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SWEDEN

*By email*

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**MINERAL INVEST INTERNATIONAL / SOKIMO**

Your ref.:  
Our ref. : 11OVE107

Dear Sten,

After having conducted a legal research and after discussion with the head of our team in the DRC, Emmanuel Lubala, I wish to comment as follows on the report of the Swedish NGO Swedwatch.

**1-** It is correct that the JV Agreement Sokimo is mentioned as being represented by Mr. Yvon Nsuka as chairman of the board and Mr. Willy Bafoa in his capacity of CEO ("Administrateur – directeur général"), with an explicit reference to their appointment by an ordinance 08/004/2008 dated 12 January 2008.

At the time of that appointment, Sokimo was a public enterprise under the name Okimo, governed by the law 78-002 of 6 January 1978.

**2-** On 7 July 2008, the President of the DRC promulgated a law 08.007 previously adopted by the National Assembly and the Senate, transforming most of the public enterprises into commercial companies.

The Prime Minister subsequently issued a decree 09/11 on 24 April 2009 organizing the transition period pending the effective transformation. Said decree provides among others that the transformed public enterprises are governed by their board of directors as they are presently made up.

**3-** On 23 December 2010, Sokimo was actually transformed into a commercial company, with the DRC state as sole shareholder and playing the role of a general meeting, and adopted its new articles of association.

According to article 30 of the articles of association, the directors are appointed and renewed by the ordinary general meeting "during the social life".

4-. We have no copy of minutes of a general meeting (only made up of the DRC state), which would have been held after the transformation and which would have appointed a new board and consequently a new chairman and a new CEO.

There is however no doubt that Mr. Nsuka and Mr. Bafoa were still in function on 6 September 2011 which is the date at which the JV Agreement with Mineral Invest was actually signed.

Two hypothesis are conceivable :

- Either, a general meeting and a board meeting were held after the transformation of Sokimo, reappointing them. In that case, the fact that the JV Agreement wrongly refers to their appointment by the ordinance 08/004/2008 of 12 January 2008 has no impact at all on the fact that they validly represented Sokimo
- Or, more likely, no new assembly was held with the consequence that the board, the chairman and the CEO as they were previously appointed by the ordinance 08/004/2008 of 12 January 2008 remained in function.

In both cases, the JV Agreement of 6 September 2011 was validly signed by Mr. Nsuka and Mr. Bafoa and Sokimo is committed under their signature. Article 33 of the articles of association of Sokimo provides that the chairman represents the company toward third parties and article 36 provides that the managing director (the CEO) represents the company within the daily management.

Article 37 of the articles of association provides that any deed binding the company, other than included in the daily management, any power and proxy are signed by two persons who hold a delegation given by the board. This clause is however not prejudicial to the powers which the chairman personally holds pursuant to article 33, on the one hand and it expressly excludes from its scope the power of representation of the managing director, on the other hand.

As a matter of fact, Sokimo would have even validly been represented by the chairman acting alone.

5-. We have found another JV Agreement which was entered into by Sokimo and a Swiss company Ferro AG on 16 April 2011, in which the company was also represented by Mr. Nsuka and Mr. Bafoa pursuant to the ordinance 08/004/2008 of 12 January 2008.

6-. In November 2011, Mr. Bafoa resigned and was replaced by Mr. Michel Makaba.

Symptomatic is the fact in a JV Agreement with Amani SPRL, dated 3 January 2012, Mr. Michel Makaba appears with Mr. Nsuka, representing Sokimo and he is mentioned as being appointed by the ordinance 08/004/2008 of 12 January 2008.

This is of course a clear error but it does not harm the fact that he was validly appointed by the DRC state represented by the Minister of Portfolio, in its capacity of sole shareholder of Sokimo.

7-. Conclusion.

We do not share Swedwatch's view when mentioning in its report that the employment of Mr. Nsuka as chairman and Mr. Bafoa as managing director or CEO creates legal uncertainty regarding the JV Agreement with Mineral Invest, dated 6 September 2011.

It is clear that they were still in function at the time of signing the JV Agreement.

Assuming that the reference to the ordinance 08/004/2008 of 12 January 2008 was wrong – this is not even certain – it does not harm the reality of their respective functions and their capacity to represent the company.

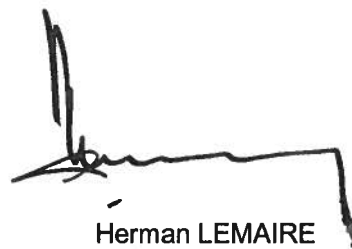
As stated above, either, as I believe, no general meeting was held after the transformation of Sokimo in order to confirm or renew their mandates and they then remained in function under the ordinance of 12 January 2008 and the reference to the latter is then correct, or their mandates were renewed or confirmed by a general meeting (the DRC state acting alone), and the same reference is then wrong without impact, however, on the existence and the validity of their mandates.

Transforming a company does not create a new legal entity. The same entity remains in existence under another legal form and there is no legal obligation to formally reappoint the individuals in charge of its management.

Failing such reappointment, the former team remains in function under their former appointment.

I remain at your disposal for any further clarification you might require.

Best regards,



Herman LEMAIRE