

Osvaldo Gratacós  
Vice President and CAO  
Office of the Compliance Advisor Ombudsman  
International Finance Corporation  
2121 Pennsylvania Avenue NW  
Washington, DC 20433 AS

Email: [CAO@worldbankgroup.org](mailto:CAO@worldbankgroup.org)

29 October 2019

Dear Vice President Gratacós

**Re: Complaint concerning IFC investments in:**

- PT Dairi Prima Minerals (DPM),

1. We are the representatives of five villages in the regency of Diari, North Sumatra, Indonesia. Our villages are Bongkaras Village and Pandiangan Village. We are aware of other communities facing similar issues as below at the hands of the same corporation.
2. Due to concerns for our personal security, we request that our names be kept confidential.
3. We have limited reliable access to email or postal systems. Therefore, we request that you direct all correspondence related to the complaint to our advisors:
  - Natalie Bugalski, Legal Director, Inclusive Development International ([Natalie@inclusivedevelopment.net](mailto:Natalie@inclusivedevelopment.net))
  - David Pred, Executive Director, Inclusive Development International ([David@inclusivedevelopment.net](mailto:David@inclusivedevelopment.net))

The above individuals will ensure that information related to this complaint reaches us.

4. Inclusive Development International (IDI) is an international human rights organization that works to make the international economic system more just and inclusive. IDI supports and builds the capacity of grassroots organizations and affected communities to defend their rights and the environment against threats from transnational investment and destructive mega-projects.
5. We are likely to be, adversely affected by Dairi Prima Mineral's Zinc/lead mine, and its associated facilities, which we believe to be an IFC sub-project.
6. We believe that the IFC is actively exposed to the DPM mine through its financial intermediary investments in Raiffeisen Bank and Postal Savings Bank of China, as set out and explained by a separate note by Inclusive Development International.

We believe we have not been properly consulted about the proposed DPM mine and will be adversely affected by numerous social and environmental impacts of the project:

- The mining company has not yet acquired a study on the risks from mining activities around disaster-prone and earthquake-prone areas.
- The company uses the Protected Forest Area for infrastructure development, and concern arises over the fact that this forest conversion will cause disturbance to our water resources.
- The mine will create a tailings dam that will cause chemical contamination. The whole mine is located in an area which has a significant earthquake risk.
- DPM are already bringing in external people from other provinces and countries to work the mine. This does and will place significant social pressure on our communities.
- The mine is likely to generate a large amount of air pollution which could lead to an increase in health problems for nearby communities.
- The mine will dramatically increase the heavy road traffic to and from the mine. This will be on public roads with communities located aside those roads.
- DPM have not conducted an EIA for the mine extraction phase and they have refused to provide adequate information about the mine. This is something we have tried to address through the Indonesian Information Commissioner, to date with no result.

We thank you in advance and look forward to hearing your response. If our complaint is found eligible, we would be pleased to add more information regarding previous, current and predicted impacts.

**RAINIM PURBA**  
Pandiangan Village



Oswaldo Gratacós  
Wakil Presiden dan CAO  
Kantor Compliance Advisor Ombudsman International  
Finance Corporation  
2121 Pennsylvania Avenue NW  
Washington, DC 20433 AS

Surel: [CAO@worldbankgroup.org](mailto:CAO@worldbankgroup.org)

29 Oktober 2019

Wakil Presiden Gratacós yang terhormat

**Perihal: Pengaduan tentang investasi IFC di:**

- PT Dairi Prima Minerals (DPM),

1. Kami adalah perwakilan dari dua desa di Kabupaten Dairi, Sumatera Utara, Indonesia. Desa kami adalah Desa Bongkaras dan Desa Pandiangan. Sepengetahuan kami terdapat komunitas lain yang menghadapi masalah serupa seperti di bawah ini dengan perusahaan yang sama.
2. Untuk menjaga keamanan pribadi kami, kami minta agar nama kami dirahasiakan.
3. Kami memiliki akses terbatas pada sistem surel dan pos yang bisa diandalkan terkait dengan hal tersebut, segala bentuk korespondensi terkait dengan pengaduan, mohon ditujukan kepada penasihat kami:
  - Natalie Bugalski, Direktur Legal, Inclusive Development International ([Natalie@inclusivedevelopment.net](mailto:Natalie@inclusivedevelopment.net))
  - David Pred, Direktur Eksekutif, Inclusive Development International ([David@inclusivedevelopment.net](mailto:David@inclusivedevelopment.net))

Para individu di atas akan memastikan bahwa informasi yang terkait dengan pengaduan ini tersampaikan kepada kami.

4. Inclusive Development International (IDI) merupakan sebuah organisasi hak asasi manusia internasional yang berupaya mewujudkan sistem ekonomi internasional yang lebih adil dan inklusif. IDI mendukung dan membangun kapasitas organisasi akar rumput dan masyarakat yang terdampak dalam rangka mempertahankan hak-hak dan lingkungan mereka terhadap ancaman kegiatan investasi transnasional dan mega proyek yang merusak.
5. Kami berpeluang besar terkena dampak merugikan tambang seng/timah PT Dairi Prima Mineral, dan fasilitas terkait miliknya, yang kami yakini adalah sub-proyek IFC.

6. Kami meyakini bahwa IFC secara aktif terpapar dengan tambang DPM melalui investasi perantara keuangannya di Bank Raiffeisen dan Postal Savings Bank of China, sebagaimana dinyatakan dan dijelaskan secara terpisah dalam catatan Inclusive Development International.

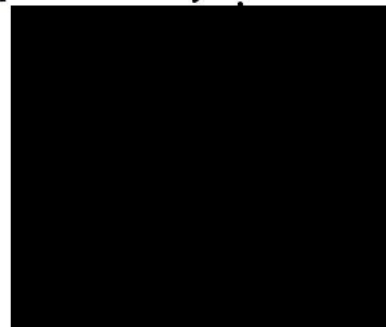
Sepengetahuan kami, kami belum pernah diajak berdiskusi mengenai tambang DPM yang diusulkan dan kami akan terkena dampak merugikan dari berbagai dampak sosial dan lingkungan proyek:

- Perusahaan tambang tidak memiliki kajian tentang risiko dari kegiatan perusahaan tambang di kawasan rawan bencana dan rawan gempa.
- Perusahaan menggunakan kawasan Hutan Lindung untuk kepentingan pembangunan infrastruktur, dan dikhawatirkan alih fungsi hutan lindung akan berpengaruh terganggunya sumber air kami.
- Tambang akan menciptakan tanggul tailing yang akan menyebabkan kontaminasi bahan kimia. Seluruh tambang terletak di daerah yang memiliki risiko besar gempa bumi.
- DPM sudah mendatangkan orang-orang luar dari provinsi dan negara lain untuk mengerjakan tambang. Hal ini akan memberikan tekanan sosial yang cukup besar pada masyarakat kami.
- Tambang berpeluang besar menghasilkan polusi udara dalam jumlah besar yang dapat menyebabkan peningkatan masalah kesehatan bagi masyarakat di sekitarnya.
- Tambang akan membuat arus lalu lintas jalan meningkat padat ke dan dari tambang. Lokasi ini di jalan umum dengan masyarakat tinggal di pinggir jalan tersebut.
- DPM belum melakukan AMDAL untuk tahap ekstraksi tambangnya dan mereka menolak memberikan informasi yang memadai tentang tambang. Masalah ini telah kami coba atasi melalui Komisi Informasi Pusat Indonesia, tetapi hingga saat ini tidak ada hasilnya.

Kami berterima kasih sebelumnya dan menantikan tanggapan Anda. Jika pengaduan kami dinilai memenuhi persyaratan, kami akan dengan senang hati menambahkan lebih banyak informasi mengenai dampak baik sebelumnya, saat ini, maupun prediksi nantinya.



**RAINIM PURBA**  
Desa Pandiangan





## Annex 1: Financial links between the IFC and PT Dairi Prima Mineral

The IFC is materially exposed to PT Dairi Prima Mineral through equity investments in two commercial banks: **Raiffeisen Bank International** of Austria and **Postal Savings Bank of China**. These banks have in turn made equity and debt investments in the Indonesian mining company **Bumi Resources** and the **China Nonferrous** mining group, respectively, which are the sole equity investors in PT Dairi Prima Mineral, the special project vehicle developing the mine in North Sumatra. The IFC's exposure to the mine through these financial intermediary investments is detailed below.

### 1) Raiffeisen Bank International → Bumi Resources

In January 2014, the IFC made a \$186.05 million equity investment in Raiffeisen Bank International.<sup>1</sup> This investment exposes the IFC to Raiffeisen Bank International's entire balance sheet, including the bank's equity and debt investments in Bumi Resources, a beneficial owner of PT Dairi Prima Mineral.

