



London Stock Exchange Financing for Illegal Deforestation in Peru via AIM-listed United Cacao Ltd. SEZC

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Introduction

This document summarizes and provides evidence about the activities and statements of AIM-listed United Cacao Limited SEZC, as well as its subsidiaries and related companies in Peru, in order to set the record straight about this network of companies' impacts on human rights, tropical rainforests, the global climate, and rule of law. Together, this network of companies is responsible for over 11,100 hectares of deforestation, according to the Peruvian government,^{1,2,3} including over lands claimed by indigenous communities native to the Peruvian Amazon,⁴ and according to this analysis, has broken AIM Rules for Companies⁵

United Cacao Limited SEZC (hereinafter, United Cacao) is registered in the Cayman Islands, but its subsidiaries, Cacao del Peru Norte SAC and Cooperativa de Cacao Peruano SAC, operate within the Peruvian Amazon region of Loreto. The Admission Document through which United Cacao registered to participate on AIM refers to United Cacao, its two Peruvian subsidiaries, as well as another subsidiary in the British Virgin Islands, Grupo Cacao del Peru Limited, as "the Group."⁶

In order to trade in the United Kingdom, the company and its nominated adviser in London, Strand Hanson Ltd., submitted an Admission Document that described the legal and tax benefits of this intentional jurisdictional segmentation of activities.⁷ In addition to this international structure, a legal structure employed in Peru by the company's major shareholder, Dennis Melka, allows a network of at least 25 companies to operate in parallel, without officially declaring other Melka-controlled companies as part of the same corporate group, because they lack a traditional subsidiary-parent corporate relationship.⁸

AIM's involvement as a financing strategy in this structure forms a key pillar of United Cacao's corporate strategy. United Cacao explained in detail in its Admission Document how funding raised on the Exchange would be used to plant 2,000 hectares in its subsidiary's project areas,⁹ and the document noted CEO Dennis Melka's role in developing oil palm plantations that receive financing via United Cacao.¹⁰ What the Admission Document didn't disclose, however, was that this

¹ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, December 9). Resolución de Dirección General N° 462-2014-MINAGRI-DVDIAR-DGAAA. Lima, Peru.

² Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2015, September 2). Resolución de Dirección General N° 270-2015-MINAGRI-DVDIAR-DGAAA. Lima, Peru.

³ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, December 9). Resolución de Dirección General N° 463-2014-MINAGRI-DVDIAR-DGAAA. Lima, Peru.

⁴ Letter sent by representatives of the Kashibo Kakataibo, Shipibo – Conibo, Awajún, Ashéninka y Andino Indigenous Peoples to the General Director of the General Directorate of Environmental Agricultural Affairs of the Ministry of Agriculture and Irrigation. (2015, August 21). *Carta s/n de fecha 21 de agosto de 2015, remitida por los representantes de los Pueblos Indígenas Kashibos Kakataibos, Shipibos – Conibos, Awajún, Ashéninkas y Andinos a la Directora General de Dirección General de Asuntos Ambientales Agrarios del Ministerio de Agricultura y Riego.*

⁵ London Stock Exchange. (2016, January 1). AIM Rules for Companies. London.

⁶ Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 6-9.

⁷ Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 13, 16, 18, 24, 25, 95-101.

⁸ Environmental Investigation Agency. (2015). *Deforestation by Definition: The Peruvian government fails to define forests as forests, while palm oil expansion and the Malaysian influence threaten the Amazon.* Washington, DC. p. 22-23.

⁹ Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 15, 30, 34-35.

¹⁰ Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 16.

development necessitated clearance of dense rainforest. Therefore, when United Cacao’s subsidiaries and related companies in Peru deforested without obtaining proper governmental approval¹¹ while making misleading statements regarding the law and their compliance with it in Peru, as outlined below, the company was depending on its illegal forest-clearing activities remaining unknown and unpunished.

United Cacao’s manipulation of information about its operations in Peru has been widespread, as this document will outline below. In just one of the ongoing legal cases in Peru, each of the four crimes of which the company’s subsidiary and its personnel stand accused carry between two and eight years in prison, as well as substantial fines, for each person found guilty.¹² United Cacao claims the Supreme Court has conclusively ruled in their favor on these crimes,¹³ but the case has not been finalized and continues to be prosecuted in Peruvian courts.¹⁴ If United Cacao is allowed to continue to trade on AIM, despite breaches of AIM Rules, documented illegal deforestation financed with money raised on AIM, as well as the ongoing criminal prosecution in Peru, AIM’s reputation will be severely damaged and could attract other criminal enterprises looking for ways to finance their illegal operations.

Section 1. Overview of Disclosure Problems

Misleading the markets regarding ongoing legal proceedings and environmental damage

United Cacao omitted and misrepresented evidence about the illegal, and thus high-risk nature of its business in Peru, seriously misleading investors, the market, and the public, both in its Admission Document and in subsequent statements. United Cacao’s incorrect and selective statements to the press has led to contradictory news reports.¹⁵¹⁶ A lack of independent information about the in-country operations of the company has allowed confusion to persist, despite the solid evidence gathered by the Peruvian government against United Cacao’s subsidiaries and representatives.

Primary evidence contradicts United Cacao’s statements. The company’s misleading statements and material omissions break AIM’s Rules for Companies that require “[a]n AIM company [to] take reasonable care to ensure that any information it notifies is not misleading, false or deceptive and does not omit anything likely to affect the import of such information.”¹⁸ Further requirements are set out for the Admission Document submitted to AIM, which must be “in accordance with the facts

¹¹ See Section: “Ongoing Legal Proceedings”

¹² Cuarto Juzgado Penal de Investigación. Preparatoria – Sede Central, Corte Superior de Justicia de Loreto. (2014, September 30). Expediente 00740-2014-75-1903-JR-PE-04. Auto de Excepción de Improcedencia de Acción: Resolución 7. p 1-2. Iquitos, Peru.

¹³ United Cacao Limited SEZC. (2016, February 15). Litigation & Settlement Results. London.

¹⁴ Poder Judicial del Peru. Consulta de Expedientes Judiciales-Supremo. Retrieved 2016, February 2 from <http://cej.pj.gob.pe/cej/forms/busquedaform.html>

¹⁵ Cannon, J. (2015, January 20). Company Chops Down Rainforest to Produce Sustainable Chocolate. *Mongabay*. Retrieved from <http://news.mongabay.com/2015/01/company-chops-down-rainforest-to-produce-sustainable-chocolate/>

¹⁶ Cannon, J. (2015, February 13). ‘Sustainable’ Cacao Company Allegedly Defies Government’s Call to Halt Plantation Development. *Mongabay*. Retrieved from <http://news.mongabay.com/2015/02/sustainable-cacao-company-allegedly-defies-governments-call-to-halt-plantation-development/>

¹⁷ Cannon, J. (2015, April 16). Court Rules Deforestation of Peruvian Rainforest for Chocolate was Legal. *Mongabay*. Retrieved from <http://news.mongabay.com/2015/04/court-rules-deforestation-of-peruvian-rainforest-for-chocolate-was-legal/>

¹⁸ London Stock Exchange. (2016, January 1). AIM Rules for Companies. (Rule 10). London. p. 36.

and [contain] no omission likely to affect the import of such information.”¹⁹ AIM rules specifically mention the requirement to submit updates about changes to information in the Admission Document, if changes happen after the Admission Document is drafted and submitted to AIM, but before trading begins.²⁰ Evidence summarized in this document consistently demonstrates that statements made by United Cacao, in its Admission Document contain misrepresentations and material omissions. The in-depth, primary information about alleged violations of Peruvian law also demonstrates that United Cacao failed to update its previous submissions where changes have occurred since the initial submission.

Orders to cease operations

Governmental on-site inspections for United Cacao’s fully-owned subsidiary Cacao del Peru Norte,^{21,22,23} and related company Plantaciones de Ucayali,^{24,25,26} occurred in September and November 2014, before United Cacao’s admission to trading on December 2, 2014. The results of these inspections documented extensive environmental damage and lack of compliance with Peruvian laws. However, the fact that these governmental inspections occurred, and the results of the inspections, were not disclosed in United Cacao’s Admission Document. The lack of disclosure of these ongoing processes investigating Cacao del Peru Norte’s compliance with Peruvian law, and their potential impact on the company’s operations, success, and thus trading position, are just some of the material omissions in United Cacao’s submissions.

The subsequent lack of disclosure that Cacao del Peru Norte²⁷ and Plantaciones de Ucayali²⁸ had been ordered to halt operations due to lack of compliance with Peruvian law, in December 2014; and that later, in September 2015, a similar cease order was received by the related company, Plantaciones de Pucallpa,²⁹ violated AIM’s ongoing disclosure requirements, which state that: “An AIM company must issue notification without delay of any new developments which are not public knowledge which, if made public, would be likely to lead to a significant movement in the price of its AIM securities.”³⁰ The process of tracking, requesting, and analyzing documents that United Cacao did not make public in its AIM submissions took many months by external researchers.

¹⁹ London Stock Exchange. (2016, January 1). AIM Rules for Companies. (Rule 3). London. p. 4.

²⁰ Ibid.

²¹ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, September 23). Informe 953-14-MINAGRI-DVDIARDGAAA-DGAA-ENLT-1139-12-13. Lima, Peru

²² Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, December 5). Informe 1206-2014-MINAGRI-DVDIAR-DGAAA-DGAA_REA-114912-13. Lima, Peru.

²³ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, December 9). Resolución de Dirección General N° 462-2014-MINAGRI-DVDIAR-DGAAA. Lima, Peru.

²⁴ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, September 23). Informe 955-14-MINAGRI-DVDIAR-DGAAA-AHR-ACF-TAW-95350-13. Lima, Peru.

²⁵ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, December 5). Informe 1207-2014-MINAGRI-DVDIAR-DGAAA-DGAA-REA-95350-13. Lima, Peru.

²⁶ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, December 9). Resolución de Dirección General N° 463-2014-MINAGRI-DVDIAR-DGAAA. Lima, Peru.

²⁷ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, December 9). Resolución de Dirección General N° 462-2014-MINAGRI-DVDIAR-DGAAA. Lima, Peru.

²⁸ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, December 9). Resolución de Dirección General N° 463-2014-MINAGRI-DVDIAR-DGAAA. Lima, Peru.

