

12 August 2020

Company Announcements Office  
ASX Limited  
Exchange Centre  
20 Bridge Street  
SYDNEY NSW 2001

Dear Sir/Madam

## **SUPREME COURT ORDERS GRANTED**

Further to the announcement of 11 August 2020, Imdex Ltd (ASX:IMD) (**Imdex** or the **Company**) advises that earlier today the application to the Supreme Court was heard to rectify an administrative oversight related to the non-issue of a cleansing notice when issuing shares in July 2020.

### **Non-issue of cleansing notice**

The matter relates to the issue by the Company of 4,438,851 shares on 22 July 2020 (the **July Shares**) in accordance with the Appendix 3B lodged that day. The shares were issued pursuant to completion of the recent acquisition of AusSpec International Limited (**AusSpec**).

Through an inadvertent administrative oversight, a cleansing notice under section 708A(5)(e) of the Corporations Act was not given to ASX within 5 business days after the date of issue. This issue was identified by the Company and was reported to both the ASX and ASIC.

On 10 August 2020, the Company lodged an Appendix 2A for the quotation of the July Shares and also lodged a delayed cleansing notice of that same date.

### **Granting of orders curing non-issue of cleansing notice**

The application was heard in the Supreme Court earlier today and the Court made the orders sought by the Company, namely:

- (a) orders that:
  - (i) the period of five days in which to lodge the cleansing notice be extended to 10 August 2020; and
  - (ii) a cleansing notice that is lodged within that extended timeframe will take effect as if it had been lodged within time; and
- (b) a declaration that any sale of the July Shares after their issue and prior to making of the orders is not invalid by reason of any shareholder's failure to comply with the disclosure obligations under the Corporations Act.

A copy of the orders accompanies this announcement.

In accordance with the orders, the Company will also forward a copy of the orders to each person who was issued the July Shares on 22 July 2020.

### **Technical breach of ASX Listing Rule 10.11**

After the delayed cleansing statement issue became apparent, in the course of addressing the same, the Company identified that there had been a potential inadvertent and technical breach of ASX Listing Rule 10.11 in relation to an aspect of the issue of the July Shares.

The Company promptly advised ASX of the issue, and has today received advice from ASX formally declaring the breach, and advising as to the outcome.

The breach occurred on 22 July 2020 when a portion of the July Shares being issued as consideration to the vendors of AusSpec, were directed by the vendors to be issued to one of its advisors to satisfy a fee payable by the vendors to its advisor in connection with the completion of the sale. The advisor is Atrico Pty Ltd (**Atrico**) and was issued 783,261 of the July Shares at the direction of the vendors. Atrico is an advisory firm specialising in commercialisation of technology. Atrico entered into an advisory mandate with AusSpec on 12 June 2017, which included terms for a fee to be payable to Atrico upon the sale of AusSpec.

Atrico ran a competitive process for the sale of AusSpec and Imdex was one of three shortlisted in this process and ultimately the successful acquirer.

Atrico is an associate of a related party of the Company by virtue of Ivan Gustavino (director of Imdex) being a director and shareholder of Atrico. Mr Gustavino was not part of Imdex Board deliberations on the decision to acquire AusSpec, nor the offer terms nor the sale agreement with AusSpec.

At completion, the vendors directed a portion of the July Shares to be issued to Atrico to partly satisfy the fee. The Company agreed to the request on the basis that Atrico would immediately sell and not hold the shares issued, in order that Atrico was, in effect, receiving its fee from the vendors and not shares in Imdex. The Company incorrectly and inadvertently considered the mechanism proposed by the vendors to satisfy the vendors' liability to Atrico was in compliance with the ASX Listing Rules.

However, ASX Listing Rule 10.11 prohibits an issue of shares to an associate of a related party, without shareholder approval. The payment mechanism does not fall within any of the exceptions set out in ASX Listing Rule 10.12. The shares issued to Atrico resulted in a technical and inadvertent breach of ASX Listing Rule 10.11.

In light of the above, the ASX has required that:

- (a) any profits arising to Atrico from the sale of the shares issued to it in breach of ASX Listing Rule 10.11, be donated to an entity, or entities, registered with the Australian Charities and Not-For-Profits Commission as a charity; and
- (b) Imdex will be required to provide ASX with sufficient evidence of the donation.

### **Technical breach of ASX Listing Rule 3.10.3**

The issue of shares to Atrico also resulted in a relevant interest arising to Ivan Gustavino for a short period between issue and their sale. As a result, the Company has inadvertently breached Listing Rule 3.10.3 in failing to lodge an Appendix 3Y for Mr Gustavino within 5 days of this change. This will be corrected today by the lodgement of an Appendix 3Y for Mr Gustavino.

