

**BELIZE:**

**TELECOMMUNICATIONS ACQUISITION (SETTLEMENT) ACT, 2015**

**ARRANGEMENT OF SECTIONS**

1. Short title.
2. Interpretation.
3. Validation of Government's authority.
4. Compensations payable from Consolidated Fund.
5. Financial Secretary authorized to pay compensations.
6. Exemptions conferred.
7. Extent of exemptions.
8. Commencement.

**FIRST SCHEDULE  
SECOND SCHEDULE**



**No. 14 of 2015**

**I assent,**

**(SIR COLVILLE N. YOUNG)**  
*Governor-General*

17th September, 2015

**AN ACT to facilitate the implementation of the terms of a deed of settlement and compromise between the Government, Dunkeld International Investment Ltd, British Caribbean Bank Limited and The Trustees of the BTL Employees Trust arising from the acquisition by the Government, in the public interest, of shares in Belize Telemedia Limited and rights under certain loans and security arrangements made by The British Caribbean Bank Limited; and to provide for matters connected therewith or incidental thereto**

***(Gazetted 18th September, 2015.)***

***BE IT ENACTED, by and with the advice and consent of the House of Representatives and Senate of Belize and by the authority of the same, as follows:***

1. This Act may be cited as the

**Short title.**

**TELECOMMUNICATIONS ACQUISITION**  
**(SETTLEMENT) ACT, 2015.**

Interpretation.

2. In this Act, unless the context otherwise requires -

“Bank Settlement Deed” means the Settlement Deed entered into between the British Caribbean Bank Limited and the Government dated 11th September 2015;

“Bank” means British Caribbean Bank Limited;

“BTL Employees Trust” means The Trustees of the BTL Employees Trust;

“Dunkeld” means Dunkeld International Investment Ltd;

“Dunkeld and Trust Settlement Deed” means the Settlement Deed entered into between Dunkeld and the BTL Employees Trust and the Government dated 11th September 2015;

“Final Dunkeld Compensation” means the payment to be made by the Government to Dunkeld pursuant to clause 4.1(b) of the Dunkeld and Trust Settlement Deed;

“Final Trust Compensation” means the payment to be made by the Government to Dunkeld pursuant to clause 5.1 (b) of the Dunkeld and Trust Settlement Deed;

Validation of  
Government’s  
authority.

3. For greater certainty, it is hereby declared that the Government -

(a) has with full lawful authority entered into the Bank Settlement Deed and the Dunkeld and Trust Settlement Deed; and

(b) is lawfully authorized to carry out its obligations as provided under the Bank Settlement Deed and the Dunkeld and Trust Settlement Deed notwithstanding the provisions of the **Belize Telecommunications (Amendment) Act, 2011.**

4. All amounts which may become payable by the Government as the Final Dunkeld Compensation and the Final Trust Compensation as provided for in clauses 4.1 and 5.1 respectively of the Dunkeld and Trust Settlement Deed shall be a charge on the Consolidated Revenue Fund.	Compensations payable from Consolidated Fund.
5. Subject to this Act and the Dunkeld and Trust Settlement Deed the Financial Secretary is authorised to pay the Final Dunkeld Compensation and the Final Trust Compensation at the times and on the terms as provided for in the said Dunkeld Settlement Deed.	Financial Secretary authorized to pay compensations.
6. The Bank, Dunkeld and the BTL Employees Trust shall be exempt from all taxes, charges, fees and imposts imposed on compensation paid to the Bank pursuant to the Bank Settlement Deed, on compensation paid to Dunkeld and the BTL Employees Trust respectively pursuant to the Dunkeld and the Trust Settlement Deed that would, but for this provision, be payable to the Government (including exemption from withholding of tax as required by section 22 of the Income and Business Tax Act, as amended from time to time).	Exemptions conferred.
7. The BTL Employees Trust shall be exempt from the provisions of the Exchange Control Regulations Act and Regulations made thereunder from time to time that would, but for this provision, apply in respect of the compensation paid to the BTL Employees Trust pursuant to the Dunkeld Settlement Deed.	Extent of exemptions.
8. This Act shall be deemed to have come into operation on the 18th day of September, 2015.	Commencement.

FIRST SCHEDULE

[SECTION 3]

BANK SETTLEMENT DEED

SECOND SCHEDULE

[SECTION 3]

DUNKELD AND THE TRUST SETTLEMENT DEED

FIRST SCHEDULE

[SECTION 3]

BANK SETTLEMENT DEED

**SETTLEMENT AGREEMENT**

**11 SEPTEMBER 2015**

**THE GOVERNMENT OF BELIZE**

**and**

**BRITISH CARIBBEAN BANK LIMITED**

**THIS AGREEMENT** is made by way of deed on 11 September 2015 (“the **Deed**”).

**BETWEEN:**

- (1)     **The Government of Belize** of Sir Edney Cain Building, Belmopan, Cayo District (“the **Government**”) of the first part; and
  - (2)     **British Caribbean Bank Limited** a company duly incorporated under the Laws of the Turks & Caicos Islands, having its registered office is at Governor Road, P.O. Box 270, Providenciales, Turks and Caicos Islands (“the **Bank**”) of the second part;
- (together the **Parties**, and each a **Party**).

**WHEREAS:**

- (A)     On 25 August 2009 the Government enacted the Belize Telecommunications (Amendment) Act, 2009 (“the **2009 Act**”) and the Minister of Public Utilities issued the Belize Telecommunications (Assumption of Control over Belize Telemedia Limited) Order (“the **2009 Order**”), Statutory Instrument No 104 of 2009, pursuant to which it nationalised Belize Telemedia Limited (“**Telemedia**”) and compulsorily acquired the Bank’s rights under certain loan and security agreements concluded with Telemedia and Sunshine Holdings Limited (together “the **Bank’s Property**”);
- (B)     The Bank challenged the legality of the 2009 Act and the 2009 Order before the Belize courts, resulting in the Court of Appeal decision in *British Caribbean Bank Limited and Dean Boyce v The Attorney General of Belize and the Minister of Public Utilities* (Civil Appeal No. 30 of 2011) dated 24 June 2011 which declared that the 2009 Act and the 2009 Order were unconstitutional and therefore void;
- (C)     On 4 July 2011 the Government enacted the Belize Telecommunications (Amendment) Act, 2011 (“the **2011 Act**”) and Statutory Instrument No. 70 of 2011 (“the **2011 Order**”), pursuant to which the Government compulsorily re-acquired the Bank’s Property;
- (D)     On 25 October 2011, the Belize Constitution (Eighth Amendment) Act 2011 (“the **Eighth Amendment**”) was enacted which sought to entrench the nationalization of Telemedia and provide for the Government majority ownership and control of Telemedia;
- (E)     The Bank challenged the legality of the 2011 Act, the 2011 Order and the Eighth Amendment before the Belize courts, which proceedings are currently pending before the Caribbean Court of Justice (“the **CCJ**”) together with an appeal in relation to the challenge to the 2009 Act and the 2009 Order (*BZCV2011/003 British Caribbean Bank Limited v The Attorney General of Belize & The Minister of Public Utilities* and *BZCV2014/006 and BZCV2014/2008 British Caribbean Bank Limited v The Attorney General of Belize & The Minister of Public Utilities*) (“the **CCJ Appeals**”, together with the related proceedings at first instance before the Supreme Court and Court of Appeal, “the **Constitutional Proceedings**”);
- (F)     The Bank commenced an arbitration under the 1982 Agreement between the Government of United Kingdom of Great Britain and Northern Ireland and the Government of Belize for the Promotion and Protection of Investments (“the **Treaty**”) in connection with the compulsory acquisition of the Bank’s Property under the 2009 Act and the 2009 Order and the 2011 Act and the 2011 Order; namely PCA Case No. 2010-18 (“the **Arbitration**”). On the 19 December 2014 the Arbitral Tribunal issued a final award in the Arbitration in which it found that the Government had breached

the Treaty when it compulsorily acquired the Bank's Property and ordered the Government to pay compensation ("the **Final Award**");

- (G) The Bank submitted claims under both the 2009 Act and the 2011 Act for compensation for the compulsory acquisition of the Bank's Property ("the **Compensation Claims**"); and
- (H) To date the Government has not paid any compensation for the Bank's Property which it compulsorily acquired;

## **IT IS AGREED:**

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 Section headings are for convenience and are not to be considered in construing or interpreting this Deed. References to statutes include any amendment, re-enactment or extension of them. References to "Sections", "Clauses", "Sub-clauses" and "Schedules" are references to Sections, Clauses, Sub-clauses of and attachments to this Deed. The Schedules to this Deed are an integral part of this Deed and references to this Deed include references to the Schedules. Headings are for ease of reference only and are not to be taken into account in construing this Deed.
- 1.2 In this agreement:
  - (a) **Claim** means each and any claim, counter-claim, cause or right of action or proceedings, whether at law or in equity, of whatsoever nature and howsoever arising, in any jurisdiction whatsoever, whether secured, proprietary, by way of tracing, priority or otherwise, whether by way of contribution or subrogation or otherwise, arising out of or in connection with the CCJ Appeals, the Arbitration, and the Compensation Claims; and
  - (b) **Business Day** means a day when banks are open for business in Belize and the United States.
- 1.3 Words denoting persons shall include bodies corporate and unincorporated associations of persons and any references to the singular shall include the plural and vice versa.
- 1.4 The headings in this agreement are for convenience only and do not affect its interpretation.

### **2. SETTLEMENT, RELEASE AND DISCHARGE**

Subject to Clause 3 (Condition Precedent) and the obligations under Clause 4 (Payments) being completed, the Bank shall release and discharge the Government from the Claims and from all actions, proceedings, claims, costs, expenses and demands whatsoever related to or arising out of the compulsory acquisition of the Bank's Property pursuant to the 2009 Act, the 2009 Order, the 2011 Act, the 2011 Order and the Eighth Amendment.

