

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO, MANITOBA AND NOVA SCOTIA

AND

IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF
SIX CONTINENTS PLC, NEWCO PLC AND TOPCO PLC

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, Manitoba and Nova Scotia (the "Jurisdictions") has received an application from Six Continents plc ("Six Continents"), TopCo plc ("TopCo") and NewCo plc ("NewCo", and together with Six Continents and TopCo, the "Applicants") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirement contained in the Legislation to file and obtain a receipt for a preliminary prospectus and a prospectus (the "Prospectus Requirement") and the requirement to register to trade in a security (the "Registration Requirement") shall not apply to the issuance of the NewCo Shares (as defined below) or to the first trades to be made by holders of NewCo Shares which shares were acquired pursuant to a reorganization of Six Continents;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;

AND WHEREAS the Applicants have represented to the Decision Makers as follows:

Background Information

1. Six Continents is a company which was incorporated and registered in England and Wales on 17 August 1967 as Bass Public Limited Company under the *Companies Acts 1948 to 1981*. Six Continents changed its name from Bass Public Limited Company to Six Continents plc on July 27, 2001.
2. Six Continents is a provider of hospitality services. Its hotel business (the "Hotel Business") includes brands such as InterContinental, Crowne Plaza and Holiday Inn and operates over 3,300 hotels in approximately 100 countries. Its retail business (the "Retail Business") includes pubs,

bars and restaurants of brands such as All Bar One, Browns and O'Neills. Six Continents operates approximately 2000 sites, 1,100 of which are branded outlets. Six Continents is also the majority shareholder of the Britvic soft drinks business (the "Drinks Business").

3. As of November 29, 2002, the authorized share capital of Six Continents was 1,148,800,287 divided into 888,343,756 non-cumulative redeemable preference shares of 95 pence each and 1,072,971,427 ordinary shares (the "Six Continents Shares") of 28 pence each, of which no non-cumulative redeemable preference shares and 866,614,035 ordinary shares have been issued and are credited as fully paid. The remainder are unissued.

4. Six Continents is currently listed on the London Stock Exchange (the "LSE") under the symbol "SXC". The closing market price of Six Continents Shares on November 28, 2002 was 590 pence and Six Continents' market capitalization on such date was approximately 5.1 billion.

5. TopCo was incorporated and registered in England and Wales under the *Companies Act, 1985* (the "Act") on October 2, 2002 as Hackplimco (No.111) Public Limited Company as a public company. NewCo was incorporated and registered in England and Wales under the Act on October 2, 2002 as Hackplimco (No.112) Public Limited Company as a public company.

6. Six Continents, TopCo and NewCo are not and do not intend to become reporting issuers under the Legislation.

7. As of November 29, 2002, there were approximately 172 Six Continents Shareholders resident in Canada. The Six Continents Shareholders resident in Canada hold approximately 136,049 shares representing approximately 0.0001 % of the Six Continents Shares. Of the Six Continents Shareholders resident in Canada, there are approximately 94 resident in Ontario, 38 resident in British Columbia, 20 resident in Alberta, 2 resident in Saskatchewan, 5 resident in Manitoba, 9 resident in Quebec, and 3 resident in Nova Scotia.

The Plan of Arrangement and Demerger

8. Six Continents is proposing to "demerge" its hotel, drinks and retail businesses by incorporating two new companies, TopCo and NewCo, to be listed on the LSE. One of the new holding companies, TopCo, will acquire all of the issued and outstanding shares of Six Continents by way of a plan of arrangement (the "Plan of Arrangement"). After the Plan of Arrangement has been completed, the Six Continents hotel and drinks businesses (without the retail business) will be transferred to the other newly-incorporated holding company, NewCo, by a series of transactions (the "Demerger").

9. Pursuant to the Plan of Arrangement, Six Continents Shareholders' Six Continents Shares will be exchanged for TopCo Shares on a one-for-one basis and a cash payment from TopCo (which will be paid a few days after such exchange) for each Six Continents Share held as of the record date of the Plan of Arrangement.

10. An application will be made for a meeting to be convened by the High Court of Justice in England and Wales (the "Court") to enable each Six Continents Shareholder to consider and, if

thought fit, approve the Plan of Arrangement. The resolution must be approved by the majority in number of the Six Continents Shareholders representing not less than three-fourths of the nominal value of the Six Continents Shares held by such shareholders. In addition, an extraordinary general meeting of Six Continents will be convened for the Six Continents Shareholders to approve the Plan of Arrangement and Demerger and other matters relating to the Demerger.

11. A circular describing the Plan of Arrangement of TopCo (the "Six Continents Scheme Document") and forms of proxy will be sent to every Six Continents Shareholder, including those resident in Canada. The Six Continents Scheme Document shall be prepared in accordance with the Act and the Listing Rules of the UK Listing Authority (some of which will be provided by cross reference to the listing particulars prepared in respect of each of TopCo and NewCo) and will provide, among other things, the following:

- (a) general descriptions of the business of each of TopCo and NewCo following implementation of the Demerger;
- (b) financial information on the hotel business and retain business segments of Six Continents and pro forma financials for TopCo and NewCo;
- (c) the interests of the Six Continents directors and the effect of the Plan of Arrangement on their interests; and
- (d) the conditions for the implementation of both the Plan of Arrangement and Demerger.

12. The Plan of Arrangement is conditional, *inter alia*, upon the following:

- (a) approval of a majority of Six Continents Shareholders who represent not less than three-fourths of the nominal value of the Six Continents Shares voting at a meeting convened by the Court to approve the Plan of Arrangement;
- (b) the passing of a special resolution of Six Continents Shareholders at an extraordinary general meeting;
- (c) the sanction by the Court of the Plan of Arrangement, and the confirmation of the reduction in capital of Six Continents which comprises part of the Plan of Arrangement; and
- (d) the registration by the Registrar of Companies of an office copy of the order of the Court sanctioning the Plan of Arrangement and reduction in capital.

