

To: Dhanesswurnath Thakoor
Chief Executive
Financial Services Commission,
FSC House
54 Cybercity Ebene,
Mauritius

By email: mail@fscmauritius.org

3 October 2023

Dear Dhanesswurnath Thakoor

RE: POSSIBLE OFFENCES EMINATING FROM MAURITIAN INDIVIDUALS AND ENTITIES ASSISTING KUDAKWASHE TAGWIREI, AND ASSOCIATED COMPANIES, IN PURCHASING BINDURA NICKEL MINE AND FREDA REBECCA GOLDMINE FROM ASA RESOURCE GROUP PLC.

1. Open Secrets is a South African non-profit organisation dedicated to investigating and pursuing accountability for economic crimes and related human rights violations. Consequently, an important aspect of our work includes holding private actors accountable for human rights abuses and profiteering from economic crimes.
2. The Sentry is an investigative and policy organization in the United States that seeks to disable multinational predatory networks that benefit from violent conflict, repression, and kleptocracy.
3. On 6 July 2023 Open Secrets and The Sentry jointly published a report titled *Fronts Fakes and Façades* (“the Report”). The Report outlines how various entities and individuals across multiple jurisdictions helped Kudakwashe Regimond Tagwirei

("Tagwirei"), a politically connected Zimbabwean businessman, purchase two mines from United Kingdom ("UK") based company ASA Resource Group Plc, a public limited company incorporated in England and Wales, company number 02167843 ("ASA"). Through the use of a Mauritian front company and opaque financial transactions, Tagwirei's identity as the source of funds and ultimate purchaser was obscured. The Report is based on primary documents and evidence supplied to Open Secrets and The Sentry by Christopher Fourie ("Fourie"), a former business associate of Tagwirei turned whistle-blower. A digital copy of the Report is available at <https://www.opensecrets.org.za/report-fronts-fakes-and-facades/>.

4. The report is a follow up to a Sentry publication, *Shadows and Shell Games: Uncovering an Offshore Business Empire in Zimbabwe*. A digital copy of this report is available at <https://thesentry.org/reports/shadows-shell-games/>.
5. This letter will outline why Open Secrets and The Sentry believe the following individual and entities may have committed offences in terms of Mauritian law, and why a full investigation by your offices is required:
 - 5.1. Capital Horizons Limited, a private Company incorporated in Mauritius, file number C110865 ("CHL");
 - 5.2. Sotic International Limited, a Global Business Company incorporated in Mauritius, file number C135746 ("Sotic") – administered by CHL;
 - 5.3. Shaan Kundomal ("Kundomal"), chief executive and co-owner of CHL, a citizen of Mauritius.
6. We understand that either the Financial Services Commission ("FSC") or Financial Intelligence Unit in Mauritius have previously investigated this matter, based in part upon material provided by Kundomal. We attach as Annexure A WhatsApp correspondence between Kundomal and Fourie that is relevant to Kundomal's knowledge of Tagwirei's control of Sotic at certain points during the ASA transaction.

OVERVIEW OF MATTER

7. Tagwirei is a Zimbabwean businessman who was appointed as a presidential adviser to current Zimbabwean president Emmerson Mnangagwa in January 2019. Tagwirei owns various companies including Sakunda Holdings (Pvt) Ltd ("Sakunda")

and is affiliated with many more. On 5 August 2020 Tagwirei was sanctioned by the United States government for *“for materially assisting senior Zimbabwean government officials involved in public corruption.”* A copy of the media release by the USA State Department is attached as Annexure B. On 21 July 2021, the United Kingdom placed sanctions on Tagwirei for *“profiting from misappropriation of property when his company, Sakunda Holdings, redeemed Government of Zimbabwe Treasury Bills at up to ten times their official value.”* A copy of the media release by the UK Foreign Commonwealth Development Office is attached hereto marked Annexure C.

