

Serious Fraud Office



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The Attorney General
The United Republic of Tanzania

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Date: 21 March 2008
SPC01/D/MC

Dear Attorney General,

**RE: BAE SYSTEMS PLC; RED DIAMOND TRADING LTD & MERLIN
INTERNATIONAL LTD; ENVERS LTD; TANIL KUMAR CHANDULAL
SOMAIYA; SHAILISH PRAGJI VITHLANI; ANDREW JOHN CHENGE &
OTHERS**

SUPPLEMENTAL REQUEST FOR MUTUAL LEGAL ASSISTANCE (THE HARARE SCHEME)

The Director of the Serious Fraud Office ("SFO") presents his compliments to the Competent Judicial Authorities of Tanzania and the Attorney General and has the honour of presenting the following facts and request for assistance in the investigation of a suspected case of serious and complex fraud committed in England.

The SFO was created by the Criminal Justice Act 1987 ("the CJA 1987") and came into being on the 6th April 1988. Under the CJA 1987, the Director of the SFO may investigate and institute criminal proceedings of suspected offences in England, Wales and Northern Ireland which appear to him, on reasonable grounds, to involve serious or complex fraud. The Director discharges his functions under the superintendence of the Attorney General for England and Wales.

Designated lawyers in the SFO have all the powers of the Director as to the investigation, institution and conduct of proceedings. I am a lawyer so designated and have been appointed by the Director to be the Case Controller of the case in which the present request for assistance is made.



Individuals under Investigation

The SFO, in partnership with the Ministry of Defence Police ("MDP"), are principally investigating the affairs of:

1. BAE Systems PLC
6 Carlton Gardens
London
SW1Y 5AD
2. Michael Peter Rouse (date of birth 29th January 1948)
Hunters Keep
26 Badgers Hill
Virginia Water
Surrey
GU25 4SA
3. Sir Richard Harry Evans (date of birth 9th July 1942)
Hallcross Manor
Hallcross
Freckleton,
Preston,
Lancashire
PR4 1HU
4. Michael John Turner (date of birth 5th August 1948)
Greenacre
79 Fairmile Lane
Cobham
Surrey
KT11 2DG
5. Julia Aldridge (date of birth 31st March 1957)
102 Forest Rd
Liss
Hampshire
GU33 7BP
6. Andrew John Chenge (date of birth 24 December 1946)
546 Ghuba Road
Oyster Bay
PO BOX 11958 Dar Es Salaam
Tanzania



Tanzania

8. Tanil Kumar Chandulal Somaiya (7th July 1965)
Passport number: A0163862
c/o Merlin International Limited
1st Floor
Avalon House
Zanaki Street
PO Box 4013
Dar Es Salaam
Tanzania
PO Box 4013
Dar Es Salaam

9. Shailesh Pragji Vitlani (date of birth: 3rd October 1964)
Passport number: B-404501
c/o Merlin International Limited
1st Floor
Avalon House
Zanaki Street
PO Box 4013
Dar Es Salaam
Tanzania

Suspected Criminal Offences

The UK is a signatory to the Organisation for Economic Co-operation and Development's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention) 1997. In December 2001, the UK implemented the Convention by enacting Part 12 of the Anti-Terrorism, Crime and Security Act 2001 (the "2001 Act"). The 2001 Act amended the Prevention of Corruption Act 1906, in the view of the government, to clarify the scope of the Act in relation to extraterritorial applicability. The provisions of the amended Prevention of Corruption Act 1906, in so far as it affected the corruption of agents of foreign principals, came into force in the UK on 14th February 2002.

There is reasonable cause to believe that all the above named persons and company have committed offences of corruption under section 1 of the Prevention of Corruption Act 1906.

The maximum sentence for a person convicted, on indictment, for corruption is seven years imprisonment.

The relevant extracts from the above statute are set out at "Annex A" to this Letter of Request



The SFO and the Ministry of Defence Police were made aware that there was an ongoing domestic investigation into the sale by BAE of an air traffic control system to the Government of Tanzania. The SFO continues to work in partnership with the PCCB in relation to this matter.