### **3. CONDITIONS PRECEDENT**

- 3.1 It shall be a condition precedent to Clause 2 (Settlement, Release and Discharge) becoming effective that the provisions of Sub-Clause 3.2 and Sub-Clause 3.3 are satisfied and payment is made in accordance with Clause 4 (Payment) thereupon the Bank shall release and discharge the Government from the Claim and from all actions, proceedings, claims, costs, expenses and demands whatsoever related to or arising out thereof.
- 3.2 The Government shall introduce into the House of Representatives and seek to pass legislation and/or take such executive action as may be required by law to:



- (a) authorise the Government to:
  - (i) enter into this Deed; and
  - (ii) to make the payments to the Bank pursuant to Clause 4 (Payment) through an Appropriation Act;
- (b) confer on the Bank:
  - (i) full exemption from the provisions of the Exchange Control Regulations Act and Regulations in respect of the payment to be made to the Bank pursuant to Clause 4; and
  - (ii) full exemption from any and all taxes, duties, charges, fees and imposts (if any) payable by the Bank in respect of the payment to be made to the Bank pursuant to Clause 4;

(collectively, “the **Legislation**”).

3.3 The Government shall introduce the Legislation to the House of Representatives and take such executive action as soon as reasonably practicable following the date of this Deed, and in any event no later than 15 September 2015, and such legislation shall receive Governor General’s assent and be published in the Gazette as law by 18 September 2015 when enactment shall then have deemed to have taken place.

3.4 The Government shall, as soon as reasonably practicable following the date of this Deed and in any event no later than 18 September 2015, procure that the Attorney General issue an opinion to the Bank entitling the Bank to rely upon such opinion, confirming that this Deed, and the obligations herein are valid, binding and enforceable obligations of the Government.

3.5 The Government shall, as soon as reasonable practicable following the date of this Deed and in any event no later than 18 September 2015, procure that the Commissioner of Income Tax shall issue to the Bank a Certificate that no income or business taxes are due and owing by the Bank, and that the Payment provided for by Clause 4 of this Deed is not subject to any taxes or to the withholding of any taxes under the Income and Business Tax Act.

#### **4. PAYMENT**

4.1 On the Business Day following the enactment of the Legislation, the Government shall pay or procure payment to the Bank of US\$48,544,927.78, representing compensation, including costs, expenses and interest, in the amounts specified in paragraph 328 (h) to (m) and, in the case of interest, calculated according to paragraph 328 (n) of the Final Award.

4.2 All payments made pursuant to Clause 4 shall be:

- (a) exempt from and be made free from any taxes, duties, charges, fees or imposts; and
- (b) made in United States Dollars directly, without any set off, deduction or counterclaim whatsoever, in immediately available funds by wire transfer into an account at a financial institution in the name of the Bank or of its nominees which shall be notified to the Government by the Bank in accordance with the notification provisions in Clause 8 of this Deed.

**5. INTEREST ON LATE PAYMENT**

If the Government fails to pay the whole or any part of the payments to the Bank pursuant to Clause 4, interest shall accrue on any unpaid amounts until they are fully paid at the rate of 6% per annum, compounded monthly.

**6. LEGAL PROCEEDINGS**

- 6.1 On the Business Day following execution of this Deed, Counsel on record to the parties shall write to the Registrar of the CCJ to inform the court that this Deed has been entered into, together with a copy of this executed Deed and inform the CCJ that the Bank shall within three Business Days of the Legislation being enacted file an Application for a Consent Order in the terms appearing in the Schedule to this Agreement.
- 6.2 The parties shall each bear their own respective costs of the Constitutional Proceedings.
- 6.3 Within 3 Business Days of the Legislation being enacted, the Bank shall apply to the CCJ for a Consent Order in the form set out in Schedule 1 of this Deed, such application to be supported by the Government.
- 6.4 Within 3 Business Days of the Legislation being enacted, the Government of Belize shall withdraw or procure the withdrawal of the following Belize Supreme Court cases with no order as to costs:
- (a) Claim 360 of 2011: The Attorney General of Belize and Belize Telemedia Limited v The British Caribbean Bank Limited et al.; and
  - (b) Claim No: 194 of 2011: The Financial Secretary v BCB Holdings Limited et al.

**7. REPRESENTATIONS AND WARRANTIES**

- 7.1 The Government represents and warrants to the Bank that:
- (a) the execution, delivery and performance of this Deed:
    - (i) are its legal, valid and binding obligations, enforceable against it by the Bank in accordance with its terms, and that it has all powers, authorities, consents and approvals necessary to enter into this Deed;
    - (ii) save as otherwise contemplated in Clause 3.2, has been duly ratified by all necessary constitutional and legal action;
    - (iii) does not contravene the Constitution or any law, rule, regulation, treaty, regulated practice, procedure or policy or any of its duties or obligations, any material indenture, mortgage, trust deed, bond or other instrument or agreement to which it is bound, or any award, order, judgment, regulation, injunction, resolution, determination or other ruling of any court or governmental authority, agency or instrumentality which is binding on it; and
    - (iv) does not constitute or result in (even if notice is given, time elapses or both) a default, event of default or event of acceleration under any contract which is binding on or affecting it;
  - (b) it has taken, or will take in accordance with Clause 3.2, all action required by law, regulation, or policy required to authorize the execution, delivery and performance of this

Deed, and this Deed is a valid and binding Deed of the Government in accordance with its terms;

- (c) the undersigned party executing this Deed on behalf of the Government have been duly authorized to execute and deliver this Deed;
- (d) the Bank does not owe any taxes, duties, fees or monies whatsoever to the Government or any department of the Government or other public entity in Belize, and that the Payment to be made pursuant to Clause 4 above shall be made without any deductions whatsoever;
- (e) it is not in violation or breach of, or in default under, any law, rule or regulation, any duty or obligation, or any indenture, mortgage, trust deed or other instrument or Deed to which it is bound, so as to materially and adversely affect in any of the foregoing instances, its ability to perform its obligations hereunder; and, as of the date of this Deed, there is no pending or, to its knowledge, threatened action or proceeding affecting it before any court, governmental agency or arbitrator which may materially and adversely affect its assets, financial condition, affairs or its ability to either execute, deliver or perform (or the ability of the Bank to enforce) this Deed;
- (f) its obligations hereunder are direct, unconditional and general obligations; and
- (g) it will co-operate in all respects to the end that all matters contemplated by this Deed will be consummated.

7.2 The Bank represents and warrants to the Government that:

- (a) it has taken all action required by law to authorize the execution and delivery of this Deed, and this Deed is a valid and binding in accordance with its articles of incorporation (or equivalent) and governing instruments; and
- (b) the undersigned party executing this Deed on its behalf has been duly authorized by it to execute and deliver this Deed.

7.3 Without prejudice to any other remedy available to a Party or its ability to claim damages on any other basis which is available to it by reason of any of the warranties set out in this Deed being untrue, inaccurate or misleading, if any of the warranties is untrue, inaccurate or misleading the Party breaching its representation or warranty shall be liable for and shall, at the direction of the other Party, pay an amount equal to all losses whether directly or indirectly arising incurred or suffered by that Party, which would not have existed or arisen if the relevant representation or warranty had not been untrue, inaccurate or misleading.

## **8. NOTICES**

8.1 Notices under this Deed must be in writing and will be deemed given when actually received if delivered by courier with written proof of delivery, by fax upon confirmation of successful transmission; or ten days after being sent by first class mail, return receipt requested, to the other party at the address below:

- (a) For notices to the Government:

To the address set forth on page 1, marked "Attention: Minister of Finance", with copies (which will not constitute notice) by fax to +501 822 2886, and to Attorney-at-Law Mr. Denys Barrow SC of Barrow & Co LLP and by email at [brotherbarrow@yahoo.com](mailto:brotherbarrow@yahoo.com) and by fax at +501 2235900.

- (b) For notices to the Bank:

To the address set forth on page 1 marked "Attention: Mr Stewart Howard" with copies (which shall not constitute notice) to: (i) Philip Osborne at 3rd Floor, 212 North Front Street, Belize City, Belize and by email at: pto23362@hotmail.com; and (ii) to Attorney-at-Law Mr. Eamon Courtenay SC of Courtenay & Co LLP and by email at ecourtenay@courtenaycoye.com and fax at +501 223 0214.

- 8.2 A party may change its address by giving the other written notice as described above.

## **9. REMEDIES AND WAIVERS**

No delay or omission on the part of any of the Parties in exercising any right, power or remedy provided by the law of any jurisdiction or under this Deed shall:

- (a) impair such right, power or remedy; or
- (b) operate as a waiver thereof.

## **10. ENTIRE AGREEMENT**

This Deed and its Schedules and any other documents specifically incorporated herein by reference constitute the entire understanding and agreement of the Government and the Bank, whether written or oral, with respect to the subject matter of this Deed and supersede any prior or contemporaneous agreements or understandings between the Government and the Bank, with respect to its subject matter.

## **11. AMENDMENTS**

This Deed may not be amended or modified except by a written amendment signed by authorized signatories of the Government and the Bank.

## **12. SEVERABILITY**

If a court or tribunal of competent jurisdiction holds that any provision of this Deed is invalid or unenforceable, the remaining provisions will remain in full force and effect, and the parties will replace the invalid or unenforceable provision with a valid and enforceable provision that achieves the original intent and economic effect of this.

## **13. COUNTERPARTS**

The Government and the Bank may execute this Deed in multiple counterparts, each of which will be deemed an original, and all of which, collectively, will constitute only one agreement. Delivery of an executed counterpart by email or fax shall be as effective as executing and delivering this Deed in the presence of the other party.

## **14. WAIVERS**

A waiver of a condition or obligation under this Deed will be effective only if in writing and signed by the party granting the waiver, and no such waiver will constitute a waiver of the satisfaction of any other condition or the non-performance of any other obligation.

**15. GOVERNING LAW**

This Deed and any non-contractual obligations arising out of it shall be governed by and shall be construed in accordance with the Laws of Belize.

**16. DISPUTE RESOLUTION**

**16.1 Jurisdiction**

- (a) Subject to Clause 16.2 (Option to arbitrate), the Belize courts have non-exclusive jurisdiction to settle any dispute, claim, difference or controversy arising out of, relating to or having any connection with this Deed, including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity and any dispute relating to any non-contractual obligations arising out of or in connection with it (for the purpose of this Clause, “a **Dispute**”), and each party submits to the non-exclusive jurisdiction of the Belize courts.