8. Prior to these sanctions there were numerous reports of Tagwirei’s alleged involvement in corruption and ‘state capture’ in Zimbabwe. A list, assembled by Open Secrets and The Sentry, of public reporting on allegations against Tagwirei is attached as Annexure D. This reporting was available in 2019 at the time of the ASA transaction, and further public allegations emerged during the several months-long ASA transaction. Any funds which originated from Tagwirei were therefore potentially tainted by corruption, and the source of funds should have been subject to enhanced due diligence by CHL.
9. During 2019 Zimbabwean Bindura Nickel Mine and Freda Rebecca Gold Mine (“the Mines”) were purchased from ASA through various intermediaries owned or controlled by Tagwirei. At the time of the transaction ASA had been put into liquidation and was being administered by Duff & Phelps, a multinational financial and risk advisory conglomerate which has since renamed itself Kroll. Duff and Phelps operates in the United Kingdom through D&P International Services (UK) Limited (now Kroll International (UK) Limited), a private company with company no: 9897805 (“Duff and Phelps”). Duff and Phelps were appointed as joint administrators of ASA on the 1 August 2017.
10. The use of the intermediaries to facilitate the purchase had the effect of obscuring Tagwirei’s involvement as both the source of the funds for the purchase of the Mines and as the ultimate purchaser. The primary intermediary vehicle used for the purchase was Sotic. Sotic was set up in 16 November 2018 and administered by CHL. After its incorporation Fourie became a director at Sotic and the sole owner through the Light House Trust, a Mauritian registered trust again set up by CHL.

11. Another entity involved in the purchase was a subsidiary wholly owned by Sotic, Landela Investments Limited, a private company incorporated in Zimbabwe, registration number: 3335/2019 (“Landela Investments”). While Sotic provided the funding for the purchase, Landela Investments was the entity listed as the purchaser. Landela Investments received hard currency from the Reserve Bank of Zimbabwe (“RBZ”) at a favourable exchange rate at the time Sotic was getting the funds to pay the deposit for the mines.
12. Sotic’s purchase of the mines was done in three stages, whereby numerous legal vehicles were used to move Tagwirei’s money out of Zimbabwe to Sotic, which ultimately paid the funds to Duff & Phelps. A copy of the Share Purchase Agreement between ASA, Landela Investments and others is attached as Annexure E.
13. Despite having no formal role in Sotic, email correspondence between CHL, employees of Sotic, and/or Tagwirei, clearly demonstrates that Tagwirei was not just the source of Sotic’s funds but was actively involved in the financial, business and operational decisions of the company.

FAILURE TO RECORD THE TRUE BENEFICIAL OWNER OF SOTIC

14. Open Secrets and The Sentry believe that Tagwirei met the standard of a beneficial owner of Sotic under Mauritian law as he exercised ultimate control over the legal entity.
15. CHL, as a regulated management company, had an ongoing duty to identify and record the true ultimate beneficial owner of Sotic under both the Mauritian Companies Act (2001) and the Financial Intelligence and Anti-Money Laundering Act (2002) (“FIAMLA”) and associated 2018 AML Regulations.
16. Kundomal was aware from November 2018 that Tagwirei was involved with Sotic. The WhatsApp correspondence between Fourie and Kundomal reveals the dates on which Kundomal became aware that Tagwirei was exercising ultimate control over Sotic:

- 16.1. On 30 September 2019 Kundomal was told by Fourie that he (Fourie) was a front for Tagwirei. At that time CHL undertook no enhanced due diligence measures to establish whether that was the case.
 - 16.2. On 13 October 2019 Kundomal told Fourie he did not want to send KYC material relating to the ASA transaction without “express approval” from Tagwirei (who was ostensibly uninvolved in the transaction between Sotic and a third party registered in the Caymans).
 - 16.3. On 31 December 2019 Kundomal requested Fourie (who at that point in time was the ostensible owner and director of Sotic) to obtain permission from Tagwirei (who ostensibly had no formal role in Sotic at that time) to withdraw \$1,000 from Sotic’s account (“He has insisted that every cent transferred gets his approval.”) This was an acknowledgement by Kundomal of Tagwirei’s ultimate financial control over Sotic.
17. If CHL has failed to record in its Sotic company papers Tagwirei as the beneficial owner of SOTIC, then CHL may be amenable to sanctions under the different laws of FIAMLA, the Companies Act, and also the Financial Services Act 2007.

