



REPORT FOR THE QUARTER TO 30 JUNE 2014

(showing amendments to the PROCEEDINGS section of the report submitted to ASX on 21 July 2014)

LEGAL PROCEEDINGS IN RESPECT OF PROSPECTING LICENCE PL69/2003, THE KIHABE – NXUU PROJECT, BOTSWANA

On 26 May 2014 the Company advised the ASX that its wholly owned subsidiary Mount Burgess (Botswana) (Proprietary) Limited (MBB) had lodged a Notice of Appeal in the Court of Appeal of Botswana. The Notice of Appeal seeks the reversal of the ruling by the High Court of Botswana on 28 April 2014, to strike out MBB's application for extension of PL69/2003. PL69/2003 contains the Kihabe – Nxuu Zn/Pb/Ag JORC compliant resources of 25 million tonnes @ 3% Zn/Pb with 3.3 million ozs Ag, developed by the Company and MBB at a cost of \$14.5 million.

MBB has been advised by its legal Counsel that its case will likely be heard in the Appeal Court in January 2015.

PROTOCOL FOR FINANCE AND INVESTMENT IN SOUTHERN AFRICAN DEVELOPMENT COMMUNITIES

The Company is reviewing the potential of MBB to pursue investor-state arbitration proceedings against Botswana under the Southern African Development Community (SADC) Protocol on Finance and Investment (Protocol), if required. Botswana is a member of the SADC and is a signatory to the Protocol.

Annex 1 of the Protocol provides certain protections to investments in the SADC. MBB claims that Botswana has breached its obligations to accord several of these protections to MBB.

The Protocol's dispute resolution procedure is contained within Article 28 (1) to (3) and provides:

1. *Disputes between an investor and a State Party concerning an obligation of the State Party, in relation to the admitted investment of the investor, which have not been amicably settled after exhausting local remedies, shall after a period of six (6) months from written notification of claim, be submitted to International Arbitration, if either party of the dispute so wishes.*
2. *Where the dispute is referred to International Arbitration, the Investor and the State Party concerned in the dispute may agree to refer the dispute either to:*

(a) The SADC Tribunal;

(b) The International Centre for the Settlement of Investment Disputes (the ICSID) having regard to the provisions, where applicable, of the ICSID Convention and

the Additional Facility for the Admission of Conciliation, Arbitration and Fact-Finding Proceedings; or

(c) An International Arbitrator or ad hoc arbitral tribunal to be appointed by special agreement established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL)

3. *If after three (3) months from written notification of the claim, there is no agreement to one of the above alternative procedures, the parties of the dispute shall be bound to submit the dispute to arbitration under the Arbitration Rules of UNCITRAL as then in force. The parties to the dispute may agree in writing to modify these rules.*

In August 2012 at a SADC Summit it was resolved that a new Tribunal should be negotiated and that its mandate should be confined to interpretation of the SADC treaty and protocols relating to disputes between member states. This now leaves ICSID or UNCITRAL arbitration as the only alternatives for dispute resolution under the Protocol for disputes between investors and SADC member states.

BACKGROUND

On 18 March 2010, MBB applied to the Ministry of Minerals, Energy and Water Resources (MMEWR), Botswana, for an extension of PL69/2003, the Kihabe Zn/Pb/Ag project, for a further two years to 30 June 2012. MBB completed the MMEWR **Checklist for Appropriate Company Programme of Prospecting Operations (Checklist), issued under Botswana's Mines and Minerals Act (MMA)**. MBB indicated that it would conduct a Feasibility Study on the Kihabe project, based on previous assurances that grid power would be available in the Kihabe region by the end of 2012. MBB had previously advised MMEWR that the project would need in the region of 40MW of power. Section D (Pre-feasibility) and section E (Mining Feasibility Study) of the MMEWR **Checklist**, required that **"Delineated Reserves" must be "compliant to one of the international codes for estimating reserves"**.

It became apparent that the provision of grid power would not be available by the end of 2012. In accordance with the MMEWR **Checklist** and the Australian JORC code, an International code with which MBB must comply :

(a) **RESOURCES** cannot be delineated as **ORE RESERVES** without power and

(b) A feasibility study cannot be signed off by a competent person where **RESOURCES** cannot be delineated as **ORE RESERVES**.

On 23 March 2012, MBB gave a power point presentation on the Kihabe project to Minister Kedikilwe MMEWR. The presentation highlighted the problem of 40MW of power not being available for the project. It detailed alternative metallurgical recovery processes to be trialled in order to reduce power requirements. It also highlighted ongoing in-field geochemical soil sampling being conducted to discover new Zn/Pb anomalies. The discoveries to date plus any future discoveries would increase the projects resource base, thereby allowing for more economic higher annual mining rates.

