



## ASX ANNOUNCEMENT

2 November 2023

### Update on Dathomir Dispute

**AVZ Minerals Limited** (ASX: AVZ, OTC: AZZVF) (**AVZ** or **Company**) provides the following update to the Company's shareholders (**Shareholders**).

It will be recalled that:

- In June 2019, AVZ and Dathomir Mining Resources SARL (**Dathomir**) executed an agreement (**2019 SPA**) under which AVZ agreed to purchase 5% of the shares in Dathcom for a deposit of US\$500,000 payable immediately and a balance of US\$5,000,000 payable at any time within 36 months (ie by 23 June 2022).
- In September 2020, AVZ, AVZ International Pty Ltd (**AVZI**) and Dathomir executed an agreement (**2020 SPA**) under which AVZI agreed to purchase a further 10% of the shares in Dathcom for a deposit of US\$500,000 payable immediately and a balance of US\$15,000,000 payable within 12 months (ie by 16 September 2021).

#### Summary of Key Developments

AVZ and AVZI have applied to the International Chamber of Commerce (**ICC**) for emergency measures against Dathomir to preserve the status quo including an injunction compelling Dathomir to:

- withdraw the application to the Commercial Court of Lubumbashi to dissolve Dathcom; and
- comply with the binding and valid arbitration clause in the 2020 SPA and refrain from bringing any action before any domestic court in the Democratic Republic of Congo (**DRC**).

The emergency measures sought are in addition to those sought against La Congolese D'Exploitation Minière (**Cominière**) as disclosed to ASX on 30 October 2023 titled 'Zijin Response'.

#### Fat Tail Allegations

In releases available on the MMGA website and provided to Shareholder, Fat Tail Holdings Pty Ltd (**Fat Tail**) has suggested in effect that:

- AVZ's agreements to acquire 15% of the shares in Dathcom from Dathomir were subject to conditions that were not satisfied and that Dathomir terminated the agreements before completion; and
- the Dathomir dispute should be resolved in a 'fair and equitable' manner.

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Technical Director: Graeme Johnston

Non-Executive Director: Rhett Brans

Executive Director: Serge Ngandu

Non-Executive Director: Casta Tungaraza

Non-Executive Director: Salome Sijaona

**ASX Code: AVZ**

**OTC Code: AZZVF**

## Historical Summary of Dathomir Dispute

In order to explain the context for the application for emergency measures against Dathomir and in order to respond to the allegations by Fat Tail, the Company provides the following detailed summary of the Dathomir dispute which should be read with the Company's announcements dated 27 September 2023 titled 'Arbitration Proceedings Update' and 8 December 2022 titled 'Legal action to affirm interests in the Manono Project'.

The summary below includes detail of domestic proceedings but it should be noted that the ICC is seized of the substantive dispute in accordance with the arbitration clause in the 2019 SPA and 2020 SPA which is the proper forum for the resolution of the dispute with Dathomir.

This information is provided solely to assist Shareholders with understanding the complexities the Company is currently facing and does not impact the materiality of any of the facts, matters or circumstances at the relevant time. In this regard, please refer to the Company's announcement dated 12 April 2023 titled 'Response to ASX Aware Letter'.

Contemporaneously with the signing of the 2019 SPA and the 2020 SPA, the deposits were paid by AVZ on behalf of AVZI.

AVZ executed the 2019 SPA on behalf of AVZI as the existing shareholder in Dathcom (though Dathomir now apparently disputes this notwithstanding subsequent ratification by Dathcom that AVZI was the purchaser).

The 2019 SPA and the 2020 SPA allowed AVZI to complete the share purchases at its election by paying the balance of the purchase prices before 23 June 2022 and 16 September 2021, respectively. There were no other pre-conditions to completion. Indeed, the share transfer instruments were prepared and held in escrow by AVZ's DRC counsel, which would then be lodged with the relevant DRC authorities following AVZI's election.

Subsequently, Dathomir asserted that the purchase prices under the 2019 SPA and 2020 SPA should be re-assessed. Dathomir had no right to seek a reassessment of the purchase prices.

On 14 May 2021, Dathomir sent a letter to AVZI which gave notice of Dathomir's purported termination of the 2019 SPA and the 2020 SPA. The letter did not specify any arguable grounds of termination. Dathomir had no right to terminate.

On or about 13 August 2021 (ie within the agreed period under within which AVZI had to pay the balances of the purchase prices under the 2019 SPA and the 2020 SPA), AVZ on behalf of AVZI, paid US\$20,000,000 to Dathomir's bank account thereby completing the purchase of 15% of the shares in Dathcom. That share purchase was effective immediately upon payment and took AVZI's shareholding in Dathcom from 60% to 75%, as announced via ASX release on 18 August 2021, "Manono Lithium and Tin Project Corporate Update".

Following the completion of the share purchase, Dathcom updated the internal company share register to reflect the transfer of shares and requested the registrar of the RCCM (which is the public share register in the DRC) to issue an updated share certificate along with an updated shareholders' register both reflecting the fact that AVZI was now a 75% shareholder of Dathcom.

