

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

CASE NO.:

15/18755

In the matter between:

**EVRAZ HIGHVELD STEEL AND VANADIUM LTD**

**(IN BUSINESS RESCUE)**

**Applicant**

and

**SASFIN BANK LTD**

**Respondent**

**INDEX TO APPLICATION**

ITEM	DESCRIPTION	PAGE NO.
1.	Notice of motion	1-3
2.	Founding Affidavit	4-28
3.	Annexure PM1 – Resolution	29-30
4.	Annexure PM2 – Confirmatory affidavit of Danie Terblanche	31-32
5.	Annexure PM3 – Letter dated 1 May 2015	33-39
6.	Annexure PM4 – Email from IDC	40
7.	Annexure PM5 – Invoice discounting agreement	41-48
8.	Annexure PM6 – Letter dated 14 April 2015	49
9.	Annexure PM7 – Letter dated 23 April 2015	50
10.	Annexure PM8 – Letter dated 15 April 2015	51-53
11.	Annexure PM9 – Letter dated 24 April 2015	54-55
12.	Annexure PM10 – Letter dated 29 April 2015	56-61
13.	Annexure PM11 – Letter dated 4 May 2015	62-63
14.	Annexure PM12 – Letter dated 12 May 2015	64-66
15.	Annexure PM13 – Email dated 12 May 2015	67
16.	Annexure PM14 – Email dated 14 May 2015	68
17.	Annexure PM15 – Email dated 18 May 2015	69
18.	Annexure PM16 – Reconciliations	70-74
19.	Annexure PM17 – Letter dated 20 May 2015	75-77
20.	Annexure PM18 – Confirmatory Affidavit of Anabela Da Silva	78-79

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**Respondent**

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**NOTICE OF MOTION**

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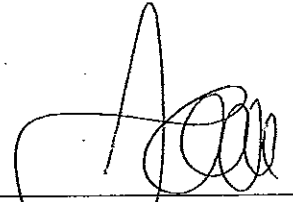
**BE PLEASED TO TAKE NOTICE THAT –**

1. The Applicant intends to make application to the above Court on **THURSDAY, 28 MAY 2015** at 10h00 or so soon thereafter as counsel may be heard, for the following orders –
  - 1.1 dispensing with the forms and services provided in Rule 6, and allowing the application to be heard as a matter of urgency;
  - 1.2 directing the respondent to cede and assign to the applicant –
    - 1.2.1 all debts sold by the applicant to the respondent in terms of the

- invoicing discounting agreement which remain uncollected by the respondent from the debtors concerned; and
- 1.2.2 all debts ceded by the applicant to the respondent as security in terms of the invoice discounting agreement;
- 1.3 declaring that the respondent has no further claims to the debt of the applicant; and
- 1.4 ordering the respondent to pay the costs of this application;
- 1.5 further and/or alternative relief.
2. the accompanying affidavit of **PIERS MARSDEN**, together with the annexures thereto, will be used in support of this application;
3. the applicant has appointed **TUGENDHAFT WAPNICK BANCHETTI & PARTNERS** at 20<sup>th</sup> Floor, Sandton City Office Tower, 5<sup>th</sup> Street, Sandton as the address at which it will accept notice and service of all process in these proceedings;
4. if you intend opposing this application you are required –
- 4.1 to notify the applicant's attorneys in writing via email by **10h00 on SUNDAY, 24 MAY 2015** ;
- 4.2 to deliver your answering affidavit, if any, by **17H00 on MONDAY, 25 MAY 2015** whereupon the applicant will deliver its reply if any by **12H00 on WEDNESDAY, 27 MAY 2015**;
5. you are required to 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.

KINDLY PLACE THE MATTER ON THE ROLL ACCORDINGLY

DATED at JOHANNESBURG this 22<sup>nd</sup> day of MAY 2015.



**TWB – TUGENDHAFT WAPNICK  
BANCHETTI AND PARTNERS**

Applicant's Attorneys

20<sup>th</sup> Floor, Sandton City Office Tower

5<sup>th</sup> Street, Sandown

Tel: (011) 291 5304

Fax: (011) 884 7949


Email: anabela@twb.co.za

Ref: O TUGENDHAFT / A DA SILVA : E4034

TO:  
**THE REGISTRAR OF THE ABOVE  
HONOURABLE COURT**  
High Court Building  
Cnr Pritchard and Kruis Streets  
Johannesburg

AND TO:  
**WERKSMANS ATTORNEYS**  
Respondent's Attorneys  
155, 5<sup>th</sup> Street  
Sandton, 2146  
Tel: (011) 535 8000  
Fax: (011) 535 8600  
Email: lsilberman@werksmans.com  
Ref: F Van Tonder / L Silberman

Accepted  
Without Prejudice

  
22/5/15

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**IN THE HIGH COURT OF SOUTH AFRICA  
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**(IN BUSINESS RESCUE)**

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And

**SASFIN BANK LTD**

**Respondent**

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**FOUNDING AFFIDAVIT**


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I, the undersigned,

**PIERS MICHAEL MARSDEN**

hereby make oath and say that:

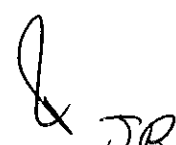
1. I am an adult male business rescue practitioner employed by Matuson & Associates, a firm of senior business and consulting professionals specialising in business rescue.

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2. The facts contained in this affidavit are, within my knowledge (save where otherwise may be stated or where the contrary may appear from the context) and are to the best of my knowledge and belief true and correct.
3. I am authorised to institute this application on behalf of the applicant.
4. I together with my co-business rescue practitioner, Daniel Terblanche, was appointed as the business rescue practitioners of the applicant on 16 April 2015 pursuant to a voluntary resolution of the board of directors of the applicant which was filed with the Companies and Intellectual Property Commission on 13 April 2015. A copy of the SENS announcement which reflects the resolution of the board of directors is attached hereto marked **PM1**. A confirmatory affidavit from Mr Terblanche indicating support for this application and for what I say in this founding affidavit is attached marked **PM2**.

## PARTIES

5. The applicant is EVRAZ HIGHVELD STEEL AND VANADIUM LTD a steel manufacturing company duly registered and incorporated according to the company laws of the Republic of South Africa and having its principal place of business at Old Pretoria Road, Portion 93 of Schoongezicht and which was placed into voluntary business rescue on 13 April 2015.
6. The respondent is SASFIN BANK LTD a company registered and incorporated according to the company laws of the Republic of South Africa having its principal place of business at 29 Scott Street, Waverly, Johannesburg.
7. The respondent is a bank registered as such under the Banks Act 94 of 1990, a financial services provider registered as such under the Financial Advisory and

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Intermediary Service Act 37 of 2002 and a credit provider registered as such under the National Credit Act 34 of 2005.

#### THE PURPOSE OF THIS APPLICATION AND URGENCY

8. This application is brought as a matter of extreme urgency. It is regrettable that it has to be brought at all.
9. The applicant is, as I set out in further detail below, in business rescue. Before it entered business rescue it concluded an invoice discounting agreement with the respondent. Various securities were advanced to the respondent under that agreement.
10. On 24 April 2015 after the applicant entered business rescue the respondent, purportedly acting in terms of the agreement, mulcted the applicant with a penalty in excess of R30 million, as set out below, purely for having entered into business rescue. The respondent called up its securities in order to ensure payment of its penalty and instructed the applicant's debtors to pay it and not the applicant.
11. As a result of the above unilateral step, the applicant's cash flow then evaporated. Almost no cash came in to the business from the above date (24 April 2015) until 5 May 2015 and the survival of the applicant and the success of the business rescue was and is imperilled. The respondent's conduct almost resulted in an urgent application to this court. This was avoided when the respondent, following a demand by the applicant dated 1 May 2015 (copy annexed marked **PM3**), instructed the applicant's debtors to begin paying the applicant and not to pay the respondent any further. I discuss this further below. Nonetheless as a result of the respondent's unilateral act, the applicant remains desperately short of cash.

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58


12. While the respondent gave the security debtors the assurance that they could pay the applicant, the respondent has refused to release the cession it holds over the ceded debts.
13. The Industrial Development Corporation ("IDC") is willing to make post commencement financing available to the applicant, but wishes to be able to take security over the debts, which the respondent holds. I cannot cede these debts to the IDC as security unless the respondent releases them. I attach marked **PM4** a copy of the communication from the IDC dated 14 May 2015, which sets out its position in this regard.
14. On the respondent's version, the remaining debt owed to it is less than R1 million. The applicant has offered, under protest and with a suitable reservation of rights, to pay the amount to the respondent that it contends it is owed in order to procure the release of the debts, but it has been unwilling to release them. It is unwilling to release the applicant's security even though, as I set out below, it acknowledges that there is a desperate need by the applicant for post commencement financing.
15. The applicant has so little cash that in order to pay the nett salaries of the roughly 4000 employees employed by the applicant I had to discount a substantial invoice to MacSteel by 6.5%. However, the applicant cannot pay all the essential components of the salaries including the PAYE and medical aid. The applicant's month end expenses will not be met unless post commencement finance is obtained urgently. As I set out below, invoices fall due for payment at the end of May. Unless the security is released by the respondent next week, irreparable harm will be done to the applicant as creditors withhold supplies and services and staff potentially refuse to work.
16. Accordingly the applicant is in a situation where, although the respondent has already received payment of more than R100 million from the applicant, it is jeopardising the business rescue of the applicant and threatening to push it into

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liquidation over an amount of money which is tiny relative to what the respondent has already made, and even though I offered to pay it sufficient money to cover its exposure. The following facts indicate why the continuation of business rescue is in the public interest and why there is a good likelihood that business rescue should have a successful outcome.

17. The applicant converts iron ore and coal, which is mined in South Africa, into steel. It is the sole producer in South Africa of large structural steel products. These comprise some 40% of the applicant's production capacity.
18. The applicant is one of only 5 steel mills in the world and the only one in Africa that rolls heavy construction products. Steel is central to the national government's infrastructure development plans.
19. The applicant is the only steelmaker in world that has the technology and infrastructure to economically beneficiate the magnetite rich Bushveld Igneous Complex that is by far the largest iron ore resource left in South Africa. The resource is, however, difficult to beneficiate. For this reason the applicant has developed technologies, extensive mining, ore processing facilities, dedicated rail and manufacturing infrastructure to beneficiate this specific vanadium and iron ore. Without the applicant it would be years before any other steel processor would have the means and the technological capacity to beneficiate this particular resource.
20. The Mapochs mine, from which the applicant receives the raw product it smelts, is the source of 15% of the total global production of vanadium.
21. The applicant is one of Mapochs mine's two customers. The success of the applicant's business rescue plan affects not only its own employees, but also all of those who are employed at the Mapochs mine and who receive an income by

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selling their product to the applicant. The industries that purchase steel are similarly dependent on the continued survival of the applicant.


22. The applicant has been the cornerstone employer of the eMalahleni area for the last 50 years. It employs some 3700 direct employees, 2300 permanent and 1400 contractors. The applicant spent some R788 million during 2014 in the eMalahleni community.
23. Mapochs is the only employer in the area in which it is located and spent R297 million during 2014 on community development. Mapochs mine enforces a policy that contract miners must staff their operations from the community surrounding the mine and also source goods and services preferentially from the community. About 600 businesses in the area depend upon the mine.
24. Those South African manufacturers who purchase their steel from the applicant enjoy significant foreign exchange savings from this local source of vanadium and steel.
25. The failure to save the applicant will have devastating consequences for all stakeholders, including loss of jobs and business in a province that cannot afford the job loss of almost 4000 breadwinners impacting some 20,000 people.
26. The business rescue of the applicant is therefore no ordinary business rescue. It is a business rescue of national importance. Ensuring the success and turnaround of the applicant, to restore it to financial health, is complex, time-consuming and stressful.
27. In the scale of the applicant's operations, the invoice discounting agreement with the respondent is small and, but for the stranglehold it now holds over the success of the business rescue, should not be a significant issue.



28. It is, however, occupying a disproportionate amount of my time and is diverting me from being able to concentrate on the critical negotiations and cost-saving measures I ought to be focusing on in order to ensure that the applicant is restored to financial health.

#### THE INVOICE DISCOUNTING AGREEMENT

29. On 18 September 2014 the applicant (represented by Jan Valenta) and the respondent (represented by an authorised representative) entered into a written Invoice Discounting Agreement. A copy of the agreement is attached marked **PM5**. As far as I can tell, it is the respondent's standard invoice discounting agreement.
30. I highlight the following terms of that agreement:
- 30.1 The applicant was required to offer to sell to the respondent, at least every two weeks, all book debts which complied with clause 5 of the discounting agreement and which are owed to the applicant at the time of the offer (clause 2.1).
- 30.2 "Book debts" were defined to mean any claim which the applicant may have arising directly from any goods sold and delivered, services rendered by the applicant, or from any other cause howsoever arising (clause 1.5.1).
- 30.3 Every offer by the applicant to sell book debts to the respondent would be irrevocable and would remain open for acceptance for a period of not less than three working days after receipt by the respondent of the offer by the applicant (clause 2.2).
- 30.4 The respondent could at its discretion accept or reject the offer and if the offer was accepted would thereby purchase the book debts on



all the terms and conditions of the discounting agreement and such book debts would ipso facto have been ceded by the applicant to the respondent (clause 2.2).

- 30.5 Upon acceptance by the respondent of the offer made by the applicant, the applicant would ipso facto and without any further act or deed be deemed to have sold, ceded, assigned, and made over to and in favour of the respondent, all its rights in and to the accepted book debts, together with all the applicant's rights in and to any suretyships, guarantees or other securities of any other nature whatsoever given in the applicant's favour in respect of such book debts, as well as all such further rights as may be necessary to enable the respondent to enjoy the benefits set out in clause 2.6 (clause 2.7).
- 30.6 All or any payments made in respect of the accepted book debts would accrue to the respondent, who would have the right at any time to give notice or to require the applicant to give notice of the cession of the book debts in clause 2.2 to all or any debtor concerned and to all or any sureties or guarantors or such debtors and to take such steps as the respondent may deem fit to collect the accepted book debts (clause 3.1).
- 30.7 Notwithstanding the provisions of clause 3.1 the applicant could, unless and until directed otherwise by the respondent, and for this purpose acting as agent for and on behalf of the respondent, at its own expense and without charge to the respondent, take all reasonable steps as the respondent may deem fit to collect the accepted book debts (clause 3.2).
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- 30.8 If at any time the respondent elected to itself collect and enforce payment of all or any of the accepted book debts the applicant would be obliged to refund to the respondent an amount equal to 5% of the face value of such an accepted book debts and to pay the respondent all of its costs incurred in collecting and enforcing payment of such accepted book debts including, but not limited to, all legal costs on the scale as between attorney and client without being entitled to require that such attorney and client charges be taxed (clause 3.3).
- 30.9 The purchase price payable by the respondent to the applicant for each accepted book debt purchased would be the face value of such accepted book debt less the service fee in respect thereof (clause 4.1).
- 30.10 The service fee was 0.375% of the aggregate face value of accepted book debts with a minimum monthly service fee of R175,000 (clause 1.5.5 and 4.8 read with schedule A).
- 30.11 The purchase price of each accepted book debt would become due and payable to the applicant on the date on which the respondent received payment in full of such book debt (clause 4.2).
- 30.12 The service fee became due and payable by the applicant immediately such charge was ascertained and debited to the applicant's current account maintained by the respondent in terms of clause 11 (clause 4.3).
- 30.13 The applicant could at any time after the sale of any book debt to the respondent, request the respondent to prepay an amount not exceeding 70% of the purchase price of the book debt up to a




maximum amount of R175 million provided always that the respondent would have absolute discretion both as to the amount of any such prepayment and as to the aggregate amount of all prepayments to be made to the applicant and the respondent would be entitled to refuse to make any prepayment whatsoever (clause 4.4).

30.14 Interest accrued on prepayments made by the respondent (clause 4.5).

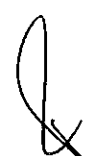
30.15 In the event of the applicant committing a breach of the discounting agreement or failing to pay any money due to the respondent on demand or being placed (whether provisionally or finally) under business rescue or in winding up (whether compulsory or voluntary) or the applicant entering or attempting to enter into any compromise, composition or arrangement with its or his creditors, then the respondent would be entitled, without prejudice to any other right it might have, to forthwith terminate the discounting agreement by giving written notice to the applicant to that effect and would further be entitled, without prejudice to any other rights or remedies it may have, notwithstanding such termination, to retain and enforce against debtors any unpaid and accepted book debts or to resell to the applicant, who would be obliged and deemed to have repurchased at the face value thereof, any unpaid accepted book debts (clause 16.1).

30.16 The respondent would not be obliged, notwithstanding termination of the discounting agreement pursuant to clause 16.1, to pay to the applicant any amount standing to the applicant's credit in the current account maintained with the respondent, where the respondent's claims against the applicant were set-off against such credit either



by operation of law or in terms of the discounting agreement (clause 16.2).

