

**IN THE HIGH COURT OF JUSTICE**

**No. 1201 of 2005**

**CHANCERY DIVISION**

**COMPANIES COURT**

**IN THE MATTER OF SMM HOLDINGS LIMITED**

**AND IN THE MATTER OF THZ HOLDINGS LIMITED**

**AND IN THE MATTER OF THE COMPANIES ACT 1985**

**AMG GLOBAL NOMINEES (PRIVATE) LIMITED**

**Claimant/Part 20 Defendant**

**-and-**

**(1) SMM HOLDINGS LIMITED**

**(2) THZ HOLDINGS LIMITED**

**Defendants**

**-and-**

**AFRICA RESOURCES LIMITED**

**Part 20 Claimant**

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**WITNESS STATEMENT OF MUTUMWA DZIVA MAWERE**

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I, MUTUMWA DZIVA MAWERE, of 62 Cambridge Road, Bryanston, South Africa  
WILL SAY:

1. I am a director of the Defendants and director and sole shareholder of the Part 20 Claimant. I am authorised on behalf of the Part 20 Claimant, Africa Resources Limited (“ARL”) to make this witness statement.
2. I make this witness statement in response to AMG’s application for specific disclosure by ARL of (i) its management accounts for the period 1996 -2004, or (ii) any other documents, which demonstrate how any payments due from ARL to T&N Plc under the Sale & Purchase Agreement dated 7<sup>th</sup> March 1996 (“the SPA”) were treated by ARL.

3. I confirm that, except as appears herein, ARL does not have in its control either management accounts or any other documents demonstrating how any payments due from ARL to T&N Plc under the SPA were treated by ARL. The reason for this is, as I have consistently maintained, because no payment of actual monies was due from ARL to T&N Plc under the SPA and so no documents exist or can exist which record how such (un-due) payments were treated.
4. I was very closely involved in the negotiation, structuring and closing of the SPA. Both by reason of its terms, and as a matter of fact, ARL (i) did not receive any payment from Shabanie Mashaba Mines Private Limited (“SMMZ”) during the period 1996-2004 and (ii) did not itself, in any way that could or was required to appear on any balance sheet or other ARL document, make any direct payment to T&N Plc during the same period.
5. The structure of the SPA deal was that ARL would procure that SMMZ gives instruction to the MMCZ as required by the payment mechanism set out section 3(1)(b) in the SPA.
6. Consent by SMMZ to give such an instruction required a special resolution to be passed by its shareholder at a general meeting as well as the approval by its board. Thus the only documents in ARL’s possession which in any way demonstrate how any payments “due” from ARL to T&N Plc under the SPA were treated by ARL are relevant resolutions and minutes as set out in this statement, which themselves reflect only the basis on which and how SMMZ’s consent was procured, by ARL and no more.
7. The first document is a fax dated 11 March 1995 (*sic.* 1996) from Mr. E. Manikai, ARL’s Zimbabwean SPA transaction advisor, attached marked MDM1 in which he confirmed his preparedness to deal with all the local completion matters including settling resolutions. The resolutions referred to below were part of the steps set out in Clause 10 of the SPA and help explain the acquisition deal structure and the obligations of ARL.
8. To fulfil the execution of the SPA deal structure, on 15 March 2006, an extraordinary general meeting (“EGM”) of SMMZ was held at which the SPA was tabled and considered in conjunction with the Disclosure Letter, the Memorandum of Deposit and Charge, the Tax Deed, and the Technical Services Agreement. A copy of the minutes of the EGM is attached marked MDM2. I was elected as Chairman of the meeting where I reported that working capital of the order of US\$25 million to US\$30 million was expected to be

injected into the company shortly. This information was necessary for SMMH to apply its mind to the implications of the implementation of the SPA on SMMZ particularly in so far as the consequences of rendering the support contemplated to meet the payment obligations to T & N Plc using the company's export proceeds. At the material time, SMMZ had no need for any injection of funds other than in the context of making it possible for the execution of the SPA transaction. Pursuant to the implementation of the SPA, ARL first took control of SMMH and this allowed it to appoint representatives to the board of SMMZ. The proposed working capital injection was procured after the transfer of control of SMMH to ARL. On the basis that an injection of funds into SMMZ was secured, SMMH proceeded to approve the scheme contemplated in the SPA through passing a special resolution in terms of Section 58 of the Companies Act, Chapter 190. Accordingly, Messrs. Manikai, John Mkushi and I were authorised by SMMH to sign and execute all documentation to give effect to the resolution.

