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The Directors  
Cherrytime Investments Limited  
Kingston Chambers  
PO Box 173  
Road Town, Tortola  
British Virgin Islands

20 July 2012

Dear Sirs

### **Cherrytime Investments Limited (the "Company")**

We have been instructed to provide a summary of certain aspects of British Virgin Islands ("BVI") company law. We assume that the memorandum and articles of association of the Company remain in full force and effect at the date hereof.

We are pleased to advise as follows:

#### **1 Introduction**

The BVI Business Companies Act, 2004 (as amended) (the "**Companies Act**") is derived, to a large extent, from English corporate legislation, although there are significant differences between the Companies Act and English corporate legislation. Set out below is a summary of certain provisions of the Companies Act, although this summary does not purport to be a complete review of all matters of corporate law and taxation which may differ from equivalent provisions in jurisdictions with which interested parties may be more familiar.

#### **2 Incorporation**

The Company was incorporated in the BVI as BVI Business Company on 29 May 2012 under the Companies Act. The Company is required to pay an annual fee to the Registrar of Corporate Affairs in the BVI which is based on the number of shares the company is authorised to issue.

#### **3 Shares**

One of the major features of the Companies Act is that the concept of share capital has been abolished.

Instead, a company limited by, or otherwise authorised to issue shares, can now simply state in its memorandum of association the maximum number and classes of shares that the company is authorised to issue. Companies may also divide their shares (including those shares already in issue) into a larger number of shares or combine them into a smaller number of shares in the same class or series, provided that the maximum number of shares the company is permitted to issue is not exceeded. On any such division or combination of shares the aggregate par value (if any) of the new shares must be equal to the aggregate par value of the original shares.

The directors of a company can, at their discretion, issue shares in registered or bearer form (although in order to issue bearer shares there must be an express authorisation in the

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memorandum of association and such bearer shares must be held by an approved custodian) for such consideration and on such terms as they may determine.

Shares can be issued for consideration in any form, provided such consideration is not less than par value where the share is a par value share.

If so authorised by its memorandum of association, a company can issue more than one class of shares and, if so, the memorandum of association must also specify the rights, privileges, restrictions and conditions which attach to each class.

The Companies Act provides that companies may issue redeemable shares, shares with no rights, limited rights or preferential rights to share in distributions, or shares with no or special or limited or conditional voting rights. They may also, subject to their memorandum of association and articles of association, issue bonus shares, partly or nil paid shares, and fractional shares.

The Companies Act provides that a company may purchase, redeem or otherwise acquire its own shares, either in accordance with the procedure set out in the Companies Act, or any other procedure as provided for in the memorandum of association and articles of association of the company.

Under the provisions in the Companies Act, the directors may make an offer for the company to purchase, redeem or otherwise acquire shares in the company provided that the offer is either (a) to all shareholders and would, if successful, leave the relative voting and distribution rights unaffected, or (b) to one or more shareholders and consented to in writing by all shareholders, or is otherwise permitted by the memorandum of association or articles of association. Where the offer is to one or more shareholders, the directors must pass a resolution to the effect that in their opinion the purchase, redemption or other acquisition would benefit the remaining shareholders, and the proposed offer is fair and reasonable to the company and the remaining shareholders.

Where an acquisition by a company of its own shares would be treated as a distribution, the conditions imposed on distributions (detailed in paragraph 5 below) must be met. The purchase, redemption or other acquisition by a company of its own shares is not deemed to be a distribution where it is effected pursuant to, inter alia, a right of a shareholder to have his shares redeemed or exchanged for money or other property of the company or where the share is redeemable at the option of the company.

#### 4 Financial Assistance

There is no statutory restriction in the BVI on the provision of financial assistance by a company for the purchase of, or subscription for, its own or its holding company's shares. Accordingly, a company may provide financial assistance if the directors of the company consider, in discharging their duties of due care, skill and diligence that they are acting in good faith, for a proper purpose and in the interests of the company, that such assistance can be given.

#### 5 Dividends and distributions

The directors of a company may only declare a distribution by the company if they are satisfied, on reasonable grounds, that the company will, immediately after the distribution, satisfy the solvency test set out in section 57(1) of the Companies Act. A company satisfies the solvency test if the value of its assets exceeds its liabilities and it is able to pay its debts as they fall due.

