



global witness



Submission to Foreign and Commonwealth Office Overseas Territories Consultation – December 2011

Cc:

- Henry Bellingham MP, Minister responsible for Overseas Territories and Africa
- George Osborne, Chancellor of the Exchequer
- Andrew Mitchell, Secretary of State for International Development
- Ken Clarke MP, Secretary of State for Justice and Anti-Corruption Champion
- Eric Joyce MP, chair of Great Lakes region of Africa APPG

Introduction

Global Witness is an NGO based in London and Washington, DC that investigates the role of natural resources in fuelling corruption and conflict. Nominated for a Nobel Peace Prize in 2003 for our work on conflict diamonds, our investigations and advocacy have led to regulatory change and the setting up of voluntary schemes such as the Extractive Industries Transparency Initiative. Our reports are available on our website at www.globalwitness.org

In 2009 we made a submission (attached) to a consultation by HM Treasury on the UK's offshore financial centres, led by Michael Foot, in which we focused on the role of the financial sector of Anguilla in facilitating the funnelling of what appeared to be state oil revenues into a bank account controlled by Denis Christel Sassou Nguesso, son of the president of Republic of Congo, which was then used to pay his designer shopping bills. Following our submission, which prompted an investigation by the Anguillan Financial Services Commission, the regulations in Anguilla were amended so that trust and company services providers would be required to ensure that company beneficial ownership information is held in Anguilla when a company has been incorporated by an overseas agent.

This submission focuses on the role of the financial sector of the British Virgin Islands (BVI) in facilitating a possible loss in value of billions of dollars from state mining assets in the Democratic Republic of Congo (DRC), a country that remains at the bottom of the UN's Human Development Index and which is a significant recipient of UK aid.

While many of the online responses to this current consultation so far have come from residents of the Overseas Territories (OTs), we believe that a number of the questions posed by the FCO, particularly 2, 3 and 6, are extremely relevant from the perspective of the OTs' growing international reputation, and by implication that of the UK, as jurisdictions that are impeding development in some of the poorest countries in the world.

While the OTs are free to set their own regulatory standards and to enforce them, the fact remains that in extreme situations, the FCO will take action, as recently occurred in the Turks and Caicos. Global Witness believes that the impact of the BVI company registration system (one not dissimilar to those of other OTs) is having such a deleterious impact on development in DRC, and such an undermining effect on British aid to DRC, that action from London is necessary.

Democratic Republic of Congo: Poverty, Aid and Minerals

The UK is the second largest provider of aid to the DRC, after the US.¹ In 2010-11, UK bilateral aid to the DRC came to £133 million.² This is due to increase to £258 million in 2014-15. During the period 2010/11 to 2014/15, according to current plans, the UK will have provided over £900 million in bilateral aid to the DRC, not counting many tens of millions of pounds more in multilateral aid. According to the data from 2009-10, 38% of the UK's aid to the DRC went on humanitarian assistance, 36% on governance and 14% on health.³

The DRC's people are desperately poor. Under-five mortality is 199 for every 1,000 births. Over half the population lives on less than \$1.25 a day. The country ranks bottom on the UN's Human Development Index. Yet the country is exceptionally rich in minerals, which could contribute much more to its development.

Mining accounts for over 70% of the country's exports and 28% of its GDP.⁴ The DRC accounts for about 48% of the world's cobalt reserves,⁵ and produced 15% of the world's rough diamonds in 2010.⁶ It claims to hold between 60% and 80% of the world's tantalum reserves – a rare, strategic mineral prized for its ability to store electric current in devices such as mobile phones, and for its extreme resistance to heat for use in the defence industry. Although the reserves figure cannot be verified, the DRC accounted for at least 9% of world output of the metal in 2009.⁷

The role of front companies with hidden ownership

The sale of mining assets at below market price could be perceived as a problem of Congolese governance. But if the buyers of possibly underpriced, yet potentially hugely valuable assets, are permitted by the BVI's company registration procedures to keep their identity – or identities – secret, then the BVI has abetted poor governance in Congo, a huge loss of value to the Congolese people, and the undermining of British development assistance.

The problem of opacity in company ownership is increasingly recognised by the international community, and it is not just a problem of the BVI. One of the main reasons it is a problem is that it allows a bank account to be opened in the name of the company, rather than the individual who controls the funds. While banks are supposed to identify the real, beneficial owner of the funds, a complicated corporate structure makes it much harder for them to do so.