While the IFC Project Information Portal claims that Raiffeisen Bank International “confirmed to IFC that it will deploy” the capital to four banking subsidiaries in Europe, the portal nonetheless makes clear that the IFC deal is a “straight equity investment” in Raiffeisen Bank International – not the four subsidiaries.

Indeed, the IFC's investment was designed to directly benefit Raiffeisen Bank International. The investment contributed to the Austrian bank's accelerated book building transaction in 2014, which was designed to help the bank repay \$2.5 billion in assistance it received following the 2008 financial crisis and comply with Basel III requirements.<sup>2</sup> The IFC's investment in Raiffeisen Bank International gives it an ownership stake in the bank, commensurate shareholder voting rights and a proportion of the bank's profits in the form of dividends. Equity investments of this nature cannot be ringfenced.

On June 12, 2014, six months after becoming an IFC financial intermediary client, Raiffeisen Bank International provided the Indonesian mining company Bumi Resources with an “AS\$80 million [sic]” loan. Five months later, Bumi Resources defaulted on the loan. Following a settlement agreement, 57.03% of the loan was converted into shares, giving Raiffeisen Bank International a significant equity stake in Bumi Resources. The remaining balance of the loan was converted into two new Bumi Resources debt facilities held by Raiffeisen Bank International: a credit facility with a maturity of 2021 and a convertible facility with a maturity of 2024 that could be redeemed for further equity in Bumi Resources.<sup>3</sup>

<sup>1</sup> IFC Project Information Portal, Project #31979. <https://disclosures.ifc.org/#/projectDetail/SII/31979>

<sup>2</sup> Reuters, “Raiffeisen Bank International Launches Capital Increase,” January 21, 2014. <https://www.reuters.com/article/raiffeisen-caphike-idUSL5N0KV3HQ20140121>

<sup>3</sup> Bumi Resources, “Additional And/Or Revised Information On Brief Prospectus,” July 12, 2017. [http://www.bumiresources.com/uploads/2018-bumi-resources/09/2584ac1662bca252239bd0c2f3c6834d\\_a133608947371c2244aafb34566ce0f7.pdf](http://www.bumiresources.com/uploads/2018-bumi-resources/09/2584ac1662bca252239bd0c2f3c6834d_a133608947371c2244aafb34566ce0f7.pdf)

Bumi Resources is the self-described “parent company” of Bumi Resources Minerals,<sup>4</sup> with a 35.73% equity stake in the subsidiary. Bumi Resources Minerals in turn owns a 49% equity stake in PT Dairi Prima Mineral. Through this relationship, Bumi Resources publicly acknowledges that it is a 17.51% beneficial owner of PT Dairi Prima Mineral.<sup>5</sup> This chain of equity investments – from the IFC to Raiffeisen Bank International to Bumi Resources to Bumi Resources Minerals to PT Dairi Prima Mineral – creates sufficient materiality to expose the IFC to PT Dairi Prima Minerals. Moreover, Bumi Resources’ sole business activity is mining, a high-risk activity that necessitated a high level of social and environmental due diligence by Raiffeisen Bank International, which it apparently failed to apply.

While this chain of equity investments alone is enough to materially expose the IFC to PT Dairi Prima Mineral, a number of additional factors strengthen the exposure:

- Bumi Resources is one of the largest creditors of Bumi Resources Minerals, having provided its subsidiary with a working capital loan that has a current balance of \$68 million. Moreover, as part of a cooperation agreement signed between the two entities, Bumi Resources administers the funds of Bumi Resources Minerals, suggesting it has a level of financial control over the company.<sup>6</sup> This establishes active financial and administrative links between the two entities that go beyond the parent-subsi-dary relationship.
- As part of that same cooperation agreement, Bumi Resources is providing “technical and project support” to Bumi Resources Minerals.<sup>7</sup> PT Dairi Prima Mineral is one of just three projects operated by Bumi Resources Minerals – and it is the furthest along in terms of development.<sup>8</sup> This suggests that Bumi Resources is operationally involved in PT Dairi Prima Mineral at some level.
- Although PT Dairi Prima Mineral has not yet begun commercial extraction, Bumi Resources Minerals has to date spent \$256 million on the project: \$65 million to fund exploration and the development of mining infrastructure and \$191 million to purchase equity in PT Dairi Prima Mineral.<sup>9</sup> This establishes active financial exposure between Bumi Resources Minerals and PT Dairi Prima Mineral.

<sup>4</sup> Bumi Resources Minerals, Annual Report 2018.

[https://www.idx.co.id/StaticData/NewsAndAnnouncement/ANNOUNCEMENTSTOCK/From\\_EREP/201904/50cfb3d9b8\\_7a9fd8598b.pdf](https://www.idx.co.id/StaticData/NewsAndAnnouncement/ANNOUNCEMENTSTOCK/From_EREP/201904/50cfb3d9b8_7a9fd8598b.pdf)

<sup>5</sup> Bumi Resources, Interim Consolidated Financial Statements March 31, 2019 and December 31, 2018, and For The Three-Month Periods Ended March 31, 2019 and 2018.

[http://www.bumiresources.com/uploads/2019/04/1de4b8676173750a6450a478273b15df\\_cc607b55773aa512888139b2a4bc2945.pdf](http://www.bumiresources.com/uploads/2019/04/1de4b8676173750a6450a478273b15df_cc607b55773aa512888139b2a4bc2945.pdf)

<sup>6</sup> Bumi Resources Minerals, Annual Report 2018.

[https://www.idx.co.id/StaticData/NewsAndAnnouncement/ANNOUNCEMENTSTOCK/From\\_EREP/201904/50cfb3d9b8\\_7a9fd8598b.pdf](https://www.idx.co.id/StaticData/NewsAndAnnouncement/ANNOUNCEMENTSTOCK/From_EREP/201904/50cfb3d9b8_7a9fd8598b.pdf)

<sup>7</sup> Bumi Resources Minerals, Annual Report 2018.

[https://www.idx.co.id/StaticData/NewsAndAnnouncement/ANNOUNCEMENTSTOCK/From\\_EREP/201904/50cfb3d9b8\\_7a9fd8598b.pdf](https://www.idx.co.id/StaticData/NewsAndAnnouncement/ANNOUNCEMENTSTOCK/From_EREP/201904/50cfb3d9b8_7a9fd8598b.pdf)

<sup>8</sup> Bumi Resources Minerals, Business Units.

[https://www.bumiresourcesminerals.com/index.php?option=com\\_content&view=article&id=69&Itemid=53](https://www.bumiresourcesminerals.com/index.php?option=com_content&view=article&id=69&Itemid=53)

<sup>9</sup> Bumi Resources Minerals, Annual Report 2018.

[https://www.idx.co.id/StaticData/NewsAndAnnouncement/ANNOUNCEMENTSTOCK/From\\_EREP/201904/50cfb3d9b8\\_7a9fd8598b.pdf](https://www.idx.co.id/StaticData/NewsAndAnnouncement/ANNOUNCEMENTSTOCK/From_EREP/201904/50cfb3d9b8_7a9fd8598b.pdf)

- Bumi Resources publicly states that it owns a 35.73% stake in Bumi Resources Minerals. However, there is evidence suggesting that it may own a larger stake than it claims. For instance, the Indonesian Stock Exchange, where Bumi Resources Minerals is listed, currently describes Bumi Resources as a majority shareholder, with an 87.09% stake.<sup>10</sup>
- There is further evidence suggesting that Bumi Resources may own a larger stake than it claims. Historically, Bumi Resources majority owned Bumi Resources Minerals. But when Bumi Resources Minerals ran into debt trouble several years ago, a number of outside investors became shareholders of the company as part of a restructuring.<sup>11</sup> However, these new investors have apparent links with a number of other companies connected to Bumi and/or Indonesia's Bakrie family, which historically has controlled the Bumi group of companies. This suggests that Bumi and/or the Bakrie family may control a much larger stake in Bumi Resources Minerals than they disclose:
  - **Wexler Capital Pte: 13.23% stake in Bumi Resources Minerals**  
Wexler Capital is an investment vehicle established in Singapore in 2013. The firm's only known business activity is its investment in Bumi Resources Minerals. Its registered address is Suite #03-05 at the International Plaza in Singapore.<sup>12</sup> A number of Bumi Resources entities are also registered at the same office suite, including:
    - 1) Bumi Capital Pte Ltd.,<sup>13</sup> a subsidiary of Bumi Resources<sup>14</sup>
    - 2) Bumi Investment Pte.,<sup>15</sup> a subsidiary of Bumi Resources<sup>16</sup>
    - 3) Lemington Investments Pte. Ltd.,<sup>17</sup> a subsidiary of Bumi Resources Minerals<sup>18</sup>
    - 4) Bumi Energy Resources Singapore Pte. Ltd.<sup>19</sup>
  - **1st Financial Company Limited: 22.86% stake in Bumi Resources Minerals**

