

Background

On 21 October 2019 Gerard Blaauw, a director representing Bolepu Holdings, lodged an extraordinary urgent application in the Johannesburg high court to try to force the directors of Corridor Mining Resources (CMR) to sign a series of board resolutions.

Bolepu is a 40% shareholder in Sefateng Chrome Mine in Limpopo. CMR (a company wholly owned by the Limpopo Economic Development Agency, LEDA, an organ of state) is the majority 55% shareholder, while 5% is nominally held by three community trusts.

The resolutions would have committed CMR to approve a R3.2-billion credit agreement with Nedbank and to sign over the mining rights and shares in Sefateng to Nedbank as security for the loan.

Blaauw was also the chief executive of Sefateng, which he was litigating against on behalf of a minority shareholder, Bolepu.

It is worth noting at this stage that Bolepu is 49.9% owned by a multinational, Luxembourg based Traxys, whose interests, like those of Nedbank, are at the centre of this dispute. Traxys is an effective 20% shareholder in Sefateng, through Bolepu.

Blaauw went to court on the basis of the shareholder's agreement, arguing that CMR's refusal to approve the loan and related agreements amounted to bad faith.

The core of the dispute goes back to 2015 but has morphed in significant ways.

CMR linked up with Bolepu Holdings in 2006 to prospect and later set about open-cast mining at Sefateng, for which CMR obtained the mining right, later transferred to Sefateng.

Shareholders have contributed about R100 million in shareholder loans to get the mine going, of which CMR's portion is in the region of R61 million. These loans have not yet been repaid and Sefateng has paid no dividends.

From the start CMR was distanced from operations and exercised little direct control, despite its majority shareholding and major contribution to start-up costs.

Sefateng was essentially a management company and, more specifically, Bolepu was responsible for the day-to-day management of the mine.

The actual mining was subcontracted to MTC Mining and the sale of ore was contracted to commodity trader Metmar (later Traxys).

In July 2015 Traxys, which is ultimately controlled by the US Carlyle Group, completed its takeover of Metmar, thereby inheriting 49.9% in Bolepu (and thereby 20% of Sefateng).

In December 2015, Sefateng's original shareholders - CMR, Bolepu Holdings and Jibeng, Mampa Serole and Roko Phasha community trusts - met to finalise the proposal that the mine should go underground as, according to senior board members, the miners would soon exhaust the chrome ore available through the open cast mine.

At this meeting a document was signed which came to be known as the Sumdev agreement.

It was supposedly entered into because Sefateng did not itself have the capacity or resources to construct the underground mine and conduct underground mining activities.

The agreement was between Sefateng, the Sefateng Underground Mining Development Company (Sumdev), a company called MTC Underground (the mining subcontractor) and law firm Steyn Kinnear as the escrow agent.

In terms of the agreement, Sumdev was appointed to construct an underground mine on the property; MTC was appointed as Sefateng's contractor to mine for chrome ore; Sefateng agreed that it would sell the chrome to Sumdev; and Sefateng would be paid for the chrome according to a price formula. Steyn Kinnear would manage the flow of invoices and payments between the parties.

Sumdev (later subsumed by a company called Richards Bay Alloys) was 66.6% percent owned by Traxys and 33.3% by five empowerment companies, at least one of which appears plugged into the Limpopo political elite.

The sole director of Thabang Thabang General Trading is Thabo Leopeng, who appears to have been raised as a brother to Limpopo premier Chupu Mathabatha and had a business relationship with Mathabatha's wife Margaret in the early 2000s.

There were several troubling features about the agreement that CMR's 2015 directorate (deployed by LEDA) signed up for.

The agreement would have distanced CMR further from the underground mining project.

It assigned the responsibility to Sumdev on behalf of Sefateng to raise funding to construct the mine.

It set a price formula which left Sefateng with a very limited slice of the income, but with significant and unquantified liabilities.

In particular, it made provision for Sefateng to pay the contract miner R580 per ton. In turn, Sefateng would receive R680 per ton from Sumdev (dominated by Traxys), which would then sell the ore on the open market and pocket the profit.

That left Sefateng with R100 per ton.

