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6 July 2011

Asset Freezing Unit
HM Treasury
1 Horse Guards Road
London, SW1A 2HQ

Re: Memorandum relating to the trading in shares of the Central African Mining and Exploration Company plc (CAMEC) controlled by designated persons

Rights & Accountability in Development (RAID) has recently made a submission to the Alternative Investment Market (AIM) Regulation team on the conduct of both the Central African Mining and Exploration Company plc (CAMEC) and its nominated adviser, Seymour Pierce Limited. The submission includes information on EU sanctions concerning designated individuals and entities, which we believe is pertinent to HM Treasury and the Asset Freezing Unit (AFU).

In May 2010 RAID wrote to the AFU, asking a number of general questions about implementation of sanctions in the UK. Our enquiries received a helpful reply from the AFU on 18 May 2010. We have drawn upon this response in framing further questions which relate to specific individuals and entities, *inter alia*, Muller Conrad ('Billy') Rautenbach, Harvest View Limited, Meryweather Investments Limited, Eurasian Natural Resources Corporation plc (ENRC), and CAMEC. ENRC announced an offer for CAMEC in September 2009, which was successfully concluded later that year. The accompanying memorandum, based on the AIM submission, summarises our concerns over, and seeks clarification on, the application of sanctions to trading in CAMEC shares of possible direct or indirect benefit to designated persons or entities, including Rautenbach, who was added to the list in January 2009.

RAID is a research and advocacy organisation that promotes respect for human rights and responsible conduct by companies abroad. We are a longstanding contributor to the debate on corporate conduct during and after the devastating war in DRC, raising our concerns about the activities of individuals and companies – some of them designated persons or entities – with the UK Government. In 2004, at Chatham House, we launched a comprehensive report on unanswered questions arising from the work of the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, filing cases on companies – including Rautenbach's Ridgepoint Overseas Developments Ltd., John Bredenkamp's Tremalt/KMC and Oryx Natural Resources (Oryx) – with the UK office responsible for implementation of the *OECD Guidelines for Multinational Enterprises* (which was then based at the former Department of Trade and Industry). In January 2004, RAID raised these cases with Patricia Hewitt, the Minister of Trade and Industry; Chris Mullin, the Minister for Africa at the Foreign & Commonwealth Office; and Hilary Benn, the Secretary of State for International Development. RAID subsequently met with the Serious Fraud Office.

RAID notes that the Council of the European Union

...continues to consider that the Government of Zimbabwe is still engaging in serious violations of human rights. Therefore, for as long as the violations occur, the Council deems it necessary to maintain restrictive measures against the Government of Zimbabwe and those who bear prime responsibility for such violations....The restrictive measures provided for by Common Position 2004/161/CFSP include, inter alia,...the freezing of funds, financial assets and economic resources of members of the Government of Zimbabwe and of any natural or legal persons, entities or bodies associated with them. [*Council Regulation (EC) No 314/2004 of 19 February 2004, concerning certain restrictive measures in respect of Zimbabwe*]

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. 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. A media release on behalf of Rautenbach confirmed that he agreed to pay '[t]he sum of R40 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.'¹

We would therefore be interested to hear the AFU's views on these matters in its response to the questions raised.

Yours sincerely,

Patricia Feeney
Executive Director

encl. Memorandum to HM Treasury, Asset Freezing Unit, 06 July 2011

cc. Lucy Leroy, Head of UK Primary Market Regulation, London Stock Exchange

¹ 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-botswana-hauliers-finalised.html>>.

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

Memorandum to HM Treasury, Asset Freezing Unit

06 July 2011

The designation of Rautenbach

In 2002, the Council of the European Union 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.’¹ The sanctions were subsequently extended and updated and, on 19 January 2009, Muller Conrad (a.k.a. Billy) Rautenbach and his company Ridgepoint Overseas Developments Limited were added to the list.² The date of his designation is given as 27 January 2009.³ The entry for Rautenbach reads:

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

We understand that Council Regulation (EC) No 314/2004 of 19 February 2004, concerning certain restrictive measures in respect of Zimbabwe,⁴ is enforced under UK legislation by The Zimbabwe (Financial Sanctions) Regulations 2009 (SI 2009/847).

