

QUESTIONS OF COMPLIANCE

**The Conduct of the Central African Mining & Exploration
Company (CAMEC) plc and its Nominated Adviser, Seymour
Pierce Limited**

Submission to AIM Regulation

by

Rights & Accountability in Development (RAID)

May 2011

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List of Abbreviations

ACS	Aviation Consultancy Service Company
AIM	London Stock Exchange Alternative Investment Market
BVI	British Virgin Islands
CAMEC	Central African Mining & Exploration plc
CAMI	Mining Registry (<i>Cadastre Minier</i>)
CCC	Congo Cobalt Corporation
CEEC	Diamond and Precious Metals Evaluation Centre (<i>Centre d'évaluation, d'expertise et certification</i>)
CEO	Chief Executive Officer
CMD	Congo Minerals Developments Ltd., a subsidiary of First Quantum
CMGC	Central Mining Group Corp.
CNDP	<i>Congrès national pour la défense du peuple</i> (National Congress for the Defense of the People)
COPIREP	<i>Comité de pilotage de Réforme des Entreprises Publiques</i> (Commission on Public Sector Reform (DRC))
COSLEG	Comiex (<i>Compagnie mixte d'import-export</i>) and OSLEG (Operation Sovereign Legitimacy)
CPA	Comprehensive Peace Agreement (Sudan)
CPRG	<i>Comité Permanent pour la Restructuration de la Gécamines</i> (Steering Committee for the Restructuring of Gécamines)
CRC	Copper Resources Corporation
CRJV	Congo Resources Joint Venture
DCP	DRC Copper and Cobalt Project Sarl
DECA	Desenvolvimento E Comercialização Agricola Limitada
DfID	Department for International Development (UK)
DGI	Dan Gertler International
DRC	Democratic Republic of the Congo
DSO	Directorate Special Operations (South Africa)
DTR	Disclosure and Transparency Rules
ENRC	Eurasian Natural Resources Corporation plc
EPSA	exploration and production sharing agreement
EU	European Union
FARDC	<i>Forces Armées de la République Démocratique du Congo</i> (Armed Forces of the Democratic Republic of the Congo)
FATF	Financial Action Task Force
FDLR	<i>Forces démocratiques de libération du Rwanda</i> (Democratic Forces for the Liberation of Rwanda)
FSA	Financial Services Authority
GCM	<i>La Générale des Carrières et des Mines</i> . Also Gécamines
GEC	Global Enterprises Corporate Ltd.
Gécamines	see GCM
HMT	Her Majesty's Treasury
ICC	International Chamber of Commerce
ICSID	International Centre for the Settlement of Investment Disputes
IDC	Industrial Development Corporation of South Africa
IDI	International Diamond Industries
IFC	International Finance Corporation
IMC	The IMC Consulting Group
IMF	International Metal Factors Ltd.
IRR	Internal Rate of Return
JVC	Joint Venture Company
KASE	Kazakhstan Stock Exchange
KCC	Kamoto Copper Company
KFL	Kinross-Forrest Limited

KMC	Kababankola Mining Company Sprl
KMT	Kingamyambo Musonoi Tailings Sarl
LFL	Lefever Finance Limited
LRA	Lord's Resistance Army
LSE	London Stock Exchange
MCRC	Mining Contracts Review Commission (<i>Commission de Revisitation des Contrats Miniers</i>)
MIBA	Société Minière de Bakwanga
MIL	Meryweather Investments Limited
MMT	Majestic Metal Trading Ltd
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
NCP	National Contact Point for the OECD Guidelines for Multinational Enterprises
NDPP	National Director of Public Prosecutions (South Africa)
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)
OSC	Ontario Securities Commission
OSLEG	Operation Sovereign Legitimacy
PE	<i>Permis d'Exploitation</i> (Exploitation Permit)
PRGSP	Poverty Reduction and Growth Strategy Paper
RAID	Rights & Accountability in Development
RDC	<i>République démocratique du Congo</i> (Democratic Republic of the Congo)
RPC	RP Capital Group
RPEMF	RP Explorer Master Fund
SAPS	South African Police Service
SDN	Specially Designated National
SPV	special purpose vehicle
TSX	Toronto Stock Exchange
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
USAID	United States Agency for International Development
ZDF	Zimbabwean Defence Force
ZMDC	Zimbabwe Mineral Development Corporation

The Democratic Republic of the Congo



INTRODUCTION

The United Nations Group of Experts on the Democratic Republic of the Congo: AIM and ‘insufficient due diligence’

The Democratic Republic of the Congo (DRC) has suffered from a devastating war, with hostilities recommencing in 1998 in a fight for control of the country’s vast mineral wealth. One legacy of this war is the legitimacy or otherwise of many mining and mineral concessions originally transferred in exchange for military support at the height of the conflict.

The United Nations Group of Experts on the Democratic Republic of the Congo, in their report to the Security Council of 18 July 2006, examined, *inter alia*, ‘concession rights held by individuals of unknown or questionable standing’.¹ The Experts reported ‘the consequences of insufficient due diligence procedures’ and refer to the Central African Mining and Exploration Company (Concession No. 1590-1605):² ‘Billy Rautenbach is a major shareholder of the Central African Mining and Exploration Company. He is wanted by the authorities of South Africa for fraud and theft.’ The Experts also referred to Boss Mining (Concession Nos. 467, 469), again identifying Billy Rautenbach as a major shareholder.³

A key question of this submission is to understand how the Group of Experts can make such an allegation of insufficient due diligence when the regulatory regime – in this case the London Stock Exchange’s Alternative Investment Market (AIM), upon which Central African Mining & Exploration plc (CAMEC) was traded at the time – exists to ensure the ‘appropriateness’ of companies. The Exchange’s stated approach to regulation ‘is aimed at maintaining the integrity, orderliness, transparency and good reputation of its markets and changing behaviour in those markets where necessary’.⁴ We believe that the concerns raised in the submission warrant scrutiny by the regulator, as part of AIM Regulation’s responsibility to monitor and investigate AIM companies’ compliance with the regulations.

Due Diligence is defined as ‘diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation’.⁵ Companies are required to exercise due diligence in their dealings in the interests of their shareholders. However, the concept is now more broadly interpreted: the Organisation for Economic Co-operation and Development (OECD) defines due diligence as ‘the dynamic process whereby companies discharge their corporate responsibilities. Risk-based due diligence refers to the steps a company would take to detect and manage risk in order to prevent or mitigate the actual, potential or perceived adverse impacts of its operations.’⁶ In 2008, the United Nations (UN) approved a framework on business and human rights, which rested, alongside the State’s duty to protect, on ‘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.’⁷ According to *Guiding Principles on Business and Human Rights*, drawn up to implement the framework, ‘a business enterprise’s activities are understood to include both actions and omissions; and its ‘business relationships’ are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services’.⁸ Human rights due diligence may be included within ‘broader enterprise risk-management systems, provided that it goes beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders’.⁹

CAMEC’s DRC assets were previously acquired during the Congolese war by companies belonging to Billy Rautenbach and fellow Zimbabwean-national, John Bredenkamp, who have both subsequently been placed on European Union (EU) and United States (US) sanctions lists. Prior to CAMEC’s acquisitions, both Rautenbach and Bredenkamp and their companies were named by

another UN Panel examining the illegal exploitation of natural resources in DRC, which alleged that they were party to a secret profit sharing agreement with the Zimbabwean regime.¹⁰ Given the gravity of these charges and the serious reputational risk attached to these assets, for both the acquiring company and the market, it is legitimate to scrutinise compliance with due diligence measures under the AIM regulatory regime.

The Group of Experts' accusation of insufficient due diligence is particularly grave given the context in which it was made: the Group had been mandated, *inter alia*, to report to the Security Council, on the implementation of a UN arms embargo covering the entire DRC.¹¹ In its reporting of diversions of natural resources for funding embargo violations, the Experts stated that 'the integrity of the natural resources export industry of the Democratic Republic of the Congo is dangerously impaired. The lack of proper ownership controls over many mining sites permits the illegal exportation and trading of natural resources at a great loss to the country's workforce and overall economy. The Group of Experts cannot exclude that some of this trade is funding illegal arms acquisitions or that they might serve as financial sources for political campaigning in the upcoming elections.'¹² The arms embargo was imposed in an attempt to curb continued violence in the wake of the war in DRC.

Companies with DRC mining assets traded on the Alternative Investment Market

AIM is the London Stock Exchange (LSE)'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.¹³ AIM is the most successful international growth market in terms of new admissions and raising new money; it is the index of choice for many mining and natural resources companies, attracting more than an average number of companies incorporated overseas, as well as in the UK. Of the new admissions in 2005 and 2006, a quarter were international, rising to almost a third in 2007.¹⁴ Forty per cent of overseas AIM companies are incorporated in Bermuda, the British Virgin Islands (BVI) or the Cayman Islands.¹⁵ Oil and gas producers and mining companies, many with assets in the developing world, currently make up 35% by market capitalisation of AIM.¹⁶

A number of companies with DRC mining assets are or have been traded on AIM, including African Diamonds plc, Brinkley Mining plc (uranium), CAMEC, Copper Resources Corporation (which cancelled its admission to trade on 24 February 2009 – see below), Moto Goldmines Limited (which cancelled its admission to trade on 16 October 2009)¹⁷, Mwana Africa plc (gold, copper, diamonds), Nikanor plc (copper) and Xceldiam Limited (admission to trade cancelled on 18 September 2008)¹⁸. Nikanor announced its intention to cancel its AIM admission and the trading of its shares on the market with effect from 11 February 2008, following a merger with Katanga Mining.¹⁹

CAMEC, at commencement of research for this report, was the largest AIM-traded mining company with assets in DRC, with a market capitalisation in August 2008 of £823 million, over six times greater than its nearest AIM-traded peer.²⁰ The company's size reflected its acquisitions: other DRC mining assets originally acquired by Prairie International Limited (majority owned by a trust benefiting the family of Israeli mining magnate Dan Gertler) were taken over by CAMEC.²¹ Dan Gertler was, and remains, a key player in the DRC mining sector and was one of the founding shareholders of the formerly AIM-traded Nikanor. Moreover, when undertaking preliminary research for this submission in 2008, CAMEC owned 47.2% of Copper Resources Corporation (CRC), the holding company for a group of mineral exploration and development companies in DRC.²² Subsequently, CRC cancelled its admission to trade on AIM following a buy-out by Metorex, the majority owner at the time of CAMEC's acquisition of shares in CRC, which sued CAMEC for failing to make a mandatory offer for CRC.²³

Of the AIM-traded companies, CAMEC was the only one referred to by the Group of Experts under 'Concession rights held by individuals of unknown or questionable standing' in its 'samples' illustrating 'the consequences of insufficient due diligence procedures'.²⁴

While research for this submission was under way in late 2009, CAMEC announced that, following a successful offer for CAMEC by Eurasian Natural Resources Corporation plc (ENRC), it would cancel

the trading of its shares on AIM, effective from 8 December 2009.²⁵ Notwithstanding the takeover of CAMEC and its cancellation of trading on AIM, it remains pertinent to examine the company's conduct, for several reasons.

- Different shareholders and other stakeholders will have been adversely or beneficially affected at different times depending upon the company's conduct whilst traded on AIM and it is necessary to examine its record of compliance to ensure accountability.
- Whilst CAMEC has cancelled its AIM shares, its DRC assets, which have been the subject of considerable controversy, as detailed in this report, are now owned by ENRC, a company incorporated and registered in England and Wales and listed on the Main Market.²⁶
- A precedent exists where the Exchange examined the conduct and, in that case, also censured an entity – the nominated adviser, Durlacher – even though the company had since merged with stockbroker Panmure Gordon and had ceased to operate as before in its own right.²⁷
- CAMEC's nominated adviser, Seymour Pierce Limited, continues to work as a nominated adviser for other companies on AIM and 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. In the case of Crown Corporation Limited, later renamed Langbar International Limited, the company cancelled its admission to trade on AIM following suspension.²⁸ The company is being investigated by the Serious Fraud Office. However, the fact that the company was no longer AIM-traded did not prevent the exchange from taking disciplinary action against Langbar's nomad, Nabarro Wells & Co. Limited (see AIM disciplinary action taken by the Exchange (III), p. 77).

The naming of CAMEC by the Group of Experts must give rise to a consideration of the AIM rules designed to promote due diligence *vis-à-vis* CAMEC's conduct and the advice given by CAMEC's nominated adviser, Seymour Pierce, about compliance with the rules. Yet to better understand the Group of Experts' concern, it is pertinent briefly to outline the context for business conduct in DRC: the legacy of war and weak governance ought to heighten rather than diminish the need for due diligence.

Business conduct and the legacy of war in DRC

War in DRC

The first (July 1996 – July 1998) and second (commencing in August 1998) Congolese wars, 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.²⁹ Human rights organisations have documented grave abuses that have been carried out by all parties during the war. Unarmed civilians have been massacred; forcible abductions, arbitrary arrest and torture have been widespread; and thousands of women and girls have been raped by combatants.³⁰

In April 2003, the warring parties finally agreed to share power and signed the All Inclusive Agreement on the Transitional Government. The Government of National Unity was installed in June 2003, but the peace remains fragile. Presidential and legislative elections scheduled for June 2005 eventually took place in July 2006, with Joseph Kabila announced as DRC's first democratically elected president after an October run-off vote.³¹ Violence has persisted in DRC, particularly in the east of the country (see Supplement for more detail). In May 2010, the Security Council renewed the deployment of its renamed peace keeping force in DRC – United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) – until 30 June 2011.³² President Kabila had called for the UN mission to withdraw its peace keeping force by mid 2011.³³

A war over natural resources

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 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 concluded:³⁴

The regional conflict that drew the armies of seven African States into the Democratic Republic of the Congo has diminished in intensity, but the overlapping microconflicts that it provoked continue. These conflicts are fought over minerals, farm produce, land and even tax revenues. Criminal groups linked to the armies of Rwanda, Uganda and Zimbabwe and the Government of the Democratic Republic of the Congo have benefited from the microconflicts. Those groups will not disband voluntarily even as the foreign military forces continue their withdrawals. They have built up a self-financing war economy centred on mineral exploitation.

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 legacy of wartime contracts

Ever since 2002, when the UN Panel listed 85 companies as in violation of the OECD Guidelines on Multinational Enterprises (a set of recommendations adopted by member governments setting out 'shared expectations for business conduct')³⁵ there has been considerable debate over the provenance of assets acquired during the war in DRC and the fairness or otherwise of contracts concluded at that time.

Rights & Accountability in Development (RAID) is a longstanding contributor to this debate, reporting on unanswered questions arising from the UN Panel's work, filing complaints against companies named by the UN Panel under the OECD Guidelines, and producing several papers analysing the nature of joint venture contracts between the state-owned mining company, La Générale des Carrières et des Mines (Gécamines), and its private sector partners.³⁶

The fact that the right to exploit many mineral concessions was granted *in extremis*, when DRC was at war, leaves an inescapable legacy. According to the World Bank,³⁷

[a] great deal of local and international controversy attends the contracts with private mining companies. Beginning in 1994 and 1995, in face of the inability of the state companies to maintain production, the government began to allow them to enter into partnerships with private 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.

Whilst the majority of DRC's mineral reserves were previously exploited by Gécamines, there has been a proliferation of wartime and post-war public-private partnership agreements: Gécamines alone had thirty such agreements, under which it retained only a minority stake.³⁸

Moving forward: domestic review of the wartime mining contracts

The key question is how to move forward to enable the mining sector to make its rightful contribution to the DRC economy. It is an expedient notion to suggest that, in order to progress, DRC should draw a line under the way in which mineral rights were originally transferred during the war and transitional post-war period. Yet such an approach, at least at the policy level, has been rejected – although following through upon the revision of the wartime and transitional contracts in practice has proved much more problematic.

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 (IMC), 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 – see Supplement for further details).³⁹ Calls for the scrutiny of the terms of wartime and post-war partnerships with private companies culminated in a four-year review by the DRC Government of over 60 contracts (*Commission de Revisitation des Contrats Miniers* (MCRC)). The MCRC 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.'⁴⁰

The reviews and audits were concerned with the legal and regulatory requirements of DRC as the host country. Indeed, the World Bank, mindful of the need 'to rapidly reestablish credibility on the international markets which supply funding for mining investments in DRC' recommended that the renegotiated contracts be submitted for review by an independent panel of experts to establish once and for all their conformance to DRC legislation and to assess their financial and economic impacts 'based on industry recognized standards of financial, technical and economic analysis.' Yet the Bank's formula for ensuring that domestic due diligence leads to international credibility can be reversed: the corollary is that properly regulated overseas markets should ensure the credibility of listed mining companies and expose legislative non-compliance or financial or technical shortcomings.

The blocking from AIM admission of a company named by the UN Panel

Before examining the AIM rules in respect of CAMEC's acquisitions in DRC, it is pertinent to review how the exchange dealt with an attempted admission by another company with DRC mining assets – a diamond concession – originally transferred to the DRC's Zimbabwean allies during the war.

In 2001, the UN Panel reported that rights to exploit two of the DRC's richest state-owned (Société Minière de Bakwanga – MIBA) diamond concessions – respectively, the kimberlite deposits in Tshibua and the alluvial deposits in the Senga Senga River – had been transferred to the Zimbabwean Defence Force (ZDF) by the late President Laurent Kabila as a barter payment for ZDF military assistance.⁴¹ The Panel stated that Oryx-Zimcon joined with a company set up by the Congolese and Zimbabwean Governments and military elites (known as COSLEG) in October 1999 to provide the technical expertise to exploit the concessions, resulting in the formation of the joint venture Sengamines.⁴² Financial statements for Oryx Natural Resources confirm that Oryx-Zimcon was 'a joint venture company registered in Harare, Republic of Zimbabwe which is equally owned by the Company [Oryx Natural Resources] and the Government of the Republic of Zimbabwe.'⁴³ According to the Panel, the joint venture of Oryx-Zimcon held 90 percent of the diamond concession mining rights.⁴⁴

Oryx Natural Resources Ltd. was a private mining company incorporated in the Cayman Islands and a member of the Oryx Group, registered in Oman.⁴⁵ The UN Panel alleged that Oryx Natural Resources was 'a front for ZDF [Zimbabwe Defence Forces] and its military company' and that the company was advised by senior COSLEG military and government figures.⁴⁶ Oryx Natural Resources was listed in annexe I of the Panel's October 2002 report as a company on which the Panel recommended the placing of financial restrictions. The Panel stated: 'By contributing to the revenues of the elite networks, directly or indirectly, those companies and individuals [listed in Annexes I and II] contribute to the ongoing conflict and to human rights abuses. More specifically, those business enterprises are in violation of the OECD Guidelines for Multinational Enterprises.'⁴⁷

Oryx rejected the Panel's allegations of wrongdoing as false and denied that the company was being used as 'a front for ZDF'.⁴⁸ In its response to the Panel, Oryx asserted that it has reached 'a minuted and formal resolution' with the Panel.⁴⁹ Yet, the Oryx case was ultimately referred by the Panel in October 2003 to the UK authorities for updating or further investigation.⁵⁰ The UK National Contact Point (NCP – the office established to implement the OECD Guidelines) issued a final statement on

the Oryx case in June 2005, which, while noting the resolution with the UN Panel, stressed the need for Oryx, *inter alia*, to ‘respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments’.⁵¹ Ultimately, the UK NCP declared itself ‘unable to form any further conclusion over the application of the Guidelines’. In the interim, Oryx Natural Resources and two co-claimants had 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 2004.⁵² ‘Oryx, Mr Al Shanfari and Mr White have strenuously denied the truth of the allegations in the article and those in the UN Report. The newspaper, in its defence, has maintained that the allegations it published were true.’

In June 2000, Oryx Natural Resources Ltd. had sought AIM admission for a new entity, Oryx Diamonds Ltd.⁵³ This was to have been achieved by a £50 million ‘reverse takeover’ by a company already traded on AIM, the Bermuda-registered and South African-managed Petra Diamonds Ltd. Petra was to acquire Oryx Natural Resources, after which Petra intended to change its own name to Oryx Diamonds Ltd.⁵⁴ Following the acquisition, existing Oryx shareholders were to have had a 60 percent holding in the new company.⁵⁵

On 9 June 2000, Oryx’s nominated adviser, the accounting firm Grant Thornton, withdrew its services. This ended the attempt to join AIM because the rules governing admission require the participation of a nominated adviser. Grant Thornton issued a statement confirming that discussions with the regulatory authorities had led them to conclude that it could no longer act if the acquisition of Oryx Natural Resources was to proceed.⁵⁶ In the libel case proceedings in the British High Court of Justice, 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’.⁵⁷ Oryx publicly cited on its website newspaper sources blaming the withdrawal on UK Government interference.⁵⁸

Given that the assets acquired by CAMEC in DRC were originally acquired during the war by companies belonging to individuals – Billy Rautenbach and John Bredenkamp – currently listed on EU and US sanctions lists and alleged by the UN Panel to have, respectively, ‘close ties to the ruling ZANU-PF party in Zimbabwe’ and to have been party to a confidential profit sharing agreement with the Zimbabwean regime, it is legitimate to examine how CAMEC’s DRC acquisitions were deemed acceptable under AIM regulation.⁵⁹ Moreover, and as documented below, not only did Rautenbach profit from the transaction with CAMEC, but he continued to actively manage the assets after their acquisition.

A knowledge of events in DRC: the context for an assessment of CAMEC’s admission to trade on AIM

Many companies, in their replies to the UN Panel at the time, defended their actions by stating that they were unaware of the serious implications of their conducting business in DRC. Even at the time, this defence ignored the fact that, far from being politically naïve, businesses have an acute understanding of political risk in order to do business in a destabilised country. Companies operating in countries like DRC routinely purchase advice on political risk from consultancies specialising in such analysis. In the wake of seven UN Panel Reports, resolutions by the UN Security Council strongly condemning the illegal exploitation of natural resources in DRC,⁶⁰ the setting up of the Group of Experts on the implementation of an arms embargo on DRC, a series of hard-hitting reports on the resource war from credible international NGOs, and Congolese domestic inquiries – such as the Lutundula Commission – into wartime agreements, it is apparent that any business, including CAMEC, acquiring assets in DRC would be well aware of the heightened need for thorough due diligence. Moreover, beyond an examination of the provenance of assets originally acquired during the war, any company making acquisitions would also have been fully aware of the ongoing review of the wartime and immediate post-war mining contracts. In the wake of the failed attempt by Oryx to join AIM, the UK regulatory authorities should certainly have recognised the need for vigilance in respect of the holding of DRC assets by AIM companies, including CAMEC.

It is the case that CAMEC's DRC acquisitions – which occurred after CAMEC joined AIM and which were not deemed to constitute a reverse takeover – were not captured by, or subjected to the due diligence checks under the AIM admission rules. However, given the information required by or provided to the exchange, a key purpose of this submission is to set out CAMEC's conduct so that it may be examined in relation to the ongoing requirements of the AIM regulatory regime: it is, of course, the preserve of the exchange to determine matters of compliance or non-compliance.

Structure of the submission and sources of information

The submission is structured as follows.

- The main submission focuses on CAMEC during the period of AIM trading, when it acquired mining concessions in DRC, and seeks to establish the extent to which the company's transactions and conduct are governed by the AIM regulations, to include the advisory role played by the company's nominated adviser (nomad), Seymour Pierce.
- Where the provenance and ownership of CAMEC's DRC assets, or accounting practices, management or disclosure relating to these assets or specific transactions, appear to engage AIM company or nomad rules, this is highlighted by a series of questions addressed to the company and/or its nomad.
- Disciplinary action taken by the Exchange is summarised in Annexe 1. Where relevant, further details of disciplinary action taken against AIM-traded companies and their nominated advisers – named and unnamed – are juxtaposed throughout the text. Attention is drawn to the factors 'which the Exchange takes into account when considering what disciplinary action to take in relation to a rule breach', *inter alia*: 'Consistent and fair application of the rules (any precedents of previous similar rule breaches)'.⁶¹
- Where appropriate, greater detail on specific entities or events is given in a series of annexes, which are referenced in the text.

The main part of the submission is divided into three chapters. The first chapter details CAMEC's incorporation and admission to AIM, its acquisition of DRC mining concessions and the company's resulting corporate structure. In order to understand the final consolidation of CAMEC prior to its acquisition by ENRC, it is also necessary to review its failed bid for another Congolese company, Katanga Mining Limited, after a rival bid from AIM-traded Nikanor plc, backed by the mining magnate Dan Gertler, who had a significant holding in both companies. Eventually, CAMEC and another company – Prairie International Limited, with a majority shareholding benefiting Gertler's family – were to merge amicably, but not before Prairie's subsidiary ownership of a half share in CAMEC's Mukondo mine had resulted in the cessation of cobalt production and an intervention by the DRC Government, withdrawing CAMEC's mine licenses. This event had obvious import for disclosure under the AIM rules.

The second chapter outlines the AIM rules applicable to CAMEC's DRC acquisitions, including the *AIM Rules for Companies* on disclosure (general disclosure and substantial transactions), ongoing obligations arising from the Guidance for Mining, Oil and Gas Companies, and the relevance of the *AIM Rules for Nominated Advisers* applicable to CAMEC's nomad, Seymour Pierce, in advising on CAMEC's Congolese transactions.

The third and final chapter outlines the principal concerns for AIM regulation by relating substantive information on CAMEC's DRC acquisitions to the AIM rules. Where the provenance and ownership of CAMEC's DRC assets, or accounting practices, management or disclosure relating to these assets or specific transactions, appear to engage AIM company or nomad rules, this is highlighted in the submission by a series of questions concerning the actions of CAMEC and Seymour Pierce. These unanswered questions warrant careful scrutiny by the regulator.

The sources for RAID's 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 submission includes comprehensive endnotes that reference the documents consulted in its 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.)

Incorporation and AIM admission

CAMEC was incorporated in England and Wales on 11 June 2001 as Ableplan plc, changing its name to Central African Mining & Exploration Company on 5 July 2001.⁶³ The company's registered office was in London.⁶⁴

CAMEC was admitted to AIM in October 2002.⁶⁵ It described itself as an 'African mining company with a primary focus on the mining and production of copper and cobalt in the DRC,' but also noted 'investment, agricultural, trading and development activities' in Central and Southern Africa, including 'the region's largest trucking and logistics business'.⁶⁶ Further details of CAMEC's sale of its agricultural holdings to Agriterra (formerly White Nile, an oil and gas exploration company sharing a common chairman and chief executive with CAMEC) are given in the box below.

At the time of admission, CAMEC had not purchased its DRC assets: its principal project activity centred upon the mining and processing of tantalum (used in capacitors in mobile phones and other small electronic devices) in Namibia, with satellite operations in Zimbabwe, Mozambique and Zambia.⁶⁷

Likewise, at the time of admission to AIM, CAMEC had not acquired a number of platinum assets in Zimbabwe, in partnership with the Zimbabwe Mineral Development Corporation (ZMDC), the Zimbabwean state-owned mining company: ZMDC was later included in the list of entities supporting the Mugabe regime under the US Department of the Treasury's Zimbabwe sanctions program (see p. 44). The issue of sanctions *vis-à-vis* ENRC's acquisition of CAMEC, to include the latter's Zimbabwean platinum, is discussed further: see ENRC's acquisition of CAMEC: Rautenbach, the Zimbabwean platinum assets and sanctions, p. 43.

White Nile and Agriterra

CAMEC's chairman, Philippe Edmonds, and its chief executive, Andrew Groves, were also, respectively, the chairman and chief executive of another AIM-traded company, White Nile Ltd., which concluded a controversial oil deal with the Government of Southern Sudan in February 2005. White Nile's oil block encompassed more than half of the concession already claimed by a consortium led by Total.⁶⁸ Trading in White Nile's shares – following an initial surge in value on announcement of the Sudanese deal – were suspended by the Exchange in February 2005 over concerns that the deal counted as a reverse takeover and required the company to produce a detailed prospectus outlining the proposed deal with the southern Sudan leadership.⁶⁹ In May 2005, the LSE again halted trading in the company's shares, amidst doubts that it was possible to maintain an orderly market in the company's shares. In 2007, the Sudanese Government asked White Nile to withdraw from the disputed oil block and, in December 2008, White Nile announced that it was abandoning its oil and gas exploration business.⁷⁰ Further details of White Nile's Sudanese acquisitions are given in Annexe 4.

In January 2009, White Nile changed its name to Agriterra Limited and announced a new investing strategy by concentrating on the agricultural sector in Africa.⁷¹ In a reverse takeover, Agriterra acquired 75% of the issued share capital of each of Desenvolvimento E Comercialização Agrícola Limitada ('DECA'), Compagri Limitada ('Compagri') and Mozbife Limitada ('Mozbife'), all companies which were 75% owned by CAMEC. According to Agriterra's regulatory announcement, CAMEC held approximately 8.5% of Agriterra's Ordinary Shares and had common directors (Messrs Edmonds and Groves) with the Company.⁷² Agriterra continues to be AIM-traded; Edmonds and Groves remain directors; and the company's nomad is Seymour Pierce.⁷³

CAMEC's 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.⁷⁴ 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.'⁷⁵ According to the public relations company representing CAMEC at the time of the acquisition, CAMEC was not disclosing the identity of Meryweather's owners.⁷⁶

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.⁷⁷ The remaining 40% of Todal was held by the state-owned ZMDC.

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.'⁷⁸ 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.'⁷⁹ CAMEC's announcement of the acquisition stated:⁸⁰

...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:⁸¹ '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.

Seymour Pierce Limited – CAMEC's nomad and broker

CAMEC's nomad and broker was Seymour Pierce Limited.⁸³ Seymour Pierce describes itself as 'a leading London based investment bank and stockbroker focused on advising companies and raising finance for them.... With a strong focus on AIM, we are expert in advising growing companies across a range of sectors, both in the UK and internationally.'⁸⁴ The private equity firm Alchemy Partners holds 29.9% of the equity in the company, with virtually all of the remainder owned by the company's management and employees.⁸⁵

CAMEC's mining concessions in the Democratic Republic of Congo

The way in which CAMEC acquired its DRC mining concessions is complex, but can be understood in terms of a three stage process: firstly, it purchased the company established to sell the output from the mines (Congo Resources Joint Venture); secondly, it acquired the company (Boss Mining) which held the actual mining rights to the Likasi mines; and thirdly it consolidated its holdings by forming and then buying out a joint venture to operate the Mukondo mine. The latter acquisition resolved a dispute with the co-owners of the Mukondo mine (Prairie International, under the majority beneficial ownership of Dan Gertler and family), which had escalated to the point where the DRC Government temporarily withdrew CAMEC's mining licences. To better understand this final resolution and CAMEC's consolidation of its assets, it is also necessary to examine its failed bid for another major

operator in DRC – Katanga Mining Limited – a company that was subsequently acquired through a reverse takeover by Nikanor plc, a company in which Gertler also held a major interest.

The mines acquired by CAMEC were formerly organised under Gécamines' Groupe Centre (Centre Group). An overview summarising changes to the ownership structure of the Centre Group concessions, including CAMEC's acquisitions, is given in Annexe 2. All of the mining concessions referred to throughout the submission can be located on the map 'Mining Concessions in the DR Congo' produced by the International Peace Information Service (IPIS) using official and public data, available via: <http://www.ipisresearch.be/mine-concessions-drc.php?&lang=en>.

Purchase of the marketing company

In February 2006, CAMEC acquired International Metal Factors Ltd for US\$80 million – a figure later revised to £69,205,596.⁸⁶ 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.⁸⁷ These concessions were Likasi PE467 and PE469 (previously named C21 and C19 respectively) and 50% of the Mukondo concession.⁸⁸ 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.⁸⁹

Purchase of the mining company

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.⁹⁰ 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.'⁹¹ 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.'⁹² At the time of acquisition, the remaining 20% of the Boss Mining joint venture was owned by Gécamines.

CAMEC's cobalt and copper mines in DRC: the nature and extent of mineral resources

CAMEC's copper and cobalt mines and processing plant were all located in the southern province of Katanga in DRC, near the town of Likasi in Katanga Province, close to the border with Zambia and 125 kilometres to the north-west of the provincial capital, Lubumbashi.

The combined permit areas covered a total of 350 square kilometers. PE469 (Kakanda, also referred to as C19) covered 23,363 hectares and PE467 (Mende, also referred to as C21) covered 12,828 hectares.⁹³ Both permits gave the exclusive right to explore and exploit cobalt and copper minerals and to construct appropriate facilities. PE2589 for Mukondo covered ground within the much larger C19 area.⁹⁴ Mukondo mine is described as the largest historical producer in the area and has the largest remaining historic resource of any of the established deposits, especially in cobalt content.⁹⁵ Following its acquisition of Prairie, CAMEC was potentially the world's largest producer of cobalt.⁹⁶

PE467 has been partially explored, but no mining has taken place. Several deposits in PE469 have been mined in the past or are currently being mined.⁹⁷ Mukondo was CAMEC's most important cobalt producing mine in DRC.

As of June 2007, it was estimated that the total inferred mineral resource across the permit areas amounted to approximately 60.2 million tonnes at 2.12% copper and 0.49% cobalt, with a content of 1.28 million tonnes of copper and 295,000 tonnes of cobalt.⁹⁸ However, because the estimates were largely based on incomplete 2001 data, the technical report on CAMEC's DRC assets suggested an upside potential:⁹⁹ 'delineation drilling at Tenke Fungurume, a neighbouring project a short distance along strike, outside the permits, has nearly doubled a Cu-Co resource in similar rocks.'

CAMEC owned and operated 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

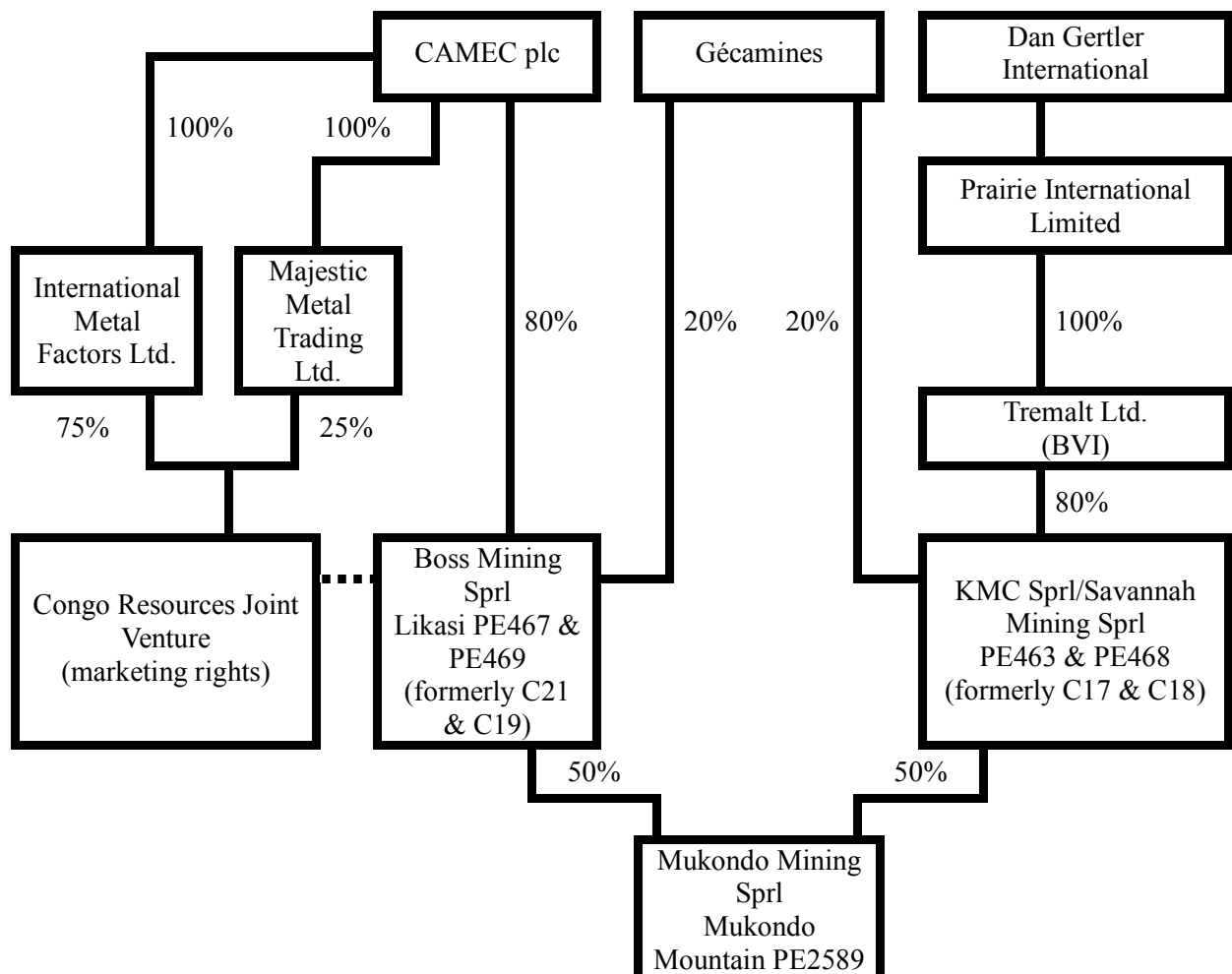
process the ore.¹⁰⁰ The first of ten 10,000 tonnes per annum modules in the Luita SX/EW was commissioned in March 2007.¹⁰¹ The Kakanda concentrator was rehabilitated in 2003.¹⁰²

The technical experts concluded that, ‘Using a fifteen year life for cobalt production and depletion of the copper resource in under 13 years, the preliminary assessment shows an aggregate cash flow to CAMEC of US\$1,881 million. At a discount rate of 12% this gives a NPV [Net Present Value] of US\$ 959 million.’¹⁰³ These projections were compiled before CAMEC’s acquisition of the whole of Mukondo and additional permits PE463 and PE468.

At the time, CAMEC anticipated annualised production of 30,000 tonnes of copper cathode and 8,000 tonnes of cobalt concentrate metal (subject to demand) by March 2009, rising to 100,000 tonnes and 12,000 tonnes respectively by March 2011.¹⁰⁴ However, interim results for the six months prior to the end of September 2008 recorded average monthly sales for the period of 422 tonnes of cobalt and 867 tonnes of copper, equating to annualised production of approximately 5000 tonnes of cobalt and 10,000 tonnes of copper.¹⁰⁵

The onset of global recession in the latter half of 2008 saw copper prices fall sharply from \$8985/million tonnes on 3 July 2008 to \$2902/million tonnes by the end of December 2008.¹⁰⁶ By the end of 2009, the copper price had recovered to \$7346/million tonnes.¹⁰⁷ High grade cobalt prices crashed from a peak of \$51.06/lb in March 2008 to a low of \$12.63/lb in March 2009.¹⁰⁸ CAMEC temporarily halted copper and cobalt mining in November 2008, meeting sales from stockpiled reserves, and put its exploration activities under review in order to reduce its cost base.¹⁰⁹ An increase in cobalt demand prompted mining to recommence at Mukondo Mountain at the end of March 2009.¹¹⁰ Although prices cycled up and down in the second quarter of 2009, the price of high grade cobalt had risen to an average of \$18.11/lb for July 2009.¹¹¹

CAMEC’s DRC assets before consolidation



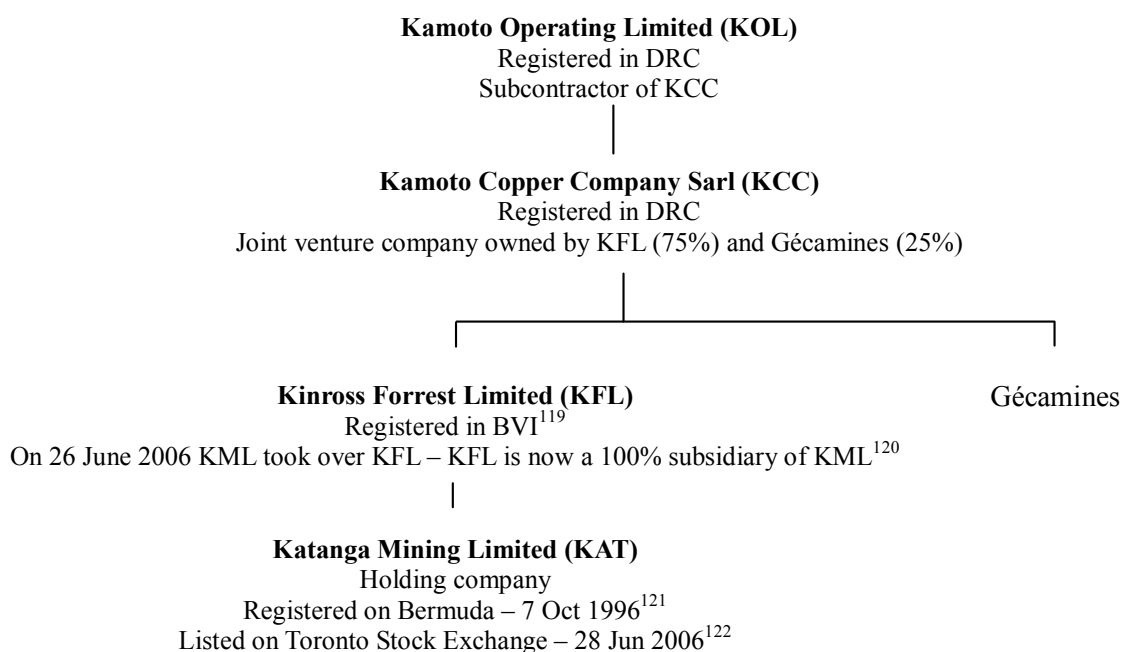
CAMEC's failed bid for Katanga Mining Limited

The bid for Katanga Mining

In mid-2007, CAMEC sought to acquire Katanga Mining Limited, the majority owner, via its Kinross-Forrest Limited (KFL) subsidiary, of the Kamoto Copper Company (KCC), a joint venture with DRC's state mining company to develop the Kamoto/Dima mining complex (the Kamoto Project). The 15,235 hectares awarded to KCC included the underground Kamoto mine, three open-pit mines, and the Musonoie T17 deposit.¹¹² Other assets comprised the Kamoto Concentrator and the Luilu metallurgical plant, as well as all other infrastructure. The total proven and probable reserves of copper and cobalt at Kamoto were calculated at 3.28 million tonnes and 344,000 tonnes respectively.¹¹³ In an interview, given prior to CAMEC's bid for Katanga, the president and chief executive officer (CEO) of KML was unequivocal about the quality of both the Kamoto reserves and production facilities: 'I am unaware of any start-up enterprise in the base metal mining sector that has come into the marketplace with such large, high-grade reserves and large installed capacity.... If you look at the grade of these deposits, the production grade of the ore going into the mills and the plants, it's extremely high by world standards, and as a result this operation will be one of the lowest cost producers in the world.'¹¹⁴

Katanga Mining Limited and the Kamoto Project

The holding company Katanga Mining Limited, registered in Bermuda, but with its corporate address in London, was the parent company of KFL.¹¹⁵ On Feb 7 2004, Joint Venture Contract no. 632/6711/SG/GC/2004¹¹⁶ was signed between Gécamines and KFL establishing the joint venture Company Kamoto Copper Company Sarl (KCC). KCC was 75% owned by KFL and 25% by Gécamines. The contract was approved on August 4th 2005 by Presidential Decree no. 05/070¹¹⁷. Under the contract, KCC had the right to mine in Kolwezi district in Katanga province, south-DRC for the next 20 years, with an option to extend.¹¹⁸



During April and May, 2007, CAMEC acquired Katanga shares increasing its holdings to approximately 22%.¹²³ On 8 May 2007, Katanga announced that it had applied to the Ontario Securities Commission (OSC) for an order prohibiting CAMEC from purchasing the Katanga shares

as previously announced and any additional shares.¹²⁴ On 11 May 2007, Katanga announced that the Toronto Stock Exchange (TSX) had ‘accepted notice of filing of the shareholder rights plan enacted by Katanga... designed to prevent a creeping take-over of the Company.’¹²⁵

On July 6, 2007, CAMEC met with Arthur Ditto, President and Chief Executive Officer of Katanga Mining, George Forrest and Malta Forrest (Non-Executive Directors of Katanga Mining) to discuss a possible takeover offer by CAMEC for Katanga.¹²⁶ George Forrest indicated that he was supportive of an offer from CAMEC, while Mr. Ditto advised ‘that he would not support an offer or even entertain negotiations in this regard.’¹²⁷ Katanga issued a news release on the same day stating that it had ‘been advised by Central African Mining & Exploration Company plc (“CAMEC”) that it [CAMEC] intends to make a formal take-over bid for all of Katanga’s outstanding common shares.’¹²⁸

On July 11, 2007 CAMEC confirmed that it would proceed with an offer to purchase Katanga and announced that Shareholders with an aggregate of 32% of the outstanding Katanga Shares had agreed to tender to the Offer.¹²⁹ The ‘Locked-Up Shareholders’ – those who had agreed to subscribe their shares to the offer and not to withdraw them (except in limited circumstances) – included George Forrest.¹³⁰ Katanga responded that it would ‘evaluate a formal offer from CAMEC, if and when it is made’ and that it intended ‘to explore strategic alternatives.’¹³¹ On 16 July, Katanga appointed an Independent Committee of the Board of Directors to review these alternatives.¹³²

In the interim, while Katanga’s Shareholders Rights Plan remained in effect, CAMEC was prevented from purchasing Katanga shares: a meeting to discuss and vote on the plan on 17 July 2007 was postponed by Katanga after CAMEC announced its take-over bid,¹³³ and Katanga responded to an 8 August requisition notice issued by CAMEC seeking that the meeting be held by 6 September 2007 by scheduling a meeting for 2 November 2007.¹³⁴ According to CAMEC: ‘Given that CAMEC’s Offer will expire on October 4, 2007... the Katanga board would appear to be seeking to frustrate the will of a majority of the Katanga Shareholders and to deny all Shareholders the opportunity to sell their Katanga Shares to CAMEC.’¹³⁵ However, Katanga stated that ‘the shareholder rights plan does not prevent CAMEC from making an offer to all Katanga shareholders for their shares.... CAMEC wants the shareholder rights plan terminated in order to enable it to pursue additional share transactions which are not in the interest of all Katanga shareholders and, importantly, are not permitted under the terms of the plan.’¹³⁶

CAMEC announced its formal offer for Katanga Mining on 29 August 2007 on the basis of 17 common shares of CAMEC for each Katanga share, effectively valuing each Katanga share at C\$17.80.¹³⁷ While Katanga stated that it would fully consider the offer and make a recommendation to shareholders within 15 days, it observed that Katanga did not believe ‘there will be any significant financial or operating synergies from combining the two companies’.¹³⁸ Indeed, once more Katanga stated that the ‘Independent Committee of the Board continues to pursue a number of strategic alternatives...’, adding that ‘[a] number of parties have expressed interest in Katanga’.¹³⁹

The failure of the bid

Late on the same day that CAMEC made its formal offer for Katanga, the Congolese Public Prosecutor sought to cancel CAMEC’s mining permits and the Mining Registry issued notices to that effect.¹⁴⁰ Victor Kasongo, the Deputy Mines Minister, is quoted in press reports:¹⁴¹ ‘Their procedures for obtaining the licence were fraudulent. So the licence was never legitimate, according to the mining code.’ Reuters reported that the DRC Government’s spokesman in London, Antoine Lokongo, had denied that the revocation had anything to do with the Katanga bid.¹⁴²

The news of the cancellation spread on 30 August 2007. According to *The Times* newspaper: ‘Any fall in the share price affects the value of the bid, given that there is no cash element. CAMEC’s shares tumbled 36 per cent at one stage yesterday [30 August 2007] before closing down 8p at 39¼p, a fall of 17 per cent.’¹⁴³ AIM suspended trading in CAMEC shares for three hours on 31 August 2007 after the plunge in the company’s market capitalisation, before lifting the suspension later the same day following a statement by CAMEC.¹⁴⁴ The fall in CAMEC’s share price undermined the proposed takeover. In a statement made on 5 September 2007, withdrawing its offer for Katanga, CAMEC said: ‘CAMEC believes there is no legal valid basis for any revocation, and that the announcement of this potential action was clearly timed to impact CAMEC’s Offer for Katanga. Furthermore, CAMEC

believes that this action is motivated by commercial forces in the DRC who oppose CAMEC's acquisition of Katanga.¹⁴⁵

The opposition to the CAMEC bid from RP Explorer Master Fund

Press reports at the time of CAMEC's bid for Katanga Mining referred to a potential rival seeking to increase its stake in Katanga:

Beyond the unresolved Mukondo issue, Gertler is also now knocking heads with Camec over Katanga Mining. Late last month, RP Explorer Master Fund (RPEMF) said it had purchased some 6% of Katanga Mining, taking its total stake to 15.7% in Katanga Mining. The latest RPEMF transaction manifests the interest, directly or indirectly, of Gertler in Katanga Mining, via RP Capital Partners Cayman Islands.¹⁴⁶

In *The Times* newspaper it was reported that:

Conspiracy theorists have claimed that much of the opposition is being driven by Dan Gertler, the Israeli diamond merchant who holds significant stakes in Katanga and Nikanor, another London-listed mining group.¹⁴⁷

The *Telegraph*, in an article published on 26 August 2007, refers to the fact that:¹⁴⁸

CAMEC's bid for Katanga also faces some significant obstacles. RP Capital, which has a stake of 15.7 per cent in Katanga, opposes the deal and wants the company to merge with Nikanor, another Aim-listed group with assets in the DRC.

The newspaper quotes an RP Capital spokesman:

'As a large shareholder in Katanga and across the DRC mining space, this isn't the combination we prefer. We are doing everything we can to effect the combination of Nikanor and Katanga'.

In a news release of 11 July 2007, RP Capital Partners Cayman Islands Limited confirmed its holding, via a hedge fund, in Katanga Mining:¹⁴⁹

RP Explorer Master Fund ("RP EMF") a major shareholder in Katanga Mining Limited ("Katanga") states that it is strongly opposed to CAMEC's unsolicited offer for Katanga. RP EMF believes that this unsolicited offer of CAMEC's shares undervalues the potential of Katanga and the quality of its assets.

The news release further stated that 'RP EMF is a 15.72% shareholder in Katanga' and that 'RP EMF a London based hedge fund is managed by RP Capital Partners Cayman Islands Limited'.

The beneficiary relationship of Dan Gertler to RP Capital is established in a notification issued by Nikanor plc, a mining company with significant assets in DRC, which was itself AIM-traded. As noted previously in this report, Dan Gertler was a founding shareholder in Nikanor.

Nikanor plc was described as 'the holding company of a Group with copper and cobalt assets in the DRC'.¹⁵⁰ The company was incorporated and headquartered in the Isle of Man.¹⁵¹ On 17 July 2007, Nikanor was admitted to AIM. Nikanor detailed the history of its DRC mining assets. In September 2004, Global Enterprises Corporate Ltd. (GEC), incorporated in BVI, entered into an agreement with Gécamines to mine KOV, Tilwezembe and Kananga (all situated in the same area near the town of Kolwezi, Katanga province) through the joint venture company DRC Copper and Cobalt Project (DCP) Sarl.¹⁵² DCP was owned 75% by GEC and 25% by Gécamines. In February 2006, exploitation permits were transferred to DCP from Gécamines. Prior to its AIM admission, Nikanor PLC was set up in June 2006 to act as the holding company for GEC and its subsidiaries: GEC became a 100% owned subsidiary of Nikanor.¹⁵³

It was confirmed in the Nikanor admission document that the GEC shareholders would receive initial subscriber shares in Nikanor in proportion to their holdings in GEC.¹⁵⁴ As of the end of 2005, the controlling shareholders of the GEC Group with a 50% holding each were Oakey Invest Holdings Inc. and Kennon Management Inc., both incorporated in BVI. The ultimate controlling shareholders at the

time are described as the Balda Foundation (the beneficiaries of which are the Beny Steinmetz family¹⁵⁵) and Dan Gertler. On 7 May 2006, Kennon assigned 60% of its shareholding in the GEC Group to a new investor, Pitchley Properties Limited, and the remaining 40% to HFN Trust Company Ltd to be held in trust for New Horizon Minerals Limited (such shares subsequently being released from trust).¹⁵⁶ New Horizon Minerals Limited is one of the entities holding shares on behalf of Dan Gertler.¹⁵⁷ Pitchley is the company that holds the interests of the Gertner Family Trust.¹⁵⁸ After the assignment to Pitchley, Gertler's holding in GEC was reduced to 20%, Steinmetz's holding remained at 50% and the Gertner family took a 30% stake.

Hence prior to admission to AIM, the respective stakes of Steinmetz, Gertner and Gertler in Nikanor were 50%, 30% and 20% respectively.¹⁵⁹ This is confirmed in the admission document: Nikanor stated that Gertler was a major shareholder in the company, owning 20 percent of issued ordinary share capital prior to admission and 14.7 percent following admission to AIM.¹⁶⁰ Since admission, Gertler significantly increased his shareholding in Nikanor.

Nikanor announced that, following a preliminary approach on 2 May 2007, it had received 'a non-binding indicative proposal' from a special-purpose vehicle, Cosaf Limited, to make an offer to buy the company.¹⁶¹ The shareholders of Cosaf were listed as the three existing major shareholders of the Company (Oakey Invest Holdings Inc., Pitchley Properties Limited and New Horizon Minerals Limited – together owning 72% of the existing issued share capital of Nikanor) and 'two entities wholly owned by RP Capital Partners Cayman Islands Limited and Glencore International AG, respectively.'¹⁶² Although the offer was rejected, Nikanor announced on 1 June 2007 that it had raised £400 million by a new issue of 66,700,000 shares, the majority of which (50,000,000) were placed with Glencore, although half of these shares were applied for on behalf of Ruwenzori Limited, described as 'an SPV [special purpose vehicle] managed by RP Capital in which a major shareholder is a discretionary trust, in which Dan Gertler is a potential ultimate beneficiary (the Dan Gertler family trust).'¹⁶³

It is reported that, in a telephone conference with minority investors following the share placement, concern was raised that Jonathan Leslie, Nikanor's executive chairman,

could not properly identify the RP Group, the company which will administer the shares in the SPV. He [Leslie] said Dan Gertler, who was an original shareholder in Nikanor, had "an indirect interest". "So you treated insiders in a preferential way and gave shares to RP Capital but you don't know where they are. Where's the corporate governance?," said an investor.¹⁶⁴

On 13 July 2007, Nikanor issued a notification that 'entities externally managed by RPC [RP Capital Group] will hold approximately 46mn Nikanor shares, 22.2% of the entire share capital of Nikanor on behalf of its investors. One such major investor is a group of companies ultimately owned by a discretionary trust for the benefit of members of the Gertler family.'¹⁶⁵ New Horizon Minerals Ltd – one company through which Gertler holds shares – increased its holdings in Nikanor to 22,750,000 or 11% in August 2007 and to 24,496,604 (11.86%) in September 2007.¹⁶⁶ By 30 October 2007, RPC managed entities had an aggregate interest in 28.05% of Nikanor shares.¹⁶⁷ The underlying RPC managed entities holding Nikanor shares were identified as Cosaf acting as bare trustee for New Horizon Minerals Ltd) with 24,500,000 (11.86%), Cosaf holding 8,445,713 (4.09%) shares directly, and Ruwenzori Limited holding 25,000,000 (12.10%) shares.

It is therefore apparent that, towards the end of 2007, RPC-managed entities held almost a third of Nikanor shares. It is also apparent that RPC held shares in Nikanor on behalf of major investors, which were for the ultimate benefit of the Gertler family.

The merger of Katanga Mining Limited and Nikanor plc

On 6 November 2007, Nikanor and Katanga announced board agreement on a recommended merger between Nikanor and Katanga Mining limited to 'create a company with a combined market capitalisation of approximately US\$3.3 billion and the potential to become by 2011 Africa's largest copper producer and the world's largest cobalt producer.'¹⁶⁸

Nikanor shareholders approved the deal on 10 January 2008 and Katanga Mining Shareholders did the same on the following day, completing the merger.¹⁶⁹ Nikanor announced its intention to cancel its AIM admission and the trading of its shares on the market with effect from 11 February 2008.¹⁷⁰ The

merged company, retaining the name Katanga Mining Limited, is listed on the TSX. Following the merger, Nikanor Shareholders were to hold 60 per cent and Katanga Shareholders 40 per cent of the merged company.¹⁷¹

Consolidation of the DRC concessions

As part of the purchase of Boss Mining, CAMEC acquired a 50% holding in the highly lucrative Mukondo concession. Originally, the concession had been operated as Mukondo Mining Sprl, in partnership with Kababankola Mining Company (KMC) Sprl.¹⁷²

In June 2006, the 50% holding owned by KMC was purchased by Dan Gertler International (DGI) group via its acquisition of KMC's parent company, Tremalt Limited.¹⁷³ Following Gertler's purchase, the former KMC assets were operated as Savannah Mining Sprl, a subsidiary of Prairie International Limited.¹⁷⁴ Savannah Mining Sprl was ultimately owned by a company in which a Trust benefiting the members of the Gertler family was a major shareholder¹⁷⁵ – see *intra*, p. 48: 'Mr Gertler's family are beneficiaries of the Ashdale Settlement, the majority beneficial owner of Prairie.'¹⁷⁶

After their purchase of the other half of Mukondo, the new owners gave CAMEC formal notice to terminate operations at the mine.¹⁷⁷ It appears that the dispute between Prairie International and CAMEC arose because of the inequitable way in which the mine's full production was sold via Boss Mining and its Congo Cobalt Corporation subsidiary (see Suspension of operations at Mukondo, p. 88).

As noted in the section on CAMEC's failed bid for Katanga Mining, on 29 August 2007, the Congolese Public Prosecutor intervened by seeking cancellation by the Mining Registry of exploitation permit number 469 in the name of Boss Mining Sprl and the transfer of part of that permit (PE2589) to Mukondo Mining Sprl.¹⁷⁸ The permits for the concessions acquired by CAMEC were effectively withdrawn and notices to that effect issued by the Mining Registry, with the rights reverting to Gécamines.¹⁷⁹ The DRC Government announced that, in addition to the licences being 'improperly obtained', the Prosecutor's decision 'follows from a concern raised by the Governor of Katanga Province that Mukondo Mining has been in standstill for more than 16 months and this fact is seriously prejudicial to the province and the State of Congo.'¹⁸⁰

The validity or otherwise of CAMEC's licenses was in the process of being decided by the Congolese courts – see Revocation of the licenses and the *Tribunal de Grande Instance*, p. 26; however, while the court was still deliberating, CAMEC released details in November 2007 of a proposal to resolve the disagreement by establishing a new joint venture with Prairie, via a new subsidiary in DRC, to own, operate and develop Mukondo, as well as the mining concession areas previously known as C17, C18, C19 and C21 in the central Katanga region of DRC.¹⁸¹ To achieve this, it was proposed that CAMEC and Prairie would transfer their respective shares in Boss Mining (including CAMEC's 50% stake in Mukondo and concessions C19 and C21) and Tremalt (including Prairie's 80% stake in Savannah, which held the remaining 50% of Mukondo as well as concessions C17 and C18) into the joint venture company (JVC).¹⁸² Given Gécamines 20% shareholding at the time in both underlying companies – Boss Mining and Savannah Mining – the transaction was subject to the state-owned mining company's consent.¹⁸³ CAMEC and Prairie would each own half of the share capital of the JVC and would have equal shareholder voting rights.

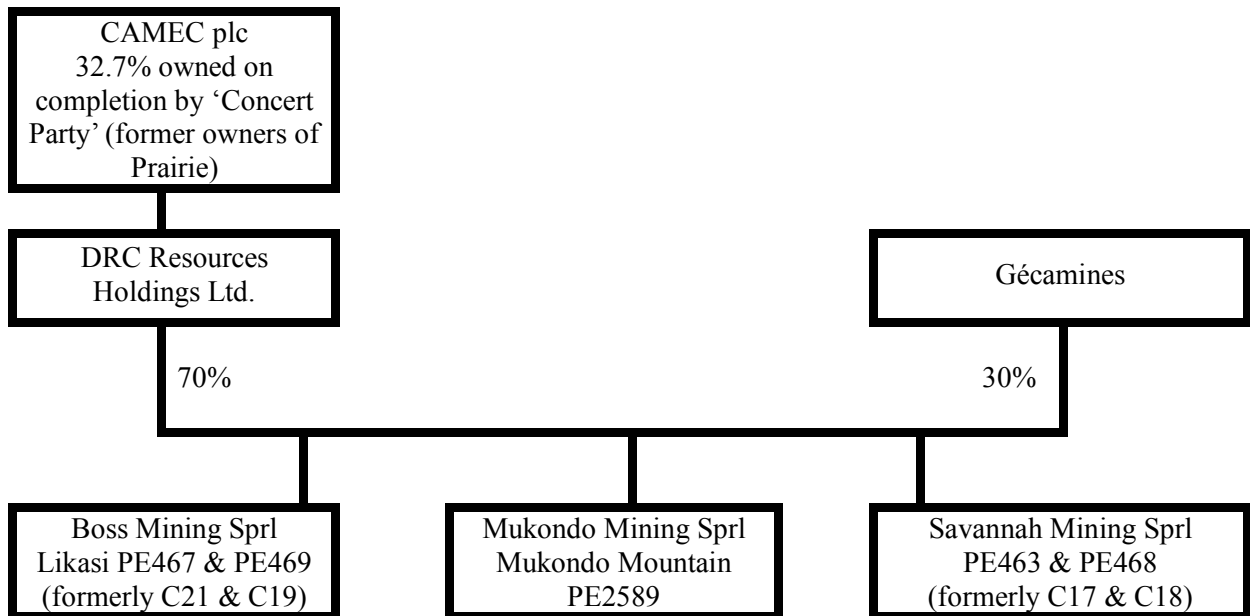
In January 2008, Prairie and CAMEC entered into a shareholders' agreement relating to the proposed joint venture.¹⁸⁴ According to further details released in February 2008, on completion of the JVC, CAMEC would acquire Prairie's 50% stake in the JVC while, in return, Prairie would receive 815,000,000 new ordinary shares in CAMEC, representing approximately 39.9% of its enlarged share capital.¹⁸⁵ The intention was to list the new JVC on either the London or another agreed stock exchange.¹⁸⁶

At the beginning of March 2008, CAMEC announced that the proposed JVC had been approved by Gécamines.¹⁸⁷ Moreover, CAMEC stated '[i]n line with the DRC Mining Contracts Review Commission's stated requirement for a reappraisal of the real contribution of all stakeholders in value terms, it has been agreed that the JVC will make a payment to Gécamines of \$2 million, and that Gécamines will increase its effective interest in the JVC to 30%.'¹⁸⁸ At the same time, CAMEC announced that an agreement had been reached under which '[t]he issues relating to CAMEC's

licences in the DRC that were raised by the Government of the DRC... have been addressed and agreed.¹⁸⁹

On 10 March 2008, CAMEC announced Mining Registry approval, confirming the validity of the licenses for the JVC concessions.¹⁹⁰ On 20 March 2008, the joint venture was duly completed and at the beginning of May 2008, CAMEC sought shareholder approval for the purchase by CAMEC of Prairie's stake in the JVC, DRC Resources Holdings Limited.¹⁹¹ The acquisition was approved and completed at a CAMEC general meeting on 29 May 2008, with admission to trading on the following day of the new ordinary shares created by the acquisition.¹⁹² The effect of the agreement between Prairie and CAMEC was the consolidation of the Likasi and Mukondo concessions under CAMEC.

CAMEC's DRC assets after consolidation



The acquisition of CAMEC by Eurasian Natural Resources Corporation (ENRC)

On 10 November 2009, CAMEC gave notice of its application to cancel its shares on AIM, taking effect on 8 December 2009.¹⁹³ The cancellation followed a successful offer for CAMEC by ENRC, ‘a leading diversified natural resources group with fully integrated mining, processing, energy and transport operations.’¹⁹⁴

ENRC itself was incorporated and registered in England and Wales on 8 December 2006,¹⁹⁵ the company listed on the Main Market in December 2007 and is also listed on the Kazakhstan Stock Exchange (KASE).¹⁹⁶ ENRC ranks high in the FTSE 100, with a market capitalisation of £14,294 million.¹⁹⁷

The majority of the ENRC group’s assets were acquired by the group’s three founders – Patokh Chodiev, Alijan Ibragimov and Alexander Machkevitch – in the privatisation process undertaken in Kazakhstan in the mid-1990s and ENRC was established as a holding company in December 2006 to simplify the ownership structure of the group and consolidate its assets. The three founders each retain a 14.59% shareholding; 11.65% is owned by the state of Kazakhstan; and Kazakhmys plc (a Kazakhstan-based, but Main Market-listed, natural resources company, with principal interests in copper) holds 26% of shares through Greenwood Nominees Limited.¹⁹⁸

In mid-July 2009, CAMEC issued a news release confirming media speculation that an approach had been made concerning a possible offer for the entire share capital of CAMEC.¹⁹⁹ On 16 September 2009, ENRC issued a similar statement in response to further speculation on an imminent offer for CAMEC, followed by notification of the terms of the offer on 18 September 2009.²⁰⁰ The offer price was 20p per share, placing an overall value on CAMEC of £584 million.²⁰¹ The offer document was posted to shareholders on 9 October 2009, setting a closing date for the offer of 9 November 2009.²⁰²

The threshold for sufficient acceptances was set at not less than 90 per cent of the CAMEC shares to which the offer relates.²⁰³ ENRC announced the offer as accepted and unconditional in all respects on 10 November 2009.²⁰⁴

The controversy surrounding ENRC's acquisition of a stake in other DRC mining assets

It should be noted that, since acquiring CAMEC, ENRC is currently embroiled in a controversial deal concerning further DRC mining concessions. ENRC announced in August 2010 that it had acquired a 50.5% stake in a company, Camrose Resources Limited, which holds indirect interests in five copper and cobalt exploitation licences in DRC, including 'the tailings exploitation licence covering the Kolwezi Tailings Site (otherwise known as the Kingamyambo Musonoi Tailings, or "KMT") (PER 652)'.²⁰⁵ The deal is highly controversial because Canadian miner First Quantum and its partners, including the International Finance Corporation (IFC), had commenced proceedings in February 2010 at the International Chamber of Commerce International Court of Arbitration in Paris against the DRC Government following cancellation of its KMT license in August 2009. ENRC purchased its shares in Camrose from companies which ENRC describes as 'held by the Gertler Family Trust'.²⁰⁶ In September 2010, First Quantum, through its subsidiary Congo Minerals Developments Ltd. (CMD), filed a claim in BVI in relation to the Kolwezi tailings project against a number of ENRC subsidiaries, claiming inducement of breach of contract and interference with contractual relations and property rights.²⁰⁷

Felix J Vulis, the then Chief Executive Officer of ENRC, stated:²⁰⁸ 'Prior to the acquisition of Camrose, ENRC undertook an extensive due diligence process, and ENRC remains fully satisfied with the findings. The licence was withdrawn by the DRC Government in August 2009, and the Court of Appeal confirmed that the withdrawal was lawful. ENRC is not a party to arbitration or legal proceedings with First Quantum; any dispute that First Quantum has is with the relevant DRC authorities.'

Clive Newall, President of First Quantum stated:²⁰⁹ 'First Quantum is surprised that the Board of a constituent company of London's FTSE 100 index laying claim to the highest standards of governance, transparency and propriety could have approved acquiring an asset with such a controversial provenance, and one still subject to international arbitration, and where First Quantum is seeking an order compelling the return of its asset.'

The Chair of the UK All-Party Parliamentary Group on the Great Lakes Region of Africa, Eric Joyce MP, following the removal of the Kolwezi and Frontier mines from First Quantum by the DRC government, submitted an early day motion for debate in the House of Commons. The motion noted 'with concern the involvement of UK-listed companies now in possession of the Kolwezi mine' and called 'on the UK Government to bring legally binding measures for UK-listed extractive companies to report their payments to foreign governments to create a new standard of global extractive industry transparency'.²¹⁰

Addressing the House of Commons in April 2011, Mr Joyce stated:²¹¹ 'In essence, First Quantum had its assets expropriated, which were then sold on to a middleman – a man called Dan Gertler, whose only business qualifications as far as I can see is that he is a close personal friend of the President of the DRC. Having bought those assets for a song, Mr Gertler put them on the market and within a few months a FTSE 100-listed London company bought them for \$175 million. Not one whit of that enormous benefit to him – and perhaps others: it is very hard to tell, because there was no transparency in the deal – would have gone to the people of the DRC.'

On 8 April 2011, it was reported by the *Telegraph* that Mr Joyce had written to the Serious Fraud Office 'asking it check whether Eurasian Natural Resources Corporation is complying with the Bribery Act'.²¹² According to the newspaper, Mr Joyce wanted 'the authorities to make sure the FTSE 100 miner had "sufficient measures in place to prevent bribery" when it did a controversial deal to buy a mine in the Democratic Republic of Congo (DRC)'.²¹³ The newspaper refers to a statement by ENRC:²¹⁴ 'ENRC declined to comment but said earlier this week: "Eric Joyce is the sponsor of a company with which ENRC is in potential litigation. As such his profoundly inaccurate remarks are unsurprising and the fact that he chose to make them under parliamentary privilege speaks for itself.'

Contrary to the implication of his remarks, ENRC conducts its business in an appropriate and ethical manner.”

In a May 2011 House of Commons debate about governance in FTSE 100 companies, Mr. Joyce stated:²¹⁵ ‘I have a bad apple in mind. At the core of my concern – because it illustrates perfectly the case that I am making – is the Eurasian Natural Resources Corporation.’ Mr Joyce continued:²¹⁶ ‘A close friend of the President of the DRC bought the assets [KMT] at a knock-down price – about \$20 million, which is a bit of a joke. The markets were very sceptical about the legitimacy of bidding for them. The key assets were the licences to operate a couple of mines, but one in particular at a place called Kolwezi. The only company that was really interested in procuring that was the ENRC, and that was its entrée into the DRC.... Many questions were raised about where an overnight profit of £160 million went. There were patterns; other deals had been operated in the same way by the same guy, Dan Gertler. He is an Israeli, and apparently a legitimate businessman, who flies across to the Congo to do his business.’ Mr. Joyce further stated:²¹⁷ ‘It is a testament to the integrity of the governance of other FTSE 100 companies that many showed deep concern. Several withdrew their investments, and several reputable investment funds took out their money. One major merchant bank made a public statement that it was very concerned and reluctant to deal with this FTSE 100 company again.’ Mr. Joyce questioned:²¹⁸ ‘How will the Government ensure some degree of confidence in the markets that a company like the ENRC will not do the same thing it did with Kolwezi and damage the good reputation of the City of London?’

Further information on the disputed KMT assets is given in Annexe 3; for further information on Dan Gertler, see Dan Gertler, p. 36.

Introduction

At the time CAMEC was admitted to AIM, it had not acquired the Likasi and Mukondo concessions in DRC. Certain of the AIM rules for companies are applicable only at the time of admission and do not apply subsequently and they could not, therefore, have assisted in the scrutiny of CAMEC's Congolese acquisitions. Once a company has been admitted to trading, both the company and its nomad must comply with ongoing AIM rules that regulate the company's conduct in respect of, *inter alia*, corporate transactions and disclosure. AIM companies incorporated in the UK must also comply with a limited number of the Financial Services Authority (FSA) Disclosure and Transparency Rules (DTR). In addition, the *Guidance Note for Mining, Oil and Gas Companies* clarifies the appropriateness of suitability qualified and experienced nomads in reviewing company notifications. The dedicated nomad rules set out the ongoing requirements to be met by advisers.

This section outlines for reference the rules applicable to CAMEC's DRC acquisitions; however it is the preserve of the Exchange to determine and apply the rules and to offer an authoritative interpretation.

AIM Rules for Companies

Companies joining AIM and those already admitted must comply with the *AIM Rules for Companies* drawn up by the Exchange. A concern over CAMEC's conduct in DRC and its compliance with the AIM rules begins with its announcement of the purchase of International Metal Factors (IMF) on 3 February 2006 and ends with the company's cancellation of its AIM admission, effective on 8 December 2009. An assessment of CAMEC's and its nomad's conduct therefore spans more than one revision of the *AIM Rules for Companies*.²¹⁹ The convention adopted has been to refer to the version of the rules in force at the time the conduct took place. For the majority of the period in question, the February 2007 edition of the AIM rules was in force. The period of conduct from 3 February 2006 until 20 February 2007 is considered under the previous 2005 version of the AIM rules. A brief period from 1 June 2009 until CAMEC's cancellation of admission is covered by the revised version of the AIM rules effective from 1 June 2009.

