

**Asset laundering and AIM:
Congo, corporate misconduct and
the market value of human rights**



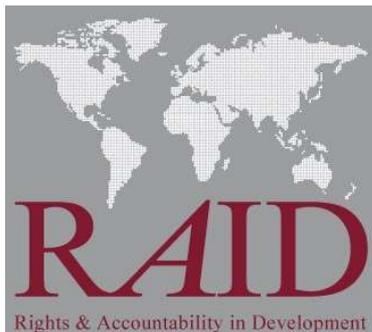
Rights & Accountability in Development

Asset laundering and AIM: Congo, corporate misconduct and the market value of human rights

Rights & Accountability in Development

July 2012

RAID promotes respect for human rights and responsible conduct by companies abroad and is a long-standing contributor to the debate on corporate conduct during and after the devastating war in DRC. Its publications on DRC include *Unanswered Questions: Companies, Conflict and the Democratic Republic of Congo* (2004); *Kilwa: A Denial of Justice* (2007); *Economic Aspects of Key Mining Contracts in Katanga* (2007); *Chinese Mining Companies in Katanga, Democratic Republic of the Congo* (2009). All available at <www.raid-uk.org>.



© 2012 Rights & Accountability in Development. All rights reserved.

Rights & Accountability in Development
PO Box 778
Oxford
OX1 9GU
United Kingdom

<http://www.raid-uk.org>

RAID is a private company limited by guarantee, no. 4895859.

Contents

Contents.....	i
Executive Summary	iv
Key Recommendations	viii
Abbreviations	x
The Democratic Republic of the Congo.....	xi
INTRODUCTION	1
AIM-traded CAMEC plc, the Congo and the UN allegation of ‘insufficient due diligence’	1
RAID’s May 2011 submission to the Exchange.....	3
Standing to submit a complaint	3
RAID’s decision to publish.....	3
Sanctions	4
Company conduct, the adequacy of market rules, and the intersection between business and human rights	4
The continued relevance of examining compliance.....	5
CAMEC: structure and assets	6
PART I – COMPLIANCE.....	9
AIM rules	9
Provenance of the concessions and the withdrawal of CAMEC’s mining licences.....	10
Withdrawal of CAMEC’s ‘improperly obtained’ licences.....	10
The reputation of former owners and/or those with significant or substantial beneficiary interests in CAMEC	11
Billy Rautenbach	12
Dan Gertler and John Bredenkamp.....	12
Significant shareholder notification.....	13
Managerial malpractice, opaque subcontracts and conflicts of interest in the predecessor companies	13
Incompleteness of accounts and the implications for determining how transactions are classed	14
Licence review: information of import and the effect on transactions	15
Notification of price sensitive information without delay.....	16
Suspension of mining operations at Mukondo.....	16
Disputed claims.....	17
CAMEC, ENRC and sanctions against Zimbabwe: implications for AIM and questions for HM Treasury.....	17
Rautenbach and associated entities	17
CAMEC’s acquisition of Zimbabwean platinum assets	18
Sanctions and ENRC’s offer for CAMEC: Non-disclosure of the identity of Rautenbach and other SDNs in the offer document	19
Questions put to the Asset Freezing Unit and their failure to respond.....	20
The administration of Rautenbach-controlled shares	20
The requirement for licence(s) from HM Treasury: prior approval?	20
Proceeds from any sale of CAMEC shares	21

PART II – A CRITIQUE OF AIM REGULATION AND THE IMPLICATIONS FOR RESPECTING HUMAN RIGHTS.....	22
Introduction	22
Implementation of the AIM rules.....	22
The regulation of AIM.....	22
Sidestepping EU standards.....	22
AIM’s ‘self’ regulation.....	23
Role of nominated advisers.....	23
Disciplinary action.....	24
Record of disciplinary action taken by the Exchange.....	24
The CAMEC case and consistency of enforcement.....	24
CAMEC and its nomad: the lack of public action to date.....	24
Questions of consistent implementation: action taken against others.....	25
The scope remaining for disciplinary action: AIM Disciplinary Notice 11 and Seymour Pierce....	27
Wider concerns about AIM’s disciplinary process.....	28
Ambiguity in the disciplinary process.....	28
Resisting transparency and minimising public disclosure.....	28
Matters dealt with directly by the Exchange without referral to the disciplinary bodies	28
Cases before the Executive Panel, Disciplinary Committee and Appeals Committee.....	29
Lack of accountability and exclusion of complainants from the process.....	29
Enforcement and market logic.....	30
Capturing misconduct: the AIM rules and failures of formulation	31
Market regulation and its intersection with human rights.....	31
A tales of two cities: prohibition, permission and the laundering of Congolese wartime assets ..	32
A fleeting coincidence: human rights, AIM and the prohibition of Oryx Diamonds.....	33
When human rights and market regulation cease to intersect: AIM-traded CAMEC, provenance and the laundering of its Congolese assets.....	33
The rule deficit: due diligence at admission versus ongoing regulation.....	34
Accounting for the exclusion of Oryx whilst CAMEC was allowed to prosper.....	34
Due diligence at admission	34
The opaque basis upon which Oryx’s admission was blocked.....	35
‘Case 2’ and a rare glimpse behind the veil.....	35
The impetus for bringing clients to market: nomad fees for advice on admission versus ongoing fees.....	35
The counter-factual: what if CAMEC had acquired its Congolese assets prior to admission?..	36
The probity and reputation of managers and directors	36
Nomad Rules and the investigation of managers.....	37
Control over a company and substantial shareholders.....	37
Conflicts of interest and other arrangements	38
The placing of a market value on human rights.....	38
Market repercussions and the existence of human rights.....	38
Reputation and ruling elites: influence as a market asset.....	39
The Financial Services Bill: the wider context for the regulation of AIM.....	40

PART (III) – RAID’S SUBMISSION ON CAMEC: OBSERVATIONS AND RECOMMENDATIONS FOR THE REGULATION OF AIM	41
Concluding observations.....	41
On the regulation of AIM.....	41
On the UN Guiding Principles on Business and Human Rights, corporate law and human rights.	42
Recommended action	43
Annexe I. Selected correspondence between RAID and AIM Regulation	47
Annexe 2. RAID Memorandum to Asset Freezing Unit	55
Notes.....	67

Executive Summary

The Central African Mining and Exploration Company plc (CAMEC) was able to flourish on the London Stock Exchange's junior market despite its close links to Robert Mugabe's ZANU PF party (Zimbabwe), the dubious provenance of its Congolese mining assets and the unsavoury reputation of key business associates.

This report sets out the history of CAMEC's listing on the London Stock Exchange's Alternative Investment Market (AIM) in the context of the unresolved legacy of the wartime mining contracts awarded by the government of the Democratic Republic of the Congo (DRC). The DRC's lucrative minerals sector is beset by the continuing problem of corruption, which blights the well-being and future prospects of the Congolese population. The RAID report is the first systematic examination of the extent to which corporate conduct in zones of conflict is taken into account by stock market regulations, and of whether existing rules are adequately enforced. Inadequate due diligence, both before and after admission to AIM, is one of the major failings identified in the report.

Although CAMEC is no longer AIM-traded, the findings remain highly relevant in the context of ongoing controversies about mining contracts in the DRC, and the importance of London as a financial centre and stock market for such companies. CAMEC was acquired in 2009 by FTSE 100 Eurasian Natural Resource Corporation (ENRC) for £584 million – generating significant rewards for major shareholders – yet controversy persists. Global Witness has called upon ENRC to respond to concerns over corruption in the Congo, and the company has been in discussion with the Serious Fraud Office (SFO) in relation to problems with a Kazakh subsidiary.¹ A spokesman for ENRC denied that there is any formal SFO investigation into the company.²

AIM was established in 1995 by the London Stock Exchange (the Exchange) with the express purpose of giving smaller companies – from any country and any industry – the chance to raise capital on a market with 'a pragmatic and appropriate approach to regulation'. AIM is run by the London Stock Exchange, which in turn is recognised and regulated by the UK Financial Services Authority (FSA). Through its regulatory office (AIM Regulation), AIM monitors the admission regime and imposes continuing obligations on issuers and their nominated advisers. Companies joining AIM and those already listed must comply with rules set by the Exchange.

Much of the responsibility for the regulation of AIM companies is delegated to nominated advisers or nomads (mostly corporate finance firms, accountants or brokers). Nomads are approved by the Exchange to assess the suitability of applicants for AIM and to act as a mentor once a company has joined. Disciplinary action is rare in the extreme: only six companies and four nomads have been publicly censured, with two of these companies and three nomads also being fined between £75,000 and £600,000. To place this in context, AIM has been in existence for over 15 years, admitting over 3300 companies (over 1100 currently trading), advised by over 50 approved nomads and raising £78 billion in investment.

The report questions the effectiveness and good faith implementation of AIM's regulatory regime. In 2000, a company called Oryx Diamonds was prevented from joining AIM because the UK regulatory authorities warned of the 'utter unacceptability of a London listing for a company

¹ This is in relation to an internal investigation into claims that money went missing from SSGPO, a division of ENRC in Kazakhstan. See Simon Bowers, 'SFO looks into Kazakh miner ENRC', *Guardian*, 11 December 2011. Available at: <<http://www.guardian.co.uk/business/2011/dec/11/sfo-looking-at-enrc>>.

² See Ben Harrington 'ENRC in talks with SFO over corruption allegations', *The Telegraph*, 11 December 2011. Available at: <<http://www.telegraph.co.uk/finance/newsbysector/industry/mining/8949716/ENRC-in-talks-with-SFO-over-corruption-allegations.html>>.

involved with the Zimbabwean military in the exploitation of diamonds in a conflict zone'. Yet just six years later, CAMEC, already trading on AIM at the time, was able to bring DRC copper and cobalt assets of parallel provenance to the London market. CAMEC's assets were previously owned by companies belonging to the Mugabe ally Billy Rautenbach and arms dealer John Bredenkamp. The reputation of both should have resulted in heightened scrutiny of CAMEC's acquisition of DRC mining concessions. A series of United Nations and other reports had repeatedly raised grave concerns about how the struggle to control vast mineral wealth fuelled the war in the DRC, naming Rautenbach, Bredenkamp, and their associated companies in the exploitation. Both men and these companies were subsequently placed on European Union and United States sanctions lists. Rautenbach, wanted on criminal charges in South Africa at the time CAMEC purchased its DRC concessions from him, was later convicted of fraud. There is also growing international scrutiny of the dominant position in Congo's mining sector attained by Dan Gertler, a former CAMEC business partner and friend of Joseph Kabila, the DRC President.³ Allegations of asset stripping, underselling of Congolese mining assets, and other wrong-doing made by British MPs and the NGO Global Witness⁴ have been strenuously denied by the Congolese Government, ENRC and Mr Gertler.⁵

RAID's report concludes with recommendations for the British Government, which, like its predecessor, is a strong advocate of transparency and good governance. In February 2012, Andrew Mitchell, the International Development Secretary, reaffirmed the government's anti-corruption position: 'Corruption is a cancer in developing countries and the Coalition Government has a zero tolerance approach to it.'⁶

This report supplements a highly detailed complaint submitted by RAID in June 2011 to AIM Regulation (which was also copied to the FSA and SFO) entitled *Questions of compliance: The Conduct of the Central African Mining & Exploration Company (CAMEC) plc and its Nominated Adviser, Seymour Pierce Limited*. Although it has acknowledged the substantial nature of RAID's submission, AIM has refused to enter into a dialogue about the issues raised. In December 2011, Seymour Pierce was publicly censured and fined, *inter alia*, for failing: (i) to exercise due skill and care in undertaking pre-admission due diligence; and (ii) to advise an AIM company properly about the need for timely and accurate notifications about its deteriorating financial situation. There is no reference to CAMEC in the disciplinary notice, which takes no account of other equally serious questions of compliance detailed in RAID's submission such as the disputed ownership of assets; the absence or incompleteness of accounts; and the conduct and reputation of key managers and business associates, all of which should have been thoroughly scrutinized. AIM refused to confirm whether it had investigated the issues arising out of RAID's submission, claiming that its 'duty of confidentiality' precluded the disclosure of information about any aspect of the process including any outcome, unless it resulted in public censure.⁷

³ William Wallis and Katrina Manson, 'Questions over tycoon's Congo mines role', *Financial Times*, 26 June 2012. Available at: <<http://www.ft.com/intl/cms/s/o/dce3c89a-becc6-11e1-8ccd-00144feabdco.html#axzz1yv1LX7Gh>>.

⁴ Global Witness, *Memo to ENRC Shareholders*, 12 June 2012. Available at: <http://www.globalwitness.org/sites/default/files/Global%20Witness%20memo%20to%20ENRC%20shareholders%2012.6.12_1.pdf>

⁵ Helen Thomas 'Head of ENRC faces governance challenge', *Financial Times*, 12 June 2012, p. 19.

⁶ DFID Press Release 'Success in fighting against corruption as Ibori starts jail term', 17 April 2012. Available at: <<http://www.dfid.gov.uk/Documents/publications1/press-releases/Success%20in%20fighting%20against%20corruption%20as%20Ibori%20starts%20jail%20term.pdf>>

⁷ Letter from AIM Regulation to RAID, 24 April 2012.

In October 2009, Seymour Pierce was fined £154,000 by the FSA for failing to establish effective controls to guard against employee fraud.⁸ In July 2012, *The Telegraph* reported that Seymour Pierce had been conditionally sold to a firm from either Ukraine or Kazakhstan, subject to FSA approval.⁹

The report is divided into three sections: the first summarises RAID's submission on CAMEC and deals with unanswered questions concerning compliance with AIM rules, which the Exchange must publicly answer and determine; the second is a critique of AIM rules, in terms of both their formulation (where they omit reference to forms of misconduct) and their implementation (where misconduct is captured by the rules, but where there is no public enforcement); and the third concludes with recommendations to the British Government on reform of the way in which AIM – and, by implication, other stock markets – are regulated.

The recommendations of the report are timely given the Financial Services Bill that is currently under consideration by the UK parliament to reform *inter alia* the Financial Services and Markets Act (FSMA). Under this Bill, the Financial Conduct Authority (FCA) will be responsible for protecting investors, regulating markets and supervising more than 25,000 brokers, investment managers and independent advisers. The way the Exchange has sought to water down tougher regulation proposed in the Financial Services Bill, even in relation to the Main Market, betrays a culture more interested in prioritising safeguards for companies and advisers than in bringing wrongdoers to account.¹⁰ This stance bodes even less well for AIM as the Exchange's deregulated junior market.

AIM, for the most part, does not fall directly under the FSMA; the Exchange draws up the rules for AIM and is responsible for the market's regulation. However, the Exchange, as a Recognised Investment Exchange (RIE) is itself regulated under the Act by the Financial Services Authority (to be replaced by the FCA). Unless the Exchange can demonstrate that it can reform the functioning of AIM and move away from a regulatory regime and culture where conflict-derived assets can be laundered with impunity, then the FCA must use new powers to regulate the regulator.

In 2007 a senior US regulator described AIM as 'a casino' and warned: 'It is a losing proposition to tout lower standards as a way to promote your markets.'¹¹ It is time for action if the integrity of

⁸ Financial Services Authority, *Final Notice To Seymour Pierce Limited*, 8 October 2009, available at:

<http://www.fsa.gov.uk/pubs/final/seymour_pierce.pdf>; also 'FSA fines Seymour Pierce £154,000 for failing to prevent employee fraud', *FSA/PN/136/2009*, 8 October 2009, available at: <<http://www.fsa.gov.uk/library/communication/pr/2009/136.shtml>>.

⁹ James Quinn, 'Seymour Pierce set to be sold to former Soviet company', *The Telegraph*, 1 July 2012, available at: <<http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/9367251/Seymour-Pierce-set-to-be-sold-to-former-Soviet-company.html>>.

¹⁰ The London Stock Exchange successfully pushed for the dropping of proposals whereby the FCA's power to require a skilled person report – studies that look further into matters of concern – would be extended beyond regulated finance firms to include listed companies; it opposed the FCA's new power on the early disclosure of warning notices, arguing that such a move 'could cause significant market uncertainty, threaten market stability, and the reputation and viability of issuers and investment firms concerned'; and has sought to resist measures directed at the Exchange simplifying the way the FCA can give it directions, impose financial penalties and publicly censure it, and make the Exchange subject to skilled person reports. See London Stock Exchange Group, *Response to HM Treasury White Paper "A new approach to financial regulation: the blueprint for reform"*, 8 September 2011, available at: <<http://www.londonstockexchange.com/about-the-exchange/regulatory/lsegresponsetogovernmentwhitepaperseptember2011.pdf>>.

¹¹ Roel Campos, Securities and Exchange Commissioner, as reported in 'London v New York: top US regulator attacks AIM 'casino'', *The Times*, 9 March 2007.

the market is to be restored: loopholes in the current regulations should be closed, rules should be vigorously enforced and penalties significantly increased. Securities law and stock market regulations are designed to protect shareholder interests and an orderly market in shares; yet evidence from AIM suggests that even these rules are being flouted. The regulations do not address issues of wider public interest, particularly in relation to assets held in countries such as the DRC, which have an appalling human rights record and high levels of corruption.

As this report demonstrates, if human rights violations do not immediately impact upon market value and share price, then they are currently of little or no concern to the regulator. The UK Government, which champions transparency abroad, through the Extractive Industries Transparency Initiative, lags behind domestically. In the USA, the Securities and Exchange Commission (SEC) is set to issue new disclosure rules for oil, gas and mining companies, as required by Section 1504 of the Dodd-Frank Act.¹² Similar action is needed in the UK if the London Stock Exchange and AIM are not to provide havens for perpetrators of the worst corporate misconduct in some of the world's most conflict-prone regions.

The UN Guiding Principles on Business and Human Rights recognise the heightened risk of gross human rights violations in conflict-affected areas and call upon States to review whether their policies, regulations and enforcement measures effectively address this risk. This RAID report and its recommendations suggest how faith in the integrity of the UK's markets might be restored.

The sources for RAID's report and submission include a large number of official studies and reports, as well as legal and financial audits and analyses that have been carried out between 1998 and 2010 on behalf of the United Nations Security Council, the World Bank, the Government of DRC and the Congolese Parliament. Many of these have been published and others are in the public domain. The submission also draws, where appropriate, on court documents. The report and submission includes comprehensive references for the documents consulted in their preparation. Although they indicate the original source referred to, it should be noted that certain links to web-based material are no longer active either because the website has been taken down or because the information has been moved or removed.

¹² The Dodd-Frank Wall Street Reform and Consumer Protection Act was approved in July 2010. Section 1504 of the Dodd-Frank Act adds to existing stock listing requirements in the US by obliging all extractive companies to publish the payments they make to the US and foreign governments in the countries where they operate. This information is to be disclosed in an annual document to the US Securities and Exchange Commission. The SEC is expected to vote on the rules in August 2012. See Publish What You Pay at: <<http://www.publishwhatyoupay.org/about/stock-listings/cardin-lugar-amendment-dodd-frank-1504>>.

Key Recommendations

RAID's detailed recommendations can be found at the conclusion of this report, p. 43.

➤ The CAMEC case

RAID calls on:

- The London Stock Exchange to determine compliance or non-compliance with AIM rules in relation to the unanswered questions concerning the conduct of CAMEC and Seymour Pierce presented in RAID's submission of May 2011.
- The FSA to delay its approval of the sale of Seymour Pierce Limited until it has had time to fully consider whether any outstanding compliance issues relating to the company's role as CAMEC's nomad have been satisfactorily dealt with by the Exchange.
- The UK Treasury to make clear whether – and, if so, to what extent – any individual or entity on sanctions lists benefited from the sale to ENRC.

It would be a matter of concern had the UK sanctions regime been manipulated to suit the convenience of private commercial interests.

➤ The regulation of AIM

RAID calls on the London Stock Exchange to strengthen AIM rules by:

- Introducing requirements to strengthen ongoing due diligence.

There should be mandatory extensive due diligence for all substantial transactions involving assets in conflict-affected or weak governance zones: to include, for example, thorough checks on the validity of titles and licences, the reputation of key managers, business partners and associates and the rigour of accounting practices.

- Preventing the same firm from acting as both nomad and broker at admission, so that the gatekeeper function is ring-fenced from the drive to earn commission from a successful flotation.
- Making all breaches by nomads public and naming the adviser concerned.
- Drawing up rules and transparent procedures for handling complaints.

Commercial confidentiality should not be used as a pretext to restrict the regulator from disclosing information about investigations.

➤ Wider market regulation

RAID recommends that the Financial Services Bill should:

- Give powers to the FCA – as proposed in the draft – to impose financial penalties or to issue public censures through a warning notice in relation to contraventions of regulatory requirements by the Exchange.
- Include a provision requiring disclosure of payments from oil, gas and mining companies to British and foreign governments.

Such a provision would provide information to investors, help stem corruption, and encourage the accountable use of the revenues from the oil, gas and mining sector.

- Be amended to place a duty on the FCA, in its role as the UK listing authority, to require all energy (including mining, oil and gas) companies listed on the stock exchange to conduct human rights due diligence to identify, prevent and mitigate adverse impacts of their operations; companies should submit annual human rights impact reports to the Exchange which should also be publicly available.

The UN Guiding Principles recognise the heightened risk of gross human rights violations in conflict-affected areas and call upon States to help ensure that business enterprises are not involved in such abuses (Guiding Principle 7).

Abbreviations

AD	AIM Disciplinary Notice
AFU	Asset Freezing Unit, HM Treasury
AIM	London Stock Exchange Alternative Investment Market
AR	Aim Rule
BVI	British Virgin Islands
CAMEC	Central African Mining & Exploration plc
CCC	Congo Cobalt Corporation
CEO	Chief Executive Officer
CMGC	Central Mining Group Corp.
COSLEG	Comiex (<i>Compagnie mixte d'import-export</i>) and OSLEG (Operation Sovereign Legitimacy)
DGI	Dan Gertler International
DRC	Democratic Republic of the Congo
DTR	Disclosure and Transparency Rules
EITI	Extractive Industries Transparency Initiative
ENRC	Eurasian Natural Resources Corporation plc
EU	European Union
Exchange	London Stock Exchange
FCA	Financial Conduct Authority
FSA	Financial Services Authority
FSMA	Financial Services and Markets Act
Gécamines	<i>La Générale des Carrières et des Mines</i> (the DRC's state-owned mining company)
Guiding Principles	United Nations Guiding Principles on Business and Human Rights
ICC	International Chamber of Commerce
IFC	International Finance Corporation
IMC	The IMC Consulting Group
IMF	International Metal Factors
KMC	Kababankola Mining Company Sprl
KMT	KingamyamboMusonoi Tailings Sarl
MIBA	<i>Société Minière de Bakwanga</i>
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
Nomad	Nominated Adviser
NPA	National Prosecuting Authority (South Africa)
OECD	Organisation for Economic Co-operation and Development
OFAC	Office of Foreign Assets Control (US Department of the Treasury)
OR	Ongoing Responsibilities, Schedule Three, <i>AIM Rules for Nominated Advisers</i>
OSC	Ontario Securities Commission
OSLEG	Operation Sovereign Legitimacy
PE	<i>Permis d'Exploitation</i> (Exploitation Permit)
PTM	a subsidiary of Simberi Mining Corporations
RAID	Rights & Accountability in Development
RIE	Recognised Investment Exchange
RNA	Rules for Nominated Advisers
SDN	Specially Designated National
SEC	Securities and Exchange Commission
SFO	Serious Fraud Office
UN Panel	UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of Congo
UN	United Nations
ZDF	Zimbabwean Defence Force
ZMDC	Zimbabwe Mineral Development Corporation

The RAID report *Asset laundering and AIM: Congo, corporate misconduct and the market value of human rights* and its Executive Summary should be read in conjunction with RAID's submission to AIM Regulation, *Questions of compliance: The Conduct of the Central African Mining & Exploration Company (CAMEC) plc and its Nominated Adviser, Seymour Pierce Limited*, and the underlying source documents.

To facilitate this, the submission and other key material is available at
http://www.raid-uk.org/work/aim_2012.htm

INTRODUCTION

The objectives of this report are threefold:

- to summarise unanswered questions about compliance with market rules of certain AIM-traded companies having operations in the Democratic Republic of Congo (DRC), and of their advisers – questions upon which the Exchange must make a public determination
- to critique both the *formulation* of the regulations (where they omit reference to forms of misconduct) and the *implementation* of the regulations (where misconduct is captured by the rules, but where there is no public enforcement)
- to draw from this detailed analysis any implications for the United Nations (UN) Guiding Principles on Business and Human Rights, in particular the operational principle that corporate law should enable rather than constrain respect for human rights.

This report supplements a submission made by Rights & Accountability in Development (RAID) to the London Stock Exchange in May 2011, which concerned specific matters of company compliance with AIM rules.¹ The submission, *Questions of Compliance: The Conduct of the Central African Mining & Exploration Company (CAMEC) plc and its Nominated Adviser, Seymour Pierce*, is made public for the first time.

AIM-traded CAMEC plc, the Congo and the UN allegation of 'insufficient due diligence'

The Democratic Republic of the Congo (DRC) has suffered from a devastating war, costing some three million lives, with hostilities recommencing in 1998 in a fight for control of the country's vast mineral wealth (**Box 1**). One legacy of this war is the questionable legitimacy of many mining and mineral concessions originally transferred in exchange for military support at the height of the conflict. Other concessions continue to change hands for below market value in opaque deals outside of any competitive tendering process, leading to suspicion of corrupt practices (**Box 2**).

War, human rights abuse and a legacy of impoverishment

Box 1

The first and second Congolese wars (July 1996 – July 1998; August 1998–), are estimated to have cost some 3 million lives, making them the most devastating of conflicts in terms of civilian deaths since World War II. Human rights organisations have documented grave abuses that have been carried out by all parties during the war. A 2010 report on the DRC by the UN High Commissioner for Human Rights focuses on 617 of the most serious violations, detailing grave cases of mass killings, sexual violence, attacks on children, and other abuses by a range of armed actors, including foreign armies, rebel groups, and Congolese Government forces.

In April 2003, the warring parties finally agreed to share power. Presidential and legislative elections took place in July 2006, with Joseph Kabila announced as DRC's first democratically elected president. Kabila was re-elected in December 2011.

Violence has persisted in the DRC, particularly in the east of the country. As recently as May 2012, 40,000 people were displaced by fighting between the army and rebels in the Kivus. The Security Council renewed the deployment of its renamed peace keeping force in DRC – United Nations Organization Stabilisation Mission in the Democratic Republic of the Congo (MONUSCO) – until 30 June 2012.

DRC is ranked bottom out of 187 countries in terms of its development; it is one of only three countries with a lower Human Development Index (HDI) today than in 1970.

Annual per capita expenditure on health is the lowest in the world at just \$17. One-fifth of children die before reaching their fifth birthday.

More than 1.7 million people are still classed as internally displaced.

RAID's submission on CAMEC concerns the conduct of both CAMEC and its nominated adviser (nomad), Seymour Pierce Limited, *vis-à-vis* the company's Congolese and Zimbabwean assets. CAMEC was already trading on the Exchange's Alternative Investment Market (AIM) when it acquired these assets and continued to do so until its own acquisition in 2009 by Eurasian Natural Resources Corporation plc (ENRC).

AIM is the Exchange's public market for smaller and growing companies, which is designed to allow access to investment capital under a 'balanced' regulatory regime, less onerous than the rules for companies listed on the Main Market.²

War and the legitimacy of mining contracts

Box 2

In 2000, the United Nations Security Council appointed a Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo as a response to widespread concern over the link between exploitation of gold, diamonds and other minerals in the east of the DRC and the war taking place in that region. The Panel's reports depict a self-reinforcing cycle of conflict and resource exploitation: natural resources fuelled the war, which was perpetuated to control resources.

The Panel also identified business enterprises from both inside and outside the region that it believed to be implicated in the conflict and which it accused of helping to perpetuate the war and of profiteering from it. The Panel listed 85 companies as in violation of the OECD Guidelines on Multinational Enterprises (a set of recommendations setting out 'shared expectations for business conduct').

There has been considerable debate over the provenance of assets acquired during the war in the DRC and the fairness or otherwise of contracts concluded at that time. According to the World Bank, '[a] great deal of local and international controversy attends the contracts with private mining companies.... This was a period of civil war, and it is alleged that some of these and other contracts were awarded under opaque and suspicious circumstances. Many of the state-owned enterprises entered into these contracts at a time of distress or without proper evaluation of the assets under the partnership agreement.'

Calls for the terms of wartime and post-war partnerships with private companies to be scrutinised culminated in a four-year review by the DRC Government of over 60 contracts (*Commission de Revisitation des Contrats Miniers* or 'Mining Contracts Review Commission'). The Commission recommended the renegotiation of two-thirds of these contracts and the cancellation of the remainder. The final negotiations were handled *in camera* by 'a specially constituted panel' of senior government officials, criticised at the time by the World Bank because 'the possibility exists of corrupting influences or inappropriate behavior within the panel itself and/or the negotiating team.'³

In 2006, a UN Group of Experts on the DRC, mandated to monitor the sanctions regime and arms embargo, remarked upon 'the consequences of insufficient due diligence procedures' when referring to CAMEC as the owner of certain mining concessions in the DRC.⁴ The Experts referred to a lack of capacity in the DRC's Mining Cadastre when it came to identifying those of doubtful integrity benefiting from the concessions. However, their criticism reflects equally badly upon the regulators of overseas markets where the companies that own the assets are listed. A key question that needs to be addressed is: how could the Group of Experts allege insufficient due diligence in respect of AIM-traded CAMEC when the AIM regulatory regime exists to ensure the 'appropriateness' of companies?

The Group of Experts named an individual, Billy Rautenbach, 'wanted by the authorities of South Africa for fraud and theft', as a major shareholder in CAMEC. Beginning in 2006, CAMEC bought its DRC mines from Rautenbach in return for cash and shares. Rautenbach has subsequently been listed on US and EU sanctions lists against Zimbabwe and convicted in South Africa on fraud charges as a representative of his company, SA Botswana Hauliers Ltd. Another former owner of other DRC mining concessions acquired by CAMEC, Zimbabwean John Bredenkamp, also appears on the sanctions lists, together with entities owned or controlled by him. In 2008, CAMEC ultimately consolidated its DRC assets in a deal with companies controlled by Israeli

mining magnate Dan Gertler, an individual accused by another UN expert panel of exchanging conflict diamonds for money, weapons and military training.⁵ Gertler is now one of the most powerful figures in the mining sector in the DRC. Also in 2008, CAMEC acquired a number of platinum assets in partnership with the Zimbabwean state-owned mining company.

In September 2009, Kazakhstan natural resources company Eurasian Natural Resources Corporation (ENRC) (though UK registered and incorporated and Main Market-listed) confirmed a £584 million offer for CAMEC.⁶ ENRC formally acquired CAMEC on 10 November 2009, which duly cancelled CAMEC's AIM admission.⁷ The transaction generated significant financial rewards for CAMEC's major shareholders; it also raised further issues of compliance with sanctions.

Overall, the concessions acquired by CAMEC were the same concessions transferred to Congolese-Zimbabwean companies controlled by political elites during the war in return for Zimbabwean military support. The bringing of such concessions to legitimacy on the London market can be interpreted as a laundering of assets formerly identified by the UN as part of illegal exploitation in the DRC (Box 10).⁸

An explanation is sought as to how CAMEC was allowed to flourish on AIM, while another company, Oryx Diamonds Ltd., holding Congolese assets of parallel provenance, was blocked from admission. Moreover, on a number of occasions CAMEC's conduct engages ongoing AIM rules, leaving numerous unanswered questions on the determination of compliance.

RAID's May 2011 submission to the Exchange

Standing to submit a complaint

RAID made its submission regarding CAMEC on the basis that AIM Regulation has indicated that it is receptive to 'a complaint relating to an AIM company or a Nomad's compliance with the AIM Rules'.⁹ RAID sent its submission to the Exchange on 3 June 2011, copying it to the Financial Services Authority (FSA) and the Serious Fraud Office (SFO). AIM Regulation has a responsibility to monitor and investigate AIM companies' compliance with the regulations. Specific rules on the conduct of AIM companies and nomads are engaged in relation to CAMEC and its adviser. These rules relate to the disclosure of shareholdings, substantial transactions, information of import and price sensitive information. The RAID submission on CAMEC poses publicly unanswered questions and outlines the rules engaged. It is for the Exchange to determine compliance or non-compliance.

RAID's decision to publish

The decision to make the RAID submission on CAMEC public has been taken in the wake of disciplinary action taken by the Exchange in late December 2011 against CAMEC's nomad, Seymour Pierce (under AIM Disciplinary Notice 11 – AD11).¹⁰ At the time, Seymour Pierce was AIM's biggest nomad, representing more client companies than any other.

Whilst the Exchange has imposed a record £400,000 fine and public censure upon Seymour Pierce for breaches of nomad rules (*inter alia*, on assessing the appropriateness of an applicant for AIM; on the requirement to act with due skill and care; and on proper due diligence), the disciplinary notice does not in any way address the compliance issues raised by RAID concerning the role of Seymour Pierce as CAMEC's nomad. Moreover, and of particular concern, the disciplinary notice appears to draw a line under Seymour Pierce's past conduct. RAID believes that this may have implications for the likelihood of further public censure or fines, even if the Exchange were to find that Seymour Pierce had also breached nomad rules in respect of CAMEC. RAID has not been reassured by the response of the Exchange on this point (below, p. 27): a copy of the correspondence with the Exchange is included (Annexe 1).

