

Jailed in Jakarta

Arrested in a dispute over corporate taxes, former high-flying stockbroker Mark Greenwood spent 12 months in an Indonesian jail. But despite his alleged crimes, he was never tried in court. Ben Davies sits down with Greenwood to discuss the perils of doing business in Indonesia.

CIPINANG PENITENTIARY CENTRE is a maximum-security jail situated in the eastern suburbs of Indonesia's capital, Jakarta. It is one of the country's toughest jails, housing 3,300 prisoners on charges ranging from drug trafficking to terrorism and murder. At night, prisoners incarcerated behind its fortress-like walls occasionally howl in fear and anguish. The jail suffers from severe over-crowding. According to one United Nations report, 25% of inmates are infected with HIV.

For 365 days and nights, Cipinang was the home of former high-flying stockbroker Mark Greenwood. As the country manager of the Paribas Asia Equity Thailand operation in the early to mid 1990s, Bangkok-based Greenwood was instrumental in raising the profile of Thai equities amongst foreign institutions. He went on to head up the Brooker Group, the first company to list on Thailand's fledgling market for alternative investments. But after 15 years in the financial industry, Greenwood looked for new challenges. So in January 2002, he joined Indo-Pacific Resources, a struggling Canadian-owned oil company that operated an oil field in the East Java Sea.

But within two years of arriving in Jakarta, Greenwood found himself in jail over a dispute concerning US\$5.4 million in back taxes and penalties owed by Indo-Pacific Resources to the Indonesian authorities, dating back to 1997. Held without trial under new tax laws, Greenwood languished in prison for more than a year before his release at the end of last year. It is only now that he feels comfortable enough to speak out about his ordeal. Indonesia's Ministry of Finance was unavailable for comment.



Greenwood's home for a year, Cipinang Penitentiary.

AM: *In late 2003, you became the first foreigner in Indonesia to be arrested under the government's controversial new tax laws. What were the circumstances of your arrest and what were the charges?*

MG: At approximately 10 minutes to 10 on a Monday morning in November, three gentlemen from the tax department arrived at my office in Jakarta with a

posse of policemen. They were nice and polite but firm and read me the equivalent of the debtors' jail charge sheet, which said that I had not cooperated with the Indonesian tax authorities over my company's outstanding tax liabilities and that they were going to put me in jail.

AM: *What was your immediate reaction?*

MG: After they had read out my rights,

so to speak, I immediately phoned my lawyer who gave me the wonderful advice of 'don't go'. The reason was that 10 days earlier we had won a decision in the Jakarta administrative court that ruled that an earlier order banning me from overseas travel was illegal. It also stipulated that no authority of the government of Indonesia should interfere with any employees of the company that I worked for. I showed the police a copy of this judgment but they said that they had different orders and could not accept the validity of the court decision and, therefore, were going to arrest me anyway. So you had the courts of justice issuing a decision and the Ministry of Finance ignoring it.

AM: *What were Indo-Pacific Resources' outstanding tax liabilities and did you dispute them in any way?*

MG: At the time of my arrest, the outstanding tax bill, including interest and penalties, was approximately Rp45 billion, or around US\$5.4 million at the then exchange rate. But about 80-90% of the company's outstanding tax liabilities were due to VAT (value-added tax). Considering that, under Indonesian law, oil companies are specifically exempted from VAT—meaning that it can be claimed back from the tax man—my fellow directors and I believed that the situation could be resolved in a relatively straightforward manner. However, any deal would have had to involve the tax department, the Ministry of Finance, and the Ministry of Energy and Mineral Resources. And, as with so many bureaucracies in the developing world, the departments just don't like to speak with each other.

AM: *Following your arrest, you spent 12 months in a high security jail but were never tried or found guilty on any charges.*

MG: It is symptomatic of what the country is going through and why it is failing to attract badly needed foreign investment. If you look at this new law, it is similar to the debtors' prison laws, which were abolished in the United Kingdom some 250 years ago. Even

stranger, at the time of my arrest I wasn't a significant shareholder of the company. I am still not a shareholder of the company in any major way, shape or form. The logic they used is that if they threw me in jail, money to settle the bills would miraculously appear from somewhere.

AM: *How many other people have been put behind bars under these new tax laws?*



Mark Greenwood: "I wasn't a shareholder."

MG: To my knowledge there have only ever been three. One of them was a Chinese Indonesian. The second one was me. And the third was an Indonesian who was involved in a foreign joint-venture power plant project that went to arbitration. But he ended up paying his dues and got out.

AM: *In a sense, the Indonesian government can argue that its get-tough approach to tax collection is simply following the advice of the IMF. Given the country's low tax collection rates, doesn't it have some justification?*

MG: Certainly one of the chief justifications of this law, which was enacted back in June 2002, was to please the IMF, which was still lending to Indonesia. With tax revenues well below 20% of GDP, this is very understandable. However, I am sure that if they had asked the advice of the IMF as to whether they should be arresting executives of companies who were actually trying to promote foreign investment in Indonesia, they would

have received a very different opinion.

AM: *In your case, why wasn't it possible to reach an equitable settlement at the outset?*

MG: By the time I was sent to jail, my fellow directors and I had already initiated a course of action to sell a major stake in the business to a potential partner. That deal, in the end, did not go ahead as punctually as I would have hoped. As a result, the funds that could have been made available to sort out the tax liabilities were not available—so I languished in jail. In many ways, I was in the unique situation of not knowing when I was going to get out. All that I knew was that under these regulations, I could be held without trial for up to a year.

