



31 July 2017

LEGAL CLAIM UPDATE

AVZ provides the following update in relation to the proceedings in the Supreme Court of Western Australia commenced by MMCS Strategic 1 (**MMCS**).

As AVZ has previously announced:

- In March 2017 it was served with a writ of summons filed in the Supreme Court of Western Australia by MMCS (**MMCS Claim**);
- the MMCS Claim sought declarations that:
 - the rights conferred upon Manono Minerals S.A.R.L. (**Manomin**) under an exploitation licence (PE12202) issued by the Ministry of Mining in the Democratic Republic of Congo (which covered the same area as that covered by an exploration permit PR13359 granted on 28 December 2016 to AVZ's joint venture partner La Congolaise d'E Exploitation Minière SARL (**Cominière**) (**Manono Tenement**)) remain valid; and
 - Manomin has the exclusive right to carry out various mining activities and associated works in connection with the area covered by the Manono Tenement;
- AVZ applied to the Supreme Court to have the MMCS Claim stayed permanently on the ground that the Supreme Court of Western Australia is a clearly inappropriate forum to hear the MMCS Claim;
- An appeal by Manomin in the Democratic Republic of Congo (DRC) claiming that PE12202 was invalidly cancelled was dismissed by the DRC Supreme Court of Justice on 3 May 2017.

AVZ's application to stay permanently the MMCS Claim was due to be heard on 31 July 2017. However, MMCS sought and was granted leave to amend its claim on 28 July 2017 and as a result, the declaratory relief previously sought by MMCS as to the validity of Manomin's rights in respect of the Manono Tenement has been abandoned.

MMCS is no longer seeking a declaration as to the validity of PE12202, or a declaration that Manomin has the exclusive right to carry out mining activities in connection with the area covered by the Manono Tenement. Instead, MMCS is seeking an order pursuant to the ASIC Act and the Corporations Act requiring AVZ to make announcements to the market to correct what MMCS claims were misleading or deceptive announcements (or announcements which were likely to mislead or deceive) made by AVZ on 2 February 2017, 10 February 2017, 21 March 2017, 31 March 2017, 6 April 2017, 28 April 2017 and 8 May 2017 (Amended MMCS Claim). A copy of the Amended MMCS Claim is attached.

The Amended MMCS claim, in essence, is that at the time of each of those announcements, the rights held by Manomin under PE12202 remained valid because the ministerial decree cancelling it was subject to appeal, and therefore mining rights could not be validly conferred to Cominière under PR13359. MMCS claims that it was misleading or deceptive not to inform the market that this was the case.

AVZ firmly denies that any of its past announcements concerning the Manono Tenement were misleading or deceptive or likely to mislead or deceive, and AVZ will strenuously defend the claims made by MMCS under the Amended MMCS Claim. AVZ confirms that AVZ's legal adviser in the DRC has advised:

- The issuance of PR 13359 by the DRC Minister of Mines to La Congolaise d'Exploitation Minière SA (**Cominière**, a DRC State-owned enterprise) is valid, and was so at the time of each of the AVZ announcements referred to above.
- The term of validity of PR 13359 is five years from 28 December 2016 to 27 December 2021.
- The joint venture agreement entered into by AVZ, Cominière and others is valid and enforceable under the laws of the DRC in accordance with its terms.
- PE12202 was cancelled by the DRC Minister of Mines in accordance with the DRC Mining Code in November 2016.

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STATEMENT OF CLAIM

1. The first named plaintiff (**MMCS**) is and was at all material times:
 - 1 a company incorporated in Mauritius;
 - 2 the holder of 68 per cent of the issued shares in the capital of the second named plaintiff, Manono Minerals SARL (**Manomin**).

2. The second named plaintiff (Manomin) is and was at all material times:
 - 1 a company registered in the Democratic Republic of Congo (**DRC**);
 - 2 engaged in the business of exploring and developing mineral deposits and mining projects, specifically in the DRC.

3. The defendant (**AVZ**) is and was all material times:
 - 1 a public company incorporated in Western Australia and is admitted to be and is listed on the official list of the Australian Securities Exchange Limited (**ASX**); and
 - 2 engaged in trade and commerce and in particular in the business of exploring and developing mineral deposits and mining projects, particularly projects prospective for lithium, tin and tantalum.

