

Annex

Concerns over alleged corruption in CDC-backed investments in Nigeria

(Annex to submission by The Corner House and Dotun Oloko to the International Development Committee's Inquiry into the Department for International Development's Annual Report, DFID in 2009-10.)

The CDC Group states that “responsible investment practices have always been core to CDC’s mandate”. The funds in which CDC invests are selected because of their managers’ specialist knowledge and understanding of the countries in which they operate. Moreover, they are expected to invest only in accordance with CDC’s Investment Code, which requires, *inter alia*, that all businesses in which CDC’s capital is invested comply with all applicable laws and international standards intended to prevent bribery and financial crime. The aim is “to ensure that portfolio companies improve upon their business practices from the environmental, social and governance perspectives during their investment period.”

Serious concerns have emerged over whether or not two CDC-backed private equity funds – Emerging Capital Partners Africa Fund II PCC (ECP Africa Fund II) and Ethos Fund V – complied with CDC’s Investment Code. Both funds have invested in Nigerian companies reported to be “fronts” for the alleged laundering of money said to have been obtained corruptly by the former Governor of Nigeria’s oil rich Delta State, James Ibori. Nigeria’s Economic and Financial Crimes Commission (EFCC) and law enforcement agencies in the UK have alleged links between these ECP- or Ethos-backed companies and Ibori and/or his associates.

- In October 2007, the Economic and Financial Crimes Commission (EFCC), Nigeria’s prime anti-corruption enforcement agency, named four companies – Notore, OandO, Celtel and Oceanic Bank – in a sworn affidavit as companies through which funds are alleged to have been corruptly moved on behalf of James Ibori, the former Governor of Nigeria’s Delta State. Emerging Capital Partners (ECP) or Ethos has invested in these companies. The affidavit also referred to a fifth ECP-backed company, Intercontinental Bank, as party to an alleged illegal payment.

Ibori has a criminal record in the United Kingdom and is currently under investigation on money laundering charges by London’s Metropolitan Police. In 2007, a UK court froze assets allegedly belonging to him worth \$35 million (£21 million). Ibori fled Nigeria in April 2010, following charges brought against him by the EFCC for allegedly selling off Delta State assets illegally to pay off a private loan from Intercontinental Bank while he was still Governor. He is accused of stealing \$290 million (£196 million) from Delta State. Ibori’s dealings with both Oceanic Bank (on which Ethos had board representation) and Intercontinental Bank (on which ECP had board representation) are central to the charges. On 13 May 2010, he was arrested in Dubai at the request of the London Metropolitan Police.

- Two directors of ECP-backed companies – Henry Imasekha and Michael Orugbo – were also named by the EFCC as part of its 2007 investigations into Ibori’s alleged “corruption, diversion and misappropriation of public funds, stealing and money laundering”. In EFCC’s October 2007 affidavit, Imasekha was described as “the character moving funds in Celtel, OandO and Notore Chemical Industries.” Imasekha has also been charged as a co-conspirator in the money-laundering case against Ibori and several of his associates that is currently being heard before the UK. In May

2010, Imasekha was reported to have fled to Ghana, following fresh corruption charges against Ibori.

- The current director of the Ethos-backed Oceanic Bank, Oboden Ibru, and the Bank's former CEO and director, Cecilia Ibru, are currently facing money-laundering charges in Nigeria. The assets of Cecilia Ibru have been frozen, and Oboden Ibru has been named as her associate. Oboden Ibru is also currently listed as a non-executive director of ECP-backed OandO.
- Intercontinental Bank and Oceanic Bank, in which ECP and Ethos have invested respectively, collapsed in 2009 and had to be bailed out by the Central Bank of Nigeria (CBN) – in effect, by Nigerian citizens to the detriment of the country's development. CBN sacked the banks' executive directors and ordered an investigation into a number of non-performing loan portfolios, including unsecured loans to Ibori's associates. Thomas Gibian, ECP's current Executive Chair, has reportedly been a board member of Intercontinental since 2007. Ethos similarly has board representation on Oceanic Bank.

The links that Nigeria's Economic and Financial Crimes Commission (EFCC) and other law enforcement agencies have alleged between ECP- or Ethos-backed companies in Nigeria and associates of James Ibori raise many questions about the due diligence performed by ECP and Ethos and by CDC:

- Did ECP seek advice from the EFCC as to its planned investments in Notore and other companies in Nigeria? If so, when? If so, what was the EFCC's response? If it did not, why did it not do so?
- Why did ECP chose to invest in OandO some two months after the company had been named by the EFCC in connection with Ibori's alleged money laundering?
- Why did ECP increase its stake in Notore after the EFCC had similarly named the company?
- Did the companies whose directors were named by the EFCC in its 2007 affidavit concerning money laundering and illegal payments inform their board members, including those representing the CDC-backed investment funds, about these widely publicised allegations and legal actions? If so, what did the board members representing the private equity funds do with this information? If not, how effective are these private equity funds, and the board members representing them, in ensuring good corporate governance, a key goal of CDC?
- What action did ECP and Ethos take to address the governance failures that ultimately led to the 2009 collapse of Intercontinental Bank and Oceanic Bank?
- Was Ethos aware of the size and extent of unsecured loans made by Oceanic Bank to companies associated with Henry Imasekha, whom the EFCC had named in 2007 as a business associate of Ibori? Did Ethos – which had board representation on Oceanic Bank – question the purpose of such loans?
- Did ECP's nominated board member on Intercontinental Bank – ECP's current Executive Chair Thomas Gibian – know that the bank was making unsecured loans to companies associated with Henry Imasekha, whom the EFCC had also named in 2007 as a business associate of Ibori? If so, what steps did he take to stop the practice?
- When did ECP and Ethos learn of the alleged links between their investee companies in Nigeria and James Ibori?

- If they were unaware of such links, which were widely publicised in Nigeria and elsewhere, what is the extent and relevance of their knowledge of the country in which they invested?
- What steps did ECP or Ethos take to alert the UK or Nigerian authorities of any concerns that such links might have raised?
- Did ECP and Ethos disclose to CDC that companies in which they were investing had been named by the EFCC in its investigations?
- When did CDC become aware of the alleged links between these five companies and Ibori?
- If CDC did not flag up such links, what does this indicate about the quality of its anti-corruption due diligence procedures?
- What losses has CDC incurred in relation to the five cited companies?
- What warranties did the two private equity firms, ECP and Ethos, make to CDC concerning the due diligence they had undertaken relating to the five investee companies and the anti-corruption procedures they had in place? Were these warranties broken? If so, what action is CDC taking?
- CDC conducted its own board level investigation into the alleged links between Ibori and the five investee companies. If it deemed the allegations sufficiently credible to merit such an investigation, why did CDC not inform the Serious Fraud Office of them immediately?
- DfID's support for CDC is premised on private sector-led economic growth being the way out of poverty. How was this objective realised through CDC's support for investments in Intercontinental Bank and Oceanic Bank on which CDC-backed funds had board representation? What are the development consequences for poorer Nigerians who are now effectively bailing out these banks after their failure helped to bring the Nigerian economy to the brink of collapse?

For the sources of information used to compile this Annex, please contact The Corner House. A Memorandum giving further details of the above concerns, signed by eight non-governmental organisations, is available at:

http://www.thecornerhouse.org.uk/sites/thecornerhouse.org.uk/files/CDC%20Memorandum_0.pdf.

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