

2011 BCSECCOM 376

July 19, 2011

Headnote

1996 Securities Act s. 48 – Exemption order by commission or executive director - exemption from s.34(b) requirement to be registered as an adviser - a person who resides outside BC wants to advise BC residents - the person is licensed to provide advice in the jurisdiction in which they are resident; the person will provide advice to one BC client; the BC client is a “permitted client” as that term is defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, an adviser that is exempt from the adviser registration requirement, with professional advisers on staff; the client is aware that the person is not registered in BC and that it may not have the same protections that it might have if the person were registered in BC

Applicable Legislative Provisions

1996 *Securities Act* s. 48 – Exemption order by commission or executive director
1996 *Securities Act* s.34(b) – Adviser registration requirement

Exemption Order

Corston-Smith Asset Management Sdn. Bhd. (Company Number 769082-H)

Section 48 of the *Securities Act* R.S.B.C. 1996, c. 418

Background

- ¶ 1 Corston-Smith Asset Management Sdn. Bhd. (Company Number 769082-H) (**Corston-Smith**) applied to the Executive Director pursuant to section 48 of the *Securities Act* (British Columbia) (the **Act**) for an exemption from the adviser registration requirement in section 34(b) of the Act (the **adviser registration requirement**) in order to provide portfolio management services to one prospective sophisticated client resident in British Columbia, the British Columbia Investment Management Corporation (**bcIMC**).

bcIMC is an adviser that was granted an exemption from the adviser registration requirement pursuant to an order granted on July 22, 2010 under 2010 BCSECCOM 426 (the **2010 Order**).

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

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Representations

¶ 3 Corston-Smith represents that:

1. it is a private company incorporated under the laws of Malaysia, it is a resident of Malaysia and its business office is located in Kuala Lumpur, Malaysia;
2. it is actively engaged in the business of providing fund management and portfolio management services;
3. it is licensed by the Malaysian Securities Commission under the *Capital Markets and Services Act 2007* (Malaysia) (the **Malaysian Act**) to undertake on behalf of other persons, whether on a discretionary authority granted by such persons or otherwise, the management of a portfolio of securities (the **License**);
4. it is not in default of any requirements under the Malaysian Act;
5. it has carried on business in Malaysia since 2007;
6. bcIMC sought out Corston-Smith to provide portfolio management services to bcIMC, and it intends to provide such portfolio management services to bcIMC;
7. it has satisfied itself that bcIMC:
 - a. is a crown corporation, incorporated under the *Public Sector Plans Act* (British Columbia);
 - b. is a “permitted client” as defined in National Instrument 31-103 – *Registration Requirements and Exemptions* (**NI 31-103**);
 - c. has professional advisers; and
 - d. was granted an exemption from the adviser registration requirement pursuant to the 2010 Order;
8. its obligations and duties with respect to the portfolio management services Corston-Smith will provide to bcIMC are set out in a written agreement with bcIMC;

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9. it will not hold or have access to any assets of bcIMC and an unrelated third-party custodian will hold all assets managed by it for bcIMC in trust for bcIMC;
10. it does not:
 - a. maintain an office or representatives in British Columbia;
 - b. currently have any clients in British Columbia; or
 - c. intend to actively solicit other clients in British Columbia;
11. it intends that bcIMC will be its only client in British Columbia;
12. it will advise bcIMC:
 - a. it is not registered as an adviser under the Act;
 - b. it may not have the same proficiencies as persons registered as an adviser under the Act;
 - c. bcIMC may not have the same protections that it otherwise might have if Corston-Smith were registered as an adviser under the Act;
 - d. its jurisdiction of residence is Malaysia;
 - e. of the name and address of its agents for service of process in British Columbia; and
 - f. there may be difficulty enforcing legal rights against Corston-Smith because it is a resident outside Canada and all or substantially all of its assets may be situated outside of Canada;
13. in providing portfolio management services to bcIMC, Corston-Smith would be considered to be acting as an adviser under the Act and without this order would be required to be registered, or otherwise be exempt from registration, as an adviser under the Act; and
14. there are no exemptions from the adviser registration requirement that Corston-Smith can rely on to provide portfolio management services to bcIMC.

Order

- ¶ 4 Considering that it is not prejudicial to the public interest, the Executive Director orders under section 48 of the Act that Corston-Smith is exempt from the adviser

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registration requirement for portfolio management services provided to bcIMC, provided that:

1. bcIMC is a permitted client as defined in NI 31-103; and
2. Corston-Smith maintains in good standing its License under the Malaysian Act.

Sandy Jakab
Director, Capital Markets Regulation
British Columbia Securities Commission