

2003 BCSECCOM 817

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Employment agreements with senior management entered into for reasons other than to increase the value of the consideration paid to management for their shares in a take-over bid and may be entered into despite the prohibition on collateral agreements in the Legislation

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 107(2) and 114(2)(a)

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

AND

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

AND

**IN THE MATTER OF HONEYWELL INTERNATIONAL INC.,
678669 BRITISH COLUMBIA LTD. AND
SILENT WITNESS ENTERPRISES LTD.**

MRRS DECISION DOCUMENT

- ¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Honeywell International Inc. (“Honeywell”) and 678669 British Columbia Ltd. (the “Applicant”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that, in connection with their take-over bid (the “Offer”) to acquire all of the issued and outstanding common shares (“Common Shares”) of Silent Witness Enterprises Ltd. (“Silent Witness”), the employment agreements (the “Employment

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Agreements”) between Honeywell, the Applicant and each of Rob Bakshi (“Bakshi”) and Tom Gill (“Gill”) are made for reasons other than to increase the value of the consideration paid to Bakshi and Gill and may be entered into despite the prohibition in the Legislation against an offeror entering into a collateral agreement with any holder of an offeree that has the effect of providing to the holder a consideration of greater value than that offered to the other holders of the same class of securities (the “Prohibition on Collateral Agreements”);

- ¶ 2 AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the British Columbia Securities Commission is the principal regulator for this application;
- ¶ 3 AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;
- ¶ 4 AND WHEREAS Honeywell and the Applicant have represented to the Decision Makers that:
1. Honeywell is a corporation existing under the laws of Delaware and is not a reporting issuer in any of the Jurisdictions;
 2. the Applicant is an indirect wholly-owned subsidiary of Honeywell incorporated in British Columbia for the purpose of making the Offer;
 3. the Applicant is not a reporting issuer in any of the Jurisdictions;
 4. Silent Witness is a company existing under the laws of British Columbia having its head office in Surrey and its Common Shares listed and posted for trading on The Toronto Stock Exchange;
 5. Silent Witness is a reporting issuer in Ontario and British Columbia;
 6. as at October 10, 2003, Silent Witness had 7,468,541 Common Shares outstanding (excluding 549,900 Common Shares which are held by Silent Witness and which have not been cancelled) and 427,000 options outstanding;
 7. Honeywell, indirectly through the Applicant, has made an all-cash offer to acquire all of the Common Shares at \$11.27 per Common Share;
 8. the Offer will be made by way of a take-over bid circular (the “Circular”) prepared in accordance with the Legislation, which was sent to all shareholders of Silent Witness on October 28, 2003;

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9. the Offer will be conditional upon, among other things, there being validly deposited under the Offer and not withdrawn at the expiry time at least 90% of the Common Shares (calculated on a fully-diluted basis);
10. neither Honeywell nor the Applicant will, as a result of the Offer, become a reporting issuer under the Legislation;
11. the Applicant, Honeywell and Silent Witness have entered into a support agreement under which Silent Witness has agreed to support the Offer, subject to its right under certain conditions to terminate the agreement in the event of a superior proposal that is not matched by the Applicant;
12. Honeywell has entered into deposit agreements with Bakshi and Gill under which they have agreed to deposit to the Offer all of the Common Shares held by them, representing approximately 8% of the outstanding Common Shares;
13. Bakshi, as the Chairman, Chief Executive Officer and President of Silent Witness, is responsible for, among other things establishing short-term and long range-objectives, plans and policies (subject to approval of the Board of Directors) and directing financial, operations, product development and sales and marketing functions and ensuring performance objectives are met;
14. Gill, as the Chief Operating Officer of Silent Witness, is responsible for planning, directing and controlling Silent Witness's overall operations and financial plans and policies and, under the guidance of the Chief Executive Officer, is also responsible for establishing short-term and long-term objectives, plans and policies relating to the financial, organizational, operations and human resources planning activities;
15. Gill has also undertaken the responsibilities of Chief Financial Officer since June 2003;
16. there is currently no formal, written employment agreement between Silent Witness and either of Gill or Bakshi;
17. the main terms of the Employment Agreements are described in the Circular;
18. the purpose of the Employment Agreements is to provide incentives to Bakshi and Gill to:

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- (a) continue their involvement with the business of Silent Witness and thereby improve the performance of Silent Witness' business after its indirect acquisition by Honeywell; and
 - (b) assist in managing and expanding Honeywell's global video controls business (with current worldwide sales of approximately US\$150 million annually), which business will include Silent Witness following the acquisition;
- 19. the Applicant believes these two individuals have been critical to the successful development of the business of Silent Witness to date and they are important to the relationship between Silent Witness and many of its principal clients;
- 20. the Applicant believes that it is important to the long-term success and growth of Honeywell's global video controls business that each of Bakshi and Gill be retained as senior officers of Honeywell, or a direct or indirect subsidiary, engaged full time in such business;
- 21. it is intended that the terms of the Employment Agreements will provide Bakshi and Gill with long-term incentives to support and grow the business of Silent Witness and to assist with the transition of the business to its new ownership;
- 22. the proposed terms of the Employment Agreements have been negotiated with each of Bakshi and Gill at arm's length and are on terms and conditions that are commercially reasonable;
- 23. the proposed base compensation and eligibility for annual stock options and incentive compensation provided to each of Bakshi and Gill is substantially similar to their current compensation and is commensurate with the compensation of employees of Honeywell with similar levels of responsibility in similar contexts;
- 24. Honeywell has provided similar retention and incentive packages in comparable acquisitions it has undertaken to ensure management continuity so as to preserve and grow the value of the acquired business;
- 25. Honeywell believes that such packages are customary in the industry; and
- 26. the Employment Agreements have been made for valid business reasons unrelated to Bakshi's and Gill's holdings of Common Shares or options to acquire Common Shares and not for the purpose of conferring an economic or

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collateral benefit that the other shareholders of Silent Witness do not enjoy or to increase the value of the consideration to be paid to Bakshi or Gill for their Common Shares tendered under the Offer;

- ¶ 5 AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);
- ¶ 6 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;
- ¶ 7 THE DECISION of the Decision Makers in the Jurisdictions under the Legislation is that the Employment Agreements are being made for reasons other than to increase the value of the consideration to be paid to Bakshi and Gill for their Common Shares and may be entered into notwithstanding the Prohibition on Collateral Agreements.
- ¶ 8 December 5, 2003

Brenda Leong
Director