

**“AA1”**

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**DELIVERED BY EMAIL****Edward Nathan Sonnenbergs**

Attention: Gary Oertel  
Email: goertel@ensafrica.com

Cc: Letitia Field  
Email: lfield@ensafrica.com

**Johannesburg Office**  
155 5th Street  
Sandton 2196 South Africa  
Private Bag 10015  
Sandton 2146  
Docex 111 Sandton  
Tel +27 11 535 8000  
Fax +27 11 535 8600  
www.werksmans.com  
enquiries@werksmans.com

**YOUR REFERENCE:**

**OUR REFERENCE:** Mr E Levenstein/Ms L Becker/lb/AIRL26674.3/#3935613v1  
**DIRECT PHONE:** +27 11 535 8237/8196  
**DIRECT FAX:** +27 11 535 8737/8796  
**EMAIL ADDRESS:** elevenstein@werksmans.com/lbecker@werksmans.com

28 September 2015

Dear Sirs

**AIR LIQUIDE PROPRIETARY LIMITED / EVRAZ-HIGHVELD STEEL AND VANADIUM LIMITED (IN BUSINESS RESCUE)**

- 1 As you are aware, we act on behalf of Air Liquide Proprietary Limited ("Air Liquide/our client").
- 2 We refer to the meeting held at your offices on 22 September 2015 ("meeting").
- 3 As discussed at the meeting, we advised that we would record the material items raised at the meeting in a letter. This letter aims to deal with such items.
- 4 As previously advised, we and our client are available to meet with International Resources Limited ("IRL") from 16h00 on 29 September 2015. Please confirm whether this is suitable for you, your client and IRL.
- 5 We and our client are in receipt of the business rescue plan published by your clients, the business rescue practitioners on 15 September 2015 ("plan") for Evraz Highveld Steel and Vanadium ("Highveld Steel").
- 6 We confirm that at the meeting, it was agreed that your client will cause an amendment of the plan to be proposed at the meeting to consider and vote on the plan on 28 September 2015, which amendment preserves the right of affected persons to proceed against any sureties and guarantees for the full amount of their claims, notwithstanding the adoption and implementation of the provisions of the plan.
- 7 It is ours and our client's considered view that as a key supplier of product to Highveld Steel, and an entity who had invested significant capital, in the amount of over R600 000 000 in a plant which is principally devoted to the supply of product to Highveld Steel, the plan does not adequately deal with our client.

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office 155 5th Street Sandton 2196 South Africa  
Directors: D Hertz (Chairman) AL Armstrong BA Aronoff DA Artelro T Bata AR Berman NMN Bhengu L Bick HGB Boshoff GT Bossr TJ Boswell MC Brönn  
W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C ColeMorgan JN de Villiers LJ du Preez RJ Feenstra S Fodor SJ Gardiner D Geyer JA Gobetz R Gootkin  
ID Gouws GF Griessel J Hollesen MGH Honiball VR Hoslosky BB Rotz HC Jacobs TL Janse van Rensburg N Jansen van Vuuren G Johannes S July J Kallmeyer  
SLG Kayana A Kenny BM Kew R Killoran N Kirby HA Kotze S Krige PJ Krusche P le Roux MM Lessing E Levenstein JS Lochner JS Lubbe BS Mabasa  
PK Mabasa MPC Manake H Masondo C Morallis KO Motshwane L Naidoo J Nicklg JJ Niermand BPF Olivier WE Oosthuizen S Padayachy M Pansegrouw CP Pauw  
AV Pillay T Potter BC Price AA Pyzikowski RJ Raath A Ramdhini L Rood BR Roothman W Rosenberg NL Scott TA Sibidja LK Silberman JA Smit JS Smit  
Cl Stevens PO Steyn J Stockwell W Strachan JG Theron JJ Truter KJ Trudgeon DN van den Berg HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis  
RN Wakefield DC Walker D Weglarski M Wlahahn DC Williams DG Williams E Wood BW WorkmanDavies

JOHANNESBURG • CAPE TOWN • STELLENBOSCH • TYGER VALLEY

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- 8 More particularly, whilst your clients have indicated that they have no intention to terminate our client's Supply Agreement with Highveld Steel, there is no indication in the plan that they will not attempt to do so. In such event, your client has endeavoured to limit the damages claims of affected persons to a period of 6 months in terms of clause 24.2 without having provided any rational explanation for same. Such limitation is not permitted by the provisions of Chapter 6 of the Companies Act 71 of 2008 or by law. This limitation of 6 months is significantly less than the remaining term of the Supply Agreement which has another 20 years left of its term.
- 9 Our client's right to challenge the limitation of its potential damages claim (to the extent that it becomes necessary to do so) is fully and strictly reserved.
- 10 We trust that you understand that whilst our client has been supportive, and remains supportive, of the business rescue of Highveld Steel, it has a duty to protect its interests.

Yours faithfully

Werksmans

THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

A handwritten signature in black ink, appearing to be 'AH' or similar, located at the bottom right of the page.

**“AA2”**



AA

**ENSafrica**

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 P O Box 783347 Sandton South Africa 2146  
 docex 152 Randburg  
 tel +2711 269 7600 fax +2711 269 7899  
 info@ENSafrica.com ENSafrica.com

Van Hulsteyns Attorneys  
 By email: [andrew@vhlaw.co.za](mailto:andrew@vhlaw.co.za)  
[Daniel@vhlaw.co.za](mailto:Daniel@vhlaw.co.za)

G Oertel / L Field our ref  
 A Legg/Mat10034 your ref  
 14 November 2016 date

Dear Sirs

**RE: EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED (IN BUSINESS RESCUE) ("EVRAZ") /  
 AIR LIQUIDE (PTY) LIMITED**

1. We refer to our letter of 24 October 2016 and the meeting of affected persons held on 28 October 2016.
2. We are instructed that further claims have been reconciled since our letter.
3. To this extent, we attach an updated schedule reflecting the claims submitted by creditors that:
  - 3.1. have been accepted;
  - 3.2. have been rejected / disputed; and
  - 3.3. are still in the process of being reconciled.
4. In regard to the claims still in the process of being reconciled (and reflected as "*claims to be adjudicated*" in the presentation to the meeting):
  - 4.1. Hochvanadium Handels GMBH ("Hochvanadium") submitted a claim form pursuant to its termination of the supply agreement concluded with Evraz, however, the claim is still subject to finalisation by Hochvanadium. Hochvanadium's claim comprises, *inter alia*, a claim for prepayment of slag and a claim for damages. Upon the finalisation of the claim by Hochvanadium, our clients will dispute the claim. Our clients have, in the interim, advised Hochvanadium that the claim will be limited in accordance with the provisions of the business rescue plan.