Notwithstanding the periodic revision of the AIM rules for companies, the principal AIM rules engaged – Rule 10 on principles of disclosure, Rule 11 on price sensitive information, and Rule 12 and Schedule Four on substantial transactions – are substantially the same across all three editions.²²⁰ AIM Rule 39 on the conduct of nomads alters with the introduction of the dedicated nomad rules: both the 2005 and 2007 rules are therefore elucidated, as appropriate (see *intra*, AIM Rule 39 and the introduction of AIM Rules for Nominated Advisers: relevance for CAMEC's Congolese transactions, p. 23 and the consolidation of existing practice).

Additional requirements on AIM companies that are incorporated in Great Britain, including Northern Ireland: the disclosure and transparency rules

The DTR introduced by the FSA to implement the EU Transparency Directive came into effect on 20 January 2007.²²¹ The Transparency Directive applies to regulated markets. However, because it is a 'minimum harmonisation', the UK is free to add 'super-equivalent' requirements in its implementation of the directive.²²² Hence a part (albeit a small one) of the disclosure and transparency rules²²³ – requiring shareholders (or those with rights to acquire shares) to inform the issuing company

of changes to major holdings in that company's shares²²⁴ – are applicable not only to regulated markets in the UK, but also to prescribed markets, including AIM.²²⁵ The issuing company is then required to make the information public.²²⁶

The new DTR regime for AIM-traded companies that are incorporated in Great Britain, including Northern Ireland has little practical effect on significant shareholder disclosures: the existing 'super-equivalent' thresholds set for disclosure remain more stringent than those in the directive²²⁷ and the necessity to also comply with AIM rules means that disclosure must be notified 'without delay' rather than made public within three days.²²⁸ However, for companies incorporated overseas, the caveat under AIM Rule 17 that a company must notify and disclose relevant changes to significant shareholders 'insofar as it has such information' potentially allows them to avoid such disclosure.²²⁹

CAMEC, as a company incorporated in England and Wales, falls within the DTR regime and must meet the 'super-equivalent' thresholds under Rule 17 to notify all relevant changes to significant shareholders without exception or delay; hence the caveat under Rule 17 'disclosing, insofar as it has such information' cannot be used to justify non-disclosure.

CAMEC's transactions to acquire IMF, CRJV and Boss Mining occurred in, respectively, February 2006, July 2006 and March 2007. Guidance notes to the 2005 AIM rules in force at the time state: 'For UK registered companies compliance with sections 198 to 208 of the Companies Act 1985 provides a mechanism to assist in complying with Rule 17 insofar as changes to the holdings of significant shareholders are concerned. Note, though, the obligation on an AIM company under Rule 17 to disclose such information without delay.'²³⁰ In this instance, Rautenbach did not acquire the CAMEC shares unbeknown to CAMEC, but received them from CAMEC as part consideration for the purchase from him of IMF. Moreover, post 20 January 2007, the requirement was to know and notify all significant shareholders.

Substantial transactions

Disclosure of substantial transactions

AIM rules specify the disclosure of information 'without delay as soon as the terms of any substantial transaction are agreed'.²³¹ A substantial transaction (including those transacted by a subsidiary of the AIM company) is one which exceeds 10% 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% of the AIM company's gross assets, gross capital, profits, turnover or company value).²³² The requirement to disclose any other information necessary to enable investors to evaluate the effect of the transaction on the AIM company could be read as placing an onus on the company/nomad to provide details on reputational risk or provenance associated with the transaction.²³³

Applying the class tests to CAMEC's acquisitions

Taking just one of the class tests – in respect of consideration paid/market value – it is apparent that the IMF acquisition and option to acquire Boss Mining constituted a substantial transaction, triggering the disclosure requirements. On the day the transaction was notified, CAMEC announced that it had paid a consideration of £45 million for IMF, when its own market value the day before the transaction was £166 million.²³⁴ Hence the consideration paid represented 27% of CAMEC's market value, constituting a significant transaction in the class tests. It should also be noted that the total consideration paid was actually significantly greater: according to CAMEC's final accounts for 2006, it paid £69,205,596 for IMF, once a 'fair value adjustment in respect of market value of shares at date of agreement' was taken into consideration.²³⁵

Again, applying the class test on consideration paid/market value to CAMEC's acquisition of Prairie's interest in DRC Resources Holdings, it is apparent that this too represented a substantial transaction, thereby triggering disclosure. The consideration paid by CAMEC for Prairie's interest in DRC Resources Holdings was £348.4 million, representing 66% of CAMEC's market value of £519 million the day before the transaction was notified.²³⁶

It should be noted that audits of Boss Mining, KMC and Sabot (a transport and logistics company acquired from Rautenbach) have noted the absence of reliable financial information for the predecessor companies: this raises the issue of the extent to which CAMEC and its nomad were confident in the figures used in the class tests to determine substantial transactions and/or reverse takeovers – see Incompleteness of accounts: a disregard for accountancy rules and a lack of financial transparency in the predecessor companies, p. 71. Under the AIM rules, a reverse takeover – 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 – requires shareholder approval, as well as a further admission document.²³⁷ Both the IMF/Boss Mining transaction and the purchase by CAMEC of Sabot, given the size of the turnover of the acquired companies, gives rise to questions over the proper application of the class tests on substantial transactions and/or reverse takeovers: see p. 74.

Guidance for Mining, Oil and Gas Companies: ongoing obligations

Introduced with immediate effect on 16 March 2006 as guidance to the AIM rules themselves, the *Guidance Note for Mining, Oil and Gas Companies* – which deals in large part with the notification of resource and drilling updates – also contains overarching provisions on compliance, requiring a nomad to have access to suitably experienced and qualified individuals in the sector in which the client company operates and to ensure that the review of all notifications is undertaken by an appropriate person.²³⁸

The 2006 edition of the *Guidance for Mining, Oil and Gas Companies* is applicable to CAMEC's and its nomad's conduct for the majority of the period under consideration in this report. A revised version of the guidance, re-titled *Note for Mining, Oil & Gas Companies*, was introduced in June 2009. The revisions were not substantive, but clarified that the note formed part of the AIM Rules and required full compliance.²³⁹

AIM Rule 39 and the introduction of AIM Rules for Nominated Advisers: relevance for CAMEC's Congolese transactions

Effective from 20 February 2007, AIM introduced dedicated rules governing the eligibility and ongoing obligations for nomads.²⁴⁰ The *AIM Rules for Nominated Advisers* were introduced to consolidate the existing obligations on nomads contained at the time in the *AIM Rules for Companies* and in the Nominated Adviser Eligibility Criteria.²⁴¹ Prior to the introduction of the nomad rules, the July 2005 version of the *AIM Rules for Companies* included details of the responsibilities of nomads under Rule 39 and requirements that they must meet under Schedules Six and Seven.

CAMEC acquired IMF in February 2006, completed its acquisition of CRJV in July 2006 and exercised its option in March 2007 – as part of a 4 August 2006 agreement – to acquire 80% of the shares of Boss Mining. CAMEC's proposals to form a joint venture with Prairie were first announced in November 2007 and all transactions leading up to the formation of DRC Resources Holdings occurred after the nomad rules became effective.

In raising issues of compliance in the sections that follow, it is therefore apparent that certain transactions and other actions or conduct by CAMEC and its nomad Seymour Pierce occurred prior to the nomad rules becoming effective.

The new nomad rules incorporated 'the broad principles' of the previous Rule 39, but set out in greater detail the Exchange's expectations.²⁴² Although the Exchange codified a new set of responsibilities within Schedule Three of the nomad rules, the intention was 'to reflect current good market practice.'²⁴³ The Exchange issued a notice at the beginning of October 2006 in the run-up to the introduction of the rules for nomads that made it clear that '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 Criteria²⁴⁴.

The new AIM Rules for Nominated Advisers incorporate the existing Nominated Adviser Eligibility Criteria with proposed changes to clarify, update and encapsulate in the new rules how the Exchange interprets and implements the **existing** [emphasis added] criteria.

The Exchange has included a new set of responsibilities at Schedule Three of the Rules for Nominated Advisers which are intended to reflect **current** [emphasis added] good market practice.

The new Rules for Nominated Advisers incorporate the broad principles of Rule 39 of the current AIM Rules for Companies but now also set out in greater detail what the Exchange expects of a nominated adviser.

In addition, the Exchange notice states:²⁴⁵

2.5 Interim application
The Exchange would like to make clear that because the requirements set out in the Rules for Nominated Advisers are designed to reflect existing good market practice, the Exchange expects that nominated advisors **should already be acting in accordance with the new rules** [emphasis added].

Given the commonality between the previous and present rules governing nomad conduct and the Exchange's emphasis on the interim application of the latter reflecting existing good market practice, there should be little or no material difference in the standards required of a nomad acting before, after or during the transition period to the new rules. However, the convention used here in the consideration of the conduct of Seymour Pierce as CAMEC's nomad is to indicate whether Rule 39, Schedule Six and the Eligibility Criteria or Rule 39 and the dedicated nomad rules were formally in effect at the time.

The Exchange's AIM Regulation team is responsible for guiding, monitoring and investigating the compliance of AIM companies and their nominated advisers with the regulations.²⁴⁶ Ultimately, the Exchange may take disciplinary action against a company that breaks the rules: see Annexe 1.

The remainder of the submission seeks to establish whether or not unanswered questions remain for AIM Regulation over the failure or otherwise of due diligence at the time of CAMEC's acquisition of the Likasi and Mukondo assets and whether unanswered questions arise about CAMEC or its nomad's ongoing compliance with the AIM rules for companies or with the nomad rules. The submission covers six areas of enquiry.

I. Provenance of the concessions (p. 26) – The first area of compliance concerns the provenance of both the Boss Mining and Savannah Mining (formerly KMC) concessions acquired by CAMEC and the disclosure by CAMEC of information of import relating to the validity or otherwise of the agreements awarding the concessions to Boss Mining and KMC. An integral part of the issue of provenance concerns the reputations of former owners who have subsequently become managers and/or significant shareholders in CAMEC and their degree of influence over the company: information should have been disclosed to investors in CAMEC to enable them to have evaluated the effect of a transaction on the company, together with information of import and/or price sensitive information.

II. Significant shareholder notification (p. 57) – 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/Majestic/Boss Mining in CAMEC shares to entities controlled by Rautenbach.

III. Managerial conduct: information of import (p. 60) – A third area of concern stems from the criticism by the auditors and/or the MCRC of the conflict of interest posed by the same management team managing both Boss Mining and the Rautenbach-controlled Congo Cobalt Corporation and the '[a]bsence of any contractual framework with Congo Cobalt Corporation'.²⁴⁷ CAMEC acknowledged more than a year after the commencement of the acquisition of IMF/Majestic/Boss Mining (i) the continued key role played by Rautenbach in managing the mining and transport operations after their acquisition;²⁴⁸ and (ii) the continued contracting out of mining operations at the concessions to CCC.²⁴⁹ Given the seriousness of the managerial problems uncovered by the audits and the fact that no information relating to Rautenbach's continued key managerial role was disclosed in CAMEC's notifications concerning the acquisition, AIM rules which require that reasonable care be taken 'not to omit anything likely to affect the import of such information' should have been engaged.²⁵⁰

IV. Incompleteness of accounts (p. 71) – 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 the logistics company Sabot and hence the reliability of the required financial information about the transaction – the profits and value attributable to the assets – provided to investors.²⁵¹ The auditor's findings also have implications for the class tests on substantial transactions and reverse takeovers required of CAMEC.

V. License review: information of import and the effect on transactions (p. 77) – The MCRC examined the Boss Mining, Savannah Mining and Mukondo Mining contracts as part of its industry-wide review of ventures between private partners and Gécamines. The concern within the fifth section of this submission is to consider what action, if any, was required by CAMEC or its nomad under AIM regulations to inform the market of known issues likely to give rise to findings of the Commission or of the Commission's own findings and recommendations as these became public knowledge.

VI. Notification of price sensitive information without delay (p. 86) – The final issue of compliance relates to the requirement to notify price sensitive information without delay and

examines CAMEC's public response to (i) the Ernst & Young audits and the conclusions and recommendations of the MCRC as these became public knowledge; (ii) the suspension of operations at Mukondo after the acquisition of the other 50% share by DGI/Prairie in June 2006, but prior to the subsequent agreement between CAMEC and Prairie to form a new joint venture company to operate the mine; (iii) the claim by another mining company, Simberi Mining Corporation, that hard rock concessions granted to its wholly owned subsidiary PTM Minerals (Cayman) Ltd 'appeared to overlap with a claim by CAMEC and Boss Mining for concession C19 and Exploration permit 469', and the MCRC'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',²⁵² and (iv) a chemical fire at Boss Mining's depot in Likasi and the reported release of bromine gas.

I. The provenance of the DRC concessions

A concern with provenance is taken here to encompass two elements: (a) the history of disputed ownership of the assets acquired by CAMEC and (b) allegations concerning the reputation of former owners. Whilst issues of ownership have an obvious, specific and direct bearing upon the validity or otherwise of CAMEC's licenses, reputational issues are also of import when former owners become significant shareholders and/or managers in CAMEC or otherwise exercised a degree of influence over the company or the political milieu in which it operated. AIM rules are concerned with the disclosure of necessary information to investors to enable them to judge the effect of a transaction and to ensure that nothing of import is omitted; ultimately, a company's nomad must concern itself with situations relating to the reputation or integrity of AIM.

The history of disputed ownership

Matters at issue

When CAMEC acquired IMF and the option on Boss Mining and/or when it announced the proposed transaction to acquire Prairie's interest in DRC Resources Holding, CAMEC did not disclose at the time of the relevant transaction nor subsequently information about the disputed history of ownership of the Mukondo and Likasi concessions, both subject to underlying war-time agreements between the Congolese and Zimbabwean Governments. This provenance has had repercussions – including the August 2007 cancellation of CAMEC's mining licenses and the recommendation for renegotiation arising from the ongoing mining licence review – of direct import for investors; yet investors were not notified by CAMEC of known provenance issues to enable them to judge their likely effect on the company.

Revocation of the licenses and the Tribunal de Grande Instance

When in August 2007 the Mining Registry cancelled exploitation permit number 469 in the name of Boss Mining Sprl (CAMEC's subsidiary) and the transfer of part of that permit (PE2589) 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.

CAMEC responded: 'CAMEC believes there is no legal valid basis for any revocation and we are absolutely confident that we will successfully refute any allegations or attempts made against our licenses.'²⁵³ 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 and its associated licence transfers were valid.²⁵⁴

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' and that the Tribunal had not concerned itself 'with the main grounds upon which the licences had been removed, nor the act of removal itself'.²⁵⁵ The DRC Government's Director General of the Mining Registry (*Directeur Général du Cadastre Minier*), Jean Felix Mupande, said the court ruling meant little because at issue was not the legality of the transfer of

licences but whether those licences were valid or not: ‘The “licences” were improperly obtained originally and are still invalid’.²⁵⁶ The DRC Government referred to ‘gross irregularities in the original issue, which predates CAMEC’s interest’.²⁵⁷

A request by Gécamines to the *Tribunal de Grande Instance* to review part of its original ruling was heard by the court on 18 October 2007.²⁵⁸ According to CAMEC, the court’s ruling was expected within a month. However, the company’s announcement that agreement had been reached concerning the issue of the mining licenses 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 license revocation on CAMEC’s share price and trading volumes

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% in one day and prompted AIM to temporarily suspend trading in the company’s securities when the market opened on 31 August 2007.²⁵⁹ 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.²⁶⁰ A week after the DRC Government’s announcement of the cancellation of mining rights, CAMEC’s share price had fallen by over 50%.²⁶¹

Principal AIM rules engaged

Aim Rules for Companies

12.

...

An AIM company must issue notification without delay as soon as the terms of any substantial transaction are agreed, disclosing the information specified by Schedule Four.

[‘Rule 12. Notification of substantial transactions, disclosure’]

Schedule Four.

In respect of transactions which require notifications pursuant to rules 12, 13, 14 and 15 an AIM company must notify the following information:

...

(f) the effect on the AIM company;

...

(j) any other information necessary to enable investors to evaluate the effect of the transaction upon the AIM company.

[‘Schedule Four. Notifications, (f) effect, (j) necessary information for investors’]

10.

...

An AIM company must take reasonable care to ensure that any information it notifies is not misleading, false or deceptive and does not omit anything likely to affect the import of such information.

[‘Rule 10. Principles of disclosure, misleading, false, deceptive, omitted information’]

39.

A nominated adviser must comply with the AIM Rules for Nominated Advisers

[‘Rule 39. Compliance with Nominated Adviser Rules’]

AIM Rules for Nominated Advisers

16. Due skill and care

A nominated adviser must act with due skill and care at all times.

[‘RNA 16. Due skill and care’]

19. Liaison with the Exchange

...

A nominated adviser 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.

...

[‘RNA 19. Liaison with the Exchange, reputation or integrity of AIM’]

OR2.

The nominated adviser should undertake a prior review of relevant notifications made by an AIM company with a view to ensuring compliance with the AIM Rules for Companies

In meeting this, the nominated adviser should usually:

review in advance (although without prejudice to the requirement of Rule 10 to release information without delay) all notifications to be made by an AIM company for which it acts to ensure as far as reasonably possible that they comply with the AIM Rules for Companies.

...

[‘RNA OR2. Nominated adviser prior review of relevant notifications’]

Guidance Note for Mining, Oil and Gas Companies [2006]

Part Two, Ongoing obligations, Notifications.

Review by nominated adviser

The Exchange expects that... an appropriate person from the nominated adviser of an AIM company will review, prior to its release (as part of its regulatory obligations owed solely to the Exchange) all notifications made by its client AIM company.

[‘Guidance MOG [March 2006], Part Two. Ongoing obligations, Notifications, Review by Nominated Adviser’]

Substantiating information

Background: eliciting Zimbabwe’s support during the war

The UN Panel on the illegal exploitation of natural resources in DRC drew a distinction between those areas in the north and east of DRC which were controlled by Rwandan and Ugandan forces and their allied rebel movements, and the remainder of the territory controlled by government forces, assisted principally by Zimbabwe.²⁶² In the government-controlled areas, the Panel highlighted the use

of the mining and minerals sector to finance the war by seeking cash payments for the attribution of monopolies and concessions; by the uptake of funds from parastatals; and by the creation of joint ventures between parastatals and foreign companies in countries allied with DRC.²⁶³ The Panel described how the elite network of Congolese and Zimbabwean Government officials and private businessmen transferred ownership of at least US\$ 5 billion of assets from the State mining sector to private companies under its control with no compensation or benefit for the State treasury of DRC.²⁶⁴ According to the UN Panel, '[a]lthough Australian, United States, Canadian, Belgian and South African companies have established joint ventures in Gécamines' concession areas, the Government of the Democratic Republic of the Congo has primarily relied on it as a means to ensure the continued support of Zimbabwe.'²⁶⁵

The initial award of the concessions

In testimony before the Belgian Senate 'Great Lakes' Commission of Inquiry, which was established and conducted in response to the UN Panel's work,²⁶⁶ it is stated:²⁶⁷

There was a summit in Victoria Falls on 4 September 1998, convened to bring closer ties between DRC and Zimbabwe. At this summit, Presidents Kabila and Mugabe signed a deal providing for a 'self-financing' intervention by the Zimbabwean National Defence Force (ZNDF). One of the main planks in this strategy was the state-owned copper and cobalt mining company... the Zimbabwean Government placed a lot of hope in the success of this operation. They brought in a long-time ZANU-PF supporter, Billy Rautenbach, whose name might well be familiar to you, who had extensive experience in DRC. He had a company called Ridgepoint Overseas Development Ltd and this company received the right to mine cobalt near Lukasi [sic]... a deal was agreed on the Zimbabwean side by Rautenbach, Mwangagwa, and an unidentified person said to be representing Robert Mugabe. I think it was probably Leo Mugabe, his nephew.

The BVI-registered Ridgepoint Overseas Development Ltd (Ridgepointe) concluded a mining convention (for the usage of this term, see note 116 to Supplement) with Gécamines in September 1998 to create a joint company, Central Mining Group Corp. Sprl (CMGC), to exploit seven concessions of the Central Mining Group: Kababankola, Kamoya, Shinkolobwe, Mukondo, Kambove/Kakanda and Shituru.²⁶⁸ The mining convention was subsequently approved by Presidential Decree and the transfer of the concessions implemented by Ministerial Order.²⁶⁹ Ridgepointe was given an 80% holding in CMGC, while Gécamines retained a 20% holding. At the time, Ridgepointe was 70% beneficially owned by Rautenbach and his family.²⁷⁰

After the then President Laurent Désiré Kabila of DRC (father of current president Joseph Kabila) visited Harare, Zimbabwe, on 4 – 5 November 1998, it was announced that final arrangements had been made to appoint Rautenbach as Executive Chairman of Gécamines itself.²⁷¹ Hence within seven weeks of the Presidential Decree and one week of the final ministerial order transferring the concessions to CMGC, Rautenbach was confirmed as executive chairman of Gécamines. According to the United Nations Panel on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo:

'Zimbabwean Billy Rautenbach was named the Managing Director of Gécamines in November 1998 during a visit to Harare by President Laurent-Désiré Kabila. According to this deal, some of Gécamines' best cobalt-producing areas were also transferred to a joint venture between Mr. Rautenbach's Ridgepoint Overseas Development Ltd. and the Central Mining Group, a Congolese company controlled by Pierre-Victor Mpoyo, then Minister of State. Mr. Rautenbach also acted as Managing Director of the joint venture, a blatant conflict of interest.'²⁷²

The Panel continued: 'The Panel has information that President Kabila's decision to appoint Mr. Rautenbach – a man with no mining experience but with close ties to the ruling ZANU-PF party in Zimbabwe – was made at the request of President Robert Mugabe during that visit.'²⁷³ Elsewhere in its report, the UN Panel reiterates: 'Following the outbreak of the war in 1998, Zimbabwe's new status in the Democratic Republic of the Congo was reflected in the appointment of Billy Rautenbach to head Gécamines'.²⁷⁴

Cancellation of Rautenbach's mining rights and their transfer to Bredenkamp

The mining concessions and other rights held by Ridgepointe and the CMGC Joint Venture were cancelled by Ministerial Decree on 14 March 2000.²⁷⁵ The DRC Government's justification for issuing the Decree was that the Joint Venture had not been properly constituted and did not legally exist. Concurrent with the cancellation of the concessions and rights, Rautenbach was dismissed as Executive Chairman of Gécamines.²⁷⁶ According to the UN Panel, Mr Rautenbach was replaced reportedly because he 'failed to pay the government's share of the profits from the joint venture. President Kabila accused him of transferring profits to a shell company, as well as stockpiling cobalt in South Africa. Shipments of cobalt had allegedly been seized in Durban to pay Gécamines' South African creditors.'²⁷⁷

In January 2001, a joint venture agreement was signed between Gécamines (20%) and a BVI-registered company, Tremalt Ltd. (80%), to create Kababankola Mining Company Sprl.²⁷⁸ The agreement, ratified by a mining convention in March 2001, transferred the concessions, which had formerly been held by Ridgepointe Overseas Development, to KMC.

Tremalt Ltd. described itself as a natural resources company, incorporated in October 2000 in BVI.²⁷⁹ It was 100% owned by Brecon Mines Limited, a company which itself formed part of the Breco business group of Zimbabwean John Bredenkamp.²⁸⁰ The shares of Brecon Mining were held in trust, the sole beneficiaries of which were Bredenkamp and his immediate family.²⁸¹

The return of mining concessions to Rautenbach: the ICSID claim and negotiated settlement

On 27 July 2001, Rautenbach registered a \$500 million claim in the name of Ridgepointe against the Government of DRC and Gécamines under a World Bank arbitration mechanism, the International Centre for the Settlement of Investment Disputes (ICSID).²⁸² The claim stated that the DRC Government and Gécamines had unlawfully expropriated and seized Ridgepointe's investment in DRC. Gécamines filed a defence and counterclaim.

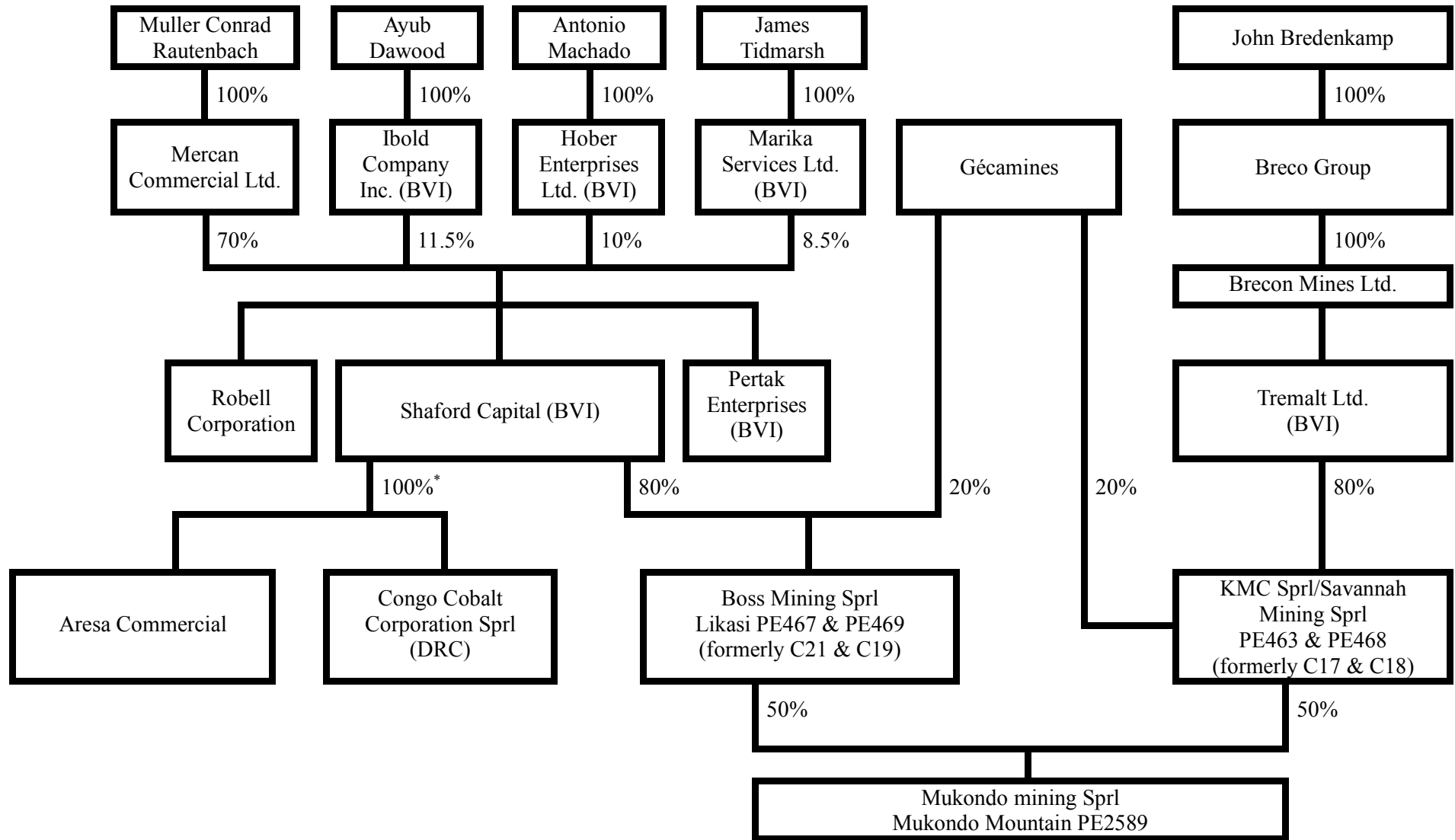
The ICSID claim continued between March 2000 and February 2004. According to the Lutundula Commission and the MCRC, the high cost of the proceedings led the parties to seek an alternative dispute resolution process.²⁸³ James Tidmarsh, the lawyer who represented Ridgepointe in the ICSID claim, has confirmed that his then client was running out of money to meet the legal bills for the case. The same lawyer has also stated that the DRC Government 'simply did not have the money to pay a settlement of the magnitude required'.²⁸⁴ Following a meeting between the parties in Lubumbashi, the ICSID claim was concluded on 25 February 2004.²⁸⁵ The settlement agreement (First Agreement) provided for the withdrawal of the ICSID claims by Ridgepointe and the incorporation of a new joint venture – Boss Mining Sprl – between Ridgepointe and Gécamines, with the former holding 80% of the shares and the state mining company allocated the remaining 20%.²⁸⁶

Concessions C19 and C21 (later renamed PE469 and PE467) were transferred to Boss Mining.²⁸⁷ The settlement also provided Boss Mining with a 50% holding in Mukondo Mining Sprl, in partnership with Kababankola Mining Company (KMC) Sprl.²⁸⁸ This sequence of events is confirmed by the Mining Contracts Review Commission and the Lutundula Commission.²⁸⁹

Boss Mining was itself majority owned by the BVI-registered holding company Shaford Capital Ltd. The majority (70%) of Shaford's issued share capital was owned by Mercan Commercial Limited, a BVI-registered company 100% owned by Rautenbach.²⁹⁰ The remainder of the share capital was allocated to three other BVI companies owned by associates of Rautenbach, including James Tidmarsh, who assumed the legal and regulatory functions of Shaford and its affiliates.²⁹¹ It is pertinent to note that Shaford was also the owner of two subsidiaries – Congo Cobalt Corporation Sprl (DRC) and Aresa Commercial.²⁹² Auditors were later to allege that the contract between Shaford's filials Boss Mining and CCC, which owned and operated processing plant and extraction equipment at the mines, represented a 'conflict of interest'.²⁹³

As commentators have noted, KMC/Tremalt/Bredenkamp received no consideration for an effective transfer of half the Mukondo mine to Rautenbach's Boss Mining.²⁹⁴ Bredenkamp's acquiescence is discussed below. After the settlement of the ICSID claim, Tremalt, in addition to its Mukondo stake, was left with concessions C17 and C18 (PE468-Milebi and PE463-Mindingi) held through KMC.²⁹⁵

Ownership of the Likasi and Mukondo concessions after the ICSID settlement



* Originally 90% owned by Shaford and 10% owned by James Tidmarsh, as a nominee, to comply with DRC law which required more than one shareholder.

The conclusions of the Mining Contracts Review Commission on the relinquishment of mining rights

In 2007, the MCRC examined the history and legal aspects of the Boss Mining joint venture (later acquired by CAMEC). The Commission recorded that ‘This partnership was not preceded by a contract for the creation of a joint-venture enterprise, so that the out-of-court agreement [see *intra*, p. 30] mentioned above constitutes the principal reference document’²⁹⁶. Indeed, a technical report commissioned by CAMEC confirms this finding: ‘there is no joint-venture agreement between CAMEC or its predecessor and Gécamines’.²⁹⁷ Yet it should be noted that this technical report was not published by CAMEC until the end of August 2007 and that the company did not declare the absence of a joint-venture agreement at the time it completed its acquisition of Boss Mining in March 2007.

The MCRC also concluded that ‘the date of authentication of the statutes preceded the creation of the company [Boss Mining]’, stating:²⁹⁸

With reference to Article 43 of the decree of 23 June 1960 and Articles 199 and 200 of the Congolese Civil Code, Book III, as well as law No 66-344 of 9 June 1966 on notarised documents, the Commission finds that at the time of the acquisition of concessions C-19 and C-21 in 2004, the entity Boss Mining did not legally exist. As a result this company was not eligible for mining rights, in conformity with article 23 of the Mining Code.²⁹⁹

The MCRC found that there was no duly signed transfer contract for Boss Mining.³⁰⁰ In February 2008, the Ministry of Mines sent notification letters to all affected companies presenting the results of the mining review. The letter to Boss Mining asserted that the company had ‘registered the mining rights with the Registry before the contract of relinquishment [*cession*] had been signed’ and that ‘[t]he authentication of Boss Mining’s statutes predates the formation of the company’.³⁰¹ The Ministry of Mines demanded that ‘[t]he parties must follow the proper procedure for the relinquishment of mining titles in accordance with the Mining Code.’³⁰²

Underlying wartime agreements with other parties: allegations made against the predecessor companies

Both CMGC and KMC were ostensibly established as joint ventures between two parties – Gécamines and a private partner, respectively Ridgepointe and Tremalt – in which the state-owned mining company retained a 20% shareholding. However, in respect of both the original agreement between Gécamines and Ridgepointe and the subsequent agreement between Tremalt and Gécamines, it has been alleged both by the UN Panel and before the Belgian Senate that underlying agreements with other parties were in place. These other parties – the DRC Government and the Government of Zimbabwe – stood to profit from the concessions irrespective of whether the private partner was Ridgepointe or Tremalt.

In testimony before the Belgian Senate ‘Great Lakes’ Commission of Inquiry, it is stated.³⁰³

Under the terms of this deal [between the Zimbabwean and Congolese Governments], Ridgepointe 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. Apparently, Kabila personally took part in these negotiations, which was regarded as highly unusual.

The UN Panel reported:³⁰⁴

the Panel has obtained a copy of the confidential profit-sharing agreement, under which Tremalt retains 32 per cent of net profits, and undertakes to pay 34 per cent of net profits to the Democratic Republic of the Congo and 34 per cent to Zimbabwe. This profit-sharing agreement was the subject of a confidential memorandum from the Defence Minister, Mr. Sekeramayi, to President Mugabe in August 2002. Tremalt also undertakes to provide the Congolese and Zimbabwean militaries with motor vehicles, trucks, buses and cash payments as necessary. These are to be subtracted from the two countries’ part of the profit share.

It is apparent from the UN Panel reports that both Rautenbach/Ridgepointe and Bredenkamp/Tremalt were vehicles through which the interests of both the DRC and the Zimbabwean Governments were administered.

Following the 1998 Victoria Falls summit and Laurent-Désiré Kabila's subsequent visit to Harare, the arrangements between DRC and Zimbabwe for the exploitation of the former's mineral reserves were further formalised. On 23 September 1999, the Zimbabwean Defence Minister Moven Mahachi announced the formation of the Congo-Zimbabwe joint stock company COSLEG.³⁰⁵ COSLEG was incorporated in Kinshasa on 8 November 1999.³⁰⁶ COSLEG represented the partnership between COMIEX – a company owned by the late DRC President Laurent Kabila and some of his close allies in government³⁰⁷ – and the Zimbabwean OSLEG (Private) Ltd., a company incorporated in Harare on 11 December 1998, which the Panel described as ZDF's 'military company.'³⁰⁸ According to the Panel, 'OSLEG represents the commercial side of the Zimbabwe Defence Forces in the Democratic Republic of the Congo. Its directors are predominantly top military officials.' The Panel, referring to OSLEG's agreement with COMIEX, stated that³⁰⁹

[t]he role of OSLEG was defined as that of the partner with 'the resources to protect and defend, support logistically, and assist generally in the development of commercial ventures to explore, research, exploit and market the mineral, timber, and other resources held by the State of the Democratic Republic of the Congo'. 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. The prevailing business environment is another incentive. The constraints of governmental controls and regulations and a functioning legal system to enforce them are often absent. As a result, the Zimbabwean army has been successful in enticing investors, often with off-shore companies, to bankroll and make operational its joint ventures. This pattern now characterizes all of the Zimbabwean exploitation activities, whether with MIBA, Gécamines, SOCEBO or the relatively recent SCÉM.

According to the UN Panel, Bredenkamp's Tremalt was advised by Brigadier General Sibusiso Busi Moyo, who was Director General of COSLEG.³¹⁰ It alleged that a key role was played by Air Commodore Mike Tichafa Karakadzai, Deputy Secretary of COSLEG, in arranging the Tremalt cobalt and copper deal.³¹¹ The Panel also stated that: 'A forum has been established between Tremalt and ZDF to plan strategy in the Democratic Republic of the Congo and "look after the interests of the Zimbabweans".' The Panel described the forum as meeting monthly and detailed its main members as General Zvinavashe; Brigadier Moyo; Air Commodore Karakadzai; Mr. Bredenkamp; the Managing Director of KMC, Colin Blythe-Wood; and the Director of KMC, Gary Webster.³¹²

The Panel asserted that the price paid for the [Tremalt] concessions worth US\$1 billion was US\$400,000.³¹³ Furthermore, according to the Panel: 'Gécamines officials told the Panel that the National Security Minister of the Democratic Republic of the Congo, Mwenze Kongolo had pressured their negotiators to agree to the joint venture contract despite its negative implications for the State company's finances.'³¹⁴ The Panel asserts that '[u]nder this agreement, the Panel has learned that Gécamines derives no direct financial benefit.'³¹⁵

The Lutundula Commission reiterated the financial advantages enjoyed by KMC arising from the transaction: the concessions C17, C19, C21 and the Kakanda concentrator were transferred to KMC without any payment of rights and the Commission did not see any document establishing Tremalt's payment to Gécamines in return for its 80% stake;³¹⁶ the material inputs of Gécamines – certain deposits and many tons of minerals stocked on site – were not evaluated and taken in account;³¹⁷ KMC was exempted from paying Gécamines any allowance and royalties for the mining titles;³¹⁸ the company was 'to be exonerated of the whole amount of national, regional, and local taxes, duties and rights, contributions and debits of whatever types... owed to the State...'.³¹⁹

Tremalt, in its response to the Panel, denied that the joint venture was exploitative and maintained that it operated on a fair commercial basis for the benefit of the Congolese people.³²⁰

The decision of the DRC Government in 2001 to cancel Rautenbach’s original concessions and award these to Bredenkamp/Tremalt did not fundamentally alter underlying agreements to distribute the profits from the ventures between, *inter alia*, the Congolese and Zimbabwean Governments. 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. Given the existence of an underlying and undeclared agreement in respect of Tremalt’s KMC joint venture, combined with the low purchase price paid for the concessions, it is unsurprising that Tremalt did not file a counter-claim for the transfer of 50% of its concessions to Rautenbach’s Boss Mining. Neither had Tremalt, according to the Panel, made substantial investments in the concessions.³²¹ This lack of investment is subsequently noted by the Lutundula Commission.³²² Moreover, the Commission names KMC as one of the companies to have entered into a joint-venture agreement ‘without regard to formal contractual obligations’, a criticism repeated by Ernst & Young.³²³

Following its investigations, both COMIEX and COSLEG were understood by the UN Panel to have been dissolved in late 2002.³²⁴ ‘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.’³²⁵ Questions remain as to whether any underlying agreement in respect of the Boss Mining joint venture existed after the settlement of the ICSID 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.

AIM Compliance

Questions that remain publicly unanswered	Aim rules potentially at issue
<p>1. When CAMEC acquired IMF in February 2006 and later exercised its option on Boss Mining in March 2007 and when it announced the transaction to form a joint venture with Prairie and later acquired the resulting DRC Resources Holdings, why did CAMEC not disclose at the time of these transactions</p> <ul style="list-style-type: none"> ▪ details of the provenance or disputed history of ownership of the Mukondo and Likasi concessions; ▪ allegations made by the UN Panel and in the Belgian Senate inquiry that the joint venture with Tremalt/KMC and the joint venture with Ridgepointe had been subject to underlying, undisclosed profit sharing agreements with elite interests in the Congolese and Zimbabwean Governments; ▪ details of the ICSID claim and its settlement, including the unexplained transfer of Tremalt/KMC assets to Boss Mining without apparent due consideration? 	<p>Rule 12 [2005 & 2007]</p> <p>Schedule Four, (f) and (j)</p>
<p>2. If it is accepted that the market should have been notified about the provenance and disputed history of ownership of the concessions and about the allegations made by the UN Panel and in the Belgian Senate concerning the predecessor companies, the question arises as to whether these omissions were likely to affect the import of information as notified.</p>	<p>Rule 10 [2005 & 2007]</p>

3. Did Seymour Pierce review CAMEC’s notification of 3 February 2006 ‘Central African Mining & Exploration Company Plc (“CAMEC” or “the Company”) Acquires Majority Interest in Major Copper Cobalt Joint Venture in DRC’ and subsequent notifications on this acquisition, including that of 1 March 2007 entitled ‘Democratic Republic of the Congo Acquisition and Production Update’? If so did it question why there were no references to the provenance and disputed history of ownership of the concessions and to the allegations made by the UN Panel and in the Belgian Senate concerning the predecessor companies?

Rule 39 [2005 and 2007], RNA OR2 [2007] Guidance MOG, Ongoing obligations, Review by Nominated Adviser

4. Did Seymour Pierce advise and guide CAMEC’s directors about their obligations to ensure compliance on an ongoing basis with the AIM rules, including the application of rules 10 and 12 to information concerning the disputed history of ownership of the CAMEC concessions and the allegations made by the UN Panel and in the Belgian Senate concerning the predecessor companies and the underlying agreements with the Zimbabwean regime? Did Seymour Pierce, at the earliest opportunity, seek the advice of the Exchange (via AIM Regulation) over the likely consequences of information about this provenance and these allegations entering the public domain?

Rule 39 [2005 & 2007], RNA 19 [2007]

5. Can Seymour Pierce demonstrate that it acted with due skill and care at all times?

Rule 39 [2005 & 2007], RNA 16

Allegations concerning the former owners of CAMEC’s assets in DRC and/or those with significant or substantial beneficiary interests in CAMEC

Matters at issue

The companies initially 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.³²⁶ The acquisition by CAMEC of Prairie International’s stake in the joint venture DRC Resources Holdings, including the underlying assets Savannah Mining (formerly KMC) and Mukondo Mining, raises questions about the reputations of KMC’s former controlling shareholder, John Bredenkamp, and 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 of the assets and, in the case of Rautenbach and Gertler, continued beneficiary shareholders, may have deprived investors of the necessary information to enable them to evaluate the effect of the transactions on CAMEC and thereby engage 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 is 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 not necessarily the veracity or otherwise of the allegations, but CAMEC’s notification of such information given its existence or the likelihood of its emergence in the public domain.

Summary of the allegations

Billy Rautenbach

When CAMEC purchased Boss Mining and IMF from Billy Rautenbach in 2006, Rautenbach was already a notorious figure. Yet in the transaction to acquire IMF and the option on Boss Mining, 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, James Tidmarsh, that Rautenbach was identified in a database consulted by financial institutions as a 'Politically Exposed Person' (PEP), representing a high risk under regulations to combat money laundering³²⁷; or
- 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 Public Prosecutions and the Investigating Directorate, Serious Economic Offences on 27 September 2000.³²⁸

One immediate repercussion of Rautenbach's fugitive status was his designation as *persona non grata* by the Congolese authorities and the cancellation of CAMEC's licences and the effect this had upon CAMEC's share price; a longer-term effect concerns financial transparency and the completeness or otherwise of the financial information presented to CAMEC shareholders and 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.³²⁹ The latter issues of financial transparency and management *vis-à-vis* AIM compliance are examined further: *intra*, Managerial conduct: information of import on the suitability of management and opaque subcontracts in the predecessor companies, p. 60; and Incompleteness of accounts: a disregard for accountancy rules and a lack of financial transparency in the predecessor companies, p. 71.

Dan Gertler

CAMEC did not disclose at the time it announced the proposed transaction to acquire Prairie's interest in DRC Resources Holding, nor at the time of the transaction itself, nor subsequently:

- the fact that Dan Gertler, the family of whom are beneficiaries of a trust with an effective 60.21 per cent interest in Prairie, was subject to allegations of 'improper dealings with the Government of the DRC' referred to in the Nikanor admission document; or
- 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 training.³³⁰

Neither DGI nor Prairie International, the initial purchasers of Tremalt (including its KMC subsidiary, co-owner of Mukondo Mining) is 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.

John Bredenkamp

CAMEC did not disclose at the time it announced the proposed transaction to acquire Prairie's interest in DRC Resources Holding, nor at the time of the transaction itself, nor subsequently:

- 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 Bredenkamp's mining companies were party to undisclosed profit-sharing agreements with elite interests in the DRC and Zimbabwean Governments
- that Bredenkamp represented the illicit interests of Zimbabwe in DRC; or
- that Bredenkamp companies procured military equipment for the ZDF and breached EU sanctions on Zimbabwe in 2002.³³¹

United States and European Union sanctions

It is also pertinent to note that both Rautenbach and Bredenkamp have been placed on US and EU sanctions lists, confirming at the highest levels of international sanction their status as ‘Mugabe regime cronies’ providing financial and logistical support to the Zimbabwean regime in its intervention in DRC and as ‘persons who bear a wide responsibility for serious violations of human rights’.³³² While neither Rautenbach nor Bredenkamp nor entities they owned were named on these sanctions lists at the time of CAMEC’s DRC acquisitions, the imposition of EU and US sanctions represents a culmination and reconfirmation of the allegations made by the UN Panel and other international organizations.

An important question for the Exchange to determine is the extent to which CAMEC and its nomad knew or should have known of Rautenbach’s and Bredenkamp’s widely reported prior conduct during the war in DRC and whether the duty to notify such information was required under the AIM rules *per se*.

Principal AIM rules engaged

AIM Rules for Companies

Rule 10. Principles of disclosure, misleading, false, deceptive, omitted information

11. General disclosure of price sensitive information

An AIM company must issue notification without delay of any new developments which are not public knowledge concerning a change in:

- its financial condition;
- its sphere of activity
- the performance of its business; or
- its expectation of its performance

which, if made public, would be likely to lead to a substantial movement in the price of its AIM securities.

[‘**Rule 11.** Notification of price sensitive information without delay’]

Rule 12. Notification substantial transactions, disclosure

Schedule Four. Notifications, (f) effect, (j) necessary information for investors

Rule 39. Compliance with Nominated Adviser Rules

AIM Rules for Nominated Advisers

RNA 16. Due skill and care

RNA 19. Liaison with the Exchange, reputation or integrity of AIM

OR1.

The nominated adviser should maintain regular contact with an AIM company for which it acts, in particular so that it can assess whether (i) the nominated adviser is being kept up-to-date with developments at the AIM company and (ii) the AIM company continues to understand its obligations under the AIM Rules for Companies.

In meeting this, the nominated adviser should usually:

- maintain regular contact with the AIM company, in particular to be satisfied that the nominated adviser is kept up-to-date in order that it can advise the company on its obligations under the AIM Rules for Companies (especially the requirements of Rule 11) and to identify breaches of the AIM Rules for Companies (e.g. in relation to Rule 17 disclosures)

...

['RNA OR1. Regular client contact, keeping up-to-date with developments, advice on disclosures']

RNA OR2. Nominated adviser prior review of relevant notifications

OR3.

The nominated adviser should monitor (or have in place procedures with third parties for monitoring) the trading activity in securities of an AIM company for which it acts, especially when there is unpublished price sensitive information in relation to the AIM company. In meeting this, the nominated adviser should usually:

- use suitable alerts or other triggers to alert the nominated adviser to substantial price or trading movements. This can be satisfied via the broker
- contact an AIM company where appropriate if there is a substantial movement to ascertain whether an announcement or other action is required, liaising with the Exchange where appropriate
- consider the necessity for arranging relevant press monitoring, particularly when there is material unpublished price sensitive information in existence

['RNA OR3. Monitoring of trading, price sensitive information, required announcements']

Guidance Note for Mining, Oil and Gas Companies [March 2006]

Guidance MOG [March 2006], **Part Two.** Ongoing obligations, Notifications, Review by Nominated Adviser

Substantiating information

Muller Conrad Rautenbach (also known as 'Billy' Rautenbach)

Rautenbach's control and management of the companies acquired by CAMEC

Before restating the allegations made against Rautenbach, it is first necessary to establish his control of the companies at the time of their acquisition by CAMEC. Only a year after the commencement of the IMF/MMT/Boss Mining acquisition in February 2006, did CAMEC acknowledge that the concessions had been acquired from companies controlled by Rautenbach.³³³

CAMEC states in its preliminary results for the year to 31 March 2007:³³⁴

[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:³³⁵ '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. Moreover, CAMEC states elsewhere: '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 DRC from companies controlled by Mr. Rautenbach and his family.'³³⁶ The MCRC states: 'CAMEC, a new Gécamines joint venture partner, entered into Boss Mining Sprl on 1 March 2007, after buying back shares in Shaford.'³³⁷ Rautenbach's interest in Shaford is confirmed: see *intra*, p. 30 and note 291.

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'.³³⁸

A Politically Exposed Person

James Tidmarsh, Rautenbach's former business partner and Shaford's lawyer, filed an affidavit, dated 5 January 2006, in a court case against Shaford Capital, the BVI holding company ultimately used by Rautenbach in his former exploitation of the DRC mining concessions. In his affidavit, Tidmarsh said that Rautenbach was identified in a database consulted by financial institutions, as part of their 'know your client' obligations, as a 'Politically Exposed Person':

Given Mr. Rautenbach's majority beneficial ownership of the Company [Shaford], it was extremely difficult for me to open bank accounts for the Company and its affiliates... they [the banks] were not interested in the business on account of the additional level of scrutiny required over the accounts, as a result of Mr. Rautenbach's status as identified to them in such databases, as well as his past business history, including the pending arrest warrant.³³⁹

A 'Politically Exposed Person' is defined by the Financial Action Task Force (FATF) – an inter-governmental body developing national and international policies to combat money laundering and terrorist financing – an individual who is or has been entrusted with prominent public functions in a foreign country, *inter alia*, senior executives of state-owned corporations, and is considered to represent a high risk to banks and other financial institutions.³⁴⁰

The charges against Rautenbach and the warrant for his arrest

In September 2000, South Africa's Deputy Director Public Prosecutions and the Investigating Directorate, Serious Economic Offences issued a warrant for Rautenbach's arrest on charges of fraud, theft and corruption.³⁴¹

A restraint order issued by the National Director of Public Prosecutions (NDPP) prohibiting Rautenbach from dealing in specified assets in South Africa was reinstated by the Supreme Court of Appeal of South Africa in November 2004: 'there are reasonable grounds for believing that Rautenbach might be convicted of fraud and that a confiscation order might be made against him in a substantial amount.'³⁴² According to the judgment: 'The principal accusation made against Rautenbach was that he was a party to defrauding the South African Revenue Service in the course of operating a business that imported vehicles into southern Africa and into South Africa in particular. Rautenbach was also accused of having stolen money from one of the companies with which he was associated and of contravening s 86(e) of the Customs and Excise Act 91 of 1964.'³⁴³ Rautenbach was associated with and able to exercise control over the affairs of three companies importing Hyundai motor vehicles from Korea into southern Africa for sale mainly in South Africa.³⁴⁴ The judgment, simplifying the NDPP's case, states that the prices reflected on invoices for the vehicles or disassembled components 'were fraudulently reduced, in order to reduce the liability for duty.'³⁴⁵

In July 2006, the United Nations Group of Experts on the Democratic Republic of the Congo named Billy Rautenbach as an individual of 'unknown or questionable standing', reiterating that he was wanted by the authorities of South Africa for fraud and theft, and confirming that he was a major shareholder of CAMEC.³⁴⁶

Investigation of the 'Rautenbach/CAMEC transaction' and Rautenbach's deportation from DRC

In May 2007, according to press reports citing a statement from Victor Kasongo, DRC's vice minister of mines, South Africa's Justice Department requested DRC to assist with the arrest warrant for Rautenbach on charges of fraud, corruption and theft.³⁴⁷ Katanga Mining, in a news release of 9 May 2007 relating to measures taken to prevent a creeping takeover of Katanga by CAMEC, stated:³⁴⁸

On May 9, 2007, the Vice Minister of Mines in the Democratic Republic of Congo announced that the mining activities of Central African Mining & Exploration Company PLC ('CAMEC') are under investigation and commented on CAMEC's purchase of Katanga shares. In his press release the Vice Minister, in referring to CAMEC, stated: 'This company uses business practices which are not in alignment with international corporate governance standards.' The Vice Minister also reported: 'While under investigation for the initial Rautenbach/CAMEC transaction, the Company has made hostile moves toward its competitors through an unsolicited purchase of a large portion of shares in Katanga Mining, a publicly listed company...'. The Vice Minister of Mines was supportive of the application made by Katanga with the Ontario Securities Commission to prohibit CAMEC from proceeding with further share purchases of Katanga.

On 16 May 2007, *Reuters*, reporting on South Africa's request, also quoted the Vice Minister of Mines:³⁴⁹ 'What country can accept to have a fugitive [Rautenbach] as a company's top guy on their territory? We are not happy with how (CAMEC) are operating in Congo. We want them to be a level player.' Kasongo said: 'They [CAMEC] will be reviewed along with all the other contracts.' The *Reuters* article states: 'CAMEC, which... is listed on London's AIM exchange, has denied any wrongdoing connected to its operations in Congo. It has suggested Kasongo's statements may be commercially motivated, following the company's recent acquisition of a 22 percent stake in rival Katanga Mining.'

According to a statement distributed on behalf of the Katanga provincial government, the Interior Ministry informed Rautenbach on 17 July 2007 that he was barred from the country, declaring him *persona non grata*.³⁵⁰ The statement read: 'Mr Rautenbach had amassed a large number of mineral and other assets in the DRC during the civil war and subsequently'.³⁵¹ 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'.³⁵²

According to press reports, CAMEC held a press briefing contesting the validity of the *persona non grata* order concerning Rautenbach and claimed that, despite the order, he had entered DRC.³⁵³ Indeed, a CAMEC news release of Wednesday 18 July 2007 confirmed that 'Mr Rautenbach has this morning entered the DRC without hindrance' stating that 'CAMEC does not believe that the restriction order has been issued by the appropriate authorities and therefore questions its authenticity'.³⁵⁴ Rautenbach was detained by the Katanga provincial authorities on the same day and deported to Zimbabwe on the following day.³⁵⁵ In a release of 23 July 2007, stated in one attribution to be on behalf of Billy Rautenbach and CAMEC and in another to be on behalf of Billy Rautenbach, it was denied that Rautenbach had been arrested, detained and had had his passport confiscated;³⁵⁶ the release went on to query the validity of the *persona non grata* order. The release did confirm that 'Rautenbach arrived in Lubumbashi on Wednesday [18 July] to conduct various meetings'. According to the release, Rautenbach 'could not depart the same evening due to runway repairs', but stayed with friends, departing Thursday morning when the runway reopened. In a further statement, the DRC Government confirmed that Rautenbach had indeed been arrested and deported from the country.³⁵⁷

Rautenbach's return to South Africa and his appearance before the Specialised Commercial Crimes Court

Rautenbach returned to South Africa on 18 September 2009.³⁵⁸ It is reported that Rautenbach handed himself over to the National Prosecuting Authority and was arrested on arrival.³⁵⁹ He appeared before the Specialised Commercial Crimes Court on the same day.³⁶⁰ A media release on behalf of Rautenbach states:³⁶¹

Following extensive discussions and negotiations between the National Prosecuting Authority (NPA), S.A. Botswana Hauliers (Pty) Limited (S.A. Botswana Hauliers) and its company representative and director, Mr. Muller Conrad Rautenbach (Billy Rautenbach), a plea bargain agreement was reached on Friday, 18 September 2009.

Billy Rautenbach – a Zimbabwe citizen and resident – arrived at Lanseria Airport on Friday morning from Zimbabwe and appeared in court in Pretoria on behalf of S.A. Botswana Hauliers relating to 326 counts of tax charges brought against the company. S.A. Botswana Hauliers pleaded guilty, was convicted accordingly and as part of the sentence imposed by the court, following the conclusion of the Plea Bargain Agreement in terms of Section 105 (1) (a) of the Criminal Procedure Act – which was authorised by the National Director of Public Prosecutions – the company was ordered to pay amounts aggregating R40 million to certain departments of state.

...

It is believed that following careful analysis and consideration it was concluded that the alleged offences, which occurred more than 10 years ago, related directly to S.A. Botswana Hauliers and not to Rautenbach personally.

The NPA has withdrawn all criminal charges against Billy Rautenbach and accordingly he is at liberty to depart from and enter the Republic of South Africa subject to compliance with normal immigration and customs formalities.

According to the NPA, Rautenbach pleaded guilty to 326 charges of fraud as a representative of his company, SA Botswana Hauliers Ltd.³⁶² A spokesman for the NPA is quoted:³⁶³ ‘He [Rautenbach] was sentenced in terms of a plea and sentence agreement.’

The *Bloomberg* news agency reported upon answers to questions about the plea bargain agreement provided by Mthunzi Mhaga, a spokesman for the NPA:³⁶⁴

Rautenbach agreed to pay a 10 million-rand fine immediately, Mhaga said. He has also agreed to pay a fine of 15 million rand to the South African Revenue Service and a further 15 million rand to the Criminal Asset Recovery Account in installments, the NPA’s Mhaga said. As surety, the NPA is holding a farm owned by Rautenbach in Paarl, a wine-producing region near Cape Town, Mhaga added in a later interview.

The media release of 22 September 2009 on behalf of Rautenbach confirms that ‘[t]he sum of R40 million 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.’³⁶⁵

The naming of Rautenbach in the prosecution of the former National Commissioner of the South African Police Service

Rautenbach’s plea bargain agreement was concluded with the South African authorities just 17 days before the commencement, on 5 October 2009, 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 (SAPS) and former head of Interpol.

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.

Following the plea bargain agreement, Rautenbach subsequently appeared as a key prosecution witness in Selebi’s trial.

Rautenbach and the trial of Jacob Sello Selebi

The allegations in the State versus Jacob Sello Selebi stem from Selebi's 'generally corrupt' relationship with Glenn Norbert Agliotti, described as a SAPS informer and businessman.³⁶⁶ Agliotti was arrested in March 2006 in connection with the murder of mining magnate Bret Kebble and stood trial on charges of murder and conspiracy to commit murder.³⁶⁷ In November 2010, Agliotti was found not guilty by the High Court.³⁶⁸ In December 2007, in another case, Agliotti had pleaded guilty and was convicted of dealing in drugs and was fined and sentenced to ten years in prison (suspended), conditional on his testifying in another major drugs case.³⁶⁹

The Selebi charge sheet stated:

19. During meetings between Agliotti, Rautenbach, Rautenbach's legal representative James Tidmarsh and Paul Stemmet, Rautenbach requested assistance regarding an arrest warrant in South Africa. Some of the meetings took place at a hotel in Sandton, Gauteng during the period 17 June 2004 up to and including 30 November 2005.

Meetings also took place in Harare and in Lubombashi [sic] during the aforementioned period.

20. Agliotti discussed Rautenbach's request with the accused [Selebi] and the latter indicated a willingness to assist. During 2005, the accused [Selebi] attended a meeting with Rautenbach's legal representative, James Tidmarsh, at the Sandton Intercontinental Towers and gave him the undertaking that Rautenbach's request will be attended to.

21. Rautenbach made 40 000 US Dollars available as payment for the accused to have the arrest warrant cancelled. Of this amount, 30 000 Dollars, was paid over to the accused, by Agliotti.

Selebi was accused on count/subcounts of corruption. In addition, he was accused on the count of defeating the administration of justice, *inter alia*, by 'agreeing to and/or attempting to influence the investigative and/or prosecutorial process against Rautenbach'.³⁷¹

Selebi was found guilty of corruption in July 2010, but cleared of the charge of defeating or obstructing the ends of justice.³⁷² He was sentenced in August 2010 to 15 years imprisonment.³⁷³ Part of the judgment against Selebi states:³⁷⁴

... Agliotti flew in to the DRC. He left the DRC a few hours after his arrival on the same aeroplane as he had arrived in. He met Rautenbach and Tidmarsh in Rautenbach's motor vehicle in the car park at the airport in Lubumbashi. Agliotti sat in front of the vehicle with Rautenbach, Tidmarsh sat in the back, Tidmarsh handed \$100000 over to Agliotti. Rautenbach confirmed that the money was paid over as he was trying to resolve his issues in South Africa and he believed that Agliotti had the necessary contacts to raise his matter and get it resolved. The reason for this belief was founded in the fact that the doors of the NPA were closed to Rautenbach. Agliotti had managed to at least raise the issue with the accused. Rautenbach regarded that as important so that he could try and find a conclusion to his case.

...

According to Agliotti he had intended giving the accused \$40000 of the \$100000 that he had in fact received. He testified that he in fact had only given him a total of \$30000 on three separate occasions.

The judgment also details an earlier approach made by Mr Bulelani Ngcuka, the National Director of Public Prosecutions and head of the DSO (Directorate Special Operations, commonly referred to as the Scorpions) to Mr Ramsay, an attorney representing Rautenbach, suggesting a solution to the pending criminal case against Rautenbach, which had been investigated by the DSO, if Rautenbach co-operated with Ngcuka.³⁷⁵ It is later stated that '[t]owards the end of 1999 and the beginning of 2000, Rautenbach approached... Mr James Ramsay... and requested him to make contact with the NPA on behalf of Rautenbach'.³⁷⁶ The upshot of this was that Ramsay met with Ngcuka on a few occasions and the NPA directed a letter to Ramsay seeking information about, *inter alia*, beneficial interests in a mining company with operations in DRC and Rautenbach's contacts with foreign intelligence services.³⁷⁷

A meeting was held between Ngcuka's representatives and Rautenbach in Maputo in July 2000.³⁷⁸ Discussions did not centre on the Hyundai case, but upon intelligence issues relevant to issues outside South Africa's borders. The judgment also refers to an e-mail from Tidmarsh commenting on a

memorandum (the basis of a later affidavit made by Rautenbach) referring to his contact with Ngcuka, which quotes from the draft memorandum: 'it became evident that there was a real interest on the part of the South African authorities (including the National Intelligence Agency) with regard to the contacts/business activities of Mr. Billy Rautenbach in DRC...' ³⁷⁹

A subsequent meeting was held at the request of the South Africans with some officials from DRC, after which Rautenbach received a letter from a National Intelligence Agency official representing Ngcuka advising that all negotiations or communications were terminated. ³⁸⁰

US sanctions and the designation of Muller Conrad Rautenbach

A Specially Designated National (SDN) is defined by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) as an individual or company owned or controlled by, or acting for or on behalf of, targeted countries. ³⁸¹ In November 2008, OFAC, under Executive Order 13469 implementing sanctions against Zimbabwe, designated Rautenbach as an individual who provided financial and other support to the Government of Zimbabwe and Zimbabwean SDNs. ³⁸²

The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) today designated four Mugabe regime cronies and a number of entities owned or controlled by two of them. The financial and logistical support they have provided to the regime has enabled Robert Mugabe to pursue policies that seriously undermine democratic processes and institutions in Zimbabwe.

...

Also designated today is Muller Conrad Rautenbach (a.k.a. Billy Rautenbach). Billy Rautenbach is a Zimbabwean businessman who has maintained close relations with the Mugabe regime. He has provided support to senior regime officials during Zimbabwe's intervention in the Democratic Republic of the Congo and also provided logistical support for large-scale mining projects in Zimbabwe that benefit a small number of corrupt senior officials there. Today's designations include an entity owned and controlled by Billy Rautenbach, Ridgepoint Overseas Developments Limited.

...

As a result of Treasury's action, any assets of the individuals and entities designated today that are within U.S. jurisdiction must be frozen. Additionally, U.S. persons are prohibited from conducting financial or commercial transactions with these individuals or entities.

European Union sanctions

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.' ³⁸³ The sanctions have subsequently been extended and updated and, in January 2009, Rautenbach and his company Ridgepoint Overseas Development were added to the list. ³⁸⁴ 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....

ENRC's acquisition of CAMEC: Rautenbach, the Zimbabwean platinum assets and sanctions

In its offer document, 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.' ³⁸⁵ The company confirmed that 'US sanctions regulations are implicated because there are a few senior managers of ENRC (including Felix Vulis, ENRC's chief executive officer) who are US persons and who may not participate in or support

transactions involving sanctioned countries or individuals’ and also stated that ‘United Kingdom rules apply... to ENRC as well’.³⁸⁶

In respect of US sanctions, ENRC put in place arrangements, without the participation of any US persons, to negotiate the offer and manage certain assets post acquisition.³⁸⁷

- The creation of a special oversight committee, composed entirely of non-US persons, to negotiate and conclude the Offer;
- ENRC Africa, a separate United Kingdom incorporated wholly-owned subsidiary of ENRC, set up by the special oversight committee to hold and acquire CAMEC Shares;
- The management of all platinum-related assets (including all assets and subsidiaries within the CAMEC Group that have been deemed to be SDNs by the Office of Foreign Asset Control of the US Department of the Treasury) acquired from CAMEC by a non-US person and/or a steering committee directed exclusively by non-US persons;
- The management of all non-platinum assets and non-sanctioned subsidiaries or assets within the CAMEC Group by the existing team at CAMEC and an integration team from ENRC led by James Cochrane, a non-US person and a director of ENRC Africa.
- As both management teams are to report directly to the ENRC Directors, all ENRC Directors and all ENRC Africa Directors who are US persons ‘will recuse themselves, where applicable, from participation in the taking of any actions and the discussion of possible actions to be taken as regards the platinum-related assets to be acquired from CAMEC pursuant to the Offer.’

In respect of the UK, ENRC stated in the offer document:³⁸⁸

...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.

Yet, prior to the posting of the offer document *per se*, ENRC confirmed on the day the offer was announced that it already had HMT approval: ‘The HM Treasury has approved ENRC making the offer for the shares of CAMEC.’³⁸⁹

Non-disclosure of the identity of Rautenbach and other SDNs in the offer document

ENRC refers to ‘assets and subsidiaries within the CAMEC Group that have been deemed to be SDNs by OFAC’.

Although ENRC includes information on the acquisition of the Zimbabwe Platinum Assets (see *intra*, box on CAMEC’s Zimbabwean platinum assets, p. 10), it does not identify which of the entities it describes are SDNs.³⁹⁰

On 10 April 2008, CAMEC entered into a share purchase agreement with Meryweather Investments Limited (‘MIL’), pursuant to which CAMEC agreed to acquire the entire issued share capital of Lefever Finance Limited (‘LFL’) from MIL in consideration.... LFL is the 60 per cent. share holder of Todal Mining (Private) Limited (‘Todal’), a company incorporated in Zimbabwe and which owns the Bougai and Kironde claims.

By cross-reference to the list of SDNs issued by the US Department of the Treasury, it is apparent that none of the entities referred to by ENRC in section 6 (c) of its offer document appears on the list.³⁹¹

However, CAMEC, on its acquisition of LFL and its shareholding in Todal, stated that ‘[t]he remaining 40% of Todal is held by the Zimbabwe Mineral Development Corporation (“ZMDC”), the Zimbabwean state-owned mining company.’³⁹² ZMDC does appear as an SDN under the US Department of the Treasury’s Zimbabwe sanctions program.

Moreover, CAMEC confirms how it ‘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 Total.³⁹³ No details are given about the terms of repayment of the loan by the Zimbabwean Government.

Non-disclosure by ENRC in its offer document of Rautenbach's holdings in CAMEC

Harvest View

As noted, CAMEC, in a circular dated 28 August 2007, confirmed that Harvest View Limited, a company controlled by Mr. Rautenbach and his family, held 90,926,134 CAMEC Shares.³⁹⁴ 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.

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, while the section in the offer document on 'Sanctions and ongoing post-acquisition management issues' refers to the fact that US persons may not participate in or support transactions involving sanctioned countries or individuals and to 'assets and subsidiaries within the CAMEC Group that have been deemed to be SDNs by OFAC', 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:

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.

Although Rautenbach is not identified in the offer document or presentation, in relation to compliance with international sanctions or otherwise, his ownership of CAMEC shares *vis-à-vis* the sanctions regime had been widely reported both before and after ENRC's offer for CAMEC.

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.'³⁹⁵ 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".'

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.'³⁹⁶

In a presentation given by Felix Vulis, ENRC's chief executive officer, as part of a conference call with investors that took place on 18 September 2009, it is 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.'³⁹⁷

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.'³⁹⁸

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.³⁹⁹ 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]'.

However, it should be recalled that ENRC stated on 18 September 2009, when the offer for CAMEC was first announced that 'The HM Treasury has approved ENRC making the offer for the shares of CAMEC.'⁴⁰⁰

Meryweather Investments Limited

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.'⁴⁰¹

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...⁴⁰²

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 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.⁴⁰³ 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).⁴⁰⁴

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?'

Dan Gertler

The strengthening of Gertler's relationship with CAMEC

Ernst and Young, in their 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:⁴⁰⁵ '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.'

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:

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.⁴⁰⁶

...

Dan Gertler is a leader in the development of natural resources assets and significant investments in the mining sector. His interests include mining, energy, exploration, logistics, metal processing, real estate, agriculture and finance in Africa and other emerging markets around the world.

...

Mr Gertler has built significant business interests in the DRC. Mr Gertler was named honorary consul of the DRC in Israel in April 2003.⁴⁰⁷

CAMEC do not make reference to allegations made against Dan Gertler, either referred to in the admission document of Nikanor, another formerly AIM-traded company in which Gertler was a founding shareholder, or 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.

Reference to allegations in the Nikanor admission document

In the Nikanor admission document, under the heading 'litigation', reference is made to allegations that Dan Gertler

acquired a temporary monopoly on sales of diamonds from the DRC as a result of improper dealings with the Government of the DRC. A lawsuit was filed against Mr Gertler in the Tel Aviv District Court in February 2004 by Mr Yossi Kamisa, a former officer in the Israeli Police Border Guard Anti-Terrorism Unit. Mr Kamisa alleged that Mr Gertler had obtained rights to diamond sales from the DRC in 2000 in exchange for promising the President of the DRC that he would arrange a meeting with Israeli security personnel who would train the DRC army and provide military advice. It was also alleged that Mr Gertler had made improper payments to government officials and army officers in connection with these arrangements. Mr Kamisa alleged that he had been approached in connection with the provision of such training and advice. The lawsuit was dismissed in July 2004. Mr Kamisa has elected to exercise his right to appeal without the need for leave of the court. An appeal hearing has been scheduled for November 2006.

The Nikanor admission document concludes that: 'These allegations do not relate to the Company [Nikanor], the Group or any of their activities. They concern Mr Gertler in his capacity as a shareholder.' Yet it is stated under 'risk factors' in the admission document: '...each of the Major Shareholders will be able to exercise significant influence over all matters requiring shareholder approval, including the election of Directors and significant corporate transactions.' It is also noted that New Horizon, the entity holding shares on behalf of Gertler, has the right to appoint one non-

executive director to the board.⁴⁰⁸ To reiterate, Nikanor plc has cancelled its admission to trading on AIM; it is not, and never has been, a business partner of CAMEC.

Following CAMEC's acquisition of DRC Resources Holdings, it is apparent that a trust benefiting the Gertler family was then a substantial shareholder of CAMEC (see *intra*, Annexe 5). CAMEC states: 'The Ashdale Settlement beneficially owns the entire share capital of Fleurette Properties Limited and accordingly has an effective 60.21 per cent. interest in Prairie (and thereby an effective interest in 490,706,407 Consideration Shares).'⁴⁰⁹ CAMEC confirms the current beneficiaries of the Ashdale Settlement as 'the wife, children and remoter issue of Dan Gertler.'⁴¹⁰ The Consideration Shares benefiting the Gertler family represented a 19.7% interest in the enlarged share capital of CAMEC at the time of the DRC Resources Holdings acquisition.⁴¹¹ CAMEC notes that 'Prairie also has the right, under the Acquisition Agreement, to appoint up to four representatives to the Board, depending on the level of the aggregate shareholding of the Consideration Shares Recipients in CAMEC.'⁴¹²

CAMEC's admission to AIM, triggering admission due diligence requirements, predates its transactions with companies in which Gertler has an interest; however, disclosure rules concerning continuing compliance are engaged.

Allegations made by the UN Panel

In its April 2001 report to the Security Council, the UN Panel states:⁴¹³

150. Monopoly on diamonds granted to International Diamond Industries (IDI).—According to government sources, the objective of this monopoly was twofold: first, to have fast and fresh money that could be used for the purchase of needed arms, and address some of the pending problems with the allies. Second, to have access to Israeli military equipment and intelligence given the special ties that the Director of International Diamond Industries, Dan Gertler, has with some generals in the Israeli army.

151. This deal turned out to be a nightmare for the Government of the Democratic Republic of the Congo and a disaster for the local diamond trade as well as an embarrassment for the Republic of the Congo, which is currently flirting with illicit diamonds. According to different sources, IDI paid only \$3 million instead of \$20 million and never supplied military equipment.

152. President Joseph Kabila has expressed willingness to liberalize the diamond trade in the Democratic Republic of the Congo, and IMF and the World Bank are very supportive of this move. IDI is, however, threatening to sue the Government of the Democratic Republic of the Congo. The IDI deal also turns out to be a disaster for the local diamond trade. As the monopoly was granted to IDI, most diamond dealers operating in the government-controlled area crossed to Brazzaville to sell their diamonds. It is estimated that during the first three months of the monopoly, \$60 million worth of diamonds from the Democratic Republic of the Congo were sold on the international market, and the Republic of the Congo was mentioned as the country of origin. This smuggling of diamonds deprived the already ailing economy of the Democratic Republic of the Congo of substantial sums of money and the treasury of substantial tax revenues. This case shows that the desperate need for quick cash to finance the defence of its territory has instead brought other problems to the government and has paradoxically deprived the treasury of substantial revenue.

