



REPUBLIC OF GHANA

MINISTRY OF FINANCE

In case of reply, the
number and date of this
letter should be quoted

Our Ref: No. B.114/MESTI/OAG/06/20

Your Ref:

Tel No:

6th July , 2020

**RE: IN THE MATTER OF ARBITRATION BETWEEN APEX SOLUTION CONTROL
COMPANY LIMITED (CLAIMANT) AND THE ATTORNEY GENERAL OF THE
REPUBLIC OF GHANA**

Please refer to a letter numbered D3/SF.27 dated 16th April, 2020, from the Office of the Attorney-General and Ministry of Justice, addressed to this Ministry on the above subject (copy attached).

2. The Office of the Attorney-General and the Ministry of Justice has applied for the release of an amount of **US\$88,247,246.63** (Eighty-Eight Million, Two Hundred and Forty-Seven Thousand, Two Hundred and Forty-Six United States Dollars, Sixty-Three Cents), due Apex Pollution Control Company Limited (PCCL), in respect of an agreed negotiated settlement with the Ministry of Environment, Science Technology and Innovation (MESTI).
3. Our records indicate that no request was received from Ministry of Environment, Science, Technology and Innovation in respect of the above. In view of that we will be grateful if the expenditure of **US\$88,247,246.63**, is validated and certified by the Internal Audit Unit of MESTI and this Ministry, advised appropriately.
4. Counting on your usual co-operation, please.

PATRICK NOMO
CHIEF DIRECTOR
FOR: MINISTER

THE CHIEF DIRECTOR
MINISTRY OF ENVIRONMENT, SCIENCE
TECHNOLOGY AND INNOVATION
ACCRA

Cc: The Hon. Minister, MOF
The Hon. Minister, OAG
The Hon. Minister, MESTI
The Hon. Dep. Ministers, MOF
The Chief Director, OAG
The Director of Budget, MOF
The Director, Legal, Division



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MINISTRY OF ENVIRONMENT, SCIENCE, TECHNOLOGY & INNOVATION
MEMORANDUM

OFFICE OF THE MINISTER

TO : OFFICE OF THE PRESIDENT

SUBJECT : JUDGEMENT DEBT/APEX POLLUTION CONTROL COMPANY

DATE : 21-07-2020

The story officially begins on 11th March 2011 with a Cabinet Memo that approved an “AIR QUALITY AND EMISSIONS POLICY” that enjoined the EPA, DVLA, CEPS, CSIR and KNUST to commence implementation of the emissions control policy. MESTI was the coordinating ministry.

Contrary to laid down procedures the MESTI minister on 18th August 2011 signed an MOU with APEX POLLUTION CONTROL LTD, a private company, to carry out monitoring of vehicle emissions. Subsequently two agreements were signed between the two parties on 30th November 2012 and 21th March 2014.

Going through the volumes of documents on the matter, I could see many irregularities that had also been documented by the AG’s Office.

It is instructive to note that the many NDC ministers (Shirley Aryeetey, Oteng Adjei, Oppong Fosu and Mahama Ayariga) who proceeded me at MESTI could not implement the project and after the change in December 2016, somebody decided to engage in arbitration which has now suggested the payment of this judgement debt.

I must also report that this project was not in the handing over notes given to me when I became the President’s representative at MESTI in February 2017.

I am not in the position to approve this transaction. I need guidance, Mr. President.



PROF. KWABENA FRIMPONG-BOATENG
MINISTER



MINISTRY
OF
FINANCE

P.O.Box MB 40, Ministries, Accra
Digital Address : GA-144-2024

Kindly quote this number and date on all correspondence

My Ref. No. HMS/APEX/10/06

Your Ref. No.

Date: 14th JUNE, 2022

**RE: IN THE MATTER OF ARBITRATION BETWEEN THE APEX POLLUTION
COMPANY LIMITED (CLAIMANT) AND THE ATTORNEY-GENERAL OF THE
REPUBLIC OF GHANA**

The above subject matter refers.

