

October 29, 2013

IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,  
MANITOBA, ONTARIO, NEW BRUNSWICK, NOVA SCOTIA,  
PRINCE EDWARD ISLAND AND NEWFOUNDLAND AND LABRADOR  
(THE "JURISDICTIONS")

AND

IN THE MATTER OF  
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS  
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF  
MINERAL DEPOSITS LIMITED (THE "FILER")

DECISION

**Background**

The securities regulatory authority or regulator in each of the Jurisdictions (the "**Decision Maker**") has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") that the Filer is not a reporting issuer in the Jurisdictions (the "**Decision Sought**").

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review application):

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

**Interpretation**

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

**Representations**

This decision is based on the following facts represented by the Filer:

1. The Filer is a company established under the *Australian Corporations Act 2001* (Commonwealth).

2. The registered and head office of the Filer is located at Level 17, 530 Collins Street, Melbourne Victoria 3000 Australia.
3. The Filer has no operations, employees or offices in Canada.
4. The Filer is an Australian based mining company in the business of finding, mining and processing mineral sands resources. The Filer owns 50% of TiZir Limited which owns the Grande Côte Mineral Sands Project in Senegal, West Africa and an ilmenite upgrading facility in Tyssedal, Norway.
5. The Filer's ordinary shares have been listed on the ASX since March 10, 1997.
6. The Filer is a reporting issuer in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the "**Jurisdictions**"), and its outstanding ordinary shares were listed for trading on the Toronto Stock Exchange ("**TSX**") and currently are listed on the Australian Securities Exchange ("**ASX**").
7. The Filer became a reporting issuer in the Jurisdictions upon the completion of its initial Canadian public offering pursuant to a final prospectus dated December 12, 2007.
8. The Filer qualifies as a "designated foreign issuer" under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* and has relied on and complied with the exemptions from Canadian continuous disclosure requirements afforded to designated foreign issuers under Part 5 of National Instrument 71-102.
9. The capital structure of the Filer is composed of an unlimited number of ordinary shares, without par value. As of June 28, 2013, 83,538,786 shares were issued and outstanding and 250,000 unvested performance rights over ordinary shares were on issue. There is no exercise price pertaining to the performance rights and all expire on 31 August 2016.
10. The TSX has confirmed that the ordinary shares were delisted from the TSX at the close of trading on June 29, 2012. Following the delisting from the TSX, the Filer's Canadian share register was closed on July 27, 2012.
11. The Filer is not eligible for the simplified procedure pursuant to CSA Staff Notice 12-307 and BC Instrument 11-502 is not available as its securities are traded on a marketplace in Australia.
12. Residents of Canada do not, directly or indirectly, beneficially own more than 2% of each class or series of outstanding securities of the issuer worldwide. The due

diligence conducted by the Filer in support of the foregoing representation is as follows:

- a) The share register analysis was conducted based on an extract of the register of members of the Filer dated June 28, 2013. As of this date there were 83,538,786 ordinary shares on issue and outstanding and administered on a single Australian share register. The register extract consisted of all shareholdings of greater than or equal to 50,000 shares and contained a total of 37 registered securityholders which made up 94.62% of the total share capital on issue.
- b) In order to undertake the analysis, tracing notices pursuant to section 672A(1)(a) of the *Corporations Act, 2001* ("**the Act**") were issued by Orient Capital Pty Ltd ("**Orient Capital**") as the Filer's duly appointed Agent. A direction under section 672 of the Act obligates the recipient of the tracing notice to disclose underlying beneficial ownership/relevant interest information to the issuer. The tracing notices were served on registered (direct) securityholders (irrespective of domicile) recognised as a custodian, nominee or broker ("**Custodian**") holding, requesting disclosure of underlying beneficial ownership/relevant interest details of the total shares held under their custody. On receipt of the disclosure information from the registered holders, subsequent tracing notices pursuant to section 672A(1)(b) of the Act were issued to disclosed (indirect) entities (irrespective of domicile) requesting underlying beneficial ownership/relevant interest details and total shares held under their custody. This process continued until the ultimate beneficial owner/relevant interest holders were identified. As a result of this process on both direct and indirect Canadian-based securityholders, Canadian-based securityholders were identified and the Canadian holder report was compiled. The report illustrates the beneficial owners or investment managers domiciled in Canada.
- c) In cases where a Canadian domiciled Custodian was not in a position to disclose the name and address details of the beneficial owner/relevant interest holders under their custody due to the Canadian Privacy Laws, Orient Capital obtained a generic breakdown of the number of beneficial holders under custody together with total shares held by each securityholder together with the respective Canadian state of domicile in which the securityholder resides. One Canadian Custodian holding 300 shares (0.00036% of the Filer's issued capital) would not provide the generic breakdown. In this case, it was assumed that their full custody position was held on behalf of a Canadian-based securityholder with the state of domicile being the location of the Custodian.
- d) From the analysis of the top 37 registered holders, 24 registered holders representing 77,781,627 shares were identified to hold on behalf of multiple underlying holders. From this analysis, 64 holders were identified as