Factual Background

The factual background the Radar contract and other relevant matters were set out in the Serious Fraud Office's previous Letters of Requests:

Letter of Request dated 13th June 2006

Supplementary Letter of Request dated 14th March 2007

Supplementary Letter of Request dated 1st October 2007

Supplemental Facts to this Letter of Request

BAE and Tanzania

In 1999, BAE entered into a contract to sell Radar equipment (an air traffic control system) to the Government of Tanzania. The Radar was to be used at Dar es Salaam airport and had both a civilian and military capability.

The contract price was US\$40 million. In fact, negotiations for this sale to the Government of Tanzania predated BAE's involvement and were originally conducted by Siemens Plessey Systems ("SPS") from 1992. At that time the Government of Tanzania was considering purchasing defence equipment valued at approximately US\$ 88 million.

BAE acquired SPS in October 1997 and inherited negotiations which were in an advanced state. Nevertheless even on the reduced contract price of US\$40 million, this sale continued to attract opposition from WB and IMF as well as the United Kingdom Government's Department for International Development and the Foreign Office. Ultimately however BAE were granted an export licence and the contract was approved.

Tanzanian Agent: Envers & Shailesh Vithlani

In 1999 BAE, through Red Diamond Trading Limited ("Red Diamond") a company registered in the British Virgin Islands, entered into an agreement with a Panamanian entity, Envers Trading Corporation ("Envers"). Envers is identified as a consultant working in Tanzania. This agent had previously acted for SPS and it continued to provide services following the acquisition of those companies by BAE. Documents disclosed to the SFO confirm that Envers was to receive commission fees in the region of 30% on the sale of the Radar equipment.

During the course of the SFO investigation it has been revealed that Tanil Jumar Chandulal Somaiya and Shailesh Pragji Vithlani ("Vithlani") held a power of attorney over Envers, which operated from an address associated with Merlin International Limited ("Merlin") in Dar es Salaam (see below).



Between January 2000 and April 2005 over US\$8m was paid by BAE through Red Diamond to Envers. These payments continued after the implementation of the Anti Terrorism, Crime & Security Act 2001 until the agreement between Red Diamond and Envers was terminated in December 2005, with a settlement payment of US\$3,362,250.

It is apparent from documents obtained from BAE and from interviews conducted by the SFO that Vithlani was acting as SPS agent from the earliest stages of the proposed sale, as far back as 1992-1993. However there is no written product from Vithlani of note for the sums he was paid and persons familiar with the commercial negotiations state that Vithlani neither was a technical nor commercial specialist playing an apparently nominal role as the contract progressed to finality.

The SFO investigation has good grounds now to believe it was generally known that Vithlani's role involved making payments to Tanzanian public officials in positions of influence in the Radar contract negotiations. The SFO believes on reasonable grounds that the Attorney-General, Andrew John Chenge ("Chenge") was one of the most important persons whom it was believed Vithlani would have had to make payments.

Andrew John Chenge

Chenge was the Attorney General in Tanzania between 1995 and 2006. During this period BAE and SPS were negotiating the sale of the radar system for Dar es Salaam airport with the Government of Tanzania. Chenge became directly involved with numerous aspects of the contract negotiations, notably the financing of the purchase.

In summary however, achieving an agreement for the financing of the radar system became a condition precedent to the viability of the proposed sale. Without the agreement of the Attorney General, the financing package, backed by Barclays Bank, could not be agreed. The Attorney General's Office was required to comment and approve the financing package. The importance of the Attorney General's role in the radar deal was encapsulated in a 16 June 1995 letter from the regional sales manager for SPS, Naqvi,

"What is becoming increasingly more important is the requirement by the Attorney General for the draft contract"

Documents in the possession of the SFO indicate that by 29 June 1995 the Attorney General was personally in charge of this aspect of the negotiations. From this time onward the Attorney General's role and importance in the negotiations are acknowledged in numerous internal SPS documents.

