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WEST AFRICAN GAS PIPELINE PROJECT ACT, 2005

AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF THE TREATY ON THE WEST AFRICAN GAS PIPELINE PROJECT AND THE INTERNATIONAL PROJECT AGREEMENT, AND FOR RELATED MATTERS

[22nd Day of June, 2005]

Commencement.

WHEREAS Federal Republic of Nigeria is a Party to the Treaty on the West African Gas Pipeline Project (in this Act referred to as "the WAGP Treaty") entered into by the Republic of Benin, the Republic of Ghana, the Federal Republic of Nigeria and the Republic of Togo dated 31st January, 2003 ;

AND WHEREAS the Parties to the WAGP Treaty entered into an International Project Agreement with the West African Gas Pipeline Company Limited pursuant to the provisions of Article VII of the WAGP Treaty on 28th May, 2003 ;

AND WHEREAS the WAGP Treaty including the International Project Agreement has been ratified by Nigeria ;

NOW THEREFORE IT IS—

ENACTED by the National Assembly of the Federal Republic of Nigeria—

PART I—CORPORATE MATTERS

1.—(1) The West African Gas Pipeline Company (in this Act referred to as "the Company") shall—

(a) perform the functions required to be performed by it under the terms of the International Project Agreement in its own right ; and

(b) not be required to incorporate a subsidiary in Nigeria or conduct its operations in Nigeria through a subsidiary by reason only of—

(i) the grant or exercise of the project rights or the project authorizations ;

(ii) the establishment in Nigeria of a place of business for the purpose of the Project ; or

(iii) the implementation of the Project.

(2) Any shipper or buyer in Nigeria, in its own right, may—

(a) acquire natural gas for transmission through the Pipeline System ; or

(b) contract with the Company to transport natural gas through the Pipeline Systems ; or

(c) contract with another person to transport natural gas through other pipeline facilities to the Pipeline System,

and shall not be required to incorporate or act through a subsidiary in Nigeria by reason only of that acquisition or transmission.

Local incorporation of the West African Gas Pipeline Company, shippers, buyers and other persons, etc.

(3) Any person in Nigeria either on its own behalf or on behalf of another person, in his or its own right, may—

(a) offer for sale, promote the sale of, or sell natural gas to be transported through the Pipeline System ; or

(b) deliver gas through the Pipeline system ;
and shall not be required to incorporate or act through a subsidiary in Nigeria by reason only of that activity.

Registration
as a foreign
or external
company,
filing
obligation,
share
transfers and
charges.

2.—(1) Without prejudice to Section 1 of this Act, the Company shall establish a legal presence in Nigeria and shall be exempted from any requirement in the Companies and Allied Matters Act to incorporate as a separate Local Legal entity and the Commission shall maintain a registration for the Company as an external Company.

(2) In order to register as an external company, the Company shall deliver a statement to the Commission containing the following information about the Company—

(a) its name ;

(b) its country of incorporation, its registration number and the identity of the register in its country of incorporation ;

(c) the address of its registered office in its country of incorporation ;

(d) copies of its constitutional documents ;

(e) details of its directors and secretaries ;

(f) the amount of its authorised and issued share capital ;

(g) the address of any office of the Company in Nigeria ; and

(h) the name and address of all persons resident in Nigeria authorised to accept service on behalf of the Company in respect of the business of any branch of the Company in Nigeria.

(3) The Company shall not be required to comply with any reporting and filing requirements under any law or enactment other than the following reporting requirements—

(a) the Company shall notify the Commission of any change to the information contained in the statement delivered under subsection (2) of this section within 28 days of the change occurring thereof ; and

(b) the Company shall submit to the Commission audited financial reports prepared in accordance with section 3 of this Act within 6 months of the end of each tax year.

(4) Notwithstanding anything to the contrary contained in any enactment or law, there shall be no restriction on the ownership of any transfer of, or any transaction concerning, shares in or the share capital of the Company and any sale, transfer, pledge of or other transaction in the share capital of the Company or the share capital of a shareholder shall not be subject to any prior approval of any authority in Nigeria

nor shall it give rise to any right to suspend or revoke a project authorisation or a project right nor to amend the terms or conditions thereof.

Cap. 59 LFN.

(5) If the Company creates a mortgage, charge or other security interest over any property situated in Nigeria, the Company or the holder of the security interest may register the charge with the Commission, or with any other appropriate registry, in the same manner as a company incorporated in Nigeria.

(6) In respect of a mortgage, charge or security interest registered as provided in subsection (5) of this section, section 198 of the Companies and Allied Matters Act shall apply to the Company in the same manner as a company incorporated in Nigeria.

3.—(1) The Company and any of its branches, places of business or subsidiaries in Nigeria shall keep bank accounts in such currencies as it considers appropriate.

Keeping of accounts and submission of reports.

(2) All financial statements and reports to be prepared and submitted by the Company or any of its subsidiaries to any applicable authority in Nigeria shall be prepared in US dollars in accordance with the accounting principles.

(3) The Company shall have no obligation to prepare or maintain or file financial reports in respect of any branch, subsidiary or place of business in Nigeria or otherwise solely in respect of the Company's activities in Nigeria.

PART II—THE WAGP AUTHORITY

4. The WAGP Authority shall have the power to—

Power of the WAGP Authority.

- (a) perform the functions assigned to it under the WAGP Treaty ;
- (b) monitor compliance by the Company with the WAGP Regulations ; and
- (c) exercise the powers conferred on it under the WAGP Regulations.

5. The Steering Committee shall be responsible for carrying out the functions of the WAGP Authority prior to the WAGP Authority having acquired the full authority to perform its functions.

Steering Committee to perform initial functions.

6. The WAGP Authority shall in accordance with the WAGP Treaty report to, and be subject to the direction of, the Committee of Ministers in respect of any of its activities in or relating to Nigeria.

Reporting and monitoring of the WAGP Authority.

7. The Company and each buyer, seller and shipper shall be entitled to act in reliance on the exercise by the WAGP Authority of the powers conferred upon it by this Act, the WAGP Treaty or the WAGP Regulations.

Reliance on WAGP Authority actions and authorizations.

8. The Government shall be bound by the actions and decisions of the WAGP Authority to the extent of the powers conferred upon it by this Act, the WAGP Treaty and/or the WAGP Regulations.

Government to be bound by the actions of the WAGP Authority.

Funding of
the WAGP
Authority.

9. The Government shall have the power to take all measures required of it under the WAGP Treaty or the International Project Agreement, or which it considers necessary, to provide funds and support the activities of the WAGP Authority as the need arises.

PART III—LICENSING

Grant and
conditions of
pipeline
licence. Cap.
338 LFN.

10.—(1) The Company shall construct and operate the Pipeline System pursuant to a licence granted by the Minister in accordance with the provisions of the Oil Pipelines Act and this Act.

(2) Without prejudice to subsection (1) of this section, the Company shall construct the pipeline system subject to any building permit granted by the Town and Country Planning Authority or Department having jurisdiction over the area where the pipeline traverses.

Duration of
the licence.
Cap. 338
LFN.

11. Notwithstanding anything to the contrary in the Oil Pipelines Act or any enactment or law, the licence granted by the Minister for the Project shall be for a period of 25 years in the first instance and may be renewed for a further period of 10 years at a time.

Mortgage of
a licence.

12. The Company may create a mortgage using a licence granted pursuant to section 10 of this Act.

Rights
conferred by
licence. Cap.
338 LFN.

13. A licence granted in accordance with section 10 of this Act shall, in addition to those rights set out in the Oil Pipelines Act, confer upon the Company and upon its officers, servants, agents and the Project Contractors the right—

(a) to enter upon (with all necessary equipment and vehicles); and

(b) to take non-exclusive possession of and use a strip of land or seabed or subsoil of a width specified in the Approved Pipeline Development Plan either side of, the route specified in the Approved Pipeline Development Plan and thereon, there over or there under to construct, maintain and operate the pipeline system.

Approval to
operate.

14.—(1) Notwithstanding that a licence has been granted pursuant to section 10 of this Act, the Company shall not commence the commissioning or operation of the pipeline system or any newly installed part thereof, without a prior approval to operate given by the WAGP Authority.

(2) The Company in making an application for approval, and the WAGP Authority, in granting the approval to operate under subsection (1) of this section, shall follow such procedures as may be agreed between them.

No other
licence
required.

15. Except as otherwise provided in this Act, no other licence or permit or authorisation is required by the Company or any Project Contractor for the construction and operation of the pipeline system.

Electricity
and
telecommu-
nications.

16. The Company may—

(a) construct, own and operate an electricity generating plant as part of the pipeline system; and

(b) construct, own and operate such communication facilities, as set out in the Approved Pipeline Development Plan.

17.—(1) No transit, export or import permit, licence or other authorisation shall be required by the Company, a buyer, a seller or a shipper solely for the purposes of—

- (a) export of natural gas from Nigeria by means of the pipeline system ;
- (b) transit of natural gas through Nigeria by means of the pipeline system ; or
- (c) import of natural gas into Nigeria by means of the pipeline system.

Transmission, export or import of natural gas.

18.—(1) No shipper or buyer, who—

(a) acquires natural gas in Nigeria for transmission through the pipeline system;
 (b) ships natural gas through the pipeline system, or
 (c) ships natural gas through other pipeline facilities to the pipeline system,
 shall be required to obtain any licence or permit by reason only of that acquisition or transmission.

Dealings in natural gas by shippers and buyers, etc.

(2) No person who, in Nigeria (either on its own behalf or on behalf of another person)—

- (a) offers for sale or promotes the sale of or sells natural gas to be transported through the pipeline system ; or
- (b) delivers gas through the pipeline system,

shall be required to obtain any licence or permit by reason only of that offer, promotion, sale or delivery.

19. The transmission of natural gas through Nigeria or across its territorial boundaries may be restricted during a period of a national emergency declared by the President in accordance with the Constitution of the Federal Republic of Nigeria 1999 and upon the cessation of such national emergency, any restrictions placed on the transmission of natural gas through Nigeria or across its territorial boundaries shall cease.

Restrictions on transmission of natural gas during emergency period.

PART IV—WAGP REGULATIONS

20.—(1) The Minister shall adopt and implement, as delegated legislation, the WAGP Regulations.

Power of the Minister to make and implement the WAGP Regulations, etc.

(2) The WAGP Regulations made by the Minister pursuant to subsection (1) of this section, including any amendments or supplements thereto, shall be—

- (a) consistent with similar regulations adopted in the Republics of Benin, Ghana and Togo ; and
- (b) consistent with the WAGP Treaty and this Act.

(3) The WAGP Authority shall have exclusive power to administer and enforce the WAGP Regulations in Nigeria and may collaborate with the Minister or any relevant agency of Government.

Exclusive regulations of matters contained in the Second Schedule.

21. Notwithstanding anything to the contrary in any enactment or law, any matter specified in the Second Schedule of this Act relating to the pipeline system and the Company shall be exclusively regulated in Nigeria by this Act and the WAGP Regulations.

Power to amend and supplement.

22. The Minister may amend or supplement the WAGP Regulations to the extent that such amendment or supplement is consistent with this Act and with the obligations of Nigeria under the WAGP Treaty.

PART V—FINANCIAL PROVISIONS

Agreed fiscal regime. First Schedule.

23. The liability for, and the calculation of, and method of assessment of tax payable by the Company and each WAGP Company in relation to WAGP income otherwise referred to as the agreed fiscal regime shall be in accordance with the principles and rules set out in the First Schedule to this Act.

Non-WAGP Regime. First Schedule.

24. The Non-WAGP Regime shall not apply to any WAGP Company in respect of WAGP activities or WAGP income except as set out in the First Schedule to this Act.

Buyers, sellers, shippers and Project Contractors. First Schedule

25. The principles and rules relating to the liability for, and the calculation of tax in the First Schedule to this Act shall also apply to buyers, sellers, shippers and Project Contractors to the extent specified in the First Schedule to this Act and the Non-WAGP Regime applicable to buyers, sellers, shippers and Project Contractors in respect of their activities as provided in the First Schedule to this Act shall be modified in accordance with the First Schedule to this Act.

Foreign currency and financial transactions.