9. On 23 May 1996, the special resolution passed at the EGM of SMMZ held on 15 March 1996, a copy of which is attached hereto marked MDM3 was filed in accordance with the provisions of the Companies Act in Zimbabwe.
10. An SMMZ board meeting had also previously been held on 15 March 1996 at which T & N Plc's board nominees' resignations were accepted with immediate effect. A new board including Mr. Manikai and myself was then appointed to handle the transitional matters as required in the SPA. I attach marked MDM4 a copy of the minutes of the meeting.
11. To procure SMMZ's consent to the SPA payment mechanism, an injection of funds for working capital into SMMZ was deemed necessary to allow the company to make its export proceeds available to MMCZ for the purpose of making payments to T & N Plc pursuant to the SPA mechanism. At all material times MMCZ was a statutory agent of SMMZ and could not make direct payments to T & N Plc in US dollars without the consent of both its principal, SMMZ, and of the Reserve Bank of Zimbabwe ("RBZ"). Under the agency agreement and MMCZ's statutory requirements, all foreign export proceeds for asbestos sold were paid into the account of MMCZ who then had to credit the account of SMMZ. The effect of the SPA payment mechanism was to divert funds due to SMMZ to T & N Plc and clearly, without a compensating injection of funds into SMMZ, such an arrangement would not have been approved by the members of the board of SMMZ –

Messrs Manikai, Mkushi and myself - who as directors could have been liable in our personal capacities for the funds so diverted in the event of liquidation of SMMZ as provided for in the Companies Act of Zimbabwe.

12. Accordingly, to give effect to the financial assistance resolution, an EGM was held on 18<sup>th</sup> March 1996 by SMMZ whose minutes are attached hereto marked MDM5. The meeting was properly constituted and with respect to the injection of funds secured after the change of control of SMMZ from T & N Plc to ARL, I quote below the wording of the resolution:

*“Further to the Extraordinary General Meeting held on the 15 March 1996 and in terms of Article 53 of the Company’s Articles of Association it was resolved that the Directors be and they are hereby authorised to borrow on behalf of the Company, up to the equivalent of US\$60 million.*

*It was further resolved that the Directors be and they are hereby authorised to give, on behalf of the Company, any guarantee, pledge, lien or other form of security that may be required by the providers of the funds.”*

13. On 25 April 1996, the board of SMMZ passed resolution No. 3917 attached hereto marked MDM6 authorizing the company to conclude, as part of the \$60m borrowing thus authorised, arrangements for a US\$40 million pre and post-shipment facility.
14. On 26 April 1996, having followed the steps set in the SPA as part of the completion exercise, Mr. Manikai resigned from the transitional SMMZ board and all the former independent board members of the Company (with the exception of direct representatives of T & N) were reappointed. A resolution to that effect is attached hereto marked MDM7.
15. On 16 May 1996, SMMZ was granted another facility of US\$20 million by Trust Merchant Bank as confirmed in a letter attached hereto marked MDM8. Together with the aforementioned US\$40 million, this facility, which was also procured by ARL, brought the total amount to US\$60 million. The injection of funds thus procured by ARL was expected to be matched by foreign exchange inflows from export proceeds generated by MMCZ.

16. The reconstituted board of SMMZ met on 4<sup>th</sup> June 1996 chaired by me. Resolution No. 3921 a copy of which is attached marked MDM9 deals with the completion resolutions and the ratification of the steps taken by the transitional board in relation to the financial assistance matters.
17. Having secured the board approval of SMMZ regarding the SPA, on 24<sup>th</sup> June 1996, the Executive Committee of SMMZ met and under item number 2, para.3(f) of the minutes attached marked MDM10, it was reported that the borrowing facilities remained as per the Board Minutes of 25<sup>th</sup> April 1996 confirming that these facilities had already been disbursed.
18. I attach marked MDM11 an extract from SMMZ's financial statements dated 31 December 1996. These show, in the Long Term Loans an amount of Z\$596.75 million (US\$58.3 million) outstanding as at 31 December 1996 and in the section of the Notes to Financial Statements it is described (note 15) as a revolving off-shore finance facilities denominated in US Dollars with repayment terms of which have been extended to 1998. These loans were procured by ARL after the transfer of ownership. Accordingly, ARL complied with its obligations to T & N Plc to allow the financial assistance plan to be executed without any prejudice to SMMH.
19. Pursuant to Minute No. 3923 passed by the SMMZ board on 21 October 1997 a copy of which is attached marked MDM12, my resignation from the board was accepted and, therefore, my formal and direct association with SMMZ ended on that day.
20. It is evident from the above that by procuring an injection of funds into SMMZ without any encumbrance on SMMH or T & N Plc, ARL made it possible for SMMZ to instruct MMCZ to make payments to T & N Plc. The failure of SMMZ to complete the payments to T & N Plc was a result of exogenous factors outside the control of ARL including the failure by MMCZ to efficiently market the asbestos and collect from debtors on a timely basis.
21. ARL's obligations did not go beyond enabling SMMZ to provide financial assistance for the acquisition by using the company's balance sheet in compliance with the laws of Zimbabwe. It is clear from the structure and execution of the deal that without the intervention of ARL in facilitating the injection of funds into SMMZ, the payment

mechanism would not have worked. Accordingly, ARL had no obligations to make any payment to SMMZ but rather the cost of the acquisition was to be met by SMMZ from future earnings as would have been the case if a third party had provided the acquisition financing.

