

## **BAE's relationship with its South African agent, Commercial International Corporation**

### **A) BACKGROUND**

Commercial International Corporation ("CIC") was incorporated in 1966 in Jersey. It is one of the 10 BAE South African agents, with the code SOU026. Its beneficiary for all intents and purposes is **Fana Hlongwane**.

Niall Irving has not heard of CIC, nor has Kevin Smith, John MacBeath, or Stuart McIntyre.

#### **Company background (from material received under LOR)**

The company was registered in Jersey on 18 June 1966 by Messrs Albert Raphael Shammah, Freddy Roland Martell and Ben Andre, the first 2 based in Milan and holding 100, 100 and 3 shares each.<sup>1</sup>

The next information about the company is that a directors meeting was held on 23 October 1997 in Jersey where Hugh Thurston and Robert Chapman became directors and CP Thian and E Thian resigned as directors.

A trustees meeting was held on 2 November 1999 at Thurston's address where Leonard Day was appointed as director and Nigel Day as Secretary, a bank account to be opened at Standard Chartered, and Graeme L Robertson and Graham Miller to transfer 590 shares to the Days.

Leonard Day has had longstanding intermediary banking relationship with Standard Chartered, certainly previous to 1996. He was once of the senior partners at Turquands, Barton Mayhew that eventually became part of Ernst and Young. He retired in 1985 and some of his long standing clients stayed with him. He had an involvement in Modern Hotels in Jersey. On the intermediary banking form it lists Margery Rosita Day as his wife, Nigel Howard Day as his son and Ian Hugh Thurston.

On 2 November 1999 the mandate for Commercial International Corporation Limited is signed by Thurston, Chapman and Day as directors, and Day Jnr as secretary.<sup>2</sup>

On a manuscript document dated 8 May 2000 by Hugh Thurston with reference to instructions to Johannes Matt, there is a note alongside Westunity – 'Draw bank cheque for GBP 20,000 in favour of Mr Chapman payment for purchase of Commercial International Corporation Ltd.'<sup>3</sup>

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<sup>1</sup> 013481000077 (section 2 BAE)

<sup>2</sup> 013849000076-80

<sup>3</sup> 013889000099

CIC was paid a total of £290,000 from the Red Diamond Sterling account between 17<sup>th</sup> October 2000 and 17<sup>th</sup> April 2002 into an account at the Standard Chartered Bank in Jersey.

## **B) AGREEMENTS**

There is a draft Schedule A for a *Primula Investments Limited* included and dated 21 September 1999. Here the address is Ernst and Young where Leonard Day used to work. Part 4 has been amended to read to assist with activities – delivery of defence IP, non-defence, and delivery xxx. The schedule B details a payment of £75,000 per annum to be paid in quarterly instalments.<sup>4</sup> The bank account on Schedule A is where the 10<sup>th</sup> payment to Primula in December 2001 is made to from Marketing Services. Payments to Primula started in January 2000 for £10,000 per quarter.

There is an Ex committee proposal by Hugh Dickinson dated 20 September 1999 for amending the arrangements in South Africa. There is a schedule of payments to advisers, CIC is not listed. The proposals are:

1. It is proposed to make an immediate one off payment of £100,000 to Arstow Commercial Corporation. This amount is to be deducted from the first payment due in respect of the contract for Hawk and Gripen.

2. It is proposed to pay Primula Investments Ltd a retainer of £75,000 p.a. fixed for a period of three years, to be renewed annually, with the first annual payment payable on effectivity of the contract. The task being:-

- i) Support to aircraft contract implementation
- ii) Support for the Defence Industrial Programme
- iii) Support for the National Industrial Programme
- iv) Delivery of the Aircraft Options

This is signed off by M Turner, Kevin Smith and Philip Riley.<sup>5</sup>

There is a document dated November 1999 on Julia Aldridge headed notepaper. On one side it has *SOU Arstow – Alex R/Hugh T, £75k x 3 approved, £150k pa agreed by KS to cover Airbus, start April 2000 (contract effectivity), do all and back to back or do 75k on & airbus do their own? KS said cleared by RHE.*

