

**IN THE FOURTH SESSION OF THE FIFTH PARLIAMENT OF THE FOURTH
REPUBLIC OF GHANA**

**REPORT OF THE FINANCE COMMITTEE ON THE
SUBSIDIARY AGREEMENT BETWEEN THE GOVERNMENT
OF THE REPUBLIC OF GHANA AND THE CHINA
DEVELOPMENT BANK CORPORATION UNDER THE
MASTER FACILITY AGREEMENT (MFA) FOR AN AMOUNT
OF US\$100,000,000.00 TO FINANCE SMALL AND
MEDIUM ENTERPRISE (SME) PROJECTS INCUBATION**

1.0. INTRODUCTION

The Subsidiary Agreement between the Republic of Ghana and the China Development Bank (CDB) Corporation under The Master Facility Agreement (MFA) between the Republic of Ghana and the China Development Bank Corporation in relation to the SME Project Incubation Facility for an amount of US\$100,000,000.00 under the Tranche B Facility was laid before the House on Thursday, 24th May, 2012 and referred to the Finance Committee for consideration and report in accordance with Article 181 of the Constitution and Orders 171 of the Standing Orders of Parliament.

Pursuant to this, the Committee met with the Hon. Dy. Minister of Finance and Economic Planning, Mr. Seth Terkper, and officials of the Ministry of Finance and Economic Planning and considered the

facility. The Committee presents its Report to the House in accordance with Order 161 (1) of the Standing Orders of the House.

2.0 REFERENCE DOCUMENTS

- i. 1992 Constitution of the Republic of Ghana
- ii. The Standing Orders of Parliament
- iii. The Loans Act, 1970, (Act 335)
- iv. The Master Facility Agreement between the Republic of Ghana and China Development Bank Corporation (CDB)

3.0 BACKGROUND

The Master Facility Agreement (MFA) between Government of Ghana (GoG) and CDB was approved by Parliament on 26th August, 2011. Parliament requested that all the Subsidiary Agreements relating to the facility be presented to the House for consideration. Subsequently, the revised ninth Subsidiary Agreement is for financing of an SME Projects Incubation Facility to pilot an affordable commercial on-lending programme to promote and develop Micro, Small and Medium Enterprises (SMEs) in Ghana was approved by the House.

The SME Projects Incubation Facility is derived from Master Facility Agreement (MFA) and its the ninth Subsidiary Agreement. However, it is being resubmitted for consideration and approval of the House because Government of Ghana (GoG) and the China

Development Bank (CDB) realised that the form of the Agreement approved by Parliament Resolution on 22nd March 2012 at the thirty-seventh sitting of Parliament, was not the form agreed to and initialled by the Parties during negotiations on 31st October 2011. The Ministry of Finance and Economic Planning on behalf of Government of Ghana was asked to resubmit the agreed and initialled form of the document for parliament's approval.

The House accordingly on 22nd March 2012 rescinded its decision taken in respect of the Subsidiary Agreement Facility for SME Projects Incubation between the Republic of Ghana and the China Development Bank Corporation under the Master Facility Agreement (MFA) between the Republic of Ghana and the China Development Corporation on the SME Projects Incubation Facility to enable Government access the facility of US\$100 million from the Master Facility of US\$3.0 billion, to finance the Small and Medium Enterprises (SMEs) Projects Incubation.

4.0 PURPOSE OF THE FACILITY

The purpose of the facility is to promote private sector development by providing sustainable and affordable financing to credible Micro, Small, and Medium Enterprises (MSMEs) operating in Ghana, by creating access through a dedicated service provided by the management of the Fund under an MSME Incubation Facility related intermediation services.

5.0 SCOPE OF THE PROJECT AND BENEFICIARIES

4.1 The SME Projects Incubation facility

The SME Projects Incubation facility is one of the social intervention programmes under the MFA aimed at establishing a model project of an affordable commercial on-lending programme to promote and develop Micro, Small and Medium Enterprises (MSMEs). The facility is to benefit strategic production facilities and business incubation for sectors including those aligned to ICT and new industrial initiatives.

4.2 SME Production Financing and Business Incubation

The target beneficiaries for the SME Strategic Production & Financing are as follows; Members of Association of Ghana Industries (AGI); Ghana National Chamber of Commerce (GNCC), etc. Contract Suppliers of goods and services for all sectors including Oil & Gas and industrial value chains; Manufacturers of Building Materials; Component Manufacturers for large local and foreign industries; Export oriented Manufacturing companies; Producers of Non-Traditional Exports products; Agriculture; Agro-processing; Information Technology.

