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February 19, 2006

Mrs. Tricia Feeney, President
Rights and Accountability in Development
Oxford University, United Kingdom

Dear Mrs. Feeney

Please find hereunder our comments on the Joint Venture Agreement dated February 2004 (the « JV Agreement ») between *La Générale des Carrières et des Mines (« Gécamines »)* and *Kinross Forest Limited (« KF Limited »)*(together the « Parties ») with respect to the Kamoto Mine, the Dima- Kamoto concentrator and the Luilu hydrometallurgical plant.

Our mandate

As per your instructions, we have reviewed the JV Agreement and have centered our analysis on how its provisions generally compare with the provisions normally found in joint venture agreements of a similar nature.

To complete our analysis, we have reviewed the provisions of the Mining Code of the Democratic Republic of Congo (Décret N° 007/2002 du 11 juillet 2002) and such other joint venture agreements known to us.

We have not undertaken a review of the contractual laws applicable to the JV Agreement or of the mandate of any administrative transitional body appointed in the Democratic Republic of Congo to assist the interim government in the application of such joint venture agreements.

Our Analysis

By virtue of a Joint Venture dated February 2004, the Parties have agreed that, following a positive production decision based on a Feasibility Study to be completed, a Joint Venture Company would be registered under the Laws of the Democratic Republic of Congo to be known as *Kamoto Copper Company sarl (“KCC”)*.

1. **CONTRIBUTIONS OF THE PARTIES TO THE SHARE CAPITAL AND ASSET BASE OF KCC AND REMUNERATION.**

A) Gécamines

A.1 Gecamines' contribution to KCC is three-folded:

Attribution of Exclusive Exploitation Rights to KCC

Under the JV Agreement, Gécamines agreed that KCC would have and that Gécamines would grant to KCC as of the date of the beginning of operations, the exclusive rights to occupy, have full benefit, use, maintain, upgrade, develop, process the tailings, the Surface Rights[1], the Concessions[2], the Properties of the KAMOTO Project[3] and all other Mining Rights[4] and any other rights or participations relating to properties held by Gécamines within the Mining Area[5]. Such properties, rights and participations in the properties being designated as the "Used Assets" and the rights granted to KCC in relations to these rights being designated as the "Exploitation Rights".

The JV Agreement also provides that should the Concessions contain ore in an amount insufficient to meet the production targets defined by the Feasibility Study or to feed the processing plant for the period of the JV Agreement, then Gécamines must also make available to KCC, supplementary exploitable Concessions.

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[1] Means the right to use the surface related to the **Contributed Assets** and other equipment needed and activities to be performed by KCC to complete the Project, including without limitation, rights of way, road tolls, pipelines, electric cables, water canalisation, transport system and any other equipment. **Contributed Assets** means the properties and other assets held by Gécamines which will be rented to KCC or for which KCC will obtain an exclusive right of use.

[2] Means the Mining Rights held by Gécamines as identified in schedule A to this JV Agreement as well as any other Right (such as Rental, Mining or Exploitation Rights) which forms part of this JV Agreement as it relates to mineral or "quarry substances" which includes all the rights conveyed by a mining permit or a mining title granted in accordance with the provisions of the Mining Code (Law n° 007/2002 bearing the Mining Code) or preceding legal provisions and the right to extract **Minerals** within the region covered by the Concession. **Minerals** means any mineral substance or deposit containing Minerals object of a Concession or of quarry right that is put at KCC's disposal in accordance with the JV Agreement, which mineral substance can be found above or underground, in or underwater and which could have a commercial value.

[3] Means the **KAMOTO Properties** and the **KAMOTO Installations**. **KAMOTO Properties** designates the Mining Rights defined in Schedule A of the JV Agreement as well as the Surface Rights completing these Mining Rights, the legal description of the Surface being found in Schedule A. **KAMOTO Installations** designates the KAMOTO mine, the processing Plant and related installations.

[4] Includes without limitation, any reconnaissance, prospecting, exploration, retention and extraction licence, any authorisation and Concession of ore such as copper, cobalt and quarry substances, issued by the authorities of the Democratic Republic of Congo (or its predecessor) by virtue of related legislation enacted before, contemporaneously or after the Mining Code.

[5] Designates the entire geographical area within which KCC can carry on exploration, development and extraction operations in the Concession Area, said area having been duly examined and its perimeter defined and staked, as shown in Schedule A hereto.

