

THE TURKS AND CAICOS ISLANDS

2010

IN THE SUPREME COURT

CAP 122

IN THE MATTER of  
**TCI BANK LIMITED**  
(In Liquidation by Order of *the Supreme Court of the Turks & Caicos Islands*)

AND

IN THE MATTER of  
THE COMPANIES ORDINANCE (CAP 122)

FIRST REPORT OF THE JOINT OFFICIAL LIQUIDATORS  
TO  
THE SUPREME COURT OF THE TURKS & CAICOS ISLANDS

December 31, 2010

Respectfully Submitted by  
Messrs  
Anthony S. Kikivarakis and Mark E. Munnings  
As Joint Official Liquidators for  
TCI Bank Limited, Turks and Caicos Islands

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**TCI BANK LIMITED**  
**(In Liquidation under the supervision of The Supreme Court)**

**FIRST REPORT OF THE JOINT OFFICIAL LIQUIDATORS**

**1. INTRODUCTION**

On April 9, 2010, the Honourable Justice Richard Williams (“Justice Williams”) ordered that we, Messrs Anthony S. Kikivarakis and Mark E. Munnings, both Partners of Deloitte & Touche, Nassau, The Bahamas, be appointed as Provisional Liquidators for TCI Bank Limited (“the Company”), until further ordered by the Supreme Court of the Turks and Caicos Islands (“the Court”). As indicated in our first report as Provisional Liquidators, our appointment ultimately resulted from a Petition to wind up the Company (“the Petition”), by the Turks and Caicos Islands Financial Services Commission (“FSC”). Justice Williams had initially scheduled the hearing of the said Petition for June 4, 2010, to make a decision on the formal winding up of the Company. However, in an effort to salvage the Company, responding to Justice Williams’ instructions that we should make every effort to keep the Company’s operations ongoing, we held meetings with a number of potential investors and reviewed their proposal plans to purchase / rescue the Company. The following individuals and/or entities are noted below:

1. Temple Financial Group Limited – represented by David J. C. Knipe;
2. ECIC Holdings Ltd. – representing the Eastern Caribbean shareholder Banks through Milton Lawrence:
  - a. Grenada Co-operative Bank Ltd.;

- b. National Bank of Dominica Ltd.;
  - c. ABI Bank Ltd.;
  - d. Antigua Overseas Bank Ltd.;
  - e. St Kitts Nevis Anguilla National Bank Ltd.;
  - f. The Bank of Nevis Ltd.;
  - g. National Bank of Anguilla Ltd.; and
  - h. Caribbean Commercial Bank (Anguilla) Ltd.
- 3. ENTEC Financial Services Inc. ("ENTECS") a company out of Barbados;
  - 4. Altima Limited – represented by Professor Gilbert Morris; and
  - 5. Investor Group – represented by David Kosoy & Phil Biden.

In addition to the above entities, the following persons/entities were contacted or either made enquiries with regard to a rescue plan:

- 1. Bank of The Bahamas International; and
- 2. Mr. Craig Flowers.

Unfortunately after liaising and meeting with interested parties, reviewing proposals submitted by the above-mentioned individuals and entities, attending numerous Court hearings, and attending to other activities as deemed necessary, a rescue plan for the Company did not materialize. In light of this, the Petition was finally heard on October 29, 2010, which resulted in Justice Williams ordering that the Company be wound up and formally appointing us as the Company's Joint Official Liquidators. A copy of the said Order is contained as **JOL I**.

As the Company's Joint Official Liquidators we have the powers as set out in section 107 of the Companies Ordinance (CAP 122), which is exercisable without the sanction or intervention of the Court.

## **2 BACKGROUND**

The Company commenced operations in December 2005, as the first indigenous bank in the Turks and Caicos Islands, providing retail, corporate, and investment banking services locally. The Company adopted an aggressive lending policy, primarily issuing loans as follows:

- a) to acquire real estate;
- b) for real estate development projects (apartments, small resorts, a tourist attraction complex, convenience shops, retail spaces, and an entertainment complex);
- c) to purchase motor vehicles; and
- d) for special purposes buildings such as:
  - churches (3);
  - schools (1); and
  - government facility type structure (1).

This aggressive lending policy resulted in certain non-performing unsecured loans negatively impacting the Company's cash flow and growth potential. The downturn in the economy over the past years further compounded the Company's problem. The Company was also unsuccessful in attracting the level of new deposits required to meet its liquidity needs. Consequently, many of the loans on the Company's books were reclassified as non-performing, due to the customers' inability to make regular monthly payments.