**16.2 Option to arbitrate**

- (a) The Bank may by notice in writing to the Government in a manner provided for in Clause 8 (“Notices”) require that all Disputes or a specific Dispute be referred to and finally resolved by arbitration under the LCIA Arbitration Rules as amended from time to time (for the purpose of this Clause, “the **Rules**”).
- (b) If proceedings have already been commenced (pursuant to Clause 16.1(a) above) in respect of any Dispute(s) referred to in a Notice:
  - (i) that Notice must be given no later than the date for service of the acknowledgment of service or within seven days of any application having been made to the CCJ in the CCJ Appeal;
  - (ii) following such Notice being given, those proceedings shall be stayed by consent with no order as to costs; and
  - (iii) each party to those proceedings shall, following such Notice being given, instruct attorneys to execute a consent order (or, if applicable, consent orders) to this effect as soon as reasonably practicable and in any event prior to the date for service of the defence.
- (c) Any stay of proceedings will be without prejudice to the date when any claim or defence was raised for the purpose of applying any limitation bar or any similar rule or provision.

**16.3 Arbitration**

- (a) Where Notice has been given pursuant to Clause 16.2, then in respect of each Dispute to which the Notice refers, the provisions of this Clause 16.3 shall apply.
- (b) The Rules are incorporated by reference into this Clause and capitalised terms used in this Clause which are not otherwise defined in this Deed shall have the meaning given to them in the Rules.
- (c) The number of arbitrators shall be three. The Claimant (or Claimants jointly) shall nominate one arbitrator for appointment by the LCIA Court. The Respondent (or Respondents jointly)

shall nominate one arbitrator for appointment by the LCIA Court. The LCIA Court shall appoint the presiding arbitrator.

- (d) The seat or legal place of arbitration shall be London.
- (e) The parties agree that Miami would be a convenient venue for any hearings.

**16.4 Waiver of immunity**

- (a) To the fullest extent permitted by law the Government irrevocably and unconditionally:
  - (i) submits to the jurisdiction of the Belize and English courts in relation to any Dispute to be resolved in accordance with Clause 16 above and waives and agrees not to claim any sovereign or other immunity from the jurisdiction of the Belize and English courts in relation to any Dispute to be resolved in accordance with Clause 16 above (including to the extent that such immunity may be attributed to it), and agrees to ensure that no such claim is made on its behalf;
  - (ii) submits to the jurisdiction of the Belize and English courts and the courts of any other jurisdiction in relation to the recognition of any judgment or order of the Belize or English courts in relation to any Dispute (including a judgment or order in support of any arbitration) and in relation to the recognition of any arbitral award and waives and agrees not to claim any sovereign or other immunity in relation to the recognition of any such judgment or court order or arbitral award and agrees to ensure that no such claim is made on its behalf; and
  - (iii) consents to the enforcement of any order or judgment or award made or given in accordance with Clause 16 in connection with any Dispute and the giving of any relief whether before or after final judgment or arbitral award including, without limitation:
    - (A) relief by way of interim or final injunction or order for specific performance or recovery of any property;
    - (B) attachment of its assets; and
    - (C) enforcement or execution against any property, revenues or other assets whatsoever (irrespective of their use or intended use) and waives and agrees not to claim any sovereign or other immunity in relation to such enforcement and the giving of such relief (including to the extent that such immunity may be attributed to it), and agrees to ensure that no such claim is made on its behalf.

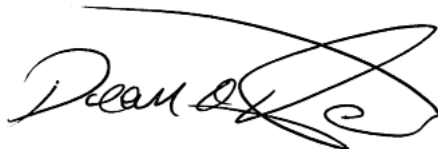
IN WITNESS whereof the Parties hereto have caused this deed to be duly executed on the date first written above.

**FOR THE GOVERNMENT OF BELIZE**

by Dean O. Barrow, Prime Minister

in the presence of:

\_\_\_\_\_  
Witness



**FOR BRITISH CARIBBEAN BANK  
LIMITED**

by

in the presence of:

\_\_\_\_\_  
Witness

IN WITNESS whereof the Parties hereto have caused this deed to be duly executed on the date first written above.

FOR THE GOVERNMENT OF BELIZE

by Dean O. Barrow, Prime Minister

in the presence of:

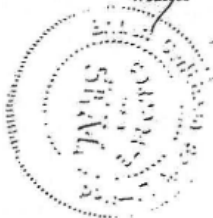
\_\_\_\_\_  
Witness

FOR BRITISH CARIBBEAN BANK  
LIMITED

by STEWART HOWARD

in the presence of:

\_\_\_\_\_  
Witness





SCHEDULE ONE

IN THE CARIBBEAN COURT OF JUSTICE  
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF BELIZE

CCJ Appeal No. BZCV2011/003 (formerly CCJ Appeal CV 6 of 2011)  
BZ Civil Appeal No. 30 of 2010

BETWEEN

BRITISH CARIBBEAN BANK LIMITED

APPELLANT

AND

THE ATTORNEY GENERAL OF BELIZE  
THE MINISTER OF PUBLIC UTILITIES

FIRST RESPONDENT  
SECOND RESPONDENT

AND

CCJ Appeal No BZCV2014/006 and CCJ Appeal No. BZCV2014/2008  
BZ Civil Appeal No 18 of 2012

BETWEEN

BRITISH CARIBBEAN BANK LIMITED

APPELLANT

AND

THE ATTORNEY GENERAL OF BELIZE  
THE MINISTER OF PUBLIC UTILITIES

RESPONDENTS

Draft/CONSENT ORDER

Dated the [ ] day of October 2015

Before the Honourable  
AND the Honourables

Mr Justice D. Byron, President  
Mr Justice A. Saunders, JCCJ  
Mr Justice J. Wit, JCCJ  
Mr Justice D. Hayton, JCCJ  
Mr Justice W. Anderson, JCCJ

**UPON READING** the Notice of Application dated the [ ] day of September 2015 filed by the Appellant in CCJ Civil Appeal Nos. BZCV 2011/003, 2014/006 and 2014/008 (the **CCJ Appeals**) together with the Affidavit of [ ] sworn to on the [ ] September 2015 and filed in support thereof and the Affidavit of [ ] sworn to on the [ ] September 2015 on behalf of the Respondents in those appeals;

**AND UPON HEARING** the oral submissions of Mr Eamon H. Courtenay SC Attorney-at-Law for the Appellant in CCJ Civil Appeal Nos. BZCV 2011/003, 2014/006, and 2014/008 and the oral submissions of Mr Denys A. Barrow SC Attorney-at-Law for the Respondent in those appeals

**AND UPON THE APPELLANT AND THE RESPONDENT HAVING AGREED** terms of compromise

**IT IS BY CONSENT ORDERED THAT –**

1. The Order of this Honourable Court made herein on the 23 July 2014 is varied to the extent that CCJ Appeal CCJ Appeals BZCV 2011/003, 2014/006 and 2014/008 all entitled *British Caribbean Bank Limited. v The Attorney General of Belize & The Minister of Public Utilities* shall no longer be treated as being consolidated with CCJ Appeals numbered BZCV 4 OF 2011 and BZCV2014/005; BZCV 2014/005 and BZCV 2014/008 and BZCV2014/007.
2. All further proceedings in the CCJ Appeals are stayed on the terms set out in the schedule except for the purpose of carrying such terms into effect without the need to bring a new claim and for that purpose the parties are at liberty to apply.
3. The parties shall each bear their respective costs of the appeals in BZCV2011/003, BZCV 2014/006 and BZCV2014/008 and the proceedings in the Supreme Court and the Court of Appeal.
4. The interim order made by this court on 19 December 2012, as varied on 15 October 2013, is hereby discharged.

Registrar and Chief Marshall

Caribbean Court of Justice

To: Registrar of the Supreme Court of Belize

**AND to: Mr Eamon H. Courtenay SC**

**Mr Denys A. Barrow SC**

**SCHEDULE**

[The Settlement Deed will form the Schedule to the Consent Order.]

SECOND SCHEDULE

[SECTION 3]

DUNKELD AND THE TRUST SETTLEMENT DEED

**SETTLEMENT AGREEMENT**

**11 SEPTEMBER 2015**

**THE GOVERNMENT OF BELIZE**

**and**

**DUNKELD INTERNATIONAL INVESTMENT LTD**

**and**

**THE TRUSTEES OF THE BTL EMPLOYEES TRUST**

**THIS AGREEMENT** is made by way of deed on 11 September 2015 (“the **Deed**”).

**BETWEEN:**

- (1) **The Government of Belize** of Sir Edney Cain Building, Belmopan, Cayo District (“the **Government**”) of the first part;
  - (2) **Dunkeld International Investment Ltd** a company duly incorporated under the Laws of the Turks & Caicos Islands, having its registered office is at Lot 20 Kira Isle, Leeward, Providenciales Turks & Caicos Islands (“**Dunkeld**”) of the second part; and
  - (3) **The Trustees of the BTL Employees Trust** on behalf of the BTL Employees Trust of 212 North Front Street (a trust registered in Belize) (“**Trust**”) of the third part;
- (together the **Parties**, and each a **Party**).

