

**ICC INTERNATIONAL COURT OF ARBITRATION**

**CASE No. 27585/AB/CPB**

TULLOW GHANA LIMITED

(Channel Islands)

**vs/**

THE REPUBLIC OF GHANA

(Ghana)

This document is an original of the Final Award rendered in conformity with the Rules of Arbitration of the International Chamber of Commerce.

**ARBITRATION UNDER THE RULES OF ARBITRATION OF THE  
INTERNATIONAL CHAMBER OF COMMERCE EFFECTIVE 1 JANUARY 2021  
("ICC RULES")**

**ICC CASE NO. 27585/AB/CPB**

**BETWEEN:**

**TULLOW GHANA LIMITED**

Claimant

**AND**

**THE REPUBLIC OF GHANA**

Respondent

---

**FINAL AWARD**

---

***Arbitral Tribunal***

Dr. Michael PRYLES AO PBM  
Mr. J. Christopher THOMAS KC  
Prof. Albert Jan VAN DEN BERG (President)

***Arbitral Secretary***

Tarunima VIJRA

Dated: 22 September 2026

## REPRESENTATION OF THE PARTIES

### **Claimant**

Mr. David Edwards KC  
7 KINGS BENCH WALK

and

Mr. Ben Juratowitch KC  
ESSEX COURT CHAMBERS

and

Mr. Oliver Marsden  
Ms. Helen Buchanan  
Mr. Joshua Kelly  
Ms. Annie Pan  
Ms. Camille Strosser  
Ms. Victoria Seow  
Ms. Alice Ding  
Ms. Christy Lee  
FRESHFIELDS BRUCKHAUS  
DERINGER LLP  
100 Bishopsgate  
London EC2P 2SR  
United Kingdom

and

Ms. Seyram Dzikunu  
Ms. Nania Owusu-Ankomah Sackey  
Mr. Godwin Ofosuhene Nkrumah  
Mr. Pappa Kweku Anan-Ankomah  
BENTSI-ENCHILL, LETSA &  
ANKOMAH  
4 Momotse Avenue  
Adabraka, Accra  
Ghana

and

Ms. Hannah Agbozo  
TULLOW GHANA LIMITED

and

Mr. Mike Walsh  
Mr. Gareth Harrison  
TULLOW OIL PLC

### **Respondent**

Ms. Tafadzwa Pasipanodya  
Mr. Nicholas Renzler  
Ms. Nour Nicolas  
Mr. Peter Shults  
Ms. Sun Young Hwang  
Mr. Jago Chanter  
FOLEY HOAG LLP  
1717 K Street, NW  
Washington DC 20006 – 5350  
United States of America

and

1301 Avenue of the Americas, 25th Floor  
New York NY 10019  
United States of America

and

Hon. Dr. Dominic Akuritinga Ayine  
Dr. Justice Srem-Sai  
Ms. Helen Akpene Awo Ziwu  
Ms. Anna Pearl Akiwumi Siriboe  
Ms. Grace Oppong Dolphy  
Ms. Adwoa O. Obeng  
OFFICE OF THE ATTORNEY  
GENERAL OF THE REPUBLIC OF  
GHANA  
P.O Box MB 60  
Accra  
Ghana

and

Dr. Martin Kolbil Yamborigya  
Mr. Freeman Nunekpeku Sarbah  
Ms. Laurene Boahene  
Ms. Kate Ferguson Ntow  
Mr. Richard Kwasi Amenuveve  
Mr. Mohammed Ibrahim  
Mr. Eric Anthony  
GHANA REVENUE AUTHORITY

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## **LIST OF DEFINED TERMS**

|                                          |                                                                                                                                   |
|------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| Act 592                                  | Internal Revenue Act, 2000                                                                                                        |
| Act 915                                  | Revenue Administration Act, 2016                                                                                                  |
| Act 919                                  | Petroleum (Exploration and Production) Act 2016                                                                                   |
| Adjei-Djan Report                        | Expert Report of Mr. Kwame Adjei-Djan dated 24 January 2025                                                                       |
| ADR Act 2010                             | Ghana's Alternative Dispute Resolution Act of 2010                                                                                |
| Agreed List of Issues                    | List of Issues jointly prepared by the Parties and submitted on 16 October 2025                                                   |
| Answer                                   | Ghana's Response to the RfA dated 25 April 2023                                                                                   |
| Arbitration Agreement                    | Article 24 of the DWT Petroleum Agreement                                                                                         |
| Arbitration Costs                        | fees and expenses of the arbitrators and the ICC administrative expenses fixed by the ICC Court                                   |
| Beyou Report                             | Expert Report of Mr. Kizito Beyuo dated 10 May 2024                                                                               |
| BPT                                      | Branch Profits Tax                                                                                                                |
| BPT Arbitration                          | ICC Arbitration 26579/AB/CPB between TGL and Ghana                                                                                |
| BPT Assessment                           | GRA's imposition of branch profits tax on TGL for the years 2012, 2013 and 2014                                                   |
| BPT Award                                | Award dated 24 December 2024 rendered in ICC Arbitration 26579/AB/CPB between Tullow Ghana Limited and Republic of Ghana          |
| Business Interruption Insurance Proceeds | The sum of USD 561,559,991 received by Tullow PLC between financial years 2016 to 2019 under the Energy Package Policy            |
| C-CS                                     | TGL's Costs Statement dated 19 December 2025                                                                                      |
| Claimant                                 | Tullow Ghana Limited                                                                                                              |
| CMC                                      | Case Management Conference                                                                                                        |
| Consolidation Request                    | Ghana's Request for Consolidation dated 27 July 2023 seeking consolidation of the present arbitration with ICC Case No. 27584/CPB |

|                                |                                                                                                                                                                                                               |
|--------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Contract Acknowledgment        | The signed Contract Acknowledgment with respect to the Jubilee Field, according to the template in Exhibit Q-2 to the Unitization Agreement                                                                   |
| C-PHB                          | TGL's Post-Hearing Brief dated 3 December 2025                                                                                                                                                                |
| C-SoRjoJ                       | TGL's Statement of Rejoinder on Jurisdiction dated 13 June 2025                                                                                                                                               |
| C-SoRy                         | TGL's Reply and Defence to Objections to Jurisdiction dated 24 January 2025                                                                                                                                   |
| Deed of Assignment             | Deed of Assignment dated 1 September 2006 executed between Ghana, GNPC, Kosmos, Sabre and TGL                                                                                                                 |
| Demitia First Report           | First Expert Report of Mr. William Kofi Owusu Demitia dated 5 September 2024                                                                                                                                  |
| Demitia Second Report          | Second Expert Report of Mr. William Kofi Owusu Demitia dated 15 May 2025                                                                                                                                      |
| Dickinson First Statement      | First Witness Statement of Ms. Deirdre Dickinson dated 10 May 2024                                                                                                                                            |
| Dickinson Second Statement     | Second Witness Statement of Ms. Deirdre Dickinson dated 24 January 2025                                                                                                                                       |
| DWT Block                      | Deepwater Tano block                                                                                                                                                                                          |
| DWT Petroleum Agreement        | Petroleum Agreement dated 10 March 2006 relating to the "Deepwater Tano" block                                                                                                                                |
| Energy Package Policy          | Operational energy insurance under the Energy Package Policy 2013                                                                                                                                             |
| English Arbitration Act        | English Arbitration Act 1996                                                                                                                                                                                  |
| EO                             | E.O. Group                                                                                                                                                                                                    |
| FICE                           | Financial Interest Cover Endorsement                                                                                                                                                                          |
| First Jurisdictional Objection | Ghana's jurisdictional objection that it did not consent to arbitrate disputes relating to the Jubilee Field between itself and any single Private Unit Party under Article 24 of the DWT Petroleum Agreement |
| FPSO                           | The Kwame Nkrumah Floating Production and Storage Offloading vessel                                                                                                                                           |

|                                     |                                                                                                                                                                                             |
|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ghana                               | Republic of Ghana                                                                                                                                                                           |
| GNPC                                | Ghana National Petroleum Corporation                                                                                                                                                        |
| Government Approval                 | The signed form of Government Approval with respect to the Jubilee Field, according to the template in Exhibit Q-1 to the Unitization Agreement                                             |
| GRA                                 | Ghana Revenue Authority                                                                                                                                                                     |
| GRA                                 | Ghana Revenue Authority                                                                                                                                                                     |
| GRA Assessment                      | GRA's assessment of TGL's income tax liability for tax years 2016-2019 in the amount of USD 393,091,993.70, inclusive of penalty                                                            |
| GRA's December 2018 Tax Assessments | GRA's two tax assessment decisions issued in December 2018 for TGL for the DWT and WCTP Blocks finding that TGL improperly failed to disclose insurance proceeds of USD 121,900,000 in 2016 |
| Hearing                             | Hearing in the arbitration scheduled between 17 and 21 November 2025                                                                                                                        |
| Hearing Time Chart                  | Tentative schedule of each day of the Hearing                                                                                                                                               |
| Hull Policy                         | Hull and Machinery Policy taken by TGL for the KNK FPSO                                                                                                                                     |
| ICC                                 | International Chamber of Commerce                                                                                                                                                           |
| ICC Case No. 27584/AB/CPB           | Separate arbitration between TGL and Ghana in relation to another tax dispute under the Petroleum Agreements                                                                                |
| ICC Court                           | International Court of Arbitration                                                                                                                                                          |
| ICC Rules                           | Rules of Arbitration of the International Chamber of Commerce 2021                                                                                                                          |
| ICC Secretariat                     | Secretariat of the ICC Court                                                                                                                                                                |
| Income Tax Assessment               | Income tax assessment component in the GRA Assessment in the amount of USD 196,545,996.86                                                                                                   |
| IRA                                 | Internal Revenue Act, 2000                                                                                                                                                                  |

|                              |                                                                                                        |
|------------------------------|--------------------------------------------------------------------------------------------------------|
| Jubilee Field                | Field straddling the DWT and WCTP Blocks, extending across both of their boundaries                    |
| Jurisdictional Objections    | First, Second and Third Jurisdictional Objections, collectively                                        |
| KNK FPSO                     | The Kwame Nkrumah Floating Production and Storage Offloading vessel                                    |
| KNK FPSO Hull Policy         | Hull and Machinery Policy taken by TGL for the KNK FPSO                                                |
| KNK FPSO Loss Event          | Damage to the KNK FPSO that took place in 2016                                                         |
| Kosmos                       | <sup>n</sup> Kosmos Energy Ghana HC                                                                    |
| Legal Costs                  | reasonable legal and other costs incurred by the Parties for the arbitration                           |
| Loss Adjuster Report         | Final Report dated 14 August 2019 issued by MatthewsDaniel on the KNK FPSO Loss Event                  |
| LTO                          | Large Taxpayers Office of the GRA                                                                      |
| MatthewsDaniel               | MatthewsDaniel International (London) Limited                                                          |
| MatthewsDaniel Clarification | MatthewsDaniel letter of 14 October 2022 making a clarification in respect of the Loss Adjuster Report |
| Midwinter First Report       | First Expert Report of Mr. Stephen Midwinter KC dated 30 August 2024                                   |
| Midwinter Second Report      | .Second Expert Report of Mr. Stephen Midwinter KC dated 12 May 2025                                    |
| Ofori Report                 | .Expert Report of Dr. Justice Yaw Ofori dated 4 September 2024                                         |
| Parties                      | TGL and Ghana, collectively                                                                            |
| Party                        | TGL and Ghana, individually                                                                            |
| Penalty                      | Penalty component in the GRA Assessment in the amount of USD 196,545,996.86                            |
| Petroleum Act                | Petroleum (Exploration and Production) Act 2016                                                        |
| Petroleum Agreements         | WCTP Petroleum Agreement and DWT Petroleum Agreement, collectively                                     |

|                                   |                                                                                                                 |
|-----------------------------------|-----------------------------------------------------------------------------------------------------------------|
| Petroleum Operations              | Petroleum Operations as defined in Article 1.58 of the DWT and WCTP Petroleum Agreements                        |
| PITL                              | Petroleum Income Tax Law, 1987                                                                                  |
| PNDCL 188                         | Petroleum Income Tax Law, 1987                                                                                  |
| PO 2                              | Procedural Order No. 2 dated 9 November 2025                                                                    |
| PO1                               | Procedural Order No.1 dated 19 December 2023                                                                    |
| Policy                            | Operational energy insurance under the Energy Package Policy 2013                                               |
| RAA                               | Revenue Administration Act, 2016                                                                                |
| Railton First Report              | First Expert Report of Mr. David Railton KC dated 10 May 2024                                                   |
| Railton Second Report             | Second Expert Report of Mr. David Railton KC dated 24 January 2025                                              |
| R-CS                              | Ghana's Costs Statement dated 19 December 2025                                                                  |
| Reply to Counterclaim             | TGL's Reply to Ghana's Counterclaim filed together with its Answer dated 5 June 2023                            |
| Respondent                        | Republic of Ghana                                                                                               |
| Response to Consolidation Request | TGL's Response to the Consolidation Request dated 4 August 2023                                                 |
| RfA                               | TGL's Request for Arbitration dated 13 February 2023                                                            |
| R-PHB                             | Ghana's Post-Hearing Brief dated 3 December 2025                                                                |
| R-SoRj                            | Ghana's Statement of Rejoinder dated 16 May 2025                                                                |
| Sabre                             | Sabre Oil and Gas Limited                                                                                       |
| Second Jurisdictional Objection   | Ghana's jurisdictional objection that claims under the PITL fall outside the scope of the Arbitration Agreement |
| Secretary General                 | Secretary General of the ICC Court                                                                              |
| SIAT                              | Special Investigative Audit Team                                                                                |
| SIC Policy                        | Ghanaian local insurance policy taken by Ghana in 2013 with the insurance company, SIC.                         |
| SoC                               | TGL's Statement of Claim dated 10 May 2024                                                                      |

|                                |                                                                                                                                                  |
|--------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| SoD                            | Ghana's Statement of Defense dated 6 September 2024                                                                                              |
| TEN Field                      | Tweneboa, Enyenra and Ntomme in the DWT Block                                                                                                    |
| TGL                            | Tullow Ghana Limited                                                                                                                             |
| Third Jurisdictional Objection | Ghana's jurisdictional objection that the bulk of TGL's claims are non-arbitrable                                                                |
| ToR                            | Terms of Reference                                                                                                                               |
| Tribunal                       | Arbitral tribunal in ICC CASE NO. 27585/AB/CPB comprising Dr. Michael Pryles AO PBM, Mr. Christopher Thomas KC and Prof. Albert Jan van den Berg |
| Tullow PLC                     | Tullow Oil Plc                                                                                                                                   |
| Unitization Agreement          | Unitization and Unit Operating Agreement dated 13 July 2009                                                                                      |
| Updated List of Issues         | Parties' Agreed List of Issues as updated with the Tribunal's questions and sub-issues raised during the Hearing                                 |
| WCTP Block                     | West Cape Three Point block                                                                                                                      |
| WCTP Petroleum Agreement       | Petroleum Agreement dated 22 July 2004 relating to the "West Cape Three Points" block                                                            |
| Yamborigya First Statement     | First Witness Statement of Dr. Martin Kolbil Yamborigya dated 4 September 2024                                                                   |
| Yamborigya Second Statement    | Second Witness Statement of Dr. Martin Kolbil Yamborigya dated 14 May 2025                                                                       |

## I. INTRODUCTION

1. This case concerns a dispute between Tullow Ghana Limited (“TGL” or “**Claimant**”) and the Republic of Ghana (“**Ghana**” or “**Respondent**”) arising under two petroleum agreements:
  - (i) Petroleum Agreement dated 22 July 2004 relating to the “West Cape Three Points” block (the “**WCTP Petroleum Agreement**”); and
  - (ii) Petroleum Agreement dated 10 March 2006 relating to the “Deepwater Tano” block (the “**DWT Petroleum Agreement**”) (hereinafter collectively referred to as the “**Petroleum Agreements**”).
2. The dispute relates to the Ghana Revenue Authority’s (“**GRA**”) assessment of TGL’s income tax liability for tax years 2016-2019 in the amount of USD 393,091,993.70, inclusive of penalty (“**GRA Assessment**”). The income tax and penalty components of the GRA Assessment were each in the amount of USD 196,545,996.86 (“**Income Tax Assessment**” and “**Penalty**” respectively). TGL contends that the GRA Assessment constitutes a breach of the tax arrangements agreed under the Petroleum Agreements and requests for declaratory relief and payment of indemnity under the Petroleum Agreements. Ghana objects to the Tribunal’s jurisdiction over TGL’s claims for several reasons, while also refuting the merits of the claims.

## II. THE PARTIES

### A. CLAIMANT

3. Claimant is Tullow Ghana Limited. It was incorporated in 2005 in Jersey and has its registered office at:<sup>1</sup>

Tullow Ghana Limited  
44 Esplanade  
St Helier JE4 9WG  
Jersey

4. Claimant is represented in this arbitration by its duly authorised attorneys, identified on page 2 above.

---

<sup>1</sup> Request for Arbitration dated 13 February 2023 (“**RfA**”), ¶ 3.

**B. RESPONDENT**

5. Respondent is the Republic of Ghana, represented through its Ministry of Energy, with postal address as follows:<sup>2</sup>

Government of the Republic of Ghana  
Ministry of Energy  
P.O. Box SD 40  
Stadium Post Office  
Accra  
Ghana  
Attn: Mrs. Wilhelmina Asamoah / Chief Director  
Telephone: +233 302 683961 2  
Fax: +233 302 668262  
Email: [wilhcmina.asamoah@energymin.gov.gh](mailto:wilhcmina.asamoah@energymin.gov.gh)

6. Respondent is represented in this arbitration by its duly authorised attorneys, identified on page 2 above.
7. Claimant and Respondent are hereinafter collectively referred to as “**Parties**” and individually as a “**Party**”.

**III. THE ARBITRAL TRIBUNAL**

8. On 5 July 2023, the Secretary General (“**Secretary General**”) of the International Court of Arbitration (“**ICC Court**”) of the International Chamber of Commerce (“**ICC**”) confirmed Dr. Michael Pryles AO PBM as co-arbitrator upon Claimant’s nomination, and Mr. J. Christopher Thomas KC as co-arbitrator upon Ghana’s nomination, in accordance with Article 13(2) of the ICC Rules.
9. On 7 November 2023, the Secretary General confirmed Professor Albert Jan van den Berg as president of the arbitral tribunal upon the joint nomination of the co-arbitrators, in accordance with Article 13(2) of the ICC Rules.
10. The arbitral tribunal has, accordingly, been constituted as follows (“**Tribunal**”):

Professor Albert Jan van den Berg  
VAN DEN BERG ARBITRATION  
IT Tower, 2nd Floor  
Avenue Louise 480 bte 2  
1050 Brussels, Belgium  
Telephone: +32 476 960 591

---

<sup>2</sup> Answer to the RfA dated 25 April 2023 and filed on 28 April 2023 (“**Answer**”), ¶¶ 6, 7.

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#### IV. ARBITRATION AGREEMENT, APPLICABLE LAW AND PLACE OF ARBITRATION

11. The arbitration agreement is contained in Article 24 of the DWT Petroleum Agreement (“**Arbitration Agreement**”), which applies by virtue of Article 1.10 of the “**Contract Acknowledgement**” to the Unitization and Unit Operating Agreement dated 13 July 2009 (“**Unitization Agreement**”).

##### Article 24 of the DWT Petroleum Agreement

##### CONSULTATION, ARBITRATION AND INDEPENDENT EXPERT

- 24.1 Except in the cases specified in Article 26.4 any dispute arising between the State and GNPC or either of them on one hand and Contractor on the other hand in relation to or in connection with or arising out of any terms and conditions of this Agreement shall be resolved by consultation and negotiation among senior personnel authorized by each Party. In the event that no agreement is reached within thirty (30) days after the date when either Party notifies the other that a dispute or difference exists within the meaning of this Article or such longer period specifically agreed to by the Parties or provided elsewhere in this Agreement, any Party shall have the right subject to Article 24.7 to have such dispute or difference finally settled through international arbitration under the auspices of the International Chamber of Commerce (the “ICC”) and adopting the Rules of Arbitration of the International Chamber of Commerce (the “ICC Rules”), which ICC Rules are deemed incorporated by reference into this Article 24, save as otherwise provided herein.
- 24.2 The tribunal shall consist of three (3) arbitrators. Each Party to the dispute shall appoint one (1) arbitrator and those so appointed shall designate a chairman arbitrator. If a Party’s arbitrator and/or the chairman arbitrator is not appointed within the periods provided in the rules referred to in Article 24.1

above, such Party's arbitrator and/or the chairman arbitrator shall at the request of any Party to the dispute be appointed by the ICC International Court of Arbitration in accordance with the ICC Rules.

- 24.3 No arbitrator or Sole Expert shall be a citizen of the home country of any Party hereto, and no arbitrator or Sole Expert shall have any economic interest or relationship with any such Party.
- 24.4 The arbitration proceedings shall be conducted in London, England or at such other location as selected by the arbitrators unanimously, but which must be located in a State which is a party to the New York Convention on the Recognition and enforcement of Foreign Arbitral Awards and located within any one of the States specified in the Schedule to the Arbitration (Foreign Awards) Instrument, 1963 (L1 261), as may be amended from time to time. The proceedings shall be conducted in the English language.
- 24.5 The award of the tribunal shall be final and binding upon the Parties and enforceable by the Parties in whose favour the award is made. Each of the Republic of Ghana and GNPC hereby irrevocably agree that to the extent that such party, has any right of immunity from any legal proceedings whether in Ghana, England, or elsewhere in connection with or arising from terms and conditions of this Agreement, including immunity from service of process, immunity from jurisdiction or judgment or any arbitration tribunal, immunity from execution of judgment or tribunal award, such party hereby expressly and irrevocably waives any such immunity and agrees not to assert or invoke any such rights or claim in any such proceedings wherein in Ghana, England or elsewhere.
- 24.6 The right to arbitrate disputes arising out of this Agreement shall survive the termination of this Agreement.
- 24.7 Unless where a matter is specifically required to be referred to a Sole Expert under this Agreement, the Parties to a dispute under this Agreement may, in lieu of resorting to arbitration, mutually agree to refer such matter for determination by a Sole Expert to be appointed by agreement of the Parties. The Sole Expert proceedings shall be administered in accordance with the Rules for Expertise of the International Chamber of Commerce and any hearings or meetings shall take place in Accra, Ghana. Where, however, the Parties fail to agree upon the appointment of a Sole Expert within forty-five (45) days of the notice by one Party to the other Parties of a dispute pursuant to this Agreement, the Sole Expert shall be appointed by the International Centre for Expertise established by the International Chamber of Commerce (ICC). The decision of the Sole Expert shall be given in writing with full reasoning and shall be final and binding upon the Parties and shall be treated as if it was an award by a sole arbitrator. The Sole Expert shall have ninety (90) days after his appointment to decide the case, subject to any extensions mutually agreed to by the Parties to the dispute. Upon failure of the Sole Expert to decide the matter in a prompt and timely manner, any Party may call for arbitration under Article 24.1 above.
- 24.8 Each party to a dispute shall pay its own counsel and other costs; however, costs of the arbitral tribunal shall be allocated in accordance with the decision of the tribunal. The costs and fees of the Sole Expert shall be borne equally by the Parties to the dispute.
- 24.9 Any arbitration or Sole Expert proceedings pursuant to this Agreement shall be conducted in accordance with the ICC Rules or the ICC Rules for Expertise (as applicable) in effect on the date on which the proceeding is instituted.

- 24.10 In the event of a matter being referred for resolution under this Article 24; any obligations of the Parties relating to such matter shall (unless otherwise provided by this Agreement) be suspended, without liability to any Party, until said matter has been resolved pursuant to this Article 24.
- 24.11 Neither the State and/or GNPC, on the one hand, and the Contractor, on the other hand, shall be liable to the other for any consequential, special, indirect or punitive damages (including loss of profit or loss of production) arising directly or indirectly out of or in relation or in connection to this Agreement regardless of cause or fault.<sup>3</sup>

#### **Article 1.10 of the Contract Acknowledgment**

**Dispute Resolution.** Disputes between Tullow, Kosmos, Anadarko, Sabre and/or EO Group, or their successor and assigns (the "Private Unit Parties") on one hand and the Government and GNPC or either of them on the other hand (the Government and GNPC on one hand and the Private Unit Parties on the other hand each referred to as a "Party" and collectively as the "Parties") arising out of, related to or connected with any terms and conditions of the Government Approval of this Acknowledgment or the terms and conditions of either Petroleum Agreement to the extent it relates to the Jubilee Unit, save as otherwise described below, (each such dispute a "Dispute") shall be resolved in accordance with the dispute resolution procedures set forth in Article 24 of the DWT Petroleum Agreement, provided that the "Contractor" to such Dispute shall consist of all the Private Unit Parties.

Disputes between one or more of the Private Unit Parties and GNPC in relation to or in connection with or arising out of the terms and conditions of the Unitization Agreement or the operations carried out under the Unitization Agreement shall be resolved pursuant to the dispute resolution provisions of the Unitization Agreement.

Disputes relating solely to any terms and conditions of one Petroleum Agreement shall continue to be resolved pursuant to Article 24 of that Petroleum Agreement.

If the subject matter of a Dispute and an arbitration proceeding under a Petroleum Agreement and/or Government Approval and/or this Acknowledgment and/or the Unitization Agreement are related by common questions of law or fact, then such proceedings may be consolidated into a single arbitral tribunal, as determined by the tribunal constituted under the Unitization Agreement (or, if none, the tribunal constituted under the Government Approval).<sup>4</sup>

12. Article 26.1 of each Petroleum Agreement provides in identical terms in relation to the applicable law as follows:

This Agreement and the relationship between the State and GNPC on one hand and Contractor on the other shall be governed by and construed in accordance with the laws of the Republic of Ghana consistent with such rules of

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<sup>3</sup> **Exh. C-3, Article 24 (bold and underline in original).**

<sup>4</sup> **Exh. C-6, Article 1.10 (underline in original).**

international law as may be applicable, including rules and principles as have been applied by international tribunals.<sup>5</sup>

13. The Parties have agreed, pursuant to Article 24.4 of the DWT Petroleum Agreement, that the legal seat of the arbitration is London, England.<sup>6</sup>

## V. PROCEDURAL HISTORY

14. On 13 February 2023, TGL filed its Request for Arbitration (“RfA”) with the Secretariat of the ICC Court (“ICC Secretariat”). TGL nominated Mr. Alistair Schaff KC as co-arbitrator in the RfA.
15. Also on 13 February 2023, TGL filed another Request for Arbitration, instituting a separate proceeding against Ghana in relation to another tax dispute under the Petroleum Agreements (“ICC Case No. 27584/AB/CPB”).
16. On 17 February 2023, the ICC Secretariat, *inter alia*, acknowledged receipt of the RfA, referred to in ¶ 14 above, and notified TGL that pursuant to Article 4(2) of the ICC Rules, the arbitration had commenced on 13 February 2023.
17. On 23 February 2023, the ICC Secretariat, *inter alia*, (i) notified Ghana of the commencement of the arbitration on 13 February 2023; (ii) provided Ghana with TGL’s RfA and accompanying documents; (iii) invited Ghana to submit its Answer to the RfA within 30 days of receipt of the ICC Secretariat’s letter in accordance with Article 5(1) of the ICC Rules; (iv) invited Ghana’s comments on TGL’s nominated co-arbitrator, Mr. Schaff KC, and outlined the procedure for constitution of the arbitral tribunal; (v) invited TGL to provide a quantification or an estimate of the monetary value of its unquantified claims by 28 February 2023; and (vi) noted that pursuant to the arbitration agreement, London, England is the place of arbitration and English is the language of the arbitration.
18. On 20 March 2023, TGL, referring to its nomination of Mr. Schaff KC as co-arbitrator in the RfA, requested Ghana’s consent for the Parties to disapply Article 24.3 of the DWT Petroleum Agreement, which provided that no arbitrator shall be a citizen of the home country of any Party in relation to this dispute.

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<sup>5</sup> Exh. C-1, Article 26.1, p. 77; Exh. C-3, Article 26.1. See also Terms of Reference (“ToR”), ¶ 103.

<sup>6</sup> ToR, ¶¶ 100-101. See also, Exh. C-3, Article 24.4.

19. On 24 March 2023, Ghana requested the ICC Secretariat for an extension of time for filing its Answer to the RfA and for nominating its co-arbitrators in this arbitration and in ICC Case No. 27584/AB/CPB. Without admitting the validity or enforceability of the arbitration clauses invoked by TGL in this arbitration and in ICC Case No. 27584/AB/CPB, and without prejudice to its defences and claims in the two arbitrations, Ghana confirmed that the language of both arbitrations shall be English, the place of both arbitration is London, United Kingdom, and the applicable law to the Petroleum Agreements are the laws of Ghana. Ghana also confirmed its agreement to a three-member tribunal in the two arbitrations.
20. On 31 March 2023, the ICC Secretariat granted Ghana an extension of time until 28 April 2023 to (i) submit its answer to TGL's RfA; (ii) nominate a co-arbitrator; and (iii) comment on TGL's proposal in its 20 March 2023 letter to disapply the provision in Article 24.3 of the DWT Petroleum Agreement insofar as it related to the nationality of the party-appointed arbitrators, referred to in ¶ 18 above.
21. On 12 April 2023, TGL, referring to the ICC Secretariat's correspondence of 31 March 2023, requested the ICC Secretariat to invite Mr. Schaff KC to complete a Statement of Acceptance, Availability, Impartiality and Independence at his earliest convenience, pending Ghana's comments on TGL's proposal regarding Article 24.3 of the DWT Petroleum Agreement. TGL reserved its right to submit an alternative nomination for co-arbitrator if Ghana were to disagree with its proposal.
22. On 18 April 2023, the ICC Secretariat, *inter alia*, provided the Parties with Mr. Schaff KC's Statement of Acceptance, Availability, Impartiality and Independence.
37. On 28 April 2023, Ghana filed its Response to the RfA dated 25 April 2023 ("Answer"), wherein it, *inter alia*, raised objections to the Tribunal's jurisdiction and raised a counterclaim against TGL. Ghana nominated Mr. J. Christopher Thomas KC as co-arbitrator in its Answer. Additionally, Ghana filed a letter dated 25 April 2023, objecting to the appointment of Mr. Schaff KC as co-arbitrator on the ground that Mr. Schaff KC's appointment would violate Article 24.3 of the DWT Petroleum Agreement. Ghana also filed its Response to the Request for Arbitration in ICC Case No. 27584/AB/CPB through the same correspondence.
23. On 4 May 2023, the ICC Secretariat, *inter alia*, (i) invited TGL to nominate an alternative co-arbitrator by 18 May 2023; and (ii) stated that, pursuant to Article 6(3)

of the ICC Rules, Ghana's objections to the Tribunal's jurisdiction would be decided directly by the arbitral tribunal, once constituted, after providing the Parties with an opportunity to comment.

24. On 9 May 2023, the ICC Secretariat provided the Parties with Mr. Thomas KC's Statement of Acceptance, Availability, Impartiality and Independence, for the Parties' comments.
25. On 15 May 2023, TGL, *inter alia*, requested Mr. Thomas KC to clarify the reason for making a disclosure regarding Foley Hoag LLP, stating that TGL was not aware of Foley Hoag LLP's role in the arbitration.
26. On 18 May 2023, TGL nominated Dr. Michael Pryles AO PBM as co-arbitrator.
27. On 23 May 2023, the ICC Secretariat provided the Parties with Mr. Thomas' clarification as requested by TGL on 15 May 2023 and invited the Parties' comments thereto by 26 May 2023.
28. On 24 May 2023, TGL requested Ghana to confirm if Foley Hoag LLP had been engaged to represent Ghana in the arbitration and to share the contact details of the concerned attorneys from Foley Hoag LLP.
29. On 2 June 2023, the ICC Secretariat provided the Parties with Dr. Pryles' Statement of Acceptance, Availability, Impartiality and Independence.
30. On 5 June 2023, TGL, pursuant to Article 5(6) of the ICC Rules, submitted its Reply to Ghana's Counterclaim filed together with the Answer ("**Reply to Counterclaim**").
31. On 7 June 2023, the ICC Secretariat, *inter alia*, invited Ghana to confirm whether it is represented by Foley Hoag LLP in the arbitration.
32. On 5 July 2023, the ICC Secretariat, notified the Parties that (i) on that date, the Secretary General had confirmed Dr. Pryles' appointment as co-arbitrator nominated by TGL and Mr. Thomas KC's appointment as co-arbitrator nominated by Ghana; and (ii) the co-arbitrators would be granted 30 days, *i.e.*, until 4 August 2023 to nominate the president of the arbitral tribunal.
33. Also on 5 July 2023, the ICC Secretariat invited the co-arbitrators to nominate a president of the arbitral tribunal by 4 August 2023.

34. On 21 July 2023, Ghana notified the ICC Secretariat that Foley Hoag LLP is representing it in the arbitration.
35. Also on 21 July 2023, Ghana notified the co-arbitrators that it wished to submit an application for consolidation of this arbitration with ICC Case No. 27584/AB/CPB and that the Parties had agreed that pending the ICC's decision on such consolidation request, the process for selecting the president of the arbitral tribunal in the present arbitration should be suspended.
36. On 24 July 2023, Ghana, on behalf of the Parties, notified the ICC Secretariat of the correspondence, referred to in ¶ 35 above, which was acknowledged by the ICC Secretariat on 26 July 2023.
37. On 27 July 2023, Ghana filed a Request for Consolidation of this arbitration with ICC Case No. 27584/CPB, pursuant to Article 10(b) of the ICC Rules ("**Consolidation Request**").
38. On 28 July 2023, the ICC Secretariat invited TGL to provide its comments on Ghana's Consolidation Request by 4 August 2023.
39. On 4 August 2023, TGL submitted its Response to the Consolidation Request, wherein it objected to the Consolidation Request ("**Response to Consolidation Request**").
40. On 17 August 2023, the ICC Secretariat notified the Parties that the ICC Court had decided in its session of 17 August 2023 not to consolidate this arbitration with ICC Case No. 27584/CPB.
41. On 18 August 2023, TGL requested Ghana's consent to a 30-day extension to the deadline for nominating the president of the arbitral tribunal.
42. On 22 August 2023, Ghana responded to TGL's correspondence of 18 August 2023, proposing that the Parties seek a 30-day extension for the appointment of the president of the arbitral tribunal in ICC Case No. 27584/CPB and a 45-day extension for the appointment of the president of the arbitral tribunal in this arbitration.
43. On 23 August 2023, TGL responded to Ghana's correspondence of 22 August 2023, proposing that that the Parties suspend the selection process for the president of the arbitral tribunal in this arbitration until a president had been appointed in ICC Case

No. 27584/CPB. Ghana confirmed its agreement to Claimant's proposal on the same day.

44. On 24 August 2023, the co-arbitrators acknowledged the Parties' agreement, referred to in the preceding paragraph.
45. On 25 September 2023, TGL, on behalf of the Parties, notified the co-arbitrators that (i) on 19 September 2023, Ms. Judith Levine had been appointed by the ICC Court as president of the arbitral tribunal in ICC Case No. 27584/CPB; (ii) the list procedure for selecting the president of the arbitral tribunal in this arbitration should recommence with effect from 26 September 2023; (iii) each Party would provide the co-arbitrators with three proposals for the president of the tribunal; and (iv) the Parties had agreed that Ms. Levine should not be appointed as the president of the arbitral tribunal in the present arbitration (*i.e.*, ICC Case No. 27585/AB/CPB).
46. On 30 October 2023, the ICC Secretariat informed the Parties that the co-arbitrators had jointly nominated Professor Dr. Albert Jan van den Berg as president of the arbitral tribunal and provided the Parties with Professor Dr. van den Berg's Statement of Acceptance, Availability, Impartiality and Independence, for the Parties' comments.
47. On 8 November 2023, the ICC Secretariat informed the Parties that on 7 November 2023, the Secretary General had confirmed Professor Dr. van den Berg's appointment as president of the tribunal pursuant to Article 13(2) of the ICC Rules, and that the ICC Secretariat would transmit the case file in the arbitration to the newly constituted Tribunal.
48. On 8 November 2023, the ICC Secretariat transmitted the case file to the Tribunal, in accordance with Article 16 of the ICC Rules. On the same day, the Tribunal made its first contact with the Parties, notifying them of its constitution in the arbitration.
49. On 15 November 2023, the Tribunal notified the Parties of its intention to convene a Case Management Conference ("**CMC**"), pursuant to Article 24(1) of the ICC Rules, and invited the Parties to indicate their availabilities for the CMC. In the same correspondence, the Tribunal fixed a schedule for the establishment of the Terms of Reference ("**ToR**") in the arbitration and invited the Parties to provide brief summaries of their respective cases for inclusion in the ToR.

50. Following an exchange of correspondence on 20, 22 and 23 November 2023, on 25 November 2023, the Tribunal (i) confirmed that the CMC shall take place through video conference on Tuesday, 5 December 2023; and (ii) circulated a draft Agenda for the CMC and a draft ToR for the Parties' comments.
51. On 28 November 2023, the Tribunal circulated a draft of Procedural Order No. 1, intended to establish the procedural rules and timetable for the arbitration, for the Parties' comments.
52. On 1 December 2023, the Parties (i) informed the Tribunal that they were at the final stages of reaching an agreement on the draft ToR and draft Procedural Order No. 1 circulated by the Tribunal; (ii) requested an extension of time until 4 December 2023 for reverting to the Tribunal with their comments on the draft ToR and draft Procedural Order No. 1; and (iii) informed the Tribunal that they have agreed that the CMC provisionally scheduled for 5 December 2023 may be vacated in view of the Parties' agreement on the draft ToR and draft Procedural Order No. 1.
53. On 1 December 2023, the Tribunal (i) granted the Parties' request for an extension of time to revert with their comments on the draft ToR and draft Procedural Order No. 1; and (ii) notified the Parties that it was considering their proposal to vacate the CMC and would revert to the Parties separately in that regard.
54. On 3 December 2023, the Parties (i) submitted their joint edits to and comments on the draft ToR and draft Procedural Order No. 1 circulated by the Tribunal on 25 and 28 November 2023, respectively; and (ii) confirmed their agreement to vacate the CMC scheduled for 5 December 2023.
55. On 3 December 2023, in view of the Parties' agreement, the Tribunal confirmed the vacation of the CMC scheduled for 5 December 2023.
56. On 7 December 2023, the ToR were executed by the Parties and the Tribunal.
57. On 19 December 2023, the Tribunal issued Procedural Order No. 1 ("PO 1"), by consent of the Parties.
58. On 10 May 2024, TGL filed its Statement of Claim ("SoC") together with factual exhibits C-1 to C-99, legal authorities CL-1 to CL-26, the witness statement of Ms. Deirdre Dickinson ("**Dickinson First Statement**"), and expert reports of Mr. Kizito Beyuo ("**Beyuo Report**") and Mr. David Railton KC ("**Railton First Report**").

59. On 6 September 2024, Ghana filed its Statement of Defence (“**SoD**”) together with factual exhibits R-1 to R-61, legal authorities RL-4 to RL-85, the witness statement of Dr. Martin Kolbil Yamborigya (“**Yamborigya First Statement**”), and expert reports of Mr. William Kofi Demitia (“**Demitia First Report**”), Mr. Stephen Midwinter KC (“**Midwinter First Report**”), and Dr. Justice Yaw Ofori (“**Justice Ofori Report**”).
60. On 24 January 2025, TGL filed its Reply and Defence to Objections to Jurisdiction (“**C-SoRy**”) together with factual exhibits C-100 to C-154, legal authorities CL-30 to CL-66, a further witness statement of Ms. Deirdre Dickinson (“**Dickinson Second Statement**”), a further expert report of Mr. David Railton KC (“**Railton Second Report**”), and an expert report of Mr. Kwame Adjei-Djan (“**Adjei-Djan Report**”).
61. On 1 March 2025, the Tribunal requested the Parties’ consent for the appointment of Ms. Tarunima Vijra, a lawyer in the firm of the President of the Tribunal, as administrative secretary in the arbitration on the terms set out in the Tribunal’s correspondence. On 6 and 7 March 2025, the Parties provided their consent to Ms. Vijra’s appointment as administrative secretary. On 14 March 2025, the Tribunal provided the Parties with Ms. Vijra’s signed Declaration of Independence and Impartiality and Undertaking.
62. On 16 May 2025, Ghana filed its Rejoinder on the Merits and Reply on Jurisdiction (“**R-SoRj**”) together with factual exhibits R-62 to R-68, legal authorities RL-86 to RL-143, a further Witness Statement of Dr. Martin Kolbil Yamborigya (“**Yamborigya Second Statement**”), and further expert reports of Mr. William Kofi Owusu Demitia (“**Demitia Second Report**”) and Mr. Stephen Midwinter KC (“**Midwinter Second Report**”).
63. On 13 June 2025, TGL filed its Rejoinder on Jurisdiction (“**C-SoRjoJ**”) together with factual exhibits C-155 to C-160 and legal authorities CL-67 to CL-80.
64. On 29 June 2025, TGL, on behalf of both Parties, informed the Tribunal that, in light of ongoing settlement discussions, the Parties had agreed to suspend the arbitration and that they would inform the Tribunal in due course if it should become necessary to adjourn the hearing in the arbitration fixed for 17-21 November 2025 (“**Hearing**”). Ghana confirmed its agreement to TGL’s correspondence on the same day.