*Handwritten signature/initials*

- 4.2. SA Roll Company (Pty) Limited submitted an amended claim form in terms whereof damages are being claimed for the cancellation of a purchase order. This claim is in the process of being dealt with by our clients.
  - 4.3. Vesuvius South Africa (Pty) Limited and Vesuvius GMBH submitted claim forms for, *inter alia*, non-delivery of purchase orders. These claims are in the process of being dealt with by our clients.
  - 4.4. Samancor Chrome Limited submitted a claim form for, *inter alia*, rehabilitation costs regarding a dump. Our clients have requested further information relating to this claim to establish whether there are any projected costs included in the claim, in which event, same will be dealt with in terms of the provisions of the business rescue plan.
5. As requested previously, we attach:
- 5.1. a schedule reflecting the contracts cancelled by exercising the termination notices provided in the respective agreements or which terminated by effluxion of time; and
  - 5.2. the list of shareholders received from Computershare.
6. Please confirm receipt of this letter with the attachments referred to herein.

Yours faithfully

**EDWARD NATHAN SONNENBERGS INC.**

Per:

  
LETTIA FIELD

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# Paragraph 3.1

## (Accepted)



# Paragraph 3.2

## (Rejected Disputed)





Paragraph 3.3  
(To be reconciled)



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# Paragraph 5.1

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## Paragraph 5.2



**“AA3”**

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# VAN HULSTEYNS

Attorneys • Notaries • Conveyancers

SINCE 1872

ENSafrica

Attention: Gary Oertel / Letitia Field

By E-mail: [goertel@ensafrica.com](mailto:goertel@ensafrica.com)  
[lfield@ensafrica.com](mailto:lfield@ensafrica.com)

06 September 2016

*Your Reference: G Oertel/L Field*  
*Our Reference: Mr A Legg/MAT10034*

Dear Sirs

**RE: EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED (IN BUSINESS RESCUE) / AIR LIQUIDE PROPRIETARY LIMITED**

1. We refer to your letter dated 5 September 2016 as well as to our letter dated 25 August 2016.
2. Our client denies that the documents identified in our client's Rule 35(12) notices are irrelevant in respect of which all of its rights are reserved.
3. In relation to the documents which your client has tendered to make available for inspection, we propose doing so on Friday morning, 9 September 2016 at 08h30 and request you to confirm that the suggested time will be suitable to you.
4. In addition, we also request that you provide the following information to us, which is similarly required for purposes of enabling us to draft our client's answering affidavit:
  - 4.1. A register/details of those creditors who attended and voted at the meeting to approve the business rescue plan and Amendments 2 and 3 (which amendments are to be inserted as paragraphs 24.3.4 and 24.3.3 of the plan) as well as the amounts of their claims where this does not appear from the Business Rescue Plan.
  - 4.2. A list of all creditors whose contracts have been cancelled since the inception of the business rescue to date who have lodged damages claims against the company, together with the full amounts of their claims and whether and to what extent any such claim has been accepted by the business rescue practitioners.
  - 4.3. Annexure B to the Business Rescue Plan is a list of creditors of the company as at the Commencement Date. It is not possible to discern from the list whether any of those claims is a claim for damages. Kindly identify which of

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 PO Box 783436 • Sandton • 2146

Vat No  
 4680106780

**Partners**

Chris Christos • Andrew Legg • Ivan Tshinangwe  
 Barbara Seimenis • Shaviv Singh • Daniel Raath

**Practising Consultants**

Arnold Cigler • Karel Jasper

Associate In association with  
 Louise Swart Diane Hall

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the claims is a claim for damages and in respect of each claim, state what the full amount of the claim is and whether and to what extent the claim has been accepted by the BRPs.

- 4.4. Kindly advise us what the status of the proceedings instituted by East Metals AG and Mastercroft S.A.R.L against your clients for the setting aside of the business rescue plan as invalid is, and let us know what affidavits were filed in such proceedings by your client, copies of which are requested, your reasonable photocopying charges being tendered.
- 4.5. We understand from our client that prior to the commissioning of the Air Liquide Plant, your client sourced product from Afrox for a period of approximately two month's prior to such commissioning. You are requested to make available copies of all invoices rendered by Afrox to your client in respect of the supply of oxygen, nitrogen and argon (or any hereof) during the period October 2013 to March 2014.
5. In order to avoid a delay in the delivery of our client's answering affidavit, we kindly request you to revert to us urgently.

Yours faithfully,

*(Electronically transmitted without signature)*

**VAN HULSTEYNS**

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the claims is a claim for damages and in respect of each claim, state what the full amount of the claim is and whether and to what extent the claim has been accepted by the BRPs.

- 4.4. Kindly advise us what the status of the proceedings instituted by East Metals AG and Mastercroft S.A.R.L against your clients for the setting aside of the business rescue plan as invalid is, and let us know what affidavits were filed in such proceedings by your client, copies of which are requested, your reasonable photocopying charges being tendered.
- 4.5. We understand from our client that prior to the commissioning of the Air Liquide Plant, your client sourced product from Afrox for a period of approximately two month's prior to such commissioning. You are requested to make available copies of all invoices rendered by Afrox to your client in respect of the supply of oxygen, nitrogen and argon (or any hereof) during the period October 2013 to March 2014.
5. In order to avoid a delay in the delivery of our client's answering affidavit, we kindly request you to revert to us urgently.