4.3 SME Vehicle Supply and Renewal Facility (BRT, GPRTU, etc.)

Investments in Vehicle Leasing & Guarantee component is expected to achieve key outcomes, including: facilitating the replacement of aged vehicles in targeted and strategic road transport segments; increasing investment in passenger transport services; increasing

revenue generation for local authorities; increasing economic productivity; reducing costs associated with road accidents; increasing employment; reducing travel time; reducing per capita energy consumption; reducing air & noise pollution and improving utilization of transport infrastructure.

4.4 SME Microfinance and Social intervention On-Lending Package

The following groups are expected to access funds under this component; Microfinance and Small Loans Centre (MASLOC); Group Microfinance Loans Schemes; Cooperatives Societies; Other Micro Lending Scheme. The project would establish a Board of Trustee through the Trust of Deeds under the laws of Ghana, to administer the fund.

5.0 TERMS OF THE FACILITY

The facility is a Tranche B facility with the following terms:-

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| Loan Amount | - | US\$100.0 million |
| Tenure | - | 10 years |
| Grace Period | - | up to 5 years |
| Maturity Period | - | 15 years |
| Interest Rate | - | 6 months libor + 2.85% |
| Commitment Fee | - | 1.00% p.a. (Undrawn balance) |
| Upfront Fee | - | 0.25% Flat (charged on the 3.0 billion Master facility) |

6.0 OBSERVATION

6.1 Withdraw of Document

The Committee was informed by the Minister that what warranted the withdrawal of the document was that GoG and CDB realised that the form of the Agreement approved by Parliamentary Resolution on the 22nd March 2012 at the thirty-seven Sitting, was not the form agreed initially to by the Parties during the negotiation on the 31st October, 2011 and that the latest SME Subsidiary Agreement submitted on Thursday, 24th May, 2012 was in the right form.

6.2 The Committee noted that paragraph (b), (c) and (d) have been included in of Preamble to the *latest* SME Subsidiary Agreement was relevant. The Hon Dy. Minister of Finance and Economic Planning agreed with the Committee that the initial SME Subsidiary Agreement has an administrative error.

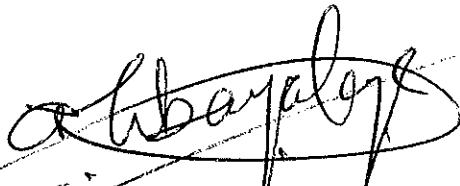
6.3 The Committee therefore requested for the list of definitions which have been included, deleted and reworded to be attached to the Committees' Report. The Committee attached paragraphs which have been included, deleted or reworded in SME Subsidiary Agreement as "**APPENDIX A**"

7.0. RECOMMENDATION & CONCLUSION

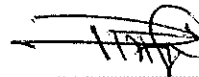
The Committee, having carefully examined the latest Subsidiary Agreement, recommends to the House to approve by Resolution, the ninth Subsidiary Agreement between the Government of the

Republic of Ghana and the China Development Bank Corporation for an amount One Hundred Million United States Dollars (US\$100,000,000.00) to finance the SME Projects Incubation under the MFA in accordance with article 181 of the Constitution, Sections 1 (3) and 4 of the Loans Act, 1970 (Act 335) and the Standing Orders of the House.

Respectfully submitted.



HON. ALFRED W.G. ABAYATEYE
VICE CHAIRMAN, FINANCE COMMITTEE



PEACE A. FIAWOYIFE (MS.)
CLERK, FINANCE COMMITTEE

COMMENTS ON 9TH SUBSIDIARY AGREEMENT

in relation to the

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"APPENDIX A"

| <u>No</u> | <u>Clause No</u> | <u>Heading</u> | <u>Comments</u> | <u>Original clause</u> | <u>Amended clause</u> |
|-----------|------------------|----------------|---|------------------------|--|
| 1. | | Preamble | The following clauses were added as background to show that SME projects is a special loan programme for the development of small-medium enterprises ("SME") in Africa. | N/A | <p>(b) During the Fourth Ministerial Conference of the Forum on China-Africa Co-operation, the Government of the PRC announced eight new measures to enhance practical cooperation with African countries, which includes providing assistance to Africa in building up its own financing capability and support to Chinese financial institutions to establish special loan programmes for the development of small-medium enterprises ("SME") in Africa.</p> <p>(C) To implement the above-mentioned measure, support the development of African SMEs, assist in achieving the Millennium Development Goals, improve the livelihood of people, create more employment opportunities and boost the economy in Africa, the Lender has set up special loan programmes which will be conducted through market operations to benefit Africans on behalf of the Government of the PRC.</p> <p>(D) The Ministry of Finance and Economic Planning of Ghana and China Development Bank Corporation have engaged in sincere and amicable negotiations and reached a consensus to support the financing of Ghanaian SMEs to promote social and economic development, strengthen Ghana's self-development ability and create more employment opportunities in the Republic of Ghana.</p> |

