

International Development Committee

Inquiry into the UK's strategy towards development finance institutions

Additional Submission by Corner House Research

National Audit Office's Response to Allegation of Corruption by UK nationals in BII-backed Spenco

1. Further to the evidence that Corner House submitted on 2 February 2023 to the International Development Committee's ongoing inquiry into The UK's strategy towards Development Finance Institutions, we attach a response from the National Audit Office (NAO) to concerns raised by Corner House that the former chair and two UK managers of Spenco, in which British International Investment was indirectly invested through Emerging Capital Partners, were complicit in a conspiracy to bribe officials in East Africa.
2. Given that BII's investment in Spenco has been raised in oral hearings, Corner House believes that the letter is of relevance to the Committee's inquiry, which is referenced by NAO in its letter.
3. In its letter (Attachment 1), NAO provides an extensive summary of information that was provided to it by BII and the Foreign and Commonwealth Development Office (FCDO). For example, NAO discloses (emphasis added):
 - i) ". . . as you are aware from the letter sent to you by CDC in December 2021, the independent board-instigated investigation conducted during 2021 concluded that ECP was aware of CDC's behavioural expectations with regard to business integrity when it committed to the Fund and a successor fund. One of those expectations was that investee companies, such as Spenco, would uphold high standards of business integrity and operate in accordance with laws, including those intended to prevent bribery. The report stated that CDC's expectations had not been met in this regard".
 - ii) "We asked about CDC's ability to take action in relation to any perceived breaches of the conditions for providing capital to the Fund. We were told that the Code of Responsible Investing did not exist when CDC committed capital to the Fund in 2005 and that, at that time, its behavioural expectations were set out in, a less-detailed forerunner of the Code, its Business Principles. BII also told us that CDC's / BII's requirements of its funds, fund managers and their investee companies had strengthened over time and that when it invested in the Fund, its behavioural expectations were not stringent contractual obligations – with the ability to suspend funding in the event of material breaches – as they are now".
 - iii) "BII told us that it did not believe that there was anything more it could have done to take action in relation to the allegations when they were first raised in 2015 based on the supporting evidence provided at that point".
 - iv) "We have discussed with BII what lessons it has learned and the extent to which it has revised its processes to reduce the risk of such events occurring again. BII informed us that it had undertaken two lessons learned exercises that resulted in a series of recommendations, which it had acted on. These cover areas such as coordination with

FCDO; internal complaints handling; the investigation of alleged business integrity breaches; and scrutiny of fund manager business integrity systems. We have reviewed the results of the lessons learned exercises and how these were reported to the BII board and to FCDO. We are satisfied that BII has taken action to address the recommendations. However, this is an area that we will continue to monitor”.

4. Corner House would draw particular attention to the revelation that a whole generation of funds (to which money was committed prior to the introduction of the Investment Code) were inadequately safeguarded, despite CDC (as it then was) repeatedly stating in the past that its Investment Code applied to all of CDC's investments and that contractual clauses were in place to enforce the Code's implementation. For example, CDC's 2009 Development Review states (at p.9) that “The Investment Code . . . is a key guiding document for all CDC's investments” (our emphasis); and, at p.10, that “When CDC commits capital to a fund, it places the fund and the manager of the fund under a legal obligation to operate in accordance with an investment code identical to or substantially similar to CDC's Investment Code”.¹ The only exemption, according to CDC/BII, is “where CDC is a late stage investor in a fund which is already operating in accordance with the ESG principles of other DFIs which are broadly similar to CDC's Investment Code”. These reassurances are now revealed to have been misleading and false. This is clearly of considerable public interest, both because of the apparent secrecy surrounding the lack of contractual safeguards for many CDC funds but also because of the large sums of public money that for years were put at risk. Although the investments in questions have now expired, Corner House notes that the Spenco allegations have prompted new procedures to be introduced by BII. This raises the question as to whether subsequent intermediated investments also suffered from poor safeguards, which the need for new procedures would imply. We would urge the Committee to investigate.
5. Corner House also disputes that CDC/BII could not have taken action before the reported independent board-instigated investigation was completed in 2021. We would point out that both CDC and DfID deemed the evidence provided by Corner House and the whistleblowers in 2015 to have been sufficiently robust to make a referral to the SFO (which is a matter of public record). Making such a referral is no light matter and would have been entirely irresponsible if there were not credible grounds for suspecting criminality. In our view, the referral to the SFO provides factual evidence that there were grounds for CDC to have taken additional actions to hold ECP Africa Fund II to account. In particular, CDC could have challenged ECP Africa Fund II for breach of undertakings to act with integrity and, indeed, for making what have now appear to have been fraudulent representations to CDC that ECP had policies in place to prevent bribery in its portfolio companies. In our view, CDC could and should have acted.