<sup>10</sup> Indonesian Stock Exchange, Bumi Resources Minerals. <https://www.idx.co.id/en-us/listed-companies/company-profiles/company-profile-detail/?kodeEmiten=BRMS>

<sup>11</sup> Bumi Resources, Consolidated Financial Statements, December 2016. <https://quantitativemethod.files.wordpress.com/2018/03/bumi.pdf>

<sup>12</sup> Singapore Business Directory, Wexler Capital Pte. Ltd. <<https://www.sgpbusiness.com/company/Wexler-Capital-Pte-Ltd>>

<sup>13</sup> Singapore Databases, Bumi Capital PTE. Ltd. <https://www.singaporedatabases.com/company/200804179N/bumi-capital-pte-ltd>

<sup>14</sup> Bumi Resources, "Company Confirms 11 December 2017 as Effective Date The Exchange of Old Debts with New Securities & New Loans," December 6, 2017. <http://www.bumiresources.com/en/media/press-release/detail/press-release-3-1>

<sup>15</sup> Singapore Databases, Bumi Investment Pte. Ltd. <https://www.singaporedatabases.com/company/201019399E/bumi-investment-pte-ltd>

<sup>16</sup> Bumi Resources, "Company Confirms 11 December 2017 as Effective Date The Exchange of Old Debts with New Securities & New Loans," December 6, 2017. <http://www.bumiresources.com/en/media/press-release/detail/press-release-3-1>

<sup>17</sup> Hoovers, Lemington Investments Pte. Ltd. [http://www.hoovers.com/company-information/cs/company-profile/lemington\\_investments\\_pte\\_ltd.f1616ff76dc80d4e.html?aka\\_re=1](http://www.hoovers.com/company-information/cs/company-profile/lemington_investments_pte_ltd.f1616ff76dc80d4e.html?aka_re=1)

<sup>18</sup> Bumi Resources Minerals, 2018 Annual Report. [http://bumiresourcesminerals.com/index.php?option=com\\_jdownloads&Itemid=68&view=finish&cid=295&catid=3](http://bumiresourcesminerals.com/index.php?option=com_jdownloads&Itemid=68&view=finish&cid=295&catid=3)

<sup>19</sup> Singapore Business Directory, Bumi Energy Resources Singapore Pte. Ltd. <https://www.sgpbusiness.com/company/Bumi-Energy-Resources-Singapore-Pte-Ltd>

1<sup>st</sup> Financial Company Limited's registered address is the first floor of the Oliaji Trade Centre in Victoria, on Mahé Island, Seychelles.<sup>20</sup> This is the same address of Zurich Assets International,<sup>21</sup> a subsidiary of Bumi Resources.<sup>22</sup>

- **PT Biofuel Indo Sumatra: 7.99% stake in Bumi Resources Minerals**

The sole director of Biofuel Indo Sumatra is Bayu Irianto. He is also the president director of Bakrie Sumatera Plantations,<sup>23</sup> a Bakrie Group subsidiary.<sup>24</sup> Bayu Irianto's official company biography notes that he has been with the Bakrie Group since 1997.<sup>25</sup>

## 2) Postal Savings Bank of China → China Nonferrous

In 2015, the IFC made a \$300 million equity investment in Postal Savings Bank of China.<sup>26</sup> This investment exposes the IFC to Postal Savings Bank's entire balance sheet. The bank's balance sheet includes substantial debt investments in China Nonferrous Metal Mining (Group), the self-described parent company and largest shareholder of China Nonferrous Metal Industry's Foreign Engineering and Construction Co., Ltd. (NFC),<sup>27</sup> which in turn owns 51% of PT Dairi Prima Mineral.<sup>28</sup>

In October and November of 2018, Postal Savings Bank co-arranged two perpetual medium-term note issues worth \$721 million for China Nonferrous Metal Mining (Group) Co. In prospectuses accessed through the Bloomberg terminal, China Nonferrous Metal Mining (Group) Co. disclosed that it would use the capital from the issues to fund the operations of its subsidiaries.<sup>29</sup> This would put NFC and PT Dairi Prima Mineral squarely within the stated use of proceeds for the debt issues.

Medium-term notes are debt instruments that create continuous active material exposure between the arranger, in this case Postal Savings Bank, and the issuer, in this case China Nonferrous Metal Mining (Group) Co. In a medium-term note transaction, the issuer does not sell all of the debt up front at once. Rather, the issuer continuously sells portions of the debt on an as-needed basis to the arranger, which then places the debt on the market, according to the issuer's capital requirements. Through this relationship, the arranger regularly purchases debt from the issuer, creating ongoing intermittent

<sup>20</sup> Indonesia Stock Exchange, "Announcement of 5 Percent of More Securities Ownership Reports," Oct. 29, 2018. <[https://www.idx.co.id/StaticData/NewsAndAnnouncement/ANNOUNCEMENTSTOCK/From\\_EREP/201810/8ec5bc743f\\_5e52412bcd.pdf](https://www.idx.co.id/StaticData/NewsAndAnnouncement/ANNOUNCEMENTSTOCK/From_EREP/201810/8ec5bc743f_5e52412bcd.pdf)>

<sup>21</sup> Indonesia Stock Exchange, "Announcement of 5 Percent of More Securities Ownership Reports," Oct. 29, 2018. <[https://www.idx.co.id/StaticData/NewsAndAnnouncement/ANNOUNCEMENTSTOCK/From\\_EREP/201810/8ec5bc743f\\_5e52412bcd.pdf](https://www.idx.co.id/StaticData/NewsAndAnnouncement/ANNOUNCEMENTSTOCK/From_EREP/201810/8ec5bc743f_5e52412bcd.pdf)>

<sup>22</sup> Bloomberg, Company Overview of Zurich Assets International, Ltd. <https://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=47845968>

<sup>23</sup> Bakrie Sumatera Plantations, Board of Directors. <https://www.bakriesumatera.com/index.php/en/corporate-information/management-team/board-of-directors>

<sup>24</sup> Reuters, Profile : Bakrie Sumatera Plantations Tbk PT (UNSP:JK). <https://www.reuters.com/finance/stocks/companyProfile/UNSP:JK>

<sup>25</sup> Bakrie Sumatera Plantations, Board of Directors. <https://www.bakriesumatera.com/index.php/en/corporate-information/management-team/board-of-directors>

<sup>26</sup> IFC, Project Information Portal, #35461. <https://disclosures.ifc.org/#/projectDetail/SII/35461>

<sup>27</sup> China Nonferrous Mining Corporation, Annual Report 2017. Limited <http://www.cnmccl.net/Managed/Resources/docs/report/ar2017e.pdf>

<sup>28</sup> Bumi Resources Minerals, Annual Report 2018. [https://www.idx.co.id/StaticData/NewsAndAnnouncement/ANNOUNCEMENTSTOCK/From\\_EREP/201904/50cfb3d9b8\\_7a9fd8598b.pdf](https://www.idx.co.id/StaticData/NewsAndAnnouncement/ANNOUNCEMENTSTOCK/From_EREP/201904/50cfb3d9b8_7a9fd8598b.pdf)

