

**OCH-ZIFF, MUGABE’S “BAGMEN” AND THE
UNDERPRICING OF AFRICAN ASSETS**

**A New York hedge fund’s record
of questionable African investments**

Rights and Accountability in Development

April 2014

OCH-ZIFF, MUGABE’S “BAGMEN” AND THE UNDERPRICING OF AFRICAN ASSETS

**A New York hedge fund’s record
of questionable African investments**

© 2014 Rights and Accountability in Development (RAID)

RAID is a Registered Charity, No. 1150846 and a not-for-profit Company Limited by Guarantee, No. 4895859

www.raid-uk.org



Rights and Accountability in Development

Contents

Introduction.....	1
Specific developments: Och-Ziff, recent disclosures and a new company launch on AIM.....	4
Unanswered questions arising from Och-Ziff's response to CalPERS.....	4
The destination of the investment.....	4
The extent of due diligence.....	4
The timeline of the private placement.....	5
After the platinum deal.....	6
Actions available to a passive investor.....	6
Knowledge of the Mugabe regime as beneficiary.....	6
<i>Funnekotter et al. v. Republic of Zimbabwe</i> : Och-Ziff and knowledge of entities behind the CAMEC transaction.....	7
Managers with knowledge in common: Och-Ziff and Africa Management Limited.....	9
Africa Management Limited and Camrose Resources Limited: loans and transaction in the DRC.....	11
Palladino Capital 2 Limited and the secret loan to the Republic of Guinea.....	16
The opaque awarding of Lake Albert oil blocks in the DRC: the involvement of Gertler and the role of Africa Management (UK) Limited's chief executive.....	19
Concerns over the admission of Africa Oilfield Logistics Limited to AIM.....	22
Official silence and the wider context.....	25
The 2013 Zimbabwean elections and the relaxation of EU sanctions.....	25
Enforcement of sanctions in the US: actions against prominent banks.....	26
Concluding observations and a call for action.....	27
Financial sanctions and corrupt practices.....	27
The US authorities.....	27
The UK authorities.....	28
The company.....	28
The pension funds.....	28
Annex 1.....	29
Annex 2.....	31
Notes.....	40

Introduction

UPDATE

On 18 March 2014, the US hedge fund Och-Ziff Capital Management Group LLC, certain of whose investments in Africa are examined in this report, made the following statement in a regulatory filing to the US Securities and Exchange Commission (SEC):¹

Beginning in 2011, and from time to time thereafter, we have received subpoenas from the SEC and requests for information from the US Department of Justice (the “DOJ”) in connection with an investigation involving the FCPA [Foreign Corrupt Practices Act] and related laws. The investigation concerns an investment by a foreign sovereign wealth fund in some of our funds in 2007 and investments by some of our funds, both directly and indirectly, in a number of companies in Africa. At this time, we are unable to determine how the investigation will be resolved and what impact, if any, it will have. An adverse outcome could have a material effect on our business, financial condition or results of operations.

In August 2012, the *Mail & Guardian*, the leading South African newspaper, revealed how a \$100 million loan to the Mugabe regime was part of a 2008 deal by UK-registered Central African Mining and Exploration Company plc (‘CAMEC’) to acquire Zimbabwean platinum assets. Finance for this transfer originated with a subsidiary of Och-Ziff Capital Management Group LLC (‘Och-Ziff’), a US hedge fund. The money from the platinum deal was used by the Mugabe regime to unleash a campaign of violence and overturn the result of the 2008 elections (See box, [The platinum deal and electoral violence](#)).

Building on existing and further research, RAID published in July 2013 its own report into the platinum transaction. The transfer of funds had happened despite the existence of US and EU sanctions against Zimbabwe: indeed, Mugabe’s violent subversion of the elections led to the imposition of further sanctions. Moreover, the loan cannot be easily distanced from the human rights violations it facilitated.

Dating back to 2011, RAID has raised concerns with the UK authorities about certain tran-

The platinum deal and electoral violence

In April 2008, CAMEC acquired a majority holding in a Zimbabwean platinum joint venture. As part of this transaction, CAMEC advanced a US\$100 million loan to enable its newly acquired Zimbabwean subsidiary to ‘comply with its contractual obligations to the Government of the Republic of Zimbabwe’. Regulatory news releases indicate that the money for the loan came from OZ Management LP (‘OZ Management’), a subsidiary of Och-Ziff.

The finance originating from Och-Ziff was used to fund the Mugabe regime’s campaign of violence that subverted democratic elections. Up to 200 people were killed, 5,000 more were beaten and tortured, and 36,000 people were displaced. An opposition spokesman has stated: ‘all the heartache, pain, gerrymandering, violence, intimidation, repression that took place at the 2008 election is directly linked to that 100 million.’ The US Ambassador to Zimbabwe in 2008, James McGee, condemned the ‘systematic campaign of violence designed to block this vote for change... orchestrated at the highest levels of the ruling party.’ The electoral violence led to an extension of US sanctions against Zimbabwe, which remain in force.

sactions carried out by CAMEC, formerly traded on AIM (Alternative Investment Market), London’s junior market. In May 2013, RAID wrote again to the UK Treasury – responsible for the implementation of sanctions – and to its US counterpart, calling for an investigation. RAID wrote to Och-Ziff and also contacted several prominent US public pension funds with investments managed by the hedge fund. Och-Ziff describes itself as ‘one of the largest institutional alternative asset managers in the world’, with \$41.3 billion in assets under management in early 2014. Pensions account for 32 percent of Och-Ziff’s investor base across its hedge funds and other alternative investment vehicles.²

The purpose of this short report is to provide an update on developments – set against a wall of official silence (see table) – since RAID raised its concerns over the legacy of the Zimbabwean platinum deal in its July 2013 report *Sanctions, violence, pensions and Zimbabwe*.

Who	What	When
HM Treasury’s Asset Freezing Unit	In 2011, RAID raised concerns with the UK Treasury’s Asset Freezing Unit – responsible for implementing aspects of the UK’s sanctions regime – over both CAMEC’s dealings with the Zimbabwean regime and the subsequent acquisition of CAMEC by Eurasian Natural Resources Corporation plc (ENRC). RAID wrote again in July 2012, and several times since, including making an explicit Freedom of Information request to the Treasury in order to elicit information about how it handled and even licensed these transactions. ³ Letters providing more information on the Zimbabwean platinum deal and calling upon the Treasury to investigate were sent in May and September 2013. The Treasury has, however, refused to answer RAID’s questions or release any information; and it has failed to respond to RAID’s call for an investigation. In 2014, RAID filed a complaint to the Information Commissioner on the Treasury’s refusal to provide information.	2011–2014
Office of Foreign Assets Control (OFAC)	In May 2013, RAID wrote to the US Office of Foreign Assets Control (OFAC) asking it to investigate whether the Och-Ziff loan and CAMEC transactions engaged US sanctions against Zimbabwe. OFAC has never responded to RAID’s request, despite a further prompt in September 2013.	May & September 2013
Och-Ziff	At the same time that RAID wrote to OFAC, it contacted Och-Ziff directly about its concerns. Och-Ziff has never replied to RAID.	May 2013
Pension funds	In July 2013, RAID sent letters to three of the largest US state pension funds in Massachusetts, New Jersey and California, who at the time of the Zimbabwe deal, or who have subsequently, used Och-Ziff to manage part of their portfolios. In September 2013, RAID wrote to an additional six public pension funds in Florida, Texas, Missouri, Sacramento, and Utah, all with investments managed by Och-Ziff. Out of the nine funds contacted, only California has replied. RAID also sent a letter in September 2013 to Transport for London, a high-profile pension fund in the UK, which uses Och-Ziff to manage certain investments. Seven months later and there has been no response to the concerns raised.	July & September 2013

Since that report was published, there have been a number of significant developments in relation to the case:

- Och-Ziff, which has not responded publicly or privately to RAID about the concerns raised, has felt compelled to write to the influential California state pension fund (CalPERS), the only such institution to have taken up RAID's call to seek answers from Och-Ziff.
- A civil action, brought against the Zimbabwean government to recover money to compensate for state expropriations, has had the effect of bringing certain (albeit circumscribed) information about the CAMEC/Och-Ziff transaction to light.
- More is also known about Och-Ziff's parallel venture into Africa, launched at the same time as its investment in CAMEC. Transactions in Guinea and the DRC, linked to Och-Ziff's joint investment vehicle – Africa Management Limited ('AML') – or to Och-Ziff's partners or affiliated entities, have attracted considerable controversy.
- One such deal raises questions about AML's investment in a company called Camrose Resources Limited ('Camrose') and the latter's transactions to sell DRC mining assets to Eurasian Natural Resources Corporation plc ('ENRC'), the company that bought CAMEC. The UK's Serious Fraud Office (SFO) is currently investigating allegations of fraud, bribery and corruption relating to the activities of ENRC or its subsidiaries in Africa.
- Key figures in CAMEC have launched a new company on AIM, Africa Oilfield Logistics. RAID has sought to ensure that the regulatory authorities abide by their responsibility to scrutinise the company's admission and ensure proper due diligence on the track-record of certain directors, given the unanswered questions that hang over CAMEC whilst under their stewardship.

Whilst a number of circumstances specific to the Och-Ziff/CAMEC case have therefore changed, so has the wider context political and legal context:

- 2013 saw constitutional reform in Zimbabwe and the re-election of Mugabe and Zanu-PF. There has been a rolling back of sanctions in the EU, although no significant relaxation in the US.
- At the same time, there have been a number of prominent sanctions cases in the US, resulting in significant fines for major banks. However, this appetite for legal action has not extended to the Zimbabwean sanctions regime.
- Developments in UK and US domestic and foreign policy cannot explain away the lack of investigative or enforcement action by the authorities in the CAMEC case or in the case of ENRC.

RAID continues to call for a full investigation and, where appropriate, enforcement action by the relevant authorities.

The sources for the current report include company records, company correspondence, regulatory filings, contracts, court documents and newspaper reports. Many of these have been published and others are in the public domain. The report includes comprehensive references for the documents consulted in its preparation.

This RAID report and its summary should be read in conjunction the underlying source documents.

Specific developments: Och-Ziff, recent disclosures and a new company launch on AIM

Since RAID published its July 2013 memorandum on CAMEC's Zimbabwean platinum deal, there have been developments that relate specifically to the transaction itself and Och-Ziff's role in providing investment finance. The two most significant disclosures are a response from Och-Ziff to CalPERS and an ongoing US court case (*Funnekotter et al. v. Republic of Zimbabwe*), in which Och-Ziff has been subpoenaed as a non-party to produce specified information on its dealings with CAMEC. Certain other information is also presented on Och-Ziff's concurrent, pro-active investment program in Africa at the time of the Zimbabwean platinum deal. In the UK, the same team of directors and advisers that brought CAMEC to market have recently launched another company on AIM, despite the fact that questions in the public domain about CAMEC's compliance with AIM rules have never been satisfactorily answered.

Unanswered questions arising from Och-Ziff's response to CalPERS

CalPERS raised RAID's concerns with Och-Ziff, and received a reply dated 4 September 2013. After explaining to Och-Ziff that it would disclose this reply to RAID, CalPERS forwarded the letter to RAID. A copy is attached as Annex 1.

Och-Ziff's response to CalPERS, as it stands, leaves many key questions unanswered: on the timeline of its investment, its due diligence on a sizeable investment, the extent of its knowledge of the Zimbabwe platinum transaction, and the course of action taken by Och-Ziff once the latter deal was announced by CAMEC.

The destination of the investment

Och-Ziff says that CAMEC stated that the proceeds from the placement 'were to be used to fund existing company assets and operations in Democratic Republic of Congo'. This suggests that Och-Ziff had no knowledge that the proceeds would be used to fund assets and operations in any other country apart from the DRC. However, CAMEC's statements at the time of the placement already refer to 'further discussions with the places regarding multiple investment opportunities available to the Company in Africa' (28 March 2008), and CAMEC's chief executive noted 'it [the placement] enables us to accelerate our well known development plans in the DRC and **also take advantage of other opportunities elsewhere within our regions of operations**' [emphasis added]. This confirms that the proceeds were to be used outside of the DRC. The CAMEC statement is therefore at odds with Och-Ziff's account that proceeds from the placement were solely to be used in the DRC.

- Does Och-Ziff believe it was misled by CAMEC as to the destination of the investment?

The extent of due diligence

The information given by CAMEC in the public domain, which nevertheless confirms investment elsewhere outside DRC, would surely have been minimal in comparison to the information provided privately to investors willing to provide \$150 million. Och-Ziff acknowledges 'the relative size of its investment in CAMEC'.

Our understanding is that private placements of the magnitude of that transacted between Och-Ziff and CAMEC are based upon an offer memorandum or equivalent robust documentation. It is surely inconceivable that Och-Ziff would invest the amount of money it did in CAMEC without knowing more about the company, its ownership and its plans.

- If Och-Ziff did invest \$150 million in CAMEC without such knowledge, then would this not raise serious questions about the lack of fundamental due diligence?

Yet in response to a subpoena served on Och-Ziff (as a non-party) to produce documents as part of an ongoing court case (see p. 7 for details), an exchange of letters between the plaintiff's lawyers and counsel for Och-Ziff concerns precisely the extent of due diligence prior to investing in CAMEC:

Och-Ziff's apparent lack of candour and efforts to impede discovery are underscored by its response to the Order, which required production of 'core documents relating to Och-Ziff's investment in CAMEC.'... The production does not include any due diligence or approvals of the CAMEC investment, nor CAMEC documents such as an offering memorandum. We believe it is highly unlikely that Och-Ziff's analysis of a \$150 million investment, representing almost 10% of CAMEC's shares, would be so superficial.

—*Extract from letter to the judge from Counsel for the plaintiffs, seeking the production of documents*⁴

To be clear, there is no request in the subpoena for 'core documents' relating to the investment. These documents were produced in an effort to provide Plaintiffs with basic information relating to Och-Ziff's investment in CAMEC. Thus, there is no particular set of 'core' documents to which Plaintiffs are entitled. In any event, the documents that Plaintiffs claim they should receive have already been produced or do not exist. Och-Ziff produced its due diligence documents, and there was no private placement memorandum issued in connection with the CAMEC investment, which we understand is standard for placings of AIM-listed companies like CAMEC.

—*Extract from letter to the judge from Counsel for Och-Ziff*⁵

The timeline of the private placement

Och-Ziff refers to making a 'routine filing notice' in respect of their purchase of CAMEC shares. However, Och-Ziff does not confirm when this notice was made. On 29 July 2008, CAMEC eventually issued a holdings release, attributed 'From OZ Management' and dated 28 July 2008. Does this indicate that Och-Ziff provided the relevant filing to CAMEC on 28 July 2008? Moreover, Och-Ziff does not confirm when it received its CAMEC shares. Filings made by CAMEC in the UK give an allotment date of 7 April 2008 for 150,000,000 shares to Och-Ziff funds; however, the Return of Allotment of Shares 88(2) form is dated 21 April 2008.

- It should be a simple matter for Och-Ziff to confirm the date upon which it concluded its private placement in CAMEC; the date it made its routine filing to CAMEC; the date by which it had transferred all monies due to CAMEC in payment; and the last date by which it had received all of its allotted CAMEC shares.

This timeline will assist in establishing the extent to which Och-Ziff's completion of its purchase of CAMEC shares pre- or post-dates CAMEC's transaction (11 April 2008) to acquire the Zimbabwean platinum assets.

Without this confirmation from Och-Ziff, reliance must be placed on existing disclosures. CAMEC announced share capital of 1,229,938,032 ordinary shares as of 3 March 2008.⁶ As of 14 April 2008 – that is three days after the Zimbabwean platinum transaction – Credit Suisse announced that it held 68,642,517 CAMEC ordinary shares, representing 5.58% of issued share capital. The Credit Suisse holding of 68,642,517 is indeed 5.58% (to two decimal places) of CAMEC's total share capital as announced on 3 March 2008, before the Zimbabwean platinum

deal. This suggests that Och-Ziff's allocation of 150,000,000 shares had not been admitted for trading by the time the deal was announced.

After the platinum deal

In scrutinising Och-Ziff's conduct in respect of the CAMEC platinum transaction, it is all too easy to fail to see the wood for the trees. Regardless of the extent of Och-Ziff's *prior* knowledge of CAMEC's plans to invest in Zimbabwe, on 11 April 2008, details of the platinum deal were announced by CAMEC. These details included reference to the fact that '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.'

- Did this disclosure not prompt Och-Ziff to ask questions of CAMEC about how the proceeds of Och-Ziff's private placement were being used?
- If, as Och-Ziff states, it had no knowledge that the platinum deal was on the cards at the time of the private placement, then surely the surprise announcement of such a significant acquisition ought to have prompted Och-Ziff to interrogate CAMEC about its plans and the ultimate destination of Och-Ziff's payment to CAMEC?

Actions available to a passive investor

Och-Ziff draws attention to its role as a passive shareholder in CAMEC: 'The Och-Ziff funds had no control over the company, its operations or use of the proceeds.' Control over CAMEC is not the central issue. Rather Och-Ziff, given CAMEC's need for cash via a private placement, was in a position to interrogate the company over its operations and plans, and did therefore have a choice about whether it invested in CAMEC at all; furthermore, Och-Ziff also had control over divesting from CAMEC after the platinum deal was announced (Mugabe and senior Zimbabwean government figures were already designated under US sanctions) or after the designation of both the Zimbabwe Mining Development Corporation (ZMDC – CAMEC's state-controlled partner in the platinum venture) and Billy Rautenbach, later described by the US as a 'Mugabe crony' and who was wanted at the time by the South African authorities on fraud charges.⁷ Rautenbach had originally provided CAMEC with its mining assets in the DRC. Och-Ziff, however, held onto its CAMEC shares into 2009, selling its remaining holding only when ENRC acquired CAMEC in November of that year.

Knowledge of the Mugabe regime as beneficiary

Och-Ziff states: (a) 'Och-Ziff is not aware, and does not believe, that any employee knew that CAMEC intended to provide funds raised from the offering to the regime of Robert Mugabe, even assuming such allegation is true'; (b) 'As a passive shareholder of CAMEC for a limited time, Och-Ziff is not aware of information that validates the claim that CAMEC provided funds to the Mugabe regime.' Both statements cast doubt on the claim that funds were transferred to the Mugabe regime. Yet – notwithstanding the question of whether Och-Ziff or its employees had any *prior* knowledge of the ultimate beneficiary of CAMEC's loan – Och-Ziff's statements are belied by CAMEC's own confirmation that it provided the loan, via a company called Lefever, to the Zimbabwean government.

- Presumably Och-Ziff would not deny that the Zimbabwean government at the time comprised President Robert Mugabe and Zanu-PF?

Funnekotter et al. v. Republic of Zimbabwe: Och-Ziff and knowledge of entities behind the CAMEC transaction

There is also evidence to suggest that Och-Ziff, far from being an uninformed passive investor, had knowledge not only of CAMEC's Zimbabwean platinum assets, but also of certain of the individuals and entities behind the transaction. Och-Ziff has been subpoenaed in a US court case concerned with the pursuit of compensation owed by the Republic of Zimbabwe to the plaintiffs – direct or indirect owners of commercial farms expropriated by the Zimbabwean state – following an award by the International Centre for Settlement of Investment Disputes (ICSID).⁸ Och-Ziff, as a non-party to the case, has been required to produce a number of documents.⁹ An exchange of letters concerning disclosure by Och-Ziff provides certain information: it would appear that by 22 July 2008, Och-Ziff had drawn up a valuation model of CAMEC that included a reference to Zimbabwean instrumentalities.¹⁰ The spreadsheet refers to 'Platinum (Zim)' and also to 'Meryweather (BR)', an apparent reference to Billy Rautenbach, who has been associated with Meryweather. The spreadsheet was circulated on 4 August 2008.¹¹

Och-Ziff's counsel refers to the spreadsheet as being drawn up 'several months after CAMEC had announced publicly that it was purchasing a platinum mine in Zimbabwe'.¹² Counsel's letter continues: 'The document does not even remotely suggest that Och-Ziff knew about CAMEC's acquisition of a company in Zimbabwe before that acquisition occurred or that Och-Ziff had any knowledge about the flow of any funds to the Republic of Zimbabwe or its instrumentalities.'

