

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 PROVISIONAL LIQUIDATORS  
TO  
THE SUPREME COURT OF THE TURKS & CAICOS ISLANDS

31 MAY 2010

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

# TABLE OF CONTENTS

	<b>PAGE</b>
1. INTRODUCTION	1
2. BACKGROUND	2
3. OBJECTIVE OF THIS REPORT	4
4. EVENTS THAT LEAD TO OUR APPOINTMENT	5
5. STEPS TAKEN BY THE JOINT PROVISIONAL LIQUIDATORS	8
6. FINANCIAL CONDITION OF THE COMPANY AS AT 9 APRIL 2010	11
7. LOANS AND ADVANCES	17
8. ISSUES ARISING FROM OUR REVIEW OF THE COMPANY'S RECORD	21
9. RELATED PARTY TRANSACTIONS	36
10. PROPOSED INVESTORS	39
11. SUMMARY OF FINDINGS	40
12. APPENDIX I – STATEMENT OF RECEIPTS AND DISBURSEMENTS	44
13. APPENDIX II – SHAREHOLDINGS	45
14. APPENDIX III – COURT ORDER	46
15. APPENDIX IV – DEBENTURE	47

**TCI BANK LIMITED  
TURKS & CAICOS ISLANDS**

**FIRST REPORT OF THE PROVISIONAL LIQUIDATORS**

**1. INTRODUCTION**

On 9 April 2010, upon reading the application of the Applicant, the Turks and Caicos Islands Financial Services Commission ("FSC") of Harry E. Francis Bldg., Pond Street, Grand Turks and Caicos Islands, hearing the legal counsel of the Applicant in Chambers, Mr. Jonathan Katan, reading the Affidavits sworn by Mr. J. Kevin Higgins, Managing Director of the FSC, and reading the Petition to wind-up TCI Bank Limited ("the Company"), the Honourable Justice Richard Williams ordered that we, Messrs. Anthony S. Kikivarakis and Mark E. Munnings, both Partners of Deloitte & Touche, Nassau, Bahamas, be appointed as Provisional Liquidators for the Company until further ordered by the Supreme Court of the Turks & Caicos Islands ("the Court"). Further to this Order, the Judge scheduled a hearing for 4 June 2010 at 9:30 a.m. to make a decision on the formal winding up of the Company. This hearing has been rescheduled for 14 July 2010 through 15 July 2010.

## **2. BACKGROUND**

The Company incorporated on 17 August 2005 under the Companies Ordinance 1981, obtained a national and overseas banking license from the Government of the Turks and Caicos Islands on 24 June 2005 and commenced operations in December 2005. The Company was the first indigenous bank established in the Turks and Caicos Islands to provide retail, corporate, and investment banking services locally. The Company at one point operated a total of four (4) branches, two located in Providenciales, one in Grand Turk, and another located in North Caicos. Prior to our appointment, the Company closed one of its branches in Providenciales and its sole branch in North Caicos. The latest closure occurred on 31 March 2010. From discussions with management, these branches were closed to reduce cost.

The Company's authorized share capital was US\$20,000,000 divided into 20,000,000 ordinary shares of US\$1.00 each. US\$12,542,500 of the Company's capital was issued and fully paid up. Prior to the 2009 Annual General Meeting ("AGM") held 28 January 2010 the Company's share capital was divided into five (5) classes of shares A through E. The allocation of the five (5) classes of shares is appended as **ASK/MEM II**. At the AGM the shareholders passed a special resolution to abolish the individual classes in favor of having one class of ordinary shares. Following the AGM, the special resolution was registered at the Companies Registry, along with the amended Register of Members. New share certificates were to be issued indicating the change but this process was not completed as at 9 April 2010.

At the date of our appointment the Company's Acting Chief Executive Officer was Mr. Henley Richardson and the Company employed thirty-eight (38) persons. The Company's directors were:

- Mr. Andrew Newlands;
- Mr. McAlister Abbott;
- Mr. Norman Hamilton;
- Mr. Marcel Fahie;
- Ms. Rhesa Cartwright;
- Mr. Richard Taylor;
- Mr. Gregory deGannes;
- Mr. Gordon Burton; and
- Mr. Levi Martin Everette.

The Company's secretary was Miss Alexandria Missick.

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

The objective of this report is to advise the Supreme Court of:

1. Events that led up to our appointment;
2. The steps taken since our appointment;
3. The condition of the Company as at 9 April 2010, particularly with regard to its liquidity and insolvency;
4. Issues arising from our review of the Company's records; and
5. To report preliminarily on attempts to keep the Company operating as a going concern.

#### **4. EVENTS THAT LED UP TO OUR APPOINTMENT**

During 2007 and 2008, the Company made a number of large real estate loans, amongst others for the construction of churches, schools, a government facility type structure, apartments, small resorts, a tourist attraction complex, convenience shop, retail spaces, and an entertainment complex. The subsequent downturn in the economy in the past two (2) years resulted in many of those loans being reclassified as non-performing, due to the customers' inability to make regular monthly payments. In addition the Company also struggled to attract new deposits.

