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The United Kingdom's Serious Fraud Office (SFO) launches an investigation into Switzerland-based multinational mining company Glencore relating to bribery allegations. Car and technology giants face legal action in the United States related to the unethical source of the cobalt used in their lithium ion batteries. A year after the 2018 presidential elections that symbolise the first peaceful election since independence, the Democratic Republic of the Congo has a government whose executive power is shared between the Cap pour le Changement (CACH) coalition and the Front Commun pour le Congo (FCC) but badly needed political reforms and policy are yet to be introduced.

UK fraud watchdog probes Glencore for bribery

The **United Kingdom (UK)**'s **Serious Fraud Office (SFO)** confirmed on 5 December that it has launched an investigation into **Switzerland**-based multinational mining company **Glencore** relating to "suspicions of bribery in the conduct of business by its officials, employees, agents and associated persons".¹ The announcement of the investigation caused Glencore's share price to plummet by 9% to a three-year low.²

Reports relating to a potential SFO inquiry into the Glencore's activities emanated from a sanctions case on **Israeli** billionaire **Dan Gertler** in December 2017.³ The **United States (US) Treasury** placed Gertler on a sanctions list stating that his close relationship to former president **Joseph Kabila** (2001-2019) put him on a pedestal within the mining trade and enabled him to act as a middleman between multinationals and the Congolese government.⁴ At the time, Glencore denied that the company had gained entry into the DRC's mining trade through Gertler, but instead voluntarily began to do business alongside him when they expressed similar interests in the country's mining assets.⁵ Speculation as to whether the SFO would launch an inquiry into Glencore's operations re-emerged in 2018 when US-based media company **Bloomberg** reported that the fraud office was planning a formal probe into Glencore's dealings in DRC.⁶

The SFO inquiry is the third regulatory probe into Glencore's businesses. In July 2018, the **US Department of Justice (DOJ)** subpoenaed Glencore in relation to its operations in **Nigeria, Venezuela** and the DRC.⁷ The DOJ is examining company records dating back to 2007 to assess whether Glencore complied with US money-laundering laws and the **Foreign Corrupt Practices Act**.⁸ In April 2019, the US commodity market regulator, **Commodity Futures Trading Commission**, launched an investigation into Glencore and its subsidiaries relating to possible violations of the **Commodity Exchange Act** through "corrupt practices in connection with commodities".⁹

¹ Investors Chronicle, 5 Dec 2019.

² Live Briefs PRO Global Markets, 6 Dec 2019

³ Business Day SA, 6 Dec 2019

⁴ FT, 15 Jun 2018

⁵ FT, 5 Dec 2019

⁶ Bloomberg, 18 May 2018

⁷ Investors Chronicle, 13 Dec 2019

⁸ FT, 10 Dec 2019

⁹ London Stock Exchange ARN, 3 Dec 2019

The triple-investigation into Glencore's operations has had a significant impact on the company's share prices and valuation. Commentators argue that Glencore can only begin to increase its valuation and attract investors once the inquiries conclude, with fines and appropriate remedies set out.¹⁰ US-based **Bernstein Research** analyst **Paul Gait** says Glencore must convince both the DOJ and the SFO that there has been an "appreciable change in the way Glencore does business" for the investigations to be completed.¹¹

Glencore claims it had already planned to make significant structural changes in management and governance in the coming year. At an annual investor briefing in **London** (UK) on 3 December, two days before the news of the SFO investigation, Glencore CEO **Ivan Glasenberg** said he would step aside as soon as a younger generation is ready to take over.¹² He also said that talks within the company about changes in the 'old guard' would start early next year.¹³ The retirement in 2018 of the company's head of copper marketing, **Telis Mistakidis**, marked the start of the generational shift within Glencore's management.¹⁴ However, US-based **Jefferies Financial Group** analysts **Christopher LaFermina** and **Patricia Hove** believe that company specific initiatives will not increase the value of Glencore shares in the short term and, instead, the valuation is dependent on commodity prices:¹⁵

"The Glencore equity valuation is therefore likely to stay low, and the Glencore share price is therefore almost entirely dependent on commodity prices going higher. This is not a capital returns or a value story. It is a high beta play on the cycle, with incremental investors likely to rent rather than own."