It should be noted that the apparent attribution of Meryweather to Billy Rautenbach in the Och-Ziff spreadsheet demonstrates knowledge not available through public disclosures.¹³ Moreover, on 25 July 2008, just ten days prior to the circulation of the spreadsheet, CAMEC's ZMDC partner in the platinum venture had been designated on the US sanctions list. Three months later, at the end of November 2008, Rautenbach was designated. By that time, Och-Ziff should have been in no doubt as to the status of Rautenbach as an instrumentality of the Republic of Zimbabwe, yet Och-Ziff remained invested in CAMEC.

- Given its private knowledge of the role of Meryweather and Billy Rautenbach ('BR'), did Och-Ziff question CAMEC after Rautenbach was designated about Och-Ziff's earlier placement and the use of the proceeds?

Counsel for the plaintiffs, in a letter to the judge, states:¹⁴

As CAMEC used the private placement proceeds to fund the purchase of the mine and its grant of shares to Meryweather immediately diluted Och-Ziff's shareholding by roughly 10%, Plaintiffs believed that Och-Ziff should have significant information on the Zimbabwe mine acquisition...

...

This [the spreadsheet] suggests that perhaps Och-Ziff's counsel was less than candid in stating that Och-Ziff had no knowledge of the funds flowing to Zimbabwe instrumentalities.

Under the subpoena, Och-Ziff has produced core documents stamped OZF00063389 – OZF00064184 'dated around the time of, and relating to, Och-Ziff's acquisition of shares in CAMEC that mention CAMEC and Zimbabwe'.¹⁵ In respect of Och-Ziff having information about the assets of the Republic of Zimbabwe, Och-Ziff's counsel states: 'we are not aware of any such documents in Och-Ziff's possession.'¹⁶ However, Och-Ziff's counsel does refer to 'the sporadic mention of Zimbabwe in connection with discussions of CAMEC in the handful of emails being produced', explaining this in terms of CAMEC's existing operations in Zimbabwe at the time of the offering.¹⁷

The documents produced by Och-Ziff remain confidential under the terms of a protective order.¹⁸ Dissatisfied with Och-Ziff's disclosure of documents, counsel for the plaintiffs is seeking a further order to compel Och-Ziff to produce the full range of documents requested (please refer to counsel's numbered requests, reproduced in Annex 2):¹⁹

Each of the plaintiffs' requests 1-9 are specifically tailored to seek documents concerning Och-Ziff's substantial investment in a company called Central African Mining and Exploration Company ("CAMEC") through a 2008 private placement of securities.... Plaintiffs are seeking discovery from Och-Ziff about this transaction....

...

The identity of the fronts or "bagmen" for Zimbabwe is also critically important... some of Africa's most notorious businessmen were involved with CAMEC and the 2008 private placement. In order to assess whether these individuals or any of their affiliated companies are in fact fronts from the Republic of Zimbabwe, holding or transferring assets that plaintiffs may pursue to satisfy the [ICSID] Judgment, plaintiffs seek information from Och-Ziff concerning CAMEC's activities and organizational structure.... a company with clear ties to the Mugabe regime in Zimbabwe and an example of how Zimbabwe conducts business through its fronts and "bagmen."

...

Document Requests 11(b)-(l) involve the individuals and entities that plaintiffs believe were the key players in the CAMEC private placement transaction and CAMEC's subsequent Zimbabwe-related dealings, including CAMEC's 2008 purchase through a number of shell companies of a 60% interest of a mine expropriated by Zimbabwe, and the use of funds CAMEC received to extend a \$100 million "loan" to the government of Zimbabwe.

...

Document Requests 11(n)-(o) concern the 2008 Zimbabwe presidential election and the opposition party to Mr. Mugabe's regime, which are clearly relevant given CAMEC's \$100 million "loan" to Zimbabwe, which was used by the government to influence the 2008 presidential election.

Documents and communications are requested from Och-Ziff in relation to a number of named individuals and entities, *inter alia*: Muller Conrad "Billy" Rautenbach, James Ramsay (Rautenbach's lawyer), Phillippe Henri Edmonds (Chairman of CAMEC), Andrew Groves (CEO of CAMEC), Meryweather, Lefever, Todal, CAMEC and ENRC. Och-Ziff has also been requested to produce all documents and communications concerning OFAC (the office responsible for sanctions in the US) with respect to the 2008 private placement, Zimbabwe or sanctions (both US and EU). Counsel for the plaintiffs states:²⁰

Notably, Och-Ziff has never said whether it has such documents; if so, how many; and why. Why would Och-Ziff have documents concerning the Sanctions on Zimbabwe except to analyze how Zimbabwe and its counterparties can avoid those Sanctions? Since there is no claim that producing these documents is burdensome, Och-Ziff's failure to produce these documents to date is particularly inexcusable.

Och-Ziff's counsel has rejected the plaintiffs' request for further documents, stating:²¹ 'Och-Ziff has no documents relating to any Zimbabwe assets; it has no documents relating to any transfer of assets to or from Zimbabwe; it has no documents reflecting Zimbabwe bank accounts that might be used to find Zimbabwe assets. That should end the story, but Plaintiffs have refused to acknowledge this reality'. Counsel's letter to the judge continues: 'Och-Ziff has objected to the subpoena on a number of grounds, including that the subpoena is overbroad, unduly

burdensome, and sought documents beyond the permissible scope of... discovery. In a good faith effort to demonstrate to Plaintiffs that the premise of the subpoena – that Och-Ziff had knowledge of CAMEC's investment in Zimbabwe through which funds were supposedly provided to Zimbabwe – was totally false, Och-Ziff produced documents responsive to certain of Plaintiffs' requests around the time period of Och-Ziff's original investment in CAMEC and CAMEC's investment in Zimbabwe. Och-Ziff also has attempted to negotiate limitations to the overbroad requests, but counsel for Plaintiffs has refused to agree to any limitations, including any reasonable date restrictions.'

Counsel for the plaintiffs has also subpoenaed OFAC as a non-party and requested certain documents, including requests for a license or guidance letter explicitly related to transactions or dealings with specified designated entities, including, *inter alia*, the Zimbabwe Mining Development Corporation (ZMDC).²² The OFAC documents and information are also covered by a protective order requiring confidentiality.²³

Managers with knowledge in common: Och-Ziff and Africa Management Limited

Och-Ziff's portrayal of itself as a passive investor in CAMEC is at odds with its approach to other investments in companies with African assets.

In a June 2008 interview and article, Daniel Och, founder, chairman and CEO of Och-Ziff, outlined how Och-Ziff had created a dedicated investment vehicle 'to focus on private transactions and less-liquid investments'.²⁴ The company's decision to go public in November 2007 was to provide additional capital for such investments. According to the article: 'By seeking to extend his business to encompass a range of unusual private financing structures – corporate restructurings, joint ventures and private-equity-style investments – Och is now treading on the very ground that investment banks... have long considered their domain.... Companies around the world are desperate for capital, and he [Och] and his team are keen to provide it.'²⁵ In order to move into this space, Och-Ziff brought in some 30 private equity professionals. The article describes how Och and his senior partners 'have been working on a spate of new deals, including two recently disclosed joint ventures.... In conjunction with Palladino Holdings, another private investment firm in South Africa, Och-Ziff and Mvelaphanda – the word means progress – are raising money to invest in mining and oil and natural-gas exploration.'²⁶ For a summary, see box, **Africa Management Limited: partners and key individuals**.

In its 2008 second quarterly market report, Och-Ziff clearly articulated this new investment strategy focusing upon private equity investment in developing markets:²⁷

The evolution of the markets in India, China and Africa, as well as the expansion of the capital markets in Latin America, has led to opportunities in asset classes such as energy and alternative energy, natural resources, infrastructure and real estate. The expansion of our private investments business through the development of new investment platforms that capitalize on these opportunities, such as our African joint venture, are an important element of our strategy for growth in assets under management, revenues and earnings.

...

Investments in new businesses established to expand certain of our private investment platforms are also included in other operations. For example, our investment in Africa Management Limited, our joint venture with Mvelaphanda Holdings (Proprietary) Limited and Palladino Holdings Limited, is included in other operations.

Africa Management Limited: partners and key individuals

In its press release, Och-Ziff does not further identify Africa Management Limited; however, other corporate documents confirm that Africa Management Limited is registered and incorporated offshore in Guernsey.²⁸ Africa Management Limited is the parent company of Africa Management (UK) Limited ('AML UK'), the latter registered and incorporated in the UK.²⁹ Its current status is described as active, but 'under a proposal to strike off'.³⁰ Och-Ziff's press release refers to the UK subsidiary as capitalising on available opportunities under its chief executive, Mark Willcox.³¹

Mvela Holdings is incorporated in South Africa.³² Mvela Holdings is described in the Och-Ziff release as 'a private investment company founded in 1998 by Tokyo Sexwale, Mikki Xayiya and Mark Willcox. It is the controlling shareholder of JSE-listed Mvelaphanda Group Ltd and has a significant interest in JSE-listed Mvelaphanda Resources Ltd. It has other substantial privately held interests in the mining, energy, real estate and various other industrial sectors in South Africa and Africa.' Sexwale is a former Minister in the South African government.³³

Palladino Holdings is described as a private investment vehicle, founded in 2003 by Walter Hennig holding 'a variety of significant mining, energy and other assets in Africa.'³⁴ A company under the name Palladino Holdings Limited is registered in the UK, and recorded as originating in the Turks & Caicos Islands.³⁵ Other market notifications that refer to Palladino Holdings Limited as a shareholder give an address for Palladino in the Turks & Caicos Islands.³⁶ Palladino Capital 2 Limited, a closely-related Palladino subsidiary behind a controversial loan to the Guinea government (see below), is registered in the British Virgin Islands.

The directors of Africa Management (UK) include or have included, Walter Hennig (Palladino), Andre Cilliers (Palladino) its chief executive Mark Willcox (also Chief Executive Officer of Mvela Holdings), Michael Cohen (Och-Ziff) and Vanja Baros (Och-Ziff).

Africa Management Limited ('AML') was created by OZ Management LP (an Och-Ziff subsidiary) and the partner organisations in January 2008, just a few months before Och-Ziff invested in CAMEC. According to the Och-Ziff press release announcing the launch:³⁷

Africa Management Limited has established African Global Capital I, L.P. ("African Global Capital"), as a platform to invest in both the private and public markets across Africa, with a bias towards natural resources and related businesses. The new joint venture will combine the regional infrastructure and expertise of Mvela Holdings and Palladino together with the global investment management expertise of OZ Management. Africa Management Limited will act as the exclusive vehicle for Mvela Holdings and OZ Management to pursue private investment opportunities within the region.... Contributed assets range from exploratory mining and energy concessions to mature producing mining assets and public equity positions across Africa.

Och-Ziff's African investments are managed out of Europe.³⁸ Until March 2013, the company's European operations were headed by Michael Cohen. Cohen had joined Och-Ziff near the outset, was one of 18 partners at the time Och-Ziff went public, and was described as one of the six key partners whose retention was 'crucial to our [Och-Ziff's] success'.³⁹ Cohen's surprise departure from Och-Ziff was announced on 19 March 2013 by Och-Ziff in a perfunctory notice to the US Securities and Exchange Commission.⁴⁰

In addition to being Head of European Investing, Cohen was a Director of Och-Ziff Europe, an executive managing director of Och-Ziff Capital Management Group LLC, an executive managing director at each Och-Ziff Operating Group entity, and a member of the Partner Management Committee for the Och-Ziff organization.⁴¹ Cohen held these positions in 2008, at the time Och-Ziff was moving into private equity investments in Africa.

In June 2009, Cohen gave a presentation at a key industry forum on private equity investment in Africa.⁴² He drew attention to the continent's "vast and still underexploited" natural resources, to strategies benefiting from many countries' black economic empowerment legislation, as well as

to Och-Ziff's own joint venture investment in Africa. According to a report on the forum, 'he [Cohen] highlighted corruption as a particularly significant and wholly "unacceptable" aspect of African business life.'⁴³

Cohen was a director of AML's UK subsidiary from 10 October 2007 to 2 July 2012.⁴⁴ Och-Ziff's Africa Director, Vanja Baros, was also a director in AML UK from December 2007 until July 2012.⁴⁵ Like Cohen, Baros is no longer employed by Och-Ziff, but is reported to be head of business development at QKR Corporation (see below, for information on the founder of QKR and a controversial loan to the Guinea government).⁴⁶

At the same time as helping coordinate Och-Ziff's investments through AML, Baros was also analysing CAMEC. The spreadsheet referred to in the Funnekotter court case, with details of CAMEC's operations, is named 'CAMEC_VB_20080722.xls' and was circulated to and forwarded by <vanja.baros@ozcap.com>.⁴⁷ According to counsel, "The "VB" in the title appears to be a reference to Vanja Barros [sic]".⁴⁸ The spreadsheet makes it clear that Baros was conversant with aspects of CAMEC's operations and certain figures and entities (the reference to 'BR' and Meryweather) behind the company.

AML or its affiliated or partner organisations – Palladino and Mvela, tasked with contributing assets to the venture – have been associated with three controversial deals in Guinea and the Democratic Republic of Congo. Again, questions arise as to what Och-Ziff knew about these transactions; whether it contributed funds to these investments through AML or through any other entity; and, if it did invest, the extent of its analysis and due diligence.

Africa Management Limited and Camrose Resources Limited: loans and transaction in the DRC

In June 2011, RAID, as part of its detailed submission to the AIM authorities on the conduct of CAMEC, drew attention to certain transactions between CAMEC and companies part-owned or controlled by Dan Gertler, an Israeli businessman with close connections to Joseph Kabila, the President of the Democratic Republic of Congo.⁴⁹ Gertler's deals in the DRC are linked to the offshore holding company, Fleurette Properties Limited.⁵⁰ Fleurette, in turn, is the parent company of Camrose Resources Limited,⁵¹ and this latter company amended its very Memorandum and Articles of Association to accommodate and grant powers to a company that, as stated in the amended company records, is affiliated to AML, the Och-Ziff joint venture vehicle.

The influential Africa Progress Panel, established to promote equitable and sustainable development for Africa and chaired by former UN Secretary-General, Kofi Annan, used its 2013 annual report to highlight lost revenues associated with the opaque trading of mining concessions, epitomised by the DRC where the 'minerals sector has been plagued by a culture of secrecy, informal deals and allegations of corruption.'⁵² The Panel focused on five deals:⁵³ 'In each case the trading arrangement involved a state company and one or more offshore companies, most of which were registered in the British Virgin Islands and connected to one of the largest private investors in the DRC, the Fleurette Group.'

The campaign group Global Witness has stated its belief that the secret sales of mining assets in the DRC 'make little commercial sense for the Congolese state' and has expressed its concern 'that figures from the Congolese elite could be corruptly benefiting from the deals'.⁵⁴ Gertler has stated in response that the offshore companies in the Fleurette Group have solely members of his family as beneficiaries, and his spokesman has denied that assets were obtained at 'knock-down values'.⁵⁵

The Panel calculated that between 2010 and 2012, the DRC lost at least \$1.36 billion in revenues from the under-pricing of mining assets sold to offshore companies.⁵⁶

Across the five deals, assets were sold on average at one-sixth of their estimated commercial market value. Assets valued in total at US\$1.63 billion were sold to offshore companies for US\$275 million. The beneficial ownership structure of the companies concerned is unknown.

Offshore companies were able to secure very high profits from the onward sale of concession rights. The average rate of return across the five deals examined was 512 percent, rising to 980 percent in one deal.

The latter deal – the Kolwezi project (also known as KMT) – with the highest return on investment, concerns Camrose.⁵⁷ Camrose is registered and incorporated in the British Virgin Islands.⁵⁸ Camrose’s Memorandum and Articles of Association were amended in November 2008 following the agreement of a US\$124 million loan to Camrose by an entity called Vipar Investments, primarily to fund the purchase of mining assets in the DRC by Camrose.⁵⁹ The amended memorandum and articles include several references to Vipar and an explicit reference to Africa Management Limited as an affiliate:⁶⁰

“Affiliate” means: (i) in respect of Vipar,... (b) any partnership or other entity that is managed, advised or controlled by, or which receives any investment management services from Africa Management Limited or its successors and assigns...

According to a newspaper report, focusing on Tokyo Sexwale (Mvelaphanda Holdings) as a partner with Palladino and Och-Ziff in AML:⁶¹

Seen from a distance, Sexwale and his associates were no more than arms-length lenders through Vipar to Gertler. But on closer examination the... loan was secured in a way that made it more of a co-investment, giving them significant rights to Camrose even though Gertler was the formal owner.

At the time of the loan, Camrose amended its incorporation documents to reflect the relationship. Significantly, Vipar was entitled to convert its loan to equity, making it a full co-owner. But in the absence of it doing so it still had rights, including:

- It was party to a shareholders’ agreement with Gertler;
- It held the right to appoint an observer to Camrose’s board[;]
- It was party to the creation of a three-year business plan for Camrose, helping to devise its strategic direction; and
- Gertler needed Vipar’s consent before any Camrose shares or assets could be sold.

Camrose’s amended Memorandum and Articles of Association lend credence to this reporting of Vipar’s rights: for further details see box, [Camrose and the accommodation of Vipar and Africa Management Limited into the company](#).

In the context of this report, it is important not to lose sight, through the layers of companies and amidst the complex transactions, of the ultimate link between Camrose and AML: Camrose re-writing its Articles of Association to accommodate Vipar; the loan from Vipar to Camrose; the underlying affiliation between Vipar and AML; finally, the role of AML as the joint investment vehicle used by Och-Ziff.

Camrose and the accommodation of Vipar and Africa Management Limited into the company

Camrose's amended Memorandum and Articles of Association refer to Vipar as a party to the shareholders' agreement, to the agreed business plan, and to Vipar's observer on the board.⁶² The shareholder agreement, dated 23 July 2007 [2008?], between Camrose, its parent company, other shareholders and Vipar has not been publicly disclosed.⁶³ Other company documents do confirm that the shareholders' agreement set out, *inter alia*, restrictions on the 'disposition, charge of or dealing in any other manner of [Camrose] Shares'.⁶⁴

It is also known that the issue of 'Conversion Shares' to allow Vipar to become a shareholder was contemplated, and the circumstances under which this would occur defined, in the shareholder agreement.⁶⁵ Moreover, there are several references throughout the amended articles of association to Vipar 'once it has become a shareholder', providing for significant powers: appointment and removal of directors;⁶⁶ voting rights;⁶⁷ budgetary approval;⁶⁸ Vipar's agreement for the transfer of Camrose shares and first refusal on any shares put up for sale;⁶⁹ and written consent from Vipar (and Fleurette Shareholders' Representative) for no less than thirty key matters relating to the running of Camrose and its subsidiaries, *inter alia*:⁷⁰ changes to the business plan, the disposal of or dilution of the Company's interests, borrowing, changes to the share capital, the acquisition of shares in other companies, the entry into joint ventures, the approval of the buying or selling of assets worth more than \$250,000, the appointment and removal any senior executive all the way through to the hiring and firing and employment conditions of any employee earning \$100,000 or more.

