To
Mr. Frederick Ubermayer
Suddeutsche Zeitung

Thursday, October 26, 2017

Dear Mr. Ubermayer,

Mr. Gertler's response to 10 questions presented in your letter of 24 October 2017

1. **US/OZ/DPA**

- In relation to the DPA, you have created confusion across your correspondence to us. We will express our response to your questions and allegations regarding the DPA/OZ/US matter clearly for you here and now. This is the only statement from us you should use in relation to the DPA/OZ/US matter.

- We cannot confirm the identity of Mr. Gertler or anyone else cited in the DoJ DPA or SEC Statement, although we can confirm that those two documents touch on matters and transactions in the DRC in which Mr. Gertler was involved.

- The DPA does not constitute evidence of anything against Mr. Gertler, as it is a settlement agreement of terms between the DoJ and Och Ziff, entered into by Och Ziff's current management for its own commercial considerations and reasons. It is absolutely not a legitimate or reliable source of fact or evidence about persons or entities that are not party to it.

- To the extent such agreement is alleged to relate to Mr. Gertler, it did so without any participation by him or any opportunity to provide any comment whatsoever before it was agreed upon between DoJ and Och Ziff, and Mr. Gertler rejects absolutely any allegations of wrongdoing or criminality by him.

- Mr. Gertler has evidence that documents received by the US authorities from certain sources in the context of their investigation were false and baseless. In the absence of any involvement in such investigation, however, and without knowing whether such investigation

is complete or ongoing, Mr. Gertler is prevented from providing any such evidence in the public domain in respect of matters arising from the DPA.

- Therefore, Mr. Gertler insists that before publishing any allegation that relies on or is based on the DPA, you appoint a trustworthy lawyer on a strictly confidential basis. We then meet with this lawyer and present him with clear and robust evidence to show that documents received by the US authorities from certain sources in the context of their investigation were false and baseless. To the extent such lawyer is satisfied, we would expect him or her to inform you of this but without sharing any details of the evidence itself.

We expect to receive a clear response from you on this offer before any publication is made by any of your co-media entities.

2. Relationship with President Kabila and Augustin Katumba

- Mr. Gertler categorically denies any allegations of improper, illegal and/or corrupt relations with either President Kabila or Mr. Katumba. The sole basis for such allegation is an agreement from the US signed by unrelated parties with their own agendas and reasoning.

- As previously reported, Mr Gertler has a long-standing friendship with the President of DRC, His Excellency Joseph Kabila. They first met in the early 2000s, when Mr Gertler came to DRC to make his first major investment in the country – (which was concluded with the State under the Presidency of Laurent Kabila). Joseph Kabila, (around the same age as Mr Gertler and President Kabila's son), the son of the President, was the then Chief of Staff in his late father's administration. Mr Gertler has been a committed investor in the DRC since the Presidency of Laurent Kabila and this naturally carried forward into Joseph Kabila's Presidency after his father was killed. The relationship between the President of DRC and Mr. Gertler is strictly one of personal.

- As to Mr. Katumba: Mr. Gertler met Mr. Katumba sometime later but became acquainted with him on a personal basis, only after Mr. Katumba's retirement from Government.

3 and 4. - Mandate from Katanga to negotiate the new KCC JVA

- The new KCC Joint Venture Agreement (JVA) of July 2009 was negotiated and finalised in a historical context that you have completely failed to recognise or acknowledge in your

allegations. You have only focussed on the *pas de porte* amount, as if that was negotiated in a vacuum and as if that was the only relevant provision when considering value to Gécamines and the DRC in that agreement.

- In fact, the full context of the new KCC JVA is largely recorded in the recitals to the agreement itself, a copy of which you have obviously seen and reviewed in depth. The new KCC JVA was expressly intended to consolidate a number of previous commercial arrangements and agreements between the parties, many of which contained valuable provisions for Gécamines. This amounted to a complicated and detailed backdrop for the KCC JVA all of which would need to be combined and reflected in the new agreement.