Major tech, car companies face DRC child labour charges in US over cobalt

US-based human rights group **International Rights Advocates** filed a lawsuit on 16 December in the **US District Court of Washington DC** against giant car and tech companies including **Apple**, **Microsoft**, **Dell** and **Tesla**, on behalf of 14 DRC families.¹⁶ The lawsuit claims that the multinational companies did not regulate their supply chain and appropriately source the cobalt used in the production of the rechargeable lithium-ion batteries in their products.¹⁷ Cobalt is primarily used in tech products such as mobile phones, laptops, and electric cars. The cobalt-copper produced in the DRC's "**Copperbelt**" region accounts for most of the world's production and known reserves.¹⁸

The lawsuit states:

*"Plaintiffs and the other child miners producing cobalt for Defendants Apple, **Alphabet**, Dell, Microsoft and Tesla typically earn 2-3 US dollars per day and, remarkably, in many cases even less than that, as they perform backbreaking and hazardous work that will likely kill or maim them."*¹⁹

International Rights Advocates reportedly filed the lawsuit in the US alleging that the DRC's corrupt judicial system would not enable them to take the appropriate legal actions against the firms operating in their country.¹⁹ The plaintiffs claim that the companies benefit from the use of young cobalt miners and are seeking damages for forced child labour that leads to the death and serious injury of their children.

The **International Labour Organisation Convention 182** that defines the worst forms of child labour includes hazardous work within its definition. This refers to "work which, by its nature or the

¹⁰ Alliancenews, 5 Dec 2019

¹¹ FT, 10 Dec 2019

¹² FT, 3 Dec 2019

¹³ Wall Street Journal, 3 Dec 2019

¹⁴ FT, 11 Dec 2018

¹⁵ Alliancenews, 5 Dec 2019

¹⁶ Skynews, 17 Dec 2019

¹⁷ Forbes, 17 Dec 2019

¹⁸ OECD, 2019

¹⁹ Forbes, 17 Dec 2019

circumstances in which it is carried out, is likely to harm the health, safety or morals of children, including hazardous work”.²⁰ The alleged actions of the multi-billion dollar companies breach the **Trafficking Victims Protection Reauthorization Act of 2000**^{45,21}

This lawsuit marks the first time the tech industry will face legal action over the source of the cobalt mineral used in its products. The case highlights the need for companies to carry out regular supply chain audits regarding the source of their metals and minerals to ensure that they do not come from conflict zone countries.

A year on from the 2018 presidential and parliamentary elections

The past year in the DRC has been politically historical, as the presidential and parliamentary elections yielded unprecedented results. **Union pour la Démocratie et le Progrès Social (UDPS)** leader President **Felix Tshisekedi** (2019-present) was sworn into office on 24 January,²² marking the first peaceful transfer of power by election since the country became independent 59 years ago.²³

However, the election results featured irregularities and were quickly tainted by allegations of fraud and vote rigging. Electronic voting data, collected by DRC voting machines and leaked on 15 January, as well as the independent **Conférence Episcopale National au Congo (CENO)** results, showed that **Martin Fayulu** of the **Engagement pour la Citoyenneté et le Développement** party was the rightful winner of the election (see *ARC Briefing DRC February 2019*). The leaked result conflicted with the preliminary results of the election and revealed that Fayulu won 59.4% of the vote while Tshisekedi obtained 19% of the votes cast.²⁴ Tshisekedi and now former president Joseph Kabila dismissed the CENO and electronic voting data. A constitutional court affirmed Tshisekedi’s defeat on 20 January.²⁵

The legislative elections held on the same day provided vastly different results to the presidential elections, much to analysts’ surprise. The legislative elections saw Kabila’s **Front Commun pour le Congo (FCC)** win 337 of the 485 parliamentary seats.²⁶ As a result, executive power in the DRC is now shared between the FCC and the **Cap pour le Changement (CACH)** coalition for the first time in Congolese history.

