

Citation: 2013 BCSECCOM 526

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – 1996 *Securities Act* s. 76 - Exemption from s. 61 requirement to file a prospectus in connection with a distribution - A foreign issuer is making a distribution of its securities under a robust foreign securities regulatory regime and wants relief from the prospectus requirement to distribute some of those securities to Canadian listed companies as payment for securities of the listed companies in what can be described as financing transactions – The issuer is a foreign issuer; the issuer’s business is to invest in listed companies and hold these securities; the issuer intends to file a prospectus to qualify the distribution of its securities in the UK and to list its securities on the London Stock Exchange; the issuer’s only distributions in Canada will be to listed companies in connection with negotiated financing transactions; the issuer will pay for its investments in the listed companies with its own securities; the listed companies are expected to sell the issuer’s securities on the London Stock Exchange for cash to finance their operations; the issuer has no connection to Canada apart from its investments in the listed companies; the issuer’s securities will trade only on a market outside Canada; the issuer will impose safeguards to ensure a market for its securities does not develop in Canada

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, sections 61 and 76

November 13, 2013

In the Matter of
the Securities Legislation of
British Columbia and Ontario
(the Jurisdictions)

and

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

and

In the Matter of
Global Resources Investment Limited
(the Filer)

Decision

Background

¶ 1 The securities regulatory authorities or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation

of the Jurisdictions (the Legislation) that the prospectus requirement in the Legislation will not apply to the distribution of the ordinary shares of the Filer to certain Canadian listed companies under a prospectus filed in the United Kingdom in connection with an initial public offering and listing of the ordinary shares of the Filer (the Exemption Sought).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application,
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta and Nova Scotia, and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 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 was incorporated under the laws of England and Wales on October 16, 2012;
2. the Filer's head office is located at 6 New Street Square, New Fetter Lane, London, United Kingdom (UK), EC4A 3AQ;
3. the principals of the Filer, and its management, are located in London, UK; apart from its investments in the Canadian Pubcos (as defined below), the Filer has no other connection to Canada;
4. the Filer will be re-registered as a public company with the name "Global Resources Investment Trust plc" on or before filing its final prospectus with the UK Listing Authority;
5. the Filer is authorized to issue ordinary shares with a par value of £0.01;
6. the Filer is not a reporting issuer in any jurisdiction of Canada and has no present intention of becoming a reporting issuer in any jurisdiction of Canada;
7. no securities of the Filer have ever been traded on a marketplace in Canada as defined in National Instrument 21-101 *Marketplace Operation*; the Filer has no present intention of trading securities on any marketplace in Canada;

8. the Filer is not in default of any of the requirements of the applicable securities legislation of any jurisdiction in Canada or the UK;
9. the Filer will be constituted as an investment trust under UK law; its business is to generate capital growth through investing in a portfolio of securities of small and mid-capitalized natural resource and mining companies, and holding this portfolio of securities as long-term investments; securities of the Filer will not be redeemable at the net asset value per security more than once annually;
10. the Filer may invest in producing companies, development companies, or companies with exploration potential, which may include seed capital companies; the Filer will seek to ensure, through active shareholder involvement, that investee companies act to maximize long-term shareholder value, and may seek representation on the boards of some investee companies if it is deemed necessary;
11. the Filer proposes to acquire securities of Canadian companies as part of its portfolio; the Filer has negotiated terms and conditions of private placements in 35 Canadian companies listed on the TSX Venture Exchange, the Toronto Stock Exchange or the Canadian National Stock Exchange (Canadian Pubcos); the private placements will occur by the Filer acquiring common shares or convertible securities of each Canadian Pubco (Pubco Securities) in exchange for the distribution of ordinary shares of the Filer (GRIT Shares), having equivalent value, to each Canadian Pubco (the Distribution);
12. the minimum dollar value equivalent of the Pubco Securities to be issued to the Filer, and of the GRIT Shares to be issued to each Canadian Pubco, is \$150,000; the Filer cannot rely on the minimum amount exemption in section 2.10 of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) because the Canadian Pubcos are not paying for their GRIT Shares in cash; the Filer cannot rely on the asset acquisition exemption in section 2.12 of NI 45-106 because the Canadian Pubcos are not paying for their GRIT Shares with assets;
13. the Canadian Pubcos are all resident in Canada as follows: 26 are located in British Columbia, five are located in Ontario, three are located in Alberta, and one is located in Nova Scotia;
14. each Canadian Pubco is listed on a recognized exchange and is a reporting issuer in one or more jurisdictions in Canada; the sole purpose of the Canadian Pubcos in acquiring GRIT Shares is to promptly resell such shares on the London Stock Exchange (LSE) to realize cash proceeds to finance their respective businesses and operations; each Canadian Pubco is entering into an agreement with the Filer as an indirect means of undertaking a private placement, and is aware of the business risk associated with receiving GRIT Shares as opposed to directly receiving cash consideration;
15. the Filer has advised the Canadian Pubcos of the risks associated with acquiring and reselling GRIT Shares; each Canadian Pubco has had the opportunity to receive independent financial and legal advice regarding the financing transaction the Filer has proposed;

