



‘Bribery in its purest form’: Och-Ziff, asset laundering and the London connection

January 2017

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Executive Summary

January 2017

‘Gaining the upper hand in a business venture by engaging in corrupt practices is bribery in its purest form. Doing so with the intention of influencing a foreign official in his or her capacity is nothing short of corruption. In this scheme, payments of millions of dollars were paid out to senior officials within certain parts of Africa in exchange for access to profitable investment opportunities. This type of behavior can’t and won’t be tolerated.’

[William F. Sweeney Jr., Assistant Director in Charge of the FBI’s New York Field Office]

A leading US hedge fund admits its role in African bribery conspiracies

Back in May 2013, RAID wrote to the US authorities asking them to investigate certain transactions in the Democratic Republic of Congo (DRC) and Zimbabwe, financed by the US hedge fund, Och-Ziff. In March 2014, RAID was about to release a second report examining questionable Och-Ziff deals across Africa, when the hedge fund announced for the first time that, since 2011, it had been under investigation by the US Department of Justice and the Securities and Exchange Commission (SEC) in relation to the Foreign Corrupt Practices Act (FCPA).

On 29 September 2016, the DOJ charged Och-Ziff, one of the largest hedge funds in the world, managing a vast \$37 billion portfolio of assets, with conspiracy to violate the anti-bribery provisions of the FCPA.ⁱ The DOJ described the corrupt practices of Och-Ziff Capital Management Group LLC (Och-Ziff) as ‘bribery in its purest form’. The parent company resolved the case under a deferred prosecution agreement (DPA). An Och-Ziff subsidiary, OZ Africa Management GP LLC (OZ Africa), pleaded guilty to conspiracy to violate the FCPA.ⁱⁱ

Och-Ziff is publicly listed, and the SEC, which regulates the New York stock exchange, also announced that Och-Ziff had agreed to settle civil charges of violating the FCPA.ⁱⁱⁱ Overall, Och-Ziff agreed to pay combined civil and criminal penalties of \$412 million, the largest ever settlement concerning a Wall Street firm.

The US authorities found that the hedge fund used intermediaries, agents, and business partners to pay bribes to high-level government officials in Africa.^{iv} Three elements of the Och-Ziff case are of particular interest to RAID. (1) All of the corrupt transactions outlined in the settlement and DPA had a London connection: the deals were arranged through Och-Ziff’s London office and many of the entities involved were London-listed. For many years, RAID has tracked how mining assets of dubious provenance have been laundered through UK-markets. (2) One corruption scheme operated in the Democratic Republic of Congo, a country that has long been the focus of RAID’s campaign to expose the process by which rich mineral assets were used to fund a brutal war and to reward the government’s allies and vested interests in its aftermath. (3) The US authorities

ⁱ United States of America against Och-Ziff capital Management Group LLC, *Deferred Prosecution Agreement*, Cr. No. 16-516 (NGG), United States District Court Eastern District of New York, 29 September 2016, available at: <<https://www.justice.gov/opa/file/899306/download>>.

ⁱⁱ United States of America against OZ Africa Management GP, LLC, *Plea Agreement*, Cr. No. 16-515 (NGG), United States District Court Eastern District of New York, 29 September 2016, available at: <<https://www.justice.gov/opa/file/899316/download>>.

ⁱⁱⁱ U.S. Securities and Exchange Commission, ‘Och-Ziff Hedge Fund Settles FCPA Charges Och-Ziff Executives Also Settle Charges’, *Press Release*, 2016-203, 29 September 2016, available at: <<https://www.sec.gov/news/pressrelease/2016-203.html>>

^{iv} U.S. Securities and Exchange Commission, *Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934 and Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order*, against Och-Ziff Capital Management Group LLC, OZ Management LP, Daniel S. Och, Joel M. Frank, Securities and Exchange Act of 1934 *Release No. 78989*/September 29, 2016, Investment Advisers Act of 1940 *Release No. 4540*/September 29, 2016, Administrative Proceeding *File No. 3-17595*, available at: <<https://www.sec.gov/litigation/admin/2016/34-78989.pdf>>

refer to a platinum deal in Zimbabwe, which RAID has condemned for funding Mugabe's violent 2008 election campaign, despite the existence of sanctions.

RAID sets out the repeated failure of the UK regulatory authorities over a 10-year period – despite warnings from UN Experts, due diligence studies and compliance watch lists – to take action to prevent assets acquired through corrupt means being traded on the London markets. **The key question addressed in the report is this: having failed to heed RAID's repeated calls for action, can the UK continue to shelter those who have been involved in corrupt deals, or ostensibly breached sanctions or flouted market rules, without causing lasting damage to its reputation?** It has taken action by the US authorities on Och-Ziff to bring renewed impetus to this question. Answers are long overdue. The report concludes with a series of recommendations to the UK authorities.

This summary should be read in conjunction with the full report (available at <www.raid-uk.org>), which provides detailed references. While some individuals and entities involved are named in the official documents, others are not. By comparing facts provided by the DOJ and SEC with information on the public record, it is possible to match the details referred to by the US authorities to known individuals and entities (see Annex 1).

Och-Ziff's African investments were managed out of its London office

Through a complex chain of subsidiaries, Och-Ziff had joint control over all investments and operations of African Global Capital (AGC), a joint venture set up by Guernsey-based Africa Management Limited (AML) (see full report, *Simplified ownership of Africa Management Limited*, p.4). AML was started by Och-Ziff and its affiliates and a group of South African business partners (Mvela Holdings and Palladino Holdings) to find lucrative investment opportunities in Africa. Two Och-Ziff employees, both working out of the hedge fund's London office, were 'made aware of and participated in the corrupt payments, using funds provided by Och-Ziff'. Both individuals were directors of AML's UK subsidiary.

AGC was instrumental in providing funds to Och-Ziff's DRC Partner – referred to by the DOJ as 'an Israeli businessman' with 'significant interests in the diamond and mineral mining industries in the Democratic Republic of the Congo' – in the bribery scheme to consolidate DRC copper mines.^v A spokesman for the Fleurette Group – a network of companies, many active in DRC, controlled by Israeli businessman Dan Gertler – is quoted in newspaper reports on the DOJ and SEC action: 'The Fleurette Group and Dan Gertler strongly deny the allegations announced today, which are motivated by a hedge fund trying to put behind it problems sparked by people that have nothing to do with Fleurette.'^{vi}

Alternative Investment Market – a haven for asset laundering

At the height of the commodities boom and the scramble for African resources, the lax procedures of the Stock Exchange's junior Alternative Investment Market (AIM) made it a magnet for shady companies operating in high risk areas. AIM enabled such companies not only to raise funds, but also to acquire a veneer of respectability that a London listing conferred. As the RAID report shows, **the UK authorities missed many opportunities to intervene before the corrupt transactions detailed by the DOJ and SEC had taken place and prevent what a government minister has recently described as 'the flow of dirty money into the City'.**

^v DPA, Statement of Facts, 12; and 29 ff.

^{vi} Spokesman for the Fleurette Group quoted in: Franz Wild and Keri Geiger, 'Diamond Magnate at the Heart of Och-Ziff's Africa Ambitions', *Bloomberg*, 30 September 2016, <<http://www.bloomberg.com/news/articles/2016-09-30/the-diamond-magnate-at-the-heart-of-och-ziff-s-africa-ambitions>>; Franz Wild and Jesse Riseborough, 'Glencore Reviewing Bribery Allegations Said to Involve Gertler', *Bloomberg*, 30 September 2016, <<http://www.bloomberg.com/news/articles/2016-09-30/glencore-reviewing-bribery-allegations-said-to-involve-gertler>> and; Thomas Wilson, Franz Wild, Jesse Riseborough, 'Congo Backs Billionaire Gertler After Och-Ziff Allegations', *Bloomberg*, 4 October 2016, <<http://www.bloomberg.com/news/articles/2016-10-04/congo-backs-billionaire-gertler-after-u-s-och-ziff-allegations>>.

DRC Corruption Scheme

The RAID report examines in depth the principal transactions referred to by the US authorities in the DRC, which all followed a similar pattern: Och-Ziff employees entered into agreements with Gertler as the fund's DRC Partner to purchase shares in DRC mining companies under his control, aware that payments would be made to bribe high ranking Congolese officials, who would bring pressure to bear on rival companies, forcing them to relinquish their assets. Och-Ziff as the parent company 'knowingly failed to implement and maintain controls to address known risks for corruption or misuse of company funds'.^{vii} When such misuse surfaced, Och-Ziff 'conducted no review or audit to confirm or rebut the allegations, and thereafter advanced more than \$200 million to DRC Partner for additional transactions.' The DOJ's filing shows how, over a 10-year period, Och-Ziff's 'DRC Partner, together with others, paid more than one-hundred million U.S. dollars in bribes to DRC officials to obtain special access to and preferential prices for opportunities in the government-controlled mining sector'.^{viii} The DOJ and SEC outline the scheme used:

In or about and between March 2008 and February 2011, Och-Ziff entered into several DRC-related transactions with DRC Partner: (1) an April 2008 purchase of approximately \$150 million of shares in a publicly traded DRC-focused mining company controlled by DRC Partner ("Company A"); (2) a \$124 million convertible loan through a subsidiary company and AGC to Company B, a DRC Partner-controlled shell entity, funded in or about and between April and October 2008 (the "Convertible Loan Agreement"); and (3) a \$130 million margin loan to Company C, a DRC Partner-controlled shell entity, in November 2010 and February 2011 (the "Margin Loan Agreement"). Leading up to and through these transactions, Och-Ziff Employee 3 and Och-Ziff Employee 5 were made aware of and participated in the corrupt payments, using funds provided by Och-Ziff to Company B and Company C, that DRC Partner made to various DRC officials to secure mining interests in the DRC. [DPA, Statement of Facts, 28]

Och-Ziff and DRC Partner worked to acquire and consolidate assets in the DRC into an entity controlled by DRC Partner that could then be sold to a large publicly-traded mining company for a significant profit. [SEC Order, 42]

The anonymised individuals and companies referred to by the US authorities can be readily matched to their identifiable counterparts across a series of known mining deals struck in the DRC, *inter alia*:

- DRC Partner matches Dan Gertler. Gertler denies any allegations and has neither been named or charged by the US authorities.
- Och-Ziff Employee 3 matches Michael Cohen, former Och-Ziff partner, and the then head of Och-Ziff's London office. Cohen is not named in the DOJ and SEC action; he has issued a denial of any wrong-doing and has not been charged by the US authorities. Cohen has since left Och-Ziff.
- Och-Ziff Employee 5 matches Vanja Baros, then a member of Och-Ziff's African investment team, based in London. Baros is not named in the DOJ and SEC action and has made no public comment on the facts of the case. No charges have been brought against Baros by the US authorities. Baros has since left Och-Ziff.
- 'DRC officials' include the DOJ's 'DRC Official 2', matching Augustin Katumba Mwanke (since deceased), parliamentarian, and Ambassador-at-Large for the DRC government, and close adviser to the DRC President, Joseph Kabila (who matches the DOJ's 'DRC Official 1').
- Company A matches Central African Mining and Exploration Company (CAMEC) Limited, admitted to AIM in October 2002. Once set up on AIM, given its lax regulations, CAMEC was then free to bring DRC and Zimbabwean mining assets of dubious provenance to the London market. Gertler had earlier acquired a large holding in CAMEC, paving the way for the injection of funds from Och-Ziff.^{ix} Soon after receiving the Och-Ziff money, CAMEC announced a deal to buy a platinum mine in Zimbabwe, making

^{vii} DPA, Statement of Facts, 96.

^{viii} DPA, Statement of Facts, 20.

^{ix} DPA, Statement of Facts, 32.

cash available to the Mugabe regime.^x The deal was set up by another significant shareholder in CAMEC (the ‘Zimbabwe Shareholder’), who matches Billy Rautenbach, an individual later referred to by the US Treasury as a ‘Mugabe crony’. According to the DOJ, another \$11 million was immediately made over by Och-Ziff’s DRC Partner to DRC Official 2.^{xi}

- Company B matches Gertler’s Camrose Resources Limited. The US authorities describe how Och-Ziff’s DRC Partner went about obtaining assets belonging to a Canadian mining company, identified as Africo Resources Limited.^{xii} DRC Official 2 (Katumba Mwanke) had orchestrated the taking of Africo’s interest in a DRC mine. The DOJ details how Och-Ziff’s DRC Partner paid ‘\$500,000 to DRC officials, including judges, who were involved in the Africo court case to corruptly influence the outcome of those proceedings to the benefit of Och-Ziff and DRC Partner’.^{xiii} Camrose, using \$100 million from Och-Ziff, then moved in to purchase a majority stake in Africo in exchange for resolving its legal issues.^{xiv}

To attract a buyer for Camrose, the DOJ describes how ‘Och-Ziff Employee 5 [Baros] worked with DRC Partner [Gertler] to obtain additional...assets known as Kolwezi Tailings and SMKK. Och-Ziff knew that Kolwezi Tailings had been stripped by the DRC government from a mining company immediately before being obtained by a group of companies controlled by DRC Partner and the DRC government.’^{xv} The Kolwezi Tailings (also known as KMT) had belonged to another Canadian company, First Quantum Minerals, and SMKK (Société Minière de Kabolela et Kipese) to the DRC state mining company. The DOJ confirms:^{xvi} ‘Throughout the period of DRC Partner’s acquisition of Kolwezi Tailings and SMKK, DRC Partner continued to make corrupt payments to DRC Official 2.’

- The ‘large publicly-traded mining company’ is the now infamous London Stock Exchange listed mining company, Eurasian Natural Resources Corporation (ENRC) plc, which is currently under investigation by the UK’s Serious Fraud Office (SFO). The influential Africa Progress Panel, established to promote equitable and sustainable development for Africa and chaired by former UN Secretary-General, Kofi Annan, has stated: ‘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 ...for \$63.5 million – a return of just under 1,000 per cent for the offshore companies concerned’.^{xvii}

In July 2016 Africo was acquired by Eurasian Resources Group (ERG), the successor company to ENRC, and delisted from the Toronto Stock Exchange. **RAID is writing to the Canadian authorities to ask why they allowed the take-over and delisting of Africo, given the advanced stage of the investigations into Och-Ziff by the US authorities and the on-going inquiry by the SFO into ENRC.**

In July 2016, it was widely reported that the SFO had secured special so-called ‘blockbuster’ funding to continue its investigation into ENRC.^{xviii} In December 2016, *Bloomberg* reported that Dan Gertler is included as part of the SFO’s investigation into ENRC.^{xix} Gertler’s Fleurette Group said in response: ‘Mr. Gertler has always made it clear that his business dealings in the DRC are entirely proper and appropriate. That remains the case. Beyond that, he is not able to comment on allegedly leaked documents.’

‘Suspicious Payments’, sanctions and Zimbabwe

Both the DOJ and SEC are concerned with violations of the FCPA and not the enforcement of sanctions. This notwithstanding, both authorities refer, under the headings of ‘Suspicious Payments’ or ‘Allegations of

^x SEC Order, 51.

^{xi} DPA, Statement of Facts 32.

^{xii} DPA, Statement of Facts, 29 ff.

^{xiii} DPA, Statement of Facts, 38.

^{xiv} DPA, Statement of Facts 33.

^{xv} DPA, Statement of Facts 51.

^{xvi} DPA, Statement of Facts 52.

^{xvii} *Africa Progress Report 2013*, Box 9, The Kolwezi project, p.58.

^{xviii} See, for example, Caroline Binham and Tom Burgis, ‘UK awards extra funds for SFO probe into ENRC’s mining deals - Serious Fraud Office stepping up investigation into alleged corruption involving Africa deals’, *Financial Times*, 3 July 2016, <<https://www.ft.com/content/edb2760e-3fb3-11e6-9f2c-36b487ebd80a>>.

^{xix} Thomas Wilson, ‘SFO Probes Israeli Billionaire, Ex-ENRC Directors on Congo Deals’, *Bloomberg*, 5 December 2016, <<https://www.bloomberg.com/news/articles/2016-12-05/sfo-probes-israeli-billionaire-ex-enrc-directors-on-congo-deals>>.

'Serious Misconduct', to a transaction in Zimbabwe to buy platinum assets from a state entity and the Zimbabwean Shareholder (Rautenbach), to the diversion of an Och-Ziff loan to a Zimbabwean political party and to the use of Och-Ziff's investment to pay for an arms shipment from China.^{xx}

In the 2008 election in Zimbabwe, ZANU-PF's Robert Mugabe retained the presidency after a campaign of horrific brutality against Movement for Democratic Change (MDC) supporters. Up to 200 people were killed, 5,000 more were beaten and tortured, and 36,000 people were displaced.

The violence was financed by money originating with Och-Ziff and channelled to the Mugabe government via a loan as part of CAMEC's lucrative platinum deal. The US\$100 million loan changed Zimbabwe's future by thwarting progress towards democracy. Mugabe and key allies in ZANU-PF and the military were all on the EU and US sanctions list at the time of the loan. The *SEC Order* accords with RAID's 2013 account of the platinum deal.^{xxi} Furthermore, the head of Och-Ziff's London office (Cohen) had been warned by his colleague (Baros) that the Och-Ziff loan may have been used to pay for a shipment of arms from China. Yet neither Och-Ziff employee notified Och-Ziff's legal and compliance department. Despite the existence of US sanctions against Zimbabwe, Och-Ziff held onto its CAMEC shares until November 2009.

RAID has already raised the matter of the Zimbabwean platinum deal and sanctions with both HM Treasury in the UK and the Office of Foreign Assets Control (OFAC) in the US. Statements made by the SEC and DOJ in the Och-Ziff case corroborate that RAID was right to have flagged these concerns. **RAID's current report highlights inconsistencies over when and what Och-Ziff knew about the Zimbabwean platinum deal and calls upon OFAC to investigate. A key question is whether the UK authorities, far from preventing the platinum mine purchase or the later sale of shares controlled by sanctions targets, actually approved or licenced the transactions.**

For the first time, the SEC confirms what has long been suspected:^{xxii} that the Zimbabwe Shareholder (who matches Rautenbach) not only brokered the Zimbabwean platinum deal, but also that he was behind a company (matching Meryweather Investments) that sold the assets in return for CAMEC shares. When CAMEC itself was sold to ENRC, Rautenbach cashed in his shares, despite being on the sanctions list; even more disturbingly, it seems likely that the UK Treasury licensed the unfreezing of Rautenbach's gains. As a result of this windfall, Rautenbach was able to pay off a substantial fine of R 40 million (£3.3 million) and reach a plea bargain agreement on 326 counts of fraud with the South African authorities.^{xxiii}

RAID has been unsuccessful in its attempts to find out, through a Freedom of Information Act (FOIA) request, what the UK government knew or did about the Zimbabwean platinum deal. The Treasury is refusing to confirm or deny whether or not it gave tacit approval for the transaction – it is apparent that CAMEC has never been charged with violating sanctions – or whether it licensed the sale of Rautenbach's shares and allowed him access to the proceeds (again, there is a widespread perception that such licences were forthcoming).

In refusing to disclose information, the Treasury has relied upon an exemption under FOIA applied to the EU regulation implementing sanctions, which RAID has sought to challenge in the courts. While the first level court upheld the Treasury's grounds for refusal, RAID was granted the right to appeal to a higher court, but could not pursue the case. However, as information on the DRC and Zimbabwean transactions continues to filter out, and given the unprecedented action by the DOJ and SEC in the US, certain UK companies implicated in the same corrupt schemes, not to mention the position of the UK authorities, may become increasingly exposed: much of the information the Treasury has sought to conceal is nonetheless emerging.

^{xx} *SEC Order*, B. Suspicious payments in Zimbabwe, 48 – 52; DPA, Statement of Facts, 43.

^{xxi} RAID, *Och-Ziff, Mugabe's "Bagmen" and the underpricing of African assets*, July 2013.

^{xxii} *SEC Order*, 51.

^{xxiii} Antony Sguazzin and Brett Foley, 'Rautenbach to Pay S. African Fine to End Legal Battle', *Bloomberg*, 21 September 2009, available at: <<http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aJNXh9QhQiyQ>> (since archived). The article quotes Mthunzi Mhaga, spokesman for the NPA.

Conclusion

‘For many good reasons, the UK is an attractive place to invest money. But the downside is clear. The UK is also attractive to criminals and the corrupt kleptocrats who steal billions from their own people – often some of the poorest people in the world – and launder it through the UK.’

[Home Secretary, Amber Rudd, speech at the 2016 Financial Conduct Authority annual crime conference.]

A number of factors contributed to the web of corruption exposed in the Och-Ziff settlement that tainted so many of the transactions of key mineral resources over the past decade, not only in the DRC, but across the African continent. The DRC, a deeply impoverished country, weakened by years of conflict and lacking strong institutions, was particularly vulnerable to the predations and schemes of an unscrupulous cabal of wheeler dealers. The scale of the corruption they embarked on is breath-taking. These deals not only undermined the hopes for a peaceful transition to democracy and sustainable development in the Congo, but they helped to entrench corrupt practices, undermine efforts to promote good governance and consigned the majority of the population to live in squalor and environmental degradation.

The review of mining licences that the Congolese government embarked on in 2007, which was supposed to clear up the murky legacy of wartime contracts, provided Och-Ziff and its collaborators with a golden opportunity to snap up valuable assets at knock-down prices. Working with the Congolese political elite, this group were able to exploit the threat of expropriation or revocation of mining permits to their own advantage. By 2014, according to *Forbes Magazine*, President Joseph Kabila had amassed an estimated personal fortune of US\$15 billion in just over 13 years of power.^{xxiv} In 2015, *The Sunday Times Rich List* estimated Michael Cohen’s wealth to be £335 million (US\$500 million). *Forbes* puts Daniel Och’s (the founder and CEO of Och-Ziff) net worth at US\$2.5 billion and Dan Gertler’s wealth at \$1.18 billion. The DRC is one of the poorest and least developed nations in the world, ranked 176 out of 188 countries.^{xxv} Almost 87% of its 69 million people live on less than \$1.25 a day. Put another way, that \$1.25 each day equates to \$450 per year, and with life expectancy of 58 years, Och’s personal fortune would last the lifetimes of more than 95,000 Congolese at today’s values.

Whereas developments in the DRC were outside the control of the UK regulatory authorities, as RAID’s report shows, what is at issue is the adequacy and timeliness of their response to matters that took place in London and which fell within their competence. Over the past decade, at crucial moments, the UK authorities were in a position to take action that might have thwarted at least some of the corrupt deals and could have prevented ‘the flow of dirty money into the City’.

During 2016, the Government announced a number of initiatives. Following the UK Anti-Corruption Summit of May 2016, the Government acknowledged that law enforcement struggles to prosecute ‘corporations for money laundering, false accounting, and fraud under existing common laws’ and said it would consult on an extension of ‘the criminal offence of a corporate ‘failing to prevent’ beyond bribery and tax evasion to other economic crimes’ to complement existing legal and regulatory frameworks.^{xxvi} But this consultation has not yet happened. However, in the context of the Criminal Finances Bill, Members of Parliament have put forward an amendment to the Proceeds of Crime Act 2002, extending the scope of unlawful conduct (set out in s. 7 of the Bribery Act 2010) to cover certain actions connected to a gross human rights abuse which have taken place abroad.^{xxvii}

There has also been government recognition of the importance of financial sanctions to help maintain the integrity of and confidence in the UK financial services sector. RAID welcomes the creation in March 2016 of

^{xxiv} Richard Miniter, ‘Obama’s Secret Neo-Con Agenda’, *Forbes Magazine*, 30 June 2014.

^{xxv} Data from United Nations Development Programme, *Human Development Reports*, <<http://hdr.undp.org/en/countries/profiles/COD>>.

^{xxvi} Ministry of Justice, ‘New plans to tackle corporate fraud’, *Press Release*, 12 May 2016, <<https://www.gov.uk/government/news/new-plans-to-tackle-corporate-fraud>>.

^{xxvii} House of Commons, Criminal Finances Bill, as Amended, *Notices of Amendments*, given up to and including Monday 28 November 2016, <http://www.publications.parliament.uk/pa/bills/cbill/2016-2017/0097/amend/criminal_rm_rep_1128.1-5.html>.

an Office of Financial Sanctions Implementation (OFSI) in the Treasury, which will be able to impose penalties for serious breaches.^{xxviii} The legislation is part of a raft of wider measures in the Policing and Crime Bill to toughen the government's response to sanctions breaches, currently (as of January 2017) going through Parliament.^{xxix} By giving OFSI powers to hand out monetary penalties and publish details of serious breaches, the government is sending a clear message that it will not tolerate breaches of the financial sanctions regime. However, RAID is concerned that a public interest exemption, allowing OFSI to choose not to take enforcement action, even in cases where the facts seem to warrant it, should be subject to review.

Lessons must be learned from the Och-Ziff case, including the involvement of UK-based individuals and entities, and where necessary new legislation should be enacted and existing regulations more rigorously enforced to ensure that nothing on this scale happens again.

Key Recommendations

Call for action by the UK authorities in light of the 'London connection' in the Och-Ziff case

- *The Serious Fraud Office* should investigate or continue to investigate all UK entities, UK-based individuals and companies associated with the corrupt transactions identified by the DOJ and SEC: *inter alia*, Central African Mining and Exploration Company (CAMEC), African Management (UK) Limited, Eurasian Natural Resources Corporation (ENRC), and their directors and/or key executives and personnel.
- *The Financial Conduct Authority* should, in the light of the US settlement, review the fitness of individuals and entities, referred to in the DOJ and SEC documentation, appearing on the Financial Services Register.
- *The National Crime Agency* must review the role of UK-based individuals and entities in the Zimbabwe platinum deal, referred to by the DOJ and SEC. Apparent breaches of financial sanctions must be fully investigated and, where there is evidence of illegality, the perpetrators must be prosecuted.

General recommendations

- *Alternative Investment Market*
 - a. AIM's procedures should be strengthened in order to prevent corruptly obtained assets being laundered on London markets: (i) to avoid a conflict of interest, the same firm should not be able to act as both nomad and broker at admission. (ii) Companies should be refused admission to AIM if their directors and/or executives and/or significant shareholders have a dubious reputation or track record or where existing assets are of dubious provenance.
 - b. The UK parliament's Treasury Committee should hold an inquiry into the reasons why AIM failed to prevent companies controlled by individuals of ill-repute being admitted to AIM over the period in question, allowing them to trade corruptly obtained assets on the London market, while hiding the beneficial ownership of key shareholders.
- *UK Listing Authority*: There should be zero tolerance for corruption and asset laundering. The UKLA should establish a quality committee to vet applicants to the main market.
- *Beneficial ownership*: The UK is the first G20 country to have an on-line public register of beneficial ownership information. It allows anyone to find out who really owns or controls a British company, preventing fraudsters from hiding behind anonymous 'shell companies'. However the current policy

^{xxviii} HM Treasury, 'New body to support financial sanctions implementation launched', *Press Release*, 31 March 2016, <<https://www.gov.uk/government/news/new-body-to-support-financial-sanctions-implementation-launched>>.

^{xxix} See HM Treasury, *Factsheet: Policing and Crime Bill – Financial Sanctions*, July 2016,

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537282/Factsheet_18 - Financial sanctions.pdf>.

While the legislation sets the parameters within which OFSI must operate, the Treasury is currently consulting on the implementation process. See HM Treasury, *The process for imposing monetary penalties for breaches of financial sanctions: consultation*, December 2016,

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/574669/Monetary_sanctions_consultation_final.pdf>.

of seeking voluntary information exchanges between offshore jurisdictions and UK law enforcement authorities is manifestly not working. It is time to draw back the cloak of secrecy and legislate for all UK-linked offshore territories to establish full public registries of beneficial ownership.

- *Money Laundering*: In an increasingly competitive international marketplace, the UK cannot afford to be seen as a haven for dirty money. The government should extend ‘the failure to prevent offence’ to money laundering to enhance the scope for criminal sanctions.
- *Human Rights*: unexplained wealth orders, which will require an individual suspected of serious criminality to explain the origins of their wealth or face civil recovery action, should be extended to people connected to gross human rights abuses.
- *Sanctions*
 - a. Forthcoming powers of enforcement – including monetary penalties – are to be welcomed, as is the commitment to publish details of serious breaches. However, RAID has serious reservations about ‘public interest’ exemptions to these powers: at a very minimum, such exemptions should be subject to review.
 - b. There should also be greater transparency over the issuing of licences to allow transactions or the unfreezing of assets. The UK Government should follow the example of the U.S. Treasury, which releases certain information on the licencing of transactions under a sanctions program.
 - c. The Treasury should establish a mechanism by which informed parties, including NGOs, can submit information to better identify sanctions targets and their associated entities.
 - d. The Treasury should account for decisions to add to or remove people or entities from the sanctions list.

‘Bribery in its purest form’: Och-Ziff, asset laundering and the London connection

‘This case marks the first time a hedge fund has been held to account for violating the Foreign Corrupt Practices Act. In its pursuit of profits, Och-Ziff and its agents paid millions in bribes to high-level officials across Africa. By exposing corruption in this industry, the Criminal Division’s Fraud Section continues to root out wrongdoing of all types in the financial sector.’

[Principal Deputy Assistant Attorney General David Bitkower of the US Justice Department’s Criminal Division]

‘Och-Ziff engaged in complicated, far-reaching schemes to get special access and secure significant deals and profits through corruption. Senior executives cannot turn a blind eye to the acts of their employees or agents when they became aware of suspicious transactions with high-risk partners in foreign countries.’