OBSCURING SOURCE OF FUNDS IN OCTOBER 2019 ASA TRANSACTION

18. Despite having been warned by Fourie that he was a front for Tagwirei, Kundomal assisted in obscuring Tagwirei as the source of funds in the October 2019 ASA transaction in two ways.
19. First, Kundomal conceived the idea of having Sotic issue convertible debentures and arranged for its subscription by Almas Global Opportunities Fund (“Almas”), a segregated portfolio company (“SPC”) organised under the laws of the Cayman Islands, using funds belonging to Mr Tagwirei. Following that plan, on 21 October 2019, Mr Tagwirei transferred from his personal Mauritian bank account US\$8.5 million to “invest” in Almas. On 23 October 2019, Almas paid Sotic. Then on 24 October 2019 Sotic paid the lawyers for Duff and Phelps. Almas received a substantial six figure fee for its role. These sequential payments have the hallmarks of a suspicious pass-through transaction, with little or no commercial justification.
20. Kundomal seemed to be aware that the Almas transactions could obscure the source of funds. On 26 October 2019 Kundomal wrote to Fourie by WhatsApp

saying he “was thinking that the whole fund solution was really nice. If tomorrow anyone questions the source of fund, the answer is an international investment fund [referring to Almas].”

21. Second, as there was a shortfall of funds in Sotic to complete the ASA transaction, Kundomal used his personal Seychelles company Kubera Investments (“Kubera”) to route \$350,000 from Tagwirei to Sotic. Kubera acted as a buffer: the flow of funds, from Tagwirei to Kubera to Sotic, had the effect of obscuring the source of funds for anyone questioning Sotic about where funds originated. In exercising continued enhanced due diligence Kundomal should have, at least, asked why Tagwirei wished to place funds into Sotic via a third party, rather than a more straightforward loan from Tagwirei to Sotic. Instead Kundomal seemed to facilitate the suspicious transaction.
22. The FIAMLA, in section 2, defines a “suspicious transaction” as a transaction which:
*“(a) gives rise to a reasonable suspicion that it may involve the laundering of money or the proceeds of any crime; or
(b) is made in circumstances of unusual or unjustified complexity;
(c) appears to have no economic justification or lawful objective;
(d) is made by or on behalf of a person whose identity has not been established to the satisfaction of the person with whom the transaction is made; or
(e) gives rise to suspicion for any other reason.”*
23. We note that CHL’s Money Laundering Reporting Officer announced his resignation on 15 October 2019, and formally left after a notice period in November 2019 – after which Kundomal served as a temporary replacement MLRO until March 2020 – a period covering the remainder of the ASA transaction period. Kundomal wrote to Fourie on WhatsApp on 15 October 2019: *“I had a resignation to deal with... my compliance officer. It’s a simple transaction. And the guy got on my Nerves... I think we should charge Kuda [Tagwirei] a symbolic fee for this. What do you think. Am exhausted fighting off this compliance.”*
24. By October 2019 CHL should have sent a Suspicious Transaction Report to the Financial Intelligence Unit. A failure to do so may have constituted a ‘failure to report’ offence.

INADEQUATE DUE DILIGENCE OF HIGH RISK TRANSACTIONS: SOTIC INTERNATIONAL'S FALSE INVOICE TO RIMOSA TRADING

25. Zimbabwe has stringent exchange controls, and getting money out of the country is difficult. Analysis of communications and available trade records show that a false invoice was used to move millions out of Zimbabwe to Sotic in Mauritius for the second payment to ASA. Open Secrets and The Sentry believe that these actions constitute fraud.

25.1. On or about 27 August 2019:

25.1.1. A Sotic team member asked a colleague via email to draw up an invoice to Zimbabwean trading company Rimosa Trading ("Rimosa") for \$3.5 million for 'soybean crude oil' ("the invoice").

25.1.2. In the email chain the Sotic team ask whether the product 'will actually flow' or whether this was a means for Tagwirei to 'get funding for ASA'. The response was that the funding was for ASA and that this had been confirmed by 'Joseph'; a likely reference to Joseph Mudzingwa, chief executive officer of Rimosa.