There is a clear public interest in determining questions of compliance and establishing accountability for any breaches of the AIM rules that may have occurred in the CAMEC case. In the light of the continued ambiguity over AD11 and the Consent Order between the Exchange and Seymour Pierce – specifically the implications for further public censure and fines – RAID believes that the public interest is best served by the publication of the submission on CAMEC. Publication may prompt other interested parties – MPs, Parliamentary committees, other regulators, financial journalists, or others in the investment community – to offer further information to the Exchange or assist the Exchange in protecting AIM’s reputation by formulating further questions they believe warrant answers in the public domain.

Sanctions

At the same time that RAID made its submission to the Exchange, relevant sections were extracted and sent to the Asset Freezing Unit (AFU) at HM Treasury, which deals with the implementation of sanctions, including those against Zimbabwe. RAID sought to clarify that sanctioned individuals – including Billy Rautenbach (former owner of the principal assets acquired by CAMEC, continued manager of the mines for a significant period under CAMEC’s ownership, and a major CAMEC shareholder) – did not profit from the sale of CAMEC to ENRC.

Whilst the main focus of this report and the submission is on compliance with AIM rules, the sale of AIM-traded CAMEC to Main Market-listed ENRC cannot be fully disentangled from the sanctions issue. The offer prospectus itself discusses sanctions, but is far from transparent in naming sanctioned individuals and entities (below, p. 19).

RAID is greatly concerned by the lack of response received to the detailed enquiries made to the AFU (see Annexe 2). In the absence of official information and assurances to the contrary, suspicions will persist that those on the sanctions lists, including those in, or associated with, the Zimbabwean political and military hierarchy, may have benefited from the sale to ENRC.

Company conduct, the adequacy of market rules, and the intersection between business and human rights

Part I of this report focuses upon compliance. It summarises the AIM rules engaged *vis-à-vis* the conduct of CAMEC and Seymour Pierce, and should be read in conjunction with the unanswered questions around compliance considered in the full RAID submission. It also outlines key unanswered questions on sanctions relating to transactions concerning CAMEC.

Part II seeks to move beyond questions of compliance to critique the AIM rules *per se* by exploring whether they capture misconduct.

- Are there barriers or structural impediments to the implementation of the existing rules?
- Are there lacunae at the heart of the existing rules or loopholes through which existing AIM companies can bring assets to market with lower levels of due diligence than at admission?
- Can a company prosper on AIM despite wider perceptions of misconduct? In other terms, to what extent are definitions of misconduct in terms of human rights and definitions of misconduct in respect of market regulation separate entities driven by their own logics?
- Is there evidence to suggest that the market is the dominant force, so that human rights are perceived only when they impinge upon share price? Do universal, immutable rights defined in the International Bill of Human Rights give way under stock exchange regulations to a sporadically expressed subset of human rights that have a purely market definition?

The analysis of AIM sheds a certain amount of light on the intersection between corporate law/regulation and human rights, as envisaged under the recently adopted UN Guiding Principles on Business and Human Rights (June 2011) (Box 3).

UN Guiding Principles on Business and Human Rights

Box 3

After rejecting proposed norms imposing duties under international law on companies, in 2005 the UN Commission on Human Rights mandated a Special Representative on the issue of human rights and transnational corporations and other business enterprises.

In June 2008, the Human Rights Council (which replaced the Commission) supported the "Protect, Respect and Remedy" Framework.¹¹ The first pillar is the State duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation and adjudication. The second is the corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved. The third is the need for greater access by victims to effective remedy, both judicial and non-judicial.

The Guiding Principles, endorsed by the Council in June 2011, are meant to 'operationalize' the Framework by providing concrete and practical recommendations for its implementation.¹² The Guiding Principles do not create new international law obligations directly on companies, but set out normative foundational and operational principles by which business enterprises should realise their responsibility to respect human rights. Under the State duty to protect human rights, one operational principle requires States to 'enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps' and 'Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights'.¹³

Part III calls for appropriate action by AIM Regulation in respect of the CAMEC case and makes recommendations on reform of the way in which AIM – and, by implication, other stock markets – are regulated, to include their intersection with human rights.

The continued relevance of examining compliance

Arguably, controversy surrounding the role of companies in the DRC reached a peak between late 2002 and 2007, bracketed by the publication of what was supposed to have been the UN Panel's final report on the illegal exploitation of natural resources and by a raft of complaints against companies under the *OECD Guidelines for Multinational Enterprises*.¹⁴ However, the exploitative contracts arising out of the conflict have continued to cause concern. Given this legacy, and notwithstanding the takeover of CAMEC and its cancellation of trading on AIM, it remains pertinent to examine the company's conduct, for several reasons.

- Perhaps most pertinently, CAMEC's nominated adviser, Seymour Pierce, continues to work as a nomad for other companies on AIM. Any unanswered questions that remain about CAMEC's compliance with the AIM rules may be better answered once the extent to which Seymour Pierce fulfilled its advisory and regulatory role is better understood. The recent public censure and fine of Seymour Pierce (under AIM Disciplinary Notice 11) does not relate to Seymour Pierce's role as CAMEC's nomad: the matters raised in the RAID CAMEC submission were not examined by the Exchange as part of its investigation. In respect of issues documented in the RAID submission, it is important for the Exchange to account for, clarify and declare compliance or non-compliance and thereby remove any persistent doubts in respect of possible breaches of the rules.
- The need for public determination by the Exchange is heightened by the impending sale of Seymour Pierce. In July 2012, *The Telegraph* reported that Seymour Pierce had been conditionally sold to a firm from either Ukraine or Kazakhstan, subject to FSA approval.¹⁵ According to the article: 'Regulatory approval could come as early as this month, one source indicated, but pointed out that the buyer's domicile could prove to be an issue.'
- Different shareholders and other stakeholders will have been adversely or beneficially affected at different times as a result of CAMEC's conduct whilst it was listed on AIM, and it

is necessary to examine its record of compliance to ensure accountability. It should be noted that once it becomes law, the Financial Services Bill – designed to fundamentally reform the financial and regulatory system in the UK – will place on a statutory footing the power of the new Financial Conduct Authority (FCA) to require a regulated firm or person to take remedial action in respect of past conduct.¹⁶ While AIM will not be directly regulated by the FCA, the principle of remedial action in respect of past conduct ought to be extended to nomads.

- Although CAMEC has cancelled trading on AIM, its DRC assets – which have been the subject of considerable disquiet, as detailed in RAID’s CAMEC submission – are now owned by ENRC, a company incorporated and registered in England and Wales and listed on the main market of the London Stock Exchange.¹⁷
- Material in the RAID submission on CAMEC may also be pertinent to other publicly listed companies with DRC mining assets. These include Glencore International plc, which is now the majority shareholder in Katanga Mining and which has longstanding and recent business links to entities associated with Dan Gertler. In May 2011, Glencore completed London’s largest ever public listing. In May 2012, Global Witness published a memorandum on secrecy surrounding Glencore’s business dealing in the DRC.¹⁸
- Questions remain about whether the sale of CAMEC shares may have benefited sanctioned individuals or entities at the time that ENRC acquired CAMEC, and about the application of sanctions to CAMEC’s prior acquisition of Zimbabwean platinum assets (Box 4).

The fact that CAMEC is no longer trading in its own right on AIM does not prevent its conduct from being considered: a precedent exists where the Exchange examined the conduct of (and in that case also censured) an entity – the nominated adviser, Durlacher – even though it had since merged with stockbroker Panmure Gordon and had ceased to operate as before in its own right.¹⁹ An investigation would also be in line with a provision in the new Financial Services Bill whereby the FCA may require a firm to take remedial action in respect of past conduct (section 55N(5), FSMA).

ENRC, corporate governance, and recent acquisitions in the DRC

Box 4

ENRC faced criticism after two independent directors were voted off the board in June 2011 for raising concerns over corporate governance.²⁰ Moreover, it has recently been embroiled in a controversial deal concerning further DRC mining concessions – the Kingamyambo Musonoi Tailings (KMT), stripped from Canadian miner First Quantum – due to ENRC’s acquisition of KMT’s new owner, Camrose Resources Limited, an entity ultimately owned by Gertler’s family trust.²¹ Settlement of the dispute, under which First Quantum was to be paid US\$1.25 billion and ENRC was to acquire First Quantum’s DRC property and assets, was announced in January 2012.²² In June 2012, Global Witness raised concerns that mining magnate Dan Gertler ‘...secretly snapped up prize mining assets [in the DRC] at steeply undervalued prices and quickly sold them on to ENRC for huge profits – in one case flipping a mine to ENRC for five times the original value paid.’²³

CAMEC: structure and assets

The following bullet points and organograms summarise the structure and assets of CAMEC during the time to which this report relates. The two organograms refer to the corporate structure of CAMEC’s DRC operations before and after consolidation with Prairie International (the parent company owning the other half of Mukondo mine). Prairie International later merged with CAMEC.

- Copper and cobalt mines and processing plant all located in the southern province of Katanga in the DRC.
- Three production plants: the Luita SX/EW facilities (the biggest under-roof facility of its kind in Africa), the Kakanda concentrator and the Kambove sulphuric acid plant – to process the ore.
- Mukondo mine is the largest historical producer in the area and has the largest remaining historic resource of any of the established deposits, especially in cobalt content. Following its

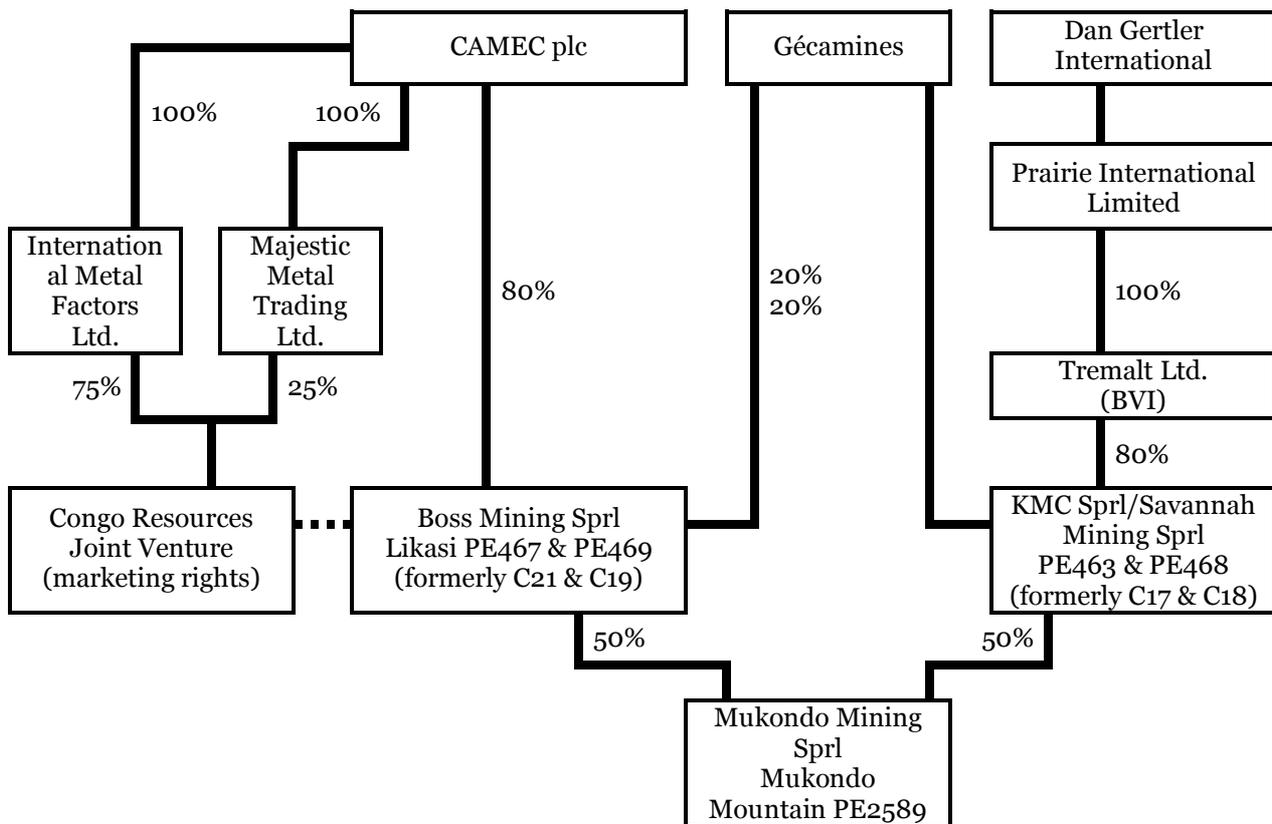
acquisition of Prairie and the whole of Mukondo, CAMEC was potentially the world's largest producer of cobalt.

- As of June 2007, estimated total inferred mineral resource of 60.2 million tonnes of ore at 2.12% copper and 0.49% cobalt, with a content of 1.28 million tonnes of copper and 295,000 tonnes of cobalt. However, because the estimates were based on incomplete 2001 data, the technical report on CAMEC's DRC assets suggested a true value of perhaps double the copper/cobalt resource.
- A preliminary assessment suggested an aggregate cash flow to CAMEC of US\$1,881 million over 13 – 15 years of production, giving a NPV (Net Present Value) of US\$959 million. (These projections were compiled before CAMEC's acquisition of the whole of Mukondo and additional permits PE463 and PE468.)

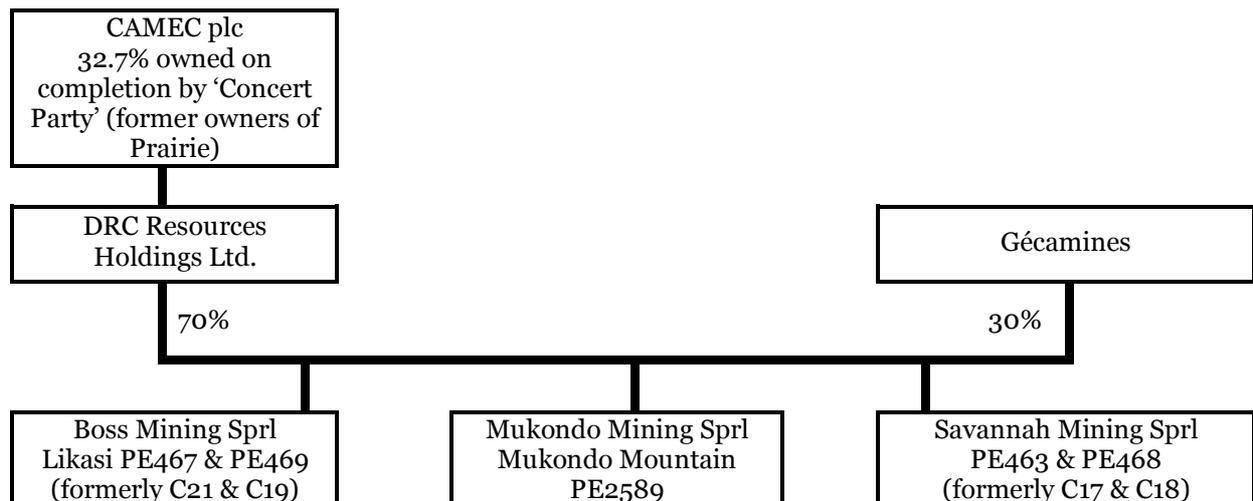
Notes on the organograms:

- Gécamines is the DRC's state-owned mining company.
- The designations C17, PE467, etc. refer to individual mining concessions at specific locations.

CAMEC's DRC assets (prior to consolidation with Prairie International)



CAMEC's DRC assets (after consolidation with Prairie International)



PART I – COMPLIANCE

This part of the report is concerned with compliance.

The first section considers the conduct of CAMEC and its nomad Seymour Pierce in relation to the AIM rules. The Exchange is called upon to publicly determine any unanswered questions of compliance raised in RAID's submission on CAMEC. As already described, the purpose of AIM is to allow access to investment capital under a less onerous regulatory regime than for companies listed on the Main Market (**Box 5**).

The second section examines unanswered questions relating to the implementation of sanctions against Zimbabwe (and the implications for the market's reputation) *vis-à-vis* i) certain transactions between CAMEC and other entities concerning Zimbabwean platinum assets; and ii) the sale of CAMEC shares benefiting sanctioned individuals or entities when CAMEC was acquired by ENRC.

Whilst questions on sanctions are largely directed at the Asset Freezing Unit of HM Treasury, other unanswered questions address the implications of sanctions for compliance with the AIM rules.

Key features of AIM

Box 5

- Light regulatory touch – admission mostly without a full prospectus and therefore no vetting by UK Listing Authority
- Less onerous ongoing disclosure requirements compared to the Main Market
- No minimum market capitalisation needed, no requirement of a minimum number of shares in public hands, little or no trading record necessary
- The most successful international growth market in terms of new admissions and raising new money. Over 3300 companies raising £78 billion admitted since launch.
- Of the new admissions in 2005 and 2006, a quarter were international, rising to almost a third in 2007.
- Forty per cent of overseas AIM companies are incorporated in Bermuda, the British Virgin Islands (BVI) or the Cayman Islands.
- The index of choice for many mining and natural resources companies.

AIM rules

Companies joining AIM and those already admitted must comply with the *AIM Rules for Companies* drawn up by the Exchange.²⁴ CAMEC, already trading on AIM when it acquired its concessions in the DRC, was required to comply with ongoing AIM rules regulating its conduct.

Periodic revision of the AIM rules for companies notwithstanding, the principal AIM rules engaged in respect of CAMEC's conduct remained substantially the same throughout the company's period of market trading.²⁵

These were:

- **Rule 10** on principles of disclosure, misleading, false, deceptive, omitted information
- **Rule 11** on notification of price sensitive information without delay

- **Rule 12** and **Schedule Three** on class tests to determine how transactions are treated; and **Schedule Four** on the notification and disclosure of substantial transactions
- **Rule 14** on reverse takeovers
- **Rule 17** on notification relevant changes, including those to significant shareholders
- **Rule 19** on the publication of accounts and accounting standards

CAMEC, as a company incorporated in the UK, was also required to comply with a limited number of the Financial Services Authority (FSA) Disclosure and Transparency Rules, although under AIM Rule 17, the company had always been required to disclose known significant shareholdings.²⁶

In addition, AIM's *Guidance Note for Mining, Oil and Gas Companies* clarifies the appropriateness of suitability qualified and experienced nomads in reviewing company notifications.²⁷ From February 2007 – and therefore covering most of Seymour Pierce's period as CAMEC's nomad – dedicated *AIM Rules for Nominated Advisers* (RNA) set out the ongoing requirements to be met by advisers;²⁸ moreover, 'this new rulebook is primarily a consolidation of the existing obligations on nominated advisers currently contained in the AIM Rules for Companies and in the Nominated Adviser Eligibility Criteria'.²⁹

The principal Nomad rules engaged in respect of Seymour Pierce's role as CAMEC's adviser were:

- **RNA 16** – due skill and care
- **RNA 19** – liaison with the Exchange, reputation or integrity of AIM
- **RNA 25** – nominated adviser records and audit trail
- **RNA OR1** – regular client contact, keeping up to date with developments, advice disclosures
- **RNA OR2** – nominated adviser prior review of relevant notifications
- **RNA OR3** – monitoring of trading, price sensitive information, required announcements

Provenance of the concessions and the withdrawal of CAMEC's mining licences

The first area of compliance concerns the provenance of both the Boss Mining and KMC/Savannah Mining concessions acquired by CAMEC, and the disclosure by CAMEC of relevant information. In particular, we are concerned with information relating to i) the validity or otherwise of the agreements awarding the concessions to Boss Mining and KMC/Savannah; and (ii) the reputations of former owners – including individuals facing criminal charges and/or named for misconduct by the UN and later placed on sanctions lists – who subsequently became managers of and/or significant shareholders in CAMEC. Whilst AIM rules on due diligence at *admission* could not be applied to the transactions, information under *ongoing* rules should have been disclosed to investors in CAMEC to enable them to have evaluated the effect of a transaction on the company. In the event, controversy over the provenance of the concessions led to the temporary withdrawal of CAMEC's licences and a sharp dip in CAMEC's share price (**Box 6**).

This area engages *inter alia* **AIM Rules 10** and **12** and **RNAs 16, 19** and **OR2**. See RAID's submission on CAMEC, pp. 26 *et seq.*

Withdrawal of CAMEC's 'improperly obtained' licences

When in August 2007 the DRC Mining Registry cancelled an exploitation permit in the name of Boss Mining Sprl (CAMEC's subsidiary) and the transfer of part of that permit to Mukondo Mining Sprl, the grounds given for the cancellation were that the licences had been 'improperly obtained' and that the Mukondo mine was not in fact operating.³⁰ Victor Kasongo, the Deputy Mines Minister, is quoted in press reports:³¹ 'Their procedures for obtaining the licence were fraudulent. So the licence was never legitimate, according to the mining code.'

According to CAMEC, Boss Mining obtained a ruling on 18 September 2007 from the *Tribunal de Grande Instance* (the superior or higher civil court) that the ratification of the agreement

between Boss Mining and Gécamines (the state-owned mining company) and its associated licence transfers were valid.³²

However, following the court ruling, the DRC Government and Gécamines re-stated their position ‘that neither the application made by CAMEC nor the ruling directly challenged the government’s annulment of the licence’.³³ The DRC Government’s Director General of the Mining Registry said: ‘The “licences” were improperly obtained originally and are still invalid’.³⁴ The DRC Government referred to ‘gross irregularities in the original issue, which predates CAMEC’s interest’.³⁵

The matter was referred back to the *Tribunal de Grande Instance*, which met on 18 October 2007.³⁶ However, the company’s announcement that agreement had been reached concerning the issue of the mining licences signalled the effective end of the legal dispute; it does not appear that the *Tribunal de Grande Instance* issued its judgement.

The effect of the licence revocation on CAMEC’s share price and trading volumes Box 6

Whatever the final outcome – that is, the consolidation of the Likasi and Mukondo concessions under CAMEC – the debacle over the cancellation of the mining rights caused CAMEC shares to fall by 16 percent in one day and prompted AIM to temporarily suspend trading in the company’s securities when the market opened on 31 August 2007. 90 million shares had been traded on 30 August and 44 million more changed hands on the following day, compared to average volumes of 10 million per day over the preceding three months. A week after the DRC Government’s announcement of the cancellation of mining rights, CAMEC’s share price had fallen by over 50 percent.

The reputation of former owners and/or those with significant or substantial beneficiary interests in CAMEC

The companies purchased by CAMEC in 2006 and 2007 – International Metal Factors Ltd and Boss Mining Sprl – were formerly majority owned and controlled by Billy Rautenbach, a Zimbabwean with close ties to ZANU-PF and the Mugabe regime.³⁷

CAMEC also acquired Prairie International’s stake in the joint venture DRC Resources Holdings, including the underlying assets Savannah Mining (formerly KMC) and Mukondo Mining. These acquisitions raise questions about the reputations of KMC’s former controlling shareholder, John Bredenkamp, and of Savannah’s subsequent majority owner, Dan Gertler, whose family trust became a substantial beneficiary shareholder in CAMEC.

The failure to disclose details about allegations (made prior to CAMEC’s transactions to acquire the assets) concerning the reputations of the former owners – and, in the case of Rautenbach and Gertler, continued beneficiary shareholders – may have deprived investors of the information they needed in order to evaluate the effect of the transactions upon CAMEC. The omission thus engages the disclosure rules on transactions; moreover, there may have been an omission to disclose information of import. The corresponding responsibilities of the nomad – to ascertain whether disclosure of such information was required and to review announcements – are also engaged. Moreover, a nomad must, at the earliest opportunity, seek the advice of the Exchange (via AIM Regulation) in any situation where it has a concern about the reputation or integrity of AIM.

At issue is CAMEC’s notification of such information with an effect upon reputation, given its existence or the likelihood of its emergence in the public domain.

Billy Rautenbach

When CAMEC purchased International Metal Factors (IMF) Ltd and Boss Mining from Billy Rautenbach in 2006, Rautenbach was already a notorious figure. Yet CAMEC did not disclose at the time:

- Rautenbach's ownership, beneficial ownership or shareholdings in any of the companies being acquired
- allegations by Rautenbach's former partner and legal adviser that Rautenbach was identified in a financial database as a 'Politically Exposed Person' (PEP), representing a high risk under regulations to combat money laundering³⁸
- the fact that there was an outstanding South African warrant for Rautenbach's arrest on charges of fraud, theft and corruption, issued by the Deputy Director of Public Prosecutions and the Investigating Directorate, Serious Economic Offences on 27 September 2000.³⁹ Rautenbach subsequently returned to South Africa on 18 September 2009, was arrested, and appeared before the Specialised Commercial Crimes Court on the same day.⁴⁰ According to the NPA, Rautenbach pleaded guilty to 326 charges of fraud as a representative of his company, SA Botswana Hauliers Ltd.⁴¹ A spokesman for the NPA is quoted:⁴² 'He [Rautenbach] was sentenced in terms of a plea and sentence agreement.' Rautenbach was fined a total of 40 million Rand.

One immediate repercussion of Rautenbach's fugitive status was his designation as *persona non grata* by the Congolese authorities. According to a statement distributed on behalf of the Katanga provincial government, the Congolese Interior Ministry informed Rautenbach on 17 July 2007 that he was barred from the country.⁴³ The statement read: 'Mr Rautenbach had amassed a large number of mineral and other assets in the DRC during the civil war and subsequently'.⁴⁴ The statement continued: 'The Government of the DRC is making strenuous efforts to clean up the mining sector in the country, and has taken seriously South African charges of fraud, corruption and other crimes against Rautenbach'.⁴⁵ This 'clean up' resulted in the cancellation of CAMEC's licences, which had a devastating effect on CAMEC's share price.

A longer-term effect concerns financial transparency and the completeness or otherwise of the financial information presented to CAMEC's shareholders. This includes the value – or otherwise – to the company of contracts with Rautenbach-controlled entities, given his continued key role in managing the Boss Mining concessions for a period after their acquisition.⁴⁶

The issues of financial transparency and management *vis-à-vis* AIM compliance are examined further (below, p. 13).

Dan Gertler and John Bredenkamp

In relation to the transaction to acquire Prairie International's interest in DRC Resources Holdings, CAMEC did not disclose:

- the fact that Dan Gertler, the family of whom are beneficiaries of a trust with an effective 60.21% interest in Prairie,⁴⁷ was subject to allegations of 'improper dealings with the Government of the DRC'. These allegations were referred to in the admission document of another formerly AIM-traded company (Nikanor plc), in which Gertler was a founding shareholder⁴⁸
- allegations made by the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of Congo that
 - Gertler exchanged conflict diamonds for money, weapons and military training⁴⁹
 - Bredenkamp's mining companies were party to undisclosed profit-sharing agreements with elite interests in the DRC and Zimbabwean Governments, and that he represented the illicit interests of Zimbabwe in the DRC⁵⁰
 - Bredenkamp companies procured military equipment for the ZDF and breached EU sanctions on Zimbabwe in 2002.⁵¹

Neither DGI nor Prairie International, the initial purchasers of Tremalt (including its KMC subsidiary, co-owner of Mukondo Mining), was AIM-traded. However, as soon as CAMEC notified the market of negotiations with Prairie to form and ultimately acquire the DRC Resource Holdings joint venture, which included KMC's former assets acquired by Bredenkamp, then the background and reputation of Gertler and Bredenkamp became material to the interests of investors in the enlarged company.

Significant shareholder notification

A second compliance issue relates to the requirement to notify changes to significant shareholders, following the settlement of part of the purchase price of IMF Ltd/Boss Mining in CAMEC shares transferred to entities controlled by Billy Rautenbach.

IMF Ltd was acquired by CAMEC on 3 February 2006 for a cash consideration of US\$25 million, plus 171,853,471 New Ordinary Shares at 18p per share.⁵² It does not appear that CAMEC issued a holdings notification identifying the owner or beneficiary of the 171,853,471 shares – representing 20 percent of issued shares at the time.⁵³

In a circular sent to shareholders dated 28 August 2007, and in response to press speculation about the ownership and operation of CAMEC's DRC assets, the company eventually confirmed that its DRC concessions were acquired 'from companies controlled by Mr. Rautenbach and his family.... CAMEC has been notified that Harvest View Limited, a company controlled by Mr. Rautenbach and his family, holds an interest in 90,926,134 CAMEC Shares. This currently represents 7.40% of the outstanding CAMEC Shares....'⁵⁴

The belated announcement made to shareholders, almost 18 months after the IMF Ltd transaction, serves to underline the apparent absence of immediate notification of changes to significant shareholders at the time of the transaction.

This area engages **AIM Rule 17**. See RAID's submission on CAMEC, pp. 57 *et seq.*

Managerial malpractice, opaque subcontracts and conflicts of interest in the predecessor companies

A third area of concern stems from management malpractice, opaque subcontracts, and conflicts of interest in Rautenbach companies later acquired by CAMEC, as detailed in DRC Government-commissioned audits and contract reviews of the predecessor companies,⁵⁵ as well as in successful legal action against Rautenbach's holding company (Shaford) by Rautenbach's former partner and legal counsel.⁵⁶ The issues are:

- the lack of contractual arrangements between the Congo Cobalt Corporation (CCC – a Rautenbach-owned company, outside the joint venture, owning and operating the processing facilities and other mining equipment at the concessions) and Boss Mining, and the conflict of interest arising from their both being filials of the same holding company (Shaford)
- the deprivation of the state-owned mining company, Gécamines, of the full value of its interest in Boss Mining. This state of affairs arose i) because of the service contract with CCC, which was based on a 'cost plus 20 principle' (where CCC paid only a fixed margin of 20 percent over the cost of extracting the ore, when it was generating much bigger profits than that); and ii) because of transfer pricing (by which agreed transfer prices are used to distribute profits to the offshore parts of a company, also depriving home governments of tax revenue)
- the transfer of assets out of the Boss Mining joint venture
- the absence of contracts and terms of business between Sabot (a transport and logistics company later acquired by CAMEC from Rautenbach) and Shaford, and the use of the Sabot bank account for cobalt sales

- ‘severe damage to the long term potential of the mining concessions’ brought about by Rautenbach extracting high grades ores to the detriment of the cost-effective recovery of lower grade ores.

Malpractice and conflicts of interest are of obvious import and ought surely to have constituted necessary information for investors in evaluating CAMEC’s transactions to acquire Boss Mining. However, not until more than a year after the commencement of the acquisition of Boss Mining did CAMEC acknowledge (i) the continued key role played by Rautenbach in managing the mining and transport operations after their acquisition;⁵⁷ and (ii) the continued contracting out of mining operations at the concessions to the Rautenbach-controlled Congo Cobalt Corporation.⁵⁸

This area engages *inter alia* **AIM Rules 10** and **12** and **RNAs 16, 19, 25, OR1** and **OR2**. See RAID’s submission on CAMEC, pp. 60 *et seq.*

Incompleteness of accounts and the implications for determining how transactions are classed

The fourth area of concern arises from the criticism by auditors of the incompleteness of the accounts provided by Boss Mining, KMC, Mukondo Mining and Sabot and hence the reliability of the required financial information about the transaction – the profits and value attributable to the assets – that was provided to investors. The auditors’ findings have implications for the class tests on substantial transactions and reverse takeovers required under AIM rules. CAMEC itself, in relation to both the Boss Mining and the Sabot acquisitions, notes in its financial statements (released at the end of August 2007, 6 to 18 months after the transactions):⁵⁹

Reliable financial information is not available for periods prior to acquisition and consequently it is not practicable to state the profit after tax and minority interest for the acquired entity in respect of the period from the beginning of the entity’s financial year to the date of acquisition and in respect of its previous financial year.

The accountancy firm Ernst & Young criticises both Boss Mining and Mukondo Mining (and the predecessor company, KMC) for the absence of regular accounting and the disregard of accounting rules.⁶⁰ It is important to establish the extent to which enquiries were made by either CAMEC or its nomad to ensure that required financial information about each transaction was accurate, especially if investors were deprived of the necessary information to enable them to evaluate the effect of the transactions on CAMEC.

Moreover, given the magnitude of the IMF/Boss acquisition, RAID calls upon AIM Regulation to provide details of the calculations used by CAMEC and its nomad for each of the class tests under the AIM rules in order to demonstrate that the acquisition did not amount to a reverse takeover (**Box 7**).⁶¹ The implications of a transaction constituting a reverse takeover are profound; not least are the requirements for shareholder consent and the publication of a full AIM admission document for the enlarged entity.⁶² Questions also arise concerning the Sabot acquisition and application of the class tests on substantial transactions/reverse takeovers, triggering the disclosure of specified information. The absence of reliable financial information for Boss Mining and Sabot must raise the question as to whether it can be satisfactorily demonstrated that all the class tests were properly applied.

The class tests for a substantial transaction or reverse takeover

Box 7

A substantial transaction is one which exceeds 10 percent in any of the class tests (i.e., where the gross assets, gross capital, profits or turnover attributable to the transaction, or the consideration paid represents, respectively, more than 10 percent of the AIM company’s gross assets, gross capital, profits, turnover or company value).

A reverse takeover occurs where the company being purchased has greater gross assets, profits, turnover, value or gross capital than the AIM company itself or where the acquisition would result in a fundamental change of business.