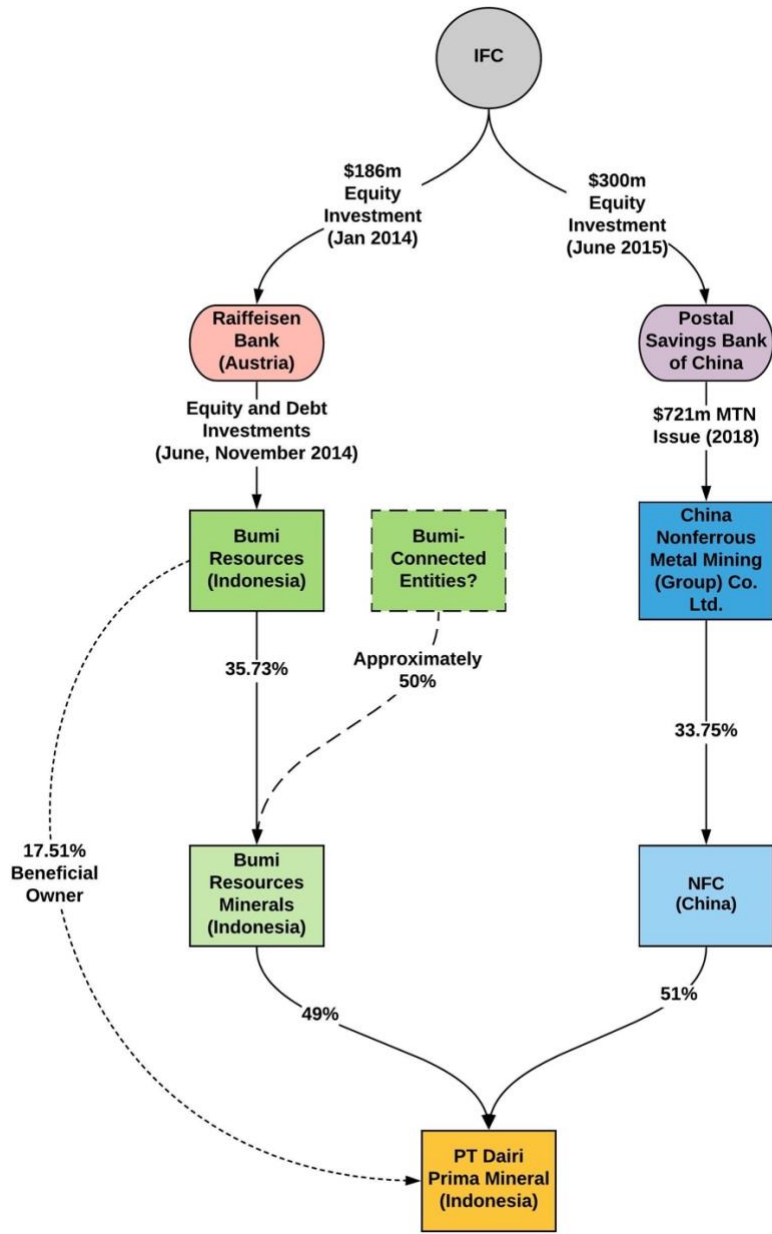
<sup>29</sup> Bloomberg terminal



material exposure between the issuer and the arranger. The arranger is also expected to perform ongoing due diligence on the issuer over the life of the transaction.

The issuer may also call that debt, also on an as-needed basis, again depending on its capital requirements. In this way, arrangers of medium-term notes remain actively involved for the life of the transaction, acting as a conduit between the issuer and the market, with capital flowing back and forth continuously over time. The two medium-term notes issues by China Nonferrous Metal Mining (Group) Co. and managed by Postal Savings Bank in 2018 are unique in that they are perpetual, meaning that they never mature.

China Nonferrous Metal Mining (Group)'s sole business activity is mining and processing metals, high-risk activities that necessitated a high level of social and environmental due diligence by Postal Savings Bank, which the bank apparently failed to apply. Moreover, given the tenor (infinite) and size (\$721 million) of the debt issue, Postal Savings Bank should have closely scrutinized the transaction for environmental and social risks.



*This document is designed to supplement the complaint filed to the CAO on November 6, 2019, concerning the IFC's material exposure to PT Dairi Prima Mineral through two financial intermediaries, Raiffeisen Bank International and Postal Savings Bank of China.*

## **The IFC's Material Exposure to PT Dairi Prima International through Raiffeisen Bank International:**

In January 2014, the IFC made a \$186.05 million “straight equity investment” in Raiffeisen Bank International.<sup>1</sup> On June 12, 2014, six months after becoming an IFC financial intermediary client, Raiffeisen Bank International provided the Indonesian mining company Bumi Resources with a loan worth “AS\$80 million [note: presumably Australian dollars].”<sup>2</sup>

On November 14, 2014, Bumi Resources defaulted on the loan. Two years later, on November 9, 2016, Bumi Resources was forced to restructure to pay back Raiffeisen Bank International and its other creditors. The size of the Raiffeisen Bank International loan had reached AS\$93.11 million. Under the terms of the restructuring agreement, Bumi Resources' debt to Raiffeisen Bank International was converted into the following equity and debt instruments:<sup>3</sup>

- 57.03% of the total debt amount, roughly AS\$53 million, was converted into shares in Bumi Resources. The size of Raiffeisen Bank International's stake in Bumi Resources is not disclosed.<sup>4</sup> However, given that the share price of Bumi Resources was 290 Indonesian Rupiah on November 9, 2016,<sup>5</sup> the day the conversion occurred, Raiffeisen Bank International would have acquired approximately 1.84 billion shares in the company, based on currency exchange rates that day.<sup>6</sup>
- 32.24% of the debt was converted into a “New Senior Secured Facility and/or New 2021 Notes.”<sup>7</sup> Based on the instrument's name, this debt appears to have a maturity date of 2021.
- 10.73% of the debt was converted into seven-year mandatory convertible bonds, which mature in 2023.<sup>8</sup> Because the conversion to shares is mandatory, Raiffeisen Bank International

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<sup>1</sup> IFC Project Information Portal, Project #31979. <https://disclosures.ifc.org/#/projectDetail/SII/31979>

<sup>2</sup> Bumi Resources, “Additional And/Or Revised Information On Brief Prospectus,” July 12, 2017. [http://www.bumiresources.com/uploads/2018-bumi-resources/09/2584ac1662bca252239bd0c2f3c6834d\\_a133608947371c2244aafb34566ce0f7.pdf](http://www.bumiresources.com/uploads/2018-bumi-resources/09/2584ac1662bca252239bd0c2f3c6834d_a133608947371c2244aafb34566ce0f7.pdf)

<sup>3</sup> Bumi Resources, “Additional And/Or Revised Information On Brief Prospectus,” July 12, 2017. [http://www.bumiresources.com/uploads/2018-bumi-resources/09/2584ac1662bca252239bd0c2f3c6834d\\_a133608947371c2244aafb34566ce0f7.pdf](http://www.bumiresources.com/uploads/2018-bumi-resources/09/2584ac1662bca252239bd0c2f3c6834d_a133608947371c2244aafb34566ce0f7.pdf)

<sup>4</sup> Bumi Resources, “Additional And/Or Revised Information On Brief Prospectus,” July 12, 2017. [http://www.bumiresources.com/uploads/2018-bumi-resources/09/2584ac1662bca252239bd0c2f3c6834d\\_a133608947371c2244aafb34566ce0f7.pdf](http://www.bumiresources.com/uploads/2018-bumi-resources/09/2584ac1662bca252239bd0c2f3c6834d_a133608947371c2244aafb34566ce0f7.pdf)

<sup>5</sup> Thomson Eikon

<sup>6</sup> XE, Australian dollar exchange rates on November 9, 2016, <https://www.xe.com/currencytables/?from=AUD&date=2016-11-09>

<sup>7</sup> Bumi Resources, “Additional And/Or Revised Information On Brief Prospectus,” July 12, 2017. [http://www.bumiresources.com/uploads/2018-bumi-resources/09/2584ac1662bca252239bd0c2f3c6834d\\_a133608947371c2244aafb34566ce0f7.pdf](http://www.bumiresources.com/uploads/2018-bumi-resources/09/2584ac1662bca252239bd0c2f3c6834d_a133608947371c2244aafb34566ce0f7.pdf)

<sup>8</sup> Bumi Resources, “Additional And/Or Revised Information On Brief Prospectus,” July 12, 2017. [http://www.bumiresources.com/uploads/2018-bumi-resources/09/2584ac1662bca252239bd0c2f3c6834d\\_a133608947371c2244aafb34566ce0f7.pdf](http://www.bumiresources.com/uploads/2018-bumi-resources/09/2584ac1662bca252239bd0c2f3c6834d_a133608947371c2244aafb34566ce0f7.pdf)

effectively took on an additional equity stake in Bumi Resources. However, the company has not disclosed whether the conversion occurred – and if it did, at what conversion rate.

Despite this restructuring, Bumi Resources' debt troubles worsened. In May-June 2017, the company issued a limited public offering to its existing shareholders in an attempt to pay back debt amounting to US\$4.2 billion.<sup>9</sup> Under the terms of the offering, existing equity holders were entitled to roughly double their current shareholding.<sup>10</sup> Based on the above calculations, Raiffeisen Bank International would have had a minimum of roughly 1.84 billion shares before the limited public offering (and more if it had converted the bonds it held). If it had participated in the rights issue, its equity holdings would have doubled to at least approximately 3.68 billion shares.

Bumi Resources currently has 65.48 billion shares outstanding.<sup>11</sup> If Raiffeisen Bank International had participated in the 2017 rights issue, it would have a minimum stake in Bumi Resources of approximately 5.6%. If it didn't participate, it would own a minimum of roughly 2.8% of the company.