26.—(1) Each of the WAGP Companies, the shareholders, the Project Contractors, the buyers, the sellers and the shippers, and their counterparts, shall be entitled (solely in connection with the Project, or the transportation of natural gas in, or the sale of natural gas transported or to be transported through the pipeline system, or the provision of security for their obligations under agreements in respect of the foregoing) to do the following, that is to—

(a) open, maintain and operate bank accounts in foreign currency both inside and outside Nigeria and receive payments of any kind (including without limitation, revenues in connection with the sale or transportation of natural gas) directly into all or any such accounts and retain the proceeds therein and make payments from such accounts as it should think fit ;

(b) transfer foreign currency into Nigeria ;

(c) purchase local currency at the most favourable rate available and in any event at a rate not less favourable than that which is generally made available by the Central Bank of Nigeria ;

(d) convert local currency into foreign currency at the most favourable rate available and in any event at a rate not less favourable than that generally made available by the Central Bank of Nigeria ;

(e) transfer, export and hold foreign currency outside of Nigeria ;

(f) obtain and use letters of credit in foreign currency ;

(g) utilise foreign currency in Nigeria without restriction, other than local costs incurred in Nigeria with suppliers of goods or services who are residents of Nigeria which shall be paid in Naira ;

(h) be exempted from any rule or regulation of Nigeria requiring the repatriation or mandatory conversion of foreign currency into local or any other currency ;

(i) pay in foreign currency all salaries, allowances and other benefits due to any of their employees in connection with or relating to the Project, other than residents of Nigeria who are only engaged in relation to the Project in Nigeria ;

(j) pay in foreign currency any amount due to foreign Project Contractors, shareholders or lenders in connection with the Project ;

(k) make any other payments due in connection with or relating to the Project in foreign currency, other than costs incurred solely in Nigeria with residents of Nigeria ; and

(l) enter into contracts with each other for services or the sale of goods, and to make payment for such goods or services, in any foreign currency.

27. Notwithstanding anything to the contrary in any enactment or law, the Company shall be entitled to—

Additional benefits and exemptions for Company.

(a) borrow money or raise equity in foreign currency from any source, and in each case, without the requirement for any further approval, consent or administrative act of Nigeria or any State authority ;

(b) remit to shareholders out of Nigeria any dividend derived from the Company or its affiliate in Nigeria or return of capital without any deduction, withholding or other cost, in each case without the requirement for any further approval, consent or administrative act of Nigeria or any State authority ;

(c) grant security over any property of the Company or its affiliate in Nigeria or elsewhere to lenders or other creditors or potential creditors, including balances in local and foreign currency bank accounts within or outside Nigeria ;

(d) service or repay foreign loans and pay associated fees and indemnities in any currency without being subject to any tax or withholding obligation or deduction; and

(e) remit to its lenders any principal, interest, fees or other borrowing costs owed or payable by the Company or its affiliate in Nigeria without any deduction, withholding or other cost, in each case without the requirement for any further approval, consent or administrative act by Nigeria or any State Authority.

28. The Nigerian National Petroleum Corporation established pursuant to the Nigerian National Petroleum Corporation Act, 1990 (in this Act referred to as "the Corporation") shall have power to undertake any commitment in any commercial agreement relating to the Project to which it is a party.

Authority of the Nigerian National Petroleum Corporation. Cap. 320 LFN.

29. In addition to the provisions of the Nigerian National Petroleum Corporation (Projects) Act, 1993, the Corporation or any of its subsidiaries may charge any of its assets, revenues and accounts as are set aside for the Project as security for the

Security and Assets, 1993 No. 94.

performance of its obligations under any agreement relating to the Project to which it is a party.

Performance guarantee.

30. The President of the Federal Republic of Nigeria may in the name and on behalf of Nigeria, in writing, guarantee the performance by the Corporation of its undertakings under any agreement relating to the Project to which the Corporation is a party.

Waiver of immunity.

31.—(1) Subject to such exceptions as may be contained in any commercial agreement to which it is a party, Nigeria or the Corporation unconditionally waives any immunity from suit, execution or other legal process in connection with any action or proceeding to obtain or enforce an arbitral award in relation to the Project.

(2) The amount of any award obtained against Nigeria or the Corporation under a dispute resolution procedure in any agreement relating to the Project to which it is a party will constitute conclusive evidence of the existence and amount of the claim against it.

PART VI—ENVIRONMENTAL PROVISIONS

General environmental liability.

32. The Company, its affiliates, shareholders or the Project Contractors shall be liable for any environmental damage that occurs by reason of any of the Project activities.

Exemption from liability for certain environmental damage.

33.—(1) The Company, any of its shareholders or their affiliates, lenders of the Company or the Project Contractors shall not be liable for any environmental damage that occurs other than by reason of any of the Project activities.

(2) Any environmental damage or adverse environmental effects identified in the environmental impact assessment of the Project as existing prior to the construction commitment date shall be deemed to have existed prior to the commitment of the Project activities and shall not be deemed to have been caused by the Company, its affiliates, shareholders or its lenders or Project contractors.

(3) No buyer, seller or shipper shall be liable for any environmental damage that was not caused by its activities.

Mitigation measures for certain environmental impacts existing before the commencement of the Project. 1992 No. 86.

34. Notwithstanding any exemption mentioned in section 33 of this Act, if an existing environmental damage which occurred prior to the construction commitment date will be exacerbated by any environmental impact identified in the environmental impact assessment carried out for the Project, the Company, its affiliates or the Project Contractors shall take appropriate mitigation or remediation measures to prevent the worsening of the existing environmental damage.

PART VII—MISCELLANEOUS PROVISIONS

35. The Minister may, upon receipt of a copy of a notice from the WAGP Authority to the Company given in accordance with Article IV 2 (2) (a) (xiii) of the WAGP Treaty, make Regulations requiring as a matter of law the Company to comply with the provisions of the Access code.

Empowerment
to carry out
the project.

36.—(1) Subject to the provisions of subsection (2) of this section, none of the following shall constitute a breach of any law prohibiting or restricting any person from acting in concert or combination in relation to competition in a market or the fixing of prices, that is—

Anti-trust
provisions.

(a) the entry into the International Project Agreement by the Company or the performance of its obligations thereunder ;

(b) the acquisition of natural gas in a State by a buyer or shipper for transmission through the pipeline system or the shipping of natural gas through the pipeline system or through other pipeline facilities to the pipeline system by a buyer or shipper ;

(c) the offer for sale or sale of natural gas in a State by a shipper or seller which is delivered out of the pipeline system, or the delivery of natural gas into a State through the pipeline system by a shipper or seller ;

(d) the formation of the Company by the shareholders ; or

(e) the formation of a buyer or seller or shipper by the shareholders or members of any group or consortium.

(2) Except in relation to conduct specifically contemplated in the International Project Agreement or the Access code, this subsection shall not—

(a) permit or authorise unreasonable discrimination against buyers or shippers ;

(b) permit the conduct by the Company, a buyer, a seller or a shipper which constitutes unfair discrimination ; or

(c) permit a lessening of competition, or other conduct which may otherwise be regarded under competition law as an abuse of a dominant market position.

37.—(1) The pipeline system when placed in, under or over land, in accordance with the terms of the licence, shall remain the property of the Company, notwithstanding any suspension, termination, cancellation or expiry of the licence.

Ownership of
pipeline
system.

(2) No third party shall acquire ownership or interest in the pipeline system merely by the fact of its situation in, under or over land in which that third party has an interest.

38. Notwithstanding anything to the contrary in any enactment or law, any WAGP Company or any shipper may arrange any insurance coverage for its activities under this Act in any country of its choice.

Insurance
program.

39.—(1) Notwithstanding anything to the contrary in any enactment or law and subject to subsection (2) of this section, the Company and the WAGP Authority shall carry out the Project in accordance with the provisions of this Act.

Disapplication
of other laws.

(2) The following enactments or laws shall not apply to any WAGP Company, buyer, seller, shipper and Project Contractor in respect of the Project, that is—

Cap. 338 LFN.

(a) sections 17 (1) and 18 of the Oil Pipelines Act and any regulations made pursuant to the Oil Pipelines Act ;

Cap. 350 LFN.

(b) the Petroleum Act and all regulations and statutory guidelines made thereunder ;

Cap. 118 LFN.

(c) the Export (Incentives and Miscellaneous) Act (as amended) ;

1992 No. 65.

Cap. 469 LFN.

(d) Wireless Telegraphy Act (as amended) ;

1992 No. 38.

1998 No. 31.

1995 No. 16.

1998 No. 32.

1999 No. 45.

(e) Nigerian Investments Promotion Commission Act (as amended) ;

(f) Investment and Securities Act.

Inconsistency
of this Act
with other
laws.

40. Subject to the Constitution of the Federal Republic of Nigeria, 1999, if any other law in Nigeria is inconsistent with the provisions of this Act for the purposes of the Project, this Act shall prevail and that other law shall to the extent of the inconsistency be consequentially amended.

Interpreta-
tion.

41.—(1) In this Act, unless the context otherwise requires—

“access code” means an access code applying to all gas transportation agreements for transportation of natural gas in the pipeline system other than foundation gas transportation agreements, agreed by the Company and the WAGP Authority ;

“accounting principles” means principles for accounting which are in accordance with international accounting standards, on an accrual basis (as opposed to cash) unless otherwise specifically provided in the International Project Agreement, with revenues attributed to the accounting period in which they are earned, and costs and expenses to the accounting period in which they are incurred without the need to consider when the amount is received or disbursed in connection with a particular transaction and costs and expenses deemed to have been incurred, in the case of physical items, in the accounting period when title passes, and in the case of services, in the accounting period when such services are performed ;

“administrative fees” means any fees, charges or other imposts which are imposed or charged for services, materials or rights provided or granted by any State or State authority ;

“affiliate” means, with respect to a person, any other person (or two or more persons acting together) that directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with that person, or who possesses or possess directly or indirectly, the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract, by law or otherwise ;

- “agreed fiscal regime” means the regime mentioned in section 23 of this Act and set out in the First Schedule to this Act ;
- “approval to operate” means an approval to operate the pipeline system given by the WAGP Authority to the Company in accordance with the International Project Agreement ;
- “Approved Pipeline Development Plan” means the Pipeline Development Plan which is approved by the WAGP Authority in accordance with the International Project Agreement, as it may be amended from time to time by the Company and the WAGP Authority ;
- “buyer” means a purchaser from a shipper of the natural gas which has been or is to be transported through the pipeline system ;
- “commercial agreements” means the gas purchase agreements, gas sales agreements, gas transportation agreements, interconnection agreements and credit security agreements defined as Commercial Agreements in the International Project Agreement ;
- “Commission” means Corporate Affairs Commission established under section 1 of the Companies and Allied Matters Act 1990 ; Cap. 59 LFN.
- “Committee of Ministers” means the committee established in accordance with Article X (I) of the WAGP Treaty ;
- “Company” means the West African Gas Pipeline Company Limited ;
- “Constitution” means the Constitution of the Federal Republic of Nigeria 1999 ;
- “construction commitment date” has the meaning given to it in the International Project Agreement ;
- “Corporation” means the Nigerian National Petroleum Corporation established under the Nigerian National Petroleum Corporation Act 1990 and any of its wholly owned subsidiaries ; Cap. 320 LFN.
- “debt” means any actual obligation (whether present or future, secured or unsecured) for the payment or repayment of money (excluding contingent liabilities, amounts owing to trade creditors, and other liabilities incurred in the ordinary course of business) ;
- “ELPS” means the Escravos-Lagos Pipeline System located in Nigeria ;
- “enabling legislation” has the meaning given to it in the International Project Agreement ;
- “environmental impact assessment” has the meaning given to it in the International Project Agreement and the Environmental Impact Assessment Act 1992 ; 1992 No. 86.
- “exempt goods list” means the list agreed by the Company and the WAGP Authority in accordance with Clause 29.13 of the International Project Agreement, and includes any amendments to that list agreed from time to time ;

"fiscal laws" means laws in force in a State applying in respect of the Project and governing the fiscal topics addressed in the Agreed Fiscal Regime (including, to the extent applicable, this Act) ;

"foreign currency" means any freely convertible currency, including US dollars, that is the lawful currency of a State (other than the lawful currency of any of the States) ;

"foundation gas transportation agreement" has the meaning given to it in the International Project Agreement ;

"gas transportation agreement" means an agreement between a person and the Company for the transportation by the Company on behalf of that person of natural gas through the pipeline system ;

"Government" means the Federal Government of the Federal Republic of Nigeria ;

"interest" includes all other forms of return in respect of a debt claim (other than repayment of the debt), including, for the avoidance of doubt, discounts, fees and charges ;

