

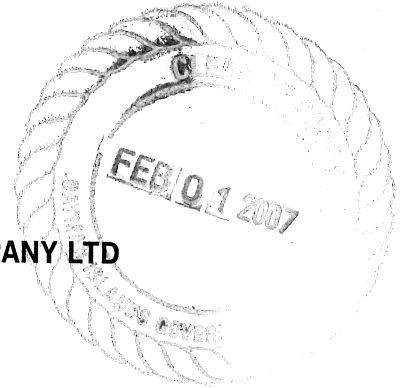
CAUSE NO 49 OF 2007

IN THE GRAND COURT OF THE CAYMAN ISLANDS

IN THE MATTER OF THE COMPANIES LAW (2004 REVISION)

IN THE MATTER OF ASIA-CELL TELECOMMUNICATION COMPANY LTD

TO THE GRAND COURT OF THE CAYMAN ISLANDS



THE PETITION OF ASIA-CELL FOR TELECOMMUNICATIONS LTD OF SALIM STREET,  
ALI NAMALI BUILDING, SULAYMANIAH, IRAQ, SHOWS AS FOLLOWS:-

**THE COMPANY**

1. The above named company, Asia-Cell Telecommunication Company Ltd. ("Asia-Cell Cayman") is a private exempt Cayman Islands registered company limited by shares, which until 31 December 2006, held a telecommunications licence to operate a mobile telecommunications network in Iraq. It was incorporated in the Cayman Islands on 8 July 1999 under the Companies Law (as revised) ("the Companies Law") of the Cayman Islands.
2. Asia-Cell Cayman's registered office is situated at the offices of Brown Brothers Harriman Trust Company (Cayman) located on the fourth floor of Butterfield House, Fort Street, George Town, P.O. Box 2330 GT.
3. Asia-Cell Cayman's shares are currently held by three parties. Asia-Cell For Telecommunications Ltd ("Asia-Cell Iraq") owns 51% of the shares. The remaining 49% is held by National Mobile Telecommunications Company, a company based in Kuwait (also known as "Wataniya"), (40%) and United Gulf Bank (9%), which is based in Bahrain.

4. The authorised share capital of Asia-Cell Cayman is US\$100,000,000 divided into one hundred million shares of US\$1.00 par value. Of those US\$100,000,000 shares 64,999,900 have been issued and allocated to the principal shareholders as follows:-

	<b>Shares</b>
Asia-Cell Iraq	33,000,000
Wataniya	26,122,449
UGB	5,877,451
<b>Total</b>	<b>64,999,900</b>

The above allocation of shares is reflective of the percentage shareholdings set out in paragraph 2 above. These shareholdings are also set out in the Shareholders Agreement exhibited at "FMR3" of the affidavit of Faruk Mastafa Rasool filed on behalf of the Petitioner in support hereof.

5. As set out in more detail below, by this Petition Asia-Cell Iraq seeks a winding up order (on just and equitable grounds) in respect of Asia-Cell Cayman on the following key grounds:
- (a) the relationship between the principal shareholders Asia-Cell Iraq and Wataniya and any trust and confidence in that relationship has now irretrievably broken down to such an extent that it is just and equitable to wind up the affairs of Asia-Cell Cayman;
  - (b) Asia-Cell Cayman has no prospect of successfully continuing in business in light of the fact that it no longer holds a licence to operate a mobile telecommunications network in Iraq. In the result the very purpose for which Asia Cell Cayman was brought into being has evaporated;

- (c) there have been no shareholders' meetings regarding the management and direction of Asia-Cell Cayman for some time; and
- (d) the board of Asia-Cell Cayman has not met for some time and it is unlikely to do so in the future due to a dispute which has arisen between Wataniya and Asia-Cell Iraq which has led each of those parties (both of whom control directors on the board of Asia-Cell Cayman) to act in a manner that demonstrates that there is no realistic (or possible) future for the company. There is no realistic prospect of this dispute being resolved in the foreseeable future.

The Companies relevant to the Petition

- 6. The companies relevant to the Petition are described below.