16. the Filer's sole purpose in acquiring Pubco Securities is to hold these securities as investments for capital appreciation; the Filer will not sell, trade, short-sell, lend, or otherwise dispose of the Pubco Securities during its anticipated life of four to five years, unless to realize gains, limit losses, or to maintain compliance with applicable UK regulations governing investment trusts; the Filer is not proposing to enter into an equity line financing agreement or similar arrangement with any Canadian Pubco;
17. the Filer is making an application to list its ordinary shares on the LSE; the Distribution, and the concurrent distribution of the Pubco Securities to the Filer, are conditional on the Filer attaining that listing;
18. the Filer is in the process of filing a prospectus with the UK Listing Authority for the issuance of its ordinary shares at £1.00 per share; distribution will be effected under the public offering procedures of the UK Listing Authority and the LSE, as applicable to UK investment trusts, which include:
 - (a) a requirement that GRIT's prospectus follows prescribed content requirements that obligate an issuer to present all relevant information about the issuer and the offering at a level of detail equivalent to full, true and plain disclosure of all material facts, as required by a prospectus filed in Canada; the Filer's prospectus will disclose the Filer's portfolio of securities, including the Pubco Securities it holds;
 - (b) due diligence of the Filer conducted by a qualified sponsor in the UK, which is subject to liability and sanction from UK regulatory authorities for failure to suitably conduct its review and undertake the offering;
 - (c) a verification process regarding the disclosure in the GRIT prospectus by its duly qualified legal advisor and sponsor;
 - (d) a review and comment process on GRIT's prospectus imposed by the UK Listing Authority in accordance with rules promulgated under the *Financial Services & Markets Act 2000* of the UK; and
 - (e) a requirement to distribute the GRIT prospectus to investors in connection with their subscription for GRIT Shares(collectively, the UK Prospectus Procedure);
19. the only distribution of GRIT Shares in Canada will be to the Canadian Pubcos; the Filer has not conducted any other offerings of its securities in Canada nor does the Filer intend to conduct any offerings of its securities in Canada;
20. as a consequence of the transactions, it is anticipated that there will be 26,738,509 GRIT Shares held by the Canadian Pubcos;

21. the Canadian Pubcos will represent approximately 81% of the number of shareholders of the Filer, and the GRIT Shares will represent approximately 68% of the Filer's issued and outstanding ordinary shares;
22. any resale of the GRIT Shares by the Canadian Pubcos is expected to be effected through the facilities of the LSE as there is no market for the GRIT Shares in Canada and none is expected to develop;
23. because of the financing purpose underlying the Distribution, the Filer anticipates all Canadian Pubcos will seek to dispose of their GRIT Shares and realize cash proceeds as quickly as possible; after the Filer obtains an LSE listing, the Filer anticipates there will be a liquid market for the GRIT Shares, based on the trading volumes of other similar investment trusts and the aggregate size and general liquidity of the investment trust sector of the LSE;
24. the Filer has undertaken that it will deliver to holders of GRIT Shares who are residents of Canada all disclosure materials required to be delivered to holders of GRIT Shares resident in the UK, in the manner required by UK securities law and the requirements of the LSE;
25. the material filed by the Filer under its UK securities law reporting obligations will also be available on the Filer's website at www.globalresourcesinvestments.com; information concerning the Filer will also be available through the LSE website at www.londonstockexchange.com;
26. each Canadian Pubco has agreed that the Filer's UK sponsor and broker, Nplus1 Singer Advisory LLP (N+1 Singer), will coordinate any resale of the GRIT Shares on the LSE on behalf of the Canadian Pubcos during the first six months following the Distribution; N+1 Singer anticipates primarily marketing and selling the GRIT Shares to its UK institutional clients; except in relation to negotiating terms of the Filer's investments in the Canadian Pubcos, neither the Filer nor N+1 Singer have marketed the GRIT Shares in Canada or will conduct any marketing of GRIT Shares in Canada;
27. N+1 Singer will seek to sell such quantities of GRIT Shares as requested by each Canadian Pubco during the first six months following the Distribution; the Canadian Pubcos will be responsible for selling any GRIT Shares that remain unsold after this six-month period;
28. the Filer has put in place certain safeguards to ensure that no market for GRIT Shares develops in Canada (Safeguards):
 - (a) the Filer's prospectus will contain a prominent disclaimer to the effect that the GRIT Shares are not available for distribution in Canada other than under available prospectus exemptions;
 - (b) all marketing materials to be used by the Filer and N+1 Singer will contain language to the effect that the GRIT Shares being resold by Canadian Pubcos may not be acquired by Canadian residents, or person controlled, directly or indirectly, by Canadian residents, and may not be acquired for the purposes of resale to Canadian residents; and

- (c) N+1 Singer will market the GRIT Shares only to its institutional clients, none of whom are Canadian residents or controlled by Canadian residents;
29. the Filer is precluded under its investment policy from taking legal or management control of any Canadian Pubco, and as such will not acquire or hold more than 19.9% of the outstanding voting securities of any Canadian Pubco; and
30. the Filer is aware of and will comply with all applicable Canadian securities obligations pertaining to “insiders” including:
- (a) filing an insider profile on SEDI, and filing all necessary insider reports; and
 - (b) filing early warning reports and disseminating corresponding news releases.

Decision

¶ 4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Makers to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that:

- (a) the Filer is not a reporting issuer in any jurisdiction of Canada at the date of the Distribution;
- (b) the Filer complies with the UK Prospectus Procedure;
- (c) the Filer completes its listing on the LSE;
- (d) the Filer advises each Canadian Pubco of the terms of this relief;
- (e) the Filer complies with the Safeguards;
- (f) the first trade of any GRIT Shares acquired under the Distribution will be deemed to be a distribution unless the trade is made:
 - (i) through the LSE or another exchange or market outside of Canada, or
 - (ii) to a person or company outside of Canada; and
- (g) the Filer provides a report to the Decision Makers detailing the number of GRIT Shares then held by Canadian Pubcos, and to its knowledge, all Canadian residents, on the earlier of:
 - (i) the disposition of all GRIT Shares by the Canadian Pubcos, and
 - (ii) six months following the date of the Distribution.

Brent W. Aitken
Vice Chair
British Columbia Securities Commission