In August 2010, ENRC – the company that had also acquired CAMEC – acquired just over half of Camrose. As part of this transaction, Vipar's loan to Camrose was substituted, so that Camrose now owed the money to a company called Cerida (indirectly and wholly owned by Gertler's Fleurette),⁷¹ whilst Cerida became responsible for repayment of the loan to Vipar.⁷² ENRC's role was to guarantee the repayment by Cerida of the money owed to Vipar.⁷³ This was done by earmarking \$160 million dollars out of a \$400 million loan facility that ENRC provided to Camrose.⁷⁴ Although the money to pay Vipar was earmarked in 2010, Vipar was not paid back until 20 August 2012, when Camrose requested the drawdown of US\$160,077,302 (the repayment of the original \$124 million loan, with interest), which was paid directly to Vipar.⁷⁵

The participation of Vipar affiliates is clearly contemplated and recognised in Camrose's amended Memorandum of Association.⁷⁶

"Vipar Investment Contribution" means all amounts paid in cash by Vipar (or an Affiliate of Vipar) to or in respect of their investment in any Group Company from time to time including (without limitation) loans convertible into the equity of any Group Company [Camrose or any of its subsidiaries], subscription monies, loans, interests on loans, purchase price for the acquisition of equity securities loan notes or promissory notes issued by any Group Company, transaction fees, costs and expenses and any amount contributed by Vipar pursuant to Clause 19 of the Shareholders Agreement;

"Vipar Investment Returns" means all amounts paid to Vipar (or an Affiliate of Vipar) from or in respect of their investment in any Group Company from time to time, including (without limitation) (i) amounts paid by return of capital or share buy back, (ii) repayment of principal and payment of interest on any indebtedness, (iii) all cash dividends and other cash distributions paid or made;

Camrose's amended Memorandum and Articles of Association therefore recognise the circumstance under which affiliates of Vipar (including, presumably, AML) may hold equity shares in Camrose.⁷⁷ In the event of any compulsory purchase of shares, there is even a guarantee that the proceeds will provide Vipar and any affiliates holding shares with a return on investment of 20% or more per annum.⁷⁸

It is not known what conditions governed the conversion of the Vipar loan to equity in Camrose for Vipar and its affiliates, nor whether these conditions were ever met. What is known is that Vipar had those rights and powers referred to (above, p. 12), irrespective of conversion. In August

2010, however, it appears that Vipar's loan to Camrose was substituted, and the former's Memorandum and Articles of Association revised for a second time, to reflect the changed relationship between the two entities as ENRC acquired just over half of Camrose (for further details see box, [The Camrose transactions](#)).

The Camrose transactions

Camrose is at the centre of a number of controversial deals in DRC. In April 2008, Camrose agreed to acquire a majority 60% stake in Africo Resources Limited, owner of several DRC mining assets.⁷⁹ Camrose funded its purchase by way of a CAD 100 million (US\$98.6 million) private placement. Funds for this placement came out of a \$124 million convertible loan provided by Vipar secured against direct or indirect holdings in Africo (45,400,000 Africo shares, i.e. Camrose's entire holding in Africo).⁸⁰ Vipar is itself an investment vehicle, allowing the participation of its affiliates, including AML.⁸¹

In August 2010, ENRC announced that it had acquired a 50.5% stake in Camrose Resources Limited.⁸² In addition to the Africo assets, Camrose held an indirect interest in mining reserves known as the Kolwezi Tailings or KMT (the Kingamyambo Musonoi Tailings).⁸³ ENRC's purchase of its holding in Camrose provoked a storm of controversy because the KMT assets had been stripped by the DRC government from Canadian miner First Quantum Minerals Ltd and sold on to an entity called the Highwinds Group, entirely owned by Camrose.⁸⁴ First Quantum and the IFC (the World Bank's International Finance Corporation) had already commenced proceedings against the DRC government when ENRC moved to acquire Highwinds.⁸⁵

The price paid in January 2010 by Highwinds for the concessions was US\$60 million.⁸⁶ Just seven months later, ENRC paid almost three times this amount – US\$175 million – for only half of Camrose.⁸⁷ ENRC purchased its shares in Camrose from companies which ENRC describes as 'held by the Gertler Family Trust'.⁸⁸ Moreover, ENRC agreed to provide Camrose with a US\$400 million shareholder loan facility and a guarantee of US\$155 (\$160 million, including interest) million to secure repayment of outstanding debt.⁸⁹ This debt is the Vipar loan underpinning the Africo acquisition: it is pertinent to recall that Africa Management Limited is an affiliate of Vipar.

Despite the controversy surrounding its initial purchase of just over half of Camrose, ENRC pressed ahead in December 2012 to buy the outstanding 49.5% interest in Camrose, still held by Fleurette Properties Limited.⁹⁰ This time ENRC paid US\$550 million for the assets.⁹¹ According to the Africa Progress Panel, 'Taking into consideration other assets wrapped up in the Camrose purchase, ENRC effectively paid \$685.75 million for Kolwezi and associated concessions, which were originally purchased by the Highwind Group and its affiliates for \$63.5 million – a return of just under 1,000 percent for the offshore companies concerned'.⁹²

The repercussions of ENRC's 2010 and 2012 Camrose transactions were profound. ENRC faced criticism after two independent directors were voted off the board in June 2011 for raising concerns over corporate governance because of the DRC deals.⁹³ Concerns over the governance of ENRC and other premium listed companies fed through into a strengthening by the Financial Conduct Authority (FCA) of listing rules to enhance shareholder protection.⁹⁴ In December 2011, it was reported that the SFO had launched an investigation into ENRC:⁹⁵ the company later confirmed that the SFO had required ENRC to undertake an internal investigation into its operations, assets and transactions, in particular in the DRC.⁹⁶

First Quantum pursued legal action, leading to a US\$1.25 billion out of court settlement in January 2012.⁹⁷

ENRC also disclosed that the Financial Services Authority had instructed the company in April 2012 to review compliance with: 'Listing Rule 10 of the Listing Rules (Significant Transactions: Premium Listing) and Listing Rule 11 of the Listing Rules (Related Party Transactions: Premium Listing) analyses of certain transactions, including of the original purchase of 50.5 percent. of Camrose (including all ancillary agreements, such as loans etc)'.⁹⁸

In May and June 2012, 100Reporters, a US-based organisation of investigative journalists exposing corruption, published details about a Suspicious Activity Report (SAR) that ENRC filed with the Serious Organised Crime Agency (SOCA) in August 2010, updating SOCA on a previous July 2010 SAR sent by

ENRC on that part of the Camrose transaction (the Transaction) concerning the Highwinds Group:⁹⁹

There is a risk that the assets of the Highwind group [sic] may have been obtained by corruption and the Transaction may facilitate the acquisition, retention, use or control of criminal property by the Highwind Group/Dan Gertler and others and/or may result in corrupt payments being made to public officials.

Consent for the Camrose transaction was therefore sought from the UK authorities, consent that was clearly forthcoming. ENRC sought to prevent publication of media reports relating to the SAR: 101Reporters has published not only the SAR, but also the letter it received from ENRC's lawyers, which stated: 'you will respect the public interest in maintaining the confidentiality in SARs and remove that aspect from your article.'¹⁰⁰

In April 2013, press reports, based on a leaked letter from a law firm (Dechert), formerly engaged by ENRC to conduct the internal investigation and 'self-report process' (required by the SFO), indicated that the law firm had been reviewing, *inter alia*, the Camrose and Camec transactions.¹⁰¹ According to the Dechert letter, the SFO was to be updated on:¹⁰²

Camrose Resources Limited - where information to be reported included evidence that documents had been falsified, the CFO of ENRC plc (and her team) had been misled, and the that USD35m had been misappropriated;

Camec - sanctions - where evidence of possible breaches of financial sanctions by senior executives and employees was to be presented.

In the same month, the SFO launched a criminal investigation into ENRC focusing upon 'allegations of fraud, bribery and corruption relating to the activities of the company or its subsidiaries in Kazakhstan and Africa'.¹⁰³ The SFO investigation continues. Yet ENRC was allowed to delist from the main market in November 2013, despite RAID's concerns - raised with the UK authorities - that this could assist the company in avoiding regulatory scrutiny and in dissipating the company's assets.¹⁰⁴

Given the following factors, as detailed above:

- the amendment of Camrose's Memorandum and Articles of Association to accommodate Vipar and its affiliates, including AML
- the evidence presented by the Africa Panel on the undervaluation of, *inter alia*, Camrose's assets and their later sale for vast profit
- the filing of suspicious activity reports by ENRC - seeking fast-track approval - with the UK's Serious Organised Crime Agency (SOCA) [now the National Crime Agency] concerning the Camrose transaction
- the referral of ENRC's completion of its Camrose acquisition to the UK's Financial Services Authority [now the Financial Conduct Authority]
- the leaked letter from the law firm hired (then fired) by ENRC referring in the case of Camrose Resources to the falsification of documents, the misleading of the CFO of ENRC (and her team) and the misappropriation of US\$35m and, in the case of CAMEC, to 'evidence of possible breaches of financial sanctions by senior executives and employees'
- the launching of an SFO inquiry into 'allegations of fraud, bribery and corruption relating to the activities of the company [ENRC] or its subsidiaries in Kazakhstan and Africa',

Och-Ziff is invited to clarify or provide information on the following questions:

- Given Och-Ziff's partner status in AML and the presence of Och-Ziff employees on the AML UK board, what was AML's relationship with its Vipar affiliate?

- To Och-Ziff's knowledge, did Vipar convert any part of its loan to equity in Camrose? Did Och-Ziff have sight of: Camrose's November 2008 amended Memorandum and Articles of Association; the 16 April 2008 Vipar loan agreement; the Shareholder Agreement, dated 23 July 2008, between Camrose et al and Vipar?
- Given Och-Ziff's standing in AML, to what extent did Och-Ziff exercise any influence or control, via AML, over Vipar?
- Did Och-Ziff have any agreement with Vipar or with companies associated with or affiliated to Vipar?
- Did Och-Ziff invest funds in Camrose Resources, either directly, indirectly, or through affiliates, such as Vipar or any other entities? If so, to what extent?
- If, as it appears from Camrose's amended Memorandum and Articles of Association, AML was an affiliate of the company loaning funds to Camrose, what due diligence did Och-Ziff (as a partner in AML) carry out in respect of the transactions by Camrose i) to acquire Africo Resources and ii) to sell Camrose holdings to ENRC?
- Did Och-Ziff, directly or indirectly through AML, provide funds to Vipar for the loan to Camrose?
- When Vipar was repaid by Camrose via Cerida on 20 August 2012, was any payment made to affiliates of Vipar, including AML (or subsidiary or associated entities) in which Och-Ziff was a partner?
- In the light of Camrose's amended Articles of Association, what is the identity of any partnerships or other entities that AML managed, advised or controlled or to which AML provided investment management services?
- Who were the ultimate beneficiaries of any partnerships or other entities that AML managed, advised or controlled or to which AML provided investment management services?
- What profits were made in respect of any funds invested directly or indirectly by Och-Ziff, whether through AML via its affiliation with Vipar or through any other entity AML managed, advised or controlled or to which AML provided investment management services?

Palladino Capital 2 Limited and the secret loan to the Republic of Guinea

One of Och-Ziff's partners in the AML joint venture has been at the centre of 'a secret deal [with the Guinea government] that could hand billions of dollars of mining assets... to a shadowy middleman', identified by *The Sunday Times* newspaper as Walter Hennig, the founder of Palladino.

A detailed, but anonymously authored, report, circulating widely, appears to link Och-Ziff to Palladino and the deal with the Guinea government concerning mining assets.¹⁰⁵ Other newspapers have also reported on Palladino, Och-Ziff and the Guinea deal.¹⁰⁶ One element of the deal was a \$25 million loan from Palladino to the Guinea government, allowing Palladino, in the event of a default, to convert the debt into a 30% stake in the operations of the national mining company (see box, [Guinea, mining assets and the Palladino loan](#)). In mid-2012, letters from Palladino envisaged such a default, but the breaking of the story in the press caused the Guinea government to pay off the debt, later admitting that it had not informed the International Monetary Fund (IMF) of the loan.

Guinea, mining assets and the Palladino loan

The Sunday Times published an article on 3 June 2012, about ‘a secret deal that could hand billions of dollars of mining assets belonging to companies such as BHP Billiton and Rio Tinto to a shadowy middleman’, identified by the newspaper as Walter Hennig, the founder of Palladino.¹⁰⁷ The deal was concluded prior to the introduction by the Guinean government of a new mining code that established a review of existing contracts and the right of the state mining company (later renamed SOGUIPAMI) to take 15% of every mine in the country free of charge – plus a further 20% at market rates.¹⁰⁸ The newspaper report states:

Documents seen by *The Sunday Times* show that last April, five months before the code became law, Mohamed Lamine Fofana, the mining minister, agreed a \$25m (£16m) loan with Palladino Capital [2 Limited], an investment vehicle registered in the British Virgin Islands. The deal was signed by Fofana, Kerfalla Yansane, the finance minister, and Samuel Mebiane, listed as ‘proxy holder’ for Palladino. Hennig set up Palladino Holdings in 2003 as a vehicle for ‘mining, energy and other assets in Africa’.

Crucially, the terms of the loan include a provision that if the cash-strapped government defaults, Palladino can convert the debt into a 30% stake in the operations of the national mining company. This would potentially be worth billions. Simandou alone – owned by Rio Tinto, China’s state giant Chinalco, resources tycoon Beny Steinmetz and Vale, the Brazilian iron ore group – is worth at least \$10 billion.

The Guinea government issued a statement on 21 June 2012, claiming the newspaper article contained ‘a number of inaccuracies regarding the terms and status of the loan agreement’, *inter alia*:¹⁰⁹ ‘Firstly, this agreement does not affect the Republic of Guinea’s obligations vis-à-vis international financial institutions, as it was signed on behalf of a parastatal entity, the SOGUIPAMI.’ However, the Guinea government was later to admit that it had not informed the IMF of the \$25 million Palladino loan until June 2012 and that the loan ‘had not been had not previously been included in the debt database’.¹¹⁰ It is reported that the IMF and World Bank investigated the Palladino loan, although no findings have been published.¹¹¹

The Guinea government alleged other inaccuracies: ‘Secondly, this [Palladino] loan is not automatically convertible to a 30 percent stake in SOGUIPAMI in case of default.... Thirdly, the probability of defaulting on this loan is minimal....’¹¹² Yet it is apparent from documents later posted on the SOGUIPAMI website that Palladino had earlier written to the Guinean government, in a letter signed by Walter Hennig, envisaging default and threatening to initiate arbitration over the disputed repayment:¹¹³

We regretfully note the lack of response from the Government to our letter dated 24th May 2012 indicating an event of default under the Loan Agreement constituted by the failure of the Republic of Guinea to perform its obligation to assign to the National Mining Company the rights and obligations under the Loan Agreement.

In the wake of the furore created by the Palladino loan agreement, the Guinean government announced that it would ‘repay the full loan amount to Palladino.’ On 6 August 2012, documents were posted on the SOGUIPAMI website, including the Loan Agreement, correspondence between Palladino and the Guinea government/SOGUPAMI over the default claim, and a copy of the bank transfer to Palladino repaying the loan.

In June 2012, the publication *Africa Confidential* wrote an article ‘A New Battle to Control the Mines’:¹¹⁴

The second element of the proposed joint venture between Palladino and the national mining company was a framework agreement under which Palladino would undertake to bring in private investors for equity stakes in mining operations. Hennig signed a framework on behalf of his Floras Bell company with [Guinea Mines Minister, Lamine] Fofana on 13 March 2011, which set out the terms of the exclusive options to be offered to Floras Bell and Palladino for stakes in national mining company ventures. The agreement made no reference to valuation procedures or competitive bidding; rather, it

suggested that any decision on asset prices would be a matter between the Mines Ministry and Palladino.

There is no doubt that the deal offered lucrative opportunities to Hennig and associates. Hennig's Palladino Holdings, registered in the British Virgin Islands, has a substantial stake (at least \$20 mn.) in an investment company called Africa Global Capital (ACG) with the United States' Och-Ziff hedge fund (with a \$100 mn. stake) and Mvelaphanda Holdings (\$5 mn. stake), founded by South African presidential contender Tokyo Sexwale. Willcox is Chief Executive of both Mvelaphanda and ACG.

When Cilliers [Chief Financial Officer of Palladino and Director of Palladino Capital 2] sent out an invitation to companies to join Palladino's venture on 30 March 2011, those contacted said they had been given the impression that a group of 'cash-rich outfits' such as Och-Ziff and Mvelaphanda Holdings had already signed up to the arrangement. 'Why would Guinea establish a state-owned mining business to hand it to a South African company?' asked one.

Palladino is a partner, alongside Och-Ziff, in the AML joint venture. Moreover, Palladino's Andre Cilliers, as well as Walter Hennig, were both appointed directors of AML UK in September 2012.¹¹⁵ Another ex-AML UK director and ex-Och-Ziff employee, Vanja Baros (see pp. 10, 11), is now employed by QKR, 'a private mining company focused on acquiring and building a diversified portfolio of development and growth assets', set up by Lloyd Pengilly, a former senior banker at JP Morgan Cazenove.¹¹⁶ Pengilly is described in newspaper reports as 'a close associate of Mark Willcox' and as 'close to Hennig, Mvela Holdings CE Mark Willcox and Sexwale'.¹¹⁷ Pengilly, chairman of JP Morgan Cazenove's African business at the time of the Guinea loan, was reportedly either dismissed or resigned from the bank at the beginning of August 2012.¹¹⁸ It was reported that QKR had originally received backing from Och-Ziff while Michael Cohen, its former Head of European Investing, was in post.¹¹⁹ However, according to The Sunday Times, Och-Ziff withdrew from the investment in QKR following Cohen's departure from Och-Ziff.¹²⁰

Yet [Cohen's] departure, I hear, was bad news for Lloyd Pengilly. Once the right-hand man to JP Morgan rainmaker Ian Hannam, Pengilly followed his boss out the door last year. He had a cunning plan for life after JP Morgan, however.

Pengilly managed to raise \$1bn from a few big backers – four in all – for a new fund designed to scoop up mines cast off by the industry giants. He convinced Och-Ziff to invest in the venture, called QKR, alongside Qatar, BTG Pactual and Jan Kulczyk, Poland's richest man.

But Cohen's departure meant Pengilly was bereft of an advocate at Och-Ziff. The New Yorkers, clearly less enthused about his idea, have pulled out.

Och-Ziff should have the opportunity to respond to questions arising from the Guinea deal:

- Did Och-Ziff or any of its subsidiaries or entities it controls or in which it invests (including AML) have any knowledge of the Palladino Capital 2 loan to the Guinea government?
- The January 2008 AML joint venture, in which Och-Ziff partnered Palladino, suggests a longstanding relationship, cemented further by the appointment of both Cilliers and Hennig as directors in AML UK in September 2012. Has Palladino or any of its subsidiaries or associated entities ever had access to Och-Ziff funds for use in Guinea, whether through loans or through other investments, either via AML or through any other vehicle?
- Has Och-Ziff ever discussed the Palladino 'secret deal' or loan with either Palladino, Walter Hennig or any other associated entity?

- Did Och-Ziff agree to provide funds – directly or indirectly – to invest in the Guinean national mining company via Floras Bell or via any other company or investment vehicle?
- Did Och-Ziff discuss any investments in Guinea with Lloyd Pengilly while he was at JP Morgan Cazenove?
- Did Michael Cohen, while employed by Och-Ziff, or other Och-Ziff employees, work with Lloyd Pengilly on the finance of other private equity deals or investment opportunities?
- When did Vanja Baros leave Och-Ziff? What were the circumstances of Baros’s departure?
- Why did Och-Ziff reportedly withdraw from investing in QKR after the departure of Michael Cohen?

The opaque awarding of Lake Albert oil blocks in the DRC: the involvement of Gertler and the role of Africa Management (UK) Limited’s chief executive

In the DRC, a 2010 contract (Production Sharing Agreement – PSA) awarding disputed oil blocks, without proper valuations or competitive tender, to two offshore companies with no track record in the oil industry has attracted widespread criticism.¹²¹ A DRC minister belatedly, and after much speculation, stated in June 2012 that Gertler is a partner in the companies concerned – Foxwhelp Limited and Caprikat Limited. The Fleurette Group has confirmed its interest in the oil blocks via Caprikat and Foxwhelp.¹²²

Cross-referencing details from the contract itself shows that both Caprikat and Foxwhelp share business addresses with Mark Willcox. Willcox confirms acting as ‘special adviser’ to the signatory (the nephew of South Africa’s President) for Caprikat. Willcox is described by Och-Ziff as the chief executive officer of their joint venture vehicle, AML UK. For further details, see box, [Foxwhelp, Caprikat and the Lake Albert oil blocks](#).

