

TRINIDAD AND TOBAGO SECURITIES AND EXCHANGE COMMISSION



DECISION

**ON THE APPLICATION OF
THE TRINIDAD AND TOBAGO STOCK EXCHANGE
TO AUTHORIZE THE DE-LISTING OF
BWIA WEST INDIES AIRWAYS LIMITED**

In accordance with sections 45 and 134 of the Securities Industry Act, 1995

December 22, 2006

1. BACKGROUND TO THE HEARING HELD ON DECEMBER 15, 2006

A. THE APPLICATION OF THE TRINIDAD AND TOBAGO STOCK EXCHANGE

1. By letter to the Commission dated May 12, 2006 the Trinidad and Tobago Stock Exchange (“the Stock Exchange”), a self-regulatory organization registered under section 34 of the Securities Industry Act, 1995 (“the SIA”), requested that the Commission authorize the de-listing of BWIA pursuant to section 45(1) of the SIA. The Stock Exchange indicated that BWIA West Indies Airways Limited (“BWIA”) had requested a further three (3) month suspension of trading in its shares, but the Exchange had decided that it could not accede to BWIA’s request. However, this letter did not state the grounds upon which the Stock Exchange was seeking the de-listing.
2. By letter dated June 20, 2006, the Stock Exchange wrote to the Commission listing the following four (4) grounds upon which it was seeking to rely with respect to its application to have BWIA de-listed (collectively referred to as “the four grounds”):
 - (i) **Unsatisfactory financial condition or operating results;**
 - (ii) **Inability to meet current debt obligations or adequately finance operations;**
 - (iii) **Failure to make timely adequate and accurate disclosures of information to its shareholders and the investing public; and**
 - (iv) **An effective and fair market cannot be made in the security.**

The Stock Exchange also advised that its request to have BWIA de-listed would not be in breach of any of the Rules of the Stock Exchange.

B. HISTORY OF BWIA ON THE OFFICIAL LIST OF THE STOCK EXCHANGE

Listing of BWIA’s Shares

1. By letter dated November 27, 2000, the Commission issued its receipt to BWIA for the prospectus covering the issue of 12 million BWIA shares at a price of TT\$7.85 or US\$1.25 in an Initial Public Offering (“the IPO”).
2. The Stock Exchange has represented that an application was made to it later that year for the listing of BWIA’s ordinary shares on the Official List of the Stock Exchange upon completion of the IPO.
3. The issue of 12 million shares to the public commenced on December 4, 2000 and remained open in other Caribbean jurisdictions until January 19, 2001.
4. BWIA’s issued share capital at the date of listing was 46,824,656 shares, of which 15.5% (representing 7,279,906 shares) was taken up by the public in the IPO.
5. BWIA was listed on the Stock Exchange’s Official List on February 6, 2001 at the issue price of TT\$7.85.

Suspension of Trading in BWIA’s Shares

1. By letter dated November 15, 2005, BWIA requested the suspension of trading in its shares for a period of three (3) months, in order to halt any speculative trading pending the restructuring of the company. It indicated that it also wanted the option to request the continuation of the suspension if circumstances warranted this.

2. By letter dated November 16, 2005, the Stock Exchange advised the Commission that trading in BWIA's shares had been suspended with immediate effect for a period of three (3) months at the request of the company.
3. By letter dated February 9, 2006, BWIA requested an extension of the suspension of trading in its shares for a further period of three (3) months. It indicated that the Board of Directors had undertaken an in-depth analysis of the company to inform the restructuring process, and that the company was in the process of preparing a business plan and a plan of restructuring. It was unable to indicate a definitive time-frame for the completion of this exercise. It further indicated that it had also requested an extension of the suspension of trading on the Barbados Stock Exchange.
4. By letter dated February 14, 2006, the Stock Exchange granted the extension of the suspension for a further three (3) months.
5. The Stock Exchange thereafter wrote the abovementioned letters of May 12 and June 20, 2006, in respect of its application to the Commission to have BWIA de-listed.

2. DE-LISTING PROCEDURE

De-listing of Securities under section 45 of the Securities Industry Act, 1995

Section 45 of the SIA confers authority on the Commission to grant an order that authorizes the Stock Exchange to de-list a security listed by it, as well as impose such conditions as deemed appropriate by the Commission. It provides as follows:

(1) No self-regulatory organization shall de-list a Security admitted for quotation by it, unless it obtains an order from the Commission authorizing the de-listing and imposing, for the protection of investors, such conditions, if any, as it thinks fit.