In accordance with Section 22 (1) of Botswana's MMA, Minister Kedikilwe MMEWR had two months within which to reject such alternative amendments, if not in accord. As no rejection was received within the two month period, such amendments had effect after such period.

On 29 March 2012, MBB applied for a further two year extension of PL69/2003 to 30 June 2014. In accordance with Section 17 (2) MMA, MBB submitted its Application for Extension

three (3) months prior to the end of its term, 30 June 2012. This three (3) month period allows MMEWR time to review work done to date and work proposed to be done. If MMEWR decides not to grant an extension, notice thereof can be served on the applicant within the three (3) month period, thereby informing the applicant not to incur further expenditure beyond the current term. No such notice was served by MMEWR in this three (3) month period to 30 June 2012. Accordingly, MBB continued in good faith to incur expenditure on PL69/2003 on a daily basis.

In the fourteen months from 29 March 2012, when MBB lodged its Application for Extension, to 13 May 2013, when the new Minister Mokaila MMEWR finally rejected the Application for Extension of PL 69/2003, MBB had spent \$1.2 million on the project. During this fourteen month period MMEWR had full knowledge of work being conducted through MBB's filing of required reports.

On 13 May 2013, Minister Mokaila, MMEWR, rejected the Application for Extension of PL69/2003, stating that MBB had failed to carry out the approved prospecting programme outlining the completion of a Feasibility Study in the two years to 30 June 2012.

Minister Mokaila MMEWR stated: "I note that you highlight one of the reasons for not meeting the approved programme of prospecting is that you varied the programme since you knew 40 MW of power supply would not be available for your project in the foreseeable future. I have considered your representation and find it to be unsatisfactory." MBB was not able to delineate its **RESOURCES** as **ORE RESERVES**, as required for a feasibility study, without the provision of a commercial grid power supply.

Minister Mokaila MMEWR further stated: "I further draw you attention to section 22 of Mines and Minerals Act which requires that any amendments to prospecting programmes should be done only after the approval of the Minister and Mount Burgess did not apply to amend the prospecting programme".

Section 22(1) MMA actually states: *The holder of a prospecting licence may, from time to time, notify the Minister of amendments he wishes to make to his programme of prospecting operations and such amendments shall, unless the Minister rejects the same within two months after being notified, have effect after such period.* MBB did notify Minister Kedikilwe MMEWR of such amendments which were not rejected within two months. Consequently the amendments had effect after such period.

On 6 June 2013, in terms of Botswana law, MBB exercised its right through appealing to the Vice President of Botswana, seeking reversal of the decision of Minister Mokaila MMEWR not to extend PL69/2003. MBB also appealed against the unacceptable fourteen (14) month time frame it had taken for the rejection decision to be made (maladministration), during which time MBB had spent \$1.2 million on the project.

11 July 2013, Minister Mokaila informed MBB that he, as Minister MMEWR, had the right to reject MBB's appeal to the Vice President and confirmed that despite the appeal, PL69/2003 would not be extended.

Minister Mokaila MMEWR stated "The issue of unavailability of grid power was raised as the main reason why you did not proceed with a feasibility study as it is a requirement under the Australian JORC code for a competent person to sign off the feasibility. As indicated in my letter of 13 May 2103, Ref: GSC 6/43/ 7 III (12), Mount Burgess cannot unilaterally amend the approved prospecting programme without the Minister's approval, this is as per section 22 of MMA".

As previously mentioned, MBB **did** notify Minister Kedikilwe MMEWR on 23 March 2012 of the amendments, which he did not reject within two months. Consequently such amendments took effect after such period.

Minister Mokaila MMEWR further stated "In addition any holder of a Mineral Concession issued under the Mines and Minerals Act of the Republic of Botswana is required to comply with the relevant sections of MMA irrespective of the company's international reporting requirement. JORC code or any other international requirements and standards does not substitute one's obligation under the MMA".

As required, MBB **did** comply with the MMEWR'S **own Checklist** issued under the MMA. In compliance with the **Checklist** and the JORC code, MBB was not able to produce a feasibility study.

Minister Mokaila MMEWR failed to address that section of the appeal relative to the fourteen (14) month delay in advising MBB of the rejection of the renewal of PL69/2003 (maladministration), during which time MBB had spent \$1.2 million on the project.

26 July 2013, The Company informs the ASX that it has been advised by its legal Counsel that the decision by Minister Mokaila MMEWR rejecting MBB's appeal to the Vice President is "ultra vires".

