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MEMORANDUM

ON

INTELLECTUAL PROPERTY AND E-COMMERCE

1. Copyright Protection and Computer Software

Bermuda Exempted Companies (i.e. companies entirely owned by non-residents) may be used to hold intellectual property rights of all kinds in a jurisdiction that offers international copyright, patent and trade mark protection similar to the United Kingdom. In fact, the U.K. Copyright Act, 1956 and applicable International Conventions have been extended to Bermuda thereby granting copyright protection in Bermuda to artistic, literary, musical or other creative dramatic works.

Recently, computer programmes of all kinds, including machine-readable programmes, have been granted protection under The Copyright Act, 1956 in Bermuda which has, in turn, led a number of software developers and distributors to establish companies in Bermuda to carry out the research and development functions within the global corporation or to hold the intellectual property rights of the software, and in some cases to actually manufacture and distribute the software internationally from Bermuda in a tax neutral environment with no exchange controls or statutory approvals of any kind being required. In addition, there are no customs duties payable on products imported into Bermuda for software manufacture and distribution provided such products are brought into Bermuda solely for manufacture and exportation from Bermuda.

In addition, the software distributors have found Bermuda-based entities attractive for licensing arrangements with entities located outside Bermuda since governmental approvals are not required for such arrangements and royalty and license fees paid to the Bermuda entity are free from any form of taxation or exchange controls in Bermuda.

Bermuda has developed a sophisticated computer service sector to lend support to and carry out software manufacturing and distribution worldwide and our banks and trust companies are able to provide software escrow services when required.

Because of Bermuda's growing computer expertise, it has been found to be an attractive domicile to arbitrate disputes involving software license agreements with multiple jurisdictional elements.

2. **Transfer of Know-How and Information Technology**

Know-how, licensing and franchising agreements have become increasingly common when a Bermuda Exempted Company contracts with another company located outside Bermuda to permit the latter company access to confidential or commercially sensitive information.

Agreements relating to the transfer of know-how and technology as well as patent or trademark licensing agreements between Bermuda entities, their affiliates or third parties do not require governmental approval or registration in Bermuda.

3. **Trade Marks**

The Trade Marks Act, 1974 permits registered owners and users to register marks in Bermuda thereby ensuring protection from infringement. (see attachment on Registration of Trade Marks)

The registration of a trade mark in Bermuda is initially for a period of seven years but may be renewed up to a maximum period of fourteen years. Applications for the registration of a trade mark in Bermuda are submitted to the Registrar General.

4. **Patents and Designs**

The Patents and Designs Act, 1930 gives any inventor the right to apply for a patent in Bermuda which when approved by the Registrar General, will vest in the patentee the sole right and benefit of using within Bermuda the invention for a period of sixteen years or as extended upon application a further total period of fourteen years.

Any person being a grantee of a patent in the United Kingdom may apply within three years from the date of issue of the patent in the U.K. to have such patent registered in Bermuda.

Similarly, the author of any new original design may make application to the Registrar General to register a design in Bermuda. Once the design is registered, the owner has copyright in the design for five years from the registration date or a further period of five years upon an application or extension. During the existence of a copyright in a design, the design is not open to public inspection.

5. **Transborder Data Flow**

Certain industries, particularly the transportation and travel industries, have international operations that rely heavily on a free flow of information and data across borders. These industries may utilize a Bermuda Exempted Company or branch operation to establish data storage or processing facilities in Bermuda at a considerably lower cost than many other jurisdictions and the added advantage of ease of data transmission since information and its use is not subject to data protection legislation in Bermuda.

6. **Performing Arts and Performers' Protection**

Actors, artists and athletes that have income earnings from multiple jurisdictions have also utilized Bermuda-based entities. Such persons may form either a holding company or trust to either hold their worldwide income or alternatively to act as the contractual agent. In addition, the Bermuda company could have the rights to the proceeds from the sale of artistic works or performances produced by such persons.

The Performers' Protection Act, 1967 grants protection to performers located in or outside Bermuda against unauthorized reproductions of their performances.

7. **Entertainment Industry**

Movie and television production companies may utilize Bermuda companies to not only hold film and distribution rights but also to actually edit and produce films or television programs where filming takes place in multiple jurisdictions.

Support facilities for editing, taping and recording exist in Bermuda at reasonable costs.

In addition, a Bermuda Exempted Company may be of benefit to production companies that wish to enter into contracts with actors, directors and other suppliers of services to that industry.