(2) The Commission shall not refuse to authorize the de-listing of a security, unless the de-listing is in breach of-

- (a) the rules of the self-regulatory organization; or**
- (b) an agreement entered into by the issuer of the security.**

De-listing Criteria under Rule 401 of the Stock Exchange Rules

Rule 401 of the Stock Exchange Rules ("the Rules") enumerates de-listing criteria to be considered by the Stock Exchange in its determination of whether to remove a company from its official list. The relevant parts of Rule 401 provide as follows (the underlined areas are the grounds upon which the Stock Exchange relied as indicated above):

Rule 401

(1) The aim of the Trinidad and Tobago Stock Exchange is to provide the foremost auction market for securities of well established companies in which there is a broad public interest and ownership.

(2) Securities admitted to the official list may be suspended from dealings or removed from the list at any time.

Prior to the delisting of any security, the Exchange shall make an appraisal of, and determine, the suitability for continued listing in light of all the pertinent facts whenever it deems such action appropriate.

The grounds under which a company's security may be de-listed include, but are not limited to, the following:

(a) Failure of a company to make timely adequate and accurate disclosures of information to its shareholders and the investing public;

(b) Failure to observe good accounting practices in reporting of earnings and financial position;

(c) Conduct inconsistent with just and equitable principles of trade;

(d) Unsatisfactory financial condition or operating results;

(e) Inability to meet current debt obligations or to adequately finance operations;

(f) Abnormally low selling price or volume of trading;

(g) Unwarranted use of company's funds for the repurchase of its equity securities,

(h) Any other event or condition which may exist or occur that make further dealings and listing of the securities on the Exchange inadvisable or unwarranted in the opinion of the Exchange.

(i) When a company falls below any of the criteria enunciated in Rule 401(3), the Exchange may give consideration to any definitive action that a company would propose to take that would bring it in line with original standards.

Changes that a company might consider or make that would bring it above the delisting criteria but not in line with the original listing standards would normally not be adequate reason to warrant continued listing.

Rule 401(4) also lists other criteria which may result in the de-listing of a company including, but not limited to:

(a) Reductions in Operating Assets and/or scope of operations;

(b) Bankruptcy and/or liquidation;

(c) Authoritative advice/proof that a security is without value;

(d) Registration no longer effective;

(e) Proxies are not solicited for all meetings of stockholders;

(f) Agreements are violated;

(g) Interest coverage of debt securities is inadequate;

(h) Failure to meet payment, redeem or retire securities on due dates.

Hearings pursuant to section 134 of the Securities Industry Act, 1995

Prior to making a final order in an application of a self-regulatory organization to de-list a security pursuant to section 45 of the SIA, the Commission is required to hold a hearing pursuant to section 134. Pursuant to section 134(9), the requirement to provide an opportunity for a hearing pursuant to section 134(1) is unnecessary when the Commission determines that the relevant order:

- is essentially procedural; or
- does not adversely affect the rights or interests of any person.

The Commission made a determination that the application to de-list BWIA could affect the rights or interests of its shareholders and accordingly decided that it was required to hold a hearing on the Stock Exchange's application under section 45 of the SIA.

The Commission convened a hearing in order to give interested parties an opportunity to advance any arguments relevant to the Stock Exchange's application to de-list BWIA. In this regard, and in keeping with section 134 of the SIA, the Commission published in the daily newspapers in Trinidad and Tobago a Notice of Hearing dated November 24, 2006, and issued a Notice of Hearing dated November 27, 2006 to each of the shareholders listed in BWIA's register of shareholders, both local and foreign. The matter was heard on Friday 15th December, 2006.