"International Project Agreement" means the international project agreement made between the Republic of Benin, the Republic of Ghana, the Federal Republic of Nigeria, the Republic of Togo and the West African Gas Pipeline Company concerning the West African Gas Pipeline Project ;

"Legislature" means the National Assembly of Nigeria ;

"Minister" means the Minister for the time being charged with responsibility for petroleum ;

"natural gas" means any hydrocarbons (or a mixture of hydrocarbons and other gases) which at a temperature of 60 degrees Fahrenheit and at atmospheric pressure are predominantly in a gaseous state ;

"Nigeria" means either the Federal Republic of Nigeria or the territory of the Federal Republic of Nigeria, as the context may require ;

"Non-WAGP Regime" means the legislation, regulations, principles of interpretation and application and any other features of the system of taxation applicable either generally or specifically in Nigeria, as amended, modified or enacted from time to time, which is not legislation introducing, amending, modifying, re-enacting or consolidating the agreed fiscal regime ;

"Pipeline Development Plan" means the development plan for the pipeline system prepared in accordance with the International Project Agreement ;

"pipeline licences" has the meaning given to it in the International Project Agreement ;

"pipeline system" means a Natural gas pipeline running from the ELPS, through Benin and Togo, to a terminus initially near Takoradi, Ghana to be developed, built, operated and maintained by the Company under the terms of the International Project Agreement together with ancillary permanent facilities which are needed for the construction and operation thereof (including compression stations, metering stations, valve stations,

pig launching and receiving stations and Supervisory Control and Data Acquisition systems (SCADA) and includes any extension or expansion ;

“Project” or “West African Gas Pipeline Project” means the development of specifications, feasibility and market studies, design, financing, construction, ownership, operation and maintenance of the pipeline system ;

“project activities” means activities undertaken within one or more of the States by a WAGP Company, the shareholders or the Project contractors in connection with the implementation of the Project ;

“ project authorisations” means all rights, permits, licences, consents, permissions, exemptions and approvals (including those identified in detail in the Approved Pipeline Development Plan) which are needed by a WAGP Company or a Project contractor for the successful implementation of the Project, or to fulfil commitments made under the commercial agreements or for the exercise of any of the rights of the Company under the International Project Agreement, and includes the pipeline licences ;

“ Project Contractors” means any contractors, sub-contractors, advisers or agents of the Company engaged in connection with the implementation of the Project ;

“Project rights” means all of the rights, entitlements and benefits conferred on the Company by the International Project Agreement, including the right of the Company to be issued the Project Authorisations and to implement the Project in accordance with the terms of the International Project Agreement ;

“relevant Minister” means the Minister of each State from time to time having power to make regulations under the enabling legislation ;

“rules of procedure” means the rules of procedure to be established by the Relevant Ministers in accordance with Article VI of the WAGP Treaty ;

“SCADA” means Supervisory Control and Data Acquisition System ;

“sellers” means the sellers of natural gas which has been or is to be transported through all or part of the pipeline system ;

“shareholders” means —

(a) the Chevron Texaco West African Gas Pipeline Company Limited ;

(b) the Nigerian National Petroleum Corporation ;

(c) the Shell Overseas Holding Limited ;

(d) the Takoradi power Company Limited and subject to the exercise of existing options to take up shares in the Company

(e) Societe Beninoise de Gaz S.A, and

(f) Societe Togolaise de Gaz S. A,

and their successors and assigns each a “shareholder” ;

"shipper" means a person who enters into a gas transportation agreement with the Company ;

"State authorities" means the Government and each aspect thereof at every level, including central, regional and local authorities or bodies, and all non-judicial instrumentalities, statutory bodies, taxing authorities, branches and sub-divisions of any of the foregoing, and any entity which is directly or indirectly controlled by Nigeria or one or more State Authorities ; and includes the State Environmental Protection Authorities, the Tax Authority of Nigeria and the Technical Authority ;

"State Environmental Protection Authorities" include—

- (a) the Federal Ministry of Environment ;
- (b) the environmental section of the Department of Petroleum Resources of Ministry of Petroleum Resources ;
- (c) the Lagos State Environmental Protection Agency ;
- (d) the Ministry of Environment and Physical Planning of Lagos State ;
- (e) the Ogun State Environmental Protection Agency ;
- (f) the section or department of the Office of the Governor of Ogun State having responsibility for environmental matters ; and
- (g) the environmental section of the National inland Waterways Authority ;

"States" means Benin, Ghana, Nigeria and Togo, each a "State" ;

"Steering Committee" has the meaning given to it in the International Project Agreement :

"tax" or "taxes" means any existing or future taxes, levies, duties, customs imposts, contributions (such as social fund and compulsory medical insurance contributions), fees, assessments or other similar charges payable to or imposed by Nigeria or a State Authority, but does include Administrative Fees to the extent that they do not exceed a reasonable amount for the services, materials or rights provided or granted ;

"tax authority" means—

- (a) in respect of Benin, the Direction Generale des Imports,
- (b) in respect of Ghana—
 - (i) in respect of value added tax, the Value Added Tax Service,
 - (ii) in respect of customs and excise duties, the Customs, Excise and Preventive Service, or
 - (iii) in respect of Income Tax or any other Tax matter, the Internal Revenue Service ;
- (c) in respect of Nigeria—
 - (i) in respect of income tax and valued added tax, the Federal Inland Revenue Service, and

(II) in respect of customs and excise duties, the Nigerian Customs Service, and

(d) in respect of Togo, the Direction Generale des Imports, or in each case, their successor bodies ;

"tax year" means a period of one year beginning on 1st January and ending on 31st December ;

"Technical Authority" means the Ministry of Petroleum Resources ;

"US dollars" or "US \$" means the lawful currency of the United States of America ;

"WAGP activities" include any activity of the Company or any subsidiary of the Company which—

(a) are engaged in by the Company or its subsidiary in relation to the pipeline system, business or for the purpose of furthering the West African Gas Pipeline system business, or

(b) are agreed by the Company and the WAGP Authority to be a WAGP Activity, but shall not include—

(i) the operation of local distribution companies, or

(ii) any other activity agreed by the Company and the WAGP Authority not to be a WAGP Activity ;

"WAGP Company" means the Company and any wholly owned subsidiary of the Company which is the subject of a notification to the WAGP Authority and the tax authorities in accordance with the International Project Agreement ;

"WAGP Income" has the meaning given to it in paragraph 7 of the First Schedule to this Act ;

"WAGP Treaty" means the treaty concerning the West African Pipeline project made between the Republic of Benin, the Republic of Ghana, the Federal Republic of Nigeria and the Republic of Togo concerning the West African Gas Pipeline Project ;

"WAGP Tribunal" means the tribunal of that name established by the WAGP Treaty ;

"WAGP Regulations" means regulations governing the construction and operation of the pipeline system (including the matters referred to in the Second Schedule to this Act), to be adopted by the Minister under this Act ; and

"West African Gas Pipeline Authority" or "WAGP Authority" means the body established under the WAGP Treaty.

(2) Any term, word or phrase not specifically defined in this Act shall have the same meaning as in the International Project Agreement.

42. This Act may be cited as the West African Gas Pipeline Project (Special Provisions, etc.) Act, 2005. Short Title.

Section 23

FIRST SCHEDULE

SUPPLEMENTARY PROVISIONS RELATING TO AGREED FISCAL REGIME

PART 1—GENERAL PROVISIONS RELATING TO AGREED FISCAL REGIME

Assessment
of tax
payable by
WAGP
Companies.

1.—(1) This Schedule sets out the principles and rules relating to the liability for, and the calculation of, and method of assessment of, tax on the Company (including in respect of each other WAGP Company that is deemed to be a branch of the Company in accordance with paragraph 16 (3)) of this Schedule in relation to WAGP income.

(2) For the purposes of this Schedule all income accrued and expenses incurred by any WAGP Company in respect of WAGP activities shall be deemed to be income accrued and expenses incurred by the Company, and the Company shall accordingly be liable to pay income tax in respect thereof.

(3) No WAGP Company other than the Company shall have any liability to income tax in respect of WAGP activities.

(4) The Non-WAGP regime shall not apply to any WAGP Company in respect of WAGP activities or WAGP income except as set out in this Schedule.

(5) All Income tax liabilities of the Company, and payments made by the Company in respect of those liabilities, shall be to the Tax Authority of Nigeria.

(6) The WAGP Authority will participate in the determination of the liability of the Company to pay Income Tax as set out below.

(7) The income tax liability of the Company shall be calculated by reference to tax years.

Other
persons.

2.—(1) The principles and rules relating to the liability for and the calculation of tax on buyers, sellers, shippers and Project contractors shall be as set out in this Schedule.

(2) The Non-WAGP regime applying to such persons in respect of any activities contemplated in this Schedule shall be modified in accordance with this Schedule.

(3) If any WAGP Company undertakes any action, transaction or agreement (whether or not as a part of an arrangement or series of arrangements) where the principal purpose is—

(a) to obtain for the Company a relief (or increased relief) from, or repayment or increased repayment of, income tax on WAGP income imposed by this Schedule ; or

(b) for the avoidance or reduction of a charge to such a tax or an assessment to such a tax, the amount of the relief, repayment or charge for the Company shall be the amount that would have been the case had the action, transaction or agreement or arrangements or series of arrangements not been undertaken.

Interpreta-
tion of some
terms in this
Schedule.

3.—(1) For the purposes of this Schedule—
"agreed fiscal regime" means the fiscal regime as set out in Section 23 of this Act and this Schedule ;

"applicable person" means a WAGP Company or any other person (including Project Contractors, buyers, sellers and shippers) to whom the agreed fiscal regime is intended to apply ;

"applicable rate" means a rate of interest equal to 15 per cent per annum, compounding annually ;

"certification system" has the meaning given to it in the International Project Agreement ;

"completion date" has the meaning given to it in the International Project Agreement ;

"construction expenditure" has the meaning given to it in the International Project Agreement ;

"debt" means any actual obligation (whether present or future, secured or unsecured) for the payment or repayment of money (excluding contingent liabilities, amounts owing to trade creditors, and other liabilities incurred in the ordinary course of business) ;

"Dispute Resolution Procedure" has the meaning given to it in the International Project Agreement ;

"Eligible Development Costs" has the meaning given to it in Schedule 16 of the International Project Agreement ;

"equity" means total assets, including retained earnings and other surplus reserves, less total liabilities (including Debt), the resulting sum equal to the values ascribed to common stock, preferred stock, capital surplus or paid in capital and retained earnings or earned surplus, as disclosed in audited accounts ;

"Fiscal Review Board" means the Fiscal Review Board established in accordance with the WAGP Treaty ;

"fiscal start date" has the meaning given to it in the International Project Agreement ;

"income tax" means amounts payable by a WAGP Company in accordance with Part II of this Schedule ;

"minor taxes" means taxes other than income tax, VAT and customs duties ;

"Non-WAGP regime" means the legislation, regulations, principles of interpretation and application and any other features of the system of taxation applicable either generally or specifically in Nigeria, as amended, modified or enacted from time to time, which is not legislation introducing, amending, modifying, re-enacting or consolidating the agreed fiscal regime ;

"reservation charge" has the meaning given to it in the International Project Agreement ; and

"WAGP Authority Charge" has the meaning given to it in the International Project Agreement.

PART II—INCOME TAX

4.—(1) Subject to the principles and rules set out in this Schedule, and in particular to paragraph 13 of this Schedule, the Company shall be liable to pay to Nigeria, in respect of each tax year, income tax at the rate of 35 per cent of its taxable income attributable to Nigeria in the tax year.

Liability to any rate of income tax.

(2) The taxable income of the company attributable to Nigeria shall be calculated as set out below, following the apportionment between the States of WAGP income, allowable expenses and capital allowances as set out in this Schedule.

Assessment of tax payable by WAGP Companies.

(3) In calculating the amount due in respect of income tax from the Company to Nigeria, credit shall be given for any amount in respect of which an election is made by the Company under this paragraph.

(4) In this Part of this Schedule, "State liability" means—

(a) an amount of money which has been determined under the dispute resolution procedure to be owing by Nigeria to the Company under Clause 36.4 of the International Project Agreement ;

(b) an amount of money which has been determined in accordance with this Schedule to be owing by Nigeria to the Company under the fiscal laws (whether laws implementing the provisions of paragraph 11 of this Schedule or paragraph 35 of this Schedule or otherwise) and in respect of which no further appeal is permitted under Part VII of this Schedule (whether as a result of the expiry of any time limit or otherwise) or in respect of which Nigeria has confirmed that no appeal will be made by it ;

(c) an amount of money which is deemed under sub-paragraph (5) or (6) of this paragraph to be owed by Nigeria to the Company ;

(d) an amount of money which has been determined under sub-paragraph (7) of this paragraph to be owing by Nigeria to the Company ; or

Other persons.