In May 2010 RAID wrote to the AFU, asking a number of general questions about implementation of the sanctions regime in the UK.⁵ In accordance with the response received, ‘[u]nder financial sanctions legislation in effect in the UK, all funds and economic resources belonging to a person subject to the financial restrictions (a ‘designated person’) are to be frozen.’ Moreover, ‘[a]s a result individuals and entities to whom the legislation applies, e.g. UK nationals and companies incorporated in the UK, are prohibited from making funds and/or economic resources available to a designated person unless authorised by licence by the Treasury.’

The offer by Eurasian Natural Resources for Central African Mining & Exploration Company plc

On 18 September 2009, the UK-incorporated mining company Eurasian Natural Resources plc announced the terms of an offer for Central African Mining & Exploration Company plc (CAMEC).⁶ CAMEC owned

¹ 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 has been renewed each year and the restrictive measures it provided for were extended until 20 February 2011. Common Position 2004/161/CFSP was repealed and replaced by Council Decision 2011/101/CFSP of 15 February 2011 concerning restrictive measures against Zimbabwe, *Official Journal*, L42/6, 16.2.2011.

² Addendum to the Common Position, 5304/09 ADD 1 REV 1, Restreint UE, Brussels, 19 January 2009.

³ Commission Regulation (EC) No 77/2009 of 26 January 2009 amending Council Regulation (EC) No 314/2004 concerning certain restrictive measures in respect of Zimbabwe, *Official Journal*, L23/5, 21.1.2009.

⁴ 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.

⁵ RAID wrote to the AFU by e-mail on 7 May 2010 and received a reply on 18 May 2010.

⁶ Respectively, ENRC, RNS 1825Z, ‘Statement Regarding Press Speculation’, 16 September 2009, available at:

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

mining assets in the DRC and a logistics operation, both of which had originally been acquired from Rautenbach-controlled entities. At the time of both the designation of Rautenbach and at the time of CAMEC's acquisition by ENRC, Rautenbach held shares indirectly in CAMEC. Shares fall within the definition of funds and therefore any shares held by a designated person shall be frozen.

The offer price was 20p per share, placing an overall value on CAMEC of £584 million.⁷ The offer document was posted to shareholders on 9 October 2009, setting a closing date for the offer of 9 November 2009.⁸ The threshold for sufficient acceptances was set at not less than 90 per cent of the CAMEC shares to which the offer relates.⁹ ENRC announced the offer as accepted and unconditional in all respects on 10 November 2009.¹⁰

Rautenbach's shareholding in CAMEC via Harvest View

It is pertinent to track how Rautenbach, via certain entities, acquired a shareholding in CAMEC prior to his designation on the sanctions list.

In February 2006, CAMEC acquired International Metal Factors Ltd for US\$80 million – a figure later revised to £69,205,596.¹¹ IMF had a 75% participation interest in Congo Resources Joint Venture (CRJV), the company established to sell, market and distribute the product from three copper cobalt concessions in the Kakanda region of Katanga in DRC.¹² These concessions were Likasi PE467 and PE469 (previously named C21 and C19 respectively) and 50% of the Mukondo concession.¹³ In July of the same year, CAMEC completed its acquisition of CRJV following the purchase of Majestic Metal Trading Ltd (MMT), holder of the remaining 25% of CRJV, for US\$25.8 (£13,792,592) million in cash.¹⁴

In March 2007, CAMEC exercised its option – as part of a 4 August 2006 agreement – to acquire 80% of the shares of BOSS Mining Sprl, the actual holders of the mining rights.¹⁵ According to the company at the time, '[t]he transaction consolidates the Congo Resources Joint Venture marketing agreement already in place and reinforces CAMEC's relationship with Gécamines.'¹⁶ It should be noted that Boss Mining was acquired for a 'nominal' consideration of £31,511: according to CAMEC, 'the consideration paid for the IMF and MMT acquisitions in the previous period represents the purchase price of the concessions.'¹⁷ At the time of acquisition, the remaining 20% of the Boss Mining joint venture was owned by Gécamines.

available at: <<http://www.londonstockexchange.com/exchange/prices-and-news/news/market-news/market-news-detail.html?announcementId=10197319>>.