Once again, the relationship of the companies, entities and individuals involved in the Foxwhelp/Caprikat PSA is opaque. The concern here is that the AML UK chief executive is linked to the deal and that Och-Ziff’s Mvela partner is described by technical advisers as being ‘interested’ in the project, although Mvela denies any shareholding.

Newspaper reports from the time of the contract award state:¹²³

Willcox confirmed he and Mvelaphanda were giving “strategic advice” to [South African President Jacob] Zuma’s nephew, Khulubuse Zuma.

—*Mail & Guardian*

Mvelaphanda Holdings Ltd., the South African company founded by former freedom fighter Tokyo Sexwale, is advising Khulubuse Zuma on the development of two oil blocks in eastern Congo, Chief Executive Officer Mark Willcox said.

...

Willcox is working as Zuma’s ‘strategic adviser’ with a team from Mvelaphanda, Willcox said by phone from Monaco yesterday.

—*Bloomberg*

Eric Joyce, a member of the UK Parliament, states:¹²⁴ ‘The BVI corporate records show that Mr Willcox’s Africa Management Ltd, through its affiliate Vipar Investments, has previously funded Dan Gertler’s dealings in the Congo. Is Dan Gertler, a known close friend of President Kabila, one of the beneficiaries of this [Caprikat/Foxwhelp] deal? Is that why Mr Willcox is so reluctant to disclose who is really behind the Lake Albert deal?’

Foxwhelp, Caprikat and the Lake Albert oil blocks

Extensive oil reserves, the largest in sub-Saharan Africa, have been found in the Lake Albert basin, which straddles the DRC and Uganda. According to London-listed Tullow Oil PLC, in 2006 the company (with its then partner, Heritage Oil) was awarded two DRC licences adjacent to its Ugandan holdings on Lake Albert.¹²⁵ The Tullow licences never received presidential approval and the concessions were subsequently awarded by the DRC government in 2010 to two British Virgin Islands-registered companies, Foxwhelp Limited and Caprikat Limited.¹²⁶ Tullow commenced legal proceedings to dispute the award, but announced that it had discontinued its challenged in March 2011.¹²⁷

On 5 May 2010, Foxwhelp Limited and Caprikat Limited signed a production sharing agreement (PSA) for the oil blocks with the DRC government.¹²⁸ The contract was rapidly confirmed by Presidential decree in June 2010.¹²⁹ The companies paid a \$6 million signature bonus for the concessions.¹³⁰ Neither company has any experience in the oil industry, and both were formed offshore in the British Virgin Islands just over a month before the oil contract was signed.¹³¹

The campaign group PLATFORM, which focuses on the social, economic and environmental impacts of the global oil industry, calculate up to \$10 billion in lost revenue to the DRC state as a result of the Foxwhelp/Caprikat contract compared with the terms of an earlier, cancelled deal.¹³² The Foxwhelp/Caprikat PSA accords the companies 60 percent of net revenues for the first 12 million barrels, later dropping to 55%. Commentators suggest that neighbouring Uganda offers companies only 20 to 31.5 percent on similar deals.¹³³ According to PLATFORM: 'Nothing in this contract [Caprikat/Foxwhelp] looks like a long-term plan – we've never seen the state share of "profit oil" so low'.¹³⁴

The contract is signed for Caprikat by Khulubuse Clive Zuma and for Foxwhelp by Michael Andrew Thomas Hulley. Khulubuse Zuma is the nephew of South African president Jacob Zuma. Hulley is a South African law attorney who acts for Jacob Zuma.¹³⁵

The addresses given for Caprikat and Foxwhelp in the contract are, according to other corporate documents, the same addresses given for Mark Willcox.

A February 2011 joint company circular by Mvelaphanda Resources Limited (Mvela Resources) and Northam Platinum Limited records Mark J Willcox as the Chief Executive and a director of Mvela Resources and a director of Northam:¹³⁶ 'Mr Willcox's business address is 1st Floor, North Wing, The Reserve, 54 Melville Road, Illovo, Johannesburg'. This is also the address given for Caprikat in the DRC oil contract.¹³⁷ An earlier 2003 circular issued by Northam lists both Mark John Willcox and Tokyo Mosima Gabriel Sexwale as directors at the same address: 23 Glenhove Road, Melrose Estate Johannesburg, 2196. This is also the address for Foxwhelp given in the DRC oil contract.¹³⁸ According to the *Mail & Guardian* newspaper, the Caprikat and Foxwhelp oil contract 'gave Mvelaphanda Holdings' address in Illovo, Johannesburg, as Caprikat's legal domicilium, while it gave Foxwhelp's as Mvelaphanda Holdings' former address in Melrose Estate, Johannesburg.' Mvelaphanda Holdings letterheads – dating back to 2003 and 2006 – confirm the Glenhove Road address.¹³⁹

It should be recalled that Mvela Holdings, the parent holding company of Mvela Resources, the former founded by Tokyo Sexwale, partnered Och-Ziff in the Africa Management Limited joint venture and that Mark Willcox is described in Och-Ziff's press release as chief executive officer of both Mvela Holdings and of AML's UK subsidiary.¹⁴⁰

Mark Willcox is reported as having confirmed that he travelled to Kinshasa partly to assist Khulubuse Zuma with 'strategic advice' on 'a number of commercial endeavours including the applications surrounding blocks one and two in partnership with Medea' [see below].¹⁴¹

On the use of Mvelaphanda addresses in the DRC oil contract, it is reported that Willcox said Khulubuse Zuma did not have a Johannesburg office at the time:¹⁴² 'in the intervening period, for ease of administration, due to the fact that he was spending most of his business time in Johannesburg, he used these office addresses as a domicilium'.

Willcox has denied that he or Mvelaphanda had any stake in Foxwhelp or Caprikat.¹⁴³ Bloomberg and South Africa's *Mail & Guardian* quote a Sexwale spokesperson:¹⁴⁴ 'Mr Sexwale and the [independent] trustees confirm that neither Mr Sexwale nor his trust or any corporate entities with which he is directly or

indirectly associated have or will receive any benefit from the DRC oil blocks.’ The *Mail & Guardian* also quotes Hulley, speaking on behalf of Caprikat and Foxwhelp, saying that President Zuma had ‘no relationship or interest with either Caprikat or Foxwelp [sic], either directly or indirectly at any level, nor has he participated even remotely in any negotiation or discussion pertaining to any of its operations or structure’.¹⁴⁵ According to the same newspaper, ‘Hulley failed to answer direct questions about the ownership of Caprikat and Foxwhelp’.¹⁴⁶

Medea Development SA describes itself ‘a consulting, engineering and projects development Company with a proven track-record in the energy and mineral resources sector’.¹⁴⁷ Founded in 1992, it is incorporated in Luxembourg, with offices in Switzerland and Italy.¹⁴⁸ In a company release, Giuseppe Ciccarelli is described as the CEO of Medea Development.¹⁴⁹ Ciccarelli told *Reuters* that he was authorised to speak for Caprikat and Foxwhelp:¹⁵⁰

Ciccarelli said the offshore companies are owned by a trust administered in Switzerland and are setting up a local company named Oil of Congo, a joint venture in which the two companies will have 85 percent and the state 15 percent. In an unusual arrangement, state oil company Cohydro has no stake in the deal.

Ciccarelli stated:¹⁵¹ ‘A trust started Caprikat and Foxwhelp... they are financial and industrial investors,’ continuing, ‘It is not the right time to say who the investors are’. Ciccarelli told *Reuters* that Marc Bonnant is the legal representative of the two companies and that he administers the trust.¹⁵² Notices are attached to the PSA, signing over power of attorney to Khulubuse Zuma for Caprikat and to South African lawyer Michael Hulley for Foxwhelp.¹⁵³

Ciccarelli also said that neither Khulubuse Zuma nor Hulley have shares in Caprikat or Foxwhelp.¹⁵⁴ However, according to Bloomberg:¹⁵⁵

Giuseppe Ciccarelli, [Khulubuse] Zuma’s technical adviser, said Mvelaphanda was among a number of South African groups that are “interested” in the project.

“This does not mean that this group is involved in ownership,” Ciccarelli said by phone from Milan yesterday. “Zuma is the owner.”

Whilst the beneficial owners of both Foxwhelp and Caprikat remain unknown, a DRC government minister and the company operating the oil blocks on the ground have both confirmed to the *Financial Times* newspaper the involvement of Dan Gertler in both companies.¹⁵⁶

According to Mr Atama Tabe [Minister of Hydrocarbons] and other industry sources, one of the principal partners in Caprikat and Foxwhelp is Dan Gertler, an Israeli businessman who has built a reputation as one of Congo’s most prominent deal makers.

...

“He is in the team of Caprikat,” Mr Atama Tabe told the FT of Mr Gertler. He added that he has met him in Congo’s capital Kinshasa and had asked the operators for progress reports.

...

Were Congo to take back the blocks, it could deal a hammer blow to what one investor called a “tried and tested formula” familiar to Mr Gertler – buying up assets in private and selling them on to larger more public companies at higher prices. “Anything marketable and flippable is a target,” said an oil company source.

Mr Atama Tabe says “stories left and right” about the blocks and their ownership may be deterring investors: “The majors are very sensitive – I know it – if big companies can’t work with partners and trust them.”

According to the *Financial Times*, ‘Giuseppe Ciccarelli, chief executive of Oil of DR Congo, which operates both blocks, confirmed Mr Gertler’s involvement in Caprikat and Foxwhelp’.¹⁵⁷ In a release of 24 March 2014, the Fleurette Group confirmed that it entered ‘through Caprikat and Foxwhelp’ into the PSC with the DRC Government, establishing Oil of DR Congo as operator.¹⁵⁸

Gertler and the Fleurette Group have recently called for an open tender process for the allocation of oil rights in the DRC:¹⁵⁹ 'Fleurette believes any Tender Process should be based on a competitive bidding system and that any tender must be public with transparent and clear pre-qualification and evaluation criteria.... Fleurette also believes that the ultimate beneficial owners of all hydrocarbons rights should be disclosed. It is clear that transparency is vital to give international investment community confidence in the regulatory environment. Fleurette notes that in the past the ultimate beneficial ownership of investments in the hydrocarbons sector has not been fully transparent and will support the government to bring in a regime where disclosure of beneficial ownership is compulsory.'

Given that Willcox was chief executive officer for AML UK – the joint venture created by Och-Ziff and its partners and in which Och-Ziff employees were directors – Och-Ziff is invited to clarify:

- Did Och-Ziff know that Willcox and a team from Mvelaphanda were giving 'strategic advice' to the signatory for Caprikat?
- Did Och-Ziff or any of its subsidiaries or entities it controls or through which it invests (including AML) have any knowledge of the Foxwhelp/Caprikat PSA?
- Has Och-Ziff ever discussed the Foxwhelp/Caprikat PSA with either Willcox or Mvela Resources or any other associated entity?
- Has Foxwhelp/Caprikat, either directly or indirectly, ever had access to Och-Ziff funds, either via AML or through any other vehicle?

Concerns over the admission of Africa Oilfield Logistics Limited to AIM

A new company, Africa Oilfield Logistics ('AOL'), was admitted to the London Stock Exchange's Alternative Investment Market (AIM) on 25 June 2013.¹⁶⁰ According to the admission document, AOL's directors include former directors of CAMEC:¹⁶¹

- Andrew Groves, former Managing Director and Chief Executive of CAMEC¹⁶²
- Philippe Edmonds, former Chairman of CAMEC
- Andrew Burns, former director and Chief Financial Officer of CAMEC

Like CAMEC, AOL joined AIM as an investing company or 'cash shell' without assets.¹⁶³ CAMEC only acquired its controversial DRC mining assets after joining AIM, thereby side-stepping the additional scrutiny of these assets at admission.

AOL's nominated adviser (nomad) is Cantor Fitzgerald Europe. Cantor Fitzgerald began operating as a nomad through its acquisition in February 2013 of Seymour Pierce Limited.¹⁶⁴ CAMEC's nomad, responsible for advising CAMEC on compliance during its time on AIM, was Seymour Pierce. The Seymour Pierce team transferred to Cantor Fitzgerald.¹⁶⁵ This team appears to include key personnel who advised CAMEC. Jonathan Wright, a former Head of Corporate Finance at Seymour Pierce and director at a number of Seymour Pierce entities, is now a director of AOL.

RAID wrote to the Exchange expressing concern over the circumstances of the admission of AOL, asking AIM Regulation to investigate and clarify:¹⁶⁶

- whether there was adequate consideration of the suitability and investigation into the background of AOL's directors (*AIM Rules for Nominated Advisers*, AR2)
- whether there was adequate disclosure of the results of such due diligence in the admission document (*AIM Rules for Nominated Advisers*, AR4)

- whether the nomad properly assessed the appropriateness of AOL as an AIM company and liaised accordingly with the Exchange (*AIM Rules for Nominated Advisers*, Part Two, General Obligations, 14); and whether the nomad exercised due care in exercising responsibilities under its admission responsibilities (*ibid.*, 16)
- whether the Exchange imposed any special conditions for admission under rule 9 of the *AIM Rules for Companies*
- the extent to which the Exchange considered whether the applicant's admission was detrimental to the reputation of AIM and why the Exchange did not exercise its powers under rule 9 to refuse admission.

RAID's concerns stem from the fact that its June 2011 complaint on the conduct of AIM-traded CAMEC and its nomad, Seymour Pierce Limited, was never publicly determined by the Exchange.¹⁶⁷ Further, RAID published a follow-up paper in July 2013:¹⁶⁸ unanswered questions on compliance remain on record, in the public domain and yet have not been addressed by former CAMEC personnel, the company's nomad or the Exchange. The only sensible explanation is that the concerns raised are well founded.

The Exchange has taken no publicly acknowledged action in respect of CAMEC's conduct, either at the time when instances of compliance arose or subsequently in the form of disciplinary action. Neither has it taken any public action against Seymour Pierce for compliance or otherwise in its role as CAMEC's nomad: when the Exchange imposed in December 2011 a record £400,000 fine and public censure upon Seymour Pierce for breaches of nomad rules, the disciplinary notice did not consider the evidence presented in the CAMEC case and, furthermore, the consent order agreed with Seymour Pierce drew a line under Seymour Pierce's past conduct, thereby appearing to exclude the possibility of a public determination of the acceptability or otherwise of its conduct as CAMEC's adviser.¹⁶⁹ RAID has objected to the fact that the Exchange chose to limit its disciplinary action to 'illustrative' cases, rather than to all instances of non-compliance; hence the extent of Seymour Pierce's non-compliance is unknown.¹⁷⁰

The fact that the Exchange, by adopting an 'illustrative' approach to disciplinary action, has failed to determine the CAMEC case means that there is, of course, no formal disciplinary notice pertaining to CAMEC or even to Seymour Pierce as CAMEC's nomad *per se*. Neither is there any official exoneration, if the Exchange believes that there has been full compliance. Under AIM rules, a company in its admission document is required to disclose 'details of any public criticisms of such director by statutory or regulatory authorities'.¹⁷¹ There are no such disclosures in respect of AOL's directors because the Exchange or other regulatory bodies have not publicly identified any wrong-doing. Yet the unanswered questions persist.

RAID sought to establish whether these outstanding questions of compliance concerning CAMEC whilst under the directorship of certain individuals, now at AOL, were considered by AIM before admitting AOL.

In response to RAID, AIM drew a distinction between 'concerns... primarily based on the involvement of AOL's directors and advisers with Central African Mining and Exploration Company Limited ("CAMEC")' and 'information or evidence that relates specifically to the matters you raise in respect of AOL'.¹⁷² In RAID's view, these matters are not distinct because the past record of AOL's directors and advisers are matters that relate directly to AOL and its admission.

The ongoing inquiry by the UK Parliament's Business, Innovation and Skills Committee into the Extractive Industries Sector included an evidence session on 26 November 2013.¹⁷³ Ann McKechin MP put a question to David Lawton, Director of Markets, Financial Conduct Authority:¹⁷⁴

Ann McKechin: If someone made an allegation about a dodgy deal a company may have done a few years ago, for example, presumably you would be in contact with the sponsor

about whether or not that allegation could be satisfactorily answered, if it was in the public domain.

David Lawton: That is typically the sort of detailed conversation we would get into. In the context of the structure of our regime, sponsors have a critical role in selecting and promoting, or sponsoring – that is where the word comes from – companies for admission to the List. It is clearly an important part of their job and their reputation going forward that they bring companies to the List that they feel comfortable satisfy the criteria.

This exchange demonstrates the wider concern held by Committee members that public allegations require satisfactory answers before sponsors (in the case of the main market) or nomads (in the case of AIM) bring a company to market. This must surely include material about the prior conduct of a company's directors and the compliance record of companies under their directorship.

Official silence and the wider context

It is difficult to pinpoint why there has been no official response to the concerns prompted by CAMEC's Zimbabwean platinum deal and the associated transaction with Och-Ziff. A mixture of factors are undoubtedly at play: pursuing companies for past transactions now exposes the failure of the regulatory system at the time; there is a fear that unilateral enforcement cedes competitive advantage to other countries and markets; as sanctions against Zimbabwe are dismantled in the EU, there is a lack of political will to investigate prior incidents; and, in the US context, the authorities have been pursuing sanctions violations involving foreign banks and other regimes of greater significance for US foreign policy.

The 2013 Zimbabwean elections and the relaxation of EU sanctions

As a precursor to elections, Zimbabweans voted in March 2013 to approve a new constitution. On 25 March, the EU suspended sanctions against 81 individuals and 8 companies in recognition of the 'peaceful, successful and credible' nature of the vote, leaving 10 individuals (including Mugabe) and 2 entities on the list (one of them ZMDC, the state company at the heart of CAMEC's 2008 platinum deal).¹⁷⁵ Elections duly followed on 31 July 2013 and Mugabe was re-elected president with 61% of the vote. Mugabe's Zanu-PF party won three-quarters of the seats in the National Assembly.¹⁷⁶ The opposition MDC-T rejected the result, claiming that voters in its urban strongholds were left off the electoral roll.

The EU's ambassador to South Africa had earlier been quoted in the press as stating that the EU would lift sanctions if Southern African Development Community (SADC) observers declared the elections as free and fair.¹⁷⁷ SADC issued a preliminary report on 3 August describing the election as 'free and peaceful'.¹⁷⁸ On 18 August, even before the report from SADC observers was finalised, SADC used its summit communiqué to call for the lifting of sanctions against Zimbabwe.¹⁷⁹ SADC presented a summary of its final report on 2 September, again referring to 'free, peaceful and generally credible harmonized elections', despite noting 'highly polarized' media and a 'delay in issuing the voters roll on time'. However, SADC appears to have published neither the summary report nor the final full report on its official site, and MDC-T has contested the report's status.¹⁸⁰

Whilst an EU declaration of 21 August made reference to SADC and African Union assessments and described elections as 'peaceful', it stopped short of declaring them free.¹⁸¹ The EU reiterated its concern over 'alleged irregularities and reports of incomplete participation'. Consequently, sanctions against a limited set of individuals and entities remained in force. However, in September 2013 the EU signalled a further relaxation in sanctions by removing ZMDC from the list.

It may be the case that the UK authorities are reluctant to investigate instances relating to entities that are no longer on the sanctions list. However, it should be noted that the British Foreign Secretary, William Hague, voiced 'grave concerns over the conduct of the election' and the UK remains one of the most prominent critics of the Mugabe regime.¹⁸²

- Is it the case that, despite its condemnation of Mugabe and Zanu-PF, it is convenient for the UK to hide behind the EU's dismantling of sanctions on Zimbabwe because that deflects attention from the failure of the authorities to act at the time?

Not only have entities implicated in the CAMEC transaction been dropped from the sanctions list, but over five years have elapsed since the platinum deal and the violence it funded. Five years is not a long time for those tortured in the aftermath of the 2008 elections or for those who lost

loved ones or lost their homes. Moreover, recent enforcement action in the US deals with instances from that time, albeit concerning other targeted countries (see below).