Canadian domiciled beneficial owners representing 215,359 shares. 413 non-Canadian beneficial owners were identified holding 77,566,268 shares.

- e) Shareholdings outside of the top 37 registered holders holding shares less than or equal to 50,000 make up 5.38% of the issued share capital. This balance of shares was assumed to consist of holdings of a retail nature. These shareholdings were made up either of shares beneficially owned by the person(s) named on the register of members or by predominantly Australian domiciled private client brokers and non-responding or non-queried Custodians that typically hold on behalf of domestic retail clients.
- (i) Of the first group: a total of 2,383 registered holders (including joint holders and private companies) were identified holding 5,430,039 shares. For the purpose of ascertaining domicile of these holdings, the address on the register was taken as the resident address of the securityholder, and on this basis was only reflected in the Canadian holder report if the registered address of the securityholder was in Canada. Two of these holders had a registered address in Canada representing a combined total of 8,000 shares. 2,381 non-Canadian registered holders were identified holding 5,422,039 shares.
  - (ii) Of the private client brokers and non-responding or non-queried non-North American Custodians that hold on behalf of domestic retail clients, 30 registered holders were identified representing 327,120 shares. All 30 are boutique Australian or New Zealand investment firms. Based on their domicile and the size of their securityholdings, Canadian ownership is considered to be highly unlikely. For these reasons, these holders were classified as non-Canadian owners.
  - (iii) A further category was identified, that of non-Canadian beneficial owners with potential for multiple underlying holders identified through serving notices on the top 37 holders. This category arises due to the circumstances under which specialist Australian registry analysis service providers issue notices to Custodians to assess underlying ownership. This category represents beneficial owners that potentially hold for multiple entities identified through notices served on registered holders listed at point (d) above, but not issued further notices to investigate additional underlying holdings due to the nature of investor practices; namely, that such intermediaries (domestic banks and brokers) hold on behalf of domestic retail clients and so the likelihood that such banks/brokers resident outside of North America own on behalf of Canadian underlying holders is negligible. For these reasons, these holders were classified as non-Canadian owners. There were 48 intermediary holders (domestic banks and brokers) in this category. One of these holders, representing 120 shares, was identified as having a North American address and this individual holder has been categorised

as Canadian. The shares represented by the remaining 47 non-Canadian intermediary holders (2,025,655 shares) are included at point (d) above.

- (iv) The analysis conducted found that as at June 28, 2013, 67 residents of Canada directly and indirectly held 223,479 Ordinary shares representing 0.27% of the issuer's outstanding securities, distributed by province as follows:

Jurisdiction	Number of securityholders	Number of ordinary shares held	Percentage of issued capital
Alberta	11	3,635	0.0043
British Columbia	6	8,470	0.0101
Manitoba	1	200	0.0002
Newfoundland & Labrador	1	50	0.0000
Nova Scotia	3	182	0.0002
Ontario	38	204,402	0.2447
Quebec	5	6,270	0.0075
Saskatchewan	1	150	0.0002
North America	1	120	0.0001
<b>Total</b>	<b>67</b>	<b>223,479</b>	<b>0.2675</b>

- f) The 250,000 unvested performance rights over ordinary shares on issue are held by three individual holders, none of whom are Canadian or residents of Canada.
13. Residents of Canada do not, directly or indirectly, comprise more than 2% of the total number of securityholders of the issuer worldwide. The due diligence conducted by the Filer in support of the foregoing representation is as follows:
- a) As at June 28, 2013 there were 2,437 registered holders on the Filer's register of members. A majority of the Filer's securities are held indirectly through Custodians. A reliable estimate of total worldwide direct and indirect holders is difficult to determine and is an undertaking dependent on a wider application of the process described under representation 12 above.
- b) While it is difficult to reliably estimate the total number of holders of the issuer worldwide the Filer can reliably estimate the level of Canadian ownership based on the total register of members. In this instance, 64 Canadian beneficial holders are represented by 4 Custodians and there are an additional 2 resident Canadians holding securities directly, giving a total of 6 directly registered holders with Canadian ownership. Including the non-responding Custodian with a North American address representing 120 shares (therefore deemed to only represent 1 holder), then there are a total of

7 directly registered holders with Canadian ownership. Consequently, the level of Canadian ownership based on the total register of members is 0.29% (or 7 out of 2,437 registered members). The Filer believes this is the most accurate and reliable manner to assess Canadian ownership.