⁷ *Ibid.*

⁸ ENRC, RNS 5050A, 'Posting of Offer Document', 9 October 2009, available at:

<<http://www.londonstockexchange.com/exchange/prices-and-news/news/market-news/market-news-detail.html?announcementId=10225675>>.

⁹ ENRC, 'Recommended Cash Offer ENRC for CAMEC, section 15.

¹⁰ ENRC, RNS 2560C, 'Offer Declared Unconditional in all Respects', 10 November 2009, available at:

<<http://www.londonstockexchange.com/exchange/prices-and-news/news/market-news/market-news-detail.html?announcementId=10267407>>.

¹¹ The consideration being US\$25 million in cash and the issue of 171,853,471 New Ordinary Shares at 18p per share. See CAMEC, RNS 9173X, 'Central African Mining & Exploration Company Plc ("CAMEC" or "the Company") Acquires Majority Interest in Major Copper Cobalt Joint Venture in the DRC', 3 February 2006, available at: <<http://investors.camec-plc.com/news-item?item=31793495509572>>. The higher figure takes into consideration a 'fair value adjustment in respect of market value of shares at date of agreement' (see CAMEC, *Report and Financial Statements: Year ended 31 March 2006*, p. 58).

¹² 'CAMEC Acquires Majority Interest in Major Copper Cobalt Joint Venture in the DRC'.

¹³ *Ibid.*

¹⁴ CAMEC, RNS 8712G, 'Update on activities in the DRC', 28 July 2006, available at:

<<http://www.hemscott.com/news/static/rna/item.do?newsId=35199404715494>>. See also, CAMEC, 'Proposed acquisition of shares in DRC Resources Holdings Limited', *Circular to shareholders*, 6 May 2008, p. 24.

¹⁵ CAMEC, RNS 0916S, 'Democratic Republic of the Congo Acquisition and Production Update', 1 March 2007, available at:

<<http://investors.camec-plc.com/news-item?item=39859444065073>>. Minutes of a meeting of the Boss Mining board, held on 26 January 2007, show the passing of a resolution to cede the holdings of Shaford Capital in Boss Mining to CAMEC on 1 March 2007: CAMEC 80% and Gécamines 20%. See Boss Mining Sprl, Resolution no. AGE/01/2007/003, *Procès-Verbal de la Réunion de l'Assemblée Générale Extraordinaire [sic] du 26 Janvier 2007*. On 4 August 2006 agreement, see CAMEC, 'Proposed acquisition of shares in DRC Resources Holdings Limited', p. 29.

¹⁶ 'Democratic Republic of the Congo Acquisition and Production Update.'

¹⁷ CAMEC, 'Proposed acquisition of shares in DRC Resources Holdings Limited', p. 26.

The consideration paid for IMF included a cash consideration of US\$25 million plus 171,853,471 New Ordinary Shares at 18p per share.¹⁸ IMF was described by mining analysts as wholly owned by Rautenbach – CAMEC has subsequently described the acquisition of its DRC concessions ‘from companies controlled by Mr. Rautenbach and his family’.¹⁹ At the time, CAMEC stated that application had been made for the admission of the 171,853,471 New Ordinary Shares and that dealing in these shares was expected to commence on 9 February 2006; however, it does not appear that CAMEC issued a holdings notification identifying the owner or beneficiary of the 171,853,471 shares – representing 20% of issued shares at the time.²⁰

CAMEC stated in its preliminary results for the year to 31 March 2007:²¹

[T]he company owed £3,175,000 (2006: £6,170,000) to Harvest View Limited, a company controlled by Mr Rautenbach, in respect of deferred purchase consideration (see note 16). At 31 March 2007 Harvest View Limited held an interest in 90,926,134 shares in the company and continued to hold those shares as at 21 August 2007.

Cross-referencing to ‘note 16’ clarifies:²² ‘The liability in respect of the deferred purchase consideration is the subject of a charge over the share capital of International Metal Factors Limited. This charge will be released upon settlement of the outstanding consideration.’

