

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Hawaiki Submarine Cable USA LLC,	)	
<i>Licensee,</i>	)	
	)	
HCL Limited Partnership,	)	
<i>Transferor,</i>	)	File No. SCL-LIC-2016-0906-00019
	)	File No. SCL-T/C-2021-_____
and	)	
	)	
BW Digital Pte. Ltd.,	)	
<i>Transferee</i>	)	
	)	
Joint Application for Transfer of Control of	)	
Cable Landing License	)	

**JOINT APPLICATION FOR TRANSFER OF CONTROL OF  
CABLE LANDING LICENSE**

Hawaiki Submarine Cable USA LLC (“HSC USA” or “Licensee”), HCL Limited Partnership (“HCL LP” or “Transferor”) and BW Digital Pte. Ltd. (“BW Digital” or “Transferee”) (collectively, “Applicants”), pursuant to the Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§34-39, Executive Order 10,530, and Section 1.767 of the Commission’s rules, 47 C.F.R. §1.767, request approval for the transfer of control of HSC USA from Transferor to BW Digital.

For the reasons set forth below, Applicants respectfully submit that the grant of this application will serve the public interest. In support of their Application, Applicants provide as follows:

## **I. Description of the Cable System**

Construction of the Hawaiki Submarine Cable System (the “Hawaiki System”) started on March 31, 2016 and the Commission granted the required U.S. cable landing license, IB File No. SCL-LIC-2016-0906-00019, on December 20, 2017.<sup>1</sup> The Hawaiki System was placed into service on July 20, 2018.<sup>2</sup> The Hawaiki System has five segments and currently lands in five locations: Sydney, Australia; Mangawhai Heads, New Zealand; Tafuna, American Samoa; Kapolei, Oahu, Hawaii; and Pacific City, Oregon.<sup>3</sup>

## **II. Description of the Applicants**

### **A. HSC USA (Licensee) and HCL LP (Transferor)**

HSC USA, a Delaware limited liability company, is involved in submarine cable installation, as well as operations and management of the Hawaiki System. HSC USA is a direct, wholly-owned subsidiary of Hawaiki Submarine Cable LP (“HSC LP”), a limited partnership organized under the laws of New Zealand, which, in turn, is a direct, wholly-owned subsidiary of HCL LP.<sup>4</sup> HSC LP is a bandwidth supplier in the Pacific submarine cable market and is the 100% owner of the capacity and facilities of the main trunk of the Hawaiki System, excluding the spur to American Samoa, which is owned by ASTCA. In addition, HSC USA owns and operates the

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<sup>1</sup> Tillamook Lightwave IGA (“Tillamook”), ACS Cable Systems, LLC (“ACS”), DRFortress, LLC (“DRFortress”) and American Samoa Telecommunications Authority (“ASTCA”) are also parties to the U.S. cable landing license granted in IB File No. SCL-LIC-20160906-00019.

<sup>2</sup> See *Hawaiki Cable System, Notice of In-Service Date*, IB File No. SCL-LIC-20160906-00019 (filed July 24, 2018).

<sup>3</sup> For additional details regarding the Hawaiki cable system, please see the Application for Cable Landing License, IB File No. SCL-LIC-20160906-00019 (filed Sept. 6, 2016).

<sup>4</sup> The General Partner of HSC LP is Hawaiki Submarine Cable General Partner Limited (“HSC GP Ltd.”), organized under the laws of New Zealand; which is wholly owned by HCL LP General Partner Limited (“HCL LP GP Ltd.”), also organized under New Zealand law. The partners in HCL LP also own HCL LP GP in the same proportion as their interests in HCL LP. HCL LP GP Ltd. owns 100% of HSC GP Ltd.

Hawaiki System’s cable landing station located in Oahu, Hawaii. Additional information about HSC USA and HCL LP is available at: <http://www.hawaikicable.co.nz/>.

