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QUERIES IN RELATION TO EU SANCTIONS

Dear Ms Feeney,

I write further to our letter of 5 October in relation to RAID's report entitled, "Asset Laundering and AIM: Congo, corporate misconduct and the market value of human rights." RAID's letter and memorandum of July 2011 and your 2012 report posed a number of questions. Please accept this letter as a response to both.

Your letters, memorandum and report raised queries about specific individuals, entities and transactions in relation to the EU sanctions against Zimbabwe. Unfortunately, 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.

Consequently we are afraid to say that we cannot reply specifically to your various queries relating to ENRC, CAMEC and Mr Rautenbach. However, in the interests of being helpful we have provided information about our general approach to implementing financial sanctions in the UK, in so far as it relates to some of the main issues you raised.

As you are aware, the effect of a listing is to prohibit a designated person or anyone else from dealing with funds and economic resources, and to prohibit anyone from making funds or economic resources available, directly or indirectly, to a designated person or for their benefit. In the case of the EU sanctions against Zimbabwe, these restrictions are set out in EU Regulation 314/2004 (see Article 6).

The Treasury can grant licences to exempt certain activities from these prohibitions, provided that one of the grounds for issuing a licence contained in the Regulation is applicable and all of the relevant conditions are satisfied. Article 7 of Council Regulation 314/2004 provides a legal framework for licensing, and also contains exemptions that allow the release of frozen or economic resources in certain situations.



INVESTOR IN PEOPLE

The objective of all the exemptions is to allow the designated person to make a payment or meet an expense from funds frozen under article 6 of the EU Regulation, where this is necessary for expressly recognised needs. Therefore, the Treasury considers applications when the unfreezing of funds is genuinely essential to the designated person; for example, for legal expenses incurred or other basic expenses. Article 7 (1)(d) permits "extraordinary expenses" which is not defined in the Regulation. In general, extraordinary licences are granted in a small number of cases and considered only where the objectives of the sanctions are not undermined. Therefore, Member States are legally restricted to issuing licences only where the activity of the request falls within one of the prescribed licensing grounds in the Regulation and all the conditions for issuing a licence are satisfied.

One of the issues you asked about was whether interest or dividends accrue in frozen accounts of designated persons or entities. Article 7(2)(a) of the EU Regulation exempts the addition to frozen accounts of "interest or other earnings on these accounts..." which means that bank(s) holding the frozen account(s) can credit them with interest and other financial institutions can credit funds into the designated person's frozen account. The listed person would not be able to access the funds without a licence from the relevant Member State and the exemptions mentioned above need to be met.

You also asked about whether separate licences would be required to cover different persons or entities and whether licences can be granted to an entity or to an officeholder within an entity. The licencing system is flexible and so, provided the requisite information is provided, one licence could cover all of the parties to, and all the steps required to fulfil a licencable transaction. In general the Treasury provides licences permitting an entity to undertake a transaction, rather than a nominated corporate officer, although this would be possible.

If you have further questions about the operation of financial sanctions please contact us, albeit noting that we are unable to provide information relating to specific individuals and entities.

Yours sincerely,



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