- c) Alternatively, the following can be represented. It is known that there were:
- (i) 64 Canadian domiciled beneficial owners identified through query notices on the top 37 holders. These beneficial owners are represented by 4 registered Custodians, representing 215,359 shares. The ratio of registered Custodians to beneficial holders is approximately 1:16.
  - (ii) 413 non-Canadian domiciled beneficial owners identified through query notices on the top 37 holders. These beneficial owners are represented by 20 registered Custodians, representing 77,566,258 shares. The ratio of registered Custodians to beneficial holders is approximately 1:21.
  - (iii) 2 directly registered Canadian domiciled owners, representing 8,000 shares.
  - (iv) 2,381 directly registered non-Canadian domiciled owners (including joint-owners and private companies), representing 5,422,039 shares.
  - (v) 79 non-responding and non-queried Custodians with the potential for further underlying ownership which is unknown and therefore must be estimated. The breakdown of this category is as follows:
    - (A) 1 beneficial owner with a North American address holding 120 shares. Due to such a small parcel of shares it is assumed that this holding was beneficially held by 1 owner and held by a Canadian beneficial owner.
    - (B) 30 registered Custodians with potential underlying ownership. All 30 are boutique Australian or New Zealand investment firms. Based on their domicile and the size of their securityholdings, Canadian investment is considered to be highly unlikely and, as such, all 30 are deemed to be non-Canadian holders. The Filer has conservatively estimated that these Custodians are individual owners. These Custodians represent 327,120 shares.
    - (C) 48 beneficial owners with potential underlying ownership. This category arises due to the circumstances under which specialist Australian registry analysis service providers issue notices to Custodians to assess underlying ownership. This category represents beneficial owners that potentially hold for multiple entities identified through notices served on registered holders listed at point

(c)(ii) above, but not issued further notices to investigate additional underlying holdings due to the nature of investor practices; namely, that such intermediaries (domestic banks and brokers) hold on behalf of domestic retail clients and so the likelihood that such banks/brokers resident outside of North America own on behalf of Canadian underlying holders is negligible. Of these, 1 beneficial owner holding a parcel of 120 shares was identified as having a North American address. Therefore, for the purposes of this exercise the Filer has assumed that this beneficial owner was Canadian and included this beneficial holder at point (A) above. The remaining 47 beneficial owners were classified as non-Canadian domiciled beneficial owners with potential for underlying ownership.

Generating a representative level of underlying beneficial ownership for these 47 non-Canadian beneficial owners can be estimated in two ways: a proportional share-ownership method and a ratio method.

Using the proportional share-ownership method: the Filer has conservatively assumed that each underlying indirect beneficial owner holds the average amount of shares identified in categories (c)(iii) and (c)(iv) above, being 5,430,029 shares over 2,383 holders for an average of 2,278 shares per holder. Consequently, it is estimated that there are an additional 916 non-Canadian beneficial owners.

Using the ratio method: by applying the most conservative underlying holder ratio identified in points (c)(i) and (c)(ii) above (being a ratio of approximately 1:16) to these 47 intermediaries, it is estimated that there are an additional 752 non-Canadian beneficial owners. Less conservatively, if the average ratio of points (c)(i) and (c)(ii) is applied (being a ratio of 24:477 or approximately 1:20) to these 47 intermediaries, then it is estimated that there are an additional 934 non-Canadian beneficial owners.

- d) Based on the above breakdown and applying the proportional share-ownership method, Canadian ownership is 1.76% of the total number of securityholders of the issuer worldwide (67 divided by 3,807).
  - e) Based on the above breakdown and applying the most conservative ratio method, Canadian ownership is 1.84% of the total number of securityholders of the issuer worldwide (67 divided by 3,643). Applying the less conservative average ratio method, Canadian ownership is 1.75% of the total number of securityholders of the issuer worldwide (67 divided by 3,825).
14. In order to determine that it meets the 2% test of the modified approach in CSA Staff Notice 12-307, the Filer has, over a period of time, reviewed (i) share register

analysis reports produced by Orient Capital bimonthly; (ii) share ownership and share count analysis reports produced by Orient Capital, and (iii) Geographical Analysis Reports prepared by Broadridge.

