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February 19, 2006

Mrs. Tricia Feeney, President
Rights and Accountability in Development
Oxford University, United Kingdom

Dear Mrs. Feeney

Please find hereunder our comments on the Joint Venture Agreement dated 9 September 2004 (the « JV Agreement ») between *La Générale des Carrières et des Mines* (« *Gécamines* ») and *Global Enterprises Limited* (« *GEC* ») together (the « Parties ») for the exploitation of the open pit mine of KOV and the Kananga and Tilwezembe deposits.

Our mandate

As per your instructions, we have reviewed the JV Agreement and have centered our analysis on how its provisions generally compare with the provisions normally found in joint venture agreements of a similar nature.

To complete our analysis, we have reviewed the provisions of the Mining Code of the Democratic Republic of Congo (Décret N° 007/2002 du 11 juillet 2002) and such other joint venture agreements known to us.

We have not undertaken a review of the contractual laws applicable to the JV Agreement or of the mandate of any administrative transitional body appointed in the Democratic Republic of Congo to assist the interim government in the application of such joint venture agreements.

Our Analysis

By virtue of a Joint Venture dated 9 September 2004, the Parties have agreed, following a positive production decision based on a Feasibility Study, that a Company would be registered under the Laws of the Democratic Republic of Congo, to be known as *DRC Copper and Cobalt Project sprl* («*DCP*»).

1. CONTRIBUTIONS OF THE PARTIES TO THE SHARE CAPITAL AND ASSET BASE OF DCP AND REMUNERATION.

A) Gécamines

A.1 Gecamines' contribution to DCP :

Attribution of exclusive Exploitation Rights to DCP

Under the JV Agreement, Gécamines agrees to irrevocably, unconditionally and with full title guarantee and transfer to DCP the parts of the Mining Title¹ that will permit DCP to become the exclusive holder of the DCP Exploitation Permits². The Parties agree that the JV Agreement will constitute conveyance as per the terms of section 182³ of the Mining Code.

Leasing of Auxiliary Sites and Processing Facilities

Gécamines further agrees to irrevocably lease to DCP (“par amodiation⁴”), the rights attached to the Mining Title or as the case may be the exploitation permits corresponding to the Auxiliary Sites⁵ and Processing Facilities⁶ (the “Leased Assets”). The Parties agree that the provisions of the JV Agreement will constitute a Leasing Agreement as per the terms of section 177 of the Mining Code.

¹ Means licence n° 525 (West Group) as registered in the Land Register (“Cadastre minier”)

² Means the Exploitation Licences covering the **DCP Assets**. **DCP Assets** means the assets and rights to be transferred to DCP including the Exploitation Licences, the Leased Assets as well as the Technical Data related thereto, the servitudes, rights of way and other authorisation, rights, interests, information, file, equipment, installations, supplies and material and other tangible or intangible assets.

³ Section 182 provides that mining rights and Authorizations for Permanent Quarry Exploitation may be conveyed in whole or in part and that this conveyance is final and irrevocable. Section 182 then provides for the conditions to be fulfilled for such conveyance to be valid.

⁴ « Amodiation » (section 177 of the Mining Code) means a lease that consists of renting for a fixed or indeterminate period of time, without the right to sublet, all or part of the rights relating to a mining right or a quarry authorization in return for a payment agreed to by the lessor and the lessee. The lease contract must include clauses setting out the conditions for the maintenance and the reinvestment necessary for the exploration and development of the deposit and it must provide for the joint and several liability of the lessor and the lessee vis-à-vis the State. Notwithstanding any clause to the contrary, the lessee is liable for payment of the taxes and royalties due by virtue of a mining or quarry title. However, if the lessee defaults, the lessor is liable vis-a-vis the State, subject to its right of recourse against the defaulting lessee.

⁵ Means the Mining Area except the geographical areas covered by the Exploitation Licences (on which are located **KZC**, **Luilu ER**, **SKM** and the **Storage Areas**) to be leased (“amodiés”) by Gécamines to DCP and as the case may be, **Luilu HM**. **KZC** means the processing plant for copper and cobalt Ore located within the West Group. **Luilu ER** means the electro-refining facility located within the West Group. **SKM** means the offices, installations, equipment and spare parts identified for the management and exploitation of the **Mines** within the West Group. **Storage areas** means the areas where DCP could store waste and sterile and eventually tailings generated by the Project as determined by the Feasibility Study. **Mines** means the individual deposits of Ore and the mines of KOV and Kananga (including South Manga, North Manga (in part) East and West Kananga) and any extension thereof within the Mining Area of the **Project**. **Project** means the joint venture including the conception, rehabilitation and research activities, **Development**, exploitation, mining, crushing, grinding, processing, enrichment and metallurgical refining within the Mining Area. **Luilu HM** means the hydro-metallurgical processing plant located within the West Group.