Rented Equipment and Installations to KCC

Gécamines agreed to rent to KCC as of the date of the beginning of operations, the KAMOTO mine, the KAMOTO and DIMA concentrators, the DIKULUWE deposit, the MASHAMBA EAST and WEST deposits, the T17 deposit or any other deposit to be identified by the Parties in order to guarantee that a sufficient amount of ore is available to ensure the profitability of the Project and of the hydrometallurgical plant of LUILU with all their infrastructures and Processing Installations and all rolling equipment together with all the registered documents and technical data relating thereto (the "Rented Equipment and Installations"). KCC has the exclusive right to use the Rented Equipment and Installations as it deems fit.

In addition, KCC has the right to use all stocks, furniture, material, tools, fuel, spare parts and all other parts necessary to operate or maintain the Rented Equipment and Installations that Gécamines has in storage as at the date of the beginning of the operations as well as to use all infrastructure relating to water, electricity and all other things necessary for the use of the Rented Assets.

Other Contributions

Gécamines assumed all minimum expenses required for maintain the Mining Titles current. It realised prior to the effective date of this JV Agreement all studies and reports with respect to the Concessions, ore deposits and Mines[6] that were legally required.

Gécamines undertook to make available to KF limited and KCC all feasibility studies, geological, geophysical, geobotanical, geochemical, photogeological, aeromagnetic information and analysis as well as other technical data (including drilling samples and data interpretation) as well as all files and registration in its possession and any documents related to the control of prospection and extraction activities completed by Gécamines in the Concession Area prior to the effective date.

A.2 Gécamines' remuneration for contributing the above described assets is as follows:

Gécamines is attributed a 25% free carried participation in KCC's share capital in consideration for the **Attribution of Exclusive Exploitation Rights** to KCC.

The rent to be paid for the **Rented Equipment and Installations** is an amount equal to 2% of Net Sales Revenues[7] for the first three (3) years and 1, 5% of Net Sales Revenues thereafter.

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[6] Designates all individual Mineral deposits and the mines defined in Schedule A as well as any expansion thereof or any new mines built by or on behalf of KCC in the Mining Area.

[7] Means **Net Revenues** less **Permitted Deductions**. **Net revenues** means the proceeds received par KCC or the Operator from the sale of the **Products**. The **Permitted Deductions** are as follows**: 1)** all costs, expenses and Charges in relation to transportation **(**including insurance, packaging, loading, handling, loading fees and others, delays and expedition costs and transaction fees) of the Products from the point where these Products are taken charge of to their delivery to the refinery or any place where they would be crushed, melted, refined or submitted to any other transformation and from this place to any other place where they would be further transformed and from this last place to the one where they will be stored and sold and includes transportation

Said remuneration based on Net Sales Revenues could be reduced to allow for a credit to KCC should it not be able to claim depreciation and amortisation on the Rented Equipment and Installations[8].

There is no remuneration provided for the Other Contribution under the provisions of JV Agreement.

B) KF Limited's

B.1 KF Limited's Contribution

Under the JV Agreement, KF Limited agrees to use its best efforts to secure financing for the Project.

It is provided under the JV Agreement that financing of the Project can come from several sources:

- Cash flow generated by KCC
- Loans (granted by anyone including the shareholders or parties related thereto) bond, equipment leasing, issuance of treasury shares or any other means permitted by the applicable legal provisions or any combination of the above described means.

All KCC's financing requirements for the Project that are in excess of KCC's available cash flow shall be fulfilled by KF Limited by way of capital advances and or loans granted by KF Limited, related parties thereto or third parties or other financial arrangements with KF Limited or third parties. These loans and advances will be fully guaranteed by the assets contributed to the Project by Gécamines and or by the production.

B.2 KF Limited' remuneration for securing the financing for the Project is as follows:

KF Limited is attributed a 75% participation in KCC's share capital.

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to the place of delivery to the purchaser; 2) Any tax levied on the Product from the Mining Area but excluding Net Income tax; 3) The sales costs and insurance, storage, agency and costs of intermediaries in relation to the Products as well as any discount or return granted to the client for default of the sold Products in view of client's specifications or for damaged goods; 4) Payments made to KF Limited in reimbursement and remuneration of the invested capital; 5) Payments made to KF Limited or parties related thereto or to third parties, in relation to loans made to KCC for the conduct of the operations. **Products** means all ore, concentrate and other mineral substance constituting or containing ore produced from the Mining Area by or on behalf of KCC using KCC's assets including marketing and sale of the transformed ore, extract or other products.