Yours faithfully,

*(Electronically transmitted without signature)*

**VAN HULSTEYNS**

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Van Hulsteyns Attorneys  
 By email: [andrew@vhlaw.co.za](mailto:andrew@vhlaw.co.za)  
[Daniel@vhlaw.co.za](mailto:Daniel@vhlaw.co.za)

G Oertel / L Field our ref  
 A Legg/Mat10034 your ref

8 September 2016 date

Dear Sirs

**RE: EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED (IN BUSINESS RESCUE) ("EVRAZ") /  
 AIR LIQUIDE (PTY) LIMITED**

1. We refer to your letter of 6 September 2016.
2. We do not propose dealing with each of the allegations contained in your letter and all of our clients' rights to do so at a later stage are reserved.
3. We confirm 08h30 on 9 September 2016 for the purpose of the inspection of the documents our clients have agreed to make available.
4. In regard to the documents requested in paragraph 4 of your letter:
  - 4.1. Ad sub-paragraph 4.1:
    - 4.1.1. The documents requested are irrelevant to these proceedings. In addition, pages 136 to 138 of the record, being the report detailing the amendments and the results of the meeting held in terms of section 151 of the Companies Act, 71 of 2008, provides sufficient details relating to your request.
  - 4.2. Ad sub-paragraphs 4.2, 4.3 and 4.5:
    - 4.2.1. The documents requested are irrelevant to these proceedings.
  - 4.3. Ad sub-paragraph 4.4:
    - 4.3.1. There have been no further developments in the respective proceedings instituted by East Metals AG and Mastercroft SALR, the issues effectively having become moot.

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4.3.2. The affidavits filed are available on Evraz's website.

5. We record the following:

- 5.1. Your client was furnished with a copy of the application as far back as 4 August 2016.
- 5.2. Your client delivered its Rule 35(12) notice on 16 August 2016.
- 5.3. Your client, three weeks after delivery of its Rule 35(12) notice, is now requesting further documents as set out in your letter ostensibly for the purpose of preparing its answering affidavit.
- 5.4. The documents requested in the Rule 35(12) notice and paragraph 4 of your letter are either irrelevant to the proceedings between our respective clients or already in your client's possession. Your client's conduct accordingly appears to be nothing more than a dilatory tactic to avoid filing the answering affidavit by the extended time agreed to by our clients for an ulterior motive, as alluded to in our clients' founding affidavit.

6. We accordingly advise that your client will be required to file its answering affidavit by 30 September 2016.

7. All of our clients' rights remain reserved.

Yours faithfully

**EDWARD NATHAN SONNENBERGS INC.**

  
**LETITIA FIELD**

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## Meeting Report

<b>Subject:</b>	<b>Highveld Utilities Commercial proposal</b>	
Date of Meeting: 05/04/2016	Date of Issue: 06/04	
Location of Meeting: Highveld	Meeting Organizer: Alexandre Gizard	
Time of Meeting: 11:00	Telephone:	

<b>Purpose:</b>	<b>Discuss with Evraz the commercial proposal about utilities supply during HVS business rescue</b>
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<b>Participants:</b>	
Alexandre Gizard	Air Liquide (AL)
Martin Baird	Air Liquide
Fergus Feltman	Afrox (AF)
Sihle Lande	Afrox
Nicholas Isabirye	Afrox
Kunal Harilal	EHSV

<b>Distribution:</b>	
Business owner:	
Confidentiality level: •INTERNAL	
Distribution list:	Participants of the meeting

Topics:	Presented by / Time Allocated
1. Discuss each Item of commercial proposal V.2	
2.	
3.	
4.	

### ACTION ITEMS

N°	Topic & Sub Categories
1	<b>Labour: 617 kZAR /month</b> EHSV explains that labour includes <ul style="list-style-type: none"> <li>- 8 HT Technicians working in shift 24/7 and operating HSV2 and basic tasks on the water plant.</li> <li>- 1 C/I specialist who knows about the control system. This resource is difficult to externalise since the control systems are multiple and very old.</li> <li>- 1 GMR 2.1 for legal reasons</li> <li>- 1 day shift operator for activities on the water plant not covered by the HT technicians</li> <li>- 1 Mechanical fitter for all preventive maintenance on mechanical equipments: pumps, valves, pipes.</li> <li>- 1 Lab analyst for potable water and return condensate</li> </ul> In terms of operation & maintenance the water plant is resource-intensive and therefore