IMF/Boss Mining

Under AIM rules, one of the criteria defining a reverse take-over is an acquisition or acquisitions in a twelve-month period which for an AIM company would exceed 100 percent in any of the class tests. CAMEC reports a turnover of £805,075 to the year ended 31 March 2005; while no turnover figure attributable to the IMF/Boss assets for the same period is given by CAMEC, the turnover attributed to the acquisition in the following year is £9,431,000 against a turnover of £1,613,000 for continuing operations. It is therefore also pertinent to ask CAMEC to show that the magnitude of the turnover attributable to IMF/Boss prior to acquisition for the purposes of the turnover test was substantially less and did not therefore exceed the threshold for a reverse takeover.

Sabot

For the purposes of the turnover test, CAMEC's latest stated turnover prior to the acquisition of Sabot was £11.044 million to 31 March 2006. No figure is given for Sabot's most recent turnover prior to its acquisition by CAMEC. However, given that Sabot's turnover for the following financial year was £17.098 million, it is pertinent to ask CAMEC to show that the magnitude of Sabot's turnover prior to acquisition for the purpose of the turnover test was substantially less and did not therefore exceed the threshold for a substantial transaction or indeed a reverse takeover.

According to CAMEC, it acquired Sabot on 24 July 2006. However it is not apparent that CAMEC released a notification on that date nor in the days immediately following. It would seem that CAMEC's first public reference to its acquisition of Sabot was made in its notification of its preliminary results on 18 September 2006, almost two months after the actual date of the acquisition. Under AIM rules, a substantial transaction must be notified without delay.

This area engages *inter alia* [AIM Rules 10, 11, 12, 14 and 19](#) and [RNAs 16, OR1 and OR2](#). See RAID's submission on CAMEC, pp. 71 *et seq.*

Licence review: information of import and the effect on transactions

The Boss Mining, KMC/Savannah Mining and Mukondo Mining contracts were examined as part of the industry-wide review ([Box 2](#)) of ventures between private partners and Gécamines. The Mining Contracts Review Commission, together with prior audits and studies (see above, p. 13 and n. 55), raised concerns that the contracts for Boss Mining, KMC/Savannah and Mukondo

- failed to identify the real level of contributions of private partners and Gécamines
- resulted in the inequitable division of share capital between the parties
- failed to pay royalties and/or an entry premium to Gécamines.

These issues, central to the perceived fairness of the contracts and calls for their renegotiation, must have been known to CAMEC at the time of the acquisitions.

A key question is the extent to which CAMEC and its nomad should have notified the existence of such criticisms – arising both from the prior audits and in the work of the Mining Contracts Review Commission – both during the course of its Congolese acquisitions and subsequently, in order to allow investors and the market to gauge for themselves the likelihood or otherwise of calls by the DRC Government for renegotiation of the contracts.

For Boss Mining, Savannah Mining and Mukondo Mining, the Commission ultimately recommended renegotiation of the partnerships. The date given on the review notification letter published on the DRC Mining Ministry website for Boss Mining is 11 February 2008.⁶³ Yet CAMEC did not make a regulatory news announcement concerning the content of this notification until 26 February, over two weeks later.⁶⁴ Moreover, a number of requirements raised in the notification letter with financial implications for CAMEC's investors are not mentioned by CAMEC in its 26 February release or in subsequent news releases. These include requirements i) to release to the government a

feasibility study that identifies and evaluates the parties' real input so that shares may be equitably divided (CAMEC refers only to 'reappraisal of the real contribution of all stake holders in value terms' and does not refer to a feasibility study *per se*);⁶⁵ and ii) to pay the royalties and overdue entry premium to Gécamines.

On 4 March 2008, CAMEC was the first to announce that it had negotiated a settlement over the future of its joint venture contract with Gécamines.⁶⁶ CAMEC's settlement occurred before the DRC Government announced its terms of reference for the renegotiation of contracts in September 2008!⁶⁷ Usual practice would suggest that settlement should occur after the terms of reference for renegotiation are issued, as has been the case with other contract renegotiations in the DRC.

This area engages *inter alia* **AIM Rules 10** and **12** and **RNAs 16, 25, OR1, OR2** and **OR3**. See RAID's submission on CAMEC, pp. 77 *et seq.*

Notification of price sensitive information without delay

The final issue of compliance relates to the requirement under AIM rules to notify price sensitive information without delay, and CAMEC's public response, *inter alia*, to:

- the findings of the Ernst & Young audits and the conclusions and recommendations of the Mining Contracts Review Commission concerning the Boss Mining and Mukondo concessions (see above, p. 15)
- the suspension of operations at its jointly-owned Mukondo mine following formal notice from the mine's new co-owners, Gertler's DGI/Prairie
- the competing claim by mining company Simberi Mining Corporation (via its wholly-owned subsidiary PTM) over the Kakanda tailings and mining deposits of north and south Kakanda and the recommendation of the Mining Contracts Review Commission that PTM participate in the renegotiation of the partnership contract between Boss Mining/Savannah Mining and Gécamines
- a chemical fire at Boss Mining's depot in Likasi and the reported release of bromine gas.

Suspension of mining operations at Mukondo

Dating back to the time when Rautenbach's regained mining assets from the DRC government in 2004 (**Box 10**), Boss Mining was given a 50 percent stake in the Mukondo concession, with 50 percent retained by Bredenkamp's KMC.⁶⁸ Under a new agreement in July 2005, the entire production was sold on favourable terms to a subsidiary of Rautenbach's Boss Mining, Congo Cobalt Corporation.⁶⁹ Following the sale of Tremalt/KMC to Dan Gertler International (DGI), it was reported in the press that 'Gertler, the foreigner closest to the ear of DRC president Joseph Kabila, immediately ordered a halt to activities on Mukondo', and that 'Gertler wanted a fair deal'.⁷⁰

There is a general requirement under AIM rules to disclose without delay price sensitive information, which, if made public, would be likely to lead to a substantial movement in a company's share price.⁷¹ The sale to DGI of Tremalt (including KMC and the 50 percent stake in Mukondo) was concluded in June 2006. A news release of 30 August 2007, attributed to the DRC Government, states that 'Mukondo Mining has been in standstill for more than 16 months,' which suggests that operations may have ceased in May or June 2006.⁷² CAMEC, in a 28 November 2007 circular to shareholders about the new proposed joint venture with Prairie International, eventually gave a date for the suspension of operations at Mukondo: 'production at Mukondo ceased in August 2006 following a disagreement between Boss Mining and Savannah, the partners in Mukondo Mining.'⁷³ In the light of both this admission by CAMEC and an even earlier date for the cessation of activity at Mukondo implied by the DRC Government's news release, it is pertinent to question why CAMEC did not announce the suspension of mining at Mukondo until

5 September 2006 – and then only in a ‘comment on press speculation’ in response to a press article headlined ‘CAMEC’s revenue from DRC dries up’.⁷⁴

There can be no doubting the financial significance to CAMEC of the Mukondo concession, which the company itself describes as ‘the richest cobalt mine in the world’, nor the influence of its prospects on CAMEC’s share price.⁷⁵ In the days following the press article of 3 September 2006 stating that operations at Mukondo had been terminated, CAMEC’s share price fell by almost 5%;⁷⁶ on the day following the announcement on 7 November 2007 of a new memorandum of understanding with the joint owners of Mukondo, the share price shot up by over 53% compared to its price on 5 November 2007.⁷⁷

Moreover, AIM rules also require that nothing of import is omitted from disclosed information.⁷⁸ Prior to CAMEC’s September release, the company notified two updates concerning its cobalt operations in the DRC on 2 June 2006 and 28 July 2006 – that is, after the date given by the DRC Government when Mukondo was at ‘standstill’.⁷⁹ No reference is made in either release to the termination of operations at Mukondo and the impact of this upon cobalt production and sales.

Disputed claims

According to Simberi Mining Corporation, ‘our hard rock concessions [claimed by Simberi’s subsidiary PTM]... appeared to overlap with a claim by CAMEC and Boss Mining for concession C19 and Exploration permit 469’.⁸⁰ CAMEC appears not to have issued a notification or public announcement regarding PTM’s claim over the Kakanda tailings and mining deposits of north and south Kakanda; nor regarding the Mining Contracts Review Commission’s recommendation ‘that PTM participates in the renegotiation of the partnership contract between Boss Mining and Gécamines on the one hand and Savannah Mining and Gécamines on the other hand’;⁸¹ nor regarding the requirement in the notification letter to Boss Mining that, in the transfer of mining titles, PTM’s rights are to be taken into account.⁸²

Simberi Mining Corporation has since changed its name to Greenock Resources Inc.⁸³ On 18 March 2011, Greenock announced that ‘consequent upon a review by staff of the OSC [Ontario Securities Commission]’ it had made material changes to its filed documents. It would appear that the OSC review was prompted by a complaint to the regulator made by ENRC over the contested DRC concessions.

It would be anomalous if CAMEC were to have failed to disclose the contested title of Kakanda and to have escaped review by AIM Regulation when – at the behest of ENRC, as the successor to CAMEC – the same issue of non-disclosure has prompted action by the Canadian authorities.

This area engages **AIM Rule 11** and **RNAs 16, OR1, OR2** and **OR3**. See RAID’s submission on CAMEC, pp. 86 *et seq.*

CAMEC, ENRC and sanctions against Zimbabwe: implications for AIM and questions for HM Treasury

Rautenbach and associated entities

US sanctions were first imposed against specifically identified individuals and entities in Zimbabwe in March 2003, and were expanded in November 2005 and July 2008. In November 2008, the US designated Rautenbach as an individual who provided financial and other support to the Government of Zimbabwe and other designated Zimbabweans, as well as adding his company Ridgepoint Overseas Developments.⁸⁴

In 2002, the Council of the European Union imposed a prohibition on the supply of arms, technical training and equipment for internal repression and a travel ban and freezing of funds for ‘the Government of Zimbabwe and persons who bear a wide responsibility for serious violations of human rights and of the freedom of opinion, of association and of peaceful assembly.’⁸⁵ The sanctions have subsequently been extended and updated and, in January 2009, Rautenbach and Ridgepoint Overseas Developments were added to the list.⁸⁶

RAID has raised questions in its submission on CAMEC under the AIM rules about the disclosure by CAMEC and Seymour Pierce of Rautenbach’s status as a designated individual under US and EU sanctions.

- Why did CAMEC not disclose Rautenbach’s sanctioned status given his continued interest in CAMEC and the reputational risk his status presented for CAMEC’s share price?
- Did Seymour Pierce advise and guide CAMEC’s directors on any implications arising from the status of Rautenbach on sanctions lists or seek the advice of the Exchange over the likely reputational consequences?

See RAID’s submission on CAMEC, pp. 43 *et seq.*

CAMEC’s acquisition of Zimbabwean platinum assets

In April 2008, CAMEC announced the acquisition of an interest in platinum mining assets in Zimbabwe via its acquisition of 100 percent of Lefever Finance Ltd, registered in BVI.⁸⁷ Lefever owned 60 percent of Todal Mining (Private) Limited, a Zimbabwean company, which held the rights to two platinum claims in Zimbabwe.⁸⁸ The remaining 40 percent of Todal was held by ZMDC, wholly owned by the Government of Zimbabwe. ZMDC was added to the US Specially Designated Nationals (SDN) list on 25 July 2008, and was designated under EU sanctions on 27 January 2009.

CAMEC’s announcement of the acquisition stated:⁸⁹ ‘CAMEC has agreed to advance to Lefever an amount of US\$100 million by way of loan to enable Lefever to comply with its contractual obligations to the Government of the Republic of Zimbabwe.’ Other commentators have described the advance as a ‘thinly disguised donation... nothing less than an unsecured cash loan to the Zimbabwe Government... “the president Robert Mugabe regime”’.⁹⁰

RAID has raised questions with the UK authorities about CAMEC’s acquisition of Todal via Lefever.

In respect of AIM Regulation:⁹¹

- Why did CAMEC not disclose ZMDC’s SDN status given the reputational risk presented for CAMEC’s share price of being in partnership with an SDN?
- Did Seymour Pierce give advice on notification and disclosure?

In respect of HM Treasury and the implementation of sanctions, did CAMEC at the time of the Lefever/Todal transaction:⁹²

- notify or otherwise seek the advice of the Treasury as to whether its proposed acquisition complied with the sanctions then in force
- require a licence or other permission from the Treasury in order to make loan finance via Lefever available to the Zimbabwean government, given that President Robert Mugabe and other senior Zimbabwean government members and ZANU-PF officials were all designated under EU sanctions?

See RAID’s submission on CAMEC, pp. 10, 43 *et seq.*

Sanctions and ENRC's offer for CAMEC: Non-disclosure of the identity of Rautenbach and other SDNs in the offer document

In its September 2009 offer document for CAMEC, ENRC noted that 'various issues have arisen in respect of the Offer in relation to the possible application of International Sanctions Laws.'⁹³

ENRC refers to 'assets and subsidiaries within the CAMEC Group that have been deemed to be SDNs by OFAC'. However, although ENRC includes information on the acquisition of the Zimbabwe Platinum Assets, it does not identify any SDNs.⁹⁴

Information on certain of Rautenbach's shareholdings – amounting to the nearly 3.2% of CAMEC shares held via Harvest View Limited – can be pieced together from CAMEC documents pre-dating the ENRC offer (**Box 8**). CAMEC also confirmed a 13 percent interest in CAMEC held by Meryweather Investments Limited, following CAMEC's acquisition of the Zimbabwean platinum assets.⁹⁵ Other commentators have suggested that Meryweather is linked to Rautenbach, but have recorded his denial of any link.⁹⁶

Nowhere is it stated in the ENRC offer document, either in the section on sanctions or elsewhere, that Harvest View holds an interest in CAMEC shares or that Rautenbach controls Harvest View. No reference is made to Meryweather Investments Limited. Rautenbach is not named in the offer document nor are any CAMEC holdings attributed to him.

A number of specialist industry publications and newspapers reported that any sale of Rautenbach's shares in CAMEC to ENRC required UK Treasury approval. ENRC's chief executive officer confirmed that 'the acquisition of any shares from those on the sanctions list will require United Kingdom license from the United Kingdom Treasury.'⁹⁷ The *Daily Telegraph* reported on 12 October 2009: 'Yesterday ENRC sent a letter to the [UK] Treasury seeking approval to buy the 3.2pc CAMEC stake owned by businessman Billy Rautenbach, whose assets have been frozen by the European Union.'⁹⁸ Moreover, the question remains as to how the hidden owners of Meryweather's much larger holding in CAMEC, worth £43 million, have benefited from the sale to ENRC.

Rautenbach's shareholdings in CAMEC

Box 8

Harvest View Limited

As noted (above, p.13), CAMEC confirmed in a circular dated 28 August 2007 that Harvest View Limited, a company controlled by Mr. Rautenbach and his family, held 90,926,134 CAMEC Shares.⁹⁹ As of the date ENRC's terms of offer were announced, Harvest View Limited continued to hold these shares, representing 3.17% of issued share capital.

On 15 December 2009, ENRC announced that it either owned or had received valid acceptances in respect of 95.66 percent of the entire issued share capital of CAMEC.¹⁰⁰ The announcement went on to confirm arrangements for the compulsory acquisition of remaining CAMEC shares. *Private Eye* magazine noted: ENRC 'will not say whether that [percentage] includes Harvest View's [shares]'

Meryweather Investments Limited

Upon acquiring a stake in the Zimbabwean platinum assets, CAMEC confirmed that 'Meryweather Investments Limited, the seller of the shares in Lefever, will on completion of the transaction hold a 13.07% interest in the enlarged share capital of CAMEC.'¹⁰¹

According to an article in *Private Eye* magazine, 'CAMEC, headed by former England cricketer Phil Edmonds, is understood to have informed the Treasury earlier this year that Meryweather was linked to Zimbabwean businessman 'Billy' Rautenbach, whose assets are supposedly frozen by UK and US sanctions against the Mugabe regime... Rautenbach himself denies any links to Meryweather (*Eye* 1246), so that must be true.'¹⁰²

The magazine names James Ramsey as the 'sole director of Lefever, and who also appeared to sign for Meryweather' describing this as 'a remarkable coincidence' given that a lawyer of the same name 'has for many years represented Rautenbach'.

ENRC describes irrevocable undertakings to accept the offer from, *inter alia*, Temple Nominees Limited, with a holding of 115,000,000 shares or approximately 4% of the entire issued ordinary share capital of CAMEC; and Chambers Nominees Limited, with a holding of 100,000,000 shares or approximately 3.48%.¹⁰³ Both Temple and Chambers nominees are confirmed by ENRC as acting 'for and on behalf of Meryweather Investments Limited'. CAMEC confirmed that Meryweather held 215,000,000 ordinary shares or 7.49 per cent of CAMEC's issued share capital.¹⁰⁴

According to *Private Eye*, 'Neither Temple nor Chambers appears to have any connection to CAMEC. However, the letters accepting the bid for the Meryweather shares were signed by the CAMEC company secretary, Philip Enoch. This suggests that CAMEC is well acquainted with the real owners and empowered to act for them. Which would be so if, as is suggested, CAMEC had volunteered to the Treasury that the Meryweather shares were linked to Rautenbach and as such covered by the sanctions freeze.'

The *Private Eye* article asks: 'Has the money been passed on to the hidden Meryweather owners – who may not be so hidden to Rautenbach – or has the £43m been paid into an escrow account pending clearance from the Treasury and Washington? Might that be the reason why Enoch signed for the shares? But how can clearance be given if there is a suspicion that interests close to Rautenbach or other Mugabe sympathisers will benefit?'

Questions put to the Asset Freezing Unit and their failure to respond

As follow-up to an earlier letter (May 2010) enquiring in general about implementation of aspects of the sanctions regime in the UK, RAID sent a detailed memorandum and questions to the UK Treasury's Asset Freezing Unit (AFU) on 6 July 2011 (Annexe 2). The memorandum raised matters relating to specific individuals and entities, *inter alia*, Billy Rautenbach, Harvest View Limited, Meryweather Investments Limited, Eurasian Natural Resources Corporation plc (ENRC), and CAMEC. In light of the successful offer by ENRC for CAMEC, RAID's memorandum sought clarification on the application of sanctions to trading in CAMEC shares of possible direct or indirect benefit to designated persons or entities, including Rautenbach.

The administration of Rautenbach-controlled shares

The AFU was asked to comment on who would take over the administration of shares in a company held by a designated person when they first appear on the sanctions list. A March 2009 report in the press stated: 'The company [CAMEC] said: "As soon as the sanctions were announced CAMEC took appropriate legal advice and subsequently, in early February, made a notification to the Treasury. CAMEC is in full compliance with its requirements under the sanctions".'¹⁰⁵ RAID sought to clarify, *inter alia*:

- the date upon which CAMEC made its notification to the Treasury
- whether or not CAMEC disclosed Rautenbach's direct or indirect holdings of CAMEC shares, the names of any Rautenbach-controlled or associated entities disclosed by CAMEC and whether his direct or indirect holdings were quantified.

The requirement for licence(s) from HM Treasury: prior approval?

ENRC in its offer document described discussions with HM Treasury in connection with the application of UK sanctions as 'ongoing'.¹⁰⁶ Yet on the very day the offer was announced, and prior to the posting of the offer document, ENRC indicated that it already had approval: 'The HM Treasury has approved ENRC making the offer for the shares of CAMEC.'¹⁰⁷ This statement by ENRC would appear to indicate that the matter of Treasury approval was considered a *fait accompli*, despite wording within the offer document that presented licence approval as a matter yet to be determined.¹⁰⁸

In light of the requirement for a licence to deal with funds or economic resources belonging to a designated person, and because the AFU is responsible for processing applications 'for licences to

release frozen funds or to make funds available to designated/restricted persons', the Unit was asked to confirm the following.¹⁰⁹

- Did ENRC require and apply for a licence to purchase any Rautenbach-controlled direct or indirect shareholdings in CAMEC, or did CAMEC or any other person (including Rautenbach) or entity apply for a licence to sell such shareholdings? When were any such licences refused or granted?
- Was any licence application made to allow the purchase and/or sale of certain CAMEC shares, including the purchase of any CAMEC shares owned by Harvest View or Meryweather Investments or administered by Temple Nominees Limited or Chambers Nominees Limited? Who made any such licence application(s)?
- On what date(s) was/were any application(s) for any licence(s) to sell/purchase/deal in CAMEC shares made? On what date(s) was/were any licences refused or granted?

Proceeds from any sale of CAMEC shares

RAID also seeks clarification on the following questions.

- What has happened to the consideration from the sale of Harvest View's or Meryweather's holdings in CAMEC or those from any other Rautenbach-controlled holdings?
- Who administers the account(s) in which any such considerations are held?
- The AFU's response stated that 'any sale of a designated person's shares could take place only on the basis that any consideration for the shares remains frozen'. However, given that a designated person can apply for a derogation from Council Regulation (EC) No 314/2004 and that a designated person may seek a licence from the Treasury authorising access to economic funds or resources, has any consideration arising from the ENRC's acquisition of any shares benefiting Rautenbach (including any benefiting him held via Harvest View's or Meryweather's holdings in CAMEC) indeed remained frozen?

RAID notes, in the event of any request for derogation from the freezing of funds and economic resources, the timing of the settlement reached by Rautenbach with the South African National Prosecuting Authority (NPA) concerning fraud charges. The announcement of ENRC's offer for CAMEC – to include the purchase of Rautenbach-controlled holdings in CAMEC – exactly coincided with Rautenbach's return to South Africa on 18 September 2009 and his appearance on the same day before the Specialised Commercial Crimes Court. A media release on behalf of Rautenbach confirmed that he agreed to pay 'R40 million [~ £3.3 million, which] constituted amounts payable directly to the state, to the South African Revenue Services and an amount payable directly to the Criminal Asset Recovery Account of the NPA.'¹¹⁰

PART II – A CRITIQUE OF AIM REGULATION AND THE IMPLICATIONS FOR RESPECTING HUMAN RIGHTS

Introduction

Part I outlined areas of compliance concerning the conduct of CAMEC and its nomad that appear to engage AIM rules. This Part has three concerns:

- to consider the *implementation and enforcement* of the rules
- to consider the *formulation* of the rules, i.e. their scope or adequacy to capture corporate misconduct of the type that led the UN experts to lay charges of insufficient due diligence
- to examine whether there is any intersection – as suggested by the UN Special Representative on Business and Human Rights’ corporate law project (below, p. 31) – between market rules and human rights protection, and to consider whether a market value is placed upon human rights.

Implementation of the AIM rules

In this section, the implementation and enforcement of AIM’s rules are considered under four headings:

- a brief summary of how AIM is regulated; a consideration of the role of nomads (commercial firms, typically investment banks, corporate financiers, brokers or accountants) as gatekeepers; and an overview of the regulatory measures available to the Exchange, from trading suspensions through to disciplinary action
- a review of action taken by the Exchange in respect of CAMEC, Seymour Pierce, and certain other companies where their conduct has raised parallel issues. One objective is to discern any apparent inconsistencies in implementation; a second is to identify areas where there appear to be significant unanswered questions about CAMEC’s compliance
- a discussion of the scope that remains for retrospective disciplinary action by the Exchange, particularly in the light of the disciplinary notice issued against Seymour Pierce in December 2011
- a critique of the AIM disciplinary process, which is mostly conducted ‘in-house’; seldom publicly names miscreants; invites public complaints but then excludes complainants from the process; and is ultimately secretive and unaccountable. It may be that these in-built attributes are, however, the product of prioritising orderly markets over public scrutiny.

The regulation of AIM

Sidestepping EU standards

The London Stock Exchange took a number of steps to revise the functioning of AIM in anticipation of the introduction of the European Union’s Prospectus Directive (PD), a measure designed to harmonise standards for companies seeking to list on exchanges across Europe.¹¹¹ Most importantly, because the Prospectus Directive applies to officially regulated markets, AIM changed its status in October 2004 to become ‘exchange regulated’, setting and implementing its own rules. This means the Prospectus Directive does not apply to a company listing on AIM unless it is making a public offer, rights issue or report takeover taking the value over certain limits.

In practice, a full Directive-compliant prospectus, approved by the FSA, is not required from AIM applicants who place shares with institutional investors or otherwise qualify for an exemption. Rather, the AIM rules have been amended so as to adopt the contents of the regulations implementing the Prospectus Directive, but with ‘carve outs’ or exemptions in many areas, which reduce the overall level of information required.

AIM’s ‘self’ regulation

As an exchange-regulated market, AIM is run by the London Stock Exchange, which in turn is recognised and regulated by the UK Financial Services Authority (FSA).¹¹² Ultimately, as AIM is part of the Exchange, it is subject to regulation by the FSA;¹¹³ but AIM is also a regulator in that it establishes and monitors a regulatory regime for admission and imposes continuing obligations on issuers and their nomads. Companies joining AIM and those already listed must comply with rules set by the Exchange.

The Exchange’s AIM Regulation team is responsible for guiding, monitoring and investigating AIM companies’ compliance with the regulations.¹¹⁴ Ultimately, the Exchange may take disciplinary action against a company that breaks the rules.

However – and this constitutes one of the key differences between AIM and the Main Market – the responsibility for the day-to-day regulation of AIM companies is delegated to nomads. Hence admission documents are not approved by the Exchange nor the UK Listing Authority but by the nomad. It is the nomad who makes the decision on the suitability of a company for AIM admission.

Role of nominated advisers

Nomads are approved by the Exchange to assess the suitability of applicants for AIM and to act as a mentor once a company has joined.¹¹⁵ The very first AIM rule states that ‘in order to be eligible for AIM, an applicant must appoint a nominated adviser and an AIM company must retain a nominated adviser at all times.’¹¹⁶ The nominated adviser is responsible to the Exchange for advising and guiding an AIM company on complying with the AIM Rules for Companies, both in respect of its admission and its continuing obligations.¹¹⁷

Nomads are required to complete a declaration of compliance with the AIM rules every time they act for a new applicant or are appointed to act for an existing AIM company.¹¹⁸ The nominated adviser’s declaration forms part of the contract between the Exchange and the nomad. *AIM Rules for Nominated Advisers*, effective from 20 February 2007, were introduced to consolidate the existing obligations on nominated advisers.¹¹⁹

The Exchange has placed great regulatory faith in its nomads at the same time as effectively privatizing the regulatory function. The Exchange’s *A guide to AIM* states:¹²⁰

The Nomad’s primary responsibility and duty of care is owed to the Exchange and it must ensure that the admission of a company to AIM and its conduct following admission do not impact adversely on the reputation or integrity of the Exchange. For a Nomad, the reputation and integrity of the market are of paramount importance.

Any case concerning an errant nomad therefore has considerable ramifications. Every time the Exchange is seen to take public action against a nomad, the faith that underpins the system is undermined. This may give rise to an imperative to suppress information about the failure of nomads to ensure compliance by their clients. Moreover, AIM regulation acknowledges ‘that nomads also owe a duty of care to their client company, as well as to the Exchange.’¹²¹ At a minimum, owing a duty of care to two parties must complicate deciding whether a client’s or the Exchange’s best interests are served when advising on compliance.

The news that Seymour Pierce has been conditionally sold to a Ukrainian or Kazakh firm has certain implications for AIM. The regulatory function, responsibility for which falls to the

Exchange (itself a listed company) via AIM Regulation, is ultimately delegated to a nomad, a private company itself owned by a firm in a jurisdiction not known for the highest standards of good governance. What is frequently regarded as a public regulatory function is not only privatised, but is also internationalised – if account is taken of the ultimate interests of a nomad's overseas owners.

Disciplinary action

The Exchange may take disciplinary action against both companies and nomads. An AIM company that has breached the rules may be fined, censured or even have its admission cancelled. Following formal review by the Exchange, any nomad found to have breached its responsibilities under the rules or to have impaired the reputation of AIM faces disciplinary action.¹²² A Market Compliance and Investigations team investigates potential breaches of the rules by any company or nomad. On conclusion of an investigation, the Exchange may issue a 'warning notice' (when it believes that a breach has occurred but the offence does not justify a fine, censure or tougher sanction). More serious cases are submitted by the Exchange to either the Executive Panel or the Disciplinary Committee.¹²³ The criteria by which the Exchange refers a case to one body or the other are not given, but the Disciplinary Committee can impose tougher sanctions in the most serious cases.

The sanctions available to the Executive Panel are to censure the company/nomad or to impose a fine of up to £50,000 for each rule breach or else to refer the case to the Disciplinary Committee.¹²⁴ Sanctions available to the Disciplinary Committee are to impose a fine, censure the company or nomad (including the power to publish the fact that action has been taken) and, ultimately, to cancel the admission of a company's AIM securities or remove a nomad from the approved register.¹²⁵ Disciplinary action may also be settled – as in the case of Seymour Pierce – by way of a consent order negotiated between the Exchange and the AIM company or nomad and submitted to either the Executive Panel or the Disciplinary Committee for approval.¹²⁶

Record of disciplinary action taken by the Exchange

The Exchange has taken acknowledged disciplinary action against a very small number of AIM companies and nomads. Public censure is rarer still: six companies and four nomads have been named in this way, with two of these companies and three nomads also being fined between £75,000 and £600,000. The Exchange has privately censured and fined seven companies and one nomad (fines ranged from £5,000 – £75,000), privately censured (no names are published) one company and two nomads, imposed fines on nine other unnamed companies, and has acknowledged issuing seven warning notices against companies.¹²⁷ To place the limited extent of disciplinary action in context, AIM has been in existence for over 15 years, admitting over 3300 companies (over 1100 currently trading), advised by over 50 approved nomads, raising £78 billion in investment.

The CAMEC case and consistency of enforcement

CAMEC and its nomad: the lack of public action to date

To date, the Exchange has taken almost no publicly acknowledged action in respect of CAMEC's conduct, either at the time when instances of compliance arose or subsequently in the form of disciplinary action. Following the cancellation of CAMEC's mining licences by the DRC Government, the Exchange suspended trading in CAMEC shares for three hours on 31 August 2007 after the plunge in the company's market capitalisation.¹²⁸ The suspension was lifted later the same day following an explanatory statement by CAMEC.¹²⁹

Recall that the Exchange, although it has publicly censured and fined Seymour Pierce, has taken

no publicly acknowledged action in respect of its role as CAMEC’s nomad *per se* (below, p. 27).

Questions of consistent implementation: action taken against others

Whilst the Exchange has taken public action against only a handful of named or unnamed companies and nomads, these cases nevertheless engage the same rules about which questions remain over compliance by CAMEC and Seymour Pierce. The table below juxtaposes such instances of disciplinary action alongside publicly unanswered questions of compliance in the CAMEC case.

Rules engaged	CAMEC case	Cases of disciplinary action
Admission of shares to trading and associated notification (AIM rules 17, 29, 33)	When IMF Ltd was acquired, it does not appear that CAMEC issued a holdings notification identifying the owner or beneficiary of 171,853,471 new shares as part of the purchase price. Only much later did CAMEC note the interest in the shares of Rautenbach-controlled entities.	In its censure of Environmental Recycling Technologies plc , the Exchange found that the company had breached AIM rules on the admission of certain issued shares to trading on AIM and had not made the required announcements. ¹³⁰
Misleading, false or deceptive information and omissions (AIM Rule 10)	Audits of the Rautenbach companies later acquired by CAMEC uncovered serious managerial malpractice: given Rautenbach’s continued key managerial role in the companies after their acquisition, AIM rules which require that reasonable care be taken ‘not to omit anything likely to affect the import of such information’ ought to have been engaged.	SubSea Resource plc and Regal Petroleum plc were publicly censured (the latter also fined) for failing to take reasonable care to ensure that announcements were not misleading, false or deceptive and did not omit anything likely to affect the import of such information. ¹³¹ Meridian Petroleum plc was publicly censured and fined for its failure to ensure that announcements disclosed realistic operational deadlines and/or material issues likely to affect the achievability of those deadlines. ¹³² Environmental Recycling Technologies plc was publicly censured and two other companies have been privately censured and fined for misleading announcements. ¹³³
Notification of substantial transactions and reverse takeovers (AIM Rules 12 and 14)	Given the magnitude of the turnover for IMF/Boss Mining and Sabot in the year after their acquisition compared to the turnover attributed to CAMEC’s other operations, and in light of the admission by CAMEC of the absence of reliable financial information for Boss Mining and Sabot, confirmation of the figures used in the class tests is sought to demonstrate that each acquisition did not represent a reverse takeover (CAMEC/Sabot) and/or significant transaction (Sabot).	Minmet plc was publicly censured by the Exchange for failure to announce without delay a substantial transaction and an acquisition constituting a reverse takeover, neglecting to secure shareholder consent or to publish an admission document for the enlarged entity. ¹³⁴ The Exchange privately censured another AIM company and fined it £15,000 for not seeking nomad advice and for failing to announce without delay aggregated payments amounting to a substantial transaction. ¹³⁵

Rules engaged	CAMEC case	Cases of disciplinary action
Incompleteness of accounts (Rule 19)	Auditors have drawn attention to the incompleteness of accounts provided by Boss Mining, KMC, Mukondo Mining and Sabot and hence the reliability of the required financial information about the transaction provided to investors.	The Exchange has disciplined the nomad Nabarro Wells & Co. Limited for breaches of Rule 39 requiring due skill and care at all times: ¹³⁶ <i>inter alia</i> , approving the release of interim results despite the fact that questions posed by the auditor had not been satisfactorily answered; inadequate consideration of the requirement to notify the market of a change in a Company's financial condition.
Failures to disclose price sensitive information (Rule 11)	Questions remain over the requirement to notify price sensitive information without delay and CAMEC's public response, <i>inter alia</i> , to the suspension of operations at its jointly-owned Mukondo mine, notification of the conclusions of various audits and the mining review, and the competing claim by Simberi/PTM over mining concessions.	Publicly censured companies: Incite Holdings for failing to adequately disclose price sensitive information; ¹³⁷ SubSea Resources plc for a breach of the requirement to notify without delay new developments which were not public knowledge (and which, if made public, would have been likely to lead to a substantial movement in its share price) concerning a change in the expectation of its performance; ¹³⁸ Meridian Petroleum plc for its failure to disclose price sensitive information without delay about operational problems; ¹³⁹ Regal Petroleum plc (also fined) for, <i>inter alia</i> , its failure to announce without delay problems with oil wells; ¹⁴⁰ Environmental Recycling Technologies plc for failing to disclose under-performance. ¹⁴¹ Moreover, the Exchange has privately censured four companies (imposing fines of £5000 – £25,000 on three of them) for, <i>inter alia</i> , failing to issue a regulatory announcement without delay. One company failed to make any announcement; two of the others delayed release by two months and several weeks. Three nomads have been disciplined for incorrect advice on, or inadequate consideration of, the requirement to disclose price sensitive information. In the cases of Durlacher Limited and Nabarro Wells & Co. Limited , censure has been public. ¹⁴²

In addition to the cases dealt with in the table, it should be noted that:

- Seymour Pierce has been publicly censured and fined (in Disciplinary Notice AD11, December 2011) for breaches of Nomad **Rule 14** (assessing the appropriateness of an applicant for AIM), **Rule 16** (to act with due skill and care), **Rule 17** (advice and guidance on continuing obligations) and **Rule 18** (exercising **Schedule Three**, including **AR2** (*inter alia*, due diligence on directors and substantial shareholders at admission), **OR1** (regular contact to advise client, especially on notification price sensitive information) and **OR2** (review of notifications)). The Exchange states in AD11 that the breaches relate to two illustrative cases;

no mention is made of Seymour Pierce's role as CAMEC's nomad. With the exception of the rules solely applicable at admission, the same rules dealt with under AD11 (in addition to certain other rules), are all engaged *vis-à-vis* the CAMEC case. Nevertheless, in response to RAID's submission on CAMEC, the Exchange has made no public declaration, either that the rules were complied with or that they were breached.

