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BERMUDA ATTRACTS DRAGON OIL, PLC

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Dragon Oil plc, the Dublin-listed producer of oil in the Caspian Sea, has recently announced that it is seeking shareholder approval to move its holding company to Bermuda. The Company cited tax and administrative efficiencies as reasons for transferring all of its assets to a Bermuda holding company which in turn will list on the main board of the London Stock Exchange.

Senior management of Dragon Oil said “*Dragon’s new structure would give the company more flexibility as it seeks to acquire assets in North Africa, the Middle East and Central Asia*”.¹

The Board of Directors of Dragon Oil reported that “*the corporate restructuring is in the best interests of Dragon Oil and the company shareholders, and is the next step in the development of Dragon Oil as an innovative international oil and gas development and production company.....The decision to proceed with the proposed restructuring is the result of extensive consideration by the Board of the advantages and disadvantages of relocating the holding company of the group to a more logical jurisdiction of incorporation.*”²

The Board of Directors of Dragon Oil also reported that “*the proposed corporate restructuring will help streamline certain management and administration processes to create efficiencies and will also allow Dragon Oil to structure future new business ventures forming part of its diversification plans in a tax efficient manner*”.³

The Board of Directors of Dragon Oil also believed that the proposed corporate restructuring “*will have minimal impact on shareholders, as Dragon Oil Limited will have legal, regulatory, capital, financial, listing and trading arrangements largely consistent with the existing arrangements in place with Dragon Oil plc*”.⁴

¹ Financial Times (27 March 2009).

² Dragon Oil’s Regulatory News dated 27 March 2009.

³ Dragon Oil’s Regulatory News dated 27 March 2009.

⁴ Telegraph 3/31/2009.

A Broker at Merrill Lynch was quoted in the Telegraph (31st March 2009) that the corporate restructuring of Dragon Oil would increase liquidity of the company's shares as well as having tax benefits.⁵

Bermuda was the jurisdiction of choice for Dragon Oil which described its proposed move to Bermuda as a move to a more '*logical jurisdiction*' based upon a number of internal and external factors as highlighted above. This article will highlight some of the significant advantages in choosing Bermuda as a base from which global businesses may be conducted.

Bermuda's Regulatory Environment:

Businesses such as Dragon Oil, that operate globally or are conducting business in multiple jurisdictions, have a competitive advantage by operating from the jurisdiction of Bermuda. Bermuda has developed a regulatory and business environment strongly based upon:

- The highest standards of business practice and professionalism provided by professionals that service international companies;
- British common law principles enshrined in Bermuda legislation;
- Company legislation that is substantially based upon the British model which, unlike certain jurisdictions, permits international companies to continue into Bermuda and discontinue from Bermuda without the need to liquidate;
- A legal system that is well respected around the world by both regulatory authorities and international businesses;
- The highest standards of business practice implemented by Bermuda financial services industry;
- The "Know Your Customer" principles that are applied by businesses and government regulatory authorities in Bermuda that service or regulate international companies;
- The cost efficiencies of conducting business from or listing on a stock exchange in Bermuda in comparison to other jurisdictions;
- The business sensitive regulations imposed on companies by regulatory authorities in Bermuda;
- The access to one of the largest and most respected insurance and reinsurance markets in the world.

⁵ Telegraph 3/31/2009.

Bermuda's regulatory environment has been tested by courts in and outside of Bermuda and is considered to be well respected around the world by both international businesses and regulatory authorities.

Companies that have taken advantage of Bermuda's regulatory advantages have been able to efficiently list on stock exchanges in and outside of Bermuda without undue regulation, cost and delays by relying on professional service providers in Bermuda that have extensive experience in sophisticated business transactions involving multiple jurisdictions and the broad respectability of the rules and regulations of the Bermuda Stock Exchange ("BSX") in the event that companies such as Dragon Oil intend to seek a secondary listing on the BSX.

Tax Efficiency:

Bermuda-based international businesses operate in a tax neutral environment since Bermuda does not impose any form of income, capital appreciation or withholding taxes on the operations or distributions of such companies.

Government Undertaking on Taxation:

Since 1956, the Bermuda Government (through the Minister of Finance) has granted international businesses operating in Bermuda an undertaking that, in the event of there being enacted in Bermuda any legislation imposing tax computed on profits or income or computed on any capital asset, gain or appreciation, then the imposition of any such tax shall not be applicable to such international businesses or to any of their operations. The Exempted Undertakings Tax Protection Act, 1966 which repealed the Exempted Companies Tax Protection Act 1956 has extended this tax undertaking to the year 2016. This period is generally extended from time to time by the Government of Bermuda.