- Prior to delisting from the TSX and closing its Canadian share register, the Filer confirmed through Computershare (Australia and Canada), Broadridge analysis and Orient Capital analysis that Canadian residents did not own more than 2% of the Filer's shares, directly or indirectly, or comprise more than 2% of the Filer's security holders worldwide. As at April 30, 2012 the number of shares held by Canadians, or residents of Canada, whether through the Australian share register or in Canada, beneficially and of record, was 1,034,523 shares representing 1.24% of the total outstanding shares.
  - Analysis conducted since that time and via the process disclosed in representation number 12 and number 13 above illustrates the continued decline of Canadian ownership.
15. The Filer files continuous disclosure reports under Australian securities laws and is listed on the ASX. Such continuous disclosure reports are available to Canadian securityholders on the Filer's website at [www.mineraldeposits.com.au](http://www.mineraldeposits.com.au) and on the ASX website at [www.asx.com.au](http://www.asx.com.au).
16. The Filer has not taken steps to create a market for the ordinary shares and, in particular, has not conducted a prospectus offering in Canada since the initial offering in 2007, and has not privately placed any ordinary shares in Canada in the last 12 months. The Filer has no future plans to raise equity financing by private or public offering in Canada.
- The Filer only attracted a de minimis number of Canadian investors and the daily average volume of trading of the ordinary shares in the 12 months prior to delisting from the TSX on June 29, 2012 was approximately 1,912 ordinary shares per day, which accounted for approximately 0.8% of the Filer's worldwide daily trading volumes. In contrast, the average daily volume on the ASX for the same period represented approximately 237,170 ordinary shares per day.
17. None of the Filer's securities are listed, traded or quoted on a marketplace in Canada as defined in National Instrument 21-101 Marketplace Operation and the Filer does not intend to have its securities, listed, traded or quoted on such marketplace in Canada. The Filer has not maintained a listing for the ordinary shares on a Canadian marketplace or exchange for the last 12 months.
- The TSX confirmed that the ordinary shares of the Filer were delisted from the TSX at the close of trading on June 29, 2012. Following the delisting from the TSX, the Filer's Canadian share register was closed on July 27, 2012.

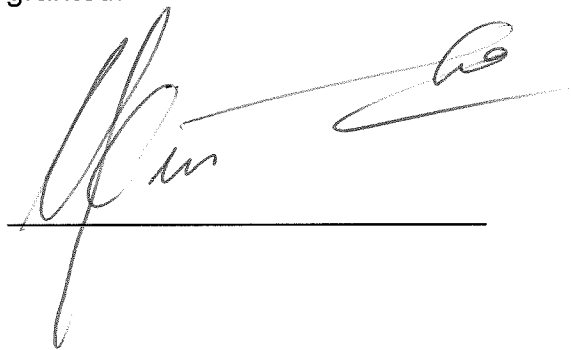


- Securityholders on the Canadian share register were given up to four weeks from the date the Filer delisted on the TSX to transfer their holdings to Australia if they had a preferred holding format. Securityholders who did not make a transfer during such period were advised that an automatic transfer would occur after the four week period ended on July 27, 2012. Prior to the July 27, 2012 deadline, 10 securityholders voluntarily transferred to the Australian share registry and 15 securityholders were automatically transferred by the Canadian transfer agent after this date. These securityholders included all holders on the Canadian register and not just Canadian residents. To date, no securityholder has expressed concern to the Filer regarding this transfer.
18. The Filer has provided advance notice to Canadian resident securityholders in a press release issued on June 13, 2012 that it intends to apply to the relevant securities commission in Canada for an order that it is not a reporting issuer.
  19. The Filer undertakes to concurrently deliver to its Canadian securityholders all disclosure that it would be required under Australian securities law or exchange requirements to deliver to Australian resident securityholders.
  20. The Filer is not in default of securities legislation in any Jurisdiction.
  21. The Filer is not in default of any reporting requirements or other requirement of the ASX.
  22. The Filer will not be a reporting issuer or the equivalent in any jurisdiction in Canada immediately following the Commission granting the Decision Sought.

**Decision**

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Decision Sought is granted.



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A handwritten signature in black ink, appearing to be 'D. S. C. A.', written over a horizontal line.