The OECD published its report *Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes* in 2001, and the anti-money laundering standards set by the Financial Action Task Force (FATF) recognise, in FATF Recommendation 33, that jurisdictions must make beneficial ownership information available to competent authorities such as law enforcement. But while this may contribute to law enforcement efforts once money has already been laundered or other crimes

¹ OECD Development Aid statistics Online database : <http://stats.oecd.org/qwids/#?x=2&y=6&f=3:51,4:1,1:2,5:3,7:1&q=3:51+4:1+1:1,2,5,6,9,21,23,24+5:3+7:1+2:40+6:2004,2005,2006,2007,2008,2009> . The data used here comes from 2009, which is the latest year for which the OECD provides data.

² from the March 2011 DFID bilateral Aid review technical report consulted on the DFID website: http://www.dfid.gov.uk/Documents/MAR/FINAL_BAR%20TECHNICAL%20REPORT.pdf

³ See DFID website, DR Congo Section last accessed in Mar 2011. <http://www.dfid.gov.uk/Where-we-work/Africa-West-Central/Congo-Democratic-Republic/>

⁴ Data presented in the Economist Intelligence Unit June 2011. The report shows base metals accounting for 47.6% of exports in 2007 and diamonds for 26.1%.

⁵ USGS, 2008 Minerals yearbook, Congo (Kinshasa), by Thomas R. Yager, <http://minerals.usgs.gov/minerals/pubs/country/2008/myb3-2008-cg.pdf>

⁶ See Kimberley Process statistical summary table for 2010, <https://kimberleyprocessstatistics.org/static/pdfs/AnnualTables/2010GlobalSummary.pdf>

⁷ USGS. Mineral Commodity Summaries: Tantalum, 2010 report: <http://minerals.usgs.gov/minerals/pubs/commodity/niobium/mcs-2010-tanta.pdf>

committed, it does nothing to prevent the misuse of front companies in the first place. And it certainly does not help the Congolese people to know who is getting such cheap access to their valuable mineral resources.

The changes to Recommendation 33 currently being considered by FATF, to come into force in 2012, will provide an option for countries to have a register of beneficial ownership information, but there is no mention of it being public, and it is only an option, which means those financial centres that make a living from providing secrecy will be able to continue to do so.

Most recently the World Bank and UN Office on Drugs and Crime, in their Stolen Asset Recovery Initiative (STAR) collaboration, published *The Puppet Masters*, an in-depth study of the use of front companies in corruption cases. In 150 cases of grand corruption, in which 817 corporate vehicles were used, the BVI was the second most frequent jurisdiction of incorporation, after the US. Other British Overseas Territories and Crown Dependencies featured in the top 20 jurisdictions for incorporation: the Bahamas (5th place), Cayman Islands (10th) and Bermuda (11th), as well as Jersey (12th) and the Isle of Man (19th). But so, also, did the UK itself (6th).⁸

These findings clearly illustrate two key points. One is that the Overseas Territories are helping to facilitate corruption through the provision of front companies. We believe it is time that the UK took some responsibility for this. The other point is that onshore jurisdictions including the UK itself are also a problem. A shareholder registry such as the UK's Companies House contributes little useful information on the real owner behind a company if the next level of shareholding listed is itself a BVI company, as so often happens. The solution, therefore, will not be confined to offshore jurisdictions such as the Overseas Territories.

The Secret Sales

Eric Joyce MP, chair of Great Lakes Region of Africa All-Party Parliamentary Group, has recently submitted to the Serious Fraud Office a list of 59 BVI shell companies which secretly bought Congolese mining assets at what appears to be well below their market value, at a potential loss of billions to the Congolese state.⁹

Due to the secrecy of company ownership information provided by the BVI, this means that the Congolese people – and, indeed, the DRC's donors such as DFID in the UK – have no means of understanding who has benefitted from these secret deals.

