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## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – Relief from registration and prospectus requirements for trades and distributions of securities under the incentive plans of a UK issuer – registration relief for first trades by permitted transferees

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61, 76

Multilateral Instrument 45-103 *Resale of Securities*, s. 2.14(1)

**IN THE MATTER OF THE SECURITIES LEGISLATION OF  
MANITOBA, SASKATCHEWAN, BRITISH COLUMBIA, PRINCE  
EDWARD ISLAND AND NEW BRUNSWICK  
AND**

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

**AND**

**IN THE MATTER OF WOLSELEY PLC**

**MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker” or, collectively, the “Decision Makers”) in each of the provinces of Manitoba, Saskatchewan, British Columbia, Prince Edward Island and New Brunswick (the “Jurisdictions”) has received an application from Wolseley plc (the “Filer”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the Registration Requirement and the Prospectus Requirement shall not apply to certain trades and distributions to be made in stock options (“Options”) and ordinary shares of the Filer (“Shares”) acquired under the Filer's Employee Share Purchase Plan (the “Purchase Plan”) and the Filer's Executive Share Option Scheme (the “Option Plan”) (collectively, the “Plans”);

AND WHEREAS, under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Manitoba Securities Commission (the “Commission”) is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definition;

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AND WHEREAS the Filer has represented to the Decision Makers as follows:

1. The Filer is an English corporation primarily engaged in the distribution of heating, plumbing and industrial products. The Filer's principal corporate offices are located at Parkview 1220, Arlington Business Park, Theale, Reading, RG7 4GA. The Filer conducts its business in Canada through its Canadian subsidiaries, including Wolseley Canada Inc. and Wolseley Industrial Products Group Inc., and through their respective Canadian subsidiaries.
2. The Filer is subject to the reporting requirements of the United Kingdom Listing Authority and United States *Securities Exchange Act of 1934* (the "1934 Act"). To date, the Filer has filed all necessary and required reports under the 1934 Act and as required by the UK Listing Authority.
3. As of June 20, 2003, the Filer had approximately 577,949,907 Shares issued and outstanding. The Shares are listed for trading on the London Stock Exchange ("LSE") under the symbol "WOS.L"; American depositary receipts of the Filer (the "ADRs") are quoted for trading on the New York Stock Exchange under the symbol "WOS". Five Shares equal one (1) ADR.
4. Neither the Filer, nor Wolseley Canada Inc., Wolseley Industrial Products Group Inc. or any of their Canadian subsidiaries is, or has the present intention of becoming, a reporting issuer or the equivalent thereof under the securities legislation of any jurisdiction in Canada.
5. Residents of Canada do not own directly or indirectly more than ten percent of the outstanding Shares and do not represent in number more than ten percent of the total number of owners, directly or indirectly, of Shares. For the purposes of the foregoing, Shares represented by ADRs have been included in the calculation.

### THE PURCHASE PLAN

6. The Filer has established the Purchase Plan to assist the Filer and its subsidiaries in recruiting and retaining individuals with ability and initiative by enabling such persons to participate in the future success of the Filer and its subsidiaries. The Purchase Plan permits any individual (an "Eligible Employee") (a) who has been continuously employed by the Filer or one of its participating subsidiaries for at least one year on the date prescribed by the Board of Directors or a duly authorized committee thereof (the "Board") as the date on which the rights to purchase shares are deemed to be granted (the

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“Date of Grant”); and (b) whose customary employment is for greater than 20 hours per week and more than five months in any calendar year to purchase Shares at a discounted price from fair market value through accumulated savings usually sourced from payroll deductions.

7. An individual who, immediately after the grant of a right to purchase, owns or would be deemed to own more than five percent of the total combined voting power or value of all classes of stock of the Filer or of any of its subsidiaries cannot be an Eligible Employee.
8. As of June 20, 2003, there were approximately 54 Eligible Employees in Nova Scotia, 5 Eligible Employees in Prince Edward Island, 81 Eligible Employees in Saskatchewan, 80 Eligible Employees in New Brunswick, 628 Eligible Employees in Québec, 606 Eligible Employees in Ontario, 104 Eligible Employee in Manitoba, 331 Eligible Employees in Alberta and 157 Eligible Employees in British Columbia.
9. The maximum number of Shares which will be made available for sale under the Purchase Plan is 50,000,000 Shares.
10. The number of Shares over which rights to subscribe may be granted under the Purchase Plan on any date shall be limited so that, when aggregated with the number of Shares issued in the ten year period ending on that date or capable of being issued pursuant to options granted in the previous ten year period under any other employee share scheme operated by the Filer, the total number of Shares shall not exceed ten percent of the issued ordinary share capital of the Filer on that date (including the ADRs).
11. Participation in the Purchase Plan is voluntary and Eligible Employees will not be induced to participate in the Purchase Plan by expectation of employment or continued employment with the Filer, any of its subsidiaries or any other affiliated entity of the Filer.
12. An Eligible Employee may become a participant in the Purchase Plan by completing an enrollment form (the “Enrollment Form”) authorizing monthly payroll deductions to be made over the course of the Offering Period (as defined in the Purchase Plan) and returning it to the Board prior to the Date of Grant prescribed by the Board.
13. A participating Eligible Employee may revoke his or her Enrollment Form and withdraw from participation in the Purchase Plan for an Offering Period by giving written notice to that effect to the Board at any time before the date prescribed by the Board as the date on which each right to purchase Shares is

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deemed to be exercised (the “Date of Exercise”). In that event, all of the payroll deductions credited to his or her account will be paid to the Eligible Employee promptly after receipt of the written notice and no further payroll deductions will be made from his or her compensation for that Offering Period.