- Amongst other things, the new KCC JVA had to incorporate and address:

    - the merger of Nikanor and Katanga, merging the DRC-level joint venture agreements into one consolidated joint venture agreement for KCC;

    - the terms of the February 2008 agreement between Katanga and Gecamines (regarding the transfer of certain exploitation permits and mining rights to KCC, the release of hugely valuable copper and cobalt reserves to Gécamines and the *pas de porte* amount of US$135m that would be payable by Katanga);

    - the upshot of the DRC Mining Review which was taking place at that time across the entire DRC mining sector and led to the renegotiation of all of Gécamines' joint venture agreements, including Katanga's.

- It was in this context that Mr. Gertler was mandated by the Katanga Board to assist with the negotiations with Gécamines and DRC on behalf of the company. There is no doubt that Mr. Gertler has been a strategic investor in the DRC for many years and is highly familiar with the economic and regulatory systems therein. This fact makes Mr. Gertler an important business partner for companies wishing to invest in the DRC, and the relations with him are based on clear and rational business interests.

- It was also in this context that Gécamines received valuable contractual terms throughout the terms of the new KCC JVA, unrelated to the specific *pas de porte* amount that has been your focus. We particularly bring your attention to the following points:

    - the final KCC JVA stated that when combining the terms of the previous Nikanor JVA and Katanga JVA, in respect of each provision, the clause which was preferable for Gécamines would be the one that will apply in the new KCC JVA.

- the transfer of approximately 4m tonnes of copper and cobalt reserves from KCC to Gécamines was a hugely valuable arrangement for Gécamines (and a corresponding reduction in value for Katanga).

- regarding the 2008 and 2009 Mining Review, all of Gécamines joint ventures were subject to renegotiation. Across the mining industry, Gécamines made demands to improve its contractual position with its joint venture partners. The fact of Gécamines requesting certain amendments to its joint venture terms did not, in any way, indicate the veracity or fairness of such requests. It was simply an opening negotiating position- in each case, amendments to Gécamines' joint ventures were made, with Gécamines being rewarded to a larger or lesser degree in relation to their original requests. Whatever initial pas de porte amount Gécamines may have sought- (regarding this or any other of its joint ventures)- that is not an indicator of it being a sum that they deserved, would have expected to receive or that any mandated negotiator acting for the relevant mining company would have contemplated accepting.

- You have also ignored the context of Mr. Gertler's role and involvement in Katanga at this time. By the Nikanor/Katanga merger in January 2008, Fleurette Group was a major shareholder in Katanga, having paid nearly $500m to acquire shareholdings in Nikanor and Katanga in previous years.

- To be absolutely clear, all negotiations on the new KCC JVA were carried out in a bona fide manner on arm's length basis. The final *pas de porte* amount in the new KCC joint venture reflected the result of such negotiations, taking account of the significant reduction in Katanga's copper and cobalt reserves because of the transfer by KCC to Gécamines, as well as the pas de porte amount agreed between Gécamines and Katanga under the February 2008 agreement, even before Mr. Gertler was mandated.

- There is no basis for the allegation that Katanga received preferential terms in the Katanga JV as a result of Mr. Gertler's involvement. Aside from your misunderstanding of the pas de porte amount, many other provisions of the Katanga JV are expressly better for Gécamines than the previous Katanga and Nikanor joint ventures. Gécamines were undoubtedly in a better position following the 2009 Katanga JV than they were before.

- It should also be noted that in the 10 years of Fleurette Group's shareholding in Katanga Mining, it never received any distributions or dividends from its shares, ultimately selling

them to Glencore in 2017 at a valuation which was hundreds of millions of dollars less than Fleurette paid for them.

5 ENRC SAR

With regard to the SAR, you should note that ENRC carried out extensive due diligence before proceeding with the 2012 transactions with Fleurette Group, evidently having satisfied itself of any initial concern raised in the SAR.

6 Africa Progress Panel 2013 Report

In 2013 the Africa Progress Panel (APP) published a report on Africa's natural resources criticising Fleurette Group transactions. Fleurette categorically refutes all of the allegations made and contained in the APP report. In advance of the report's publication Fleurette repeatedly sought to engage with the APP to explain the details of the transactions; however at no point was Fleurette given the opportunity to respond to any of the allegations against it.