Global Witness has investigated some of these sales. For example, in July and August 2011, news came out that state mining companies in the DRC, Gécamines and Sodimico, had sold stakes in four major mining sites without making the information public. Global Witness had several major concerns over the deals, notably:

- They were done in secret and not disclosed publicly;
- Certain assets were sold for far less than most commercial estimates of their value;
- The companies that benefited from these deals were based in the British Virgin Islands and could thus keep their real owners secret;
- The state mining companies conducting the sales and the relevant government bodies publish virtually nothing in terms of financial statements. This means it is impossible to trace what has happened to the sums officially received from the sales.

⁸ World Bank, *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*, 2011

http://www1.worldbank.org/finance/star_site/documents/Puppet%20Masters%20Report.pdf

⁹ Press release, 'Congo Shell Companies Reported to Serious Fraud Office,' Eric Joyce MP, 24 November 2011, <http://ericjoyce.co.uk/2011/11/congo-fire-sale-4/>

The behaviour of the DRC authorities in these deals appears to be part of a pattern of selling off assets to opaque offshore-registered companies. Sometimes the assets sold had been confiscated in unclear circumstances from previous owners. The sales prices subsequently agreed with the offshore-registered companies were much lower than most commercial estimates. In such circumstances, and given the well-established risks of corruption in the DRC, there is an evident concern about the risk of embezzlement and significant losses of revenue to the country.

After news of the sales became public knowledge, the Congolese government did publish some details in the form of contracts related to Sodimico's sale of stakes in two mines – Frontier and Lonshi. These stakes were sold to two BVI companies, Sandro and Garetto. These mines had been confiscated previously from international mining firm First Quantum, in circumstances First Quantum vigorously disputed. Though it is commendable that the government published the contracts, this did not clear matters up.

The International Monetary Fund was sufficiently concerned by the sales to write to the DRC authorities for clarification. Sodimico stated, in a response to the IMF that was published on the website of the Congolese Ministry of Mines, that the stakes had been sold for \$30 million.¹⁰ But Bloomberg, the business news service, has cited research by two London-based securities firms that valued the two mines at more than \$1.6 billion. If these estimates are accurate, then they would indicate that the stakes were sold for less than a sixteenth of their value.¹¹ This obviously raises profound questions about the commercial motives of the deal.

The whole episode, including the confiscation of Frontier and Lonshi, is worrying. Frontier is now in disuse and, according to a donor source, is flooded with water. Before its confiscation, the company was the largest taxpayer in the DRC, contributing some \$70 million to state coffers and producing 84 per cent of the country's copper ore exports.¹² The financial impact of the affair on the DRC will evidently be huge.

Because the BVI permits companies to obscure their beneficial ownership, nobody knows who is behind Sandro and Garetto, and therefore nobody knows who has benefitted from these Congolese assets.

In addition, contracts have not been published for the sale of stakes in two other mines – 20 per cent of Mutanda and 25 per cent of Kansuki – to further BVI companies: Rowny Assets and Biko Investments respectively. Here, the sales price similarly remains an issue. In October 2011, Gécamines reportedly confirmed the sale value of \$137 million for both mines, although in a response to the IMF Gécamines suggested that this represented the value of the stake in Mutanda mine only. According to Gécamines, BNP Paribas valued the Mutanda stake at \$108 million.

However, the May 2011 share prospectus issued by Glencore (which owns shares in Mutanda via a subsidiary), contained an independent consultant's report commissioned by Glencore which valued Mutanda at over \$3 billion:¹³ this would value the 20 per cent stake in Mutanda sold by Gécamines at around \$600 million. And Deutsche Bank said in a June 2011 report that Glencore's 37.5 per cent stake in Kansuki was worth \$313 million: at the same valuation, the 25 per cent sold

¹⁰ Letter to DRC Minister of Mines from Sodimico. 16 September 2011. http://mines-rdc.cd/fr/documents/Reponse_Sodimico_questionnaire_FMI.pdf.

¹¹ *Bloomberg*, 'Congolese State Miner Sodimico Sells Stake in Former First Quantum Mines', by Michael J. Kavanagh and Franz Wild. 17 August 2011

¹² For data on copper ore exports: Congo Business Lobby Criticizes Prime Minister Over Changes to Mining Laws, by Michael J. Kavanagh. For data on Frontier, also see First Quantum President Clive Newall's evidence to the UK parliament's International Development Select Committee, in which he says: "Frontier paid \$54 million in taxes alone for 2009, and contributed over \$70 million in 2009 including royalties, import duties etc."

