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Headnote

Securities Act, s. 48, 76 – Other – Exemption from registration and prospectus requirements for situations other than a corporate acquisition or reorganization; trades to business associates; debt settlements; or trades involving employee investment plans and consultants – An issuer wants relief from the registration and prospectus requirements under securities legislation in connection with securities it is going to issue – The issuer is a TSX listed reporting issuer in British Columbia; it intends to pursue a listing of its securities on the Hong Kong Stock Exchange; the issuer will file a prospectus in Hong Kong to qualify the distribution of securities to non-Canadian purchasers; it file on SEDAR the final version of the prospectus used in connection with the offering along with supporting documents; it will impose safeguards on the offering to ensure that sales do not occur in Canada

Securities Act, s. 169 – Confidentiality – An applicant wants to keep an application and order confidential for a limited amount of time after the order is granted – The record provides intimate financial, personal or other information; the disclosure of the information before a specific transaction would be detrimental to the person affected; the information will be made available after a specific date

Exemption Order

SouthGobi Energy Resources Ltd. (the Filer)

Sections 48, 76 and 169 of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

- ¶ 1 The Filer has applied to the British Columbia Securities Commission for:
- (a) an order under Sections 48 and 76 of the *Securities Act*, R.S.B.C. 1996, c. 418 (Act) exempting the Filer from the requirements of Sections 34 and 61 of the Act for the issuance of common shares in its capital (Common Shares) under a global offering (HK Global Offering) consisting of a public offering in Hong Kong and an international placement to qualified institutional buyers under local prospectus and registration exemptions, all in reliance on a Hong Kong prospectus (HK Prospectus) and an international offering circular incorporating the HK Prospectus (except for information which is customarily included only in the HK Prospectus) (Prospectus and Registration Relief);

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- (b) an order under Section 76 of the Act exempting the Filer from the requirements of Section 61 of the Act for the first trade by a holder of Common Shares purchased in the HK Global Offering (Resale Relief); and
- (c) a decision that this order and the accompanying application made by the Filer (collectively, Confidential Material) be kept confidential until the earlier of:
 - (i) the date of posting on a web site of the Stock Exchange of Hong Kong Limited (HKSE) of a Web Proof Information Pack about the Filer and other information to be set out in the HK Prospectus;
 - (ii) the date on which the Filer first publicly discloses the HK Listing Application; and
 - (iii) the date that is 90 days from the date of this order(collectively, Confidentiality Relief).

Representations

¶ 2 The Filer represents that:

1. the Filer is incorporated under the laws of British Columbia;
2. the Filer is a reporting issuer under the Act;
3. the Common Shares are listed and posted for trading on the Toronto Stock Exchange;
4. the HK Global Offering will occur concurrent with the Filer attaining a listing on the HKSE;
5. the HK Global Offering will be effected under the public offering procedures of Hong Kong that include the following:
 - (a) a requirement to complete the HK Prospectus following prescribed content requirements that requires the 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 British Columbia;
 - (b) due diligence on the Filer conducted by qualified underwriters in Hong Kong, who are subject to liability and sanction from Hong Kong

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regulatory authorities for failure to suitably conduct the offering in the capacity of underwriters;

- (c) a review and comment process on the HK Prospectus imposed by the HKSE and the Securities and Futures Commission of Hong Kong;
- (d) a requirement to distribute the HK Prospectus to investors in connection with their subscription for Common Shares;
- (e) a verification process regarding the disclosure in the HK Prospectus by qualified Hong Kong underwriters; and
- (f) completion of technical reports in compliance with National Instrument 43-101 *Standards of Disclosure for Mineral Projects* for each material mineral property, three years of audited financial statements prepared in accordance with International Financial Reporting Standards and completion of an independent property valuation for each property of the issuer, all as part of the public offering and disclosed in the HK Prospectus

(collectively, the HK Global Offering Process);

6. concurrent with the distribution of Common Shares under the Global Offering, the Filer intends to file on SEDAR the final version of the HK Prospectus used in connection with the HK Global Offering along with:

- (a) a supplementary document that includes a cover page identifying the filing as effective to qualify the distribution of Common Shares under the HK Global Offering under an exemption from the prospectus and registration requirements and a certificate page substantially similar to that required for a B.C. prospectus;

- (b) a press release announcing the filing; and

- (c) a material change report filed within 10 days of the filing

(collectively, the BC Filing Procedure);

7. the Filer intends to impose safeguards on the HK Global Offering to ensure that sales do not occur in Canada, as follows:

- (a) a restriction in the underwriting agreement whereby the underwriters would agree not to offer the securities to be sold under the HK Global Offering in Canada;

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- (b) similar restrictions on members of the selling group whereby members of the selling group would agree not to offer the securities to be sold under the HK Global Offering in Canada;
- (c) a clear and prominent statement on the front page of the HK Prospectus stating the offered securities to be sold under the HK Global Offering are not qualified for sale in Canada and may not be offered and sold in Canada, directly or indirectly, on behalf of the Filer; and
- (d) delivery by the underwriters of a certificate on closing confirming that neither the underwriters nor any member of the selling group, to the best of their knowledge, has sold to purchasers resident in Canada under the HK Global Offering

(collectively, the Distribution Safeguards);

8. imposing the BC prospectus filing requirements on such a distribution from the jurisdiction would add no additional effective protection to investors or the public, provided the safeguards and procedures of the HK Global Offering Process exist and the Distribution Safeguards and BC Filing Procedures have been followed.

Order

¶ 3 Considering that it is not prejudicial to the public interest, the Commission orders under Sections 48 and 76 of the Act that the Prospectus and Registration Relief is granted and orders under Section 76 of the Act that the Resale Relief is granted, provided that the Filer:

- (a) complies with the HK Global Offering Process;
- (b) complies with the Distribution Safeguards; and
- (c) completes the BC Filing Procedure.

Considering that it is not prejudicial to the public interest, the Commission orders under Section 169 of the Act that the Confidentiality Relief is granted.

¶ 4 December 15, 2009

Brent Aitken
Vice-Chair
British Columbia Securities Commission