Ministry of Transport

GHANA PORTS AND HARBOURS AUTHORITY

MINISTERIAL COMMITTEE REPORT

VERY CONFIDENTIAL

FINAL

Under the Instruction of the Economic Management Team (EMT)

A REVIEW OF CONCESSION AGREEMENTS BETWEEN THE GHANA PORTS AND HARBOURS AUTHORITY AND MERIDIAN PORT SERVICES LIMITED

PORT OF TEMA CONTAINER TERMINAL CONCESSION

Tema
February 2018

Table of Content

EXECUTIVE SUMMARY

1 BACKGROUND 4

1.1 The Concession Agreement - 17th August 2001 9
1.2 Deed of Amendment – 12th June 2015 9
1.3 Background to the Deed of Amendment 9
1.4 MPS' Representations 9
1.5 Tax Waivers Granted By Parliament Of Ghana 12
1.6 Equity Contribution and Dilution of GoG/GPHA Shares 13
1.7 IFC-Arranged Loan 13
1.8 Summary of Events Leading to Impasse 13

2 MINISTERIAL REVIEW COMMITTEE 13

2.1 Committee Membership 14
2.2 Terms Of Reference 14
2.3 METHODOLOGY 14

FINDINGS / GENERAL OBSERVATIONS BY THE COMMITTEE 15

3 SHAREHOLDING STRUCTURE AND AGREEMENTS 16

3.1 Original and Only Shareholder's Agreement 16
3.2 General Shares Structure 16
3.3 The 6.75% Sutton Energy Group Share 16
3.4 The Bouygues Travaux Publique-12.9% Shares for GPHA 16
3.5 Restructuring of Shareholding 17

4 THE IFC AGREEMENTS FOR THE FINANCING OF THE PROJECT 17

4.1 Set of IFC Financial Agreements 18

5 CONCESSION AGREEMENT AND THE DEED OF AMENDMENT 18

5.1 Term of the Concession 19
5.2 Assignment of Terminal 2 19
5.3 Transfer of Assets 19
5.4 Investment Protection Regime 20
5.5 Exclusivity Of Services 20
5.6 Contribution by Third Parties 21
5.7 Development Of Fifth Berth 22
5.8 Concession Fees 22
5.9 Tariff Adjustment 23
5.10 Concession Area Rent Payment 23
5.11 Initial Concession Fee Payment 26

6 FINANCIAL EVALUATIONS AND IMPLICATIONS OF THE CONCESSION 26

6.1 Project Profitability 27
6.2 Project Viability Analysis Based On 35-Year Concession 27
6.3 Valuation of Concessions Made by The Grantor under the DOA 28
6.4 Project Viability Analysis Based on 26-Year Concession 31

7 TAX WAIVERS FOR THE PORT EXPANSION PROJECT 32

7.1 Construction Procurement Tax 32
7.2 Corporate Income tax 33
7.3 Stabilization Levy 33
7.4 Five-Year Carry-Forward of Losses / Deductions 33
7.5 Withholding Taxes (Expatriate and Local Contractors, Subcontractors) 33
7.6 Dividend Tax on Shareholders for 20years 33

7.7 VALUE-ADDED TAX AND NATIONAL HEALTH INSURANCE LEVY.... 33
8 RECOMMENDATIONS AND CONCLUSION.... 34
8.1 RECOMMENDATIONS.... 34
8.2 CONCLUSION.... 34
9 APPENDICES.... 37
9.1 SHAREHOLDERS' AGREEMENT RELATING TO MERIDIAN PORT SERVICES LTD; 2004.... 38
9.2 CONCESSION AGREEMENT BETWEEN THE GHANA PORTS AND HARBOURS AUTHORITY (THE 'GRANTOR') AND MERIDIAN PORT SERVICES LTD. (THE 'CONCESSIONAIRE') DATED 17TH AUGUST 2004. 38
9.3 DEED OF AMENDMENT NO. 1 TO THE CONCESSION AGREEMENT BETWEEN THE GHANA PORTS AND HARBOURS AUTHORITY AND MERIDIAN PORT SERVICES DATED 12TH JUNE 2015, ... 38
9.4 LOAN AGREEMENT BETWEEN MERIDIAN PORT SERVICES LTD. AND INTERNATIONAL FINANCE CORPORATION.... 38
9.5 SUBORDINATION AND ASSIGNMENT AGREEMENT BETWEEN APM TERMINALS B.V., BOLLORÉ AFRICA LOGISTICS, MERIDIAN PORT SERVICES LTD. (AS BORROWER), MERIDIAN PORT HOLDINGS LTD., INTERNATIONAL FINANCE CORPORATION, THE GHANA PORTS AND HARBOURS AUTHORITY AND THE SECURED HEDGE PROVIDERS.... 38
9.6 DIRECT AGREEMENT BETWEEN THE GHANA PORTS & HARBOURS AUTHORITY; INTERNATIONAL FINANCE CORPORATION; MERIDIAN PORT SERVICES.... 38
9.7 FEASIBILITY STUDIES AND ENGINEERING DESIGNS FOR THE UPGRADE AND EXPANSION OF THE PORT OF TEMA, GHANA. 38
9.8 COST REPORT TERMINAL NORTH GPHA.... 38
9.9 DEED OF AMENDMENT – SUBMISSION OF DESIGN DRAWINGS OF SCHEDULE A (CONCESSION AREA), SCHEDULE C (GPHA MASTER PLAN) AND SCHEDULE E (OPERATIONAL AREA). 38
9.10 MINUTES/LETTERS/RESOLUTIONS: 38
.... 38

List of Tables

TABLE 1 - SUMMARY OF REVIEW ITEMS.... 5
TABLE 2 - CONCESSION FEE IMPACT ON GPHA / GHANA 8
TABLE 3 - IMPACT OF RECOMMENDED CONCESSION FEE SCENARIO (S3).... 8
TABLE 4 - PROJECT COST SUMMARY 27
TABLE 5 - PROJECTED STATEMENT OF COMPREHENSIVE INCOME.... 28
TABLE 6 - ROYALTY AND PORT DUES STRUCTURE UNDER OCA 29
TABLE 7 - ROYALTY AND PORT DUES STRUCTURE UNDER DOA.... 29
TABLE 8 - ROYALTY AND PORT DUES STRUCTURE BASED ON COMMITTEE'S PROPOSAL TO THE DOA 30
TABLE 9 - SNAPSHOT OF PROJECT VIABILITY ANALYSIS 30
TABLE 10 - VALUATION OF ESTIMATE TOTAL GROSS CONCESSION FESS CEDED TO MPS PROJECT DUE TO DOA.... 31
TABLE 11 - PROJECTED STATEMENT OF COMPREHENSIVE INCOME BASED ON 26-YEAR CONCESSION.... 32

REVIEW OF AGREEMENTS BETWEEN GPHA AND MPS

EXECUTIVE SUMMARY

A select Committee under the Chairmanship of the Honorable Deputy Minister of Transport and Member of Parliament (Tema East Constituency) Daniel Nii Kwartei Titus-Glover was appointed on the instruction of His Excellency The Vice President Alhaji Dr. Mahamudu Bawumia and the Economic Management Team, to assist the Ghana Ports and Harbours Authority (GPHA) to review several documents relating to concession / contracts between the GPHA and a Consortium of Meridian Port Holding Limited (MPH). The review exercise covered all relevant engagements related to the container terminal operations in the Port of Tema since August 2004 till date and with the view of the implications for the future and sustenance of the Port Authority.

The Committee's Terms of Reference covered the following: To review

1. The Shareholding agreement and structure of Meridian Port Services (MPS);
2. The International Finance Corporation (IFC) Loan and related Agreements for the Tema Port Expansion Project;
3. The Main Concession Agreement of 2004 and its "Deed of Amendment" of 2015;
4. The Tax Waiver and Import duties on the Port Expansion Project.
5. Any Other Related Issues.

The Committee, in summary, recommends that all the Agreements, waivers of taxes and related protocols must be substantially reviewed. Such review may take any form ranging from amicable settlements through (re)negotiations of several terms and conditions to emphatic Governmental instructions in the interest of the Sovereignty. In essence the GPHA-MPH / MPS engagements, if left to continue in its current forms, are gravely detrimental to the Government and People of Ghana by virtue of the financial implications, concessions, loss of jobs, lack of transparency and ethical discipline of international partners and the threat of a monopolistic control of Ghana's main international trade cluster – The Port of Tema.

Considering that GPHA was administering an international procurement process to expand and upgrade the Port of Tema which was terminated and the Project handed over to MPS/MPH, there is no doubt that the MPS engagement has to be renegotiated completely. The recommended renegotiation should aim at achieving, at the least, the intended development goals under the Port Master Plan as was being procured by GPHA, and to ensure corporate growth.

This report therefore presents the facts, analysis, multi-technical interpretations of the terms of the various agreements, projections and estimates of revenue streams and their implications for the People and Government of Ghana. On the face of documents available, it can be ruled that parties have signed various documents to represent the transactions. The signed documents (MoU, Concession Agreement, DoA) were clearly well-crafted, timed to execute the agenda of the MPH parties such that they do neither represent the original intentions of the engagements nor reflect honest business ethics between parties. GPHA has also not been able, over the years, to handle its advantageous positions as Grantor and at the same time a major Shareholder in the Concessionaire / Consortium. While it is important to stress the huge potential this joint position carried, the Committee noted that GPHA could not exercise its rights and responsibilities to control and govern the processes.

This Review Committee brings to the fore major issues bordering on misrepresentation, lack of detail, mismanagement, accountability, corporate governance, procurement, political influence and such related loopholes. The various agreements and their implementations are largely fragmented, inconsistent with serious ethical professional deficiencies. As indicated from the onset, the engagements has to be carefully and deliberately reviewed. The Table below presents a snapshot of the various issues that have been looked at and the recommended remedies.

Table 1 - **Summary of Review Items**

Item	Issue	Indications as of 2004	Indications as of 2017	Remarks/Analysis	Recommendations
1	**MPS Consortium and Shareholding Structure**	GPHA 130%) MPH (70%), which includes Sutton Energy Grp's. (6.75%)	GPHA – diluted to 15% under unusual circumstances. MPH - 85%	Indications of Sutton Energy Group shares undisclosed. 12.94% additional shares that should have been transferred to GPHA since 2007 had still not been effected There was no verifiable valuation method used as basis for the apportioning of the shares 30/70 in 2004.	GPHA's shares should start from 42.94% unconditionally before any discussions on t actual analysis of the project will be effecte 1. The existence of MPH needs to be verifie office location, assets, accounts, etc., unle is retained only as a "Holding" company. 2. Shareholders Agreement to be redone and signed with the specific structures, names registered addresses of ALL shareholders consistent with ethical business practice. 3. GPHA's share must be 42.94%, non-nego
2	**Shareholders Agreement**	Signed – does not mention the detailed shares of the various members except MPH and GPHA.	No amendment, except the dilution of GPHA to 15%.	MPS – MPH suddenly promised to restore GPHA to 30%, when Review Committee was inaugurated.	
3	**Shareholding Structure (12.94% Specific)**	Was not effected, though the shares were available at the time and should have been returned to GPHA.	Had still not been returned to GPHA and therefore shrouded in the MPH's 70%.	This 12.94% share should have been transferred to GPHA before the execution of the DoA to the Concession.	The 12.94% and all lost benefits should be accounted for and returned to GPHA.
4	**Share Dilution**	Not applicable	Diluted from 30% to 15% somewhere in July 2016.	Resulted from GPHA's refusal to pay upfront cash for the Project, consistent with the clear intents of the MoU. Share allotment / issues without under unusual circumstances. Resolutions Passed and Signed under unusual circumstances.	Company Secretary to report on restored SI Registration for the 42.94% complete befor negotiations on the project. A Government Instruction will be required.
5	**Share Dilution Implication on IFC Loan**	Not Applicable	Was not reflected in the IFC Loan but was rather used to justify the IFC conditionality.	Share dilution timelines are inconsistent with the IFC loan agreements. The purported resolutions, share authorization, share allotment notes all pre-dated the IFC Loan Agreements. Therefore the figures in the IFC documents should have been consistent with the purported share dilutions.	Shares' Restoration is a must and non-negotiable.