From documents, reports, and discussions with members of management, staff, and certain directors and shareholders, it was determined that management, the directors, and the regulatory authority in the FSC recognized that the Company was having liquidity issues stemming from the growth in the number of bad loans and the inability to attract new depositors.

The Company sought the services of Mr. Les Clarke, a consultant, and in this regard signed a contract dated 22 December 2009 with Mr. Clarke, on behalf of Goodwood Financial Consulting to conduct a review of the Company's financial position, with a close focus on its liquidity. The Company also contracted the services of Grant Thornton Specialist Services (Cayman) Ltd. (Grant Thornton) to provide an independent and urgent assessment of its financial and regulatory compliance.

Meanwhile, various related party depositors, primarily shareholder banks, were requesting the repayment of their deposits or the securitization of such balances by requesting the pledge of certain assets of the Company in their favour.

The Company's auditors PriceWaterhouseCoopers expressed concerns about "some very serious operational and strategic deficiencies, which should they remain unchecked could impact the bank's ability to continue for the foreseeable future." The auditors also noted that "we have continually expressed our concern with regard to the liquidity position of the bank. In the year, (2008-2009-added) and subsequent to the year end this situation has become untenable". Needless to say, the liquidity issues continued through the end of 2009 and into 2010, even though management and its directors continued their efforts to find additional funding from new investors and depositors.

The closure of two (2) branches and a growing view in the community that the Company was having difficulties did not help the Company in its efforts to gain new depositors or investors.

The reduction of setoff at this time from sixty to around forty also raised concerns. In addition the FSC also carried out reviews and examination of the Company in which they concluded that they were not satisfied with the Company's liquidity position.

Overall the liquidity problems were recognized by the regulators, auditors, consultants, the directors, management and certain material shareholders. The inability to generate



new capital and deposits in a timely manner finally culminated in the appointment of ourselves as provisional liquidators.

The closing of branches, the reduction of staff, engagement of consultants and the search for new capital was evidence that the Company was experiencing serious liquidity difficulties and was trying to stave off its insolvency.

## **5. STEPS TAKEN BY THE JOINT PROVISIONAL LIQUIDATORS**

As the Company's Provisional Liquidators we have the powers as set out in section 107 of the Companies Ordinance (CAP 122), which are exercisable without the sanction or intervention of the Court save as contained in section 107(b). A copy of the said Order is contained as **ASK/MEM III**.

In the execution of our duties, we and our agents performed the following tasks, amongst others:

- i) Retained Deloitte & Touche as our agents
- ii) Retained Stanfield Greene, Turks & Caicos Islands, and Sears & Co., the Bahamas, as our attorneys
- iii) Took control of the Company's branches in Providenciales and Grand Turk, including the books and records of the Company that were contained within
- iv) Met with the Company's employees and apprised them of The Honourable Justice Richard Williams' Order appointing us as the Company's Provisional Liquidators
- v) Met with members of the Clearing Banks Association
- vi) Liaised with potential investors
- vii) Liaised with individuals from the Turks & Caicos Islands Police Force
- viii) Met with some of the Company's shareholders, management, and certain directors, and the Company's attorneys
- ix) Interviewed the Company's former management, certain directors, and staff

- x) Held press conferences with the members of the media and issued a press release to inform the public of the Company's liquidation
- xi) Addressed crowds outside of the Company's premises
- xii) Requested a number of management and staff to assist us in the execution of our duties and contracted them to do so. From 12 April 2010 to the date of this report, we have employed at least eight (8) former employees. Six (6) of these individuals have worked with us on a continuous basis from 12 April 2010
- xiii) Maintained and took possession of the Company's assets, including securing the Company's cash in Providenciales and Grand Turk in the amounts set out below:

<b><u>Currency</u></b>	<b><u>Amount</u></b>	<b><u>Location</u></b>
USD	361,806.63	Grand Turk
USD	648,837.76	Providenciales
CAD	1,625.00	Providenciales
GBP	5,000.00	Providenciales
EURO	120.00	Grand Turk
EURO	1,870.00	Providenciales

- xiv) Set up bank accounts at First Caribbean International Bank (FCIB) as joint liquidators.
- xv) Took control of the Company's information technology department including core banking systems, ATMs, and email applications.
- xvi) Established a website for the Company, [info@tcibpliquidation.com](mailto:info@tcibpliquidation.com), to allow interested parties to obtain updates on the Company's status
- xvii) Met with Justice Williams, on 15 April 2010, and reported on our preliminary findings.
- xviii) Met with the Company's clients and other interested parties

xix) Contacted the Company's clients and requested the continued payment of loan balances

xx) Oversaw the collection and proper allocation of loan payments received to date

xxi) Paid operating expenses which included staff salaries, rent, etc.