PROCEEDINGS

On 27 September 2013 MBB lodged in the High Court of Botswana a Notice of Motion and Founding Affidavit, seeking the decision of Minister Mokaila MMEWR not to extend PL69/2003, to be set aside. In accordance with subsection 3 of section 127 of the Constitution of Botswana and subsections 3(1) 3(2) and 4 of the State Proceedings Act, Botswana, copies were also lodged with the Attorney General as RESPONDENT on behalf of Minister Mokaila MMEWR

On 28 April 2014 the High Court Judge ruled that MBB's application for renewal of PL69/2003 be struck out with costs. Contrary to precedent established in the Court of Appeal, the RESPONDENT failed to lodge an opposing Affidavit. The ruling to strike out MBB's application was based only on a point of Law *in Limine*, which was that the decision maker, Minister Mokaila, MMEWR, was not joined in the proceedings, only the Attorney General was cited as the RESPONDENT. Such ruling was contrary to subsections 3 (1) and 3(2) of the State Proceedings Act and subsection 3 of section 127 of the Constitution which imposes a legal duty on MBB to cite the Attorney General in this matter, as **actions by or against the Government shall be instituted by or against the Attorney General**. Precedence previously established in the High Court of Botswana, in *Tim's Lock and Key Pty Ltd V the Attorney General*, also determined that a **MINISTER was included in the word "Government" and therefore represented by the Attorney General in any litigation**.

CORPORATE

FUNDING

During the quarter Jan and Nigel Forrester lent the Company a further \$439,749. This amount provided for \$394,249 to clear the Company's bank overdraft and \$45,500 for ongoing working capital. Since the end of the quarter Jan and Nigel Forrester have lent the Company a further \$12,000 for ongoing working capital.

EXPENDITURE

Whilst awaiting the outcome of a decision from the Appeal Court of Botswana in respect of the Application for Extension of PL69/2003, the Company has had to apply appropriate restrictions on corporate expenditure. To this end Nigel Forrester CEO and Jan Forrester, Joint Company Secretary, have allowed the Company to defer their salary payments since July 2013 and August 2013 respectively. In addition, Jan and Nigel Forrester have provided the Company with a moratorium in respect of interest on their loan to the Company. Serene Chau, Accountant and Joint Company Secretary is currently being paid on the basis of working three days a week.

With these and other corporate expenditure restrictions in place, the Company is currently incurring expenses in the region of \$25,000 per month.

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Appendix 5B

Mining exploration entity quarterly report

Introduced 1/7/96. Origin: Appendix 8. Amended 1/7/97, 1/7/98, 30/9/2001, 01/06/10.

Name of entity

MOUNT BURGESS MINING N.L.

ABN

31009067476

Quarter ended ("current quarter")

30 June 2014

Consolidated statement of cash flows

	Current quarter \$A'000	Year to date (12 months) \$A'000
Cash flows related to operating activities		
1.1 Receipts from product sales and related debtors	-	-
1.2 Payments for (a) exploration & evaluation	(6)	(47)
(b) development	-	-
(c) production	-	-
(d) administration	(36)	(308)
1.3 Dividends received	-	-
1.4 Interest and other items of a similar nature received	-	-
1.5 Interest and other costs of finance paid	(2)	(40)
1.6 Income taxes refund	-	104
1.7 Other (provide details if material)	-	-
Net Operating Cash Flows	(44)	(291)
Cash flows related to investing activities		
1.8 Payment for purchases of: (a) prospects	-	-
(b) equity investments	-	-
(c) other fixed assets	-	-
1.9 Proceeds from sale of: (a) prospects	-	-
(b) equity investments	-	-
(c) other fixed assets	-	21
1.10 Loans to other entities	-	-
1.11 Loans repaid by other entities	-	-
1.12 Other (provide details if material)	-	-
Net investing cash flows	-	21
1.13 Total operating and investing cash flows (carried forward)	(44)	(270)

+ See chapter 19 for defined terms.

Appendix 5B
Mining exploration entity quarterly report

1.13	Total operating and investing cash flows (brought forward)	(44)	(270)
Cash flows related to financing activities			
1.14	Proceeds from issues of shares, options, etc.	10	79
1.15	Proceeds from sale of forfeited shares	-	-
1.16	Proceeds from borrowings	439	600
1.17	Repayment of borrowings	-	(17)
1.18	Dividends paid	-	-
1.19	Other – Lease liability repayments	(1)	(3)
	Other – Placement fees	-	-
	Net financing cash flows	448	659
	Net increase / decrease in cash held	404	389
1.20	Cash at beginning of quarter/year to date	(388)	(372)
1.21	Exchange rate adjustments to item 1.20	-	(1)
1.22	Cash at end of quarter	16	16