6	**Concession Agreement**	Signed in August 2003; Terminal Operations by MPS began in April 2007 Term of 20years: 2004. but 2007 – 2027	DoA in June 2015[1] Term of (30 or 35)years: starting date unclear due to varying views and documents from parties.	Terms of the Concession and DoA are inconsistent: interview transcripts, in some cases, do not corroborate the terms of executed documents. Parties obviously have different interpretations of the intentions of the project	There is the need to re-draft all doc clearly spell out the separation of r responsibilities of the Parties
7	**Concession Agreement – Terms and Conditions**	Clauses are first timed	Some terms are amended and others are not. Those amended turn out to be detrimental to GPHA / Ghana.	There are several inconsistent sections and various documents do not corroborate each other	Terms and Conditions to be redefi substantially to cover basic definit and conditions related to: 1. Exclusivity and investment prote 2. Term / Period of Concession 3. Concessionaire Survival Rights o Terminal 2 4. Rights to tariff review / adjustme illegality
8	**Concession Agreement - Financial Implications to GPHA / GoG**	Not initially valued but represented in Revenues, Dividends, etc. over the years. See Section 6.	DoA substantially reduces GPHA / GoG's revenues.	Negotiated Royalties do not represented the intentions and promises of the MPH Group. Considering that the executed terms are giveaways to the Concessionaire.	All royalties must be reviewed to r original, or better, intentions plann International Competitive Bidding
9	**Tax Protocol**	No tax protocol established at the time.	Major Tax Exemptions granted for various reasons in lieu of the expansion project.	Tax protocol is so generous and does not present a truthful request in favor of the engagement. Tax concession was based on estimated cost at the time of US$1.5Billion.	GPHA needs to submit an applica to Government to review the waiv specific components, revaluation, and compliance systems, etc.
10	**Corporate Income Tax**	Not Applicable	Exemption of corporate income taxes for 10 years and income tax rate of 15%.	Financial modelling on viability of project IRR is not dependent on tax waiver.	Waiver of corporate income taxes rescinded and must be 25%.
11	**Stabilization Levy**	Not applicable	Stabilization levy approx. US$143Mil.	waiver creates uneven and unfair playing ground among other foreign investors	waiver should be rescinded
12	**Losses' Deductions to be carried-forward.**	Not Applicable	Carry forward of losses' deductions for five years.	Carry forward of losses is subject to manipulation	Waiver should be rescinded
13	**Withholding Taxes on Dividends**	Not Applicable	No tax on dividends to all shareholders for 30 years: US$122M.	Waiver creates uneven and unfair playing ground among other foreign investors.	Waiver should be rescinded

[1] Further analysis of this "Deed" and recommendations to review specific clauses are provided in Section 5 on the report
[2] A period that is actually not defined in the concession

		Not Applicable	Withholding taxes on MPS itself during corporate income tax exemption period.	Waiver creates uneven and unfair playing ground among other foreign investors.	Waiver should be rescinded
		Not Applicable	Resident and non-resident contractors and sub-contractors exempted from withholding taxes: US$91M	No specific benefits to the Local Economy could be established.	Waiver should be, at least, re-evaluated.
14	**Value Added Tax, NHIL**	Not Applicable	VAT/NHIL US$62 million	Waiver is discriminatory in nature since subcontractors working for MPS are exempted from this tax	Waiver should be rescinded
15	**International Finance Corporation (IFC) Loan**	Not Applicable	Signed with various other agreements	1. GPHA was not represented in the IFC negotiations. 2. The material facts used by MPH / Sponsors to negotiate the loan was not disclosed to GPHA. 3. The material facts used by MPH / the Sponsors to negotiate the loan - e.g. GPHA's shares dilution, was not disclosed to IFC. 4. Signed loan agreement was never provided to GPHA until review Committee was formed. 5. Based on information provided to the Committee, the IFC-loan is self-funding; a fact that was not disclosed to GPHA or Parliament for the tax concession and waiver. 6. It was not disclosed in tax waiver request that loan had a 10-year repayment period. The omission of this material fact and other factors resulted in a tax waiver far in excess of the project benefits. 7. IFC Loan was not part of the intentions on the project. MPS's main partners (APMT and Bollore Africa) indicated their readiness and willingness to fund the project all through. IFC was never mentioned in the MoU which sort to truncate the open tender. 8. End-of year financial report, IFC documents, resolutions, etc., imply material misrepresentation and inaccuracies by virtue of the times / dates these documents were executed.	IFC Loan or any other such loans should have been between IFC and MPH and not MPS, where GPHA is technically implicated. Governmental Approval should be sought to ratify the IFC-Loan, if in the interest of the Sovereignty.

The Financial Impact of the Agreements

Table 2 - Concession Fee Impact on GPHA / Ghana

1	2	3	4
Estimated Total Gross Concession Fees to GPHA under OCA over 35 Years: (A)	Estimated Total Gross Concession Fees to GPHA under DOA over 35 Years: (B)	Estimated Total Gross Concession Fees Ceded to MPS due to DOA over 35 Years: (A)-(B)	Present Value of Estimated Total Gross Concession Fees Ceded to MPS due to DOA over 35 Years using a 30-year United States (US) Treasury yield of 3% -- PV [(A)-(B)]
US$7,988,676, 600.00	US$3,903,431,880.00	US$4,085,244,720.00	US$2,297,541, 560.00

Column 1 presents the concession fees that GPHA would have earned over a 35 year period if the same concession terms of the 2004 Agreement remains. The DoA will return, over the same period, US$3.9Billion (column 2) which is US$4.1Billion (column 3) less than the original case. The US$4.1Billion translates "loss" to a Present Value of US$2.3Billion (column 4) ceded to the Concessionaire as a result of the DoA. The Committee's recommended minimum royalty levels will yield an aggregated Concession Fee of US$5.833Billion, with a 12-year project payback period and a 15% Internal Rate of Return.

Table 3 - Impact of Recommended Concession Fee Scenario (S3)

	Scenario 2 (S2)	Scenario 3 (S3)
Project Payback Period (PPP)	10 years	12 years
Internal Rate of Return (IRR)	18%	15%
Cost of Capital	7.3%	7.3%
Estimated Concession Fees to GPHA	US$3,903,431,880.00	US$5,833,407,610.00

If the DoA is retained, the project's immediate impact, estimated over the next 10years, for GPHA is dire, as presented in the **Chart 1** below, direct impact of the DoA will be the dwindling Operating Profit. It will be impossible to even increase administrative expenditure e.g. salaries, emoluments, or any such operating expenses let alone maintain basic port facilities within the first 8-years of operations on the DoA.

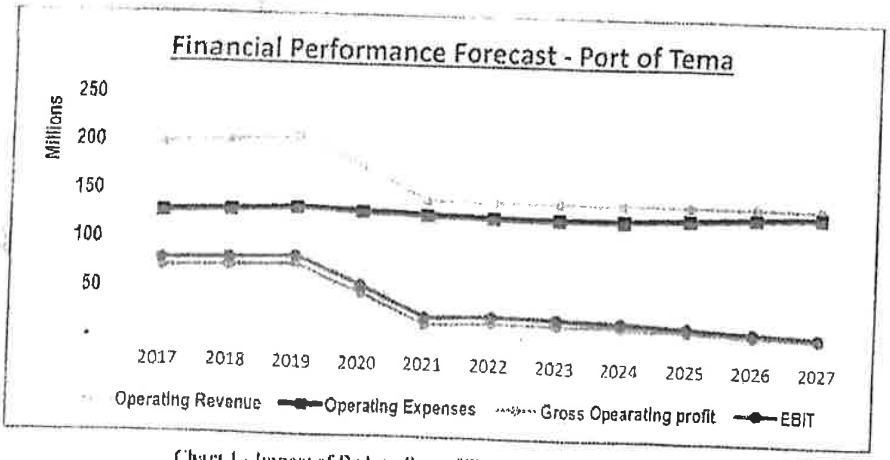


Chart 1 - Impact of DoA on Port of Tema Financial Performance

1 BACKGROUND

1.1 THE CONCESSION AGREEMENT - 17TH AUGUST 2004

1.1.1 The Ghana Ports and Harbours Authority (GPHA) in line with the Government of Ghana's Trade and Development Gateway Project (The Gateway Project) embarked on the port reform process through private participation in the development of facilities within the Tema Port. GPHA's development programmes are also in accordance with the mandate under the GPHA Law PNDCL-160 of 1986.

1.1.2 In July 2004, GPHA entered into a Shareholder Agreement with Meridian Port Holdings, a consortium registered in the United Kingdom, made up of APM-Terminals Bolloré Logistics Africa, Bouygues Traveaux and Sutton Energy Group. The GPHA-MPH relationship established a special purpose vehicle (SPV) Meridian Port Services Limited (MPS) after discussions with the then Government under the Leadership of H.E. J.A. Kufuor. The specific shareholder-members of the SPV (MPS) was not fully disclosed in the Shareholder Agreement. Subsequently, in August 2004, GPHA entered into a Concession Agreement with the Meridian Ports Services Ltd., for the Container Terminal Operations in the Port of Tema.

1.1.3 The first Concession Agreement was effected on 1st April 2007, noted as the date of First Commercial Move by MPS. It must be noted that GPHA largely funded the original MPS terminal, including the procurement of cranes and operated the terminal (Area A) from the date of commissioning in July 2005 till MPS's "go-live date" of 1st April 2007.

1.1.4 As a result of national economic growth and the increasing volumes of containerized cargo handled at the Tema Port, GPHA decided and embarked on the project to expand the Tema Port in order to accommodate larger container vessels and increase its container handling capacity in line with the GPHA Master Plan. In 2012, GPHA initiated the procurement process to expand the Tema Port into deeper waters in accordance with the Tema Port Master Plan through international competitive public tender. The Project was part of the strategy of GPHA to realize its vision of becoming the leading trade and logistics hub of West Africa. The goal was to develop adequate capacity in the Port of Tema, to cope with projected growth in traffic and to meet the economic needs of the country and the region over the long term.

1.2 DEED OF AMENDMENT – 12TH JUNE 2015

The GPHA on June 12, 2015 executed a DoA (DoA) to the Concession Agreement with Meridian Ports Services (MPS). The DoA updated and amended some provisions in the Concession Agreement for the development, management and operation of a container terminal in the Port of Tema. A major feature of the DoA is the right granted to MPS to design, develop, manage, and operate Terminal 3 (a new container terminal) in the Port of Tema. Further details are provided in Section 5.

1.3 BACKGROUND TO THE DEED OF AMENDMENT

Prior to the execution of the DoA, a series of events, presented below, provide a comprehensive background and circumstances under which the DoA was executed. The Committee has established that, GPHA's own internal efforts had generated sufficient data and technical information that became useful to the Concessionaire / MPH Group to execute the project.

1.3.1 Expression of Interest for the Development Works

1.3.1.1 In line with the requirements of the Public Procurement Act. and in pursuit of transparency and value for money considerations, GPHA decided to use the International Competitive Tender process as a method to procure contractors, financiers and operators for the Port of Tema Expansion Project. The First Procurement Notice was issued by GPHA in local and international media covering the period February 1, 2013 to April 12 2013. This notice was a Request for Expression of Interest (REOI) to Finance and Engineer, Procure and Construct (F&EPC) the Port Expansion Development Works. A number of entities showed interest in the Project. GPHA received 56 entries; an indication of the high local and international interest in the Project due to the inherent potential of the business.

1.3.2 **Finance and Engineer, Procure, Construct (F&EPC) International Competitive Bidding**

1.3.2.1 A total of 20 out of the 56 applicants / consortia were shortlisted and pre-qualified, based on a set of evaluation criteria. The pre-qualified applicants were subsequently invited to submit Bids towards the delivery of the Port of Tema Expansion Works. The Invitation for Bids (IFB) was issued on July 22, 2013 and the final bid submission date was January 27, 2014. All the shortlisted entities received the full set of Bidding Documents. The documents (Technical, Commercial, Financial Bid Forms, Draft Forms of Contracts, Drawings and all Addenda /Annexure of useful Documents) were prepared by GPHA and fully administered through the bidding process.

1.3.2.2 In-between the time, a major Pre-Bid Conference was hosted by GPHA at the Movenpick Ambassador Hotel, in Accra for the prospective Bidders and their Funding agencies. More than 120 persons participated in the Pre-Bid Meeting held on October 2, 2013. Minutes of meetings, site visits, responses to requests for clarifications (RFCs) and technical engagements were all administered fully by GPHA to the satisfaction of the proponents.

1.3.2.3 At the close of the bid on January 27, 2014, seven bids were received and were found to be fully responsive to the IFB. These bids were opened publicly and the commercial terms declared in accordance with international competitive bidding procedures. Bids were subjected to preliminary technical and commercial evaluations with recommendations forwarded to GPHA towards the next steps in the procurement process.

1.3.3 **Expression of Interest for the Terminal Operators**

1.3.3.1 As part of the process, GPHA issued another procurement notice on April 10, 2014 for Request for Expression of Interest for Terminal Developers and Operators for Container, Roll-On-Roll-Off (RoRo) and Cruise / Passenger Terminals in the Port of Tema. The closing date for the REOI was May 23, 2014. GPHA received 16 entries as of the close of the submission deadline. These were made up of major international players in the various terminal operations. It is important to note that the REOI for the Terminal Operators was different from the Bidding for the construction works. These two main procurement plans were meant to run concurrently to, hopefully, engage various operators who will influence the final terminal superstructure designs for their operations.

1.3.3.2 The Committee noted that in all these procurement notices, MPS / MPH did not participate in the competitive processes. APMT and Bolloré jointly expressed interest in the Operations REOI, but not as "MPH" for that matter.

1.3.3.5 While the procurement processes were underway, the then Government, acting through the sector ministry issued a directive to GPHA to terminate the procurement processes. The directive requested GPHA to open discussions and negotiation with MPS for the Port of Tema Expansion Project. The Committee did not sight a written evidence of the directive.

