

2003 BCSECCOM 446

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief to be deemed to have ceased to be a reporting issuer granted to Canadian public issuer following acquisition of all its outstanding securities by French-based public company by way of an arrangement

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 88

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, QUÉBEC, NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR, AND THE YUKON TERRITORY

AND

IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF IMAGICTV INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Ontario, Québec, Nova Scotia, Newfoundland and Labrador, and the Yukon Territory (the “Jurisdictions”) has received an application from ImagicTV Inc. (“ImagicTV”) for a decision pursuant to the securities legislation, regulations, rules and/or policies of the Jurisdictions (the “Legislation”) that ImagicTV be deemed to have ceased to be a reporting issuer under the Legislation;

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this Application;

AND WHEREAS, unless otherwise defined herein the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;

AND WHEREAS ImagicTV has represented to the Decision Makers that:

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1. ImagicTV was incorporated in 1997 under the name “imagicTV Inc.” In 1998, ImagicTV changed its name to “ImagicTV Inc.” ImagicTV’s corporate headquarters are located at One Brunswick Square, 14th Floor, Saint John, New Brunswick E2L 3Y2.
2. ImagicTV became a reporting issuer in November 2000 pursuant to an initial public offering of the ImagicTV Shares in all provinces and territories of Canada. ImagicTV is not on the list of defaulting reporting issuers maintained by the Decision Makers.
3. ImagicTV’s authorized capital consists of an unlimited number of common shares (the “ImagicTV Shares”) and an unlimited number of preferred shares issuable in series. As at April 29, 2003, there were 24,813,218 ImagicTV Shares issued and outstanding and no preferred shares were issued or outstanding. As at April 29, 2003, options to acquire 2,623,834 ImagicTV Shares were granted and outstanding pursuant to ImagicTV’s employee stock option plans (the “ImagicTV Options”).
4. The ImagicTV Shares were formerly listed and posted for trading on the TSX (symbol: IMT) and were also formerly quoted on the Nasdaq (symbol: IMTV).
5. Alcatel is a company organized under the laws of France. The Class A shares of Alcatel (the “Alcatel Shares”) are listed on Euronext Paris among other non-Canadian stock exchanges. Alcatel Shares are also listed on The New York Stock Exchange (the “NYSE”) in the form of Class A American Depositary Shares (“Alcatel ADSs”) (symbol: ALA). Each Alcatel ADS is equivalent to one Alcatel Share, and can be exchanged for Alcatel Shares in accordance with the provisions of the Alcatel ADSs.
6. On April 30, 2003, Alcatel acquired directly or indirectly all of the outstanding ImagicTV Shares (excluding shares held by or on behalf of Alcatel) by way of a plan of arrangement (the “Arrangement”) under section 192 of the *Canada Business Corporations Act* (the “CBCA”).
7. As a result of the Arrangement, the terms of the ImagicTV Options have been amended so that the ImagicTV Options now represent options to acquire Alcatel Shares (the “Revised Options”), each such Revised Option to be exercisable for a number of Alcatel Shares at an exercise price in Euros per Alcatel Share based on the exchange ratio and the Euro exchange rate as determined pursuant to the Arrangement Agreement.

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8. As a result of the Arrangement, Alcatel, through its subsidiaries, beneficially owns all of the ImagicTV Shares. ImagicTV has no securities, including debt securities, outstanding other than
 - (i) the ImagicTV Shares beneficially owned indirectly by Alcatel, and
 - (ii) the Revised Options, which might possibly be considered to be securities of ImagicTV (although holders thereof have no economic interest in ImagicTV and thus, from a Canadian securities law perspective, should be more properly viewed as securities of Alcatel).
9. There are approximately 104 holders of Revised Options, of whom 90 are resident in New Brunswick and of whom one is resident in Nova Scotia. No other holder of Revised Options is resident in Canada.
10. The ImagicTV Shares were delisted from the TSX on April 30, 2003 and from the Nasdaq on April 30, 2003. No securities of ImagicTV are listed or quoted on any other exchange or market.
11. ImagicTV does not intend to seek financing by way of an offering of its securities to the public.

AND WHEREAS pursuant to the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS each of the Decision Makers is satisfied that the test 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 pursuant to the Legislation is that ImagicTV is deemed to have ceased to be a reporting issuer under the Legislation.

Dated June 3rd, 2003.

Harold P. Hands

Robert W. Korthals