The UN Panel again referred to the business dealings of Gertler in its November 2001 report to the Security Council.⁴¹⁴

67. In some cases, it appears that deals were concluded because they were linked, directly or indirectly, to arms and military support. In 1997, the Kabila government ended the exclusive contract it had with De Beers to buy all of the industrial diamond output of MIBA. Following a period in which Congolese diamonds were sold on the international auction market to the highest bidder, President Kabila reached an agreement with the Israeli-owned International Diamond Industries in August 2000 for a monopoly on diamond sales. According to the terms of the agreement, IDI agreed to pay \$20 million in return for a monopoly on sales valued at \$600 million annually. The Panel was informed by very credible sources that this deal

included unpublished clauses, in which IDI agreed to arrange, through its connections with high-ranking Israeli military officers the delivery of undisclosed quantities of arms as well as training for the Congolese armed forces.

68. IDI ultimately paid only \$3 million from the agreed sum of \$20 million. President Joseph Kabila decided in April 2001 to end the contract, citing failure to pay as the reason. In his statement, the owner of IDI, Dan Gertler, claimed that IDI had complied with its obligations and alleged that the government's decision was motivated by the fact that information about the agreement was included in the Panel's final report. The statement also insisted that the Panel did not consult with IDI and demanded that the Panel rectify its report. The Panel requested to meet with IDI representatives in Kinshasa in September 2001. IDI declined this request. IDI is reportedly trying to negotiate some form of compensation for breach of contract with the Government of the Democratic Republic of the Congo.

69. It is important to look at this failed Kabila-Gertler deal as a number of key aspects are significant. On the Congolese side, it comes within a pattern of miscalculated decisions taken by the cash-strapped Laurent-Désiré Kabila, whose main interest was the immediate cash flow. Although there was some discontent within Kabila's entourage at the outrageousness of the deal, it was, nonetheless, not revoked until seven months after it was signed. The Panel has credible information indicating that there is a growing involvement of Israeli businessmen in the region. Taking advantage of the withdrawal of De Beers from conflict diamond regions, a whole network of Israelis was established, including Mr. Gertler in the Democratic Republic of the Congo, Lev Leviev in Angola and Shmuel Shnitzer in Sierra Leone. In all three cases, the pattern is the same. Conflict diamonds are exchanged for money, weapons and military training. These diamonds are then transported to Tel Aviv by former Israeli Air Force pilots, whose numbers have significantly increased both in UNITA-held territory in Angola and in the Democratic Republic of the Congo. In Israel, these diamonds are then cut and sold at the Ramat Gan Diamond Centre.

The UN Panel's final report on the illegal exploitation of natural resources in DRC, published in October 2003, was transmitted to the UN Security Council with an additional confidential section, which was not publicly released.⁴¹⁵ However, the confidential part of the report was leaked and was widely circulated.⁴¹⁶ Following the ending of the earlier IDI monopoly, the UN Panel of Experts reported that another agreement had been drawn up between a Canadian-based company, EMAXON International Finance Inc, and MIBA.⁴¹⁷

Under the heading 'The Kinshasa-linked network,' the report describes how:⁴¹⁸

32. A secret agreement between state diamond company, Minière de Bakwanga (MIBA), and Emaxon (an entity controlled by Israeli diamond traders Chaim Leibovitz and Dan Gertler) was at the centre of the first major dispute in the power-sharing government over mining revenues. The existence and terms of the agreement between Emaxon and MIBA, dated 13 April 2003, were kept secret by leading officials of the former DRC Government – even from the new Minister of Mines Eugene Diomi Ndongala who represents the non-armed opposition in the new government.

33. Under the terms of the agreement, Emaxon is to lend MIBA \$5 million for capital investment in its production plant and advance it a further \$10 million, which will be redeemed against future diamond sales. However, some of MIBA's creditors say that the agreement between Emaxon and MIBA contravenes an undertaking, which the state diamond company gave promising to consult them about any change in marketing and export sale arrangements. The Panel is in possession of a copy of the agreement which is dated Johannesburg, 25 February 2003. The agreement is between MIBA, Groupe Van De Ghinste, Demimpex, Ken Overseas, Chanic and OSS. The agreement stipulates that MIBA must consult the creditors if it changes its marketing agreements.

34. A businessman representing one of the MIBA creditors reported that Secretary General to the government Augustine Katumba Mwanke instructed MIBA's *Président Administrateur*

Délégué Gustave Luabeye Tshitale and MIBA's Director of General Services Michel Haubert to sign the Emaxon agreement, and explained that there may be deliberate under-pricing of the MIBA shipments to fund Emaxon's 'credit line' to MIBA. Other credible sources have made the same claims, explaining that the Secretary General played a key role in negotiating the agreement with Mr. Leibowitz.

35. Concerns have also been expressed about the legal accountability of Emaxon, should there be a dispute over sales revenues or the enforceability of payment agreements. Emaxon Finance International Inc. (the entity that signed the agreement) gives its address as [located] in Montreal, Canada. It does not have a publicly listed telephone number. The majority shareholder in Emaxon is FTS Worldwide Corporation whose business address is stated to be that of a firm of lawyers, Mossack Fonseca & Co in Panama City.

The agreement with MIBA gave Emaxon the right to the marketing of 88% of MIBA's diamond production, worth over \$100 million of exports annually, which DGI purchased at a five per cent discount.⁴¹⁹ The signatories to the agreement with MIBA on behalf of Emaxon were Gertler's adviser, Rabbi Chaim Leibovitch, and a lawyer, Yaakov Neeman, currently Israel's Minister of Justice.⁴²⁰

In December 2003 the Tel Aviv law firm Herzog, Fox & Neeman, representing Emaxon International Finance Inc., in a letter signed by Yaakov Neeman, demanded that the Congolese newspaper *Le Potentiel* publish a correction to an article it had printed claiming that Emaxon examiners in Antwerp had attempted to lower MIBA's average product price for a package of diamonds.⁴²¹ Emaxon demanded payment of \$15 million damages and interest from *Le Potentiel* and the removal of the article from its website and archive. The International Freedom of Expression Exchange (IFEX), which works on press freedom, reported that it considered Emaxon's lawyer's letter as 'a thinly-veiled attempt at blackmail' and stated that in its view *Le Potentiel* had only done its work in reporting on the facts of a business transaction, which had taken place in a public setting.⁴²² In January 2004, Victor Kasongo Shomary, the then head of the Congolese *Centre d'évaluation, d'expertise et de certification* (CEEC, Congo's Regulatory Mining Body), praised the Emaxon–MIBA deal.⁴²³

In March 2004, RAID's Executive Director met Rabbi Leibowitz in London and expressed concerns about the fairness of the deal and the terms of the loan. The public controversy led to a renegotiation of the diamond deal.⁴²⁴ In June 2004, the International Monetary Fund called on the DRC Government to conduct a full audit of MIBA's operations, but this was not begun till June 2005.⁴²⁵ Industry sources estimated that DRC produced and sold diamonds worth \$1 billion but that tax had been collected on just \$730 million. The rest was smuggled out.⁴²⁶

In 2005, the Lutundula Commission questioned whether the contract should be terminated mid-term.⁴²⁷ It argued that Emaxon's contract had been unfair and financially imbalanced.⁴²⁸ The undervaluation of MIBA diamonds under the scheme had been losing MIBA some \$2 million a month. In 2003 – 04 under the Emaxon contract the official valuation of MIBA's rough diamonds dropped \$3 a carat while world prices rose by 15 – 20 per cent.⁴²⁹ Emaxon rejected charges of wrongdoing claiming it had offered the only source of finance available to the near bankrupt MIBA. It insisted that MIBA's recovery was in Emaxon's interest.⁴³⁰ Yet by 2008, when the Emaxon contract came to an end,⁴³¹ little investment had materialised and employees and suppliers were underpaid.⁴³²

The purchase by ENRC of CAMEC share holdings attributed to Gertler and his beneficiaries

It is widely reported by, *inter alia*, *The Times*, *The Independent*, *The Mining Journal* and *Reuters*, that ENRC purchased the entire shareholding in CAMEC of Dan Gertler, to coincide with its offer for CAMEC.⁴³³ Reuters states: 'ENRC said it had purchased all of the CAMEC stake owned by major shareholder Dan Gertler, an Israeli resources investor. Gertler owned around 35 percent of CAMEC.'⁴³⁴

Using information published by CAMEC or ENRC, it is possible to track some, but not all, of the share purchases to acquire the 35 percent holding in CAMEC attributed to Gertler.

Prior to its offer for CAMEC, on 17 September 2009, ENRC Africa (the wholly-owned subsidiary of ENRC) entered into off-market share purchase agreements to acquire the entire holding of CAMEC shares from, *inter alia*, Delena International Limited, Eagle Multinational Limited, Geranium

Properties Limited, Summertown Resources Limited, Gladioli International Group Limited, and Silvertown International Limited. These purchases represented approximately 15.43 percent of CAMEC shares and were completed on 18 September 2009 at 20 pence per share, the same as the offer price.

According to a CAMEC circular of May 2008, the entire share capital of all of these entities was owned by Hyena Resources Limited, which in turn was owned by Rozaro Developments Limited, the latter owned by Fleurette Properties Limited. CAMEC states: ‘The Ashdale Settlement beneficially owns the entire share capital of Fleurette Properties Limited...’⁴³⁵ CAMEC confirms the current beneficiaries of the Ashdale Settlement as ‘the wife, children and remoter issue of Dan Gertler.’⁴³⁶

Assuming the reports that ENRC purchased Gertler’s 35 percent holding in CAMEC are correct, then approximately an additional 20 percent holding in CAMEC was purchased from other Gertler entities. Yet there is insufficient information in the public domain to identify which of the entities listed by ENRC as having entered into share purchase agreements or irrevocable undertakings to accept the offer benefit Gertler or his family.

The purchase of shares derived from CAMEC’s interest in Société Minière of Kabolela and Kipese Sprl (‘SMKK’) from Kara Enterprises Limited beneficially owned by the Bertram Trust via Line Trust Corporation Limited. In October 2008, CAMEC agreed to acquire a 50% interest in SMKK, ‘a joint venture company with significant copper and cobalt assets in the Democratic Republic of Congo’.⁴³⁷ CAMEC’s announcement at the time continues: ‘The consideration for the acquisition is US\$85 million and will be satisfied by the allotment of 230,978,260 new ordinary CAMEC shares (the ‘Consideration Shares’) to the vendor (calculated at an agreed price per CAMEC share of 20 pence and an agreed GB£:US\$ exchange rate of 1:1.84). The remaining 50% of SMKK is held by Gécamines, the DRC state-owned mining company.’⁴³⁸

CAMEC describes how ‘[t]he acquisition of an interest in SMKK was originally envisaged at the time of the joint venture project between CAMEC and Prairie (International) Limited (‘Prairie’) in November 2007.... as described in the circular to shareholders circulated on 28 November 2007, it was anticipated that the JV Co [Joint Venture Company] might be required to acquire an interest in SMKK from parties related to Prairie, at a consideration based on an independent valuation, subject to a maximum value of US\$400 million.’⁴³⁹

As noted, at the time of the CAMEC joint venture with Prairie, the Gertler family, via the Ashdale Settlement and Fleurette Properties Limited, held an effective 60.21% interest in Prairie.⁴⁴⁰

CAMEC describes how, after completion of the joint venture between CAMEC and Prairie, ‘an independent third party (the ‘Vendor’) acquired the interest in SMKK’.⁴⁴¹ CAMEC states: ‘CAMEC has now agreed to acquire this interest in SMKK from the Vendor with the transaction being effected by CAMEC’s acquisition of 100% of the share capital of Cofiparinter Limited, the sole shareholder of Cofiparinter SA, which in turns owns 50% of SMKK.’⁴⁴²

Nowhere is it specified in the announcement of the SMKK acquisition who this vendor is, nor who constituted the ‘parties related to Prairie’ to whom CAMEC attributed the original interest in SMKK.

However, on 31 October 2008, CAMEC further announced that ‘following completion of the SMKK Acquisition, the Company [CAMEC] has received notification from Kara Enterprises Limited that it holds 230,978,260 Ordinary Shares, representing 8.24% of the issued share capital and voting rights of the Company.’⁴⁴³

On 21 September 2009, CAMEC announced that it had been ‘notified on 18 September 2009 that Kara Enterprises Limited... holds 141,103,416 ordinary shares in CAMEC, representing 4.91 per cent. of the issued share capital of the Company, following a disposal of ordinary shares on 17 September 2009.’⁴⁴⁴ In the ENRC offer document, it is confirmed that shares representing 2.09 percent of issued shares were purchased off market from Kara Enterprises Limited and that irrevocable undertakings were in place to secure a further 4.91 percent holding from Kara:⁴⁴⁵ this corresponds to the remaining shareholding attributed to Kara in CAMEC’s 21 September release. Moreover, CAMEC’s release states that Kara Enterprises Limited is ‘indirectly wholly owned by Line Trust Corporation Limited as trustee for the Bertram Trust’.⁴⁴⁶ As noted at the time of CAMEC’s acquisition of DRC Resources Holdings Limited (see *intra*, Annexe 5) – and later reconfirmed by CAMEC – Line Trust Corporation Limited is also a trustee for the Ashdale Settlement, the trust

benefiting the Gertler family, from which ENRC acquired significant shareholdings in CAMEC.⁴⁴⁷ It is not known, and does not appear to have been publicly announced, who benefits from the Bertram Trust.

Withdrawal of funds by the International Finance Corporation, the UK Department for International Development and the United States Agency for International Development

The IFC, the UK's Department for International Development (DfID) and the United States Agency for International Development (USAID) have all withdrawn or cut funds from DRC mining projects or associated programmes subsequent to Gertler entities seeking or acquiring a stake in ownership.

In September 2008, the Parliamentary Under-Secretary of State for International Development informed RAID and Global Witness, with reference 'to the ongoing uncertainty surrounding the ownership of Anvil Mining', that a proposed public private partnership with the company had been halted.⁴⁴⁸ The previous month, Catala Global Limited, a company ultimately owned by a trust benefiting the family of Dan Gertler, had agreed proposals to purchase a 25% stake in Anvil. On 22 August 2008, USAID informed the Chairman of the Subcommittee on State, Foreign Operations, in the US Senate, that '[i]n the case of Anvil Mining, a significant change in company ownership... raised concerns that have prompted USAID to decide to proceed with an orderly close-out of the existing program [the Extractive Industries Alliance]... USAID believes that the concerns over ownership are significant enough to merit this action.'⁴⁴⁹ Against the background of deteriorating market conditions, the proposed placement of shares with Catala did not proceed.⁴⁵⁰

In February 2010, the International Finance Corporation (IFC) confirmed in a letter to Amnesty International that another DRC mining company, Africo Resources Limited, was 'no longer an IFC client' stating that 'a change of ownership caused IFC to exit the investment'.⁴⁵¹ In April 2008, Camrose Resources Limited, a company 'of which a trust for the benefit of family members of Dan Gertler is a major shareholder', had agreed a deal to acquire a majority 60% stake in Africo.⁴⁵² It should be recalled that the IFC's private sector partner, First Quantum Minerals, has commenced legal action in BVI in relation to the cancelled Kolwezi project against the 'Highwinds Group', which is owned by Camrose Resources, a company in which ENRC acquired a 50.5% stake in August 2010.⁴⁵³ As noted the IFC, First Quantum and the IDC have also commenced arbitration over the Kolwezi project at the International Chamber of Commerce.⁴⁵⁴

The BVI court action and the ending of the client relationship between IFC and the Camrose majority-owned Africo occurred after CAMEC had cancelled its AIM admission.

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

Bredenkamp's mining concessions

To recap, the United Nations Panel on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo alleged that Tremalt paid a below market price for its concessions;⁴⁵⁵ that a confidential profit-sharing agreement existed to divide net profits from KMC between Tremalt and the DRC and Zimbabwe Governments;⁴⁵⁶ and that '[t]he ultimate owners and beneficiaries of Tremalt are hidden behind a web of trusts and private holding companies registered in the British Virgin Islands and the Isle of Man to whose records the Panel was not allowed direct access.'⁴⁵⁷ The Panel also stated that a forum established to 'look after the interests of the Zimbabweans' in DRC included Mr. Bredenkamp.⁴⁵⁸

Military procurement

The Panel referred to Tremalt procuring equipment for the ZDF and the Congolese Armed Forces.⁴⁵⁹ Moreover, the Panel also described John Bredenkamp's investment in Aviation Consultancy Service Company (ACS), which it claimed represented the defence contractors British Aerospace, Dornier of France and Augusta of Italy in Africa.⁴⁶⁰ Specifically, the Panel stated that '[f]ar from being a passive investor in ACS as Tremalt representatives claimed, Mr. Bredenkamp actively seeks business using high-level political contacts' and described how he offered to mediate sales of British Aerospace

military equipment to DRC.⁴⁶¹ The Panel observed that ‘Mr. Bredenkamp’s representatives claimed that his companies observed European Union sanctions on Zimbabwe, but British Aerospace spare parts for ZDF Hawk jets were supplied early in 2002 in breach of those sanctions.’⁴⁶² EU sanctions against Zimbabwe have been in place since February 2002.⁴⁶³ The Panel referred to the military supply activities of another Bredenkamp controlled company – Raceview Enterprises – by citing copies of invoices in its possession recording deliveries of fuels, sundries and rations worth \$3.5 million to the ZDF and aircraft spares to the Air Force of Zimbabwe worth \$3 million.⁴⁶⁴

Mr Bredenkamp, in his public reply to the Panel, makes no detailed substantive reference to military procurement transactions, other than to confirm providing the Panel with information on the activities of ACS and Raceview. A spokesperson for Mr Bredenkamp, in an explanation publicly cited in a British newspaper, agreed that ACS acted as a broker for Raceview, which reached a general supply agreement with the Zimbabwean air force in August 2001.⁴⁶⁵ Yet the same spokesperson maintained that the aircraft spares were legitimately exported from European manufacturers and not from BAE Systems or the UK.⁴⁶⁶ Since 1999, numerous written questions have been asked in the United Kingdom House of Commons calling for information about Mr Bredenkamp’s role in the arms trade, his contacts with British officials and the alleged breaches of EU sanctions on Zimbabwe made by the UN Panel;⁴⁶⁷ his name has been cited on many occasions in relation to these activities in debates in both the Commons and the House of Lords.⁴⁶⁸

Categorisation by the UN Panel

Tremalt was listed in annex III of the October 2002 report by the United Nations Panel on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo as a business enterprise considered to be in violation of the OECD Guidelines for Multinational Enterprises and the company was also listed in annex I as a company on which the Panel recommended the placing of financial restrictions. Neither ACS nor Raceview was listed in any of the annexes of the Panel’s October 2002 report. John Bredenkamp was listed in annex II of the same report as a person for whom the Panel recommended a travel ban and financial restrictions.

The Panel stated:

By contributing to the revenues of the elite networks, directly or indirectly, those companies and individuals [listed in Annex I and II] contribute to the ongoing conflict and to human rights abuses.⁴⁶⁹

In the Panel’s October 2003 report, John Bredenkamp is listed alongside Tremalt and KMC under category II as resolved subject to further monitoring of compliance. ACS and Raceview are not listed in any category in the Panel’s final report. For a critique of the response of governments and companies to the UN Panel’s reports, including inconsistencies in the clearing of companies, see RAID’s report *Unanswered questions: Companies, conflict and the Democratic Republic of Congo*.⁴⁷⁰

The Lutundula Commission

The Lutundula Commission, reporting in June 2005, iterates in relation to ‘Mr J Bredenkamp’: ‘many sources state that he is an internationally wanted arms and drugs dealer’,⁴⁷¹ and describes him as ‘a Zimbabwean national, more of an arms dealer than a mining industrialist’.⁴⁷²

Ban on entry into the United States and US sanctions and the designation of John Bredenkamp

The US State Department

In March 2002, the US State Department barred close associates of President Mugabe from entry into the United States.⁴⁷³ Although the US Government does not publish the names of those on the list, it is understood that it included John Bredenkamp since he has been quoted as reacting to the measures taken:⁴⁷⁴ ‘The U.S. Department of State has tried me and judged me in a manner which affects my fundamental rights as an individual. The basis on which this judgment has been made has not been shared with me and I have been given no opportunity to be heard in this matter.’

US sanctions

In November 2008, OFAC designated John Bredenkamp on its sanctions list under Executive Order 13469.⁴⁷⁵

Today's designations include John Bredenkamp, a well-known Mugabe insider involved in various business activities, including tobacco trading, gray-market arms trading and trafficking, equity investments, oil distribution, tourism, sports management, and diamond extraction. Through a sophisticated web of companies, Bredenkamp has financially propped up the regime and provided other support to a number of its high-ranking officials. He also has financed and provided logistical support to a number of Zimbabwean parastatal entities.

The following entities owned or controlled by John Bredenkamp also are designated: Alpha International (Private) Ltd., Breco (Asia Pacific) Ltd., Breco (Eastern Europe) Ltd., Breco (South Africa) Ltd., Breco (U.K.) Ltd., Breco Group, Breco International, Breco Nominees Ltd., Breco Services Ltd., Corybantes Ltd., Echo Delta Holdings Ltd., Kababankola Mining Company, Masters International Ltd., Masters International, Inc., Piedmont (UK) Limited, Raceview Enterprises, Scottlee Holdings (Pvt) Ltd., Scottlee Resorts, Timpani Ltd., and Tremalt Ltd.

...

As a result of Treasury's action, any assets of the individuals and entities designated today that are within U.S. jurisdiction must be frozen. Additionally, U.S. persons are prohibited from conducting financial or commercial transactions with these individuals or entities

European Union sanctions

In January 2009, John Bredenkamp and entities owned by him, including Tremalt and the Breco Group, were added to the EU list imposing restrictive measures (sanctions on arms supply, a travel ban and the freezing of funds) against Zimbabwe.⁴⁷⁶ The entry for Bredenkamp reads:

Businessman with strong ties to the Government of Zimbabwe. He has provided, including through his companies, financial and other support to the regime....

Aim compliance

Questions that remain publicly unanswered	Aim rules potentially at issue
1. Did Seymour Pierce review CAMEC's notification of 3 February 2006 'Central African Mining & Exploration Company plc ("CAMEC" or "the Company") Acquires Majority Interest in Major Copper Cobalt Joint Venture in DRC' and subsequent notifications on this acquisition, including that of 1 March 2007 entitled 'Democratic Republic of the Congo Acquisition and Production Update'? If so did it question why there were no references to Rautenbach's control of the companies to be acquired?	Rule 39 [2005 and 2007], RNA OR2 [2007] Guidance MOG , Ongoing obligations, Review by Nominated Adviser
2. When CAMEC acquired IMF in February 2006 and later exercised its option on Boss Mining in March 2007, why did the company not disclose at the time of these transactions	Rule 12 [2005 & 2007]

<ul style="list-style-type: none"> ▪ Rautenbach’s controlling interest in the companies to be acquired and his continued key role in managing the Congolese mining assets after their acquisition; ▪ the fact that the authorities in South Africa had issued a warrant for Rautenbach’s arrest to face charges of fraud, theft and corruption? 	<p>Schedule Four, (f) and (j)</p>
<p>3. Given that the transactions to acquire IMF, CRJV and Boss Mining occurred in, respectively, February 2006, July 2006 and March 2007 – yet CAMEC did not acknowledge Rautenbach’s control of these companies until 28 August 2007 – did Seymour Pierce fulfil its obligation to monitor the press for price sensitive information and to ‘ascertain from the company whether an announcement or other action is required’ in respect of the implications of Rautenbach’s control of the companies acquired by CAMEC?</p>	<p>Rule 39 [2007], RNA OR3</p>
<p>4. Does Seymour Pierce believe that it kept itself up to date with developments at the company, including Rautenbach’s control of the companies to be acquired?</p>	<p>Rule 39 [2007], RNA OR1</p>
<p>5. When CAMEC announced the transaction to form a joint venture with Prairie in November 2007, completed the joint venture in March 2008 and later acquired the resulting DRC Resources Holdings, why did CAMEC not disclose at the time of the transaction</p>	<p>Rule 12 [2007]</p>
<ul style="list-style-type: none"> ▪ the fact that Dan Gertler, whose family trust benefited from a 60% holding in Prairie, and who, following the completion of the DRC Resources Holdings joint venture, held a 19.7% interest in the enlarged share capital of CAMEC (with rights to make appointees to the CAMEC board), was subject to allegations of ‘improper dealings with the Government of the DRC’ referred to in the Nikanor admission document and to allegations made by the UN Panel of Experts that he exchanged conflict diamonds for money, weapons and military training. ▪ the allegations made by the UN Panel and the Lutundula Commission against John Bredenkamp and the predecessor companies Tremalt and KMC of the Breco Group, former co-owners of the Mukondo concession? 	<p>Schedule Four, (f) and (j)</p>
<p>6. If it is accepted that the market should have been notified without delay of Rautenbach’s interests in the predecessor companies, his interest in CAMEC, and the warrant for his arrest, the allegations by the UN Panel concerning Bredenkamp and Gertler, and the allegations against Gertler referred to in the Nikanor admission document, were these omissions likely to affect the import of information as notified?</p>	<p>Rule 10 [2005 & 2007]</p>

7. Did Seymour Pierce review CAMEC's notification of 3 February 2006 'Central African Mining & Exploration Company Plc ("CAMEC" or "the Company") Acquires Majority Interest in Major Copper Cobalt Joint Venture in the DRC' and subsequent notifications on this acquisition, including that of 1 March 2007 entitled 'Democratic Republic of the Congo Acquisition and Production Update'; or CAMEC's notification of 7 November 2007 'CAMEC signs MOU to create new DRC Joint Venture Company' and subsequent notifications on this transaction? If so did it question why there were no references to the warrant for Rautenbach's arrest or to the allegations by the UN Panel concerning Bredenkamp and Gertler, and the allegations against Gertler referred to in the Nikanor admission document?

Rule 39 [2005 and 2007], **RNA OR2** [2007], **Guidance MOG, Part Two**, Ongoing obligations, Review by Nominated Adviser [March 2006]

8. Did Seymour Pierce advise and guide CAMEC's directors about their obligations to ensure compliance on an ongoing basis with the AIM rules, including the application of rules 10 and 12 to information concerning the allegations made by the UN Panel against Rautenbach, his interests in the predecessor companies, his interest in CAMEC and his continued managerial role after acquisition of the assets, the warrant for his arrest and the allegations by the UN Panel concerning Bredenkamp and Gertler, and the allegations against Gertler referred to in the Nikanor admission document? Did Seymour Pierce, at the earliest opportunity, seek the advice of the Exchange (via AIM Regulation) over the likely consequences of information about these allegations entering the public domain?

Rule 39 [2005 & 2007], **RNA 19** [2007]

9. Can Seymour Pierce demonstrate that it acted with due skill and care at all times?

Rule 39 [2005 and 2007], **RNA 16** [2007]

10. In November 2008, when OFAC designated Rautenbach as an individual who provided financial and other support to the Government of Zimbabwe and Zimbabwean SDNs; and when, in January 2009, the Council of the European Union added Rautenbach and his company Ridgepoint Overseas Development to the list of persons and entities under its sanctions against Zimbabwe, why did CAMEC not disclose Rautenbach's status given his continued interest in CAMEC and the reputational risk his status presented for CAMEC's share price? Following CAMEC's acquisition of LFL and its shareholding in Total in April 2008 and CAMEC's confirmation that '[t]he remaining 40% of Total is held by the Zimbabwe Mineral Development Corporation ("ZMDC"), the Zimbabwean state-owned mining company'; and given that ZMDC was added to the OFAC SDN list on 25 July 2008,⁴⁷⁷ 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?

Rule 11 [2007], **Rule 10** [2007]

11. In September 2009, when CAMEC announced that agreement had been reached on an offer for the company by ENRC; and given ENRC's confirmation that 'various issues have arisen in respect of the Offer in relation to the possible application of International Sanctions Laws', why did CAMEC not disclose at the time of the transaction

Rule 12 [2009]

<ul style="list-style-type: none"> ▪ Rautenbach’s status under US and EU sanctions and the effect of this upon his direct or indirect holdings in CAMEC <i>vis-à-vis</i> the sale of any such holdings to ENRC; ▪ the identity of the ‘assets and subsidiaries within the CAMEC Group that have been deemed to be SDNs by OFAC’ referred to by ENRC, and the possible implications of their SDN status for the transaction with ENRC? 	<p>Schedule Four, (f) and (j)</p>
<p>12. Does Seymour Pierce believe that it kept itself up to date with developments at the company, including Rautenbach’s status on EU and US sanctions lists and the status of CAMEC’s partner in Total, ZMDC, as an SDN?</p>	<p>Rule 39 [2007], RNA OR1</p>
<p>13. Did Seymour Pierce advise and guide CAMEC’s directors about their obligations to ensure compliance on an ongoing basis with the AIM rules, including the application of rules 10, 11 and 12 <i>vis-à-vis</i> international sanctions given the status of both Rautenbach and CAMEC’s partner ZMDC on sanctions lists at the time of the ENRC offer? Did Seymour Pierce, at the earliest opportunity, seek the advice of the Exchange (via AIM Regulation) over the likely consequences of information about international sanctions concerning ENRC’s offer for CAMEC entering the public domain?</p>	<p>Rule 39 [2009], RNA 19 [2007]</p>
<p>14. Did Seymour Pierce review CAMEC’s notifications concerning either its acquisition of LFL/Total or notifications about ENRC’s offer for CAMEC? If so did it question why there were no references to the status of CAMEC’s partner ZMDC and/or Rautenbach on EU and US sanctions lists?</p>	<p>Rule 39 [2007 and 2009], RNA OR2 [2007], Guidance MOG, Part Two, Ongoing obligations, Review by Nominated Adviser [March 2006 and June 2009]</p>

II. Significant shareholders

Matters at issue

An AIM company ‘must issue notification without delay’ of any relevant changes to any of its significant shareholders.⁴⁷⁸ A significant shareholder is one with a 3% or more holding in the company’s AIM securities.⁴⁷⁹ The changes to be disclosed are, *inter alia*, identity of the shareholder, date of deal or change to holdings, price and amount of AIM securities concerned, nature and extent of the director’s or significant shareholder’s interest in the transaction.⁴⁸⁰ At issue is whether or not CAMEC complied with the requirement to issue notification without delay of Rautenbach’s significant shareholding in the company following CAMEC’s February 2006 acquisition of IMF for cash and shares in CAMEC. At the time of the acquisition, the July 2005 edition of the AIM Rules was in force.

As noted, CAMEC, as a company incorporated in England and Wales, also falls under the FSA’s disclosure and transparency rules (see *intra*, p. 21), which require all shareholders to inform the issuing company of changes to major holdings in that company’s shares; hence the caveat under AIM rule 17 ‘disclosing, insofar as it [a company] has such information’ cannot be used to justify non-disclosure. Notwithstanding that the disclosure and transparency rules entered into force in January 2007, that is, after CAMEC’s purchase of IMF and the transfer of shares to Rautenbach, it was still incumbent upon CAMEC under AIM Rules [2005], rule 17 to immediately disclose any significant

shareholding given that Rautenbach did not acquire the CAMEC shares unbeknown to CAMEC, but received them from CAMEC as part consideration for the purchase from him of IMF.

Principal AIM rules engaged

AIM Rules for Companies [2005]

17.
An AIM company must issue notification without delay of:
...
any relevant changes to any significant shareholders, disclosing, insofar as it has such information, the information specified by Schedule Five

[‘Rule 17. Notification of relevant changes’]

Schedule Five
Pursuant to rule 17, an AIM company must make notification of the following:
(a) the identity of the director or significant shareholder concerned;
(b) the date on which the disclosure was made to it;
(c) the date on which the deal or relevant change to the holding was effected;
(d) the price, amount and class of the AIM securities concerned;
(e) the nature of the transaction;
(f) the nature and extent of the director’s or significant shareholder’s interest in the transaction;
...

[‘Schedule Five. Notifiable information’]

Aim Rules for Nominated Advisers

39.
... The responsibilities which a nominated adviser owes solely to the Exchange are to:
...
comply with its obligations under these rules;
...
be available at all times to advise and guide the directors of an AIM company for which it acts about their obligations to ensure compliance by the AIM company on an ongoing basis with these rules;
...
act with due skill and care at all times.

[‘RNA 39. Nomad responsibilities [2005]’]

Substantiating information

IMF was acquired on 3 February 2006 for a cash consideration of US\$25 million plus 171,853,471 New Ordinary Shares at 18p per share.⁴⁸¹ 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’.⁴⁸² 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.⁴⁸³

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:⁴⁸⁴ ‘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....’ However, it should be noted that this statement was made outside of the requirement to disclose changes to significant shareholders without delay under AIM rule 17 and, as such, does not fulfil those requirements. In other words, the belated announcement made to shareholders, almost 18 months after the IMF transaction, serves to underline the apparent absence of immediate notification of changes to significant shareholders at the time of the transaction.

Aim compliance

Questions that remain publicly unanswered	Aim rules potentially at issue
1. Will the company or nomad confirm whether or not Rautenbach and his family became significant shareholders with a greater than 3% holding in CAMEC shares immediately following the issue of New Ordinary Shares following the IMF acquisition on 3 February 2006?	Rule 17 [2005]
2. If Rautenbach and his family did become significant shareholders following the IMF acquisition, on what date was this disclosed to CAMEC? Was this disclosure then notified by CAMEC without delay, as required?	Rule 17 [2005], Schedule Five (b)
3. CAMEC confirms the significant 7.4% interest (90,926,134 shares) of Rautenbach and his family in a circular to shareholders dated 28 August 2007. Why was not a notification of this interest issued prior to 28 August 2007? What advice did Seymour Pierce give concerning the need for a notification?	Rule 17 [2005], Rule 39 [2005]
4. How do the company and the nomad account for the difference of 80,927,337 between the 171,853,471 New Ordinary Shares issued as part consideration for the purchase of IMF in February 2006 and the declared holding of Rautenbach and his family in August 2007?	Rule 17 [2005], Schedule Five (d) and (f)
5. Does Seymour Pierce believe that it advised and guided the directors CAMEC about their obligations to ensure compliance on an ongoing basis with these rules, given the significance of Rautenbach’s holding in CAMEC? Can the nomad demonstrate that it acted with due skill and care at all times?	Rule 39 [2005]

AIM disciplinary action taken by the Exchange (I)

Admission of shares to trading and associated notification

In its November 2009 censure of **Environmental Recycling Technologies plc**, the Exchange found that the company had breached AIM rules by failing to submit the required applications or to liaise appropriately with the Exchange regarding the admission of certain issued shares to trading on AIM or to make the associated required announcements, thereby breaching rules 17 (Disclosure of miscellaneous information), 29 (Applications for further issues), and 33 (Securities to be admitted).⁴⁸⁵

III. Managerial conduct: information of import on the suitability of management and opaque subcontracts in the predecessor companies

Matters at issue

A number of issues, as documented in this section, have been raised in the DRC Government-commissioned audits and contract reviews, as well as in successful legal action against Rautenbach's holding company (Shaford) by Rautenbach's former partner and legal counsel, James Tidmarsh, which relate to management practices in the predecessor mining companies later acquired by CAMEC from Rautenbach. These issues include

- the deprivation of the full value of Gécamines interest in Boss Mining because of the 'cost plus 20 principle' (see *intra*, p. 65 for an explanation of how this worked) and transfer pricing (by which agreed transfer prices are used to distribute profits to the offshore parts of a company, depriving home governments of tax revenue) in the service contract with 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);
- the lack of contractual arrangements between CCC and Boss Mining and the conflict of interest arising from their both being filials of the same holding company (Shaford);
- the transfer of assets out of the Boss Mining joint venture;
- the absence of contracts and terms of business between Sabot (Rautenbach's transport company) and Shaford and the use of the Sabot bank account for cobalt sales; and
- 'severe damage to the long term potential of the mining concessions'.

These issues are of obvious import and must constitute necessary information for investors in evaluating CAMEC's transactions to acquire Boss Mining. To reiterate, the general disclosure rules established by AIM require that nothing of import be omitted from notifications.⁴⁸⁶ Moreover, it has already been established that both the Boss Mining and Savannah/Mukondo acquisitions were substantial transactions, triggering the requirement to disclose any other information necessary to enable investors to evaluate the effect of the transaction upon the AIM company.⁴⁸⁷

Although the allegations concern the predecessor companies prior to their acquisition by CAMEC, not only did CAMEC acquire certain of these predecessor companies – Boss Mining and Sabot – but Rautenbach continued to play a key managerial role in the transport and mining operations after acquisition and CAMEC continued to contract mining to CCC.

A key question is therefore the extent to which CAMEC itself or its nomad, Seymour Pierce, were aware of the existence of such allegations. Nomads have a responsibility to review all relevant notifications.⁴⁸⁸ Moreover, '[a] nominated adviser 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.⁴⁸⁹

Legal action against Rautenbach's holding company

Successful legal action by James Tidmarsh brought in the name of Marika Services Ltd (Tidmarsh was the sole beneficial owner and director of the company), resulted in the high court in BVI issuing a provisional liquidation order on 6 January 2006 against the BVI-registered holding company (Shaford Capital) ultimately used by Rautenbach in his former exploitation of the DRC mining concessions.⁴⁹⁰ Tidmarsh had filed the case in order to wind up Shaford Capital because Rautenbach, as majority shareholder, had breached the partnership agreement with, *inter alia*, Tidmarsh, depriving the minority partners of profits from the company. The provisional liquidation order was effective until 23 January 2006, when the appointment of the provisional liquidator was due for reconsideration by the court: it is understood that Rautenbach settled 'amicably' with Tidmarsh and another minority shareholder to lift the liquidation order, buying them out for an undisclosed sum.⁴⁹¹

Tidmarsh filed a detailed affidavit alleging, *inter alia*, a deprivation of the full value to Gécamines of its interests in Boss Mining, 'creaming' of the deposits (stripping easily obtainable deposits at the expense of the future recovery of other deposits, contrary to good international mining practice), 'informal' management of the company without signing formal contracts, abuse of company bank accounts and a lack of proper accounting in the companies set up to exploit the DRC mining concessions.⁴⁹² Tidmarsh's testimony is dealt with in more detail in the sections that follow.

Principal AIM rules engaged

AIM Rules for Companies [2007]

- Rule 10.** Principles of disclosure, misleading, false, deceptive, omitted information
- Rule 12.** Notification substantial transactions, disclosure
- Schedule Four.** Notifications, (f) effect, (j) necessary information for investors
- Rule 39.** Compliance with Nominated Adviser Rules

AIM Rules for Nominated Advisers

- RNA 16.** Due skill and care
- RNA 19.** Liaison with the Exchange, reputation or integrity of AIM

25. Maintenance of appropriate records

A nominated adviser must retain sufficient records to maintain an audit trail of the key discussions it holds with, advice which it has given to, and the key decisions it has made in respect of, the AIM companies for which it acts as nominated adviser. A nominated adviser should ensure that it is able (including by keeping appropriate records) to demonstrate the basis for advice given and key decisions taken...

[**RNA 25.** Nominated adviser records and audit trail']

- RNA OR1.** Regular client contact, keeping up-to-date with developments, advice on disclosures
- RNA OR2.** Nominated adviser prior review of relevant notifications

Substantiating information

Rautenbach's key role in managing projects after their acquisition by CAMEC

Even if, after CAMEC's acquisition of IMF and Boss Mining, all managerial and beneficiary links with Rautenbach as the previous majority shareholder and manager were curtailed, investors should have been informed of the management issues raised in the BVI High Court and in the Ernst & Young and IMC audits and the Lutundula Commission report at the time of the acquisition. As noted, the BVI High Court of Justice ruled in Tidmarsh's favour on 6 January 2006, less than one month before the commencement of CAMEC's acquisition of Rautenbach's DRC mining assets on 3 February 2006. 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.⁴⁹³ There is, however, no reference to the court case nor to the managerial issues it raised in CAMEC's notifications of the IMF/MMT/Boss Mining transactions.

A reference by CAMEC to Rautenbach's controlling interest in the predecessor companies purchased by CAMEC was made at the end of August 2007, a full eighteen months after the initial acquisition of IMF and five months after the acquisition of Boss Mining. Moreover, it has likewise emerged that Rautenbach's involvement in the day-to-day business of the companies purchased and his role as an investor in CAMEC continued *after* the acquisitions were finalised, thereby heightening further the need to inform investors. In both its circular to shareholders, dated 28 August 2007, and its Report and Financial Statements Year Ended 31 March 2007, CAMEC states:⁴⁹⁴

Following those transactions [acquisition of the rights to the Likasi and Mukondo concessions], Mr. Rautenbach took a key role in the development of the Luita facility and the successful integration of the DRC operations into CAMEC's operations.... Mr. Rautenbach is not a director or officer of CAMEC.

During the year ended 31 March 2007, the Company acquired the remaining 25% interest in the Congo Resources Joint Venture through the purchase of Majestic Metal Trading Limited (see note 13a), acquired 100% of Sabot Management Limited and Sabot Management Holdings Limited which market transport and logistic services throughout Central and Southern Africa (see note 13c) and exercised its option to acquire, for a nominal sum, 80% of the share capital of Boss Mining Sprl which holds mining concessions in the DRC (see note 13d) from entities in which Mr MC Rautenbach then held a controlling interest. Following these transactions, Mr Rautenbach took on a key role in managing these operations to ensure a successful integration into the group's operations.

During the year, the group purchased services and assets amounting to £19,202,003 from companies in which Mr Rautenbach and his family continue to have a controlling interest. At 31 March 2007 the Group was owed £13,872,613 (2006: £Nil) by these companies and the 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 24 August 2007.

Moreover, prior to a meeting of the Assemblée Générale Ordinaire of Boss Mining held in Lubumbashi on 23 March 2007 – that is, after the completion of CAMEC's acquisition of Boss Mining – the chairman of CAMEC confirms in a letter dated 22 March 2007 to the Président du Conseil de Gérance:

We advise and confirm that Mr. M. C. Rautenbach is duly authorized to represent Central African Mining & Exploration Company Plc at the meeting of the Assemblée Generale

Ordinaire [sic] of Boss Mining Sprl to be held on Friday 23 March 2007 and any adjournment thereof.

The minutes themselves state: ‘CAMEC: Representee [sic] par Monsieur M.C. Rautenbach.’⁴⁹⁵

CAMEC issued a statement on 18 July 2007 in response to reports that Rautenbach was to be refused entry into DRC: ‘CAMEC does not believe that the restriction order has been issued by the appropriate authorities and therefore questions its authenticity.’ The CAMEC release continued: ‘Even if it were authentic it would not affect any of CAMEC’s operations in the Congo; Mr Rautenbach is not involved in the operational management of the Company’s projects.’⁴⁹⁶

CAMEC’s July 2007 denial of Rautenbach’s role in the operational management of CAMEC’s projects is at odds with earlier reporting by CAMEC of: (i) Rautenbach’s ‘key role in the development of the Luita facility and the successful integration of the DRC operations into CAMEC’s operations’; and (ii) – following the transactions to purchase MMT, acquire 100% of Sabot Management Limited and Sabot Management Holdings Limited and finalise its acquisition of Boss Mining Sprl – his ‘key role in managing these operations’. Of course, it is possible that Rautenbach had ceased his managerial activities by the time CAMEC released its 18 July 2007 statement; however, at no time in its later August 2007 circular to shareholders does the company indicate that Rautenbach no longer has the key managerial role described therein; nor is there a record of any other announcement by CAMEC prior to its 18 July 2007 statement that informs investors that Rautenbach no longer has a managerial role in any of the company’s projects. Omitting to inform investors of any change in his managerial status would engage AIM rule 10, which requires that reasonable care be taken ‘not to omit anything likely to affect the import of such information.’ Moreover, CAMEC’s 18 July 2007 assertion that ‘Rautenbach is not involved in the operational management of the Company’s projects’ and CAMEC’s August 2007 depiction of his managerial role cannot both be correct: rule 10 is engaged on the grounds that an AIM company should take care to ensure that information ‘is not misleading, false or deceptive’.

The nomad has an ongoing responsibility to maintain regular contact with a client company so that it can assess whether it is being kept up to date with developments at the AIM company – ought this not to include changes in key managers at a senior level?⁴⁹⁷ Moreover, a nominated adviser should review all relevant notifications – including, presumably CAMEC’s statement of 18 July 2007 – in advance (although without prejudicing the requirement to release information without delay) to ensure compliance with the AIM rules.⁴⁹⁸

Aim compliance

Questions that remain publicly unanswered	Aim rules potentially at issue
1. Why did CAMEC refer to Rautenbach’s key managerial role in its August 2007 circular to shareholders when it had previously stated in its 18 July 2007 regulatory news announcement that ‘Mr Rautenbach is not involved in the operational management of the Company’s projects’?	Rule 10
2. Does Seymour Pierce believe that it kept itself up to date with developments at the company, including the nature of Rautenbach’s managerial role?	Rule 39, RNA OR1

3. Did Seymour Pierce review CAMEC’s regulatory news announcement of 18 July 2007?	Rule 39, RNA OR2 Guidance, Ongoing obligations, Review by Nominated Adviser, Guidance MOG, Part Two , Ongoing obligations, Notifications, Review by Nominated Adviser
4. In accordance with the record keeping duties, can Seymour Pierce provide a record of any contacts with CAMEC during which Rautenbach’s managerial role was discussed? Can the nomad furnish notes of any review it undertook of CAMEC’s 18 July 2007 regulatory news announcement?	Rule 39, RNA 25
5. Can Seymour Pierce demonstrate that it acted with due skill and care at all times?	Rule 39, RNA 16

Management structures at Boss Mining, KMC and Tremalt

The various inquiries into mining contracts in DRC have heavily criticised the way in which the companies CAMEC acquired had been run.

It is apparent from the Ernst & Young analysis that Gécamines was disadvantaged when it came to determining how Boss Mining should be managed. The company’s management committee was composed of six members, four from Rautenbach’s Shaford Capital and two from Gécamines (GCM).⁴⁹⁹ According to the Ernst & Young audits for Boss Mining: ‘The fact that decisions are taken by a majority of members on the management board poses a real problem for GCM’s effective participation in the management of the company, since it has only 2 out of 6 members’.⁵⁰⁰ The Boss Mining audit criticises the internal management of the joint venture, noting, *inter alia*, the statutory failure to set up an administration board to ensure transparency and good governance when the company was created.⁵⁰¹

Ernst & Young describe the same inadequate management structures at KMC: ‘Gécamines cannot influence the long-term decisions of the company’ and ‘[t]he lack of balance in the composition of members on this management body, to the advantage of Tremalt, limits GCM’s powers of participation, all the more so since resolutions are adopted by a majority’.⁵⁰² The Lutundula Commission describes how KMC’s founding agreement and statutes ‘conferred the management of the company exclusively to Tremalt’.⁵⁰³ ‘In effect, the Management Committee[,] composed entirely of Tremalt representatives[,] is supervised by a Management Board of 7 (seven) members of which two are appointed by Gécamines.... No other structure for the supervision of the company’s management is envisaged’.⁵⁰⁴ The analysis by IMC of the KMC joint venture describes the administrative management as ‘deficient’: ‘the first general assembly took place 2 years after the project started... and important decisions were taken without consulting GCM’.⁵⁰⁵

CAMEC’s business with the Congo Cobalt Company

The reports by auditors and other bodies into the DRC mining contracts have highlighted the conflict of interest posed by Boss Mining using its own subsidiary, the Congo Cobalt Company (CCC), to carry out mining and processing at the concessions. Similar observations are also made about lack of formal agreements between KMC and its affiliates.

These issues are of obvious import and must constitute necessary information for investors in evaluating CAMEC’s transactions to acquire Boss Mining. The audits by Ernst & Young and by IMC,

together with the report by the Lutundula Commission, were all completed prior to CAMEC exercising its option to acquire Boss Mining.⁵⁰⁶ Moreover, practices giving rise to conflicts of interest must constitute price sensitive information and increase the risk of substantial movements in share price.

Depriving JVC partners of profits

Congo Cobalt Corporation, the 'cost plus 20 principle' and transfer pricing

CCC is a DRC company, incorporated on 5 May 2003. It owned and operated the Likasi cobalt processing plant and other processing plants and facilities on the concessions previously owned by Boss Mining; and other various mining equipment, including extraction equipment, diggers and lorries.⁵⁰⁷ CCC was 90% owned by Rautenbach's majority-controlled (70%) holding company, Shaford Capital, and 10% owned by James Tidmarsh, as a nominee, to comply with DRC law which required more than one shareholder.⁵⁰⁸ A December 2005 due diligence review of Shaford Capital carried out by accountants Charles Orbach & Company describes Congo Cobalt Corporation Sprl (DRC) as 100% owned by Shaford Capital Limited (BVI) and as a '[s]ub-contractor to Boss Mining & holder of permits to process all the ore' and as 'holding permits to process ore and to export cobalt'.⁵⁰⁹

The Lutundula Commission describes how CCC, since it did not have its own mining concessions, bought minerals to be treated from Boss Mining and Mukondo Mining.⁵¹⁰ Indeed, CCC, as a Rautenbach-controlled entity, was operating as a sub-contractor for the Boss Mining joint venture, itself controlled by the Rautenbach-controlled Shaford.⁵¹¹ Yet Ernst & Young describe how 'Boss Mining is closely connected to these companies [CCC and Mukondo mining] and exercises a considerable influence [over them]', referring to the absence of a separate staff for Boss Mining, explaining how the same team manages both CCC and Boss Mining.⁵¹² The audit describes how '[t]his situation carries risks, due to the underlying conflicts of interest, with the same party being responsible at the same time for purchasing, sales and record-keeping' and criticises the fact that there is 'no contract with Congo Cobalt Corporation, which, furthermore, is a subsidiary of Shafford [sic] Capital...' as one of the 'major weaknesses' in transparency.⁵¹³ The audits for Mukondo Mining and KMC also note 'no formal contractual management with CCC' and that '[t]he commissions received by Congo Cobalt Corporation are not supported by an agreement'.⁵¹⁴ A principal recommendation of the Ernst & Young Boss Mining audit is '[u]rgent formalisation of a services contract with CCC' and, in respect of Mukondo, '[f]ormalise the contracts with the subcontractor Congo Cobalt Corporation'.⁵¹⁵

The lack of contractual clarity and transparency and the conflicts of underlying interests referred to by Ernst & Young in the Boss Mining audit support and are supported by, information from other sources.

The Charles Orbach due diligence review states:⁵¹⁶

During our investigation, Mr. Johnson Deroyer [identified as 'from Boss Mining' [sic] office in Lubumbashi'] explained to us that Boss Mining and Gécamines are in the process of drafting an agreement relating to Gécamines' shareholding in Boss Mining and the margin that is retained in Gécamines.

The current verbal agreement is that Boss Mining sells ore to CCC at cost plus 20% (similar to the Mukondo Mining arrangement).

It was explained to us by Mr. Johnson Deroyer that Gécamines have expressed their dissatisfaction with this percentage and they want to negotiate a higher percentage.'

According to Tidmarsh's affidavit:

... CCC would only pay Boss Mining and Mukondo Mining the value of extracting the ore from the ground, plus a fixed margin of twenty percent (20%) to cover administrative and other costs.... I soon realised that the so-called 'cost plus twenty principle' was in effect depriving Gécamines, and therefore the Government of the DRC, of the full value of its

interests in the Boss Mining joint venture. The value added by CCC to the equation was not commensurate to the enormous profits that it was generating with the value essentially being accrued 'off-shore'. A portion of the value was certainly reinvested back on the ground in the DRC, but not in Boss Mining, the Gécamines partnership, but in CCC, outside the Boss Mining joint venture and held exclusively by the Company [Shaford Capital]. I believed, and still do believe, that the application of the 'cost plus twenty principle' is in breach of the letter and spirit of the Company's [Shaford's] contractual obligations towards Gécamines, as well as in breach of DRC company and commercial law.⁵¹⁷

The 'cost plus twenty principle' has two significant and detrimental effects on the revenue received by Gécamines and the DRC Government from the Boss Mining and Mukondo Mining joint ventures. Firstly, the true market value of the ore sold by CCC was significantly greater than the price it was paying the joint ventures for the ore. Secondly, profits from selling the ore at market prices were accruing in CCC and not in Boss Mining or Mukondo Mining, with the result that these profits were not taxed in DRC. This practice is known as transfer pricing, by which the product from one part of a company is sold to another at an agreed transfer price, with the choice of the transfer price affecting the division of the total profit among the parts of the company. In the case of the Boss Mining and Mukondo Mining joint ventures, the low transfer price meant low profits and minimal tax bills in DRC, while CCC, outside of the joint ventures and registered in the tax haven of the BVI, made large profits from selling the ore at market prices.

KMC and Tremalt: lack of formal agreements between the affiliates and the exacerbation of the risk of fraud

In the case of KMC, IMC are critical of how Tremalt's unilateral decision to stop the Kakanda concentrator and treatment at Shituru deprived Gécamines of its income by exporting untreated ore at a lesser value, while the MCRC notes in respect of Savannah Mining as the successor company to Tremalt that 'there is no agreement in place relating to the formal relinquishment and recovery of GCM's plant and installations at Kakanda'.⁵¹⁸ Moreover, IMC warn of the 'risk of conflict of interest related to transactions with the partner's other companies'.⁵¹⁹ Ernst & Young's KMC audit notes 'general weaknesses in internal auditing and, more specifically, in the management of the accounting cycle: invoicing – clients – receipts'.⁵²⁰ Ernst & Young warn of '[n]o control over the invoices by companies affiliated to the Partner [Tremalt]' and that the '[d]etermination of the costs for services invoiced is not based on any signed agreements'.⁵²¹ Moreover: '[a]ll the activities of KMC are subcontracted to Tremalt without any formal contractual basis. In the same way, all KMC's invoices are directly received by Tremalt, which then discharges payments for technical assistance. Tremalt's invoices for technical assistance are not part of the contract nor are they monitored by KMC'.⁵²² The auditors clearly state the risks associated with these arrangements.⁵²³

We noted that a company affiliated with one of the parties, IBML, carries out the commercialisation of a part of the production (manufactured by them or another party), in return for a commission of 2.5% of the turnover.

We have no knowledge of the existence of an agreement between KMC and this company in relation to this service; in effect, this arrangement does not figure in the agreement of 25 February 2004.

As regards the implementation of this agreement, it should be recalled that, at the same time, the Congo Cobalt Corporation is producing some of KMC's output, for which it is being remunerated!

...

Gécamines does not control the cost basis, neither the prices or real amount charged in invoices by the Congo Cobalt Corporation and IBML.

Furthermore, the invoices are sent to the management, that is to say, TREMALT.

This situation exacerbates the risk of fraud.

Transfer of assets out of the JVC

Tidmarsh describes how '[p]rofits from the venture were regularly reinvested in CCC, and never in Boss mining, or for that matter in Mukondo Mining'.⁵²⁴ For example, Tidmarsh estimates that at least \$6 million worth of extraction equipment, large loaders, excavators and basic 'washing plants' were purchased.⁵²⁵ 'However, instead of the value being placed back into the joint venture with Gécamines, the assets purchased with the profits of the project were placed solely back into CCC, belonging of course exclusively to the Company [Shaford]'.⁵²⁶

CAMEC's continuing business transactions with CCC

After its acquisition of IMF and Boss Mining, CAMEC continued to do business with CCC and employed key senior staff, originally appointed when Rautenbach controlled Boss Mining and CCC.

In the technical report annexed to its circular to shareholders, dated 28 August 2007, CAMEC states:

Mining is contracted out to Congo Cobalt Company (CCC) at a mining cost of US\$6 per cubic metre. CAMEC is providing the mining equipment to CCC on a commercial remuneration basis.⁵²⁷

Boss Mining has recently been mining three deposits, Disele South, Kakanda East and Kababankola.... All of the deposits are open-pit sources. Mining is undertaken under contract with CCC at an agreed rate of US\$6.00 per tonne of material.⁵²⁸

CAMEC reports a capital input to Boss Mining, in rounded numbers, up to 31 March 2007 of US\$90.6 million. Capital expenditure of US\$23M was estimated for the June quarter and US\$153M more to the end of 2008, for a total of US\$267M. This total includes US\$20M for new mining equipment for CCC...⁵²⁹

In the same circular, CAMEC provides details of its senior management, *inter alia*:

Laurent [Décation] has been chairman and general manager of Boss Mining and Congo Cobalt Corporation since May 2004 and is now CAMEC's regional manager in the DRC.⁵³⁰

Décation was therefore in post at the time Rautenbach controlled Boss mining and CCC.

CAMEC's acquisition of Sabot

In 2006, CAMEC also acquired Rautenbach's transport company, Sabot Management Holdings (BVI) and Sabot Management Limited (Seychelles). Allegations have been made concerning the use of Sabot's Botswanan company's bank account by Shaford and its affiliates in ways which 'transgressed general corporate practice'. Once more, Rautenbach continued to manage Sabot after its acquisition by CAMEC.

The Wheels of Africa Group is described as a transport business beneficially owned by Rautenbach and his family.⁵³¹ It transported the cobalt produced by Boss Mining to South African via Zambia and Zimbabwe.⁵³² Sabot Hauliers (PTY) Ltd. is described as a Botswana company owned by Rautenbach and his family.⁵³³

Absence of contracts and terms of business

Tidmarsh states in his affidavit:

Wheels of Africa and Sabot were a major service provider to the Company [Shaford Capital (BVI)], but in relation to its transport services it had no fixed contract, or terms of business. Mr. Rautenbach decided unilaterally what the transport rates would be and would pay on terms that were never fixed. When the transport company was short of funding, Mr. Rautenbach would simply advance them funds from the Company without any formal loan agreement or security arrangement.⁵³⁴

The use of the Sabot bank account for cobalt sales

Attention has already been drawn to the difficulty in opening bank accounts for Shaford and its affiliates because of the risks posed by the background and reputation of Rautenbach (see *intra*, A Politically Exposed Person, p. 39). Tidmarsh states:⁵³⁵

Mr. Rautenbach had decided at the time that CCC was first incorporated, that monies coming into the Company for cobalt sales would be paid to the bank account of Sabot Hauliers (PTY) Ltd. ('Sabot account'), a Botswana company owned by him and his family, which held, and to the best of my knowledge still holds, a bank account with Banque Belgoise in Brussels, Belgium.

Tidmarsh, acting for Shaford, eventually succeeded in opening accounts for two of Shaford's affiliates (Aresa Commercial Ltd and Robell Corporation) at HVB Bank in the Czech Republic because there was no regulatory requirement in that country to disclose Rautenbach's beneficiary holdings in the companies. Tidmarsh describes Aresa Commercial Ltd (Aresa) as a BVI company 'established to sell the product of Boss Mining and Mukondo Mining as exported from DRC to customers worldwide' and Robell Corporation (Robell) as a BVI company also 'established for the purpose of selling the product of Boss Mining and Mukondo Mining as exported from DRC'.⁵³⁶ Tidmarsh's affidavit continues:

... even after I was able to secure the accounts at HVB in Prague, the Sabot account continued to be used by the Company and notably by Robell and Aresa Commercial for the vast majority of their transactions. I believe that he continued use if such account transgressed general corporate practice..... All payments from the Sabot account were made by Mr. Rautenbach's sister.... The advantage of the Sabot account to Mr. Rautenbach was that he was able to instruct payments directly to his sister for funds coming into the Company and its affiliates. He used the Sabot account extensively to draw against the 'loan account'... purchasing property for his family in the United Kingdom, or paying directly from funds coming into the Company and its affiliates for his son's motor racing hobby.⁵³⁷

Rautenbach's continued managerial role after CAMEC's acquisition of Sabot

On 24 July 2006, CAMEC acquired a 100% interest in Sabot Management Holdings (BVI) and Sabot Management Limited (Seychelles) for a total consideration of £1,977,957.⁵³⁸ CAMEC describes Sabot as a 'logistics and transport company with a 450 truck fleet operating in central and southern Africa.' Elsewhere, CAMEC describes Sabot as based in Harare, Zimbabwe.⁵³⁹ CAMEC praises the instrumental role played by Sabot in completing the Luita facility (to extract and upgrade copper from the mines) in under a year and notes 'Sabot has subsidiaries in every country in which it operates, in order to ensure that loading, offloading, permitting and border clearances can be effected in an efficient manner....'

CAMEC acknowledges Rautenbach's continued management role in Sabot after acquisition: 'During the year ended 31 March 2007, the Company acquired [*inter alia*]... 100% of Sabot Management Limited and Sabot Management Holdings Limited which market transport and logistic services throughout Central and Southern Africa.... Following these transactions, Mr Rautenbach took on a key role in managing these operations to ensure a successful integration into the group's [CAMEC's] operations.'⁵⁴⁰

Again, given the reputational risk posed by an association with Rautenbach and the possible adverse effect on share price, shareholders should have been informed without delay about his management activities within CAMEC's companies.

The DRC mining assets and the allegation of cherry-picking or creaming by previous owners

A mining project that meets international standards requires that large sums are spent on drilling and metallurgical studies to understand the extent and state of the ore body and the most effective and sustainable means of extraction. According to Tidmarsh, the reason Shaford did not invest in the Boss Mining project was 'I believe, because Mr. Rautenbach wishes to extract as much money as possible from the Company [Shaford] in as short a period as time as possible. Profits have only been

reinvested in the business for short term gain, and not for the long term viability of the Company, or its partnerships with Gécamines.⁵⁴¹

Tidmarsh continues: ‘The mining was not conducted in accordance with good international mining practice. Mr Rautenbach had a goal to extract and take out as much as possible without any proper regard to the long term potential of the mining concessions, a practice commonly known in the industry as the ‘creaming’ of the concessions, i.e., the practice of ripping out high grade ore and leaving behind lower grades which subsequently become impossible to extract in a cost-effective manner.... In this regard, it is to be noted that Gécamines filed a very significant counter claim against Ridgepointe in the ICSID arbitration because of this very practice which had caused severe damage to the long term potential of the mining concessions.’⁵⁴²

In its terms of reference for the renegotiation and/or termination of mining contracts, the DRC Government urges the parties in a partnership to cancel a contract where there is ‘[f]ailure to observe the professional custom and practice in the mining sector causing a notable loss to the Republic’.⁵⁴³ Examples of unprofessional practice are given, such as the freezing of deposits and ‘creaming off’. Although the latter is illustrated by the example of ‘allowing artisanal exploitation in stead [sic] of industrial exploitation’, it is clear that all unprofessional custom and practice is considered grounds for termination.

Given that Rautenbach took on a key role in managing CAMEC’s DRC mining operations to ensure a successful integration into the group’s operations after their acquisition (*intra*, p. 62); and given that CAMEC continued contracting out of mining to Congo Cobalt Company (*intra*, p. 67), it is pertinent to ask to what extent investors were informed about the allegation of ‘creaming’ of the concessions made against Rautenbach and what steps were taken by CAMEC to ensure that this practice ended.

AIM Compliance

Questions that remain publicly unanswered	Aim rules potentially at issue
<p>1. When CAMEC acquired IMF in February 2006 and later exercised its option on Boss Mining in March 2007 – particularly in light of Rautenbach’s continued key managerial role and the continued contracting out of mining to CCC – why did CAMEC not disclose, at the time of the transactions, allegations made in Tidmarsh’s affidavit and/or Ernst & Young findings about:</p> <ul style="list-style-type: none"> ▪ the deprivation of the full value of Gécamines interest in Boss Mining because of the ‘cost plus 20 principle’ and transfer pricing in the service contract with CCC; ▪ the lack of contractual arrangements between CCC and Boss Mining and the conflict of interest arising from their both being filials of the same holding company (Shaford); ▪ the transfer of assets out of the Boss Mining joint venture; ▪ the absence of contracts and terms of business between Sabot and Shaford and the use of the Sabot bank account for cobalt sales; and ▪ ‘severe damage to the long term potential of the mining concessions’, <p>given the obvious import of such information and its relevance to investors in evaluating the transaction?</p>	<p>Rule 10, Rule 12 [2005 & 2007]</p> <p>Schedule Four, (f) and (j) [2005 & 2007]</p>

<p>2. Did Seymour Pierce advise and guide CAMEC’s directors about their obligations to ensure compliance by the AIM company on an ongoing basis with the AIM rules, including the application of rules 10 and 12? Did Seymour Pierce, at the earliest opportunity, seek the advice of the Exchange (via AIM Regulation) over the likely consequences for the reputation and integrity of AIM of information about these arrangements and practices (see 1., above) entering into the public domain?</p>	<p>Rule 39 [2005 & 2007], RNA 19 [2007]</p>
<p>3. If it is accepted that the market should have been notified about these arrangements and practices (see 1., above), were these omissions likely to affect the import of information as notified at the time of each transaction?</p>	<p>Rule 10 [2005 & 2007]</p>
<p>4. Does Seymour Pierce believe that it kept itself up to date with developments at the company, including the nature of, or changes to, contractual arrangements between Boss Mining (after its acquisition by CAMEC) and CCC and the integration of Sabot into CAMEC’s operations, including the managerial role played by Rautenbach?</p>	<p>Rule 39 [2005 and 2007], RNA OR1 [2007]</p>
<p>5. Did Seymour Pierce review CAMEC’s notification of 3 February 2006 ‘Central African Mining & Exploration Company Plc ('CAMEC' or 'the Company') Acquires Majority Interest in Major Copper Cobalt Joint Venture in DRC’ and subsequent notifications on this acquisition, including that of 1 March 2007 entitled ‘Democratic Republic of the Congo Acquisition and Production Update’? If so, did it question why there were no references to the allegations made in Tidmarsh’s Affidavit and/or Ernst & Young findings (see 1., above)?</p>	<p>Rule 39 [2005 and 2007], RNA OR2 [2007] Guidance MOG, Part Two, Ongoing obligations, Review by Nominated Adviser</p>
<p>6. In accordance with the record keeping duties, can Seymour Pierce provide a record of any contacts with CAMEC during which any of the matters referred to under 1 – 5 above were discussed?</p>	<p>Rule 39 [2005 and 2007], RNA 25 [2007]</p>
<p>7. Can Seymour Pierce demonstrate that it acted with due skill and care at all times?</p>	<p>Rule 39 [2005 and 2007], RNA 16 [2007]</p>

AIM disciplinary action taken by the Exchange (II)

Misleading, false or deceptive information and omissions (AIM Rule 10)

In February 2008, the AIM Disciplinary Committee approved a consent order between the Exchange and **SubSea Resources plc** (principally involved in the collation/recovery of cargoes from shipwrecks) imposing a public censure on the company in respect of breaches of AIM rules.⁵⁴⁴ SubSea failed, *inter alia*, to take reasonable care to ensure that two announcements – one concerning funds that it ultimately failed to receive, the other concerning the misleading identification of a bullion wreck – were not misleading, false or deceptive and did not omit anything likely to affect the import of such information.⁵⁴⁵

In June 2008, **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 and for its failure to make full and accurate statements regarding the progress of certain oil wells.⁵⁴⁶

In July 2008, the Exchange announced the private censure of two companies for breaching AIM rules, including rule 10: one for the release of misleading and unrealistically optimistic statements about the prospects and actual results of its operations (a corrective announcement was subsequently made) and the other for making a belated announcement that mischaracterised the cause of a significant fall in expected profits.⁵⁴⁷ The companies were also fined £75,000 and £25,000, respectively.

Regal Petroleum plc was publicly censured and fined £600,000 by the Exchange in November 2009 for, *inter alia*, failing to take reasonable care to ensure that the over-optimistic and inaccurate information it notified regarding an oil prospect was not misleading, false or deceptive and did not omit any information likely to affect the import of the notifications.⁵⁴⁸

The Exchange's disciplinary action against **Environmental Recycling Technologies plc** publicly censured the company for making announcements which misleadingly suggested that a loan it had taken out would be or had been repaid.⁵⁴⁹

IV. Incompleteness of accounts: a disregard for accountancy rules and a lack of financial transparency in the predecessor companies

Matters at issue

Ernst & Young criticise both Boss Mining and Mukondo Mining (and the predecessor company, KMC) for the absence of regular accounting and the disregard of accounting rules. In respect of CAMEC's acquisitions, it is important to establish the extent to which enquiries were made by either CAMEC or by its nomad to ensure that required financial information about each transaction – including the profits and value attributable to the assets – was accurate. In the case of the Boss Mining acquisition, serious allegations about the absence of reliable or properly prepared accounts must engage AIM disclosure rules on the omission of price sensitive information, especially if investors are 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, CAMEC and its nomad are called upon to furnish details of their calculations for each of the class tests under the AIM rules in order to demonstrate that the acquisition did not amount to a reverse takeover.⁵⁵⁰ The implications of a transaction constituting a reverse takeover are profound; not least of which are the requirements for shareholder consent and the publication of a full admission document for the proposed enlarged entity.⁵⁵¹ 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 (as acknowledged by CAMEC) must raise the question as to whether CAMEC and its nomad are satisfied that the class tests were properly applied.

Principal AIM rules engaged

AIM Rules for Companies

[Rules 10, 11, 12, Schedule Three, Schedule Four, 14 and 19 unchanged across 2005 and 2007 editions of the AIM Rules]

Rule 10. Principles of disclosure, misleading, false, deceptive, omitted information

Rule 11. Notification of price sensitive information without delay

Rule 12. Notification of substantial transactions, disclosure

Schedule Three

The class tests for determining the size of a transaction pursuant to rules 12, 13, 14, 15 and 19

are as follows:

...

The Turnover test

$$\frac{\text{Turnover attributable to the assets the subject of the transaction} \times 100}{\text{Turnover of the AIM company}}$$

Figures to use for the Turnover test:

4. The 'Turnover of the AIM company' means the turnover figure as stated in the following:

- (a) the last published annual consolidated accounts;
- (b) the last notified preliminary statement of annual results; or
- (c) in a case where transactions are aggregated pursuant to rule 16, the last such accounts or statement prior to the earliest transaction.

In a case of an acquisition or disposal of an interest in an undertaking of the type described within paragraph 2(a), the 'turnover attributable to the assets the subject of the transaction' means 100% of the turnover of the undertaking irrespective of what interest is acquired or disposed.

['Schedule Three. Class tests']

Schedule Four. Notifications

...

- (c) the profits attributable to those assets;
- (d) the value of those assets;

...

['Schedule Four. Notifications, (c) profits, (d) value']

Schedule Four. Notifications, (f) effect, (j) necessary information for investors

14.

A reverse take-over is an acquisition or acquisitions in a twelve month period which for an AIM company would:

- exceed 100% in any of the class tests;

...

['Rule 14. Reverse take-over']

19.

An AIM company must publish annual audited accounts which must be sent to its shareholders without delay and in any event not later than six months after the end of the financial year to which they relate.

An AIM company incorporated in an EEA country must prepare and present these accounts in accordance with International Accounting Standards.

...