22. Leveraged transactions rely on the cash flows of the target company to amortise the acquisition costs. The acquiring firm has the obligation to procure financing on the back of the financial performance of the target company. The SPA arrangement was no different from any such transactions. In the premises, ARL was never meant to assume the acquisition debt on its balance sheet otherwise such an arrangement would have been provided for in the SPA. Equally, ARL was not expected to make any out-of-pocket payments in respect of the acquisition.
23. For all the above reasons, ARL simply does not have any documents of the description requested – if indeed any exist - in its possession or control. Furthermore, ARL is incorporated in the British Virgin Islands, a jurisdiction that does not require the filing of any accounts and as a result none have, so far as I am aware, ever been prepared. Based on the above however, even if such accounts had been prepared, it is clear that there is no transaction between ARL and T & N Plc that would have required recording in any book of accounts. The deal structure was such that at all material times, ARL's obligation was to procure the payment to T & N Plc by facilitating the injection of working capital into SMMZ without compromising the financial viability of the company or prejudicing the interests of any third party creditor. ARL complied with this requirement but was not responsible for MMCZ's performance in terms of generating the monthly foreign currency inflows of US\$5 million as expected.
24. The relationship between ARL and SMMZ is evident from the resolutions referred to above. ARL as the ultimate shareholder of SMMZ facilitated an injection of US\$60 million into the company to make possible the financial assistance without violating the legal requirements in both Zimbabwe and the United Kingdom. With the exit of T & N Plc as the ultimate beneficial shareholder of SMMZ, ARL's involvement was necessary in order to raise the required finance and in so doing facilitated the implementation of the SPA. The banks that provided the funds were aware that the sole purpose of the cash injection was to facilitate the acquisition by ARL on an off-balance sheet basis. Given the

off-balance sheet nature of the transaction, there was nothing to record in the books of accounts of ARL as SMMZ was used as the instrument for financing the transaction. All the shareholder and regulatory approvals required to effect the transaction were obtained and no creditor to debtor relationship existed between ARL and SMMZ. If such a relationship existed, then the board of SMMZ would have passed a resolution to that effect setting out the terms and conditions for the alleged acquisition loan. The absence of such resolution itself confirms ARL's position as set out herein.

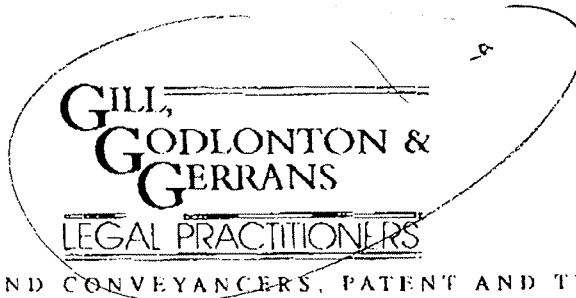
25. With respect to the financial statements of ARL, I attach herewith marked MDM13 audited financial statements for the period 1997-2001 of the company's only operating branch that was incorporated in 1996 in South Africa.

I believe that the facts stated in this witness statement are true.

Signed:

  
Mutumwa Dziva Mawere

Dated this 26 October 2007



MDM 1

ATTORNEYS, NOTARIES AND CONVEYANCERS, PATENT AND TRADE MARK AGENTS

IN REPLY PLEASE QUOTE:

OUR REF: MR MANIKAI/dm

YOUR REF:

BEVERLEY COURT, (7th Floor), One BAKER AVENUE/FOURTH STREET,  
HARARE, ZIMBABWE  
TELEPHONES: (263) (4) 70702 0/8, 708094/9, 707224/8,  
707686/9, 705528/29/30/34/36  
CABLES: "LFTIS", P.O. BOX 8 or 235  
FACSIMILE: (263) (4) 707380

**FACSIMILE TRANSMISSION FORM**

DATE: 11 MARCH 1986

TO: MR MUTUMWA MAWERE  
AFRICA RESOURCES FOUNDATION

ADDRESSEE'S  
FAX NO : 27 11 498 2770

COPY TO: NEIL HODGES  
ALIEN & OVERY  
0171 330 9999

FROM: MR MANIKAI, GILL, GODLONTON & GERRANS

TOTAL NUMBER OF PAGES TRANSMITTED INCLUDING

THIS PREFACE : TWO

IF YOU DO NOT RECEIVE ALL PAGES OR IF THEY ARE ILLEGIBLE

PLEASE INFORM US IMMEDIATELY

Dear Sir

RE: COMPLETION : NORTHERN PROJECT

I have just received a telefax message from Neil Hodges with a completion agenda of the exercise due to be carried out on 15 March 1986. The agenda is a restatement of the steps set out in Clause 10 of the Sale and Purchase Agreement.