xxii) Paid the Company's former staff members one (1) month's salary in lieu of notice, in accordance with local regulations.

xxiii) Reviewed and examined the following documents:

- a) The Company's audited financial statements
- b) Minutes and meetings of the Directors and other committees
- c) A report by Grant Thornton
- d) Reports issued by Mr. Les Clarke (consultant)
- e) Audit findings and recommendations of the auditors for the year ending June 30, 2009
- f) Proposals submitted by potential investors
- g) Employee contracts and severance entitlements
- h) Leases for premises and equipment

## 6. FINANCIAL CONDITION OF THE COMPANY AS AT 9 APRIL 2010

As at the date of our appointment, 9 April 2010, the Company's unaudited financial position was as follows:

<b>Assets</b>	<b>USD</b>
Cash and demand balances	\$1,584,877
Loans and advances to banks	5,804,670
Loans and advances to customers	66,094,994
Investments and advances to customers	8,172,179
Other assets and prepayments	715,964
Fixed assets-Net of depreciation	3,409,939
<b>Total Asset</b>	<b><u>\$85,782,623</u></b>
<b>Liabilities</b>	<b>USD</b>
Loans and advances from banks	\$15,606,999
Due to customers	56,330,936
Debentures	5,509,041
Other liabilities	1,472,443
<b>Total Liabilities</b>	<b><u>\$78,819,419</u></b>
Share Capital	\$12,542,500
Accumulated deficit	(\$5,679,296)
<b>Total Shareholders' Equity</b>	<b><u>\$6,863,204</u></b>
<b>Total Liabilities and Shareholders' Equity</b>	<b><u>\$85,782,623</u></b>

Our review and comments on the various assets and liabilities are as follows:

### **ASSETS**

<u>Cash and demand balances</u>	\$
Vault Cash	859,859
ATMs	208,910
Clearing Receivables	<u>516,108</u>
	<u>1,584,877</u>

The Company's records show cash and demand balances of US \$1,584,877. Section 8.3 of this report sets out the challenges in reconciling these assets and the issues around the clearing receivables which are under examination and investigation of ourselves.

<u>Loans and advances to banks</u>	\$
Bank of America – MasterCard	1,700,000
Bank of America	400,000
Antigua Overseas Bank	1,095,901
Antigua Overseas Bank	2,440,736
Accrued Interest	<u>168,033</u>
	<u>5,804,670</u>

### **MasterCard Collateral with Bank of America**

As part of the total cash held on the Company's balance sheet, \$1.7 million is pledged as collateral for the Company's MasterCard merchant operations with Bank of America. In an email dated March 22, 2010, management wrote to Bank of America and requested a reduction of the collateral amount. In an email of same date, Bank of America responded favorably to the reduction to under USD \$500,000 but added that they would be unable to make any change to the collateral until after April 16, 2010.

On May 5, 2010, a reminder was sent to Bank of America for the reduction in the collateral amount. On May 19, 2010, Bank of America advised us that as long as the Company holds a MasterCard license the collateral cannot be reduced. As a result, this balance represents restricted cash which cannot be used by the Company at this time. We are making every effort to get this cash returned.

Bank of America \$400,000 used to collateralize letters of credit

Antigua Overseas Bank deposit of \$1,095,901 is free and clear and carries interest of 5%

Antigua Overseas Bank deposit of \$2,440,736 has a corresponding credit in “due to customers”. This investment carries interest at 5% per annum while the deposit liability pays no interest. No cash changed hands, in this paper transaction initiated by Antigua Overseas Bank, shareholder of TCI Bank. This transaction needs further analysis.

Loans and advances to customers

	\$
Gross loans and overdrafts	67,126,894
Accrued Interest	897,327
Loan Loss provision	<u>(1,929,227)</u>
	<u>66,094,994</u>

See Section 7 for detailed discussion on loans.

<u>Investments</u>	\$
Unquoted investment in ECIC Ltd.	631,990
Antigua Government Bond 8.5%	1,499,998
TCI Government Bond 7.5%	3,833,333
TCI Government Bond 8%	2,000,000
Accrued Interest	<u>206,858</u>
	<u>8,172,179</u>

- ECIC is a company funded by ten Eastern Caribbean Banks to achieve systems standardization, sharing of best practices, staff training and loan syndication.
  
- Both the Antigua and TCI Government bonds are pledged as collateral for a loan/deposit from St. Kitts and Nevis Bank (a shareholder) in the amount of \$7,668,791 which is included within liabilities under “loans and advances from banks.”

<u>Fixed assets-Net of Depreciation</u>	\$
Leasehold improvements	1,830,300
Furniture and fittings	214,730
Equipment	718,752
Computers	615,227
Vehicles	<u>30,930</u>
	<u>3,409,939</u>

The Company's net fixed assets are approximately 50% of the Company's equity and maybe subject to a significant write down because of the large leasehold improvement balances in the event of a formal liquidation.