However, during the time that the loan used to construct the mine and raise working capital remained outstanding (together with interest), Sumdev was entitled to deduct R60 per ton to service that loan.

That left Sefateng with R40 per ton, but from this it was required to run its own management operation, pay some water and electricity costs as well as assume what the agreement calls "regulatory expenditure", namely the payment of mining royalties, social and labour plan costs – as well as environmental costs, including mine rehabilitation.

As far as we can tell no detailed feasibility study was done (prior to the signature of the agreement) that would quantify the risks and benefits to the various parties.

And some of those parties appear to be inherently conflicted in relation to Sefateng's interests – meaning that there was a risk that the various intercompany transactions were not structured or managed at arms-length and in a way that was fair to Sefateng (and its state-owned 55% shareholder, CMR).

For instance, there is an overlap in directorships between the contract miner, MTC, and the buyer, Sumdev (later Richards Bay Alloys), with Sefateng left as the piggy-in-the-middle, although Traxys, which controls Sumdev, has board representation at Sefateng.

The agreement however provided for “suspensive conditions” that needed to be fulfilled before the agreement became fully operational.

On or before 31 December 2017 SUMDEV would complete a bankable feasibility study as to whether the Sefateng Underground Project would be commercially viable.

On or before 30 November 2019 SUMDEV would procure funding for all of the reasonably anticipated costs to be incurred in connection with constructing an underground mine.

Blaauw, the Bolepu director, went to court on 21 October 2019 on an urgent basis because he believed that deadline would be missed if the court did not order CMR to approve the necessary resolutions.

He told the court: “Unless the Sumdev Agreement becomes unconditional by 30 November 2019, the Sefateng Underground Project will fail, with all the negative consequences already mentioned in relation to jobs, the local economy, the investment made to date and the loss of revenue for the shareholders. In this event, Sefateng will almost certainly face liquidation.”

But even before the Sumdev agreement was signed in 2015, one independent director representing CMR raised what appear to be legitimate concerns about the contract.

Kabela Maroga, a chartered accountant, raised questions about the structure of the transaction.

In November 2015, she wrote to the Sefateng board asking why the mining contractor and buyer were locked in for the life of the mine without a clause that allowed for renewal or renegotiations: “Are you aware of any mines with similar arrangements to the ones we are proposing?”

She said the offtake agreement was particularly concerning because, “We do not yet know or can neither estimate the results of the bankable feasibility study for us to reasonably estimate how long it will take to repay the capital, without having done a proper life of mine financial valuation.”

Notwithstanding these concerns – and presumably reassured by the fact that the agreement was subject to suspensive conditions – Sefateng signed the Sumdev agreement on 18 December 2015.

Given that the entire basis of the three-way mining deal was premised on accurate record keeping and accounting of costs and expenditure, it is noticeable that CMR had very poor insight as to what was actually happening at the mine during the open cast period of operations.

For instance, minutes of a board meeting on 11 September 2018 record Maroga again complaining about the financial opaqueness of the operations.

The minutes quote her as saying: “Last time the budget was seen, is when the project was approved. The project is run by Richards Bay Alloys ("RBA") but it is completely funded by Sefateng and there are different shareholders. No quarterly financials the were seen. The board cannot report only the technical side to shareholder. A report is requested from RBA to show all expenditure in relation to the project.”

In 2019 matters came to a head.

On 12 March 2019 a presentation was made concerning the revised funding structure that Sumdev (now Richards Bay Alloys) had come up with ahead of the 30 November 2019 deadline.

A slide on the role-players introduced Traxys as the “sponsor” – an integrated trading company, with over US\$6 billion turnover and with “access to a US\$ 1.5-billion multicurrency syndicated revolving credit facility”.

Quite why they needed Nedbank, which was introduced as the proposed lender, is not clear, but the Nedbank description suggests this was a matter of mutual benefit.

The bank, it turns out, will extend cash on the basis of “60% loan 40% equity” and its aim is “to get a larger part of the revolving credit facility (Trade Finance) with Traxys” – in other words to get a slice of Traxys’ global trade finance business.