4. On 8 November 2011, Exploitation Licence number PE 12202 issued by the Ministry of Mining of the DRC (**PE 12202**) was transferred to Manomin, who from that date held the exclusive right to undertake exploration, development, construction and exploitation works in connection with tin, coltan, lithium and wolframite in the area covered by PE 12202, which area covers the Manono and Kitotolo mineral deposits in the Katanga Province, in the DRC.

5. On 29 August 2016, the Minister for Mines of the DRC issued Ministerial Order 0378/CAB.MIN/MINES/01/2016 which purported to revoke PE 12202 (**Revocation Order**).

6. On 17 November 2016, Manomin lodged appeal RA 1538 to the Administrative Division of the Supreme Court of Justice of the DRC challenging the validity of the Revocation Order, and seeking an order annulling the Revocation Order by reason of procedural irregularities and factual errors (**Appeal**).
7. Article 289 paragraph 5 of the DRC Mining Code being Law No.007/2002 of July 11 2002 (**DRC Mining Code**) in effect provides that in the event of an appeal against a decision to forfeit or revoke a mining right, including an exploration licence or an exploitation licence, the mining rights remain valid throughout the duration of the appeal procedure.
8. The effect of Article 289 paragraph 5 of the DRC Mining Code is that PE 12202 and the underlying exclusive mining rights, held by Manomin remained valid pending determination of the Appeal.

Particulars

See the expert reports of Mr Lambert S. Djunga, Principal, of Djunga & Associates, Lawyers of the DRC dated 17 April 2017, 26 April 2017, 27 June 2017 and the email of Mr Lambert S. Djunga dated 28 June 2017.

9. On 28 December 2016, while the Appeal was pending, the Minister for Mines of the DRC purported to grant to La Congolaise d'Exploitation Minière SARL (**Cominière**) exploration right PR 13359 (**PR 13359**), covering an area that included the area the subject of PE 12202, held by Manomin and which remained valid pending the Appeal.
10. PR 13359 purported to grant to Cominière the exclusive right to carry out exploration, development, construction and exploitation works in connection with tin, coltan, lithium and wolframite in the area covered by that licence.
11. PR 13359 was granted in breach of the DRC Mining Code, in particular:
 - 1 PR 13359 was granted to Cominière in breach of Article 30 of the DRC Mining Code, which provides that the perimeter of a mining exploitation right is exclusive and prohibits an overlapping mineral exploration right from being granted;

- 2 PR 13359 was granted to Cominière in breach of Article 40 of the DRC Mining Code, which requires the mining registry to reject an application for a mining exploration right where the application relates to a Perimeter more than 25% of which overlaps with a valid mining Perimeter; and
- 3 PR 13359 was also granted in breach of Article 64 of the DRC Mining Code, which provides that, as long as a Perimeter is covered by an Exploitation Licence, no other application for a mining or quarry right for all or part of the same Perimeter can be processed.

Particulars

See the expert reports of Mr Lambert S. Djunga, Principal, of Djunga & Associates, Lawyers of the DRC dated 27 June 2017, and emails of Mr Lambert S. Djunga dated 28 June 2017 and 6 July 2017.

12. On 2 February 2017, the defendant made an announcement to the market through the Australian Securities Exchange Market Platform to the effect that:
 - 1 it had agreed to acquire, subject to certain conditions, a 60% interest in the "historic Manono Mine and surrounding area" in the DRC;
 - 2 the Manono Project comprises PR 13359, which was granted on 28 December 2016, for a period of 5 years, and can be renewed;
 - 3 it will be responsible for funding expenditure to complete a feasibility study and will make certain cash payments and share issues in relation to the acquisition;
 - 4 in order to fund the proposed acquisition, AVZ would offer a placement of 200 million shares at 2 cents (together with 200 million attaching options exercisable at 3 cents and expiring 3 years from the date of issue) to raise \$4,000,000 (**Placement**); and
 - 5 Hartleys will act as lead manager of the Placement.

13. In its announcement of 2 February 2017, AVZ did not disclose that:

- 1 Manomin had lodged the Appeal challenging the validity of the Revocation Order, which was pending at the time;
- 2 The effect of Article 289 paragraph 5 of the DRC Mining Code is that the exclusive rights granted to Manomin under PE 12202 remain valid pending determination of the Appeal;
- 3 Manomin contended that PE 12202 remained valid in respect of the area covered by that licence;
- 4 Manomin contested the validity of PR 13359 and Cominière's purported entitlement to carry out exploration, development, construction and exploitation works in respect of the area covered by PE 12202; and
- 5 PR 13359 was granted in violation of Articles 30, 40 and 64 of the DRC Mining Code.