[Andrew J. Ceresney, Director of the US Securities and Exchange Commission (SEC) Enforcement Division]

Introduction

In describing the corrupt practices of Och-Ziff Capital Management Group LLC (Och-Ziff) as ‘bribery in its purest form’, the US Department of Justice (DOJ) signalled in a 29 September news release that something exceptional had occurred.¹ Och-Ziff, one of the largest hedge funds in the world, managing a vast \$37 billion portfolio of assets, was charged with two counts of conspiracy to violate the anti-bribery provisions of the Foreign Corrupt Practices Act (FCPA), one count of falsifying its books and records and one count of failing to implement adequate internal controls.² Moreover, an Och-Ziff subsidiary, OZ Africa Management GP LLC (OZ Africa), pleaded guilty to conspiracy to violate the FCPA.³

But the DOJ was not the only US authority to take action that day: unusually for a hedge fund, Och-Ziff is publicly listed, and the Securities and Exchange Commission (SEC) announced that Och-Ziff had agreed to settle civil charges of violating the FCPA.⁴ The SEC found that the fund used intermediaries, agents, and business partners to pay bribes to high-level government officials in Africa.⁵

Och-Ziff agreed to pay combined civil and criminal penalties of \$412 million, the largest ever settlement concerning a Wall Street firm.⁶ In respect of the criminal charges, Och-Ziff admitted its role in African bribery conspiracies. Under a deferred prosecution agreement (DPA) with Och-Ziff – no formal criminal prosecution occurred or verdict was reached – the parent company is required to implement rigorous internal controls and retain a compliance monitor for three years.⁷

The settlement with the SEC also extended to individuals within the firm. Daniel Och, the group’s chief executive, was found to have caused violations in two Och-Ziff transactions in the Democratic Republic of the Congo, and he agreed to pay nearly \$2.2 million to settle the charges.⁸ Och-Ziff’s chief financial officer, Joel Frank, caused violations in Och-Ziff transactions in Libya and the Democratic Republic of the Congo, and a penalty will be assessed against him at a future date.⁹

In closing, the release from the SEC refers to the fact that the investigation is ongoing and the DOJ requires Och-Ziff to ‘cooperate fully...in any and all matters relating to the conduct described in this Agreement and the Statement of Facts, and any individual or entity referred to therein’ until all investigations and prosecutions arising out of such conduct are concluded.¹⁰ In requiring ‘truthful disclosure’ by Och-Ziff, the DPA refers, *inter alia*, to the activities of ‘present and former directors, officers, employees’.¹¹ Indeed, it has been widely reported that investigations into the role of individuals in the bribery and corruption schemes are continuing.¹² Highlighted in both the SEC and DOJ investigations to date are a senior executive ‘who headed Och-Ziff’s London office’ (named Employee 3 by the DOJ/Employee A by the SEC) and ‘an employee of Och-Ziff Management Europe Limited, the London-based subsidiary of OZ Management LP’ (named Employee 5 by the DOJ/Employee B by the SEC).¹³ Statements made by the US authorities on both employees are

unequivocal¹⁴ – ‘Och-Ziff Employee 3 and Och-Ziff Employee 5 were made aware of and participated in the corrupt payments, using funds provided by Och-Ziff’ – but of added significance for RAID is the recognition of the London connection. For more than five years, RAID has been raising concerns with the UK authorities over the very transactions that US investigators have now confirmed as corrupt.

The Home Secretary, Amber Rudd, at the FCA’s 2016 Financial Crime Conference, stated:¹⁵ ‘The UK is attractive to criminals and corrupt kleptocrats who steal billions from their own people, often some of the poorest people in the world.’ The Home Secretary concluded: ‘If...we develop world leading legislation to combat financial crime whilst continuing to develop the capabilities of our law enforcement agencies, then we will reduce the flow of dirty money into the City....’

The purpose of RAID’s current report is to: (i) further identify the entities and transactions referred to by the SEC and DOJ (the US authorities); (ii) to draw out the London/UK connection of many of these entities and associated individuals; (iii) to examine the DOJ’s Statement of Facts and the account of transactions given in the *SEC Order*, which confirm or corroborate inferences that RAID has made in the past, especially as these relate to how mining assets were acquired, the beneficial ownership of such assets, and compliance with sanctions against Zimbabwe; (iv) to draw attention to how the UK authorities – in light of the action taken under the FCPA in the US – have failed to act upon red flags in the UK context, including non-compliance with market rules and the enforcement of sanctions; and (v) to call upon the UK authorities to reconsider the role of UK companies and UK-based individuals in the corrupt transactions and illegal practices detailed by the DOJ and SEC.

Report structure

The report is structured by the principal transactions referred to by the US authorities. However, while some individuals and entities involved in these transactions are named in the official prosecution agreement and settlement, others are not: reference is instead made to certain anonymised companies and individuals. Yet, by comparing facts and events referred to by the DOJ and SEC (for example, positions held by individuals, nationalities, countries of registration or operation, dates, other entities or parties who are named, transaction details etc.) with information on the public record, it is possible to match the details referred to by the US authorities to known entities. The results of this comparison are set out in Annex 1 and underpin the parties that are matched to each transaction, as set out in **Part I: the corrupt deals**:

- A. Overview of the ‘DRC Corruption Scheme’
- B. Och-Ziff and relevant entities
- C. The CAMEC transaction
- D. The Camrose transactions
 - Africo
 - KMT or Kolwezi Tailings
- E. The ENRC transactions

In addition to the section on these principal deals, **Part II: ‘Suspicious payments’, sanctions and Zimbabwe** re-appraises certain transactions, in light of the findings of the DOJ and SEC, setting out unanswered questions that remain for the authorities in the UK and US to investigate. Of particular concern is whether individuals and entities on the sanctions list benefitted from the corrupt deals. RAID’s report highlights inconsistencies over when and what Och-Ziff knew about the CAMEC deal to buy platinum assets from the Mugabe regime in Zimbabwe; and considers the role of the UK authorities in licencing both the Zimbabwe deal and the subsequent release of funds, to the benefit of sanctions targets.

Throughout the report, RAID refers to the failure of the UK authorities to heed warnings and to act upon information provided to them. RAID makes recommendations, in light of the London connection, on how the UK should learn lessons to prevent its markets from being used to launder assets and evade sanctions.

It remains incumbent on the UK authorities to investigate and prosecute UK-based individuals and entities for bribery and corruption.

Part I: the corrupt deals

A. Overview of the 'DRC Corruption Scheme'

The DOJ sets out the 'DRC Corruption Scheme':¹⁶

In or about and between March 2008 and February 2011, Och-Ziff entered into several DRC-related transactions with DRC Partner: (1) an April 2008 purchase of approximately \$150 million of shares in a publicly traded DRC-focused mining company controlled by DRC Partner ("Company A"); (2) a \$124 million convertible loan through a subsidiary company and AGC to Company B, a DRC Partner-controlled shell entity, funded in or about and between April and October 2008 (the "Convertible Loan Agreement"); and (3) a \$130 million margin loan to Company C, a DRC Partner-controlled shell entity, in November 2010 and February 2011 (the "Margin Loan Agreement"). Leading up to and through these transactions, Och-Ziff Employee 3 and Och-Ziff Employee 5 were made aware of and participated in the corrupt payments, using funds provided by Och-Ziff to Company B and Company C, that DRC Partner made to various DRC officials to secure mining interests in the DRC.

Matching parties

- 'DRC Partner' matches Israeli businessman Dan Gertler, with interests in diamond and mineral mining industries in the DRC.
- 'Company A' matches Central African Mining and Exploration Company (CAMEC).
- 'Company B' matches Gertler's Camrose Resources Limited.
- 'Company C' is Lora Enterprises Limited (confirmed by the DOJ, *DPA*, Statement of Facts, 58).
- AGC is African Global Capital (confirmed by the DOJ, *DPA*, Statement of Facts, 5).
- 'Och-Ziff Employee 3' matches Michael Cohen, Och-Ziff partner, and head of Och-Ziff's London office.
- 'Och-Ziff Employee 5' matches Vanja Baros, member of Och-Ziff's African investment team, based in London.
- 'DRC officials' include the DOJ's 'DRC Official 2', matching Augustin Katumba Mwanke (since deceased), parliamentarian, and Ambassador-at-Large for the DRC government, and close adviser to the DRC President, Joseph Kabil (who matches the DOJ's 'DRC Official 1').

When the US authorities announced the action they had taken on Och-Ziff under the FCPA, a spokesman for Gertler's Fleurette Group is quoted in newspaper reports stating that the firm¹⁷

'vigorously contests any and all accusations of wrongdoing in any of its dealings in the DRC including those with Och-Ziff. The Fleurette Group and Dan Gertler strongly deny the allegations announced today, which are motivated by a hedge fund trying to put behind it problems sparked by people that have nothing to do with Fleurette.'

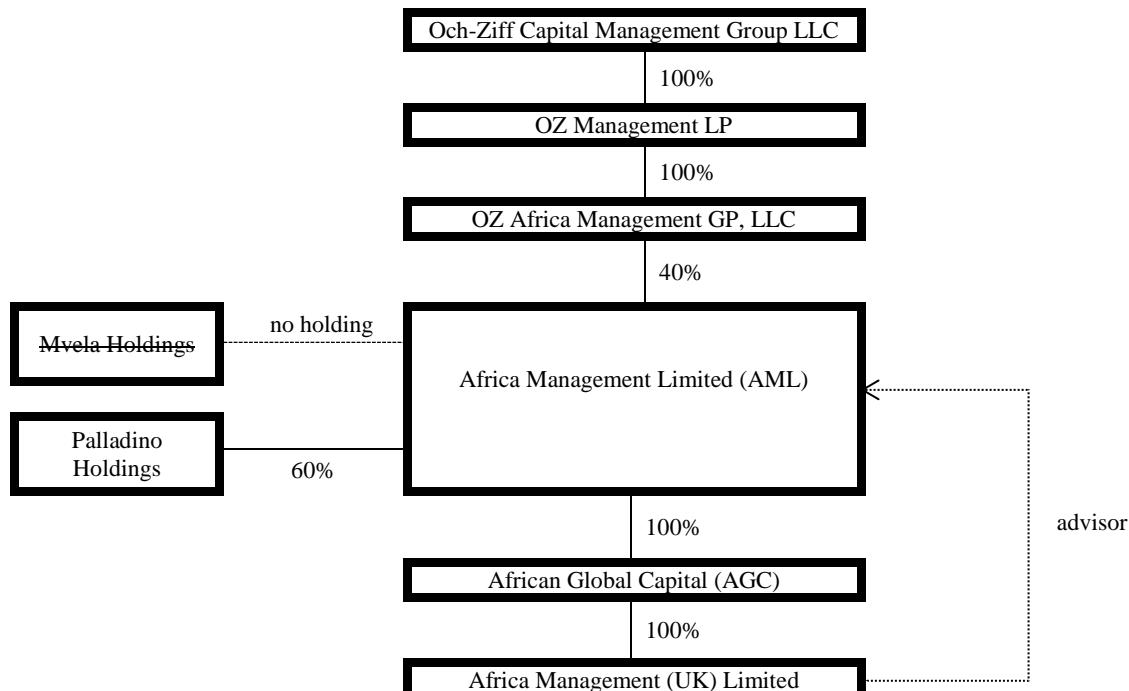
Dan Gertler is not named by the US authorities in their action against Och-Ziff and its OZ Africa subsidiary. No charges have been brought against Dan Gertler by the US authorities.

B. Och-Ziff and relevant entities

Och-Ziff Capital Management Group LLC (Och-Ziff) is 'a Delaware limited liability company and one of the largest alternative asset and hedge fund managers in the world'.¹⁸ It is headquartered in New York and listed on the New York Stock Exchange on November 14, 2007. According to the DOJ, 'Och-Ziff controlled numerous consolidated subsidiaries through which Och-Ziff operated'.¹⁹ The DOJ identifies OZ Management LP as a Delaware limited partnership and subsidiary of Och-Ziff, whilst OZ Africa Management GP, LLC (OZ Africa) is a Delaware limited liability company and wholly-owned subsidiary of OZ Management LP.²⁰ OZ Africa was, in turn, the subsidiary through which OZ Management LP held its advisory and management interest in a company called Africa Management Limited (AML). Ultimately, it was AML that formed the joint venture – African Global Capital (AGC) – to invest in natural resource assets in Africa. Despite this complex chain of subsidiaries, the SEC is clear: 'Och-Ziff had joint control over all investments and

operations of AGC and AML.²¹ According to the DOJ, ‘Och-Ziff’ s approval was required for all investments by AGC funds, and AML and AGC relied upon Och-Ziff’ s legal and compliance functions to perform due diligence, provide legal advice and document transactions.²²

AGC was instrumental in providing funds to Och-Ziff's DRC Partner in the bribery scheme to consolidate DRC copper mines.²³



Simplified ownership of Africa Management Limited

In a 2008 market report, Och-Ziff clearly articulated a new investment strategy focusing upon private equity investment in developing markets:²⁴

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....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.

According to the DOJ, AML was started by Och-Ziff, OZ Africa and affiliated and subsidiary entities with various South African business partners in 2007.²⁵ According to the Och-Ziff press release announcing the launch of AML in January 2008:²⁶

...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.

The SEC confirms that Och-Ziff ‘chose a prominent figure in South Africa as a potential partner for AGC.... a former government official as well as a successful businessman through his South African-based conglomerate.’²⁷ This conglomerate matches the profile of Mvela Holdings, jointly founded by

Tokyo Sexwale, a former government minister in South Africa.²⁸ However, the *SEC Order* continues: ‘Although Och-Ziff envisioned his conglomerate as a part of AGC, it never became part of the joint venture.’ However, although Mvela appears not to have participated directly in AML, its chief executive and joint founder, Mark Willcox, did become chief executive and a director in AML (see below). According to the US authorities, AML was owned 40% by Och-Ziff and 60% by its joint venture partner: it would therefore appear that Och-Ziff’s joint venture partner in AML was Palladino.²⁹

In April 2014, RAID contacted Och-Ziff prior to the publication of RAID’s report *Och-Ziff, Mugabe’s “Bagmen” and the underpricing of African assets*. Och-Ziff declined to comment on the material to be covered in the report. Palladino Holdings did respond publicly:³⁰ ‘The RAID report and related media coverage contain a series of inaccuracies which render the report and any subsequent media coverage misleading and in many cases simply wrong.’

AML’s partners

Mvela Holdings is incorporated in South Africa.³¹ 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.’ It appears that Mvela did not ultimately participate directly in AML.

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’.³² A company under the name Palladino Holdings Limited is registered in the UK, and recorded as originating in the Turks & Caicos Islands.³³ Other market notifications that refer to Palladino Holdings Limited as a shareholder give an address for Palladino in the Turks & Caicos Islands.³⁴ 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.

Other than Och-Ziff employees, directors of Africa Management (UK) Limited include or have included, Walter Hennig (Palladino), Andre Cilliers (Palladino) and its chief executive Mark Willcox (also Chief Executive Officer of Mvela Holdings).

Further information on: Och-Ziff and AML

[Och-Ziff, Mugabe’s “Bagmen” and the underpricing of African assets](#)

pp.9 ff.

⌚ The London connection

Africa Management (UK) Limited

In the press release announcing the launch of its African venture, Och-Ziff does not further identify AML; nor do the US authorities provide further details on AML. Other corporate documents confirm that Africa Management Limited is registered and incorporated offshore in Guernsey.³⁵ Africa Management Limited is the parent company of Africa Management (UK) Limited (AML UK), the latter registered and incorporated in England and Wales on 18 September 2007.³⁶ AML UK’s current status is described as active.³⁷

According to AML UK’s 2009 annual accounts, the company is³⁸

a wholly owned subsidiary of Africa Management Limited, a wholly owned subsidiary of African Global Capital Holdings Limited, and is included in the consolidated financial statements of African Global Capital Holdings Limited.

Furthermore, and significantly, given the account of AML as the investment vehicle in the corrupt transactions described by the SEC and DOJ, AML UK’s filings state:³⁹

The principal activity of the Company is to act as an investment advisor to the parent company, Africa Management Limited.

It is also stated:⁴⁰

In the opinion of the Directors there are two ultimate controlling parties of the Company [Africa Management (UK) Limited], being Palladino Holdings Limited and Och-Ziff Capital Management Group LLC.

Och-Ziff's press release refers to the UK subsidiary as capitalising on available opportunities under its chief executive, Mark Willcox (see box, AML's partners).⁴¹ Willcox was also a director of AML UK from 2007-2012.⁴² AML UK has a direct connection to two Och-Ziff employees understood to be at the centre of the bribery scheme. Michael Cohen was a director of AML's UK subsidiary from 10 October 2007 to 02 July 2012.⁴³ Vanja Baros was a director in AML UK from December 2007 until July 2012.⁴⁴ Palladino's Andre Cilliers, alongside Walter Hennig, were both appointed directors of AML UK in July 2012 and are still described as 'active' in company records, replacing Baros and Cohen.⁴⁵

Michael Cohen

Och-Ziff's African investments are managed out of Europe.⁴⁶ The SEC confirms that the AGC joint venture project 'was led by Och-Ziff Employee A and employees in Och-Ziff's European office' and that 'bribes were paid with the specific knowledge of a senior Och-Ziff employee who was the head of Och-Ziff Europe'.⁴⁷ The DOJ confirms that Och-Ziff Employee 3 'headed Och-Ziff's London Office'.⁴⁸ Until March 2013, the company's European operations were headed by Michael Cohen.

News reports on the DOJ and SEC announcements of violations of the FCPA by Och-Ziff identify Michael Cohen as heading Och-Ziff's European investing in the period 2007 – 2011 during which, according to the *SEC Order*, Och-Ziff 'primarily through the misconduct of two senior employees, entered into a series of transactions and investments in which Och-Ziff paid bribes through intermediaries, agents and business partners to high ranking government officials in multiple African countries...'.⁴⁹ Michael Cohen is not named by the US authorities in their action against Och-Ziff and its OZ Africa subsidiary. No charges have been brought against Michael Cohen by the US authorities. Cohen's lawyer is quoted in the newspaper coverage:⁵⁰

'Michael Cohen has an unblemished reputation built over the course of a career spent creating value for Och-Ziff's investors,' Ronald White, Cohen's lawyer, said in an e-mailed statement. 'We are confident that, when all the facts are known, it will be clear that he has done nothing wrong.'

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'.⁵¹ Cohen's surprise departure from Och-Ziff was announced on 19 March 2013 by Och-Ziff in a perfunctory notice to the SEC.⁵²

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.⁵³ Cohen held these positions in 2008, at the time Och-Ziff was moving into private equity investments in Africa.

Numerous newspaper reports state that Cohen has taken up British citizenship and that he owns a 900 acre estate in Hampshire.⁵⁴

In June 2009, Cohen gave a presentation at a key industry forum on private equity investment in Africa.⁵⁵ He drew attention to the continent's 'vast and still underexploited' natural resources, to strategies benefitting 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, '[h]e [Cohen] highlighted corruption as a particularly significant and wholly "unacceptable" aspect of African business life.'⁵⁶

In April 2014, RAID contacted Michael Cohen prior to the publication of RAID's report *Och-Ziff, Mugabe's "Bagmen" and the underpricing of African assets*. Cohen declined to comment on the material to be covered in the report.

Vanja Baros

The US authorities detail the instrumental role played by an Australian employee operating out of Och-Ziff's London office.⁵⁷ Company records for AML UK list Vanja Baros as an Australian national and former director.⁵⁸ Baros is described in several newspaper reports as Och-Ziff's Africa director.⁵⁹ Biographies of directors on company websites describe how Baros 'spent 5 years at Och-Ziff Capital Management in London, focusing on investments in the Natural Resources Sector'.⁶⁰ The DOJ refers to 'an employee of Och-Ziff Management Europe Limited, the London based subsidiary of OZ Management LP, and a member of Och-Ziff's European private investment team, which also had responsibility for investments in Africa. Och-Ziff Employee 5 was responsible for overseeing certain Och-Ziff investments involving mineral extraction, oil and other natural resources in Africa....'.⁶¹

Vanja Baros is not named by the US authorities in their action against Och-Ziff and its OZ Africa subsidiary. No charges have been brought against Vanja Baros by the US authorities. RAID is unaware of any public response by Baros to the DOJ's or SEC's statements on Och-Ziff. News reports on the DOJ and SEC announcements of violations of the FCPA by Och-Ziff and unnamed Och-Ziff employees state:⁶² 'Baros did not respond to voicemail messages seeking comment' and; 'A lawyer for Baros did not respond to a request for comment.' In April 2014, RAID contacted Vanja Baros prior to the publication of RAID's report *Och-Ziff, Mugabe's "Bagmen" and the underpricing of African assets*, but received no response.

The secret loan and the 'Transaction to Fund Corrupt Business Efforts in Guinea'

Back in 2012, one of Och-Ziff's partners in the AML joint venture was described as being 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.

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 highly lucrative 30% stake in the operations of the national mining company (later renamed SOGUIPAMI). 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.⁶³

The SEC Order describes the origin of the \$25 million loan under 'Transaction to Fund Corrupt Business Efforts in Guinea':⁶⁴

Beginning in February 2011, South African Business Partner sought assistance from Och-Ziff, and in particular Och-Ziff Employee B, to create a means for South African Business Partner and potentially AGC II to benefit financially from future Guinean government actions.

Och-Ziff Employee A and Och-Ziff Employee B, along with the CEO of AML and South African Business Partner, conceived of a related-party transaction that would accomplish these goals....According to the deal documents, South African Business Partner was to buy 31.5 million shares in the oil and gas company from the South African conglomerate for \$77 million and then immediately resell 18.5 million of those shares to AGC II for \$77 million.

...

Contrary to the deal documents...Och-Ziff Employee A and Och-Ziff Employee B knew that South African Business Partner would not pay the full \$77 million to the South African conglomerate. South African Business Partner bought 31.5 million shares...for only \$25 million, and then immediately resold 18.5 million shares in that same company to AGC II for \$77 million, providing South African Business Partner with \$52 million and an additional 13 million shares in the company. With the \$52 million, South African Business Partner then paid \$2.1 million to Och-Ziff to satisfy an outstanding debt relating to AGC I (in which the Investor had no interest), \$25 million to the government of Guinea to try to secure access to valuable mining investments there, \$1 million to the agent affiliated with the a high level Guinean government official and his family, and the remainder to personally benefit himself and his business partners.

Matching parties

- 'South African Business Partner' matches Walter Hennig, the founder of Palladino.
- 'South African conglomerate' matches Mvela Holdings.
- 'CEO of AML' matches Mark Willcox.
- 'AGCII is Africa Global Capital II.
- 'Och-Ziff Employee A' matches Michael Cohen.

- ‘Och-Ziff Employee B’ matches Vanja Baros.
- ‘high level Guinean government official and his family’ is understood to be the Guinean President, Alpha Condé, and his family (see the information, below, in support of this inference).

In August 2016, the US authorities charged an agent with ‘conspiring to bribe foreign officials in multiple African countries to obtain mining licenses’, referring *inter alia*, to ‘Guinea Conduct’:⁶⁵

4. The defendant SAMUEL MEBIAME was a Gabonese national who worked as a consultant for a joint venture (the “Joint Venture”) between a U.S.-based hedge fund (the “Hedge Fund”) and a Turks & Caicos Islands incorporated entity (the “Turks & Caicos Entity”) in or about and between 2007 and 2015. MEBIAME’s job was to source and secure mining opportunities in Africa for the Joint Venture and one of its portfolio companies (the “Mining Company”). Prior to the formation of the Joint Venture in or about January 2008, MEBIAME worked as a consultant for the Turks & Caicos Entity and the Mining Company.

42. In or about March 2011, a company controlled by Coconspirator #1 [‘the beneficial owner of the Turks & Caicos Entity’] entered into an agreement with the Guinean government, which gave the company the option to buy into the SOMC [‘Guinean state-owned mining company’]. On or about April 29, 2011, an affiliate of the Turks & Caicos Entity loaned the government of Guinea \$25 million as part of a deal to become a partner in the SOMC. Coconspirator #1 raised the \$25 million through a related-party stock sale to the Joint Venture. MEBIAME signed the loan document on behalf of the affiliate of the Turks & Caicos Entity. According to MEBIAME, the partnership with the SOMC ultimately did not go forward due to negative press accounts, which indicated that the deal between the Guinean government and Coconspirator #1 was corrupt.

The same agent, Samuel Mebiame, is referred to numerous times in documents filed in a case before the World Bank’s International Centre for Settlement of Investment Disputes (ICSID) bought by a mining and resources company (BSG Resources Limited) against the Republic of Guinea ‘for the unlawful taking of BSGR’s mining investments in Guinea’.⁶⁶

The ICSID case is pending. RAID’s current interest is in the factual exhibits. For example, the submissions include a ‘Transcript of Meeting between the Minister of Mines Mahmoud Thiam and Sammy Mebiame (the Mebiame Tapes)’, in which Mebiame refers to ‘the famous loan of 25 – officially, but you can imagine it was much, much more’ and states: “Create Sogupami, we’ll give Sogupami a legal status like a partner....” He [Alpha Condé] said that he agreed. So we made the loan, we signed the loan to Sogupami..., and so I was authorised to sign and make the transfer.’ Another exhibit – a witness statement, from a UK High Court case, made by the chief executive of a company advising BSGR – states:⁶⁷ ‘funds were transferred to Alpha Condé by way of a recorded loan of \$25million and further unrecorded transfers believed to be “much much more”....Alpha Condé attempted to reward his backers. He entered into an agreement known as the Palladino Contract, pursuant to which the provider of the \$25million loan would, on default of the loan, become entitled to a 30% share in a new Guinean national mining company established by Alpha Condé.’ Other exhibits in the ICSID case refer to Walter Hennig and AGC.⁶⁸

Baros, Cohen and QKR

In 2014, after leaving Och-Ziff and resigning as director from Africa Mining (UK) Limited, Vanja Baros was 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.⁶⁹ QKR received backing from the Qatar Holding LLC (founded by the Qatar Investment Authority) and Kulczyk Investments (founded by Polish businessman Jan Kulczyk).⁷⁰

Pengilly is described in newspaper reports as ‘a close associate of Mark Willcox’ and as ‘close to Hennig, Mvela Holdings CEO Mark Willcox and Sexwale’.⁷¹ One article refers to a 2007 tax presentation for Och-Ziff by PricewaterhouseCoopers outlining the tax structure of a private equity fund being planned to invest in African mining and minerals: ‘Och-Ziff was to invest \$300m, with decisions made by an “investment committee” including Mr Cohen, the then-JPMorgan mining banker Lloyd Pengilly and Walter Hennig.⁷² It is pertinent to recall that both Willcox and Sexwale were founders of Mvela, Och-Ziff’s prospective partner in AML and that Hennig is the founder of Och-Ziff’s other partner in AML, Palladino Holdings. Willcox was, and Hennig remains, a director of AML UK.

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 2012.⁷³ It was reported that QKR had originally received backing from Och-Ziff, while Michael Cohen was in post as Head of European Investing.⁷⁴ However, according to The Sunday Times, Och-Ziff withdrew from the investment in QKR following Cohen’s departure from Och-Ziff.⁷⁵

◎ What the UK authorities did: SFO and the Business Secretary

April 2014
RAID writes to Business Secretary and asks SFO to investigate UK entities

In April 2014, RAID sent a copy of *Och-Ziff, Mugabe's "Bagmen" and the underpricing of African assets* to the Director of the SFO, asking whether grounds existed for an investigation into any UK registered entities identified in the report. At the same time, RAID also wrote to the Business Secretary, asking him whether US investigations into the hedge fund and serious allegations over violations of US and UK sanctions had been considered when choosing Och Ziff as a preferential investor in the privatisation of the UK's national mail service (Royal Mail).⁷⁶

C. The CAMEC transaction

The US authorities confirm that Och-Ziff entered into an April 2008 transaction with DRC Partner for the 'purchase of approximately \$150 million of shares in a publicly traded DRC-focused mining company controlled by DRC Partner ("Company A")'.⁷⁷

The DOJ cites an e-mail from Och-Ziff Employee 3, which refers to the share purchase as the first part of the bribery scheme to consolidate DRC copper mines: '...Och-Ziff would buy \$150 million of new shares to be issued by Company A, controlled by DRC Partner...Och-Ziff Employee 3 wrote that the "[g]ame plan is to eventually merge [the copper and cobalt mine] and Africo into [Company A] for stock and control the company jointly with [DRC Partner].'"⁷⁸ According to the DOJ's Statement of Facts:⁷⁹

Following DRC Partner's negotiations on behalf of Och-Ziff, on or about March 27, 2008, Och-Ziff entered into a supplemental subscription agreement with Company A, as contemplated in Och-Ziff Employee 3's e-mails above, to purchase a total of 150 million shares for a total of approximately \$150 million. The stated purpose of the offering by Company A, to which Och-Ziff subscribed, was to raise capital to fund the company's ongoing mining efforts in the DRC. That same day, on or about March 27, 2008, DRC Partner caused \$11 million to be delivered to DRC Official 2.

Matching parties

- 'DRC Partner' matches Dan Gertler.
- 'Company A' matches Central African Mining and Exploration Company (CAMEC).
- 'Och-Ziff Employee 3' matches Michael Cohen.
- 'Och-Ziff Employee 5' matches Vanja Baros.
- 'DRC Official 2' matches Katumba Mwanke.

⦿ The London connection

At the time of the Och-Ziff share purchase, CAMEC was traded on the UK's Alternative Investment Market (AIM). CAMEC was incorporated in England and Wales on 11 June 2001 as Ableplan plc, changing its name to Central African Mining & Exploration Company on 5 July 2001.⁸⁰ The company's registered office was in London.⁸¹

CAMEC was admitted to AIM in October 2002.⁸² Once set up on AIM, and having cleared admission requirements, CAMEC was then free to bring DRC and Zimbabwean mining assets of dubious provenance to the London market. Indeed, a UN Group of Experts on the DRC, monitoring the arms embargo and sanctions, later reported 'the consequences of insufficient due diligence procedures' in referring to CAMEC's Congolese concessions.⁸³ Such criticism reflects badly upon AIM, London's junior stock market, which had allowed CAMEC to trade and flourish. The Group of Experts named an individual, Billy Rautenbach, 'wanted by the authorities of South Africa for fraud and theft', as a major shareholder in CAMEC.

CAMEC's assets were previously owned by companies belonging to Rautenbach, an ally of Zimbabwe's Mugabe regime, and arms dealer John Bredenkamp. The reputation of both should have resulted in heightened scrutiny of CAMEC's acquisition of DRC mining concessions. A series of United Nations and other reports had repeatedly raised grave concerns about how the struggle to control vast mineral wealth fuelled the war in

the DRC, during which mining assets were allocated to companies and individuals acting as proxies for DRC's allies – in particular, Zimbabwe – in exchange for military support.⁸⁴ Both Rautenbach and Bredenkamp and their associated companies were later placed on European Union and United States sanctions lists. Rautenbach was later convicted of fraud in South Africa.

CAMEC also became the vehicle by which Dan Gertler consolidated his DRC mining assets on the London market. Gertler achieved this consolidation, despite his status as an individual accused by another UN expert panel of exchanging conflict diamonds for money, weapons and military training and allegations of asset stripping and the 'flipping' of cheaply acquired mining assets for vast profit.⁸⁵ The DOJ and SEC in their findings on Och-Ziff detail the instrumental role played by the hedge fund's DRC Partner in acquiring Congolese mining assets through corruption. As noted, a Gertler company has denied allegations of wrongdoing in the Och-Ziff case: see *intra*, p.3.

Further information on: CAMEC and Gertler

[Questions of compliance: The Conduct of the Central African Mining & Exploration Company \(CAMEC\) plc and its Nominated Adviser, Seymour Pierce Limited](#)

On Katanga Mining: pp.14 ff.
On Camrose: pp.19 – 20
On UN Panel: p.36, pp.47 – 52

Gertler's use of London markets: background to the CAMEC transactions

Nikanor

Gertler's use of London markets to launder DRC assets began with another AIM-traded entity, Nikanor plc. Nikanor plc was described as 'the holding company of a Group with copper and cobalt assets in the DRC'.⁸⁶ The company was incorporated and headquartered in the Isle of Man.⁸⁷ On 17 July 2007, Nikanor was admitted to AIM.