In 1996 and 1997 arrangements for progressing the radar sale were coming to finality.

Information provided by the Jersey authorities indicates that between 19 June 1997 and 17 April 1998 through a company controlled by Chenge called Franton Investments Limited ("Franton"), Chenge received over US\$1.5 million into an account held by the



company at a Jersey branch of Barclays Bank.¹ These monies had previously been remitted from an account held at Barclays bank in Frankfurt² and from other documents obtained from JO Hambro, may ultimately have been remitted from LGT Bank in Liechtenstein. The documentation states that the payor is "one of our clients".

Vithlani's role in marketing or lobbying is illustrated in the following exchanges as documented by various SPS employees. It is uncontested that the "friend" and "the fat man" references are references to Vithlani.

Mark Simpkins of SPS stated in a faxed letter dated 30 August 1997,

"I have had extensive discussions with our friend and I have this morning had a meeting with the Attorney General (AG) to go through outstanding Contractual issues... The programme to achieve an effective contract were discussed with him, it was agreed that we would aim to have all issues finalised by the end of next week, he said he would notify his people accordingly... The fat man having as I stipulated now resolved all the issues is keen to sign an addendum to his agreement... He argues that he has commitments to a lot of old and new players as the project has taken a considerable period to effect, in addition he has stated to achieve the above compromises new promises have had to have been made."

One of the sticking points in the negotiation of the financing package was choice of law in the event of civil dispute. This was a matter to be determined by the Attorney General. On 8 September 1997 Simpkins wrote,

"Also over the weekend our fat friend has been working to resolve the outstanding commercial issues, this morning he informed me that all issues outstanding are now resolved as follows [inter alia]

Law. They have accepted English Law with arbitration in London."

It is inferred from the above notes that Vithlani's association with Chenge, led to this important concession which minimised Barclays financial risk in lending to Tanzania. It is also suggested that references to "commitments" and "new promises" relate to an intention to bribe. This can be inferred from the simultaneous request by Vithlani for an amendment to his consultant relationship - which it is believed either was the vehicle for paying bribes, or recompensing Vithlani for "commitments" he had made whilst the contract was being negotiated.

¹ Franton Investments Limited between 19 June 1997 and 17 April 1998 received the following transfers made to Franton's US dollar account at Barclays Bank sort code 204505 account no 59662999:

1. Value date: 19.06.1997 - payment 499,731.87 DM - Credit - \$287,615.46 - Bank Ref 252265
2. Value date: 30.07.1997 - payment 399,781.73 DM - Credit - \$216,193.41 - Bank Ref 252911
3. Value date: 25.09.1997 - payment 699,631.65 DM - Credit - \$391,852.92 - Bank Ref 792717
4. Value date: 05.12.1997 - payment 719,612.29 DM - Credit - \$406,119.55 - Bank Ref 720628
5. Value date: 29.12.1997 - payment 349,825.00 DM - Credit - \$196,443.60 - Bank Ref 252932
6. Value date: 17.02.1998 - payment 357,664.31 DM - Credit - \$196,164.03 - Bank Ref 749966



Having English law governing the financing was an important concession because it, along with other financing considerations discussed below, gave comfort to the financial backers, Barclays Bank. In short, the financing arrangement required Bank of Tanzania money to be held in London. If Tanzania defaulted on payment, litigation would be realistic and recovery could occur in the UK under English law.

On 28 September 1999 Vithlani wrote to Barclays enclosing the final draft of the financing package. He also enclosed a legal opinion dated 15 September 1999 from the Attorney General concerning the financial arrangements. Inter alia the Attorney General opined that the arrangements would not be subject to immunity or suit in Tanzania; that English law would prevail and that, in his view, the arrangements would not cause Tanzania to become ineligible for funds made available by IMF or other multinational agencies.

The SFO concludes that there are reasonable grounds to believe that in taking this stance, Chenge was putting the economic interests of Tanzania at risk.