On or about 24 August 2021, Dathomir's bank (on Dathomir's instructions) returned the US\$20,000,000 balance of the purchase price to AVZI. At the request of AVZI, the Commercial Court of Lubumbashi subsequently made orders providing for the US\$20,000,000 to be paid into escrow (where it remains pending the outcome of the ICC arbitration proceedings referred to below).

On 26 August 2021, Dathomir, requested the President of the Commercial Court of Lubumbashi to appoint an expert “for the purpose of evaluating and determining the real value of the 15% of shares” in Dathcom. On or about 27 August 2021, the Commercial Court of Lubumbashi appointed an expert to assess the value of the 15% of the shares in Dathcom. That valuation has no bearing on the validity and enforceability of the 2019 SPA and 2020 SPA.

Dathomir initiated a criminal complaint in the Criminal Court in Lubumbashi against Dathcom, Mr Graeme Johnston (the managing director of Dathcom) and the Clerk of the Court of the Unique Company Creation Office alleging that the new share certificate from the RCCM along with the new shareholders’ register both identifying AVZI as a 75% shareholder of Dathcom were forgeries. Mr Graeme Johnston was not given notice of the criminal hearing.

On or about 24 December 2021, the Criminal Court in Lubumbashi handed down a judgement, with Dathcom and Mr Johnston *in absentia*, to the effect that:

- the new share certificate along with the new shareholders’ register both identifying AVZI as a 75% shareholder of Dathcom were forgeries;
- Mr Graeme Johnston (as the managing director of Dathcom) as well as the registrar of the RCCM were complicit in that forgery;
- Mr Graeme Johnston was sentenced to three years in prison;
- Dathcom was ordered to pay damages of US\$50,000,000; and
- the updated share certificate along with the new shareholders’ register issued by the RCCM be destroyed.

To this day, neither Dathcom nor Mr Johnston have been given formal notice of the criminal judgement.

Dathcom and Mr Johnston lodged appeals in respect of the criminal judgement before the Court of Appeals of High Katanga which resulted in a decision on 8 September 2022 which reduced the damages award from US\$50,000,000 to US\$25,000,000.

Dathcom then lodged a challenge (*pourvoi en cassation*) before the Supreme Court of the DRC which is still pending. This challenge has the effect of staying the decision of the Court of Appeals of High Katanga (with the consequence that the damages award of US\$25,000,000 against Dathcom is not payable).

On 1 December 2022, AVZ and AVZI issued arbitration proceedings before the ICC (Case No. 27401/SP) seeking a determination that it has acquired 10% of the shares in Dathcom pursuant to the 2020 share purchase agreement (**2020 SPA Proceedings**).

On 9 December 2022 AVZI issued arbitration proceedings before the ICC (Case No. 27425/SP) seeking a determination that it has acquired 5% of the shares in Dathcom pursuant to the 2019 share purchase agreement (**2019 SPA Proceedings**).

It should be noted that there are two sets of ICC arbitration proceedings because the 2019 SPA and the 2020 SPA had different governing laws and AVZI was not expressly named as a party to the 2019 SPA.

In relation to the 2020 SPA Proceedings:

- AVZ and AVZI will lodge its statement of claim on 10 November 2023; and
- Dathomir will lodge its defence and counterclaims which it has foreshadowed will seek an order confirming that the 2019 SPA and 2020 SPA were terminated or alternatively an order varying the purchase price.

In relation to the 2019 SPA Proceedings:

- there is a preliminary issue to be determined as to whether AVZI was the purchaser of the shares and whether AVZI can avail itself of the benefit of the arbitration clause in the 2019 SPA (or whether AVZ would need to issue proceedings);
- Dathomir filed its submission in relation to this preliminary issue on 27 October 2023;
- AVZI is to file any responsive submissions by 24 November 2023;
- Dathomir to file any reply by 8 December 2023;
- AVZI to file any rejoinder by 22 December 2023; and
- the hearing of the preliminary issue is scheduled for 19 January 2024.

On 4 September 2023, Dathomir issued proceedings in the Commercial Court of Lubumbashi (RAC 3268), seeking an order under Article 205(5) of the OHADA Uniform Act to have Dathcom dissolved upon application of a shareholder for *“just cause, in particular in the event of non-performance by a partner or disagreement between partners preventing the normal running of the company”*. On 13 September 2023, the Commercial Court of Lubumbashi, adjourned the proceedings to 20 December 2023.

On or about 3 October 2023, Cominière filed a new criminal complaint against Dathcom and Mr Graeme Johnston for forgery related to documents lodged by Dathcom in court proceedings which described AVZI as a 75% shareholder of Dathcom. A procedural hearing took place on 13 October 2023. The case was postponed to a procedural hearing on 27 October 2023 and was further adjourned to 2 February 2024.

## Observations in relation to Dathomir Dispute

Having regard to the summary of the Dathomir dispute above, AVZ makes the following observations.

### 1. 2019 SPA & 2020 SPA

Both the 2019 SPA and the 2020 SPA allowed AVZI to complete the share purchases at its election by paying the balance of the purchase prices at any time prior to the specified deadline (ie 22 June 2022 and 15 September 2021 respectively). This occurred.