*3.11.99 – MJT sign for 75k pa only. Airbus to make own arrangements.*

*11.11.99 – SOU CIC Ltd, Mtg Hugh Thurston, - HT returns UK 25/11, will call to fix mtg to hand over company papers for CIC, - need receipt from RM ASAP (?lodge 30.11.99 trip)<sup>6</sup>*

**Mr Irving held a meeting with Mr Hlongwane on 4 November 1999.<sup>7</sup>**

There is the first page of a draft agreement dated 9 November 1999.<sup>8</sup>

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<sup>4</sup> 013481000052-53

<sup>5</sup> 013481000057-61

<sup>6</sup> 013481000056

<sup>7</sup> 012611000207

<sup>8</sup> 013481000036

There is a progress/record sheet for CIC with approval received on 10 November 1999. In the corner there is manuscript 'New file'. For method of delivery- by hand JA/Hugh Thurston.<sup>9</sup>

There is the first page of an agreement, dated 11 November 1999 and a schedule B.<sup>10</sup>

There is an unsigned agreement, dated 11 November 1999 and a 'copy for approval stamp' with Mike Turner's initials, followed by Schedules A and B

CIC, whose address is La Carriere, Le Hocq, St Clement, Jersey was to provide services in relation to the South African campaign, specifically the following issues:

- (i) Hawk/Gripen implementation
- (ii) Delivery of Defence Industrial Programme
- (iii) Delivery of National Industrial Programme
- (iv) Delivery of Additional Hawk/Gripen Aircraft Options

For these services, CIC would receive a retainer of £75,000 per annum, paid to an account at Standard Chartered in Jersey.<sup>11</sup>

Mr Irving held a meeting with Mr Hlongwane on 23 November 1999.<sup>12</sup>

On 3 December 1999, the South African government, Armscor and BAE signed the contract for design, construction, testing and delivery of 24 Hawk and 28 Gripen aircraft with associated products, spares, ground support equipment and services.<sup>13</sup>

On 10 December 1999, Mr Irving held another meeting with Mr Hlongwane.<sup>14</sup>

On 15 December 1999 Julia Aldridge wrote to Rene Merkt enclosing two envelopes containing the agreements between Red Diamond and CIC, which Merkt countersigned on 16 December 1999.<sup>15</sup>

On 15 December 1999 Philippe Pasquier of Rene Merkt et Associes wrote to CIC, La Carriere, Le Hocq, St Clement, Jersey regarding the holding of envelopes.<sup>16</sup>

Mr McIntyre met with Mr Hlongwane on 28 March 2000 and 4 April 2000.<sup>17</sup>

On 17 April 2000, BAE's defence contract with the Government of South Africa and Armscor becomes effective following achievement of the conditions stipulated in the agreement.<sup>18</sup>

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<sup>9</sup> 013481000055

<sup>10</sup> 013481000031-32

<sup>11</sup> 013481000037-48

<sup>12</sup> 012611000207

<sup>13</sup> 012410000002-005

<sup>14</sup> 012959000020

<sup>15</sup> 013481000003

<sup>16</sup> 013481000049-50

<sup>17</sup> 012959000083

<sup>18</sup> 012212000042

There is an undated handwritten document which states 1. The consultant or his associates shall not place any demands or make use of any secretarial, administration, or travel or any other support resources belonging to any BAE office/BAE associated organisation in South Africa. 2. A mechanism is required to put a travel budget in place which must be capped at a level as advised by Neils Petersen. New Co – 2-3 wks.<sup>19</sup> Part 1 is reflected in Schedule B to an extent.

Finance Data Sheet, authorised by Hugh Dickinson on 4<sup>th</sup> May 2000 with £75,000 to be paid quarterly.<sup>20</sup>

On 2 October 2000, Red Diamond paid £18,750 to CIC's bank account with Standard Chartered in Jersey.<sup>21</sup> This was followed by another payment of £18,750 to the same account on 27 October 2000.<sup>22</sup>

On 23 January 2001 the Referrals Committee approved the renewal of the CIC agreement which was due to expire on 17 April 2001.<sup>23</sup>

On 31 January 2001, Red Diamond paid £18,750 to CIC's bank account with Standard Chartered in Jersey.<sup>24</sup>

There is a draft amendment dated 26 February 2001. It does not mention £30,000 fee.<sup>25</sup>