Chenge & Rashidi: Unexplained and Undeclared Wealth

In relation to Chenge's personal financial arrangements it is further noted that from information obtained by the SFO that Barclays bank became concerned over the governance of those accounts and at a later stage the client relationship was ended. It appears that Chenge failed to respond to reasonable requests from the bank to identify what the funds represented.

On 20th September 1999, Chenge personally authorised the transfer of £600,000 to be remitted from the Franton account at Barclays bank to Royal Bank of Scotland International in Jersey. Originally acting through Franton and latterly from 2006 in his and his wife's names, Chenge entered into a relationship with JO Hambro who continue to administer the funds. As of 13 September 2006 the value of their joint portfolio stands at £804,000. The funds are stated as owned 75% by Chenge and 25% by Mrs. Chenge. Other associated accounts, including a further account maintained at Standard Chartered Dar es Salaam are identified in documents obtained by the SFO.

Importantly in answers given to JO Hambro in their completion of money laundering due diligence requirements in September 2006, Chenge asserted that the original source of the funds entrusted to JO Hambro were from the "professional earnings of Mr. A.J. Chenge as a lawyer". However in another conversation with JO Hambro in 2006 the source of funds are described as from "family savings/inheritance". Chenge has therefore, over time, given incomplete and potentially contradictory statements to his financial consultants. The SFO suspects both the statements relating to the source of the funds are false, and that these funds represent bribes taken by Chenge for his own benefit and to be distributed to others.

It further appears that Chenge gave firm instructions to his financial advisors to send all



"We did have a PO BOX for him in Dar es Salaam but...nothing should be sent to that address from Jersey, if Mr. C's government were to be made aware of these assets in London, they may confiscate them notwithstanding they legally belonged to Chenge and were not obtained via "brown envelopes"."

Instead Chenge asked his financial advisors to send all documentation to c/o 11 Sidmouth Rd, London. A bank account in Dar es Salaam has been identified from the documents obtained by the SFO. It appears that Chenge has a banking relationship at Standard Chartered Bank.

11 Sidmouth Rd, London, is the current address for JO Hambros in their communications with Chenge and is the address which will be the subject of a search operation in England on 26 March 2008.

It appears that in breach of Tanzanian law, the Public Leadership Code of Ethics Act 1995 ("Ethics Act"), Chenge has not disclosed assets held in Jersey on the appropriate register. Under the Ethics Act 1995, Chenge as Attorney General fell within the category of persons obliged to disclose his worldwide assets annually, on a public register. The SFO has been informed by the PCCB that Chenge has failed to declare any assets on the relevant register.

The material obtained from the authorities in Jersey also shows that a payment of \$600,000 was made from the Franton account controlled by Chenge to an account in the name of Langley Investments Limited ("Langley") in May 1998. That account was controlled by Mr. Idriss Rashidi ("Rashidi").

Rashidi was the Governor of the Bank of Tanzania between 1993 and 1998. He was an important figure in the negotiations that led to the radar contract being signed. In particular he was a key figure in the negotiation of the financing of the radar without which there would have been no contract.

A contract for \$88 million had been signed in September 1997, and the only condition precedents that needed to be satisfied for that contract to become effective were related to the financing of the contract. The following comment appears in a set of meeting notes dated 2 October 1997 produced by Jonathan Joseph Horne of Barclays Bank:

"SPS report that Dr. Rashidi will from now on act as the coordinating point for collecting all comments etc. from all parties in [the Government of Tanzania and the Bank of Tanzania]"

As stated above the SFO has reasonable grounds to believe that the financing package was structured to circumvent, and in reality may have breached, the requirements agreed



inconsistent with the assertions of Chenge that the funds remitted to Franton were his family inheritance or personal wealth.

It is not known whether this sum has been disclosed by Rashidi under the Ethics Act according to Tanzanian Law.