**** The Company currently has an overdraft facility of \$NIL**

Payments to directors of the entity and associates of the directors

Payments to related entities of the entity and associates of the related entities

	Current quarter \$A'000
1.23 Aggregate amount of payments to the parties included in item 1.2	-
1.24 Aggregate amount of loans to the parties included in item 1.10	-

1.25 Explanation necessary for an understanding of the transactions

N/A

Non-cash financing and investing activities

2.1 Details of financing and investing transactions which have had a material effect on consolidated assets and liabilities but did not involve cash flows

N/A

2.2 Details of outlays made by other entities to establish or increase their share in projects in which the reporting entity has an interest

N/A

+ See chapter 19 for defined terms.

Financing facilities available

**** The Company currently has an overdraft facility of \$NIL**

	Amount available \$A'000	Amount used \$A'000
3.1 Loan facilities	1,637	1,637
3.2 Credit standby arrangements	2	-

Estimated cash outflows for next quarter

	\$A'000
4.1 Exploration and evaluation	-
4.2 Development	-
4.3 Production	-
4.4 Administration	85
Total	85

Reconciliation of cash

Reconciliation of cash at the end of the quarter (as shown in the consolidated statement of cash flows) to the related items in the accounts is as follows.

	Current quarter \$A'000	Previous quarter \$A'000
5.1 Cash on hand and at bank	16	4
5.2 Deposits at call	-	-
5.3 Bank overdraft	-	(392)
5.4 Other (provide details)		-
Total: cash at end of quarter (item 1.22)	16	(388)

**** The Company currently has an overdraft facility of \$NIL**

Changes in interest in mining tenements

	Tenement reference	Nature of interest (note (2))	Interest at beginning of quarter	Interest at end of quarter
6.1 Interests in mining tenements relinquished, reduced or lapsed	-	-	-	-
6.2 Interests in mining tenements acquired or increased	-	-	-	-

+ See chapter 19 for defined terms.

Appendix 5B
Mining exploration entity quarterly report

Issued and quoted share securities at the end of current quarter

	Total number	Number quoted	Issue price per security (see note 3) (cents)	Amount paid up per security (see note 3) (cents)
7.1 Preference securities <i>(description)</i>	N/A			
7.2 Changes during quarter (a) Increases through issues (b) Decreases through returns of capital, buy-backs, redemptions				
7.3 *Ordinary securities	1,045,088,602	1,045,088,602		
7.4 Changes during quarter (a) Increases through issues (b) Decreases through returns of capital, buy-backs	12,500,000 N/A	12,500,000 N/A		
7.5 *Convertible debt securities <i>(description)</i>	N/A	N/A		
7.6 Changes during quarter (a) Increases through issues (b) Decreases through securities matured, converted				
7.7 Options <i>Employee Share Plans</i>	13,350,000 500,000	NIL NIL	5 cents 5 cents	31/12/15 31/12/16
7.8 Issued during quarter	NIL			
7.9 Exercised during quarter	NIL			
7.10 Expired / Cancelled	NIL			
7.11 Debentures <i>(totals only)</i>	NIL			
7.12 Unsecured notes <i>(totals only)</i>	NIL			

+ See chapter 19 for defined terms.

Compliance statement⁷

- 1 This statement has been prepared under accounting policies which comply with accounting standards as defined in the Corporations Act or other standards acceptable to ASX (see note 4).
- 2 This statement does give a true and fair view of the matters disclosed.

Sign here: *Serene Chau* Date: 21 Jul 2014
 (~~Director~~/Company secretary)

Print name: Serene Chau

Notes

- 1 The quarterly report provides a basis for informing the market how the entity's activities have been financed for the past quarter and the effect on its cash position. An entity wanting to disclose additional information is encouraged to do so, in a note or notes attached to this report.
- 2 The "Nature of interest" (items 6.1 and 6.2) includes options in respect of interests in mining tenements acquired, exercised or lapsed during the reporting period. If the entity is involved in a joint venture agreement and there are conditions precedent which will change its percentage interest in a mining tenement, it should disclose the change of percentage interest and conditions precedent in the list required for items 6.1 and 6.2.
- 3 Issued and quoted securities The issue price and amount paid up is not required in items 7.1 and 7.3 for fully paid securities.
- 4 The definitions in, and provisions of, *AASB 1022: Accounting for Extractive Industries* and *AASB 1026: Statement of Cash Flows* apply to this report.
- 5 Accounting Standards ASX will accept, for example, the use of International Accounting Standards for foreign entities. If the standards used do not address a topic, the Australian standard on that topic (if any) must be complied with.

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+ See chapter 19 for defined terms.