In the Nikanor admission document, reference is made to allegations that Dan Gertler 'acquired a temporary monopoly on sales of diamonds from the DRC as a result of improper dealings with the Government of the DRC'.⁸⁸ The Nikanor admission document concludes that: 'These allegations do not relate to the Company [Nikanor], the Group or any of their activities. They concern Mr Gertler in his capacity as a shareholder.'⁸⁹ Yet it is stated under 'risk factors' in the admission document:⁹⁰ '...each of the Major Shareholders will be able to exercise significant influence over all matters requiring shareholder approval, including the election of Directors and significant corporate transactions.' Moreover, there is also a reference to how the group of Nikanor companies with mining assets in the DRC and 'some of the Major Shareholders' have been 'subject to criticism from a number of NGOs' which included lack of transparency in the process by which the assets were awarded, the absence of public tendering and a joint venture agreement 'unreasonably favourable to the Group and that as a result Gécamines [the DRC's state-owned mining company] has not received proper consideration for valuable assets with a resulting detrimental effect on the economy of the DRC'.⁹¹ RAID had been instrumental in making these criticisms, commissioning a review with other NGOs from the law firm Fasken Martineau DuMoulin of, *inter alia*, a joint venture contract in which Nikanor was to gain a 75% holding.⁹² Yet even the consultancy hired by Global Enterprises Corporate Limited (the predecessor company to Nikanor, prior to the listing on AIM) to refute NGO criticism, commented:

The participants in GEC were in a favourable position, through personal contacts in the DRC, to advance their commercial interests...

...

GEC and DCP will have to live with doubts about the legitimacy of the deal arising from the lack of transparency.

Despite the concerns over due diligence at Nikanor's admission, the company and its DRC assets were allowed to join AIM. Yet the SEC Order confirms disquiet by quoting a due diligence report into DRC Partner, commissioned (though not acted upon) by Och-Ziff:⁹³ 'Based on his history and reputation "a number of London based advisors would not act for [a DRC mining company] or associated (sic) with the listing and many fund managers declined" investment deals "due to [DRC Partner's] involvement.'" Clearly, other advisers were found and the London admission went ahead. Nikanor's nominated adviser and broker for its admission to AIM was JP Morgan Cazenove.

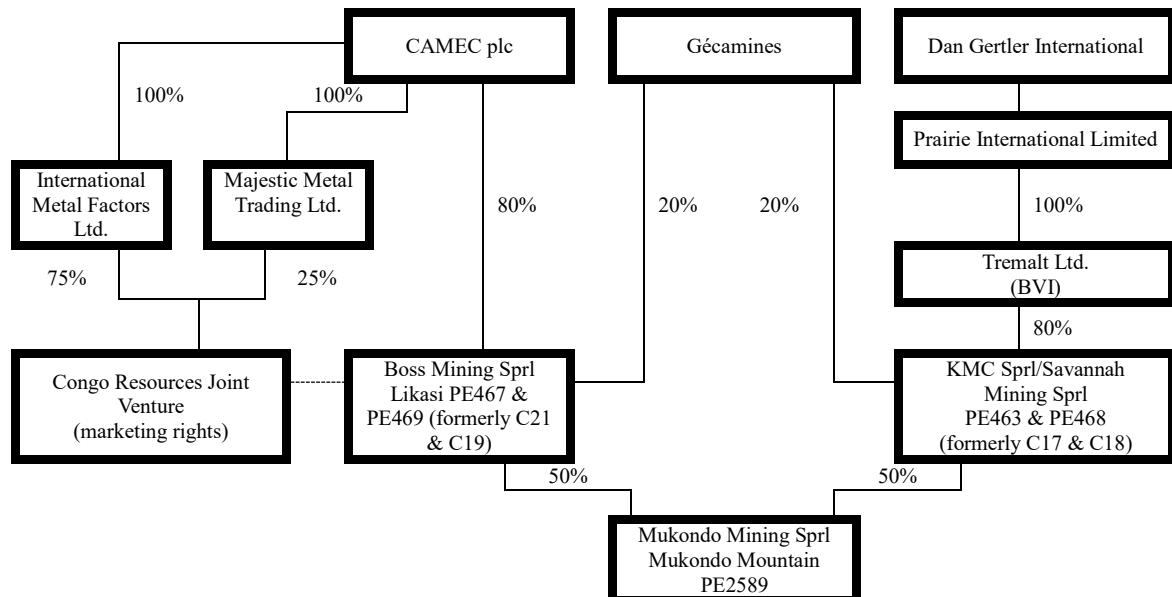
Katanga Mining

Gertler used Nikanor to launch a rival bid to CAMEC for another company with DRC assets, Katanga Mining Limited, in which Gertler had an existing holding via an entity called RP Capital. Gertler had already cut off cash-flow to CAMEC by halting cobalt production at Mukondo Mine, having obtained a half share in the latter via a company called Prairie International. On 29 August 2007, the same day that CAMEC made its formal offer for Katanga, the Congolese Public Prosecutor sought to cancel CAMEC's mining permits and the Mining Registry issued notices to that effect.⁹⁴ Victor Kasongo, the Deputy Mines Minister, is quoted in press reports:⁹⁵ 'Their procedures for obtaining the licence were fraudulent. So the licence was never legitimate, according to the mining code.' Reuters reported that the DRC Government's spokesman in London, Antoine Lokongo, had denied that the revocation had

anything to do with the Katanga bid.⁹⁶

CAMEC's share price fell sharply, curtailing its bid for Katanga, which was to be financed by issuing CAMEC shares. At the time, CAMEC stated that the revocation of its licences 'was clearly timed to impact CAMEC's Offer for Katanga' and was 'motivated by commercial forces in the DRC who oppose CAMEC's acquisition of Katanga'.⁹⁷ CAMEC clearly viewed itself as the victim of the kind of orchestration later referred to by the DOJ, when DRC officials used the domestic courts to take assets and then make these available to the DRC Partner: see *infra* pp.16 ff., on the Africo acquisition.

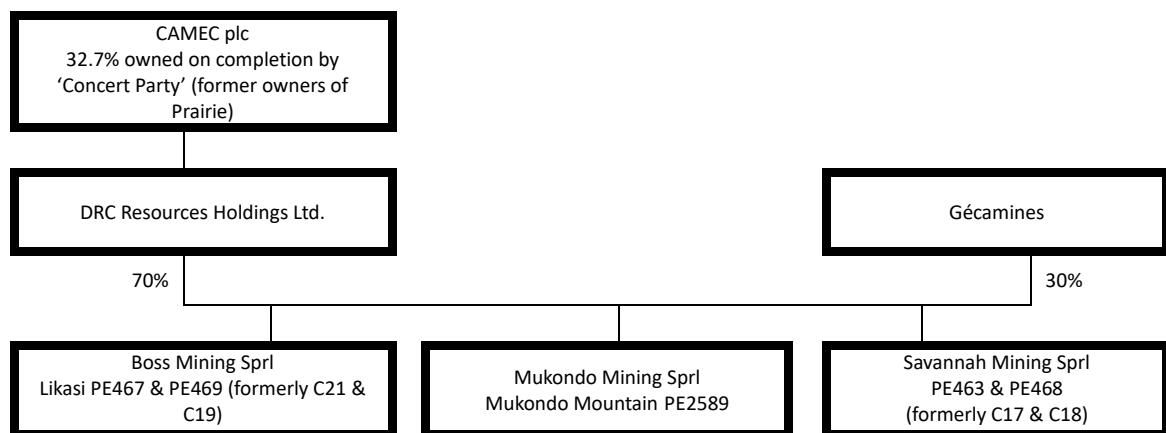
Soon after the failed CAMEC bid, the Katanga board agreed a US\$3.3 billion merger with Nikanor.⁹⁸ Nikanor shareholders approved the deal on 10 January 2008 and Katanga Mining Shareholders did the same on the following day, completing the merger.⁹⁹ Nikanor announced its intention to cancel its AIM admission and the trading of its shares on the market with effect from 11 February 2008.¹⁰⁰ The merged company, retaining the name Katanga Mining Limited, is listed on the Toronto Stock Exchange. Following the merger, Nikanor Shareholders were to hold 60 per cent and Katanga Shareholders 40 per cent of the merged company.¹⁰¹



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

Merger of Prairie International under CAMEC

Having acquired Katanga, Gertler wasted no time in again using AIM to move on CAMEC. The question of the validity or otherwise of CAMEC's licenses was still enmeshed in the Congolese courts, when CAMEC released details in November 2007 of a proposal to resolve the disagreement by establishing a new joint venture with Gertler's Prairie International.¹⁰² On 20 March 2008, the joint venture was duly completed and at the beginning of May 2008, CAMEC sought shareholder approval for the purchase by CAMEC of Prairie's stake in the JVC, DRC Resources Holdings Limited.¹⁰³ The acquisition was approved and completed at a CAMEC general meeting on 29 May 2008, with admission to trading on the following day of the new ordinary shares created by the acquisition.¹⁰⁴ The effect of the agreement between Prairie and CAMEC was the consolidation of the Likasi and Mukondo concessions under CAMEC. Gertler's resultant holding in CAMEC was in the region of 33 percent, at a time when Och-Ziff had already begun to put into effect its planned investment in CAMEC.¹⁰⁵



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

◎ **What the UK authorities did: the London Stock Exchange and AIM**

March 2006 RAID raises concerns over secret deals and beneficial ownership	It was a decade ago that RAID first wrote to the Foreign Secretary about the transfer of Congolese mining assets, without evaluation or public tender, to British Virgin Island-based companies, such as GEC, the predecessor to Nikanor. RAID called upon the British government to 'urgently consider assisting the authorities of the relevant Overseas Territories and Crown Dependencies to investigate trusts and companies...where there are <i>bona fide</i> concerns about the beneficial owner(s) and the directors/officers.'
No response from the FCO	
June 2011 RAID warns AIM about CAMEC	RAID has been raising serious concerns with the UK authorities over CAMEC's DRC transactions for over five years. RAID submitted a highly detailed 162 page complaint in June 2011 to AIM Regulation entitled <i>Questions of compliance: The Conduct of the Central African Mining & Exploration Company (CAMEC) plc and its Nominated Adviser, Seymour Pierce Limited</i> . As part of the submission, RAID drew attention to transactions between CAMEC and companies part-owned or controlled by Gertler. ¹⁰⁶
April 2012 AIM refuses to determine compliance. No action against CAMEC	Although it acknowledged the substantial nature of RAID's submission, AIM refused to enter into a dialogue over the more than 78 compliance issues raised. In December 2011, CAMEC's AIM adviser, Seymour Pierce, was publicly censured and fined, <i>inter alia</i> , for failing: (i) to exercise due skill and care in undertaking pre-admission due diligence; and (ii) to advise an AIM company properly about the need for timely and accurate notifications about its deteriorating financial situation. There is no reference to CAMEC in the disciplinary notice, which takes no account of other equally serious questions of compliance detailed in RAID's submission: the disputed ownership of assets; the absence or incompleteness of accounts; and the conduct and reputation of key managers and business associates, all of which should have been thoroughly scrutinized. AIM refused to confirm whether it had investigated the issues arising out of RAID's submission, claiming that its 'duty of confidentiality' precluded the disclosure of information about any aspect of the process including any outcome, unless it resulted in public censure. ¹⁰⁷
Autumn 2013 RAID warns AIM about the launch of other companies by those who ran CAMEC	RAID has continued to warn the UK government and authorities about other AIM-traded companies with similar provenance. In October and November 2013, RAID asked AIM regulation about how the same directors and executives who ran CAMEC – former England cricketer Philippe Edmunds (chairman), Andrew Groves (managing director and chief executive), and Andrew Burns (chief financial officer) – were allowed to set up a new shell company on AIM, Africa Oilfield Logistics Limited (AOL). ¹⁰⁸ RAID asked whether there was adequate consideration of the suitability and investigation into the background of AOL's directors; if the Exchange had considered whether or not 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. ¹⁰⁹ AIM refused to disclose any information on the admission of AOL, at the same time implying that the prior conduct of a company's directors and the compliance record of companies under their directorship were not of central concern when it came to the admission of AOL. ¹¹⁰ In December 2013, AIM regulation told RAID 'for reasons of confidentiality, we are unable to provide you with further details of any investigations that have either taken place or may be under consideration...', ¹¹¹
December 2013 AIM refuses to discuss due diligence	
2013 RAID submits evidence to parliamentary select committees	Also in 2013, RAID submitted written evidence to the Foreign Affairs Select Committee in its consideration of the Foreign and Commonwealth Office's 2012 report on Human Rights and Democracy. ¹¹² Given that mining assets were traded for military support in DRC's resource-fuelled conflict, RAID's memorandum criticised AIM's lack of due diligence and called for a public determination of compliance or non-compliance in the CAMEC case. In addition, RAID submitted a memorandum on shortcomings in the regulation of AIM to the Business Innovation and Skills (BIS) Select Committee inquiry into the Extractive Industries Sector. ¹¹³

AIM

AIM is the London Stock Exchange (LSE)'s public market for smaller and growing companies, which, according to the Exchange, is designed to allow access to investment capital under a 'balanced' regulatory regime.¹¹⁴ But a former top official at the SEC described AIM as 'a casino' and warned: 'It is a losing proposition to tout lower standards as a way to promote your markets.'¹¹⁵

- Light regulatory touch – admission mostly without a full prospectus and therefore no vetting by UK Listing Authority
- AIM is 'self-regulated', setting and implementing its own rules.
- A key difference between AIM and the Main Market is that the day-to-day regulation of AIM companies is delegated to nominated advisers ('nomads'), which are themselves investment banks, finance firms, or accountants from the private sector. Typically, the same firm will also operate as adviser and broker, which in RAID's view creates a conflict of interest.
- Much less onerous ongoing disclosure requirements compared to the Main Market
- No minimum market capitalisation needed, no requirement of a minimum number of shares in public hands, little or no trading record necessary
- Described by the Exchange as 'the world's most successful growth market' in terms of new admissions and raising new money. A total of over 3600 companies raising almost £99 billion have been admitted since launch.¹¹⁶
- Of the 1000 or so companies currently trading on AIM, about a fifth are international.¹¹⁷
- In 2010, at around the time that the DRC deals had all been concluded, forty per cent of overseas AIM companies were incorporated in Bermuda, the British Virgin Islands (BVI) or the Cayman Islands.¹¹⁸
- AIM was the index of choice for many mining and natural resources companies. Back in 2010, oil and gas producers and mining companies, many with assets in the developing world, made up 35% by market capitalisation of AIM.¹¹⁹

Further information on: AIM's failure to ensure compliance

[Asset Laundering and AIM: Congo, corporate misconduct and the market value of human rights](#)

[Memorandum to the Foreign Affairs Committee](#)

[Outstanding Questions on AIM: Memorandum to the BIS Select Committee](#)

◎ RAID's renewed call for action

- *The Serious Fraud Office* should investigate or continue to investigate all UK entities, UK-based individuals and companies associated with the corrupt transactions identified by the DOJ and SEC: *inter alia*, Central African Mining and Exploration Company (CAMEC), African Management (UK) Limited, Eurasian Natural Resources Corporation (ENRC) (see *intra*, p.22), and their directors and/or key executives and personnel.
- *The Financial Conduct Authority* should, in the light of the US settlement, review the fitness of individuals and entities, referred to in the DOJ and SEC documentation, appearing on the Financial Services Register, including: Och-Ziff Management Europe Limited (reference number: 190662); Daniel Saul Och (reference number: DSO01010). Joel Martin Frank's (reference number JMF01063) registered status is now 'inactive', his history giving an end date of 13 December 2016 for his last controlled functions in respect of Och-Ziff Management Europe Limited.
- *Alternative Investment Market (AIM)*: There should be a public determination of compliance or non-compliance with AIM rules in the CAMEC case. Under 'Jurisdiction', AIM rule 43 states: 'When an AIM company ceases to have a class of securities admitted to trading on AIM, the Exchange retains jurisdiction over the company for the purpose of investigating and taking disciplinary action in relation to breaches or suspected breaches of these rules at a time when that company was an applicant or had a class of securities admitted to trading on AIM.' This rule was introduced in May 2014, after CAMEC ceased to trade on AIM: RAID has written to AIM Regulation to confirm that rule 43 made explicit the Exchange's existing position on jurisdiction.

- AIM rules should be strengthened in order to prevent corruptly obtained assets being laundered on London markets:
- *The London Stock Exchange* should use its formal power under AIM rule 9 – when ‘admission may be detrimental to the orderly operation of AIM or the reputation of AIM’ – to refuse to admit companies to AIM whose directors and/or executives and/or significant shareholders have a dubious reputation or track record or where existing assets are of dubious provenance. Currently, the Exchange instead chooses to exert influence behind closed doors on nomads to withdraw their support for an admission to AIM, which has led to inconsistent and perplexing decisions: in 2000, Oryx Natural Resources, a company exploiting DRC diamonds in a secretive deal between the Congolese and Zimbabwean regimes, was rightly blocked from trading on AIM by this opaque process, whereas CAMEC was able to bring to market Congolese mineral assets with a parallel, disreputable, provenance because it already existed as a company on AIM.¹²⁰
- There needs to be a strengthening under AIM rules of on-going due diligence for all substantial transactions involving assets in conflict-affected or weak governance zones: checks on the validity of titles and licences, the reputation of key managers, business partners and associates and the rigour of accounting practices.
- To avoid a conflict of interest, the same firm should not be able to act as both nomad and broker at admission, so that the gatekeeper function is ring-fenced from the drive to earn commission from a successful flotation.
- The making of all breaches of market rules by AIM nomads public (and naming the adviser concerned); likewise, the publication of all rule breaches by named companies, ending the practice of private sanction.
- *The UK parliament’s Treasury Committee* should hold an inquiry into the reasons why AIM failed to prevent companies controlled by individuals of ill-repute being admitted to AIM over the period in question, allowing them to trade corruptly obtained assets on the London market, while hiding the beneficial ownership of key shareholders.

D. The Camrose transactions

1. Overview

The DOJ refers to ‘a \$124 million convertible loan through a subsidiary company and AGC to Company B, a DRC Partner-controlled shell entity, funded in or about and between April and October 2008 (the “Convertible Loan Agreement”).¹²¹ Under the heading ‘C. Corrupt Takeover of DRC Mining Company’, the SEC Order states:¹²²

Also in April 2008, Och-Ziff caused AGC I to enter into an approximately \$124 million convertible loan with a holding company affiliated with DRC Partner. The stated uses of these funds were threefold: first, to provide DRC Partner with approximately \$15 million to purchase a Congolese entity that had acquired the rights to a valuable mining asset in the DRC (the longstanding asset of a Canadian mining company) through an ex parte default judgment in the DRC that resulted in judicial misconduct proceedings; second, to provide DRC Partner with approximately \$100 million to purchase a majority stake in that Canadian mining company in exchange for resolving its legal issues; and third, to advance an additional \$9 million to be used for future mining operations in the DRC.

Matching parties

- ‘Company B’ matches Camrose Resources Limited.
- ‘DRC Partner’ matches Dan Gertler.
- ‘Congolese entity’ is Akam Mining SPRL (as confirmed by the DOJ).
- ‘Canadian mining company’ is Africo Resources (as confirmed by the DOJ).
- ‘Och-Ziff Employee 3’ or ‘Och-Ziff Employee A’ matches Michael Cohen.
- ‘Och-Ziff Employee 5’ or ‘Och-Ziff Employee B’ matches Vanja Baros.

Camrose is registered and incorporated in the British Virgin Islands.¹²³ Gertler's deals in the DRC are linked to the offshore holding company, Fleurette Properties Limited.¹²⁴ Fleurette, in turn, is the parent company of Camrose Resources Limited.¹²⁵ Camrose amended its Memorandum and Articles of Association in November 2008 to accommodate and grant powers to a company called Vipar Investments, which is affiliated to AML, the Och-Ziff joint venture vehicle. The Och-Ziff US\$124 million loan was channelled to Camrose through Vipar.¹²⁶ The amended memorandum and articles include several references to Vipar and an explicit reference to Africa Management Limited as an affiliate:¹²⁷

“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;...

In respect of the convertible loan transaction, the DOJ's *Statement of Facts* continues:¹²⁸

...Och-Ziff Employee 3 and Och-Ziff Employee 5 were made aware of and participated in the corrupt payments, using funds provided by Och-Ziff to Company B..., that DRC Partner made to various DRC officials to secure mining interests in the DRC.

In relation to the convertible loan agreement, the *SEC Order* confirms:¹²⁹

The transaction gave Och-Ziff control over what assets could be bought or sold by the entity, equity conversion rights into DRC Partner's entity, a pledged interest in the shares of the Congolese entity, and a right to future deals with DRC Partner in the DRC. Moreover, the transaction gave DRC Partner complete discretion over how to use approximately \$24 million of the funds provided by Och-Ziff. Further, Och-Ziff understood this transaction was part of a broader, ongoing partnership with DRC Partner. Finally, both Och-Ziff Employee A and Och-Ziff Employee B knew that DRC Partner was going to use a portion of the funds to pay bribes, and knew that the transaction was structured to accomplish that goal. This knowledge was not shared with others within Och-Ziff or with outside counsel.

Responding in April 2014 to RAID's report *Och-Ziff, Mugabe's “Bagmen” and the underpricing of African assets*, Palladino Holdings stated:¹³⁰

AGC was a joint venture between Palladino and Och Ziff. In 2008 AGC loaned Camrose, through its subsidiary Vipar, \$124m. This loan was used to acquire stock in a publicly traded company Africo, acquire a company called Akam and to provide \$9m in working capital to Kansuki. This loan conveyed no management control or influence over Camrose and was repaid in 2012 along with \$36m interest. This was a commercial loan. The loan was fully secured against the assets it loaned against. AGC had no involvement in, and did not profit from, any future Camrose transactions.

According to the DOJ, in its prosecution of Och-Ziff's OZ Africa subsidiary, describes how a high-ranking officer of Och-Ziff:¹³¹

...signed a draw down notice directing an entity under the management and control of the defendant OZ AFRICA to transfer approximately \$160,077,301.77, which represented the proceeds of the Convertible Loan Agreement to each of “OZ Africa MD,” “OZ Africa ME,” and “OZ Africa SI” funds. These funds were based in the Cayman Islands and under the control of Och-Ziff and the Och-Ziff Hedge Funds.

In total, Och-Ziff received wire transfers of \$342,091,110 from DRC Partner-controlled companies as satisfaction of the outstanding agreements, representing a profit of approximately \$91,181,182.

Eventually, all the assets acquired by Camrose, as detailed below, were to be sold on to an infamous London Stock Exchange-listed mining company (see *intra*, p.19), Eurasian Natural Resources Corporation (ENRC), which is currently under investigation by the UK's Serious Fraud Office (SFO).

2. Adding mining assets to Camrose I: Africo

The US authorities describe how Och-Ziff's DRC Partner went about obtaining assets belonging to a Canadian mining company, identified by the DOJ as Africo Resources Limited.¹³²

Matching parties

- ‘Company B’ matches Camrose Resources Limited.
- ‘DRC Partner’ matches Dan Gertler.
- ‘Och-Ziff Employee 3’ matches Michael Cohen.
- ‘Och-Ziff Employee 5’ matches Vanja Baros.
- ‘DRC Official 2’ matches Katumba Mwanke.

First, Och-Ziff provided DRC Partner with \$15 million to purchase a Congolese company called Akam Mining SPRL, which had obtained a judgement against Africo:¹³³ ‘In fact, DRC Official 2 had orchestrated the taking of Africo’s interest in the DRC Mine and made it available to DRC Partner.’ Reports from the time confirm that the mine in question was the Kalukundi mine and that the entire share capital of Akam had been purchased by Kigala International Limited, an entity which was entirely owned by Gertler’s Camrose.¹³⁴ The DOJ, under the heading ‘Bribes Resolve Africo and Akam Dispute in DRC’, details how Och-Ziff’s DRC Partner paid ‘\$500,000 to DRC officials, including judges, who were involved in the Africo court case to corruptly influence the outcome of those proceedings to the benefit of Och-Ziff and DRC Partner’.¹³⁵ According to the *Statement of Facts*, the DRC Partner, responding to a text message from an associate who was arranging the payments, responded: ‘We can’t accept amid result.. . Africo must be screwd and finished totally!!!!’,¹³⁶

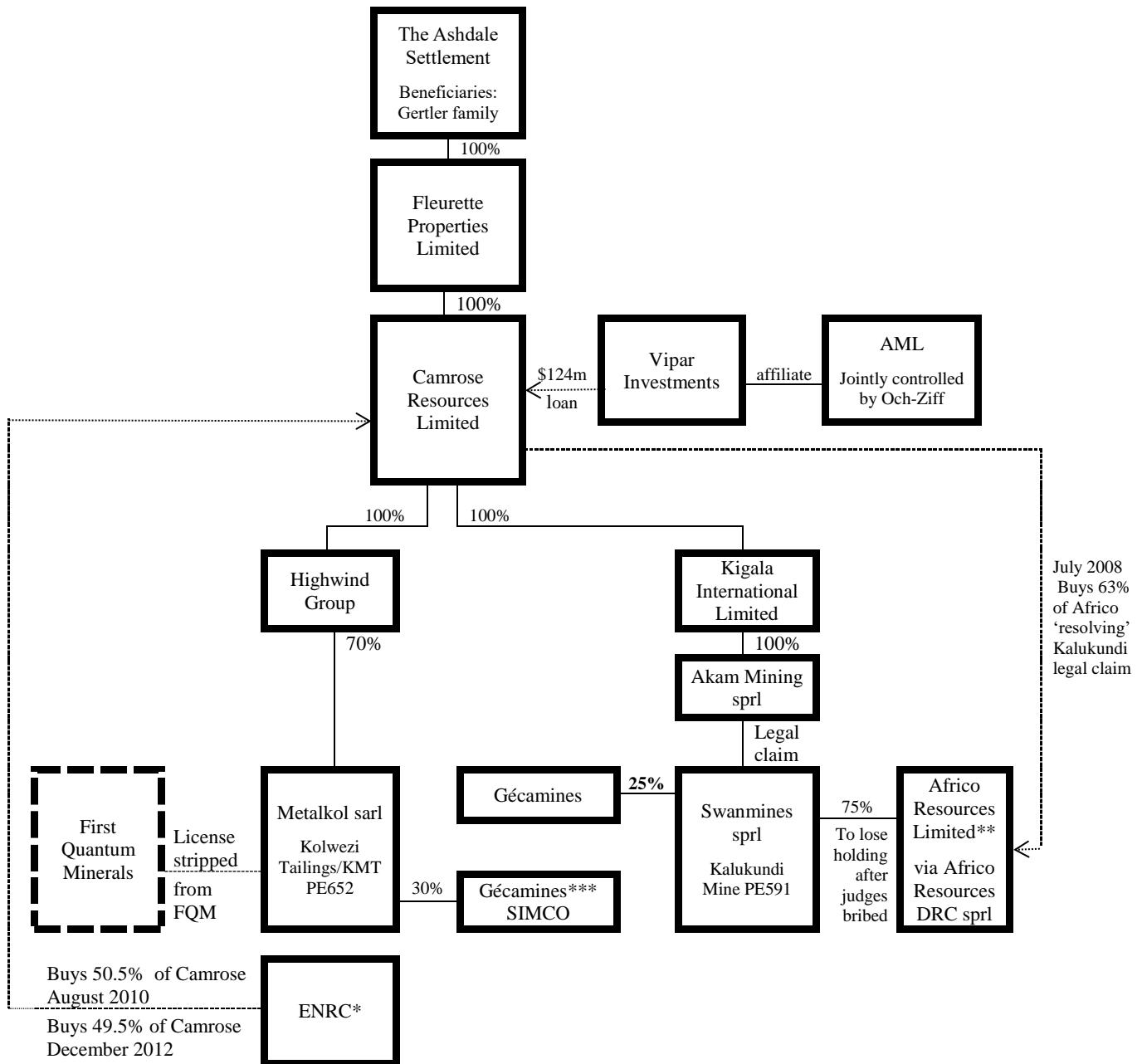
The DOJ statement describes how the DRC Partner was informed on 5 June 2008 by his associate that ‘[lawyer] has met attorney general and the magistrat[e] that has to write the opinion, he also had contact with the 3 judges of supreme court. they got clear instructions to rewrite the opinion and to make sure that akam wins...’.¹³⁷ Africo announced on 12 June 2008 that Camrose’s private placement to purchase the majority of the Africo’s shares had been approved.¹³⁸ Following this approval, ‘[o]n or about June 18, 2008, DRC Partner caused \$2.5 million to be delivered to DRC Official 2 [Katumba Mwanke].’¹³⁹ The Africo placement was completed on 24 July, with the accompanying announcement making reference to Vipar’s loan to Camrose.¹⁴⁰ The US authorities confirm that the second tranche of approximately \$100 million from Och-Ziff, through African Global Capital, was made available to allow Company B to purchase Africo shares and gain control of the latter.¹⁴¹ Moreover, on or about July 24, 2008, Och-Ziff, AGC and DRC Partner amended the Convertible Loan Agreement to provide for a \$9 million third tranche.¹⁴² According to the DOJ, ‘Och-Ziff Employee 3 and Och-Ziff Employee 5 knew that the operating expenses for Company B’s business plan included paying bribes to high-level DRC officials.’¹⁴³

Given the fact that the DOJ and SEC investigations into Och-Ziff’s transactions in the DRC were underway, the Canadian authorities must explain why Africo (see *intra*, note**, p.17) was allowed to delist from the Toronto Stock Exchange and enter into the private ownership of the successor company to ENRC, when the latter is still being investigated by the SFO (see *intra*, p.22). The delisting occurred just a matter of months before the DOJ and SEC action against Och-Ziff under the FCPA.

Further information on: the Africo deal

[Och-Ziff, Mugabe’s “Bagmen” and the underpricing of African assets](#)

On Africo: p.14
On Vipar: pp.12 ff



The Camrose transactions and onward sale to ENRC (simplified)

Notes

*ENRC delisted from the London Stock Exchange on 25 November 2013 and from the Kazakhstan Stock Exchange on 27 December 2013, becoming an entirely private company under the name Eurasian Resources Group (ERG).

**Africo Resources Limited remained listed on the Toronto Stock Exchange until 8 July 2016. In May 2016, Camrose, ERG's wholly owned subsidiary, had proposed an arrangement by which it would purchase all other holdings in Africo.¹⁴⁴ This arrangement was approved by shareholders in July 2016, taking the company into private ownership under ERG.¹⁴⁵

*** On 25 October 2016, *Reuters*, citing *Bloomberg* News, reported that Gécamines/SIMCO had disposed of its stake in Metalkol back in April 2016 to Highwind Properties Ltd, a Eurasian Resources subsidiary. Despite its decreed commitment to transparency, the DRC government did not publish details of the contract (required within 60 days) nor did it disclose the purchase price.

