

IN THE MATTER OF THE SECURITIES LEGISLATION  
OF BRITISH COLUMBIA, ALBERTA,  
SASKATCHEWAN, MANITOBA, ONTARIO  
Quebec, NEW BRUNSWICK, NOVA SCOTIA,  
PRINCE EDWARD ISLAND AND NEWFOUNDLAND

AND

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

AND

KONTRON EMBEDDED COMPUTERS AG  
KONTRON HOLDINGS INC. AND  
KONTRON COMMUNICATIONS INC.

MRRS DECISION DOCUMENT

**WHEREAS** the local securities regulatory authority or regulator (the "**Decision Maker**"), in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Prince Edward Island, Nova Scotia and Newfoundland (the "**Participating Jurisdictions**") has received an application from Kontron Embedded Computers AG ("**Kontron**"), Kontron Holdings Inc. ("**Kontron Holdings**") and Kontron Communications Inc. ("**KMCO**") (collectively, the "**Applicant**") for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") that:

(i) certain trades and/or distributions or primary distributions to the public of securities in connection with the proposed acquisition by Kontron and its subsidiaries of the issued and outstanding securities of Memotec Communications Inc. ("**Memotec**"), to be effected by way of a plan of arrangement (the "**Arrangement**") under section 192 of the *Canada Business Corporations Act* (the "**CBCA**") shall be exempt from the requirements contained in the Legislation of all the Jurisdictions to be registered to trade in a security, to file a preliminary prospectus and a prospectus and receive receipts therefore prior to distributing a security (the "**Registration and Prospectus Requirements**");

(ii) Kontron and KMCO be exempt from the requirements of the Legislation of any Jurisdiction in which Kontron and KMCO becomes a reporting issuers or the equivalent as a result of the Arrangement, to issue a press release and file a report regarding material changes, to file and deliver interim financial statements, and annual financial statements and annual report, where applicable, to file an information circular and, where applicable, to file an annual information form (including management's discussion and analysis of the financial condition and

results of operation of KMCO, as defined below) (the "**Continuous Disclosure Requirements**"); and

(iii) the requirement contained in the Legislation of any Jurisdiction in which KMCO becomes a reporting issuer as a result of the Arrangement, for an insider of a reporting issuer to file reports disclosing the insider's direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer (the "**Insider Reporting Requirement**") shall not apply to each insider of KMCO and its successors.

**AND WHEREAS** under the Mutual Reliance Review System for Exemptive Relief Applications (the "**System**"), the Commission des valeurs mobilières du Québec is the principal regulator for this application;

**AND WHEREAS** the Applicant has represented to the Decision Makers that:

1. *Memotec*

1.1 Memotec is a corporation organized and subsisting under the CBCA.

1.2 Memotec was incorporated on October 7, 1993 and is a networking company that provides data, voice and video convergence solutions for telecommunications carriers, Internet service providers (ISPs) and corporate customers.

1.3 Memotec's principal executive offices are located at 600 McCaffrey Street, Ville St-Laurent, Québec, H4T 1N1.

1.4 Memotec is authorized to issue an unlimited number of Memotec Common Shares and an unlimited number of Memotec Preferred Shares.

1.5 As at May 17, 2001, 15,238,350 Memotec Common Shares were issued and outstanding, 810,000 Memotec Preferred Shares were issued and outstanding and an aggregate of 1,308,474 Memotec Common Shares were reserved for issuance pursuant to outstanding options and warrants (collectively the "**Memotec Options**") to acquire Memotec Common Shares.

1.6 The Memotec Common Shares are fully participating voting shares and are listed on the TSE.

1.7 The holders of Memotec Preferred Shares are entitled to receive notice of and to attend and to vote at all meetings of shareholders, except meetings at which only holders of another specified class or series are entitled to vote separately, and they shall have one vote in respect of each Preferred Shares. They are entitled to dividends equal, on a per share basis to dividends to be declared, if any, on Memotec Common Shares.

1.8 Memotec is a reporting issuer or the equivalent in each of the Jurisdictions and is not in default of any of the requirements of the Legislation.