Exemption from Stamp Duty:

The Stamp Duties (International Businesses Relief) Act 1990 abolished stamp duty on any instrument affecting or relating to international businesses in Bermuda (whether such businesses are exempted companies, exempted partnerships or trusts established by non-residents of Bermuda).

Bermuda-based international businesses such as Dragon Oil may enter into agreements or amend their constitutional documents without the concern that stamp duty may be imposed on the instruments being executed under Bermuda law.

For those international businesses that hold or lease Bermuda Property (i.e. any real property situated in Bermuda or personal property or security that is denominated in Bermuda Dollars) *ad valorem* stamp duty continues to apply.

Costs of Conducting Business:

For those international businesses that do not have a physical presence in Bermuda, there are professional firms in Bermuda that provide management and

corporate support to Bermuda companies. These companies may get the full advantage of Bermuda's regulatory and tax neutral environment without the need to open offices in Bermuda. The cost involved in sub-contracting out the management and corporate support functions to Bermuda service providers with decades of experience in dealing with international business is competitive with comparable jurisdictions.

For those international businesses that establish a physical presence in Bermuda, the costs of renting office accommodation and hiring employees is lower than in many other financial markets. As a result of the proliferation of the insurance and reinsurance sectors in Bermuda, there are significant numbers of trained professionals in Bermuda for those companies wishing to employ executives, managers, accountants, legal counsel, administrators, insurance expertise and compliance professionals.

Stability of Political & Judicial System:

Bermuda has a very stable political system having been self-governing for more than 400 years. Bermuda's Parliamentary Democracy is now based upon the Bermuda Constitution and provides for internal self-government through an elected Parliament and appointed Senate.

The Bermuda Constitution provides for external affairs and internal security to remain in the control of the U.K. Government (in the person of the Governor who is appointed by the Queen).

The courts in Bermuda consist of a Magistrate's Court, a Supreme Court and a Court of Appeal, with a final appeal to the Judicial Committee of the Privy Council.

International businesses such as Dragon Oil gain confidence from the fact that Bermuda has a stable political system that has constitutional links to the U.K. which has withstood the test of time and a judicial system which has earned the respect of regulatory authorities and businesses around the world.

Company Legislation conducive to international business:

The Companies Act 1981 (as amended) provides the regulatory framework for Bermuda-based companies whether incorporated by registration or by Private Act of the Bermuda Legislature. This company law framework is largely based upon U.K. Company law with certain exceptions that relate to the Bermuda marketplace.

The Bermuda Companies Act provides for the incorporation of a broad range of companies, including companies limited by shares, companies limited by guarantee, mutual companies, unlimited liability companies and companies of limited duration. In addition, foreign corporations may apply pursuant to the Companies Act for a Permit to establish a Branch Operation in Bermuda or to conduct a specific business activity from Bermuda.

There is no statutory minimum capital requirement prescribed by the Companies Act. Share capital is provided for in the Memorandum of Association of a Bermuda company and may be increased by the members of the company at a general meeting and filing the Memorandum of Increase of Share Capital with the Registrar of Companies in Bermuda.

The Companies Act also requires that Bermuda companies hold an Annual General Meeting every year and the said meeting may take place anywhere in the world.

The Companies Act also provides for the following:

- amalgamation of companies (whether involving two Bermuda companies (related or unrelated) or a Bermuda company with a foreign corporation (related or unrelated));
- the continuation of a company into Bermuda or the discontinuation of a Bermuda company to a foreign jurisdiction;
- registration of charges on the assets of Bermuda companies;
- filing of a prospectus if a Bermuda company is offering shares to the public;
- annual audit of the financial statements of a Bermuda company and the conditions under which a waiver may be obtained;
- the fiduciary duties of directors and officers of a Bermuda company;
- power to compromise or make an arrangement between a company and its creditors or any class of them or between a company and its members or any class of them;
- residency requirements for exempted companies (which are not listed on an appointed stock exchange) which provide for at least the appointment of both a resident representative and secretary, both of whom are residents of Bermuda;
- exempted companies that are listed on an appointed stock exchange, the requirement to appoint a resident representative, who is a resident of Bermuda.

Essentially, Bermuda was selected by Dragon Oil as the 'logical jurisdiction' given its expansion goals both in terms of acquiring assets in multiple jurisdictions and listing its shares on the main board of the London Stock Exchange. The regulatory environment in Bermuda is not dissimilar to that in the U.K. and provides both the company and its shareholders (the majority of whom are located outside of Ireland) with no significant legal or regulatory changes but with the added benefits of tax neutrality, administrative efficiencies and the international respect and integrity that Bermuda companies are afforded in the business markets around the world.

Bermuda prides itself in attracting businesses of this nature and it is expected that similar companies will take advantage of Bermuda for these very same reasons.