**B. BW Digital (Transferee)**

BW Digital Pte. Ltd., a limited company organized under the laws of Singapore, is an investment holding company. It is a direct, wholly-owned subsidiary of BW Renewables Limited, a limited company organized under the laws of Bermuda, which in turn is a wholly-owned subsidiary of BW Group Limited (“BW Group”), a limited company organized under the laws of Bermuda. BW Group is a global maritime company involved in shipping, maritime infrastructure, and sustainable technologies. BW Group, as the ultimate operating parent entity, has a controlling shareholder interest in certain of its subsidiaries in various business segments such as shipping and new sustainable technologies, giving it a measure of control as a shareholder. While each of its subsidiaries has a board of directors with a considerable amount of control over its activities and decision-making which are strategic in nature, BW Group maintains a certain level of control over the subsidiaries by virtue of being the holding company entity. BW Group is in turn a wholly-owned subsidiary of Altair Limited, a limited company organized under the laws of Bermuda, which is in turn a wholly-owned subsidiary of Sparta Company Limited, a limited company organized under the laws of Bermuda and Trustee of the Core Trust (the “Trust”). The Trust is an irrevocable trust settled in Bermuda by way of a trust deed dated 29 January 2021 where Sparta Company Limited, as Trustee, retains control over the management of the trust fund specified in the trust deed. The administrator of the Trust and sole owner of Sparta Company Limited is Conyers Trust Company (Bermuda) Limited, a company holding an unlimited trust license issued by the Bermuda Monetary Authority. Andreas Sohmen-Pao, an individual and citizen of Austria, is the sole beneficiary of the Trust.

### **III. Description of the Transaction**

Pursuant to a Sale and Purchase Agreement (the “Agreement”), dated as of July 22, 2021, by and among affiliates of Transferee and Transferor, subject to securing applicable regulatory approvals, Transferee will acquire all of the outstanding equity interests in Licensee from Transferor (the “Transaction”). Under the Agreement, BW Digital will acquire all of the limited partnership equity interests in both HSC LP and HSC GP. As a result of the Transaction, Licensee will become an indirect, wholly-owned subsidiary of Transferee. While BW Digital will acquire 100% ownership of HSC LP and indirectly, HSC USA, the operation and management of HSC USA and the Hawaiki System will remain intact as the existing management team is expected to remain in place after closing of the proposed Transaction.

For the Commission’s convenience, organizational charts reflecting pre- and post-Transaction ownership are provided as **Exhibit A**.

### **IV. Public Interest Statement**

Grant of this Application and the Transaction described herein will serve the public interest because it will provide Licensee with access to additional financial and operational resources that will help strengthen the Hawaiki System’s position in the telecommunications marketplace. BW Digital is managerially and financially well-qualified to complete the Transaction and has the experience and resources to support and enhance HSC USA’s operations. The Transaction will also enhance connectivity among the United States, Australia, New Zealand, and the Pacific Islands by strengthening HSC LP and its operating subsidiaries.<sup>5</sup> Moreover, the Transaction will

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<sup>5</sup> Vice President Kamala Harris gave a speech in Singapore on August 24, 2021 during which she emphasized that in “an era with new challenges, like cybersecurity, and an era with new opportunities, like clean energy . . . our world is more interconnected and interdependent, [and] partnerships in Singapore, in Southeast Asia, and throughout the Indo-Pacific, are a top priority for the United States.” *Remarks by Vice President Harris on the Indo-Pacific Region*, The White House, Briefing Room, Speeches and Remarks, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/24/remarks-by-vice-president-harris-on-the->

have no adverse impact on and should be seamless to HSC USA's customers. Immediately following the Transaction, HSC USA will continue to provide high-quality services over the Hawaiki System at the same rates and on the same terms and conditions as are currently in effect. The only material change immediately following closing of the Transaction will be that HSC USA's indirect ownership will change, with Transferee being the new indirect owner. Thus, the direct parent of HSC USA will remain unchanged, but ownership of that parent (HSC LP) will be altered by the Transaction. Therefore, Applicants emphasize that the proposed Transaction will have no adverse operational implications for HSC USA's or the Hawaiki System's customers, and in no event will it result in the discontinuance, reduction, loss, or impairment of service to customers.

