

**To the Ministry of Finance**

**Recommendation of 24 August 2006**

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# 1 Introduction

At a meeting on 4 October 2005 the Council on Ethics for the *Government Pension Fund – Global* resolved to assess whether the investment in the company DRD Gold Limited<sup>1</sup> may constitute a risk of the Fund contributing to severe environmental damage under point 4.4 of the Ethical Guidelines.

As of 31 December 2005 the Government Petroleum Fund, currently the *Government Pension Fund – Global*, held shares worth approximately NOK 6.5 million in the company, representing an ownership interest of 0.2 per cent.

DRD Gold has been accused of causing severe environmental damage and of contributing to serious health damage in connection with its mining operations in Papua New Guinea and Fiji.<sup>2</sup> In Papua New Guinea a natural river system is used for tailings disposal from DRD's Tolukuma mine. It has been substantiated that the company's activities generate considerable pollution, which in all probability causes extensive and lasting environmental damage to the riverine ecosystem as well as having far-reaching adverse effects on the local population's life and health. In Fiji the mining operation at Vatukoula produces significant air and water pollution. Here the company has been accused of inflicting serious and chronic health damage on the population.

In both countries the negative environmental impact caused by the company's activities has been known for many years, but the company has not implemented any appreciable measures to prevent or reduce this damage. Further details in this respect are discussed in Chapter 5.

In accordance with the Guidelines, point 4.5, the Council has contacted the company through Norges Bank, requesting comments on the aforementioned accusations and their foundation. The company has chosen not to respond to Norges Bank's inquiry.

In order to establish whether there is a risk of complicity in severe environmental damage, a direct link between the company's operations and the violations must be found. The Council takes as a basis that the damage must be significant, emphasizing whether it leads to irreversible or lasting effects and whether it has a negative impact on human life and health. Furthermore, the extent to which the company's actions or neglect have caused the environmental damage must also be assessed, including whether the damage is a result of violations of national law or international norms, and whether the company has failed to take adequate action in order to prevent or amend the damage. It must also be probable that the company's unacceptable practice will continue in the future. Based on an overall assessment, the Council finds that in the present case these conditions have been met.

The Council has reached the conclusion that the Ethical Guidelines, point 4.4, second clause, third bullet point, provide a basis for recommending the exclusion of DRD Gold Limited owing to an unacceptable risk of contributing to severe environmental damage.

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<sup>1</sup> Also referred to as DRD.

<sup>2</sup> Having submitted its recommendation on 24 August 2006, the Council was later informed that DRD Gold, through its subsidiary Emperor Mines, on 5 December 2006 had decided to close the mine in Fiji. In the Council's view, this does not amount to a change in the basis for recommending exclusion. On page 21 in the present recommendation the Council states that "the environmental damage from the operation at Tolukuma and the company's failure to reduce the harmful effects represent, in themselves, an unacceptable risk of complicity in severe environmental damage and thus provide grounds for exclusion."

## 2 Sources

The recommendation is based on several sources, including information made available by the company itself on its website and other publicly accessible data. Moreover, the Council has contacted and received information from local NGOs in Papua New Guinea and Fiji, as well as international organisations, especially Oxfam Australia. Regarding the mine in Papua New Guinea, the Council has gained access to recent environmental studies conducted for Oxfam Australia in 2005/2006. Henceforth, the sources are listed in footnotes.

## 3 The Council's considerations

The Council shall assess whether the *Government Pension Fund – Global* may contribute to unethical actions through its ownership interest in the South African company DRD Gold.

### 3.1 The Council's mandate regarding severe environmental damage

The Ethical Guidelines' point 4.4, second clause, third bullet point states: "*The Council shall issue recommendations on the exclusion of one or several companies from the investment universe because of acts or omissions that constitute an unacceptable risk of the Fund contributing to: Severe environmental damage.*"

The Council will consider the question of exclusion of DRD Gold according to this rule.

The remaining alternatives listed in point 4.4 concerning violations of individuals' rights in situations of war and conflict; gross or systematic human rights violations; gross corruption; or violations of other ethical norms have not been assessed.

### 3.2 The Council's definition of "severe environmental damage"

On 15 February 2006, the Council recommended that the mining company Freeport McMoRan Inc. should be excluded from the Fund due to an unacceptable risk of complicity in severe environmental damage. In the aforementioned recommendation the Council elaborated on the concept of severe environmental damage.<sup>3</sup>

The Council concludes that the Fund, through its ownership in companies, can be said to contribute to severe damage to the natural environment. The Council emphasizes that there must be a direct connection between the company's operations and the violations in question, and that, in principle, the Guidelines include existing and future violations. However, previous violations may give an indication of future conduct. Essentially though, there must be an unacceptable risk of future violations.