Enforcement of sanctions in the US: actions against prominent banks

The US, in contrast to the EU, did not significantly reduce the scope of sanctions against Zimbabwe over the course of 2013, despite the new constitution and July elections. Reacting to the vote, US Secretary of State John Kerry described the 2013 election as ‘deeply flawed’.¹⁸³ Mugabe, other senior Zanu-PF officials, ZMDC and Rautenbach – all associated with the CAMEC platinum deal and/or benefitting from the Och-Ziff loan to the Mugabe regime via CAMEC – remained designated on the US sanctions list throughout 2013. However, on 17 April 2014, Rautenbach was removed from the list.¹⁸⁴ It may be that political will in the US to investigate and pursue violations in respect of sanctions against Zimbabwe is tempered by the moves of its European counterparts to relax sanctions.

The US authorities have been preoccupied pursuing sanctions and money laundering cases against foreign banks (see box, **Enforcement and the banks**). It is pertinent to note that the action taken relates to banks headquartered outside the US, even if they have US subsidiaries. Furthermore, the sanctions programmes relate to countries other than Zimbabwe, of perhaps greater importance in US foreign policy. However, the magnitude of the money processed in the case of The Royal Bank of Scotland and Standard Chartered is actually smaller than the amount (\$100 million) loaned by CAMEC to the Mugabe regime. This \$100 million originated with Och-Ziff: hence RAID’s call for a determination by OFAC as to whether Och-Ziff’s transaction with CAMEC falls under the Zimbabwe sanctions program. Enforcement action by the US authorities against the banks relates to events dating back to 2001 (in the case of Standard Chartered), 2004 (in the case of HSBC) and 2005 (in the case of The Royal Bank of Scotland). The time elapsed since the transactions and events in Zimbabwe would not therefore appear to be a significant obstacle.

Enforcement and the banks

In December 2013, The Royal Bank of Scotland plc (“RBS”) agreed to pay OFAC \$33 million for apparent violations of sanctions concerning Cuba, Burma, Sudan and Iran.¹⁸⁵ OFAC determined that the violations, which involved the processing of wire transfers totalling \$34 million, were egregious. The payment to OFAC was part of a wider \$100 million settlement with other US authorities.¹⁸⁶ A year previously, OFAC had reached a \$132 million settlement with Standard Chartered Bank for apparent violations of multiple sanctions programs (Burma, Iran Libya, and Sudan) through the processing wire transfers worth \$133 million.¹⁸⁷ The settlements reached with The Royal Bank of Scotland and Standard Chartered are, however, dwarfed by the total \$1.9 billion ‘deferred prosecution agreement’ reached with HSBC Holdings plc, for permitting narcotics traffickers to launder hundreds of millions of dollars through the bank.¹⁸⁸ The total agreement included a \$375 million settlement with OFAC.¹⁸⁹ HSBC admitted conducting transactions on behalf of customers in Cuba, Iran, Libya, Sudan and Burma, all countries subject to US sanctions.

Concluding observations and a call for action

Financial sanctions and corrupt practices

An acquisition and a company referred to in this report – ENRC’s Camrose transaction and CAMEC – have been identified, respectively, in relation to ‘allegations of fraud, bribery and corruption’ and ‘possible breaches of financial sanctions’.

Given that Och-Ziff has made investments – either directly or through affiliates – with both Camrose and CAMEC, the nature of these investments should be further clarified.

As noted, ENRC filed a Suspicious Activity Report with SOCA on that part of the Camrose transaction concerning the Highwind Group. Moreover, the leaked letter from the law firm Dechert indicated that the law firm had been reviewing, inter alia: ‘Camrose Resources Limited - where information to be reported included evidence that documents had been falsified, the CFO of ENRC plc (and her team) had been misled, and the that USD35m had been misappropriated; Camec - sanctions - where evidence of possible breaches of financial sanctions by senior executives and employees was to be presented.’ The SFO has since launched a criminal investigation into ENRC focusing upon ‘allegations of fraud, bribery and corruption relating to the activities of the company or its subsidiaries in Kazakhstan and Africa’.

Och-Ziff’s joint venture vehicle, Africa Management Limited, is referenced in Camrose’s amended company records as an affiliate of Vipar, which had lent money to Camrose. Och-Ziff invested directly in CAMEC within weeks of the latter’s transaction to acquire platinum assets in Zimbabwe and to make a loan to the Mugabe regime. Och-Ziff Capital Management Group LLC is registered in the US and listed on the New York Stock Exchange. Africa Management (UK) Limited is UK registered.

A recent report in the Financial Times, referring to the SFO criminal investigation into ENRC, states: ‘Potentially a bigger problem for the company [ENRC] could be the involvement of the US authorities, which can make use of the sweeping US Foreign Corrupt Practices Act and sanctions legislation if a company or individuals have a link to the US... Felix Vulis, the current chief executive, and Victor Hanna, who headed its African operations at the time of the alleged wrongdoing, hold US passports. Both have instructed US law firms, although neither faces any formal allegations.’

RAID has already submitted information to the SFO. RAID has now submitted copies of current and previous reports to the FCPA Coordinator at the US Department of Justice.

The US authorities

RAID asks OFAC to respond to RAID’s concerns by reporting back on whether it has, or intends, to investigate and determine whether US sanctions were engaged in respect of Och-Ziff’s role in relation to CAMEC’s transaction to acquire its Zimbabwean platinum assets.

RAID asks the Department of Justice to acknowledge receipt of the materials that RAID has provided and to report back on whether it has, or intends, to investigate and determine whether any transactions that concern individuals or entities linked to the US engage the FCPA.

The Securities and Exchange Commission, as the primary overseer and regulator of the US securities markets, has been sent a copy of RAID’s reports that refer to Och-Ziff. RAID asks the regulator to assess whether Och-Ziff’s conduct is in accordance with market rules and the maintenance of market integrity.

The UK authorities

The UK authorities continue to resist providing information on the implementation of sanctions and the licensing of transactions, both in relation to CAMEC's acquisition of its Zimbabwean platinum assets and the later acquisition by ENRC of CAMEC shares. RAID has sought this information through a Freedom of Information request and is currently pursuing a complaint about HM Treasury's withholding of information with the Information Commissioner. RAID also calls upon the UK authorities to investigate these transactions under the sanctions regime in force at the time.

RAID has made a recommendation to the UK Parliament's Business, Innovation and Skills Committee into the Extractive Industries Sector that it call the Head of Aim Regulation to an evidence session. This would allow the Committee to question how the Exchange has dealt with unanswered questions in the public domain concerning compliance by CAMEC and its nomad; and the degree to which such outstanding questions of compliance concerning CAMEC whilst under the directorship of certain individuals, now at AOL, were considered by AIM before admitting AOL.

RAID awaits the outcome of the SFO investigation into ENRC. RAID has submitted a copy of the current report to the SFO. RAID asks the SFO to determine whether there are grounds for an investigation into any other UK registered entities identified in the report.

The company

Unanswered questions remain in respect of Och-Ziff's role in providing investment finance in both the CAMEC Zimbabwe transaction and in transactions across Africa through the AML joint venture or affiliates, including Vipar's investment in Camrose. Questions also relate to whether or not Och-Ziff made direct or indirect investments in mining and oil deals struck by its partners in AML in, respectively, Guinea and DRC. RAID asks Och-Ziff to respond to all the questions raised throughout this briefing in order to clarify its position and provide much-needed transparency.

The pension funds

In the absence of a response, RAID renews its call to the major US pension funds: to confirm, account for and review their past and present investments through Och-Ziff; to establish the extent to which they have already sought or will be seeking clarification from Och-Ziff about its payment to CAMEC; and publicly to assess whether any such investments were and remain consistent with their investment policies.

Moreover, in the case of CalPERS – while RAID appreciates its raising initial questions with Och-Ziff – it is important that it pursue the further set of questions prompted by Och-Ziff's response. The account that Och-Ziff has provided to CalPERS raises more questions than it answers.

Annex 1



California Public Employees' Retirement System
Investment Office
P.O. Box 2749
Sacramento, CA 95812-2749
TTY: (916) 795-3240
(916) 795-3400 phone • (916) 795-2842 fax
www.calpers.ca.gov

October 11, 2013

Patricia Feeney
Executive Director
Rights and Accountability in Development Limited (RAID)
1 Blandon Close
Oxford, UK OX2 8AD

Dear Ms. Feeney:

Thank you for your letter of July 19, 2013, which we have shared with Och-Ziff Capital Management Group LLC (Och-Ziff). Attached is their response, which we have explained we will forward to you.

CalPERS expects companies to conduct themselves with propriety and with a view towards responsible corporate conduct, as state in our Global Principles of Accountable Corporate Governance.¹

If you have further questions please do contact either me or Bill McGrew at (916) 795-2431.

Sincerely,

A handwritten signature in black ink, appearing to read "Anne Simpson".

ANNE SIMPSON
Senior Portfolio Manager
Investments
Director of Global Governance

Attached: Och-Ziff response letter

cc: Bill McGrew, Portfolio Manager – CalPERS
Jeffrey C. Blockinger – Och-Ziff Capital Management Group

¹ CalPERS Global Principles of Accountable Corporate Governance: <http://www.calpers-governance.org/docs-sof/principles/2011-11-14-global-principles-of-accountable-corp-gov.pdf>



September 4, 2013

Anne Simpson
Senior Portfolio Manager
Director for Corporate Governance
California Public Employees Retirement System
Lincoln Plaza North
400 Q Street
Sacramento, CA 95811

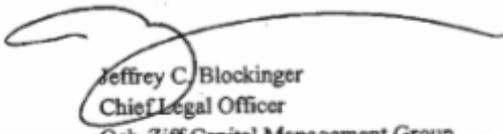
Dear Anne:

I write in response to your inquiry concerning an investment by Och-Ziff funds in Central African Mining and Exploration Company plc (CAMEC). CAMEC was a publicly traded mining company listed on the AIM in London. In 2008, Och-Ziff funds, along with other major financial institutions purchased shares of the public company in a private placement. CAMEC stated that the proceeds were to be used to fund existing company assets and operations in Democratic Republic of the Congo. The Och-Ziff funds had no control over the company, its operations or use of proceeds. The Och-Ziff funds sold the investment in 2009.

Due to the relative size of its investment in CAMEC Och-Ziff was required to make a routine notice filing in connection with the purchase. Och-Ziff complied with its filing obligations in connection with the investment by providing the relevant filing to the company. Under U.K. law, the company has the obligation to submit the filing to the relevant U.K. regulator. As a passive shareholder of CAMEC for a limited time, Och-Ziff is not aware of information that validates the claim that CAMEC provided funds to the Mugabe regime. Furthermore, Och-Ziff is not aware, and does not believe, that any employee knew that CAMEC intended to provide funds raised from the offering to the regime of Robert Mugabe, even assuming such allegation is true. Och-Ziff has no business interests in Zimbabwe or relationship with the Mugabe regime.

The allegations against Och-Ziff in the report that you received are simply false and we dispute them. Och-Ziff is aware of no evidence that its investment in CAMEC violated any sanctions, laws or statutes overseen by OFAC. Och-Ziff acted appropriately and ethically in connection with the CAMEC investment. Och-Ziff's Code of Business Conduct and Ethics requires all Company directors, officers, partners and employees to comply with the applicable laws and regulations governing the Company's business around the world. While Och-Ziff does not maintain a separate social responsibility policy, Company policy still requires that it conduct business in a manner consistent with the highest standards of integrity and would take into account a third party's reputation regarding human rights where such issues are identified.

Sincerely,



Jeffrey C. Blockinger
Chief Legal Officer
Och-Ziff Capital Management Group
9 West 57th Street, 13th Floor
New York, NY 10019

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Funnekotter et al.

Plaintiff

v.

Republic of Zimbabwe

Defendant

Civil Action No. 09-cv-8168 (CM)

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Och-Ziff Capital Management Group LLC
9 West 57th Street, 39th Floor, New York, New York 10019

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See attached Schedule A.

Place: Miller & Wrubel P.C., 570 Lexington Avenue, New York, New York 10022
Date and Time: 06/28/2013 5:00 pm

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:
Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 05/29/2013

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Plaintiffs-judgment creditors, who issues or requests this subpoena, are:

Charles R. Jacob III, Miller & Wrubel P.C., 570 Lexington Avenue, New York, New York 10022
(212) 336-3504 cjacob@mw-law.com

SCHEDULE A

Definitions

1. The Uniform Definitions in Discovery Requests contained in Local Rule 26.3 of the United States District Court for the Southern District of New York are deemed incorporated by reference into this discovery request by operation of that Rule. Please take note that pursuant to Local Rule 26.3 the term “**Document**” includes “documents or electronically stored information,” and the term “**Communication**” means “the transmittal of information (in the form of facts, ideas, inquiries or otherwise)” however recorded. Please refer to Local Rule 26.3 for further definitions and rules of construction.

2. “**You**” or “**Your**” means Och-Ziff Capital Management Group LLC, its agents, instrumentalities, employees, attorneys, representatives, affiliates, subsidiaries, predecessors, successors, alter-egos, and assigns, including (without limitation) OZ Management, LP, and all other Persons acting or purporting to act for or on its behalf, whether or not authorized to do so, wherever located.

3. “**Capital Group**” means The Capital Group Companies, Inc., its agents, instrumentalities, employees, attorneys, representatives, affiliates, subsidiaries, predecessors, successors, alter-egos, and assigns, and all other Persons acting or purporting to act for or on its behalf, whether or not authorized to do so, wherever located.

4. “**CAMEC**” means the entity formerly known as Central African Mining and Exploration Company Plc, its agents, instrumentalities, employees, attorneys, representatives, affiliates, subsidiaries, predecessors, successors, alter-egos, and assigns, and all other Persons acting or purporting to act for or on its behalf, whether or not authorized to do so, wherever located.

5. **“The 2008 Private Placement”** means the 2008 private placement of shares by CAMEC by which You acquired certain shares of CAMEC.

6. **“ENRC”** means Eurasian Natural Resources Corporation PLC, its agents, instrumentalities, employees, attorneys, representatives, affiliates, subsidiaries, predecessors, successors, alter-egos, and assigns, and all other Persons acting or purporting to act for or on its behalf, whether or not authorized to do so, wherever located.

7. **“Meryweather”** means Meryweather Investments Limited, its agents, instrumentalities, employees, attorneys, representatives, affiliates, subsidiaries, predecessors, successors, alter-egos, and assigns, and all other Persons acting or purporting to act for or on its behalf, whether or not authorized to do so, wherever located.

8. **“Lefever”** means Lefever Finance Limited, its agents, instrumentalities, employees, attorneys, representatives, affiliates, subsidiaries, predecessors, successors, alter-egos, and assigns, and all other Persons acting or purporting to act for or on its behalf, whether or not authorized to do so, wherever located.

9. **“Todal”** means Todal Mining (Private) Limited, its agents, instrumentalities, employees, attorneys, representatives, affiliates, subsidiaries, predecessors, successors, alter-egos, and assigns, and all other Persons acting or purporting to act for or on its behalf, whether or not authorized to do so, wherever located.

10. **“ZMDC”** means the Zimbabwe Mining Development Corporation, its agents, instrumentalities, employees, attorneys, representatives, affiliates, subsidiaries, predecessors, successors, alter-egos, and assigns, and all other Persons acting or purporting to act for or on its behalf, whether or not authorized to do so, wherever located.

11. **“Zimbabwe”** means the Republic of Zimbabwe, any department, agency, instrumentality or official of the Republic of Zimbabwe, or of the political party known as

ZANU-PF (including but not limited to Robert Mugabe), and any agents, instrumentalities, employees, attorneys, representatives, or alter-egos of the Republic of Zimbabwe.

12. **“Bokai Mine”** means the platinum mine located in the Republic of Zimbabwe also known as the Great Dyke platinum mine.

13. **“Sanctions”** means the United States Zimbabwe Sanctions Regulations, 31 C.F.R. Part 541, and Executive Orders 13288, 13391 and 13469, and the European Union Council Regulation 314/2004 of 19 February 2004 concerning certain restrictive measures in respect of Zimbabwe.

Instructions

1. A Document is deemed to be in Your actual or constructive possession, custody or control if it is in Your physical custody or if it is in the physical custody of any other Person and You (a) have a right, by control, contract, statute, order or otherwise, to use inspect, examine or copy such Documents on any terms; (b) have an understanding, express or implied, that You may use, inspect, examine or copy such Documents upon any terms; or (c) have, as a practical matter, been able to use, inspect, examine or copy such Document when You sought to do so. Such other Persons include record retention vendors, and technology, data, or other 3rd party information technology, cloud or other service providers, as well as employees, experts, consultants, independent contractor and similar persons.

2. Electronically stored information (“ESI”) should be produced in the native form in which it is regularly maintained or a format agreed upon with the party serving this subpoena, along with relevant database schema and textual descriptions sufficient to understand how to interpret the data produced. Database schema and textual descriptions include, for example: system and user manuals, record layouts, entity relationship diagrams, and lookup tables for keys and codes.

3. If production in native format is impossible or impracticable, ESI may be produced in non-proprietary format, such as such as .xls, .csv, .jpg, .tif, or .pdf, or other agreed upon format, at the highest resolution available along with the metadata normally contained within such Documents.

4. Documents in large or complex formats, such as large Excel-format spreadsheets or accounting databases, for which non-proprietary format imaging would alter the presentation of the data, should be produced in their native format.

5. For each data file provided, You should separately provide a control file reflecting the search protocol utilized to obtain such data file.

6. ESI should not be produced in a form that removes or significantly degrades the ability to search the ESI by electronic means where the ESI is ordinarily maintained in a way that makes it searchable by electronic means.

7. ESI may be transmitted in an encrypted container. Decryption keys should be provided separately at the time the data is produced.

8. If You decline to search or produce ESI on the ground that such ESI is not reasonably accessible because of undue burden or cost, identify such information by category or source and provide detailed information regarding the burden of cost You claim is associated with the search or production of such ESI.

9. Documents, other than ESI, shall be produced as they are kept in the usual course of business.

10. If any requested Document is not or cannot be produced in full, You are requested to produce such Document to the extent possible, indicating which Document, or portion of that Document is being withheld, and the reason that portion of the Document is being withheld.

11. In producing Documents, You are requested to produce each Document requested together with all non-identical copies and drafts of that Document.

12. In the event that any of the Documents requested herein have been lost or destroyed, You shall: (a) furnish a list identifying each such Document; (b) identify each person to whom copies of the Documents were furnished or to whom the contents thereof were communicated; (c) provide the date upon which the Document was lost or destroyed; and (d) if destroyed, state the reason the Document was destroyed.

13. If a privilege is claimed as the basis for objection to producing any Document, You shall: (a) state the nature of the privilege claimed; (b) state the date of such Document; (c) identify the person who prepared such Document; (d) identify the person(s) to whom the Document was directed or circulated; (e) identify the person(s) who has custody of such Document or a copy of such Document; (f) state any and all facts and reasons that You claim support each objection; (g) state the reason(s) for the preparation of the Document; (h) identify each person(s) who has knowledge of any of the facts or reasons that You claim support such objection; and (i) provide all information relating thereto which is not within the scope of the privilege claimed.

14. This request shall be deemed continuing so as to require further and supplemental production if any additional Documents responsive to this request come into Your possession, custody or control (as defined above).

Documents You Are Required To Produce

1. All Documents and Communications concerning Your acquisition of CAMEC shares in the 2008 Private Placement.

2. Documents sufficient to identify all personnel, whether currently or formerly employed by You, who participated in evaluating, analyzing or approving Your investment in the 2008 Private Placement.

3. All Documents and Communications concerning the acquisition by Capital Group of CAMEC shares in the 2008 Private Placement.

4. All Documents and Communications concerning the acquisition of CAMEC by ENRC.

5. All Documents and Communications concerning the role of each of the following in the 2008 Private Placement:

- a. Meryweather;
- b. Lefever;
- c. Todal;
- d. ZMDC; and
- e. Zimbabwe.

6. All Documents and Communications concerning the actual or intended use or the final or intermediate disposition of funds raised by CAMEC in the 2008 Private Placement, including (but not limited to) a use by or transfer to or by:

- a. You;
- b. Meryweather;
- c. Lefever;
- d. Todal;
- e. ZMDC; or
- f. Zimbabwe.

7. All Documents and Communications concerning each actual or intended transfer or loan of funds to Zimbabwe by CAMEC, Meryweather, Lefever or Todal.