In other words, Rautenbach controlled Harvest View, which was owed money by CAMEC in respect of the deferred purchase consideration for IMF. Rautenbach’s interest in IMF via Harvest View is therefore established.

Following its acquisition of Boss Mining, CAMEC has referred to Rautenbach’s ‘key role in the development of the Luita facility and the successful integration of the DRC operations into CAMEC’s operations’ and, with reference *inter alia* to Boss Mining, his ‘key role in managing these operations’.²³

In a circular sent to shareholders, dated 28 August 2007, and in response to press speculation about the ownership and operation of CAMEC’s DRC assets, the company stated:²⁴ ‘CAMEC acquired its rights to concessions PE467 and PE469 (previously known as C21 and C19) and 50% of the Mukondo concession in the Katanga Province of the DRC from companies controlled by Mr. Rautenbach and his family...CAMEC has been notified that Harvest View Limited, a company controlled by Mr. Rautenbach and his family, holds an interest in 90,926,134 CAMEC Shares. This currently represents 7.40% of the outstanding CAMEC Shares....’

¹⁸ ‘CAMEC Acquires Majority Interest in Major Copper Cobalt Joint Venture in the DRC’.

¹⁹ Barry Sergeant, ‘Camec selling the family silver through lack of copper and cobalt: A forensic examination of the factors contributing to the failure of Camec’s bid for Katanga Mining’, *Mineweb*, 18 September 2007, available at: <<http://www.mineweb.net/mineweb/view/mineweb/en/page67?oid=27246&sn=Detail>>. See also, CAMEC, *Offer to Purchase Katanga Mining Limited*, 28 August 2007, Offer To Purchase and Circular, A-3.

²⁰ The day before the IMF transaction, CAMEC posted a holdings announcement in which the interests of The Capital Group Companies were described as 34,668,253 Ordinary Shares, representing 5.5% of the Company’s issued share capital. From this it can be calculated that the total number of ordinary shares in issue on 2 February 2006 was 630,331,873. Hence, on issue, the 171,853,471 shares would represent $171,853,471 / (630,331,873 + 171,853,471) \times 100 = 21.4\%$ of issued ordinary shares. On 14 February, 11 days after the IMF transaction, CAMEC posted a holdings announcement in which the interests of The Capital Group Companies were described as 34,668,235 Ordinary Shares, representing 3.9% of the Company’s issued share capital. From this it can be calculated that the total number of ordinary shares in issue on 14 February 2006 was 888,929,103. In other words, by 14 February the 171,853,471 shares appear to have been issued (alongside an unaccounted for 86,743,759 shares). The notice of 14 February appears to be a minor correction to the holdings of The Capital Group Companies: 34,668,235 cf. 34,668,253 Ordinary Shares. See CAMEC, ‘Holding in Company’, RNS 8367X, 2 February 2006, available at: <<http://www.hemscott.com/news/static/rna/item.do?newsId=31793495466427>>; and CAMEC, ‘Holding in company’, RNS 3665Y, 14 February 2006, available at: <<http://www.hemscott.com/news/static/rna/item.do?newsId=31918049683985>>.

²¹ CAMEC, *Report and Financial Statements: Year Ended 31 March 2007*, 25. Related party transactions, p. 106.

²² *Ibid.*, 16. Creditors, p. 99.

²³ See, respectively, *Offer to Purchase Katanga Mining Limited*, A-3 and; CAMEC, *Report and Financial Statements: Year Ended 31 March 2007*, 25. Related party transactions, p. 106.

²⁴ *Offer to Purchase Katanga Mining Limited*, A-3.

The administration of Rautenbach-controlled shares

The AFU has indicated to us that the Treasury is not in a position to comment on who would take over the administration of shares in a company held by a designated person when they first appear on the sanctions list, adding that '[t]his would in part depend on whether the company was a public or private company.' Given that we are now in a position to provide specific details on CAMEC and Rautenbach, we would request further clarification from you on this issue of share administration.

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.'²⁵ 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".'