**V. Information Required by 47 C.F.R. § 1.767(a)(1)-(3)**

In support of this Application, Applicants submit the following information in accordance with Section 1.767 of the Commission's Rules, 47 C.F.R. § 1.767:

**(1) Name, Address, and Telephone Number of the Applicants:**

Licensee	Hawaiki Submarine Cable USA LLC 1209 Orange St. Wilmington, Delaware 19801 Telephone: (202) 373-6585	FRN: 0025654740
Transferor	HCL Limited Partnership 125, The Strand (Level 3) Parnell - Auckland 1010 New Zealand. Telephone: +64 21 163 9676	FRN: 0027728641
Transferee	BW Digital Pte. Ltd. 10 Pasir Panjang Road, #18-01 Mapletree Business City Singapore 117438	FRN: 0031226509

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[indo-pacific-region/](#), last visited on August 25, 2021. This Transaction supports, and is consistent with, the cooperation that the Vice President and the Administration are seeking to encourage.

Telephone: +65 6337 2133

**(2) Place of Formation:**

Licensee: HSC USA is a Delaware limited liability company.  
Transferor: HCL LP is a New Zealand limited partnership.  
Transferee: BW Digital is a Singaporean limited company.

**(3) Points of Contact**

Correspondence concerning the application should be sent to the following:

*For HSC USA and HCL LP:*

Andrew D. Lipman  
Ulises R. Pin  
Joshua M. Bobeck  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Ave., NW  
Washington, DC 20003  
(202) 373-6664  
andrew.lipman@morganlewis.com  
ulises.pin@morganlewis.com  
joshua.bobek@morganlewis.com

*with a copy to:*

Peter Missingham, General Counsel  
Hawaiki Submarine Cable USA LLC  
125 The Strand (Level 3)  
Parnell - Auckland 1010  
NEW ZEALAND  
+65 9831 6451  
peter.missingham@hawaiki.co.nz

*For BW Digital:*

Marc D. Machlin  
Troutman Pepper Hamilton Sanders LLP  
401 9th Street, N.W.  
Suite 1000  
Washington, DC 20004  
(202) 220-1439  
marc.machlin@troutman.com

*with a copy to:*

Nicholas Fell, General Counsel  
BW Digital Pte. Ltd.  
10 Pasir Panjang Road, #18-01  
Mapletree Business City  
Singapore 117438  
+65 6434 5818 (Direct)  
+65 9297 8648 (Mobile)  
nick.fell@bw-group.com

**VI. Information Required by 47 C.F.R. § 1.767(a)(4)-(7)**

**A. 47 C.F.R. § 1.767(a)(4): Description of the Cable**

A general description of the Hawaiki System is on file with the Commission under IB File No. SCL-LIC-2016-0906-00019 and is incorporated by reference herein.

**1. 47 C.F.R. § 1.767(a)(5): Landing Stations**

As described above, the Hawaiki System lands in five locations: Sydney, Australia; Mangawhai Heads, New Zealand; Tafuna, American Samoa; Kapolei, Oahu, Hawaii; and Pacific City, Oregon. The Transaction will have no effect on the landing points or the day-to-day operations of the Hawaiki System.

**2. 47 C.F.R. § 1.767(a)(6): Common Carrier/Non-Common Carrier Status**

The Hawaiki System is operating and will continue to operate on a private, non-common carrier basis, as more fully described in IB File No. SCL-LIC-2016-0906-00019. As previously noted, the Transaction will have no effect on the day-to-day operations of the Hawaiki System.