²⁹ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2015, September 2). Resolución de Dirección General N° 270-2015-MINAGRI-DVDIAR-DGAAA. Lima, Peru.

³⁰ London Stock Exchange. (2016, January 1). AIM Rules for Companies. (Rule 11). p. 6.

In addition to these three cease orders, Peruvian government responses to information requests³¹ have revealed at least four other ongoing legal cases in Peru's judicial system against three companies financed via United Cacao, including its direct subsidiary, Cacao del Peru Norte, and related companies Plantaciones de Ucayali and Plantaciones de Pucallpa,³² as well as an additional nine other companies related to the corporate group in Peru.^{33,34} Each of these four cases includes United Cacao CEO's Dennis Melka himself, as a defendant.³⁵ These cases also name public officials in Peru and other employees of the Group and its related companies as defendants in cases of illegal timber trafficking, irregular land accumulation, deforestation without authorization, and obstruction of justice.³⁶ United Cacao has disclosed only one of these cases in submissions to AIM, at all, and in disclosures referencing this case, United Cacao's statements contained misleading, selective, and incorrect information.^{37,38,39,40} All cases documented are ongoing, and are described below.

Clear corporate connections

United Cacao lists two direct, fully owned subsidiaries in Peru in its Admission Document: Cacao del Peru Norte S.A.C. (previously Plantaciones de Loreto Sur S.A.C.)⁴¹ and Cooperativa de Cacao Peruano S.A.C. (previously Plantaciones de Loreto Norte S.A.C.).⁴² United Cacao's AIM Admission Document refers to the Cayman Islands-registered company, its two Peruvian subsidiaries, as well as another subsidiary in the British Virgin Islands, Grupo Cacao del Peru Limited, as "the Group."⁴³ However, financial statements published by United Cacao in June 2015 (reproduced here) show that related companies, Plantaciones de Pucallpa S.A.C. and Plantaciones de Ucayali S.A.C., received in excess of US\$ 1.5 million each, by December 31, 2014 from United Cacao.⁴⁴ The Peruvian corporate registry shows that the ownership structure of these related companies does not link directly to United

³¹ Procuraduria Publica Especializada en Delitos Ambientales, Ministerio del Ambiente. (2015, November 19). Informe No. 22-2015-MINAM/PP. Lima, Peru.

³² Environmental Investigation Agency. (2015). *Deforestation by Definition: The Peruvian government fails to define forests as forests, while palm oil expansion and the Malaysian influence threaten the Amazon*. Washington, DC. p. 22-23.

³³ Plantaciones Lima S.A.C., Plantaciones Iquitos S.A.C., Plantaciones Loreto S.A.C., Plantaciones Nauta S.A.C. as listed in Procuraduria Publica Especializada en Delitos Ambientales, Ministerio del Ambiente. (2015, November 19). Informe No. 22-2015-MINAM/PP. Lima, Peru.

³⁴ Environmental Investigation Agency. (2015). *Deforestation by Definition: The Peruvian government fails to define forests as forests, while palm oil expansion and the Malaysian influence threaten the Amazon*. Washington, DC. p. 22-23.

³⁵ Procuraduria Publica Especializada en Delitos Ambientales, Ministerio del Ambiente. (2015, November 19). Informe No. 22-2015-MINAM/PP. Lima, Peru.

³⁶ Procuraduria Publica Especializada en Delitos Ambientales, Ministerio del Ambiente. (2015, November 19). Informe No. 22-2015-MINAM/PP. Lima, Peru.

³⁷ Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 25, 28, 29, 40.

³⁸ United Cacao Limited SEZC. (2015, June). *Building Communities Growing Cacao: Annual Report 2014*. p 5.

³⁹ Strand Hanson Limited VSA Capital. (2015, October 27). Information Memorandum: United Cacao Limited SEZC. p .25.

⁴⁰ United Cacao Limited SEZC. (2015, June 30). United Cacao Limited SEZC: Final Results for the year ended 31 December 2014. London Stock Exchange: London. p .2.

⁴¹ Superintendencia Nacional de Administración Tributaria. Cacao del Peru Norte/Plantaciones de Loreto Sur [RUC: 20528401393]. Retrieved from <http://www.sunat.gob.pe/cl-ti-itmrconsruc/jcrS00Alias>.

⁴² Superintendencia Nacional de Administración Tributaria. Cooperativa de Cacao Peruano/Plantaciones de Loreto Norte [RUC: 20567189156]. Retrieved from <http://www.sunat.gob.pe/cl-ti-itmrconsruc/jcrS00Alias>

⁴³ Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 6-9.

⁴⁴ United Cacao Limited SEZC. (2015, June). *Building Communities Growing Cacao: Annual Report 2014*. p 42.

Cacao, but rather lists several common Peruvian individuals as shareholders.⁴⁵ However, United Cacao's CEO Dennis Melka is listed as the legal representative for Plantaciones de Pucallpa, Plantaciones de Ucayali, and other related Peruvian companies described below, which derive significant finance from global financial markets through related party transactions without the scrutiny of financial reporting required for companies officially owned by the AIM-listed, Cayman Islands-based parent company.

Operating cash granted/(collected)	2014	2013
	US\$	US\$
Plantaciones de Pucallpa S.A.C.	1,780,871	170,290
Plantaciones de Ucayali S.A.C.	1,379,952	184,783
Servicios Ripio S.A.C	262,160	-
Grupo Palmas del Peru S.A.C.	87,219	3,986
Industrias de Palma Aceitera S.A.C.	51,255	-
Plantaciones del Peru Este S.A.C.	10,709	18,116
Plantaciones de San Francisco S.A.C.	10,064	-
Plantaciones de Masisea S.A.C	1,006	-
Plantaciones de Loreto S.A.C.	524	-
Cacao de Requena Este S.A.C.	60	-
Cacao de Requena Oeste S.A.C.	60	-
Plantaciones de Napo Norte S.A.C.	60	-
Plantaciones de Napo S.A.C.	60	-
Plantaciones de Napo Sur S.A.C.	60	-
Plantaciones de Marin S.A.C.	42	-
Plantaciones de Loreto Este S.A.C.	8	-
Cash collected from related parties	(3,584,110)	(377,175)

Plantaciones de Pucallpa and Plantaciones de Ucayali, the two related companies receiving the most financing according to United Cacao's corporate accounts,⁴⁶ are oil palm plantation companies operating in Ucayali and responsible for illegal deforestation on an even larger scale than United

⁴⁵ Environmental Investigation Agency. (2015). *Deforestation by Definition: The Peruvian government fails to define forests as forests, while palm oil expansion and the Malaysian influence threaten the Amazon*. Washington, DC. p. 22-23.

⁴⁶ United Cacao Limited SEZC. (2015, June). *Building Communities Growing Cacao: Annual Report 2014*. p 42.

Cacao's direct subsidiaries: at least 9,174 hectares cleared as of September 2015.^{47,48,49} The information from the audited statement, above, shows these related oil palm plantation companies paid back the advances they received from United Cacao,⁵⁰ which raises questions about the provenance of the paid-back funds, given that, at less than five years from planting, the plantation was too young to be producing and generating revenues from oil palm. Additionally, Peruvian government records,^{51,52,53} as well as satellite imagery⁵⁴ and photo evidence,⁵⁵ show that thousands of hectares of forest, and thus potentially valuable timber, has been removed from the plantation areas. Since no authorization was given to cut trees, nor to transport or sell wood from the plantation areas operated by Cacao del Peru Norte,^{56,57,58,59,60} Plantaciones de Ucayali,^{61,62,63,64} or Plantaciones de Pucallpa,⁶⁵ United Cacao's subsidiary and related companies acted in violation of the

⁴⁷ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2015, September 2). Resolución de Dirección General N° 270-2015-MINAGRI-DVDIAR-DGAAA. Lima, Peru.

⁴⁸ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, December 9). Resolución de Dirección General N° 463-2014-MINAGRI-DVDIAR-DGAAA. Lima, Peru.

⁴⁹ Novoa, S., Cuba, N. (2014). *Satellite imagery shows large scale deforestation and intensive agricultural activities on the lands of United Cacao's related companies Plantaciones de Ucayali and Plantaciones de Pucallpa*. USGS Landsat 7,8 INPE.

⁵⁰ United Cacao Limited SEZC. (2015, June). *Building Communities Growing Cacao: Annual Report 2014*. p 42.

⁵¹ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, December 9). Resolución de Dirección General N° 463-2014-MINAGRI-DVDIAR-DGAAA. Lima, Peru.

⁵² Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, December 5). Informe 1207-2014-MINAGRI-DVDIAR-DGAAA-DGAA-REA-95350-13. Lima, Peru.

⁵³ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2015, September 2). Resolución de Dirección General N° 270-2015-MINAGRI-DVDIAR-DGAAA. Lima, Peru.

⁵⁴ Novoa, S., Cuba, N. (2014). *Satellite imagery captures deforestation in Tamshiyacu, Peru between 1989 and 2014*, USGS Landsat 7,8 INPE.

⁵⁵ Environmental Investigation Agency. (2015, March). *Aerial photograph captures approximately half of Cacao del Peru Norte's plantation in Tamshiyacu, Peru. This subsidiary of United Cacao began operating in this area during mid-2013 [photograph]*. Washington, D.C.: Annex 24.

Environmental Investigation Agency. (2015, March). *United Cacao's related company, Plantaciones de Ucayali, has been operating in Nueva Requena since July 2012, allowing the company ample time to create its own infrastructure and plantations [photograph]*. Washington, D.C.: Annex 25.

Environmental Investigation Agency. (2015, March). *Illegal saw mill on United Cacao's property cuts timber near Tamshiyacu, Peru [photograph]*. Washington, D.C.: Annex 26.

⁵⁶ Oficina de Asesoría Jurídica, Gobierno Regional de Loreto. (2014, August 25). Informe Legal 76-2014-GRL-GGR-PRMRFFS-DEF/OAJ. Iquitos, Peru.

⁵⁷ Servicio Nacional Forestal y de Fauna Silvestre, Ministerio de Agricultura y Riego. (2014, September 3). Oficio 194-2014-SERFOR-DE. Lima, Peru.

