



REPORT FOR THE QUARTER TO 31 MARCH 2014

LEGAL PROCEEDINGS IN RESPECT OF PL69/2003 THE KIHABE – NXUU Zn/Pb/Ag PROJECT, BOTSWANA

On 28 April 2014 the High Court of Botswana handed down its ruling in regard to the decision made by the Minister of the Ministry of Minerals, Energy and Water Resources (MMEWR) not to renew Prospecting Licence PL69/2003, previously held by Mount Burgess (Botswana) (Proprietary) Limited (the Applicant).

The High Court judge ruled that the Applicant's application for the renewal of PL69/2003 be struck out with costs.

The ruling was based on the fact that the decision maker, being the Minister, MMEWR was not joined in the proceedings. Only the Attorney General was cited as the Respondent.

Legal advice conveyed to the Applicant confirmed that Sections 3(1) and 3(2) impose a legal duty on the Applicant to cite the Attorney General in this matter, as actions by or against the Government shall be instituted by or against the Attorney General. Botswana High Court case authority supports such process.

In *Tim's Lock and Key (Pty) Ltd v. the Attorney General* 2003 BLR 283 (HC), it was determined that section 4 of the State Proceedings Act defined a distinction between actions against the government and actions against a public officer. In respect of a complaint against a public officer it was contended that the service ought to be against the public officer. However a Minister was not a public officer and could not correctly be categorised as a servant or employee of the State. **A Minister was included in the word "Government" and therefore represented by the Attorney General in any litigation**".

In Section 30 of his ruling, the Judge even highlights the fact under Order 16 Rule 9 (1) **"No cause shall be defeated by reason of the misjoinder or non-joinder of parties** and the judge may in every cause deal with the matter in controversy so far as regards the rights and interests before him"

In Section 32 of his ruling the Judge further states "Although Order 16 Rule 9(1) provides some shelter to the Applicant, the Court has discretion to reach a just decision, having regard to the circumstances of each particular case. In casu, the Applicant wants the Minister to issue in its favour a prospecting licence but has not joined the Minister in these proceedings. In my ruling, it was necessary for the Applicant to have joined the relevant licencing authority and not just the Attorney General."

The Applicant intends to appeal against this ruling.

Any further material information arising as a result of consultation with its legal advisors will be released to the market accordingly.

FUNDING

During the quarter the Company received \$159,530. This was made up of \$103,530 by way of an R & D claim, \$20,000 from a share placement and \$36,000 loan funding from Directors.

Since the end of the quarter, the Company has received a further \$406,250 loan funding from NR and JE Forrester which has been utilised to eliminate the Company's bank overdraft and provide for \$10,000 worth of deposits to cover guarantees. The only facility that the Company now has is a credit card facility of \$2,000. A further \$10,000 has also been received by way of a share placement.