**3. 47 C.F.R. § 1.767(a)(7): List of Owners and Ownership Interests**

The main trunk of the Hawaiki System is 100 percent owned by HSC LP. All of the capacity on the main trunk is owned by HSC LP and its affiliates. ASTCA owns the spur from the trunk branching unit to American Samoa and the corresponding landing station. None of the other licensees (*i.e.*, Tillamook Lightwave, ACS or DRFortress) owns any capacity on the Hawaiki System.

The Transaction will not have any impact on ASTCA, Tillamook Lightwave, ACS or DRFortress.

**VII. Information Required by 47 C.F.R. § 1.767(a)(8)**

**A. Information Requested by 47 C.F.R. § 63.18(h)-(k)**

Upon completion of the Transaction, HSC USA will remain a direct, wholly owned subsidiary of HSC LP. BW Digital will acquire a combination of redeemable preference and ordinary share interests in HSC LP that equate in value to 100 percent of HSC LP, and, subject to Commission approval of the Transaction and certain other governmental clearance, will be able to exercise control over the Hawaiki System, as described in Section III, above.

Additional information about HSC USA and its post-Transaction ownership is attached hereto as **Exhibit B**.

**B. Information Requested by 47 C.F.R. § 63.18(o)**

By their signatures to this Application, Applicants certify, as required by 47 C.F.R. §§1.2001-1.2003, that they are not subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

**C. Information Required by 47 C.F.R. §§ 1.767(a)(8)(ii) - (iv)**

HSC LP is a foreign carrier in New Zealand where the Hawaiki System lands. New Zealand is a member of the World Trade Organization.

With the exception of its affiliation with HSC LP immediately upon closing of the Transaction, BW Digital is not affiliated with a foreign carrier or any entity that owns or controls a cable landing station in any foreign country where the Hawaiki System lands. Moreover, no entity that owns more than 25 percent of BW Digital controls a foreign carrier in any foreign country where the Hawaiki System lands; and no combination of foreign carriers or parties that control foreign carriers own, in the aggregate, more than 25 percent of BW Digital. No foreign carriers or entities that control foreign carriers have any ownership interest in BW Digital.



**VIII. Information Required by 47 C.F.R. § 1.767(a)(9)**

By their signatures to this Application, Applicants certify that they accept and will abide by the routine conditions in Section 1.767(g) of the Commission’s rules, 47 C.F.R. § 1.767(g).

**IX. National Security Review**

HSC USA has provided a Letter of Assurances (“LOA”) to the U.S. Department of Homeland Security and the U.S. Department of Justice, providing certain commitments with regard to operations on the Hawaiki System. By their signatures herein, Applicants certify that after the closing of the Transaction, they will continue to abide by the commitments made in the LOA.

**X. Conclusion**

For the foregoing reasons, the Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by a grant of this Application.

Respectfully submitted,

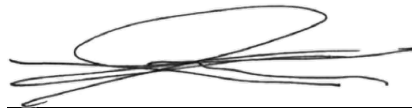


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[marc.machlin@troutman.com](mailto:marc.machlin@troutman.com)

*Counsel for BW Digital Pte. Ltd.*



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Ulises R. Pin  
Joshua M. Bobeck  
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[joshua.bobcek@morganlewis.com](mailto:joshua.bobcek@morganlewis.com)