Neil would like to know if he is required to prepare any resolutions or other paper work relating to completion. I have already indicated my preparedness to deal with all local matters including settling resolutions.

We have canvassed before the possibility of relying on AAM support for completion as the company has often acted as Secretaries to the Group in Zimbabwe.

2/...

PARTNERS

James Henry Pennell Back, B.A., LL.B., Charles Allan McAllan, LL.B.(Hons.), LL.M., Peter Carnegie Lloyd, B.L.(Hons.), LL.B., LL.M.  
Susan Mary Brighton, B.L.(Hons.), LL.B., LL.M., James Patrick Thompson, B.L.(Hons.), LL.B., Margaret Louise Coyne, B.L.(Hons.), LL.B., Mordenai Patsie Mahlogu, B.L.(Hons.), LL.B., Mary Louise Welsh, B.L.(Hons.)  
Craig Sutherland, B.A., LL.B., Donald James Piel Middlemiss, B.L.(Hons.), LL.B., Edwin Isaac Manley, B.L.(Hons.), LL.B., Kuy Ncube, B.L.(Hons.), LL.B.



G.H. GODLONK  
G.G. FERANS

11 March 1996

Mr Mutunwa Mawere

I would like to discuss and finalise these matters with you soon.

Yours sincerely

EDWIN  
(w/

*[Handwritten signature]*  
~~DRAFT~~

SHABANIE and MASHABA MINES (PVT) LTD (" the company"  
Company No. 358/190

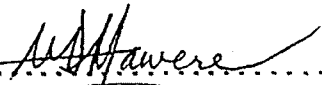
Minutes of the Extra Ordinary General Meeting of the  
Company held at 12.55 am/pm on the 15<sup>th</sup> day  
of March 1996 at  
7th Floor Beverley Court, 100 Baker Avenue,  
Harare.

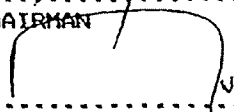
Present: Mr M D Mawere                               elected Chairman  
          Mr J F Mkushi                                Director  
          Mr E I Manikai                             Director/secretary

1. The Chairman advised the meeting that due notice had been given to members for the meeting to consider and if seen fit pass a resolution in terms of Section 58 of the Companies Act, Chapter 190.
2. The Chairman produced to the meeting for consideration a copy of the sale and purchase agreement between T&N International, T&N plc and African Resources Limited dated 7th march 1996 ("the Agreement").
3. The Chairman also produced to the meeting other ancillary documentation to the agreement including:
  - 3.1 The Disclosure letter;
  - 3.2 The Memorandum of Deposit and Charge;
  - 3.3 The Tax Deed
  - 3.4 The Technical Services Agreement.
4. The Chairman reported that working capital of the order of US \$25 million to US\$30 million was expected to be injected into the company shortly to underpin operations.
5. The Chairman produced a draft of the special resolution in terms of section 58 aforesaid.
6. The Chairman proposed that in the light of the contents of para 4, hereof the company pass the special resolution on the basis that the trading position of the company would remain solid and viable.
7. IT WAS RESOLVED THAT, the company pass the special resolution in the form proposed.

27 . . . . .

8. IT WAS RESOLVED FURTHER THAT Messrs M D Mawere, J F Mkushi and E I Manikai sign and execute all documentation to give effect to the resolution.
9. The Secretary was then instructed to enter the minutes of the meeting into the company minutes file.
10. There being no further business, the meeting was then terminated.

  
.....  
CHAIRMAN

  
.....  
DIRECTOR SECRETARY

MM3

*[Handwritten signature]*  
w/

ZIMBABWE

Form No. C.R. 11

Section 113 of Act  
Section 23 of Regulations

COMPANIES ACT (Chapter 190)

No. of Company 358/190

SPECIAL RESOLUTION

Name of Company SHABANIE and MASHABA MINES (PVT) LTD

Notice of Meeting given to members on the 15th day of  
March 1996.

Passed on the 15th day of March 1996...

(State below the contents of the resolution.)

That the company hereby authorises the rendering of financial assistance as contemplated by Section 58 of the Companies Act Chapter 190 as amended, in respect of the sale and purchase of shares as will morefully appear from Clause 3 of the Agreement of Sale signed between T&N International Limited, T&N plc and Africa Resources Limited dated 7th March 1996 a copy which has been made available to the Company. In particular, the company agrees to make available US\$60 million for the acquisition in monthly tranches of US\$5 million until payment in full of the purchase price of US\$60 million.