	<p>EHSV considers a permanent presence is necessary. Equipments are old and failures are frequent. 2 control rooms need to be operating: central control room (electricity and fire alarms) and water plant control room.</p> <p>AL &amp; AF consider that the permanent presence of 2 HT technicians is not necessary. Operating systems have protections and in case of a trip AL &amp; AF would accept to wait for the intervention of a technician on stand-by to make all utilities available again in a reasonable time (typically 1.5hr for electricity and 8-10hr for water). AL &amp; AF understand that reducing resources might compromise the reliability of supply w.r.t. response time.</p> <p>Therefore AL&amp; AF suggest to reduce the HT technicians team to 3 with a call-out roster for the nights and the weekend.</p>
2.	<p><b>Rental for Electricity: 269 kZAR/month</b></p> <p>According to EHSV this rental would secure the assets against a sale of equipment. According to AL &amp; AF the rationale behind the amount is not clear. The value calculation is similar to network charges which are already paid by AL &amp; AF with the electricity bill. AL &amp; AF do not want to pay those charges twice.</p>
3.	<p><b>Rental for Water: 375 kZAR/month</b></p> <p>As for electricity, EHSV justifies this amount for securing the assets. The value was calculated against the value of the pertaining equipments.</p> <p>In AL's opinion Electricity and water are required for the winding down of the site. Therefore these equipments will not be sold before the end of the business rescue.</p> <p>AL &amp; AF consider that no rental should be charged for utilities which are already due from the existing agreements. The spirit of this new Utilities supply agreement is to relieve EHSV from any supplementary costs generated by the continuation of utilities supply. AL &amp; AF should not be financing recurrent, sunk costs from the EHSV site.</p>
4.	<p><b>Maintenance: 2.68 kZAR/month</b></p> <p>Corrective maintenance interventions will be paid at cost on case to case basis. Remaining amount are chemicals for the potable water.</p> <p>Today potable water supplies to AL &amp; AF cannot be considered as potable. AL &amp; AF have instructed their personnel not to drink it. When agreement get signed potable water treatment shall be resumed (this will not be immediate due to the condition of the supply lines - approximately 2 months before AL/AF will receive potable water to specification) and quality should meet SANS standards. AL/AF to consider whether they will accept this or source their own potable water</p>
5.	<p><b>Transportation: 13.8 kZAR/month</b></p> <p>Not commented</p>
6.	<p><b>Security (electrical substation + water plant): 156 kZAR/month</b></p> <p>According to EHSV extra security must be deployed on "still-operating" systems. According to AL &amp; AF those are recurrent, sunk costs which are incurred by EHSV regardless of the supply of utility.</p> <p>Even if AL &amp; AF should participate in those costs, the amount seems very high compared to</p>

	the size of operations. Detailed breakdown required
7.	<b>Insurance: 67.5 kZAR/month</b> AL & AF would like to have more details about the coverage of the insurance.
8.	<b>Management fee: 15%</b> EHSV explains that this cost is for managing the contract, the organization of workforces, the invoicing and payments. (AL/AF considers 15% fee too high, EVRAZ would have these resources on site during the winding down period anyway)

Next Steps:	Responsibilities
AL & AF would like EHSV to re-evaluate their proposal taking into account the comments made during the meeting.	EHSV
Agree on a final proposal (AF & AL to propose manning model)	EHSV, AL, AF

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5. We enclose drafts of:

5.1. A Notice of Counter-Application;

5.2. A Notice of Motion (Joinder Application);

5.3. A Notice of Motion (Application For Substituted Service); and

5.4. Annexure "X" to the Application referred to in 5.3.

6. Kindly advise whether:

6.1. any of the drafts should be amended or supplemented in any respect/s having regard to the relevant facts of which your clients are aware;

6.2. whether or not your clients consent to the relief sought in the proceedings referred to in 5.2 and 5.3 above; and

6.3. whether your clients are prepared to comply fully with the relief sought in Part A of the Notice of Counter-Application which will avoid the need for our client to seek such relief.

7. Kindly revert to us as a matter of urgency so as to avoid unnecessary delay in the prosecution of the pending application.

8. We look forward to hearing from you in the above respects.

Yours faithfully,

*(Electronically transmitted without signature)*  
VAN HULSTEYNS



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

**CASE NO 26911/2016**

In the matter between:

**DANIEL TERBLANCHE N.O.**

First Applicant

**PIERS MICHAEL MARSDEN N.O.**

Second Applicant

and

**AIR LIQUIDE (PTY) LTD**

First Respondent

**EVRAZ HIGHVELD STEEL AND VANADIUM  
LIMITED (IN BUSINESS RESCUE)**

Second Respondent

**THE CREDITORS OF THE SECOND  
RESPONDENT LISTED IN ANNEXURES A AND B  
TO THIS NOTICE OF MOTION**

Third Respondents

**THE EMPLOYEES OF THE SECOND  
RESPONDENT LISTED IN ANNEXURE C TO THIS  
NOTICE OF MOTION**

Fourth Respondents

**NATIONAL UNION WORKERS OF SOUTH  
AFRICA**

Fifth Respondent

**SOLIDARITY UNION**

Sixth Respondent

**THE SHAREHOLDERS OF THE SECOND  
RESPONDENT**

Seventh Respondents

**INDUSTRIAL DEVELOPMENT CORPORATION  
SOC LTD**

Eighth Respondent

**ARCELORMITTAL SOUTH AFRICA LTD**

Ninth Respondent

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**NOTICE OF COUNTER-APPLICATION**

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**PART A**

**BE PLEASED TO TAKE NOTICE** that the first respondent intends to apply to this Honourable Court for an order in the following terms: -

1. The first respondent is granted leave in terms of section 133(1) of the Companies Act 71 of 2008 to bring this counter-application.
2. The applicants are directed to provide the information set out in paragraph 105.2 of the first respondent's answering affidavit in the main application within ten days of the grant of this order.
3. The first respondent is granted leave to supplement its answering affidavit in the main application and its founding affidavit in its counter-application within ten days of the receipt by it of the information referred to in paragraph 2 above.
4. The main application is stayed until:
  - 4.1. the applicants have complied with the orders set out in paragraph 2 above and the time period provided for in paragraph 3 above has lapsed or the first respondent has supplemented its answering affidavit in the main application and/or its founding affidavit in its counter-application, whichever is the earlier; and
  - 4.2. the necessary joinders in the counter-application have been effected.

**TAKE NOTICE** that the answering affidavit of **Amine Houssaim** in the main application, together with the attachments thereto, shall be used in support of this application.

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**TAKE NOTICE FURTHER THAT** the first respondent has appointed the address of **Van Hulsteyns Attorneys, 3<sup>rd</sup> Floor Katherine & West Building, corner Katherine and West Streets, Sandton**, as the addresses at which it will accept notice and service of all process in these proceedings.

**TAKE NOTICE FURTHER THAT** if you intend opposing this application you are required to:

- a) notify the first respondent's attorneys in writing by or before \_\_\_\_\_ 2014;
- b) within 15 days after you have so given your intention to oppose the application, to file your answering affidavits, if any; and
- c) appoint in such notification an address referred to in rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings.

