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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

DIGICEL GROUP HOLDINGS LIMITED,¹

Debtor in a Foreign Proceeding

Case No. 23-11479 (JPM)

Chapter 15

MOTION FOR AN ORDER CLOSING CHAPTER 15 CASE

A HEARING WILL BE CONDUCTED ON THIS MATTER, IN PERSON, ON NOVEMBER 29, 2023 AT 9:00 A.M. (PREVAILING EASTERN TIME), BEFORE THE HONORABLE JOHN P. MASTANDO III OF THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, COURTROOM 501, ONE BOWLING GREEN, NEW YORK, NEW YORK 10004-1408.

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING. ANY SUCH OBJECTION MUST BE FILED ELECTRONICALLY WITH THE COURT ON THE COURT'S ELECTRONIC CASE FILING SYSTEM IN ACCORDANCE WITH AND EXCEPT AS PROVIDED IN GENERAL ORDER M-399 (A COPY OF WHICH MAY BE VIEWED ON THIS COURT'S WEBSITE AT WWW.NYSB.USCOURTS.GOV), AND SERVED UPON THE FOREIGN REPRESENTATIVE'S COUNSEL, SO AS TO BE RECEIVED BY 4:00 P.M. (PREVAILING EASTERN TIME) ON NOVEMBER 22, 2023, WITH A HARD COPY SERVED UPON THE CHAMBERS OF THE HONORABLE JOHN P. MASTANDO III, UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, COURTROOM 501, ONE BOWLING GREEN, NEW YORK, NEW YORK 10004-1408. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

¹ The Debtor in this chapter 15 case, and the Debtor's registration number, are: Digicel Group Holdings Limited (55491). The Debtor's registered office and mailing address is Clarendon House, 2 Church Street, Hamilton, HM 11, Bermuda.

Lawrence Hickey, in his capacity as the authorized foreign representative (the “**Foreign Representative**”) of Digicel Group Holdings Limited (“**DGHL**” or the “**Debtor**”), which was subject to a reorganization proceeding entitled “In the Matter of Digicel Group Holdings Limited” concerning a scheme of arrangement under section 99 of the Bermuda Companies Act (the “**Scheme**”) between DGHL and the Scheme Creditors,² which in turn was sanctioned on October 19, 2023 by the Supreme Court of Bermuda, Civil Jurisdiction (Commercial Court) (the “**Bermuda Court**”), 2023: No. 282 (the “**Bermuda Proceeding**”), by and through the undersigned counsel, respectfully submits this motion (this “**Motion**”), and represents as follows:

RELIEF REQUESTED

1. Pursuant to this Motion, the Foreign Representative respectfully requests, pursuant to sections 350(a) and 1517(d) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 5009(c) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 5009-2(a) of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”), entry of an order substantially in the form attached hereto as Exhibit A (the “**Proposed Order**” and, when entered, the “**Order**”), closing the Chapter 15 Case.

JURISDICTION AND VENUE

2. The United States Bankruptcy Court for the Southern District of New York (the “**Court**”) has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* M-431 dated January 31, 2012, Reference M-431, *In re Standing Order of Reference Re: Title 11*, 12 Misc.

² Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to such term in the Motion for Recognition, as defined below.

00032 (S.D.N.Y. Jan. 31, 2012) (Preska, C.J.). This matter is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper before the Court pursuant to 28 U.S.C. § 1410.

3. The statutory predicates for the relief requested are sections 105(a), 1504, 1507, 1515, 1517, 1520, and 1521 of the Bankruptcy Code. The Foreign Representative properly commenced this case pursuant to sections 1504 and 1509 of the Bankruptcy Code by filing a motion for recognition of the Bermuda Proceeding under section 1515 of the Bankruptcy Code.

BACKGROUND

4. As described in greater detail in the *Motion for (I) Recognition of Foreign Proceeding, (II) Recognition of Foreign Representative, (III) Recognition of Sanction Order and Related Scheme, and (IV) Related Relief Under Chapter 15 of the Bankruptcy Code* [ECF No. 4] (the “**Motion for Recognition**”), on September 11, 2023, this Chapter 15 Case was commenced to seek, among other things: (i) recognition of the Bermuda Proceeding pursuant to section 1517 of the Bankruptcy Code as a “foreign main proceeding” (as defined in section 1502(4) of the Bankruptcy Code) of the Debtor, and all relief included therewith as provided in section 1520 of the Bankruptcy Code and related relief under sections 1521(a); and ultimately (ii) recognition and enforcement of the Scheme (as supplemented, amended, and modified and including the exhibits attached thereto) in the United States and giving full force and effect, and granting comity in the United States, to the order (the “**Sanction Order**”) entered by the Bermuda Court sanctioning the Scheme.