3. Adding assets to Camrose II: Kolwezi Tailing (KMT) and SMKK

According to the DOJ:¹⁴⁶

To attract a buyer for Company B, Och-Ziff Employee 5 worked with DRC Partner to obtain additional assets to inject into or sell alongside Company B, including assets known as Kolwezi Tailings and SMKK. Och-Ziff knew that Kolwezi Tailings had been stripped by the DRC government from a mining company immediately before being obtained by a group of companies controlled by DRC Partner and the DRC government. Och-Ziff also knew that the SMKK asset was the subject of a back-to-back sale that allowed DRC Partner to purchase the asset for \$15 million from the DRC-owned and controlled mining company, La Générale des Carrières et des Mines (“Gécamines”), and immediately resell it to Mining Company 1 for \$75 million even though Mining Company 1 had the right of first refusal to buy that same interest directly from Gécamines.

Matching parties

- ‘Company B’ matches Camrose Resources Limited.
- ‘DRC Partner’ matches Dan Gertler.
- ‘mining company from which the Kolwezi Tailings had been stripped’ is understood to be First Quantum Minerals.
- ‘Mining Company’ is understood to be Eurasian Natural Resources Corporation (ENRC).

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.’¹⁴⁷ The Panel focused on five deals:¹⁴⁸ ‘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.’¹⁴⁹

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 per cent, rising to 980 per cent in one deal.

The latter deal – the Kolwezi project (also known as KMT or the Kolwezi Tailings)¹⁵⁰ – with the highest return on investment, is the same transaction identified by the DOJ.¹⁵¹

The Africa Progress Panel also reported on the SMKK transaction, described as a ‘back-to-back sale’ by the DOJ, detailing how a BVI registered company, Emerald Star Enterprises, made ‘a 400 per cent profit over a four-month period, with a commensurate implied loss of public revenues’.¹⁵² ENRC, in announcing its final results for 2010, reported:¹⁵³

A 50% interest in Société Minière de Kabolela et Kipese Sprl (‘SMKK’) was acquired on 9 November 2009 as part of the CAMEC acquisition....In 2009 the Group acquired an option, for a cash consideration of US\$25 million, to purchase the outstanding 50% of the issued share capital of SMKK by acquiring the entire issued share capital of Emerald Star Enterprises Limited (‘ESEL’), (an entity controlled by the Gertler family trust), the owner of the outstanding 50% of SMKK. The Group exercised this option and the acquisition of ESEL was effectively completed and control obtained by the Group in June 2010. The total cash consideration in respect of the outstanding SMKK shares, inclusive of the US\$25 million option, amounted to US\$75 million.

What ENRC did not report was that it already had the option to buy the remaining stake in SMKK direct from the DRC government and did not have to do so via Emerald. Furthermore, as noted by the DOJ, the price paid

by Emerald for SMKK was \$15 million. Why did ENRC choose to forgo its option and pay Emerald five times the amount for SMKK and who benefitted from the \$60 million in profit?

Further information on: Camrose and KMT

[Questions of compliance: The Conduct of the Central African Mining & Exploration Company \(CAMEC\) plc and its Nominated Adviser, Seymour Pierce Limited](#)

Annex 3, pp.115 – 119

E. The ENRC transactions

1. Cashing in I: the onward sale to ENRC

In May 2014, RAID wrote about Camrose's acquisition of KMT and the onward sale to ENRC:¹⁵⁴

In August 2010, ENRC announced that it had acquired a 50.5% stake in Camrose Resources Limited.¹⁵⁵ 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).¹⁵⁶ 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.¹⁵⁷ 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.¹⁵⁸

The price paid in January 2010 by Highwinds for the concessions was US\$60 million.¹⁵⁹ Just seven months later, ENRC paid almost three times this amount – US\$175 million – for only half of Camrose.¹⁶⁰ ENRC purchased its shares in Camrose from companies which ENRC describes as 'held by the Gertler Family Trust'.¹⁶¹ 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.¹⁶² This debt is the Vipar loan underpinning the Africo acquisition: it is pertinent to recall that Africa Management Limited is an affiliate of Vipar.

Matching parties

- 'Company B' matches Camrose Resources Limited.
- 'DRC Partner' matches Dan Gertler.
- 'Mining company from which the Kolwezi Tailings had been stripped' is understood to be First Quantum Minerals.
- 'Mining Company 1' is understood to be Eurasian Natural Resources Corporation (ENRC).
- 'DRC Official 2' matches Katumba Mwanke.

It is now confirmed by the DOJ:¹⁶³

Throughout the period of DRC Partner's acquisition of Kolwezi Tailings and SMKK, DRC Partner continued to make corrupt payments to DRC Official 2. For example, on or about December 23, 2009, DRC Partner delivered \$1 million to DRC Official 2; on or about January 5, 2010, DRC Partner delivered \$2 million to DRC Official 2.

On or about August 20, 2010, Mining Company 1 acquired 50.5 percent of Company B. Mining Company I agreed to pay up to \$575 million over two years, including \$50 million in cash. Och-Ziff Employee 3 and Och-Ziff Employee 5 were informed by a co-conspirator that the \$50 million was for DRC Partner to "use on the ground" to corruptly acquire Kolwezi Tailings. As part of the deal, Mining Company 1 guaranteed repayment of the Convertible Loan Agreement through a novation of the loan.

Following the novation of the Convertible Loan Agreement, Och-Ziff continued to provide DRC Partner with financing in exchange for deal flow of investment opportunities in the DRC, per their original agreement.

2. Cashing in II: completion of the sale to ENRC

According to the US authorities, Och-Ziff established a new partnership called CML Investments in November 2010, controlled by the hedge fund.¹⁶⁴ A \$110 million margin loan was made, through CML, to Lora Enterprises Limited, described by the DOJ as 'a DRC Partner-controlled company'.¹⁶⁵ The loan was extended by a further \$20 million in February 2011.¹⁶⁶

The DOJ Statement of Facts confirms: '[i]n or about and between November 2010 and February 2011, DRC Partner caused approximately \$20 million in corrupt payments to be made to various DRC officials'.¹⁶⁷ The DOJ provides details of five corrupt payments totalling \$10 million to DRC Official 1 and four corrupt payments of \$2.1 million to DRC Official 2.¹⁶⁸

Matching parties

- 'those holdings'/'DRC mining entities' are understood to be mining assets owned by Camrose Resources Limited.
- 'DRC Partner' matches Dan Gertler.
- 'third-party mining company' is understood to be Eurasian Natural Resources Corporation (ENRC).
- 'Och-Ziff Employee A' matches Michael Cohen.
- 'Och-Ziff Employee B' matches Vanja Baros.
- 'DRC Official 1' matches President Joseph Kabilo.
- 'DRC Official 2' matches Katumba Mwanke.

According to the SEC:¹⁶⁹

Och-Ziff Employee A and Och-Ziff Employee B knew that DRC Partner would use the money provided by Och-Ziff to pay bribes. These bribes were part of his efforts to acquire additional assets and consolidate his DRC holdings in order to sell those holdings to a third-party mining company....

In December 2012, the outstanding loans relating to DRC Partner were repaid to Och-Ziff in full, with interest, as part of a transaction in which DRC Partner sold his DRC mining entities to a third-party mining company.

In May 2014, RAID reported:¹⁷⁰

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.¹⁷¹ This time ENRC paid US\$550 million for the assets.¹⁷² 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 per cent for the offshore companies concerned'.¹⁷³

Further information on: ENRC

[Questions of compliance: The Conduct of the Central African Mining & Exploration Company \(CAMEC\) plc and its Nominated Adviser, Seymour Pierce Limited](#)

pp.18 – 20

[Asset Laundering and AIM: Congo, corporate misconduct and the market value of human rights](#)

Box4, p.6

[Och-Ziff, Mugabe's "Bagmen" and the underpricing of African assets](#)

Vipar loan : p.13
Camrose: pp. 14 ff., p.27

⌚ The London connection

ENRC itself was incorporated and registered in England and Wales on 8 December 2006.¹⁷⁴ The company described itself as ‘a leading diversified natural resources group with fully integrated mining, processing, energy and transport operations.’¹⁷⁵ ENRC listed on the Main Market in December 2007 and was also listed on the Kazakhstan Stock Exchange (KASE).¹⁷⁶ At the time of its listing, it ranked high in the FTSE 100, with a market capitalisation of £14,294 million.¹⁷⁷ However, as noted (*intra*, note*, p.17), ENRC has since delisted from the Main Market, amid a storm of controversy, and is now re-organised as the private Eurasian Resources Group (ERG).

⌚ What the UK authorities did: the London Stock Exchange, Serious Fraud Office, National Crime Agency and Financial Conduct Authority

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.¹⁷⁸ Concerns over the governance of ENRC and other premium listed companies eventually fed through into a strengthening by the Financial Conduct Authority (FCA) of listing rules to enhance shareholder protection.¹⁷⁹ In June 2011, RAID sent a copy of the AIM submission on CAMEC to the SFO and the Financial Services Authority (renamed FCA). In December 2011, it was reported that the SFO had launched an investigation into ENRC.¹⁸⁰ 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.¹⁸¹

First Quantum, the Canadian mining company from whom the KMT assets had been stripped, pursued legal action, leading to a US\$1.25 billion out of court settlement in January 2012.¹⁸²

ENRC also disclosed that the FSA (renamed FCA) 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 per cent. of Camrose (including all ancillary agreements, such as loans etc)...’¹⁸³

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 UK’s Serious Organised Crime Agency (SOCA – since reorganised under the National Crime Agency) 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:¹⁸⁴

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.’¹⁸⁵

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.¹⁸⁶ According to the Dechert letter, the SFO was to be updated on:¹⁸⁷

June 2011
RAID
submits its
report on
CAMEC to
the SFO and
FSA

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.'

April 2013
SFO investigates
ENRC

In the same month, the Serious Fraud Office (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'.¹⁸⁸ Yet ENRC was allowed to delist from the main market in

July 2013
RAID writes to
FCA, SOCA and
the Takeover
Panel. ENRC
allowed to delist

November 2013, despite RAID's concerns – raised with, *inter alia*, the FCA and SOCA – this could assist the company in avoiding regulatory scrutiny and in dissipating the company's assets.¹⁸⁹ RAID had previously provided information to a parliamentary select committee inquiry into the Extractive Industries Sector:¹⁹⁰

There is a permissive pathway by which mines and minerals from zones of conflict and weak governance are transferred to companies trading on AIM who, in turn, through a process of acquisition, transfer these tainted assets to companies in the premium segment of the main market. This process can only be described as asset laundering. Certain of ENRC's Congolese and Zimbabwean assets, at the heart of the SFO criminal investigation, were derived from the acquisition of AIM-traded Central African Mining and Exploration Company Limited (CAMEC), which was allowed to flourish unchecked on the junior market, despite a myriad of compliance issues that have never been addressed by AIM Regulation.

July 2016
SFO secures
more funding

The SFO investigation continues. In July 2016, it was widely reported that the SFO had secured special so-called 'blockbuster' funding to continue its investigation into ENRC.¹⁹¹ In December 2016, *Bloomberg* reported that Dan Gertler is included as part of the SFO's investigation into ENRC.¹⁹² Gertler's Fleurette Group said in response: 'Mr. Gertler has always made it clear that his business dealings in the DRC are entirely proper and appropriate. That remains the case. Beyond that, he is not able to comment on allegedly leaked documents.'

During 2016, the Government announced a number of initiatives. Following the UK Anti-Corruption Summit of May 2016, the Government acknowledged that law enforcement struggles to prosecute 'corporations for money laundering, false accounting, and fraud under existing common laws' and said it would consult on an extension of 'the criminal offence of a corporate 'failing to prevent' beyond bribery and tax evasion to other economic crimes' to complement existing legal and regulatory frameworks.¹⁹³ But this consultation has not yet happened. However, in the context of the Criminal Finances Bill, Members of Parliament have put forward an amendment to the Proceeds of Crime Act 2002, extending the scope of unlawful conduct (set out in s. 7 of the Bribery Act 2010) to cover certain actions connected to a gross human rights abuse which have taken place abroad.¹⁹⁴

May 2013
RAID files
complaint under
OECD
Guidelines

February 2016
ENRC found not
to have met
human rights
obligations

Although not directly related to the nature of ENRC's Congolese transaction *per se*, in May 2013 RAID also filed a complaint under *OECD Guidelines for Multinational Enterprises* against ENRC for the conduct of its DRC subsidiaries, including Africo. In February 2016, the office responsible for implementation of the *Guidelines* in the UK (National Contact Point (NCP), based at the Department for Business, Innovation and Skills), concluded that ENRC 'has not met obligations under the OECD Guidelines', requiring, *inter alia*, preventing the adverse impacts of its business partners.¹⁹⁵ In respect of security risks to water supplies at villages within mining concessions, the NCP found: 'ENRC has not met the obligation to address human rights impacts with which it is involved: part of the general obligation to respect human rights'.¹⁹⁶

◎ **RAID's renewed call for action**

- *The SFO's investigation* of ENRC and other entities must continue to be fully supported by the UK government.
- *The Head of Markets at the FCA* – simultaneously notified of the compliance issues surrounding CAMEC, its nomad and the ENRC takeover – should finally intervene and hold the Exchange to account for its failure to deal with such cases and their legacy.
- *The UK Listing Authority*, in order to send a clear message on zero tolerance for corruption and asset laundering, should establish a quality committee to vet applicants to the main market. Such a committee has been resisted on the grounds that the FCA does not believe its role is to make subjective, qualitative judgements on suitability. However, such an approach means that applicants will continue to be admitted who will subsequently harm London's reputation. Establishing an open and accountable mechanism to block inherently unsuitable applicants would be entirely consistent with the UKLA's overarching power to refuse admission based on potential investor detriment and its objective to maintain market integrity: the London connection, exposed by the findings of the DOJ and SEC, reveal that the controlling shareholders and/or key executives of such companies will act only in vested self-interest when contemplating corrupt transactions.
- *Beneficial ownership*: The UK is the first G20 country to have an on-line public register of beneficial ownership information. It allows anyone to find out who really owns or controls a British company, preventing fraudsters from hiding behind anonymous 'shell companies'. However the current policy of seeking voluntary information exchanges between offshore jurisdictions and UK law enforcement authorities is manifestly not working. It is time to draw back the cloak of secrecy and legislate for all UK-linked offshore territories to establish full public registries of beneficial ownership.
- *Money Laundering*: In an increasingly competitive international marketplace, the UK cannot afford to be seen as a haven for dirty money. The government should extend 'the failure to prevent offence' to money laundering to enhance the scope for criminal sanctions.
- *Human Rights*: Unexplained wealth orders, which will require an individual suspected of serious criminality to explain the origins of their wealth or face civil recovery action, should be extended to people connected to gross human rights abuses.

Part II: ‘Suspicious payments’, sanctions and Zimbabwe

A. *Background to the sanctions question*

Both the DOJ and SEC are concerned with violations of the FCPA and not the enforcement of sanctions. This notwithstanding, both authorities refer to a transaction in Zimbabwe to buy platinum assets concerning a state entity and the Zimbabwean Shareholder, to the diversion of an Och-Ziff loan to a Zimbabwean political party and the use of Och-Ziff’s investment to pay for an arms shipment from China.¹⁹⁷

In the weeks and months following the March 2008 election in Zimbabwe, ZANU-PF’s Robert Mugabe retained the presidency after a campaign of horrific brutality against opposition Movement for Democratic Change (MDC) supporters. Up to 200 people were killed, 5,000 more were beaten and tortured, and 36,000 people were displaced. According to media reports and senior MDC officials, the violence was financed by money originating with Och-Ziff and channelled to the Mugabe government via a loan as part of the 11 April 2008 platinum deal concluded with CAMEC. The US\$100 million loan changed Zimbabwe’s future by thwarting progress towards democracy. The money was transferred despite the existence of EU and US sanctions.

It is for the US Treasury’s Office of Foreign Assets Control (OFAC) to determine compliance or non-compliance with US sanctions against Zimbabwe, in force at the time of the Zimbabwe transaction, and which listed key members of the Mugabe/ZANU-PF regime as Specially Designated Nationals (SDNs). Moreover, the state entity involved in the Zimbabwe transaction (the Zimbabwe Mining Development Corporation (‘ZMDC)) was added to the sanctions list in July 2008 and the Zimbabwean Shareholder (Rautenbach) a few months later in November 2008, throughout which time Och-Ziff remained invested in the venture.

US sanctions against Zimbabwe

Targeted US financial sanctions against Zimbabwe were first imposed in 2003, renewed in 2005 and further extended in July 2008.¹⁹⁸ Executive Order 13391 of 22 November 2005 was in force when Och-Ziff made its investment in CAMEC and when the investment was used to purchase the Zimbabwean platinum assets, including a loan to the Zimbabwean government. The Executive Order¹⁹⁹

prohibits U.S. persons, wherever located, or anyone in the United States from engaging in any transactions with any person, entity or organization found to: 1.) be undermining democratic institutions and processes in Zimbabwe; 2.) have materially assisted, sponsored, or provided financial, material, or technological support to these entities; 3.) be or have been an immediate family member of a sanctions target; or 4.) be owned, controlled or acting on behalf of a sanctions target. Persons, entities and organizations referenced in Annex A of the Executive Order are all incorporated into OFAC’s list of Specially Designated Nationals (SDNs). Prohibited transactions include, but are not limited to, exports (direct and indirect), imports (direct and indirect), trade brokering, financing and facilitation, as well as most financial transactions. Attempts to evade or avoid these sanctions are also prohibited. These prohibitions also extend to any person, organization or entity found to be owned, controlled or acting on behalf of any Zimbabwe entity included on the SDN list.

ZMDC was added to the SDN list on 25 July 2008 ‘[i]n light of the continued intransigence of the brutal Mugabe regime’. It remains on the SDN list.

On 25 November 2008, Muller Conrad (aka ‘Billy’) Rautenbach was designated as providing financial and other support to the Government of Zimbabwe and Zimbabwean SDNs. He was described by OFAC as a ‘Mugabe regime crony,’ providing financial and logistical support for ‘large-scale mining projects in Zimbabwe that benefit a small number of corrupt senior Officials’ and that ‘has enabled Robert Mugabe to pursue policies that seriously undermine democratic processes and institutions in Zimbabwe’.²⁰⁰

Rautenbach was removed from the US SDN list in April 2014.²⁰¹

This part of RAID’s report examines statements made in the DOJ deferred prosecution agreement and *SEC Order* and the extent to which they corroborate what is already known, from other sources, about those transactions that engage sanctions:

- that the Och-Ziff loan was used to buy platinum assets in Zimbabwe;
- that proceeds from the Och-Ziff loan went to the Zimbabwean government;
- that the Och-Ziff loan was used to pay for an arms shipment;
- inconsistencies over when and what Och-Ziff knew about the Zimbabwean platinum deal.

It is not only for OFAC to determine compliance with US sanctions, but also for the UK authorities to determine compliance with EU sanctions, given the leading role played by UK-based entities in the transactions.

Mugabe and his key allies in the government, ZANU-PF, and the military, were all on EU and US sanctions lists at the time CAMEC transferred \$100 million from Och-Ziff's investment to the Zimbabwean regime as part of its acquisition of the platinum assets. Operation Makavhoterapapi ('Where Did You Put Your Vote?'), the Mugabe regime's violent crack-down to subvert the election, was planned and orchestrated by the government's Joint Operations Command (JOC), eight members of which, in addition to Mugabe, were already designated sanctions targets at the time of the platinum deal (see Annex 2).

EU sanctions against Zimbabwe

In 2002, the Council of the European Union adopted a Common Position and imposed a prohibition on the supply of arms, technical training and equipment for internal repression and a travel ban and freezing of funds for 'the Government of Zimbabwe and persons who bear a wide responsibility for serious violations of human rights and of the freedom of opinion, of association and of peaceful assembly'.²⁰² EU sanctions have been updated and implemented through successive Council Regulations. In respect of the Zimbabwean platinum transaction, Council Regulation (EC) No 314/2004 of 19 February 2004, implementing restrictive measures in respect of Zimbabwe, is the most pertinent.²⁰³ As in the US, the EU maintains a list of sanctions targets.

In a subsequent extension and update to EU sanctions on 26 January 2009, Rautenbach, together with his company, Ridgepoint Overseas Developments Ltd, as well as ZMDC, were added to the list.²⁰⁴ Muller Conrad (aka 'Billy') Rautenbach is described thus:

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

Rautenbach was removed from the EU sanctions list in February 2012.²⁰⁵ ZMDC was removed from the list in September 2013.²⁰⁶

A key question is whether the UK authorities, far from preventing the platinum mine purchase or the later sale of shares controlled by sanctions targets, actually approved or licenced the transactions.

Through a Freedom of Information Act (FOIA) request, RAID has sought to find out what the UK government knew about the deal, what action it took under the sanctions regime, and how it subsequently licensed the release of funds to benefit persons on the sanctions list. The Treasury has refused to disclose information, relying on an exemption under FOIA applied to the EU regulation implementing sanctions, which RAID has sought to challenge in the courts.

B. Confirmation the Och-Ziff loan was used to buy platinum assets in Zimbabwe

The SEC Order states:²⁰⁷

Within days of the investment, the mining company publicly announced that it had acquired an interest in a platinum asset in Zimbabwe. This was inconsistent with Och Ziff's understanding that money would be used for existing DRC mining operations. The Zimbabwean government had recently seized the platinum asset from another mining entity and then resold it to a holding company affiliated with the Zimbabwe Shareholder and the Zimbabwe state owned mining company. The Zimbabwe Shareholder then transferred the holding company to the DRC-based mining company in exchange for additional shares in the mining company. The same announcement also noted that the mining company had agreed to loan \$100 million to the holding company following the acquisition.

Matching parties

- 'the mining company' matches Central African Mining and Exploration Company (CAMEC).
- 'platinum asset in Zimbabwe' is understood to be Todai Mining (Private) Limited, owner of the Bougai and Kironde claims.
- 'another mining entity' from which the asset had been seized is understood to be Anglo American Platinum Ltd.
- 'holding company affiliated with the Zimbabwe Shareholder' is understood to be Lefever Finance Ltd.
- 'the Zimbabwe Shareholder' matches Billy Rautenbach.
- 'the Zimbabwe state-owned mining company' is understood to be the Zimbabwe Mining Development Corporation ('ZMDC').

The *SEC Order* therefore confirms the same events that RAID described in its July 2013 account of the Zimbabwean platinum transaction:²⁰⁸

On 11 April 2008, CAMEC announced the acquisition of an interest in platinum mining assets in Zimbabwe via its acquisition of 100% of Lefever Finance Ltd, registered in the British Virgin Islands.²⁰⁹ Lefever owned 60% of Todal Mining (Private) Limited, a Zimbabwean company, which held the rights to the Bougai and Kironde claims south west of the city of Gweru in Zimbabwe.²¹⁰ The remaining 40% of Todal was held by the Zimbabwe Mining Development Corporation ('ZMDC'), wholly owned by the Government of Zimbabwe.

...

The consideration paid for Lefever was a cash payment of US\$5 million and the issue of 215,000,000 new CAMEC ordinary shares. CAMEC's announcement of the acquisition stated:²¹¹ 'Furthermore, CAMEC has agreed to advance to Lefever an amount of US\$100 million by way of loan to enable Lefever to comply with its contractual obligations to the Government of the Republic of Zimbabwe. Repayment to Lefever is to be made from the ZMDC's share of dividends from Todal.'

C. Confirmation proceeds from the Och-Ziff loan went to the Zimbabwean government

According to the DOJ, under 'Och-Ziff Learns of Allegations of Serious Misconduct Involving Company A...':²¹²

On or about June 13, 2008, Och-Ziff Employee 3 and Och-Ziff Employee 5 learned of allegations that a significant portion of the money that had been invested in Company A through the April 2008 private placement may have been diverted from a mining investment to a political party in Zimbabwe.

Matching parties

- 'the mining company'/'Company A' is understood to be Central African Mining and Exploration Company (CAMEC).
- 'Och-Ziff Employee 3' or 'Och-Ziff Employee A' matches Michael Cohen.
- 'Och-Ziff Employee 5' or 'Och-Ziff Employee B' matches Vanja Baros.
- 'a political party in Zimbabwe' is understood to be ZANU-PF.

Under the heading 'Suspicious Payments in Zimbabwe', the SEC states:²¹³

Och-Ziff was aware of subsequent press reports, denied by the mining company, alleging that the proceeds of that loan were diverted to a political party in Zimbabwe.

Putting aside for a moment the matter of when Och-Ziff employees knew that investment money had been diverted, the US authorities, by referring to the recipient as a political party in Zimbabwe, add credence to the considerable weight of published material, including releases and statements from CAMEC at the time, that confirm the loan did go to the Zimbabwean government (which was synonymous with the Mugabe regime and the ruling ZANU-PF party):

- According to the company's own 11 April news release announcing the Zimbabwean platinum deal, CAMEC advanced the \$100 million loan to Lefever to enable it 'to comply with its contractual obligations **to the Government of the Republic of Zimbabwe** [emphasis added].'
- CAMEC, through a spokesperson and its chief executive, have confirmed that the loan was used by the Zimbabwean government. An article in *The Telegraph* on 15 June 2008 quoted a spokesman from CAMEC on the matter of the \$100m loan:²¹⁴

Drawdown of this loan was affected by payments to a series of mainly international creditors for a variety of commodities primarily for seeds, grain, fertilizer and fuel.

- Andrew Groves, CAMEC's chief executive, later stated:²¹⁵ ‘The \$100m loan provided was used to pay off Zimbabwe's external creditors.’
- An unnamed senior shareholder told *The Telegraph* that the issue of the use of payments from the platinum rights had been raised with Groves and others in the company:

Some payments were apparently made to creditors of the Zimbabwe government but these payments, they say, were 'hand picked' and totally legitimate.

Yet, writing in September 2013, Och-Ziff stated ‘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.’²¹⁶

There are three points of note: (i) confirmation that the loan went to, and was used by, the Zimbabwean government with CAMEC's knowledge; (ii) CAMEC's careful emphasis on the use of the funds to pay external creditors, whereas other sources indicate that the money was used to fund ZANU-PF's campaign of violence within Zimbabwe/the purchase of arms from China (see below); (iii) that this confirmation of the use of the loan by the Zimbabwe government regime was in the public domain and knowledge of this was available to Och-Ziff, who took no action in relation to the loan and did not notify the US authorities.

D. Proceeds of the platinum deal used to pay for arms

According to the *SEC Order*:²¹⁷

In June 2008, Och-Ziff Employee A forwarded to Och-Ziff Employee B a text message from the CEO of AML which said that the mining company Och-Ziff had just invested in had “paid 4 arms into zim[babwe], and rented boat from china. Journo has bank transfers, apparently [sic].”

The DOJ refers to the same message, attributing the payment for arms to Company A [CAMEC].²¹⁸

The *SEC Order* and the DOJ Statement of Facts give credence to reports at the time linking the Zimbabwe platinum deal to the purchase of arms. In its July 2013 report, RAID wrote:²¹⁹

Shortly after CAMEC's acquisition of the Todal platinum assets, in the second week of April 2008, a Chinese ship An Yue Jiang was at anchor waiting to dock at Durban, South Africa.²²⁰ Dockers represented by the South African Transport and Allied Workers Union (SATAWU) refused to unload or transport the shipment. A High Court order blocking transfer of the shipment through South Africa was obtained:²²¹ the bill of lading and other documents detailed a cargo of 77 tons of bullets, rocket-propelled grenades, and mortars bound for Zimbabwe.²²²

The June 2008 article in *The Telegraph*, in discussing the Zimbabwean platinum deal, as concluded by CAMEC and its chairman, Philippe Edmonds, referred to the use of the consideration and \$100 million loan as payment for the platinum assets to pay for arms:²²³

Edmonds is facing criticism over the decision by his company to strike a lucrative business deal with a state-run company in Zimbabwe and for his willingness to cosy up to Mugabe's government. In particular, critics...question whether part of the \$120m (£60m) payment that Camec made earlier this year for platinum rights in Zimbabwe - and a further \$100m loan - have been used to pay for a massive arms cache from China: semi-automatic rifles, guns and bullets that may soon be used against Zimbabwe's impoverished population if the situation turns ugly in the run-up to the new presidential elections on June 27.

A shareholder confirmed to the newspaper ‘very heated conversations over the past two or three months between Andrew Groves and some of his shareholders...We are aware of the allegations that some of the payments for the platinum rights somehow found their way to being used for the Chinese arms payment.’²²⁴ According to the shareholder, Groves and others ‘vehemently deny that there were any direct payments to the Chinese’.

CAMEC said that ‘None of the drawdown payments [on the loan], so far as Camec knows, had anything to do with the acquisition of arms’ and denied that the company had been contacted by shareholders expressing concern about recent investment in Zimbabwe.²²⁵

Amidst mounting international pressure, US Assistant Secretary of State Jendayi Frazer called upon both the regional governments and China to prevent the weapons transfer.²²⁶ On 22 April, the Chinese government announced that the ship would return to China. The An Yue Jiang docked in Angola to take on fuel and unload construction supplies, but was reportedly denied permission to unload its Zimbabwe cargo.

However, although the arms shipment was believed at the time to have been returned to China, *The Telegraph* quotes intelligence sources saying that it was secretly unloaded at Luanda, the Angolan capital and Brazzaville, the capital of the Republic of the Congo.²²⁷ A commercial carrier is then believed to have flown the two arms shipments to Harare. According to the International Peace Information Service (IPIS), in August 2008, 53 tons of the ammunition was allegedly flown from the DRC to Harare by Enterprise World Airways, aboard a Boeing 707-3B4C aircraft registered as 9Q-CRM.²²⁸ An employee of the state-owned Zimbabwe Defence Industry (ZDI) in Harare told IPIS that the shipment had arrived in Zimbabwe.

Further information on: the Zimbabwean platinum deal

[*Sanctions, violence, pensions and Zimbabwe: A New York hedge fund, a London-traded mining company and the stealing of an election?*](#)

E. Inconsistencies over when and what Och-Ziff knew about the Zimbabwean platinum deal

There are two significant questions: firstly, what did Och-Ziff know about CAMEC’s intended purchase of the Zimbabwe platinum assets *before* the deal occurred? Secondly, what did Och-Ziff do *after* it became apparent that the deal had been done, that part of its investment had gone to the Zimbabwean government (the Mugabe regime), that funds had been used to buy arms, and that the Mugabe government had orchestrated a campaign of electoral violence?

1. Knowledge prior to the purchase of the Zimbabwean assets

The SEC, after stating that the announcement of the acquisition of the platinum assets had occurred ‘within days’ of Och-Ziff’s investment, adds:²²⁹ ‘This was inconsistent with Och Ziff’s understanding that money would be used for existing DRC mining operations.’

However, elsewhere the SEC confirms:²³⁰

Och-Ziff Employee B travelled to Zimbabwe and the DRC in March 2008 and met Zimbabwe Shareholder **prior** [emphasis added] to the transaction, purportedly to assess the company’s assets and infrastructure. After this trip, Och-Ziff negotiated a lower share price and then doubled its investment in this company to a total of \$150 million.