3. PROCEDURE AT THE HEARING

The Commission's Hearing Panel consisted of the Commission's Chairman, Mr. Osborne Nurse, and Commissioners Mrs. Bridgid Annisette-George, Dr. Shelton Nicholls and Mr. Vishnu Dhanpaul. The following procedure was applied:

1. The Stock Exchange, represented by its Corporate Secretary, Mrs. Sherry-Ann Rudd, was asked to:
 - (a) provide evidence to support the four grounds upon which it was relying with respect to its application to de-list BWIA pursuant to section 45 of the SIA;
 - (b) provide evidence to demonstrate that the application was not in breach of its Rules or any written agreement with BWIA;
 - (c) outline the Stock Exchange's procedure in arriving at its decision to de-list BWIA.
2. BWIA, as represented by Ms. Rachel Laquis, Corporate Secretary, Mr. Stephen Singh, external counsel, and Mr. William Lucie-Smith, Non-Executive Board Director, was asked to respond.
3. Other parties present were invited to make submissions in respect of the Stock Exchange's application upon statement of their name and interest.

4. The Stock Exchange was given an opportunity to respond to the comments made during the course of the proceedings.
5. The proceedings were brought to a conclusion.

During the proceedings, members of the Hearing Panel asked further questions that arose out of the Stock Exchange's submission and issues under consideration.

4. THE STOCK EXCHANGE'S SUBMISSION

Reasons for its Application

In its written submission with supporting documents, the Stock Exchange, in citing its reasons for the application to de-list BWIA, stated that as a self regulatory organization registered under the SIA, it has a duty to act in the best interests of the investing public in accordance with rules established by the self-regulatory organization for this purpose.

Rule 401 of the Rules sets out several grounds under which a company's security may be de-listed and states, inter alia, that suitability for continued listing of any security shall be determined in light of all the pertinent facts. The Stock Exchange asserted that it should be noted that while the de-listing criteria include the grounds relied upon by the Stock Exchange, it is not limited only to such grounds in its appraisal of BWIA's continued suitability for listing.

In support of its application to de-list BWIA, the Stock Exchange relied upon the four grounds stated above and set out at Rule 401 of the Rules.

Basis for the Grounds Relied Upon

Grounds 1 & 2

1. **Unsatisfactory financial condition or operating results;**
2. **Inability to meet current debt obligations or adequately finance operations.**

Grounds 1 and 2 were treated as one ground for the purpose of the Stock Exchange's supporting documentation.

(a) BWIA's Financial Statements 2001 - 2005

A review of BWIA's year end financial statements over the period 2001 to 2005, as sourced from its Consolidated Income Statements, indicates that the company consistently posted a loss each year for the duration of its listing as follows:

Year End	Group Profit/Loss in TT\$
2001	(4,349,000)
2002	(216,722,000)
2003	(138,228,000)
2004	(96,208,000)
2005	(165,516,000)

(b) The Auditor's Reports

The Auditor's Report to the Members of BWIA for each of the years 2003 to 2005 clearly concludes that for each of the years 2003 to 2005, the company's current liabilities exceeded its current assets.

- i. For the year ended December 31 2003, the Auditor's Report states inter alia, at paragraph 4 that the Company's current liabilities exceed its current assets by TT\$448,693,000.
- ii. For the year ended December 31 2004, the Auditor's Report states inter alia at paragraph 4 that the Company's current liabilities exceed its current assets by TT\$695,433,000.
- iii. For the year ended December 31st 2005 the Auditor's Report states inter alia at paragraph 4 that the Company's current liabilities exceed its current assets by TT\$468,151 000

The Stock Exchange emphasised that:

- **An examination of the Consolidated Income Statements shows that BWIA was consistently in an unsatisfactory financial condition having posted losses for each year over a five year period from the time of its listing to the time of its suspension from listing.**
- **A review of the Auditor's Reports for the last three years, from 2003 to 2005 shows that BWIA was consistently unable to meet its current debt obligations or adequately finance its operations.**

Ground 3 - Failure to make timely, adequate and accurate disclosures of information to its shareholders and the investing public

- (a) Pursuant to the Stock Exchange's Listing Requirements and the Stock Exchange's agreement to list BWIA's shares, both parties entered into a Listing Agreement.
- (b) Clause 5 of the Listing Agreement requires BWIA to issue its annual report and accounts **within four (4) months following the financial year end to which such accounts relate.** BWIA is required to notify the Board of the Stock Exchange ("the Board") for the reason for any delay in the publication of such accounts and to state when it expects to publish the accounts.
- (c) Clause 6 of the Listing Agreement requires BWIA to prepare a half-yearly or interim report which must be sent to the holders of securities or inserted as paid advertisements in two (2) leading daily newspapers **not later than six (6) months from the date of the notice convening the annual meeting of the company.**
- (d) The Stock Exchange rendered the following table setting out the timeliness and availability of information about the financial condition of BWIA:

Timeliness and Availability of Information/Record of Events

Year	Company Year End	Financial Results Filed	Date Filed
2001	December 31 2001	Half year— 6 months	05.09.2001
2001	December 31 2001	Third quarter — Sep. 01	18.12.2001
2002	December 31 2002	Half year— 6 months	10.11.2002
2002	December 31 2002	Year end audited results 2002- requested extension to 29 05 2003 Further extension requested to 30.06.2003.	27.06. 2003
2003	December 31 2003	Third quarter— Sep.03	10.12.2003
2003	December 31 2003	Annual Report 2003- extension requested to 30 06 04, Further extension requested to 05.07.04	05.07.2004
2004	December31 2004	Rights Issue approved	03.06.2004
2004	December 31 2004	Listing of Rights shares 1,283,408,712	13.08 2004
2004	December 31 2004	Third quarter— Sep 04	29.11.2004
2004	December 31 2004	Annual Report 2004. Extension requested to 30.05.05. Further extension requested to 03.06.05	06.06 2005
2005	December 31 2005	Third quarter — Sep. 05	09.12.2005
2005 2005	December 31 2005 December 31, 2006	Request for suspension of trading Suspension of trading granted for 3 months	15.11.2005 16.11 2005
2006	December 31, 2006	Notification date 11 09.06 of termination of operations	Proposed termination date- first quarter 2007

- (e) A review of the above table indicates that aside from the year 2001, BWIA consistently failed to file its half-year and year end results on time. It also failed to file such accounts within extensions of time for filing granted by the Stock Exchange.
- (f) Correspondence from BWIA requesting extensions of time and three (3) press releases issued by the Stock Exchange advising the investing public of the extensions of time granted to BWIA were supplied in support of ground 3.

The Stock Exchange emphasised that:

One of the prerequisites for a strong capital market is that investors are assured that there is adequate disclosure about the financial condition of a public company. BWIA consistently failed to comply with the provisions of clauses 5 and 6 of the Listing Agreement and thus failed to make timely, adequate and accurate disclosures of information to its shareholders and the investing public.

Ground 4 - An effective and fair market cannot be made in the security

- (1) The Stock Exchange submitted that an effective and fair market cannot be made in BWIA's shares in light of the Listing Requirements issued by the Stock Exchange.

The Listing Requirements set out the criteria for the admission of a security to listing. Listing Requirement No. 4 contained in Chapter 1 requires that:

“A sufficient proportion, which shall normally be 25% of any class of issued equity capital or securities convertible into equity capital is required to be in the hands of the public., that is persons who are not associated with the directors or major shareholders, but the Board shall have discretion to admit listing of a security of which a lower proportion is held by the public if in their view an effective and fair market in the security may be made.”

- (3) While Listing Requirement No. 4 is an admission to listing criteria, it is implied therein that these criteria must be adhered to throughout the listing life of the security admitted to listing.
- (4) When BWIA was listed on the Stock Exchange on February 6th 2001 it was stated at page 14 of its Prospectus that its majority shareholder, the Government of the Republic of Trinidad and Tobago (“GORTT”), held 48.55% of its issued share capital as at November 2000.
- (5) It proposed to issue for public subscription 12 million shares which represented 23% of its issued share capital.
- (6) Subsequent to BWIA's 27 for 1 rights issue at TT\$0.20 per share in June 2005, GORTT held 97.18% of BWIA's issued shares.

The Stock Exchange emphasised that only 2.82% of BWIA's issued shares are in public hands and it is accordingly of the view that an effective and fair market cannot be made in the security.

The Stock Exchange submitted that in accordance with section 45(2) of the SIA, the Commission shall not refuse to authorize the de-listing of a security unless the de-listing is in breach of:

- (a) The rules of the self-regulatory organisation; or
(b) An agreement entered into by the issuer of the security.

