

## **Response from AVZ Minerals to Global Witness, 31 October 2023**

### **MANONO PROJECT – DEMOCRATIC REPUBLIC OF CONGO**

Thank you for your letter received 16 October 2023 (your letter) and subsequent correspondence. We appreciate you providing us with the opportunity to respond.

We set out below our responses on the key considerations you have raised and also wish you to refer to our previous response to Global Witness dated 25 October 2021.

We trust that you find this information of use.

### **CURRENT STATUS OF THE MANONO PROJECT**

Since February 2017, AVZ has successfully executed a strategy that has progressed the Manono Project, which is believed to be the largest and one of the highest grade undeveloped hard rock lithium projects globally, to a stage where all technical and engineering work is complete.

The AVZ Board and executive management team continue to work tirelessly to execute on its strategy to progress the Manono Project to generate value for all shareholders and is in advanced stage discussions with DRC authorities while awaiting the granting of the Mining Licence.

The Company has been and continues to be engaged in various legal proceedings relating to baseless claims over its ownership interests in the Manono Project, including with parties seeking to unlawfully acquire an interest in the Manono Project for themselves, through an unlawful purported acquisition of shares in Dathcom, highlighted by the DRC General Inspectorate of Finance report (“IGF Report”), released during FY23 into the mismanagement of mining assets by Cominière.

The Company, its subsidiaries and Dathcom, has and will continue to take all actions necessary to protect its legal rights in the Manono Project, the interests of its shareholders and other stakeholders, not least the people of the DRC.

### **ARBITRATION PROCEEDINGS**

The Company and its subsidiaries are involved in several ongoing arbitration proceedings which involve:

- Dathcom Mining SA (Dathcom) which is the entity that holds PR 13359 in respect of the Manono Project and the grant of an exploitation licence (PE) in respect of that licence;
- AVZ International Pty Ltd (AVZI) which is the wholly owned subsidiary of AVZ that holds 75% of the shares in Dathcom pursuant to the Dathcom joint venture agreement dated 27 January 2017, as amended from time to time (Dathcom JVA);
- La Congolaise d’Exploitation Minière (Cominière) which the state-owned entity which holds a minority shareholding in Dathcom;
- Dathomir Mining Resources SARLU (Dathomir) which is a former minority shareholder in Dathcom; and
- Jin Cheng Mining Company (Jin Cheng) which is the subsidiary of Zijin Mining Limited (Zijin) which alleges it acquired a minority shareholding in Dathcom from Cominière.

The arbitration proceedings comprise:

- the three ICC arbitration proceedings involving Cominière and/or Jin Cheng in relation to Cominière's purported sale of a 15% shareholding in Dathcom to Jin Cheng in breach of AVZI's pre-emptive right and other issues of compliance with the Dathcom JVA;
- the two ICC arbitration proceedings involving Dathomir in relation to its attempts to dispute the sale of its 15% shareholding in Dathcom; and
- the ICSID arbitration proceedings against the Democratic Republic of the Congo (DRC) in relation to its failure to procure the expeditious grant to Dathcom of an exploitation permit in respect of the Manono Project.

AVZ believes Jin Cheng, Dathomir and Cominière are acting in concert to crystallise disputes with AVZ and disrupt and delay the development of the Manono Project with the aim of seizing control of the Manono Project. Their conduct has contributed to the delay in granting the exploitation permit and therefore led to the commencement of the ICSID proceedings.

The Cominière/Jin Cheng dispute comprises three separate but related proceedings:

- ICC arbitration proceeding (ICC No. 26986/SP) issued by Jin Cheng seeking orders to the effect the articles of association of Dathcom to reflect Jin Cheng as a 15% shareholder of Dathcom;
- ICC arbitration proceedings (ICC No. 27720/SP) issued by AVZ International Pty LTD (AVZI) against Cominière seeking (i) declarations that the purported sale by Cominière to Jin Cheng of a 15% shareholding in Dathcom was ineffective and that the purported termination of the Dathcom JVA by Cominière was invalid and (ii) damages for Cominière's various disrupting actions made in breach of the Dathcom JVA; and
- ICC arbitration proceedings (ICC No. 27769/SP) issued by Cominière and Jin Cheng against AVZI seeking a declaration that the Dathcom JVA was terminated and damages for breach of the Dathcom JVA.

### **ICC PROCEEDINGS BY JIN CHENG**

On or about 22 April 2022, Jin Cheng issued proceedings at the ICC seeking orders to the effect the articles of association of Dathcom to reflect Jin Cheng as a 15% shareholder of Dathcom.

In these proceedings, AVZI has disputed that the ICC has jurisdiction on the basis Jin Cheng is not entitled to have recourse to arbitration because it is not a shareholder of Dathcom because the purported acquisition of its 15% shareholding from Cominière was ineffective as it occurred in contravention of AVZI's pre-emptive right.