Following the publication of the report, Fleurette representatives met representatives of the APP (including its then CEO). At the meeting Fleurette demonstrated fundamental errors in the APP's report, most significantly, that incorrect data had been relied upon by the APP and there were basic errors in its asset valuation methodology and assumptions. The APP acknowledged that it had relied on information from a single source – the NGO, Global Witness- for the entirety of its allegations against Fleurette Group without verifying or substantiating the allegations from any other source or seeking Fleurette's comment on them before publication. APP gave assurances that, going forward, it would not publish allegations about Fleurette without giving Fleurette a prior opportunity to comment and thorough verification of material provided to it by external parties. You will note that the APP has not written any negative or critical pieces about Fleurette since the 2013 Report.

7 Sale of KAT shares and Mutanda shares to Glencore

The sale of Mutanda and Katanga shares to Glencore earlier in 2017 did not affect Fleurette Group's contractual right to receive royalties from Mutanda or KCC.

Notwithstanding Fleurette's right to receive KCC royalties, as you will be aware, KCC has not been in production since September 2015 and accordingly no royalties have been payable. Furthermore, from March 2019 any such royalties must first be applied to repay KCC for the reserves that were transferred to Gécamines in accordance with the February 2008 agreement.

8 Clear statement re OZ/US/DPA matters

Our only and complete and attributable answer in respect of the DPA matter is set out in response to question 1 above in this response. Reference to any other statement regarding the DPA, Och Ziff, or the DOJ would be improper and misleading.

9 UN Report and pre-2006 allegations

Your introductory paragraph to this question addresses two matters: (i) the unfavorable UN report from 2001; and (ii) reports criticizing the KOV Mines Gécamines joint venture agreement. Our previous response (the two paragraphs of our October 17, 2017 reply that you pasted in your most recent questions) respond to those two points as well as all other general and uncategorised allegations pre-dating the Nikanor IPO of July 2006 that you included within your long list of questions.

We wish to make a minor clarification to our previous response, specifically in the paragraph re regarding pre-2006 allegations (paragraph 14 of the our October 17, 2017 response) in order to make it certain that you understand that our response covers criticism of the KOV JVA as well as any other pre-2006 matter. We have pasted it, including our minor amendment, below. The second paragraph re IDI and the UN Report is unchanged.

Amended Paragraph 14 of our October 17, 2017 Response (emphasis added for additions/amendments):

"Your questions regarding pre-2006 matters – As you should be aware, in the context of a London IPO, the parties are required to go through a thorough due diligence process regarding their previous business activities (both regarding the asset that is the subject of the IPO and other activities). All of your questions and implied allegations regarding pre-2006 matters, including the KOV-Mines joint venture agreement, have been circulating in online media for over a decade. They were all investigated by the London financial institutions and international lawyers that led the Nikanor IPO. The mention of such matters in the risk

factors of the IPO Admission Document evidences the same. Nonetheless the financial institutions and international market were satisfied with their due diligence of such matters and proceeded with the successful IPO."

10 Lora Enterprises $45m Facility

Our response that you pasted in your email, starting "With regard to Lora Enterprises..." was in response to all of the questions you sent relating to Lora Enterprises, which taken as a whole demonstrated lack of understanding of international finance transactions, including aspects of security and security documents. It is in that context that our response makes sense, not merely in response to the few specific lines about the $45m facility, Mr. Gertler's mandate and the event of default that you set out in the last email. To the extent that you determine to write about this subject matter, you are advised to reflect the same. You should also add that: "To be clear, the entirety of the $45m loan was used solely for the participation by Lora Enterprises in the convertible loan facility which Glencore had provided to Katanga. Neither Lora Enterprises nor Mr. Gertler nor any company or person related to them received the loan funds directly. Rather, the $45m loan was effected by Glencore's transfer to Lora of $45m of the Katanga loan participation. At a later date the loan participation was converted into a shareholding for Lora Enterprises of approx. 161m Katanga shares. The Lora loan was repaid to Glencore in full in 2010. As you are aware, Lora sold these Katanga shares to Glencore in February 2017 at a loss of approx. $15m."

In conclusion, after reviewing our responses dated 17 October and today and having carefully re-considered information at your disposal, if you still wish to publish some or all of the allegations put to Mr. Gertler in your recent correspondence, we highly recommend that you reflect Fleurette's answers - both of Oct. 17th and this one - accurately, fairly and in full.

Sincerely,

Eitan Maoz
Eitan Maoz, Adv.

Boaz
Boaz Ben Zur, Adv.