Please could you confirm:

- The date upon which CAMEC made its notification to the Treasury?
- Whether or not CAMEC disclosed Rautenbach's direct or indirect holdings in CAMEC shares, the names of any Rautenbach-controlled or associated entities disclosed by CAMEC and whether his direct or indirect holdings were quantified?
- Whether or not the Rautenbach's shares in CAMEC via Harvest View were, after notification, administered by CAMEC. If not, who administered these shares?

Once the Treasury had received notification from CAMEC, it is our understanding that shares in CAMEC benefitting Rautenbach could not be sold or otherwise traded without permission. We wish to understand the process by which any such shares were made available for acquisition by ENRC.

ENRC's approach to sanctions

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'.²⁶ Measures taken 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. In respect of the UK, ENRC stated in the offer document:²⁷

...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.

Nowhere is it stated in the ENRC offer document, neither in the section on sanctions nor elsewhere, that Harvest View holds an interest in CAMEC shares nor that Rautenbach controls Harvest View. ENRC does not refer to Rautenbach in the section on 'Sanctions and ongoing post-acquisition management issues', nor elsewhere in the offer document. Indeed, the issue of ENRC acquiring shares owned by individuals subject to international sanctions is not dealt with in this section *per se*. However, under the 'Procedure for acceptance of the offer' outlined by ENRC in the offer document, it is stated:

²⁵ 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>>.

²⁶ 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', 9 October 2009, p. 25, available at: <<http://www.enrc.com/files/CamecOffer.pdf>>.

²⁷ *Ibid.*, p.26.

Your attention is specifically drawn to paragraph (b) of Parts C and D of Appendix I. By accepting the Offer in respect of your CAMEC Shares, you will be deemed to represent and warrant to ENRC, members of the ENRC Group, BMO Capital Markets and Capita Registrars that the CAMEC Shares held by you are not subject to any restrictions imposed by International Sanctions Laws and that the sale and purchase of such CAMEC Shares pursuant to the Offer will not breach any law or regulation in any jurisdiction whatsoever.

The purchase of CAMEC shares by ENRC: Harvest View Limited

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.

Rautenbach does not appear to have held shares in CAMEC directly, but to have done so via Harvest View. From the AFU's previous response, we understand that if a company – in this case, Harvest View – is not designated, then it is not subject to the financial restrictions although the shareholding of the designated person – in this case, Rautenbach – is: 'Neither the designated person, the company itself nor any third party would be able to deal with those shares including any trading.'

Moreover, your previous response clarifies:

The legal concept of the corporate veil means that payments to a company of which a designated person is a shareholder or director are not to be regarded as direct payments to that person. Payments to such a company may however be regarded as indirectly for the benefit of the shareholder/director in certain circumstances. If the designated shareholder/director received a salary or a director's loan from the company or a shareholder received dividends then he or she might be deriving an indirect benefit from payments to the company. There may be other diversions of funds from companies to owners/directors, particularly where the company is wholly owned by a listed person.

Hence it is apparent that, should Rautenbach derive indirect benefit via Harvest View from the purchase of the latter's CAMEC shares, then it would be prohibited for ENRC Africa to have participated 'knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to make funds available to a designated person.' Given the prospect of indirect benefit to Rautenbach from ENRC's purchase of Harvest View's CAMEC shares, it is assumed that any purchase by ENRC of Harvest View's CAMEC shares is governed by the same requirements had Rautenbach owned CAMEC shares directly, as outlined in the AFU's response to RAID:

2. What happens when an offer is made for a company in which someone appearing on the sanctions list has a significant holding? Does the company making the offer have to write to the asset freeze team to seek permission to buy such shares? Under what circumstances is permission granted?

In those circumstances, the purchase of the shares of the designated person would breach the terms of the asset freeze as it would result in payment to the designated person which would constitute making funds available to that person, which is prohibited. In certain situations, depending on the relevant financial sanctions regime, it might be possible to make an application for a licence from HM Treasury to allow the purchase to go ahead. The applicant would have to show that their circumstances fell within one of the exemptions set out in the relevant legislation and that the transaction was therefore capable of being licensed. Further, it is likely that, depending on the regime itself, the issue of any licence would be subject to the approval of UN and/or notification to EU Member States.