Bumi Resources is the self-described “parent company” of Bumi Resources Minerals,<sup>12</sup> with a 35.73% equity stake in its subsidiary. Bumi Resources Minerals in turn owns a 49% equity stake in PT Dairi Prima Mineral. Through this relationship, Bumi Resources describes itself as a 17.51% beneficial owner of PT Dairi Prima Mineral.<sup>13</sup> This chain of equity investments, from the IFC through Raiffeisen Bank International and Bumi Resources, is alone enough to materially expose the IFC to PT Dairi Prima Mineral.

The following factors, which supplement those discussed in the annex to the complaint submitted to the CAO on November 6, 2019, strengthen this exposure:

- **Equity investments cannot be ringfenced:** When the IFC purchased common stock in Raiffeisen Bank International, it became part owner of the bank. The IFC is thus exposed to the Austrian bank's entire balance sheet. This includes Raiffeisen Bank International's loan to – and subsequent equity and debt investments in – Bumi Resources. As a shareholder of Raiffeisen Bank International, the IFC is part owner of the bank; receives a proportion of the bank's profits in the form of dividends; has voting rights; and is entitled to a proportion of the bank's net worth if its liabilities are settled and its assets are sold.<sup>14</sup> Equity investments of this nature cannot be ringfenced.

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<sup>9</sup> *Jakarta Post*, “Bumi Resources Rights Offering to Begin in May,” April 18, 2017.

<https://www.thejakartapost.com/news/2017/04/18/bumi-resources-rights-offering-to-begin-in-may.html>

<sup>10</sup> Bumi Resources, “Additional And/Or Revised Information On Brief Prospectus,” July 12, 2017.

[http://www.bumiresources.com/uploads/2018-bumi-resources/09/2584ac1662bca252239bd0c2f3c6834d\\_a133608947371c2244aafb34566ce0f7.pdf](http://www.bumiresources.com/uploads/2018-bumi-resources/09/2584ac1662bca252239bd0c2f3c6834d_a133608947371c2244aafb34566ce0f7.pdf)

<sup>11</sup> Bloomberg, Bumi Resources. <https://www.bloomberg.com/quote/BUMI:IJ>

<sup>12</sup> Bumi Resources Minerals, Annual Report 2018.

[https://www.idx.co.id/StaticData/NewsAndAnnouncement/ANNOUNCEMENTSTOCK/From\\_EREP/201904/50cfb3d9b8\\_7a9fd8598b.pdf](https://www.idx.co.id/StaticData/NewsAndAnnouncement/ANNOUNCEMENTSTOCK/From_EREP/201904/50cfb3d9b8_7a9fd8598b.pdf)

<sup>13</sup> Bumi Resources, Interim Consolidated Financial Statements March 31, 2019 and December 31, 2018, and For The Three-Month Periods Ended March 31, 2019 and 2018.

[http://www.bumiresources.com/uploads/2019/04/1de4b8676173750a6450a478273b15df\\_cc607b55773aa512888139b2a4bc2945.pdf](http://www.bumiresources.com/uploads/2019/04/1de4b8676173750a6450a478273b15df_cc607b55773aa512888139b2a4bc2945.pdf)

<sup>14</sup> U.S. Securities and Exchange Commission, Beginners Guide to Financial Statements.

<https://www.sec.gov/oiea/reportspubs/investor-publications/beginners-guide-to-financial-statements.html>

- The IFC is a shareholder in Raiffeisen Bank International, not its Eastern European subsidiaries:** The IFC Project Information Portal claims that Raiffeisen Bank International “confirmed to IFC that it will deploy” the capital from this investment to four banking subsidiaries in Eastern Europe. However, the portal nonetheless makes clear that the IFC deal is a “straight equity investment” in Raiffeisen Bank International – not those four subsidiaries.<sup>15</sup> If the IFC had wanted to invest directly in those subsidiaries, it could have done so. Indeed, the IFC has done just that on many occasions: It made nine direct investments in Raiffeisen Bank International’s Eastern European subsidiaries between 2000 and 2019.<sup>16</sup> However, in this case, the IFC chose to purchase shares in Raiffeisen Bank International.
- The IFC investment was designed to benefit Raiffeisen Bank International:** The IFC invested directly in Raiffeisen Bank International – and not its subsidiaries – because the Austrian bank needed to be bailed out of financial troubles. The investment contributed to Raiffeisen Bank International’s accelerated book-building transaction in 2014, which was designed to help the Austrian bank repay \$2.5 billion in assistance it received following the 2008 financial crisis. The IFC investment also helped the Austrian bank comply with Basel III requirements.<sup>17</sup>
- The IFC board had strong doubts about the investment:** On June 21, 2012, the IFC Board of Directors voted on whether to approve the investment in Raiffeisen Bank International. Notably, the executive directors of Japan and the United States, Nobumitsu Hayashi and Ian Solomon, went on record opposing the investment, according to meeting minutes.<sup>18</sup> Such public opposition to a proposed IFC investment by two prominent board members is unusual. That IFC funds were being used to bail out a large European commercial bank with extensive exposure to the tobacco industry, which is on the IFC’s exclusion list, and the Russian oil industry may have been of concern to Hayashi and Solomon.
- Raiffeisen Bank International is not an unwitting equity investor in Bumi Resources:** When Bumi Resources restructured for the first time, in November 2016, the company’s creditors voted on whether to approve the terms. One hundred percent of the company’s “concurrent creditors,” including Raiffeisen Bank International, approved the terms, including the conversion of some debt to equity. The second restructuring, in May-June 2017, involved a rights issue to existing shareholders. Raiffeisen Bank International had the option to decline additional shares; it is unclear what the bank ultimately decided. But in both cases, Raiffeisen Bank had full control over whether it acquired shares in Bumi Resources.<sup>19</sup>

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<sup>15</sup> IFC Project Information Portal, Project #31979. <https://disclosures.ifc.org/#/projectDetail/SII/31979>

<sup>16</sup> IFC Project Information Portal. <https://disclosures.ifc.org>

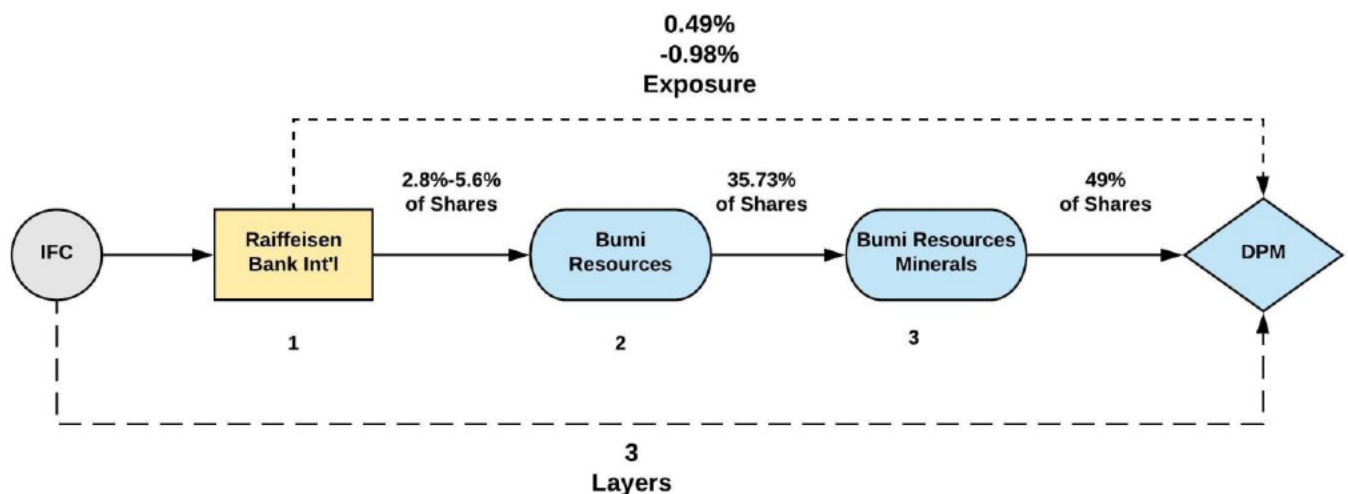
<sup>17</sup> Reuters, “Raiffeisen Bank International Launches Capital Increase,” January 21, 2014. <https://www.reuters.com/article/raiffeisen-caphike-idUSL5N0KV3HQ20140121>

<sup>18</sup> World Bank, Minutes of Meeting of the Board of Directors of IFC, held in the Board Room on Thursday, June 21, 2012, at 10:01 a.m. <http://documents.worldbank.org/curated/en/291441468336566413/pdf/716650REVISED00808020120Box370082B0.pdf>