13. The proposed court convened meeting and extraordinary general meeting of the Six Continents Shareholders are currently scheduled for March 12, 2003 and, if all of the conditions are met, it is expected that the Plan of Arrangement will be effective on April 11, 2003. On the effective date, the Six Continents Shares will be cancelled.

14. After the Plan of Arrangement has become effective, there will be a share consolidation, the precise terms of which are likely to be determined immediately prior to posting of the documents to shareholders. The number of shares in TopCo held by former Six Continents Shareholders will therefore be less than the number of Six Continents Shares held previously. In addition, there will be a reorganisation the effect of which shall be that the Retail Business will no longer be owned by Six Continents but by TopCo.

15. Pursuant to the Demerger, TopCo will issue NewCo Shares to TopCo shareholders at the Demerger record time on a one-for-one basis. The Demerger will be effected by a reduction of capital of TopCo. The reduction of capital of TopCo will take place as follows:

(a) after the Plan of Arrangement has become effective, the capital of TopCo will be reduced by reducing the nominal value of each TopCo Share by an amount to be determined by the directors of TopCo at the time to be at least the market value of all shares in Six Continents held by TopCo, with Six Continents being the holding company of the companies constituting the Hotel Business and Drinks Business at this stage;

(b) TopCo will transfer Six Continents to NewCo such that NewCo shall come to own all of the Hotel and Drinks Businesses; and

(c) the TopCo Shareholders on the date of record of the Demerger will be allotted and issued one NewCo Share, credited as fully paid, for each TopCo Share.

16. The following procedural steps, *inter alia*, must be taken in order for the Demerger to become effective:

(a) the Plan of Arrangement becoming effective;

(b) the passing of a special resolution of the Six Continents Shareholders at the extraordinary general meeting;

(c) the board of directors of TopCo resolving, following the Plan of Arrangement becoming effective, that the Demerger is in the best interests of Six Continents;

(d) the transfer of the Retail Business to TopCo having taken place;

(e) the High Court of Justice in England and Wales granting an order sanctioning the reduction of capital of TopCo; and

(f) the order referred to in (e) being registered by the Registrar of Companies at Companies House in Cardiff, UK.

17. Admission of the NewCo Shares and the TopCo Shares to the Official List and to trading on the LSE may also be a condition necessary to give effect to the Demerger. If all of the conditions of the Plan of Arrangement and Demerger are met, they will become effective. It is currently

anticipated that listing of the TopCo Shares and NewCo Shares will become effective, and that dealings will commence, on April 15, 2003.

18. Listing particulars of TopCo and NewCo will also be provided to each Six Continents Shareholder, including those resident in Canada. The listing particulars will be prepared in accordance with the listing rules of the UK Listing Authority pursuant to the *Financial Services and Markets Act 2000*. The listing particulars will contain a description of the business of TopCo and NewCo. It will summarise the Plan of Arrangement and the Demerger. The Six Continents Scheme Documents will contain a more fulsome description of the Plan of Arrangement and the Demerger.

19. Generally, the purpose of the Six Continents Scheme Document, and the listing particulars is to provide sufficient information to all Six Continents Shareholders entitled to vote at the meetings to allow them to make an informed decision as to whether to vote in favour of or against the Plan of Arrangement and Demerger.

20. An application will be made for admission to the Official List of the UK Listing Authority and admission to trading on the LSE of the ordinary shares of each of TopCo and NewCo.

21. Every Six Continents Shareholder resident in Canada holding TopCo Shares and NewCo Shares after the completion of the Plan of Arrangement and Demerger will receive all continuous disclosure documents required to be sent to holders resident in England and Wales in the case of TopCo Shares and NewCo Shares pursuant to the laws, rules and regulations of England and Wales, and applicable stock exchange rules.

22. There is a *de minimis* number of Six Continents Shareholders in Canada and therefore there will be, upon implementation of the Plan of Arrangement and Demerger, a *de minimis* number of TopCo and NewCo shareholders in Canada.

23. An exemption from the Prospectus Requirements and Registration Requirements of the Legislation is not available for the issuance of the NewCo Shares in the Jurisdictions.

24. An exemption from the Prospectus Requirements of the Legislation is not available for the first trade in NewCo Shares in the Jurisdictions.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS each of the Decision Makers is satisfied that the requirements contained in the Legislation that provide the Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is that:

1. the Registration Requirement and the Prospectus Requirement shall not apply to the issuance of NewCo Shares in connection with the Plan of Arrangement and Demerger, provided that the

first trade in securities acquired under this Decision in a Jurisdiction shall be deemed to be a distribution or primary distribution to the public under the Legislation of such Jurisdiction; and

2. the Prospectus Requirement shall not apply to the first trade in a security acquired under this Decision if the conditions in subsection 2.14(1) of Multilateral Instrument 45-102 *Resale of Securities* are satisfied.

February 12, 2003.

"R.W. Korthals"

"R.L. Shirriff"

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - application for relief from registration and prospectus requirements in connection with certain trades arising out of a plan of arrangement and demerger involving issuer based in the United Kingdom - existing exemptions relating to arrangements and reorganizations arguably may not be available for certain trades for technical reasons - filer has *de minimis* connection to Canada - relief granted subject to resale restrictions.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am, ss. 25(1), 53(1), 74(1).

Applicable Ontario Rules

OSC Rule 45-501 - Exempt Distributions, s. 2.8.

Applicable Multilateral Instrument

Multilateral Instrument 45-102 - Resale of Securities, s. 2.14.