Matching parties

- ‘the company’ is understood to be Central African Mining and Exploration Company.
- ‘Och-Ziff Employee B’ matches Vanja Baros.
- ‘Zimbabwe Shareholder’ matches Billy Rautenbach.

Given that this meeting between an Och-Ziff employee occurred just a matter of weeks before the Zimbabwean platinum deal was concluded; that it occurred in Zimbabwe between Och-Ziff and Rautenbach; that it concerned CAMEC’s assets; that it was Rautenbach’s holding company that a few weeks later sold its interest in Zimbabwean platinum assets to CAMEC; that the SEC confirms that the Och-Ziff’s investment in

CAMEC occurred 'within days' of the announcement of the Zimbabwean transaction; **is it really credible that Och-Ziff knew nothing about the Zimbabwe platinum deal in advance?**

Billy Rautenbach is not named by the US authorities in their action against Och-Ziff and its OZ Africa subsidiary. No charges have been brought against Billy Rautenbach by the US authorities.

Och-Ziff's reply to CalPERS and disclosure in a US court case

Back in July 2013, RAID wrote to the California state pension fund (CalPERS) about its investments via Och-Ziff, given concerns over the latter's investments in Zimbabwe. To its credit, CalPERS raised these concerns with Och-Ziff. Och-Ziff told CalPERS that CAMEC had stated that the proceeds from the placement 'were to be used to fund existing company assets and operations in Democratic Republic of Congo'.²³¹ 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 statements at the time of the placement already refer to 'further discussions with the placees 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].²³² 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.

As part of an ongoing US court case (Funnekotter et al. v. Republic of Zimbabwe), Och-Ziff has been subpoenaed as a non-party to produce specified information on its dealings with CAMEC. Och-Ziff acknowledges 'the relative size of its investment in CAMEC'. It is surely inconceivable that Och-Ziff would invest the amount of money it did in CAMEC (\$150 million) – and after it had met CAMEC's Zimbabwean Shareholder [Rautenbach] – without knowing more about the company, its ownership and its plans. In the court case, 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** [emphasis added]. [[Extract from letter to the judge from Counsel for the plaintiffs, seeking the production of documents²³³]

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-Ziff²³⁴]

Under the subpoena, Och-Ziff has produced 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'.²³⁵ 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'.²³⁶ 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.²³⁷

The documents produced by Och-Ziff remain confidential under the terms of a protective order.²³⁸ Counsel for the plaintiffs have 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).²³⁹ The OFAC documents and information are also covered by a protective order requiring confidentiality.²⁴⁰

2. Knowledge after the purchase of the Zimbabwean platinum assets

Och-Ziff 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'. Och-Ziff, however, held onto its CAMEC shares into 2009, selling its remaining holding only when ENRC acquired CAMEC in November of that year.

It is pertinent to briefly set out the timeline of when Och-Ziff knew about events connected to the Zimbabwean platinum deal:

The SEC confirms what is in any case obvious, that Och-Ziff indisputably knew that its investment had been used by CAMEC to purchase the Zimbabwean platinum assets. If Och-Ziff 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?

Moreover, Och-Ziff knew – because CAMEC confirmed this in its announcement of the deal – that a loan had been made to the Zimbabwean government (the Mugabe regime).

13 June 2008 ('on or about') The SEC and DOJ confirm that Och-Ziff Employee 3 and Och-Ziff Employee 5 knew of the allegation that the private placement may have been diverted a political party in Zimbabwe and had been used to pay for an arms shipment from China. But according to the DOJ (and the SEC, in similar terms):²⁴¹ 'Neither Och-Ziff Employee 3 nor Och-Ziff Employee 5 reported this matter to Och-Ziff's legal and compliance employees nor undertook efforts to determine whether the funds had been used as described in the message.'

22 July 2008 An exchange of letters concerning disclosure by Och-Ziff in the US court case 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.²⁴² The spreadsheet, with details of CAMEC's operations, is named 'CAMEC_VB_20080722.xls' and was circulated to and forwarded by <vanja.baros@ozcap.com>.²⁴³ According to counsel, 'The "VB" in the title appears to be a reference to Vanja Barros [sic].'²⁴⁴ The spreadsheet refers to 'Platinum (Zim)' and also to 'Meryweather (BR)', an apparent reference to Billy Rautenbach, who has been associated with Meryweather.

Counsel for the plaintiffs, in a letter to the judge, state:²⁴⁵

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.

25 July 2008 CAMEC's ZMDC partner in the platinum venture was designated on the US sanctions list.

4 August 2008 The spreadsheet was circulated – ten days **after** ZMDC's designation – by Vanja Baros [Och Ziff Employee 5] and also contains the letters 'VB' in its title.²⁴⁶ 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.²⁴⁷

25 November 2008 Rautenbach was designated on the US sanctions list. **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 and a major CAMEC shareholder.**

November 2009 Och-Ziff sells its shares in CAMEC to ENRC.

Further information on: Och-Ziff and 'Mugabe's bagmen'

[Och-Ziff, Mugabe's "Bagmen" and the underpricing of African assets](#)

◎ RAID's renewed call for action

- OFAC must 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: the nature of Och-Ziff's due diligence; inconsistencies over when and what Och-Ziff knew about the CAMEC deal to buy platinum assets from the Mugabe regime in Zimbabwe; the extent to which it knew, or should have known, that it was providing funds whose ultimate beneficiary was the Mugabe regime and SDNs; the purpose, timing and sequencing of its investment; whether it had information that should have been passed on to OFAC.

F. Did the UK authorities fail to stop or even approve the Zimbabwe platinum deal?

It was precisely because of 'the violence organised and committed by the Zimbabwean authorities during the presidential election campaign in 2008, which turned the election into a denial of Democracy' that the EU further extended sanctions in July 2008.²⁴⁸ Yet ZMDC and Rautenbach were not designated under the EU sanctions regime until 27 January 2009.

However, the belated extension of EU sanctions to the latter, does not mean that the platinum deal fell outside of the sanctions regime: there is clear evidence that the advance from CAMEC to Lefever was to be made available to the Government of the Republic of Zimbabwe and; that the government of Zimbabwe was synonymous with the Mugabe/ZANU-PF regime, comprising existing sanctions targets. The use of the CAMEC loan to finance the crack-down on the political opposition (Operation Makavhoterapapi) directly benefitted high-ranking members of the Joint Operations Committee (JOC), which took control of the state security apparatus in order to ensure the re-election of Mugabe so that the vested interests of the Committee's own members could be protected whilst a ZANU-PF-led regime remained in power.²⁴⁹ Moreover, the majority of the JOC were on the EU (and US) sanctions list(s) *prior* to CAMEC's acquisition of the platinum assets (see *intra*, Annex 2).²⁵⁰

Condemnation of the Mugabe government's orchestration of the violence

US Ambassador McGee condemned the 'systematic campaign of violence designed to block this vote for change...orchestrated at the highest levels of the ruling party'.²⁵¹ Ambassador McGee confirmed that a diplomatic convoy had seen evidence of violence of a 'massive' scope, including proof that civilians had been interrogated at a torture camp. A State Department spokesman linked Mugabe to the campaign of violence, urging him to 'call off his dogs'.²⁵² The US administration repeatedly criticised the failure of the ruling party in Zimbabwe to accept and announce the results of the election, accusing Mugabe of trying to steal the election.²⁵³ The UN High Commissioner for Human Rights, Louise Arbour, attributed serious human rights violations 'to groups linked to the ruling ZANU PF'.²⁵⁴ Arbour called on the Government of Zimbabwe and its legitimate security forces 'to discharge their lawful responsibilities...and ensure the protection of all Zimbabweans, irrespective of whom they do or do not support politically'.²⁵⁵ Human Rights Watch confirmed the role of government 'at national and local levels' in the systematic and methodical targeting of MDC supporters, with the top leadership of the security forces 'aligned to President Robert Mugabe and ZANU-PF'.²⁵⁶

⦿ The London connection

It is important to emphasise that the Zimbabwe platinum deal was instigated and concluded by CAMEC, a UK-registered and London-traded company, falling squarely with the UK's jurisdiction.

◎ What the UK authorities did: HM Treasury and the National Crime Agency

RAID has sought to find out how this financial transfer by CAMEC could have occurred, given the existence of EU sanctions against the Mugabe regime. RAID asked the Treasury:

- whether CAMEC, at the time of the Zimbabwean platinum transaction, had notified or had sought advice from the Treasury before proceeding with the Zimbabwean platinum transaction;
- whether CAMEC's proposed acquisition complied with the sanctions then in force;
- or whether licences or other permissions under the sanctions regime to allow the transaction and loan had been sought or granted.

July 2011
RAID warns Treasury over sanctions violations

Questions seeking this and other information (see *intra*, pp.36 – 37) were first put to HM Treasury in a memorandum sent, with a covering letter, by RAID to the Treasury on 6 July 2011. RAID prompted for a reply in November 2011. Later, a copy of RAID’s report *Asset laundering and AIM*, published the previous week, was sent to the Treasury on 27 July 2012. The letter accompanying this report drew the Treasury’s attention to the questions seeking information from the department on the Zimbabwe sanctions regime, which were re-stated in the public report.

December 2012
Treasury refuses to answer

It was not until 3 December 2012, almost a year and a half later, that the Treasury finally responded to RAID’s original July 2011 memorandum and July 2012 public report. It refused to answer RAID’s specific questions on the Zimbabwe sanctions regime.

July 2013
RAID writes to Ministers

RAID sent letters in July 2013 to both the Chancellor and Foreign Secretary, ‘calling on the British authorities to scrutinize CAMEC’s conduct in order to determine whether the Todol-related transaction was in compliance with sanctions’, and enclosing a letter and further information on the Zimbabwe platinum deal submitted to the Treasury’s Asset Freezing Unit (AFU).

September 2013
RAID seeks law enforcement

In September 2013, RAID again wrote to the Treasury asking for an update ‘on whether the Treasury has investigated this matter and whether any action will be taken under as a result’. Another nine months elapsed before RAID received a reply (undated) in June 2014 from the Treasury’s Financial Sanctions Unit advising: ‘HM Treasury has referred RAID’s concerns to the relevant law enforcement agencies’, referring to the National Crime Agency as responsible for assisting HM Treasury in enforcing the sanctions regime. RAID immediately responded to clarify what information had been provided on what dates to the relevant law enforcement agencies. RAID never received a reply from the Treasury; nor have we ever been contacted by the NCA.

June 2014
Treasury referral to NCA, but no action taken

The UK authorities have never confirmed that any proper investigation has taken place into CAMEC’s Zimbabwe platinum deal. HM Treasury is refusing to confirm or deny whether or not it gave tacit approval for the transaction. However, what is certain is that CAMEC has never been charged with violating sanctions or with any other offence.

Further information on: Sanctions against Zimbabwe: CAMEC, Rautenbach and ENRC

[Memorandum to HM Treasury, Asset Freezing Unit](#)

G. Sanctions targets cash in on the eventual sale of the DRC mining assets

CAMEC acquired its interest in the Zimbabwe platinum assets via its purchase of 100% of Lever Finance Ltd. CAMEC identified the seller of the shares in Lefever as Meryweather Investments Limited, which ‘will on completion of the transaction hold a 13.07% interest in the enlarged share capital of CAMEC’, but was not identifying Meryweather’s owners.²⁵⁷

There is a further important detail in the *SEC Order*, which must not be overlooked: that the platinum assets were resold ‘to a holding company affiliated with the Zimbabwe Shareholder’ and that ‘[t]he Zimbabwe Shareholder then transferred the holding company to the DRC-based mining company in exchange for additional shares in the mining company.’²⁵⁸ Given that the Zimbabwe Shareholder must be Billy Rautenbach, the US authorities have confirmed an affiliation between Rautenbach and the companies concerned; in other words, an affiliation between Rautenbach, Lefever and Meryweather.

The reason the link between Rautenbach, Lefever, and ultimately Meryweather matters is because of the later acquisition of CAMEC by London main market-listed ENRC. By the time ENRC set out its offer document for CAMEC shares, Rautenbach was designated on both US and European sanctions lists. ENRC confirmed that it would be buying Meryweather’s shares and RAID has long suspected that this sale benefitted Rautenbach.

Council Regulation (EC) No 314/2004 implementing restrictive measures in respect of Zimbabwe is enforced under UK legislation by The Zimbabwe (Financial Sanctions) Regulations 2009 (SI 2009/847) and the Treasury is responsible for issuing or refusing licences to allow transactions concerning persons or entities on the sanctions list. There are two aspects to this licensing: (1) The buying and selling of shares: at the time of both his addition to the EU sanctions list and at the time of CAMEC's acquisition by ENRC, Rautenbach held shares indirectly in CAMEC, which he had received as part of the consideration when he had sold companies to the latter. Shares fall within the definition of funds under the Zimbabwe financial sanctions regime and therefore any shares held by a designated person shall be frozen.²⁵⁹ When ENRC made its offer to acquire CAMEC, this entailed buying Rautenbach-controlled shares from which he – or those for whom he was acting – would ultimately benefit. In order to buy such shares, ENRC was required to obtain a licence from HM Treasury.²⁶⁰ (2) Once shares have been sold and bought, the proceeds of the sale would normally remain frozen. However, provision is made in the EU regulation, again implemented by the Treasury in the UK, for a second type of licence to be granted, allowing a person on the sanctions list to access funds.²⁶¹

⌚ The London connection

1. ENRC's acquisition of CAMEC: licensing the purchase of shares from Rautenbach-controlled entities

On 18 September 2009, UK-incorporated, but largely Kazakh-owned, ENRC announced the terms of an offer for CAMEC.²⁶² As noted, the London Stock Exchange played a central role: ENRC was main market-listed and CAMEC was both UK-registered and traded on AIM.

ENRC's offer price was 20p per share, placing an overall value on CAMEC of £584 million.²⁶³ The offer document was posted to shareholders on 9 October 2009, setting a closing date for the offer of 9 November 2009.²⁶⁴ The threshold for sufficient acceptances was set at not less than 90 per cent of the CAMEC shares to which the offer relates.²⁶⁵ ENRC announced the offer as accepted and unconditional in all respects on 10 November 2009.²⁶⁶

Rautenbach held a significant shareholding in CAMEC via a number of entities that it is known or suspected he controlled (Harvest View Limited, Meryweather Investments Limited, Temple Nominees Limited and Chambers Nominees Limited).

In its offer document of 9 October, ENRC included further information on 'Sanctions and ongoing post-acquisition management issues', noting 'various issues have arisen in respect of the Offer in relation to the possible application of International Sanctions Laws' and that 'United Kingdom rules apply... to ENRC as well'.²⁶⁷

ENRC's acquisition of CAMEC: US sanctions

The company confirmed that 'US sanctions regulations are implicated because there are a few senior managers of ENRC (including Felix Vulis, ENRC's chief executive officer) who are US persons and who may not participate in or support transactions involving sanctioned countries or individuals'.²⁶⁸

Measures taken by ENRC to prevent a breach of US sanctions included the establishment of ENRC Africa, a separate United Kingdom incorporated wholly-owned subsidiary of ENRC, set up by a special oversight committee to hold and acquire CAMEC Shares.²⁶⁹ Only 'non-US persons' could take part in the management of all platinum-related assets acquired from CAMEC (including all assets and subsidiaries within the CAMEC Group deemed to be SDNs by OFAC). Although ENRC refers to 'assets and subsidiaries within the CAMEC Group that have been deemed to be SDNs by OFAC' and includes information on the acquisition of the Zimbabwe Platinum Assets in the offer document, ENRC does not identify which of the entities it describes are SDNs.²⁷⁰

In respect of the UK, ENRC stated in the offer document:²⁷¹

...discussions with HMT [Her Majesty's Treasury] in connection with the application of possible UK sanctions legislation are ongoing. ENRC is committed to maintaining this dialogue and intends to ensure that any post-acquisition asset management and/or other issues which may affect the ENRC

Group adversely under UK or any other relevant sanctions regimes will be managed by ENRC so as to try and prevent the risk of ENRC breaching International Sanctions Laws.

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

Harvest View

Although neither Rautenbach nor Harvest View are referred to by ENRC in its Offer document, CAMEC had previously confirmed that Harvest View Limited, a company controlled by Mr. Rautenbach and his family, held 90,926,134 CAMEC Shares.²⁷² As of 18 September 2009 (the date the ENRC terms of offer were announced), CAMEC shows in its 2009 Annual Report that Harvest View Limited continued to hold 90,926,134 shares representing 3.17% of issued share capital.

ENRC noted discussions with HM Treasury:²⁷³

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

Moreover, Felix Vulis, ENRC's chief executive officer, as part of a conference call with investors that took place on 18 September 2009, the day the offer was announced, stated:²⁷⁴

'Our bid, the acquisition of any shares from those on the sanctions list will require United Kingdom license from the United Kingdom Treasury.'

A number of specialist industry publications and newspapers reported that any sale of Rautenbach's shares in CAMEC to ENRC required UK Treasury approval:²⁷⁵

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

In an article in the *Daily Telegraph* published on 12 October 2009, it was reported: 'Yesterday ENRC sent a letter to the [UK] Treasury seeking approval to buy the 3.2pc CAMEC stake owned by businessman Billy Rautenbach, whose assets have been frozen by the European Union.'²⁷⁶

On 15 December 2009, ENRC announced that, as of 14 December 2009, it either owned or had received valid acceptances in respect of 2,753,050,972 CAMEC Shares, representing approximately 95.66 per cent. of the entire issued share capital of CAMEC.²⁷⁷ The announcement went on to confirm arrangements for the compulsory acquisition of remaining CAMEC shares. It is unclear whether or not the 95.66 percent of shares included the Harvest View shares. Indeed, *Private Eye* magazine, in its 25 December 2009 – 7 January 2010 issue reports on the percentage level of acceptance of ENRC's offer by CAMEC shareholders, noting that ENRC 'will not say whether that [percentage] includes Harvest View's [shares]'

Rautenbach's confirmed holding of nearly 3.2% of CAMEC shares via Harvest View was worth approximately £18.4 million at the time of ENRC's acquisition of CAMEC. However, if, as suspected (as set out below), Rautenbach held shares via Meryweather, these would have accounted for an additional 7.49% and would have been worth £43 million.

Meryweather

It should be recalled that Meryweather was at the heart of the Zimbabwean platinum transaction and that CAMEC was not disclosing the identity of Meryweather's owners.²⁷⁸

In its offer document, ENRC confirmed that two nominees (Temple and Chambers) were acting 'for and on behalf of Meryweather Investments Limited' and held 215,000,000 shares (by that time representing approximately 7.48% of issued ordinary share capital).²⁷⁹ The total of shares held by Meryweather's nominees is equal to the consideration of 215,000,000 CAMEC shares paid as part-consideration for the Zimbabwean platinum acquisition.²⁸⁰

According to *Private Eye* magazine:²⁸¹

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

The *Private Eye* article continues:

Rautenbach himself denies any links to Meryweather (Eye 1246), so that must be true. Yet new information concerning Meryweather and its dealings with CAMEC suggest that Rautenbach may at least have a very good idea as to who stands to benefit from the Meryweather millions....The sole director of Lefever, and who also appeared to sign for Meryweather, was one James Ramsay. Now that's a remarkable coincidence. For a lawyer named James Ramsay has for many years represented Rautenbach... So were the two Ramsays one and the same?

Private Eye states:

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

Private Eye asks:

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

Further information on: Rautenbach, Harvest View and Meryweather

[Memorandum to HM Treasury, Asset Freezing Unit](#)

[Questions of compliance: The Conduct of the Central African Mining & Exploration Company \(CAMEC\) plc and its Nominated Adviser, Seymour Pierce Limited](#)

pp.43 – 46

[Och-Ziff, Mugabe's "Bagmen" and the underpricing of African assets](#)

Meryweather: pp.7 – 8

◎ **What the UK authorities did: HM Treasury**

July 2011
RAID asks
Treasury
about
Rautenbach's
shares

Rautenbach's control over, and benefit from, Harvest View was already known; RAID sought information from the Treasury about the administration and licensing of the sale of the latter's shares under the sanctions regime, to corroborate and supplement press reporting of the sale.

The relationship between Rautenbach and Meryweather was the subject of informed analysis, but was not confirmed. RAID sought information from the Treasury about the administration and licensing of the sale of Meryweather's shares, which would help ascertain whether the latter was controlled by a person on the sanctions list (Rautenbach) and whether or not that person was the ultimate beneficiary when Meryweather's shares were sold.

December
2012
Treasury
refuses to
answer

The Treasury refused to provide any information on whether or not it had licensed the sale of shares in CAMEC to ENRC:

...we cannot comment on specific cases involving named individuals and entities and the Treasury does not comment on individual licence applications. There are also restrictions in EU Regulation 314/2004 which mean that the Treasury cannot respond to the vast majority of the very specific questions contained in your memorandum dated 6th July 2011. Article 8 of the EU Regulation explains that information obtained to facilitate compliance with the Regulation cannot be used for any purpose other than that for which it was provided. Therefore, it would be a breach of EU law for the Treasury to release such information.

Yet, prior to the posting of the offer document *per se*, ENRC confirmed on the day the offer was announced that it already had HMT approval: 'The HM Treasury has approved ENRC making the offer for the shares of CAMEC.'²⁸²

While other commentators suggested that Meryweather is linked to Rautenbach, this relationship remained unconfirmed until the SEC stated the affiliation between the Zimbabwe Shareholder and the holding company from which CAMEC purchased the Zimbabwe platinum assets. **In light of the SEC's confirmation of this affiliation and ENRC's affirmation of HM Treasury approval of its purchase of CAMEC shares, the only logical conclusion is that the UK authorities did issue a license to allow Rautenbach-controlled entities to cash in their holdings.**

2. Her Majesty's Treasury and the unfreezing of assets: licences and silence

On 30 March 2009, the *Daily Mail* reported how 'CAMEC insisted yesterday that it took action to freeze Rautenbach's shareholding in early February, just a few days after the Treasury issued its list of Mugabe-linked targets.'²⁸³ The *Daily Mail* article continues: 'The company said: "As soon as the sanctions were announced CAMEC took appropriate legal advice and subsequently, in early February, made a notification to the Treasury. CAMEC is in full compliance with its requirements under the sanctions".'

Under normal circumstances, if shares or other assets of a sanctions target are sold, the proceeds from any such sale remain frozen. However, under the Zimbabwe sanctions regime, there is provision, in certain situations, for a person on the sanctions list to make an application for a licence from the Treasury to allow funds to be released.²⁸⁴ The applicant would have to show that their circumstances fell within one of the exemptions set out in the relevant legislation: these include payments necessary for basic expenses (*inter alia*, food, medicine, rent), for professional fees and legal services, for service charges associated with holding or maintaining frozen funds, and for unspecified 'extraordinary expenses'. In the latter case, the competent authority has to give grounds for such an authorisation, and also has to notify its counterparts in other EU member states.

◎ **What the UK authorities did: HM Treasury**

July 2011 RAID asks about unfreezing of Rautenbach's assets RAID asked the Treasury whether it had licensed the release of funds to Rautenbach:²⁸⁵

We also note, in respect to any request for derogation from the freezing of funds and economic resources which may have been made, the timing of the settlement reached by Rautenbach with the South African authorities concerning fraud charges.^[286] The announcement of ENRC's offer for CAMEC, to include the purchase of Rautenbach-controlled holdings in CAMEC, exactly coincided with Rautenbach's return to South Africa on 18 September 2009 and his appearance on the same day before the Specialised Commercial Crimes Court. According to the National Prosecuting Authority, Rautenbach pleaded guilty to 326 charges of fraud as a representative of his company, SA Botswana Hauliers Ltd.^[287] A media release on behalf of Rautenbach confirmed that he agreed to pay '[t]he sum of R40 million [£3.3 million] [which] constituted amounts payable directly to the state, to the South African Revenue Services and an amount payable directly to the Criminal Asset Recovery Account of the NPA.'²⁸⁸

Had Rautenbach used funds from the sale of his shares in CAMEC to pay his legal bill and fine in South Africa, all with the approval of the UK government?

July 2012 Question asked in Parliament In July 2012, Lord Chidgey tabled a question in the House of Lords, which received a written answer:²⁸⁹

To ask Her Majesty's Government whether in 2009 they granted a licence allowing the release of funds to Billy Rautenbach, or any entity linked with that individual, when he was on the European Union sanctions list for his alleged links with the Government of Robert Mugabe; and, if so, why. [HL1851]

In his reply, the Commercial Secretary to the Treasury (Lord Sassoon), stated:

Treasury refuses to answer The Treasury considers all licence applications on a case-by-case basis against the licensing grounds of the relevant regulation and the purpose of the sanctions....However, for reasons of personal confidentiality, I regret that the Treasury is not able either to confirm or deny the information requested about named individuals.

December 2012 Treasury refuses to answer The Treasury finally informed RAID: 'we cannot reply specifically to your various queries relating to ENRC, CAMEC and Mr Rautenbach.'

H. Freedom of Information, continued silence and the significance of the action against Och-Ziff

Back in July 2008, Prime Minister Gordon Brown, '[i]n the face of the deepening tragedy in Zimbabwe—the intimidation and deaths, the violation of human rights, the detention of political prisoners' stated:²⁹⁰

'our aim is that there will be no safe haven and no hiding place for the criminal cabal that surrounds the Mugabe regime.'

It would, of course, be paradoxical if money from a UK company had ultimately financed the electoral violence that led to the EU tightening sanctions against Zimbabwe; it would be nothing short of duplicitous should it transpire that the Treasury had already been consulted about the transaction and that the UK authorities had given approval, tacit or otherwise. RAID made a freedom of information request about the Zimbabwe platinum deal precisely because of the potential for such a transaction to undermine EU and UK policy on Zimbabwe.

Concerned by the Treasury's refusal to provide information on the compliance with sanctions of the Zimbabwe transactions, licensing of the ENRC takeover deal and the unfreezing of assets, RAID filed a complaint with the Information Commissioner's Office (ICO) in February 2014. The ICO upheld the

Treasury's decision to withhold information on the implementation of sanctions against Zimbabwe, but RAID was granted permission to appeal to the courts. The lower tribunal heard the case in September 2015. The Treasury relied mainly upon an exemption (section 44) under FOIA which prohibits disclosure: the UK has signed up to EU sanctions and, in the UK government's view, Article 8 of Council Regulation (EC) No.314/2004 of 19 February 2004, implementing restrictive measures in respect of Zimbabwe, prevents the disclosure of any information gathered. And not only does the same prohibition appear in sanctions against other countries, but the FOIA exemption under which it is cited is absolute, meaning there is no consideration of the public interest. In other words, the UK would breach its treaty obligations with other EU member states if it disclosed information that the rules say should be kept confidential. But that presupposes that all other EU states would agree with the UK's interpretation of the regulation in question: can it really be the case that there is, in effect, a European-wide blanket-ban on the release of any information concerning sanctions?

The lower tribunal upheld the Treasury's decision to withhold the requested information.²⁹¹ Again, however, RAID was granted permission to appeal to the upper tribunal, which stated:²⁹² 'It [the upper tribunal] will be exercised to give permission only if there is a realistic prospect of an appeal succeeding....In this case, there is a realistic prospect that the decision involved the making of an error on a point of law...' The issues to be discussed included 'whether any question should be referred to the Court of Justice of the European Union.' RAID, however, took the decision in September 2016 to withdraw its appeal following the unprecedented decision of the UK to exit the European Union: it is unlikely that the Court of Justice will continue, in the longer term, to exercise jurisdiction over the UK sanctions regime.

Although the legal action could not be taken to conclusion, it is apparent that access to information on the implementation of sanctions in the UK under the FOIA regime is seriously curtailed, with little or no accountability.

Most of the evidence produced by the Treasury in RAID's court case was presented in confidential files and considered in closed session, which RAID was not allowed to attend because the information sought was being discussed. However, the tribunal rules meant RAID was not represented in the closed session. So, unusually and worryingly for a UK court, no one was present to argue on behalf of the plaintiff.

What was said in open court nevertheless gives some rare insights into the inner workings and mind-set of the UK authorities. Peter Maydon, the head of HM Treasury's Sanctions and Counter-Terrorist Financing Unit claimed that disclosing information on particular deals or individuals would result in financial institutions – already hypersensitive about safeguarding their reputations – withholding information in case it became known that they acted for those on the sanctions list. To withhold such information is a criminal offence, but Mr Maydon admitted that financial institutions were 'savvy', knowing that the government is unlikely to pursue such cases because this would damage the 'goodwill' upon which the Treasury depends when seeking information in the first place. Yet in the US, the authorities do make certain disclosures, without diminishing their ability to get banks to cooperate.

Mr Maydon also confirmed that Treasury staff knew that their decisions on sanctions matters were unlikely to be disclosed because of exemptions under FOIA. Mr Maydon went as far as to say that questioning such decisions undermined public confidence in the implementation of sanctions. RAID's view is precisely the opposite; rather, it is undisclosed, unaccountable decisions made behind closed doors that undermine confidence, especially when, as in the CAMEC case, there is a perception that sanctions were breached and that those on the sanctions list profited.

RAID continues to question the necessity of withholding all information on sanctions. When asked in court about OFAC's practice of releasing information on licensing, Mr Maydon dismissed such disclosure as confined to 'a few cases' and asserted that the UK need not, in any case, follow the Americans' lead. In fact – though still not going as far as RAID would like – OFAC has posted databases detailing its licensing in thousands of sanctions cases (see box).

OFAC and the release of information on licences

In early 2010, a leading law firm advised its clients of a forthcoming change in OFAC policy on the disclosure of information:²⁹³

The U.S. Treasury Department's Office of Foreign Assets Control has begun the process of systematically releasing to the public pursuant to Freedom of Information Act requests records of applications to do business with countries subject to U.S. economic sanctions. To be released also, are the licenses themselves. Until recently, it was assumed that a request for and the issuance of such licenses would be confidential.

In a landmark decision at the end of 2010, and as a result of a request from *The New York Times* under the Freedom of Information Act (US FOIA), OFAC agreed to provide information on licences (10,000 in total) granted to US companies to allow them to trade with Iran and other blacklisted under the sanctions regime. The newspaper states:²⁹⁴

...after *The Times* filed a federal Freedom of Information lawsuit, the government agreed to turn over a list of companies granted exceptions and, in a little more than 100 cases, underlying files explaining the nature and details of the deals. The process took three years, and the government heavily redacted many documents, saying they contained trade secrets and personal information. Still, the files offer a snapshot — albeit a piecemeal one — of a system that at times appears out of sync with its own licensing policies and America's goals abroad.

The material released to *The New York Times* is extensive, including details of who applied for the licence, details of the goods or services to be licensed, and when the licence was granted. Examples of the licenses illustrating the extent of the information release can be viewed at: <<http://www.nytimes.com/interactive/2010/12/24/world/24-sanctions.html>>.