**WHEREAS:**

- (A) On 25 August 2009 the Government enacted the Belize Telecommunications (Amendment) Act, 2009 (“the **2009 Act**”) and the Minister of Public Utilities issued the Belize Telecommunications (Assumption of Control over Belize Telemedia Limited) Order, Statutory Instrument No 104 of 2009 (“the **2009 Order**”), pursuant to which it compulsorily acquired Dunkeld’s share interest in Belize Telemedia Limited (“**Telemedia**”) (held through BCB Holdings Limited, Ecom Limited, Mercury Communications Limited, New Horizons Inc and Thiermon Limited) and the Trust’s share interest in Telemedia (held through Sunshine Holdings Limited);
- (B) Mr Boyce, on behalf of the Trust, challenged the legality of the 2009 Act and the 2009 Order before the Belize courts, resulting in the Court of Appeal decision in *British Caribbean Bank Limited and Dean Boyce v The Attorney General of Belize and the Minister of Public Utilities* (Civil Appeal No. 30 of 2011) dated 24 June 2011 which declared that the 2009 Act and the 2009 Order were unconstitutional and therefore void;
- (C) On 4 July 2011 the Government enacted the Belize Telecommunications (Amendment) Act, 2011 (“the **2011 Act**”) and Statutory Instrument No. 70 of 2011 (“the **2011 Order**”), pursuant to which the Government compulsorily re-acquired the same share interest in Telemedia held by Dunkeld and the BTL Employees Trust as had been acquired under the 2009 Act and 2009 Order;
- (D) On 25 October 2011, the Belize Constitution (Eighth Amendment) Act 2011 (“the **Eighth Amendment**”) was enacted which sought to entrench the nationalization of Telemedia and provide for the Government majority ownership and control of Telemedia;
- (E) Mr Boyce and the BTL Employees Trust challenged the legality of the 2011 Act, the 2011 Order and the Eighth Amendment before the Belize courts, which proceedings are currently pending before the Caribbean Court of Justice (“the **CCJ**”) together with an appeal in relation to the challenge to the 2009 Act and the 2009 Order (BZCV2011/002 *Dean Boyce v The Attorney General of Belize & The Minister of Public Utilities* and BZCV2014/005 and 008 *Dean Boyce & Trustees of the BTL Employees Trust v The Attorney General of Belize & The Minister of Public Utilities*) (“the **CCJ Appeals**”, and together with related proceedings at first instance before the Belize Supreme Court and the Court of Appeal, “the **Constitutional Proceedings**”);
- (F) Dunkeld has commenced two arbitrations under the 1982 Agreement between the Government of United Kingdom of Great Britain and Northern Ireland and the Government of Belize for the Promotion and Protection of Investments (“the **Treaty**”) in connection with the compulsory

acquisition of its Telemedia share interest under the 2009 Act and the 2009 Order and the 2011 Act and the 2011 Order; namely PCA Case No. 2010-13, (Dun-BZI) ("the **First Dunkeld Arbitration**") and PCA Case No. 2010-21 (Dun-BZ II) ("the **Second Dunkeld Arbitration**"). The Second Dunkeld Arbitration has been stayed pending the outcome of the First Dunkeld Arbitration. The parties are awaiting the final decision in the First Dunkeld Arbitration;

- (G) The Trust, BCB Holdings Limited, Ecom Limited, Mercury Communications Limited, New Horizons Inc and Thiermon Limited have submitted claims under both the 2009 Act and the 2011 Act for compensation for the compulsory acquisition of their shares in Telemedia ("the **Compensation Claims**"); and
- (H) To date the Government has not paid any compensation for the Telemedia shares which it compulsorily acquired;

## IT IS AGREED:

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 Section headings are for convenience and are not to be considered in construing or interpreting this Deed. References to statutes include any amendment, re-enactment or extension of them. References to "Sections", "Clauses", "Sub-clauses" and "Schedules" are references to Sections, Clauses, Sub-clauses of and attachments to this Deed. The Schedules to this Deed are an integral part of this Deed and references to this Deed include references to the Schedules. Headings are for ease of reference only and are not to be taken into account in construing this Deed.
- 1.2 In this agreement:
  - (a) **Claim** means each and any claim, counter-claim, cause or right of action or proceedings, whether at law or in equity, of whatsoever nature and howsoever arising, in any jurisdiction whatsoever, whether secured, proprietary, by way of tracing, priority or otherwise, whether by way of contribution or subrogation or otherwise, arising out of or in connection with the CCJ Appeals, the First Dunkeld Arbitration, the Second Dunkeld Arbitration and the Compensation Claims;
  - (b) **Arbitral Tribunal** means the Arbitral Tribunal in the First Dunkeld Arbitration and/or the Second Dunkeld Arbitration;
  - (c) **Business Day** means a day when financial institutions are open for business in Belize and the United States; and
  - (c) **Hayward Charitable Belize Trust** means The Hayward Charitable Belize Trust established under the laws of the Turks and Caicos Islands.
- 1.3 Words denoting persons shall include bodies corporate and unincorporated associations of persons and any references to the singular shall include the plural and vice versa.
- 1.4 The headings in this agreement are for convenience only and do not affect its interpretation.

### 2. SETTLEMENT, RELEASE AND DISCHARGE

- 2.1 Subject to Clause 3 (Condition Precedent) and the obligations under Clause 4 (Payments to Dunkeld) and Clause 5 (Payments to the Trust) being completed, Dunkeld and the Trust shall release and discharge the Government from the Claims and from all actions, proceedings, claims, costs, expenses and demands whatsoever related to or arising out of the compulsory acquisition of Dunkeld

and the Trust's share interest in Telemedia pursuant to the 2009 Act, the 2009 Order, the 2011 Act, the 2011 Order and the Eighth Amendment, and Dunkeld shall procure that the same release and discharge is given by BCB Holdings Limited, Ecom Limited, Mercury Communications Limited, New Horizons Inc and Thiermon Limited.

### **3. CONDITIONS PRECEDENT**

- 3.1 It shall be a condition precedent to Clause 2 (Settlement, Release and Discharge) becoming effective that the provisions of Sub-Clauses 3.2 to 3.8 are satisfied and payment is made in accordance with Clause 4 (Payments to Dunkeld) and Clause 5 (Payments to the Trust), thereupon Dunkeld and the Trust shall release and discharge the Government from the Claim and from any actions, proceedings, costs, expenses and demands whatsoever related to or arising out thereof and Dunkeld shall procure that the same release and discharge is given by BCB Holdings Limited, Ecom Limited, Mercury Communications Limited, New Horizons Inc and Thiermon Limited.
- 3.2 On the Business Day following the execution of this Deed, counsel for Dunkeld shall submit an application to the Arbitral Tribunal in the terms of the letter and order of consent at Schedule 2 to this Deed, in which it shall be confirmed on behalf of the parties that, provided that the Arbitral Tribunal is willing to assume jurisdiction and proceed to determine the remaining claims before it:
- (a) The Government shall withdraw all of its preliminary objections and objections to the merits of Dunkeld's claim;
  - (b) It is agreed that the Arbitral Tribunal has jurisdiction conferred on it under the Treaty or by ad hoc party agreement, to determine the quantum of the value of the remaining claims before it, including any issues relating to the Accommodation Agreement in so far as they relate to quantum as described in the draft order by consent in Schedule 2 of this Deed; and
  - (c) The Tribunal should issue a final and binding award in relation to the remaining claims before it including legal costs and interest.
- 3.3 On the same day as the application is made pursuant to Clause 3.2, counsel for the Government shall write to the Arbitral Tribunal supporting the application made by Dunkeld pursuant to Sub-Clause 3.2. In the event that, by 20 September 2015, the Arbitral Tribunal does not grant the application made pursuant to this Sub-Clause, this Deed shall be ineffective and terminate without the parties being under any obligation to take any further step pursuant to the terms of this Deed.
- 3.4 The Government shall introduce into the House of Representatives and seek to pass legislation and/or take such executive action as may be required by law to:
- (a) authorise the Government to:
    - (i) enter into this Deed; and
    - (ii) to make the payments to Dunkeld pursuant to Clause 4 (Payments to Dunkeld) and Clause 5 (Payments to the Trust), including that all such payments are charged on the Consolidated Revenue Fund and authorised through an Appropriation Act;
  - (b) confer on Dunkeld and the Trust:
    - (i) full exemption from the provisions of the Exchange Control Regulations Act and Regulations made thereunder from time to time in respect of the payments to be made to Dunkeld and the Trust pursuant to Clause 4 and Clause 5 respectively; and



- (ii) full exemption from any and all taxes, duties, charges, fees and imposts (if any) payable by Dunkeld and the Trust in respect of the payments to be made to Dunkeld and the Trust pursuant to Clause 4 and Clause 5 respectively;

(collectively, “the **Legislation**”).

- 3.5 The Government shall introduce the Legislation to the House of Representatives and take such executive action as soon as reasonably practicable following the date of this Deed, and in any event no later than 15 September 2015 and such legislation shall receive Governor General’s assent and be published in the Gazette as law by 18 September 2015 when enactment shall then have deemed to have taken place.
- 3.6 In the event that the Government does not comply with Sub-Clauses 3.4 and 3.5, this Deed shall be ineffective and terminate without the parties being under any obligation to take any further step pursuant to the terms of this Deed.
- 3.7 The Government shall, as soon as reasonable practicable following the date of this Deed and in any event no later than 18 September 2015, procure that the Commissioner of Income Tax shall issue to the Dunkeld and the Trustees of the Employees Trust Certificates that no income or business taxes are due and owing by the Dunkeld or the Employees Trust, and that the Payments provided for by Clauses 4 and 5 of this Deed are not subject to any taxes or to the withholding of any taxes under the Income and Business Tax Act.
- 3.8 The Government shall procure, as soon as reasonably practicable following the date of this Deed and in any event no later than 18 September 2015, that the Attorney General shall issue separate opinions to Dunkeld and the Trust, entitling Dunkeld and the Trust respectively to rely upon such opinions, confirming that this Deed, and the obligations herein are valid, binding and enforceable obligations of the Government.

#### **4. PAYMENTS TO DUNKELD**

- 4.1 The Government shall pay, or procure, the following payments of compensation to Dunkeld subject to sub-clauses 4.2 to 4.4 below as applicable:
  - (a) by way of part payment of compensation, US\$0.72 per share for 34,107,117 shares (total of US\$ 24,557,124) on the Business Day following the enactment of the Legislation (“the **Partial Dunkeld Compensation**”);
  - (b) by way of final payment of compensation, the amount awarded by the arbitral tribunal in the First Dunkeld Arbitration (including compensation, costs, expenses and interest) (“the **Final Award**”) minus any amounts paid by the Government by way of the Partial Dunkeld Compensation pursuant to Sub-clause 4.1(a) of this Deed, such payment to be made in two instalments as follows:
    - (i) 50% to be paid within 10 Business Days of the issuance of the Final Award; and
    - (ii) 50% to be paid on the 12 month anniversary date of the issuance of the Final Award (together “the **Final Dunkeld Compensation**”);

subject to the right of Dunkeld to immediately demand payment in the event that the Government defaults in payment of any and/or all of the instalment payment amounts under Sub-clauses (b)(i) and (b)(ii), whereupon all amounts outstanding of the Final Dunkeld Compensation shall immediately become due and payable; and

- (c) Interest on the Final Dunkeld Compensation is to continue to accrue on the terms specified in the Final Award and paid proportionately on those sums.

