

# A sigh of relief from IronRidge Resources Limited

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Are you an Australian registered company looking to list on AIM, the London Stock Exchange, the Singapore Stock Exchange or another overseas stock exchange that is not a 'prescribed financial market' under the Corporations Act? If so, we have encouraging news for you.

HopgoodGanim acted for IronRidge Resources Limited (**IRR**) in respect of its recent admission to AIM. As part of that process, HopgoodGanim sought and obtained ASIC relief so that IRR does not obtain a 'relevant interest' in its own shares merely through entry into escrow arrangements required under the AIM Listing Rules.

ASIC has not previously granted such relief in respect of an AIM listing, and only once previously in respect of a listing on an overseas securities exchange. This relief granted to IRR significantly reduced the complexity surrounding the shareholder approvals that IRR was required to get in order to facilitate its admission to AIM.

In this article, we provide a brief overview of the circumstances giving rise to the need for relief and the key aspects of the relief obtained.

## The transaction

On 12 February 2015, iron ore explorer, IronRidge Resources Limited (**IRR**) completed its GBP£9.7 million capital raising and listing on AIM.

The transaction raised a number of unique and challenging legal issues by virtue of the fact that IRR is subject to both the *Corporations Act 2001* (Cth) and the *AIM Rules for Companies*, the latter being designed largely with UK company law and practice in mind.

## The complexity

Under the AIM Rules, an entity seeking admission must enter into lock-in arrangements (the UK equivalent of escrow arrangements) with certain shareholders for a period of one year from admission. Accordingly, IRR entered into lock-in deeds with each of its directors as well as each shareholder with an interest of 10% or more (**Lock-in Deeds**). The total number of shares subject to the Lock-In Deeds is approximately 75% of the issued share capital of IRR (**Locked-in Shares**).

Section 606 of the Corporations Act restricts the acquisition of a 'relevant interest' in more than 20% of issued voting shares in a company. Section 608(8) makes it clear that a company may acquire a relevant interest in its own shares.

Under the Lock-in Deeds, IRR did not gain any ownership interest in the Locked-in Shares nor an ability to control how they are voted. However, IRR was considered to acquire a relevant interest in the Locked-In Shares by virtue of its contractual right to enforce the undertakings in the Lock-In Deeds. In effect it arguably had some negative control over the relevant shareholders' power to dispose of the Lock-in Shares.

In addition, the following parties were also deemed to hold a relevant interest in the Locked-in Shares:

- DGR Global Limited (**DGR**), which through the operation of section 608(3), was deemed to hold the same relevant interest held by IRR due to the fact that its voting power in IRR was more than 20%; and
- SP Angel, the nominated advisor to IRR for the purposes of the AIM Rules, which in accordance with standard practice in the UK, was a party to each of the Lock-in Deeds.

As a result of the above, absent any relief from ASIC, IRR would require various shareholder approvals under the takeover provisions of the Corporations Act in order to proceed with its listing. This made for a particularly complex set of meeting materials and potential confusion for shareholders in relation to what is essentially a matter of the technical operation of the law.

Were IRR seeking listing on the ASX as opposed to AIM, ASIC Class Order 13-520 would have provided relief to IRR such that it did not obtain a relevant interest in its own shares. The relief did not apply however, as IRR sought a listing on AIM, which is not a “prescribed financial market” under the Corporations Act.

## **The relief**

On behalf of IRR, HopgoodGanim sought and obtained relief from ASIC to the effect that IRR (and so DGR) and SP Angel did not obtain a relevant interest in the Locked-in Shares. The relief was provided on the following basis:

- IRR is not listed on a prescribed financial market;
- IRR applied for its shares to be admitted to trading on AIM;
- SP Angel is an approved nominated advisor and has agreed to act as nominated advisor to IRR in relation to its admission to AIM;
- Lock-in Deeds include certain required terms, for example:
  - restrictions on the disposal but not the voting rights of the locked-in shareholder, subject to certain exclusions in relation to takeover bids (including a proportional bid); and
  - a term that the deeds terminate 24 months after admission;
- IRR is obliged to make certain disclosure on its website in relation to the lock-in arrangements, including disclosure of copies of the Lock-in Deeds, the ASIC relief instrument, initial, and ongoing disclosure in relation to the number of shares subject to lock-in arrangements, and the total issued share capital of IRR.

The value of the relief for IRR lay in resolving a complex series of issues without the need for shareholder approval. The issue arose merely as a result of the technical operation of the Corporations Act. The relief avoided potential confusion amongst shareholders and uncertainty for the company in the lead up to admission.

## **The takeaway point**

The relief provided to IRR is novel and was granted having regard to IRR’s particular circumstances. Accordingly, there is no guarantee that ASIC will grant such relief to other companies moving forward.

However, the granting of this relief for IRR is an encouraging sign for other Australian entities in similar situations.

If you are an entity that is seeking to list on an exchange other than the ASX, Chi-X, the Asia Pacific Exchange, the National Stock Exchange of Australia and the SIM Venture Securities Exchange, then if all goes well, IRR may have set a useful precedent in removing one of the more cumbersome and complex hurdles involved in the listing process.

For more information or discussion, please contact HopgoodGanim Lawyers' [Corporate Advisory & Governance](#) team.

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