

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

**REPORT OF THE JOINT COMMITTEE ON FINANCE AND
POVERTY REDUCTION STRATEGY ON THE ADDENDUM TO
THE MASTER FACILITY AGREEMENT BETWEEN THE
GOVERNMENT OF THE REPUBLIC OF GHANA AND THE
CHINA DEVELOPMENT BANK (CDB) FOR A LOAN OF US\$3.0
BILLION (THREE BILLION UNITED STATES DOLLARS) TO
FINANCE INFRASTRUCTURE DEVELOPMENT PROJECTS
UNDER THE GHANA SHARED GROWTH AND
DEVELOPMENT AGENDA**

1.0 INTRODUCTION

The Addendum to the Master Facility Agreement between the Government of the Republic of Ghana and the China Development Bank (CDB) for a loan of three billion United States Dollars (US\$3,000,000,000.00) to finance Infrastructure Development Projects under the Ghana Shared Growth and Development Agenda (GSGDA) was laid in the House on Tuesday 14th February, 2012 and referred to a Joint Committee on Finance and Poverty Reduction Strategy for consideration and report.

In considering the Addendum to the Master Facility Agreement, the Committee met with the Deputy Minister of Finance and Economic Planning, Hon. Seth Terpkper and some officials from the Ministry of Finance and Economic Planning.

The Joint Committee is grateful to the Deputy Minister, Hon. Seth Terpkper for providing some useful clarifications and explanations on the proposed amendments to the original version of the Agreement.

2.0 REFERENCES

In considering the Addendum, the Joint Committee made reference to and/or was guided by the following documents:

- a. The 1992 Constitution of Ghana
- b. The Standing Orders of Parliament
- c. The Master Facility Agreement between the Republic of Ghana and China Development Bank approved by the House on 26th August, 2011.
- d. The executed version of the Agreement signed by the Government of Ghana and China Development Bank

3.0 BACKGROUND INFORMATION

Honourable Members would recall that the House on 26th August, 2011 gave approval for the Government of Ghana to enter into Agreement with China Development Bank Corporation for an amount of *Three Billion United States Dollars* (US\$3.0 billion) to finance infrastructural and social development projects under the Ghana Shared Growth and Development Agenda (GSDA).

Parliament is once again being requested to consider and approve an Addendum to the said Agreement which contains amendments in the form of deletions and insertions to the earlier Master Facility Agreement approved by the House.

4.0 OBSERVATIONS

Reason for the Proposed Amendments

The Joint Committee was informed by the Deputy Minister of Finance and Economic Planning, Hon. Seth Terkper that the rationale for the proposed amendments is to enhance the agreement in general, and in particular, facilitate the acquisition of the loan by removing certain clauses which served as hindrances to the two parties to the Agreement, resulting from contributions of Honourable Members on the debate of the Master Facility Agreement.

Definition of Offtaker Agreement

It was observed that the Offtaker Agreement (as defined in Clause 1.1, paragraph iii of the executed Version of the MFA) is to be approved by both the Parliament

of the Republic of Ghana and the Lender. Some Members of the Joint Committee found this arrangement to be inappropriate as they thought the Parliament of the sovereign Republic of Ghana should not be placed on the same level with the lender which is a corporate body.

Honourable Members of the Committee recommended the following new rendition:

“Offtaker Agreement means the Crude Oil Sales and Purchase Agreement to be entered into between the exporter and the Offtaker in a form agreed to by the Lender and approved by the Parliament of the Republic of Ghana”

Application of Hong Kong Law

Hong Kong had been added to the jurisdiction specified in the Agreement because the operation of the Account will be conducted in Hong Kong.

However, some Honourable Members of the Committee expressed concern about clause c(iv) of the Addendum which places the “Charge over Accounts” under Hong Kong Law. They were particularly unhappy with the situation, given that the entire Master Facility Agreement is governed by the English Law. The Deputy Minister of Finance and Economic Planning however explained to the Committee that Hong Kong Law was chosen as the jurisdiction for exercising the lien, in the event that it becomes necessary.

IMF and World Bank Sections

The sections/references to the IMF and the World Bank were deleted by mutual consent to remove potential interferences and impediments from third parties in the implementation of the Agreement.