¹³ Glencore International Plc. *Prospectus for initial public offering*. 4 May 2011, p958

by Gécamines would be worth more than \$200 million.¹⁴ On this basis, these two stakes may have been sold for a fraction of their real value.

According to the Glencore prospectus, Rowny Assets and Biko Investments are ‘associated with’ Dan Gertler, a businessman who is an associate of President Kabila.¹⁵ Again, because of the secrecy of company registration in the BVI, it is not clear if he, or indeed anyone else, is the ultimate beneficial owner(s) of these companies.

But it is only because of the chance timing that Glencore was conducting an IPO during 2011, and that Glencore happens to own shares in Mutanda via a subsidiary, that this information came into the public domain. Without this, these would be another two BVI companies benefitting from Congo’s mineral resources, without the Congolese people or parliament, or Congo’s donors, knowing who is behind them.

A spokesman for Mr Gertler told Global Witness that although Mr Gertler and his companies had good relationships with the DRC leadership, they never enjoyed “free rides”. He said that the sale price reflected the true value of the mining assets and disputed that the valuation figures for Mutanda and Kansuki were accurate assumptions of value.¹⁶ Without official, published and verified information about the pricing of the sales, it is not possible to address the concern (denied by Mr Gertler’s spokesman) that the assets may have been sold at well below their market value.

Without the role of a secrecy jurisdiction such as the BVI that is willing to allow companies to incorporate and keep their beneficial owners hidden, these Congolese assets could not have been sold to secret owners. The possibility remains that among the beneficial owners of the BVI companies are corrupt Congolese officials. Without transparency the Congolese people have no assurance that this is not the case.

These are just a small number of examples of Congolese state assets that have sold to secret BVI companies, sometimes after being confiscated from London-listed companies.

Two previously unknown oil companies, Caprikat Ltd and Foxwhelp Ltd, both also registered in the British Virgin Islands, were granted rights to two untapped oil blocks on Lake Albert in north-eastern Congo by a June 2010 presidential decree. The government had already awarded the blocks to other companies, with signature bonuses apparently totalling \$3 million, though we are not aware that Presidential decrees ratifying the earlier awarding of oil blocks were made.¹⁷

The re-awarding of the licences was disputed by Tullow, the UK-listed oil company which had been awarded licences for the blocks in 2006. Tullow commenced legal proceedings to challenge the subsequent award of the licences but later announced its withdrawal from the proceedings explaining that “it became clear that Tullow’s rights were not likely to be upheld so long as the DRC government maintained its position that it had the right to ignore or revoke the earlier award to Tullow”. Tullow also highlighted the difficulties of enforcing any award against the DRC even in the event of success.¹⁸ It is unclear on what basis Caprikat and Foxwhelp were selected or who their beneficial owners are.

¹⁴ Deutsche Bank. *Glencore. The value in volatility, initiating with a buy*. 6 June 2011, p117

<http://www.scribd.com/doc/57254342/34/Mutanda-%E2%80%93-a-tier-1-greenfield-development-asset>

¹⁵ For Gertler’s links to Kabila see, for example, Jason Stearns’s Congo Siasa blog of 21 June 2010 (<http://congosiassa.blogspot.com/2010/06/dan-gertler-at-it-again.html>) and *Sunday Times* piece of 6/3/11: “Israeli holds key to Congo riches”, by Danny Fortson.

¹⁶ E-mail from a spokesman for Mr Gertler to Global Witness, 12 September 2011

¹⁷ Global Witness press release: ‘More transparency in resource sector vital for Congo to benefit from debt relief’, 7 July 2010

¹⁸ Tullow Oil annual report, 2010, p57

We are recounting this incident, not to comment on the price of these assets, but to illustrate the fact that potentially lucrative oil blocks have been granted in a context of total opacity to companies with no known oil experience and with unknown ownership. What this means is the Congolese parliament and people have no idea who will benefit from this oil, which could potentially provide a huge future source of income. Once again, the BVI has made this secrecy possible. In addition, this deal also highlights how opacity of beneficial ownership can potentially harm the interests of companies trying to do business in Congo.