In each case, the Council will make an overall assessment of whether there is an unacceptable risk that the Fund may contribute to "severe environmental damage", stressing whether:

- The damage is significant.
- The damage causes irreversible or long-term effects.
- The damage has considerable negative consequences for human life and health.

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<sup>3</sup> The recommendation on exclusion of Freeport McMoRan Inc. is available at [www.etikkradet.no](http://www.etikkradet.no)

- The damage is the result of violations of national law or international norms.
- The company has failed to act in order to prevent damage.
- The company has not implemented adequate measures to rectify the damage.
- It is probable that the company's unacceptable practice will continue.

## 4 About DRD Gold Limited

With headquarters in South Africa, DRD Gold Ltd is a mining company involved in mining operations in South Africa, Papua New Guinea, and Fiji.<sup>4</sup>

DRD currently operates 4 gold mines in South Africa, two of which are wholly owned by the company.<sup>5</sup> In Papua New Guinea and Fiji the mines are run by Australian-based Emperor Mines Limited<sup>6</sup>, in which DRD holds 88.3 percent of the shares.<sup>7</sup> Before the DRD takeover of Emperor in 2005, DRD owned and operated the Tolukuma gold mine and had a 20 percent stake in the Porgera gold mine,<sup>8</sup> both of which are located in Papua New Guinea. These assets have been bought by Emperor as part of the takeover.

Moreover, Emperor owns and operates the Vatukoula gold mine in Fiji. DRD's CEO Mark Wellesly-Wood was Emperor's managing director from 2004 to April 2006.<sup>9</sup> Three of DRD's directors also sit on Emperor's board,<sup>10</sup> wielding considerable influence over its operations.

In 2004-2005 DRD's annual production of gold amounted to 375,000 ounces.<sup>11</sup> DRD's share of the Porgera mine yielded 195,400 ounces (52 percent), the Tolukuma mine 76,300 ounces (20 percent), and the Vatukoula mine 104,000 ounces (28 percent).<sup>12</sup> Additionally, the Tolukuma mine produced 168,300 ounces of silver.

## 5 Allegations concerning severe environmental damage

The company is accused of causing severe environmental damage through its use of a natural river system for tailings transport and disposal from the Tolukuma mine. There are also

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<sup>4</sup> <http://www.drd.co.za/>

<sup>5</sup> See footnote 4.

<sup>6</sup> Henceforth referred to as Emperor.

<sup>7</sup> <http://www.emperor.com.au/>

<sup>8</sup> The Porgera gold mine is owned by Porgera Joint Venture, of which Barrick Gold is the operator and holder of 75% of the shares, see <http://www.barrick.com/>. Porgera is the largest mine in Papua New Guinea. The tailings from the mine are dumped into the Porgera River. As is the case with the Tolukuma mine, the pollution from Porgera is associated with substantial discharge of sediments and heavy metals, particularly mercury, arsenic, lead and cadmium. DRD's share in Porgera generates approximately twice the revenue of the Tolukuma mine.

<sup>9</sup> [http://www.emperor.com.au/news/EMP\\_CEO\\_Appointment\\_270406.pdf](http://www.emperor.com.au/news/EMP_CEO_Appointment_270406.pdf)

<sup>10</sup> DRD Gold Form 10-K Filings to the Stock and Exchange Commission (SEC) 2004, p. 24; accessible at [http://secfilings.nasdaq.com/edgar\\_conv.html%2f2005%2f04%2f29%2f0001156973-05-000583.html#FIS\\_COMPANY\\_INFORMATION](http://secfilings.nasdaq.com/edgar_conv.html%2f2005%2f04%2f29%2f0001156973-05-000583.html#FIS_COMPANY_INFORMATION).

<sup>11</sup> One ounce is the equivalent of 31.1 grams. DRD's production equalled approximately 10,630 kg of gold in the period between 30 June 2004 and 30 June 2005. <http://www.emperor.com.au/abouteml/Operations.html>.

<sup>12</sup> The mines produced 5,540 kg, 2,160 kg and 2,950 kg of gold respectively. <http://www.emperor.com.au/abouteml/Operations.html>