

INTERIM REPORT

AN INTERIM REPORT ON THE TASK FORCE INVESTIGATING ECONOMIC CRIMES BY CHARTERHOUSE BANK AND RELATED COMPANIES

INTRODUCTION

The task force met on 28th and 29th October 2004 to appraise themselves with the task and draw up an action plan,

OBJECTIVE

The team defined their objectives as:

- 1.1 To institute an economic crime investigation against the companies mentioned below with a view to identifying potential Tax evasion, illegal, money transfers or violation of Banking Act with the connivance of Charterhouse Bank Ltd, The companies are:
 - 1.1.1 Creative Innovations Ltd.
 - 1.1.2 Sailash Prajapati
 - 1.1.3 D.Shah
 - 1.1.4 Kariuki Muiguna & Co. (Clients Accounts)
 - 1.1.5 W. E. Tilley (Muthaiga) Ltd
 - 1.1.6 Paolo Sattanino
 - 1.1.7 Tusker Mattrasses Ltd
- 1.2 To establish whether the Bank aided the said companies in committing economic crimes
- 1.3 To identify the Directors of Charterhouse Bank and establish a link with the related companies in a possible network for committing economic crimes with a view to breaking it

METHODOLOGY

The task force undertook the following steps to achieve its objective:

- 1.4 Carried out a search at the Registrar of Companies offices for details of the companies referred above to obtain their registration details,

- 1.5 Traced the physical addresses of the said companies to establish their locations.
- 1.6 Carried out a surprise visit to Charterhouse Bank to obtain bank account details in respect of various accounts held by the above listed companies and individuals
- 1.7 Carried out a surprise visit to the specified companies and obtained documents and records relating to their business activities for the period starting 1st January 1999 to 4th November 2004

The visits to the companies' premises and the bank were carried out simultaneously.

- 1.8 Wrote to the Kenya Revenue Authority and obtained tax records in respect of the companies listed above
- 1.9 Started sifting through the documents obtained from the companies and the bank to try and establish any incidence of VAT evasion

SHORT TERM SCOPE

The team set out a short-term objective, which was to try and establish any likelihood of VAT evasion by the said companies [or the period beginning 2nd of May 2003 to September 2004]

The reason [or this short-term scope was to take into account the following factors:

1. To take advantage of the period Kenya Anti - Corruption Commission became operational and within which period it can legally investigate and prosecute
2. The team appreciated that the exercise is complex and will take longer to complete hence it was necessary to define a short term goal for immediate action while the long term objective will be pursued systematically as the investigation expands

ITERI~1 FINDINGS

CREATIVE INNOVATIONS LTD

from the documents collected from the company's premises and from Charterhouse Bank, the following was observed:

- » That the company operates four bank accounts with the Charterhouse Bank.
- r Only two accounts are disclosed in the company's official records. These are:
 - o CA 01 - 001000009
 - o CA 01 - 0001000275
- r The other two accounts as shown below with deposits amounting to Kshs. 262,105,659 are not disclosed in the company's Balance Sheet for the period under review (ie from 2nd May 2003 to October 2004).
 - o CA 01 - 01000074 Kshs. 237,268,640
 - o CA 01 - 01000206 Kshs. 24,837,019

262,105,659
- r It is evident that these deposits are company income from sales and have not been assessed for VAT and Income Tax since they are not disclosed in the companies official records.
- r The figure shown above is for the period under review starting from May 2003 to October 2004. It will certainly grow once the prior period is computed.