5. On October 19, 2023, the Bermuda Court entered the Sanction Order.

6. On October 26, 2023, this Court entered the *Order Granting (I) Recognition of Foreign Proceeding, (II) Recognition of Foreign Representative, (III) Full*

Force and Effect in the United States to the Scheme and Sanction Order, and (IV) Related Relief Under Chapter 15 of the Bankruptcy Code (the “**Recognition Order**”) [ECF No. 21].

7. On November 14, 2023, the Closing Date (as defined in the Scheme) occurred, and the restructuring contemplated by the Scheme was consummated.

8. Other than this Motion, there are no outstanding motions, contested matters, or adversary proceedings in this Chapter 15 Case. Thus, the Chapter 15 Case has been fully administered and the purpose of the Foreign Representative’s request for recognition of the Scheme will have been completed.

RELIEF REQUESTED

9. With the occurrence of the Closing Date and the lack of other matters pending in this Chapter 15 Case (other than this Motion), the Foreign Representative has determined that there is no longer a reason for the Chapter 15 Case to remain open. Accordingly, upon this Motion, the Foreign Representative requests that this Court deem this Motion to be the final report required to be filed by the Foreign Representative under Bankruptcy Rule 5009(c) and enter the Proposed Order closing this Chapter 15 Case.

BASIS FOR RELIEF

10. Section 1517(d) of the Bankruptcy Code provides that “[a] case under this chapter [15] may be closed in the manner prescribed under section 350,” which provides that a case may be closed “[a]fter an estate is fully administered.” Although a chapter 15 case has no “estate” per se, see *In re Fairfield Sentry Ltd.*, 458 B.R. 665, 683 (S.D.N.Y. 2011), a party may apply for an order closing a bankruptcy case after substantially all issues have been resolved and the plan substantially consummated. See *In re A.H. Robins Co.*, 219 B.R. 145 (10th Cir. 1998).

11. Courts consider the following factors to determine if an estate has been "fully administered":

(1) whether the order confirming the plan has become final, (2) whether deposits required by the plan have been distributed, (3) whether the property proposed by the plan to be transferred has been transferred, (4) whether the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the plan, (5) whether payments under the plan have commenced, and (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.

In re Pulp Finish 1 Co., 2014 WL 201482, at *11 (Bankr. S.D.N.Y. Jan. 16, 2014).

12. Further, Bankruptcy Rule 5009(c) requires that a foreign representative:

file a final report when the purpose of the representative's appearance in the court is completed. The report shall describe the nature and results of the representative's activities in the court. The foreign representative shall transmit the report to the United States trustee, and give notice of its filing to the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all parties to litigation pending in the United States in which the debtor was a party at the time of the filing of the petition, and such other entities as the court may direct. The foreign representative shall file a certificate with the court that notice has been given. If no objection has been filed by the United States trustee or a party in interest within 30 days after the certificate is filed, there shall be a presumption that the case has been fully administered.

Fed. R. Bankr. P. 5009(c).

13. However, Local Rule 5009-2 further provides that a case may be closed upon the presumption of full administration, without the need for further relief of the Court. *See* Local Rule 5009-2(a). Indeed, pursuant to Local Rule 5009-2, "even in the absence of a certificate, the Court has discretion, after notice and a hearing, to close the case if it finds that the purpose of the foreign representative's appearance in the case has been completed." *See* Local Rule 5009-2.

14. Taken together, Bankruptcy Rule 5009(c) and Local Rule 5009-2 are clear that once the need for a chapter 15 case no longer exists, and the purpose of a foreign

representative's appearance in the U.S. court is completed, the Court has the discretion to close the case.

15. Other than this Motion, there are no outstanding motions, contested matters, or any adversary proceedings in either this Chapter 15 Case or in the Bermuda Proceeding. The Scheme was declared effective on November 14, 2023, and the Restructuring Transactions contemplated thereby have been fully implemented.

