

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

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

Summary with recommendations

Rights and Accountability in Development

April 2014

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

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

Summary with recommendations

© 2014 Rights and Accountability in Development (RAID)

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

www.raid-uk.org



Rights and Accountability in Development

Summary with recommendations

Introduction

UPDATE

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

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

The starting point of this report is an examination of responses that Och-Ziff Capital Management Group LLC (‘Och-Ziff’), a \$41 billion US hedge fund listed on the New York Stock Exchange, has given to questions raised about its investment in a UK mining company recently described as a front for the Mugabe regime. It updates and supplements RAID’s July 2013 report, *Sanctions, violence, pensions and Zimbabwe*. Och-Ziff became a publicly listed company in 2007 and started looking for private investment opportunities in potentially lucrative oil, mining and natural gas exploration in Africa.

In 2008, an Och-Ziff’s subsidiary privately purchased 150 million shares in the UK-registered Central African Mining and Exploration Company plc (CAMEC) for £75 million (US\$150 million). Cash-strapped CAMEC used the proceeds in its acquisition of a lucrative platinum mining joint venture (Todal Mining (Private) Limited) with the Zimbabwean government. In August 2012, the *Mail & Guardian*, the leading South African newspaper, revealed that \$100 million of the Och-Ziff funds had been used to finance the Mugabe regime’s campaign of violence that subverted the 2008 democratic elections. CAMEC was recently described in legal proceedings in the US as ‘a company with clear ties to the Mugabe regime in Zimbabwe and an example of how Zimbabwe conducts business through its fronts and “bagmen”’.² RAID has been raising its concerns about CAMEC’s deals and the sanctions regime with the UK authorities since 2011, yet key individuals behind CAMEC (now delisted) have recently been allowed to launch another company, Africa Oilfields Logistics, on London’s junior market.

¹ Och Ziff Capital Management Group, United States Securities and Exchange Commission, Form 10-K, Annual Report for the Fiscal Year Ended December 31, 2013, filed 18 March 2014, p.27, available at:

<<http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MjI1NDE1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>>.

² Letter from Miller Wrubel (Counsel to Funnekotter et al.) to Judge Ronald L. Ellis, United States District Court, Southern District of New York, 10 January 2014 and attached Subpoena and (Proposed) Order Compelling Production, Case 1:09-cv-08168-CM-RLE, Document 62.

RAID wrote to Och-Ziff in May 2013. Och-Ziff has not responded to RAID's letter or to RAID's previous report about the loan to the Mugabe regime, but it has provided a response to questions put to it – at RAID's request – by the California Public Employees' Retirement System (CalPERS), one of several prominent US state pension funds investing through the hedge fund. Further information about Och-Ziff's role in the Zimbabwean deal has come to light in US legal proceedings (*Funnkotter et al. v. Republic of Zimbabwe*).

RAID's current report analyses other controversial transactions in Guinea and the Democratic Republic of the Congo (DRC) involving the investment vehicle Africa Management Limited (AML) – jointly set up by Och-Ziff in 2008 – or Och-Ziff's partners in AML, Mvelaphanda Holdings (Proprietary) Limited and Palladino Holdings Limited.

In 2008, a company called Camrose Resources Limited bought mining assets in DRC and amended its company records to accommodate both AML and its Vipar Investments affiliate, which had loaned Camrose money to make the acquisition. Camrose is part of the group of companies controlled by the controversial businessman Dan Gertler, who acquired mining assets cheaply from the DRC government to sell them on at vast profit. Camrose was itself acquired by Eurasian Natural Resources Corporation (ENRC) plc, formerly one of the top 100 companies on the London stock market, which has been mired in controversy over its investments in the DRC and which is now subject to a criminal investigation by the Serious Fraud Office (SFO) in the UK. ENRC had bought CAMEC in 2009.