1.9 Memotec's management is not aware of any Memotec Shareholder who owns in excess of 10% of the outstanding Memotec Common Shares with the exception of Mr. Henry David Epstein who holds approximately 2,101,784 of the outstanding Memotec Common Shares, as of May 15, 2001. Members of Mr. Epstein's family hold 770,000 Memotec Common Shares and the Memotec Warrants which give them the right to purchase 200,000 Memotec Common Shares at a price of \$1.75 per Common Share. Mr. Epstein disclaims beneficial ownership of the shares held by his family.

## *2. Kontron*

2.1 Kontron is a corporation organized and subsisting under the laws of Germany.

2.2 Kontron was constituted in November 1998 and is one of the most important manufacturers of embedded computers.

2.3 Kontron's principal executive offices are located at Oskar von-Miller-StraBe 1, 85386 Eching, Germany.

2.4 Kontron's authorized capital consists of 16,500,000 common shares.

2.5 There were 12,100,000 of Kontron Common Shares issued and outstanding as of June 10, 2001.

2.6 The Kontron Common Shares are fully participating and voting. The Kontron Common Shares are listed and have been trading on the Neuer Markt of the Frankfurt Exchange (the "**Neuer Markt**") since April 6, 2000. The Kontron Common Shares have traded in a range of Euro 33.3 and 146.5 since their listing.

2.7 Kontron is currently subject to reporting requirements under the laws of Germany and is not a reporting issuer or the equivalent thereof in any Canadian Jurisdiction, or under the securities legislation of the United States.

2.8 Less than 10% of the issued and outstanding Kontron common shares will be held by Canadian residents upon completion of the Arrangement.

## *3. KMCO and Kontron Holdings*

3.1 KMCO is a private corporation organized and subsisting under the CBCA.

3.2 KMCO was constituted in February 2001 for the purpose of implementing the Arrangement.

3.3 KMCO's registered office is located in Toronto, Ontario.

3.4 KMCO's authorized capital consists of an unlimited number of Common Shares and Exchangeable Shares. The principal rights, privileges, restrictions and conditions attached to the KMCO Exchangeable Shares (the "**Exchangeable Shares**") are summarized in the Proxy Circular (as described hereafter).

3.5 All of the issued and outstanding common shares of KMCO are held by Kontron Holdings.

3.6 Kontron Holdings is a private corporation organized and subsisting under the British Columbia Corporations Act.

3.7 Kontron Holdings was constituted in February 2001 for the purpose of implementing the Arrangement.

3.8 Kontron Holdings' registered office is located in Vancouver, British Columbia.

3.9 Kontron Holdings' authorized capital consists of an unlimited number of Common Shares.

3.10 All of the issued and outstanding common shares of Kontron Holdings are held by a third party.

3.11 Kontron Holdings and KMCO are not reporting issuers in any Canadian Jurisdiction.

3.12 The Exchangeable Shares are not expected to be listed on the TSE or any other exchange.

#### *4. Overview of the Arrangement*

4.1 The Acquisition will be carried out by way of the Arrangement as described herein. The Arrangement will require approval by (i) not less than two-thirds of the votes cast by the aggregate of the holders of Memotec Common Shares voting as a class (present in person or by proxy), (ii) not less than two thirds of the votes cast by the aggregate of the holders of Memotec Preferred Shares (present in person or by proxy) voting as a class; and (iii) thereafter, the approval of the Superior Court of the Province of Quebec (the "**Court**").

4.2 The management information circular and proxy circular were mailed to Memotec Shareholders in respect of the Arrangement (the "**Proxy Circular**"). The Proxy Circular contains prospectus-level disclosure concerning the business of Kontron and a detailed description of the Arrangement. This Proxy Circular was mailed to Memotec Shareholders, in connection with a special meeting of

Memotec Shareholders to be held on June 26, 2001. The Proxy Circular was prepared in conformity with the provisions of the Legislation relating to information circulars.

4.3 The Proxy Circular states under "the Arrangement-Stock Exchange Listing" : "Kontron has advised Memotec that it will notify the Neuer Markt of the Proposed Arrangement and request the listing of the Kontron Common Shares to be issued under the Arrangement Agreement and under the Voting and Exchange Trust Agreement, subject (i) to the satisfaction of customary requirements of the Neuer Markt, and (ii) the registration of the new Kontron Common Shares to be issued under the Arrangement with the Commercial Registry of the Munich Lower District Court."