⁶ Means all processing facilities situated at KZC, Luilu ER, SKM, Storage Areas and as the case may be Luilu HM.

Under the JV Agreement, Gécamines irrevocably accepts to transfer or make available to DCP the right to

- 1) access the properties,
- 2) use the roads, railways, water ways, the roads built for the transportation of ore, dams, canalisation and other infrastructures and
- 3) to claim any right of way, servitude, usage rights, irrigation rights and any other right that might facilitate access or use of the properties or installations located thereon

from which it presently benefits (or will benefit in the future) within or without the Mining Area⁷, the West Group⁸ and the Centre Group⁹.

It is to be noted that Gécamines will remain responsible to keep in good order the roads built for the transportation of ore and to ensure the safety of any person that might be in the vicinity of such ways. DCP is authorised to act on behalf of Gécamines in order to fulfill these obligations.

Gécamines must also finalise the Environmental Adjustment Plan, obtain the relevant authorisations in relation thereto and provide the financial guarantees in relation therewith as provided for in the Mining Code and applicable Regulations.

Other Contributions

Gécamines will provide assistance to GEC in its negotiations with KCC/KF Limited for the use of Luilu HM for the processing of the KZC concentrates and otherwise make available the processing plants of Shituru and Luilu ER.

Gécamines will provide assistance to GEC with respect to 1) the coordination of KCC/KF Limited rights and those of DCP (among other issues those related to West Kananga Mine and the KOV Conveyor), 2) elimination or evacuation of water (KOV Mine and KZC) and the storage of tailings pending the construction by DCP, of its own facilities, 3) the negotiations in relation with the supply of electrical power.

Gécamines also undertook to grant to GEC the right to sell of up to 60% of the copper and cobalt production from Shituru in accordance with the terms and conditions to be included in a "Marketing and Sales Agreement - Centre Group" to be entered into by the Parties. In a scenario where DCP manages Shituru, the parties confirm that the 60% rate will apply to products other than DCP's.

Gécamines irrevocably undertook to sell to DCP the production of acid and lime plants that could be commissioned, extended or rehabilitated by Gécamines whether such production

⁷ Means the Area determined in Schedule A to the JV Agreement.

⁸ Means the mines and quarries as well as the processing facilities related thereto held by Gécamines and located in and around the operational area of the city of Kolwezi.

⁹ Means the mines and quarries as well as the processing facilities related thereto held by Gécamines and located in around the operational area of the city of Likasi.

was or not financed by a first draw under the Loan Agreement¹⁰. DCP will be offered and will have a right of first refusal on all over surpluses produced by said plants.

Gécamines undertook to make available to GEC and DCP all feasibility studies, geological, geophysical, geobotanical, geochemical, photogeological, aeromagnetic information and analysis as well as other technical data (including drilling samples and their interpretation), files and registration as well as any documents related to the control of prospecting and extraction activities completed by Gécamines in the Mining Area prior to the effective date.

A.2 Gécamines' remuneration for contributing the above described assets is as follows:

Gécamines is attributed a 25% free carried participation in DCP's share capital.

It is to be paid with respect to the **Attribution of Exclusive Exploitation Rights** to DCP and **Leasing of Auxiliary Sites and Processing Facilities** is an amount equal to 2% of Net Sales Revenues¹¹ for the four (4) first years and 1, 5% of Net Sales Revenues thereafter.

Said remuneration based on Net Sales Revenues could be reduced to compensate for any reimbursement due to GEC under the Loan Agreement or any other sum due by Gécamines under its other commitments such as the provision of a guarantee by virtue of the Environmental Adjustment Plan and indemnisation with respect to environmental liabilities for all amounts due by virtue of operations that have taken place prior to the transfer of the DCP Assets to DCP.

Under the provisions of JV Agreement, there is no remuneration provided for the Other Contributions.

B) GEC

B.1 GEC's Contribution

Under the JV Agreement, GEC must prepare the Feasibility Study and provide a letter of reference from an international bank confirming its capacity to invest at least US\$ 200,000,000 in the Project.

¹⁰ Means the loan agreement in an amount of US\$30,000,000 to be entered into by GEC (as lender) and Gécamines (as borrower).