In the run-up to the launching of the SFO investigation, ENRC's Camrose transaction and CAMEC have been identified, respectively, in relation to 'allegations of fraud, bribery and corruption' and 'possible breaches of financial sanctions'.³

Given that Och-Ziff has made investments – either directly or through affiliates – in both Camrose and CAMEC, a key purpose of this report is to ask questions of the hedge fund and the relevant authorities to clarify the exact nature of Och-Ziff's finance.

The sources for RAID's report *Och-Ziff, Mugabe's "Bagmen" and the under-pricing of African assets* include company records, company correspondence, regulatory filings, contracts, court documents and newspaper reports. Many of these have been published and others are in the public domain. The report includes comprehensive references for the documents consulted in its preparation.

The full RAID report and this summary should be read in conjunction with the underlying source documents.

Och-Ziff, CAMEC and Zimbabwe

Och-Ziff states that it was 'a passive shareholder' in CAMEC with 'no control over the company, its operations or use of the proceeds'. Och-Ziff denies that the company or any of its employees knew that CAMEC intended to provide funds from the placement to the Mugabe regime. Och-Ziff has not confirmed when it completed the purchase of CAMEC shares – was it before or after CAMEC's transaction to acquire the Zimbabwean platinum assets? Moreover, is it credible that Och-Ziff would invest \$150 million in CAMEC without knowing more about the company, its ownership and its plans?

It has emerged in legal proceedings in the US – in which Och-Ziff has been subpoenaed as a non-party – that, in mid-2008, Och-Ziff had drawn up a valuation model of CAMEC that included a

³ Respectively, SFO, Our cases, <<http://www.sfo.gov.uk/our-work/our-cases/case-progress/enrc-plc.aspx>> and Letter dated 12 April 2013, from the legal firm Dechert to ENRC, cited in Juliette Garside, *The Guardian*, 'ENRC investigated for bribery in Africa and Kazakhstan,' 28 April 2013, available at: <<http://www.theguardian.com/business/2013/apr/28/enrc-bribery-africa-kazakhstan>>.

reference to its Zimbabwean operations: ‘Platinum (Zim)’ and also to ‘Meryweather (BR)’, an apparent reference to Billy Rautenbach, later described by the US as a ‘Mugabe crony’ and who was wanted at the time by the South African authorities on fraud charges. Rautenbach had originally provided CAMEC with its mining assets in the DRC. The details on the Och-Ziff spreadsheet would appear to confirm that Och-Ziff was conversant with CAMEC’s operations and with individuals and entities behind the company.

Och-Ziff could have divested 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 (Todal’s state-controlled partner) and Rautenbach.⁴ Och-Ziff, however, held onto its CAMEC shares into 2009, selling its remaining holding only when ENRC acquired CAMEC.

Question for Och-Ziff:

- If, as Och-Ziff states, it had no knowledge that the platinum deal was on the cards at the time of the private placement, then surely the surprise announcement of such a significant acquisition ought to have prompted Och-Ziff to interrogate CAMEC about its plans and the ultimate destination of Och-Ziff’s payment to CAMEC?
- Given its private knowledge of the role of Meryweather and Billy Rautenbach in CAMEC, did Och-Ziff question CAMEC about Och-Ziff’s earlier placement and the use of the proceeds after Rautenbach was designated under US sanctions?
- At the end of November 2008, Rautenbach was designated. By that time, should not Och-Ziff have been aware of Rautenbach’s status as “an instrumentality” of the Republic of Zimbabwe?

Och-Ziff and Africa Management Limited

A matter of months prior to investing directly in CAMEC, Och-Ziff had also launched a joint investment vehicle called Africa Management Limited. Och-Ziff’s OZ Management LP subsidiary was partnered in AML by Mvelaphanda Holdings (‘Mvela’) and Palladino Holdings (‘Palladino’), with Och-Ziff providing the investment expertise and the other partners contributing mining and energy assets. Africa Management Limited is the parent company of Africa Management (UK) Limited, whose directors have included Och-Ziff’s (former) Head of European Investment, Michael Cohen, their (former) Africa Manager, Vanja Baros, and key figures in Palladino and Mvela.