⁵⁸ Oficina de Asesoría Jurídica, Ministerio de Agricultura y Riego. (2014, September 24). Informe 1182-2014-MINAGRI-OGAJ. Sept. 24, 2014. Lima, Peru.

⁵⁹ Oficina de Asesoría Jurídica, Ministerio de Agricultura y Riego. (2014, September 10). Informe 1066-2014-MINAGRI-OGAJ. Lima, Peru.

⁶⁰ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, October 13). Informe 1008-14-MINAGRI-DVDIAR-DGAAA-DGAA-112228-14. Lima, Peru.

⁶¹ Dirección Ejecutiva Forestal y de Fauna Silvestre-Ucayali, Gobierno Regional de Ucayali. (2014, July 21). RDE 290-2014-GRU-P-GGR-GRDE-DEFFS-U. Pucallpa, Ucayali, Peru.

⁶² Dirección Ejecutiva Forestal y de Fauna Silvestre-Ucayali, Gobierno Regional de Ucayali. (2014, September 4) Informe Técnico 001-2014-GRU-P-GGR-GRDE-DEFFS-ATI_JRCT. Sept. 5, 2014. Pucallpa, Ucayali, Peru.

⁶³ Gerente Regional de Desarrollo Económico, Gobierno Regional de Ucayali. (2014, September, 16). Resolución Gerencial Regional No. 010-2014-GRU-P-GGR-GRDE. Pucallpa, Ucayali, Peru.

⁶⁴ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, September 24). Informe 955-14-MINAGRI-DVDIAR-DGAAA-AHR-ACF-TAW-95350-13. Lima, Peru.

⁶⁵ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2015, September 2). Resolución de Dirección General N° 270-2015-MINAGRI-DVDIAR-DGAAA. Lima, Peru.

forestry laws and regulatory framework, according to multiple official legal reports from the Peruvian government. Additionally, at least three flyovers of the Cacao del Peru Norte plantation between March and October 2015 documented an illegal sawmill on the property.^{66,67,68} This evidence undermines statements by United Cacao in its AIM document that “the Group has not...removed any timber from its project sites.”⁶⁹ The Admission Document does reference “seven independent contractors on site” at its Cacao del Peru Norte plantation,⁷⁰ but if these contractors were responsible for removing or selling timber from the area, the responsibility still rests with the Group for these violations of Peruvian law.^{71,72}

Disclosing selective and incorrect information

United Cacao’s Admission Document to AIM refers to just one of the ongoing legal cases related to compliance with environmental impact management and land use change authorization procedures in Peru. Understanding the legal context in Peru is critical for identifying the misrepresentations and omissions in United Cacao’s statements with regard to the ongoing case disclosed. The paragraphs below analyze the statements made by United Cacao, and show clearly that they are not consistent with Peruvian legal rulings that were made both before the Admission Document was filed and after the company’s admission to trading on AIM.

As stated in United Cacao’s Admission Document, the group’s subsidiary, Cacao del Peru Norte (formerly Plantaciones de Loreto Sur), in Loreto acquired land from private owners, who had received small plots under a law⁷³ which was intended to help provide land to internally displaced victims of terrorist violence.⁷⁴ The company argues in its Admission Document that this law, Decreto Legislativo 838 (DL 838), automatically implies that the best land use capacity – a technical legal classification which interprets the “natural ability” of “a given geographic area...to produce

⁶⁶ Sociedad Peruana de Ecodesarrollo. (2015). Continúa Deforestación en Tamshiyacu y Manítí—Región Loreto [Deforestation Continues in Tamshiyacu and Manítí in the Region of Loreto]. [Press Release]. Retrieved from <http://www.biofuelobservatory.org/nota-de-prensa-002-2015-spde.html>

⁶⁷ Environmental Investigation Agency. (2015, March). *Illegal saw mill on United Cacao’s property cuts timber near Tamshiyacu, Peru [photograph]*. Washington, D.C.: Annex 26.

⁶⁸ Aquisé, S. (Photographer). (2015, October 31). *Amazonía Arrasada: El Grupo Melka y la Deforestación por Palma Aceitera y Cacao en el Perú*. Convoca, Oxfam, Kené: Lima, Peru. p. 47. Retrieved from <http://www.keneamazon.net/Documents/Publications/Amazonia-Arrasada.pdf>

⁶⁹ Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 28.

⁷⁰ Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 14.

⁷¹ Código Penal Peruano: DL 365. Artículos 310-A y 310-B, con penas de hasta 12 años de prisión [Peruvian Criminal Code: Legislative Decree 365. Articles 310-A and 310-B, with sanctions of up to 12 years in prison]. El Peruano, Diario Oficial. Retrieved from <http://spij.minjus.gob.pe/CLP/contenidos.dll?f=templates&fn=default-codpenal.htm&vid=Ciclope:CLPdemo>

⁷² Ley Contra el Crimen Organizado: Ley N. 30077. Artículos 2 y 3 [Peruvian Law against Organized Crime: Law No. 30077. Articles 2 and 3]. El Peruano, Diario Oficial. Retrieved from <http://spij.minjus.gob.pe/CLP/contenidos.dll?f=templates&fn=default-leyes.htm&vid=Ciclope:CLPdeleyes>

⁷³ “Resolution No. 298-97-CTAR-DRA pursuant to Legislative Decree No. 838 and its regulations, approved in Peru by Supreme Decree No. 016-98-AG in 1996” according to Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 40

⁷⁴ Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 40-41.

consistently under continuous treatment and for specific uses⁷⁵ – is agricultural.⁷⁶ United Cacao then argues that the land’s classification as agricultural obviates the need for a land use change authorization to remove forest cover.⁷⁷ United Cacao’s representatives in Peru also claim that the previous landowners had carried out agricultural activities since 1997, and argued that this meant they did not have to comply with laws requiring a land use change authorization.⁷⁸

However, this interpretation of DL 838 was incorrect, as it was not issued by the proper legal authority within the Ministry of Agriculture and Irrigation (hereinafter referred to as MINAGRI), and was subsequently corrected prior to United Cacao’s submission to and listing on AIM.⁷⁹ The interpretation did not take into account the Forest and Wildlife Law 27308 or respect the proper procedure for designing and implementing an environmental management tool for the project.⁸⁰ Official legal reports published in September^{81,82} and October⁸³ 2014 clarify that DL 838:

(1) Did not imply any designation of best land use capacity of the land allocated under DL 838;

(2) Did not have any bearing on the requirement established in the Forest Law⁸⁴ that all landowners request and get approval for land use change to convert land with forest cover to agricultural use.⁸⁵

Citing that the Forest Law and other environmental protections in Peru were enacted to protect the resource rights of all Peruvians, the legal assessment office from MINAGRI issued reports correcting the interpretation that DL 838 suspended the requirement to obtain authorization for land use change, stating that the prior interpretation would be contrary to the general public interest and that United Cacao’s subsidiaries and related companies would have to obtain land use change authorization in order to cut down forests.⁸⁶

Furthermore, satellite imagery shows that the land given to the previous landowners remained mostly primary forest from as early as 1989,⁸⁷ until Cacao del Peru Norte’s began operations, by

⁷⁵ Fernandini, P. W. & Sousa, R. F. (2015). *The Distribution of Power and Responsibilities Affecting Forests, Land Use, and REDD+ Across Levels and Sectors in Peru: A Legal Study*. CIFOR: Bogor, Indonesia.

⁷⁶ Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 25, 28.

⁷⁷ Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 40.

⁷⁸ Resolution No. 276-14-MINAGRI-DGAA-DGAA/TAW-148537-13 as cited in Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 40.

⁷⁹ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, October 13). Informe 1008-14-MINAGRI-DVDIAR-DGAAA-DGAA-112228-14. Lima, Peru.

⁸⁰ Ibid.

⁸¹ Oficina de Asesoría Jurídica, Ministerio de Agricultura y Riego. (2014, September 10). Informe 1066-2014-MINAGRI-OGAJ. Lima, Peru.

⁸² Ibid.

⁸³ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, October 13). Informe 1008-14-MINAGRI-DVDIAR-DGAAA-DGAA-112228-14. Lima, Peru.

⁸⁴ Ley Forestal y de Fauna Silvestre: Ley 27308. [Forest and Wildlife Law: Law 27308]. (2000). El Peruano, Diario Oficial.

⁸⁵ Oficina de Asesoría Jurídica, Ministerio de Agricultura y Riego. (2014, September 10). Informe 1066-2014-MINAGRI-OGAJ. Lima, Peru.

⁸⁶ Ibid.

⁸⁷ Nova, S., Cuba, N. (2014). *Satellite imagery captures deforestation in Tamshiyacu, Peru between 1989 and 2014*, USGS Landsat 7,8 INPE.

mid-May 2013.⁸⁸ The presence of mostly primary forest indicates that there were not significant agricultural activities conducted by previous owners, a direct contradiction of claims made by United Cacao in their Admission Document.⁸⁹ The lack of previous agricultural activities further weakens the company's argument that it did not need to request and receive land use change authorization before proceeding to deforest this land.

The September^{90,91} and October 2014⁹² government reports also confirm that the previous owners' lack of authorization for land use change does not create any precedent that would exempt the subsequent owner, Cacao del Peru Norte, from the requirement under the Forest Law to obtain authorization for land use change and thus, forest cover removal.

Though the matter has been clarified legally for over a year, United Cacao continues to argue that its subsidiary, Cacao del Peru Norte, did not require a land use change authorization to destroy the forest and replace it with a plantation.^{93,94,95,96} The basis of the company's argument lies in a report titled Informe 1376-13-MINAGRI-DGAAA-DGAA/REA-114912-13 (hereinafter, "Report 1376"),⁹⁷ which was not issued by the correct legal authority within MINAGRI.^{98,99,100} This report said the company did not need land use change authorization,¹⁰¹ based on an incorrect interpretation of DL 838,^{102,103,104} and accepted Cacao del Peru Norte's claims that it had simply continued agricultural

⁸⁸ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, December 5). Informe 1206-2014-MINAGRI-DVDIAR-DGAAA-DGAA_REA-114912-13. Lima, Peru.

⁸⁹ Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p.25, 28, 29, 40.

