

TANZANIA ELECTRIC SUPPLY COMPANY LIMITED

From: Chief Legal Counsel & Company Secretary

To: Managing Director

Ref. No. SEC. 427/IPTL/11/2013

Date: 7<sup>th</sup> November, 2013



**RE: DUE DILIGENCE OF MECHMAR CORPORATION (MALAYSIA) BERHAD**

**In the Matters involving IPTL and Disputes with Standard Chartered Bank (Hong Kong)**

**Background**

As it will be recalled, since 2010 TANESCO is involved in arbitration proceedings at the International Centre for the Settlement of Investment Disputes (ICSID) in London, UK with Standard Chartered Bank (Hong Kong). After the finalization of hearing and submissions by the parties in December, 2012, this matter is now pending pronouncement of the Award.

In a twist and turn of events, in August 2013 VIP Engineering and Marketing Limited (VIP), the minority shareholders of IPTL filed a notice to withdraw the petition for winding up of IPTL. At the same time, it also transpired that VIP had sold its 30% stake in IPTL to one company called Pan Africa Power Solutions Tanzania Limited (PAP).

When this was happening, Standard Chartered Bank (Hong Kong) were still pursuing their application for administration of IPTL in the consolidated Misc.Civil Cause No. 49 of 2002, Misc. Civil Cause No. 254 of 2003 and Misc Civil Cause No. 112 of 2009 at the High Court of Tanzania, at Dar es Salaam (before Utamwa, J.). On 5<sup>th</sup> September, 2013 the High Court (Utamwa, J.) made a ruling granting orders, among others, that the Petition for winding up of IPTL be withdrawn, the appointment of the Provisional Liquidator be terminated, the affairs of IPTL as a Company be handed over to PAP and the shares sale agreement between VIP and PAP be judicially recognized. In simple terms, what the High Court did here was to revive the life of IPTL and put her under the control of PAP.

What followed was the mushrooming of cases both at the High Court and the Court of Appeal; for instance, Standard Chartered Bank (Hong Kong) filed an application for revision at the Court of Appeal (CAT Civil Application No. 130 of 2013) seeking orders to reverse the decision of Utamwa, J. of 5<sup>th</sup> September, 2013. Hand in hand with this, one Martha Kaveni Renju, purporting to be the Administrative Receiver of IPTL, filed a Commercial Case No. 123 of 2013 at the Commercial Division of the High Court seeking orders to take over the running of affairs of the IPTL against PAP, VIP and the Bank of Tanzania (the Escrow Agent). Again, this Martha Kaveni Renju opened another matter, Misc. Commercial Case No. 98 of 2013 at the same Commercial Court seeking some injunctory orders to restrain PAP and / or VIP from preventing her to manage the affairs of IPTL.

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Amidst this confusion, it transpired in court proceedings that one law firm, Asyla Attorneys was appearing for Mechmar Corporation (Malaysia) Berhad (Mechmar) the majority Shareholders of IPTL – and some statements were being made to the effect that Mechmar is under liquidation in Malaysia. From this unconfirmed information, after consultations with the Office of the Attorney General, a decision was made to carry out due diligence of Mechmar in Malaysia.

Thus, we travelled to Kuala Lumpur to carry out the exercise between 14<sup>th</sup> and 20<sup>th</sup> September, 2013.

### **The Due Diligence**

In carrying out this exercise in Malaysia, and owing to its sensitivity, we sought assistance and guidance of the Tanzania's High Commission in Kuala Lumpur, in particular that of the High Commissioner, H.E. Rogatius Anthony Shao and Amb. Hassan Yahaya Simba. We also got an opportunity to meet the Liquidators of Mechmar at Bangsar South City and managed to obtain some documents from them.

### **Findings**

1. Since sometime in 2010, Mechmar had been put under receivership on the application of some creditors, including certain local banks who had extended loans to Mechmar (these loans do not necessarily relate to Mechmar's investment in IPTL in Tanzania). Ferrier Hodgson, (FH) an Accounting Firm in Malaysia was appointed receivers; although later in that very year, by order of the Court in Malaysia, FH were discharged from their role as receivers.
2. It would appear that, sometime in August, 2011, while Mechmar was still under receivership, Standard Chartered Bank (Hong Kong) secured a consent order of the High Court of Malaysia restraining Mechmar from transferring or selling howsoever its shares in IPTL.
3. In between 2010 and 2011 Mechmar had sold its shares in IPTL to one, "Piper Link (BVI)". This transaction was executed in Malaysia and in accordance with Malaysian law. In this transaction, Piper Link were represented by one Harbinder Singh Sethi. We could not obtain any documentation in this respect, except the word of mouth from the officials in the office of the Liquidators of Mechmar (FH).
4. It is alleged by FH (the Liquidators of Mechmar) that subsequent to the agreement between Mechmar and Piper Link, as explained above, Standard Chartered Bank (Hong Kong) obtained an Order of the Court in Malaysia that annulled the said agreement. We could not obtain copy of this Order.
5. It is also alleged by FH that in 2013 there issued another Order by the High Court of Malaysia restraining Harbinder Singh Sethi from dealing with and or purporting to represent Mechmar in Tanzania. Similarly, we could not obtain copy of this Order.
6. We established that on 18<sup>th</sup> May, 2012 FH were, by Order of the Court in Malaysia appointed Liquidators of Mechmar. This was by way of a petition to the High Court of Malaysia filed by Alliance Investment Bank Berhad (Malaysia), supported by Standard Chartered Bank (Hong Kong), as creditors, wherein the Court granted the petition orders to wind up Mechmar.

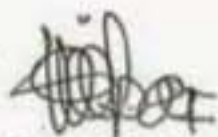


7. FH in their capacity as Liquidators of Mechmars were granted order by the High Court of Malaysia to require/secure assistance from Advocates in Tanzania to assist them with the performance of their duties in Tanzania, and that no one other than them would be authorized to conduct the affairs of Mechmar in Malaysia and Tanzania. However, thus far we have not been able to secure any evidence indicating that these Orders by Courts in Malaysia have been domesticated in Tanzania in accordance with the laws of Tanzania, which is a requirement.
8. Despite repeated requests, we could not obtain any document to establish conclusively the fact that PAP and or Harbinder Singh Sethi have lawfully bought or secured anyhow Mechmar's stake in IPTL in Tanzania

### Opinion

On the basis of the foregoing, it is in our considered opinion that in as far as the orders of Utamwa, J. are still in force, and now that Martha Kaveni Renju and Standard Chartered Bank (Hong Kong) are seeking to withdraw matters filed by them in courts in Tanzania, TANESCO should continue dealing with IPTL as is. However, the current standing is not settled yet, as firstly the Award at ICSID is being awaited; secondly, the liquidators of Mechmar in Malaysia are not settled and still pursue to collect from IPTL. The second limb here can easily be dealt with, as by the orders of Utamwa, J., any Claimant / Creditor to IPTL is required to deal with the Company (IPTL) as is. Besides, TANESCO should continue to be vigilant and exercise great care and caution in dealing with IPTL. It is advised that times major decisions involving TANESCO and IPTL should be done with prior liaison / consultation with the Government.

Submitted.



Godwin S. Ngwilimi  
**CHIEF LEGAL COUNSEL & COMPANY SECRETARY**

See Enclosures: