



1 November 2018

ASX Limited  
20 Bridge Street  
Sydney NSW 2000

Dear James

### **Related Party Arrangement Query**

The Company refers to your letter of 29 October 2018 and responds as follows:

1. Attached
2. The Service Deed was entered into in August 2009 as part of transitional arrangements on the move of the registered office from Perth to Melbourne. At the time, the previous Company Secretary was dealing with board matters and resigned on 12 August 2009 and the current Company Secretary was appointed on that date. The Directors in office at that time were Joseph Gutnick, Tom Reddicliffe and Ian Hastings. There is a minute dated 12 August 2009 dealing with certain matters to do with the move of the office to Melbourne however the Service Deed is not specifically referred to. The Company does not have any other documents dealing with the entering into of the Service Agreement as documents are only retained for 6 years.
3. See response to question 2.
4. There is insufficient information available to the Directors of Merlin some 9 years since it was entered into to be able to respond to this question. The Company does not have any other documents dealing with the entering into of the Service Agreement as documents are only retained for 6 years.
5. In our response of 22 October 2018, we advised that the loan agreement was verbally approved by the independent directors.
6. See response to question 5.
7. The independent directors took the view that the terms and conditions, given the status of the loan at the time of entering into the loan agreement, were at arms' length, noting the interest rate, term, etc.
8. The Company has had a long relationship with AXIS. Accordingly the independent directors did not believe it was necessary to undertake a due diligence.

9. No.

10. As per our response in our letter of 22 October 2018, Mordechai Gutnick was not involved in the decision.

11. The Company's responses have been approved and authorised by the Board of Directors.

If you require any further information, please do not hesitate to contact us.

Merlin Diamonds Limited



29 October 2018

**Mr Peter Lee**

Company Secretary

By email: peterl@axisc.com.au

Dear Mr Lee

**Merlin Diamonds Limited (“MED”): Related Party Arrangement Query**

ASX Limited (“ASX”) refers to the following:

- A. MED’s annual report for the year ended 30 June 2018 lodged on the ASX Market Announcements Platform and released at 8:59 am on 8 October 2018 (the “Annual Report”).
- B. ASX’s query letters dated 9 and 17 October 2018 and MED’s responses to the query letters dated 15 and 22 October 2018.
- C. The loan agreement between AXIS Consultants Pty Ltd (“AXIS”) and MED provided with MED’s letter dated 15 October 2018 (“Loan Agreement”).
- D. The service deed dated 31 August 2009 referred to in the Annual Report whereby AXIS provides MED with company secretarial, finance, geology, exploration, IT and other services (“Service Deed”).
- E. A search of the ASIC records of AXIS, which indicates that at various times there have been common directors of MED and AXIS, as follows:
  - Mr David Tyrwhitt, a director of MED since 16 December 2011, was also a director of AXIS from 1 January 1997 until 13 October 2017.
  - Mr Mordechai Gutnick, a director of MED since 8 July 2016, is also a director of AXIS and has been since 18 October 2017 and before that was a director of AXIS from 7 July 2016 to 5 August 2016.
  - Mr Joseph Gutnick, a director of MED since 8 June 2018 and before that from 27 October 2008 until 8 July 2016 was also a director of AXIS from 1 January 1987 to 7 July 2016.
- F. The financial statements included in the Annual Report which on pages 46 - 48 disclose the Service Deed and the Loan Agreement under the heading “Related party transactions”.