- 30.17 Monies owing by the applicant to the respondent at termination would become due immediately and would accrue interest at a rate of 2.5% per month (clause 16.3).
- 30.18 In any circumstances entitling the respondent to terminate the discounting agreement the respondent could at its sole discretion increase the service fee to 10% in respect of all debts then outstanding, either in whole or in part (clause 16.4).
- 30.19 If the applicant in breach of the discounting agreement failed for any reason whatsoever to offer any book debt to the respondent as required by clause 2.1 the respondent would, in addition to and without prejudice to any other claims and rights under the discounting agreement, be entitled to demand from the applicant immediate payment as and by way of liquidated damages an amount of 2.5% of the gross amount of any such book debts (clause 17).
- 30.20 As security for any amount which the applicant might at any time after the conclusion of the discounting agreement owe to the respondent from whatever cause arising, and whether such indebtedness be a direct, indirect or contingent obligation of the applicant, and whether such obligation to the respondent arises in terms of or pursuant to the discounting agreement or otherwise in any manner whatsoever, the applicant ceded certain named debts to the respondent (clause 30).
- 30.21 The security ceded to the respondent in terms of clause 30 was to remain in operation for so long as the applicant remains indebted to



the respondent in any amount whatever whether actual or contingent and for so long as any book debt purchased by the respondent remains unpaid, notwithstanding any termination of the discounting agreement that might have taken place at the instance of either party or by reason of effluxion of time or in any other manner whatever (clause 30.4).

30.22 The discounting agreement commenced on the date of signature and, unless and until terminated in terms of clause 16.1, continued for an indefinite period and could be terminated by either of the parties giving to the other six months written notice of its intention so to terminate provided that such notice could only be given on 30 September 2015 or any anniversary date thereof (clause 31.1 read with Schedule A).

30.23 In terms of clause 5 of the discounting agreement, the applicant provided various warranties to the respondent, *inter alia*,:

30.23.1 that all accepted book debts will be paid by the debtor within 3 months from the date on which it was incurred (clause 5.12); and

30.23.2 all transactions entered into by the applicant with the debtors will be governed by terms and conditions of sale or service approved by the respondent, and that the relevant goods will be delivered and/or the relevant services rendered strictly in accordance with the terms of the transaction which terms will not be varied without the prior consent in writing of the respondent (clause 5.17).





- 30.24 Notwithstanding such termination (in terms of clause 16.1), the respondent was entitled to retain and enforce against any debtor any accepted book debts which remain unpaid as at the date of termination or to resell to the applicant, who shall be obliged and be deemed to have repurchased at the face value thereof, any accepted book debts which remain unpaid as at the date of termination (clauses 16.1.1 and 16.1.2).
- 30.25 In the event of termination of the discounting agreement pursuant to clause 16.1 the respondent (in addition to and without prejudice to any other claims or rights which it may have against the applicant) was entitled to demand from the applicant immediate payment, as and by way of liquidated damages or a penalty, of an amount equal to 6 times the minimum monthly fee (of R175,000) plus an additional amount calculated at the rate of 1% for each calendar month or part thereof "from the date of such termination or notice thereof by the [applicant] until six months after the later of such termination or notice of thereof [sic] and [30 September 2015]" which amount shall be payable by the applicant to the respondent on demand (clause 32).

**THE ACCEPTED BOOK DEBTS ("SOLD DEBTS")**

31. Acting in accordance with the agreement the applicant sold book debts to the respondent from time to time. Although those book debts were, therefore, acquired by the respondent, since the respondent only advanced, at most 70% of the purchase price of the sold debts to the applicant (as explained in 30.13 above), once the respondent had recovered all amounts due to it by the applicant in terms of the discounting agreement, the respondent could not be legally entitled to continue collecting payment from those debtors concerned. In those circumstances, the respondent would be obliged to recede the sold debts concerned to the applicant, to enable the applicant to collect same. Whilst this



may not have been spelt out in the discounting agreement, it does, I submit, follow as a matter of legal principle, in that the discounting agreement operated as a running account, in terms of which the respondent would always be in a position to collect amounts in excess of the advanced portion of the purchase price paid by it to the applicant in respect of the sold debts. There also cannot be any dispute about this position, because it was expressly, or at least implicitly so recognised by the respondent in its letter to the applicant, to which I will refer in paragraph 42 below.

### THE CEDED DEBTS

32. In addition to the sold debts, the applicant, importantly, ceded all its right title and interest in and to all its book debts, to the respondent as security and as is required by clause 30 of the invoice discounting agreement. It is these debts, which, in addition to the uncollected sold debts referred to in paragraph 31 above, are the subject of this application, and which the applicant needs released as a matter of urgency in order for them to be ceded as security to the IDC.

### THE RESPONDENT'S CONDUCT

33. The applicant entered business rescue by way of a voluntary resolution on 13 April 2015, (annexure PM1).
34. On 14 April 2015 the respondent, relying on clause 16.1 of the agreement, terminated the agreement. It did so on the sole ground that the applicant had entered into business rescue. I attach marked **PM6** a copy of the respondent's letter terminating the agreement.
35. Subsequent to the termination, the respondent took the following steps:



- 35.1 It exercised its right to collect and enforce payment of all accepted book debts. These are the debts referred to in paragraph 31 and are the debts which are not in issue.
- 35.2 It notified and instructed those debtors who had been ceded to the respondent by the applicant as security in terms of clause 30, to effect payment of their debts to the respondent, rather than to the applicant. I attached marked **PM7** an example of a letter that came into my possession in which the respondent gave the security debtors these instructions.
- 35.3 It increased the applicant's service fee from 0.375% to 10% from in terms of clause 16.4.
- 35.4 It demanded payment of a penalty by the applicant, which it purported to levy in terms of clause 32 of the discounting agreement.
36. Because of having given notice to the debtors and instructing them to pay it, the respondent received payment of the following amounts:
- 36.1 an amount R22,050,000 which it contended was the penalty it had levied in terms of clause 32;
- 36.2 an amount of R9,594,059.10 in respect of the increase in the service fee to 10% in terms of clause 16.4; and
- 36.3 a VAT amount of R4,430,168.27 on the above two amounts.
37. The Court does not have to decide the issue now, but the applicant disputes that the respondent is entitled to levy the amounts referred to in paragraph 36 at all. There are several reasons why this is so and it is not necessary to set them out

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here in any detail. I will only provide a superficial summary of the applicant's reasons for this contention. The applicant's legal representatives are in the process of settling and issuing the summons for the recovery of the penalty.

38. In essence, and without unnecessarily foreshadowing the applicant's case at trial, the applicant contends that the respondent is not entitled to a penalty under clause 32 (nor the amount referred to in paragraph 36.2 above – which is also constitutes a penalty) for the following reasons:

- 38.1 Clause 32 properly interpreted, does not entitle the respondent to impose a penalty on the applicant in circumstances where the respondent (absent any breach by the applicant of any obligation under the agreement), unilaterally elects to terminate the discounting agreement (as the respondent did) as a result of the applicant resolving to place itself in business rescue.
- 38.2 The imposition of a penalty where a company has entered into business rescue, particularly where it has not breached the agreement, is contrary to public policy, especially in circumstances where, had the respondent not had a cession of debtors, it would have been unable to enforce its penalty without first approaching the court.
- 38.3 The respondent has, given the nature of the agreement, not suffered any damages and yet seeks to enforce a windfall penalty. I say this because while the applicant was obliged to offer to sell all its book debts to the respondent, the respondent was not obliged to purchase any of the book debts offered for sale and, where it did buy a debt, the purchase price only became payable once the respondent had collected the book debt concerned. The service fee that the applicant had to pay became due and payable immediately the

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charge was ascertained by the respondent. Furthermore, the respondent was not obliged to prepay to the applicant any portion of the purchase price. The applicant could request an advance, but the respondent could, in its absolute discretion, refuse to pay any requested advance. In other words, the respondent never had to provision or make capital available for the applicant. It could, if it had capital available, make an advance. If it did not have capital available, it could decline an advance. The agreement put the applicant in a position that it sold book debts to the respondent without any assurance that it would receive any advances on the debts so sold.

38.4 To make matters worse, the respondent was entitled to take such steps as it may deem fit to collect the accepted book debts, without being obliged to take any steps to ensure that the book debts concerned were collected. The respondent could re-sell to the applicant on termination of the agreement those debts, which remained unpaid, and the applicant would be obliged to pay the face value of those debts.

39. On 15 April 2015 Sasfin Holdings Ltd (i.e., an entity related to the applicant and apparently its holding company), through its attorneys Edward Nathan Sonnenbergs, wrote to the applicant. A copy of the letter is attached marked **PM8**. In that letter Sasfin Holdings recorded, amongst other things, that:

*"[3] If post commencement finance ... is not advanced to [the applicant] urgently – and certainly within the next few days – the joint business rescue practitioners, once appointed, may have no alternative but to terminate the business rescue proceedings and to file for liquidation immediately, in which case all creditors will receive a minimal dividend and may, in fact, receive no dividend whatsoever.*



*[4] In order for creditors to receive any meaningful dividend there is no doubt that the business must continue to operate as a going concern to preserve value for all stakeholders and to save jobs.*

*[5] Sasfin – subject to board approval and the suspensive conditions listed hereunder – will be prepared to advance post commencement finance of up to approximately R230 million, subject to the fulfilment of the below mentioned suspensive conditions and the furnishing of appropriate security. Having regard to the urgency of the cash needs of the [applicant] the first PCF draw down ... will have to be made by Monday 20 April 2015, if we are able to reach agreement with you.*

*[6] Sasfin, after it has conducted an urgent assessment of the business ... will determine in what form the PCF is to be advanced ... but it will be made subject to the following suspensive conditions:*

*[6.1] an irrevocable option to purchase 100% of the equity currently held by Mastercroft SA RL and/or Evraz SPL ... being granted to Sasfin ... for a consideration of R1 ... in the aggregate, exercisable by Sasfin ... within 60 days hereof, or on the date of acquisition of the business and/or its assets as referred to in point 6.3 below ...*

*[6.2] ...*

*[6.3] an irrevocable right of first refusal is granted to Sasfin ... to acquire the business and/or assets of the [applicant] ... either through the adoption and substantial implementation of a business rescue plan or through the purchase of the business and/or assets of the [applicant] ..."*

40. Unsurprisingly, the shareholder refused this offer for post-commencement finance as it was an unfair attempt to take advantage of a company in a desperate financial plight.
41. It was only after the shareholder had rejected the offer of post commencement finance that the respondent imposed its penalty in terms of clause 32. The letter



of 14 April 2015 was noticeably silent about any penalty. On 24 April 2015 the respondent sent the applicant a letter in which it set out the amounts which it contended it was owed, including the penalty of R22,050,000. A copy of this letter is attached marked **PM9**.

42. Importantly, in the above letter Sasfin Holdings demanded an amount of R3,907,065.54 in full and final settlement and stated that "*Once this amount has been received, we are prepared to cede to you all remaining book debts and cancel all securities.*" Another feature of this letter worth noting is that it recorded that from the date of termination of the agreement to 24 April 2015 (in other words in a space of 10 days), the respondent had collected R134,152,256.47.
43. On 29 April 2015 the applicant responded to this letter and denied that the respondent was entitled to claim the amounts it had. A copy of the reply is attached marked **PM10**. The applicant immediately sought legal advice.
44. On 1 May 2015 the applicant wrote to the respondent through its attorneys. A copy of the letter is referred to above has been attached marked PM3. As appears from that letter, it was written in the hope of avoiding an urgent application (and the urgent application was in fact avoided).
45. Because of the applicant's dire need for cash, the applicant demanded that the respondent provide a written undertaking to the effect that it would, by a specified time, provide the applicant with a letter on its letterhead advising the applicant's debtors that they should henceforward proceed to pay the applicant directly all and any amounts owing to the applicant. I mention that the letter also set out that
- 45.1 The respondent's entitlement to claim a penalty at all was placed in issue and, in respect of the imposition of a penalty, the applicant reserved the right to approach the Court for relief on an urgent basis.

Handwritten signature and initials, possibly 'JB', at the bottom right of the page.

- 45.2 The respondent was told that its action had had a severe impact on the applicant, compromising its ability to pay salaries and wages and placing the success of the business rescue in jeopardy.
- 45.3 The respondent was advised that as cash was urgently required for the successful implementation of the business rescue plan, the applicant could not resolve the question of the reasonableness and lawfulness of the penalty in the ordinary course and, for that reason, sought agreement from the respondent and an undertaking that this issue be resolved urgently.
46. The respondent provided this undertaking and the necessary letter, notwithstanding that its professed indebtedness under the agreement then stood at R3,907,065.54. This exposure was, however, small relative to the amount it had already collected.
47. On 4 May 2015 the respondent, through its attorneys, replied to the letter of 1 May 2015. A copy of the reply is attached marked **PM11**. In terms of the letter the respondent offered to provide the undertaking which had been sought but subject to the condition that:

*"... bearing in mind that legal proceedings between the parties are likely to follow due to our client's claims arising from the Agreement, our client requires the Business Rescue Practitioners to provide their consent as required in terms of s133 of the Companies Act 71 of 2008 that such legal proceedings, by way of arbitration, may proceed in relation to the balance of the indebtedness due to our client as well as in regard to any other claim/s which our client may have arising from the Agreement."*

*JB*



48. I was not surprised that the respondent wished to keep a dispute about its imposition of a penalty on a company in business rescue out of the public eye and have the matter determined in arbitration.
49. The respondent later provided the undertaking without insisting upon the condition. The undertaking and the necessary letter was provided on 5 May 2015.
50. The applicant immediately instructed its legal representatives to commence work on particulars of claim, which is presently being finalised for the recovery of the penalties which the respondent had imposed.
51. On 12 May 2015 and when the respondent had not yet provided the reconciliation requested on 7 May 2015, a letter was addressed by the applicant's attorneys to the respondent's attorneys. A copy thereof is attached marked **PM12**.
52. On 12 May 2015, Lisa Silberman, the respondent's attorney of record, acknowledged receipt of the request for the reconciliation and undertook to revert on receipt of the respondent's instructions. A copy thereof is attached marked **PM13**.
53. On 14 May 2015 Ms Silberman once again addressed a letter to the applicant's attorney of record indicating that they should be in a position to forward the reconciliation during the course of 15 May 2015. A copy thereof is attached marked **PM14**.
54. No reconciliation was received from the respondent's attorneys on 15 May 2015.
55. On 18 May 2015 the applicant's attorney once again addressed a request to the respondent's attorneys requesting that the reconciliation be provided urgently. A copy thereof is attached marked **PM15**.

 JB

56. On 19 May 2015 the respondent, in response to the numerous requests from the applicant (commencing on 7 May 2015), finally provided the applicant with a reconciliation of the amount which it alleged was then outstanding. I attach the reconciliation marked **PM16**. Of interest in this reconciliation is the following:

56.1 There is an outstanding balance of R826,894.45;

56.2 Interest alone exceeded R500,000; and

56.3 There is a euphemistically named "Termination Fee", which are the combined penalty amounts of R31,644,059.10 plus VAT thereon.

57. The applicant desperately needed the debtors to be released in order to secure post-commencement financing. Accordingly, on receipt of that reconciliation on 19 May 2015 I immediately told the applicant's attorneys that as difficult and painful as it would be financially for the applicant, it would make payment under protest of the amount which was alleged to be outstanding in order to procure the release of the debtors by the respondent. A copy of the letter addressed by the applicant's attorney dated 20 May 2015 is attached marked **PM17**.

58. No reply was received to that letter. Accordingly, on my instruction, the applicant's attorney telephoned the respondent's attorney to enquire as to whether the debtors would be released. She was told that the attorneys would not be able to obtain instructions until the following morning but that there were in any event further amounts outstanding which had been referred to in an email of 4 May 2015. I refer in this regard to a confirmatory affidavit deposed to by the applicant's attorney, Anabela Da Silva a copy of which is annexed hereto marked **PM18**.




59. It is not clear to me what amount is being referred to nor why, if anything further is owed, it is not reflected in the reconciliation which the respondent provided.
60. For an exposure of less than R1million, which the applicant was willing to pay subject to a reservation of rights, it is unconscionable that the applicant should be prevented from obtaining the necessary post-commencement finance and that the applicant's business rescue should be allowed to fail.

### URGENCY

61. The applicant submits that this application is extremely urgent for the reasons already set out above. The applicant will *inter alia*:
- 61.1 will not be able to pay the entire component of the salaries of the roughly 4000 employees despite the discounting of the MacSteel invoice;
  - 61.2 not be in a position to pay the PAYE and medical aid portions of the salaries of the employees which is due by 30 May 2015;
  - 61.3 will not be able to pay the raw material suppliers such as Mapoch, Transnet (who provide the rail for delivery of the raw material) and Eskom.
62. The inability to make payment of the aforementioned critical amounts is that there will be a disruption of the operations of the applicant which will lead to the cessation of the applicant's activities which in turn will result in millions of Rands worth of damages.

