

NON-U.S. ISSUERS TO BECOME SUBJECT TO EDGAR

SIMPSON THACHER & BARTLETT LLP

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On May 14, 2002, the U.S. Securities and Exchange Commission ("SEC") adopted a final rule, requiring that foreign private issuers and foreign governments file most documents electronically via the SEC's electronic EDGAR system, instead of using paper filings as is currently permitted for such issuers. Documents filed on EDGAR will be available on the SEC's website as well as through information providers, such as www.freedgar.com. The SEC adopted the new rule in order to enhance investors' access to material information regarding non-U.S. issuers. The new rule becomes effective November 4, 2002.

The new rule will apply to registration statements under the U.S. Securities Act of 1933 (the "Securities Act") as well as to registration statements, periodic reports and other documents filed under the U.S. Securities Exchange Act of 1934 (the "Exchange Act"). In addition to requiring non-U.S. issuers to file most documents via EDGAR, the new rule will increase the reporting obligations of foreign private issuers under Form 6-K by eliminating the option of providing only a "brief description" of "statutory reports" filed in the issuer's home country (i.e., a report that is required to be made public or filed with a stock exchange in the issuer's home country and is not a press release or information distributed directly to shareholders) in lieu of a summary or full translation and by narrowing the scope of documents that can be summarized in English rather than translated in full.

The full text of the new rule (Release Nos. 33-8099, 34-45922) can be found on the SEC's website at <http://www.sec.gov/rules/final/33-8099.htm>.

FILING OBLIGATIONS

Registration Statements and Reports

The new rule will require that the following documents, and any amendments thereto, be filed via EDGAR:

- in the case of foreign private issuers, Securities Act registration statements, such as Forms F-1, F-2, F-3, F-4 and F-6;
- in the case of foreign private issuers, Exchange Act registration statements and reports, such as Form 20-F; and

- in the case of foreign governments, Securities Act registration statements on Schedule B, Exchange Act registration statements on Form 18 and annual reports on Form 18-K.

Foreign private issuers generally will have to submit via EDGAR Form 6-K reports, which is the Exchange Act form used to submit periodic and current reports to the SEC. However, the SEC will permit Form 6-K reports to be submitted on paper under two circumstances:

- if the sole purpose of the Form 6-K report is to submit the issuer's attached annual report to security holders; or
- the document:
 - must be made public under the laws of the jurisdiction in which the issuer is incorporated, domiciled or legally organized, or under the rules of the home country exchange on which the issuer's securities are traded;
 - is not a press release;
 - is not required to be, and has not been, distributed to the issuer's security holders; and
 - if it discusses a material event, including the disclosure of annual audited or interim consolidated financial results, has already been the subject of a Form 6-K or other filing on EDGAR.

Confidential Filings

The SEC's Division of Corporation Finance will continue to permit first-time non-U.S. registrants to submit, on a one-time basis only, paper drafts of their initial Securities Act or Exchange Act registration statements for staff review on a non-public basis. In other words, the existing confidential submission process for first-time non-U.S. registrants will continue to be paper-based. However, when a non-U.S. issuer subsequently publicly files its registration statement, it will have to do so via EDGAR.

Beneficial Ownership and Tender Offer Forms

Statements of beneficial ownership in a foreign private issuer on Schedules 13D and 13G, as well as Schedule TO relating to tender offers for the securities of a foreign private issuer, will be required to be filed with the SEC via EDGAR, whether such reports are filed by a non-U.S. or U.S. person. In addition, foreign private issuers that are subject to tender offers for their securities will have to file Schedule 14D-9 electronically.

Other Forms

The following forms also will have to be provided to the SEC via EDGAR:

- Form CB, which is the form used for cross-border rights offerings, exchange offers and business combinations that are exempt from the tender offer rules or Securities Act registration, but only if the entity submitting it is an Exchange Act reporting company. Companies that are not reporting companies will be able to but need not submit Form CB via EDGAR;
- Forms F-X and F-N, which are the forms used for designating U.S. agents for service of process, but only if the filer is an Exchange Act reporting company. As with Form CB, companies that are not reporting companies will be able to but need not file Form F-X electronically. Canadian issuers filing Form F-X in connection with qualifying an offering statement pursuant to Regulation A also may file the form on paper;
- most Trust Indenture Act forms; and
- Multijurisdictional Disclosure System (“MJDS”) forms filed by Canadian issuers, such as Securities Act registration statements on Forms F-7, F-8, F-9, F-10 and F-80, Exchange Act registration statements and annual reports on Form 40-F, and Schedules 13E-4F, 14D-1F and 14D-9F, the MJDS tender offer forms.