Presumably the 40% equity share is in Traxys Africa – or some other Traxys entity – NOT in struggling Sefateng.

Richards Bay Alloys (RBA) is the company Traxys used to acquire the former Tata Steel smelter in Richards Bay which produces ferro-chrome – meaning Traxys could beneficiate Sefateng’s chrome before export.

The company was merged with Sumdev and inherited the contract with Sefateng to develop the mine, arrange financing and has the “right to all the offtake which it markets via Traxys”.

The slide explains that Nedbank required the formation of an entity that had no other assets or liabilities other than the Sefateng Underground Mine. So, a new entity was formed for that purpose called Sefateng Chrome Valley Development (SCVD), which had the same shareholding as RBA.

SCVD (majority owned by Traxys) would be the borrower from Nedbank.

Sefateng (55% owned by CMR) which holds the mining right, would be the guarantor for the Nedbank loan.

MTC Underground Mining was another stand-alone – as required by Nedbank – to do the contract mining.

Yet another entity was introduced. Nedbank was apparently not confident in the ability of MTC Underground Mining to construct the mine, so that would have to be subcontracted to Murray & Roberts via MTC.

The escrow account management would also have to be taken over by Nedbank.

One slide mentioned that a risk factor was the “Complex Structure”.

Adding to the complexity, for tax purposes the loan had to be made to Sefateng.

So, Nedbank would extend a credit facility of R438-million to SCVD on undisclosed terms – and SCVD would extend a R3.2-billion credit facility at prime plus 2% to Sefateng.

It is not clear how the differential in cash flows is calculated, supplemented or managed.

Despite the complexity, there was a rush to get the deal approved. On 5 June 2019 Sefateng directors were persuaded to sign approval for agreements as yet unfinalized.

The approval resolution would be held by the lawyer representing Sefateng until Sefateng shareholders had approved the terms of the final agreements.

But on 6 June 2019 the CMR chief executive Kabu Nkadimeng, who served on the Sefateng board, called timeout.

He queried the resolution that had approved the appointment of Murray & Roberts as a subcontractor to MTC without proper consideration.

He also queried the approval in principle of the deal, when two studies, a legal and financial review, had not been completed.

He raised the same concern about the board resolution approving the Credit Facility Agreement, which he said was only “provided to us during the meeting yesterday”.

He withdrew his support for both resolutions.

In May 2019 a company called Fieldstone had been asked by Sefateng to check whether the R3.2-billion credit facility drawdown and repayment had been correctly accounted for in the financial model presented by Traxys to Sefateng.

This model showed that, over the 20-year life of the mine, Sefateng would supposedly earn some R330-million profit.

Fieldstone in fact found some errors. It also emphasized that it checked only the financial modeling of the loan and repayments based on an amount deducted from the cash generated by each ton of chrome mined.

It did not interrogate the other assumptions and prices contained in the rest of the model, on which the supposed profit of about R16-million per year is based – and therefore could make no pronouncements on the overall viability of the project for Sefateng.

Nkadimeng, supported by Moroga, called for a full legal and financial review.

On 18 June 2019 Fieldstone told Sefateng this would cost about R750 000 and take about five weeks. The letter from Fieldstone noted: “I am frankly very surprised that the model we were shown passed audit, and would still like to actually see the BDO audit report on this.”

In response, Blaauw, the Sefateng chief executive, wrote: “Unfortunately we do not have the luxury of time to conduct this review. (A delay of this nature will cost us easily R30m to R60m and we will have to retrench staff).”

On 21 June 2019 another board meeting took place.

Some extracts from minutes are instructive.

“A van Heerden [the RBA CEO] confirmed that there are various sensitivities that could impact the model, the currency fluctuations, chrome prices, and many other factors. The principle is that the project cannot afford for any of the parties to be in financial distress.”

“A van Heerden emphasised the fact that this would be the first time in a very long time that a commercial bank is funding a mining project, and emphasised that the greatest financial exposure lay with Traxys in its capacity as the project sponsor.