The Corner House, 3 September 2023

¹ CDC's Development Review 2009, available at: https://web.archive.org/web/20101020101835if/http://www.cdcgroup.com/uploads/development_review_2009.pdf



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Date 20 July 2023

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CDC/BII PRIVATE EQUITY FUND INVESTMENT

Dear Mr Hildyard,

Thank you for contacting the National Audit Office (NAO) raising concerns in relation to an investment made indirectly by CDC Group Plc (CDC), which is now known as British International Investment (BII), through the ECP Africa Fund II. You wrote to us in June 2022. Given the serious nature of the issues raised, we undertook to make inquiries of BII and the Foreign, Commonwealth & Development Office (FCDO). Thank you for your patience while we have conducted our inquiries.

In your email you outlined concerns relating to the following issues:

- that you had seen evidence that suggested that two British managers of Spencon, in addition to the Chair of Spencon, were complicit in a conspiracy to bribe officials;
- that CDC and FCDO's predecessor, the Department for International Development (DFID), were informed of evidence of bribery and fraud in relation to Spencon and the ECP Africa Fund II in 2015 and that they failed to act to protect UK aid funds; and
- that ECP Africa Fund II failed to comply with CDC's / BII's Code of Responsible Investing and that this should have triggered action by CDC / BII to potentially stop providing capital to the fund.

You asked that we investigate CDC / BII's handling of the allegations and wider concerns over oversight of intermediary funds. The NAO is not a law enforcement agency and when concerns are raised with us, we consider them in the context of the Comptroller & Auditor General's (the head of the NAO's) public audit remit. In particular, we consider the impact of the issues raised on the audited body's financial statements and the effectiveness of governance and oversight arrangements. We also consider whether systemic issues have arisen that we might pursue through our discretionary power to examine the economy, efficiency and effectiveness with which an audited body has used the resources at its disposal. Please note that, while the NAO is the statutory external auditor of FCDO, it does not hold this position in regard to BII. Nevertheless, recognising that FCDO is the sole shareholder of BII, we consider it appropriate to engage with both FCDO and BII on the issues you raised.

In response to your email and the further information that you provided, we met with key individuals within BII and FCDO and requested and reviewed relevant supporting documents. Based on these conversations and our review of the documents we have the following observations.

Allegations of bribery and corruption in relation to the Chair and managers of Spencon

Thank you for the memoranda that you submitted to us regarding the allegations against the Chair of the Spencon board and various managers at Spencon, which you had previously prepared for, and submitted to the CDC and the Serious Fraud Office.

Given our remit, we cannot conduct a criminal investigation. This would be a matter for relevant law enforcement agencies. However, we have spoken to BII about the work it undertook to investigate the claims following your provision of this supplemental evidence in 2020. The allegations contained within your memoranda are clearly serious and we recognise that CDC / BII treated them as such through commissioning an independent investigation undertaken by an experienced criminal lawyer, the results of which we are aware were provided to you in December 2021.

CDC's actions relating to information provided to them in 2015

In your email you said that "both CDC and DFID were informed of evidence of bribery and fraud in 2015" but that they failed to act, and that, had they done so, "further wrongdoing and mismanagement could have been prevented and the company, which is now in liquidation, saved".

BII told us that it met with you in December 2015 to discuss your concerns around ECP and Spencon. We understand that there were subsequent meetings between you and DFID / CDC during 2016 to discuss these matters and that some supporting information regarding the allegations was provided to DFID but not to CDC. BII told us that it did not believe that there was anything more it could have done to take action in relation to the allegations when they were first raised in 2015 based on the supporting evidence provided at that point.

CDC's / BII's actions in regard to its investments in the ECP Africa Fund II

As Mr McDonald explained in his letter to you of April 2017, once CDC / BII commits to a fund, it is legally required to finance that commitment. He also noted that for funds that had signed up to CDC's Code on Responsible Investing, CDC could stop financing its commitment if the funds had materially and repeatedly breached the Code. You have said that the evidence you have seen strongly suggests that ECP Africa Fund II failed to comply with the Code and that this should have triggered actions by CDC within its powers.

We asked about CDC's ability to take action in relation to any perceived breaches of the conditions for providing capital to the Fund. We were told that the Code of Responsible Investing did not exist when CDC committed capital to the Fund in 2005 and that, at that time, its behavioural expectations were set out in, a less-detailed forerunner of the Code, its Business Principles. BII also told us that CDC's / BII's requirements of its funds, fund managers and their investee companies had strengthened over time and that when it invested in the Fund, its behavioural expectations were not stringent contractual obligations – with the ability to suspend funding in the event of material breaches – as they are now.

As set out above, the conditions were less clear when CDC committed to the Fund. However, as you are aware from the letter sent to you by CDC in December 2021, the independent board-instigated investigation conducted during 2021 concluded that ECP was aware of CDC's behavioural expectations with regard to business integrity when it committed to the Fund and a successor fund. One of those expectations was that investee companies, such as Spencon, would uphold high standards of business integrity and operate in accordance with laws, including those intended to prevent bribery. The report stated that CDC's expectations had not been met in this regard. We, therefore, asked BII what action it had taken in relation to ECP after learning the results of the investigation. It told us that by the time of the investigation, the Fund was reaching the end of its contractual life and was now in liquidation, having divested of its last asset. It also told us that it had engaged with ECP to share areas for improvement and that, in January 2023, a routine business integrity review of ECP's operations had found that the fund manager has a "sophisticated approach to business integrity" and highlighted no issues.

Lessons to be learned

We have discussed with BII what lessons it has learned and the extent to which it has revised its processes to reduce the risk of such events occurring again. BII informed us that it had undertaken two lessons learned

exercises that resulted in a series of recommendations, which it had acted on. These cover areas such as coordination with FCDO; internal complaints handling; the investigation of alleged business integrity breaches; and scrutiny of fund manager business integrity systems. We have reviewed the results of the lessons learned exercises and how these were reported to the BII board and to FCDO. We are satisfied that BII has taken action to address the recommendations. However, this is an area that we will continue to monitor.

Wider governance issues relating to the relationship between FCDO and BII

BII's corporate governance arrangements are set out on [its website](#). BII, as a plc, is governed by a Board of Directors who are answerable to FCDO as shareholder. FCDO's expectations of the Board are set out in a detailed Memorandum of Understanding (MoU). FCDO's expectations of the Chair are set out in a letter to the Chair, issued annually by FCDO.

The BII Board is responsible for oversight of the executive management team and for ensuring that appropriate systems are in place to identify and manage risks to the business, including the risk of fraud, bribery and corruption perpetrated by staff at BII and/or businesses financed by BII, directly or indirectly (e.g. through investment funds). The MoU confirms that the Secretary of State holds the Board responsible for delivering BII's objectives. FCDO obtains assurance from BII through a series of formal meetings throughout the year to monitor the effectiveness of BII's risk management and delivery including quarterly shareholder meetings, and annual meetings with the chairs of board committees.

As you may already be aware, the International Development Committee is currently undertaking an inquiry into *Investment for development: The UK's strategy towards Development Finance Institutions*. The inquiry is assessing whether BII is best placed to deliver impact and value for the UK taxpayer and is specifically considering some issues which may be of particular interest to you relating to FCDO's oversight of BII and the use of intermediary fund managers to invest its capital. The inquiry will publish its report and recommendations in due course, but the oral evidence provided by witnesses to the inquiry, including by the Minister of State (Development and Africa) FCDO and the current Chair and Chief Executive Officer of BII can be found [here](#).

Thank you for bringing these matters to our attention. We have concluded our inquiries at this time, but your correspondence has prompted us to have valuable conversations with officials from BII and FCDO. We will keep these issues in mind as we plan and conduct relevant future audit work.

Yours sincerely,

Leena Mathew
NAO Director