⁹⁰ Oficina de Asesoría Jurídica, Ministerio de Agricultura y Riego. (2014, September 10). Informe 1066-2014-MINAGRI-OGAJ. Lima, Peru.

⁹¹ Oficina de Asesoría Jurídica, Ministerio de Agricultura y Riego. (2014, September 24). Informe 1182-2014-MINAGRI-OGAJ. Lima, Peru

⁹² Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, October 13). Informe 1008-14-MINAGRI-DVDIAR-DGAAA-DGAA-112228-14. Lima, Peru

⁹³ Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 25, 28, 29, 40.

⁹⁴ United Cacao Limited SEZC. (2015, June). *Building Communities Growing Cacao: Annual Report 2014*. p 5.

⁹⁵ Strand Hanson Limited VSA Capital. (2015, October 27). Information Memorandum: United Cacao Limited SEZC. p .25.

⁹⁶ United Cacao Limited SEZC. (2015, June 30). United Cacao Limited SEZC: Final Results for the year ended 31 December 2014. London Stock Exchange: London. p .2.

⁹⁷ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2013, December 6). Informe 1376-13-MINAGRI-DGAAA-DGAA/REA-114912-13. Lima, Peru.

⁹⁸ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, October 13). Informe 1008-14-MINAGRI-DVDIAR-DGAAA-DGAA-112228-14. Lima, Peru.

⁹⁹ Oficina de Asesoría Jurídica, Ministerio de Agricultura y Riego. (2014, September 10). Informe 1066-2014-MINAGRI-OGAJ. Lima, Peru.

¹⁰⁰ Oficina de Asesoría Jurídica, Ministerio de Agricultura y Riego. (2014, September 24). Informe 1182-2014-MINAGRI-OGAJ. Lima, Perú.

¹⁰¹ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2013, December 6). Informe 1376-13-MINAGRI-DGAAA-DGAA/REA-114912-13. Lima, Peru.

¹⁰² Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, October 13). Informe 1008-14-MINAGRI-DVDIAR-DGAAA-DGAA-112228-14. Lima, Peru.

¹⁰³ Oficina de Asesoría Jurídica, Ministerio de Agricultura y Riego. (2014, September 10). Informe 1066-2014-MINAGRI-OGAJ. Lima, Peru.

¹⁰⁴ Oficina de Asesoría Jurídica, Ministerio de Agricultura y Riego. (2014, September 24). Informe 1182-2014-MINAGRI-OGAJ. Lima, Peru.

activities initiated by local farmers.¹⁰⁵ The detailed evidence which contradicts, and corrects Report 1376 (*Informe 1376*), is summarized, below.

The Problems with Report 1376 (*Informe 1376*)

Land Use Change Requirements

In order to regulate the conversion of the Amazon rainforest for agricultural purposes, the Peruvian Forest and Wildlife Law 27308¹⁰⁶ requires the regional forest authority to approve land use change requests for land with forest cover.¹⁰⁷ To determine whether to grant this approval, the regional forest authority must obtain a classification of best land use capacity determined by the national-level Ministry of Agriculture (DGAAA), which evaluates whether the land's best capacity is for agriculture, as standing forest, or otherwise.¹⁰⁸

Informe 1008-14-MINAGRI-DVDIAR-DGAAA-DGAA-112228-14 (hereinafter "Report 1008"), issued by the General Office for Legal Assessment on October 13, 2014 (OGAJ, for its Spanish acronym), confirms that Report 1376, and the precedents cited therein, did not adequately take into account the Forest Law when issuing an opinion about whether Cacao del Peru Norte's land requires an authorization for land use change.¹⁰⁹

Corrections to Report 1376 were finalized and published on Oct. 13, 2014,¹¹⁰ almost two months before United Cacao's admission to AIM. Yet, in the company's Admission Document, published on November 26, 2014, the company continued to refer to the previous, incorrect interpretation contained in Report 1376.¹¹¹

Authority

Report 1376 contradicted¹¹² the original report received by Cacao del Peru Norte, Report 1081,¹¹³ composed by a different DGAAA employee, on Oct. 4, 2013, which stated that the company was in fact required to obtain an authorization for land use change in accordance with the Forest and Wildlife Law.¹¹⁴

In response to Report 1081, which required the company to obtain authorization for land use change from the regional government after completing an environmental management plan,¹¹⁵ Cacao del Peru Norte sent a written request to the DGAAA on November 19, 2013 which appears to have

¹⁰⁵ Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 25, 28, 29, 40.

¹⁰⁶ Ley Forestal y de Fauna Silvestre: Ley 27308. [Forest and Wildlife Law: Law 27308]. (2000). El Peruano, Diario Oficial.

¹⁰⁷ This doesn't mean land with best land use capacity forest – this just means land with trees on it.

¹⁰⁸ Ley Forestal y de Fauna Silvestre: Ley 27308. [Forest and Wildlife Law: Law 27308]. (2000). El Peruano, Diario Oficial.

¹⁰⁹ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, October 13). Informe 1008-14-MINAGRI-DVDIAR-DGAAA-DGAA-112228-14. Lima, Peru.

¹¹⁰ Ibid.

¹¹¹ Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 25, 28, 29, 40.

¹¹² Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2013, December 6). Informe 1376-13-MINAGRI-DGAAA-DGAA/REA-114912-13. Lima, Peru.

¹¹³ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2013, October 4). Informe 1081-13-MINAGRI-DGAAA-DGAA/REA-114912-13. Lima, Peru.

¹¹⁴ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2013, October 4). Informe 1081-13-MINAGRI-DGAAA-DGAA/REA-114912-13. Lima, Peru.

¹¹⁵ Ibid.

originally suggested the incorrect interpretation of DL 838 – that was incorporated later in Report 1376 – and argued the land use change authorization requirement should be waived.¹¹⁶

In response to the company’s letter, Report 1376 cites the opinion of a DGAAA lawyer agreeing with the interpretation of DL 838 as proposed by the company, contained in Report No. 009-2016-DGA/TANDALUZ (hereinafter, “Report 009”) issued on Dec. 2, 2013, four days prior to the issuance of Report 1376.¹¹⁷ Thus, Report 009 and Report 1376 reversed of the original DGAAA opinion contained in Report 1081.

The incorrect interpretation of DL 838 was and continues to be propagated both by Cacao del Peru Norte’s lawyer and by United Cacao’s statements contained in its Admission Document (November 26, 2014),¹¹⁸ Annual Report on 2014,¹¹⁹ Mid-Year Report on 2015,¹²⁰ and Regulatory News Service (RNS) statements,¹²¹ long after this interpretation was officially corrected on October 13, 2014 by Report 1008.

Specifically, in Report 1008, the OGAI corrects Report 1376, stating that the DGAAA may not emit its own legal opinions, as it did in Reports 009 and 1376, and citing the relevant laws that establish the authority of OGAI to issue official legal opinions for MINAGRI.¹²²

At the regional government level, Report Legal no. 076 from August 25, 2014 confirmed the requirement for authorization of land use change, and confirmed that Cacao del Peru Norte broke the Forest Law,¹²³ directly nullifying Report No. 040 from March 31, 2014 which said the company did not need land use change based on MINAGRI’s previous interpretation.¹²⁴

None of these corrections from the national or regional competent authorities were disclosed in the Admission Document, particularly in the risks section, which noted that the interpretation from the government could change,¹²⁵ rather than stating that the interpretation had already been changed and the opinion cited in the section had already been corrected. The continual use of the incorrect interpretation of DL 838 by United Cacao and its representatives, and citing Report 1376 after it had long been corrected, is a serious and continued misrepresentation of both material risks and facts.

PAMA vs. Environmental Impact Assessment

¹¹⁶ Cacao del Peru Norte. (2013, November 19). Sumilla: Adjunto documentos de predios adquiridos para ejecutar proyecto agrícola de siembra de cacao [Summary: Attached documents of properties acquired to run agricultural cacao planting project].

¹¹⁷ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2013, December 2). Informe 009-2013-DGAAA/TAW. Lima, Peru

¹¹⁸ Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 25, 28, 29, 40.

¹¹⁹ United Cacao Limited SEZC. (2015, June). *Building Communities Growing Cacao: Annual Report 2014*. p 5.

¹²⁰ Strand Hanson Limited VSA Capital. (2015, October 27). Information Memorandum: United Cacao Limited SEZC. p .25.

¹²¹ United Cacao Limited SEZC. Regulatory News Service. London Stock Exchange. Retrieved from <http://www.londonstockexchange.com/exchange/prices-and-markets/stocks/exchange-insight/company-news.html?fourWayKey=KYG9271M1078GBGBXASQ1>

¹²² Decreto Supremo No. 031-2008-AG, in effect at the time of publication of the previous reports, and Decreto Supremo No. 008-2014-MINAGRI, in effect at the time of publication of Informe 1008. As cited in 1008.

¹²³ Decreto Supremo No. 014-2001-AG. Artículo 363. (2001, August 4). El Peruano, Diario Oficial.

¹²⁴ Programa Regional de Manejo de Recursos Forestales y de Fauna Silvestre, Gobierno Regional de Loreto. (2014, March 31). Informe 040-2014-GRL-GGR-PRMRFFS-DER/OAJ. Iquitos, Peru.

¹²⁵ Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 40.

Since 2001,¹²⁶ Peru has been in the process of updating its environmental impact assessment rules and regulations,¹²⁷ with substantial support from international donors.¹²⁸ The Supreme Decree issued on environmental impact assessments issued by MINAGRI in November 2012 changed regulations governing forests in Peru.¹²⁹ It said that any negative environmental impacts which had occurred prior to Nov. 15, 2012 could be documented via a PAMA (*Programa de Adecuación y Manejo Ambiental*), for significant activities already underway, or a DAAC (*Declaración Ambiental para Actividades en Curso*) for less significant activities already underway.¹³⁰ All projects involving new deforestation in Peru after Nov. 15, 2012 are required to submit an Environmental Impact Assessment in accordance with the new regulation, prior to initiating deforesting activities.¹³¹

The United Cacao Admission Document cites Report 1376, arguing multiple times that it should apply the rules for the negative environmental impacts – including deforestation – before November 2012 because the land had already been deforested prior to its arrival, and thus claiming that any activities were essentially a continuation of the previous landholders' intervention.¹³² However, satellite imagery^{133,134} and official government inspection reports document that the land had not been deforested prior to November 2012.¹³⁵ United Cacao's own Admission Document states that the company began operations in the area in May 2013.¹³⁶ Therefore, United Cacao's subsidiary project at Cacao del Peru Norte should have conducted an Environmental Impact Assessment to comply with the law.¹³⁷

A public presentation by the Minister of Agriculture to the Peruvian Congress in October 2014, prior to United Cacao's listing, lays out the proper procedure which Cacao del Peru Norte and related

¹²⁶ Starting with Ley del Sistema Nacional de Evaluación de Impacto Ambiental: No. 27446 [Environmental Impact Assessment National System Law: No. 27446]. (2001). El Peruano, Diario Oficial.