65. On 30 June 2025, the Tribunal (i) confirmed the suspension of the arbitration; and (ii) invited the Parties provide monthly updates to the Tribunal regarding the status of their settlement discussions, and to also inform the Tribunal at the earliest opportunity if they would consider it necessary to vacate the Hearing dates pending the settlement discussions. On the next day, the Parties confirmed that they would keep the Tribunal updated.
66. On 31 July 2025, the Parties jointly informed the Tribunal that their negotiations with a view to reach a settlement were ongoing, and that they wished to continue the suspension of the arbitration and to maintain the Hearing dates.
67. On 25 August 2025, the Tribunal invited the Parties, in view of the impending Hearing scheduled for 17-21 November 2025, and in order to ensure that the Parties and the Tribunal had sufficient preparation time, to inform it by 15 September 2025 if it appeared likely to the Parties that their settlement discussions would continue beyond that date. The Tribunal proposed that, in such event, it would vacate the November Hearing dates, and should the settlement discussions not result in an agreement, the Tribunal will proceed to fix fresh Hearing dates in the matter after consultation with the Parties. The Tribunal invited the Parties to provide their comments on the Tribunal's proposal.
68. On 29 August 2025, the Parties jointly informed the Parties that their negotiations with a view to reach a settlement were ongoing and that they wished to continue the suspension of the arbitration. The Parties further confirmed that they would advise the Tribunal by 15 September 2025 if it appeared likely that the negotiations would continue beyond that date.
69. On 3 September 2025, the Parties informed the Tribunal that they had agreed on certain amendments to the procedural timetable, which amendments were confirmed by the Tribunal on 4 September 2025, without prejudice to the Parties' forthcoming update on the settlement discussions which was due on 15 September 2025.
70. On 15 September 2025, the Parties informed the Tribunal that their settlement discussions had not been successful and requested that the suspension of the proceedings be lifted and the Hearing proceed as scheduled in November 2025.
71. On 19 September 2025, the Tribunal informed the Parties that the suspension of the arbitration had been lifted and that the final Hearing scheduled for 17–21 November

2025 would proceed as planned. In the interests of an efficient and cost-effective arbitration while ensuring that the Parties had full opportunity to pursue settlement discussions, the Tribunal also requested the Parties to promptly notify it if they decided to resume settlement discussions before the scheduled Hearing to enable the Tribunal to take the necessary steps to vacate the scheduled Hearing dates. In addition, the Tribunal invited the Parties to provide their comments on certain pre-Hearing procedural steps.

72. Also on 19 September 2025, the Parties provided their respective notification lists of witnesses and experts whom they wished to call for cross-examination at the Hearing.
73. Following this, and until the Hearing scheduled to commence on 17 November 2025, the Parties, the Tribunal and the Administrative Secretary exchanged several pieces of correspondence in connection with the Hearing. The relevant correspondence is set out below.
74. On 26 September, 1, 8, 15, 21 and 31 October 2025, and 9, 10 and 11 November 2025 the Parties and the Tribunal exchanged correspondence regarding matters pertaining to the organisation of the Hearing, preparation of a draft order on Hearing organization, and a Hearing time chart. On 10 November 2025, the Tribunal issued Procedural Order No. 2 dated 9 November 2025 (“**PO 2**”) and the Hearing time chart.
75. On 16 October 2025, following correspondence between the Tribunal and the Parties on 4 September and 10 October 2025, the Parties submitted (a) an agreed *dramatis personae*; and (b) an agreed list of issues (“**Agreed List of Issues**”).
76. On 21 October 2025, the Tribunal, amongst other matters, took note of the Parties’ agreement of 10 October 2025 to dispense with the examination of Dr. Justice Ofori at the Hearing.
77. On 25 October 2025, the Parties submitted their additional legal authorities. TGL filed legal authorities CL-81 to CL-85 and Ghana filed RL-144 to RL-146.
78. On 4 November 2025, TGL filed an application requesting leave to submit an additional legal authority, which was objected to by Ghana in its response of 6 November 2025. On 10 November 2025, the Tribunal, in view of the belated timing of TGL’s request, the proximity of the Hearing, and in order to ensure a level playing

field between the Parties, declined to grant Claimant leave for the filing of the additional authority.

79. On 10 November 2025, the Parties provided their respective list of attendees for the Hearing.
80. Following an exchange of correspondence between the Tribunal, the Administrative Secretary and the Parties, on 15 November 2025, the Tribunal endorsed the Parties' arrangements to facilitate virtual participation of some members of their counsel team at the Hearing.
81. Between 17 and 21 November 2025, the Tribunal conducted the Hearing in the arbitration. The following persons attended the hearing on behalf the Parties:

| <b>Claimant</b>                            | <b>Respondent</b>            |
|--------------------------------------------|------------------------------|
| <u>Counsel</u>                             | <u>Counsel</u>               |
| David Edwards KC                           | Tafadzwa Pasipanodya         |
| Ben Juratowitch KC                         | Nicholas Renzler             |
|                                            | Peter Shults                 |
| <i>Freshfields</i>                         | Nour Nicolas                 |
| Oliver Marsden                             | Sun Young Hwang              |
| Helen Buchanan                             | Jago Chanter                 |
| Joshua Kelly                               | Jennifer Schoppmann          |
| Annie Pan                                  | Nancy Lopez                  |
| Camille Strosser                           | Roy Campos                   |
| Victoria Seow                              |                              |
| Alice Ding                                 | <u>Party Representatives</u> |
| Christy Lee                                | Justice Srem-Sai             |
| Stephanie Mbonu                            | Helen Akpene Awo Ziwu        |
|                                            | Anna Pearl Akiwumi Siriboe   |
| <i>Bentsi-Enchill, Letsa &amp; Ankomah</i> | Grace Oppong Dolphy          |
| Seyram Dzikunu                             | Adwoa Obenewah Amoah         |
| Nania Owusu-Ankomah Sackey                 | Freeman Nunekpeku Sarbah     |
| Godwin Ofosuhene Nkrumah                   | Eric Anthony                 |
| Pappa Kweku Anan-Ankomah                   | Mohammed Ibrahim             |
| Kwame Owusu Nkansah                        | Laurene Boahene              |

|                                                                                                                                                                                              |                                                                                                                                                                                                                                                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>Party Representatives</u><br>Mike Walsh<br>Gareth Harrison<br>Hannah Agbozo<br><br><u>Fact Witness</u><br>Deirdre Dickinson<br><br><u>Experts</u><br>David Railton KC<br>Kwame Adjei-Djan | Richard Kwasi Amenuveve<br>Kate Ferguson Ntow<br>Abdulai Iddrisu<br>Daniel Elorm Agbemabiawo<br><br><u>Fact Witness</u><br>Martin Kolbil Yamborigya<br><br><u>Experts</u><br>William Kofi Owusu Demitia<br>Stephen Midwinter KC<br>Richard Oppong |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

82. On the fourth day of Hearing, 20 November 2025, the Tribunal circulated to the Parties a list of questions and sub-issues inserted into the Parties' Agreed List of Issues circulated on 16 October 2025 (see ¶ 75 above), for the Parties' review and comments.
83. On 21 November 2025, *i.e.*, the last day of Hearing, the Parties provided their comments and confirmation on the Tribunal's Updated List of Issues in their closing submissions ("**Updated List of Issues**").
84. On 3 December 2025, the Parties filed their respective post-hearing briefs containing their responses to the Updated List of Issues ("**C-PHB**" and "**R-PHB**", respectively). The C-PHB and R-PHB are updated versions of Parties' respective closing submissions. TGL's C-PHB is in the form of a statement whereas Ghana's R-PHB is in the form of a PowerPoint Presentation.
85. On 19 December 2025, TGL submitted its Costs Statement ("**C-CS**") and on 20 December 2025, Ghana submitted its Costs Statement ("**R-CS**").
86. On 16 April 2026, the ICC Secretariat informed the Parties and the Tribunal that the deadline of the Award had been extended by the ICC Court from 30 April 2026 to 29 May 2026. The ICC Secretariat notified the Parties and the Tribunal of further extensions to the Award deadline by the ICC Court, on 29 May 2026 until 31 July 2026 and on 31 July 2026 until 30 September 2026.

87. On 12 August 2026, the Tribunal submitted the draft Final Award for scrutiny to the ICC Court in accordance with Article 34 of the ICC Rules.
88. On 13 August 2026, the Tribunal notified the Parties that the draft Final Award had been submitted for scrutiny to the ICC Court and it declared the proceedings closed in accordance with Article 27 of the ICC Rules.
89. On 14 August 2026, the Tribunal invited the Parties to (i) clarify whether they would agree to the notification of the Final Award by email, or whether a hard copy notification was required, and further whether they would agree to signature in counterparts; and (ii) confirm their representatives to be listed in the Final Award.
90. On 18 August 2026, Claimant, on behalf of both Parties, informed the Tribunal that the Parties wished to receive a formal hard-copy notification of the Award, which may be signed in counterparts. For convenience purposes, the Parties would like to receive a courtesy electronic copy of the Award from the ICC on the day it is dispatched to the Parties by courier. The Parties further requested that they be provided three business days' advance notice of the date on which the Award is to be issued.
91. On 19 August 2026, the Parties provided the Tribunal with the respective lists of representatives to be listed in the Award.
92. On 10 September 2026, the ICC Court approved the draft Award submitted by the Tribunal for scrutiny.

## **VI. FACTUAL BACKGROUND**

93. The Parties' dispute in the arbitration pertains to the GRA Assessment concerning TGL's income tax liability for tax years 2016-2019 on the Business Interruption Insurance Proceeds (defined in ¶ 147 below) received by Tullow Oil Plc ("Tullow PLC") pursuant to the KNK FPSO Loss Event (defined in ¶ 117 below). TGL contends that the GRA Assessment constitutes a violation of the Petroleum Agreements, which is disputed by Ghana.
94. Section A contains a brief background into Ghana's oil and gas sector and Section B outlines TGL's activities in Ghana and the Petroleum Agreements. Section C discusses the insurance arrangements concluded by the Tullow Group, followed by a discussion on the KNK FPSO Loss Event in Section D, MatthewsDaniel in Section

E, the Background to the GRA Assessment in Section F, the Loss Adjuster Report in Section G, the GRA Assessment in Section H and finally the steps taken by TGL in response to the GRA Assessment in Section I.

**A. BRIEF BACKGROUND TO GHANA'S OIL AND GAS SECTOR**

95. Oil and gas exploration in onshore Ghana dates back to the 1890s.<sup>7</sup> Since the 1960s, the focus of the exploration activities was directed towards Ghana's offshore resources located in its continental shelf.
96. In 1983, Ghana National Petroleum Corporation ("GNPC") was established as a state-owned petroleum company pursuant to the Ghana National Petroleum Corporation Law, 1983<sup>8</sup> and the Petroleum (Exploration and Production) Law 1984.<sup>9</sup> In 2016, the Petroleum (Exploration and Production) Law 1984 was repealed and replaced by the Petroleum (Exploration and Production) Act 2016 ("**Petroleum Act**" or "**Act 919**").<sup>10</sup> Pursuant to the Petroleum Act, GNPC has the authority to undertake exploration, development and production of petroleum over all blocks opened for petroleum operations by Ghana. To this end, the GNPC is authorised to enter into petroleum agreements with contractors and is required to hold an initial participating carried interest of 15% in each block.<sup>11</sup>
97. In 1987, the Petroleum Income Tax Law, 1987 ("**PITL**" or "**PNDCL 188**") was promulgated in Ghana to govern the payment of tax on petroleum operations and for related matters.<sup>12</sup> Other taxation laws that have been referred by the Parties in the context of their dispute in the arbitration, include the Internal Revenue Act, 2000 ("**IRA**" or "**Act 592**") and the Revenue Administration Act, 2016 ("**RAA**" or "**Act 915**"). The IRA and RAA will be discussed as relevant later on in this Award.
98. Ghana states that, as the exploration for commercial hydrocarbons intensified in deepwater areas in the early 2000s, it opened several offshore blocks for petroleum

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<sup>7</sup> **Exh. R-37.**

<sup>8</sup> **Exh. RL-13**, Section 1.

<sup>9</sup> **Exh. CL-24**, Section 2.

<sup>10</sup> **Exh. RL-60.**

<sup>11</sup> See **Exh. C-1**, Recitals 2 and 3; **Exh. C-3**, Recitals 2 and 3; **Exh. RL-60**, Section 10(14)(1).

<sup>12</sup> **Exh. CL-25.** The Tribunal notes that the legislation is actually titled Petroleum Income Tax Act, 1987. In the Award, it follows the Parties' reference of "Petroleum Income Tax Law", which is also the reference in Article 1.56 of the Petroleum Agreements.

operations, including the Deepwater Tano block ("**DWT Block**") and the West Cape Three Point block ("**WCTP Block**"), where TGL operates.<sup>13</sup>

99. The dispute in the arbitration concerns the Ghanaian tax authorities' levy of income tax on TGL under the PITL for tax years 2016-2019. The tax was levied for certain insurance payments made in connection with activities in the Jubilee field, which straddled the DWT and WCTP Blocks, extending across both of their boundaries (the "**Jubilee Field**").<sup>14</sup> The Jubilee Field is discussed in further detail below. TGL alleges, which is disputed by Ghana, that this tax levy breached its taxation arrangement with Ghana under the Petroleum Agreements.

#### **B. TGL'S ACTIVITIES IN GHANA AND THE PETROLEUM AGREEMENTS**

100. TGL is an indirect wholly-owned subsidiary of Tullow PLC. It was incorporated in 2005 in Jersey for purposes of the Tullow Group's operations in Ghana.<sup>15</sup> The Parties agree that TGL's business is, and always has been, the sale and export of petroleum from its operations in Ghana.<sup>16</sup>
101. In 2006, TGL entered into the two Petroleum Agreements which are at issue in this arbitration: the DWT Petroleum Agreement and the WCTP Petroleum Agreement.
102. The DWT Petroleum Agreement was executed between TGL, Ghana, GNPC, Kosmos Energy Ghana HC ("**Kosmos**") and Sabre Oil and Gas Limited ("**Sabre**") on 10 March 2006.<sup>17</sup>
103. The WCTP Petroleum Agreement was initially executed between Ghana, GNPC, Kosmos and the E.O. Group ("**EO**").<sup>18</sup> On 1 September 2006, TGL acquired an interest in the WCTP Petroleum Agreement through a Deed of Assignment executed between Ghana, GNPC, Kosmos, Sabre and TGL, pursuant to which Kosmos assigned 22.896% and 1.854% of its interest in the WCTP Petroleum Agreement to TGL and Sabre, respectively ("**Deed of Assignment**").<sup>19</sup>

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<sup>13</sup> SoD, ¶ 24.

<sup>14</sup> Exh. C-4, Recital 3, p.1.

<sup>15</sup> Exh. C-22; Exh. C-72, p. 28; Exh. C-74, p. 175.

<sup>16</sup> SoC, ¶ 31; SoD, ¶ 32.

<sup>17</sup> Exh. C-3.

<sup>18</sup> Exh. C-1.

<sup>19</sup> Exh. C-2, Recital A.

104. As noted above, the DWT and WCTP Blocks are straddled by the Jubilee Field.<sup>20</sup> Following the discovery of the Jubilee Field in 2007,<sup>21</sup> on 25 November 2008, Ghana's Minister of Energy determined that the Field should be developed and operated as a single unit. This led to the execution of the Unitization Agreement on 13 July 2009.<sup>22</sup> The Unitization Agreement is accompanied by two Annexes: the form of Government Approval in Exhibit Q-1 and the form of Contract Acknowledgement in Exhibit Q-2.<sup>23</sup> The signed form of Government Approval with respect to the Jubilee Field (the "**Government Approval**") contains Ghana's approval of the unitization, and the signed Contract Acknowledgement with respect to the Jubilee Field (defined in ¶ 11 above) sets forth the provisions that apply to petroleum operations under the Petroleum Agreements relating to the Jubilee Field.
105. The DWT and WCTP Petroleum Agreements govern the exploration, development and production of petroleum in the DWT and WCTP Blocks, respectively.<sup>24</sup>
106. The contractual provisions in the Petroleum Agreements that TGL alleges have been breached by Ghana concern the taxation regime agreed between the parties for "**Petroleum Operations**", defined in the Agreements as:
- meaning all activities, both in and outside Ghana, relating to the Exploration for, Appraisal, Development, Production, handling and transportation of Petroleum contemplated under this Agreement and includes Exploration Operations, Development Operations and Production Operations and all activities in connection therewith.<sup>25</sup>
107. The agreement on taxation is set out in Article 12 of each Petroleum Agreement. Article 12 is largely identical in both Agreements, with minor differences between the two versions. In summary, Article 12 of both Agreements stipulates that no tax, duty, fee or impost shall be imposed on the contractor under the Agreement (or on its sub-contractors or affiliates) in respect of activities related to Petroleum Operations and to the sale and export of Petroleum, save for income tax in accordance with the PITL calculated at the rate of 35% or at an amended income tax rate that may come into force later.

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<sup>20</sup> Exh. C-4, Recital 3, p.1.

<sup>21</sup> Exh. R-57.

<sup>22</sup> Exh. C-4, Recital 4, p.1.

<sup>23</sup> Exh. C-4, pp. 110-131.

<sup>24</sup> Exh. C-1, Recitals; Exh. C-3, Recitals.

<sup>25</sup> Exh. C-3, Article 1.58; Exh. C-1, Article 1.58.

108. Article 12 of the DWT Petroleum Agreement provides as follows in relevant part:

**TAXATION AND OTHER IMPOSTS**

12.1 No tax, duty, fee or other impost shall be imposed by the State or any political subdivision on Contractor, its Subcontractors or its Affiliates in respect of activities related to Petroleum Operations and to the sale and export of Petroleum other than as provided in this Article.

12.2 Contractor shall be subject to the following:

[ . . . ]

- ii) Income Tax in accordance with the Petroleum Income Tax Law 1987 (PNDC L188) levied at the rate of thirty-five percent (35%) as stipulated in the Petroleum Income Tax Law 1987, PNDC Law 188. Where a new income tax rate comes into force as a result of the promulgation of the new Petroleum Income Tax Law currently before the Cabinet, Contractor shall have the option of either applying the new income tax rate to this Agreement or remaining under the Petroleum Income Tax Law, 1987, PNDC Law 188;

[ . . . ]<sup>26</sup>

109. The WCTP Petroleum Agreement likewise provides as follows in relevant part:

**TAXATION AND OTHER IMPOSTS**

12.1 No tax, duty, fee or other impost (including VAT) shall be imposed by the State or any entity or Affiliate political subdivision on Contractor, its Subcontractors or its Affiliates in respect of activities related to Petroleum Operations and to the sale and export of Petroleum other than as provided in this Article.

12.2 Contractor shall be subject to the following:

[ . . . ]

- (ii) Income Tax at the rate of thirty-five percent (35%), calculated in accordance with the Petroleum Income Tax Law 1987 (PNDC L.188) or at such lower rate as may be applicable under an amended Petroleum Income Tax Law;

[ . . . ]<sup>27</sup>

110. The DWT Petroleum Agreement defines “Contractor” as meaning “Tullow Ghana Limited, Sabre Oil and Gas Limited and Kosmos Energy Ghana HC and their respective successor and assignees”.<sup>28</sup> The WCTP Petroleum Agreement defines “Contractor” as meaning “Kosmos and EO and their respective successors and

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<sup>26</sup> Exh. C-3, Article 12.

<sup>27</sup> Exh. C-1, Article 12.

<sup>28</sup> Exh C-3, Article 1.15.

assignees”.<sup>29</sup> Following the Deed of Assignment, “Contractor” under the WCTP Petroleum Agreement additionally included TGL and Sabre (see ¶ 102 above).<sup>30</sup>

111. Both Agreements also contain a stabilization provision in Article 26.2, which provides in identical terms as follows:

26.2 The State, its departments and agencies, shall support this Agreement and shall take no action which prevents or impedes the due exercise and performance of rights and obligations of the Parties hereunder. As of the Effective Date of this Agreement and throughout its Term, the State guarantees Contractor the stability of the terms and conditions of this Agreement as well as the fiscal and contractual framework hereof specifically including those terms and conditions and that framework that are based upon or subject to the provisions of the laws and regulations of Ghana (and any interpretations thereof) including, without limitation, the Petroleum Income Tax Law, the Petroleum Law, the GNPC Law and those other laws, regulations and decrees that are applicable hereto.<sup>31</sup>

112. The WCTP Petroleum Agreement has an additional provision on stabilization in Article 12.12, which provides as follows:

12.12 Contractor shall be entitled to economic and fiscal stability according to the rights and benefits as defined in this Agreement.<sup>32</sup>

113. The Parties agree that Articles 12 and 26 of the Petroleum Agreements establish a regime through which incentives are given to private contractors to provide certainty as to the fiscal and regulatory framework for the investment, including in relation to tax.<sup>33</sup> There is a concomitant duty and obligation on the private contractors under Article 18 to, amongst others, furnish the information necessary for Ghana’s tax authorities to carry out their responsibility of assessing the Contractor’s tax liabilities.<sup>34</sup>

114. Article 24.10 of the DWT Petroleum Agreement is also invoked by TGL in connection with its claims, and provides that:

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<sup>29</sup> Exh. C-1, Article 1.15.

<sup>30</sup> See Exh. C-4, This was executed after the Deed of Assignment and it defines the “WCTP Contract Group” to “mean[] all those Persons who from time to time constitute the ‘Contractor’ or equivalent under the WCTP Contract (who, at the Effective Date, consist of Tullow, Kosmos, Anadarko, Sabre and EO Group) and GNPC or any successor-in-interest to GNPC’s interest in the WCTP Contract”.

<sup>31</sup> Exh. C-1, Article 26.2; Exh. C-3, Article 26.2.

<sup>32</sup> Exh. C-1, Article 12.

<sup>33</sup> SoC, ¶ 3; SoD, ¶ 35.

<sup>34</sup> Exh. C-3, Article 18.1 and 18.2; Exh. C-1, Article 18.1 and 18.2. See also SoD, ¶ 37.

24.10 In the event of a matter being referred for resolution under this Article 24; any obligations of the Parties relating to such matter shall (unless otherwise provided by this Agreement) be suspended, without liability to any Party, until said matter has been resolved pursuant to this Article 24.<sup>35</sup>

115. The Parties have referred to TGL's two operations in Ghana,<sup>36</sup> which the Tribunal understands are its main operations.
116. The first is with respect to the Jubilee Field, referred to in ¶ 104 above. TGL owns a 38.9778% interest in the Jubilee Field. Its other partners include Kosmos (24.0771%), Kosmos Energy Ghana Investments (14.5337%), GNPC (13.6408%), Jubilee Oil Holding Limited (6.0451%), and PetroSA Ghana Limited (2.7254%).<sup>37</sup>
117. As part of its operations in the Jubilee Field, TGL owns and operates the Kwame Nkrumah Floating Production and Storage Offloading vessel ("**KNK FPSO**" or "**FPSO**").<sup>38</sup> The KNK FPSO is a converted very large crude carrier having a storage capacity of approximately 1,600,000 barrels of oil and maximum production of 120,000 barrels of oil per day. It can also process 160 million standard cubic feet per day of gas. Petroleum extracted from the wells in the Jubilee Field is taken to the KNK FPSO for storage and production.<sup>39</sup>
118. As discussed in Section D below, the KNK FPSO was damaged in 2016 ("**KNK FPSO Loss Event**"), for which TGL and Tullow PLC sought and received insurance payments. The insurance proceeds received by Tullow PLC for the damage to the KNK FPSO was determined by the GRA as forming part of TGL's chargeable income for the tax years 2016-2019, which is contested by Claimant.
119. TGL's second operation is in the "**TEN Field**", which comprises Tweneboa, Enyenra and Ntomme in the DWT Block.<sup>40</sup> TGL owns 4.841% interest in the TEN Field. Its other partners include Kosmos (17%), Kosmos Energy Ghana Investments (3.384%), GNPC (15%), Jubilee Oil Holding Limited (5.95%) and PetroSA Ghana Limited (3.825%).<sup>41</sup>

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<sup>35</sup> Exh. C-3, Article 24.10.

<sup>36</sup> SoC, ¶ 2, fn 2; SoD, ¶¶ 27-31.

<sup>37</sup> Exh. R-58, p. 3.

<sup>38</sup> Exh. C-15. *See also*, SoC, ¶ 31; SoD, ¶¶ 2, 50.

<sup>39</sup> Exh. C-86, p. 2.

<sup>40</sup> Exh. R-58.

<sup>41</sup> Exh. R-58, p. 3.

### C. THE TULLOW GROUP'S INSURANCE ARRANGEMENTS

120. The Tullow Group, which includes Tullow PLC and TGL, availed itself of three different types of insurance for TGL's petroleum operations in Ghana annually:<sup>42</sup>
121. An operational energy insurance under the Energy Package Policy 2013<sup>43</sup> as subsequently amended from time to time ("**Energy Package Policy**" or "**Policy**");<sup>44</sup>
- (i) A non-operational insurance, such as Directors & Officers insurance;<sup>45</sup> and
122. Specific insurance policies for certain local assets. For the KNK FPSO, the damage to which in 2016 was the trigger event giving rise to the dispute in the present arbitration, TGL had taken a hull and machinery insurance ("**KNK FPSO Hull Policy**" or "**Hull Policy**")<sup>46</sup> and also insurance cover against third party liabilities through the entry of the KNK FPSO with the Standard P&I Club.
123. At issue in the arbitration is the insurance payment received by Tullow PLC under the "Business Interruption and/or Contingent Business Interruption" cover in the Energy Package Policy for the KNK FPSO Loss Event. The Parties disagree on the scope and coverage of the Energy Package Policy, specifically, whether TGL was an "Insured" under the Policy, and, if so, whether it was also an insured for the purposes of the "Business Interruption and/or Contingent Business Interruption" cover in the Policy. In this context, TGL also refers to the scope and coverage of the KNK FPSO Hull Policy with a view to highlighting the differences between the two policies.
124. An overview of the Energy Package Policy and the KNK FPSO Hull Policy is set out below. The two policies will be discussed in more detail, as required, later in the Award.

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<sup>42</sup> **Exh. C-38**, p. 1. *See also*, Dickinson First Statement, ¶ 10.

<sup>43</sup> **Exh. C-30**.

<sup>44</sup> *See for example*, C-45; C-46; C-57; C-58; C-61; C-66.

<sup>45</sup> **Exh. C-38**, p.5

<sup>46</sup> **Exh. C-38**, p. 6; **Exh. C-63**; **Exh. C-66**, p. 15

## 1. Energy Package Policy

125. The Energy Package Policy was provided by a consortium of international insurers led by AIG Europe Limited<sup>47</sup> for a period of three years from 1 June 2013 to 31 May 2016.<sup>48</sup> Periodic updates were made to the Policy through “Endorsements” for adjusting exposure data and limits under the Policy.<sup>49</sup>

126. The term “Insured” is defined under the Energy Package Policy as:

Tullow Oil Plc (First Named Insured) and/or Parent and/or Subsidiary and/or Associated and/or Affiliated Companies and/or Joint Venturers and/or Co Venturers and/or inter-related Companies as now are or as hereafter may be constituted for whom the Insured(s) has authority and/or responsibility to insure and/or joint venture partners as applicable and/or including companies acquired or former during the contract period.

BNP Paribas SA, as Security Trustee for the Secured Creditors in respect of the Tullow Oil Plc group credit facility.

And/or indemnified Parties including Mortgagees and other involved parties or parties all as more fully described in the contract wording and as may be required and agreed by the Contract Leader.<sup>50</sup>

127. The Policy also contains a list of “Additional Insureds” that are “added to the extent of their financing/contractual interests herein”.<sup>51</sup>

128. The Insured’s address is listed in the Policy as “Tullow Oil Plc, 9 Chiswick Park, 566 Chiswick High Road, London W4 5XT”.<sup>52</sup>

129. The Policy provided coverage for a number of operational risks, including physical damage to machinery and assets, operators extra expense, third party liability, construction all risks, and business interruption/contingent business interruption.<sup>53</sup>

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<sup>47</sup> Dickinson First Statement, ¶ 18.

<sup>48</sup> Exh. C-30, p. 1.

<sup>49</sup> See for example, Exh. C-45; C-46; C-57; C-58; C-61; C-66.

<sup>50</sup> Exh. C-30, p. 1.

<sup>51</sup> Exh. C-30, p. 1. These include: The Bangladesh Oil, Gas and Mineral Corporation (Petrobangla) (Block 9 field in Bangladesh only), Bangladesh Petroleum Exploration and Production Company Limited (BAPEX) (Block 9 field in Bangladesh only), Niko Resources Limited (Block 9 field in Bangladesh only), Africa Oil Corporation (South Omo field in Ethiopia only), AIC-Petrofi Limited (Tulipe S.A. fields in Gabon only), Sabre Oil and Gas Limited and Ghana National Petroleum Corporation (Jubilee and Deepwater Tano fields in Ghana only), Africa Oil (Blocks 10A, 10BA, 10BB and 13T in Kenya only), FP Mauritania A B.V. (PSC A and Chinguetti EEA fields in Mauritania only), FP Mauritania B B.V. (PSC B field in Mauritania only), National Petroleum Corporation of Namibia (NAMCOR) (Kudu field in Namibia only), Itochu Oil Exploration Company Limited (Kudu field in Namibia only), Eagle Drill Limited (EA2 and EA3a fields in Uganda only).

<sup>52</sup> Exh. C-30, p.1.

<sup>53</sup> Exh. C-30, “Interest” Sections 1-6, pp. 2-3. See also, “Sum Insured”, pp. 3-9.

The Policy also protected Tullow PLC's financial interest in its subsidiaries and affiliates by way of a Financial Interest Cover Endorsement ("**FICE**").<sup>54</sup>

130. In addition to direct insurance, the Energy Package Policy provided coverage as reinsurance of local insurance companies where the insurance taken out by, or on behalf of, the operating entity for local risks was required by applicable law to be provided by local insurance companies.<sup>55</sup>
131. According to TGL, Ghanaian local laws required certain forms of insurance to be obtained from Ghanaian insurers because there were restrictions under its insurance laws on contracting with offshore insurers in relation to property situated and liabilities arising in Ghana.<sup>56</sup>
132. In the case of Ghana, TGL took out a local insurance policy in respect of certain risks with the Ghanaian insurance company SIC in 2013 (the "**SIC Policy**"), which was then reinsured 95% under the Energy Package Policy.<sup>57</sup>
133. The SIC Policy includes "Business Interruption and/or Contingent Business Interruption" cover under Section 4. According to TGL's witness, Ms. Dickinson:

[a]lthough the SIC Policy repeated the wording of the Energy Package Policy in full, including the business interruption and/or contingent business interruption cover in Section 4, no cover was provided under that Section and no premiums were ever charged.<sup>58</sup>

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<sup>54</sup> **Exh. C-30**, "Financial Interest Cover Endorsement", pp. 30-31.

<sup>55</sup> **Exh. C-30**, p. 3; **Exh. C-66**, Section 29, p. 27 ("Reinsurance Clause: It is understood and agreed that, subject to endorsement hereon, in certain countries coverage hereon will have to be as a reinsurance of local or national insurance companies.

Proportional Facultative Reinsurance Clause:

In consideration of the premium charged, and subject to the terms and conditions of this Contract as set out in the slip and its attachments and/or endorsements applicable thereto, this Contract reinsures the Reinsured's interest in payments made within the terms and conditions of the original insurance policy.

In the event of inconsistencies between the original insurance policy and this Contract, this Contract shall prevail.

If the Reinsured shall make a claim knowing the same to be false or fraudulent as regards amount or otherwise, this Contract shall become void and all claims hereunder shall be forfeited. 1/1/97 NMA2735 (excluding rate and retention).

The Insured shall not be prejudiced by the above provided the Insured was not privy such false or fraudulent claim.

The percentage order hereon is to be stated by Policy endorsement and coverage is to be subject to the following Claims Control and Cut Through Clauses.")

<sup>56</sup> Dickinson First Statement, ¶ 19.

<sup>57</sup> **Exh. C-66**, Definition of "Reinsured" pp. 2-3; **Exh. C-37**.

<sup>58</sup> Dickinson First Statement, ¶ 27.

134. According to TGL, where the applicable law required local insurance cover, the Energy Package Policy initially provided coverage to Tullow PLC through FICE to protect its financial interest in its subsidiaries and affiliate. Once local insurance arrangements were finalised, the FICE would be automatically deleted and would not apply in respect of that country.<sup>59</sup>
135. Turning to the “Business Interruption and/or Contingent Business Interruption” cover in the Energy Package Policy, the Policy stipulates that “Business Interruption coverage is bought by Tullow Oil plc as protection for scheduled overseas locations”.<sup>60</sup>
136. The schedule to Section 4 of the Policy lists (i) under the Business Interruption Schedule, three drilling wells (non-completed wells) in the Jubilee Field, stating that “Business Interruption coverage under Section 4 in respect of the above scheduled Drilling Wells (non-Completed Wells) hereunder is for Tullow [PLC]’s interest only”; and (ii) under the Contingent Business Interruption Schedule, the “Jubilee Field Floating Production Storage Offloading (FPSO) — Tullow Ghana Limited operated owned asset”.<sup>61</sup>
137. At the time of occurrence of the KNK FPSO Loss Event, Endorsement 50 to the Energy Package Policy was in effect.<sup>62</sup> The schedule to Section 4 in Endorsement 50 contains identical terms as under the Policy (see preceding paragraph), save that the Business Interruption coverage covered five drilling wells (non-completed wells) instead of the three wells listed under the Policy.<sup>63</sup>
138. Endorsement 50 further specified that Business Interruption coverage was for “interruption of the business at any of the Insured’s Assets” listed in the schedule to Section 4 for, *inter alia*, loss of production resulting in reduction of revenue and increased cost of working directly caused by physical loss or damage or machinery breakdown at any of the Insured’s assets:

Subject to the Exclusions, Conditions and Definitions of the Policy and also to the following additional Exclusions, Conditions and Definitions, this Section 4 shall indemnify the Insured, following interruption of the business at any of the Insured’s Assets as scheduled to this Section 4 for:

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<sup>59</sup> SoC, ¶ 87(c).

<sup>60</sup> Exh. C-30, p. 12.

<sup>61</sup> Exh. C-30, p. 16. See also, pp. 3, 62.

<sup>62</sup> Exh. C-66.

<sup>63</sup> Exh. C-66, p. 12.

- (i) Loss of Production at any of the Insured's Assets as scheduled to this Section 4 that results in a reduction of the Insured's revenue during the Recovery Period at the Insured's Assets as defined and scheduled to this Section 4.
- (ii) Loss of Production at any of the Insured's Assets as scheduled to this Section 4 that results in a reduction of the Insured's revenue from Tariff Receipts from third parties and/or supply of crude oil and/or gas to third parties arising from any of the Insured's Asset as scheduled to this Section 4;
- (iii) Increased Cost of Working as defined hereunder;  
directly caused by either:
  - (a) physical loss of or physical damages to real or personal property;  
or
  - (b) Well Out of Control as defined in this POLICY, SECTION 2
  - (c) Machinery Breakdown as defined under the Policy Number EH107913 (or renewal or replacements [sic] thereof in respect of the Jubilee Field Floating Production Storage and Offloading (FPSO) vessel offshore Ghana and FPSO Sendje Ceiba, Ceiba Field, Equatorial Guinea only.  
occurring while this Policy is in force.<sup>64</sup>

## 2. KNK FPSO Hull Policy

139. The KNK FPSO Hull Policy was underwritten by SIC Insurance Company Ltd and covered the period between 29 December 2015 and 29 December 2016.<sup>65</sup> This Policy is not the subject of the dispute in this arbitration.

140. The "Insured" is listed in the Hull Policy as follows:

- i. Tullow Ghana Ltd for and on behalf of itself, Kosmos Energy Ghana HC, Anadarko WCTP Company, Sabre Oil & Gas Holdings Limited (Petro SA) and Ghana National Petroleum Corporation (GNPC) and/or parent and/or associated and/or affiliated and/or subsidiary and/or inter-related, owned and controlled companies, employees, officers or directors acting in their capacities as such and/or others for whom the Insured has responsibility to provide insurance as more fully defined within the contract wording.
- ii. Lenders and/or Financiers as declared and agreed by the Contract Leader only.

Co insureds to include Co-Venturers / Joint Venturers, contractors, sub-contractors as required by written contract or other as their respective rights and interests may appear as agreed by Contract Leader only.<sup>66</sup>

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<sup>64</sup> Exh. C-66, p. 98.

<sup>65</sup> Exh. C-63, p. 1

<sup>66</sup> Exh. C-63, "Definition of Insured", p. 6.

141. The Insured's address is listed in the policy, as "Tullow Ghana Ltd, Plot No. 70, Off George Walker Bush Highway, North Dzorwulu, Accra, Ghana".<sup>67</sup>

142. The "Property Insured" is identified as:

FPSO Kwame Nkrumah MV21 including Vessel and all associated property, tanks, plant, machinery, equipment, outfit, buoys, spares Topsides, Processing Equipment, Turret, Anchors and Moorings Lines, Chains, Wires, Buoys, Pipeline End Manifold (PLEM), Floating hoses (being unit to tanker transfer hoses) and all other appurtenances connected therewith whilst used within a production, processing and storage system, nothing excluded, to the extent to which the insured is contractually responsible for these systems excluding the umbilicals, risers and flowlines up to and including the mating flanges of each riser and couplings of each umbilical on the Floating Production Storage & Offloading Unit (FPSO).<sup>68</sup>

143. The KNK FPSO Hull Policy *inter alia* provided indemnification to TGL and its joint venture partners in respect of physical loss or physical damage (including machinery breakdown) of the KNK FPSO.<sup>69</sup>

#### **D. THE KNK FPSO LOSS EVENT**

144. As noted in ¶ 117 above, KNK FPSO was used to store and produce oil collected from the Jubilee Field. TGL was the operator of the KNK FPSO.

145. In February 2016, TGL identified damage leading to the failure of the main turret bearing of the KNK FPSO.<sup>70</sup> Further, on 9 March 2016, the KNK FPSO turret bearing seized during preparation for an offloading operation, leading to a reduction in the rate of production and increased costs of working.<sup>71</sup>

146. Following the KNK FPSO Loss Event, TGL made a claim under the KNK FPSO Hull Policy on behalf of itself and its joint venture partners, pursuant to which all joint venture partners recovered an amount of USD 626,999,848 during financial years 2016 to 2021. TGL's net share of this amount was USD 237,520,134.<sup>72</sup>

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<sup>67</sup> Exh. C-63, p. 2.

<sup>68</sup> Exh. C-63, pp. 6-7.

<sup>69</sup> Exh. C-63, Section 2, pp. 8-10.

<sup>70</sup> Exh. C-86, p. 2.

<sup>71</sup> Exh. C-86, p. 2.

<sup>72</sup> Exh. C-98, pp. 1, 4.

147. Tullow PLC made a separate insurance claim under the Business Interruption and/or Contingent Business Interruption cover in Section 4 of the Energy Package Policy. Pursuant to this, Tullow PLC recovered an amount of USD 561,559,991 between financial years 2016 to 2019 (“**Business Interruption Insurance Proceeds**”).<sup>73</sup> This amount was subjected to tax in Ghana as forming part of TGL’s revenue for financial years 2016-2019, which has led to the Parties’ dispute in this arbitration.

**E. MATTHEWSDANIEL**

148. The payment of the Business Interruption Insurance Proceeds to Tullow PLC under the Energy Package Policy was pursuant to a loss adjuster analysis performed by MatthewsDaniel International (London) Limited (“**MatthewsDaniel**”).<sup>74</sup> Following several interim reports, MatthewsDaniel issued its final report on the KNK FPSO Loss Event on 14 August 2019 (“**Loss Adjuster Report**”),<sup>75</sup> wherein TGL was stated as the “Insured”.<sup>76</sup>
149. Subsequently, following Tullow PLC’s requests (see Section G below), on 14 October 2022, MatthewsDaniel issued a letter, noting an “error in the cover page” of the Loss Adjuster Report”, and clarifying that “[w]here the ‘Insured’ was listed as ‘TULLOW GHANA LIMITED’, this should have in fact stated ‘Tullow Oil Plc’ as the named Insured on Energy Package Policy No. B0509eh056913” (“**MatthewsDaniel Clarification**”).<sup>77</sup> The implication of the MatthewsDaniel Clarification is disputed between the Parties and will be addressed, as relevant, later in the Award.