ASX has the following further queries and requests:

1. Please provide a copy of the Service Deed. This is not for release to the market.
2. Please provide a copy of the minutes of the MED board meeting which approved the entry into the Service Deed. This is not for release to the market.
3. Please advise which directors of MED voted in favour of MED entering into the Service Deed, which directors voted against and which directors abstained from voting on the basis of their conflict of interest.
4. Noting that the Service Deed would appear to involve the giving of a financial benefit by MED to a related party of MED (see F. above), please advise:

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- (a) whether MED sought shareholder approval to giving of that benefit under section 208 of the Corporations Act;
    - (b) if MED did not seek such approval, why did it not do so?
    - (c) if it was because the board considered the Service Deed was entered into on arm's length terms and therefore exempt from shareholder approval under section 210 of the Corporations Act, please advise the basis and evidence on which the directors formed that view.
  5. Please provide a copy of the minutes of the MED board meeting which approved the entry into the Loan Agreement. This is not for release to the market.
  6. Please advise which directors of MED voted in favour of MED entering into the Loan Agreement, which directors voted against and which directors abstained from voting on the basis of their conflict of interest.
  7. Noting that the Loan Agreement would appear to involve the giving of a financial benefit by MED to a related party of MED (see F. above), please advise:
    - (a) whether MED sought shareholder approval to giving of that benefit under section 208 of the Corporations Act;
    - (b) if MED did not seek such approval, why did it not do so?
    - (c) if it was because the board considered the Loan Agreement was entered into on arm's length terms and therefore exempt from shareholder approval under section 210 of the Corporations Act, please advise the basis and evidence on which the directors formed that view.
  8. Noting that the Loan Agreement was for a considerable sum of money and unsecured, what due diligence did the board of MED undertake to satisfy itself that AXIS had the financial wherewithal to meet its obligations under the Loan Agreement before approving the entry of the Loan Agreement and the making of the loan thereunder ("Loan")?
  9. Prior to approving the entry of the Loan Agreement, did the directors of MED ask AXIS to provide financial statements or any other financial information to confirm its financial capacity to repay the Loan? If so, provide a copy of those financial statements (this is not for release to the market). If not, why not?
  10. Given the fact that Mr Mordechai Gutnick currently sits on the boards of both MED and AXIS:
    - (a) how can MED claim, as it did in paragraph 2(d) of its letter to ASX dated 15 October 2018 that MED "does not have access to financial information of AXIS"?
    - (b) in the course of reviewing the financial statements included in the Annual Report, did the other directors of MED ask Mr Mordechai Gutnick for information about AXIS' financial position to confirm AXIS' capacity to repay the loan? If not, why not?
    - (c) if in the course of reviewing the financial statements included in the Annual Report, the other directors of MED did ask Mr Mordechai Gutnick for information about AXIS' financial position to confirm AXIS' capacity to repay the loan, why Mr Mordechai Gutnick not provide this information and how is this consistent with his duty to MED as a director of MED?
    - (d) How can Mr Mordechai Gutnick claim that the financial statements of MED included in the Annual Report give a true and fair view of MED's financial position, as all of the directors did in the Annual Report and in paragraph 2(d) of MED's letter to ASX dated 15 October 2018, when he has information about the financial standing of AXIS which he has not provided to the board or to the auditors of MED and this consequently has led to a qualification to those financial statements?
  11. Please confirm that MED's responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of MED with delegated authority from the board to respond to ASX on disclosure matters.

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12. Please have an authorised officer of MED sign MED's letter in response.

**When and where to send your response**

This request is made under, and in accordance with, Listing Rule 18.7. Your response is required as soon as reasonably possible and, in any event, by not later than half an hour before the start of trading (ie before 9.30 a.m. AEDT) on Friday, 2 November 2018.

ASX reserves the right to release a copy of this letter and your response on the ASX Market Announcements Platform under Listing Rule 18.7A. Accordingly, your response should be in a form suitable for release to the market.

Your response should be sent to me by e-mail. It should not be sent directly to the ASX Market Announcements Office. This is to allow me to review your response to confirm that it is in a form appropriate for release to the market, before it is published on the ASX Market Announcements Platform.

If you have any queries or concerns about any of the above, please contact me immediately.

Yours sincerely

*[Sent electronically without signature]*

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**James Gerraty**

Manager, Listings Compliance (Melbourne)