## **Liabilities**

### **Loans and advances from banks**

Deposits held for five (5) Eastern Caribbean Banks, including the St. Kitts and Nevis Bank collateralized deposit mentioned above.

	\$
St. Kitts and Nevis Bank	7,668,791
ABI Bank, Antigua	2,826,249
National Bank of Dominica	2,269,859
Bank of Nevis	1,118,491
Grenada Cooperative Bank	1,644,907
Accrued Interest	78,702
	<u>15,606,999</u>

<b><u>Due to Customers</u></b>	\$
Checking	20,135,192
Savings (inclusive of accrued interest)	8,548,033
Certificates of Deposit (inclusive of accrued interest)	27,357,260
Vehicles	290,451
	<u>56,330,936</u>

Included within the checking account category are two accounts which have been frozen under a court order pending the outcome of criminal proceedings against the named entities below:

Hallmark Bank-Beneficial owner Olint	\$6,095,152
TCI FX Traders	\$768,719

See Section 11

### Debenture

Represents \$5.5M loan from National Insurance Board inclusive of accrued interest. The balance is secured by fixed and floating debenture over the assets of the Bank and bears interest at 7.5% calculated on the outstanding quarterly balance.

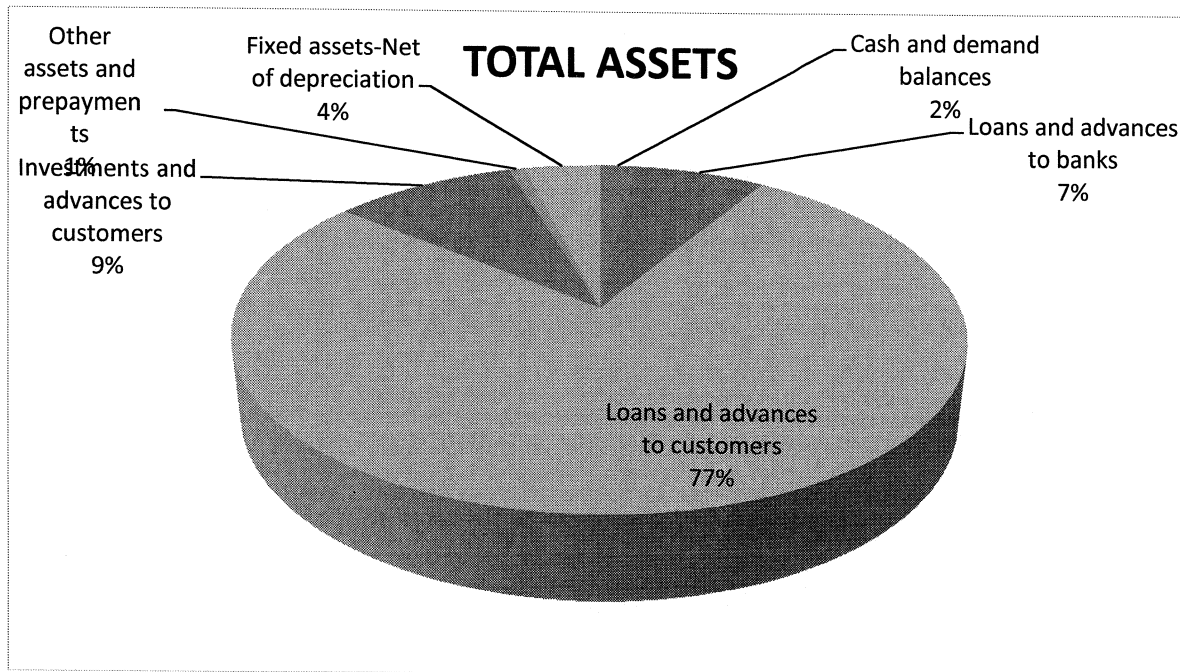
### Other liabilities

\$

Guarantees and indemnities	512,000
Manager's Cheques	533,033
Accruals and provisions	<u>427,410</u>
	<u>1,472,443</u>

## 7. LOANS AND ADVANCES

From a review of the Company's records, the Company's loan portfolio averaged seventy percent (70%) of its total assets over the last twelve (12) months. As at the date of our appointment, the Company's loan portfolio accounted for seventy-six (76%) of the Company's assets.



The Company primarily made loans:

- a) to acquire real estate;
- b) for real estate development projects;
- c) for motor vehicle loans; and

In addition, the Company issued a number of loans for special purposes buildings such as churches (3), schools (1), and a government facility type structure (1). These and

certain other non-performing unsecured loans have negatively impacted the Company's cash flow and growth potential because of their size and the recent downturn in the economy.