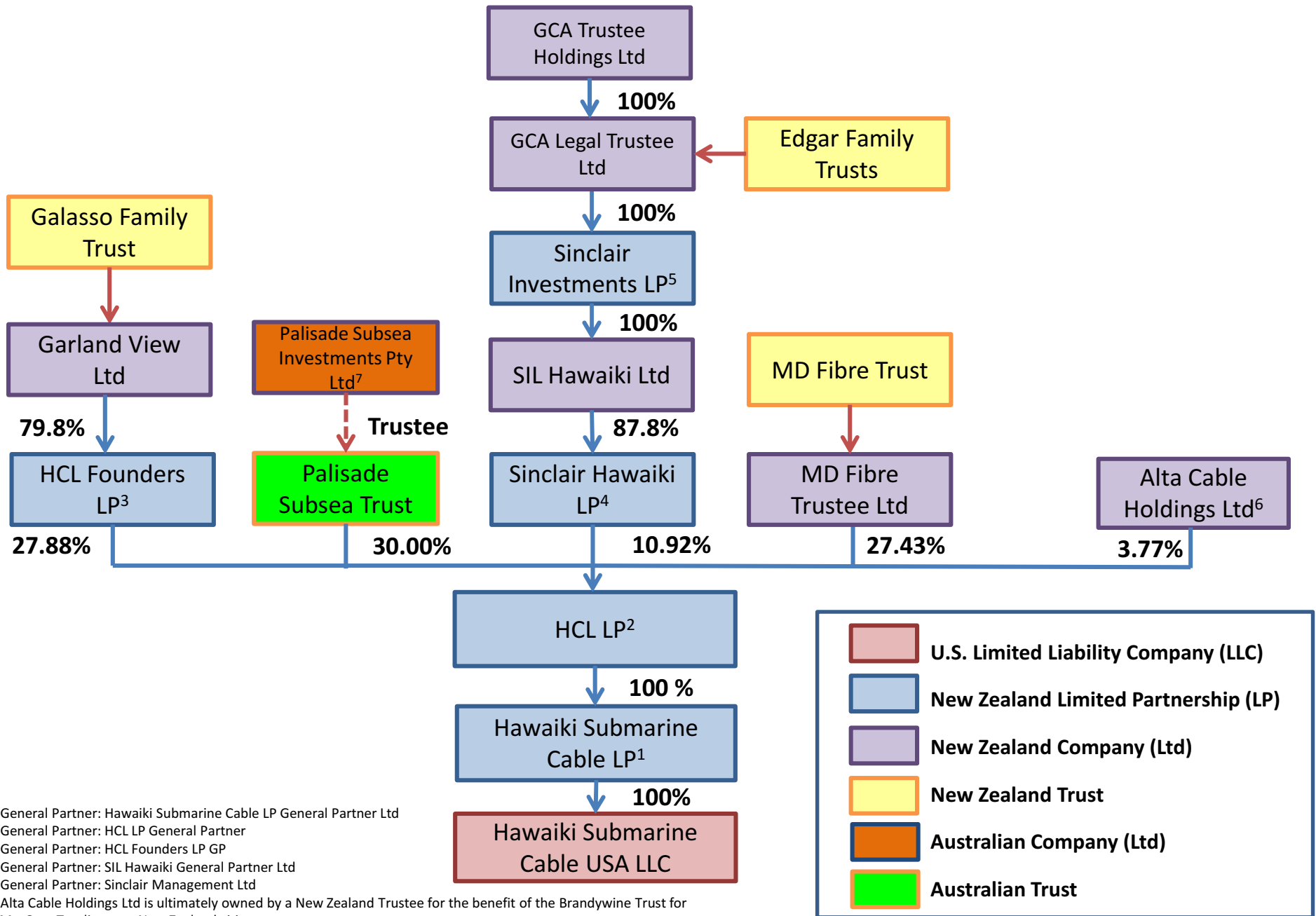
*Counsel for HSC USA and HCL LP*

Dated: August 31, 2021

**EXHIBIT A**

**PRE- AND POST-TRANSACTION ORGANIZATIONAL CHARTS**

# HSC USA Pre-Transaction Organization Chart:



1 General Partner: Hawaiki Submarine Cable LP General Partner Ltd

2 General Partner: HCL LP General Partner

3 General Partner: HCL Founders LP GP

4 General Partner: SIL Hawaiki General Partner Ltd

5 General Partner: Sinclair Management Ltd

6 Alta Cable Holdings Ltd is ultimately owned by a New Zealand Trustee for the benefit of the Brandywine Trust for Mr. Greg Tomlinson, a New Zealand citizen.

