

**News Release  
Communiqué**



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**Trinidad and Tobago  
Securities and Exchange  
Commission  
57-59 Dundonald Street  
Port of Spain**

**FOR IMMEDIATE RELEASE**

**December 27<sup>th</sup> , 2006**

### **SEC decides on the delisting of BWIA from the Stock Exchange**

The Trinidad and Tobago Securities and Exchange Commission (“the Commission”) held a hearing on Friday 15<sup>th</sup> December at the Eastern Credit Union La Joya Auditorium Eastern Main Road, St Joseph to discuss an application from the Trinidad and Tobago Stock Exchange (“the Stock Exchange”) for the de-listing of the securities in BWIA West Indies Airways Limited (“BWIA”).

The Stock Exchange listed the following four (4) reasons for their application.

1. Unsatisfactory financial condition or operating results as specified in Rule 401(2)(d) of the Trinidad and Tobago Stock Exchange Rules (“the Rules”); and/or
2. Inability to meet current debt obligations or adequately finance operations as specified in Rule 401(2)(e) of the Rules; and/or
3. Failure to make timely adequate and accurate disclosures of information to its shareholders and the investing public as specified in Rule 401(2)(a) of the Rules; and/or
4. The inability to make an effective and fair market in this security as required by Chapter 1 Clause 4 of the Listing Requirements for the Securities Markets of Trinidad and Tobago issued by the Stock Exchange.

The Stock Exchange presented evidence and arguments to support those four (4) grounds. BWIA indicated that it had no objections to the arguments presented by the Stock Exchange. Submissions were also made by several minority shareholders.

The Commission considered all of the evidence, deliberated on the arguments and submissions presented and came to a decision in the matter. By an Order dated the 22<sup>nd</sup> of December the Commission has agreed that the Trinidad and Tobago Stock Exchange is authorised to de-list the shares of BWIA.

The Commission further made the following comments 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 minority shareholders present reflected that the interests of minority shareholders were being ignored. 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"). 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.

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.

**END OF RELEASE**

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