  
JB

- 61.3 will not be able to pay the raw material suppliers such as Mapoch, Transnet (who provide the rail for delivery of the raw material) and Eskom.
62. The inability to make payment of the aforementioned critical amounts is that there will be a disruption of the operations of the applicant which will lead to the cessation of the applicant's activities which in turn will result in millions of Rands worth of damages.
63. The applicant will not be able to obtain substantial redress in due course for the reasons set out above. Merely to shut down and restart the applicant's steel smelters would cost approximately R150million the full amount of the post commencement financing which the IDC is offering to make available. The restarting of the plant would include, but not be limited to, getting the furnaces back to operating efficiencies at temperatures of 1500 to 1800 degrees Celsius. This is complex, notoriously expensive and time consuming process. There would obviously also be a loss of production during this time.
64. Despite the non-acceptance by the respondent of the applicant's tender as contained in the applicant's attorney's letter of 20 May 2015 (PM14) the applicant even now remains willing to make this tender and repeats it.
65. I accordingly ask the Court to order the respondent to immediately release all of the ceded debtors to the applicant to enable me to procure finance for the applicant from the IDC.

  
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**WHEREFORE I PRAY THAT** this Honourable Court grant an order in terms of the Notice of Motion to which this Affidavit is annexed.

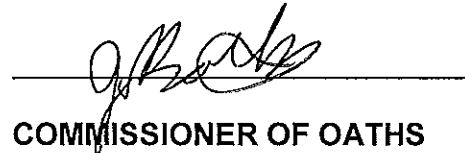


**PIERS MICHAEL MARSDEN**

I CERTIFY that the deponent:

- (a) has acknowledged that he knows and understands the contents of this affidavit, that he has no objection to taking the oath and that he considers the oath binding on his conscience; and
- (b) has in due form SWORN that the contents of this affidavit are true and has SIGNED the same

BEFORE me at Sandton on this the 22 day of May 2015.



**COMMISSIONER OF OATHS**

Name:

Address:

Capacity:

JAN JOHANNES RANKIN BOTHA COMMISSIONER OF OATHS EX OFFICIO  10TH FLOOR OFFICE TOWERS SANDTON CITY SANDTON PO BOX 784740 SANDTON 2146
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29  
"PM-1"

Evraz Highveld Steel and Vanadium Limited  
(Incorporated in the Republic of South Africa)  
(Registration No: 1960/001900/06)  
Share code: EHS ISIN: ZAE000146171  
("Highveld" or "the Company")

#### SUSPENSION OF LISTING AND CAUTIONARY ANNOUNCEMENT

##### 1. Resolution to commence voluntary business rescue

Shareholders of Highveld are hereby advised that the board of directors of Highveld ("the Board") has resolved that the Company does not have adequate funding to meet its obligations for the short term. This is primarily as a result of historical operational difficulties and sustained financial losses within a capital constrained operating environment. This is despite the current operational stability achieved through the recent implementation of the Company's operational turnaround plan. Highveld's financial position has further been negatively impacted by weakened global steel and vanadium markets and a severe reduction of domestic steel demand.

The Board has accordingly resolved that it will be in the best interest of Highveld and its stakeholders to commence with voluntary business rescue proceedings in terms of section 129 of the Companies Act, 2008 (as amended) ("the Act"). The resolution to this effect has been filed with the Companies and Intellectual Property Commission ("CIPC").

The Board believes that implementation of voluntary business rescue will afford the business practitioner the opportunity to consider the continued implementation of the turnaround plan and successfully re-establish the Company.

The Board has further resolved to appoint Messers Daniel Terblanche and Piers Marsden as joint business rescue practitioners. The relevant forms relating to, and necessary to formalise, the appointment of the business rescue practitioners, as contemplated in section 129(b) of the Act, will be filed with the CIPC in due course.

##### 2. Application for suspension of listing on the JSE and cautionary announcement

The commencement of business rescue proceedings by the Company is expected to have a material impact on the price of the Company's shares.

JB

In accordance with section 1.9(a)(iii) of the JSE Listings Requirements, the Board has made an application to the Johannesburg Securities Exchange ("JSE") to suspend the listing of Highveld's shares with immediate effect. JSE granted such application.

Shareholders are accordingly advised to exercise caution when dealing in shares of the Company.

3. Update on the agreement between Macrovest and EVRAZ plc subsidiary

Shareholders are referred to the announcement released by the Company on 12 August 2014 wherein it was advised that Macrovest 147 (Pty) Ltd ("Macrovest") had entered into an agreement with a subsidiary of EVRAZ plc ("EVRAZ"), the 85% shareholder of Highveld, to acquire 34% of the shares in Highveld subject to certain conditions precedent. Shareholders are hereby advised that the agreement between Macrovest and EVRAZ has lapsed.

4. Due to the uncertainties associated with the business rescue proceedings the Company will not be able to release its results as required today.

eMalahleni

14 April 2015

Sponsor

J.P. Morgan Equities South Africa (Pty) Ltd.

IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, JOHANNESBURG)

CASE NO.: \_\_\_\_\_

In the matter between:

EVRAZ HIGHVELD STEEL AND VANADIUM LTD  
(IN BUSINESS RESCUE)

Applicant

And

SASFIN BANK LTD

Respondent

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CONFIRMATORY AFFIDAVIT

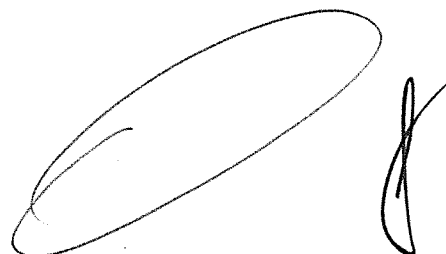
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I, the undersigned,

DANIEL TERBLANCHE

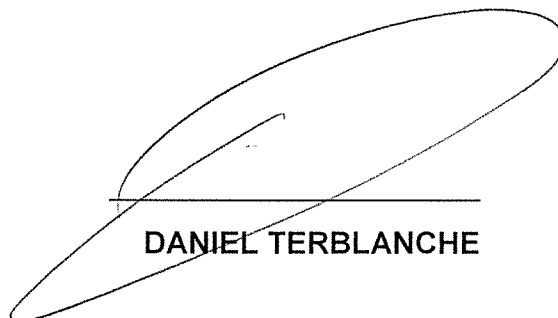
hereby make oath and say that:

1. I am an adult male business rescue practitioner employed by Mazars Business Rescue Services (Pty) Ltd and the joint business rescue practitioner of the applicant.





2. The facts herein contained are, save where the contrary is clearly indicated, within my personal knowledge and are, to the best of my belief, both true and correct.
3. I have read the founding affidavit deposed to by **PIERS MARSDEN** and confirm the content thereof insofar as it relates to me.



**DANIEL TERBLANCHE**

I CERTIFY that the deponent:

- (a) has acknowledged that he knows and understands the contents of this affidavit, that he has no objection to taking the oath and that he considers the oath binding on his conscience; and
- (b) has in due form SWORN that the contents of this affidavit are true and has SIGNED the same

BEFORE me at CAPE TOWN on this the 22<sup>nd</sup> day of MAY 2015.



**COMMISSIONER OF OATHS**

Name: **SELWYN MARK SOLOMON**  
 Commissioner of Oaths (RSA)  
 Chartered Accountant (SA)

Address: Registration number 00234439

Capacity: MAZARS HOUSE RIALTO ROAD  
 GRAND MOORINGS PRECINCT  
 CENTURY CITY 7441 • TEL +27 21 818 5000

John-Carlos Atouguia

33  
"PM-3"

From: John-Carlos Atouguia  
Sent: 01 May 2015 01:03 PM  
To: rsassoon@sasfin.com  
Cc: Anabela Da Silva; Oshy Tugendhaft; Magriet.buys@sasfin.com  
Subject: Urgent :EVRAZ HIGHVELD STEEL AND VANADIUM LTD VS SASFIN BANK  
Attachments: Sasfin 30.04.15 (2).pdf

Dear Sir,

Please see correspondence attached for your urgent attention.

Yours faithfully

*JOHN-CARLOS ATOUGUIA*

*TWB - TUGENDHAFT WAPNICK BANCHETTI & PARTNERS*

TEL: (011) 291 5000 \ 2915309(Direct)

FAX NO.: (011) 884 7949

E-MAIL : [johnccarlos@twb.co.za](mailto:johnccarlos@twb.co.za)

Partners : O TUGENDHAFT; S WAPNICK; Z E E BANCHETTI; A CHAVES DA SILVA; T POLLAK; R KANTOR; ; J RAVJEE

Associates : J ATOUGUIA

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JB



**TUGENDHAFT WAPNICK BANCHETTI  
AND PARTNERS**

ATTENTION: MR R SASSOON

Our Ref: O TUGENDHAFT /  
A DA SILVA/kp

SASFIN BANK  
P O BOX 19504  
GRANT PARK

Your Ref:

Per: EMAIL: rsassoon@sasfin.co.za

Date: 01 May 2015

Dear Sirs

**RE: EVRAZ HIGHVELD STEEL AND VANADIUM LTD VS SASFIN BANK**

1. We act on behalf of Evraz Highveld Steel and Vanadium Ltd, which is presently in business rescue, on the instructions of the business rescue practitioners Messrs Marsden and Terblanche.
2. We have been provided with a copy of your letters of 14 April 2015, 15 April 2015 and 24 April 2015 addressed to our client, as well as the underlying Invoice Discounting Agreement ("the Agreement").
3. This letter is written to you in the hope of avoiding an extremely urgent application, the potential need for which arises in the circumstances set out below. If such an application is to be avoided our client requires a written undertaking from you by no later than 10:30 on Monday 4 May 2015 to the effect that you will, by no later than 14:00 on Monday 4 May 2015, provide our client with a letter on your letterhead advising our client's debtors that they should henceforward proceed to pay our client directly all and any amounts owing to our client, and that payment should no longer be made to yourselves.

**ATTORNEYS**

Tel +27 11 291 5000 Fax +27 11 884 7949 Website [www.twb.co.za](http://www.twb.co.za)  
20th Floor Sandton City Office Towers 5th Street Sandown 2196 South Africa PO Box 786728 Sandton 2146 Docex 19 Sandton  
Partners O Tugendhaft S Wapnick Z E E Banchetti A Chaves da Silva T Pollak R Kantor J Ravjee H Fotakis Muller  
Associates J C Atougula K Venter K Verwey  
Email: [anabela@twb.co.za](mailto:anabela@twb.co.za)



JB

4. The reasons for our client's demands are set out below.
5. As you are aware, our client was placed under business rescue on 14 April 2015. This caused you to terminate the Agreement with our client in terms of clause 16.1. Pursuant to that elected termination you purported to raise our client's service fee to 10% in terms of clause 16.4 of the Agreement and demanded payment of an amount of R9,594,059.10. You additionally demanded a penalty of R22,050,000 in terms of clause 32. According to your letter of 24 April 2015, your exposure as at that date (including the aforementioned penalties, VAT and interest) stood at R3,907,065.54. As you have been collecting payment directly from our client's debtors we assume that the amount of your purported exposure has reduced in the interim. As recorded herein *infra* we are of the view that your attempt to recover an alleged penalty during the course of the business rescue moratorium has no basis. Our client's rights in this regard are again reserved.
6. As a result of the letters, which you delivered to our client's debtors insisting on payment directly to yourselves and not to our client, our client is receiving little to no income. Some debtors have advised our client that in the face of two competing claims for payment they have elected not to pay either our client or yourselves. This is not of assistance to either party. Our client does not accept, given the moratorium imposed by business rescue proceedings, that you can recover your alleged liquidated damages upon termination of the Agreement, particularly in circumstances where on your own version it is you and not our client who has elected to terminate the Agreement, *sans* any breach, whether material or otherwise, of our client's obligations thereunder. As this letter addresses our client's most pressing present urgent concerns in regard to the penalty levied by you, it should therefore not be construed as any admission that you are or were entitled in law to recover damages, whether liquidated or otherwise, from our client as a result of your election to terminate the Agreement.
7. Our client's rights in this regard including its right to approach the Court *inter alia* in terms of s136(2)(b) of the Companies Act on an urgent basis or

*JP*

otherwise, in regard to your apparent premature and baseless recovery of alleged liquidated damages in subversion of the moratorium, are reserved.

8. It is now trite that the very purpose of business rescue is to afford a company the necessary breathing space to permit for a restructuring of its affairs so as to allow it to return to profitability and avoid insolvency. In the case of our client, the livelihoods of approximately 4,000 employees, not to mention the innumerable customers who depend, for their livelihoods and business dealings on the supplies of steel from our client, depend on the success of the business rescue proceedings.
9. In the letter written by your attorneys, Edward Nathan Sonnenbergs, to our client on 15 April 2015 your attorneys recognised in paragraphs 3 and 5 the urgent need on the part of our client for sufficient financial reserves as to enable it to avoid liquidation. Your attorneys further commented in paragraph 4 that *"there is no doubt that the business must continue to operate as a going concern to preserve value for all stakeholders and to save jobs."*
10. It is therefore regrettable that, in the face of this advice from your attorneys, and notwithstanding your recognition of the impact of failed business rescue proceedings on the broader community, you nevertheless chose to both raise our client's service fee and impose a penalty in a combined amount of R31,644,059.10. At the very moment when our client needed a reprieve from the enforcement of obligations against it, as it is entitled to, it was punished by the imposition of a penalty. It is noteworthy that your letter of 14 April 2015 did not seek to impose any penalty on our client and that it was only after the rejection of your offer of post-commencement finance by our client's majority shareholder that a penalty was imposed.
11. The impact on our client of the loss of its anticipated cash flow from debtors has been severe. Its ability to pay salaries and wages has been compromised and the success of the business rescue plan placed in jeopardy. Unless debtors begin to pay our client that which they owe to it,

JB

the prospect of our client being saved from liquidation is minimal, if not non-existent.

12. In the face of your letter to our client's debtors instructing them to withhold payment from our client, payments have been and are being withheld. You would in any event have had to notify our client's debtors that they should proceed to pay our client their debts once your final exposure has been collected, if it has not already been collected. Without a letter from you to our client's debtors they are unlikely to accept our client's assurance that payment should be made to it. There will inevitably be a delay between the receipt of your letter to this effect by our client, the transmission of that letter by our client to its debtors, and the resumption of payment by our client's debtors.
13. We are confident, given your stance recorded in the letter of 15 April 2015, that it would not be your intention to jeopardise the success of the rescue of our client over a sum of about R3 million, considering that you have already recovered over R25 million in penalties, excluding interest.
14. In addition to the above the quantum of the penalty has been miscalculated. The correct calculation period in terms of clause 32 is six months from the date of your letter of 14 April 2015, bringing the penalty to R10,500,000 and not R21,000,000 as demanded in your letter. To calculate the period as running for a further six months from the Specified Termination Date in Schedule A, as you have done, is incorrect.
15. The combined penalty referred in paragraphs 10 and 14 above is furthermore grossly disproportionate both when one has regard to the capital amount concerned and to the circumstances in which the Agreement was terminated and the penalty raised.
16. We again emphasise that what is stated in paragraph 15 above must not be understood to imply that our client accepts that the penalty stipulations contained in clause 16.4 and 31 are valid and enforceable and not *contra bonos mores*. Our client's rights in this regard are reserved.

JB

17. Even if you are entitled to have recovered a penalty during business rescue, and to have recovered the full penalty in circumstances where you elected to terminate the agreement in the absence of any breach, and without reduction, it remains the case that for the reasons set out above you have claimed double the amount to which you are entitled under the clause and that you have, therefore, already recovered more than that to which you are entitled under the Agreement. There is therefore no justification for withholding from our client the letter to debtors which it seeks from you.
18. That letter can be given without prejudice to your rights to claim payment of any amounts which you contend are still due to you, whether under the penalty clause or on any other basis.
19. As cash is urgently required for the successful implementation of the business rescue plan, our client cannot resolve the question of the reasonableness and lawfulness of the penalty in the ordinary course and, for that reason, seeks your agreement and undertaking that this issue be resolved urgently. We will in due course send you our proposals in this regard.
20. If you are unwilling to co-operate in this regard our client will have no alternative but to seek urgent relief from the Court.
21. We accordingly await receipt of the undertaking referred to in paragraph 3 above as a matter of urgency and by no later than 10:30 on Monday 4 May 2015.
22. Our clients wish to be able to reassure the employees, unions, government stakeholders, creditors, customers and the public at large of the probable success of the business rescue plan which is to be published in May 2015 and, until the necessary undertaking is received, that reassurance cannot be given.