<sup>19</sup> Bumi Resources, “Additional And/Or Revised Information On Brief Prospectus,” July 12, 2017. [http://www.bumiresources.com/uploads/2018-bumi-resources/09/2584ac1662bca252239bd0c2f3c6834d\\_a133608947371c2244aafb34566ce0f7.pdf](http://www.bumiresources.com/uploads/2018-bumi-resources/09/2584ac1662bca252239bd0c2f3c6834d_a133608947371c2244aafb34566ce0f7.pdf)



- **Bumi Resources is a mining company with a long track record of social and environmental problems:** Raiffeisen Bank International chose to finance Bumi Resources three times: When it provided the original loan in 2014, when it approved the conversion of that loan to equity and debt in 2016, and when it subscribed to the rights issue in 2017 (assuming it did). Bumi Resources has a well-documented track record of harmful social and environmental impacts, particularly on the island of Borneo, where it operates one of the world’s largest open-pit coal mines.<sup>20</sup> The company’s past performance, along with the fact that its only business activities are in the high-risk mining industry, necessitated heightened due diligence by Raiffeisen Bank International. On all three occasions, the bank apparently failed to apply the necessary level of due diligence.
- **The IFC’s material exposure to PT Dairi Prima Mineral is neither diminutive nor remote, in the context of previous CAO eligibility determinations:** The IFC’s exposure to sub-projects can be measured in two ways: the proportional **size** of the IFC’s exposure and the IFC’s **proximity** to the sub-project on the ground. In the case of PT Dairi Prima Mineral, the size of Raiffeisen Bank International’s exposure to the project is at minimum between 0.49% and 0.98%, depending on whether the bank participated in the 2017 Bumi Resources rights issue. (Because the IFC does not disclose details on its equity investments in commercial banks, including the size of its equity stakes, it is not possible to measure the exposure back to the IFC.) In terms of proximity, there are three entities between the IFC and PT Dairi Prima Mineral: Raiffeisen Bank International, Bumi Resources and Bumi Resources Minerals.

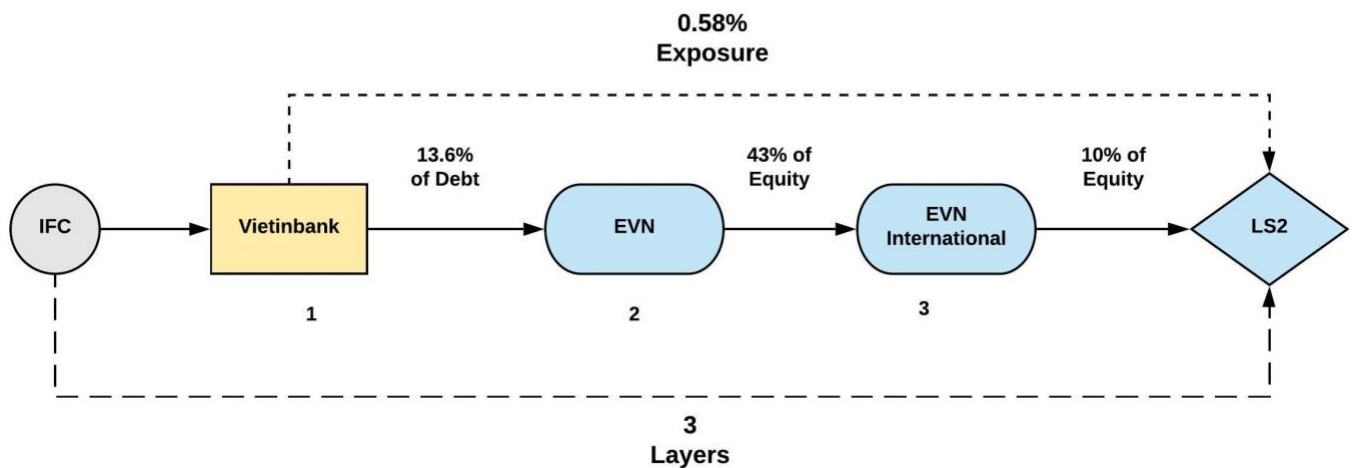


The CAO has found at least one complaint eligible in which the size and proximity of the IFC’s exposure are comparable to that of PT Dairi Prima Mineral: **Lower Sesan 2**. (A lack of publicly disclosed information made it difficult to assess many of the financial-intermediary cases found eligible by the CAO.) The CAO found IFC material exposure in the Lower Sesan 2 case through two financial intermediaries:

- **Vietinbank:** The IFC’s client is Vietinbank. In 2014, Vietinbank signed an agreement

<sup>20</sup> Banktrack, “Bumi’s Deadly Coal,” August 21, 2014. [https://www.banktrack.org/article/bumi\\_s\\_deadly\\_coal](https://www.banktrack.org/article/bumi_s_deadly_coal)

to provide debt to Electricity Vietnam worth \$2.85 billion,<sup>21</sup> or 13.6% of the company’s total debt liabilities of \$20.97 billion (486.9 trillion VND) at the end of 2017,<sup>22</sup> the latest date this information is available. At the time that the complaint was filed, Electricity Vietnam owned 43% of EVN International, which in turn owned a 10% stake in Lower Sesan 2.<sup>23</sup> Through this relationship, the relative size of Vietinbank’s exposure to Lower Sesan 2 was 0.58%. This is *comparable* to the size of Raiffeisen Bank International’s exposure to PT Dairi Prima Mineral of between 0.49% and 0.98%. Moreover, there are three entities between the IFC and Lower Sesan 2, the *same number* that are between the IFC and PT Dairi Prima Mineral. Furthermore, while EVN International’s stake in Lower Sesan 2 is passive, Bumi Resources is operationally involved in PT Dairi Prima Mineral, arguably closing the distance between the two.



- **ABBank:** The IFC’s client is ABBank. The Vietnamese bank owns a 10.31% stake in EVN International,<sup>24</sup> which in turn owns a 10% stake in Lower Sesan 2.<sup>25</sup> Through this relationship, the relative size of ABBank’s exposure to the dam is 1.03%. This is comparable to Raiffeisen Bank International’s exposure to PT Dairi Prima Mineral. Moreover, while EVN International’s stake in Lower Sesan 2 is passive, Bumi Resources is operationally involved in PT Dairi Prima Mineral, arguably closing the distance between the two.

<sup>21</sup> *Viet Nam News*, “VietinBank signs cooperation agreement with EVN,” April 22, 2014.

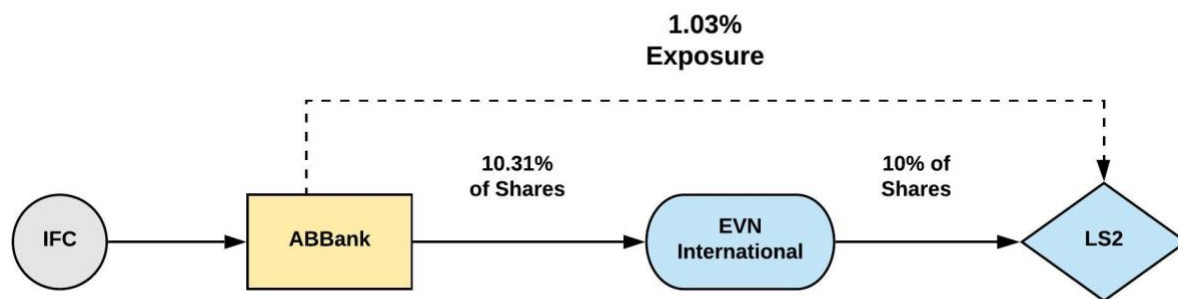
[http://bizhub.vn/banking/vietinbank-signs-cooperation-agreement-with-evn\\_5392.html](http://bizhub.vn/banking/vietinbank-signs-cooperation-agreement-with-evn_5392.html)

<sup>22</sup> EVN, Annual Report 2017. <https://en.evn.com.vn/userfile/User/huongbtt/files/2018/2/AnnualReport2017.pdf>

<sup>23</sup> EVN International, Lower Sesan 2, Project Introduction. <<http://evni.vn/du-an/qua-trinh-xay-dung>> (Google Translate); Xinhuanet, Spotlight: Chinese-built biggest dam in Cambodia to Start operation in November, 25 September 2017. <[http://www.xinhuanet.com/english/2017-09/25/c\\_136636417.htm](http://www.xinhuanet.com/english/2017-09/25/c_136636417.htm)>

<sup>24</sup> Thomson Eikon.