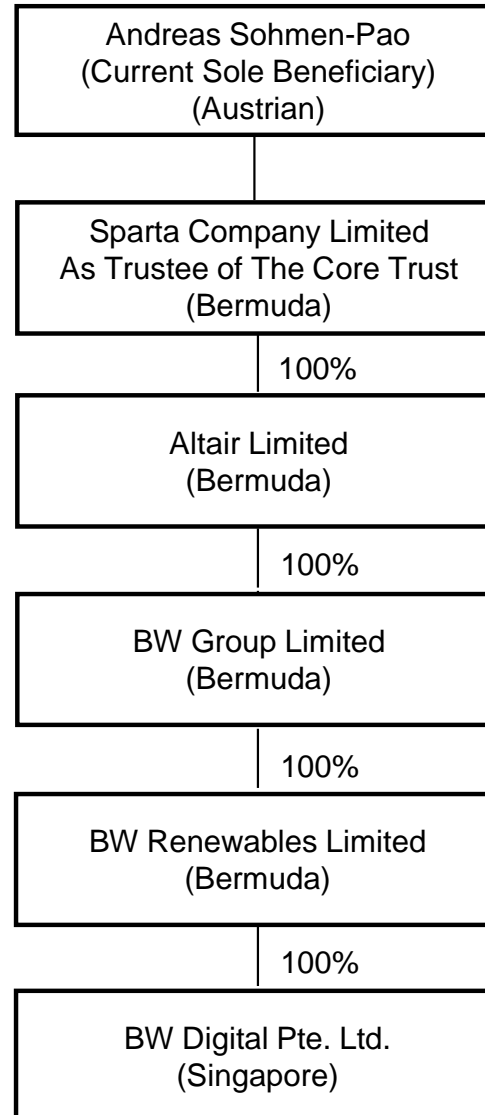
7 Palisade is owned by Pinnacle Fund Services Ltd, Perpetual Trust Services Ltd, LGIA Super Trustee and Pinnacle RE Services Ltd, each an Australian company, and none of which owns 10% or more of HCL LP.



