



23 July 2013

LEGAL OPINION REGARDING THE REJECTION OF THE COMPANY'S APPLICATION FOR EXTENSION OF PL69/2003, BOTSWANA.

On the 13 May 2013, The Minister for the Ministry of Minerals, Energy and Water Resources (MMEWR), Botswana, rejected the Application for Extension of PL69/2003, lodged on 29 March 2012 in the name of Mount Burgess (Botswana) (Proprietary) Ltd (MBB), a wholly owned subsidiary of Mount Burgess Mining NL (MTB). PL69/2003 contains the Kihabe and Nxuu JORC compliant resources of 25 million tons @ 3% Zn/Pb including 3 million ozs Ag, developed by MTB and MBB.

MBB and MTB appealed against the decision and on the 9 July 2013 The Minister MMEWR, rejected the appeal on the basis that MBB had failed to:

1. Carry out the proposed prospecting programme, during the two years to 30 June 2012, which included the completion of a feasibility study.
2. Gain approval from the Minister for a change in the prospecting programme for not having completed a feasibility study.

With regard to 1. above, as MTB is a Company listed on the ASX, MTB and MBB must comply with the provisions of the JORC code, relative to feasibility studies. Under the provisions of the JORC code, which are similar to other international codes such as the SAMREC code of South Africa and the NI 43 – 101 code of Canada, the proposed feasibility study was not able to be compiled and signed off by a competent person because of the unavailability of a commercial power supply. Previous advice was that grid power would be available within the project area by the end of 2012.

With regard to 2. above, MTB and MBB gave a presentation to the previous Minister MMEWR on the 23 March 2012, advising him of alternative metallurgical processes being trialled to reduce the projects 40MW power requirement, because of the foreseeable lack of grid power. The Minister suggested that MTB and MBB should join the power forum in order to be kept informed of the progress in the upgrade of power to the area. The Minister was also advised of the geochemical soil sampling programmes being conducted in an effort to increase the projects resource base with the concept of increasing annual throughput and thereby reducing operating costs, in the event of having to rely on higher cost on-site power generation.

With regard to the above, a memorandum received on the 18 July 2013 from Chambers of Advocate Robert S. Douglas, SC and Advocate Peter O'Halloran, outlined the following:

LEGAL ADVICE ON THE LEGAL POSITION

1. MBB is faced with a situation where it is impossible for it to comply with the JORC code without the necessary power. Consequently, it cannot produce the requisite feasibility study i.e. MBB is faced with impossibility of performance.
2. In our view MMEWR was, at all times, aware of this situation yet took no steps to provide the power or advise MBB that it should not continue operations and involve itself in the steep costs thereof.
3. In other words MMEWR is itself responsible for the stalemate that has arisen and MBB's obligation to provide the necessary feasibility study has become impossible as a direct result of MMEWR's failure to provide power at the site despite its assurances that it would do so.
4. In Roman Dutch law impossibility of performance negates the obligation.
5. Likewise MBB has a cause of action based on MMEWR's failure to honour assurances and failure to comply with time frames i.e. maladministration of the process.

LEGAL CONCLUSION

1. We therefore conclude that the rejection of the Application for Extension was unlawful and in direct contravention of the common law. MMEWR is legally bound to grant it.
2. In our view the Botswana High Court will uphold the contention that MBB is bound by the JORC code whatever the Botswana legislation may provide and that at all material times MMEWR was fully aware of this fact
3. MMEWR's failure to hand down its decision of rejection within the prescribed three month period to 30 June 2012, amounts to maladministration.
4. An application to the High Court ought to be made seeking the setting aside MMEWR's decision rejecting the renewal application.
5. MBB has a claim for damages arising out of the costs of its operations.

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Nigel Forrester
CEO
Mount Burgess Mining NL