1.3.4 **Termination of International Competitive Bidding Procurement Processes**

1.3.4.1 Consequently, on November 13, 2014, GPHA formally terminated the procurement process for the Terminal Operations. Letters were formally scanned and sent to the proponents. Again on December 16, 2014, the EPC and Finance Bid was also terminated by the issuance of a notice to all the participants who submitted bids.

1.3.4.2 On November 14, 2014, just a day after the termination of the Terminal Operations Procurement process, GPHA executed a Memorandum of Understanding (MoU) with MPS. It is unclear whether, or to what extent the MoU was negotiated before execution.

1.3.4.3

1.3.4.4 The Committee identified some contradictions in the MoU that should have been rectified before execution. One of such contradictions is the term / duration of the Concession: in one section (Article 4), it refers to an extension of the concession ***period to 35 years***, while another section (Annex 2: List of Provisions, Item 6) presents a concession of more than an ***additional 35 years***. The implications of these contradictions are discussed further in the Report. The MoU was to serve as the basis for the negotiations that led to the execution of the DoA. The decision of the then Government of Ghana to partner with MPS to deliver the Port of Tema Expansion Project was widely carried in the local and international news media.

1.3.5 **MPS / MPH's Proposal to Expand the MPS Terminal**

1.3.5.1 Prior to the international competitive tender process, APMT and Bolloré Group, in 2012, approached GPHA to express interest in expanding the MPS terminal along their proposed layout to satisfy MPS only. Their proposed layout was rejected by GPHA because it did not conform to the Port's Master Plan. That proposal was not considered as an option to the tender process, hence the unique international tender processes introduced in 1.3.2 and 1.3.3 above.

1.3.5.2 MPS, in November 2014, indicated to the Presidency of Ghana that it would provide funding for the GPHA Master Plan Development Programme including the Expansion of the Tema – Accra Motorway. It is significant to note that notwithstanding the international bid offers received by GPHA for the Phase I of the Project, GPHA truncated the promising international tendering process in favour of MPS on the basis of the promise that MPS[1] would provide full funding for the Project. The GPHA tender process neither envisaged any financial contribution from GPHA, nor sovereign guarantee from the Ghana Government to support the investment.

1.3.6 **Negotiating the Deed of Amendment (DoA)**

1.3.6.1 Following the execution of the MoU, GPHA engaged MPS to negotiate the DoA. The Parties agreed to negotiate the terms of the DoA in good faith and on the basis of the MoU. Some levels of negotiations were held between GPHA and the Partners in the Meridian Port Holding Group. Minutes of the negotiations were not available to the Committee. The negotiations culminated in the execution of the DoA to the Concession Agreement between GPHA and MPS.

[1] MPS was represented by the main MPH partners (APMT and Bollore) as the developers for the project. Therefore it can be construed that MPH (and not MPS) promised to fund the port project and then expand the access roads as well; and their readiness to inject nearly US$1.5M into the Ghanaian economy without any contribution from GPHA / GoG won them the support

1.3.2 GPHA gave concessions in consideration of promises and representations that MPS made during the negotiations. Some of these promises and representations are captured in the MoU executed between the Parties. The Committee noted that periods and quality of negotiations were inadequate and the failures of such inadequacy are reflected in the executed agreements. The extent of negotiations (length, quality, team composition, venues, minutes of discussions etc.,) on the DoA and the related data were not available to the Committee. Albeit the implications of the negotiations of the DoA on the survival of GPHA are described further in Section 6.

1.4 MPS' Representations

Some of the representations that MPS made and which formed the basis of the approach adopted by GPHA are summarized below:

1.4.1 MPS' Investment Partners to invest US$1.5Billion

1.4.1.1 The initial project cost for the Expansion Project was estimated at US$1.5Billion though this was not stated in the MoU. However, from the onset of the negotiations of the DoA MPS consistently made reference to the estimated project cost of $1.5 billion as one of a kind in an African Port. They indicated that their investment in the Port Expansion Project will provide Ghana with a world-class port infrastructure with expanded and modern facilities lasting 100years at a cost of US$ 1.5Billion. It was understood that the Project investment partners, MPH (APMT and Bolloré Grp) would provide the funding, build, operate and handover to GPHA after the term of the concession.

1.4.2 Investment in Basic Port Infrastructure

1.4.2.1 Given the understanding that the Project investment partners, MPH (APMT and Bolloré Grp) were to invest so much into the project, and the basic infrastructure to be developed (dredging, breakwater, etc.) could be used for other concessions within the Expansion Area, GPHA was ready to make all the concessions to facilitate the realization of the Project.

1.4.3 Feasibility Studies and Viability Indicators

1.4.3.1 The Committee noted that the Financial Model submitted by MPS indicated that the Internal Rate of Return (IRR) acceptable for the project was approximately 10.5 percent. This influenced the level of concessions made by the Grantor since the Grantor did not re-evaluate the IRR representations form MPS.

1.4.4 Concession Fees Waived to Support Project

1.4.4.1 Following from above, GPHA agreed to very low and liberal concession fees on Stevedoring and Ports Dues and Zero concession fees on Berth Occupancy Charge (Harbour Rent) to ensure project feasibility and ultimate project realization. GPHA also agreed to forego payment of lease rent on the land or any upfront payment (Initial Concession Fee Payment) for the business granted MPS, See Section 5.8. All these were done to allow MPS to recover the cost of the Project, initially estimated at US$1.5billion. The project estimates earlier published were estimates based on GPHA's Technical Feasibility Studies and Designs prior to the International bidding process.

1.4.4.2 It has come to light upon commencement of marine works that the initially estimated project cost of US$1.5Billion has reduced to about $1.1Billion and may go down further as the Project is executed and actual bill of quantities are aggregated.

1.5 Tax Waivers Granted By Parliament Of Ghana

After signing the DoA in June 2015, MPS, with the support of GPHA and Ministry of Transport, made an application for tax waivers and concession through the Ministry of Finance to the Parliament of Ghana, in January 2016 and was granted tax waivers totaling US$832million in March 2016.

1.6 Equity Contribution and Dilution of GoG/GPHA Shares

As stated earlier, the clear understanding of the Parties, as established during the International Tender, was that GPHA had no intention to contribute cash towards the realization of the Project. Throughout the negotiation of the DoA, MPH, in recognition of the above, gave no indication that GPHA (as Grantor / Shareholder of MPS) would ever be called upon to make equity contribution towards the realization of the Project. There was also no decision and suggestion that GPHA will have its shareholding in MPS diluted in the event that it fails to respond to any equity cash call in the future.

1.7 IFC-Arranged Loan

1.7.1 Following the Execution of the DoA, MPS entered into a Loan Agreement with the International Finance Corporation (IFC) for the financing of the Project. It is unclear why the loan was not on the account of MPH to confirm the representations made by MPS under the MoU. One of the conditions of the loan was that the "Sponsor Parties" (MPH Shareholders of MPS) would contribute a minimum of 35% of the amount required as equity. These IFC-related developments, in the view of the Committee, are inconsistent with the original understanding of the Parties. See Section 1.6 above, and further explanations in the Shareholding structure in Section 3.5, below.

1.8 Summary of Events Leading to Impasse

1.8.1.1 The MoU of November 2014 was premised on the development of the Project through funding from GPHA's Project investment partners, APMT and Bolloré Africa Logistics, without recourse to Government Sovereign Guarantees nor GPHA's balance sheet. Over the course of several events that were not consistent with the intentions of the MoU, it turned out that GPHA's shareholding in MPS was diluted from 30% to 15% under very questionable circumstances. Some of the events included the execution of the DoA itself, the execution an IFC Loan Agreement with several other collateral agreements, Board Meetings, Shareholders' Meetings, shares allotment and issuing notices with purported resolutions, etc., and eventually the purported shares dilution.

1.8.1.2 GPHA had maintained its position that there was no need for GPHA to contribute any cash to finance the Project. Further, the PIP in particular insisted that the IFC Loan required counterpart / equity funding for the Project. These positions are captured in some Minutes of Meetings, particularly the May 23, 2016 Shareholders' Meeting in Amsterdam. However, the Resolution, dated June 24, 2016, which purported to dilute GPHA's shareholding appears to be at odds with the said minutes. According to the Former Director General (Mr. Richard Anamoo) and the General Manager of Finance of GPHA (Mr. Christian Amedor), the dilution of the shares was filed at the Registrar General's Department but GPHA only became aware of the said dilution when the 2016 Financial Statement of MPS was delivered to GPHA. This apparent realization triggered a major impasse between the Parties.

1.8.1.3 Further GPHA refused to endorse certain IFC documents (The Share Pledge Agreement and the Form Irrevocable Power of Attorney) to trigger the disbursement of the IFC facility. GPHA's refusal to sign the additional agreements, according to MPS, could threaten the sustenance of the project.

1.8.1.4 The Committee however observed that contrary to the above, GPHA had signed the Resolution of Shareholders (dated June 24 2016) which, among other things, purported to dilute the shares of GPHA from 30% to 15% through share allotment. The Committee also noted that GPHA had signed the following IFC-Agreements: the Equity Support Agreement, Direct Agreement, Subordinate and Assignment Agreement.

2 MINISTERIAL REVIEW COMMITTEE

The continuous impasse and GPHA's refusal to sign the Share Pledge Agreement, which is a Condition Precedent to the first drawdown of the IFC Loan facility, was reported to the Government's Economic Management Team (EMT). The EMT directed the Ministry of Transport to set up an inter-ministerial / agency Committee to basically review the various agreements signed between GPHA and MPH/MPS.

On Tuesday, 23rd January, 2018, the Honorable Minister for Transport inaugurated the Committee and charged the members to, among other things, review the Shareholding structure of GPHA and MPH, the GPHA/MPS Concession Agreement(s) and the related financial implications considering the IFC Loan and the tax waiver and concession for the project.

2.1 COMMITTEE MEMBERSHIP

The Committee is multi-skilled set-up made of:

i. Hon. Daniel Nii Kwartei Titus-Glover (MP), Deputy Minister of Transport (Chairman).
ii. Mr. Charles Adu Boahen, Co-Chairman, Dep. Minister of Finance.
iii. Mr. Godfred Dame, Deputy Minister of Justice & A.G. – Member
iv. Hon. Samuel Ayerh-Paye (MP), Chairman, Parliamentary Select Committee on Roads and Transport.
v. Miss Irene Messiba, Ag. Director-PPME, MoT- Member
vi. Mr. Kofi Nti, Commissioner-General, GRA – Member
vii. Mr. Hayford Amoh, Director of Internal Audit, Min. of Finance – Member
viii. Ing. Komla Ofori, GPHA – Member
ix. Alhaji Khalid Nuhu, Finance Manager, Takoradi Port, GPHA – Member
x. Mr. Frederick Kwesi Blay, Reserves Manager, Bank of Ghana – Member
xi. Mr. George Ekow Mill, GPHA – Member / Secretary.
xii. **Co-opted Members**
   a. Mr. Peter Mac Manu, Board Chairman, GPHA
   b. Mr. Sam Owusu-Akyaw, Private Financial Consultant,
   c. Edward Kofi Osei, Director of Tema Port – Member
   d. Mr. Joshua Nimako, Head of Legal, Tema Shipyard & Drydocks (GPHA).
   e. Mr. Adrian Osei Antwi, Legal Counsel, Ministry of Finance
   f. Mr. Ofotsu Tetteh-Kujorjie, Advisor, Ministry of Finance.

2.2 TERMS OF REFERENCE

The Terms of Reference were given as follows:

2.2.1 To review the shareholding structure of the Meridian Port Services.

2.2.2 To review the IFC Agreement for the financing of the Port Expansion Project.

2.2.3 To review the main Concession Agreement and its amended version.

2.2.4 To review the Tax Waiver and Import duties on the Port Expansion Project.

2.2.1.5 Any Other Related Issues.

2.3 METHODOLOGY

2.3.1 Desk Study

The Committee adopted the following methodology:

2.3.1.1 Reviewed all available documents, files, correspondences, minutes of meetings, where available, covering the various arrangements;

2.3.1.2 Analyzed technical data that may have arisen due to these agreements and the assessment of the financial implications;

2.3.1.3 Extensive group discussions on the various issues to explore the most probable interpretations of the various terms;

2.3.1.4 Any other methods consistent with such assignments.

In all these facets, the Committee upheld the highest sense of confidentiality and self-discipline in the issues encountered.

2.3.2 Interviews

2.3.2.1 The Committee interviewed principal actors in the negotiations of the various contracts / agreements for the purposes of seeking clarification and institutional memory on some of the documents, reasoning, setting, situations, etc., which may have influenced the various agreements

2.3.2.2 The following key persons were interviewed:

i. Mr. Christian Amedor, General Manager - Finance, GPHA;
ii. Prof. Christopher Ameyaw-Ekumfi, former Minister of Harbours and Railways;
iii. Mr. Ben Owusu-Mensah, former Director General of GPHA (2001 – 2009);
iv. Mr. Richard A. Anamoo, former Director General of GPHA (Mar. 2012 – Jan. 2017);
v. Mr. Ruben Atekpe, former Board Chairman of the MPS and Shareholder Representative of the Sutton Energy Group. He attended with Mr. Franklin Kwame Asante, the former Board Member of MPS (representing GPHA) and Former GM-Audit of GPHA.
vi. Mr. Mohamed Samara, CEO of MPS (Sept. 2007 till date) who attended the interview with MPS Legal, Claims and Insurance Manager, Mr. Frank Ebo Brown.