**F. BACKGROUND TO THE GRA ASSESSMENT**

150. Ghana states that the GRA has conducted routine tax audits of TGL following the commencement of its operations in Ghana, which allegedly “revealed a disturbing pattern of TGL impermissibly reducing its taxable income to avoid its tax liabilities in Ghana”.<sup>78</sup>

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<sup>73</sup> Exh. C-86, p. 21.

<sup>74</sup> Exh. C-86.

<sup>75</sup> Exh. C-86.

<sup>76</sup> Exh. C-86, p. 1.

<sup>77</sup> Exh. C-96.

<sup>78</sup> SoD, ¶ 62.

151. In this regard, Ghana explains that TGL was a large taxpayer and was subject to the jurisdiction of the GRA's Large Taxpayer Office ("LTO"), a department of the domestic tax revenue division of the GRA. TGL's tax audits were conducted by two units within the LTO: the Petroleum Unit, which is responsible for auditing petroleum companies and the Transfer Pricing Unit, which is responsible for auditing large taxpayers' transactions with their associated entities.<sup>79</sup>
152. The Petroleum Unit of the GRA conducted three audits of TGL for FY (i) 2006-2010;<sup>80</sup> (ii) 2011-2013;<sup>81</sup> and (iii) 2014-2016.<sup>82</sup> According to Ghana, each audit established that TGL had been impermissibly reducing its taxable income to avoid its tax liabilities.
153. In 2021, the GRA's Transfer Pricing Unit separately audited TGL for FY 2014-2021.<sup>83</sup> Ghana contends that this audit sought to examine whether the interest that TGL deducted on its tax returns for FY 2014-2020 based on an intercompany loan it had allegedly concluded with its parent company, Tullow PLC, reflected terms that would have been reached at arm's length and was in line with Ghana's transfer pricing rules.<sup>84</sup> Ghana further states that the tax assessment resulting from this audit has been challenged by TGL in a separate ICC arbitration.
154. The issue of the insurance proceeds received by Tullow PLC under the Energy Package Policy for the damage caused to the KNK FPSO arose for the first time during the course of the GRA's audit of TGL for tax years 2014-2016 (see ¶ 152 above). In December 2018, the GRA issued two decisions, one for each offshore block in which TGL was operating, finding that TGL improperly failed to disclose insurance proceeds of USD 121,900,000 in 2016 ("**GRA's December 2018 Tax Assessments**").<sup>85</sup> The GRA added this amount to TGL's tax liabilities and also assessed TGL for additional taxes unrelated to its failure to disclose the Business Interruption Insurance Proceeds.<sup>86</sup>

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<sup>79</sup> SoD, ¶ 63.

<sup>80</sup> Exh. R-5.

<sup>81</sup> Exh. R-19; Exh. R-21; Exh. R-20.

<sup>82</sup> Exh. C-78; Exh. C-79.

<sup>83</sup> Exh. R-34.

<sup>84</sup> SoD, ¶ 65.

<sup>85</sup> Exh. C-78, p. 1; Exh. C-79, p. 1.

<sup>86</sup> Exh. C-78; Exh. C-79.

155. On 21 December 2018, TGL sent an objection notice to the GRA concerning the GRA's December 2018 Tax Assessments with respect to the Business Interruption Proceeds.<sup>87</sup> TGL asserted that Tullow PLC "was the insured entity and responsible for paying all premiums under the policy" and that the insurance proceeds therefore represented Tullow Oil's and not TGL's taxable income.<sup>88</sup>
156. In December 2019, the GRA issued several assessment decisions concerning TGL's tax assessment for FY 2014-2016. These assessments did not include a decision on the Business Interruption Insurance Proceeds. TGL contends that the absence of a decision in that regard indicates that the GRA had withdrawn the December 2018 Tax Assessments on the Business Interruption Insurance Proceeds. Ghana disagrees, contending that the December 2018 Tax Assessments were not withdrawn but merely suspended pending further investigation.<sup>89</sup>
157. Ghana states that during the pendency of its investigation into TGL, the GRA received information from a whistleblower suggesting that TGL had committed improper tax avoidance or evasion during FYs 2010-2020.<sup>90</sup>
158. Following this, in December 2020, the GRA created a Special Investigative Audit Team ("SIAT") that initiated a special audit in October 2021 to investigate TGL's "probable intentional falsification of [its] tax returns to reduce [its] corporate income tax assessment and payments".<sup>91</sup> TGL was informed of this through a "Notice of Investigation – Underpayment of Corporate Income Taxes for the period 2010 to 2020", sent by the LTO. The Notice stated that "the closed tax years of Tullow Ghana Ltd are reopened for a reperformance audit to be conducted by officers of the Petroleum Unit and the GRA and [TGL's] tax liabilities are to be reassessed under Section 17 of the Petroleum Income Tax Law, act 188", and that the investigation would be led by the Petroleum Unit of the LTO.<sup>92</sup>
159. On 29 October 2021, the LTO followed up with a "Notice of Additional Assessment under Section 17 of the Petroleum Income Tax Law, Act 188" to TGL, which similarly notified TGL that its "tax liabilities for the period 2010 to 2020 are to be

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<sup>87</sup> Exh. C-80.

<sup>88</sup> Exh. C-80, ¶ 2.2.

<sup>89</sup> Yamborigya First Statement, ¶¶ 41-42.

<sup>90</sup> Yamborigya First Statement, ¶ 7.

<sup>91</sup> Exh. R-32; Yamborigya First Statement, ¶ 8.

<sup>92</sup> Exh. R-32.

reassessed under Section 17 of the Petroleum Income Tax Law, Act 188”, and that the investigation would be led by the Petroleum Unit of the LTO.<sup>93</sup>

160. On 17 December 2021, the Transfer Pricing Unit of the LTO notified TGL that it was conducting a transfer pricing audit into TGL for the period 2014-2020.<sup>94</sup>
161. Ghana states that the SIAT took over the GRA’s investigation into TGL’s undisclosed Business Interruption Insurance Proceeds for the years 2014-2016.<sup>95</sup> On 9 May 2022, the GRA notified TGL of its intention to “consolidate the ongoing 2014-2016 tax audit and the special investigations into one audit team”.<sup>96</sup>
162. On 24 May 2022, TGL responded to the GRA’s 9 May 2022 letter, “welcome[ing] this idea [of consolidation] as it seeks to find a speedy resolution of the pending audit issues”.<sup>97</sup> TGL further noted with respect to the 2014-2016 audit that while it had been co-operating with the GRA investigation team for the past year and had provided a significant amount of historical operational and financial data in that process, the objectives of the investigation and the issues currently under consideration had not been made clear to it. TGL requested a clarification on the scope and objectives of the ongoing investigation.<sup>98</sup>
163. Between August and October 2022, the SIAT and representatives from TGL and Tullow PLC had several meetings and exchanged several pieces of correspondence in connection with the SIAT’s investigation.<sup>99</sup>
164. On 16 August 2022, during an interview by the SIAT, the Insurance and Risk Manager of Tullow PLC disclosed that Tullow PLC had received insurance proceeds in the amount of USD 561,559,991 between 2016 and 2019 as compensation for the loss of revenue and increased costs of working resulting from the KNK FPSO Loss Event.<sup>100</sup>
165. Subsequently, TGL and the SIAT exchanged several pieces of correspondence in connection with the SIAT’s request for information and documents for the audit. One

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<sup>93</sup> **Exh. R-33.**

<sup>94</sup> **Exh. R-34.**

<sup>95</sup> SoD, ¶ 76.

<sup>96</sup> **Exh. R-36, p. 1**

<sup>97</sup> **Exh. R-36, p. 1.**

<sup>98</sup> **Exh. R-36, p. 1.**

<sup>99</sup> **Exh. C-138.**

<sup>100</sup> **Exh. C-10, ¶ 2.1.**

of the SIAT's requests raised during these exchanges was for a copy of MatthewsDaniel's Loss Adjuster Report.

166. The Tribunal notes that the request for the Loss Adjuster Report was a protracted issue between the SIAT and TGL, and the implications of TGL's response to the request have been discussed extensively by the Parties in their submissions. The Tribunal provides an overview of the correspondence between the SIAT and TGL to the extent it pertains to the Loss Adjuster Report. In the said correspondence, the SIAT also requested for other information and documents from TGL in connection with the audit, which is not summarised below. It will be addressed later in the Award to the extent it is relevant to the dispute. The Tribunal further notes that on occasion the correspondence from the SIAT became rather heated. The Tribunal will likewise also discuss this matter to the extent relevant later in the Award.

#### **G. LOSS ADJUSTER REPORT**

167. On 25 August 2022, the Petroleum Unit of the LTO wrote to TGL in connection with the "Tax Adjustment – Interest payment 2010-2020", stating that:

[f]ollowing an additional information that came to the attention of the Special Investigation Audit Team we have to withdraw the Tax Adjustment sent to you. We will resubmit a fresh adjustment in due course for your response. Meanwhile, you are kindly requested to share with the Special Investigation Audit Team Tullow Oil PLC interest payments computation charged to TGL tax return for 2021 financial year.<sup>101</sup>

168. On 29 August 2022, the SIAT requested a copy of the Loss Adjuster Report from TGL.<sup>102</sup>
169. On 30 August 2022, TGL responded by suggesting a call to discuss the request for a copy of the Loss Adjuster Report.<sup>103</sup> On 31 August, TGL and the SIAT exchanged further correspondence in connection with information to be provided for the SIAT's audit. TGL repeated that it would revert shortly on the Loss Adjuster Report.<sup>104</sup>
170. On 1 September 2022, Ms. Dickinson sent an email to Mr. Mawditt and Mr. Clark (from MatthewsDaniel), informing them that "[o]ne of our stakeholders has

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<sup>101</sup> Exh. R-64.

<sup>102</sup> Exh. C-138, p. 24.

<sup>103</sup> Exh. C-138, p. 23.

<sup>104</sup> Exh. C-138, pp. 21-23.

requested a copy of the final LA report on our BI loss". While noting that "this report is not our property and whilst we have a copy in our possession there is a confidential note across it with regard to it being shared", she requested guidance as to the steps that needed to be taken in order to share the report.<sup>105</sup> On the same day, Mr. Mawditt responded to Ms. Dickinson stating that approval for sharing the report would have to be sought from the insurers, AIG.<sup>106</sup>

171. Nearly two weeks later, on 12 September 2022, the SIAT again asked TGL to provide the Loss Adjuster Report.<sup>107</sup> On 17 September 2022, Mr. Richard Inch, Tax Manager of Tullow PLC, responded, stating that "there is a legal issue in that the report was issued to the underwriters rather than Tullow Oil plc, and as such it is not currently clear if we can provide it to you". He further stated that "we are making inquiries to determine whether we can, and what we could provide in the alternative if required".<sup>108</sup>
172. On 26 September 2022, the SIAT expressed doubts on whether there could be a "legal barrier" to sharing the Loss Adjuster Report with it. It queried whether the Report could now be shared and if there was an intention to share it at all. The SIAT further stated that "if it is the case that the report cannot be shared with the GRA, that's fine. It is enough to note that it is on record that TGL confirmed that Tullow Oil has recovered the amount of \$562 million dollars from insurers in respect of FPSO Nkrumah turret failure which is not reported in the financial statements of TGL". On this basis, the SIAT requested a meeting with Mr. Musah from TGL.<sup>109</sup>
173. On the same day, TGL responded as follows in relation to the Loss Adjuster Report:

On the insurance side, the issue with the loss adjuster's report has been that we were in fact not on copy and so not in a position to pass it on. I can however confirm that:

- a. Tullow Oil plc received a total of \$561,559,991 in the periods 2016 — 2019 in respect of its own Business Interruption insurance against losses arising from damage to the Kwame Nkrumah MV21 FPSO, the Dependency Premises for these purposes. The income was not reported in Tullow Ghana Limited's audited accounts as it was not that company's income, just as Tullow Ghana Limited did not report the cost of the related premiums paid by Tullow Oil plc.

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<sup>105</sup> Exh. C-137, p. 5.

<sup>106</sup> Exh. C-137, p. 5.

<sup>107</sup> Exh. R-39, p. 2; Exh. C-138, pp. 20-21.

<sup>108</sup> Exh. R-60 ; Exh. C-138, pp. 19-20.

<sup>109</sup> Exh. C-138, pp. 18-19.

- b. Tullow Ghana Limited received and reported a net \$627,000,000 in respect of its Hull and Machinery insurance for the vessel, in respect of the cost of repairs and some of the related operating expenditure, eg for the tugboats deployed to stabilise the FPSO.<sup>110</sup>

174. On 27 September 2022, Ms. Dickinson wrote again to Mr. Mawditt and Mr Clark, noting as follows with respect to the Loss Adjuster Report:

I am afraid this matter is not going away, in fact it is getting ever more urgent.

Did you speak with Adrian and would he be happy if we shared this report and if so would he be happy to share an email with his approval

Secondly the error on the report page noting the insured a Tullow Ghana Limited is not in fact correct and therefore could MatDan issue an email noting this as in fact it does not reflect the insured being Tullow Oil Plc for section 4 of the BI wording for the insured period

Sorry to keep bugging you on this one but your guidance/assistance would be very much appreciated.<sup>111</sup>

175. Mr. Mawditt responded on the same day, stating that he had spoken to Mr. Adrian from AIG and would follow up again.<sup>112</sup>

176. Mr. Dickinson followed up with Mr. Mawditt again on 27 September 2022, pointing out the discrepancy in the Loss Adjuster Report and requesting advice on how “we can manage the error in the insured name as this is not reflective of the wording”.<sup>113</sup>

177. Mr. Mawditt responded on the same day, noting that he “[got] the impression that even if consented to releasing the report, Adrian was less comfortable about amending the title page”. He queried if it would suffice to provide a memo explaining the discrepancy.<sup>114</sup>

178. The SIAT responded to TGL on 27 September 2022, expressing disappointment on TGL’s “decision not to share with [the GRA] the Loss Adjuster Report on the flimsy excuse that TGL was not copied”, and noting that “[r]efusal to provide information is considered an obstruction of tax administration and it has serious legal

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<sup>110</sup> Exh. C-138, pp. 17-18.

<sup>111</sup> Exh. C-137, p. 3.

<sup>112</sup> Exh. C-137, p. 3.

<sup>113</sup> Exh. C-137, p. 2.

<sup>114</sup> Exh. C-137, p. 1.

consequences". The SIAT also noted that its attempts to contact Mr. Musah from TGL by phone over the past four weeks were unsuccessful.<sup>115</sup>

179. On 4 October 2022, TGL responded to the SIAT's 27 September 2022 email, stating in relation to the Loss Adjuster Report as follows:

I would also like to pick up on your claim that we have refused to provide you with any information regarding the loss adjuster's report. You had previously advised in writing that the report was not needed, and that what you required was confirmation of the insurance proceeds received by Tullow Oil plc, which we have since confirmed. On the report itself, as we have explained, this was provided by the loss adjuster to the lead insurer on a confidential basis, and not to us. We have asked if this can be disclosed to you but the current position is not something we cannot simply ignore.<sup>116</sup>

180. On 10 October 2022, the SIAT again requested that TGL provide a copy of the Loss Adjuster Report, noting that TGL's "excuses" were "not healthy for promoting trust" and were "not tenable in law".<sup>117</sup> In the correspondence, the SIAT also referred to a meeting between them where these concerns were discussed.
181. Between 10 and 13 October, Ms. Dickinson and Mr. Clark exchanged several pieces of correspondence with respect to procuring approval from AIG to share the Loss Adjuster Report with the SIAT and for MatthewsDaniel to provide a clarification regarding the identity of the insured as mentioned in the Report. Mr. Clark shared a draft of the correction statement from MatthewsDaniel with Ms. Dickinson on 13 October 2022 for comments.<sup>118</sup>
182. On 12 October 2022, TGL responded to the SIAT stating, in connection with the Loss Adjuster Report, that "the position remains as advised to you on Friday, that we have requested permission from the lead insurer to make it available to you in view of the fact it is their document, and we expect to hear from them shortly. If you need any information regarding the insurance in the meantime please let us know".<sup>119</sup> Ms. Dickinson confirmed on 14 October 2022 that the wording of the draft was acceptable to them and on the same day, Mr. Clark shared the final clarification statement.<sup>120</sup>

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<sup>115</sup> Exh. C-138, pp. 15-17.

<sup>116</sup> Exh. C-138, pp. 14-15.

<sup>117</sup> Exh. C-138, pp. 13-14.

<sup>118</sup> Exh. C-139.

<sup>119</sup> Exh. C-138, pp. 10-12.

<sup>120</sup> Exh. C-140; Exh. C-96.

183. On 15 October 2022, the SIAT wrote to TGL, stating as follows in relation to the Loss Adjuster Report:

Again, but for the last time, we want to point it out that your refusal to provide the Loss Adjuster Report is in bad faith and it is in breach of the tax laws of Ghana. You are therefore requested to provide the Loss Adjuster Report by 12 noon of 18th October, 2022, otherwise we will advise ourselves accordingly and swiftly by the law. If I may ask you, did you obtain the lead underwriters permission before making available the Loss Adjuster's Report that you provided to us ?. [sic] And if you did, and approval was given by the lead underwriters what is stopping the lead underwriters from giving the approval this time as you want us to believe?<sup>121</sup>

184. On 18 October 2022, TGL provided the Loss Adjuster Report to the SIAT with the following explanation:

I write specifically in respect of your request to share the Loss Adjustors Report ("LAR") determining the loss suffered in respect of the issues associated with the main turret bearing on the Jubilee field FSPO.

I was not aware that Tullow had provided loss adjuster reports relating to the insurance claim under the H&M policy ("**H&M Reports**") and confirm that we did not seek approval from the insurer such that there has already been a breach of our confidentiality obligations with regards to the disclosure of these reports. I understand from my team that these documents were provided in good faith in order to assist with your investigation and it is clear in this case that the GRA could have requested them directly from the insurer as you have done with other documentation. We also note the H&M Reports was also held by

third parties in Ghana who could have been compelled to provide it. Any notice against Tullow Oil plc would be enforceable only if in respect of an application under Article 28 of the UK/Ghana Double Taxation Convention of 1993, but in view of the fact we have already disclosed the reports in respect of the H&M claim, I believe that it is right to also disclose to you the LAR requested under the BII policy.

On that basis, please find attached a copy of the LAR. You will note that front page of the LAR refers to the insured party being Tullow Ghana Limited. Please be aware that this is a typo as confirmed by the Letter attached, confirming the insured party is Tullow Oil plc. I also attach for your information, a copy of the Full and Final Payment Release confirms a final settlement with the Insurer in the sum of \$561,559,991 apportioned between [sic] the LOPI claim and the ICOW claim.

I assure you that we have been genuinely being [sic] trying to be co-operative and comply with your request but at the same time ensuring that we comply with other legal and contractual obligations. Please be advised that we have not received permission to share the LAR but we have informed our insurers and the report provider that the reports have been shared with the GRA as a matter of courtesy.<sup>122</sup>

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<sup>121</sup> Exh. C-138, pp. 4-6.

<sup>122</sup> Exh. C-138, pp 2-3; Exh. R-42.

185. The “Letter attached” mentioned in the penultimate paragraph extracted above, refers to the MatthewsDaniel Clarification of 14 October 2022, which states as follows:

To whom it may concern,

In respect of the issues with Main Turret Bearing on FPSO KWAME NKRUMAH (MV21) stationed in the Jubilee Field, Offshore Ghana, with a date of discovery of February 11, 2016, it has come to our attention that our Final Report dated August 14, 2019, detailing the final settlement of Energy Package Policy No. B0509eh056913 Effective from June 1, 2013 to June 1, 2017 and with MatthewsDaniel Claim Reference MD7690, included an error in the cover page.

Where the ‘Insured’ was listed as “TULLOW GHANA LIMITED”, this should have in fact stated ‘Tullow Oil Plc’ as the named Insured on Energy Package Policy No. B0509eh056913.

We apologies [sic] for this oversight and any confusion this may have caused.

Yours faithfully and on behalf of MatthewsDaniel,<sup>123</sup>

186. On 19 October 2022, the SIAT responded to TGL with certain comments and queries on the Loss Adjuster Report, as follows:

On page 20 of the LAR, under the heading Policy Details we have noted the following- The insured is named as "... Tullow Oil PLC and/or Parent and /or Subsidiary and/or Associated and/or Affiliated Companies and/or Joint Ventures and/or Co-Ventures and/or inter-related Companies...".

And in the Full and Final Payment Release, the Insured is described as follows- TULLOW OIL PLC (First Named Insured) on its own behalf and on behalf of all insureds (including BNP Paribas SA as Security Trustee) and Additional Insureds, as such terms are defined in the Policy (the "Tullow Insureds").

It's obvious from the above that the insured under the policy-B0509EH056913-is not only Tullow Oil PLC but includes others as defined in the policy. Can you therefore please provide us with the policy documents to enable us ascertain the additional insureds under the policy.

Otherwise, can you please provide us with the definition of Subsidiary, Joint Ventures, Co-Ventures under the policy.

Specifically, can you confirm if TGL falls under the definition of a Subsidiary under the policy.

Finally, do Kosmos Energy Ghana and Anardako WCTP falls under Joint Ventures or Co-Ventures under the policy and if indeed they were also covered under policy.<sup>124</sup>

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<sup>123</sup> **Exh. C-96.**

<sup>124</sup> **Exh. R-43.**

187. On 26 October 2022, an email was exchanged internally within the GRA and the SIAT noting that it was apparent from the documents that TGL had failed to disclose that the Business Interruption Insurance Proceeds belonged to it. The email further stated that there was sufficient documentary evidence to support the GRA's case of tax evasion by TGL on account of its non-disclosure of insurance recoveries in its financial statements and tax returns for the period 2016-2019.<sup>125</sup> In October and November 2022, the GRA exchanged five internal emails (including the 26 October 2022 email referred here) discussing TGL's tax implications for the Business Interruption Insurance Proceeds.<sup>126</sup> TGL refers to these emails to contend that they show that the GRA Assessment was not based on Section 5 of the PITL, whereas Ghana contends that the emails reflect the GRA's thinking regarding the application of Section 5 of the PITL.<sup>127</sup>

188. On 27 October 2022, TGL responded to the SIAT's 19 October email clarifying the position as follows:

As observed in your email, the main policy documents state that the insured is "... Tullow Oil PLC and/or Parent and /or Subsidiary and/or Associated and/or Affiliated Companies and/or Joint Ventures and/or Co-Ventures and/or inter-related Companies...". For the overall insurance policy, Tullow Ghana Limited (TGL) falls within this definition. However, this definition does not apply to the business interruption policy which is specifically taken out by Tullow Oil plc (PLC) only, as noted on page 12 of the attached slip (which has some details unrelated to Ghana or BII redacted) which states:

Business Interruption coverage is bought by Tullow Oil plc as protection for scheduled overseas locations.

We understand that this approach is common market practice for a business interruption policy to sit at parent level only. We can also confirm that the premium for the business interruption aspect of the policy was paid by PLC and not charged to TGL.

It is further confirmed that as the business interruption policy does not apply to other partners such as Kosmos Energy Ghana or Anadarko WCTP. Again it was a PLC policy only and would not benefit TGL or its joint venture partners.<sup>128</sup>

189. The GRA responded on the same day, requesting for a copy of the Policy and asking TGL to stop making "baseless claims".<sup>129</sup>

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<sup>125</sup> Exh. C-138, pp. 1-2.

<sup>126</sup> Exh. C-138, pp. 1-2, Exh. C-141, Exh. C-142, Exh. C-143 and Exh. C-144.

<sup>127</sup> C-SoRy, ¶ 193. See also ¶¶ 101, 179; R-SoRj, ¶ 267.

<sup>128</sup> Exh. R-44.

<sup>129</sup> Exh. R-44.

## H. GRA ASSESSMENT

190. On 31 October 2022, the GRA issued a draft tax assessment of TGL for FY 2016-2019 (“**Proposed Tax Assessment Report**”).<sup>130</sup> The Proposed Tax Assessment Report contained the recommendation that “a tax of \$196,545,996.85 is assessed on the amount of \$561,559,99.00 and a penalty imposed on TGL as required by Section 33 of Act 188, making a total of \$393,091,993.70 assessed as TGL total tax liability in accordance with Act 188-PITL”.<sup>131</sup> The recommendation was made, amongst others, on the grounds that (i) “TGL is a Bonafide subsidiary of Tullow Oil Plc., and therefore TGL as an insured under the insurance policy is a fact that cannot be contested”; (ii) Tullow PLC “do[es] not have a direct insurable interest in the assets of TGL”; (iii) “[t]he indirect insurable interest of Tullow Oil Plc as a shareholder cannot therefore take precedence over TGL interest irrespective of whether TGL paid the insurance premium or not”; and (iv) “as the owner of the asset and who was directly and negatively impacted financially by the physical damage to the insured asset, TGL is the insured in law and in-fact under the insurance policy”.

191. TGL was invited to respond in writing within seven days as to:

why the GRA should NOT proceed to issue a final tax adjustment and a demand notice for payment of the total tax liability [and] why they should not be reported to the appropriate authorities for prosecution for aggravated criminal conduct of tax evasion and attempting to deceive a public officer contrary to Section 252 of Act 29.<sup>132</sup>

192. On 10 November 2022, TGL provided its comments on the Proposed Tax Assessment Report, objecting to the seven-day deadline provided by the GRA for responding to the Report and noting that it would communicate its full response by 25 November 2022. TGL provided some interim comments in this letter, as follows:

- First, all tax years up to and including 2017 are now closed for this issue. The GRA previously assessed TGL as liable to tax on \$121.9 million of Business Interruption proceeds received by Tullow Oil plc in 2016 in its assessments of 13 December 2018. Those assessments were subsequently withdrawn by the GRA’s Objection Decisions of 5th and 12th December 2019. The GRA cannot now re-assess these periods on the grounds of alleged non-disclosure given they were fully aware of the situation by

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<sup>130</sup> **Exh. C-7.**

<sup>131</sup> **Exh. C-7, ¶ 5.6.3.**

<sup>132</sup> **Exh. C-7, ¶¶ 6.1-6.3.**

December 2018 at the latest. In the circumstances, there is no basis for the GRA to issue new assessments for periods up to and including 2017.

- Second, we consider that the SIAT has fundamentally misunderstood and mischaracterised the insurance arrangements. We will therefore endeavour to provide further clarifications with respect to those arrangements, via our substantive response.
- Third, we reject in the strongest possible terms the SIAT's assertion that Tullow has engaged in any form of tax fraud and/or that Tullow has done anything to evade corporate income tax payable by TGL. At the time the insurance arrangements were put in place by Tullow Oil plc, it was completely unknown whether this would give rise to a profit or a loss: the outcome of these arrangements was not subject to our control in any way.<sup>133</sup>

193. On 25 November 2022, TGL provided its further comments on the Proposed Tax Assessment Report.<sup>134</sup> TGL stated that the Proposed Tax Assessment Report by the SIAT "is not an appropriate basis for a final tax assessment as it is based on a fundamentally incorrect analysis of the relevant insurance law and misinterprets how the relevant policy operates". TGL further provided the following specific comments on the Proposed Assessment:

- This is most starkly illustrated by the SIAT's assertion that Tullow Oil plc does not have a "direct insurable interest in the assets of TGL". As a matter of settled insurance law (and as a matter of fact) that is wrong. At all relevant times, Tullow Oil plc had an insurable interest pursuant to the relevant policy.
- The SIAT's attempt, therefore, to create a (false) distinction – and hierarchy – between "direct" and "indirect" insurable interests is incorrect under settled English insurance law principles.
- It is not an "uncontested fact" that TGL is insured under the contract on the basis of being a "bona fide subsidiary" of Tullow Oil Plc.
- The SIAT's assertion that Tullow Oil plc in "insurance law and practice is a trustee of TGL" is also baseless. No English law authority is cited by the SIAT in support of this proposition, nor has the SIAT given any factual basis for such an assertion.
- Tullow's position, as previously explained, is that the Business Interruption insurance was bought by Tullow Oil plc for its own interest only.
- There is no basis under the Petroleum Income Tax Law 1987 PNDCL 188 to tax insurance proceeds which have not been received by TGL and which do not form part of its gross income.<sup>135</sup>

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<sup>133</sup> Exh. C-8.

<sup>134</sup> Exh. C-9.

<sup>135</sup> Exh. C-9.

194. TGL further objected to the allegations of tax evasion and fraudulent misrepresentation against it, denied that 16 August 2022 was the first time it had informed the GRA of the Business Interruption Insurance Proceeds (as was stated in the Proposed Assessment), and also pointed out that that the tax assessment for tax years 2016-2017 was time barred:

TGL rejects in the strongest possible terms any assertion by the SIAT that there has been *intentional and fraudulent misrepresentation*” or “*tax evasion*” by TGL or Tullow Oil plc, or indeed by MatthewsDaniel, which is an independent loss adjuster.

It is entirely improper to state that these insurance proceeds were disclosed to the GRA on 16th August 2022 “during interrogation”. As noted in our letter of 10th November 2022, the GRA had already assessed TGL to tax in December 2018 on the insurance proceeds received by Tullow Oil plc in 2016. Those assessments were subsequently withdrawn by the GRA’s Objection Decisions dated 5th and 12th December 2019.

As such, there is no basis for this matter to be reopened so many years after the event. The SIAT Report fails to recognise that the proposed adjustment is on any view now out of time in relation to the tax years 2016 and 2017, due to the limitation period applicable under the Petroleum Income Tax Law 1987 PNDCL 188.<sup>136</sup>

195. On 1 December 2022, GRA issued the final tax adjustment report (*i.e.*, the GRA Assessment) assessing TGL under the PITL for income tax of USD 196,545,996.85 in respect of the insurance proceeds received by Tullow PLC in tax years 2016-2019 under the Business Interruption and/or Contingent Business Interruption section of the Energy Package Policy. The GRA also imposed the Penalty of 100% of the assessed tax, for alleged non-payment of the appropriate tax on time, relying on Section 33 of the PITL, *i.e.*, in the amount of USD 196,545,996.85<sup>137</sup> Accordingly, the GRA Assessment imposed a liability on TGL for a total amount of USD 393,091,993.70.

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<sup>136</sup> **Exh. C-9.**

<sup>137</sup> **Exh. C-10.**

## I. POST-GRA ASSESSMENT EVENTS

196. On 30 December 2022, TGL sent Ghana's Ministry of Energy and the GRA a Notice of Dispute ("**Notice of Dispute**") under Article 24.1 of the DWT Petroleum Agreement.<sup>138</sup>
197. On 13 January 2023, the GRA commenced an action against TGL in Ghana's High Court (Economic & Financial Division) to recover the tax liability arising under the GRA Assessment.<sup>139</sup> On 23 January 2023 Ghana's High Court issued a writ of summons to TGL and TGL's Managing Director and Director of Finance.<sup>140</sup> Subsequently, on 30 January 2023, the GRA withdrew these proceedings.<sup>141</sup>

## VII. PARTIES' CLAIMS AND REQUEST FOR RELIEF

### A. CLAIMANT

198. In the RfA, TGL requests that the Tribunal:

- (a) DECLARE that the Insurance Assessment, including the imposition of the Penalty, constitutes a breach by the Respondent of Article 12 and/or Article 26.2 of the Petroleum Agreements;
- (b) DECLARE that any income tax assessment issued by the Respondent (or any political subdivision of the Respondent) to the Claimant that is dated more than four years after the end of the year of assessment to which such assessment relates constitutes a breach by the Respondent of Article 12 and/or Article 26.2 of the Petroleum Agreements;
- (c) DECLARE that the Respondent has breached Article 24.10 of the DWT Petroleum Agreement;
- (d) ORDER the Respondent to indemnify the Claimant in respect of any amount paid by the Claimant (or otherwise received by the Respondent, including the GRA, for example through any enforcement action) in respect of the Insurance Assessment;
- (e) ORDER the Respondent to pay damages to the Claimant for any losses resulting from any actions of the Respondent (including, without limitation, any enforcement action) in breach of Article 24.10 of the DWT Petroleum Agreement, in an amount to be quantified;
- (f) ORDER the Respondent to pay interest on all sums awarded, at a rate to be determined by the Tribunal;
- (g) ORDER the Respondent to pay all of the costs and expenses of this arbitration, including the fees and expenses of the Claimant's counsel, experts and witnesses, the fees and expenses of the Tribunal and any experts appointed

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<sup>138</sup> Exh. C-11.

<sup>139</sup> Exh. C-12.

<sup>140</sup> Exh. C-12.

<sup>141</sup> Exh. C-97.

by the Tribunal, the ICC's fees and expenses and any other costs incurred by the Claimant, in an amount to be determined by the Tribunal; and/or

(h) ORDER such further and/or other relief as the Tribunal may deem appropriate.<sup>142</sup>

199. In the Reply to Counterclaim, TGL requests that the Tribunal:

(a) DECLARE that the Insurance Assessment, including the imposition of the Penalty, constitutes a breach by the Respondent of Article 12 and/or Article 26.2 of the Petroleum Agreements;

(b) DECLARE that any income tax assessment issued by the Respondent (or any political subdivision of the Respondent) to the Claimant that is dated more than four years after the end of the year of assessment to which such assessment relates constitutes a breach by the Respondent of Article 12 and/or Article 26.2 of the Petroleum Agreements;

(c) DECLARE that the Respondent has breached Article 24.10 of the DWT Petroleum Agreement;

(d) ORDER the Respondent to indemnify the Claimant in respect of any amount paid by the Claimant (or otherwise received by the Respondent, including the GRA, for example through any enforcement action) in respect of the Insurance Assessment;

(e) ORDER the Respondent to pay damages to the Claimant for any losses resulting from any actions of the Respondent (including, without limitation, any enforcement action) in breach of Article 24.10 of the DWT Petroleum Agreement, in an amount to be quantified;

(f) ORDER the Respondent to pay interest on all sums awarded, at a rate to be determined by the Tribunal;

(g) DISMISS the Respondent's counterclaim;

(h) ORDER the Respondent to pay all of the costs and expenses of this arbitration, including the fees and expenses of the Claimant's counsel, experts and witnesses, the fees and expenses of the Tribunal and any experts appointed by the Tribunal, the ICC's fees and expenses and any other costs incurred by the Claimant, in an amount to be determined by the Tribunal; and/or

(i) ORDER such further and/or other relief as the Tribunal may deem appropriate.<sup>143</sup>

200. In the SoC, TGL requests that the Tribunal:

(a) DECLARE that the Insurance Assessment, including the Penalty, constitutes a breach by the Respondent of Article 12 and/or Article 26.2 of the Petroleum Agreements;

(b) ORDER the Respondent to indemnify the Claimant in respect of any amount the Claimant is required to pay in respect of the Insurance Assessment, including the Penalty;

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<sup>142</sup> RfA, ¶ 46.

<sup>143</sup> Reply to Counterclaim, ¶ 7.

- (c) DECLARE that the Respondent has breached Article 24.10 of the DWT Petroleum Agreement;
- (d) ORDER the Respondent to pay damages to the Claimant for any losses resulting from any actions of the Respondent (including, without limitation, any enforcement action) in breach of Article 24.10 of the DWT Petroleum Agreement, in an amount to be quantified;
- (e) ORDER the Respondent to pay interest on all sums awarded, at a rate to be determined by the Tribunal;
- (f) ORDER the Respondent to pay all of the costs and expenses of this arbitration, including the fees and expenses of the Claimant's counsel, experts and witnesses, the fees and expenses of the Tribunal and any experts appointed by the Tribunal, the ICC's fees and expenses and any other costs incurred by the Claimant, in an amount to be determined by the Tribunal; and/or
- (g) ORDER such further and/or other relief as the Tribunal may deem appropriate.<sup>144</sup>

201. In the C-SoRy, TGL requests that the Tribunal:

- (a) DECLARE that the Insurance Assessment (including the Penalty), in whole or in part, constitutes a breach by the Respondent of Article 12 of the Petroleum Agreements;
- (b) ORDER the Respondent to indemnify the Claimant in respect of any amount the Claimant is required to pay in respect of the Insurance Assessment, including the Penalty;
- (c) DECLARE that the Respondent has breached Article 24.10 of the DWT Petroleum Agreement;
- (d) ORDER the Respondent to pay interest on all sums awarded, at a rate to be determined by the Tribunal;
- (e) ORDER the Respondent to pay all of the costs and expenses of this arbitration, including the fees and expenses of the Claimant's counsel, experts and witnesses, the fees and expenses of the Tribunal and any experts appointed by the Tribunal, the ICC's fees and expenses and any other costs incurred by the Claimant, in an amount to be determined by the Tribunal; and/or
- (f) ORDER such further and/or other relief as the Tribunal may deem appropriate.<sup>145</sup>

202. In the C-SoRjoJ, TGL requests that the Tribunal:

- (a) DECLARE that the Insurance Assessment, including the Penalty, in whole or in part, constitutes a breach by the Respondent of Article 12 of the Petroleum Agreements;
- (b) ORDER the Respondent to indemnify the Claimant in respect of any amount the Claimant is required to pay in respect of the Insurance Assessment, including the Penalty;

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<sup>144</sup> SoC, ¶ 127.

<sup>145</sup> C-SoRy, ¶ 224.

- (c) DECLARE that the Respondent has breached Article 24.10 of the DWT Petroleum Agreement;
- (d) ORDER the Respondent to pay interest on all sums awarded, at a rate to be determined by the Tribunal;
- (e) ORDER the Respondent to pay all of the costs and expenses of this arbitration, including the fees and expenses of the Claimant's counsel, experts and witnesses, the fees and expenses of the Tribunal and any experts appointed by the Tribunal, the ICC's fees and expenses and any other costs incurred by the Claimant, in an amount to be determined by the Tribunal; and/or
- (f) ORDER such further and/or other relief as the Tribunal may deem appropriate.<sup>146</sup>

## **B. RESPONDENT**

203. In the Answer, Ghana requests the Tribunal to:

- i. Dismiss all Claimant's claims on the ground of an Arbitral Tribunal's lack of jurisdiction with respect to a dispute between Claimants [sic].
- ii. Dismiss Claimant's claim in their entirety;
- iii. Order Claimant to compensate Respondent for the damages and losses suffered as a result of Claimant's conduct, currently estimated to be in the amount of UD\$381,104,773.42
- iv Order Claimant [or Claimant and/or any other party] to pay all arbitration costs, including Respondent's legal representative's costs and expenses.
- v. Order any further and / or additional relief as the Tribunal may deem appropriate.<sup>147</sup>

204. In the SoD, Ghana requests that the Tribunal issue an award finding, ordering, and declaring that:

- a. All of Claimant's claims are denied with prejudice in their entirety because the Tribunal lacks jurisdiction to adjudicate those claims;
- b. Should the Tribunal conclude that some or all Claimant's claims fall within its jurisdiction, Respondent's Tax Assessment does not constitute a breach of Article 12 or Article 26.2 of the Petroleum Agreements, Respondent has not breached Article 24.10 of the DWT Petroleum Agreement, and Claimant's claims are denied in their entirety with prejudice;
- c. Should Respondent be found to have breached Article 12 or Article 26.2 of the Petroleum Agreements or Article 24.10 of the DWT Petroleum Agreement, (1) Claimant's request for indemnification for breaches of Article 12 and 26.2 of the Petroleum Agreements is denied because such relief impermissibly intrudes on the sovereignty of Ghana and because an award of such relief would be unenforceable, and (2) Claimant's request for damages for breach of Article 24.10 of the DWT Petroleum Agreement is denied

<sup>146</sup> C-SoRjoJ, ¶ 91.

<sup>147</sup> Answer, ¶ 25.

because Claimant has not met its burden to prove and quantify actual loss caused by a breach of Article 24.10; and

d. Claimant is ordered to pay all costs and expenses related to this arbitration, including but not limited to the fees and expenses of the Tribunal, the administrative fees and expenses of the International Chamber of Commerce, and all costs of Respondent's legal representation, witnesses, and expert assistance.<sup>148</sup>

205. In the R-SoRj, Ghana requests that the Tribunal issue an award finding, ordering and declaring that:

a. All of Claimant's claims are denied with prejudice in their entirety because the Tribunal lacks jurisdiction to adjudicate those claims;

b. Should the Tribunal conclude that some or all Claimant's claims fall within its jurisdiction, Respondent's Tax Assessment, either in whole or in part, does not constitute a breach of Article 12 of the Petroleum Agreements, Respondent has not breached Article 24.10 of the DWT Petroleum Agreement, and Claimant's claims are denied in their entirety with prejudice;

c. Should Respondent be found to have breached Article 12 of the Petroleum Agreements or Article 24.10 of the DWT Petroleum Agreement, Claimant's request for indemnification is denied because such relief impermissibly intrudes on the sovereignty of Ghana and because an award of such relief would be unenforceable; and

d. Claimant is ordered to pay all costs and expenses related to this arbitration, including but not limited to the fees and expenses of the Tribunal, the administrative fees and expenses of the International Chamber of Commerce, and all costs of Respondent's legal representation, witnesses, and expert assistance.<sup>149</sup>

206. The Tribunal takes note that while Ghana had raised a counterclaim in its Answer (see relief (iii) in ¶ 203 above), it no longer pursued the counterclaim in its request for relief in the SoD and the R-SoRj (see ¶¶ 204 and 205 above). Neither did Ghana refer to its counterclaim, in the List of Issues, in its oral arguments at the Hearing or in the R-PHB. Accordingly, based on Ghana's updated request for relief in the SoD and R-SoRj, the Tribunal understands Ghana no longer pursues its counterclaim in the arbitration.