(e) interest on any of the above amounts arising under Clause 44.3 of the International Project Agreement or paragraph 20 of this Schedule.

(5) Where the Company claims that an amount is owing by Nigeria to the Company under the fiscal laws (whether laws implementing the provisions of paragraphs 19, 25, 35 (2) and (4) of this Schedule, or otherwise), including interest thereon arising under paragraph 20 of this Schedule, and in respect of which a further appeal is permitted under Part 7 of this Schedule, and in respect of which Nigeria has not confirmed that no appeal will be made by it, the Company may give to the WAGP Authority and to the Tax Authority of Nigeria written notice setting out particulars of the amount in question and the circumstances in which the liability arose.

(6) If Nigeria disputes that any part of the amount set put in the notice is owing to the Company, it may within 30 days of receipt of such notice make application to the WAGP Tribunal for a determination that such amount or a part of it is not owing by Nigeria to the Company and if Nigeria does not make such an application, or does not make it in respect of the whole of the amount claimed, then for the purpose of this

Interpretation of some terms in this Schedule.

Schedule the amount stated in the notice, or if Nigeria disputes only part of the amount stated in the notice, the balance of the amount claimed, shall be deemed to be owing by Nigeria to the Company and shall be a State liability in accordance with subparagraph (1) of this paragraph.

(7) If Nigeria makes an application in accordance with subparagraph (6) of this paragraph to the WAGP Tribunal for a determination that an amount is not owing by it to the Company and if—

(a) the application is dismissed in whole by the WAGP Tribunal, the amount stated in the notice shall be deemed to be owing and shall be a State liability ;

(b) the application is dismissed in part by the WAGP Tribunal the amount stated in the notice which relates to that part of the application which was dismissed shall be deemed to be owing and shall be a State liability ; or

(c) the WAGP Tribunal makes a determination that an amount is owing, then that amount shall be a State liability ; or

(8) The Company may, by notice given in a return, elect to treat any part of a State liability as a credit in the calculation of the amount of income tax due to Nigeria in respect of the tax year to which the return relates and where a notice is given in accordance with this paragraph the liability of the Company to income tax for the tax year to which the return relates shall be reduced accordingly.

Taxable
income.

5. The taxable income for any period shall be equal to the amount of WAGP income attributable to Nigeria for that period less the aggregate of—

(a) allowable expenses attributable to Nigeria for that period ;

(b) capital allowances attributable to Nigeria in respect of that period ; and

(c) any allowable losses available in Nigeria.

WAGP
income and
allowable
expenses :
income and
expenses.

6. For the purposes of this Part of this Schedule—

(a) "income" means any receipts or realised gains of a revenue nature, determined in accordance with the accounting principles and for the avoidance of doubt, income includes amounts recovered by way of insurance claims, judicial or arbitral awards, recovered legal costs, rental or refunds, proceeds from sale or exchange of plant or facilities or supplies, or sale or licence of intellectual property, where under the accounting principles such amounts would be treated as income ; and

(b) "expenses" means any payment or outflow or depletion of assets or incurrence of liabilities, other than distributions to equity participants.

WAGP
Income.

7.—(1) Subject to subparagraph (2) of this paragraph, the amount of WAGP income for any tax year is the aggregate of—

(a) payments accrued by the Company during that tax year that are derived from natural gas transportation operations which are WAGP activities ;

(b) income accrued during that tax year in respect of any debt claims in which the Company is the creditor ;

(c) any other income incidental to WAGP activities accrued by the Company during that tax year ; and

(d) any negative pool balance in respect of that tax year;

(2) WAGP income shall not include—

(a) any amount accrued in respect of the disposal of any capital asset other than as provided under subparagraph (1) (d) of this paragraph ;

(b) any accrual in respect of the WAGP Authority charge or any part of the WAGP Authority charge ;

(c) any dividend or any accrual in respect of any dividend received from any WAGP Company ;

(d) any amount accrued or payable to a WAGP Company by a State under the International Project Agreement, except where and to the extent that the amount paid is compensations for or reimbursement of lost WAGP income, or

(e) any interest or other income accruing prior to the fiscal start date.

8. —(1) Allowable expenses for a period means all expenses (other than non-allowable expenses) which are incurred in that period including accruals on any debt claims where the Company is the debtor wholly, exclusively and necessarily for the purpose of deriving WAGP income :

Allowable expenses.

Provided that expenses will be considered to be necessarily incurred where the Company believes at the time the expenses are incurred, that to incur the expenses is reasonable and appropriate to enable, facilitate, develop or make more efficient the carrying out of WAGP activities or the deriving of WAGP income.

(2) For the avoidance of doubt, expenses shall not cease to be allowable expenses solely as a result of being incurred in respect of related party transactions.

(3) For the purposes of this Schedule, an expense shall be treated as incurred at the time at which and to the extent that an accrual in respect of such expense is properly recordable in the accounts of the Company in accordance with the accounting principles or in the case of costs incurred by shareholders or their affiliates, in the account of that person in accordance with its accounting principles.

9. Non-allowable expenses means all expenses, other than allowable expenses, which shall include—

Scope of non-allowable expenses.

(a) expenses that are interest to the extent that—

(i) the average ratio of debt to equity for the consolidated group during the tax year exceeds 70:30 so that in calculating the amount of allowable expenses and non-allowable expenses where this ratio is exceeded the amount of the interest expense shall be prorated between the two in accordance with the amount of debt that falls within and exceeds this ratio, respectively ;

(ii) such interest expense is incurred in an amount exceeding a reasonable commercial return for a borrowing between unconnected parties on the same terms for the same amount and entered into at the same time and for the same period and in the same currency as the relevant borrowing by the Company; and for the purpose

of determining for the purposes of this paragraph whether any interest expense exceeds such a reasonable commercial return, if the Company and the WAGP Authority agree on a mechanism for determining reasonable interest rates for the purposes of this paragraph, or if the WAGP Authority approves the terms of a finance facility, then any interest expense incurred under a facility which complies with that mechanism or under any facility the terms of which are so approved, shall not be a non-allowable expense, or

(iii) the debt in respect of which the interest expense accrues is incurred for the principal purpose of reducing the Company's tax liability ;

(b) any expenses incurred in providing business entertainment or gifts, other than the cost of accommodation, food and drink attributable to any employee or director of any WAGP Company incurred in any of the States ;

(c) legal fees or other costs of proceedings incurred in relation to arbitration or any determination under the International Project Agreement ;

(d) any expenses incurred prior to the fiscal start date ;

(e) any expenses already taken into account as a deduction in respect of any tax liability calculated by reference to net profits or gains of any shareholder or affiliate of a shareholder in any State ;

(f) any expenses in relation to any purchase of goods or services from any shareholder or an affiliate of a shareholder to the extent that the consideration given exceeds the consideration which would be payable in an arm's length transaction of substantially the same nature between unconnected parties ;

(g) the cost of any letter of guarantee from shareholders or affiliates to the States which is given in relation to the International Project Agreement ;

(h) fines and penalties imposed under any law of a State; and the costs of indemnities to employees, contractors or agents of any WAGP Company in respect of such fines and penalties ;

(i) any general overhead or general head office costs incurred by shareholders or affiliates and re-charged to any WAGP Company not including any amounts charged in respect of specific services supplied and separately invoiced by such shareholders or affiliates to the extent these exceed 1.5 per cent of the Company's aggregate allowable expenses, excluding the amounts to be re-charged, for the relevant tax year ;

(j) any depreciation for accounting purposes in the value of any assets ;

(k) any Capital Expenditure or any debit for accounting purposes arising by reference to any Capital Expenditure ;

(l) any payment by the Company to the WAGP Authority which is reimbursable through the WAGP Authority charge ; and

(m) any payment of, or on account of tax and any interest, supplement or penalty in respect of an underpayment of, or on account of tax.

Reliefs.

10. Claimed reliefs in respect of Nigeria are the allowable losses available in Nigeria plus capital allowances claimed in the return in respect of Nigeria for the relevant tax year.

11.—(1) If in any tax year the amount of allowable expenses attributable to Nigeria exceeds the amount of WAGP income attributable to Nigeria, the excess shall be an allowable loss of the Company available in Nigeria for that tax year.

Loss reliefs.

(2) An amount of allowable loss mentioned in subparagraph (1) of this paragraph shall be carried forward and may be claimed by the Company in any of the nine subsequent tax years in accordance with paragraph 5 and this paragraph of this Schedule.

(3) Where an amount of any allowable loss is claimed and utilised by the Company in Nigeria in any subsequent tax year—

(a) the amount of the taxable income of the Company in Nigeria in respect of that tax year shall be reduced by the amount of allowable loss so claimed; and

(b) the amount of that allowable loss that may be carried forward for use in Nigeria in subsequent tax years shall be reduced by the amount so used.

(4) The Company shall be deemed to claim amounts of allowable loss in chronological order beginning with those that arose in the earliest available tax year.

12.—(1) All eligible development costs, and to the extent not included in the eligible development costs, all allowable expenses incurred by the Company prior to the fiscal start date less the sum of all WAGP income derived by the Company prior to the fiscal start date, including the amount of any interest income accruing to the Company prior to the fiscal start date, will be the amount of the capital account as at the fiscal start date.

Capital allowances.

(2) At the end of each tax year ending after the fiscal start date, the amount of the capital account of the Company shall be adjusted by adding the amount of capital expenditure incurred by the Company in that tax year (other than capital expenditure) incurred prior to the fiscal start date, and subtracting an amount equal to the aggregate of the disposal proceeds for that tax year (but not so that the capital account may ever be a negative number).

(3) To the extent that the aggregate of the disposal proceeds for any tax year exceeds the amount of the capital account after adding the amount of capital expenditure incurred by the Company in that year but prior to adjustment in accordance with subparagraph (2) of this paragraph in respect of the amount equal to the aggregate of the disposal proceeds for that tax year or in accordance with this paragraph, the amount of the excess (the "negative pool balance") shall be treated as WAGP Income of the Company for the relevant tax year; and the amount of the capital account shall be reduced to zero.

(4) The Company may elect to claim an amount of relief (known as its "capital allowances") equal to not more than 25 per cent of the balance of its capital account at the end of the relevant tax year.

(5) The amount of the capital allowances shall be taken into account in reducing the taxable income of the Company for the relevant tax year as described in paragraph 5 of this Schedule, and shall be deducted from the capital account at the commencement of the next succeeding tax year.

(6) The capital allowances mentioned in sub-paragraph (5) of this paragraph shall not be claimed, and the balance of the capital account shall not be reduced until the tax year or part thereof which falls after the end of the income tax holiday period, and in subsequent tax years.

(7) The capital expenditure shall be—

(a) the expenses of acquiring or improving any asset which is a capital asset ; and

(b) the expenses of capital services, but, in each case, shall not include any expenses that do not exceed US \$10,000.

(8) For purposes of subparagraph (7) of this paragraph—

(a) an asset is a capital asset if that asset is acquired not with a view to its sale for a profit, but for the enduring benefit of the business of the Project;

(b) a service is a capital service if that service is not provided to or acquired by the Company to be utilised by the Company directly for an onward supply of goods and services with a view to profit, but is supplied for the enduring benefit of the business of the Project.

(9) The Company will keep a ledger in US dollars recording all capital expenditure incurred and the capital asset in respect of which that capital expenditure has been incurred.

(10) Where any capital asset is disposed of by the Company (other than a disposal which is disregarded in accordance with sub-paragraph (d) of paragraph 16 (3) of this Schedule), "disposal proceeds" shall arise in the tax year in which the disposal takes place and the amount of the disposal proceeds shall be the amount of the sale proceeds or the value of other consideration received for that capital asset.

Income tax holidays.

13 (1) The income tax holiday period shall be the period starting on the fiscal start date, and lasting for 60 months.

(2) The Company shall notify the WAGP Authority and the Tax Authority of Nigeria promptly upon becoming aware of the first day on which a reservation charge is payable.

(3) No income tax shall be payable by the Company in respect of WAGP income arising prior to the last day of the income tax holiday period.