8. Documents sufficient to identify all banks or other financial institutions through which any withdrawal, deposit or transfer of funds related to the 2008 Private Placement was made or intended or planned to be made.

9. All Documents and Communications concerning any filing or possible filing with any regulatory authority in the United States or the United Kingdom, including but not limited to the London Stock Exchange, related to Your acquisition of CAMEC shares in the 2008 Private Placement.

10. All Documents and Communications concerning the United States Office of Foreign Asset Control with respect to the 2008 Private Placement, Zimbabwe or the Sanctions.

11. All Documents and Communications from January 1, 2008 to the present concerning:

- a. Zimbabwe;
- b. Muller Conrad "Billy" Rautenbach;
- c. James Ramsay;
- d. Phillipe Henri Edmonds;
- e. Andrew Groves;
- f. Philip Enoch;
- g. Meryweather;
- h. Lefever;
- i. Todal;
- j. CAMEC;

- k. ENRC;
- l. Bokai;
- m. Sanctions;
- n. The Movement for Democratic Change in Zimbabwe;
- o. The 2008 Presidential election in Zimbabwe.

Notes

¹ Och-Ziff Capital Management Group, United States Securities and Exchange Commission, *Form 10-K*, Annual Report For the Fiscal Year Ended December 31, 2013, filed 18 March 2014, p. 27, available at: <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MjIiNDE1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>.

² Och-Ziff, Our Firm, http://www.ozcap.com/our_firm/index and; Fund Investors by Type, http://www.ozcap.com/our_business/fund_investors/index.

³ RAID's original request for information was made on 6 July 2011; we sent a follow-up letter to this request on 30 November 2011; and, on 27 July 2012, RAID sent the AFU a copy of its public report *Asset laundering and AIM: Congo, corporate misconduct and the market value of human rights*, which re-framed the original questions put to the AFU. In May 2013, RAID raised with the Treasury the concern that its original enquiries should have been treated as Freedom of Information requests. After refusing to release information in July 2013, the Treasury conducted an internal review before maintaining its refusal in November 2013.

⁴ Letter from Miller Wrubel (Counsel to Funnekotter et al.) to Judge Ronald L. Ellis, United States District Court, Southern District of New York, 3 October 2013 and attached Exhibits, Case 1:09-cv-08168-CM-RLE, Document 45.

⁵ Letter from Gibson Dunn (Counsel to Och-Ziff) to Judge Ronald L. Ellis, United States District Court, Southern District of New York, 8 October 2013, Case 1:09-cv-08168-CM-RLE, Document 47, fn 1.

⁶ CAMEC, *RNS Release*, 'Total Voting Rights', 3 March 2008.

⁷ Rautenbach remained designated under US sanctions until 17 April 2014, when he was removed from the list by OFAC, just prior to publication of RAID's update.

⁸ *Bernardus Henricus Funnekotter and others v. Republic of Zimbabwe* (ICSID Case No. ARB/05/6).

⁹ *Funnekotter et al. v. Republic of Zimbabwe*, United States District Court, Southern District of New York, Case 1:09-cv-08168-CM-RLE. Och-Ziff was ordered to produce 'core documents relating to Och-Ziff's investment in CAMEC'. See Order, *Funnekotter et al. v. Republic of Zimbabwe*, Case 1:09-cv-08168-CM-RLE, 23 September 2013, Document 44. The original subpoena seeking disclosure by Och-Ziff was filed on 29 May 2013: see Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action, *Funnekotter et al. v. Republic of Zimbabwe*, Civil Action No. 09-cv-08168 (CM), addressed to Och-Ziff Capital Management Group LLC, 29 May 2013. The subpoena is reproduced in Letter from Miller Wrubel (Counsel to Funnekotter et al.) to Judge Ronald L. Ellis, 10 January 2014 and attached Subpoena and (Proposed) Order Compelling Production, Case 1:09-cv-08168-CM-RLE, Document 62. The initial Order was limited to core documents until a protective order stipulating confidentiality (subsequently agreed) was in place. The plaintiffs are seeking documents relating to all their requests under the original subpoena: 'The "core document" production was an interim means of facilitating the parties' further discussions while no confidentiality order was in place.... Now that the Confidentiality Order has been agreed, Och-Ziff should immediately commence its full production of all remaining documents, but it is not doing so.' (Letter from Miller Wrubel (Counsel to Funnekotter et al.) to Judge Ronald L. Ellis, 3 October 2013, Document 45, *op. cit.*).

¹⁰ Letter from Miller Wrubel (Counsel to Funnekotter et al.) to Judge Ronald L. Ellis, 3 October 2013, Document 45, *op. cit.*

¹¹ *Ibid.*, Exhibit 1, e-mail from vanja.baros@ozcap.com, 'Fw: New spreadsheet of Tugai project', 4 August 2008, forwarding e-mail from Rodrigo Del Fierro, rdelfierro@nrg-fund.com, 'New spreadsheet of Tugai project', 4 August 2008, with attachment (*inter alia*) CAMEC_VB_20080722.xls; Exhibit 2, copy of attached spreadsheet CAMEC_VB_20080722.xls (also labelled 'OZF00013479.').

¹² Letter from Gibson Dunn (Counsel to Och-Ziff) to Judge Ronald L. Ellis, 8 October 2013, Document 47, *op. cit.*

¹³ The question of Meryweather's links to Rautenbach is discussed in RAID, *Questions of Compliance: The Conduct of the Central African Mining & Exploration Company (CAMEC) plc and its Nominated Adviser, Seymour Pierce*, Submission to AIM Regulation, May 2011, p. 46.

¹⁴ Letter from Miller Wrubel (Counsel to Funnekotter et al.) to Judge Ronald L. Ellis, 3 October 2013, Document 45.

¹⁵ Letter from Gibson Dunn (Counsel to Och-Ziff) to Judge Ronald L. Ellis, United States District Court, Southern District of New York, 18 October 2013, Case 1:09-cv-08168-CM-RLE, Document 51.

¹⁶ *Ibid.*, Exhibit A.

¹⁷ *Ibid.*, Exhibit A, fn 2.

¹⁸ United States District Court, Southern District of New York, Funnekotter et al. v. Republic of Zimbabwe, Case 1:09-cv-08168-CM-RLE, Stipulation of Confidentiality and Protective Order for Non-Party Witnesses, 27 September 2013, Document 52.

¹⁹ Letter from Miller Wrubel (Counsel to Funnekotter et al.) to Judge Ronald L. Ellis, United States District Court, Southern District of New York, 10 January 2014 and attached Subpoena and (Proposed) Order Compelling Production, Case 1:09-cv-08168-CM-RLE, Document 62.

²⁰ *Ibid.*

²¹ Letter from Gibson Dunn (Counsel to Och-Ziff) to Judge Ronald L. Ellis, United States District Court, Southern District of New York, 31 January 2014, Case 1:09-cv-08168-CM-RLE, Document 69.

²² United States District Court, Southern District of New York, Funnekotter et al. v. Republic of Zimbabwe, Case 1:09-cv-08168-CM-RLE, Declaration of Charles R. Jacob III in Support of Unopposed Motion for A Protective Order, 27 January 2014, Document 64. The 9 December 2013 subpoena sought to update the documents and information received from OFAC resulting from an earlier subpoena of 6 June 2011. For the full list of documents sought see *ibid.*, Exhibit A, Schedule A.

²³ United States District Court, Southern District of New York, Funnekotter et al. v. Republic of Zimbabwe, Case 1:09-cv-08168-CM-RLE, Protective Order, 29 January 2014, Document 68 (see also Protective Order, 28 January 2014, Document 66).

²⁴ Loch Adamson, *Institutional Investor*, 13 June 2008, 'Welcome to Oz', available at: <<http://www.institutionalinvestor.com/Popups/PrintArticle.aspx?ArticleID=1945499>>.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ Och-Ziff Capital Management Group, *Form 10-Q*, Quarterly Report to 30 June 2008, filed 11 August 2008, pp. 25 and 24, available at: <http://library.corporate-ir.net/library/21/213/213764/items/318006/%7B66C5ABD2-AFFF-4102-80BD-CBoFFCCFo42A%7D_OchZiffCapitalMioQ_Q2o8.pdf>.

²⁸ Och-Ziff, *Press Release*, 'Mvelaphanda Holdings, Och-Ziff and Palladino create joint venture to focus on natural resources in Africa', 29 January 2008, available at: <<http://shareholders.ozcap.com/phoenix.zhtml?c=213764&p=irol-newsArticle&ID=1101494&highlight=>>>.

²⁹ Och-Ziff Capital Management Group, *Annual Report 2012*, Financial Report, p.5 : 'OZ Europe Master Fund is a multi-strategy fund that opportunistically allocates capital between the underlying investment strategies described below in Europe, Africa and the Middle East.' A due diligence questionnaire published by Merrill Lynch International as fund sponsor and promoter, describes: 'Och-Ziff Management Europe Limited – Functions: Assists OZ Management LP in the management of a portion of the assets of the OZ funds pursuant to a sub-advisory agreement, subject to the direction of, and policies established by, OZ Management LP. Primarily focuses on Europe- and Africa-related investment opportunities.' (Merrill Lynch International, Due Diligence Questionnaire for Och-Ziff Multi-strategy UCITS Fund, March 2011, Q.1.2.6, p. 4).

³⁰ 'The success of our business depends on the efforts, judgment and personal reputations of our key partners, particularly our founder, Daniel Och, and other members of our senior management team, including... Michael Cohen.... Our key partners' reputations, expertise in investing, relationships with investors in our funds and relationships with third parties on whom our funds depend for investment opportunities and financing are each critical elements in operating and expanding our business.... Accordingly, the retention of our key partners is crucial to our success'. See Och-Ziff Capital Management Group, *Prospectus*, 13 November 2007, 'The loss of services of any of our key partners', p. 37, available at: <<http://www.sec.gov/Archives/edgar/data/1403256/000119312507248245/d424b4.htm>>.

³¹ Och-Ziff Capital Management Group, *Form 8K*, Report of unscheduled material events or corporate event, 19 March 2013, available at: <<http://www.sec.gov/Archives/edgar/data/1403256/000119312513115192/d504373d8k.htm>>.

³² Och-Ziff Capital Management Group, *Annual Report 2008*, Our Executive Officers, entry for Michael L. Cohen, p. 16. See also Och-Ziff, *Prospectus*, *op. cit.*, ‘Partner Management Committee’, p. 18, and ‘Management’, entry for Michael Cohen, p. 179.

³³ Africa Management is referred to in the *Memorandum of Association* of Camrose Resources: ‘Africa Management Limited, a company incorporated in Guernsey with registered number 47651 and whose registered office is at Ogier House, St Julian’s Avenue, St. Peter Port.’ (See *Memorandum and Articles of Association of Camrose Resources Limited*, Incorporated 9 October 2006, Amendment registered in this 20th day of November 2008, Memorandum of Association, 10 Definitions and Interpretation, 10.1, “Africa Management Limited”). Camrose is a mining company at the centre of a number of highly controversial deals (see pp. 11 *et seq.*) in the Democratic Republic of the Congo.

³⁴ Company No. 06374856, registered in the UK 18 September 2007 (as given in Companies House WebCheck, accessed 20 January 2014).

³⁵ Entry for Africa Management (UK) Limited, as given in Companies House WebCheck, accessed 20 January 2014.

³⁶ Och-Ziff, *Press Release*, ‘Mvelaphanda Holdings, Och-Ziff and Palladino create joint venture to focus on natural resources in Africa’, *op. cit.*

³⁷ Company number 1997/021524/07, incorporated in South Africa, 12 October 1997. See <<http://www.cipro.co.za/ccc/EntDet.asp?T1=%DD%47%02C%8C%57%Co%1E%BE%13%BD%38%8A%BF%AD%22&T2=MVELAPHANDA%20HOLDINGS>>.

³⁸ Sexwale was appointed Minister of Human Settlement in May 2009 and was dismissed in a cabinet reshuffle in July 2013. See South African Government News Agency, respectively: ‘Sexwale to head human settlements ministry’, 10 May 2009, available at: <<http://www.sanews.gov.za/south-africa/sexwale-head-human-settlements-ministry>>; ‘President Zuma announces changes to cabinet’, 9 July 2013, available at: <<http://www.sanews.gov.za/south-africa/president-zuma-announces-changes-cabinet>>.

³⁹ Och-Ziff, *Press Release*, 29 January 2008, *op. cit.*

⁴⁰ Company number FC026401 (UK establishment number BR012048), registered in the UK 12 May 2005 (as given in Companies House WebCheck, accessed 20 January 2014). The address for Palladino Holdings Limited is given as Sovereign Corporate & Fiscal Services Limited, 40 Craven Street, Charing Cross, London, Turks & Caicos Islands, WC2N 5NG.

⁴¹ See, for example, Coal of Africa Limited, *RNS 2379X*, ‘Holding(s) in company’, 6 February 2013, <<http://otp.investis.com/clients/uk/coalofafrica/rns/regulatory-story.aspx?cid=361&newsid=312889>>, where the address for Palladino Holdings Limited is given as PO Box 170, Churchill Building, Front Street, Grand Turk, Turks and Caicos Islands. Africa Management Limited is a major shareholder in Coal of Africa.

⁴² Private Equity International, *The Annual Review 2009*, ‘Africa Beckons’, p. 20.

⁴³ *Ibid.*

⁴⁴ A notice announcing Cohen’s appointment was filed on 24 October 2007 and one terminating his directorship was filed on 21 August 2012. See Companies House, WebCheck for Africa Management (UK) Limited, respectively forms 288a and TMO1, accessed 21 January 2014.

⁴⁵ A notice announcing Baros’s appointment was filed on 23 December 2007 and one terminating Baros’s directorship was filed on 21 August 2012. See Companies House, WebCheck for Africa Management (UK) Limited, respectively forms 288a and TMO1, accessed 21 January 2014.

⁴⁶ Gareth Tredway, *Mining Journal*, 14 February 2014, ‘QKR kicks-off private funds investment drive’, available at: <<http://www.mining-journal.com/production-and-markets/qkr-kicks-off-private-funds-investment-drive>>.

⁴⁷ See note 11.

⁴⁸ Letter from Miller Wrubel (Counsel to Funnekotter et al.) to Judge Ronald L. Ellis, 3 October 2013, Document 45, *op. cit.*

⁴⁹ RAID, *Questions of Compliance*, *op. cit.*, pp. 14–20; p. 36; pp. 47–52. The report was submitted to AIM Regulation on 3 June 2011.

⁵⁰ According to the company website: ‘The Fleurette Group is comprised of various businesses organized under Fleurette Properties Ltd., a company established in 2006 for the benefit of the Gertler Family Trust.’ (<<http://fleurettegroup.com/>>). A press release attributed to Fleurette Properties Limited states: ‘The Fleurette Group of Companies is a Dutch-resident group of companies whose primary activities are the investment in, exploration, exploitation and development of mining assets in Africa. The parent company of the group is called Fleurette Properties Limited, which is owned by Line Trust Corporation Limited strictly and solely on behalf of the Ashdale Settlement, a trust established in 2006 for the benefit of the family of Dan Gertler.’ (PRNewswire, 25 July 2013, ‘Fleurette and Glencore Complete Merger of Mutanda and Kansuki Mining Operations,’ attributed to Fleurette Properties Limited, available at: <<http://www.prnewswire.com/news-releases/fleurette-and-glencore-complete-merger-of-mutanda-and-kansuki-mining-operations-216882021.html>>).

⁵¹ A regulatory news release indicates that the 50.5% of Camrose bought by ENRC on 20 August 2010 was owned by ‘Silvertide Global Limited, Zanette Limited and Cerida Global Limited (‘Cerida’) which are held by the Gertler Family Trust’ (see ENRC plc, *RNS 4192R*, 20 August 2010, ‘Acquisition of 50.5% of the Shares of Camrose Resources Limited’, available at: <http://www.enrc.com/ru/regulatory_news_article/2003>). Fleurette confirms that it sold the remaining 49.5% of Camrose to ENRC in December 2012 (see Fleurette Properties Limited, *Press Release*, ‘Sale of 49.5% interest in Camrose Resources Limited’, 7 December 2012, available at: <<http://fleurettegroup.com/press-releases/sale-of-49-5-interest-in-camrose-resources-limited-and-outstanding-minorities-in-la-congolaise-des-mines-et-de-development-sprl/>>). In a circular detailing the conclusion of its purchase of Camrose, ENRC confirms at 1. Proposed transaction and General Meeting, p. 2: ‘The remaining 49.5 percent. of the share capital of Camrose (the “Camrose Minority Shares”) was, and as at the date of this document continues to be, held by Cerida, a private company incorporated in the British Virgin Islands that is indirectly and wholly owned by Fleurette, a company incorporated in Gibraltar and whose entire issued share capital is, in turn, indirectly and wholly owned by a discretionary trust for the benefit of the wife and children of Mr. Dan Gertler. Mr. Gertler is an adviser of this trust, Fleurette and its subsidiaries.’; at p. 9: Silvertide Global Limited and Zanette Limited are described as ‘private companies indirectly and wholly owned by Fleurette’. (See ENRC plc, 7 December 2012, *Circular to ENRC Shareholders and Notice General Annual Meeting*, ‘Acquisition of shares in Camrose Resources Limited and certain subsidiaries’).

⁵² Africa Progress Panel, *Africa Progress Report 2013: Equity in Extractives*, p. 55.

⁵³ *Ibid.*, p. 56.

⁵⁴ Global Witness, ‘Secret Sales’, <<http://www.globalwitness.org/library/secret-sales>>.

⁵⁵ *Ibid.*

⁵⁶ Africa Progress Panel, *Africa Progress Report 2013: Equity in Extractives*, p. 56.

⁵⁷ *Ibid.*, Box 9, p. 58.

⁵⁸ Camrose Resources Limited, BVI company number: 1055983, incorporated in the British Virgin Islands on 9 October 2006.

⁵⁹ See *Memorandum and Articles of Association of Camrose Resources Limited*, amended 20 November 2008, *op.cit.*; also Africo Resources Limited, *News Release*, 21 April 2008, ‘Africo Resources announces CAD\$100 million private placement to develop the Kalakundi project’, available at: <http://www.africoresources.com/ir/press_display.php?Id=2008/21apr2008>; also Africo Resources Limited, *News Release*, 24 July 2008, ‘Africo Resources completes CAD\$100 million private Placement with Camrose Resources Limited’, available at: <http://www.africoresources.com/ir/press_display.php?Id=2008/24jul2008>.

⁶⁰ *Memorandum and Articles of Association of Camrose Resources Limited*, amended 20 November 2008, *op. cit.*, *Memorandum of Association*, 10.1, “Affiliate”.

⁶¹ James Wood, Craig McKune, Stefaans Brümmer, *Mail & Guardian*, 17 August 2012, ‘Tokyo Sexwale and the DRC’s Mr Grab’, available at: <<http://mg.co.za/article/2012-08-17-00-tokyo-sexwale-and-the-drcs-mr-grab>>.

⁶² *Memorandum of and Articles of Association of Camrose Resources Limited*, amended 20 November 2008, *op. cit.*, *Memorandum of Association*, 10.1: “Shareholders Agreement” means the shareholders’ deed entered into between Vipar the Shareholders, the Parent [Line Trust Corporation Limited] and the Company [Camrose] on 23 July 2007; “Business Plan” business plan for the Group in respect of the 3 year period commencing on the 23 July 2008, as agreed between Vipar and the Fleurette Shareholders’ Representative in accordance with the provisions of paragraph 5 of Schedule 6 of the Shareholders Agreement’. See also *ibid.*, *Articles of Association*, 18.11: ‘Until it becomes a Shareholder, Vipar shall have the right to appoint and remove one observer to the board.’

⁶³ Elsewhere in Camrose's *Articles of Association*, a Shareholders' Agreement dated 23 July 2008 is referred to: see Article 28 Transfers of Shares, 28.7.