As well as winning the majority in the House of Representatives, the FCC won an overwhelming majority of 91 out of 108 seats in the upper house of parliament, the Senate, while the CACH did not win any seats (see *ARC Briefing DRC March 2019*). Fayulu contested all three election results. He urged Congolese people to not recognise the newly elected president, claiming that the results clearly uncovered a “backdoor arrangement” between Tshisekedi and Kabila that would allow the latter to step down as president while maintaining control of government.²⁷ The UDPS and FCC denied Fayulu’s claims.

Prime minister **Sylvestre Ilunga Ilukamba**, charged with overseeing legislature changes and policy reforms, was appointed on 20 May after four months of deliberation between Tshisekedi and Kabila.²⁸ The composition of the cabinet was also delayed until eight months into the new presidency, due to a power struggle between the leading party heads over which ministries each party would control.²⁹ Formal consultations between the president and prime minister officially began on 7 August.⁸ In line with the FCC’s parliamentary majority, the party administers 43 ministries. The key ministries under its command include defence, justice, finance and mines. The CACH coalition administers the remaining 23 ministries, including the interior, security, and foreign affairs ministries (see *ARC*

²⁰ OECD, 2019

²¹ Anadolu Agency, 17 Dec 2019

²² Al Jazeera, 24 Jan 2019

²³ News.un.org, 19 Mar 2019

²⁴ FT, 15 Jan 2019

²⁵ Washington Post Blogs, 20 Jan 2019

²⁶ Africanews, 18 Feb 2019

²⁷ Washington Post Blogs, 20 Jan 2019

²⁸ The East African, 21 May 2019

²⁹ Institute of Security Studies, 12 Sep 2019

Briefing DRC September 2019). A businessman with extensive knowledge of the DRC notes the general feeling in DRC that the new ministers are still under the hand of Kabila and the Kabila family:

*“For example, the Governor of **Tanganyika Province** is Kabila’s brother. It is very likely that the Kabilas, whether it be Joseph Kabila or his brother, will come back in the next presidential election.”³⁰*

Since the start of his presidency, Tshisekedi has liberated political prisoners and returned exiled politicians such as **Moise Katumbi**.³¹ However, commentators await considerable reform and state that the reform of the **Constitutional Court** and the **Commission électorale nationale indépendante (CENI)** (national independent electoral commission) should be the president’s first priority.³² Both institutions are heavily politicised; reforming them would be conducive to fairer elections in line with democratic principles.

Major mining companies also hoped that the new president would conduct policy changes with regard to the mining code that was amended prior to Kabila’s departure. Tshisekedi showed early attempts to reconcile with mining enterprises when he confirmed a partnership with **Canada**-based **Barrick Gold** during his first official visit to the US in early April.³³ Barrick Gold executive chairman **John Thornton** said he was

*“... encouraged by the president’s vision of attracting foreign investment and supporting the development of the DRC’s mining industry”.*³⁴

In August, Glencore announced that it planned to shut down its **Mutanda** cobalt mine in DRC as it was “no longer economically viable”.³⁵ Glencore’s directors are believed to be planning the closure of one of the largest cobalt producing mines in order to bolster the price of cobalt. The company is responsible for roughly a fifth of global cobalt supply;³⁶ its closure would result in the global reduction of cobalt supply and possibly help to raise the price of cobalt (see *ARC Briefing DRC August 2019*). ARC’s source, a businessman with extensive knowledge of DRC commented:

“The expected Mutanda mine shut down is the result of a combination of government policies such as the new mining code, the new tax laws on foreign expats, and the depressed prices in certain commodities.”

It is likely that the government’s new tax policies on foreign individuals and companies as well as the tax and royalty revisions in the mining code contributed to Glencore’s decision to shut down its DRC mine. Non-resident companies or individuals are taxed on profits they realise through private equity firms or fixed establishments located in DRC:³⁷

“The government has now begun taxing expats to the point where companies are getting rid of them because they can’t afford them.”³⁸

The mining code was amended in May 2018 and set new rates for mining royalties. These were set at 10% for strategic substances.³⁹ Following its passage, the Congolese government designated cobalt as a strategic substance. As a result, the royalty rate of cobalt is now five times higher than it was under the previous mining code.⁴⁰

³⁰ ARC source, DRC businessman

³¹ BBC, 2 Mar 2019

³² Institute of Security Studies, 12 Sep 2019

³³ Market News Publishing, 3 Apr 2019

³⁴ Market News Publishing, 3 Apr 2019

³⁵ FT, 6 Aug 2019

³⁶ FT, 6 Aug 2019

³⁷ Taxsummaries.pwc, 29 Aug 2019

³⁸ Source, businessman, DRC

³⁹ OECD, 2019

⁴⁰ OECD, 2019

Looking ahead, the government may introduce some important reforms. However, the major policy changes that were hoped for with the appointment of the new president are unlikely.