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| 2. | | Definitions | The following definitions have been included because they apply specifically to SME facility | <u>N/A</u> | "Approved SME Projects List" "Confirmation Letter" "Customer" "Fund" "Fund Agreement" "Fund Document" "Implementation Report" "Manager" Recommendation Letter" SME" "SME Projects Incubation Facility" |
| 3. | | Definitions | The following definitions have been deleted because they are project related and have no direct bearing on the SME facility as compared to most MFA projects | <u>N/A</u> | "Loan Certificate" "Project" "Project Construction Start Date" "Project Costs" "Project Cost Overrun" "Project Document" |

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| | | Definitions | |
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| | | The definitions listed have been reworded to make them more appropriately applicable to SME's | |
| 4. | | <p>The facility is specifically a Tranche B facility</p> <p>These definitions are adapted or apply to SME's</p> | <p>"Margin" means: two point eight five per cent- (2.85%) per annum</p> <p>"Material Adverse Project Effect" means in relation to the SME Projects Incubation Facility or the Fund, any event or circumstance which having a material adverse effect on:</p> <ul style="list-style-type: none">(a) the implementation and operation of the SME Projects Incubation Facility;(b) the ability of the Fund or a Manager to perform any of its obligations under the Fund Documents; or(c) the ability of the Borrower to perform any of its obligations under the Finance Documents. <p>"Recommendation Appraisal Report" means a report issued by the Borrower to the Lender in substantially the same form as set out in Part I (<i>Form of Recommendation Appraisal Report</i>) of Schedule</p> <p>"SME Project" means a project listed in the Approved SME Projects List and</p> <p>"SME Projects" means all of them.</p> |

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| Substantive Clauses The clauses listed have been <u>reworded</u> to make them more applicable to SME's | | | | | |
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| 5. | Clause 2.2 | Commitments | References to MFA | | <p>(i) Subject to sub-clause 2.2.2 below, the currency and amount of the Commitment on the Signing Date is US\$100,000,000.</p> <p>(ii) The Commitment is subject to any cancellation or reduction thereof in accordance with this Agreement.</p> |
| | Clause 3.1 | Purpose | | | <p>The Borrower shall apply all amounts borrowed by it under this Agreement for on-lending to the Fund for the establishment and operation of the SME Projects Incubation Facility.</p> |
| | Clause 4.1 | Conditions of Utilisation - Initial conditions precedent | These provisions are directly related to the SME Facility and form the basis for the operational agreement | | <p>The Borrower may not deliver a Utilization Request unless:</p> <p>the Lender has received:</p> <p>a Recommendation Letter in respect of the SME Project(s) to which the proposed Utilisation relates, together with all annexes and documents referred to therein;</p> <p>other than in respect of the first Utilisation Request delivered pursuant to this Agreement, an Implementation Report dated no earlier than the date of the Recommendation Letter referred to in paragraph (A) above; and</p> <p>all of the documents and other evidence listed in and appearing to comply with the requirements of Part I (<i>Initial conditions precedent</i>) of</p> |

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| | | | | | <p>Schedule 1 (<i>Conditions precedent</i>) in the form and substance satisfactory to the Lender,</p> <p>and the Lender shall (in each case) notify the Borrower promptly upon receiving such documents and other evidence referred to in sub-clause 4.1.1; and</p> <p>the Borrower has received a Confirmation Letter issued by the Lender in respect of the SME Project(s) to which the proposed Utilisation relates.</p> |
| | The Clauses listed have been deleted as they are not applicable to the SME Facility | | | | |
| 6. | Clause 4.2 (f)– | Further Conditions Precedent | | | <p>The Lender has received a Loan Certificate issued by an authorised signatory of the Borrower in substantially the form as Schedule 3 (Loan Certificate).</p> |

