NOTE TO: Craig McKune

FROM: Sue Vey

2 OCTOBER 2014

RESPONSES TO MAIL&GUARDIAN

Introduction

The essence of all these assertions is that money was diverted from WPL and EPL which should have gone to meet employee salary demands. All companies alleged to have benefitted are part of the Lonmin group, so the ultimate beneficiaries of such "alleged diversions" would be the shareholders of Lonmin Plc. Between 2008 and 2012 Lonmin Plc shareholders received dividends amounting to $247m but paid in $749m by way of rights issues and private placement of shares. A further $823m was contributed by shareholders in the 2013 financial year by way of a rights issue. During the same period (2008 to 2012) $673m flowed through to the operations by way of loan advances from Lonmin Plc to WPL.

Furthermore, every year we detail in our sustainability report the value created by the group and how it was distributed to all our stakeholders in a value added statement. These illustrate that the biggest share of value is directed towards employees.

RESPONSES:

Question 1. According to Simon Scott's affidavit this week, WPL and EPL continued to pay dividends to Incwala during the "crunch" years of 2009-2012, including two loss-making years and the year of the Marikana massacre. In the "agreed facts" document before the commission, the company admitted that it was not under an obligation to pay Incwala dividends during loss making years, but it chose to (preferring Incwala over other shareholders) so that Incwala could service its loan facilities. This was in spite of considerable strife between the company and workers, who sought better wages and living conditions from the company. This suggests that the instead of enriching the position of its politically powerful BEE partners to such an extent, the company could well have afforded to meet the demands of its work force.

Response: The Mining Charter requires that mining companies achieve certain levels of HDSA equity participation by certain dates failing which the licences held by the mining companies would be in jeopardy. HDSA equity participation is a non-negotiable element of the Mining Charter and therefore it is imperative that the HDSA structures put in place by mining companies are sustainable. Lonmin chose to loan monies to Incwala in the form of advance dividends so as to ensure that Incwala was in a position to service its loan obligations. Had Lonmin not done so, Incwala would have breached its loan obligations and the HDSA equity structure could have been compromised, leaving Lonmin's mining licences

open to scrutiny. Without mining licences, mining companies are compromised. The advance loans made to Incwala will be deducted from any future dividend payments owed to Incwala. Incwala itself has not distributed any dividends to its shareholders since Shanduka bought its shareholding in Incwala.

- The fact that Incwala Resources was controlled by Cyril Ramaphosa's Shanduka from 2010 underscores that it was a politically powerful entity from then on. Did this influence the company's decision to treat Incwala preferentially – over workers and remaining shareholders – during those years? No, Lonmin did not treat Incwala preferentially. Refer above.

Question 2. In 2011, the company employed about 25 000 workers in SA. In the same year it paid a preferential $10m (about R79m then) dividend to Incwala. As a simple illustration, that is R3160 that might have been distributed to each SA employee. Similarly, in 2012, the year of the massacre and a serious loss-maker for WPL, the company paid $14m (R116m) to Incwala – or more than R4000 per SA employee.

Reponse: As mentioned, the advance dividend paid to Incwala is repayable and will be deducted from future dividend payments due to Incwala. This advance dividend enabled Incwala to service its debts and remain a going concern and thereby retaining Lonmin's HDSA equity structure. Making additional payments to employees at the expense of HDSA equity obligations is irresponsible as it would have put mining licences in jeopardy. For our employees to continue receiving salaries to support the lives of themselves and their families, Lonmin needs to be in business.

3. Irrespective of Lonmin's 2012 decision to "retroactively" restructure the sales commissions so that they were paid to LMS instead of WMS, up until that point (June and July 2012) the fees were paid to LMS, as reflected in all of WPL's audited financial statements that were signed off before the date of the agency agreement (leaving aside the 2012 AFS, which the company says contained an error).

- Please comment and explain.