On 6 March 2001 Julia Aldridge emailed Valerie Hanscomb to ask her to contact Chris Barrett (no names) about the status of the contract/bid of VGS as they have to allow for an ex-gratia payment of £30,000. They do not need a proposal from Avionics but RR should sign something off.<sup>26</sup>

On 27 March 2001 the Referrals Committee approved the proposed one-off payment of £30,000. Action TAF.<sup>27</sup>

Progress record sheet dated about April 2001 indicates in a manuscript note to Julia that fee of £30,000 is only to be paid following receipt of 1<sup>st</sup> instalment of contract, which has been checked with NI.<sup>28</sup>

On 10 April 2001 there is a redraft which states that £75,000 per annum is to be paid in quarterly instalments (for Hawk and Gripen implementation programme, DIP and NIP) plus £30,000 fee 'shall be paid at such time and in such manner as the Company may, in its absolute discretion, determine'.<sup>29</sup>

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<sup>19</sup> 013481000051

<sup>20</sup> 013481000034-35

<sup>21</sup> 009453000188, 010466000097-098

<sup>22</sup> 009453000190, 010466000101-102

<sup>23</sup> 013481000024

<sup>24</sup> 009453000200, 010466000153-154

<sup>25</sup> 013481000027

<sup>26</sup> 013481000026

<sup>27</sup> 013481000025

<sup>28</sup> 013481000023

<sup>29</sup> 013481000006-7

On 27 April 2001, Red Diamond paid £18,750 to CIC's bank account with Standard Chartered in Jersey.<sup>30</sup>

Finance Data Sheet, 1 May 2001 signed by Andrew Fletcher with banking instructions given as Standard Chartered in Jersey.<sup>31</sup>

On 2 May 2001 there is an unsigned amendment initialled by Rolf Rue.<sup>32</sup>

On 23 May 2001 there is an Ex Committee request by Julia Aldridge to amend the CIC arrangement. The proposal is to increase the £30,000 to \$200,000 [in relation to **Visual Guidance System Contract** with South African Airways] and to be paid immediately rather than on receipt of downpayment from the customer. It is signed off by Sir Charles Masefield, Philip Riley, Rolf Rue, Phil Lynas, and Neils Petersen. 'Chargeable to Avionics, in agreement with Chris Geogehan' has been added in manuscript.<sup>33</sup>

On 29 May 2001 the reason for the increase in the £30,000 fee was given in an email from Chris Geoghehan to Valerie Hanscombe "Our consultant was engaged late in the campaign on VGS and no terms and conditions were finalised. The campaign was recovered from a lost position however commitment to early payment of fees had to be made. The fee amount will be accepted by Avionics as a recharge". This is following a request from Julia Aldridge because normal company requirements are to pay only on receipt from the customer.<sup>34</sup>

There is a draft amendment dated 30 May 2001 which states that £75,000 per annum will be paid in quarterly instalments (for Hawk and Gripen implementation programme, DIP and NIP) plus \$200,000 to be paid at any time at the Company's discretion.<sup>35</sup>

There is an email from Julia Aldridge to Valerie Hanscomb dated 26 June 2001 which indicates that Neils Petersen has confirmed that the ex-gratia payment should go ahead in \$ not £.<sup>36</sup>

On 1 July 2001, BAE implemented its new policies and procedures for the appointment and remuneration of Sales Advisers.<sup>37</sup>

There is an amendment possibly dated 29 June 2001 or 4 July 2001 which £75,000 to be paid in quarterly instalments plus \$200,000 to be paid at Company's discretion. It is initialled by Rolf Rue.<sup>38 39</sup>

On 16 July 2001 Julia Aldridge completes a finance data sheet with a manuscript note about waiting for a call from Chris Geoghehan about recharge instructions. The

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<sup>30</sup> 009453000208, 010466000157-158

<sup>31</sup> 013481000019-20

<sup>32</sup> 013481000021

<sup>33</sup> 013481000014-5

<sup>34</sup> 013481000017-8

<sup>35</sup> 013481000004-5

<sup>36</sup> 013481000016

<sup>37</sup> 009036000002-35

<sup>38</sup> 013481000012

<sup>39</sup> 013481000061-62

\$200,000 has been recharged to Avionics HQ account (attn Terry West).<sup>40</sup> A progress record sheet has been completed.<sup>41</sup>