(4) If a tax year begins before and ends after the last day of the income tax holiday period, the amount of WAGP Income earned and allowable expenses incurred in that tax year in the part periods before the last day and after the last day of the income tax holiday period shall be calculated on a pro rata basis by apportionment of the total WAGP Income and allowable expenses of the tax year between the two periods according to the number of days falling before that last day and the number of days falling after.

(5) The maximum capital allowances claimable in respect of the period after the last day of the tax holiday period shall be pro-rated downwards in the same manner.

(6) The income tax payable in respect of taxable income arising during the tax year in question shall be calculated only by reference to WAGP Income and allowable expenses apportioned to the period after the last day of the income tax holiday period.

14—(1) All WAGP income, allowable expenses and capital allowances for a tax year shall be apportioned between each State in proportion to that State's apportionment percentage for that tax year determined in accordance with sub-paragraph (2) of this paragraph, irrespective of where or how such WAGP income might have been earned or accrued or expenses incurred.

Assessment
and adminis-
tration of tax
liability.

(2) In each tax year, the apportionment percentage of Nigeria shall be derived according to the following formula—

$$APs = 45 \times ((Ls \div Lt) + (RCs \div RCT)) + 2.5.$$

where:

APs = the apportionment percentage of Nigeria in the tax year, expressed as a percentage ;

Ls = the length of pipeline comprised in the pipeline system situated within Nigeria as at 1st of January in that tax year, which has been commissioned for which purpose the length of the pipeline within Nigeria shall be determined by the as-built survey carried out by the Company, and the length of lateral pipelines shall be included ;

Lt = the total length of pipeline system as at 1st of January in that tax year, which has been commissioned for which purpose the length of the pipeline shall be determined by the as-built survey carried out by the Company, and the length of lateral pipelines shall be included ;

RCs = the sum of the quantities of reserved capacity which are reserved at any time for transportation of natural gas as at the 1st of January in that tax year, for delivery out of the pipeline system in Nigeria ; and

RCT = the total sum of the quantities of reserved capacity which are reserved at any time for transportation of natural gas as at the 1st of January in that tax year.

(3) The Company shall, not later than the 10th January in that tax year, notify the WAGP Authority and the Tax Authority of Nigeria of its calculation of the apportionment percentage of each State for that tax year.

(4) The WAGP Authority shall, not later than the 31st of January in that tax year referred to in sub-paragraph (3) of this paragraph, notify the Company, on behalf of all of the Tax Authorities, whether it accepts the correctness of such calculation.

(5) If the WAGP Authority notifies the Company that all of the Tax Authorities accept the correctness of the calculation, or if the WAGP Authority fails to notify the Company by the 31st of January, then the apportionment percentages for the tax year shall be as calculated by the Company.

(6) If the WAGP Authority notifies the Company that one or more Tax Authorities do not accept the correctness of the calculation, the dispute resolution procedure shall be used to determine the apportionment percentage to apply for that tax year and pending the final determination under the dispute resolution procedure, the apportionment percentages which applied during the previous tax year shall continue to apply.

(7) Upon the final determination of the apportionment percentages under dispute resolution procedure, there shall be an adjustment between the State (and if applicable, between the State and the Company) of any monies paid by or to the Company, without penalty or Interest (including any supplement or Interest as set out in paragraph 20 of this Schedule, or any penalties set out under Part VI of this Schedule).

(8) The apportionment percentages to apply in any tax year, or the method of determining the apportionment percentages, may be adjusted by the States by written notice signed by each relevant Minister and delivered to the Company prior to that tax year :

Provided, however that —

(a) the total of the apportionment percentages to apply in a tax year shall always equal 100 per cent ;

(b) if a methodology is to be used to determine the division of the apportionment percentages between the States, the apportionment percentages shall be readily ascertainable not later than the 1st of January in the tax year concerned ; and

(c) If on the 1st of January in a tax year adjusted apportionment percentages which the States intend to apply in that tax year are not readily ascertainable in accordance with sub-paragraph (b) of this paragraph, then the apportionment percentages which applied in the previous tax year shall continue to apply.

Tax Returns.

15.—(1) As from the commencement of the tax year in which the fiscal start date occurs, the Company shall submit returns for (each a return and together, the returns) as set out in this Schedule to this Act.

(2) The returns will comprise the audited company accounts of the Company (prepared in accordance with the accounting principles) together with tax accounts showing the appropriate tax adjustments to the financial statements.

(3) The returns will include the results of the Company irrespective of the State to which they relate and the results of each other WAGP Company that is deemed to be a branch of the Company under this Schedule and shall be prepared in accordance with the bases and assumptions in paragraph 16 (3) of this Schedule.

(4) The returns shall set out the WAGP income, allowable expenses and capital allowances for that tax year and the apportionment in accordance with paragraph 14 (1) of this Schedule of those amounts to each State and shall include a calculation of the Company's liability to income tax in each State for that tax year and the basis of that calculation.

(5) The Company shall maintain its accounting records and present its financial statements, income tax computations and returns in US dollars.

(6) The Company shall keep its original financial statement, income tax computations, returns and all reasonably necessary supporting documentation in premises situated within one of the States at the choice of the Company.

(7) The Company shall submit one return to the WAGP Authorities and one to the Tax Authority of Nigeria within six months of the end of the tax year, the final date of such six month period being the filing date.

(8) The Tax Authority of Nigeria together with the Tax Authorities of the other States shall jointly review the returns in conjunction with the WAGP Authority and prepare a single combined assessment on the basis of the information contained in the returns.

(9) The combined assessment shall show the calculation of the taxable income of the Company in each State for the tax year in question, and the Liability of the Company to each State for income tax in respect of the tax year in question, having credited any amount to be credited in accordance with this Schedule, and shall constitute a tax assessment (referred to in this Schedule as "the assessment") by each individual State for the amounts so assessed in respect of that State.

(10) The WAGP Authority shall, on behalf of the Tax Authority in each State, issue the combined assessment to the Company within 90 days of the filing date :

Provided that, if the Company has not been provided with reasonable adequate information to justify the claims and calculations in the Returns, the WAGP Authority may, within 30 days of the filing date, request such further information as it may reasonably consider it necessary to justify the claims and calculations in the returns, in which case the issue of the combined assessment shall be not later than—

(a) ninety days following the filing date ;

(b) thirty days after the Company provides such further information, such later date being the assessment due date.

(11) If the Company fails to submit returns in accordance with sub-paragraphs (1) to (7) of this paragraph, not later than the date failing 12 months after the filing date, the Tax Authority in Nigeria together with the Tax Authorities in the other States may jointly in conjunction with the WAGP Authority, prepare a combined assessment on the basis of the information they are aware.

(12) The combined assessment prepared in accordance with sub-paragraphs (8), (9) and (10) of this paragraph shall constitute a tax assessment by each individual State for the amounts so assessed in respect of that State.

(13) If, after the notification of a combined assessment prepared pursuant to sub-paragraph (11) of this paragraph, the Company submits returns in accordance with sub-paragraphs (1) to (7) of this paragraph, the returns shall be assessed in accordance with this Schedule and following such assessment, sub-paragraph (12) of this paragraph shall cease to have effect and this Schedule shall apply as if no combined assessment or assessment had been issued pursuant to this Part of this Schedule.

(14) If no assessment is issued in accordance with subparagraph (10) of this paragraph not later than the assessment due date, then the Company shall be deemed to have been assessed by the Tax Authority of Nigeria, exactly in accordance with the return filed by the Company and such deemed assessment shall constitute the assessment by Nigeria accordingly.

(15) An Assessment of liability to income tax of the Company shall only be made in accordance with subparagraphs (10), (11) or (14) of this paragraph, and shall not be made by the Tax Authority of Nigeria otherwise than in accordance with those paragraphs.

(16) An Assessment made under subparagraphs (10), (11) or (14) of this paragraph shall be without prejudice to the power for an amended or altered Assessment to be made following an audit, in accordance with paragraphs 17 (4), (5) and (6) of this Schedule.

Consolidated
tax returns.

16.—(1) The Company shall promptly notify the WAGP Authority and the Tax Authority of Nigeria in writing, when any wholly owned subsidiary of the Company engages in WAGP Activities.

(2) The Company and any subsidiary in respect of which the Company gives a notice under this paragraph (together referred to as "the Consolidated Group") shall be treated as a consolidated entity for the purposes of calculating the liabilities to income tax of the members of the Consolidated Group under this Schedule.

(3) For all purposes of Part II of this Schedule, each of the member of the consolidated Group other than the Company shall, with respect to the tax year in which notice is given under subparagraph (1) of this paragraph and each subsequent tax year, be deemed to be a branch of the company in respect of WAGP income, allowable expenses and claimed reliefs and in particular—

(a) all income accruing to any other WAGP Company shall be treated as if it is or was accrued by or to the Company ;

(b) all allowable expenses incurred by any other WAGP Company shall be treated as if they are or were incurred by the Company ;

(c) the belief, intent or purpose of the Company shall be the same as that of the WAGP Company concerned had no consolidation taken place ;

(d) any payment to or receipts from another member of the Consolidated Group including, for the avoidance of doubt, dividends, any indebtedness between members of the Consolidated Group and all supplies and or disposals between members of the Consolidated Group shall be disregarded ;

(e) any asset that is or was acquired, held or improved by any WAGP Company shall be treated as if it is or was acquired, held or improved by the Company ;

(f) any indebtedness of or to any WAGP Company (other than any indebtedness disregarded pursuant to subparagraph (3) (d) of this paragraph) shall be treated as if it is or was indebtedness of or to the Company.

(g) any goods or services, other than any goods or services disregarded pursuant to sub-paragraph (3) (d) of this paragraph provided to or acquired by any WAGP Company shall be deemed to be provided to or acquired by the Company ;

(h) any action, transaction or omission of any WAGP Company shall be treated as an action, transaction or omission of the Company ;

(i) any allowable loss that would have arisen to any member of the Consolidated Group other than the Company but for the bases and assumptions set out in sub-paragraphs (3) (a) to (h) of this paragraph shall be treated as an allowable loss of the Company ; and

(j) each WAGP Company other than the Company shall have no liability to income tax in respect of WAGP activities or WAGP income.

(4) The Company shall submit returns, and assessments shall be issued to the Company, in accordance with the bases and assumptions set out in sub-paragraph (3) of this Schedule.

17.—(1) The WAGP Authority may, on behalf of and as agent of the Tax Authority of Nigeria, request further information and conduct an audit of any return at any time during the period of six years from the filing date for that return.

Audit and amended assessment and returns.

(2) Except as otherwise provided in sub-paragraph (1) of this paragraph, no audit of the Company shall be conducted by the Tax Authority of Nigeria.

(3) The WAGP Authority shall be empowered to act on behalf of and as agent of the Tax Authority of Nigeria in dealing with the Company on a dispute as to an assessment or the outcome of an audit and any agreement reached between the WAGP Authority so acting and the Company shall be binding on the Tax Authority of Nigeria.

(4) The Company may, at any time during the six years following the filing dates submit amended returns for a tax year, one to each of the WAGP Authority and the Tax Authority of Nigeria in which case the Tax Authority of Nigeria shall issue an amended assessment or more than one amended assessments in accordance with paragraph 15 (8) and (9) of this Schedule within 90 days of receipt of the amended return, or if it fails to do so, paragraph 15 (14) shall apply.

(5) The WAGP Authority acting for and on behalf of the Tax Authority of Nigeria, may issue an altered assessment to the Company if it considers that a previous assessment was incorrect in any manner.

(6) If there is a dispute as to an assessment, then any agreement reached to resolve that dispute shall, in the absence of fraud, be binding on the WAGP Authority and the Tax Authority of Nigeria, and no assessment shall be issued which is inconsistent with such agreement.

18. All payments in respect of income tax shall be made in US dollars.

Currency of Income Tax payments.

19.—(1) Within 30 days of the commencement of each tax year, the Company will deliver to the WAGP Authority, an estimate of its income tax liability in respect of

Interim payments.

taxable income including, where applicable, as a result of paragraph 16 (3) of this Schedule for that tax year and the Company may vary any such estimate at any time during the year by written notice to the WAGP Authority.

(2) The Company shall make instalmental payments not later than each of the 31st March, the 30th June and the 30th September in each tax year and each payment shall be of an amount so that the Company following that payment has paid or is deemed to have paid an amount of income tax in respect of taxable income in Nigeria equal to the estimated income tax in respect of taxable income in Nigeria for the tax year multiplied by the product of 25 per cent and the number of installment payment dates that have then fallen due ; and a final installment payment shall be made not later than the 31st December.