16. To date, the Foreign Representative has not received any objection from any party in interest in this Chapter 15 Case, and no party in interest filed an appeal during the 14-day appeal period following the entry of the Recognition Order. This Motion describes the Foreign Representative's activities in this Chapter 15 Case in their entirety and contains all necessary details for a foreign report. The lack of outstanding motions, contested matters, and adversary proceedings give rise to the presumption that the Chapter 15 Case has been fully administered under Local Rule 5009-2. Accordingly, the Foreign Representative requests that this Court enter the Proposed Order closing this Chapter 15 Case pursuant to Bankruptcy Rule 5009 and Local Rule 5009-2.

NOTICE

17. In accordance with Rule 2002(q) of the Bankruptcy Rules, the Foreign Representative will provide notice of this Motion to: (a) the Debtor; (b) the Office of the United States Trustee for Region 2 (the "**U.S. Trustee**"); and (c) the Notice Parties (as defined in the *Motion Pursuant to Fed. R. Bankr. 2002 and 9007 Requesting Entry of Order Scheduling Recognition Hearing and Specifying Form and Manner of Service of Notice*) [ECF No. 8]. The Foreign Representative submits that, in view of the facts and circumstances, such notice is sufficient, and no other or further notice need be provided.

NO PREVIOUS REQUEST

18. No previous request for the relief sought herein has been made by the Foreign Representative to this Court or any other court.

CONCLUSION

19. For the reasons set forth above, the Foreign Representative respectfully requests that the Court enter the Proposed Order, substantially in the form annexed hereto as Exhibit A, closing the Chapter 15 Case.

[Remainder of page intentionally left blank]

WHEREFORE, the Foreign Representative respectfully requests entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: November 15, 2023

New York, New York

/s/ Timothy Graulich

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Timothy Graulich, Esq.

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Richard J. Steinberg, Esq.

Counsel to the Foreign Representative

EXHIBIT A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

**DIGICEL GROUP HOLDINGS
LIMITED,¹**

Debtor in a Foreign Proceeding

Case No. 23-11479 (JPM)

Chapter 15

ORDER CLOSING CHAPTER 15 CASE

Upon consideration of the *Motion for an Order Closing Chapter 15 Case* [ECF No. ·] (the “**Motion**”)² and due and sufficient notice of the Motion having been given; and no objections or responses to the Motion having been filed; and it appearing that the relief requested in the Motion is in the best interests of the Debtors and other parties in interest in the Chapter 15 Cases; and after due deliberation and sufficient cause appearing therefor,

THIS COURT FINDS AND CONCLUDES THAT:

- A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157, 1334 and section 1501 of the Bankruptcy Code.
- B. This is a core proceeding pursuant to 28 U.S.C. §§ 157 and 1334.
- C. Venue is proper pursuant to 28 U.S.C. § 1410.
- D. The Closing Date occurred on November 14, 2023 and the Restructuring Transactions contemplated by the Scheme were fully effectuated.

¹ The Debtor in this chapter 15 case (the “**Chapter 15 Case**”), and the Debtor’s registration number, are: Digicel Group Holdings Limited (55491). The Debtor’s registered office and mailing address are Clarendon House, 2 Church Street, Hamilton, HM 11, Bermuda.

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

E. This Motion satisfies the requirements of Bankruptcy Rule 5009(c), and the Foreign Representative's obligations to submit a final report in connection with the closure of this Chapter 15 Case has been fulfilled.

F. Appropriate notice of the Motion was given, which notice is adequate for all purposes, and no other or further notice need be given.

G. There are no other duties to be performed by the Foreign Representative at this time in connection with the Chapter 15 Case.

H. The Chapter 15 Case has been fully administered.

IT IS HEREBY ORDERED THAT:

1. The Chapter 15 Case is closed pursuant to sections 350 and 1517(d) of the Bankruptcy Code, without prejudice to reopening pursuant to section 350. The Office of the Clerk of the Court is respectfully directed to close the above-captioned cases.

2. All orders entered by this Court in the Chapter 15 Case, including the Recognition Order, shall survive entry of this Order.

3. This Court shall retain jurisdiction with respect to the effect, enforcement, amendment, or modification of this order, the Recognition Order and any other request for additional relief in or related to the Chapter 15 Case.

Dated: [·], 2023
New York New York

HONORABLE JOHN P. MASTANDO III
UNITED STATES BANKRUPTCY JUDGE