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| 7. | Clause 5 | Utilisation - Delivery of a Utilisation Request | These are aligned to the MFA as in the other Subsidiary Agreements | | <p>The Borrower may utilise the Facility by delivery to the Lender of a Utilisation Request duly completed in accordance with clause 5 (<i>Utilisation</i>) of the Master Facility Agreement.</p> <p>Completion of a Utilisation Request</p> <p>In addition to the requirements set out in Clause 5.2 (<i>Completion of a Utilisation Request</i>), each Utilisation Request will not be regarded as having been duly completed unless:</p> <p>In respect of a Utilisation Request issued in respect of amounts to be paid to a PRC Contractor, the Utilisation Request specifies that the proceeds of the Loan shall be disbursed by the Lender directly to an account of that PRC Contractor opened with the Lender's Dalian Branch or Hong Kong branch or such other account as the Lender may agree; and</p> <p>In respect of a Utilisation Request issued in respect of amounts to be paid to an Other Contractor, the Utilisation Request specifies that the proceeds of the Loan shall be disbursed by the Lender directly to an account of that Other Contractor.</p> |
| 8. | Clause 8.1 | Status | This clause has been reworded to refer specifically to the Fund | | <p>The Fund, when established, will be a fund duly established and validly existing under the law of the Republic of Ghana.</p> |

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| 9. | Clause 8.5.2 | Validity and admissibility in evidence | This paragraph was inserted into the clause as it's a provision directly related to the Fund | <p>All Authorisations required or desirable:</p> <p>to enable the Fund to lawfully enter into, exercise its rights and comply with its obligations in the Fund Documents to which it is a party;</p> <p>to make the Fund Documents to which the Fund is a party admissible in evidence in the Republic of Ghana; and</p> <p>for the Fund to carry on its business, and which are material,</p> <p>will be obtained or effected and remain in full force and effect after the Fund is established.</p> |
| 10. | Clause 8.6 | Governing law and enforcement | This clause has been amended to specify the choice of law | <p>The choice of English law as the governing law of the Fund Documents will be recognised and enforced in the Republic of Ghana.</p> <p>Any arbitral award obtained in England in relation to a Fund Document will be recognised and enforced in the Republic of Ghana.</p> |
| 11. | Clause 9.1.2 | Information | This paragraph has been reworded to have a specific bearing on SME projects | <p>of any public proposal filed in Parliament or decision of any Governmental Agency known to the Borrower which envisages the introduction of such alteration or modification, in each case which has or could reasonably be expected to have a Material Adverse Project Effect;</p> |
| 12. | Clause 9.1.4 | Information | This paragraph has been inserted as it relates to the Fund | <p>promptly supply the Lender, or procure that the Fund supplies to the Lender, such information in relation to the SME Projects or SME Projects Incubation Facility (including the rate of interest on the funds borrowed by</p> |

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| | | | | | each Customer under the SME Projects Incubation Facility) as the Lender may from time to time request. |
| 13. | Clause 9.2 Clause 9.2.1 | SME Project Information | This clause has been reworded to make it applicable to the SME Facility This clause has been reworded to make it applicable to the SME Facility | | Without prejudice to the provisions of Clause 4.1 (<i>Initial conditions precedent</i>), the Borrower shall within twenty-five (25) Business Days of the end of each six-Month period, with the first such six-Month period beginning on the Signing Date, deliver to the Lender a duly completed Implementation Report in respect of that six-Month period. with the first such six-Month period beginning on the Signing Date, deliver to the Lender a duly completed Implementation Report in respect of that six-Month period. |
| 14. | Clause 9.2.2 | SME Project Information | This clause has been deleted as it specifically applies to non-SME projects | | The Borrower shall promptly notify the Lender of: any circumstances becoming known to it which have led or may lead to any Project Cost Overrun; any circumstances becoming known to it which have led or may lead to any Project Document not being in full force and effect; it becoming aware of any party to any Project Document having failed to comply with any terms of it in any respect which may be material; and any circumstances becoming known to it (whether as a result of a force majeure event or for any other reason) which have led or may lead to any obligation of any party under the Project Documents being |

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| | | | | | suspended or incapable of fulfilment- |
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| 15. | Clause 10.2.5 | SME Project Information | This clause has been amended to apply to SME projects. This forms the basis of the Fund Agreement | | <p>(A) at the date of the Lenders request;</p> <p>(B) at the Lender's reasonable request, permit and/or use its best endeavours to procure the permission or authorisation of the Fund, the relevant Manager and such other persons as may be necessary (as the case may be) for, all relevant representatives of the Government of the PRC and/or the Lender (as the case may be) and each of its professional advisers to visit the site and offices of any SME Project with adequate notice and to be given reasonable access to all books and records kept at such site or offices pertaining to that SME Project; and</p> <p>(C) shall procure that the Fund shall provide all necessary assistance and convenience to all representatives of the Government of the PRC and/or the Lender (as the case may be), as may be required for any site visits described in paragraph (B) above,</p> <p>(D) provided that the Borrower shall not be required to bear any cost or expense incurred by for such site visits described in paragraphs (B) and (C) above.</p> |
| 16. | Clause 11 | General Undertakings | This clause has been introduced as it relates to the SME Facility | | <p>The Borrower shall apply all amounts towards on-lending to the Fund in respect of the SME Projects Incubation Facility.</p> <p>The Borrower shall procure that the Fund shall apply all amounts [on-lent] to it by the Borrower under this Facility towards loans to</p> |