Summary

In summary the SFO submits that there are reasonable grounds to suspect corruption in connection with Chenge and Rashidi's role in the radar contract:

- a) Chenge and Rashidi were pivotal persons of influence over the success of this contract;
- b) Chenge associated with the SPS agent, Vithlani at a crucial stage in the finalising of negotiations;
- c) This association came at a time when SPS employees documented that Vithlani told them that he had old and new "commitments" were being made by Vithlani. The reference to "commitments" were a code for bribes;
- d) Chenge made a number of decisions memorialised in a legal opinion which permitted the financing package to be agreed;
- e) There are good grounds to suggest that these decisions were not in the best interests of Tanzania;
- f) Contemporaneously with the above, are movement of substantial sums of money to accounts under Chenge's control within Jersey from Frankfurt/Liechtenstein;
- g) Chenge was keen to disguise the existence of these funds by using a front company, Franton and a London forwarding address for correspondence;
- h) Chenge's bankers terminated their client relationship with him, apparently because they were dissatisfied with his account of the origins of these funds and his failure to produce adequate information over time about the origins of his funds; and
- i) Chenge transferred \$600,000 to Rashidi indicating that he is not only a recipient of suspected BAE bribes, but also a distributor of those bribes connected to the radar deal, a project in which both were important and influential players.

Inquiries Requested

1. The SFO requests that the relevant authorities search addresses connected to Mr. Chenge and Rashidi and seize the following:
 - (i) Non privileged documents relating to the Radar contract;
 - (ii) Documents revealing their association with Vithlani and SPS/BAE or persons acting on SPS/BAE's behalf generally;
 - (iii) Documents relating to the financial affairs of Andrew John Chenge; Timur Sebuni Chenge and Ubrice Rashidi



In relation to the above request, "banking documentation" should include copies of all account opening forms, client identification documentation and due diligence forms whenever completed. Whereas bank statements, paid cheques, paying in slips, credit vouchers, telegraphic transfers, swift transfers, records of inter account transfers, records of payments out to any other account or bank, safety deposit box details, safe custody account records, signature cards and references, customer information records and notes, bank managers' notes, or any other correspondence concerning the accounts described above is requested in relation to documentation dating from 1st January 1995 to date.

3. That the following persons are interviewed as suspects in a criminal investigation:
 - a) Andrew John Chenge
 - b) Idriss Rashidi
4. The Serious Fraud Office requests that copies of all relevant entries relating to Mr. Chenge and Mr. Rashidi's assets and financial affairs held under the Public Leadership Code of Ethics Act 1995 be provided.
5. That any further inquiries arising from actions taken in relation to the requests above or generally be permitted as appear to be necessary in the course of the investigation.

Admissibility of Evidence

There are a number of statutory provisions in the law of England and Wales governing the admissibility into evidence of statements taken in anticipation of criminal proceedings and of business records.

Section 114 of the Criminal Justice Act 2003 governs the admissibility of statements not made in oral evidence in proceedings. Section 117 of the Criminal Justice Act 2003 governs the admissibility of business records.

Details of the relevant statutory provisions are set out in "Annex B".

Assistance required

That the above enquiries are made by the Tanzanian authorities with a member of the SFO and/or constable of the Ministry of Defence Police in attendance.

That signed and certified copies of any statements made and any documents or other items secured during the course of the enquiries be provided.

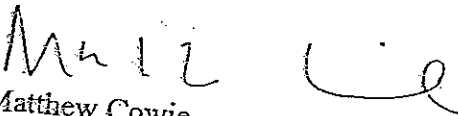


Restriction on use of evidence obtained under a Letter of Request

In this request for assistance, the Director of the SFO undertakes that the information obtained on his behalf by the Tanzanian authorities will be used only for the purposes of criminal and ancillary proceedings brought by the SFO and will not be released to any other investigatory or enforcement agency without the express consent of Tanzanian authorities.

The Director of the SFO takes this opportunity to renew to the Competent Judicial Authorities of Tanzania and to the Attorney General the expression of his highest consideration and to thank them in anticipation of their valued assistance in this case.

Yours faithfully,


Matthew Cowie
Case Controller