- In October 2009, Seymour Pierce was fined £154,000 by the FSA for failing to establish effective controls to guard against employee fraud.¹⁴³ This sanction was not imposed under AIM disciplinary measures, but for breach of Principle 3 of the FSA's Principles for Businesses, pursuant to section 206 of the Financial Services and Markets Act 2000.
- CAMEC shared its chairman and its chief executive with AIM-traded White Nile Ltd. Trading in White Nile shares was suspended by the Exchange on 16 February 2005 and again in May 2005. The initial suspension followed the company's announcement of a deal with the government of Southern Sudan to acquire an interest in a disputed oil concession (also claimed by Total), which caused a 1,275 percent surge in the value of the company's shares.¹⁴⁴ On 27 May 2005, just four days after the stock had returned from suspension, the London Stock Exchange again halted trading in the company's shares, fearing that there could not be an orderly market.¹⁴⁵ Moreover, the acquisition was reportedly referred to AIM's disciplinary panel: the transaction counted as a reverse takeover, requiring the company to produce a detailed prospectus (admission document).¹⁴⁶ If any disciplinary action was taken, it has not been publicly reported or recorded in an AIM Disciplinary Notice. According to White Nile, the initial temporary suspension was requested by the company's directors until such time as they had prepared full information on the transaction, which they announced on 4 March as a reverse takeover.¹⁴⁷ No reference is made by the Exchange or company to the instigation of any disciplinary action.

The scope remaining for disciplinary action: AIM Disciplinary Notice 11 and Seymour Pierce

On 21 December 2011, the Exchange issued AIM Disciplinary Notice AD11 setting out the sanctions – public censure and a £400,000 fine – imposed upon Seymour Pierce for breaches of the nomad rules.¹⁴⁸ The disciplinary action was agreed with Seymour Pierce by way of a Consent Order – a settlement negotiated by the Exchange and the nomad, then approved by the Disciplinary Committee. The Exchange also states that the cases referred to in AD11 are demonstrative and illustrative of Seymour Pierce's breaches. This appears to be a tacit acknowledgement that Seymour Pierce committed further breaches, which remain publicly unexamined.

The Disciplinary Notice examines issues from early 2010 to early 2011 and refers to visits and investigations carried out by the Exchange over the same period, thereby excluding the possibility that Seymour Pierce's conduct as CAMEC's nomad has in any way informed the Disciplinary Notice (recalling that CAMEC cancelled trading on AIM in December 2009). Yet the notice as framed may have implications for the way in which compliance issues *vis-à-vis* Seymour Pierce raised in RAID's CAMEC submission to the Exchange are dealt with (**Box 9**).

The implications of AD11 for the CAMEC case: AIM's response

Box 9

RAID has sought clarification on the implications of AD11 for matters dealt with in the CAMEC submission. The Exchange has replied that it cannot give a specific response 'beyond that which has been clearly and publicly stated in the public censure'. (See *intra*, Annexe 1).

However, the implications of the public censure are far from clear: on the one hand, the suspended fine is contingent upon further public censure – a warning or private censure would not trigger it – and crucially, it is entirely future-focused. On the other hand, AD11 states 'nor does [the arrangement over the suspended fine] restrict the Exchange from undertaking any disciplinary action against Seymour Pierce should it think fit.'

However – and in the light of the future-focused trigger for further public censure and fine – is such disciplinary action restricted to a private warning?

Given that RAID’s submission was presumably under investigation by the Exchange at the time it agreed the consent order with Seymour Pierce, why did the Exchange enter into these arrangements – it has not done so in the past?

Moreover, why were the suspended arrangements only specified in respect of future acts rather than past acts, given that RAID’s material on CAMEC was, presumably, pending consideration?

£200,000 of the fine is suspended, becoming payable if Seymour Pierce is censured for ‘any acts and/or omissions of Seymour Pierce... which commence within two years of the publication of this Public Censure.’ It is RAID’s understanding that the suspended fine cannot therefore be invoked in respect of *prior* acts or omissions by the nomad, including those pertaining to the period during which Seymour Pierce advised CAMEC. If AD11 does indeed draw a line under Seymour Pierce’s past conduct, this would leave questions about the quality of its advice to CAMEC unexamined and unanswered.

Quite apart from the question of whether the interests of shareholders and the reputation of AIM are best protected by the selective ‘illustrative’ approach adopted by the Exchange, it is our submission that AD11 cannot substitute for action in relation to equally serious misconduct in other cases. RAID’s submission on CAMEC engaged not only the same nomad and AIM Rules referred to in AD11, but also a further set of nomad rules and AIM company rules which AD11 does not touch upon.¹⁴⁹ The Exchange has made no public determination of compliance or non-compliance in respect of the matters raised in RAID’s submission.

Wider concerns about AIM’s disciplinary process

Ambiguity in the disciplinary process

There appears to be some ambiguity within the AIM procedures as to when and how the formal disciplinary process is initiated. On one hand, the AIM Disciplinary Procedures state:

Where the Exchange wishes to commence disciplinary action against an AIM company or a nominated adviser pursuant to the AIM rules, it shall refer such disciplinary matter to either the AIM Executive Panel or the AIM Disciplinary Committee.¹⁵⁰

This implies that all disciplinary action is initiated via one or other of these bodies. However, on the other hand, it is stated:

Upon conclusion of its investigation the Exchange will decide what action is necessary in each instance. The Exchange may, as an initial step, instruct the AIM company or nominated adviser concerned (via email, telephone, or in a meeting) to take remedial action. Alternatively, the Exchange may decide to issue a warning notice to the AIM company or nominated adviser concerned. These measures all form part of the disciplinary process.¹⁵¹

The implication is that disciplinary action can be taken prior to any referral to the two disciplinary bodies.¹⁵² Moreover, the Exchange provides no criteria by which it decides to refer a case to either body (as opposed to dealing directly with the matter itself), or by which it chooses between referring a case to the Executive Panel or referring it to the Disciplinary Committee.

Resisting transparency and minimising public disclosure

Matters dealt with directly by the Exchange without referral to the disciplinary bodies

The mechanism by which, in the first instance, disciplinary matters can be dealt with by the Exchange without initial referral to the dedicated disciplinary bodies raises certain concerns

about the transparency of the process. The company/nomad and the Exchange can agree remedial action without the requirement to publish or notify any details of non-compliance and without, necessarily, even a warning notice being issued. Warning notices are noted on compliance records, but these remain 'in house' and are not disclosed. Moreover, when a consent order is agreed, the company or nomad concerned may request that it is anonymised so that not even the Disciplinary Committee is aware of their identity when considering the order for approval.¹⁵³

Cases before the Executive Panel, Disciplinary Committee and Appeals Committee

Even when cases are dealt with directly by the Executive Panel or Disciplinary Committee, there is a general lack of transparency.

Any matters relating to proceedings of the Executive Panel, the Disciplinary Committee or the Appeals Committee are kept confidential.¹⁵⁴ While the Executive Panel usually proceeds on the basis of confidential written submissions, the Disciplinary Committee and Appeals Committee usually hold hearings to determine a case.¹⁵⁵ Hearings are held in private, unless the party subject to the complaint wants the hearing to be public.¹⁵⁶ A record is made of the hearings, but this is made available only to the parties.¹⁵⁷ The parties are notified in writing of the reasoned decision of any of the disciplinary bodies,¹⁵⁸ but there is no automatic requirement for details of the outcome to be published.

While the Disciplinary Committee may 'publish the fact that the AIM company has been fined and/or censured and the reasons for such fine or censure', it is not required to do so.¹⁵⁹ Moreover, 'where the sanction imposed is a private censure, the AIM Disciplinary Committee may publish its decision in part or a summary of it and the reasons for the decision without revealing the identity of the AIM company or nominated adviser sanctioned.'¹⁶⁰ For cases heard before the Executive Panel, there is no provision for publication.

The Exchange does have an overall right to publish in part, in summary or in full the findings of either disciplinary body or details of warning notices issued, where it 'believes that to do so would be of assistance to the market'.¹⁶¹ Yet when publication is to assist the market in general rather than as part and parcel of the disciplinary process *per se* (see below), the identity of any party concerned is not disclosed.

The AIM Appeals Committee may publish part or all of its written decision or a summary of it, and the reasons for the decision – it is not specified whether the identity of the party/parties subject to the appeal will be revealed or not, but presumably this too is discretionary.¹⁶²

Lack of accountability and exclusion of complainants from the process

After RAID made its submission on CAMEC to the Exchange in May 2011, but before the Disciplinary Notice concerning Seymour Pierce was issued in December of that year, AIM Regulation used its September 2011 *Inside AIM* newsletter to focus on its investigation and enforcement functions. Having placed its faith in, and reliance upon, nomads to ensure compliance with its rules, AIM adopted an approach which – 'given the need for support and co-operation from nomads' – could be viewed as closer to appeasement than strict supervision. Moreover, the regulator clearly rejects accountability as its prime concern:¹⁶³

We are not enforcement-led; the emphasis is on education, deterrence and providing a proportionate and appropriate response for all market participants. Investigations should not be seen as adversarial but as a means by which the Exchange and nomads can work together to ensure a good standard of practice by AIM companies and their nomads.

In response to RAID, the Exchange advocates that its range of private as well as public sanctions 'enables us to take appropriate action in each case and, importantly, not merely for the purposes of enforcement...' The Exchange's approach, by minimising the number of cases that end in

public enforcement, sends out the message 'business as usual'. This 'in-house' process undoubtedly has the effect of modulating the repercussions of disciplinary action on the market.

On the other hand, the Exchange has also sought to gain wider credibility for the AIM regulatory regime, which appears to open the regulatory system to external influence:¹⁶⁴

AIM Regulation investigates all alleged breaches of the rules... brought to our attention from a variety of sources, including complaints from the public, notifications from other regulators as well as by nomads themselves...

AIM Regulation has thus given standing to third parties.¹⁶⁵ Typically, most complaint processes, having recognised complainants, would then ensure their continued engagement with the process, keeping them updated on progress and ultimately informing them of the outcome. This is the procedure, for example, in the case of the *OECD Guidelines for Multinational Enterprises*. By contrast, AIM Regulation has no published guidelines on how the information it receives from the complainant is dealt with. Having invited complaints, AIM denies the complainant any further role in the process and provides no information on how the complaint is being handled or on the outcome. RAID has sought clarification on how its submission is being dealt with and the Exchange has made its position clear:¹⁶⁶

we are unable to comment on how our investigations are progressing or on the conclusions we reach unless and until such time as any public disciplinary sanction is imposed. This is because our duty of confidentiality precludes us from doing so. This is to ensure... that we do not prejudice the outcome of any potential investigation.

Other bodies responsible for the hearing of complaints have, of course, also sought to balance the interests of all parties whilst maintaining appropriate confidentiality measures. However, this has generally been achieved without recourse to excluding one party.

In refusing to inform RAID about how it is dealing with the complaint, AIM regulation notes 'we are unable to favour one market participant or stakeholder over another'.¹⁶⁷ By contrast, AIM regulation has stated elsewhere: 'An open and transparent dialogue between AIM Regulation and the nomad/AIM company during the investigation process should make the process as effective and efficient as possible.'¹⁶⁸ Moreover, in those rare cases where the Exchange intends enforcement action, 'we would usually seek to give the nomad or company a reasonable opportunity to comment on the case and our proposed sanction. We will of course take into account matters that they raise with us.'¹⁶⁹

Enforcement and market logic

The Exchange's reticence to disclose and discipline is not necessarily unforeseeable: in certain circumstances, it is the inevitable outcome of a system that prioritises orderly operation of the market over the exposure of misconduct. Disciplinary action is, by dint of the time taken for investigations and for the process to play out, retrospective in nature, by which time many impacts of misconduct upon shareholder interests will have been overtaken by events. What benefit to the market going forward therefore arises out of exposing such misconduct? If too many serious rule breaches are brought to light, then market reputation is damaged as misconduct is seen as rife. Disciplining a nominated adviser for multiple breaches across several clients may undermine confidence in companies currently advised by the same nomad.

One lesson drawn from the Seymour Pierce disciplinary action is that the 'illustrative' cases chosen by the Exchange to demonstrate rule breaches concern client companies with little or no market legacy. In 'Case 1', the company concerned went into administration and ceased trading on AIM many months before the public censure of Seymour Pierce. In 'Case 2' – examined further below – the company was never admitted to trading.

Of course, a total absence of disciplinary action would give the impression of an unpoliced market, so the happy medium is to operate a system which makes an example of a few cases. Such a system has little to do with accountability or a thorough exposure of wrong-doing.

Capturing misconduct: the AIM rules and failures of formulation

Consideration is given to two aspects of regulation: the first concern has been with implementation of the AIM rules; the second concern, dealt with in this section, is with the content or formulation of the rules, considering their adequacy in capturing perceived corporate misconduct. Are due diligence and disclosure measures sufficiently developed in the AIM rules as they stand? Does their scope – designed to protect the market and shareholder interests – nevertheless extend, however unintentionally, to protecting the interests of other stakeholders, including their human rights?

The Special Representative on Business and Human Rights' corporate law project sought to identify whether and how corporate and securities law in over 40 jurisdictions currently encourages companies to respect human rights.¹⁷⁰ It is envisaged under the corporate law project that human rights and market regulation do intersect in that market value can be damaged by failures to respect human rights. However, the corollary of this formulation is that when market value is unaffected by violations – particularly those impacts on social and economic rights that slip under the radar – then human rights fail even to register or figure when determining compliance with market rules. The contrasting treatment under the AIM regulatory regime of CAMEC and Oryx Diamonds will help illustrate this point.

The AIM rules have been formulated both to maintain AIM's lighter regulatory touch and to draw a clear distinction between rules applicable at admission – requiring that certain threshold standards are met and which, in most circumstances, are not re-applied – and a more limited set of ongoing rules governing companies once they are trading. A contrast exists between the potential to block companies with tainted assets under the admission rules – as happened in the case of Oryx Diamonds (below, p. 33) – and support under ongoing rules for existing AIM-traded companies, such as CAMEC, that may later acquire assets of parallel provenance. This leads to an inconsistent and ultimately untenable situation where it is purely the timing of the acquisition of assets – pre- or post-admission – and not their inherent suitability or provenance that determines the degree of scrutiny and access to the market thereafter.

Other factors are at play: the question of whether this differing treatment is by accident or design; the fact that exclusions at admission are deliberately opaque; and, finally, the counterfactual as to whether due diligence, as devised under the admission rules, would have captured the kind of misconduct of concern to the UN expert panels: in other words, if CAMEC had not already been trading on AIM, would the admission rules have drawn attention to questions of provenance, reputation, and managerial conduct in CAMEC's DRC assets acquired from Rautenbach? The decision of the UK authorities to place AIM outside of the reach of the full EU Prospective Directive, designed to harmonise market standards across Europe, is a factor in this consideration.

Market regulation and its intersection with human rights

Another way of viewing the different treatment of Oryx Diamonds and CAMEC is to consider both cases in the wider context of business and human rights. The recently agreed UN Guiding Principles on Business and Human Rights countenance an intersection between corporate law – of which stock market regulation is a subset – and human rights.

The third Guiding Principle (GP3) under the State duty to protect human rights states:

3. In meeting their duty to protect, States should:

- (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights

This statement encapsulates that the State has a binding duty to protect human rights and that, in ensuring this, it must override the ambivalence of corporate law, i.e., its capacity to constrain or enable respect for human rights. Minimally, GP3 holds forth the prospect that corporate law ought to enable respect for human rights.

The research commissioned by the Special Representative – whilst cautioning that the implications for human rights of corporate and securities law remain poorly understood – nevertheless finds a common ground:¹⁷¹ ‘The jurisdiction-specific surveys indicated that corporate and securities law around the world does intersect with human rights. Simply put, where the impact on human rights may harm a company’s short- or long-term interests if it is not adequately identified, managed and reported, companies and their directors and officers may risk non-compliance with a variety of rules promoting corporate governance, risk management and market safeguards.’

A tales of two cities: prohibition, permission and the laundering of Congolese wartime assets

The thesis arising from the corporate law project – that human rights impacts may harm business interests and may thereby risk non-compliance with market safeguards – may be tested in relation to the UN Panel reports highlighting the link between resource exploitation, human rights abuse and corporate conduct in the DRC. One would have expected the reports’ findings to have brought about one of those moments when ‘corporate and securities law around the world does intersect with human rights.’ Both Oryx’s and CAMEC’s DRC concessions were all originally acquired by entities associated with the Zimbabwean regime in return for the kind of military assistance to the DRC government condemned by the UN Panel (Box 10).

Parallels in the provenance of Oryx diamond and CAMEC copper/cobalt assets Box 10

In transactions closely paralleling the exploitation of the diamond concessions through Oryx, the predecessor copper and cobalt companies acquired by CAMEC had also been established to partner the same Congolese and Zimbabwean military companies.

The Likasi and Mukondo concessions were first transferred from the Congolese State mining company to Rautenbach’s Ridgepoint (via the Central Mining Group Corp. (CMGC) joint venture), then to Bredenkamp’s Konkola Mining Company, before being returned to a Rautenbach company, Boss Mining (after settlement following, but outside of, an arbitration claim made by Rautenbach). Whilst both CMGC and its successor KMC were ostensibly established as joint ventures between Gécamines (retaining a 20% holding) and private partners, respectively Ridgepoint and Tremalt, underlying agreements with the DRC and Zimbabwe regimes were in place: ‘...Ridgepoint received 37.5% of Gécamines, whilst the DRC Government retained 62.5%, with the profits to be split accordingly. However, of the DRC’s 62.5% share they had to pay 30% to finance Zimbabwe’s war effort.’ The UN Panel reported: ‘...the Panel has obtained a copy of the confidential profit-sharing agreement, under which Tremalt retains 32 percent of net profits, and undertakes to pay 34 percent of net profits to the Democratic Republic of the Congo and 34 percent to Zimbabwe.’ In awarding the concessions back to Rautenbach in 2004, it was presumably as important, if not more important, to renegotiate the underlying agreements, which governed the real distribution of profits.

The UN Panel identifies the same Congo-Zimbabwe agreement underlying Oryx’s diamond concessions (COSLEG), whereby the Zimbabwean military company OSLEG joined forces with its Congolese counterpart: ‘While President Kabila provided the concessions, the Zimbabweans supplied the muscle to secure the commercial activities. Third party investors have been brought in to furnish needed capital and expertise. Attracting the third party has not been a difficult task, since Zimbabwe’s added leverage on the Democratic

Republic of the Congo has allowed it to obtain very favourable terms for its deals.... This pattern now characterizes all of the Zimbabwean exploitation activities, whether with MIBA, Gécamines....'

Both COMIEX and COSLEG were understood by the UN Panel to have been dissolved in late 2002. 'However, the main private commercial partners that represented the interests of a small group of Zimbabwean military entrepreneurs remain active in the original joint ventures. Revenues from them are now primarily routed through private corporate entities located offshore, with smaller percentages of the benefits flowing to DRC State enterprises.'

Questions remain as to whether any underlying agreement in respect of the Boss Mining joint venture existed after the settlement of Rautenbach's claim; the terms of any such agreement; and, if the pre-existing underlying agreements had ended, the terms on which these agreements had been settled.

A fleeting coincidence: human rights, AIM and the prohibition of Oryx Diamonds

In June 2000, Oryx Natural Resources Ltd. sought AIM admission for a new entity, Oryx Diamonds Ltd.¹⁷² Oryx held two of the DRC's richest state-owned diamond concessions, transferred to the Zimbabwean Defence Force (ZDF) as a barter payment for military assistance.¹⁷³

Access to the London market to raise capital was to have been achieved by a £50 million reverse takeover of Oryx Natural Resources by Petra Diamonds, a company already traded on AIM. It was because the transaction constituted a reverse takeover that a full new admission for Oryx Diamonds was required.

The admission of the new company was, however, effectively ended by the withdrawal of Oryx's nomad, reportedly under pressure from the UK government.¹⁷⁴

In late 2002, the UN Panel examining the illegal exploitation of the DRC's natural resources listed Oryx as a company on which it recommended the placing of financial restrictions: 'By contributing to the revenues of the elite networks, directly or indirectly, those companies and individuals [listed in Annexes I and II of the UN Panel's report] contribute to the ongoing conflict and to human rights abuses.'¹⁷⁵

In 2003, Oryx Natural Resources and two co-claimants sued *The Independent* newspaper and two journalists for libel in the British High Court of Justice. An out-of-court settlement was reached at the end of March 2004.¹⁷⁶ In the libel case, the barrister defending the newspaper told the court that the regulatory authorities warned of the 'utter unacceptability of a London listing for a company involved with the Zimbabwean military in the exploitation of diamonds in a conflict zone'.¹⁷⁷ Oryx publicly cited on its website newspaper sources blaming the withdrawal on UK Government interference.¹⁷⁸

Initially, protecting human rights and ensuring the good reputation of the market appeared to have intersected; yet, the two sets of aims were soon to diverge.

When human rights and market regulation cease to intersect: AIM-traded CAMEC, provenance and the laundering of its Congolese assets

It was some six years after the UN Panel had begun its examination of illegal resource exploitation in the DRC and Oryx had failed to achieve admission to trade on AIM (both in the year 2000) that another UN body, this time the Group of Experts on the DRC monitoring the arms embargo and sanctions, reported 'the consequences of insufficient due diligence procedures' in referring to CAMEC's Congolese concessions (see above, p. 1). The criticism by the Experts has resonance beyond the DRC's over-burdened Mining Cadastre, and could simultaneously be read as an indictment of the AIM regulatory regime which had allowed

CAMEC to trade and flourish. Any intersection between the stock market and concern over the human rights implications of owning DRC mining assets had split apart.

CAMEC had succeeded in bringing its Congolese assets to market where Oryx had failed. In other terms, whereas the market and international opinion had been in step on the unacceptability of Oryx gaining legitimacy for its assets on a credible stock market, in the case of CAMEC they were now out of step as the AIM-traded company prospered on the back of its acquisition of Rautenbach's businesses in the DRC.

The way in which this inconsistent and – from a human rights perspective – unjustified treatment of two companies with equally tainted assets arose is bound up, at least in part, in differences in the due diligence required between the admission and ongoing rules.

The rule deficit: due diligence at admission versus ongoing regulation

Accounting for the exclusion of Oryx whilst CAMEC was allowed to prosper

CAMEC was admitted to AIM in October 2002.¹⁷⁹ At the time of admission, the company had not purchased its controversial DRC assets: its principal project activity centred upon the mining and processing of tantalum, principally in Namibia.¹⁸⁰ Nor had CAMEC at that time acquired platinum assets in partnership with the Zimbabwean state-owned mining company (later to be listed under US sanctions).

CAMEC's Congolese assets escaped scrutiny because due diligence measures applied at admission are not repeated once a company has joined AIM. One consequence of this – analogous to the idea of a 'cash shell' (a company, already admitted to an exchange, with cash assets waiting to buy a business) – is that it is better to secure admission *before* acquiring controversial companies or assets. Moreover, it appears that in CAMEC's case questions remain (Box 7) over the basis upon which the class tests – used to determine the requirement for further disclosure – were carried out.

Put succinctly, while the contrast between Oryx's prohibition at admission and CAMEC's enjoyment of the advantages conferred by AIM can be *explained* by the relative absence of due diligence under ongoing rules, it is difficult to *justify* how assets with the essentially the same tainted provenance can be deemed acceptable or unacceptable on the basis of when they were acquired.

Due diligence at admission

All applicants to AIM – and this would have included Oryx – are required to provide pre-admission information, much of a basic factual nature.¹⁸¹ Three provisions in the pre-admission information are potentially useful when it comes to due diligence on individuals associated with the applicant. The first requires the full names and functions of its directors and proposed directors;¹⁸² the second requires the full name and percentage holding of any significant shareholder before and after admission;¹⁸³ and the third requires the names of any persons who have received or who are contracted to receive fees, securities or benefits from the applicant.¹⁸⁴

Moreover, non-quoted applicants (those not already listed on certain designated exchanges elsewhere) are required to submit an admission document,¹⁸⁵ although the content of this is diluted down from the fuller-bodied EU Prospectus Directive. Again, certain information which is required under AIM admission rules has a direct bearing on due diligence, including information on: the probity and reputation of directors; major shareholders; risk factors; material contracts; and other company holdings.

The opaque basis upon which Oryx's admission was blocked

It cannot be said with any certainty that these admission and pre-admission disclosures lay behind Oryx's failed listing: the admission failed on the basis that AIM rules require the appointment and retention of a nominated adviser. The withdrawal of Oryx's adviser therefore ended the company's ambitions to join AIM, and it can only be assumed that pressure upon the nomad to withdraw left Oryx a poisoned chalice that no other nomad would touch.

The lack of transparency in the way in which Oryx was blocked was presumably calculated to make it difficult to ascertain precisely when and by how much matters of reputation, integrity and probity can be overlooked before the Exchange intervenes behind the scenes. The recent disciplinary action against CAMEC's nomad, Seymour Pierce, in the blocked admission of an unnamed company ('Case 2') sheds further light on how the Exchange's opaque policing of reputational issues operates behind or in advance of the formal application of the rules.

'Case 2' and a rare glimpse behind the veil

In 'Case 2', where Seymour Pierce breached nomad rules on pre-admission due diligence in relation to the applicant company and to the reputation and integrity of a key founding and continuing shareholder and director, the Exchange reveals that it:¹⁸⁶

gave serious consideration to exercising its powers under AIM Rule 9 to refuse the New Applicant's admission to AIM. The exercise of this power is extremely rare and consideration of its use only arises in circumstances where an applicant's admission, in the view of the Exchange, is likely to affect the orderly operation or integrity and reputation of AIM. In the event, Seymour Pierce did not proceed with the New Applicant's Schedule One submission.

It cannot be stated with complete certainty that the Exchange informed Oryx's nomad that it was considering using Rule 9. What is revealed in Case 2, however, is that Seymour Pierce persisted in supporting the admission despite two interventions by the Exchange requiring further investigation of the key director and despite a series of three due diligence reports, the last drawing on intelligence sources, that continued to raise serious concerns.

The impetus for bringing clients to market: nomad fees for advice on admission versus ongoing fees

In the absence of a public explanation, it cannot be known why Seymour Pierce persisted to push for the admission of the company in question. However, in general terms, it should be noted that the fee structure is front-loaded in respect of the earnings for nomads (who also often act as a company's broker) when successfully bringing a company to market as compared to ongoing fees:¹⁸⁷

The typical cost for appointing a nomad to advise on admission to AIM is... between 3 and 5 percent of the value of the issue, depending on the nature of the obligations assumed by the NOMAD.... Additionally a corporate finance fee is generally charged. This may be in the region of £75,000 to £300,000. Approximately £25,000 to £35,000 is charged on an annual basis for a NOMAD's continued services. [Based on 45 AIM admissions since 2004]

Updated figures for 2010 show the same range of corporate finance fees, but increased annual fees for nomad services of £40,000 to £100,000.¹⁸⁸

However, particularly in the case where the same firm acts as nomad and broker, the weighting of admission versus ongoing fees may encourage nomads to push for admission. The imbalance may also give relatively less incentive for advising existing clients under ongoing rules as opposed to seeking out potential new client companies.

The fee structure may also discourage clients from switching nomads, even if they have concerns about the advice they are being given, because AIM rules require that a change of nomad trigger further due diligence, which, although typically less extensive than at admission, will incur attendant costs.

Furthermore, companies only have 30 days to appoint a new nomad or else their listing is cancelled. Commentators have described the nomad system as a ‘closed shop’; given the barriers presented in changing nomads, the advice is to ‘think carefully’ before appointing one in the first place.¹⁸⁹ However, it is not difficult to perceive the dilemma that this intransigent system presents to a company when its nomad is publicly censured, even if this is in respect of another client; it may also explain the Exchange’s reluctance to publicly discipline nomads, given the repercussions for other clients trapped in an inflexible system of the Exchange’s own devising.

Seymour Pierce, at the time AD11 was issued, was AIM’s biggest nomad in terms of the number of client companies (totalling 74).¹⁹⁰ As of the end of May 2012, AIM records Seymour Pierce as advising 66 companies.¹⁹¹

The counter-factual: what if CAMEC had acquired its Congolese assets prior to admission?

Even in the absence of full disclosure by the Exchange, it is difficult to comprehend how the reputational issues surrounding Oryx and the Case 2 company could have been any graver than the concerns surrounding Rautenbach and the companies he controlled.

When CAMEC purchased Boss Mining and IMF Ltd from Rautenbach in 2006, he was already a notorious figure facing a South African arrest warrant on charges of fraud, theft and corruption; identified in a database consulted by financial institutions as a ‘Politically Exposed Person’ (PEP), representing a high risk under regulations to combat money laundering;¹⁹² and named, alongside the companies he controlled, by the UN Panel examining the illegal exploitation of natural resources in DRC, which alleged secret profit sharing with the Zimbabwean regime.¹⁹³ Later, of course, he and his companies were placed on US and EU sanctions lists and in September 2009, following a plea bargain agreement, he was duly convicted in South Africa on 326 counts of fraud as a representative of his company, SA Botswana Hauliers Ltd.¹⁹⁴ The following month saw commencement of the high-profile trial, on counts of corruption and defeating the ends of justice, of Jacob Selebi, suspended National Commissioner of the South African Police Service and former head of Interpol.¹⁹⁵ Rautenbach had been named in the Selebi charge sheet: he was alleged to have made payments to Selebi to have the arrest warrant against him cancelled.¹⁹⁶ Following the plea bargain agreement, Rautenbach appeared as a key prosecution witness in Selebi’s trial.

Under AIM’s ‘exchange-regulated’ status, the requirement to provide certain directive-compliant information – the background of key managers, conflicts of interest, the unqualified scrutiny of major shareholders, the display of key documents – has been discarded or diluted and thereby weakens due diligence. Had Boss Mining and other companies been part of CAMEC at the time of its admission, these omissions increase the likelihood that the extent of Rautenbach’s involvement in the company would not have been revealed.

The probity and reputation of managers and directors

The AIM company rules limit disclosure to the names of directors and the companies in which they have been (over the previous five years) or remain partners or directors.¹⁹⁷ Rautenbach has never been a director in CAMEC. There is a ‘carve-out’ (exemption) under AIM admissions rules that removes senior managers from scrutiny. The fact that Rautenbach was and remained a key manager and influential figure in the companies acquired by CAMEC would not therefore have triggered due diligence under AIM admission rules. By way of contrast, the regulations implementing the Prospectus Directive require an applicant to provide the names and functions

– including their principal activities outside of the company – of *inter alia*, key senior managers;¹⁹⁸ to list the companies in which such persons have previously been a member of the administrative, management or supervisory bodies; and to provide details of their remuneration.¹⁹⁹ AIM rules require none of these. Under the AIM admission rules, information on unspent convictions (although these cover all indictable offences, not just fraud), bankruptcies, liquidations, receiverships and public criticism/sanction by regulatory or statutory bodies (including disqualification from acting as a director) is again sought only in relation to directors or proposed directors and not senior managers (unlike the best practice in implementing the Prospectus Directive, which extends disclosure to the latter).²⁰⁰

Nomad Rules and the investigation of managers

There appears to be some ambiguity between the AIM rules for companies and the rules for nomads on the question of the background of managers. Whilst, as noted, the company rules waive requirements for information on managers, the nomad rules suggest that investigations can be extended to such personnel (Box 11). More clarity is needed on whether the investigation of key managers is limited to those named in the admission document: if so, given that under the AIM rules a company need not name managers, an applicant may omit reference to controversial figures and thereby avoid the nomad check of their records. The non-mandatory nature of due diligence in respect of key managers raises the distinct possibility that Rautenbach's role in CAMEC's subsidiary companies may have remained unexamined.