2.3.2.3 The Committee expected the attendance of the former Deputy Attorney General, Hon. Dr. Dominic Ayine; He could not attend. Also, the Board Chairman of MPS, and former Board Member of GPHA Alhaji Asoma Banda could not attend though several attempts were made to reach him.

2.3.3 Insight and Historical Perfective

2.3.3.1 GPHA's Representatives on the Committee, the Project Engineer, Ing. Komla Ofori and the Finance Manager of the Port of Takoradi, Alhaji Khalid Nuhu provided very useful historical, information and knowledge of the port expansion project and processes, especially in the latter years of the MPH/MPS engagements. Other members also brought to bear extensive analytical views of the various scenarios to present objective interpretation of the issues discussed.

CONFIDENTIAL

2.3.4 **Site Visit**

2.3.4.1 The Committee, on Tuesday 6th February 2017, paid a visit to the construction site of the MPS new terminal project for a first-hand view of the physical scale of works covered under the DoA.

2.3.4.2 The site visit also confirmed actual construction programs that were ongoing with marine crafts, dredgers and reclaimers, land-based equipment, trucks and other plants were at work. GPHA port development engineers estimated the value of works executed / committed at the time of visit to the site could be between US$250Million and US$300Million.

FINDINGS / GENERAL OBSERVATIONS BY THE COMMITTEE

3 SHAREHOLDING STRUCTURE AND AGREEMENTS

3.1 ORIGINAL AND ONLY SHAREHOLDER'S AGREEMENT.

The Meridian Port Services Limited (MPS) was incorporated as a joint venture special purpose vehicle mainly between the GPHA and Meridian Port Holding (MPH). The MPH was mainly made up of Bolloré Africa Logistics Grp. Bouygues Travaux Publique and the Sutton Energy Group and the APM-Terminals who were, at the time, represented in Ghana by the Maersk Shipping Line. Apparently, within the period of the execution of the Shareholders Agreement and Concession Agreement, the Bouygues Travaux Publique abandoned the deal in favour of other new engagements in Africa.

3.2 GENERAL SHARES STRUCTURE

3.2.1.1 The Initial shares represented in Shareholders Agreement

MPH: 70%, made up of

12.9% of Bouygues Travaux[4] (which should have been reverted to GPHA, as of 2007)

6.75% of Sutton Energy Group[5], and

In essence, 25.175% each for the Bolloré and APMT/Maersk teams, considering representations that these entities had equal shares.

GPHA: 30%

3.2.1.2 Mr. Ben Owusu-Mensah, the Former DG of GPHA (2001-2009) narrated to the Committee the circumstances under which the shares were allocated. According to him, "the then President of Ghana, H.E., J.A. Kufuor earlier wanted a 40% share for GPHA and later agreed that GPHA (or GoG) should retain at least 30% shares in the SPV and that the rest of the four international private parties could share the 70%". The Committee also noted that there is no documentation of these engagements leading to the Shareholder's Agreement.

3.2.1.3 The Committee also noted that the shareholding structure that emerged was not based on a scientific evaluation of contributions of the Parties. Indeed the initial value of shares as presented in the shareholder's agreement could not be explained.

3.3 THE 6.75% SUTTON ENERGY GROUP SHARE

3.3.1.1 There were varying figures ranging from 5%, through 6.5% to 6.75% purported to belong to the Sutton Energy Group, though such figures were always subsumed under the MPH-70%. The Sutton Energy Group was represented by Mr. Reuben Atekpe, Kojo Annan and one Michael Wilson.

---

[4] This group pulled out of the consortium before the terminal concession was executed in 2004.

[5] Sutton Energy Grp indicated a 6.5% in other correspondences though the recent arbitration award indicated a retention of a 6.75%shares in the Consortium.

3.3.1.2 The Committee also found out that in October 2017, the Sutton Energy Group won an Arbitration against the MPH Group in respected of a purported dilution of the Sutton Energy Group's shares in the MPS. This arbitral decision (globalarbitrationreview.com of 5th October 2017) brought to light the existence of the Sutton Energy Group in the MPH partnership.

3.4 THE BOUYGUES TRAVAUX PUBLIQUE-12.9% SHARES FOR GPHA

3.4.1.1 The Committee also observed that the third MPH party, Bouygues Travaux Publique, before the signing of the Concession Agreement, did not take up the shares allocated to it. Also, since there is no evidence that the original Shareholding structure was established under any scientific valuation, the remaining Shareholders did not take any action to re-value the dis-engagement of Bouygues Travaux from the consortium.

3.4.1.2 The Government of Ghana then took over the said unsubscribed shares. It was originally thought to be a third of the MPH-70% until the MPH informed the Ministry of Ports Harbours and Railways (MPHR) that it was rather 12.94%[6] (MPH Letter to MPHR) of December 5, 2005). The Government of Ghana (GoG) accepted the 12.94% and offered to transfer it to a local Ghanaian firm to encourage indigenous participation in the maritime container services business. GoG directed that the 12.9% shares should be allocated to Alhaji Asoma Banda, the then CEO of Port Handling Company (PHC). Alhaji Banda acknowledged receipt of the offer letter and accepted the offer, in writing (refer to Appendices 9.10.19), and promised to revert to the Minister of Ports, Harbours and Railways on the offer.

3.4.1.3 Evidence made available to the Committee revealed that the Government of Ghana, shortly after the offer to Alhaji Banda, rescinded its decision and directed that the 12.9% shares be rather given to GPHA. See Appendix 9.10.15.

3.4.1.4 The main conclusions are that:

a. There was no evidence that Alhaji Asoma Banda paid any consideration (cash or otherwise) for the 12.9% shares at the time they were offered.

b. It has been established that the 12.9% shares have still, as of the date of this Report, not been transferred to GPHA. as instructed by the Ex-President J. A. Kufuor, at the time.

c. In essence the beneficiary of the 12.9% over the period must be compelled to refund such benefits to GPHA and the share transfers completed without any further delays.

3.5 RESTRUCTURING OF SHAREHOLDING

3.5.1.1 The Shareholding structure, prior to the IFC Agreement was 70% and 30% to MPH and GPHA respectively, covering a total of 100,000 shares..

3.5.1.2 Following the need for a funding requirement of US$1,095 million, IFC required a capital structure of 65% Debt (US$712m) and 35% equity (US$383m). In order to meet the equity requirement of the IFC loan, the Shareholders of MPS on June 10, 2016 resolved to increase the number of authorized ordinary shares of no par value to 3,000,000 from 100,000. On the same date (June 10, 2016), MPS resolved to make a capitalization issue by transferring US$101.995,670 (equivalent to 768,916 units) from income surplus to stated capital without altering the existing shareholding structure of 70%/30%.

[6] The exact figure has since not been established, though the 12.9% comes out prominent in most discussion and texts. Figures encountered include 12.8%, 12.94%, 12.9%.

3.5.1.3 Subsequently a June 10, 2016 resolution sought to allot, issue and call on ordinary shares up to GHC equivalent of US$98.70m. On June 24, 2016, 512,963 units of shares was allotted to MPH whilst 219,841 was purported to have been allotted to GPHA, under the presumption that in accordance with the June 24, 2016 resolution, MPH accepted their allotment of 512,963 units of shares though GPHA elected to decline the share offer for the cash consideration.

3.5.1.4 Consequently and in accordance with Clause 13.1(b) of the 2004 shareholders agreement, the GPHA 219,841 units of shares was offered to MPH so that GPHA's shareholding was purported to have been diluted from 30% to 15%.

4 THE IFC AGREEMENTS FOR THE FINANCING OF THE PROJECT

The International Finance Corporation (IFC), an affiliate of the World Bank, was engaged by the PIP to provide financing for the Project. The Loan Agreement came with several other related Financing Documents listed below;

4.1 SET OF IFC FINANCIAL AGREEMENTS

a. The IFC Loan Agreement
b. The Equity Support Agreement – *signed by GPHA*
c. The Share Retention Agreement – *signed by GPHA*
d. The Security Documents
e. The Required Hedging Agreements
f. The IFC Fee Letter
g. The Direct Agreement – *signed by GPHA*
h. The Collateral Agency Agreement
i. The Intercreditor and Security Sharing Agreement
j. Subordination and Assignment Agreement – *signed by GPHA*
k. Share Pledge Agreement
l. Form of Irrevocable Power of Attorney,
m. Form of Accession Agreement
n. Any other Agreement

4.1.1.1 According to GPHA, the IFC-loan and its conditions placed GPHA under some sort of pressure, considering that it was not expected to contribute cash to the Project under the circumstances. In particular, the 35% equity / upfront contribution for the Project, which was the obligation of the Sponsor Parties (excluding GPHA, by its definition in the IFC documents) resulted in the GPHA share dilution and its impasse.

4.1.1.2 The Committee, however, strongly disagrees with GPHA's position and interpretation of the IFC Agreements. GPHA had actually signed the necessary collateral IFC agreements as noted in Section 4.1 above, and therefore cannot purport to be unaware of the implications. GPHA's refusal to execute the Share Pledge Agreement, as a condition precedent to drawdown is therefore not tenable, considering that GPHA had already executed the supporting agreements. The financial terms of the IFC-loan in its form do not necessary present any dangers to the Borrower and the Sponsors, as it appears the terms were negotiated based on the representations made by the Borrower and the Sponsors to IFC. Also, with the history of the international competitive bidding process that had to be truncated to the benefit of MPH, the Committee is of the view that the IFC facility could have been structured to reflect the original intentions of bidding process.

[4] See Appendix 9.4

4.1.1.3 According to the CEO of MPS, Mr. Mohamed Samara, as of February 1, 2018, no part of the IFC facility had been disbursed and that the project could come to a halt by March 2018 if no drawdowns were made on the IFC facility. He emphasized that all the works, services and supplies contracted as of February 2018 had been funded through the revenue / income flows of the Company (MPS). The Committee's site visit revealed that works contracted and executed could be in excess of US$250Million (conservative estimation), and therefore MPS needed to revert to Board of Directors on such commitments.

4.1.1.4 The Committee therefore recommends an engagement with IFC, if possible, to review the structuring of the loan agreement and the other related commitments. From the executed copies of the IFC Agreements, the term of the loan is a 10-year repayment period with a grace period of 3 years for construction. These time scales are inconsistent with Investment Protection Period, the tax waiver and concessions period for the concessionaire, and most importantly, the Concession and its DoA described in further details below, See Section 5.

5 CONCESSION AGREEMENT AND THE DEED OF AMENDMENT

The Concession Agreement is the main contractual link between the Parties for the development of the Project. Without doubt, it remains the most contentious document with conflicting interpretations on various issues. It is clear that the DoA, as executed, did not fully reflect the objectives of the GPHA Masterplan.

In the first place, several, most likely all, definitions and re-definitions of terms need to be revised and made consistent with the respective timelines, milestones, etc., in the DoA. Ultimately, the major disparities and / or unfair contentious texts need to be re-aligned. The Committee therefore presents herein some of the main contentious sections, clauses / sub-clauses that need to be re-looked at.

5.1 TERM OF THE CONCESSION.

Section 3.16 of the DoA provides:

5.1.1.1 Term

(a) Clause 3.1 of the Concession Agreement is replaced, in the DOA, by the following:

"The Concession is granted from the Agreement Date and shall continue for a period of thirty-five (35) years from the Date of Operation unless terminated earlier in accordance with the provisions contained in this Agreement (the "Term") during which the Concessionaire is authorized to implement the Project and the Expansion Project subject to and in accordance with the provisions of this Agreement."

5.1.1.2 GPHA's position is that the intention of Section 3.16(a) of the DoA is merely to extend the existing concession term from 20years to 35years counting from the Agreement Date of 2004. On the contrary, the MPS team (represented by MPH-Bolloré and APMT) is of the view that the DoA grants a distinct 35year term starting from 2020, when MPS hopes to have completed and commenced operations on a "New Second Berth". The MPH position would bring the total term of the Concession to, at least, 55years (20+35).

5.1.1.3 GPHA finds MPS' (MPH) interpretation of Section 3.16(a) to be disingenuous and totally unacceptable. According to GPHA, the MPS Concession had run for 9 years as at the time the DoA was executed in June 12, 2015. It would have run for close to 16 years by the time the First and Second New Berths are completed and deployed by 2019. The years spent on Terminal 2 should count as part of the 35 years' term of the Concession., The Concessionaire is only expected to relocate its operations to a new area with increased capacity and therefore an extended period, considering the scale of development. The concession term must be clearly re-defined and instructed.

5.1.1.4 The Committee also observed that, the DoA provides an opportunity for MPS to extend the Term by an Additional Term of 15 years..