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<sup>148</sup> SoD, ¶ 374.

<sup>149</sup> R-SoRj, ¶ 366.

## VIII. UPDATED LIST OF ISSUES

207. The Tribunal sets out below the Updated List of Issues as finalized by the Parties and the Tribunal during the Hearing (see ¶ 83 above):<sup>150</sup>

### I. Jurisdiction

- 1 **Is Ghana precluded, as a result of the BPT arbitration, from advancing its jurisdictional objections on the basis of issue estoppel and/or because they constitute an abuse of process?**
  - a. What is the applicable law governing the doctrines of issue estoppel and abuse of process?
  - b. What are the tests for issue estoppel and abuse of process under the applicable law?
  - c. Can domestic res judicate rules be imported to international arbitration?
  - d. If the doctrines are applicable, are each of the three jurisdictional objections raised by Ghana in the present arbitration barred by issue estoppel or abuse of process in view of the findings in the BPT arbitration?
- 2 **Has Ghana agreed to submit TGL's claims to arbitration pursuant to Article 24 of the DWT Petroleum Agreement and Article 1.10 of the Contract Acknowledgment?**
  - a. Does Article 1.10 of the Contract Acknowledgment read with Article 24 of the DWT Petroleum Agreement only cover disputes between all Private Unit Parties on the one side and Ghana or GNPC on the other side?
    - i. What are the applicable rules governing contractual interpretation under Ghanaian law: relevance of a commercial business sense interpretation?
    - ii. Applying the principles of contractual interpretation under Ghanaian law, how should the phrase "*and/or*" in the first part of the first paragraph of Article 1.10: be reconciled with the last part of the paragraph, which states that "*'Contractor' for such Dispute shall consist of all the Private Unit Parties*"?
    - iii. Applying the principles of contractual interpretation under Ghanaian law, does the term "*Contractor*" under the Petroleum Agreements refer to all Private Unit Parties as a single unit or the Private Unit Parties, individually or collectively?
- 3 **Does the Tribunal have jurisdiction over TGL's claims that the Assessment was not "*in accordance with*" the PITL?**
  - a. Is the use of the phrase "*in accordance with*" the PITL in Article 12.2(ii) of the Petroleum Agreements sufficient to bring the

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<sup>150</sup>

Emphasis in original.

determination of statutory issues of Ghanaian tax law within the ambit of a contractual dispute between the Parties?

- b. Is Article 12.2(ii) of the Petroleum Agreements limited to prescribing the applicable taxation rate under the PITL?
- c. Does “*in accordance with*” the PITL necessarily require that the Assessment should have first been subjected to all levels of scrutiny as per the statutory regime contemplated under the PITL before disputes regarding the Assessment can be submitted to arbitration? Does this constitute a jurisdictional/admissibility hurdle?

**4 Are TGL’s claims arbitrable under Ghanaian law and international law?**

- a. If the Tribunal decides in favor of Claimant that the claims raised in the arbitration are contractual in nature, will the claims in the arbitration will be arbitrable as a matter of Ghanaian law and international law?
- b. If the Tribunal decides that the claims are not contractual in nature, will the claims in the arbitration be non-arbitrable?

**II Merits**

**5 Should the Tribunal apply substantial deference and a heightened burden or standard of proof in assessing whether the Assessment and Penalty were lawfully imposed under Ghanaian law?**

- a. Are the basis and standard for the alleged deferential treatment that must be shown by the Tribunal to the Assessment [...] determined under Articles 23 and 296 of the Constitution of Ghana?
- b. What is the standard of Claimant’s burden of proof to establish that the Assessment was not lawfully imposed under Ghanaian law?
- c. What is the standard for determining that an administrative decision was unreasonable?

**6 Does the Assessment constitute a breach of Article 12 of the Petroleum Agreements on the basis that it is a tax imposed not “*in accordance with*” the PITL?**

- a. Is the legal basis of the Assessment – Sections 1 and 2 of the PITL or Section 5 of the PITL, or both?
- b. Would the determination of whether the Assessment constitutes a breach of Article 12 of the Petroleum Agreements vary depending on whether the Assessment was issued pursuant to the application of Sections 1 and 2 of the PITL or Section 5 of the PITL or both?
- c. In the Assessment, the GRA held that “*TGL is assessed to have evaded \$196,545,996.85 in corporate income taxes for the financial period between 2016 and 2019 as a result of intentional non-disclosure of admissible income of \$561, 559,991.00 during the said period*”. The Tribunal understands that the GRA reached this finding based on the determinations that (i) TGL is an insured under the Energy

Package Policy (EPP); and (ii) the FPSO Kwame Nkrumah is owned by TGL and JVP, and that, therefore “*TGL is entitled to the amount recovered from the insurers as the company within the Tullow Group that has direct insurable interest in the assets of the Jubilee fields as opposed to Tullow Oil Plc, which is a shareholder of TGL*”. The Parties are invited to confirm.

- d. Does the issue of TGL’s entitlement to the amount recovered from the insurers under the EPP depend on (i) an interpretation of the EPP and accompanying Endorsements as a matter of English insurance law; or (ii) the application of Ghanaian tax law principles; or (iii) both? Would the answer change if TGL’s entitlement is deemed entitlement?
- e. Can the GRA’s determination that TGL is an insured under the EPP for purposes of the Business Interruption (BI) or Contingent Business Interruption (CBI) insurance be regarded as a “reasonable” conclusion, based on an interpretation of the EPP read with Endorsement 50 as a matter of English insurance law?

Amongst others, the Parties are invited to comment on:

- i. The provisions of the EPP read with Endorsement 50 that lead to the conclusion that TGL can (or cannot) be regarded as an “insured” under the EPP for purposes of BI insurance;
- ii. Whether any of the entities covered by the definition of “insured” under the EPP could raise an insurance claim against the insurers or could the claim only be raised by Tullow Plc? Is the position different in the case of a general insurance claim and a BI/CBI claim?
- iii. As a matter of English insurance law, was Tullow Plc entitled to recover the losses suffered to the assets of TGL under the BI insurance coverage of the EPP read together with Endorsement 50? Put another way, can assets of the subsidiary be regarded as insurable assets of the parent company for purposes of a BI insurance?
- f. Which is the artificial or fictitious transaction on the basis of which the GRA made the Assessment?
- g. Does the Assessment by the GRA meet the requirement under Section 5(2)(a) of the PITL that the “*main purpose or one of the main purposes*” of the transaction was avoidance or reduction of liability to tax?
- h. Was TGL notified at the contemporaneous time that the GRA considered the transaction as an artificial or fictitious transaction for purposes of Section 5 of the PITL?
- Bis.* Was the Assessment otherwise compliant with the requirements of Section 5 of the PITL, read in conjunction with Articles 23 and/or 296 of the Constitution?
- i. If the Tribunal were to find that the GRA’s application of Section 5 of the PITL was unreasonable, can the Assessment constitute a breach of Section 12 of the Petroleum Agreements in

circumstances where the GRA was not given the opportunity to correct the Assessment as per the statutory recourses under the PITL?

*Bis.* Was the Assessment permitted under Sections 1 and 2 of the PITL, and, to the extent that this is an admissible issue, compliant with Section 18(2)?

**7 Does Article 12 of the Petroleum Agreements apply to the Commissioner General's issuance of the Penalty?**

- a. Can the "penalty" be regarded as either of "*taxes, duties, fees or other imposts*" under Article 12 of the Petroleum Agreements?
- b. To fall within the ambit of Article 12, should the penalty have been imposed in relation to TGL's petroleum operations or to the sale and export of petroleum? If so, does the penalty for failure to pay the tax meet this requirement?
- (i) **If yes, does the Penalty imposed in the Assessment constitute a breach of Article 12 of the Petroleum Agreements on the basis that it was not imposed "*in accordance with*" Section 33 of the PITL?**
  - a. Does Section 33 of the PITL mandate that there is a summary conviction before the GRA can impose a penalty for non-payment of tax? If so, has that requirement been met in the present case?

**8 Does Article 12 of the Petroleum Agreements apply to the issue of whether the Assessment is time-barred in respect of tax years 2016-2017?**

- a. Can the imposition of tax for financial years beyond the four-year limitation period under Section 18 of the PITL be regarded as tax imposed otherwise than in accordance with the PITL?
- (i) **If yes, does the Assessment constitute a breach of Article 12 of the Petroleum Agreements on the basis that it is time-barred in respect of tax years 2016-2017 under Section 18 of the PITL?**
- b. Are the conditions for extension of the limitation period under Section 79(2) of the Internal Revenue Act 2000 satisfied in this case: (i) fraud; (ii) gross or willful neglect by or on behalf of a person; (iii) discovery of new information in relation to the tax payable for the year of assessment?
- c. At what point in time did the SIAT/GRA receive knowledge of the BI insurance proceeds received by Tullow Plc for the period 2016-2019 on account of loss of revenue and increased cost of working due to failure and damage to the FPSO turret?

**III. Relief**

**9 What remedies is TGL entitled to?**

**10 In particular, is TGL entitled to an order for indemnification?**

- a. What is the legal basis for Claimant's indemnification request: Ghanaian law, international law or English law?

## **IX. INTRODUCTION TO THE TRIBUNAL'S ANALYSIS**

### **A. THE PARTIES' SUBMISSIONS**

208. In the analysis below, the Tribunal has considered not only the positions of the Parties as summarised in this Award, but also the numerous detailed arguments made in the Parties' written submissions and during the Hearing. To the extent that these arguments are not referred to expressly, they have been considered and subsumed into the Tribunal's analysis.

### **B. OVERVIEW OF THE AWARD**

209. In the Sections that follow, the Tribunal sets out the Parties' positions with respect to the various aspects of the Parties' dispute, together with the Tribunal's analysis and determinations on each matter. The Tribunal will first address Ghana's jurisdictional objections in Section X, followed by the merits in Section XI. Section XII concerns the Parties' costs claims. The Tribunal's decisions are contained in Section XIII.

## **X. JURISDICTION**

210. Ghana raises three objections to the Tribunal's jurisdiction over TGL's claims:

- (i) Ghana did not consent to arbitrate disputes relating to the Jubilee Field between itself and any single Private Unit Party under Article 24 of the DWT Petroleum Agreement ("**First Jurisdictional Objection**");
- (ii) Claims under the PITL fall outside the scope of the Arbitration Agreement ("**Second Jurisdictional Objection**"); and

211. Even if the Tribunal were to determine that Ghana has consented to arbitrate TGL's tax claims, the bulk of the claims are non-arbitrable under Ghanaian law consistent with international arbitral practice ("**Third Jurisdictional Objection**", together with the First Jurisdictional Objection and Second Jurisdictional Objection "**Jurisdictional Objections**").<sup>151</sup>

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<sup>151</sup> SoD ¶ 140.

212. TGL disputes all Jurisdictional Objections on their merits. In addition, it raises a threshold objection that Ghana is barred by the doctrines of issue estoppel and/or abuse of process from objecting to the Tribunal's jurisdiction in this arbitration following an award dated 24 December 2024 ("**BPT Award**") rendered in ICC Arbitration 26579/AB/CPB between Tullow Ghana Limited and Republic of Ghana ("**BPT Arbitration**"). TGL contends that the BPT Arbitration was invoked under the same Arbitration Agreement and also concerned disputes pertaining to TGL's tax assessment and the associated alleged breaches under the Petroleum Agreements.<sup>152</sup>

**A. RESPONDENT'S POSITION**

**1. No Preclusion of the Jurisdictional Objections by the Doctrines of Issue Estoppel and/or Abuse of Process**

213. Ghana submits that the applicable law governing the application of the doctrines of issue estoppel and/or abuse of process is English law tailored to the context of international arbitration.<sup>153</sup>
214. Ghana argues that TGL's description of both doctrines omits critical elements. It argues that for issue estoppel to apply, the determined issue must be fundamental and not merely subsidiary to the earlier decision,<sup>154</sup> and the finding must be sufficiently clear and precise.<sup>155</sup> For Ghana, the burden lies on TGL to prove that the specific issue of law or fact was conclusively decided.<sup>156</sup> Even if these conditions are met, Ghana maintains that tribunals retain the discretion to decline preclusion to avoid injustice or where special circumstances, such as new facts, arise.<sup>157</sup>
215. Regarding abuse of process, Ghana contends that the threshold is exceptionally high, requiring a showing of "manifest unfairness" or disrepute to the administration of

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<sup>152</sup> C-SoRy, ¶ 4(a).

<sup>153</sup> R-PHB, pp. 27-28, *citing* Exh. CL-79, p. 68; Exh. RL-114, p. 184; Exh. RL-102, p. 72; R-SoRj, ¶¶ 34-39.

<sup>154</sup> R-SoRj, ¶ 28.

<sup>155</sup> R-PHB, p. 30, *citing* Exh. CL-52, p. 105; Exh. RL-143, ¶¶ 224-225; Exh. RL-136, ¶ 8.08; Exh. RL-95, ¶ 63; R-SoRj, ¶ 29, *citing* Exh. RL-142, ¶ 39.

<sup>156</sup> R-SoRj, ¶ 29, *citing* Exh. RL-136, ¶ 8.08.

<sup>157</sup> R-SoRj, ¶ 30.

justice.<sup>158</sup> According to Ghana, such a situation rarely arises in the absence of “unjust harassment or oppression” of the party seeking to defend itself.<sup>159</sup>

216. Ghana contends that the law governing preclusion in international arbitration is far from settled.<sup>160</sup> For Ghana, TGL’s presumption of the automatic application of English domestic rules is overly simplistic.<sup>161</sup> Ghana submits that party autonomy grants parties latitude in presenting claims and defences, provided the process is not abused.<sup>162</sup> According to Ghana, the general understanding, also accepted by TGL, is that the binding effect of a tribunal’s ruling is confined to the specific dispute and the claims that the parties have agreed to submit to the tribunal.<sup>163</sup> It follows that invoking abuse of process to preclude issues not previously raised would be “very rare” in arbitration.<sup>164</sup>
217. Ghana submits that TGL erroneously conflates the requirements of the distinct doctrines of issue estoppel and abuse of process.<sup>165</sup> Under this distinction, in Ghana’s view, issue estoppel applies only to issues raised and decided in earlier proceedings, whereas abuse of process concerns issues that could and should have been raised.<sup>166</sup>
218. Applying these principles to the present case, Ghana submits that issue estoppel cannot apply by mere implication, as the BPT Award does not contain a blanket ruling granting jurisdiction over all tax assessment claims. It argues that precluding Ghana’s jurisdictional objections would force this Tribunal to abandon its fundamental duty to independently determine its own jurisdiction, a mandate Ghana considers crucial given its concerns regarding the impartiality of the president of the BPT tribunal.<sup>167</sup>
219. Regarding the Second Jurisdictional Objection, Ghana maintains that TGL mischaracterizes its position. Ghana submits that its objection centres on the

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<sup>158</sup> R-SoRj, ¶ 32, *citing* Exh. RL-124, ¶ 75.

<sup>159</sup> R-SoRj, ¶¶ 32-33, *citing* Exh. RL-97, ¶ 49; Exh. RL-130, ¶ 173; Exh. RL-116, ¶¶ 43, 48; Exh. RL-94, ¶ 26; Exh. RL-124, ¶ 75.

<sup>160</sup> R-SoRj, ¶ 36, *citing* Exh. RL-111, p. 287; Exh. RL-113, ¶¶ 4.192-4.193; Exh. RL-139, ¶ 7; Exh. RL-140, § 27.02[A][2].

<sup>161</sup> R-SoRj, ¶ 34, *citing* C-SoRy, ¶¶ 38-39.

<sup>162</sup> R-SoRj, ¶¶ 37-38, *citing* Exh. RL-140, § 27.01[B]; Exh. RL-116, ¶ 43; Exh. RL-93, pp. 31A-E; Exh. RL-110, pp. 621-635; Exh. RL-103, pp. 524-529; Exh. RL-102, p. 79, ¶ 60.

<sup>163</sup> R-SoRj, ¶¶ 35-36, *citing* C-SoRy, ¶ 90, Exh. RL-114, ¶¶ 5.24-5.26; Exh. RL-113, ¶ 4.191; Exh. RL-102, p. 72; Exh. RL-128 ¶ 16-027; Exh. RL-100, p. 1; Exh. RL-96, p. 75.

<sup>164</sup> R-SoRj, ¶ 39, *citing* Exh. RL-96, pp. 74-75; Exh. RL-103, p. 517; Exh. RL-102, ¶ 64.

<sup>165</sup> R-SoRj, ¶ 28.

<sup>166</sup> R-SoRj, ¶ 27, *citing* Exh. RL-122, ¶ 62; Exh. CL-55, ¶ 25.

<sup>167</sup> R-SoRj, ¶¶ 40-44.

argument that the claims are non-contractual administrative reviews within the exclusive jurisdiction of Ghanaian courts. Ghana notes that the BPT tribunal did not reject this point but expressly agreed it lacked jurisdiction to determine compliance with Ghanaian law *per se*. Consequently, any statements in the BPT Award relied upon by TGL are dismissed as *obiter dictum*, unclear, or pertaining to moot issues.<sup>168</sup>

220. Ghana further submits that raising its First and Third Jurisdictional Objections does not constitute an abuse of process. Ghana highlights TGL's contradictory stance in initiating three separate arbitrations while successfully opposing consolidation on the basis that each involved entirely different legal and factual issues. It argues that having deliberately fragmented the disputes, TGL must be precluded from claiming unjust harassment on account of Ghana's defences.<sup>169</sup>
221. Ghana asserts it had valid reasons for not raising these jurisdictional objections in the BPT Arbitration. It argues that while that arbitration centred on contractual interpretation, the current arbitration involves claims triggering distinct Ghanaian public policy concerns regarding the non-arbitrability of tax disputes. Accordingly, Ghana requests that this Tribunal reject TGL's threshold objection based on issue estoppel and/or abuse of process and proceed to determine the jurisdictional objections on their merits.<sup>170</sup>

## **2. First Jurisdictional Objection: No Consent to Arbitrate Exists between Respondent and a Single Private Unit Party**

222. Ghana contends that the Tribunal lacks jurisdiction because Ghana did not consent to arbitrate disputes with TGL alone under Article 24.1 of the DWT Petroleum Agreement.<sup>171</sup>
223. Ghana contends that pursuant to Article 1.10 of the Contract Acknowledgment signed in connection with the Unitization Agreement, the arbitration could only be commenced for disputes concerning the Jubilee Field if all the Private Unit Parties (defined in Article 1.10 of the Contract Acknowledgement as comprising Tullow, Kosmos, Anadarko, Sabre and/or EO Group, or their successor and assigns) were

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<sup>168</sup> R-SoRj, ¶¶ 46-56.

<sup>169</sup> R-SoRj, ¶¶ 57-60.

<sup>170</sup> R-SoRj, ¶¶ 61-63.

<sup>171</sup> SoD, ¶ 141.

party to the arbitration. It argues that this is because Article 1.10 of the Contract Acknowledgment expressly defines the “Contractor” as the collective group of Private Unit Parties – Tullow, Kosmos, Anadarko, Sabre and/or EO Group – acting together, for purposes of disputes under Article 24 of the DWT Petroleum Agreement.<sup>172</sup>

224. Ghana argues that pursuant to contractual interpretation principles under Ghanaian law, clear and unambiguous terms of the agreement must be given effect, and those cannot be substituted with presumed intention of the parties.<sup>173</sup> Ghana submits that the text of Article 1.10 contains no indication that Ghana consented to arbitrate disputes concerning the Jubilee Field with a single contractor.<sup>174</sup> In Ghana’s view, the expression “and/or” appears only to reflect that the EO Group was a party to the WCTP but not the DWT Petroleum Agreement and was not intended to authorise unilateral disputes by individual companies.<sup>175</sup>
225. Ghana further submits that while Article 1.10 of the Contract Acknowledgment sets forth the contracting parties’ agreement to arbitrate in three other scenarios, none of them have been invoked by TGL in this case and, in any event, they do not provide a basis for jurisdiction over the types of disputes raised by TGL in this arbitration.<sup>176</sup>
226. Ghana submits that the broader structure of both Petroleum Agreements also confirms that the “Contractor” acts collectively, not individually.<sup>177</sup> It contends that Article 24, like other provisions in the Agreements, is framed around disputes in which the contractors’ interests are aligned, such as disputes over plans of development or events triggering termination of the entire agreement.<sup>178</sup> According to Ghana, where the Agreements refer to a single company, they do so expressly.<sup>179</sup>
227. Ghana rejects TGL’s “business common sense” argument for purposes of interpreting Article 1.10 of the Contract Acknowledgment.<sup>180</sup>

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<sup>172</sup> SoD, ¶¶ 141-143, *citing* **Exh. C-6**, Article. 1.10.

<sup>173</sup> SoD, ¶ 147, *citing* **Exh. RL-17**, p. 106; **Exh. RL-34**, p. 14; **Exh. RL-8**, p. 328.

<sup>174</sup> SoD, ¶ 148.

<sup>175</sup> R-SoRj, ¶¶ 67-70.

<sup>176</sup> SoD, ¶¶ 144-146.

<sup>177</sup> R-SoRj, ¶ 73.

<sup>178</sup> R-SoRj, ¶ 73, *citing* **Exh. C-3**, , Articles 8.14-8.15.

<sup>179</sup> R-SoRj, ¶ 71.

<sup>180</sup> R-SoRj, ¶¶ 71-72, 74.

**3. Second Jurisdictional Objection: No Jurisdiction over Claims  
under the PITL**

228. Ghana objects to the Tribunal's jurisdiction over TGL's following claims on the ground that they involve issues of statutory interpretation rather than contractual interpretation:<sup>181</sup>

- (i) The GRA's Tax Assessment breached Article 12 "because the assessment is not issued in accordance with the PITL";
- (ii) The GRA's imposition of the Penalty breached Article 12 because it was "not in accordance with Section 33 of the PITL"; and
- (iii) The GRA Assessment breached Article 12 because it was not "imposed in accordance with Section 18 of the PITL" and thus time-barred for the tax years of 2016-2017.

229. Ghana contends that in both form and substance, the crux of the said claims requires the Tribunal to engage in statutory interpretation to determine if the GRA's reading of the PITL is supported by the statute.<sup>182</sup> This is unlike TGL's claim regarding an alleged breach of Article 24.10 of the DWT Petroleum Agreement, which Ghana accepts is *prima facie* contractual.<sup>183</sup>

230. Ghana contends that it did not consent to arbitrate TGL's non-contractual claims, concerning the legality of the GRA's interpretation and application of Ghana's tax law, under Article 1.10 the Contract Acknowledgment and Article 24.1 of the DWT Petroleum Agreement.<sup>184</sup> According to Ghana, this is uncontested by TGL.<sup>185</sup> Ghana emphasizes that TGL bears the burden of establishing a contractual basis for each of its claims, which it has failed to discharge.<sup>186</sup>

231. Pointing to the BPT Arbitration, Ghana alleges that TGL's counsel conceded there that a tribunal lacks jurisdiction over claims that arise under and require the

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<sup>181</sup> SoD, ¶¶ 153-154. The Tribunal notes that in the SoC, TGL alleged a breach of both Articles 12 and 26.2 of the Petroleum Agreements. In the C-SoRy, TGL limited these claims to a breach of Article 12 of the Petroleum Agreements (see C-SoRy, § V.(A)-(E), fns. 375 and 391) and accordingly, Ghana's jurisdictional objections under this head are referenced to TGL's alleged breaches of Article 12 of the Petroleum Agreements.

<sup>182</sup> SoD, ¶ 154.

<sup>183</sup> SoD, ¶ 152.

<sup>184</sup> SoD, ¶ 149.

<sup>185</sup> SoD, ¶ 150, *citing* SoC, ¶¶ 7, 125, 9; R-SoRj, ¶ 75.

<sup>186</sup> SoD, ¶ 151.

application of the PITL itself rather than the contract. That was in the context of an identical argument that the GRA's assessment for branch profits tax breached Article 12 of the Petroleum Agreements because it was time-barred under Section 18 of the PITL. Ghana submits that the same jurisdictional prohibition applies here.<sup>187</sup> Ghana further submits that the BPT tribunal concluded that it lacked the contractual authority to resolve a question of domestic taxation of Ghana.<sup>188</sup>

232. Ghana contends that, pursuant to Ghanaian law, the interpretation of the scope of an agreement to arbitrate should reflect an objectively fair and functional solution consistent with the underlying facts and the parties' reasonable contemplations.<sup>189</sup> The contract terms are given their ordinary meaning, and any ambiguity regarding intent must be resolved objectively.<sup>190</sup> Ghana maintains it could not reasonably have contemplated that a commitment to apply a specific income tax rate would be transformed into consent to arbitrate the GRA's broader application of the PITL.<sup>191</sup>
233. Ghana relies on decisions by the Iran-US Claims Tribunal and other arbitral tribunals, to argue that jurisdiction should be declined where claims arise from the application of domestic tax legislation rather than a contractual relationship.<sup>192</sup>
234. Ghana contends that TGL's claims are not contractual because they require the Tribunal to assess, *inter alia*: (i) whether the Commissioner General of the GRA was correct under the PITL to regard the insurance proceeds that were received by Tullow Oil as belonging to TGL; (ii) whether the Commissioner General of the GRA was correct under the PITL in applying the penalty; and (iii) whether the Commissioner General of the GRA is prohibited under the PITL from assessing taxes beyond the four-year statute of limitations. The Tribunal is required to rule on the proper interpretation and application of the PITL. Ghana submits that relevant arbitral practice illustrates that these claims would fall outside the ambit of the Tribunal's

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<sup>187</sup> SoD, ¶ 155, *citing* Exh. R-2, Tr. Day 1, 66:22-67:3.

<sup>188</sup> R-SoRj, ¶ 85, *citing* Exh. C-152, ¶¶ 203, 206.

<sup>189</sup> SoD, ¶ 156, *citing* Exh. RL-33, ¶¶ 76-77.

<sup>190</sup> SoD, ¶ 156, *citing* Exh. RL-34, pp. 14-15.

<sup>191</sup> SoD, ¶ 156.

<sup>192</sup> SoD, ¶¶ 157-164, *citing* Exh. RL-15, ¶¶ 17, 20; Exh. RL-16, ¶¶ 79-80; Exh. RL-25, ¶ 434; Exh. RL-20, ¶ 92; Exh. RL-57, pp. 31-32; Exh. CL-6, ¶¶ 129-132, 138-139, 142, 152, 154, 159, 162, 164-165, 215-216; Exh. RL-23, pp. 80-86.

jurisdiction and should be dismissed. Ghana submits that this is a standalone ground to dismiss the claim, for lack of jurisdiction.<sup>193</sup>

235. Ghana submits further that PITL itself contains specific, separate dispute resolution procedures for challenging tax assessments, which TGL expressly agreed to follow.<sup>194</sup> Ghana asserts that nowhere in the DWT Petroleum Agreement is there an express and specific indication that Ghana exempted the contractors from these provisions.<sup>195</sup>
236. Ghana clarifies that its objection is not that statutory interpretation automatically ousts jurisdiction, but rather that jurisdiction is lacking when the claim requires the determination of statutory issues that are only formalistically related to, and effectively untethered from, the contract.<sup>196</sup> Ghana asserts that the cases cited by it demonstrate that when faced with nominally contractual claims based on alleged violations of domestic tax law, tribunals must scrutinize the “true nature” of a claim and reject those that are non-contractual.<sup>197</sup>
237. Ghana contends that TGL’s claims effectively ask the Tribunal to formulate its own theory of Ghanaian tax and constitutional law, matters that should be reserved for Ghanaian courts.<sup>198</sup> Ghana submits that TGL’s requested relief, if granted, would effectively nullify any decision of the GRA in this matter and would therefore have the same effect as setting aside such a decision.<sup>199</sup>

#### **4. Third Jurisdictional Objection: Non-Arbitrability of Claimant’s Claims under Ghanaian Law**

238. Ghana contends that the law applicable to arbitrability in the present case is Ghanaian law, consistent with principles of international law.<sup>200</sup>

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<sup>193</sup> SoD, ¶ 165.

<sup>194</sup> SoD, ¶¶ 166-169, *citing* Exh. CL-25, §§ 19-22, 29(1), 39(5); Exh. RL-29, §§ 128-132; Exh. RL-59, §§ 41-45; Demitia First Report, ¶¶ 47, 64, 73-78.

<sup>195</sup> SoD, ¶ 170, *citing* Exh. C-3, Art. 12.2(ii).

<sup>196</sup> R-SoRj, ¶¶ 79-80.

<sup>197</sup> R-SoRj, ¶¶ 80-82, *citing* Exh. RL-23, p. 81; Exh. CL-6, ¶¶ 159, 216, 226.

<sup>198</sup> R-SoRj, ¶ 83, *citing* Exh. CL-6, ¶ 226; Adjei-Djan Report, ¶¶ 21, 57, 59-65; Reply, ¶¶ 62, 108, 113, 191, 195.

<sup>199</sup> R-SoRj, ¶ 86.

<sup>200</sup> SoD, ¶¶ 174-179, *citing* Exh. RL-52, p. 879; Exh. RL-57, p. 6; Exh. RL-31, p. 448; Exh. RL-74, p. 4; Exh. RL-58, p. 123; Exh. RL-58, pp. 80-81; Exh. RL-39, pp. 4-6; Exh. RL-40, p. 143; Exh. RL-39; Exh. RL-74; Exh. RL-27, p. 143; Exh. RL-68, p. 393; Exh. RL-73, ¶ 255; Exh. RL-65, ¶¶ 96-98.

239. Ghana submits that pursuant to Section 1 of Ghana’s Alternative Dispute Resolution Act of 2010 (“**ADR Act 2010**”), matters relating to the “national or public interest” or matters that “by law cannot be settled by an alternative dispute resolution method” are not arbitrable.<sup>201</sup> It submits further that arbitral awards dealing with such matters are susceptible to setting aside pursuant to Section 58 of the Act.<sup>202</sup>
240. Ghana contends that disputes between a taxpayer and the tax administrator over the proper interpretation and application of tax laws are substantive tax law matters and are not arbitrable under Ghanaian law. In Ghana’s view, TGL’s claims require the Tribunal to rule directly on the principle or amount of tax imposed by Ghana and call into question the state’s sovereign power. It argues that such matters relate to “national or public interest”, which cannot be settled by arbitration.<sup>203</sup>
241. Ghana submits further that its Constitution defines “public interest” as “any right or advantage which ensures or is intended to ensure to the benefit generally of the whole of the people of Ghana”.<sup>204</sup> Taxation is characterized as a “classic example” of a strictly political or public act that private actors cannot undertake. For a developing country like Ghana, tax evasion or delays in payment by large international oil companies place a massive strain on government resources. Furthermore, Ghana argues that the quasi-criminal nature of taxation, where liability often implicates criminal culpability and the requirement for strict compliance with the uniform procedure for challenging tax decisions by the GRA, make these disputes a matter of national interest that must be adhered to by all taxpayers.<sup>205</sup>
242. Ghana points to case law and commentary demonstrating that tribunals have historically declined to arbitrate substantive tax claims that implicate a state’s sovereign power to tax, particularly when relevant tax laws are ambiguous or involve the exercise of administrative discretion by tax authorities.<sup>206</sup>

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<sup>201</sup> SoD, ¶ 180, *citing* Exh. RL-43, § 1(a), (d).

<sup>202</sup> SoD, ¶ 180, *citing* Exh. RL-43, § 58.

<sup>203</sup> SoD, ¶¶ 181-183, *citing* Exh. RL-57, p. 15; Exh. RL-30, p. 269; Exh. RL-43, §§ 1(a), (d).

<sup>204</sup> SoD, ¶¶ 184-187, *citing* Exh. RL-21, Art. 295.

<sup>205</sup> SoD, ¶¶ 184-187, *citing* Exh. RL-57, p. 14; Exh. RL-24, p. 479; Exh. RL-15, ¶ 132; Exh. RL-45, ¶ 695; Exh. RL-30, p. 269; Exh. R-54,; Exh. RL-85, pp. 18-19; Exh. RL-80, p. 22; Exh. C-10, ¶¶ 8.2, 5.5.1; Exh. RL-81, p. 5; Exh. WD1-17, pp. 7-9.

<sup>206</sup> SoD, ¶¶ 188-194, *citing* Exh. RL-6, Arts. II, V; Exh. RL-64, pp. 47-48; Exh. RL-28, p. 146; Exh. RL-23, pp. 83-88; Exh. RL-15, ¶ 132; SoC, ¶¶ 9, 127(b); Exh. RL-14, p. 11; Exh. RL-19, p. 59; Exh. RL-45, ¶ 694; Exh. RL-18, p. 38; Exh. RL-48, pp. 38-39.

243. Ghana refutes TGL's contention that the ADR Act 2010 is inapplicable due to stabilization provisions. Ghana submits that stabilization guarantees the stability of fiscal terms but does not allow contractors to operate in a "legal vacuum" or ignore general laws that post-date the Petroleum Agreements.<sup>207</sup>
244. *In arguendo*, Ghana submits that even if TGL's interpretation of the stabilization provisions is correct, TGL has failed to prove the existence of a stable prior understanding that tax matters were arbitrable before 2010. Ghana submits that the non-arbitrability of matters relating to national public interest is a well-established and longstanding principle. Accordingly, Ghana submits that the ADR Act 2010 is fully applicable to TGL.<sup>208</sup> Ghana submits that TGL's interpretation of Section 1 of the ADR Act 2010 is wrong.<sup>209</sup> Ghana cites case law and commentary to support this contention.<sup>210</sup>
245. Ghana refutes TGL's reliance on BITs concluded by Ghana with certain States that provide for arbitration and do not carve out tax related claims. Ghana submits that the existence of such BITs is entirely consistent with Ghana's position in this arbitration. Ghana submits that in all tax-related claims that are arbitrated under such a BIT the object of the arbitration is not to ascertain the correctness of domestic law application, but solely to assess whether the tax measure breached the standard of protection under the applicable investment treaty or the investment contract. Ghana submits Ghana's consent to arbitrate the latter type of disputes does not mean it consents to claims like those of Claimant.<sup>211</sup>

<sup>207</sup> R-SoRy, ¶¶ 112-113, *citing* Exh. C-80, p. 1; Exh. R-16 p. 25; Exh. CL-35, ¶¶ 112, 128-138.

<sup>208</sup> R-SoRy, ¶¶ 113-114, *citing* Exh. CL-6, ¶ 226; SoD ¶¶ 174, 182, 184, 188-195; C-SoRy, ¶¶ 84, 85(b).

<sup>209</sup> R-SoRy, ¶ 115, *citing* Exh. RL-107; Exh. RL-105, p. 212; Exh. RL-123, p. 2, ¶ 8; Exh. RL-112, A pp. 189-190; Exh. RL-127, p. 285. *See also* Exh. RL-120, pp. 6-7.

<sup>210</sup> R-SoRy, ¶ 116, *citing* Exh. RL-81, pp. 5, 9; Exh. WD1-17.

<sup>211</sup> R-SoRy, ¶ 118, *citing* Exh. RL-135, pp. 4, 6.

## B. CLAIMANT'S POSITION

### 1. Respondent's Jurisdictional Objections are Precluded by the Doctrines of Issue Estoppel and/or Abuse of Process

246. TGL's threshold objection to Ghana's Jurisdictional Objections is based on doctrines of issue estoppel and abuse of process under English law, which it contends apply by virtue of the seat of the arbitration.<sup>212</sup>
247. TGL refutes Ghana's position that domestic preclusion rules do not automatically transpose to international arbitration, contending that tribunals predominantly apply *res judicata* rules of the seat (here, English law). Relying on Section 33 of the English Arbitration Act 1996 ("English Arbitration Act") and *Union of India v Reliance Industries Limited & Ors*, TGL argues that tribunals have a statutory duty to avoid unnecessary delay and expense, which requires guarding against duplicative proceedings regardless of the flexibility generally afforded to party autonomy in arbitration.<sup>213</sup>
248. With respect to issue estoppel, TGL submits that the re-litigation of points in subsequent proceedings is barred where those points were either (i) not raised in earlier proceedings but could and should have been raised; and (ii) were raised but had been rejected.<sup>214</sup>
249. TGL emphasizes that the rationale behind the principle of issue estoppel and *res judicata* in general is the "public interest [...] that there should be finality in litigation and that a party should not be twice vexed in the same matter".<sup>215</sup> TGL further submits that while the doctrine of issue estoppel may not apply in certain "special circumstances" such as "subsequent change in the law or new material which could not with reasonable diligence have been found or used in the earlier legal process",<sup>216</sup> it has been clarified by the UK Supreme Court that if the relevant point could have

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<sup>212</sup> C-SoRy, ¶ 38, citing Exh. CL-61, ¶ 4-038; Exh. CL-60, Section 27.01[B][6].

<sup>213</sup> C-SoRjoJ, ¶¶ 18-23, citing Exh. CL-79, p. 54; Exh. CL-61, ¶ 4-038; Exh. CL-51, p. 643; Exh. CL-72, ¶ 44; Exh. CL-74, ¶¶ 61, 68; Exh. CL-73, ¶ 9; Exh. CL-72, ¶ 44; Exh. CL-78, p. 85.

<sup>214</sup> C-SoRy, ¶ 38, citing Exh. CL-55, ¶¶ 17 and 22(3); Exh. CL-52, p. 105.

<sup>215</sup> C-SoRy, ¶ 38, citing Exh. CL-55, ¶ 24; Exh. CL-51, p. 640; Exh. CL-34, ¶¶ 434-443.

<sup>216</sup> C-SoRy, ¶ 40, citing Exh. CL-57, ¶ 88.

been raised with reasonable diligence and should have been raised, the bar against re-litigation “will usually be absolute”.<sup>217</sup>

250. TGL contends that the issue estoppel doctrine applies to decisions in arbitrations, be it on jurisdiction or merits.<sup>218</sup> In TGL’s view, none of the reasons put forth by Ghana to draw a distinction between international arbitration and domestic litigation for purposes of applying the doctrine pass muster.<sup>219</sup> TGL disputes that applying issue estoppel would violate the principle of “competence-competence”. It argues, rather, that determining whether an issue is precluded is a method by which the tribunal exercises its mandate to rule on its own jurisdiction.<sup>220</sup>
251. TGL submits that the principle of abuse of process is a separate, albeit related, concept to issue estoppel, which focuses on whether a party is “misusing or abusing” the process of the court (or arbitral tribunal) by seeking to raise before it an issue which could have been raised before, or which has already been determined by another court or tribunal.<sup>221</sup>
252. TGL disputes Ghana’s assertion that the legal threshold for establishing an abuse of process is a “high” one. TGL contends that Ghana’s reliance on *Mad Atelier International BV v Manes and Norris, In Re*, is misplaced, as those cases do not establish the application of a high threshold but rather support the prohibition of re-litigating issues that should have been raised earlier.<sup>222</sup>
253. In TGL’s view, issue estoppel and abuse of process are overlapping doctrines, both of which serve to restrain a party from the re-litigation of points that were, or could and should have been, brought in earlier proceedings.<sup>223</sup> It argues that Ghana wrongly contends that the issue estoppel doctrine is limited to issues that were raised and decided in earlier proceedings while the abuse of process doctrine governs issues that were not raised but could and should have. It submits that the judgment of the UK Supreme Court in the *Virgin Atlantic* case makes clear that issue estoppel can arise in respect of points unsuccessfully raised as well as those omitted in earlier

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<sup>217</sup> C-SoRy, ¶ 40, citing Exh. CL-55, ¶ 22(3).

<sup>218</sup> C-SoRy, ¶ 39, citing Exh. CL-51, p. 640; Exh. CL-34, ¶¶ 434-443.

<sup>219</sup> C-SoRjoJ, ¶ 24.

<sup>220</sup> C-SoRjoJ, ¶ 26, citing Exh. RL-126, p. 1160; Exh. C-160.; Exh. C-156; Exh. C-157; Exh. C-158; Exh. C-159.

<sup>221</sup> C-SoRjoJ, ¶ 14, citing Exh. CL-55, ¶¶ 14, 18, 24.

<sup>222</sup> C-SoRj, ¶ 17, citing Exh. RL-124, ¶ 75; Exh. RL-94.