Large sums of monies were loaned to customers whose income level and capacity to pay could not be sustained. Therefore many loans became delinquent very shortly after disbursement. The Company did a poor job in managing real estate investment made by its clients with the result that a number of properties remain incomplete even today.

In an effort to improve its liquidity problem, the Company sought funding from new investors but without success. New investors or depositors who were attracted felt the need to secure their investment/deposits/loans with certain of the Company's assets. In particular, St. Kitts Nevis Anguilla National Bank ("SKNANB") had been able to secure its deposit by investments held by the Company, in the amount of \$7,668,791.

During 2009 the Company was promised funding from the Eastern Caribbean shareholders banks, in the amount of \$3,500,000, but this never materialized. However, the Company obtained a temporary solution to its liquidity problem, by obtaining US\$7,250,000 from one (1) of its shareholders, the Turks and Caicos Islands National Insurance Board ("NIB"). NIB purchased investments from the Company for US\$1,750,000. The Company also issued a debenture in the amount of US\$5,500,000, secured by a fixed and floating charge over its assets ("the Debenture"). Nevertheless, upon receipt of the funds, approximately US\$4,900,000 was immediately withdrawn from the Company by a few customers with large deposit balances, thus restoring the Company again to its illiquid state.

As a result of this, and other challenges faced by the Company, which included but was not limited to a deteriorating financial condition, recurring net losses, and an inability to generate new capital and deposits in a timely manner, the Company was placed into liquidation provisionally on April 9, 2010, and officially on October 29, 2010. The investment required to revive the Company did not materialize from any of the investor groups or interested parties.



### **3 OBJECTIVE OF THIS REPORT**

The objective of this report is to provide parties interested in the Company's liquidation, with the steps that have been taken since our first and final report as Provisional Liquidators dated May 31, 2010, and the progress made since that date. In this regard, this report should be read in conjunction with that report, contained as **JOL II**. Topics included in the report are as follows:

4. Steps Taken in the Liquidation;
5. Rescue Plan;
6. Financial Services Commission ("FSC");
7. NIB's Claim;
8. Scheme of Arrangement;
9. Loans and Advances;
10. Other Matters;
11. Further Steps to be Taken; and
12. Conclusion.

#### **4 STEPS TAKEN IN THE LIQUIDATION**

These steps included, but were not limited to the following:

- a) Identifying, safeguarding, and collecting the Company's assets. This included:
  - i. Acknowledging Letters of Undertakings;
  - ii. Executing Transfer of Charge Documents;
  - iii. Executing Certificates of Identification;
  - iv. Executing Discharge of Charges;
  - v. Executing Deeds of Assignments;
  - vi. Executing Transfer of Collateral Debentures;
  - vii. Executing Guarantees;
  - viii. Registering Discharge of Charges, Transfer of Charges, and other documents with the Land Registry;
  - ix. Liaising with representatives from the Land Registry, regarding documents lodged with them, which included ascertaining whether charges over properties held as collateral for loans had been properly registered;
  - x. Liaising with insurance companies to ascertain if the Company's assets had been insured. This included insurance policies for properties and vehicles, held as collateral for loans issued to customers;
  - xi. Obtaining an injunction to prevent the demolition of property, held as collateral for a loan issued to one of the Company's clients;
  - xii. Renewing insurance premiums for the Company's assets;

- xiii. Releasing clients' salary assignments, upon final payment of their loans;
- xiv. Releasing clients' life policies, which were held as collateral for loans issued to the Company's clients, upon final payment of their loans;
- xv. Removing the Company as the loss payee on home owners' and vehicle insurances, upon final payment of their loans;
- xvi. Obtaining appraisals for the Company's vehicle, as well as those repossessed from clients;
- xvii. Advertising the sale of the Company's vehicles, which included repossessed vehicles;
- xviii. Liaising with persons interested in purchasing the Company's vehicles via email and telephone and met with them in person;
- xix. Servicing and repairing the Company's vehicles; which included repossessed vehicles;
- xx. Liaising with financial institutions who expressed an interest in purchasing the Company's loan portfolio or a portion thereof. These financial institutions expressed an interest in purchasing some of the Company's loans;
- xxi. Instructing insurance companies to submit all claim proceeds, for assets assigned to the Company under our control;
- xxii. Requesting employers who had retained deductions from their staff's salaries, for loan payments to the Company, to submit the same to the Company to be applied to the clients' loans; and

xxiii. Liaising with FirstCaribbean International Bank regarding unidentified deposits on the Company's accounts.