*[Handwritten signature]*  
.....w/  
(Signed) DIRECTOR/SECRETARY.

This ...23rd..... day of .....May..... 19.96...

Presented for filing by ..D.S. Nel.....

...c/o A.A.Mines.(Pvt).Ltd.....

..P.O.. Box.1100,.. Bulawayo.....

Notes:- (a) If special resolution passed in terms of section 110 (3) of section 111 (1) of this should be stated on this form.

(b) This form should also be used for the purposes of section 215 (1) of the Act.

23 MAY 1996

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MDM4

*[Handwritten signature]*

draft: 15MAR96

SHABANIE AND MASHABA MINES (PRIVATE) LIMITED

Minutes of a meeting of the directors of the  
company held at Mercury House  
15th March, 1996 at 12.45 pm.

Present: A RACKHAM (in part) (in the chair)  
BJN OLIPHANT (in part)  
MD MAWERE (in part)  
JP MKUSHI (in part)  
EI MANIKAI (in part)

1. A RACKHAM was appointed chairman of the meeting. The chairman reported that notice of the meeting had been given to all the directors in accordance with the company's articles of association and that the meeting had been duly convened.

Resignations and appointments

2. It was resolved that Mutumwa Dziva Mawere, ~~John Finier~~ ~~Mkushi~~ and Edwin Isaac Manikai be appointed directors of the company (and being present they took their seats at the meeting) and that Mr Mawere take the chair of the meeting.

*[Handwritten signature]*

2.1 The resignation of Mr JP Mkushi was produced to the meeting and accepted with immediate effect.  
2.2 Mr JP Mkushi was appointed a director of the company and being present took his seat at the meeting.

J D Carter AA Botsh

3. There were produced the resignations of D G Carruthers, L H Cook A Rackham H P Mkushi, ~~J P Mkushi~~, T Mswaka, B J N Oliphant, A C Thompson, J M Pattison and E P Waldburge as directors of the company. It was resolved that such resignations be accepted with immediate effect.

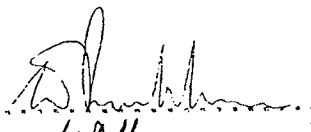
~~3. It was resolved that J P Mkushi be re-appointed to the board of directors.~~

4. There was produced to the meeting the resignation of African Associated Mines (Private) Limited as secretary of the company. It was resolved that such resignation be accepted and that Mr Edwin Isaac Manikai be appointed secretary of the company.

5. It was resolved that the registered office of the company remains the same.

6. There was produced the resignation of KPMG as the auditors of the company and it was resolved that:

(a) KPMG be appointed auditors of the company on terms and at a remuneration to be agreed:

  
Chairman

MDMS

SHABANIE AND MASHABA MINES (PRIVATE) LIMITED

MINUTES OF AN EXTRAORDINARY GENERAL MEETING OF MEMBERS HELD AT  
TURNALL FIBRE CEMENT, HARARE  
ON 18TH MARCH 1996 AT 11 A.M.

Present

- |                |   |   |
|----------------|---|---|
| Mr M.D. Mawere | - | Chairman<br>Representing SMM<br>Holdings Limited holder<br>of 54 999 999 shares |
| Mr J.P. Mkushi | - | Representing Turner &<br>Newall Welfare Trust<br>Limited holder of 1<br>share   |

In Attendance

- |                 |   |                      |
|-----------------|---|----------------------|
| Mr E.I. Manikai | - | (Director/Secretary) |
|-----------------|---|----------------------|

It was confirmed that the Meeting was properly constituted in terms of Article 62 of the Articles of Association of the Company.

BORROWINGS

Further to the Extraordinary General Meeting held on the 15th March, 1996 and in terms of Article 53 of the Company's Articles of Association IT WAS RESOLVED that the Directors be and they are hereby authorised to borrow on behalf of the Company, up to the equivalent of US\$60 million.

IT WAS FURTHER RESOLVED that the Directors be and they are hereby authorised to give, on behalf of the Company, any guarantee, pledge, lien or other form of security that may be required by the providers of the funds.

HAULAGE TRUCKS

IT WAS RESOLVED that the Directors be and they are hereby authorised to purchase 100 haulage trucks and trailers at an approximate cost of US\$3 million C.I.F. Durban.

MINUTES OF A MEETING OF THE BOARD OF DIRECTORS HELD AT TURNALL  
FIBRE CEMENT (PRIVATE) LIMITED, HARARE  
ON 25TH APRIL, 1996 AT 11 A.M.

Present

Mr M.D. Mawere (Chairman)  
Mr J.P. Mkushi  
Mr E.I. Manikai

No. 3917 BORROWINGS

IT WAS RESOLVED that, as part of the US\$60 million authorised by the shareholders on 18th March, 1996, the Company conclude arrangements for the following Offshore Pre and Post-Shipment Finance Facilities:-

- (1) US\$30 million - Heritage Investment Bank Limited
- (2) US\$10 million - Universal Merchant Bank Zimbabwe Limited.