NB: Global Witness provided written and oral evidence about these secret sales to the International Development Select Committee's recent hearings on aid to fragile and conflict-affected states, calling on the UK to call the Congolese government to account on its transparency commitments. The transcript of the oral evidence is at <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmintdev/c1133-ii/c113301.htm> and the live testimony is at <http://www.parliamentlive.tv/Main/Player.aspx?meetingId=9019&player=windowsmedia>. The written evidence is at <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmintdev/writev/conflict/co19a.htm>

Recommendations

Global Witness's recommendations can be read as responses to the following consultation questions:

2. Cooperation with the UK
 - In what areas would you like to see greater engagement and interaction between the UK and your Territory/the Territories?
3. Governance, financial management and economic planning
 - What are the priorities for improvement?
 - How can the UK best work with your Territory/the Territories to strengthen these areas?
6. Global profile of the Territories
 - What more could be done to raise Territories' profile internationally?
 - How can the UK best support this?

Recommendation 1: The UK should put pressure on its Overseas Territories and Crown Dependencies to maintain open company registers, accessible to the public as in the UK.

Recommendation 2: The UK and its Overseas Territories and Crown Dependencies should move to a system whereby ultimate beneficial ownership information is declared, recorded and verified in company registers at the point of incorporation.

Recommendation 3: The UK should work within international fora such as FATF, the EU and the G20 to ensure that open registries of ultimate beneficial ownership, collected and verified at the point of company incorporation, are the global standard, pushed by FATF.

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Michael Foot
OFC Review Team
HM Treasury
1 Horse Guards Road
London, SW1A 2HQ

22 May 2009

Dear Mr Foot,

Following the meeting at No 10 Downing Street on 6 May where NGOs presented you with some broad views on your interim report and on the impact of the UK's offshore centres on poverty in the developing world, I am writing to you as promised to provide you with information about the particular case I mentioned at that meeting concerning Anguilla.

Global Witness is an NGO based in London that works to expose the corrupt exploitation of natural resources to drive campaigns that end impunity, resource-linked conflict, and human rights abuses. We were nominated for a Nobel Peace Prize in 2003 for our work on conflict diamonds. Our reports can be found at www.globalwitness.org.

While corruption is traditionally thought of as the payment of bribes, and while bribes in themselves are devastating to the governance and economies of poor countries, Global Witness seeks to raise awareness that corruption also encompasses the outright looting of state resources, and that this cannot take place without the involvement of the international financial system: banks, offshore centres, lawyers, accountants, and company and trust providers. The amounts of money involved in the looting of state assets are so large that they cannot be stolen in the first place unless there is somewhere to hide them.

Global Witness is concerned that despite the framework of anti-money laundering regulations, banks are still willing and able to do business with corrupt regimes. British offshore financial centres can play a role in this by providing the necessary anonymity to allow politicians and their family members to conceal looted state assets. Global Witness has uncovered evidence of how a British Overseas Territory, Anguilla, was used to channel state oil revenues from Republic of Congo into an account controlled by a senior official. Details of this case are outlined below.

The role of British offshore financial centres as secrecy jurisdictions that can be abused by corrupt politicians poses considerable reputational and regulatory risks for the offshore centres. These risks can, up to a point, be minimised by ensuring that these jurisdictions have the necessary resources to properly regulate their financial sectors. But ultimately, while they

remain as secrecy jurisdictions, obscuring beneficial ownership and providing services that help the citizens of other states to hide their identity, these risks cannot be significantly curtailed. The UK has a moral duty, and in the case of Anguilla an additional practical responsibility, to ensure that its offshore financial centres do not facilitate corruption that assaults the economic well-being of other states. If it cannot do this, these centres should be wound down.

Our recent report, *Undue Diligence: How banks do business with corrupt regimes*¹⁹ argues that there are still problems with the British, and indeed global, anti-money laundering framework. It reveals a number of alarming examples of major banks doing business with corrupt regimes in natural resource-rich countries. In particular, I would like to draw your attention to Chapter 5. This describes how an offshore company based in Anguilla helped to funnel oil revenues from the Republic of Congo into a Hong Kong bank account controlled by the President's son, Denis Christel Sassou Nguesso, who is responsible for marketing the state's oil. These funds were then used to pay his personal credit card bills after frequent luxury shopping sprees.

Mr Sassou Nguesso set up a company called Long Beach.²⁰ The company's business address was stated as being in Hong Kong at the same address as a trust and company services provider called ICS. But Long Beach was actually incorporated in Anguilla. In order to further protect his identity Mr Sassou Nguesso put his shares in Long Beach in trust.