5.2 ASSIGNMENT OF TERMINAL 2

5.2.1.1 Section 3.2 of the DoA provides for the transfer of the operations and management of Terminal 2 (The current MPS Container Terminal) to GPHA upon commencement operations on the Third New Berth of Terminal 3 (the New Terminal). This is observed to be 12 months after the construction of the 3rd Berth of Terminal 3. The implication of this is that, MPS can hold on to the existing Terminal 2, even if it operates two New Berths at the new site and will only handover Terminal 2 upon first container move at the 3rd New Berth. This provision could potentially, in the case where MPS fails to complete Berth 3 of Terminal 3, eliminate GPHA from container operations.

5.2.1.2 GPHA's original intent from the Tema Port Master Plan and confirmed during the interviews, was that MPS, upon assumption of operations at the New Terminal (not related to any number of berth) shall relinquish all rights at the existing terminal. This should be carried forth and properly re-presented in the text of the DoA.

5.3 TRANSFER OF ASSETS

5.3.1.1 According to the DoA, the transfer of management and operations of Terminal 2 shall be realized through the execution of an "Assignment Agreement" by the Parties. The Assignment Agreement shall transfer the MPS's Returnable and Transferable Assets to GPHA at their written down value as at the date of the execution of the Assignment Agreement.

5.3.1.2 After taking over the management and operations of Terminal 2:

i. GPHA may decide to operate the facility or assign it to another party to operate.

ii. MPS will continue to maintain some rights in Terminal 2 – **Concessionaire's Surviving Rights.** This allows MPS to continue to provide stevedoring and shore handling services at the facility when it is faced with the problem of queuing of vessels at Terminal 3.

iii. GPHA or its Assigns shall pay 20 percent of the revenues from stevedoring of containers handled on Terminal 2 to MPS as **Concessionaire's Share** of the stevedoring revenues.

iv. MPS shall collect all containers handled at Terminal 2 within 48 hours to its facility for storage and delivery to customers.

v. All shore handling and storage services in respect of containers transferred from Terminal 2 shall be provided and invoiced by MPS.

5313 In GPHA's view, this Section of the DoA on the assignment of Terminal 2 to GPHA should be renegotiated to achieve the following objectives:

a. MPS should completely relinquish Terminal 2 to GPHA without any rights to receive a share of the stevedoring revenues without the maintenance of any surviving rights in Terminal 2. Also, such transfer should require MPS to vacate the terminal by decommissioning and demobilizing all equipment / moveable assets to the new site at no cost to GPHA. Any assets that are left behind and will require GPHA's efforts to demolish/ decommission shall be at a cost to MPS. Any asset that may be reassigned to GPHA will be done at no cost to GPHA.

b. MPS should not have the right to handle any vessels at Terminal 2 in the event of queues on the new Terminal (Concessionaires Surviving Rights). Where there are queues and vessels have to call at Terminal 2, the Operator of Terminal 2 should be given the full right to handle and maintain the proceeds.

c. GPHA or its Assigns should not pay any share of the revenues from its stevedoring operations on Terminal 2 to MPS.

d. GPHA or its Assigns should have the right to perform shore handling (receipt and delivery) of containers handled on Terminal 2.

e. GPHA or its Assigns should retain all the revenues from shore handling of containers (handling, storage, unstuffing, etc.) at Terminal 2.

5314 If these provisions of the DoA are not renegotiated, and the renegotiated terms enforced, it would become very complicated when GPHA decides to assign the Terminal 2 to another concessionaire. The new concessionaire will be confronted with the problem of paying royalties to both MPS and GPHA; this is not acceptable.

5.4 Investment Protection Regime

5411 Section 3.3 of the DoA obliges GPHA not to (i) initiate discussions, (ii) develop, or (iii) authorize the development and/or operation of any container terminal in the jurisdiction of the Port of Tema and within a radius of 20 nautical miles from the Operational Area's boundaries during the **Investment Protection Period**. This is the period starting from the Effective Date and continuing until the end of one year's period after annual container throughput is or exceeds 2.5 million Twenty-Foot Equivalent Units (TEUs). The Investment Protection Period shall not be (i) less than 12 years from the Date of Operation and (ii) extended beyond 18 years from the **Date of Operation**. The Date of Operation is the date after Date of First Operation upon which the Services are first provided at the **Third New Berth.** The import of this is that where commercial operations begin after the construction of the First New Berth then the minimum period of the Investment Protection Regime is more than the 12years envisaged in the DoA.

5412 The Investment Protection Regime gives MPS a veritable monopoly in the handling of containers in the Port of Tema until throughput is at 2.5 million TEUs or for a minimum period of between 12 and 18 years from the Date of Operation.

CONFIDENTIAL

5.4.1.3 There is an urgent need to open the container market in the Port of Tema to competition in order to instill efficiency and best customer service. Consequently, the Section 3.3 of the DoA must be revised to limit the Investment Protection Period to be consistent with the IFC facility payback period or not more than 12years. This shall not be tied to TEUs and shall be reckoned from the date of first move from the first new berth. This will provide a fair balance between the need to protect the investment of MPS and protecting the interest of customers and the state.

5.5 Exclusivity Of Services

5.5.1.1 Section 3.7 of the DoA amended Section 4.1 of the Concession Agreement to grant MPS as Concessionaire, the exclusive right to handle any vessel which is (i) a full container vessel or (ii) a vessel which is carrying 200 TEUs or more. These are called the Eligible Vessels.

5.5.1.2 The Committee observes that the 200 TEUs cut off point literally reserves all vessels carrying economic volumes of containers to MPS, with the exception of ro-ro vessels. This will deny the Licensed Stevedores a fair share of the container traffic; and would jeopardize the survival and growth of their businesses.

5.5.1.3 the above provisions of the DoA will negatively impact local capacity building and operations of indigenous businesses at the Port . It will also lead to significant loss of jobs and income in the local economy.

5.5.1.4 The Committee recommends an amendment of this clause to make the cut-off point to vessels carrying more than 400 TUEs of containers and at the fair notification of queues. In other words, vessels carrying up to 400-TEUs must be handled by GPHA or its assigns to help develop and sustain local capacity.

5.6 Contribution by Third Parties

5.6.1.1 Section 3.9 of the DoA provides that any person granted rights to develop facilities within the sheltered area constructed by MPS is required to make some payment (contribution) to MPS. This is to ensure that the said operator makes a contribution to the capital cost of the breakwater construction, dredging and common infrastructure. The calculation of the contribution to be paid to MPS is based on a formula provided in the DoA.

5.6.1.2 It is expected that the recovery of part of the investment made by MPS from prospective concessionaires through contribution arrangement will reduce their investment risks , loan and interest repayment burden. Sadly, the DoA made no provisions for adjustment in the concession fees, or GPHA as Grantor benefiting from such recovery of part of the investment costs from future Port Operators.

5.6.1.3 The Committee observes that, the import of the above is that, the Concessionaire is limiting the right of GPHA as Grantor/Landlord to use its assets (breakwater, dredged area and common infrastructure) for the benefit of the Country. This is also on the back of the fact that the Concessionaire has the benefit of the Investment Protection Period within which it is expected to recoup its investment in the Project.

5.6.1.4 This is unfair when one considers that the concession fees were negotiated on the presumption that MPS will bear the full cost of the investments.

5.6.5 The Committee strongly recommends that Section 3.9 be revised and amended to provide for a corresponding formula for adjustment in the concession fees, reduction in investment protection period, exclusivity rights (if applicable) at any time a contribution is made by third parties to MPS. Such contribution, if made, shall be made through the Grantor, as those assets technically become the Grantor's Assets. Alternatively, a portion of the amount recovered be paid to GPHA as Grantor. This will ensure fairness and equitable allocation of the benefits accruing from the arrangement requiring future Concessionaire setting up operations within the development area to make contribution to the development costs. GPHA may use its share of the contribution to support the development of such new concessions to improve the Port's cluster.

5.7 Development Of Fifth Berth

5.7.1.1 Section 3.1 (b) provides an opportunity for MPS to develop a Fifth Berth, if it so desires. This intention, the Committee has gathered, never came up in the negotiations but ended up in the DoA.

5.7.1.2 The Committee has observe that under Section 3.1(b) of the DoA, there is no specific performance matrix applicable to MPS. MPS is merely given the right to unilaterally decide on when it finds it appropriate to request for the right to build a Fifth New Berth and in the event it does request for such right, GPHA is bound to favourably consider the said request of the concessionaire.

5.7.1.3 The Committee further observes that granting MPS the right to develop a Fifth Berth will further entrench their monopoly position in the Port to the detriment of the country and customers of the Port. The argument had always been in favour of a four-berth facility and never a fifth berth. It is therefore recommended that this clause to be expunged completely.

5.8 Concession Fees

The DoA has revised downwards and restructured the Concession Fees and Tariffs in the Concession Agreement. These were primarily conceded to allow the Project Investment Partners" to recoup their investment in the shortest possible time.. However, considering the duration of these concessions fees, relative to the IFC repayment and investment protection regimes, the concession fee structure has to be revised. Below is the concession fees structure provided under the DoA:

5.8.1 Ship Dues and Port Dues

5.8.1.1 Clause 3.11 of the DoA grants MPS the right to charge and retain all payment made in respect of Vessel Dues viz. Harbour Rent (i.e. Berth Occupancy Charge).

5.8.1.2 Clause 3.11 further grants MPS the right to charge and retain Port Dues as follows:

a. Until **Discharge Date**, 90 percent to MPS and 10 percent to GPHA. The Discharge Date is the date of discharge of all the Concessionaire's obligations under the Financing Agreements as confirmed by the Lenders.

b. During the **First Period**[1], 80 percent to MPS and 20 percent to GPHA. The First Period is the five years' period commending on the first date after the Discharge Date.

c. During the **Second Period**, 50 percent to MPS and 50 per cent to GPHA. The Second Period is the period commencing on the first day after the date of expiry of the First Period and ending on the expiry of the Term.

[1] This First Period / Second Period should be suppressed into one period (rest of the term periods) in further detail computations.

5.8.1.3 Berth Occupancy and Port Dues are major revenue sources of GPHA. Currently, GPHA collects and keeps 100% of all revenues from Berth Occupancy and Port Dues on cargo. A conservative financial model, developed on the basis of the MPS project, presents that over the Term of the Concession (considering both the controversial "35yrs from Date of Operations" and actual terms 35years from 1st April 2007", an estimated US$7.99Billion will be earned from Royalties / Concession Fees which include the main components of Berth Occupancy Charge and Port Dues, if the 100% (original concession situation) prevailed. However, based on the DoA, US$3.9Billion-average will be the equivalent earnings, that is less than 48% of the original, even though the terminal facility would be much larger, with a bigger capacity. This means that GPHA cedes more than half (US$4.1Billion) to MPS as result of the revision and restructuring of the Concession Fees in the DoA. This is clearly unacceptable and detrimental to GPHA and the Ghana.

5.8.1.4 Consequently, the Committee recommends, considering the earlier arguments of investment protection periods, terms of loans, term of the concession itself, etc., royalties to be paid as follows, at the worst:

a. Berth Occupancy Charge Royalty:
- *i.* Until Discharge Date, 60 percent to MPS and 40 percent to GPHA,
- *ii.* During the rest of the term / Period, 40 percent to MPS and 60 percent to GPHA

b. Port Dues Royalty:
- *i.* Until Discharge Date, 60 percent to MPS and 40 percent to GPHA,
- *ii* During the rest of the term / Period, 40 percent to MPS and 60 per cent to GPHA

5.8.1.5 It is important to note, and the Committee strongly recommends that that the concept of "First Period" and "Second Period" should be scrapped so that the terms focus on the period leading to the "Discharge Date" and the "Rest of the Term". However the financial implications computed in Section 6 of this report tends to retain the concept as a scenario, which is obviously not in the interest of GPHA / Ghana, but only presented to give the most conservative scenarios. The Committee, therefore, strongly recommends the suppression of the "First Period" concept. This should also be re-negotiated and replicated where they occur in the DoA, considering the financial implications for both parties.