Other observations

- r The company mainly deals with imports most of which is supplied to Nakumatt Holdings Ltd. It was observed that the company in respect of these supplies to Nakumatt Holdings maintains no proper documentation.
- r It has also come to the Commissions knowledge that the company is a major supplier of certain oils/lubricants to the following corporations the income of which may not have been disclosed in their books.
 - o Kenya Ports Authority
 - o Kenya Airports Authority
 - o Kenya Power & Lighting Company

Steps remaining to be undertaken

- r Seek an explanation from the Directors of Creative Innovations about the two accounts held in their company's name at charthouse Bank
- r If no satisfactory explanation is given, assume the amounts to be sales income and assess VAT and Income Tax on it
- r Prepare to charge the company and the Directors with the offence of committing an economic crime contrary to section 45 (1) (d) of the Anti-Corruption and Economic Crimes Act No 1 of 2003
- r Assist KRA assess the income from the same two parallel accounts covering the period from 1999 to April 2003 and assess VAT on it and pursue appropriate legal action on the offenders
- r Obtain details of payments and invoices the above mentioned corporations may have made to the company and establish whether the income had been included in their official books of Accounts and assess for VAT and Income Tax.
- r Get an explanation on the imported supplies made to Nakumatt Holdings Ltd and assess the tax implication

Offence likely to be disclosed

Failure to pay taxes contrary to section 45 (1) (d) of the Anti-Corruption and Economic Crimes Act of 2003

W E TILLEY (MUTIAIGA) LTD

From documents obtained from the bank and the company's premises, the following has been observed:

- r The company is a fish processing firm with exports forming 95% of their sales and the remainder 5% being local sales
- r From the above observations it follows that the bulk of their sales proceeds are in foreign currency i.e. US Dollars
- r The company has three other related companies for which they allege to handle their export through Kenya. The directorships are the same for all the four companies. The three companies are:

- o Prime Catch Ltd Tanzania
- o Nilara fish Packers Ltd Tanzania
- o Victoria Fish Packers & Processors Ltd Uganda

r The company operates six bank accounts spread as shown below

- o Charterhouse Bank
 - CA01-600178 US DOLLAR ACCOUNT
 - C/A 01 - 01000630 KSHS, ACCOUNT
- o Imperial Commercial Bank
 - 100805 162 US DOLLAR ACCOUNT
 - 100805 006 KSHS, ACCOUNT
- o Fidelity Commercial Account
 - 11502443 US DOLLAR ACCOUNT
 - 11102442 KSHS, ACCOUNT

- r The total credits for the period January to September 200+ into the six accounts amount to Kshs 5,893,464,798. This figure is not adjusted by opening and closing debtors although the deposits still appear to be on the higher side.
- r The total sales for the same period amount to Kshs 1,351,874,269
- r There are numerous transfers from dollar accounts to shilling accounts in the same bank and across the other banks as well raising the possibility of double credits in computing the above figure.
- r There is also evidence of heavy trading in foreign currency between the company and several Forex Bureaus in the city.
- r The company claims to receive export proceeds for its related companies and banking it in its own accounts.
- r It was observed that the company banks a lot in Afro Forex Bureau bank account with Fidelity Commercial bank.
- r Large payments are also made to persons who on the face of it do not seem to have any relationship with the nature of the company's business activities.

Steps remaining to be undertaken

- r Adjust the figure of Kshs. 5,893,464,798 by cross account transfers, opening and closing debtors and the declared sales

- » Obtain details and information on Directors bank accounts held in the same bank and in other banks and establish whether any company proceeds are banked in them
- » Obtain an explanation on the surplus amount from the Directors of the company
- » If no satisfactory explanation is obtained, assess VAT and Income Tax on the surplus
- r Charge the company and the Directors with the offence of committing an economic crime contrary to section 45 (I) (d) of the Anti-Corruption and Economics Crimes Act of 2003
- » Compute income into the same accounts for the period starting from January 1999 to April 2003 and levy the appropriate taxes and pursue the necessary legal action
- » Obtain the details of vehicles sold to one of their companies for which details of the transactions have not been properly disclosed
- » Obtain from the company documents relating to vehicles sold to Prime Catch Ltd one their related companies
- r Establish the nature and purpose of huge payments made to certain persons
- r Get an explanation on huge withdrawals and deposits from the some of the accounts held in their banks
- r Obtain an explanation in regard to transactions with certain Bureaus in town especially the Afro Forex Bureau.
-) Pursue other leads that will emerge