Following other US FOIA requests from individuals, journalists and NGOs – notably on license applications to do business with North Korea, the request and approval allowing the entertainers Beyoncé and Jay Z to travel to Cuba, and the release of the OFAC licensing database of individuals and companies – OFAC has a webpage dedicated to FOIA requests and the information disclosed.²⁹⁵ Significantly, this includes data in the form of Excel files of the OFAC licensing database for 2008, 2009 and 2011. The 2011 database, released after a request from a freelance journalist, lists, *inter alia*, the parties holding the licenses, details of the attorneys or the companies that applied for the licenses on behalf of the license holders, the date of application for the license and its date of issue, the type of license.²⁹⁶

In an August 2011 article, contrasting the stance of the UK authorities when refusing to disclose the names of businesses licensed to sell goods with a potential military use to Iran, *Bloomberg* was told by a legal expert that:²⁹⁷

[the US] Treasury's Office of Foreign Assets Control, in response to freedom of information requests, routinely releases names of companies applying for licenses to export agricultural products, medicine and medical devices to Iran under a congressional exemption passed in 2000.

In October 2013, *Bloomberg* obtained information under US FOIA on the amount of holdings belonging to Japanese criminal gangs frozen by the US Treasury.²⁹⁸ In March 2015, *The Wall Street Journal* obtained mandatory reports from financial institutions to the US Treasury under US FOIA detailing the worth of assets frozen in the US as a result of financial sanctions against Russia.²⁹⁹ The information includes the names of major international banks and how amount of money frozen in individual accounts.

Given that sanctions targets are publicly known, and the business dealings of Mr Rautenbach have been widely reported in the media, Mr Maydon was asked whether there was any danger to individuals should the Treasury corroborate facts that are already in the public domain. Mr Maydon replied that, in general, corroboration of existing, known facts was not a danger, but this did not apply in the current case, something that he would discuss further only in closed session. This is yet another hint that there is more to this case than meets the eye. Is the UK government protecting CAMEC and Rautenbach from scrutiny, and, if so, why? There is no doubt that Article 8 and the exemption under section 44 of FOIA are proving to be very convenient.

Further information on: RAID's FOIA complaint and court case

[Witness Statement of Patricia Feeney, RAID v \(1\) The Information Commissioner, \(2\) Her Majesty's Treasury, Case No. EA/2015/0019](#)

[Second Witness Statement of Patricia Feeney, RAID v \(1\) The Information Commissioner, \(2\) Her Majesty's Treasury, Case No. EA/2015/0019](#)

[Second Witness Statement of Mr Peter Maydon, RAID v \(1\) The Information Commissioner, \(2\) Her Majesty's Treasury, Case No. EA/2015/0019](#)

[Panama, Congo, Zimbabwe, London, New York: the vultures come home to roost](#)

In April 2016, a vast cache of 11.5 million documents ('the Panama papers') was leaked from the Panamanian law firm Mossack Fonseca. The papers consist of client records that reveal how a myriad of offshore companies are used by the rich and powerful to hide their wealth in tax havens. The names of notorious businessmen who profited from deals done in the Congolese war and its aftermath soon began to emerge from the mass of information.

As the content of the Panama papers continues to filter out (on Rautenbach in *The Guardian*³⁰⁰, on Gertler in *le Monde*³⁰¹), and given the unprecedented action by the DOJ and SEC in the US, certain UK companies implicated in the same corrupt transactions, not to mention the position of the UK authorities, may become increasingly exposed: confidentiality under Article 8 may be upheld, but much of the information the Treasury has sought to conceal may emerge anyway.

I. Restoring confidence in the UK's sanctions regime

The Och-Ziff case, including the involvement of UK-based individuals and entities, has damaged the UK's reputation when it comes to upholding economic sanctions imposed upon despotic regimes. Where necessary, new legislation should be enacted and existing regulations more rigorously enforced to ensure that sanctioned individuals and entities do not profit from transactions linked to the UK.

There has been recent government recognition of the importance of financial sanctions to help maintain the integrity of and confidence in the UK financial services sector. RAID welcomes the creation in March 2016 of an Office of Financial Sanctions Implementation (OFSI) in the Treasury, which will be able to impose penalties for serious breaches.³⁰² The legislation is part of a raft of wider measures in the Policing and Crime Bill to toughen the government's response to sanctions breaches, currently (as of December 2016) going through Parliament.³⁰³ By giving OFSI powers to hand out monetary penalties and publish details of serious breaches, the government is sending a clear message that it will not tolerate breaches of the financial sanctions regime. However, RAID is concerned that a public interest exemption, allowing OFSI to choose not to take enforcement action, even in cases where the facts seem to warrant it, should be subject to review.

The key question is this: having failed to heed RAID's repeated calls for action, can the UK continue to shelter those who have been involved in corrupt deals, or ostensibly breached sanctions or flouted market rules, without causing lasting damage to its reputation? It has taken action by the US authorities on Och-Ziff to bring renewed impetus to this question. Answers are long overdue.

② RAID's renewed call for action

- *The National Crime Agency* must review the role of UK-based individuals and entities in the Zimbabwe platinum deal, referred to by the DOJ and SEC. Apparent breaches of financial sanctions must be fully investigated and, where there is evidence of illegality, the perpetrators must be prosecuted.
- *Enforcement:* Forthcoming powers of enforcement – including monetary penalties – are to be welcomed, as is the commitment to publish details of serious breaches. However, RAID has serious reservations about 'public interest' exemptions to these powers: at a very minimum, such exemptions should be subject to review.
- *Licences:* There should also be greater transparency over the issuing of licences to allow transactions or the unfreezing of assets. The UK Government should follow the example of the U.S. Treasury, which releases certain information on the licencing of transactions under a sanctions program.
- *Third party information:* The Treasury should establish a mechanism by which informed parties, including NGOs, can submit information to better identify sanctions targets and their associated entities.

- *Designation:* The process by which individuals or entities are designated as sanctions targets is entirely opaque. The Treasury should account for decisions to add to or remove people or entities from the sanctions list.

Endnotes

¹ Department of Justice, Office of Public Affairs, 'Och-Ziff Capital Management Admits to Role in Africa Bribery Conspiracies and Agrees to Pay \$213 Million Criminal Fine', 29 September 2016, <<https://www.justice.gov/opa/pr/och-ziff-capital-management-admits-role-africa-bribery-conspiracies-and-agrees-pay-213>>.

² United States of America against Och-Ziff capital Management Group LLC, Deferred Prosecution Agreement, Cr. No. 16-516 (NGG), United States District Court Eastern District of New York, 29 September 2016, available at: <<https://www.justice.gov/opa/file/899306/download>>.

³ United States of America against OZ Africa Management GP, LLC, Plea Agreement, Cr. No. 16-515 (NGG), United States District Court Eastern District of New York, 29 September 2016, available at: <<https://www.justice.gov/opa/file/899316/download>>.

⁴ U.S. Securities and Exchange Commission, 'Och-Ziff Hedge Fund Settles FCPA Charges Och-Ziff Executives Also Settle Charges', *Press Release*, 2016-203, 29 September 2016, available at: <<https://www.sec.gov/news/pressrelease/2016-203.html>>.

⁵ U.S. Securities and Exchange Commission, *Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934 and Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order*, against Och-Ziff Capital Management Group LLC, OZ Management LP, Daniel S. Och, Joel M. Frank, Securities and Exchange Act of 1934 *Release No.* 78989/September 29, 2016, Investment Advisers Act of 1940 *Release No.* 4540/September 29, 2016, Administrative Proceeding *File No.* 3-17595, available at: <<https://www.sec.gov/litigation/admin/2016/34-78989.pdf>>

⁶ SEC *Press Release*, 2016-203.

⁷ *DPA*, 9 ff., 11 ff.

⁸ SEC *Press Release*, 2016-203.

⁹ *Ibid.*

¹⁰ Respectively, SEC *Press Release*, 2016-203; *DPA*, 5.

¹¹ *DPA*, 5a.

¹² See, for example, Peter J Henning, 'Och-Ziff May Face Consequences Beyond Fine in Bribery Case', *New York Times*, 3 October 2016, <<http://www.nytimes.com/2016/10/04/business/dealbook/och-ziff-may-face-consequences-beyond-fine-in-bribery-case.html>>; Katia Porzecanski, Simone Foxman, Saijel Kishan, 'Dan Och's \$37 Billion Question: Will Investors Stand By Him?', *Bloomberg*, 4 October 2016, <<http://www.bloomberg.com/news/articles/2016-10-04/och-s-role-in-africa-probe-poses-ethics-questions-to-investors>>; Nate Raymond, 'Och-Ziff to pay \$412 million to settle U.S. foreign bribery charges', *Reuters*, 30 September 2016, <<http://uk.reuters.com/article/us-sec-och-ziff-capital-corruption-idUKKCN11Z2NW>>.

¹³ *DPA*, Attachment A, Statement of Facts, 8, 10; *SEC Order*, 1.

¹⁴ *DPA*, Statement of Facts, 28. See also *SEC Order*, 1: 'These bribes were paid with the specific knowledge of a senior Och-Ziff employee who was the head of Och-Ziff Europe ("Och-Ziff Employee A") and in certain cases, of an Och-Ziff investment professional working in Och-Ziff's European office ("Och-Ziff Employee B")'.

¹⁵ Home Secretary's speech to the FCA's Financial Crime Conference, delivered 10 November 2016, available at: <<https://www.gov.uk/government/speeches/home-secretarys-speech-to-the-fcas-financial-crime-conference>>.

¹⁶ *DPA*, Statement of Facts, 28

¹⁷ Spokesman for the Fleurette Group quoted in: Franz Wild and Keri Geiger, 'Diamond Magnate at the Heart of Och-Ziff's Africa Ambitions', *Bloomberg*, 30 September 2016, <<http://www.bloomberg.com/news/articles/2016-09-30/the-diamond-magnate-at-the-heart-of-och-ziff-s-africa-ambitions>>; Franz Wild and Jesse Riseborough, 'Glencore Reviewing Bribery Allegations Said to Involve Gertler', *Bloomberg*, 30 September 2016, <<http://www.bloomberg.com/news/articles/2016-09-30/glencore-reviewing-bribery-allegations-said-to-involve-gertler>> and; Thomas Wilson, Franz Wild, Jesse Riseborough, 'Congo Backs Billionaire Gertler After Och-Ziff Allegations', *Bloomberg*, 4 October 2016, <<http://www.bloomberg.com/news/articles/2016-10-04/congo-backs-billionaire-gertler-after-u-s-och-ziff-allegations>>.

¹⁸ *DPA*, Statement of Facts, 1.

¹⁹ *DPA*, Statement of Facts, 2.

²⁰ *DPA*, Statement of Facts, 3 – 5.

²¹ *SEC Order*, 32.

²² *DPA*, Statement of Facts, 5.

²³ *DPA*, Statement of Facts, 28 – 29. See also *DPA*, Statement of Facts, 20 and 23.

²⁴ Och Ziff Capital Management Group, *Form 10-Q*, Quarterly Report to 30 June 2008, filed 11 August 2008, respectively, p.25 and p.24, available at: <http://library.corporate-ir.net/library/21/213/213764/items/318006/%7B66C5ABD2-AFFF-4102-80BD-CB0FFCCF042A%7D_OchZiffCapitalM10Q_Q208.pdf>.

²⁵ *DPA*, Statement of Facts, 5.

²⁶ 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](http://shareholders.ozcap.com/phoenix.zhtml?c=213764&p=irol-newsArticle&ID=1101494&highlight=)>.

²⁷ *SEC Order*, 34.

²⁸ 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>>.

²⁹ *SEC Order*, 32; *DPA*, Statement of Facts, 5.

³⁰ Palladino's full response is posted at: <<https://business-humanrights.org/en/response-by-palladino-holdings-re-investments-in-africa-sanctions-on-zimbabwe>>.

³¹ Company number 1997/021524/07, incorporated in South Africa, 12 October 1997. See <<http://www.cipro.co.za/ccc/EntDet.asp?T1=%DD%47%2C%8C%57%C0%1E%BE%13%BD%38%8A%BF%AD%22&T2=MVELAPHANDA%20HOLDINGS>>.

³² Och-Ziff, 'Mvelaphanda Holdings, Och-Ziff and Palladino create joint venture to focus on natural resources in Africa', op. cit.

³³ Company No.: FC026401 (UK establishment number BR012048), registered in the UK 12 May 2005 (as given in Companies House WebCheck, visited 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.

³⁴ 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 was a major shareholder in Coal of Africa.

³⁵ 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').

³⁶ Company No. 06374856, registered in the UK 18 September 2007 (as given in Companies House WebCheck, accessed 20 January 2014).

³⁷ Companies House, overview, <<https://beta.companieshouse.gov.uk/company/06374856>> (accessed 2 November 2016).

³⁸ 14. Related Parties, Africa Management (UK) Limited, *Annual Report and Financial Statements For the Year Ended 31 December 2009*.

³⁹ Ibid., Directors' Report, Registration and Principal Activity.

⁴⁰ Ibid., 15. Controlling Parties.

⁴¹ Och-Ziff, *Press Release*, 'Mvelaphanda Holdings, Och-Ziff and Palladino create joint venture to focus on natural resources in Africa', op. cit.

⁴² Companies House, record of company officers, <<https://beta.companieshouse.gov.uk/company/06374856/officers>> (accessed 2 November 2016).

⁴³ 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 TM01, accessed 21 January 2014.

⁴⁴ A notice announcing Baros's appointment was filed on 23 December 2007 and one terminating her directorship was filed on 21 August 2012. See Companies House, WebCheck for Africa Management (UK) Limited, respectively forms 288a and TM01, accessed 21 January 2014.

⁴⁵ Companies House, record of company officers, <<https://beta.companieshouse.gov.uk/company/06374856/officers>> (accessed 2 November 2016).

⁴⁶ 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).

⁴⁷ SEC Order, respectively, 32, 1.

⁴⁸ DPA, Statement of Facts, 8.

⁴⁹ SEC Order, 1.

⁵⁰ See Nishant Kumar and Franz Wild, 'Och-Ziff Plea Halts Rise of Hedge-Fund Billionaire's Protege', *Bloomberg*, 30 September 2016, <<http://www.bloomberg.com/news/articles/2016-09-30/och-ziff-plea-stalls-rise-of-hedge-fund-billionaire-s-protege>>. See also Nate Raymond, 'Och-Ziff to pay \$412 million to settle U.S. foreign bribery charges', *Reuters*, 30 September 2016, <<http://uk.reuters.com/article/us-sec-och-ziff-capital-corruption-idUKKCN11Z2NW>>; Michael Rothfield and Christopher M. Matthews, 'Och-Ziff to Pay \$412 Million in Bribery Case', *The Wall Street Journal*, 29 September 2016, <<http://www.wsj.com/articles/och-ziff-to-settle-civil-bribery-probe-1475176413>>.

⁵¹ '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>>.

⁵² Och Ziff Capital Management Group, *Form 8K*, Report of unscheduled material events or corporate event, 19 March 2013, available at: <<http://services.corporate-ir.net/SEC/Document.Service?id=P3VybD1hSFIwY0RvdkwyRndhUzUwWlc1cmQvbDZZWEprTG1OdmJTOWtiM2R1Ykc5aFpDNXdhSEEwVvD0MGFXOXVQVkJFUmlacGNHRm5aVDA0T0RBNE5ERTBKb4xWW5OcFpEMDFOdz09JnR5cGU9MiZmbj1PY2haaWZmQ2FwaXRhbE1hbmFnZW1lbhRhc91cExMQ184S18yMDEzMDMxOS5wZGY=>>>.

⁵³ 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.

⁵⁴ See, for example: Jim Armitage, 'The London connection: Former UK boss of Wall Street hedge fund could be drawn into corruption investigation', *Independent*, 18 June 2014, <<http://www.independent.co.uk/news/business/analysis-and-features/the-london-connection-former-uk-boss-of-wall-street-hedge-fund-could-be-drawn-into-corruption-9547612.html>>; Tom Burgess and Kara Scannell, 'US seeks scalps in Och-Ziff bribery investigation', *Financial Times*, 12 September 2006, <<https://www.ft.com/content/f446a112-745f-11e6-bf48-b372cdb1043a>>.

⁵⁵ Private Equity International, *The Annual Review 2009*, 'Africa Beckons', p.20, available at: <[http://www.peimedia.com/resources/Digital%20Editions/2010/Annual%20Review%2009\(1\).pdf](http://www.peimedia.com/resources/Digital%20Editions/2010/Annual%20Review%2009(1).pdf)>.

⁵⁶ Ibid.

⁵⁷ DPA, Statement of Facts, 10.

⁵⁸ Companies House, record of company officers, <<https://beta.companieshouse.gov.uk/company/06374856/officers>> (accessed 2 November 2016).

⁵⁹ See, for example, *Africa Confidential*, Vol. 53 No. 13, 22 June 2012, 'Who's who in the Guinea Loan Saga'; also Scott Patterson and Michael Rothfield, 'U.S. Investigates Hedge Fund Och-Ziff's Link to \$100 Million Loan to Mugabe', *Wall Street Journal*, 5 August 2015, <<http://www.wsj.com/articles/u-s-probes-och-ziff-africa-deal-tied-to-mugabe-1438817223>>.

⁶⁰ Loon Energy Corporation, biography of Vanja Baros, <http://www.loonenergy.com/bios/v_baros.html>. An identical biography was used by Serinus Energy, although has since been removed; see, however, webpage captured on 5 September 2015, available at: <<http://web.archive.org/web/20150905104442/http://investor.serinusenergy.com/en/press/Management-biographies/vanja-baros>>

⁶¹ DPA, Statement of Facts, 10.

⁶² Respectively: Franz Wild and Keri Geiger, 'Diamond Magnate at the Heart of Och-Ziff's Africa Ambitions', *Bloomberg*, 30 September 2016, <<http://www.bloomberg.com/news/articles/2016-09-30/the-diamond-magnate-at-the-heart-of-och-ziff-s-africa-ambitions>>; Nate Raymond, 'Och-Ziff to pay \$412 million to settle U.S. foreign bribery charges', *Reuters*, 30 September 2016, <<http://uk.reuters.com/article/us-sec-och-ziff-capital-corruption-idUKKCN11Z2NW>>;

⁶³ RAID, *Och-Ziff, Mugabe's "Bagmen" and the underpricing of African assets*, April 2014, pp.16 – 17.

⁶⁴ SEC Order, 79 – 81.

⁶⁵ United States of America against Samuel Mebiame, Complaint and Affidavit in Support of Application for Arrest Warrant, 12 August 2016, Case 1:16-mj-00752-PK, United States District Court, Eastern District of New York.

⁶⁶ BSG Resources Limited, BSG Resources (Guinea) Limited and BSG Resources (Guinea) SÀRL v. Republic of Guinea, ICSID Case No. ARB/14/22, available at: <<https://icsid.worldbank.org/apps/icsidweb/cases/Pages/casedetail.aspx?CaseNo=ARB/14/22&tab=DOC>>.

⁶⁷ BSGR had sought a judicial review (its application was subsequently dismissed) of the decision of the UK's Serious Fraud Office (SFO) to accede to the formal request for assistance from the Republic of Guinea relating to a criminal investigation into BSGR. See Witness Statement of Dag Lars Cramer, BSG resources Limited vs (1) The Director of the Serious Fraud Office (2) The Secretary of State for the Home Department, High Court of Justice, 25 November 2014, paragraph 19.2. Cramer's witness statement is reproduced in the ICSID case at <<https://icsid.worldbank.org/apps/ICSIDWEB/Uncitral/C3765/Claimants%20Amended%20Memorial/Factual%20Exhibits/C-0028.PDF>>.

⁶⁸ For the Mebiame transcripts, see

<<https://icsid.worldbank.org/apps/ICSIDWEB/Uncitral/C3765/Claimants%20Amended%20Memorial/Factual%20Exhibits/C-0135.PDF>>. Examples of exhibits that refer to Walter Hennig and AGC include: Memorandum of meeting between Asher Avidan and Walter Hennig, 20 March 2012 (C-0106), <<https://icsid.worldbank.org/apps/ICSIDWEB/Uncitral/C3765/Claimants%20Amended%20Memorial/Factual%20Exhibits/C-0106.PDF>>; Transcript of meeting between Asher Avidan and Walter Hennig, 28 March 2012 (C-0107), <<https://icsid.worldbank.org/apps/ICSIDWEB/Uncitral/C3765/Claimants%20Amended%20Memorial/Factual%20Exhibits/C-0107.PDF>>.

⁶⁹ Gareth Tredway, 'QKR kicks-off private funds investment drive', *Mining Journal*, 14 February 2014, available at: <<http://www.mining-journal.com/production-and-markets/qkr-kicks-off-private-funds-investment-drive>>. The biographies of Baros, cited in note 60, also state: 'Mr. Baros has also headed up Business Development at QKR Corporation Limited, a private investment vehicle for the mining sector, partially owned by Kulczyk Investments.'

⁷⁰ See <<http://qkrcorp.com>> (the website now appears to be inactive: visited 8 November 2016); and <<http://kulczykinvestments.com/page/211>>.

⁷¹ 'Who's who in the Guinea Loan Saga', *Africa Confidential*, Vol. 53 No. 13, 22 June 2012; also David Gleason, 'Economic predators rule in Guinea', *Business Day*, 29 November 2012, available at: <<http://www.bdlive.co.za/opinion/columnists/2012/11/29/economic-predators-rule-in-guinea>>.

⁷² Jim Armitage, 'Accounts reveal huge dividends paid to hedge fund tycoon Michael Cohen', *Independent*, 8 December 2014, <<http://www.independent.co.uk/news/business/news/accounts-reveal-huge-dividends-paid-to-hedge-fund-tycoon-michael-cohen-9911648.html>>.

⁷³ *The Sunday Times*, 5 August 2012, 'Dealmaker out at Caz', reported that Lloyd Pengilly 'has been dismissed by the bank'. Danny Fortson, 'Hannam sidekick trawls Africa', *The Sunday Times*, 11 November 2012, describes Pengilly as having 'resigned this summer' from JP Morgan Cazenove.

⁷⁴ 'Hannam sidekick trawls Africa', op. cit.; also Jan Cienski, 'Kulczyk and Qatar back \$700m mine project', *Financial Times*, 11 November 2012, available at: <<http://www.ft.com/cms/s/0/5c04a07a-2c10-11e2-a91d-00144feabdc0.html#axzz2v0kmuDSm>>.

⁷⁵ Simon Duke ('Prurock'), 'Prurock: Hedge leaves mine fund in the pits', *The Sunday Times*, 5 January 2014: 'Yet his departure [Cohen's], 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.'

⁷⁶ As the float price doubled, hedge funds cashed in, causing widespread public consternation at the 'botched' privatisation. Och-Ziff reduced its holding from 10 million shares to 3.5 million, turning in a large profit. See, for example, Oliver Wright, Jim Armitage and Mark Leftly, 'Royal Mail float scandal: how hedge funds cleaned up', *Independent*, 29 April 2014,

<<http://www.independent.co.uk/news/business/news/royal-mail-float-scandal-how-hedge-funds-cleaned-up-9303674.html>>.

⁷⁷ DPA, Statement of Facts, 28, THE DRC CORRUPTION SCHEME, A. Och-Ziff's Agreements with DRC Partner.

⁷⁸ DPA, Statement of Facts, 29.

⁷⁹ DPA, Statement of Facts, 32.

⁸⁰ Registration number 4232247. See *CAMEC Admission document*, Part VII, p. 85.

⁸¹ 4th Floor, Clements House, 14 – 18 Gresham Street, London EC2V 7NN. See *CAMEC Admission document*, Part VII, p. 85.

⁸² <<http://www.londonstockexchange.com/en-gb/about/Newsroom/Media+Resources/Welcome+Stories/2002/09-10-2002.htm>>.

⁸³ UN Security Council, *Report of the Group of Experts on the Democratic Republic of the Congo in Accordance with Paragraph 2 of the Security Council Resolution 1654 (2006)*, S/2006/525, 18 July 2006, paragraph 132 and table.

⁸⁴ In 2000, the UN Security Council appointed the United Nations Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, as a response to widespread concern at the link between exploitation of gold, diamonds, and other minerals in the east of the DRC, and the war ongoing in that region since 1996. The UN Panel produced a series of seven reports: Interim report dated 16 January 2001 (S/2001/49); Report dated 12 April 2001 (S/2001/357); Addendum report dated 13 November 2001 (S/2001/1072); Interim report dated 22 May 2002 (S/2002/565); Report dated 16 October 2002 (S/2002/1146); Addendum dated 20 June 2003 (S/2002/1146/Add.1); Report dated 23 October 2003 (S/2003/1027).

⁸⁵ UN Security Council, *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo*, S/2001/357, 12 April 2001, paragraphs 150 – 2. See also the Panel's report S/2001/1072, 13 November 2001, paragraphs 67 – 9 and S/2003/1027, 23 October 2003, confidential Section 5, paragraphs 32 – 5.

⁸⁶ Nikanor plc, *Admission to AIM*, 12 July 2006, p. 1.

⁸⁷ Incorporated on 26 June 2006. See *Ibid.*, title page; also p. 1.

⁸⁸ Nikanor, *Admission to AIM*, 12 July 2006, Part IX – Additional Information, 15.4.

⁸⁹ *Ibid.*, 15.4.

⁹⁰ *Ibid.*, Part II – Risk factors, p.15.

⁹¹ *Ibid.*, Part III – Information on the Group, p.29.

⁹² In a highly unusual move, Fasken later sought to withdraw its analysis (after publication), sending a letter to the World Bank (which was also analysing DRC mining contracts) informing the Bank's President that it had retracted its opinion because 'unfortunately [it] was released without partner review'. See 11.11.11, Broederlijk Delen, RAID et al, *Public Private Partnerships on the DRC's Mining Sector: Development, Good Governance and the Struggle Against Corruption?* The joint venture referred to was the DRC Copper and Cobalt Project sprl (DCP): see *idem*, Annex 3 - Gécamines – Global Enterprises Corporate (Nikanor Plc).

⁹³ SEC Order, 46.g.

⁹⁴ *La Procureur General de la République, Annulation de l'enregistrement des cessions entre la Gécamines et BOSS MINING Sprl, MUKONDO MINING Sprl et KMC*, 29 August 2007, No. 3182/D.025/2433/PGR/MOP/2007. (Extracts from the statement are reproduced at: <<http://www.mineweb.net/mineweb/en/page36?oid=26114&sn=Detail>>); see also CAMEC, RNS 0770D, 'Update regarding Mining Permit', 31 August 2007, available at: <<http://investors.camec-plc.com/news-item?item=48500919003000>>. See also *Cadastre Minier, Avis Cadastral Défavorable, Concerne: Dossier de la Société GECAMINES, Cession partielle du PE No. 469*, 29 August 2007. The Avis Défavorable was transmitted by the Cadastre Minier to both Boss Mining and Mukondo Mining on the same day: respectively, N°. Réf/CAMI/DG/3050/2007 and N°. Réf/CAMI/DG/3049/2007.

⁹⁵ Reuters, 'CAMEC to fight Congo on license', 30 August 2007, available at:

<<http://www.reuters.com/article/idUSSP27308120070830>>; also, Steve Hawkes, 'Camec's shares tumble as DRC plans to revoke mining licence', *The Times*, 31 August 2007, available at:

<http://business.timesonline.co.uk/tol/business/industry_sectors/natural_resources/article2357762.ece>.

⁹⁶ Reuters, 'CAMEC to fight Congo on license', op. cit.

⁹⁷ CAMEC, RNS 3548D, 'CAMEC withdraws Offer for Katanga', 5 September 2007, available at:

<<http://www.hemscott.com/news/static/rna/item.do?newsId=49372796654424>>. See also *Mining Weekly*, 'Camec Katanga bid withdrawn after DRC 'uncertainty', 5 September 2007, available at: <<http://www.miningweekly.com/article/camec-katanga-bid-withdrawn-after-drc-039uncertainty039-2007-09-05>>.

⁹⁸ Nikanor plc, RNS 1241H, 'Recommended merger of Katanga and Nikanor to create a leading African copper and cobalt company', 6 November 2007, available at: <http://www.nikanor.co.uk/m/press_display.asp?Id=2007/06nov2007>. See also Katanga Mining Limited, 'Recommended Merger of Katanga and Nikanor to Create a Leading African Copper and Cobalt Company', 6 November 2007, available at: <<http://www.katangamining.com/kat/media/newsreleases/news2007/2007-11-06/2007-11-06.pdf>>.

⁹⁹ Nikanor plc, RNS 5152L, 'Results of voting at Nikanor AGM', 10 January 2008, available at:

<http://www.nikanor.co.uk/m/press_display.asp?Id=2008/10jan2008>; Katanga Mining Limited, 'Katanga Completes Merger with Nikanor to Create a Leading African Copper and Cobalt Company', 11 January 2008, available at:

<http://www.katangamining.com/kat/investor_relations/newsreleases/pressrelease/?id=4612616>.

¹⁰⁰ Nikanor plc, RNS 6457L, 'Update on completion of merger between Nikanor PLC and Katanga Mining Limited', 11 January 2008, available at: <http://www.nikanor.co.uk/m/press_display.asp?Id=2008/11jan2008>.

¹⁰¹ Nikanor plc, 'Recommended Merger of Katanga and Nikanor to Create a Leading African Copper and Cobalt Company', op. cit., p. 7.

¹⁰² CAMEC, RNS 7150P, 'DRC Update', 10 March 2008, available at: <<http://investors.camec-plc.com/news-item?item=61518964316144>>; 'The Avis Cadastral Favorable confirm the validity of CAMEC's licences under the Mining Code of the DRC, and the transfer of the licences in respect of areas 467 and 469 from Gécamines to Boss Mining sprl, CAMEC's subsidiary,

and of the licence in respect of Mukondo Mountain to Mukondo Mining sprl. Further Avis Cadastral Favorable have also confirmed the validity of Prairie's licences over areas 463 and 468 (formerly known as C17 and C18) and the transfer of those licences to Savannah Mining.'

¹⁰³ CAMEC, 'Proposed acquisition of shares in DRC Resources Holdings Limited', *Circular to shareholders*, 6 May 2008, pp. 7 – 8. DRC Resources Holdings Limited was incorporated in the Isle of Man on 30 January 2008 – see p.13.

¹⁰⁴ CAMEC, RNS 5299V, 'Results of General Meeting and Directorate Change', 29 May 2008, available at:

<www.investigate.co.uk/central-afr-min-38-exp-cfm/rns/results-of-general-meeting-an/200805291406025299V/>.

¹⁰⁵ CAMEC, 'Circular re DRC Joint Venture Acquisition and Trading Update', 7 May 2008, available at:

<www.investigate.co.uk/central-afr-min-38-exp-cfm/circ-re-drc-joint-venture/200805070701298349T/>.