4.2 The Government and Dunkeld agree that should any portion of the value per Telemedia share be determined in the Final Award to be attributed to the Accommodation Agreement between the Government and Telemedia dated 19 September, 2005 (as amended), the same portion per each of the 34,107,117 shares owned by Dunkeld in Telemedia prior to the nationalisation, shall be designated as a restricted amount (“the **Dunkeld Restricted Amount**”).

4.3 The Government acknowledges that Dunkeld has outstanding liabilities that include, but are not limited to, legal, accounting, funding and ancillary costs incurred in connection with the compulsory acquisition of its interest in the Telemedia shares pursuant to the 2009 Act, the 2009 Order, the 2011 Act, the 2011 Order and the Eighth Amendment but not claimed in the First Dunkeld Arbitration and the Second Dunkeld Arbitration (“the **Dunkeld Liabilities**”). The Government further acknowledges that the Dunkeld Liabilities should be attributed on a pro rata basis to the Partial Dunkeld Compensation and the Final Dunkeld Compensation and that as a result a proportionate amount of the Dunkeld Liabilities should be attributed to the Dunkeld Restricted Amount (“the **Dunkeld Attributed Liabilities**”). The Government and Dunkeld agree that the Dunkeld Restricted Amount shall be reduced by the amount of the Dunkeld Attributed Liabilities and the remaining balance (“the **Dunkeld Restricted Amount Balance**”) shall be subtracted from the payment to be made by the Government to Dunkeld pursuant to Clause 4.1(b)(ii) and shall instead be paid by the Government in Belize Dollars into a bank account designated by Dunkeld. Provided that if for any reason Dunkeld is not permitted by applicable law, regulation or permission to receive the Dunkeld Restricted Amount Balance in Belize dollars, then the Government shall pay the equivalent amount of the Dunkeld Restricted Amount Balance to Dunkeld in the currency of the United States of America into an account with a financial institution designated by Dunkeld.

4.4 Subject to the constitutional documents of Dunkeld and the objects of the Hayward Charitable Belize Trust, the Dunkeld Restricted Amount Balance shall be applied in accordance with such requests for grants as the Government may reasonably make to fund projects to help the people of Belize. The consent of Dunkeld shall be required before all or any part of the Dunkeld Restricted Amount Balance is applied in accordance with any such request by the Government, such consent not to be unreasonably withheld.

4.5 Subject to Clause 4.3, all payments made pursuant to Clause 4 shall be made in United States Dollars directly, without any set off, deduction or counterclaim whatsoever, in immediately available funds by wire transfer into accounts at financial institutions in the name of Dunkeld or of its nominee which shall be notified to the Government by Dunkeld in accordance with the notification provisions in Clause 9 of this Deed.

## **5. PAYMENTS TO THE TRUST**

5.1 The Government shall pay, or procure, the following payments of compensation to the Trust subject to sub-clauses 5.2 to 5.6 below as applicable:

- (a) by way of part payment of compensation, US\$0.72 per share for 11,092,844 shares (total of US\$7,986,848) on the Business Day following the enactment of the Legislation (“the **Partial Trust Compensation**”);
- (b) by way of final payment of compensation, the amount per Telemedia share determined by the arbitral tribunal in the Final Award for 11,092,844 shares plus interest on the terms specified in the Final Award minus any amounts paid by the Government as Partial Trust Compensation pursuant to Sub-clause 5.1(a), such payment to be made in two instalments as follows:

- (i) 50% to be paid within 10 Business days of the issuance of the Final Award; and
- (ii) 50% to be paid on the 12 month anniversary date of the issuance of the Final Award (together “the **Final Trust Compensation**”);

subject to the right of the Trust to immediately demand payment in the event that the Government defaults in payment of any and/or all of the instalment payment amounts under Sub-clauses (b)(i) and (b)(ii), whereupon all amounts outstanding of the Final Trust Compensation shall immediately become due and payable; and

- (c) Interest on the Final Trust Compensation is to continue to accrue on the terms specified in the Final Award and paid proportionately on those sums.

- 5.2 The Government and the Trust agree that should any portion of the value per Telemedia share be determined in the Final Award to be attributed to the Accommodation Agreement between the Government of Belize and Telemedia dated 19 September, 2005 (as amended), the same portion per each of the 11,092,844 shares owned by the Trust in Telemedia prior to the nationalisation shall be designated as a restricted amount (“the **Trust Restricted Amount**”).
- 5.3 The Government acknowledges that the Trust has outstanding liabilities that include, but are not limited to, legal, accounting, funding and ancillary costs incurred in connection with the 2009 and 2011 nationalisation of Telemedia (“the **Trust Liabilities**”). The Government further acknowledges that the Trust Liabilities should be attributed on a pro rata basis to the Partial Trust Compensation and the Final Trust Compensation and that as a result a proportionate amount of the Liabilities should be attributed to the Trust Restricted Amount (“the **Trust Attributed Liabilities**”).
- 5.4 The Government and the Trust acknowledge that the loans to Sunshine Holdings Limited by the Social Security Board and the Government in connection with the funding of Sunshine Holdings Limited’s original investment in the shares of Telemedia remain outstanding and that the principal balances owed under these loans total BZ\$20,000,000 (together “the **Investment Loans**”) and further that any liability for the Investment Loans is for Sunshine Holdings Limited, which will continue to be wholly owned by the Government.
- 5.5 The Government and the Trust agree that the Trust Restricted Amount shall be reduced by the amount of the Trust Attributed Liabilities and the total outstanding principal balance of the Investment Loans. The remaining balance (the “**Trust Restricted Amount Balance**”) shall be subtracted from the payment to be made by the Government to the Trust in Sub-Clause 5.1(b)(ii) above and shall instead be paid by the Government in Belize Dollars into a bank account designated by the Trust.
- 5.6 Subject to the objects of the Trust, the Trust Restricted Amount Balance shall be applied in accordance with such requests for grants as the Government may reasonably make to fund projects to help the people of Belize. The consent of the Trust shall be required before all or any part of the Trust Restricted Amount Balance is applied in accordance with any such request by the Government, such consent not to be unreasonably withheld.
- 5.7 Subject to Clause 5.5 above, all payments made pursuant to Clause 5 shall be made in United States Dollars directly, without any set off, deduction or counterclaim whatsoever, in immediately available funds by wire transfer into bank accounts at financial institutions in the name of the Trust or of its nominee which shall be notified to the Government by the Trust in accordance with the notification provisions in Clause 9 of this Deed.

**6. INTEREST ON LATE PAYMENT**

If the Government fails to pay the whole or any part of the payments to the Dunkeld pursuant to Clause 4 or to the Trust pursuant to Clause 5 interest shall accrue on any unpaid interest until they are fully paid at the rate of 6%, compounded monthly.

**7. LEGAL PROCEEDINGS**

7.1 On the Business Day following execution of this Deed counsel of record to the Parties shall write to the Registrar of the CCJ to inform the court that this Deed has been entered into and attach a copy of this executed Deed and inform the CCJ that Dunkeld and the Trust shall within three Business Days of the Legislation being enacted file an Application for a Consent Order in the terms appearing in the Schedule to this Agreement.

7.2 Within 3 Business Days of the Legislation being enacted, the Parties shall:

- (a) make the following applications to the CCJ in the CCJ Appeals:
  - (i) Dunkeld shall apply to the CCJ to be added as a Respondent to the CCJ Appeals for the purposes of this Deed, such application to be supported by the Government; and
  - (ii) Mr Boyce, the Trust and Dunkeld shall apply to the CCJ for a Consent Order substantially in the form set out in Schedule 1 of this Deed, such application to be supported by the Government.
- (b) withdraw, or to procure the withdrawal of, the following claims, appeals and applications with no order as to costs:
  - (i) Claim No: 145 of 2011: Belize Telemedia Limited v Keith Arnold & others and Civil Appeals 14 and 15 of 2012;
  - (ii) Claim No. 646 of 2011: BTL Employees Trust v Attorney-General of Belize and the Minister of Public Utilities;
  - (iii) Claim No: 341: Social Security Board v Sunshine Holdings Limited;
  - (iv) the application for leave to appeal the decision of the Court of Appeal in Civil Appeals 14 and 15 of 2012 or any resulting appeal, and
  - (v) Claim No: 194 of 2011: Financial Secretary v BCB Holdings & others.

7.3 The parties shall each bear their respective costs of the Constitutional Proceedings.

**8. REPRESENTATIONS AND WARRANTIES**

8.1 The Government represents and warrants to Dunkeld and the Trust that:

- (a) the execution, delivery and performance of this Deed:
  - (i) are its legal, valid and binding obligations, enforceable against it by Dunkeld and the Trust in accordance with its terms, and that it has all powers, authorities, consents and approvals necessary to enter into this Deed;

- (ii) save as otherwise contemplated in Clause 3.4, has been duly ratified by all necessary constitutional and legal action;
  - (iii) does not contravene the Constitution or any law, rule, regulation, treaty, regulated practice, procedure or policy or any of its duties or obligations, any material indenture, mortgage, trust deed, bond or other instrument or agreement to which it is bound, or any award, order, judgment, regulation, injunction, resolution, determination or other ruling of any court or governmental authority, agency or instrumentality which is binding on it; and
  - (iv) does not constitute or result in (even if notice is given, time elapses or both) a default, event of default or event of acceleration under any contract which is binding on or affecting it;
- (b) it has taken, or will take in accordance with Clause 3.2, all action required by law, regulation, or policy required to authorize the execution, delivery and performance of this Deed, and this Deed is a valid and binding Deed of the Government in accordance with its terms;
  - (c) the undersigned party executing this Deed on behalf of the Government have been duly authorized to execute and deliver this Deed;
  - (d) it is not in violation or breach of, or in default under, any law, rule or regulation, any duty or obligation, or any indenture, mortgage, trust deed or other instrument or Deed to which it is bound, so as to materially and adversely affect in any of the foregoing instances, its ability to perform its obligations hereunder; and, as of the date of this Deed, there is no pending or, to its knowledge, threatened action or proceeding affecting it before any court, governmental agency or arbitrator which may materially and adversely affect its assets, financial condition, affairs or its ability to either execute, deliver or perform (or the ability of Dunkeld and the Trust to enforce) this Deed;
  - (e) its obligations hereunder are direct, unconditional and general obligations;
  - (f) it will co-operate in all respects to the end that all matters contemplated by this Deed will be consummated;
  - (g) neither Dunkeld nor the Trust owe any taxes, duties, fees or monies whatsoever to the Government or any department of the Government or other public entity in Belize, and the payments to be made pursuant to Clauses 4 and 5 above shall be made without any deductions whatsoever; and
  - (h) no former director or executive committee member of Telemedia who were in place immediately prior to the nationalisation of Belize Telemedia Limited in August 2009 owe any taxes, fees or monies to the Government or any department of the Government or other public entity in Belize.