Offence likely to be disclosed

- I: Failure to pay taxes contrary to section 45 (I) (d) of the Anti-Complition and Economics Act of 2003
2. Money laundering activities

1 TUSKER MATTRESSES LTD

A scrutiny of the documents obtained from the company's premises and the Charterhouse Bank revealed the following:

- ✓ The company operates a current bank account No 301 which had a balance of Kshs. 4.3 billion from 2nd Ma 2003 to September 2004
- ✓ The bank account was opened in the year 2001 but was not disclosed in the official books of accounts for the years 2001 and 2002
- ✓ However Charterhouse bank is included in the final accounts for the years 2003 and 2004
- ✓ We have also discovered that the company's Directors operate numerous other accounts with the Charterhouse Bank in the form of fixed deposit accounts, savings accounts, and current accounts and call accounts. These accounts numbering about seventy-five reflect huge balances

Steps remaining to be undertaken

- ✓ Establish when the account 301 at Charterhouse Bank was incorporated in the official books of accounts
- ✓ Obtain from Charterhouse Bank and Barclays Bank details of other accounts held by the company's directors and assess whether proceeds from the company are deposited in those accounts
- > Determine whether any of the period under review was excluded
- ✓ Assess tax on undeclared income for the period under review
- ✓ Charge the directors and the company with the offense of tax evasion
- > Pursue source of imported goods sold by the company. There were no import documents found in the company's premises
- ✓ Cover the period starting from 1999 to April 2003
- ✓ Pursue any other leads

OTHER ENTITIES

Bank account details were sought for the following entities and below are the observations from the information obtained from Charterhouse Bank

KARIUKI MUIGUA & CO. (CLIENTS ACCOUNTS)

Charterhouse Managing Director declined to divulge any information or documents with regard to this account citing a High Court order, which he claimed, barred him from disclosing any information with regard to the above named accounts. He could only produce a court order barring certain respondents from accessing the information with regard to that bank account of which the Kenya Anti-Corruption Commission or its agent was not among them.

However, according to documents availed from other sources within the task force, one of the accounts, C1\ 01 - 000563 received deposits amounting to Kshs. 386,548,898 starting from 8th March 2004 to 1st September 2004. Information from the same source also indicated that the bank acts on unsigned instructions supposedly from Kariuki Muigua, raising the possibility that the instructions are prepared within the bank. It is also believed that the account is actually operated by some of the big businesses in town but shielded by the cloak of clients' confidentiality.

Steps to be undertaken

Since the court order barring access to any of Kariuki MuigU3S accounts does not cite the Kenya Anti - Corruption Commission or its agents, then the warrant to investigate issued to Henry Mwirthia should be enforced.

Offence likely to be disclosed

failure to pay taxes by the companies using this account as parallel accounts contrary to section 45 (I) (d) of the Anti-Corruption and Economics Act of 2000

D SHAIL ACCOUNT

This account has received a total of Kshs. 601,968,171.33 in deposits for the period starting from 5th May 2003 to 3^d November 2004 mostly in huge cash deposits. It is also reflects huge cash withdrawals. It is believed that the related companies use this account as a secret parallel account through which to hide sales proceeds. The account opening documents could not reveal the owner.

Steps to be undertaken

- r: Collect debit and credit vouchers effecting entries into this account and establish the source of the funds
- r: Interview Chartrhouse bank officials and try to trace the owner of the account
- x: If a case is established of VAT and Income Tax evasion, then charge the companies their directors with committing an economic crime

Offences likely to be disclosed

Tax evasion contrary to section 45 (1) (d) of the Anti-Corruption and Economic Crimes Act of 2003

SAILESH PRAJAPATI ACCOUNT CA 01 - 000148

The bank claimed that account-opening documents in respect to this account were burnt down in a fire.

