

2010 BCSECCOM 360

June 10, 2010

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions – Securities Act*, s. 88 – Cease to be a reporting issuer in BC - The issuer's securities are traded only on a market or exchange outside of Canada - Canadian residents own less than 2% of the issuer's securities and represent less than 2% of the issuer's total number of security holders; the issuer does not intend to do a public offering of its securities to Canadian residents, will not be a reporting issuer in a Canadian jurisdiction, is subject to the reporting requirements of UK securities laws, and all shareholders receive the same disclosure

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 88

In the Matter of
the Securities Legislation of
British Columbia, Saskatchewan, Manitoba, Québec and
Newfoundland and Labrador
(the Jurisdictions)

and

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

and

In the Matter of
Mwana Africa Plc
(the 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 (the Legislation) that the Filer is not a reporting issuer (the Exemptive Relief Sought).

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

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

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* 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 public limited company existing under the laws of England and Wales;
 - 2. the authorised share capital of the Filer is £65,000,000 made up of 650,000,000 ordinary shares of 10 pence each (the Ordinary Shares);
 - 3. the Ordinary Shares are listed on the London Stock Exchange's Alternative Investment Market (AIM). As of April 26, 2010 the Filer's market capitalization was 488,774,359 Ordinary Shares outstanding;
 - 4. the Filer has no other securities outstanding;
 - 5. the Filer is a reporting issuer in the Jurisdictions;
 - 6. the Filer is not in default of any of its obligations under the Legislation as a reporting issuer;
 - 7. in 2007 the Filer made an offer (the Offer) to all shareholders of SouthernEra Diamonds Inc. (SouthernEra) to acquire all of the outstanding Class A common shares of SouthernEra (SouthernEra Shares) not already owned by the Filer; as a result of filing a securities exchange take-over bid circular pursuant to the Offer, and taking up and paying for the SouthernEra Shares, the Filer became a reporting issuer in the Jurisdictions;
 - 8. the Filer is currently a "designated foreign issuer" as that term is defined in National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (NI-71-102); since becoming a reporting issuer in

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the Jurisdictions, the Filer has complied with the requirements of the Legislation applicable to designated foreign issuers;

9. as of April 26, 2010 there were:

- (a) 889,744 Ordinary Shares held directly by Canadians, representing 0.18% of the outstanding capital;
- (b) 23 securityholders identified as Canadian representing 0.72% of securityholders worldwide; and
- (c) 2 securityholders identified as resident in British Columbia holding an aggregate of 5,042 Ordinary Shares, 1 securityholder identified as resident in Manitoba holding 87 Ordinary Shares, 3 securityholders identified as resident in Quebec holding 7,037 Ordinary Shares, 1 securityholder identified as resident in Alberta holding 14,692 Ordinary Shares and 16 securityholders identified as resident in Ontario holding an aggregate of 862,886 Ordinary Shares;

10. Securityholders resident in Canada do not:

- (a) directly or indirectly beneficially own more than 2% of each class or series of outstanding securities of the Filer worldwide; and
- (b) directly or indirectly comprise more than 2% of the total number of securityholders of the Filer worldwide;

11. in the last 12 months, the Filer has not conducted an offering of its securities in Canada or taken any steps that indicate there is a market for its securities in Canada; the Filer has no plans to raise financing by way of a public offering of its securities in Canada or an offering under an exemption from the registration requirement and prospectus requirement of the Legislation;

12. none of the Filer's securities are traded on a marketplace in Canada, as defined in National Instrument 21-101 *Marketplace Operations*; the Filer does not currently intend to have its securities listed for trading on a marketplace in Canada;

13. the Filer is subject to the securities laws of United Kingdom of Great Britain and the listing rules of the AIM (the UK Rules);

14. the Filer is subject to, and will continue to comply with, all applicable requirements of applicable UK Rules;

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15. on March 15, 2010 the Filer issued and filed a news release announcing that the Filer has submitted an application to the securities regulatory authorities of the Jurisdictions to cease to be a reporting issuer in the Jurisdictions;
16. the Filer has undertaken in each of the Jurisdictions that it will continue to concurrently deliver to its securityholders resident in Canada all disclosure documents it is required by the UK Rules to deliver to U.K. resident securityholders.

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 Exemptive Relief Sought is granted provided that the Filer continues to concurrently deliver to its securityholders resident in Canada all disclosure documents it is required by the UK Rules to deliver to U.K. resident securityholders.

Martin Eady, CA
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British Columbia Securities Commission