b) Liaising with the Company's clients and/or their attorneys or representatives via telephone, email, and in person. We liaised with them regarding the following matters:

- i. Payment of their loan balances;
- ii. Providing them and/or their representatives with account balances or statement of their accounts;
- iii. Allowing them access into their safety deposit boxes;
- iv. Providing them with verification of draft and cheque payments drawn on the Company, this included providing them with copies of the same;
- v. Issuing letters to their financial institutions, informing them that the Company had no further interest in the clients' salaries, upon satisfaction of their loans with the Company;
- vi. Providing them with source of funds for deposits made to their accounts;
- vii. Cancelling standard order payments;
- viii. Analyzing proposals to payoff delinquent loans and accepting or rejecting agreements of the same;
- ix. Assisting clients with prior claims against the Company, for assets fraudulently removed from their accounts;

- x. Requesting clients to renew insurance premiums for vehicles and properties in their possession, which serve as collateral for loans with the Company;
  - xi. Responding to audit confirmations; and
  - xii. Notifying and liaising with clients regarding the Town Hall meetings, the meetings of the Creditors and Shareholders, and meetings to explain the Scheme of Arrangement and various proposals.
- c) Collecting and allocating loan payments received to clients' loan accounts;
  - d) Liaising with the Company's former staff via telephone, email, and in person;
  - e) Liaising with members of the Creditor's Protection Committee via telephone, email, and in person;
  - f) Liaising with members of the Clearing Banks Association;
  - g) Meeting with the Attorney General of The Turks and Caicos Islands and representatives from his office, regarding accounts held at the Company for David Smith and/or Tracy Smith, Hallmark Bank and Trust Limited, and TCI FX Traders Ltd. ("the Olint Accounts");
  - h) Liaising with members of the Turks and Caicos Ministry of Finance, regarding payments, overpayments, and queries of clients' loans, where payment are made by salary deductions;
  - i) Liaising with members of NIB, regarding the following:
    - i. their interest in the Company;
    - ii. their claim against the Company, through a debenture and deposit balances;

- iii. their request for copies of Minutes of the Company's Board of Directors' Meetings;
  - iv. their audit confirmations;
  - v. staff members irrevocable letters for repayment of their loans with the Company; and
  - vi. national insurance payments for the Company's former employees;
- j) Issuing employment contracts to the Company's former employees, who were retained as agents, to assist us with our duties;
- k) Managing the Company's former employees retained to assist us with our duties as the Company's Provisional Liquidators and subsequently as Official Liquidators. This included, but was not limited to:
- i. Instructing them on various matters, including the preparation of a proper loan portfolio with matching collateral held;
  - ii. Reviewing their work and tasks assigned to them;
  - iii. Paying the staff for services rendered; and
  - iv. Dealing with Human Resource matters arising from managing the staff.
- l) Holding and participating in Town Hall Meetings in Providenciales, North Caicos, and Grand Turk, to apprise parties interested in the Company's status, of the progress made since our appointment on April 9, 2010, and the rescue proposals put to the shareholders and creditors;

- m) Collating and issuing the Company's financial records to individuals / entities interested in purchasing / rescuing the Company. This included calculating the immediate payments that would be made to creditors under various scenarios determined in various proposals;
- n) Reviewing and analyzing rescue proposals issued by potential investors to purchase / rescue the Company and providing an analysis of the same;
- o) Liaising with the Company's creditors and shareholders. This included:
  - i. terminating contracts, leases, and other agreements where applicable;
  - ii. obtaining information from them as required; and
  - iii. informing them of their status, as a result of our appointment as the Company's Joint Liquidators;
- p) Obtaining work permits for our agents;
- q) Preparing for and attending Court hearings to ascertain the fate of the Company on the following dates:
  - i. June 30, 2010;
  - ii. July 15, 2010;
  - iii. August 3, 2010;
  - iv. August 6, 2010;
  - v. August 10, 2010;
  - vi. August 13, 2010;
  - vii. September 9, 2010;
  - viii. September 22, 2010;
  - ix. October 7, 2010; and

- x. October 29, 2010.
- r) Paying the Company's operating expenses;
- s) Issuing press releases regarding the Company's liquidation;
- t) Preparing Bills of Costs and accompanying Affidavits for Allowance of Liquidation Costs, detailing our and our agents' and attorneys' time and costs;
- u) Liaising with and instructing my attorneys, Stanfield Greene, Turks and Caicos Islands and Sears & Co., The Bahamas, on various matters and obtaining advice from them;
- v) Liaising with members of the Royal Turks and Caicos Islands Police Force and obtaining their assistance in various matters. This included, but was not limited to the following:
  - i. Attending Town Hall Meetings;
  - ii. Attending Meetings with the Company's staff who were retained to assist us with our duties; and
  - iii. Delivering demand letters to the Company's delinquent clients.
- w) Calculating the Company's former staff's termination pay. As at the date of this report This process including:
  - i. Reviewing the Companies Ordinance;
  - ii. Reviewing the former employees' contracts;
  - iii. Reviewing the Company's thrift fund policy;
  - iv. Meeting with some of the former staff members; and
  - v. Liaising with my attorneys and discussing issues concerning severance and the laws surrounding such.



- x) Issuing Mutual Confidentiality Agreements to potential investors, who expressed an interest in purchasing / rescuing the Company and obtaining signed copies of the same;
- y) Requesting the Company's records from Saunders & Co. and instructing our attorneys to issue a demand letter for the same;
- z) Vacating the Company's branch in Grand Turk and relocating the Company's assets and records;
- aa) Maintaining the Company's UPS System;
- bb) Liaising with the Special Investigations and Prosecutions Team ("SIPT") regarding Customer Information Orders ("CIO") and Production Orders ("PO"). This included the following:
  - i. Meeting with representatives from SIPT;
  - ii. Reviewing and discussing their requests;
  - iii. Reviewing the Company's records to obtain the information requested;  
and
  - iv. Collating and issuing the information requested in CIO's and PO's.
- cc) Reviewing and examining the Company's records as deemed necessary; and
- dd) Performing others duties as deemed necessary in the Company's liquidation process.

As the Company's Provisional Liquidators, most of our time and that of our agents and attorneys was spent on recovering the Company's assets and complying with Justice Williams' instructions, to make every effort to keep the Company's operations ongoing, up to October 29, 2010, when the Company was placed into official liquidation. As the Joint Official Liquidators, the process of carrying out an examination of all aspects of the Company continued and the collection process intensified.

## **5 RESCUE PLAN**

As Provisional Liquidators we were occupied with carrying out Justice Williams' wishes to save the Company if it was possible. In pursuit of this goal, we analyzed the Company's records and realized that the Company's equity had been completely eroded. In light of the above and given the Company's liquidity problems, we concluded that any rescue plan for the Company would require replacement of the Company's original capital of US\$12,000,000, along with injecting additional deposits of at least US\$15,000,000 for a minimum of two (2) years. We further concluded that it was imperative to obtain NIB's approval of any purchase / rescue plan, given NIB's claim against the Company for US\$5,500,000.

Being mindful of NIB's claim and the potential affect on the Company's assets, we advised all parties concerned of NIB's claim and the role they played in any negotiations to purchase / rescue the Company. Consequently, NIB was a party to the negotiations with potential purchasers / rescuers for the Company. During this process we were informed by NIB as follows:

- i. They would not accept any proposal that did not include the full discharge of the Company's indebtedness to them under the Debenture, which they claimed had crystallized;
- ii. They were unwilling to convert any of their deposits into preferred shares or ordinary shares;
- iii. They would be willing to maintain their deposits with the Company for a number of years, subject to i. and ii. above; and

- iv. They did not believe that the cash injection we suggested may have been sufficient to restore confidence in the Company. However, they stated that they would not have allowed their belief to stand in the way of a rescue plan, if a broad consensus had been reached on the rescue plan.

In light of the above, NIB's claim was a major factor in any proposal to purchase / rescue the Company and at all times we kept them apprised of who was involved and encouraged their participation in all discussions.

Also, we informed all potential investors, of NIB's claim against the Company and were mindful of the same when reviewing and considering proposals. In fact we directed all new investors to meet with and discuss their proposals with NIB.

In compliance with Justice Richards' instructions, as agents of the Court, we liaised with parties who expressed an interest in either rescuing the Company, assisting with the same, or whose approval was essential to the acceptance of a successful proposal. This process involved, but was not limited to:

- meeting and liaising with interested parties, which included representatives of the FSC, NIB, and potential purchasers;
- providing parties interested in purchasing the Company with information requested, to assist them in preparing their proposals to purchase / rescue the Company;
- reviewing proposals and commenting on the same;

- attending court hearings; and
- other tasks as deemed necessary.