(i) Asia-Cell Cayman

- 7. Asia-Cell Cayman is a consortium composed of Asia-Cell Iraq, Wataniya and United Gulf Bank. Asia-Cell Cayman was utilised as a vehicle for this consortium to operate GSM mobile operations in Iraq following the 2003 war in Iraq (which led to the toppling of Saddam Hussein and establishment of the Coalition Provisional Authority ("CPA") as the interim Iraqi government). The CPA has subsequently established a body called the Communications and Media Commission ("the CMC") which, amongst other things, is now responsible for the granting of mobile telecommunications licences to suitable operators. Asia-Cell Cayman was granted its first licence to provide GSM services by the CPA on 22 December 2003. Asia-Cell Cayman subsequently renewed its licence to provide such GSM services on a number of occasions until it finally expired on 31 December 2006.

(ii) Asia-Cell Iraq

8. Asia-Cell Iraq is a company duly formed and organised under the laws of Iraq whose registered office is at Salim Street, Ali Namali Building, Sulaymaniyah, Iraq. Asia-Cell Iraq has also been recognised as a registered company by the Registrar of Companies in Iraq since the 2003 war.
9. Asia-Cell Iraq was the first GSM telecommunications company in Iraq. It was established in 1999 under the 'no fly zone' to operate in Northern Iraq. In 2003, following the incorporation of Asia-Cell Cayman, Asia-Cell Iraq transferred its business interests to Asia-Cell Cayman in exchange for its shareholding in that company.
10. Asia-Cell Iraq effectively managed Asia-Cell Cayman at 'ground level' in Iraq. To the extent that any arrangements may have been entered into formally with Asia-Cell Iraq, it was always understood by the principal shareholders of Asia-Cell Cayman that this was done on behalf of Asia-Cell Cayman. As from 1 January 2007 Asia-Cell Iraq has held a temporary telecommunications licence for the provision of GSM mobile services in Iraq with its new partner Raywood Ltd. (such licence having been granted on 10 December 2006 by the CMC in the light of the imminent expiration of Asia-Cell Cayman's licence on 31 December 2006).

(iii) Wataniya

11. Wataniya is a Kuwaiti based telecommunications company that was launched in 1999. Wataniya is Kuwait's first privately owned operator. In 2003 it entered into a joint venture with Asia-Cell Iraq and the United Gulf Bank to form Asia-Cell Cayman in order to be granted a licence by the CPA to operate mobile telephone operations throughout Iraq. Wataniya is a subsidiary of Kuwait Projects Company ("KIPCO"), a large investment holding company in the Middle East and North Africa which manages a regional network of investment/asset management companies and commercial banks operating in various sectors including financial services, media and telecommunications, real estate and industry.

(iv) United Bank Bank ("UGB")

UGB is also an investment subsidiary of KIPCO. UGB's proprietary investments include real estate and telecommunications and, as such, it holds a 9% investment stake in Asia-Cell Cayman.

Background

12. Asia-Cell Iraq has operated a GSM network in Iraq from 1999. In 2003, the provisional authority acting on behalf of the Iraqi Government issued an invitation to local and international applicants to bid by way of tender for at least two licences to establish and operate mobile telecommunications services in Iraq.
13. Accordingly, Asia-Cell Iraq entered into a joint venture with Wataniya and UGB and on 16 August 2003 entered into a Memorandum of Understanding and its addendum dated 19 August 2003. By those agreements, Asia-Cell Iraq, Wataniya and UGB agreed to combine their abilities and expertise to bid as a consortium for the tender and, if successful, to perform the tender and incorporate a jointly-owned legal entity. The terms of that relationship are set out in the Shareholders' Agreement between the parties dated 12 October 2003.

14. The parties were successful in the tender process and a temporary licence was granted to the consortium. The temporary licence was held in the name of Asia-Cell Cayman, the company which had been established for this purpose. This licence was for a term of 2 years and was due to expire on 22 December 2005. Another Licence Agreement was entered into on 14 December 2005 which extended the term of the licence(s) to 30 June 2006. The Licence was subsequently extended to 31 December 2006 on which date it expired. A new temporary 3 month licence has now been granted to a new consortium comprising of Asia-Cell Iraq and its new partner Raywood Ltd. ("the Consortium").
  
15. It was agreed between Asia-Cell Iraq, Wataniya and UGB that, for the duration of the existence of Asia-Cell Cayman and as long as Wataniya held a financial interest in Asia-Cell Cayman, Wataniya would act as the manager and operator of Asia-Cell Cayman for the setting up and operation of the telecommunication network. The Shareholders' Agreement also envisaged that the parties would enter into a management agreement on agreed terms. That management agreement was to (and subsequently did) provide, amongst other things, that Wataniya was to manage and operate the company and in doing so should make all commercial, technical and operational decisions for a management fee equal to 1% of the gross revenues of Asia-Cell Cayman.
  