['Rule 19. Accounting']

Rule 39. Nomad responsibilities [2005]

Rule 39. Compliance with Nominated Adviser Rules [2007]

AIM Rules for Nominated Advisers [2007]

RNA 16. Due skill and care

RNA OR1. Regular client contact, keeping up-to-date with developments, advice disclosures

RNA OR2. Nominated adviser prior review of relevant notifications

Guidance Note for Mining, Oil and Gas Companies [March 2006]

Guidance MOG [March 2006], Part Two. Ongoing obligations, Notifications, Review by Nominated Adviser

Substantiating information

Boss Mining and Sabot

Incomplete and unreliable accounts, disregard for accountancy rules, a lack of financial transparency

Ernst & Young, in their audit of Boss Mining, note ‘the various limitations encountered by the commission due to the lack of data available. This has prevented the appreciation of past and present economic performances and the completion of the analysis of the profitability for future partnerships.’⁵⁵² The auditors refer to ‘persistent fiscal and corporate risks: an absence of fiscal and corporate returns in 2004’,⁵⁵³ no opening balance,⁵⁵⁴ and no administrative, accountancy and financial manuals.⁵⁵⁵ Ernst & Young note:⁵⁵⁶ ‘The company Boss Mining did not enter in its accounts output from the Mukondo mine [which amounted to] a sum of 6,168,165 USD (equal to 331,252.91 tonnes of minerals). This represents a turnover of 182%, or 164% of the output from other quarries over the same period.’ In analysing the keeping of company accounts, the auditors note: ‘None of the expenses linked to the constitution and the release of capital have been entered in Boss Mining’s accounts nor have the prospecting costs and expenses linked to the acquisition of exploitation rights been shown in the accounts. There is no bank reconciliation by the company; for example, the balance in the books has not been reconciled with the relevant banks. The financial statements make no mention of the following accounts: accounts concerning immovable assets, accounts with suppliers and stock [inventory] accounts; even though the company has tax liabilities and invoices from sub-contractors and suppliers. Third party credit and overdraft balances have been settled without prior agreement.’⁵⁵⁷

The January – December 2004 financial statements completed under Boss Mining supervision are described as ‘incomplete’.⁵⁵⁸ According to the Ernst & Young audit, ‘[a]ccounts have not been regularly maintained according to the standards of the profession’; ‘there has been a failure to observe accountancy rules’ and ‘the accounts have not been properly maintained’.⁵⁵⁹

Citing Standard IAS 01 (Components of Financial Statements) in respect of a balance sheet, statement of income, statement of changes in equity, cash flow statements, accounting policies and explanatory notes, the auditors stated:⁵⁶⁰ ‘Boss Mining’s financial statements submitted for our examination were not complete, that is they lacked the abovementioned elements.’ Citing Standard IAS 08 (Net profit and loss for the period, fundamental errors and changes in accounting methods) in respect of statement of profit or loss: from ordinary and extraordinary activities; in the accounting estimates; from fundamental errors arising from preceding financial years; and from changes in accounting methods, the auditors also stated:⁵⁶¹ ‘The financial statements placed at our disposal did not allow us to discern these elements.’ Finally, in respect of Standard IAS 24 (Related Party Disclosures), concerning the information to be disclosed when ‘one party can exercise control over the other party’, the auditors note that ‘We have not been able to obtain, in the course of our work, details about the transactions allowing us to establish the revenue of each partner.’⁵⁶²

Overall, the Ernst & Young audit concludes: ‘the necessary conditions to guarantee the financial transparency of the Boss Mining partnership for all parties were not in place’.⁵⁶³ Key

recommendations in the Boss Mining audit included the reorganisation of accounting and the appointment of a competent accountant as a matter of urgency.⁵⁶⁴

The MCRC also reports an absence of financial information:⁵⁶⁵ ‘... the Commission has not received the financial statements [which it would need] in order to make a proper evaluation of the financial situation of Boss Mining.’ Despite the project reaching the production stage, ‘After examining the information provided, the Commission notes that there is no explicit financial plan for the Boss Mining project.’⁵⁶⁶

It is also pertinent to note that the MCRC reported on other aspects of the Boss Mining project’s operation with financial implications: the lack of a feasibility study and the absence of information on environmental protection or a costed social programme (see *intra*, p. 81).

Attention is also drawn to allegations made in Tidmarsh’s affidavit in support of his successful application to wind up and liquidate Rautenbach’s BVI holding company:

‘... the Company [the BVI holding company] did not have properly prepared accounts. This was not only the case for the Company itself, but also Boss Mining, the joint venture with DRC Government-owned Gécamines, CCC and the marketing companies, Robell and Aresa... Internationally accepted practice on accounting (‘IAAP’) for mining companies were certainly not adopted.’⁵⁶⁷

Tidmarsh, describes the accounting records as ‘either non-existent, or as confused as possible’.⁵⁶⁸

Finally, CAMEC itself, in its notes to financial statements, states in relation to both the Boss Mining and the Sabot acquisitions:⁵⁶⁹

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.

IMF/Boss Mining and the class tests for a reverse takeover

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% in any of the class tests.⁵⁷⁰ CAMEC reports a turnover of £805,075 to the year ended 31 March 2005;⁵⁷¹ 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.⁵⁷² It is therefore also pertinent to ask CAMEC to demonstrate that the magnitude of the turnover attributable to IMF/Boss prior to acquisition for the purpose of the turnover test was substantially less and did not therefore exceed the threshold for a reverse takeover, thereby triggering requirements, *inter alia*, for the consent of shareholders being given in general meeting, the cancellation of trading in AIM securities on any such consent, and the publication of an admission document as part of a new application to AIM.⁵⁷³

Sabot and the class tests for a substantial transaction or reverse takeover

In its Circular to shareholders of 28 August 2007, CAMEC states: ‘[CAMEC’s] Turnover of £69.469 million for the year ended March 31, 2007 was materially higher than £11.044 million in the same period in the year ended March 31, 2006. This was principally due to a full year of trading from the Congo Resources Joint Venture which was consolidated in March 2007 by the acquisition of an 80% interest in Boss Mining. In addition Sabot contributed £17.098 million.’⁵⁷⁴

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 2006.⁵⁷⁵ 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 under AIM rule 12 [2005 & 2007] or, indeed, a reverse takeover under AIM Rule 14 [2005 & 2007].

Rule 12 states: ‘An AIM company must issue notification without delay as soon as the terms of any substantial transaction are agreed, disclosing the information specified by Schedule Four.’ According to CAMEC, it acquired Sabot on 24 July 2006. However – and in light of the requirement to notify the terms of a substantial transaction without delay – it is not apparent that CAMEC released a notification on that date nor in the days immediately following that date. 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.⁵⁷⁶

As noted, a reverse takeover under rule 14 would require, *inter alia*, notification without delay, the consent of shareholders and a new AIM admission process.⁵⁷⁷

Mukondo Mining and KMC

Ernst & Young comment on ‘the incomplete nature’ of KMC’s accounts, to include turnover figures, an area covered by the class tests in determining substantial transactions:⁵⁷⁸ ‘In spite of the investigations carried out to reconstitute the accounts... the absence of accounts and formal contracts with the sub-contractors does not allow us to verify that there is a complete record of the sums accounted for in the turn over and accounts of the sub-contractors and clients.’

The audit for Mukondo Mining notes that ‘[a]ccounting has not been properly carried out according to professional standards’ and states ‘in 2004 the company Mukondo Mining did not carry out proper accounting according to generally accepted standards and principles’.⁵⁷⁹ Ernst & Young identify the need to ‘[s]et up an accounts system conforming to generally accepted standards and principles’; to ‘[d]evise a manual of administrative, financial and accounting procedures’; and to ‘[s]tructure and formalise the organisation of the company, to ensure a strict separation of tasks, particularly within accountancy activities.’⁵⁸⁰

In respect of KMC, the auditors note: ‘Regarding the management of finance and accounts: the financial statements of the 2004 financial year were not audited. We are not in a position to certify that the annual accounts (of the financial years 2002 and 2003) are regular, accurate and a faithful reflection of KMC’s capital, its financial situation and its results’.⁵⁸¹ IMC confirms that ‘the accounts presented for 2001 – 2002 had not been audited’.⁵⁸² The Lutundula Commission notes: ‘The company KMC has the right to draw up two financial statements: one in Congolese francs for declarations in the DRC and another in a foreign currency for its own personal account’.⁵⁸³

The auditors criticise a lack of budgetary information to evaluate Gécamines’ income for Mukondo Mining and KMC, noting ‘the absence of forecasts necessary for the running of the company (business plans, investment and exploitation budgets)’.⁵⁸⁴ In the case of KMC, Ernst & Young conclude that ‘[t]he measures put in place cannot guarantee the financial transparency of the Partnership’.⁵⁸⁵

Aim compliance

Questions that remain publicly unanswered	Aim rules potentially at issue
<p>1. In respect of CAMEC's Sabot and Boss Mining acquisitions in, respectively, July 2006 and March 2007, and in light of CAMEC's statement in August 2007 on the unavailability of reliable financial information for the acquired entities, to what extent did either CAMEC or its nomad ensure that required financial information about the transaction – the profits and value attributable to the assets – was accurate?</p>	<p>Rule 12 [2005 & 2007], Schedule Four (c) and (d), Rule 39 [2005 & 2007]</p> <p>Guidance MOG [March 2006], Part Two, Ongoing obligations, Notifications, Review by Nominated Adviser, RNA OR2 [2007] Guidance, Ongoing obligations, Review by Nominated Adviser</p>
<p>2. Given the requirement for an AIM company incorporated in an EEA country to prepare and present accounts in accordance with International Accounting Standards, and given the failings by Boss Mining in this regard noted by Ernst & Young, what steps did CAMEC or its nomad take to ensure that its own annual accounts met the required standards?</p>	<p>Rule 19 [2005 & 2007], Rule 39 [2005 & 2007]</p>
<p>3. In the absence of reliable financial information for both Boss Mining and Sabot prior to their acquisition or with knowledge of criticisms concerning accounting practices, did CAMEC or Seymour Pierce consider AIM disclosure rules on the omission of price sensitive information, especially if investors were likely to have been deprived of the necessary information to enable them to evaluate the effect of the transactions on CAMEC?</p>	<p>Rule 11 [2005 & 2007], Rule 12 [2005 & 2007], Schedule Four (f) and (j), Rule 39 [2005 & 2007]</p>
<p>4. In the absence of reliable financial information on Sabot, how did CAMEC or Seymour Pierce ascertain whether the class tests triggering disclosure for significant transactions or reverse takeovers were properly applied?</p>	<p>Rule 12 [2005], Rule 14 [2005], Rule 39 [2005]</p>
<p>5. What figures did CAMEC or Seymour Pierce use in applying the class tests to CAMEC's acquisition of IMF, CRC and Boss Mining? Is the company and nomad confident that all of the class tests – including that on turnover – were comfortably below the threshold representing a reverse takeover?</p>	<p>Rule 12 [2005 & 2007], Rule 14 [2005 & 2007], Schedule Three, Rule 39 [2005 & 2007]</p>
<p>6. Can Seymour Pierce demonstrate that it acted with due skill and care at all times?</p>	<p>Rule 39 [2005], RNA 16, Rule 39 [2007]</p>

AIM disciplinary action taken by the Exchange (III)

Notification of substantial transactions and reverse takeovers (AIM Rules 12 and 14)

The Exchange privately censured an AIM company and fined it £15,000 in December 2007 for breaching rules 31 and 12.⁵⁸⁶ The company had failed to seek advice from its nomad regarding compliance with the AIM Rules, which resulted in the company not notifying its nomad of payments being made to another company which it was intending to acquire. As a result, and because the aggregated payments amounted to a substantial transaction, the company failed to release an announcement of the payments without delay as required by rule 12.

Minmet plc (a mining and exploration company) was publicly censured by the Exchange in December 2008.⁵⁸⁷ The company entered into an agreement (the ‘Alaska Agreement’) to acquire an oil and gas company for a returnable deposit of \$4.35 million (the ‘Alaska Deposit’) and \$83.14 million in Minmet shares on completion. According to the Exchange, the deposit amounted to a substantial transaction and the acquisition, due to its size, constituted a reverse takeover.⁵⁸⁸ ‘By failing to announce without delay the Alaska Agreement and the payment of the Alaska Deposit, the Company breached AIM Rules 14 and 12 respectively. Furthermore, the Company did not comply with the other provisions of AIM Rule 14 requiring, *inter alia*, shareholder consent to the transaction, suspension of the Company’s shares and publication of an admission document in respect of the proposed enlarged entity.’

It should be recalled that CAMEC’s chairman and its chief executive were also the chairman and chief executive of AIM-traded **White Nile Ltd.**, the trading of whose shares was initially suspended by the Exchange in February 2005 following the company’s announcement of a deal with the government of Southern Sudan to acquire an interest in a disputed oil concession. It was reported that the Exchange referred the deal to its disciplinary panel: the transaction counted as a reverse takeover, requiring the company to produce a detailed prospectus.⁵⁸⁹ If any disciplinary action was taken, it has not been publicly reported or recorded in an AIM Disciplinary Notice.

Company results and financial condition: failure by the nomad to act with due skill and care

In October 2007, the Exchange announced its second ever public censure (and, at the time, unprecedented £250,000 fine) of the nomad **Nabarro Wells & Co. Limited**.⁵⁹⁰ Over the previous year, the Exchange had undertaken a formal review of Nabarro Wells, selecting seven of its client companies for detailed examination (the Exchange made no finding in relation to the conduct of the companies and did not reveal who they were). The Exchange identified material breaches by the nomad of the AIM Rules [2005] in respect of five of the companies and a procedural breach of the Eligibility Criteria in respect of a further company. Nabarro Wells was the nomad for Crown Corporation Limited (later renamed Langbar International Limited), which is being investigated by the Serious Fraud Office.⁵⁹¹

Breaches by Nabarro Wells of Rule 39 requiring nomads to act with due skill and care at all times included, *inter alia*:⁵⁹²

- approving the release of interim results by a Company, despite the fact that questions posed in writing 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.

V. License review and the CAMEC concessions: information of import and the effect of transactions

Matters at issue

The central concern of this section is the likelihood or otherwise of the renegotiation of the contracts underlying the concessions acquired by CAMEC as a result of the mining audit and review process under way in DRC and the disclosure to investors of timely and pertinent information.

The audits and studies by Ernst & Young and, to an extent, by the Lutundula Commission, raised concerns that the contracts for Boss Mining, KMC/Savannah and Mukondo failed to identify the real contributions of the private partners and Gécamines; resulted in the inequitable division of share capital between the parties; and 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 and prior to the commencement of the work of the MCRC. 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 MCRC – 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.

The general disclosure rules require that nothing of import is omitted from notifications.⁵⁹³ Moreover, it has already been established that both the Boss Mining and Savannah/Mukondo acquisitions were substantial transactions, triggering the requirement to disclose any other information necessary to enable investors to evaluate the effect of the transaction upon the AIM company.⁵⁹⁴ There is also a requirement to disclose without delay price sensitive information – on this aspect of CAMEC’s disclosure of the conclusions of Ernst & Young and the conclusions and recommendations of the MCRC, see *intra*, The Ernst & Young audits and the conclusions and recommendations of the MCRC, p. 86.⁵⁹⁵

There is reference neither to the Ernst & Young audit nor to its findings in CAMEC’s notifications of the IMF/MMT/Boss Mining or Prairie transactions. Nor is there reference to the MCRC’s leaked (November 2007) report in any of CAMEC’s notifications, including those concerning its transactions with Prairie to acquire and consolidate Mukondo Mining and other DRC assets. A notification by CAMEC referring to the findings of the mine license review in DRC was not issued until 26 February 2008.

Principal Aim rules engaged

AIM Rules for Companies

[Rules 10, 12, and Schedule Four unchanged across 2005 and 2007 editions of the AIM Rules]

Rule 10. Principles of disclosure, misleading, false, deceptive, omitted information

Rule 12. Notification substantial transactions, disclosure

Schedule Four. Notifications, (f) effect, (j) necessary information for investors

AIM Rules for Nominated Advisers [2007]

RNA 16. Due skill and care

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

Guidance Note for Mining, Oil and Gas Companies [March 2006]

Guidance MOG [March 2006], Part Two. Ongoing obligations, Notifications, Review by Nominated Adviser

Substantiating information

Audits and reviews prior to the commencement of the MCRC's work

The Ernst & Young audits were completed in May 2006. Whilst CAMEC acquired IMF in February 2006 – marking the beginning of the process to acquire Boss Mining – all other transactions took place after Ernst & Young had completed their audit: in July 2006, CAMEC completed its acquisition of CRJV following the purchase of MMT;⁵⁹⁶ 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.⁵⁹⁷ The Boss Mining transaction occurred at a time when CAMEC must have had known that the Ernst & Young audit had been concluded.

CAMEC released details on 7 November 2007 of the proposal to establish a new joint venture with Prairie International Limited, via a new subsidiary in DRC, to own, operate and develop Mukondo.⁵⁹⁸ By 20 March 2008, the joint venture was duly completed and at the beginning of May 2008, CAMEC sought shareholder approval for the purchase by CAMEC of Prairie's stake in the JVC, DRC Resources Holdings Limited.⁵⁹⁹ Hence the acquisition of Mukondo and other assets began and was completed after Ernst & Young had finished its audit. Again, the CAMEC/Prairie transaction occurred when CAMEC must have been fully aware that the Ernst & Young audit had been concluded.

Ernst & Young described a fundamental lack of transparency in the Boss Mining Joint venture: 'The obligations of the parties are not defined in the Boss Mining statutes, as modified on 27 January 2005... A clear definition of the parties' obligations would enable the Commission to evaluate whether the financial benefits of this joint venture for GCM, such as the payment of provisional dividends, are proportional to the contributions it has made.'⁶⁰⁰ The audit for Boss Mining continues: 'Despite our requests, we have not received the business plans and other budgets that would enable us to evaluate the financial consequences of the partnership agreements for Gécamines. As a result, we have been unable to implement all the necessary steps to make a financial evaluation of revenue expected by Gécamines, specifically, a comparison between the projected cash flow and real cash flow of the operation.'⁶⁰¹

Ernst & Young's Mukondo and KMC audits note that Gécamines incomes from the Mukondo Mining partnership were nil as it had no direct participation in the venture, which was owned 50% each by Boss Mining and KMC: 'It is hard from this point of view to understand that this cession was not at least accompanied by shareholdings in the joint venture....'⁶⁰² Hence Gécamines indirect participation was only via dividend payments due to its 20% interest in Boss and KMC.⁶⁰³ While KMC 'lost half of its own capital' in 2003, Tremalt's income, through its affiliates, amounted to more than US\$1.5 million in the same year.⁶⁰⁴ The Lutundula Commission attributed KMC's losses 'to production costs that are clearly excessive and difficult to justify given the level of the company's activities.'⁶⁰⁵ Ernst & Young conclude: 'Gécamines' participation has not been profitable to date: at the end of December 2003, Gécamines' partnership in this project had not delivered the expected revenues. In contrast with Gécamines, the partner Tremalt had managed to obtain directly substantial revenues from the venture.'⁶⁰⁶ In their audit of KMC, Ernst & Young state: 'The agreements are extremely unfair and are disadvantageous to Gécamines' adding 'Gécamines bears the financial risks linked to the financing but, unlike its partner, does not recoup any profits'.⁶⁰⁷ For the Boss Mining, Mukondo and KMC/Savannah contracts, the auditors recommended, *inter alia*: direct participation for Gécamines in Mukondo (at least 40%);⁶⁰⁸ a management convention with at least equivalent remuneration for Gécamines;⁶⁰⁹ royalties based on turnover and calculated on the metals content and their price in London Metal Exchange⁶¹⁰ or a charge based upon gross turnover (KMC/Savannah);⁶¹¹ and a new approach and a new partnership to include Gécamines.⁶¹²

The Lutundula Commission recommended 'the outright termination of the March 7 2001 Mining Convention between Gécamines, Tremalt and KMC, as well as the dissolution of the latter company'.⁶¹³ Both Ernst & Young and the MCRC recommended the renegotiation of the Boss Mining, KMC/Savannah and Mukondo partnerships. Similarly, IMC recommended that steps should be taken for a wholesale renegotiation of all the Gécamines joint venture agreements it analysed,

including KMC. The Lutundula Commission was an isolated voice in advocating an unaltered partnership with Boss Mining.⁶¹⁴

The Mining Contracts Review Commission

The *Commission de Revisitation des Contrats Miniers* (Mining Contracts Review Commission – MCRC), made up of government officials and supervised by the Ministry of Mines, reviewed more than 60 mining contracts signed between private companies and the state or state-owned enterprises. The MCRC Commission reported to the government in early November 2007. Its findings were immediately leaked and the DRC Government eventually published the Commission’s report in March 2008. The Commission recommended the renegotiation of two-thirds of the contracts and the cancellation of the remainder. See Supplement for further details on the work of the MCRC and the review process.

The MCRC report and conclusions on Boss Mining, KMC, Savannah Mining and Mukondo

For Boss Mining, the MCRC concluded, *inter alia*, that:⁶¹⁵

- the authentication of the statutes predates the establishment of the company;
- the division of capital shares is unbalanced;
- there is no duly signed contract of relinquishment;
- no feasibility study was done before production (Luita);
- there is no explicit financial plan for the project;
- there were no royalties nor any entry premium for Gécamines.

In respect of Boss Mining, the MCRC describes how: ‘Under the contract, Shaford/CAMEC have 80% and Gécamines has 20% of the shares respectively. However, the Commission lacks the necessary documentation to establish on what basis the shares were allocated, particularly given that this was done in the context of the aforementioned settlement’.⁶¹⁶

According to Gécamines, the internal rate of return (IRR – a measure of a project’s profitability) had been set at 25% because of ‘speculative parameters, in particular the fact that DRC was considered a high-risk country due to the war.’⁶¹⁷ However, the MCRC ‘considers the rate to be too high in comparison with international standards, which, in the opinion of several experts consulted on this point, should not be in excess of 10%.’⁶¹⁸

Boss Mining’s statutes anticipate, but then fail to provide for the inputs or contributions from the parties.⁶¹⁹ The Commission therefore drew on a Gécamines presentation to examine their respective contributions:⁶²⁰ Gécamines is to provide data, cash and the formal transfer of the mining titles; Shaford (CAMEC) is to find financing and a financial contribution. However, the MCRC states that the latter ‘amount involved is not specified. It should be noted that, according to statements by representatives of Boss Mining Sprl, the investments made by the company to date are in the order of 200 million USD for the construction of its two processing plants (Luita and Kankonde [sic]) and for other social actions.’⁶²¹

The MCRC describes how this money is to be completely refunded to Shaford/CAMEC out of proceeds from marketed production and a deduction of a contractual percentage (80%) on the dividends.⁶²² The Commission criticises this arrangement:⁶²³

As regards the contributions, the Commission is surprised that the funds the joint venture partner is supposed to provide are regarded both as a contribution to the joint venture and as a reimbursable debt.

The question that arises is why CAMEC, after having been as a priority completely reimbursed for its investment, which [supposedly] constituted its contribution, would continue to insist on its partner status entitling it to the same share allocation?

In other words, Shaford/CAMEC was awarded its capital share (i.e., 80%) on the basis that it would be providing finance. Yet it is to be refunded this cash in full and also keep its capital share intact.

The MCRC also reports a lack of information on payments to the state-owned partner:⁶²⁴ ‘Gécamines receives a sum of three hundred thousand (USD 300,000) at the end of each month from Boss Mining as advance dividend. However, the Commission has not received the financial reports in order to make a proper evaluation of the financial situation of Boss Mining. On the other hand, the Commission notes that Gécamines has not received an entry premium from this partnership and that it does not receive any royalties.’

For Boss Mining, the Commission also drew attention to the fact that ‘at the time when production started in the Luita plant, no feasibility study for the project existed’ and that ‘[t]he documents provided by Boss Mining to the Commission do not give any information about the measures taken to protect the environment.’⁶²⁵ In the case of Boss Mining, ‘The Commission was not able to obtain any document specifying actions for promoting the sustainable development of the surrounding population, much less a schedule for the completion of the work and the corresponding costs.’⁶²⁶ The MCRC similarly noted for Savannah Mining that ‘[t]he company has not presented the Commission with any document relating to the protection of the environment’ and ‘has not yet produced a feasibility study’.⁶²⁷

For Savannah Mining, the MCRC concluded:⁶²⁸

- Without a feasibility study, the allocation of shares is arbitrary.
- From 2001 onwards, no work has been undertaken.
- Kakanda concentrator and its reserves are at a standstill.
- Gécamines’ installations at Kakanda were never formally surrendered, nor were they formally returned.
- No feasibility study has been produced.

For Mukondo Mining, the MCRC reported:⁶²⁹

- irregularities in the joint venture’s articles of association;
- the absence of Gécamines in the partnership;
- the absence of a relinquishment contract duly signed by the parties.

For Boss Mining, the MCRC recommended to⁶³⁰

- maintain the terms of the out-of-court settlement of 25 February 2004 between GCM, Ridgepointe and Tremalt (now Savannah Mining);
- identify and evaluate the actual contributions of the parties in the joint venture in order to achieve a fair division of the shares, since the value of the ore body (1,426,810 tonnes of copper and 70,152 tonnes of cobalt) is estimated to be between 2.5 and 4 billion USD;
- require royalties to be paid to Gécamines retrospectively.

Overall, the MCRC’s recommendation was that ‘the Gécamines and Boss Mining partnership should be renegotiated.’⁶³¹

For Savannah Mining, the MCRC observed that ‘This partnership is part of an out-of-court agreement between GCM and Ridgepointe’, and recommended to⁶³²

- identify and assess the value of the actual contributions of parties to the existing joint venture, with a view to equitably distributing shares;
- demand that the partners develop the concessions;
- demand that partners conclude a contract for the relinquishment of titles in correct and due form;
- demand the payment of royalties on gross receipts.

The Commission considered that ‘the present partnership should be renegotiated’.⁶³³

For Mukondo Mining, the MCRC recommended to⁶³⁴

- maintain the terms of the out-of-court agreement of 25th February 2004 between GCM Ridgepointe and Tremalt;

- open share capital to GCM;
- identify and assess the value of the actual contributions of parties to the existing joint venture, with a view to distributing shares equitably;
- value the concession at 4.5 million USD;
- provide for the payment of royalties in favour of GCM.

The MCRC recommended that '[t]his contact needs to be renegotiated'.⁶³⁵

The letters notifying the conclusions of the mining review

The Ministry of Mines presented the results of the mining review in letters to the companies dated 11 February 2008.⁶³⁶ Each letter listed 'Criticisms' and 'Government demands' in respect of each contract, including those for Boss Mining Mukondo Mining and Savannah Mining (see tables).

Criticisms	Boss Mining Letter 11 Feb 2008 CAB.MIN/MINES/ 001/0096/2008	Mukondo Letter 11 Feb 2008 CAB.MIN/MINE S/ 001/0106/2008	Savannah Letter 11 Feb 2008 CAB.MIN/MINE S/ 001/0103/2008
Contract issued prior to registration with the mining registry	X 1.1		
Statutes authenticated before the company formed	X 1.2		
No feasibility study prior to starting exploitation, which resulted in arbitrary and unfair share allocation	X 1.3		X 1.1
No payment of royalties and no entry premium for Gécamines	X 1.4		X 1.4
Freezing of concessions: prospecting and research not carried out or exploitation not started		X 1.4	X 1.3
Irregularities in the company statutes; partners failed to nominate signatories		X 1.1	
No role in partnership once Gécamines relinquished its mining rights		X 1.2	
Relinquishment of mining rights in violation of Mining Code		X 1.3	X 1.2
No formal documents authorising release and return of Gécamines' installations			X 1.4

Government's demands	Boss Mining Letter 11 Feb 2008 CAB.MIN/MINES/ 001/0096/2008	Mukondo Letter 11 Feb 2008 CAB.MIN/MINE S/ 001/0106/2008	Savannah Letter 11 Feb 2008 CAB.MIN/MINES / 001/0103/2008
Ensure transfer of mining title conforms with Mining Code; take into account needs of PTM minerals	X 2.1	X 2.4	X 2.2
Provide feasibility study that identifies and evaluates the parties' real contribution to make an equitable share allocation	X 2.2	X 2.3	X 2.1
Pay Gécamines' royalties and overdue entry premium	X 2.3		
Submit an effective social action plan	X 2.4	X 2.6	X 2.5
Gécamines' representatives must participate actively in company administration	X 2.5	X 2.7	
Bring company statutes into line with Congolese commercial law		X 2.1	
Open capital to Gécamines		X 2.2	
Develop mineral deposits within a short period of time		X 2.5	X 2.3
Pay Gécamines net royalties			X 2.4

In February 2008, letters were sent to the companies outlining issues in the contracts requiring renegotiation.⁶³⁶ Following the notification letters, discussions took place between some companies and a panel of senior government representatives. In September 2008, the DRC Government indicated that the mining companies had been divided into:⁶³⁷ fourteen ‘green light’ companies who had outlined the future development of their assets and were entering final stage negotiations; twenty-five ‘orange light’ companies ‘making some though not yet enough progress’, given additional time to renegotiate and modify their contracts; and twenty-two ‘red light’ companies who had contracts ‘so far out of line with mainstream international practice as to warrant cancellation’, requiring them to renegotiate new contracts from scratch. The government warned that ‘three of the worst offenders have little chance of retaining a foothold in DRC.’

At the same time in September 2008, the DRC Government published terms of reference for the renegotiation panel.⁶³⁸ The terms noted that: ‘in nearly all the mining contracts, the rates of return are excessive compared with those of other countries in the sub-region.’⁶³⁹ Parameters were set, *inter alia*, for the payment of surface rights, key money, leasing rent arrears and royalties; for allotting share capital only after the real value of the contributions from each party had been determined; and for ensuring that the contracts allowed for the state-owned company to participate in the day-to-day management of the partnerships.⁶⁴⁰ The terms of reference put forward mechanisms, including cancellation of the contract, to constrain partners who failed to meet their obligations, for example by not submitting feasibility studies, environmental impact assessments or rehabilitation plans, or else unjustifiably failing to adhere to agreed schedules.⁶⁴¹

Notification of the market by CAMEC of the mining review

As noted, the MCRC reported to the government in early November 2007 and its findings were immediately leaked. Hence CAMEC should have had knowledge that the MCRC’s report had been leaked and its findings reported in the press prior to its announcement of the proposed joint venture with Prairie. Indeed, CAMEC, in its 28 November 2007 circular to shareholders concerning the proposed joint venture with Prairie does refer to the Mining Licence Review, but not to the leaked report nor to the conclusions and recommendations therein already reached by the Commission.⁶⁴²

The mining licences of Boss Mining, Savannah and Mukondo Mining in the DRC remain subject to the Mining Licence Review that is currently being carried out by the Ministry of Mines in the DRC. As part of the agreement to create the Joint Venture both parties have also agreed to use their respective best endeavours to work together to achieve a positive outcome in relation to the licences held by Boss Mining, Savannah and Mukondo Mining and to work towards general political approval and support for the ongoing operations of the Joint Venture.

The DRC Government released the Commission’s November 2007 report in March 2008; the report, including its conclusions and recommendations remained the same.

The date given on the notification letter for Boss Mining published on the mining ministry’s website is 11 February 2008.⁶⁴³ Yet CAMEC did not make a regulatory news announcement concerning the content of this notification until over two weeks later.⁶⁴⁴ In this announcement, CAMEC acknowledged that the DRC Government required ‘regularisation of any irregularities arising from the original transfer of the licences in 2004, reconfirmation of Gécamines involvement in management and of the current social plan and the reappraisal of the real contribution of all stake holders in value terms’ and stated that it was ‘already in discussions with Gécamines and the DRC Government with a view to expediting the resolution of these issues and a further announcement will be made as soon as possible.’⁶⁴⁵

Having finally referred to the review findings, CAMEC omitted from its 26 February release, and from subsequent news releases, a number of requirements raised in the notification letter, *inter alia*:

- to release a feasibility study to the government that identifies and evaluates the parties’ real input in order to equitably divide the shares. (As noted, 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*.⁶⁴⁶ According to an August 2007 report commissioned by CAMEC and forming part of its own offer document for Katanga Mining (since aborted), ‘The speed at which CAMEC has developed its operations in the DRC, and the lack of pre-feasibility and feasibility studies to support this

development, mean that CAMEC faces a number of challenges. In particular, although CAMEC’s management believes that, on the basis of historic reserve analysis, significant reserves of copper and cobalt exist, they have not yet been proven to internationally accepted standards.’⁶⁴⁷

- to pay the royalties and overdue entry premium to Gécamines.

On 4 March 2008, CAMEC was the first company to announce that it had negotiated a settlement.⁶⁴⁸ ‘The issues relating to CAMEC’s licences in the DRC that were raised by the Government of the DRC and highlighted in CAMEC’s Press Release dated 28th February 2008 [sic – release dated 26 February] have been addressed and agreed.’ The tripartite agreement – between CAMEC and its Boss Mining subsidiary, Gécamines and Prairie International Limited – covered not only CAMEC’s Likasi concessions, but also Mukondo Mountain (see immediately below). CAMEC announced the required Mining Registry approval within a matter of days, on 10 March 2008.⁶⁴⁹

CAMEC’s settlement occurred before the DRC Government announced its terms of reference for the renegotiation of contracts in September 2008. 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 DRC.

CAMEC’s prior settlement has led to some apparent anomalies. For example, the notification letter does not require CAMEC to produce an environmental impact assessment; yet the DRC Government’s terms of reference for the renegotiation specifically refer to mechanisms, including cancellation of the contract, to constrain partners who fail to meet their obligations, for example by not submitting feasibility studies, environmental impact assessments or rehabilitation plans.⁶⁵⁰ The technical report commissioned by CAMEC for its Boss mining assets in August 2007 states: ‘An environmental impact assessment is in preparation by an independent consultant, as required by the Mining Code. The draft is in the process of revision to accommodate current plans’, and continues: ‘An environmental management plan and system will be required to limit the impacts arising from the current and proposed operations.’⁶⁵¹ In January 2009, CAMEC acknowledged in correspondence that the ‘Boss Mining Environmental Management Plan’ was still under management review.⁶⁵²

Aim compliance

Questions that remain publicly unanswered	Aim rules potentially at issue
<p>1. When CAMEC acquired IMF in February 2006 and later exercised its option on Boss Mining in March 2007 and/or when it announced the transaction to form a joint venture with Prairie and later acquired the resulting DRC Resources Holdings, why did CAMEC not disclose at the time of each transaction:</p> <ul style="list-style-type: none"> ▪ the existence of the Ernst & Young audits and any details known at the time concerning the auditor’s findings in respect of the entities being acquired; ▪ the ongoing work of the MCRC and the leaking of its findings? 	<p>Rule 12 [2005 & 2007]</p> <p>Schedule Four, (f) and (j)</p>
<p>2. If it is accepted that the market should have been notified about the Ernst & Young audits and about the leaked findings of the MCRC, the question arises as to whether these omissions were likely to affect the import of information as notified at the time of each transaction.</p>	<p>Rule 10 [2005 & 2007]</p>

<p>3. Does Seymour Pierce believe that it kept itself up to date with developments affecting the company, including the audits by Ernst & Young and the work of the MCRC?</p>	<p>Rule 39 [2007], RNA OR1</p>
<p>4. Did Seymour Pierce review CAMEC’s notification of 3 February 2006 ‘Central African Mining & Exploration Company Plc (“CAMEC” or “the Company”) Acquires Majority Interest in Major Copper Cobalt Joint Venture in DRC’ and subsequent notifications on this acquisition, including that of 1 March 2007 entitled ‘Democratic Republic of the Congo Acquisition and Production Update’; or CAMEC’s notification 7 November 2007 ‘CAMEC signs MOU to create new DRC Joint Venture Company’ and subsequent notifications on this transaction? If so, did it question why, in either case, there were no references to the Ernst & Young audits and, in the case of the Prairie/CAMEC transaction, no reference to the findings of the mining license review until 26 February 2008?</p>	<p>Rule 39 [2005 and 2007], RNA OR2 [2007] Guidance MOG [March 2006], Part Two, Ongoing obligations, Review by Nominated Adviser</p>
<p>5. Did CAMEC or Seymour Pierce consider omitting information on the lack of a feasibility study for Boss Mining before issuing notifications of the transaction to the market in March 2007?</p>	<p>Rule 10 [2007], Rule 39 [2007], Guidance MOG [March 2006], Part Two, Ongoing obligations, Notifications, Review by Nominated Adviser</p>
<p>6. The MCRC reports on the absence of information about environmental protection in the document provided to the Commission. What information did CAMEC receive concerning environmental protection prior to its acquisition of Boss Mining? If, like the MCRC, CAMEC itself had no information or limited information on environmental protection, did the company or nomad determine the need to notify the market of this before issuing other contemporaneous notifications to the market?</p>	<p>Rule 10 [2007], Rule 39 [2007], Guidance MOG [March 2006], Part Two, Ongoing obligations, Notifications, Review by Nominated Adviser</p>
<p>7. On what basis did the company or its nomad consider that investors did not need to be informed about the absence of a feasibility study and information about environmental protection in order to value the assets to be acquired or to evaluate the effect of the Boss Mining transaction upon CAMEC?</p>	<p>Rule 12 [2005 and 2007], Schedule Four, (d) and (j)</p>
<p>8. In accordance with the record keeping duties, can Seymour Pierce provide a record of any contacts with CAMEC during which any of the matters referred to in 1 – 7 above were discussed?</p>	<p>Rule 39 [2007], RNA 25</p>
<p>9. Can Seymour Pierce demonstrate that it acted with due skill and care at all times?</p>	<p>Rule 39 [2005 and 2007], RNA 16</p>

VI. Notification of price sensitive information without delay

Matters at issue

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 the share price.⁶⁵³ Moreover, the rules require that nothing of import is omitted from disclosed information.⁶⁵⁴ Nomads are expected to monitor the press for price sensitive information and ascertain the need for any announcements or other action, and are required to review notifications.⁶⁵⁵

At issue is the extent to which CAMEC was required to notify without delay apparent price sensitive information relating to:

- the findings of the Ernst & Young audits and the conclusions and recommendations of the MCRC concerning the Boss Mining and Mukondo concessions;
- the suspension of mining operations at Mukondo following formal notice from the mine's new co-owners;
- the competing claim by the mining company Simberi/PTM over the Kakanda tailings and mining deposits of north and south Kakanda and the recommendation of the MCRC that PTM participate in the renegotiation of the partnership contract between Boss Mining/Savannah Mining and Gécamines;
- and a chemical fire at Boss Mining's depot in Likasi and the reported release of bromine gas.

Principal Aim rules engaged

AIM Rules for Companies

Rule 10. Principles of disclosure, misleading, false, deceptive, omitted information

Rule 11. Notification of price sensitive information without delay

Rule 39. Compliance with Nominated Adviser Rules

AIM Rules for Nominated Advisers

RNA 16. Due skill and care

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

Guidance Note for Mining, Oil and Gas Companies [March 2006]

Guidance MOG [March 2006], Part Two. Ongoing obligations, Notifications, Review by Nominated Adviser

Substantiating information

The Ernst & Young audits and the conclusions and recommendations of the MCRC

The conclusions reached by Ernst & Young concerning Gécamines' participation and revenue in both Boss Mining and Mukondo were in areas of ultimate import for CAMEC's profitability and its own level of participation in the projects (see *intra*, p. 79) and were therefore of a price sensitive nature;

yet there is no reference to the Ernst & Young audit nor to its findings in CAMEC's notifications of the IMF/MMT/Boss Mining or Prairie transactions.

Likewise, many of the MCRC's findings and recommendations for Boss Mining, Savannah Mining and Mukondo Mining are price sensitive, for example: to identify and evaluate the real contributions of the parties in the existing joint venture in order to reach a fair distribution of the shares, and to demand the payment of royalties to Gécamines. In respect of Mukondo Mining, the MCRC also recommended the opening of the share capital to Gécamines (*intra*, p. 81).

The MCRC's report to government was immediately leaked; see, for example, the report by Reuters posted on 6 November 2007, stating that it had seen 'a leaked preliminary report' on Saturday 3 November 2007.⁶⁵⁶ It should be noted that Reuters' reporting of the leaked MCRC report occurred the day before CAMEC announced the proposed transaction with Prairie; yet there is no reference to the MCRC report or its conclusions and recommendations in CAMEC's 7 November notification. It should be recalled that it was this November 2007 MCRC report that was officially released by the Congolese Government in March 2008, and that the conclusions and recommendations remained the same as they were in the leaked draft.

The guidance notes to the AIM rules for companies in respect of the general disclosure of price sensitive information state:⁶⁵⁷

...if the **AIM company** [emphasis in original throughout] has reason to believe that a breach of such confidence has occurred or is likely to occur and, in either case, the matter is such that knowledge of it would be likely to lead to substantial movement in the price of its **AIM securities**, it must without delay issue at least a warning **notification** to the effect that it expects shortly to release information regarding such matter.

The guidance notes continue:⁶⁵⁸

Where such information has been made public the **AIM company** must **notify** that information without delay.

Aim compliance

Questions that remain publicly unanswered	Aim rules potentially at issue
1. On what date was CAMEC or its nomad aware of the existence and/or content of the Ernst & Young audits?	Rule 11 [2005 & 2007]
2. On what date was CAMEC or its nomad aware that the Ernst & Young report had been leaked and posted on the internet?	<i>ibid.</i>
3. On what date was CAMEC or its nomad aware of the existence and/or content of the MCRC report to government?	<i>ibid.</i>
4. On what date was CAMEC or its nomad aware that the MCRC report had been leaked?	<i>ibid.</i>

<p>5. Why did CAMEC not notify the market of the findings of the MCRC until 26 February 2008 when the MCRC’s report to government was first leaked on 3 November 2007 and when the notification letters drawing on the findings of the review are dated 11 February 2008?</p>	<p>Rule 11 [2007]</p>
<p>6. Does Seymour Pierce believe that it kept itself up to date with developments affecting the company, including the leaking and/or publication of the Ernst & Young report and the MCRC report? What advice did Seymour Pierce give concerning the requirements of rule 11 and the need for a notification?</p>	<p>Rule 11 [2005 & 2007], Rule 39 [2005 & 2007], RNA OR1</p>
<p>7. If it is accepted that the market should have been notified of the Ernst & Young audits and the MCRC’s leaked report to government without delay, the question arises as to whether the failure to refer to these reports in intervening company releases amounted to an omission likely to affect the import of information in these releases.</p>	<p>Rule 10 [2005 & 2007]</p>
<p>8. Does Seymour Pierce believe that it fulfilled its obligation to monitor the press for price sensitive information and to ‘ascertain from the company whether an announcement or other action is required’ in respect of the leaked Ernst & Young audits and/or the MCRC’s report to government?</p>	<p>Rule 39 [2007], RNA OR3</p>
<p>9. Did Seymour Pierce review CAMEC’s notification(s) concerning the company’s Congolese assets and acquisitions, in particular its notification of 7 November 2007 announcing details of the proposed transaction with Prairie? If so, did the nomad question why there was no reference to the leaked Ernst & Young audits and/or the MCRC’s report to government?</p>	<p>Rule 39 [2007], RNA OR2, Guidance MOG, Part Two, Ongoing obligations, Review by Nominated Adviser</p>
<p>10. Can Seymour Pierce demonstrate that it acted with due skill and care at all times concerning its obligations and responsibilities <i>vis-à-vis</i> unpublished price sensitive information and the advice it gave to its client on such matters?</p>	<p>Rule 39 [2005 & 2007], RNA 16</p>

Suspension of operations at Mukondo

It should be recalled that, dating back to the time of the ICSID settlement in February 2004 and the related settlement with KMC, Boss Mining was given a 50% stake in the Mukondo concession, which, prior to the settlement, had been owned and operated by KMC.⁶⁵⁹

According to, James Tidmarsh, Rautenbach’s former business partner, Rautenbach’s holding company ‘walked into a situation where it was making money from the very first day.... This was largely due to the favourable terms of the Second Settlement Agreement with KMC and the high market value for cobalt at the time. Boss Mining and Mukondo Mining picked up on the ongoing operations of KMC which from 25 to 26 February 2004 lost half of its production to the Company.’⁶⁶⁰

Mukondo Mining duly sold 50% of its production to Boss Mining’s subsidiary Congo Cobalt Corporation with the other 50% going to KMC.⁶⁶¹ However, after July 2005 the entire production was sold to CCC.⁶⁶² The Charles Orbach due diligence report of December 2005 confirms the existence of a new agreement, dated 19 July 2005, governing Mukondo Mining, under which Shaford sought full operational control.⁶⁶³ The report notes that, effective from 16 June 2005, ‘the full mining production of Mukondo Mining is to be sold to Boss Mining at “cost” plus 20%.’⁶⁶⁴ Following the sale of

Tremalt/KMC to 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’.⁶⁶⁵

The first Regulatory News Announcement by CAMEC confirming that mining at Mukondo had ‘been suspended until agreement can be reached with the new owners of the remaining 50% on how best to develop the concession area’ was not made until 5 September 2006 – and then only in response to a press article headed ‘CAMEC’s revenue from DRC dries up’.⁶⁶⁶ CAMEC’s response stated: ‘The Company confirms that this allegation is completely untrue and that it is in the course of taking legal action for damage suffered as a result of this untrue speculation.’ In a subsequent 18 September 2006 regulatory announcement of preliminary results for the period to 31 March 2006, CAMEC referred again to the suspension of mining at Mukondo;⁶⁶⁷ in a 5 December 2006 announcement of its interim results to 30 September 2006, CAMEC states:⁶⁶⁸ ‘During the period under review our joint venture partners at Mukondo were taken over and the new owners gave us formal notice to terminate operations until a new operational agreement was effected. Discussions are continuing and we are hopeful that a mutually beneficial arrangement can be concluded shortly.’

CAMEC and Prairie subsequently resolved their differences over Mukondo and established a new joint venture company to develop the asset. CAMEC reported in February 2008 that operations at Mukondo Mountain had recommenced.⁶⁶⁹

There is a general requirement to disclose without delay price sensitive information, which, if made public, would be likely to lead to a substantial movement in the share price.⁶⁷⁰ The sale to DGI of Tremalt (including KMC and the 50% stake in Mukondo) was concluded in June 2006. A 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 2006.⁶⁷¹ CAMEC, in a 28 November 2007 circular to shareholders about the proposed joint venture with Prairie, 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.’⁶⁷² 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 release, it is pertinent to question why CAMEC did not announce the suspension of mining at Mukondo until 5 September 2006.

There can be no doubting the financial significance of the Mukondo concession to CAMEC, which the company itself describes as ‘the richest cobalt mine in the world’, nor the influence of its prospects on CAMEC’s share price:⁶⁷³ in the days following the press article of 3 September 2006 stating that operations at Mukondo had been terminated, CAMEC share price fell by almost 5%;⁶⁷⁴ 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 the share price on 5 November 2007.⁶⁷⁵

Moreover, AIM rules also require that nothing of import is omitted from disclosed information.⁶⁷⁶ Prior to CAMEC’s September release, the company notified two updates concerning its operations in DRC on 2 June 2006 and 28 July 2006. The 2 June cobalt sales update refers to an 18.5% increase over the previous month in the turnover of CRJV, the company marketing the cobalt from Mukondo.⁶⁷⁷ The 28 July release refers to the quantification of resources at Mukondo, the anticipated production of 12,000 tons per annum cobalt cathode at the Luita facility and the establishment of a new plant ‘to help process cobalt ore from Kababankola and other C19 cobalt deposits.’⁶⁷⁸ No reference is made in either release to the termination of operations at Mukondo and the impact of this upon cobalt production and sales.

Aim compliance

Questions that remain publicly unanswered	Aim rules potentially at issue
1. On what date was notification received by CAMEC from the new owners of the Mukondo joint venture to terminate operations?	Rule 11 [2005]
2. Why did CAMEC not notify the market of the termination of operations at Mukondo until September 2006 when the DRC Government refers to the fact that operations were terminated 16 months prior to the end of August 2007 and CAMEC itself later states that production ceased in August 2006?	<i>ibid.</i>
3. If it is accepted that the market should have been notified of the termination of operations at Mukondo without delay, the question arises as to whether the failure to refer to the termination in intervening company releases amounted to an omission likely to affect the import of information in these releases.	Rule 10 [2005]
4. Given that the sale to DGI of Tremalt (including KMC and the 50% stake in Mukondo) was concluded in June 2006, does Seymour Pierce believe that it advised and guided the directors CAMEC about their obligations to disclose price sensitive information and to ensure nothing of import was omitted from notifications? What advice did Seymour Pierce give concerning the requirements of rule 11 and the need for a notification?	Rule 39 [2005]
5. Did Seymour Pierce review CAMEC's notification(s) of 2 June 2006 'Cobalt Sales Update' and 28 July 2006 'Update on Activities in the DRC'; if so, did it question why there was no reference to the termination of operations at Mukondo?	Rule 39 [2005], Guidance MOG, Part Two, Ongoing obligations, Review by Nominated Adviser
6. Given the termination of operations at Mukondo and the absence of a notification to that effect, can Seymour Pierce demonstrate that it acted with due skill and care at all times?	Rule 39 [2005]

AIM disciplinary action taken by the Exchange (IV)

Disclosure of price sensitive information (AIM Rule 11)

Failures to disclose price sensitive information

On 10 September 2004 the Exchange, with the approval of the external AIM Disciplinary Committee, announced a public censure of **Incite Holdings plc**.⁶⁷⁹ From its admission to its suspension, the Exchange established that the lack of revenue generated and the lack of working capital amounted to changes in the company's financial position, performance and expectation of its performance, which, if

made public, would be likely to have led to a substantial movement in the price of its AIM securities.⁶⁸⁰ Notifications issued by the company during this period failed to adequately disclose these changes in the company's financial standing. The Exchange determined that the Company therefore breached its obligations under paragraph 10 (later renumbered paragraph 11) of the AIM Rules.⁶⁸¹

In August 2005, the Exchange privately censured two AIM companies (in addition, one of the companies was also fined £5,000) for breaching paragraph 11 of the AIM rules by failing to issue a regulatory announcement without delay.⁶⁸² In both cases, performance was falling short of market expectations: one company delayed announcing this while the company that was also fined did not make an announcement.

In its public censure of **SubSea Resources** (see *intra*, AIM disciplinary action taken by the Exchange (II), p. 70), the Exchange announced a breach by the company 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 (rule 11).⁶⁸³

Meridian Petroleum plc (see *intra*, AIM disciplinary action taken by the Exchange (II), p. 70) was publicly censured by the Exchange for its failure to disclose price sensitive information without delay about operational problems and consequent drilling and production delays. Another natural resources company, **Regal Petroleum plc**, was sanctioned (including a £600,000 fine) for, *inter alia*, its failure to announce without delay poor test results of an oil well and the plugging and abandonment of two oil wells.⁶⁸⁴ **Environmental Recycling Technologies plc** was censured for failing to inform the market of the material underperformance of its business and about the use of funds raised to pay down a loan that were used for other purposes.⁶⁸⁵

In its July 2008 disciplinary notice, the Exchange privately censured and fined (£25,000 and £15,000) two companies for, *inter alia*, delays of two months and several weeks in their release of price sensitive information.⁶⁸⁶

The disclosure of price sensitive information: incorrect advice or inadequate consideration

A case dealt with by the Exchange in August 2004 resulted in the private censure of a nomad. The issue considered by the Executive Panel – advice given by a nomad to delay the disclosure of price sensitive information – is the same as that considered by the Exchange in respect of its August 2005 public censure of Durlacher (see below). In the August 2004 case:⁶⁸⁷ ‘The AIM company made one announcement concerning two pieces of information, both of which were separately of a price sensitive nature. The Executive Panel concluded that the AIM company should have made separate announcements at the point at which each of these facts became clear. The nomad had advised the AIM company to delay making an announcement in respect of the first piece of information (the facts of which were known with certainty) in anticipation of further developments relating to the second piece of information (the outcome of which was at that point uncertain). The Panel considered that the advice provided by the nomad resulted in the Company failing to disclose price sensitive information as required by paragraph 10 [currently paragraph 11] of the AIM rules....’ It is unclear, in the absence of further details released by the Exchange, as to why the nomad in the August 2004 was not publicly censured in the same manner as Durlacher.

In August 2005, the Exchange issued its first public censure of a nomad, **Durlacher Limited**. The Exchange concluded that as a result of incorrect advice given by Durlacher to Prestbury Holdings plc (PH) (a former nomad client company of Durlacher) PH failed to disclose price sensitive information to the market without delay.⁶⁸⁸ Durlacher had advised PH (in good faith) that it could delay making a negative trading announcement pending the completion of an imminent private fundraising by PH. On 17 May 2004 PH concluded that the performance of its business would fall significantly short of market expectations. On 18 May 2004 PH provided a draft announcement to Durlacher for comment. Yet the announcement of the profits warning was issued on 26 May 2004, a day after the fundraising was completed. By the end of the day, the company's share price lost almost two thirds of its value.⁶⁸⁹ The Exchange noted that the censure was limited to Durlacher and did not imply any criticism of Prestbury. A follow-up article issued by the Exchange stated:⁶⁹⁰ ‘What the Exchange finds particularly unacceptable – as evidenced by the recent disciplinary action against a nomad – are instances where a nomad agrees with a client AIM company to withhold negative information from the market for a material period of time until positive information becomes available. In such cases it is the Exchange's strong view that the nomad has not discharged the duty it owes to the Exchange to act with due skill and care.’

In the Exchange's public censure of **Nabarro Wells & Co. Limited** (see *intra*, AIM disciplinary action taken by the Exchange (III), p. 77), breaches by the nomad under Rule 39, requiring, *inter alia*, nomads to act with due skill and care at all times, included:⁶⁹¹

- inadequate consideration of the requirement to notify the market of a change in a company's financial condition, under AIM Rule 11;
 - not advising a company of its obligations to update the market under AIM Rule 11 (when Nabarro Wells discovered that it had failed to receive subscription monies and the funds that the working capital report had assumed it would receive);
 - approving an announcement of a transaction (a reverse takeover) by a company, whilst the transaction was still in the course of negotiation.⁶⁹² When the transaction aborted, Nabarro Wells advised the company that this information need not be announced immediately.
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PTM Minerals (Cayman) Ltd and the CAMEC concession areas

According to Simberi Mining Corporation, its wholly owned subsidiary PTM Minerals (Cayman) Ltd has a 51% interest in the Kakanda Copper–Cobalt Property through a joint venture agreement with Gécamines:⁶⁹³ 'The Property is held under *Permis d'Exploitation* [PE] No. 469, issued in the name of Gécamines under which the concession was transferred to a joint venture with PTM Minerals after completion of a feasibility study in 1997.' PE469 was issued under DRC's revised mining code of July 2002 and replaced the former concession designated C19.⁶⁹⁴ It should be recalled that PE469/C19 is one of the concessions acquired by CAMEC (see *intra*, CAMEC's mining concessions in the Democratic Republic of Congo, p. 10).

According to the MCRC report, leaked in November 2007 and officially published in March 2008:⁶⁹⁵

On 12th August 1996 PTM Minerals and Gécamines signed a preliminary agreement relating to the recovery and treatment of old tailings from the concentrators of Kambove and Kakanda in the province of Katanga.

At the end of the negotiations, which were not ratified in any legal document, the mineral deposits of north and south Kakanda were also assigned to PTM Minerals. The reason for this was that the reprocessing of tailings was limited to six years, which would not allow the different partners involved enough time to recoup their investment.

Gécamines provided confirmation to PTM Minerals that their rights to the tailings and the mines of Kakanda north and south were intact in a letter (number 047/DG/2002) of 29 January 2002.

Gécamines restated this position in a letter to PTM (number 405/ADG/2006) of 25 January 2006.

At this time, the tailings and deposits of north and south Kakanda (which had been the subject of the preliminary agreement) were located within the concession for which Boss Mining and Kababankola Mining Company had been granted prospecting rights by Gécamines, in accordance with the out-of-court settlement between Gécamines and Ridgepointe Overseas of 25 February 2004 [for a map showing the location of the disputed concession, see Annexe 6].

The MCRC concluded:⁶⁹⁶

Taking into account the wishes of the parties to implement the preliminary agreement related to the Kakanda tailings, and numerous letters addressed to Gécamines by the Minister of Mines upholding PTM's rights over the Kakanda concentrator tailings, the Commission recommends that PTM participate in the renegotiation of the partnership contract between Boss Mining and Gécamines on the one hand and Savannah Mining and Gécamines on the other, in order to examine the possibility of preserving its [PTM's] rights as set out in the preliminary agreement.

The MCRC's recommendation that PTM participate in the renegotiation is reiterated in the 11 February 2008 notification letter from the Ministry of Mines to PTM.⁶⁹⁷ Moreover, the notification letter to Boss Mining also states: 'The parties must ensure that the formal procedures for the transfer of mine titles are in order in conformity with the Mining Code, and taking into account the rights of PTM Minerals Ltd.'⁶⁹⁸

Simberi Mining stated on 21 November 2007, in relation to the work of the MCRC:⁶⁹⁹

with the new mining registry system there was confusion with regard to our hard rock concessions which appeared to overlap with a claim by CAMEC and Boss Mining for concession C19 and Exploration permit 469.

The confusion made it difficult for the central registry to transfer clear title for the hard rock deposits to Gecomines [sic] for the creation of the joint venture between Gecomine [sic] and Simberi. There was no such confusion with regard to the tailings deposit and under the new registry system Simberi's joint venture rights have been confirmed

The Commission met with Simberi in the third quarter in order to make a recommendation with regard to the hard rock concession dispute. The Commission recognized Simberi and prior organisations affiliated with Simberi's wholly owned subsidiary PTM have invested in excess of \$10 million in exploration and development of the properties and fulfilled their contractual obligations reflected in the mining study resulting in a feasibility study in October 1997 and the more recent 43-101 compliant technical report.

In early November 2007, the DRC Government issued a decree annulling all CAMEC and Boss Mining contracts including those over the disputed concessions.

The government cited Boss Mining in particular violated a DRC Presidential decree dated June 18th 2001, protecting our rights over our concessions, in both the tailings, Kakanda north and Kakanda south. This has now created clear titles under the new registry for the tailings and the hard rock properties and will allow Gecomines [sic] to finalise the terms for a joint venture between PTM Congo and Gecomines [sic], the State Mining Company for the final development of the properties.

Simberi's technical, legal, domestic and international government affairs consultants have worked hard with management to achieve this successful result in a competitive and complicated environment. Simberi is presently working with Gecomine's [sic] lawyers to complete the final joint venture agreements.

On the issue of the annulment of CAMEC's licences, see *intra*, Revocation of the licenses and the *Tribunal de Grande Instance*, p. 26: CAMEC later announced that the issues relating to CAMEC's licences in DRC had been addressed and agreed.⁷⁰⁰

According to Simberi's 30 September 2008 corporate update,⁷⁰¹

negotiations to finalize the joint venture agreement for the development of the Kakanda copper/cobalt project are continuing with the Democratic Republic of Congo ('DRC') Government officials.... On August 30, 2008 the DRC Minister of Mines issued a notice (Ref. 01.0708/2008) under instructions from the Prime Minister directing Gécamines that it has the authority to complete negotiations with PTM and 28 other companies that have been identified as valid project sponsors.

CAMEC appears not to have issued a notification or public announcement regarding PTM's rights over the Kakanda tailings and mining deposits of north and south Kakanda; nor regarding the MCRC'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'; 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.

Simberi Mining Corporation has since changed its name to Greenock Resources Inc.⁷⁰² On 18 March 2011, Greenock announced that ‘consequent upon a review by staff of the OSC [Ontario Securities Commission], the company filed, on SEDAR [System for Electronic Document Analysis and Retrieval (Canadian Securities Administrators)], amended and restated financial statements, revised MD&A [Management Discussion & Analysis], and related CEO and CFO [Chief Financial Officer] certificates for its most recently completed interim period ended September 30, 2010.’⁷⁰³ The required material change included the statement:⁷⁰⁴

London based Eurasian Natural Resources Corporation plc (“Eurasian”) made an unsubstantiated claim regarding the ownership of Kakanda. Eurasian’s unsubstantiated assertion is that Greenock has no rights, title or licenses respecting land covered by PE 469. Greenock’s DRC legal counsel reviewed this unsubstantiated claim and provided a January 12, 2011 opinion that confirmed PTM Minerals Cayman (“PTM”) a wholly owned subsidiary of Greenock ownership and the validity of its longstanding Kakanda development rights originally issued in 1998 to the Kakanda tailings and hard rock and the joint venture with Gécamines [*sic*] for the economic development of the Kakanda project.

It would appear that the review by the OSC and the material change to Greenock’s documents were prompted by a complaint to the regulator made by ENRC. Greenock’s CEO, Michael Newbury, notes:⁷⁰⁵ ‘It is unfortunate that Eurasian has chosen to use a public disclosure complaint with Canadian regulators as a strategy to attempt to resolve a complicated mineral development right issue in the DRC.’

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 disclosure of the same issue has prompted action by the Canadian authorities.

Aim compliance

Questions that remain publicly unanswered	Aim rules potentially at issue
1. On what date did CAMEC become aware that there was a competing claim by Simberi/PTM over the Kakanda tailings and mining deposits of north and south Kakanda?	Rule 11 [2007]
2. Given that the Simberi publicly announced on 21 November 2007 details of a meeting, held in the third quarter of 2007, with the MCRC ‘in order to make a recommendation with regard to the hard rock concession dispute’; and given that the MCRC report, leaked in November 2007 and officially published in March 2008, recommends ‘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, with a view to examining the possibility of preserving its inherent rights in the preliminary agreement’, why did CAMEC not notify the market about Simberi/PTM’s competing claim?	<i>ibid.</i>
3. If it is accepted that the market should have been notified of Simberi/PTM’s competing claim without delay, the question arises as to whether the failure to refer to the claim in intervening company releases amounted to an omission likely to affect the import of information in these releases.	Rule 10 [2007]

4. Did Seymour Pierce fulfil its obligation to monitor the press for price sensitive information and to ‘ascertain from the company whether an announcement or other action is required’ in respect of the implications of Simberi/PTM’s competing claim for CAMEC?	Rule 39 [2007], RNA OR3
5. Did Seymour Pierce review CAMEC’s notification(s) after Simberi’s 21 November 2007 announcement, after the leak in November 2007 and official publication in March 2008 of the MCRC report; if so, did it question why there was no reference in CAMEC’s announcements to the competing PTM claim?	Rule 39 [2007], RNA OR2, Guidance MOG, Part Two, Ongoing obligations, Review by Nominated Adviser
6. Does Seymour Pierce believe that it kept itself up to date with developments at the company, including the competing claim by Simberi/PTM over the Kakanda tailings and mining deposits of north and south Kakanda and the recommendations of the MCRC concerning these claims and rights? What advice did Seymour Pierce give concerning the requirements of rule 11 and the need for a notification?	Rule 11 [2007], Rule 39 [2007], RNA OR1
7. Can Seymour Pierce demonstrate that it acted with due skill and care at all times?	Rule 39 [2007], RNA 16

The chemical fire at Boss Mining’s depot in Likasi and the reported release of bromine gas

On 5 January 2009, a chemical fire occurred at around 4:00 pm at CAMEC’s Boss Mining Depot in Likasi. A thick plume of smoke was released from the facility, which spread over the neighbourhood of Simba, on the road to Kolwezi, in the adjacent town of Likasi (see photograph). People can clearly be seen on the streets as the fire was burning.



Chemical fire at Boss Mining Depot in Likasi, 5 January 2009. Photo: RAID

The incident – later characterised by CAMEC in correspondence as ‘a large chemical fire’ that released a ‘cocktail of fumes’ into the atmosphere – prompted the Mayor of Likasi, Denis Kalonji, to discuss events on the local radio station RCK.⁷⁰⁶ According to a local community organisation – *La Plate-forme des activistes de droits de l’Homme de Likasi* (PADHOLIK) – the mayor questioned a Boss Mining official at the facility about the nature of the fire, who made reference to the chemical bromine.⁷⁰⁷ The mayor, in turn, relayed information to the provincial authorities.⁷⁰⁸ On 6 January, PADHOLIK issued a news release about the incident, prompting a report by the national broadcaster, Radio Okapi, on 7 January.⁷⁰⁹

According to Radio Okapi, the mayor said that there were several products in the warehouses, including bromine.⁷¹⁰ Radio Okapi notes conflicting opinions on the origins of the smoke, attributing its effects to bromine and toxins. The same report quotes Mayor Kalonji as stating that ‘[t]here are bitumens that burned and caused the danger’.⁷¹¹ A press report, also dated 7 January, attributes the accident at Likasi to 12 drums of bitumen catching fire.⁷¹² It cites Laurent Décalion, Boss Mining’s

CEO, as saying that no bromine had been burnt in the fire and stating: ‘We think it was an accident [Decalion said]. Somebody threw a cigarette or something. It’s no big deal. It’s over.’⁷¹³ Correspondence from PADHOLIK suggests that the mayor’s language changed on the day after the incident and that he no longer referred to bromine.⁷¹⁴ Radio Okapi reports on the health concerns of the inhabitants and upon instructions from the mayor to hospital doctors to record all cases of lung inflammation.⁷¹⁵

A number of facts can be discerned about the nature of the Likasi incident. It did constitute a large chemical fire. There was immediate local and then national media coverage of the fire. The effects from the fire and smoke were attributed, at the time, to different causes. Moreover, news of the fire was noted on at least one investor’s forum. A forum post states:⁷¹⁶ ‘The talk in the DRC is about the CAMEC fire in Likasi’ although another post disputes this assertion. The incident was picked up by the international business press, including by *Bloomberg* and the Canada-based *Globe and Mail*.⁷¹⁷

While the CEO of CAMEC’s Congolese Boss Mining subsidiary did make a curt statement to *Bloomberg*, CAMEC itself did not issue any notification or news release about the fire at the Boss Mining facility, neither at the time of the incident nor during the remainder of the month or thereafter. Given the fact of a large chemical fire, media coverage, reports of the release of harmful bromine gas – immediately denied by Boss Mining’s CEO and later by CAMEC – and discussion of the incident in an investor’s forum, the question arises as to whether or not CAMEC should have notified investors and the market of the incident.

Correspondence between RAID and CAMEC about the reported release of bromine gas

As a result of correspondence with PADHOLIK and the Congolese organisation *Action Contre l’Impunité pour les Droits Humains* (ACIDH), RAID wrote to CAMEC on 7 January 2009 to inquire about the apparent release of bromine gas from the Boss Mining facility.⁷¹⁸ RAID’s letter included details of the areas affected – Simba, Zout, Industriel, Kamatanda, Toyota, Mission, along the Lubumbashi road and in parts of the Shituru Commune – where local people exposed to the smoke and gases suffered from coughing and irritation to the eyes and nasal passages. Several people reported that they had difficulties breathing.⁷¹⁹ RAID and its partner organisations asked CAMEC to investigate the incident promptly and to report back on what action the company proposed to ensure that a similar release did not recur.⁷²⁰ RAID reminded CAMEC that the MCRC had reported on the absence of any documentation from Boss Mining about measures to protect the environment and sought reassurance that this omission – which was in violation of the Mining Code – had since been rectified. RAID asked CAMEC for a copy of Boss Mining’s Environmental Management Plan.⁷²¹

RAID received a reply from Andrew Groves, Managing Director of CAMEC, dated 30 January 2009.⁷²² According to Mr. Groves, he immediately ‘ordered local management to carry out an investigation’.⁷²³ This ‘preliminary investigation has revealed that the nature of the fumes released as a result of a chemical fire at the Likasi facility on the 5th January 2009 did not include Bromine (Br)’.⁷²⁴ CAMEC’s letter stated ‘that bitumen paint awaiting dispatch to Luita, was the cause of the fumes.... No evidence could be found that (Na₂S₂O₅) [meta-bisulphide in salt form] was part of the cocktail of fumes released into the atmosphere’. According to Mr. Groves, the colour and nature of the smoke was ‘consistent with pyro-chemical decoupling of polycyclic aromatic hydrocarbons (PAHs)... that caused the ‘unpleasant effects’ on people who came in contact or were exposed to the fumes, consistent with any natural oil fire’.⁷²⁵ Mr. Groves stated that ‘no lasting effect has been observed nor reported by our employees who extinguished the fire’ and that he was ‘of the opinion that no lasting impact has been caused to the environment’.⁷²⁶

Blaming the start of the fire on unknown intruders, CAMEC’s board had directed local management to take additional security measures at the facility to protect against unauthorized access; to repair and maintain onsite fire extinguishing mechanisms (which CAMEC admitted had been ‘rendered useless’ prior to the fire); to take further precautions in the storage of flammable chemicals and; to offer a company Fire Fighting Unit while the Likasi municipal fire department reviewed its capacity to deal with chemical fires.⁷²⁷ CAMEC acknowledged that stock levels of industrial chemicals ‘had not exceeded our standard, but were higher than normal on the day of the incident’: stock levels would be regularly monitored.⁷²⁸ Mr. Groves stated that the ‘Boss Mining Environmental Management Plan’ was ‘currently under management review as required by the Government Mine Licence Review’.⁷²⁹

Aim compliance

Questions that remain publicly unanswered	Aim rules potentially at issue
<p>1. Given that the large chemical fire and the release of a cocktail of fumes at Boss Mining's depot occurred on 5 January 2009 and that reports about the nature and adverse effects of the fire appeared in local, national and international media reports in the proceeding days, as well as upon an investors' bulletin board, why did CAMEC not notify the market of the incident given that such events with adverse health and environmental consequences can impact significantly upon share price?</p> <p>To what extent did the short statement to Bloomberg made by Boss Mining's CEO, Laurent Décalion, denying that bromine had been burnt in the fire, rely upon a detailed investigation of the event? This question is posed in light of the fact that the results of the internal investigation, ordered by CAMEC's managing director, Andrew Groves, were not reported to RAID until 30 January 2009, more than three weeks after the fire?</p>	<p>Rule 11 [2007]</p>
<p>2. Did Seymour Pierce fulfill its obligation to monitor the press for price sensitive information and to 'ascertain from the company whether an announcement or other action is required' in respect of the implications of a large chemical fire releasing a cocktail of fumes?</p>	<p>Rule 39 [2007], RNA OR3</p>
<p>3. Does Seymour Pierce believe that it kept itself up to date with developments at the company, including the fact that a large chemical fire, releasing a cocktail of fumes, had occurred at the Boss Mining depot? What advice did Seymour Pierce give concerning the requirements of Rule 11 and the need for a notification?</p>	<p>Rule 11 [2007], Rule 39 [2007], RNA OR1</p>
<p>4. Can Seymour Pierce demonstrate that it acted with due skill and care at all times?</p>	<p>Rule 39 [2007], RNA 16</p>

Supplement

War, weak governance and post-war contracts: the context for due diligence in DRC

War in DRC

The conflict in the DRC is often described in terms of two wars. The first began in 1996, when the Rwandan army invaded eastern DRC, backing the rebel leader Laurent-Désiré Kabila, who eventually toppled president Mobutu Sese Seko; the second began in August 1998, when Kabila broke with his Rwandan allies, who, in turn, backed a new rebel group, the Rassemblement Congolais pour la Démocratie (RCD), in an attempt to overthrow Kabila. The five years of armed conflict that followed split the country into different zones of control ruled by competing armed groups. The wars 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.¹ Human rights organisations have documented grave abuses that have been carried out by all parties during the war. Unarmed civilians have been massacred; forcible abductions, arbitrary arrest and torture have been widespread; and thousands of women and girls have been raped by combatants.²

In April 2003, the warring parties finally agreed to share power and signed the All Inclusive Agreement on the Transitional Government. The Government of National Unity was installed in June 2003, but the peace remains fragile.

Widespread violence against civilians inflicted by government soldiers and armed combatants has continued to blight eastern DRC.

In 2004, massacres and summary executions were perpetrated at Gobu, Lengabo and in the Mongbwalu area and at a refugee camp inside Burundi.³ Rwanda threatened to invade to defend Tutsi interests. Former rebel forces refused to disband.⁴ In 2005, atrocities were committed by government forces and rebel factions in fighting at Walungu, South Kivu and around Boga and Kilo.⁵ Uganda continued to back anti-government warlords in Ituri.

Dozens of pro-election protestors were killed by security forces in January and June 2005 in Kinshasa, Mbuyi Mayi, Goma and other towns.⁶ Presidential and legislative elections scheduled for June 2005 eventually took place in July 2006, with Joseph Kabila announced as DRC's first democratically elected president after an October run-off vote.⁷ In the election year, 150,000 civilians fled their homes in Central Katanga after fighting between government troops and Mai Mai insurgents in an area known as 'the triangle of death'.⁸ Both sides killed and raped civilians. The following year, defeated presidential candidate Jean Pierre Bemba fled the country after an intense fire fight in Kinshasa.⁹

In 2007, fighting in eastern Congo intensified after troops newly integrated into the national army, but loyal to the renegade General Laurent Nkunda, committed abuses against civilians in a campaign against the Democratic Forces for the Liberation of Rwanda (FDLR).¹⁰ 350,000 people were displaced. Nkunda's soldiers reformed the National Congress for the Defence of the People (CNDP).

According to Human Rights Watch:¹¹ 'Violence, impunity, and horrific human rights abuses continue in the Democratic Republic of Congo, two years after historic elections were expected to bring stability. Early in 2008 a peace agreement brought hope to eastern Congo, but combat between government and rebel forces resumed in August. During the year, hundreds of civilians were killed, thousands of women and girls were raped, and a further 400,000 people fled their homes, pushing the total number of displaced persons in North and South Kivu to over 1.2 million.'

In August 2008, serious fighting recommenced in North Kivu as the Congolese army sought to halt an offensive by Nkunda's CNDP.¹² At the end of October, the CNDP stopped just short of taking Goma and unilaterally declared a ceasefire, demanding talks with the government.¹³ A new alliance between DRC and Rwanda, Nkunda's former backers, led to Nkunda's arrest in January 2009.¹⁴

During 2009, two successive Congolese military operations – one with Rwandan military forces (*Umoja Wetu*) and the second with UN support (*Kimia II*) – attempted to neutralise the FDLR.¹⁵ Widespread human rights abuses were carried out by government and rebel forces. In north eastern Congo, the Ugandan rebel Lord's Resistance Army (LRA), intensified attacks on civilians in early 2010.