Nevertheless, for a rescue plan to be successful, it was determined that it required the approval of:

- i. seventy-five percent (75%) of the Company's creditors;
- ii. the Company's shareholders;
- iii. the Company's regulatory body, the FSC; and
- iv. NIB.

In this regard, Justice Williams requested the Company's creditors to present him with their recommendation for the Company's future on or before July 27, 2010. To assist with this process, the Creditor's Protection Committee ("CPC"), a committee formed to represent the interest of the Company's depositors and local shareholders, canvassed the Company's creditors. The CPC was comprised of depositors and a number of the Company's local shareholders.

To assist creditors with presenting their recommendations to the Court, the CPC organized and held Town Hall meetings on July 23, 2010, in Grand Turk and July 24, 2010, in North Caicos and Providenciales, where representatives of the ECIC Holdings Ltd. / Eastern Caribbean Banks ("ECIC") and the Investor Group presented their proposals to rescue the Company.

The meetings were attended by the Company's depositors, creditors, and interested parties and the attendees were asked to state whether they wished for the Company to be rescued or placed into liquidation. If a rescue plan was chosen, participants were asked to state which proposal they preferred, the ECIC's proposal presented by Mr. Milton Lawrence or the Investor Group's proposal presented by Messrs. David Kosoy and Phil Biden. After hearing both proposals, the ECIC's proposal was selected. A copy of the said proposal, dated July 29, 2010, is contained as **JOL III**. We concluded that the ECIC proposal was the better of the two (2) presented to the creditors and shareholders.

## **6 Financial Services Commission (“FSC”)**

The FSC as the Company’s regulatory body and the financial services regulatory body in the Turks and Caicos Island had additional requirements. Primarily, the FSC required the following when considering the ECIC’s proposal:

- i. Confirmation that the regulatory authority for the Eastern Caribbean banks, the Eastern Caribbean Central Bank (“ECCB”), had been officially notified of each bank’s participation in the proposal to purchase / rescue the Company;
- ii. Total capital requirements of US\$18,500,000 as follows:
  - a. US\$12,500,000 in the form of ordinary shares to replace the Company’s original capital; and
  - b. US\$6,000,000 by way of ordinary or preference shares to fund NIB’s loan (principal and interest). The FSC specifically stated that a line of credit was unacceptable; and
- iii. Additional funding of US\$16,500,000 or US\$24,500,000, depending on the Court’s ruling regarding the Olint Accounts. For a total funding of US\$35,000,000 at minimum or US\$44,000,000 at maximum. The additional funding was required as follows:
  - a. US\$16,000,000 as liquidity to meet the best estimates on the “cash burn”, the amount that would have been immediately available for withdrawal by depositors. As at April 9, 2010, the Company’s records reflected US\$13,500,000 on deposit accounts and US\$2,500,000 on current accounts; and
  - b. US\$9,000,000 as liquidity to cover the Olint Accounts.

A subsequent ruling by the Court that the Olint Account was not preferential meant that the total funding required was now US\$33,000,000 and not US\$44,000,000.



## **7 National Insurance Board's ("NIB") CLAIM**

As indicated in Section 2, NIB purchased assets for US\$1,750,000 from the Company and issued a debenture loan of US\$5,500,000, secured by a fixed and floating charge over the Company's assets ("the Debenture"), bearing interest at 7.5% calculated on the outstanding quarterly balance. As Debenture Holders NIB formally notified us on April 15, 2010, that our appointment as the Company's Provisional Liquidators crystallized their Debenture, and they demanded payment of the same. This matter has to be determined by the Court. Nevertheless, if they are correct in their assertion, US\$5,500,000 of the Company's assets is restricted, thus further reducing the possible dividends to be paid to the Company's creditors.

Specifically the Company signed a Facility Letter dated December 17, 2009, charging to the Lender, NIB, by way of security a fixed charge over the following:

- i. all estate or interests in any freehold and leasehold property of the Company then and in future vested in the Company, together with all buildings, fixtures including trade fixtures and fixed plant and machinery from time to time on any property;
- ii. all of the Company's plant, equipment, machinery, and chattels;
- iii. all of the goodwill and uncalled capital for the time being of the Company;
- iv. all book debts and other debts now and in future due or owing to the Company;
- v. all intellectual property rights, choses in action and claims now and in the future belonging to the Company; and

- vi. by way of floating charge all the Company's present and future undertakings and assets, whatever and wherever, including (without limitation) all other property and assets not subject to a fixed charge under this debenture.