AM: *Looking back, you must have known the laws and the risks when you joined Indo-Pacific Resources. Did it ever cross your mind that this could happen?*

MG: I think I knew that it could happen, but I never thought that it would. I had been dealing with bureaucracies in Asia for quite a few years. And in the end, if you talk to them with respect and give them a little bit of dignity and try not to lay down the law, they will generally return that respect to you. In this case, everyone knew that we had a cash-flow problem. Everyone knew that the debts were created by the previous management of the business after they were forced to close off an oil field when the price of oil fell in the late 1990s. We were slowly but surely paying off the old income tax and withholding tax. All we needed was more time. But in the end, I don't know whether it was political pressure or what, but someone's patience snapped and they decided that the best course of action would be to put me in jail.

AM: *To what extent should your experience act as a warning to other potential foreign investors in Indonesia?*

MG: I don't think you should simply look at my experience. In the greater scheme of things, Indo-Pacific Resources was a relatively small foreign investor. However,

whilst I was in jail, four or five top executives from Newmont Mining, the largest gold mining company in the world, were arrested on charges of polluting a bay in northern Sulawesi, one of Indonesia's major islands. It is not up to me to judge whether there was pollution or not. Suffice to say that all independent analysis seems to indicate that Newmont is innocent of the charges. But the real issue here is double standards. Everyone knows that next door to major foreign mining operations you get illegal local mining operations that use mercury and arsenic to get gold out of the deposits. But they are not touched because powerful interests often back them. So the foreigners are blamed instead.

AM: *What were the best times and the worst times in jail?*

MG: I suppose the best times were when I believed, rightly or wrongly, that I had some kind of deal worked out that would get me out.

AM: *Cipinang jail is notorious for overcrowding and violence. Yet you were placed in a special wing for low security-risk prisoners. What were the conditions like there?*

MG: Although the prison houses around 3,300 prisoners, most of whom have been convicted of drug offences, I was in a small and fairly comfortable block with approximately 20 inmates. The people I mixed with there were not your average prisoner. They were nearly all extremely well-connected and nationally very well-known. Some had fallen foul of the corruption laws in Indonesia; others had fallen foul of the banking laws. To be able to exchange views with these people and have intelligent, meaningful conversations in a jail environment was a very pleasant surprise. Having said that, I was extremely lucky. I knew that in other parts of the jail, life could get very nasty with gangs and mafias and the like.

AM: *Tommy Suharto, the youngest son of the former Indonesian president, was also incarcerated in a special block in Cipinang—reportedly with the protection*

of his own bodyguards and the services of his own personal secretary. Were you in the same block?

MG: There were various blocks built for different purposes. The [block I was in] just happened to be the block that Tommy Suharto lived in from the time when he was tried up to the time he was convicted of complicity in a plot to kill a Supreme Court judge. Fortunately for me the block had extra strong fortifications, making it difficult for people to get in rather than out.

AM: *Were you ever approached by anyone and told that if you paid a certain amount of cash you would be released at an earlier date?*

MG: To be quite frank, the answer is yes. Mainly by lawyers. Shortly after I arrived in jail, a number of people approached me through various intermediaries and suggested that they would be able to get me out because they had a cousin or second cousin or a best friend or a grandmother who knew the deputy or the head of the tax department. Of course, they all wanted upfront commissions, which I was not prepared to give. I believe in payment for services rendered, rather than services promised. I do remember one particular case of a fellow inmate who paid money to get his sentence reduced or reviewed. But his cash was soon swallowed up and nothing happened. And the sad thing is that it was obvious that he was completely innocent.

AM: *What did it take to eventually secure your release?*

MG: It took a settlement with the tax department, which demonstrated that half of the liabilities that my company owed to it had been settled. The other half is still outstanding and is in the process of being dealt with.

AM: *With the benefit of hindsight, could this have been better handled by all concerned?*

MG: If I have to be fair about the whole thing, these are two areas where both

sides are to blame. On the government's side, there was a lack of willingness to consider an offset of our VAT liabilities against the mandated repayment of the same, which would have allowed us to arrange a payment schedule for the remaining outstanding tax liabilities. And on our side, there was perhaps an overly legalistic approach. Quite frankly, bureaucrats in Asia don't like talking to lawyers and consultants. Turning up with a phalanx of lawyers and consultants does nothing but upset them.

AM: *What would it take for you to go back and do business in Indonesia?*

MG: It would take a complete, total and utterly final settlement of the outstanding tax liabilities. At the time that I was in jail, even my fellow directors in Canada didn't dare step foot in the country because they were afraid that the same thing would happen to them. And they still don't want to go back.

AM: *How bitter are you about what happened?*

MG: My argument is not with the Indonesian people. It is with the machinery of justice in Indonesia as applied by the tax department to foreign business. When I first visited Indonesia in 1986 to analyze banks' credit risk, I always told friends that this was possibly the only country in Asia outside of Thailand where I could live. I like places that are a little bit exotic, somewhat chaotic with a dash of anarchy thrown in—and Indonesia has always provided such an atmosphere. Nevertheless, I do feel sorry for the population at large for having to deal with a truly venal bureaucracy that generally thinks of nothing but itself as its main priority in administering the country. So much human potential wasted.

AM: *What do you plan to do now?*

MG: I'm told that I was rather good at stock broking when I was doing it in Thailand. So I think that now I am back in Bangkok, I may return to my Asian roots and take up my activities in the Thai stock market again. **am**