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MEMORANDUM

on

BERMUDA TRUST COMPANIES

Introduction

The Trusts (Regulation of Trust Business) Act 2001 (“the Act”) permits the formation of licensed trust companies by local and exempted companies that have demonstrated trust administration experience and have met the criteria laid down by the Act and its regulations.

Trust business is defined by the Act as the “undertaking, executing and administering of trusts, as a business, trade, profession or vocation carried on or practiced in the service of the public generally”.

In the event that a company does not intend to provide trust services to the general public there is no need to obtain a license under the Act. Private trustee companies may be formed for a group of related trusts and such entities are required to apply for an exemption under the Act.

Regulatory Environment

Trust companies that are licensed under the Act are regulated by the Minister of Finance and supervised on an on-going basis by the Bermuda Monetary Authority. Such companies are also subject to The Companies Act 1981 with respect to general company law matters.

Who May Form Trust Companies?

Trust companies can be formed as (i) Bermuda local companies; or (ii) Bermuda exempted companies.

Local trust companies are companies that are able to carry on trust business within the

domestic market in Bermuda which means that they can market directly in the Bermuda market. Such local companies must be controlled by Bermudians and the Companies Act provides that at least sixty percent of the shares of a local company must be owned by Bermudians. Trust companies formed as local companies have no restrictions on their trust activities in Bermuda.

Exempted companies are companies incorporated by non-residents and under the Companies Act they are able to conduct business from Bermuda but not “within” Bermuda. In essence, trust companies formed as exempted companies cannot market directly in the Bermuda domestic market without obtaining a license under the Companies Act.

Application Procedure for Trust Company

The Act requires that an application for a license pursuant to Section 5 shall be accompanied by:

- (i) A Business Plan setting out the nature and scale of the trust business which is to be carried on by the Company and particulars of the arrangements proposed for the operation and management of that business;
- (ii) The proposed share capital of the Trust Company which must be not less than US\$250,000 or its equivalent in another foreign currency;
- (iii) The scope of insurance coverage;
- (iv) The expertise of the Company showing that the Company has available to it (whether directly employed or available through other arrangements) sufficient personnel with adequate knowledge, skill and experience necessary for the conduct of the Company's business; and
- (v) The Company's approved auditor.

Role of Minister and BMA

The grant or rejection of the application for a trust company license is within the discretion of the Minister of Finance. A license once granted, remains in force until cancelled or amended.

The Bermuda Monetary Authority is the on-going supervisory body for licensed Trust Companies.

Annual Filing

A licensed trust company must file, within 120 days after the last day of each financial year, with the Bermuda Monetary Authority, a copy of each of the following:

- (i) The Company's financial statements;
- (ii) The Company's certificate of management; and
- (iii) The two reports of the Auditor, namely:
 - (a) a report of the financial statements in accordance with generally accepted auditing standards; and
 - (b) a Report on the Certificate of Management.

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