Due diligence under the Nomad Rules

Box 11

As part of its responsibility for assessing the appropriateness of an applicant, the nomad should 'investigate and consider the suitability of each director and proposed director'.²⁰¹ Official advice suggests that the nomad should:²⁰²

- issue and review directors' questionnaires, review directors' CVs and test information
- test the information revealed by directors' questionnaires and CVs, where appropriate, obtaining third party checks (includes 'appropriate investigations' for non UK-based directors)
- extend these investigations and considerations as appropriate to key managers and consultants who are discussed in the admission document
- analyse any issues arising from these investigations, in particular as to how they could affect the applicant's appropriateness to be admitted to AIM and be publicly traded
- consider each director's suitability and experience
- consider, with the directors of an applicant, the adoption of appropriate corporate governance measures.

Control over a company and substantial shareholders

The AIM rules require that an applicant state whether it is 'directly or indirectly owned or controlled and by whom and describe the nature of such control and describe the measures in place to ensure that such control is not abused'.²⁰³ This is a potentially powerful measure to discover whether individuals or entities are seeking to use an AIM listed company as a vehicle to gain respectability while they covertly continue to exert control over the business. Again, it is recognised that providing such information on underlying ownership control depends upon the extent to which it is known by the applicant. However, official advice expects the nomad to consider extending the kind of investigations of directors that it undertakes – through questionnaires, review of CVs and the testing of information (including third party checks at home and overseas) – to 'substantial shareholders at admission as appropriate, especially where there is uncertainty as to their identity or where they are not established institutions, in particular to enquire about the existence of persons exerting control over the applicant'.²⁰⁴

A substantial shareholder under the AIM rules is defined as ‘any person who holds any legal or beneficial interest directly or indirectly in 10% or more of any class of AIM security (excluding treasury shares) or 10% or more of the voting rights (excluding treasury shares) of an AIM company including for the purpose of rule 13 such holding in any subsidiary, sister or parent undertaking...’. Had CAMEC concluded the IMF/Boss Mining acquisition prior to admission, it would appear that Rautenbach or Rautenbach-controlled entities (i.e. IMF Ltd.) would have constituted not only significant but substantial shareholders (see above, p. 13). However, whether or not a nomad would have viewed Rautenbach’s influence as a controlling one – to the extent that due diligence on Rautenbach would have been triggered – is a moot point. It should be recalled that Seymour Pierce has recently ‘breached Nomad Rules 14, 16 and 18 (AR2 of Schedule Three in particular), as it did not adequately assess the appropriateness of the New Applicant and its securities for AIM, including an investigation and consideration of the suitability of each director, with due skill and care’. This rule breach occurred in a context where investigations of directors are meant to be mandatory, whilst checks on substantial shareholders are advisory.

Conflicts of interest and other arrangements

Had CAMEC owned Boss Mining at admission, with Rautenbach in place as manager (as happened post-acquisition), the irregular management practices highlighted by auditors in Rautenbach entities, including Sabot and Boss Mining, to cover the latter’s relationship with its CCC filial, would not necessarily have been captured by AIM admission rules. There is a carve-out from the section of the regulations implementing the Prospectus Directive covering administrative, management and supervisory bodies and senior management. Therefore, no information is explicitly sought under the AIM rules on potential conflicts of interests between any duties of such persons to the issuer on the one hand and their private interests and/or other duties on the other; the nature of any family relationship between any of these persons; or details of any arrangement or understanding with major shareholders, customers, suppliers or others, after which an individual was selected for their post.²⁰⁵ AIM rules only require that directors and members of a director’s family reveal details of related financial products whose value in whole or in part is determined directly or indirectly by reference to the price of AIM securities.²⁰⁶ As in the pre-admission information, applicants are required to provide the names of any persons who have received or who are contracted to receive fees, securities or benefits from the applicant.²⁰⁷

The placing of a market value on human rights

Market repercussions and the existence of human rights

Excluding Oryx and its Congolese concessions from AIM, at a time when the international spotlight was on human rights and corporate conduct in the DRC, protected AIM’s reputation without having a market impact; whereas subjecting parallel acquisitions by CAMEC, already trading on AIM, to similar scrutiny would have been fraught with market repercussions. The focus of international attention has now shifted to other conflicts and regions, yet legacy issues still abound, even as the same assets are now owned by Main Market-listed ENRC.

The fact that underlying human rights standards – as formulated in the International Bill of Rights and other instruments – have remained unchanged between Oryx’s blocked admission and CAMEC’s unhindered period of trading on AIM, points to factors on the regulatory side that have diminished respect for human rights. Another way of putting this is to suggest that consistency of respect for human rights, in the context of AIM regulation, is defined not in relation to largely immutable human rights standards but in relation to prevailing market logic.

Whether human rights are recognised or dissolved depends not upon their intrinsic definition in human rights instruments, but upon whether their violation impacts upon market value. This is unsurprising, as securities law and stock market regulations are designed to protect shareholder interests and an orderly market in shares. If human rights violations do not impact upon market

value and share price, then they are of little or no concern to the regulator and there is no common ground between human rights and corporate law.

The formulation and the implementation of AIM rules combine to modulate market impact: an inertia attaches itself to a company that has already been brought to market, and due diligence becomes ossified, even when the company's asset-base or control alters to encompass resources or relationships derived from conflict or exploitation. The regulations are formulated so that due diligence exercised at the admission stage, once self-certified and approved by the nomad, is seldom repeated. Whilst excluding certain dubious companies at the outset is pre-emptive, nipping the disreputable in the bud, once a company is admitted and trading on a market, exposing such legacies can only endanger an orderly market in a company's shares.

It is perhaps not surprising, then, that alongside the gaps and silences on due diligence in the ongoing rules, those areas of potential non-compliance that *are* captured – for example, on price-sensitive information, information of import, market reputation – are not necessarily rigorously implemented or enforced, at least not in a sufficiently transparent and accountable manner to satisfy the wider public interest. Moreover, there have been instances when nomads have failed to apply class tests to transactions that would otherwise have triggered disclosure or a new admission document with its attendant due diligence requirements.

If implementation leaves unanswered questions *vis-à-vis* compliance with AIM rules designed to protect shareholder interests – indeed, if implementation is 'not enforcement-led' and confidentiality and non-disclosure are viewed as protecting the market – then what hope is there for the use of corporate regulation as a mechanism for respecting human rights? The CAMEC case must call into question certain aspirational aspects of the UN Guiding Principles underpinned by the corporate law project, or at least expose the gulf that exists between the regulation of securities and human rights. To paraphrase and reverse the original formulation used in the corporate law project (postulating a common ground between human rights impacts and company regulation (see above, p. 32)): simply stated, where the impact on human rights does *not* harm a company's short- or long-term interests, it is not perceived at all and goes unreported as companies and their directors and officers face little or no risk of non-compliance.

Reputation and ruling elites: influence as a market asset

The accepted notion, expressed within the corporate law project, is not only that reputation is tied to risk, but also that ill-repute equates to heightened risk. In fact, a corollary exists whereby institutional investors come to regard the reputation of influential controlling individuals within a company, who operate with impunity in conjunction with ruling elites, as an asset to be valued. Alliances that are condemned in other contexts are perceived as a virtue to the market. Such individuals can secure valuable assets for a mining company and hedge against contract renegotiation or even expropriation. What incentive is there for a regulator to expose such relationships when they support market value?

Three examples of comments by analysts relating to certain of CAMEC's DRC transactions are reproduced here.

Ernst & Young, in a quarterly appraisal of their index of the top twenty mining companies on AIM by market value, stated in respect of CAMEC's announced joint venture with Prairie International:²⁰⁸

The venture is significant for CAMEC, not least because it signals an end to the widely-reported differences of opinion between CAMEC and Prairie's major shareholder, Dan Gertler, that have resulted in the curtailment of cobalt output from the Luita processing facility.... Gertler's influence in the region may provide CAMEC with some much needed diversification away from the threat of licence disputes.

Credit Suisse, in equity research on CAMEC published in March 2008, states:²⁰⁹

By joining forces with Dan Gertler, the group now have a strong political voice in DR Congo and all licence issues have now been fully ratified by the DR Congo Government and Gécamines. We welcome the new partnership and think it is a win/win for Camec shareholders.

In its circular to shareholders, issued in May 2008 when CAMEC was seeking shareholder approval for its proposed acquisition of shares in DRC Resources Holdings Limited, the company states:²¹⁰

In particular, the Acquisition will strengthen CAMEC's relationship with Dan Gertler and will enable CAMEC and its Shareholders to benefit from Mr Gertler's many years of experience of investing in the DRC.

...

Mr Gertler has built significant business interests in the DRC. Mr Gertler was named honorary consul of the DRC in Israel in April 2003.

Neither CAMEC, nor Ernst and Young, nor Credit Suisse makes reference to allegations concerning Gertler of 'improper dealings with the Government of the DRC', referred to in the admission document for Nikanor, another formerly AIM-traded company in which Gertler was a founding shareholder; or to allegations made by the UN Panel that Gertler exchanged conflict diamonds for money, weapons and military training.

The Financial Services Bill: the wider context for the regulation of AIM

The Financial Services Bill that is currently under consideration by the UK parliament will reform, *inter alia*, the Financial Services and Markets Act (FSMA).²¹¹ Under the Bill, the Financial Conduct Authority (FCA) will be responsible for protecting investors, regulating markets and supervising more than 25,000 brokers, investment managers and independent advisers.

The way the Exchange has sought to water-down tougher regulation proposed in the Financial Services Bill, even in relation to the Main Market, betrays a culture interested in prioritising safeguards for companies and advisers over bringing wrongdoers to account.²¹² This stance bodes even less well for AIM as the Exchange's 'deregulated' junior market.

The Exchange successfully pushed for the dropping of proposals whereby the FCA's power to require a skilled person report – studies that look further into matters of concern – would be extended beyond regulated finance firms to include the issuers of listed securities (i.e. listed companies);²¹³ it opposed the FCA's new power on the early disclosure of warning notices, arguing that such a move 'could cause significant market uncertainty, threaten market stability, and the reputation and viability of issuers and investment firms concerned';²¹⁴ and has sought to resist measures directed at Recognised Investment Exchanges (RIEs – including the London Stock Exchange) simplifying the way the FCA can give directions to the RIEs, impose financial penalties and publicly censure them, and make the RIEs subject to skilled person reports.²¹⁵

AIM, for the most part, does not fall directly under the FSMA; the Exchange draws up the rules for AIM and is responsible for the market's regulation. However, the Exchange, as an RIE, is itself regulated under the Act by the Financial Services Authority (to be replaced by the FCA).

Unless the Exchange can demonstrate that it can reform the functioning of AIM, to move away from a regulatory regime and culture where conflict-derived assets can be laundered with impunity, then the FCA must use new powers to regulate the regulator.

PART (III) – RAID’S SUBMISSION ON CAMEC: OBSERVATIONS AND RECOMMENDATIONS FOR THE REGULATION OF AIM

Concluding observations

On the regulation of AIM

The sequence of critique is clear.

- AIM rules reduce scrutiny after admission, yet the admission rules themselves also fail on aspects of due diligence and, as formulated, would not necessarily have captured reputational issues and misconduct centred on Rautenbach
- certain aspects of CAMEC’s and its nomad’s conduct are captured by existing ongoing rules, but unanswered questions remain over their implementation at the time. This leaves open the question as to whether AIM regulation intends to take disciplinary action – contingent, of course, on any determination of non-compliance – in respect of any matters documented in RAID’s CAMEC submission.

As noted, the AIM admission rules, including those on due diligence, did not apply to CAMEC’s acquisitions because of the company’s existing AIM-traded status. Yet RAID’s submission demonstrates that many ongoing rules do appear to be engaged by CAMEC’s transactions and subsequent conduct. In the absence of public consideration by AIM regulation, there remain unanswered questions over the implementation of these rules. Arguing that the regulator’s hands were tied in the case of CAMEC because of its trading status highlights the inadequacy of due diligence under the ongoing rules. On the other hand, defending the ongoing rules as sufficiently robust must lead to the criticism that they have, to date, been inadequately enforced in that key questions on compliance remain unanswered.

Ongoing due diligence is minimised, both in terms of its formulation and implementation, because, once a company is admitted to market, the driving logic of maintaining an orderly market in its shares is to modulate reputational risks. However, the minimal approach to ongoing due diligence is not unproblematic because protecting the wider reputation of the market and protecting the shareholder interests of a particular company do not always coincide.

Having survived the associated risks – including licence withdrawal – CAMEC and its major shareholders have undoubtedly reaped benefits and rewards in bringing former Rautenbach-owned and controlled concessions of dubious provenance to the London market. However, AIM itself has undoubtedly suffered damage to its reputation because of concerns over insufficient due diligence, and is yet to deal publicly with questions of compliance.

Moreover, the glaring inconsistency whereby conflict-derived assets are at one time blocked from admission to AIM, when assets with a parallel provenance later benefit from an existing company’s trading status, surely requires justification. It is relatively easy to nip companies of ill repute in the bud at admission and prevent them from trading as there are no market repercussions (notwithstanding the question as to whether the door is shut only when admission happens to coincide with misconduct falling under the spotlight of public opinion). Yet lending

market status to concessions once at the heart of a resource war condemned as illicit by successive UN bodies can be construed as condoning asset laundering.

In general, if blame for non-compliance is laid at the door of the nomad as gatekeeper, the question arises as to how much faith ought to be placed in commercial hands with vested interests in earning fees, the bulk of which are front-loaded at the time of admission. The recourse left to AIM Regulation is disciplinary action, having transferred immediate, day-to-day matters of compliance into the hands of the nomads.

Disciplinary action is mainly retrospective, generally kicking in long after a specific instance of non-compliance has passed. Moreover, there must be a threshold above which any findings of serious and repeated non-compliance bring the whole nomad-led regulatory system into question. The stakes may be too high for further and repeated public censure of nomads.

In the CAMEC case, the question arises as to why the consent order agreed with Seymour Pierce in AD11 puts in place arrangements that have no precedent in other disciplinary actions: on future-focused non-compliance, a suspended fine and censure based on ‘illustrative’ cases. This question of unusual treatment is a particularly pertinent one, given that AD11, with its future-orientated focus, was published at a time when RAID’s submission on CAMEC had already been filed and must, surely, have been under active consideration by the Exchange as it agreed the consent order.

In cases where there is considerable controversy or a public interest, RAID would resist any notion – as recently opined by the Exchange – that disciplinary action is not ‘enforcement-led’. Without enforcement there is no accountability and little incentive to others to stamp out malpractice and non-compliance.

On the UN Guiding Principles on Business and Human Rights, corporate law and human rights

The Guiding Principles, under the State duty to protect human rights, stipulate that ‘other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights’. This principle is informed by the Special Representative’s corporate law project. The project identifies the intersection of corporate law and human rights whereby the failure to respect human rights affects a company’s market value or damages its interests, thereby risking non-compliance with regulatory measures on matters such as due diligence, corporate governance and the disclosure of risk.

Whilst this formulation correctly identifies the link between market value and human rights, it fails to express the all-too-prevalent flip-side: that market impetus is dominant and when a company’s value or share price is unaffected, even where underlying human rights issues exist, then human rights fail to register in a regulatory regime concerned with orderly markets.

Current market regulations often neither constrain nor enable respect for human rights; rather, human rights must first impact upon the market before the regulations are called into play. This can lead to an anomalous situation whereby relationships between ruling elites and corporate figures/entities in zones of conflict, post-conflict and weak governance – relationships condemned by UN bodies concerned with combating exploitation and sanctions violations and with protecting human rights – are the same relationships welcomed by industry analysts, because they provide political capital and risk insurance, thereby enhancing market value.

Recommended action

➤ Compliance with the AIM rules

RAID calls on:

1. The London Stock Exchange to determine compliance or non-compliance with the AIM rules engaged *vis-à-vis* the unanswered questions concerning the conduct of CAMEC and Seymour Pierce in the RAID submission on CAMEC of May 2011.
2. The Exchange to offer re-assurance that public censure and, if appropriate, the imposition of fines cannot be precluded should any breaches be found in the CAMEC case; and, given the public interest, to communicate the outcome of any investigation and any determination of compliance or non-compliance.
3. AIM Regulation to clarify the nature and timing of the consent order between the Exchange and Seymour Pierce concerning future-focused arrangements and illustrative cases under AD11, in light of the fact that the Exchange was already in receipt of RAID's submission on CAMEC.
4. The FSA to delay its approval of the sale of Seymour Pierce Limited until it has had time to fully consider whether any outstanding compliance issues relating to the company's role as CAMEC's nomad have been satisfactorily dealt with by the Exchange.

➤ Compliance with sanctions

5. RAID calls on the Asset Freezing Unit within HM Treasury to answer the questions on sanctions put by RAID concerning, *inter alia*, the transaction by CAMEC to acquire Zimbabwean platinum assets, the licensing of the sale/purchase of shares belonging to sanctioned individuals and entities in ENRC's acquisition of CAMEC, and the tracking of the proceeds from the sale, including the release of any funds to sanctioned individuals or entities.

➤ Regulation of AIM

RAID calls on the London Stock Exchange to:

6. Close the gap between due diligence at admission and ongoing due diligence.

Whilst it is unrealistic to require due diligence on every transaction, whatever its magnitude, it is appropriate that where transactions of a certain magnitude – perhaps at the substantial level in the class tests – concern assets associated with zones of conflict or weak governance, due diligence must be made mandatory.

7. Ensure that the class tests are effectively applied. Rather than leaving the decision on compliance with the class tests to nomads, capacity should be developed within AIM Regulation to verify the calculations relating to transactions, at the very least.

There have been instances when these tests have not been rigorously applied, to the extent that even transactions of the magnitude of reverse takeovers have not been notified at the time, with the attendant failure to produce a new admission document underpinned by due diligence.

8. Revise the class tests to increase transparency. At a minimum, the absence of reliable financial information needs to be made notifiable without delay; substitute

tests need to be specified and disclosed in such a case; and the results of all class tests and substitute tests should be made public.

The current arrangement, whereby the Exchange may substitute tests (relevant indicators of size, including industry-specific tests) when the class tests produce anomalous results, needs to be revised if transactions such as the IMF/Boss Mining or Sabot acquisition by CAMEC are failing to trigger disclosure, shareholder approval, a new admission document or further due diligence. Moreover, although only the Exchange can decide to disregard one or more of the class tests, or substitute another test, presumably the system can work only when the nomad, responsible for advising clients on the class tests, communicates full information to the Exchange.

- 9.** Make communication to the Exchange of all class tests, as calculated, mandatory, with public censure and a fine as the automatic penalty for failure to properly apply the class tests or for failing to communicate and seek the advice of the Exchange on anomalous results.

- 10.** Consider the reinstatement of the carve-outs from the EU Prospectus Directive on the investigation of key managers.

At a minimum, such investigation must be mandatory when either applicants or significant transactions concern assets associated with zones of conflict or weak governance.

- 11.** Require immediate notification when directors, key managers or other key personnel are designated on sanctions lists.

- 12.** Introduce rules to redistribute the balance between initial and ongoing fees, to encourage nomads to bring *bona fide* companies to market and to ensure that proper attention is given to ongoing compliance: for example, a rule should be introduced to prevent the same company from being both nomad and broker at admission, so that the gatekeeper function is ring-fenced from the drive to earn commission from the capital raised.

There is evidence to show that nomads are pushing to list unsuitable applicants, despite concerns raised in repeated due diligence investigations. Undoubtedly the front-loaded fees that are to be earned at admission contribute to this impetus.

- 13.** Make all breaches by nomads public, and name the adviser concerned.

In relation to accountability and market integrity and reputation, the wrong message is being sent by suggesting that disciplinary action is not 'enforcement-led'. This is particularly the case when disciplinary action relates to the conduct of nomads: given the trust placed in them to ensure the compliance of their clients, it is of the utmost importance that their own conduct is of the highest standard. One of the regulatory principles in the Financial Services Bill refers to the desirability of publishing information on authorized persons.

- 14.** End the recently-introduced practice of restricting the public censure of nomads to illustrative cases.

Such a practice leaves questions in the minds of other client companies as to the extent of a nomad's non-compliance and its level of competence, making it hard to reach a decision whether to change nomad.

- 15.** Review the 30-day rule and the expense associated with changing nomads who breach the rules.

The stricture and costs discourage companies from getting rid of a nomad even in circumstances where its adviser has been disciplined for rule breaches or has otherwise offered wrong advice on compliance.

- 16.** Draw up rules and transparent procedures on handling complaints, to support the standing given by the Exchange to third parties and the public in submitting complaints on company and nomad conduct and compliance with the AIM rules.

At present, blanket confidentiality cloaks the whole process and excludes the complainant, even to the extent that AIM regulation refuses to seek further information or clarification about the complaint. Commercial confidentiality should not be used as a pretext to restrict the regulator from disclosing information about investigations. This would be in line with another of the regulatory principles in the Financial Services Bill (FSM Act 2000 new section 3B) which states that a regulator should exercise its functions transparently. But in order for this principle to be meaningful, a change to the present duty of regulatory confidentiality would be required.

- 17.** Extend the degree of mandatory due diligence on material assets in the AIM Note for Mining, Oil and Gas Companies to cover substantial transactions in conflict or weak governance zones. Such due diligence should include, for example, thorough checks on the validity of titles and licences, the reputation of key managers, business partners and associates, and the rigour of accounting practices.

- 18.** Ensure that due diligence on such assets explores and discloses criticisms made by competent bodies about the provenance of assets, to include the impact of exploitative arrangements upon the human rights and security situation; and appoint a competent person, if necessary, in addition to the appropriate legal adviser, to assist the nomad in this regard.

It is apparent that the means by which mineral concessions are obtained in extremis in conflict or weak governance situations often leads to the exploitative transfers of concessions. The exposure of such transfers fuels calls for the renegotiation of contracts and may even lead to the cancellation of licences or the expropriation of assets.

➤ Wider market regulation

RAID calls on the FSA:

- 19.** To use its existing powers under Section 165 of the FSMA to require that the Exchange as an RIE provide the FSA with information on how it has handled RAID's submission on CAMEC in light of concerns raised by the timing and nature of the Disciplinary Notice (AD11) against Seymour Pierce.

The notice fails to address compliance issues relating to the CAMEC case and appears to restrict further public censure and the suspended fine to future acts.

In relation to the Financial Services Bill, RAID recommends:

- 20.** That new powers of the FCA to impose financial penalties or to issue public censures through a warning notice in relation to contraventions of regulatory requirements by RIEs – including the Exchange – be retained in the Bill and not diluted.
- 21.** That new FCA powers to appoint a skilled person to prepare a report on any matter where an RIE is required to provide information be incorporated into the FSMA to

increase scrutiny of the Exchange, for example in the way it handles complaints and enforces disciplinary action.

- 22.** That commercial confidentiality should not be used to restrict disclosure by the FCA and that section 348 of the amended FSMA should be as unrestrictive as possible.
- 23.** That a provision be included requiring disclosure of payments made by oil, gas and mining companies to British and foreign governments.

Such a provision would provide information to investors, help stem corruption, and encourage the accountable use of the revenues from the oil, gas and mining sector.

- 24.** That the Bill be amended to place a duty on the Financial Conduct Authority (FCA), in its role as the UK listing authority, to require all energy (including mining, oil and gas) companies listed on the stock exchange to conduct human rights due diligence to identify, prevent and mitigate adverse impacts of their operations; companies should submit annual human rights impact reports to the Exchange which should also be publicly available.

The UN Guiding Principles (in Principle 7) recognise the heightened risk of gross human rights violations in conflict-affected areas and call upon States to help ensure that business enterprises are not involved in such abuses.

Annexe I. Selected correspondence between RAID and AIM Regulation

1. Letter from AIM Regulation to RAID, 3 August 2011, 2 pp.



10 Paternoster Square
London EC4M 7LS
T +44 (0)20 7797 1000
www.londonstockexchange.com

Patricia Feeney
Rights & Accountability in Development
PO Box 778,
Oxford
OX1 9GU

3 August 2011

Dear Ms Feeney

Complaint relating to the Central African Mining & Exploration Company Plc ("CAMEC") and Seymour Pierce Limited

I am writing in response to your letter to Marcus Stuttard, Head of AIM, dated 3 June 2011. The matters about which you have enquired are regulatory in nature and Mr Stuttard has therefore passed your submission to me to respond.

By the way of background and as you are aware, AIM is a market operated and regulated by the London Stock Exchange (the "Exchange"). AIM Regulation is a dedicated department within the Exchange that conducts the primary market regulation of issuers admitted to AIM. As part of its role AIM Regulation investigates all potential breaches of the AIM Rules for Companies ("AIM Rules"), including the Note for Mining, Oil & Gas Companies, and the AIM Rules for Nominated Advisers ("Nomad Rules") and takes disciplinary action pursuant to the AIM Disciplinary Procedures and Appeals Handbook where appropriate. In certain circumstances, where AIM Regulation does not have jurisdiction over the issues in question, referral may be made to other regulatory bodies, including the FSA, UKLA, the SFO, and the Takeover Panel etc. For the avoidance of doubt, AIM Regulation's remit does not extend to matters beyond the AIM Rules or Nomad Rules.

I thought it would be helpful to explain that the AIM Rules and Nomad Rules focus on two core principles for publicly traded companies: (1) the suitability of a new company to be admitted to a public market (the judgment for which is primarily made by a nomad firm in accordance with our rules), and (2) the provision of adequate information by AIM companies to the market after admission, to ensure that investors and potential investors have all the relevant information they need in order to make investment decisions. AIM has a robust regulatory framework in relation to these core requirements including that the Exchange monitors companies' compliance and approves and regulates nomads and reviews the quality and effectiveness of their work on a regular basis through a variety of means.

The Exchange takes the regulation of AIM very seriously, not only for investor protection reasons but also because it has a direct impact on the reputation of AIM and the wider London Stock Exchange Group. This is in part demonstrated by the numerous disciplinary actions taken by the Exchange for breaches of the AIM Rules and Nomad Rules in the past.

When considering what action to take in the event of any breaches of our rules we take into account a number of different factors, including, but not limited to, market impact, the seriousness of the breaches, whether the behaviour involved a deliberate or reckless contravention of our rules and the size and financial resources of the relevant party. We also consider the effectiveness of any action that has been taken in remedying the misconduct and/or preventing future misconduct.

Turning to the matters raised by your submission, please be assured that we will be giving serious consideration to the points raised by your submission concerning the former AIM company and Seymour Pierce's conduct in relation to it. We appreciate in particular the detailed submission and consideration of the AIM Rules that you have made to us. However, I am sure you will appreciate that we are unable to comment on how our investigations are progressing or on the conclusions we reach unless and until such time as any public disciplinary sanction is imposed. This is because our duty of confidentiality precludes us from doing so. This is to ensure, for example, that we do not prejudice the outcome of any potential investigation. I appreciate this absence of feedback may be disappointing but any breach of the Exchange's requirement for confidentiality could undermine its ability to take effective regulatory action where necessary.

I also note that a number of the matters you have raised, such as the provenance of various concessions which were granted to certain individuals, are in relation to assets now acquired by Eurasian Natural Resources Corporation ("ENRC"), a company currently listed on the Main Market. We also note that you consider that issues raised in your submission may be relevant to other companies, such as Glencore International Plc. As you are no doubt aware companies listed on the Main Market are regulated by the UK Listing Authority, part of the FSA, not the Exchange, and we are unable to look into such matters as they do not fall within our regulatory remit.

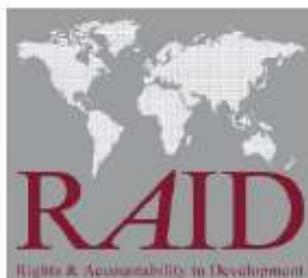
We would like to thank you for bringing your concerns to our attention, in particular in the form of the detailed submission made.

Yours sincerely,



Nilam Statham
Head of AIM Regulation

2. Letter from RAID to AIM Regulation, 29 February 2012, 4 pp.



Rights & Accountability in Development | PO Box 778, Oxford, OX1 9GU | United Kingdom
Tel: (+44) (0)1865 436245 | Fax: (+44) (0)1865 612001 | <http://www.raid-uk.org> | E-mail: tricia.feeney@raid-uk.org

Nilam Statham
Head of AIM Regulation
London Stock Exchange
10 Paternoster Square
London EC4M 7LS

29 February 2012

Dear Ms Statham,

You will recall that we sent a detailed submission to AIM Regulation in June 2011 on the conduct of both the Central African Mining & Exploration Company Plc (CAMEC), formerly listed on AIM, and its nominated adviser, Seymour Pierce Limited.

It has, of course, come to our attention that Seymour Pierce was publicly censured and fined by the Exchange on 21 December 2011. The AIM Disciplinary Notice (AD 11) setting out the sanctions imposed upon Seymour Pierce for breaches of the Nomad Rules touches upon matters raised in our submission and may have implications for how the Exchange intends to act in respect of the conduct that the submission documented.

We appreciate the assurance you gave in your letter to us of 3 August 2011 'that we will be giving serious consideration to the points raised by your submission concerning the former AIM company and Seymour Pierce's conduct in relation to it' and your recognition of 'the detailed submission and consideration of the AIM Rules'.

Whilst we understood the need for the confidentiality of material during any investigation, the matters of confidentiality and due process should not be elided. A request to keep the substance of a case confidential whilst investigations or a disciplinary process are under way safeguards the integrity of the process. However, the confidentiality of material information is a separate issue from denying a complainant any information about due process, *inter alia*, whether an investigation is under way, whether further information or primary sources are required, whether the issuance of a disciplinary notice with apparent import signals an end to disciplinary action. Updates on the status of an investigation, accompanied by the caveat that such updates should be kept confidential until the investigation is concluded, should in no way be precluded by

the requirements of material confidentiality. Moreover, in considering the onus upon a regulator to keep a complainant informed of progress, considerable weight should be given to the standing of the complainant. AIM Regulation has publicly invited third parties to submit information to it and has recognised public complaints as a means of bringing rule breaches to its attention.¹

We are sure that you will understand that, for AIM Regulation to have instigated a process by which it seeks to engage with such parties only to refuse to update them on how the information they submitted is being dealt with or to fail to demonstrate that such information is being acted upon, would, in the eyes of many, constitute a procedural or administrative failure.

We also note your acknowledgement in your letter of 3 August 2011 that AIM Regulation would be unable to comment 'unless and until such time as any public disciplinary sanction is imposed.' The Disciplinary Notice as issued and worded may impinge upon how the material we submitted is acted upon, without the Notice dealing with the substance of the CAMEC case. We believe therefore that the current public sanction constitutes a basis, and places an onus upon AIM Regulation, to enter into a dialogue with us.

We seek clarification and/or reassurances in respect of the following matters:

1. The preclusion of further disciplinary action for past acts or omissions

Paragraph 1(b)(ii) of AD 11 states that:

The remaining £200,000 ("suspended fine") will become payable if in the future an ADC (or AIM Appeals Committee, if applicable) imposes a sanction on Seymour Pierce (or any successor firm) in accordance with the Handbook, that both:

- constitutes a censure and/or removal from the register together with publication of such action; and
- relates to any acts and/or omissions of Seymour Pierce (or any successor firm) which commence within two years of the publication of this Public Censure.'

Moreover, the proceeding clarification refers to 'such future acts and/or omissions'. It is therefore our understanding that the suspended fine relates solely to future acts by Seymour Pierce and cannot therefore be invoked in respect of prior or past acts or omissions by the nomad, including those pertaining to the period during which Seymour Pierce advised CAMEC. Given the future-focused nature of this element of the sanctions, we would seek the reassurance that the Consent Order agreed with Seymour Pierce in no way signals the preclusion of further possible disciplinary action and sanctions, as the Exchange sees fit, in respect of Seymour Pierce's conduct at any time prior to publication of the Disciplinary Notice.

RAID would be extremely concerned if the disciplinary action taken against Seymour Pierce were to be perceived as 'wiping the slate clean' in respect of any past misconduct which is not the subject of the current disciplinary notice.

2. The time period considered by the Exchange in its investigation of Seymour Pierce's conduct

It is apparent from paragraphs 12 – 15 of AD 11 that the Exchange examined Seymour Pierce's conduct as a nominated adviser in a May 2010 'nomad visit' and that, following this nomad visit, it commenced new investigations. The Exchange also clearly states that the sanctions imposed on Seymour Pierce in AD 11 are 'in respect of breaches...which occurred in relation to the period from early 2010 to early 2011'.

¹ 'If you have a complaint relating to an AIM company or a Nomad's compliance with the AIM Rules, please e-mail aiminvestigations@londonstockexchange.com.' <<http://www.londonstockexchange.com/companies-and-advisors/aim/advisors/aim-reg-team/aim-regulation-team.htm>>. See also *Inside AIM*, Issue 4 – September 2011, The investigation process, p.1.

However, the Exchange also refers to the fact that '[p]rior to the 2010 Nomad Visit, the Exchange was also undertaking investigations of various potential breaches of the Nomad Rules'. In light of the fact that AD 11 refers only to two cases of misconduct during the period 2010 to 2011, despite apparent investigations into Seymour Pierce's conduct prior to 2010, can AIM Regulations confirm:

- Whether it examined Seymour Pierce's conduct prior to 2010, including the period during which Seymour Pierce was acting as CAMEC's nomad from October 2002 until December 2009?
- Why the Disciplinary Notice is limited to illustrative cases from 2010 – 2011?