¹²⁷ Ley General del Ambiente; No. 28611 [General Environment Law: No. 28611]. 2005. El Peruano, Diario Oficial.

¹²⁸ Peru received at least US\$20 million in loans from the World Bank to implement these policies. World Bank. (2009, February 17). Peru First Programmatic Environmental Development Policy Loan /DDO (P101471). Retrieved from: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/LCR/2015/09/08/090224b0830c4749/1_0/Rendered/PDF/Peru000Peru0Fi0Report000Sequence010.pdf

¹²⁹ Decreto Supremo 019-2012-AG. (2012, November 12). El Peruano, Diario Oficial.

¹³⁰ Decreto Supremo 019-2012-AG, Título III. Artículo 9.4. (2012, November 12). El Peruano, Diario Oficial.

¹³¹ Decreto Supremo 019-2012-AG, Capítulo IV. Artículo 40. (2012, November 12). El Peruano, Diario Oficial.

¹³² Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 25, 28, 29, 40.

¹³³ Satellite imagery cited in Informe 1206 from Dec. 5, 2014 says that the Cacao del Peru Norte plantation area had only experienced .2% (5.15 hectares) of deforestation of its area as of Sept 2012, but in August 2013, 34% (1,054.56 hectares) had been deforested. Over a total area of 3,097.41. Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, December 5). Informe 1206-2014-MINAGRI-DVDIAR-DGAAA-DGAA_REA-114912-13. Lima, Peru.

¹³⁴ Novoa, S., Cuba, N. (2014). *Satellite imagery captures deforestation in Tamshiyacu, Peru between 1989 and 2014*, USGS Landsat 7,8 INPE.

¹³⁵ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, December 5). Informe 1206-2014-MINAGRI-DVDIAR-DGAAA-DGAA_REA-114912-13. Lima, Peru.

¹³⁶ Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 29.

¹³⁷ Benites Ramos, Ministerio de Agricultura y Riego. (2014, October 24). Minister's Presentation "Invitación a Sesión Extraordinaria Comisión de Fiscalización y Contraloría Congreso de la República" [Invitation to Congressional Extraordinary Session of the Commission of Auditing and Comptroller. Slides 8-15. Retrieved from

[http://www2.congreso.gob.pe/sicr/comisiones/2014/com2014fiscon.nsf//pubweb/DBC0900B49B8A3F405257D8500750D4C/\\$FILE/MAGRICULT241014.PDF](http://www2.congreso.gob.pe/sicr/comisiones/2014/com2014fiscon.nsf//pubweb/DBC0900B49B8A3F405257D8500750D4C/$FILE/MAGRICULT241014.PDF)

company Plantaciones de Ucayali should have followed, to obtain authorization for land use change and comply with environmental laws. This presentation details how the companies' actions did not comply with the proper procedure established in Peruvian law. The minister's presentation states that the appropriate environmental management instrument for Cacao del Peru Norte was an Environmental Impact Assessment, not a PAMA. It states more generally that Plantaciones de Ucayali did not have the proper environmental certification before it proceeded with deforestation.¹³⁸

Forest carbon experts have weighed in on the issue in news reports, stating that the area deforested by Cacao del Peru Norte previously contained carbon amounts only found in intact, tropical forests.¹³⁹

A review of United Cacao's statements, both before listing, in its Admission Document, and subsequently, reveals no record or reference to the Minister's presentation, its contents, or any other reports that described that the deforestation was the responsibility of Cacao del Peru Norte and was illegal.

Supreme Court Ruling

United Cacao stated in February 2016 that the land use zoning and environmental approvals for its Cacao del Peru Norte plantation had been confirmed by the Supreme Court of Peru in January 2016.¹⁴⁰ In fact, the case referred to in Supreme Court rulings is ongoing, after being delayed on procedural grounds.¹⁴¹ There are numerous procedural matters currently being decided as part of this case, and according to Peruvian law, the resolution of any procedural matters related to the case does not determine whether a crime was committed by the defendants, which include Cacao del Peru Norte and United Cacao's CEO, Dennis Melka.¹⁴² In order for this decision to take place, the procedural matters must be concluded. All publicly available documents relate to only these procedural decisions, and do not confirm United Cacao's statements that it now has approval for the Cacao del Peru Norte project.¹⁴³

Additionally, in response to information requests, MINAGRI confirmed on February 22, 2016 and again on April 20, 2016 that the environmental approvals for Cacao del Peru Norte are not in place,¹⁴⁴¹⁴⁵ further disproving United Cacao's announcement from February.

¹³⁸ Ibid.

¹³⁹ 122 metric tons per hectare, as quoted by Greg Asner in: Cannon, J. (2015, January 20). Company Chops Down Rainforest to Produce Sustainable Chocolate. *Mongabay*. Retrieved from

<http://news.mongabay.com/2015/01/company-chops-down-rainforest-to-produce-sustainable-chocolate/>

¹⁴⁰ United Cacao Limited SEZC. (2016, February 15). Litigation & Settlement Results in Favour of the Company. [Press release]. London Stock Exchange. London. Retrieved from

<http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/CHOC/12698746.html>

¹⁴¹ Poder Judicial del Peru. Consulta de Expedientes Judiciales-Supremo. Retrieved 2016, February 2 from <http://cej.pj.gob.pe/cej/forms/busquedaform.html>

¹⁴² Corta Suprema de Peru: Sala Penal Permanente. (2015, November 2). Casación No. 487 2015. Loreto, Peru.

¹⁴³ Corta Suprema de Peru: Sala Penal Permanente. (2015, July 6). Queja NCPP No. 145-2015. Loreto, Peru.

Corta Suprema de Peru: Sala Penal Permanente. (2015, July 6). Queja NCPP No. 146-2015. Loreto, Peru.

Corta Suprema de Peru: Sala Penal Permanente. (2015, November 2). Casación No. 487 2015. Loreto, Peru.

¹⁴⁴ Direccion General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2016, February 22). Memorando No. 117-2016-MINAGRI-DVDIAR-DGAAA. Lima, Peru.

¹⁴⁵ Direccion General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2016, April 20). Memorando No. 238-2016-MINAGRI-DVDIAR-DGAAA. Lima, Peru.

The original case accuses Cacao del Peru Norte staff Giovanni Cubas Ramirez, Ruben Antonio Espinoza, and Ernesto Vega Delgado of conspiring to commit crimes against the forests (deforestation), trafficking in illegal timber, and obstruction of justice.¹⁴⁶ Cacao del Peru Norte and Dennis Melka were subsequently added as defendants in the case, according to a MINAM report disclosing the status of ongoing cases from Nov. 19, 2015.¹⁴⁷ United Cacao withheld the fact that its CEO was added as a defendant to the case, and instead only disclosed that its subsidiary was involved.¹⁴⁸

The full court decisions to which United Cacao refers in its Regulatory News Service (RNS) statement from February 2016¹⁴⁹ have not yet been made public, due to the ongoing nature of the case. This omission appears to violate AIM Rule 11, which states that “[a]n AIM company must issue notification without delay of any new developments which are not public knowledge which, if made public, would be likely to lead to a significant movement in the price of its AIM securities.”¹⁵⁰

The Basis for Action by AIM

The repeated omissions and misleading statements published by United Cacao and its CEO, Dennis Melka, must be the subject of an immediate, robust investigation by AIM. Pending confirmation of the facts laid out here, United Cacao should be sanctioned with penalties proportionate to the violations, in this case, removal from trading on AIM. Numerous official Peruvian documents, cited above and referenced in detail in Section 4, prove that the company has consistently misrepresented or omitted key information about its operations in Peru. The legal risks undertaken by the company, its subsidiaries, related companies, and other companies run by Mr. Melka in Peru must be disclosed, particularly in a market designed for high-risk investments, like AIM. In its disregard for the law, this group of companies has caused irreparable damage to Peruvian forests and the rights of the local communities that depend upon them for survival.¹⁵¹ Breaking the law and violating indigenous rights are unacceptable behaviors by companies, and AIM has a duty to act if it learns that a listed company is engaging in these practices.

¹⁴⁶ Cuarto Juzgado Penal de Loreto. (2014, September 30). Resolución No. 7: Auto de Excepción de Improcedencia de Acción [Resolution No. 7: Automatic Exemption of Inadmissible Action]. p. 6.

¹⁴⁷ Procuraduría Pública Especializada en Delitos Ambientales, Ministerio del Ambiente. (2015, November 19). Informe No. 22-2015-MINAM/PP. Lima, Peru.

¹⁴⁸ Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 41.

¹⁴⁹ United Cacao Limited SEZC. (2016, February 15). Litigation & Settlement Results in Favour of the Company. [Press release]. London Stock Exchange. London. Retrieved from <http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/CHOC/12698746.html>

¹⁵⁰ London Stock Exchange. (2016, January 1). AIM Rules for Companies. (Rule 11). p. 6.