However, between 2nd May 2003 and 2nd August 2004 the account received Kshs. 551,518, 102.25 in the form of huge cash deposits, and cheques from Nakummatt Holdings. The account also reflects cash withdrawals in an usually huge amounts. It is believed that this account is also used by big business in town like to hide sales proceeds.

Steps to be undertaken

- r: Collect debit and credit vouchers effecting entries into this account and establish the source of the funds

- » Interview Charterhouse bank officials and try to trace the owner of the account
- » If a case is established of VAT and Income Tax evasion, then charge the companies their directors with committing an economic crime.

PAOLO SATTANINO ACCOUNTS

Mr. Paolo Sattanino operates three foreign accounts with Charterhouse Bank. However, the bank opening documents contains the name of Capricorn SRL. The bank officials claimed that those are the documents for the account. The bank opening documents are an account opening form and two letters signed by Paolo Sattanino, one as himself and the other as the Managing Director of Capricorn SRL. The letters authorize the bank to act on Email instructions from the writer.

The three accounts are:-

1: ACCOUNT NO. CA 01 - 60006 A US DOLLAR ACCOUNT

A scrutiny of the bank statement revealed that the above account received USD 657,251.2 (the equivalent of Kshs. 52 million) between 1st April 2004 and 3rd November 2004 by way of transfer mostly from Creative Innovations and Kingsway. Telegraphic transfer of foreign exchange takes out an equivalent amount to recipients like several recipients like Tradex.

Steps to be undertaken

- Establish the purpose of the funds transferred into his account
- Establish the tax implications on the activities of this account.
- Assess appropriate tax
- Charge those responsible for tax evasion with the offence of committing an economic crime
- Pursue the destination of the funds transferred out of the account by telegraph and establish whether any laws have been contravened.

2. ACCOUNT NO. CA 01 - 8001.15 Euro ACCOUNT

This account received a total of Euros 392,387.49 (the equivalent of Kshs. 40,808,298) in the short period between 1st April 2004 and 22nd October 2004. Similarly, the deposits were by way of transfers from Creative Innovations and D Shah accounts. Debits in the account are by way of telegraphic transfers to foreign destinations.

Steps to be undertaken

- r Establish the purpose of the funds transferred into his account
- r Establish the tax implications on the activities of this account.
- r Assess appropriate tax
- ∴ Charge those responsible for tax evasion with the offence of committing an economic crime
- ∴ Pursue the destination of the funds transferred out of the account by telegraph and establish whether any laws have been contravened.

3. ACCOUNT NO. CA 01 -700154 A BRITISH POUND ACCOUNT

Between 1st April 2004 and 22nd October 2004, the above account received a total of 4,748.20 British Pounds (the equivalent of Kshs. 712,200) in deposits mainly from D Shall..

Steps to be undertaken

- ∴ Establish the purpose of the funds transferred into his account
- r Establish the tax implications on the activities of this account.
- r Assess appropriate tax
- ∴ Charge those responsible for tax evasion with the offence of committing an economic crime

- > Pursue the destination of the funds transferred out of the account by telegraph and establish whether any laws have been contravened.

3. ACCOUNT NO. CA 01-700154 A BRITISH POULTRY ACCOUNT

Between 1st April 2004 and 30th October 2004, the above account received a total of 4,748.20 British Pounds (the equivalent of Kshs. 712,200) in deposits mainly from D Shah.

Steps to be undertaken

- > Establish the purpose of the funds transferred into his account
- > Establish the tax implications on the activities of this account.
- > Assess appropriate tax
- > Charge those responsible for tax evasion with the offence of committing an economic crime
- > Pursue the destination of the funds transferred out of the account by telegraph and establish whether any laws have been contravened.

Offence likely to be disclosed

1. Failure to pay taxes contrary to section 45 (l) (d) of the Anti-Corruption and Economic Act of 2003.
2. Funds transfer to secret destination.



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