AML or its partner organisations have been associated with controversial deals in Guinea and the Democratic Republic of Congo.

Deals concerning Och-Ziff’s AML vehicle or its AML partners in the DRC

Camrose Resources Limited

In June 2011, RAID, as part of a detailed submission to the London Stock Exchange on the conduct of CAMEC, drew attention to certain transactions between CAMEC and companies part-owned or controlled by Dan Gertler, who has close connections to Joseph Kabila, the President of DRC. Some the most lucrative (and opaque) deals in the DRC concern Camrose, one of Gertler’s companies.

⁴ Rautenbach remained designated under US sanctions until 17 April 2014, when he was removed from the list by OFAC, just prior to publication of RAID’s update.

In April 2008, Camrose used CAD 100 million (US\$98.6 million) out of funds it had borrowed to acquire a majority 60% stake in Africo Resources Limited, owner of several DRC mining assets. Camrose's Memorandum and Articles of Association were amended in November 2008 following the agreement of this loan (US\$124 million in total) to Camrose by an entity called Vipar Investments. The amended articles include several references to Vipar and an explicit reference to Africa Management Limited as an affiliate. In return, Vipar's loan was secured against Camrose shares and Vipar was given certain powers in the running of the company.

Kofi Annan's influential Africa Progress Panel, established to promote equitable and sustainable development for Africa, used its 2013 annual report to highlight lost revenues associated with the opaque trading of mining concessions, epitomised by the DRC. The Panel focused on five deals connected to Fleurette Properties Limited – Gertler's holding company – calculating that between 2010 and 2012, the DRC lost at least \$1.36 billion in revenues from under-pricing. The highest return of 980 per cent involved the sale of Camrose's interests in the Kolwezi project (also known as KMT), assets which had been stripped by the DRC government from Canadian miner First Quantum before being sold to a Camrose subsidiary. ENRC bought Camrose in two transactions in August 2010 and December 2012, thereby acquiring the Africo and KMT assets.

The campaign group Global Witness has stated its belief that the secret sales of mining assets in the DRC 'make little commercial sense for the Congolese state' and has expressed concern 'that figures from the Congolese elite could be corruptly benefiting from the deals'.⁵ Gertler has stated in response that the offshore companies in the Fleurette Group have solely members of his family as beneficiaries, and his spokesman has denied that assets were obtained at 'knock-down values'.

Questions for Och-Ziff:

- Given Och-Ziff's partner status in AML and the presence of Och-Ziff employees on the AML board, what was AML's relationship with its Vipar affiliate?
- Did Och Ziff invest funds in Camrose Resources, either directly, indirectly, or through affiliates, such as Vipar or any other entities – and if so, to what extent?
- When Vipar was repaid by Camrose (via a company called Cerida) on 20 August 2012, was any payment made to affiliates of Vipar, including AML (or subsidiary or associated entities) in which Och-Ziff was a partner?
- What profit did Och-Ziff make in respect of any funds invested directly or indirectly, whether through AML via its affiliation with Vipar or through any other AML managed entity, in Camrose?

Given the filing of suspicious activity reports by ENRC – seeking fast-track approval – with the Serious Organised Crime Agency (SOCA: renamed the National Crime Agency) concerning the Camrose transaction, and the subsequent opening of a criminal investigation by the UK's Serious Fraud Office into ENRC's DRC acquisitions:

- If, as it appears from Camrose's amended Memorandum and Articles of Association, AML was an affiliate of the company loaning funds to Camrose, what due diligence did Och-Ziff (as a partner in AML) carry out in respect of the transactions by Camrose i) to acquire Africo Resources and ii) to sell Camrose holdings to ENRC?