MINUTES OF A MEETING OF THE BOARD OF DIRECTORS HELD AT TURNALL  
FIBRE CEMENT (PRIVATE) LIMITED, HARARE  
ON 26TH APRIL, 1996 AT 11 A.M.

Present

Mr M.D. Mawere (Chairman)  
Mr J.P. Mkushi  
Mr E.I. Manikai (in part)  
Mr A.W. Rackham (in part)

No. 3918 DIRECTORATE

IT WAS RESOLVED that Mr A.W. Rackham, Mr A.A. Botsh, Mr L.H. Cook, Mr G.H. Hampshire, Mr H.P. Mkushi, Mr T.E. Mswaka, Mr B.J.N. Oliphant, Mr J.M. Pattison and Mr A.C. Thompson be appointed Directors of the Company.

The resignation of Mr E.I. Manikai was produced to the meeting and accepted with immediate effect.

No. 3919 SECRETARY

There was produced to the meeting the resignation of Mr E.I. Manikai. IT WAS RESOLVED that such resignation be accepted and that African Associated Mines (Private) Limited be appointed Secretaries of the Company.

WMS

*Bank*



749409 - Direct  
Mr Nyenk

**MERCHANT BANK LIMITED**

Registered Accepting House

749407 - Direct

**FAX COVER SHEET**

Sent To : MR J MKUSHI

Company : SHABANIE AND MASHABA MINES (PRIVATE) LIMITED

Fax No : 14 - ~~757031~~ 754632

From : C P GOROMONZI

Phone : 749401/6

No. of pages including cover sheet: 45

**COMMENTS**

RE: DRAFT FACILITY LETTER

WE FAX HEREWITH DRAFT FACILITY LETTER FOR YOUR COMMENTS. COULD WE PLEASE FINALISE AND SIGN BEFORE MR MAWERE'S DEPARTURE.

REGARDS

*C P Goromonzi*

C P GOROMONZI  
EXECUTIVE DIRECTOR



Ref: SHABANIE/MASHABA/CPG/RM/cm2

16 May 1996

The Directors  
Shabanie and Mashaba Mines (Private) Limited  
5 Glasgow Road  
Southerton  
P O Box 3985  
HARARE

ATTENTION: MR J P MKUSHI

Dear Sirs,

**CREDIT FACILITIES - LETTER OF CREDIT NO. TRUST016.**

We refer to our recent discussions and have pleasure in placing the following facility at your disposal:-

1. **AMOUNT**

US 20 000 000 (twenty million United States Dollars) in the facilities of US\$10 million each.

2. **TYPE OF FACILITY**

Documentary letters of credit, cash advance, guarantee and offshore finance facility.

3. **PURPOSE**

To finance your working capital requirements.

*E. Capex*

**SHABANIE AND MASHABA MINES (PRIVATE) LIMITED**

**4. DRAWDOWN PROCEDURES**

**4.1 Documentary letters of credit/guarantees**

You may instruct us to open irrevocable documentary letters of credit in favour of your overseas suppliers. Such credit and guarantees will be subject to a commission of 0.15% for three months and will be governed by the Contract for Documentary Credits to be signed by you. In this respect we enclose two copies of the contract for signing and returning to us.

**4.2 Offshore Finance**

You may instruct us to raise offshore loans on your behalf.

**5. OTHER TERMS AND CONDITIONS**

**5.1 Limit**

It is understood that the amount of bills outstanding drawn and accepted under this facility and the amounts outstanding to the debit of your off-shore finance account shall together not exceed \$20 000 000 (twenty million United States dollars) at any one time.

**5.2 Off Shore Finance Cost**

Facility I : LIBOR plus 1.75% on the first US\$10 million.

Facility II : LIBOR plus 1.50% on remaining facility of US\$10 million.

**6. CHANGE OF CONTROL**

It is agreed that during the period that this facility is available to you, we will be notified of any change in senior management or effective ownership or control of the company, whereupon this facility shall become immediately subject to review.

**7. SECURITY AND SPECIAL CONDITIONS**

**7.1 Security**

On a pari-passu basis with other banks, or any other security that may be necessary to lessen the bank's capital adequately constraints.

**SHABANIE AND MASHABE MINES (PRIVATE) LIMITED****7.2 Special Conditions**

- (a) The company undertakes to channel (most, if not all) export proceeds through Trust Merchant Bank Limited.
- (b) The Bank guarantees timeous remittances of the monthly payments of US\$5 000 000 (five million United States Dollars) to T & N PLC (UK).