“Both A van Heerden and C Stewart [director of Traxys and SVDC] stated that the model and the project has been analyzed and scrutinized by many competent parties including Nedbank, BDO (in its capacity as Nedbank's independent model auditor), Traxys and its shareholders. Therefore, Sefateng should be able to take some comfort from these reviews and that no fatal flaws had been found which indicated that it was not sufficiently robust. It was suggested that, rather than bringing in a new party like Fieldstone, that Sefateng consider and rely on the work that had been performed by the audit and accounting firm BDO.”

In other words: “trust us” – despite the fact that BDO, for instance, had originally been called on to confirm that the model protected not Sefateng’s interests, but Nedbank’s, whose interests were already well secured via guarantees.

This was followed up on 26 June 2019 with an email to the audit committee from its chair, Renaud de Tarragon, who was at the same time a Sefateng director and Audit Committee chair as well as being the Traxys CFO and a director SCVD.

These conflicting roles had led him to recuse himself from the 5 June vote on the Sefateng board resolutions, but now he felt able to advise the audit committee that, as chair, “I am of the opinion that we received enough assurance concerning the sustainability of the project as evidenced by the financial model.”

In case other members felt there was not enough assurance, “The only option we have is to immediately approach BDO who did the model review for Nedbank and see if they would agree to finalize the question raised by Kabelo [Maroga] prior tomorrow CoB.”

That assurance was clearly insufficient for Maroga. On 19 August 2019 she wrote to the full Sefateng board.

She noted: “Unfortunately I remain unconvinced that the commercial benefits for Sefateng and ultimately its shareholders... are fair and just. I remain of the view that the affairs of the company are being run without regard to its profitability...”

“I have raised my biggest concerns, especially at the audit committee, that there is a significant risk and possibility that the company will make a loss over the life of mine which will financially and legally expose the company and its Directors.”

On 30 August 2019 Blaauw wrote back, arguing that there was a relationship between risk and reward and the SUMDEV proposal eliminated all financial risk for Sefateng – a claim that appears on its face to be false.

“To now insist that the terms of SUMDEV be renegotiated, is a moot point,” he argued. “There is the sanctity of contract which is written into South African Contract Law.”

However, he immediately contradicted himself by noting, “Through the process of negotiation we have somewhat improved the commercial terms.”

On 3 September a special board meeting was held to discuss the letter from Maroga.

The minutes record, “The Shareholders of SCVD (SUMDEV) had denied any further review of the commercial terms agreed to when the SUMDEV agreement was signed in 2015.”

The representatives of the three Community trusts were unhappy about looming retrenchments and suggested that Maroga resign from the board of Sefateng.

The minutes record that majority of the Sefateng board agreed to proceed with the project but were restricted by lack of approval from the majority shareholder, CMR.

A resolution was passed calling for the removal of Nkadimeng, the CMR chief executive, as a director on the Sefateng board.

A significant feature of this resolution was this motion was supported by the two other CMR directors on the Sefateng board present at the meeting, the Sefateng chair, Demetrios Kortoumbellides and Mmantsitsi Maphutha – siding against Nkadimeng and Maroga.

The possible significance of this will become apparent.

Further evidence of a CMR appointed director possibly not acting in the interests of CMR emerged two days later.

On 5 September 2019, the chair of LEDA (the parent of CMR) Mofasi Lekota sent a letter to Sefateng in which he stated, “The Board [of LEDA] has recently been informed by 3 directors deployed to the board of CMR that Mr. Chapepe, has signed the Nedbank Loan agreement without a resolution of the board of CMR empowering him to do so. It follows that his signature thereon was appended ultra vires...”

Chepape was the chair of CMR.

Lekota went on, “The LEDA Board is presently engaging relevant authorities, including the MEC for Economic Development, Environment and Tourism in the Limpopo Provincial Government with a view to obtain guidance in regard to the conduct of Mr Chapape. This engagement may result in the removal of Mr Chepape as a chairman and member of the board of CMR and as a member of the board of LEDA.

“Meanwhile, the Safateng Board is hereby notified that at this stage the board of CMR and the Board of LEDA do not support the signing of the Nedbank Loan Agreement. We will be forwarding a copy of this letter to Nedbank’s lawyers to inform them of this position. We will also be seeking legal advice regarding Mr. Chepape's ultra vires conduct and its legal implications.”

We are aware that Nedbank’s lawyers were so informed.

Mr Nkadimeng alleged later, “Mr Chapape went off on a frolic of his own and had simply no authority to do what he did.”

The brinkmanship was ratcheted up on 1 October 2019, when the community trusts wrote to LEDA complaining about CMR's failure to adopt the Sefateng board resolution.

Countering that, on 9 October 2019, the chair of LEDA raised a figure of R6-billion as being a fair revenue that should accrue to CMR over the life of the mine.

Blaauw hung his case on this hook, claiming in his affidavit, “This demand evidenced for the first time that CMR's true motive is to seek to procure an extraordinary financial advantage for itself at the expense of Sefateng and the other shareholders.”

Bolepu put CMR on terms and then went to court on 21 October on an urgent basis to try to compel CMR to sign the agreements.

On 7 November 2019, Nkadimeng filed a spirited defence.

Aside from technical issues, he raised deep concerns about the actual benefit of the contracts to be signed.

For instance he noted: “The scenario therefore that is being foreseen at the moment is exactly the same scenario as we have already experienced during the open cast mining process, where it appears that all the other parties who are involved in the process are making money and the dregs of the contract are then paid out to Sefateng, which is then used up by Sefateng to meet the obligations that have already been imposed on it, such as the payment of the diesel fuel component and the security at the mine component.”

And elsewhere:

“At every turn it appears that Bolepu and its associated parties are and have been attempting to strongarm CMR and Sefateng to comply with their profit seeking activities...

“CMR's concern is not that underground mining operations at the Sefateng mine are to take place. its concern is with the oppressive terms within which the operations are proposed to take place...

“[CMR] cannot be held ransom to conclude oppressive terms with Nedbank at the threat of facing liquidation...

“What we are dealing with is almost like the old colonial times where tribes were given some glass beads for vast assets and were told to be satisfied with that...

“CMR cannot support this project because the only economic development that is being sponsored through this project are those of Mr Blaauw's interests and the other associated companies...”

Nkadimeng also attached a legal opinion of the Sumdev agreement and other contracts from law firm Maboku Mangena Attorneys Inc.

The firm found that the cross directorships and ownership between Sefateng and those companies providing services to Sefateng constituted a conflict of interest.

It noted: “In view of the existing business relationship between the contract miner, Bolepu as the managing agents and RBA, it is our opinion that Bolepu will not exercise a fair and impartial role ... In our view, the development agreement is one sided.”

The firm recommended the termination of the management agreement with Bolepu and that the other main contracts, for mining and offtake, be reviewed and/or terminated.

Nkadimeng also alleged that the person who signed a confirmatory affidavit for Bolepu on behalf of one of the community trusts (The Roko Phasha Makgalanoto trust) was not an authorized representative of the Trust – and produced a letter from the trust secretary to that effect.

On 12 November Blaauw filed Bolepu’s replying affidavit.

His basic point was that CMR had since 2015 led Sefateng to believe that it supported the project and could not, four years later, seek to undo the provisions and pricing agreed to by Sefateng in the Sumdev agreement.

He ignored the fact that the new proposals flowing from the Nedbank funding proposal fundamentally altered the structure and content of the Sumdev agreement anyway.

Blaauw faced several technical hurdles relating to urgency and the extraordinary ambit of the resolutions he was asking the court to enforce – as well as the fact that, given that the case was by application on papers, the court was constrained to accept CMR’s version where it contradicted Bolepu’s.

Bolepu had two weeks to arrange a court date before the suspensive condition of the Sumdev agreement ran out on 30 November.

But they did not set the case down. Perhaps they had wind of the impending board coup that would be executed by Thabo Mokone, the Limpopo MEC responsible for CMR's parent, LEDA, which reports to the MEC for Economic Development, Environment and Tourism.

Mokone himself was a director of LEDA until his appointment as MEC in May 2019.

Mokone advertised for a new board in July 2019, with a closing date of Friday, 16 August. The boards of subsidiaries like CMR are appointed from among members of the LEDA board.