<sup>223</sup> C-SoRjoJ, fn. 13, citing Exh. RL-122, ¶ 62.

proceedings, and that it may be an abuse of process for a party to seek to re-litigate points that have already been decided.<sup>224</sup>

254. TGL contends that the BPT Award gives rise to an issue estoppel in relation to Ghana's Jurisdictional Objections because:

- (i) the contractual basis giving rise to the BPT Arbitration and the present arbitration is identical: Article 24 of the DWT Petroleum Agreement pursuant to Article 1.10 of the Contract Acknowledgement;
- (ii) similar to the present arbitration, the BPT Arbitration was between TGL and Ghana and did not involve any other Private Unit Party;
- (iii) similar to the present arbitration, TGL's claims in the BPT Arbitration concerned allegations that Ghana had breached Articles 12 and 26.2 of the Petroleum Agreements in making the branch profits tax assessment because the assessment was allegedly time-barred under Section 18 of the PITL;
- (iv) after considering items (ii) and (iii), the BPT Arbitration tribunal upheld jurisdiction over TGL's claims in that arbitration;
- (v) the BPT Arbitration tribunal has decided that an arbitral tribunal may make an order for indemnification arising from Ghana's breach of the Petroleum Agreements under Ghanaian law and international law; and
- (vi) Ghana either did not raise the Jurisdictional Objections in the BPT Arbitration and/or they were raised but rejected by the BPT Arbitration tribunal.<sup>225</sup>

255. In relation to (vi) above, TGL elaborates in relation to the three Jurisdictional Objections that:

- (i) Ghana did not raise the First Jurisdictional Objection in the BPT Arbitration when it could and should have.<sup>226</sup> It argues that since the BPT Arbitration tribunal has upheld jurisdiction over TGL's claims, that objection "has now been determined against Ghana as part of the BPT tribunal's decision to uphold jurisdiction in the BPT Arbitration" and Ghana is estopped from raising it.<sup>227</sup>

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<sup>224</sup> C-SoRjoJ, ¶ 15, *citing* Exh. CL-55, ¶¶ 18 and 22(3).

<sup>225</sup> C-SoRy, ¶¶ 37, 45; C-SoRj, ¶¶ 7-8.

<sup>226</sup> C-SoRy, ¶ 47; C-SoRjoJ, ¶¶ 40-44.

<sup>227</sup> C-SoRy, ¶ 47; C-SoRjoJ, ¶¶ 40-42.

- (ii) Ghana had raised the Second Jurisdictional Objection in the BPT Arbitration, which was considered and specifically rejected by the BPT Arbitration tribunal.<sup>228</sup>
  - (iii) Ghana also did not raise the Third Jurisdictional Objection in the BPT Arbitration when it could and should have, and, therefore, Ghana is now estopped from raising it.<sup>229</sup> TGL further notes that while Ghana did not specifically rely on Section 1, ADR Act 2010 in the BPT Arbitration, it did unsuccessfully raise a jurisdictional objection based on the arbitrability of tax matters, and thus tax concerns were equally “as pronounced” in both cases.<sup>230</sup>
256. TGL maintains that its claims are strictly contractual and rejects Ghana’s attempt to dismiss the BPT tribunal’s jurisdictional findings as “obiter dicta”. TGL emphasizes that the determination regarding the PITL was fundamental to the BPT tribunal’s assumption of jurisdiction and its ultimate declarations of breach.<sup>231</sup> TGL contends that its refusal of Ghana’s request to consolidate the separate tax assessment arbitrations between itself and Ghana is irrelevant as Ghana’s application for consolidation did not relate to the BPT Arbitration. It argues that, in any event, the non-consolidation of the three tax assessment arbitrations does not grant Ghana a right to repeatedly re-litigate identical jurisdictional issues.<sup>232</sup>
257. In TGL’s view, the BPT Award has thus determined the “exact same issues” that Ghana seeks to relitigate through the Jurisdictional Objections, referred to in ¶ 210 above.<sup>233</sup> It contends that it is an abuse of process for Ghana to raise the Jurisdictional Objections in the present arbitration following the conclusion of the BPT Arbitration.<sup>234</sup>

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<sup>228</sup> C-SoRy, ¶¶ 48-49, *citing* Exh. C-152, ¶¶ 202, 206-207, 549-550. *See also* C-SoRjoJ, ¶¶ 30-34.

<sup>229</sup> C-SoRy, ¶ 47; C-SoRjoJ, ¶¶ 35-36.

<sup>230</sup> C-SoRjoJ, ¶¶ 35-39.

<sup>231</sup> C-SoRjoJ, ¶¶ 27-34.

<sup>232</sup> C-SoRjoJ, ¶¶ 38.

<sup>233</sup> C-SoRy, ¶ 41; C-SoRjoJ, ¶ 9.

<sup>234</sup> C-SoRy, ¶ 42.

**2. First Jurisdictional Objection: Alleged Absence of Consent to Arbitrate Disputes between Ghana and a single Private Unit Party**

258. TGL argues that Ghana's objection rests on a misconstruction of Article 1.10 of the Contract Acknowledgment and is inconsistent with both its wording and business common sense.<sup>235</sup>
259. According to TGL, the proviso in Article 1.10 of the Contract Acknowledgment ("provided that the 'Contractor' for such Dispute shall consist of all Private Unit Parties") was inserted to ensure that any contractor under either Petroleum Agreement who was involved in Jubilee Unit operations could bring a dispute under Article 24 of the DWT Petroleum Agreement. This was done, according to TGL, because at the time that the Contract Acknowledgment was signed, the WCTP and DWT contractor groups were not identical; specifically, the EO Group was a contractor under the WCTP Petroleum Agreement only and not under the DWT Petroleum Agreement.<sup>236</sup>
260. TGL contends that the phrase "and/or" between the names of the entities comprising the Private Unit Parties in Article 1.10 of the Contract Acknowledgement confirms that a dispute falling under that provision may involve one or some of the Private Unit Parties, not necessarily all of them.<sup>237</sup> It argues that Ghana's proposed reading that requires all contractors to be party to any dispute cannot be reconciled with this language.
261. TGL rejects Ghana's interpretation of "and/or" on linguistic grounds. It submits that, in ordinary grammatical usage, "and/or" indicates that any one, several, or all of the connected entities may be involved. According to TGL, if Article 1.10 was intended to refer to the collective WCTP or DWT contract groups, the text would have used the defined terms "WCTP Contract Group" and "DWT Contract Group," as it does elsewhere when referring collectively to contractors. Instead, the provision lists each contractor individually, confirming that the parties intended to treat them individually for Article 1.10 purposes.<sup>238</sup>

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<sup>235</sup> C-SoRy, ¶ 58.

<sup>236</sup> C-SoRy, ¶ 58(a) and (b).

<sup>237</sup> C-SoRy, ¶ 58(c).

<sup>238</sup> C-SoRjoJ, ¶¶ 52-54.

262. TGL contends that the third paragraph of Article 1.10 of the Contract Acknowledgment cannot be interpreted as limiting the first paragraph of the provision. According to TGL, on Ghana's construction, the opening paragraph of Article 1.10 governing disputes relating to Jubilee Unit operations would be rendered redundant, which conflicts with basic principles of contractual interpretation.<sup>239</sup>
263. TGL also disputes Ghana's assertion that the term "Contractor" in the Petroleum Agreements always refers to all private contractors acting collectively. It argues that such a reading would render numerous provisions unworkable, including those concerning the establishment of offices, calculation of tax liabilities, maintenance of bank accounts, and assignment of interests, all of which require action or obligations to be performed by individual contractors.<sup>240</sup>
264. TGL further contends that Ghana's proposed construction undermines the commercial purpose of the Unitization Agreement and the Contract Acknowledgment, which was to ensure that the Jubilee Field would be developed and administered as a single unit. Under Ghana's interpretation, any dispute concerning Jubilee Unit involving fewer than all contractors would require multiple parallel arbitrations under different Petroleum Agreements, followed potentially by consolidation attempts or inconsistent outcomes. TGL argues that this result is contrary to business common sense and the purpose of the unitization regime and is inherently unlikely.<sup>241</sup>
265. TGL submits that the Tribunal should test both Parties' interpretations using business common sense as part of the iterative process of contractual construction.<sup>242</sup> Contrary to Ghana's position, commercial reasonableness is not confined to "exceptional cases"; English courts consider business common sense even absent ambiguity.<sup>243</sup> Applying that test here, TGL argues that only its construction accords with the clear commercial purpose of Article 1.10 namely, to provide a single dispute resolution forum for disputes relating to Jubilee Unit operations. Under Ghana's reading, contractors would be left without a contractual arbitration mechanism for disputes affecting only them individually, potentially forcing them to bring proceedings

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<sup>239</sup> C-SoRjoJ, ¶ 54(c).

<sup>240</sup> C-SoRjoJ, ¶ 56, *citing* Exh. C-1, Articles 7.2(a), 10.2, 13.2, 25.2.

<sup>241</sup> C-SoRy, ¶ 58(d).

<sup>242</sup> C-SoRjoJ, ¶ 60, *citing* Exh. CL-77, ¶¶ 2.55, 2.70; Exh. CL-14, ¶ 21.

<sup>243</sup> C-SoRjoJ, ¶ 60, *citing* Exh. CL-75, ¶ 130.

before Ghanaian courts, where jurisdiction is uncertain. TGL submits that such an approach would be antithetical to business common sense.<sup>244</sup>

266. Finally, TGL relies on the approach endorsed by the House of Lords in *Fiona Trust v Privalov*, whereby an arbitration clause must be interpreted to give effect, so far as possible, to its commercial purpose and to the Parties' likely intention that all disputes arising out of their relationship be determined by the same tribunal. TGL maintains that its reading of Article 1.10 and Article 24 accords with that principle, whereas Ghana's interpretation does not and, therefore, should be rejected.<sup>245</sup>

**3. Second Jurisdictional Objection: Alleged Lack of Jurisdiction over Claimant's Claims that the GRA Assessment was not "in accordance with" the PITL**

267. TGL maintains that its claims in the arbitration are contractual in nature and therefore fall within the Tribunal's jurisdiction.
268. TGL contends that the test for jurisdiction is whether the claim "is in relation to or in connection with or arising out of any terms and conditions of" the Petroleum Agreements, as determined by the substance of the claim and the relief sought.<sup>246</sup> TGL clarifies that it is only pursuing contractual remedies (declarations and indemnification) for breaches of contractual tax protections and that it is not asking the Tribunal to overturn the GRA Assessment in the same way that Ghanaian courts would in the context of the domestic statutory appeal process under Ghanaian law. That the Tribunal would need to consider and interpret the PITL for determining TGL's claim under the Petroleum Agreements does not render the claims non-contractual in nature.<sup>247</sup> TGL submits that the BPT Arbitration award is to the same effect.<sup>248</sup>
269. Relying on English case law, TGL argues that where a contractual obligation incorporates a statutory provision by reference, the content of that obligation is defined by the interpretation of the statute.<sup>249</sup> This does not transform a contractual

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<sup>244</sup> C-SoRjoJ, ¶ 61.

<sup>245</sup> C-SoRj, ¶ 62, citing Exh. CL-71, ¶ 8.

<sup>246</sup> C-SoRy, ¶ 62.

<sup>247</sup> C-SoRy, ¶ 62; C-SoRjoJ, ¶ 70.

<sup>248</sup> C-SoRy, ¶ 62.

<sup>249</sup> C-SoRy, ¶ 63, citing Exh. CL-62, ¶¶ 3.76-3.77.

claim into a statutory one; rather, the statute is the benchmark for the contract's performance.<sup>250</sup> TGL asserts that Ghanaian courts too have similarly considered contractual clauses which incorporate by reference provisions of international conventions and applied such provisions as terms of the contract without difficulty.<sup>251</sup>

270. TGL submits that this is further illustrated by "compliance with laws" clauses, which routinely require tribunals to identify the law, ascertain its requirements, and assess a party's compliance.<sup>252</sup> TGL contends that the DWT Petroleum Agreement contains several examples of contractor's "compliance with laws" clauses in Article 7.1(b). It argues that a claim by Ghana regarding a breach of such provisions would be contractual in nature and within the scope of Article 24, notwithstanding the need for statutory interpretation.<sup>253</sup> In TGL's view, the case law relied on by Ghana does not support its position; rather it supports TGL's position that the real test for jurisdiction is the substance of the claim and relief sought by a party.<sup>254</sup>
271. TGL refutes Ghana's attempt to limit Article 12.2(ii) of the Petroleum Agreements to the tax rate alone, arguing that it would render the phrase "in accordance with the PITL" redundant.<sup>255</sup> TGL contends that the principles of contract construction in both Ghana and England require that effect be given to all words; therefore, the phrase must import a requirement for substantive compliance with the provisions of the PITL, not just the tax rate prescribed under Article 12.2(ii).<sup>256</sup>
272. In the alternative, TGL argues that even if Article 12.2(ii) of the Petroleum Agreements only protected the 35% tax rate, a breach would occur if Ghana improperly determined the "chargeable income" (the tax base). It argues that a tax rate applied to an improperly inflated base results in an effective rate higher than the 35% limit, thereby violating the provision.<sup>257</sup>

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<sup>250</sup> C-SoRy, ¶ 64, *citing* Exh. CL-54, ¶ 51; Exh. CL-50, pp. 184-186.

<sup>251</sup> C-SoRy, ¶ 65, *citing* Exh. CL-43, pp. 6-7; Exh. CL-46, pp. 14-15.

<sup>252</sup> C-SoRy, ¶ 66, *citing* Exh. CL-63, ¶ 8.54. *See also* Exh. C-4, Article 21.1(C).

<sup>253</sup> C-SoRy, ¶ 67.

<sup>254</sup> C-SoRy, ¶ 68.

<sup>255</sup> C-SoRjoJ, ¶ 76.

<sup>256</sup> C-SoRjoJ, ¶¶ 76-77, *citing* Exh. CL-70, p. 4; Exh. CL-67; Exh. CL-68; Exh. CL-69, pp. 1290-

1291.

<sup>257</sup> C-SoRj, ¶ 78.

273. TGL contends that Ghana's domestic tax appeal rules do not preclude this arbitration. While a domestic procedure exists for appealing a GRA Assessment, the arbitral procedure exists for determining if a party has breached its contractual obligations.<sup>258</sup> The Petroleum Agreements do not preclude arbitration for tax-related contract disputes, nor do they require the exhaustion of domestic remedies.<sup>259</sup>
274. TGL contends that it made no concession in the BPT Arbitration that a claim involving issues of statutory interpretation cannot properly be characterised as a contractual claim. Claimant clarifies that in that case, the issue was whether a tax fell outside the contractual protections of Article 12 of the Petroleum Agreements. TGL's position was that if a tax was not a "tax in respect of activities related to petroleum operations" it would fall outside Article 12 and thus outside the Tribunal's jurisdiction.<sup>260</sup>
275. TGL therefore submits that the above is entirely consistent with its position in this arbitration. Claimant accepts that the Tribunal would not have jurisdiction to determine any claim for contravention of the PITL outside the prism of a contractual claim. However, TGL's claims in this arbitration are contractual claims for breach of Article 12.2 of the Petroleum Agreements and therefore, the Tribunal has jurisdiction to rule on whether the said article has been breached. TGL asserts that that exercise requires interpreting the PITL strictly in the context of and for the purpose of determining breach.<sup>261</sup>
276. TGL points out that the tribunal in the BPT Arbitration observed that if the branch profits tax had been imposed by Ghana under PITL but in breach of limitation period in the PITL, it would have jurisdiction to consider such a question. Claimant asserts that that is precisely the case here.<sup>262</sup>

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<sup>258</sup> C-SoRj, ¶ 81.

<sup>259</sup> C-SoRj, ¶ 69.

<sup>260</sup> C-SoRj, ¶ 70.

<sup>261</sup> C-SoRj, ¶ 71.

<sup>262</sup> C-SoRj, ¶ 72.

#### **4. Third Jurisdictional Objection: Alleged Lack of Jurisdiction on grounds of Non-Arbitrability**

277. TGL concurs with Ghana that the issue of arbitrability of TGL's claims must be decided under Ghanaian law consistent with the applicable rules of international law, although it disagrees with Ghana's reasoning to arrive at that conclusion.<sup>263</sup>
278. TGL maintains that its claims are arbitrable under both Ghanaian law and international law, arguing that the case law relied on by Ghana to assert the contrary are inapposite and do not support Ghana's position.<sup>264</sup>
279. TGL contends that the ADR Act 2010 is irrelevant to the present dispute because it entered into force after the execution of the DWT and WCTP Petroleum Agreements, *i.e.*, after its rights were stabilised pursuant to Article 26.2 of the Petroleum Agreements as at 2004 and 2006 when they were executed.<sup>265</sup> TGL contends that the applicable predecessor act, *i.e.*, Ghana's Arbitration Act of 1961 did not provide for the exclusion of matters relating to national or public interest or to the exclusion of tax matters or any other matters relevant to TGL's claims in relation to the insurance assessment.<sup>266</sup>
280. *In arguendo*, TGL contends that even if the ADR Act 2010 did apply, the Act does not state anywhere that tax matters are not arbitrable or that a contractual claim which involves issues of taxation is not arbitrable. According to TGL, the ADR Act 2010 leaves open the possibility that such matters could be submitted to arbitration outside the ambit of the Act.<sup>267</sup>
281. In support of its position, TGL refers to bilateral investment treaties entered by Ghana with other states, which do not contain any carve out for tax-related claims, and therefore, provide for arbitration as a means of dispute resolution for any claims arising thereunder. TGL submits that those treaties would be at odds with Ghana's position in this arbitration that tax-related claims are not arbitrable under Ghanaian law.<sup>268</sup>

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<sup>263</sup> C-SoRy, ¶¶ 77-80, *citing* Exh. CL-56, ¶ 170; Exh. CL-65.

<sup>264</sup> C-SoRy, ¶¶ 81-82, *citing* Exh. RL-80; Exh. RL-81; Exh. RL-85; Exh. WD1-17.

<sup>265</sup> C-SoRy, ¶ 83.

<sup>266</sup> C-SoRy, ¶ 84, *citing* Exh. CL-64.

<sup>267</sup> C-SoRy, ¶ 85, *citing* Exh. RL-43, § 1.

<sup>268</sup> C-SoRy, ¶ 86.

282. TGL contends that the Tribunal has jurisdiction over the present dispute, asserting that the language of Article 24.1 of the DWT Petroleum Agreement is broad and encompasses any dispute arising out of the agreement's terms, including Articles 12 and 26.2. Under the international law principle of *pacta sunt servanda*, TGL argues that the agreement must be enforced on its terms.<sup>269</sup>
283. Regarding Ghana's objection to the arbitrability of tax matters, TGL argues that international case law and arbitral practice distinguish between the enforcement of public tax laws and the adjudication of contractual disputes involving tax issues.<sup>270</sup> TGL asserts that while a State may not use an arbitral tribunal to enforce statutory tax assessments (as seen in *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v The Government of Mongolia*), a tribunal is fully competent to determine whether a State has breached specific contractual warranties or tax incentives promised to an investor. TGL relies on *BCB Holdings and Belize Bank v Belize* to argue that tax incentives are often a primary inducement for investment and excluding them from arbitration would undermine the very purpose of the dispute resolution clause.<sup>271</sup>
284. Finally, TGL rejects the notion that these matters must be reserved for Ghanaian domestic courts. It submits that international tribunals routinely interpret domestic law for the purpose of resolving contractual claims without infringing upon national sovereignty or transparency. Because the Tribunal's award would be limited to the specific parties and would not form part of Ghana's general jurisprudence, TGL maintains there is no basis to deviate from the parties' agreement to arbitrate.<sup>272</sup>

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<sup>269</sup> C-SoRy, ¶ 87, citing Exh. CL-20, pp. 113-118.

<sup>270</sup> C-SoRy, ¶ 87, citing Exh. CL-60, ¶ 6.04[O].

<sup>271</sup> C-SoRy, ¶¶ 88-89, citing Exh. RL-19, ¶ 2; Exh. RL-45, ¶¶ 694-695; Exh. RL-18, p. 38; Exh. RL-48, p. 6; Exh. CL-33, ¶¶ 69-70; Exh. CL-31; Exh. CL-32.

<sup>272</sup> C-SoRy, ¶ 90.

## C. THE TRIBUNAL'S CONSIDERATIONS

### 1. Are Ghana's Jurisdictional Objections Precluded by the Doctrines of Issue Estoppel and/or Abuse of Process?

285. The question before the Tribunal is whether, following the BPT Award, Ghana is precluded from advancing its Jurisdictional Objections on account of the doctrines of issue estoppel and/or abuse of process.<sup>273</sup>
286. The Tribunal will first summarise the BPT Award as relevant (i), followed by a determination on the law applicable to the doctrines of issue estoppel and abuse of process in this case (ii), a determination on the content of those doctrines (iii), and finally, the Tribunal will consider whether Ghana's Jurisdictional Objections are precluded pursuant to the doctrines of issue estoppel and/or abuse of process (iv).

#### i. The BPT Award

287. The BPT Arbitration concerned disputes between TGL and Ghana under the Petroleum Agreements with respect to the GRA's imposition of branch profits tax ("BPT") on TGL for the years 2012, 2013 and 2014 ("BPT Assessment").<sup>274</sup>
288. BPT is a tax imposed under the IRA (Ghanaian Internal Revenue Act 2000) on a non-resident person carrying on business in Ghana through a permanent establishment which has earned repatriated profits for a basis period ending within the assessment year.<sup>275</sup>
289. TGL commenced the BPT Arbitration pursuant to Article 1.10 of the Contract Acknowledgement and Article 24 of the DWT Petroleum Agreement,<sup>276</sup> claiming declaratory relief that the BPT Assessment constituted a breach by Ghana of Article 12 and/or Article 26.2 of the Petroleum Agreements. In addition, TGL requested indemnity from Ghana in respect of any amount that TGL was compelled to pay pursuant to the BPT Assessment and any costs or losses incurred by TGL in that respect.<sup>277</sup>

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<sup>273</sup> See Updated List of Issues, Issue 1.

<sup>274</sup> Exh. C-152, ¶ 50.

<sup>275</sup> Exh. C-152, ¶ 96.

<sup>276</sup> Exh. C-152, ¶ 5.

<sup>277</sup> Exh. C-152, ¶ 116.

290. In the BPT Arbitration, Ghana challenged the arbitral tribunal's jurisdiction to determine TGL's claims on five grounds as listed below:

- (a) The Claimant has waived its right to arbitration, having sent the Claimant's 2018 Objection [to] the GRA in response to the 2018 WHT Assessment.
- (b) TGL was obliged to exhaust local remedies before exercising its contractual rights to arbitrate under the Petroleum Agreements, which it has failed to do.
- (c) The Tribunal lacks jurisdiction to determine whether the 2019 BPT Assessment is time barred.
- (d) The Tribunal lacks jurisdiction to determine Claimant's alternative Article 26.2 claim, to the extent it relies on s 39(3) of the PITL 1987.
- (e) The Tribunal lacks jurisdiction to determine Claimant's alternative 'computational' claim.<sup>278</sup>

291. The BPT Award records that TGL "opposed the first two objections; effectively conceded the third [. . .]; and opposed the fourth and fifth objections".<sup>279</sup>

292. The BPT tribunal rejected Ghana's first and second jurisdictional objections mentioned in ¶ 290 above.<sup>280</sup> These two jurisdictional objections were raised by Ghana in the specific factual matrix of the BPT Arbitration and are not raised in the present arbitration.

293. Ghana's third jurisdictional objection (based on time-bar) in the BPT Arbitration (mentioned in ¶ 290 above) is akin to Ghana's jurisdictional objection raised in this arbitration against Claimant's claim that the GRA Assessment breached Articles 12 and 26.2 of the Petroleum Agreements because it was not "imposed in accordance with Section 18 of the PITL" and is thus time-barred for the tax years of 2016-2017 (see ¶ 228(iii) above).

294. The BPT tribunal did not decide on the time-bar objection, holding that a separate decision on that jurisdictional issue was not necessary as the matter could be resolved based on the tribunal's decision on the main merits issue. The BPT tribunal's observations are extracted below in relevant part:

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<sup>278</sup> Exh. C-152, ¶ 150.

<sup>279</sup> Exh. C-152, ¶ 152.

<sup>280</sup> See generally, Exh. C-152, ¶¶ 190-198. With respect to the first objection (based on waiver), the BPT tribunal held that TGL "has not, by its actions '*waived*' its right to arbitrate the dispute". As to the second jurisdictional objection (based on a failure to exhaust local remedies), the tribunal determined that the Petroleum Agreements did not impose an obligation to exhaust local remedies. (italics in original)

200. The question of the applicability of the limitation provisions in s 18(3) of the PITL 1987 is ultimately resolved by deciding the core substantive issue – whether Article 12 operates to exclude BPT.
201. *If the Claimant is correct that it does*, then the time bar argument falls away. The BPT is caught by Article 12.1 and it is agreed by the parties that it is not a tax that falls within the only available provision which is Article 12.2(ii). On this hypothesis, there is simply no basis in the Petroleum Agreements to permit the Respondent to charge BPT on the Claimant, irrespective of *when* such an assessment was made having regard to domestic law rules. The Tribunal, on this hypothesis, will proceed directly to remedy and it adds nothing, even if it be the case that a domestic time bar was infringed in the levying of the BPT.
202. Nor, on this hypothesis, is this a case where the alleged breach of the time bar adds an additional breach to the Claimant's case. The carve out in Article 12.2(ii) is for Income Taxes levied under and in accordance with the PITL 1987. If the BPT had been imposed by the Respondent under the PITL 1987 but in breach of a limitation period in the PITL 1987, that would be a matter which we would have jurisdiction to consider. But in the present case it is imposed under a different Act, the IRA 2000, an act which does not contain any time limitation.
203. However, *if as the Respondent contends, Article 12 does not exclude BPT*, we do not see how the arbitration clause confers a contractual authority on the Tribunal to resolve what is wholly a question of domestic taxation law of Ghana. Specifically, if the Respondent has success on the main issue, it will be on the basis that the BPT *falls outside* the terms of the prohibition in Article 12.1 – that is, it is a tax imposed on the Claimant but not “*in respect of activities related to Petroleum Operations and to the sale and export of Petroleum*”. The Respondent's success will *not* be on the basis that it is a “*Income Tax in accordance with the PITL*” within the permitted taxes under Article 12.2(ii). No occasion will arise to consider how the PITL, including its limitation provisions, would apply to the BPT under domestic law.
204. It follows that the question of whether s 18(3) of the PITL qualifies assessment of BPT under s 66 of the IRA 2000 independently of the provisions of Article 12 is either not a matter within the Tribunal's jurisdiction or in any event is a matter that is moot, given the joinder between the parties on the principal issue. It would be a matter to be assessed by the Ghanaian courts in assessing the Claimant's BPT liability, should it be seized of such a dispute.<sup>281</sup>

295. Ghana's fourth jurisdictional objection (analysis of the PITL was beyond the tribunal's jurisdiction) in the BPT Arbitration (mentioned in ¶ 290 above) concerned TGL's alternative claim that Section 39(3) of the PITL is relevant for the construction of Article 26.2 of the Petroleum Agreements.<sup>282</sup> The BPT tribunal upheld its jurisdiction over the alternative claim, finding that “it has jurisdiction to

<sup>281</sup> Exh. C-152, ¶¶ 200-204 (italics in original).

<sup>282</sup> Exh. C-152, ¶ 188.

consider the effect, if any, of Section 39(3) of the PITL 1987 on the present dispute, including whether Section 39(3) was part of the laws of Ghana at the time of either or both of the Petroleum Agreements”.<sup>283</sup> The BPT tribunal ruled that while:

it has no jurisdiction to determine, as a matter of Ghanaian law *per se*, whether the tax imposed by the GRA was compliant with Ghanaian law [ . . . ] the Tribunal has jurisdiction to determine whether, as a matter of the parties’ rights and obligations under the Petroleum Agreements, there has been a breach of (Article 12 and/or) Article 26, in which respect the legal effect, if any, of Section 39(3) is a necessary and relevant legal fact that the Tribunal must consider.<sup>284</sup>

296. On Ghana’s fifth jurisdictional objection (computation of BPT was beyond the tribunal’s jurisdiction ) in the BPT Arbitration (mentioned in ¶ 290 above), the tribunal held that it had jurisdiction to determine, as part of its determination on whether the BPT was imposed in contravention of Article 12 of the Petroleum Agreements, whether the calculation of BPT was in accordance with the statutory formula.<sup>285</sup> The BPT tribunal ruled that if the proper determination of questions of breach of Articles 12 and 26 of the Petroleum Agreements required the tribunal to consider the construction and application of Articles 12 and 26, that would fall within the scope of its jurisdiction.<sup>286</sup> In this regard, the BPT tribunal stated that it:

accepts TGL’s argument that the domestic courts of Ghana, however well positioned to determine ordinary taxation disputes between a taxpayer and the Revenue, are not shown to have jurisdiction or authority to determine questions of the breach of Articles 12 or 26 of the Agreements.<sup>287</sup>

297. It further reasoned that:

there is no scope in the context of this case for any application of a doctrine of exhaustion of local remedies that would require the Tribunal to decline to exercise its jurisdiction until Ghana has had the relevant disputes presented before and determined by its local courts.<sup>288</sup>

298. On merits, the tribunal in the BPT Arbitration decided that the BPT Assessment constituted a breach of Article 12 and Article 26.2 of the Petroleum Agreements and

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<sup>283</sup> Exh. C-152, ¶ 205.

<sup>284</sup> Exh. C-152, ¶ 206.

<sup>285</sup> Exh. C-152, ¶ 208.

<sup>286</sup> Exh. C-152, ¶ 547.

<sup>287</sup> Exh. C-152, ¶ 549.

<sup>288</sup> Exh. C-152, ¶ 550.

ordered Ghana to indemnify TGL in respect of any amount that TGL would be compelled to pay pursuant to the BPT Assessment.<sup>289</sup>

**ii. Law applicable to the Doctrines of Issue Estoppel and Abuse of Process**

299. Claimant submits that English law is applicable,<sup>290</sup> whereas Ghana submits that “English law tailored to the context of international arbitration” applies.<sup>291</sup> At the Hearing, Ghana further submitted that while it “agrees that the tribunal may be guided by English law rules on issue estoppel and abuse of process [,] [g]iven the differences between international arbitration and domestic litigation, however, the tribunal is not bound to apply these doctrines as an English court would”.<sup>292</sup>
300. International arbitration tribunals have applied different approaches for determining the applicable law governing the doctrines of issue estoppel and abuse of process, ranging from applying the law of the seat, the law applicable to the merits, or transnational law. The Parties’ reference to English law as being applicable to the doctrines of issue estoppel and abuse of process in this arbitration is based on it being the law of the seat of the arbitration (see ¶ 13 above).
301. The Tribunal regards questions of issue estoppel and abuse of process as procedural in nature and, accordingly, determines that the said issues must be addressed under the law of the *lex fori*, i.e., English law. This is also agreed by the Parties, subject to the nuance for which Ghana contends, that the Tribunal may be guided by English law but is not bound to apply it strictly.
302. The Tribunal is not persuaded that there is a cogent reason to refrain from applying the doctrines of issue estoppel and abuse of process in accordance with English law as the law of the *lex fori*. These doctrines are routinely applied in arbitration proceedings as they would be in court proceedings.<sup>293</sup> Thus, if the said doctrines are in fact triggered in the facts of this case (which will be considered below), the Tribunal will apply them as required under English law.

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<sup>289</sup> Exh. C-152, ¶ 600 (a) and (b).

<sup>290</sup> C-PHB, p. 1.

<sup>291</sup> R-PHB, pp. 27-28.

<sup>292</sup> Tr. Day 5, 63:10-15.

<sup>293</sup> Exh. CL-51, p. 640; Exh. RL-136, ¶ 8.27; Exh. CL-74, ¶¶ 60-62.

**iii. Doctrines of Issue Estoppel and Abuse of Process under English Law**

303. The doctrines of issues estoppel and abuse of process are directed at precluding re-litigation of issues by the same parties in subsequent proceedings. The position under English law with respect to these doctrines is summarised below.
304. **Issue Estoppel:** Issue estoppel may arise in connection with an issue raised in a proceeding, if that particular issue formed a “necessary ingredient” in a cause of action that has been “litigated and decided between the same parties” in a previous proceeding.<sup>294</sup> Ghana emphasizes that the issue determined in the earlier proceeding must have been “fundamental” to that decision for issue estoppel to apply.<sup>295</sup> Ghana posits that the test is “whether the determination was so fundamental that the decision cannot stand without it”.<sup>296</sup> The Tribunal accepts this, which is consistent with the requirement that the issue was a “necessary ingredient” in the previous proceeding.
305. Issue estoppel does not apply to subsidiary or collateral points that were decided in the previous proceeding, nor to every step of the reasoning.<sup>297</sup> However, this does not preclude issue estoppel from applying to those steps in the reasoning which were necessary to decide as a groundwork of the decision, irrespective of whether those issues were actually decided in the case. Thus, issue estoppel can extend to inferred judicial determinations, if such determinations were necessary for the eventual decision. As explained in the treatise of Spencer Bower and Handley, “[w]here the decision necessarily involves a judicial determination of some issue of law or fact, because it could not have been legitimately or rationally pronounced without determining or assuming a particular answer, that determination, though not expressed is an integral part of the decision”.<sup>298</sup>
306. For issue estoppel to arise, the identity of issues between the two proceedings must be certain.<sup>299</sup> The doctrine precludes the re-opening of an issue in a subsequent

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<sup>294</sup> Exh. CL-52, p. 105.

<sup>295</sup> R-SoRj, ¶ 28, citing Exh. RL-143, ¶ 224.

<sup>296</sup> R-SoRj, ¶ 28, citing Exh. RL-136, ¶ 8.24.

<sup>297</sup> Exh. RL-143, ¶ 225 (“Nothing but what is legally indispensable to the conclusion is precluded by issue estoppel; [...] Matters which are subsidiary or collateral do not give rise to an issue estoppel [...] however deliberate and formal the findings; [...] Decisions upon matters of law which amount to no more than steps in a process of reasoning do not give rise to an issue of estoppel.”); Exh. RL-136, ¶ 8.24.

<sup>298</sup> Exh. RL-136, ¶ 8.08.

<sup>299</sup> Exh. RL-142, ¶¶ 39-40 (citing and quoting *Yukos Capital Sarl (JSC) v Rosneft Oil Co (No 2)* [2011] EWHC 1461 (Comm); [2012] 1 All ER (Comm) 479, ¶ 49).

proceeding where either that issue was not raised in earlier proceedings, but could and should have been raised or it was raised but rejected in the earlier proceedings.<sup>300</sup> Ghana's contention that issue estoppel is limited to the latter category of issues (*i.e.*, those that were raised and rejected) is not supported by the decisions in *Arnold v. Westminster Bank*<sup>301</sup> and *Virgin Atlantic v. Zodiac Seats*.<sup>302</sup> These decisions continue to be good law and are also relied upon in the subsequent authorities on which Ghana has relied such as *Lufthansa Technik AG v. Astronics Advanced Electronic Systems and others*.<sup>303</sup>

307. The doctrines of issue estoppel and abuse of process are not mutually exclusive, as Ghana suggests. In *Virgin Atlantic v. Zodiac Seats*, the UK Supreme Court specifically considered and rejected the proposition that where an issue was not raised in the previous proceeding but could and should have been raised before, it goes beyond the remit of issue estoppel into abuse of process. The UK Supreme Court ruled that because the principle in *Henderson v. Henderson* was concerned with abuse of process does not mean that it could not also be part of the law of res judicata.<sup>304</sup>
308. The application of issue estoppel may be exempted in "special circumstances" such as a subsequent change in law or a fact which could not have been discovered with reasonable diligence in the earlier proceedings, where applying the doctrine would cause injustice.<sup>305</sup>
309. **Abuse of Process:** Abuse of process, as noted in ¶ 307 above, has overlapping elements with issue estoppel. It is, however, a separate doctrine to issue estoppel.
310. In this case, TGL invokes the abuse of process doctrine that is commonly credited to the case of *Henderson v. Henderson*.<sup>306</sup> That doctrine refers to the abuse of process

<sup>300</sup> Exh. CL-52, p. 106; Exh. CL-55, ¶ 22(3).

<sup>301</sup> Exh. CL-52, p. 106 ("Issue estoppel, too, has been extended to cover not only the case where a particular point has been raised and specifically determined in the earlier proceedings, but also that where in the subsequent proceedings it is sought to raise a point which might have been but was not raised in the earlier.")

<sup>302</sup> Exh. CL-55, ¶ 22 ("Arnold is accordingly authority for the following propositions: [ . . . ] (3) [ . . . ] issue estoppel bars the raising in subsequent proceedings of points which (i) were not raised in the earlier proceedings or (ii) were raised but unsuccessfully. If the relevant point was not raised, the bar will usually be absolute if it could with reasonable diligence and should in all the circumstances have been raised.")

<sup>303</sup> Exh. RL-143

<sup>304</sup> Exh. CL-55, ¶ 25; See also Exh. RL-116, ¶ 43.

<sup>305</sup> Exh. RL-142, ¶¶ 41-42; Exh. CL-57, ¶ 88

<sup>306</sup> C-SoRjoJ, ¶¶ 13-14, citing Exh. CL-55 ¶¶ 18, 22(3), 24 (citing *Henderson v Henderson* (1843) 3 Hare 100, 115).

involved in seeking to raise in subsequent litigation points which could and should have been raised previously.<sup>307</sup> It applies:

not only to points upon which the Court [or tribunal] was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.<sup>308</sup>

311. In *Virgin Atlantic*, the UK Supreme Court ruled that the abuse of process doctrine is regarded as “both a rule of public policy and an application of the law of res judicata”.<sup>309</sup> The application of this doctrine is founded on two interests: “the private interest of a party not to be vexed twice for the same reason and the public interest of the state in not having issues repeatedly litigated”.<sup>310</sup> These interests “reflect unfairness to a party on the one hand, and the risk of the administration of public justice being brought into disrepute on the other”.<sup>311</sup>

312. However, not every instance of a party raising an issue in a subsequent proceeding which could and should have been raised in an earlier proceeding amounts to an abuse of process. In *Virgin Atlantic*, the UK Supreme Court upheld the findings in *Johnson v. Gore-Wood & Co* that:

[i]t is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before.<sup>312</sup>

313. Ghana contends that the threshold for finding an abuse of process is a high one.<sup>313</sup> Claimant disputes this, contending that the application of a high threshold is not established by the authorities relied on by Ghana.<sup>314</sup> As noted in the preceding paragraph, the UK Supreme Court in *Virgin Atlantic* upheld the findings in *Johnson*

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<sup>307</sup> Exh. RL-124, ¶ 78.

<sup>308</sup> Exh. CL-55, ¶ 18 (citing *Henderson v Henderson* (1843) 3 Hare 100, 115).

<sup>309</sup> Exh. CL-55, ¶ 24.

<sup>310</sup> Exh. RL-116, ¶ 48.

<sup>311</sup> Exh. RL-116, ¶ 48.

<sup>312</sup> Exh. CL-55, ¶ 24 (citing *Johnson v Gore-Wood & Co* [2002] 2 AC 1).

<sup>313</sup> R-SoRj, ¶¶ 32-33, citing Exh. RL-124, ¶¶ 75, 137; Exh. RL-116, ¶¶ 43, 48; Exh. RL-89, p. 536; Exh. RL 97, ¶ 49; Exh. RL-130, ¶ 43; Exh. RL-94, ¶ 26.

<sup>314</sup> C-SoRjoJ, ¶ 17.

v. *Gore-Wood & Co* that the test for abuse of process is whether a party is “misusing or abusing” the process of the court. A similar finding was made in *In re Norris*, where the Court ruled that “abuse must involve something which amounts to a misuse of the litigational process. Clear cases of litigating without any honest belief in any basis for doing so or litigating without having any legitimate interest in the litigation are simple cases of abuse”. The Court further held that “[a]ttempts to relitigate issues which have already been the subject of judicial decision may or may not amount to an abuse of process.”<sup>315</sup> The Tribunal considers that the search for these factors in a case naturally results in a relatively high threshold for applying the abuse of process doctrine.

314. Unlike issue estoppel, which requires the same parties in both sets of proceedings, such requirement is not necessary for the application of abuse of process, although finding an abuse of process is harder in such a case.<sup>316</sup>

**iv. Whether Respondent’s Jurisdictional Objections in the arbitration are precluded pursuant to the doctrines of issue estoppel and/or abuse of process**

315. The parties to the BPT Arbitration are identical to the present arbitration, *i.e.*, TGL and Ghana. The BPT Arbitration was also initiated on the same contractual basis as the present, *i.e.*, under the Arbitration Agreement in Article 24 of the DWT Petroleum Agreement, applied pursuant to Article 1.10 of the Contract Acknowledgement (see ¶¶ 287 and 289 above).
316. In addition, there exists a commonality in the claims raised in the two sets of proceedings: in the BPT Arbitration, TGL challenged Ghana’s imposition of BPT (branch profits tax) on TGL as being in breach of the agreement on taxation under Articles 12 and 26.2 of the Petroleum Agreements. In the present arbitration, TGL challenges Ghana’s imposition of income tax on TGL, as being in breach of the agreement on taxation under Article 12 and 26.2 of the Petroleum Agreements.<sup>317</sup>
317. The Tribunal considers that the identity between the parties, the Arbitration Agreement, and the claims in the two arbitrations (*i.e.*, claim of breach of Articles

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<sup>315</sup> Exh. RL-94, ¶ 26.