On 20 July 2001, Red Diamond paid £18,750 to CIC's bank account with Standard Chartered in Jersey.<sup>42</sup>

There is a referrals committee minute of 24 July 2001 'it was noted that a revised proposal (originally a one –off payment of £30,000) had been approved ex committee<sup>43</sup>

Between 31 July 2001 and 17 January 2002, Red Diamond made the following payments to CIC's bank account with Standard Chartered in Jersey:

Red Diamond Trading Ltd (Lloyds USD account)	31-Jul-01	\$200,000.00 <sup>44</sup>
Red Diamond Trading Ltd (Lloyds GBP account)	17-Oct-01	£18,750.00 <sup>45</sup>
Red Diamond Trading Ltd (Lloyds GBP account)	17-Jan-02	£18,750.00 <sup>46</sup>

The Anti-Terrorism Crime and Security Act 2001 was implemented on 14 February 2002. Following the introduction of the new legislation, Red Diamond made only one further payment to CIC of £18,750 on 17 April 2002.<sup>47</sup>

The CIC agreement with Red Diamond expired on 17 April 2002 and was not subsequently renewed.<sup>48</sup>

SC Wood wrote to Rene Merkt's office on 10<sup>th</sup> September 2002 with a request for the bearer of the letter to withdraw the agreement<sup>49</sup>

There is no termination documentation. It was just allowed to lapse as a retainer and was not renewed.

## **ACCOUNT BACKGROUND**

1996

In response to a letter from the bank with a request for information as to 'any account you introduce to us has been vetted by yourselves in terms of due diligence and that you have routines in place to establish that the account, to the best of your knowledge, is not being used for money laundering purposes', Day replies that as he is semi-

<sup>40</sup> 013481000009-10

<sup>41</sup> 013481000011

<sup>42</sup> 009453000222, 010466000258-259

<sup>43</sup> 013481000008

<sup>44</sup> 009453000101, 010465000037-038

<sup>45</sup> 009453000231, 010466000297-298

<sup>46</sup> 009453000240, 010466000318-319

<sup>47</sup> 009453000248, 010466000348

<sup>48</sup> 013481000061-062

<sup>49</sup> 013481000002

retired he does not take on any cold clients nor solicit new business, and any new business is because of an existing connection or recommendation from existing client and he makes all necessary enquiries to satisfy himself that funds passing through his hands have legitimate background.<sup>50</sup>

1998

Day Snr has had longstanding intermediary banking relationship with Standard Chartered, certainly previous to 1996. He was once of the senior partners at Turquands, Barton Mayhew that eventually became part of Ernst and Young. He retired in 1985 and some of his long standing clients stayed with him. He had an involvement in Modern Hotels in Jersey. On the intermediary banking form it lists Margery Rosita Day as his wife, Nigel Howard Day as his son and Ian Hugh Thurston.

The bank requests copy passports for the above mentioned people and address and telephone details for the son and Thurston. This is because of increased due diligence responsibilities.

1999

Day replies with the above information. Dates of birth are as follows: Day 15 September 1935, Mrs Day – 7 December 1930, Hugh Thurston 10 February 1931, Nigel Day 25 October 1962.<sup>51</sup>

On 2 November 1999 the mandate for Commercial International Corporation Limited is signed by Thurston, Robert Hugh Chapman and Day as directors, and Day Jnr as secretary.<sup>52</sup>

2000

A debit card has been issued for this account although there is no card application form, (should there be one? The bank would need to know who's name should be on the card) There is an internal bank memo noting that cardholder F Hlongwane had requested a gold card but a classic card was ordered in error which he does not want. The bank write to Hlongwane c/o CIC at Day's home address to say a card has been ordered and will be sent in due course. Day returns the unwanted card.<sup>53</sup>

2001

15 January 2001 - Internal bank memo noting that the customer does not require the debit card anymore and that it should be cancelled.<sup>54</sup> However there are some transactions which may have been carried out by debit card post this date for the Mandarin Oriental, and South African Airways,

14 May 2001

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<sup>50</sup> 013849000037-38

<sup>51</sup> 013849000026-33

<sup>52</sup> 013849000076-80

<sup>53</sup> 013849000060-62

<sup>54</sup> 013849000072

It is worth extracting this banking memo in full:

*Len and Hugh requested the meeting to advise us of a large transfer, which will be remitted to the captioned account on behalf of their client, Mr F Hlongwane*

*Their client is retained by British Aerospace (BA) and receives annual commissions in the region of GBP75,000 through a subsidiary company of theirs called Red Diamond Ltd.*

*Hugh is due to have a meeting with BA on 21 May 2001 when a further payment of GBP 2.9 Million will be discussed. This relates to the sale of equipment to BA from a Swedish company, which Hugh's client has negotiated. Hugh was keen to stress that their client is not a civil servant or government employee but rather a consultant to BA.*

*Hugh will ask BA to have their bankers, Lloyds Bank Plc, London, to write to me to confirm that they are happy with the source of funds which we will see coming from Red Diamond Ltd. He will also advise us prior to the transfer taking place and give instructions for placing the funds on Fixed Term Deposit*

*He also mentioned that his client, a Zulu by birth, is interested in helping orphans and under privileged children in South Africa to gain a better education. At the same time he is developing a garage mechanic business in South Africa and we may see funds being transferred out in the future to help fund these two projects.*

*On a separate issue there have been some queries recently regarding Debit Card claims on the account, which their client had disputed. The client has since remembered the transactions relating to South African Airlines but continues to dispute a claim by the Mandarin Hotel. A letter confirming the South African Airline transactions will be forwarded to us and Hugh will continue to press Mr Hlongwane regarding the outstanding item.*

*Finally Hugh mentioned that on behalf of another client he will be traveling to China in July and has asked us to secure an introduction to our Shenzhen office prior to his arrival.*

#### *Action Points*

*Amanda: Please liaise with Hugh re incoming monies and deal with Debit Card transactions*

*Peter. I will approach our Shenzhen branch for a contact<sup>55</sup>*

As noted in the Arstow file note the original payment from Red Diamond to Arstow was for £5.8m but this was split into two payments of £2.9m, and subsequently just over £4m went to Westunity and Shun Hing Company over the following month.

There are then some due diligence papers and correspondence with the Jersey Financial Services Commission about Day's registration as a regulated person, and forming a new trust company called Modern Financial Services.

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<sup>55</sup> 013849000011

## **ACCOUNT TRANSACTIONS**

### **Credits**

The credits from Red Diamond total £289,198.22. This is slightly different from Adil's S16 work as the \$200,000 payment converts to £139,198.22. Otherwise there are two refunds, interest, and two transactions from VP Bank in Liechtenstein for £25,000 and £40,000 (not from Arstow) and £100,000 from Westunity at VP Bank in Liechtenstein. There is just one other transaction of interest which is for £27,270 from SANLUCPR, which appears to come from Royal Bank of Scotland (Jersey), possibly as correspondent bank. Google reveals nothing for SANLUCPR.

### **Debits**

I have broken this down into administrative spending in Jersey, spending by Hlongwane and others.

### **Jersey**

Day has signed cheques to the Treasurer of the States, the Jersey Financial Services Commission and himself. He is paid a total of £14,630 over two and a half years.

### **Hlongwane**

Hlongwane's first involvement with the account is to receive \$7,500 worth of travellers cheques around 16 March 2000, and \$30,000 on 17 March 2000, the latter to be picked up in London and organised by Day.

Hlongwane has made extensive use of the gold debit card on lifestyle purchases, spending £64,481 in 11 months in UK, France, Portugal, Mauritius, Switzerland, Germany and South Africa from June 2000 to May 2001.

£180,000 was transferred to Westunity's account at Swiss First on 29 October 2001.

The account was closed on 10 June 2003 following Standards Chartered's decision to withdraw from the intermediary banking market. The balance of £53,720.18 was transferred to Westunity's account at Swiss First in Liechtenstein.

### **Others**

£6,740 has been transferred to Tremarco and Tremarco Trust Reg in Liechtenstein.

As Lydia has noted there is a transaction for Ferrier Lullin et Cie in Geneva, account number 30845. The instruction has come from Day to transfer the entire balance on the account less £10,000 by quickest method possible, in effect £139,348.42.

£2291.99 was transferred to AFC Roberts account at Standard Chartered Jersey on 30 May 2000.