

# 2008 BCSECCOM 328

June 9, 2008

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – Securities Act, ss. 48 and 76 – registration and prospectus requirements – Trades by an issuer to its shareholders in securities of another company that it owns (e.g. spin-off transactions) – The first issuer will transfer shares it holder in a second issuer (reporting) to the first issuer’s shareholders as a return of capital; the return of capital will be done in compliance with corporate law requirements; the first issuer would be able to rely on the exemptions contained in section 2.31(2) of NI 45-106 (also section 45(2)(14) and 74(2)(13) of the Act) if the transfer was being done as a dividend in kind; the transfer of shares will result in the shareholders of the first issuer holding directly their interest in the second issue as opposed to indirectly through their shareholdings in the first issuer

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 43(1), 48(1), 61(1) and 76(1)

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

and

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

and

In the Matter of  
International KRL Resources Corp.  
(the Filer)

MRRS Decision Document

## **Background**

- ¶ 1 The local securities regulatory authority or regulator (each a Decision Maker and collectively, the Decision Makers) in each of the Jurisdictions has received an application from the Filer for a decision, pursuant to the securities legislation of the Jurisdictions (the Legislation) for an exemption from the dealer registration requirement (the Registration Requirement) and the prospectus requirement (the Prospectus Requirements) of the Legislation (the Requested Relief) for a proposed

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distribution by the Filer to its shareholders (the KRL Shareholders) by way of return of capital (the Return of Capital Distribution) of some or all of the common shares (each, a GHR Share) that the Filer holds in Golden Harp Resources Ltd. (GHR).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the British Columbia Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

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

### **Representations**

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. the Filer is a British Columbia company with its head office located at 1640-1066 West Hastings Street, Vancouver, British Columbia, V6E 3X1;
  2. the Filer is a reporting issuer in the Provinces of British Columbia, Ontario and Alberta;
  3. the Filer's share capital is comprised of an unlimited number of Common Shares without par value (the KRL Shares). The KRL Shares are listed and posted for trading on the TSX Venture Exchange under the symbol "IRK-V";
  4. as of May 27, 2008, there were 66,539,641 KRL Shares issued and outstanding of which approximately 4,030,000 shares were held by at least 110 shareholders in Canada; to the knowledge of the senior officers of the Filer no person beneficially owns, directly or indirectly or exercises control or direction over more than 5% of the issued KRL Shares;
  5. GHR was incorporated as a British Columbia company on May 3, 2006, as a subsidiary of the Filer as part of the Filer's reorganization plan (the Reorganization Plan) to increase shareholder value by "spinning off" to the Filers' shareholders the Filer's mineral properties located in the Shining Tree Area in the Abitibi Greenstone Belt of Northeastern Ontario consisting of 20 Mineral Leases and 245 unpatented Mining Claims totaling 849 claim units

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and covering an area of approximately 145 square kilometers (the Copper Hill Property);

6. the Reorganization Plan involved transferring the Copper Hill Property to GHR and upon GHR obtaining financing, reporting issuer status and a listing on the TSX Venture Exchange, the Filer distributing all or part of GHR shares owned by the Filer to its shareholders, on a pro rata basis, by way of return of capital to its shareholders;
7. to implement the Reorganization Plan, the Filer transferred the Copper Hill Property to GHR on May 31, 2006, for \$3,200,000 payable by the issue to the Filer of 10,000,000 Common Shares of GHR at a price of \$.32 per share; the initial distribution of the GHR Shares to KRL was exempt from the prospectus and registration requirements under section 2.13 of National Instrument 45-106 *Prospectus and Registration Exemptions*; as a result, the GHR shares are subject to a restricted period under the Legislation;
8. to satisfy the requirement of the TSXV concerning the disposition of the Copper Hill Property, the KRL shareholders, on November 26, 2006, approved, by special resolution (99.5 % plurality), the disposition of the Copper Hill Property to GHR;
9. GHR has completed an initial public offering (the Offering) consisting of a total of 8,890,700 flow through and non flow through units and was called to trade on the TSX Venture Exchange as a Tier 2 Issuer on March 4, 2008;
10. GHR filed its final prospectus dated February 28, 2008, with the securities regulatory authorities in British Columbia, Alberta and Ontario to qualify the Offering of a combination of flow-through units and non-flow-through units;
11. the Filer is the registered and beneficial holder of 10,000,000 Common Shares of GHR, which will constitute approximately 40.5 % of the issued and outstanding common shares of GHR;
12. the Filer is permitted to reduce its stated capital if it is authorized to do so by order of the Supreme Court of British Columbia (the Court) pursuant to Section 74 of the *Business Corporations Act* (British Columbia);
13. KRL proposes to seek the approval of the Court to reduce its stated capital when GHR is listed and posted for trading on the TSX Venture Exchange;

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14. the Filer intends to distribute to its shareholders all of the GHR Shares it owns as a return of capital on a pro rata basis based on the number of Common Shares held by the KRL Shareholders;
15. the Filer anticipates that within 90 days of the order being issued by the Decision Makers, some or all of the GHR Shares will be distributed to the KRL shareholders of record at the close of business on the 7th trading day after the day on which the Court approves the Return of Capital Distribution;
16. the Return of Capital Distribution will be completed in compliance with the corporate laws of British Columbia;
17. the Filers' shareholders will not be required to pay for the GHR Shares received in the Return of Capital Distribution or to surrender or exchange common shares of the Filer in order to receive the GHR Shares or to take any other action in connection with such distribution;
18. as a consequence of the fact that the Filer owns approximately 40.5% of the outstanding GHR Shares, a Return of Capital Distribution constitutes: (a) a "primary distribution to the public" or a "distribution", as the case may be, to which the Prospectus Requirement applies, absent statutory exemption or exemptive relief; and (b) a trade in securities to which the Prospectus and Registration Requirement applies, absent statutory exemption or exemptive relief;
19. the Legislation in British Columbia, Alberta, and Ontario provide for an exemption from the Prospectus Requirement and the Registration Requirement of such Legislation for a trade by an issuer in a security of a reporting issuer held by the issuer that is distributed by it to its security holders as a dividend in specie or a dividend in kind;
20. the Return of Capital Distribution is not a dividend in specie or a dividend in kind but is a return of capital; in substance, there is no practical difference between the Filer distributing its GHR Shares by way of a dividend in specie (or a dividend in kind) and a return of capital because in both cases the KRL shareholders would receive GHR Shares on a pro rata basis;
21. if the Return of Capital Distribution was a dividend in specie or a dividend in kind there would be an exemption in British Columbia, Alberta and Ontario;
22. the Return of Capital Distribution is not a sale of shares but a distribution to the shareholders of the Filer who are currently the indirect or underlying holders of the GHR Shares; and

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23. the prospectus contains full disclosure of the Filer's plan to distribute the GHR Shares to its shareholders by way of a Return of Capital Distribution.

### **Decision**

¶ 4 Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the decision has been met;

The decision of the Decision Makers pursuant to the Legislation is that the Requested Relief is granted provided that:

- (a) the first trade in GHR shares acquired pursuant to this Decision shall be deemed a distribution under the Legislation unless the conditions in subsection 2.6(3) of National Instrument 45-102 *Resale of Securities* are satisfied and for such purposes the “distribution date” shall be deemed to be the date of the initial distribution of the GHR shares by the Filer to the KRL Shareholders; and
- (b) the proposed Return of Capital Distribution be completed not later than 90 days after the date of this order.

Martin Eady, CA  
Director, Corporate Finance  
British Columbia Securities Commission