The trustees were two related company services providers in Anguilla called Orient Investments and Pacific Investments – part of the ICS group, whose office in Hong Kong provided an address for Long Beach. When Long Beach opened an account at Bank of East Asia in Hong Kong in November 2003, Orient Investments was the sole signatory, while the shareholders and directors appeared to be Orient Investments and Pacific Investments.

Hong Kong anti-money laundering guidelines required banks to identify the beneficial owners of shell companies such as Long Beach. Therefore, the bank should have known that it was effectively opening an account for the son of the President of the Republic of Congo. However, it is unclear what due diligence Bank of East Asia did on its client Long Beach, and the bank declined to answer Global Witness' questions.

Bank of East Asia was in a position to know that the money in the account was likely to come from trading in Congolese oil because, according to Hong Kong court documents, the bank held a customer information sheet on Long Beach, signed by Orient on behalf of Long Beach, describing the company's main business activities as 'Trading crude oil, gas and products (mogas, jet, gasoil, kerosene) in Congo.'

Some payments coming into Long Beach's account at Bank of East Asia appear to be related to specific Congolese oil cargoes. This included a payment of US\$149,944.19 in April 2005, referenced to an oil tanker called MT Genmar Spartiate and another payment of US\$322,132.84 in May 2005, referenced to a tanker called the MT Tanabe.

This account at Bank of East Asia was used to pay Mr Sassou Nguesso's credit card bill after his designer shopping sprees. Each month, Orient Investments in Anguilla wrote to Bank of East Asia on Long Beach letterhead instructing it to arrange for payment of the credit card from the Long Beach account. The payment instruction mentions Mr Sassou Nguesso by name so the bank had a clear opportunity to see who it was dealing with.

Mr Sassou Nguesso attempted to force Global Witness to take this evidence of his personal spending off our website. A UK High Court judgement in August 2007 dismissed this attempt, saying that 'it is an obvious possible inference that [Sassou Nguesso's] expenditure has been

¹⁹ The report can be downloaded from www.globalwitness.org

²⁰ Complete references for this case study can be found in Chapter 5 of appendix 1: Global Witness, *Undue Diligence: How banks do business with corrupt regimes*, March 2009.

financed by secret personal profits made out of dealings in oil sold by Cotrade.’ Mr Justice Stanley Burnton continued that the documents, ‘unless explained, frankly suggest’ that Mr Sassou Nguesso and his company were ‘unsavoury and corrupt’, and that ‘the profits of Cotrade’s oil sales should go to the people of the Congo, not to those who rule it or their families.’

Global Witness has corresponded with the director of the Anguillian Financial Services Commission (FSC), Mr Niguel Streete, to raise our concerns about Mr Sassou Nguesso’s use of an Anguillian company to divert Congolese oil revenues in order to fund his personal shopping. This correspondence appears to highlight a disturbing lack of regulatory capacity over a trust and company service provider in Anguilla. Given that the provision of trust and company services forms the backbone of Anguilla’s offering as an offshore centre, this is a crucial issue requiring the attention of your review.²¹

I have summarised our correspondence with the FSC below. The complete correspondence is attached as appendix 2 to this letter.

11 July 2007 Fax from Global Witness (GW) to Mr Streete	When Global Witness obtained the documentation relating to this case in 2007 we wrote to the FSC to draw its attention to our concerns about the use of Anguillian companies.
17 July 2007 Email from Mr Streete to GW	Mr Streete responded expressing concern about the possible misuse of Anguillian-registered companies and asking GW to forward the relevant documentation.
19 July 2007 Email from GW to Mr Streete	GW emailed Mr Streete the relevant documents. <i>Note: Mr Streete claims not to have received this email, however, GW has electronic evidence that it was sent.</i>
25 June 2008 Email from Mr Streete to GW	Alerted by a third party to GW’s ongoing interest in the case, Mr Streete emailed GW to assure GW that the FSC had ‘conducted a review of operations of the local agent representing the referenced companies to ensure that adequate due diligence was and continues to be conducted on the companies [sic] principals and its operations. We will continue to monitor the companies operations’.
22 July 2008 Letter from GW to Mr Streete (emailed)	GW wrote to Mr Streete asking whether the FSC considered it appropriate for an Anguillian company to provide services to Mr Sassou Nguesso and his company, following the decision of the UK High Court that, unless proved otherwise, Mr Sassou Nguesso and his company were ‘unsavoury and corrupt’.
28 July 2008 Email from Mr Streete to GW	Six days later Mr Streete wrote to GW saying that measures had been taken to ‘strike the referenced companies off the register of companies operating in Anguilla’.
22 August 2008 Email from GW to Mr Streete	GW wrote to Mr Streete asking him to clarify that he was referring to Long Beach and another related company, E Investments Ltd.
19 September 2008 Email from GW to Mr Streete	GW again wrote to Mr Streete asking him to clarify that he was referring to Long Beach and E Investments Ltd.
30 September	Mr Streete confirmed that Long Beach had been struck off the register.

