

2006 BCSECCOM 406

COR 06/054

June 23, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 88 - Cease to be a reporting issuer in BC - The securities of the issuer are beneficially owned by more than 50 persons and are not traded through any exchange or market - The issuer's common shares became owned by another company; the issuer has other securities outstanding, held by more than 50 holders, entitling the holders to participate in the revenue from a portion of the issuer's business; the participation is based on a formula that cannot be calculated using GAAP numbers; the securityholders' entitlements will be overseen by a committee, a majority of which are major securityholders that are independent of the issuer; the transaction, structure of the payments, existence of the committee, and intention of the issuer to cease to be a reporting issuer were disclosed in an information circular sent to all of the issuer's securityholders; the securityholders voted to approve the entire transaction; there is no market for the securities; the issuer does not intend to do a public offering of its securities to Canadian residents; the issuer will not be subject to continuous disclosure requirements in any Canadian jurisdiction

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 and Ontario
(the Jurisdictions)

and

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

and

In the Matter of
International Keystone Entertainment Inc.
(the Filer)

MRRS Decision Document

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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 Filer be deemed to cease to be a reporting issuer under the Legislation (the Requested Relief).

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 a reporting issuer in the provinces of British Columbia, Ontario and Québec and has its head office in Vancouver, British Columbia;
 - 2. the Filer is not in default of its requirements under the Legislation, except it has not filed its annual financial statements for its year ended January 31, 2006;
 - 3. the Filer was voluntarily delisted from the Montreal Exchange in August 2000 and there are currently no securities of the Filer being traded on any stock exchange or quotations system or traded over the counter in Canada or elsewhere;
 - 4. the Filer has applied in Québec for relief from the requirement to comply with the continuous disclosure obligations that apply to reporting issuers;
 - 5. the Filer's authorized capital consists of
 - (a) an unlimited number of common shares, of which 20,398,593 are outstanding and held by Keystone Pictures Inc., and

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- (b) 3571,428 Class A Preferred Shares and 3,571,428 Class B Preferred Shares, none of which were outstanding as at June 9, 2006;
- 6. the only other securities the Filer has outstanding are 20,398,593 participation rights that
 - (a) entitle the holders to receive quarterly royalty payments based on the revenue received by the Filer from the Film Library described below,
 - (b) do not carry any voting rights or any other rights associated with the control or direction of the Filer,
 - (c) are redeemable by the Filer in certain circumstances until 30 days before they expire for an aggregate US\$7,000,000, less any royalty payments paid to the holders, and
 - (d) expire on the earlier of
 - (i) the date the Film Library is sold,
 - (ii) the date the Filer redeems the participation rights, or
 - (iii) June 30, 2009, unless there is more than \$100,000 owing to the Filer in respect of the Film Library on June 30, 2009, then the first day after June 30, 2009 on which there is less than \$100,000 owing to the Filer in respect of the Film Library;
- 7. the Filer issued the participation rights in connection with an arrangement that closed May 25, 2006 under which all of its shareholders exchanged their shares for participation rights and which resulted in Keystone Pictures holding all of the Filer's outstanding shares;
- 8. there are 141 registered holders of participation rights, of which 95 hold 100 participation rights or less;
- 9. RBC Capital (RBCC) and Working Opportunity Fund (EVCC) Ltd. (WOF) each hold approximately 31% of the participation rights;
- 10. the Film Library is comprised of the distribution rights to approximately 63 completed films of the Filer (excluding certain reserved rights to the films);
- 11. the Filer will establish an oversight committee, comprised of a nominee of each of RBCC, WOF and Keystone Pictures Inc., that will be responsible for

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- (a) financial reporting and budgeting in respect of the Film Library,
 - (b) reviewing and approving the Filer's quarterly calculation of the revenue from the Film Library, and
 - (c) determining the scope of review and reporting of the revenue from the Film Library and expenses on an ongoing basis;
12. the calculation of the revenue from the Film Library is not based on GAAP measures, but on a calculation set out in the trust indenture governing the participation rights;
13. the oversight committee may require the Filer to provide the holders of the participation rights with a report documenting how it determined the amount owing under the participation rights;
14. the Filer sent an information circular in connection with the arrangement that disclosed
- (a) how the revenue from the Film Library would be calculated,
 - (b) the role of the oversight committee, and
 - (c) that the Filer was intending to make an application to cease to be a reporting issuer following the closing of the arrangement; and
15. the Filer does not intend to offer its securities to the public.

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.

The decision of the Decision Makers pursuant to the Legislation is that the Requested Relief is granted.

Robin E. Ford
Commissioner
British Columbia Securities Commission