## 5. *The Arrangement*

5.1 Under the Arrangement, Memotec Shareholders whose registered address is in Canada (other than dissenting Memotec Shareholders) will receive a fraction of an Exchangeable Share for each Memotec Share held, corresponding to an Exchange Ratio described in the arrangement agreement entered into by the Parties as of February 9, 2001 (the "**Arrangement Agreement**"). Other Memotec Shareholders will receive a fraction of an Exchangeable Share for each Memotec Share held, corresponding to the Exchange Ratio and such Exchangeable Shares will be forthwith exchanged for a corresponding number of Kontron Common Shares, in accordance with the terms and conditions of the Exchangeable Shares.

5.2 The Exchangeable Shares will provide a holder with a security in a Canadian issuer (ie. KMCO) having economic, ownership and voting rights which are, as nearly as practicable, equivalent to those of Kontron Common Shares.

5.3 Memotec Shareholders shall be entitled to make an income tax election pursuant to section 85 of the *Income Tax Act* (Canada) with respect to the transfer of their Memotec Common Shares for Exchangeable Shares which shares, generally, may be received on a tax-deferred rollover basis.

5.4 Each Memotec Option will become exercisable into a fraction of an Exchangeable Share equal to the Exchange Ratio.

5.5 The Exchangeable Shares will be exchangeable for Kontron Common Shares on a one-for-one basis at any time at the option of the holder and will be exchanged upon the occurrence of certain events including the liquidation, dissolution or winding-up of Kontron or KMCO.

5.6 A number of Kontron Common Shares (the "**Trust Shares**") corresponding to the number of Exchangeable Shares to be issued (including Exchangeable shares that could be issued to holders of Memotec Options) will be created, subscribed for and issued to Kontron Holdings. Kontron Holdings will pay the subscription

price for the Trust Shares in kind, by i) transferring to Kontron the common shares of KMCO, and ii) giving to Kontron an undertaking to deliver and transfer all of the Exchangeable Shares that will be acquired by Kontron Holdings upon its exercise of certain call rights described below.

5.7 The Trust Shares will then be transferred by Kontron Holdings to a trustee (the "**Trustee**") under a voting and exchange trust agreement (the "**Voting and Exchange Trust Agreement**").

5.8 The Trustee will hold the Trust Shares in trust for the benefit of Kontron, Kontron Holdings and the holders of Exchangeable shares and will cause them to be delivered from time to time to holders of Exchangeable Shares who exercise their right of exchange attached thereto.

5.9 The Trustee will hold the Trust Shares pursuant to the Voting and Exchange Trust Agreement. The Trustee will be entitled at Kontron Stockholder meetings to cast a number of votes equal to the number of Trust Shares outstanding at such time. These voting rights will be exercised by the Trustee only on instructions received from time to time from the holders of the Exchangeable Shares other than Kontron and its subsidiaries. By furnishing instructions to the Trustee, holders of Exchangeable Shares will be able to exercise the same voting rights with respect to Kontron as they would if they were holders of Kontron Common Shares.

5.10 Dividends paid on the Trust Shares will be remitted to the holders of Exchangeable Shares by the Trustee, at the same time and in the same amount per share as dividends on the Kontron Common Shares.

5.11 Dissenting Memotec Shareholders will not exchange their Memotec Common Shares pursuant to the Arrangement. Memotec Common Shares held by dissenting shareholders will be dealt with in accordance with the dissent provisions of Section 192 of the CBCA.

## *6. Description of Principal Securities and Ancillary Agreements*

### *Additional Attributes of the Exchangeable Shares*

6.1 Subject to the overriding call right of Kontron Holdings referred to below in this paragraph, on liquidation, dissolution or winding-up of KMCO, a holder of Exchangeable Shares will be entitled to receive for each share an amount equal to the market price of one Kontron Common Share held by the Trustee, which will be satisfied by delivery of one Kontron Common Share. Upon a proposed liquidation, dissolution or winding-up of KMCO, Kontron Holdings will have an overriding call right to purchase outstanding Exchangeable Shares for a price per share equal to the market price of one Kontron Common Share, which shall be satisfied by the delivery of one Kontron Common Share held by the Trustee.