**TAKE NOTICE FURTHER THAT** if no notice of intention to oppose is given, the application will be made on \_\_\_\_\_ at 10h00.

**PART B**

**BE PLEASED TO TAKE NOTICE** that the first respondent intends to apply to this Honourable Court for an order in the following terms: -

1. Declaring that an order cancelling the obligations of the second respondent on the terms set out in paragraph 1 of the notice of motion in the main application amounts to a repudiatory breach on the part of the second respondent of the

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Supply Agreement giving rise to a claim for damages on the part of the first respondent against the second respondent.

2. Declaring that:

- 2.1. the first respondent is not bound by paragraph 24.2 of the Business Rescue Plan ("**the Plan**");
- 2.2. clause 20.12 of the Supply Agreement does not impose any limitation on the first respondent's claim for damages arising from a cancellation of the second respondent's obligations under the Supply Agreement on the terms set out in paragraph 1 of the notice of motion;
- 2.3. the first respondent is entitled to submit and the applicants are obliged to accept a claim to the full extent of the first respondent's damages in the business rescue proceedings and that any dispute regarding the quantification thereof is to be determined in accordance with the dispute resolution mechanism in paragraph 38 of the Plan;
- 2.4. the first respondent is entitled to be paid and the applicants are directed to pay the first respondent a dividend based on the full extent of the first respondent's damages claim in the business rescue proceedings.

3. Declaring that:

- 3.1. the first respondent is entitled to continue to receive a supply of water according to its requirements from the Highveld Steel water pipeline ("**the pipeline**") on reasonable commercial terms;

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- 3.2. to that end, the second respondent and/or the applicants is/are obliged to include the first respondent in any agreement concluded by the second respondent and/or the applicants with any third party or parties concerning the ownership and continued operation of the pipeline.
4. Directing that the applicants pay the costs of this counter-application including the costs consequent upon the employment of two counsel as costs of the business rescue proceedings.
5. Granting the first respondent further and/or alternative relief.

**TAKE NOTICE** that the answering affidavit of **Amine Houssaim** in the main application, together with the attachments thereto, shall be used in support of this application.

**TAKE NOTICE FURTHER THAT** if you intend opposing this application you are required to:

- d) notify the first respondent's attorneys in writing by or before \_\_\_\_\_  
2014;
- e) within 15 days after you have so given your intention to oppose the application, to file your answering affidavits, if any; and
- f) appoint in such notification an address referred to in rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings.

**TAKE NOTICE FURTHER THAT** the application will be made at the hearing of the main application.

B  
At

DATED AT JOHANNESBURG ON THIS THE \_\_\_\_ DAY OF OCTOBER 2016.

**VAN HULSTEYNS ATTORNEYS**

First Respondent's Attorneys  
3<sup>rd</sup> Floor, Katherine & West Building  
Cnr. Katherine and West Streets  
Sandton

Email: [andrew@vhlaw.co.za](mailto:andrew@vhlaw.co.za)

Ref: Mr Legg/MAT10034

**TO: THE REGISTRAR OF THE  
ABOVE HONOURABLE COURT  
JOHANNESBURG**

**AND TO: EDWARD NATHAN SONNENBERGS INC**

Applicants' Attorneys  
150 West Street  
Sandton  
Email: [lfield@ens.co.za](mailto:lfield@ens.co.za)  
Ref: L Field

Received a copy hereof on this the  
\_\_\_\_ day of October 2016.

\_\_\_\_\_  
For: Applicants' Attorneys

**AND TO: EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED  
(IN BUSINESS RESCUE)**

Second Respondent  
*[Insert address]*

**SERVICE BY THE SHERIFF**

**AND TO: THE CREDITORS OF THE SECOND RESPONDENT LISTED IN  
ANNEXURES A AND B TO THIS NOTICE OF MOTION**

Third Respondents  
**SUBSTITUTED SERVICE**

**AND TO: THE EMPLOYEES OF THE SECOND RESPONDENT LISTED IN  
ANNEXURE C TO THIS NOTICE OF MOTION**

Fourth Respondents  
**SUBSTITUTED SERVICE**

*Handwritten initials: b and AA*

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**AND TO: NATIONAL UNION WORKERS OF SOUTH AFRICA**

Fifth Respondent

*[Insert address]*

**SERVICE BY THE SHERIFF**

**AND TO: SOLIDARITY UNION**

Sixth Respondent

*[Insert address]*

**SERVICE BY THE SHERIFF**

**AND TO: THE SHAREHOLDERS OF THE SECOND RESPONDENT**

Seventh Respondents

**SUBSTITUTED SERVICE**

**AND TO: INDUSTRIAL DEVELOPMENT CORPORATION SOC LTD**

Eighth Respondent

*[Insert address]*

**SERVICE BY THE SHERIFF**

**AND TO: ARCELORMITTAL SOUTH AFRICA LTD**

Ninth Respondent

*[Insert address]*

**SERVICE BY THE SHERIFF**

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## Paragraph 5.2

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AIR LIQUIDE (PTY) LTD

Respondent

---

**NOTICE OF MOTION  
(JOINDER APPLICATION)**

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**BE PLEASED TO TAKE NOTICE** that Air Liquide (Pty) Ltd intends to apply to this Honourable Court for an order in the following terms: -

1. The following persons are joined as respondents in Air Liquide (Pty) Limited's counter-application under case number 26911/2016:
  - 1.1. Evraz Highveld Steel and Vanadium Limited (In Business Rescue), to be referred to as "the second respondent".
  - 1.2. The creditors of the first respondent listed in in annexures A and B to this notice of motion, to be referred to as "the third respondents".
  - 1.3. The employees of the first respondent listed in annexure C to this notice of motion, to be referred to as "the fourth respondents".
  - 1.4. National Union Workers of South Africa, to be referred to as "the fifth respondent".
  - 1.5. Solidarity Union, to be referred to as "the sixth respondent".
  - 1.6. The Shareholders of the first respondent, to be referred to as "the seventh respondents".