(3) The Company shall, at the same time as filing its returns for each tax year, pay a further installment payment equal to the amount of further income tax if any, which the returns indicate is owing by the Company.

(4) An adjusting payment, if any, shall be due within 30 days from the date on which the assessment is issued, from the Company to Nigeria if the result of the assessment is that further income tax is owing by the Company to Nigeria, or from Nigeria to the Company if the result of the assessment is that the Company has overpaid installment payments for the tax year in question.

(5) Any supplement due from the Company under paragraph 20 of this Schedule shall also be due on that date and in the event that the adjusting payment is due from Nigeria to the Company and any supplement is due from the Company to Nigeria, the amounts shall be netted off and only the remainder shall be due.

(6) If an income tax liability of the Company is adjusted following the issuance of an amended assessment or an altered assessment or following an appeal by the Company or a State, a further adjusting payment, if any, shall be due from, or as the case may be, to the Company within 30 days from the date of which the amended or altered assessment is issued or, as the case may be, the date on which judgment is given by the relevant appellate body together with interest at the applicable rate from the date on which the amended or altered assessment or decision on appeal is made.

Supplement
and interest.

20.— (1) Where, for any tax year the amount of income tax due from the Company in Nigeria on the basis of the return for the tax year in question exceeds the product of 1.05, and the aggregate of the installments paid by the Company in Nigeria for the tax year in question pursuant to paragraph 19 (2) of this Schedule, the Company shall pay, in accordance with paragraph 19 (4) of this Schedule, to Nigeria a supplement of an amount equal to 10 per cent of that excess.

(2) Interest payable in US dollars will be payable at the applicable rate on all other amounts owing by the Company to Nigeria or by Nigeria to the Company under the fiscal laws and no interest shall be due in respect of over or under payment of installments under paragraphs 19 (2) or (3) of this Schedule.

Withholding
taxes.

21.—(1) No amount in respect of taxes will be required to be withheld or deducted from—

(a) the dividends declared by the Company or any dividends declared by any WAGP Company which are disregarded pursuant to paragraph 16 (3) (d) of this Schedule ;

(b) subject to sub-paragraph (2) of this paragraph, the payments by or to the Company in respect of interest, principal or fees, charges or costs in respect of debt or any such payment by or to any WAGP Company that is disregarded pursuant to paragraph 16 (3) (d) of this Schedule ;

(c) the payments in respect of branch profits or repatriation of branch capital of the Company or any such payment by or to any WAGP Company that is disregarded pursuant to paragraph 16 (3) (d) of this Schedule ;

(d) the payments made for sales of natural gas which has been or is to be transported through or consumed in the pipeline system ; or

(e) the payments to a shipper or the Company for transportation of natural gas through the pipeline system or any such payment by or to any WAGP Company that is disregarded pursuant to paragraph 16 (3) (d) of this Schedule.

(2) If the Company makes any payment of interest to a person who is not resident in any of the States in respect of debt owed by the Company which was incurred other than in connection with the funding of construction expenditure or working capital or other costs incurred by the Company prior to the completion date or refinancing of debt originally incurred in connection with the funding of construction expenditure or working capital or other costs incurred by the Company prior to the completion date, then—

(a) the payment of interest shall be made subject to a withholding in respect of taxes of the lender, of 10 per cent of the gross payment ;

(b) the amount of the withholding shall be paid by the Company to the Tax Authority of Nigeria in proportion to the apportionment percentages of Nigeria applying in the tax year in which the withholding is made ; and

(c) the amount so paid to the Tax Authority of Nigeria shall be a final tax on income in Nigeria in respect of that interest.

(3) Where the Company receives services from a contractor within any of the States, the Company shall require a separate invoice in respect of the services that are rendered in Nigeria, or a breakdown showing the amounts invoiced in respect of services rendered in Nigeria.

(4) The Company shall, upon receiving such services mentioned in sub-paragraph (3) of this paragraph, apply a 6 per cent withholding in respect of the invoiced amount and shall pay to the contractor the net amount and to the Tax Authority in Nigeria the amount withheld in respect of services rendered in Nigeria.

(5) Notwithstanding sub-paragraph (4) of this paragraph, no withholding shall be applied to services that are not rendered in Nigeria nor in any of the other States, nor will there be a withholding in respect of goods supplied to the Company, whether supplied in conjunction with services or otherwise.

(6) Where a withholding is applied under sub-paragraph (5) of this paragraph, the treatment of the withholding for the relevant contractor shall be as follows, that is—

(a) where the contractor is a resident of Nigeria, the withholding will be a refundable credit against taxation on income of that contractor in Nigeria ; and

(b) where the contractor is not a resident of Nigeria, the withholding will be a final tax on income in Nigeria.

(7) For the purposes of this paragraph, of this Schedule, a service shall be considered to be rendered and received where the supplier of the services actually performs the services.

Information provision.

22. The Company shall notify the Tax Authority of Nigeria whenever to its knowledge it makes a payment of a dividend or an interest payment to a resident of Nigeria.

Other transactions related to income tax.

23.—(1) A buyer, seller or shipper who is not a resident of Nigeria shall not be subject to taxation on his income in Nigeria unless he carries on business in Nigeria through a permanent establishment situated in Nigeria.

(2) Where a buyer, seller or shipper carries on business through a permanent establishment as specified in sub-paragraph (1) of this paragraph, his income may be taxed in Nigeria, but only so much thereof as is attributable to that permanent establishment.

(3) A buyer, seller or shipper who is a resident of two or more States shall be deemed to be a resident only of the State in which his place of effective management is situated.

(4) A buyer, seller or shipper who is a resident of any State shall be subject to taxation on income only in that State unless it carries on business in another State through a permanent establishment situated in that other State.

(5) If the buyer, seller or shipper carries on business as aforesaid, the income of that buyer, seller or shipper may be subject to taxation in that other State but only so much thereof as is attributable to that permanent establishment in that State.

(6) The amount of the income of that buyer, seller, or shipper that is attributable to that permanent establishment in that other State, and therefore subject to taxation in that other State, shall not also be subject to taxation in the State of residence.

(7) In this Part of this Schedule, the following expressions shall have the following meanings—

“resident” means, in respect of a State, a person which under the laws of that State is liable to taxation in that State by reason of its incorporation or registration in that State, or by reason of its place of management being in that State ; but does not include a person liable to taxation in that State in respect only of Income from sources in that State or capital situated therein ; and

"permanent establishment" means, in respect of a State, a fixed place of business in that State through which the business of an enterprise is wholly or partly carried on,

and a person shall not be regarded as a resident or having a permanent establishment in a State, by reason only that the person holds an interest in another person which is a resident of or has a permanent establishment in that State.

(8) Any question of apportionment of income or expenses or of profits to any permanent establishment shall be determined in a manner consistent with the provisions of Article 7 of the United Nations Model Double Taxation Convention of June 2001.

PART III—VALUED ADDED TAX

24.—(1) The Non-WAGP regime in respect of Value Added Tax (in this Schedule referred to as "the VAT") in Nigeria shall apply but with the following adaptations.

1993 No. 102.

(2) In this Part, references to Nigeria include references to any State Authority having authority in relation to VAT.

(3) All supplies of goods or services which are imported from outside Nigeria for the purpose of construction of the pipeline system shall be exempt for the purposes of VAT:

Provided that, in the case of goods—

(a) the relevant goods are items of plant, equipment, machinery or other materials to be used in the construction of the pipeline system and are listed on or are to be part of items listed on the exempt goods list; and

(b) they have been certified under the certification system as qualifying for this exemption.

(4) The VAT in respect of supplies of goods or services rendered in Nigeria shall to the extent that the relevant expenditure is capital expenditure be zero-rated.

(5) A supplier of goods or services shall be entitled to rely on a certificate given under the certification system as evidence that its supply is zero-rated.

1993 No. 102.

(6) The VAT in respect of supplies of services rendered in Nigeria by contractors without a permanent business establishment in any State to a WAGP Company, where such supplies of services are not zero-rated or exempted in accordance with sub-paragraph (3) of this paragraph shall be chargeable in accordance with the Value Added Tax Act.

(7) Where the foreign contractor is registered for the purposes of VAT in Nigeria, the relevant WAGP Company which is deemed under paragraph 26 of this Schedule to be part of the VAT Consolidation shall make payment of that VAT directly to that foreign contractor and may assume that the relevant foreign contractor is bound to account to Nigeria.

(8) Where the payment mentioned under sub-paragraph (7) of this schedule is not made, the relevant WAGP Company which is deemed under paragraph 26 of this

Schedule to be part of the VAT Consolidation shall withhold that VAT from the payment to the foreign Contractor and shall account for that VAT to Nigeria.

(9) Natural gas imported for transit, or for consumption in the course of the pipeline system operations will be exempted from VAT and natural gas imported for sale will be subject to existing Valued Added Tax Act in Nigeria:

1993 No. 102.

Provided that the treatment shall be comparable to the treatment of competing fuels.

(10) The sale of natural gas in Nigeria for export through the pipeline system and the provision of services in Nigeria to facilitate the delivery of such natural gas into the pipeline system shall be zero-rated and all natural gas transportation services in respect of the pipeline system shall also be zero-rated.

(11) For the purposes of VAT, supplies of services shall be rendered where the supplier of services actually performs the services and supplies of goods rendered where title to the relevant goods passes.

25.—(1) The Company, shall be entitled to refunds of all VAT paid or deemed pursuant to sub-paragraphs (1) and (2) of paragraph 26 of this Schedule to be paid by it in respect of supplies of goods and services to it or such supplies deemed pursuant to sub-paragraphs (1) and (2) of paragraph 26 of this Schedule.

VAT returns
and refunds.

(2) The Company shall submit to the Tax Authority in Nigeria a VAT return in respect of each month not later than the 30th day of the subsequent month.

(3) The Tax Authority in Nigeria will, within 30 days of the submission of the VAT return, reimburse the Company, in the currency or currencies in which the Company made the payments concerned an amount equal to the VAT refund due in respect of the supplies received during the period to which that return relates.

(4) Any amount of VAT refund not reimbursed to the Company concerned within 30 days of submission of a VAT return by the Company shall bear interest at the applicable rate from that date until the date of actual payment or effective date of a credit as set out below.

(5) If the Tax Authority in Nigeria fails to refund an amount due in respect of such a period of account, following the Company having made all reasonable efforts to recover that amount from the State Authority in question the Company may claim a credit in respect of that payment due in the calculation of income tax payable in Nigeria by the Company in accordance with sub-paragraph (1) of this paragraph.

(6) If the Company claims a credit in accordance with paragraph 4 of this Schedule, Nigeria shall cease to owe that amount to the Company under this paragraph with effect from the time when, due to the credit, it pays a lesser amount of income tax than it would otherwise have paid.

26.—(1) The Company shall, to the extent that it has not already done so in accordance with paragraph 16 (1) of this Schedule, give notice in writing to the WAGP Authority, and to the Tax Authority of Nigeria of the name and registered office of any other WAGP Company carrying out WAGP Activities within its jurisdiction.

VAT
consolidation.

(2) The Company and all other WAGP Companies operating in Nigeria shall for the purposes of VAT Consolidation, be deemed to be a single entity for the purposes of calculating their liabilities to, and rights to a refund in respect of, VAT under this Schedule and their other rights and obligations under this Part 3 of this Schedule.

(3) For all purposes of this Schedule, the business carried on by each of the WAGP Companies that are members of the VAT Consolidation shall, with respect to the VAT period in which a notice is given in accordance with sub-paragraph (1) of this paragraph and each subsequent VAT period, be treated as carried on by the Company and in particular—

(a) any supply of goods or services by any member of the VAT Consolidation to another member of the VAT Consolidation shall be disregarded ;

(b) any other goods or services supplied by or to a member of the VAT Consolidation shall be treated as supplied by or, as the case may be, to the Company ; and

(c) any payments of VAT made by any member of the VAT Consolidation shall be treated as a payment by the Company.

(4) The Company shall submit a VAT return and the Tax Authority of Nigeria shall make payments to the Company in accordance with the bases and assumptions set out in this Part of this Schedule.

PART IV—CUSTOMS DUTIES

Application
of customs
duties.

27.—(1) The non-WAGP Regime in respect of customs duties in Nigeria shall apply subject to the provisions of this Part of this Schedule.

(2) For the purposes of this Part, “customs duties” includes all customs and excise duties, all import and export duties and all similar charges, fees, taxes, levies and duties.