¹⁰⁶ RAID, *Questions of compliance: The Conduct of the Central African Mining & Exploration Company (CAMEC) plc and its Nominated Adviser, Seymour Pierce Limited*, May 2011, pp.14 – 20; p.36; pp.47 – 52. The report was submitted to AIM Regulation on 3 June 2011.

¹⁰⁷ Letter from AIM Regulation to RAID, 24 April 2012.

¹⁰⁸ Africa Oilfield Logistics Limited, incorporated and registered in Guernsey, was set up as a 'cash shell' by Andrew Groves and Philippe Edmonds with the objective of acquiring or investing in one or more businesses to provide the logistics support for oil and gas exploration and other development projects in sub-Saharan Africa. AOL was admitted to trade on AIM on 25 June 2013.

¹⁰⁹ RAID, letter to Nilam Statham, Head of AIM Regulation, 1 October 2013; RAID, letter to Nilam Statham, Head of AIM Regulation, 28 November 2013.

¹¹⁰ AIM Regulation, e-mail to RAID, 20 November 2013: 'We note that your concerns are primarily based on the involvement of AOL's directors and advisers with Central African Mining and Exploration Company Limited ("CAMEC"). Should you have any information or evidence that relates specifically to the matters you raise in respect of AOL, we would be grateful if you would provide this to us.'

¹¹¹ AIM Regulation, e-mail to RAID, 23 December 2013.

¹¹² RAID, *Memorandum to the Foreign Affairs Committee*, May 2013, <<http://www.raid-uk.org/documents/foreignaffairscommitteememorandummay2013.pdf>>.

¹¹³ RAID, *Outstanding Questions on AIM: Memorandum concerning the second evidence session for the BIS Select Committee's inquiry into the extractive industries sector*, 6 December 2013, <<http://www.raid-uk.org/documents/bisselectcommitteememorandumdec2013.pdf>>.

¹¹⁴ London Stock Exchange plc, *A guide to AIM*, 2010, pp. 4 – 6, available at: <www.londonstockexchange.com/companies-and-advisors/aim/documents/a-guide-to-aim.pdf>.

¹¹⁵ Roel Campos, at the time a Securities and Exchange Commissioner, as reported in 'London v New York: top US regulator attacks AIM 'casino'', *The Times*, 9 March 2007.

¹¹⁶ AIM *Factsheet*, September 2016, <<http://www.londonstockexchange.com/statistics/historic/aim/aim-statistics-archive-2016/sept-16.pdf>>.

¹¹⁷ Ibid.

¹¹⁸ Calculated using data from AIM *Country of Operation & Country of Incorporation*, October 2010, <<http://www.londonstockexchange.com/statistics/historic/aim-country-of-operation-and-incorporation/aim-country-of-operation-archive-2010/oct-2010.xls>>.

¹¹⁹ AIM *Market Statistics*, October 2010, <<http://www.londonstockexchange.com/statistics/historic/aim/aim-statistics-archive-2010/october-2010.xls>>.

¹²⁰ On Oryx Natural Resources and its abortive AIM listing, see RAID, *Asset Laundering and AIM*, July 2012, Box 10 - Parallels in the provenance of Oryx diamond and CAMEC copper/cobalt assets, pp.32 – 33.

¹²¹ DPA, Statement of Facts, 28.

¹²² SEC *Order*, 53.

¹²³ Camrose Resources Limited, BVI company number: 1055983, incorporated in the British Virgin Islands on 9 October 2006.

¹²⁴ 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>>).

¹²⁵ 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 per cent. 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, *Circular to ENRC Shareholders and Notice General Annual Meeting*, ‘Acquisition of shares in Camrose Resources Limited and certain subsidiaries’), 7 December 2012.

¹²⁶ See *Memorandum and Articles of Association of Camrose Resources Limited*, amended 20 November 2008, op. cit.; also Africo Resources Limited, ‘Africo Resources announces CAD\$100 million private placement to develop the Kalukundi project’, *News Release*, 21 April 2008, available at: <http://www.africoresources.com/ir/press_display.php?Id=2008/21apr2008>; also Africo Resources Limited, ‘Africo Resources completes CAD\$100 million private Placement with Camrose Resources Limited’, *News Release*, 24 July 2008, available at: <http://www.africoresources.com/ir/press_display.php?Id=2008/24jul2008>.

¹²⁷ *Memorandum and Articles of Association of Camrose Resources Limited* amended 20 November 2008, op. cit., *Memorandum of Association*, 10 Definitions and Interpretation, 10.1, “Affiliate”.

¹²⁸ *DPA*, Statement of Facts, 28.

¹²⁹ *SEC Order*, 56.

¹³⁰ Palladino’s full response is posted at: <<https://business-humanrights.org/en/response-by-palladino-holdings-re-investments-in-africa-sanctions-on-zimbabwe>>.

¹³¹ DOJ, OZ Africa Plea Agreement, Exhibit 3, Statement of Facts, 57 – 58.

¹³² *DPA*, Statement of Facts, 29.

¹³³ *DPA*, Statement of Facts, 30.

¹³⁴ Barry Sergeant, ‘Africa’s greatest little story – copper/cobalt saga continues’, *Mineweb*, 12 June 2008, <<http://www.mineweb.com/archive/africas-greatest-little-story-coppercobalt-saga-continues>> . A company circular concerning a later deal to acquire shares in Camrose confirmed that Kigala Multinational (cf. ‘International’, but believed to be the same entity), was ‘99.9 per cent. owned by the Camrose Group Company Kigala Multinational Limited (“Kigala”). See ENRC, *Circular to ENRC Shareholders*, 7 December 2012, op. cit., p.3, numbered paragraph 4.

¹³⁵ *DPA*, Statement of Facts, 38.

¹³⁶ *DPA*, Statement of Facts, 39.

¹³⁷ *DPA*, Statement of Facts, 40.

¹³⁸ Africo Resources Limited, ‘Africo shareholders approve \$100M private placement and associated Camrose transactions’, 12 June 2008, available at: <http://www.newswire.ca/news-releases/africo-shareholders-approve-100m-private-placement-and-associated-camrose-transactions-536293911.html>

¹³⁹ *DPA*, Statement of Facts, 42.

¹⁴⁰ Africo Resources Limited, ‘Africo Resources completes CAD\$100 million private placement with Camrose Resources Limited to develop the Kalukundi project and re-establish its ownership of Swanmines’, available at: <http://www.newswire.ca/news-releases/africo-resources-completes-cad100-million-private-placement-with-camrose-resources-limited-to-develop-the-kalukundi-project-and-re-establish-its-ownership-of-swanmines-536483491.html>

¹⁴¹ *DPA*, Statement of Facts, 44.

¹⁴² *DPA*, Statement of Facts, 46.

¹⁴³ *Ibid.*

¹⁴⁴ Africo Resources Ltd., ‘Africo Resources Ltd. Enters into Definitive Agreement with Camrose Resources Limited for Going Private Transaction’, 13 May 2016, available at: <<http://www.marketwired.com/press-release/africo-resources-ltd-enters-into-definitive-agreement-with-camrose-resources-limited-tsx-arl-2124766.htm>>.

¹⁴⁵ Africo Resources Ltd., ‘Africo Completes Going Private Transaction’, 6 July 2016, available at:

<<http://www.marketwired.com/press-release/africo-completes-going-private-transaction-tsx-arl-2140304.htm>>.

¹⁴⁶ *DPA*, Statement of Facts, 51.

¹⁴⁷ Africa Progress Panel, *Africa Progress Report 2013: Equity in Extractives*, p.55.

¹⁴⁸ *Ibid.*, p.56.

¹⁴⁹ *Ibid.*, p.56.

¹⁵⁰ *Ibid.*, Box 9, p.58.

¹⁵¹ *DPA*, Statement of Facts, 51 – 53.

¹⁵² *Africa Progress Report 2013: Equity in Extractives*, p.58.

¹⁵³ ENRC, ‘Announcement of 2010 Preliminary Results’, *RNS* 4402D, 23 March 2011, available at:

<<http://www.investigate.co.uk/eurasian-natural-res--enrc--rns/final-results/201103230700124402D.htm>>.

¹⁵⁴ RAID, *Och-Ziff, Mugabe’s “Bagmen” and the underpricing of African assets*, op. cit., box ‘The Camrose transactions’, p.14.

Endnote numbering follows the current report and not the original numbering scheme, but the notes themselves are unchanged.

¹⁵⁵ The private purchase was through ENRC’s wholly-owned subsidiary, ENRC Congo BV. See ENRC plc, ‘Acquisition of 50.5% of the Shares of Camrose Resources Limited’, *RNS* 4192R, 20 August 2010, op. cit.

¹⁵⁶ 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.

¹⁵⁷ 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.).

¹⁵⁸ 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., ‘First Quantum Minerals announces commencement of international arbitration regarding the cancellation of the Kolwezi Project’, *News Release* 10-08, 1

February 2010, available at: <<http://www.first-quantum.com/i/pdf/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., 'First Quantum Minerals provides update on legal proceedings in the Democratic Republic of Congo', *News Release 10-28*, 21 August 2010, available at: <http://www.first-quantum.com/i/pdf/2010-08-21_NR.pdf>.

¹⁵⁹ 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>.

¹⁶⁰ '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.

¹⁶¹ 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'.

¹⁶² 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 per cent. 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.'

¹⁶³ *DPA*, Statement of Facts, 52 – 54.

¹⁶⁴ *DPA*, Statement of Facts, 57.

¹⁶⁵ *DPA*, Statement of Facts, 58.

¹⁶⁶ *DPA*, Statement of Facts, 59.

¹⁶⁷ *DPA*, Statement of Facts, 60.

¹⁶⁸ Ibid., table of payments.

¹⁶⁹ *SEC Order*, 66 – 67.

¹⁷⁰ RAID, *Och-Ziff, Mugabe's "Bagmen" and the underpricing of African assets*, op. cit., box 'The Camrose transactions', p.14.

Endnote numbering follows the current report and not the original numbering scheme, but the notes themselves are unchanged.

¹⁷¹ ENRC, 'Acquisition of Remaining 49.5% of the Shares in Camrose Resources Limited and the Outstanding Minority Shareholdings in Certain Camrose Subsidiaries,' *RNS 0856T*, 7 December 2012, available at: <http://www.enrc.com/regulatory_news_article/3045>. The transaction was completed on 28 December 2012: ENRC, 'Completion Acquisition of Remaining 49.5% of the Shares in Camrose Resources Limited and the Outstanding Minority Shareholdings in Certain Camrose Subsidiaries', *RNS 462OU*, 28 December 2012, available at: <http://www.enrc.com/regulatory_news_article/3056>.

¹⁷² Ibid.

¹⁷³ *Africa Progress Report 2013*, op. cit., Box 9, The Kolwezi project, p.58.

¹⁷⁴ Under registered number 06023510. The name of the Company on incorporation was 'Eurasian Natural Resources Company plc' and on 11 December 2006, the name of the Company was changed to 'Eurasian Natural Resources Corporation plc'. See ENRC, *Prospectus*, Part XIII: Additional information, 2. Incorporation and Registration, p. 216, available at: <http://www.enrc.com/files/pdf/ENRC_Prospectus_FINAL_Part_13.pdf>. The registered office and principal place of business of the Company is Second Floor, 16 St James's Street, London SW1A 1ER.

¹⁷⁵ <<http://www.enrc.com/output/page5.asp>>

¹⁷⁶ See, respectively, ENRC, 'Successful completion of IPO', 7 December 2007, available at:

<<http://miranda.hemscott.com/ir/enrc/ir.jsp?page=news-item&item=56416542957058>> and 'Listing on the Kazakhstan Stock Exchange', 27 March 2008, available at: <<http://www.enrc.com/files/27March2008ENRCListedontheKazakhstanStockExchange.pdf>>.

¹⁷⁷ <<http://www.londonstockexchange.com/exchange/prices-and-news/stocks/summary/company-summary.html?fourWayKey=GB00B29BCK10GBGBXSET1>>, visited 9 March 2010.

¹⁷⁸ See, for example, Tom Bawden, 'Sir Richard Sykes: voted out, but not down', *The Guardian*, 10 June 2011, available at: <<http://www.guardian.co.uk/business/2011/jun/10/enrc-richard-sykes-kazakh-mining-firm?INTCMP=ILCNETT3487>>; Nikhil Kumar, 'ENRC shares a 'no go' over governance', *The Independent*, 18 August 2011, available at: <<http://www.independent.co.uk/news/business/news/enrc-shares-a-nogo-over-governance-2339570.html>>.

¹⁷⁹ See FCA, 'The FCA strengthens the listing rules to enhance protection for shareholders', *Press Release*, 5 November 2013, 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>.

¹⁸⁰ Ben Laurance, 'Fraud Office steps in at embattled Foothsie mining giant', *The Sunday Times*, 11 December 2011, available at: <<http://www.thesundaytimes.co.uk/sto/business/Industry/article839656.ece>>.

¹⁸¹ *Circular to ENRC Shareholders*, 7 December 2012, op. cit., p.12; see also p.27.

¹⁸² 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., 'First Quantum Minerals commences legal proceedings against ENRC subsidiaries', *News Release 10-32*, 15 September 2010, available at: <http://www.first-quantum.com/i/pdf/2010-09-15_NR.pdf>.

quantum.com/i/pdf/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., 'First Quantum Reaches Agreement With ENRC to Dispose of First Quantum's Residual DRC Assets and to Settle All Claims in Relation to First Quantum's DRC Operations', *Press Release*, 5 January 2012, available at: <<http://www.first-quantum.com/Media-Centre/Press-Releases/Press-Release-Details/2012/First-Quantum-Reaches-Agreement-With-ENRC-to-Dispose-of-First-Quantums-Residual-DRC-Assets-and-to-Settle-All-Claims-in-Relati/default.aspx>>; ENRC plc, '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', *RNS 0633V*, 5 January 2012, available at: <<http://staging.hemscottir.com/ir/enrc/ir.jsp?page=news-item&item=883747503235111>>.

¹⁸³ *Circular to ENRC Shareholders*, op. cit., 7 December 2012, p.15; see also p.27.

¹⁸⁴ *100Reporters*, 'Mining Copper, Burying Truth,' 28 May 2012, available at: <<http://100r.org/2012/05/mining-copper-burying-truth/>> and; 'Fast Track Past Red Flags', 4 June 2012, available at: <<http://100r.org/2012/06/fast-track-past-red-flags/>>.

¹⁸⁵ 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'.

¹⁸⁶ Danny Fortson, 'Heart of Darkness', *The Sunday Times*, 28 April 2013.

¹⁸⁷ Juliette Garside, 'ENRC investigated for bribery in Africa and Kazakhstan,' *The Guardian*, 28 April 2013, available at: <<http://www.theguardian.com/business/2013/apr/28/enrc-bribery-africa-kazakhstan>>.

¹⁸⁸ <<http://www.sfo.gov.uk/our-work/our-cases/case-progress/enrc-plc.aspx>>.

¹⁸⁹ 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, 'Response to RAID Allegations', *RNS 7003K*, 1 August 2013, available at: <http://www.enrc.com/regulatory_news_article/3713>). ENRC announced its delisting on 25 November 2013: ENRC plc, 'Notice of cancellation of listing from the official list', *RNS 7720T*, 25 November 2013, available at: <http://www.enrc.com/regulatory_news_article/4116>.

¹⁹⁰ RAID, *Outstanding Questions on AIM*, op. cit.

¹⁹¹ See, for example, Caroline Binham and Tom Burgis, 'UK awards extra funds for SFO probe into ENRC's mining deals - Serious Fraud Office stepping up investigation into alleged corruption involving Africa deals', *Financial Times*, 3 July 2016, <<https://www.ft.com/content/edb2760e-3fb3-11e6-9f2c-36b487ebd80a>>.

¹⁹² Thomas Wilson, 'SFO Probes Israeli Billionaire, Ex-ENRC Directors on Congo Deals', *Bloomberg*, 5 December 2016, <<https://www.bloomberg.com/news/articles/2016-12-05/sfo-probes-israeli-billionaire-ex-enrc-directors-on-congo-deals>>.

¹⁹³ Ministry of Justice, 'New plans to tackle corporate fraud', *Press Release*, 12 May 2016, <<https://www.gov.uk/government/news/new-plans-to-tackle-corporate-fraud>>.

¹⁹⁴ House of Commons, Criminal Finances Bill, as Amended, *Notices of Amendments*, given up to and including Monday 28 November 2016, <http://www.publications.parliament.uk/pa/bills/cbill/2016-2017/0097/amend/criminal_rm_rep_1128.1-5.html>.

¹⁹⁵ UK National Contact Point for the OECD Guidelines for Multinational Enterprises, *RAID and ENRC: Final Statement after Examination of Complaint*, February 2016, available at: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/506285/BIS-16-156-raid-and-enrc-final-statement-after-complaint.pdf>.

¹⁹⁶ Ibid., p.4.

¹⁹⁷ *SEC Order*, B. Suspicious payments in Zimbabwe, 48 – 52; *DPA*, Statement of Facts, 43.

¹⁹⁸ US sanctions against specifically identified individuals and entities in Zimbabwe were first imposed on 7 March 2003, under Executive Order 13288. On 23 November 2005, new Executive Order 13391 superseded the original order, expanding the list of sanctions targets. On 25 July 2008, Executive Order 13469 increased further the scope of sanctions.

¹⁹⁹ US Department of the Treasury, Office of Foreign Assets Control, *Zimbabwe - What You Need To Know About U.S. Sanctions: Executive Order - Blocking Property of Additional Persons Undermining Democratic Processes or Institutions in Zimbabwe*, 23 November 2005.

²⁰⁰ US Department of the Treasury, 'Treasury Designates Mugabe Regime Cronies,' 25 November 2008, available at: <<http://www.treasury.gov/press-center/press-releases/Pages/hp1295.aspx>>..

²⁰¹ OFAC, Specially Designated Nationals List Update, Zimbabwe Designations; Zimbabwe Designations Removals, 4/17/2014, <<https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/pages/20140417.aspx>>.

²⁰² Common Position 2002/145/CFSP, *Official Journal*, L 50, 21.2.2002, p. 1. Common Position 2002/145/CFSP was amended by Common Position 2002/600/CFSP, extending the measures to further persons who bear a wide responsibility for such violations (*Official Journal*, L 195, 24.7.2002, p. 1). Common Position 2002/145/CFSP was further amended and extended by Common Position 2003/115/CFSP and Common Position 2004/161/CFSP (see, respectively, *Official Journal*, L 46, 20.2.2003, p. 30, and *Official Journal*, L 50, 20.2.2004, p. 66). Common Position 2004/161/CFSP was renewed each year and the restrictive measures it provided for were extended until 20 February 2011. Although the EU sanctions regime has been further amended (*intra*, paragraph 26 and footnotes 10 – 11), Common Position 2004/161/CFSP and Council Regulation (EC) No 314/2004 (see footnote 8, below) remain key in respect of the information requested.

²⁰³ Council Regulation (EC) No 314/2004 of 19 February 2004 concerning certain restrictive measures in respect of Zimbabwe, *Official Journal*, L 55/1, 24.2.2004.

²⁰⁴ Council Common Position, 2009/68 CFSP, 26 January 2009, *Official Journal*, L 23/43, 27.1.2009. Council Regulation (EC) No 77/2009 of 26 January 2009, implemented the Common Position, entering into force on the day of its publication (*Official Journal*, L 23/5, 27.1.2009).

²⁰⁵ Council Implementing Decision 2012/124/CFSP of 27 February 2012, *Official Journal*, L 54/20, 28.2.2012; Commission Implementing Regulation (EU) No 151/2012 of 21 February 2012, *Official Journal*, L 49.2, 22.2.2012.

²⁰⁶ Council Implementing Decision 2013/469/CFSP of 23 September 2013, *Official Journal*, L 252/31, 24.9.2013; Commission Implementing Regulation (EU) No 915/2013 of 23 September 2013, *Official Journal*, L252/23, 24.9.2013.

²⁰⁷ *SEC Order*, 51.

²⁰⁸ RAID, *Sanctions, violence, pensions and Zimbabwe*, July 2013, p.2. Endnote numbering follows the current report and not the original numbering scheme, but the notes themselves are unchanged.

²⁰⁹ CAMEC, 'Acquisition of Platinum Assets,' *RNS 1641S*, 11 April 2008, available at: <<http://www.investigate.co.uk/central-afr-min--38-exp--cfm/rns/acquisition/200804111130081641S/>>.

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² DPA, Statement of Facts, 43.

²¹³ SEC Order, 51.

²¹⁴ Andrew Alderson and Russell Hotten, 'Business and morality: Is Phil Edmonds right to trade with Robert Mugabe?,' *The Telegraph*, 15 June 2008, <<http://www.telegraph.co.uk/finance/newsbysector/energy/2791649/Business-and-morality-Is-Phil-Edmonds-right-to-trade-with-Robert-Mugabe.html>>.

²¹⁵ Miningmx, 'Camec's Zimbabwe platinum project threatened,' 18 July 2008, <http://www.miningmx.com/pls/cms/iac.page?p_t1=1535&p_t2=0&p_t3=0&p_t4=0&p_dynamic=YP&p_content_id=674062&p_site_id=83>.

²¹⁶ 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 (CalPERS) replied. CalPERS forwarded to RAID a copy of a reply (dated 4 September 2013) it had received from Och-Ziff after the pension fund had raised RAID's concerns with the hedge fund. A copy of this letter, which CalPERS had explained to Och-Ziff would be disclosed to RAID, is available as Annex 1 to RAID's report *Och-Ziff, Mugabe's "Bagmen" and the underpricing of African assets*, op. cit.

²¹⁷ SEC Order, 52.

²¹⁸ DPA, Statement of Facts, 43: 'Och-Ziff Employee 3 received a message which stated: "[Company A] paid 4 arms into zim, and rented boat from china. Journo has bank transfers apparently."'

²¹⁹ RAID, *Sanctions, violence, pensions and Zimbabwe*, op. cit., box 'The \$100 million loan and payment for an arms shipment from China', pp. 10 – 11. Endnote numbering follows the current report and not the original numbering scheme, but the notes themselves are unchanged.

²²⁰ David Beresford, 'Chinese ship carries arms cargo to Mugabe regime,' *The Guardian*, 18 April 2008.

²²¹ High Court of South Africa Durban & Coast Local Division, Court Order, Case No. 4975/08, 18 April 2008.

²²² The documents produced in court included the bill of lading, packing list and commercial invoice. Copies are available at: <[http://wikileaks.org/wiki/Zimbabwe_Chinese_weapons_shipment_documentation_\(2008\)](http://wikileaks.org/wiki/Zimbabwe_Chinese_weapons_shipment_documentation_(2008))>.

²²³ 'Business and morality: Is Phil Edmonds right to trade with Robert Mugabe?,' op. cit..

²²⁴ Ibid.

²²⁵ Ibid.

²²⁶ Lauren Ploch, 'Zimbabwe: 2008 Elections and Implications for U.S. Policy,' *CRC Report for Congress*, RL34509, 22 May 2008, p.11.

²²⁷ 'Business and morality: Is Phil Edmonds right to trade with Robert Mugabe?,' op. cit..

²²⁸ Brian Johnson-Thomas and Peter Danssaert, *Zimbabwe - Arms and Corruption: Fuelling Human Rights Abuses*, International Peace Information Service, July 2009; also Fiona Forde, 'Weapons flowing in and out of Zimbabwe,' *The Sunday Independent*, 12 July 2009.

²²⁹ SEC Order, 51.

²³⁰ SEC Order, 50.

²³¹ Letter from Jeffrey C. Blockinger, Chief Legal Officer, Och-Ziff Capital Management Group, to Anne Simpson, Director for Corporate Governance, California Public Employees Retirement System, 4 September 2014. See also *intra*, note 216.

²³² CAMEC, 'Planned Placing Extended To Raise Additional Funds For Expansion,' 28 March 2008, available at: <<http://www.investigate.co.uk/central-afr-min--38-exp--cfm/rns/placing-extension/200803281300050470R/>>.

²³³ 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.

²³⁴ 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.

²³⁵ 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.

²³⁶ Ibid., Exhibit A.

²³⁷ Ibid., Exhibit A, fn 2.

²³⁸ 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.

²³⁹ 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.

²⁴⁰ 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).

²⁴¹ DPA, Statement of Facts, 43; also SEC Order, 52: 'Neither informed anyone else at Och-Ziff of these accusations, took steps to determine whether these accusations were true, or limited Och-Ziff's relationship with DRC Partner or the mining company.'

²⁴² Letter from Miller Wrubel (Counsel to Funnekotter et al.) to Judge Ronald L. Ellis, 3 October 2013, Document 45, op. cit.

²⁴³ Ibid., Exhibit 1, e-mail from vanja.baros@ozcap.com, ‘Fw: New spreadsheet of Tugai project’, 04 August 2008, forwarding e-mail from Rodrigo Del Fierro ,rdelfierro@nrg-fund.com>, ‘New spreadsheet of Tugai project’, 04 August 2008, with attachment (inter alia) CAMEC_VB_20080722.xls; Exhibit 2, copy of attached spreadsheet CAMEC_VB_20080722.xls (also labelled ‘OZF00013479.’).

²⁴⁴ Letter from Miller Wrubel (Counsel to Funnekotter et al.) to Judge Ronald L. Ellis, 3 October 2013, Document 45, op. cit.

²⁴⁵ Ibid.

²⁴⁶ Ibid., Exhibit 1, e-mail from vanja.baros@ozcap.com, ‘Fw: New spreadsheet of Tugai project’, 04 August 2008, op. cit.

²⁴⁷ 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*, op. cit., p.46.

²⁴⁸ Council Common Position amending Common Position 2004/161/CFSP renewing restrictive measures against Zimbabwe, 11895/08, 28 July 2008, paragraph (2).

²⁴⁹ On the role of the JOC/Mugabe, see US Embassy South Africa, *Transcript Press Roundtable with Assistant secretary of State for African Affairs*, Dr. Jendayi E. Frazer, 21 December 2008, <<http://southafrica.usembassy.gov/root/pdfs/zimbabwe081221.pdf>>; also Lauren Ploch, ‘Zimbabwe: 2008 Elections and Implications for U.S. Policy,’ op. cit., p.9 and footnote 42.

²⁵⁰ Only Gideon Gono was added to the EU list after the platinum transaction, but was already on the US list. Happyton Bonyongwe was already on the EU, but only later added to the US list.

²⁵¹ James D. McGee, US Ambassador to Zimbabwe, ‘Breaking the Silence on Political Violence in Zimbabwe’, 14 May 2008, available at: <http://iipdigital.usembassy.gov/st/english/article/2008/05/20080514150007eaifas0.9153559.html#axzz2T_AkACsMH>.

²⁵² Tom Casey, Deputy Spokesman, US Department of State, *Daily Press Briefing*, Washington, DC, 1 May 2008, <<http://2001-2009.state.gov/r/pa/prs/dpb/2008/may/104268.htm>>.

²⁵³ See, for example, Assistant US Secretary of State for African Affairs, Jendayi Frazer, quoted in ‘Mugabe Trying to Steal Elections, Says U.S. Official,’ *CNN*, April 24, 2008, <<http://edition.cnn.com/2008/WORLD/africa/04/24/zimbabwe.ship/index.html>>.

²⁵⁴ United Nations High Commissioner for Human Rights, ‘Arbour calls for justice for victims of electoral violence in Zimbabwe,’ *Press Release*, 26 June 2008, <<http://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=8795&LangID=E>>

²⁵⁵ United Nations High Commissioner for Human Rights, ‘Alarmed by violence in Zimbabwe, Arbour urges restraint,’ *Press Release*, 27 April 2008. <<http://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9166&LangID=E>>

²⁵⁶ Human Rights Watch, ‘*Bullets for Each of You*: State-Sponsored Violence since Zimbabwe’s March 29 Elections, June 2008, p.17, <<https://www.hrw.org/reports/2008/zimbabwe0608/zimbabwe0608web.pdf>>.

²⁵⁷ ‘Acquisition of Platinum Assets,’ op. cit. That CAMEC was not disclosing the identity of Meryweather’s owners is referred to by Ben Brewerton of London-based Financial Dynamics Ltd., a public relations firm representing CAMEC, cited in Antony Sguazzin and Mark Herlihy, ‘Camec to Mine Platinum With Zimbabwe Government Unit,’ *Bloomberg*, 11 April 2008, <<http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aINXh9QhQiyQ>> (since archived).

²⁵⁸ *SEC Order*, 51.

²⁵⁹ Under Article 6 of Council Regulation (EC) No 314/2004, all funds and economic resources of the persons on the EU sanctions list are frozen and should not be made available directly or indirectly to them. It is a criminal offence to breach a financial sanction, without an appropriate licence or authorisation from the Treasury.

²⁶⁰ The Zimbabwe (Financial Sanctions) Regulations 2009 state that ‘[a] person (including the designated person) must not deal with funds or economic resources belonging to a designated person’ (regulation 6(1)) and a ‘person must not make funds or economic resources available, directly or indirectly, to or for the benefit of a designated person’ (regulation 7(1)) ‘unless authorised by a licence granted under regulation 10’. Under regulation 10, the Treasury ‘may grant a licence to disapply the prohibition in regulation 6(1) or 7(1)’. It is understood that a licence may be ‘general or granted to a particular person or to a category of persons’.

²⁶¹ Council Regulation (EC) No 314/2004, Article 7 provides for derogation from Article 6, which provides for the freezing of all funds and economic resources of designated persons or associated entities.

²⁶² Respectively, ENRC, ‘Statement Regarding Press Speculation’, *RNS 1825Z*, 16 September 2009, <<http://www.londonstockexchange.com/exchange/prices-and-news/news/market-news/market-news-detail.html?announcementId=10193918>>; ENRC, ‘Recommended Cash Offer Eurasian Natural Resources Corporation PLC (“ENRC” or “the Group”) for Central African Mining & Exploration Company PLC (“CAMEC”), *RNS 3109Z*, 18 September 2009, <<http://www.londonstockexchange.com/exchange/prices-and-news/news/market-news/market-news-detail.html?announcementId=10197319>>.

²⁶³ *RNS 3109Z*, ‘Recommended Cash Offer Eurasian Natural Resources Corporation PLC’, op. cit.

²⁶⁴ ENRC, ‘Posting of Offer Document’, *RNS 5050A*, 9 October 2009, <<http://www.londonstockexchange.com/exchange/prices-and-news/news/market-news/market-news-detail.html?announcementId=10225675>>.

²⁶⁵ ENRC, ‘Recommended Cash Offer by ENRC Africa Limited (a wholly-owned subsidiary of Eurasian Natural Resources Corporation PLC) to acquire Central African Mining & Exploration Company plc’, (‘Offer Document’), 9 October 2009, section 15, p.25.

²⁶⁶ ENRC, ‘Offer Declared Unconditional in all Respects’, *RNS 2560C*, 10 November 2009, <<http://www.londonstockexchange.com/exchange/prices-and-news/news/market-news/market-news-detail.html?announcementId=10267407>>.