So that we can better understand the likelihood of the Exchange scrutinising the matters we raised in our CAMEC submission at the time the alleged conduct took place, please could you provide dates of the routine programme of nomad visits to Seymour Pierce undertaken by the Exchange from February 2006 to December 2009 (from the acquisition of CAMEC's DRC assets until the company's acquisition by Eurasian Natural Resources Corporation – ENRC)?

3. Scope of the Rules breached

The Exchange notes in AD 11 that '[t]he proper conduct of the nominated adviser in accordance with the Nomad Rules is...fundamental to the proper operation of AIM' (paragraph 7; see also paragraph 49(a)) and that '[t]he breaches of the Nomad Rules are serious in nature' (paragraph 49(b)). The breaches relate to Nomad Rules 16, 17 and 18 (with regard to OR1 and OR2 of Schedule Three) and underlying AIM Rules 10 and 11 in respect of Case 1 and Nomad Rules 14, 16 and 18 (AR2 of Schedule Three in particular) and underlying AIM Rules 2 and 9 in respect of Case 2.

The Exchange states that the cases referred to are demonstrative and illustrative of Seymour Pierce's breaches (paragraph 49(c)). This is an acknowledgement that Seymour Pierce committed further breaches. Notwithstanding whether the purpose of protecting the interests of shareholders and the reputation of AIM is best served by illustrative cases rather than quantifying or specifying the full range of lesser breaches concerning the same set of rules, it is another matter should a nomad have breached either (i) other Nomad Rules or underlying AIM Rules or (ii) if other breaches of an equally serious nature remain publicly unexamined.

You will appreciate that RAID's CAMEC submission referred not only to a parallel set of apparent serious breaches of the Nomad and AIM Rules, which are not referred to in substance in the Disciplinary Notice, but also to breaches of a further set of Nomad and underlying AIM Rules of which the breaches referred to in AD 11 are categorically not illustrative, *inter alia*:

- Rule 12 [notification substantial transactions] and Schedule Three [class tests]
- Rule 12 [notification substantial transactions] and Schedule Four [notifications]
- Rule 14 [reverse takeovers] and Schedule Three [class tests]
- Rule 17 [notification relevant changes to significant shareholders] and Schedule 5 [notifiable information]
- Rule 19 [accounting]
- Nomad Rules, 19 [liaison with the Exchange]
- Nomad Rules, 25 [maintenance of appropriate records]
- Nomad Rules, OR3 of Schedule Three [monitoring trading, price sensitive information]
- Guidance Note for Mining, Oil and Gas Companies, Part Two, Ongoing Obligations, Notifications

In summary, whilst welcoming the action that the Exchange has taken in AD 11 to ensure market safeguards and promote due diligence, the way in which the Disciplinary Notice is framed causes us serious disquiet *vis-à-vis* the investigation of matters in the CAMEC submission: firstly, any implication that the Consent Order and Disciplinary Notice is future-focused and draws a line under Seymour Pierce's past conduct would leave

questions about the quality of its advice to CAMEC unexamined and unanswered; secondly, this concern is reinforced by the fact that the Disciplinary Notice examines issues from early 2010 to early 2011 and refers to visits and investigations carried out by the Exchange over the same period, thereby excluding the possibility that Seymour Pierce's conduct as CAMEC's nomad has in any way informed the Disciplinary Notice; and, thirdly, whilst the illustrative nature of the Disciplinary Notice is acknowledged, this can neither substitute for action in relation to equally serious misconduct nor for misconduct relating to breaches of other underlying AIM Rules not considered in the Disciplinary Notice.

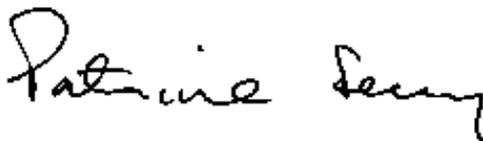
The illustrative cases referred to by the Exchange exhibit a marked degree of closure. In the first case, the company advised by Seymour Pierce entered into administration and cancelled its admission to AIM. In the second case, the company was never admitted to AIM. In contrast, the underlying companies and assets acquired by CAMEC remain in the hands of London-listed companies following the acquisition of CAMEC by ENRC. Given the way in which such assets were originally acquired and managed by CAMEC, as advised by Seymour Pierce, with all the attendant market and reputational risks borne by shareholders and AIM, considerable legacy issues remain and will continue to have material effect.

Case 2 clearly illustrates that nomads are required to undertake robust due diligence to maintain AIM's reputation by ensuring that companies owned, directed or otherwise controlled by individuals lacking integrity or with unsuitable backgrounds are not brought to market. In the CAMEC submission and covering letter, attention was drawn to the parallel case of Oryx Diamonds Ltd., whose AIM admission was ended by the withdrawal of its nomad. Yet these two examples of blocked admissions only serve to sharpen questions about CAMEC's continued inclusion on AIM, given the shareholding, operational control and standing of a sanctioned individual, Billy Rautenbach, in the company. Either there is a lacuna at the heart of the AIM Rules, whereby the due diligence required at admission is not repeated under rules governing continuing compliance; or else – and there are questions to be answered in this regard on CAMEC's acquisitions – the class tests which otherwise might have triggered further disclosure and closer scrutiny proved ineffective. To put it succinctly, it appears anomalous that Oryx and the Case 2 company failed to achieve an AIM-admission when CAMEC succeeded in maintaining its trading status.

We note that the Disciplinary Notice states: 'nor does it [the arrangement to suspend part of the fine imposed on Seymour Pierce] restrict the Exchange from undertaking any disciplinary action against Seymour Pierce should it think fit' It may be that we have misread or misinterpreted AD 11 and that it in no way precludes action on the CAMEC case. I am sure you will understand our concern in this regard and the need for AIM Regulation to engage candidly with us about the status of the CAMEC case and any implications arising from the arrangements agreed in AD 11.

Given the pressing need for clarification of the matters raised, we look forward to hearing from you in due course.

Yours sincerely,



Patricia Feeney
Executive Director

3. Letter from AIM Regulation to RAID, 24 April 2012, 2 pp.



London
Stock Exchange

Patricia Feeney
Rights & Accountability in Development
PO Box 778
Oxford
OX1 9GU

10 Paternoster Square
London EC4M 7LS
T +44 (0)20 7797 1000
www.londonstockexchange.com

24 April 2012

Dear Ms Feeney

Complaint relating to the Central African Mining & Exploration Company Plc ("CAMEC") and Seymour Pierce Limited

We write further to your letter of 29 February 2011.

We would once again like to reassure you that we take all complaints seriously and investigate all potential breaches of our rules. As you are aware, we have a range of disciplinary sanctions available to us, including (but not limited to) warning notices, fines, private or public censures. This range of sanctions enables us to take the appropriate action in each case and, importantly, not merely for the purposes of enforcement but also to enable us to educate and change participants' behaviour so that future breaches may be avoided. We undertake our work for the benefit of all market stakeholders and in the more complex cases work in parallel with other regulatory bodies.

As previously advised, our duty of confidentiality precludes us from discussing with you how we are dealing with your complaint and/or the progress or outcome of an investigation unless it results in a public censure. The duty of confidentiality is integral to our ability to conduct our regulatory responsibilities effectively. Information about the process of any investigation (for example, whether an investigation is being undertaken, discussing what information we have or do not have, the progress of that investigation and the outcome) are all inherently caught by the duty of confidentiality and accordingly, discussing these types of matters with a complainant may not only prejudice the integrity of the investigation but potentially compromises our ability to effectively undertake such investigations and to make our regulatory decisions regarding the most appropriate actions to take.

As regards your more specific points which centre around the nomad public censure published on 21 December 2011 (AIM Notice AD11) and how that might relate to any action we may or may not take in respect of your complaint, for the reasons stated above, we cannot give specific responses over and above what has already been included in the censure. However:

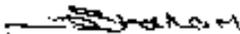
- Our considerations and the basis of our decision to bring a public censure against any nomad is not something we can discuss with market participants beyond that which has been clearly and publicly stated in the public censure;
- We can confirm that the public censure does not restrict our ability to properly investigate your complaint and take appropriate action;
- We are unable to give market participants details of visits we perform on nominated adviser firms as this work is undertaken as part of our regulatory obligations and is confidential between the Exchange and the nominated adviser firm.

Whilst we appreciate your desire to understand how we might be dealing with your complaint, we trust you will appreciate that we are unable to favour one market participant or stakeholder over another and our approach is based on regulatory considerations for the benefit of the market as a whole.

Should you remain unsatisfied as to how we have dealt with your complaint and you wish to file a formal complaint, the Exchange has a formal complaints process which is independent of the AIM Regulation team. If you wish to make a complaint, please set out the details of your complaint in writing to:

Regulatory Complaints
UK Regulation
London Stock Exchange
10 Paternoster Square
London EC4M 7LS

Yours sincerely,



Nilam Statham
Head of AIM Regulation

Annexe 2. RAID Memorandum to Asset Freezing Unit

Letter and Memorandum, 6 July 2011, 12 pp.



Rights & Accountability in Development | PO Box 778, Oxford, OX1 9GU | United Kingdom
Tel: (+44) (0)1865 436245 | Fax: (+44) (0)1865 612001 | <http://www.raid-uk.org> | E-mail: tricia.feeney@raid-uk.org

6 July 2011

Asset Freezing Unit
HM Treasury
1 Horse Guards Road
London, SW1A 2HQ

Re: Memorandum relating to the trading in shares of the Central African Mining and Exploration Company plc (CAMEC) controlled by designated persons

Rights & Accountability in Development (RAID) has recently made a submission to the Alternative Investment Market (AIM) Regulation team on the conduct of both the Central African Mining and Exploration Company plc (CAMEC) and its nominated adviser, Seymour Pierce Limited. The submission includes information on EU sanctions concerning designated individuals and entities, which we believe is pertinent to HM Treasury and the Asset Freezing Unit (AFU).

In May 2010 RAID wrote to the AFU, asking a number of general questions about implementation of sanctions in the UK. Our enquiries received a helpful reply from the AFU on 18 May 2010. We have drawn upon this response in framing further questions which relate to specific individuals and entities, *inter alia*, Muller Conrad ('Billy') Rautenbach, Harvest View Limited, Meryweather Investments Limited, Eurasian Natural Resources Corporation plc (ENRC), and CAMEC. ENRC announced an offer for CAMEC in September 2009, which was successfully concluded later that year. The accompanying memorandum, based on the AIM submission, summarises our concerns over, and seeks clarification on, the application of sanctions to trading in CAMEC shares of possible direct or indirect benefit to designated persons or entities, including Rautenbach, who was added to the list in January 2009.

RAID is a research and advocacy organisation that promotes respect for human rights and responsible conduct by companies abroad. We are a longstanding contributor to the debate on corporate conduct during and after the devastating war in DRC, raising our concerns about the activities of individuals and companies – some of them designated persons or entities – with the UK Government. In 2004, at Chatham House, we launched a comprehensive report on unanswered questions arising from the work of the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, filing cases on companies – including Rautenbach's Ridgepoint Overseas Developments Ltd., John Bredenkamp's Tremalt/KMC and Oryx Natural Resources (Oryx) – with the UK office responsible for implementation of the *OECD Guidelines for Multinational Enterprises* (which was then based at the former Department of Trade and Industry). In January 2004, RAID raised these cases with Patricia Hewitt, the Minister of Trade and Industry; Chris Mullin, the Minister for Africa at the Foreign & Commonwealth Office; and Hilary Benn, the Secretary of State for International Development. RAID subsequently met with the Serious Fraud Office.

...continues to consider that the Government of Zimbabwe is still engaging in serious violations of human rights. Therefore, for as long as the violations occur, the Council deems it necessary to maintain restrictive measures against the Government of Zimbabwe and those who bear prime responsibility for such violations....The restrictive measures provided for by Common Position 2004/161/CFSP include, inter alia,...the freezing of funds, financial assets and economic resources of members of the Government of Zimbabwe and of any natural or legal persons, entities or bodies associated with them. [*Council Regulation (EC) No 314/2004 of 19 February 2004, concerning certain restrictive measures in respect of Zimbabwe*]

We also note, in respect to any request for derogation from the freezing of funds and economic resources which may have been made, the timing of the settlement reached by Rautenbach with the South African authorities concerning fraud charges. The announcement of ENRC's offer for CAMEC, to include the purchase of Rautenbach-controlled holdings in CAMEC, exactly coincided with Rautenbach's return to South Africa on 18 September 2009 and his appearance on the same day before the Specialised Commercial Crimes Court. According to the National Prosecuting Authority, Rautenbach pleaded guilty to 326 charges of fraud as a representative of his company, SA Botswana Hauliers Ltd. A media release on behalf of Rautenbach confirmed that he agreed to pay '[t]he sum of R40 million [which] constituted amounts payable directly to the state, to the South African Revenue Services and an amount payable directly to the Criminal Asset Recovery Account of the NPA.'¹

We would therefore be interested to hear the AFU's views on these matters in its response to the questions raised.

Yours sincerely,

Patricia Feeney
Executive Director

encl. Memorandum to HM Treasury, Asset Freezing Unit, 06 July 2011

cc. Lucy Leroy, Head of UK Primary Market Regulation, London Stock Exchange

¹ Madelain Roscher, 'Plea Bargain Agreement Between Npa And Billy Rautenbach's Company, SA Botswana Hauliers Finalised', *PR Worx*, Press Release on behalf of Billy Rautenbach, 22 September 2009, available at: <<http://www.prlog.org/10350092-plea-bargain-agreement-between-npa-and-billy-rautenbachs-company-sa-botswana-hauliers-finalised.html>>.

The offer by Eurasian Natural Resources plc to acquire Central African Mining & Exploration Company plc: trading in direct or indirect holdings to the benefit of designated persons under the UK sanctions regime

Memorandum to HM Treasury, Asset Freezing Unit

06 July 2011

The designation of Rautenbach

In 2002, the Council of the European Union imposed a prohibition on the supply of arms, technical training and equipment for internal repression and a travel ban and freezing of funds for 'the Government of Zimbabwe and persons who bear a wide responsibility for serious violations of human rights and of the freedom of opinion, of association and of peaceful assembly.'¹ The sanctions were subsequently extended and updated and, on 19 January 2009, Muller Conrad (a.k.a. Billy) Rautenbach and his company Ridgepoint Overseas Developments Limited were added to the list.² The date of his designation is given as 27 January 2009.³ The entry for Rautenbach reads:

Businessman with strong ties to the Government of Zimbabwe, including through support to senior regime officials during Zimbabwe's intervention in DRC....

We understand that Council Regulation (EC) No 314/2004 of 19 February 2004, concerning certain restrictive measures in respect of Zimbabwe,⁴ is enforced under UK legislation by The Zimbabwe (Financial Sanctions) Regulations 2009 (SI 2009/847).

In May 2010 RAID wrote to the AFU, asking a number of general questions about implementation of the sanctions regime in the UK.⁵ In accordance with the response received, '[u]nder financial sanctions legislation in effect in the UK, all funds and economic resources belonging to a person subject to the financial restrictions (a 'designated person') are to be frozen.' Moreover, '[a]s a result individuals and entities to whom the legislation applies, e.g. UK nationals and companies incorporated in the UK, are prohibited from making funds and/or economic resources available to a designated person unless authorised by licence by the Treasury.'

The offer by Eurasian Natural Resources for Central African Mining & Exploration Company plc

On 18 September 2009, the UK-incorporated mining company Eurasian Natural Resources plc announced the terms of an offer for Central African Mining & Exploration Company plc (CAMEC).⁶ CAMEC owned

¹ Common Position 2002/145/CFSP, *Official Journal*, L 50, 21.2.2002, p. 1. Common Position 2002/145/CFSP was amended by Common Position 2002/600/CFSP, extending the measures to further persons who bear a wide responsibility for such violations (*Official Journal*, L 195, 24.7.2002, p. 1). Common Position 2002/145/CFSP was further amended and extended by Common Position 2003/115/CFSP and Common Position 2004/161/CFSP (see, respectively, *Official Journal*, L 46, 20.2.2003, p. 30, and *Official Journal*, L 50, 20.2.2004, p. 66). Common Position 2004/161/CFSP has been renewed each year and the restrictive measures it provided for were extended until 20 February 2011. Common Position 2004/161/CFSP was repealed and replaced by Council Decision 2011/101/CFSP of 15 February 2011 concerning restrictive measures against Zimbabwe, *Official Journal*, L42/6, 16.2.2011.

² Addendum to the Common Position, 5304/09 ADD 1 REV 1, Restreint UR, Brussels, 19 January 2009.

³ Commission Regulation (EC) No 77/2009 of 26 January 2009 amending Council Regulation (EC) No 314/2004 concerning certain restrictive measures in respect of Zimbabwe, *Official Journal*, L23/5, 21.1.2009.

⁴ Council Regulation (EC) No 314/2004 of 19 February 2004 concerning certain restrictive measures in respect of Zimbabwe, *Official Journal*, L 55/1, 24.2.2004.

⁵ RAID wrote to the AFU by e-mail on 7 May 2010 and received a reply on 18 May 2010.

⁶ Respectively, ENRC, RNS 1825Z, 'Statement Regarding Press Speculation', 16 September 2009, available at:

<http://www.londonstockexchange.com/exchange/prices-and-news/news/market-news/market-news-detail.html?announcementId=10193918>; ENRC, RNS 3109Z, 'Recommended Cash Offer Eurasian Natural Resources Corporation PLC ("ENRC" or "the Group") for Central African Mining & Exploration Company PLC ("CAMEC")', 18 September 2009,

mining assets in the DRC and a logistics operation, both of which had originally been acquired from Rautenbach-controlled entities. At the time of both the designation of Rautenbach and at the time of CAMEC's acquisition by ENRC, Rautenbach held shares indirectly in CAMEC. Shares fall within the definition of funds and therefore any shares held by a designated person shall be frozen.

The offer price was 20p per share, placing an overall value on CAMEC of £584 million.⁷ The offer document was posted to shareholders on 9 October 2009, setting a closing date for the offer of 9 November 2009.⁸ The threshold for sufficient acceptances was set at not less than 90 per cent of the CAMEC shares to which the offer relates.⁹ ENRC announced the offer as accepted and unconditional in all respects on 10 November 2009.¹⁰

Rautenbach's shareholding in CAMEC via Harvest View

It is pertinent to track how Rautenbach, via certain entities, acquired a shareholding in CAMEC prior to his designation on the sanctions list.

In February 2006, CAMEC acquired International Metal Factors Ltd for US\$80 million – a figure later revised to £69,205,596.¹¹ IMF had a 75% participation interest in Congo Resources Joint Venture (CRJV), the company established to sell, market and distribute the product from three copper cobalt concessions in the Kakanda region of Katanga in DRC.¹² These concessions were Likasi PE467 and PE469 (previously named C21 and C19 respectively) and 50% of the Mukondo concession.¹³ In July of the same year, CAMEC completed its acquisition of CRJV following the purchase of Majestic Metal Trading Ltd (MMT), holder of the remaining 25% of CRJV, for US\$25.8 (£13,792,592) million in cash.¹⁴

In March 2007, CAMEC exercised its option – as part of a 4 August 2006 agreement – to acquire 80% of the shares of BOSS Mining Sprl, the actual holders of the mining rights.¹⁵ According to the company at the time, '[t]he transaction consolidates the Congo Resources Joint Venture marketing agreement already in place and reinforces CAMEC's relationship with Gécamines.'¹⁶ It should be noted that Boss Mining was acquired for a 'nominal' consideration of £31,511: according to CAMEC, 'the consideration paid for the IMF and MMT acquisitions in the previous period represents the purchase price of the concessions.'¹⁷ At the time of acquisition, the remaining 20% of the Boss Mining joint venture was owned by Gécamines.

available at: <<http://www.londonstockexchange.com/exchange/prices-and-news/news/market-news/market-news-detail.html?announcementid=10197319>>.

⁷ *Ibid.*

⁸ ENRC, RNS 5050A, 'Posting of Offer Document', 9 October 2009, available at:

<<http://www.londonstockexchange.com/exchange/prices-and-news/news/market-news/market-news-detail.html?announcementid=10225675>>.

⁹ ENRC, 'Recommended Cash Offer ENRC for CAMEC, section 15.

¹⁰ ENRC, RNS 2560C, 'Offer Declared Unconditional in all Respects', 10 November 2009, available at:

<<http://www.londonstockexchange.com/exchange/prices-and-news/news/market-news/market-news-detail.html?announcementid=10267407>>.

¹¹ The consideration being US\$25 million in cash and the issue of 171,853,471 New Ordinary Shares at 18p per share. See CAMEC, RNS 9173X, 'Central African Mining & Exploration Company Plc ("CAMEC" or "the Company") Acquires Majority Interest in Major Copper Cobalt Joint Venture in the DRC', 3 February 2006, available at: <<http://investors.camec-plc.com/news-item?item=31793495509572>>. The higher figure takes into consideration a 'fair value adjustment in respect of market value of shares at date of agreement' (see CAMEC, *Report and Financial Statements: Year ended 31 March 2006*, p. 58).

¹² 'CAMEC Acquires Majority Interest in Major Copper Cobalt Joint Venture in the DRC'.

¹³ *Ibid.*

¹⁴ CAMEC, RNS 8712G, 'Update on activities in the DRC', 28 July 2006, available at:

<<http://www.bemscott.com/news/static/rna/item.do?newsId=35199404715494>>. See also, CAMEC, 'Proposed acquisition of shares in DRC Resources Holdings Limited', *Circular to shareholders*, 6 May 2008, p. 24.

¹⁵ CAMEC, RNS 0916S, 'Democratic Republic of the Congo Acquisition and Production Update', 1 March 2007, available at:

<<http://investors.camec-plc.com/news-item?item=39859444065073>>. Minutes of a meeting of the Boss Mining board, held on 26 January 2007, show the passing of a resolution to cede the holdings of Shaforid Capital in Boss Mining to CAMEC on 1 March 2007: CAMEC 80% and Gécamines 20%. See Boss Mining Sprl, Resolution no. AGE/01/2007/003, *Procès-Verbal de la Réunion de l'Assemblée Générale Extraordinaire [sic] du 26 Janvier 2007*. On 4 August 2006 agreement, see CAMEC, 'Proposed acquisition of shares in DRC Resources Holdings Limited', p. 29.

¹⁶ 'Democratic Republic of the Congo Acquisition and Production Update.'

¹⁷ CAMEC, 'Proposed acquisition of shares in DRC Resources Holdings Limited', p. 26.

The consideration paid for IMF included a cash consideration of US\$25 million plus 171,853,471 New Ordinary Shares at 18p per share.¹⁸ IMF was described by mining analysts as wholly owned by Rautenbach – CAMEC has subsequently described the acquisition of its DRC concessions ‘from companies controlled by Mr. Rautenbach and his family’.¹⁹ At the time, CAMEC stated that application had been made for the admission of the 171,853,471 New Ordinary Shares and that dealing in these shares was expected to commence on 9 February 2006; however, it does not appear that CAMEC issued a holdings notification identifying the owner or beneficiary of the 171,853,471 shares – representing 20% of issued shares at the time.²⁰

CAMEC stated in its preliminary results for the year to 31 March 2007:²¹

[T]he company owed £3,175,000 (2006: £6,170,000) to Harvest View Limited, a company controlled by Mr Rautenbach, in respect of deferred purchase consideration (see note 16). At 31 March 2007 Harvest View Limited held an interest in 90,926,134 shares in the company and continued to hold those shares as at 21 August 2007.

Cross-referencing to ‘note 16’ clarifies:²² ‘The liability in respect of the deferred purchase consideration is the subject of a charge over the share capital of International Metal Factors Limited. This charge will be released upon settlement of the outstanding consideration.’

In other words, Rautenbach controlled Harvest View, which was owed money by CAMEC in respect of the deferred purchase consideration for IMF. Rautenbach’s interest in IMF via Harvest View is therefore established.

Following its acquisition of Boss Mining, CAMEC has referred to Rautenbach’s ‘key role in the development of the Luita facility and the successful integration of the DRC operations into CAMEC’s operations’ and, with reference *inter alia* to Boss Mining, his ‘key role in managing these operations’.²³

In a circular sent to shareholders, dated 28 August 2007, and in response to press speculation about the ownership and operation of CAMEC’s DRC assets, the company stated:²⁴ ‘CAMEC acquired its rights to concessions PE467 and PE469 (previously known as C21 and C19) and 50% of the Mukondo concession in the Katanga Province of the DRC from companies controlled by Mr. Rautenbach and his family....CAMEC has been notified that Harvest View Limited, a company controlled by Mr. Rautenbach and his family, holds an interest in 90,926,134 CAMEC Shares. This currently represents 7.40% of the outstanding CAMEC Shares....’

¹⁸ ‘CAMEC Acquires Majority Interest in Major Copper Cobalt Joint Venture in the DRC’.

¹⁹ Barry Sergeant, ‘Camec selling the family silver through lack of copper and cobalt: A forensic examination of the factors contributing to the failure of Camec’s bid for Katanga Mining’, *MineWeb*, 18 September 2007, available at: <<http://www.mineweb.net/mineweb/view/mineweb/en/page67?cid=27246&sn=Detail>>. See also, CAMEC, *Offer to Purchase Katanga Mining Limited*, 28 August 2007, Offer To Purchase and Circular, A-3.

²⁰ The day before the IMF transaction, CAMEC posted a holdings announcement in which the interests of The Capital Group Companies were described as 34,668,253 Ordinary Shares, representing 5.5% of the Company’s issued share capital. From this it can be calculated that the total number of ordinary shares in issue on 2 February 2006 was 630,331,873. Hence, on issue, the 171,853,471 shares would represent $171,853,471 / (630,331,873 + 171,853,471) \times 100 = 21.4\%$ of issued ordinary shares. On 14 February, 11 days after the IMF transaction, CAMEC posted a holdings announcement in which the interests of The Capital Group Companies were described as 34,668,235 Ordinary Shares, representing 3.9% of the Company’s issued share capital. From this it can be calculated that the total number of ordinary shares in issue on 14 February 2006 was 888,929,103. In other words, by 14 February the 171,853,471 shares appear to have been issued (alongside an unaccounted for 86,743,759 shares). The notice of 14 February appears to be a minor correction to the holdings of The Capital Group Companies: 34,668,235 cf. 34,668,253 Ordinary Shares. See CAMEC, ‘Holding in Company’, RNS 8367X, 2 February 2006, available at:

<<http://www.bemscott.com/news/static/rna/item.do?newsId=31793495466427>>; and CAMEC, ‘Holding in company’, RNS 3665Y, 14 February 2006, available at: <<http://www.bemscott.com/news/static/rna/item.do?newsId=31918049683985>>.

²¹ CAMEC, *Report and Financial Statements: Year Ended 31 March 2007*, 25. Related party transactions, p. 106.

²² *Ibid.*, 16. Creditors, p. 99.

²³ See, respectively, *Offer to Purchase Katanga Mining Limited*, A-3 and; CAMEC, *Report and Financial Statements: Year Ended 31 March 2007*, 25. Related party transactions, p. 106.

²⁴ *Offer to Purchase Katanga Mining Limited*, A-3.

The administration of Rautenbach-controlled shares

The AFU has indicated to us that the Treasury is not in a position to comment on who would take over the administration of shares in a company held by a designated person when they first appear on the sanctions list, adding that '[t]his would in part depend on whether the company was a public or private company.' Given that we are now in a position to provide specific details on CAMEC and Rautenbach, we would request further clarification from you on this issue of share administration.

On 30 March 2009, the Daily Mail reported how 'CAMEC insisted yesterday that it took action to freeze Rautenbach's shareholding in early February, just a few days after the Treasury issued its list of Mugabe-linked targets.'²⁵ The Daily Mail article continues: 'The company said: "As soon as the sanctions were announced CAMEC took appropriate legal advice and subsequently, in early February, made a notification to the Treasury. CAMEC is in full compliance with its requirements under the sanctions".'

Please could you confirm:

- The date upon which CAMEC made its notification to the Treasury?
- Whether or not CAMEC disclosed Rautenbach's direct or indirect holdings in CAMEC shares, the names of any Rautenbach-controlled or associated entities disclosed by CAMEC and whether his direct or indirect holdings were quantified?
- Whether or not the Rautenbach's shares in CAMEC via Harvest View were, after notification, administered by CAMEC. If not, who administered these shares?

Once the Treasury had received notification from CAMEC, it is our understanding that shares in CAMEC benefitting Rautenbach could not be sold or otherwise traded without permission. We wish to understand the process by which any such shares were made available for acquisition by ENRC.

ENRC's approach to sanctions

In its offer document of 9 October, ENRC included further information on 'Sanctions and ongoing post-acquisition management issues', noting 'various issues have arisen in respect of the Offer in relation to the possible application of International Sanctions Laws' and that 'United Kingdom rules apply... to ENRC as well'.²⁶ Measures taken to prevent a breach of US sanctions included the establishment of ENRC Africa, a separate United Kingdom incorporated wholly-owned subsidiary of ENRC, set up by a special oversight committee to hold and acquire CAMEC Shares. In respect of the UK, ENRC stated in the offer document:²⁷

...discussions with HMT [Her Majesty's Treasury] in connection with the application of possible UK sanctions legislation are ongoing. ENRC is committed to maintaining this dialogue and intends to ensure that any post-acquisition asset management and/or other issues which may affect the ENRC Group adversely under UK or any other relevant sanctions regimes will be managed by ENRC so as to try and prevent the risk of ENRC breaching International Sanctions Laws.

It should be noted that both ENRC and ENRC Africa are UK-incorporated and therefore fall under the UK's sanctions regime.

Nowhere is it stated in the ENRC offer document, neither in the section on sanctions nor elsewhere, that Harvest View holds an interest in CAMEC shares nor that Rautenbach controls Harvest View. ENRC does not refer to Rautenbach in the section on 'Sanctions and ongoing post-acquisition management issues', nor elsewhere in the offer document. Indeed, the issue of ENRC acquiring shares owned by individuals subject to international sanctions is not dealt with in this section *per se*. However, under the 'Procedure for acceptance of the offer' outlined by ENRC in the offer document, it is stated:

²⁵ Ben Lurance, 'UK freezes Mugabe's ally's holding in Edmonds firm', *Daily Mail*, 30 March 2009, available at: <<http://www.dailymail.co.uk/money/article-1165959/UK-freezes-Mugabes-allys-holding-Edmonds-firm.html#ixzz0icaJRtLS>>.

²⁶ ENRC, 'Recommended Cash Offer by ENRC Africa Limited (a wholly-owned subsidiary of Eurasian Natural Resources Corporation PLC) to acquire Central African Mining & Exploration Company plc', 9 October 2009, p. 25, available at: <<http://www.enrc.com/files/CamecOffer.pdf>>.

²⁷ *Ibid.*, p.26.

Your attention is specifically drawn to paragraph (b) of Parts C and D of Appendix I. By accepting the Offer in respect of your CAMEC Shares, you will be deemed to represent and warrant to ENRC, members of the ENRC Group, BMO Capital Markets and Capita Registrars that the CAMEC Shares held by you are not subject to any restrictions imposed by International Sanctions Laws and that the sale and purchase of such CAMEC Shares pursuant to the Offer will not breach any law or regulation in any jurisdiction whatsoever.

The purchase of CAMEC shares by ENRC: Harvest View Limited

As of 18 September 2009 (the date the ENRC terms of offer were announced), CAMEC shows in its 2009 Annual Report that Harvest View Limited continued to hold 90,926,134 shares representing 3.17% of issued share capital.

Rautenbach does not appear to have held shares in CAMEC directly, but to have done so via Harvest View. From the AFU's previous response, we understand that if a company – in this case, Harvest View – is not designated, then it is not subject to the financial restrictions although the shareholding of the designated person – in this case, Rautenbach – is: 'Neither the designated person, the company itself nor any third party would be able to deal with those shares including any trading.'

Moreover, your previous response clarifies:

The legal concept of the corporate veil means that payments to a company of which a designated person is a shareholder or director are not to be regarded as direct payments to that person. Payments to such a company may however be regarded as indirectly for the benefit of the shareholder/director in certain circumstances. If the designated shareholder/director received a salary or a director's loan from the company or a shareholder received dividends then he or she might be deriving an indirect benefit from payments to the company. There may be other diversions of funds from companies to owners/directors, particularly where the company is wholly owned by a listed person.

Hence it is apparent that, should Rautenbach derive indirect benefit via Harvest View from the purchase of the latter's CAMEC shares, then it would be prohibited for ENRC Africa to have participated 'knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to make funds available to a designated person.' Given the prospect of indirect benefit to Rautenbach from ENRC's purchase of Harvest View's CAMEC shares, it is assumed that any purchase by ENRC of Harvest View's CAMEC shares is governed by the same requirements had Rautenbach owned CAMEC shares directly, as outlined in the AFU's response to RAID:

- 2. What happens when an offer is made for a company in which someone appearing on the sanctions list has a significant holding? Does the company making the offer have to write to the asset freeze team to seek permission to buy such shares? Under what circumstances is permission granted?**

In those circumstances, the purchase of the shares of the designated person would breach the terms of the asset freeze as it would result in payment to the designated person which would constitute making funds available to that person, which is prohibited. In certain situations, depending on the relevant financial sanctions regime, it might be possible to make an application for a licence from HM Treasury to allow the purchase to go ahead. The applicant would have to show that their circumstances fell within one of the exemptions set out in the relevant legislation and that the transaction was therefore capable of being licensed. Further, it is likely that, depending on the regime itself, the issue of any licence would be subject to the approval of UN and/or notification to EU Member States.