There were no other pre-conditions to completion. The 2019 SPA and 2020 SPA were in the nature of call options. They were typical commercial arrangements, which operated to fix the purchase price before AVZI elected to take the risk of sole-funded exploration work which might otherwise increase the value of the Dathcom shares.

Dathomir has never had any legal right to seek a variation of the purchase price under the 2019 SPA and the 2020 SPA and no right to terminate the 2019 SPA and the 2020 SPA.

The 2020 SPA was freely negotiated for months and the amount of the balance of the purchase price (i.e. USD 15 million) was never an issue during the negotiations, even following Dathomir's receipt of a summary of the Definitive Feasibility Study in respect of the Manono Project (**DFS**). Dathomir's eagerness to leave the Manono Project was prompted by its desire to avoid its funding obligations which crystallised under the joint venture agreement upon publication of the DFS. Between signing of the 2019 SPA in June 2019 and completion of the sale under the 2019 SPA and 2020 SPA in August 2021, the AVZ share price increased by approximately 350%<sup>1</sup>. Accordingly, the only available conclusion is that this is a simple case of seller's remorse.

## 2. Criminal Proceedings

AVZ maintains there was no forgery. There is no evidence of forgery.

On the contrary, Dathcom (and Mr Johnston as managing director of Dathcom) were entitled and indeed obliged under DRC law to update the Dathcom company share register and request the RCCM to issue an updated share certificate identifying AVZI as a 75% shareholder of Dathcom.

AVZ regards the criminal complaints by Dathomir as an attempt to:

- obtain commercial leverage over AVZI and force it to renegotiate the purchase price under the 2019 SPA and the 2020 SPA in circumstances where Dathomir has not right of renegotiation; and
- discredit AVZ's standing with the DRC Government and assist Cominière and Zijin (with each of whom it is acting in concert) in misappropriating the Manono Project.

Once AVZI has obtained favourable determinations in the ICC proceedings it will take the necessary steps to have any criminal convictions set-aside.

Dathcom is not liable to pay the damages award of US\$25,000,000 because the judgement is stayed pending the decision of the Supreme Court of the DRC. The AVZ Board assessed this potential liability against the criteria set out in AASB137 and formed the view, having regard to the circumstances outlined in that accounting standard, that the prospect of that liability ever crystallising is remote.

Dathcom then lodged a challenge (*pourvoi en cassation*) which is still pending. This challenge has the effect of staying the decision of the Court of Appeals of High Katanga (with the consequence that the damages award of US\$25,000,000 against Dathcom is not payable).

## 3. ICC Proceedings

Based on the limited materials filed to date by Dathomir in the 2019 SPA Proceedings and the 2020 SPA Proceedings, AVZ considers that AVZI has strong prospects of success.

Moreover, Dathomir has not yet identified any arguable – let alone determinative – basis for terminating the 2019 SPA or 2020 SPA and has not yet identified any arguable basis for seeking a variation of the purchase price.

The application by Dathomir on 4 September 2023 before the DRC local courts to have Dathcom dissolved is:

- dependent upon the proposition that Dathomir continues to be a shareholder of Dathcom which will be authoritatively determined in the ICC proceedings; and

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<sup>1</sup> Based on a closing price of AVZ shares of \$0.055 on 23 June 2019 and \$0.245 on 13 August 2021.

- perverse in the sense that it seeks to deprive all the shareholders of Dathcom (irrespective of whether it be Dathomir or AVZI that holds the 15% of the shares in dispute) of the benefit of their investment.

As noted above, AVZ and AVZI applied to the ICC for emergency measures against Dathomir to preserve the status quo including an injunction compelling Dathomir to:

- withdraw the application to the Commercial Court of Lubumbashi to dissolve Dathcom; and
- comply with the arbitration clause in the 2020 SPA and refrain from bringing any action before a domestic court in the DRC.

#### 4. Early Dispute Resolution

Notwithstanding AVZ's view as to the strength of its case against Dathomir, AVZ is not opposed to a negotiated resolution of the Dathomir dispute with a view to expediting development of the Manono Project.

AVZ has previously sought to commence settlement negotiations with Dathomir, which would have involved an increase in the purchase price payable to Dathomir for the 15% of shares in Dathcom; which would of course need to comply with Australian and international laws and regulations.

Whilst the arbitration proceedings remain on foot, it must be recognised that, in issuing the proceedings before the ICC, AVZ has merely sought to uphold the rule of law in the DRC and ensure that:

- the 2019 SPA and 2020 SPA are given legal effect according to their terms; and
- the implementation of the 2019 SPA and 2020 SPA do not attract baseless criminal sanctions.

A negotiated resolution with Dathomir could only occur on the basis that the criminal complaints by Dathomir and Cominière are withdrawn and it is conceded by Dathomir that AVZI validly acquired the shares on or about 13 August 2021 so that the baseless criminal sanctions imposed at Dathomir's behest can be set aside.

Such is the complexity of the 'fair and equitable' resolution being pursued by AVZ that Fat Tail also suggests is appropriate.

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

For further information, visit [www.avzminerals.com.au](http://www.avzminerals.com.au) or contact:

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