16. On 12 October 2003, the parties entered into the Management Agreement as envisaged by the Shareholders' Agreement. Clause 2 of that Agreement provides, as a term and condition of the Management Agreement, that Wataniya was to provide Asia-Cell Cayman with the necessary support, assistance, advice, collaboration, cooperation and full availability regarding all technical activities and managerial capacities.

17. Asia-Cell Iraq alleges that Wataniya failed to honour its side of the Management Agreement. Wataniya continues to deny this allegation. There is, therefore, an ongoing dispute between the two largest shareholders in Asia-Cell Cayman.
18. The issues between the shareholders first came to a head in the first quarter of 2006 when the CMC in Iraq issued an invitation to pre-qualify in relation to new long term licences for mobile services to be issued in Iraq. As discussed above, the temporary licence granted to Asia-Cell Cayman was originally due to expire on 22 December 2005 and it was the intention of the CMC to organise a formal bid process in relation to permanent licences. The formal bid process has subsequently been postponed and has not yet taken place, but is anticipated in the course of 2007. As a result of these delays the temporary licence held by Asia-Cell Cayman was extended on two occasions to finally expire on 31 December 2006. From 1 January 2007 the Consortium have, therefore, operated the mobile network formerly operated by Asia-Cayman (their having been granted the right to operate under that temporary licence on 10 December 2006).
19. In response to the invitation to pre-qualify, Asia-Cell Iraq and Wataniya engaged in discussions about the position going forward. In a meeting held between Mr Al Ayyar of Wataniya and Mr. Rasool of Asia-Cell Iraq in Amman at the beginning of March 2006 Mr. Rasool advised Mr Al Ayyar that Asia-Cell Iraq wished to proceed with Wataniya in a joint application to pre-qualify for a the grant of a new and permanent licence. Wataniya responded by sending a revision to the Shareholders Agreement that was completely unacceptable to Asia Cell Iraq and further discussions to pre-qualify Asia Cell Cayman and work together to obtain the long term license ceased.
20. In a letter dated 5 April 2006, Wataniya wrote to Mr. Rasool and proposed a sale of Asia-Cell Iraq's 51% share in Asia-Cell Cayman for a sum of US\$80.2 million.
21. The conditions attached to the offer to purchase Asia-Cell Iraq's shares for US\$80.2 million included a condition that Asia-Cell Iraq would refrain from carrying out any

new similar activity in the telecommunication sector. This offer was unacceptable to Asia-Cell Iraq.

22. In response to the letter from Wataniya dated 5 April 2006, Mr. Rasool reported the offer made by Wataniya to the board of Asia-Cell Iraq. The board of Asia-Cell Iraq approved the valuation commissioned by Wataniya and agreed that Asia-Cell Iraq should submit the same offer to Wataniya and UGB to purchase their shareholding in Asia-Cell Cayman. Asia-Cell Iraq based its offer on Wataniya's valuation of the company by reference to Wataniya's relative shareholding. Wataniya and UGB did not respond to that offer until 16 October 2006 when they confirmed that the proposed terms were unacceptable.
23. At the same time that these discussions were taking place, Asia-Cell Iraq heard through its contacts that Wataniya was proposing to pre-qualify on its own in relation to the bid for the permanent licences. Wataniya did not communicate its intentions in this regard to Asia-Cell Iraq.
24. On 10 April 2006, the cut-off date for applications to pre-qualify for the permanent licenses, without informing Asia-Cell Iraq, Wataniya submitted a pre-qualification application in its own name pursuant to the invitation to pre-qualify. The Consortium also submitted a separate application to pre-qualify later on in the same day.
25. The effect of these applications to pre-qualify by both Wataniya (and subsequently the Consortium) and the preceding failure of the shareholders to agree terms on which Asia-Cell Cayman would pre-qualify, meant that Asia-Cell Cayman did not in fact apply to pre-qualify. Accordingly it is not now eligible to apply for a permanent licence. Asia-Cell Cayman ceased to operate on the expiry of its temporary licence on 31 December 2006. Therefore, in light of the events which have happened, the very purpose for which Asia-Cell Cayman was brought into being has now come to an end.

