



Old Mutual Limited – Open letter to Shareholders

The Board of Old Mutual Limited (OML) has received a number of queries from shareholders and stakeholders regarding the dispute being pursued by Mr Moyo. The Board maintains that engaging extensively with the media on this matter is not appropriate, but we do think it is appropriate to communicate with shareholders to address certain key matters of concern that have been raised.

1. The June 2019 notice of termination of employment

In June 2019, Mr Moyo was given six months' notice of termination of his employment. This is the notice period provided for in his contract of employment.

The Board took legal advice on the procedure that it followed before giving notice and considered whether it should initiate a formal inquiry before taking further decision. On careful reflection, it considered that the process of dialogue and engagement that it had followed with Mr Moyo had provided a fair and appropriate opportunity for Mr Moyo to address the issues raised with him, and that an adversarial internal process would not have been either more fair to Mr Moyo or appropriate from the point of view of the company and its stakeholders.

On the reason for the decision to give notice, the Board had lost trust and confidence in Mr Moyo. The background to this was set out at length in Old Mutual's answering affidavit in the court proceedings brought by Mr Moyo. In summary, and as is now generally known, concerns had arisen over Mr Moyo's involvement in approving NMT Capital ordinary dividend payments (in his capacity as a director of NMT Capital) at a time when various amounts were due and payable by NMT Capital to Old Mutual, in breach of the terms of NMT Capital's preference share subscription agreement with Old Mutual. These ordinary dividend payments benefited Mr Moyo personally in the amount of approximately R30.6 million, and he did not at any relevant stage raise the matter with the Board sub-committee entrusted with oversight over his relationship with NMT. The Board was not satisfied with Mr Moyo's responses during his engagements with Board sub-committees and with the Board itself when these matters were raised with him.

In addition, Mr Moyo has not been able to explain satisfactorily why, according to the records at Old Mutual's disposal, the NMT Capital board resolved to disburse cash (including by way of a R105 million dividend to ordinary shareholders declared at a meeting chaired by Mr Moyo himself) while ignoring a liability to the Industrial Development Corporation (IDC) in terms of a guarantee in an amount of R157m at the time. This NMT Capital guarantee to the IDC was apparently settled in November 2018, pursuant to a written agreement in terms of which a large proportion of the outstanding debt to the IDC was apparently written off.



We point out that Mr Moyo has not challenged under the Labour Relations Act either the fairness of the reason for terminating his employment or the fairness of the procedure that was followed.

Mr Moyo has, however, challenged the contractual validity of the June notice in High Court proceedings, and as many shareholders will know, a High Court judge decided in urgent proceedings that the company was not entitled to give the June notice of termination without, as a term of the contract, first holding a formal disciplinary process. We respectfully disagree, both because we do not believe that the contract required this and because we believe that a fair and appropriate process was followed before notice was given. We are advised that there are good prospects that another court may agree with us, either in an appeal or when the merits of Mr Moyo's case are eventually heard.

This does not mean that Old Mutual does not respect the courts or their decisions. Old Mutual has taken careful legal advice before asking for leave to appeal the urgent court's judgment. It is exercising a right that it has, with all due respect to the court. Its stakeholders are entitled to expect Old Mutual to appeal when, as here, it has been advised that a court decision with important implications may be overturned on appeal.

2. Further notice of termination

The ongoing appeal processes and related litigation have, however, in certain respects been overtaken by events.

It will remain important to finally resolve the dispute about the validity of the June notice of termination. However, irrespective of what might eventually happen in those legal proceedings, events following the June notice have made it clear that a continued employment relationship between Mr Moyo and Old Mutual is untenable. The directors have been appointed by shareholders, and are required to take appropriate steps in the exercise of their fiduciary duties to the company. It is clearly in the best interests of the company and its stakeholders that the employment relationship with Mr Moyo should come to an end.

For this reason, Old Mutual has now given Mr Moyo a further notice terminating his employment.

This step, as with previous steps taken in relation to Mr Moyo, has been taken after legal advice and on careful reflection by directors, with proper regard to their fiduciary duties to the company. We must accept that Mr Moyo may decide to challenge this step too. We will stand our ground if he does, naturally and at all times continuing to respect the law and our court system.



3. Incorrect and defamatory statements made by Mr Moyo or on his behalf

Mr Moyo has made a number of claims in court proceedings and to the media that are incorrect and defamatory. It is not our practice to litigate through the media. We must make it clear, however, that the company believes that it should hold individuals accountable for their actions, and the Board consciously promotes high standards of corporate governance, as appropriate to an international company listed on various stock exchanges.