²¹ International Monetary Fund, *Anguilla – Overseas Territory of the United Kingdom: Assessment of the Supervision and Regulation of the Financial Sector: - Review of Financial Sector Regulation and Supervision*, IMF Country Report No. 03/370, November 2003, p5

2008 Email from Mr Streete to GW	
27 April 2009 (although the letter is dated 2008, it arrived in April 2009) Letter from Mr Streete to GW (emailed)	Following an Anguillian blog entry about GW's report <i>Undue Diligence</i> , Mr Streete again contacted GW, 'to offer some clarification,' due to concerns that 'issue was reported in such a way as to create such inaccurate and misguided inferences on the work and actions of the Commission.'

As you will see, this most recent letter from Mr Streete poses some very interesting questions about the ability of Anguilla's own Financial Services Commission, let alone the company and trust providers that it regulates, to identify beneficial ownership. Given that the identification of beneficial ownership is at the heart of anti-money laundering regulations, this casts doubt over the ability of the FSC to prevent Anguilla being used to facilitate corruption. To elaborate:

Mr Streete says that when he requested the documents from Global Witness on 17 July 2007 and did not receive them (although Global Witness has a record of this email being sent, on 19 July), the FSC performed an 'onsite examination' and requested information about the beneficial ownership and the nature of the companies' business. This was provided, he says, by the 'overseas agent in Hong Kong,' and showed that the beneficial owner was a lawyer in Republic of Congo. Given 'the absence of any reference that these companies were associated with the son of the President of the Republic of Congo or any politically exposed persons', the FSC opted for heightened monitoring without specific further action.

Anguilla regulates its trust and company service providers for anti-money laundering purposes, which means that they should themselves be conducting know-your-customer due diligence on their clients. In this case, according to Mr Streete's account, it appears as if these Anguillian agents relied for knowledge of their clients on the overseas agent, and did not even have the records to hand themselves, because this information had to be provided to the FSC by the overseas agent. In Anguilla a company services provider can rely on an intermediary, including an overseas agent, to carry out due diligence on a prospective customer. The Anguillian services provider does not even have to keep the identification documents and instead can rely on a letter of assurance from the intermediary.²²

It is clear from the documents that Global Witness had prominently displayed on its website from 26 June 2007 onwards, and which we enclose here, as well as from Mr Justice Stanley Burton's August 2007 ruling, that the beneficial owner of Long Beach was Denis Christel Sassou Nguesso, the son of the president of Congo, and an official responsible for marketing the state's oil.

In the document entitled 'Declaration of Trust', Orient Investments 'solemnly and sincerely' declares that the shares in Long Beach belong not to itself but to Denis Christel Sassou Nguesso. The letterhead is that of ICS International. The document has been signed on behalf of Long Beach, witnessed by somebody who states their address to be that of ICS Trust (Asia) Ltd in Hong Kong. It is therefore reasonable to assume that this document was signed at the offices of ICS Trust in Hong Kong. It is also reasonable to assume that the 'overseas agent in Hong Kong' referred to by Mr Street is ICS.

This raises the following important questions,

1. What due diligence did Orient Investments do to identify its customer?

²² Anguillian Anti-Money Laundering Regulations, 2006, Sections 4, 5 and 7; Anguillian Anti-Money Laundering Guidance Notes, 2006, section 4.04.