We understand that Council Regulation (EC) No 314/2004 of 19 February 2004,²⁸ concerning certain restrictive measures in respect of Zimbabwe, provides for derogation from financial sanctions, allowing the competent authorities to

...authorise the release of certain frozen funds or economic resources or the making available of certain frozen funds or economic resources, under such conditions as they deem appropriate, after having determined that the funds or economic resources concerned are:

- (a) necessary for basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums and public utility charges;
- (b) intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services;
- (c) intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources;
- (d) necessary for extraordinary expenses, provided that the relevant competent authority has notified the grounds on which it considers that a specific authorisation should be granted to all other competent authorities and the Commission at least two weeks prior to the authorisation.

The Zimbabwe (Financial Sanctions) Regulations 2009 state that '[a] person (including the designated person) must not deal with funds or economic resources belonging to a designated person' (regulation 6(1)) and '[a] person must not make funds or economic resources available, directly or indirectly, to or for the benefit of a designated person' (regulation 7(1)) 'unless authorised by a licence granted under regulation 10.' Under regulation 10, the Treasury 'may grant a licence to disapply the prohibition in regulation 6(1) or 7(1)'. It is understood that a licence may be 'general or granted to a particular person or to a category of persons'.

i. The requirement for licence(s) from HM Treasury

Although neither Rautenbach nor Harvest View are referred to by ENRC in its Offer document, discussions with HM Treasury are noted. ENRC states:²⁹

In addition, and irrespective of the deemed representation and warranty given by each CAMEC Shareholder who accepts the Offer..., if for whatever reason, whether or not as a result of International Sanctions Laws, it would be unlawful for ENRC to acquire your CAMEC Shares pursuant to the Offer, ENRC would not be able to accept your acceptance. However, ENRC reserves the right, subject to obtaining a licence or other legal or regulatory consent from an appropriate governmental or regulatory authority, to accept your acceptance...

Moreover, Felix Vulis, ENRC's chief executive officer, as part of a conference call with investors that took place on 18 September 2009, the day the offer was announced, stated that: 'Our bid, the acquisition of any shares from those on the sanctions list will require United Kingdom license from the United Kingdom Treasury.'³⁰

A number of specialist industry publications and newspapers reported that any sale of Rautenbach's shares in CAMEC to ENRC required UK Treasury approval: 'Billy Rautenbach cannot tender his shares to Eurasian Natural Resources Corp's (ENRC) \$1-billion takeover bid for Central African Mining and Exploration Co. (CAMEC) until he gets permission from the UK Treasury due to sanctions on CAMEC's controversial shareholder.... Those sanctions will prevent him selling shares worth almost \$70 million until the UK Treasury gives the go ahead, MB [Metal Bulletin] understands. Any transfer of assets and/or funds within the UK that are owned by anyone under sanction would need to be approved by the Treasury's asset freezing unit. They would also not be able to access any funds.'³¹

²⁸ Council Regulation (EC) No 314/2004, Article 7 provides for derogation from Article 6, which provides for the freezing of all funds and economic resources of designated persons or associated entities.

²⁹ ENRC, 'Recommended Cash Offer by ENRC for CAMEC,' 12. Procedure for acceptance of the offer, p.19.

³⁰ A recording of the conference call is available at:

http://prs.enrc.com/enrc012/webcast.asp?Media=wmv_snd&PresNum=01&SlideNum=001.

³¹ 'Rautenbach can't sell Camec stake to ENRC till UK Treasury approves', *Metal Bulletin*, 07 October 2009, available at:

<http://www.metalbulletin.com/Article2311307/Rautenbach-cant-sell-Camec-stake-to-ENRC-till-UK-Treasury.html>.

In an article in the Daily Telegraph published on 12 October 2009, it was reported: 'Yesterday ENRC sent a letter to the [UK] Treasury seeking approval to buy the 3.2pc CAMEC stake owned by businessman Billy Rautenbach, whose assets have been frozen by the European Union.'³²

In light of regulation 10(2) that a licence 'may be general or granted to a particular person or to a category of persons' and that the AFU is responsible for processing applications 'for licences to release frozen funds or to make funds available to designated/restricted persons', will the Unit confirm:

- Whether different persons or entities were required to apply for separate licences in respect of the ENRC transaction to purchase CAMEC shares owned and/or controlled by and benefitting Rautenbach?
- Whether a licence can be granted to an entity, such as a body corporate, or whether it can only be granted to a particular person within an entity, such as a company secretary or other corporate officer?
- Did ENRC require and apply for a licence to purchase any Rautenbach-controlled direct or indirect shareholdings in CAMEC?
- What date was any application for a licence made by ENRC? If so, on what date was it refused or granted?
- Did any such application by ENRC refer to the purchase of shares held via Harvest View Limited? Were other entities via which Rautenbach held shares referred to in any such application?
- Whether the issue of any such licence to ENRC was subject to the approval of UN and/or notification to EU Member States? If so, on what date was UN approval given and EU notification made?
- Did Rautenbach also require a licence to sell the CAMEC shares he controlled? If so, was Rautenbach obliged to show that his circumstances fell within one of the exemptions set out in the legislation and that the transaction was therefore capable of being licensed?
- What date was any application for a licence made by Rautenbach? If so, on what date was it refused or granted? Which, if any, exemption was cited in the application? What, if any were the conditions attached to any license(s) granted?
- Whether the issue of any such licence to Rautenbach was subject to the approval of UN and/or notification to EU Member States? If so, on what date was UN approval given and EU notification made?

Please could the AFU also clarify:

- Whether, in addition to any licences required by ENRC as the purchaser and by Rautenbach (see above), whether any administrator of CAMEC shares required a licence to sell or otherwise deal in holdings controlled by or benefitting Rautenbach?

ii. Proceeds/consideration

On 15 December 2009, ENRC announced that, as of 14 December 2009, it either owned or had received valid acceptances in respect of 2,753,050,972 CAMEC Shares, representing approximately 95.66 per cent. of the entire issued share capital of CAMEC.³³ The announcement went on to confirm arrangements for the compulsory acquisition of remaining CAMEC shares. It is unclear whether or not the 95.66 percent of shares included the Harvest View shares. Indeed, *Private Eye* magazine, in its 25 December 2009 – 7 January 2010 issue reports on the percentage level of acceptance of ENRC's offer by CAMEC shareholders, noting that ENRC 'will not say whether that [percentage] includes Harvest View's [shares]'.³⁴

ENRC, in its offer document does state:³⁴

³² Garry White, 'Kazakh miners seek Chinese funding of up to \$2.4bn', *The Daily Telegraph*, 12 October 2009, available at <<http://www.telegraph.co.uk/finance/newsbysector/industry/6310353/Kazakh-miners-seek-Chinese-funding-of-up-to-2.4bn.html>>.

³³ ENRC, 'Compulsory acquisition', 15 December 2009, available at: <<http://www.enrc.com/files/CamecAnn15DEC.pdf>>.

³⁴ ENRC, 'Recommended Cash Offer by ENRC for CAMEC', 12. Procedure for acceptance of the offer, p.19.

...if for whatever reason, whether or not as a result of International Sanctions Laws, it would be unlawful for ENRC to acquire your CAMEC Shares pursuant to the Offer, ENRC would not be able to accept your acceptance. However, ENRC reserves the right, subject to obtaining a licence or other legal or regulatory consent from an appropriate governmental or regulatory authority, to accept your acceptance and to pay any settlement consideration that may be due to you pursuant to the Offer into a blocked UK or EU bank account, approved by such governmental or regulatory authority.

In our previous exchange with the AFU, assuming a licence to trade is granted, we asked about what happens to the proceeds from the purchase of shares benefitting a designated person and what happens when an offer becomes unconditional, triggering a compulsory purchase of remaining shares. Your response – that the Treasury would deal with any such issues on a case by case basis – can presumably be elaborated now that the parties in the ENRC acquisition are known:

- What has happened to the consideration from the sale of Harvest View's holding in CAMEC or those from any other Rautenbach-controlled holdings?
- Who administers the account(s) in which any considerations are held?
- Does interest, dividends or any other financial benefits deriving from the consideration accrue in any such accounts? It is our understanding that financial sanctions do not prevent the crediting of frozen accounts by financial institutions that receive funds transferred by third parties provided that any additions to such accounts will also be frozen.
- The AFU's response stated that 'any sale of a designated person's shares could take place only on the basis that any consideration for the shares remains frozen'; however, given our understanding that a designated person can apply for a derogation from Council Regulation (EC) No 314/2004 and that a designated person may seek a licence from the Treasury authorising access to economic funds or resources, has any consideration arising from the ENRC's acquisition of Harvest View's holding in CAMEC remained frozen?

CAMEC's Zimbabwean platinum assets and Meryweather Investments Limited

The company Meryweather Investments Limited, prior to and at the time of ENRC's acquisition of CAMEC, held shares in CAMEC derived from the consideration paid to by CAMEC when the latter acquired Meryweather's holding in certain Zimbabwean platinum mining assets. At issue is (i) whether CAMEC complied with EU sanctions against Zimbabwe in force at the time and (ii) whether licences were sought and granted in relation to the trading of Meryweather's shares at the time of ENRC's transaction to acquire ENRC.

i. CAMEC's acquisition of the Zimbabwean platinum assets

In April 2008, CAMEC announced the acquisition of an interest in platinum mining assets in Zimbabwe via its acquisition of 100% of Lefever Finance Ltd, registered in BVI.³⁵ The consideration paid for Lefever was a cash payment of US\$5 million and the issue of 215,000,000 new CAMEC ordinary shares. CAMEC identified the seller of the shares in Lefever as Meryweather Investments Limited, which 'will on completion of the transaction hold a 13.07% interest in the enlarged share capital of CAMEC.'³⁶ According to the public relations company representing CAMEC at the time of the acquisition, CAMEC was not disclosing the identity of Meryweather's owners.³⁷

Lefever owned 60% of Todal Mining (Private) Limited, a Zimbabwean company, which held the rights to the Bougai and Kironde claims south west of the city of Gweru in Zimbabwe.³⁸ The remaining 40% of Todal was held by the state-owned Zimbabwe Mining Development Corporation (ZMDC).

³⁵ CAMEC, RNS 1641S, 'Acquisition of Platinum Assets', 11 April 2008, available at: <http://www.londonstockexchange.com/exchange/prices-and-news/news/market-news/market-news-detail.html?announcementId=1810075>.

³⁶ *Ibid.*

³⁷ Ben Brewerton of London-based Financial Dynamics Ltd., a public relations firm representing CAMEC, quoted in Antony Sguazzin and Mark Herlihy, 'Camec to Mine Platinum With Zimbabwe Government Unit (Update4)', *Bloomberg*, 11 April 2008, available at: <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=age21cHHHm5Y>.

³⁸ CAMEC, 'Acquisition of Platinum Assets'.

Todal was given the right by the Zimbabwean Government to export platinum from Zimbabwe and 'also secured an agreement to allow it to expatriate the profits generated by its mining operations in the country.'³⁹ The Reserve Bank of Zimbabwe also gave extensive fiscal incentives to Todal covering royalties, income tax, import duties, value added tax and withholding taxes.

Bloomberg reported that, under the deal to purchase the Zimbabwean platinum assets, CAMEC would 'lend a further \$100 million to President Robert Mugabe's government.'⁴⁰ CAMEC's announcement of the acquisition stated:⁴¹

...CAMEC has agreed to advance to Lefever an amount of US\$100 million by way of loan to enable Lefever to comply with its contractual obligations to the Government of the Republic of Zimbabwe. Repayment to Lefever is to be made from the ZMDC's share of dividends from Todal.

Other mining commentators, referring to CAMEC's loan to Lefever, state:⁴² 'This thinly disguised donation appears to be nothing less than an unsecured cash loan to the Zimbabwe Government; for that, read "the president Robert Mugabe regime"'. CAMEC's acquisition of the Zimbabwean platinum assets occurred after Zimbabwe's crucial 29 March 2008 presidential election, but before the result was announced.

Given that President Robert Mugabe and other senior Zimbabwean government members and ZANU-PF officials all were designated under EU sanctions in force at the time of CAMEC's acquisition of the Zimbabwean platinum assets; given that the partner in the Todal joint venture, ZMDC, was a state body wholly-owned by the Government of Zimbabwe (although not designated until 27 January 2009); and given that the loan advance from CAMEC to Lefever was to be made available to the Government of the Republic of Zimbabwe, did CAMEC at the time of the transaction:

- Notify or otherwise seek the advice of the Treasury as to whether its proposed acquisition complied with the sanctions then in force;
- Require a licence or other permission from the Treasury in order to make loan finance via Lefever available to the Zimbabwean government?

ii. Meryweather Investments Limited's shareholding in CAMEC

On its acquisition of a stake in the Zimbabwean platinum assets, CAMEC confirmed at the time that 'Meryweather Investments Limited, the seller of the shares in Lefever, will on completion of the transaction hold a 13.07% interest in the enlarged share capital of CAMEC. All of the shares issued to Meryweather will be subject to a lock in for six months and 50% of those shares will be subject to a lock in for 12 months.'⁴³

According to an article in *Private Eye* magazine,

CAMEC, headed by former England cricketer Phil Edmonds, is understood to have informed the Treasury earlier this year that Meryweather was linked to Zimbabwean businessman 'Billy' Rautenbach, whose assets are supposedly frozen by UK and US sanctions against the Mugabe regime...⁴⁴

The article continues:

Rautenbach himself denies any links to Meryweather (*Eye* 1246), so that must be true. Yet new information concerning Meryweather and its dealings with CAMEC suggest that Rautenbach may at least have a very good idea as to who stands to benefit from the Meryweather millions.... The sole director of Lefever, and who also appeared to sign for Meryweather, was one James Ramsay. Now

³⁹ *Ibid.*

⁴⁰ Antony Sguazzin and Mark Hertlby, 'Camec to Mine Platinum With Zimbabwe Government Unit'.

⁴¹ CAMEC, 'Acquisition of Platinum Assets'.

⁴² Barry Sergeant, 'Platinum panic in Harare', *MineWeb*, 22 August 2008, available at: <<http://www.mineweb.com/mineweb/view/mineweb/en/page357?oid=60438&sm=Detail>>.

⁴³ CAMEC, 'Acquisition of Platinum Assets'.

⁴⁴ 'In the City', *Private Eye*, issue no. 1252, 25 December 2009 – 7 January 2010, p. 33.

that's a remarkable coincidence. For a lawyer named James Ramsay has for many years represented Rautenbach.... So were the two Ramsays one and the same? Attempts to contact Ramsay were unsuccessful, although a business associate confirmed that he had passed on a message asking to discuss Meryweather Investments – and whose interests he was representing, if not Rautenbach's.

ENRC describes in the offer document how it had received irrevocable undertakings to accept the offer from, *inter alia*, Temple Nominees Limited with a holding of 115,000,000 shares or approximately 4.00 percent of the entire issued ordinary share capital of CAMEC and Chambers Nominees Limited with a holding of 100,000,000 shares or approximately 3.48 percent.⁴⁵ Both Temple and Chambers nominees are confirmed by ENRC as acting 'for and on behalf of Meryweather Investments Limited'. CAMEC, in its 2009 annual report, confirms that Meryweather held 215,000,000 ordinary shares or 7.49 percent of CAMEC's issued share capital, as of 18 September 2009 (the day ENRC's offer for CAMEC was announced).⁴⁶

According to *Private Eye*,

Neither Temple nor Chambers appears to have any connection to CAMEC. However, the letters accepting the bid for the Meryweather shares were signed by the CAMEC company secretary, Philip Enoch. This suggests that CAMEC is well acquainted with the real owners and empowered to act for them. Which would be so if, as is suggested, CAMEC had volunteered to the Treasury that the Meryweather shares were linked to Rautenbach and as such covered by the sanctions freeze.

The *Private Eye* article asks:

Has the money been passed on to the hidden Meryweather owners – who may not be so hidden to Rautenbach – or has the £43m been paid into an escrow account pending clearance from the Treasury and Washington? Might that be the reason why Enoch signed for the shares? But how can clearance be given if there is a suspicion that interests close to Rautenbach or other Mugabe sympathisers will benefit?

Please could the AFU clarify:

- Whether or not CAMEC made notification to the Treasury following Rautenbach's designation on 19 January 2009 of any direct or indirect holdings via Meryweather Investments or any other entity in CAMEC shares benefitting Rautenbach? If so, what was the date of any such notification?
- Whether any licence application made to allow the purchase and/or sale of certain CAMEC shares to go ahead included the purchase of any CAMEC shares owned by Meryweather Investments or administered by Temple Nominees Limited or Chambers Nominees Limited? Who made any such licence application(s)?
- The date upon which any such application naming Meryweather Investments and/or Temple or Chambers was made?
- The date upon which any licence(s), which included permission to trade in Meryweather's and/or Chambers/Temple's holdings in CAMEC, was granted?
- Whether or not any holdings via Meryweather Investments benefitting Rautenbach were, after notification, administered by CAMEC? If not, who administered these shares? Were they administered by Temple Nominees and/or Chambers Nominees? Will the AFU confirm that the letters accepting the bid for the Meryweather shares were signed by the CAMEC company secretary, Philip Enoch?
- What has happened to the consideration from the sale of Meryweather Investment's holding in CAMEC?
- Who administers the account(s) in which any considerations are held?
- Given that a designated person can apply for a derogation from Council Regulation (EC) No 314/2004 and that a designated person may seek a licence from the Treasury authorising access to economic funds or resources, has any consideration arising from the ENRC's acquisition of Meryweather Investment's holding in CAMEC remained frozen?

⁴⁵ ENRC, 'Recommended Cash Offer by ENRC for CAMEC,' Other CAMEC Shareholders, p. 11.

⁴⁶ CAMEC, *Report and Financial Statements: Year ended 31 March 2009*, Substantial shareholders, p. 49.

Notes

- ¹ RAID, *Questions of Compliance: The Conduct of the Central African Mining & Exploration Company (CAMEC) plc and its Nominated Adviser, Seymour Pierce*, Submission to AIM Regulation, May 2011.
- ² London Stock Exchange plc, *A guide to AIM*, 2010, pp. 4 – 6, available at: <<http://www.londonstockexchange.com/companies-and-advisors/aim/publications/documents/a-guide-to-aim.pdf>>.
- ³ World Bank, ‘Democratic Republic of Congo: Growth with Governance In the Mining Sector Technical Assistance Project’, pp. 1 – 2.
- ⁴ UN Security Council, *Report of the Group of Experts on the Democratic Republic of the Congo in Accordance with Paragraph 2 of the Security Council Resolution 1654 (2006)*, S/2006/525, 18 July 2006, paragraph 132 and table. Paragraph 132 and the reference to CAMEC appears under section V. Financing of arms embargo violations, A. Diversions of natural resources for funding embargo violations, beginning at paragraph 123.
- ⁵ UN Security Council, *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo*, S/2001/357, 12 April 2001, paragraphs 150 – 2. See also the Panel’s report S/2001/1072, 13 November 2001, paragraphs 67 – 9 and S/2003/1027, 23 October 2003, confidential Section 5, paragraphs 32 – 5.
- ⁶ ENRC, ‘Recommended Cash Offer by ENRC Africa Limited (a wholly-owned subsidiary of Eurasian Natural Resources Corporation PLC) to acquire Central African Mining & Exploration Company plc’, (*Offer Document*), 9 October 2009, p.25, available at: <<http://www.enrc.com/PageFiles/2310/18-09-09%20Recommended%20Cash%20Offer%20for%20CAMEC.pdf>>.
- ⁷ ENRC, RNS 2560C, ‘Offer Declared Unconditional in all Respects’, 10 November 2009, available at: <<http://staging.hemscottir.com/ir/enrc/ir.jsp?page=news-item&item=294398533307146>>.
- ⁸ UN Security Council, Addendum to the report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, S/2001/1072, 13 November 2001 [hereafter UN Panel Report 13 November 2001], paragraph 31 and paragraph 37.
- ⁹ <<http://www.londonstockexchange.com/companies-and-advisors/aim/advisers/aim-reg-team/aim-regulation-team.htm>>. An e-mail address is given for the receipt of complaints: aiminvestigations@londonstockexchange.com. See also p. 30 and n. 165.
- ¹⁰ London Stock Exchange, Stock Exchange AIM Disciplinary Notice, AD11, ‘Public censure and fine – Seymour Pierce Limited’, 21 December 2011, available at: <<http://www.londonstockexchange.com/companies-and-advisors/aim/advisers/aim-notices/aim-notice-ad11.pdf>>.
- ¹¹ United Nations, Human Rights Council, ‘Protect, Respect and Remedy: a Framework for Business and Human Rights’, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, A/HRC/8/5, 7 April 2008.
- ¹² United Nations, Human Rights Council, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, A/HRC/17/31, 21 March 2011.
- ¹³ *Ibid.*, I. The State duty to protect human rights, B. Operational principles, General State regulatory and policy functions, 3 (a) and (b).
- ¹⁴ *The OECD Guidelines for Multinational Enterprises* (Paris: OECD, 2000). The Guidelines, first adopted in 1976 and significantly revised in 2000 and 2011, ‘constitute a set of voluntary recommendations to multinational enterprises in all the major areas of business ethics, including employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation.’ (See <http://www.oecd.org/about/o,3347,en_2649_34889_1_1_1_1_1,00.html>).

-
- ¹⁵ James Quinn, 'Seymour Pierce set to be sold to former Soviet company', *The Telegraph*, 1 July 2012, available at: <<http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/9367251/Seymour-Pierce-set-to-be-sold-to-former-Soviet-company.html>>.
- ¹⁶ See Consolidated version of the Financial Services and Markets Act (FSMA) highlighting amendments by the Financial Services Bill at Lords Introduction, section 55N, available at: <http://www.hm-treasury.gov.uk/d/fin_fs_bill_consolidated_fsma.pdf>. This is described as an 'illustrative document' and does not reflect subsequent amendments to the Bill.
- ¹⁷ Under registered number 06023510. The name of the Company on incorporation was 'Eurasian Natural Resources Company plc' and on 11 December 2006, the name of the Company was changed to 'Eurasian Natural Resources Corporation plc'. See ENRC, Prospectus, Incorporation and Registration, p.216. The registered office and principal place of business of the Company is Second Floor, 16 St James's Street, London SW1A 1ER.
- ¹⁸ Global Witness, 'Secrecy surrounding Glencore's business deals in the Democratic Republic of Congo risks exposing shareholders to corrupt practices', 9 May 2012, available at: <<http://www.globalwitness.org/sites/default/files/library/Global%20Witness%20memo%20on%20Glencore's%20secretive%20dealings%20in%20the%20Democratic%20Republic%20of%20Congo.pdf>>. The report should be read in conjunction with the responses from the companies concerned, available through: <<http://www.globalwitness.org/library/glencore-has-questions-answer-global-witness-investigation-potentially-corrupt-deals-congo>>.
- ¹⁹ The Exchange censured Durlacher in August 2005. The merger between Durlacher and Panmure Gordon had been concluded over three months previously on 26 April 2005. See Durlacher Corp plc, RNS 5561L, 'Acquisition of Panmure Gordon & Co., Limited,' 26 April 2005, originally available at: <<http://www.hemscott.com/news/static/rna/item.do?newsId=27193585852781>>.
- ²⁰ See, for example, Tom Bawden, 'Sir Richard Sykes: voted out, but not down', *The Guardian*, 10 June 2011, available at: <<http://www.guardian.co.uk/business/2011/jun/10/enrc-richard-sykes-kazakhstan-mining-firm?INTCMP=ILCNETTXT3487>>; Nikhil Kumar, 'ENRC shares a 'no go' over governance', *The Independent*, 18 August 2011, available at: <<http://www.independent.co.uk/news/business/news/enrc-shares-a-nogo-over-governance-2339570.html>>.
- ²¹ The KMT licences, held by First Quantum Minerals, had been cancelled by the DRC government in August 2009. ENRC moved to acquire the assets in August 2010, even though First Quantum and its partners, including the International Finance Corporation, had commenced proceedings at the International Chamber of Commerce International Court of Arbitration in Paris against the DRC government.
- ²² First Quantum Minerals Ltd., 'First Quantum Reaches Agreement With ENRC to Dispose of First Quantum's Residual DRC Assets and to Settle All Claims in Relation to First Quantum's DRC Operations', Press Release, 5 January 2012, available at: <<http://www.first-quantum.com/Media-Centre/Press-Releases/Press-Release-Details/2012/First-Quantum-Reaches-Agreement-With-ENRC-to-Dispose-of-First-Quantums-Residual-DRC-Assets-and-to-Settle-All-Claims-in-Relati/default.aspx>>; ENRC plc, RNS 0633V, 'Agreement signed with First Quantum Minerals Ltd. to acquire their residual assets and settle all claims in relation to their Democratic Republic of Congo operations', 5 January 2012, available at: <<http://staging.hemscottir.com/ir/enrc/ir.jsp?page=news-item&item=883747503235111>>.
- ²³ Global Witness, Memo to ENRC Shareholders, 12 June 2012, Introduction, p.1, available at: <http://www.globalwitness.org/sites/default/files/Global%20Witness%20memo%20to%20ENRC%20shareholders%2012.6.12_1.pdf>. The report should be read in conjunction with the responses from the companies concerned, detailed under 'Notes to editors' at <<http://www.globalwitness.org/library/ftse-100-mining-company-enrc-must-openly-address-congo-corruption-concerns>>.
- ²⁴ The July 2005 edition and the February 2007 edition of the *AIM Rules for Companies* cover most of the period of CAMEC's trading on AIM, post-acquisition of its DRC assets. A brief period is covered from the June 2009 revision of the rules until CAMEC's cancellation of admission. Further revisions,

-
- effective from 17 February 2010, fall outside of the time period examined within the CAMEC Submission.
- ²⁵ Rules 10, 11 and 12 are the same across all three (2005, 2007 and 2009) editions. Minor amendments are made to certain clauses under Schedule Four in the June 2009 edition of the *AIM Rules*.
- ²⁶ For a discussion of the Disclosure and Transparency Rules and AIM Rule 17, see the RAID Submission on CAMEC, pp. 21 – 22.
- ²⁷ London Stock Exchange, *AIM – Guidance Note for Mining, Oil and Gas Companies*, March 2006.
- ²⁸ London Stock Exchange, *AIM Rules for Nominated Advisers* [‘RNA’], February 2007.
- ²⁹ London Stock Exchange, Stock Exchange AIM Notice, AIM 24, ‘AIM Rules Consultation – AIM Rules for Nominated Advisers and other proposed rule amendments’, 2 October 2006, available at: <<http://www.londonstockexchange.com/companies-and-advisors/aim/advisors/aim-notices/aim-notice-24.pdf>>.
- ³⁰ ‘Further Statement by DRC government on mining contracts’, 30 August 2007, available at: <<http://www.stockhouse.com/blogs.asp?page=viewpost&blogID=996&postID=26820>>
- ³¹ Reuters, ‘CAMEC to fight Congo on license’, 30 August 2007, available at: <<http://www.reuters.com/article/idUSSP27308120070830>>; also, Steve Hawkes, ‘Camec’s shares tumble as DRC plans to revoke mining licence’, *The Times*, 31 August 2007, originally available at: <http://business.timesonline.co.uk/tol/business/industry_sectors/natural_resources/article2357762.ece>.
- ³² CAMEC, RNS 1161E, ‘Update on DRC Mining Licences’, 19 September 2007, originally available at: <<http://www.hemscott.com/news/static/rna/item.do?newsId=50047106752767>>.
- ³³ ‘DRC Government clarifies legal position on invalidity of mining licences with particular reference to CAMEC’s copper/cobalt licences’, 26 September 2007, available at: <<http://www.mineweb.net/mineweb/view/mineweb/en/page674?oid=37501&sn=Detail>>.
- ³⁴ Jean Felix Mupande, Director General of the Cadastre Minier, quoted in ‘Congo rubbishes CAMEC victory claims’, Allan Seccombe, *Miningmx*, 20 Sep 2007, available at: <http://www.miningmx.com/mining_fin/572981.htm>.
- ³⁵ See ‘DRC Government clarifies legal position on invalidity of mining licences with particular reference to CAMEC’s copper/cobalt licences’.
- ³⁶ CAMEC, RNS 9833F, ‘Update on DRC Court Hearing’, 18 October 2007, originally available at: <<http://www.hemscott.com/news/static/rna/item.do?newsId=51178830925666>>.
- ³⁷ UN Panel Report 13 November 2001, paragraph 31.
- ³⁸ *Marika Services Ltd vs. Mercan Commercial Ltd., Hober Enterprises Ltd., Ibold Company Inc. and Shaford Capital Ltd.*, First Affidavit of James Anthony Tidmarsh [‘*Tidmarsh Affidavit*’], The Eastern Caribbean Supreme Court, High Court of Justice, British Virgin Islands, BVI HCV 2005, paragraph 127. See RAID’s submission on CAMEC, A Politically Exposed Person, p.39 and n. 339.
- ³⁹ See RAID’s submission on CAMEC, The Charges against Rautenbach and the warrant for his arrest, p. 39.
- ⁴⁰ *Ibid.*, Rautenbach’s return to South Africa and his appearance before the Specialised Commercial Crimes Court, pp. 40 – 41.
- ⁴¹ Antony Sguazzin and Brett Foley, ‘Rautenbach to Pay S. African Fine to End Legal Battle’, Bloomberg, 21 September 2009, available at: <<http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aINXh9QhQiyQ>>
- ⁴² Mthunzi Mhaga, spokesman for the NPA, quoted in ‘Rautenbach to Pay S. African Fine to End Legal Battle’.

-
- 43 As reported in Mining Weekly, 'CAMEC's Rautenbach arrested in DRC, deported to Zimbabwe', 19 July 2007, available at: <<http://www.miningweekly.com/article/camec039s-rautenbach-arrested-in-drc-deported-to-zimbabwe-2007-07-19>>.
- 44 *Ibid.*
- 45 *Ibid.*
- 46 See RAID's submission on CAMEC, Rautenbach's key role in managing projects after their acquisition by CAMEC, p. 62.
- 47 CAMEC, 'Proposed acquisition of shares in DRC Resources Holdings Limited', Circular to shareholders, 6 May 2008, C. Other key parties, p.51.
- 48 Nikanor plc, Admission to AIM, 12 July 2006, paragraph 15.4, p. 113.
- 49 See UN Panel Report 13 November 2001, paragraphs 67 – 9; also UN Panel Report 12 April 2001, paragraphs 150 – 2; also CAMEC Submission, Allegations made by the UN Panel, pp. 48 – 50.
- 50 CAMEC Submission, John Bredenkamp, Allegations made by the United Nations Panel on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo, pp. 52 – 53.
- 51 *Ibid.*
- 52 CAMEC, RNS 9173X, 'Central African Mining & Exploration Company Plc ("CAMEC" or "the Company") Acquires Majority Interest in Major Copper Cobalt Joint Venture in the DRC', 3 February 2006, originally available at: <<http://investors.camec-plc.com/news-item?item=31793495509572>>.
- 53 The day before the IMF Ltd transaction, CAMEC posted a holdings announcement in which the interests of The Capital Group Companies were described as 34,668,253 Ordinary Shares, representing 5.5% of the Company's issued share capital. From this it can be calculated that the total number of ordinary shares in issue on 2 February 2006 was 630,331,873. Hence, on issue, the 171,853,471 shares would represent $171,853,471 / (630,331,873 + 171,853,471) \times 100 = 21.4\%$ of issued ordinary shares. On 14 February, 11 days after the IMF Ltd transaction, CAMEC posted a holdings announcement in which the interests of The Capital Group Companies were described as 34,668,235 Ordinary Shares, representing 3.9% of the Company's issued share capital. From this it can be calculated that the total number of ordinary shares in issue on 14 February 2006 was 888,929,103. In other words, by 14 February the 171,853,471 shares appear to have been issued (alongside an unaccounted for 86,743,759 shares). The notice of 14 February appears to be a minor correction to the holdings of The Capital Group Companies: 34,668,235 cf. 34,668,253 Ordinary Shares. See CAMEC, 'Holding in Company', RNS 8367X, 2 February 2006, originally available at: <<http://www.hemscott.com/news/static/rna/item.do?newsId=31793495466427>>; and CAMEC, 'Holding in company', RNS 3665Y, 14 February 2006, originally available at: <<http://www.hemscott.com/news/static/rna/item.do?newsId=31918049683985>>.
- 54 CAMEC, Offer to Purchase Katanga Mining Limited, 28 August 2007, A-3.
- 55 There have been a number of DRC Government and consultant reports into the legitimacy, financial basis and economic fairness of the mining contracts: the IMC Consulting Group, Duncan & Allen, Ernst & Young (for the DRC Government's Commission on Public Sector Reform (COPIREP)), the Congolese Special Parliamentary Commission Responsible for Examining the Validity of Economic and Financial Agreements Signed during the War (Lutundula Commission). Scrutiny of the terms of wartime and post-war partnerships with private companies culminated in the four-year review by the DRC Government of over 60 contracts (*Commission de Revisitation des Contrats Miniers* – Mining Contracts Review Commission). See RAID's CAMEC submission, endnote 39 for full references; also *ibid.*, Supplement, Review and audit of wartime and post-war mining contracts in DRC, pp. 103 ff.
- 56 *Tidmarsh Affidavit*; also RAID's submission on CAMEC, Legal action against Rautenbach's holding company, p. 61.