14. In the absence of the material qualifications pleaded in paragraph 13 above, AVZ's announcement of 2 February 2017 was misleading or deceptive or likely to mislead or deceive in that the announcement created the erroneous impression in the market and in the minds of potential investors that:

- 1 PR 13359 was validly granted;
- 2 the statements in the announcements were complete and no material facts had been omitted, when in fact the statements in the announcement were not complete as material facts had been omitted to the effect that the Appeal was pending;
- 3 there was no challenge or threat to Cominière's purported right to carry out exploration, development, construction and exploitation works in connection with tin, coltan, lithium and wolframite in the location of the "historic Manono Mine and surrounding area" in the DRC pursuant to PR 13359, when in fact there was such a challenge or threat;

- 4 there was no challenge or appeal that might impede/interfere with Cominière's purported right referred to in subparagraph 3 above, when in fact the Appeal was pending;
 - 5 Manomin had no mining rights in respect of the Manono Project; and
 - 6 Manomin had no further right to contest or challenge the validity of the Revocation Order or the validity of PR 13359.
15. On 8 February 2017, MMCS sent a letter to AVZ informing AVZ of the plaintiffs' interests in the Manono Project, including the joint venture agreement between the first named plaintiff and Cominière and the fact that PR 13359 covers an area the subject of PE 12202 held by Manomin. MMCS also urged AVZ to obtain advice from DRC-qualified counsel and to seek clarification from Cominière regarding the joint venture agreement between MMCS and Cominière.
16. On 10 February 2017, AVZ made a further announcement to the market through the Australian Securities Exchange Market Platform to the effect that:
- 1 AVZ had completed tranche 1 of the Placement;
 - 2 AVZ has commenced its due diligence of the Manono Project;
 - 3 AVZ has completed settlement for the issue and allotment of 125,000,000 ordinary shares at an issue price of 2 cents to raise \$2,500,000;
 - 4 4,000,000 performance rights were converted into ordinary shares and 35,000,000 options exercisable at 1.2 cents exercisable on or before 30 September 2017 have been exercised;
 - 5 AVZ was advised that "a third party that previously held an indirect interest in a historic licence at Manono (PE 12202) is claiming that the cancellation of that licence in 2016 by the DRC Mining Registry was invalid. AVZ understands the DRC Minister for Mines has previously rejected an appeal against cancellation (ie. upheld the cancellation)."

17. In its announcement of 10 February 2017, AVZ did not disclose any of the facts pleaded in paragraph 13.1 to 3 and 5 above.
18. In the absence of the material qualifications referred to in paragraph 13 above, AVZ's announcement of 10 February 2017, was misleading or deceptive or likely to mislead or deceive in that the announcement created the erroneous impression in the market and in the minds of potential investors as pleaded in paragraph 14 above.
19. On 21 March 2017, AVZ made a further announcement to the market through the Australian Securities Exchange Market Platform regarding the Manono project to the effect that:
 - 1 diamond drilling will commence today at the Manono Project;
 - 2 AVZ is completing mapping, trenching and sampling of the Manono pegmatites, which work has shown that the pegmatites are more extensive than previously thought;
 - 3 the date for completion of the due diligence was extended until 28 April 2017;
 - 4 AVZ expects to settle the acquisition (assuming the results of the due diligence are to AVZ's satisfaction and shareholders approve transaction related resolutions) and the second tranche of the placement by about 3 May 2017.
20. In its announcement of 21 March 2017, AVZ did not disclose any of the facts pleaded in paragraph 13 above.
21. In its quarterly report for the period ending 31 March 2017, AVZ made a further announcement to the market through the Australian Securities Exchange Market Platform to the effect that:
 - 1 technical due diligence of the Manono Project is continuing;
 - 2 an action by a third party claiming that a historic mining at Manono was invalidly cancelled has been heard by the DRC Supreme Court of Justice;