Response: From the end of FY 2008, all sales commissions were paid to LMS and no sales commissions were paid to WMS. There was no "retrospective" restructuring of the sales commissions. The WPL financial statements contained a clear error in that they erroneously indicated payments to WMS as opposed to payments made to LMS.

Question 4. In spite of this, the company said in its M&G letter: "No payments have been made by a Lonmin Group company to Western Metal Sales since the end of the 2008 Financial Year" (and similar wording in the "agreed facts" document and in your original statements to me in August)

Response: Yes, this is the correct as agreed to by the evidence leaders who had sight of the LMS and WMS financial statements.

- Please explain the evident contradiction (again, accepting for now Lonmin's explanation that the 2012 AFS contained an error). Explained above

Question 5. These statements (WMS is "long dormant" and "no further payments after 2008") are further contradicted by the fact that WPL made loan repayments to WMS of R9.9m and R621 000 in 2009 and 2010, and WMS loaned R1.2m to WPL in 2011.

Response: The differences noted above are not loan repayments.
The loan movement comprises the receipt of the R7.2 million payment for FY2008 commissions which were paid in the following year, FY2009, and a movement arising from the translation of the US dollar denominated loan in the Company accounts of R2.7 million. In FY 2010 and 2011 the movements arise from US dollar :Rand translation differences between closing exchange rates at the different balance sheet dates of R621 000 and R1,2m respectively.

6. In it's M&G letter, Lonmin said: "The new agreement with LMS, based in South Africa, and Western Platinum Limited, which superseded the previous agreement with Western Metal Sales, was given effect to in 2008, but only ratified by Incwala in 2012."

Response: This is correct. The agreements referred to were internally agreed to and implemented effective 2008

- Please explain in practical terms how this "retroactive" change was achieved?

Response: There was no retroactive change. WPL paid LMS the full commission from the end of FY2008.

7. Such a "retroactive" change would have required a redirection of funds from WMS to LMS and an explanation in the accounts signed off after the 2012 agency agreement. There is no explanation in WPL's later audited statements.

- Why not?

Response: There was no retroactive change. WPL paid LMS the full commission from the end of FY2008.

The change – with the payments being "retroactively" redirected from WMS to LMS – would also have required a different tax treatment, with LMS's profits on the fees being taxed in SA.

- Was the change declared to SARS?

Yes.

- Was a new tax liability recorded by LMS? At what rate?

Response: No, since the tax liability was recorded from the beginning at 33%. The replacement of the contract had nothing to do with tax - it was simply to move the business

to South Africa on a bona fide basis and the tax payment at 33% follows the business rationale.

8. According to the AIDC's Dick Forslund, this new tax liability is not reflected in Lonmin PLC's accounts as it should be, suggesting the new tax liability has not been recorded. According to him, taxation fell from 2006 to 2008, "the platinum boom years" from more than $200m per year to an average of just $8m from 2009-2013 (in fact a tax credit in the recent years).

- Please comment.

Response: The global recession had a major impact on platinum producers and likewise on Lonmin. Consequently the Lonmin's financial position, since October 2008, has been disappointing evidenced by the lower tax liability of the Company in the period 2009 to 2013. In addition, the Company continued to incur capital expenditure in its mining operations to maintain production capacity leading to unclaimed capital balances during periods of low profitability - therefor low overall tax liability in the period under discussion.

9. The fact that Lonmin was able to unwind six years of commercial history "retroactively" raises the question of whether or not there was a commercial basis for the Bermuda fees. If from 2007 to 2012 (the date of the agency agreement) a function was performed by a Bermuda-based company, using WMS's assets there, it is difficult to understand how this commercial reality could be "retroactively" undone.

Response: No, Lonmin did not unwind six years of commercial history retroactively. No activity was carried out by WMS from the end of FY2008 and WMS received no commissions from the end of FY2008.

Lonmin itself said that WMS was "registered in Bermuda and operating out of London". This further supports the argument that little to no commercial function was performed in Bermuda using assets there. Rather this suggests the function was performed from Lonmin's London office, which is why it was possible to "retroactively" pay the fees to LMS (which is "legally indivisible" from the London parent company)."