2. Did Orient Investments in Anguilla have a copy of this 'Declaration of Trust' document?
3. If not, why not?
4. Given that this document on ICS letterhead clearly states the beneficial owner of Long Beach to be Denis Christel, why did ICS Trust reply to the FSC that the beneficial owner was a Congolese lawyer?
5. The guidance notes to the Anguillian anti-money laundering regulations in 2000 and 2006, (regulations which allow Anguillian regulated institutions to rely on third parties to do their customer due diligence), state that Hong Kong is a jurisdiction with equivalent anti-money laundering regulations to Anguilla. However, Global Witness notes (see page 64 of Undue Diligence) that Hong Kong does not regulate its trust and company service providers for anti-money laundering purposes. Should the FSC be content to accept beneficial ownership information from a third party that is unregulated for anti-money laundering purposes?
6. Did the information that this company was owned by 'a lawyer in Congo' prompt further concerns on the part of the FSC about the potential for corruption, given that the purpose of Long Beach was to trade in Congolese oil products?

In summary, this letter from Mr Streete raises the disturbing possibility that the FSC does not have the will or the powers (we cannot tell which) to get to the bottom of who its own companies are fronting for, and only closed Long Beach once it was presented with the evidence about the real beneficial owner from the UK court case a year later. But why did it not find this information when it looked into this matter in 2007?

There are a number of additional questions that have been unanswered by Global Witness' correspondence with Mr Streete. He states in his letter of April 2009 that he does not have to discuss these with Global Witness, which is understandable, however, these questions should be examined by your review.

7. Did Orient Investments or Pacific Investments ever file any suspicious activity reports in relation to Long Beach or Mr Sassou Nguesso? If so, when?
8. Once Long Beach was closed what further investigation did the FSC do into the procedures and personnel of Orient and Pacific Investments, and what if any further consequences were there for Orient and Pacific Investments.

Further questions which require the attention of your review are those posed by the UK National Audit Office report on risks in the Overseas Territories, published in 2007. This reiterated a number of concerns raised by the IMF in its 2003 assessment of Anguilla's anti-money laundering regime, and raised the following concerns:

9. Has Anguilla created a separate agency to market its financial services overseas, freeing the regulator from involvement in this activity?
10. Has the FSC increased the number of skilled staff able to analyse and investigate suspicious transaction reports?
11. Have procedures for obtaining customer information from overseas sub-agents been tightened? If so, how?
12. Have any sanctions been applied to financial service providers since 2003? If so, how many? Of what did the sanctions consist?

Global Witness has identified two key actions to curtail the flow of corrupt funds through British offshore financial centres:

- Banks and regulated institutions including trust and company service providers must change their due diligence practices, and not treat customer due diligence solely as a box-ticking exercise. They must adopt policies so that if they cannot identify an ultimate beneficial owner of the funds, and do not have strong evidence that the source of funds is not corrupt, they must not accept the customer or the transaction.

- Banks and regulated institutions including trust and company service providers must be regulated to force them to do this due diligence properly. Anti-money laundering laws must be absolutely explicit, and consistent across different jurisdictions, that regulated institutions must identify the natural person behind the funds, and have strong evidence that the source of funds is not corrupt, or they must not accept the customer or transaction. In the case of the British offshore financial centres the pressure to strengthen the anti-money laundering regulations will only come from the UK government.

Further to these specific recommendations, Global Witness supports the work of the Tax Justice Network and others who are calling for automatic exchange of account information. This would have the dual benefit of minimising tax evasion and of making it harder for corrupt politicians to hide their looted wealth. Law enforcement would be able to see where politically exposed persons (politicians, senior officials or their family members who pose a higher corruption risk) have got bank accounts abroad that they should not have.

If you have any questions about our recommendations or our correspondence with the Anguillian FSC please do not hesitate to get in touch.

Yours sincerely,

Anthea Lawson
Lead investigator, financial institutions

cc.

Alistair Darling, Chancellor of the Exchequer

Brendan Cox, Special Adviser to the Prime Minister on International Development

Lucy Rahal, Head of international policy and crime, HM Treasury

Piers Harrison, Senior Governance Adviser, Department for International Development

Colin Roberts, Director, Overseas Territories Directorate, Foreign and Commonwealth Office

Alison Marshall, Desk officer responsible for Anguilla, Foreign and Commonwealth Office

Niguel S. Streete, Director, Anguilla Financial Services Commission