[8] Should fiscal provisions in the DRC prevent KCC from claiming depreciation and amortisation benefits in relation to the investment realised by KCC then Gécamines will be deemed to have claimed such benefits. The loss to KCC shall be determined by re-calculating annual profits and determining the proportionate amount by which profits have been reduced because of the fact that KCC could not claim any amount for depreciation and amortisation. In order for KCC to recover such loss profits, KCC can reduce the dividend or payment based on Net Sales Revenues otherwise due to Gécamines from an amount equal to such loss profit.

KF Limited will be reimbursed for such loans in priority as follows:

The following priority is established for the use of funds available from operations:

- Priority is given to financial obligations in relation with the operations which includes the service of the debt and payments due to the Operator by virtue of a Management Agreement.

- Available cash can be set aside for later use in anticipation of operational costs within a reasonable period of time, for the payment of taxes, for the payment of the rent of Gécamines, for maintenance and replacement of existing equipment and installations or other eventualities, for modifications, upgrading, expansion of the equipment and installations, for the purchase or construction of new equipment and installations or expansion of existing mining processing operations or to initiate new mining and processing operations.

- Available cash following the allocation of the above described reserves will be distributed or paid to KF Limited in reimbursement of the costs incurred during the preparation of the feasibility study and for the signature of the JV Agreement and then in reimbursement of contributions to the capital of KCC and of the loans made to KCC in order for KF Limited to recover its investments in the Project.

- The remaining available cash could be used for accelerated reimbursement of loans made to KCC or for dividends to shareholders as decided by the Board of Directors. Dividends paid by KCC from after tax profits will be so in proportion to shareholders' participation in KCC's share capital.

2. OPERATIONNAL MATTERS

A.1 Control of the Operations

KF Limited will be granted a 75% participation in KCC's share capital and is entitled to appoint four directors of a total of six directors to compose KCC's board of directors. Gécamines will appoint the two remaining directors.

KF Limited will appoint the Chairman of the Board and Gécamines the Vice-Chairman of the Board.

Control of the Operations of the Company will be assumed by KF Limited under the instructions of the board of directors. KOL[9] will be appointed as Manager. The Manager will manage, direct and control all the business and Operations of the Company. The Manager can us its own staff for such Operations. The Manager is responsible for the sale of the Products. The Manager will maintain several accounts where the proceeds of the sales and any other revenues will be deposited as well as any amount received by virtue of

[9] Means Kamoto Operating Limited, a corporation registered under the Laws of the Democratic Republic of Congo. It is reasonable to assume that KOL will be a company controlled by KF Limited. It is provided that KF Limited will be preparing the Management Contract to be signed between KCC and KOL. There are no provisions in the JV Agreement for Gécamines to receive a participation in KOL's share capital.

loans from the shareholders or third parties. From this account, the Manager will be responsible to pay all costs related to the Operations and other financial obligations including the service of the debt.

The Manager is free to choose its suppliers but must give priority to the Parties, organisations and parties related to the Parties including Gécamines and the shareholders of KF Limited and parties related thereto if these entities offer competitive financial terms and guarantees as regards quality and delays in the delivery of supplies, identical to those offered by other companies.

A.2 Sale of the Products

KCC can sell the Products itself or use the services of KF Limited, of the Manager or of a related party or of an independent third party hired by the Manager. Sales will be completed in US$ or any other strong foreign currency. KCC and the Manager will have the right to dispose of the proceeds of the sales in accordance with the provisions of the JV Agreement.

A.3 Offshore accounts

KCC or KOL can open foreign bank accounts in an international bank approved by the board of directors and the Central Bank of the Democratic Republic of Congo and conduct the following transactions:

- Receive payments by shareholders of KCC
- Following a call for funds from KCC, receive funds from KF Limited obtained from loans granted by its bankers
- Following a call for funds from KCC, receive funds from loans made directly to KCC
- Receive the proceeds of the Sales of Products
- Receive the proceeds from other commercial or financial operations

A.4 Securities to be given upon financing

Gécamines undertook to facilitate the financing by agreeing to sign any required documents and by pledging its shares as well as accepting that encumbrances, liens or charges be placed on the Contributed Assets and Rented Equipment and Installations as may be required to secure the financing.

