

22 September 2009

Dr Idris Rashidi,
Chief Executive,
Tanzania Electric Supply Company Limited,
P.O. BOX 9024,
Dar es Salaam,
Tanzania.

Dear Dr Rashidi,

Independent Power Tanzania Limited (IPTL)

As you are aware, Standard Chartered Bank (Hong Kong) Limited (the **Bank**) is the lender and Independent Power Tanzania Limited (IPTL) is the borrower, under a Loan Facility Agreement (the **LFA**) dated 28 June 1997, relating to the Tegeta Power Project (the **Project**). The amount now due under the LFA (including principal, interest and other amounts recoverable thereunder) is approximately US\$112 million.

Tanzania Electricity Supply Company Limited (**TanESCO**) is the off-taker from the Project. It has an obligation to pay Capacity Charges under Article five of the Power Purchase Agreement between TanESCO and IPTL dated 26 May 1995 (the **PPA**).

The Bank has the benefit of assigned rights, from IPTL, to recover from TanESCO payments due to IPTL under the PPA. The Bank can exercise those rights so as to recover payments due, either in its own name as assignee, or as IPTL under the current ICSID proceedings commenced by IPTL against TanESCO.

Over the course of recent months, the Bank and TanESCO have been engaged in constructive negotiations with a view to reaching a settlement to the Bank's claims for payment of its outstandings under the LFA, whilst at the same time furthering TanESCO's desire to see the Project deliver power to the TanESCO grid system at a reduced tariff. Our discussions have resulted in a draft Work-out Term Sheet and an accompanying Restructuring Plan, upon the essential terms of which (the **Agreed Plan**), both parties are substantially in agreement.

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The Bank has hitherto taken the view that the most appropriate and effective vehicle for implementing the Agreed Plan was Administration pursuant to the modern corporate rescue/reconstruction law of Tanzania embodied within s.247 *et seq.* of the Companies Act 2002. Displaying a constructive spirit, and notwithstanding reservations expressed (in good faith) by your local legal advisers, you agreed to support our attempt to have an Administrator appointed in relation to IPTL.

The Bank's Administration Petition came on for mention in the High Court of Tanzania on Monday of this week; it was heard at the same time as the hearing of the IPTL Provisional Liquidator's application to withdraw US\$26 million from the Escrow Account (the **Escrow Account**) established by the Government of Tanzania, the Bank of Tanzania and IPTL, for the purpose of receiving disputed Capacity Charge payments under the PPA.

The result of the hearing was that the Bank was obliged to withdraw its Petition and re-file a fresh application for an Administration Order. In light of an earlier Ruling of the Court of Appeal in the matter, and in the absence of any Insolvency Rules (they have not yet been Gazetted) to accompany the Administration procedure in the Companies Act 2002, it is the Bank's view, and it is understood that this is a view shared by your legal advisers, that there is no reasonable likelihood of an Administration Order being made in the foreseeable future; any attempt will be delayed and otherwise adversely affected by the efforts of the minority shareholder, VIP Engineering & Marketing Limited (VIP), notwithstanding that the position of VIP lacks any legal merit or foundation.

The Bank is firmly of the view that any attempt to implement the Agreed Plan through the office of a Provisional Liquidator will suffer the same fate. In any event, as the Bank has carefully explained to you and your advisers, it cannot accept any settlement terms which leave in place the threat of the winding-up of the Project company, IPTL; nor can it accept that a Provisional Liquidator - who after all is only supposed to be in office to "hold the ring" for the short period until a winding-up order is made - is the legally correct person to implement the Agreed Plan.

Regrettably, the courts will not take notice of the fact that the Bank has appointed a Receiver over the shares (the **Shares**) held by (both Mechmar and) VIP in IPTL. The Bank has exercised its rights under Share security given to it by both Mechmar and VIP and now controls the Shares absolutely, through its Receiver. The Bank asserts that it has the power to, and it will if so advised, sell the Shares to a third party and pass good title to them.