The advert did not specify when the new board would assume office – and the existing board had been acting as an interim board since 2013.

At the end of November, the interim chair, Lekota, resigned. He refused to discuss with amaBhungane the reasons for his resignation, “out of respect for the current leadership”.

On 3 December Mokone announced the new board.

It is notable who he retained, and who he did not retain.

He retained all those directors who had taken issue with Nkadimeng, the CMR chief executive, namely: Demetrios Kortoumbellides, Mmantsitsi Maphutha and Victor Chepape – the latter being the director who had explicitly gone against the mandate of the LEDA board according to the then chair.

Maroga, one of the most qualified and active board members, who had also made common cause with Nkadimeng, was not reappointed, despite being one of those who had applied following the July advert.

In fact, we are informed, that none, or almost none of the new appointees had applied.

It's worth considering in more detail some of those non-executive directors appointed and retained.

- **“Jimmy the Greek” Kortoumbellides** is a controversial Limpopo businessman and ANC benefactor who benefited from massive provincial property tenders. He has been politically embedded since the days of Premier Ngaoko Ramatlhodi and was deputy chair of LEDA and chair of Sefateng. He is said to be very close to MEC Mokone and one of his new co-directors, Ronald Shingange.
- **Ronnie Shingange** is said to be a friend of Mokone, with whom he once worked in the Limpopo department of Public Works, Roads and Infrastructure. He served on the board of the Limpopo Road Agency. He shares business interests with Kortoumbellides, including in EAST OF EDEN TRADING 421 and DALMADA PRIME, which we believe owns the Zororo Lodge in Polokwane.

Shingange and Mokone each had a 10% interest in a company called AFRICAN CORRIDOR PROPERTIES, since deregistered; and a 25% share each in CTRT PROPERTY CONNEXION, also since deregistered.

Both companies included Charles Sekoati, who was tagged for his business interests with Kourtoumbellides way back in 2007 when City Press reported: “Health MEC Charles Sekoati is a shareholder of a company, Alpha-Veta Entertainment Enterprise, that is erecting an office block for the provincial government. He is also a director of another company, Leopont 121 Properties, that sold an office block for R36m to the health department. He joined the company in 1999. Of the five office blocks under construction, controversial ANC benefactor Demetrios "Jimmy" Kourtoumbellides is involved in three. The fourth involves his codirectors in another company. Kourtoumbellides, a co-shareholder with Sekoati in Alpha-Veta, has repeatedly been accused of selling a number of properties to government at inflated prices.”

- **Seboikana Victor Chepape**

In an extraordinary move, Chepape was not reappointed to the LEDA board, but he remains on the CMR board – where, according to the former chair and the CEO, he disgraced himself by engaging in a frolic of his own by signing the loan agreement with Nedbank.

Chepape has his own colourful background, having ousted his former partner Matiki Chikala in the battle to secure a piece of the extraordinary empowerment action in UraMin – the uranium company whose overpriced takeover nearly destroyed French nuclear company Areva.

But most extraordinary was the appointment **Mpho Makwana** as chair of LEDA because Makwana was conflicted right from the start.

That’s because Makwana is the “lead independent director” at Nedbank where he has served as a director since November 2011.

He serves as the Chair: Group Directors’ Affairs Committee and among other on the Group Related-party Transactions Committee, so he is well versed in the issues around conflict.

Nedbank is the bank extending the loan to and equity investment in the Sefateng underground mining project – and wants a share of the Traxys global trade finance business.

It is hard to imagine how Makwana is not conflicted when the LEDA board nominates the members of its subsidiary boards, including CMR.

At the time that Makwana was appointed, on 3 December 2019, CMR was engaged in active litigation with Bolepu, in which Traxys holds a controlling stake. Via SCVD, Nedbank had signed a credit facility agreement with a Traxys affiliate.

It is hard to understand how Makwana was appointed and, if he was aware of the CMR dispute, how he accepted appointment.

Firstly, the board of LEDA appears to have limited independence. It is described in the LEDA Act as “an implementing agency of the Department of Economic Development”.