We understand that Council Regulation (EC) No 314/2004 of 19 February 2004,²⁸ concerning certain restrictive measures in respect of Zimbabwe, 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.

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'.

i. The requirement for licence(s) from HM Treasury

Although neither Rautenbach nor Harvest View are referred to by ENRC in its Offer document, discussions with HM Treasury are noted. ENRC states:²⁹

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 that: 'Our bid, the acquisition of any shares from those on the sanctions list will require United Kingdom license from the United Kingdom Treasury.'³⁰

A number of specialist industry publications and newspapers reported that any sale of Rautenbach's shares in CAMEC to ENRC required UK Treasury approval: '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.'³¹

²⁸ 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.

²⁹ ENRC, 'Recommended Cash Offer by ENRC for CAMEC,' 12. Procedure for acceptance of the offer, p.19.

³⁰ A recording of the conference call is available at:

<http://pres.enrc.com/enrc012/webcast.asp?Media=wm_aud&PresNum=01&SlideNum=001>.

³¹ 'Rautenbach can't sell Camec stake to ENRC till UK Treasury approves', *Metal Bulletin*, 07 October 2009, available at: <<http://www.metalbulletin.com/Article/2311307/Rautenbach-cant-sell-Camec-stake-to-ENRC-till-UK-Treasury.html>>.

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.’³²

In light of regulation 10(2) that a licence ‘may be general or granted to a particular person or to a category of persons’ and that the AFU is responsible for processing applications ‘for licences to release frozen funds or to make funds available to designated/restricted persons’, will the Unit confirm:

- Whether different persons or entities were required to apply for separate licences in respect of the ENRC transaction to purchase CAMEC shares owned and/or controlled by and benefitting Rautenbach?
- Whether a licence can be granted to an entity, such as a body corporate, or whether it can only be granted to a particular person within an entity, such as a company secretary or other corporate officer?
- Did ENRC require and apply for a licence to purchase any Rautenbach-controlled direct or indirect shareholdings in CAMEC?
- What date was any application for a licence made by ENRC? If so, on what date was it refused or granted?
- Did any such application by ENRC refer to the purchase of shares held via Harvest View Limited? Were other entities via which Rautenbach held shares referred to in any such application?
- Whether the issue of any such licence to ENRC was subject to the approval of UN and/or notification to EU Member States? If so, on what date was UN approval given and EU notification made?
- Did Rautenbach also require a licence to sell the CAMEC shares he controlled? If so, was Rautenbach obliged to show that his circumstances fell within one of the exemptions set out in the legislation and that the transaction was therefore capable of being licensed?
- What date was any application for a licence made by Rautenbach? If so, on what date was it refused or granted? Which, if any, exemption was cited in the application? What, if any were the conditions attached to any license(s) granted?
- Whether the issue of any such licence to Rautenbach was subject to the approval of UN and/or notification to EU Member States? If so, on what date was UN approval given and EU notification made?

Please could the AFU also clarify:

- Whether, in addition to any licences required by ENRC as the purchaser and by Rautenbach (see above), whether any administrator of CAMEC shares required a licence to sell or otherwise deal in holdings controlled by or benefitting Rautenbach?

ii. Proceeds/consideration

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.³³ 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]’.

ENRC, in its offer document does state:³⁴

³² 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>>.

³³ ENRC, ‘Compulsory acquisition’, 15 December 2009, available at: <<http://www.enrc.com/files/CamecAnn15DEC.pdf>>.

³⁴ ENRC, ‘Recommended Cash Offer by ENRC for CAMEC’, 12. Procedure for acceptance of the offer, p.19.

...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 and to pay any settlement consideration that may be due to you pursuant to the Offer into a blocked UK or EU bank account, approved by such governmental or regulatory authority.