#### 6 Shareholders' Remedies

The Companies Act has introduced a series of remedies available to shareholders. Where a company engages in activity which breaches the Companies Act or the company's memorandum of association and articles of association, the court can issue a restraining or compliance order. Shareholders can also bring derivative, personal and representative actions under certain

circumstances. The traditional English basis for shareholders' remedies has also been incorporated into the Companies Act - where a shareholder of a company considers that the affairs of the company have been, are being or are likely to be conducted in a manner likely to be oppressive, unfairly discriminating or unfairly prejudicial to him, he may apply to the court for an order on such conduct.

## 7 Mergers and Consolidations

Under the Companies Act two or more companies, each a "constituent company", may merge or consolidate.

A merger involves merging two or more companies into one of the constituent companies that will remain as the surviving company and a consolidation involves two or more companies consolidating into a new company. Subject to the memorandum of association and articles of the company a merger or consolidation must be authorised by a resolution of shareholders of every class of shares entitled to vote on the merger.

There are differing procedures depending on the type of merger that is taking place. Under the Companies Act a merger may occur between any of the following:

- (a) Two or more companies incorporated under the Companies Act;
- (b) One or more companies incorporated under the Companies Act and one or more companies incorporated under the laws of a jurisdiction outside the BVI where the BVI company is the surviving entity;
- (c) One or more companies incorporated under the Companies Act and one or more companies incorporated under the laws of a jurisdiction outside the BVI where the foreign company is the surviving entity;
- (d) A parent company and one or more of its subsidiaries where the companies are incorporated under the Companies Act;
- (e) A parent company and one or more of its subsidiaries where one or more of the companies are incorporated under the Companies Act, one or more are incorporated under the laws of a jurisdiction outside the BVI and where the BVI company is the surviving company; or
- (f) A parent company and one or more of its subsidiaries where one or more of the companies are incorporated under the Companies Act, one or more are incorporated under the laws of a jurisdiction outside the BVI and where the foreign company is the surviving entity.

Under the Companies Act, a shareholder of a company is entitled to payment of the fair value of his shares upon dissenting from:

- (a) A merger, if the company is a constituent company, unless the company is the surviving company and the shareholder continues to hold the same or similar shares;
- (b) A consolidation, if the company is a constituent company.

The Companies Act sets out the procedure that must be followed in effecting dissenters' rights. Ultimately, if the company and the dissenter fail to agree on the price to be paid for the shares owned by the dissenter, then the statutory procedure provides that the fair value of the shares owned by the dissenter is fixed by three appraisers.

## 8 Redemption of minority shares

Under section 176 of the Companies Act and subject to the memorandum of association or articles of association of a company, shareholders of a company holding 90 per cent of the votes of the outstanding shares entitled to vote; and shareholders of a company holding 90 per cent of the votes of the outstanding shares of each class of shares entitled to vote as a class, may give a written instruction to the company directing it to redeem the shares held by the remaining shareholders. Upon receiving this direction, the company must redeem the shares it has been directed to redeem and must give written notice to each shareholder stating the redemption price and the manner by which the redemption will be effected.

The shareholders having their shares compulsorily redeemed are entitled to receive fair value for their shares and may dissent from the compulsory redemption. Section 179 of the Companies Act sets out the procedure that must be followed in effecting dissenters' rights. Ultimately, if the company and the dissenter fail to agree on the price to be paid for the shares owned by the dissenter, then the statutory procedure provides that the fair value of the shares owned by the dissenter is fixed by three appraisers.

## 9 Disposal of assets

Under the Companies Act and subject to the memorandum of association or articles of association of a company, any sale, transfer, lease, exchange or other disposition, other than a mortgage, charge or other encumbrance or the enforcement thereof, of more than 50 per cent in value of the assets of the company, if not made in the usual or regular course of the business carried on by the company, requires the approval of the shareholders.

The Companies Act sets out the procedure that must be followed in relation to effecting such a disposal.

## 10 Accounting and auditing requirements

The Companies Act requires that a company shall cause to be kept proper books of account that (a) are sufficient to show and explain the company's transactions; and (b) will, at any time, enable the financial position of the company to be determined with reasonable accuracy.

## 11 Register of shareholders

A BVI Business Company may, subject to the provisions of its articles of association, maintain its principal register of members and any branch registers at such locations, whether within or outside of the BVI, as its directors may, from time to time, think fit. However either the register of members or a copy of the register of members of the BVI Business Company has to be kept at the office of its registered agent in the BVI.