JB

23. We look forward to receiving your positive response.

Yours faithfully

**TWB – TUGENDHAFT WAPNICK BANCHETTI AND PARTNERS**

JB



From: Tokelo Moloi <tokelom@idc.co.za>  
Date: Thursday 14 May 2015 at 8:02 PM  
To: piers m <pmarsden@matusonassociates.co.za>  
Cc: Washington Musara <washingtonm@idc.co.za>  
Subject: FW: SASFIN letters

40  
"PM-4"

Hi Piers

I have read the attached letters from SASFIN and none of them confirm that the debtors have been released, however, they do state that an arrangement has been reached with you.

We would need a letter that is clear and expressly states that the debtors are released, unconditionally.

I look forward to hear from you.

*Regards, Tokelo Moloi*  
*Senior Legal Advisor*  
*Legal & International Finance*  
Tell: 011 269 3741  
Cell: 082 777 3863



JB

41  
"PM-5"

# INVOICE DISCOUNTING AGREEMENT

(including a Guarantee and Cession)

between

**SASFIN BANK LIMITED**

(Reg No:1951/002280/06)

("the Bank")



and

**EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED REG NO: 1960/001900/06**

(jointly and severally referred to as the "the Supplier")

1. In this agreement unless the context clearly indicates a contrary intention:
  - 1.1 an expression which denotes any one gender includes the other genders;
  - 1.2 a natural person includes an artificial person and vice versa;
  - 1.3 the singular includes the plural and vice versa;
  - 1.4 any number of days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday and;
  - 1.5 the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings:-
    - 1.5.1 "book debt" means any claim which the Supplier may have arising directly from any goods sold and delivered, services rendered by the Supplier, or from any other cause howsoever arising including monies advanced, insurance and damages claims in respect of work in progress, that is, work done or goods ordered or goods delivered or construction undertaken or services performed for and on behalf of a debtor, for which an invoice may not yet have been issued or an account rendered to the debtor;
    - 1.5.2 "debtor" means any person or company or firm or close corporation or other legal persona against whom the Supplier has or may have a claim;
    - 1.5.3 "accepted book debts" means any book debt which is accepted by the Bank pursuant to 2.7;
    - 1.5.4 "the Supplier's Associates" means any person who is or was a director, member or partner of the Supplier at any time during the subsistence of this agreement and/or the holding company or Close Corporation of the Supplier and/or any subsidiary or controlled company or Close Corporation of the Supplier or of the holding company or Close Corporation of the Supplier and/or any company, firm, business or Close Corporation or undertaking in which the Supplier and/or persona referred to above directly or indirectly, individually or collectively, have not less than a 30% (thirty percent) interest by way of shares in the equity capital, or share in profits or losses or shareholders' or members' loan accounts or otherwise, or in the case of a Close Corporation, have not less than a 30% (thirty percent) interest as a member;
    - 1.5.5 "the Service Fee" means an amount equal to that percentage as specified in Schedule A against the item Service Fee, of the aggregate face value of accepted book debts;
    - 1.5.6 "VAT" means Value Added Tax in terms of the Value Added Tax Act number 89 of 1991 as amended from time to time;
    - 1.5.7 "due date" means the date by which accepted book debts are to be repaid in terms of 5.12;
    - 1.5.8 "Minimum Monthly Fee" means the amount as specified in Schedule A against the item Minimum Monthly Fee, which shall increase cumulatively by 10% (ten percent) per annum on each anniversary date of this agreement.
  - 2.1 The Supplier shall at least every two weeks offer to sell to the Bank all book debts which comply with 5 and which are owed to the Supplier at the time of the offer.
  - 2.2 Every offer by the Supplier to sell book debts to the Bank shall be irrevocable and in writing in such form as may be prescribed by the Bank from time to time and subject to 6.3 shall be open for acceptance for a period of not less than 3 (three) working days after receipt by the Bank of the offer by the Supplier. The Bank shall at its discretion accept or reject the offer and if the offer is accepted shall thereby purchase the book debts on all the terms and conditions of this agreement, and such book debts shall ipso facto have been ceded by the Supplier to the Bank.
  - 2.3 Each offer shall be accompanied by all documents held by the Supplier, including all original guarantees and suretyships, bills of exchange, promissory notes, cheques, proof of delivery and other liquid documents or securities in any way relating thereto.
  - 2.4 The Supplier shall give the Bank such assistance, information and access to its books and records as the Bank may require for the purpose of deciding upon acceptance or otherwise of such offer.
  - 2.5 The Supplier shall be bound by any offer made on its behalf by any of the Supplier's directors, members, partners or employees or by any duly appointed agent of the Supplier.
  - 2.6 The Bank's benefits to the accepted book debts shall include all rights and claims of whatsoever nature relating to such book debts, including the right to receive payment of the amount of the book

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42

debts and all rights ancillary thereto including, but without limiting the generality of the foregoing, the right of stoppage in transit, any lien which could be applicable and/or other rights which could be applicable and all other rights which could, but for this agreement, have been exercised by the Supplier to the extent that the Bank will be placed in the same position including ownership and/or the right to receive the return of the goods and all such other rights as the Supplier would have enjoyed in respect of the book debts.

- 2.7 Upon acceptance by the Bank of the offer made by the Supplier, the Supplier shall *ipso facto* and without any further act or deed be deemed to have sold, ceded, assigned, transferred and made over to and in favour of the Bank, all its rights in and to the accepted book debts, together with all the Supplier's rights in and to any sureties, guarantees or other securities of any other nature whatsoever given in the Supplier's favour in respect of such accepted book debts, as well as all such further rights as may be necessary in order to enable the Bank to enjoy the Bank's benefits as set out in 2.6. The Supplier consent to the Bank ceding in whole or in part any or all of the accepted book debts to any other party/parties and any reference to the Bank shall be deemed to include a reference to its cessionary/cessionaries.
- 3.1 All or any payments made in respect of the accepted book debts shall accrue to the Bank, which shall have the right at any time or times to give notice or, in its discretion, to require the Supplier to give notice of the cession referred to in 2.2 above to all or any of the debtors concerned and to all or any sureties or guarantors for such debtors and to take such steps as the Bank may deem fit to collect the accepted book debts.
- 3.2 Notwithstanding the provisions of 3.1, the Supplier shall, unless and until the Bank in writing directs otherwise and for this purpose acting as agent for and on behalf of the Bank, at its own expense and without charge to the Bank, unless otherwise agreed to in writing:
  - 3.2.1 take all reasonable steps to collect the accepted book debts expeditiously;
  - 3.2.2 comply promptly with all and any directions which the Bank may give in regard to the collection thereof;
  - 3.2.3 account forthwith for and pay over to the Bank *in specie* or otherwise as the Bank may from time to time in writing direct, all amounts received by it in payment of the accepted book debts. Such accounting and paying over shall, unless and until the Bank directs to the contrary, comprise, *inter alia*, the following:
    - 3.2.3.1 A statement of the name and address of the debtor from whom payment was received, the date of receipt of such payment and particulars of the accepted book debts, sufficient to enable the Bank to identify it;
    - 3.2.3.2 The delivery to the Bank of any bill of exchange, promissory note, cheque or any other like instrument of payment drawn or made in payment of any accepted book debts and duly endorsed by the Supplier so as to render the Bank or its order the lawful holder thereof.
- 3.3 If at any time the Bank elects to itself collect and enforce payment of all or any of the accepted book debts:
  - 3.3.1 the Supplier will be obliged to refund to the Bank an amount equal to 5% (five percent) of the face value of such accepted book debts, which refund shall be regarded as a reduction of the purchase price of the book debts concerned, and
  - 3.3.2 the Supplier will be obliged to pay all costs including VAT thereon incurred by the Bank in collecting and enforcing payment of such accepted book debts including, but not limited to, all legal costs on the scale as between an attorney and own client, and the Supplier shall be obliged to pay to the Bank, upon demand, any amount which may be charged by the Bank's attorneys which the Bank in its sole discretion, considers reasonable and the Supplier shall not be entitled to require any such attorney and client charge to be taxed.

- 4.1 The purchase price payable by the Bank to the Supplier for each accepted book debt purchased shall be the face value of such accepted book debt as reflected in the Supplier's offer, less:-
  - 4.1.1 any trade discount, cash discount, commission credit or any other allowance whatsoever due or allowable to the debtor in accordance with the terms of the transaction as shown in the relevant invoice or as otherwise agreed; and
  - 4.1.2 the Service Fee in respect thereof.
- 4.2 The purchase price of each accepted book debt as above, shall become due and payable to the Supplier on the date on which the Bank receives payment in full of such accepted book debt.
- 4.3 The Service Fee shall become due and payable by the Supplier immediately such charge is ascertained and debited to the Supplier's current account maintained by the Bank in terms of 11 hereof.
- 4.4 The Supplier may at any time after the sale of any book debt to the Bank, request the Bank to prepay an amount not exceeding the percentage as is specified in Schedule A against the item Percentage Advance of the purchase price of that book debt, before deducting the Service Fee in terms of 4.1.2 provided that the amount owing by the Supplier to the Bank in terms of the Supplier's current account shall not exceed the amount as is specified in Schedule A against the item Specified Limit, and provided always that the Bank shall have absolute discretion both as to the amount of any such prepayment, and as to the aggregate amount of all prepayments to be made to the Supplier and the Bank shall be entitled to refuse to make any prepayment whatsoever whether or not it has or acquires any information that it regards as reflecting adversely on the creditworthiness of the debtor concerned or the Supplier.
- 4.5.1 The balance of the purchase price, being the difference between the amount calculated in terms of 4.1 and the prepayments effected made by the Bank in terms of 4.4 shall be paid to the Supplier in terms of 4.2, provided that the said balance shall be reduced daily in accordance with the following formula:
 

$$\frac{P \times R}{365}$$

where:

"P" is the amount of the prepayments paid by the Bank in terms of 4.4;

"R" is the prevailing publicly quoted base rate of interest at which any one of the Bank's bankers will lend on overdraft ("Prime") plus that percentage as specified in Schedule A against the item Spread Above Prime.
- 4.5.2 In the event of the purchase price being less than the amount of the Percentage Advance, the Supplier shall forthwith pay to the Bank the amount of the shortfall.
- 4.5.3 If for any reason, and whether or not agreed to between the parties, the total outstanding prepayments at any time exceed the percentage of accepted book debts as specified in Schedule A against the item Percentage Advance then the Bank shall be entitled, entirely at its discretion, and without prior notice, to claim from the Supplier in addition to the amount referred to 4.5.1 an excess fee of not more than 0,25% (zero comma two five percent) of the amount of such excess for each day that such excess remains unpaid.
- 4.6 Should any event occur entitling the Bank to cancel this agreement, then notwithstanding the fact that the Bank does not actually cancel the agreement, the purchase price remaining unpaid, shall not be due or become payable by the Bank until the full amount of the Supplier's present and future indebtedness to the Bank, whether actual or contingent and howsoever arising, has been finally ascertained and then only to the extent, if any, by

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43

- which such purchase price exceeds such indebtedness.
- 4.7 Any amounts whatsoever payable by the Supplier to the Bank shall be set-off against payments due by the Bank to the Supplier in respect of the purchase price of book debts purchased.
- 4.8 The Bank shall charge the Supplier at the end of each calendar month the amount specified in Schedule A against the item Minimum Monthly Fee that exceeds (if any) the aggregate amount of Service Fee charged in any calendar month to the Supplier in terms of 4.1.
- 4.9 The Bank shall not be obliged to disclose any credit information to the Supplier, but should it do so, the Supplier shall treat such information in strict confidence and shall not allow such information to be passed on to any other person and the Bank shall incur no responsibility or liability whatsoever should such information prove to be incorrect or untrue. The Supplier hereby indemnifies the Bank and holds it harmless against any claim of whatsoever nature brought against the Bank by any person whatsoever, arising out of such statements made or information given.
- 5 The Supplier warrants, represents and undertakes in favour of the Bank in respect of each book debt included in each offer that:-
- 5.1 immediately before the sale of the book debt to the Bank, the Supplier will be the true and lawful owner of all the book debt, that any goods or materials sold to the debtor by the Supplier belonged to the Supplier immediately prior to such sale and that the Supplier's rights in respect of the book debt have not in any way been ceded, pledged, alienated or encumbered otherwise than in terms of this agreement; and furthermore, that the Supplier is entitled to cede the book debt to the Bank and that no debtor will be entitled to refuse to recognise the cession of any book debt to the Bank following the purchase thereof by the Bank in accordance with this agreement;
- 5.2 the book debt is an existing, bona fide, enforceable and recoverable claim for the amount of the book debt as reflected in the offer in respect of the purchase price of goods sold and delivered or the amount due for services rendered by the Supplier in the ordinary course of the Supplier's business;
- 5.3 the Supplier has duly and punctually performed and discharged all of its obligations to the debtor under the contract from which the book debt arose and that the book debt will be due and payable by the debtor on or before the due date;
- 5.4 no book debt will be subject to any dispute or claim of whatsoever nature, including disputes or claims by the debtor as to price, terms, quality, quantity, delay in delivery, set off or any other defence of any nature;
- 5.5 the debtor named in each invoice is or will be liable to pay the full amount stated therein;
- 5.6 no book debt will have arisen in respect of the supply of goods or the rendering of services on a consignment basis or sale or return, or where payment for such goods and/or services is subject to any conditions which are unfulfilled;
- 5.7 no debtor is one of the Supplier's associates;
- 5.8 the Supplier has disclosed and shall, during this agreement, disclose to the Bank all matters and facts known to the Supplier which might in any way influence the Bank in the granting, refusing or withdrawing of approval of any book debt or prospective book debt or which might in any way influence the Bank in any decisions to be taken or contemplated in terms of the agreement;
- 5.9 without the prior written consent of the Bank, no book debt will be subject to any discount for cash. The Bank shall not be liable to the Supplier for the amount of any discount, commission or allowance wrongfully claimed or deducted by the debtor in respect of any book debt unless and until such amount has been received by the Bank;
- 5.10 the name and address of the debtor as shown in the relevant invoices and documents submitted to the Bank are true and correct and genuine in all respects and that the copy of any invoice/statement submitted to the Bank will be a true copy of the original invoice or statement sent by the Supplier to the debtor;
- 5.11 the full amount of the book debt is a South African currency obligation and is enforceable in the Republic of South Africa;
- 5.12 all accepted book debts will be paid by the debtor not later than the last day of the number of the calendar months referred to in Schedule A against the item Specified Month for Payment calculated from and inclusive of the calendar month during which the book debt came into existence;
- 5.13 the relevant debtor in each instance will have accepted the goods sold and/or services rendered and the invoice therefor without any dispute or claim whatsoever (including disputes as to price, terms, discount, quantity or quality, set-off or counterclaim or claims of release from liability or inability to pay because of vis major) or because of the requirements of law or of customs rules, regulations or orders having the force of law and that the Supplier shall forthwith notify the Bank promptly of all such disputes or claims, whereupon the Bank shall (in addition and without prejudice to any other rights to which the Bank is entitled) have the right forthwith after re-crediting the book debt concerned, to debit the Supplier with the amount thereof and to demand immediate payment of the amount thereof from the Supplier. Without detracting from the generality, force and effect of the foregoing, it is hereby agreed and declared that a dispute shall be deemed to arise between the Supplier and any debtor should such debtor fail to pay for any book debt on the due date for payment thereof for any reason other than financial inability to pay;
- 5.14 the Supplier, as trustee for the Bank, shall hold and keep separate from the Supplier's other monies, all remittances which may be received by it in payment of or on account of book debts sold to the Bank and will immediately deliver to or on behalf of the Bank the identical cheques, monies and other forms of payment received (properly endorsed, where required);
- 5.15 the Supplier will, immediately after being notified of the Bank's acceptance of the offer of sale relating to any book debt, make an appropriate entry in its books of account recording such sale;
- 5.16 all goods which are the subject matter of all book debts, will have been duly delivered to the debtors and/or all services duly completed prior to the offer date and that in every case written evidence to the satisfaction of the Bank of the due delivery of the goods and/or completion of the services, and of the due delivery to the debtor of the invoice relating thereto, is available and will be furnished to the Bank;
- 5.17 all transactions entered into by the Supplier with the debtors will be governed by terms and conditions of sale or service approved by the Bank, and that the relevant goods will be delivered and/or the relevant services rendered strictly in accordance with the terms of the transaction which terms will not be varied without the prior consent in writing of the Bank.
- 6.1 The Supplier shall provide the Bank with all such information as the Bank may require and which may be available to the Supplier regarding the financial standing of any debtor, including such debtor's trading history with the Supplier, and bank and other reports, which may be in its possession or be known to the Supplier.
- 6.2 Should the Bank in its sole discretion consider it necessary to obtain additional information from third parties including Credit Bureaus, to determine the debtor's credit worthiness, such costs will be for the Supplier's account.
- 6.3 The period referred to in 2.2 hereof shall be extended until the information referred to in 2.4 and 6.1 shall have been received by the Bank from the Supplier.
- 6.4 The Bank shall always be afforded full access through any person