Lake Albert Oil Blocks

In May 2010, two unknown companies, Foxwhelp Limited and Caprikat Limited, signed a production sharing contract for oil blocks with the DRC government. Neither company had any experience in the oil industry and both were formed offshore in the British Virgin Islands just

⁵ Global Witness, Secret Sales, <<http://www.globalwitness.org/library/secret-sales>>.

over a month before the oil contract was signed. The contract was rapidly confirmed by Presidential decree in June 2010. The companies paid a \$6 million signature bonus for the concessions. The UK campaign group PLATFORM calculates up to \$10 billion in lost revenue to the DRC state as a result of the Foxwhelp/Caprikat contract compared with the terms of an earlier, cancelled deal.

After much speculation, a DRC minister belatedly confirmed in June 2012 that Gertler is a partner in the companies concerned – Foxwhelp Limited and Caprikat Limited. The Fleurette Group has confirmed its interest in the oil blocks via Caprikat and Foxwhelp. Cross-referencing details from the contract itself shows that both companies shared business addresses with Mark Willcox. Willcox confirmed acting as ‘special adviser’ to the signatory (the nephew of South Africa’s President) for Caprikat. Willcox is described by Och-Ziff as the chief executive officer of their joint venture vehicle, Africa Management (UK) Limited.

Questions for Och-Ziff, given that Willcox was chief executive officer for Africa Management (UK) Limited a joint venture created by Och-Ziff and its partners and in which Och-Ziff employees were directors:

- Has Foxwhelp/Caprikat, either directly or indirectly, ever had access to Och-Ziff funds, either via Africa Management Limited or through any other vehicle?
- Did Och-Ziff know that Mark Willcox and a team from Mvelaphanda were giving ‘strategic advice’ to the signatory for Caprikat?

Palladino’s loan to the Government of Guinea

The other of Och-Ziff’s partners in AML has been at the centre of ‘a secret deal [with the Guinea government] that could hand billions of dollars of mining assets... to a shadowy middleman’, identified by *The Sunday Times* 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 30% stake in the operations of the national mining company. 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 IMF of the loan. According to *Africa Confidential* (June 2012):

The second element of the proposed joint venture between Palladino and the national mining company was a framework agreement under which Palladino would undertake to bring in private investors for equity stakes in mining operations.... When Cilliers [Chief Financial Officer of Palladino and Director of Palladino Capital 2] sent out an invitation to companies to join Palladino's venture on 30 March 2011, those contacted said they had been given the impression that a group of ‘cash-rich outfits’ such as Och-Ziff and Mvelaphanda Holdings had already signed up to the arrangement.

Palladino’s Andre Cilliers was appointed a director of Africa Management (UK) Limited in September 2012, as was Walter Hennig.

Questions for Och-Ziff:

- The January 2008 AML joint venture, in which Och-Ziff partnered Palladino, suggests a longstanding relationship, cemented further by the appointment of both Cilliers and Hennig as directors in AML (UK). Has Palladino or any of its subsidiaries or associated entities ever had access to Och-Ziff funds for use in Guinea, whether through loans or through other investments, either via Africa Management Limited or through any other vehicle?

- Has Och-Ziff ever discussed the Palladino ‘secret deal’ or loan with Palladino, Walter Hennig or any other associated entity?
- Did Och-Ziff agree to provide funds – directly or indirectly – to invest in the Guinean national mining company via Floras Bell or via any other company or investment vehicle?

Recommendations

The US authorities

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

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

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

The UK authorities

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

RAID has made a recommendation to the UK Parliament’s Business, Innovation and Skills Committee to call the Head of AIM Regulation to an evidence session. This would allow the Committee to question how the Exchange has dealt with unanswered questions in the public domain concerning compliance by CAMEC and its adviser with market rules; and the degree to which such outstanding questions of compliance concerning CAMEC, whilst under the directorship of certain individuals, now at Africa Oilfield Logistics (AOL), were considered by London’s junior Alternative Investment Market before admitting AOL.

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

Och-Ziff

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

throughout this summary and the full briefing in order to clarify its position and provide much-needed transparency.

The pension funds

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

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