## **8 SCHEME OF ARRANGEMENT**

On July 29, 2010, certain of the Eastern Caribbean Banks under the ECIC umbrella, submitted a revised proposal for the Company. In the said rescue plan, amongst other things, the ECIC proposal offered and required the following:

- i. To immediately invest US\$5,000,000 in ordinary shares to strengthen the Company's balance sheet. Under this arrangement the ownership of the Company's ordinary shares would have been as follows:
  - a. Existing shareholders - 2%; and
  - b. New shareholders - 98%;
- ii. To immediately invest US\$7,500,000 in preferred shares;
- iii. To allow all of the Company's depositors immediate access to their account balances up to US\$50,000;
- iv. To allow all chequing account holders, individuals and corporate holders, with balances in excess of US\$50,000 access to an additional US\$50,000 of their accounts within a twelve (12) month period. The payments would have been made in increments of US\$12,500 quarterly, commencing three (3) months after the Company reopened;
- v. All chequing account holders with balances in excess of US\$100,000 and depositors with balances in excess of US\$50,000, including ECIC and NIB, to maintain their deposits with the Company for a minimum period of five (5) years from the date the Company reopened, at an interest rate of one point seven five percent (1.75%) per annum;

- vi. The Court's agreement of their proposal in the form of a Scheme of Arrangement, agreed to by a significant majority of the Company's depositors;
- vii. The Court's would treat the Olint Accounts as ordinary / general accounts;
- viii. To provide cash of US\$5,500,000 to pay-off the loan issued by NIB and obtain a release of the Debenture, of the fixed and floating charge over the Company's assets;
- ix. To ensure that minimum deposits of US\$12,500,000 was placed with the Company, upon opening, for a minimum period of three (3) years. This would have ensured that the Company had adequate liquidity to meet its initial operating expenses, demand for withdrawals by clients, and to recommence lending; and
- x. To provide a qualified, skilled, and experienced management team and board of directors.

The above-mentioned Scheme of Arrangement was presented to the Court by Application of Originating Summons dated August 13, 2010. Upon reading the application and reviewing the evidence presented to the Court, Justice Williams ordered that the Company convene separate meetings with its creditors, and shareholders to decide whether they would approve the Scheme of Arrangement (with or without modifications) proposed to be made between the Company and its creditors and shareholders.

As per the said order, Mr. Norman Saunders was responsible for ensuring that the Company's customers were contacted and informed of the contents of the Scheme of Arrangement and to inform them that seventy-five percent (75%) of the Company's customers had to agree to the same. Mr. Saunders also chaired the Court ordered meetings, held with the Company's creditors and shareholders in Grand Turk, North Caicos, and Providenciales. We assisted in this process as follows:

- i. providing overseas shareholders with copies of the notice and proxy forms;
- ii. collecting and registering creditors' and shareholders' proxy forms;
- iii. collecting last minute proxy forms at the meetings;
- iv. collating the list of depositors and the amount of deposits held with the Company and arranging the same in a printable format for voting at the meeting;
- v. recording attendance at the meeting;
- vi. issuing ballots and collecting the same after the vote;
- vii. calculating the results of the ballots; and
- viii. other tasks required to comply with the Court order dated August 13, 2010.

In spite of the efforts mentioned above and the approval of the Company's creditors and shareholders; certain Eastern Caribbean Banks were unable to make good on their ECIC proposal, due to the Eastern Caribbean Central Bank ("ECCB") not approving the investment in the Company. As a result of this hurdle, the ECIC through Mr. Milton Lawrence started negotiations with a Barbados-based investor, ENTEC FINANCIAL SERVICES INC. ("ENTEC") and presented a revised proposal to purchase the Company. In the revised proposal, the investment in the Company was as follows:

- i. ENTEC US\$10,500,000 in ordinary shares;
- ii. St. Kitts Nevis Anguilla National Bank US\$1,000,000 in ordinary shares;
- iii. National Bank of Dominica US\$1,000,000 in ordinary shares; and
- iv. ENTEC US\$6,000,000 in the preference shares.