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44

- whom it may nominate to the books and records of the Supplier relating to transactions with the debtors, and shall be entitled to take extracts therefrom.
- 6.6 For as long as this agreement remains in force or for as long as any book debts sold to the Bank in terms hereof remain unpaid or the Supplier is indebted to the Bank for any reason whatsoever, the Supplier shall keep proper books of account and the Bank, or its nominees, shall at all reasonable times have access thereto; and to such other information as in the Bank's opinion may be necessary to give a true reflection of the state of the Supplier's affairs. The books of account of the Supplier shall be audited by a registered and practising public accountant and auditor and annual audited financial statements of the Supplier, duly certified, shall as soon as they are completed, but not later than a period of 4 (four) months from the date of the termination of each financial year, be furnished to the Bank. In addition, the Supplier shall provide the Bank with such additional facts, figures and statements of account as the Bank may from time to time require, and where the Bank so requests, such statements shall at the Supplier's cost be certified by the Supplier's auditors.
- 7 Notwithstanding anything to the contrary herein contained, the Supplier shall not without the written consent of the Bank grant credit terms to any debtor exceeding the number of calendar months as specified in Schedule A against the item Specified Month for Payment calculated from and inclusive of the calendar month during which the book debt was offered.
- 8 The Bank shall have absolute discretion to disallow prepayments in terms of 4.4 in respect of any accepted book debt or part thereof where such book debt has not been paid by the debtor within the Specified Month for Payment referred to in Schedule A. Where the Bank disallows prepayments in terms hereof, the Supplier shall forthwith pay to the Bank the amount prepaid in respect of such book debt.
- 9.1 Should any goods which are the subject of any book debt be returned to the Supplier for any reason whatsoever, then the Supplier shall immediately notify the Bank thereof in writing of receiving such goods and shall mark such goods with the Bank's name and set them aside and hold them in the Bank's name and for the Bank's account as owner.
- 9.2 The Supplier shall promptly prepare all credit notes arising from returns per 9.1 and shall notify the Bank of every credit note. The Bank shall in its absolute discretion decide whether or not to approve any credit note and shall promptly advise the Supplier in writing of its decision. The Supplier shall not notify the debtor of the credit note until the Bank's written approval has been received, upon which the Supplier shall issue the credit note and immediately thereafter effect payment thereof to the Bank. Immediately upon the approval of any credit note by the Bank, and the payment thereof by the Supplier to the Bank, any goods set aside and marked in terms of 9.1 hereof, shall revert to and become the property of the Supplier. The Bank shall (in addition and without prejudice to any other rights which it might have), have the right to take possession of and sell, or cause to be sold, without notice to the Supplier, any returned or recovered goods, on such terms and at such prices and to such purchasers as it in its absolute discretion shall deem advisable, and in the event of any such sale, the Supplier shall pay to the Bank on demand (and without asserting any right of set-off) the difference between the total credit due to the debtor which the Bank grants to the debtor in respect of such goods and the amount received on any such sale and all costs and expenses (including legal fees) incurred by the Bank in relation to any such sale.
- 10.1 Should an accepted book debt remain unpaid at the due date thereof then, in addition to any other rights the Bank may have against the Supplier pursuant hereto, the Bank shall be entitled to again charge the Supplier the Service Fee for each period specified in Schedule A against the term Specified Month for Payment, by which such accepted book debt remains unpaid, beyond the due date.
- 10.2 The Bank shall (in addition and without prejudice to any other rights it may have hereunder or otherwise) have the right to institute any proceedings in its own name for the recovery of any book debt, and to settle or compromise any such proceedings or make any agreement with any debtors as the Bank in its absolute discretion may deem fit.
- 10.3 Any reduction agreed to by the Bank in terms of 10.2 and all legal and other professional costs, charges and expenses whatsoever in respect of any proceedings instituted by the Bank in its or the Supplier's name, including all attorney and own client costs shall be paid by the Supplier whatever the result of such proceedings may be.
- 11 The Bank will maintain a current account relating to the Supplier which shall be:
- 11.1 credited with every payment made:
- 11.1.1 by a debtor on account of any book debt to which this agreement applies;
- 11.1.2 by the Supplier in terms of 5.14 or 9.2;
- 11.2 debited with:
- 11.2.1 every prepayment made by the Bank to the Supplier in terms of 4.4;
- 11.2.2 every other payment made by the Bank to the Supplier or to any debtor or to any other person on behalf of the Supplier;
- 11.2.3 every item chargeable to the Supplier in terms of this agreement or from any other cause howsoever arising; such debits to be entered on the date on which the relevant prepayment or payment or charge is made; and
- 11.2.4 every remittance previously credited to the current account under this Clause which is subsequently unpaid for any reason whatsoever; such debit to be entered retrospectively to the date on which the relevant remittance was previously credited to the current account.
- 11.3 Should the net daily balance shown on the current account reflect an amount due to the Bank, then interest shall be calculated on a day to day basis on such amount at Prime plus that percentage as specified in Schedule A against the item Spread Above Prime.
- 11.4 Subject to the provisions of this agreement and save as otherwise agreed between the parties, interest shall be payable monthly in arrears by the Supplier to the Bank.
- 12 The Supplier hereby irrevocably and in *rem suam* authorises any director, manager or secretary for the time being of the Bank or any other employee of the Bank so delegated by such director, manager or secretary, in the name and on behalf of the Supplier, to endorse and otherwise make over to the Bank or any other person, all cheques, promissory notes and bills of exchange made or drawn in the Supplier's favour by any debtor in respect of any accepted book debt. Furthermore, the Bank's bankers are hereby irrevocably authorised by the Supplier to accept all such instruments of payment deposited by the Bank for credit to the Bank's account, whether or not same are endorsed by or on behalf of the Supplier. In regard to any cheques which are payable to the Supplier and which are not transferable, the Supplier hereby authorises the Bank to open a separate banking account in the name of the Supplier in respect of which account only the Bank shall have signing powers and into which such cheques shall be deposited. The Supplier hereby cedes to the Bank that account. The Supplier undertakes to forthwith take any steps which the Bank's bankers may require in regard to the opening of the account and the cession thereof.
- 13.1 Notwithstanding anything to the contrary in this agreement contained, the Bank shall at all times be entitled to retain any monies for the time being standing to the credit of the Supplier in the Bank's books up to the full amount thereof, as the Bank in its sole discretion shall decide, as security for any claims which have

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45

arisen or which may arise by the Bank against the Supplier from any cause whatsoever.

13.2 Any monies for the time being standing to the debit of the Supplier in the Bank's books shall be payable by the Supplier to the Bank on demand.

13.3 The Bank shall have the right from time to time and notwithstanding termination of this agreement, for as long as there shall be monies standing to the credit of the current account, to deduct therefrom without reference to the Supplier, any amount of money which may become owing by the Supplier to the Bank from whatsoever cause arising.

14 Notwithstanding anything to the contrary in this agreement contained, the Bank shall be entitled in its sole discretion at any time to apply and/or allocate any monies received by the Bank from the Supplier and/or paid to the Bank by and/or on behalf of the Supplier and/or any person whomsoever and from whatsoever cause arising and set same off against any monies which the Supplier may then or at any time thereafter owe to the Bank, whether due or not and from whatsoever cause arising and such rights of application and/or allocation shall include the right to reapply and/or re-allocate any monies previously applied and/or allocated by the Bank.

15.1 The Supplier may not cede or assign, or attempt to cede or assign, or in any way dispose of any rights or obligations arising from this agreement, except with the prior written consent of the Bank, which consent shall not be unreasonably withheld.

15.2 The Bank may at any time cede or assign any or all of its rights or obligations under this agreement, in whole or in part.

16.1 In the event of the Supplier committing a breach of any of the terms, conditions, undertakings or warranties in this agreement, or failing to pay any monies due to the Bank on demand or being placed (whether provisionally or finally) under business rescue or in winding up (whether compulsory or voluntary) or of its estate being provisionally or finally sequestered or voluntarily surrendered, or the Supplier entering or attempting to enter into any compromise, composition or arrangement with its or his creditors, or if any default judgment is entered against the Supplier and is not satisfied within 7 (seven) days after the grant thereof, or should the Supplier in the reasonable opinion of the Bank without the Bank's prior written approval, suspend or materially reduce the scale of its business, or change the nature of its business, then the Bank shall be entitled, without prejudice to any other right which it may have, forthwith to terminate this agreement by giving written notice to the Supplier to that effect and shall further be entitled, without prejudice to any other rights or remedies which it may have in terms hereof or at law:

16.1.1 notwithstanding such termination, to retain and enforce against any debtor any accepted book debts which remain unpaid as at the date of termination; or

16.1.2 to resell to the Supplier, who shall be obliged and be deemed to have repurchased at the face value thereof, any accepted book debts which remain unpaid as at the date of termination. Payment of the purchase price of unpaid accepted book debts so resold to the Supplier shall be made in cash upon demand and until payment therefor has been made in full ownership of the accepted book debts shall remain with the Bank.

16.2 Notwithstanding the termination of this agreement pursuant to 16.1, the Bank shall not be obliged to pay to the Supplier any amounts standing to the credit of the current account which the Bank claims were, by operation of law, or in terms of this agreement, set off against amounts due to the Bank by the Supplier from whatever cause under this agreement unless the Supplier (or its successor in title) proves that set-off did not apply in respect of any such amount.

16.3 In respect of any monies owing by the Supplier to the Bank not paid when due, the Bank shall (in addition to and without prejudice to any other claims or rights which it may have against the

Supplier) be entitled to demand from the Supplier immediate payment, plus interest thereon at the rate of 2.50% (two and a half percent) thereof for each calendar month or part thereof from the date that such amount was due until such amount is paid.

16.4 In any circumstances entitling the Bank to terminate this agreement the Bank may at its sole discretion increase the Service Fee to 10 % (ten percent) in respect of all debts then outstanding; whether in whole or in part.

16.5 The Bank shall also be entitled to cancel this agreement without prior notice, if without prior written approval of the Bank (which approval shall not be unreasonably withheld),

16.5.1 the share capital of the Supplier is reduced, or

16.5.2 any shares in the Supplier's capital are transferred, or any change in beneficial ownership thereof takes place, or

16.5.3 any of the Supplier's shareholders pledges his shares, or

16.5.4 the Supplier undertakes any guarantee or suretyship otherwise than in respect of liabilities incurred by the Supplier's Associates in the ordinary and regular course of its business, or

16.5.5 any payment is made by the Supplier in reduction of amounts owing by the Supplier to any of its shareholders or directors or members or partners or to the proprietor, or

16.5.6 the Supplier hypothecates, pledges or otherwise encumbers any of its assets, or

16.5.7 a dividend, whether interim or final, is declared by the Supplier's directors or members.

17 Should the Supplier, in breach of the provisions of this agreement, fail for any reason whatsoever to offer any book debts to the Bank as required by 2.1 hereof, then the Bank shall (in addition and without prejudice to any other claims and rights which it may have against the Supplier) be entitled to demand from the Supplier immediate payment as and by way of liquidated damages, of an amount of 2.50% (two and a half percent) of the gross amount of any such book debts.

18 The Supplier hereby agrees that no claim whatsoever will be made by the Supplier against the Bank for damages or otherwise in respect of any action taken by the Bank in good faith under this agreement.

19 The Supplier shall, within a period of 10 (ten) days of receipt by it of any statement forwarded by the Bank, submit to the Bank in writing, any objection, query or defence which it may have to any of the items dealt with or covered in such statement. In the event of it failing to do so, the Supplier shall *prima facie* be presumed to have accepted the figures and/or information contained therein as being in every respect true and correct.

20 The Supplier warrants that all information at any time supplied to the Bank by the Supplier or anyone on its behalf concerning the Supplier's business in whatsoever form, was, and remains, true and correct; in particular, all information acquired by or supplied to the Bank during its investigations of the Supplier prior to the signing of this agreement, including balance sheets, income statements and all other financial statements or accounts and all such information as may be presented to the Bank in the future will be, and shall remain, true and correct in every aspect, and the Supplier undertakes to inform the Bank immediately upon any change in this information.


21 For as long as the Supplier is in any way indebted to the Bank, the Supplier will not, without the prior written consent of the Bank, which shall not be unreasonably withheld, sell, cede, encumber, alienate or in any manner deal with or dispose of any of the Supplier's assets of whatever nature except in the normal, regular and ordinary course of the Supplier's business.

22.1 All bank commission, ledger fees and other charges and expenses

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- incurred by the Bank in maintaining and operating any account which the Bank or the Supplier may open for the purposes of receiving payment in respect of book debts purchased, shall be paid by the Supplier, and the Bank shall be entitled to require payment by the Supplier immediately such charges and expenses are ascertained or at the option of the Bank, to debit same to the Supplier's current account maintained by the Bank in terms of 11 hereof.
- 22.2 The Supplier shall pay to the Bank on demand the cost of any policy of insurance taken out and maintained by the Bank covering loss resulting from inability to recover any of the book debts due to the financial inability of the debtor and/or loss or damage to the Supplier's computer records, books of account or other documents, whether by reason of fire or otherwise, which policies the Bank may at its sole discretion take out. The Bank may debit such costs to the Supplier's current account maintained by the Bank in terms of 11.
- 22.3 Upon the purchase by the Bank of any book debts, there shall vest in the Bank the benefit of all guarantees, indemnities, insurances and securities given to or held by the Supplier in respect of such book debts or of goods to which they relate, including the benefit of any policies of credit insurance covering the Supplier against default in payment by a Debtor or Debtors.
- 22.4 All charges in respect of the provision of purchase note books, remittance schedule books, credit note books, disclosure notices, credit investigations, additional statement runs and extraordinary requests, shall be paid by the Supplier and the Bank shall be entitled to debit the Supplier's current account maintained in terms of 11 hereof, immediately such items are provided or such costs are incurred.
- 23 A certificate of account signed by any manager of the Bank, whose appointment it shall not be necessary to prove, as to the existence and amount of the indebtedness of the Supplier at any time, whether actual or contingent and/or to the fact that any such amount is due and payable and/or to the identity of the Supplier and as to any other fact, matter or thing relating to the indebtedness of the Supplier to the Bank, shall be *prima facie* proof of the contents thereof for the purposes of provisional sentence or summary judgment or any other proceedings of whatsoever nature and/or be treated as a liquid document for those purposes and such certificate of account shall be deemed to contain sufficient particulars for the purposes of pleading and trial in any action instituted by the Bank against the Supplier.
- 24 Each phrase, sentence, paragraph and clause in this agreement is severable the one from the other, notwithstanding the manner in which they may be linked together or grouped grammatically and if in terms of any judgment or order any phrase, sentence, paragraph or clause, is found to be defective or unenforceable for any reason the remaining phrases, sentences, paragraphs and clauses, as the case may be, shall nevertheless be and continue to be of full force and effect.
- 25 This agreement, together with each of the Supplier's written offers and the Bank's written notice of acceptance thereof, constitutes the whole agreement between the parties and no variation, alteration or modification of any of the provisions hereof, including Schedule A or any consensual cancellation of this agreement shall be binding on either of the parties unless reduced to writing and signed by or on behalf of the parties.
- 26 No latitude or indulgence extended by the Bank to the Supplier or to any debtor shall be deemed to be a waiver by the Bank of any of its rights hereunder.
- 27.1 The parties hereto respectively choose *domicilium citandi et executandi* for all notices and processes to be given and served in pursuance of this agreement at the addresses as set out below their respective signatures hereto.
- 27.2 The parties shall be entitled to change their *domicilium* from time to time provided that any new *domicilium* selected by them shall be situate in the Republic of South Africa and any such change shall only be effective upon receipt of notice by the other party of such change.
- 27.3 Any notice or communication intended for either party pursuant to this agreement shall be forwarded to the addressee's *domicilium* for the time being, and if delivered by hand or transmitted by facsimile or sent by e-mail, be deemed to have been received by the addressee on the day of delivery or transmission, or if posted by prepaid registered post, on the 8<sup>th</sup> (eighth) day following posting.
- 28 The Bank may (but shall not be obliged to) institute proceedings in any Magistrates Court having jurisdiction in respect of the Supplier for any claim which may be brought by the Bank against the Supplier arising out of or in connection with this agreement, notwithstanding the fact that the amount claimed by the Bank may exceed the jurisdiction of such Magistrates Court.
- 29 The costs and charges in connection with this agreement, including but not limited to, instructions, consultations, preparation of conveyancing and other documents and the registration thereof in respect of security to be provided in terms hereof, drafting and re-drafting and copying, as well as costs incidental thereto and stamp duty thereon, shall be for the account of the Supplier. The Bank is authorised and entitled to settle such costs and charges and to deduct such costs from amounts due by it to the Supplier pursuant to this agreement.
- 30 **CESSION**
- To the extent that any book debts owing by Macsteel Trading (Pty) Ltd, Battershill Steel Industries (Pty) Ltd (BSI), Genesis Steel (Pty) Ltd, BM Steel (Pty) Ltd, Robor (Pty) Ltd, Quantum Steel (Pty) Ltd, NJR Steel Central Buying (Pty) Ltd, Argent Steel Group (Pty) Ltd, Goliath Steel (Pty) Ltd, Allied Steelrode (Pty) Ltd, Stewarts and Lloyds Holdings (Pty) Ltd and Stemcor (South Africa) (Pty) Ltd may not have been purchased by the Bank pursuant to this agreement for any reason whatever, or having been purchased by the Bank, are thereafter sold back to the Supplier by the Bank or to the extent that the Bank may not have acquired ownership of a book debt intended to be purchased pursuant to this agreement for any reason whatever, the Supplier hereby—
- 30.1 Irrevocably cedes to the Bank all its right, title and interest in and to debts which are not owned by the Bank relating to the above listed debtors;
- 30.2 acknowledges that the cession referred to in 30.1 shall be in *securitatem debiti* and as a covering security for any amount which the Supplier may at any time hereafter owe to the Bank from whatever cause arising and whether such indebtedness be a direct, indirect or contingent obligation of the Supplier and whether such obligation to the Bank arises in terms of or pursuant to this agreement or otherwise in any manner whatever;
- 30.3 acknowledges that the security hereby afforded to the Bank shall be in addition to and shall not in any way prejudice, nor shall it in any way be affected by, any other security which the Supplier may have already afforded the Bank in terms of or pursuant to this agreement or otherwise however;
- 30.4 expressly acknowledges that the provisions of this clause shall remain in operation for so long as the Supplier remains indebted to the Bank for any amount whatever whether actual or contingent, and/or any of the book debts purchased by the Bank remains unpaid, notwithstanding any termination of this agreement that might have taken place at the instance of either party or by reason of effluxion of time or any other manner whatever.
- 30.5 The terms of 10.2 and 10.3 of this agreement shall apply *mutatis mutandis* hereto.
- 31.1 The agreement shall commence on the date of signature hereof and, unless and until terminated pursuant to 16.1, shall continue for an indefinite period and may be terminated by either of the parties giving to the other six months written notice of its intention

J.S.  
  