All loans made to KCC (including loans granted by parties related to the shareholders and loans made in order to finance the Project) can be guaranteed in whole or in part by KCC's assets, the Products, the shares held by the shareholders or a combination thereof, by the proceeds or products thereof as may be determined by the board of directors. Shareholders agreed that such guarantee shall be a first ranking guarantee on their assets.

3. COMMENTS

Typically in Africa, a state participates in the development of the national resources located on its territory in two ways.

It takes a participation in the mining company. In doing so, it shares the risks with the Investor who in a typical situation will have to invest large amounts as contributed capital and still invest a fairly large balance as shareholder advances. Generally, this participation is determined by law and is of maximum of 25% as states prefer to have a higher royalty rather than a higher participation in the company.

Except under exceptional circumstances, there is very little infrastructure on the mine site, the Investor will build the roads, bring water, electricity, telephone and electronic communications to the site. The Investor will build the landing strip, the living quarters, the cafeteria and recreational facilities. Should these infrastructures already exist, it is considered as an advantage to the project and the Investor will upgrade such infrastructure at its own expenses and pay the prescribed taxes to the state to compensate the expenses incurred by the state in building the infrastructure.

The royalty collected by the state is generally between 1.5% to 3.5% calculated on gross revenues from the sales of the products. It is therefore paid before any other expenses are paid. It is from these payments, often substantial, that it will draw its main revenue from the extraction of its natural resources. This amount is paid before the product leaves the country and is not at risk.

In return for paying this royalty, the investor will ask (not always successfully) during the negotiations of the mining convention, that its advances be reimbursed in priority to dividends being paid. As those advances often will come from loans from financial institutions that the investor could have been called upon to guarantee putting its own assets at risk, it is important for it to receive revenues in order to be able to reimburse his loans. Typically, shareholders advances are remunerated but not guaranteed by the assets of the operating mining company.

It is to be noted that contributed capital is not reimbursed until the company is liquidated.

In certain instances, amounts for previous work done on the property is claimed by the state and recognised on the opening balance sheet of the operating mining company as an advance from a shareholder. In such instances, both shareholders will be reimbursed for these advances in priority and *pari passu*.

Further, the operating mining company could have been granted a loan by a financial institution. To guarantee this loan, the operating mining company will give its assets in guarantee for the loan if the legal system in the host country can accommodate such demand. More generally, the proceeds from the sale of the Products will be paid in a dedicated offshore account from which the financial institution will draw, monthly or by-monthly, the capital and interests due to be reimbursed at that date. The shareholders will also agree to pledge their shares. These guarantees are released as soon as the loan to the financial institution is paid.

A1. Determination of the allocation of share capital in KCC

The general rules in such matter cannot apply in the circumstances documented by the JV Agreement. In instances such as the one documented here, the practice as confirmed by laws in certain instances, is to have an audit and an evaluation of "in kind" contributions so that both partners can be satisfied that such contribution has been given a fair value. The share capital is thereafter attributed proportionately to the contributions of each partner.

It is worth noting that the Parties contributions have been determined before the completion of the Feasibility Study.

Has Gécamines' in kind contribution been fairly evaluated?

- What would have been the cost of building a complete infrastructure (road, electric stations and sub-stations, canalisation for the water, railroads and access to public utilities, pumping stations, etc) in that area, a new plant, Equipment and Installations? How should Gécamines' contribution be evaluated in regards to these costs?

- What is the value of Gécamines' contribution in relation to the value of the ore in the ground or tailings available for reprocessing, if any?

- What is the value of all licences and permits being transferred to KCC with potential extraction targets of up to 150,000 tons Cu/year ore and profits related thereto?

- Why isn't Gécamines remunerated for allowing its assets to guarantee the loans made to KF Limited and KCC?

- Why isn't there an advance from shareholders recognised to the benefit of Gécamines for the previous studies conducted on the property?

The JV Agreement relates to extensive assets, part of the national wealth of the Democratic Republic of the Congo, which are being transferred to be used by the private sector without an evaluation and assurance that the country will be appropriately remunerated for the privilege granted to a private concern.

Has KF Limited's contribution been fairly evaluated?

- How should the cash advances or loans fully remunerated, obtained from related parties and fully guaranteed by assets contributed to the Joint Venture by Gécamines, be evaluated?

- How should the above mentioned cash advances or loans be evaluated given the fact that KF Limited will have complete control of the Project which will be managed by a related party thereto?

