

# 2005 BCSECCOM 165

February 17, 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)(d) of the Act required for an exempt take over bid - The target company has more than 50 shareholders; the bid will satisfy all other conditions required for an exempt take over bid under s. 98(1)(d); the shareholders of the target company signed a shareholders' agreement when they purchased their shares which provided the issuer with authority to enter into a take over bid transaction under certain conditions, which have been met

## **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  
Alberta, British Columbia and Ontario  
(the Jurisdictions)

and

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

and

In the Matter of  
LOR Capital Inc. (the Filer) and Time Industrial, Inc. (the Target)

## **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) that the requirements contained in the Legislation relating to take-over bids (the Take-over Bid Requirements) shall not apply to the acquisition by the Filer of all of the issued and outstanding shares of the Target (the Requested Relief).

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2. Under the Mutual Reliance Review System for Exemptive Relief Applications (the MRRS):
  - 2.1 the Alberta Securities Commission is the principal regulator for this application, and
  - 2.2 this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

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

### **Representations**

4. This decision is based on the following facts represented by the Filer:
  - 4.1 The Filer was incorporated under the *Canada Business Corporations Act* on November 18, 2003.
  - 4.2 The head office of the Filer is located in Montreal, Quebec.
  - 4.3 The Filer is authorized to issue an unlimited number of common shares (the Common Shares) of which there are 10,500,000 Common Shares issued and outstanding.
  - 4.4 The Common Shares have been listed on the TSX Venture Exchange since March 10, 2004.
  - 4.5 The Filer is a reporting issuer in each of the Jurisdictions and Quebec.
  - 4.6 The Target was incorporated on July 5, 2000 under the *Business Corporations Act* (Alberta) as Exceedia Inc. (Exceedia) and was continued under the laws of the state of Delaware on November 30, 2000. Exceedia changed its name to Time Industrial, Inc. on October 16, 2001.
  - 4.7 The head office of the Target is located in Edmonton, Alberta.
  - 4.8 The Target is not and has never been a reporting issuer in any jurisdiction, nor are any of its securities listed or posted for trading on any exchange or marketplace.

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- 4.9 The Target is authorized to issue 70,000,000 Class A voting common shares (the Class A Shares), 20,000,000 Class B non-voting common shares (the Class B Shares), 5,000,000 Series I Class C preferred shares, 5,200,000 Class D non-cumulative convertible voting preferred shares (the Class D Shares) and 38,000,000 Class E non-cumulative convertible voting preferred shares (the Class E Shares) of which there are 10,834,669 Class A Shares, 4,466,566 Class B Shares, 4,446,535 Class D Shares and 21,963,110 Class E Shares issued and outstanding. Each of the Class B Shares, the Class D Shares and the Class E Shares are convertible into Class A Shares.
- 4.10 The Target has 95 shareholders of record (the Target Shareholders), all of whom are residents of Alberta, British Columbia, Ontario or the United States.
- 4.11 89 Target Shareholders hold Class B Shares (the Class B Shareholders) and 6 Target Shareholders (the Other Shareholders) hold Class A Shares, Class D Shares and/or Class E Shares.
- 4.12 80 of the Class B Shareholders (holding a total of 4,304,566 Class B Shares) are resident in Alberta, two of the Class B Shareholders (holding a total of 30,000 Class B Shares) are resident in British Columbia, two of the Class B Shareholders (holding a total of 42,000 Class B Shares) are resident in Ontario and five of the Class B Shareholders (holding a total of 90,000 Class B Shares) are resident in the United States.
- 4.13 Five of the Other Shareholders are resident in Ontario (holding a total of 1,421,874 Class A Shares, 4,446,535 Class D Shares and 21,963,110 Class E Shares) and one of the Other Shareholders is resident in the United States (holding a total of 9,412,795 Class A Shares).
- 4.14 Each of the Class B Shareholders has entered into a shareholders' agreement dated October 11, 2001 (the Class B Agreement) which provides, amongst other things, that if a holder of Class A Shares, Class C Shares or Class D Shares, owning at least 55% of such shares (on an as if converted to Class A basis) proposes to sell to an arm's length purchaser, the Class B Shareholders are required to sell their Class B Shares on identical terms and conditions.
- 4.15 Each of the Other Shareholders has entered into a shareholders' agreement dated October 4, 2004, as amended and restated (the Other Shareholders' Agreement), which provides, among other things, for a carry-along right which provides that shareholders representing 75% of

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the shares of the Target (on an as if converted to Class A Share basis) shall have the right to compel the remaining Other Shareholders to sell their shares to a third party who has made a bona fide offer to purchase such shares, provided that the Other Shareholders carried along obtain the same terms and conditions as the carrying along parties.

- 4.16 The Filer, the Target and four of the six Other Shareholders which collectively hold 91.3% of the shares of the Target (on an as if converted to Class A Share basis) entered into a letter of agreement dated December 23, 2004 pursuant to which the Filer has agreed to acquire all of the issued and outstanding shares of the Target for an aggregate purchase price of approximately \$18.7 million, payable by the issuance of up to 81,668,055 Common Shares at a deemed price of \$0.23 per share (the Acquisition).
- 4.17 The board of directors of the Target has determined that the Acquisition is fair, from a financial point of view, to the Target Shareholders and is in the best interests of the Target and the Target Shareholders.
- 4.18 There are no exemptions from the Take-over Bid Requirements available to allow the Acquisition to occur.

### **Decision**

5. 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.
6. The Decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that the Acquisition is completed in compliance with the Class B Agreement and the Other Shareholders' Agreement.

Glenda A. Campbell, Q.C., Vice-Chair  
Alberta Securities Commission

Stephen R. Murison, Vice-Chair  
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