

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Takeover Bids - Exemption from the take-over bid requirements in Part 2 of MI 62-104 and the corresponding provisions of the *Securities Act* (Ontario) - The Filer wants an exemption from the formal take-over bid requirements of Part 2 of MI 62-104 and corresponding provisions of the *Securities Act* (Ontario) - An issuer wants to complete a take over bid that meets some, but not all, of the conditions of the foreign bid exemption set out in s. 4.4 of MI 62-104 and s. 100.3 of the *Securities Act* (Ontario) - The bid is being done in compliance with Australian law; issuer has made reasonable commercial efforts to determine Canadian beneficial ownership in the target; excluding the shares beneficially owned by the issuer, the number of the target's shareholders in Canada is less than 10% of the number of target shareholders worldwide; securityholders in Canada will receive the same information as other target securityholders; the bid will satisfy all other conditions required for an exempt take-over bid.

Applicable British Columbia Provisions

Multilateral Instrument 62-104, Part 2 and 6.1

January 14, 2104

In the Matter of
the Securities Legislation of
British Columbia and Ontario
(the Jurisdictions)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
Eldorado Gold Coöperatief UA
(Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (Legislation) exempting the Filer and its indirect parent, Eldorado Gold Corporation (Eldorado) from Part 2 of Multilateral Instrument 62-104 *Take Over Bids and Issuer Bid Requirements* (MI 62-104) and the corresponding provisions of the *Securities Act* (Ontario)

(the OSA, and together with Part 2 of MI 62-104, Take-Over Bid Requirements) in connection with an offer (Offer) made by the Filer to acquire all of the issued and outstanding ordinary shares (Shares) of Glory Resources Limited (Glory), other than those already owned by the Filer, under applicable corporate and federal securities laws of Australia (Exemption Sought).

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

- (a) the British Columbia Securities Commission (BCSC) is the principal regulator for this application,
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in each Province (other than British Columbia and Ontario) and Territory of Canada, and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

- ¶ 2 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

- ¶ 3 This decision is based on the following facts represented by the Filer:
- 1. the Filer is a cooperative formed under the laws of The Netherlands with a corporate seat and its head office address in Amsterdam, The Netherlands; it is an indirect wholly-owned subsidiary of Eldorado;
 - 2. the Filer is not a reporting issuer in any jurisdiction of Canada; the Filer is not in default of any requirement of applicable Canadian securities laws;
 - 3. Eldorado is governed by the *Canada Business Corporations Act* and has its head office in Vancouver, British Columbia; it is a reporting issuer or equivalent in each of the Provinces of Canada and has listings on the Toronto Stock Exchange and the New York Stock Exchange; based on a review of the reporting issuer and/or defaulting issuer lists (or equivalent list) maintained by the securities regulatory authorities in the jurisdictions in which Eldorado is a reporting issuer as at December 16, 2013, Eldorado is not in default of any requirement of applicable Canadian securities laws;
 - 4. based on a review of Glory's company extract from the Australian Securities and Investments Commission (ASIC) as at December 17, 2013, Glory:
 - (a) is a company governed by the *Corporations Act* 2001 (Australia) (ACA); and

- (b) has its registered office and principal place of business in Australia and it has a listing on the Australian Securities Exchange (ASX);
5. based on a review of SEDAR as at December 17, 2013, Glory is not a reporting issuer in any jurisdiction in Canada;
 6. based on the Glory Register (as defined below) the number of Shares issued and outstanding is 224,100,099; as of December 17, 2013, the Filer holds 44,595,920 Shares representing approximately 19.9% of the issued and outstanding Shares; the applicable securities legislation deems Eldorado to beneficially own securities beneficially owned by the Filer;
 7. as at November 26, 2013, based on Glory's announcement dated November 26, 2013 as filed with the ASX, Glory had 29,585,000 unlisted options (Options) outstanding with exercise prices ranging from A\$0.17 to A\$0.25 and expiry dates ranging from February 28, 2014 through to August 15, 2016;
 8. to the Filer's knowledge, each Option entitles or will entitle the holder to acquire one unissued Share upon exercise of the Option in accordance with its terms;
 9. Glory has entered into a bid implementation agreement dated October 31, 2013 (BIA) with the Filer, which sets out the obligations with respect to implementation of the Offer; the BIA sets out various conditions to the Offer, which include applicable regulatory and governmental approvals and the Filer acquiring at least 90% of each of the Shares and Options;
 10. the Offer is an all-cash offer to acquire all of the Shares other than those owned by the Filer, but including any Shares that may be issued during the Offer Period (as defined in the Filer's bidder's statement) (Glory Shares) at a price per Glory Share of A\$0.17;
 11. the Filer made the Offer in compliance with applicable corporate and federal securities laws of Australia, including the ACA, and the rules of the ASX; under the ACA, the Filer:
 - (a) prepared a bidder's statement containing, among other things, details of the Filer, information about Glory, the background to the Offer, and the terms and conditions of the Offer;
 - (b) lodged such bidder's statement with the ASX and ASIC;
 - (c) sent the bidder's statement to each shareholder of Glory as at the record date set by the Filer in its bidder's statement, including any such shareholders resident in Canada; and
 - (d) issued a press release announcing the Offer and advising Glory shareholders to read the materials related to the Offer that will be filed by the Filer with the ASX and ASIC;
 12. if, following the close of the Offer, the Filer has a relevant interest in at least 90% (by number) of the total issued Shares of Glory, the Filer will be entitled to, and intends to,

proceed under Part 6A.1 of the ACA with the 'post-bid' compulsory acquisition of the remaining Shares that are not owned or controlled by the Filer; if, following the close of the Offer, the Filer has a relevant interest in less than 90% of the issued Shares (so that the Filer is not entitled to proceed with the 'post-bid' compulsory acquisition), the Filer may, subsequently become entitled to exercise rights of 'general' compulsory acquisition under Part 6A.2 of the ACA; if so, the Filer may consider exercising such rights;