-
- 57 See RAID's CAMEC submission: Rautenbach's key role in managing projects after their acquisition by CAMEC, p. 62; also Rautenbach's continued managerial role after CAMEC's acquisition of Sabot, p. 68.
- 58 See RAID's CAMEC submission, CAMEC's continuing business transactions with CCC, p. 67.
- 59 CAMEC, Report and Financial Statements: Year ended 31 March 2007, 13 (c) and (d), p. 97. See also Offer to Purchase Katanga Mining Limited, 3 (c), C-18.
- 60 RAID's CAMEC submission, Boss Mining and Sabot, Incomplete and unreliable accounts, disregard for accountancy rules, a lack of financial transparency, pp. 73 ff.; and Mukondo Mining and KMC, pp. 75 ff.
- 61 *AIM Rules*, rule 14 and Schedule Three. The rule and schedule are unchanged from the 2005 to the 2007 editions of the *AIM Rules*.
- 62 *AIM Rules*[2005 & 2007], rule 14.
- 63 Ministère des Mines, Letter to Boss Mining, '*Objet: Notification conclusions revisitation contrat minier*', No. CAB.MIN/MINES/001/0096/2008, 11 February 2008, available at: <http://www.miningcongo.cd/notifications_entreprises_mars2008/Liste_notifications_mars2008.htm>.
- 64 CAMEC, 'DRC Licence Review Update', 26 February 2008, originally available at: <<http://stagingcamec.hemscott.com/news-item?item=55145232750428>>.
- 65 *Ibid.*
- 66 CAMEC, RNS 2866P, 'DRC Update', 4 March 2008, originally available at: <<http://investors.camec-plc.com/news-item?item=60917668905074>>.
- 67 See Ministry of Mines, Democratic Republic of Congo, Press Release, 5 September 2008, 'DRC Ministry of Mines Convenes General Forum With Mining Executives to Explain Terms of Reference and Road Map for Contracts Review – Government of the DRC Aims to Provide Transparency and Direction'.
- 68 *Tidmarsh Affidavit*, paragraph 72; see also Charles Orbach & Company, Due diligence review of Shaford Capital Ltd (BVI) and its subsidiaries, paragraphs 4.1.3 – 4.1.4.
- 69 *Tidmarsh Affidavit*, paragraph 78.
- 70 Barry Sergeant, 'Copper/cobalt bull elephants square up in the DRC', 6 May 2007, Mineweb, available at: <<http://www.mineweb.com/mineweb/view/mineweb/en/page36?oid=20556&sn=Detail>>
- 71 *AIM Rules* [2005], rule 11.
- 72 'Further Statement by DRC government on mining contracts', 30 August 2007, available at: <<http://www.stockhouse.com/blogs.asp?page=viewpost&blogID=996&postID=26820>>.
- 73 CAMEC, 'Circular to Shareholders relating to the proposed Joint Venture with Prairie (International) Limited and Notice of General Meeting', 28 November 2007, Restarting Operations at Mukondo, p. 4.
- 74 Peta Thorneycroft, 'CAMEC's revenue from DRC dries up', *Business Report*, 3 September 2006, originally available at: <<http://www.busrep.co.za/index.php?fArticleId=3421513>>; CAMEC, RNS 4758I, 'Comment on Press Speculation', 5 September 2006, originally available at: <<http://investors.camec-plc.com/news-item?item=35847944944597>>.
- 75 CAMEC, RNS 1586H, 'CAMEC signs MOU to create new DRC Joint Venture Company', 7 November 2007, originally available at <<http://investors.camec-plc.com/news-item?item=52587579878880>>.
- 76 CAMEC's share price graph was originally available at <<http://investors.camec-plc.com/share-price-chart?returnPeriod=1D&period=-&fromDay=01&fromMonth=09&fromYear=2006&toDay=08&toMonth=09&toYear=2006>>. A fall of 4.63% was recorded between the share price of 54p on Friday 1 September and a low of 51.5p on Tuesday 5 September. Over the course of 5 September, the share price recovered.

-
- 77 CAMEC's share price graph was originally available at <<http://investors.camec-plc.com/share-price-chart?returnPeriod=1D&period=-&fromDay=05&fromMonth=11&fromYear=2007&toDay=12&toMonth=11&toYear=2007>>.
- 78 *AIM Rules* [2005], rule 10.
- 79 CAMEC, RNS 9394D, 'Cobalt Sales Update', 2 June 2006, originally available at: <<http://investors.camec-plc.com/news-item?item=34022583889023>>; CAMEC, 'Update on Activities in the DRC', 28 July 2006, originally available at: <<http://www.investegate.co.uk/Article.aspx?id=200607280700418712G>>.
- 80 Simberi Mining Corporation, 'Update on Kakanda Property in the Democratic Republic of Congo', 21 November 2007, originally available at: <http://www.simberimining.com/news/2007/index.php?&content_id=116>.
- 81 *Rapport des Travaux de la Commission de Revisitation des Contrats Miniers* – vol. 2, PTM Minerals (Cayman) Ltd, Conclusions, p.245.
- 82 Ministère des Mines, Letter to Boss Mining, 'Objet: Notification conclusions revisitation contrats minier', No. CAB.MIN/MINES/001/0096/2008, 11 February 2008, paragraph 2.1.
- 83 See <<http://www.sedar.com/GetFile.do?lang=EN&docClass=13&issuerNo=00011101&fileName=/csfsprod/data101/filings/01484734/00000001/r%3A%5CA001SEDAR%5CFilings%5CGreenock%5CartAmendSept909.pdf>>.
- 84 Originally available at <<http://www.ustreas.gov/press/releases/hp1295.htm>>. More information on Executive Order 13391 Blocking Property of Additional Persons Undermining Democratic Processes or Institutions in Zimbabwe was originally available at <<http://www.treasury.gov/offices/enforcement/ofac/programs/ascii/zimb.txt>>.
- 85 Common Position 2002/145/CFSP, Official Journal, L 50, 21.2.2002, p. 1. Common Position 2002/145/CFSP was amended by Common Position 2002/600/CFSP, extending the measures to further persons who bear a wide responsibility for such violations (Official Journal, L 195, 24.7.2002, p. 1). Common Position 2002/145/CFSP was further amended and extended by Common Position 2003/115/CFSP and Common Position 2004/161/CFSP (see, respectively, Official Journal, L 46, 20.2.2003, p. 30, and Official Journal, L 50, 20.2.2004, p. 66). Common Position 2004/161/CFSP has been renewed each year.
- 86 Addendum to the Common Position, 5304/09 ADD 1 REV 1, Restreint UE, Brussels, 19 January 2009.
- 87 CAMEC, RNS 1641S, 'Acquisition of Platinum Assets', 11 April 2008, originally available at: <<http://www.londonstockexchange.com/exchange/prices-and-news/news/market-news/market-news-detail.html?announcementId=1810075>>.
- 88 CAMEC, 'Acquisition of Platinum Assets'.
- 89 CAMEC, 'Acquisition of Platinum Assets'.
- 90 Barry Sergeant, 'Platinum panic in Harare', Mineweb, 22 August 2008, available at: <<http://www.mineweb.com/mineweb/view/mineweb/en/page35?oid=60438&sn=Detail>>.
- 91 See RAID's CAMEC Submission, pp 56–7.
- 92 See RAID, Letter & Memorandum to HM Treasury, Asset Freezing Unit, 6 July 2011, reproduced in Annexe 2.
- 93 ENRC, *Offer Document*, 9 October 2009, p. 25, available at: <<http://www.enrc.com/files/CamecOffer.pdf>>.
- 94 ENRC, *Offer Document*, 9 October 2009, Acquisition of Zimbabwe Platinum interests, p. 61.

-
- ⁹⁵ CAMEC, RNS 1641S, 'Acquisition of Platinum Assets', 11 April 2008, originally available at: <<http://www.londonstockexchange.com/exchange/prices-and-news/news/market-news/market-news-detail.html?announcementId=1810075>>.
- ⁹⁶ 'In the City', *Private Eye*, issue no. 1252, 25 December 2009 – 7 January 2010, p. 33.
- ⁹⁷ A recording of the conference call was originally available at: <http://pres.enrc.com/enrc012/webcast.asp?Media=wm_aud&PresNum=01&SlideNum=001>.
- ⁹⁸ Garry White, 'Kazakh miners seek Chinese funding of up to \$2.4bn', *The Daily Telegraph*, 12 October 2009, available at: <<http://www.telegraph.co.uk/finance/newsbysector/industry/6310353/Kazakh-miners-seek-Chinese-funding-of-up-to-2.4bn.html>>.
- ⁹⁹ CAMEC, Offer to Purchase Katanga Mining Limited, A-3.
- ¹⁰⁰ ENRC, 'Compulsory acquisition', 15 December 2009, originally available at: <<http://www.enrc.com/files/CamecAnn15DEC.pdf>>.
- ¹⁰¹ CAMEC, 'Acquisition of Platinum Assets'.
- ¹⁰² 'In the City', *Private Eye*, p. 33.
- ¹⁰³ ENRC, 'Recommended Cash Offer ENRC for CAMEC, Other CAMEC Shareholders', p. 11.
- ¹⁰⁴ CAMEC, Report and Financial Statements: Year ended 31 March 2009, Substantial shareholders, p. 49.
- ¹⁰⁵ Ben Laurance, 'UK freezes Mugabe's ally's holding in Edmonds firm', *Daily Mail*, 30 March 2009, available at: <<http://www.dailymail.co.uk/money/article-1165959/UK-freezes-Mugabes-allys-holding-Edmonds-firm.html#ixzz0icaJRxLS>>.
- ¹⁰⁶ *Ibid.*, p.26.
- ¹⁰⁷ ENRC presentation, 18 September 2009, p. 19, available at: <<http://www.enrc.com/PageFiles/5155/18-09-2009%20CAMEC%20Investor%20Presentation.pdf>>.
- ¹⁰⁸ ENRC, RNS 3109Z, 'Recommended Cash Offer Eurasian Natural Resources Corporation PLC ("ENRC" or "the Group") for Central African Mining & Exploration Company PLC ("CAMEC")', 18 September 2009, Procedure for acceptance of the offer, p.19, available at: <<http://staging.hemscottir.com/ir/enrc/ir.jsp?page=news-item&item=261965087770038>>: 'ENRC reserves the right, subject to obtaining a licence or other legal or regulatory consent from an appropriate governmental or regulatory authority, to accept your acceptance and to pay any settlement consideration that may be due to you pursuant to the Offer into a blocked UK or EU bank account, approved by such governmental or regulatory authority.'
- ¹⁰⁹ The Zimbabwe (Financial Sanctions) Regulations 2009 state that '[a] person (including the designated person) must not deal with funds or economic resources belonging to a designated person' (regulation 6(1)) and '[a] person must not make funds or economic resources available, directly or indirectly, to or for the benefit of a designated person' (regulation 7(1)) 'unless authorised by a licence granted under regulation 10.'
- ¹¹⁰ Madelain Roscher, 'Plea Bargain Agreement Between Npa And Billy Rautenbach's Company, SA Botswana Hauliers Finalised', PR Worx, Press Release on behalf of Billy Rautenbach, 22 September 2009, available at: <<http://www.prlog.org/10350092-plea-bargain-agreement-between-npa-and-billy-rautenbachs-company-sa-botswana-hauliers-finalised.html>>.
- ¹¹¹ EU Directive 2003/71/EC, commonly referred to as the Prospectus Directive, implemented through Annex I of the Regulation 809/2004 of the European Commission. (Referred to as the PD Regulation in the FSA Handbook, the latter being the document that presents the regulations and guidance as set out by the Financial Services Authority. The online version of the FSA Handbook is available at: <<http://fsahandbook.info/FSA/index.jsp>>).
- ¹¹² Sridhar Arcot, Julia Black and Geoffrey Owen, *From Local to Global: The rise of AIM as a stock market for growing companies*, The London School of Economics and Political Science, September 2007, p.18.

-
- ¹¹³ According to the Exchange: ‘AIM is owned and operated by the London Stock Exchange in its capacity as a Recognised Investment Exchange under Part XVIII of the UK’s Financial Services & Markets Act 2000 (FSMA 2000). AIM therefore falls within the definition of a Prescribed Market under FSMA 2000 and is subject to the UK market abuse regime. Under the directives that form the EU’s Financial Services Action Plan, AIM is not a Regulated Market but instead falls within the classification of a Multilateral Trading Facility (MTF) as defined under the Markets in Financial Instruments Directive 2004 (MiFID).’ See ‘What is AIM’s regulatory status?’, available at: <<http://www.londonstockexchange.com/companies-and-advisors/aim/faq/faq.htm>>
- ¹¹⁴ See <<http://www.londonstockexchange.com/companies-and-advisors/aim/advisors/aim-reg-team/aim-regulation-team.htm>>.
- ¹¹⁵ See <<http://www.londonstockexchange.com/companies-and-advisors/aim/for-companies/choosing/advisor.htm>>.
- ¹¹⁶ AIM Rules [2007], rule 1.
- ¹¹⁷ RNA, rule 17. See also *AIM Rules* [2007], rule 1.
- ¹¹⁸ RNA, rule 20; Schedule Two – Nominated adviser’s declaration.
- ¹¹⁹ RNA, op. cit.; see also London Stock Exchange, Stock Exchange AIM Notice, AIM 24, ‘AIM Rules Consultation – AIM Rules for Nominated Advisers and other proposed rule amendments,’ 2 October 2006, available at: <<http://www.londonstockexchange.com/companies-and-advisors/aim/advisors/aim-notices/aim-notice-24.pdf>>.
- ¹²⁰ London Stock Exchange plc, A guide to AIM, 2010, p. 14, available at: <<http://www.londonstockexchange.com/companies-and-advisors/aim/publications/documents/a-guide-to-aim.pdf>>.
- ¹²¹ AIM Regulation, Inside AIM, Issue 4 – September 2011, p.1.
- ¹²² RNA, rule 29.
- ¹²³ *AIM Disciplinary Procedures and Appeals Handbook*, Disciplinary Process, pp. 2 – 3; see also *AIM Rules* [2007], rule 44.
- ¹²⁴ *AIM Disciplinary Procedures*, C5.1.
- ¹²⁵ *AIM Disciplinary Procedures*, C15.2 and C15.3; see also *AIM Rules* [2007], rule 42.
- ¹²⁶ *AIM Disciplinary Procedures*, C36.1; see also C5.2 and C15.1.3.
- ¹²⁷ The Exchange has fined nine AIM companies and issued warning notices against seven others for breaches of AIM rule 26 requiring AIM companies to maintain a website to make certain information publicly available. The names of the companies concerned were not made public.
- ¹²⁸ AIM, ‘Temporary suspension of trading on AIM: Central African Mining & Exploration Company PLC,’ 31 August 2007, available at: <<http://www.investegate.co.uk/Article.aspx?id=200708310731130639D>>. The Exchange has recourse to precautionary suspension (*AIM Rules* [2007], rule 40). The trading of AIM securities may be suspended by the Exchange: where trading in those securities is not being conducted in an orderly manner; where it considers that an AIM company has failed to comply with the AIM rules; to protect investors; or where the integrity and reputation of the market has been or may be impaired by dealings in the securities in question. A dealing notice is issued to bring the suspension into effect.
- ¹²⁹ CAMEC, RNS 0770D, ‘Update regarding Mining Permit’, 31 August 2007, originally available at: <<http://investors.camec-plc.com/news-item?item=48500919003000>>; also AIM, ‘Restoration of trading on AIM: Central African Mining & Exploration Company PLC,’ 31 August 2007, available at: <<http://www.investegate.co.uk/Article.aspx?id=200708311045020772D>>.
- ¹³⁰ London Stock Exchange, Stock Exchange AIM Disciplinary Notice, AD10, ‘Public censure – Environmental Recycling Technologies plc’, 23 November 2009, available at:

-
- <<http://www.londonstockexchange.com/companies-and-advisors/aim/advisers/aim-notices/aim-notice-ad10.pdf>>. In respect of the admission of shares, the company breached rules 17 (Disclosure of miscellaneous information), 29 (Applications for further issues), and 33 (Securities to be admitted).
- ¹³¹ London Stock Exchange, Stock Exchange AIM Disciplinary Notice, AD4, 'Public censure – SubSea Resources plc', 1 February 2008, available at: <<http://www.londonstockexchange.com/companies-and-advisors/aim/advisers/aim-notices/aim-notice-d4.pdf>>. The company incorrectly stated that it had raised £4.5 million from a sale and leaseback agreement in respect of one of its vessels; later, when SubSea announced that the funds had never been received, its share price dropped by 17%. SubSea was misleading in its announcement that it had succeeded in locating the bullion wreck Ella; later, when SubSea announced that the wreck had not been definitively proven to be the Ella and ultimately stated that the wreck was not the Ella, its share price decreased by 46% and another 10% respectively.
- ¹³² London Stock Exchange, Stock Exchange AIM Disciplinary Notice, AD5, 'Public censure and fine – Meridian Petroleum PLC', 19 June 2008, available at: <<http://www.londonstockexchange.com/companies-and-advisors/aim/advisers/aim-notices/public-censure-final.pdf>>.
- ¹³³ 'Public censure – Environmental Recycling Technologies plc'.
- ¹³⁴ London Stock Exchange, Stock Exchange AIM Disciplinary Notice, AD7, 'Public Censure – Minmet PLC', 4 December 2008, available at: <<http://www.londonstockexchange.com/companies-and-advisors/aim/advisers/aim-notices/min-met-public-censure.pdf>>.
- ¹³⁵ London Stock Exchange, Stock Exchange AIM Disciplinary Notice, AD2, 'Section C2.2 Notice', 28 December 2007, available at: <<http://www.londonstockexchange.com/companies-and-advisors/aim/advisers/aim-notices/aim-disciplinary-ad2.pdf>>.
- ¹³⁶ London Stock Exchange, Stock Exchange AIM Disciplinary Notice, AD1, 'Public censure and fine – Nabarro Wells & Co Limited', 19 October 2007, available at: <<http://www.londonstockexchange.com/companies-and-advisors/aim/advisers/aim-notices/ad1v4-clean.pdf>>.
- ¹³⁷ See London Stock Exchange, Regulation Briefing, May 2005 – Issue 20, p.3, originally available at: <<http://www.londonstockexchange.com/NR/rdonlyres/9FAB10Co-DFBo-4514-A4A7-2F50636E857D/o/May2005RegBriefing1.pdf>>.
- ¹³⁸ 'Public censure – SubSea Resources plc'.
- ¹³⁹ 'Public censure and fine – Meridian Petroleum PLC'.
- ¹⁴⁰ London Stock Exchange, Stock Exchange AIM Disciplinary Notice, AD9, 'Public censure and fine – Regal Petroleum PLC', 17 November 2009, available at: <<http://www.londonstockexchange.com/companies-and-advisors/aim/advisers/aim-notices/aim-notice-ad9.pdf>>.
- ¹⁴¹ 'Public censure – Environmental Recycling Technologies plc'.
- ¹⁴² Respectively, 'Public censure and fine – Nabarro Wells & Co Limited'; London Stock Exchange, RNS 8482P, 'Statement regarding Durlacher Limited', 8 August 2005, originally available at: <<http://www.londonstockexchange.com/LSECWS/IFSPages/MarketNewsPopup.aspx?id=1049640&source=RNS>>. See also the summary of the censure by Linklaters, UK Corporate Update, 26 August 2005, pp. 2 – 3, available at: <<http://www.linklaters.com/Publications/Publication1005Newsletter/PublicationIssue20050826/Pages/PublicationIssueItem618.aspx>>.
- ¹⁴³ Financial Services Authority, *Final Notice To Seymour Pierce Limited*, 8 October 2009, available at <http://www.fsa.gov.uk/pubs/final/seymour_pierce.pdf>; also 'FSA fines Seymour Pierce £154,000 for failing to prevent employee fraud', *FSA/PN/136/2009*, 8 October 2009, available at: <<http://www.fsa.gov.uk/library/communication/pr/2009/136.shtml>>.
- ¹⁴⁴ White Nile Limited, 'Acquisition of oil assets and request for suspension', 16 February 2005, available at: <<http://www.investegate.co.uk/Article.aspx?id=200502160700126555I>>; also AIM, 'Temporary

-
- suspension of trading on AIM: While Nile Limited,' 16 February 2005, available at: <<http://www.investegate.co.uk/Article.aspx?id=200502160700116550I>>.
- ¹⁴⁵ AIM, 'Temporary suspension of trading on AIM: While Nile Limited', 27 May 2005, available at: <<http://www.investegate.co.uk/Article.aspx?id=200505271230028653M>>.
- ¹⁴⁶ Stephen Foley, 'Small Talk: LSE to set up disciplinary inquiry into White Nile', *The Independent*, 25 February 2005. Available at: <<http://www.independent.co.uk/news/business/analysis-and-features/small-talk-lse-to-set-up-disciplinary-inquiry-into-white-nile-485208.html>>.
- ¹⁴⁷ White Nile Limited, 'Update', 27 April 2005, available at: <<http://www.investegate.co.uk/Article.aspx?id=200504270700105626L>>.
- ¹⁴⁸ See n. 10.
- ¹⁴⁹ *Inter alia*: Rule 12 [notification substantial transactions] and Schedule Three [class tests] and Schedule Four [notifications]; Rule 14 [reverse takeovers] and Schedule Three [class tests]; Rule 17 [notification relevant changes to significant shareholders] and Schedule 5 [notifiable information]; Rule 19 [accounting]; Nomad Rule 19 [liaison with the Exchange]; Nomad Rule 25 [maintenance of appropriate records]; Nomad Rule OR3 of Schedule Three [monitoring trading, price sensitive information]; Guidance Note for Mining, Oil and Gas Companies, Part Two, Ongoing Obligations, Notifications.
- ¹⁵⁰ *AIM Disciplinary Procedures*, Disciplinary Process.
- ¹⁵¹ *AIM Disciplinary Procedures*, Disciplinary Process.
- ¹⁵² *AIM Disciplinary Procedures*, C1.1. However, the issuing of a warning notice does not preclude the matter being referred to either the Executive Panel or Disciplinary Committee; moreover, a case may be referred to either body in the absence of a warning notice.
- ¹⁵³ *AIM Disciplinary Procedures*, C36.2. There is caveat when seeking to make a consent order anonymous: 'provided that this will have no impact on the decision taken by the AIM Disciplinary Committee.' Also, the Disciplinary Committee retains the right to insist that the name of the AIM company or nominated adviser is disclosed to them.
- ¹⁵⁴ *AIM Disciplinary Procedures*, C8, C18.3 and C30.3.
- ¹⁵⁵ There is provision for the Executive Committee to hold a hearing if either party believes it to be essential (C11.1). Any oral hearing is held in private (C11.2). Similarly, the Chairman of the Disciplinary Committee may direct, with the written consent of all parties, that the hearing or part of it shall proceed by written representations (C21.1.2). The Appeals Committee, again with the consent of the parties, may also proceed by way of written submission (C31.2). There is also provision for both the Disciplinary Committee and the Appeals Committee to hold a pre-hearing review (respectively, C20.1.2 and C32.1).
- ¹⁵⁶ *AIM Disciplinary Procedures*, C22.1 and C33.1.
- ¹⁵⁷ *AIM Disciplinary Procedures*, C22.10 and C33.9. Records of any pre-hearing reviews by the Disciplinary Committee may be made at the request of any party or if the Chairman so decides (C22.9). It is unclear whether there is provision for records to be kept of any pre-hearings by the Appeals Committee: C33.9 confirms that '[a] record of any hearing will be made', although this provision is made under the section entitled 'The hearing'.
- ¹⁵⁸ *AIM Disciplinary Procedures*, C12.3.1 and C12.3.2, C23.2.1 and C23.2.2, C34.3.1 and C34.3.2.
- ¹⁵⁹ *AIM Disciplinary Procedures*, C15.2.3 (in respect of companies) and C15.3.4 (in respect of nomads).
- ¹⁶⁰ *AIM Disciplinary Procedures*, C23.6.
- ¹⁶¹ *AIM Disciplinary Procedures*, C2.2.
- ¹⁶² *AIM Disciplinary Procedures*, C34.6.
- ¹⁶³ AIM Regulation, *Inside AIM*, Issue 4 – September 2011, p.1.
- ¹⁶⁴ *Ibid.*

-
- ¹⁶⁵ See pp. 3, 30 and nn. 9, 165.
- ¹⁶⁶ Letter from AIM Regulation to RAID, 3 August 2011, reproduced in Annexe 1.
- ¹⁶⁷ Letter from AIM Regulation to RAID, 24 April 2012, reproduced in Annexe.
- ¹⁶⁸ AIM Regulation, Inside AIM, Issue 4 – September 2011, p.1.
- ¹⁶⁹ *Ibid.*, p.2.
- ¹⁷⁰ For a summary of the findings, see Human Rights Council, 'Human rights and corporate law: trends and observations from a crossnational study conducted by the Special Representative', Addendum: Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, A/HRC/17/31/Add.2, 23 May 2011.
- ¹⁷¹ *Ibid.*, p.2.
- ¹⁷² An account of this reverse takeover, 'Oryx Natural Resources Merger with Petra Blocked', was originally available at <<http://www.oryxnaturalresources.com/news/2002-12-3/>>. The same posting can still be accessed at:
<<http://web.archive.org/web/20030214144830/http://www.oryxnaturalresources.com/news/2002-12-3/>>
- ¹⁷³ Respectively, the kimberlite deposits in Tshibua and the alluvial deposits in the Senga Senga River. *UN Panel Report* 12 April 2001, paragraphs 159 ff. For a full account of the UN Panel's allegations and the credibility of Oryx's response, see Rights & Accountability in Development, *Unanswered questions: Companies, conflict and the Democratic Republic of Congo*, May 2004, pp. 46 – 54, available at: <http://www.raid-uk.org/docs/UN_Panel_DRC/Unanswered_Questions_Full.pdf>.
- ¹⁷⁴ Suzy Jagger, 'Exchange pressured on Petra case', *Telegraph*, 13 June 2000.
- ¹⁷⁵ UN Security Council, Final report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, S/2002/1146, 16 October 2002, paragraph 175.
- ¹⁷⁶ See Case No. HQ02X04337, Oryx et al. versus Independent News and Media et al., High Court of Justice, 26 – 27 November 2003. The agreed statement was published in *The Independent*, 26 March 2004.
- ¹⁷⁷ Reported by Terry Kirby, 'Mining group hid links with Zimbabwe army, court told', *The Independent*, 27 November 2003 (attention is drawn to Oryx's rejection of the allegation that it 'hid links' to the Zimbabwean Government). British Foreign Office Minister, Peter Hain, is quoted in the *Financial Times* at the time of the failed application for admission of Oryx Diamonds as saying that 'No foreign office official has given any encouragement to Oryx to get involved in this diamond concession in the DRC. Quite the opposite, Oryx should not touch Congo with a barge pole in the present circumstances.' (See Francesco Guerrera, Michael Holman and Andrew Parker, 'Mugabe ministers linked to diamond group', *Financial Times*, 10 June 2000).
- ¹⁷⁸ See 'Oryx Natural Resources Merger with Petra Blocked'.
- ¹⁷⁹ See welcome announcement by the Exchange, originally available at <<http://www.londonstockexchange.com/en-gb/about/Newsroom/Media+Resources/Welcome+Stories/2002/09-10-2002.htm>>.
- ¹⁸⁰ CAMEC Admission document, pp. 9 – 11; also Part V, Independent Report on the Company's Projects and Activities, p. 32.
- ¹⁸¹ *AIM Rules*, rule 2; Schedule One.
- ¹⁸² Schedule One, (i)
- ¹⁸³ Schedule One, (j)

-
- ¹⁸⁴ Schedule One, (k). The threshold is set at £10,000 in either fees, securities, or other benefits. See Schedule Two (h).
- ¹⁸⁵ *AIM Rules*, rule 3.
- ¹⁸⁶ ‘Public censure and fine – Seymour Pierce Limited’, paragraph 41.
- ¹⁸⁷ London Stock Exchange and DLA Piper, *Joining AIM, a field guide for applicants to AIM*, September 2006, p.6.
- ¹⁸⁸ *Ibid*, version published August 2010.
- ¹⁸⁹ Investors LLP, ‘Your freshly squeezed guide to floating on AIM and PLUS, 2008, p.24.
- ¹⁹⁰ The figure of 74 companies is quoted in James Quinn, ‘Seymour Pierce hit with record fine’, *The Telegraph*, 21 December 2011.
- ¹⁹¹ As recorded in the Exchange’s Nomad search facility, <<http://www.londonstockexchange.com/exchange/companies-and-advisors/aim/for-companies/nomad-search.html>>.
- ¹⁹² See n. 38.
- ¹⁹³ See RAID’s submission on CAMEC, The initial award of the concessions, p. 29 and Underlying wartime agreements with other parties: allegations made against the predecessor companies, p. 32.
- ¹⁹⁴ See p. 12 and n. 41.
- ¹⁹⁵ See RAID’s CAMEC submission, ‘The naming of Rautenbach in the prosecution of the former National Commissioner of the South African Police Service’, pp. 41 ff.
- ¹⁹⁶ The State versus Jacob Sello Selebi, Charge Sheet, paragraphs 19 – 21, available at: <<http://www.npa.gov.za/UploadedFiles/Selebi%20charge%20sheet.pdf>>.
- ¹⁹⁷ *AIM Rules*, Schedule Two, (g)(i)(ii).
- ¹⁹⁸ ‘[A]ny senior manager who is relevant to establishing that the issuer has the appropriate expertise and experience for the management of the issuer's business.’ (PD Regulation, Annex I, 14.1(d), reproduced in FSA Handbook, Prospectus Rules, App 3.1.1).
- ¹⁹⁹ Cf. PD Regulation, Annex I, 14.1, reproduced in FSA Handbook, Prospectus Rules, App 3.1.1. On remuneration, see PD Regulation, Annex I, 15 and subparagraphs.
- ²⁰⁰ *AIM Rules*, Schedule Two, (g)(iii) – (viii). Cf. PD Regulation, Annex I, 14.1(b) – (d), reproduced in FSA Handbook, Prospectus Rules, App 3.1.1.
- ²⁰¹ RNA, Schedule Three – Nominated Adviser Responsibilities, AR2.
- ²⁰² *Ibid*.
- ²⁰³ PD Regulation, Annex I, 18.3. Reproduced in FSA Handbook, Prospectus Rules, App 3.1.1.
- ²⁰⁴ RNA, Schedule Three – Nominated Adviser Responsibilities, AR2.
- ²⁰⁵ Cf. Annex I, 14.1 and 14.2, reproduced in FSA Handbook, Prospectus Rules, App 3.1.1.
- ²⁰⁶ *AIM Rules*, Schedule Two, (i). See also definition of ‘related financial product’ under *AIM Rules*, Glossary.
- ²⁰⁷ *AIM Rules*, Schedule Two, (h). The threshold is set at £10,000 in either fees, securities, or other benefits.
- ²⁰⁸ Ernst and Young, *Mining Eye*, Q4, 2007, pp. 2 – 3, originally available at: <[http://int.sitestat.com/ernst-and-young/uk/s?Q4_2007_Mining_EYe&ns_type=pdf&ns_url=\[http://www.ey.com/Global/assets.nsf/UK/Q4_2007_Mining_EYe/\\$file/q4_2007_Mining_EYe.pdf\]](http://int.sitestat.com/ernst-and-young/uk/s?Q4_2007_Mining_EYe&ns_type=pdf&ns_url=[http://www.ey.com/Global/assets.nsf/UK/Q4_2007_Mining_EYe/$file/q4_2007_Mining_EYe.pdf])>.

-
- ²⁰⁹ Credit Suisse, Central African Mining (CFM.L): The cobalt king is back, 26 March 2008, pp. 2 –3, available at: <http://minesite.com/fileadmin/content/pdfs/Brokers_Notes_Mar_08/Credit_Suisse_-_26_Mar_08.pdf>.
- ²¹⁰ CAMEC, ‘Proposed acquisition of shares in DRC Resources Holdings Limited’, respectively, p. 8 and C. Other key parties, p.51.
- ²¹¹ As of July 2012, the Financial Services Bill was undergoing revision in the House of Lords. Amendments will be considered by the House of Commons. It is planned that the Bill will receive Royal Assent by the end of 2012 and the resulting Act to be in force by early 2013. See <<http://services.parliament.uk/bills/2010-12/financialservices.html>>.
- ²¹² See London Stock Exchange Group, *Response to HM Treasury White Paper “A new approach to financial regulation: the blueprint for reform”*, 8 September 2011, available at: <<http://www.londonstockexchange.com/about-the-exchange/regulatory/lsegresponsetogovernmentwhitepaperseptember2011.pdf>>.
- ²¹³ *Ibid.*, p. 13. See also, HM Treasury, *A new approach to financial regulation: securing stability, protecting consumers*, January 2012, paragraph 4.34, p.34, available at: <http://www.hm-treasury.gov.uk/d/fin_fs_bill_policy_document_jan2012.pdf>. The publication summarises key changes to the draft Financial Services Bill, following public consultation and initial review by parliamentary committees.
- ²¹⁴ Response to HM Treasury White Paper, p.10.
- ²¹⁵ *Ibid.*,1. Recognised Investment Exchanges, pp. 11 – 12.