In our previous exchange with the AFU, assuming a licence to trade is granted, we asked about what happens to the proceeds from the purchase of shares benefitting a designated person and what happens when an offer becomes unconditional, triggering a compulsory purchase of remaining shares. Your response – that the Treasury would deal with any such issues on a case by case basis – can presumably be elaborated now that the parties in the ENRC acquisition are known:

- What has happened to the consideration from the sale of Harvest View’s holding in CAMEC or those from any other Rautenbach-controlled holdings?
- Who administers the account(s) in which any considerations are held?
- Does interest, dividends or any other financial benefits deriving from the consideration accrue in any such accounts? It is our understanding that financial sanctions do not prevent the crediting of frozen accounts by financial institutions that receive funds transferred by third parties provided that any additions to such accounts will also be frozen.
- The AFU’s response stated that ‘any sale of a designated person’s shares could take place only on the basis that any consideration for the shares remains frozen’; however, given our understanding that a designated person can apply for a derogation from Council Regulation (EC) No 314/2004 and that a designated person may seek a licence from the Treasury authorising access to economic funds or resources, has any consideration arising from the ENRC’s acquisition of Harvest View’s holding in CAMEC remained frozen?

CAMEC’s Zimbabwean platinum assets and Meryweather Investments Limited

The company Meryweather Investments Limited, prior to and at the time of ENRC’s acquisition of CAMEC, held shares in CAMEC derived from the consideration paid to by CAMEC when the latter acquired Meryweather’s holding in certain Zimbabwean platinum mining assets. At issue is (i) whether CAMEC complied with EU sanctions against Zimbabwe in force at the time and (ii) whether licences were sought and granted in relation to the trading of Meryweather’s shares at the time of ENRC’s transaction to acquire ENRC.

i. CAMEC’s acquisition of the Zimbabwean platinum assets

In 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 BVI.³⁵ 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 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.’³⁶ According to the public relations company representing CAMEC at the time of the acquisition, CAMEC was not disclosing the identity of Meryweather’s owners.³⁷

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.³⁸ The remaining 40% of Todal was held by the state-owned Zimbabwe Mining Development Corporation (ZMDC).

³⁵ CAMEC, RNS 1641S, ‘Acquisition of Platinum Assets’, 11 April 2008, available at: <http://www.londonstockexchange.com/exchange/prices-and-news/news/market-news/market-news-detail.html?announcementId=1810075>.

³⁶ *Ibid.*

³⁷ Ben Brewerton of London-based Financial Dynamics Ltd., a public relations firm representing CAMEC, quoted in Antony Sguazzin and Mark Herlihy, ‘Camec to Mine Platinum With Zimbabwe Government Unit (Update4)’, *Bloomberg*, 11 April 2008, available at: <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=age21cHHHm5Y>.

³⁸ CAMEC, ‘Acquisition of Platinum Assets’.

Todal was given the right by the Zimbabwean Government to export platinum from Zimbabwe and ‘also secured an agreement to allow it to expatriate the profits generated by its mining operations in the country.’³⁹ The Reserve Bank of Zimbabwe also gave extensive fiscal incentives to Todal covering royalties, income tax, import duties, value added tax and withholding taxes.

Bloomberg reported that, under the deal to purchase the Zimbabwean platinum assets, CAMEC would ‘lend a further \$100 million to President Robert Mugabe’s government.’⁴⁰ CAMEC’s announcement of the acquisition stated:⁴¹

...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.

Other mining commentators, referring to CAMEC’s loan to Lefever, state:⁴² ‘This thinly disguised donation appears to be nothing less than an unsecured cash loan to the Zimbabwe Government; for that, read “the president Robert Mugabe regime”’. CAMEC’s acquisition of the Zimbabwean platinum assets occurred after Zimbabwe’s crucial 29 March 2008 presidential election, but before the result was announced.

