

2005 BCSECCOM 623

September 27, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - Securities Act s. 119 - Proxies/Information Circular Requirements - An issuer wants relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization, acquisition or amalgamation - The issuer is required to include historical financial statements for a business it is acquiring; it would be extremely difficult, if not impossible, to prepare certain of the historical financial statements because information to support an audit cannot be obtained and personnel with the historical information are not available; alternate financial information that is available will be provided about the business; information will be provided about the parties to the transaction sufficient for shareholders to assess the transaction as a whole

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 117 and 119

National Instrument 51-102, s. 9.1 and 13.1

Form 51-102F5, section 14.2

In the Matter of
the Securities Legislation of
Alberta, British Columbia, New Brunswick and Ontario (the “Jurisdictions”)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of
Datec Group Ltd. (“Datec”)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the “Legislation”) for:

An exemption from the requirement for the Filer to provide financial statement disclosure with respect to eLandia Solutions, Inc. (“eLandia”)

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for the years ended December 31, 2002 and December 31, 2003 in the management information circular (the “Information Circular”) prepared by the Filer and delivered to the Filer’s shareholders in connection with the annual and special meeting of the Filer’s shareholders scheduled to be held on October 28, 2005 (the “Requested Relief”);

Under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Alberta Securities Commission is the principal regulator for this application;

The decision evidences the decision of each of the Decision Makers.

Interpretation

Defined terms contained in National Instrument 14-101 have the same meaning in this decision unless they are defined in this decision.

Representations

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

- 1.1 the Filer is a corporation continued under the laws of the Province of New Brunswick and is a reporting issuer in British Columbia, Alberta, Ontario and New Brunswick, and is not in default under the Legislation.
- 1.2 The authorized share capital of the Filer consists of an unlimited number of common shares (“Datec Common Shares”). As at August 12, 2005, there were 28,801,101 Datec Common Shares issued and outstanding and 2,051,500 convertible securities issued by the Filer which may be exercised, converted or exchanged for 2,051,500 Datec Common Shares (the “Datec Convertible Securities”, and collectively with Datec Common Shares, the “Datec Securities”).
- 1.3 Datec Common Shares are listed on the Toronto Stock Exchange (the “TSX”) under the symbol “DGL” and are quoted on the “Other OTC” operated by NASDAQ under the symbol “DTGLF”
- 1.4 According to the shareholder records of the Filer as of August 9, 2005, the Filer has 39 registered shareholders resident in Canada holding a total of 10,229,085 Datec Common Shares (35.5%), and based upon information provided to the Filer by ADP Investor Communications those registered shareholders include intermediaries representing 1,309 beneficial shareholders of the Filer resident in Canada, holding an aggregate of 4,381,758 Datec Common Shares (15.2% of the total issued

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Datec Common Shares). Such Datec Common Shares are distributed as follows:

<u>Province</u>	<u>Shareholders</u>	<u>Shares Held</u>
British Columbia	263	475,228
Alberta	680	2,427,214
Saskatchewan	21	36,024
Manitoba	16	59,150
Ontario	243	1,165,096
Quebec	61	102,572
Nova Scotia	11	78,574
New Brunswick	5	22,650
Prince Edward Island	7	14,250
Northwest Territories	2	1,000

Holdco

- 1.5 Datec Pacific Holdings Ltd. (“Holdco”) is a corporation organized under the laws of the British Virgin Islands and is not a reporting issuer or its equivalent in any jurisdiction in Canada and has no present intention of becoming a reporting issuer or its equivalent in any jurisdiction in Canada.
- 1.6 The authorized share capital of Holdco consists of 50,000,000 common shares with a par value of US\$0.01 per share (“Holdco Common Shares”). All of the issued and outstanding Holdco Common Shares are held by the Filer.
- 1.7 The Holdco Common Shares are not listed or quoted for trading on any stock exchange or marketplace.

eLandia

- 1.8 eLandia is a corporation incorporated under the laws of Delaware and is not a reporting issuer or its equivalent in any jurisdiction in Canada. Prior to the effective date of the Arrangement eLandia will have less than 300 shareholders and will not be a registrant under the U.S. Securities Exchange Act of 1934, as amended (the “1934 Act”).
- 1.9 Prior to 2004, eLandia (formerly known as Centra Industries, Inc.) and its subsidiaries operated (through a wholly owned subsidiary, Midwest Cable of Arkansas, Inc. (“Midwest”)) a construction company

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specializing in horizontal directional boring technology and aerial installations (see Exhibit “A” – pre-merger corporate structure). Specifically, Midwest replaced and constructed underground cable for telecommunication and cable television providers, water and sewer systems and natural gas pipelines.