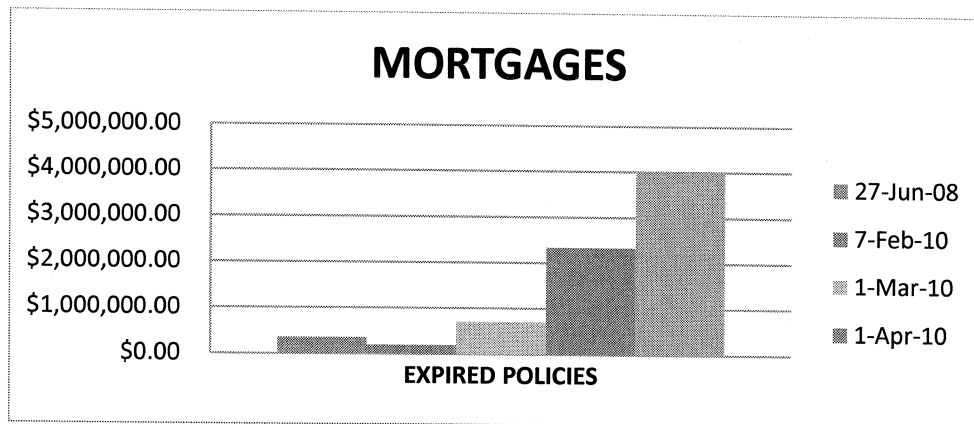
### Significant Overdue Loans

In discussions with Henley Richardson, Manager of Credit & Business Development, we found the following loan exposure:

1. Loan #1 USD\$644,000 (267 days overdue) – Collateral is a special use building;
2. Loan #2 USD\$2,042,000 (132 days overdue) – Touristic product (four (4) buildings);
3. Loan #3 USD\$2,688,000 – Finished special purpose building. Litigation issues.
4. Loan #4 USD\$417,000 (673 days overdue) –Special purpose building.
5. Loan #5 USD\$1,000,000 (455 days overdue) – Special purpose building;
6. Loan # 6 USD\$516,000 (152 days overdue) – Apartments;
7. Loan # 7 USD\$1,052,000 (117 days overdue) – Apartments;
8. Loan # 8 USD\$498,000 (193 days overdue) – Apartments;
9. Loan # 9 USD\$669,000 (132 days overdue) – Apartments;
10. Loan # 10 USD\$707,000 (166 days overdue) – Apartments;
11. Loan # 11 USD\$488,000 (195 days overdue) – Commercial property;
12. Loan # 12 USD\$456,000 (91 days overdue) – Apartments; and
13. Loan # 13 USD\$516,000 (268 days overdue) – Apartments.

The Company classified its delinquent loans into five (5) categories Pass, Special Mention, Substandard, Doubtful, and Loss. From a review of the Company's procedures manual and discussions with a senior member of the management team, use of the policy was not implemented and had it been implemented the provision determined would have been woefully inadequate. The primary reason was that significant valuation pledged on real estate projects did not reflect the downturn in the economy and resulted in loans appearing to be adequately secured when they were not.

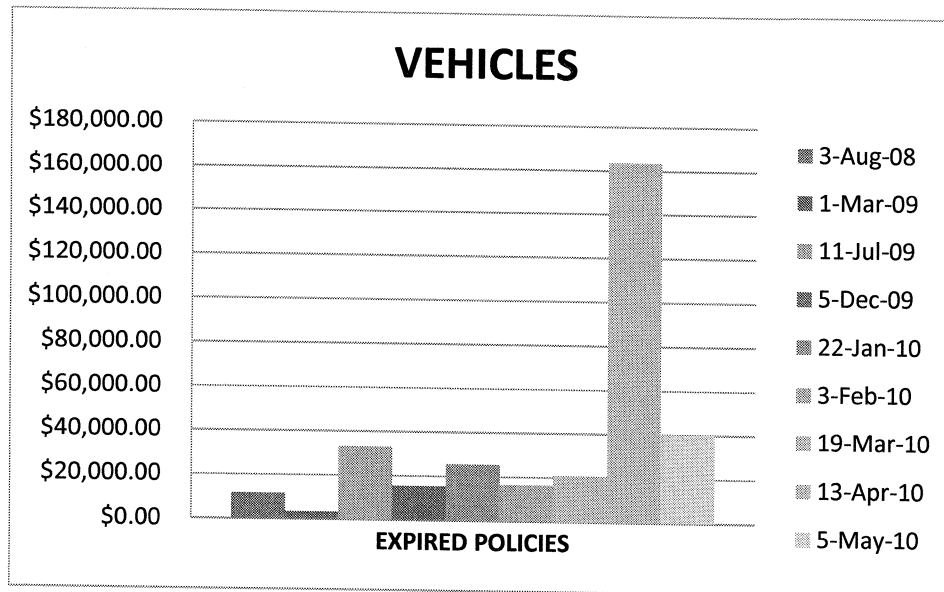
In addition to the problems with loans loss provisioning, from a review of the mortgages granted at the branch in Providenciales, for which the Company was the loss payee, we identified five (5) homeowners' insurance policies that had expired prior to the date of our appointment and an additional twenty (20) homeowners' insurance policies that expired subsequently.



