

2005 BCSECCOM 188

March 11, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 114(2) Takeover Bids - Exemption from the formal take over bid requirements in Part 13 of the Act - An issuer wants to complete a take over bid that meets some, but not all of the conditions set out in s. 98(1)(e) of the Act required for an exempt take over bid - The bid is being done in compliance with the laws of a foreign jurisdiction that has not been recognized for the purposes of s. 98(1)(e); the bid will satisfy all other conditions required for an exempt take over bid

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 105-110, and 114(2)

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 Lundin Mining Corporation (the Filer)

MRRS Decision Document

Background

- ¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the requirements in the Legislation relating to take-over bids, except the requirements to file a report of a take over bid, where applicable, and to pay the applicable fees, in respect of an offer (the Offer) to be made by the Filer to acquire ordinary shares of Arcon International Resources Plc (Arcon) (the Requested Relief).

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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 incorporated under the *Canada Business Corporations Act*;
 - 2. the Filer's registered office and principal business office are in Vancouver, British Columbia;
 - 3. the Filer is a reporting issuer in British Columbia, Alberta, Ontario, Québec and Nova Scotia and is not on the list of defaulting reporting issuers in any of these jurisdictions where such a list is maintained;
 - 4. the Filer's common shares are listed for trading on the Toronto Stock Exchange and its Swedish Depository Receipts are listed on the O-list of the Stockholm Stock Exchange;
 - 5. the Filer has entered into an agreement to make the Offer to acquire all of the shares of Arcon, an Irish registered mining and mineral exploration company whose ordinary shares are listed on the London Stock Exchange and the Irish Stock Exchange;
 - 6. Arcon is not a reporting issuer or the equivalent in any jurisdiction of Canada and its securities are not listed for trading on any Canadian stock exchange;
 - 7. under the Offer, each tendering Arcon shareholder will receive approximately 0.032 common shares of the Filer and US\$0.36 for each Arcon share held;
 - 8. the Filer will

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- (a) make the Offer to all of the Arcon shareholders, other than to those shareholders resident in Australia, Japan, the United States and any other jurisdiction where it is unlawful to do so, and
 - (b) and prepare the documents relating to the Offer,
- in compliance with the corporate and securities laws of Ireland;
- 9. the Offer is subject to Arcon shareholders holding at least 80% of the issued and outstanding Arcon shares accepting the Offer, in which case the Filer intends to exercise its right under Irish corporate law to compulsorily acquire all of the remaining outstanding Arcon shares;
- 10. as of February 10, 2005, the registered shareholder list of Arcon indicates that there are a total of 12 registered Canadian shareholders of Arcon holding a total of 9,511 Arcon shares, approximately 0.00005% of the total number of issued and outstanding Arcon shares, and that these persons are resident in British Columbia, Alberta, Ontario and the Northwest Territories;
- 11. the Offer will be made to Canadian holders of Arcon shares on the same basis as it is being made to the holders of Arcon shares resident elsewhere, including extending to those holders identical rights and consideration;
- 12. the Filer will
 - (a) send the documents relating to the Offer to the holders of Arcon shares whose addresses on the books of Arcon are, to the best of the Filer's knowledge, in Canada, at the same time that it sends those documents to the other Arcon shareholders to whom the Offer is made, and
 - (b) file those documents with Decision Makers in the Jurisdictions and in the Northwest Territories; and
- 13. the Filer cannot rely on the *de minimis* exemption relating to take-over bids in the Legislation because Ireland is not a recognized jurisdiction for the purpose of this exemption.

Decision

- ¶ 4 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.

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The decision of the Decision Makers under the Legislation is that the Requested Relief is granted in connection with the Offer, provided that

- (a) the Offer is made in compliance with the laws of Ireland, and
- (b) the Filer complies with representation 12.

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