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- c) appoint in such notification an address referred to in rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings.

**TAKE NOTICE FURTHER THAT** if no notice of intention to oppose is given, the application will be made on \_\_\_\_\_ at 10h00.

DATED AT JOHANNESBURG ON THIS THE \_\_\_\_ DAY OF OCTOBER 2016.

**VAN HULSTEYNS ATTORNEYS**  
First Respondent's Attorneys  
3<sup>rd</sup> Floor, Katherine & West Building  
Cnr. Katherine and West Streets  
Sandton  
Email: [Andrew@vhlaw.co.za](mailto:Andrew@vhlaw.co.za)  
Ref: Mr Legg/MAT10034

**TO: THE REGISTRAR OF THE  
ABOVE HONOURABLE COURT  
JOHANNESBURG**

**AND TO: EDWARD NATHAN SONNENBERGS INC**  
Applicants' Attorneys  
150 West Street  
Sandton  
Email: [lfield@ens.co.za](mailto:lfield@ens.co.za)  
Ref: L Field

Received a copy hereof on this the  
\_\_\_\_ day of October 2016.

\_\_\_\_\_  
For: Applicants' Attorneys

**AND TO: EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED  
(IN BUSINESS RESCUE)**  
Second Respondents  
*[Insert address]*

**SERVICE BY THE SHERIFF**

*AS*

*AA*

**AND TO: THE CREDITORS OF THE FIRST RESPONDENT LISTED IN  
ANNEXURES A AND B TO THIS NOTICE OF MOTION**  
Third Respondents  
**SUBSTITUTED SERVICE**

**AND TO: THE EMPLOYEES OF THE FIRST RESPONDENT LISTED IN  
ANNEXURE C TO THIS NOTICE OF MOTION**  
Fourth Respondent  
**SUBSTITUTED SERVICE**

**AND TO: NATIONAL UNION WORKERS OF SOUTH AFRICA**  
Fifth Respondent  
*[Insert address]*

**SERVICE BY THE SHERIFF**

**AND TO: SOLIDARITY UNION**  
Sixth Respondent  
*[Insert address]*

**SERVICE BY THE SHERIFF**

**AND TO: THE SHAREHOLDERS OF THE FIRST RESPONDENT**  
Seventh Respondent  
**SUBSTITUTED SERVICE**

**AND TO: INDUSTRIAL DEVELOPMENT CORPORATION SOC LTD**  
Eighth Respondent  
*[Insert address]*

**SERVICE BY THE SHERIFF**

**AND TO: ARCELORMITTAL SOUTH AFRICA LTD**  
Ninth Respondent  
*[Insert address]*

**SERVICE BY THE SHERIFF**

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## Paragraph 5.3

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**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

**CASE NO 26911/2016**

In the application of:

**AIR LIQUIDE (PTY) LTD**

Applicant

and

**EVRAZ HIGHVELD STEEL AND VANADIUM  
LIMITED  
(IN BUSINESS RESCUE)**

First Respondent

**THE CREDITORS OF THE FIRST RESPONDENT  
LISTED IN ANNEXURES A AND B TO THIS  
NOTICE OF MOTION**

Second Respondents

**THE EMPLOYEES OF THE FIRST RESPONDENT  
LISTED IN ANNEXURE C TO THIS NOTICE OF  
MOTION**

Third Respondents

**NATIONAL UNION WORKERS OF SOUTH  
AFRICA**

Fourth Respondent

**SOLIDARITY UNION**

Fifth Respondent

**THE SHAREHOLDERS OF THE FIRST  
RESPONDENT**

Sixth Respondents

**INDUSTRIAL DEVELOPMENT CORPORATION  
SOC LTD**

Seventh Respondent

**ARCELORMITTAL SOUTH AFRICA LTD**

Eighth Respondent

In the matter between:

**DANIEL TERBLANCHE N.O.**

First Applicant

**PIERS MICHAEL MARSDEN N.O.**

Second Applicant

and

AA B

AIR LIQUIDE (PTY) LTD

Respondent

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**NOTICE OF MOTION  
(APPLICATION FOR SUBSTITUTED SERVICE)**

---

**TAKE NOTICE** that application will be made on behalf of Air Liquide (Pty) Limited on \_\_\_\_\_ 2016 at 10:00 or so soon thereafter as counsel may be heard for an order in the following terms: -

1. Air Liquide (Pty) Limited ("Air Liquide") is granted leave to serve its application to join the first to eighth respondents in its counter-application under case number 26911/2016 upon the second respondents as follows:
  - 1.1. By publication by the business rescue practitioners of the first respondent ("the BRPs") of a notice in the form annexed as "X" to this application upon the first respondent's website ["the notice"] within two days of this order;
  - 1.2. By Air Liquide emailing a copy of the notice to the creditors by way of email where such email service can be effected;
  - 1.3. By publication of the notice and of a copy of the notice of motion of each application (without the founding affidavit and annexures) in the Witbank News and in the Star newspaper.
2. Air Liquide is granted leave to serve its application to join the first to eighth respondents in its counter-application under case number 26911/2016 upon the third respondents as follows:

Att

- 2.1. By publication by the BRPs of a notice in the form annexed as "X" to this application upon the first respondent's website within two days of this order;
  - 2.2. By Air Liquide emailing a copy of the notice to the employees other than those belonging to the fourth and fifth respondents (the trade unions) by way of email where such email service can be effected;
  - 2.3. By Air Liquide affixing a copy of the notice together with the notice of motion in each application (without the founding affidavit and annexures) to such notice boards to which the employees of the first respondent have access or such other prominent place in their workplace to which they have access;
  - 2.4. By service of the main application per sheriff upon the fifth and sixth respondents as the trade unions representing the employees;
  - 2.5. By publication (without the founding affidavit and annexures) in the Witbank News and in the Star newspaper.
3. Air Liquide is granted leave to serve its application to join the first to eighth respondents in its counter-application under case number 26911/2016 upon the sixth respondents as follows:
- 3.1. By publication by the business rescue practitioners of a notice in the form annexed as "X" to this application upon the first respondent's website informing the affected parties of the availability of the main application;



3.2. By publication of a copy of the notice of motion (without the founding affidavit and annexures) in the Witbank News and in the Star newspaper.