This information was forwarded to the FSC. Although the revised proposal had addressed the FSC's requirement for a minimum capital investment of US\$18,500,000 they requested the following:

- i. A copy of the memorandum of agreement or other written agreement between the Investor Banks and ENTEC ("the Proposed Investors") setting out how they proposed to work together;
- ii. Confirmation that the ECCB had approved the level of capital injection proposed by the Eastern Caribbean participating banks and the partnership agreement or such other agreement for the Investor Banks and ENTEC to make the joint proposal;

- iii. A fully updated copy of the proposed rescue plan, setting out full details of how the Proposed Investors intended matters to proceed, including details of proposals for the Company's management and governance;
- iv. Confirmation that US\$12,500,000 had been placed into an escrow account, to be invested into the Company, if approved by the Court, or confirmation of the availability of the same;
- v. Copies of all necessary board of directors resolutions and if necessary shareholders' resolutions, of the Proposed Investors, confirming approval to make the offer to invest in the Company; and
- vi. Confirmation of approval or approval in principle by ENTEC's regulator in Barbados, or at the very least written confirmation that the regulator had been approached and was aware of the offer and was considering the same.

The FSC's position was formally documented in an Affidavit sworn by Mr. Kevin Higgins, Managing Director of the FSC, dated September 20, 2010. In said Affidavit, the FSC once again requested that the Company be wound up. A copy of the said Affidavit is contained as **JOL IV**.

In response to the FSC's request, the proposal was once again revised by ENTEC, as the two Eastern Caribbean banks had dropped out of the initial ENTEC partnership. ENTEC could not comply with the FSC's requirement as listed above, even after numerous meetings, court hearings, and discussions. Consequently, Mr. Saunders, as counsel for the Company, was not able to petition the Court to sanction the Scheme of Arrangement, nor did NIB approve the same. As a result of this, the Petition to wind up the Company was heard and the Court ordered that the Company be wound up and our appointment as Joint Official Liquidators.



## **9 LOANS AND ADVANCES**

On April 9, 2010, the Company's loan portfolio was distressed to say the least and represented seventy-six percent (76%) of the Company's assets. In light of this, we took the necessary steps to secure these assets or convert the same to cash. During the reporting period we contacted the Company's clients and requested them to pay their loans as per their facility letters and issued demand letter to delinquent customers. As a result of our efforts, we collected in excess of US\$8,500,000 from hundreds of clients, with some loans being fully paid off. Nevertheless, collections remain a challenge on many accounts and we will have no choice but to commence foreclosure proceedings. Many of the customers however are seeking to refinance their positions by moving to other banks.

As at the date of this report, the significant overdue loans are as follows:

1. Loan #1 USD\$737,000 (531 days overdue) – Collateral is a special use building;
2. Loan #3 USD\$3,351,000 (274 days overdue) - Finished special purpose building.  
Litigation issues.
3. Loan #4 USD\$551,000 (937 days overdue) –Special purpose building.
4. Loan #5 USD\$1,748,000 (719 days overdue) – Special purpose building;
5. Loan # 6 USD\$624,000 (416 days overdue) – Apartments;
6. Loan # 7 USD\$1,171,000 (381 days overdue) – Apartments;
7. Loan # 8 USD\$593,000 (457 days overdue) – Apartments;
8. Loan # 9 USD\$729,000 (396 days overdue) – Apartments;
9. Loan # 10 USD\$779,000 (396 days overdue) – Apartments;

10. Loan # 11 USD\$551,000 (430 days overdue) – Commercial property;
11. Loan # 12 USD\$456,000 (355 days overdue) – Apartments;
12. Loan # 13 USD\$588,000 (532 days overdue) – Apartments;
13. Loan # 14 USD\$1,036,000 (overdraft facility) – Tourist Products; and
14. Loan # 15 USD\$658,000 (747 days overdue) – Apartments.

The overdraft noted as Loan #14 has had no significant movement on the account.

## **10 OTHER MATTERS**

The first six (6) months of our appointment as the Company's Provisional Liquidators was critical to the fate of the Company. This was partly due to the fact that a rescue plan was being considered. Therefore when making decisions we had to bear in mind the possibility of keeping the Company's operations ongoing. In light of this, most of our time and effort focused on the possibility of the Company's existence as a financial institution and preserving the Company's assets. Subsequent to our appointment as the Company's Joint Official Liquidators, we shifted gears to actively pursuing and recovering the Company's assets, mainly loans balances and the Company's operations.

### **Restricted Assets**

As indicated in our previous report, we have identified that at least US\$12,800,000 of the Company's assets are restricted. The Company's restricted assets are listed below:

- i. US\$7,300,000 of the Company's Government Bonds and Treasury Bills serve as collateral for a deposit by a shareholder bank; and
- ii. US\$5,500,000 of the Company's assets has been segregated, pending the Court's ruling regarding the Debenture issued by NIB.