¹¹ Means **Net Revenues** less **Permitted Deductions**. **Net revenues** means the proceeds received by DCP from the sale of the **Products**. The **Permitted Deductions** are as follows: 1) all costs, expenses and Charges in relation to transportation (including insurance, packaging, loading, handling, loading fees and others, delays and expedition costs and transaction fees) of the Products from the point where these Products are taken charge of to their delivery to the refinery or any place where they would be crushed, melted, refined or submitted to any other transformation and from this place to any other place where they would be further transformed and from this last place to the one where they will be stored and sold and includes transportation to the place of delivery to the purchaser; 2) Any tax levied on the Product from the Mining Area but excluding Net Income tax; 3) sales costs and insurance, storage, agency and costs of intermediaries in relation with the Products as well as any discount or return granted to the client for default of the sold Products in view of client's specifications or for damaged goods; 4) Sums to be affected as compensation with respect to sums due under the Loan Agreement. **Products** means all ore, concentrate and other mineral substance constituting or containing ore produced from the Mining Area by or on behalf of DCP. Concentrate from KZC and other refined metal, sub-products or derivatives.

Within 6 months of the approval of the Feasibility Study, GEC must procure financing at conditions satisfactory to it, for the expansion and rehabilitation of existing equipment or for the construction of new one, as the case may be.

All DCP's financing requirements for the Project shall be fulfilled by GEC by way of third party loans, capital advances and or loans granted by GEC or related parties thereto. These loans and advances will be fully guaranteed by the shares issued by DCP and/or by the production.

B.2 GEC's remuneration for securing the financing for the Project is as follows:

GEC is attributed a 75% participation in DCP's share capital.

GEC will be reimbursed in priority for its loans and advances in accordance with the following priority established for the use of funds available from operations:

- Priority is given to financial obligations in relation with the operations which includes the service of the debt and payments to the Manager.
- Available cash can be set aside for later use in anticipation of operational costs within a reasonable period of time, for the payment of taxes, the payments to Gécamines as regards the Leased Assets, maintenance and replacement of existing equipment and installations or other eventualities, the constitution of authorised reserves for environmental liabilities, modifications, upgrading, expansion of the equipment and installations, for the purchase or construction of new equipment and installations or expansion of existing mining processing operations or to initiate new mining and processing operations.
- Available cash following the allocation of the above described reserves will be distributed or paid to GEC in reimbursement of the costs incurred during the preparation of the feasibility study and for the signature of the JV Agreement and then in reimbursement of the loans made to DCP in order for GEC to recover its investment in the Project.
- The remaining available cash could be used for accelerated reimbursement of loans made to DCP or for dividends to shareholders as decided by the General Meeting of Shareholders. Dividends paid by DCP from after tax profits will be so in proportion to shareholders' participation in DCP's share capital. DCP will be authorised to withhold from any dividend payable to Gécamines any sums due by virtue of the Loan Agreement and to pay these sums to GEC on behalf of Gécamines.

2. OPERATIONNAL MATTERS

A.1 Control of the Operations

GEC will be granted a 75% participation in DCP's share capital and is entitled to appoint six directors of a total of eight directors to compose DCP's board of directors. Gécamines will appoint the two remaining directors.

DCP will appoint the Chairman of the Board and the “Managing Director/Administrateur Délégué” and Gécamines the “Assistant Managing Director/Administrateur Délégué adjoint”.

Control of the Operations of the Company will be assumed by GEC under the instructions of the board of directors. GEC can request that a Manager be appointed to perform its obligations

DCP will maintain several accounts where the proceeds of the sales will be deposited as well as any amount received by virtue of loans from the shareholders or third parties. From this account, DCP will be responsible to pay all costs related to the Operations and other financial obligations including the service of the debt.

The Manager is free to choose its suppliers but must give priority to the Parties, organisations and parties related to the Parties if these entities offer competitive financial terms and guarantees as regards quality and delays in the delivery supplies identical to those offered by other companies.

A.2 Sale of the Products

DCP will sell the Products subject to the rights granted to GEC as described above.

A.3 Offshore accounts

DCP can open foreign bank accounts in an international bank approved by the board of directors and conduct the following transactions:

- Receive payments by shareholders of DCP
- Following a call for funds from DCP, receive funds from loans granted by its bankers or shareholders
- Receive the proceeds of the Sales of Products
- Receive the proceeds from other commercial or financial operations

A.4 Securities to be given upon financing

Gécamines undertook to facilitate the financing by agreeing to sign any required documents and by pledging its shares as well as accepting that encumbrances, liens or charges be placed on the DCP Assets (except the “Leased Assets”) as may be required to secure the financing.