6.2 The Exchangeable Shares will be non-voting (vis-à-vis KMCO, but have voting entitlement vis-à-vis Kontron pursuant to the Voting and Exchange Trust Agreement) and will be exchangeable for Kontron Common Shares at the option of the holder at any time, through a retraction provision attached to the Exchangeable Shares. Subject to the overriding call right of Kontron Holdings referred to below in this paragraph, upon retraction the holder will be entitled to receive from KMCO for each Exchangeable Share an amount equal to the market price of a Kontron Common Share, which amount will be satisfied by the delivery by the Trustee on behalf of KMCO of one Kontron Common Share. Upon being notified by KMCO of a proposed retraction by a holder of Exchangeable Shares, Kontron Holdings will have an overriding call right to purchase the Exchangeable Shares that are the subject of the retraction notice for a price per share equal to the market price of one Kontron Common Share. For Canadian tax reasons, it is expected that all redemptions will be effected through this latter mechanism.

6.3 Subject to the overriding call right of Kontron Holdings referred to below in this paragraph, KMCO will redeem all of the Exchangeable Shares then outstanding on or after June 30<sup>th</sup>, 2006, unless such date shall be extended to a specified later date by the KMCO board of directors, not to be later than the 15<sup>th</sup> anniversary of the effective date of the Arrangement, or on such earlier date as specified by the KMCO board of directors if there are fewer than 100,000 Exchangeable Shares outstanding (other than Exchangeable Shares held by Kontron and entities controlled by Kontron). Upon such redemption by KMCO, each shareholder will be entitled to receive from KMCO, for each Exchangeable Share redeemed, an amount equal to the market price of a Kontron Common Share, which amount will be satisfied by the delivery by the Trustee on behalf of KMCO of one Kontron Common Share. Upon being notified by KMCO of a proposed redemption of Exchangeable Shares, Kontron Holdings will have an overriding call right to purchase all but not less than all of such shares for a price per share equal to the market price of one Kontron Common Share, which shall be satisfied by the delivery by the Trustee on behalf of Kontron Holdings of one Kontron Common Share. For Canadian tax reasons, it is expected that all redemptions will effected through this latter mechanism.

6.4 Pursuant to the Voting and Exchange Trust Agreement, in the event of the dissolution of Kontron, the Exchangeable Shares will be automatically exchanged (the "Automatic Exchange Right") for Kontron Common Shares so that the holders thereof may participate in the dissolution of Kontron on the same basis as holders of Kontron Common Shares.

6.5 The provisions attaching to the Exchangeable Shares are included in the Proxy Circular as part of Annex B.

Voting and Exchange Trust Agreement

6.6 At the effective time of the Arrangement, Kontron, KMCO and the Trustee will enter into the Voting and Exchange Trust Agreement which will provide that the Trust Shares will be held by the Trustee for the benefit of Kontron, Kontron Holdings and the holders of Exchangeable Shares and each voting right attached thereto will be voted pursuant to the instructions of the holder of the related Exchangeable Share. In the absence of any such instructions from a holder of Exchangeable Shares, the related voting rights will not be exercised.

6.7 In the Voting and Exchange Trust Agreement, Kontron will grant to the Trustee, for the benefit of the holders of Exchangeable Shares, a put right (the "**Exchange Right**"), exercisable upon the insolvency of KMCO, to require Kontron to purchase from the holder all or any part of the Exchangeable Shares held by the holder. The purchase price for each Exchangeable Share purchased by Kontron will be an amount equal to the market price of share of one Kontron Common Share, to be satisfied by the delivery by the Trustee on behalf of Kontron to the holder of one Kontron Common Share.

6.8 In the event of the voluntary or involuntary liquidation, dissolution or winding-up of Kontron, Kontron will be required to purchase each outstanding Exchangeable Share for a purchase price per share equal to the market price of a Kontron Common Share. Kontron shall satisfy the purchase price of each Exchangeable Share purchased by causing the Trustee to deliver one Kontron Common Share.

6.9 Kontron will send concurrently to all holders of Exchangeable Shares and Kontron Common Shares resident in Canada all disclosure material furnished to holders of Kontron Common Shares resident in Germany, including, without limitation, copies of its annual audited financial statements, quarterly financial statements and all proxy solicitation materials.