In May 2010, the UN Security Council renewed the deployment of its renamed peace keeping force in the – United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) – until 30 June 2011.¹⁶ President Kabila had called for the UN mission to withdraw its peace keeping force by mid-2011.¹⁷

In July and August 2010 members of armed groups raped hundreds of people in North Kivu where it is believed that the majority of human rights violations are carried out by the Congolese military (FARDC) and demobilised combatants.¹⁸ The Congolese Government has failed to pay all its soldiers nor is it carrying out a proper disarmament, demobilisation and reintegration program.

In October 2010 a report on DRC prepared by the Office of the United Nations High Commissioner for Human Rights was released.¹⁹ The report focuses on 617 of the most serious incidents across DRC during the 10-year period (March 1993 and June 2003) and provides details of 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. The report concludes that the majority of the crimes documented qualify as crimes against humanity and war crimes.

War and fragile peace in the Democratic Republic of Congo

- 1996 The first Congolese war begins.
- May 1997 The government of President Mobutu is overthrown, bringing to power the *Alliance des Forces Démocratiques pour la Libération du Congo-Zaïre* (AFDL) led by Laurent-Désiré Kabila.
- August 1998 A falling out between Kabila and his former Ugandan and Rwandan allies sparks a second Congolese war. The war draws in Angola, Namibia and Zimbabwe on the side of the DRC Government and Uganda, Rwanda and Burundi on the side of several rebel groups.
- 1999 Lusaka Peace Accords are signed, but the peace collapses. DRC is divided among four regimes supported by foreign forces. A 'resource war' is fought, mainly in eastern DRC: resources fuel the war, which is perpetuated to control resources.
- 16 January 2001 Laurent Kabila is assassinated and succeeded by his son, Joseph Kabila.
- April 2002 Two of the principal rebel movements agree the Sun City Peace Accord with the DRC Government.
- 30 July 2002 Rwanda and DRC sign bilateral accords, leading to Rwandan troop withdrawals in October 2002.
- 6 September 2002 Uganda and DRC sign bilateral accords, leading to Ugandan troop withdrawals in May 2003.
- April 2003 The third major rebel force, together with the other parties, sign the All Inclusive Agreement on the Transitional Government.
- June 2003 A transitional government is named and two former rebel leaders are sworn in as vice-presidents. However, serious microconflicts and human rights violations continue throughout 2003, especially in the provinces of Ituri and northern Katanga.
- July 2006 Presidential and legislative elections take place.
- October 2006 Joseph Kabila is announced president after run-off vote with Jean Pierre Bemba.
- 2007 Fighting intensifies in eastern DRC against FDLR forces. Reformation of

	Nkunda's CNDP.
January 2008	Goma Peace agreement in place in eastern DRC.
August 2008	Serious fighting between government forces and CNDP recommences in North Kivu.
October 2008	CNDP halts just short of taking Goma.
January 2009	New alliance between the Congolese and Rwandan Governments leads to Nkunda's arrest.
2009	Two joint operations between the Congolese military and, respectively, the Rwandan military and UN forces against the FDLR.
Early 2010	Renewed violence is perpetrated against civilians by the Ugandan rebel Lord's Resistance Army (LRA).
March 2010	Kabila government signals it wants UN peace keeping withdrawal by mid-2011.
May 2010	UN mission in DRC renamed and deployment renewed until June 2011.

The impact of the war upon development

The impact upon development of both the war in DRC and the country's uncertain post-war transition has been catastrophic.

In its 2010 Human Development Report, the United Nations Development Programme ranks DRC 168th out of 169 countries in terms of its development, and DRC is one of only three countries with a lower Human Development Index (HDI) today than in 1970.²⁰ The 2006 International Monetary Fund and World Bank-backed Poverty Reduction and Growth Strategy Paper (PRGSP) describes poverty in DRC as 'a generalized, chronic, mass phenomenon.'²¹ The incidence of poverty (71 percent of DRC's population falls below the poverty line, living on less than \$US1 per day), its depth (the extent to which the 'average poor' falls below the poverty line) and its severity (the degree of inequality suffered by the poorest) are all extremely high by comparison with the other countries of central Africa.²²

According to the PRGSP, '[t]he education, health, water supply, and sanitation sectors, as well as social security, are in an advanced state of deterioration and loss.'²³

The health sector is falling short of meeting the Millennium Development Goals 'to an unprecedented degree'.²⁴ Annual per capita expenditure on health is the lowest in the world at just \$17.²⁵ A fifth of children die before reaching their fifth birthday.²⁶ 4.2 million children under age 5 suffer from malnutrition in DRC.²⁷ In the early 1990s, just under a third of the population was undernourished; in 2004 – 2006, this had risen to three quarters of the population.²⁸

Only 22 percent of the population have access to drinking water.²⁹ Less than 10% of waste water is hygienically evacuated and 80 percent of the instances of disease are attributable to poor environmental conditions.³⁰

The transport system in DRC is described in the PRGSP as being in a 'disastrous situation' with 'the impassibility if not to say the disappearance of most secondary and tertiary roads'.³¹

Congolese villages 'are in the throes of a self-perpetuating process of destruction', with 76% of households considered 'extremely overcrowded'; the PRGSP predicted that there would be 5,211,288 shanties throughout the country by 2010.³² According to the same document, '[t]he breakdown in living conditions is associated with the successive wars which struck in the eastern part of DRC in particular, and with the population migrations which ensued.'³³

At the beginning of 2010, over 2 million people were still internally displaced, in addition to over 185,000 refugees and asylum seekers in DRC from other countries in the region and just over 44,000 returning refugees.³⁴

The war left the country in a state of economic collapse. According to the World Bank, ‘the widespread looting of public and individual assets, and the absence of any effective economic management systems have discouraged economic production, while laying the ground for a mushrooming of semi-criminal networks’.³⁵

Reconstruction and the mining sector

Minerals, which were at the heart of a war for control over lucrative resources, are now key to DRC’s recovery. The Congo has some of the world’s most important reserves of numerous strategic and precious resources (copper, cobalt, uranium, colombo-tantalite, diamonds, gold). DRC has an estimated 12 per cent of the world’s copper reserves and almost half the world’s cobalt reserves.³⁶ Katanga, where the copper and cobalt ore bodies are found, is the source of much of this potential wealth.

An ambitious government programme for 2007 – 2011, costing \$14 billion over five years, was approved by the Congolese parliament in February 2007.³⁷ The programme is designed to rebuild the economy, reduce poverty and improve the country’s infrastructure. Around half of this money will need to come from international donors;³⁸ given the underlying mineral wealth, the mining sector ought to make a meaningful contribution to the development of Congo.

In a conservative estimate, the World Bank has calculated gross production value from the mining sector in DRC at US\$2,088 million to US\$2,466 million annually between 2010 – 2014 and a contribution to government fiscal receipts of US\$267 million to US\$394 million annually.³⁹ For reference, in 2009, GDP was US\$10.8 billion and government fiscal receipts were US\$1,373 million.⁴⁰

In 2009, the global economic crisis triggered a fall in key commodity prices. The copper price fell from around US\$7,000 per tonne to approximately US\$2,700 per tonne in October 2008.⁴¹ As copper, cobalt and diamonds represent 80% of DRC’s exports, export earnings in DRC are estimated to have fallen by \$3.2 billion between 2008 and 2009.⁴² The extractive industries sector growth rate fell considerably from 11.4 % to 2.5 % over the course of 2008.⁴³ Overall, the global downturn triggered a decline in the DRC’s economic growth from 6.2 % in 2008 to 2.8 % in 2009. However, construction and public works, coupled with renewed growth in the mining sector commencing in late 2009, saw GDP growth rise to an estimated 6% in 2010.⁴⁴ Public finance in DRC deteriorated significantly between the end of 2008 and the first half of 2009, but improved in the later half of the year.⁴⁵

The Bank predicts that receipts from mining could increase to between 15 and 20 percent of DRC’s GDP and one quarter of domestic revenues by 2020, but adds the important proviso ‘if the right systems and structures are put in place for revenue collection and for the supervision and control of mineral exploitation’.⁴⁶ In the past, the mining sector has provided between 70% and 80% of export earnings and around 8% of GDP, but, since the early 1990s, its contribution has declined substantially.⁴⁷ The World Bank notes the problem of transfer pricing in many contracts, whereby mineral products are sold between related parties on ‘a non arms length basis’ in order to avoid tax liabilities.⁴⁸ Overall, the World Bank is of the view that⁴⁹

[t]he *fiscal regime* applicable to the sector is internationally competitive and would provide a solid basis for generating tax revenues for the state. However, fraudulent practices by companies and government agencies have created a gap of US\$35 million between what should be paid versus what is actually recorded as having been received in terms of royalties and surface rents alone. The gap is actually larger if total mining taxes are considered: about US\$200 million per annum should be generated by the sector; the government claims to have received sector taxes in 2005 of US\$27 million.

The new Mining Code, which came into force with World Bank support in 2002, (and the Mining Law of March 2003) was supposed to ensure full transparency in the access to mineral resources (e.g. allocation of permits), reduce government discretion, promote the disclosure of information and ensure “a fair distribution of revenues among Government, mining companies and affected

communities”.⁵⁰ The DRC Government was to design a restructuring plan that would transform Gécamines into a holding company.⁵¹

In mid-2005, the Transitional Government approved three joint venture contracts between Gécamines, DRC’s main state-owned mining company, and a number of foreign private companies: Kinross Forest Ltd (now Katanga Mining Ltd)⁵², Global Enterprises Corporate Limited (a subsidiary of Nikanor Plc, which has since merged with Katanga Mining⁵³) and a consortium formed by Phelps Dodge Corporation, Lundin Holdings Ltd and Tenke Mining Corporation (in 2007, Phelps Dodge was acquired by Freeport McMoRan Copper & Gold Inc. and Tenke by Lundin Mining Corporation)⁵⁴. These three joint venture agreements, covering, respectively, the key Kamoto, Kamoto Oliveira Virgule (KOV) and Kwatebala, Goma and Kavifwafwalu deposits, account for between 50 and 75 per cent of DRC’s copper and cobalt reserves and form an important part of Katanga’s industrial capacity.⁵⁵ There was disquiet over the way these deals had been negotiated, signed and approved, without due transparency, on the basis of either a flawed or a non-existent international tendering process. In November 2003, when the agreements were still being negotiated, World Bank-appointed consultants recommended that all ongoing negotiations should be halted and, ultimately, that the Gécamines joint venture agreements should be renegotiated.⁵⁶ Furthermore, according to the Implementation Completion Report for the World Bank’s Economic Recovery Credit, a moratorium on new mining concessions was one of the measures by which the Government was to have demonstrated its commitment to implementing far-reaching reforms, contributing to the decision by major creditors to provide support. Yet the moratorium was not respected and other crucial measures, such as the reform of the Mining Registry and making the Commission for the validation of mining titles operational were never implemented.⁵⁷

Review and audit of wartime and post-war mining contracts in DRC

The IMC audit

In 2002, the World Bank supported a Steering Group for the Reform of Public Enterprises – COPIREP (*Comité de pilotage de Réforme des Entreprises Publiques*) and agreed to fund the development of a strategy for Gécamines, the state-owned copper and cobalt conglomerate.⁵⁸ In September 2002, IMC Consulting Group Ltd was appointed by the World Bank on behalf of the Congolese Government to conduct an audit and define a new business plan for Gécamines. IMC recommended that all ongoing negotiations should immediately be halted and that steps should be taken for a wholesale renegotiation of the joint venture agreements.⁵⁹ IMC also recommended that all Gécamines’ directors be dismissed immediately and that a team assisted by international experts renegotiate all of Gécamines’ partnerships, starting with the major ones, including Kamoto and Tenke Fungurume. Following the IMC report, negotiations between Gécamines and private partners were briefly suspended.⁶⁰ After an international tendering process, the French management consultancy, SOFRECO, was awarded the contract to manage IMC’s restructuring plan.

The Ernst & Young and Duncan & Allen audits

In August 2004, the World Bank and COPIREP commissioned new financial and legal audits of Gécamines from, respectively, Ernst & Young and Duncan & Allen.⁶¹ Ernst & Young (France) examined a number of contracts between Gécamines and foreign parties during two missions to DRC in 2005.⁶² The financial audits – delayed because of anomalies, obstructions and missing data – were completed in May 2006.⁶³ The DRC government delayed the start of the Duncan & Allen audit and, by the time the consultants started work in February 2005, they found that most of the priority mining contracts had been concluded and ratified before they were able to present the results of their evaluation.⁶⁴ The work of the consultants was obstructed by senior Gécamines management.⁶⁵ Neither the financial nor the legal audits have been officially published. Copies of both reports – in their entirety or in part – are, however, in wider public circulation and have been seen by RAID.⁶⁶

The Duncan & Allen report reviews, *inter alia*, priority joint ventures, preliminary agreements under negotiation, ‘cases to be cleared up’, inactive joint ventures, and non-priority operational joint

ventures.⁶⁷ The main report is supplemented by 34 annexes analysing the individual mining contracts. Paul Fortin, the current head of *Gécamines*, has stated that the Duncan & Allen audit had found ‘some mistakes in the legal aspects’.⁶⁸

Duncan & Allen warn: about the risk of litigation because some of the preliminary mining agreements, although never implemented, had not been formally revoked before being reassigned,⁶⁹ that some joint ventures agreements are illegal, despite having been signed by or created with the agreement of the DRC Government, and will have to be brought into conformity with the law;⁷⁰ and that detailed descriptions of *Gécamines*’ mining rights, needed to establish the precise geographical boundaries of the mine licences and reserves, were often missing.⁷¹ The legal consultants conclude: ‘It seems that *Gécamines* has alienated the majority of its mining rights without ensuring that it received just compensation in return. There was not an objective evaluation (either by an independent expert or *Gécamines*) of GCM’s contributions to the partnership. As a result the real value of these contributions (assets) is unknown.’⁷² Duncan & Allen further note how it would have been desirable for *Gécamines* to have negotiated leasehold agreements instead of contracts (whereby it relinquished its mining title and rights).⁷³ In all the joint ventures, *Gécamines* is a minority shareholder and has no control over the company. In nearly all the joint ventures, *Gécamines* does not have any influence or control over technical or management decisions and so is unable to insist on contractual obligations being met.⁷⁴

The Lutundula Commission

In June 2005, yet another report – this time by the Lutundula Commission (Congolese Special Parliamentary Commission Responsible for Examining the Validity of Economic and Financial Agreements Signed during the War) – was published.⁷⁵ The Commission recommended that 16 contracts be ended or renegotiated and that 28 Congolese and international companies be investigated for violations of Congolese law, and it sought an immediate moratorium on the signing of new contracts.⁷⁶ The Commission condemned the interference of politicians in the negotiation of contracts and noted the lack of feasibility studies or proper assessments of *Gécamines*’ contributions to the partnerships, resulting in highly advantageous contracts for the private sector partners.⁷⁷ Finally, the Commission recommended that its own mandate be extended to investigate contracts signed during the transitional period from June 2003 onwards.⁷⁸ Although the Commission’s report was uneven in quality (some companies received more favourable treatment than others and there were a number of omissions), nevertheless its general assessment of the joint ventures was accurate. The Lutundula report has never been debated by the National Assembly and its recommendations were not acted upon.

The ‘selling off’ of Gécamines

Yet, despite all the reviews, audits and the repeated call for a moratorium on concluding new contracts, negotiations with private partners continued unabated. As early March 2003, the Transitional Government, influenced by vested interests, bypassed COPIREP and set up a parallel structure, the Steering Committee for the Restructuring of *Gécamines* (CPRG), rendering the World Bank’s programme devoid of substance. With a complete lack of transparency, mines or plant that would have enabled *Gécamines* to become commercially viable was systematically ‘sold off’ to private groups. In February 2004, despite the IMC report, the Kamoto joint venture agreement between Kinross Forrest and *Gécamines* was signed, followed in May 2004 by a preliminary agreement between Global Enterprises Corporate (GEC) and *Gécamines* to develop the KOV mine.⁷⁹ The KOV joint venture agreement between GEC and *Gécamines* was signed in September 2004.⁸⁰ Dan Gertler was the sole signatory for GEC on the contract.

In July 2005, the Council of Ministers decided to approve the joint venture agreements of *Gécamines* with GEC, Kinross-Forrest (both now merged under Katanga Mining), and Lundin/Phelps Dodge (involving the Tenke Fungurume deposits – now majority-owned by Freeport McMoran).⁸¹ All three joint ventures were ratified soon after.⁸² According to the World Bank, ‘The legal and financial/economic studies [Ernst & Young/Duncan & Allen] were under way in 2005 when the Government authorized the signature (July 2005) of certain partnership agreements without waiting for the results of the studies.’⁸³ Moreover, a commission set up to validate mining titles foundered amidst allegations of impropriety.⁸⁴

A confidential memo sent in September 2005 from the World Bank's principal mining specialist to the Bank's Country Director for DRC concerning the partnerships between Gécamines and Kinross Forrest, GEC and Lundin Holdings/Phelps Dodge noted 'serious concerns we have regarding the terms and conditions of the contracts, the manner in which they have been negotiated, and their potentially negative implications in respect of maximizing the value of mineral assets'.⁸⁵ The memo ends with the key points of criticism taken from IMC's report.

Commission de Revisitation des Contrats Miniers

Amidst the continuing controversy surrounding the award of mining concessions, a promise was made during the 2006 elections to revisit the war and post-war contracts. On 20 April 2007, an inter-ministerial *Commission de Revisitation des Contrats Miniers* (MCRC) was set up to 'examine partnership contracts and their impact on the recovery of these companies and national development, to propose, if necessary, modalities for their revision with a view to correcting any imbalances and related faults.'⁸⁶

The MCRC, the plenary composed of a chairman and 28 members from government offices and key ministries, supervised by the Ministry of Mines, reviewed more than 60 mining contracts signed between private companies and the state or state-owned enterprises.⁸⁷ Although civil society groups were in theory permitted to act as observers and to make submissions they were soon sidelined and excluded from key meetings. The Commission reported to the government in early November 2007. Its findings were immediately leaked and the DRC Government eventually published the Commission's report in March 2008. The Commission recommended renegotiation of two-thirds of the contracts and the cancellation of the remainder.

In February 2008, an international coalition of non-governmental organisations warned that new deals were being struck behind closed doors, outside of the opaque and incomplete review process⁸⁸ – for example, the transfer of two mining concessions previously held by the Katanga Mining Company to China's Sinohydro Corporation and the China Railway Engineering Corporation as part of the deal for a \$5 billion loan from China's Exim Bank.⁸⁹ The Vice Minister of Mines of DRC, Victor Kasongo, made a commitment to instituting a 'brief and open administrative appeal process' for the mining contract review before 'a specially constituted panel'.⁹⁰ This would allow each company whose contract has been reviewed to put its case for 'reclassification' and to minimise confrontation and delay. At the same time, Kasongo stated 'that none of the contracts met international standards.... Many of them need to be re-negotiated and some of them have to be terminated, because when you do business every partner must be remunerated proportionate to their input.'⁹¹

In February 2008, letters were sent to the companies outlining issues in the contracts requiring renegotiation.⁹² Discussions took place between some companies and a panel of senior government representatives, including the Minister of State in the President's office, the Minister in the Prime Minister's office, the Minister of Finance, the Minister of Portfolio, the Minister of Mines and the Vice-Minister of Mines.

In September 2008, the DRC Government indicated that the review process had reached an advanced stage and that the mining companies had been divided into three categories.⁹³ Fourteen 'green light' companies were those that had successfully produced feasibility studies of the future development of their assets and were entering final stage negotiations with the state entities.⁹⁴ Twenty-five 'orange light' companies were those 'making some though not yet enough progress' who had a further 12 to 18 months to renegotiate and modify their contracts and produce a viable plan for an ongoing public/private partnership.⁹⁵ Twenty-two 'red light' companies had contracts 'so far out of line with mainstream international practice as to warrant cancellation' and had to renegotiate new contracts from scratch rather than modifying their existing contract.⁹⁶ The government warned that 'three of the worst offenders have little chance of retaining a foothold in DRC.'⁹⁷

At the same time in September 2008, the DRC Government published terms of reference for the renegotiation panel.⁹⁸ The terms of reference sought, as a prerequisite to the renegotiation, and on a case-by-case basis, the full payment of the surface rights, key money, leasing rent arrears and royalties.⁹⁹ The structure of the share capital was to be made only after determining the real value of the contributions from each party after the full feasibility study had been approved.¹⁰⁰ The need to set a minimum level of shareholders' equity was identified in order to secure the redistribution of

dividends in favour of the state, where taxes and other levies are owed, over repaying capital borrowed on overseas markets.¹⁰¹ Mechanisms were also to be introduced to make good the loss from the assignment of company shares, over which the state has no control.¹⁰² Provision was to be made in the contracts to ensure that the state-owned company could also participate in the day-to-day management of the partnerships.¹⁰³ In key areas – *inter alia*, modification of the articles of association, choice of subcontractors and varying the share capital – the recommendation was for a blocking minority.¹⁰⁴

A report published by RAID, which examined in detail the fairness of some of the deals and proposed a model for the renegotiation, appears to have had an influence on the review process.¹⁰⁵ The terms of reference for the renegotiation of contracts noted that ‘in nearly all the mining contracts, the rates of return are excessive compared with those of other countries in the sub-region.’¹⁰⁶ The terms of reference established a basis for the re-examination of internal rates of return, the economic model used, project risks, profitability and the equitable distribution of profits.¹⁰⁷

Companies were required to abide by the letter of the legislation in force.¹⁰⁸ The terms of reference put forward mechanisms, including cancellation of the contract, to constrain partners who failed to meet their obligations, for example by not submitting feasibility studies, environmental impact assessments or rehabilitation plans, or else unjustifiably failing to adhere to agreed schedules.¹⁰⁹ The terms of reference stated: ‘Within six months following the end of the renegotiation, those partnerships that have not started work on their feasibility studies shall be cancelled automatically.’¹¹⁰ The parties were also urged to cancel contracts where there had been a lack of reaction to the review process, where there was an absence of valid title, clear violation of current legal or regulatory provisions or the failure to observe professional custom and practice causing a notable loss to the state, ‘such as the freezing of deposits and “creaming off”’.¹¹¹

Other requirements sought included provision for subcontracting with local businesses and the use of Congolese labour and contributions towards the economic and social development of affected communities.¹¹² Accompanying the terms of reference was the announcement that the DRC Government would automatically own 51% of any future mining project making new mineral discoveries in the country.¹¹³

Following notification in February 2008 that the DRC Government intended to end the Sengamines diamond mining joint venture, this contract became the first to be publicly cancelled.¹¹⁴ The allocation of the rights to this concession had always been controversial.¹¹⁵ In November 2008, the Minister of Mines announced that agreement had been reached with the majority of the companies involved in the review but that six mining conventions concerning Freeport-McMoRan, First Quantum, Banro, AngloGold Ashanti, Gold Fields and Mwana Africa – licences awarded before the introduction of the 2002 mining code – were still under consideration.¹¹⁶ The outcome of the negotiations for three of the contracts which concerned concessions in Katanga were mixed. The KMT project, owned by First Quantum Minerals¹¹⁷, was cancelled in August 2009.¹¹⁸ In February 2010 First Quantum announced that it had begun arbitration at the International Chamber of Commerce’s International Court of Arbitration in Paris to defend its right to the concession.¹¹⁹ The International Finance Corporation (IFC), the World Bank’s private sector arm, has announced that it will not make new commitments in DRC until the dispute over the cancellation of First Quantum’s KMT mining project is resolved.¹²⁰ Anvil Mining’s Dikulushi convention, despite having been classified by the Commission as ‘Category C’ (contracts that should be revoked) was unchanged.¹²¹ Conclusion of the Tenke Fungurume Mining Sarl (TFM) convention, whose majority shareholder is Freeport-McMoRan, was delayed while negotiations continued.¹²² In October 2010, Freeport-McMoRan finally announced the successful conclusion of the review of TFM’s contract, confirmed by Presidential Decree in April 2011.¹²³

The final phase of negotiations left many apparently seriously flawed contracts untouched, raising doubts about the impartiality and integrity of the whole process. The mine licence review, though it had initially elicited support from NGOs, rapidly lost credibility among the population and investors alike. The Carter Center, which had been advising the Ministry of Mines, described the process as opaque and ‘a missed opportunity’.¹²⁴ Mining companies complained that as a result of the protracted negotiations they had been left in limbo, unable to raise money to develop their projects.¹²⁵ Congolese newspapers expressed misgivings about the benefits of the review, which had lasted almost 3 years, after the Minister of Mines announced that \$315 million had been recouped either in unpaid surface rents or as a result of increased entry premiums.¹²⁶ These apparent gains (after a review of 57 mining

licences and 6 conventions) were dwarfed by the estimated \$450 million lost in revenue each year through the failure of the authorities, as a result of corruption or incompetence, to collect taxes on mineral exports and industrial production.¹²⁷

In June 2010, the Ministry of Mines published a new model mining contract as an example for all future mining agreements.¹²⁸ Under the proposal, which at the time of writing had not been approved by the DRC Government, DRC would retain a 35% stake in all future joint ventures with state-owned mining companies and would require companies to pay an entry premium of at least 1% of the value of their mineral concessions to the state-owned mining partner. Joint ventures would also be required to pay 2.5% royalty fees on gross receipts from all mineral product sales. In addition, companies will have to agree to conform to the disclosure requirements of the Extractive Industries Transparency Initiative, a global standard that aims to improve accountability in the mining, oil and natural gas industries.

Annexes

Annexe 1

The AIM disciplinary process

Introduction

The Exchange has a range of measures to ensure the maintenance of orderly markets, from precautionary suspension through to disciplinary action, which can result in a company that has breached the rules being fined, censured or even having its admission cancelled. A nomad may be subject to a formal review by the Exchange to ensure that it has fully discharged its responsibilities.¹ When reviewing the actions of a nomad, the Exchange will examine its records for ‘clear evidence’ of appropriate action by the nomad to ensure compliance with the rules.² Any nomad found to have breached its responsibilities under the rules or to have impaired the reputation of AIM as a result of its conduct or judgement faces disciplinary action.³ A nomad which is the subject of disciplinary action or which can no longer meet the eligibility requirements or discharge its responsibilities may face a moratorium on acting for other AIM companies.⁴ The imposition of such a moratorium is not necessarily made public.

The Exchange may submit a statement of case concerning the conduct of a nomad or company to either the Executive Panel or the Disciplinary Committee.⁵ The sanctions available to the 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.⁶ 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 (effected by a dealing notice) or remove a nomad from the approved register.⁷ The removal of a nominated adviser is made public by an AIM notice and/or marking the register.⁸

Record of disciplinary action taken by the Exchange

The Exchange has taken disciplinary action against a small number of AIM companies and nomads. In a handful of prominent cases, censure has been public: six companies and three nomads have been named in this way, with two of these companies and both 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 one company and two nomads, imposed fines on nine other unnamed companies, and has acknowledged issuing seven warning notices against companies.⁹

Recent AIM disciplinary action

Date		Company	Nomad	Public censure	Private censure	Fine (£)	Breach	Rules engaged
							(Rule/paragraph numbering refers to the version of the AIM Rules in force at the time of the breach.)	
August 2004	Unnamed		•		•		Advice given by the nomad to delay the disclosure of price sensitive information (rule 10)	Exchange cited rule 41 in issuing censure: nominated adviser in breach of its responsibilities under rule 37 or the integrity and reputation of AIM has been or may be impaired as a result of its conduct or judgement
September 2004	Incite Holdings plc	•		•			Failure to adequately disclose changes in its financial standing	10 General disclosure of price sensitive information
August 2005	Unnamed		•		•		Incorrectly advising its client that, on admission, lock-ins were not required under the AIM Rules (rule 7)	37 To advise and guide the directors of an AIM company on their obligations to ensure compliance 39 Nominated advisers to act with due skill and care at all times [Note: RNS release by the Exchange did not state actual number of AIM rule breached]
August 2005	Durlacher Limited		•	•			Failure to advise client to publicly disclose negative price sensitive information without delay (rule 11 General disclosure of price sensitive information)	37 To advise and guide the directors of an AIM company on their obligations to ensure compliance 39 Nominated advisers to act with due skill and care at all times
August 2005	Unnamed	•			•	5,000	Failure to issue without delay a regulatory announcement concerning underperformance	11 General disclosure of price sensitive information
August 2005	Unnamed	•			•	10,000	Informing the press about previously unpublished price sensitive information prior to releasing a regulatory announcement	10 Principles of disclosure
August 2005	Unnamed	•			•		Failure to issue without delay a regulatory announcement concerning underperformance	11 General disclosure of price sensitive information

Date		Company	Nomad	Public censure	Private censure	Fine (£)	Breach	Rules engaged
							(Rule/paragraph numbering refers to the version of the AIM Rules in force at the time of the breach.)	
AD1 19 October 2007	Nabarro Wells & Co Limited		•	•		250,000	Inadequate due diligence on a client seeking admission to AIM Insufficient involvement in preparation of AIM admission document and failure to identify non-compliance Failure to advise on obligations to update the market on price sensitive information (rule 11), inadequate assessment of related party transactions, premature approval of the announcement of a reverse takeover, approving interim results questioned by auditors, failure to ensure a client applied for the admission of securities Systems and controls falling below the required standard Failure to comply with internal procedures and transaction approval procedures Inadequate record keeping to evidence compliance Delegation of nomad responsibilities to another not approved to act as a nomad	39 Nominated advisers, Sch. Six (c) The appropriateness of a company to be admitted to AIM 39 Nominated advisers, Sch. Six (b) To ensure compliance with the AIM rules 39 Nominated advisers to act with due skill and care at all times Eligibility Criteria Part 2
AD2 28 December 2007	1 unnamed company	•			•	15,000	Failure to seek advice from its nomad over payments to another company: as a result, and because the aggregated payments amounted to a substantial transaction, the company failed to announce the payments without delay	31 AIM company and directors' responsibility for compliance 12 Substantial transactions
28 December 2007	1 unnamed nomad	•			•	30,000	<i>Inter alia</i> , failure to: identify the age of audited financial information and non-compliant projections in the admission document; confirm the sufficiency of the company's working capital	39 Nominated advisers to act with due skill and care at all times
AD3 10 January 2008	9 unnamed companies	•				Range 3,000 – 15,000	Failure to meet the deadline for establishing a website containing key company information	26 Company information disclosure
AD4 1 February 2008	Subsea Resources plc	•		•			Failure: to ensure that two announcements, concerning funds that it ultimately failed to receive and the misidentification of a bullion wreck, complied with rule 10; to notify without delay price sensitive information about a change in the expectation of its performance and to notify without delay a material change between SubSea's actual and forecast trading performance; to notify without delay details of loans from a substantial shareholder, nor to aggregate the loans and apply the class tests in determining notification; to ensure that advice from its nominated adviser was sought and/or taken into account	10 Principles of disclosure 11 General disclosure of price sensitive information 13 Related party transactions 16 Aggregation of transactions 17 Disclosure of miscellaneous information 31 AIM company and directors' responsibility for compliance

Date		Company	Nomad	Public censure	Private censure	Fine (£)	Breach	Rules engaged
							(Rule/paragraph numbering refers to the version of the AIM Rules in force at the time of the breach.)	
AD5 19 June 2008	Meridian Petroleum PLC	•		•		75,000	Failure to: ensure that announcements disclosed realistic operational deadlines and/or material issues likely to affect the achievability of those deadlines; make full and accurate statements regarding the progress of certain oil wells; disclose price sensitive information without delay about operational problems and consequent drilling and production delays; ensure that advice from its nominated adviser was sought and/or taken into account	10 Principles of disclosure 11 General disclosure of price sensitive information 31 AIM company and directors' responsibility for compliance
AD6 16 July 2008 Action over preceding 6 months	4 unnamed companies	•			•	75,000	Release of misleading and unrealistically optimistic statements about the prospects and actual results of its operations; a corrective announcement was subsequently made	10 Principles of disclosure
		•			•	55,000	Failure to: disclose certain third parties share subscriptions on admission; seek advice from its nomad on disclosure of a similar proposed arrangement in its admission document	3 Admission document, Sch. Two (k), 31 AIM company and directors' responsibility for compliance
		•			•	25,000	Almost two month delay in announcing price sensitive information; eventual announcement mischaracterised the cause of a significant fall in expected profits; failure to consult its nominated adviser about potential disclosure requirements arising from increasingly adverse trading conditions	10 Principles of disclosure, 11 General disclosure price sensitive information , 31 AIM company and directors' responsibility for compliance
		•			•	15,000	Delay of several weeks in announcing price sensitive information; failure to notify an expected delay to refinancing, when it had already notified a deadline for completion of this refinancing.	11 General disclosure price sensitive information, 17 Disclosure of miscellaneous information
AD7 4 December 2008	Minmet plc	•		•		Failure to: release announcements without delay regarding a reverse takeover and certain substantial and/or related party transactions Failure to include material information in certain announcements when made; comply with the requirements of the AIM Rules concerning reverse takeovers, including (but not limited to) seeking shareholder consent for the transaction Failure on occasion to liaise appropriately with its nomad	11 General disclosure of price sensitive information, 12 Substantial transactions, 13 Related party transactions, 14 Reverse take-overs, 10 Principles of disclosure, 31 AIM company and directors' responsibility for compliance	

Date		Company	Nomad	Public censure	Private censure	Fine (£)	Breach	Rules engaged
							(Rule/paragraph numbering refers to the version of the AIM Rules in force at the time of the breach.)	
AD8 22 June 2009	Astaire Securities plc (formerly Blue Oar Securities plc)		•	•		225,000	Failure to: assess adequately a company's appropriateness for AIM prior to admission; carry out appropriate due diligence and to advise a company properly regarding certain disclosures at admission; advise a company properly in respect of certain announcements after admission Failure on one occasion to liaise appropriately with the Exchange	39 Nominated advisers, Schedule Six, 16 Due skill and care, 18 Nominated adviser responsibilities, Schedule Three, RNA OR1 Regular contact, RNA OR2 Review of notifications, RNA 19 Liaison with the Exchange
AD9 17 November 2009	Regal Petroleum plc	•		•		600,000	Failure to: take reasonable care to ensure that the over-optimistic and inaccurate information it notified regarding an oil prospect was not misleading, false or deceptive and did not omit any information likely to affect the import of the notifications; announce without delay poor test results of an oil well and the plugging and abandonment of two oil wells	10 Principles of disclosure, 11 General disclosure of price sensitive information
AD10 23 November 2009	Environmental Recycling Technologies plc	•		•			Failure to inform the market of the material underperformance of its business and about the use of funds raised to pay down a loan that were used for other purposes, instead using continued share issuances to pay down the loan Announcements which misleadingly suggested that the loan would be or had been repaid Failure to: submit the required applications or to liaise appropriately with the Exchange regarding the admission of the issued shares to trading on AIM or to make the associated required announcements; liaise appropriately with its nomad	11 General disclosure of price sensitive information, 10 Principles of disclosure, 17 Disclosure of miscellaneous information, 29 Applications for further issues, 33 Securities to be admitted, 31 AIM company and directors' responsibility for compliance

Annexe 2

Overview of Changes in Ownership Structure of Centre Group Concessions

- 1998 Laurent Kabila ‘gives’ Billy Rautenbach key concessions and installations from Gécamines’ *Groupe Centre*, Likasi, despite objections from staff and the mineworkers’ unions. Concessions include Mukondo Mountain.
September: Rautenbach’s Ridgepointe Overseas Development forms joint venture, CMG.
November: Billy Rautenbach is made Managing Director of Gécamines.
- 1999 Billy Rautenbach replaced as Managing Director of Gécamines, by rival businessman Georges Forrest.
- 2000 After dispute about missing cobalt, Kabila withdraws all of Rautenbach’s mining concessions.
South African authorities issue arrest warrant for Rautenbach on charges of theft, fraud and corruption.
- 2001 January: After pressure from Zimbabwe, John Bredenkamp takes over most of the Centre Group mines. Bredenkamp’s Tremalt Ltd forms joint venture, Kababankola Mining Corporation (KMC). Gécamines’ management protests to DRC government about the loss of its concessions and facilities. UN Panel of Experts allege that Rautenbach and Bredenkamp a front for Zimbabwean and Congolese elite.
July: Billy Rautenbach files claim against DRC and Gécamines at ICSID.
- 2002 UN Panel Report accuses Rautenbach, Bredenkamp and Gertler (in relation to his diamond company, IDI) of improper business activities in DRC. UN Panel recommends imposing a travel ban and financial restrictions on Bredenkamp.
- 2003 Withdrawal of ICSID claims and settlement of the dispute between Rautenbach and Gécamines/DRC.
- 2004 February: Mukondo Mine and other ‘Zimbabwean’ concessions divided between Rautenbach and Bredenkamp. Boss Mining joint venture created.
Mukondo Mining Company formed between Shaford Capital (a Rautenbach company) and KMC. Gécamines forced to cede its title to Mukondo Mining.
- 2005 Bredenkamp agrees to sell KMC’s share of Mukondo’s production to Rautenbach’s processing company, Congo Cobalt Company (CCC).
- 2006 CAMEC acquires Rautenbach’s International Metal Factors Ltd (IMF) and Majestic Metal Trading Ltd to become owner of Congo Resources Joint Venture (CRJV). Rautenbach had set up CRJV to sell copper and cobalt.
CAMEC also acquires Sabot, Rautenbach’s transport company.
June: Prairie International (majority owned by a trust benefiting the family of Dan Gertler) acquires KMC from Bredenkamp and 50% of Mukondo. New venture called Savannah Mining.
UN refers to Rautenbach as ‘person of questionable standing’ and criticises CAMEC’s lack of due diligence.
- 2007 CAMEC purchases BOSS Mining, including 50% of Mukondo.
Dispute between Prairie and CAMEC leads to halt in production at Mukondo.
Commission to review mining licences starts work.

After CAMEC attempts to take over another company, Katanga Mining, its licence for the Boss Mining concessions is revoked.

Rautenbach declared *persona non grata* and deported from DRC.

Simberi in dispute with CAMEC over prior claim of its subsidiary, PTM Minerals, to Kakanda tailings and other mineral deposits held by CAMEC.

2008 CAMEC enters into an agreement with DGI's Prairie to create the JVC DRC Resources Holdings Limited. CAMEC acquires Prairie's 50% share of the JVC while, in return, Prairie receives nearly 40% stake in CAMEC. Arrangement approved by DRC government.

CAMEC is the first company to announce agreement with Gécamines/DRC in relation to the Mine Licence Review.

Simberi finalising a joint venture with Gécamines for disputed Kakanda assets.

US Government places Billy Rautenbach and Ridgepointe Overseas Developments on the sanctions list for providing financial and other support to senior regime officials during Zimbabwe's intervention in DRC.

US Government also places John Bredenkamp and his companies, including Tremalt, on the sanctions list for financial support to Zimbabwe.

2009 January: EU adds Rautenbach and Ridgepoint Overseas Development and Bredenkamp and his companies including Tremalt to the sanctions list.

Take-over bid for CAMEC by London Main Market-listed but Kazakhstan-based, Eurasian Natural Resource Company (ENRC).

UK Treasury permission required to allow Rautenbach's shares in CAMEC to be purchased because of the sanctions in force.

Rautenbach agrees plea bargain with South African prosecutors: he pleads guilty to 326 charges of fraud as a representative of his company, SA Botswana Hauliers Ltd and pays a total of 40 million Rand to the South African authorities.

2010 ENRC completes its acquisition of CAMEC and maintains 'key operational' staff in DRC, including Laurent Décalion, CAMEC's regional manager who had formerly worked for Rautenbach as Chairman and Managing Director of Boss Mining and CCC.

John Bredenkamp identified as a covert BAE Systems agent in affidavits obtained by South African investigators and the Serious Fraud Office (SFO). Bredenkamp alleged to have made corrupt payments to South African politicians. BAE Systems cases settled in US and UK. Related criminal investigation in South Africa closed.

Annexe 3

First Quantum, ENRC and disputed DRC mining assets

Cancellation of First Quantum Minerals's Kolwezi Mining Project

First Quantum Minerals Ltd. was informed by letter on 21 August 2009 by DRC's Prime Minister Muzito, following a meeting of the Council of Ministers on 4 August 2009, that its Kolwezi Project mining contract was to be revoked or cancelled.¹ The Kolwezi exploitation permit (No. 652) was held in the KMT joint venture, owned 65% by First Quantum's subsidiary Congo Minerals Developments Limited (CMD), 12.5% by Gécamines, 10% by the Industrial Development Corporation of South Africa (IDC), 7.5% by the International Finance Corporation (IFC) and 5% by the Congolese government.²

The reasons underlying the revocation outlined in the Prime Minister's letter of 21 August are restated by First Quantum:³ misdated KMT decree issue (according to the Prime Minister's letter: 'The decree No. 04/020 of 15 March 2004 bearing authorisation of KMT Sarl's creation precedes the notarised articles of association of KMT Sarl...'); failure to commence commercial production within 44 months; failure to respect the terms of the initial tender offer ('under which an upfront payment of USD 130 million in favour of Gécamines was foreseen, with an apportionment of the share capital of 40% for Gécamines and 60% for CMD'); refusal to agree to pay increased royalties;⁴ and refusal to agree to cancel the Management Fees provided for in the Contract of Association.⁵

According to First Quantum, the claims made in the Prime Minister's letter as the basis for revocation of the contract had been discussed with government officials and refuted during the mining review process and had no legal basis.⁶ CMD declined to return KMT's exploitation permit, prompting the DRC Mining Registry to unilaterally cancel KMT's exploitation permit on 25 August 2009 and to issue a new exploitation permit to Gécamines.⁷ In response, local proceedings were filed in DRC by CMD and KMT 'to seek protective relief pending resolution by international arbitration.'⁸

On 16 September 2009, First Quantum 'had no choice but to announce' that it had suspended construction at its Kolwezi Project following an order by the General Prosecutor of Katanga on 15 September 2009 to seal KMT's facilities.⁹ First Quantum disputed the legality of the order, but found it necessary to file notices of *force majeure* under the DRC Mining Code and Contract of Association in response to the cancellation of the exploitation permit and the DRC Government's interference with the company's activities.¹⁰

The suspension of construction at the 74% complete Kolwezi Project resulted in the immediate loss of approximately 700 jobs in the Kolwezi area.¹¹ Given the DRC Government's actions, First Quantum was advised that there was no longer any purpose in pursuing interim relief through the local courts.¹² The company put a carrying value on the Kolwezi project of \$765.6 million, comprising the initial acquisition cost of \$387.6 million and capital expenditures of \$378.0 million. The company warned that '[t]he final outcome of the revisitation process remains uncertain and may result in the impairment or loss of all or part of the Company's investment which could be material.'¹³

On 21 October 2009, KMT and CMD appeared before the *Tribunal de Grande Instance* (higher civil court) in Kinshasa to note the withdrawal of the proceedings, a step which was contested by the DRC Government and Gécamines.¹⁴ According to First Quantum, it learned by way of a press conference called by the Vice Minister of Mines that the court had rendered judgment on 28 October 2009. First Quantum states that the judgment, served on CMD on 23 November 2009, 'concluded on the basis of no evidence that there was not a clerical error in the Decree granting authorisation for the constitution of KMT, but rather there was a formal defect. The Local Court also found without any evidence presented that there was fraud committed in the constitution of KMT and held that for this reason KMT did not exist in law.'¹⁵ The court ruled CMD and KMT to pay to Gécamines and the DRC Government damages and interest equivalent to US \$3,000,000 and court costs.¹⁶

On 21 December 2009, CMD and KMT filed an appeal on the ruling of the lower court.¹⁷ The appeal was held by the Court of Appeal of Kinshasa/Gombe at less than 48 hours' notice to CMD and KMT on 24 February 2010.¹⁸ Gécamines and the DRC Mining Registry (CAMI) requested the confirmation of the lower court judgment and also made an unsupported request for up to US\$12 billion in damages to be awarded to Gécamines and CAMI. KMT's lawyers objected to the proceedings. First Quantum was notified of the Appeal Court's judgement on 7 April 2010, which confirmed the award of approximately US\$12 billion in damages against CMD and KMT.¹⁹ First Quantum states:²⁰ 'The Company continues to believe the allegations against KMT and CMD have no merit and intends to file for a "cassation", which is the final venue of appeal in the RDC.... The Company believes there is no legal basis for the cancellation of KMT's exploitation permit, the sealing of the KMT facilities, Gécamines' cancellation of the Contract of Association, or the decision of the Local Court and Local Appeal, and... that CMD and the KMT Project's other contributing partners, the IFC and the IDC, continue to have a valid and binding contract with the RDC [DRC] and Gécamines.'

On 16 July 2010, KMT and CMD were summoned by DRC, Gécamines and CAMI to appear before the Court of Appeal of Kinshasa to wind up KMT, appoint a liquidator and value its assets to enforce the Appeal Court's earlier judgement.²¹ On 2 August 2010, KMT received notice of a judgment, reached by the Appeal Court of Kinshasa on 27 July 2010, appointing a Congolese liquidator in order, notably, to [RAID's translation]:²² 'value the needs and debts of the company KMT being liquidated; and carry out liquidation transactions including:... to pay the debts;... and to transform the assets into cash, to transfer them to third parties either by selling them or off-setting them against the company's debts' First Quantum stated:²³ 'The Company believes that this judgement is yet a further step taken by the RDC [DRC] and Gécamines to transfer the assets of the Kolwezi Project to a third party notwithstanding and without regard to the on-going international arbitration before the ICC' (see below).

International Chamber of Commerce International Court of Arbitration

In the interim, whilst proceedings continued and intensified in the DRC domestic courts, on 1 February 2010, First Quantum Minerals Ltd. announced that it had, along with its partners the IFC and IDC of South Africa, commenced international arbitration at the International Chamber of Commerce (ICC) International Court of Arbitration in Paris, France against Gécamines and the Democratic Republic of Congo.²⁴ First Quantum stated that its CMD subsidiary had received a letter on 11 January 2010 from Gécamines cancelling the Contract of Association. The Company viewed international arbitration as necessary to protect the investment of CMD, IFC and IDC, including seeking interim orders to protect and preserve the KMT site.²⁵ While commencing international arbitration pursuant to the Contract of Association, the company and its partners restated their intent to seek a negotiated solution.²⁶

On 19 August 2010, the International Chamber of Commerce arbitration tribunal issued two temporary orders in relation to the Kolwezi Project, pending its consideration of the claimant's request for interim measures.²⁷ The first order prohibited DRC and Gécamines from taking any action to transfer or allow the transfer of the Kolwezi tailings exploitation permit covering the Kolwezi Project. The second prohibited enforcement of the Appeal Court of Kinshasa judgment ordering CMD and KMT to pay more than US\$12 billion to Gécamines, CAMI and DRC.

On 12 October 2010, the ICC Tribunal ruled on the interim measures sought by CMT and its project partners, maintaining its temporary order that DRC and Gécamines could not enforce directly or indirectly the 10 March 2010 decision of the DRC Court of Appeal, to include the US\$12 billion damages judgment.²⁸ According to First Quantum, '[t]his ruling impacts the ongoing efforts by the DRC to enforce the Court judgment through the appointment of a Liquidator and means that the DRC cannot liquidate First Quantum's assets in the country in payment of the damages claim.'²⁹

First Quantum has also stated:³⁰ 'Reported statements suggesting the DRC has won the case or now has a right to transfer the Kolwezi assets are completely without foundation. The ICC Tribunal has made no rulings on the merits of the case and the hearing of the arbitration is not scheduled until early 2012. The Tribunal in fact concluded that CMD, IFC and IDC established *prima facie* that they have

valid claims on the merits. Further, the Tribunal did not grant any orders with respect to the transfer of the Kolwezi tailings permit, which had already been transferred to a British Virgin Islands registered company in August 2010’

In August 2010, London-listed Eurasian Natural Resources plc had announced that it had acquired an indirect interest in KMT through its purchase of shares in Camrose Resources Limited, which, though BVI- and DRC-registered entities had acquired the KMT licence (see below). Commenting on the ICC Tribunal’s interim ruling, ENRC has stated:³¹ ‘Although ENRC is not a party to the arbitration proceedings, the tribunal’s approval of the DRC’s right to transfer the KMT licence at the centre of this dispute, further validates the extensive legal due diligence undertaken by ENRC before entering into the Camrose transaction.’

The acquisition of the KMT exploitation licence by Eurasian Natural Resources plc

On 3 February 2010, during the Indaba mining conference held in Cape Town, South Africa, DRC’s Minister of Mines publicly stated that Gécamines had been instructed to start negotiations with third parties to create a new partnership in relation to the KMT Project.³² In response, First Quantum ‘published notices in certain widely circulated publications advising of CMD’s, IFC’s and IDC’s valid contractual rights, and the ongoing ICC International Arbitration with respect to the KMT Project and warning third parties not to interfere with KMT legal title or attempt to induce a breach of CMD’s, IFC’s and IDC’s contractual relations with the RDC and Gécamines.’³³

On 20 August 2010, the day after the ICC Tribunal issued its temporary orders, Eurasian Natural Resources Corporation plc (ENRC) announced that its wholly-owned subsidiary ENRC Congo BV had privately purchased 50.5% of the outstanding common shares of Camrose Resources Limited.³⁴ The Camrose shares had been purchased from Silvertide Global Limited, Zanette Limited and Cerida Global Limited, companies which ENRC described as ‘held by the Gertler Family Trust’.³⁵

Camrose is described as holding indirect interests in five copper and cobalt exploitation licences in DRC, including a 70% interest, via an entity called the Highwind Group, in Metalkol Sarl, which ENRC states as owning ‘the tailings exploitation licence covering the Kolwezi Tailings Site (otherwise known as the Kingamyambo Musonoï Tailings, or “KMT”) (PER 652)’.³⁶ The Highwind Group, entirely owned by Camrose, comprises Highwind Properties Limited, Pareas Limited, Interim Holdings Limited and Blue Narcissus Limited. According to ENRC, Metalkol’s 70% interest in KMT is established under the terms of a joint venture agreement dated 7 January 2010, between the Highwind Group, DRC, Gécamines and Simco Sprl, the latter described as ‘an entity associated with Gécamines’.³⁷

The price paid for the acquisition of Camrose was US\$175 million.³⁸ Moreover, ENRC agreed to provide Camrose with a US\$400 million shareholder loan facility and a guarantee of US\$155 million to secure repayment by Cerida of outstanding debt.³⁹

According to First Quantum, the DRC Government also issued a statement announcing the ENRC acquisition.⁴⁰

First Quantum describes Camrose’s holdings as ‘a purported indirect 70% interest in the tailings exploitation permit covering the Kolwezi Project’.⁴¹ According to First Quantum:⁴²

These announcements [of the ENRC acquisition] appear to indicate a clear contradiction of the Tribunal’s orders. First Quantum believes that CMD and the Kolwezi Project’s other contributing partners, the IFC and the IDC, continue to have exclusive rights and a valid and binding contract with RDC and Gécamines relating to the Kolwezi Project, which are currently the subject of the arbitration before the Tribunal. ENRC has not contacted First Quantum with respect to the status of the arbitration or its legal and contractual rights to the Kolwezi tailings exploitation permit and its over \$400 million investment in plant and infrastructure on site. First Quantum further believes that any purported transfer of the tailings exploitation permit covering the Kolwezi Project is ineffective and contrary to the orders issued by the Tribunal.

On 9 September 2010, ENRC describes itself as ‘mindful of the dispute between FQM, Gécamines and the Government of the DRC,’ stating:⁴³

That dispute arises from the contract revisitation process.... Following that review, the relevant rights were withdrawn from Kingamyambo Musonoi Tailings Sarl (‘KMT’) by the Government of the DRC in August 2009. Congo Mineral Developments Ltd (‘CMD’), a subsidiary of FQM and shareholder in, KMT challenged the withdrawal of those rights in the courts of the DRC. Those courts ruled in October 2009 that the withdrawal of the rights was lawful. ENRC carefully considered the written judgments of the DRC courts and relevant DRC laws and, having done so, was satisfied that Gécamines had the right to transfer to Metalkol the permit to exploit the Kolwezi tailings.’

ENRC further states that the 7 January 2010 agreement which gave the Highwind Group the right to acquire the rights to exploit the Kolwezi tailings ‘was signed more than four months after the withdrawal of KMT’s rights to exploit the Kolwezi Tailings site and after the decision of the DRC courts that those rights had been lawfully withdrawn.’⁴⁴ In respect of the ICC arbitration, ENRC states:⁴⁵

Those arbitration proceedings, to which ENRC is not a party, have been brought under a contract to which ENRC is also not a party, and have no bearing on the transaction into which ENRC Congo BV has entered. PER652 was issued to Metalkol prior to FQM [First Quantum]’s public announcement on 21 August 2010 of the procedural order of the ICC arbitration tribunal. In light of this, there is no basis for FQM alleging any breach by ENRC of the procedural order of the ICC arbitration tribunal and ENRC responded today to FQM pointing this out

First Quantum, in its public response to the ENRC acquisition, observes, despite ENRC’s statement that the ICC arbitration has no bearing on the ENRC Congo BV transaction, that the Highwind Group, in its joint venture contract with DRC and Gécamines, ‘has contracted to advise on and pay for the legal cost of DRC and Gécamines in the ICC arbitration’.⁴⁶ First Quantum states:⁴⁷

In First Quantum’s view ENRC is relying on a legalistic explanation of its actions in justifying its Highwinds Group acquisition, based on the assertion that the expropriation of the Kolwezi Project tailings permit from CMD was approved by the DRC’s Courts. It has failed entirely, however, to address the wider questions of international law, governance and business ethics raised by the wrongful cancellation of the Kolwezi Project tailings permit, the subsequent transfer of the Kolwezi tailings permit to the Highwinds Group, while the parties are participating in an international arbitration, and the acquisition by ENRC of this highly disputed asset.

On 15 September 2010, First Quantum, through its subsidiary CMD, filed a claim in BVI in relation to the Kolwezi tailings project against Highwind Properties Limited, Pareas Limited, Interim Holdings Limited and Blue Narcissus Limited (the ‘Highwinds Group’), all subsidiaries of ENRC. The legal action includes claims for inducement of breach of contract and interference with contractual relations and property rights. According to First Quantum, it had taken this legal action ‘to pursue its rights in relation to the unlawful expropriation of its legal title to the Kolwezi Project.’⁴⁸ First Quantum further stated:⁴⁹ ‘The Company believes that the expropriation of the Kolwezi Project has been orchestrated by certain interests within the government of the DRC and third parties at First Quantum’s expense.’

First Quantum states that it wrote to ENRC in June 2010 when ENRC’s interest in the Kolwezi Project was first reported in the media, explicitly warning that ‘any transfer of the asset to a third party whilst the ICC arbitration was ongoing would be unlawful; would constitute a breach of the rights of First Quantum and of its partners in the Kowlezi [sic] Project...; and would expose any third party participating in such a transfer to legal action.’⁵⁰ According to First Quantum, ‘ENRC did not respond to the letter, nor did it make any contact with First Quantum prior to announcing its acquisition of Camrose.’⁵¹ For its part, ENRC says that ‘FQM did not respond to a previous letter from ENRC, suggesting a dialogue. Instead of accepting that offer, FQM has made statements to try to

discredit ENRC and to interfere with ENRC's rights to develop the Camrose joint venture and the Kolwezi tailings project.⁵²

Felix J Vulis, the then Chief Executive Officer of ENRC, states:⁵³ 'Prior to the acquisition of Camrose, ENRC undertook an extensive due diligence process, and ENRC remains fully satisfied with the findings. The licence was withdrawn by the DRC Government in August 2009, and the Court of Appeal confirmed that the withdrawal was lawful. ENRC is not a party to arbitration or legal proceedings with First Quantum; any dispute that First Quantum has is with the relevant DRC authorities.'

Clive Newall, President of First Quantum states:⁵⁴ 'First Quantum is surprised that the Board of a constituent company of London's FTSE 100 index laying claim to the highest standards of governance, transparency and propriety could have approved acquiring an asset with such a controversial provenance, and one still subject to international arbitration, and where First Quantum is seeking an order compelling the return of its asset.'

Action in DRC against First Quantum's other operations and subsidiaries: Comisa and Frontier

On 8 March 2010, First Quantum and its DRC subsidiaries Comisa and Frontier were served notices of a case introduced by Sodimico (Société de Développement Industriel et Minier du Congo – a DRC state mining company) against DRC in the DRC Supreme Court of Justice requesting the cancellation of a February 2000 letter from the Minister of Mines, which Sodimico alleged wrongfully withdrew mining titles belonging to Sodimico.⁵⁵ On 21 May 2010, the Supreme Court restored certain mineral rights to Sodimico.⁵⁶

According to First Quantum, the rights restored to Sodimico 'conflicted with mineral rights held by Frontier and Comisa. The conclusions of the Supreme Court are impossible to reconcile with the known history of the mineral rights in question.'⁵⁷

The Supreme Court's decision was followed on 10 August 2010 and 25 August 2010 by notification from the DRC Mining Registry of the withdrawal, respectively, of Frontier's and Comisa's mining and exploration titles based on instructions from the Minister of Mines.⁵⁸

On 27 August 2010, First Quantum suspended operations at the Frontier mine.⁵⁹ According to the company, '[t]he threats by Sodimico rendered it impossible to continue safe and orderly operations at Frontier.'⁶⁰ The mine had employed 1500 workers. First Quantum calculated an historical carrying value of the assets and associated liabilities of more than \$300 million.⁶¹

On 1 October 2010, First Quantum, through its subsidiaries International Quantum Resources Limited, Frontier and Comisa, began international arbitration through the International Centre for Settlement of Investment Disputes (ICSID) in Washington, USA against the Democratic Republic of Congo.⁶² First Quantum states:⁶³ 'The arbitration relates to the unjustified withdrawal and reissue of certain mining titles (the "Permits") held by Frontier and Comisa, in violation of the provisions of the DRC Mining Code and applicable laws.'

In addition, Sodimico obtained a judgement on 12 March 2010 against Compagnie Minière De Sakania Sprl (Comisa) and First Quantum from the *Tribunal de Commerce* of Lubumbashi ordering them to pay to Sodimico \$17.3 million for the value of studies made by Sodimico over titles (the Lonshi deposits) now held by Comisa and a further \$40.0 million as additional unknown damages.⁶⁴ First Quantum disputes the award and states:⁶⁵ 'Comisa did not use any geological data or studies belonging to Sodimico and there is no factual or legal basis for the judgment.' Comisa has filed an appeal of the judgment.

Annexe 4

White Nile

White Nile made its stock market debut as a ‘shell’ company in February 2005. The Company was incorporated in Guernsey on 17 December 2004 with the objective of identifying and acquiring projects in the natural resources sector with particular emphasis on oil projects within Africa.¹ On 10 February 2005, only six days after the company had raised £9 million and had been admitted to AIM, White Nile announced a deal with the government of Southern Sudan and an oil company, Nile Petroleum Corporation, which had been set up by the southern Sudanese leadership to look after its oil interests. White Nile immediately ran into difficulties with the regulator of the London Stock Exchange and with Total, the French Petroleum company, which contested the legality of its claim to the Sudanese oil concession. White Nile’s oil block encompassed more than half of the concession claimed by the consortium led by Total.²

The announcement of the agreement with the Southern Sudanese leadership caused a surge in the value of the shares (which rose 1,275 per cent in a week) and the London Stock Exchange suspended trading in White Nile shares for three months. AIM regulation was concerned that the deal counted as a reverse takeover and required the company to produce a detailed prospectus outlining the fine details of the proposed deal with the southern Sudan leadership.³ In May 2005, the London Stock Exchange again halted trading in the company's shares, just four days after the stock had returned from suspension. The regulator said it feared there could not be an orderly market in the shares. The founding shareholders including Phil Edmonds, White Nile’s chairman, who owned 9.7 per cent, had been unwilling to sell, leaving speculators chasing a small number of freely traded shares. The Exchange warned against short selling White Nile shares. Short sellers sell stock they do not own in the expectation that they will be able to buy it back more cheaply at a later date, but the Exchange said it did not believe there were enough White Nile shares available to be able to settle the trades.⁴

The dispute with Total concerned the allegation that it had a valid prior agreement with the Government in Khartoum which had been obtained before the outbreak of the civil war between the mainly Arab north and the Christian south. The French company claimed that it had signed an exploration and production sharing agreement (EPSA) for Block B in south-eastern Sudan in 1980 which overlapped with White Nile’s concession (Block Ba). Although Total had left Sudan in 1985 when civil war broke out, the company claimed that it had always maintained its rights to the concession.

In mid-2005, Total made a pre-action disclosure application to the Court in London concerning White Nile’s title rights over Block Ba.⁵ An initial ruling by the High Court in May 2006 was upheld by the Court of Appeal in January 2007, and White Nile was required to disclose to Total the documents referred to in the Company's AIM admission document of 19 May 2005. White Nile expressed its unhappiness with the matter being decided by English courts and pointed out that Total had not instituted substantive proceedings against the company.⁶ In February 2007 White Nile lodged a petition for permission to appeal to the House of Lords, which was refused.

According to Total, White Nile's contract not only clashed with the French company’s claim but also contravened the inter-Sudanese peace agreements in that prior contracts – and Total’s contract had been updated in December 2004 – were not open for negotiation.⁷ ‘article 4 of the agreement stipulated that all contracts signed with the Sudanese authorities before that date (January 9, 2005) would be abided by.’

On June 17, 2007, the National Petroleum Commission, a joint institution enacted by the peace agreements between North and South Sudan, definitively settled the dispute by acknowledging Total's exclusive rights on Block B.⁸ In July 2007 Sudan asked White Nile to withdraw from the disputed oil block in the south.⁹ In December 2008, White Nile announced that it was abandoning its oil and gas exploration business.¹⁰

War in Sudan

Sudan's civil war, which pitted the Muslim north against Christians and animists in the south, left more than 2 million people dead.¹¹ Apart from an 11-year period from 1972 – 1983, southern Sudan had been at war continuously since 1956.¹² In 2000 President Omar Hassan al-Bashir was reelected, and his National Congress Party won 340 out of 360 seats in the parliament in deeply flawed elections boycotted by all major opposition parties. The country experienced serious and violent ethnic and religious conflict, including a rebellion in the South led by the Sudan People's Liberation Movement and a rebellion in Darfur led by the Sudan Liberation Movement/Army and the Justice and Equality Movement. Peace talks began in 2002. On 9 January 2005, the government and the SPLM signed a Comprehensive Peace Agreement (CPA) that gave SPLM representation in the government. The parties adopted a constitution in July 2005, and, in September 2005, they installed a government of National Unity to serve until the holding of elections in 2009. The state of emergency was lifted on 9 July 2005.¹³

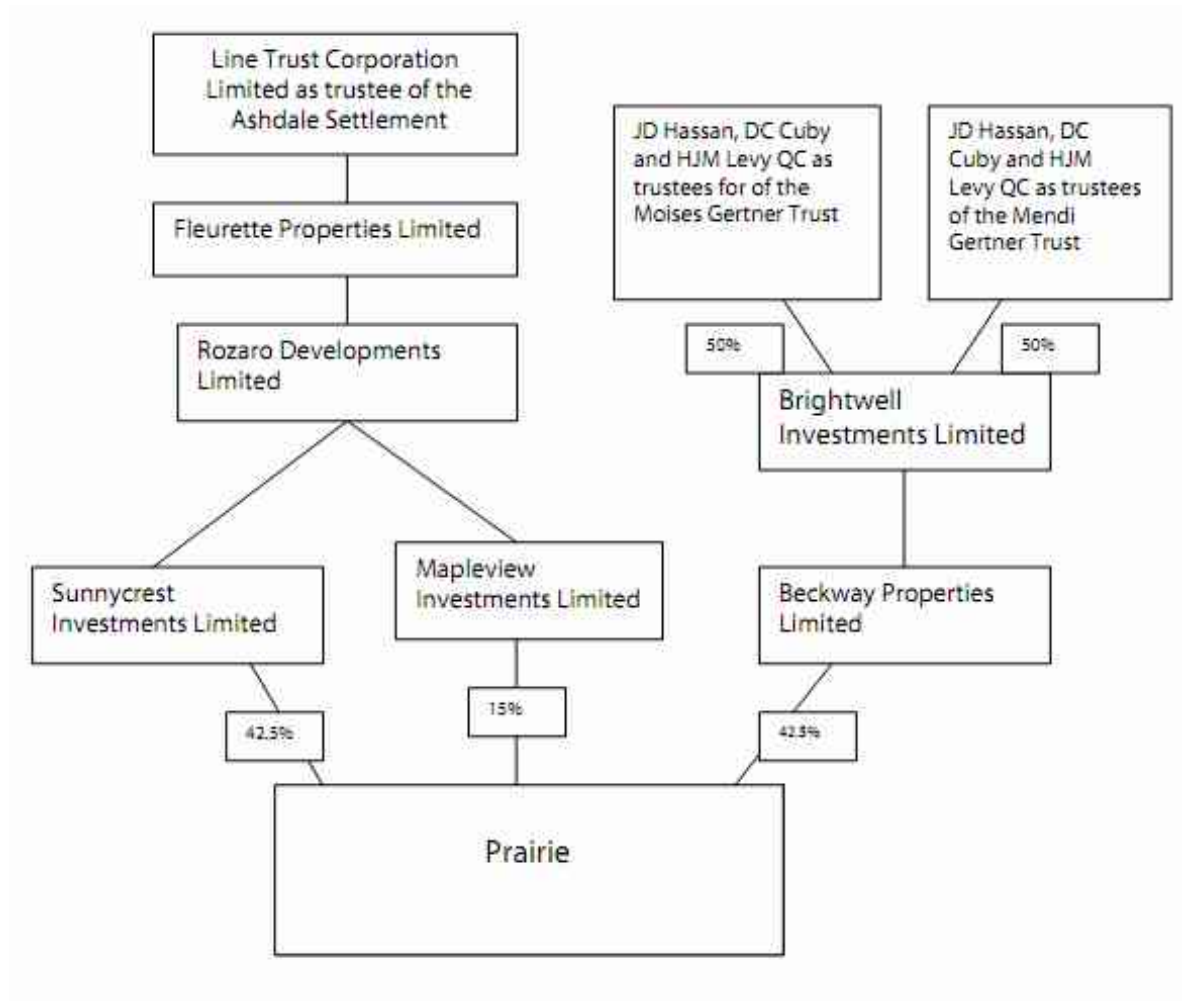
After the signing of the CPA, violence in the South decreased, but insecurity continued due to militia activity. Government forces routinely killed, injured and displaced civilians, and destroyed clinics and dwellings intentionally during offensive operations. There were confirmed reports that government-supported militias intentionally attacked non-combatant civilians, looted their possessions and destroyed their villages.¹⁴

In 2005 the UN reported 'a disturbing pattern of disregard for basic principles of human rights and humanitarian law' being perpetrated in Darfur by both the armed forces of the Sudan and its proxy militia known as the Janjaweed. The World Health Organisation reported that, as a result of the conflict, at least 70 thousand civilians had died, more than 1.9 million civilians were internally displaced, and an estimated 210 thousand refugees had fled to neighbouring Chad since the start of the Darfur conflict.¹⁵

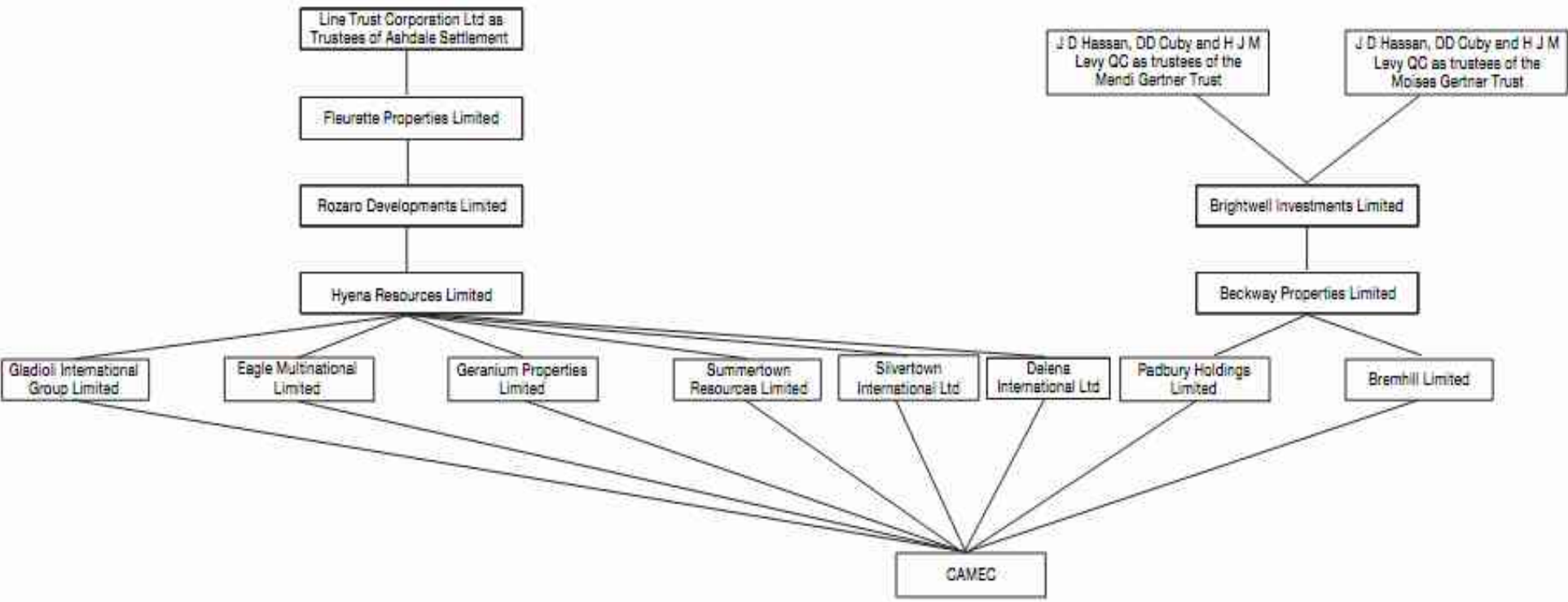
Annexe 5

CAMEC's acquisition of DRC Resources Holdings shares from Prairie: organisation charts

The ownership of Prairie prior to CAMEC's acquisition of shares in DRC Resources Holdings Limited (reproduced from CAMEC, Proposed acquisition of shares in DRC Resources Holdings Limited, Circular to shareholders, 6 May 2008, D: Organisation charts, 1. Current organisation, p.52)



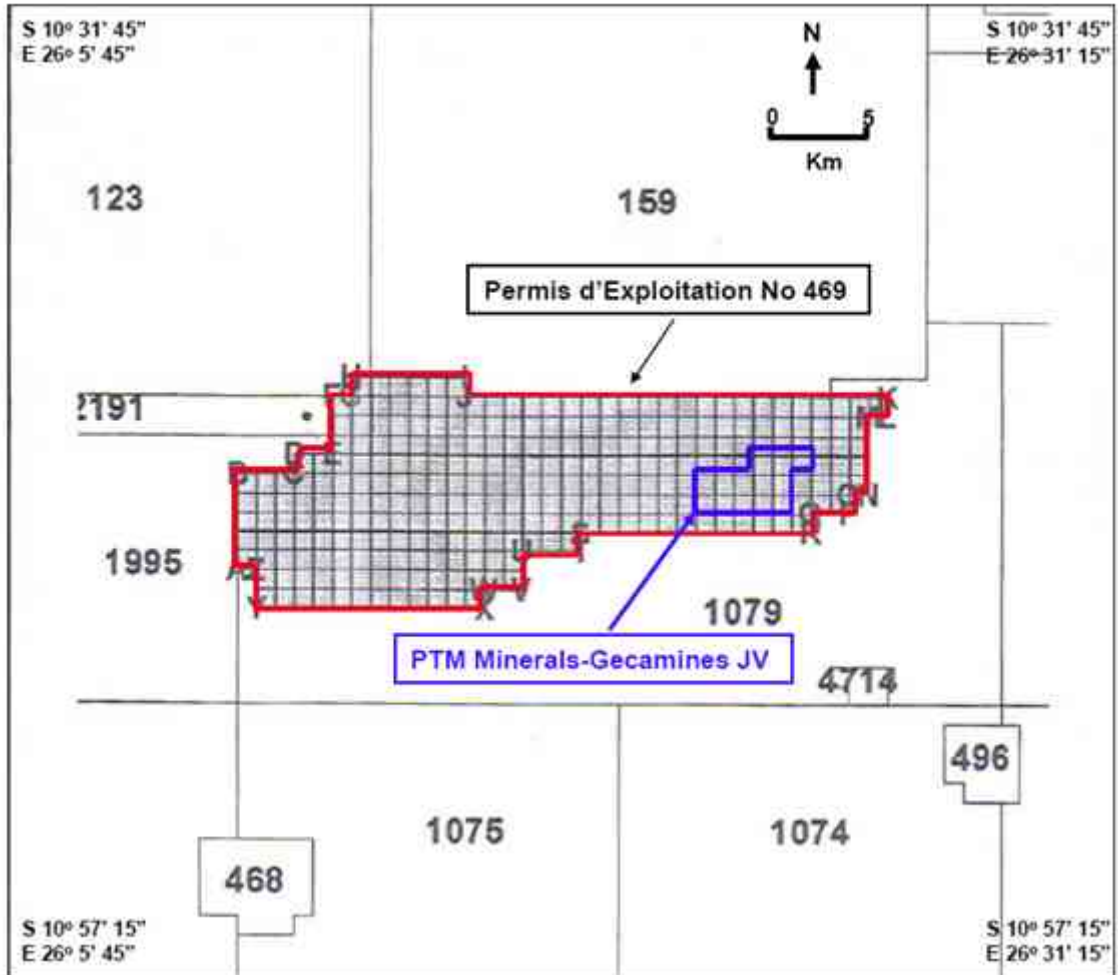
Organisation of the corporate and trust members of the Concert Party at completion of CAMEC's acquisition of shares in DRC Resources Holdings Limited (reproduced from CAMEC, Proposed acquisition of shares in DRC Resources Holdings Limited, Circular to shareholders, 6 May 2008, p.52)



Annexe 6

PTM's disputed concession PE469

Concession PE469 showing the area claimed by Simberi's subsidiary PTM



Endnotes

Main submission

¹ 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, available at: <http://www.un.org/ga/search/view_doc.asp?symbol=S/2006/525>.