(3) In this Part, a reference to Nigeria includes a reference to any State Authority having authority in relation to customs duties.

Conditions
for exemp-
tion from
customs
duties.

28.—(1) Any goods imported for use on the pipeline system shall be exempt from customs duties ;

Provided that—

(a) the relevant goods are items of plant, equipment, machinery or other materials to be used in the construction of the pipeline system and are listed or are to be part of items listed on the exempt goods list ; and

(b) they have been certified under the certification system as qualifying for this exemption.

(2) If subsequent to the importation of any asset without the payment of duty in accordance with the application of sub-paragraph (1) of this paragraph, that asset is utilised within any of the States other than for the purposes of the pipeline system, then the amount of duty will become due from the WAGP Company concerned that would have been due if the exemption had not been available on the initial importation.

29. Each WAGP Company shall pay local or national clearance fees, registration fees and any other fees in relation to the importation of capital assets.

Payment of clearance fees.

30. No customs duties will be levied in respect of the import or export of natural gas.

Import or export of natural gas exempted from customs duty.

PART V—OTHER TAXES

31. No taxes on income or profits or gains or any other corporate income taxes other than as described in Part H of this Schedule and no taxes on capital gains will be payable by any WAGP Company in respect of WAGP Income or Income derived from WAGP activities or income falling within paragraph 7(1)(b) of Part 11 of this Schedule.

Corporate income taxes.

32. The Non-WAGP regime in respect of payroll taxes and national insurance or social security contributions in respect of employees of any WAGP Company shall apply to that WAGP Company.

Employment taxes.

33. Each WAGP Company shall be liable to pay administrative fees of general application, but to the extent that administrative fees exceed an amount that is regular and necessary for the services, materials or rights provided or granted them shall be taxed.

Administrative fees.

34. Any gains arising from the sale of Securities as a consequence of the exercise of the rights set out in clause 6 of the International Project Agreement, or the proceeds of such sale, shall not be subject to taxation.

Capital gains on company shares.

35.—(1) The WAGP Companies shall, in respect of WAGP activities, be liable to taxes on income or profits or gains to VAT and to customs duties as set out in Parts II, III and IV of this Schedule, but not otherwise.

Any other taxes.

(2) Each WAGP Company shall be subject to all minor taxes within the Non-WAGP regime but to the extent that the combined payments of all WAGP Companies in respect of minor taxes to Nigeria and to any Tax Authority of Nigeria in a tax year in aggregate exceeds in respect of WAGP Activities an amount equal to US\$50,000 adjusted for inflation as set out in sub-paragraph (3) of this paragraph, the amount of that excess shall be a debt owing by Nigeria to the Company.

(3) The amount of \$50,000 shall be adjusted for inflation as follows, that is—

$$AA = \$50,000 \times \frac{I_y}{I_0}$$

Where—

AA = The adjusted amount for the tax year in question.

I₀ = The average of the inflation index for the twelve calendar months up to and including the 31st October prior to the calendar year in which FID occurs.

iv = The average of the inflation index for the twelve calendar months up to and including the 31st October prior to the calendar year for which the calculation is being made.

(4) Where the Company considers that in a tax year, it or any other WAGP Company has paid in Nigeria in a tax year, minor taxes in excess of the adjusted amount determined in accordance with sub-paragraphs (2) and (3) of this paragraph the Company shall submit to Nigeria, with a copy to the WAGP Authority, a statement specifying all minor taxes paid during the tax year and its calculation of the amount of the excess.

(5) Nigeria shall, within 30 days of the submission of such return reimburse the Company, in the currency or currencies in which the Company or other WAGP Company concerned made the payments, an amount equal to the amount due from Nigeria under sub-paragraphs (2) and (3) of this paragraph.

(6) Any amount not reimbursed to the Company concerned within 30 days of submission of such return by the Company shall bear interest at the applicable rate from that date until the date of actual payment.

(7) Where Nigeria fails to refund an amount due in respect of such a period of account, following the Company having made all reasonable efforts to recover that amount from Nigeria, the Company may claim a credit in respect of that payment due in the calculation of income tax payable in Nigeria by the Company, in accordance with paragraph 4 (3) in Part II of this Schedule.

(8) If the Company claims a credit in accordance with this Act, Nigeria shall cease to owe that amount to the Company under this Paragraph with effect from the time when, due to the credit, it pays a lesser amount of income tax than it would otherwise have paid.

PART VI—PENALTIES

General.

36.—(1) The Tax Authority of Nigeria may impose penalties on the Company in accordance with this Part of this Schedule but may not otherwise impose penalties on the Company or any WAGP Company.

Failure to submit a return in respect of Income Tax.

(2) The Tax Authority of Nigeria may impose in accordance with this Part VI a fixed penalty payable by the Company to such Tax Authority if the Company fails to submit a return by the filing date for that return.

(3) The fixed penalty payable under paragraph 6 (2) will be—

(a) US \$400, if the return is submitted within three months after the filing date ; or

(b) US \$800, if the return is submitted later than three months after the filing date but within 12 months after the filing date.

(4) The Tax Authority of Nigeria may impose in accordance with this Part VI a further penalty payable by the Company to such Tax Authority in addition to a fixed penalty if the Company fails to submit a return within twelve months after the filing date for that return.

(5) The further penalty imposed by the Tax Authority shall be 20 per cent of the unpaid income tax being the amount of the Income tax liability of the Company in

Nigeria for the tax ; year concerned less the sum of the installments paid pursuant to paragraph 19 (2) for the tax year to which a return relates.

(6) The further penalty payable pursuant to sub-paragraph (5) of this paragraph shall be calculated by reference to the assessment of Nigeria under sub-paragraph (8), (9) or (11) to (14) of paragraph 15 of this Schedule, and shall be subject to adjustment if the amount of such assessment is adjusted or altered whether under sub-paragraphs (4), (5) or (6) or paragraph 17 of this Schedule, or otherwise.

37.—(1) The Tax Authority of Nigeria may impose in accordance with Part VI, a penalty payable by the Company to such Tax Authority if the Company knowingly and with an intention to deceive such Tax Authority—

(a) submits a return that contains material errors or omissions ; or

(b) submits incorrect company accounts with any return that contains material errors or omissions.

(2) Where the Company discovers that there has been a material error or omission in a return or any company accounts submitted to the Tax Authority of Nigeria that was not included knowingly and with an intention to deceive such Tax Authority, the Tax Authority of Nigeria may impose in accordance with this Part VI a penalty unless the Company remedies the error or omission within a reasonable period.

(3) Where the Company discovers that there has been a material error or omission in a return or any company accounts submitted to the Tax Authority of Nigeria whether or not knowingly and with an intention to deceive and the error or omission is notified by the Company to such Tax Authority before such Tax Authority issues a notice under paragraph 40 (1) below in respect of that error then the Tax Authority of Nigeria may not impose a penalty and any subsequent notice under paragraph 40 (1) by such Tax Authority in respect of that error shall be invalid.

(4) The amount of a tax-related penalty payable by the Company under this paragraph shall not exceed the amount by which the amount of the liability of the Company to income tax in Nigeria for the tax year to which the return relates and according to the return including the material error or omission by the Company is less than the amount of the liability of the Company to income tax in Nigeria for the tax year to which the return relates and would have been payable if the return had not contained the error or omission concerned.

38.—(1) The Company shall keep and preserve records necessary for the completion of each return in accordance with paragraph 15 (5) and (6) of this Schedule.

(2) If the Company fails to comply with sub-paragraph (1) of this paragraph, the Tax Authority of Nigeria may impose on the Company a penalty not exceeding US \$10,000.

39.—(1) The Tax Authority of Nigeria may impose in accordance with this Part, a fixed penalty payable by the Company to such Tax Authority if the Company fails to submit a VAT return on or before the due date for that VAT return.

Delivery of an incorrect return in respect of income tax.

Failure to keep records.

Failure to submit a return in respect of VAT.

(2) The fixed VAT penalty payable under this Schedule shall be—

(a) US \$250, if the VAT return concerned is submitted within 30 days after the due date for that VAT return under Part 3 of this Schedule ; and

(b) US \$500, in any other case.

Enforcement
procedure.

40.—(1) In order to impose a fixed penalty, a further penalty or a tax related penalty on the Company in accordance with the provisions of this Part, the Tax Authority of Nigeria shall serve a notice in writing on the Company within 6 years of the filing date for the return to which the penalty relates.

(2) In order to impose a fixed VAT penalty on the Company in accordance with the provisions of this Part of this Schedule, the Tax Authority of Nigeria shall serve a notice in writing on the Company within 3 months of the due date for the VAT return concerned under paragraph 25 (2) of this Schedule.

(3) Where the Tax Authority of Nigeria serves a notice upon the Company, it shall specify the grounds for imposing the penalty, the amount of the penalty and the date which shall not be less than thirty days after the date on which the notice is received by the Company on which, in the absence of any appeal, the Company is to make payment of the penalty.

PART VII—APPEALS

Jurisdiction
of Fiscal
Review
Board.

41. Subject to the right to appeal to the WAGP Tribunal as set out below, the Fiscal Review Board shall have exclusive jurisdiction to hear applications filed by any applicable person for review of a decision or action or inaction of Nigeria, the Tax Authority of Nigeria, any other State Authority or the WAGP Authority in relation to the application of the agreed fiscal regime (including NonWAGP Regime matters which are modified by the implementation of the Agreed Fiscal Regime), including the specific applications set out in this Part.

Rights of
appeal.

42.—(1) Any WAGP Company or any other applicable person who is aggrieved or dissatisfied by a decision or action or inaction of Nigeria, the Tax Authority of Nigeria, any other State Authority or the WAGP Authority in relation to the application of the fiscal laws, may apply to the Fiscal Review Board, and beyond it to the WAGP Tribunal as set out in this Part, for a review of or to appeal that decision or action or inaction or for a direction to Nigeria, the Tax Authority of Nigeria, other State Authority or WAGP Authority in respect of such matter, in accordance with this Part.

(2) The right of appeal or review under this Part shall extend to all matters covered by the Agreed Fiscal Regime, including NonWAGP Regime matters which are modified by the implementation of the agreed fiscal regime.

(3) Nigeria or a State Authority which is aggrieved or dissatisfied by a decision of the Fiscal Review Board may appeal the decision of the Fiscal Review Board in accordance with this Part but where the matter being appealed is a matter arising under Part II of this Schedule (other than an appeal in relation to the application of paragraph 4 or in respect of matters covered in paragraphs 21 and 23 of this Schedule), then an appeal shall lie only if all States or the equivalent State Authority in all States joins in the appeal.

43.—(1) Any applicable person who is dissatisfied with—

Income Tax.

(a) any Assessment or any amended or altered assessment issued by the Tax Authority of Nigeria ; or

(b) the failure of Nigeria to issue an amended assessment following the submission of amended returns in accordance with Part II of this Schedule,

may appeal to the Fiscal Review Board by written notice to the WAGP Authority, copied to the Tax Authority of Nigeria.

(2) Any applicable person who is dissatisfied with any imposition of a withholding or deduction contrary to paragraph 21 of this Schedule or the failure of Nigeria to treat any withholding in accordance with paragraph 21 (6) of this Schedule, may appeal to the Fiscal Review Board by notice in writing to the WAGP Authority, copied to the Tax Authority of Nigeria.

(3) The notice required to be given under this paragraph, shall be given—

(a) in the case of sub-paragraph (1) (a) of this paragraph, within 30 days of the date on which the assessment, amended assessment or altered assessment is issued ; or

(b) in the case of sub-paragraph (1) (b) of this paragraph, within 135 days of the submission of the amended returns as referred to in paragraph 17 (4) of this Schedule ; or

(c) in the case of sub-paragraph (2) of this paragraph, within 30 days of the date on which the Tax Authority of Nigeria seeks to impose the withholding or deduction or the date on which Nigeria fails to treat the withholding in accordance with Part II of this Schedule.

44.—(1) If any applicable person is dissatisfied with—

Appeals with respect to VAT.

(a) any refund of VAT by Nigeria or a State Authority including as to the amount of any interest due ;

(b) any refusal by Nigeria or a State Authority to make a repayment of VAT including as to the amount of any interest due ;

(c) any requirement of Nigeria or a State Authority that VAT be paid or charged ; or

(d) any refusal in whole or in part by Nigeria or a State Authority to allow a credit for Tax in respect of VAT paid and not refunded,

may appeal to the Fiscal Review Board by written notice to the WAGP Authority, copied to the Tax Authority of Nigeria and to any other State Authority involved.