In respect of the procedure adopted by the Stock Exchange, it was submitted that the Board consists of eleven (11) Directors of which eight (8) are drawn from member firms of the Stock Exchange and listed companies. The remaining three (3) are independent Directors. The suitability of BWIA for continued listing was discussed at the level of the Board of the Stock Exchange. At a Board meeting on Thursday May 11, 2006, the day following a third application by BWIA for an extension of the suspension in trading of its shares on the Stock Exchange, the Board reviewed the matter and made a decision to apply to the Commission for BWIA to be de-listed pursuant to section 45.

The Stock Exchange also submitted that, having reviewed its Rules and the Listing Agreement between the Stock Exchange and BWIA, its de-listing of BWIA would not be in breach of either the said Rules or Listing Agreement. On the contrary, the Rules support the application to de-list in the circumstances outlined above. Further, a review of the Listing Agreement indicates that BWIA has not complied with clauses 5 & 6 of the Agreement as outlined above and the Agreement is otherwise silent on the issue of de-listing.

5. SUBMISSIONS BY INTERESTED PARTIES

BWIA

Mr. William Lucie-Smith, Non-Executive Board Director of BWIA, responded on behalf of BWIA. He indicated that BWIA had been provided with the Stock Exchange's submission and believed that the grounds stated therein were accurate and valid. Accordingly, BWIA did not contest the application.

OTHER INTERESTED PARTIES

The hearing was attended by 205 interested and/or affected persons. Of these, twenty-one (21) persons who attended made submissions when invited to do so by the Panel's Chairman.

Arising out of a question from a shareholder in respect of Ground 4 and whether the Stock Exchange met the criteria for a fair and effective market at the point of the rights issue in 2004, it was clarified by BWIA that when it was privatised in 1995, GORTT reduced its shareholding to 48% and was therefore not the majority shareholder. GORTT did not have control of the Board which was appointed by the private sector at this time. As a result of its IPO in March 2001, further shares were issued to the public at which point GORTT's shareholding fell and more than 25% of the issued share capital was in the hands of the public following that issue. The rights issue in July 2004 occurred as BWIA had become insolvent and was in desperate need of funding in order to continue operations. GORTT provided US\$40 million as additional capital when it took up the unsubscribed shares in the rights issue thereby increasing its shareholding in BWIA to 97.18%. It is only at that time in 2004 that GORTT reacquired control of the Board of BWIA. The new Board was not appointed until October 2005.

In response to the question of why BWIA was not de-listed upon failure to disclose its annual accounts, it was clarified by the Stock Exchange that there was not an outright failure to disclose the accounts but rather a failure to disclose and publish these accounts in the timely manner agreed to by BWIA in its listing agreement with the Stock Exchange. Further, each request by BWIA for an extension of time was made known to the public through press releases published by the Stock Exchange in at least two (2) daily newspapers.

In commenting on the history of State Enterprises, it was questioned why BWIA's IPO was allowed. It was clarified by BWIA that GORTT did not take BWIA public in 2001 and it was not a State enterprise but was a private sector company. According to its financial statements in 1999 and 2000, BWIA met all of its targets and forecasts up to the end of August 2001 until the occurrence of September 11, 2001. It was submitted that the explanation for BWIA's demise does not lie in its State ownership at the point of the rights issue in July 2004 which was a rescue effected by GORTT for the purpose of protecting the travelling public. Upon the seizure of

BWIA's aircraft owing to arrears to its creditors at that time, GORTT felt obligated to assist BWIA to ensure that it was stabilized. Furthermore, the disclosure in the rights issue documentation was clear that there was no recommendation or guarantee by GORTT that it would fund BWIA indefinitely.

Persons in attendance at the hearing also made contributions in respect of three (3) key issues:

1. What may be expected with respect to the disposal of their shares – where are the shares now and what will happen to them in the future having regard to the reported cessation of BWIA's operations on December 31, 2006;
2. The failure by BWIA to communicate with minority shareholders as to the disposition of BWIA and its assets;
3. The values to which shareholders may be entitled especially as assets are being reportedly sold off and/or assigned and/or transferred to a new company, namely Caribbean Airlines Limited.

6. DECISION OF THE COMMISSION

Purpose of the Hearing

Having regard to section 45(2) of the SIA as outlined above, the purpose of the hearing is limited to the determination by the Commission of whether the Stock Exchange's decision to de-list BWIA is consistent with:

1. The Rules of the Stock Exchange; or
2. An agreement entered into by BWIA, such as the Listing Agreement between the Stock Exchange and BWIA.