<sup>316</sup> Exh. RL-124, ¶ 75.

<sup>317</sup> As noted in fn. 179 above, TGL no longer pursues claims for breach of Article 26.2 of the Petroleum Agreements in this arbitration.

12 and 26.2 of the Petroleum Agreements on account of tax imposition on TGL) in principle satisfies the foundational features for establishing issue estoppel and/or abuse of process.

318. Ghana contends that for TGL's argument on issue estoppel and/or abuse of process to succeed, the subject-matter "issue" would have to be defined very broadly as: "whether any tribunal constituted under Article 1.10 of the Contract Acknowledgement and Article 24 of the DWT Petroleum Agreement always has jurisdiction to hear any Article 12 and/or Article 26.2 claims brought by TGL against Ghana in relation to any tax assessment issued by the GRA".<sup>318</sup> It argues that the BPT tribunal did neither consider nor conclusively decide this issue in such broad terms, and, therefore, no issue estoppel can be invoked in the present arbitration based on the jurisdictional findings in the BPT Award.
319. The Tribunal agrees that a broad formulation of the "issue" which is allegedly estopped in the present arbitration is neither proper nor appropriate. The Tribunal understands that this is not TGL's position either. The Tribunal will accordingly consider below whether each of Ghana's three Jurisdictional Objections are individually precluded by issue estoppel and/or abuse of process.
320. **First Jurisdictional Objection:** The First Jurisdictional Objection in the present arbitration (lack of consent to arbitrate between a single Private Unit Party and Ghana) was not raised by Ghana as a jurisdictional objection in the BPT Arbitration.
321. As noted in ¶ 306 above, issue estoppel may be invoked for those issues that were not specifically raised and decided on in the previous proceeding, provided they could and should have been raised in that proceeding. Therefore, Ghana is incorrect in arguing that issue estoppel cannot apply to the First Jurisdictional Objection because it was not raised in the BPT Arbitration.
322. The Tribunal also noted, in ¶ 305 above, that issue estoppel can extend to inferred judicial determinations in the previous proceeding. The test is whether such determinations formed a necessary basis of the decision, irrespective of whether these issues were actually decided in the case.

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<sup>318</sup> R-SoRj, ¶ 41 (underline in original).

323. The Tribunal considers that the scope of consent under Article 1.10 of the Contract Acknowledgment, (*i.e.*, whether it extends to disputes between Ghana and any single Private Unit Party or only to disputes between Ghana and all Private Unit Parties together, in connection with the Jubilee Field), whilst not raised as an issue in the BPT Arbitration, falls within the category of an inferred judicial determination by the BPT tribunal.
324. This is because the BPT tribunal could not have upheld jurisdiction over TGL's claims against Ghana under Article 24 of the DWT Petroleum Agreement, applied through Article 1.10 of the Contract Acknowledgment, without determining that the said provisions permitted the arbitration of disputes between a single Private Unit Party and Ghana. This was a necessary basis for the BPT tribunal's finding that it had jurisdiction over TGL's claims.
325. Further, by not raising a jurisdictional objection in the BPT Arbitration similar to the First Jurisdictional Objection in the present arbitration, Ghana effectively admitted in the BPT Arbitration that it consented to arbitration of disputes between Ghana and any single Private Unit Party in relation to the Jubilee Field under Article 24 of the DWT Petroleum Agreement, applied through Article 1.10 of the Contract Acknowledgment. The different types of tax impositions challenged in the BPT Arbitration and the present arbitration do not have a bearing on Ghana's consent under Article 24 of the DWT Petroleum Agreement, pursuant to the application of Article 1.10 of the Contract Acknowledgment
326. Ghana contends that it did not raise the First Jurisdictional Objection in the BPT Arbitration as that arbitration did not relate to the "type of non-contractual claims raised by TGL in this arbitration".<sup>319</sup> This is not a persuasive justification. Ghana's First Jurisdictional Objection concerns the scope of consent under Article 1.10 of the Contract Acknowledgment with respect to the parties to the Arbitration Agreement. That is disconnected from the nature of claims that may be raised pursuant to the Arbitration Agreement.
327. There are also no new facts that have emerged since the BPT Arbitration which might justify raising the First Jurisdictional Objection in the present arbitration, despite not having raised it in the previous arbitration between the Parties.

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<sup>319</sup> R-SoRj, ¶ 61 (underline in original).

328. The Tribunal's determination that the First Jurisdictional Objection is barred by issue estoppel is not a breach of the competence-competence principle, as Ghana alleges. The competence-competence principle requires the Tribunal to decide on its own jurisdiction. Its analysis and conclusions on the application of the issue estoppel doctrine to Ghana's Jurisdictional Objections is in exercise of that power and duty and not in contravention of it.
329. That Ghana had challenged the president of the BPT tribunal is not a relevant factor for ascertaining the application of the issue estoppel doctrine.
330. Thus, the Tribunal finds that there is no persuasive basis put forth by Ghana that justifies its failure to raise the First Jurisdictional Objection in the BPT Arbitration while raising it in the present arbitration.
331. The Tribunal holds therefore that Ghana could have and should have raised the First Jurisdictional Objection in the BPT Arbitration. By failing to do so, Ghana admitted in the BPT Arbitration that the Arbitration Agreement covers disputes between Ghana and a single Private Unit Party. The BPT tribunal's positive finding on jurisdiction is necessarily based on its acceptance that the Arbitration Agreement extends to disputes between Ghana and a single Private Unit Party. For all these reasons, the Tribunal concurs with TGL that Ghana is estopped from raising the First Jurisdictional Objection in this case.
332. Having determined that the First Jurisdictional Objection is barred by issue estoppel, the Tribunal need not consider whether Ghana's conduct of raising this objection also constitutes an abuse of process.
333. **Second Jurisdictional Objection:** Under its Second Jurisdictional Objection, Ghana objects to TGL's following three claims on the basis that they are non-contractual in nature:
- (i) the GRA's Tax Assessment breached Article 12 "because the assessment is not issued in accordance with the PITL";
  - (ii) the GRA's imposition of the Penalty breached Article 12 because it was "not in accordance with Section 33 of the PITL"; and

- (iii) the GRA Assessment breached Article 12 because it was not “imposed in accordance with Section 18 of the PITL” and thus time-barred for the tax years of 2016-2017 (see ¶ 228 above)
334. TGL contends that the BPT tribunal has upheld jurisdiction under the Arbitration Agreement to decide on claims for alleged breaches of Article 12 and/or Article 26.2 of the Petroleum Agreements arising from the GRA’s imposition of branch profits tax on TGL. It argues that its claims in the BPT Arbitration similarly involved an interpretation of Ghanaian tax legislation. In addition, the time-bar issue was also raised in the BPT Arbitration and the BPT tribunal indicated that an issue relating to the breach of a limitation period in the PITL would be a matter that it would have jurisdiction to consider. Thus, TGL argues that Ghana’s Second Jurisdictional Objection relates to the same points that were raised and rejected in the BPT Arbitration and, therefore, it is barred by issue estoppel and/or abuse of process.<sup>320</sup>
335. Ghana maintains that its Second Jurisdictional Objection is distinct from the issues decided in the BPT Arbitration. Ghana contends that its position in the present arbitration is that Claimant’s claims are not contractual in nature and instead are “in substance, wholly questions of interpreting Ghanaian law”, akin to seeking an administrative review of the GRA Assessment.<sup>321</sup> It argues that this is unlike the BPT Arbitration where the issue decided was that contractual claims under the Petroleum Agreements involving an interpretation of Ghanaian tax legislation fell within the tribunal’s jurisdiction. Ghana argues that the BPT tribunal’s observations on this issue, in fact, reinforce Ghana’s position on the Second Jurisdictional Objection.<sup>322</sup>
336. The Tribunal notes that out of the three issues identified in ¶ 333 above as falling under Ghana’s Second Jurisdictional Objection, issue (iii) is the only one that directly coincides with one of Ghana’s jurisdictional objections in the BPT Arbitration. Specifically, Ghana’s contention in the present arbitration that the Tribunal lacks jurisdiction to determine whether the GRA Assessment is time-barred for financial years 2016 and 2017 (see ¶ 333(iii) above) coincides with Ghana’s third jurisdictional objection in the BPT Arbitration that “[t]he Tribunal

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<sup>320</sup> C-SoRjoJ, ¶¶ 26-29.

<sup>321</sup> R-SoRj, ¶¶ 47, 51.

<sup>322</sup> R-SoRj, ¶¶ 48-51.

lacks jurisdiction to determine whether the 2019 BPT Assessment is time barred” (see ¶ 290 above).

337. The BPT tribunal did not decide the time-bar objection, holding that in the circumstances of that case it was not necessary to make a finding on that issue. However, it remarked that “[i]f the BPT had been imposed by the Ghana under the PITL 1987 but in breach of a limitation period in the PITL 1987, that would be a matter which we would have jurisdiction to consider” (see ¶ 294 above).
338. The Tribunal considers the BPT tribunal’s remark regarding its jurisdiction over a time-bar claim raised under the PITL to be an *obiter dictum*. Indeed, the BPT tribunal made this observation while expressly stating that it was not deciding on the question of its jurisdiction over TGL’s time-bar claim in that arbitration. Since the issue of the BPT tribunal’s jurisdiction over TGL’s time-bar claim was not conclusively decided in the BPT Arbitration, it does not preclude Ghana from raising the same jurisdictional objection in the present arbitration.
339. Ghana contends that TGL conceded during the BPT Arbitration that a claim involving issues of statutory interpretation cannot be properly characterised as a contractual claim.<sup>323</sup> TGL disputes this, contending that its statement during the hearing in the BPT arbitration was made in the context of the BPT (branch profits tax), which fell outside the Article 12 contractual arrangement, and hence, TGL’s remark that it would not be a contractual claim.<sup>324</sup>
340. The Parties have placed on record excerpts of the transcript from the hearing in the BPT Arbitration,<sup>325</sup> from which the Tribunal cannot properly ascertain the context in which TGL’s statement was made. The Tribunal, therefore, cannot accord much weight to this evidence.
341. For these reasons, the Tribunal determines that TGL is not precluded from raising the time-bar claim in this arbitration.
342. With respect to the issues listed under (i) and (ii) of ¶ 333 above, the Tribunal considers that there are differences between the factual matrix of the BPT

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<sup>323</sup> SoD, ¶ 155.

<sup>324</sup> C-SoRy, ¶ 70(c).

<sup>325</sup> Exh. C-145; Exh. R-2.

Arbitration and the present arbitration, and consequently in TGL's legal claims in both proceedings, which preclude the invocation of the issue estoppel doctrine.

343. For example, TGL's main claim in the BPT Arbitration was that branch profits tax imposed under the IRA was not covered by Article 12 of the Petroleum Agreements and, on that basis, it argued that Ghana had breached Articles 12 and/or 26.2 of the Petroleum Agreements. Thus, the issue being considered by the BPT tribunal was whether branch profits tax fell within Article 12 of the Petroleum Agreements.
344. By contrast, the issues under ¶ 333 (i) and (ii) relate to whether or not TGL's claim that the GRA Assessment was not "in accordance with the PITL" is a purely contractual issue. It is not in dispute between the Parties that the GRA Assessment pertained to income tax imposed under the PITL and that income tax is covered within Article 12 of the Petroleum Agreements.
345. Since the findings by the BPT tribunal regarding the contractual nature of TGL's claims in that arbitration were rendered in the context of a separate tax legislation in Ghana, *i.e.*, the IRA instead of the PITL, the Tribunal does not consider that there is a clear identity of these two issues in the two proceedings.
346. TGL contends that the BPT tribunal had specifically found that it could consider whether a tax assessment on TGL was in accordance with PITL for purposes of Articles 12 and/or 26 of the Petroleum Agreements. On this basis, it argues that issue (i) under ¶ 333 is estopped from being raised in this arbitration. The Tribunal is not persuaded. The BPT tribunal's finding, relied on by TGL, was made in the context of determining whether Section 39(3) of the PITL applied to the parties' dispute. It was a disputed issue in that arbitration whether Section 39(3) formed part of the contractual factual matrix relevant to the construction of the Article 12 of the Petroleum Agreements. That is an issue distinct from that raised in the present arbitration.
347. There is also no specific finding by the BPT tribunal upholding jurisdiction to determine whether a penalty issued by the GRA was in contravention of Section 33 of the PITL.
348. Thus, the Tribunal concurs with Ghana that its Second Jurisdictional Objection is not barred by issue estoppel. For the same reasons, the Tribunal also does not

consider that Ghana's Second Jurisdictional Objections in the present arbitration constitutes an abuse of process.

349. **Third Jurisdictional Objection:** The Third Jurisdictional Objection (non-arbitrability of Claimant's tax claims under Ghanaian law), again was not raised by Ghana as a jurisdictional objection in the BPT Arbitration.
350. Ghana contends that it had not done so because the non-arbitrability issue was "neither as pronounced, nor at the forefront" in the BPT Arbitration. According to Ghana, the core issue in the BPT Arbitration concerned the scope of Article 12.1 of the Petroleum Agreements and whether that provision excluded the application of BPT, which raised questions of contractual interpretation.<sup>326</sup>
351. TGL disagrees and contends that Ghana could have and should have raised the non-arbitrability objection in the BPT Arbitration. It argues that Ghana's failure to do so precludes it from raising it in the present arbitration pursuant to the doctrines of issue estoppel and/or abuse of process.<sup>327</sup>
352. The core issue forming the basis of TGL's claims regarding Ghana's alleged breaches of Articles 12 and/or 26.2 of the Petroleum Agreements in the present arbitration is whether the GRA Assessment was imposed "in accordance with the PITL". While Claimant characterises this as a contractual question, Ghana considers that the question goes to a review of the GRA's exercise of its statutory obligations under the PITL. This is distinct from the main issue underlying TGL's claims in the BPT Arbitration, which concerned whether BPT was covered within the scope of Article 12.1 of the Petroleum Agreements.
353. Based on this difference, the Tribunal accepts that the issue of a potential non-arbitrability of TGL's claims might have been less pronounced in the BPT Arbitration. Thus, the Tribunal is not persuaded that Ghana "should" have raised the non-arbitrability jurisdictional objection in the BPT Arbitration and that by failing to do so, it is estopped from raising it in the present arbitration. For the same reasons, the Tribunal does not consider Ghana's Third Jurisdictional Objection to constitute an abuse of process.

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<sup>326</sup> R-SoRj, ¶ 62.

<sup>327</sup> C-SoRjoJ, ¶¶ 35-39.

354. **Conclusion:** For these reasons, the Tribunal determines that Ghana is precluded from raising the First Jurisdictional Objection based on doctrine of issue estoppel. It is not precluded from raising the Second and Third Jurisdictional Objections either under the doctrine of issue estoppel or abuse of process.
355. The Tribunal will accordingly address Ghana's Second and Third Jurisdictional Objections below.

**2. Does the Tribunal have Jurisdiction over Claimant's claims that the GRA Assessment was not "in accordance with" the PITL?**

356. As noted in ¶ 333 above, Ghana's Second Jurisdictional Objection is directed at TGL's three claims regarding Ghana's alleged breaches of Article 12 of the Petroleum Agreements on the basis that the GRA Assessment was not "in accordance with" the PITL.
357. Ghana contends that these claims are non-contractual in nature as their "crux" is that "the GRA's interpretation and application of the PITL is not supported by a proper reading of the statute".<sup>328</sup> It argues that the claims "necessitate[] determination of issues of statutory interpretation that are only formalistically related to, and thus effectively untethered from, the contract".<sup>329</sup> It argues that, in effect, TGL is "requesting the Tribunal to opine on the correctness of the GRA's decision and interpretation of the PITL".<sup>330</sup> Ghana finds TGL's contention that the claims are contractual in view of its request for relief formulation, *i.e.*, declarations and orders for indemnification, to be misguided.<sup>331</sup> It argues that the proper remedy for TGL was to challenge the GRA Assessment as per the available procedures under Ghanaian law.<sup>332</sup>
358. Ghana further contends that TGL's claims are premised on a "distortion of the meaning and purpose" of Article 12(ii). According to Ghana, the import of the provision is limited to stipulating the applicable income tax rate.<sup>333</sup>

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<sup>328</sup> SoD, ¶ 154; R-SoRj, ¶ 76.

<sup>329</sup> R-SoRj, ¶ 80.

<sup>330</sup> R-SoRj, ¶ 83.

<sup>331</sup> R-SoRj, ¶ 86.

<sup>332</sup> R-SoRj, ¶¶ 103-107.

<sup>333</sup> R-SoRj, ¶¶ 87-88.

359. For its part, TGL argues that its claims are contractual because it is pursuing contractual remedies of declarations and indemnification. TGL emphasizes that it is not seeking to overturn the GRA Assessment through these proceedings. Relying on case law, TGL contends that in order to determine whether or not a claim is “contractual in nature”, a tribunal should consider the legal basis of the claim and the relief sought.<sup>334</sup>
360. TGL contends that the mere fact that a contractual obligation incorporates a statutory obligation does not transform the content of a contractual claim based on that obligation into a statutory claim.
361. As noted in ¶ 333 above, the Second Jurisdictional Objection concerns three claims advanced by TGL in the arbitration.
362. The *first claim*, mentioned in ¶ 333 (i) above, is that the GRA’s Tax Assessment breached Article 12 “because the assessment is not issued in accordance with the PITL”.
363. TGL’s contention that the GRA’s Tax Assessment was not issued in accordance with the PITL is founded on the allegation that the GRA incorrectly calculated TGL’s chargeable income under the PITL for the FY 2016-2019.
364. The question is whether the incorporation into the Petroleum Agreements of an obligation that income tax be imposed on TGL in accordance with the PITL confers upon the Tribunal jurisdiction to determine whether the GRA correctly calculated TGL’s chargeable income.
365. The Petroleum Agreements impose contractual obligations requiring Ghana to act in accordance with the PITL. Had the Parties intended to exclude disputes concerning compliance with those obligations from arbitration, they could have provided for such exclusion expressly. The Agreements contain no such limitation. There is no dispute between the Parties, and the Tribunal agrees, that the mere fact that resolution of a claim requires the interpretation of a statutory provision does not, in itself, place that claim beyond the Tribunal’s jurisdiction.
366. In the Tribunal’s view, the determination and computation of chargeable income for the purposes of assessing tax liability falls, in principle, within the exclusive remit

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<sup>334</sup> C-SoRjoJ, ¶ 69.

of the tax authorities of the State. Such matters fall primarily within the jurisdiction of the competent authorities and courts of the State. The computation of chargeable income under the PITL is, therefore, primarily a matter for the Ghanaian tax authorities and courts. However, where the Petroleum Agreements impose contractual obligations requiring Ghana to act in accordance with the PITL, the Tribunal may examine compliance with those contractual obligations, albeit without substituting itself for the competent tax authorities.

367. While in this case, the formulation of the contractual obligation in the Petroleum Agreements and existence of an unqualified arbitration agreement might serve to vest the Tribunal with jurisdiction to assess whether the GRA's Tax Assessment was in accordance with the PITL, the Tribunal considers that its power of review will be limited. In particular, the Tribunal is not sitting as an appellate or review court over the GRA's Tax Assessment; its examination of the Tax Assessment for purposes of ascertaining whether the GRA has breached Article 12 of the Petroleum Agreements is accordingly circumscribed.
368. The Tribunal further notes that TGL has not pursued the available challenge procedures against the GRA's Tax Assessment before the competent Ghanaian authorities. While the Petroleum Agreements do not impose a requirement of exhaustion of local remedies before the Tribunal can be seized in arbitration, in the absence of such proceedings, the Tribunal lacks the benefit of factual and legal findings by the specialized domestic institutions charged with administering the PITL. This constrains the Tribunal's examination of the GRA's Tax Assessment for purposes of deciding on the alleged contractual breaches.
369. The Tribunal notes that Ghana disputes that it has breached Article 12 of the Petroleum Agreements, contending that its obligation under Article 12(ii) is limited to fixing the income tax rate at 35%. This matter goes to the merits of Ghana's defence and will be considered by the Tribunal in the next Section.
370. The *second claim*, mentioned in ¶ 333 (ii) above, is that the GRA's imposition of the Penalty breached Article 12 because it was "not in accordance with Section 33 of the PITL". The second claim is distinct from the first claim in that it does not require the Tribunal to determine the correctness of the GRA's computation of TGL's chargeable income or to undertake a substantive reassessment of TGL's liability

under Ghanaian law, a matter which ordinarily falls within the remit of the competent tax authorities. Rather, the claim concerns the legality of the procedure followed in imposing the Penalty, as opposed to the substantive correctness of the Penalty assessment itself. In assessing this latter issue, the Tribunal is not called upon to compute TGL's tax or Penalty liability afresh, but only to determine whether the relevant procedural requirements were observed. For that reason, and for the additional reasons set out above in connection with the first claim, the Tribunal is satisfied that it has jurisdiction over the second claim.

371. The *third claim*, mentioned in ¶ 333 (iii) above, is that GRA Assessment breached Article 12 because it was not "imposed in accordance with Section 18 of the PITL", pursuant to which the Assessment is allegedly time-barred for the FY 2016-2017 (see ¶ 228 above). The dispute concerns whether the GRA was entitled, under the applicable limitation provisions of the PITL, to issue the GRA Assessment in respect of those fiscal years. In determining this issue, the Tribunal is not called upon to calculate TGL's taxable income or to substitute its assessment for that of the competent Ghanaian tax authorities. Rather, it is required only to determine whether the GRA Assessment was issued within the period permitted by the applicable legal framework. This issue is distinct from the substantive determination of TGL's tax liability under Ghanaian law. For this reason, and for the additional reasons set out above in connection with the first claim, the Tribunal is satisfied that it has jurisdiction over the third claim.

372. For the foregoing reasons, the Tribunal is satisfied that TGL's three claims challenged by Ghana as part of its Second Jurisdictional Objection are contractual in nature and it upholds jurisdiction over them.

### **3. Are TGL's Claims Arbitrable under Ghanaian law and international law**

373. The Parties agree that the Tribunal's decision on the Third Jurisdictional Objection is directly linked to the decision on the Second Jurisdictional Objection. In response to the Tribunal's questions on this issue, both Parties have confirmed that if the Tribunal decides that Claimant's claims are contractual in nature, they will be arbitrable under Ghanaian law and international law; if the Tribunal decides that the

claims are non-contractual, they will not be arbitrable.<sup>335</sup> Indeed, if Claimant's claims are determined to be contractual in nature, Ghana's non-arbitrability objection based on allegedly implicating public rights or interests of third parties does not hold.

374. In the preceding Section, the Tribunal has determined that Claimant's claims challenged under the Second Jurisdictional Objection are contractual in nature. In view of this, the Tribunal does not need to separately address Ghana's Third Jurisdictional Objection, which also fails.

## **XI. MERITS**

375. TGL claims that the GRA Assessment (*i.e.*, the Income Tax Assessment plus Penalty) pertaining to FY 2016-2019 constitutes a breach of Article 12 of the Petroleum Agreements because it was not imposed in accordance with the PITL. With respect to FY 2016-2017, TGL claims that the GRA Assessment was time-barred, thereby constituting an additional breach of Article 12 of the Petroleum Agreements. Finally, it claims that the GRA's action to enforce the GRA Assessment constitutes a further breach of Article 24.10 of the DWT Petroleum Agreement.
376. Ghana disputes all of TGL claims on their merits, while contending that the Tribunal must accord substantial deference to the Commissioner-General's decisions in the GRA Assessment. Ghana also argues that TGL bears a heightened standard of proof for its claims. These assertions are disputed by TGL.
377. The Tribunal will first address the Parties' differences on the applicable standards of review and proof for TGL's claims, following which it will address each of TGL's claims in turn below.
378. As noted in ¶ 206 above, while Ghana raised a counter-claim in the Answer, seeking recovery from TGL of the amount levied in the GRA Assessment, it did not pursue this counter-claim in any submission thereafter, nor did it do so at the Hearing. The Tribunal, therefore, understands that the counter-claim is no longer being pursued.

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<sup>335</sup> C-PHB, Response to Issues 4(a) and (b) in the Updated List of Issues, p. 4; R-PHB, Response to Issues 4(a) and (b), p. 25 in the Updated List of Issues.

## A. STANDARDS OF REVIEW AND PROOF

### 1. Claimant's Position

379. TGL disagrees with Ghana's position that the Tribunal must apply a "substantial deference" standard when considering its challenge to the GRA Assessment and that it bears a "heightened standard of proof" in relation to its claims. It argues that these principles, even if accurate as a matter of Ghanaian law (which TGL disputes), have no role in the present case because TGL's claims are only contractual in nature.<sup>336</sup>
380. While in the C-SoRy TGL took the position that "there is no rationale for applying any doctrine of deference in this case",<sup>337</sup> at the Hearing, it accepted that the Tribunal's review of the GRA Assessment for purposes of addressing its contractual claims in the arbitration must involve a degree of deference although not "substantial deference".<sup>338</sup>
381. TGL requests the Tribunal to follow the approach to deference taken by the tribunal in *Eni and Vitol v. Ghana*, contending that the said arbitration also concerned a dispute arising under a petroleum agreement and the applicable substantive law was Ghanaian law and international law.<sup>339</sup> TGL contends that in that arbitration, the tribunal reviewed whether the governmental acts in question were in accordance with the relevant statutes and concluded that "[t]here were several procedural and substantial shortcomings to the [Ministry of Energy's] decision to impose the unitisation terms" in the directives in question.<sup>340</sup> TGL contends that, in that case, the tribunal found that Ghana had failed to provide the claimants with the relevant sources forming the basis of its decision and therefore the claimants did not have a meaningful opportunity to consider and contest the Ministry of Energy's decision in dispute in that case. The tribunal also rejected the *ex post* reasoning advanced by Ghana in that case.<sup>341</sup>
382. With respect to the authorities relied on by Ghana, TGL contends that the Supreme Court of Canada's decision in *Dunsmuir v. New Brunswick* is "controversial" and

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<sup>336</sup> C-SoRy, ¶¶ 105-108, citing Adjei-Djan Report, ¶¶ 21, 62; Exh. RL-21, Articles 23 and 296; Exh. CL-37, p. 427; Exh. CL-40, p. 49.

<sup>337</sup> C-SoRy, ¶ 106

<sup>338</sup> Tr. Day 1, 20:4-14; Tr. Day 5, 24:20-24.

<sup>339</sup> C-SoRy, ¶ 109, citing Exh. CL-35.

<sup>340</sup> C-Sory, ¶ 109(c), citing Exh. CL-35, ¶ 387.

<sup>341</sup> C-Sory, ¶ 109 (d) and (e).

has been departed from in subsequent decisions by that Court.<sup>342</sup> TGL contends that Ghana incorrectly submits that in *Kofi A. Boateng v. The Electoral Commission*, the Ghanaian court has endorsed *Dunsmuir*.<sup>343</sup>

383. TGL disputes that any additional deference must be afforded to the GRA Assessment because it concerns matters of taxation.<sup>344</sup> Relying on Articles 23 and 296 of the Constitution of Ghana, TGL contends that the exercise of administrative power in Ghana is constrained by certain standards, including but not limited to reasonableness.<sup>345</sup> TGL argues that, in any event, the question of application of a deferential standard is relevant only to the extent of reviewing the Commissioner-General's exercise of discretionary authority under Section 5 of the PITL. The test does not apply to TGL's claim that the GRA Assessment violated Section 1 of the PITL.<sup>346</sup>
384. TGL contends that the applicable standard of proof for its claims is the ordinary civil standard of balance of probabilities and not a heightened burden of proof as Ghana alleges.<sup>347</sup>
385. According to TGL, Section 37(1) of the Evidence Act, 1975 ("**Ghanaian Evidence Act**"), on which Ghana relies, is irrelevant to the present case.<sup>348</sup> It contends that the said provision, codifying the presumption of regularity, is a rebuttable presumption of fact, not law. This means, according to TGL, that Section 37(1) creates a presumption regarding compliance with procedural formalities and does not pertain to the substantive basis for the exercise of governmental or decision-making power.<sup>349</sup> TGL further contends that the applicable standard of proof of a preponderance of probabilities is provided for in Section 21 of the Ghanaian Evidence Act; this makes clear that a rebuttable presumption does not alter that standard of proof.<sup>350</sup>

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<sup>342</sup> C-SoRy, ¶ 111, citing **Exh. CL-58**, ¶¶ 13, 14 and 68.

<sup>343</sup> C-SoRy, ¶ 112, citing **Exh. CL-40**, pp. 18-19 cited **Exh. RL-15**, pp. 15-16.

<sup>344</sup> C-SoRy, ¶¶ 120-121, citing Adjei-Djan Report, ¶¶ 68-70; **Exh. CL-42**, p. 19; **Exh. CL-47**, pp. 19-20

<sup>345</sup> C-PHB, Response to Issue 5(a) in the Updated List of Issues, citing Adjei-Djan Report, ¶¶ 66-70; Tr. Day 3, 218:1-232:7.

<sup>346</sup> Tr. Day 1, 18:11-19:19.

<sup>347</sup> C-SoRy, ¶¶ 114-115; Tr. Day 1, 20:18-23.

<sup>348</sup> C-SoRy, ¶¶ 118-119.

<sup>349</sup> C-SoRy, ¶ 116, citing **Exh. CL-40**, pp. 18-19 cited in **Exh. RL-67**, p. 16; **Exh. RL-9**, Sections 18(1), 20, 24 and 30; **Exh. RL-79**, p. 17; **Exh. RL-46**, pp. 25-26; **Exh. CL-44**; **Exh. CL-41**.

<sup>350</sup> C-SoRy, ¶ 117, citing **Exh. RL-9**, Section 21; **Exh. CL-36**, p. 295.

## 2. Respondent's Position

386. Ghana contends that pursuant to Ghanaian law, a tribunal reviewing a challenge to an administrative action, such as the GRA Assessment, must accord a “wide margin of deference” to that action.<sup>351</sup>
387. It argues that this is particularly important when reviewing taxation decisions<sup>352</sup> because (i) they are rendered by specialised, experienced authorities;<sup>353</sup> (ii) the PITL itself emphasises that deference must be accorded to the decisions of the Commissioner-General;<sup>354</sup> (iii) tax collection and tax administration invoke public interest elements;<sup>355</sup> and (iv) there are appeal procedures instituted within the Ghanaian legal system for addressing tax-related challenges, which would be undermined if tribunals could easily overturn the Commission-General’s decisions.<sup>356</sup>
388. In Ghana’s view, a tribunal’s role is limited to satisfying itself that the action was reasonable, *i.e.*, it was “within a range of possible, acceptable outcomes”.<sup>357</sup> Ghana contends that TGL cannot escape the above principles of Ghanaian law by disguising its challenge to the GRA Assessment as a contract claim.<sup>358</sup>
389. Ghana contends that TGL does not dispute that the Tribunal must accord deference to the GRA Assessment; the Parties differ only with respect to the degree of deference that must be accorded.<sup>359</sup> Ghana maintains that the standard under Ghanaian law is that of “substantial deference”. In response to TGL’s arguments, Ghana contends that (i) it is established that Articles 23 and 296 of the Ghanaian Constitution, pertaining to judicial review of administrative decisions, are not to be used to stifle the independence or authority of State institutions;<sup>360</sup> and (ii) the

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<sup>351</sup> SoD, ¶¶ 204-208, *citing* Demitia First Report, ¶¶ 30-31; **Exh. RL-37**, ¶¶ 46-47, 49; **Exh. RL-67**, p. 31; **Exh. RL-47**, pp. 12-13; **Exh. RL-46**, pp. 35-38.

<sup>352</sup> SoD, ¶ 213, 218, *citing* Demitia First Report, ¶ 32.

<sup>353</sup> SoD, ¶ 214, *citing* **Exh. RL-37**, ¶ 49.

<sup>354</sup> SoD, ¶ 215, *citing* **Exh. CL-25**, §§ 3(1)(c), 5(2)(a)-(b), 14(2), 16(2)(b), 16(3), 17(1); Demitia First Report, ¶ 32.

<sup>355</sup> SoD, ¶ 216, *citing* **Exh. RL-80**, pp. 21-22; **Exh. RL-85**, p.19.

<sup>356</sup> SoD, ¶ 217, *citing* Demitia First Report, ¶¶ 70-79; **Exh. RL-81**, pp. 8-9.

<sup>357</sup> SoD, ¶¶ 204-205, *citing* Demitia First Report, ¶ 30.

<sup>358</sup> R-SoRj, ¶¶ 139-145.

<sup>359</sup> R-SoRj, ¶¶ 129-131, *citing* **Exh. RL-66**, ¶¶ 22, 43; C-SoRy, ¶¶ 101(c); 110, 174(c), 180, 189; **Exh. CL-35**, ¶ 359.

<sup>360</sup> R-SoRj, ¶¶ 132-133, *citing* Demitia First Report, ¶¶ 30-32; Demitia Second Report, ¶¶ 5, 63; **Exh. RL-46**, pp. 35-38.

Ghanaian Supreme Court has upheld in several cases, as well as recently reaffirmed, the importance of according substantial deference to administrative decisions, the test being whether the decision at issue is “so unreasonable that it can be dismissed as one which could not reasonably be entertained”.<sup>361</sup>

390. In relation to point (ii) in the preceding paragraph, Ghana places some emphasis on the Supreme Court of Canada’s ruling in *Dunsmuir v. New Brunswick*, which was cited with approval by the Ghanaian Supreme Court in *Kofi A. Boateng v. Electoral Commission and Attorney General*.<sup>362</sup> Ghana disputes TGL’s assertion that *Dunsmuir* is no longer good law in Canada, arguing that, contrary to TGL’s assertions, *Canada*<sup>363</sup> (*Minister of Citizenship and Immigration*) *v. Vavilov* reaffirms the importance of the substantial reasonableness standard set forth in *Dunsmuir*.<sup>363</sup> Ghana contends that, in any event, the *Dunsmuir* principles continue to be relied on by Ghanaian courts.<sup>364</sup>
391. Ghana further relies on Section 37(1) read with Section 20 of the Ghanaian Evidence Act to argue that TGL bears a heightened standard of proof in its challenge of the GRA Assessment.<sup>365</sup> According to Ghana, TGL is required to prove “by clear and satisfactory proof that the [GRA Assessment] decision was unreasonable”.<sup>366</sup>

### 3. The Tribunal’s Considerations

392. The Tribunal will first address the Parties’ dispute on the applicable standard of review and then turn to the applicable standard of proof.
393. The Tribunal understands that the debate on the applicable standard of review of the GRA Assessment concerns the GRA’s exercise of its discretionary power under Section 5 of the PITL when issuing the Assessment.<sup>367</sup>

<sup>361</sup> R-SoRj, ¶¶ 134-137, citing Exh. RL-137, ¶¶ 3, 6-7, 41-46, 69; Exh. RL-87, pp. 1-2, 9, 14-15; Exh. RL-138, p.12; Exh. RL-98, p. 21; Exh. RL-67, p. 31; Exh. CL-58, ¶¶ 10, 13;

<sup>362</sup> SoD, ¶¶ 206-207, citing Exh. RL-37, ¶¶ 46-47, 49; Exh. RL-67, p. 31.

<sup>363</sup> R-SoRj, ¶ 137, citing Exh. CL-58, ¶¶ 10, 13.

<sup>364</sup> R-SoRj, ¶ 137, citing Exh. RL-67, p.31; Demitia First Report, ¶¶ 29-32; Demitia Second Report, ¶¶ 63-70.

<sup>365</sup> SoD, ¶¶ 209-211, citing Exh. RL-38, p. 11; Exh. RL-79, p. 6; Exh. RL-46, pp. 25-26; Exh. RL-9.

<sup>366</sup> SoD, ¶ 212; R-SoRj, ¶ 138, citing Exh. RL-12, p. 697; Exh. RL-79, p. 6; Exh. RL-119, p.12; Exh. RL-46, p. 38; Exh. RL-109, p. 14.

<sup>367</sup> Tr. Day 1, 18:18-19:19; Demitia First Report, §V.B.; Demitia Second Report, ¶ 5. Adjei-Djan Report, ¶¶ 58-70.

394. The Tribunal notes that at the Hearing, TGL clarified that the issue of the applicable standard of review is not relevant to its allegation that the GRA Assessment was issued in breach of Section 1 of the PITL, *i.e.*, on the basis of an incorrect calculation of the chargeable income,<sup>368</sup> and Ghana did not dispute TGL's proposition.

395. On applicable standard of review, the Parties agree that:

(i) The GRA Commissioner-General's discretionary authority under Section 5 of the PITL is subject to judicial review in Ghana pursuant to Articles 23 and 296 of the Constitution of Ghana.<sup>369</sup>

(ii) Articles 23 and 296 of the Ghanaian Constitution provide the basis for the applicable standard of review of an administrative or governmental decision under Ghanaian law. The test is one of reasonableness, which provides that a decision by a public body of an official will be regarded as unreasonable if it is a decision that no reasonable, properly informed decision-maker could reach.<sup>370</sup> It is not a standard of legal correctness.

(iii) The Tribunal must accordingly accord a degree of deference to the GRA Assessment.<sup>371</sup>

396. The Parties' disagreement only concerns whether a "substantial deference" standard applies as a matter of Ghanaian law for the review of administrative or governmental decisions, and if it applies to the Tribunal's analysis.

397. Before addressing this issue, the Tribunal considers it appropriate to make two preliminary observations.

398. *First*, the Tribunal is an international arbitral tribunal seated in London. Its role and powers are distinct from those of the Ghanaian tax authorities under the PITL or the Ghanaian constitutional court exercising its powers under Articles 23 and 296 of the Ghanaian Constitution. While the Tribunal applies Ghanaian law as part of the law governing the dispute in the arbitration, it does not do so in the exercise of statutory or constitutional powers, which are vested exclusively in the Ghanaian tax authorities

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<sup>368</sup> Tr. Day 1, 18:18-19:19.

<sup>369</sup> R-PHB, Response to Issue 5(a) in the Updated List of Issues, p. 35, *citing* Tr. Day 3, 171:8-21; 78:24-79:2; 200:4-14; Demitia Second Report, ¶ 68; C-PHB, Response to Issue 5(a) in the Updated List of Issues, *citing* Tr. Day 3: 218:1-232:7; C-SoRy, ¶¶ 108-113; Adjei-Djan Report, ¶¶ 66-70.

<sup>370</sup> Tr. Day 1, 19:25-20:3.

<sup>371</sup> Tr. Day 1, 20:4-14; 96:10-16.

and the Ghanaian constitutional court, respectively. This is relevant because the Tribunal does not presume to pronounce on how the Ghanaian constitutional court would review the GRA Assessment under Articles 23 and 296 of the Ghanaian Constitution. Such analysis is also not necessary for the Tribunal's review of the Parties' dispute regarding the GRA Assessment. The Tribunal is not sitting in appeal of the GRA Assessment in this arbitration.

399. *Second*, the Tribunal is conscious of the need to tread carefully insofar as tax matters are concerned. It is mindful that the assessment and collection of taxes are core exercises of State sovereignty, ordinarily entrusted to specialised administrative authorities and courts operating under dedicated statutory procedures. The Tribunal, therefore, approaches the review of the GRA Assessment with due regard for the institutional role and powers of those authorities and courts.
400. Having said that, based on the authorities presented by the Parties, the Tribunal is satisfied that Ghanaian law recognizes a substantially deferential reasonableness review of administrative decisions.
401. In the Tribunal's view, a number of judgments rendered by Ghanaian courts, including the recent judgment by the Ghanaian Supreme Court in *Republic v. Bank of Ghana Ex-Parte: Hoda Holdings Limited*,<sup>372</sup> make it clear that an administrative decision can be overturned only where the error was "fundamental, substantial, material, grave or so serious as to go to the root of the matter".<sup>373</sup> In the *Hoda Holdings* case, the Supreme Court held that the challenged administrative decision must be "so outrageous in its defiance of logic or of accepted moral standards that no sensible person, applying his mind to the relevant question, could have arrived at the decision".<sup>374</sup> This points strongly in the direction of a finding that the Court was applying a "substantial deference" standard of review.
402. That said, it is equally the case that the exercise of administrative power is not unfettered under the laws of Ghana. The Parties agree that administrative power and decisions are subjected to a standard of reasonableness. This does not require the reviewing court to agree with the decision under review, so much as to determine whether, on the facts of the particular case, the challenged decision falls within a

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<sup>372</sup> Exh. RL-137.