8. **Holding Companies**

Bermuda holding companies have featured significantly in corporate restructurings as a business planning tool to the high net worth individual. Such companies may hold, acquire, manage and sell personal property of all kinds (including patent, trademark and copyright rights) or any real property provided such real property is situated outside Bermuda. In addition, such companies may include in their portfolio of investments, bonds issued by other companies, governments or public entities and may promote their investments by lending funds to companies in which they have an interest without any fiscal or other regulatory consequences in Bermuda.

A wide range of activities are possible for a Bermuda holding company:-

- ◆ as a management trust, it may provide for control and co-ordination of a group of multi-national subsidiaries;
- ◆ as a promoting company, it may take up securities of other companies which are in the course of formation providing the initial capital before the other company makes a public offering;
- ◆ as a patent, trademark or copyright holding company, it may hold such intellectual property rights and facilitate their use through operating subsidiaries;
- ◆ to hold family assets and facilitate central management of those assets;
- ◆ as a finance holding company to contribute to the development of the subsidiaries within a multi-national group to which it belongs by either utilizing its own assets or borrowing funds to give the group financial assistance;
- ◆ special purpose holding companies may be formed, for instance to hold the shares in its subsidiary insurance or reinsurance company.

Bermuda based holding companies may finance their investments with their capital or if necessary with borrowed funds. The minimum capital of a Bermuda holding company is US\$12,000 or its equivalent in another foreign currency, which must be subscribed on formation but need not be fully paid at that time. No special accounting rules govern holding companies except that their financial statements must be set up according to the general accounting standards and practices followed in Canada.

9. **Regulatory Environment**

Bermuda Exempted companies that are established by non-residents operate in a relatively relaxed regulatory environment - free of taxation on income, profits or dividends; free from exchange control restrictions of all kinds; and free of undue governmental intervention.

10. **E-Commerce from Bermuda**

Bermuda is considered one of the world's leading business-friendly jurisdictions that has been able to strike a good balance between government regulation and business innovation. This approach to economic development in Bermuda has led to significant success in the insurance and reinsurance industry and Bermuda is now positioning itself to be a leading E-Commerce centre. Bermuda's technological infrastructure is sufficiently advanced to support the speed, security and stability necessary for the long-term growth and success of Bermuda in the electronic commerce field.

The only thing preventing B2B electronic commerce from reaching its full potential is the lack of a safe, secure and predictable environment with the legal infra-structure to enable electronic transactions to take place.

Bermuda has addressed these issues by the passing of the Electronic Transaction Act, 1999 and providing for the creation of the first Electronic Contracts' Exchange called 'the World E-Commerce Exchange'. This internet enabled contracts exchange provides its members (who may or may not be located in Bermuda) with all of the jurisdictional advantages of Bermuda by virtue of its Charter. For further information on WECX see its website at www.wecx.com.

It has been recognised by both the private and public sectors of Bermuda's economy that e-business is complimentary to the existing international business sector that has developed in Bermuda and that any initiatives in this area that do not place undue pressure on Bermuda's physical and social infra-structure, would be a welcomed additional segment to our economy.

11. Legislative Initiatives in Bermuda

Bermuda is now poised to become the premier E-Commerce domicile because of its leadership in addressing legal and regulatory issues that have yet to be addressed in other major financial centres.

The Government of Bermuda passed the Electronic Transactions Act, 1999 which introduced the legal frame-work for the development and operation of electronic commerce in and from Bermuda in a jurisdiction that has developed a reputation for integrity, security and innovation.

The Act draws upon a variety of sources including the UNCITRAL Model Law on Electronic Commerce, the European Parliament and Council Directives for a common framework for electronic signatures, the 'safe harbor' principles' of the European Union relating to data protection.

The Act lays a foundation for the conduct of electronic transactions on a technology neutral basis that is sufficiently flexible to embrace new technological developments and that contemplates a high degree of self-regulation.

12. WECX – An Internet Contracts Exchange (www.wecx.com)

The World E-Commerce Exchange ('WECX') which was incorporated on August 15th, 1999 by a Private Act of the Bermuda Legislature is the first institution of its kind in the Internet world. It provides the electronic base with servers located in Bermuda for companies located anywhere in the world upon becoming a member of WECX to trade goods and services through the Exchange with complete confidentiality, security and legal validity of an electronic contract.