- 1.10 On August 1, 2003, (the “Midwest Petition Date”) Midwest filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court (the “Court”) for the Western District of Arkansas Fayetteville Division.
- 1.11 On January 8, 2004 (the “eLandia Petition Date”), eLandia filed a voluntary petition for relief under Chapter 11 of Title 11 of the U.S. Bankruptcy Code in the Court for the Western District of Arkansas, Fayetteville Division.
- 1.12 On September 10, 2004, the Court issued an order confirming a Joint Plan of Reorganization and granting the debtors’ motion to substantially consolidate the two separate bankruptcy cases.
- 1.13 On September 14, 2004 (the “Confirmation Date”), the Court entered an order confirming the debtors’ joint Plan of Reorganization in accordance with the provisions of Chapter 11 of the U.S. Bankruptcy Code.
- 1.14 Essentially, the confirmation date discharged eLandia and Midwest from all pre-confirmation claims and terminated all rights and interest of equity security holders or general partners. During the course of the bankruptcy proceedings all of the employees of eLandia and its subsidiaries were terminated, their headquarters and facilities were closed and abandoned and various business records are impossible to acquire. The historical accounting records for eLandia and Midwest have been destroyed and cannot be reconstructed. An audit of financial results of eLandia for the years ended December 31, 2002 and 2003, consisting of the discontinued operations and assets previously disposed of, presents difficulties for a number of reasons, including the following:
 - (a) Records – Due to the bankruptcy, lack of proper record oversight and three office moves in an attempt to reduce rent costs, there are many transactions that have no documentation and much underlying invoice and billing data is no longer available to efficiently audit.

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- (b) Personnel – No one who was a member of management or responsible for accounting in 2002 and 2003 is available to interview regarding what transpired on matters or transactions that are unclear from the incomplete records available to audit.
 - (c) Bankruptcy Transactions – The amount and nature of many of the claims asserted by vendors during the bankruptcy case did not correspond to the records of eLandia (as they existed). Because the plan of reorganization provided for an aggregate amount of cash to be paid and a limited amount of stock to be issued in respect of such claims (amounting to approximately 2% of the total claims), eLandia chose to conserve its cash and did not dispute any of the claims. This discrepancy was settled as of September 14, 2004, in the confirmation of the plan, but the ability to report events in accordance with generally accepted accounting principals for periods prior to 2004 is in question.
- 1.15 Prior to the eLandia Petition Date, Stanford Venture Capital Holdings, Inc. (“Stanford”) agreed to provide up to \$2,000,000 in debtor-in-possession financing in the form of a secured, super-priority line of credit in accordance with the Bankruptcy Code. During April 2004, Stanford loaned an additional \$2,500,000 under the same terms as the original debtor-in-possession financing.
- 1.16 Pursuant to the Plan of Reorganization, on the Confirmation Date, eLandia issued the equivalent of 7,250,000 (representing 97%) shares of common stock to Stanford in satisfaction of the original principal portion of the super priority claims along with other Stanford secured claims and 200,000 (representing 3%) shares of common stock to the holders of allowed unsecured claims.
- 1.17 Effective December 31, 2004, eLandia merged with eLandia Technologies, Inc. (“Technologies”) (and its subsidiary eLandia Wireless Solutions, LLC), which operated a Wifi business, i.e., setting up wireless internet capabilities in major hotels and apartment complexes. The merger of Technologies with eLandia was accounted for as a common control merger, since Stanford owned 97% of eLandia and 67% of Technologies. The business of Technologies was discontinued during the first quarter of 2005 due to the high competition in the wireless market. For U.S. accounting purposes, the financial statements of Technologies will be consolidated with those of eLandia retroactive to the Confirmation Date, which is the earliest date of common control.

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- 1.18 Commencing the first quarter of 2005, eLandia committed to a plan for disposing of essentially all of its Wifi/construction business in order to focus its business affairs on companies in the telecommunications industry, which would allow it to leverage the expertise of new management and the wireless licenses it currently owns.
- 1.19 As at the date hereof, the authorized share capital of eLandia consists of 50,000,000 common shares with a par value of US\$0.00001 per share (the “eLandia Common Shares”) and there were 9,427,344 eLandia Common Shares issued and outstanding.
- 1.20 The eLandia Common Shares are not listed or quoted for trading on any stock exchange or marketplace.