All loans made to DCP (including loans granted by parties related to the shareholders and loans made in order to finance the Project) can be guaranteed in whole or in part by DCP’s assets, the Products, the shares held by the shareholders or a combination thereof, by the proceeds or products thereof as may be determined by the board of directors. Shareholders agreed that such guarantee shall be a first ranking guarantee on their assets.

A.5 Default under the JV Agreement

Should a party be substantially in default of its obligations, the party not in default has the option to acquire all the shares of the defaulting party. The price of the shares will be

calculated in relation to the capital of DCP including retained earnings and reserves less all short term and long term loans.

Should DCP be in default as per the JV Agreement, then Gécamines could terminate the Lease Agreement. In such a case GEC has the right to terminate the JV Agreement and all loans will become immediately due and must be paid by Gécamines within the best delays but at the latest within 60 days of the date of resiliation.

3. COMMENTS

Typically in Africa, a state participates in the development of the national resources located on its territory in two ways.

It takes a participation in the mining company. In doing so, it shares the risks with the Investor who in a typical situation will have to invest large amounts as contributed capital and still invest a fairly large balance as shareholder advances. Generally, this participation is determined by law and is of maximum of 25% as states prefer to have a higher royalty rather than a higher participation in the company.

Except under exceptional circumstances, there is very little infrastructure on the mine site, the Investor will build the roads, bring water, electricity, telephone and electronic communications to the site. The Investor will build the landing strip, the living quarters and the cafeteria and recreational facilities. Should these infrastructures already exist, it is considered as an advantage to the project and the Investor will upgrade such infrastructure at its own expenses and pay the prescribed taxes to the state to compensate the expenses incurred by the state in building the infrastructure.

The royalty collected by the state is generally between 1.5% to 3.5% calculated on gross revenues from the sales of the products. It is therefore paid before any other expenses are paid. It is from these payments, often substantial, that it will draw its main revenue from the extraction of its natural resources. This amount is paid before the product leaves the country and is not at risk even if the mining company loses money.

In return for paying this royalty, the investor will ask (not always successfully) during the negotiations of the mining convention, that his advances be reimbursed in priority to dividends being paid. As those advances often will come from loans from financial institutions that the investor could have been called upon to guarantee putting his own assets at risk, it is important that he can benefit from a cash flow in order to be able to reimburse his loans. Typically, shareholders advances are remunerated but not guaranteed by the assets of the operating mining company.

It is to be noted that contributed capital is not reimbursed until the company is liquidated.

In certain instances, amounts for previous work done on the property is claimed by the state and recognised on the opening balance sheet of the operating mining

company as an advance from a shareholder. In such instances, both shareholders will be reimbursed for these advances in priority and *pari passu*.

Further, the operating mining company could have been granted a loan by a financial institution. To guarantee this loan, the operating mining company will give its assets in guarantee for the loan if the legal system in the host country can accommodate such demand. More generally, the proceeds from the sale of the Products will be paid in a dedicated offshore account from which the financial institution will draw, monthly or by-monthly, the capital and interests due to be reimbursed at that date. The shareholders will also agree to pledge their shares. These guarantees are released as soon as the loan to the financial institution is paid.

A1. Determination of the allocation of share capital in KCC

The general rules in such matter cannot apply in the circumstances documented by the JV Agreement. In instances such as the one documented here, the practice as confirmed by laws in certain instances, is to have an audit and an evaluation of “in kind” contributions so that both partners can be satisfied that such contribution has been given a fair value. The share capital is thereafter attributed proportionately to the contributions of each partner.

It is worth noting that the Parties’ contributions have been determined before the completion of the Feasibility Study.

Has Gécamines’ in kind contribution been fairly evaluated?

- What is the value of the assets being conveyed or leased by Gécamines? Should it receive shares (of uncertain value) or cash for its contribution? Could the US\$30,000,000 loan that seems to be needed by Gécamines, be lowered if cash was being paid for the conveyance or leasing of the Assets?
- What is the value of Gécamines’ contribution in relation to the value of the ore in the ground or tailings available for reprocess, if any?
- What is the value of all licences and permits being transferred to DCP with potential extraction targets of up to 200,000 tons Cu/year ore and profits related thereto?
- Why isn’t there an advance from shareholders recognised to the benefit of Gécamines for the previous studies conducted on the property? The realisation of the Environmental Adjustment Plan?