**8. NEGATIVE PLEDGE**

You undertake that without prior written consent, which consent shall not be unreasonably withheld, your company shall neither give any guarantee, create any pledge, lien, charge or hypothecation over any of your assets nor arrange any borrowing facilities in addition to those already available to your company.

**9. ANNUAL ACCOUNTS**

We will require to be furnished with audited financial statements of your company each year.

**10. MANAGEMENT ACCOUNTS**

Detailed half yearly management accounts comprising balance sheet and income statement are to be submitted to the bank by the 25th day of the month following the half year to which they refer.

**11. DEFAULT**

In the event of any default by you in the terms and conditions of this facility letter we shall be entitled, without notice to demand payment forthwith of sums required to cover your liabilities to us hereunder whether or not such sums are immediately due and payable, and in addition to decline to afford you any further facilities hereunder.

**12. EXPIRY DATE - 31st MAY 1997**

This facility represents a line of credit and not a legal commitment to lend and unless previously withdrawn by us or extended for a further period it will expire on 31st May 1997 which shall be the last date on which all amounts under this facility must have been repaid. Should you require an extension beyond the date of expiry your application for renewal should reach us by 31 March 1997.

Kindly confirm your agreement with the terms and conditions as set out herein by having the enclosed copy signed by authorised official(s) and returned to us together with:

- i) Resolution of your Board along the lines of the attached extract.

**SHABANIE AND MASHABA MINES (PRIVATE) LIMITED**

- ii) A letter signed in accordance with the above resolution authorising us to accept certain signatures together with specimen signatures of the officials concerned.
- iii) Your Memorandum and Articles of Association and Certificate of Incorporation for our file.

We are pleased to place this facility at your disposal and trust that it will operate to our mutual advantage.

Yours faithfully,  
for **TRUST MERCHANT BANK LIMITED**

**T W Nyemba**  
**MANAGING DIRECTOR**

**C P Goromonzi**  
**EXECUTIVE DIRECTOR**

We, **Shabanie and Mashaba Mines (Private) Limited** in terms of a Resolution of the directors dated..... hereby confirm our agreement with and acceptance of the terms and conditions contained in this facility and undertake to carry out all the obligations set out herein.

For and on behalf of **Shabanie and Mashaba Mines (Private) Limited**

.....  
Authorised Signatory

.....  
Authorised Signatory



AGENDA FOR THE MEETING OF THE BOARD OF DIRECTORS  
TO BE HELD AT 2.15 PM ON  
THURSDAY 1ST AUGUST, 1996  
AT TURNALL FIBRE CEMENT (PVT) LTD.,  
HARARE

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1. MINUTES
2. MATTERS ARISING
3. COMPANY RESULTS
  - 3.1 JUNE 1996
  - 3.2 CASH FLOW FORECAST
4. DIVISIONAL RESULTS
  - 4.1 PROFIT/CASH FLOW
  - 4.2 BALANCE SHEET
  - 4.3 RATIO ANALYSIS
  - 4.4 TRADE DEBTORS
5. DIVISIONAL STATISTICS
6. DIVISIONAL REPORTS
  - 6.1 AFRICAN ASSOCIATED MINES
  - 6.2 TURNALL
  - 6.3 T.P.I.
7. CAPITAL EXPENDITURE
  - 7.1 JUNE 1996
  - 7.2 ESTIMATES APPROVED
  - 7.3 PROJECTS AND ESTIMATES FOR APPROVAL - nil
8. AUDIT COMMITTEE
9. OTHER

SHABANIE AND MASHABA MINES (PRIVATE) LIMITED

MINUTES OF A MEETING OF THE DIRECTORS HELD IN THE BOARD  
ROOM, 5 GLASGOW ROAD, HARARE ON 4th JUNE 1996  
AT 2.15 P.M.

Present

Mr M.D. Mawere  
Mr A.W. Rackham  
Mr A.A. Botsh  
Mr L.H. Cook  
Mr G.G. Gomwe  
Mr G.H. Hampshire  
Mr J.P. Mkushi  
Mr T.E. Mswaka  
Mr B.J.N. Oliphant  
Mr J.M. Pattison  
Mr A.C. Thompson

Apologies : Mr H.P. Mkushi

No. 3920      DIRECTORATE

The Chairman welcomed Mr Gomwe to the meeting and IT WAS RESOLVED that he be and is hereby elected a Director of the Company.

No. 3921      MINUTES

The Minutes of the Board Meeting held on 15th March, 1996 and the Extraordinary General Meetings of the Company held on 15th March, 1996 and 18th March, 1996 were tabled.

The Minutes of the Board Meetings held on 13th February, 1996, 25th April, 1996 and 26th April, 1996 as circulated to members of the Board, were taken as read and IT WAS RESOLVED that the same be signed.

Matters Arising

It was advised that payment of the Final 1995 dividend had been effected.