<sup>373</sup> Exh. RL-137, ¶ 44.

<sup>374</sup> Exh. RL-137, ¶ 45.

range of potentially reasonable outcomes. This is explained by the Court of Appeal in Accra in *Commissioner of Income Tax v. Maatschappij de Fijnhouthandel N.V.* where the Court ruled that an administrative decision cannot be challenged unless it was “so unreasonable that it can be dismissed as one which could not reasonably be entertained by them. It is not sufficient that the judge would himself have come to a different conclusion”.<sup>375</sup>

403. Having regard to the Tribunal’s two preliminary observations in ¶¶ 398 and 399 above, the Tribunal’s determination that a substantial deference standard is applied for review of administrative decisions under Ghanaian law, and considering that the dispute in the arbitration is governed by Ghanaian law, the Tribunal will take into account a substantial deference standard when reviewing the GRA Assessment.

404. The Tribunal now turns to the applicable standard of proof.

405. As noted in ¶ 398 above, the Tribunal is not exercising the functions of a Ghanaian tax authority or court; rather, it is resolving the Parties’ dispute in an international arbitration. The applicable standard of proof is therefore the ordinary civil standard of proof on the balance of probabilities typically applied in international arbitration.

## **B. DOES THE TAX ASSESSMENT CONSTITUTE A BREACH OF ARTICLE 12 OF THE PETROLEUM AGREEMENTS**

### **1. Claimant’s Position**

406. TGL contends that the GRA’s Tax Assessment constitutes a breach by Ghana of Article 12 of the Petroleum Agreements because it was not “in accordance with” the PITL.<sup>376</sup>

407. According to TGL, the principles of contractual interpretation under Ghanaian law are the same as under English law.<sup>377</sup> It argues that pursuant to such principles, Article 12 of the Petroleum Agreements should be construed (i) in accordance with their natural and ordinary meaning, having regard to the text and context, while (ii)

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<sup>375</sup> Ex. RL-87, p. 9.

<sup>376</sup> SoC, § IV.A; C-SoRy, § V.(A)-(E). In the SoC, TGL alleged a breach of both Articles 12 and 26.2 of the Petroleum Agreements. In the C-SoRy, it limited its claim to a breach of Article 12 of the Petroleum Agreements.

<sup>377</sup> SoC, ¶¶ 56 – 59, *citing*, Exh. CL-14; Exh. CL-15; Exh. CL-16; Exh. CL-12, pp. 5-9; Exh. CL-7, pp. 373-374; Exh. CL-17, ¶¶ 17-19; Exh. CL-9, p. 3; Exh. CL-10, p. 526; Exh. CL-20, pp. 112-114; Exh. CL-8, p. 533. *See also*, C-SoRy, ¶ 94.

giving effect to the principle of *pacta sunt servanda*; and (iii) avoiding any construction that would allow Ghana to invoke its own domestic laws to escape compliance with its obligations under the bespoke tax regime set out in the Petroleum Agreements.<sup>378</sup>

408. TGL contends that “[o]n their plain terms, Articles 12.1 and 12.2(ii) provide that income tax can only be imposed on TGL **in accordance with** the PITL, as stabilised in accordance with Article 26.2”.<sup>379</sup> It submits that pursuant to these provisions, only income tax at **the** rate of 35% calculated in accordance with the PITL can be levied on TGL.<sup>380</sup> It submits further that pursuant to Sections 1 and 2(1) of the PITL, such income tax may only be assessed on “chargeable income” of a person, which is to be calculated by reference to the “gross income of that person”.<sup>381</sup> TGL disputes Ghana’s assertion that Article 12 was limited to fixing the applicable tax rate.<sup>382</sup>
409. It is TGL’s case that the Tax Assessment was not in accordance with the PITL because it was imposed on insurance proceeds received by Tullow PLC under Section 4 of the Energy Package Policy covering business interruption and/or contingent business interruption risks. TGL submits that such insurance proceeds received by Tullow PLC do not constitute the chargeable income of TGL, as TGL neither received them nor did it have any entitlement to them.<sup>383</sup>
410. TGL contends further that Ghana’s assertion in the SoD that the Tax Assessment was made by the GRA pursuant to the anti-avoidance rule in Section 5 of the PITL is a “*post hoc* invention”, which not supported by contemporaneous documentary evidence.<sup>384</sup> In TGL’s view, the contemporaneous documentary evidence indicates that the Tax Assessment was issued pursuant to Sections 1 and 2 of the PITL.<sup>385</sup>
411. TGL refers to English law principles to argue that it is not an insured under Section 4 of the Energy Package Policy.<sup>386</sup> It contends that the GRA’s determination to the contrary was wrong because it proceeded on flawed premises, namely, that (i) TGL’s

<sup>378</sup> SoC, ¶ 61.

<sup>379</sup> SoC, ¶ 62 (bold and underline in original).

<sup>380</sup> SoC, ¶¶ 63-64.

<sup>381</sup> SoC, ¶ 65(a)-(c).

<sup>382</sup> Tr. Day 5, 23:1-24:2.

<sup>383</sup> SoC, ¶ 65(d)-(e).

<sup>384</sup> C-SoRy, ¶¶ 98-102, 104.

<sup>385</sup> C-SoRy, ¶ 103, *citing* Exh. C-78; Exh. C-79; Exh. C-80; Exh. R-38; Exh. C-138; Exh. C-7; Exh. R-44; Exh. C-8; Exh. C-9; Exh. C-10.

<sup>386</sup> SoC, ¶¶ 67-103; C-SoRy, ¶ 126 *et seq.*

alleged “*direct insurable interest*” under the Energy Package Policy should take precedence over Tullow PLC’s “*indirect insurable interest*”;<sup>387</sup> and (ii) Tullow PLC was holding the insurance proceeds as a trust for TGL.<sup>388</sup>

## 2. Respondent’s Position

412. In its written submissions, Ghana argued that the GRA’s Tax Assessment was issued in exercise of its discretionary authority under the general anti-avoidance rule in Section 5 of the PITL. According to Ghana, the GRA determined that the arrangement under the Energy Package Policy, whereby Tullow PLC exclusively recovered the insurance proceeds resulting from the KNK FPSO Loss Event, was an artificial or fictitious transaction, amounting to a tax avoidance scheme.<sup>389</sup> At the Hearing, Ghana submitted that “[v]arious sections of the PITL, particularly Sections 1 through 5, which fall under the heading ‘Imposition of Tax and Ascertainment of Chargeable Income’” form the legal basis of the Tax Assessment.<sup>390</sup>
413. Ghana argues further that the GRA’s decision was reasonable for the following reasons:
- (i) Claimant is an insured party under the definition of “Insured” in the Energy Package Policy, including for purposes of Section 4 of the Policy.<sup>391</sup> This is clear from a plain reading of the definition of “Insured” as well as contemporaneous statements made by Tullow PLC’s tax manager, Mr. Inch, during the GRA’s investigation in 2022.<sup>392</sup>
  - (ii) Furthermore, the distinction sought to be drawn by Claimant with respect to the definition of insured for purposes of the business interruption cover under the Energy Package Policy is not supported by the terms of the Policy and it is also contradicted by the Loss Adjuster Report on the KNK-FPSO Loss Event as well as other loss Adjuster reports concerning the Jubilee Field.<sup>393</sup>

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<sup>387</sup> SoC, ¶¶ 105-108.

<sup>388</sup> SoC, ¶¶ 109-111.

<sup>389</sup> SoD, ¶¶ 220-227.

<sup>390</sup> R-PHB, Response to Issue 6(a) in the Updated List of Issues, p. 49.

<sup>391</sup> SoD, § IV.B.2.a

<sup>392</sup> SoD, ¶¶ 230-232, citing **Exh. R-44**.

<sup>393</sup> SoD, ¶¶ 234-243; R-SoRj, ¶¶ 168-170.

- (iii) The Business Interruption Insurance Proceeds compensated the loss of production/revenue suffered and the increased costs of operation incurred by TGL as the owner and operator of KNK FPSO, and not of Tullow PLC, which had no petroleum operations in Ghana.<sup>394</sup>
  - (iv) The Insurance Proceeds indemnified TGL's business interruption interests and not Tullow PLC's business interruption and/or contingent business/interruption interest.<sup>395</sup>
  - (v) Tullow PLC received the insurance proceeds on its behalf of the other insureds listed in the definition of "Insured" in the Energy Package Policy.<sup>396</sup>
414. Relying on the expert report of Mr. Demitia, Ghana argues that the GRA's adjustment of TGL's tax liability was correct upon an application of Section 5 of the PITL.<sup>397</sup>
415. Ghana disagrees with TGL regarding the relevance of English insurance law for purposes of determining whether the GRA Assessment was correctly issued. In Ghana's view, the key question was (and is) whether the GRA reasonably applied Ghanaian tax law.<sup>398</sup> That said, it argues that a court applying English law would also conclude, based on the natural and ordinary reading of the Energy Package Policy's definition of "Insured" that TGL is covered under Section 4 of the Policy.<sup>399</sup>
416. Ghana also contests TGL's arguments challenging the GRA Assessment on grounds that were not raised before the Ghanaian authorities at the relevant time (*i.e.*, during its investigation and assessment). In particular, Ghana objects to TGL's reliance on the FICE coverage under the Energy Package Policy, the Tullow Group's internal policies and documents, and on Ghanaian insurance law principles.<sup>400</sup> It also objects to TGL's reliance on English insurance law principles, arguing that these were not raised by TGL before the GRA at the relevant time.<sup>401</sup>

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<sup>394</sup> SoD, ¶¶ 244-253 *citing* Exh. C-98; Exh. C-66; C-80; Exh. C-86; Exh. C-96; Exh. R-47; Exh. R-31; Exh. R-36; Exh. C-10; Exh. C-71; Exh. C-72; Exh. C-75; Exh. C-81; Exh. C-92; R-SoRj, ¶¶ 155-167.

<sup>395</sup> SoD, ¶¶ 254-261.

<sup>396</sup> SoD, ¶¶ 262-265.

<sup>397</sup> SoD, ¶¶ 265-276; R-SoRj, ¶ 148.

<sup>398</sup> SoD, ¶¶ 276-278.

<sup>399</sup> SoD, ¶¶ 279-285; R-SoRj, ¶¶ 211-232.

<sup>400</sup> SoD, ¶¶ 286-308.

<sup>401</sup> R-SoRj, ¶¶ 152-154.

### **3. The Tribunal's Analysis**

417. The Tribunal first provides an overview of the reasoning and decision in the GRA Assessment (i), following which it will address TGL's claim that the Tax Assessment therein constitutes a breach of Article 12 of the Petroleum Agreements (ii).

#### **i. The GRA Assessment**

418. The GRA Assessment pertains to TGL's tax liability for FY 2016-2019 on account of the alleged "[n]on-disclosure by TGL/Tullow Oil Plc of insurance recoveries totaling \$561,559,991.00 received between the period 2016 to 2019 for loss of revenue and increased cost of working consequent upon failure and damage to the turret of FPSO Kwame Nkrumah of the Jubilee Oils fields".<sup>402</sup>

419. The GRA examined the following issues as part of the Assessment:

- 3.1. Whether TGL is an insured under the policy.
- 3.2. Whether TGL is entitled to the amount of \$561,559,991.00 recovered from the insurers by Tullow Oil Plc.
- 3.3. Whether Tullow Oil Plc. is exclusively entitled to the amount of \$561,559,991.00 recovered from the Insurers as a result of the damage of an asset owned by TGL in the territorial waters of Ghana.
- 3.4. Whether it is legal under the tax laws of Ghana for TGL/Tullow Oil Plc. not to disclose the said amount in the financial statements and the tax returns of TGL for the period 2016 to 2019 on the basis that Tullow Oil Plc. did not charge the insurance premium to TGL.<sup>403</sup>

420. The GRA Assessment records that the GRA received the following documents from TGL/Tullow PLC during its investigation:

- (i) The Loss Adjuster Report;
- (ii) Full and Final Payment Release;
- (iii) The Energy Package Policy;
- (iv) The Insurance Payment Slip prepared by Marsh, the insurance broker; and
- (v) the MatthewsDaniel Clarification.<sup>404</sup>

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<sup>402</sup> Exh. C-10, ¶ 1.0.

<sup>403</sup> Exh. C-10, ¶¶ 3.1-3.4

<sup>404</sup> Exh. C-10, ¶ 2.4.

421. On the *first issue*, which concerns the identity of “insured” under the Energy Package Policy (see ¶ 419 above), the GRA noted that the definition of “insured” under the Energy Package Policy covered Tullow PLC and/or parent and/or subsidiary. It determined that since TGL was a *bona fide* subsidiary of Tullow PLC, it fell within the definition of an insured under the Policy.<sup>405</sup>
422. On the *second and third issues*, which concern the question whether TGL was entitled to receive Business Interruption Insurance Proceeds under the Energy Package Policy (see ¶ 419 above), the GRA determined that because (i) TGL is an insured under the Policy, and (ii) the KNK FPSO is owned by it, TGL is entitled to the insurance proceeds recovered from the insurers within the Tullow Group. The GRA considered that TGL’s “direct insurable interest” in the KNK FPSO superseded Tullow PLC’s indirect insurable interest as a shareholder of TGL. The GRA formed the view that Tullow PLC was acting as a trustee of TGL with respect to the Business Interruption Insurance Proceeds paid under the Energy Package Policy.<sup>406</sup>
423. The *fourth issue* concerned whether, under Ghanaian law, TGL/Tullow PLC was permitted not to disclose the amount of the Business Interruption Insurance Proceeds in TGL’s financial statements for the relevant years on the basis that TGL did not pay the insurance premium under the Energy Package Policy (see ¶ 419 above). The GRA determined that TGL was not permitted to do so and regarded the non-disclosure as fraudulent misrepresentation amounting to tax fraud as a matter of Ghanaian law:
- the non-disclosure and failing to recognize the insurance recoveries, totaling \$561,559,991, in the financial statements and tax returns of TGL for the period 2016 to 2019 in computing the chargeable income for corporate income tax payments amounts to fraudulent mis-representation and non-disclosure which constitutes a tax fraud as it was planned and done intentionally to evade corporate income tax payments by TGL.<sup>407</sup>
424. The GRA reached the above determination, amongst others, on the basis that:<sup>408</sup>
- (i) During the GRA’s investigation, and three years after its issuance, Tullow PLC sought to cause an amendment of the Loss Adjuster Report to change

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<sup>405</sup> Exh. C-10, ¶ 5.1.  
<sup>406</sup> Exh. C-10, ¶¶ 5.2-5.3.  
<sup>407</sup> Exh. C-10, ¶ 5.4.  
<sup>408</sup> Exh. C-10, ¶¶ 5.5.1 – 5.6.1.

the name of the insured from TGL to Tullow PLC. The GRA regarded the MatthewsDaniel Clarification as an attempt to “cover up fraudulent non-disclosure and mis-representation leading to tax evasion which is a criminal act under the laws of Ghana”; and

- (ii) Tullow PLC did not provide any evidence to prove that it did not charge the insurance premium under the Energy Package Policy to TGL.

425. The GRA considered that if the Energy Package Policy indeed was intended to exclude TGL, despite TGL’S owning and claiming the physical assets that were damaged and for which insurance payments were made, it was fraudulent. According to the GRA, this was:

confirmation of Tullow Oil plc fraudulent intention to order TGL business affairs in a manner to evade corporate income tax payments in Ghana. This is emphasized by the fact that Tullow Oil plc did not own any physical assets in Ghana and Tullow Oil PLC did not incur any increased cost of working or directly lose any revenue as a result of the physical damage to TGL’s asset in Ghana to be entitled exclusively to the insurance recoveries.<sup>409</sup>

426. Based on the foregoing, the GRA proposed that “a tax of \$196,545,996.85 is assessed on the amount of \$561,559,991.00 and a penalty imposed on TGL as required by Section 33 of Act 188, making a total of \$393,091,993.70 assessed as TGL total tax liability in accordance with Act 188- PITL”. The aforementioned amount of USD 561,559,991.00 is the amount of Business Interruption Insurance Proceeds recovered by Tullow PLC under the Energy Package Policy between FY 2016-2019 on account of losses arising from the KNK FPSO Loss Event (see ¶ 147 above).

427. The GRA shared the above reasoning with TGL/Tullow PLC in the Proposed Tax Assessment Report, inviting the latter to show cause as to why:

- (i) the GRA should not proceed to issue a final tax adjustment on the basis set out in the preceding paragraphs; and
- (ii) TGL/Tullow PLC should not be reported to the appropriate authorities in Ghana for prosecution for aggravated criminal conduct of tax evasion and attempting to deceive a public officer.

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Exh. C-10, ¶ 5.6.2.

428. It is a matter of record that TGL provided preliminary comments on the GRA's show cause notice on 10 November 2022 with further comments on 25 November 2022 (see ¶¶ 192 - 193 above).

429. The GRA Assessment records that TGL responded to the GRA's show cause notice on 25 November 2022 as follows:

1. TGL is not insured for loss of production insurance under the policy and therefore is not entitled to the insurance recoveries. Therefore, the insurance recoveries of \$561,559,991 was not disclosed in the financial statements and tax returns of TGL for tax purposes as it is not required by the Petroleum Income Tax Law, Act 188.

2. Tullow Oil Plc alone took the loss of production insurance policy to protect only Tullow Oil Plc interest and not that of TGL, and therefore the amount of \$561,559,991 was accordingly disclosed in only Tullow Oil Plc financial statements and tax returns to HMRS in the United Kingdom of Britain for tax assessment by the UK.

3. The GRA is time barred from raising assessment for the years prior to 2018 as proposed. Therefore, TGL is not liable to pay the GRA the amount to be assessed as proposed.<sup>410</sup>

430. The GRA rejected the reasons provided by TGL and held that "TGL is assessed to have evaded \$196,545,996.85 in corporate income taxes for the financial period between 2016 and 2019 as a result of intentional non-disclosure of admissible income of \$561,559,991.00 during the said period".<sup>411</sup>

**ii. Whether the Tax Assessment in the GRA Assessment constitutes a breach of Article 12 of Petroleum Agreements**

431. As a preliminary matter, the Tribunal notes that in the Updated List of Issues, it identified several sub-issues as relevant to addressing the Parties' dispute under this head, based on their respective positions presented in the arbitration. However, a number of the sub-issues identified by the Tribunal fall away for the reasons discussed further below.

432. Ghana contends that the Tax Assessment cannot constitute a breach of Article 12 of the Petroleum Agreements because its obligation under Article 12.2(ii) is limited to fixing the income tax rate at 35%. By contrast, TGL contends that Article 12.2(ii) of the Petroleum Agreements is not limited to the rate of tax. According to TGL, the

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<sup>410</sup> Exh. C-10, ¶ 7.0.

<sup>411</sup> Exh. C-10, ¶ 8.3.

use of the phrase “in accordance with [the PITL]” in Article 12.2(ii) extends the scope of Ghana’s contractual obligation to ensuring that the provisions of the PITL are complied with when imposing income tax on TGL’s activities related to its Petroleum Operations and to the sale and export of Petroleum.

433. The two (slightly differently worded) Article 12.2(ii) provisions of the Petroleum Agreements provide as follows:

| DWT Petroleum Agreement                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | WCTP Petroleum Agreement                                                                                                                                                                                                                                                             |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Contractor shall be subject to the following: [ . . . ] ii) Income Tax in accordance with the Petroleum Income Tax Law 1987 (PNDC L188) levied at the rate of thirty-five percent (35%) as stipulated in the Petroleum Income tax Law 1987, PNDC Law 188. Where a new income tax rate comes into force as a result of the promulgation of the new Petroleum Income Tax Law currently before Cabinet, Contractor shall have the option of either applying the new income tax rate to this Agreement or remaining under the Petroleum Income Tax Law, 1987, PNDC Law 188 [ . . . ] | Contractor shall be subject to the following: [ . . . ] (ii) Income Tax at the rate of thirty-five percent (35%), calculated in accordance with the Petroleum Income Tax Law 1987 (PNDC L.188) or at such lower rate as may be applicable under an amended Petroleum Income Tax Law; |

434. The Tribunal considers that these Articles address two separate matters: (i) income tax will be imposed *in accordance with* the PITL on the Contractor’s activities relating to its Petroleum Operations and to the sale and export of Petroleum in accordance with the PITL; and (ii) the *rate* of income tax will be 35% as was prescribed under the PITL at the time, or a new rate when updated under the PITL, (in one case at the option of the contractor and in the other case if it is a lower rate).
435. The Tribunal agrees with TGL that if Ghana’s interpretation of Article 12.2(ii) were to be accepted, *i.e.*, the provision was intended only to fix a tax rate, it would render the phrase “in accordance with [the PITL]” redundant. Therefore, the Tribunal does not agree with Ghana that the Tax Assessment cannot implicate Article 12 of the Petroleum Agreements at all.

436. Having said that, for the following reasons, the Tribunal does not consider the Tax Assessment to constitute a breach of Article 12 of the two Petroleum Agreements.

437. *First*, the Tribunal accepts Ghana's position that the Tax Assessment was issued pursuant to Sections 1, 2 and 5 of the PITL (emphasis by the Tribunal). Sections 1 and 2 provide the basis on which income tax is to be calculated under the PITL. Section 5 sets forth the general anti-avoidance rule in the PITL.

(i) Section 1 of the PITL, entitled "Charge of tax", provides that:

A person conducting petroleum operations shall, subject to this Act, pay for each year of assessment a tax on chargeable income calculated in the manner provided in this Act.

(ii) Section 2(1) of the PITL, entitled "Ascertainment of chargeable income", provides that:

(1) The chargeable income of a person conducting petroleum operations for a year of assessment from and after the year of commencement shall be calculated by deducting from the gross income of that person for that year the amounts specified in section 3.

(2) For the purpose of ascertaining the gross income, the income of that person from the sale of petroleum shall be taken into account at the selling price actually realised, and in the case of a sale to an affiliate or an export without sale at world market prices established in the manner provided for in the petroleum agreement to which that person is a party.

(iii) Section 5 of the PITL, entitled "Artificial of fictitious transactions" provides that:

(1) Where the Commissioner-General is of the opinion that a transaction which reduces or would reduce the amount of tax payable by a person, is artificial or fictitious, the Commissioner-General may disregard that transaction and direct that the adjustments shall be made with regards to liability to tax that the Commissioner considers appropriate, so as to prevent the reduction of liability to tax effected, or the reduction which would otherwise be effected by the transaction, and the person concerned shall be assessed accordingly.

(2) For the purpose of subsection (1), the following transactions are artificial or fictitious:

(a) transactions of which the main purpose or one of the main purposes, is, in the opinion of the Commissioner-General, the avoidance or reduction of liability to tax;

(b) transactions between persons one of whom, has control over the other, or in the case of a natural person is related to the other, or transactions between persons both of whom are controlled by some

other person which, in the opinion of the Commissioner-General have not been made on the terms which might fairly have been expected to have been made by independent persons engaged in the same or similar activities dealing with one another at arms length.

438. TGL contends that because the Tax Assessment does not specifically refer to Section 5 of the PITL, it cannot be regarded as having been issued under that provision.
439. The Tribunal is not persuaded. The Tax Assessment makes clear at several places that it considered the arrangement whereby Tullow PLC received the Business Interruption Insurance Proceeds under the Energy Package Policy for losses arising from the KNK FPSO Loss Event to be in the nature of a tax avoidance or a tax fraud scheme. The GRA Assessment also records that the GRA regarded TGL to have made a fraudulent misrepresentation by failing to disclose the Business Interruption Insurance Proceeds in its financial statements for the relevant years (see ¶¶ 424 and 425 above).
440. In the Tribunal's view, these indications in the Tax Assessment, even absent a specific reference to Section 5 of the PITL, suggest that the GRA had invoked Section 5 of the PITL as part of its assessment. They make clear that the GRA considered the main purpose or one of the main purposes of the Energy Package Policy was to cause a reduction in the tax payable by TGL in Ghana in the event of an insured loss. Even if TGL would be correct that the Tax Assessment is not clear that the GRA reached its determinations on TGL's adjusted tax liability based on Section 5 of the PITL, it is not within the remit of this Tribunal to determine or pronounce how the GRA should have recorded its findings in the Tax Assessment. The Tribunal finds support for this finding in Mr Demetia's opinion that, in contradiction to TGL's contention that the GRA was obliged to follow a "three-stage analysis", "the text of the PITL does not require the Commissioner-General to follow a specific number of steps in a particular sequence."<sup>412</sup>
441. The Tribunal notes that TGL agrees that deference must be afforded to an assessment made under Section 5 of the PITL. Based on the above, the Tribunal accepts Ghana's position that the GRA had invoked Section 5 of the PITL as part of its assessment

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<sup>412</sup> Demetia Second Report ¶ 22.

into TGL. Having reached this conclusion, it is not for this Tribunal to require that the GRA, as an administrative agency, must follow a particular form of analysis.

442. *Second*, in this regard, the Tribunal notes that the GRA's analysis under Section 5 of the PITL is based on a discretionary power that is specifically vested in the GRA under Ghanaian law. It begins with "Where the Commissioner-General is of the opinion". The Tribunal's analysis, therefore, is necessarily guided by whether the Commissioner-General of the GRA could have reached the conclusion that TGL's tax liability for FY 2016-2019 required adjustment to account for the Business Interruption Insurance Proceeds generated under the Energy Package Policy.
443. Applying the standard of substantial deference, the Tribunal is satisfied that conclusions in the Tax Assessment were reasonable in the circumstances put forth before and considered by the Commissioner-General of the GRA, namely:
- (i) the definition of "Insured" under the Energy Package Policy, which covered Tullow PLC and its subsidiaries;
  - (ii) the fact that the payment made under the Energy Package Policy was under the Business Interruption coverage for damage to the KNK FPSO, a vessel situated in Ghana and an integral part of the oilfield operations owned and operated solely by TGL, not by Tullow PLC;
  - (iii) the Loss Adjuster Report dated 14 August 2019, which mentioned at several places that the losses being insured were suffered by TGL;
  - (iv) the fact that the Commissioner-General was applying Ghanaian taxation law (not English insurance law) in making the tax assessment; and
  - (v) in any event, the fact that, at the time of the assessment, TGL had not provided substantiated English law evidence to the Commissioner-General for purposes of interpreting the Energy Package Policy under the applicable English law.
444. *Third*, the Tribunal is persuaded by Mr. Yamborigya's testimony regarding the underlying logic of the Tax Assessment. Dr. Yamborigya testifies that that the GRA took issue with the fact that Tullow PLC had "made a claim and received payment for TGL's losses." It regarded this to be "not proper under Ghanaian tax law," "because the insurance proceeds made up for a shortfall of income that, but for the

damage to the FPSO, would have been earned in the first instance by TGL and subjected to mandatory income tax law under Section 1 of the PITL”.<sup>413</sup> Thus, had the KNK FPSO Loss Event not occurred, TGL would have earned revenue from its petroleum operations (and not incurred the increased costs of working) in Ghana. In that scenario, TGL’s income unquestionably would have been subject to the mandatory income tax pursuant to the PITL before any profit could be distributed by way of dividends to its parent company.

445. *Fourth*, TGL’s arguments on interpretation of the Energy Package Policy under English law do not assist its case because the detailed English insurance evidence put forth in this arbitration was not put before the GRA at the time of its Assessment, nor, in the Tribunal’s view, was the GRA obliged to enter into its own detailed inquiry as to how the Energy Package Policy was to be construed as a matter of English law. Indeed, even if TGL’s position that TGL was not an insured for the purposes of the Business Interruption coverage under the Energy Package Policy is correct as a matter of English insurance law, it does not provide a complete answer to GRA’s opinion that the Policy was structured or operated so as to bypass the Ghanaian tax net.
446. In the Tribunal’s view, it was not unreasonable for the GRA to conclude, based on the material before it, that (i) a Loss Event occurring in Ghana; (ii) which was suffered by the Ghanaian legal person that owned and controlled the damaged assets (*i.e.*, TGL); (iii) in respect of which the calculation of the insurable loss was dependent upon data pertaining to reduced production and increased working costs that could only have been generated (in the case of data) and suffered (in the case of increased costs of working) by that Ghanaian legal person (*i.e.*, TGL); (iv) which data and costs could only *then* be employed by Tullow PLC in its dealings with the insurer; and (v) tellingly, in which TGL was treated over a period of many months by the Loss Adjuster as the Insured (until the MatthewsDaniel Clarification was issued), all pointed to the locus of the loss of income being Ghana. The Tribunal considers that the GRA’s conclusion that the loss was so closely tied to the Ghanaian taxpayer’s business that, but for the Loss Event, the production would in the normal course of business have occurred in Ghana and would have been taxed by it in

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<sup>413</sup> Yamorigya Second Statement, ¶¶ 6-7.

accordance with the PITL, could have been reasonably reached based on the material before the GRA.

447. *Fifth*, for the avoidance of doubt, the Tribunal makes clear that its determinations above are not based on an analysis of the Energy Package Policy under English insurance law. Although the dispute before the Tribunal is contractual in nature, its resolution is not dependent on an interpretation of the terms of the Energy Package Policy. The Tribunal's inquiry is limited to assessing whether the GRA could reasonably reach the conclusions reflected in the Tax Assessment based on the material before it. The Tribunal, therefore, makes no finding on the scope of the "Insured" under the Energy Package Policy or whether TGL was actually entitled to receive the Business Interruption Insurance Proceeds under the Energy Package Policy. Therefore, the Tribunal does not consider the precise position under English insurance law to be determinative to the review of the GRA Assessment based on the substantial deference standard employed by the Ghanaian courts.

448. For the foregoing reasons, the Tribunal is satisfied that the Tax Assessment cannot be regarded as unreasonable. Accordingly, the Tribunal rejects TGL's claim for breach of the Article 12 of the Petroleum Agreements under this head.

**C. DOES THE IMPOSITION OF PENALTY IN THE GRA ASSESSMENT CONSTITUTE A BREACH OF ARTICLE 12 OF THE PETROLEUM AGREEMENTS?<sup>414</sup>**

**1. Claimant's Position**

449. TGL contends that the GRA's imposition of the Penalty is a breach of Article 12 of the Petroleum Agreements because the pre-conditions under Section 33 of the PITL were not met.<sup>415</sup>

450. TGL contends that it neither (i) failed without reasonable excuse to make a return or statement; nor (ii) make an incorrect return or statement; nor (iii) give incorrect information in relation to a matter affecting its or another person's liability, as

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<sup>414</sup> In the SoC, TGL argued that the imposition of Penalty constituted a breach of Articles 12 and 26.2 of the Petroleum Agreements. In the C-SoRy, TGL no longer maintained its claim for breach of Article 26.2 of the Petroleum Agreement on account of the imposition of Penalty. *See* C-SoRy, fn. 375 ("TGL accepts that, on the basis that Ghana does not seek to rely on any change in law in support of the Penalty, TGL's claim that the Penalty is not in accordance with the PITL would not give rise to a breach of Article 26.2 of the Petroleum Agreements independent of Article 12.").

<sup>415</sup> SoC, ¶ 114; C-SoRy, ¶ 198.

required under Section 33 of the PITL for the imposition of a penalty. It further submits that “critically” TGL had not been subject to any “summary conviction” in Ghana on any of these grounds, which, according to TGL, is a necessary requirement for any penalty under Section 33 of the PITL.<sup>416</sup>

451. With respect to Ghana’s contentions (see ¶ 459 below), TGL contends that:<sup>417</sup>

- (i) it had correctly informed the GRA that it was not an insured for the purposes of Section 4 of the Energy Package Policy and had no entitlement to the business interruption insurance proceeds received by Tullow PLC thereunder;
- (ii) it did not delay providing or provide incorrect information relating to the Loss Adjuster Report. TGL contends that it had *bona fide* concerns as to whether it was permitted to share a copy of the Loss Adjuster Report with the GRA. It objects to Ghana’s suggestion that MatthewsDaniel, a reputable and independent loss adjuster, would have fraudulently issued a correction to the Loss Adjuster Report;
- (iii) Ghana incorrectly argues that there is no requirement for a summary conviction for imposition of penalty under Section 33 of the PITL;<sup>418</sup> and
- (iv) Section 35 of the PITL prescribes the procedure for collection of penalty after it has been correctly imposed under Section 33 following a summary conviction.<sup>419</sup>

452. TGL disputes Ghana’s assertion that Article 12 of the Petroleum Agreements does not provide protection to TGL in relation to the Penalty imposition. It contends that penalty falls within the scope of “other imposts” in Article 12, which, in turn covers “[a]nything imposed, levied or enjoined”.<sup>420</sup>

453. TGL finds Ghana’s characterisation of the Penalty as a “governmental administration” to be “wholly artificial”. It contends that since the GRA Assessment, including the Penalty, applied in relation to TGL’s Petroleum Operations and the sale and export of Petroleum gave rise to the income against which the Insurance Assessment was applied, the Penalty necessarily qualifies as an “other impost . . . in

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<sup>416</sup> SoC, ¶¶ 112-114; C-SoRy, ¶¶ 199-200.

<sup>417</sup> C-SoRy, ¶ 203.

<sup>418</sup> Adjei-Djan Report, ¶¶ 80-82.

<sup>419</sup> Adjei-Djan Report, ¶ 82.

<sup>420</sup> C-SoRy, ¶ 201(a).

respect of activities related to Petroleum Operations and to the sale and export of Petroleum”.<sup>421</sup>

## **2. Respondent’s Position**

454. Ghana contends that TGL’s claim regarding the Penalty imposition in the GRA Assessment is not arbitrable because Article 12 of the Petroleum Agreements does not govern penalties imposed by the GRA.<sup>422</sup>
455. It argues that Article 12 is limited to taxes or impositions closely related to tax, such as “duty, fee or other impost”. This does not include a penalty, which is different from a tax, in Ghana’s view. Ghana submits that where the contracting parties had intended to refer to penalties in the Petroleum Agreements, that was expressly done, for e.g. in Article 26.9 of the DWT Petroleum Agreement.<sup>423</sup>
456. Ghana contends that TGL’s contention that the Penalty constitutes an “impost” under Article 12 of the Petroleum Agreements is a belated attempt to broaden the scope of Article 12. It argues that it is clear that the Penalty is not an impost under Article 12 from (i) the legal definition of “impost”; (ii) the structure of the Petroleum Agreements, specifically that the term penalty has been expressly mentioned in other provisions of the Agreements; and (ii) the objective of Article 12, which is to delineate the taxes and duties (including customs duties) to which TGL is subject.<sup>424</sup>
457. Ghana contends that even if the Penalty would be regarded as a tax, it was not imposed in respect of activities related to the Petroleum Operations and to the sale and export of Petroleum and, therefore, is not covered by Article 12 of the Petroleum Agreements. Ghana argues that the Penalty is related to “governmental administration”, a means to enforce penal and revenue laws.<sup>425</sup> Ghana contends that it is an “almost universal principle” globally that the enforcement of penal and revenue laws is “not a matter of contract but of authority and administration as between the State and those within its jurisdiction”.<sup>426</sup>

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<sup>421</sup> C-SoRy, ¶ 201(b).

<sup>422</sup> SoD, ¶ 310.

<sup>423</sup> SoD, ¶¶ 311-316.

<sup>424</sup> R-SoRj, ¶¶ 296-299.

<sup>425</sup> SoD, ¶¶ 318-319.

<sup>426</sup> SoD, ¶ 219; R-SoRj, ¶ 305.

458. Ghana disagrees with TGL that because the Penalty was imposed on TGL's Petroleum Operations and to the sale and export of Petroleum, it is covered within Article 12 of the Petroleum Agreements. This is too far removed an approach, according to Ghana. It argues that if TGL's argument in this regard were to be accepted, "any type of monetary imposition—including, for example, any fine or penalty—imposed on TGL would be done 'in respect of activities related to Petroleum Operations,' because anything TGL does in Ghana would have a 'connection with' its petroleum operations".<sup>427</sup> Ghana contends that this would serve to expand the scope of Article 12 rather than limit it, contrary to the purpose of the provision.<sup>428</sup>
459. Ghana further contends that, in any event, the Penalty was lawfully imposed by the Commissioner-General under Section 33 of the PITL because:<sup>429</sup>
- (i) TGL, without reasonable excuse, made incorrect returns or statements, including by failing to disclose the income derived from the insurance proceeds under the Energy Package Policy in each of the annual returns it filed for FYs 2016-2019, leading to a tax shortfall of USD 196,545,996.85;<sup>430</sup>
  - (ii) TGL, without reasonable excuse, gave incorrect information in relation to TGL's status and entitlements as an insured entity under the Energy Package Policy, a matter which affected TGL's tax liability;<sup>431</sup>
  - (iii) TGL gave incorrect information regarding its alleged inability to provide the Loss Adjuster Report to the SIAT and also delayed providing the said Report;<sup>432</sup> and
  - (iv) It is evident from Section 35 of the PITL that the imposition of a penalty under Section 33 of the PITL did not require a "summary conviction".<sup>433</sup>

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<sup>427</sup> R-SoRj, ¶ 304.

<sup>428</sup> R-SoRj, ¶¶ 310-304.

<sup>429</sup> SoD, ¶¶ 324-330; R-SoRj, ¶¶ 307-317.

<sup>430</sup> SoD, ¶ 327, *citing* Exh. C-10, ¶¶ 5.6.3, 8.3; Exh. R-16, pp. 3-4; Exh. R-24, pp. 2-3; Exh. R-27, pp. 2-3; Exh. R-29, pp. 2-3; Demitia First Report, ¶¶ 49-51; Exh. C-71; Exh. C-75; Exh. C-81 and Exh. C-92; R-SoRj, ¶ 310.

<sup>431</sup> SoD, ¶ 328; R-SoRj, ¶ 310.

<sup>432</sup> SoD, ¶ 329; R-SoRj ¶¶ 311-312.

<sup>433</sup> SoD, ¶¶ 331-333, *citing* Demitia First Report, ¶ 53; Exh. RL-12, pp. 704-705; Exh. R-3, p. 20; R-SoRj, ¶¶ 314-316, *citing* Demitia First Report, ¶¶ 52-61; Demitia Second Report, ¶¶ 76-82; Exh. R-20, p. 20; Exh. CL-25, § 33(4).

### 3. The Tribunal's Considerations

460. There are two broad issues to be considered for addressing TGL's claim under this head:

- (i) Whether the Penalty imposed in the GRA Assessment implicates Article 12 of the Petroleum Agreements;<sup>434</sup> and
- (ii) If yes, whether the Penalty was imposed in contravention of Section 33 of the PITL, and accordingly was not "in accordance with" the PITL for the purpose of Article 12.<sup>435</sup>

461. Article 12 of each Petroleum Agreement is extracted in ¶¶ 108 and 109 above. As noted in ¶ 107 above, the two provisions are largely identical and broadly provide that no "tax, duty, fee or other impost" shall be imposed on the contractor under the Agreement "in respect of activities related to Petroleum Operations and to the sale and export of Petroleum", save for income tax in accordance with the PITL calculated at the rate of 35% or at an amended income tax rate that may come into force later.

462. The first disputed issue, mentioned in ¶ 460 above, concerns the scope of Article 12 of the Petroleum Agreements. The Parties disagree on (i) whether a penalty can be regarded as an "other impost" for purposes of Article 12.1 of the Petroleum Agreements; and (ii) whether the Penalty imposed on TGL in this case was in respect of activities related to Petroleum Operations and to the sale and export of Petroleum.

463. On (i), TGL contends that "the term 'impost' [in Article 12.1] extends to any 'imposition' which, in turn, encompasses '[a]nything imposed, levied or enjoined'". On this basis, it argues that Article 12.1 "plainly covers penalties issued in connection with tax assessed in respect of activities related to Petroleum Operations or the sale and export of Petroleum".<sup>436</sup> This is disputed by Ghana, which contends that the term "other impost" in Article 12.1 is intended to mean a type of tax or duty, which, in its view, is also supported by the structure of the Petroleum Agreements.<sup>437</sup>

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<sup>434</sup> This covers Issues 7(a) and (b) in the Updated List of Issues.

<sup>435</sup> This covers Issue 7(i)(a) in the Updated List of Issues.

<sup>436</sup> C-SoRy, ¶ 201(a).

<sup>437</sup> R-SoRj, ¶ 298.