The Act also provides:

A person may not be appointed or remain a member if that person —

- (a) has or acquires a direct or indirect interest in any enterprise or business, which may result in a conflict of interest with that member's professional conduct as a member
- (b) has at any stage, a direct or indirect interest in a matter before the Board which may reasonably preclude that person from performing his or her functions as a member in a fair, unbiased and proper manner;

The Sefateng/CMR dispute, in which Nedbank has a substantial interest, would appear to place Makwana in an unavoidable position of conflict.

Perhaps it is no co-incidence then that on the same day the new LEDA board was appointed, 3 December 2019, Bolepu drafted an agreement to withdraw the case against CMR and pay CMR's legal costs – though the agreement was only made an order of court on 27 January this year.

Perhaps they had received assurances that the new board would see the matter differently.

That certainly seemed to be the conclusion drawn by City Press.

In an article dated 11 December 2019 veteran Limpopo journalist Sizwe Sama Yende reported bluntly that the MEC had removed the LEDA board over the Sefateng dispute.

The story stated: "Thabo Mokone, Limpopo's MEC for economic development, environment and tourism, has disbanded the board of a parastatal for allegedly lobbying for higher returns in a chrome mining project, in which the provincial government holds a 55% stake. Mokone took this decision after most board members of the Limpopo Economic Development Agency (Leda) demanded that the provincial government benefit by at least R6 billion from the expansion of Sefateng Chrome Mine, situated in Ga-Mampa in the Sekhukhune District Municipality, over the next 20 years."

Indeed, once the new board was in place, the negotiations over the Sefateng project have miraculously revived.

According to a recent statement from Richards Bay Alloys, "This multi-billion rand underground mining project – which has significant economic spinoffs for BEE shareholders, local communities and the Limpopo province – has been delayed as the funders require Corridor Mining Resources (CMR) – which is a 55% shareholder in SCM to pass a shareholder resolution to nominate a director(s) to sign project documentation at SCM board level. Ongoing board discussions between SCM and the CMR continue, an outcome that will be communicated to the market once discussions are finalised."

Questions and comments

From this background, the following specific questions and issues arise for the relevant parties.

A) For Premier Mathabatha, Mr Thabo Leopeng, RBA/Sefateng Chrome Valley Development Proprietary, Traxys, Nedbank

Thabang Thabang General Trading is a shareholder in both RBA and SCVD.

The sole director of Thabang Thabang General Trading is Thabo Leopeng, who appears to have been raised as a brother to Limpopo premier Chupu Mathabatha and had a business relationship with Mathabatha's wife Margaret in the early 2000s.

We suspect he might simply be a placeholder for the Premier – and he is in any event a Politically Exposed Person (PEP) whose participation in this structure gives rise to conflict of interest and a suspicion that he is being used indirectly to gratify the premier and buy support for this project, despite the contested nature of its actual benefit to CMR and the people of Limpopo.

- 1) Please comment on and correct any inaccuracy concerning the alleged historical and current relationship between the Mathabathas and Mr Leopeng.
- 2) Please indicate if you were aware of such a relationship and if so, when you became aware.
- 3) Please comment on the conflict and suspicion highlighted in the paragraph above. Should you disagree with our inferences, please substantiate your answer.

B) For Nedbank, the boards of LEDA & CMR, Mpho Makwana, MEC Thabo Mokone, Bolepu/RBA/Traxys

To quote from the background

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which may result in a conflict of interest with that member's professional conduct as a member

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The Sefateng/CMR dispute, in which Nedbank has a substantial interest, would appear to place Makwana in an unavoidable position of conflict."

- 1) Given the background set out, please indicate whether you disagree that Mr Makwana's role at Nedbank represents at least an indirect interest that may result in a conflict of interest regarding his conduct as the chair of LEDA. If so, please substantiate your answer.
- 2) Please indicate when Mr Makwana became aware of the dispute between CMR and Bolepu?
- 3) Please indicate when Nedbank became aware that Mr Makwana had applied or been nominated to join the board of LEDA.
- 4) Please indicate whether Mr Makwana recused himself from any involvement regarding the appointment of the board of CMR and/or Sefateng – and, if so, when he did so.
- 5) Please indicate whether Mr Makwana recused himself from any involvement regarding the ongoing discussions between the board of CMR and Sefateng around the underground project – and, if so, when he did.
- 6) It is our understanding that some of the board members currently serving on the Leda board (as of December 3, 2019) did not apply for their positions when the posts were advertised. Can you confirm this and provide a list of all those who applied?