Each of Dunkeld and the Trustees of the Trust severally represents and warrants to the Government that:

- (a) it has taken all action required by law to authorize the execution and delivery of this Deed, and this Deed is a valid and binding in accordance with its articles of incorporation (or equivalent) and governing instruments; and

- (b) the undersigned party executing this Deed on its behalf has been duly authorized by it to execute and deliver this Deed.

8.3 Without prejudice to any other remedy available to a Party or its ability to claim damages on any other basis which is available to it by reason of any of the warranties set out in this Deed being untrue, inaccurate or misleading, if any of the warranties is untrue, inaccurate or misleading the Party breaching its representation or warranty shall be liable for and shall, at the direction of the other Party, pay an amount equal to all losses whether directly or indirectly arising incurred or suffered by that Party, which would not have existed or arisen if the relevant representation or warranty had not been untrue, inaccurate or misleading.

## **9. NOTICES**

9.1 Notices under this Deed must be in writing and will be deemed given when actually received if delivered by courier with written proof of delivery, by fax upon confirmation of successful transmission; or ten days after being sent by first class mail, return receipt requested, to the other party at the address below:

- (a) For notices to the Government:

To the address set forth on page 1, marked "Attention: Minister of Finance", with copies (which will not constitute notice) by fax to +501 822 2886, and to Attorney-at-Law Mr. Denys Barrow SC of Barrow & Co LLP and by email at [brotherbarrow@yahoo.com](mailto:brotherbarrow@yahoo.com) and by fax at +501 2235900.

- (b) For notices to the Trustees of the Trust:

To the address set forth on page 1, marked "Attention: Mr Dean Boyce" with copies (which shall not constitute notice) to (i) Philip Osborne at 3rd Floor, 212 North Front Street, Belize City, Belize and by email at: [pto23362@hotmail.com](mailto:pto23362@hotmail.com) and (ii) to Attorney-at-Law Mr. Eamon Courtenay SC of Courtenay & Co LLP and by email at [ecourtenay@courtenaycoye.com](mailto:ecourtenay@courtenaycoye.com) and fax at +501 223 0214.

- (c) For notices to Dunkeld:

To the address set forth on page 1 with copies (which shall not constitute notice) to (i) Philip Osborne at 3rd Floor, 212 North Front Street, Belize City, Belize and by email at: [pto23362@hotmail.com](mailto:pto23362@hotmail.com) and (ii) to Attorney-at-Law Mr. Eamon Courtenay SC of Courtenay & Co LLP and by email at [ecourtenay@courtenaycoye.com](mailto:ecourtenay@courtenaycoye.com) and fax at +501 223 0214.

9.2 A party may change its address by giving the other written notice as described above.

## **10. REMEDIES AND WAIVERS**

No delay or omission on the part of any of the Parties in exercising any right, power or remedy provided by the law of any jurisdiction or under this Deed shall:

- (a) impair such right, power or remedy; or  
(b) operate as a waiver thereof.

**11. ENTIRE AGREEMENT**

This Deed and its Schedules and any other documents specifically incorporated herein by reference constitute the entire understanding and agreement of the Government, Dunkeld and the Trust, whether written or oral, with respect to the subject matter of this Deed and supersede any prior or contemporaneous agreements or understandings between the Government, Dunkeld and the Trust, with respect to its subject matter.

**12. AMENDMENTS**

This Deed may not be amended or modified except by a written amendment signed by authorized signatories of the Government, Dunkeld and the Trust.

**13. SEVERABILITY**

If a court or tribunal of competent jurisdiction holds that any provision of this Deed is invalid or unenforceable, the remaining provisions will remain in full force and effect, and the parties will replace the invalid or unenforceable provision with a valid and enforceable provision that achieves the original intent and economic effect of this.

**14. COUNTERPARTS**

The Government, Dunkeld and the Trust may execute this Deed in multiple counterparts, each of which will be deemed an original, and all of which, collectively, will constitute only one agreement. Delivery of an executed counterpart by email or fax shall be as effective as executing and delivering this Deed in the presence of the other party.

**15. WAIVERS**

A waiver of a condition or obligation under this Deed will be effective only if in writing and signed by the party granting the waiver, and no such waiver will constitute a waiver of the satisfaction of any other condition or the non-performance of any other obligation.

**16. GOVERNING LAW**

This Deed and any non-contractual obligations arising out of it shall be governed by and shall be construed in accordance with the Laws of Belize.

**17. DISPUTE RESOLUTION****17.1 Jurisdiction**

- (a) Subject to Clause 17.2 (Option to arbitrate), the Belize courts have non-exclusive jurisdiction to settle any dispute, claim, difference or controversy arising out of, relating to or having any connection with this Deed, including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity and any dispute relating to any non-contractual obligations arising out of or in connection with it (for the purpose of this Clause, “a **Dispute**”), and each party submits to the non-exclusive jurisdiction of the Belize courts.

**17.2 Option to arbitrate**

- (a) Dunkeld and the Trust may by notice in writing to the Government in a manner provided for in Clause 9 (“Notices”) require that all Disputes or a specific Dispute be referred to and

finally resolved by arbitration under the LCIA Arbitration Rules as amended from time to time (for the purpose of this Clause, "the Rules").

- (b) If proceedings have already been commenced (pursuant to Clause 17.1(a) above) in respect of any Dispute(s) referred to in a Notice:
  - (i) that Notice must be given no later than the date for service of the acknowledgment of service or within seven days of any application having been made to the CCJ in the CCJ Appeal;
  - (ii) following such Notice being given, those proceedings shall be stayed by consent with no order as to costs; and
  - (iii) each party to those proceedings shall, following such Notice being given, instruct attorneys to execute a consent order (or, if applicable, consent orders) to this effect as soon as reasonably practicable and in any event prior to the date for service of the defence.
- (c) Any stay of proceedings will be without prejudice to the date when any claim or defence was raised for the purpose of applying any limitation bar or any similar rule or provision.

### **17.3 Arbitration**

- (a) Where Notice has been given pursuant to Clause 17.2, then in respect of each Dispute to which the Notice refers, the provisions of this Clause 17.3 shall apply.
- (b) The Rules are incorporated by reference into this Clause and capitalised terms used in this Clause which are not otherwise defined in this Deed shall have the meaning given to them in the Rules.
- (c) The number of arbitrators shall be three. The Claimant (or Claimants jointly) shall nominate one arbitrator for appointment by the LCIA Court. The Respondent (or Respondents jointly) shall nominate one arbitrator for appointment by the LCIA Court. The LCIA Court shall appoint the presiding arbitrator.
- (d) The seat or legal place of arbitration shall be London.
- (e) The parties agree that Miami would be a convenient venue for any hearings.

### **17.4 Waiver of immunity**

- (a) To the fullest extent permitted by law the Government irrevocably and unconditionally:
  - (i) submits to the jurisdiction of the Belize and English courts in relation to any Dispute to be resolved in accordance with Clause 17 above and waives and agrees not to claim any sovereign or other immunity from the jurisdiction of the Belize and US courts in relation to any Dispute to be resolved in accordance with Clause 17 above (including to the extent that such immunity may be attributed to it), and agrees to ensure that no such claim is made on its behalf.
  - (ii) submits to the jurisdiction of the Belize and English courts and the courts of any other jurisdiction in relation to the recognition of any judgment or order of the Belize or English courts in relation to any Dispute (including a judgment or order in support of any arbitration) and in relation to the recognition of any arbitral award



and waives and agrees not to claim any sovereign or other immunity in relation to the recognition of any such judgment or court order or arbitral award and agrees to ensure that no such claim is made on its behalf.

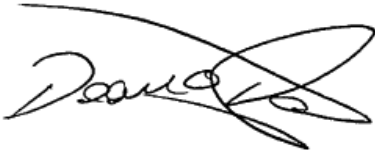
- (iii) consents to the enforcement of any order or judgment or award made or given in accordance with Clause 17 in connection with any Dispute and the giving of any relief whether before or after final judgment or arbitral award including, without limitation:
- (A) relief by way of interim or final injunction or order for specific performance or recovery of any property;
  - (B) attachment of its assets; and
  - (C) enforcement or execution against any property, revenues or other assets whatsoever (irrespective of their use or intended use) and waives and agrees not to claim any sovereign or other immunity in relation to such enforcement and the giving of such relief (including to the extent that such immunity may be attributed to it), and agrees to ensure that no such claim is made on its behalf.

IN WITNESS whereof the Parties hereto have caused this deed to be duly executed on the date first written above.

FOR THE GOVERNMENT OF BELIZE

by Dean O. Barrow, Prime Minister

in the presence of:



Witness 

FOR DUNKELD INTERNATIONAL  
INVESTMENT LIMITED

by

in the presence of:

\_\_\_\_\_  
Witness

FOR THE BTL EMPLOYEES TRUST

by

in the presence of:

\_\_\_\_\_  
Witness

IN WITNESS whereof the Parties hereto have caused this deed to be duly executed on the date first written above.