464. The Tribunal finds Ghana's position persuasive in light of the context and objective of Article 12 and based upon a holistic reading of the Petroleum Agreements.
465. The objective behind Article 12 of the Petroleum Agreements is to provide contractual protection by fixing the fiscal regime applicable to revenue earned from activities related to Petroleum Operations and from the sale and export of Petroleum. The contractual protection afforded under Article 12 is directed at fixing the type of tax that is payable on such revenue under the PITL: income tax imposed in accordance with the PITL calculated at the rate of 35% or at an amended income tax rate that may come into force later.
466. The Tribunal understands that the Parties are not in dispute regarding the objective behind Article 12. Ghana's position in this regard is mentioned in ¶ 463 above. On its part, TGL, too, accepts this at several places in its written and oral pleadings, as set forth below.
467. For instance, TGL accepts that "Article 12 of the Petroleum Agreements sets out a specific tax regime that applies to TGL's operations thereunder".<sup>438</sup> According to TGL, Article 12 together with Article 26.2 of the Petroleum Agreements are intended to provide contractual protections to contractors to ensure "long-term fiscal certainty and stability given the high costs and risks associated with exploration and development activities in the oil and gas sector".<sup>439</sup>
468. At another place in its submissions, TGL notes in a similar vein that "[t]he rationale for Articles 12 and 26.2 is clear: given the costs and risks associated with exploration and development activity, contractors require long-term fiscal certainty and stability, including with respect to the domestic tax regime".<sup>440</sup> At the Hearing, TGL submitted, with reference to Article 12, that "it is clear that the parties went into very significant detail to codify in contract applicable fiscal terms, and they did so by reference to provisions of the contract and to statutes external to Article 12".<sup>441</sup>
469. Against this background, the Tribunal is not convinced that the term "other impost" in Article 12.1 of the Petroleum Agreements was intended to extend to any and every form of financial imposition by the State. In the Tribunal's view, the term "other

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<sup>438</sup> SoC, ¶ 3.

<sup>439</sup> SoC, ¶ 3.

<sup>440</sup> SoC, ¶ 22.

<sup>441</sup> Tr. Day 5, 18:14-18.

impost” must be interpreted in the context of the objective behind Article 12 and in conjunction with the words that precede it, namely “tax, duty, fee”. Read in this context, the Tribunal considers that the term “imposts” refers to fiscal charges of the same general character as taxes, duties and fees, rather than penalties imposed for non-compliance.

470. That penalties are not covered under Article 12.1 of the Petroleum Agreements is supported by other terms of the Petroleum Agreements, which indicate that the contracting parties specifically used the term penalty when they intended to refer to penalties.
471. As pointed out by Ghana, Article 26.9 of the DWT Petroleum Agreement, which corresponds to Article 26.8 of the WCTP Petroleum Agreement, uses the term “penalties” but does not mention “taxes”. These provisions provide that if one party breaches its warranty, it “shall defend, indemnify and hold the other [p]arties harmless from and against any and all claims, damages, losses, penalties, costs and expenses”.<sup>442</sup> A similar distinction between penalties and taxes is found in Annex 2 to the Petroleum Agreements, which also refers to both terms as applicable.<sup>443</sup> The Tribunal, therefore, concurs with Ghana that where a reference to penalties was intended, that was specifically inserted by the contracting parties in the Agreements.
472. Thus, the Tribunal considers that, had the contracting parties intended Article 12.1 to extend to penalties, they would have said so expressly, as they did elsewhere in the Petroleum Agreements. The absence of a reference to penalties in Article 12.1 confirms that the term “other imposts” should not be interpreted as encompassing penalties.
473. Accordingly, the Tribunal determines that the Penalty in the GRA Assessment does not fall within the scope of Article 12 of the Petroleum Agreements. It follows that the imposition of the Penalty cannot, as a matter of principle, constitute a breach of Article 12.
474. In view of the foregoing, the Tribunal need not consider the Parties’ remaining arguments concerning whether the Penalty was imposed in respect of activities

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<sup>442</sup> Exh. C-3; Exh. C-1.

<sup>443</sup> Exh. C-1, Annex 2, Article 3.17; Exh. C-3, Annex 2, Article 3.17.

related to Petroleum Operations and the sale and export of Petroleum. Neither does it need to consider the validity of the Penalty under Section 33 of the PITL.

475. The Tribunal dismisses TGL's claim for breach of Article 12 of the Petroleum Agreements under this head.

**D. IS THE GRA ASSESSMENT FOR FY 2016 AND 2017 TIME-BARRED AND A BREACH OF ARTICLE 12 OF THE PETROLEUM AGREEMENTS?<sup>444</sup>**

**1. Claimant's Position**

476. TGL contends that the GRA Assessment issued in December 2022 is time-barred to the extent that it pertains to FY 2016 and 2017, since it exceeds the four-year limitation period prescribed under Section 18 of the PITL.<sup>445</sup> TGL argues that the imposition of the time-barred tax assessment on it is a contravention of Section 18 of the PITL and constitutes a breach of Article 12 of the Petroleum Agreements.<sup>446</sup>

477. According to TGL, the deadline for a tax assessment for FY 2016 expired at the end of 2020 and that for FY 2017 expired at the end of 2021. It argues that it had engaged with the GRA at all relevant times and, therefore, there is no justification for the delayed assessment in relation to FYs 2016 and 2017.<sup>447</sup>

478. TGL rejects Ghana's assertion that Article 12 of the Petroleum Agreements does not provide a cause of action for its time-barred claim because the GRA Assessment related to "administration of taxes and assessments and TGL's interactions with the GRA".<sup>448</sup> This argument is "hopeless" according to TGL because it ignores the fact that the GRA Assessment was issued in connection with income earned by TGL as a result of its Petroleum Operations and the sale and export of Petroleum. In TGL's

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<sup>444</sup> While in the SoC, TGL raised a claim for breach of Articles 12 and 26.2 of the Petroleum Agreements on account of the time-bar issue, in the C-SoRy, TGL has limited its claim on the time-bar issue to a breach of Article 12 of the Petroleum Agreements. See C-SoRy, fn. 391 ("As with the Penalty, TGL accepts that, on the basis that Ghana does not seek to rely on any change in law in support of its arguments on the time-bar, TGL's claim that the Insurance Assessment is not in accordance with the PITL because it does not comply with the limitation period in the PITL would not give rise to a breach of Article 26.2 of the Petroleum Agreements independent of Article 12."). See also, R-SoRj, ¶ 318.

<sup>445</sup> SoC, ¶¶ 116-117.

<sup>446</sup> SoC, ¶¶ 115-118; C-SoRy, ¶ 205.

<sup>447</sup> SoC, ¶¶ 116-118.

<sup>448</sup> C-SoRy, ¶ 209. See also, ¶¶ 207-208.

view, this makes it an issue that squarely falls within the scope of Article 12 of the Petroleum Agreement.<sup>449</sup>

479. TGL contends that none of the exceptions to the application of the limitation period in Section 79(2) of the IRA (Internal Revenue Act) are fulfilled in the present case and, therefore, there is no basis for the GRA's non-compliance with the limitation period under Section 18 of the PITL.<sup>450</sup>

## **2. Respondent's Position**

480. Ghana contends that Article 12 of the Petroleum Agreements can only be implicated with respect to claims that Ghana imposed taxes other than those identified in Article 12 "in respect of activities related to Petroleum Operations and to the sale and export of Petroleum".<sup>451</sup> It argues that the time-bar issue is a distinct claim that relates to the GRA's administration of taxes and assessments and TGL's interactions with the GRA in relation to those administrative functions, and is not governed by Article 12 of the Petroleum Agreements.<sup>452</sup>

481. Ghana contends that even if the time-bar claim were to be covered by Article 12 of the Petroleum Agreements, there is no breach since, pursuant to Section 79(2) of the IRA, the Commissioner-General had authority to make a tax assessment beyond the limitation period under Section 18 of the PITL in cases of fraud, gross or wilful neglect and/or the discovery of new information.<sup>453</sup> According to Ghana, TGL does not dispute that the Commissioner-General may extend an assessment beyond the prescribed limitation period upon satisfaction of the conditions set forth in Section 79(2) of the IRA.<sup>454</sup>

482. Ghana contends that in the present case, the extension of the limitation period was justified for FYs 2016 and 2017 on two counts: (i) the GRA had discovered new information in the Loss Adjuster Report;<sup>455</sup> and (ii) TGL was grossly or wilfully neglectful in its delay in sharing the Loss Adjuster Report with the GRA.<sup>456</sup>

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<sup>449</sup> C-SoRy, ¶ 209. *See also*, ¶¶ 207-208.

<sup>450</sup> C-SoRy, ¶¶ 210-213.

<sup>451</sup> SoD, ¶ 339; R-SoRj, ¶¶ 321-323.

<sup>452</sup> SoD, ¶ 340; R-SoRj, ¶¶ 324-325.

<sup>453</sup> SoD, ¶¶ 342-345.

<sup>454</sup> R-SoRj, ¶¶ 326-330.

<sup>455</sup> SoD, ¶¶ 346-347; R-SoRj, ¶¶ 332-334.

<sup>456</sup> SoD, ¶¶ 348-350; R-SoRj, ¶¶ 335-339.

### 3. The Tribunal's Considerations

483. There are two issues to be considered in relation to TGL's claim under this head:

- (i) Whether the time-bar claim implicates Article 12 of the Petroleum Agreements;<sup>457</sup> and
- (ii) Whether the GRA Assessment was time-barred for FY 2016-2017 pursuant to Section 18 of PITL read with Section 79(2) of the IRA.<sup>458</sup>

484. On the *first issue* (see ¶ 483(i) above), the Tribunal is not convinced by Ghana's assertion that a claim for breach of Article 12 of Petroleum Agreements would be maintainable only where the GRA Assessment imposed taxes other than those identified in Article 12 in respect of TGL's activities related to Petroleum Operations and to the sale and export of Petroleum.

485. Article 12.1 of the Petroleum Agreements provides that no "tax, duty, fee or other impost" can be imposed on a Contractor in respect of activities related to Petroleum Operations and to the sale and export of Petroleum except as provided in Article 12. Article 12.2 further provides that a Contractor shall be subjected to income tax in accordance with the PITL at a rate of 35%.

486. In ¶ 434 above, the Tribunal has determined that Article 12.2(ii) of the Petroleum Agreements addresses two separate matters: (i) income tax in accordance with the PITL will be imposed on the Contractor's activities relating to its Petroleum Operations and to the sale and export of Petroleum in accordance with the PITL; and (ii) the rate of income tax will be 35% as was prescribed under the PITL at the time, or a new rate when updated under the PITL, at the option of the contractor.

487. In the Tribunal's view, the use of the phrase "in accordance with [the PITL]" after "income tax" in Article 12.2(ii) requires that income tax be imposed in accordance with the provisions of the PITL. A contrary interpretation would render the "in accordance with [the PITL]" phrase in Article 12.2(ii) redundant. The Tribunal, therefore, concurs with TGL that the phrase "in accordance with [the PITL]" in Article 12.2 incorporates the obligation to comply with the relevant requirements of the PITL governing the imposition of income tax on a Contractor.

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<sup>457</sup> Issue 8(a) in the Updated List of Issues.

<sup>458</sup> Issues 8(i) (b) and (c) in the Updated List of Issues.

488. The Tribunal further agrees with TGL that the limitation provision in Section 18 of the PITL is one such requirement that must be complied with. Compliance with Section 18 of the PITL thus forms part of the obligation under Article 12.2 that income tax be imposed “in accordance with [the PITL]”.
489. Ghana further contends that the time-bar issue raised by TGL cannot constitute a breach of Article 12 of the Petroleum Agreements because it does not implicate the imposition of tax in respect of activities related to Petroleum Operation and to the sale and export of Petroleum. According to Ghana, the time-bar issue instead concerns administration of taxes and assessments, which falls outside the scope of Article 12.
490. The Tribunal is not persuaded by the distinction sought to be drawn by Ghana. TGL’s time-bar claim is not directed at the administration of tax and assessments regime in Ghana in abstract. Rather, TGL contends that the GRA Assessment, under challenge in this case, was issued outside the limitation period prescribed under Section 18 of the PITL, to the extent that it relates to FY 2016-2017. In turn, the GRA Assessment concerns the imposition of taxes on TGL in connection with activities related to Petroleum Operations and to the sale and export of Petroleum. Thus, although TGL’s specific claim under this head concerns an alleged breach of the applicable statutory limitation period, the claim ultimately concerns a tax assessment imposed in connection with activities related to Petroleum Operations and to the sale and export of Petroleum. This is sufficient to bring the claim within the scope of Article 12 of the Petroleum Agreements.
491. Accordingly, the Tribunal considers that if the GRA Assessment was issued in contravention of the limitation period in Section 18 of the PITL, that contravention would be capable of constituting a breach of Article 12 of the Petroleum Agreements.
492. The Tribunal turns to the *second issue* (see ¶ 483(ii) above).
493. Section 18(3) of the PITL prescribes a four-year limitation period for issuing a tax assessment, as follows:<sup>459</sup>

An assessment under section 16 or an additional assessment under section 17 shall not be made later than four years from the end of the year of assessment or quarterly period to which the assessment or additional assessment relates.

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<sup>459</sup> **Exh. CL-25**, Section 18(3).

494. Applying Section 18(3) of the PITL to the facts of this case, the Tribunal notes that with respect to FY 2016, the four-year limitation period for a tax assessment expired in 2020 and with respect to FY 2017, the four-year limitation period expired in 2021. Thus, absent an applicable exception, the GRA Assessment issued in December 2022 would be beyond the limitation period for FY 2016-2017.

495. The Parties agree that the limitation period prescribed under Section 18(3) of the PITL may be extended pursuant to Section 79(2) of the IRA. Section 79(2) of the IRA, in turn, applies by virtue of Section 39(5) of the PITL, as is also agreed between the Parties.<sup>460</sup>

496. The question, therefore, is whether the conditions for extending the limitation period under Section 79(2) of the IRA are fulfilled in this case.

497. Section 79(2) of the IRA provides as follows:

Where the need to make an additional assessment arises by reason of fraud or a gross or wilful neglect by, or on behalf of, a person or the discovery of new information in relation to the tax payable for a year of assessment, the Commissioner-General may make an additional assessment for that year at any time.<sup>461</sup>

498. Section 79(2) sets forth three grounds on which the GRA may make an additional tax assessment for a particular year that falls outside of the four-year limitation period prescribed under Section 18(3) of the PITL. These are: (i) fraud; (ii) gross or wilful neglect; and/or (iii) discovery of new information in relation to the tax payable for the assessment year.

499. TGL contends that ground (iii), *i.e.*, discovery of new information in relation to the tax payable for the assessment year, must be interpreted narrowly, and by reference to the preceding exceptions in (i) and (ii). Relying on the testimony of its expert, Mr, Adjei-Djan, TGL contends that the GRA “may only rely on the carve-out for a discovery of new information if that discovery is the result of deliberate concealment by the taxpayer, akin to the categories of fraud, and gross or wilful neglect”.<sup>462</sup>

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<sup>460</sup> C-SoRy, ¶ 212; R-SoRj, fn 158.

<sup>461</sup> Exh. RL-29, Section 79(2).

<sup>462</sup> C-SoRy, ¶ 213(a), *citing* Adjei-Djan Report, ¶¶ 76-78.

500. This is disputed by Ghana, which contends that the each of the three exceptions under Section 79(2) of the IRA are independent of each other. Relying on the testimony of its expert, Mr. Demitia, Ghana submits as follows:

As the plain language of Section 79(2) demonstrates, and as Mr. Demitia confirms, “the discovery of new information” is not dependent on the existence of fraud or gross or wilful neglect. Mr. Demitia has explained that any interpretation in which the discovery of new information is dependent on the other circumstances in Section 79(2) would render “the discovery of new information in relation to the tax payable” superfluous, would introduce words to that phrase that do not exist, would alter the plain meaning of the phrase, and would be inconsistent with the appropriate approach to interpreting tax laws in Ghana. TGL does not respond to these points and provides no authority in support of its attempt to rewrite the law.<sup>463</sup>

501. The Tribunal concurs with Ghana and its expert Mr. Demitia that Section 79(2) of the IRA sets forth three independent grounds that may be invoked for extending the limitation period for an assessment. This is clear from a plain reading of the provision, specifically the use of “or” between each of the three grounds listed therein: “fraud or a gross or wilful neglect by, or on behalf of, a person or the discovery of new information in relation to the tax payable for a year of assessment”. TGL has not provided convincing evidence that contradicts this plain reading of Section 79(2) of the IRA.

502. Thus, the Tribunal accepts Ghana’s position that the limitation period under Section 18(3) of the PITL may be extended upon occurrence of any of the three conditions set forth in Section 79(2) of the IRA: (i) fraud; or (ii) gross or wilful neglect; or (iii) discovery of new information in relation to the tax payable.

503. Of the three exceptions in Section 79(2) of the IRA, Ghana invokes (ii) and (iii), namely gross or wilful neglect and discovery of new information in relation to the tax payable, as the GRA’s basis for extending the limitation period for FY 2016-2017.

504. Ghana’s basis for invoking these grounds is the Loss Adjuster Report. Ghana contends that the Loss Adjuster Report was discovered by the GRA in 2022 and constituted new information in relation to TGL’s tax payable for FY 2016-2017. Ghana further contends that TGL hid important information from the GRA which

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<sup>463</sup> R-SoRj, ¶ 330, *citing* Demitia Second Report, ¶ 73; Demitia First Report, ¶¶ 65-66.

would have allowed the GRA to understand that the loss that was identified and paid out under the Energy Package Policy was that of TGL and not Tullow PLC. This was revealed in the Loss Adjuster Report, which made clear that the Business Interruption Insurance Proceeds were to compensate TGL's loss and not that of Tullow PLC. TGL's conduct also satisfies the gross or wilful neglect condition under Section 79(3) of the IRA, according to Ghana. In response to the timing of the GRA's knowledge, Ghana submits that:

the GRA had some knowledge in late 2018 that business interruption proceeds had been received by Tullow Plc. But the GRA did not have the full picture of what was insured and what was paid out until it received the loss adjuster report in full and final payment release in October 2022.<sup>464</sup>

505. TGL objects to Ghana's assertions on both counts.
506. Taking into account the standard of substantial deference, the Tribunal considers that it was reasonable for the GRA to conclude upon reviewing the Loss Adjuster Report that TGL was an insured under the Energy Package Policy and, that, accordingly, the Business Interruption Insurance Proceeds paid out to Tullow PLC under the Policy for losses to the KNK FPSO – an asset owned and operated by TGL – should have been disclosed by TGL in its financial statements for assessing its tax liability.
507. The Tribunal is also satisfied that the Loss Adjuster Report constitutes the “discovery of new information” for the purposes of Section 79(2) of the IRA.
508. It is a matter of record that, in 2018, the GRA, while undertaking the tax assessment for FY 2014-2016, had raised queries with respect to the Business Interruption Insurance Proceeds paid to Tullow PLC under the Energy Package Policy. The Tribunal notes from Dr. Yamborigya's testimony at the Hearing that, at the time, while the GRA was aware of the Energy Package Policy, it was not aware of the Loss Adjuster Report.<sup>465</sup>
509. In the GRA's December 2018 Tax Assessments, the GRA determined that TGL improperly failed to disclose the Business Interruption Insurance Proceeds of USD 121,900,000 for FY 2016 and added this amount to TGL's tax liabilities and also assessed TGL for other unrelated additional taxes. Subsequently, following TGL's

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<sup>464</sup> Tr. Day 5, 100:17-22, Ghana's response to Issue 8(b) in the Updated List of Issues.

<sup>465</sup> Tr. Day 2, 122: 6-124:25.

objections based on the terms of the Energy Package Policy, the GRA did not include a decision on the Business Interruption Insurance Proceeds for FY 2016 in its final assessments for FY 2014-2016, issued in 2019 (see ¶¶ 154 - 156 above).

510. In view of the foregoing, the Tribunal is satisfied that the Loss Adjuster Report constitutes new information relevant for the tax assessment of FY 2016 (and consequently for FY 2017).
511. The Parties disagree whether the 2014-2016 audit into TGL was concluded in the 2019 assessments. TGL contends that the absence of a decision on the treatment of TGL's tax liability for FY 2016 based on the Business Interruption Insurance Proceeds received by Tullow PLC in that year indicates that the GRA had withdrawn the December 2018 Tax Assessments on the Business Interruption Insurance Proceeds. Ghana objects, contending that the December 2018 Tax Assessments were not withdrawn but merely suspended pending further investigation.
512. The documentary record set forth in ¶¶ 158 - 162 above shows that following the constitution of the SIAT in December 2020, in 2021, the GRA informed TGL that it was reopening the assessment of TGL's tax liabilities for the period 2010 – 2020 in December for reassessment.
513. On 9 May 2022, the GRA notified TGL of its intention to "consolidate the ongoing 2014-2016 tax audit and the special investigations into one audit team".<sup>466</sup>
514. On 24 May 2022, TGL responded to the GRA's 9 May 2022 letter, "welcome[ing] this idea [of consolidation] as it seeks to find a speedy resolution of the pending audit issues".<sup>467</sup> TGL noted with respect to the 2014-2016 audit that while it had been co-operating with the GRA investigation team for the past year and had provided a significant amount of historical operational and financial data in that process, the objectives of the investigation and the issues currently under consideration had not been made clear to it. TGL requested a clarification on the scope and objectives of the ongoing investigation.<sup>468</sup>
515. While it is not clear to the Tribunal whether the issue of TGL's tax liability for the Business Interruption Insurance Proceeds received in 2016 was conclusively

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<sup>466</sup> Exh. R-36, p. 1

<sup>467</sup> Exh. R-36, p. 1.

<sup>468</sup> Exh. R-36, p. 1.

determined one way or the other in the 2019 assessments, the above exchange reveals that, in 2021, the GRA had informed TGL that it was reopening the audit into TGL for FY 2010-2020. The Tribunal considers that, at that stage, it was open for TGL to raise a limitation objection at least for FY 2016, and by May 2022, TGL could have raised the limitation objection for FY 2017 as well. That TGL did not do so at the relevant time suggests that it may have considered that the issue of its tax liability for the Business Interruption Insurance Proceeds for 2016 was a pending issue. The documentary record indicates that TGL raised a time-bar objection in respect of FY 2016-2017 for the first time on 10 November 2022, when it provided its preliminary comments to the Proposed Tax Assessment.

516. In view of the foregoing, the Tribunal is satisfied that the Loss Adjuster Report that was submitted by TGL to the GRA for the first time in 2022, constitutes discovery of new information by the GRA for purposes of invoking Section 79(2) of the IRA. TGL's time-bar claim, therefore, fails. Having determined this, the Tribunal need not consider whether TGL had also displayed gross or wilful neglect in relation to FY 2016-2017.

517. For these reasons, the Tribunal dismisses TGL's claim for breach of Article 12 of the Petroleum Agreements under this head.

**E. DOES GRA'S ENFORCEMENT ACTION CONSTITUTE A BREACH OF ARTICLE 24.10 OF THE DWT PETROLEUM AGREEMENT**

**1. Claimant's Position**

518. TGL contends that the enforcement proceedings instituted by the GRA on 13 January 2023 before the Ghanaian High Court to recover the tax liability arising under the GRA Assessment constitutes a breach of Article 24.10 of the DWT Petroleum Agreement. It contends that this is because TGL had already, on 30 December 2022, issued a Notice of Dispute to Ghana, which suspended TGL's liability to make any payment in respect of the GRA Assessment. According to TGL, Ghana was prohibited since then from taking an enforcement action with respect to the GRA Assessment.<sup>469</sup>

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<sup>469</sup> SoC, ¶¶ 119-122.

519. TGL considers Ghana's position that the obligation under Article 24.10 of the DWT Petroleum Agreement arises only upon the commencement of arbitration to be misconceived.<sup>470</sup> In TGL's view, Ghana's proposed construction of Article 24.10 of the DWT Petroleum Agreement requires a reading down of that provision without any basis. According to TGL, Ghana's interpretation also makes no commercial sense and cannot have been what the contracting parties intended, because it would leave them exposed during the mandated negotiation period under Article 24.1 of the DWT Petroleum Agreement.<sup>471</sup>
520. TGL notes that the GRA subsequently withdrew the enforcement proceedings on 30 January 2023.<sup>472</sup> On this basis, TGL withdraws its claim for damages arising from the alleged breach, while reserving its rights in that regard, should any further enforcement action be taken by Ghana.<sup>473</sup>

## 2. Respondent's Position

521. Ghana disputes that TGL's Notice of Dispute triggered the suspension of TGL's obligations pursuant to Article 24.10 of the DWT Petroleum Agreement. It argues that there is no breach on account of the GRA's institution of enforcement proceedings in January 2023 for recovery of TGL's tax liability under the GRA Assessment because the present arbitration had not been commenced by TGL by then. In Ghana's view, the phrase "referred for resolution" in Article 24.10 of the DWT Petroleum Agreement means a reference to arbitration; to read it as covering a notification of dispute would be straining the provision in Ghana's view.<sup>474</sup>
522. Ghana also contends that TGL's interpretation that a notice of dispute would suspend TGL's liability to make payment in respect of the GRA Assessment is self-serving and would leave Ghana exposed. Ghana argues that based on this construction, TGL could suspend its obligations indefinitely without actually referring the matter to arbitration or a sole expert as contemplated under the dispute resolution mechanism in Article 24.1 of the DWT Petroleum Agreement.<sup>475</sup>

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<sup>470</sup> C-SoRy, ¶¶ 214-217.

<sup>471</sup> C-SoRy, ¶ 216.

<sup>472</sup> SoC, ¶ 121.

<sup>473</sup> C-SoRy, ¶ 218.

<sup>474</sup> SoD, ¶¶ 351-359.

<sup>475</sup> R-SoRj, ¶ 345.

### 3. The Tribunal's Considerations

523. At the Hearing, Ghana submitted that TGL appears to have abandoned its claim for breach of Article 24.10 of the DWT Petroleum Agreement. Ghana argues this on the basis that TGL did not include this claim in the Agreed List of Issues and neither did it make submissions in relation this claim in the opening submissions at the Hearing.<sup>476</sup>
524. TGL did not respond to Ghana's assertion regarding the maintainability of its claim for breach of Article 24.10 of the DWT Petroleum Agreement. TGL did not make any submissions in relation to that claim at the Hearing.
525. Having said that, the Tribunal notes that TGL continues to maintain this claim in its last written submission filed prior to the Hearing, *i.e.*, the C-SoRjoJ (see ¶ 202 above). Therefore, the Tribunal understands TGL to be pursuing this claim.
526. Article 24.10 of the DWT Petroleum Agreement provides as follows:

In the event of a matter being referred for resolution under this Article 24; any obligations of the Parties relating to such matter shall (unless otherwise provided by this Agreement) be suspended, without liability to any Party, until said matter has been resolved pursuant to this Article 24.<sup>477</sup>

527. The Tribunal concurs with Ghana that a clear starting point for referring a matter for resolution under Article 24.10 of the DWT Petroleum Agreement would be the request for arbitration or for appointment of a sole expert as opposed to a notice of dispute. While the notice of dispute commences a negotiation process between the disputing parties, it is not tantamount to a reference for resolution. Such interpretation also makes commercial sense considering that the consequence is suspension of all obligations under the Agreement.
528. Since the GRA filed and withdrew the enforcement proceeding against TGL on 30 January 2023 before TGL's filing of its RfA on 13 February 2023, the Tribunal does not consider Ghana to have committed a breach of Article 24.10 of the DWT Petroleum Agreement by commencing and withdrawing the enforcement proceeding.

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<sup>476</sup> Tr. Day 1, 105:3-9.

<sup>477</sup> **Exh. C-3**, Article 24.10.

529. The Tribunal accordingly dismisses TGL's claim under this head.

## **F. CONCLUSION ON MERITS**

530. Based on the foregoing, the Tribunal rejects all of TGL's claims regarding Ghana's contractual breaches under the Petroleum Agreements. It follows that TGL's claim for "interest on all sums awarded, at a rate to be determined by the Tribunal" is also rejected. The Tribunal further notes that TGL has additionally requested an order for "such further and/or other relief as the Tribunal may deem appropriate". There are no circumstances which warrant granting and further or other relief as requested by TGL. Accordingly, the Tribunal rejects TGL's request in this regard.

## **XII. COSTS**

### **A. APPLICABLE RULES**

531. The ICC Rules and the English Arbitration Act, which are relevant for these proceedings, provide as follows in relation to the costs of the arbitration.

532. Article 38 of the ICC Rules, provides in relevant part, with respect to costs of the arbitration as follows:

#### **Article 38 – Decision as to the Costs of the Arbitration**

1) The costs of the arbitration shall include the fees and expenses of the arbitrators and the ICC administrative expenses fixed by the Court, in accordance with the scale in force at the time of the commencement of the arbitration, as well as the fees and expenses of any experts appointed by the arbitral tribunal and the reasonable legal and other costs incurred by the parties for the arbitration.

[. . .]

3) At any time during the arbitral proceedings, the arbitral tribunal may make decisions on costs, other than those to be fixed by the Court, and order payment.

4) The final award shall fix the costs of the arbitration and decide which of the parties shall bear them or in what proportion they shall be borne by the parties.

5) In making decisions as to costs, the arbitral tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner.

[. . .]

533. Article 38(1) of the ICC Rules includes within the definition of “costs of the arbitration” (i) the fees and expenses of the arbitrators and the ICC administrative expenses fixed by the ICC Court (the “**Arbitration Costs**”); and (ii) the reasonable legal and other costs incurred by the Parties for the arbitration (the “**Legal Costs**”).

534. Section 61 of the English Arbitration Act provides in relevant part in connection with an award of costs as follows:

**61 Award of costs**

- (1) The tribunal may make an award allocating the costs of the arbitration as between the parties, subject to any agreement of the parties.
- (2) Unless the parties otherwise agree, the tribunal shall award costs on the general principle that costs should follow the event except where it appears to the tribunal that in the circumstances this is not appropriate in relation to the whole or part of the costs.

535. Section 63 of the English Arbitration Act provides in connection with the “recoverable costs of the arbitration”, as follows:

**63 The recoverable costs of the arbitration**

- (1) The parties are free to agree what costs of the arbitration are recoverable.
- (2) If or to the extent there is no such agreement, the following provisions apply.
- (3) The tribunal may determine by award the recoverable costs of the arbitration on such basis as it thinks fit.  
If it does so, it shall specify—
  - (a) the basis on which it has acted, and
  - (b) the items of recoverable costs and the amount referable to each.
- (4) If the tribunal does not determine the recoverable costs of the arbitration, any party to the arbitral proceedings may apply to the court (upon notice to the other parties) which may—
  - (a) determine the recoverable costs of the arbitration on such basis as it thinks fit, or
  - (b) order that they shall be determined by such means and upon such terms as it may specify.
- (5) Unless the tribunal or the court determines otherwise—
  - (a) the recoverable costs of the arbitration shall be determined on the basis that there shall be allowed a reasonable amount in respect of all costs reasonably incurred, and
  - (b) any doubt as to whether costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party.
- (6) The above provisions have effect subject to section 64 (recoverable fees and expenses of arbitrators).

(7) Nothing in this section affects any right of the arbitrators, any expert, legal adviser or assessor appointed by the tribunal, or any arbitral institution, to payment of their fees and expenses.

536. Section 64 provides with respect to the recoverable fees and expenses of arbitrators as follows:

**64 Recoverable fees and expenses of arbitrators.**

(1) Unless otherwise agreed by the parties, the recoverable costs of the arbitration shall include in respect of the fees and expenses of the arbitrators only such reasonable fees and expenses as are appropriate in the circumstances.

(2) If there is any question as to what reasonable fees and expenses are appropriate in the circumstances, and the matter is not already before the court on an application under section 63(4), the court may on the application of any party (upon notice to the other parties)—

(a) determine the matter, or

(b) order that it be determined by such means and upon such terms as the court may specify.

[ . . . ]

(4) Nothing in this section affects any right of the arbitrator to payment of his fees and expenses.

**B. THE PARTIES' POSITIONS**

**1. Claimant's Position**

537. As noted in ¶ 202 above, TGL makes the following request in the C-SoRjoJ in relation to the costs of the arbitration:

ORDER the Respondent to pay all of the costs and expenses of this arbitration, including the fees and expenses of the Claimant's counsel, experts and witnesses, the fees and expenses of the Tribunal and any experts appointed by the Tribunal, the ICC's fees and expenses and any other costs incurred by the Claimant, in an amount to be determined by the Tribunal;

538. TGL quantifies its costs of the arbitration as follows:<sup>478</sup>

| Type of fees and expenses | Details                  | Total (in GBP) | Total (in USD) |
|---------------------------|--------------------------|----------------|----------------|
|                           | Freshfields (legal fees) | 2,068,236.72   |                |

<sup>478</sup>

C-CS.

| Type of fees and expenses                                       | Details                                                                                                        | Total (in GBP)      | Total (in USD) |
|-----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|---------------------|----------------|
| <b>Legal fees and expenses (exc. VAT)</b>                       | Disbursements consisting of the legal fees of David Edwards KC and Ben Juratowitch KC                          | 829,749.99          |                |
|                                                                 | Disbursements consisting of expert witness fees (Mr David Railton KC, MR Kizito Beyou and Mr Kwame Adjei-Djan) | 562,725.59          |                |
|                                                                 | Disbursements consisting of hearing services fees (FTO)                                                        | 28,705.49           |                |
|                                                                 | Disbursements consisting of hearing venue fees and related expenses                                            | 10,762.95           |                |
|                                                                 | Disbursements for document storage (Relativity)                                                                | 6,495.90            |                |
|                                                                 | Bentsi-Enchill, Letsa & Ankomah (legal fees)                                                                   |                     | 103,655        |
| <b>Advances on the costs of the Tribunal and ICC (exc. VAT)</b> |                                                                                                                |                     | 615,000        |
| <b>Total</b>                                                    |                                                                                                                | <b>3,506,676.64</b> | <b>718,655</b> |

## 2. Respondent's Position

539. As noted in ¶ 205, Ghana makes the following request in the R-SoRj in relation to the costs of the arbitration:

Claimant is ordered to pay all costs and expenses related to this arbitration, including but not limited to the fees and expenses of the Tribunal, the

administrative fees and expenses of the International Chamber of Commerce, and all costs of Respondent's legal representation, witnesses, and expert assistance.

540. Ghana quantifies its costs as follows:<sup>479</sup>

| <b>Cost</b>                                                                                                                                                                                                                                                                  | <b>Total in USD</b> | <b>Total in GHS</b> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|---------------------|
| <b>Legal fees</b> <ul style="list-style-type: none"> <li>Foley Hoag LLP, including Peter Shults</li> </ul>                                                                                                                                                                   | 2,027,114.10        |                     |
| <b>Expert services</b> <ul style="list-style-type: none"> <li>Fees and expenses of Respondent's experts in Ghanaian law and English law</li> </ul>                                                                                                                           | 596,149.87          |                     |
| <b>Travel costs for Respondent's witnesses and party representatives</b> <ul style="list-style-type: none"> <li>Costs incurred in relation to travel to London for the Hearing</li> </ul>                                                                                    | 48,830.00           | 597,312.29          |
| <b>Administrative costs</b> <ul style="list-style-type: none"> <li>Travel, printing, telephone usage, hearing venue and administration, graphic preparation, evidence projection, IT, court reporting and hearing bundle services, and other administrative costs</li> </ul> | 191,639.10          |                     |
| <b>ICC advance payments</b>                                                                                                                                                                                                                                                  | 615,000             |                     |
| <b>Total</b>                                                                                                                                                                                                                                                                 | <b>3,478,733.07</b> | <b>597,312.29</b>   |

## C. THE TRIBUNAL'S CONSIDERATIONS

### 1. Allocation of costs of the arbitration

541. Article 24.8 of the DWT Petroleum Agreement (*i.e.*, the Arbitration Agreement) provides as follows in relation to the costs of the arbitration:

<sup>479</sup>

R-CS.

Each party to a dispute shall pay its own counsel and other costs; however, costs of the arbitral tribunal shall be allocated in accordance with the decision of the tribunal. The costs and fees of the Sole Expert shall be borne equally by the Parties to the dispute.<sup>480</sup>

542. The Tribunal understands that the Parties have agreed under the above provision that each Party shall bear its own Legal Costs whereas the Arbitration Costs shall be allocated by the Tribunal. The Parties' agreement in this regard, however, was entered into prior to the dispute having arisen in the arbitration. This is not regarded as a valid agreement for purposes of Section 60 of the English Arbitration Act, which provides that "[a]n agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event is only valid if made after the dispute in question has arisen". The Parties have not notified the Tribunal of any agreement on allocation of costs entered between them after the dispute in the arbitration has arisen and neither Party has also referred to Article 24.8 of the DWT Petroleum Agreement in connection with the allocation of costs of the arbitration.
543. The Tribunal is mindful of the principle of cost follows the event for purposes of allocating costs, as set forth in Section 61 of the English Arbitration Act. Nevertheless, the Tribunal retains discretion in allocating costs depending on the circumstances of the case. In the present case, based on the nature of the claims and defences raised by the Parties in the arbitration, which the Tribunal does not consider to have been frivolous, as well as the Parties' conduct during the arbitral proceedings, especially the efforts to conduct the proceedings efficiently, the Tribunal considers it appropriate for each Party to bear its own Legal Costs incurred in the arbitration.
544. The Tribunal therefore determines that each Party shall bear its own Legal Costs in accordance with Article 24.8 of the DWT Petroleum Agreement.
545. The Tribunal will allocate the Arbitration Costs between the Parties based on the on the general principle that "costs follow the event", *i.e.*, costs should reflect the Parties' relative success and failure in the arbitration. The Tribunal does not consider that there exist any circumstances necessitating a departure from this principle as set forth in Section 61(2) of the English Arbitration Act.

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Exh. C-3, Article 24.8.

546. In the present case, while Ghana was unsuccessful in all its Jurisdictional Objections, it was successful in defending itself against all of TGL's claims on the merits. Thus, on jurisdiction, TGL was the successful party and on merits, Ghana was the successful party.

547. In these circumstances and also taking into account the Tribunal's determination regarding the allocation of the Parties' Legal Costs in ¶ 543 above regarding the Parties' conduct of these proceedings, the Tribunal decides that each Party will bear the Arbitration Costs fixed in the arbitration in equal shares. It follows that, to the extent, Claimant claims interest on costs, that is rejected.

## **2. Reasonableness of Legal Costs**

548. In view of its determinations in ¶¶ 542 - 543 above, the Tribunal needs not consider the reasonableness of the Parties' Legal Costs claimed in the arbitration.

## **3. Quantification of Arbitration Costs**

549. The Arbitration Costs, covering the Tribunal's fees and expenses and the ICC's administrative charges, have been fixed by the ICC Court at USD 1,171,000:

| <b>S. No.</b>           | <b>Description</b>           | <b>Amount</b> |
|-------------------------|------------------------------|---------------|
| 1.                      | ICC's administrative charges | USD 150,000   |
| 2.                      | Tribunal's fees and expenses | USD 1,021,000 |
| Total Arbitration Costs |                              | UD 1,171,000  |

550. Each Party has deposited USD 615,000 with the ICC Secretariat by way of advance on costs.

551. In view of the Tribunal's determination above that the Arbitration Costs will be borne equally by the Parties, the Tribunal determines that each Party will bear 50% of USD 1,171,000, amounting to USD 585,500.

### **XIII. DECISION**

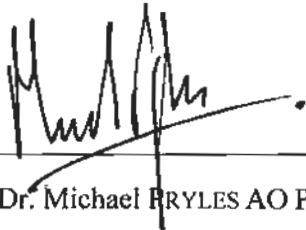
552. FOR THE FOREGOING REASONS, the Tribunal renders the following decisions:

- (i) DECLARES that it has jurisdiction over TGL's claims in this arbitration.
- (ii) DECLARES that the GRA Assessment does not constitute a breach of Article 12 of the Petroleum Agreements.
- (iii) DECLARES that the enforcement proceedings instituted by the GRA against TGL on 13 January 2023 do not constitute a breach by Ghana of Article 24.10 of the DWT Petroleum Agreement.
- (iv) DETERMINES that each Party will bear its own Legal Costs incurred in the arbitration.
- (v) DETERMINES that each Party will bear 50% of the Arbitration Costs in the amount of USD 585,500.
- (vi) DISMISSES any and all other reliefs claimed by the Parties.

Place of Arbitration: London, England

Date:

THE ARBITRAL TRIBUNAL



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Dr. Michael PRYLES AO PBM  
Co-Arbitrator

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Mr. J. Christopher THOMAS KC  
Co-Arbitrator

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Professor Dr. Albert Jan VAN DEN BERG  
President

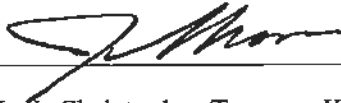
Place of Arbitration: London, England

Date:

THE ARBITRAL TRIBUNAL

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Dr. Michael PRYLES AO PBM  
Co-Arbitrator



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Mr. J. Christopher THOMAS KC  
Co-Arbitrator

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Professor Dr. Albert Jan VAN DEN BERG  
President

Place of Arbitration: London, England

Date: 22-SEP-2026

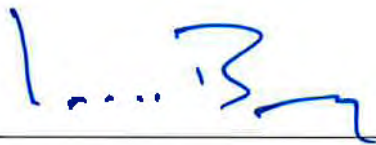
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Professor Dr. Albert Jan VAN DEN BERG  
President