Planner

16 Jan 2020 **(DRC)** Heroes' Day (Laurent Kabila);
 17 Jan 2020 **(DRC)** Heroes' Day (Patrice Lumumba);
 30 Jun 2020 **(DRC)** Independence Day;
 2023 **(DRC)** Scheduled presidential and parliamentary elections;

Chronology

17 Dec 2019 **Kinshasa (DRC)** *Xinhua General News Service*. **Stephane Dujarric**, spokesman for **United Nations** Secretary-General **Antonio Guterres**, voices concern over the widespread flooding in 12 districts of the **Democratic Republic of the Congo** that has affected 600,000 people;

16 Dec 2019 **Kinshasa (DRC)** *Targeted news service*. U.S. **Public-Private Alliance** is conducting a delegation to the **Democratic Republic of the Congo** to seek responsibly sourced minerals;

16 Dec 2019 **Kinshasa (DRC)** *Forbes.com*. **United States**-based tech and car companies are being sued for knowingly benefiting from child cobalt miners in the **Democratic Republic of the Congo**;

15 Dec 2019 **Beni (North Kivu, DRC)** *i-Independent Print Ltd*. **Allied Democratic Forces (ADF)** kill at least 43 people in **Kamango**;

15 Dec 2019 **Luanda (Angola)** *Angola Press Agency*. **Angola's** energy and water ministry denies any possible sale of electricity to neighbouring **Democratic Republic of the Congo**;

13 Dec 2019 **Kinshasa (DRC)** *States News Service*. The **US** Department of the Treasury's **Office of Foreign Assets Control (OFAC)** imposes sanctions on **Lebanon**-based **Nazem Said Ahmad** and **DRC**-based **Saleh Assi** who are accused of using money laundering and tax evasion schemes to generate millions of dollars for the **Hezbollah** terrorist group;

13 Dec 2019 **Kinshasa (DRC)** *Voice of America*. The **World Health Organisation (WHO)** will carry out an immunisation campaign to combat the measles crisis that has affected all provinces in the **Democratic Republic of the Congo**;

12 Dec 2019 **Nóqui Municipality (Angola)** *Angola Press Agency*. A report claims that energy and water minister **João Baptista Borges** intends to sell electricity to the **Democratic Republic of the Congo**;

12 Dec 2019 **Kinshasa (DRC)** *Agence France Presse*. **Switzerland** opens a war crimes investigation into possible illegal mineral trading in the **Democratic Republic of the Congo**;

12 Dec 2019 **Kinshasa (DRC)** *Xinhua General News Service*. The **African Union (AU)** announces that the death toll from the **Ebola** outbreak in the **Democratic Republic of the Congo** has reached 2,209;

11 Dec 2019 **Kinshasa (DRC)** *DefenceWeb*. The **United States (US) Treasury of Foreign Assets Control (OFAC)** discloses that the US has imposed sanctions on **Allied Democratic Forces (ADF)** leader **Musa Baluku** and five others for serious human rights abuses including mass rape, torture and killings in eastern **Congo**;

3 Dec 2019 **Kigoma (Tanzania)** *The East African*. Transport ministers of **Tanzania**, **Burundi** and the **Democratic Republic of the Congo (DRC)** sign an agreement to link Tanzania's

standard gauge railway to Burundi and the DRC, giving the landlocked countries direct access to **Dar es Salaam Port**;

8 Dec 2019 **Rubavu and Rusizi (Rwanda)** *Ventures Africa*. **Rwanda** and the **Democratic Republic of the Congo (DRC)** launch a grand scale vaccination campaign to fight the spread of **Ebola** to Rwanda, at the **Grande Barrière** border crossing;