Holdings

- 1.21 Elandia South Pacific Holdings, Inc. (“Holdings”) is a corporation incorporated under the laws of Delaware and is not a reporting issuer or its equivalent in any jurisdiction in Canada and has no present intention of becoming a reporting issuer or its equivalent in any jurisdiction in Canada.
- 1.22 The authorized share capital of Holdings consists of 1,000 common shares with a par value of US\$0.001 per share (the “Holdings Common Shares”) and 1,000 Series A Preferred Shares with no par value. All of the issued and outstanding Holdings Common Shares and Preferred Shares are held by eLandia.
- 1.23 The Holdings Common Shares are not listed or quoted for trading on any stock exchange or marketplace.

Acquisition Co.

- 1.24 Elandia Datec Acquisition, Inc. (“Acquisition Co.”) is a corporation incorporated under the laws of Delaware and is not a reporting issuer or its equivalent in any jurisdiction in Canada and has no present intention of becoming a reporting issuer or its equivalent in any jurisdiction in Canada.
- 1.25 The authorized share capital of Acquisition Co. consists of 50,000 common shares with a par value of US\$1.00 per share (“Acquisition Co. Common Shares”). All of the issued and outstanding Acquisition Co. Common Shares are held by Holdings.

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- 1.26 The Acquisition Co. Common Shares are not listed or quoted for trading on any stock exchange or marketplace.

The Arrangement

- 1.27 It is proposed that the Filer and Holdco will enter into an Arrangement Agreement and a Plan of Arrangement (collectively, the "Arrangement") with eLandia, Holdings, and Acquisition Co.
- 1.28 Subject to the approval of not less than two-thirds of the votes cast by holders of Datec Securities (on a fully-diluted basis) and a final order (the "Final Order") of the Court of Queen's Bench of New Brunswick approving the Arrangement, effective 12:01 a.m. on the date (the "Effective Date") shown on the Certificate of Arrangement issued under the *Business Corporations Act* (New Brunswick):
- (a) eLandia shall make a capital contribution and issue 6,808,542 eLandia Common Shares to Holdings and, immediately upon receipt of such shares, Holdings shall make a capital contribution and transfer the 6,808,542 eLandia Common Shares to Acquisition Co.;
 - (b) the Filer shall transfer and assign all of the Offshore Assets to Holdco in exchange for Holdco Common Shares;
 - (c) the Filer shall permit the holders of securities that are exchangeable into or provide the right to acquire Common Shares of the Filer ("Datec Convertible Securities") (the "Datec Common Shares" and the "Datec Convertible Securities" are together referred to as the "Datec Securities") to convert the Datec Convertible Securities into, or exchange them for or exercise the rights provided thereunder to purchase or otherwise acquire, Datec Common Shares. If the conversion or other rights under the Datec Convertible Securities are not exercised at the time when same is permitted therefor, the holders of any unconverted or unexercised Datec Convertible Securities shall receive the distribution described in Section 1.28(f) below;
 - (d) the Filer's articles shall be amended to create New Datec Common Shares;

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- (e) the Datec Common Shares (other than Datec Common Shares held by Dissenting Shareholders) shall be automatically cancelled and, in exchange therefor, the holders of Datec Common Shares shall receive (i) the same number of New Datec Common Shares; and (ii) a pro rata amount of all outstanding Holdco Common Shares, less any Holdco Common Shares to be distributed to holders of Datec Convertible Securities;
 - (f) the Datec Convertible Securities that have not been exercised within the time permitted therefor shall be automatically cancelled and, in exchange therefor, the holders of Datec Common Shares shall receive (i) the same number of Convertible Securities (“New Datec Convertible Securities”) having the same terms and conditions as the Datec Convertible Securities have by such holders except that the securities to be issued upon the exercise of the New Datec Convertible Securities shall be New Datec Common Shares and the exercise price for each New Datec Common Share issuable thereunder shall be \$0.10 (in Canadian funds); and (ii) the number of Holdco Common Shares determined in the manner prescribed in the Arrangement;
 - (g) Acquisition Co. shall deposit with Computershare Trust Company of Canada (the “Escrow Agent”) certificates evidencing 6,808,542 eLandia Common Shares registered in the names of the holders of Holdco Common Shares;
 - (h) all of the outstanding Holdco Common Shares shall be automatically exchanged with Acquisition Co. for (i) a pro rata amount of the 6,808,542 eLandia Common Shares; and
 - (i) the Escrow Agent will hold the certificates for the 6,808,542 eLandia Common Shares in escrow and release them over time as set forth in an escrow agreement (the “Escrow Agreement”).
- 1.29 Pursuant to the terms of the Escrow Agreement between the Filer, eLandia and shareholders of the Filer, all eLandia Common Shares registered in the names of shareholders of the Filer will be held in escrow and released upon the following terms:
- (a) at the rate of twenty five percent (25%) thirty days following the listing of eLandia Common Shares, with the written approval of the Board of Directors of eLandia, on the NASDAQ small cap or National Market system, the AMEX or the OTC Bulletin Board,

