

SOCA

SERIOUS ORGANISED CRIME AGENCY



## SAR Ref: 187731

Source Ref:	2113/3192/30908517	Disclosure Type:	Proceeds of Crime Act 2002
SAR Date:	12 Aug 2010	Consent Required:	Y
Source:	Herbert Smith LLP	Source Outlet:	London Office
Related Disclosure IDs:	1516537 1693364 1722017		

## Main Subject - Suspect

Legal Entity Name:	Dan Gertler		
Legal Entity Number:		VAT Number:	
Business Type:		Registered:	

## Reason For Suspicion

## 1. BACKGROUND

Herbert Smith LLP ("Herbert Smith") and Eurasian Natural Resources Corporation PLC ("ENRC") together with its subsidiaries (and any subsidiaries it may acquire in the future) (together, "ENRC Group") filed a Suspicious Activity Report on 8 July 2010 ("First SAR") setting out details of the Transaction, the grounds for suspicion and a request for consent to take certain actions with respect to the Transaction. Consent was received on 12 July 2010 (Consent ref 1722017). The definitions used in the First SAR will also be used here.

The purpose of this report ("Second SAR") is to update SOCA with respect to the matters described in the First SAR, in particular in relation to that part of the Transaction concerning the Highwind Group, to provide information in respect of some additional potential 'red flags' and accordingly to seek updated consent with respect to the Transaction. This is an application for fast track consent.

As set out in the First SAR Herbert Smith is advising ENRC in relation to the possible acquisition of an interest in Camrose (likely to be 50.5%). The sale price is some US \$175 million, which comprises the US \$50 million deposit already paid and the issue of promissory notes totalling US \$125 million in favour of the BVI Companies which are due to mature between 9 months and 24 months from the date of completion. (As indicated in the First SAR ENRC is also providing a US \$400 million loan facility pursuant to the ENRC Shareholder Loan Agreement. It is not clear whether this facility will be secured or not.)

It is now proposed that prior to completion of the Transaction Camrose will acquire a 100% interest in the Highwind Group.

Under the terms of the Highwind JVA between the Highwind Group, Gecamines, the Democratic Republic of Congo ("DRC") and SIMCO Spri, an entity we understand is associated with Gecamines, the Highwind Group has a 70% interest in the joint venture vehicle Metalkol Sari ("Metalkol"). Metalkol is referred to at sub-paragraph (b) in the First SAR. Metalkol has acquired (or may have a right to acquire) the tailings exploitation permit covering the Kolwezi Tailings site (permit 652). This site is situated in the Kolwezi District of Katanga Province in the southeast of the DRC. It is intended that Metalkol exercises that right and acquires the permit before completion of the Transaction. The permit constitutes a potentially valuable mining asset.

## 2. FURTHER RELEVANT INFORMATION AND POTENTIAL 'RED FLAGS'

(1) The permit which is to be transferred to Metalkol was previously held by Kingamyambo Musonoi Tailings Sari ("KMT"). KMT is owned as to 65% by First Quantum Minerals Limited ("FQ"). Gecamines and the Government of the DRC also hold interests in KMT. The permit was withdrawn from KMT in August 2009. The withdrawal of the permit has been the subject of court proceedings and the Court of Appeal in the DRC has confirmed that KMT had been improperly incorporated in the DRC and was therefore without legal existence and unable to hold the permit, which had been validly withdrawn from it. First Quantum is a Canadian company and it alleges that the permit was not validly withdrawn.

(2) It has been alleged in the Canadian media and certain industry publications that the sale of the share capital of the Highwind Group to third parties is part of a "grab and flip" strategy devised by the Government of the DRC to allow "insiders" to benefit, including Dan Gertler.

(3) According to internet sources, Augustin Katumba Mwanke, a senior adviser to Joseph Kabila, President of the DRC is close to Mr Gertler and was also involved in the deal which resulted in the Kolwezi permit being transferred to the Highwind joint venture:

"Many suspect that Israeli businessman Dan Gertler, who is close to the secretive adviser to President Joseph Kabila, Augustin Katumba Mwanke, of being behind the operation. But Gertler and those close to him deny this is the case."

(It appears that Mr Augustin Katumba Mwanke was formerly the "Minister for Presidency" in the DRC but was suspended in November 2002 after being accused by the United Nations of stealing money from public funds.)

During the course of negotiations and due diligence in relation to the Transaction, the following has emerged.

(a) The Highwind Group is said to be owned legally and beneficially by Mr Sydney Attias, a lawyer from Gibraltar. Mr Attias does not appear to have had any previous significant experience in the mining industry, nor to have had any previous significant business dealings in the DRC.

(b) Mr Gertler apparently assisted Mr Attias in relation to the Highwind JVA and the acquisition of the Kolwezi permit by introducing him to relevant people in the DRC. In return for this assistance it is said that Mr Attias entered into a gentleman's agreement with Mr Gertler which enables Mr Gertler to acquire the Highwind Group. In addition, allegations in the media suggest that Mr Gertler is the ultimate beneficiary of the Highwind transaction.

(c) In light of the above, it cannot be discounted as a possibility that it is in fact Mr Gertler who is the beneficial owner of the Highwind Group rather than Mr Attias.

(d) The negotiations and due diligence process have not so far revealed the price which is to be paid by Fleurette to Mr Attias for a 100% interest in the Highwind Group nor how much, if anything is to be paid by Camrose for the subsequent transfer of that interest to it.

Whilst the above allegations are in large part unsubstantiated, bearing in mind the low threshold test for "suspicion" under POCA, it is not possible to discount them completely. Accordingly, in the light of these allegations and the low test for "suspicion" Herbert Smith and ENRC suspect that there is a risk that the assets of the Highwind group may have been obtained by corruption and the Transaction may facilitate the acquisition, retention, use or control of criminal property by the Highwind Group/Dan Gertler and others and/or may result in corrupt payments being made to public officials. They therefore seek updated consent in respect of those matters set out in the final paragraph of the First SAR.

Report Activity Assessment:	
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**RESTRICTED**