¹⁵¹ Asociación Interétnica de Desarrollo de la Selva Peruana. (2016, March 29). Organizaciones Indígenas y ONGs Alertan Amenaza de Deforestación por Palma Aceitera. Retrieved from <http://www.aidesep.org.pe/organizaciones-indigenas-y-ongs-alertan-amenaza-de-deforestacion-por-palma-aceitera/>

FIGURE 1: Cacao del Peru Norte and Related Company Ongoing Legal and Administrative Proceedings

	General Directorate of Agricultural Environmental Affairs - Ministry of Agriculture and Irrigation (Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego - MINAGRI)	Public Prosecutor Specialized in Environmental Crimes, Ministry of Environment (Procuraduría Pública Especializada en Delitos Ambientales, Ministerio del Ambiente - MINAM)
Direct Subsidiaries	Cacao del Perú Norte S.A.C. (and listed as a defendant in a separate case under its previous name, Plantaciones de Loreto Sur S.A.C.)	
	Ordered to cease operations December 9, 2014, based on evidence of 1,944 hectares of illegal deforestation. ¹⁵²	(1) Accused of deforestation of 1,900 hectares of forest in Tamshiyacu area, which constitutes a crime against the forest and forest formations, for illegal trafficking in wood products, and obstruction of justice. Dennis Melka, CEO of United Cacao Ltd., is a defendant. ¹⁵³ (2) 46,000 hectares requested in Permanent Production Forest, (bordering a national protected area, Alpahuayo-Mishana Reserva Nacional, and indigenous community lands); and 20,000 hectares requested over primary forest in the Maniti River basin. Dennis Melka, CEO of United Cacao Ltd., is a defendant. ¹⁵⁴
	Plantaciones de Loreto S.A.C. (listed as defendant in case under previous name, now called Cooperativa del Cacao Peruano S.A.C.)	
		46,000 hectares requested in Permanent Production Forest, (bordering a national protected area, Alpahuayo-Mishana Reserva Nacional, and indigenous community lands); and 20,000 hectares requested over primary forest in the Maniti River basin. ¹⁵⁵
Related Companies funded via United Cacao Ltd. ¹⁵⁶	Plantaciones de Ucayali S.A.C	
	Ordered to cease operations December 9, 2014, based on evidence of 3,911 hectares of illegal deforestation. ¹⁵⁷	Deforestation or intervention in an area of approximately 4759 hectares. Investigation is being reinstated after some legal delays brought by the company, which were eventually overturned. Dennis Melka, CEO of United Cacao Ltd., is a defendant. ¹⁵⁸
	Plantaciones de Pucallpa S.A.C.	

¹⁵² Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, December 9). Resolución de Dirección General N° 462-2014-MINAGRI-DVDIAR-DGAAA. Lima, Peru.

¹⁵³ Procuraduria Publica Especializada en Delitos Ambientales, Ministerio del Ambiente. (2015, November 19). Informe No. 22-2015-MINAM/PP. Lima, Peru.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ United Cacao Limited SEZC. (2015, September 29). Half Yearly Report for the Period Ended 30 June 2015 [Press release]. London Stock Exchange. London. Retrieved from <http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/CHOC/12518324.html>

¹⁵⁷ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, December 9). Resolución de Dirección General N° 463-2014-MINAGRI-DVDIAR-DGAAA. Lima, Peru.

¹⁵⁸ Procuraduria Publica Especializada en Delitos Ambientales, Ministerio del Ambiente. (2015, November 19). Informe No. 22-2015-MINAM/PP. Lima, Peru.

	Ordered to cease operations September 2, 2015, based on evidence of 5,263 hectares of illegal deforestation. ¹⁵⁹	At least 500 hectares of deforestation (crime against the forests) in the area of the Native Community Santa Clara de Uchunya without permission or environmental certification. May 29, 2015. Dennis Melka, CEO of United Cacao Ltd., is a defendant. ¹⁶⁰
	Plantaciones del Peru Este S.A.C., Plantaciones de Loreto Este S.A.C., Plantaciones de San Francisco S.A.C., Plantaciones de Marín S.A.C.	
		46,000 hectares requested in Permanent Production Forest, (bordering a national protected area, Alpahuayo-Mishana Reserva Nacional, and indigenous community lands); and 20,000 hectares requested over primary forest in the Maniti River basin. Dennis Melka, CEO of United Cacao Ltd., is a defendant. ¹⁶¹
Other companies linked to the group in Peru	Plantaciones de Lima S.A.C., Plantaciones de Iquitos S.A.C., Plantaciones de Nauta S.A.C. ((listed as a defendant under previous name, now called East Pacific Capital Peru S.A.C.), Plantaciones de Tamshiyacu S.A.C. (listed as a defendant under previous name, now called Plantaciones de Inahuaya S.A.C.),	
		46,000 hectares requested in Permanent Production Forest, (bordering a national protected area, Alpahuayo-Mishana Reserva Nacional, and indigenous community lands); and 20,000 hectares requested over primary forest in the Maniti River basin. Dennis Melka, CEO of United Cacao Ltd., is a defendant. ¹⁶²

¹⁵⁹ Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2015, September 2). Resolución de Dirección General N° 270-2015-MINAGRI-DVDIAR-DGAAA. Lima, Peru.

¹⁶⁰ Procuraduría Pública Especializada en Delitos Ambientales, Ministerio del Ambiente. (2015, November 19). Informe No. 22-2015-MINAM/PP. Lima, Peru.

¹⁶¹ Ibid.

¹⁶² Ibid.

Section 2: Failure to consider risks: Peruvian Commitments to Forest Conservation and Climate Change Mitigation

International commitments to combat climate change

In the last several years, Peru has shown leadership in joining important international agreements to protect forests in the global context of serious concern over climate change and its impacts, both in Peru and across the world. In 2010, the Peruvian government announced its commitment to reduce to a net rate of zero deforestation by the year 2020, a 45% reduction below year 2000 levels, as part of its contribution to within the United Nations Framework Convention on Climate Change (UNFCCC).¹⁶³ Subsequent statements by Peruvian political officials, as well as the policies and rules adopted in recent years have trended toward the same focus of reducing deforestation, as described below.

These commitments are being converted into national strategies with the support of Cooperation Agreements for forest conservation in the framework of Reducing Emissions from Deforestation and Degradation (REDD) as well as the Forest Investment Program (FIP) and the Forest Carbon Partnership Facility (FCPF) administered by the World Bank (WB) and the Inter-American Development Bank (IDB).¹⁶⁴ In September 2014, Peru launched a partnership with Germany and Norway intended to make the forest and agriculture sectors carbon neutral by 2021, with payments to Peru from Norway dependent on verified carbon reductions.¹⁶⁵ Finally, Peru's role in hosting the 20th Conference of the parties (COP) of the UNFCCC in December 2014 was a clear and significant demonstration of the political will to meet the international commitments which Peru has taken on to protect forests and effectively reduce deforestation.

In addition to creating huge carbon emissions, the replacement of natural forest with monoculture plantations effects a radical and irreparable loss of biodiversity,¹⁶⁶ at a time when Peru is promoting itself as a country proud and respectful of its high biodiversity. Among the most heralded international and national commitments made by Peru are the National Strategy on Biological Diversity (*Estrategia Nacional sobre Diversidad Biológica*)¹⁶⁷ and Peru's participation in the United Nations Convention on Biological Diversity (CBD).¹⁶⁸

Large-scale, agro industrial monoculture projects which involve or propose deforestation of thousands of hectares of primary forests stand in stark contrast to the international commitments that the Peruvian government has made against deforestation, climate change, and biodiversity loss. The massive deforestation committed by United Cacao's subsidiaries and related companies

¹⁶³ Ministerio del Ambiente. (2011, July 25). Carta No. 055-2011-DVMDERN/MINAM a la Secretaría Ejecutiva de la Convención Marco de las Naciones Unidas [Letter No. 055-2011-DVMDERN/MINAM to the Executive Secretary of the Framework Convention of the United Nations.

¹⁶⁴ Baiker, J., Lehnebach, B., Dourojeanni, L., Escalante, A., Leyva, F. *Hacia una Estrategia Nacional sobre Bosques y Cambio Climático—Documento Preliminar*. Agencia ANDINA, Asociación para la Conservación de la Cuenca Amazónica – ACCA. Retrieved from http://www.bosques.gob.pe/archivo/enbcc_documento.pdf

¹⁶⁵ Government of Norway. (2014, September 23). Peru, Germany, Norway Launch Climate and Forest Partnership. [Press Release]. Retrieved from <https://www.regjeringen.no/no/aktuelt/Peru-Germany-Norway-launch-climate-and-forest-partnership/id2001143/>

¹⁶⁶ Savilaakso, S. (2014). Does Production of Oil Palm, Soybean, or Jatropha Change Biodiversity and Ecosystem Functions in Tropical Forests? *Journal of Environmental Evidence* 3(4).

¹⁶⁷ Consejo Nacional del Ambiente, Ministerio del Ambiente. (2001). *Estrategia Nacional sobre Diversidad Biológica* (D.S. 102-2001-PCM) [National Strategy on Biological Diversity (D.S. 102-2001-PCM)]. Lima, Perú.

¹⁶⁸ United Nations. (1992). *Convention on Biological Diversity*. Retrieved from <http://www.cbd.int/doc/legal/cbd-es.pdf>

contributed large amounts of carbon dioxide emissions from land use change when they removed from over 11,110 hectares of Amazon land enough timber as to fill 218 Olympic swimming pools.¹⁶⁹ The forest and land use sector is responsible for 71 million tons of CO₂ each year in Peru.¹⁷⁰ Relying on the Peruvian government to fail to implement any of these agreements is not a viable or ethical business plan, nor is failing to disclose the enforcement or future policy risks that these agreements pose for United Cacao's unlawful and unsustainable activities in Peru. Ultimately, the failure to identify these risks also breaks AIM rules.

Trade Agreements

At the same time, the Free Trade Agreement between Peru and the United States, the Trade Agreement with the European Union, and the Trans Pacific Partnership agreement (TPP) – currently awaiting approval by Peru and 10 other APEC countries – are some of the trade fora in which Peru has expressed and reiterated the importance of primary forests and committed to conserving them. The U.S.-Peru trade pact includes a binding Forest Governance Annex, which aims to make transparent and accountable forest governance a condition of trade with the United States.

The volume of timber removed from United Cacao's subsidiary and related company plantations would have filled 218 Olympic pools.¹⁷¹ As stated above, since the companies were never authorized to remove the forest, no timber from these areas could have been legally permitted to be transported or traded, which means that any mobilization or trade in the timber would have required falsified paperwork, a common mechanism for laundering timber of illegal origin in Peru.¹⁷² Satellite images do not show signs of burning or otherwise destroying the timber¹⁷³ and at least one illegal sawmill was documented to be on company property for months in early 2015.¹⁷⁴ The fact that the satellite imagery shows dense forest cover before the company arrived, and recent flyovers show a clear-cut area with no timber piled up, also undermine the company's assertion that "the Group has not...removed any timber from its project sites."¹⁷⁵ Implication in illegal timber trafficking represents a tremendous risk incurred by Peruvian companies controlled and financed by United Cacao in breaking Peruvian law, and potentially also in violation of international trade pacts, and should have been disclosed to AIM.