26. The dispute between Wataniya and Asia-Cell Iraq is continuing and is described in more detail in the affidavit of Faruk Mustafa Rasool (and the exhibits thereto) filed on behalf of the Petitioner in support hereof.
27. This Petition does not in any way seek to ask the Court to determine the dispute between Asia-Cell Iraq and Wataniya in the context of these proceedings. However, the dispute does demonstrate, in the context of the Petition, that all trust and confidence in the relationship between Asia-Cell Iraq and Wataniya has broken down irretrievably. It also demonstrates that it is now in the best interests of all the parties (including the company's creditors) that Asia-Cell Cayman be wound up on just and equitable grounds.

#### Summary

28. This Petition to wind up Asia-Cell Cayman is made in the context of a dispute that has arisen between the two largest shareholders of Asia-Cell Cayman, namely Asia-Cell Iraq and Wataniya. That dispute is ongoing.
29. Since at least early 2006, steps have been taken by both Asia-Cell Iraq and Wataniya to try to resolve their dispute without recourse to litigation. These attempts to reach an amicable resolution have failed.
30. Asia-Cell Cayman no longer holds a licence to operate a mobile telecommunications network in Iraq, the very purpose for which it was established.
31. Therefore, Asia-Cell Iraq now has no option other than to petition for the winding up of Asia-Cell Cayman given that the very substratum of the company has disappeared (i.e. Asia-Cell Cayman no longer holds a licence to operate a mobile network) and in the light of the deadlock reached between the principal shareholders.

**AND THE PETITIONER** therefore prays as follows:-

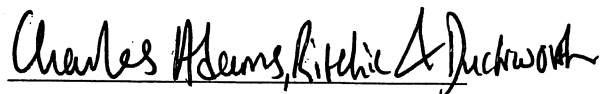
- (1) That Asia-Cell Cayman may be wound up by the Court under the provisions of the Companies Law.
- (2) That Kris Beighton and Simon Whicker of KPMG in the Cayman Islands be appointed Joint Official Liquidators of Asia-Cell Cayman.
- (3) That the Joint Official Liquidators be authorised to do any act or thing considered necessary or desirable in connection with the liquidation of Asia-Cell Cayman and the winding up of its affairs.
- (4) That the Joint Official Liquidators be authorised to exercise all the powers set out in Section 109 of the Companies Law without further sanction or intervention of this Honourable Court.
- (5) That the Joint Official Liquidators be at liberty to appoint attorneys, counsel and other professional advisors in the Cayman Islands or elsewhere as they may consider necessary to advise and assist them in the performance of their duties and on such terms as they may think fit.
- (6) That the Joint Official Liquidators be entitled to receive remuneration for their services at such rates as may be approved by this Honourable Court together with all costs, charges expenses of their attorneys and all other agents, managers, accountants or other persons that the Joint Official Liquidators may employ.
- (7) That there be such further orders and directions as this Honourable Court thinks fit.
- (8) That the Petitioner's costs be provided for.

**NOTE**

It is intended to serve this Petition on:-

- (1) Asia-Cell Telecommunications Company Ltd. at its registered office:-  
Brown Brothers Harriman Trust Company (Cayman)  
PO Box 2330 GT  
4<sup>th</sup> Floor, Butterfield House,  
Fort Street, George Town,  
Grand Cayman, Cayman Islands  
KY1-1106
  
- (2) National Mobile Telecommunications Company  
Wataniya Telecom Tower  
P.O. Box 613  
Safat 13007  
Kuwait
  
- (3) United Gulf Bank  
P.O. Box 5964  
Diplomatic Area  
UGB Tower  
Manama  
Bahrain

DATED this 1<sup>st</sup> day of February, 2007.



Charles Adams Ritchie & Duckworth  
Attorneys at Law for the Petitioner

**NOTICE OF HEARING**

This Petition having been presented to the Court on the 1<sup>st</sup> day of February 2007 will be heard at the Court House, George Town, Grand Cayman on the \_\_\_\_ day of \_\_\_\_\_ 2007 at 10:00 o'clock in the forenoon or as soon thereafter as the Petition can be heard.

This Petition is presented by Charles Adams Ritchie & Duckworth, Zephyr House, Mary Street, PO Box 709, George Town, Grand Cayman, for the Petitioners whose address for service is care of its said Attorneys at Law.