

## ICSID Rules Majority of Tanzania's Annulment Request Without Merit

### Highlights

- ICSID has struck out two of three grounds relied upon by Tanzania in its application to annul the Award delivered to the Claimants in July 2023
- ICSID found that the following grounds relied upon by Tanzania in its application for annulment were manifestly without legal merit:
  - manifest excess of powers;
  - failure to state the reasons on which the Award is based; and
  - serious departure from a fundamental rule of procedure with respect to the ICSID Tribunal's determination on the allocation of costs
- The findings are not open to challenge – Tanzania prohibited from raising these grounds in submissions at the hearing of its annulment application
- Annulment now continues with the sole focus on the remaining complaint by Tanzania – that the Tribunal seriously departed from fundamental rules of procedure
- Timetable for annulment proceedings now confirmed
- Tanzania's Memorial on Annulment is due on 15 March 2024
- Total amount payable by Tanzania under the Award now stands at US\$120 million – comprising US\$116 million to date plus costs of US\$4 million
- Interest continues to accrue at the rate of approximately US\$1 million per month until the full amount is paid to the Claimants

Indiana Resources Limited (**ASX: IDA**) ("**Indiana**" or the "**Company**") provides the following update on the dispute with the United Republic of Tanzania ("**Tanzania**") which was the subject of arbitration at the International Centre for Settlement of Investment Disputes ("**ICSID**"), a division of the World Bank.

Indiana is the majority shareholder in Ntaka Nickel Holdings Ltd ("**NNHL**"), Nachingwea UK Ltd ("**NUKL**") (both incorporated in the United Kingdom), and Nachingwea Nickel Ltd ("**NNL**", incorporated in Tanzania); together known as the "**Claimants**", and the manager of the joint venture and responsible for activities relating to the arbitration against Tanzania.

Indiana reports that, following a hearing on 20 December 2023, the *ad hoc* Committee constituted to determine the Annulment Application by Tanzania has now delivered its decision on the Claimants' preliminary objections to Tanzania's Annulment Application pursuant to ICSID Arbitration Rule 41(5).

#### CAPITAL STRUCTURE

615,237,061  
Shares on Issue  
  
A\$0.082  
Share Price  
  
50M  
Market Cap

#### BOARD & MANAGEMENT

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Robert (Bob) Adam  
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David Ward  
Non-Executive Director

Maja McGuire  
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The *ad hoc* Committee found that the following grounds relied upon in Tanzania's Annulment Application are **manifestly without legal merit**, and granted the Claimants' preliminary objections under Rule 41(5) with respect to those grounds:

- (a) the Tribunal manifestly exceeded its powers;
- (b) the Tribunal failed to state the reasons on which the Award is based; and
- (c) the Tribunal departed seriously from a fundamental rule of procedure with respect to the Tribunal's determination on the allocation of costs.

#### **Executive Chairman Bronwyn Barnes commented:**

*"This is a very positive outcome for the Claimants. We have consistently maintained that the documents lodged by Tanzania do not demonstrate that Tanzania will be able to meet the high threshold necessary to annul the Award, and this latest ruling from ICSID reflects that position. Tanzania's request for annulment should be seen for what it is – an attempt to delay and deny compensation to the Claimants for the loss of their investment following the illegal expropriation of the Ntaka Hill Nickel Project in 2018.*

*We are pleased that the Committee has ruled that the majority of Tanzania's grounds for seeking annulment are manifestly without legal merit. It is our hope that Tanzania will recognise the futility of their current approach to this matter and pay the compensation owed to the Claimants under the Award so that this matter can finally be resolved."*

#### **Detail of the Decision**

The decision delivered by the Committee advised as follows:

1. The Claimants' preliminary objection under ICSID Arbitration Rule 41(5) is granted with respect to the Annulment Application based on:
  - (a) Article 52(1)(b) – manifest excess of powers;
  - (b) Article 52(1)(e) – failure to state the reasons on which the Award is based; and
  - (c) allegation 21 in relation to the Tribunal's allocation of costs which Tanzania challenged under Article 52(1)(d) alleging there to be a serious departure from a fundamental rule of procedure.
2. The Claimants' preliminary objection under ICSID Arbitration Rule 41(5) is dismissed with respect to the Annulment Application based on Article 52(1)(d) – a serious departure from a fundamental rule of procedure (with the exception of allegation 21).
3. The Committee reserves its decision on costs until its Decision on the Application for Annulment.