4. The costs of this application shall be costs in Air Liquide's counter-application.

TAKE NOTICE that the attached affidavit of **Amine Houssaim**, together with the attachments thereto, shall be used in support of this application.

KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING ACCORDINGLY.

DATED AT JOHANNESBURG ON THIS THE \_\_\_\_ DAY OF OCTOBER 2016.

**VAN HULSTEYNS ATTORNEYS**

Respondent's Attorneys  
3<sup>rd</sup> Floor, Katherine & West Building  
Cnr. Katherine and West Streets  
Sandton  
Email: [Andrew@vhlaw.co.za](mailto:Andrew@vhlaw.co.za)  
Ref: Mr Legg/MAT10034

TO: THE REGISTRAR OF THE  
ABOVE HONOURABLE COURT  
JOHANNESBURG

AND TO: EDWARD NATHAN SONNENBERGS INC

Applicants' Attorneys  
150 West Street  
Sandton  
Email: [lfield@ens.co.za](mailto:lfield@ens.co.za)  
Ref: L Field

Received a copy hereof on this the  
\_\_\_\_ day of October 2016.

For: Applicants' Attorneys

Handwritten signature/initials.



## Paragraph 5.4

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**EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED (In Business Rescue)**

Registration No: 1960/001900/06

**NOTICE OF COURT PROCEEDINGS AGAINST *INTER ALIA* EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED (IN BUSINESS RESCUE) ("Highveld"), THE BUSINESS RESCUE PRACTITIONERS OF HIGHVELD ("the BRPs") AND AFFECTED PERSONS**

1. The Business Rescue Practitioners of Highveld have instituted court proceedings against Air Liquide (Pty) Limited ("Air Liquide") in which they seek, *inter alia*, to cancel a Supply Agreement entered into between Highveld and Air Liquide and declaratory relief pertaining to limitations on Air Liquide's damages claim against Highveld as a consequence of such cancellation.
2. Air Liquide opposes the relief, and intends to bring a counter-application against the BRPs, Highveld and affected persons for a declaration that, *inter alia*:
  - 2.1. Air Liquide is not bound by paragraph 24.2 of the Business Rescue Plan;
  - 2.2. Clause 20.12 of the Supply Agreement does not impose any limitation on Air Liquide's claim for damages against Highveld arising from a cancellation of Highveld's obligations under the Supply Agreement by the BRPs;
  - 2.3. Air Liquide is entitled and the BRPs are obliged to accept a claim to the full extent of Air Liquide's duly mitigated damages, discounted to a present day value, in the Business Rescue Proceedings and any dispute regarding the quantification thereof is to be determined in accordance with the dispute resolution mechanism contained in paragraph 38 of the Business Rescue Plan; and
  - 2.4. Air Liquide is entitled and the BRPs are directed to pay to Air Liquide the same proportionate dividend as will be paid to all other concurrent creditors in the Business Rescue Proceedings, calculated on the full extent of Air Liquide's damages claim;



- 2.5. Air Liquide is entitled to receive a supply of water according to its requirements from the Highveld Steel water pipeline on reasonable commercial terms and to that end to be included in any agreement concluded by Highveld with any third party or parties concerning the ownership and continued operation of the pipeline.
3. An application has been launched by Air Liquide to join all affected persons to the court proceedings for purposes of its counter-claim.
4. A full copy of the papers in the main application, the counter-application and the application to join affected persons is available on the website of Highveld, [www.evrazhighveld.co.za](http://www.evrazhighveld.co.za), and upon request from Van Hulsteyns Attorneys, the attorneys representing Air Liquide, who can be contacted as follows:

**Van Hulsteyns Attorneys**

Ref: Mr Andrew Legg / Mr Daniel Raath

Telephone – 011 523 5300

Email: [andrew@vhlaw.co.za](mailto:andrew@vhlaw.co.za)

[daniel@vhlaw.co.za](mailto:daniel@vhlaw.co.za)

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105.1 ....

105.2 It is of paramount importance for Air Liquide and the above Honourable Court to be provided with the following information:

105.2.1 The identities of all of the concurrent creditors whose claims against Highveld Steel have been admitted by the applicants and the amount in which each such claim has been admitted.

105.2.2 The identities of all of the concurrent creditors, if any, who have lodged claims against Highveld Steel which have not been admitted by the applicants and the amount of each such claim.

105.2.3 The identities of the concurrent creditors whose pre-business rescue contracts with Highveld Steel have either been cancelled by agreement with the applicants or in respect of which the applicants have sought or will seek a cancellation order and in respect of each such agreement:

105.2.3.1 what the remaining term of the agreement was at the date of cancellation or at the date on which the applicants' application for cancellation was brought or will be brought;

105.2.3.2 whether in terms of the consensual cancellation of the agreement, the concurrent creditor concerned has a claim for damages against Highveld Steel and, if so, what the quantum of the damages claim is and what the extent, if any, of the reduction in the claim pursuant to paragraph 24.2 of the Plan is; and

105.2.3.3 whether the damages claim has been admitted by the applicants and, if so, in what amount.



**“AA7”**

Handwritten signature or initials.