The ICC Tribunal is determining the issue of jurisdiction as a preliminary question. That preliminary question was listed for hearing in July 2023, but Jin Cheng sought a postponement of the hearing to give it an opportunity to address allegations raised by AVZI that the sale from Cominière to Jin Cheng was also tainted by corruption.

The issue was heard on 5th and 6th October 2023 and we are awaiting the Arbitrators decision.

AVZ is confident AVZI's jurisdictional challenge will be successful, which will affirm that Jin Cheng does not have the right to instigate the ICC arbitration proceedings against AVZI as it is not (and never has been) a shareholder in Dathcom.

### **ICC PROCEEDING AGAINST COMINIÈRE**

On 11 April 2023, AVZI issued the proceedings against Cominière to ensure Cominière is liable for (i) breach of the pre-emptive right and (ii) other disruptive actions made in breach of the Dathcom JVA.

Following the introduction of these proceedings, Cominière purported to terminate the Dathcom JVA on the grounds of alleged breaches of the Dathcom JVA by AVZI under various spurious grounds. AVZ does not believe AVZI breached the Dathcom JVA and disputes that the termination occurred in accordance with the Dathcom JVA.

AVZI thus brought a successful emergency arbitration application under ICC rules, restraining Cominière from taking any actions with regards to its purported termination of the Dathcom JVA.

The Emergency Arbitrator's determination included financial penalty orders for violations of the restraining order issued against Cominière, including a penalty of 50,000 Euros per day of violation, whilst ordering Cominière to pay 90% of the legal costs incurred by the Company in respect to the emergency arbitration action.

Refer to ASX Announcement dated 8 May 2023 titled "Favourable Ruling in ICC Emergency Arbitration Proceedings against Cominière"

AVZ is of the opinion Cominière has acted in contravention of the Emergency Arbitrator's order including by seeking to have PR 13359 transferred from Dathcom to Cominière. AVZI will take action in respect of this contravention at the appropriate time.

These proceedings will in due course be heard by a 3-member tribunal. AVZ remains confident AVZI will ultimately obtain declarations that the Dathcom JVA remains on foot and that the purported sale of a 15% shareholding in Dathcom by Cominière to Jin Cheng was invalid.

#### **ICC PROCEEDINGS BY COMINIÈRE AND JIN CHENG**

On or about 28 April 2023, Cominière and Jin Cheng jointly issued proceedings against AVZI seeking a declaration the Dathcom JVA was terminated and damages for breach of the Dathcom JVA.

Following the commencement of these proceedings, Cominière and Jin Cheng filed a request for consolidation of the three proceedings (ICC No. 26986/SP, ICC No. 27720/SP and ICC No. 27769/SP). AVZ believes the primary motive of Cominière and Jin Cheng in commencing and seeking consolidation of these proceedings was to delay the determination of the jurisdictional issue in the proceedings commenced by Jin Cheng and the constitution of the tribunal, which will hear AVZI's claims against Cominière.

AVZ remains confident the Tribunal will rule that the Dathcom JVA is not terminated and that it is in fact Cominière who has breached the Dathcom JVA.

#### **DATHOMIR DISPUTE**

The Dathomir arbitration proceedings comprise two separate proceedings:

- ICC proceedings (ICC No. 27425/SP) were instituted by AVZI to obtain confirmation AVZI validly acquired a further 5% shareholding in Dathcom pursuant to an agreement executed in 2019; and
- ICC proceedings (ICC No. 27401/SP) were instituted by AVZ and AVZI to obtain confirmation AVZI validly acquired a further 10% shareholding in Dathcom pursuant to an agreement executed in 2020.

AVZ paid the purchase prices and completed both sales in 2021 but Dathomir purported to terminate the sale agreements and sought to renegotiate the purchase price. Dathomir then issued various

proceedings in the DRC to challenge the sale and prevent the registration of the share transfers. However, according to the sale agreements, any dispute needed to be resolved by arbitration.

Consequently, on or about 1 December 2022 and 9 December 2022, AVZI and AVZ were forced to commence the two ICC arbitration proceedings.

The two proceedings will be heard separately by different three-member tribunals because the two sale agreements have different governing laws.

In relation to the proceedings in respect of the 2019 sale agreement, Dathomir applied to the ICC Tribunal (ICC No. 27401/SP) for orders to keep the arbitration proceedings confidential. AVZ and AVZI successfully opposed those orders with the ICC refusing to make confidentiality orders.

On or about 4 September 2023, Dathomir issued proceedings in the DRC seeking to have Dathcom wound-up on the grounds the Dathcom JVA had been terminated and PR 13359 transferred from Dathcom to Cominière.

AVZ believes Dathomir is acting on behalf of Cominière who is prevented from taking such action by the order of the Emergency Arbitrator. AVZI will vehemently oppose these new proceedings by all available legal means.