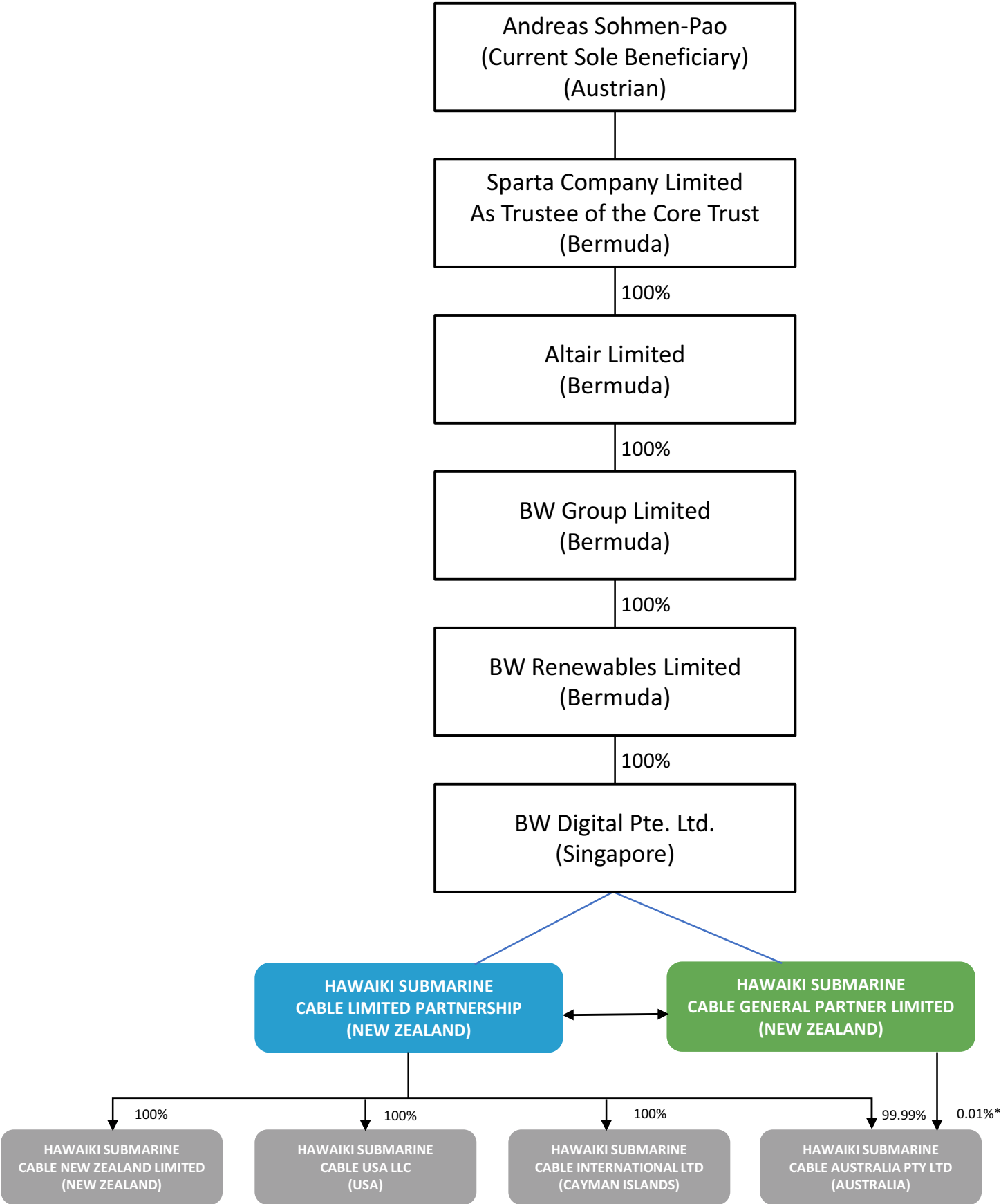
# BW GROUP LIMITED

## CURRENT LEGAL CORPORATE STRUCTURE

(INFORMATION AS AT 28 JULY 2021)



# Project Poseidon: Organizational Chart of Buyer Post-Transaction



\*HSC LP owns 3,417,318 redeemable preference shares in HSC AUS and HSC GP owns 120 ordinary shares in the entire share capital of HSC AUS.

## **EXHIBIT B**

### **HAWAII OWNERSHIP POST-TRANSACTION**

Following consummation of the proposed Transaction, HSC USA will have the following 10 percent or greater direct or indirect interest holders:

#### **HSC LP**

Address: 125, The Strand (Level 3) - Parnell - Auckland 1010 - New Zealand

Citizenship: New Zealand

Principal Business: Submarine Cable Telecommunications

Relationship: HSC LP directly owns 100% of HSC USA.

#### **HSC GP Ltd.**

Address: 2/a, 3 Ceres Court, Rosedale - Auckland 0632, New Zealand

Citizenship: New Zealand

Principal Business: General Partner

Relationship: HSC GP Ltd. is the sole general partner of HSC LP and indirectly controls 100% of HSC USA.

#### **BW Digital<sup>1</sup>**

Address: 10 Pasir Panjang Road, #18-01 - Mapletree Business City - Singapore 117438

Citizenship: Singapore

Principal Business: Investment Holding Company

Relationship: Upon closing of the Transaction, BW Digital will directly own 100% of HSC LP and will indirectly own 100% of HSC USA.

#### **BW Renewables Limited<sup>2</sup>**

Address: Washington Mall, Phase 2, 4th Floor, Suite 400, 22 Church Street, HM 1189, Hamilton HM EX, Bermuda

Citizenship: Bermuda

Principal Business: Investment Holding Company

Relationship: BW Renewables Limited directly owns 100% of BW Digital and upon closing of the Transaction will indirectly own 100% of HSC LP and HSC USA.