5.8.2 **Other Payments – Concession Fees / Royalties**

5.8.2.1 Section 3.13 of the DoA extinguishes the payment of Royalty by MPS to GPHA from the First Instalment Date. The First Instalment Date is the date on which MPS makes the first instalment of the repayment of the loan to the lenders.

a. For the Services provided until the **Discharge Date** [the date of discharge of all the Concessionaire's obligations under the Financing Agreements, which means at least 11years of operations], the Concession Fee shall be aggregate amount of:
- *i.* Five percent of the stevedoring charges for Imports, Exports, Transit containers (full and empty)
- *ii.* Five percent of the stevedoring charges for Transshipment containers
- *iii.* Five percent of the shore handling tariffs for Import, Export, Transit and Transshipment containers

b. For the Services provided during the **First Period** [the five year, beyond the 11years, period commencing on the first day after the Discharge Date] the Concession Fee shall be aggregate amount of:
- *i.* Ten percent of the stevedoring charges for Imports, Exports, Transit containers (full and empty)

ii. Ten percent of the stevedoring charges for Transshipment containers
iii. Ten percent of the shore handling tariffs for Import, Export, Transit and Transshipment containers

c. For the Services provided during the **Second Period** [the period commencing on the first day after the date of expiry of the First Period and ending on the expiry of the Term] the Concession Fee shall be aggregate amount of:
   i. Fifteen percent of the stevedoring charges for Imports, Exports, Transit containers (full and empty)
   ii. Fifteen percent of the stevedoring charges for Transshipment containers
   iii. Fifteen percent of the shore handling tariffs for Import, Export, Transit and Transshipment containers

5.8.2.2 The Committee observes that the DoA's provisions are a paltry fraction of the 25 percent Royalty in the Concession Agreement that was amended. In the light of the very attractive and liberal tax concessions granted MPS by the Parliament of Ghana, and also the attractive revenue projections, it is important that the Concession Fees and indeed other related payments be revised. The following are recommended revised rates for the Concession Fee:

A. For the Services provided **until the Discharge Date**, the Concession Fee shall be aggregate amount of:
   i. Fifteen percent of the stevedoring charges for Imports, Exports, Transit and Transshipment containers (full and empty)
   ii. Fifteen percent of the shore handling tariffs for Import, Export, Transit and Transshipment containers

B. For the Services provided during the **First Period** the Concession Fee shall be aggregate amount of:
   i Twenty percent of the stevedoring charges for Imports, Exports, Transit and Transshipment containers (full and empty),
   ii. Twenty percent of the shore handling tariffs for Import, Export, Transit and Transshipment containers

C. For the Services provided during the Second Period the Concession Fee shall be aggregate amount of:
   i Twenty-five percent of the stevedoring charges for Imports, Exports, Transit and Transshipment containers (full and empty),
   ii Twenty-five percent of the shore handling tariffs for Import, Export, Transit and Transshipment containers.

D. Committee also recommends the payment Concession Fee on Containers Shifted on Board and Via Quay i.e. re-stows. These traffic are not mentioned among the categories to attract payment of Concession Fees. Rates of 25% for the entire concession term is expected.

E. Concession Fees should also be fixed for "Craneage and Stevedore Labour Overtime" at rates specified above viz. for 15% until the Discharge Date, 25% for the rest of the term.

5.9 TARIFF ADJUSTMENT

5.9.1 Section 3.14(c) grants MPS the freedom to adjust tariffs to reflect inflationary trends without approval from GPHA. MPS has the right to revise tariffs upwards at the beginning of each fiscal year using a formula based on the inflation index in Ghana and United States of America. Once MPS determines the Tariff Adjustment Factor, GPHA is obliged to notify the port community within 30days after which the new tariffs shall take effect.

5.9.2 Another issue regarding the application of the Tariff Adjustment Factor is that it shall come into effect from the Effective Date [the date of satisfaction of all the Conditions Precedent]. This is long before the First and Second New Berths are completed and put into commercial operations.

5.9.3 The Committee observes that MPS (a Concessionaire) should not be given the freedom to determine tariffs and then instruct GPHA (the Grantor) to publish same. The arrangement does not only undermine the absolute right of GPHA to set port tariffs, it also undermines Regulation 5 of the Ghana Shippers' Authority Regulations, 2012 LI 2190 which mandates the GPHA to negotiate tariffs with the Ghana Shippers' Authority over approved multi-stakeholder processes.

5.9.4 It is therefore recommended that Section 3.14 be revised completely to allow GPHA to set the tariffs within the existing legal and policy framework. MPS, just like any other concessionaire, may be encouraged to make a case for tariff adjustment by presenting its verifiable cost of operations to GPHA for consideration. Also the proposed formula, indexation to the US-dollar, exchange rates, depreciation, etc., may not be required if GPHA retains its rights over the review of tariffs and determines when such tariffs should be applied.

5.10 CONCESSION AREA RENT PAYMENT

5.10.1 Section 3.13(h) of the DoA exempts MPS from the payment of rent on the land on which Terminal 3 is to be developed (Concession Area Payment).

5.10.2 For a Port Authority that is transforming partially into a landlord model, ceding rent on prime port land leased to private operators will be unwise. Indeed, ports earn a greater part of their income from rent on leased prime port land. GPHA cannot afford a total waiver of the land leased to MPS for the development of its terminals.

5.10.3 Committee therefore calls for a renegotiation of this section of the DoA to a proposed minimum of US$5.00/m^2-per annum as rent for the hard land (i.e. unreclaimed lands) and a minimum US$1.00/m^2-per annum for the reclaimed land. The rent should be fixed for the first five years and thereafter reviewed upwards by a minimum of five percent every two years. Otherwise, under the DoA, if these rates are applied it is estimated that GPHA would cede an estimated US$300Million, over the supposed 35year[a] term, to MPS in Lease Rent on Land (Concession Area Fees) over the Term of the Concession if the provision of Section 3.13(h) is not amended.

5.11 INITIAL CONCESSION FEE PAYMENT

5.11.1 The DoA should have, but did not provide for, an Initial / Upfront Concession Fee Payment by MPS. As a normal practice, this is a lump sum payment by a Concessionaire to a Grantor in concession agreements. From rule of thumb estimation applicable to port reform models, an average 5% of construction costs may be taken as Upfront Concession Fees for such a business. Such a fee would have come up to over US$70Million, for a US$1.5Billion deal.

[a] Tarnt should actually be 26years and not 35years

6 FINANCIAL EVALUATIONS AND IMPLICATIONS OF THE CONCESSION

This Section discusses the financial implications of the DoA for GPHA and sums up the revenues that would have either traditionally accrued to GPHA or that would have been ceded to MPS/MPH as a result of the transaction. The revenues from Port Dues and Berth Occupancy (Royalty) are computed from the Financial Model of MPS used for the negotiation.

6.1 PROJECT PROFITABILITY

6.1.1 The estimated total cost of the Project, following the execution of the DoA, is US$1,026 million with the breakdown as stated in Table 4 below.

6.1.2 The Project is expected to deliver the main facilities such as 4-km Breakwater; dredging of the entrance channel and harbour basin to a depth of 16-meters; 1,400-metre wharf ; 120-hectare yard; Fully geared facility with next generation port equipment and information technology.

Table 4- **Project Cost Summary**

Project Details (Use of funds)	Cost (USD Million)	% of total
Preliminary works and Engeneering	$ 101.00	10%
Dredging	114.00	11%
Breakwater	112.00	11%
Quary	86.00	8%
Reclamation & Soil Improvement	57.00	6%
Yard & Internal road	67.00	7%
Networks	57.00	6%
Building,gates & Walls	13.00	1%
Civil works Insurance	9.00	1%
Contingent	133.00	13%
Total Civil Works	749.00	73%
Ship to Shore cranes	45.00	4%
Rubber Tyred Gantries	36.00	4%
Other equipments	12.00	1%
Contingent	5.00	0%
Total equipment	98.00	10%
Financing fees	36.00	4%
Interest during Construction	80.00	8%
DSRA	44.00	4%
Start-up costs	19.00	2%
Total Financing and capitalised start up cost	179.00	17%
Total Project Cost	$ 1,026.00	100.00%

Financing Structure		Amount (MM)		Rate (%)	Tenor (Yrs)
Equity (fresh)	$	93.00			
Internal Cash generation	$	266.00			
Total Equity		359.00	35%		
IFC Loan (A & B)	$	667.00		6%	11
Total Senior Debt		667.00	65%		
Total Financing Cost	$	1,026.00			

DRAFT

6.1.3 Construction commenced in November 2016 and the Project Sponsor (MPS) is estimated to have spent between $250million and $300million in equity, with additional costs to be incurred as construction progresses. IFC, the senior lender, is expected to disburse debt in the amount of US$667million, subject to MPS fulfilling certain conditions (See Appendix 9.4). The debt financing of US$667million is yet to be disbursed by IFC as GPHA is yet to sign the Share Pledge Agreement, which a condition precedent for disbursement.

6.2 PROJECT VIABILITY ANALYSIS BASED ON 35-YEAR CONCESSION

The Project Viability Analysis is developed around 3 scenarios, based on:

1. The Original Concession Agreement (OCA), dated 17 August, 2004 (S1);
2. The Deed of Amendment (DoA), dated 12 June, 2015 (S2); and
3. The Committee's **Proposed Minimum Royalty Structure** (S3)

The outcome of the above analyses is presented in **Table 5** below:

Table 5 - Projected Statement of Comprehensive Income

		S1 : Based on the OCA	S2: Based on DOA	S3: Proposed Minimum (GPHA)
$'000				
Total Revenue		22,930,364.86	22,930,364.86	22,930,364.86
	Concession Fees	-7,988,676.60	-3,903,431.88	-6,166,666.31
	Gross Operating Profit	14,941,688.26	19,026,932.98	16,763,698.55
	Debt Service	-1,075,245.94	-1,075,245.94	-1,075,245.94
	Admin. Expenses	-6,544,198.15	-6,544,198.15	-6,544,198.15
Cash Net Profit before Tax (Cash)		7,322,244.16	11,407,488.88	9,144,254.45
PV of Net Profit before Tax (Cash)		$3,996,193.75	$6,293,735.30	$5,038,422.86
	Payback Period	15-years	10-years	12-years
	IRR	10%	18%	15%
	Cost of capital (Libor plus 5%)	7.3%	7.3%	7.3%

6.2.1 Scenario 1: Profitability Analysis of Project based on the Original Concession Agreement (S1)

6.2.1.1 Under this scenario, total gross projected revenue to MPS is estimated at US$ 22.9 billion over a 35-year term. Out of this, an amount of US$ 7.9 billion accrues to GPHA as Royalties and Port Dues payable by MPS over the project life.

6.2.1.2 Taking into consideration other operating costs such as debt service of US$ 1 billion and administrative cost of US$ 6.5 billion, it leaves MPS with an estimated net profit before tax (cash) of US$ 7.3 billion over the term of the concession.

6.2.1.3 The Present Value (PV) of the net cash profit before tax is estimated at US$ 3.9 billion, with an Internal Rate of Return of 10%, using a US 30-year treasury yield of 3%. The cost of capital for the project is 7.3% with an expected project payback period of 15 years.

Table 6 below, presents the royalty and port dues structure under the Original Concession Agreement (OCA).

Table 6 - **Royalty and Port Dues Structure under OCA**

Original Concession terms		
Gross Revenue	**GPHA**	**MPS**
1. Royalty : Import/export/Transit	25%	75%
2. Royalty: Transshipment	10%	90%
3. Port dues on Cargo	100%	
4. Royalty: Shorehandling	10%	90%
5. Marine Services including berth occupancy charges	100%	

6.2.2 **Scenario 2: Profitability Analysis of Project based on the Deed of Amendment (S2)**

6.2.2.1 Total gross projected revenue to MPS is estimated at US$22.9billion over a 35-year term. Out of this an amount of US$3.9billion accrues to GPHA as Concession Fees and Port Dues payable by MPS over the 35-year term.

6.2.2.2 When we consider other operating costs such as debt service of US$1billion and administrative cost of US$6.5billion, it leaves MPS with an estimated net profit before tax (cash) of US$11.4billion over the term of the concession.

6.2.2.3 The PV of the net cash profit before tax is estimated at US$ 6.3 billion, with an Internal Rate of Return (IRR) of 18%, using a US 30-year treasury yield of 3%. The cost of capital for the project is 7.3% with an expected project payback period of 10 years.

The following (**Table 7**) are the royalty and port dues structure under the DoA.

Table 7 - **Royalty and Port Dues Structure Under DoA**

PORT DUES	MPS	GPHA	REMARKS
Import, Export, Transit, Transshipment	90%	10%	Until discharge date
Import, Export, Transit, Transshipment	80%	20%	During first period
Import, Export, Transit, Transshipment	50%	50%	During second period
CONCESSION FEES (Stevedoring and Shorehandling)			
Import, Export, Transit, Transshipment	95%	5%	Until discharge date
Import, Export, Transit, Transshipment	90%	10%	During first period
Import, Export, Transit, Transshipment	85%	15%	During second period
SHIP DUES (Berth Occupancy)			
All vessels calling Terminal 3	100%		Payable throughout the concession period

6.2.3 **Scenario 3: Profitability Analysis of the Project based on the Committee's Proposed Amendment to the DoA (S3)**

6.2.3.1 Total gross projected revenue to MPS from the OCA is estimated at US$22.9billion over a 35-year term. Out of this an amount of US$5.8 billion accrues to GPHA as Royalties and Port Dues payable by MPS over the 35-year term.

6.2.3.2 When we consider other operating cost such as debt service of US$1billion and administrative cost of US$6.5billion, it leaves MPS with an estimated net profit before tax (cash) of US$9.5billion over the term of the concession.

6.2.3.3 The PV of the net profit before tax (cash) is estimated at US$ 5.2 billion, with an IRR of 15%, using a US 30-year treasury yield of 3% per annum. The cost of capital for the project is 7.3% with an expected project payback period of 12 years.

The following (**Table 8**) are the royalty and port dues structure based on the Committee's Proposed Amendment to the DoA.