The Committee also stated that it was not convinced that an expansion of Tanzania's arguments in subsequent submissions would alter the Committee's decision. In the course of its decision, the Committee noted that no previous *ad hoc* committee has granted a Rule 41(5) objection in any annulment case.

The remaining grounds relied upon by Tanzania as the basis for its annulment application relate to complaints about what it alleges are “annullable errors” in the way that the ICSID Tribunal conducted the original arbitration proceeding.

The Committee recognised that some of Tanzania’s allegations are “**extremely preliminary, lacking substance and legal basis when reviewed one by one**”, but acknowledged that questions about the conduct of the Tribunal could not be answered by an analysis of the Award on its face. Therefore, the Committee determined that Tanzania should be given the opportunity to present its case and that the Claimants will be given the opportunity to rebut the same.

The Committee will make a decision on costs for this decision together with its determination on the Annulment Application.

### Award Total and Monthly Interest Breakdown

The Award currently totals **US\$120,174,819**, being **US\$116,061,238**, the amount of the Award plus interest, and costs of **US\$4,113,581**.

Interest on the Award continues to accrue at the rate of approximately US\$1 million a month. The table below outlines the monthly increase in award debt over the next months.

Date	Total Award US\$
29 February 2024	120,905,336
31 March 2024	121,897,227
30 April 2024	122,865,141
31 May 2024	123,873,676
30 June 2024	124,857,832
31 July 2024	125,883,290
31 August 2024	126,917,458
30 September 2024	127,926,627
31 October 2024	128,978,148

### Timeline for Annulment

The Committee’s timeline for the annulment proceeding is set out below:

1. Tanzania’s Memorial on Annulment 15 March 2024
2. Claimants’ Counter-Memorial on Annulment 26 April 2024
3. Tanzania’s Reply on Annulment 24 May 2024
4. Claimants’ Rejoinder on Annulment 21 June 2024
5. Pre-Hearing Organizational Meeting – within three weeks of the Rejoinder on Annulment (exact date to be decided in consultation with the Claimants and Tanzania).
6. Hearing on Annulment – to be decided in consultation with the Claimants and Tanzania.

## Background to Annulment Application and Rule 41(5) Objection

The Award was rendered in favour of the Claimants on 14 July 2023. Tanzania filed an application for annulment of the Award on 25 July 2023.

The specific and narrow grounds that may, in exceptional circumstances, justify annulment are articulated in ICSID Convention Article 52(1), specifically:

- a. that the Tribunal was not properly constituted;
- b. that the Tribunal has manifestly exceeded its powers;
- c. that there was corruption on the part of a member of the Tribunal;
- d. that there has been a serious departure from a fundamental rule of procedure; or
- e. that the award has failed to state the reasons on which it is based.

In this case, Tanzania applied for the annulment of the Award on three grounds, asserting that:

- i. the Tribunal manifestly exceeded its powers;
- ii. there was a serious departure from a fundamental rule of procedure; and
- iii. the Tribunal failed to state the reasons on which the Award is based.

The Hearing of the Claimants' Rule 41(5) Objection was held on 20 December 2023.

In deciding to grant the Claimants' preliminary objection in part, the *ad hoc* Committee noted that in annulment proceedings, the preliminary objection under Rule 41(5) that a claim is manifestly without legal merit is "*an exceptional remedy against an exceptional remedy*".

Nevertheless, the *ad hoc* Committee found that two out of three of the grounds relied upon by Tanzania, as well as one of Tanzania's procedural objections, are manifestly without legal merit, and that an expansion of Tanzania's arguments would not alter the Committee's decision.

### **ENDS**

*This announcement is authorised for release by the Chair of Indiana Resources Limited with the authority from the Board of Directors.*

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