The loan value of the above-mentioned mortgages total US\$7,541,820.06.

We have inquired about the cost of renewal premiums for most of the mortgages. Quotes received amounted to approximately US\$113,170

In addition we found instances where the insurance cover on eleven (11) motor vehicles with individual loan balances ranging from US\$2,200 to US\$30,700, had expired, some for over twelve (12) months. The Company as loss payee is exposed as to its collateral.



The loan value of the above-mentioned vehicles total US\$330,967.02.

## **8. ISSUES ARISING FROM OUR REVIEW OF THE COMPANY'S RECORDS**

### **8.1 LIQUIDITY AND INSOLVENCY**

Whether the Company was insolvent at the time of our appointment has been questioned by some. For the benefit of the readers of this report we have included various definitions of insolvency:

1. The inability to pay one's debts as they come due. Even though the total assets of an organization may exceed its total liabilities, the entity is insolvent if the assets cannot be converted into cash to meet the current obligations.  
(<http://www.investordictionary.com/definition/insolvency.aspx>);
2. The inability to pay one's debts as they fall due. Usually used to refer to the business, insolvency refers to the inability of a company to pay off its debts.  
(<http://en.wikipedia.org/wiki/Insolvency>);
3. The situation where the liabilities of a person or firm exceed its assets. In practice, however, insolvency is the situation where an entity cannot raise enough cash to meet its obligations, or to pay debts as they become due for payment. Properly called technical insolvency, it may occur even when the value of an entity's total assets exceeds its total liabilities. Mere insolvency does not afford enough ground for lenders to petition for involuntary bankruptcy of the borrower, or force a liquidation of his or her assets.  
(<http://www.businessdictionary.com/definition/insolvency.htm>);

4. Financial condition in which the total liabilities of an individual or enterprise exceed the total assets so that the claims of the creditors cannot be paid. There are essentially two approaches in determining insolvency: insolvency in the equity sense and under the balance-sheet approach. Insolvency in the equity sense denotes the inability of the debtor to pay his debts as they become due in the ordinary course of business. Insolvency under the balance-sheet approach means that the total liabilities of the debtor exceed his total assets.  
  
(<http://www.britannica.com/EBchecked/topic/289166/insolvency>).

Universally it is accepted that a company's inability to meet its obligations as they fall due denote the insolvent status of the entity.

We set out below details and findings of consultants and professionals engaged to assist the Company through its liquidity crisis.

As a result of the challenges faced by the Company, which included but was not limited to, deteriorating financial condition, liquidity issues, recurring net losses, and other issues, the Company's directors approached its shareholders to invest additional capital into the Company or to provide them with loans. Two (2) of the shareholders approached were the National Insurance Board ("NIB") and the Eastern Caribbean banks. Initially these shareholders refused to provide the Company with additional funding and requested the Company to address some of the issues stated in the management letter issued by PriceWaterhouseCoopers Ltd. The Company was advised to hire a merchant bank advisor to conduct a review of the Company.



## **GRANT THORNTON REPORT**

In January 2010, the Company retained Grant Thornton Specialist Services (Cayman) Ltd. (“Grant Thornton”), to provide an independent and urgent assessment of its financial and regulatory compliance position and its strategic intent to seek the Company’s survival as a banking institution. This resulted in Grant Thornton issuing a report dated 20 January 2010 (“Report”). In that Report, Grant Thornton detailed its findings and reported on the feasibility of the Company achieving its strategic intent, in light of its financial and operational position and identified the key tasks that were necessary for it to achieve its objective. In that Report, Grant Thornton stated that if the Company intended to have a long term future it needed to:

1. obtain additional financing to provide liquidity and an acceptable capital adequacy ratio. To count as capital and to provide an acceptable cost of funds for the long term, such investment had to be equity in nature; and
2. improve its management of its non-performing loans and its lending practices, and to limit future incidences of net losses to commercially substantial levels.

In their report, Grant Thornton stated that the Company had three (3) immediate and very real threats to its continued operation and stated that anyone of them could force the Company to suspend or terminate its operations. The three (3) immediate and very real threats they listed were:

1. Regulatory intervention;
2. Liquidity crisis; and
3. Insolvency.

As at the date of our appointment, the Company had not been able to attract new capital and the loan portfolio has continued to deteriorate resulting in increased losses for the Company.

Ironically, as indicated in Grant Thornton's Report the first immediate threat resulted in the Company being placed into provisional liquidation.

The report stated that "If the Bank's position deteriorates, or the FSC loses confidence in the Bank's ability to turn things around, an escalation to a more comprehensive form of intervention seems inevitable." Unfortunately both factors occurred, that is the Company's position continued to deteriorate with its equity (unaudited) decreasing from US\$10,509,101 as at 31 December 2009 to US\$6,863,204 as at 9 April 2010, after incurring loss of US\$3,645,879 and the FSC lost confidence in the Company's ability to improve its liquidity issues and operational problems.