Table 8 - Royalty and Port Dues Structure based on Committee's Proposal to the DoA

PORT DUES	MPS	GPHA	REMARKS
Import, Export, Transit, Transshipment	60%	40%	Until discharge date
Import, Export, Transit, Transshipment	50%	50%	During first period[10]
Import, Export, Transit, Transshipment	40%	60%	During second period
CONCESSION FEES (Stevedoring and Shorehandling)			
Import, Export, Transit, Transshipment	85%	15%	Until discharge date
Import, Export, Transit, Transshipment	80%	20%	During first period
Import, Export, Transit, Transshipment	75%	25%	During second period
SHIP DUES (Berth Occupancy)			
a. All vessels calling Terminal 3	60%	40%	Until discharge date
b. All vessels calling Terminal 3	50%	50%	During first period
c. All vessels calling Terminal 3	40%	60%	During second period

6.2.3.4 As presented in the projected statement of comprehensive income in **Table 5** above, MPS will generate sufficient cash flow to finance the Project costs arising under the Concession Agreement and remain profitable. Additionally, the Project is viable and the development costs are reasonably compares to projects of similar nature and the GPHA ports master plan feasibility studies (Sellhorn-HPC Report, 2014).

6.2.3.5 The Committee's decision rule for Project viability is based on the Project Payback Period (PPP) and the IRR. As evidenced in the snapshot in **Table 9** below, though the PPP is extended from 10 years (under S2) to 12 years (under S3) with respective IRRs of 18% (S2) and 15% (S3), the cost of capital for the project remains unchanged at 7.3%, which is lower than the IRRs, and indicates that the Project is viable irrespective of the two scenarios.

6.2.3.6 The scenario 3 returns a higher concession fees to GPHA without affecting the viability of project and investment return to the project sponsor.

***Table 9* - Snapshot of Project Viability Analysis**

	Scenario 2 (S2)	Scenario 3 (S3)
Project Payback Period (PPP)	10 years	12 years
Internal Rate of Return (IRR)	18%	15%
Cost of Capital	7.3%	7.3%
Estimated Concession Fees to GPHA	**US$3,903,431,880.00**	**US$5,833,407,610.00**

[10] Recommended to be suppressed so we have only Discharge Period and the rest of the Concession Term

6.2.5 Consequently, the Committee advises that the Grantor should pursue renegotiation of the DoA in accordance with the proposed revisions under S3 to maximize GPHA's concession fees intake. **Chart 2** below, reflects the Concession Fees recoverable by GPHA over 35 years on a successful renegotiation of the DoA under S3. The relative differential at year 26 is consistent with the Committee's recommendations and certainly does not leave MPS / MPS any worse off.

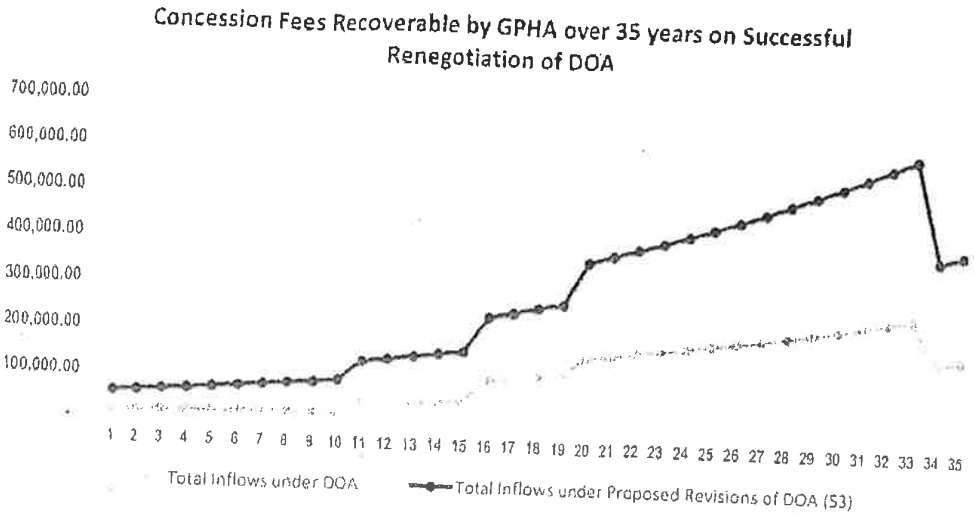


Chart 2 - **Concession Fees Recoverable by GPHA over 35 Years on Successful Renegotiation of the DoA**

6.3 VALUATION OF CONCESSIONS MADE BY THE GRANTOR UNDER THE DOA

An analysis was carried out to quantify various concessions made by GPHA in the DoA relative to the OCA. The estimated PV of the said concessions amounts to US$2,297,541,560.00. For the purposes of bringing MPH to the negotiating table, it is the Committee's recommendation that the value of the said concessions could be characterized as GPHA's additional equity contribution towards the Project. The Committee takes the view that this position could be used as a counter to MPH's purported dilution of GPHA's shares in MPS, with a view to:

a. Clawing back the diluted 15% of GPHA's shareholding in MPS;

b. Clawing back Bouygues Travaux Publique's 12.94% that should have been returned to GPHA in accordance with Government's directive issued more than 10years ago.

c. Engender good faith negotiations between the GPHA and MPH.

The results of the analysis is presented in **Table 10** and **Chart 3** below.

Table 10 - **Valuation of Estimate Total Gross Concession Fess Ceded to MPS Project due to DoA**

Estimated Total Gross Concession Fees to GPHA under OCA over 35 Years: (A)	Estimated Total Gross Concession Fees to GPHA under DOA over 35 Years: (B)	Estimated Total Gross Concession Fees Ceded to MPS due to DOA over 35 Years: (A)-(B)	Present Value of Estimated Total Gross Concession Fees Ceded to MPS due to DOA over 35 Years using a 30-year United States (US) Treasury yield of 3% -- PV [(A)-(B)]
US$7,988,676, 600.00	US$3,903,431,880.00	US$4,085,244,720.00	US$2,297,541, 560.00

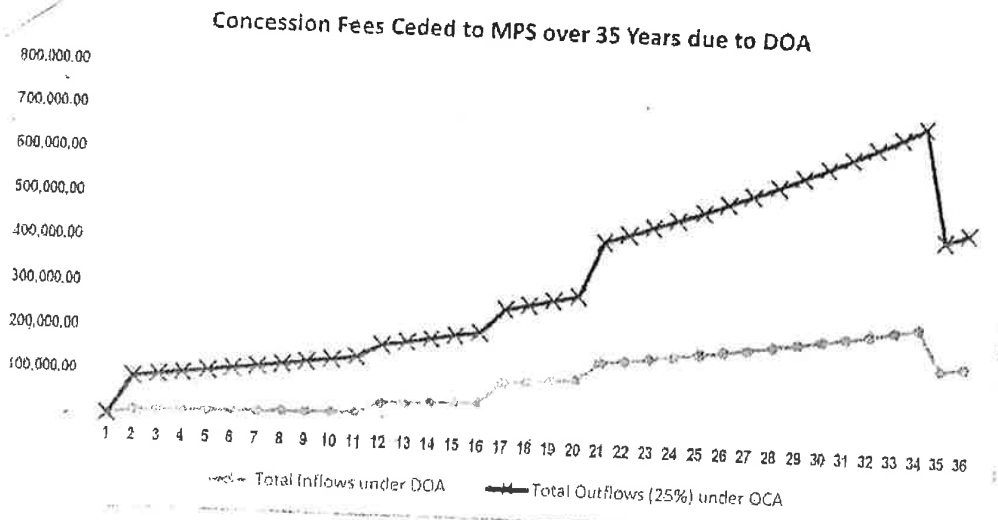


Chart 3 - **Concession Fees Ceded to MPS over 35Years due to DoA**

6.4 PROJECT VIABILITY ANALYSIS BASED ON 26-YEAR CONCESSION

The Committee's baseline Project Viability Analysis was anchored on a 35-year Project lifetime. However, an alternative scenario based on a 26-year[11] Project / concession lifetime was also considered, the results of which is tabulated in Table 11 below. Notably, notwithstanding the reduced term, the Project remains profitable as the three scenarios, S1, S2 and S3, churn out IRRs of 9%, 17% and 14% respectively, relative to a corresponding cost of capital of 7.3% across the board. Incidentally, the Payback period remains unchanged.

Table 11 - **Projected Statement of Comprehensive Income based on 26-Year Concession**

	S1: Based on the original concession agreement	S2: Based on the DoA	S3: Based on proposals by GPHA
$'000			
Total Revenue	13,798,598.72	13,798,598.72	13,798,598.72
Concession Fees	-4,565,402.00	-2,002,562.11	-3,241,618.03
Gross Operating Profit	9,233,196.72	11,796,036.61	10,556,980.69
Debt Service	-1,075,245.94	-1,075,245.94	-1,075,245.94
Admin Expenses	-3,207,829.46	-3,207,829.46	-3,207,829.46
Net Cash Profit before Tax	4,950,121.31	7,512,961.20	6,273,905.28
PV of net cash profit before tax	3,020,796.10	4,706,081.61	3,890,277.87
Payback	15-years	10-years	12-years
IRR	9%	17%	14%
Cost of Capital	7.3%	7.3%	7.3%

From the **Table 11** above, the originally intended 26-year term, which has been misrepresented in the DoA also returns a viable project and should be sustained.

7 TAX WAIVERS FOR THE PORT EXPANSION PROJECT

In early 2016, the MPS/MPH applied to the Government for certain tax waivers and concessions for the Project. The tax waiver application was explored under various provisions of the Ghana Investment

[11] The 26-year term is based on the original intention of the Concession Term as envisaged under the MoU – with an extension of the 20-year term to 35years and having spent 9-years (out of the 20) at the time of executing the MoU, the useful unexpired term of the Concession (the original and the DoA) then should have become 26years.

Promotion Centre (GIPC) for "Strategic Investor" tax breaks. There is documentary evidence that MPS contacted the GIPC to initiate the tax waiver application as a strategic investor.

GPHA also wrote to support the tax protocol applications for the project, particularly in the principle of waivers for the construction-related procurement taxes

Parliament, after some debates, approved the tax waiver which covered virtually every possible tax obligation expected under the transaction. The Committee also observed that the tax protocol and grated waivers were not considered in the financial modeling for the viability of the Project.

The breakdown of tax waivers are as follows:

7.1 Construction Procurement Tax

This covers contractors and subcontractors of works, services and supplies. There was also a waiver on customs duties and related taxes, levies for goods and equipment that are imported into the country for the project. The construction procurement tax waiver exceeded US$163Million.

7.2 Corporate Income Tax

Exemption of corporate income taxes for minimum of 10 years is applicable under the GIPC Act and MPS was granted a 15% Corporate Income tax rate after the waiver, over a 10-year period.

7.3 Stabilization Levy

An exemption from Stabilization levy estimated at US$145million was supposed to have been taken off after 2017

7.4 Five-Year Carry-Forward of Losses / Deductions

The essence of this waiver grants that any tax obligations that are not secured as a result of end-of-year losses can be carried-forward to as far as five years.

7.5 Withholding Taxes (Expatriate and Local Contractors, Subcontractors)

Waiver considers that contractors and sub-contractors shall be exempt from withholding taxes, estimated at US$91million over the period of construction and beyond.

7.6 Dividend Tax on Shareholders for 20Years

A 20-year tax-free Dividend for MPH estimated in excess of US$122Million.

7.7 Value-Added Tax and National Health Insurance Levy

VAT/NHIL waived on certain procurement items is estimated at US$62Million.

8 RECOMMENDATIONS AND CONCLUSION

The Committee strongly recommends that the Government uses all available technical, legal and political means to call for a thorough review and renegotiation of aspects of the agreements governing the GPHA-MPH-MPS relationship. The agreements should be substantially re-negotiated with clear and consistent definitions of terms, roles, rights, responsibilities, etc., of the parties. The GPHA, as Grantor, should be given the full hand, with the support of the Ministry of Transport and other sectors to re-organize the affected agreements. The renegotiations should cover the Shareholder's Agreement, DoA, Financial Agreements, Tax Protocol and the remodeling of the fair financial implications of the Project.

The Committee emphasizes

1. MPS did not submit a bid
2. MPS did not participate in the bidding processes, and
3. In the end, the then ongoing international competitive bidding processes was terminated and handed over to MPS for reasons that the Committee, through its interviews cannot justify.

8.1 RECOMMENDATIONS

8.1.1 Shareholders Agreement

The Committee recommends the following:

8.1.1.1 the restoration of the 15% Shares to GPHA with immediate effect, as the conditions under which the shares were diluted are untenable.

8.1.1.2 the restoration of the 12.94% shares which should have been completed more than 10years ago. This will bring GPHA's total shareholding to 42.94%.

8.1.1.3 The payment of dividends, to GPHA, accruing to the 12.94% shares, plus interest thereon, from 2008 to date;

8.1.1.4 A new, or amended, shareholder agreement to be executed between the shareholders and the structure to be registered with the shareholder agreement. Shareholding Certificates should be distributed to all the parties in clear transparency.

