

**IN THE MATTER OF
KATANGA MINING LIMITED, ARISTOTELIS MISTAKIDIS,
TIM HENDERSON, LIAM GALLAGHER, JEFFREY BEST,
JOHNNY BLIZZARD, JACQUES LUBBE and MATTHEW COLWILL**

APPLICATION OF KATANGA MINING LIMITED

(Variation of a Decision Under Section 144 of the *Securities Act*, RSO 1990, c S.5)

ORDER SOUGHT:

Katanga Mining Limited ("Katanga") requests that the Ontario Securities Commission (the "Commission") make an order, with notice to and on the consent of Staff of the Enforcement Branch of the Ontario Securities Commission ("Enforcement Staff"):

1. Varying the terms of the Settlement Approval Order (as defined below) to permit Katanga to conclude the review ordered thereunder of its practices and procedures by the Consultant (as defined below) on terms acceptable to Katanga and the Consultant, and thereafter, releasing Katanga and the Consultant from any further obligations imposed by the Terms of Reference (as defined below) under the Settlement Approval Order; and
2. Waiving, pursuant to Rule 3 of the *Ontario Securities Commission Rules of Procedure and Forms* (2019) 40 OSCB 8988 (the "Rules of Procedure"), the requirement of Rule 15(2) of the Rules of Procedure to serve on the individually named respondents (the "Individual Respondents") the within Application and Notice of Hearing.

FOUNDATIONS:

Background

3. Until June 22, 2020, when the Katanga relinquished such status, Katanga was an Ontario reporting issuer with shares listed on the Toronto Stock Exchange. Katanga is now a wholly-owned indirect subsidiary of Glencore plc (together with its affiliates, "Glencore").

4. Glencore is one of the world's largest global diversified natural resource companies and a major producer and marketer of commodities. It has a primary listing on the London Stock Exchange.

The Settlement Agreement and the Settlement Approval Order

5. In or around April 2017, Enforcement Staff commenced an investigation into certain of the affairs of Katanga.

6. At the conclusion of the investigation, Enforcement Staff issued a Statement of Allegations dated December 14, 2018 naming Katanga and the Individual Respondents (collectively, the "Respondents"). On the same date, Enforcement Staff and the Respondents entered into a settlement agreement (the "Settlement Agreement").

7. On December 18, 2018, the Commission approved the Settlement Agreement, and issued an order pursuant to subsection 127(1) and section 127.1 of the *Securities Act*, RSO 1990, c S.5 (the "Act") (the "Settlement Approval Order").

The Engagement of PwC as Consultant

8. The Settlement Approval Order imposed sanctions on Katanga and the Individual Respondents. Separately, it required Katanga to submit to a review of its practices and procedures pursuant to paragraph 4 of subsection 127(1) of the Act by a consultant (the "Consultant") in accordance with the Terms of Reference appended at Schedule "A" thereto (the "Terms of Reference").

9. PricewaterhouseCoopers LLP ("PwC") was engaged to act as the Consultant pursuant to the terms of a Letter of Engagement dated March 7, 2019.

10. PwC developed a form of work plan, which was approved by Enforcement Staff, and thereafter, commenced the work contemplated by the Terms of Reference. The work plan included, among other things, an assessment of Katanga's metal accounting procedures and financial accounting procedures related to production statistics.

11. In connection with its mandate, PwC attended on site at Katanga's operations in the DRC in May 2019, conducted interviews of members of Katanga's current and former management and audit team (including its external auditors and metals accounting consultants), performed process walkthroughs and conducted transaction testing and evaluations.

12. PwC delivered a preliminary report dated July 15, 2019 to Katanga's Board of Directors and Audit Committee in which it reported on, among other things, its findings and observations to date, and in which it provided certain preliminary recommendations (the "Preliminary Report").

13. The Preliminary Report contemplated that PwC would return to the DRC to conduct a subsequent site visit to facilitate the completion of certain additional testing procedures and then

deliver the report contemplated in paragraphs B(iii) to B(vi) of the Terms of Reference. In response to certain questions from Enforcement Staff concerning PwC's work, in correspondence dated July 26, 2019, PwC clarified that while it had performed extensive testing of Katanga's metal accounting system, "PwC recommended to Katanga that one final aspect of the Mandate (i.e., testing of the effectiveness of certain of the additional Metals Accounting controls and procedures) be deferred until the completion of the mining site SAP implementation." PwC indicated to Enforcement Staff that it believed the financial information it intended to review would be more efficiently, accurately and effectively tested once the SAP system and controls were fully implemented.

14. The implementation of Katanga's SAP system was finalized in or about the second quarter of 2020, and PwC's second site visit was scheduled to occur in March 2020. Due to travel restrictions imposed by the DRC government as a result of the COVID-19 pandemic (the "Pandemic"), PwC was unable to make the scheduled site visit. PwC provided Enforcement Staff with a status report and an Undertaking dated March 27, 2020 in which it undertook to complete its work at a future date and to deliver the report contemplated in paragraphs B(iii) to B(vi) of the Terms of Reference (which was intended to be produced in April 2020) by October 31, 2020. The current uncertainty surrounding the future course of the Pandemic globally means the work may be delayed for months or longer.