 JB

- so to terminate, provided that such notice may only be given on the date specified in Schedule A against the item Specified Termination Date or on any anniversary date thereof.
- 31.2 The Supplier hereby agrees that should it submit to the Bank an offer in terms of 2.1 after expiry of the notice period referred to in 31.1 and should such offer be accepted by the Bank, then this agreement will upon such acceptance be reinstated on the same terms and conditions and will remain in force as if the agreement had not been terminated.
- 32 In the event of termination of this agreement pursuant to 16.1, the Bank shall (in addition to and without prejudice to any other claims or rights which it may have against the supplier) be entitled to demand from the Supplier immediate payment, as and by way of liquidated damages or a penalty, of an amount equal to six times the amount as specified in Schedule A against the item Minimum Monthly Fee plus an additional amount calculated at the rate as specified in Schedule A against the item Specified Commitment Fee Percentage of the amount as specified in Schedule A against the item Specified Limit for each calendar month or part thereof from the date of such termination or notice thereof by the Supplier until six months after the later of such termination or notice thereof and the date specified in Schedule A against the item Specified Termination Date, which amount shall be payable by the Supplier to the Bank on demand.
- 33 The Supplier agrees on its behalf and on behalf of its directors, shareholders, members and associates that the Bank is entitled at any time to communicate with any registered Credit Bureau to obtain any information relating to the Supplier's payment behaviour, creditworthiness or defaults, and that such information may be disclosed to any other person.
- 34 **GUARANTEE**
- 34.1 The Supplier hereby binds itself to the Bank as guarantor and as a principal obligator in solidum for the due and punctual payment by each debtor of each purchased debt.
- 34.2 All admissions or acknowledgements of indebtedness made to the Bank by the debtor shall be binding on the Supplier. The Bank shall be at liberty without apprising the Supplier and without affecting its rights hereunder to release securities and/or give time and/or compound or make other arrangements with the debtor or release or make any arrangements with any other surety for the debtor. In particular, should the debtor commit a breach of his obligation to the Bank, the Bank's rights against the Supplier hereunder shall not be prejudiced by reason of any election on the part of the Bank in regard to alternative remedies available to it against the debtor, nor shall the Bank, by electing a particular remedy in lieu of another remedy, be deemed to have waived any rights against the debtor, it being the intention that the Bank shall, without prejudicing its rights against the Supplier, have a full and free discretion as to the choice and method of enforcement of its rights against the debtor. Nothing herein contained or implied shall be deemed to create any obligation on the part of the Bank to enforce or pursue any of its rights against the debtor before being entitled to enforce its rights against the Supplier hereunder.
- 34.3 In the event of the estate of a debtor being placed under provisional or final sequestration, or a debtor being a corporate body, being placed under business rescue or order of winding-up, whether provisional or final --
- 34.3.1 no dividends or payment which the Bank may receive from the debtor or from his trustee, business rescue practitioner or liquidator of other security, shall prejudice the Bank's right to recover from the Supplier to the full extent of this guarantee any sum which, after the receipt of such dividend or payment may remain owing by the debtor, and on the debtor being sequestrated or placed under business rescue or order of winding-up, the Bank shall be entitled, notwithstanding any payment received by it from the Supplier or any other surety or guarantor, to prove against the estate of the debtor for the full amount of the indebtedness of the debtor to the Bank as at the date of sequestration, business rescue or winding-up (as the case may be).
- 34.3.2 the Supplier shall not make or submit for proof any claim against the debtor or the estate of the debtor until all amounts owing by the debtor to the Bank have been paid and discharged in full, unless the written consent of the Bank shall first have been obtained;
- 34.3.3 any payment or dividend to which the Supplier may become entitled directly or indirectly, whether by reason or having paid the Bank any sum hereunder or of having signed this document or for any other reason, and all the Supplier's rights against the debtor, will belong to the Bank and this document shall operate as a present cession thereof to the Bank (as additional security to and without affecting the Supplier's liability under this document) who shall be entitled in respect thereof, to prove against and vote in the debtor's estate or the debtor in business rescue or liquidation, as the case may be.
- 34.4 In the case of a plurality of debtors this guarantee shall apply to all their indebtedness and obligations to the Bank, whether joint or several.
- 34.5 The Supplier renounces, insofar as the same may be applicable, the benefits of excussion, division and *de duobus vel pluribus reis debendi, non numeratae pecuniae, non causa debiti*, revision of accounts and no value received, with the full force and effect of which it is acquainted.
- 34.6 The Supplier agrees and declares that this guarantee is in addition and without prejudice to any other guarantors or securities now or hereafter held by the Bank and shall remain in force as a continuing security notwithstanding any intermediate settlement of account, until the agreement is terminated, but such termination shall not affect the Supplier's liability hereunder, and the Supplier shall remain fully liable in respect of any sum or sums due to or owing by the debtor at the date of termination or which may become due thereafter, the cause of which arose prior to such termination.
- 35 All charges and fees levied in terms of this agreement, which are subject to VAT, are quoted exclusive of VAT.

To.

JB



THUS DONE AND SIGNED at Mafahle on this the 18<sup>th</sup> day of September 2014

For: The Supplier

For: The Bank

[Signature]  
Name: Jan Valenta

Designation: Director

Manager(s):

who declares that he is duly authorised who declares that he is duly authorised hereto hereto

OF Old Pretoria Road, Portion 93 of

OF: 29 Scott Street

The Farm Schoongezicht

Waverley

No 308 JS, Witbank

Johannesburg

Facsimile Number: 013 690 9293

Facsimile Number: (011) 887-2489

E-mail address: anrew@evrazhighveld.co.za

E-mail address: info@sasfin.com

**AS WITNESSES**

For: The Supplier

For: The Bank

1. [Signature]

2. \_\_\_\_\_

Name ANDRÉ WESTERDAE

Name \_\_\_\_\_

Address Old Pretoria Road,

Address \_\_\_\_\_

Portion 93 of Schoongezicht

308 JS, Witbank.

Occupation \_\_\_\_\_

Occupation Company Secretary

**SCHEDULE A**

Service Fee	:0.375%	(clauses 1.5.5, 4, 10.1,16.4)
Minimum Monthly Fee	:R175,000.00	(clauses 1.5.8, 4.8, 32)
Percentage Advance	:70%	(clause 4.4, 4.5.2, 4.5.3)
Specified Limit	:R175,000,000.00	(clauses 4.4, 32)
Spread Above Prime	:+1% p.a	(clauses 4.5.1,11.3)
Specified Month for Payment	:03 (three)	(clauses 5.12, 7, 8, 10.1)
Specified Termination Date	:30/09/2015	(clauses 31, 32)
Specified Commitment Fee Percentage	:1%	(clause 32)

[Signature] JB

49  
"PM-6"

**sasfin bank**  
a partner beyond expectations

14 April 2015

Evrast Highveld Steel and Vanadium Limited  
Old Pretoria Road  
Portion 93 of Schoongezicht  
308 JS  
WITBANK

**BY HAND**

Attention: The Company Secretary

Dear Sir

**TERMINATION OF INVOICE DISCOUNTING AGREEMENT ("THE AGREEMENT")**

We refer to the announcement placed on SENS on 14 April 2015 in which you inter alia advised that your Board of Directors had determined that you do not have adequate funding to meet your obligations for the short term, and accordingly resolved to commence with voluntary business rescue proceedings in terms of section 129 of the Companies Act of 2008.

In terms of clause 16.1 of the Agreement which you concluded with us on or about 18 September 2014, you agreed that in the event of you committing a breach of any of the terms, conditions, undertakings or warranties in the Agreement or failing to pay any monies due to us or being placed under business rescue (our emphasis), we would be entitled, to forthwith terminate the Agreement without prejudice to any rights or remedies which we may have.


We advise you that we hereby -

- Elect to so terminate the Agreement, subject to the preservation of our rights, in accordance with the said clause 16.1
- Exercise our right to collect and enforce payment of all of the accepted book debts
- Invoke our right to claim payment of all additional fees and penalties provided for in the Agreement, pursuant thereto, including our right in terms of clause 16.4 of the said agreement, to increase the service fee in respect of all debts outstanding

All of our rights remain reserved.

A copy of this letter will be sent to the business rescue practitioners.

Yours faithfully

  
**A. VORSTER**  
Senior Litigation Manager: Group Legal

  
**D. VAN DER WESTHUIZEN**  
General Manager: Credit

[www.sasfin.com](http://www.sasfin.com)

Sasfin Bank Limited  
Reg No. 185100228058 Info@sasfin.com  
Head Office Tel: +27 11 609 7500 Fax: +27 11 637 6167 29 Scott Street Waverley Johannesburg 2090 PO Box 95194 Grand Park 2051  
Also at Bloemfontein Cape Town Durban Hong Kong Paternberg Bay Port Elizabeth Pretoria Stellenbosch

Directors: RC Andersen (Chairman) RDEB Sassoon (Chief Executive Officer) TD Soondas (Financial Director)  
L de Beer GC Dunnington J. Noses MS Rylands LJ Sennels  
Alternate Directors: LR Fritsch MG Lane MEE Sassoon  
Company Secretary: H Brown (Executive) (Non-executive)  
An Authorised Financial Services Provider 23333, Registered Credit Provider NCRCP 22 and a Member of the Sasfin Group

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Crispin, Sec  
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and 1/2 of the

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"PM-8"

**ENSafrica**

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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

S Lewis/M du Preez our ref

To: Sandra du Toit  
Standard Bank  
Head: Africa Corporate Finance Mining & Metals  
Email: [sandra.dutoit@standardbank.co.za](mailto:sandra.dutoit@standardbank.co.za)

15 April 2015 date

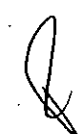
And to:  
Barend Petersen  
Chairperson  
Evraz Highveld Steel and Vanadium Limited (In Business Rescue)  
Email: [barend.petersen@sizwebr.co.za](mailto:barend.petersen@sizwebr.co.za)

And to:  
Evraz PLC  
Email: [Pavel.Tatyanin@evraz.com](mailto:Pavel.Tatyanin@evraz.com)  
[Timur.Yanbukhtin@evraz.com](mailto:Timur.Yanbukhtin@evraz.com)

Dear Sir/Madam

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

1. We represent Sasfin Holdings Limited and its subsidiaries ("Sasfin")
2. We confirm that Evraz Highveld Steel and Vanadium Limited (the "Company") was placed under business rescue and that its shares are currently suspended from trading on the Johannesburg Stock Exchange, effective 14 April 2015. We note that Messrs Piers Marsden and Daniel Terblanche were nominated as joint business rescue practitioners.
3. If post commencement finance ("PCF") is not advanced to the Company urgently - and certainly within the next few days - the joint business rescue practitioners, once appointed, may have no alternative but to terminate the business rescue proceedings and to file for liquidation immediately, in which case all creditors will receive a minimal dividend and may, in fact, receive no dividend whatsoever.
4. In order for creditors to receive any meaningful dividend there is no doubt that the business must continue to operate as a going concern to preserve value for all stakeholders and to save jobs.
5. Sasfin - subject to board approval and the suspensive conditions listed hereunder- will be prepared to advance post commencement finance of up to approximately R230 million, subject to the fulfilment of the below mentioned suspensive conditions and the furnishing of appropriate security.

  
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Having regard to the urgency of the cash needs of the Company, the first PCF draw down (in such amounts and on such terms as may be agreed between Sasfin and the joint business rescue practitioners) will have to be made by Monday 20 April 2015, if we are able to reach agreement with you.

6. Sasfin, after it has conducted an urgent assessment of the business of the Company and its subsidiaries, will determine in what form the PCF is to be advanced in consultation with the joint business rescue practitioners; but it will be made subject to the following suspensive conditions:
  - 6.1. an irrevocable option to purchase 100% of the equity currently held by Mastercrocft SA RL and/ or Evraz SPL (as the case may be) being granted to Sasfin and/or its nominee, for a consideration of R1 (one rand) in the aggregate, exercisable by Sasfin or its nominee within 60 days of date hereof, or on the date of acquisition of the business and/or its assets as referred to in point 6.3 below, whichever date is the later;
  - 6.2. a credit and risk assessment of, inter alia, the Company, its subsidiaries and joint venture partners is to be completed to the satisfaction of Sasfin within 3 days of this in principle offer being accepted;
  - 6.3. an irrevocable right of 1st refusal is granted to Sasfin and/or its nominee to acquire the business and/or assets of the Company and its subsidiaries, either through the adoption and substantial implementation of a business rescue plan, or through the purchase of the business and/or assets of the Company and its subsidiaries. If any other bona fide 3<sup>rd</sup> party bidder submits a higher offer for the business and/or its assets, then Sasfin will be entitled to either match or better such offer, failing which the option and right to purchase the business and /or its assets will lapse and be of no further force or effect; and
  - 6.4. the joint business rescue practitioners agreeing to the terms of this in principle offer in so far as may be necessary.
7. If this in principle offer, which is subject to Sasfin board approval, is acceptable to you we will urgently prepare a comprehensive agreement for signature.
8. This in principle offer will expire by close of business (17h00) on Thursday the 16<sup>th</sup> of April 2015, if not accepted in writing by Evraz PLC, Mastercrocft SA RL and Evraz SPL in writing per return email addressed to Stephen Lewis at: [slewis@ensafrica.com](mailto:slewis@ensafrica.com)

Sincerely

Stephen Lewis



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"PM-9"

24 April 2015

Evrast Highveld Steel and Vanadium Limited (in Business Rescue)  
Old Pretoria Road  
Portion 93 of Schoongezicht  
308 JS  
WITBANK

**Attention: The Company Secretary**

Dear Sir

**TERMINATION OF INVOICE DISCOUNTING AGREEMENT (THE AGREEMENT)**

We refer to our letter dated 14 April 2015 in terms of which we elected to terminate the Agreement.

We now write to advise that as at today's date 24 April 2015, according to our records, we have collected an amount of R134,152,256.47 since the date of termination.

The capital exposure owing to us at the date of termination amounted to R99,678,536.16, excluding month to date interest.

In addition thereto, we are entitled, in terms of clause 16.4 of the Agreement, having regard to the circumstances that led to the termination of the facility, to an increase in the service fee to 10% in respect of all debts then outstanding, whether in whole or in part. The amount owed in terms of this clause amounts to R9,594,059.10.

Furthermore, in terms of clause 32 of the Agreement, we are entitled, to immediate payment of an amount equal to six times the amount as specified in schedule A of the Agreement against the item "Minimum Monthly Fee," plus an additional amount calculated at the rate as specified in schedule A of the Agreement against the "Specified Commitment Fee Percentage" of the amount as specified in schedule A against the item "Specified Limit" being R175,000,000, for each calendar month or part thereof, from the date of such termination or notice thereof until six months after the later of such termination or notice thereof and the date specified in schedule A of the Agreement against the item "Specified Termination Date", which amount shall be payable by you to us on demand. Thus, in terms thereof, we are entitled to an additional R1,050,000 being six times R175,000 plus 12% of R175,000,000 equaling R21,000,000, i.e. R22,050,000 in total.