⁶⁴ See the statement to be carried by each share certificate, reproduced in Camrose's *Articles of Association*, 28.7. The statement continues: [The Shareholders' Agreement was] 'made between Zannette Ltd., Cerida Global Limited, Silvertide Global Ltd., Vipar Investments Limited, Line Trust Corporation Limited and Camrose Resources Limited.'

⁶⁵ According to Camrose's *Memorandum of Association*: "'Shareholders" means (i), Zanette, Cerida and Silvertide and, after the issue of Conversion Shares, Vipar...' and "'Conversion Notice Date" shall have the meaning given to it in the Shareholders Agreement;' and "'Conversion Shares" shall have the meaning given to it in the Shareholders Agreement;'. See Camrose's *Memorandum of Association*, 10 Definitions and Interpretation, 10.1, respectively, p. 8 and p. 6.

⁶⁶ '(a) Upon becoming a Shareholder, Vipar may appoint a director for each 25 percent of the aggregate total number of shares held by it... (b) If Vipar holds less than 25 percent, but more than 10 percent, of the aggregate total number of shares, Vipar may still appoint 1 director...' (Camrose's *Articles of Association*, 13.1, p. 8). "'Vipar Director" means a director appointed by Vipar in accordance with the Articles and "Vipar Directors" shall be construed accordingly' (Camrose's *Memorandum of Association*, 10.1, p. 8).

⁶⁷ The voting rights of Vipar Directors (if appointed) are set out under Camrose's *Articles of Association*, 18 Proceedings of Directors, pp. 14-15.

⁶⁸ See Camrose's *Articles of Association*, 27.1 (r) the adoption and amendment to any Budget. According to Camrose's *Memorandum of Association*, 10.1: "'Budget" means the budget for the Group approved from time to time by the Fleurette Shareholders' Representative and, for the period after Vipar becomes a Shareholder, Vipar'.

⁶⁹ Once it has become a Shareholder, Vipar's agreement is required for the transfer of shares, as set out in section 28 Transfers of Shares. The conditions governing Vipar's right to sell, transfer, dispose or grant an interest in any of its shares to an Affiliate of Vipar are also set out (28.1(c)). There are also clauses (28.1(e)(i), (ii)) warranting that any Fleurette Shareholder will not transfer shares to the Parent [Line Trust Corporation limited] or any beneficiary of the Ashdale Settlement or to entities party to any arrangements with Line Trust or Ashdale. Presumably, this is to prevent Gertler-controlled entities acting in concert. Section 29 Right of First Offer, gives Fleurette and Vipar (subject to it becoming a Shareholder) the right to purchase (during a 30 day period) any shares the other puts up for sale. (See Camrose's *Articles of Association*, 29.1).

⁷⁰ According to the Camrose's *Articles of Association*, 27.1: 'Following Vipar becoming a Shareholder, the Shareholders shall procure, as far as they can, that no action is taken or resolution passed by the Company or any Group Company in respect of the following matters or their equivalent in the case of a Group Company ("Shareholder Reserved Matters"), without the prior written consent of each of Vipar and the Fleurette Shareholders' Representative: [*inter alia*] (a) any change to the Memorandum and Articles or the articles of association of any Group Company; (b) the appointment and removal of the Auditors; (d) the adoption of the Audited Accounts; (g) the adoption of and any amendment to the Business Plan; (h) any change in the share capital or the creation, allotment or issue of any shares or of any other security or the grant of any option or rights to subscribe for or to convert any instrument into such shares or securities; (i) any reduction of the share capital or variation of the rights attaching to any class of shares...; (j) the entry into of any joint venture, partnership, consortium...; (k) any investment (whether by way of debt or equity) in a Group Company by an entity other than Vipar, an Affiliate of Vipar or any Fleurette Shareholder; (l) the appointment, removal and conditions of employment of the Company secretary or any director or senior executive of any Group Company...; (m) the appointment, discharge, remuneration and conditions of employment of any employee earning \$100,000 or more each year; (o) the sale of any Group Company or any consolidation or amalgamation with any other company; (p) the cessation of any business operation; (q) any material change to the nature or geographical area of the Business...; (r) the adoption of and amendment to any Budget; (s) the entry into of any contract or commitment not provided for in the Budget under which any Group Company may incur costs of \$250,000 or more...; (u) the acquisition by any Group Company of any assets or property at a total cost (per transaction) of more than \$250,000; (v) the sale or disposition by any Group Company of any fixed assets for a total price per transaction of more than \$250,000; (w) the borrowing of any amount, or the creation of any charge or other security over any assets or property of any Group Company; (x) the disposal of or dilution of the Company's interests, directly or indirectly, in any Group Company; (bb) the incorporation of a new subsidiary undertaking or the acquisition of any share capital or other securities of any body corporate'.

⁷¹ See ENRC plc, 7 December 2012, *Circular to ENRC Shareholders, op. cit.*, 1, p. 10; also Camrose's *Memorandum of Association*, 10 Definitions and Interpretation, 10.1, p. 6: 'Cerida means Cerida Global Limited, a company incorporated under the laws of the British Virgin Islands with registered number 1018804 and whose registered office is at PO Box 438, Road Town, Tortola, British Virgin Islands.'

⁷² ENRC plc, 7 December 2012, *Circular to ENRC Shareholders, op. cit.*, 7(b), p. 10: 'The Company [ENRC] understands that Camrose entered into a loan for US\$124 million with Vipar on 16 April 2008 primarily to finance Camrose's acquisition of its interest in Africo. As part of the transaction whereby ENRC Congo BV acquired 50.5 percent. of the issued shares of Camrose on 20 August 2010, Camrose's loan agreement with Vipar was novated to Cerida for the amount outstanding under that loan facility of US\$155 million (which comprised principal plus capitalised interest which had accrued on the original Vipar loan) and a back to back loan agreement for the same amount was entered into on the same date by Cerida and Camrose (the "Camrose Loan").'

⁷³ *Ibid.*, pp. 10–11: 'Separately, pursuant to a guarantee agreement entered into by ENRC NV and Vipar also on 20 August 2010, ENRC NV guaranteed the repayment of the Cerida Loan to Vipar.'

⁷⁴ *Ibid.*, p. 11: 'To finance the repayment of the Camrose Loan, US\$160 million of the US\$400 million shareholder loan facility granted by ENRC Congo BV to Camrose (the "ENRC Loan "...) had been earmarked for this purpose.'

⁷⁵ *Ibid.*, p. 11: 'however the final amount due under the Cerida Loan including interest amounted to US\$160,077,302 (further details regarding the ENRC Loan are provided in paragraph 4 (p) of Part V of this document). Under the terms of the ENRC Loan, when a relevant advance was requested by Camrose, the money lent by ENRC Congo BV to Camrose was required to be paid directly to Vipar, on Cerida's behalf, by way of repayment of the Cerida Loan. Accordingly, on 20 August 2012, US\$160,077,302 was drawn down under the ENRC Loan (ENRC NV providing the relevant funds on behalf of ENRC Congo BV), and paid directly to Vipar in satisfaction of the Cerida Loan, as a result of which the Cerida Loan and the Camrose Loan were terminated and the guarantee given by ENRC NV in favour of Vipar was terminated and released.' Paragraph 4(b) of Part V, as referred to, reads: 'As part of the transaction [ENRC's original 2010 purchase of Camrose shares], ENRC Congo BV provided Camrose with a US\$400 million shareholder loan facility pursuant to a loan agreement dated 20 August 2010 (the "ENRC Loan "...).'

⁷⁶ Camrose's *Memorandum of Association*, 10.1, pp. 8–9.

⁷⁷ There are other references to the possibility of shares held by affiliates. See, for example, Camrose's *Articles of Association*, article 29 Right of First Offer, 29.1: 'and, in respect of Vipar only, any shares held by its Affiliates'; article 30 Drag along rights, 30.2: 'each share held by Vipar (or by an Affiliate of Vipar).'

⁷⁸ Camrose's *Articles of Association*, article 30 Drag along rights, in the circumstance where any Shareholders (including Fleurette) transfer all their shares to a bona fide third party and serve a compulsory purchase notice on the Remaining shareholder, appears to guarantee that the consideration paid for each share held by Vipar (or by an Affiliate of Vipar) shall 'be sufficient to ensure that Vipar receives from the aggregate proceeds of such sale an IRR on its Vipar Investment Contribution of 20 percent or more per annum.' Moreover, Fleurette Shareholders may force a sale of Camrose 'if, and only if, the proceeds of such sale shall provide Vipar with an IRR on its Vipar Investment Contribution of 20 percent or more per annum'. By contrast, Vipar may force a sale without any such guarantee for Fleurette Shareholders. (See, respectively, article 30.5 (a) and (b)).

⁷⁹ See Africo Resources Ltd., 21 April 2008, 'Africo Resources announces CAD100 million private placement to develop the Kalukundi project', *op. cit.* The placement was completed in July 2008 ('Africo Resources completes CAD100 million private placement with Camrose Resources Limited', 24 July 2008, *op. cit.*).

⁸⁰ 'Africo Resources completes CAD100 million private placement with Camrose Resources Limited', *op. cit.*: 'Vipar Investments Limited ("Vipar") has made certain credit facilities available to Camrose in connection with the transactions pursuant to terms and conditions set out in a loan facility (the "Facility") between Camrose and Vipar. Vipar may become a direct or indirect holder of securities of Africo pursuant to the terms of the Facility or enforcement of security thereunder.' See also *Register of Registered Charges of Camrose Resources Limited*, Business Company No 1055983, Attachment ID# 7339929. Under 'Description of Liability Secured', reference is made to 'the convertible loan facility agreement dated 16 April 2008 entered into between, inter alios, the Pledgor [Camrose Resources Limited] and the Secured Creditor [Vipar Investments Limited]' and; under 'Description of Property Charged', to '45,400,000 common shares in Africo Resources Limited'. According to corporate documents from ENRC: 'The Company [ENRC] understands that Camrose entered into a loan for US\$124 million with Vipar on 16 April 2008 primarily to finance Camrose's acquisition of its interest in Africo'. (See *Circular to ENRC Shareholders*, 7 December 2012, *op. cit.*, 7(b), p. 10).

⁸¹ Camrose's *Memorandum of Association*, 10.1, "Affiliate".

⁸² The private purchase was through ENRC's wholly-owned subsidiary, ENRC Congo BV. See ENRC plc, *RNS 4192R*, 20 August 2010, 'Acquisition of 50.5% of the Shares of Camrose Resources Limited', *op. cit.*

⁸³ Camrose is described as holding indirect interests in five copper and cobalt exploitation licences in DRC, including a 70% interest, via 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 Musonoi Tailings, or "KMT") (PER 652)'. See ENRC plc, 'Acquisition of 50.5% of the Shares of Camrose Resources Limited', *op. cit.*

⁸⁴ The Highwind Group, entirely owned by Camrose, comprises Highwind Properties Limited, Pareas Limited, Interim Holdings Limited and Blue Narcissus Limited. (See ENRC, *Circular to ENRC Shareholders*, 7 December 2012, *op. cit.*, Part VI, (A) Definitions and Glossary, Highwind Group, p. 63). 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'. (See 'Acquisition of 50.5% of the Shares of Camrose Resources Limited' *op. cit.*).

⁸⁵ First Quantum and the IFC had commenced proceedings against the DRC government in February 2010 at the International Chamber of Commerce International Court of Arbitration in Paris. (See First Quantum Minerals Ltd., *News Release 10-08*, 1 February 2010, 'First Quantum Minerals announces commencement of international arbitration regarding the cancellation of the Kolwezi Project', available at: <http://first-quantum.com/files/doc_news/NR-10-08-InternationalArbitration.pdf>. ENRC's announcement of the Camrose acquisition came on 20 August 2010, the day after the ICC Tribunal issued its temporary orders, *inter alia*, prohibiting the DRC government and Gécamines from taking any action to transfer or allow the transfer of the Kolwezi tailings exploitation permit covering the Kolwezi Project. (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://first-quantum.com/files/doc_news/2010-08-21_NR.pdf>.

⁸⁶ The Highwind contract with Gécamines refers to a 'signature bonus' of \$60 million. See *Contrat d'association entre La République Démocratique du Congo, Le Groupe Gécamines et le Groupe Highwind Properties Limited*, 30 January 2010, p. 21, available at: <http://mines-rdc.cd/fr/documents/contrat_gcm_highwind.pdf>.

⁸⁷ 'Acquisition of 50.5% of the Shares of Camrose Resources Limited', *op. cit.* ENRC paid US\$50 million in cash and issued promissory notes totalling US\$125 million, to mature between 9 months and 24 months later.

⁸⁸ *Ibid.* The Camrose shares had been purchased from Silvertide Global Limited, Zanette Limited and Cerida Global Limited, companies which ENRC describes as 'held by the Gertler Family Trust'.

⁸⁹ *Ibid.* See also *Circular to ENRC Shareholders*, 7 December 2012, *op. cit.*, pp. 10–11: 'On 20 August 2012, ENRC NV repaid, on behalf of Cerida, an outstanding debt of US\$155 million plus interest (totalling in the aggregate US\$160,077,302) owed by Cerida to Vipar Investments Limited ("Vipar"), which had been granted by Vipar to Cerida and documented pursuant to a loan agreement dated 20 August 2010 (the "Cerida Loan"). The Company understands that Camrose entered into a loan for US\$124 million with Vipar on 16 April 2008 primarily to finance Camrose's acquisition of its interest in Africo. As part of the transaction whereby ENRC Congo BV acquired 50.5 percent. of the issued shares of Camrose on 20 August 2010, Camrose's loan agreement with Vipar was novated to Cerida for the amount outstanding under that loan facility of US\$155 million (which comprised principal plus capitalised interest which had accrued on the original Vipar loan) and a back to back loan agreement for the same amount was entered into on the same date by Cerida and Camrose (the "Camrose Loan"). Separately, pursuant to a guarantee agreement entered into by ENRC NV and Vipar also on 20 August 2010, ENRC NV guaranteed the repayment of the Cerida Loan to Vipar.'

⁹⁰ ENRC, *RNS 0856T*, 7 December 2012, 'Acquisition of Remaining 49.5% of the Shares in Camrose Resources Limited and the Outstanding Minority Shareholdings in Certain Camrose Subsidiaries,' available at: <http://www.enrc.com/regulatory_news_article/3045>. The transaction was completed on 28 December 2012: ENRC, *RNS 462OU*, 28 December 2012, 'Completion Acquisition of Remaining 49.5% of the Shares in Camrose Resources Limited and the Outstanding Minority Shareholdings in Certain Camrose Subsidiaries', available at: <http://www.enrc.com/regulatory_news_article/3056>.

⁹¹ *Ibid.*

⁹² *Africa Progress Report 2013*, *op. cit.*, Box 9, The Kolwezi project, p. 58.

⁹³ See, for example, Tom Bawden, *The Guardian*, 10 June 2011, 'Sir Richard Sykes: voted out, but not down', available at: <<http://www.guardian.co.uk/business/2011/jun/10/enrc-richard-sykes-kazakh-mining>>

[firm?INTCMP=ILCNETTXT3487](#)>; Nikhil Kumar, *The Independent*, 18 August 2011, 'ENRC shares a 'no go' over governance', available at: <<http://www.independent.co.uk/news/business/news/enrc-shares-a-nogo-over-governance-2339570.html>>.

⁹⁴ See FCA, *Press Release*, 5 November 2013, 'The FCA strengthens the listing rules to enhance protection for shareholders', available at: <<http://www.fca.org.uk/news/the-fca-strengthens-the-listing-rules-to-enhance-protection-for-shareholders>>. The FCA consulted on its proposals in October 2012: see RAID, 'Polishing the family silver: Response to the FSA's Consultation Paper CP12/25 *Enhancing the effectiveness of the Listing Regime*', available at: <http://raid-uk.org/docs/Response_FSA_Consultation_2012.pdf>.

⁹⁵ Ben Laurance, *The Sunday Times*, 11 December 2011, 'Fraud Office steps in at embattled Footsie mining giant', available at: <<http://www.thesundaytimes.co.uk/sto/business/Industry/article839656.ece>>.

⁹⁶ *Circular to ENRC Shareholders*, 7 December 2012, *op. cit.*, p. 12; see also p. 27.

⁹⁷ 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. See First Quantum Minerals Ltd., *News Release 10-32*, 15 September 2010, 'First Quantum Minerals commences legal proceedings against ENRC subsidiaries', available at: <http://first-quantum.com/files/doc_news/NR10-32.pdf>. Under the settlement, First Quantum was to be paid US\$1.25 billion and ENRC was to acquire First Quantum's DRC property and assets. See First Quantum Minerals Ltd., *Press Release*, 5 January 2012, 'First Quantum Reaches Agreement With ENRC to Dispose of First Quantum's Residual DRC Assets and to Settle All Claims in Relation to First Quantum's DRC Operations', available at: <<http://www.first-quantum.com/Media-Centre/Press-Releases/Press-Release-Details/2012/First-Quantum-Reaches-Agreement-With-ENRC-to-Dispose-of-First-Quantums-Residual-DRC-Assets-and-to-Settle-All-Claims-in-Relati/default.aspx>>; ENRC plc, *RNS 0633V*, 5 January 2012, 'Agreement signed with First Quantum Minerals Ltd. to acquire their residual assets and settle all claims in relation to their Democratic Republic of Congo operations', available at: <<http://staging.hemscottir.com/ir/enrc/ir.jsp?page=news-item&item=88374750323511>>.

⁹⁸ *Circular to ENRC Shareholders*, *op. cit.*, 7 December 2012, p. 15; see also p. 27.

⁹⁹ *100Reporters*, 28 May 2012, 'Mining Copper, Burying Truth', available at: <<http://100r.org/2012/05/mining-copper-burying-truth/>> and; 4 June 2012, 'Fast Track Past Red Flags', available at: <<http://100r.org/2012/06/fast-track-past-red-flags/>>.

¹⁰⁰ Links to the August 2010 SAR and to the 31 May 2012 letter from ENRC's lawyers received by *100Reporters* are given in 'Fast Track Past Red Flags'.

¹⁰¹ Danny Fortson, *The Sunday Times*, 28 April 2013, 'Heart of Darkness'.

¹⁰² Juliette Garside, *The Guardian*, 28 April 2013, 'ENRC investigated for bribery in Africa and Kazakhstan', available at: <<http://www.theguardian.com/business/2013/apr/28/enrc-bribery-africa-kazakhstan>>.

¹⁰³ <<http://www.sfo.gov.uk/our-work/our-cases/case-progress/enrc-plc.aspx>>.

¹⁰⁴ RAID wrote to the FCA, The Takeover Panel and SOCA in July 2013. ENRC issued a response to media reporting of RAID's concern (ENRC plc, *RNS 7003K*, 1 August 2013, 'Response to RAID Allegations', available at: <http://www.enrc.com/regulatory_news_article/3713>). ENRC announced its delisting on 25 November 2013: ENRC plc, *RNS 7720T*, 25 November 2013, 'Notice of cancellation of listing from the official list', available at: <http://www.enrc.com/regulatory_news_article/4116>.

¹⁰⁵ Anonymous, 25 January 2013, *Guinea Special Analysis*, available at: <<http://johnhelmer.net/wp-content/uploads/2013/03/Guinea-Special-Analysis-Jan-2013.pdf>>. The 88-page report has references to either/or/both Och-Ziff and OZ Management on p. 9, p. 65, and p. 68. An equally anonymous website, defending the integrity of the Palladino loan is available at: <<http://guinealloan.com/>>.

¹⁰⁶ Craig McKune, Stefaans Brümmer and James Wood, *Mail & Guardian*, 29 June 2012, 'Tokyo-linked company in Guinea row', available at: <<http://mg.co.za/article/2012-06-28-tokyo-linked-company-in-guinea-row/>>.

¹⁰⁷ Danny Fortson, *The Sunday Times*, 3 June 2012, 'Secret deal threatens big miners: BHP Billiton and Rio Tinto are at risk after a shadowy middleman, Walter Hennig, has struck a backdoor pact in Guinea'.

¹⁰⁸ State participation is stipulated under Article 150 of the Mining Code. The 2011 Mining Code of the Republic of Guinea (L/2011/No06/CNT) and Act L/2013/No53/CNT of 8 April 2013 amending certain provisions of the Code are available at <<http://soguiipami-gn.com/index.php/projets/2013-08-04-16-15-50>>.