## **FSC'S EXAMINATIONS**

In the course of executing its duties as a regulatory body, the FSC conducted annual reviews of the Company's operation and became concerned about the Company's financial position and regulatory compliance with the Banking Ordinance 1998. The FSC communicated its concerns to the Company. In a letter dated 1, January 2010 issued by the FSC to the Company it stated that in its opinion the Company:

- i. had contravened or was in contravention of Section 37 Financial Services Commission Ordinance 2007, a financial services Ordinance or the Code;
- ii. was carrying on or was likely to carry on business in a manner detrimental to the public interest or to the interest of any of its customers or creditors. Section 33 (1) (a) of the Financial Services Commission Ordinance.

In light of this, with immediate effect until further notified, the FSC issued the directives to the Company under Section 37 (1) (b) of the Financial Services Commission Ordinance 2007, referred to as the Asset Directive. The Asset Directive prohibited the Company from:

- i. providing a security interest over any of the assets owned by the Company, without the FSC's prior written consent;
- ii. disposing of any of the assets owned the Company, without the FSC's prior written consent; and
- iii. making any additional fixed assets purchases and/or investment (other than liquid and marketable securities with remaining maturities not exceeding six (6) months), without the FSC's prior written consent.

In two (2) other letters dated the same date, 1 January 2010, the FSC issued the following directives, referred to as the Credit Directive and Reporting Directives, as set out below:

**Credit Directive**

- i. The Company should make no new loan commitments to or guarantees on behalf of customers or employees without the FSC's prior written consent;
- ii. The Company should cancel all undrawn commitments to lend to or guarantee on behalf of customers or employees (other than personal overdrafts for existing customers currently operating within the agreed terms and conditions and not exceeding US\$10,000); and
- iii. The Company should not release any security interest it held, without the FSC's prior written consent.

**Reporting Directive**

The directive stated that the Company should, within five (5) working days of each calendar month end, provide the FSC with the following, recording the position as at the end of the previous calendar month:

- i. The Company's Management Account (including Balance Sheet and Profit and Loss Statement);
- ii. The Company's Aged Listing of Loans and Advances (inclusive of overdrafts);  
and
- iii. The Company's Payroll Listing by branch.

In its petition, the FSC stated that it was entitled to take enforcement action against the Company if it was of the opinion that the Company:

- i. Was carrying on, or was likely to carry on, business in a manner detrimental to the public interest or to the interest of any of its customers or creditors; and/or
- ii. Had failed to comply with a directive given to it by the Petitioner; and/or
- iii. was likely to become insolvent; and/or
- iv. Had contravened or was in contravention of the Banking Ordinance and its Regulations.

The final result was that the FSC did petition for the winding up.

## **OTHER ISSUES**

The Company continued to face serious liquidity problems late in 2009 due to its failure to attract new depositors or raise new capital.

As a result of the liquidity problems, the Company entered into negotiations with the Eastern Caribbean Banks and was promised a line of credit of USD\$3,500,000. However, these funds did not materialize.

Additionally, new accounts were not being opened at the Company.

The NIB was also approached and responded by purchasing assets for \$1.75 Million from the company and making a debenture loan of \$5.5 Million which was secured by a fixed and floating charge over the Company's assets.

Major cash movements from December 2009 –March 2010 was as follows:

New Cash received:

➤ NIB -	USD\$5,500,000
➤ NIB -	USD\$1,750,000
Total -	USD\$7,250,000

Major Withdrawals:

➤ A Government Authority -	USD\$2,000,000
➤ A public company -	USD\$1,200,000
➤ A former director-	USD\$1,700,000
Total -	USD\$4,900,000

## 8.2 RESTRICTED ASSETS

From a review of the Company's records and discussions with the Company's management, a substantial portion of the Company's assets are restricted. A summary of the Company's restricted assets are listed below.

### *Shareholder*

US\$7,300,000 of the Company's Government Bonds and Treasury Bills serve as collateral for a deposit by a shareholder bank.

### *NIB*

In 2009 the Company was in dire need of cash to continue its operations. As a result of this, the Company requested assistance from one of its shareholders, namely NIB. This resulted in the NIB issuing a cheque dated 21 December 2010 to the Company in the amount of US\$7,250,000. The cheque represented the following:

1. US\$1,750,000 for the purchase of US\$1,500,000 of the Company's then US\$6,500,000 TCI Government Non-Callable Bonds 2006-2021, with interest at 8% per annum; and
2. US\$5,500,000 being a demand loan, with an annual interest rate of seven and one-half percent (7.5%).