<sup>25</sup> EVN International, Lower Sesan 2, Project Introduction. <<http://evni.vn/du-an/qua-trinh-xay-dung>> (Google Translate); Xinhuanet, Spotlight: Chinese-built biggest dam in Cambodia to Start operation in November, 25 September 2017. <[http://www.xinhuanet.com/english/2017-09/25/c\\_136636417.htm](http://www.xinhuanet.com/english/2017-09/25/c_136636417.htm)>



**Table 1: Comparison of IFC’s Exposure to PT Dairi Prima Mineral and Lower Sesan 2**

Project	Financial Intermediary	Size of Financial Intermediary’s Exposure	Layers between IFC and Project	Sub-Client Involved in Project Operations?
Dairi Prima Mineral	RBI	0.49% - 0.98%	3	Yes
Lower Sesan 2	Vietinbank	0.58%	3	No
Lower Sesan 2	ABBank	1.03%	2	No

- **The IFC’s exposure to PT Dairi Prima Mineral may be even greater, if Bumi Resources controls more of Bumi Resources Minerals than it discloses:** Bumi Resources publicly claims to own 35.73% of Bumi Resources Minerals shares. (Until a restructuring several years ago, it owned a majority stake.) But evidence exists that Bumi Resources may own a greater stake than it discloses. In Bumi Resources Minerals’ 2018 Annual Report, Bumi Resources is described as its “parent company.”<sup>26</sup> The parent-subsidary relationship is legally defined in most jurisdictions. In Indonesia’s company law, it is described as:

[T]he parent company (*induk perusahaan*) owns more than fifty percent of [the subsidiary’s] shares; (b) the parent company controls more than fifty percent of the voting rights in a general meeting of shareholders; and/or (c) the parent company influences management control, the appointment, and the dismissal of directors and commissioners.<sup>27</sup>

This suggests that Bumi Resources owns and/or controls more than 50% of Bumi Resources Minerals’ shares and/or has sufficient influence over the management and directors of the company to regard itself as the parent, which would in turn increase the IFC’s exposure to PT

<sup>26</sup> Bumi Resources Minerals, Annual Report 2018.

[https://www.idx.co.id/StaticData/NewsAndAnnouncement/ANNOUNCEMENTSTOCK/From\\_EREP/201904/50\\_cfb3d9b8\\_7a9fd8598b.pdf](https://www.idx.co.id/StaticData/NewsAndAnnouncement/ANNOUNCEMENTSTOCK/From_EREP/201904/50_cfb3d9b8_7a9fd8598b.pdf)

<sup>27</sup> Benny S. Taballjan, “The New Indonesian Company Law,” pg. 898, University of Pennsylvania.

<https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1480&context=jil>

Dairi Prima Minerals. It is possible that Bumi Resources is exercising this ownership/control surreptitiously.

- **Bumi Resources may majority-own or -control Bumi Resources Minerals through shell companies registered in tax havens:** When Bumi Resources sold its majority stake in Bumi Resources Minerals several years ago, a number of little-known companies registered in tax havens became large shareholders.<sup>28</sup> These shell companies, which have no discernible business activity other than holding large stakes of Bumi Resources Minerals, share office suites with a number of entities connected to Bumi Resources and/or the Bakrie family (which controls Bumi Resources). This suggests that Bumi Resources may retain majority control over the company but is seeking to conceal this from the public.

For instance, Wexler Capital Pte., which owns 13.23% of Bumi Resources Minerals, shares the same office suite in Singapore with at least four Bumi Resources/Bakrie-connected entities: 1) Bumi Capital Pte Ltd.,<sup>29</sup> a subsidiary of Bumi Resources;<sup>30</sup> 2) Bumi Investment Pte.,<sup>31</sup> a subsidiary of Bumi Resources;<sup>32</sup> 3) Lemington Investments Pte. Ltd.,<sup>33</sup> a subsidiary of Bumi Resources Minerals;<sup>34</sup> and Bumi Energy Resources Singapore Pte. Ltd.<sup>35</sup> Other shareholders of Bumi Resources Minerals have similar connections to Bumi Resources/the Bakries.

This would not be the first time that the Bakrie family has sought to obscure its ownership stake in a company. In a dispute with a British investor for control over Bumi Resources several years ago, the Bakrie family used an unknown investment vehicle called Long Haul Holdings to wage that fight – without publicly disclosing its connection to the entity.<sup>36</sup>

### **The IFC's Material Exposure to PT Dairi Prima International through Postal Savings Bank of China:**

In 2015, the IFC made a \$300 million equity investment in Postal Savings Bank of China.<sup>37</sup> This investment exposes the IFC to Postal Savings Bank's entire balance sheet. The bank's balance sheet

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<sup>28</sup> Bumi Resources, Consolidated Financial Statements, December 2016.

<https://quantitativemethod.files.wordpress.com/2018/03/bumi.pdf>

<sup>29</sup> Singapore Databases, Bumi Capital PTE. Ltd. <https://www.singaporedatabases.com/company/200804179N/bumi-capital-pte-ltd>

<sup>30</sup> Bumi Resources, "Company Confirms 11 December 2017 as Effective Date The Exchange of Old Debts with New Securities & New Loans," December 6, 2017. <http://www.bumiresources.com/en/media/press-release/detail/press-release-3-1>

<sup>31</sup> Singapore Databases, Bumi Investment Pte. Ltd.

<https://www.singaporedatabases.com/company/201019399E/bumi-investment-pte-ltd>

<sup>32</sup> Bumi Resources, "Company Confirms 11 December 2017 as Effective Date The Exchange of Old Debts with New Securities & New Loans," December 6, 2017. <http://www.bumiresources.com/en/media/press-release/detail/press-release-3-1>

<sup>33</sup> Hoovers, Lemington Investments Pte. Ltd. [http://www.hoovers.com/company-information/cs/company-profile/lemington\\_investments\\_pte\\_ltd.f1616ff76dc80d4e.html?aka\\_re=1](http://www.hoovers.com/company-information/cs/company-profile/lemington_investments_pte_ltd.f1616ff76dc80d4e.html?aka_re=1)

<sup>34</sup> Bumi Resources Minerals, 2018 Annual Report.

[http://bumiresourcesminerals.com/index.php?option=com\\_jdownloads&Itemid=68&view=finish&cid=295&catid=3](http://bumiresourcesminerals.com/index.php?option=com_jdownloads&Itemid=68&view=finish&cid=295&catid=3)

<sup>35</sup> Singapore Business Directory, Bumi Energy Resources Singapore Pte. Ltd.

<https://www.sgpbusiness.com/company/Bumi-Energy-Resources-Singapore-Pte-Ltd>

<sup>36</sup> *Financial Times*, "The Battle for Bumi Flares Again," February 28, 2013.

<https://ftalphaville.ft.com/2013/02/28/1403362/the-battle-for-bumi-flares-again/>

<sup>37</sup> IFC, Project Information Portal, #35461. <https://disclosures.ifc.org/#/projectDetail/SII/35461>

includes substantial investments in China Nonferrous Metal Mining (Group) Co., the self-described parent company and largest shareholder of China Nonferrous Metal Industry's Foreign Engineering and Construction Co., Ltd. (NFC),<sup>38</sup> which in turn owns 51% of PT Dairi Prima Mineral.<sup>39</sup>

In October and November of 2018, Postal Savings Bank co-arranged two perpetual medium-term note issues worth a total of \$721 million for China Nonferrous Metal Mining.<sup>40</sup> In prospectuses accessed through the Bloomberg terminal, China Nonferrous Metal Mining disclosed that it would use the capital from the issues to fund the operations of its subsidiaries.<sup>41</sup> This would put NFC and PT Dairi Prima Mineral squarely within the stated use of proceeds for the securities issues.

This is the first complaint that the CAO has received involving perpetual medium-term notes. While the CAO has determined that bond underwriting does not materially expose the IFC in most cases, perpetual medium-term notes **are structurally and categorically different from bonds**. In addition, the OECD issued **new guidance** in October 2019 on the human rights and environmental responsibilities of securities underwriters; this guidance has particular relevance for arrangers of medium-term notes. For these reasons, the CAO should not apply its decision on bonds to perpetual medium-term notes. Rather, it should issue a new reasoned decision for this distinct instrument, given the following factors:

- **Arrangers of perpetual medium-term notes are involved in the issue continually and infinitely, creating ongoing material exposure until the end of the issue:** When underwriters issue bonds, they sell their entire allotment of securities up front, in one lump sum, after which their involvement ends. Arrangers of medium-term notes, on the other hand, continuously sell portions of the total amount over the life of the issue, depending on the issuer's capital needs – and the market's appetite for the securities.<sup>42</sup> As the St. Louis Federal Reserve notes, medium-term notes give “a corporation the flexibility to issue in small amounts continuously.”<sup>43</sup> It can be helpful to think of medium-term notes as the revolving credit facility of the fixed-income world. Indeed, the OECD, in its Glossary of Statistical Terms, refers to notes issued under a medium-term facility as “a form of revolving credit.”<sup>44</sup>

China Nonferrous Metal Mining's two perpetual medium-term notes issues are structured in this way. According to the prospectuses, the arrangers are responsible for selling the securities

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<sup>38</sup> China Nonferrous Mining Corporation, Annual Report 2017. Limited. <http://www.cnmc.net/Managed/Resources/docs/report/ar2017e.pdf>

<sup>39</sup> Bumi Resources Minerals, Annual Report 2018.