The acquisition and disposal occurred on 22 and 23 July 2020 respectively, which pursuant to the Company's securities trading policy is a closed period. Albeit inadvertent, the payment mechanism adopted as described above, has result in a breach of the Company's securities trading policy, given that it occurred during a closed period.

As confirmed by the cleansing notice lodged by the Company on 10 August 2020, the Company has confirmed that there was no excluded information (as defined under section 708A(8) of the Corporations Act) being withheld as at 22 July 2020, and there was no such information being withheld at the time that the acquisition and disposal by Atrico occurred.

### **Remedial Steps**

The Board regards these issues to be highly regrettable.

On realisation of the delayed cleansing statement issue on 7 August 2020 and then the ASX Listing Rules breaches subsequently, the Imdex Board has begun implementing steps to ensure, insofar as possible, such issues do not arise again in the future. Imdex will undertake a thorough review of compliance procedures led by the Board, to ensure appropriate preventative steps are in place, and will introduce additional internal checks, to avoid any future issues.

Imdex will continue to operate its business in the normal course however has already and will continue to sharpen its focus on ensuring all governance functions within Imdex are operating at the level required of a publicly listed company, to ensure that no future corporate actions of the nature the subject of this announcement are missed. A particular focus will be on completion issues and share issuances, and ensuring that all processes are formalised in a more detailed manner, and include the necessity for, and checking occurrence of, each of the steps.

Although inadvertent, the issues surrounding the breach of Listing Rule 10.11, and the resultant breaches of Listing Rule 3.10.3 and the Company's securities trading policy, will also be a particular focus of the review of compliance procedures to be undertaken.

Yours faithfully

**Imdex Limited**



**Paul Evans**

Company Secretary

**This announcement has been approved for lodgement by the Company Secretary.**

### **ABOUT IMDEX**

IMDEX is a leading Mining-Tech company, which enables successful and cost-effective operations from exploration to production. The Company develops cloud-connected sensors and drilling optimisation products to improve the process of identifying and extracting mineral resources for drilling contractors and resource companies globally.  
[www.imdexlimited.com](http://www.imdexlimited.com)

### **FURTHER INFORMATION**

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IN THE SUPREME COURT OF WESTERN AUSTRALIA

COR/107/2020

EX PARTE:  
**INDEX LIMITED (ACN 008 947 813)**

First Plaintiff

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**ORDER OF JUSTICE HILL**  
**MADE 12 August 2020**

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**IT IS ORDERED that:**

1. Pursuant to section 1322(4)(d) of the Corporations Act, in respect of the 4,438,851 ordinary fully paid shares in the Plaintiff, which were issued on 22 July 2020, the period of five business days referred to in section 708A(6)(a) of the Corporations Act be extended to 10 August 2020.
2. Pursuant to section 1322(4)(a) of the Corporations Act, it is declared that a notice under section 708A(5)(e) of the Corporations Act given to the Australian Securities Exchange Limited (ASX) in respect of the 4,438,851 ordinary fully paid shares in the Plaintiff, which were issued on 22 July 2020, within the period provided for in paragraph 1 above be deemed to take effect as if it had been given to the ASX on 22 July 2020.
3. Pursuant to section 1322(4)(a) of the Corporations Act, it is declared that any offer for sale or sale of the 4,438,851 ordinary fully paid shares in the Plaintiff, which were issued on 22 July 2020, during the period after their issue to the date of the Court orders is not invalid by reason of:
  - (a) any failure of a notice under section 708A(5)(e) of the Corporations Act to exempt the sellers from the obligation of disclosure under the Corporations Act; and
  - (b) the sellers' consequent failure to comply with section 707(3) of the Corporations Act.
4. A sealed copy of these orders is to be served on the Australian Securities and Investments Commission (ASIC) as soon as reasonably practicable and upon service of these orders on ASIC. ASIC is to include these orders on its database.
5. A copy of these orders is to be given to each person to whom the shares in orders 1 and 2 were issued and as soon as reasonably practicable the Plaintiff is to publish an announcement to ASX in which a copy of these orders is included.
6. For a period of 28 days from the date of publication of a copy of these orders on the ASX website, any person who claims to have suffered substantial injustice or is likely to suffer substantial injustice by the making of any or all of these orders has liberty to apply to vary or to discharge them within that period.
7. There be no order as to costs.

BY THE COURT

THE HONOURABLE JUSTICE J HILL