- How were the relative risks incurred by the respective Parties evaluated as none of KF Limited assets are given as guarantee for the financing and all loans

> and advances including those made by KF Limited and related parties are fully guaranteed by Gecamines contributed assets to the Project and must be reimbursed on a priority basis?

One can truly question the methodology or lack thereof used in the allocation of the share capital among the Parties to the JV Agreement.

It is justified to assume that, as a shareholder, Gécamines will not receive any dividend until loans, capital and interest have been reimbursed to KF Limited and then such dividends will be paid only if available cash is sufficient in view of the priorities established for the use of such available cash. Gecamines, as regards remuneration on its contributed capital, bears all the risks.

A2. Gécamines' remuneration for the Rented Equipment and Installations

As previously mentioned the remuneration of the state as regards the sale of its natural resources comes from the royalty collected on the gross revenues of the sales of the Product (processed ore being sent to refineries to be transformed into a finished or semi-finished products).

The important concept is that this royalty is paid on gross revenues and is of low risk as it is paid from the proceeds of the sale of the Product to the refinery. The state is thus sure of obtaining a fair value for its resources (the royalty is calculated on the spot market price in London or other specialised exchange without deduction of real or discretionary expenses).

A payment based on Net Profits or Net Sales Revenues is speculative. Generally, given its speculative nature, the percentage used for calculation of such a payment will be higher, between 10% and 15%. But a higher percentage does not entirely compensate for the risk attached to a payment based on a net amount especially when all operations are controlled by the party who will be paying the royalty.

It is realistic to envisage that Gécamines will not receive any payments as regards the Rented Equipment and Installations given that amounts otherwise payable will be fully loaded with expenses relating to every stage of the transformation of the Product, its commercialisation, transportation, insurance, remuneration of the Manager and intermediaries (related parties or not), administrative costs (of related parties or not) and allowances for profits (of related parties or not) as calculated by the Manager, a related party accounting for its own profits and that of related companies.

Such amounts will be further reduced by amortisation and depreciation credits.

The depreciation and amortisation calculations play an important role in the calculation of the profitability of a project. For a company, those are non cash items that will reduce profitability (ie taxable income) in the first years of the Project. Amortisation costs are deductible by the company which accounts for the assets and benefits from the investment. It is likely, as assets are rented to KCC, that the investments channelled through KCC would benefit assets accounted for on the books of Gécamines.

Given the low percentage that Gécamines would receive from the Net Sales Revenues which as mentioned before, is a speculative amount, one could well question whether the "depreciation and amortisation credit" could be seen as already discounted with therefore, no need to account for it in reduction of the rent.

A3. Gécamines' remuneration for Other Contributions

As KF Limited will be remunerated for the expenses incurred for the preparation of the Feasibility Study, why isn't Gécamines remunerated for the work previously done on the property? As previously mentioned, such previous work and the expenses incurred in the preparation of the JV Agreement could be recognised as a shareholder advance and remunerated and repaid in priority and pari passu with KF Limited's advances and expenses incurred in the preparation of the present Agreement instead of as share capital bearing a lower remuneration and being more speculative.

A4. KF Limited's remuneration

KF Limited's contributions will be fully guaranteed, remunerated and reimbursed in priority.

Through KOL, a related company, it will be remunerated as Manager of the project as well as for the marketing and sale of the Products and other services (commission for putting together the financing, fee on any guarantee it could be called upon to provide should a loan from a financial institution be sought) which it will call on related parties to perform.

Bank accounts will be operated offshore by the Manager. KF Limited's contributions will be paid in these bank accounts. The proceeds of the sale of the Products will be paid in these bank accounts and it is contemplated in the JV Agreement that the Manager will have full authority and be mandated to pay expenses (including reimbursement of loans, payments of interests, payment of its own remuneration and that related companies) out of this or other operational accounts without further review and approval.

4. CONCLUSION

It is reasonable to assume that KF Limited will have been totally reimbursed in capital and interests of all loan and advances and will have derived substantial benefits from the control exercised on the operations prior to Gécamines receiving any remuneration on its contributions.

It is reasonable to assume that the remuneration for the Rented Equipment and Installation will be minimal, if any.

It is reasonable to assume that available cash for dividends will be minimized as it will be more advantageous for KF Limited to be fully remunerated through contracts with the Manager and related companies rather than share the remaining available cash with Gécamines.

Signed : Fasken Martineau DuMoulin (Pty) Ltd.