Incorporation by Reference

Non-U.S. issuers will be able to incorporate by reference into an electronic filing documents previously filed with the SEC on paper, although such issuers will have the option to refile via EDGAR such documents. However, if a foreign private issuer wishes to incorporate by reference into an electronic filing any portion of an annual or other report to security holders, or of a document filed or submitted under cover of Form 6-K on paper, the issuer will be required to file the incorporated portion electronically as an exhibit to the filing. In addition, if a foreign private issuer amends its articles of incorporation or by-laws, the issuer will have to restate and file that document in electronic format.

Hardship Exemption

A non-U.S. filer that experiences unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing may be given a “temporary hardship exemption” from the EDGAR filing requirement. With such an exemption, the issuer will be allowed to file the document on paper no later than one business day after the date on which

the filing was to be made, so long as another copy is submitted to the SEC electronically within six business days of the paper filing. In addition, non-U.S. filers will be able to ask the SEC for a longer, “continuing hardship exemption” if all or part of a filing or group of filings cannot be filed electronically without undue burden or expense. The SEC stated, however, that it expects to grant hardship exemptions for non-U.S. issuers on an infrequent basis, as is the case for U.S. issuers that seek similar dispensation.

Other Aspects

The new rule will:

- continue to require foreign private issuers to submit only on paper their applications and supporting documents for the exemption from registration provided by Exchange Act Rule 12g3-2(b);
- eliminate the requirement that a first-time EDGAR filer (whether non-U.S or U.S.) submit a paper copy of its electronic filing to the SEC; and
- permit additional supranational entities to file their reports electronically.

ENGLISH TRANSLATIONS AND SUMMARIES

The new EDGAR rule will expand substantially the English translation requirements for documents that are the subject of SEC filings and submissions.

In general, non-English language documents that are required to be filed with or submitted to the SEC will need to be provided in the form of a “fair and accurate” English translation. English summaries of specified documents will continue to be allowed; however, the current rule allowing “brief descriptions” or English “versions” of certain documents to be filed under Form 6-K and other forms will be eliminated.

Division of Corporate Finance Filings and Submissions

In limited circumstances, the SEC will allow parties to provide English summaries of non-English language documents that must be included in filings or submissions subject to review by the Division, in lieu of a full translation. Under the new EDGAR rule, the following documents (the “translation-only documents”) may not be summarized:

- articles of incorporation, memoranda of association, by-laws, and other comparable documents, whether original or restated;

- instruments defining the rights of security holders, including indentures qualified or to be qualified under the Trust Indenture Act of 1939;
- voting agreements, including voting trust agreements;
- contracts to which directors, officers, promoters, voting trustees or security holders named in a registration statement are parties;
- contracts upon which a filer's business is substantially dependent;
- audited annual and interim consolidated financial information;
- any document that is or will be the subject of a confidential treatment request under the Securities Act or the Exchange Act; and
- any amendments to any of the foregoing documents.

In the case of documents other than translation-only documents, parties may file a "fair and accurate" English summary of the document instead of a full translation.

The SEC also has set forth new guidelines concerning what constitutes an adequate English summary. Any English summary submitted to the SEC's Division of Corporation Finance will have to summarize fairly and accurately each material provision of the non-English language document, and fairly and accurately describe the terms that have been omitted or abridged. In addition, filers will be required to identify English translations and summaries as such. These guidelines will apply not only to registration statements or reports filed with the SEC, but to all other Securities Act and Exchange Act submissions, including submissions under Rule 12g3-2(b).

While retaining the ability of filers to submit an English summary instead of a translation, the SEC has eliminated the option of filing an English "version" or anything short of an English summary of a non-English language document in filings or submissions under the Securities Act or the Exchange Act.

These new requirements will apply regardless of whether the documents are sent to the SEC on paper or via EDGAR.

Form 6-K

Form 6-K will be revised to provide that, with respect to information that is required to be furnished on Form 6-K, the foreign private issuer must submit an English translation of the following documents, whether or not the document is being furnished via EDGAR or on paper:

- press releases;
- communications and other documents distributed directly to security holders for each class of securities to which a reporting obligation under the Exchange Act pertains, except for offering circulars and prospectuses that relate entirely to offerings outside the United States; and
- documents disclosing annual audited or interim consolidated financial information.

This obligation will be in addition to the general requirement that documents consisting of a translation-only document must be translated instead of summarized.