Accordingly, the total amount of fees claimed, pursuant to the termination amounts to R31,644,059.10 plus VAT at 14% thereof, being R4,430,168.27, equaling R36,074,227.37.

JB

Therefore your position with us, is currently as follows:

Amount owing at date of termination	R 99,678,536.16
Plus amounts above	R 36,074,227.37
Plus outstanding interest	R 547,678.30
Less amounts collected from date of termination	R134,152,256.47
Total	R 2,148,185.36

You also owe us in respect of purchases from Verref Shaped (Pty) Ltd, whose account has been sold and ceded to us, an amount of R1,758,880.18.

The total amount we are prepared to accept in full and final settlement, provided we receive this amount by close of business on 28 April 2015 amounts to **R3,907,065.54**. Until paid in full, the outstanding balance will attract interest as per the Agreement. Once this amount has been received, we are prepared to cede to you all remaining book debts and cancel all securities.

We reserve our right to not only claim the aforesaid amount, but in addition thereto also claim such other fees and interest charges as may be permitted in terms of the Agreement.

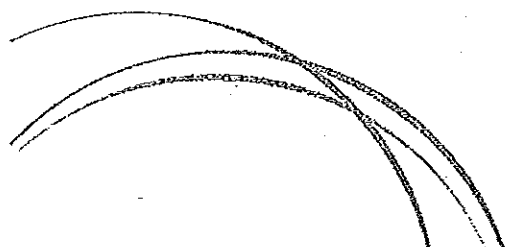
A copy of this letter is being simultaneously sent to the Business Rescue Practitioners.

We take this opportunity of wishing you every success with your Business Rescue.

Yours faithfully

  
RICRADO FREITAS  
Senior Manager: Credit

  
D. VAN DER WESTHUIZEN  
General Manager: Credit







56  
"PM-10"

Our Ref: MS A WESTSTRATE/CS/ir

29 April 2015

VIA E-MAIL: [Magriet.Buys@sasfin.com](mailto:Magriet.Buys@sasfin.com)

SASFIN BANK LIMITED  
29 SCOTT STREET  
WAVERLEY  
JOHANNESBURG

FOR ATTENTION: MS MAGRIET BUYS

Dear Madam

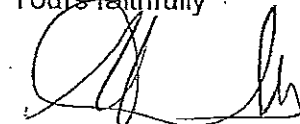
TERMINATION OF INVOICE DISCOUNTING AGREEMENT

We are in receipt of your letter dated 24 April 2015 and have noted the contents thereof.

We do not agree with all of the allegations and calculations as set out in your letter under reply. We also dispute your right to currently claim the amounts as set out in your said letter. We however do not intend responding to each and every allegation at the present time and our rights to respond to a specific allegation are reserved in full. Any failure to deal with a specific allegation should not be viewed as an admission thereof but rather as a denial.

The purpose of this letter is to inform you that the business rescue practitioners will respond in detail to your letter in due course.

Yours faithfully



**A WESTSTRATE**  
COMPANY SECRETARY



JB

29 April 2015

Mr. R Sassoon  
Chief Executive  
Sasfin Bank  
P O Box 19504  
GRANT PARK  
Sent via email: rsassoon@sasfin.co.za

Dear Sir

**TERMINATION OF INVOICE DISCOUNTING AGREEMENT ("THE AGREEMENT")**

1. I refer to the Sasfin letters dated 14 April 2015, signed by Messrs Vorster and Van Der Westhuizen and 24 April 2015, signed by Messrs Freitas and Van Der Westhuizen. In the letter of 14 April 2015, Sasfin Bank Limited ("Sasfin") cancel the agreement as a result of the fact that the Evraz Highveld Steel and Vanadium Limited ("Highveld") has been placed under business rescue. For this purpose, Sasfin relied on clause 16.1 of the agreement.
2. In the letter of 24 April 2015, it is indicated that, based on various provisions of the agreement, Sasfin is entitled to a further R36,074,227.37. In this regard, the letter records the following:

*"Furthermore, in terms of clause 32 of the Agreement, we are entitled, to immediate payment of an amount equal to six times the amount as specified in schedule A of the Agreement against the item (Minimum Monthly Fee), plus an additional amount calculated at the rate as specified in schedule A of the Agreement against the 'Specified Commitment Fee Percentage' of the amount as specified in schedule A against the item (Specified Limit) being R175,000,000 (sic) for each calendar month or part thereof, from the date of such termination or notice thereof until six months after the later of such termination or notice thereof and the date specified in schedule A of the Agreement against the item (Specified Termination Date) which amount shall be payable by you to us on demand. Thus, in terms thereof, we are entitled to an additional R1,050,000 being six months R175,000 plus 12% of R175,000,000 equalling R21,000,000 i.e. R22,050,000 in total.*

*Accordingly, the total amount of fees claimed, pursuant to the termination amounts to R31,644,059.10 plus VAT at 14% thereof, being R4,430,168.27, equalling R36,074,227.37."*

3. In the letter of 24 April 2015, it is indicated that the capital amount outstanding, at date of termination, i.e. 14 April 2015, amounted to R99,678,536.16, excluding interest of

**Evraz Highveld Steel and Vanadium Limited**

Registration No.: 1960/001900/06, Incorporated in the Republic of South Africa

Certified in accordance with the requirements of DIN EN ISO 9001: 2008 and DIN EN ISO 14001: 2004 Quality and Environmental Management Systems

P.O. Box 111, Witbank 1035, Tel: +27 (0) 13 690 9911, Fax: +27 (0) 13 690 9293, [www.evrazhighveld.co.za](http://www.evrazhighveld.co.za), [general@evrazhighveld.co.za](mailto:general@evrazhighveld.co.za)

DIRECTORS: B Petersen (Chairman), I J Burger (Chief Executive Officer), M Bhabha, V Borisov (Russian), A P Maralack, T Mosololi, D Šćuka (Czech), P S Talyanin (Russian), T I Yanbukhtin (Russian)

COMPANY SECRETARY: Ms A Weststrate



R547,678.30. It is further indicated that, from date of termination, i.e. 14 April 2015, to 24 April 2015 Sasfin have collected an amount of R134,152,256.47.

4. The amount of R36,074,227.37 therefore constitute the penalty which Sasfin imposed on Highveld as a result of the prejudicial termination of the contract by Sasfin.
5. You made miscalculated the penalty in terms of clause 32 i.e. six months amounts to R10,500,000.00 and not R21,000,000.00. The penalty, even on your version should be reduced by R10,500,00 plus VAT.
6. That being said, it is our considered opinion that the value of the penalties imposed by Sasfin is grossly disproportionate to the prejudice which Sasfin might have suffered. Had Sasfin not been terminated the agreement, the capital amount of R99,678,536.16 would have been satisfied on 24 April 2015 when Sasfin collected R134,152,256.47 and Sasfin would have suffered no prejudice whatsoever as the minimum monthly fee of R175,000.00 and R373,831.96 (being 0.375% of the capital amount of R99,678,536.16) that is due to Sasfin for April 2015 is R548,831.96 (excluding VAT).
7. Since on or about October 2014 until April 2015 members of the Highveld executive team and I met you and your team on several occasions to discuss the state of the Highveld business with Sasfin, given the Agreement. Sasfin is therefore fully aware
  - 7.1. that a highly experienced team of experts with extensive local and global steel industry experience completed a detailed turnaround strategy during December 2014, which confirmed that it is indeed possible to turn Highveld around;
  - 7.2. that the services of world class South African executives with extensive global and South African mining, steel making, vanadium and marketing experience were secured and appointed as Chief Executive, Chief Operating Officer, Deputy Chief Operating Officer and Divisional Manager Iron and Steel Making to implement the turnaround of Highveld. I secured the services of these highly sought after and economically mobile executives, because of their commitment and belief that the turnaround of Highveld is highly achievable;
  - 7.3. that the financial difficulties are despite the operational stability achieved through the recent implementation of the Company's operational turnaround plan;
  - 7.4. that the operational performance improved as evidenced from the production volumes report published on SENS 15 January 2015;
  - 7.5. that the turnaround plan, implemented since January 2015, has yielded actual annualised cost reductions of R184 million through improved operational and energy efficiencies, the introduction of strict cost control measures and improved process yields, whilst another R284 million savings has been identified. The first positive quarterly EBITDA in many years, was achieved for the 2015 1st quarter with an EBITDA of R9 million (2014 Q1 R49 million loss);
  - 7.6. that it is critical that funding for the business rescue process be secured within the next few days to secure the vital window of time required to save Highveld

and ensure that the Business Rescue Practitioners are afforded a window the opportunity to properly consider all material issues relating to the financial position, the operational viability, the turnaround plan, the potential restructuring of the company to successfully re-establish Highveld;

- 7.7. that Highveld has the following unencumbered assets, save for the inventory pledged in respect of the USD30 million East Metals loan,

Property plant and equipment	R1,500 million
Inventory	R 900 million
Trade and other receivables	R 706 million

- 7.8. of the critical national strategic importance of Highveld and the disastrous consequences of a failure to save Highveld will include the

- 7.8.1. permanent loss of jobs of 3,500 breadwinners supporting almost 15,000 people in an area with high unemployment rate;
- 7.8.2. impact on the some 600 suppliers and small business impacting some 10,000 people;
- 7.8.3. concomitant disastrous economic impact of the loss of R1,1 billion annual spend by Highveld in the Mpumalanga Province;
- 7.8.4. negative impact on the Mpumalanga Provincial Development Plan currently under discussion with the Provincial Government;
- 7.8.5. permanent loss of strategic South African steelmaking capacity and future reliance on imports;
- 7.8.6. permanent loss of skills, technologies, intellectual property and infrastructure specifically develop to beneficiate this unique vanadium and iron ore resource without which this valuable South African mineral resource will be sterilized.
- 7.8.7. permanent foreign exchange losses;
- 7.8.8. closure of a fully accredited apprentice training centre with a capacity to train up to 200 apprentices and the annual training of 20 engineers and technicians from the local areas, at a time when skills development in a key government priority.
- 7.8.9. loss of critical ongoing support of Mapochs mine to the Roossenekal local municipality which includes the supply of potable water;
- 7.8.10. loss of Highveld engineering and technical support to the Witbank dam, the largest municipal dam in the country and general support contributing to service delivery of the eMalahleni municipality; and
- 7.8.11. loss of the only opportunity to mitigate the risk to the South African government of the environmental liabilities of Highveld in a considered, cost effective and value preserving process.



8. Sasfin was so convinced of the turnaround plan of Highveld that it approved, during January 2015, the increase of the facility from R175 million to R300 million, subject to the closure of the transaction with Macrovest.
9. Sasfin remained convinced of the turnaround plan of Highveld, even after Highveld was placed into business rescue, that it made an offer, in a letter dated 15 April 2015 from ENS your attorneys, to advance R230 million in post commencement funding subject to Sasfin simultaneously being granted an irrevocable option to buy 85% of the issued shares for R1 and the business.
10. In paragraph 4 of the letter referred to in the preceding paragraph it is stated that *"in order for creditors to receive any meaningful dividend there is no doubt that the business must continue to operate as a going concern to preserve value for all stakeholders and to save jobs."* Sasfin is therefore fully aware of the need of Highveld to urgently be able to continue as a going concern
11. Sasfin did not at any stage allude to any damages suffered as a consequences of the business rescue proceedings and only claimed damages of R36 million when Evraz, the 85% shareholder, declined the offer.
12. The imposition by Sasfin R36 million of penalties the of R36 million in penalties and retaining it in the bank account of Sasfin is therefor not only grossly insensitive to the plight of breadwinners employed by Highveld and the range of suppliers in an economically distressed Mpumalanga Province, but also highly prejudicial to the extra-ordinary efforts to raise funding and the collective serious endeavours of many stakeholders, including, inter alia, government, employees, suppliers, state owned enterprises, etc. to save Highveld.
13. Sasfin unilaterally decided to terminate the agreement and to consequently profit from its decision to tune of R36 million in less than a week at the expense of the future of the major employer and key economic driver in the Mpumalanga Province without any engagement whatsoever with Highveld. Sasfin's action violates the objectives of business rescue that seeks to preserve a business in distress.
14. The magnitude and potential devastating consequences from a failure to save Highveld demand that any attempts to opportunistically and unjustly benefit from the current crisis be vigorously resisted.
15. The damage done to Highveld as a result of letters sent to our debtors to continue to pay Sasfin may result in Highveld not being able to pay wages and could directly result in the failure of the business rescue proceedings and would lead to multi billion rand damages.
16. Highveld urgently requires our money retained in the Sasfin bank and it is accordingly urgently request that Sasfin immediately return erroneous penalty deduction of R10,500,000.00 plus VAT amounting to R11,970,000 and the penalty of R24,104,227.37 by close of business today.

Yours faithfully





**B Petersen**  
Chairman





WERKSMANS

ATTORNEYS

"PM-11"

**DELIVERED BY EMAIL**

Messrs Tugendhaft Wapnick Banchetti and Partners  
Mr O Tugendhaft  
Email: anabela@twb.co.za

**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  
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YOUR REFERENCE: O Tugendhaft/A da Silva/kp  
OUR REFERENCE: Mr F van Tonder / Mrs L Silberman/lks/SASF3673.64/#3648602v1  
DIRECT PHONE: +27 11 535 8120 / 8134  
DIRECT FAX: +27 11 535 8620 / 8174  
EMAIL ADDRESS: fvtonder /LSilberman@werksmans.com

4 May 2015

Dear Sirs

**SASFIN BANK LIMITED / EVRAZ HIGHVELD STEEL AND VANADIUM LTD ("HIGHVELD STEEL")**

- 1 We refer to the above matter and the telephone discussion between your Ms Da Silva and the writer earlier.
- 2 As you are aware, we act on behalf of Sasfin Bank Limited who have handed to us your letter dated 1 May 2015 for attention and reply.
- 3 Our client has instructed us to place the following on record:-
  - 3.1 Our client has strictly adhered to the terms and provisions of the Invoice Discounting Agreement (including a Guarantee and Cession) ("the Agreement") concluded between our client and Highveld Steel on 18 September 2014;
  - 3.2 The Agreement contains *inter alia* a cession of debts, which cession constitutes our client's security in respect of the indebtedness of Highveld Steel to it and our client in demanding payment from Highveld's debtors, exercised its rights in terms of that security; and
  - 3.3 The provisions of the Agreement and specifically those at clauses 16.1, 16.4 and 32 entitle our client to claim and demand immediate payment from Highveld Steel those monies which it contends are due to it consequent upon the breach of the Agreement by Highveld Steel.
- 4 The above having been said and without prejudice to our client's rights afforded to it in terms of its security and without prejudice to any further claims that our client may have against

**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 Arteiro T Bata AR Berman NMN Bhengu L Bick HGB Boshoff GT Bossu T Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villiers LJ du Preez RJ Feenstra S Fodor SJ Gardiner D Gewer JA Gobetz R Gootkin ID Gouws GF Griessel J Hollesen MGH Honiball VR Hoslosky BB Hotz 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 Mabaso MPC Manaka H Masondo C Moraitis KO Motshwane L Naidoo J Nickig JJ Niemand BPF Olivier WE Oosthuizen S Padayachy M Pansegrouw CP Pauw AV Pillay T Potter BC Price AA Pyzikowski RJ Raath A Ramdhin L Rood BR Roothman W Rosenberg NL Scott TA Svidla LK Silberman JA Smit JS Smit CI 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 Weglinski M Wiehahn DC Willans DG Williams E Wood BW Workman-Davies

W/3  
63

Highveld Steel, our client is prepared to assist your clients in communicating with the debtors on the terms proposed in your letter under reply. This will enable your clients to collect the debtors and to continue trading without affecting our client's rights arising from the Agreement and from the security afforded to it.

- 5 However, the condition attached to the undertaking provided is that, bearing in mind that legal proceedings between the parties are likely to follow due to our client's claims arising from the Agreement, our client requires the Business Rescue Practitioners to provide their consent as required in terms of s133 of the Companies Act 71 of 2008 that such legal proceedings, by way of arbitration, may proceed in relation to the balance of the indebtedness due to our client as well as in regard to any other claim/s which our client may have arising from the Agreement.
- 6 To the extent that we have not dealt with any allegations in your letter under reply at this stage, our failure to do so is not to be construed as an admission of same and our client's rights to address such allegations at the appropriate time and, if necessary, in the appropriate forum remain strictly reserved together with all our client's other rights.
- 7 We await your urgent response.

Yours faithfully

Werksmans Inc

2  
5/13



64  
PM-12

**Anabela Da Silva**

---

**From:** Anabela Da Silva  
**Sent:** 12 May 2015 02:46 PM  
**To:** 'FVTonder@werksmans.com'; 'Lisa Silberman'  
Oshy Tugendhaft; Carine Pick  
**Subject:** EVRAZ HIGHVELD STEEL / SASFIN  
**Attachments:** 201505121443.pdf

Please see correspondence attached.

