

2010 BCSECCOM 87

February 4, 2010

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 51-102 *Continuous Disclosure Obligations* – National Instrument 52-109 *Certification of Disclosure in Issuer's Annual and Interim Filings* – National Instrument 52-110 *Audit Committees* – National Instrument 58-101 *Disclosure of Corporate Governance Practices* – The Filer seeks relief from the requirement in the definition of “venture issuer” in section 1.1 of each of the rules, that a reporting issuer not have any of its securities listed or quoted on a marketplace outside of Canada and the United States of America, in order to remain listed on the Risk Capital Segment of the Lima Stock Exchange (*Segmento de Capital de Riesgo da la Bolsa de Valores de Lima*) - A venture issuer with common shares listed on the TSXV wants to list on an exchange that does not meet the requirements of the definition of a venture issuer; the relevant exchange is a junior market that has similar requirements as the TSXV; the exchange requires the issuer to comply with TSXV requirements in order to acquire and maintain listing on that exchange; to remain a venture issuer, the issuer must continue to have its common shares listed on the TSXV and the exchange must remain a junior market

Securities Act, s. 171 – revocation of a previous decision – An issuer wants a previous decision revoked – Since the previous relief was granted the issuer's circumstances have changed; certain conditions to the relief are no longer appropriate; alternative conditions can be structured that address the issuer's new circumstances

Applicable British Columbia Provisions

National Instrument 51-102, s. 1.1

National Instrument 52-109, s. 1.1

National Instrument 52-110, s. 1.1

National Instrument 58-101, s. 1.1

Securities Act, R.S.B.C. 1996, c. 418, s. 171

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

2010 BCSECCOM 87

and

In the Matter of
Inca Pacific Resources Inc.
(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):

1. for relief from the requirement in the definition of venture issuer in section 1.1 of each of National Instrument 51-102 - *Continuous Disclosure Obligations*, National Instrument 52-109 - *Certification of Disclosure in Issuer's Annual and Interim Filings*, National Instrument 52-110 - *Audit Committees* and National Instrument 58-101 - *Disclosure of Corporate Governance Practices* that a reporting issuer not, at the relevant time, have any of its securities listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace or a marketplace outside of Canada and the United States of America other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc (the Exemption Sought) ;and
2. the order granted to the Filer on May 11, 2009 (the Prior Order) be revoked.

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 Manitoba; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

2010 BCSECCOM 87

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.

In this decision,

“Exchange” means Risk Capital Segment of the Lima Stock Exchange (Segmento de Capital de Riesgo de la Bolsa de Valores de Lima) in Peru; and

“TSXV” means the TSX Venture Exchange.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. the Filer was incorporated under the *Business Corporations Act* (British Columbia) and its registered and head office is in Vancouver, British Columbia;
 2. the Filer is a reporting issuer in British Columbia, Alberta, Manitoba and Ontario (the Reporting Jurisdictions);
 3. the Filer’s principal asset, the Magistral mining project, is located in Peru;
 4. the common shares of the Filer (the Shares) are listed on the TSXV under the trading symbol “IPR” and, since September 17, 2007, on the Exchange;
 5. the Filer listed the Shares on the Exchange due to the Filer’s connection to Peru and to facilitate the sale and transfer of the Shares in Peru;
 6. since September 17, 2007 to the date of this decision, the Filer has been in default of securities legislation requirements in the Reporting Jurisdictions that apply to a non-venture issuer;
 7. the Filer acknowledges that any right of action, remedy, penalty or sanction available to any person or company or to a securities regulatory authority against the Filer from September 17, 2007 until the date of this decision are not terminated or altered as a result of this decision;
 8. the Exchange is a junior market;
 9. the Exchange is similar to the TSXV in terms of its requirements since the requirements of the Exchange were modelled after those of the TSXV;

2010 BCSECCOM 87

10. the Exchange requires the Filer to comply with TSXV requirements in order to maintain its listing; the Exchange also requires that the Filer file with the Exchange copies of all public disclosure documents filed with Canadian securities regulators (Canadian Disclosure Documents);
11. the information that the Filer has provided about the Exchange (and its status as a junior market) herein is accurate as at the date of this decision; and
12. the Decision Makers granted the Exemption Sought in the Prior Order; the Prior Order contained a representation from the Filer that the Exchange requires that the Filer file with the Exchange Spanish translated copies of the Canadian Disclosure Documents; the Filer has advised staff in the Jurisdictions that there is no requirement to file with the Exchange Spanish translated copies of the Canadian Disclosure Documents.

Decision

- ¶ 4 Each of the Decision Makers is satisfied that the decision meets the applicable 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 Exemption Sought is granted provided that:

- (a) the Exchange is not restructured in a manner that makes it unreasonable to conclude that it is still a junior market;
- (b) the representations listed in sections 8 to 11 above continue to be true;
- (c) the Filer continues to have the Shares listed on the TSXV; and
- (d) the Filer does not have any securities listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace or a marketplace outside of Canada and the United States of America other than the Exchange, the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc.

The decision of the Decision Makers under the Legislation that is the Prior Order is revoked.

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission