

2<sup>nd</sup> April 2020

## Appointment of Lalive as Legal Advisor in Claim to Arbitration

- 
- **Highly experienced international investment arbitration law firm Lalive appointed to represent Claim to Arbitration against Government of Tanzania**
  - **Lalive’s lawyers have significant experience in investment arbitration and extensive experience in claims against the Government of Tanzania**
  - **Discussions significantly advanced with litigation funding firms to support legal costs**
  - **Potential remains for a mutually acceptable outcome to be negotiated with the Government of Tanzania**
  - **If agreement cannot be reached by mid-July, a Claim can be referred to the International Centre for the Settlement of Investment Disputes (ICSID), part of the World Bank**
  - **The quantum of any Claim for compensation may include, but will not be limited to:**
    - **the value of historic investment made by Indiana in Tanzania.**
    - **the value of the project at the time that tenure was expropriated.**
    - **damages the Company has suffered as a result of Tanzania’s acts and omissions.**
- 

Indiana Resources Limited (ASX: IDA) (**‘Indiana’** or the **‘Company’**) provides the following update on legal activities in relation to its majority shareholding position in Ntaka Nickel Holdings Ltd (**“NNHL”**, incorporated in the United Kingdom) and the Ntaka Hill Nickel Project located in the Nachingwea Property in south-eastern Tanzania (the **“Project”**). Indiana is the manager of the Joint Venture for the Project and is leading activities with regards to this matter in liaison with the Board of NNHL. Further background is contained in the latter part of this release.

Following the release of a Request for Proposal (**“RFP”**) for the provision of ongoing legal advice in regards to the Claim in early March 2020, a number of competitive proposals were received from several experienced and highly respected international investment arbitration law firms. A review of each proposal was undertaken by both Indiana and the Board of NNHL. The two boards were unanimous of their selection of Lalive to represent NNHL.

One of the key factors in selecting Lalive is its innovative approach to fees, which included deferring costs until litigation funding had been secured and the advanced discussions with litigation funders to support the legal costs and additional costs that may be incurred in the process.

### **Company Comment**

**Indiana’s Executive Chairman Bronwyn Barnes said:** *“We are very confident that Lalive can deliver a strong team and a clear financial proposal to support our potential arbitration with the Government of Tanzania. Whilst we remain disappointed at the lack of response from the Government to our correspondence on this important issue, we are now moving actively to swiftly prepare our case for arbitration.”*

## **Background to Claim**

In July 2017, the Government of Tanzania introduced wide-ranging and severe amendments to the Mining Act 2010, which, *inter alia*, abolished the legislative basis for the Retention Licence classification with no replacement classification.

On 10 January 2018 Tanzania published the Mining (Mineral Rights) Regulations 2018. Under Regulation 21 of these Regulations, Tanzania cancelled all Retention Licences issued prior to 10 January 2018 at which point they ceased to have any legal effect. The rights over all areas under Retention Licences, including the Retention Licence held for the Project, were immediately transferred to the government of Tanzania.

During the time from January 2018 to December 2019, the Company actively engaged with the Tanzanian Minister for Energy and Minerals and the Mining Commission in an effort to resolve a suitable tenure mechanism for the Project licence to be reinstated.

A submission presented to the Government in May 2018 included an application for a Prospecting Licence as recommended by Government Officials. Following numerous visits to Tanzania and meetings with the Minister for Energy and Minerals, Mining Commission and other senior government officials, a further submission was presented to the Minister for Energy and Minerals and the Mining Commission in October 2019 that outlined a four-year work programme and a US\$8-11 million proposed budget to progress the Project. At a meeting on 9 December 2019 with the Minister for Energy and Minerals, the Mining Commission and other senior government officials, the Chairman of Indiana was reassured that the Company's historic investment would be respected and the Government would shortly advise a process to agree an appropriate tenure for the Project.

At all times Tanzanian Government representatives reassured company representatives, including Indiana Board members that visited Tanzania for the purpose of collaborative engagement with the Government, that the historic investment of the Company would be recognised and that our rights would be respected and protected.

On 19 December 2019, the Mining Commission of Tanzania announced a public invitation to tender for the joint development of areas covered previously by retention licences (the "**19 December Tender**"). It was a condition of the 19 December Tender that the successful bidder compensate the previous retention licence holder for its exploration costs incurred. This public invitation was not sent to the Company but was advertised on the website for the Ministry of Energy and Minerals.

On 20 December 2019, the Mining Commission of Tanzania announced a revised public invitation to tender (the "**20 December Tender**"). The 20 December Tender removed the condition that the successful bidder compensate the previous retention licence holder for its exploration costs incurred.

Through the measures described above, it is now clear that Tanzania has removed the ownership of the project from NNHL and its local subsidiary (the "**Investors**"), and in doing so has breached its obligations to the Investors under the UK-Tanzania BIT (the "**BIT**") and international law. These include, but are not limited to:

- a) Tanzania's obligation not to nationalise or expropriate the Investors' investments or subject them to measures having effect equivalent to nationalisation or expropriation without prompt, adequate and effective compensation under Article 5(1) of the BIT;
- b) Tanzania's obligation to accord fair and equitable treatment to the Investors' investments under Article 2(2) of the BIT.

Article 8(3) of the BIT provides that the Investors may submit the dispute to the International Centre for the Settlement of Investment Disputes ("ICSID") if the Investors and Tanzania are unable to reach an agreement concerning the dispute within six months of the dispute arising (in this instance from the date of the Investors' dispute notice being 14 January 2020). ICSID is an arm of the World Bank and the treaty underlying the institution, the ICSID Convention, has been ratified by 154 States. An award issued by ICSID is enforceable in any one of those 154 member States as if it were a judgment of one of their own courts. Partly because of this, States have overwhelmingly and historically complied voluntarily with the payment terms of such awards.

Consequently, a Notice was delivered to the President of Tanzania, H. E. The Hon John Magufuli, to the Tanzanian Solicitor General and to the Tanzanian Ministry of Energy and Minerals on 14 January 2020, that a dispute had arisen in relation to the Investors' investment in the Ntaka Hill Nickel Project. In delivering that Notice the Investors notified Tanzania of the commencement of the abovementioned six-month period.

The Notice of Intent is necessary in order to preserve the Company's rights to initiate arbitration should a resolution with the Tanzanian government not be reached.

Further information on the Ntaka Hill Nickel Project, including historical exploration reporting and releases relating to development studies, can be found at the Company's website [www.indianaresources.com.au](http://www.indianaresources.com.au)

### **Ends**

*This announcement is authorised for release to the market by the Chairman of Indiana Resources Limited with the authority from the Board of Directors. For further information, please contact:*

**Bronwyn Barnes**  
**Non-Executive Chairman**  
**T: +61 417 093 256**

**Aida Tabakovic**  
**Company Secretary**  
**T: +61 8 9481 0389**

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