Form 6-K will retain the English summary option for a report required to be furnished and made public under the laws of the issuer's home country or the rules of the issuer's home country stock exchange, as long as it is not a press release and is not required to be and has not been distributed to the issuer's security holders. The SEC refers to these types of reports as "statutory reports".

Annual and interim statutory reports often contain consolidated financial information. With regard to such reports, the SEC staff has advised our firm in response to an inquiry that a summary of all or a portion of the statutory report will be permitted in the following cases:

- The issuer generally must provide a full translation of the consolidated financial information, but may summarize in English the other information in the statutory report.
- If the issuer prepares both U.S. GAAP financial statements for purposes of its SEC reporting and home country GAAP financial statements for purposes of its home country reporting, and issues a statutory report containing home country consolidated financial statements contemporaneously with, or after, the filing or submission of a Form 20-F annual report or Form 6-K report containing U.S. GAAP financial statements for the same period, the issuer may summarize the home country GAAP financial statements in the Form 6-K report that submits the statutory report. However, if the home country GAAP financial statements are disclosed prior to the disclosure of the U.S. GAAP financial statements, they must be translated in full.
- If the consolidated financial information contained in the statutory report has already been disclosed in a Form 20-F or Form 6-K

report, the issuer may submit a summary of the consolidated financial information in the statutory report.

Consistent with elimination of the option to include English “versions” of non-English language documents in Exchange Act filings and reports generally, Form 6-K will no longer permit foreign private issuers to submit English “versions” or “brief descriptions” in English of non-English language documents in lieu of English translations or summaries.

The new rule provides that an issuer will not be required to submit under cover of Form 6-K an offering document that pertains solely to a foreign offering if the issuer has already submitted a Form 6-K or filed a Form 20-F or other SEC filing via EDGAR that reported all material information disclosed in the offering document. If the offering document contains material information that has not been previously disclosed electronically to the SEC, the issuer will have to submit via EDGAR an English translation or summary of that portion of the offering document that discusses the new material information.

Supplemental Submission of Unabridged Non-English Language Documents

While the new EDGAR rule will require that substantially all documents provided to the SEC be in English, a party may, at its option, submit a paper copy of the unabridged non-English language document when filing or submitting an English summary or translation of the document. However, such a submission will not correct an incomplete or inaccurate English summary or translation included in a filing or submission. In addition, parties that file or submit an English translation or summary will be required to provide the underlying non-English language document upon request of the SEC staff.

Annual Budgets of Foreign Governments

The new EDGAR rule will continue to require a foreign government or its political subdivision to file electronically a fair and accurate English translation, if available, of its latest annual budget as an exhibit to Form 18 or Form 18-K. If an English translation of the budget is not available, the government or subdivision will have to submit a copy of the original language version of its latest annual budget on paper.

Bilingual Filings by Canadian Issuers

The new EDGAR rule will provide Canadian issuers a limited exception to the requirement that all documents filed with or submitted to the SEC be in English. Canadian issuers will be allowed to include in an MJDS filing both French and English text in an exhibit to or other part of a registration statement, annual report or tender offer schedule if the filer included the French text to comply with the requirements of the Canadian securities administrator or other Canadian authority. If the bilingual document is filed via EDGAR, however, it will have to be in HTML as well.

EFFECTIVE DATE

The new EDGAR rule becomes effective November 4, 2002. However, if a registrant has filed a registration statement on paper before November 4, it will be permitted to complete its filing on paper through December 31, 2002. If the registration statement becomes effective before then, a filer also will be able to file on paper its prospectus submitted pursuant to Securities Act Rule 430A or Rule 424 through December 31, 2002. However, on or after January 1, 2003, a registrant will have to file any amendment, whether pre-effective or post-effective, or prospectus supplement in electronic format.

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If you have any questions regarding any of the foregoing, including the legal or technical requirements of filing electronically via EDGAR, please feel free to contact Glenn M. Reiter (greiter@stblaw.com) or John Lobrano (jlobranco@stblaw.com) of our New York office at 212-455-2000; Gregory Conway (gconway@stblaw.com), William Dougherty (wdougherty@stblaw.com), Walter Looney (wlooney@stblaw.com), Ryerson Symons (rsymons@stblaw.com) or Michael Wolfson (mwolfson@stblaw.com) of our London Office at +44-20-7275-6500; Stephan Feder (sfeder@stblaw.com), Chris Lin (clin@stblaw.com) or Jin Park (jpark@stblaw.com) of our Hong Kong office at +852-2514-7600; Alan Brenner (abrenner@stblaw.com) of our Singapore office at +65-6430-5100; or David Sneider (dsneider@stblaw.com) of our Tokyo office at +81-3-5562-8601.

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