Mr Moyo has made statements concerning what he claims were protected disclosures by him about the Board Chair's legal fees and a "triple conflict of interest" with Old Mutual plc and Rothschild. The Board is satisfied that these matters have been appropriately dealt with in terms of the Old Mutual Group's governance processes and the Companies Act. Nevertheless, we restate our position on them briefly here. We also respond briefly to criticism directed by Mr Moyo at members of the board.

3.1 The Board Chair's legal fees

Old Mutual has, at its own initiative, managed and paid for two litigation cases to which the Board Chair was party. In each case this was because the cases affected Old Mutual's interests. Old Mutual wanted to ensure that all steps taken in the litigation were aligned with protecting its business objectives together with its brand and reputation. Mr Moyo himself, together with the shareholder at the time, Old Mutual plc, approved the decisions to manage these matters and to pay the legal expenses involved.

The first matter related to a security breach around the Board Chair, and legal action was taken with the ultimate objective of protecting both the Board Chair and Old Mutual's process of managed separation. The second matter involved untrue allegations that undermined the independence of one of the Group's asset managers. Since the independence of asset managers is strategically important for the Group, it was important for Old Mutual that the statement should be challenged.

The Board made it clear in March 2019, when Mr Moyo sought its approval for these expenses, that future decisions of this kind would remain the responsibility of the CEO, where necessary in discussion with the chair of the Board's related party transaction committee. The separate disclosure of these expenses in the financial statements was considered during the preparation of the 2018 financial statements for OML. Since, however, the expenses were incurred for the purpose of protecting the brand, business objectives and reputation of the company, it was decided that no separate disclosure was required. The audited financial statements, and the disclosures included in them, were approved by the Board and by Mr Moyo himself.



All other litigation matters that have involved the Board Chair, including a recent matter against the EFF, his appearance at the Zondo Commission, and various actions against him by the Public Protector, have been for his own account.

3.2 The “triple conflict”

The Board Chair’s relationship with Rothschild and Old Mutual plc were known and were disclosed and managed as required by United Kingdom and South African laws and regulations and corporate governance best practice. In the Old Mutual Limited Pre-Listing Statement (PLS), on page 223, Old Mutual declared the following about the Board Chair’s relationship with Rothschild:

“Interests of Advisers and Promoters and Amounts Paid or Payable to Promoters

No promoter, Director or officer of the Company has any beneficial interest, direct or indirect, in the Joint Financial Advisers. Trevor Andrew Manuel serves as a senior adviser to the Rothschild & Co Group (the group of Rothschild entities) and as the non-executive chairperson pro tem of Rothschild. He is not involved in advising the Company and, accordingly, his involvement does not present a conflict of interest and/or impair his or Rothschild's independence and objectivity in his/its professional dealings with the Company.”

This PLS was signed by all directors of OML, including Mr Moyo, who warranted that no misleading statements were made in the PLS.

3.3. Competence and standing of the Old Mutual Board

The OML Board is a group of highly skilled individuals from diverse backgrounds with a wide range of experience across many areas of business. They have been appointed to their positions by the shareholders of OML. There are no grounds for the assertions of Mr Moyo that when board members resolved to terminate his employment they were delinquent as directors under the Companies Act, or that they are somehow collectively unable to act independently or are under the sway of the Board Chair. These allegations are insulting, baseless, and defamatory, and they do not warrant more detailed response here.



4. Where to from here?

Old Mutual has not initiated the litigation with Mr Moyo, and is unfortunately not able to bring it to an end of its own accord. Its lawyers have proposed expedited arbitration of those aspects that are suitable for arbitration, and the company will continue to explore and consider all reasonable alternative options open to end the disputes with Mr Moyo. But the Board cannot discharge its fiduciary duties without opposing claims where this is in the interests of stakeholders and where the company is legally advised that it has good grounds for doing so.

We hope that this letter helps to clarify some of the queries that have been raised by shareholders. We have put in place measures to ensure that clients, intermediaries, staff and our key stakeholders are engaged on an ongoing basis as part of a targeted stakeholder and communication strategy. Business operations continue under the management of a strong and experienced leadership team, led by Iain Williamson.

Yours faithfully

The Old Mutual Limited Board

22 August 2019