² *Ibid.*, paragraph 132 and table.

³ *Ibid.*

⁴ London Stock Exchange, *AIM Disciplinary Procedures and Appeals Handbook*, February 2007, p. 2.

⁵ *Black's Law Dictionary* definition of due diligence.

⁶ OECD, *OECD Due Diligence Guidance For Responsible Supply Chain Management of Minerals from Conflict-Affected and High-Risk Areas*, 2010, p. 8, available at: <<http://www.oecd.org/dataoecd/62/30/46740847.pdf>>.

⁷ United Nations, Human Rights Council, Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*, A/HRC/17/31, 21 March 2011, paragraph 6, available at: <<http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>>. The *Guiding Principles* are due for consideration by the Human Rights Council at its June 2011 session.

⁸ *Ibid.*, principle 13, Commentary.

⁹ *Ibid.*, principle 17, Commentary.

¹⁰ See *intra*, The initial award of the concessions, p. 29 and Underlying wartime agreements with other parties: allegations made against the predecessor companies, p. 32.

¹¹ The Group of Experts was appointed pursuant Security Council resolution S/RES/1533 (2004), paragraph 10. The arms embargo was originally imposed by Security Council resolution S/RES/1493 (2003) on the eastern part of DRC and extended under resolution S/RES/1596 (2005) to the whole country.

¹² *Report of the Group of Experts on the Democratic Republic of the Congo*, paragraph 125 (c).

¹³ London Stock Exchange plc, *A guide to AIM*, 2010, pp. 4 – 6, available at:

<<http://www.londonstockexchange.com/companies-and-advisors/aim/documents/a-guide-to-aim.pdf>>.

¹⁴ In 2005, 2006 and 2007, respectively, 120 out of 519, 124 out of 462, and 87 out of 284 new admissions were international. See *AIM Market Statistics*, May 2009, Summary: AIM since launch.

¹⁵ Bermuda, the British Virgin Islands and the Cayman Islands account, respectively for 18 (8.1%), 34 (15.3%) and 35 (15.8%) of international AIM companies (totalling 222) by number, as of October 2010. Calculations using data from *AIM Companies: country of Operation or Incorporation*, October 2010, sheet RawData, available at:

<<http://www.londonstockexchange.com/statistics/companies-and-issuers/aimstatistics.xls>>.

¹⁶ *AIM Market Statistics*, October 2010, Turnover by Sector: including number of companies and market capitalisation by sector, available at: <<http://www.londonstockexchange.com/statistics/historic/aim/october-2010.pdf>>.

¹⁷ After combining with Randgold Resources Limited: see Moto Goldmines Limited, RNS 8122A, AIM admission to be cancelled', 15 October 2009, available at: <<http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail.html?announcementId=10232411>>.

¹⁸ Following the suspension of the Company's ordinary shares from trading on AIM on 17 March 2008, the Company was required to ensure that it was acquired by another company (a reverse takeover) or otherwise implement its Investing Strategy within the following six months. It failed to do so, and, after being suspended from trading for six months, Xceldiam's admission to AIM was cancelled. See Xceldiam Limited, RNS Number 6994D, 'Confirmation of Cancellation', 17 September 2008, available at: <<http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail.html?announcementId=1961458>>.

¹⁹ RNS 6457L, 'Update on completion of merger between Nikanor PLC and Katanga Mining Limited', 11 January 2008, available at: <http://www.nikanor.co.uk/m/press_display.asp?Id=2008/11jan2008>.

²⁰ The market capitalisation (millions) of AIM-traded mining companies with DRC assets was as follows: African Diamonds plc £38.49, Brinkley Mining plc £6.41, CAMEC £823.3, Copper Resources Corporation £122.55, Moto Goldmines Limited £105.1, Mwana Africa plc £116.35, Xceldiam Limited, £0 (suspended). The market capitalisation of companies reflects the London-listed element only. All figures from AIM – Company price search, available at:

<<http://www.londonstockexchange.co.uk/NR/exeres/4B75D51D-F69F-4323-AFDD-0526967E5611.htm?FRAMELESS=false&bsg=true&ns=petroco>>.

²¹ See *intra*, Consolidation of the DRC concessions, p. 17, *et seq.*

²² CRC owns a 75 per cent interest in *Minière de Musoshi et Kinsenda*, which holds three high-grade deposits in the Katanga Province of the DRC. See CAMEC, RNS 7104S, 'Acquisition of Significant Interest in Copper Resources Corporation', 21 April 2008, available at: <<http://investors.camec-plc.com/news-item?item=63451699538004>>; also RNS 5268C, 'Acquisition of Further Interest in Copper Resources Corporation', 1 May 2008, available at: <<http://investors.camec-plc.com/news-item?item=63451699682078>>.

²³ In December 2008, CRC disenfranchised CAMEC by withdrawing CAMEC's entitlement to voting rights, dividends and any return of capital because of CAMEC's failure to extend an offer to CRC shareholders (see Copper Resources Corporation, RNS 8819J, 'Further re CAMEC's Shareholding', 10 December 2008, available at: <<http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail.html?announcementId=2043936>>). CAMEC responded that the board of CRC had 'acted improperly in seeking to

disenfranchise CAMEC's shareholding in CRC' and would use 'all avenues available to it to get the shares it holds re-enfranchised'. (CAMEC, RNS 9800J, 'Comment re Copper Resources Corporation', 11 December 2008, available at: <http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail.html?announcementId=2045240>). CAMEC alleged that CRC 'acted improperly and solely in the interests of Metorex Limited', an allegation refuted by CRC. (See, respectively, CAMEC, RNS 5165K, 'Interim results', 19 December 2008, available at: <http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail.html?announcementId=2052737>; CRC, 'Copper Resources Corporation notes the comments made by Central African Mining & Exploration Company Plc ("CAMEC") in respect of CRC in CAMEC's interim results announcement released on 19 December 2008', *PRNewswire*, 23 December 2008, available at: <http://www.investigate.co.uk/Article.aspx?id=20081223164900NE279>). On 10 February 2009, CRC launched an Offer for Subscription by which Metorex was to convert a US\$25 million loan to CRC into shares (CRC, RNS 0487N, 'Offer for Subscription', 10 February 2009, available at: <http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail.html?announcementId=2087395>). On 24 February, prior to the allotment and issue of subscription shares, CRC cancelled its AIM admission (CRC, 'Cancellation of Admission to Trading on AIM', 24 February 2009, available at: <http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail.html?announcementId=2097853>). Metorex announced on 30 April 2009 that, following the subscription, it held 87% of the enlarged issued share capital (Metorex, 'Acquisition by Metorex of a further 246,579,089 shares in Copper Resources Corporation', 03 April 2009, available at: http://www.metorexgroup.com/nm_latest_news_03042009.htm). Given the disenfranchisement of CAMEC, Metorex held an effective economic interest in CRC of 99.99%. Metorex announced the commencement of legal proceedings against CAMEC for breach of the Articles in the amount of GBP 86.3 million for failure to comply with the provisions of Article 56A of CRC's articles of association ('Articles') and extend a mandatory offer to CRC shareholders (Metorex, 'Camec/Copper Resources Corporation', 30 April 2009, available at: http://www.metorexgroup.com/nm_latest_news_30042009.htm).

²⁴ *Report of the Group of Experts on the Democratic Republic of the Congo*, paragraph 131 *et seq.* The other company named in this section is Ruashi Mining, a joint venture with London-listed Metorex as the majority partner. By the time of publication of the Group of Experts report, Metorex had increased its stake in Ruashi Holdings to 76% (see Metorex Limited, History, available at: http://www.metorexgroup.com/ci_history.htm). In February 2009, Metorex announced the cancellation of the listing of its ordinary shares on the UK Official List (see 'Cancellation of listing of ordinary shares on the Official List', available at: http://www.metorexgroup.com/nm_latest_news_06022009.htm).

²⁵ RNS 2958C, 10 November 2009, available at: <http://www.londonstockexchange.com/exchange/prices-and-news/news/market-news/market-news-detail.html?announcementId=10268440>.

²⁶ 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, Part XIII: Additional information, 2. Incorporation and Registration, p.216, available at: http://www.enrc.com/files/pdf/ENRC_Prospectus_FINAL_Part_13.pdf. The registered office and principal place of business of the Company is Second Floor, 16 St James's Street, London SW1A 1ER.

²⁷ 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, available at:

<http://www.hemscott.com/news/static/rna/item.do?newsId=27193585852781>. For more information on the censure of Durlacher, see *intra*, AIM disciplinary action taken by the Exchange (IV), p. 48.

²⁸ Langbar International Limited, 'Cancellation of AIM listing', 11 April 2006, available at: <http://www.investigate.co.uk/article.aspx?id=200604111702513947B>.

²⁹ International Rescue Committee, 'Mortality in the Democratic Republic of the Congo: Results from a Nationwide Survey', April 2003.

³⁰ See for example, Human Rights Watch, *Democratic Republic of the Congo: Confronting Impunity*, January 2004.

³¹ On the conduct of the elections, see *Mission d'observation électorale de l'Union Européenne en République Démocratique du Congo, Elections Présidentielle, Législatives et Provinciales 2006, Rapport Final*, 23 février 2007, available at: <http://www.moerdc.org/files/MOE%20RDC%202006%20-%20Rapport%20Final.pdf>.

³² United Nations Security Council, Resolution 1925 (2010), S/RES/1925 (2010), 28 May 2010, available at: [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1925\(2010\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1925(2010)).

³³ UN News Centre, 'UN presence in DR Congo crucial despite call for early withdrawal, says relief chief', 3 May 2010, available at: <http://www.un.org/apps/news/story.asp?NewsID=34582>

³⁴ 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 [UN Panel Report 16 October 2002], paragraph 12.

³⁵ *The OECD Guidelines for Multinational Enterprises* (Paris: OECD, 2000), Preface, 7. The Guidelines, first adopted in 1976 and revised in 2000, '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/0,3347,en_2649_34889_1_1_1_1_1,00.html). The Guidelines are adhered to by governments in all 34 OECD member countries and by eight non-members: Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States; non-member adherents; Argentina, Brazil, Egypt, Latvia, Lithuania, Morocco, Peru and Romania. Companies based in adhering countries should observe the Guidelines wherever they operate, including in non-adhering countries. (Guidelines I. Concepts and Principles, 2 & 3).

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- ³⁸ Fatal Transactions – Netherlands institute for Southern Africa (NIZA) and International Peace Information Service (IPIS), *The State vs. the people: Governance, mining and the transitional regime in the Democratic Republic of Congo*, March 2006, pp. 28 – 33, available at: <<http://www.ipisresearch.be/download.php?id=127>>.
- ³⁹ The Ernst & Young audits, *Rapports finales des audits financiers chargée par COPIREP [hereafter 'Ernst & Young', followed by the abbreviated company name], RD Congo, 26 mai 2006*, are available at: <www.freewebs.com/contratsminiers>; Duncan & Allen, *Projet d'Evaluation Juridique des Accords de Partenariats de la Gécamines (Contrat N31/COPIREP/SE/02/2005): Rapport Final, 6 avril 2006*, available at: <<http://www.congoone.net/PDF/DUNCANALLEN.pdf>>; IMC Consulting Ltd, *Restructuration de la Gécamines, Project No M5733C – Phase 1, janvier 2003 also; Restructuration de la Gécamines, Kinshasa – Phase 2, 26 septembre 2003 and; Restructuration de la Gécamines, Project No. M5670C – Phase 2, février 2004*. The National Assembly's Lutundula Commission reported in June 2005: *République Démocratique du Congo, Assemblée Nationale, Commission spéciale chargée de l'examen de la validité des conventions à caractère économique et financier conclues pendant les guerres de 1996 – 1997 et de 1998 [hereafter Lutundula Commission], Rapport des travaux, 1ère Partie, Fait à Kinshasa, le 26 juin 2005*. Available at: <<http://www.freewebs.com/congo-kinshasa/>>.
- ⁴⁰ World Bank, 'Democratic Republic of Congo: Growth with Governance In the Mining Sector Technical Assistance Project', pp. 1 – 2.
- ⁴¹ 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 [hereafter *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, '2. Mining companies, i. Oryx Natural Resources', pp. 46 – 54, available at: <http://www.raid-uk.org/docs/UN_Panel_DRC/Unanswered_Questions_Full.pdf>.
- ⁴² *UN Panel Report 12 April 2001*, paragraphs 160 – 1. On the formation of COSLEG, see *intra*, p. 5.
- ⁴³ 'Oryx Natural Resources Financial Statements for the period from inception on 14 May 1999 to 31 December 1999', Notes to the Financial Statements – 31 December 1999, note 4. This financial statements, audited by Arthur Anderson & Co., are reproduced in Part IV of Petra Diamonds Limited, 'Document issued in connection with the application for admission to trading of the whole of the Enlarged Issued Share Capital of Petra Diamonds Limited on AIM', p.8.
- ⁴⁴ 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 40.
- ⁴⁵ <<http://www.oryxnaturalresources.com/company/>> (visited 17 December 2003).
- ⁴⁶ Respectively, *UN Panel Report 16 October 2002*, paragraphs 37 – 8 and paragraph 28. Oryx Natural Resources was advised by Brigadier General Sibusiso Busi Moyo, who was Director General of COSLEG and assisted by the Minister of Defence and former Security Minister, Sidney Sekeramayi, who was a shareholder in COSLEG.
- ⁴⁷ *Ibid.*, paragraph 175.
- ⁴⁸ <<http://www.oryxnaturalresources.com/UNissues/>>.
- ⁴⁹ Reaction No. 26, written statement from Oryx Natural Resources to the Panel, Introduction and Summary, reproduced in *Addendum to the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo*, S/2003/1146/Add.1, 20 June 2003 [*UN Panel Report 20 June 2003*].
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- ⁵⁵ *Ibid.*
- ⁵⁶ Statement quoted in article by Suzy Jagger, 'Exchange pressured on Petra case', *The Telegraph*, 13 June 2000.
- ⁵⁷ 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 Guerrerera, Michael Holman and Andrew Parker, 'Mugabe ministers linked to diamond group', *Financial Times*, 10 June 2000).
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- ⁶⁰ UN Security Council, Resolution 1457 of 23 January 2003.
- ⁶¹ *AIM Disciplinary Procedures*, p. 2.
- ⁶³ Registration number 4232247. See *CAMEC Admission document*, Part VII, p. 85.

- ⁶⁴ 4th Floor, Clements House, 14 – 18 Gresham Street, London EC2V 7NN. See *CAMEC Admission document*, Part VII, p. 85.
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- ⁶⁶ <<http://www.camec-plc.com/comec/overview.php>>.
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- ¹²¹ Government of Bermuda, Review of Companies Register: <<https://www.roc.gov.bm/roc/web.nsf/public+register/k+public+companies>>.
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- ¹⁵³ *Ibid.*, Part VIII – Financial information, 1 Introduction, p. 76.
- ¹⁵⁴ *Ibid.*

- ¹⁵⁵ *Ibid.*, Part IX – Additional information, 7.3.1, note (1), p. 93.
- ¹⁵⁶ *Ibid.*, Part VIII – Financial information, 17 Post Balance Sheet events, p. 68.
- ¹⁵⁷ *Ibid.*, Part IX – Additional information, 7.3.1, note (3), p. 93; also 15. Litigation, paragraph 15.4, p. 113.
- ¹⁵⁸ *Ibid.*, Part IX – Additional information, 7.3.1, note (2), p.93.
- ¹⁵⁹ *Ibid.*, Part IX – Additional information, 7.3.1, p. 93.
- ¹⁶⁰ *Ibid.* Gertler’s shares are registered in the name of New Horizon Minerals Ltd. It is noted that should an ‘Over-allotment Option’ be exercised, Gertler’s holding would be 14.3 percent.
- ¹⁶¹ See Nikanor plc, RNS 6715W, ‘Update for Shareholders’, 16 May 2007; also RNS 0136W, ‘EGM postponed following bid’ 2 May 2007.
- ¹⁶² Nikanor plc, ‘Update for Shareholders’.
- ¹⁶³ Nikanor plc, RNS 6774X, ‘Issue of equity’, 1 June 2007. Ruwenzori exercised its options to acquire 25,000,000 shares from Glencore on 4 September 2007. See Nikanor plc, RNS 4343D, ‘Notification of interest’, 6 September 2007.
- ¹⁶⁴ David McKay, ‘Nikanor grilled over “unusual” financing’, *Miningmx*, 1 June 2007, available at: <http://www.miningmx.com/mining_fin/927287.htm>.
- ¹⁶⁵ Nikanor plc, RNS 2394A, ‘Notification of interest’, 13 July 2007.
- ¹⁶⁶ Nikanor plc, RNS 9994C, ‘Notification of interest’, 30 August 2007; Nikanor plc, RNS 9677D, ‘Notification of interest’, 17 August 2007.
- ¹⁶⁷ Nikanor plc, RNS 6452G, ‘Notification of interest’, 30 October 2007.
- ¹⁶⁸ Nikanor plc, RNS 1241H, ‘Recommended merger of Katanga and Nikanor to create a leading African copper and cobalt company’, 6 November 2007, available at: <http://www.nikanor.co.uk/m/press_display.asp?Id=2007/06nov2007>. See also Katanga Mining Limited, ‘Recommended Merger of Katanga and Nikanor to Create a Leading African Copper and Cobalt Company’, 6 November 2007, available at: <<http://www.katangamining.com/kat/media/newsreleases/news2007/2007-11-06/2007-11-06.pdf>>.
- ¹⁶⁹ Nikanor plc, RNS 5152L, ‘Results of voting at Nikanor AGM’, 10 January 2008, available at: <http://www.nikanor.co.uk/m/press_display.asp?Id=2008/10jan2008>; Katanga Mining Limited, ‘Katanga Completes Merger with Nikanor to Create a Leading African Copper and Cobalt Company’, 11 January 2008, available at: <http://www.katangamining.com/kat/investor_relations/newsreleases/pressrelease/?id=4612616>.
- ¹⁷⁰ Nikanor plc, RNS 6457L, ‘Update on completion of merger between Nikanor PLC and Katanga Mining Limited’, 11 January 2008, available at: <http://www.nikanor.co.uk/m/press_display.asp?Id=2008/11jan2008>.
- ¹⁷¹ Nikanor plc, ‘Recommended Merger of Katanga and Nikanor to Create a Leading African Copper and Cobalt Company’, p. 7.
- ¹⁷² The exploitation permit relating to the Mukondo deposit was registered in the name of Mukondo on 7 April 2004 under exploitation permit number 2589 (see CAMEC, ‘Update regarding Mining Permit’).
- ¹⁷³ Tremalt held an 80% share in KMC, the balance of 20% held by Gécamines (see *intra*, Cancellation of Rautenbach’s mining rights and their transfer to Bredenkamp, p. 30 and note 277). The MCRC refer to DGI (Tremalt): see *Rapport des Travaux de la Commission de Revisitation des Contrats Miniers – vol. 2, Savannah Mining Sprl, 4.2. Apport des parties*, p. 85. See also Barry Sergeant, ‘Nikanor’s DRC mining contract quandary’, *Mineweb*, 3 April 2007, available at: <<http://www.mineweb.net/mineweb/view/mineweb/en/page36?oid=19037&sn=Detail>>; and Peta Thorneycroft, ‘CAMEC’s revenue from DRC dries up’, *Business Report*, 3 September 2006, available at: <<http://www.busrep.co.za/index.php?fArticleId=3421513>>.
- ¹⁷⁴ CAMEC, *Circular to Shareholders relating to the proposed Joint Venture with Prairie (International) Limited and Notice of General Meeting*, 28 November 2007, Introduction, p. 4. See also CAMEC, RNS 1586H, ‘CAMEC signs MOU to create new DRC Joint Venture Company’, 7 November 2007, available at <<http://investors.camec-plc.com/news-item?item=52587579878880>>. According to the MCRC: ‘At the end of the General Assembly which took place on 28 March 2007, Kababankola Mining Company Sprl changed its name to Savannah Mining sprl.’ (See *Rapport des Travaux de la Commission de Revisitation des Contrats Miniers – vol. 2, Savannah Mining Sprl, 1. Historique*, p. 83: ‘A l’issue de l’Assemblée Générale tenue en date du 28 mars 2007, la société KABABANKOLA MINING COMPANY Sprl a changé de dénomination et devenue SAVANNAH MINING Sprl’).
- ¹⁷⁵ CAMEC, ‘CAMEC signs MOU to create new DRC Joint Venture Company’.
- ¹⁷⁶ CAMEC, ‘Proposed acquisition of shares in DRC Resources Holdings Limited’, p. 8.
- ¹⁷⁷ CAMEC, RNS 2339N, ‘Interim Results’, 5 December 2006, available at: <<http://investors.camec-plc.com/news-item?item=37971805865741>>. See also CAMEC, *Interim Report*, 30 September 2006, p. 5, available at: <http://investors.camec-plc.com/pdf/Interim_Report_Sept_2006.pdf>.
- ¹⁷⁸ *Annulation de l’enregistrement des cessions entre la Gécamines et BOSS MINING Sprl, MUKONDO MINING Sprl et KMC*, (extracts reproduced at: <<http://www.mineweb.net/mineweb/view/mineweb/en/page36?oid=26114&sn=Detail>>); see also CAMEC, ‘Update regarding Mining Permit’.
- ¹⁷⁹ *Cadastre Minier, Avis Cadastral Défavorable*. On reversion to Gécamines, see *Annulation de l’enregistrement*. The Government issued a clarifying statement the following day: ‘There has been a suggestion that the Public Prosecutor has no role in the withdrawal of licences. This would be true in the case of valid licences. But in the current situation, the action of the Prosecutor was based upon the fact that the licences themselves were invalid.’ See ‘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>>
- ¹⁸⁰ ‘Further Statement by DRC government on mining contracts’.
- ¹⁸¹ CAMEC, *Circular to Shareholders relating to the proposed Joint Venture with Prairie (International) Limited*, Introduction, p. 4. See also CAMEC, ‘CAMEC signs MOU to create new DRC Joint Venture Company’.
- ¹⁸² CAMEC, *Circular to Shareholders relating to the proposed Joint Venture with Prairie (International) Limited*, Introduction, p. 4; Legal Structure, p. 7.
- ¹⁸³ CAMEC, ‘CAMEC signs MOU to create new DRC Joint Venture Company’.

¹⁸⁴ CAMEC, 'Proposed acquisition of shares in DRC Resources Holdings Limited', p. 7.

¹⁸⁵ CAMEC, RNS 4872N, 'DRC Update', 7 February 2008, available at: <<http://investors.camec-plc.com/news-item?item=59596966209331>>.

¹⁸⁶ CAMEC, *Circular to Shareholders relating to the proposed Joint Venture with Prairie (International) Limited*, Listing the Joint Venture Company, p. 6.

CAMEC, 'CAMEC signs MOU to create new DRC Joint Venture Company'.

¹⁸⁷ CAMEC, RNS 2866P, 'DRC Update', 4 March 2008, available at: <<http://investors.camec-plc.com/news-item?item=60917668905074>>.

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

¹⁹⁰ CAMEC, RNS 7150P, 'DRC Update', 10 March 2008, available at: <<http://investors.camec-plc.com/news-item?item=61518964316144>>. 'The Avis Cadastral Favorable confirm the validity of CAMEC's licences under the Mining Code of the DRC, and the transfer of the licences in respect of areas 467 and 469 from Gécamines to Boss Mining sprl, CAMEC's subsidiary, and of the licence in respect of Mukondo Mountain to Mukondo Mining sprl. Further Avis Cadastral Favorable have also confirmed the validity of Prairie's licences over areas 463 and 468 (formerly known as C17 and C18) and the transfer of those licences to Savannah Mining.'

¹⁹¹ CAMEC, 'Proposed acquisition of shares in DRC Resources Holdings Limited', pp. 7 – 8. DRC Resources Holdings Limited was incorporated in the Isle of Man on 30 January 2008 – see p.13.

¹⁹² CAMEC, RNS 5299V, 'Results of General Meeting and Directorate Change', 29 May 2008, available at: <<http://www.stockopedia.co.uk/news/announcement/CFM/080529cfm5299v.htm>>.

¹⁹³ CAMEC, RNS 2958C, 'Cancellation of admission of trading on AIM', 10 November 2009, available at: <<http://www.londonstockexchange.com/exchange/prices-and-news/news/market-news/market-news-detail.html?announcementId=10268440>>

¹⁹⁴ <<http://www.enrc.com/output/page5.asp>>

¹⁹⁵ 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*, Part XIII: Additional information, 2. Incorporation and Registration, p. 216, available at:

<http://www.enrc.com/files/pdf/ENRC_Prospectus_FINAL_Part_13.pdf>. The registered office and principal place of business of the Company is Second Floor, 16 St James's Street, London SW1A 1ER.

¹⁹⁶ See, respectively, ENRC, 'Successful completion of IPO', 7 December 2007, available at:

<<http://miranda.hemscott.com/ir/enrc/ir.jsp?page=news-item&item=56416542957058>> and 'Listing on the Kazakhstan Stock Exchange', 27 March 2008, available at:

<<http://www.enrc.com/files/27March2008ENRCListedontheKazakhstanStockExchange.pdf>>.

¹⁹⁷ <<http://www.londonstockexchange.com/exchange/prices-and-news/stocks/summary/company-summary.html?fourWayKey=GB00B29BCK10GBGBXSET1>>, visited 9 March 2010.

¹⁹⁸ See <<http://www.enrc.com/output/page260.asp>> and ENRC, RNS 2064V, 'TR-1: Notifications of Major Interests in Shares', 06 July 2009, available at: <<http://www.londonstockexchange.com/exchange/prices-and-news/news/market-news/market-news-detail.html?announcementId=10096337>>.

¹⁹⁹ CAMEC, RNS 7804V, 'Statement re Possible Offer', 16 July 2009, available at:

<<http://www.londonstockexchange.com/exchange/prices-and-news/news/market-news/market-news-detail.html?announcementId=10110046>>.

²⁰⁰ 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, available at: <<http://www.londonstockexchange.com/exchange/prices-and-news/news/market-news/market-news-detail.html?announcementId=10197319>>.

²⁰¹ *Ibid.*

²⁰² 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>>.

²⁰³ ENRC, 'Recommended Cash Offer ENRC for CAMEC, paragraph 15.

²⁰⁴ 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>>.

²⁰⁵ ENRC PLC, RNS 4192R, 20 August 2010, 'Acquisition of 50.5% of the Shares of Camrose Resources Limited', available at: <[http://www.enrc.com/files/Direct/CamroseAnn2\(20_8_2010_15_29_221\).pdf](http://www.enrc.com/files/Direct/CamroseAnn2(20_8_2010_15_29_221).pdf)>.

²⁰⁶ *Ibid.*

²⁰⁷ First Quantum Minerals Ltd., News Release 10-32, 15 September 2010, 'First Quantum Minerals commences legal proceedings against ENRC subsidiaries', available at: <<http://www.first-quantum.com/i/pdf/NR10-32.pdf>>.

²⁰⁸ ENRC PLC, RNS 3940S, 9 September 2010, 'Statement Regarding Possible Legal Action Against Eurasian Natural Resources Corporation', available at:

<[http://www.enrc.com/files/Direct/09Sept_PossLegalAct\(9_9_2010_12_12_965\).pdf](http://www.enrc.com/files/Direct/09Sept_PossLegalAct(9_9_2010_12_12_965).pdf)>)

²⁰⁹ 'First Quantum Minerals commences legal proceedings against ENRC subsidiaries'.

²¹⁰ Early Day Motion 1444, 'Extractive Industries Transparency Initiative Principles,' tabled 10 February 2011, available at: <<http://www.parliament.uk/edm/2010-11/1444>>.

²¹¹ *Hansard*, Commons, 5 April 2011, col 985.

²¹² Rowena Mason, the *Telegraph*, 'MP calls for Serious Fraud Office checks on ENRC,' 8 April 2011, available at: <<http://www.telegraph.co.uk/finance/yourbusiness/bribery-act/8439251/MP-calls-for-Serious-Fraud-Office-checks-on-ENRC.html>>.

²¹³ *Ibid.*

²¹⁴ *Ibid.*

²¹⁵ *Hansard*, Commons, 23 May 2011, col 749.

²¹⁶ *Ibid.*, col 750.

²¹⁷ *Ibid.*

²¹⁸ *Ibid.*, col 753.

²¹⁹ Changes to the July 2005 edition of the *AIM Rules for Companies* became effective on 20 February 2007. Changes to the latter edition became effective on 1 June 2009. Further revisions, effective from 17 February 2010, fall outside of the time period examined within this submission. The version of the *AIM Rules* referred to in this submission is indicated in brackets.

²²⁰ Rules 10, 11 and 12 are the same across all three editions. Minor amendments are made to certain clauses under Schedule Four in the June 2009 edition of the *AIM Rules*.

²²¹ On 22 December 2006, the FSA published the final disclosure and transparency rules, to come into effect on 20 January 2007: *FSA Handbook*, DTR Disclosure Rules and Transparency Rules, available at:

<<http://fsahandbook.info/FSA/html/handbook/DTR>>. The London Stock Exchange has issued two notices dealing with the impact of the DTR on AIM companies: *Stock Exchange AIM Notice*, AIM 25, 'Changes to the disclosure of significant shareholders', 30 November 2006, available at: <<http://www.londonstockexchange.com/NR/rdonlyres/37156CEB-E10C-4551-A2B0-E6BE3AB38047/0/AIMNotice25.pdf>>; and *Stock Exchange AIM Notice*, AIM 26, 'Update on AIM Notice 25 (disclosure of significant shareholders) and discussion of other legislative changes (including electronic communications)', 12 January 2007, available at: <http://www.londonstockexchange.com/NR/rdonlyres/A1DF2CCC-8530-4328-9A8B-3EF44DD45566/0/AIMNotice26_FINAL_.pdf>. See also *AIM Rules* [2007], Part Two – Guidance Notes, Disclosure of miscellaneous information Rule 17: Miscellaneous information, (a). For an overview of the Transparency Directive, see London Stock Exchange, 'RNS and the new Transparency Directive', December 2006, available at:

<<http://www.londonstockexchange.com/NR/rdonlyres/2C2E3E18-BC58-4B00-8307-0BASEDEEAF0D/0/RNSTransparencyDirectiveguide.pdf>>; Freshfields Bruckhaus Deringer, *Briefing*, 'Implementation of the EU Transparency Directive', January 2007, available at: <<http://www.freshfields.com/publications/pdfs/2007/17333.pdf>>.

²²² See 'Davies Review of Issuer Liability – Liability for misstatements to the market: A discussion paper by Professor Paul Davies QC', March 2007, paragraph 17, available at: <http://www.hm-treasury.gov.uk/media/E/C/davies_discussionpaper_260307.pdf>.

²²³ *FSA Handbook*, DTR 5 Vote Holder and Issue Notification Rules, available at:

<<http://fsahandbook.info/FSA/html/handbook/DTR/5>>.

²²⁴ Disclosure relates to direct or indirect holdings of shares with 'voting rights' attached or interests in financial instruments which give the holder the formal entitlement to acquire shares with voting rights attached. For shares admitted to trading on a regulated market, but not for those trading on prescribed markets, shareholders (or those with rights to acquire shares) are not only required to inform the issuing company of changes to major holdings in that company's shares, but also to copy the notification to the FSA at the same time (DTR 5.9.1).

²²⁵ A market prescribed by the Treasury in the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001 (SI 2001/996) as amended by Regulation 10 of the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (SI 2005/381) for the purposes of the market abuse regime.

²²⁶ FSA, DTR 5.8.12(1).

²²⁷ For UK companies trading on AIM, the disclosure and transparency rules retain the Companies Act 1985 notification thresholds, i.e., a 3% threshold requires notification, as does any change (plus or minus) of one percentage point over the threshold. These notification thresholds are 'super-equivalent' to the Transparency Directive minimum notification thresholds, which require disclosure at 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%. See *AIM Rules* [2007], Glossary, 'relevant changes' and 'significant shareholder'; also Shepherd & Wedderburn, *E-Bulletin*, 'Transparency Directive – Overview', 18 January 2007, available at: <<http://www.shepwedd.co.uk/knowledge/article/692-1172/transparency-directive-overview/archive/?page=1>>.

²²⁸ *AIM Rules* [2007], rule 17.

²²⁹ *AIM Rules* [2007], rule 17. For a non-DTR AIM company, there is no requirement for the shareholders to notify the company in the first place. Hence, without such prior notification, the AIM company cannot itself notify the market: 'All non-DTR companies are required to use all reasonable endeavours to comply with rule 17 notwithstanding that the local law applicable to some AIM companies does not contain provisions that are similar to the DTR.' (*AIM Rules* [2007], Part Two – Guidance Notes, Disclosure of miscellaneous information Rule 17: Miscellaneous information, (b)). While an AIM company incorporated outside of Great Britain, including Northern Ireland is 'advised to include provisions in its constitution requiring significant shareholders to notify the relevant AIM company of any relevant changes to their shareholdings in similar terms to the DTR' nothing compels them to do so.

²³⁰ *AIM Rules* [2005], Part Two – Guidance Notes, Disclosure of miscellaneous information, Rule 17: Miscellaneous information, (b).

²³¹ *AIM Rules* [2005 & 2007], rule 12: 'An AIM company must issue notification without delay as soon as the terms of any substantial transaction are agreed, disclosing the information specified by Schedule Four.' A substantial transaction 'excludes any transactions of a revenue nature in the ordinary course of business and transactions to raise finance which do not involve a change in the fixed assets of the AIM company or its subsidiaries.'

²³² The class tests in respect of rule 12 and other rules are defined in *AIM Rules* [2005 & 2007], Schedule Three. Only the Exchange can decide to disregard one or more of the class tests, or substitute another test (see Schedule Three, Substitute

Tests). Under the consideration test, the company value is defined as ‘Aggregate market value of all the ordinary shares (excluding treasury shares) of the AIM company’.

²³³ *AIM Rules* [2005 & 2007], Schedule Four, (f) and (j).

²³⁴ CAMEC, in its 3 February 2006 release ‘Central African Mining & Exploration Company Plc (“CAMEC” or “the Company”) Acquires Majority Interest in Major Copper Cobalt Joint Venture in the DRC’ states that it paid a consideration of US\$80 million being US\$25 million in cash and the issue of 171,853,471 New Ordinary Shares at 18p per share for the entire issued share capital of IMF. The new shares at 18p per share amount to £30,933,624.78, which equates to the balance of \$80 million minus \$25 million, i.e., \$55 million. This gives an exchange rate of \$1 = £0.56. Hence the total consideration paid in sterling, as announced on 3 February 2006, = £44.99 million. According to the company’s share price charting tool, CAMEC’s share price on the 2 February 2006 was 26.36p. According to CAMEC’s most recent notification (30 December 2005) of the issue of equity prior to the transaction, there were 630,239,802 ordinary shares in issue, giving a market value £166,131,212 (see CAMEC, RNS 3320W, ‘Warrants and Options Exercise’, available at: <<http://www.hemscott.com/news/static/rna/item.do?newsId=31488552761139>>).

²³⁵ CAMEC, *Report and Financial Statements: Year ended 31 March 2006*, p. 58.

²³⁶ CAMEC’s closing share price on 6 February 2008 was 42.75p and the acquisition value of the DRC Resources shares was approximately £348.4 million: see CAMEC, ‘Proposed acquisition of shares in DRC Resources Holdings Limited’, p. 8. According to CAMEC’s most recent notification (8 January 2008) of the issue of equity prior to the transaction, there were 1,228,838,032 ordinary shares in issue, giving a market value for CAMEC of £525,328,259 (see CAMEC, RNS 3379L, ‘Exercise of Options and TVR’, available at:

<<http://www.hemscott.com/news/static/rna/item.do?newsId=57266946929041>>).

²³⁷ *AIM Rules* [2005 & 2007], rule 14.

²³⁸ London Stock Exchange, *AIM – Guidance Note for Mining, Oil and Gas Companies*, March 2006, Part Two, Ongoing obligations. See respectively Notifications and Nominated advisers. Also *Stock Exchange AIM Notice*, AIM 16, ‘AIM Rules – Guidance for Mining and Oil & Gas Companies’, 16 March 2006, available at:

<<http://www.londonstockexchange.com/companies-and-advisors/aim/advisors/aim-notices/aim-notice-16.pdf>>.

²³⁹ See London Stock Exchange, *Stock Exchange AIM Notice*, AIM 30, ‘Proposed new AIM Rules for investing companies and other changes’, 18 December 2008, available at: <<http://www.londonstockexchange.com/companies-and-advisors/aim/advisors/aim-notices/aim-notice-30.pdf>>.

²⁴⁰ London Stock Exchange, *AIM Rules for Nominated Advisers* [‘RNA’], February 2007, available at:

<<http://www.londonstockexchange.com/NR/rdonlyres/8104E31B-946D-49F1-A82B-CC14499B435A/0/AIMNominatedAdviser.pdf>>.

²⁴¹ See 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>>.

²⁴² AIM Notice AIM 24.

²⁴³ *Ibid.*

²⁴⁴ *Ibid.*

²⁴⁵ *Ibid.*

²⁴⁶ <<http://www.londonstockexchange.com/companies-and-advisors/aim/advisors/aim-reg-team/aim-regulation-team.htm>>.

²⁴⁷ See *intra*, CAMEC’s business with the Congo Cobalt Company, p. 48.

²⁴⁸ See *intra*, Rautenbach’s key role in managing projects after their acquisition by CAMEC, p. 48.

²⁴⁹ See *intra*, CAMEC’s continuing business transactions with CCC, p. 48.

²⁵⁰ *AIM Rules* [2005 & 2007], rule 10.

²⁵¹ See *intra*, IV. Incompleteness of accounts: a disregard for accountancy rules and a lack of financial transparency in the predecessor companies, p. 48.

²⁵² See *intra*, PTM Minerals (Cayman) Ltd and the CAMEC concession areas, p. 48.

²⁵³ CAMEC, Covering Letter for Annual Report 2007, 25 September 2007, <http://www.camec-plc.com/development/covering_letter_for_annual_report07.pdf>. See also CAMEC news releases: RNS 9920C, ‘CAMEC Responds to Rumours Of Permit Revocation’, 30 August 2007, available at: <<http://investors.camec-plc.com/news-item?item=48500918960011>>; ‘Update regarding mining permit’, op. cit.; RNS 1934E, ‘Response to Statement Distributed by Bell Pottinger’, 20 September 2007, available at: <<http://investors.camec-plc.com/news-item?item=50047106797425>>.

²⁵⁴ CAMEC, RNS 1161E, ‘Update on DRC Mining Licences’, 19 September 2007, available at:

<<http://www.hemscott.com/news/static/rna/item.do?newsId=50047106752767>>.

²⁵⁵ ‘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>>.

²⁵⁶ 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>.

²⁵⁷ See ‘DRC Government clarifies legal position on invalidity of mining licences with particular reference to CAMEC’s copper/cobalt licences’.

²⁵⁸ CAMEC, RNS 9833F, ‘Update on DRC Court Hearing’, 18 October 2007, available at:

<<http://www.hemscott.com/news/static/rna/item.do?newsId=51178830925666>>.

²⁵⁹ See CAMEC, share price graph, available at: <<http://investors.camec-plc.com/share-price-chart?returnPeriod=1Y&period=-&fromDay=29&fromMonth=08&fromYear=2007&toDay=07&toMonth=09&toYear=2007>>.

See also Russell Hotton, ‘CAMEC appeals to Congo’s president over licence blow’, *The Daily Telegraph*, 1 September 2007, available at:

<<http://www.telegraph.co.uk/money/main.jhtml?xml=/money/2007/09/01/cncamec101.xml>>.

²⁶⁰ *Ibid.*

- ²⁶¹ The share price was down by 53.37% on 6 September 2007 when compared to the share price on 28 August 2007.
- ²⁶² Rebel groups include, *inter alia*, RCD-Goma (Rwanda-backed) and RCD-K/ML, RCD-Congo, MLC (Uganda-backed).
- ²⁶³ *UN Panel Report* 12 April 2001, paragraph 148.
- ²⁶⁴ *UN Panel Report* 16 October 2002, paragraphs 22 and 25.
- ²⁶⁵ *UN Panel Report* 13 November 2001, paragraph 31.
- ²⁶⁶ In June 2001, the Belgian government established a parliamentary commission of inquiry in the Belgian Senate to examine conflict and resource exploitation in the Great Lakes region in response to the UN Panel's work. For the findings and conclusions of this commission, see *Commission d'enquête parlementaire chargée d'enquêter sur l'exploitation et le commerce légaux et illégaux de richesses naturelles dans la région des Grands Lacs au vu de la situation conflictuelle actuelle et de l'implication de la Belgique, Sénat de Belgique*, ['Belgian Senate Inquiry'] *Session de 2002 – 2003, 20 février 2003, 2-942/1*. The Belgian Senate Commission of Inquiry 'was established following the United Nations report on the illegal activities of Belgian companies and others in the DRC' ('a été instituée à l'occasion du rapport des Nations unies relatif aux activités illégales d'entreprises belges et autres en République démocratique du Congo') (*ibid.*, p. 4), and in its final conclusions it is stated that 'the Commission takes note of UN Security Council Resolution 1457 of 24 January 2003' ('La commission prend acte de la résolution 1457 du 24 janvier 2003 du Conseil de sécurité de l'ONU') (*ibid.*, p. 225). The Commission of Inquiry conducted hearings with experts, business representatives and company executives and also heard testimony under oath, in public unless a request to the contrary was made. Belgian Senate Inquiry, p. 5: Between November 2001 and January 2003, the Commission organised more than 70 hearings of experts and witnesses. Although the hearings were in principle public, a third of the hearings in question were held in camera at the request of the people being heard.' ('Entre novembre 2001 et janvier 2003, la Commission a organisé plus de septante auditions d'experts et de témoins. Bien que les auditions soient en principe publiques, un tiers des auditions en question ont eu lieu à huis clos, à la demande des personnes à entendre.') Those giving testimony were invited 'to take the following oath: "I swear to tell the whole truth and nothing but the truth"' ('à prêter le serment suivant: « Je jure de dire toute la vérité, rien que la vérité »).
- ²⁶⁷ Belgian Senate Inquiry, *Session ordinaire 2001 – 2002, vendredi 26 avril 2002, GR 18, Audition de M. Patrick Alley, représentant de Global Witness, sur le rapport 'Branching Out: Zimbabwe's Resource Colonialism in Democratic Republic of Congo'*, pp. 3 – 4, available at: <<http://www.senate.be/crv/GR/gr-18.pdf>>.
- ²⁶⁸ *Rapport des Travaux de la Commission de Revisitation des Contrats Miniers – vol. 2, Boss Mining, 1. Historique*, p. 8. The Convention was concluded on 4 September 1998. See also Mining Journal, 1998b; Belgian Senate Inquiry, p. 128 and *Lutundula Commission*, 2.2.4 B.(a), pp. 114 – 5. The spellings 'Ridgepointe' and 'Ridgepoint' are both used in official documents: Ridgepointe is used herein, unless quoted text uses the alternative spelling.
- ²⁶⁹ Presidential Decree N° 121 of 19 September 1998; Minister of Mining, Ministerial Orders N° 211 of 15/10/1998 and N° 217 of 27/10/1998.
- ²⁷⁰ Ridgepointe was beneficially owned by Rautenbach and his family through the Sinai Trust, the remaining 30% beneficially owned by a Mr Nissim Franco and his family who held their interests via a company Rahavia Ltd. See also *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 29.
- ²⁷¹ *Africa Confidential*, Vol 39, No.23, 20 November 1998. According to *The Sunday Telegraph*, the announcement was made on Friday 6 November. See Christina Lamb, 'Mugabe's Money Mine', *Sunday Telegraph*, 8 November 1998, available at: <<http://www.telegraph.co.uk/htmlContent.jhtml?html=/archive/1998/11/08/wcong08.html>>. See also Robert Block, 'Congo Names Zimbabwean Head of Mining Concern', *The Wall Street Journal*, 9 November 1998.
- ²⁷² *UN Panel Report* 13 November 2001, paragraph 31.
- ²⁷³ *Ibid.* See also *Metal Bulletin*, 'Spoils of War', 12 November 1998, available to subscribers at: <<http://www.metalbulletin.com/Article/1706579/Spoils-of-war.html>>.
- ²⁷⁴ *UN Panel Report* 13 November 2001, paragraph 77.
- ²⁷⁵ See *Lutundula Commission*, 2.2.4 B.(a), pp. 114 – 5.
- ²⁷⁶ See Philip Burgert, 'Rautenbach ousted from Gécamines', *American Metal Market*, 29 March 2000, available at: <http://findarticles.com/p/articles/mi_m3MKT/is_60_108/ai_61373414>. The consultants IMC confirm Rautenbach's position in Gécamines: 'After its creation, the board (first meeting held on 16/2/99) was chaired by a Chairman-Delegate General (Mr Rautenbach) who is, at the same time, Delegate General of the Management Committee...' ('Lors de sa création, le CA (première réunion du 16/2/99) est présidé par un Président-Delegué- Général (M. Rautenbach), qui est, en même temps, Délégué Général du CG...'). After the second meeting (CA du 2/6/99) the structure had not changed but the title changes to 'Chairman-Managing Director'. Hence Rautenbach was both Chairman and Managing Director of Gécamines for a period. The term Delegate General reflects the fact that the head of Gécamines was directly appointed by the President. See IMC Consulting Ltd, 'Restructuration de la Gécamines', *Project N° M5733C – Phase 1, Rapport Audit Organisation V. 4.3, De l'organisation et fonctionnement de la gecamines [sic], organisation de la sphère politique, janvier 2003*, p. 2.
- ²⁷⁷ *UN Panel Report* 13 November 2001, paragraph 32.
- ²⁷⁸ The joint venture agreement was signed on 11 January 2001, validated by a mining convention on 7 March 2001 and ratified by Presidential Decree no. 034/2001 on 18 June 2001. The agreement was also authorised by the Minister of Mines, by ministerial decree no. 002/CAB.MIN/MINES/01/2001. See *Rapport des Travaux de la Commission de Revisitation des Contrats Miniers – vol. 2, Savannah Mining Sprl, 1. Historique*, p. 83, and 3. *Autorisation de la tutelle*, p. 85. These details were also given on <<http://www.kababankola.com/profile.html>>, before the site was taken down.
- ²⁷⁹ Reaction No. 25, written statement from Tremalt to the Panel, paragraph 2.1, reproduced in *UN Panel Report* 20 June 2003; *UN Panel Report* 16 October 2002, Annex III, entry 80. The Lutundula Commission states that Tremalt's headquarters are at Akara-Building, 24 de Castro Street, Tototla (*Lutundula Commission*, 3.1.1 *KABAMBANKOLA MINING COMPANY sprl K.M.C.*, p. 100).

²⁸⁰ See <<http://www.kababankola.com/profile.html>>; also <<http://www.breco.info>>. The Lutundula Commission states: ‘However, there is no juridical document proving the real identity of Tremalt Ltd’s owner(s), although its delegates from London kept on arguing in front of the Commission that it belonged to Mr Bredenkamp, a Zimbabwean national, more of an arms dealer than a mining industrialist...’ (*‘Cependant, aucun document juridique ne permet d’établir avec certitude l’identité véritable du ou des propriétaires de TREMALT LIMITED quand bien même ses délégués venus de Londres ont continué à soutenir devant la Commission Spéciale qu’elle appartenait à monsieur BREDEKAMP, de nationalité zimbabwéenne, plutôt vendeur d’armes qu’industriel minier...’*). *Lutundula Commission, 3.1.1 KABAMBANKOLA MINING COMPANY sprl K.M.C.*, p. 100.

²⁸¹ <<http://www.kababankola.com/profile.html>>.

²⁸² *Lutundula Commission*, pp. 98 – 9. See also *Tidmarsh Affidavit*, paragraph 27. The reference for the claim is: *Ridgepointe Overseas Developments, Ltd. v. Democratic Republic of the Congo and Générale des Carrières et des Mines* (Case No. ARB/00/8), details available at <<http://icsid.worldbank.org/ICSID/>> by entering “Ridgepointe” as the search term. See also *Rapport des Travaux de la Commission de Revisitation des Contrats Miniers – vol. 2*, respectively, *Savannah Mining Sprl, 1. Historique*, p. 83, and *Boss Mining, 1. Historique*, p. 8.

²⁸³ *Lutundula Commission*, p. 115; *Rapport des Travaux de la Commission de Revisitation des Contrats Miniers – vol. 2, Boss Mining, 1. Historique* p. 9.

²⁸⁴ *Tidmarsh Affidavit*, paragraph 31.

²⁸⁵ Described by the Mining Contracts Review Commission as an ‘Amicable Settlement Agreement’ (see *Rapport des Travaux de la Commission de Revisitation des Contrats Miniers – vol. 2, Boss Mining, 1. Historique*, p. 9 and *Savannah Mining Sprl, 1. Historique*, p. 83).

²⁸⁶ *Rapport des Travaux de la Commission de Revisitation des Contrats Miniers – vol. 2, Boss Mining, 1. Histoire*, p. 9: ‘For its part, RIDGEPOINTE agreed under the terms of Article 5 of this Agreement, to transfer to GECAMINES, 20% of the shares of its subsidiary BOSS MINING Sprl. This agreement was formalised during the Extraordinary General Meeting of BOSS Mining held in Lubumbashi on 27 February 2004.’ (*‘Pour sa part, Ridgepointe s’est engagée aux termes de l’article 5 de cet Accord, à céder à la GECAMINES 20% des parts sociales de sa filiale BOSS MINING Sprl. Cet engagement a été concrétisé au cours de l’Assemblée Générale Extraordinaire des associés de BOSS MINING tenue à Lubumbashi le 27 février 2004.’*) See also, *MCRC, Ibid., 2.4 Obligations des parties*, pp. 11– 12. The MCRC confirms that Boss Mining Sprl was created on 30 December 2003 between Shaford Capital Ltd, incorporated in the British Virgin Islands, and Mr James Tidmarsh, a Swiss national: the capital of the company was initially divided 90% for Shaford Capital and 10% for Mr Tidmarsh. However, see *intra* p. 32, about the questionable authentication of the statutes. It should be noted that Congolese law requires that a company must have at least two shareholders: Tidmarsh draws attention to the arrangement by which he held 10% of the shareholding of Shaford’s filial Congo Cobalt Corporation Sprl, while Shaford held the remaining 90% (*Tidmarsh Affidavit*, paragraph 54).

²⁸⁷ ‘According to Article 3 of this Agreement, Gécamines agreed to transfer to BOSS Mining concessions C-19 and C-21. GECAMINES completed the formalities with the mining registry on 3 March 2004, after which BOSS Mining was given PE467 and 469.’ (*‘Selon l’article 3 de cet Accord, la GECAMINES s’est engagée à céder à BOSS MINING les concessions C-19 et C-21. A cet effet, la GECAMINES a accompli les formalités y relatives au Cadastre Minier le 3 mars 2004, à l’issue desquelles furent délivrées à BOSS MINING Sprl les PE 467 et 469.’*) See *Rapport des Travaux de la Commission de Revisitation des Contrats Miniers – vol. 2, Boss Mining, 1. Historique*, p. 9; also *2.4 Obligations des parties*, pp.11 – 12.

²⁸⁸ *Tidmarsh Affidavit*, paragraph 72. Ridgepointe had filed a claim against KMC in Kinshasa under Congolese law: a Second Agreement, in parallel with the First Agreement, was therefore signed, at the same time and place, to settle this claim. See *Tidmarsh Affidavit*, paragraph 71. The exploitation permit relating to the Mukondo deposit was registered in the name of Mukondo on 7 April 2004 under exploitation permit number 2589 (see CAMEC, ‘Update regarding Mining Permit’). The Mukondo exploitation permit was carved out of the much larger original C19 concession. (CAMEC/Behre Dolbear, *Technical Report on the Boss Mining Project*, 6.0 History, B-11).

²⁸⁹ MCRC states: ‘However, under the terms of another mining convention concluded 7 March 2001, between the DRC, Gécamines and the Kababankola Mining Company Sprl and TREMALT LIMITED, some concessions recognised under the convention of 4 September 1998 as belonging to RIDGEPOINTE, were transferred to the aforementioned companies. This convention was also approved by presidential decree on 18 June 2001, no 034/2001.’ (*‘Cependant, aux termes d’une autre convention minière conclue le 7 mars 2001, entre la République Démocratique du Congo et la GECAMINES d’une part et les sociétés KABABANKOLA MINING COMPANY Sprl et TREMALT LIMITED d’autre part, certaines concessions reconnues à RIDGEPOINTE en vertu de la convention du 4 septembre 1998 furent cédées à ces dernières sociétés. Cette convention fut elle aussi approuvée par décret présidentiel, en date du 18 juin 2001, sous le numéro 034/2001.’*) See *Rapport des Travaux de la Commission de Revisitation des Contrats Miniers – vol. 2, Boss Mining, 1. Historique*, p. 7. The MCRC also states: ‘According to article 3 of this settlement [the amicable settlement following the ICSID claim], Gécamines agreed to transfer concessions 17 and 18 to Kababankola Mining Company Sprl.’ (*‘Selon l’article 3 de cet accord, la GECAMINES, s’est engagée à céder à KABABANKOLA MINING COMPANY Sprl les concessions 17 et 18.’*) *Ibid., Savannah Mining Sprl, 1. Historique*, p. 82, and *2.4 Obligations des parties*, p. 84). See also *Lutundula Commission*, pp.114 – 5.

²⁹⁰ *Tidmarsh Affidavit*, paragraph 7.2; see also note 291. Shaford Capital Ltd. was incorporated in the BVI on 2 May 2002 by Icaza, Gonzalez-Ruiz & Aleman (BVI) Trust Ltd. and was purchased ‘off the shelf’ by Icaza Gonzalez’s representative in Geneva, Panama Advisory Group Inc. Shaford, as the planned successor to Ridgepointe, was originally set up as a joint investment vehicle to form a new venture with Glencore AG, a large Swiss commodities trading firm, to operate the DRC concessions in anticipation of the settlement of Ridgepointe’s ICSID claim. The venture between Glencore and Shaford never reached fruition, but Shaford was nevertheless used as the investment vehicle for Rautenbach and other partners to exploit the DRC concessions (see note 286). *Tidmarsh Affidavit*, paragraphs 38 – 40, 51.

²⁹¹ At the time Shaford was purchased, two bearer shares were held by Panama Advisory pending any later instructions to cancel the bearer shares and issue registered shares to the appropriate parties in accordance with any agreed contingency.

(*Tidmarsh Affidavit*, paragraph 40). In June 2003, the bearer shares in Shaford were cancelled and shares issued to four shareholders, all BVI companies also purchased ‘off the shelf’ from Icaza Gonzalez, in accordance with the amended contingency agreement (*Tidmarsh Affidavit*, paragraph 67): Mercan Commercial Limited (owning 70% of the issued share capital of Shaford), Ibold Company Inc. (owning 11.5%), Hober Enterprises Inc. (owning 10%), and Marika Services Ltd. (owning 8.5%). Rautenbach owned 100% of the issued share capital of Mercan; Mr. Toni Machado owned 100% of the issued share capital of Hober; Mr. Ayub Darwood, a trained accountant and long term employee of Mr. Rautenbach, owned 100% of the issued share capital of Ibold; and Mr. James Tidmarsh owned 100% of the issued share capital of Mercan. *Tidmarsh Affidavit*, paragraph 7 and paragraph 65.

²⁹² *Tidmarsh Affidavit*, paragraphs 8.2, 8.3, 54, 75 & 77.

²⁹³ See *intra*, CAMEC’s business with the Congo Cobalt Company, p. 48.

²⁹⁴ See 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>>; see also *Tidmarsh Affidavit*, paragraphs 72 and 80.

²⁹⁵ *Rapport des Travaux de la Commission de Revisitation des Contrats Miniers – vol. 2, Savannah Mining Sprl, 1. Historique*, p. 82: ‘Thus, on 25 February 2004, the parties reached a settlement. According to Article 3 of the agreement, Gécamines, undertook to transfer concessions 17 and 18 to the Kababankola Mining Company Sprl.’ (*‘C’est ainsi qu’en date du 25 février 2004, les parties concluent un accord de règlement à l’amiable. Selon l’article 3 de cet accord, la GECAMINES, s’est engagée à céder à KABABANKOLA MINING COMPANY Sprl les concessions 17 et 18’*). See also 2.4 *Obligations des parties*, p. 84: ‘Under the provisions of Articles 3 and 5 of the Settlement Agreement GECAMINES was obliged to cede its rights and mining titles pertaining to concessions C17 and C18, re-designated as PE 468 (Milebi) and PE 463 (Mindingi)...’ (*‘Il ressort des dispositions des articles 3 et 5 de l’Accord de Règlement à l’amiable que la GECAMINES a l’obligation de céder ses droits et titres miniers relatifs aux concessions C17 et C18 transformées en PE 468 (Milebi) et PE 463 (Mindingi) ...’*).

²⁹⁶ *Rapport des Travaux de la Commission de Revisitation des Contrats Miniers – vol. 2, Boss Mining, 2. Aspects juridiques*, p. 8: ‘Ce partenariat n’a pas été précédé d’un contrat de création de joint-venture, de sorte que l’Accord de règlement à l’amiable susmentionné demeure le document principal de référence.’ The partnership was authorised by the Minister of the Portfolio in a letter dated 24 July 2004, n°738/MINPF/CV/2004. The Minister of Mines subsequently endorsed the partnership in his letter dated 5 April 2004, n°CAB. MIN/MINES/01/967/04. See, *MCRC, Ibid.*, 3. *Autorisation de la tutelle*, p. 9.

²⁹⁷ CAMEC/Behre Dolbear, *Technical Report on the Boss Mining Project*, 2.1 Terms Of Reference, B-8: ‘Contrary to Behre Dolbear’s initial understanding, there is no joint-venture agreement between Camec or its predecessor and Gécamines. The activities are controlled by the Articles of Association of Boss Mining and general government regulation.’

²⁹⁸ *Rapport des Travaux de la Commission de Revisitation des Contrats Miniers – vol. 2, Boss Mining, Conclusions*, p. 15: ‘Date d’authentification des statuts antérieure à celle de la création de la société’. According to the MCRC: ‘The Commission, after analysing the company’s statutes, notes that Boss Mining’s statutes were signed on 30 December 2003 but that they had been notarised on 29 December of the same year. These statutes were modified following an Extraordinary General Meeting on 27 January 2005 with the result that Gécamines became a partner of Boss Mining Sprl. Therefore new statutes were signed at the same time and notarised on 15 February 2005.’ (*‘Lors de l’analyse des statuts de cette entreprise, la Commission a relevé que les statuts de Boss Mining Sprl ont été signés le 30 décembre 2003 mais qu’ils ont été notariés le 29 décembre de la même année. Ces statuts ont été modifiés à la suite de l’Assemblée Générale Extraordinaire du 27 janvier 2005 avec comme conséquence l’entrée de la GECAMINES dans Boss Mining Sprl. Ainsi, de nouveaux statuts ont été signés à la même date et notariés le 15 février 2005.’*). See *Boss Mining, 4. Eligibilité*, pp. 9 – 10.

²⁹⁹ *Ibid.*, p.10: ‘En référence à l’article 43 du décret du 23 juin 1960 et aux articles 199 et 200 du Code civil congolais livre III ainsi qu’à la loi n° 66-344 du 9 juin 1966 sur les actes notariés, la Commission relève que lors de l’acquisition des concessions C-19 et C-21 en 2004, l’existence juridique de la société Boss Mining n’était pas valide. Il en résulte que cette société n’était pas éligible aux droits miniers, conformément à l’article 23 du Code minier.’

³⁰⁰ *MCRC, Rapport des Travaux de la Commission de Revisitation des Contrats Miniers – vol. 2, Boss Mining, Conclusions*, p. 15: ‘Absence de contrat de cession signé en bonne et due forme’.

³⁰¹ *Ministère des Mines*, Letter to Boss Mining, ‘Objet: Notification conclusions revisitation contrats minier’, No. CAB.MIN/MINES/001/0096/2008, 11 February 2008, ‘1.1 Les droits miniers ont été enregistrés au Cadastre Minier au profit de Boss Mining, sans qu’il n’y ait au préalable signature de contrat de cession;’ and ‘1.2 L’authentification des statuts de Boss Mining est antérieure à la création de la société’.

³⁰² *Ibid.*, paragraph: ‘2.1 Les parties doivent régulariser la procédure de cession des titres miniers conformément au Code Minier...’

³⁰³ *Belgian Senate Inquiry, Session ordinaire 2001 – 2002, vendredi 26 avril 2002, GR 18, Audition de M. Patrick Alley, représentant de Global Witness, sur le rapport ‘Branching Out: Zimbabwe’s Resource Colonialism in Democratic Republic of Congo’*, pp.3 – 4, available at: <<http://www.senate.be/crv/GR/gr-18.pdf>>.

³⁰⁴ *UN Panel Report* 16 October 2002, paragraph 40.

³⁰⁵ Sam Sole, ‘New Scramble for Africa’, *Mail & Guardian* (SA), 10 February 2006, available at:

<<http://www.zwnews.com/issuefull.cfm?ArticleID=13780>>.

³⁰⁶ Defendants’ skeleton argument: for hearing before Eady J on Wednesday 26th November 2003, Case No. HQ02X04337, Oryx et al. versus Independent News and Media et al., High Court of Justice, 26 – 27 November 2003, 3.3.

³⁰⁷ *UN Panel Report* 12 April 2001, paragraph 30; also *UN Panel Report* 13 November 2001, paragraph 79.

³⁰⁸ *UN Panel Report* 12 April 2001, paragraph 159. Members of COSLEG, cited by the Panel, include: The Minister of Defence and former Security Minister, Sidney Sekeramayi, who coordinates with the military leadership and is a shareholder in COSLEG (*UN Panel Report* 16 October 2002, paragraph 28); Former Deputy Defence Minister, General Denis Kalume Numbi, a stakeholder in the lucrative Sengamines diamond deal and in COSLEG (*ibid.*, paragraph 25); Frédéric Tshineu Kabasele is a director of three joint ventures with Zimbabwe using the COSLEG platform (*ibid.*, paragraph 26); The

Technical Director of COSLEG, Mfuni Kazadi, specialises in the writing of joint venture contracts to accommodate the private interests of the elite network (*ibid.*); General Vitalis Musunga Gava Zvinavashe, Commander of ZDF and Executive Chairman of COSLEG (*ibid.*, paragraph 27); Brigadier General Sibusiso Busi Moyo is Director General of COSLEG (*ibid.*, paragraph 28); Air Commodore Mike Tichafa Karakadzai [sic] is Deputy Secretary of COSLEG (*ibid.*); Colonel Simpson Sikhulile Nyathi is Director of defence policy for COSLEG (*ibid.*). Shareholders of OSLEG, cited by the Panel, include: Lieutenant General Vitalis Musungwa Zvinavashe, Job Whabira, former Permanent Secretary in the Ministry of Defence, Onesimo Moyo, President of Minerals Marketing Corporation of Zimbabwe, and Isaiah Ruzengwe, General Manager of Zimbabwe Mining Development Corporation (*UN Panel Report* 12 April 2001, paragraph 159). The Zimbabwean government, in its reply to the Panel, states: ‘The fact that Honourable Sekeramayi may be a shareholder in COSLEG does not make him a beneficiary of the joint ventures, as is, in fact, the case with all other officials of the Zimbabwe and DRC Governments who are named as enjoying the same status.’ (See Reaction No. 58, Official Response of the Government of the Republic of Zimbabwe, reproduced in *UN Panel Report* 20 June 2003). It admonishes the Panel for failing to reveal that General Zvinavashe is a ‘well-established businessman’, stating that ‘if at all one or some of his companies have conducted business in the DRC, the fact that he is an executive director of COSLEG, an ally of the Speaker or the Commander of Defence Forces does not render such business automatically criminal or corrupt under the mandate of the present inquiry.’ Likewise, the Zimbabwean government maintains that ‘regular contacts’ and the negotiation of ‘one or two contracts’ by Brigadier SB Moyo with his counterpart in the DRC were not ‘automatically criminal’ but were part of his official function. (See also the individual replies to the Panel of General V.M.G. Zvinavashe and Brigadier General S.B. Moyo, respectively reactions Nos 53 and 54, in which the same points are made). Moreover, The Zimbabwean government accuses the Panel of suffixing ‘for COSLEG’ to the positions of Air Commodore MT Karakadzayi and Colonel SS Nyathi which they held as members of the Secretariat of the Implementation Committee for the DRC-Zimbabwe Memorandum of Understanding (see Reaction No. 58).

³⁰⁹ *UN Panel Report* 13 November 2001, paragraph 79. The same quotation from the COMIEX-OSLEG agreement is also reproduced in *Africa Confidential*, Volume 41, Number 11, 26 May 2000.

³¹⁰ *UN Panel Report* 16 October 2002, paragraph 28.

³¹¹ *Ibid.*

³¹² *Ibid.*, paragraph 40.

³¹³ *Ibid.*, paragraph 39. On KMC’s website, the initial paid up capital is stated as \$500,000. While the concessions run for twenty years, the joint-venture arrangements run for 25 years. See <<http://www.kababankola.com/profile.html>>.

³¹⁴ *UN Panel Report* 16 October 2002, paragraph 41.

³¹⁵ *Ibid.*, paragraph 39.

³¹⁶ *Lutundula Commission*, respectively, p. 101, point 1 and p. 100.

³¹⁷ *Ibid.*, p. 100.

³¹⁸ *Ibid.*, p. 102, point 5.

³¹⁹ *Ibid.*, p. 102, point 3.

³²⁰ Reaction No. 25, reproduced in *UN Panel Report* 20 June 2003, paragraphs 3.2 and 4.1.1. Tremalt furnished the Panel with, *inter alia*, the KMC Joint Venture Agreement, the Mining Convention, addenda and relevant DRC legislation (*ibid.*, paragraphs 2.4 – 2.5). Tremalt maintained that it complied with both its contractual obligations and DRC law (*ibid.*, paragraph 4.1.3). Following an investigation of KMC by the Attorney General in the DRC prompted by Security Council Resolution 1457(2003), the Tremalt Parties stated that no adverse findings were communicated to them by the Attorney General (*ibid.*, paragraph 4.1.2 (a)). Furthermore, Tremalt referred to a memorandum filed by the Government of the DRC with the Panel giving a ‘full and complete clearance of the KMC Joint Venture’ (*ibid.*, paragraph 4.1.2 (b)). The company agreed to renegotiate the KMC Joint Venture or Mining Convention if any future DRC Commission deems the former to be illegal or unfair (*ibid.*, paragraph 5.1). Tremalt further insisted that the company’s relationship with Zimbabwe was in line with the 1998 Inter-Governmental Accord (*ibid.*, paragraph 3.2). For a critique of Tremalt’s reaction to the Panel, see Rights & Accountability in Development, *Unanswered questions: Companies, conflict and the Democratic Republic of Congo*, ‘2. Mining companies, iv. Tremalt’, pp. 67 – 9 and ‘3. Military procurement, i. Tremalt, Aviation Consultancy Service Company (ACS), Raceview Enterprises and John Bredenkamp’, pp. 70 – 1.

³²¹ *UN Panel Report* 16 October 2002, paragraph 39: ‘Although Tremalt representatives told the Panel that they have invested \$15 million to date, there are no signs of substantial investments having been made on the concessions, nor has any schedule of investment in the form of a business plan been released to Gécamines.’

³²² According to the Lutundula Commission: ‘KMC attributed Tremalt’s low level of investment to the fact that the company was implicated in a UN report published at the end of 2002 in the looting of the DRC’s natural resources’ (*KMC a attribué ce faible niveau de réalisation des investissements TREMALT à la mise en cause de la société dans le pillage des ressources naturelles du Congo par le rapport des Nations Unies publié à fin 2002*) and; ‘KMC “saw itself losing several credit lines, consequently undermining the Tremalt Group’s ability to finance the project adequately and within the desired timeframe”’ (Unsigned end-of-year report, by the KMC Executive Management Board, 31/12/2003). (*KMC “s’est vu retirer plusieurs lignes de crédit, entamant du coup la capacité de Groupe TREMALT à financer le projet de manière adéquate et en temps voulu”*). See *Lutundula Commission*, p. 106.

³²³ *Ibid.*, p. 95: ‘Les sociétés ayant conclu de partenariat avec l’Etat ou les entreprises publiques sans respect des clauses et engagements contractuels: KMC...’; Ernst & Young, *KMC*, 2.3.3 *Analyse*, p. 10: ‘TREMALT did not respect part of its obligations’ (*Tremalt n’aurait pas respecté une partie de ses obligations*) and; 3. *Principales faiblesses relevées*, p. 3: ‘Concerning respect for contractual clauses: by March 2003 Tremalt had fulfilled only 11.5% of its obligations relating to the framework agreement; those obligations came into effect with the adoption of the mining code in March 2003.’ (*En ce qui concerne le respect des clauses contractuelles: Le partenaire Tremalt n’a rempli que 11,5% de ses obligations en relation avec le cadre conventionnel d’avant mars 2003; ces obligations sont tombées avec l’adoption du code minier depuis mars 2003.*’).

³²⁴ In its October 2002 report, the UN Panel stated: ‘Towards the end of its mandate, the Panel received a copy of a memorandum dated August 2002 from the Defence Minister, Sidney Sekeramayi, to President Robert Mugabe, proposing that a joint Zimbabwe-Democratic Republic of the Congo company be set up in Mauritius to disguise the continuing economic interests of ZDF in the Democratic Republic of the Congo. The memorandum states: “Your Excellency would be aware of the wave of negative publicity and criticism that the DRC-Zimbabwe joint ventures have attracted, which tends to inform the current United Nations Panel investigations into our commercial activities.”’ (See *UN Panel Report* 16 October 2002, paragraph 18).

³²⁵ *UN Panel Report* 23 October 2003, Section V, paragraph 43. The confidential ‘Section V’ to the Panel’s report was forwarded to the UN Security Council on the same day.

³²⁶ *UN Panel Report* 13 November 2001, paragraph 31.

³²⁷ *Tidmarsh Affidavit*, paragraph 127. See *intra*, A Politically Exposed Person, p. 39 and note 339.

³²⁸ See *intra*, The charges against Rautenbach and the warrant for his arrest, p. 39.

³²⁹ See *intra*, Rautenbach’s key role in managing projects after their acquisition by CAMEC, p. 48.

³³⁰ See *UN Panel Report* 13 November 2001, paragraphs 67 – 9; also *UN Panel Report* 12 April 2001, paragraphs 150 – 2; also *intra*, Allegations made by the UN Panel, p. 48.

³³¹ See *intra*, 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, p. 48.