14. On the Date of Grant, each participating Eligible Employee will be granted the right to purchase the number of whole Shares determined by dividing the aggregate of the 12 monthly contributions which the participating Eligible Employee has elected to save by the option price, as prescribed by the Board.
15. The price for the Shares shall not be less than 85% of the closing middle market quotation of a Share as derived from the Daily Official List of the LSE or the primary exchange on which Shares are listed.
16. Once the Shares are purchased, they may be issued directly by the Filer to the Eligible Employee or may be converted to whole and fractional ADRs and transferred to the Eligible Employee.
17. Upon a participant ceasing to be an Eligible Employee due to disability, retirement or death, he (in this case, the “Former Employee”) or his estate (a “Permitted Transferee”) will have the right to continued participation in the Plan for the remainder of the current Offering Period (without further contributions) and the right to purchase Shares on the Date of Exercise based on the amount credited to the Former Employee’s account on the date the Former Employee’s death or termination of employment on account of disability or retirement. If employment is terminated for any other reason, the Eligible Employee will be deemed to have elected to withdraw from the Purchase Plan, and any accumulated funds will be refunded to him without interest.
18. Eligible Employees, Former Employees and Permitted Transferees who are resident in Canada and acquire Shares under the Purchase Plan will receive the same continuous disclosure materials as holders of ADRs in the United States.
19. The distribution of Shares to Eligible Employees under the Purchase Plan qualifies for Registration Requirements and Prospectus Requirements exemptions in the Jurisdictions.
20. In order to enable Eligible Employees, Former Employees and Permitted Transferees to sell the Shares acquired or subscribed under the Purchase Plan, relief from the registration requirement is required under the Legislation.

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### THE OPTION PLAN

21. The Filer established the Option Plan to encourage and reward the performance of its executives. The Option Plan permits any person (including a director) who is in employment with the Filer and who has a normal contractual working week of 25 hours or more (the "Eligible Executives") to be granted Options.
22. As of June 20, 2003, there were approximately two Eligible Executives in Québec, one Eligible Executive in Ontario, one Eligible Executive in Manitoba and one Eligible Executive in Alberta.
23. The Options may be granted during the period of 42 days following the date of the approval of the Option Plan by general meeting of the directors of the Filer. Thereafter, except in circumstances considered by a duly appointed committee of the board of directors of the Filer (the "Board") to be exceptional, the Options may be granted only during the period of 42 days following the preliminary announcement to the LSE of the final results of the Filer and the announcement to the LSE of the interim results of the Filer for any financial year or other period for which the Filer makes up its statutory account.
24. The Options shall be granted only to such Eligible Executives as the committee shall from time to time determine in its absolute discretion.
25. The Options shall be personal to the Option holders and shall not be assignable or transferable.
26. The number of Shares over which an option to subscribe may be granted under the Option Plan on any date shall be limited so that, when aggregated with the number of Shares issued or capable of being issued pursuant to options granted under any employee share option scheme operated by the Filer (other than a savings related share option scheme) during the ten year period ending on that date of grant, the total number of such Shares does not exceed 5% of the issued ordinary share capital of the Filer on that date of grant.
27. Participation in the Option Plan is voluntary and Eligible Executives will not be induced to participate in the Option Plan by expectation of employment or continued employment with the Filer, any of its subsidiaries or any other affiliated entity of the Filer.
28. An Option may be exercised by a former Eligible Executive (in this case, a "Former Executive") or by his or her estate (a "Permitted Transferee") if the

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Eligible Executive has ceased to be an employee of the Filer by reason of its death, injury or disability or, if the Eligible Executive has ceased to be an employee of the Filer for any other reason, if the Board in its absolute discretion so determines.

29. Eligible Executives, Former Executives and Permitted Transferees who are resident of Canada and acquire Shares under the Option Plan will receive the same continuous disclosure materials as holders of ADRs in the United States.
30. The distribution of Shares and Options to Eligible Executives under the Option Plan qualifies for registration and prospectus exemptions in the Jurisdictions.
31. In order to enable Eligible Executives, Former Executives and Permitted Transferees to sell the Shares acquired or subscribed under the Option Plan, relief from the registration requirement is required under the Legislation.

### GENERAL REPRESENTATIONS

32. There is no market for the Shares in Canada and none is expected to develop; therefore, any resale of the Shares acquired under the Plans will be effected through the facilities of a stock exchange or organized market outside of Canada on which the Shares may be listed or quoted for trading.
33. The Filer has designated the Bank of New York, and may designate other plan administrators (the Bank of New York and future plan administrators being designated as the "Plan Administrator") to assist it with the Plans, including acting as the broker in connection with the trades by all the Eligible Employees, Former Employees, Permitted Transferees, Eligible Executives and Former Executives and the legal representatives of such individuals who elect to participate in the Plans (the "Participants"). The Plan Administrator is not and will not be registered under any Legislation in the Jurisdictions, but is and will be registered under applicable United States Securities laws.

AND WHEREAS, under 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 is that the Registration and Prospectus Requirements will not apply to any trade or distribution of Shares, ADRs or

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Options made in connection with the Plans, including trades and distributions involving the Filer, the Plan Administrator and the Participants, provided that the first trade in Shares or ADRs acquired through the Plans pursuant to this Decision will be deemed a distribution or primary distribution to the public under the Legislation unless the conditions in subsection of 2.14(1) of Multilateral Instrument 45-102 Resale of Securities are satisfied.

THE FURTHER DECISION of the Decision Makers is that the first trade by Participants in Shares acquired pursuant to the Plans, including first trades effected through the Plan Administrator, will not be subject to the Registration Requirement, provided such trade is executed through a stock exchange or market outside of Canada.

DATED this 15<sup>th</sup> day of July, 2003.

Chris Besko  
Deputy Director - Legal