The hearing also serves to provide the Commission with a basis upon which to consider the possible prescription of any conditions in the process of granting an order to de-list BWIA.

Under section 45(2) of the SIA, the Commission is not empowered to enquire into the operations of BWIA.

In considering its decision on the application of the Stock Exchange, and on hearing the submissions that were made by persons attending the Hearing, the Commission is of the view that it is appropriate to restate, for the benefit of existing and potential shareholders and investors, the role of the Commission in the process of approving the issue of securities.

The Chairman of the Panel pointed out that where a person wishes to issue securities to the public – that is to more than 35 persons – that person must first register with the Commission as a reporting issuer. Subsequently, such a reporting issuer must register the security that it wishes to distribute with the Commission, whether or not such security is to be listed on the Stock Exchange. It is important to note that in its determination to register the issue of a security, the Commission is not empowered to make any judgment about the merits of investing in the security but is only required to ensure that all relevant and material information in respect of the issue of the security is made available to the public. It is on the basis that BWIA had made available to the public the information necessary for a potential investor to make a decision in respect of its

shares that the Commission on November 27, 2000 registered BWIA as a reporting issuer and issued a receipt in respect of the prospectus for the initial public offering (IPO).

Again, when BWIA sought to make the rights issue in 2004 through the submission of an information memorandum in support of its application for a receipt, a similar procedure was followed by the Commission.

Commission's Response to Issues raised

The Commission is of the view that it is appropriate to comment on the three key issues raised by the persons present at the hearing.

1. Disposal of BWIA Shares

The matter in issue is not the disposal of the shares but whether or not they should continue to be available for trading through the facilities of the Stock Exchange. It should be noted that although BWIA will cease operations on December 31, 2006, it may still continue to exist as a company.

2. Treatment of Minority Shareholders

A strong complaint arising out of the comments of the 21 persons reflected that the interests of minority shareholders were being ignored. The Commission is of the view that this presents a useful opportunity to state the law in respect of the treatment of minority shareholders.

Guidance on the manner in which minority shareholders ought to be treated can be found at By-Law 26 of the Securities Industry (Take-Over) By-Laws 2005 ("the Take-Over By-Laws"). By-Law 26(1) provides as follows:

"Where ninety percent or more of a class of voting or equity securities of the offeree issuer are acquired by or on behalf of the offeror, the offeror's affiliates and the offeror's associates, then the holder of any securities of that class not counted for the purposes of calculating such percentage shall be entitled in accordance with this section to require the offeror to acquire the holder's securities of that class."

By-Law 26(2) goes to state that:

"Every offeror, within thirty days after it becomes aware that security holders are entitled to require it to acquire their securities under paragraph (1), shall send a written notice to each such security holder that the security holder may within sixty days after the date of such notice require the offeror to acquire his, her or its securities."

The circumstances are such that GORTT's increased shareholding to 97.18% occurred in 2004, prior to the coming into force of the Take-Over By-Laws in March 2005. Although the Take-Over By-Laws were not in force at that time, they existed in the form of the Take-Over Code,

which had been published for comment and discussed at a public forum held for this purpose in 2003, and presented to the Minister of Finance in 2004 for enactment into law.

The Commission is of the view that there should have been compliance with the spirit of By-Law 26 in treating with minority shareholders. The spirit of the Take-Over Code would have required a majority shareholder of in excess of 90% of the issued share capital of BWIA, to have notified the minority shareholders of their right to require the majority shareholder to acquire their shares. Such notice is required under By-law 26(3) to set out, inter alia, a price that the majority shareholder is willing to pay for the shares, the basis for arriving at the price and state that if the minority shareholder is not satisfied with the price offered by the majority shareholder in the notice, he is entitled to have the fair value of his securities fixed by the Court.

It should be noted that under By-Law 26 there also exist obligations for minority shareholders in circumstances such as these.

3. Valuation

Persons expressed concern about the value of BWIA's assets that are being disposed of and/or transferred, and their need to know whether such assets were sufficient to yield value to shareholders. In the circumstances, the Commission suggests that it would be in the best interests of all shareholders that an independent valuation be undertaken and that the results thereof be made available to all shareholders.

Decision of the Commission

1. Taking account of all the submissions made at the Hearing and the accompanying documentary evidence of the Stock Exchange in support of its application to de-list BWIA on the four grounds listed above, the Commission determines:
 - i. That the submissions made by the Stock Exchange support and justify the application of Rule 401 of the Rules, Chapter 1 No. 4 of the Listing Requirements and Clauses 5 and 6 of the Listing Agreement between the Stock Exchange and BWIA;
 - ii. That the application of the aforesaid Rules by the Stock Exchange is not in breach of the Rules of the Stock Exchange, its Listing Requirements or the Listing Agreement entered into by the Stock Exchange and BWIA;
 - iii. The Commission therefore orders that the Trinidad and Tobago Stock Exchange is authorized to de-list the shares of BWIA admitted for quotation by it in accordance with the provisions of Section 45 of the SIA;
 - iv. That this order shall take effect on the 22nd day of December, 2006.

TRINIDAD AND TOBAGO SECURITIES AND EXCHANGE COMMISSION

In the matter of section 45 of the Securities Industry Act, 1995

and

In the matter of an application by the Trinidad and Tobago Stock Exchange Limited

for an Order authorising the de-listing of BWIA West Indies Airways Limited

ORDER

WHEREAS on 12th May, 2006 the Trinidad and Tobago Stock Exchange (“the Stock Exchange”), a self-regulatory organisation registered under section 34 of the Securities Industry Act, 1995 (“the SIA”), made an application to the Trinidad and Tobago Securities and Exchange Commission (“the Commission”) to the Commission to authorise its de-listing of BWIA pursuant to section 45(1) of the SIA.

AND WHEREAS by letter to the Commission dated 20th June 2006, the Stock Exchange submitted in support of its application the following four (4) grounds (“the four grounds”):

- (v) **Unsatisfactory financial condition or operating results;**
- (vi) **Inability to meet current debt obligations or adequately finance operations;**
- (vii) **Failure to make timely adequate and accurate disclosures of information to its shareholders and the investing public; and**
- (viii) **An effective and fair market cannot be made in the security.**

AND WHEREAS the Stock Exchange further submitted that its application was not in breach of any of the Rules of the Stock Exchange.

AND WHEREAS the Commission caused to be published on 24th November 2006 in the daily newspapers in circulation in Trinidad and Tobago a notice of hearing (“the said notice of hearing”) setting out:

- a. the statement of time and place and the purpose of the hearing;
- b. a reference to the authority under which the hearing is to be held;
- c. a concise statement of the allegations of fact and law; and
- d. a statement that if the person fails to attend at the hearing, the Commission may proceed without giving him further notice.

AND WHEREAS the Commission sent the said notice of hearing by mail to each shareholder listed in BWIA's register of shareholders to the last address entered in the register of shareholders.

AND WHEREAS pursuant to section 134 of the SIA the Commission provided reasonable opportunity on 15th December, 2006 for the hearing of each shareholder of BWIA and of any interested self regulatory organisation.

AND WHEREAS the Commission on 15th December, 2006 heard the submissions presented by representatives of (i) the Stock Exchange (ii) BWIA and (iii) twenty-one (21) interested and/or affected persons ("the said submissions")

AND WHEREAS having heard the said submissions the Commission has determined:

- (i) that the application by the Stock Exchange of Rule 401 of the Rules, Chapter 1 No, 4 of the Listing Requirements and Clauses 5 and 6 of the Listing Agreement between the Stock Exchange and BWIA has been supported and is justified;
- (ii) That the application of the aforesaid Rules by the Stock Exchange is not in breach of the Rules of the Stock Exchange, its Listing Requirements or the Listing Agreement entered into by the Stock Exchange and BWIA

IT IS HEREBY ORDERED as follows:

- i. That the Trinidad and Tobago Stock Exchange is authorised to de-list the shares of BWIA admitted for quotation by it;
- ii. That this order shall take effect on the 22nd day of December, 2006.

Signed by:

Osborne Nurse
Chairman

Dr. Shelton Nicholls
Commissioner

Bridgid Anisette-George
Commissioner

Vishnu Dhanpaul
Commissioner

Dated this 22nd day of December 2006