

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - exemption granted from the requirement that the auditor's report accompanying the required audited financial statements not contain a reservation.

Applicable Legislative Provisions

National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting*

Citation: Alhambra Resources Ltd., Re, 2009 ABASC 298

Date: 20090619

In the Matter of
the Securities Legislation of
the Alberta Securities Commission (the **Jurisdiction**)

and

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

and

In the Matter of
Alhambra Resources Ltd. (the **Filer**)

Decision

Background

The principal regulator in the Jurisdiction has received an application for the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) requesting relief from the requirements in Section 3.2(a) of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency (NI 52-107)* an auditor's report accompanying financial statements does not contain a reservation under Canadian generally accepted auditing standards (the **Exemption Sought**).

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

- (a) the Alberta Securities Commission is the principle regulator for this application, and
- (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 British Columbia.

Interpretation

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

Representations

The decision is based on the following facts represented by the Filer:

1. The Filer is a corporation that was formed as the result of an amalgamation under the *Business Corporations Act* (Alberta) on January 1, 2002.
2. The head office of the Filer is located in Calgary, Alberta.
3. The Filer is a reporting issuer in Alberta and British Columbia (the Jurisdictions).
4. The Filer's common shares are listed on the TSX Venture Exchange.
5. The Filer is a junior mining company which operates in Canada and up until a recent court decision carried out gold mining activities in Kazakhstan.
6. Currently the Filer is in default of the requirements of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) in that it failed to file its annual audited financial statements, annual management's discussion and analysis, certification of annual filings for the year ended December 31, 2008. On April 16, 2009 the Filer applied to the Alberta Securities Commission for a Management Cease Trade Order (a **MCTO**). On May 1, 2009 the Alberta Securities Commission granted the Filer's request and issued a MCTO against the Filer in which it ordered the cessation of trading in or purchasing of securities of the Filer by its CEO and CFO. Other than the aforementioned, the Filer is not in default of its reporting issuer obligations under the Legislation or the securities legislation of the Jurisdictions.
7. Due to circumstances beyond the control of the Filer or its auditors, KPMG LLP (the **Auditors**), the Auditors will be unable to issue an auditor's report that does not contain a reservation in connection with the financial statements of the Filer for the year ended December 31, 2008. The Auditors will instead be issuing an auditor's report that contains a limitation of scope reservation. The circumstances that gave rise to this scope limitation are as follows:
 - (a) Up to and including the third quarter of 2008, the Filer's financial statements included the results of its wholly owned Kazakhstan Subsidiaries, Saga Creek Gold Company LLP and Goodwin Golems LLP (collectively the **Kazakhstan Subsidiaries**).
 - (b) On September 26, 2008, the companies (the **Plaintiffs**) from which the Filer had purchased the Kazakhstan Subsidiaries filed a statement of claim in the courts of Kazakhstan seeking to invalidate the agreement covering the purchase. On November 25, 2008, a Kazakhstan lower court ruled in favor of the Plaintiffs and

this ruling was upheld by two separate Kazakhstan appeal courts on December 26, 2008 and February 24, 2009. On January 27, 2009, the ownership of the Kazakhstan Subsidiaries was transferred to the Plaintiffs. On April 16, 2009, the Filer filed an appeal with the Supreme Court of Kazakhstan and is currently waiting to hear if the Supreme Court will hear the appeal.

- (c) With the transfer of the ownership on January 27, 2009, the Filer no longer legally owns the Kazakhstan Subsidiaries.
 - (d) The Filer was able to obtain sufficient information in order to compile the financial statements, however, the Plaintiffs denied the Filer and its Auditors sufficient access to the underlying accounting records of the Kazakhstan Subsidiaries to enable the Auditors to perform audit procedures.
8. Canadian generally accepted accounting principles require that the accounts of the Kazakhstan Subsidiaries be included in the consolidated financial statements of the Filer up to December 26, 2008 at which time the Filer will write off its investment in its Kazakhstan activities. The result is that the income and cash flow statements will include the activities of the Kazakhstan Subsidiaries prior to the write down after which the investment will be written off. The balance sheet for the period ending December 31, 2008 will exclude any amounts related to the Kazakhstan Subsidiaries. The notes to the annual financial statements will describe the circumstances, events and related amounts of the Kazakhstan Subsidiaries.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted.

“original signed by”

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