ANABELA DA SILVA  
TWB - TUGENDHAFT WAPNICK BANCHETTI & PARTNERS  
TEL: (011) 291 5000 \ 2915304 (Direct)  
FAX NO.: (011) 884 7949  
E-MAIL : anabela@twb.co.za

( Partners : O TUGENDHAFT; S WAPNICK; Z E E BANCHETTI; A CHAVES DA SILVA; T POLLAK; R KANTOR; J RAVJEE; H FOTAKIS MULLER Associates : J C ATOUGUIA; K VERWEY This email is private and confidential and may be protected by attorney-client privilege. This email is solely for the named addressee. Any unauthorised use or interception of this email, or the review, retransmission, dissemination or other use of, or taking of any action in reliance upon the contents of this email, by persons or entities other than the intended recipient, is prohibited. If you are not the named addressee please notify us immediately by reply email or by telephone (South Africa +27 11 291 5000), and you must delete this email and any attached files. Disclaimer: You must scan this email and any attached files for viruses and/or any other defects. TWB accepts no liability for any loss, damage or consequence, whether direct, indirect, consequential or economic, however caused, and whether by negligence or otherwise, which may result directly or indirectly from this communication or of any attached files. Save for bona fide company matters, TWB does not accept any responsibility for any opinions expressed in this email.

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65

**TUGENDHAFT WAPNICK BANCHETTI  
AND PARTNERS**

ATTENTION: FRIKKIE VAN TONDER  
AND LISA SILBERMAN

Our Ref: O TUGENDHAFT /  
A DA SILVA/kp

WERKSMANS INC

Your Ref:

Per: EMAIL:  
FVTonder@werksmans.com  
lsilberman@werksmans.com

Date: 12 May 2015

Dear Sirs,

**RE: EVRAZ HIGHVELD STEEL AND VANADIUM LTD ("EVRAZ HIGHVELD")  
VS SASFIN BANK**

1. We refer to the above matter and the telephonic discussion between Mr Tugendhaft and Mr Van Tonder during the course of Thursday, 7 May 2015.
2. We confirm that in the aforementioned telephonic discussion your Mr Van Tonder undertook to urgently liaise with your client with a view to it providing ours with a reconciliation indicating all amounts received by it from Evraz Highveld's debtors and to make payment to our client of all excess amounts received by it beyond the amount that your client claims it is entitled to retain ("the disputed amount").
3. Naturally our client will in due course challenge your client's entitlement to the disputed amount and such entitlement will *inter alia* form the subject matter of the litigation which is to ensue between the parties.

**ATTORNEYS**

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Partners O Tugendhaft S Wapnick Z E E Banchetti A Chaves da Silva T Pollak R Kantor J Ravjee H Fotakis Muller  
Associates J C Atougula K Verwey  
Email: anabela@twb.co.za

JB

4. We await your urgent advices regarding the above.

Yours faithfully

  
**ANABELA DA SILVA**  
**TWB – TUGENDHAFT WAPNICK BANCHETTI AND PARTNERS**



67  
From: Lisa Silberman <LSilberman@werksmans.com>

Date: 12 May 2015 at 9:12:09 PM SAST

To: Anabela Da Silva <Anabela@twb.co.za>, Frikkie Van Tonder  
<FVTonder@werksmans.com>

Cc: Oshy Tugendhaft <oshy@twb.co.za>, Carine Pick <Carine@twb.co.za>

Subject: RE: EVRAZ HIGHVELD STEEL / SASFIN [IWOV-Litigation.FID303736]

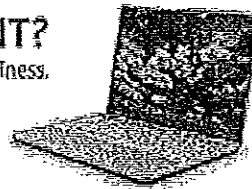
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Please join us as we discuss some of the legal requirements for your E-commerce business.

Thursday, 14 May 2015, Johannesburg. Click here for more details

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Dear Anabela

I acknowledge receipt of your correspondence, which has been forwarded to our client.

We will revert to you on receipt of instructions.

Regards

Lisa

Lisa Silberman

Director

T: +27 11 535 8134 | F: +27 11 535 8734 | [lsilberman@werksmans.com](mailto:lsilberman@werksmans.com)

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-----Original Message-----

From: Anabela Da Silva [<mailto:Anabela@twb.co.za>]

Sent: 12 May 2015 14:46 PM

To: Frikkie Van Tonder; Lisa Silberman

68

PM-14"

Anabela Da Silva

**From:** Lisa Silberman  
**Sent:** 14 May 2015 08:49 PM  
**To:** Anabela@twb.co.za  
**Cc:** Frikkie Van Tonder  
**Subject:** Sasfin Bank / Highveld Steel [IWOV-Litigation.FID303736]

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Dear Anabela

( refer to the above matter and your correspondence of 12 May.

We should be in a position to forward to you the reconciliation during the course of tomorrow morning.

Regards

Lisa



**Lisa Silberman**

Director

T: +27 11 535 8134 | F: +27 11 535 8734 | [lsilberman@werksmans.com](mailto:lsilberman@werksmans.com)

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250

Anabela Da Silva

69  
"PM-15"

**From:** Anabela Da Silva  
**Sent:** 18 May 2015 09:55 AM  
**To:** 'Lisa Silberman'  
**Cc:** 'Frikkie Van Tonder'; Oshy Tugendhaft  
**Subject:** RE: Sasfin Bank / Highveld Steel [IWOV-Litigation.FID303736]

Dear Lisa

Our emails below refer.

Please would you now provide us with the reconciliation as our client urgently requires it.

Regards  
Anabela

ANABELA DA SILVA  
TWB - TUGENDHAFT WAPNICK BANCHETTI & PARTNERS  
TEL: (011) 291 5000 \ 2915304 (Direct)  
FAX NO.: (011) 884 7949  
E-MAIL : anabela@twb.co.za

Partners : O TUGENDHAFT; S WAPNICK; Z E E BANCHETTI; A CHAVES DA SILVA; T POLLAK; R KANTOR; J RAVJEE;  
H FOTAKIS MULLER

Associates : J C ATOUGUIA; K VERWEY

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---

**From:** Anabela [mailto:anabela@twb.co.za]  
**Sent:** 14 May 2015 08:59 PM  
**To:** Lisa Silberman  
**Cc:** Frikkie Van Tonder; Oshy Tugendhaft  
**Subject:** Re: Sasfin Bank / Highveld Steel [IWOV-Litigation.FID303736]

Dear Lisa

Thanks for your advices.

We look forward to receipt of the reconciliation .

Regards  
Anabela

Sent from my iPhone

JB

70  
PM-16

**Anabela Da Silva**

**From:** Lisa Silberman  
**Sent:** 19 May 2015 09:49 AM  
**To:** Anabela@twb.co.za  
**Subject:** Highveld Steel [IWOV-Litigation.FID303736]  
**Attachments:** Current Account.xls; Current Account.xls

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Dear Anabela

Please find attached the reconciliations, as requested.

Regards

Lisa



**Lisa Silberman**

Director

T: +27 11 535 8134 | F: +27 11 535 8734 | [lsilberman@werksmans.com](mailto:lsilberman@werksmans.com)

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*[Handwritten signature]*

# sasfin bank

a partner beyond expectations

Sasfin Place, 29 Scott Street, Waverley, 2090  
 P O Box 95400, Grant Park, 2051  
 Tel: (011) 809-7500, Fax (011) 440-6225  
 Reg.No. 1951/002280/06

## STATEMENT

### DEBTOR FINANCE

### CURRENT ACCOUNT

EVRAZ HIGHVELD STEEL AND VANADIUM LTD

P O BOX 111

WITBANK

1035

VAT no: 405010431

Registration No: 1960/001900/06

Account No: A-D-999999-2

Client No:	
Date:	18/05/2015
Page:	1

Payment Received	299,304,207.26
Draw Charges	342.00
Draw	111,000,000.00
Service Fee	183,462.12
Termination Fee	36,074,227.37
Bank Account Charges	122.64
Interest Capitalised	550,824.61

71



# sasfin bank

a partner beyond expectations

Sasfin Place, 29 Scott Street, Waverley, 2090  
P O Box 95400, Grant Park, 2051  
Tel: (011) 809-7500, Fax (011) 440-6225  
Reg.No. 1951/002280/06

## STATEMENT

### DEBTOR FINANCE

### CURRENT ACCOUNT

Date	Reference	Description	Debit	Credit	Balance
01/04/2015		BALANCE B/F			153,646,682.83
01/04/2015	52147	Payment Received		90,787,456.56	62,859,226.27
02/04/2015	1010	Payment Received		70,780,498.15	-7,921,271.88
02/04/2015		Draw Charges	100.00		-7,921,171.88
02/04/2015		Draw Charges VAT	14.00		-7,921,157.88
02/04/2015		Draw	80,000,000.00		72,078,842.12
07/04/2015	71254	Payment Received		400,000.00	71,678,842.12
07/04/2015	42	Service Fee	86,658.92		71,765,501.04
07/04/2015	42	Service Fee VAT	12,132.25		71,777,633.29
08/04/2015	52270	Payment Received		1,020,000.00	70,757,633.29
08/04/2015		Draw Charges	100.00		70,757,733.29
08/04/2015		Draw Charges VAT	14.00		70,757,747.29
08/04/2015		Draw	18,000,000.00		88,757,747.29
10/04/2015	43	Service Fee	74,272.76		88,832,020.05
10/04/2015	43	Service Fee VAT	10,398.19		88,842,418.24
10/04/2015		Draw Charges	100.00		88,842,518.24
10/04/2015		Draw Charges VAT	14.00		88,842,532.24
10/04/2015		Draw	13,000,000.00		101,842,532.24

JB

# sasfin bank

a partner beyond expectations

Sasfin Place, 29 Scott Street, Waverley, 2050  
P O Box 95400, Grant Park, 2051  
Tel: (011) 809-7500, Fax (011) 440-6225  
Reg.No. 1951/002280/06

## STATEMENT

### DEBTOR FINANCE

### CURRENT ACCOUNT

13/04/2015	52189	Payment Received	563,996.08	101,278,536.16
14/04/2015	52117	Payment Received	1,600,000.00	99,678,536.16
16/04/2015	54712	Payment Received	2,950,506.10	96,728,030.06
20/04/2015	52180	Payment Received	1,216,560.49	95,511,469.57
22/04/2015	52178	Payment Received	1,887,247.71	93,624,221.86
23/04/2015	42415	Payment Received	95,883,144.33	-2,258,922.47
24/04/2015	52148	Payment Received	32,214,797.84	-34,473,720.31
24/04/2015		Termination Fee	31,644,059.10	-2,829,661.21
24/04/2015		Termination Fee VAT	4,430,168.27	1,600,507.06
28/04/2015		Bank Account Charges	107.58	1,600,614.64
28/04/2015		Bank Account Charges	15.06	1,600,629.70
30/04/2015		Interest Capitalised	550,824.61	2,151,454.31
Total Balance C/F				2,151,454.31

# sasfin bank

a partner beyond expectations

Sasfin Place, 29 Scott Street, Waverley, 2090  
P O Box 95400, Grant Park, 2051  
Tel: (011) 809-7500, Fax (011) 440-6225  
Reg.No. 1951/002280/06

## STATEMENT

### DEBTOR FINANCE

### CURRENT ACCOUNT

EVRAZ HIGHVELD STEEL AND VANADIUM LTD

P O BOX 111

WITBANK

1035

VAT no: 405010431

Registration No: 1960/001900/06

Account No: A-D-999999-2

Client No	
Date	18/05/2015
Page	1

Payment Received 1,324,559.86

Date	Reference	Description	Debit	Credit	Balance
01/05/2015		BALANCE B/F			2,151,454.31
04/05/2015	52179	Payment Received		1,323,487.95	827,966.36
15/05/2015	56124	Payment Received		1,071.91	826,894.45
Total Balance C/F					826,894.45

JB

74

75  
"PM-17"

**Anabela Da Silva**

---

**From:** Anabela Da Silva  
**Sent:** 20 May 2015 04:18 PM  
**To:** 'Lisa Silberman'  
**Cc:** 'Frikkie Van Tonder'; Oshy Tugendhaft  
**Subject:** RE: Highveld Steel [IWOV-Litigation.FID303736]  
**Attachments:** 201505201615.pdf

Please see correspondence attached.

Regards

ANABELA DA SILVA

TWB - TUGENDHAFT WAPNICK BANCHETTI & PARTNERS

TEL: (011) 291 5000 \ 2915304 (Direct)

FAX NO.: (011) 884 7949

E-MAIL : anabela@twb.co.za

Partners : O TUGENDHAFT; S WAPNICK; Z E E BANCHETTI; A CHAVES DA SILVA; T POLLAK; R KANTOR; J RAVJEE;  
H FOTAKIS MULLER

Associates : J C ATOUGUIA; K VERWEY

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TUGENDHAFT WAPNICK BANCHETTI  
AND PARTNERS

ATTENTION: FRIKKIE VAN TONDER  
AND LISA SILBERMAN

WERKSMANS INC

Per: EMAIL:  
FVTonder@werksmans.com  
lsilberman@werksmans.com

Our Ref: O TUGENDHAFT /  
A DA SILVA/kp/ E4034

Your Ref:

Date: 20 May 2015

Dear Sir / Madam

**RE: EVRAZ HIGHVELD STEEL AND VANADIUM LTD ("EVRAZ HIGHVELD")  
VS SASFIN BANK**

1. We refer to the above matter and the reconciliations forwarded to our offices yesterday.
2. Our client does not accept the correctness of the reconciliations prepared by your client nor indeed the amount reflected as due and owing by it to your client, namely R826 894.45 ("the amount due"). As previously advised our client will in due course challenge your client's entitlement to the amount claimed by it.
3. Our client urgently requires the unconditional release of the cession of its book debts in order to enable it to raise further funding for Evraz Highveld. As such and in order to expedite the release of the book debts we hold instructions that our client is prepared, under protest, and on the basis that our client will claim repayment of the amount in due course, to pay the amount reflected as due in your client's reconciliations on condition that

ATTORNEYS

Tel +27 11 291 5000 Fax +27 11 884 7949 Website www.twb.co.za  
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Partners O Tugendhaft S Wapnick Z E E Banchetti A Chaves da Silva T Pollak R Kantor J Ravjee H Fotakis Muller  
Associates J C Atougula K Verwey  
Email: anabela@twb.co.za

Member of



JB

your client, simultaneously with such payment, unconditionally releases the cession it holds in respect of our client's debtors and provides us with confirmation of this in a letter addressed to all of our client's debtors.

4. Your client can have no objection to the release of the cession by it once it has been paid all amounts it alleges are due by our client (which is disputed by ours). Accordingly, we request confirmation by your client by no later than 14h00 on 21 May 2015 that your client will unconditionally release and uplift the cession which it currently holds over our client's debtors. Should your client not provide us with the required undertaking then our client will be compelled to launch urgent application proceedings to ensure that it obtains the necessary relief.
5. We await your urgent response hereto.

Yours faithfully



**ANABELA DA SILVA**

**TWB - TUGENDHAFT WAPNICK BANCHETTI AND PARTNERS**

*[Handwritten initials]*

78  
"PM-18"

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

CASE NO.:

In the matter between:

**EVRAZ HIGHVELD STEEL AND VANADIUM LTD**

**(IN BUSINESS RESCUE)**

**Applicant**

And

**SASFIN BANK LTD**

**Respondent**

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**CONFIRMATORY AFFIDAVIT**

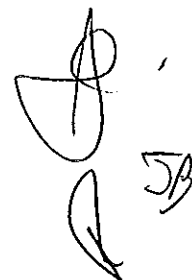
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I, the undersigned,

**ANABELA CHAVES DA SILVA**

hereby make oath and say that:

1. I am an attorney of the High Court of South Africa, duly admitted to practice as such and practising together with others in a partnership conducted under the



name and style Tugendhaft Wapnick Banchetti and Partners, 20<sup>th</sup> Floor, Sandton City Office Towers, Fifth Street, Sandton.

2. The facts herein contained are, save where the contrary is clearly indicated, within my personal knowledge and are, to the best of my belief, both true and correct.
3. I have read the founding affidavit deposed to by **PIERS MARSDEN** and confirm the content thereof insofar as it relates to me.



**ANABELA CHAVES DA SILVA**

I CERTIFY that the deponent:

- (a) has acknowledged that she knows and understands the contents of this affidavit, that she has no objection to taking the oath and that she considers the oath binding on her conscience; and
- (b) has in due form SWORN that the contents of this affidavit are true and has SIGNED the same

BEFORE me at Sandton on this the 22 day of May 2015.



**COMMISSIONER OF OATHS**

Name:

Address:

Capacity:

<b>JAN JOHANNES RANKIN BOTHA</b> COMMISSIONER OF OATHS EX OFFICIO  10TH FLOOR OFFICE TOWERS SANDTON CITY SANDTON PO BOX 784740 SANDTON 2146
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