Domestic political context

National level legal frameworks in Peru have also trended toward conservation and enforcement against illegal logging and deforestation in recent years. For example, the country has elevated environmental concerns to the ministerial level, with the creation of a Ministry of Environment

¹⁶⁹Environmental Investigation Agency. (2015). Volume of timber removed from United Cacao's plantations in Tamshiyacu and Nueva Requena based on the number of hectares deforested. Annexes, Figure 03. p. 389.

¹⁷⁰ Government of Norway. (2014, September 23). Peru, Germany, Norway Launch Climate and Forest Partnership. [Press Release]. Retrieved from <https://www.regjeringen.no/no/aktuelt/Peru-Germany-Norway-launch-climate-and-forest-partnership/id2001143/>

¹⁷¹ Environmental Investigation Agency. (2015). Volume of timber removed from United Cacao's plantations in Tamshiyacu and Nueva Requena based on the number of hectares deforested. Annexes, Figure 03. p. 389.

¹⁷² Environmental Investigation Agency. (2012). *The Laundering Machine: How Fraud and Corruption in Peru's Concession System are Destroying the Future of its Forests*. Washington, D.C.

¹⁷³ Novoa, S., Cuba, N. (2014). *Satellite imagery captures deforestation in Tamshiyacu, Peru between 1989 and 2014*, USGS Landsat 7,8 INPE.

¹⁷⁴ Environmental Investigation Agency. (2015, March). *Illegal saw mill on United Cacao's property cuts timber near Tamshiyacu, Peru [photograph]*. Washington, D.C.: Annex 26.

¹⁷⁵ Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 28

(MINAM) in 2008.¹⁷⁶ A restructuring of the forest sector, with the creation of the National Forest Service (SERFOR)¹⁷⁷ alongside a new independent forest oversight body (OSINFOR)¹⁷⁸ further developed Peru's legal frameworks for combatting illegal logging and deforestation.

Two national level operations (*Operación Amazonas 2014* and *2015*) have connected fraud in forest concessions to exports from Peruvian ports by leveraging the capacities of OSINFOR, the Tax and Customs Authority (SUNAT), Interpol, and the World Customs Organization.¹⁷⁹ *Operación Amazonas 2015* resulted in the largest seizure of illegal timber in Peru's history in November 2015.¹⁸⁰ These operations are designed to crack down on the same laundering mechanisms that would have been needed to sell the timber illegally removed from the Cacao del Peru Norte plantation land, which would require using false paperwork to export Peruvian timber to destinations around the world.¹⁸¹ In parallel, the country has undertaken a years-long revision of its Forest and Wildlife Law and corresponding regulations, which were finally published in September 2015.¹⁸²

United Cacao has repeatedly misrepresented and omitted disclosure¹⁸³ of its involvement in carrying out and financing deforestation in the Peruvian Amazon.¹⁸⁴ Given that Peru is in the midst of various forest reform processes at the national level, the enforcement of which could threaten or completely shut down the companies' operations, these misrepresentations and omissions must be considered of a material nature, and should be considered a violation of AIM rules for disclosure.¹⁸⁵

¹⁷⁶ Decreto Legislativo No. 1013-2008: Decreto Legislativo que apruebe la Ley de Creación, Organización y Funciones del Ministerio del Ambiente [Legislative Decree No. 1013-2008: Legislative Decree approving the Law of Creation, Organization, and Functions of the Ministry of Environment]. (2008, May 14). El Peruano, Diario Oficial.

¹⁷⁷ Ley N° 29763: Ley Forestal y de Fauna Silvestre [Ley No. 29763: Forest and Wildlife Law]. (2011, July 22). El Peruano, Diario Oficial.

¹⁷⁸ Decreto Legislativo 1085-2008: Ley que crea el Organismo de Supervisión de los Recursos Forestales y de Fauna Silvestre [Legislative Decree 1085-2008: Law creating the Monitoring Institution of Forest Resources and Wildlife]. (2010, May). El Peruano, Diario Oficial.

¹⁷⁹ Navarro Gómez, R. (2014). *Contribución del OSINFOR al Comercio Legal de Madera 'Operación Amazonas 2014'* [OSINFOR's Contribution to the Legal Timber Trade "Operation Amazonas 2014"]. Organismo de Supervisión de los Recursos Forestales y de Fauna Silvestre.

¹⁸⁰ Luna Amancio, N. (2015). *Operación Amazonas: La Historia de la Mayor Decomiso de Madera de Origen Ilegal*. *Ojo Público*. Retrieved from <http://ojo-publico.com/132/operacion-amazonas-la-mayor-incautacion-de-madera-de-origen-ilegal>

¹⁸¹ Environmental Investigation Agency. (2012). *The Laundering Machine: How Fraud and Corruption in Peru's Concession System are Destroying the Future of its Forests*. Washington, D.C.

¹⁸² Ley N° 29763: Ley Forestal y de Fauna Silvestre [Ley No. 29763: Forest and Wildlife Law]. (2011, July 22). El Peruano, Diario Oficial.

¹⁸³ See SECTION 4: RNS Announcements which omitted reference to legal proceedings and deforestation.

¹⁸⁴ Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 28, 42.

¹⁸⁵ London Stock Exchange. (2016, January 1). AIM Rules for Companies. (Rules 3, 10, 11, 17). p. 4, 6, 8.

Section 3: AIM Policy Matters

Evidence summarized in this document indicates that the activities of United Cacao have broken AIM rules, and in addition, exposes behaviors that are currently not regulated by AIM which have been exploited. Detailed analysis of the rules which evidence indicates United Cacao has broken, warranting investigation by AIM, can be found above, including:

- Rule 2 “Pre-Admission Document”;
- Rule 3 “Admission Document”;
- Rule 10 “Principles of Disclosure”;
- Rule 11 “General Disclosure of Price Sensitive Information”; and
- Rule 17 “Disclosure of miscellaneous information,” specifically, “any material change between its actual trading performance or financial condition and any profit forecast, estimate or projection included in the admission document or otherwise made public on its behalf.”¹⁸⁶

AIM has several potential courses of action for investigating and sanctioning the company. AIM must cooperate with law enforcement in Peru to provide information about United Cacao, its financing, and beneficial ownership.¹⁸⁷ Given the group’s ongoing non-compliance with cease orders from Peruvian authorities, as discussed in Section 1, above, effecting a cancellation¹⁸⁸ of trading by United Cacao is a necessary measure to support law enforcement actions in Peru and avoid further negative impacts on the Exchange’s reputation and integrity.¹⁸⁹

AIM Rule 42 lays out the potential for the exchange to take disciplinary action against listed companies, including the cancellation of trading on the market.¹⁹⁰ Given the severity of the crimes of which United Cacao is accused, this case should be referred to the AIM Disciplinary Committee, to enable the subsequent publication of investigative results¹⁹¹ given the severity of United Cacao’s continued false statements and financing of illegal activities, including massive deforestation through subsidiary and related companies.

Should AIM fail to undertake and publish results of an investigation of United Cacao, as well as its subsidiaries and related companies in Peru, it will be sending a message that the Exchange favors opacity rather than transparency as a way to maintain orderly markets, with undisclosed risks and violations out of public sight. An investigation and public response by AIM to the actions of United Cacao, its subsidiaries, and related companies, would serve as a positive sign for responsible investors who wish to avoid financing illegal acts, and for responsible companies that wish to maintain a positive reputation and continue involvement in AIM in the future.

Adding subsidiaries after launch date

In addition to violations of AIM rules, United Cacao’s structure and modes of operating appear to exploit critical loopholes in AIM rules.

¹⁸⁶ London Stock Exchange. (2016, January 1). AIM Rules for Companies. p 8.

¹⁸⁷ London Stock Exchange. (2016, January 1). AIM Rules for Companies. (Rule 23). p. 10.

¹⁸⁸ London Stock Exchange. (2016, January 1). AIM Rules for Companies. (Rule 40, 41). p. 13.

¹⁸⁹ London Stock Exchange. (2016, January 1). AIM Rules for Companies. (Rule 40). p. 13.

¹⁹⁰ London Stock Exchange. (2016, January 1). AIM Rules for Companies. (Rule 42). p.13.

¹⁹¹ London Stock Exchange. (2014, May 13). Aim Disciplinary Procedures and Appeals Handbook—May 2014. (C15.1 and C15.2). p 8.

United Cacao's Admission Document notes related company operations¹⁹² and the potential for further land acquisitions in Peru.¹⁹³ Indeed, the company's subsidiaries and related companies have continued to acquire and trade in rural land since its Admission to AIM.¹⁹⁴ However, AIM's lack of ongoing disclosure requirements for acquisitions (whether of land-owning companies or of land itself) means that financial and legal information about new properties will not have to be disclosed. This loophole allows land associated with deforestation,¹⁹⁵ or irregular¹⁹⁶ and potentially unfair acquisition practices, to increase the assets on balance sheets of companies traded on AIM, with little to no scrutiny.

This loophole creates an incentive for unscrupulous AIM companies to delay official acquisition of risky or illegal ventures or properties with questionable land tenure situations until after their admission to the exchange. In the case of United Cacao, funds raised on AIM appear to have contributed to a large group of plantation companies in Peru.¹⁹⁷ A similar pattern occurred in Singapore-based Asian Plantations Ltd., which was also founded by United Cacao's CEO Dennis Melka, and went on to obtain several land-holding subsidiaries in Sarawak, Malaysia, after its launch date.¹⁹⁸ AIM must prevent companies from exploiting this loophole by extending disclosures required at Admission to subsequent acquisitions.

Legitimacy for other markets

Although AIM openly welcomes companies with perceived higher-risk than non-alternative exchanges, the finer points of AIM rules matter, because a listing in London creates legitimacy for companies operating in other markets.