Given that President Robert Mugabe and other senior Zimbabwean government members and ZANU-PF officials all were designated under EU sanctions in force at the time of CAMEC’s acquisition of the Zimbabwean platinum assets; given that the partner in the Todal joint venture, ZMDC, was a state body wholly-owned by the Government of Zimbabwe (although not designated until 27 January 2009); and given that the loan advance from CAMEC to Lefever was to be made available to the Government of the Republic of Zimbabwe, did CAMEC at the time of the transaction:

- Notify or otherwise seek the advice of the Treasury as to whether its proposed acquisition complied with the sanctions then in force;
- Require a licence or other permission from the Treasury in order to make loan finance via Lefever available to the Zimbabwean government?

ii. Meryweather Investments Limited’s shareholding in CAMEC

On its acquisition of a stake in the Zimbabwean platinum assets, CAMEC confirmed at the time that ‘Meryweather Investments Limited, the seller of the shares in Lefever, will on completion of the transaction hold a 13.07% interest in the enlarged share capital of CAMEC. All of the shares issued to Meryweather will be subject to a lock in for six months and 50% of those shares will be subject to a lock in for 12 months.’⁴³

According to an article in *Private Eye* magazine,

CAMEC, headed by former England cricketer Phil Edmonds, 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...⁴⁴

The 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

³⁹ *Ibid.*

⁴⁰ Antony Sguazzin and Mark Herlihy, ‘Camec to Mine Platinum With Zimbabwe Government Unit’.

⁴¹ CAMEC, ‘Acquisition of Platinum Assets’.

⁴² Barry Sergeant, ‘Platinum panic in Harare’, *Mineweb*, 22 August 2008, available at: <<http://www.mineweb.com/mineweb/view/mineweb/en/page35?oid=60438&sn=Detail>>.

⁴³ CAMEC, ‘Acquisition of Platinum Assets’.

⁴⁴ ‘In the City’, *Private Eye*, issue no. 1252, 25 December 2009 – 7 January 2010, p. 33.

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? Attempts to contact Ramsay were unsuccessful, although a business associate confirmed that he had passed on a message asking to discuss Meryweather Investments – and whose interests he was representing, if not Rautenbach's.

ENRC describes in the offer document how it had received irrevocable undertakings to accept the offer from, *inter alia*, Temple Nominees Limited with a holding of 115,000,000 shares or approximately 4.00 percent of the entire issued ordinary share capital of CAMEC and Chambers Nominees Limited with a holding of 100,000,000 shares or approximately 3.48 percent.⁴⁵ Both Temple and Chambers nominees are confirmed by ENRC as acting 'for and on behalf of Meryweather Investments Limited'. CAMEC, in its 2009 annual report, confirms that Meryweather held 215,000,000 ordinary shares or 7.49 percent of CAMEC's issued share capital, as of 18 September 2009 (the day ENRC's offer for CAMEC was announced).⁴⁶

According to *Private Eye*,

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.

The *Private Eye* article 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?

Please could the AFU clarify:

- Whether or not CAMEC made notification to the Treasury following Rautenbach's designation on 19 January 2009 of any direct or indirect holdings via Meryweather Investments or any other entity in CAMEC shares benefitting Rautenbach? If so, what was the date of any such notification?
- Whether any licence application made to allow the purchase and/or sale of certain CAMEC shares to go ahead included the purchase of any CAMEC shares owned by Meryweather Investments or administered by Temple Nominees Limited or Chambers Nominees Limited? Who made any such licence application(s)?
- The date upon which any such application naming Meryweather Investments and/or Temple or Chambers was made?
- The date upon which any licence(s), which included permission to trade in Meryweather's and/or Chambers/Temple's holdings in CAMEC, was granted?
- Whether or not any holdings via Meryweather Investments benefitting Rautenbach were, after notification, administered by CAMEC? If not, who administered these shares? Were they administered by Temple Nominees and/or Chambers Nominees? Will the AFU confirm that the letters accepting the bid for the Meryweather shares were signed by the CAMEC company secretary, Philip Enoch?
- What has happened to the consideration from the sale of Meryweather Investment's holding in CAMEC?
- Who administers the account(s) in which any considerations are held?
- Given that a designated person can apply for a derogation from Council Regulation (EC) No 314/2004 and that a designated person may seek a licence from the Treasury authorising access to economic funds or resources, has any consideration arising from the ENRC's acquisition of Meryweather Investment's holding in CAMEC remained frozen?

⁴⁵ ENRC, 'Recommended Cash Offer by ENRC for CAMEC,' Other CAMEC Shareholders, p. 11.

⁴⁶ CAMEC, *Report and Financial Statements: Year ended 31 March 2009*, Substantial shareholders, p. 49.