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and twenty five percent (25%) every three months thereafter until fully released;

- (b) if no listing of shares of common stock of eLandia on the NASDAQ small cap or National Market system, the AMEX or the OTC Bulletin Board with the written approval of the Board of Directors of eLandia has been made within a year of the Effective Date, then all of the Shares shall be released on such date; or
 - (c) at any earlier time in the sole discretion of eLandia, in whole or in part.
- 1.30 Prior to the Effective Date of the Arrangement, eLandia expects to complete a common control merger and acquire a majority interest in AST Telecom, L.L.C. ("AST"), a wireless telephone and internet services company located in Nuu'uli, American Samoa. Following this acquisition, on a pro-forma basis, the Offshore Assets of Datec and the assets of AST will represent approximately 66% and 12%, respectively, of the consolidated assets of eLandia. None of eLandia's assets will be located in Canada.
- 1.31 Immediately following the Effective Date of the Arrangement, Stanford will own or control, directly or indirectly, 9,777,513 eLandia Common Shares and holders of Datec Securities will own or control, directly or indirectly, 6,808,542 eLandia Common Shares, representing 43.8% and 30.5%, respectively, of the total number of issued and outstanding eLandia Common Shares.
- 1.32 Immediately following the Effective Date of the Arrangement it is expected that residents of Canada will own or control, directly or indirectly, approximately 1,628,538 eLandia Common Shares representing approximately 7.3% of the total number of the issued and outstanding eLandia Common Shares. The exact number of eLandia Common Shares held by Canadian residents is subject to variation based upon changes in the shareholders of the Filer and the exercise of Datec Convertible Securities.
- 1.33 From and after the Effective Date, none of the executive officers or directors of eLandia will be resident in Canada and the business of eLandia will continue to be administered principally from the United States.

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- 1.34 Pursuant to the terms of the Arrangement Agreement, within 30 days of the Effective Date, eLandia will file a registration statement or a Form 10 promulgated under section 12 of the 1934 Act, to register eLandia Common Shares thereunder.
- 1.35 Following acceptance of the registration statement or the Form 10 by U.S. Securities and Exchange Commission (the "SEC"), eLandia will be subject to the reporting requirements under Section 12 of the 1934 Act.
- 1.36 Pursuant to the Arrangement Datec shall issue securities only to its existing securityholders as at the date Effective Date.
- 1.37 On completion of the Arrangement Datec shall have substantially the same shareholders as immediately prior to the Effective Date.
- 1.38 Pursuant to the Arrangement the assets of Datec shall effectively be sold to eLandia in exchange for shares of eLandia representing approximately 30.5% of the total outstanding shares of eLandia at that time.
- 1.39 Following completion of the Arrangement Datec shall remain a reporting issuer in Alberta, British Columbia , Nova Scotia and Ontario.
- 1.40 Following completion of the Arrangement eLandia will be a reporting issuer in Alberta and British Columbia.
- 1.41 None of Holdco, Holdings or Acquisitionco will be a reporting issuer in any jurisdiction as a result of the Arrangement.

Decision

Each of the Decision Makers is satisfied that the tests contained in the Legislation that provides the Decision Maker with the Jurisdiction to make the Decision has been met.

The Decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:

1. The Information Circular contain:
 - (a) audited financial statements for eLandia, in respect of the predecessor corporation, for the period from January 1, 2004 until September 14, 2004 and, in respect of the successor corporation subsisting after the Confirmation Date, for period from September 15, 2004 until December 31, 2004 (which

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includes the results of Technologies on consolidated basis), together with unaudited interim financial statements of eLandia for the six-month period ended June 30, 2005, which statements will be expressed in United States dollars and prepared in accordance with United States GAAP and will include a note providing a reconciliation to Canadian GAAP;

DATED September 27th, 2005

Agnes Lau, CA
Deputy Director, Capital Markets
Alberta Securities Commission