C) For Nedbank, the boards of LEDA & CMR, MEC Thabo Mokone, Bolepu/RBA/Traxys Mssrs Kortoumbellides and Shingange

- 1) Please indicate why, given the letter (concerning the conduct of Mr Chepape) from the former chair copied to Nedbank via its lawyers, the bank should not have been especially careful not to place itself in a position of conflict.
- 2) Please indicate why, given the allegations against Mr Chepape, his reappointment should not be seen as a red flag signalling the danger of the political manipulation of the board to rubber-stamp the Sefateng agreements – a signal amplified by the allegation published by City Press.
- 3) Please indicate why the alleged business, political and personal connections of Mssrs Kortoumbellides, Shingange and Mokone should not be seen as a red flag signalling the danger of the political manipulation of the board to rubber-stamp the Sefateng agreements – a signal amplified by the allegation published by City Press.
- 4) Please indicate why the resignation of Mr Lekota and the failure to reappoint Ms Maroga should not be seen as a red flag signalling the danger of the political manipulation of the board to rubber-stamp the Sefateng agreements – a signal amplified by the allegation published by City Press.
- 5) Please indicate why the timing of the withdrawal of its case (at its own expense) by Bolepu should not be seen as a red flag signalling the danger of the political manipulation of the board to rubber-stamp the Sefateng agreements – a signal amplified by the allegation published by City Press.

- 6) Please indicate why the shareholding in the project by someone alleged to be close to the premier (Mr Leopeng) should not be seen as a red flag signalling the danger of the political manipulation of the board to rubber-stamp the Sefateng agreements – a signal amplified by the allegation published by City Press.
- 7) With regards to the court case, was the decision to withdraw the matter predicated on the knowledge that new directors would be appointed to the Leda board, resulting in a more amicable outcome to the discussions between Bolepu Holdings and CMR?

D) For Nedbank, the boards of LEDA & CMR, MEC Thabo Mokone, Bolepu/RBA/Traxys, MTC

- 1) Please explain why the concerns expressed by Lekota, Nkadimeng and Moroga over the commercial terms of the underground project could not be addressed prior to launching the litigation of October 2019?
- 2) Please explain how they have been addressed since then.
- 3) Please explain how the concerns expressed by Nkadimeng and Moroga and the legal opinions obtained by CMR concerning the conflicts of interest as between Sefateng and CMR (on the one side) and Nedbank/Bolepu/RBA/Traxys/MTC (on the other) have been addressed.
- 4) To give just one example, Traxys director Renaud de Tarragon is, we understand, the chair for Sefateng's audit committee. Because Sefateng does the bulk of its contracting through Traxy's subsidiaries (RBA, Bolepu Holdings and Traxys), it appears that De Tarragon is expected to make financial control decisions over companies contracting with SCM that he is involved with through his directorship with RBA and Traxys. Do you dispute this?
- 5) According to annexure GB4 from the replying affidavit (2019/36957) of the Bolepu application, if SCM sells its chrome to RBA/Traxys for R1167.38 (as per the off-take agreement), and the international sales price for chrome is \$178 per tonne (multiplied by the exchange rate given in annexure GB4 of R13.85), RBA/Traxys is selling the chrome for R2465.30. It appears from this agreement that Traxys-connected companies are making R1297.92 of profit per ton, which amounts to profit of R71.4-million for the 55 000 tonnes of chrome delivered to Traxys a month as per the off-take agreement. Is this correct?
- 6) It is our understanding that the discussions between Bolepu Holdings and CMR have concluded as of February 26, resulting in the signing of documents necessary for the Nedbank loan to come into effect. Can you confirm this?
- 7) Has the new agreement resulted in more favourable terms for Corridor Mining Resources and an update of the Memorandum of Incorporation?

Ends