



Australian Government

Takeovers Panel

**Reasons for Decision
IndiOre Limited
[2019] ATP 4**

Catchwords:

Decline to conduct proceedings – convertible notes – shareholder approval – disclosure

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
NO	NO	NO	NO	NO	NO

INTRODUCTION

1. The Panel, Teresa Dyson, Rod Halstead (sitting President) and Sarah Rennie, declined to conduct proceedings on an application by Mr Benjamin Pauley in relation to the affairs of IndiOre Limited. The application concerned whether IndiOre’s shareholders were misled when they voted to approve an issue of convertible notes. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable until such time as the notes had been issued or it became clear that it was IndiOre’s intention to issue the notes. IndiOre undertook not to do so until it had completed a previously announced strategic review.

2. In these reasons, the following definitions apply.

Applicant	Mr Benjamin Pauley
First Samuel	First Samuel Limited
IndiOre	IndiOre Limited
Meeting	IndiOre’s annual general meeting held on 27 November 2018
Notes	convertible notes to be issued to First Samuel under the facility described in paragraph 4

FACTS

3. IndiOre is an ASX listed company (ASX code: IOR). IndiOre is focused on bulk commodity development opportunities via iron ore production in India.
4. On 4 September 2018, IndiOre announced that it had secured \$6 million through an unsecured 3 year convertible note facility from its major shareholder, First Samuel.
5. On 27 November 2018, at the Meeting, IndiOre shareholders passed a resolution approving the issue of the Notes pursuant to ASX Listing Rule 7.1. The notice of

Meeting stated that IndiOre intended to use the funds raised from the Notes towards its Phase 3 wet plant expansion, mine development and general working capital.

6. On 10 December 2018, IndiOre's securities were placed in a trading halt pending release of an announcement.
7. The following day IndiOre requested a voluntary suspension so that its board could *"finalise a detailed review of the Company's resources base underpinning the P3 project as recent drilling activities, although still ongoing, have not met the Company's expectations. The Company will also be using the suspension as an opportunity to escalate due diligence and negotiations on several opportunities that the Company has recently been evaluating in India."*
8. On 7 January 2019, IndiOre announced that it had completed its drilling program and the results showed insufficient defined resources to justify mining on any of the project areas or further expenditure on the projects. As a consequence, IndiOre immediately cancelled the 'P3 project' and announced an independent review of the decision to build the project, in particular the Phase 3 expansion. The announcement stated that *"First Samuel has provided a verbal undertaking to leave the \$6 million draw-down facility previously provided to the Company by them in place, subject to agreement into the strategy going forwards post this significant change"*.
9. In an announcement dated 28 January 2019, following the application to the Panel, IndiOre requested an extension to its voluntary suspension pending finalisation of its business strategy review previously announced on 11 December 2018.

APPLICATION

Declaration sought

10. By application dated 22 January 2019, the Applicant sought a declaration of unacceptable circumstances. The Applicant submitted (among other things) that:
 - (a) at least some of the circumstances leading to the *"drastic"* changes to IndiOre's business and suspension must have been known by the board at the time of the Meeting and accordingly, that IndiOre's shareholders were *"effectively misled"* when they voted to approve the issue of Notes
 - (b) on the Applicant's calculations, if IndiOre's share price remained constant for 3 years and First Samuel's Notes were repaid in shares, First Samuel would hold 44% of IndiOre¹ while if the share price were to fall 50%, First Samuel would hold 57% of IndiOre and
 - (c) based on past disclosures and statements made at the Meeting regarding IndiOre's Phase 3 plans and IndiOre's supply of resources, IndiOre's

¹ At the time of the Meeting, First Samuel had voting power of 19.67% in IndiOre based on its most recent substantial holder notice

shareholders *“had every reason to believe the share price would be sustained and no reason to believe that First Samuel might end up with a controlling stake”*.

Final order sought

11. The Applicant sought a final order for a resolution to approve the issue of the Notes to be put to IndiOre shareholders again on a fully informed basis.

DISCUSSION

12. Given the change in IndiOre’s strategy in relation to the Phase 3 project, it was unclear to us whether IndiOre intended to continue to rely on the approval it had obtained for the issue of the Notes or whether any Notes had been (or would still be) issued. In light of this, we decided to request further information before deciding whether to conduct proceedings.
13. IndiOre advised that it would need a month to provide a definitive response as to whether it intended to rely on the previous approval for the Notes. IndiOre submitted that it was currently restructuring its business and would be revising its financial position and forecast requirements. In the process, IndiOre submitted that it would examine requirements for shareholder approval regarding both funding and any changes in business activities. IndiOre also advised that no Notes had been issued to First Samuel.
14. Given the Panel’s role to resolve matters quickly, we do not consider it appropriate to delay proceedings while IndiOre conducts its strategic review.
15. IndiOre offered, and we decided to accept, an undertaking² from IndiOre that it would not to draw down on the First Samuel facility prior to the later of the completion of its strategic review and 5 March 2019. In light of the undertaking, we declined to conduct proceedings. There is no reasonable prospect that we will make a declaration of unacceptable circumstances until such time as the Notes have been issued or it becomes clear that it is IndiOre’s intention to issue the Notes.
16. We reached no views on whether there was appropriate disclosure in the notice of Meeting regarding the potential control effect of the Notes issue, given First Samuel’s current voting power in IndiOre. If, following the strategic review, IndiOre issues the Notes without first having obtained a further shareholder approval (or the notice of meeting in relation to a further shareholder approval does not specify the purpose for which the funds are to be used or address the potential control effect of the Notes) there may be grounds for a further application to be made at that time.

DECISION

17. For the reasons above, we do not consider that there is any reasonable prospect that we would make a declaration of unacceptable circumstances. Accordingly, we have

² By email

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decided not to conduct proceedings in relation to the application under regulation 20 of the *Australian Securities and Investments Commission Regulations 2001* (Cth).

Orders

18. Given that we have decided not to conduct proceedings, we do not (and do not need to) consider whether to make any interim or final orders.

Rod Halstead
President of the sitting Panel
Decision dated 15 February 2019
Reasons given to parties 25 February 2019
Reasons published 27 February 2019

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Advisers

Party	Advisers
Mr Benjamin Pauley	-
IndiOre Limited	-