

SUPREME COURT OF SEYCHELLES

Reportable

[2020] SCSC 407

XP 72/2020

Ex Parte:

In the matter of the Companies Act (Cap 40)

And in the matter of:

CWS Investment Limited

*of First Floor, Allied Plaza,
Francis Rachel, Victoria, Mahé
(Co No 8425857-1)*

1st Petitioner

SWC Limited

*of First Floor, Allied Plaza,
Francis Rachel Street, Victoria, Mahé
(Co No 8425859-1)*

2nd Petitioner

Cable & Wireless (Seychelles) Limited

*of First Floor, Allied Plaza,
Francis Rachel Street, Victoria, Mahé
(Co No 750508-1)*

3rd Petitioner

(Represented by Olivier Chang-Leng)

Neutral Citation: *In the matter of the Companies Act (Cap 40) and in the matter of: CWS Investment Limited & Ors [2020] SCSC 407 (XP 72/2020) (07th July 2020)*

Summary: Order on petition

Before: M. Twomey, Chief Justice

Delivered: 07th July 2020

ORDER ON PETITION

M. Twomey, Chief Justice

Upon the Petition of CWS Investment Limited and SWC Limited praying for the approval of the Court of the Amalgamation of the 1st Petitioner CWS Investment Limited into the 3rd Petitioner.

Upon hearing counsel for the Petitioners and upon reading the petition and the three affidavits filed in support of the Petition including the Auditor's Merger Report dated 23rd January 2020. And in exercise of the jurisdiction and powers conferred upon the Court under section 196 – 198 of the Companies Act (Cap 40),

IT IS ORDERED THAT:

- [1] The amalgamation and transfer of the business with and into Cable & Wireless (Seychelles) Ltd of CWS Investment Limited is hereby approved by the Court pursuant to sections 196 – 198 of the Companies Act (Cap 40) on the following terms and conditions set out below
- [2] Each and every part of the transfer of CWS Investment Limited shall be transferred as a going concern to and shall vest in the Cable & Wireless (Seychelles) Limited, and its assets and liabilities shall by virtue of the order be transferred to Cable & Wireless (Seychelles) Limited subject to paragraph 5 below.
- [3] The transfer of contracts rights and obligations, properties, liabilities of CWS Investment Limited shall by virtue of this order be transferred to and become the contract rights, obligations, properties for parties and liabilities of Cable & Wireless (Seychelles) Limited and in consequence the transfer shall not;
 - (a) Invalidate, discharge, or result in the termination or contractual novation of any agreement, encumbrance, right, interest, benefit, power, obligation or title;
 - (b) Constitute a breach of, or default, a termination event under or allow any person to terminate or take any other action to any agreement, encumbrance, right, interest, benefit, power, obligation or title;

- (c) Require any registration, re-registration, filing or amendment to any existing registration or filing in respect of any agreement, encumbrance, right, interest, benefit, obligation or title;
- (d) Require any person to perform any new or additional obligation or to take any new or additional step or action, including the giving of any notice, the obtaining of any consent, approval or determination, the accession to any agreement, the payment of any fee, cost or expense, the grounds of any new or additional encumbrance, or the transfer of any asset or property;
- (e) Entitle or require any person to exercise any right or remedy, to reduce, terminate, suspend, delay, alter, or discharge any rights or obligations, the performance of any right or obligation, or otherwise to terminate any agreement, encumbrance, right, interest, benefit or obligation or title.
- (f) Affect the enforceability, priority or ranking of any encumbrance;
- (g) Enable any person to bring any claim, whether in contract or delict in relation to any part of the transferring of any assets or liabilities.

- [4] All the 1,100,000 shares of CWS Investment Limited in Cable & Wireless (Seychelles) Ltd upon the registration of the amalgamation at the Registry of Companies shall be registered in the name of SWC Limited by virtue of the order pursuant to the Shareholders Resolution passed on 13th May 2020.
- [5] SWC Limited shall pledge 1,100,000 shares in the 3rd Petitioner, obtained from CWS Investment Limited, in favour of the consortium of lenders led by the Eastern and Southern African Trade and Development Bank (“TDB”). In addition, the General Floating Charge (“GFC”) granted by CWS Investment Limited over all its assets to secure the loan of USD 70 Million in favor of TDB, is transferred to SWC Limited so that SWC Limited’s pledge of shares and the GFC shall continue to secure the TDB loan.
- [6] The amalgamation is approved by the Court and for accounting convenience it is made effective from 1st January 2020.

[7] CWS Investment Limited is dissolved without winding up upon amalgamation with and into Cable & Wireless (Seychelles) Limited.

[8] The cost of the amalgamation shall be borne by SWC Limited.

Signed, dated and delivered at Ile du Port on 07th July 2020.

M. Twomey, Chief Justice