The JV Agreement relates to extensive assets, part of the national wealth of the Democratic Republic of the Congo, which are being transferred or leased for use by the private sector without an evaluation and assurance that the country will be appropriately remunerated for the conveyed or leased assets.

Has GEC’s contribution been fairly evaluated?

- How can GEC's contribution be evaluated before the financing is put in place? Should the financing be entirely provided by third party loans made directly to DCP, what would be the value of GEC's contribution?
- How should cash advances or loans be evaluated given the fact that GEC will have complete control of the Project?
- How were the relative risks incurred by the respective Parties evaluated?

One can truly question the methodology or lack thereof used in the allocation of the share capital among the Parties to the JV Agreement.

It is justified to assume that, as a shareholder, Gécamines will not receive any dividend until loans, capital and interest have been reimbursed to GEC and third parties and then such dividends will be paid only if available cash is sufficient in view of the priorities established for the use of such available cash. Declared dividends will then be allocated in the case of Gécamines, to the reimbursement of the Loan. Gécamines may well not receive any dividends and further be liable to be pay additional amounts in reimbursement of the Loan.

A2. Royalties payable to Gécamines

As previously mentioned the remuneration of the state as regards the sale of its natural resources comes from the royalty collected on the gross revenues of the sales of the Product (processed ore being sent to refineries to be transformed into finished or semi-finished products).

The important concept is that this royalty is paid on gross revenues and is of low risk. The state is thus sure of obtaining a fair value for its resources (the royalty is calculated on the spot market price in London or other specialised exchange without deduction of real or discretionary expenses).

A payment based on Net Profits or Net Sales Revenues is speculative. Generally, given its speculative nature, the percentage used for calculation of such a payment will be higher, between 10% and 15%. But a higher percentage does not entirely compensate for the risk attached to a payment based on net revenues.

It is not unreasonable to envisage a scenario where Gécamines would not receive any payments as regards the Leased Assets given that amounts otherwise payable will be fully loaded with expenses relating to every stage of the transformation of the Product, its commercialisation, transportation, insurance, remuneration of the Manager and intermediaries, administrative costs and allowances for profits as calculated by GEC.

Such amounts will be further reduced by compensation for amount due by virtue of the Loan Agreement, guarantees payable under the Environmental Adjustment Plan and other financial obligations of Gécamines comprised in the JV Agreement.

Given the low percentage that Gécamines would receive from the Net Sales Revenues which as mentioned before, is a speculative amount, one could well question whether the reimbursement of the Loan and of other expenses could be seen as already discounted with therefore, no need to account for it in reduction of the royalty.

A3. Gécamines' remuneration for Other Contributions

GEC will be remunerated for the expenses incurred for the preparation of the Feasibility Study, why isn't Gécamines remunerated for the preparation of the Environmental Adjustment Plan and other work performed in relation to the properties? As previously mentioned, such previous work and the expenses incurred in the preparation of the JV Agreement could be recognised as a shareholder advance and remunerated and repaid in priority and *pari passu* with GEC's advances and expenses incurred in the preparation of the present Agreement.

A4. GEC's remuneration

GEC contributions will be fully guaranteed, remunerated and reimbursed in priority.

GEC will be remunerated as Manager of the project as well as for the marketing and sale of the Products and other services (commission for putting together the financing, fee on any guarantee it could be called upon to provide should a loan from a financial institution be sought).

Bank accounts will be operated offshore. GEC's contributions will be paid in these bank accounts. The proceeds of the sale of the Products will be paid in these bank accounts and it is contemplated in the JV Agreement that GEC will have full authority and be mandated to pay expenses out of this or other operational accounts without further review and approval.

4. CONCLUSION

It is reasonable to assume that GEC will have been totally reimbursed in capital and interests of all loan and advances and will have derived substantial benefits from the control exercised on the operations, prior to Gécamines receiving any remuneration on its contributions.

It is reasonable to assume that the royalty paid over the life of the Project will be minimal, if any.

It is reasonable to assume that available cash for dividends will be minimized as it will be more advantageous for GEC to be fully remunerated through contracts and payments for services rather than share the remaining available cash with Gécamines.

It is reasonable to assume that the dividends and royalties to be paid to Gécamines under the JV Agreement will not be sufficient to reimburse the Loan and that Gécamines is therefore more heavily indebted for having signed this JV Agreement compared to the situation if it had not entered into the JV Agreement.

Signed: Fasken Martineau DuMoulin (Pty) Limited