15. At the same time as the undertaking referenced above was provided, Katanga provided Staff with an update on the status of the implementation of the recommendations made in the Preliminary Report.

16. Although PwC has completed a substantial portion of the work contemplated by the Terms of Reference and Katanga was prepared for PwC to attend in March 2020 for the previously scheduled audit, PwC has been unable to complete the recommended testing of the new SAP system referenced in the Preliminary Report.

The Going-Private Transaction

17. On April 22, 2020, Katanga announced that it had entered into a definitive agreement (the "Acquisition Agreement") with Glencore International AG ("GIAG"), pursuant to which Katanga would be taken private by way of an amalgamation of Katanga with 836074 Yukon Inc. ("SubCo"), a wholly owned subsidiary of Katanga, pursuant to the *Business Corporations Act* (Yukon) (the "Amalgamation").

18. A special meeting of Katanga's shareholders was held on June 2, 2020 at which the Amalgamation was approved. The Amalgamation was completed on June 3, 2020. Thereafter, Katanga became wholly-owned, directly or indirectly, by GIAG.

19. As a result of the completion of the going-private transaction resulting from the Amalgamation, after June 3, 2020, Katanga ceased to have any public investors. In addition, the Ontario Securities Commission issued an Order on June 22, 2020 allowing Katanga to relinquish its reporting issuer status. Accordingly, at such time as PwC is able to resume travel to the DRC, there will no longer be any public investors to benefit from the remaining work contemplated by the Terms of Reference.

20. The appointment of the Consultant contemplated by the Terms of Reference was intended to facilitate improvements to Katanga's public disclosure for the benefit of the investing public

generally and Katanga's public investors. Unlike market conduct bans or administrative penalties of the sort imposed on the Individual Respondents under the Settlement Approval Order, the requirements outlined in the Terms of Reference were aimed at confirming that the Katanga control environment had improved for the purposes of discharging the Company's continuous disclosure obligations. As such, not only is the completion of the remaining steps contemplated in the Terms of Reference impracticable, their completion will not further the intended goal of facilitating improvements to Katanga's disclosure or the public interest, given there are no longer any public investors.

21. The going-private transaction pursuant to which Katanga ceased to have any public investors and following which Katanga ceased to be a reporting issuer constitutes a significant change to the material facts and circumstances underlying the terms of the Settlement Agreement and Settlement Approval Order. The going-private transaction was completed on June 3, 2020. PwC's second site visit was scheduled to occur in March 2020. Had the unforeseeable travel restrictions arising from the Pandemic (a further and separate significant change to the material facts and circumstances) not been imposed in March 2020, the work contemplated by the Terms of Reference likely would have been completed prior to the conclusion of the going-private transaction in June 2020.

22. The relief sought is not prejudicial to the public interest. Rather, the relief sought, which involves a minor variation of the Terms of Reference, is fair and reasonable in light of the new facts and circumstances that have arisen since the Settlement Approval Order was granted. It is logical that in view of the change in circumstances the additional work should not be undertaken if it will not serve the original purpose of the appointment of the Consultant. The proposed variation to the Settlement Approval Order sought by Katanga will not impact any of the Individual

Respondents who are the other parties to the Settlement Agreement or the sanctions imposed on them pursuant to the Settlement Approval Order, nor does it seek to re-open or "second guess" the administrative penalties imposed on the Individual Respondents under the Settlement Approval Order made by the Commission.

23. Given the nature of the relief sought on the within application, service of the application on parties other than Enforcement Staff is unnecessary. The variation sought affects only Katanga which was the only respondent tasked with engaging and working with the Consultant. None of the Individual Respondents is affected by let alone prejudiced by the relief sought herein. The relief sought on the within Application will not impact the sanctions imposed by the Commission on the Individual Respondents pursuant to the Settlement Approval Order. The Individual Respondents are resident in a number of foreign jurisdictions, and none is resident in Ontario, or elsewhere in Canada. Thus, in addition to being unnecessary, service on the Individual Respondents would be unduly burdensome, and may also lead to significant unnecessary delay if the Individual Respondents are unable to respond promptly to the present application (which risk may be amplified in light of circumstances related to the Pandemic). Accordingly, this is an appropriate case for the Commission to exercise its discretion to waive further notice pursuant to Rule 3 of the Rules of Procedure.

24. Enforcement Staff consent to the relief sought on the within application.

25. Rules 1, 3, 15(1), 15(2) and 23(2) of the Rules of Procedure.

26. Section 144(1) of the Act.

EVIDENCE:

27. The moving party intends to rely on the following evidence for the application:

- (a) The Affidavit of Gabriel Audebert, sworn October 23, 2020;
- (b) Such other materials as counsel may advise.

DATED the 2nd day of Novmeber, 2020.

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