The framework for managing the upstream petroleum industry in Ghana is established and given legal backing by two main statutes, PNDC Law 64 and the Petroleum Exploration and Production Law, PNDC Law 84, supplemented by the Petroleum Income Tax Law, PNDC Law 188 of 1987.

PNDC Law 64 established the Ghana National Petroleum Corporation and made it responsible for managing the petroleum resources in Ghana. The Law, in the main, spells out the organizational structure, the objects and modus operandi of GNPC. The supervising Ministry of the activities of GNPC is the Ministry of Energy.

The Petroleum Exploration and Production Law (PNDC Law 84) provides the framework for the management of oil and gas exploration, development and production. The Law establishes the contractual relationship between the State, GNPC and the prospective investor in the upstream operations. It defines the basic terms and conditions of any Petroleum Agreement, spelling out the rights and obligations of each party with appropriate sanctions.

Flowing from the Laws is the Model Petroleum Agreement which is used as the basis for drawing up a final Agreement which is negotiated and executed with an investor. This final Agreement will specify the following:

1. The area that has been applied for and awarded;

2. Exploration Period and the related Work Programme, Cost of the Work Programme, and Sanctions in case of default;

3. Benefits: Clearly defined benefits to be derived by the State which in the case of Ghana is through the Royalty Tax System:

   - Rate of Royalty
   - Carried Interest
   - Additional Interest
   - Additional Oil Entitlement (AOE)
   - Income Tax
   - Annual Surface Rentals

The investor’s portions of benefits are also stated and conditions under which they are defined are clearly stated.
MONITORING OF OPERATIONS
The Petroleum Agreement empowers GNPC to effectively monitor the operations of the oil company and apply sanctions through the Minister for Energy. The monitoring is done through a Joint Management Committee (JMC) which is established by the Petroleum Agreement, comprising equal number of representatives from GNPC and Investor and chaired by GNPC. GNPC is empowered to review the work programme of Investor and audit the cost of operations, audit procurement processes of Investor, audit employment contracts made by Investor and has the power to approve, reject or ask for modification.

The Law empowers GNPC to attach its officers to operations during all phases of operations. Similarly, the Law provides for GNPC to arrange for Customs officers on the production facilities and production platforms to monitor metering and production operations to verify quantities of oil and gas produced and lifted. Before any oil is lifted and sold from the facilities, the Customs officers will have to certify the quantity and quality of crude.

RELINQUISHMENT
The Law also provides that Investor relinquish periodically, areas of the awarded block that it is not working on.

DECOMMISSIONING
The Law makes it Investor’s obligation to reclaim the area of operations after he has finished operations.

PROCEDURES FOR OBTAINING AN EXPLORATION BLOCK IN GHANA

GNPC has conducted comprehensive evaluation of the oil and gas potential of all our sedimentary basins and packaged the potential which is promoted to the international oil and gas industry. This is done through presentations at various international oil and gas conferences, industry exhibitions and other forums. Interested investors visit GNPC for further data review and discussions. An application form is then completed and submitted to the Minister for Energy who then refers it to GNPC for evaluation and due diligence on the Company involved.

GNPC then conducts the evaluation using the following criteria, that is, Financial Capability, Technical Track Record, Proposed Work Programme and Budget, and Proposed Fiscal Package. The work programme and the fiscal package are the two critical items for negotiations. In addition to these, GNPC conducts due diligence on the Company to satisfy itself that it is duly incorporated as a corporate entity and it is free to conduct petroleum operations. GNPC further examines the competences of the investor’s management and key technical personnel.

A comprehensive report, including the Board’s recommendation, is then submitted to the Minister for Energy.
If the Company is acceptable in accordance with the set criteria, the Minister constitutes a Petroleum Agreement negotiation team to negotiate with the Company.

The team includes senior officials from:
1. Ministry of Energy;
2. Ghana National Petroleum Corporation;
3. Attorney-General’s Department; and
4. Internal Revenue Service.

The negotiated draft Petroleum Agreement is submitted to the Minister for Energy who forwards it to Cabinet for approval. If Cabinet approval is given, the Agreement is then forwarded to Parliament for consideration, modification where necessary and ratification. GNPC appears before the Parliamentary Select Committee for Mines and Energy to defend the Agreement and clarify provisions or terms that might be questioned. It is only when parliamentary ratification is secured that the Petroleum Agreement becomes effective and barring any other conditions precedent, it gives

Companies without strong financial capabilities are required to post performance bonds or provide bank guarantees to cover the risk of the company’s inability to discharge agreed work programmes.

All companies operating in Ghana are doing so within the framework of a negotiated Petroleum Agreement that has gone through this process.

**MANAGEMENT AND CONTROL OF PETROLEUM OPERATIONS**

There are several provisions in the Petroleum Agreement which enable GNPC to anticipate in the petroleum operations and at the same time, exercise control of management of petroleum operations. Fiscal provisions allow Investor to recover his cost in case of commercial discovery. Cost incurred by Investor directly affects the revenues to GNPC and Government. It is therefore important that GNPC and the Government closely monitor and control operations and cost.

This is even more paramount since the resource belongs to the State and therefore the State/GNPC should have a say in its exploration and exploitation. How is this achieved under the Petroleum Agreement? Article 6 of the Petroleum Agreement provides for a Joint Management Committee which enables GNPC to actively take part in the management of petroleum operations. The Joint Management Committee is made up of a minimum of two representatives each from GNPC and Investor and it is chaired by GNPC.

The key functions of the JMC are:

1. Discussions and approvals of Work Programmes and Budget; Having approved the detailed work programmes and budgets, Investor needs to submit expenditure at the end of the budget period for approval. GNPC vets the expenditure and has the power to reject any expenditure not properly incurred in the calculation of the Petroleum Cost. The Accounting Guide incorporated in the Petroleum Agreement
which describes the way the accounts should be organized and presented; also provide another avenue for the control of cost through the financial reporting and GNPC’s right at any point during the operations to audit the accounts of Investor.

2. The bidding process, evaluating and award of contracts to subcontractors, are all subject to the approval of the JMC and GNPC; and

3. The JMC has to approve all cost before they are accepted as Petroleum Cost and thereby, eligible for deduction for Additional Oil Entitlement and Petroleum Income Tax purposes.

The JMC is given power to approve all appraisal and development plans before submission to the Minister for Energy for final approval. The JMC meets minimum of twice in a year.

In the interim, there are various periodic reporting requirements that Investor has to submit to GNPC. These include, quarterly operational and financial reports, yearly statement of expenditure, and any other reports that GNPC and the government would request from the investor.

MONITORING OF PRODUCTION OPERATIONS BY GNPC

The production platform or floating production storage offshore (FPSO) and other facilities where oil and gas are produced, are metered. GNPC personnel on board will submit daily, weekly, monthly, quarterly and annual production reports. There will also be Customs representatives onboard all production facilities at all times.

In addition, GNPC arranges with the Navy for regular patrols in areas where production is taking place to protect installations and facilities and the product.

ENVIRONMENTAL MANAGEMENT AND CONTROL

In Ghana, both the Petroleum Law and the Petroleum Agreement demand strict adherence to the environmental laws and regulations of the country, specifically, the Environmental Protection Agency Act, Act 490 of 1994 and the Environmental Assessment Regulation, LI 1652. In addition, the Petroleum Agreement requires strict adherence to best international oil environmental practices. The Development Plan in the Petroleum Agreement requires the investor to clearly spell out how he intends to develop the field so as to have the minimum negative impact on the environment. This has to be done to the satisfaction of GNPC, the Ministry of Energy and the Environmental Protection Agency before the Development Plan can be approved.
**MONITORING AND IMPLEMENTATION**

The Law requires Environmental, Health and Safety Audits of Investor’s operations by EPA and GNPC. GNPC requires that a comprehensive Health, Safety and Environmental (HSE) Manual, detailing out how the Company intends to handle the health, safety and environmental issues, policies and procedures, is submitted for review and approval before any operations are commenced.

Emergency plans for handling accidents are discussed thoroughly among GNPC, EPA and the investor before the commencement of operations. All these are also contained in the Environmental Impact Assessment Report required to be submitted to the EPA for approval.

**DECOMMISSIONING ECOMMISSIONING OR ABANDONMENT OF FIELDS**

When production comes to an end, what happens to facilities that have been put in place for oil and gas production, the wells that have been used for the production? Whose responsibility is it to decommission, more so as at that time the ownership of these facilities is vested in GNPC? (The Law and Petroleum Agreement require GNPC has title to all equipment and facilities purchased and installed for petroleum operations once the cost has been recovered).

Unfortunately, this issue comes up at the end of production when Investor has no interest in the project anymore; and the cost of properly decommissioning these facilities could be very high. This phenomenon of abandoning project sites after extraction of the resources has been responsible for several environmental disasters globally.

1. In our Petroleum Agreements with all investors, the obligation for decommissioning is clearly placed on the investor.

2. At the time of seeking approval to develop the field, Investor must include decommissioning proposals as part of the Development Plan.

3. The approved decommissioning plan must be reviewed and modified periodically to ensure that it remains consistent with the obligation to decommission.

4. At specified time during production, a decommissioning fund will be created into which funds will then be contributed to build up sufficient funds to completely decommission in accordance with the approved decommissioning plan. The fund is audited each year and it is under the control of GNPC and the oil company. This decommissioning fund could be put in escrow accounts or operated as a trust account.

5. If decommissioning cost is higher than funds available, the investor will be responsible to make it up through insurance.