



ASX ANNOUNCEMENT

27 September 2023

## Arbitration Proceedings Update

**AVZ Minerals Limited** (ASX: AVZ, OTC: AZZVF) (**AVZ**) provides an update regarding the various arbitration proceedings relating to the Manono Project.

As previously disclosed to ASX, the arbitration proceedings 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 is the state-owned entity holding 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:

1. 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;
2. the two ICC arbitration proceedings involving Dathomir in relation to its attempts to dispute the sale of its 15% shareholding in Dathcom; and
3. 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 by the DRC in granting the exploitation permit and therefore led to the commencement of the ICSID proceedings.

This update summarises the progress to date and provides further detail.

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## Cominière & Jin Cheng Disputes

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 reflect the fact Jin Cheng is 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 reflect the fact Jin Cheng is 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 because 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 originally 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 preliminary question is currently listed for hearing on 5 and 6 October 2023.

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 proceedings 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.

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. This application was refused by the ICC Court on 1 September 2023.

On 1 September 2023, the ICC indicated it would shortly determine the number of arbitrators for the proceedings.

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 into 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 opposed those orders. On 18 September 2023, AVZ and AVZI were successful, with the ICC refusing to make confidentiality orders.

In relation to the proceedings in respect of the 2020 sale agreement, AVZ and AVZI will submit their statement of claims on 10 November 2023.

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 DRC Mining Code.

The ICSID proceedings were 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. These parties have shown a determination to create an environment of confusion and misinformation, which has delayed a conclusion by the competent DRC authorities.

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.

This announcement was authorised for release by the Board of Directors of AVZ Minerals Limited.

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