The benefits of a listing in London are clearly described by Dennis Melka in presentations to investors from its earliest days of trading. The Admission Document itself cites "reputation" as a key motivation for listing the company on AIM.¹⁹⁹ In an interview with online trading investment news, IG UK, upon launch of United Cacao, Mr. Melka said: "The reason why in London is: we had a very positive experience here. We built up a similar plantation company in the palm oil industry [Asian

¹⁹² Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 60-61.

¹⁹³ Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 33.

¹⁹⁴ Cacao de la Amazonia SAC, Cacao del Peru Norte SAC, Plantaciones de Inahuaya SAC, Plantaciones de Lima SAC, Plantaciones de Loreto SAC, Plantaciones de Pucallpa SAC, Plantaciones de Ucayali SAC according to property information from Superintendencia Nacional de los Registros Públicos. Publicidad Registral en Línea. Retrieved 2016, March 31 from <https://enlinea.sunarp.gob.pe/sunarpweb/pages/acceso/ingreso>

¹⁹⁵ Subsidiaries and related companies associated with illegal deforestation are: Cacao del Peru Norte SAC, Plantaciones de Ucayali SAC, and Plantaciones de Pucallpa SAC according to Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, December 9). Resolución de Dirección General N° 462-2014-MINAGRI-DVDIAR-DGAAA. Lima, Peru; Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2014, December 9). Resolución de Dirección General N° 463-2014-MINAGRI-DVDIAR-DGAAA. Lima, Peru; and, Dirección General de Asuntos Ambientales Agrarios, Ministerio de Agricultura y Riego. (2015, September 2). Resolución de Dirección General N° 270-2015-MINAGRI-DVDIAR-DGAAA. Lima, Peru.

¹⁹⁶ Plantaciones de Ucayali as referenced in Procuraduría Pública Especializada en Delitos Ambientales, Ministerio del Ambiente. (2015, November 19). Informe No. 22-2015-MINAM/PP. Lima, Peru.

¹⁹⁷ United Cacao Limited SEZC. (2015, June). *Building Communities Growing Cacao: Annual Report 2014*. p. 40.

¹⁹⁸ Environmental Investigation Agency. (2015). *Deforestation by Definition: The Peruvian government fails to define forests as forests, while palm oil expansion and the Malaysian influence threaten the Amazon*. Washington, DC. p. 36-38.

¹⁹⁹ Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 34.

Plantations Ltd.]. The ticker was PALM. We listed that company in 2009 at 75p, we exited last month - a full exit for all shareholders - at 220p per share.”²⁰⁰ Further presentations to investors highlight that the company is “based in the UK”²⁰¹ noting its Cayman Islands registration, even while it had clarified in the Admission Document that “[l]aw and practice in the Cayman Islands relating to companies is not the same as English law applicable to public limited companies, or that which is applicable to the Subsidiaries.”²⁰²

These statements serve to project an image of a company following UK laws. In fact, United Cacao benefits from funds raised in the UK, but avoids regulations in place for UK companies,²⁰³ which could protect investors, the environment, or even local community rights in Peru.

The Significance of United Cacao

With GBP 21.57 million in market capitalization, United Cacao is the biggest of four AIM-listed companies operating in Peru.²⁰⁴ The next largest company has a market capitalization of GBP 5.23 million.²⁰⁵ United Cacao is the only Cayman Islands-registered company listed on AIM which is operating in Latin America, and it is also the only company within the Farming and Fishing subsector operating in Latin America. However, a broader look across AIM’s currently-listed Farming and Fishing subsector companies reveals that all companies operating in the developing world are registered in jurisdictions considered tax havens.^{206,207}

In essence, this structure allows United Cacao and its group of subsidiaries and related companies to raise funds in one of the richest countries in the world, while benefitting from tax incentives in one of the most marginalized areas on the planet, the Peruvian Amazon. The company’s registration in the Cayman Islands, meanwhile, serves little purpose but to deter legal action against the company itself, given that (1) Cayman Islands law requires minimal disclosure of records like corporate accounts²⁰⁸ and (2) Cayman Islands is listed as a territory with low or no taxes – also known as tax havens – by Peruvian Tax and Customs Authority, SUNAT.²⁰⁹

This structure also sets a precedent: local news from the Cayman Islands following company’s launch on AIM reported it was the first to both be listed on the London Stock Exchange and receive exceptional discretionary tax and legal benefits from the government in the Caymans as a “Special

²⁰⁰ IG UK. (2014, December 2). United Cacao IPOs to Expand Peruvian Plantations. Minute: 3:44 retrieved from <https://www.youtube.com/watch?v=yzWOFGYT64U>

²⁰¹ Beaufort Securities. (2015, February 5). United Cacao Investor Presentation - Beaufort Investor Evening, 5th February 2015. Minute 0:35 retrieved from <https://vimeo.com/119554764>

²⁰² Strand Hanson Limited, VSA Capital Limited and Kallpa Securities Sociedad Agente de Bolsa S.A. (2014, November 26). Admission Document: United Cacao Limited SEZC. p. 44.

²⁰³ Companies Act 2006. (2006). The Stationery Office Limited. UK.

²⁰⁴ London Stock Exchange. (2016, March). *AIM Country of Primary Business March 2016* [Data file]. Retrieved from <http://www.londonstockexchange.com/statistics/historic/aim-country-of-operation-and-incorporation/aim-companies-country-of-operation.htm>

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ Tax Justice Network. (2015, November 2). *Financial Secrecy Index—2015 Results*. Retrieved from <http://www.financialsecrecyindex.com/introduction/fsi-2015-results>

²⁰⁸ Tax Justice Network. (2015). *Financial Secrecy Index: Narrative Report on Cayman Islands*. p. 11. Retrieved from <http://www.financialsecrecyindex.com/PDF/CaymanIslands.pdf>

²⁰⁹ Decreto Supremo Nº 045-2001-EF: Aprueban modificaciones al Reglamento de la Ley del Impuesto a la Renta, Anexo: Lista de Países o Territorio Considerados de Baja o Nula Imposición [Legislative Decree Nº 045-2001-EF: Approving modifications to the Regulations of the Law Imposing Income Tax, Annex: List of Countries or Territories Considered as Low or No Taxation]. (2001, March 20). El Peruano, Diario Oficial.

Economic Zone Company.”²¹⁰ Peru is struggling to control illegal logging and combat deforestation, but authorities in the country are facing a triple threat of international finance, offshore tax benefits, and local tax holidays,²¹¹ all being exploited by United Cacao, as the group illegally deforests massive tracts of Amazon rainforest.

With over half (4 of 7) AIM-listed agricultural operators in the developing world having listing dates since 2013, and all since 2002,²¹² it could be concluded that AIM is increasing in popularity as a funding strategy for developing world agricultural operations whose parent companies are located in tax havens. This trend is a concern given that developing countries often rely on land and natural resource-based development and subsistence strategies, and investment for these purposes should include taxes on profits at the local and national levels, in addition to providing jobs. Voluntary corporate programs intended to benefit local communities cannot and must not replace a regulated and fair distribution of public services provided by just tax laws on profits in operating countries. In a race to the bottom with the offshore world, countries like Peru have now put in place temporary or permanent tax holidays with the aim of attracting investment, which serve as another source of economic disenfranchisement for regions with poverty. If this trend is allowed to continue, it will further support the offshoring of and tax-free profit on natural resource assets, at the cost of local communities.

More research is needed to determine whether multiple companies in the Farming and Fishing subsector have delisted after using AIM as a short term financing strategy for tax-haven registered agricultural operations in the developing world. At least one company, researched as part of the United Cacao corporate group, Asian Plantations Ltd. registered in Singapore, used this strategy to fund palm oil plantations related to massive deforestation in Malaysia, but subsequently de-listed from AIM after selling all shares to larger palm oil conglomerate, Felda Global.²¹³ In order to facilitate this type of research, AIM should publish a comprehensive list of companies both currently and previously listed on the exchange, including their listing and de-listing dates.

Further research is also needed to determine whether the trend in agricultural sector operators registered in tax havens persists across exchanges other than AIM.

Conclusion

Market regulators and policymakers across Europe and other international market exchanges, should be concerned about companies that exploit fundraising opportunities to finance illegal activities in countries of operation. If AIM and other markets cannot establish that listed companies follow basic laws and respect local rights, their reputation, and even the exchanges’ authorization to operate under their current enabling laws, will continue to be called into question. “High risk” should not be a euphemism for violations of the law or local community rights in companies’ countries of operations, because considering these violations as “risks” means that the success of

²¹⁰ Klein, M. (2015, January 7). Cayman Compass. First Special Economic Zone Company Listed on LSE. *Cayman Compass*. Retrieved from <http://www.compasscayman.com/caycompass/2015/01/07/First-special-economic-zone-company-listed-on-LSE/>

²¹¹ Ley 27037: Ley de Promoción de la Inversión en la Amazonía [Law 27037: Law Promoting Investment in the Amazon]. (1998, December 30). El Peruano, Diario Oficial.

²¹² London Stock Exchange. (2016, March). *AIM Country of Primary Business March 2016* [Data file]. Retrieved from <http://www.londonstockexchange.com/statistics/historic/aim-country-of-operation-and-incorporation/aim-companies-country-of-operation.htm>

²¹³ Environmental Investigation Agency. (2015). *Deforestation by Definition: The Peruvian government fails to define forests as forests, while palm oil expansion and the Malaysian influence threaten the Amazon*. Washington, DC. p. 44.

global finance hinges upon on the failure of the rule of law and the lack of respect for community rights.

Companies responsible for illegal activities in countries where they operate should be barred from trading on AIM. AIM must also undertake and publish the results of its thorough investigation into the United Cacao's breach of AIM rules, including information about beneficial ownership of United Cacao, related companies in Peru, as well as any links to other plantation, agro-commodity trading, or retail companies.

Finally, AIM must close the loopholes in its current rules. Subsequent acquisitions by companies trading on AIM should be subject to the same disclosure requirements for risks, publication of audited financial accounts, and due diligence as those subsidiaries which the company owns when it lists. Preventing admitted companies from phasing in questionable subsidiaries and land assets by increasing disclosure requirements would be a common sense move by any market that wishes to maintain credibility in the global marketplace.

Section 4: Evidence Table

Please see attached document.

Section 5: Annexes

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