25.1.3. A Sotic director, in email correspondence with Fourie, stated that Sotic will be receiving this money 'in the guise of cooking oil' and further reiterated that these funds were for ASA. This above email correspondence is attached as Annexure F.

25.2. On or about 2 September 2019 Rimosa paid Sotic \$3.5 million fulfilling the invoice. This payment was part of a series of payments made from Rimosa to Sotic totalling \$10.5 million.

25.3. Searches of Zimbabwean trade and customs records conducted by Open Secrets and The Sentry did not reveal any shipments of any commodities from Sotic to Rimosa from 2018 to mid 2022. Furthermore there are no imports or exports recorded for Rimosa in this time period. Extensive searches did not yield any publicly available information on the nature of Rimosa's business save that their registered business address given to a bank matches that of Landela, which is a wholly owned subsidiary of Sotic. This raises questions as to whether Rimosa is linked to Sotic or Tagwirei.

26. Therefore Open Secrets and The Sentry believe that the invoice was sent to Rimosa for the purchase of commodity goods that were never delivered (according to Zimbabwe customs records) nor were intended to be delivered (according to email correspondence within Sotic), but for which Rimosa paid Sotic.
27. Furthermore Open Secrets and The Sentry believe that the email correspondence shows that the invoice was false and intended to move funds from Zimbabwe to Mauritius for the financing of the ASA deal. These types of transactions raise red flags for trade-based money laundering (“TBML”).
28. Commodity trading is a high risk business, and Zimbabwe is a high risk jurisdiction. It is likely that CHL did not know of the intent of Sotic employees to use fraud and a TBML technique to move money out of Zimbabwe and into Mauritius. However, in such high risk circumstances, enhanced due diligence procedures should have been employed by CHL, it is insufficient to request only financial information such as bank transfers and invoices. Checks should also have been made on whether the goods (ostensibly cooking oil in this case) were actually delivered.
29. Under section 44(1)(b) of the Financial Services Act 2007, the Chief Executive of the FSC has powers to start an investigation where he has reasonable cause to believe that a management company *“(b) has carried out, is carrying or is likely to carry out any activity which may cause prejudice to the soundness and stability of the financial system of Mauritius or to the reputation of Mauritius or which may threaten the integrity of the system.”*
30. CHL’s actions, such as obscuring the source of funds, failing to carry out enhanced due diligence on high risk transactions, and failing to properly record an entity’s beneficial owner, hinder the ability of other financial institutions in different jurisdictions to exercise their AML responsibilities and risk the reputation of Mauritius as a financial centre.

CONCLUSION

31. The harm caused by the actions of Tagwirei and his powerful associates, as well as those that enable them, is most consequentially felt by the people of Zimbabwe. The

money that flowed out of Zimbabwe in connection with the ASA deal is an important example of the illicit financial flows out of the country further hampering the Zimbabwean economy and burdening those living within its borders. Fighting illicit financial flows is a transnational responsibility, and it is vital that Mauritian authorities investigate the role of Mauritian individuals and registered corporations in any conduct linked to these flows.

32. Should you pursue this investigation we urge you to interview former members of CHL who were present at the time of the ASA transaction and subsequently resigned. We also urge you to request all communications – in particular WhatsApp messages – between CHL staff and Tagwirei, Fourie, Sotic staff and their lawyer Mark Patterton. Given the discrepancy between emails and WhatsApp messages we observed between Fourie and Kundomal, it is insufficient to rely on the formal bundle of material provided by CHL. The FSC should be wary of relying on any internal legal reviews commissioned by CHL – such as those carried out by Dentons in 2019 – which did not have access to those WhatsApp messages.
33. While this letter is a comprehensive summary of the relevant issues, Open Secrets and The Sentry have additional evidence and sources which substantiate these claims. We hope to engage your agency further on this matter.
34. Kindly acknowledge receipt of this letter.

Yours faithfully

Hennie van Vuuren

Director

Open Secrets

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