8 Dec 2019 **Kinshasa (DRC)** *PR Newswire*. **United States**-based pharmaceutical company **Johnson & Johnson** announces it will provide up to 200,000 regimens of experimental Ebola vaccine regimens to **Rwanda** to support the new vaccination campaign;

6 Dec 2019 **Kinshasa (DRC)** *Zimbabwe Independent*. The military seizes four properties belonging to **Omani** businessman **Thamer al Shanfari**, former chairperson of **Oryx Natural Resources**;

5 Dec 2019 **Kinshasa (DRC)** *Investors Chronicle*. The **Serious Fraud Office (SFO)** announces it is launching an investigation into **Glencore** relating to suspicions of bribery in the conduct of business by the miner's subsidiaries;

5 Dec 2019 **North Kivu (DRC)** *EFE Newswire*. Around 2.2 million children will be vaccinated against measles in the **North Kivu** province;

4 Dec 2019 **Kinshasa (DRC)** *Daily News*. The **East African Community (EAC)** formally begins the process of screening the membership application of the **Democratic Republic of the Congo (DRC)**;

4 Dec 2019 **Kinshasa (DRC)** *Ventures Africa*. The **World Health Organisation (WHO)** declares that the **Democratic Republic of the Congo** has the second largest **Ebola** epidemic on record with a total of 3,313 cases, 2,203 deaths and 1,084 survivors;

4 Dec 2019 **Kasindi (North Kivu, DRC)** *The East African*. Congolese traders close their businesses in solidarity with protesters in **Beni**, who are accusing the **United Nations (UN)** of failing to protect civilians against rebel attacks;

3 Dec 2019 **Kinshasa (DRC)** *China Daily*. **United Nations (UN)** Secretary-General **Antonio Guterres** appoints Lieutenant General **Ricardo Augusto Ferreira Costa Neves** from **Brazil** as the new force commander of UN peace keeping mission **MONUSCO** in the **Democratic Republic of the Congo**;

2 Dec 2019 **Addis Ababa (Ethiopia)** *Ventures Africa*. The **European Union (EU)** ambassador to the **African Union (AU)**, **Ranieri Sabatucci**, announced at the Africa against Ebola **Private Sector and Partner Forum** organised by the African Union that the **European Commission** will donate €50m (\$56m) to join efforts to combat **Ebola** in the **Democratic Republic of Congo**;

30 Nov 2019 **Goma (North Kivu)** *The New Times*. The Directorate General of Immigration and Emigration says that the border between **Rwanda** and the **Democratic Republic of the Congo**, popularly know as la **Grande Barrière**, will start operating as a **One Stop Border Post (OSBP)**;

28 Nov 2019 **Mangina (DRC)** *The Guardian*. Four **Ebola** responders of the **World Health Organisation (WHO)** are killed and a further seven injured as armed rebels attack two facilities;

28 Nov 2019 **Kinshasa (DRC)** *ICT Monitor Worldwide*. **Liquid Telecom** launches a direct land-based fibre optic cable connecting **East Africa** to **West Africa** via the **Democratic Republic of the Congo**;

24 Nov 2019 **Goma (North Kivu, DRC)** *RFI*. An aircraft run by **Busy Bee Congo** crashes after take-off in a densely populated area north of **Goma** killing at least 23 people;

21 Nov 2019 **Kinshasa (DRC)** *Sates News Service*. The **United Nations High Commission for**

Refugees (UNHCR) launches the first voluntary repatriation programme from the **Democratic Republic of the Congo** to help hundreds of refugees to return home to the **Central African Republic (CAR)**;

21 Nov 2019 **Kinshasa (DRC)** *Targeted News Service*. The director of the **US Agency for International Development (USAID)** in the **Democratic Republic of the Congo**, **Paul Sabatine**, and DRC international cooperation, regional integration and Francophonie minister **Pepin Guillaume Manjolo Buakila**, sign an agreement providing for \$600m in additional US development assistance to the **Democratic Republic of the Congo** between now and 2022.

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