No. 3922      RESULTS

The Company Results, together with the Divisional Results, Statistics and Reports for the four months ended 30th April, 1996 were tabled, discussed and confirmed.

The poor performance of the Mining Division when compared to the original plan and the previous year was noted with concern and the impact and importance of Block 58 at Shabanie Mine was discussed at length.

The ongoing legal action between the MMCZ and Mineral & Intertrade was discussed and it was agreed that whatever action is needed be taken to secure payment of the outstanding sum of approximately Z\$50 million.

It was agreed that a monthly cash flow statement be included in future Board Papers.



CAPITAL EXPENDITURE

The April 1996 analysis of Capital Expenditure and details of Capital Expenditure Estimates approved since the last Board Meeting were tabled and noted.

A detailed analysis of the Mining Division's proposed computer project of \$9 million was presented to the meeting and the project was approved subject to any savings that could be achieved.

EXECUTIVE COMMITTEEIT WAS RESOLVED -

1. THAT, in terms of Article 107 of the Company's Articles of Association, an Executive Committee of the Board be and is hereby appointed consisting, until otherwise determined, of Mr A.W. Rackham (Chairman), Mr J.P. Mkushi (Deputy Chairman), Mr J.M. Pattison, Mr G.H. Hampshire and Mr B.J.N. Oliphant.
2. THAT the Board hereby delegates to the Executive Committee, which shall report to the Board all its decisions, <sup>if the Exco was granted,</sup> ~~other than those of a routine or minor nature,~~ the power to
  - (a) authorise level B expenditures;
  - (b) authorise disposal of capital assets at level B;
  - (c) consider and approve the terms of agreements, indemnities, borrowing facilities, investments and any other obligations involving a commitment, by or in favour of the Company, at level B;
  - (d) approve loans exceeding those within the powers delegated to prescribed officials but not exceeding \$500 000 to any one borrower;
  - (e) approve donations not exceeding an aggregate of \$500 000 in any one year;
  - (f) approve the accounts of subsidiary companies;
  - (g) arrange representation of the Company at general meetings of subsidiary companies;
  - (h) in connection with personnel (excluding those whose conditions of service are agreed by the Chairman of the Board)
    - (i) approve salary and wage policies and conditions of service;
    - (ii) approve appointments, salaries and increases for all divisional Directors;
    - (iii) approve the terms of any consultancy arrangement between the Company and a retired employee over \$100,000 <sup>per annum</sup>.

- (iv) approve ex gratia payments over \$20 000;
  - (v) in respect of retirement benefit schemes for employees, including life assurance schemes, approve changes which are neither fundamental nor likely to cause a substantial increase in cost to the Company and appoint officers/trustees to the schemes.
  - (i) consider and approve the institution of legal proceedings other than those of a routine nature;
3. THAT the Board hereby entrusts to the Executive Committee the following investigatory duties for the preparation of recommendations to be made to the Board -
- (a) the consideration and formulation of Group objectives and major policies;
  - (b) the review of Group budgets and setting of targets;
  - (c) the monitoring of performance; and methods of improvements;
  - (d) the review of level A expenditures;
  - (e) the disposal of capital assets at level A;
  - (f) the review of agreements, indemnities, borrowing facilities, investments and other obligations involving a commitment, by or in favour of the Company, at level A;
  - (g) the consideration of loans beyond the powers delegated under paragraph 2 (d) above.
  - (h) in respect of retirement benefit schemes for employees, including life assurance schemes, the consideration of changes beyond the powers delegated under paragraph 2 (h) (v) above.
4. THAT the Executive Committee shall itself decide upon the frequency of its meetings but shall meet at least once in every month unless prevented by circumstances.
5. THAT the quorum for a meeting of the Executive Committee shall be three, one of whom must be the Chairman or Deputy Chairman.

## LEVELS OF EXPENDITURE

<u>Level</u>	<u>Approving Authority</u>	<u>Capital Expenditure Projects and Non-Routine Agreements and Commitments</u>
A	SMM Board	\$5 000 000 and over
B	SMM Executive Committee	\$2 000 000 to \$5 000 000
C	Divisional Boards	\$500 000 to \$2 000 000
D	Divisional M.D's	Up to \$500 000

Contracts of sale of the Company's products, routine expenditure on raw materials, authorised stores, transport, contract labour and routine maintenance of plant and buildings are within level D approving authority irrespective of amount.

### No. 3925     PROUDFOOT

It was agreed that a presentation be made to the Board at 10.30 a.m. on Thursday 20th June, 1996 in the Turnall Fibre Cement Boardroom, Harare.

### No. 3926     DATE OF NEXT MEETING

It was agreed that the next Board Meeting be held at 2.15 p.m. on Thursday 1st August, 1996 at Turnall Fibre Cement, Harare.