2. We also refer to a letter from the Honourable Minister of Environment, Science, Technology, and Innovation with reference number MESTI/SCR/049/V.4 dated 21st June 2021.

3. We have reviewed all the necessary documentation and are of the opinion that the negotiated settlement amount of **US\$88.2 million**, from the initial US\$197.1 million, cannot be justified. Noting that, the total **validated** amount invested by the claimants was **US\$4.71 million**. A breakdown of the negotiated settlement amount of US\$88.2million is given as follows:

Return on Investment	:	US\$ 20,006,226.00
Initial Investment Cost	:	US\$ 6,613,520.63
Lost Income	:	US\$ 61,627,500.00
Total	:	US\$ 88,247,246.63

4. There is a fundamental flaw in the calculation leading to the proposed amount of **US\$88.2 million**. The Return on Investment (**US\$20.0 million**) and Lost Income (**US\$61.6 million**) are essentially the same thing and, as such, including the total of the two (as done by the claimants in their calculation) amounts to double counting.

5. The settlement should therefore be based on either their return on investment (IRR of 21.1%) as captured in the agreement Schedule D or on lost income also captured in Schedule D in addition to the validated investment cost of **US\$4.71 million**.

6. Using the IRR of 21.1%, we arrived at a value of **US\$4.55 million** for the Return on Investment (see attached). Lost Income Analysis also provides an amount of **US\$4.45 million** and the total validated investment cost is **US\$4.71 million** instead of **US\$6.61 million** as indicated by the claimants. This results in a possible negotiated amount of **US\$9.16 – US\$9.26 million** in our opinion.

7. In light of these findings and analysis, we humbly request your office to review your initial assessment of the negotiated settlement amount of **US\$88.2 million**.

8. We are on standby to provide any clarifications you may require.

Please accept the assurances of my highest regard.


KEN OFORI-ATTA
MINISTER

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MINISTRY
OF
FINANCE

P.O.Box MB 40, Ministries, Accra
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THE HON. MINISTER
MINISTRY OF JUSTICE AND ATTORNEY GENERAL'S DEPT.
ACCRA

cc: The Hon. Minister, MESTI
The Hon. Minister of State, MoF
Deputy Ministers, MoF
Chief Director, MoF
Director Legal, MoF



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Appendix 1

IRR Analysis for Apex Pollution Control

Investment Amount \$ 6.30 Investment Amount as approved in the PPP Agreement
 Years 10.0 Original duration of the PPP Agreement
 2041 Eurobond 8.625% GoG 12 year Eurobond coupon to be used as the discount rate

Appendix E - Income Statement Projections

Lost Income Analysis	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Profit Before Taxes	- 1.30	- 1.16	- 0.45	- 0.94	- 0.20	0.74	1.27	1.15	3.40	4.77
Taxes	-	-	-	-	-	- 0.2	- 0.3	- 0.3	- 0.9	- 1.2
Net Income	- 1.3	- 1.2	- 0.5	- 0.9	- 0.2	0.6	1.0	0.9	2.6	3.6
Cum Net Income	\$ 4.45	Based on Apex' own projections provided at the time								

Appendix C - Internal Rate of Return Analysis

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Net Cash Flow	\$ -6.30	\$ -0.18	\$ 0.93	\$ 0.67	\$ 1.03	\$ 2.97	\$ 1.12	\$ 4.15	\$ 4.46	\$ 7.90	\$ 9.91
Residual Value											1.9
Free Cash Flow	\$ -6.30	\$ -0.18	\$ 0.93	\$ 0.67	\$ 1.03	\$ 2.97	\$ 1.12	\$ 4.15	\$ 4.46	\$ 7.90	\$ 11.83
IRR	21.1%	Based on Apex' own projections provided at the time									
NPV	\$ 10.85	Using the Eurobond rate as the GoG USD 12 yr risk free rate									
PV	\$ 4.55										