Further Amendments to the Addendum

The Joint Committee further observed that the amendments captured in the Addendum were not exhaustive and recommended that the following sections be added to the Addendum:

- i. Section 1.2.4 of the Agreement should read:

“A Default (other than an Event of Default) is ‘**continuing**’ if it has not been remedied or waived and an Event of Default is ‘**continuing**’ if it has not been remedied or waived.”

ii. Insert a new Section 1.2.5 in the Master Facility Agreement as follows:

“Any reference to ‘**Section**’, ‘**Clause**’ and ‘**Schedule**’ is a reference to a section, clause or schedule of this Agreement.

iii. Insert a new Section 4.3.2 in the Master Facility Agreement as follows:

“on or before the fifth (5th) Business Day prior to the proposed Utilization Date the conditions specified in clause 3.2.1 (*Deposits into the Debt Service Reserve Account*) of the Accounts Agreement have been satisfied.

iv. Section 5.1 should read as follows:

“Delivery of a Utilisation Request

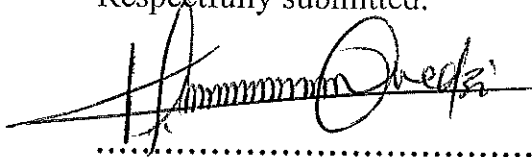
The Borrower may utilize a Facility by delivery to the Lender of a duly completed Utilisation Request not later than twenty (20) Business Days before the proposed Utilisation Date. The Utilisation Request shall be delivered by SWIFT and/or fax.”

5.0 CONCLUSION

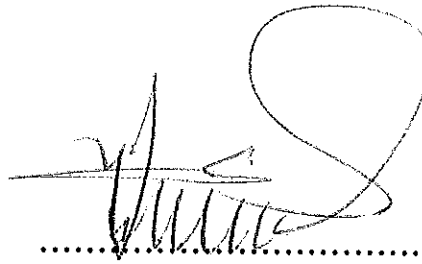
The Committee, having critically examined the Addendum, respectfully recommends to the House to approve by Resolution, the **Addendum (as amended) to the Master Facility Agreement** between the **Government of the Republic of Ghana** and the **China Development Bank (CDB)** for a loan of *three billion United States Dollars (US\$3,000,000,000.00)* to finance **Infrastructure Development Projects under the Ghana Shared Growth and Development Agenda (GSGDA)** in accordance with article 181 of the

Constitution, Sections 3 and 7 of the Loans Act, 1970 (Act 335) and the Standing Orders of the House.

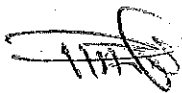
Respectfully submitted.




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HON. JAMES KLUTSE AVEDZI
CHAIRMAN, FINANCE COMMITTEE



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HON. IMORO YAKUBU KAKPAGU
CHAIRMAN, COMMITTEE ON
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.....
PEACE A. FIAWOYIFE (MS.)
CLERK, FINANCE COMMITTEE



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JOAN A.S. ADJEI (MRS.)
CLERK, COMMITTEE ON
POVERTY REDUCTION
STRATEGY

15TH FEBRUARY, 2012

Further to the Master Facility Agreement entitled:

“The Republic of Ghana

as Borrower

Represented By The

Minister for Finance
And Economic Planning

And

China Development Bank Corporation

As Lender”

For

US\$ 3,000,000,000.00 (Three Billion United States Dollars)

Which was approved by the Parliament of the Republic of Ghana on 26th August 2011, Parliament is hereby being requested to consider and approve the following Addendum to the said Agreement. The Addendum contains amendments in the form of deletions and insertions made to the said Agreement that was earlier approved by Parliament of the Republic of Ghana.

Addendum

The Agreement as approved is amended

(a) clause 1.1 of Article 1

- (i) by the insertion in the definition of “Business Day” after “Accra” of “Hong Kong”
- (ii) by the insertion immediately before the definition of “Holding Company”, a definition of Hong Kong as follows:

“Hong Kong” means the Hong Kong special administrative region of China;

- (iii) by the deletion of the definition of “Offtaker Agreement” and insertion of a new definition of “Offtaker Agreement” as follows:

“Offtaker Agreement” means the Crude Oil Sales and Purchase Agreement to be entered into between the exporter and the Offtaker in the form approved by the lender and the Parliament of the Republic of Ghana”

- (iv) by the deletion of the definition of “Offtaker” and insertion of a new definition of Offtaker as follows:

“Offtaker” means UNIPEC Asia Company Limited

- (b) in clause 15.11 of Article 15 by the insertion of the sum “US\$400,000.00” after “amount”.

- (c) in Article 16 by

(i) the deletion of clauses 16.13.1, 16.13.2 and 16.20

(ii) by the insertion in clause 16.22, after “Wales” of Hong Kong in both lines 3 and 5 change to become (i)

(iii) by the deletion in clause 16.1 of “Ministry of “ and the insertion in its place of “Minister for”;

(iv) by the deletion in clause 16.6.1 (B) of “English Law” and the insertion in its place of “Hong Kong Law”

- (d) in Article 19 by the deletion of clause 19.10;

- (e) in Schedule 1 by the deletion of paragraph 5.2