### **ICSID PROCEEDINGS**

On 8 June 2023, AVZ's subsidiaries commenced ICSID proceedings against the DRC in relation to its failure to procure the expeditious grant to Dathcom of an exploitation permit in respect of the Manono Project in accordance with the Mining Code.

The ICSID proceedings commenced as a last resort after a lengthy dialogue with the DRC Government had failed to procure the grant of the exploitation licence in accordance with the Mining Code.

AVZ acknowledges the coordinated actions of Jin Cheng, Dathomir and Cominière has contributed to the delay in granting the exploitation licence.

AVZ remains in sustained and constructive dialogue with the DRC Government with respect to the grant of the exploitation licence and the withdrawal of the ICSID proceedings. The ICSID Tribunal has not yet been fully constituted and AVZ remains hopeful a resolution can be achieved before further steps need to be taken in the ICSID proceedings.

Refer to ASX Announcement dated 9 June 2023 titled "Confirmation of Registration of the Request for ICSID Arbitration Proceedings against the Democratic Republic of Congo"

Refer to ASX Announcement dated 27 September 2023 titled "Arbitration Proceedings Update"

### **IGF REPORT**

On 30 November 2022, the DRC's General Inspectorate of Finance released its report on the management of mining assets in the DRC by Cominière ("IGF Report")

A copy of the original IGF report is available at <http://igf.gouv.cd/rapports>.

An English translation of the IGF Report is published on AVZ's website at [www.avzminerals.com.au](http://www.avzminerals.com.au)

The DRC General Inspectorate of Finance was authorised to investigate the following matters:

- Whether Cominière's purported sale of its 15% interest in the issued shares of Dathcom Mining SA ("Dathcom") to Jin Cheng Mining ("Jin Cheng Sale") was proper and appropriate;

- Any liability in connection with the Jin Cheng Sale; and
- The legality of Cominière’s and Dathomir’s other recent conduct.

By way of summary, the IGF Report included the following conclusions reached by the DRC General Inspectorate of Finance:

- Cominière has acted in violation of its Articles of Association in respect of its transfers of mining titled to “external partners” without obtaining financial guarantees;
- Cominière has acted contrary to the DRC Mining Code in respect of its transfers of mining licences without such transfer having undergone the required prior assessment by a competent DRC governmental authority;
- The Jin Cheng Sale was subject to several irregularities including the failure to select the Government’s technical body for the valuation of the 15% interest the subject of the Jin Cheng Sale, and the failure to consider the Definitive Feasibility Study valuation completed in respect of the Manono Project;
- Cominière had inappropriately allocated approximately USD6,800,000 out of the total USD33,440,000 in proceeds from the purported Jin Cheng Sale for operating needs (including for commissions, fees and exceptional remunerations of all those who would have otherwise contributed to the operation) to the detriment of productive investments; and
- Dathomir failed to comply with its obligations under the incorporated joint venture agreement in respect of Dathcom dated 27 January 2017, as amended from time to time (“Dathcom JVA”);

In response to the findings of the DRC General Inspectorate of Finance, AVZ confirmed:

- AVZ acquired valid and legal title to the 60% of shares issued in Dathcom, including, for the avoidance of doubt, as a consequence of the waiver of any rights of Cominière and Dathomir under the Dathcom JVA by virtue of their entry into the same agreement; and
- Following AVZ’s acquisition of its initial 60% of shares issued in Dathcom, AVZ performed the funding obligations under the Dathcom JVA.

#### **ENGAGEMENT OF MARIUS MIHAGO**

AVZ engaged Marius Mihago as an in-country Strategic Advisor, whom together with his team has assisted with:

- Advising on conducting business in the DRC;
- Managing Government and key stakeholder relationships in country; and
- Security arrangements within the DRC.

The terms of Mr Mihago’s engagement are recorded in a written agreement. Under the agreement, Mr Mihago and his team are remunerated only from an upfront fee of USD1 million for their services pursuant to hourly rates, together with reimbursement for disbursements for travel costs, accommodation and food (within a specified range) and other costs incidental to the services. Disbursements for travel and incidental costs must not exceed USD5,000 without prior approval from AVZ. The agreement does not provide for any success fee.

Before and during Mr Mihago's engagement, AVZ carried out appropriate independent due diligence into Mr Mihago, which disclosed no material probity issues or red flags. Among other things, the agreement requires Mr Mihago and his team to comply with (just as the Company complies with) all applicable anti-bribery and anti-corruption laws and the Company's anti-bribery and anti-corruption policy (which can be viewed at <http://avzminerals.com.au/corporate-governance>).

Refer to ASX Announcement dated 10 February 2023 titled "*Clarifications on suspension and AFR article.*"

We urge you to read future announcements from the Company that will keep you abreast of all developments with the Manono Project.

We thank you for the opportunity to respond to your considerations.