Response: WMS is taxed in the UK in terms of the UK CFC rules. We have indicated sufficiently in the above that the move of the services was simply following the business rationale of moving the service to South Africa and that was followed by a tax liability in South Africa calculated at a rate of 33%.

WMS has been registered at Appleby's offices – not an own commercial residence – since 2003. Appleby confirmed to me that there are no Lonmin or WMS staff employed there – Appleby is clearly only nominally in charge of WMS in Bermuda. Again this raises a red flag that there may be little to no substance to the marketing fees.

Response: We provided a schedule of management and marketing costs to the Farlam commission. The accounts of all of the companies within the Lonmin Group are fully audited.

To raise further questions over the substance of the fees, Lonmin has provided contradictory explanations regarding the entity responsible for marketing its PGMs. In August, the company told me: "All metal is sold direct by WPL to customers"; "WPL negotiates prices with customers as all commercial entities do – both parties negotiate as

hard as possible to obtain the best possible price” and “The fact is that all of Lonmin’s metal is sold directly by Lonmin’s operating subsidiary (WPL) direct to third parties.” The implication therefore is that no outside marketing agency is required. But Lonmin contradicted this, telling the commission and M&G readers that previously WMS and now LMS does/did the marketing – and indeed it transferred fees for this purported service (even if these were "retroactively" restructured).

Response: WMS and subsequently LMS carry out the marketing function on behalf of WPL. The confusion may have arisen from the fact that WPL and LMS are Lonmin subsidiaries and part of the Lonmin Group therefore no marketing agency external to Lonmin is required.

- In light of the above, please explain why we should not conclude that there was little or no commercial substance to the transactions between WMS and WPL.

Refer above.

10. Under oath, Mr Seedat testified that WMS assumed risk, however he later conceded that WMS did not take ownership of the PGMs at any point. Lonmin’s financial reporting and public statements are clear that the PGMs are sold direct to customer (not WMS), and it is at that point that risk is transferred (to customer, not WMS). - Please explain the evident contradiction.

Response: Mr Seedat prefaced his statement by stating that he was not entirely clear as regards the position at Lonmin but at BHP Billiton, where he had previously been employed, the marketing agent assumed risk.

11. Lonmin’s 2013 annual report, p180, records marketing and management fees. That they are disclosed at group level and not in the related parties note implies that these fees went to external service providers. When I asked Lonmin in August if and how much of any of these fees were paid to LMS and WMS, its answer was: “n/a”.

- Why is Lonmin paying such huge marketing and management fees to both internal (WMS and LMS) and external service providers (as per p180)? Or, if this is not the case, please explain.

Response: Lonmin pays management and marketing fees to LMS only which is not an external services provider.

- Once again, the fact of external marketing fees seems to undermine the basis for the marketing fees paid to WMS and LMS. Please comment and explain.

Response: Lonmin does not pay external marketing fees.

12. Forslund has said that Implats employs four or five people to sell its PGMs from its SA offices. In contrast, WPL has paid marketing fees of R200m to R300m fees a year to WMS/LMS. This seems to be an extremely expensive fee by comparison. Indeed, according to data provided by Mr Scott, LMS’s (or WMS before the 2012 “retroactive” decision) profit margins were as high as 94% on the marketing expense. It is difficult to believe that this is a market-related rate.

- Please comment and explain. Refer to annexure B below

ANNEXURE B

Management and Marketing costs incurred by Lonmin Management Services

Financial Year	Total Operating expenses (including Marketing costs) (R)	Marketing costs (R)	
FY2007	114 388 211	3 000 000	
FY2008	241 393 009	26 000 000	
FY2009	264 744 688	154 000 000	
FY2010	124 562 714	20 000 000	
FY2011	226 164 485	17 000 000	
FY2012	222 581 956	19 000 000	*AFS not yet finalised/signed*
	1 193 835 063	**239 000 000**	

- What expenses were incurred for marketing? As above.

- What led to the apparent surge in marketing expense (R154m) in 2011 (the margin of 15% is still high)?

13. While LMS is taxed in South Africa, it paid large management fees to Lonmin PLC in 2007-2010 (According to Scott). Lonmin PLC has paid no UK taxes since 2000.

- How was this expense (fees paid by LMS to PLC) justified?

Response: This fee is payable to Lonmin Plc in exchange for services rendered by Plc executives and senior management on behalf of LMS.

- Were profits on this Lonmin PLC revenue taxed? Where? At what rate?

Response: Lonmin Plc is taxable in the UK in terms of the UK corporate tax rate prevailing in the applicable year of assessment.

14. Lonmin said in the M&G letter that the WMS fee structure provided no tax benefit. This was directly contradicted by Mr Seedat's under-oath testimony.

- Please explain.

The WMS structure and fee did not provide a tax benefit as there was a CFC relationship between Bermuda and the UK in terms of which Lonmin Plc was required to pay taxes in the UK on the dividends declared by WMS. In terms of the agreement WMS has to declare dividends in terms of a dividend distribution policy acceptable to the UK revenue authorities. Mr Seedat, whilst continuing with his evidence on 29 September, corrected this position and confirmed that the WMS structure and fee did not provide a tax benefit.

15. In explaining why WMS purportedly did not create a tax benefit, Lonmin told M&G readers that WMS is taxed in the UK – but Lonmin's own audited accounts reveal that it has paid zero UK tax since 2000.

- Please explain this contradiction.

Response: Lonmin PLC had accumulated losses brought forward from previous years.

16. Lonmin's UK tax bill is cancelled out by a DTA, the reports state. There is no DTA between Bermuda and Lonmin, therefore any dividends paid by WMS to Lonmin PLC would be indicated by a UK tax liability. That there is no such liability suggests that WMS's profits might have accumulated in Bermuda.

- Please respond.

Already covered.

- Does/Did WMS pay any fees to any related parties?

Response: Prior to 2007 WMS paid fees to Lonmin Plc and during the transitional period of transferring the marketing contract to Lonmin Management Services "LMS' in South Africa, in 2007 and 2008,WMS paid fees to LMS in South Africa.

- What profits has WMS record in years that it received fees from related parties?

17. Why did Incwala block the unwinding of the Bermuda fee structure, as was put on the record by Schalk Burger two weeks ago?

Response: Between late 2008 and 2010, the relationship between Lonmin and certain Incwala shareholders became strained as the global economic downturn took effect. This led to a position where certain Incwala shareholders refused to sign any Lonmin internal agreements that required their consent, not only the Agency Agreement. Once these shareholders exited the Incwala structure in the latter part of 2010, there was no resistance to the granting of consent by the new and remaining Incwala shareholders and the consent was duly granted once the issue had been thoroughly considered by all parties.

18. As an illustrative analysis Forslund added a 25% "management premium" to Lonmin's disclosed staff numbers and staff costs in its SA branch (ie. LMS) for 2010-2012 to calculate what he believes is a reasonable management cost: R27.9m, R86.9m, R90.5m for the respective years. The costs claimed by Mr Scott are enormous by comparison: R192m, R178m and R103m. Forslund therefore argues that Mr Scott's claimed figures are unlikely to be market related. He argues that the difference represents funds that should not have been shifted from WPL to LMS.

Response: Lonmin has done transfer pricing studies that confirm that our fee margin is at the bottom range of the margin interval.

- Please comment.

19. Forslund calculates that had Lonmin not paid R1.2b to Bermuda from 2008 to 2012 (a structure he says should have been collapsed as it did not appear to be a substantial commercial transaction), R3500-R4000 could have been added to the RDO wage.

Response: No such payments were made to Bermuda during this period.

He argues further that, also cutting down the management cost, as described above, would have freed up enough money that the RDO wage demand of R12500 net in hand could have been met.

- Please comment.

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