²⁶⁷ ENRC, ‘Offer Document’, op. cit., p. 25.

²⁶⁸ Ibid.

²⁶⁹ Ibid., Sanctions and ongoing post-acquisition management issues, pp. 25 – 6.

²⁷⁰ Ibid., Acquisition of Zimbabwe Platinum interests, p. 61.

²⁷¹ Ibid., p.26.

²⁷² CAMEC, *Offer to Purchase Katanga Mining Limited*, 28 August 2007, Offer To Purchase and Circular, A-3.

²⁷³ ENRC, ‘Offer Document’, 12. Procedure for acceptance of the offer, pp. 18 - 19.

²⁷⁴ A recording of the conference call is available at: <http://pres.enrc.com/enrc012/webcast.asp?Media=wm_aud&PresNum=01&SlideNum=001>.

²⁷⁵ ‘Rautenbach can’t sell Camec stake to ENRC till UK Treasury approves’, *Metal Bulletin*, 07 October 2009, <<http://www.metalbulletin.com/Article/2311307/Rautenbach-can-t-sell-Camec-stake-to-ENRC-till-UK-Treasury.html>>.

²⁷⁶ Garry White, ‘Kazakh miners seek Chinese funding of up to \$2.4bn’, *The Daily Telegraph*, 12 October 2009, available at: <<http://www.telegraph.co.uk/finance/newsbysector/industry/6310353/Kazakh-miners-seek-Chinese-funding-of-up-to-2.4bn.html>>.

²⁷⁷ ENRC, ‘Compulsory acquisition’, 15 December 2009, available at: <<http://www.enrc.com/files/CamecAnn15DEC.pdf>>.

²⁷⁸ *Intra*, note 257.

²⁷⁹ ENRC, ‘Offer Document’, Other CAMEC Shareholders, p. 11.

²⁸⁰ CAMEC, ‘Acquisition of Platinum Assets’, op. cit.

²⁸¹ ‘In the City,’ *Private Eye*, issue no. 1252, 25 December 2009 – 7 January 2010, p. 33.

²⁸² ENRC presentation, 18 September 2009, p. 19, available at: <<http://www.enrc.com/output/page277.asp>>.

²⁸³ Ben Laurance, ‘UK freezes Mugabe’s ally’s holding in Edmonds firm’, *Daily Mail*, 30 March 2009, available at: <<http://www.dailymail.co.uk/money/article-1165959/UK-freezes-Mugabes-allys-holding-Edmonds-firm.html#ixzz0icaJRxLS>>.

²⁸⁴ Article 7 of Council Regulation (EC) No 314/2004 provides for derogation from financial sanctions, allowing the competent authorities to: ‘...authorise the release of certain frozen funds or economic resources or the making available of certain frozen funds or economic resources, under such conditions as they deem appropriate, after having determined that the funds or economic resources concerned are: (a) necessary for basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums and public utility charges; (b) intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services; (c) intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources; (d) necessary for extraordinary expenses, provided that the relevant competent authority has notified the grounds on which it considers that a specific authorisation should be granted to all other competent authorities and the Commission at least two weeks prior to the authorisation.’

²⁸⁵ RAID Letter and Memorandum to Asset Freezing Unit, ‘The offer by Eurasian Natural Resources plc to acquire Central African Mining & Exploration Company plc: trading in direct or indirect holdings to the benefit of designated persons under the UK sanctions regime HM Treasury’, 6 July 2011, <<http://www.raid-uk.org/sites/default/files/raid-afu-memorandum.pdf>>. Endnote numbering follows the current report and not the original numbering scheme; where a few additional notes have been added to provide clarification in the context of the current report, this is indicated by the use of square brackets.

²⁸⁶ A warrant for Rautenbach’s arrest on charges of fraud, theft and corruption, had been issued by South Africa’s Deputy Director of Public Prosecutions and the Investigating Directorate, Serious Economic Offences on 27 September 2000. See Investigating Directorate, Serious Economic Offences, Warrant of Arrest, 27 September 2000, with supporting affidavits.

²⁸⁷ Antony Sguazzin and Brett Foley, ‘Rautenbach to Pay S. African Fine to End Legal Battle’, *Bloomberg*, 21 September 2009, available at: <<http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aINXh9QhQiyQ>>. The article quotes Mthunzi Mhaga, spokesman for the NPA.

²⁸⁸ Madelain Roscher, ‘Plea Bargain Agreement Between Npa And Billy Rautenbach’s Company, SA Botswana Hauliers Finalised’, *PR Worx*, Press Release on behalf of Billy Rautenbach, 22 September 2009, available at: <<http://www.prlog.org/10350092-plea-bargain-agreement-between-npa-and-billy-rautenbachs-company-sa-botswanahauliers-finalised.html>>.

²⁸⁹ *Lords Hansard*, 24 Sep 2012: Column WA183.

²⁹⁰ *Commons Hansard*, 10 July 2008: Column 1547.

²⁹¹ <<http://www.informationtribunal.gov.uk/DBFiles/Decision/i1707/038a%20120116%20DECISION.pdf>>.

²⁹² Rights and Accountability in Development vs Information Commissioner and Her Majesty’s Treasury, The Upper Tribunal (Administrative Appeals Chamber), Application for Permission to Appeal to the Upper Tribunal, Upper Tribunal Case no. GIA/0753/2016, Decision, 22 April 2016.

²⁹³ Bryan Cave LLP, ‘Public Release of U.S. Treasury License Requests’, *International Regulatory Bulletin*, No. 458, 26 January 2010, <<https://www.bryancave.com/en/thought-leadership/public-release-of-u-s-treasury-license-requests-irb-no-458.html>>.

²⁹⁴ Jo Becker, ‘U.S. Approved Business With Blacklisted Nations’, *New York Times*, 23 December 2010, <http://www.nytimes.com/2010/12/24/world/24sanctions.html?hp&_r=0>.

²⁹⁵ <<http://www.treasury.gov/FOIA/Pages/ofac-index.aspx>>.

²⁹⁶ The database is available at: <<http://www.treasury.gov/FOIA/Documents/2011-10-044%20resp.xls>>. See also Erik Ferrari, ‘OFAC’s Licensing Database Released,’ *Sanctions Law*, 11 February 2012, <<http://sanctionlaw.com/ofacs-licensing-database-released/>>.

²⁹⁷ Erik Larson, ‘Companies Trading With Iran Hidden by U.K. to Avert U.S. Law’, *Bloomberg Business*, 4 August 2011, <<http://www.bloomberg.com/news/articles/2011-08-04/british-companies-trading-with-iran-hidden-by-u-k-to-avert-u-s-sanctions>>.

²⁹⁸ Terje Langel and Takahiko Hyuga, ‘Yakuza Bosses Whacked by Regulators Freezing AmEx Cards’, *Bloomberg Business*, 23 October 2013, <<http://www.bloomberg.com/news/articles/2013-10-22/yakuza-mobsters-whacked-by-regulators-freezing-amexs>>.

²⁹⁹ Philip Shiskin, ‘U.S. Sanctions Over Ukraine Hit Two Russian Banks Hardest’, *Wall Street Journal*, 5 March 2005, <<http://www.wsj.com/articles/u-s-sanctions-over-ukraine-hit-two-russian-banks-hardest-1425597150>>.

³⁰⁰ Juliette Garside, David Pegg and Holly Watt, ‘Alleged Mugabe cronies kept offshore firms years after UN alert raised’, *The Guardian*, 6 April 2016, <<http://www.theguardian.com/news/2016/apr/06/mugabe-zimbabwe-john-bredenkamp-billy-rautenbach-offshore-sanctions-panama-papers>>.

³⁰¹ Joan Tilouine, ‘«Panama papers»: Dan Gertler, roi du Congo et de l’offshore», *le Monde*, 7 April 2016, <http://www.lemonde.fr/afrique/article/2016/04/07/panama-papers-dan-gertler-roi-du-congo-et-de-l-offshore_4898097_3212.html>.

³⁰² HM Treasury, ‘New body to support financial sanctions implementation launched’, *Press Release*, 31 March 2016, <<https://www.gov.uk/government/news/new-body-to-support-financial-sanctions-implementation-launched>>.

³⁰³ See HM Treasury, *Factsheet: Policing and Crime Bill – Financial Sanctions*, July 2016, <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537282/Factsheet_18 - Financial sanctions.pdf>. While the legislation sets the parameters within which OFSI must operate, the Treasury is currently consulting on the implementation process. See HM Treasury, *The process for imposing monetary penalties for breaches of financial sanctions: consultation*, December

2016,

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/574669/Monetary_sanctions_consultation_final.pdf>.

Annex 1

Entity/individual referred to by DOJ/SEC Matching entity	Statements/facts – US authorities	Corresponding facts from the public record
Company A Central African Mining And Exploration Company (CAMEC)	<p>‘a publicly traded DRC-focused mining company controlled by DRC Partner’ [DOJ, <i>DPA</i>, Statement of Facts, 28]</p> <p>April 2008 investment by Och-Ziff in a ‘London stock exchange-listed mining company with operations in the DRC’ in which ‘DRC Partner was a significant shareholder’. [SEC <i>Order</i>, 48]</p> <p>Reference to the London miner’s placement announcement: ‘the offering of new shares to which Och-Ziff subscribed was intended to fund the company’s ongoing mining efforts in the DRC.’ [SEC <i>Order</i>, 49]</p> <p>Transaction to purchase 150 million shares in company A was for \$150 million and occurred on or about 27 March 2008 [DOJ, <i>DPA</i>, Statement of Facts, 32]</p> <p>‘Och-Ziff... funded approximately \$150 million from its managed investor funds in March 2008 to purchase shares in the mining company’ [SEC <i>Order</i>, 50]</p> <p>‘Within days of the investment, the mining company publicly announced that it had acquired an interest in a platinum asset in Zimbabwe.’ [SEC <i>Order</i>, 51]</p>	<p>CAMEC was a DRC-focused mining company, traded on the London Stock Exchange’s Alternative Investment Market (AIM).ⁱ</p> <p>By 2008, and after merging his Prairie International company with CAMEC, Gertler was a major shareholder in the latter.ⁱⁱ</p> <p>On 28 March 2008, CAMEC issued a release stating:ⁱⁱⁱ ‘[f]ollowing further discussions with the placees regarding the multiple investment opportunities available to the Company in Africa, the Company has now expanded the fundraising....150,000,000 of the New Ordinary Shares have already been placed firm...’</p> <p>Moreover CAMEC eventually issued a release (attributed ‘From OZ Management’ and dated 28 July 2008) noting:^{iv} ‘OZ Management LP as Investment Manager to a number of investment funds is now interested in 5.83% of the outstanding share capital of the Company.’ A few days before the announcement was made, CAMEC had confirmed the number of ordinary shares in issue at 2,572,806,383;^v hence the 5.83% under the management of OZ Management equated to 150,000,000 shares.</p> <p>On 11 April 2008, CAMEC announced the acquisition of an interest in platinum mining assets in Zimbabwe.^{vi}</p>
Och-Ziff Employee 3 [DOJ] or A [SEC] Michael Cohen	<p>‘headed Och-Ziff’s London Office’.[DOJ, <i>DPA</i>, Statement of Facts, 8]</p> <p>‘a senior Och-Ziff employee who was the head of</p>	<p>Och-Ziff’s African investments are managed out of Europe.^{vii} Until March 2013, the company’s European operations were headed by Michael Cohen.^{viii}</p>

ⁱ Central African Mining & Exploration Company, *Admission document*. CAMEC was admitted to AIM in October 2002 – see: <<http://www.londonstockexchange.com/en-gb/about/Newsroom/Media+Resources/Welcome+Stories/2002/09-10-2002.htm>> (page no longer available); on CAMEC’s DRC focus, see, for example, CAMEC, *Report and Financial Statements*, Year ended 31 March 2006, p.3.

ⁱⁱ CAMEC, ‘Circular re DRC Joint Venture Acquisition and Trading Update’, 7 May 2008, available at:

<<http://www.investigate.co.uk/central-afr--min--38-exp--cfm-/rns/circ-re--drc-joint-venture/200805070701298349T/>>.

ⁱⁱⁱ CAMEC, ‘Planned Placing Extended To Raise Additional Funds For Expansion,’ 28 March 2008, available at:

<<http://www.investigate.co.uk/central-afr--min--38-exp--cfm-/rns/placing-extension/200803281300050470R/>>.

^{iv} CAMEC, RNS 1627A, ‘Holding(s) in Company’. 29 July 2008, available at:

<<http://www.investigate.co.uk/central-afr--min--38-exp--cfm-/rns/holding-s-in-company/200807291809131627A/>>.

^v See CAMEC, ‘Exercise of options and TVR,’ RNS 8019Z, 24 July 2008, available at: <<http://www.investigate.co.uk/central-afr--min--38-exp--cfm-/rns/exercise-of-options-and-tvr/200807241152428019Z/>>.

^{vi} CAMEC, RNS 1641S, ‘Acquisition of Platinum Assets,’ 11 April 2008, available at: <<http://www.investigate.co.uk/central-afr--min--38-exp--cfm-/rns/acquisition/20080411130081641S/>>.

^{vii} 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).

^{viii} Och Ziff Capital Management Group, *Form 8K*, Report of unscheduled material events or corporate event, 19 March 2013,

available at: <<http://services.corporate-ir.net/SEC/Document.Service?id=P3VybD1hSFIwY0RvdkwRndhUzUwWlc1cmQvbDZZWEprTG1OdmJTWtiM2R1Ykc5aFpDN>>.

	Och-Ziff Europe' [SEC Order, 1] ‘an Australian citizen’ [DOJ, DPA, Statement of Facts, 10] ‘an employee of Och-Ziff Management Europe Limited, the London based subsidiary of OZ Management LP, and a member of Och-Ziff’s European private investment team, which also had responsibility for investments in Africa.’ [DOJ, DPA, Statement of Facts, 10]	Companies House filing on Africa Management (UK) Limited lists Vanja Baros as a former director and Australian national. ^{ix} Vanja Baros spent five years at Och-Ziff Capital Management in London investing in the natural resources sector. ^x Widely described as Och-Ziff London office’s Africa director. ^{xi}
Zimbabwe Shareholder Muller Conrad (aka ‘Billy’) Rautenbach	‘one major shareholder in the entity (“Zimbabwe Shareholder”) had been expelled from the DRC’. [SEC Order, 49] Platinum mine in Zimbabwe ‘seized from another mining entity and then ‘resold...to a holding company affiliated with the Zimbabwe Shareholder and the Zimbabwe state owned mining company. The Zimbabwe Shareholder then transferred the holding company to the DRC-based mining company in exchange for additional shares in the mining company. [SEC Order, 51]	On 17 July 2007, Zimbabwean businessman Billy Rautenbach, a significant shareholder in CAMEC and from whom the latter had acquired DRC mining assets, was barred from the DRC by the Interior Ministry. ^{xii} On 11 April 2008, CAMEC announced the acquisition of an interest in platinum mining assets in Zimbabwe via its acquisition of 100% of Lefever Finance Ltd, registered in the British Virgin Islands. ^{xiii} Lefever owned 60% of Todal Mining (Private) Limited, a Zimbabwean company, which held the rights to the Bougai and Kironde claims south west of the city of Gweru in Zimbabwe. ^{xiv} The remaining 40% of Todal was held by the Zimbabwe Mining Development Corporation (‘ZMDC’), wholly owned by the Government of Zimbabwe. The consideration paid for Lefever was a cash payment of US\$5 million and the issue of 215,000,000 new CAMEC ordinary shares.
DRC Official 2 Katumba Mwanke DRC Official 1 President Joseph Kabila	“‘DRC Official 2,’ ...was a senior official in the DRC and close advisor to DRC Official I. Since at least 2004, DRC Official 2 was an Ambassador-at-Large for the DRC government and also a national parliamentarian.’ [DOJ, DPA, Statement of Facts, 15] ‘[senior DRC government official’s] closest aide, and former [DRC provincial] governor’ [SEC Order, 46.f.] “key guy,” a top advisor to a senior DRC government official’ [SEC Order, 63] ‘On or about February 12, 2012, DRC Official 2 died. On or about February 13, 2012, Och-Ziff Employee 5 sent an e-mail message to Och-Ziff Employee 3, which stated: “FYI, [DRC Official 2 is] dead, [DRC Partner’s] key guy in DRC.” Och-Ziff Employee 5’s e-mail included the text of a Financial Times article on the official’s death, which stated, among other things: “[DRC Official 2], member of parliament and a former governor of Congo’s copper heartlands province, Katanga, cut a	Financial Times article: ^{xv} ‘Augustin Katumba Mwanke, chief adviser to Joseph Kabil, the president of the Democratic Republic of Congo, has been killed in a plane crash....Mr Mwanke, member of parliament and a former governor of Congo’s copper heartlands province, Katanga, cut a shadowy figure. Diplomats associate him with Congo’s entrenched corruption and a series of secret investments.’

[XdhSEEvWVdOMGFXOXVQVkJFUmlacGNHRm5aVDA0T0RBNE5ERTBKbk4xWW5OcFpEMDFOdz09JnR5cGU9MiZmbj1PY2haaWZmQ2FwaXRhbE1hbmFnZW1lbnRHcm91cExMQ184S18yMDEzMDMxOS5wZGY=>](https://www.xdhs.com/xdhSEEvWVdOMGFXOXVQVkJFUmlacGNHRm5aVDA0T0RBNE5ERTBKbk4xWW5OcFpEMDFOdz09JnR5cGU9MiZmbj1PY2haaWZmQ2FwaXRhbE1hbmFnZW1lbnRHcm91cExMQ184S18yMDEzMDMxOS5wZGY=>).

^{ix} Companies House, record of company officers, <<https://beta.companieshouse.gov.uk/company/06374856/officers>> (visited 02/11/2016).

^x Loon Energy Corporation, biography of Vanja Baros, <http://www.loonenergy.com/bios/v_baros.html>. An identical biography was used by Serinus Energy, although has since been removed; see, however, webpage captured on 5 September 2015, available at: <<http://web.archive.org/web/20150905104442/http://investor.serinusenergy.com/en/press/Management-biographies/vanja-baros>>.

^{xi} See, for example, *Africa Confidential*, Vol. 53 No. 13, 22 June 2012, ‘Who’s who in the Guinea Loan Saga’; also Scott Patterson and Michael Rothfield, ‘U.S. Investigates Hedge Fund Och-Ziff’s Link to \$100 Million Loan to Mugabe’, *Wall Street Journal*, 5 August 2015, <<http://www.wsj.com/articles/u-s-probes-och-ziff-africa-deal-tied-to-mugabe-1438817223>>.

^{xii} As reported in *Mining Weekly*, ‘CAMEC’s Rautenbach arrested in DRC, deported to Zimbabwe’, 19 July 2007, available at: <http://www.miningweekly.com/article/camec039s-rautenbach-arrested-in-drc-deported-to-zimbabwe-2007-07-19/rep_id:3650>.

^{xiii} CAMEC, RNS 1641S, ‘Acquisition of Platinum Assets,’ 11 April 2008, available at: <http://www.investigate.co.uk/central-afr-min--38-exp--cfm-/rns/acquisition/200804111130081641S>.

^{xiv} Ibid.

^{xv} ‘Financial Times, ‘Kabila adviser dies in plane crash’, 12 February 2012, <<https://www.ft.com/content/08789a94-55a4-11e1-9d95-00144feabdc0>>.

	<p>shadowy figure.' [DOJ, <i>DPA</i>, Statement of Facts, 61]</p> <p>“‘DRC Official 1,’...was a senior official in the DRC who had the ability to take official action and exert official influence over mining matters in the DRC.’ [DOJ, <i>DPA</i>, Statement of Facts, 14]</p>	
DRC Partner Dan Gertler	<p>“‘DRC Partner,’ an Israeli businessman...had significant interests in the diamond and mineral mining industries in the Democratic Republic of the Congo (the ‘DRC’).’ [DOJ, <i>DPA</i>, Statement of Facts, 12]</p> <p>‘infamous Israeli businessman with close ties to government officials at the highest level within the DRC (“DRC Partner”).’ [SEC Order, 42]</p> <p>Och-Ziff attorney ‘noted that the DRC Partner “will be very easy to find ... perhaps the impetus behind the movie ‘Blood Diamonds.’”’ [SEC Order, 45]</p> <p>‘DRC Partner’s business dealings in the DRC began in 2000 when he was awarded a diamond export monopoly valued at \$600 million for which he allegedly paid only \$20 million...It was later alleged that DRC Partner secured his monopoly “in exchange for providing military training” to government forces in the DRC.’ [SEC Order, 46.d.]</p> <p>Lora Enterprises Limited is described as a ‘DRC-Partner-controlled company’ (DOJ, <i>DPA</i>, Statement of Facts, 58)</p> <p>DRC Partner was ‘a significant shareholder’ in ‘a London stock exchange-listed mining company with operations in the DRC’. [SEC Order, 48]</p>	<p>In April 2001, a UN Panel stated:^{xvi} ‘Monopoly on diamonds granted to International Diamond Industries (IDI).—According to government sources, the objective of this monopoly was twofold: first, to have fast and fresh money that could be used for the purchase of needed arms.... Second, to have access to Israeli military equipment and intelligence given the special ties that the Director of International Diamond Industries, Dan Gertler, has with some generals in the Israeli army. The same UN Panel reported in November 2001 (UN Panel Report 13 November 2001, paragraphs 67 – 9):^{xvii} ‘President Kabila reached an agreement with the Israeli-owned International Diamond Industries in August 2000 for a monopoly on diamond sales. According to the terms of the agreement, IDI agreed to pay \$20 million in return for a monopoly on sales valued at \$600 million annually. The Panel was informed by very credible sources that this deal included unpublished clauses, in which IDI agreed to arrange, through its connections with high-ranking Israeli military officers the delivery of undisclosed quantities of arms as well as training for the Congolese armed forces.’</p> <p>According to a Katanga Mining news release:^{xviii} ‘Lora Enterprises Limited (“Lora”)...ultimate owner is a trust for the benefit of family members of Dan Gertler (the “Trust”).’ Global Witness put questions to Dan Gertler and received a reply, including statements:^{xix} ‘Lora...[is] owned by Fleurette Group’ and ‘Who are the ultimate beneficial owners of Lora? Fleurette Properties Limited’. Fleurette has confirmed that the Fleurette Group was established ‘for the benefit of the Gertler Family Trust’.^{xx}</p> <p>CAMEC matches the ‘London stock exchange-listed company’. By May 2008, Gertler had a 32.7% holding in CAMEC via the merger with Prairie.^{xxi}</p>
South African conglomerate Mvela Holdings Founded by:	<p>Och-Ziff ‘chose a prominent figure in South Africa as a potential partner for AGC.... a former government official as well as a successful businessman through his South African-based conglomerate.’ [SEC Order, 34]</p>	<p>Och Ziff refers to how the AML ‘will combine the regional infrastructure and expertise of Mvela Holdings’ and ‘will act as the exclusive vehicle for Mvela Holdings and OZ Management to pursue private investment opportunities within the region.’^{xxii}</p>

^{xvi} UN Security Council, *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo*, S/2001/357, 12 April 2001, paragraphs 150 – 2

^{xvii} UN Security Council, *Addendum to the report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo*, S/2001/1072, 13 November 2001, paragraphs 67 – 69.

^{xviii} Katanga Mining Limited, ‘Katanga announces closing of US\$265 million mandatorily convertible loan facility’, *News Release*, 11 February 2009, <<http://www.katangamining.com/media/news-releases/2009/2009-02-11.aspx>>

^{xix} <<https://www.globalwitness.org/documents/11511/responses%20by%20dan%20gertler%20to%20global%20witness.pdf>>.

^{xx} According to the company website: ‘Fleurette Properties Limited, incorporated in Gibraltar and a Dutch tax resident, is the parent company of the Fleurette Group, which is ultimately owned by Line Trust Corporation Limited strictly and solely in its capacity as trustees of the Ashdale Settlement, a trust established in 2006 for the benefit of the family of Dan Gertler.’ (<<http://fleurettegroup.com/the-group/ownership>>).

^{xxi} CAMEC, ‘Circular re DRC Joint Venture Acquisition and Trading Update’, 7 May 2008, available at:

<<http://www.investigate.co.uk/central-afr--38-exp--cfm-/rns/circ-re--drc-joint-venture/200805070701298349T/>>.

^{xxii} 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=ir01>>.

Tokyo Sexwale		Mvela Holdings is incorporated in South Africa. ^{xxiii} 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.'
South African Partner Walter Hennig Founder of: Palladino Holdings	'An individual with a close connection to the co-founders of the South African conglomerate ("South African Business Partner") became Och-Ziff's partner in AGC....South African Business Partner controlled a private operating entity domiciled outside of South Africa, and he was designated to source and acquire assets for AGC.' [SEC Order, 34]	Och Ziff refers to how the AML 'will combine the regional infrastructure and expertise of ...Palladino' ^{xxv} Mvela Holdings is described in the Och-Ziff release as a private investment vehicle, founded in 2003 by Walter Hennig holding 'a variety of significant mining, energy and other assets in Africa.' ^{xxvi} A company under the name Palladino Holdings Limited is registered in the UK, and recorded as originating in the Turks & Caicos Islands. ^{xxvii} Other market notifications that refer to Palladino Holdings Limited as a shareholder give an address for Palladino in the Turks & Caicos Islands. ^{xxviii} AML company records state: ^{xxix} 'In the opinion of the Directors there are two ultimate controlling parties of the Company [Africa Management (UK) Limited], being Palladino Holdings Limited and Och-Ziff Capital Management Group LLC.'
CEO of AML	'Millions of dollars in Och-Ziff investor funds also went to personally enrich...the CEO of AML' [SEC	Palladino's Walter Hennig was appointed a director of AML UK in July 2012 and is still described as 'active' in company records. ^{xxx} Palladino Holdings has confirmed: ^{xxxi} 'AGC was a joint venture between Palladino and Och Ziff.'

[newsArticle&ID=1101494&highlight=>](#) (page no longer available); alternative source: <<http://www.prnewswire.co.uk/news-releases/mvelaphanda-holdings-och-ziff-and-palladino-create-joint-venture-to-focus-on-natural-resources-in-africa-155642325.html>>.

^{xxiii} Company number 1997/021524/07, incorporated in South Africa, 12 October 1997. See <<http://www.cipro.co.za/ccc/EntDet.asp?T1=%DD%47%2C%57%C0%1E%BE%13%BD%38%8A%BF%AD%22&T2=MVELAPHANDA%20HOLDINGS>> (direct link no longer available; company information accessible on registration).

^{xxiv} 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>>.

^{xxv} 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=>>>.

^{xxvi} Ibid.

^{xxvii} Company No.: FC026401 (UK establishment number BR012048), registered in the UK 12 May 2005 (as given in Companies House WebCheck, visited 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.

^{xxviii} 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.

^{xxix} Africa Management (UK) Limited, Annual Report and Financial Statements For the Year Ended 31 December 2009, 15. Controlling Parties.

^{xxx} Companies House, record of company officers, <<https://beta.companieshouse.gov.uk/company/06374856/officers>> (visited 02/11/2016).

^{xxxi} <<https://business-humanrights.org/en/response-by-palladino-holdings-re-investments-in-africa-sanctions-on-zimbabwe>>.

Mark Willcox	<p><i>Order, 39]</i></p> <p>‘In June 2008, Och-Ziff Employee A forwarded to Och-Ziff Employee B a text message from the CEO of AML which said that the mining company Och-Ziff had just invested in had “paid 4 arms into zim[babwe], and rented boat from china. Journo has bank transfers, apparently [sic].”’ [SEC <i>Order</i>, 52]</p> <p>‘Och-Ziff Employee A and Och-Ziff Employee B, along with the CEO of AML and South African Business Partner, conceived of a related-party transaction...’ [SEC <i>Order</i>, 80]</p>	<p>opportunities under its chief executive, Mark Willcox.^{xxxii} According to the press release: ‘Mark Willcox, Chief Executive Officer of Mvela Holdings and newly appointed Chief Executive Officer of Africa Management (UK) Limited, said: “We have a strong pipeline of transactions across a broad spectrum of industries and geographies. We are excited by the opportunities available to African Global Capital and feel our partnership with Och-Ziff and Palladino places us in a prime position to capitalise on them.”’</p> <p>Willcox was also a director of AML UK from 2007-2012.^{xxxiii}</p>
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^{xxxii} Och-Ziff, *Press Release*, ‘Mvelaphanda Holdings, Och-Ziff and Palladino create joint venture to focus on natural resources in Africa’, op. cit.

^{xxxiii} Companies House, record of company officers, <<https://beta.companieshouse.gov.uk/company/06374856/officers>> (visited 02/11/2016).

Annex 2 – Key Zimbabwean officials listed under EU and US sanctions

Name/position(s)	EU list	US list	Joint Operations Command (JOC) member
Robert Gabriel Mugabe President of the Republic of Zimbabwe	First named in the Annex to Common Position 2002/145/CFSP, 21 February 2002.	Named 6 March 2003 in the Annex to Executive Order 13288.	Yes
Happyton Bonyongwe Director-General of the Central Intelligence Organisation	First named in the Annex to Common Position 2004/161/CFSP, 19 February 2004.	Named 30 January 2008 in the Annex to Executive Order 13391.	Yes
Augustine Chihuri Commissioner of the Zimbabwe Republic Police	First named in the Annex to Common Position 2002/145/CFSP, 21 February 2002.	Named 6 March 2003 in the Annex to Executive Order 13288.	Yes
Constantine Chiwenga Lt General (Army) General (Army) Commander of the Zimbabwe Defence Forces	First named in the Annex to Common Position 2002/145/CFSP, 21 February 2002.	Named 6 March 2003 in the Annex to Executive Order 13288.	Yes
Gideon Gono Governor of the Reserve Bank of Zimbabwe	First named in the Annex to Council Decision 2008/605/CFSP, 22 July 2008, implementing Common Position 2004/161/CFSP.	Named 22 November 2005 in the Annex to Executive Order 13391.	Yes
Emmerson Mnangagwa Parliamentary Speaker Rural Housing Minister Chair of the JOC after the electoral defeat	First named in the Annex to Common Position 2002/145/CFSP, 21 February 2002.	Named 6 March 2003 in the Annex to Executive Order 13288.	Yes
Didymus Mutasa Secretary for External Relations Former chair of the JOC prior to the electoral defeat	First named in the Annex to Common Position 2002/600/CFSP, 22 July 2002.	Named 6 March 2003 in the Annex to Executive Order 13288.	Yes
Perence Shiri Air Marshall Commander of the Air Force of Zimbabwe	First named in the Annex to Common Position 2002/145/CFSP, 21 February 2002.	Named 6 March 2003 in the Annex to Executive Order 13288.	Yes
Paradzayi Zimondi Major General (Ret.) Head of the Zimbabwe prison service	First named in the Annex to Common Position 2002/145/CFSP, 21 February 2002.	Named 6 March 2003 in the Annex to Executive Order 13288.	Yes