[https://www.idx.co.id/StaticData/NewsAndAnnouncement/ANNOUNCEMENTSTOCK/From\\_EREP/201904/50\\_cfb3d9b8\\_7a9fd8598b.pdf](https://www.idx.co.id/StaticData/NewsAndAnnouncement/ANNOUNCEMENTSTOCK/From_EREP/201904/50_cfb3d9b8_7a9fd8598b.pdf)

<sup>40</sup> Thomson Eikon.

<sup>41</sup> Prospectuses accessed through the Bloomberg terminal:

中国有色矿业集团有限公司2018年度第三期中期票据募集说明书(CNMC, 2018. Third quarter, medium term note prospectus) pp. 15-16, 19, November 2018.

中国有色矿业集团有限公司2018年度第二期中期票据募集说明书(CNMC, 2018. Second quarter, medium term note prospectus) pp. 18-19, October 2018.

<sup>42</sup> Freddie Mac, An Investor's Guide to GSE Debt Securities, pg. 26.

[http://www.freddiemac.com/debt/pdf/guide\\_gse\\_debtsecurities.pdf](http://www.freddiemac.com/debt/pdf/guide_gse_debtsecurities.pdf)

<sup>43</sup> St. Louis Federal Reserve, Anatomy of the Medium-Term Note Market, August 1993.

[https://fraser.stlouisfed.org/files/docs/publications/FRB/pages/1990-1994/33121\\_1990-1994.pdf](https://fraser.stlouisfed.org/files/docs/publications/FRB/pages/1990-1994/33121_1990-1994.pdf)

<sup>44</sup> OECD, Glossary of Statistical Terms. <https://stats.oecd.org/glossary/detail.asp?ID=1851>



on the market.<sup>45</sup> As a co-arranger, Postal Savings Bank of China is thus responsible for selling an allotment of the securities to investors.

It is worth pointing out that like all securities issues, the China Nonferrous Metal Mining transactions utilize a bank to act as trustee. Shanghai Clearing House is the trustee of both transactions.<sup>46</sup> As trustee, Shanghai Clearing House is *not* involved in selling the securities to investors. Rather, the trustee acts as an intermediary between the issuer and note holders, including monitoring compliance with the covenants and facilitating interest payments.<sup>47</sup>

The issue period (the period during which the arrangers place the securities on the market) for both sets of notes is “3+N.” In this case, the “N” denotes the number of years before the securities mature. Since these securities are perpetual and never mature, the “N” denotes eternity. (The “3” in the equation means that China Nonferrous Metal Mining has the option to call the securities on the third year and for every year thereafter. If it does not, the coupon rate is recalculated and the issue continues in perpetuity.)<sup>48</sup> In other words, Postal Savings Bank of China will be selling portions of the \$721 million – the total amount of both issues – through 2021, and if the issue isn’t called, for eternity.

The structure of these perpetual medium-term notes thus creates active material exposure between Postal Savings Bank (and its shareholder the IFC) and China Nonferrous Metal Mining and its subsidiaries, including NFC and its Dairi Prima Mineral project.

- **Under accounting standards, bonds and perpetual medium-term notes are categorized differently:** Bonds are a form of debt. Perpetual notes, on the other hand, are categorized as equity-like instruments because they have the characteristics of shares.<sup>49</sup> As noted by Reuters, “Under International Financial Reporting Standards, perpetual bonds count as equity as long as they do not have a set maturity and the call is an option of the issuer.”<sup>50</sup> The European Financial Reporting Advisory Group, meanwhile, notes that instruments with no maturity date and in which interest payments are made at the discretion of the issuer have the characteristics of equity.<sup>51</sup> The two 2018 China Nonferrous Metal Mining medium-term note have these three

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<sup>45</sup> Prospectuses accessed through the Bloomberg terminal:

中国有色矿业集团有限公司2018年度第三期中期票据募集说明书(CNMC, 2018. Third quarter, medium term note prospectus) pg. 4, November 2018.

中国有色矿业集团有限公司2018年度第二期中期票据募集说明书(CNMC, 2018. Second quarter, medium term note prospectus) pg. 4, October 2018.

<sup>46</sup> Bloomberg terminal.

<sup>47</sup> International Capital Market Association, “International Practices of Bond Trustee Arrangements.” [www.icmagroup.org/assets/documents/About-ICMA%2FAPAC%2FICMA-NAFMII-WG-International-Practices-of-Bond-Trustee-Arrangements-031218.pdf&usg=AOvVaw0PKCCsVxDjkMT0qybmRCj5](http://www.icmagroup.org/assets/documents/About-ICMA%2FAPAC%2FICMA-NAFMII-WG-International-Practices-of-Bond-Trustee-Arrangements-031218.pdf&usg=AOvVaw0PKCCsVxDjkMT0qybmRCj5)

<sup>48</sup> China Nonferrous Mining Corporation, Annual Report 2017. Limited <http://www.cnmc.net/Managed/Resources/docs/report/ar2017e.pdf>

<sup>49</sup> Pefindo, Perpetual Bonds: Capital Structure Balancing Alternative. <https://www.pefindo.com/index.php/fileman/file/473>

<sup>50</sup> Reuters, “Perpetual bonds arrive in China,” April 9, 2013. <https://www.reuters.com/article/idUSL3N0CW1H520130409>

<sup>51</sup> European Financial Reporting Advisory Group, “Financial Instruments with Characteristics of Equity,” April 6, 2018. <https://www.efrag.org/Assets/Download?assetUrl=%2Fsites%2Fwebpublishing%2FMeeting%20Documents%2F1709060811163678%2F06-01%20Issues%20paper%20with%20preliminary%20impact%20assessment%20on%20FICE%20-%20TEG%2018-04-06.pdf&AspxAutoDetectCookieSupport=1>

characteristics, according to the prospectuses: They have no set maturity date, the issuer has the option of calling them on the third year and for every year thereafter, and the issuer has the right to defer interest payments.<sup>52</sup> Indeed, Chinese regulators have also historically viewed perpetual securities as equity-like. (New regulations may change this in some cases, although it is not clear yet what the new rules will mean in practice.)<sup>53</sup>

Because perpetual medium-term notes are *categorically different* from bonds, the CAO should issue a new, distinct reasoned decision on whether they create material exposure for the IFC. The CAO should not apply its reasoned decision on bonds – which are debt – to an instrument that is classified as equity-like.

- **New OECD guidance clarifies the responsibility of underwriters for harmful human rights and environmental impacts:** In guidance issued in October 2019, the OECD makes clear that securities underwriters have a responsibility to address adverse impacts to which they are “directly linked.” By underwriting two China Nonferrous Metal Mining medium-term notes, whose proceeds are to be directed to the operations of its subsidiaries, Postal Savings Bank of China is directly linked with the potential impacts of the PT Dairi Prima Mineral project. The OECD guidance notes that a bank that is directly linked “has a responsibility to seek to prevent or mitigate the impact, using its leverage, which may involve efforts to influence the client to provide remediation.” The guidance acknowledges that leverage may be limited for underwriters of debt and equity transactions, because these issuances “do not provide long-term opportunities to maintain some degree of leverage over a client.”<sup>54</sup> However, the situation for arrangers of medium-term notes is fundamentally different: Unlike bond underwriters, they maintain leverage over the issuer for the life of the transaction because they continuously sell portions of the medium term notes. Therefore, Postal Savings Bank of China has a responsibility – and the necessary leverage – to engage with China Nonferrous Metal Mining over the social and environmental risks of the PT Dairi Prima Mineral project.

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<sup>52</sup> China Nonferrous Mining Corporation, Annual Report 2017. Limited.

<http://www.cnmc.net/Managed/Resources/docs/report/ar2017e.pdf>

<sup>53</sup> Bloomberg, “The Spell That Made China’s Debt Vanish Is Broken,” March 13, 2019.

<https://www.bloomberg.com/opinion/articles/2019-03-13/china-counting-perpetual-bonds-as-debt-will-burden-balance-sheets>

<sup>54</sup> OECD, Due Diligence for Responsible Corporate Lending and Securities Underwriting, October 29, 2019.

<https://www.oecd.org/investment/due-diligence-for-responsible-corporate-lending-and-securities-underwriting.htm>