- 3 AVZ's legal advisor in the DRC has advised that PR 13359 is valid and confers on Cominière as the registered holder the right to carry out exploration work for lithium, coltan and wolframite;
 - 4 if the DRC Supreme Court of Justice finds that PE 12202 has been wrongly forfeited, and as a result the decision of the DRC Minister for Mines should be annulled, the effects of the annulled decision cannot alter the rights of third parties;
 - 5 AVZ entered into an agreement with Cominière and Dathomir Mining Resources SARL (**Dathomir**) to acquire 60% interest in the Manono Project from "the current holders", Cominière and Dathomir, with the parties' interests on completion to be AVZ 60%, Cominière 30% and Dathomir 10%;
 - 6 AVZ will be responsible for funding expenditure to complete the feasibility study;
 - 7 to fund the proposed acquisition and planned works program, AVZ completed a book build for a placement to institutional and sophisticated investors to raise \$5,000,000;
 - 8 AVZ expects to settle the acquisition and the second tranche of the placement on about 23 May 2017;
22. In neither its announcement of 21 March 2017 nor in its quarterly report for the period ending 31 March 2017, did AVZ disclose any of the facts pleaded in paragraph 13, 3 and 5 above.
23. In the absence of the material qualifications referred to in paragraph 13 above, AVZ's announcements of 21 March 2017 and its quarterly report of 31 March 2017, were misleading or deceptive or likely to mislead or deceive in that the announcements created the erroneous impression in the market and in the minds of potential investors as pleaded in paragraph 14 above.
24. On 6 April 2017, AVZ made a further announcement to the market through the Australian Securities Exchange Market Platform to the effect that:

- 1 AVZ is completing detailed geological mapping, trench and rock chip sampling programs and diamond drilling;
 - 2 AVZ's legal advisor in the DRC has advised that PR 13359 is valid and confers on Cominière as its registered holder the right to carry out exploration work for lithium, coltan and wolframite;
 - 3 there is currently pending in the DRC Supreme Court of Justice an action for annulment of the Revocation Order. The existence of this litigation does not affect the ability of Cominière to dispose of PR 13359 or enter into a joint venture arrangement with third parties for the exploration, development and mining of this tenements; and
 - 4 even if the Revocation Order is annulled, the effect of the annulled decision cannot alter the rights of third parties, and any decision declaring the Revocation Order invalid would not extend its effect to the subsequent administrative decision which granted PR 13359 to Cominière.
25. In its announcement of 6 April 2017, AVZ did not disclose any of the facts pleaded in paragraph 132,3 and 5 above.
26. In the absence of the material qualifications referred to in paragraph 25 above, AVZ's announcement of 6 April 2017, was misleading or deceptive or likely to mislead or deceive in that the announcements created the erroneous impression in the stock market and in the minds of potential investors as pleaded in paragraph 15 above.
27. On 28 April 2017, AVZ made an announcement to the market through the Australian Securities Exchange Market Platform to the effect that:
- 1 AVZ was advised by its DRC legal counsel that the action challenging the validity of the Revocation Order was heard by the DRC Supreme Court and the decision has not been handed down, but AVZ's legal adviser in the DRC attended the hearing and remains of the opinion that the chances of a ruling in favour of Manomin appear very slight.

- 2 further, even if the DRC Supreme Court of Justice finds that the PE12202 was wrongly forfeited and as a result, the decision of the DRC Minister for Mines should be annulled, the effects of the annulled decision cannot alter the rights of third parties. Any decision declaring the ministerial order invalid would not extend its effect to the subsequent granting of PR 13359 to AVZ's joint venture partner, Cominière;
 - 3 AVZ has agreed with its joint venture partner to extend the date for completion of the due diligence until close of business on 18 May 2017;
 - 4 AVZ now expects to settle the acquisition on about 23 May 2017.
28. In its announcement of 28 April 2017, AVZ did not disclose any of the facts pleaded in paragraph 132,3 and 5 above.
29. In the absence of the material qualifications referred to in paragraph 28 above, AVZ's announcement of 28 April 2017 was misleading or deceptive or likely to mislead or deceive in that the announcements created the erroneous impression in the stock market and in the minds of potential investors as pleaded in paragraph 15 above
30. On 8 May 2017, AVZ made a further announcement to the market through the Australian Securities Exchange Market Platform to the effect that:
- 1 AVZ was advised that the DRC Supreme Court of Justice dismissed Manomin's claim challenging the validity of the Revocation Order, ratifying the decision by the DRC Minister of Mines which cancelled PE 12202;
 - 2 AVZ remains on track to complete its due diligence and then settle the acquisition and the second tranche of the placement on about 23 May 2017.
31. In its announcement of 8 May 2017, AVZ did not disclose any of the facts pleaded in paragraph 132,3 and 5 above.
32. In the absence of the material qualifications referred to in paragraph 31 above, AVZ's announcement of 8 May 2017 was misleading or deceptive or likely to mislead or

deceive in that the announcements created the erroneous impression in the stock market and in the minds of potential investors as pleaded in paragraph 14 above

33. Each of the announcements by the defendant on 2 February 2017, 10 February 2017, 21 March 2017, 31 March 2017, 6 April 2017, 28 April 2017 and 8 May 2017 referred to above were separately and in the aggregate misleading or deceptive or likely to mislead or deceive the market and potential investors in that the announcements created the erroneous impression in the stock market and in the minds of potential investors pleaded in paragraph 14 above.