(2) Such notice mentioned in sub-paragraph (1) of this paragraph must be given within 60 days of the matters giving rise to the dissatisfaction of the applicable person came to its attention.

45.—(1) If any applicable person is dissatisfied with any imposition of any customs duties pursuant to Part IV of this Schedule by Nigeria, may appeal to the Fiscal Review Board by written notice to the WAGP Authority, copied to the Tax Authority of Nigeria.

Customs duties.

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| Other taxes or discrimination Non-WAGP regime. | <p>(2) Such notice must be given within 60 days of the date on which the matters giving rise to the dissatisfaction of the applicable person came to its attention.</p> <p>46.—(1) If any applicable person is dissatisfied with any imposition of any Tax by Nigeria or a State Authority contrary to the provisions of the fiscal laws or by the failure of Nigeria or a State Authority or the WAGP Authority to comply with the fiscal laws or to correctly apply the NonWAGP regime as modified by the implementation of the agreed fiscal regime, it may appeal to the Fiscal Review Board by written notice to the WAGP Authority, copied to the Tax Authority of Nigeria and any other relevant State Authority.</p> <p>(2) The notice mentioned in sub-paragraph (1) of this paragraph shall be given within 90 days of the date on which Nigeria seeks to impose the Tax concerned or the final decision of Nigeria or the State Authority which gives rise to the dissatisfaction.</p> |
| Penalties and interest. | <p>47.—(1) If any applicable person is dissatisfied with any imposition of any penalty under Part VI of this Schedule for any demand for interest by the Tax Authority of Nigeria under paragraph 20 (2) of this Schedule or any refusal of the Tax Authority of Nigeria or Nigeria to pay interest pursuant to paragraph 20 (2) of this Schedule, it may appeal to the Fiscal Review Board by written notice to the WAGP Authority, copied to the Tax Authority of Nigeria.</p> <p>(2) The notice mentioned in sub-paragraph (1) of this paragraph shall be given within 30 days of the date on which the Tax Authority of Nigeria seeks to impose the penalty or the interest or the date on which the interest was due and payable by such Tax Authority.</p> |
| Fiscal Review Board Process. | <p>48.—(1) The Fiscal Review Board shall conclude, on the basis of the information and evidence submitted to it, what the correct amount of Tax due from, or repayment of Tax due to, the applicable person should be, being satisfied on the balance of probabilities. A decision of the Fiscal Review Board shall constitute an administrative decision of the Tax Authority of Nigeria.</p> <p>(2) The decisions of the Fiscal Review Board shall be binding on the parties to its proceedings, shall be recognised as final, effective and immediately enforceable as of their notification within the domestic legal and fiscal systems of Nigeria and as against any State Authorities of Nigeria (to the extent Nigeria was a party to or regularly joined in the proceedings), subject to the parties' right to appeal to the WAGP Tribunal as set out below.</p> |
| Jurisdiction of WAGP Tribunal to hear appeals. | <p>49. The WAGP Tribunal shall have exclusive jurisdiction to hear and determine the appeals and applications provided for it in this Schedule.</p> |
| Right of appeal or application to the WAGP Tribunal. | <p>50.—(1) Any party in proceedings before the Fiscal Review Board may, apply to the WAGP Tribunal if they are dissatisfied with the findings of the Fiscal Review Board so far as that finding is a finding of law, but shall not be so entitled if that finding is a finding of fact.</p> |

(2) Whether a finding is a finding of law or of fact shall be the decision of the Fiscal Review Board acting reasonably and in good faith and taking into account the submissions of each party.

(3) Any such decision may be appealed against to the WAGP Tribunal by any of the parties before the Fiscal Review Board.

(4) Nigeria may also bring an application to the WAGP Tribunal in accordance with paragraph 4 (6) of this Schedule.

51.—(1) The WAGP Tribunal shall conclude, on the basis of the information and findings of fact submitted to them, what the correct amount of tax due from or repayment of tax due to, the applicable person should be being satisfied on the balance of probabilities.

WAGP
Tribunal
process.

(2) The WAGP Tribunal shall reach its determination fairly, in accordance with the facts, the governing law and all relevant agreements including, for the avoidance of doubt, the International Project Agreement and if the WAGP Tribunal is unable to agree unanimously on its decision, a majority decision shall apply and shall be binding on the parties.

(3) The decisions of the WAGP Tribunal shall be binding on the parties to its proceedings, and shall be recognised as final, effective and immediately enforceable as of their notification within the domestic legal and fiscal systems of Nigeria and as against any State Authorities of Nigeria (to the extent Nigeria was a party to or regularly joined in the proceedings).

52. The procedures for the conduct of appeals or applications to the Fiscal Review Board or the WAGP Tribunal shall be as set out in the WAGP Treaty and the Rules of Procedure.

Procedures.

53.—(1) Where an applicable person is appealing a liability to tax only in part, it shall make payment in respect of the part of the liability to tax that is not disputed and such payment shall be taken into account by the Fiscal Review Board or WAGP Tribunal, as the case may be, in assessing the amount of any liability to tax and interest, if any, due under sub-paragraphs (5) to (7) of this paragraph following its judgment.

General.

(2) In the conduct of an appeal, no party to the appeal shall be obliged to disclose any document which it reasonably considers contains legal advice provided by a legal adviser including for the avoidance of doubt, any legal adviser employed as such by such party in respect of the appeal or otherwise and shall be entitled to disclose parts only of documents where part of such document is relevant to the appeal but parts are not, or parts contain legal advice that the party concerned shall not be obliged to disclose, and parts do not.

(3) The parties to proceedings before the Fiscal Review Board or WAGP Tribunal shall be free to settle the appeal by agreement of all such parties on such terms as they see fit at any time, including during the hearing, in which case the appeal and the hearing shall, to the extent of the settlement, come to an end and no further appeal shall be available.

(4) Any agreement made pursuant to sub-paragraph (3) of this paragraph shall not be effective unless it is made in writing signed by the appropriate representative of all the parties to the proceedings.

(5) The Fiscal Review Board and the WAGP Tribunal may in reaching its judgment, grant to a party or parties to the hearing a right to receive from the other party or parties a payment in respect of the costs of the first party or parties.

(6) The Fiscal Review Board and the WAGP Tribunal may also order that interest is payable at a rate not exceeding the Applicable Rate for any period it considers to be reasonable.

(7) Any amount of costs or interest under this paragraph 53 of this Schedule received by a party to such a proceeding shall not be taxable in the hands of that party and no payment by a party of an amount awarded under this paragraph shall be deductible as an allowable expense.

SECOND SCHEDULE

Section 21

SUBJECT MATTER OF THE WAGP REGULATIONS

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| <p>1. The WAGP Regulations shall—</p> <p>(a) be consistent with the International Project Agreement ;</p> <p>(b) adopt the Agreed Design Standards as defined in the International Project Agreement ;</p> <p>(c) accord with internationally acceptable industry standards ; and</p> <p>(d) accord with recognised good practice applicable to high pressure natural gas pipelines.</p> | <p>Nature of WAGP Regulation.</p> |
| <p>2. The WAGP Regulations shall not govern the environmental standards which shall be applied to the pipeline system and implemented in the construction and operation of the pipeline system, or the procedures for obtaining environmental approvals, which standards and procedures shall remain the subject matter of the prevailing environmental legislation applying in each State.</p> | <p>WAGP Regulations not to govern environmental standards and procedures.</p> |
| <p>3. The WAGP Regulations shall include without limitation, regulations addressing the following matters—</p> <p>(a) standards and procedures for the design and construction of the pipeline system incorporating the Agreed Design Standards ;</p> <p>(b) standards and procedures for the testing and commissioning of the pipeline system incorporating the Agreed Design Standards ;</p> <p>(c) standards and procedures for the operation and maintenance of the pipeline system including for the repair, testing and checking of the pipeline system, for internal and external corrosion, incorporating the Agreed Design Standards ;</p> <p>(d) standards of and procedures for measurement to be used in the pipeline system ;</p> <p>(e) health and safety requirements and practices for the pipeline system ;</p> <p>(f) environmental operating requirements, including handling of leaks and discharges ;</p> <p>(g) qualifications and experience required for operating personnel and companies ;</p> <p>(h) requirements for periodic reporting to the WAGP Authority ;</p> <p>(i) rights of inspection to be granted to the WAGP Authority ;</p> <p>(j) a regime providing for the imposition of penalties on the Company for certain breaches of the WAGP Regulations in the operation of the pipeline system and for continuing events of default by the Company under the International Project Agreement ;</p> <p>(k) procedures to deal with an emergency situation, including the circumstances in which the Company may be required to suspend its operations for reason of risk to health, safety or the environment ;</p> | <p>Matters to be addressed by the WAGP Regulations.</p> |

Mandatory Provisions of WAGP Regulations.

(l) procedures for the termination or resumption of operation of the pipeline system including procedures for abandonment ;

(m) to the extent not included in the Rules of Procedure, procedures for the conduct of hearings of the WAGP Authority where appropriate, under the WAGP Regulations ; and

(n) to the extent not included in the Rules of Procedure, procedures for review by the Committee of Ministers and the Fiscal Review Board and appeals to the WAGP Tribunal in accordance with the WAGP Treaty.

4. The WAGP Regulations shall provide for—

(a) all drawings, plans, designs and other technical documents made or prepared by the Company for the purposes of the Project, and any plans for the fabrication or construction of the pipeline system which have been approved by the Steering Committee or its delegates prior to the establishment and empowerment of the WAGP Authority shall be deemed to have been duly approved by the WAGP Authority ;

(b) all actions, other than those identified in sub-paragraph (a) of this paragraph, taken in accordance with the International Project Agreement or this Act by the Steering Committee or its delegates prior to the establishment and empowerment of the WAGP Authority which are functions of the WAGP Authority, shall be deemed to have been duly taken by the WAGP Authority ;

(c) any drawings, plans, designs and other technical documents made or prepared by the Company for the purposes of the Project, and any plans for the fabrication or construction of the pipeline system, which have been approved by the WAGP Authority or its delegates or deemed to have been so approved by operation of sub-paragraph (a) of this paragraph prior to the entry into force of the WAGP Regulations, which are approvals provided for in the WAGP Regulations, shall be deemed to have been approved under the WAGP Regulations upon their entry into force ; and

(d) all actions taken by the WAGP Authority or deemed to have been so taken by operation of sub-paragraph 4 (b) of this paragraph prior to the entry into force of the WAGP Regulations, which are actions provided for in the WAGP Regulations, shall be deemed to have been duly taken under the WAGP Regulations upon their entry into force.

I certify, in accordance with section 2 (1) of the Acts Authentication Act, Cap. A2, the Laws of the Federation of Nigeria 2004, that this is a true copy of the Bill passed by both Houses of the National Assembly.

NASIRU IBRAHIM ARAB
Clerk to the National Assembly
20th Day of June, 2005

EXPLANATORY MEMORANDUM

This Act provides for national legislation to implement the obligations of the Federal Republic of Nigeria under the WAGP Treaty and the International Project Agreement of the West African Gas Project involving the Federal Republic of Nigeria and the Republics of Benin, Ghana and Togo.

SCHEDULE TO THE WEST AFRICAN GAS PIPELINE PROJECT BILL, 2005

| (1) | (2) | (3) | (4) | (5) |
|--------------------------------------|--|---|----------------------------------|--|
| <i>Short Title of the Bill</i> | <i>Long Title of the Bill</i> | <i>Summary of Contents of the Bill</i> | <i>Date passed by the Senate</i> | <i>Date passed by House of Representatives</i> |
| West African Gas Pipeline Bill, 2005 | An Act to provide for the implementation of the Treaty on the West African Gas Pipeline Project and the International Project Agreement ; and for related matters. | This Bill seeks to provide for national legislation to implement the obligations of the Federal Republic of Nigeria under the WAGP Treaty and the International Project Agreement of the West African Gas Project involving the Federal Republic of Nigeria and the Republics of Benin, Ghana and Togo. | 7th Dec., 2004 | 18th May, 2005 |

of Nigeria, 2004.

I ASSENT.



NASIRU IBRAHIM ARAB,
Clerk to the National Assembly
20th Day of June, 2005

CHIEF OLUSEGUN OBASANJO, GCFR
President of the Federal Republic of Nigeria
22nd Day of June, 2005