³³² From the wording of, respectively, US and EU sanctions against Zimbabwe. For specific references, see *intra*, notes 382 and 383.

³³³ *Offer to Purchase Katanga Mining Limited*, A-3.

³³⁴ CAMEC, *Report and Financial Statements: Year Ended 31 March 2007*, 25. Related party transactions, p. 106, available at: <http://investors.camec-plc.com/pdf/comec_report.pdf>.

³³⁵ *Ibid.*, 16. Creditors, p. 99.

³³⁶ *Offer to Purchase Katanga Mining Limited*, A-3.

³³⁷ *Rapport des Travaux de la Commission de Revisitation des Contrats Miniers – vol. 2, Boss Mining, 1. Historique* p. 9.

³³⁸ 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.

³³⁹ *Tidmarsh Affidavit*, para. 127.

³⁴⁰ The Financial Action Task Force (FATF) established a series of Recommendations in 1990 (revised in 1996 and in 2003) setting out a basic framework for anti-money laundering efforts for universal application. Under the FATF recommendations, ‘Politically Exposed Persons’ (PEPs) are defined as: ‘individuals who are or have been entrusted with prominent public functions in a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations, important political party officials. Business relationships with family members or close associates of PEPs involve reputational risks similar to those with PEPs themselves. The definition is not intended to cover middle ranking or more junior individuals in the foregoing categories.’ See Financial Action Task Force on Money Laundering, *The Forty Recommendations*, 20 June 2003, Glossary, p. 14, available at: <<http://www.fatf-gafi.org/dataoecd/7/40/34849567.PDF>>. For general information about the kind of databases used for due diligence, see WorldCompliance, <<http://www.worldcompliance.com/global-pep-list.html>>. WorldCompliance is a leading private intelligence-gathering company identifying individuals who represent a risk for clients: ‘WorldCompliance offers conformity with over 100 local anti-terrorism and money-laundering legislations, including the USA Patriot Act and FATF. In addition, the WorldCompliance intelligence database is certified for compliance with the 3rd EU Money Laundering Directive.’

³⁴¹ Investigating Directorate, Serious Economic Offences, Warrant of Arrest, 27 September 2000, with supporting affidavits.

³⁴² The National Director of Public Prosecutions vs. Muller Conrad Rautenbach, Case no. 146/2003, The Supreme Court of Appeal of South Africa, delivered 22 November 2004, paragraph 57. The original provisional restraint order made by the Johannesburg High Court had been successfully challenged by Rautenbach, but was reinstated on appeal by the NDPP to the Supreme Court.

³⁴³ *Ibid.*, paragraph 28.

³⁴⁴ *Ibid.*, paragraphs 31 – 3.

³⁴⁵ *Ibid.*, paragraph 40. See also paragraph 38.

³⁴⁶ *Report of the Group of Experts on the Democratic Republic of the Congo*, paragraph 132 and table.

³⁴⁷ See *Miningmx*, ‘Congo investigates CAMEC after arrest request’, 10 May 2007, available at: <http://www.miningmx.com/mining_fin/849368.htm>.

³⁴⁸ Katanga Mining Limited, ‘Toronto Stock Exchange Accepts Notice of Katanga Shareholder Rights Plan – CAMEC’s Activities Under Investigation in the DRC’.

³⁴⁹ Joe Bavier, ‘Congo sees Rautenbach as root of CAMEC’s problems’, *Reuters*, 16 May 2007, available at: <<http://uk.reuters.com/article/idUKL1670013620070516>>.

³⁵⁰ As reported in *Mining Weekly*, ‘CAMEC’s Rautenbach arrested in DRC, deported to Zimbabwe’, 19 July 2007, available at: <http://www.miningweekly.co.za/article.php?a_id=113012>.

³⁵¹ *Ibid.*

³⁵² *Ibid.*

³⁵³ *Ibid.*

³⁵⁴ CAMEC, ‘Response to Media Reports’, RNS Non-regulatory News Release, 18 July 2007, available at: <http://www.advfn.com/news_Response-to-Media-Reports_21483362.html>.

³⁵⁵ *Mining Weekly*, ‘CAMEC’s Rautenbach arrested in DRC, deported to Zimbabwe’.

³⁵⁶ ‘Billy Rautenbach Clarifies DRC Situation’, *PR Newswire*, London, 23 July 2007, available at: <<http://www.prnewswire.co.uk/cgi/release?id=203500>>. This posting of the release states: ‘Distributed by PR Newswire on behalf of Billy Rautenbach’. However, in another posting, the same release, while citing ‘JOHANNESBURG, South Africa,

July 23 PRNewswire' states at the end of the release: 'Issued by: Madelain Roscher, PR Worx, +27-11-896-1818 / +27-83-468-6819, On behalf of: Billy Rautenbach, CAMEC'. See <<http://www.thefreelibrary.com/Billy+Rautenbach+Clarifies+DRC+Situation.-a0166691398>>.

³⁵⁷ As reported in *Mining Weekly*, 'DRC confirms Camec's Rautenbach deportation', 23 July 2007, available at: <http://www.miningweekly.co.za/article.php?a_id=113204>.

³⁵⁸ 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-mpa-and-billy-rautenbachs-company-sa-botswana-hauliers-finalised.html>>.

³⁵⁹ 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>>.

³⁶⁰ *Ibid.*

³⁶¹ 'Plea Bargain Agreement Between Npa And Billy Rautenbach's Company, SA Botswana Hauliers Finalised'.

³⁶² 'Rautenbach to Pay S. African Fine to End Legal Battle'.

³⁶³ Mthunzi Mhaga, spokesman for the NPA, quoted in 'Rautenbach to Pay S. African Fine to End Legal Battle'.

³⁶⁴ 'Rautenbach to Pay S. African Fine to End Legal Battle'.

³⁶⁵ 'Plea Bargain Agreement Between Npa And Billy Rautenbach's Company, SA Botswana Hauliers Finalised'.

³⁶⁶ The State versus Jacob Sello Selebi, Charge Sheet, COUNT 2: DEFEATING THE ENDS OF JUSTICE, paragraphs 5, 13 & 14, available at: <<http://www.npa.gov.za/UploadedFiles/Selebi%20charge%20sheet.pdf>>.

³⁶⁷ National Prosecuting Authority, Media Statement, 16 March 2006, available at:

<<http://www.npa.gov.za/UploadedFiles/Agliotti%20arrest.doc>>. Agliotti's murder trial commenced at the end of July 2010. See Franz Wild, 'Brett Kebble Murder Trial Set to Start in South Africa Today', *Bloomberg Businessweek*, 26 July 2010, available at: <<http://www.businessweek.com/news/2010-07-26/brett-kebble-murder-trial-set-to-start-in-south-africa-today.html>>.

³⁶⁸ The judge concluded that '[296]... the State has not led evidence upon which this Court acting carefully can convict him for all the charges he is facing unless he testifies and incriminate himself. [297] It is my further finding that the State has not made out a *prima facie* case against the accused at the end of its case. [298] The manner in which the prosecution was conducted from the time it was handled by the prosecution team that was replaced by the present team violated the accused's right to a fair trial.' See *State vs. Agliotti*, Case No. SS 154/2009, South Gauteng High Court, Johannesburg, Judgment, 25 November 2010, paragraphs 296 – 8, available at: <<http://www.saflii.org/za/cases/ZAGPJHC/2010/129.html>>.

³⁶⁹ See National Prosecuting Authority, 'Glen Agliotti pleads guilty', 5 December 2007, available at:

<<http://www.info.gov.za/speeches/2007/07120612151001.htm>>.

³⁷¹ See *The State versus Jacob Sello Selebi*, Midrand CAS 796/01/2008, Case Number R/C 45/08, Indictment, respectively, GENERAL CORRUPTION GIVING RISE TO THE SPECIFIC CORRUPTION, General Offence of Corruption, COUNT 1, paragraph 5, p.19; IN THE ALTERNATIVE TO COUNT 1 (AS SEPARATE COUNTS), SUBCOUNT 2, paragraph 12, p. 22; COUNT 2, DEFEATING THE ADMINISTRATION OF JUSTICE, paragraph 18, p. 25, available at: <http://www.timeslive.co.za/multimedia/archive/00167/SELEBI_INDICTMENT_A_167403a.pdf>.

³⁷² Selebi was found guilty of corruption in contravening s 40) (a) of the Prevention and Combating of Corrupt Activities Act, 12 of 2004. See *State vs. Selebi*, Case No. 25/09, South Gauteng High Court, Johannesburg, Judgment, 5 July 2010, paragraphs 422, 428.1 and 428.2, available at: <<http://www.saflii.org/za/za/cases/ZAGPJHC/2010/53.html>>.

³⁷³ *State vs. Selebi*, Case No. 25/09, South Gauteng High Court, Johannesburg, Judgment on Sentence, 3 August 2010, available at: <<http://www.saflii.org/za/za/cases/ZAGPJHC/2010/58.html>>.

³⁷⁴ *State vs. Selebi*, Case No. 25/09, Judgment, paragraphs 101 – 3.

³⁷⁵ *Ibid.*, paragraph 6.3.

³⁷⁶ *Ibid.*, paragraph 57.

³⁷⁷ *Ibid.*

³⁷⁸ *Ibid.*

³⁷⁹ *Ibid.*, paragraphs 104 – 5.

³⁸⁰ *Ibid.*, paragraph 57.

³⁸¹ See <<http://www.ustreas.gov/offices/enforcement/ofac/faq/answer.shtml#17>>.

³⁸² See <<http://www.ustreas.gov/press/releases/hp1295.htm>>. For more information on Executive Order 13391 Blocking Property of Additional Persons Undermining Democratic Processes or Institutions in Zimbabwe, see <<http://www.treasury.gov/offices/enforcement/ofac/programs/ascii/zimb.txt>>.

³⁸³ 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.

³⁸⁴ Addendum to the Common Position, 5304/09 ADD 1 REV 1, Restreint UE, Brussels, 19 January 2009.

³⁸⁵ 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 [hereafter *Offer Document*]', 9 October 2009, p. 25, available at: <<http://www.enrc.com/files/CamecOffer.pdf>>.

³⁸⁶ *Ibid.*

³⁸⁷ *Ibid.*, Sanctions and ongoing post-acquisition management issues, pp. 25 – 6.

³⁸⁸ *Ibid.*, p.26.

³⁸⁹ ENRC presentation, 18 September 2009, p. 19, available at: <<http://www.enrc.com/output/page277.asp>>.

³⁹⁰ ENRC, *Offer Document*, Acquisition of Zimbabwe Platinum interests, p. 61.

- ³⁹¹ <<http://www.ustreas.gov/offices/enforcement/ofac/sdn/>>.
- ³⁹² 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>>.
- ³⁹³ *Ibid.*
- ³⁹⁴ CAMEC, *Offer to Purchase Katanga Mining Limited*, A-3.
- ³⁹⁵ 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>>.
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- ³⁹⁷ A recording of the conference call is available at: <http://pres.enrc.com/enrc012/webcast.asp?Media=wm_aud&PresNum=01&SlideNum=001>.
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- ⁴⁰¹ CAMEC, 'Acquisition of Platinum Assets'.
- ⁴⁰² 'In the City', *Private Eye*, issue no. 1252, 25 December 2009 – 7 January 2010, p. 33.
- ⁴⁰³ ENRC, 'Recommended Cash Offer ENRC for CAMEC, Other CAMEC Shareholders', p. 11.
- ⁴⁰⁴ CAMEC, *Report and Financial Statements: Year ended 31 March 2009*, Substantial shareholders, p. 49.
- ⁴⁰⁵ Ernst and Young, *Mining Eye*, Q4, 2007, pp. 2 – 3, 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])> .
- ⁴⁰⁶ CAMEC, 'Proposed acquisition of shares in DRC Resources Holdings Limited', p. 8.
- ⁴⁰⁷ *Ibid.*, C. Other key parties, p.51.
- ⁴⁰⁸ Admission document, Relationship agreement, p. 51.
- ⁴⁰⁹ CAMEC, 'Proposed acquisition of shares in DRC Resources Holdings Limited', C. Other key parties, p. 51. See also Annex 5, which reproduces CAMEC's organograms on the ownership of Prairie and the organisation of the Consideration Shares Recipients in CAMEC at completion.
- ⁴¹⁰ *Ibid.*, p. 51
- ⁴¹¹ The number of ordinary shares in issue immediately following admission of the consideration shares is given by CAMEC as 2,495,722,269. See CAMEC, 'Proposed acquisition of shares in DRC Resources Holdings Limited', Admission Statistics, p. 4. The total does not take into consideration the conditional share purchase agreement in respect of the acquisition by CAMEC of shares in Copper Resources Corporation: see paragraph 5.1.18, p. 61.
- ⁴¹² CAMEC, 'Proposed acquisition of shares in DRC Resources Holdings Limited', p .8.
- ⁴¹³ *UN Panel Report* 12 April 2001, paragraphs 150 – 2.
- ⁴¹⁴ *UN Panel Report* 13 November 2001, paragraphs 67 – 9.
- ⁴¹⁵ *UN Panel Report* 23 October 2003, confidential Section 5.
- ⁴¹⁶ See, for example, Amnesty International, *Democratic Republic of Congo: Arming the East*, AFR 62/006/2005, 4 July 2005, available at: <<http://www.amnesty.org/en/library/asset/AFR62/006/2005/en/08df105c-d4d2-11dd-8a23-d58a49c0d652/af620062005en.pdf>>. Footnote 53 states: 'The UN Panel of Experts... submitted a confidential supplement to its report to the Security Council's Sanctions Committee on the DRC in October 2003.... This supplementary report was leaked from the Security Council shortly afterwards and has become widely available.'
- ⁴¹⁷ *UN Panel Report* 23 October 2003, confidential Section 5, paragraph 32 *et seq.* According to the *Lutundula Commission*, 'According to the statement made to the Commission by Chaim LEIBOVITZ, Director and representative of EMAXON FINANCE INTERNATIONAL INC, it was a Canadian company belonging to Mr Dan GERTLER and his family.' ('D'après la déclaration faite devant la Commission par Monsieur Chaim LEIBOVITZ, Administrateur et Représentant d'EMAXON FINANCE INTERNATIONAL INC, celui-ci serait une société de droit canadien appartenant à Monsieur Dan GERTLER et à sa famille.') See *Lutundula Commission*, 1.2 EMAXON, p. 50.
- ⁴¹⁸ *UN Panel Report* 23 October 2003, confidential Section 5.
- ⁴¹⁹ Emma Muller 'DGI's Emaxon under pressure to change diamond deal in Congo', *Polishedprices.com*, 14 December 2003.
- ⁴²⁰ Gidi Weitz, Uri Blau and Yotam Feldman 'Ace of diamonds', *Haaretz*, 26/27 June 2009. Available in English at: <<http://www.haaretz.com/hasen/spages/1097400.html>>.
- ⁴²¹ 'Canadian firm seeks US\$15 million in damages and interest from *Le Potentiel* newspaper', *IFEX Alert*, 19 December 2003, available at: <http://www.ifex.org/democratic_republic_of_congo/2003/12/18/canadian_firm_seeks_us_15_million>. See also the original article '*Diamant : la MIBA contraint EMAXON à majorer le coût du shipment M10-03*', *Le Potentiel*, No. 3001, 16 December 2003.
- ⁴²² 'Canadian firm seeks US\$15 million in damages and interest from "Le Potentiel" newspaper'.
- ⁴²³ '*Le Président de EMAXON, M. Dan Gertler, accueilli pour la première fois et en toute confiance au centre de tri de diamant de la RDC à Kinshasa*', *Digitalcongo.net*, 28 January 2004, available at : <<http://www.digitalcongo.net/article/17346>>.
- ⁴²⁴ Amendments to the original EMAXON contract were signed in December 2003 and July 2004, the most significant being a reduction on the discount on the delivery price of MIBA's diamonds from 5% to 3%. See *Lutundula Commission*, p. 53.

⁴²⁵ See Democratic Republic of the Congo, Letter of Intent, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding, Kinshasa, 24 June 2004, paragraph 66, available at: <<http://www.imf.org/external/np/loi/2004/cod/01/index.htm>>.

⁴²⁶ 'Generals, Gems and Graft', *Africa Confidential*, Vol. 46 No. 25, 16 December 2005.

⁴²⁷ *Lutundula Commission Conclusion et recommandations*, p. 57: 'Par ailleurs, le contrat étant à mi-parcours, il sied de s'interroger sur l'opportunité de le résilier.'

⁴²⁸ *Ibid.*, p. 56: 'Definitively, in terms of financial costs, the EMAXON scheme, theoretically at a zero (0) interest rate, is three (3) times more expensive than a bank loan obtained under normal conditions.' ('*En définitive, en termes des coûts financiers, l'opération EMAXON, théoriquement à taux d'intérêts zéro (0), est trois (3) fois plus chère qu'un prêt bancaire obtenu dans les conditions régulières.*')

⁴²⁹ 'Generals, Gems and Graft'.

⁴³⁰ *Ibid.*

⁴³¹ 'Congo state diamond miner to hold April 28 auction', *Reuters*, 25 April 2008, available at: <<http://www.reuters.com/article/2008/04/25/diamonds-congo-auction-idUSL2586337020080425>>

⁴³² Samuel Turpin, 'Les diamants de la misère', *New African*, May – June 2009, pp.10 – 14: 'Meanwhile, MIBA still lives on a drip, with results declining year on year to 5000 carats per day at the beginning of 2008, or \$1.5 million per month, while the payroll is in excess of \$2 million'. ('*Pendant ce temps MIBA continue de vivre sous perfusion, affiche des résultats en baisse d'année en année, atteignant 5000 carats par jour début 2008, soit 1,5 million \$ par mois, alors que la masse salariale dépasse les deux millions \$.*')

⁴³³ Respectively, 'Phil Edmonds catches £8m as Camec is taken over by ENRC', *The Times*, 19 September 2009, available at: <http://business.timesonline.co.uk/tol/business/industry_sectors/natural_resources/article6840820.ece>; 'ENRC lands Camec with £584m bid', *The Independent*, 19 September 2009, available at:

<<http://www.independent.co.uk/news/business/news/enrc-lands-camec-with-163584m-bid-1790114.html>>; 'ENRC formalises CAMEC offer at £584m', *Mining Journal*, 18 September 2009, available at: <<http://www.mining-journal.com/finance/enrc-formalises-camec-offer-at-584m>>.

⁴³⁴ 'Update 2 – ENRC settles deal to buy CAMEC for \$955 mln', *Reuters*, 18 September 2009, available at: <<http://www.reuters.com/article/idUSL021190020090918>>. See also, DEALTALK, 'Top CAMEC shareholder key to ENRC bid', *Reuters*, 18 September 2009, available at: <<http://www.reuters.com/article/idUKLH28956620090918>>.

⁴³⁵ CAMEC, 'Proposed acquisition of shares in DRC Resources Holdings Limited', C. Other key parties, p. 51. See also D. Organisation charts, p. 52, which reproduces CAMEC's organograms on the ownership of Prairie and the organisation at completion of the Consideration Shares Recipients in CAMEC.

⁴³⁶ CAMEC, 'Proposed acquisition of shares in DRC Resources Holdings Limited', p. 51. At the time (May 2008), shares benefiting the Gertler family represented a 19.7% interest in the enlarged share capital of CAMEC. The number of ordinary shares in issue immediately following admission of the consideration shares is given by CAMEC as 2,495,722,269. See *ibid.*, Admission Statistics, p. 4.

⁴³⁷ CAMEC, RNS 5372G, 'Central African Mining & Exploration Company Plc ("CAMEC" or "the Company") Acquires Extensive Copper & Cobalt assets in the DRC', 23 October 2008, available at: <<http://www.londonstockexchange.com/exchange/prices-and-news/news/market-news/market-news-detail.html?announcementId=1999432>>.

⁴³⁸ *Ibid.*

⁴³⁹ *Ibid.*

⁴⁴⁰ CAMEC, 'Proposed acquisition of shares in DRC Resources Holdings Limited', p. 51.

⁴⁴¹ CAMEC, 'Central African Mining & Exploration Company Plc ("CAMEC" or "the Company") Acquires Extensive Copper & Cobalt assets in the DRC.

⁴⁴² *Ibid.*

⁴⁴³ CAMEC, RNS 0632H, 'Total Voting Rights and Share Capital', 31 October 2008, available at: <<http://www.londonstockexchange.com/exchange/prices-and-news/news/market-news/market-news-detail.html?announcementId=2006936>>.

⁴⁴⁴ CAMEC, RNS 4232Z, 'Holdings in Company', 21 September 2009, available at: <<http://www.londonstockexchange.com/exchange/prices-and-news/news/market-news/market-news-detail.html?announcementId=10199966>>.

⁴⁴⁵ ENRC, 'Recommended Cash Offer ENRC for CAMEC', 3. ENRC AFRICA CAMEC SHARE PURCHASES, Off-Market, Acquisitions, p. 10; also 4. IRREVOCABLE UNDERTAKINGS AND LETTER OF INTENT, Irrevocable undertakings, Other CAMEC Shareholders, p. 11.

⁴⁴⁶ CAMEC, 'Holdings in Company', 21 September 2009.

⁴⁴⁷ *Ibid.*: 'CAMEC was also notified on 18 September 2009 that the Line Trust Corporation Limited as trustee for the Ashdale Settlement no longer has a notifiable interest in the capital of the Company following disposals of shares on 17 September by its indirect, wholly-owned subsidiaries Delena International Limited, Eagle Multinational Limited, Geranium Properties Limited, Gladioli International Group Limited, Silvertown International Limited, Summertown Resources Limited and Margin Investments Limited.' See also *intra*, Annexe 5.

⁴⁴⁸ Ms. Gillian Merron, Parliamentary Under-Secretary of State, Department of International Development, letter to RAID and Global Witness, 29 September 2008.

⁴⁴⁹ Jeffrey J. Grieco, Assistant Administrator, Bureau for Legislative Public Affairs at USAID, letter to the Honorable Patrick J. Leahy, Chairman, Subcommittee on State, Foreign Operations, Committee on Appropriations, US Senate, 22 August 2008.

⁴⁵⁰ Anvil announced in July 2008 that it had agreed a CAD296 million private placement of shares with Catala Global Limited, 'whose ultimate owner is a trust for the benefit of family members of Dan Gertler.' The placement gave Catala a 25% stake in Anvil and the right to nominate one person to Anvil's Board of Directors. (See Anvil Mining Limited, 'Anvil

Mining Limited announces approval in principle of C\$296 million private placement', 10 July 2008, available at: <[http://www.anvilmining.com/files/080710%20Anvil%20News%20Release%20re%20approval%20in%20principle%20of%20private%20placement%20\(July%202008\).pdf](http://www.anvilmining.com/files/080710%20Anvil%20News%20Release%20re%20approval%20in%20principle%20of%20private%20placement%20(July%202008).pdf)>. The price received for the shares was later revised down to CAD237 million. ('Anvil Mining Limited and Catala Global Limited announce definitive Subscription Agreement for private placement,' 24 August 2008, available at: <[http://www.anvilmining.com/files/080824%20News%20Release%20re%20definitive%20agreement%20for%20private%20placement%20\(C\\$10.00\).pdf](http://www.anvilmining.com/files/080824%20News%20Release%20re%20definitive%20agreement%20for%20private%20placement%20(C$10.00).pdf)>). In September 2008, Anvil announced that a special board meeting to approve the deal had been cancelled and that the placement would not be going ahead at that time. (See 'Cancellation of Shareholders' Meeting,' 18 September 2008, available at: <<http://www.anvilmining.com/files/080914%20Anvil%20-%20News%20Release%20re%20Cancellation%20of%20Shareholders%20Meeting%20-%20September%202008.pdf>>).

⁴⁵¹ Oil Gas and Mining Department, International Finance Corporation, letter to Amnesty International, 24 February 2010.

⁴⁵² See Africo Resources Ltd., 'Africo Resources announces CAD100 million private placement to develop the Kalukundi project', 21 April 2008, available at: <http://www.africoresources.com/ir/press_display.php?Id=2008/21apr2008>. The placement was completed in July 2008 ('Africo Resources completes CAD100 million private placement with Camrose Resources Limited', 24 July 2008, available at: <http://www.africoresources.com/ir/press_display.php?Id=2008/24jul2008>).

⁴⁵³ 'First Quantum Minerals commences legal proceedings against ENRC subsidiaries'.

⁴⁵⁴ *Intra*, The controversy surrounding ENRC's acquisition of a stake in other DRC mining assets, p. 19. For further information, see *intra*, Annexe 2, International Chamber of Commerce International Court of Arbitration, p. 48.

⁴⁵⁵ *UN Panel Report* 16 October 2002, paragraph 39.

⁴⁵⁶ *Ibid.*, paragraphs 39 – 40.

⁴⁵⁷ *Ibid.*, paragraph 41.

⁴⁵⁸ *Ibid.*, paragraph 40.

⁴⁵⁹ *Ibid.*, paragraph 46.

⁴⁶⁰ *Ibid.*, paragraph 56. British Aerospace, following a merger with the General Electric Company's defence arm, Marconi Electronic Systems, formed BAE Systems on 30 November 1999. See <http://production.investis.com/heritage/nonflash/lineage/systems/1999_bae_systems/>. The UN Panel continues to refer to British Aerospace.

⁴⁶¹ *Ibid.*.

⁴⁶² *Ibid.*.

⁴⁶³ Council Regulation (EC) No 310/2002 of 18 February 2002 concerning certain restrictive measures in respect of Zimbabwe, *Official Journal*, L 050, 21 February 2002, pp. 0004 – 0012.

⁴⁶⁴ *UN Panel Report* 16 October 2002, paragraph 56. The Panel gives a date for the former invoice of 6 July 2001.

⁴⁶⁵ David Pallister and Tania Branigan, 'UK inquiry into jet parts for Mugabe', *The Guardian*, 8 November 2002.

⁴⁶⁶ *Ibid.*

⁴⁶⁷ See *Hansard*, Written Answers (Commons), 26 March 2003, col 262w in response to question 103467; 16 December 2002, col 552w in response to question 82515; 18 November 2002, col 9w in response to questions 81319 and 81320; 7 November 2002, cols 761w, 763w and 498w in response to questions 80324, 80329 and 80331; 29 October 2002, col 752w in response to question 77983; 26 February 2002, col 1151w in response to question 34903. See also House of Commons, *The Order Book*, Session 2001 – 2, Part 1: Written Questions for Answer on Thursday 7 November 2002, 140 (question 80330) and 229 (question 80328).

⁴⁶⁸ See, for example, *Hansard*, Commons, 5 March 2003, col 284WH – 286WH; 17 December 2002, col 186WH; 14 November 2002, col 138; 4 November 2002, col 10; 6 March 2002, col 301; 19 December 2001, col 280; 8 November 2001, cols 408 – 9; *Hansard*, House of Lords, 3 April 2003, col 1570 and 1575; 29 January 2003, col 1128; 1 November 2002, cols 455, 461 – 2 and 465; 20 May 2002, col 541; 5 April 2000, col 1399.

⁴⁶⁹ *UN Panel Report* 16 October 2002, paragraph 175.

⁴⁷⁰ Rights & Accountability in Development, *Unanswered questions: Companies, conflict and the Democratic Republic of Congo*. In particular, see 'B. Potential miscategorisations: the Panel's final word on corporate misconduct', p. 14; on Tremalt, see 'Tremalt', pp. 67 – 9 and 'Tremalt, Aviation Consultancy Service Company (ACS), Raceview Enterprises and John Bredenkamp', pp. 70 – 1.

⁴⁷¹ *Lutundula Commission, 3.1 Etude des Cas 3.1.1 Kabambankola [sic] Mining Company sprl, KMC*, p. 110: 'Ce partenariat est pilote par Mr J. BREDEKAMP dont plusieurs sources concordantes affirment qu'il serait poursuivi par la justice internationale pour le trafic d'armes et de drogue.'

⁴⁷² *Ibid.*: 'Mr BREDEKAMP, de nationalité zimbabwéenne, plutôt vendeur d'armes qu'industriel minier.'

⁴⁷³ Zimbabwe Proclamation, 'Suspension of Entry as Immigrants and Nonimmigrants of Persons Responsible for Actions That Threaten Zimbabwe's Democratic Institutions and Transition to a Multi-Party Democracy, By the President of the United States of America', 4 March 2002. Section 1(b) suspends entry into the US of 'Persons who through their business dealings with Zimbabwe government officials derive significant financial benefit from policies that undermine or injure Zimbabwe's democratic institutions or impede the transition to a multi-party democracy'.

⁴⁷⁴ The International Consortium of Investigative Journalists, *The Business of War: Making a Killing*, Center for Public Integrity, 28 October 2002, p. 50.

⁴⁷⁵ See <<http://www.ustreas.gov/press/releases/hp1295.htm>>.

⁴⁷⁶ Addendum to the Common Position. See *intra*, note 383.

⁴⁷⁷ See <<http://www.treasury.gov/resource-center/sanctions/SDN-List/Documents/sdnew08.pdf>>.

⁴⁷⁸ *AIM Rules* [2005], rule 17. A relevant change is one which increases or decreases the holding of a significant shareholder through any single percentage (see *AIM Rules* [2005], Glossary). Rule 17 and the Glossary entry remain unchanged between the 2005 and 2007 editions of the AIM Rules.

- ⁴⁷⁹ *AIM Rules* [2005], Glossary: ‘significant shareholder: A shareholder of 3% or more of any class of AIM security (excluding treasury shares)’. The Glossary entry remains unchanged between the 2005 and 2007 editions of the AIM Rules.
- ⁴⁸⁰ *AIM Rules* [2005], Schedule Five, (a), (c), (d) and (f). Schedule Five remains unchanged between the 2005 and 2007 editions of the AIM Rules.
- ⁴⁸¹ ‘CAMEC Acquires Majority Interest in Major Copper Cobalt Joint Venture in the DRC’.
- ⁴⁸² 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?oid=27246&sn=Detail>>. See also, CAMEC, *Offer to Purchase Katanga Mining Limited*, A-3.
- ⁴⁸³ 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.hemscott.com/news/static/rna/item.do?newsId=31793495466427>>; and CAMEC, ‘Holding in company’, RNS 3665Y, 14 February 2006, available at: <<http://www.hemscott.com/news/static/rna/item.do?newsId=31918049683985>>.
- ⁴⁸⁴ *Offer to Purchase Katanga Mining Limited*, A-3.
- ⁴⁸⁵ 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/advisors/aim-notices/aim-notice-ad10.pdf>>.
- ⁴⁸⁶ *AIM Rules* [2005 & 2007], rule 10.
- ⁴⁸⁷ *AIM Rules* [2005 & 2007], rule 12. See also, *intra*, Substantial transactions, p. 22
- ⁴⁸⁸ Three – Nominated Adviser Responsibilities, OR2.
- ⁴⁸⁹ *RNA*, rule 19.
- ⁴⁹⁰ *Marika Services Ltd vs. Mercan Commercial Ltd., Hober Enterprises Ltd., Ibold Company Inc. and Shaford Capital Ltd.*, Order, Claim No. 0002 of 2006, The Eastern Caribbean Supreme Court, High Court of Justice, British Virgin Islands, 6 January 2006. See also *Tidmarsh Affidavit*. See also Sam Sole, ‘Net closes on African Buccaneer’, *Mail & Guardian Online*, 13 January 2006, available at: <http://www.mg.co.za/articlePage.aspx?articleid=261201&area=/insight/insight_national/>.
- ⁴⁹¹ *Marika Services Ltd vs. Mercan Commercial Ltd. et al.*, Order, numbered paragraph 6. See also Sam Sole, ‘New Scramble for Africa’.
- ⁴⁹² *Tidmarsh Affidavit*. See, respectively, paragraphs 99, 93, 116 – 120, 126 – 132, and 138 – 140.
- ⁴⁹³ CAMEC, ‘Democratic Republic of the Congo Acquisition and Production Update’.
- ⁴⁹⁴ Respectively, *Offer to Purchase Katanga Mining Limited*, A-3; *ibid.*, C-29; *ibid.* The latter two quotes also appear in CAMEC’s *Report and Financial Statements: Year Ended 31 March 2007*, p. 106.
- ⁴⁹⁵ Boss Mining Sprl, *Procès-Verbal de la Réunion de l’Assemblée Générale Ordinaire du 23 mars 2007*, p. 2.
- ⁴⁹⁶ CAMEC, ‘Response to Media Reports’. See also Ben Laurance, ‘Edmonds group in a spin after miner is run out’, *The Sunday Times*, 22 July 2007, available at: <http://business.timesonline.co.uk/tol/business/industry_sectors/construction_and_property/article2115100.ece>.
- ⁴⁹⁷ *RNA*, Schedule Three – Nominated Adviser Responsibilities, Ongoing Responsibilities, Regular Contact between Company and Nominated Adviser, OR1.
- ⁴⁹⁸ *Ibid.*, OR2.
- ⁴⁹⁹ *Ernst & Young, Boss Mining, 2.4.1.1 Conseil de gérance*, p.10.
- ⁵⁰⁰ *Ernst & Young, Boss Mining, 2.4.1.4 Analyse*, p. 10: ‘La prise des décisions du Conseil de gérance à la majorité des membres pose un réel problème de participation effective de la GCM à la gestion de la société, lorsque l’on sait qu’elle ne dispose que de 2 membres sur les 6.’
- ⁵⁰¹ *Ernst & Young, Boss Mining, 2.4.2 Environnement du contrôle interne*, p. 11: ‘The management bodies were not set up within the statutory timeframe: the management bodies were only established in May/June 2005, as an implementation of resolution N° AG/2005/002 of the Extraordinary General Meeting of 27 January 2005, whilst the company had been active since 2004. It should not be forgotten that setting up these structures is not only supposed to be a means of ensuring transparency in the information provided to the various parties who are signatories to the joint venture, but it is also critical to good governance.’ (‘Les organes de gestion n’ont pas été mis en place dans les délais statutaires: Les organes de gestion n’ont été mis en place qu’au mois de mai/juin 2005, en exécution de la résolution N° AG/2005/002 de l’Assemblée Générale Extraordinaire du 27 janvier 2005, alors que la société était déjà en activité en 2004. Il sied de rappeler que la mise en place de ces structures devrait répondre à la nécessité d’assurer la transparence de l’information pour les différentes parties signataires du partenariat, autant qu’à des exigences de bonne gouvernance.’).
- ⁵⁰² *Ernst & Young, KMC, 3. Principales faiblesses relevées*, p. 3: ‘Au plan de la structuration et de la gouvernance partenariat: La Gécamines ne peut influencer sur les décisions à long terme de la société’ and; 2.4.1 4 Analyse, p. 13: ‘La disproportion dans la composition des membres de cet organe de gestion au profit de Tremalt, limite le pouvoir de participation de la GCM, d’autant plus que les résolutions sont adoptées à la majorité’.
- ⁵⁰³ *Lutundula Commission*, p. 102, point 4: ‘L’article 11.1.5 de la convention de création de K.M.C et l’article à des statuts de celle-ci ont confié au partenaire Tremalt l’exclusivité de la gestion de la société.’

⁵⁰⁴ *Ibid.*: ‘En effet, le Comité de gestion composé uniquement des représentants de Tremalt est contrôlé par un Conseil de gérance comprenant 7 (sept) membres dont deux seulement sont désignés par la GECAMINES....Aucune autre structure de contrôle de gestion de la société n'est prévue’.

⁵⁰⁵ IMC Group Consulting Ltd., *Restructuration de la Gécamines, février 2004*, ‘6.2.4 “Kababankola (KMC)” partnership’, p. 48: ‘La gestion administrative... est déficiente: première assemblée convoquée plus de 2 ans après le début...’

⁵⁰⁶ CAMEC acquired IMF in February 2006, completed its acquisition of CRJV in July 2006 and exercised its option in March 2007 – as part of a 4 August 2006 agreement – to acquire 80% of the shares of BOSS Mining. The Ernst & Young and the Duncan & Allen audits were both completed on 26 May 2006 and 6 April 2006, respectively. IMC’s findings were presented to ECOFIN in September 2003 and consolidated in their report, *Restructuration de la Gécamines, Projet No. M5670C – Phase 2*, in February 2004. The Lutundula Commission reported in June 2005.

⁵⁰⁷ *Tidmarsh Affidavit*, paragraph 8.2.

⁵⁰⁸ *Tidmarsh Affidavit*, paragraph 54.

⁵⁰⁹ Charles Orbach & Company, *Due diligence review of Shaford Capital Ltd (BVI) and its subsidiaries*, 15 December 2005, paragraphs 2.1 – 2.2.

⁵¹⁰ See *Lutundula Commission*, p. 111.

⁵¹¹ *Tidmarsh Affidavit*, paragraphs 8 – 8.2 and 80 – 2.

⁵¹² *Ernst & Young, Boss Mining, Organisation administrative et gestion financière du partenariat*, p. 20: ‘... CCC et Mukondo Mining avec lesquels Boss Mining entretient des relations croisées et exerce une influence notable.’ See also, *Ernst & Young, Boss Mining, 2.4.2 Environnement du contrôle interne*, p. 11. See entries ‘La gestion des opérations est assurée par la société cliente Congo Cobalt Corporation CC’: During the 2004 financial year, Boss Mining functioned without adequate administrative organisation. The day-to-day management [of Boss Mining] was handled by and confused with that of the Congo Cobalt Corporation, a company controlled by Shaford Capital. (‘Au cours de l’exercice 2004, Boss Mining a fonctionné sans organisation administrative adéquate. La gestion quotidienne était assurée par Congo Cobalt Corporation, société contrôlée par Shaford Capital, et se confondait avec celle-ci.’); also ‘Boss Mining did not have its own staff. The team of directors that was set up in 2005 managed the CCC and Boss Mining at the same time.’ (‘Boss Mining ne dispose pas de personnel propre. L’équipe dirigeante mise en place en 2005 gère à la fois la CCC et la société Boss Mining.’)

⁵¹³ *Ernst & Young, Boss Mining, 2.4.2 Environnement du contrôle interne*, p. 11: ‘La gestion des opérations est assurée par la société cliente Congo Cobalt Corporation CC: Cette situation est porteuse de risques, en raison des conflits d’intérêts sous jacents, une même partie traitant à la fois les opérations d’achat, de vente et d’enregistrement.’ See also, *ibid.*, 4.3 *Opinion sur la transparence de la gestion financière*, p. 16: ‘Absence de cadre contractuel avec Congo Cobalt Corporation qui, de plus, est filiale de Shafford [sic] Capital...’

⁵¹⁴ *Ernst & Young, Mukondo, 4.3 Opinion sur la transparence et la gestion financière*, p. 14: ‘Absence de cadre formel contractuel avec Congo Cobalt Corporation’. *Ernst & Young, KMC, 2.3.3 Analyse*, p. 11: ‘Les commissions perçues par Congo Cobalt Corporation ne sont pas soutenues par un accord’.

⁵¹⁵ *Ernst & Young, Boss Mining, 6.1 Révision des clauses contractuelles*, p. 19: ‘Urgent formalisation of a services contract with CCC: We recommend [that Boss Mining] sign an agreement with the Congo Cobalt Corporation that defines the methods by which the company’s services will be provided, treated and invoiced.’ (‘Formalisation urgente d’un contrat de prestation avec CCC: Nous recommandons, de faire signer une convention avec Congo Cobalt Corporation en particulier, qui définisse les modalités de mise à disposition, de traitement et de facturation des produits à cette société.’). See also *Ernst & Young, Boss Mining, 6.2 Organisation administrative et gestion financière du partenariat*, p. 20: ‘Have a formal contract between CCC and Mukondo Mining. Draw up a contract of services defining the framework of collaboration and the modes for invoicing the products and services with CCC and Mukondo Mining...’ (‘Contractualiser la relation avec CCC et Mukondo Mining: Elaborer un contrat de prestations définissant le cadre de collaboration et les modalités de facturation des produits et des services avec CCC et Mukondo Mining...’). The same recommendation is made by *Ernst & Young, Mukondo Mining, 6.2 Organisation administrative et gestion financière du partenariat*, p. 16: ‘Formalise the contracts with the subcontractor Congo Cobalt Corporation’. (‘Formaliser les contrats avec la sous-traitance Congo Cobalt Corporation’).

⁵¹⁶ *Due diligence review of Shaford Capital Ltd (BVI) and its subsidiaries*, paragraphs 5.1 – 5.3.

⁵¹⁷ *Tidmarsh Affidavit*, paragraphs 98 – 9.

⁵¹⁸ IMC Group Consulting Ltd., *Restructuration de la Gécamines, février 2004*, ‘6.2.4 “Kababankola (KMC)” partnership’, p. 49: ‘Non-respect de l’engagement de contribuer à la réhabilitation de Shituru et prétexte du mauvais rendement de Shituru pour cesser le traitement à façon de Shituru, ce qui revient à priver GCM de son revenu et à exporter du concentré à moindre valeur ajoutée.’ MCRC, 8. *Savannah Mining sprl (KMC), 6. Conclusions*, p. 86: ‘Aucune remise et reprise avec la Gécamines sur les infrastructures GCM à Kakanda’. See also *Lutundula Commission*, p.104, respectively: ‘2)...it [KMC] stopped processing mining concentrates at the Shituru plants in November 2002, that is after 18 months of operation’ (‘2. [KMC] a arrêté le traitement à façon de concentrés de minerais par les usines de Shituru en novembre 2002, soit après 18 mois d’activités’) and; ‘5...[Rehabilitation of the Shituru plants] was suspended because of the lack of progress with the KMC project, particularly following the suspension of its processing activity at the Shituru plants from November 2002.... KMC confirmed that serious financial difficulties prevented it from resuming its participation in the rehabilitation program...’ (‘5... [La réhabilitation des usines de Shituru] a été suspendue à cause du développement insuffisant du projet KMC, notamment par suite de l’arrêt du traitement à façon aux usines de Shituru à partir de novembre 2002... KMC a confirmé son indisponibilité à participer à nouveau au programme de réhabilitation de ces usines pour difficultés financières importantes’).

⁵¹⁹ IMC Group Consulting Ltd., *Restructuration de la Gécamines, février 2004*, ‘6.2.4 Le Partenariat “Kababankola (KMC)”’, p. 49: ‘Risque de conflit d’intérêt relatif aux transactions avec d’autres sociétés du partenaire’.

⁵²⁰ *Ernst & Young, KMC, 4.2 Commentaires sur les comptes*, p. 17: ‘Des faiblesses de contrôle interne de manière générale et plus précisément sur la gestion du cycle comptable Facturation-Clients-Encaissements.’

- ⁵²¹ Ernst & Young, KMC, 2.3.3 Analyse, p. 12: ‘Non maîtrise des facturations réalisées par les sociétés affiliées au Partenaire’; and ‘La détermination des coûts des prestations facturées n’est pas assise sur des accords signés.’
- ⁵²² Ernst & Young, KMC, 2.4.2 Environnement du contrôle interne, p. 14: ‘Les activités sont sous-traitées à Tremalt sans base contractuelle: Toutes les activités de KMC sont sou- traitées par la Tremalt sans base contractuelle formelle. De même, toutes les facturations, de KMC sont directement perçues par Tremalt pour compensation de ces créances sur l’assistance technique[.] Les facturations de Tremalt sur l’assistance technique ne sont ni contractuelles ni suivies par la société KMC.’
- ⁵²³ Ernst & Young, KMC, 2.3.3 Analyse, pp. 11 – 12: ‘Nous avons relevé qu’une société affiliée à l’une des parties, IBML, réalise la commercialisation d’une partie de la production (celle façonnée par elle, ou une autre) moyennant une commission de 2,5% du chiffre d’affaires. Nous n’avons pas eu connaissance de l’existence d’un accord entre KMC et cette société, qui porterait sur cette prestation; en effet, cette disposition ne figure pas dans l’accord du 25 février 2004. Il sied de rappeler que, en application de l’accord, et dans le même temps, Congo Cobalt Corporation réalise une partie de la production de KMC moyennant rémunération!...La Gécamines ne maîtrise ni les bases, ni les prix, ni la réalité des facturations faites par les Congo Cobalt Corporation et IBML. D’autant que ces dernières sont réceptionnées par la Gérance, c’est-à-dire Tremalt. Cette situation exacerbe ainsi les risques de fraude.’
- ⁵²⁴ Tidmarsh Affidavit, paragraph 102.
- ⁵²⁵ Ibid., paragraph 103.
- ⁵²⁶ Ibid., paragraph 104.
- ⁵²⁷ Technical Report on the Boss Mining Project, 1.5 Mining, B-5, annexed to CAMEC, Offer to Purchase Katanga Mining Limited.
- ⁵²⁸ Ibid., 23.1 Mining, Historical and Current, B-19.
- ⁵²⁹ Ibid., 1.10 Capital, B-6
- ⁵³⁰ CAMEC, Offer to Purchase Katanga Mining Limited, Senior Management, A-34.
- ⁵³¹ Tidmarsh Affidavit, paragraph 13.
- ⁵³² Ibid., paragraph 78.
- ⁵³³ Ibid., paragraph 129.
- ⁵³⁴ Ibid., paragraph 118.
- ⁵³⁵ Ibid., paragraph 129.
- ⁵³⁶ Ibid., paragraphs 8.3 and 9.2.
- ⁵³⁷ Ibid., paragraphs 130 – 1.
- ⁵³⁸ Offer to Purchase Katanga Mining Limited, A-10.
- ⁵³⁹ Ibid., A-12.
- ⁵⁴⁰ Ibid., C-29.
- ⁵⁴¹ Tidmarsh Affidavit, paragraph 91.
- ⁵⁴² Ibid., paragraphs 93 – 4.
- ⁵⁴³ Minister of Mines, Democratic Republic of Congo, Terms of Reference for the Termination and/or Renegotiation of the Mining Contracts, August 2008, XVI. Cancellation of the contracts, p. 8. The translation of the terms of reference, originally circulated by the Congolese government’s corporate and finance agency, Bell Pottinger, states: ‘Please note that this Terms of Reference document is a translated version of the French original, and it does not constitute an official or legally approved or binding document. It is intended for general reference purposes only.’ 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’. The French *Termes de référence pour la renégociation et / ou la résiliation des contrats miniers* is available at the DRC’s Ministry of Mines website: <http://www.miningcongo.cd/pdf/TERME_DE_REFERENCES.pdf>.
- ⁵⁴⁴ London Stock Exchange, Stock Exchange AIM Disciplinary Notice, AD4, ‘Public censure – SubSea Resources plc’, 1 February 2008, available at: <<http://www.londonstockexchange.com/NR/rdonlyres/4DD49B41-5F1A-427B-BE08-C6DF805994F9/0/AIMNoticeD4.pdf>>.
- ⁵⁴⁵ Ibid., paragraphs 2, 13 – 18, 19 – 23. 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.
- ⁵⁴⁶ 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>>.
- ⁵⁴⁷ London Stock Exchange, Stock Exchange AIM Disciplinary Notice, AD6, ‘Section C2.2 Notice’, 16 July 2008, available at: <<http://www.londonstockexchange.com/companies-and-advisors/aim/advisers/aim-notices/aim-notice-ad6.pdf>>.
- ⁵⁴⁸ 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>>. The sanctions were for breaches of AIM Rules 9 and 10 over the relevant period from 27 June 2003 to 19 May 2005. The current corresponding AIM Rules are rule 10 (Principles of disclosure, misleading, false, deceptive, omitted information of import) and rule 11 (Notification of price sensitive information without delay).
- ⁵⁴⁹ ‘Public censure – Environmental Recycling Technologies plc’.
- ⁵⁵⁰ AIM Rules, rule 14 and Schedule Three. The rule and schedule are unchanged from the 2005 to the 2007 editions of the Aim Rules.
- ⁵⁵¹ AIM Rules [2005 & 2007], rule 14.
- ⁵⁵² Ernst & Young, Boss Mining, Note de synthèse, p. 1: ‘Nous avons émis un premier rapport, dans lequel nous mentionnions tes limitations nombreuses que nous avons rencontrées dans l’exécution de nos travaux, et qui avaient trait à

l'absence de données susceptibles de nous permettre d'apprécier les performances économiques passées et présentes, et de finaliser l'analyse de la rentabilité future des différents partenariats.

⁵⁵³ Ernst & Young, *Boss Mining*, 2.4.2 *Environnement du contrôle interne*, p. 11: 'Risques fiscaux et sociaux persistants: Au cours de l'exercice 2004, la société n'a effectué aucune déclaration sur les charges fiscales ou sociales.'

⁵⁵⁴ *Ibid.*, 'Absence of an opening balance sheet: No opening balance sheet exists for Boss Mining. For example, the reconstructed accounts for 2004 do not include the balances at the opening of the tax year'. ('Absence de bilan d'ouverture: Il n'existe pas un bilan d'ouverture de Boss Mining. A titre d'exemple, les comptes reconstitués de 2004 ne font pas apparaître des soldes à l'ouverture de l'exercice.')

⁵⁵⁵ *Ibid.*, p. 12: 'Non-formalised administrative and financial procedures: The company does not have a manual of accounting, financial and administrative procedures...' ('Procédures administratives et financières non formalisées: La société ne dispose pas de manuel de procédures comptables, financières et administrative...').

⁵⁵⁶ Ernst & Young, *Boss Mining*, 4.2 *Commentaires sur les comptes*, p. 14: 'La société Boss Mining n'a pas comptabilisé la production de la carrière de Mukondo pour un montant de USD 6.168.165 (correspondant à 331 252,91 tonnes de minerais, soit 182 % en termes de chiffre d'affaires, ou 164% de la production réalisée sur les autres carrières pendant la même période.'

⁵⁵⁷ Ernst & Young, *Boss Mining*, 2.4.2 *Environnement du contrôle interne*, p. 11: 'Tous les frais liés à la constitution et à la libération du capital ne figurent pas dans les comptes de Boss Mining. De même, les frais de prospection et les dépenses liées à l'acquisition de ce droit d'exploitation ne sont pas comptabilisés. La société ne tient pas de rapprochements bancaires; à titre d'exemple, le solde comptable de banque n'a pas fait l'objet d'une réconciliation avec les banques concernées. Les états financiers ne mentionnent pas les comptes suivants: comptes d'immobilisations, comptes fournisseurs, comptes de stocks, alors que la société est redevable des charges fiscales et des facturations des entrepreneurs. Les soldes des comptes de tiers débiteurs et créditeurs sont compensés sans accord préalable.'

⁵⁵⁸ Ernst & Young, *Boss Mining*, 4.2 *Commentaires sur les comptes*, p. 14: 'It was the responsibility of Boss Mining's management to prepare these financial statements, which are incomplete (comprising the balance sheet, the record of the number of employees and resources and explanatory notes in annexes)'. ('Ces états financiers qui ne sont pas complets (comprenant le bilan, le tableau des emplois et ressources ainsi que le notes annexes) ont été préparés sous la responsabilité la direction de Boss Mining.')

⁵⁵⁹ Ernst & Young, *Boss Mining*, 4.3 *Opinion sur la transparence de la gestion financière*, p. 16: 'The accounts have not been regularly maintained according to the standards of the profession; there has been a failure to observe accountancy rules.' ('Compatibilité non régulièrement tenue selon les normes de la profession; Non respect des normes comptables.'). See also *Ibid.*, 2.4.2 *Environnement du contrôle interne*, p. 12: 'The accounts have not been properly maintained: throughout 2004 the company failed to keep proper accounts'. ('Compatibilité non tenue de manière régulière: La société n'a pas tenu de compatibilité régulière au cours de l'année 2004.')

⁵⁶⁰ Ernst & Young, *Boss Mining*, 4.2 *Commentaires sur les comptes*, p. 14: 'Norme IAS 01: Présentation des états financiers: La norme prescrit que les états financiers doivent comprendre: Le bilan et le compte de résultat; L'état de variation des capitaux propres; Les tableaux de flux de trésorerie; Les méthodes comptables et notes explicatives; Les états financiers de BOSS MINING soumis à notre examen n'étaient pas complets, c'est-à-dire comprenant les éléments susmentionnés.'

⁵⁶¹ *Ibid.*, pp.14 – 15: 'Norme IAS 08: Résultat net de l'exercice, erreurs fondamentales et changements de méthodes comptables: Obligation de présenter séparément les résultats générés par chaque type d'opérations suivantes: le résultat des activités ordinaires[:] différence entre les produits et les charges résultant de l'activité courante de l'entreprise; le résultat des activités extraordinaires: résulte des événements ou transactions clairement distincts de l'activité courante de l'entreprise et ne sont pas appelés à se renouveler fréquemment (expropriations, désastres naturels...); le résultat des changements d'estimation comptable; le résultat des erreurs fondamentales: ce sont des erreurs découvertes sur les résultats des exercices précédents, de ce fait, il faut: ajuster le solde d'ouverture des résultats non distribués; retraiter les informations comparatives du compte de résultat et autres; Le résultat des changements de méthodes comptables. Les états financiers mis à notre disposition ne permettent pas de déceler ces éléments[:]'

⁵⁶² *Ibid.*, p.15: 'Norme IAS 24: Informations relatives aux parties liées[:] Définir le champ des relations entre parties liées et des transactions qu'elles induisent. Des parties sont considérées comme liées si une partie peut contrôler l'autre partie. Ce concept regroupe: les groupes de sociétés; les entreprises associées; les joint-ventures; les personnes ou les membres de leurs familles détenant une part des droits de vote substantielle dans l'entreprise; les principaux dirigeants de l'entreprise. Une transaction entre parties liées correspond à tout transfert de ressources ou d'obligations entre parties liées, et peut impliquer toute sorte de transaction. Particularité de ces transactions: les parties liées peuvent avoir un degré de flexibilité dans l'établissement du prix que l'on ne rencontre pas dans les transactions entre parties non liées. Les informations sur les relations entre parties liées doivent être fournies, dès lors qu'il y a eu transaction. Nous n'avons pas obtenu, dans l'exécution des diligences, le détail des transactions ayant permis d'établir les revenus de chaque Partenaire.'

⁵⁶³ *Ibid.*, p.16: 'les conditions pouvant garantir à toutes les parties la transparence financière du partenariat Boss Mining ne sont pas réunies.'

⁵⁶⁴ Ernst & Young, *Boss Mining*, 6.2 *Organisation administrative et gestion financière du partenariat*, p. 19: 'Redéployer la comptabilité: Acquérir de manière urgente un personnel comptable compétent, et élaborer un calendrier comptable incluant l'élaboration du bilan d'ouverture. La mise en place d'un progiciel comptable, et la mise en place de procédures comptables.'

⁵⁶⁵ MCRC, *Rapport des Travaux de la Commission de Revisitation des Contrats Miniers – vol. 2, Boss Mining*, 4.3 *Retombées financières pour la Gécamines*, p. 13: 'la Commission n'a pas reçu les états financiers pour faire une bonne appréciation de situation financière de Boss Mining.'

⁵⁶⁶ *Ibid.*, 5.3 *Chronogramme d'exécution du contrat*, p. 14: 'Après examen des éléments lui fournis, la Commission a relevé qu'il n'existe pas un plan de financement explicite du projet Boss Mining.'

⁵⁶⁷ Tidmarsh *Affidavit*, para. 138 – 9.

⁵⁶⁸ *Ibid.*, para. 140.

⁵⁶⁹ 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.

⁵⁷⁰ *AIM Rules [2005 & 2007]*, rule 14.

⁵⁷¹ CAMEC, 'Final results', RNA 9068R, 29 September 2005, available at:

<<http://www.hemscott.com/news/static/rna/item.do?newsId=29899414833023>>. Under AIM Rules, Schedule Three, The Turnover test, 4 states that turnover of the AIM company means the figure stated in either the last published consolidated accounts or the last notified preliminary statement of annual results.

⁵⁷² CAMEC, *Report and Financial Statements: Year ended 31 March 2006*, p. 43. CAMEC states the turnover for '2006 Acquisitions': although it does not attribute this turnover to its DRC acquisitions *per se* in the consolidated profit and loss account on p. 43, cross referencing to the table '1 TURNOVER, (LOSS)/PROFIT ON ORDINARY ACTIVITIES BEFORE TAXATION AND SEGMENTAL REPORT' on p.50, shows £9,525,000 of turnover attributed to DR Congo, the same figure given by business class for copper/cobalt (£9,431,000 attributed to trading and £94,000 to exploration/production).

⁵⁷³ *AIM Rules [2005 & 2007]*, rule 14.

⁵⁷⁴ *Offer to Purchase Katanga Mining Limited*, A-11.

⁵⁷⁵ CAMEC, *Report and Financial Statements: Year ended 31 March 2006*, p. 43. For Turnover test, see note 571.

⁵⁷⁶ CAMEC, RNS No.0911J, 'Preliminary Results', 18 September 2006, available at:

<<http://www.hemscott.com/news/static/rna/item.do?newsId=36223754341852>>.

⁵⁷⁷ *AIM Rules [2005 & 2007]*, rule 14.

⁵⁷⁸ Ernst & Young, *KMC, 4.2 Commentaires sur les comptes*, p. 17: 'Malgré les investigations effectuées pour la reconstitution de la comptabilité...l'absence des pièces comptables et des contrats formalisés avec les sous-traitants ne nous permettent pas de nous assurer de l'exhaustivité des montants comptabilisés en chiffre d'affaires, en compte des sous-traitants et dans les comptes clients.'

⁵⁷⁹ Ernst & Young, *Mukondo Mining, 3. Principales faiblesses relevées*, p. 3: 'En matière de gestion financière et comptable: Comptabilité non régulièrement tenue selon les normes de la profession'; also *ibid.*, 4.3 *Commentaire sur les comptes*, p. 13: 'la société de Mukondo Mining n'a pas tenu en 2004, une comptabilité régulière, conforme aux normes et principes généralement admis.'

⁵⁸⁰ Ernst & Young, *Mukondo Mining, 6.2 Organisation administrative et gestion financière du partenariat*, p.16: 'Mettre en place une comptabilité conforme aux normes et principes généralement admis... Elaborer un manuel de procédures administratives, financière et comptables, Structurer et formaliser l'organisation de la société en veillant à assurer une stricte séparation des tâches notamment dans la fonction comptable.'

⁵⁸¹ Ernst & Young, *KMC, 3. Principales faiblesses relevées*, p. 3: 'En matière de gestion financière et comptable: Les états financiers de l'exercice 2004 n'ont pas été certifiés par le commissaire aux comptes. Nous ne sommes pas en mesure de certifier que les comptes annuels (des exercices 2002 et 2003) sont réguliers et sincères et donnent une image fidèle du patrimoine, de la situation financière, ainsi que du résultat de KMC.'

⁵⁸² IMC Group Consulting Ltd., *Restructuration de la Gécamines, février 2004*, '6.2.4 "Kababankola (KMC)" partnership', p. 48: 'La gestion administrative et comptable est déficiente: ... comptes 2001 et 2002 présentés non audités, ...'

⁵⁸³ Lutundula Commission, p. 102, point 3: 'La société K.M.C a le droit de dresser deux états financiers dont l'un en francs congolais pour ses déclarations en R.D.Congo, et l'autre en monnaie étrangère pour son propre compte.'

⁵⁸⁴ Ernst & Young, *KMC, 3. Principales faiblesses relevées*, p. 3: 'Au plan de la structuration et de la gouvernance partenariat: Absence de documents prévisionnels nécessaires au pilotage de la société (business plans, budgets d'investissement et d'exploitation).' In respect of Mukondo Mining, the auditors state: 'As part of our intervention, we requested that our contacts [at Gécamines] provide certain documents, specifically, business plans and other budgets that would enable us to evaluate the financial consequences of the partnership agreements for Gécamines. These requests went unanswered. As a result, we have been unable to implement all the necessary steps to make a financial evaluation of revenue expected by Gécamines, specifically, a comparison between the projected cash flow and real cash flow of the operation.' ('Dans le cadre de notre intervention, nous avons sollicité de nos interlocuteurs la mise à disposition d'un certain nombre de documents, notamment les business plans et autres budgets qui pourraient nous permettre d'évaluer les retombées financières des accords de partenariats pour la Gécamines. Ces demandes sont restées sans suite. En conséquence, nous n'avons pu mettre en oeuvre toutes les diligences prévues en vue de l'évaluation financière des revenus attendus par la Gécamines en l'occurrence la comparaison entre cash-flow projeté et cash-flow réel de l'opération.') See Ernst & Young, *Mukondo Mining, 2. Limitations*, p.13.

⁵⁸⁵ Ernst & Young, *KMC, 4. Nos conclusions*, p. 4: 'Transparence financière: L'organisation mise en place ne donne pas toutes les garanties quant à la transparence financière du Partenariat.'

⁵⁸⁶ London Stock Exchange, *Stock Exchange AIM Disciplinary Notice*, AD2, 'Section C2.2 Notice', 28 December 2007, available at: <<http://www.londonstockexchange.com/NR/rdonlyres/D0EBC0FA-50D9-4A13-8FDA-B6D014823DE3/0/AIMNoticeD2v2FINALPDFVERSION.pdf>>.

⁵⁸⁷ 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>>.

⁵⁸⁸ *Ibid.*, paragraph 20.

⁵⁸⁹ Stephen Foley, 'Small Talk: LSE to set up disciplinary inquiry into White Nile'.

⁵⁹⁰ 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/NR/rdonlyres/B037D460-B3C5-42E6-8BCB-E08D34131B40/0/AD1v4clean.pdf>>.

⁵⁹¹ Serious Fraud Office, 'SFO to investigate Langbar', 29 November 2005, available at:

<http://www.sfo.gov.uk/news/prout/pr_444.asp?id=444>. The Exchange has not disclosed whether or not Crown/Langbar was one of the client companies reviewed in its investigation of Nabarro Wells.

⁵⁹² See 'Public censure and fine – Nabarro Wells & Co Limited', paragraph 23.

⁵⁹³ *AIM Rules* [2005 & 2007], rule 10.

⁵⁹⁴ See *intra*, Applying the class tests to CAMEC's acquisitions, p. 22.

⁵⁹⁵ *AIM Rules* [2005 & 2007], rule 11.

⁵⁹⁶ CAMEC, 'Update on activities in the DRC', 28 July 2006. See also, CAMEC, 'Proposed acquisition of shares in DRC Resources Holdings Limited', p. 24.

⁵⁹⁷ CAMEC, 'Democratic Republic of the Congo Acquisition and Production Update'. 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 Shaford 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 du 26 janvier 2007*. On 4 August 2006 agreement, see CAMEC, 'Proposed acquisition of shares in DRC Resources Holdings Limited', p. 29.

⁵⁹⁸ See also CAMEC, 'CAMEC signs MOU to create new DRC Joint Venture Company'.

⁵⁹⁹ CAMEC, 'Proposed acquisition of shares in DRC Resources Holdings Limited', pp. 7 – 8. DRC Resources Holdings Limited was incorporated in the Isle of Man on 30 January 2008 – see *ibid.*, p. 13.

⁶⁰⁰ *Ernst & Young, Boss Mining, 2.3.1 Présentation*, p. 8 : 'Les obligations des parties ne sont pas définies dans les statuts de BOSS MINING tels que modifiés le 27 janvier 2005.... La nette définition des obligations des parties permettrait de constater si les retombées financières que la GCM tire de ce partenariat, tels les paiements des dividendes provisionnels, sont proportionnelles aux apports qu'elle y a faite.'

⁶⁰¹ *Ibid.*, *Limitations*, p. 2: 'En dépit de nos relances, nous n'avons pas obtenu les business plans et autres budgets qui pourraient nous permettre d'évaluer les retombées financières des accords de partenariats pour la Gécamines. En conséquence, nous n'avons pu mettre en oeuvre toutes les diligences prévues en vue de l'évaluation financière des revenus attendus par la Gécamines en l'occurrence la comparaison entre cash-flow projeté et cash-flow réel de l'opération.' According to Ernst & Young, '[w]e have been unable to reconcile the accounts for 2003 and 2004 for Gécamines and Boss Mining because of the above-mentioned weaknesses in Boss Mining's [system]'. (See *Ernst & Young, Boss Mining, 5.1.3 Rapprochement des comptes Gécamines / Boss Mining*, p. 18: 'Nous n'avons pas pu réaliser, pour 2003 et 2004, la réconciliation entre les comptabilités de la Gécamines et celle de Boss Mining, en raison des faiblesses relevées plus haut en ce qui concerne Boss Mining'). Ernst & Young's analysis of the partnership accounts revealed that dividend payments to Gécamines, agreed at Boss Minings's AGM in 2005, did 'not appear either in the company accounts of Boss Mining placed at our disposal, nor in the management report of March 2005' (*Ernst & Young, Boss Mining, 5.1.1 Présentation des revenus d'après les comptes du Partenariat*, p.17: 'n'apparaît ni dans les comptes sociaux de Boss Mining mis à noire disposition, ni dans le rapport de gérance établi en mars 2005'). The auditors were also 'unable to obtain from Gécamines its forecasts for expected revenue for the years we were examining' and were able only to build up, using documents that were not part of the formal accounts, an incomplete picture of Gécamines revenues from the partnership. (See 5.1.2 *Evaluation des retombées financières d'après les comptes de GCM*, p.18: 'Nous n'avons pas obtenu les prévisions de revenus attendus par la Gécamines au titre des années objets de notre examen.')

⁶⁰² *Ernst & Young, KMC, 2.3.3 Analyse*, pp. 11 – 12: 'La Gécamines est exclues de la participation directe à Mukondo Mining: Au terme des accords du 25 février 2004, la Gécamines a cédé les permis d'exploitation de la concession Mukondo à Mukondo Mining. Il est de ce point de vue difficilement compréhensible que cette cession ne soit pas assortie au minimum d'une participation dans le capital de cette société.'

⁶⁰³ *MCRC, Rapport des Travaux de la Commission de Revisitation des Contrats Miniers – vol. 2, Savannah Mining Sprl, 4.3 Retombées financières pour la Gécamines*, p. 85: 'From the date of commercial production, Gécamines should have received dividends of 20%. No provision had been made for an entry premium or royalties.' ('*A compter de la date de la production commerciale, la GECAMINES bénéficiera des dividendes de 20%. Le pas de porte et les royalties n'ont pas été prévus.*').

⁶⁰⁴ *Ernst & Young, KMC, 3.3 Nos conclusions*, p. 16: 'At the end of 2003, the company [KMC] lost more than half of its own capital. This loss notwithstanding it decided to continue its activities.' ('*A la fin de 2003, la société a perdu plus de la moitié de ses capitaux propres. Nonobstant cette perte, elle a décidé de poursuivre son activité.*'). *Ernst & Young, KMC, 5.Evaluation Financière des Droits et Obligations des Partenaires, 5.2 Nos conclusions*, p. 20:

A la lecture des états financiers, il apparaît que les facturations des sociétés affiliées à TREMALT et à KMC se présentent de la manière suivante:

<i>Tremalt à travers ses Affiliés, a engrangé un revenu de plus de USD 1,5 million en 2003</i>	[From reading the financial statements, it appears that the invoices of companies affiliated to Tremalt and KMC were presented in the following way:]	2004	2003
		1 637 167	1 500 000
[Tremalt through its affiliates had an income of more than USD 1.5 million in 2003]	<i>Frais de gestion (Tremalt)</i>		
	[Management costs]		
	<i>Commissions sur ventes (IBML)</i>	370 670	91178
	[Commission on sales]		
	Total	2 007 837	1 591 178
	<i>% Production vendue</i>	8,52%	43,62%
	[Production sold]		

The auditors note, *ibid.*, 3. *Principales faiblesses relevées*, p.3: 'Regarding economic and financial performance : The company [KMC] recorded an accumulated loss of more than 16 million USD in the financial year of 2002-2003. However, profits of 8.6 million USD were recorded in 2004.' ('*En ce qui concerne les performances économiques et financières: La société a enregistré des pertes cumulées au cours des exercices 2002 et 2003 de plus de USD 16 millions. Un résultat bénéficiaire de IJSD 8,6 millions a été cependant enregistré en 2004.*').

⁶⁰⁵ *Lutundula Commission*, p. 105, point 3: 'aux coûts d'exploitation manifestement excessifs et difficilement justifiables au regard du niveau d'activités de la société.'

⁶⁰⁶ Ernst & Young, KMC, *Evaluation Financière des Droits et Obligations des Partenaires*, 5.2 Nos conclusions, p. 20: 'In fine, la participation de la Gécamines n'a pas été bénéficiaire à cette date: La participation de la Gécamines dans cette association n'a pas apporté les revenus escomptés, à fin décembre 2003. Au contraire de la Gécamines, le Partenaire TREMALT a pu tirer, de manière directe, des revenus importants.' See also Ernst & Young, KMC, 3. Principales faiblesses relevées, p. 3: 'Regarding Gécamines' revenues: On 31 December 2003, Gécamines' revenues were solely based on dividends. Due to the recorded losses, Gécamines has not earned anything to date.' ('En ce qui concerne les revenus de la Gécamines: Au 31 décembre 2003, les revenus de la Gécamines dans ce partenariat étaient constitués des seuls dividendes. En raison des pertes enregistrées, la Gécamines n'a rien perçu à cette date.')

⁶⁰⁷ Ernst & Young, KMC, 2.3.3 Analyse, p. 11: 'Les accords sont largement léonins, en défaveur de la Gécamines' and 'La Gécamines porte les risques liés au financement, mais n'en récolte pas, à l'instar du partenaire, les bénéfices'.

⁶⁰⁸ Ernst & Young, KMC, 6.3.1 Amélioration des clauses contractuelles (négociation séparée et spécifique à KMC), p. 22: 'At least a 40% shareholding in Mukondo Mining' ('Prise de participation dans Mukondo Mining pour au moins 40% des parts'). See also Ernst & Young, Mukondo, 6.1 Révision des clauses contractuelles, p. 16: 'This effective presence is by taking a direct and majority shareholding in the partnership (of at least 40%)'. ('Cette présence effective passe par une prise de participation directe et majoritaire dans ce partenariat (au moins 40%)').

⁶⁰⁹ Ernst & Young, Mukondo, 6.1 Révision des clauses contractuelles, p. 16: 'To negotiate a convention on the management or of royalties'; 'From the perspective of a renegotiation of the contract, Gécamines would be able to negotiate a convention for management remuneration for an amount at least equal to that of Tremalt in KMC...'. ('Négocier une convention de gestion ou des royalties'; 'Dans l'optique d'une renégociation du contrat, la Gécamines pourrait négocier une convention de gestion rémunérée à un montant au moins égal à celui de Tremalt dans KMC...').

⁶¹⁰ Ibid.: '...Gécamines could negotiate royalties based on the turn-over calculated on the basis of the metal content and the price of metal on the London Metal Exchange.' ('...la Gécamines pourrait négocier des royalties assises sur le chiffre d'affaires calculé sur base des métaux contenus et du cours des métaux au London Metal Exchange.')

⁶¹¹ Ernst & Young, KMC, 6.3.1 Amélioration des clauses contractuelles (négociation séparée et spécifique à KMC), p.22: 'Introduction of a charge based on the gross turn-over'. ('Mise en place d'une redevance à valoir sur le chiffre d'affaires brut').

⁶¹² Ernst & Young, Boss Mining, 6.1 Révision des clauses contractuelles, p. 19: 'Define a new approach, a new partnership including Gécamines, Ridgepoint and Tremalt Ltd; Gécamines has suggested the establishment of a new partnership between Ridgepoint and Tremalt Ltd, that is to say its Associates in the KMC and Boss Mining joint ventures.' ('Définir une nouvelle approche, un nouveau partenariat comprenant la Gécamines, Ridgepoint et Tremalt Ltd: La Gécamines a suggéré la mise en place d'un nouveau partenariat associant à la fois Ridgepoint et Tremalt Ltd, c'est-à-dire ses Associés dans les partenariats KMC et BOSS MINING.'). See also equivalent recommendations in Ernst & Young, KMC, 6.1 Revision des clauses contractuelles, p. 21 and in Ernst & Young, Mukondo, 6.1 Révision des clauses contractuelles, p. 16.

⁶¹³ Lutundula Commission, Mukondo Mining, D. Conclusion, p. 113: 'la résiliation pure et simple de la Convention minière du 07 mars 2001 entre la GECAMINES, TREMALT et KMC, d'une part, ainsi que la dissolution de cette dernière société'.

⁶¹⁴ Lutundula Commission, 2.2.4 Boss Mining Ltd., C. Observations and conclusions, p. 116: 'At the time when the delegation of the Special National Assembly Commission was on mission in Katanga, it was observed that Boss Mining Ltd was in the midst of being established. The company operates an industrial exploitation and its investment carried out to date amounts to several USD millions. Work on the ground is serious. This is why, and given the amicable settlement at ICSID on 25 February 2004, the Commission encourages the expansion and development of the partnership with Boss Mining.' ('Au moment où la délégation de Commission Spéciale de l'Assemblée Nationale était en mission au Katanga, elle a constaté que la société Boss Mining Sprl était en pleine installation. La société fait une exploitation industrielle et l'investissement effectué à ce jour s'élève à plusieurs millions de dollars américains. Le travail réalisé sur terrain est sérieux. C'est pourquoi et compte tenu du règlement à l'amiable du 25 février 2004 au CERDI, la Commission encourage l'expansion et le développement du partenariat au sein de la société Boss Mining.')