8.1.2 The International Finance Corporation (IFC) Agreement

8.1.2.1 The Committee recommends an engagement with IFC, if possible, to review the structuring of the loan agreement and the other related commitments. The re-negotiations may focus on the term of the loan, repayment period, period of 3 years, etc., to restore consistency with the re-negotiated concession terms.

8.1.2.2 The Government can also take up the IFC-Loan completely.

8.1.3 Concession Agreement and DoA

The Concession (OCA and DoA) present a wide range of the main items that need to be renegotiated some of which are noted as follows:

8.1.3.1 Term of the Concession – this is to be re-defined to reflect the original intentions of the negotiations, e.g. the additional 15years to the unexpired term of the concession and not related to the second or third new berth, ref. section 3.16 of the DoA. The 26-year concession period, as intended must be upheld.

8.13.2 **Assignment of Terminal 2** - the transfer of the operations and management of Terminal 2 should be effected as soon as the first berth of the new terminal (Terminal 3) is ready for operations. MPS should therefore not have any rights to operations at Terminal 2.

8.13.3 **Transfer of Assets** – All moveable assets on Terminal 2 may be retained (or taken away) only at cost to MPS. GPHA does not need to pay for any such moveable assets. However, all immovable assets, buildings, etc., shall be retained at no cost to GPHA.

8.13.4 **Concessionaire's Surviving** Rights – MPS shall not retain any survival rights to operations on Terminal 2 after the concessionaire's relocation Terminal 3. In line with the recommendation on the Transfer of Assets, above, MPS shall completely relinquish all rights to Terminal 2 and shall not receive any revenues from container operations on the terminal.

8.13.5 **Investment Protection Regime and Exclusivity** – to avoid the monopoly of MPS operations over the concession period, the Investment protection period should be reframed to be consistent with the loan repayment period and not necessarily cargo throughput no the physical geographic region.

8.13.6 **Exclusivity of Services to Eligible Vessels** – the Committee recommends that eligible vessels should be defined to be vessels carrying more than 400 TUEs of containers and such vessels can be handled by GPHA or its assigns at Terminal 2.

8.13.7 **Contribution by Third Parties** – if the recovery of part of the investment made by MPS from new prospective concessionaires will reduce MPS' investment risks then the concession fees, reduction in investment protection period, exclusivity rights (if applicable) at any time a contribution is made by third parties to MPS, etc., should all be revised anytime a new entrant is expected to make such payments. Such contribution, if made, shall be made through the Grantor, as those assets technically become the Grantor's Assets

8.13.8 **Development of Fifth Berth** – the opportunity for MPS to develop a Fifth Berth s should be disallowed. The concession envisages a 4-berth facility and that must be retained.

8.13.9 **Concession Fees** – the concession fees related to ship dues, port dues, berth occupancy, etc., as analyzed in Scenario 3 (see 6.2.3) and as recommended in Section 5.8 shall be the minimum levels for the Project. The Committee strongly believes that these stated minimum levels, as presented in the analysis will still allow the Project Investment Partners (PIPs)

8.13.10 **Discharge Date, First Period and Second Period** – these terms should be redefined such that the Discharge period shall be consistent with the investment protection period and any periods thereafter shall be taken as a normal commercial business period for the rest of the concession term. A new concession fee matrix should be designed to reflect the new segmented periods.

8.13.11 **Tariff Adjustment** – MPS should not be given the right to adjust tariffs as this goes against laid-down regulations. GPHA shall retain the authority to set the tariffs within the existing legal and policy framework. MPS may be encouraged to make a case for tariff adjustment by presenting its verifiable cost of operations to GPHA for consideration.

8.13.12 **Concession Area Rent Payment** – the concessioner must pay some nominal rates for concession area. It should not be given out for free. The Committee has proposed minimum rates of US$5.00/m^2-per annum as rent for the hard land (i.e. unreclaimed lands) and a minimum US$1.00/m^2-per annum for the reclaimed land.

8.1.3.3 **Initial Concession Fee Payment** – since the DoA offered additional value and volume to the container business, there should have been a nominal Upfront Concession Fee of about US$70Million, for a US$1.5Billion deal.

8.1.4 Tax Waivers for the Port Expansion Project

8.1.4.1 The Committee recommends that the Tax waivers and concessions granted should be revalued with a clear consideration of all other information relevant to the Project. The Ministry of Transport should initiate a call for review of the tax exemptions.

8.1.5 Non-Termination strategy to avoid implications as in DoA

8.1.5.1 The Committee does not recommend an outright termination of the concession, considering the implications of such an action. Until such a time that parties explicitly determine a termination as the mode of resolving any impasse, the Committee recommends that terms and conditions should generally be reviewed, re-defined, re-negotiated, revalued and where exceptional national / interests override all related aspects, specific Governmental Instructions will have to be issued.

8.1.5.2 The DoA states the **compensation package** that will be payable to MPS (MPH) which include:

a. the Written Down Value of Terminal 3 at the time of termination, AND
b. all interest paid by the Concessionaire for the financing of Terminal 3, AND
c. the Debt , AND
d. six percent (6%) per annum of the Written Down Value at the time termination of the Agreement or the cancellation of the Deed ; AND
e. all costs incurred by the Concessionaire in relation with the redundancy of its personnel, AND
f. all reasonable legal fees and other expenses of the Concessionaire.

8.1.5.3 A Termination is therefore not recommended until it becomes an inevitable option as the financial implications are huge and unattractive.

8.1.6 Governmental Instructions

8.1.6.1 The Committee appreciates that a Government instruction may be construed as a "Governmental Action" that may become detrimental to the project or discriminatory to the Concessionaire. However, it is recommended that there should be specific Governmental Instructions that must be carried out unconditionally and must be seen to enforce transparent National Interest to safeguard projects of this nature.

8.1.6.2 For example, **the 12.94% shares** should have been recognized as far back as 2007. The pending Government Instruction through the then Ministry of Ports, Harbours and Railways must be adhered to. Also, the call for renegotiations of concession agreements must be issued by the Government and should be carried out devoid of political and personal interest and with the most competent multi-disciplined teams.

8.1.7 Financial Revaluation of the Project

8.1.7.1 Referring to the Section 6 of this report, the Committee presents a re-valuation of the project under certain scenarios. The financial indications obviously need to be re-worked to give value to the project in terms of returns to all parties. If the necessary re-evaluation is not done, GPHA / GoG will be unable to service debts, retain staff and sustain the operations and maintenance of the Ports of Ghana. There is the need to sustain and improve GPHA's ability to develop additional facilities in Ghana's ports without dwindling its financial capacity.

8.1.8 **Capacity Support for GPHA**

8.1.8.1 The Committee, having realized management limitations of GPHA, recommends that the relevant technical personnel within GPHA should be given the right support to execute their responsibilities under such circumstances.

8.1.8.2 Further, for the recommended renegotiations, there is the need to lend some expertise support to GPHA as and when required. There may also be the need to procure additional expertise (local, international) and capacity building to support the business development programme.

8.1.8.3 GPHA also needs to realize its dual position in the MPS/MPH engagement – Grantor and Shareholder / Partner – and must therefore manage its engagement in negotiations with clear and distinct, yet fair and firm, positions for optimum gains in these partnerships.

8.1.9 **Information Control and Management**

8.1.9.1 The Committee believes that this review of the GPHA/MPH-MPS engagement has the potential to ignite passions and national debate on transactions of this nature. The Committee respectfully advices that the details of these discussions and sections of this report should be held confidential and tactfully disclosed. The strategy required to get all international partners in these engagements to submit to the position of Government is extremely important and can only be achieved with great attention to detail and tactical communication.

8.1.9.2 The Committee advices that the EMT should engage all possible communication teams (local and international) to pre-empt any fallouts and control deep self-introspective national discourse on this matter. This exercise could become a springboard for other similar transactions and a course for national renaissance.

8.2 CONCLUSION

In conclusion, the Chairman, Co-Chairman and Members of the Committee are grateful for this honor to serve the State on this assignment. The Committee emphasizes that the ports are strategic national assets that determine the course of the nation's trade capacity and socio-economic development. They are the main gateways for the country's foreign trade and catalysts for industrialization. The Ports generate employment and foreign exchange for the country besides being the main revenue collection platform.

As a country, we should at all times protect and guard our interest in the Ports, upholding truth, honest and ethical principles in the building of the nation in such concessions. We need to bring to bear the available sound technical expertise on major national transactions so we can give new hope to the rest of the African Continent that we have the capacity to get the best for the dignified people of Ghana.

Long Live the GPHA! God Bless our Homeland Ghana!

For and on behalf of the Committee;

GEORGE KENNEDY EKOW MILL
Member / Secretary (GPHA)

HON. DANIEL NII KWARTEI TITUS-GLOVER (MP)
CHAIRMAN / HON. DEPUTY MINISTER OF TRANSPORT

9 APPENDICES

9.1 SHAREHOLDERS' AGREEMENT RELATING TO MERIDIAN PORT SERVICES LTD; 2004

9.2 CONCESSION AGREEMENT BETWEEN THE GHANA PORTS AND HARBOURS AUTHORITY (THE 'GRANTOR') AND MERIDIAN PORT SERVICES LTD. (THE 'CONCESSIONAIRE') DATED 17TH AUGUST 2004.

9.3 DEED OF AMENDMENT NO. 1 TO THE CONCESSION AGREEMENT BETWEEN THE GHANA PORTS AND HARBOURS AUTHORITY AND MERIDIAN PORT SERVICES DATED 12TH JUNE 2015.

9.4 LOAN AGREEMENT BETWEEN MERIDIAN PORT SERVICES LTD. AND INTERNATIONAL FINANCE CORPORATION

9.5 SUBORDINATION AND ASSIGNMENT AGREEMENT BETWEEN APM TERMINALS B.V., BOLLORÉ AFRICA LOGISTICS, MERIDIAN PORT SERVICES LTD. (AS BORROWER), MERIDIAN PORT HOLDINGS LTD., INTERNATIONAL FINANCE CORPORATION, THE GHANA PORTS AND HARBOURS AUTHORITY AND THE SECURED HEDGE PROVIDERS

9.6 DIRECT AGREEMENT BETWEEN THE GHANA PORTS & HARBOURS AUTHORITY; INTERNATIONAL FINANCE CORPORATION; MERIDIAN PORT SERVICES.

9.7 FEASIBILITY STUDIES AND ENGINEERING DESIGNS FOR THE UPGRADE AND EXPANSION OF THE PORT OF TEMA, GHANA.

9.8 COST REPORT TERMINAL NORTH GPHA

9.9 DEED OF AMENDMENT – SUBMISSION OF DESIGN DRAWINGS OF SCHEDULE A (CONCESSION AREA), SCHEDULE C (GPHA MASTER PLAN) AND SCHEDULE E (OPERATIONAL AREA).

9.10 MINUTES/LETTERS/RESOLUTIONS:

9.10.1 Minutes Of Meridian Ports Services Ltd Dated 7th June 2017;

9.10.2 Letter On Shareholding Structure In MPS Dated 10th July 2017;

9.10.3 Letter On Issue Of Shares Dated 28th April 2017;

9.10.4 Letter On Issue Of Shares Dated 23rd September 2016;

9.10.5 Minutes Of Meridian Port Services Ltd. Dated 23rd May 2016;

9.10.6 Letter On Request For Parliamentary Approval For The Grant Of Tax Concessions And Waivers For The Port Expansion Project Dated 18th March 2016.

9.10.7 Letter On Proposed Equity Contribution Dated 16th February 2016;

9.10.8 Meridian Port Services Ltd. Written Resolution Dated 24th June 2016;

9.10.9 Minutes Of Meridian Ports Services Ltd Shareholder's Meeting Dated 10th June 2016;

9.10.10 Minutes Of Meridian Ports Services Ltd. Shareholder's Meeting Dated 23rd May 2016;

9.10.11 Letter On Tema Port Expansion Works: GPHA Equity Contribution To Project Funding Dated 11th April 2016;

9.10.12 Letter On Proposed Equity Contribution Dated 16th February 2016;

9.10.13 Letter On Transfer Of Shareholding Of Bouygues Travaux In Meridian Ports Services To GPHA Dated 3rd December 2007;

9.10.14 Letter On MPS Shareholders Agreement Dated 13th August 2007;

9.10.15 Letter On Shareholding Structure Of Meridian Ports Services Ltd/MPH Dated 14th January 2008;

9.10.16 Letter On Meridian Ports Services Shares Dated 4th August 2008;

9.10.17 Letter On Shareholding Allocations In MPS Dated 20th October 2008;

9.10.18 Letter On Offer of Shares In MPS Dated 3rd April 2007;

9.10.19 Letter On Offer of Shares In MPS Dated 22nd October 2007;

9.10.20 Minutes Of The 12th Meeting of GPHA Board of Directors Dated 24th May 2006;

9.10.21 Letter On Development of Tema Container Terminal Dated 20th January 2006;

9.10.22 Letter On Offer of Shares in MPH Dated 20th October 2006;

9.10.23 Letter From MPH Dated 5th December 2005;

9.10.24 Letter On Shareholding Of Bouygues Travaux and Sutton in Meridian Ports Services Ltd Held through Meridian Port Holdings Dated 21st October 2005;