¹⁰⁹ Ministry of Mines, Ministry of Economy & Finance, and SOGUIPAMI, *Press Release*, 21 June 2012, available at: <<http://soguiipami-gn.com/index.php/2013-08-03-09-24-29/2013-08-06-10-56-42?download=24:official-gouvernement-of-guinea-statement>>. Whilst the press release on the SOGUIPAMI website is undated, a date of 21 June is given on another website where it was originally posted: see <<http://www.factuinee.com/fichiers/videos5.php?langue=fr&idc=fr> Communiqué de Presse conjoint Ministère des Mines Ministère>.

¹¹⁰ IMF, Guinea: Letter of Intent, Supplement to the Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding, 11 September 2012, paragraph 13.

¹¹¹ See, for example, US Department of State, *Guinea 2012 Human Rights Report*, Section 4. Corruption and Lack of Transparency in Government, p. 19; also Danny Fortson, *The Sunday Times*, 24 June 2012, 'World Bank to probe mines deal', available at: <<http://www.thesundaytimes.co.uk/sto/business/Industry/article1066085.ece>>.

¹¹² Ministry of Mines, Ministry of Economy & Finance, and SOGUIPAMI, *Press Release*, 21 June 2012, *op. cit.*

¹¹³ Letter from Palladino Capital 2 Limited to His Excellency Mr Mohamed Lamine Fofana, Ministry of Mines and Geology, 22 June 2012, available at: <<http://soguiipami-gn.com/index.php/2013-08-03-09-24-29/2013-08-06-10-56-42?download=20:correspondance-en-anglais>>.

¹¹⁴ *Africa Confidential*, Vol. 53 No. 13, 22 June 2012, 'A new battle to control the mines'.

¹¹⁵ Companies House, WebCheck for Africa Management (UK) Limited, form AP01 of 27 September 2012, accessed 21 January 2014.

¹¹⁶ 'QKR kicks-off private funds investment drive', *op. cit.* See also <<http://qkrcorp.com/>>.

¹¹⁷ *Africa Confidential*, Vol. 53 No. 13, 22 June 2012, 'Who's who in the Guinea Loan Saga'; also David Gleason, *Business Day*, 29 November 2012, 'Economic predators rule in Guinea', available at: <<http://www.bdlive.co.za/opinion/columnists/2012/11/29/economic-predators-rule-in-guinea>>.

¹¹⁸ *The Sunday Times*, 5 August 2012, 'Dealmaker out at Caz', reported that Lloyd Pengilly 'has been dismissed by the bank'. Danny Fortson, *The Sunday Times*, 11 November 2012, 'Hannam sidekick trawls Africa', describes Pengilly as having 'resigned this summer' from JP Morgan Cazenove.

¹¹⁹ 'Hannam sidekick trawls Africa', *op. cit.*; also Jan Cieski, *Financial Times*, 11 November 2012, 'Kulczyk and Qatar back \$700m mine project', available at: <<http://www.ft.com/cms/s/0/5c04a07a-2c10-11e2-a91d-00144feabdco.html#axzz2vokmuDSm>>.

¹²⁰ Simon Duke ('Prufrock'), *The Sunday Times*, 5 January 2014, 'Prufrock: Hedgie leaves mine fund in the pits'.

¹²¹ See, for example, Ituri Civil Society (Société Civile de l'Ituri- SOCIT), 30 August 2010, *Déclaration de la population de L'Ituri par rapport au dossier pétrole du Graben Albertine a l'attention du Président de La République Démocratique du Congo*, available at: <<http://www.lemillenaireinfoplus.com/pages/ituri/petrole-du-lac-albert-la-societe-civile-de-l-ituri-interpelle-le-president-joseph-kabila.html>>; Global Witness, 29 June 2012, 'News over ownership of Congolese oil blocks raises further corruption concerns', available at: <<http://www.globalwitness.org/library/news-over-ownership-congolese-oil-blocks-raises-further-corruption-concerns>>.

¹²² Fleurette Group, release 24 March 2014, 'Fleurette Calls for Open Tender Process in Allocation of Oil Rights in the DRC', available at: <<http://www.prnewswire.co.uk/news-releases/fleurette-calls-for-open-tender-process-in-allocation-of-oil-rights-in-the-drc-251946551.html>>.

¹²³ Respectively: Stefaans Brümmer and Sam Sole, *Mail & Guardian*, 30 July 2010, 'Zuma Inc's DRC oil coup (and the Tokyo factor)', available at: <<http://mg.co.za/article/2010-07-30-zuma-incs-drc-oil-coup-and-the-tokyo-factor>> and; Michael J. Kavanagh, *Bloomberg*, 29 July 2010, 'Mvelaphanda Holdings's Willcox Advising Zuma's Nephew on Congo Oil Blocks', available at: <<http://www.bloomberg.com/news/2010-07-29/mvelaphanda-holdings-s-willcox-advising-zuma-s-nephew-on-congo-oil-blocks.html>>.

¹²⁴ Eric Joyce MP, *Press Release*, 22 November 2010, 'BVI shell companies drain Congo's oil wealth', available at: <http://ericjoyce.co.uk/wp-content/uploads/2011/11/lake_albert_press_release.pdf>.

¹²⁵ Tullow Oil Plc, *RNS Release*, 6 September 2006, 'Interim Results', available at: <<http://www.investigate.co.uk/tullow-oil-plc--tlw-/rns/interim-results/2006090607004954391/>>.

¹²⁶ The DRC government announced in August 2007 that Tullow's contract for Blocks I and II would be cancelled (see Franz Wild, *Bloomberg*, 17 August 2007, 'Tullow Oil's Congo Exploration Pact to Be Canceled (Update3)', available at: <<http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aeVQrgliWgWs>>). Reports suggest that the Tullow's contract was annulled in October 2007 (see PLATFORM, May 2010, *A Lake of Oil: Congo's contracts escalate conflict, pollution and poverty*, p. 5, available at: <http://www.platformlondon.org/carbonweb/documents/drc/A_Lake_of_Oil_Congo_DRC_Tullow_PLATFORM_May_2010.pdf>; also HIS, Global Exploration & Production Services Report, April 2008, *Sub-Saharan Africa: Democratic Republic of Congo*, p. 7). Tullow acknowledged in its 2007 *Annual Report and Accounts* that 'the validity of the award of these licences [for the two blocks] is currently being disputed by the Congolese Oil Ministry' (p. 16). According to *Sub-Saharan Africa: Democratic Republic of Congo*, the Hydrocarbon Ministry announced on 29 April 2008 that it had signed a new PSA for Block I with the Divine Inspiration Group (*op. cit.*, Contract summary sheet, p. 24). PLATFORM has posted an unsigned copy of the DIG contract, available at: <http://platformlondon.org/carbonweb/documents/drc/English_Divine_PSA_2008.doc>. When both Blocks I and II were awarded to Caprikat/Foxwhelp, DIG received \$5.2 million in compensation from the DRC government for Block 1 (see Katrina Manson, *Reuters*, 25 November 2010, 'Tullow loses Congo oil injunction - court document [UPDATE 1]', available at: <<http://uk.reuters.com/article/2010/11/25/tullow-idUSLDE6AO1RZ20101125>>).

¹²⁷ 'Given the expense of further proceedings and the difficulty in enforcing any award against the DRC even in the event of success'. See Tullow Oil PLC, *RNS 5804C*, 9 March 2011, '2010 Full Year Results', under Congo (DRC), available at: <<http://hsprod.investis.com/ir/tlw/ir.jsp?page=news-item&item=612047872092084>>.

¹²⁸ Ministère des Hydrocarbures, République Démocratique du Congo, *Contrat de Partage de Production, entre La République Démocratique du Congo et Caprikat Limited et Foxwhelp Limited (Blocs I & II du Graben Albertine)*, May 2010, available at: <http://hydrocarbures.gouv.cd/IMG/pdf/contrat_rdc_caprikat_foxwhelp-3.pdf>.

¹²⁹ République Démocratique du Congo, *Journal Officiel*, 22 Jun 2010, Ordonne 18 Jun 2010, p. 3, available at: <<http://www.leganet.cd/Legislation/JO/2010/jos.22.06.2010.pdf>>.

¹³⁰ *Contrat de Partage de Production*, *op. cit.*, article 12.8. According to *Reuters*, the signature bonus was detailed in a Ministry of Mines letter dated 10 June 2010. See: Katrina Manson, *Reuters*, 24 June 2010, 'Congo strips Tullow of oil block rights', available at: <<http://www.reuters.com/article/2010/06/24/ozatp-congo-democratic-kabila-idAFJ0E65NoNN20100624>>.

¹³¹ See, respectively, Foxwhelp Limited (BVI Company No.: 1577165), and Caprikat Limited (BVI Company No.: 1577164), *Memorandum of Association and Articles of Association*, 24 March 2010; and *Certificate of Incorporation*, 24 March 2010. Both Foxwhelp's and Caprikat's date of incorporation is given as 24 March 2010 and the registered office of both companies is given as Akara Bldg, 24 De Castro Street, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands.

¹³² PLATFORM's analysis is cited in: Katrina Manson, *Reuters*, 9 July 2010, 'Congo's new oil deals "massive regression" – lobby', available at: <<http://in.reuters.com/article/2010/07/09/congo-democratic-oil-idINLDE667oVL20100709>>. Less than two months previously, PLATFORM had published a comprehensive economic, social and environmental analysis of the 2006 Tullow/Heritage PSA for Blocks 1 and 2 and the subsequent 2008 Divine Inspiration Consortium PSA, also for Block 1. See PLATFORM, *A Lake of Oil*, *op. cit.*

¹³³ 'Congo's new oil deals "massive regression" – lobby', *op. cit.*

¹³⁴ *Ibid.*

¹³⁵ Republic of South Africa, The Presidency, *Statement*, 2 November 2011, 'Michael Hulley joins The Presidency', available at: <<http://www.gov.za/speeches/view.php?sid=22916>>.

¹³⁶ Mvelaphanda Resources Limited and Northam Platinum Limited, 18 February 2011, *Circular to Members of Mvela Resources*, Annexure 10, Information on the Mvela Resources Directors, p. 126 and Annexure 11, Information on the Directors of Northam, p. 128.

¹³⁷ *Contrat de Partage de Production*, *op. cit.*, 33.1 b).

¹³⁸ *Ibid.*, 33.1 c).

¹³⁹ See, respectively, Mvelaphanda Holdings, letter to Gold Fields Limited, 17 July 2006, available at <http://www.sec.gov/Archives/edgar/data/1172724/000110465906077569/a06-22560_1ex4d26.htm>; also Mvelaphanda Holdings, letter to Liz Hart [Managing Director of Siyenza, a corporate events company], 31 March 2003, available at <<http://www.siyenza.za.com/web-dev/Testimonial-pdfs/Mvel-ref.pdf>>. Both company letterheads give Mvelaphanda Holdings' address as 23 Glenhove Road, Melrose Estate, Johannesburg.

¹⁴⁰ 'Mvelaphanda Holdings, Och-Ziff and Palladino create joint venture to focus on natural resources in Africa', *op. cit.*

¹⁴¹ Mark Willcox, quoted in 'Zuma Inc's DRC oil coup (and the Tokyo factor)', *op. cit.*

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*; also 'Mvelaphanda Holdings's Willcox Advising Zuma's Nephew on Congo Oil Blocks', *op. cit.*

¹⁴⁵ 'Zuma Inc's DRC oil coup (and the Tokyo factor)', *op. cit.*

¹⁴⁶ *Ibid.*

¹⁴⁷ <<http://www.medeaenergia.com/introduction.php>>.

¹⁴⁸ *Ibid.*; also <<http://www.medeaenergia.com/contacts.php>>.

¹⁴⁹ Medea Development, *Press Release*, 6 December 2013, 'Ghana Parliament Ratifies East Cape Three Points Block Petroleum Agreement', available at: <<http://www.medeaenergia.com/news.php>>.

¹⁵⁰ Katrina Manson, *Reuters*, 16 August 2010, '[Refile] Firms awarded Congo oil decline to name investors', available at: <<http://www.reuters.com/article/2010/08/16/congo-democratic-oil-idAFLDE67FoX720100816>>.

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*

¹⁵³ *Contrat de Partage de Production*, *op. cit.*, Annexe II, Mandats de Caprikat et Foxwhelp. Both mandates are dated 22 April 2010.

¹⁵⁴ 'Firms awarded Congo oil decline to name investors', *op. cit.*

¹⁵⁵ 'Mvelaphanda Holdings's Willcox Advising Zuma's Nephew on Congo Oil Blocks', *op. cit.*

¹⁵⁶ Katrina Manson, *Financial Times*, 24 June 2012, 'Congo threatens to take back oil blocks', available at: <<http://www.ft.com/cms/s/0/a5aea554-bc8f-11e1-a470-00144feabdco.html#axzz2suuTtIEH>>.

¹⁵⁷ *Ibid.*

¹⁵⁸ 'Fleurette Calls for Open Tender Process in Allocation of Oil Rights in the DRC', *op. cit.*: 'On 5th May 2010, Fleurette, through Caprikat and Foxwhelp Ltd, two entities created for the Project, entered into a PSC with the DRC Government relating to the oil exploration and production of the Blocks I&II on the Albertine Graben. Presidential Approval was granted on June, 18th, 2010.... Caprikat and Foxwhelp Ltd, through Caprikat and Foxwhelp SARL (DRC), hold a 85% interest in the Blocks, while the remaining 15% is held by the DRC Government. Oil of DR Congo was established by Caprikat and Foxwhelp Ltd in the last Quarter of 2010 as Operator. It is responsible, on behalf of the interest holders, for the management and performance of all the activities envisaged by the PSC for the Blocks' development.'

¹⁵⁹ 'Fleurette Calls for Open Tender Process in Allocation of Oil Rights in the DRC', *op. cit.*

¹⁶⁰ Africa Oilfield Logistics, *RNS 7534H*, 25 June 2013, 'Admission to AIM'. See *Africa Oilfield Logistics Limited: Placing of 85.2 million new Ordinary Shares at 5p per share and Admission to trading on AIM* ('Admission Document'), 19 June 2013. According to the *Admission Document*, Africa Oilfield Logistics Limited was incorporated on 5 December 2012 in Guernsey with registered number 55964. Its registered office is given as Richmond House, St Julian's Avenue, St Peter Port, Guernsey GY1 1GZ.

¹⁶¹ *Admission Document*, *op. cit.*, 3. Directors and Management, p. 9; also 5.4, pp. 24-5.

¹⁶² When AOL was admitted to AIM, Groves was Chief Executive Officer of AOL. He stepped down from this post in March 2014, but remains an executive director of AOL. See AOL, *RNS 2685B*, 3 March 2014, ‘Appointment of Chief Executive Officer’.

¹⁶³ *Admission Document*, 1. Introduction (p. 8); 2. Investing Policy (p. 8); 5. Future Prospects and further share issues (p. 10); 7. Reasons for Admission and Use of Proceeds (p. 11).

¹⁶⁴ Cantor Fitzgerald, *Press Release*, 8 February 2013, ‘Cantor Fitzgerald Europe To Acquire Certain Assets and Businesses of Seymour Pierce Limited’, available at: <http://www.cantor.com/press_releases/Cantor_Fitzgerald_Europe_To_Acquire_Certain_Assets_and_Businesses_of_Seymour_Pierce_Limited.html>.

¹⁶⁵ *Ibid.*

¹⁶⁶ RAID, Letter to Nilam Statham, Head of AIM Regulation, 1 October 2013.

¹⁶⁷ *Questions of compliance, op. cit.*

¹⁶⁸ *Asset Laundering and AIM, op. cit.*

¹⁶⁹ *Asset Laundering and AIM, op. cit.*, ‘The scope remaining for disciplinary action: AIM Disciplinary Notice 11 and Seymour Pierce’, pp. 27–8.

¹⁷⁰ *Ibid.*

¹⁷¹ *AIM Rules for Companies*, February 2010, Schedule Two, (g)(viii).

¹⁷² E-mail from AIM Regulation to RAID, 20 November 2013.

¹⁷³ Details of the Committee’s inquiry into the Extractive Industries Sector is available at: <<http://www.parliament.uk/business/committees/committees-a-z/commons-select/business-innovation-and-skills/inquiries/parliament-2010/extractive-industries-sector/>>. See also Oral evidence: Extractive Industries Sector, *HC 832-ii*, Tuesday 26 November 2013, available at: <<http://data.parliament.uk/writtenevidence/WrittenEvidence.svc/EvidenceHtml/4003>>.

¹⁷⁴ *Ibid.*, Oral evidence, Q156.

¹⁷⁵ European Union, Declaration by the High Representative, Catherine Ashton, on behalf of the European Union with regard to the successful Constitutional referendum in Zimbabwe and the review of EU restrictive measures, 7864/1/13 REV 1, PRESSE 133, 25 March 2013, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/cfsp/136501.pdf

¹⁷⁶ Zanu-PF won 160 out of 210 seats.

¹⁷⁷ EU Ambassador to South Africa, Roeland van de Geer, quoted in *Business Day*, 12 July 2013, ‘EU “will lift all sanctions” if Zimbabwe elections pass SADC observer test’, available at: <<http://www.bdlive.co.za/africa/africanews/2013/07/12/eu-will-lift-all-sanctions-if-zimbabwe-elections-pass-sadc-observer-test>>. Asked what the EU would do if SADC declared the elections free and fair, he replied: “I would say it would be fair if the EU normalised relations with Zimbabwe. We would have to lift sanctions.”

¹⁷⁸ SADC Election Observation Mission to the Republic of Zimbabwe, *Preliminary Statement*, 2 August 2013, available at: <http://www.sadc.int/files/4313/7545/6616/FINAL_Preliminary_Statement_of_the_SADC_Election_Observer_Mission_to_the_July_31_2013_Zimbabwe_Harmonised_Elections_as_at_148_on_August_02_2013.pdf>.

¹⁷⁹ *Communiqué of the 33rd Summit of SADC Heads of State and Government*, Lilonge, Malawi, August 17–18, 2013, paragraph 21, available at: <http://www.sadc.int/files/5513/7691/9196/COMMUNIQUE_-_18_August_2013.pdf>.

¹⁸⁰ The summary report is, however, posted at: <<http://www.actsa.org/newsroom/wp-content/uploads/2013/09/Summary-Statement-of-the-SADC-Election-Observation.pdf>>.

¹⁸¹ European Union, Declaration by the High Representative, Catherine Ashton, on behalf of the EU on the elections in Zimbabwe, 12954/1/13 REV1, PRESSE 352, 21 August 2013, available at: <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/cfsp/138490.pdf>.

¹⁸² Foreign & Commonwealth Office, 3 August 2013, ‘Foreign Secretary statement on the Zimbabwe election results’, available at: <<https://www.gov.uk/government/news/foreign-secretary-statement-on-zimbabwe-election-results>>.

¹⁸³ John Kerry, Secretary of State, *Press Statement*, 3 August 2013, ‘Zimbabwe’s Presidential Election’, available at: <<http://www.state.gov/secretary/remarks/2013/08/212658.htm>>.

¹⁸⁴ OFAC, *Specially Designated Nationals List Update: Zimbabwe Designations; Zimbabwe Designations Removals*, 17 April 2014, available at: <<http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20140417.aspx>>.

¹⁸⁵ OFAC, Enforcement Information for December 11, 2013, available at: <<http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/12112013.pdf>>.

¹⁸⁶ The other two agencies were the Federal Reserve and New York State Department of Financial Services.

¹⁸⁷ OFAC, Enforcement Information for December 10, 2012, available at: <http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/12102012_scb.pdf>.

¹⁸⁸ Department of Justice, Office of Public Affairs, *News Release*, ‘HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit \$1.256 Billion in Deferred Prosecution’, 11 December 2012, available at: <<http://www.justice.gov/opa/pr/2012/December/12-crm-1478.html>>.

¹⁸⁹ OFAC, Enforcement Information for December 11, 2012, available at: <http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/121211_HSBC_posting.pdf>.