



Gemma Ritchie <gemmar@amabhungane.org>

Attn: Mr Steyn - Comment on behalf of Mr Thabo Leopeng

Wynand Venter <wynandv@vdevattorneys.co.za>
To: Gemma Ritchie <gemmar@amabhungane.org>

31 March 2020 at 15:24

Hi Gemma, trust you are well.

Kindly advise with regard to the mentioning of a Mr. Steyn above?

Kindly see our answers in red to your questions below.

We advise that you consider the contents thereof and applicable law thoroughly, since in our minds it is based on a flawed premises of State participation:

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. **Correct.**
- 2) Please indicate if you were aware of such a relationship and if so, when you became aware. Upon consultation with clients. **He became a shareholder in 2013.**
- 3) Please comment on the conflict and suspicion highlighted in the paragraph above. Should you disagree with our inferences, please substantiate your answer. Sefateng and RBA are both private companies. Although the State through CMR is a shareholder, the State as a shareholder only has the rights any other shareholder would have (see below in terms of case law). It does not exercise vertical power over other shareholders. No caveat exist in South African law that a person may not conduct business in a private company if he or she is related to any politicians or office bearers. This would amount to an infringement of the constitutional right to freedom of trade. As such, Thabo Leopeng is not a Politically Exposed Person and cannot be held to be conflicted. If this was correct, most of the South African mining powerhouses and many private companies would be having conflicts in this regard. It simply is not so, since it is not a conflict. Also, in light of the aforementioned the argument that the Premier serves as a placeholder collapses, especially since the Premier has no rights to apply vertical power in a private company. CMR can take instructions from the relevant MEC under which CMR falls, but CMR is not a majority shareholder in SCVD, RBA nor Sefateng (see reason in item 6 below) and accordingly, the State cannot exercise any power over fellow shareholders on the board. Succinctly, the State does not have the means to determine the outcome of either of SCVD, Sefateng nor RBA's decisions or actions. Accordingly, the Premier's hypothetical support cannot be a requirement for the project to succeed. It appears the investigation is based upon a legal flaw that the State exercises vertical powers in the project, whilst it is only entitled to horizontal rights and obliged with horizontal obligations – the same as any other contractual party. In *Dilokong Chrome Mines (Edms) Beperk vs Director-General of the Department of Trade and Industry* (an unreported judgment given 21 May 1992), BOTHA JA states that it is of utmost importance to ascertain the relationship between parties where the State is involved – is it one of Government and subject or one based on contract? In the premises it is contract through a shareholders agreement. This case was cited in the appeal court case of *Minister of Home Affairs v American Ninja IV Partnership [1993] 1 All SA 222 (A)*, where Nestadt JA stated: *'Obviously the State and its organs can contract. In the absence of any particular enabling statutory provision, the source of this power is the common law prerogative (Baxter Administrative Law at 389). Where such a contract is concluded the State exercises its powers with the concurrence of the persons affected and is liable under the State Liability Act 20 of 1957.'*

An incorrect perception exist that contracts with the State where the State is a fellow shareholder, that the State has the power to determine the outcomes of decisions and actions, whilst it is commercially inconceivable that private entities would invest whilst completely being subject to a State discretion. Considering the aforementioned and applicable law, we believe that the statements made against our client and the Premier would not only be unfounded in law, but also defamatory in nature with the intent to harm the public image and reputation of both our client and the Premier. The argument on which the suspicion is based, simply does not follow in logics.

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

- 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. **This has already been answered. The State through CMR although having majority shares in Sefateng does not have control on the board due to the**

Memorandum of Incorporation requiring 65% votes for an ordinary resolution and 75% votes for a special resolution. Thus it cannot exercise control in any way. This was done to curb potential power abuse. If the State could hypothetically manipulate the company, its decisions or actions then surely the shareholders and / or board would never have agreed to adopt this Memorandum of Incorporation? It would defeat the means for the manipulation you mention in this question. The 'Sefateng Agreements' thus could not have been influenced by the State or Premier due to the State not having majority control in any of Sefateng, SCVD or RBA. This has the result that the premises of the suspicion collapses since it does not hold any water in terms of logics.

Our client has instructed us to request that the aforementioned be quoted verbatim in an endeavour to ensure that no inaccurate or diluted reporting of applicable law occurs. Furthermore, it is our instructions that our client has co-operated with you beyond reasonable means under the circumstances by this reply, the handling of the COR24 request and provision of the share register. Our client now demands that you proceed with publication in an endeavour to avoid harassment of our client any further.

Our client reserves his rights concerning any inaccurate or diluted reporting, the publishing of defamatory statements or any damage as a result of irresponsible reporting.

Trust you find this in order.

Kind Regards,



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