34. In the circumstances pleaded in paragraphs:

1 12 to 14 above,

2 16 to 18 above;

3 19 to 20 above;

4 21 to 23 above;

5 24 to 26 above;

6 27 to 29 above;

7 30 to 32 above,

AVZ, in the course of trade and commerce, engaged in conduct in relation to financial services that was misleading or deceptive or likely to mislead or deceive the market and potential investors in that the announcements separately and in the aggregate created the erroneous impression referred to in paragraph 33 above.

35. AVZ's conduct pleaded in paragraphs 12 to 32 above contravenes section 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).

36. In the circumstances pleaded in paragraphs:

1 12 to 14 above,

2 16 to 18 above;

3 19 to 20 above;

4 21 to 23 above;

5 24 to 26 above;

6 27 to 29 above;

7 30 to 32 above,

AVZ engaged in conduct in relation to a financial product or a financial service that was misleading or deceptive or likely to mislead or deceive the market and potential investors in that the announcements separately and in the aggregate created the erroneous impression referred to in paragraph 33 above.

37. AVZ's conduct pleaded in paragraph 12 to 32 above contravenes section 1041H of the *Corporations Act 2001* (Cth) (**Corporations Act**).

38. In the circumstances pleaded in paragraphs:

1 12 to 14 above,

2 16 to 18 above;

3 19 to 20 above;

4 21 to 23 above;

5 24 to 26 above;

6 27 to 29 above;

7 30 to 32 above,

AVZ, in the course of trade and commerce, engaged in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose

or the quantity of financial services, in that the announcements separately and in the aggregate created the erroneous impression referred to in paragraph 33 above.

39. AVZ's conduct pleaded in paragraph 12 to 32 above contravenes section 12DF of the ASIC Act.

The plaintiffs claim against the defendant:

1 an injunction pursuant to section 12GD(1) of the ASIC Act and /or under section 1324 of the Corporations Act, requiring that the defendant to announce to the market through the Australian Securities Exchange Market Platform that:

- (a) PE 12202 and PR 13359 cover overlapping areas;
- (b) PR 13359 was granted to Cominière in December 2016 at a time when mining exploitation licence PE 12202 and the mining rights granted thereby remained in existence;
- (c) PE 12202 was held by Manomin;
- (d) Manomin contended (as was the fact) that PR 13359 was granted in breach of the Mining Code of the DRC and was therefore invalid;
- (e) Manomin contended (as was the fact) that under the laws of the DRC, the application pursuant to which PR 13359 was granted could not have been lawfully granted, as it covered an area that overlapped with PE 12202;
- (f) to the extent any of AVZ's market announcements dated 2 February 2017, 10 February 2017, 21 March 2017, 31 March 2017, 6 April 2017, 28 April 2017 or 8 May 2017 represented that PE 12202 was not valid at the time PR 13359 was purportedly granted, they are not correct;
- (g) to the extent any of AVZ's market announcements dated 2 February 2017, 10 February 2017, 21 March 2017, 31 March 2017, 6 April 2017,

28 April 2017 or 8 May 2017 represented that PE 12202 was not valid at any time prior to 3 May 2017, they are not correct;

(h) to the extent any of AVZ's market announcements dated 2 February 2017, 10 February 2017, 21 March 2017, 31 March 2017, 6 April 2017, 28 April 2017 or 8 May 2017 represented that Manomin did not at the time hold mining rights over the area covered by PR 13359, in respect of which AVZ entered into an agreement with Cominière and Dathomir Mining Resources SARL, they are not correct; and

(i) to the extent any of AVZ's market announcements dated 2 February 2017, 10 February 2017, 21 March 2017, 31 March 2017, 6 April 2017, 28 April 2017 or 8 May 2017 represented that the revocation of PE 12202 was effective on 29 August 2016 – that is not correct.

2 Such further or other orders as this Honourable Court deems fit.

3 Costs.

Andrew Bell SC
Counsel for the Plaintiffs