There is no mandatory requirement under the Companies Act for a company to make any filings of shareholder information to the Registrar of Corporate Affairs in the BVI. The names and addresses of the shareholders are, accordingly, not a matter of public record and are not available for public inspection.

## 12 Inspection of books and records

Subject to the Companies Act, a shareholder of a company will have general right under the Companies Act to inspect or obtain copies of the register of members, the register of directors and minutes of meetings and resolutions of members and of those classes of members of which he is a member. However, subject to the company's memorandum of association and articles of association, the directors may, if they are satisfied that it would be contrary to the company's interests to allow a shareholder to inspect any document (or part of a document) refuse to permit the

shareholder to inspect the document or limit the inspection of the document, including limiting the making of copies or the taking of extracts from the records.

### 13 Special resolutions

The Companies Act does not define "special resolution". However a company's memorandum of association and articles of association may make provisions for varying threshold levels of votes required to pass a resolution and require that certain matters may only be approved if passed by a certain percentage of votes.

### 14 Subsidiary owning shares in parent

The Companies Act does not prohibit a BVI company acquiring and holding shares in its parent company. The directors of any subsidiary making such acquisition must discharge their duties of care and to act honestly and in good faith and in what the director believes to be in the best interests of the company.

Under the Companies Act:-

- (a) a director of a company that is a wholly-owned subsidiary may, when exercising powers or performing duties as a director, if expressly permitted to do so by the memorandum of association and articles of association of the company, act in a manner which he believes is in the best interests of that company's holding company even though it may not be in the best interests of the company.
- (b) a director of a company that is a subsidiary, but not a wholly-owned subsidiary, may, when exercising powers or performing duties as a director, if expressly permitted to do so by the memorandum of association or articles of association of the company and with the prior agreement of the shareholders, other than its holding company, act in a manner which he believes is in the best interests of that company's holding company even though it may not be in the best interests of the company.
- (c) a director of a company that is carrying out a joint venture between the shareholders may, when exercising powers or performing duties as a director in connection with the carrying out of the joint venture, if expressly permitted to do so by the memorandum of association or articles of association of the company, act in a manner which he believes is in the best interests of a shareholder or shareholders, even though it may not be in the best interests of the company.

### 15 Indemnification

BVI law in general does not limit the extent to which a company's articles of association may provide for indemnification of officers and directors, subject to the conditions set out in the Companies Act (e.g. the officer or director has acted honestly and in good faith and in what he believed to be in the best interests of the company and, in the case of criminal proceedings, that officer or director had no reasonable cause to believe that his conduct was unlawful).

### 16 Liquidation

A company is placed in liquidation either by an order of the court or by a resolution of directors or shareholders. A liquidator is appointed whose duties are to collect the assets of the company (including the amount (if any) due from the contributories (shareholders)), settle the list of creditors and discharge the company's liability to them, rateably if insufficient assets exist to discharge the liabilities in full, and to settle the list of contributories and divide the surplus assets (if any) amongst them in accordance with the rights attaching to the shares.

17 Stamp duty on transfers

No stamp duty is payable in the BVI on transfers of shares of BVI companies.

18 Taxation

Companies incorporated or registered under the Companies Act are currently exempt from income and corporate tax. In addition, the British Virgin Islands currently does not levy capital gains tax on companies incorporated or registered under the Companies Act.

19 Exchange control

There are no exchange control regulations or currency restrictions in the BVI.

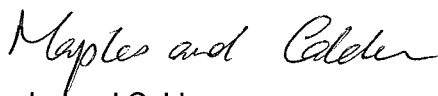
20 General

Any person wishing to have a detailed summary of BVI company law or advice on the differences between it and the laws of any jurisdiction with which he/she is more familiar is recommended to seek independent legal advice.

The above is a summary of certain salient points of BVI law. It does not, therefore, deal with every aspect of BVI law which may be relevant to the Company. With regard to the ground it does cover, the points are covered in outline only; everything stated is subject to the detailed provisions of the relevant statutes and applicable case law and will require further discussion and advice as, from time to time, new developments occur.

This opinion is addressed to you and may not be relied upon by any other party without our specific written consent.

Yours faithfully



Maples and Calder