#### **BW Group**

Address: Washington Mall, Phase 2, 4th Floor, Suite 400, 22 Church Street, HM 1189, Hamilton HM EX, Bermuda

Citizenship: Bermuda

Principal Business: Investment Holding Company

Relationship: BW Group directly owns 100% of BW Renewables Limited and upon closing of the Transaction will indirectly own 100% of HSC LP and HSC USA.

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<sup>1</sup> BW Digital is managed by BW Group, a Bermuda company.

<sup>2</sup> BW Renewables Limited is managed by BW Group, a Bermuda company.

**Altair Limited<sup>3</sup>**

Address: Washington Mall, Phase 2, 4th Floor, Suite 400, 22 Church Street, HM 1189, Hamilton HM EX, Bermuda

Citizenship: Bermuda

Principal Business: Investment Holding Company

Relationship: Altair Limited directly owns 100% of BW Group and upon closing of the Transaction will indirectly own 100% of HSC LP and HSC USA.

**Sparta Company Limited<sup>4</sup>**

Address: Clarendon House, 2 Church Street, Hamilton HM 11, Bermuda

Citizenship: Bermuda

Principal Business: Trustee

Relationship: Sparta Company Limited directly owns 100% of Altair Limited and upon closing the closing the Transaction will indirectly own 100% of HSC LP and HSC USA.

**Andreas Sohmen-Pao**

Address: 27A Swiss Club Road, Singapore 288144

Citizenship: Austria

Principal Business: Executive, entrepreneur, and investor

Relationship: Andreas Sohmen-Pao is the Chairman of BW Group and its listed entities, upon closing of the Transaction will indirectly own 100% of HSC LP and HSC USA, and is the sole beneficiary of the Trust.

No other person or entity has or will have 10% or greater direct or indirect voting or equity interest in HSC USA. Apart from the persons and entities listed here, no other person or entity will have any direct or indirect voting or equity interest in HSC USA.

HSC USA does not have interlocking directorates with a foreign carrier.

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<sup>3</sup> Altair Limited is managed by Sparta Company Limited, a Bermuda company.

<sup>4</sup> Sparta Company Limited is the Trustee of The Core Trust, an irrevocable trust settled in Bermuda, the trust fund of which is controlled and managed by Sparta Company Limited. Conyers Trust Company (Bermuda) Limited is the sole owner of Sparta Company Limited.

**VERIFICATION**

I am authorized to enter this verification on behalf of Hawaiki Submarine Cable USA LLC (“HSC USA”) and HCL Limited Partnership (“HCL LP”). All of the information contained in the foregoing Application and its Exhibits with respect to (i) the Hawaiki System; (ii) License, Transferor and their respective affiliates and parent companies; and (iii) the proposed Transaction, is true and correct to the best of my knowledge and belief.

By: 

Name: Remi Galasso

For and on behalf of HSC USA and HCL LP

Dated: 27 AUGUST 2021



**VERIFICATION**

I am authorized to enter this verification on behalf of BW Digital Pte. Ltd. (“BW Digital”). All of the information contained in the foregoing Application and its Exhibits with respect to (I) BW Digital and its affiliates and parent companies; and (ii) the proposed Transaction, is true and correct to the best of my knowledge and belief.

By: 

Name: Nicholas Fell

Title: Director of BW Digital Pte. Ltd.

For and on behalf of BW Digital Pte. Ltd.

Dated: August 31, 2021

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document was served this date upon the following via overnight delivery and/or electronic mail:

U.S. Coordinator  
EB/CIP  
U.S. Department of State  
2201 C Street, N.W.  
Washington, DC 20520-5818

Office of Chief Counsel/NTIA  
U.S. Department of Commerce  
14th St. and Constitution Ave., N.W.  
Washington, DC 20230

Defense Information Systems Agency  
ATTN: GC/DO1  
6910 Cooper Avenue  
Fort Meade, MD 20755-7088

/s/

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Thomas J. Garrity III  
August 31, 2021