In light of this, we have segregated US\$7,300,000 of the Company's investments, as at December 31, 2010, to satisfy i. above and safeguarded US\$5,500,000 of the loan payments collected to date, pending the Court's ruling on the Debenture.

## **Other Asset**

- We have been in discussions with representatives from MasterCard and Bank of America, in an effort to recover the Company's outstanding balances as at April 9, 2010. Our discussions are on-going and this matter has not been resolved as at the date of this report, due to a large termination fee that Master Card is attempting to levy. We are having discussions with Bank of America and MasterCard, to see if we can get this termination fee reduced.
- We will take a significant write off of leasehold improvements in the branches that have been closed and the main branch. The total estimated cost of these write downs will be around \$1,700,000.

## **Olint Accounts**

In our previous report, we incorrectly reported that the Olint Funds totalled US\$6,863,871, instead of US\$9,200,000. During the Court proceedings to determine the Company's fate, the Attorney General requested that the Olint Accounts be classified as restricted accounts, thus indirectly requesting the securitization of the balance, by restricting some of the Company's assets in its favour as a preferential creditor. Nevertheless, the Court ruled that the Olint Accounts fell into the category of general creditors and therefore did not have a priority claim over other clients.

## **11 FURTHER STEPS TO BE TAKEN**

In addition to the normal daily liquidation activities, we intend to perform the following tasks:

1. Continue to aggressively pursue delinquent loans;
2. Deal with all accounts that are subject to set-off;
3. Deal with matters before the Court such as the NIB matter;
4. Relocate to a less costly premises in Providenciales, Turks and Caicos Islands;
5. Assist loan customers in refinancing their obligations;
6. Commence the proof of claim process by making available out claim forms to creditors for the registration of their claims;
7. Determine, as best as possible, the realizable value of the Company's assets; and
8. Hold a press conference to update interested parties on the status of the liquidation.

## 12 CONCLUSION

This report covers the period June 1, 2010, to December 31, 2010, and will be followed by subsequent reports, which will comment on event that occurred subsequent to this report. We will continue to carry out our duties and report to the Court with half yearly reports as at June 30 and December 31, with the report being posted three (3) months after the report date. We have further investigations to carry out on the Company, its directors, and management

Respectfully submitted this 31<sup>st</sup> day of December 2010, this our first report



Anthony S. Kikivarakis  
Joint Liquidator

**TCI BANK LIMITED**  
**STATEMENT OF**  
**RECEIPTS AND PAYMENTS ACCOUNT**  
**FOR THE PERIOD APRIL 12, 2010 TO DECEMBER 31, 2010**

**RECEIPTS**

Loan Receipts - TCI Bank Customers	\$ 8,515,826	\$ 8,515,826
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**PAYMENTS**

Fiduciary Funds	681,976		
Less: Fiduciary Funds Paid Out	<u>(688,791)</u>	<u>(6,815)</u>	(6,815)
Salaries		407,979	
Rent and Utilities			
Bank	248,866		
Liquidators	<u>53,212</u>	302,078	
Liquidators' fees and other costs		781,199	
Legal fees		74,251	
Communication expenses (all branches)		74,332	
Security		39,862	
Insurance		21,864	
Equipment rental/maintenance/supplies		15,433	
Relocation costs (North Caicos/Grand Turk)		14,921	
Vehicle Costs		14,931	
Storage		14,339	
Cleaning Services		7,912	
Courier/Demand Letter Delivery		5,893	
Advertising		5,780	
Miscellaneous		5,231	
Government Fees		4,215	
Bank Fees		1,620	
Total Disbursements			<u>1,791,840</u>
<b>Excess of Receipts over payments</b>			6,717,171

**Original cash balances in Vault and ATM**

Providenciales Branch	357,693	
Grand Turk Branch	624,450	
Petty Cash	<u>1,380</u>	
Total Cash transferred in		<u>983,523</u>
<b>Available Cash Balance</b>		<u><u>\$ 7,700,694</u></u>

**Cash Consist of:**

Petty Cash	\$ 138
Operating Account	41,451
General Account	2,158,496
Fixed Deposit	<u>5,500,609</u>
	<u>\$ 7,700,694</u>

Cash Balance at Bank of America	<u>\$ 1,500,000</u>
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