**ENSAfrica**

150 West Street  
 Sandown Sandton Johannesburg 2196  
 P O Box 783347 Sandton South Africa 2146  
 docex 152 Randburg  
 tel +2711 269 7600 fax +2711 269 7899  
 info@ENSAfrica.com ENSAfrica.com

Van Hulsteyns Attorneys  
 By email: [andrew@vhlaw.co.za](mailto:andrew@vhlaw.co.za)  
[Daniel@vhlaw.co.za](mailto:Daniel@vhlaw.co.za)

G Oertel / L Field our ref  
 A Legg/Mat10034 your ref

24 October 2016 date

Dear Sirs

**RE: EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED (IN BUSINESS RESCUE) ("EVRAZ") /  
 AIR LIQUIDE (PTY) LIMITED**

1. We refer to your letter of 7 October 2016.

**Ad paragraph 2 of your letter:**

2. We attach the following:

2.1. List of creditors with corresponding email addresses. Please note that where there is no email address, the contact number is provided.

2.2. List of former employees with corresponding contact numbers and indication of the trade union involved, if any. Please note that although the employment contracts have been terminated, payment is still due to the former employees.

3. In regard to shareholders, our clients communicate to shareholders via SENS announcements and through Evaz's transfer secretary, Computershare. The list of shareholders is held by Computershare. Should your client require the list, your client will be required to make payment to Computershare for the release of same. We will forward the quotation from Computershare.

**Ad paragraph 3 of your letter:**

4. We refer to our email of earlier today and await your client's availability to have a telecon to discuss the issue regarding the pipeline.

*Handwritten signature/initials*

**Ad sub-paragraphs 6.1 and 6.2 of your letter:**

5. We record that:
  - 5.1. Industrial Development Corporation of South Africa Limited is a creditor and would accordingly form part of the third respondents; and
  - 5.2. the citation of Arcelormittal South Africa Limited is a misjoinder.
6. In regard to the application for substituted service:
  - 6.1. We note that you have only sought leave in respect of the joinder application and have not included leave in respect of the counter-application.
  - 6.2. We further note that the notice of motion erroneously makes reference to the "*main application*" as opposed to the joinder application and/or counter-application.
  - 6.3. Prayer 3 should include publication of a SENS announcement and transmission of the notice through Computershare.
  - 6.4. Paragraph 1 of annexure X should read "*to cancel certain obligations imposed on Highveld in terms of a Supply Agreement...*".
7. Provided the aforesaid amendments are made, our clients will not oppose the joinder application and application for substituted service.

**Ad sub-paragraph 6.3 of your letter:**

8. In regard to the relief sought in prayer 1 of Part A of the notice of counter-application, our clients consent to your client instituting the counter-application.
9. In regard to the relief sought in prayer 2 of Part A of the notice of counter-application:
  - 9.1. We attach a schedule reflecting the following:
    - 9.1.1. the creditors of Evraz;
    - 9.1.2. the claims submitted against Evraz; and
    - 9.1.3. whether the respective claims have been admitted or are still in the process of being reconciled.
  - 9.2. In regard to the concurrent creditors whose pre-business rescue contracts have either been cancelled by:
    - 9.2.1. Agreement or in terms of the provisions of the respective agreements:

*Handwritten initials: AH*

- 9.2.1.1. as you are aware, the agreement concluded with African Oxygen Limited prior to the commencement of business rescue was consensually cancelled. There was no damages claim;
- 9.2.1.2. certain agreements were cancelled by exercising the termination notices provided for in the respective agreements. By exercising the notice, our clients were able to avoid a damages claim; and
- 9.2.1.3. others agreements terminated by effluxion of time and were not renewed.

9.2.2. Application:

- 9.2.2.1. Other than the application against your client, no cancellation order has been sought.

10. Please confirm receipt of this letter with the attachments referred to herein.

Yours faithfully

**EDWARD NATHAN SONNENBERGS INC.**

Per:

  
LETITIA FIELD





## Paragraph 2.1

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## Paragraph 2.2

**“AA8”**

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**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case number: 26911/16

**In the matter of:**

**PIERS MICHAEL MARSDEN N.O.**

**FIRST APPLICANT**

**DANIEL TERBLANCHE N.O.**

**SECOND APPLICANT**

[in their representative capacities as the  
business rescue practitioners of Evraz Highveld  
Steel and Vanadium Limited (in business rescue)]

and

**AIR LIQUIDE PROPRIETARY LIMITED**

**RESPONDENT**

---

**CONFIRMATORY AFFIDAVIT**

---

I, the undersigned,

**Andrew Legg**

do hereby make oath and say that:

1. I am an adult male attorney of the above Honourable Court, practising in partnership under the name of Van Hulsteyns Attorneys, which carries on practice as such from Suite 25, 3<sup>rd</sup> Floor, Katherine & West Building, Katherine and West Streets, Sandown, Sandton.

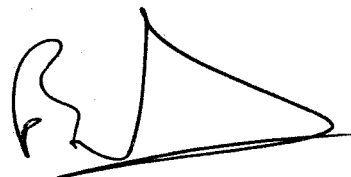


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2. I am the attorney of record for the Respondent in the application brought by the Applicants under the aforesaid case number.
3. Save for where the contrary is otherwise indicated, the facts and allegations deposed to by me herein fall within my personal knowledge and are both true and correct.
4. I have read the affidavit deposed to by Amine Houssaim on behalf of the Respondent and confirm the correctness of the allegations contained in such affidavit insofar as they relate to me.

  
\_\_\_\_\_  
**DEPONENT**

I HEREBY CERTIFY, THAT THE DEPONENT HAS ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, WHICH WAS SIGNED AND SWORN TO BEFORE ME, COMMISSIONER OF OATHS, AT SANDTON ON THIS THE 23<sup>rd</sup> DAY OF NOVEMBER 2016, THE REGULATIONS CONTAINED IN GOVERNMENT NOTICE NO. R1258 OF 21 JULY 1972, AS AMENDED, AND GOVERNMENT NOTICE NO. R1648 OF 19 AUGUST 1977, AS AMENDED, HAVING BEEN COMPLIED WITH.

  
\_\_\_\_\_  
**COMMISSIONER OF OATHS**

**Riaan Becker**  
Ex Officio  
Commissioner of Oaths  
Practising Attorney  
Suite 24 Katherine & West  
114 West Street, Sandton, South Africa

AA