

2 October 2015

## UPDATE ON TERMITE RESOURCES

IMX Resources Limited (**ASX: IXR**) ('**IMX**' or the '**Company**') provides the following update in relation to the liquidation of Termite Resources NL ('**Termite**').

On 16 September 2015, IMX received a letter of demand from the liquidators of Termite, which provides notice of a potential claim against certain directors and officers of Termite, including current IMX CEO Phil Hoskins, as well as against IMX itself.

**The Company believes that its liability in relation to the potential claim from the Termite liquidators will be limited to legal costs incurred in defending the matter, which are estimated to be approximately a maximum of \$450,000 even in the event that proceedings were notified and a trial took place.**

### Background information

Termite was wholly-owned by Outback Iron Pty Ltd ('**Outback**') an incorporated joint venture entity, itself a half-owned subsidiary of IMX. Termite undertook the management and operation of the Cairn Hill iron ore mine in South Australia. As a result of the unexpected and significant downturn in iron ore prices in the second quarter of 2014, IMX announced on 19 June 2014 that the directors of Termite had appointed Voluntary Administrators to Termite. Subsequently, on 15 September 2014, Termite's creditors voted to place that company into liquidation.

### IMX's response to potential claim

The Company has engaged Clayton Utz, one of Australia's leading litigation firms, to represent its interests. Mr Cameron Belyea, a senior litigation partner with Clayton Utz, with particular experience in dealing with liquidators, is leading the engagement for the Company. A summary biography of Mr Belyea is included as an appendix.

Clayton Utz has written to the liquidators outlining facts the Company says show a claim should not be brought against it, some of which are set out on the following page. The liquidators will now consider those matters in consultation with their legal counsel. If the liquidators still proceed against the Company, and lose, the Company will rely upon its letter to seek costs personally from the liquidators.

IMX Chairman Derek Fisher commented, "The letter received from the liquidators on 16 September was completely unexpected, particularly given that liquidators accepted the view of the voluntary administrators that Termite was not insolvent until it was placed in voluntary administration in June 2014. I can understand how the quantum of the potential claim included in the letter from the liquidators, being \$46 million or in the alternate \$75 million, may have caused alarm to investors, particularly in light of the Company's market capitalisation. However, I would like to reassure all investors that our initial legal advice supports the Company's view that any claim should not result in any negative economic outflow. It is the Board's view that the potential claim is weak. We are doing everything possible to resolve this matter as quickly as possible."

The Company lodged its year-end financial statements on 30 September 2015. On the basis that the potential claim against IMX, as presently understood, is considered by the Company to be more likely to fail than succeed (the relevant test for accounting standards), no provision for a claim has been recognised.

## **Basis of the potential claim**

The basis of the potential claim is that Termite should have retained sufficient cash reserves to pay life-of-mine take-or-pay contract arrangements with third party providers, despite there being no requirement, contractual or otherwise, to do so, and despite the liquidator having already accepted that Termite was not facing insolvency until or about the time that it entered into voluntary administration.

In the letter informing of the potential claim, the basis of the claim against IMX specifically, is that it was operator of the Cairn Hill mine and a deemed director of Termite. IMX refutes both assertions and the letter sent by Clayton Utz to the liquidators included the following matters that the Company believes the potential claim fails to consider:

- Termite was an independent entity with a board independent of IMX.
- Termite was the operator of the Cairn Hill mine, not IMX. Termite undertook its own operations, employing its own operational, financial and administrative staff and directly engaging contractors.
- In relation to distributions paid by Termite to Outback:
  - Termite paid distributions to Outback based on a policy approved by the Termite board of directors, which restricted any such distributions if iron ore and copper pricing was forecast to move below production costs – this never happened before distributions ceased in March 2014 (and did not happen until around June 2014, when administrators were immediately appointed by the Termite directors).
  - The quantum of specific distributions was governed by criteria in the Distributions Policy, not by any ad hoc requests of Termite's shareholders.
  - Termite was solvent, and significantly so, at the time that each distribution was made. The liquidators have not suggested otherwise.
  - No distributions were made to Outback after March 2014, when Termite was still generating a cash margin of approximately 20% per tonne.
  - There was no contractual limitation on making distributions to Outback, nor is there a principle of law restricting distributions of surplus cash to shareholders by solvent companies.

IMX reminds shareholders that certain former directors and officers of Termite who are also named as intended defendants should a claim proceed, are expected to be insured for legal costs and for any claims against them that are ultimately successful. However, IMX believes there is significant evidence which demonstrates that at all times they acted in the best interests of Termite shareholders and the distributions paid to Outback were made in circumstances during which Termite was generating positive cash flow and was solvent.

## **Next steps**

Clayton Utz has written to the liquidators outlining facts the Company says show a claim should not be brought against it. The liquidators will now consider those matters in consultation with their legal counsel. IMX looks forward to a response from the liquidators of Termite and has offered to speak with the liquidators in the structured environment of a mediation in order to expedite a resolution to this matter. IMX will continue to keep shareholders informed.

In the meantime, shareholders are invited to contact myself, or the Company Secretary Stuart McKenzie.



**DEREK FISHER**

**Chairman**

For further information, please contact:

**Stuart McKenzie**  
**Commercial Manager and Company Secretary**  
**Tel: +61 8 9388 7877**

**Media**  
**Michael Weir/Richard Glass – Citadel Magnus**  
**Tel: +61 8 6160 4903**

**About IMX Resources Limited**

IMX Resources is an Australian minerals exploration company that holds a 5,800 km<sup>2</sup> tenement package at the Nachingwea Property in south-east Tanzania. The Nachingwea Property hosts the Chilalo Graphite Project, the Ntaka Hill Nickel Project and the Kishugu and Naujombo Gold Prospects. IMX's primary focus is on high-grade, high quality graphite and it is rapidly advancing development of the Chilalo Graphite Project. Chilalo is located approximately 220 km by road from the deep water commercial Mtwara Port, the majority of which is a sealed main road. IMX aims to become a respected supplier of high quality graphite for the clean technology economy.

To find out more, please visit [www.imxresources.com.au](http://www.imxresources.com.au).

**APPENDIX: BIOGRAPHY OF MR CAMERON BELYEA**

In over 25 years Cameron Belyea has built a reputation as a leading lawyer in contested debt and capital restructuring, banking & finance recoveries and litigation, complex insolvencies, commercial litigation (especially takeovers, contested corporate, shareholder/oppression disputes and contested shareholder and director meetings), and tax controversy disputes.

Cameron is a vice president and a member of the national board of the Turnaround Management Association Australia, Inc., a member of the Law Council of Australia and various industry committees. He is also a former member of the Clayton Utz National Board.

**Cameron's recognition includes:**

- **Best Lawyers Australia:** named Lawyer of the Year, Insolvency and Reorganisation Law (2015-2016)
- **Best Lawyers Australia:** voted by peers as one of Australia's Best Lawyers in
  - Insolvency and Reorganisation (2012-2016)
  - Litigation (2012-2016)
- **Chambers & Partners Australia:** Other Noted Practitioners – Restructuring / Insolvency (2015)
- **IFLR 1000:** Leading Practitioner Restructuring & Insolvency (2012-2014)
- **Doyles Guide of Leading Lawyers:** Pre-eminent in Western Australia (2011-2015)