The court simply will not hear the Bank's and the Receiver's applications to have the Winding-up petition withdrawn and the Provisional Liquidator restrained. The Bank made another attempt at a hearing before the High Court on 18 September, but to no avail. Accordingly, it is clear to the Bank that its rights will not be enforced before the courts within the period required for the Agreed Plan, or at all.

You have, during our negotiations, been at pains to explain that you require power from the Project not later than the end of 2009. It is clearly not practicable to expect an Administration within the necessary timescale and therefore another route must be found.

The Bank has proposed to your legal advisers that the Government of Tanzania immediately consider the Nationalisation of IPTL. This would be with the support of the Bank and with the express objective of implementing the Agreed Plan. It would be for no other purpose. Either the Shares or the assets themselves could be Nationalised: the most effective route could be agreed upon by your legal advisers, the Bank and the Attorney General.

If Nationalisation were to be agreed upon and implemented:-

- (a) The whole process could be conducted through the Tanzanian Parliament. There would be no need to involve the courts.
- (b) The party who would, under the "Hull Formula", have the right to "compensation" as a result of the Nationalisation, would be the Bank, which holds the Shares.
- (c) The Bank would accept the provisions of the Agreed Plan as complete and final compensation. The Bank would not seek to have enforced any of the compensation for Nationalisation provisions as there may be in the Implementation Agreement executed by the Government of Tanzania and IPTL on 8 June 1995.
- (d) The Bank would agree not to seek, at any stage, to take any steps at any ICSID proceedings against Tanesco or the Government of Tanzania (whether in its own name or in the



name of IPTL or howsoever otherwise) in respect of the matters now complained of.

- (e) Subject to time being made available in Parliament, the Agreed Plan, *mutatis mutandis*, could be implemented quickly without the need for an Administrator or any court process.

The Bank believes that it has been treated unfairly and inequitably before the courts of Tanzania. The actions of the Administrator General of Tanzania, Mr Theophil Rugonzibwa also give rise to complaint. Mr Rugonzibwa is the Provisional Liquidator appointed over IPTL by an Order of the High Court of Tanzania dated 16 December 2008. Of particular concern, Mr Rugonzibwa has (*inter alia*):

- (a) taken steps to dissipate funds from the Escrow Account; funds which ought, in any properly conducted winding-up, be available for creditors;
- (b) taken steps to set aside the Administration Order of the High Court of Tanzania dated 27 January 2009 in respect of IPTL, in order to give effect to the Petition of VIP, presented to the High Court of Tanzania in 2002, for the winding up of IPTL; and
- (c) sought to make long term investment decisions for and on behalf of IPTL, including using moneys which ought to be available for creditors to convert the plant to run from gas.

These actions are *ultra vires*, inconsistent with the proper exercise of the powers of the Provisional Liquidator and contrary to the interests of IPTL and its creditors, including in particular, SCB.

Rather than seeking to resolve its claims through international litigation, and in light of the progress made with Tanesco on the Agreed Plan (which the Bank understands has been approved in principle by the Government Committee (the Committee) overseeing the IPTL problem), the Bank is prepared to give an opportunity for an early settlement to be reached through a consensual Nationalisation. Accordingly, the Bank (and its lawyers) would, if asked, work with you and your legal advisers in an effort to secure the approval of the Committee to a Nationalisation proposal, within the next 14 days.



The matter could be passed from there to the Cabinet for it to deliberate. With the approbation of the Cabinet, a bill could be placed before Parliament within a timetable consonant with your desire to dispatch power from the Project. If Tanesco and the Government of Tanzania manifest a real desire to see a Nationalisation achieved quickly and absent any avoidable delay, it can count on the full support of the Bank, which would not in such circumstances, see any need to take matters further in any international forum.

Your early reply to the matters raised above will be very much appreciated.

Yours etc,

SCB