FOR THE GOVERNMENT OF BELIZE

by Dean O. Barrow, Prime Minister

in the presence of:

\_\_\_\_\_  
Witness

FOR DUNKELD INTERNATIONAL INVESTMENT LTD

By Angela Entwistle, Director

*Angela Entwistle*

in the presence of:

*[Signature]*  
\_\_\_\_\_  
Witness *V.L. DUNBLE*



FOR THE BTL EMPLOYEES TRUST

By Dean Boyce, Trustee

in the presence of:

\_\_\_\_\_  
Witness

IN WITNESS whereof the Parties hereto have caused this deed to be duly executed above.

**FOR THE GOVERNMENT OF BELIZE**

by Dean O. Barrow, Prime Minister

in the presence of:

\_\_\_\_\_  
Witness

**FOR DUNKELD INTERNATIONAL  
INVESTMENT LTD**

By Angela Entwistle, Director

in the presence of:

\_\_\_\_\_  
Witness

**FOR THE BTL EMPLOYEES TRUST**

By Dean Boyce, Trustee

in the presence of:

\_\_\_\_\_  
Witness



**SCHEDULE ONE**

**IN THE CARIBBEAN COURT OF JUSTICE**

**Appellate Jurisdiction**

**ON APPEAL FROM THE COURT OF APPEAL OF BELIZE**

**CCJ Appeal No. 2001/002 (formerly CCJ Appeal No. CV 4 of 2011)**

**BZ Civil Appeal No. 31 of 2010**

**BETWEEN:**

**DEAN BOYCE                      Appellant**

**-AND-**

**THE ATTORNEY GENERAL OF BELIZE                      First Respondent**

**THE MINISTER OF PUBLIC UTILITIES                      Second Respondent**

**-IN THE CARIBBEAN COURT OF JUSTICE**

**Appellate Jurisdiction**

**ON APPEAL FROM THE COURT OF APPEAL OF BELIZE**

**CCJ Appeal No. BZCV2014/005**

**Civil Appeal No. 19 of 2012**

**BETWEEN:**

**DEAN BOYCE**

**TRUSTEES OF THE BTL EMPLOYEES TRUST                      Appellants**

**-AND-**

**THE ATTORNEY GENERAL OF BELIZE**

**First Respondent**

**THE MINISTER OF PUBLIC UTILITIES**

**Second Respondent**

**IN THE CARIBBEAN COURT OF JUSTICE**

**Appellate Jurisdiction**

**ON APPEAL FROM THE COURT OF APPEAL OF BELIZE**

**CCJ Appeal No. BZCV2014/006**

**BZ Civil Appeal No. 18 of 2012**

**BETWEEN:**

**BRITISH CARIBBEAN BANK LIMITED    Appellant**

**-AND-**

**THE ATTORNEY GENERAL OF BELIZE**

**First Respondent**

**THE MINISTER OF PUBLIC UTILITIES**

**Second Respondent**

**-IN THE CARIBBEAN COURT OF JUSTICE**

**Appellate Jurisdiction**

**ON APPEAL FROM THE COURT OF APPEAL OF BELIZE**

**CCJ Appeal No. BZCV2014/008**

**Civil Appeal No. 18 & 19 of 2012**

**BETWEEN:**

**THE ATTORNEY GENERAL OF BELIZE**

**THE MINISTER OF PUBLIC UTILITIES**

**Appellants**

**-AND-**

**BRITISH CARIBBEAN BANK LIMITED**

**First Respondent**

**DEAN BOYCE**

**TRUSTEES OF THE BTL EMPLOYEES TRUST**

**Second Respondent**

Dated the [ ] day of October 2015

Before the Honourable  
AND the Honourables

Mr Justice D. Byron, President  
Mr Justice A. Saunders, JCCJ  
Mr Justice J. Wit, JCCJ  
Mr Justice D. Hayton, JCCJ  
Mr Justice W. Anderson, JCCJ

**UPON READING** the Notices of Application dated the [ ] day of September 2015 filed by Dunkeld International Ltd in CCJ Appeal No.s BZCV2011/002 and BZCV2013/005 and 2008 (the “**CCJ Appeals**”) together with the Affidavit of [ ] sworn to on the [ ] September 2015 and filed in support thereof and the Affidavit of [ ] sworn to on the [ ] September 2015 on behalf of the Respondents in the CCJ Appeals

**UPON READING** the Notice of Application dated the [ ] day of September 2015 filed by the Appellants in the CCJ Appeals together with the Affidavit of [ ] sworn to on the [ ] September 2015 and filed in support thereof and the Affidavit of [ ] sworn to on the [ ] September 2015 on behalf of the Respondents in the CCJ Appeals;

**AND UPON HEARING** the oral submissions of Mr Peter Goldsmith QC, Attorney-at-Law for the Appellant in the CCJ Appeals and the oral submissions of Mr Denys A. Barrow SC Attorney-at-Law for the Respondent the CCJ Appeals.

**AND UPON THE APPELLANTS, DUNKELD INTERNATIONAL INVESTMENT LTD AND THE RESPONDENT HAVING AGREED TERMS OF COMPROMISE:**

In this Order:

the **2009 Act** means the Belize Telecommunications (Amendment) Act, 2009;

the **2009 Order** means Statutory Instrument No 104 of 2009;

the **2011 Act** means the Belize Telecommunications (Amendment) Act, 2011;

the **2011 Order** means Statutory Instrument No. 70 of 2011;

the **Eighth Amendment** means Belize Constitution (Eighth Amendment) Act 2011;

the **First Dunkeld Arbitration** means PCA Case No. 2010-13 (Dun-BZ I); and

the **Second Dunkeld Arbitration** means PCA Case No. 2010-21 (Dun-BZ II).

**IT IS BY CONSENT ORDERED THAT –**

- (1) Dunkeld International Investment Ltd be and is hereby added as a Respondent to the CCJ Appeals so as to enjoy the benefit of and be bound by this judgment.
- (2) All further proceedings in the above appeals are stayed on the terms set out in the schedule except for the purpose of carrying such terms into effect without the need to bring a new claim and for that purpose the parties are at liberty to apply to the Caribbean Court of Justice.
- (3) The Government of Belize shall pay compensation to Dunkeld International Investment Ltd as set out in this Paragraph (3). All such payments shall be made in accordance with the written instructions of Dunkeld International Investment Ltd and subject to the terms of this paragraph (3), shall be made in United States Dollars directly, without any set off, deduction or counterclaim whatsoever:
  - (a) by way of part payment of compensation, US\$0.72 per share for 34,107,117 shares (total of US\$ 24,557,124) (the “**Partial Dunkeld Compensation**”);
  - (b) by way of final payment of compensation, the amount awarded by the arbitral tribunal in the First Dunkeld Arbitration (including compensation, costs, expenses and interest) (“the **Final Award**”) minus any amounts paid by the Government of Belize by way of the Partial Dunkeld Compensation pursuant to paragraph 3(a) of this order, such payment to be made in two instalments as follows:
    - (i) 50% to be paid within 10 Business Days of the issuance of the Final Award, and
    - (ii) 50% to be paid on the 12 month anniversary date of the issuance of the Final Award (together the “**Final Dunkeld Compensation**”);

subject to the right of Dunkeld International Investment Ltd to immediately demand payment in the event that the Government defaults in payment of any and/or all of the instalment payment amounts under Sub-clause (b)(i) and (b)(ii), whereupon all amounts outstanding of the Final Dunkeld Compensation shall immediately become due and payable.

- (c) Interest on the Final Dunkeld Compensation is to continue to accrue on the terms specified in the Final Award and paid proportionately on those sums.



- (d) In the event any portion of the value per Telemedia share is determined in the Final Award to be attributable to the Accommodation Agreement between the Government and Telemedia dated 19 September, 2005 (as amended), the same portion per each of the 34,107,117 shares owned by Dunkeld in Telemedia prior to the nationalisation, shall be designated as a restricted amount (“the **Dunkeld Restricted Amount**”).
  - (e) The Government acknowledges that Dunkeld has outstanding liabilities that include, but are not limited to, legal, accounting, funding and ancillary costs incurred in connection with the compulsory acquisition of its interest in the Telemedia shares pursuant to the 2009 Act, the 2009 Order, the 2011 Act, the 2011 Order and the Eighth Amendment, but not claimed in the First Dunkeld Arbitration and the Second Dunkeld Arbitration (“the **Dunkeld Liabilities**”). The Government further acknowledges that the Dunkeld Liabilities should be attributed on a pro rata basis to the Partial Dunkeld Compensation and the Final Dunkeld Compensation and that as a result a proportionate amount of the Dunkeld Liabilities should be attributed to the Dunkeld Restricted Amount (“the **Dunkeld Attributed Liabilities**”). The Government and Dunkeld agree that the Dunkeld Restricted Amount shall be reduced by the amount of the Dunkeld Attributed Liabilities and the remaining balance (“the **Dunkeld Restricted Amount Balance**”) shall be subtracted from the payment to be made by the Government to Dunkeld pursuant to Paragraph (3)(b)(ii) and shall instead be paid by the Government in Belize Dollars into a bank account designated by Dunkeld. Provided that if for any reason Dunkeld is not permitted by applicable law, regulation or permission to receive the Dunkeld Restricted Amount Balance in Belize dollars, then the Government shall pay the equivalent amount of the Dunkeld Restricted Amount Balance to Dunkeld in the currency of the United States of America into an account with a financial institution designated by Dunkeld.
  - (f) Subject to the constitutional documents of Dunkeld and the objects of the Hayward Charitable Belize Trust, the Dunkeld Restricted Amount Balance shall be applied in accordance with such requests for grants as the Government may reasonably make to fund projects to help the people of Belize. The consent of Dunkeld shall be required before all or any part of the Dunkeld Restricted Amount Balance is applied in accordance with any such request by the Government, such consent not to be unreasonably withheld.
- (4) The Government of Belize shall pay compensation to the BTL Employees Trust (“the **Trust**”) as set out in this Paragraph (4). All such payments shall be made in accordance with the written instructions of the Trust and, subject to the terms of this paragraph (4), all such payments shall be made in United States Dollars directly, without any set off, deduction or counterclaim whatsoever:
- (a) by way of part payment of compensation, US\$0.72 per share for 11,092,844 shares (total of US\$ 7,986,848) (“the **Partial Trust Compensation**”);
  - (b) by way of final payment of compensation, the amount per Belize Telemedia Limited share determined by the arbitral tribunal in the Final Award for 11,092,844 shares plus interest on the terms specified in the Final Award minus any amounts paid by the Government of Belize as Partial Trust Compensation pursuant to paragraph 4(a) of this order, such payment to made in two instalments as follows:
    - (i) 50% to be paid within 10 Business Days of the issuance of the Final Award, and
    - (ii) 50% to be paid on the 12 month anniversary date of the issuance of the Final Award (together “the **Final Trust Compensation**”);
- subject to the right of the BTL Employees Trust to immediately demand payment in the event that the Government defaults in payment of any and/or all of the instalment payment

amounts under Sub-clause (b)(i) and (b)(ii), whereupon all amounts outstanding of the Final Trust Compensation shall immediately become due and payable.