13. the Filer lodged its bidder's statement with ASIC and mailed the bidder's statement to holders of Glory Shares and Options as set out on a register of Shares and Options provided by Glory to the Filer as of November 19, 2013 (Glory Register) on November 22, 2013; the Offer is open for acceptance until January 23, 2014 (and the Filer may elect to extend the Offer for a further period, or the Offer may otherwise be extended, in accordance with the ACA);
14. under the BIA, the Filer has also agreed to make offers to the holders of the Options (Options Offer) for Glory to cancel their Options in exchange for the payment of cash consideration based on a Black-Scholes valuation; while Australian law governs the Options Offer, it is not a 'regulated' offer under a take-over bid under the ACA, although it complies with Australian corporate and securities laws;
15. based on the Glory Register, there are two shareholders of Glory whose last address was in Canada, specifically, British Columbia and Ontario, and such persons are shown as the registered holders of 78,612 Glory Shares representing approximately 0.035% of the issued and outstanding Shares;
16. based on information about relevant interests provided by Glory to the Filer as at November 4, 2013, the Filer reasonably believes that the number of Shares beneficially held by shareholders who are residents of Canada (other than the Shares beneficially owned by Eldorado through the Filer) represent approximately 4.05% (inclusive of those held of record) of the issued and outstanding Shares;
17. based on the Glory Register, there are two holders of Options whose last address as shown in that list is in Canada, specifically, Ontario, Canada and such persons hold 400,000 Options in the aggregate, which represent approximately 1.35% of all the Options;
18. the Shares issuable pursuant to the exercise of Options held by persons resident in Canada as set out in the Option Register would constitute 0.1577% of the outstanding Shares on a fully-diluted basis;
19. relying on the information provided by Glory, the Filer reasonably believes that there are no other registered or beneficial holders of Glory Shares or Options resident in Canada;
20. since the Offer will be made to holders of Glory Shares resident in Canada, the Offer constitutes a take-over bid within the meaning of MI 62-104 and the OSA and must comply with the Take-Over Bid Requirements unless an exemption from such requirements is available;

21. based on the Glory Register, shareholders of Glory whose last address as shown on the Glory Register was in Canada hold significantly less than 10% of the issued and outstanding Shares;
22. the Offer was made to holders of Glory Shares resident in Canada on the same terms and conditions as those applicable to holders of Glory Shares resident outside Canada;
23. the Filer's bidder's statement and other materials relating to the Offer prepared by or on behalf of the Filer, including any amendments, (collectively, Offer Materials) in the English language were or will be sent by or on behalf of the Filer to the registered holders of Glory Shares whose last address as shown on the books of Glory is in Canada at the same time as the Offer Materials were or will be sent by or on behalf of the Filer to holders of Glory Shares resident in Australia; the Filer filed the bidder's statement and a notice of extension of the Offer dated December 13, 2013 with the BCSC and the Ontario Securities Commission (OSC);
24. to the knowledge of the Filer, the only published market on which trading in the Shares occurs or has occurred in the last 12 months is the ASX;
25. an offeror may use the exemption prescribed by Section 4.4 of MI 62-104 and section 100.3 of the OSA and (collectively, Foreign Take-Over Bid Exemption) to be relieved from the Take-Over Bid Requirements upon satisfaction of certain conditions, including that security holders whose last address as shown on the books of the offeree issuer is in Canada hold less than 10% of the outstanding securities of the class subject to the bid at the commencement of the bid and the offeror reasonably believes that security holders in Canada beneficially own less than 10% of the securities of the class subject to the bid at the commencement of the bid; and
26. the Filer cannot rely on the Foreign Take-Over Bid Exemption set out in Section 4.4 of MI 62-104 and section 100.3 of the OSA because, as consequence of Eldorado's beneficial ownership, the shareholders of Glory who are in Canada own or control more than 10% of the issued and outstanding Shares.

Decision

- ¶ 4 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 Exemption Sought is granted provided that:

- (a) the Offer and any amendments are made in compliance with applicable corporate and federal securities laws of Australia, including the ACA, ASIC rules, and ASX rules;
- (b) security holders in Canada are entitled to participate in the Offer in terms at least as favourable as the terms that apply to the general body of security holders of the same class; and

- (c) the Filer sends the Offer Materials to registered holders of Glory Shares whose last address as shown on the books of Glory is in Canada at the same time as the Offer Materials are sent by or on behalf of the Filer to registered holders of the Glory Shares resident in Australia and are filed with the BCSC and OSC.

Peter J. Brady
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British Columbia Securities Commission