6.10 The Trustee will be empowered to sell from time to time any Trust Shares held by it that correspond to Exchangeable Shares that could have been issued but will not be issued as a result of Memotec Options having lapsed without having been exercised. The net proceeds from such sales will be remitted to Kontron.

**AND WHEREAS** 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 test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is:



A. The Registration and Prospectus Requirements shall not apply to any trade made in connection with the Arrangement or pursuant to a right to make a trade which was derived from the Arrangement, provided that:

(i) in British Columbia, the first trade in any Exchangeable Shares, other than the exchange of the Exchangeable Shares for underlying Kontron Common Shares by the original recipients of Exchangeable Shares pursuant to the Arrangement, shall be deemed a distribution;

(ii) in the Jurisdictions other than British Columbia, the first trade in any Exchangeable Shares, other than the exchange of the Exchangeable Shares for underlying Kontron Common Shares by the original recipients of Exchangeable Shares pursuant to the Arrangement, shall be deemed a distribution or a primary distribution to the public under the Legislation, except that where:

(a) KMCO has been for a period of 12 months a reporting issuer or the equivalent under the Legislation in the Participating Jurisdiction in which such first trade is made or, in the case of Quebec, Nova Scotia, Newfoundland, Manitoba, Prince Edward Island and New Brunswick, Kontron has complied with the requirements of paragraph B below;

(b) if the seller is in a "special relationship" with or an "insider" of KMCO, (as defined in the Legislation), the seller has no reasonable grounds to believe that KMCO is in default of any requirements of the Legislation; and

(c) no unusual effort is made to prepare the market or to create a demand for the securities and no extraordinary commission or consideration is paid in respect of such first trade,

then such first trade is a distribution or primary distribution to the public only if it is a trade from the holdings of any person, company or combination of persons or companies holding a sufficient number of securities of Kontron to affect materially the control of Kontron, but any holding of any person, company or combination of persons or companies holding more than 20 percent of the outstanding voting securities of Kontron shall, in the absence of evidence to the contrary, be deemed to affect materially the control of Kontron (and for this purpose Kontron Common Shares and Exchangeable Shares are considered to be of the same class);

(iii) the first trade in Kontron Common Shares acquired upon the exchange of Exchangeable Shares shall be deemed a distribution or a primary distribution to

the public under the Legislation unless such trade is executed through the facilities of a stock exchange or market outside of Canada.

B. The Continuous Disclosure Requirements shall not apply to Kontron and KMCO, provided that at the time that any such requirement would otherwise apply:

(i) Kontron shall concurrently send to all holders of Exchangeable Shares all disclosure material furnished to holders of Kontron Common Shares, including, but not limited to, copies of its annual report, audited financial statements prepared in accordance with US GAAP, quarterly financial statements and all proxy solicitation materials, translated into English;

(ii) Kontron shall file with each of the Participating Jurisdictions copies of all documents filed by it with the Neuer Markt, translated into English;

(iii) Kontron shall comply with the requirements of the Neuer Markt (or such principal stock exchange on which the Kontron Common Shares is then listed) in respect of making public disclosure of material information on a timely basis and forthwith issues in the Participating Jurisdictions and files with the Participating Jurisdictions any press release that discloses a material change in Kontron's affairs;

(iv) KMCO shall comply with the requirements of the Legislation to issue a press release and file a report with the Participating Jurisdictions upon the occurrence of a material change in respect of material changes in the affairs of KMCO that are not material changes in the affairs of Kontron;

(v) Kontron shall include in all future mailings of proxy solicitation materials to holders of Exchangeable Shares a clear and concise statement explaining the reason for the mailed material being solely in relation to Kontron and not to KMCO, such insert to include a reference to the economic equivalency between the Exchangeable Shares and Kontron Common Shares and the right to direct voting at Kontron's stockholders' meetings pursuant to the Voting and Exchange Trust Agreement;

(vi) Kontron shall remain the direct or indirect beneficial owner of all of the issued and outstanding voting securities of KMCO other than the Exchangeable Shares; and

(vii) KMCO does not issue any securities to the public other than Exchangeable Shares and options to acquire Exchangeable Shares.

C. The Insider Reporting Requirements shall not apply to any insider of KMCO who is not also an insider of Kontron.

**Dated** "July 17", 2001.

"Jean-François Bernier"  
Directeur des Marchés des capitaux