- (c) Interest on the Final Trust Compensation is to continue to accrue on the terms specified in the Final Award and paid proportionately on those sums.
  - (d) In the event that any portion of the value per Telemedia share be determined in the Final Award is attributable to the Accommodation Agreement between the Government of Belize and Telemedia dated 19 September, 2005 (as amended), the same portion per each of the 11,092,844 shares owned by the Trust in Telemedia prior to the nationalisation shall be designated as a restricted amount (“the **Trust Restricted Amount**”).
  - (e) The Government acknowledges that the Trust has outstanding liabilities that include, but are not limited to, legal, accounting, funding and ancillary costs incurred in connection with the 2009 and 2011 nationalisation of Telemedia (“the **Trust Liabilities**”). The Government further acknowledges that the Trust Liabilities should be attributed on a pro rata basis to the Partial Trust Compensation and the Final Trust Compensation and that as a result a proportionate amount of the Liabilities should be attributed to the Trust Restricted Amount (“the **Trust Attributed Liabilities**”).
  - (f) The Government and the Trust acknowledge that the loans to Sunshine Holdings Limited by the Social Security Board and the Government in connection with the funding of Sunshine Holdings Limited’s original investment in the shares of Telemedia remain outstanding and that the principal balances owed under these loans total BZ\$20,000,000 (together “the **Investment Loans**”) and further that any liability for the Investment Loans is for Sunshine Holdings Limited, which will continue to be wholly owned by the Government.
  - (g) The Government and the Trust agree that the Trust Restricted Amount shall be reduced by the amount of the Trust Attributed Liabilities and the total outstanding principal balance of the Investment Loans. The remaining balance (the “**Trust Restricted Amount Balance**”) shall be subtracted from the payment to be made by the Government to the Trust in paragraph (4)(b)(ii) and shall instead be paid by the Government in Belize Dollars into a bank account designated by the Trust.
  - (h) Subject to the objects of the Trust, the Trust Restricted Amount Balance shall be applied in accordance with such requests for grants as the Government may reasonably make to fund projects to help the people of Belize. The consent of the Trust shall be required before all or any part of the Trust Restricted Amount Balance is applied in accordance with any such request by the Government, such consent not to be unreasonably withheld.
- (5) If any of the amounts to be paid by the Government pursuant to Paragraphs (3) and (4) above are not paid within the period of time specified in this Order, interest shall continue to accrue on those amounts until they are fully paid at the rate of 6%, compounded monthly.
  - (6) The parties shall each bear their respective costs of the CCJ Appeals, and related proceedings at first instance in the Belize Supreme Court and Court of Appeal.
  - (7) The interim order made by this court on 19 December 2012, as varied on 15 October 2013, is hereby discharged.

SCHEDULE

[The Settlement Deed will form the Schedule to the Consent Order]

**SCHEDULE TWO**

**BY EMAIL AND BY COURIER**

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Strictly private and confidential – addressee only  
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Prof Dr Albert Jan van den Berg, Presiding Arbitrator  
Hanotiau & van den Berg  
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480 Avenue Louise, B.9  
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Our ref JAEG/AAMW/LLRL/ALTC/0094052-0000003 LT:14140560.3

● 2015

Dear Members of the Tribunal,

**PCA Case No. 2010-13 (DUN-BZ): Dunkeld International Investment Ltd ("Dunkeld") v. The Government of Belize (the "Government")**

We send this letter on behalf of both parties and with the agreement of the Government. We are pleased to advise you that the parties have signed an agreement dated ● 2015 which settles certain aspects of this arbitration (the **Settlement Deed**). A copy of the Settlement Deed is enclosed with this letter. The BTL Employees Trust, which also had their share interest in Belize Telmedia Limited ("**Telemedia**") expropriated, are also a party to the Settlement Deed. The Arbitral Tribunal will see that the Government will seek authorisation from the Belize legislature to enter into the Settlement Deed (Cause 3.4).

Under the terms of the Settlement Deed, Dunkeld hereby requests that the Arbitral Tribunal issue an order by consent in the terms agreed by the parties, a proposed draft of which is enclosed as Appendix 1 to this letter. The terms of the order by consent reflect the agreement reached by the parties at Clause 3.2 of the Settlement Deed. In brief the parties confirm and agree that the Arbitral Tribunal has jurisdiction over the dispute, that there has been an expropriation of Dunkeld's property by the Government and that the Arbitral Tribunal proceeds to determine the amount which is due by way of compensation for the expropriation of Dunkeld's former share interest in Telemedia. For the avoidance of doubt, the parties recognise that the Arbitral

Tribunal is entitled to its fees and expenses for the work which it has done to date as well as the work required in order to resolve the outstanding issues between the parties, such fees to be determined according to the parties' written submissions on costs.

In terms of the timetable for settlement, it is envisaged that legislation will be introduced to the House of Representatives on 14 September and enacted by 18 September (See Clause 3.5). The first payment will be made by the Government to Dunkeld on 22 September 2015 (See Clause 5.1(a)). In the event that the Arbitral Tribunal is unable to issue an order substantially in the form agreed by the parties by 20 September, the Settlement Deed shall be ineffective and shall terminate (See Clause 3.3). With this in mind, the parties respectfully request that the Arbitral Tribunal deal with this matter with some urgency.

Should it be of assistance to the Tribunal counsel for the parties will make themselves available for a hearing to discuss the terms of the proposed order by consent.

Finally, the parties acknowledge the Tribunal's Procedural Order 9 dated 28 August 2015 and request, in light of the Settlement Deed agreed, that the direction at paragraph 2 of the Order that the parties file further written submissions in respect of the letter dated 9 June 2009 be stayed pending the resolution of this current request.

Please note that, under the terms of the Settlement Deed, the Government's counsel shall separately confirm in writing the Government's consent to and support for the contents of this letter and the terms of the proposed order by consent.

Yours faithfully,

**Allen & Overy LLP**

Copy  
(by email only)

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**APPENDIX 1**

**DRAFT ORDER BY CONSENT**

**IN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION RULES OF THE  
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW 1976**

**AND**

**PURSUANT TO THE 1982 AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED  
KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF  
BELIZE FOR THE PROMOTION AND PROTECTION OF INVESTMENTS**

**B E T W E E N:**

**DUNKELD INTERNATIONAL INVESTMENT LTD**

**Claimant**

**-v-**

**THE GOVERNMENT OF BELIZE**

**Respondent**

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**ORDER NO. 10  
(BY CONSENT)**

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**CONSIDERING:**

- (I)      The Settlement Deed dated ● 2015, entered into by *inter alia* the Claimant and the Respondent (the **Settlement Deed**).
  
- (J)      The Claimant's letter of ● 2015, confirming that, pursuant to the terms of the Settlement Deed, the Claimant and the Respondent (together, the **Parties**) have agreed that:
  - (i)      the Respondent shall withdraw any and all of its objections to the Tribunal's jurisdiction and the merits of the Claimant's claims;
  
  - (ii)     the Arbitral Tribunal has jurisdiction under the Treaty to determine the quantum of the compensation to be awarded to the Claimant (including any issues relating to the Accommodation Agreement in so far as they relate to quantum) and, should it be necessary, the Parties shall submit to the jurisdiction of the Arbitral Tribunal on an *ad hoc* basis;
  
  - (iii)    accordingly, the issues set out in Section 2.1(a) and 2.1(b) of the Claimant's Post-Hearing Brief no longer require determination by the Arbitral Tribunal;
  
  - (iv)    the Arbitral Tribunal may proceed to determine the quantum of the compensation to be paid to the Claimant, which the Parties agree shall include the fair market value of the Claimant's interest in the Telemedia shares at 25 August 2009 (plus costs, expenses and interest) (see paragraph 228 of the Claimant's Post-Hearing Brief and paragraph 121 of the Respondent's Post-Hearing Brief);
  
  - (v)    the remaining issues to be determined by the Arbitral Tribunal are consequently limited to the issues set out in Section 2.1(c) of the Claimant's Post-Hearing Brief (as articulated in Section 8 of the Claimant's Post-Hearing Brief and Sections 4.2 (excluding para114), 5, 7 and 8 of the Respondent's Post-Hearing Brief, together with the related pre-hearing submissions, evidence and submissions on costs).(**Remaining Issues**);
  
- (K)      The Respondent's letter of ● 2015, confirming its agreement to the terms of the Claimant's letter.

**THE ARBITRAL TRIBUNAL HEREBY ORDERS THE FOLLOWING BY CONSENT:**

- 2.      Pursuant to the terms of the Settlement Deed, the Respondent has withdrawn any and all of its preliminary objections to jurisdiction. The parties have further confirmed that the Tribunal has jurisdiction to determine the Remaining Issues. Accordingly, the parties have agreed specifically to confer on the Arbitral Tribunal jurisdiction to determine the Remaining Issues alone.

3. Pursuant to the terms of the Settlement Deed, the Respondent has withdrawn any and all of its objections to the merits of the Claimant's claims under the Treaty. The Respondent has expropriated the Claimant's interest in the Telemedia shares. The Respondent has not yet paid compensation to the Claimant in respect of that expropriation, as required by Article 5(1) of the Treaty.
4. The Arbitral Tribunal will proceed to determine the Remaining Issues in a Final Award.
5. The terms of this Order by Consent will be recorded in the Final Award.
6. No further written submissions shall be made by the Parties in relation to the Allen & Overy letter dated 9 June 2009 as envisaged in paragraph 2 of Procedural Order No. 9.