⁶¹⁵ MCRC, Rapport des Travaux de la Commission de Revisitation des Contrats Miniers – vol. 2, Boss Mining, Conclusions, p. 15: 'Date d'authentification des statuts antérieure à celle de la création de la société; Déséquilibre dans la répartition des parts sociales; Absence de contrat de cession signé en bonne et due forme; Absence d'étude de faisabilité au démarrage de l'exploitation (Luita); Absence d'un plan de financement explicite du projet; Absence de royalties pour la GECAMINES et de pas de porte.'

⁶¹⁶ MCRC, Rapport des Travaux de la Commission de Revisitation des Contrats Miniers – vol. 2, Boss Mining, 4.1 Capital social, p. 11: 'Le contrat a prévu les participations de 80% et 20% respectivement pour SHAFORD/CAMEC et pour GECAMINES. La Commission ne dispose d'aucun support pour apprécier cette répartition des parts sociales, surtout qu'elle a été faite dans le cadre du règlement du litige précité.'

⁶¹⁷ Ibid., p.12: 'les paramètres spéculatifs notamment le fait que la République Démocratique du Congo était considérée comme un pays à très haut risque du fait de la guerre'. The IRR – which applies to gross margins, i.e., sales less direct costs – is the rate of interest that renders the initial capital cost equal to future revenues. In other words, a company must compare how much capital it has invested in a project with the revenue that it expects to receive back from a project. However, the annual revenues must be discounted or reduced in value because, if the initial capital had been put into alternative safe investments, this in itself would have generated a certain level of returns. This level of returns or interest is generally referred to as the 'opportunity cost of capital'. In general, if the IRR is greater than the opportunity cost of capital, then the project will add value for the company. The extent to which risks attach to a particular project – for example, whether production may be disrupted by political instability or even conflict – requires that the opportunity cost of capital should include a premium to offset these risks.

⁶¹⁸ Rapport des Travaux de la Commission de Revisitation des Contrats Miniers – vol. 2, Boss Mining, 4.1 Capital social, p. 12: 'estime que ce taux est trop élevé au regard des standards internationaux qui, selon plusieurs experts consultés à ce propos, ne dépassent pas 10%.'

⁶¹⁹ ‘Although provision is made for the contribution of parties in title 3, the statutes of Boss Mining do not contain any explicit provision.’ (*Bien que prévus à l’intitulé du titre 3, les statuts de BOSS MINING Sprl ne contiennent aucune disposition sur les apports des parties.*) *Ibid.*, 4.2 *Apports de parties*, p. 12.

⁶²⁰ ‘Présentation des partenariats constitués par la GECAMINES au 30 avril 2007’. *Ibid.*

⁶²¹ *Ibid.* ‘Apport en numéraire. Toutefois, le montant y relatif n’est pas précisé. Il y a lieu de signaler, selon les déclarations recueillies auprès des responsables de BOSS MINING Sprl, que les investissements effectués à ce jour par cette société sont estimés à environ 200.000.000 USD pour la construction de ses deux usines (LUITA et KANKONDE) ainsi que pour d’autres actions sociales.’

⁶²² *Ibid.* ‘Moreover, the reimbursement of loans is guaranteed by the project once commercial production has commenced; under the contract a percentage (80%) is deducted from the dividends until the financing provided by the joint venture partner has been repaid in full.’ (*En outre, le remboursement des fonds empruntés est assuré par le projet arrivé en phase de production commerciale par prélèvement d’un pourcentage contractuel (80%) sur les dividendes, jusqu’à l’apurement total du financement apporté par le partenaire.*)

⁶²³ *ibid.*, p.13: ‘S’agissant des apports, la Commission s’étonne du fait que le financement apporté par le partenaire qui est censé constituer son apport dans la joint-venture est en même temps accepté comme une créance remboursable par celle-ci. La question qui se pose est celle de savoir pourquoi CAMEC, après avoir obtenu le remboursement total et prioritaire du montant du financement qui constituait son apport, continuerait à se prévaloir de sa qualité d’associé avec la même répartition du capital?’

⁶²⁴ *Ibid.* ‘La GECAMINES perçoit à la fin de chaque mois de BOSS MINING une somme de dollars américains trois cent milles (USD 300.000) à titre d’avances sur dividendes. Cependant, la Commission n’a pas reçu les états financiers pour faire une bonne appréciation de situation financière de BOSS MINING. En revanche, la Commission relève que la GECAMINES n’a pas perçu un pas de porte dans ce partenariat et qu’il n’est pas prévu des royalties en sa faveur.’

⁶²⁵ *Ibid.*, respectively, 3. *Aspects techniques* and 5.2 *Aspects environnementaux*, p. 11 and p. 14: ‘La Commission a noté, à ce propos, qu’au moment où cette production a démarré à l’usine de LUITA, il n’existait aucune étude de faisabilité sur le projet’; and ‘Les documents transmis par la société BOSS MINING à la Commission ne donnent aucun renseignement sur les mesures de protection de l’environnement par cette société.’

⁶²⁶ *Ibid.*, 5.1 *Impact social*, pp.13 – 14 : ‘La Commission n’a pas pu obtenir un cahier des charges des actions à caractère social pour le développement durable des populations environnantes, encore moins le programme de leur réalisation et les coûts y afférents.’

⁶²⁷ *Ibid.*, *Savannah Mining Sprl*, respectively, 3. *Aspects techniques* and 5.2 *Aspects Environnementaux*, p. 85 and p. 86: ‘ce partenariat n’a pas encore produit une étude de faisabilité’; and ‘La société n’a transmis à la Commission aucun document se rapportant à la protection de l’environnement.’

⁶²⁸ *Ibid.*, 6. *Conclusions*, p. 86: ‘Fixation arbitraire des parts sociales sans étude de faisabilité; Non commencement des travaux depuis 200[;] Gel du concentrateur de Kakanda et des gisements[;] Aucune remise et reprise avec la Gécamines sur les infrastructures GCM à Kakanda[;] Non dépôt de l’étude de faisabilité[.]’

⁶²⁹ *Ibid.*, *Mukondo Mining, Conclusions*, p. 139: ‘des irrégularités dans l’acte constitutif de la Joint-venture; l’absence de GECAMINES dans le partenariat; l’absence d’un contrat de cession dûment signé par les parties’.

⁶³⁰ *Ibid.*, *Boss Mining, Conclusions*, p. 15: ‘Maintenir les termes de l’arrangement à l’amiable du 25 février 2004 entre GCM, Ridgepointe et Tremalt (aujourd’hui Savannah [sic] Mining); Identifier et évaluer les apports réels des parties dans la joint-venture existante en vue de répartir équitablement les parts sociales car la valeur moyenne du gisement (1.426.810 tonnes de cuivre et 70.152 tonnes de cobalt) est estimée entre 2,5 et 4 Milliards USD; Exiger le paiement de royalties avec effet rétroactif.’

⁶³¹ *Ibid.* ‘le partenariat GECAMINES et BOSS MINING est à renégocier’.

⁶³² *Ibid.*, *Savannah Mining, 6. Conclusions*, p. 87: ‘Ce partenariat fait partie d’un arrangement à l’amiable entre la GCM et Ridgepointe; Identifier et évaluer les apports réels des parties dans la JV existante en vue de répartir équitablement les parts sociales [sic]; Exiger des partenaires la mise en valeur des gisements; Exiger des partenaires la conclusion d’un contrat de cession des titres en bonne et due forme; Exiger le paiement des royalties sur les recettes brutes.’

⁶³³ *Ibid.*

⁶³⁴ *Ibid.*, *Mukondo Mining, Conclusions*, p. 140: ‘Maintenir les termes de l’arrangement à l’amiable du 25 février 2004 entre GCM Ridgepointe et Tremalt; Ouvrir le capital social à la GCM; Identifier et évaluer les apports réels des parties dans la JV existante en vue de répartir équitablement les parts sociales; Valeur du gisement 4,5 Milliards USD; Prévoir le paiement de royalties en faveur de GCM.’

⁶³⁵ *Ibid.*

⁶³⁶ The letters from the Ministry of Mines to the companies are available at:

<http://www.miningcongo.cd/notifications_entreprises_mars2008/Liste_notifications_mars2008.htm>.

⁶³⁷ Ministry of Mines, Democratic Republic of Congo, ‘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’, Press Release, 5 September 2008.

⁶³⁸ *Terms of Reference for the Termination and/or Renegotiation of the Mining Contract*. See *intra*, note 543.

⁶³⁹ *Terms of Reference for the Termination and/or Renegotiation of the Mining Contracts*, ‘V. The rates of remuneration of the projects’, p. 4.

⁶⁴⁰ *Ibid.*, ‘VIII. Effective participation in the day-to-day management of the partnership’, pp. 5 – 6.

⁶⁴¹ *Ibid.*, ‘X. Meeting the obligations incumbent upon the partners’, p. 6.

⁶⁴² CAMEC, *Circular to Shareholders relating to the proposed Joint Venture with Prairie (International) Limited*, Mutual Assistance with Mining Licence Review, p. 5.

⁶⁴³ *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>

⁶⁴⁴ CAMEC, 'DRC Licence Review Update', 26 February 2008, available at: <<http://stagingcamec.hemscott.com/news-item?item=55145232750428>>

⁶⁴⁵ *Ibid.*

⁶⁴⁶ *Ibid.*

⁶⁴⁷ CAMEC/Behre Dolbear, *Technical Report on the Boss Mining Project*, 1.13 RECOMMENDATIONS, B-7. See also *ibid.*, B-16 – B-17.

⁶⁴⁸ CAMEC, 'DRC Update', 4 March 2008.

⁶⁴⁹ CAMEC, 'DRC Update', 10 March 2008.

⁶⁵⁰ *Terms of Reference for the Termination and/or Renegotiation of the Mining Contracts*, X. Meeting the obligations incumbent upon the partners, p. 6.

⁶⁵¹ CAMEC/Behre Dolbear, *Technical Report on the Boss Mining Project*, respectively, 1.9 Environmental, B-6 and 23.2 ENVIRONMENTAL CONSIDERATIONS, B-22. The technical report also states: 'An Environmental Impact Assessment Report has been prepared by a Kinshasa company and is being modified to address the future plans for the project.' (B-22).

⁶⁵² CAMEC, 'RE: Reported Release of Bromine Gas from a Boss Mining Depot in Likasi,' letter to RAID, 30 January 2009.

⁶⁵³ *AIM Rules* [2005 & 2007], rule 11.

⁶⁵⁴ *AIM Rules* [2005 & 2007], rule 10.

⁶⁵⁵ *RNA*, Schedule Three - Nominated Adviser Responsibilities, Ongoing Responsibilities, Monitor trading OR3, Review of notifications OR2.

⁶⁵⁶ 'UPDATE 1 – Congo says most mining firms to stay despite review', *Reuters*, 6 November 2007, available at: <<http://www.reuters.com/article/companyNewsAndPR/idUSL0667400520071106>>.

⁶⁵⁷ *AIM Rules* [2007], Part Two – Guidance Notes, General disclosure of price sensitive information, Rule 11: General disclosure, paragraph (c).

⁶⁵⁸ *Ibid.*, paragraph (d).

⁶⁵⁹ *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.

⁶⁶⁰ *Tidmarsh Affidavit*, paragraph 80. The Lutundula Commission refers to the advantages enjoyed by KMC: '...KMC was not constrained by heavy initial investments and heavy preparatory works to exploit its first deposits... On the top of the considerable advantages of Gécamines' installations and infrastructures found on site, KMC inherited an experienced and immediately operational staff' ('...K.M.C n'a pas été astreinte aux lourds investissements initiaux et à la réalisation d'importants travaux préparatoires pour l'exploitation des ses premiers gisements.... En plus de l'avantage considérable procure par les installations et infrastructures de la GECAMINES trouvées sur les sites, K.M.C a hérité d'un personnel expérimenté et déjà opérationnel') (*Lutundula Commission*, pp.101 – 2, point 2); also: 'KMC only began the relatively less expensive surface exploitation of the Mikondo [sic] mine' ('K.M.C a juste débuté l'exploitation superficielle relativement moins coûteuse de la mine de Mikondo') (*Lutundula Commission*, p. 105, point 2).

⁶⁶¹ *Tidmarsh Affidavit*, paragraph 78; see also *Due diligence review of Shaford Capital Ltd (BVI) and its subsidiaries*, paragraphs 4.1.5.

⁶⁶² *Tidmarsh Affidavit*, paragraph 78.

⁶⁶³ *Due diligence review of Shaford Capital Ltd (BVI) and its subsidiaries*, paragraphs 4.2 et seq.

⁶⁶⁴ *Ibid.*, paragraph 4.2.6.

⁶⁶⁵ Barry Sergeant, 'Copper/cobalt bull elephants square up in the DRC'.

⁶⁶⁶ Peta Thorneycroft, 'CAMEC's revenue from DRC dries up'; CAMEC, RNS 4758I, 'Comment on Press Speculation', 5 September 2006, available at: <<http://investors.camec-plc.com/news-item?item=35847944944597>>.

⁶⁶⁷ CAMEC, 'Preliminary Results', 18 September 2006 see also CAMEC, *Report and Financial Statements: Year Ended 31 March 2006*, p. 6.

⁶⁶⁸ CAMEC, 'Interim Results', 5 December 2006. See also CAMEC, *Interim Report*, 30 September 2006, p. 5.

⁶⁶⁹ CAMEC, 'DRC Update', 7 February 2008; see also CAMEC, 'Proposed acquisition of shares in DRC Resources Holdings Limited', p.10.

⁶⁷⁰ *AIM Rules* [2005], rule 11.

⁶⁷¹ '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>>.

⁶⁷² CAMEC, *Circular to Shareholders relating to the proposed Joint Venture with Prairie (International) Limited*, Restarting Operations at Mukondo, p4.

⁶⁷³ CAMEC, 'CAMEC signs MOU to create new DRC Joint Venture Company'.

⁶⁷⁴ See CAMEC, share price graph, 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.

⁶⁷⁵ See CAMEC, share price graph, 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>>.

⁶⁷⁶ *AIM Rules* [2005], rule 10.

⁶⁷⁷ CAMEC, RNS 9394D, 'Cobalt Sales Update', 2 June 2006, available at: <<http://investors.camec-plc.com/news-item?item=34022583889023>>.

⁶⁷⁸ CAMEC, 'Update on Activities in the DRC', 28 July 2006.

⁶⁷⁹ See London Stock Exchange, *Regulation Briefing*, May 2005 – Issue 20, p.3, available at: <<http://www.londonstockexchange.com/NR/rdonlyres/9FAB10C0-DFB0-4514-A4A7-2F50636E857D/0/May2005RegBriefing1.pdf>>.

⁶⁸⁰ *Ibid.*

⁶⁸¹ *Ibid.*

⁶⁸² See London Stock Exchange, RNS 8487P, 'AIM Disciplinary Action', 8 August 2005, available at: <<http://www.hemscott.com/news/static/rna/item.do?newsId=28999619267050>>.

⁶⁸³ 'Public censure – SubSea Resources plc'.

⁶⁸⁴ 'Public censure and fine – Regal Petroleum plc'.

⁶⁸⁵ 'Public censure – Environmental Recycling Technologies plc'.

⁶⁸⁶ 'Section C2.2 Notice'.

⁶⁸⁷ See LSE, Regulation Briefing, May 2005 – Issue 20, pp.3 - 4.

⁶⁸⁸ London Stock Exchange, RNS 8482P, 'Statement regarding Durlacher Limited', 8 August 2005, available at:

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<<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>>.

⁶⁸⁹ On 25 May 2004, Prestbury Holdings share price fell from 54p to 39.5p. On 26 May 2004, the share price fell to 14p.

⁶⁹⁰ London Stock Exchange, 'Recent disciplinary action on Aim', available at: <<http://www.londonstockexchange.com/en-gb/about/cooverview/corpad/recentdisciplinaryactiononaim12.htm>>.

⁶⁹¹ See 'Public censure and fine – Nabarro Wells & Co Limited', paragraph 23.

⁶⁹² Contrary to the guidance to AIM Rule 14.

⁶⁹³ See <<http://www.simberimining.com/properties/kakanda/>>. Simberi Mining Corporation is incorporated in Canada and listed on the Toronto Venture stock exchange. The address of its head office is 80 Richmond Street West, Suite 1101, Toronto, Ontario, M5H 2A4, Canada. In October 2005, Simberi announced its intention to purchase 66.6% equity ownership in New Congo Resources Development Company Inc., holder of the 51% interest in the Kakanda North and the Kakanda South copper and cobalt projects with Gécamines (49% interest). In May 2006, Simberi announced that it had completed its purchase of 100% of the shares of Canadian incorporated NCDC, owner of all the shares in PTM Minerals (Cayman) Ltd., a Cayman Islands domiciled mineral exploration and development company. See, respectively, 'Simberi Completes New Congo Resources Development Company Acquisition', 18 May 2006, available at:

<http://www.simberimining.com/news/2006/index.php?&content_id=64>; and 'Press Release', 24 October 2005, available at: <<http://www.sedar.com/DisplayCompanyDocuments.do?lang=EN&issuerNo=00011101>>.

⁶⁹⁴ See MPH Consulting Limited, *Technical Report on the Kakanda Copper-Cobalt Project, Katanga Province, Democratic Republic of Congo, for Simberi Mining Corporation*, 25 May 2008, p. ii, available at:

<http://www.simberimining.com/_resources/Simberi43-101May08Final.pdf>.

⁶⁹⁵ *Rapport des Travaux de la Commission de Revisitation des Contrats Miniers – vol. 2, PTM Minerals (Cayman) Ltd, 1. Historique*, p. 239: 'La société PTM Minerals (Cayman) Ltd a signé en date du 12 août 1996 avec la GECAMINES un Accord préliminaire relatif à la récupération et au traitement des anciens résidus des concentrateurs de Kambove et Kakanda dans la province du Katanga. A l'issue des pourparlers non sanctionnés par un document juridique, il a également été attribué à PTM Minerals les gisements de Kakanda Nord et Sud étant donné que le traitement des rejets limité à six (06) ans ne pouvait pas permettre aux différents partenaires intervenant de récupérer le capital investi. Par sa lettre n° 047/DG/2002 du 29 janvier 2002, la GECAMINES a assuré PTM Minerals que ses droits sur les rejets et les mines de Kakanda Nord et Sud sont intacts. La position de la GECAMINES a été confirmée de nouveau par sa lettre n°405/ADG/2006 du 25 janvier 2006 adressée à PTM. A ce jour, les périmètres où sont situés les rejets faisant l'objet de l'Accord préliminaire et les gisements de Kakanda Nord et Sud sont inclus dans les Permis d'Exploitation qui ont été octroyés aux Société Boss Mining et Kababankola Mining Company par la GECAMINES en vertu de la convention du 25 février 2004 sur le règlement à l'amiable entre la GECAMINES et Ridgepointe Overseas.'

⁶⁹⁶ *Ibid.*, *Conclusions*, p.245: 'Tenant compte de la volonté des parties d'appliquer l'Accord préliminaire sur les rejets de Kakanda et de multiples correspondances adressées à la GECAMINES par le Ministre des Mines pour confirmer la propriété de PTM sur les rejets du concentrateur de Kakanda, la Commission recommande que PTM soit associé à la renégociation du contrat de partenariat entre Boss Mining et GECAMINES d'une part et Savannah Mining et GECAMINES d'autre part en vue d'examiner la possibilité de préserver ses droits inhérents à l'Accord Préliminaire et de toutes ses suites.'

⁶⁹⁷ *Ministère des Mines*, Letter to PTM Minerals Ltd., 'Objet: Notification', No. CAB.MIN/MINES/01/0152???/2008, 11 February 2008, available at: <http://www.miningcongo.cd/notifications_entreprises_mars2008/0152bis.jpg>: 'the dispute relating to the preliminary agreement between Gécamines and your company will be examined at the time of negotiations which will take place between Gécamines and Boss Mining on the one hand, and Gécamines and Savannah Mining on the other and to which you will be invited.' ('le litige relatif à l'accord préliminaire entre le GECAMINES et votre société sera examiné au moment des négociations qui auront lieu entre la GECAMINES et Boss Mining d'une part, et la GECAMINES et Savannah Mining d'autre part et auxquelles vous serez conviés.')

⁶⁹⁸ *Ministère des Mines*, Letter to Boss Mining, 'Objet: Notification conclusions revisitation contrats minier', No. CAB.MIN/MINES/001/0096/2008, 11 February 2008: '2.1. Les parties doivent régulariser la procédure de cession des titres miniers conformément au Code Minier, en tenant compte des droits de PTM Minerals Ltd'.

⁶⁹⁹ Simberi Mining Corporation, 'Update on Kakanda Property in the Democratic Republic of Congo', 21 November 2007, available at: <http://www.simberimining.com/news/2007/index.php?&content_id=116>.

⁷⁰⁰ CAMEC, 'DRC Update', 4 March 2008.

⁷⁰¹ Simberi Mining, 'Corporate Update', 30 September 2008, available at:

<http://www.simberimining.com/news/2008/index.php?&content_id=132>.

⁷⁰² 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>>.

⁷⁰³ Greenock Resources Inc., 'Greenock Resources: Amendment to Disclosure,' 18 March 2011, available at:

<<http://www.sedar.com/GetFile.do?lang=EN&docClass=8&issuerNo=00011101&fileName=/csfsprod/data115/filings/01712838/00000001/r%3A%5CA001SEDAR%5CFilings%5CGreenock%5CPressRelease%5C2011%5C18Mar2011.pdf>>.

⁷⁰⁴ Greenock Resources Inc., 'Form 51-102F3 Material Change Report,' 18 March 2011, available at:

<<http://www.sedar.com/GetFile.do?lang=EN&docClass=14&issuerNo=00011101&fileName=/csfsprod/data115/filings/01712839/00000001/r%3A%5CA001SEDAR%5CFilings%5CGreenock%5CPressRelease%5C2011%5CMCR18Mar2011.pdf>>.

⁷⁰⁵ 'Greenock Resources: Amendment to Disclosure'.

⁷⁰⁶ E-mail from La Plate-forme des activistes de droits de l'Homme de Likasi (PADHOLIK) to RAID, 19 February 2009; also CAMEC, 'RE: Reported Release of Bromine Gas from a Boss Mining Depot in Likasi,' letter to RAID, 30 January 2009.

⁷⁰⁷ E-mail from PADHOLIK to RAID, 19 February 2009.

⁷⁰⁸ *Ibid.*

⁷⁰⁹ Radio Okapi, 'Likasi : Boss Mining accusée d'intoxiquer l'air,' 7 January 2009, available at: <<http://radiookapi.net/sans-categorie/2009/01/07/likasi-boss-mining-accusee-dintoxiquer-1%E2%80%99air/>>.

⁷¹⁰ *Ibid.*

⁷¹¹ *Ibid.*

⁷¹² Franz Wild, 'CAMEC's Congolese Warehouse Burns; Group Warns of Health Risk,' *Bloomberg*, 7 January 2009, available at: <<http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aL4vuBaKiTRs&refer=africa>>.

⁷¹³ *Ibid.*

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⁷¹⁵ Radio Okapi, 'Likasi : Boss Mining accusée d'intoxiquer l'air'.

⁷¹⁶ See <http://www.advfn.com/p.php?pid=iforum&bb_id=3&id=16792556&from=3460>.

⁷¹⁷ Franz Wild, 'CAMEC's Congolese Warehouse Burns'; also

<<http://www.theglobeandmail.com/servlet/story/RTGAM.20090107.wkatanga08/BNStory/energy/home>>.

⁷¹⁸ RAID, 'Reported Release of Bromine Gas from a Boss Mining Depot in Likasi,' letter to Mr. Andrew Groves, Managing Director of CAMEC, facsimile 7 January 2009.

⁷¹⁹ *Ibid.*

⁷²⁰ *Ibid.*

⁷²¹ *Ibid.*

⁷²² CAMEC, 'RE: Reported Release of Bromine Gas from a Boss Mining Depot in Likasi,'.

⁷²³ *Ibid.*

⁷²⁴ *Ibid.*

⁷²⁵ *Ibid.*

⁷²⁶ *Ibid.*

⁷²⁷ *Ibid.*

⁷²⁸ *Ibid.*

⁷²⁹ *Ibid.*

Supplement

¹ International Rescue Committee, 'Mortality in the Democratic Republic of the Congo: Results from a Nationwide Survey', April 2003.

² See for example, Human Rights Watch, *Democratic Republic of the Congo: Confronting Impunity*, January 2004.

³ Human Rights Watch, *World Report 2005*, Democratic Republic of Congo, p. 116.

⁴ Former Congolese Rally for Democracy-Goma (RCD-Goma) forces refused integration and clashed with the government troops in eastern DRC. The Democratic Force for the Liberation of Rwanda (FDLR) similarly failed to disband. Human Rights Watch, *World Report 2006*, p. 90 and 92.

⁵ Human Rights Watch, *World Report 2006*, pp. 92 – 3.

⁶ *Ibid.*, p.93.

⁷ On the conduct of the elections, see *Mission d'observation électorale de l'Union Européenne en République Démocratique du Congo, Elections Présidentielle, Législatives et Provinciales 2006, Rapport Final*, 23 février 2007, available at: <<http://www.moeurdcongo.org/files/MOE%20RDC%202006%20-%20Rapport%20Final.pdf>>.

⁸ Human Rights watch, *World Report 2007*, pp. 110 – 11.

⁹ In April 2007, 300 were killed in heavy fighting on the streets of Kinshasa between government forces and the bodyguards of defeated presidential candidate, Jean Pierre Bemba. Bemba, threatened with treason charges, fled the country. Human Rights Watch, *World Report 2008*, p. 106.

¹⁰ Human Rights Watch, *World Report 2008*, pp.105 – 6.

¹¹ Human Rights Watch, *World Report 2009*, p. 61.

¹² See report of MONUC Press Conference, 17 September 2008, published 22 September 2008, available at:

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- ¹⁵ Peter Swarbrick and Michael Soussan, 'Mission Creep in the Congo', *Huffington Post*, 21 September 2010, available at: <http://www.huffingtonpost.com/peter-swarbrick/mission-creep-in-the-cong_b_733470.html>.
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- ¹⁷ UN News Centre, 'UN presence in DR Congo crucial despite call for early withdrawal, says relief chief', 3 May 2010, available at: <<http://www.un.org/apps/news/story.asp?NewsID=34582>>.
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- ²¹ *Democratic Republic of Congo: Poverty Reduction and Growth Strategy Paper* [hereafter *PRGSP*], June 2006, pp. 10 – 11, available at: <<http://www.imf.org/external/pubs/ft/scr/2007/cr07330.pdf>>.
- ²² *PRGSP*, paragraph 58, p. 22. See also, IMF, 'Democratic Republic of the Congo: Poverty Reduction Strategy Paper Progress Report,' IMF Country Report No. 10/328, October 2010, Table 1. Progress toward Millennium Development Goals in the DRC, p. 54, available at: <<http://www.imf.org/external/pubs/ft/scr/2010/cr10328.pdf>>. For more information on the poverty indicators, see <http://siteresources.worldbank.org/PGLP/Resources/povertymanual_ch4.pdf>.
- ²³ *PRGSP*, paragraph 135, p. 38.
- ²⁴ *Ibid.*, paragraph 142, p. 39.
- ²⁵ Figure for 2007. See *Human Development Report 2010*, Table 14 – Health, Expenditure on health per capita (PPP US\$), p. 200, available at: <http://hdr.undp.org/en/media/HDR_2010_EN_Tables.pdf>.
- ²⁶ *Ibid.*. The under five mortality rate in 2008 was 199 per 1000 live births.
- ²⁷ *PRGSP*, paragraph 143, p. 40.
- ²⁸ See *Human Development Report 2010*, Table 8 – Human Security, Prevalence of undernourishment (% of total population), p. 175, available at: <http://hdr.undp.org/en/media/HDR_2010_EN_Tables.pdf>.
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- ³⁰ The MICS 2 survey indicates that the rate of hygienic evacuation of waste water was 9.1 percent in 2001. See *PRGSP*, paragraph 152, p. 42.
- ³¹ *PRGSP*, paragraphs 119 and 116 respectively, pp. 35 – 36.
- ³² *Ibid.*, paragraphs 153 – 155, pp. 42 – 43.
- ³³ *Ibid.*, paragraph 157, p. 43.
- ³⁴ United Nations High Commission for Refugees (UNHCR), *2010 UNHCR country operations profile – Democratic Republic of the Congo, Statistical Snapshot* (as at January 2010), available at: <<http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e45c366#>>.
- ³⁵ World Bank, *Emergency Economic and Social Reunification Support Project*, Technical Annex, Report No: T7601-ZR, 14 August 2003, p. 6, available at: <http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2003/08/25/000012009_20030825110032/Rendered/PDF/T7601.pdf>.
- ³⁶ 56 million tones of copper out of total of 480 million and 3.4 million tonnes of cobalt out of a total of 7 million. See, respectively, Paul Fortin, Chief Executive of Gécamines, *La Stratégie de la Gécamines*, presentation, Liège, Belgium, 12 January 2007; US Department of the Interior, *US Geological Survey: Mineral Commodities Summaries 2006*, p. 53, available at: <<http://minerals.usgs.gov/minerals/pubs/commodity/copper/coppemcs07.pdf>>; and *Mineral Commodities Summaries*, January 2007, p. 195, Appendix C, available at: <<http://minerals.usgs.gov/minerals/pubs/mcs/2007/mcsapp07.pdf>>.
- ³⁷ *République Démocratique du Congo, Programme du Gouvernement (2007 – 2011)*, Kinshasa, février 2007, available at: <http://siteresources.worldbank.org/CONGODEMOCRATICEXTN/Resources/DRC_Govt_Program.pdf>.
- ³⁸ *Ibid.*, p. 58.
- ³⁹ World Bank, 'Democratic Republic of Congo: Growth with Governance In the Mining Sector Technical Assistance Project', *Project Appraisal Document*, Report No.: 53116-ZR, 19 May 2010, pp.1 – 2, available at: <http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/06/07/000333037_20100607001138/Rendered/PDF/53116PAD0P106101Official0Use0Only1.pdf>.
- ⁴⁰ *Ibid.*; GDP figure from World Bank, Data and Statistics, *The Democratic Republic of Congo: Quick Facts*, available at: <[http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/CONGODEMOCRATICEXTN/0,,menuPK:349492\[2007\]pagePK:141132\[2007\]piPK:141109\[2007\]theSitePK:349466,00.html](http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/CONGODEMOCRATICEXTN/0,,menuPK:349492[2007]pagePK:141132[2007]piPK:141109[2007]theSitePK:349466,00.html)>.
- ⁴¹ World Bank, *DRC Economic Report (as of end February 2010)*, paragraph 4, available at: <http://siteresources.worldbank.org/CONGODEMOCRATICEXTN/Resources/DRC_economic_report_EN_Feb2010.pdf?resourceurlname=DRC_economic_report_EN_Feb2010.pdf>.

⁴² ‘Democratic Republic of Congo: Growth with Governance In the Mining Sector Technical Assistance Project’, Annex 9: Economic and Financial Analysis, p. 122.

⁴³ *DRC Economic Report*, paragraph 15.

⁴⁴ International Monetary Fund, DRC, *Second Review of the Three-Year Arrangement Under the Extended Credit Facility and Financing Assurances Review*, 25 January 2011, p. 4.

⁴⁵ *DRC Economic Report*, paragraphs 20 – 1.

⁴⁶ ‘Democratic Republic of Congo: Growth with Governance In the Mining Sector’, p. 12. These projected revenues do not include additional royalties and/or dividends that the state-owned enterprises are expected to collect from their joint venture partners; nor dividend streams to central government from its 5 percent shareholdings in exploitation companies; nor surface rents paid to hold mineral rights, which can be ‘substantial’. See p. 13.

⁴⁷ *Ibid.*, p. 10.

⁴⁸ *Ibid.*, p. 51.

⁴⁹ *Ibid.*, p. 6.

⁵⁰ World Bank, *Democratic Republic of Congo: Economic and Sector Work: Reforming Public Enterprises through Improved Governance*, Report No. 28048-ZR, 10 March 2004, paragraph 78, available at: < http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2004/03/24/000012009_20040324105453/Rendered/PDF/280480ZR.pdf>.

⁵¹ *Ibid.*, paragraph 80.

⁵² On 7 February 2004, joint venture contract n° 632/6711/SG/GC/2004 was signed between Gécamines and Kinross-Forrest Limited (KFL), establishing the Joint Venture Company Kamoto Copper Company Sarl (KCC) to rehabilitate and resume copper and cobalt mining and metal production at the Kamoto Mine located near Kolwezi in Katanga Province. KCC is 75% owned by KFL and 25% by Gécamines. The contract was approved on August 4th 2005 by Presidential Decree n° 05/070 (see *Journal Officiel de la République Démocratique du Congo, première partie – n° 21, 1 novembre 2005*). In November 2005, the company’s name was changed to Katanga Mining Limited and, in June 2006, Katanga Mining Limited acquired all outstanding shares in KFL. In January 2008, Katanga merged with Nikanor, consolidating the adjacent KCC and DCP joint ventures. In July 2009, an amended Joint Venture Agreement (JVA) was signed, providing for: the release of the Dikuluwe and Mashamba West Deposits; the merger of the DCP and KCC joint ventures; the meeting of requirements resulting from the DRC Government’s review of mining partnerships with Gécamines (see <http://www.katangamining.com/kat/about_us/history/>).

⁵³ On 9 September 2004, Global Enterprises Corporate Limited (GEC), incorporated in the British Virgin Islands, entered into an agreement (n°656/6755/SG/GC/2004, available at: <http://minfinrdc.cd/contrats/Gecamines_Global.pdf>) with Gécamines to mine Kamoto Oliviera Virgule (KOV), Tilwezembe and Kananga through the joint venture company DRC Copper and Cobalt Project Sarl (DCP). The joint venture agreement was approved by presidential decree n°05/114 of 13 October 2005. DCP is owned 75% by GEC and 25% by Gécamines. In February 2006, exploitation permits were transferred to DCP from Gécamines. Nikanor plc, headquartered and incorporated in the Isle of Man in 2006, is the holding company for the DRC subsidiaries, owning 100% of GEC (Admission document, p. 1). On 6 November 2007, Nikanor announced board agreement on the recommended merger with Katanga Mining limited (Nikanor, RNS 1241H, ‘Recommended merger of Katanga and Nikanor to create a leading African copper and cobalt company’, 6 November 2007, available at: <http://www.nikanor.co.uk/m/press_display.asp?Id=2007/06nov2007>. Nikanor shareholders approved the deal on 10 January 2008 and Katanga Mining Shareholders did the same on the following day, completing the merger (Nikanor, ‘Results of voting at Nikanor AGM’; Katanga Mining Limited, ‘Katanga Completes Merger with Nikanor to Create a Leading African Copper and Cobalt Company’). Nikanor announced its intention to cancel its AIM admission and the trading of its shares on the market with effect from 11 February 2008 (RNS 6457L, ‘Update on completion of merger between Nikanor PLC and Katanga Mining Limited’, 11 January 2008, available at: <http://www.nikanor.co.uk/m/press_display.asp?Id=2008/11jan2008>. The merged company, retaining the name Katanga Mining Limited, is listed on the Toronto Stock Exchange (TSX).

⁵⁴ In 1996, Lundin Holdings Ltd entered into a joint venture with Gécamines and established Tenke Fungurume Mining (TFM) to mine the Kwatebala, Goma and Kavifwafwalu deposits. On 28 September 2005, Gécamines agreed an Amended and Restated Mining Convention (ARMC) with Tenke Fungurume Mining, Lundin Holdings and Phelps Dodge Corporation: the latter had been authorised to acquire shares in the TMF venture (see République Démocratique du Congo, Ministère des Mines, Commission de Revisitation des contrats miniers, *Rapport des Travaux de la Commission de Revisitation des Contrats Miniers – vol. 2 Tenke Fungurume Mining Sarl (TFM)*, Novembre 2007, pp.18 – 19, available at: <<http://www.miningcongo.cd/pdf/tome2.pdf>>). The ARMC was approved by decree n°05/117 of 27 October 2007. On its acquisition of Phelps Dodge, Freeport McMoran Copper & Gold Inc., through its indirect 70% interest TF Holdings, is the majority 57.75% partner in Tenke Fungurume Mining Sarl (TFM) and operator of the project. Lundin Mining has a 24.75% holding in TFM, with the balance of 17.5% held by Gécamines. See Nilsson Mine Services Ltd and GeoSim Services Inc., *Technical Report for the Tenke Fungurume Project, Katanga Province, Democratic Republic of Congo*, 31 March 2009, p. 13. See also <<http://www.fcx.com/operations/AfricaTenke.htm>> Following the mining license review, renegotiation of the Tenke Fungurume contract, at the time of writing, remains to be concluded: ‘We are continuing to work cooperatively with the DRC government to resolve the ongoing contract review, but cannot predict the timing or the outcome of this process. We believe that the contract is fair and equitable, complies with Congolese law and is enforceable without modifications.’ See Freeport McMoran, *Quarterly Report* (Form 10-Q), 7 May 2010, p.36, available at <<http://ccbn.10kwizard.com/xml/download.php?repo=tenk&ipage=6940875&format=PDF>>.

⁵⁵ Estimation of IPIS based on: Katanga Mining Limited, ‘Katanga Announces Higher Grade Reserves’; Global Enterprises Corporation Ltd, *Technical Report*, 26 June 2006 (incorporated in Nikanor Prospectus, available at: <<http://www.nikanor.co.uk/downloads/Prospectus.pdf>>); Kalala Budimbwa, *Valorisation de la Gécamines engagées dans les contrats: Chemaf, KMT Tenké Fungurumé, KCC; GEC; et nécessité de révision de ces contrats pour protéger les intérêts de la République, Kinshasa, septembre 2006*.

⁵⁶ IMC Group Consulting Ltd, 'Présentation et recommandations préliminaires', *Restructuration de la Gécamines (Phase 2)*, Kinshasa, 26 septembre 2003.

⁵⁷ World Bank, Africa Region Poverty Reduction and Economic Management Unit (AFTP3), *Implementation Completion Report (IDA-36600) on a Credit in the Amount of US\$450 Million to the Democratic Republic of Congo for an Economic Recovery Credit*, 18 June 2004, paragraph 7.4.2.

⁵⁸ The *Comité de pilotage de réforme des entreprises publiques – COPIREP* – was established by Decree n°136/2002 of 30 October 2002. It was a condition for the World Bank's Economic Recovery Project, which approved \$450 million in credits for the DRC in June 2002. COPIREP was responsible for the restructuring of all of the Congo's state-owned enterprises. Its remit initially excluded Gécamines.

⁵⁹ IMC's findings were presented to the high-level inter-ministerial Economic and Financial Commission (ECOFIN). See IMC Group Consulting Ltd, *Restructuration de la Gécamines, Kinshasa, le 26 septembre 2003*. The preliminary findings were fleshed out and consolidated in a later report: IMC Group Consulting Ltd., *Restructuration de la Gécamines, Projet No. M5670C – Phase 2, février 2004*.

⁶⁰ Samba Kaputo, the deputy chief of cabinet, sent a letter to Nzenga Kongolo, the managing director of Gécamines, instructing him to suspend all ongoing negotiations between private partners and Gécamines. A copy of the letter was transmitted to President Kabila, the chairman of ECOFIN (Bemba), the Ministers of Mines (Diomi Ndongala) and Portfolio (Vunabandi), the chairman of the Gécamines board (Kabamba). See Réf. CAB/PR/DCA/SK/CPEF/0266/JMK/2003, unpublished document, signed Kinshasa 13 November 2003.

⁶¹ *Africa Mining Intelligence*, No. 94, 13 October 2004, 'Gécamines new advisers'.

⁶² Under *Contrat de consultant n° 24/COPIREP/ SE/11/2004*, the first mission took place from 30 March to 22 May 2005 and a supplementary mission took place between 15 to 21 August 2005. The companies whose contracts were audited include: (i) *Groupement du Terril de Lubumbashi (GTL)* June 1997; (ii) *Société pour le Traitement du Terril de Lubumbashi (STL)* September 1999; (iii) *Kababankola Mining Company (KMC)* January 2001; (iv) *Société de Traitement des Rejets de Mutoshi (SRM)* January 2001; (v) *Boss Mining* December 2003; (vi) *Mukondo Mining* December 2003; (vii) *La Société Minière de Kabolela et de Kipese sprl (SMKK)* April 2004; (viii) *Compagnie Minière du Sud Katanga (CMSK)* July 2004.

⁶³ Broederlijk Delen et al., 'NGOs fear that DRC mining contract review process has been hijacked', Press Release, 4 February 2008, note 4, available at: <http://raid-uk.org/docs/DRC_contracts/DRC%20review%20hijacked%204Feb08%20EN.doc>.

⁶⁴ On the delayed start to the work, see Duncan & Allen, *Projet D'Évaluation Juridique des Accords de Partenariats de la Gécamines (Contrat N31/COPIREP/SE/02/2005): Rapport Final* [hereafter referred to as *Duncan & Allen*], 6 avril 2006, paragraph 2.2.1 *Les Termes de Référence du Projet*, p. 8. The priority mining concessions identified in the terms of reference had all been renegotiated or concluded: for example, Tenke Fungurume (Phelps Dodge/Lundin) and Kolwezi Tailings (KMT); Kamoto Mine was awarded to Kinross Forrest Ltd; the preliminary agreement for the Luiswishi concession was dissolved and replaced with a new full contract, CMSK; and KOV was awarded to Global Enterprises Corporation (GEC). Even when the team was in the middle of its legal evaluation of the JVs, GCM was negotiating other agreements, notably one with the East China Corporation, and failed to provide the consultants with any documentation (see *ibid.*, *Sommaire Exécutif*, paragraph 1.1.1).

⁶⁵ *Duncan & Allen*, 3.2.1: 'Le Projet n'a pas bénéficié de la coopération souhaitée de la Direction Générale de la Gécamines'.

⁶⁶ The Ernst & Young audits, *Rapports finales des audits financiers chargée par COPIREP, RD Congo, 26 mai 2006*, are available at: <www.freewebs.com/contratsminiers>. Duncan & Allen's Final Report, dated 6 April 2006, is available at: <<http://www.congoone.net/PDF/DUNCANALLEN.pdf>>.

⁶⁷ *Duncan & Allen*, 4.4 *Les accords de partenariat prioritaires*: Tenke Fungurume, Kingamyambo Musonoi Tailings (KMT), Kinross-Forrest (sur Kamoto et al), GTL-STL, CMSK (Luiswishi), GEC, pp. 30 – 35

⁶⁸ *Financial Times*, 20 July 2006, 'Congo mining chief puts private sector contracts under spotlight'.

⁶⁹ *Duncan & Allen*, 1. *Sommaire Exécutif*, paragraph 1.1.2: 'It should also be noted that some preliminary agreements which were never finalised are susceptible to the risk of litigation.' ('Il conviendrait d'avertir en outre que certains accords préliminaires qui n'ont pas abouti à des réalisations sont susceptibles [sic] d'engendrer des litiges.')

⁷⁰ *Ibid.*, '...some agreements or operational joint venture companies are not in conformity with the law, despite the fact that they have been concluded or created with the agreement of the Government. These agreements and/or companies need therefore to be put on a proper legal footing in order to ensure the efficacy of the project in relation to third parties and for the benefit of associates or shareholders.' ('...certains accord ou sociétés de joint Venture opérationnels ne sont pas conformes à la loi, malgré qu'ils ont été conclus ou créés avec l'accord du Gouvernement. Ces accords et / ou sociétés nécessitent donc une mise en conformité afin d'assurer l'efficacité du projet vis-à-vis des tiers et au profit des associés et d'actionnaires.')

⁷¹ *Ibid.*, paragraph 3.2.2.1: 'In nearly all cases, the annexes that should comprise the description of the mining rights that GCM [Gécamines] has brought to the partnership or placed at its disposal are missing from the copy of the preliminary agreement or the Convention creating the 'joint venture' that GCM has provided to us. Despite our repeated demands, these annexes have not been supplied. As a result, it has not been possible for us to ascertain the precise geographical situation of the majority of the mining rights or of the ore bodies, which are the object of the partnerships, nor to determine the extent of the overlap between different partnerships except in the most flagrant cases.' ('Dans presque tous les cas, les annexes comprenant la description des droits miniers de la GCM apportés au partenariat ou mis à sa disposition font défaut dans la copie de l'accord préliminaire ou de la convention de création du « joint venture » que la GCM nous a fournie. Malgré nos demande [sic] à plusieurs reprises, ces annexes n'ont pas été fournies. Par conséquent, il ne nous est pas possible de fixer la situation géographique de la plupart des droits miniers ou des gisements qui dont l'objet des partenariats, ni de déterminer l'étendue des chevauchements entre de différents partenariats sauf dans les cas les plus flagrants.')

⁷² *Ibid.*, paragraph 1.1.3: 'It seems that Gécamines has alienated the majority of its mining rights without ensuring for itself just recompense. There has not been an objective evaluation (neither by an independent expert nor by GCM) of GCM's

contribution to the partnerships. As a result, the value of its contribution is not known.’ (*‘Il semble que la Gécamines a aliéné la plupart de ses droits miniers sans s’assurer d’une juste compensation en retour. Il n’y a pas eu d’évaluation objective (ni par un expert indépendant ni par la GCM) des apports [sic] de la GCM aux partenariats. Par conséquent, on ignore la juste valeur de ces apports.’*) See also paragraph 4.1.1.5.

⁷³ *Ibid.*, paragraph 1.1.4: ‘...it would have been desirable for GCM to have negotiated leasehold contracts instead of relinquishment of its mining rights.’ (*‘...il aurait été souhaitable comme objectif pour la GCM d’avoir négocié des contrats d’amodiation au lieu des contrats de cession de ses droits miniers.’*) See also paragraph 4.1.2.2.

⁷⁴ *Ibid.*, paragraph 1.1.3: ‘In nearly all the partnerships, GCM does not have a significant role in the management or technical control of the project, and therefore it is not able to influence the management of the joint venture or exercise the necessary pressure to ensure that the partnerships carry out their contractual obligations.’ (*‘Dans presque tous les partenariats, la GCM n’a pas un rôle important dans l’organe de gestion et dans le contrôle technique et, donc, elle ne peut pas influencer la gestion des partenariats ou exercer les pressions nécessaires pour que ses partenaires réalisent leurs obligations contractuelles.’*)

⁷⁵ For publication details of the report (*‘Lutundula Commission’*), see endnote 39 to main submission.

⁷⁶ See Global Witness, Human Rights Watch, Rights and Accountability in Development (RAID) et al., ‘DR Congo: end illegal exploitation of Natural Resources’, Press Release, 21 February 2006, available at: <http://raid-uk.org/news/lutundula_report.htm>.

⁷⁷ *Ibid.* See also *Lutundula Commission*, B.1.Entreprise minières, paragraphs 2, 5 and 6, pp. 92 – 3; also D.1. Les faiblesses constatées, paragraph 4, p. 97. On political interference, see also A.1 L’Etat, paragraph 3, p. 86.

⁷⁸ *Lutundula Commission*, CONCLUSION GENERALE, paragraph 7, pp. 270 – 1. See also Global Witness et al., ‘DR Congo: end illegal exploitation of Natural Resources’.

⁷⁹ See N° 632/6711/SG/GC/2004, *Convention de joint venture entre la Générale des Carrières et des Mines et Kinross-Forrest Ltd.* See also N° 656/6755/SG/GC/2004, *Convention de joint venture entre la Générale des Carrières et des Mines et Global Enterprise Corporate Ltd. relative à l’exploitation de la mine à ciel ouvert de KOV et des gisements de Kananga et de Tilwezembe.* Signed by Nzenga Kongolo, Twite Kabamba, and Dan Gertler on 09/09/2004, p. 2, available at: <http://www.minfinrdc.cd/contrats/Gecamines_Global.pdf>.

⁸⁰ *Convention de joint venture entre la Générale des Carrières et des Mines et Global Enterprise Corporate Ltd.*

⁸¹ ‘Conseil des ministres du mardi 19 juillet 2005’, in : *Le Potentiel*, 21 juillet 2005.

⁸² The Kamoto agreement with Kinross-Forrest was ratified on 4 August 2005 by Presidential Decree n° 05/070. The KOV agreement with GEC was ratified on 13 October 2005 by Presidential Decree n° 05/114; the Tenké Fungurumé agreement with Lundin Holdings/Phelps Dodge was ratified on 27 October 2005 by Presidential Decree n° 05/117.

⁸³ World Bank, ‘Democratic Republic of Congo: Growth with Governance In the Mining Sector’, note 53, p. 50.

⁸⁴ The Mine Law of 2002 established the *Commission de validation des titres miniers* (Validation Commission for Mining Titles) to adjudicate mining title disputes. However, the work of the Commission fell into disrepute. According to the World Bank, ‘it is alleged that the commission is not limiting its work to the mining titles established in the master list but accepting to arbitrate titles which are claimed in conflict by various operators. This opens the possibility that certain operators will instigate proceedings simply as a means to encumber mining titles and extract payments from legitimate title holders.’ (see World Bank, ‘Democratic Republic of Congo: Growth with Governance In the Mining Sector’, note 49, p. 49). In August 2007 a decree was issued halting the work of the Validation Commission and nullifying its decisions made after the original closing date for review of February 2007.

⁸⁵ WB Office Memorandum, From: Craig Andrews – Principal Mining Specialist – to: Pedro Alba – Country Director for DRC. Subject: Contracts between Gécamines and Private Companies. Internal memo (e-mail), 8 Sept. 2005. The Craig Andrews memo was leaked to the Financial Times, which published an article on a review of the JV contracts between Gécamines and K-F, GEC and Lundin Holdings/Phelps Dodge. See Dino Mahtani, ‘Transparency fears lead to review of Congo contracts’, in: *Financial Times*, 3 January 2007. See: <http://www.ft.com/cms/s/c918d3a2-9a8a-11db-bbd2-0000779e2340_i_rssPage=abb716b0-2f7a-11da-8b51-00000e2511c8.html>.

⁸⁶ *Arrêté ministériel* no 2745/cab.min/Mines/01, 20 April 2007.

⁸⁷ Members were from the ministries of Budget, Finance, Industry, Justice, Mines, and Portfolio; from the President’s and Prime Minister’s offices; and from other agencies, including the Mining Registry.

⁸⁸ Broederlijk Delen et al., ‘NGOs fear that DRC mining contract review process has been hijacked’.

⁸⁹ See ‘China to receive copper, cobalt in Congo loan deal’, *Reuters*, 29 January 2008, available at:

<<http://in.reuters.com/article/asiaCompanyAndMarkets/idINL2829595720080128>>.

⁹⁰ See ‘DRC Ministry of Mines Delivers Summary Contract Review to Contract Holder’, Bell Pottinger, 18 February 2008, news release on behalf of DRC Government, available at:

<<http://www.mineweb.com/mineweb/view/mineweb/en/page67?oid=47564&sn=Detail>>.

⁹¹ Victor Kasongo, Vice-Minister of Mines, interviewed on the BBC’s *Focus on Africa* programme: see ‘Mining deals cancelled in Congo’, available at: <<http://news.bbc.co.uk/1/hi/world/africa/7306325.stm>>.

⁹² The letters from the Ministry of Mines to the companies are available at:

<http://www.miningcongo.cd/notifications_entreprises_mars2008/Liste_notifications_mars2008.htm>.

⁹³ See endnote 637 to main submission.

⁹⁴ *Ibid.*, ‘What happens next?’, p. 3.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*, pp. 3 – 4.

⁹⁷ *Ibid.*

⁹⁸ Minister of Mines, Democratic Republic of Congo, *Terms of Reference for the Termination and/or Renegotiation of the Mining Contracts*, August 2008. The translation of the terms of reference, originally circulated by the Congolese government’s corporate and finance agency, Bell Pottinger, states: ‘Please note that this Terms of Reference document is a translated version of the French original, and it does not constitute an official or legally approved or binding document. It is

intended for general reference purposes only.’ 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’. The French *Termes de référence pour la renégociation et / ou la résiliation des contrats miniers* is available at the DRC’s Ministry of Mines website: <http://www.miningcongo.cd/pdf/TERME_DE_REFERENCE.pdf>.

⁹⁹ *Ibid.*, ‘I. Some prerequisites to the renegotiation’, p. 2.

¹⁰⁰ *Ibid.*, ‘II. Evaluation of the contributions of the partners’, p. 3.

¹⁰¹ *Ibid.*, ‘IV. Project financing’, p. 4.

¹⁰² *Ibid.*, ‘VII. Control of the movement of company shares or holdings’, p. 5.

¹⁰³ *Ibid.*, ‘VIII. Effective participation in the day-to-day management of the partnership’, pp. 5 – 6.

¹⁰⁴ *Ibid.*, ‘IX. Taking account of the right of veto of the minority shareholder.’, p. 6.

¹⁰⁵ *Key Mining Contracts in Katanga: The economic argument for renegotiation*, Rights & Accountability in Development (RAID), April 2007, available at: <http://raid-uk.org/docs/DRC_contracts/Economic_Argument_for_Renegotiation.pdf>.

The report presented an economic analysis of one of the contracts, Katanga Mining Limited’s (KML) Kamoto project, assessing, based on available information, the distribution of the financial benefits between KML as the private partner and Gécamines. The data was used to present a possible model for the renegotiation of Gécamines’ joint venture agreements.

¹⁰⁶ *Terms of Reference for the Termination and/or Renegotiation of the Mining Contracts*, ‘V. The rates of remuneration of the projects’, p. 4.

¹⁰⁷ *Ibid.*, pp. 4 – 5.

¹⁰⁸ *Ibid.*, ‘VI. Abiding by the legislation’, p. 5.

¹⁰⁹ *Ibid.*, ‘X. Meeting the obligations incumbent upon the partners’, p. 6.

¹¹⁰ *Ibid.*, ‘XV. Delays in submitting the feasibility study’, p. 8.

¹¹¹ *Ibid.*, ‘XVI. Cancellation of the contracts’, p. 8.

¹¹² See, *Ibid.*, respectively, ‘XI. The use of local resources’ and ‘XII. Clauses on corporate liability’. Under ‘II. Evaluation of the contributions of the partners’, it is also stated: ‘the subcontracting of the activities of the joint venture created by a public company and some private investors, nationwide or foreign, will have to be awarded to some companies domiciled in the Democratic Republic of Congo and in which some nationals hold at least 51% of the membership shares.’

¹¹³ ‘DRC Ministry of Mines Convenes General Forum With Mining Executives to Explain Terms of Reference and Road Map for Contracts Review’, p. 4: ‘The renegotiation process is about known existing assets. The terms which DRC will insist on for shared ownership of future discoveries of mineral reserves will be based on the standard international practice of countries such as South Africa and Zambia: including a customary 51%/49% share between the parastatals and the private companies.’

¹¹⁴ See *Ministère des Mines*, Letter to La Société SENGAMINES Sprl (Société Minière Senga Senga), ‘Objet: Notification conclusions revisitation contrat minier’, No. CAB.MIN/MINES/01/01/10/2008, 11 February 2008, available at:

<http://www.miningcongo.cd/notifications_entreprises_mars2008/Liste_notifications_mars2008.htm>. The South African-based First African Diamonds Ltd (FAD), operating under the name Entreprise Minière de Kasa’ Oriental (Emikor), had acquired 80 % of MIBA’s Sengamines diamond concession in April 2006. On 14 April 2008, DRC government representatives, police and army took control of the Sengamines operation. See John Helmer, ‘Alrosa agrees with DRC on Sengamines takeover’, 16 September 2008, available at: <<http://www.mineweb.co.za/mineweb/view/mineweb/en/page37?oid=62638&sn=Detail>>.

¹¹⁵ The rights to Sengamines had originally been acquired by Oryx Natural Resources Ltd. On the controversial nature of this acquisition, see *intra*, The blocking from AIM admission of a company named by the UN Panel, p. 5.

¹¹⁶ ‘UPDATE 1-Congo completes mining review, but majors quit talks’, *Reuters*, 20 December 2008, available at:

<<http://uk.reuters.com/article/idUKL73009620081220>>. During the period 1994 and 1995, given the inability of state owned companies to maintain production, the Congolese government allowed them to enter into partnerships with private companies. These partnership agreements were known as ‘conventions’. This form of contract, which was originally individually negotiated, was supposed to have been superseded after the Mining Code became law in 2002 by undergoing a process of standardisation and the incorporation of the Mining Code provisions.

¹¹⁷ KMT is owned by First Quantum’s subsidiary Congo Mineral Developments Limited (‘CMD’) and its partners the International Finance Corporation (IFC – the private sector arm of the World Bank Group) and Industrial Development Corporation (IDC – South Africa’s state-owned development finance institution), who collectively own 82.5% of KMT, and Gécamines and the DRC who own the balance of 17.5%.

¹¹⁸ First Quantum Minerals Limited, ‘First Quantum Minerals Announces Commencement Of International Arbitration Regarding The Cancellation Of The Kolwezi Project’, 1 February 2010, available at: <<http://www.first-quantum.com/i/pdf/NR-10-08-InternationalArbitration.pdf>>; ‘First Quantum Minerals Provides RDC Legal Update’, 31 March 2010, available at: <<http://www.first-quantum.com/i/pdf/NR-10-15.pdf>>.

¹¹⁹ ‘First Quantum prepares for arbitration in DRC Kolwezi stand-off’, *Metal Bulletin*, 11 November 2009, available at: <<http://www.metalbulletin.com/Article/2336226/First-Quantum-prepares-for-arbitration-in-DRC-Kolwezi-stand-off.html>>.

¹²⁰ Michael J. Kavanagh, ‘World Bank’s IFC halts Congo Investments Until Dispute Resolved’, *Bloomberg*, 23 February 2010, available at: <<http://www.bloomberg.com/apps/news?pid=newsarchive&sid=ar1fyUAoQWOk>>.

¹²¹ Anvil Mining, ‘Anvil Reaches Agreement with Gécamines and the DRC Government for the Kinsevere and the Dikulushi Properties’, 21 January 2009. Available at:

<http://www.anvilmining.com/files/090121%20DRC%20Mining%20Commission%20Review%20_final_.pdf>. The terms of the Kinsevere leasehold were altered, including an increase in rent paid to Gécamines and ‘an additional “pas de porte” (entry premium) payment of \$15 million is to be made, of which \$10 million is to be paid within six months of the amended agreement coming into effect and the balance within 12 months.’

¹²² In March 2007, Freeport McMoRan acquired Phelps Dodge. The company now operates under the name Freeport-McMoRan Copper & Gold Inc. See Steve James 'Freeport acquires Phelps Dodge, launches offering', *Reuters*, 19 March 2007, available at: <<http://www.reuters.com/article/idUSN1928000420070319>>.

¹²³ Freeport McMoRan, News Release, 'DRC Government & Freeport-McMoRan Copper & Gold Inc. Announce Successful Completion of Tenke Fungurume Contract Review Process', 22 October 2010, available at:

<<http://www.fcx.com/news/2010/102210.pdf>>. See also Freeport McMoRan, News Release, 'Freeport-McMoRan Copper & Gold Inc. Reports First-Quarter 2011 Results', 20 April 2011, p. 7, available at:

<<http://www.fcx.com/news/2011/042011.pdf>>: 'In connection with the review, TFM made several commitments that have been reflected in amendments to its mining contracts, which were signed by the parties in December 2010. In March 2011, the amendments were approved by a ministerial council; and a Presidential Decree, signed by the President and Prime Minister of the DRC, was issued in April 2011.'

¹²⁴ 'The Mining Review in the Democratic Republic of the Congo: Missed Opportunities, Failed Expectations, Hopes for the Future', The Carter Center, 3 April 2009, available at: <http://www.cartercenter.org/news/pr/drc_040309.html>.

¹²⁵ See, for example, Franz Wild, 'International Barytex Says Congo Copper Mine Held Up Over Title', *Bloomberg*, 16 October 2008: 'State-owned mining company Gécamines, which owns a quarter of Shituru, wants to increase its stake and raise Vancouver-based Barytex's signing bonus to \$10 million from \$2 million [Rene] Coda [President of Barytex's Shituru Mining Corp] said. The bonus must be made before work can begin on the concession.' The article is available at: <<http://www.bloomberg.com/apps/news?pid=20601116&sid=aZMDiCRUvJz4&refer=af>>.

¹²⁶ 'Contrats miniers : des chiffres pas convaincants', *Le Potentiel*, 17 novembre 2009, available at <http://www.laconscience.com/imprimer.php?id_article=8750>.

¹²⁷ *Etude du Sénat de la RDC, Résumé commission sénatoriale sur le recensement des entreprises minières et les revenus fiscaux miniers, Atelier de travail sur les ressources naturelles, Kinshasa, 1 et 2 octobre 2009.*

¹²⁸ *Ministère des Mines, CONTRAT MINIER TYPE EN RDC*, May 2010 (Draft). See also Michael J. Kavanagh, 'Congo Mines Ministry Creates Model Contract for Future Ventures', *Bloomberg*, 11 June 2010, available at: <http://mobile.bloomberg.com/apps/news?pid=conewsstory&tkr=FOM:LN&sid=aMKUy9Wd_Nww>.

Annexe 1

¹ *RNA*, rule 26.

² *RNA*, rule 25.

³ *RNA*, rule 29.

⁴ *RNA*, rule 30.

⁵ *AIM Disciplinary Procedures*, Disciplinary Process, pp. 2 – 3; see also *AIM Rules* [2007], rule 44.

⁶ *AIM Disciplinary Procedures*, C5.1.

⁷ *AIM Disciplinary Procedures*, C15.2 and C15.3; see also *AIM Rules* [2007], rule 42.

⁸ *RNA*, rule 32.

⁹ 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.

Annexe 3

¹ First Quantum Minerals Ltd., News Release 09-24, 28 August 2009, 'First Quantum Minerals provides update on the Kolwezi Mining contract revisitation', available at: <http://www.first-quantum.com/i/pdf/2009-08-28_NR.pdf>.

² *Ibid.* See also, First Quantum Minerals Ltd., News Release 09-30, 10 November 2009, 'First Quantum Minerals reports operational and financial results for the three and nine months ended September 30, 2009', pp. 12 – 13, available at: <http://www.first-quantum.com/i/pdf/NR_09-30.pdf>.

³ *Ibid.*

⁴ Translation by First Quantum's lawyers of the Prime Minister's 21 August 2009 letter: 'the refusal to pay to Gécamines royalties of 2.5% of the gross turnover or their equivalent'. See 'First Quantum Minerals provides update on the Kolwezi Mining contract revisitation'.

⁵ Translation by First Quantum's lawyers of the Prime Minister's 21 August 2009 letter: 'the refusal to cancel the management fees of 1.5% of the sales to be paid to the partner by Gécamines, as contemplated in...the contract.' *Ibid.*

⁶ *Ibid.*

⁷ 'First Quantum Minerals reports operational and financial results for the three and nine months ended September 30, 2009'.

⁸ *Ibid.* On 26 August and 3 September 2009, KMT and CMD initiated three proceedings before the Tribunal de Grande Instance High Court (the Local Court) in Kinshasa seeking provisional measures to preserve their rights and to secure the KMT Project site. See First Quantum Minerals Ltd., News Release 10-12, 16 March 2010, 'First Quantum Minerals reports operational and financial results for the three months and year ended December 31, 2009', p.13, available at: <<http://www.first-quantum.com/i/pdf/NR10-12.pdf>>.

⁹ First Quantum Minerals Ltd., News Release 09-26, 16 September 2009, 'First Quantum Minerals suspends construction at Kolwezi Project', available at: <http://www.first-quantum.com/i/pdf/2009-09-16_NR.pdf>. See also 'First Quantum Minerals reports operational and financial results for the three and nine months ended September 30, 2009'.

¹⁰ *Ibid.*

¹¹ 'First Quantum Minerals reports operational and financial results for the three and nine months ended September 30, 2009', p.12.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ 'First Quantum Minerals reports operational and financial results for the three months and year ended December 31, 2009', p. 13.

¹⁵ *Ibid.*, pp. 13 – 14.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.* See also First Quantum Minerals Ltd., News Release 10-15, 30 March 2010, 'First Quantum Minerals provides RDC legal update', available at: <<http://www.first-quantum.com/i/pdf/NR-10-15.pdf>>.

¹⁹ First Quantum Minerals Ltd., News Release 10-18, 10 May 2010, 'First Quantum Minerals reports operational and financial results for the three months ended March 31, 2010', pp.13 – 14, available at: <<http://www.first-quantum.com/i/pdf/NR10-18-May10.pdf>>.

²⁰ *Ibid.*

²¹ First Quantum Minerals Ltd., News Release 10-26, 10 August 2010, 'First Quantum Minerals reports operational and financial results for the three and six months ended June 30, 2010', p. 14, available at: <<http://www.first-quantum.com/i/pdf/NR-10-26.pdf>>.

²² First Quantum Minerals Ltd., News Release 10-24, 4 August 2010, 'First Quantum Minerals provides update on KMT legal proceedings in the Democratic Republic of Congo', available at: <<http://www.first-quantum.com/i/pdf/NR-10-24-RDC.pdf>>.

²³ *Ibid.*

²⁴ First Quantum Minerals Ltd., News Release 10-08, 01 February 2010, 'First Quantum Minerals announces commencement of international arbitration regarding the cancellation of the Kolwezi Project', available at: <<http://www.first-quantum.com/i/pdf/NR-10-08-InternationalArbitration.pdf>>.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ As reported by First Quantum Minerals Ltd., News Release 10-28, 21 August 2010, 'First Quantum Minerals provides update on legal proceedings in the Democratic Republic of Congo', available at: <http://www.first-quantum.com/i/pdf/2010-08-21_NR.pdf>.

²⁸ As reported by First Quantum Minerals Ltd., News Release 10-37, 27 October 2010, 'First Quantum Minerals granted interim measures orders in international arbitration regarding the Kolwezi Project', available at: <<http://www.first-quantum.com/i/pdf/NR-10-37-Interim-Measures.pdf>>.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ ENRC PLC, RNS 9946V, 11 November 2010, 'November 2010 Interim Management Statement and Production Report for the Third Quarter Ended 30 September 2010', available at: <<http://miranda.hemscott.com/ir/enrc/ir.jsp?page=news-item&item=538475082285212>>.

³² 'First Quantum Minerals reports operational and financial results for the three months and year ended December 31, 2009', p. 14.

³³ *Ibid.*

³⁴ ENRC PLC, RNS 4192R, 20 August 2010, 'Acquisition of 50.5% of the Shares of Camrose Resources Limited', available at: <[http://www.enrc.com/files/Direct/CamroseAnn2\(20_8_2010_15_29_221\).pdf](http://www.enrc.com/files/Direct/CamroseAnn2(20_8_2010_15_29_221).pdf)>.

³⁵ *Ibid.*

³⁶ *Ibid.* In a later news release, ENRC re-states that 'Metalkol did not acquire any infrastructure or equipment on the site as part of the acquisition of Camrose' (ENRC PLC, RNS 3940S, 9 September 2010, 'Statement Regarding Possible Legal Action Against Eurasian Natural Resources Corporation', available at: <[http://www.enrc.com/files/Direct/09Sept_PossLegalAct\(9_9_2010_12_12_965\).pdf](http://www.enrc.com/files/Direct/09Sept_PossLegalAct(9_9_2010_12_12_965).pdf)>). According to First Quantum, ENRC 'has also not addressed the fact that First Quantum has already invested over \$400 million in a plant on site... other than to say it has not acquired those assets.' See First Quantum Minerals Ltd., News Release 10-32, 15 September 2010, 'First Quantum Minerals commences legal proceedings against ENRC subsidiaries', available at: <<http://www.first-quantum.com/i/pdf/NR10-32.pdf>>.

³⁷ 'Acquisition of 50.5% of the Shares of Camrose Resources Limited'.

³⁸ *Ibid.*. ENRC paid US\$50 million in cash and issued promissory notes totalling US\$125 million, to mature between 9 months and 24 months later.

³⁹ *Ibid.*

⁴⁰ 'First Quantum Minerals provides update on legal proceedings in the Democratic Republic of Congo'.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ 'Statement Regarding Possible Legal Action Against Eurasian Natural Resources Corporation'.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ 'First Quantum Minerals commences legal proceedings against ENRC subsidiaries'.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² 'Statement Regarding Possible Legal Action Against Eurasian Natural Resources Corporation'.

⁵³ *Ibid.*

⁵⁴ 'First Quantum Minerals commences legal proceedings against ENRC subsidiaries'.

⁵⁵ First Quantum Minerals Ltd., 'First Quantum Minerals provides RDC legal update'. First Quantum notes that the notice was also served on 'Bwana, a wrongly named Zambian subsidiary of the Company'.

⁵⁶ First Quantum Minerals Ltd., News Release 10-41, 09 November 2010, 'First Quantum Minerals reports operational and financial results for the three and nine months ended September 30, 2010', p. 14, available at: <<http://www.first-quantum.com/i/pdf/NR-10-41.pdf>>.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.* First Quantum initially reported on 21 August 2010 that its DRC subsidiary, Frontier Sprl, had received a letter dated 5 August 2010 from the mining registry 'which purports to withdraw the exploitation permit from the Frontier mine' (see 'First Quantum Minerals provides update on legal proceedings in the Democratic Republic of Congo'.)

⁵⁹ First Quantum Minerals Ltd., News Release 10-30, 27 August 2010, 'First Quantum Minerals announces the suspension of operations at its Frontier Mine in the Democratic Republic of Congo', available at: <<http://www.first-quantum.com/i/pdf/NR-10-30.pdf>>.

⁶⁰ 'First Quantum Minerals reports operational and financial results for the three and nine months ended September 30, 2010', p. 14.

⁶¹ *Ibid.* \$252.8 million in property, plant and equipment, \$51.9 million in inventories and \$1.2 million of other assets and associated liabilities.

⁶² First Quantum Minerals Ltd., News Release 10-33, 1 October 2010, 'First Quantum Minerals launches international arbitration in Washington relating to Frontier and Comisa', available at: <<http://www.first-quantum.com/i/pdf/NR-10-33.pdf>>.

⁶³ 'First Quantum Minerals reports operational and financial results for the three and nine months ended September 30, 2010', p. 14.

⁶⁴ 'First Quantum Minerals provides RDC legal update'. See also 'First Quantum Minerals reports operational and financial results for the three months ended March 31, 2010', p.14.

⁶⁵ *Ibid.*

Annexe 4

¹ White Nile Limited, *Admission Document*, 4 February 2005, available at: <http://www.agriterra-ltd.com/Investor_relations/Downloads/White_Nile_AIM_admission_document_FINAL_%28%29.pdf>.

² Total, *Total in Sudan*, 2009, available at:

<http://sudan.total.com/fichiers/mediaLibrary/SOUDAN/publications/PDF_du_site_Total_au_Soudan_VA.pdf>.

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⁵ White Nile Limited, RNS 6435R, 'Update on activities', 21 February 2007, available at: <http://www.agriterra-ltd.com/Investor_relations/pastreleases/2007/Update%20on%20activities.pdf>.

⁶ *Ibid.*

⁷ *Total in Sudan*.

⁸ *Ibid.*

⁹ 'Sudan asks Britain's White Nile to leave oil block', *Sudan Tribune*, 7 July 2007, available at:

<http://www.sudantribune.com/spip.php?page=imprimable&id_article=22731>.

¹⁰ Ian King, 'White Nile abandons oil exploration to plant seeds of agriculture business', *The Times*, 6 December 2008, available at:

<http://business.timesonline.co.uk/tol/business/industry_sectors/natural_resources/article5295590.ece>.

¹¹ United Nations Commission on Human Rights, *Report Of The United Nations High Commissioner For Human Rights And Follow-Up To The World Conference On Human Rights: Situation of human rights in the Darfur region of the Sudan*, E/CN.4/2005/3, 3 May 2004.

¹² *Ibid.*

¹³ US Department of State. Bureau of Democracy, Human Rights, and Labor, 2005 Country Reports on Human Rights Practices, Africa, Sudan, 8 March 2006, available at: <<http://www.state.gov/g/drl/rls/hrrpt/2005/61594.htm>>.

¹⁴ *Ibid.*

¹⁵ *Ibid.*