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| | | | | | Customers in respect of SME Projects. |
| 17. | Clause 11.2 and 11.3 | Environmental Compliance and Environmental Claims | These clauses have been deleted as they are not suitable for most small SME projects. | | <p>Environmental compliance</p> <p>The Borrower shall, and shall ensure that the Sponsor shall, comply in all material respects with Environmental Laws and take all reasonable steps in anticipation of known or expected future changes to, or obligations under, any Environmental Law.</p> <p>Environmental Claims</p> <p>The Borrower shall inform the Lender in writing as soon as reasonably practicable upon becoming aware of:</p> <p>11.3.1 any claim, proceeding or investigation by any person in respect of any Environmental Law which has been commenced or (to the best of the Borrower's knowledge and belief) is threatened against it or the Sponsor (as the case may be), or</p> <p>11.3.2 any facts or circumstances which will or might reasonably be expected to result in any claim, proceeding or investigation by any person in respect of any Environmental Law being commenced or threatened against it or the Sponsor (as the case may be),</p> <p>in each case where such claim, proceeding or investigation might reasonably be expected, if determined against the Borrower or the Sponsor, to have a Material Adverse Project Effect.</p> |

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| 18. | Clause 11.4 | Publicity Undertakings | This clause has been modified to make it specific to SME's | | <p>The Borrower shall, and shall procure that the Fund shall:</p> <p>1.1.2 engage (whether directly or done on its behalf) in such activities to generate publicity and promote the SME Projects Incubation Facility using various official media, including use of local television, newspaper and radio services to promote:</p> <p>(A) the beneficial aspects of the SME Projects funded by the SME Projects Incubation Facility; and</p> <p>(B) the Lender's involvement in the SME Projects Incubation Facility in granting the Facility to the Borrower; and</p> <p>1.1.3 introduce and publicise the Lender as supporting the SME Projects Incubation Facility in the Republic of Ghana, as part of the measures announced at the Fourth Ministerial Conference of the Forum on China-Africa Co-operation as implemented in part through the provision of loans by the Lender to the Republic of Ghana to improve the financing capability of the Republic of Ghana and support the development of its small-medium enterprises.</p> |
| 19. | Clause 12 | Breach of Fund documents | This paragraph has been included in the clause as it relates to the SME Facility | | <p>The Borrower or the Fund does not comply with any material provision of any Fund Document to which it is a party and, where the failure of the Borrower or Fund to comply is capable of remedy and such failure to comply is not remedied within twenty (20) days of the earlier of the Lender giving notice to the Borrower or the Borrower becoming aware of</p> |

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| | | | | | its or the Fund's failure to comply. |
| 20. | Schedule 1 | Conditions Precedent | This clause has been included as it relates specifically to the Fund | | <p align="center">FUND DOCUMENTS AND OTHER EVIDENCES</p> <p>1.1 A signed original of each Fund Document.</p> <p>1.2 The Lender having received the documents and evidence listed in Schedule 1 (<i>Fund deliverables</i>) to the Fund Agreement.</p> <p>1.3 Evidence satisfactory to the Lender that the Fund is operational.</p> |
| 21. | | Conditions Precedent for utilization | This clause has been deleted as the issues are not suitable for most SME's. | | <p>Copies of each Project Document.</p> <p>A copy of the Project Budget, comprising the total budget for the whole Project prior to the first Utilisation and the most recent quarterly budget.</p> <p>Copies of commercial invoices issued by the relevant Approved Contractor(s) in relation to the Project that are to be financed from the proceeds of the Utilisation together with a copy of the disbursement request and all other documents (such as, completion certificates and milestone confirmations) delivered by the Sponsor requesting funds to make payment to an Approved Contractor.</p> <p>Certification by a director or authorised signatory of the Sponsor that the proceeds of the Utilisation are required by the Borrower to fund up</p> |

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| | | | | | <p>to eighty-five per cent. (85%) of the Project Costs then required to be funded under the relevant Utilisation Request in accordance with the Project Budget, and evidence that the Sponsor has already funded at least fifteen per cent. (15%) of such Project Costs.</p> <p>Evidence satisfactory to the Lender that:</p> <p>there are no Project Cost Overruns; or</p> <p>all Project Cost Overruns have been funded.</p> |
| 22. | | Recommendation letter | This letter has been redrafted | | |