As regards item 2 above, the Company signed a Facility Letter on 17 December 2009. This resulted in the Company charging to the Lender, NIB, by way of security:

1. by way of fixed charge, 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;
2. by way of fixed charge, all of the plant, equipment, machinery, and chattels;
3. by way of fixed charge, all the goodwill and uncalled capital for the time being of the Company;
4. by way of fixed charge, all book debts and other debts now and in future due or owing to the Company;
5. by way of fixed charge, all intellectual property rights, choses in action and claims now and in the future belonging to the Company;
6. by way of floating charge, all the Company's present and future undertaking and assets, whatever and wherever, including (without limitation) all other property and assets not subject to a fixed charge under this debenture.

Subsequent to our appointment, NIB formally notified us that our appointment crystallized their loan and they demanded payment of the same. If they are correct in

their assertion, US\$5,500,000 of the Company's assets is restricted. A copy of the said debenture is contained as **ASK/MEM IV**.

From an analysis of the above-mentioned, at least US\$12,800,000 of the Company's assets is restricted.

### **8.3 Banker's Association and Clearing Banks**

We were invited to attend a meeting with the Banker's Association and Mr. Kevin Higgins of the FSC on April 12, 2010 at 8:30 am to discuss the closure of the Company and its impact on other clearing banks. We were advised that the Company, although present at the prior clearing meeting, had not paid its settlement to the respective banks for April 8, 2010 and that the clearing for April 9, 2010, which was to take place on April 12, 2010, would also be outstanding from the Company. Having just been appointed at 4:30 pm on April 9, 2010, we asked for additional time to analyze the Company's affairs and to consult with our attorney before expressing a position on how the clearing matters would be resolved. It was suggested by the Banker's Association that the best alternative in the circumstance would be to charge back cheques that form a part of the outstanding clearing for April 8, 2010 and that cheques should not be swapped with the Company for April 9, 2010 until further notice.

On April 28, 2010, we contacted all clearing banks, namely, FirstCaribbean International Bank, Royal Bank of Canada, Scotia Bank, and British Caribbean Bank Limited, and informed them that we were in a better position to meet with them as regards the outstanding clearing for cheques processed on April 9, 2010.



### **First Caribbean International Bank (“FCIB”)**

On April 29, 2010, we met with representatives of FCIB to exchange cheques that were processed on April 9, 2010 clearing as follows:

<b><i>Cheques presented on April 9, 2010</i></b>		
	<b><i>Owed to FCIB</i></b>	<b><i>Owed to TCIB</i></b>
<b><i>FCIB Cheque received from FCIB</i></b>	<b><i>10,000.00</i></b>	
<b><i>FCIB Cheques delivered to FCIB</i></b>		<b><i>299,498.56</i></b>
<b><i>Total due to TCIB</i></b>	<b><i>289,498.56</i></b>	

We were informed by FCIB representatives that FCIB cheques would be processed by them on a “collection” basis. We did not receive any of the Company’s cheques from FCIB. We were advised that the Company’s cheques were returned to the customers. We requested that we be provided with a listing of these cheques that were returned to the customers. To date we have not received this list. We also requested that the bank should contact the customers and request the return of them to the respective banks for delivery to us; however this has also not been done.

On May 3, 2010 we received a listing of FCIB cheques which were not honored due to customers issuing stop payments. Of the total cheques delivered to FCIB, as noted in the table above, total stop payments received amounted to USD \$200,324.20 among 16 customers. The largest amount is USD \$171,419.01. It is believed that these stop payments were all received by FCIB after April 9, 2010, which suggests that these customers all acted on the knowledge that the Company was under a provisional liquidation court order and that their funds would be frozen.

## **Royal Bank of Canada (“RBC”)**

On April 29, 2010, we met with a representative of RBC to exchange cheques that were processed on April 9, 2010 clearing as follows:

<b><i>Cheques presented on April 9, 2010</i></b>		
	<b><i>Owed to RBC</i></b>	<b><i>Owed to TCIB</i></b>
<b><i>TCIB Cheques received from RBC</i></b>	<b><i>21,567.42</i></b>	
<b><i>RBC Cheques delivered to RBC</i></b>		<b><i>547.25</i></b>
<b><i>Total due to RBC</i></b>	<b><i>21,567.42</i></b>	

We were informed by RBC that the RBC cheques would be processed on a “collection” basis. RBC advised that they had returned all Company cheques that had been processed on April 9, 2010 to their customers but would assist in retrieving these cheques.

On May 3, 2010 we received a listing of the Company cheques (6 in total) which had been returned to customers. This list was accompanied by three of the physical cheques that had been retrieved. RBC advised that they were still attempting to retrieve the remaining three (3) cheques totaling USD \$1,167.42. We were also advised that of these six (6) cheques, several customers of RBC had ordered stop payments on some of them. It is also believed that these stop payments request were received after April 9, 2010 leading us to conclude that customers did so after having knowledge of the Company’s provisional liquidation status.

### **Scotiabank (“Scotia”)**

On April 30, 2010, we met with representatives of Scotia to exchange cheques that were processed on April 9, 2010 clearing as follows:

<b><i>Cheques presented on April 9, 2010</i></b>		
	<b><i>Owed to Scotia</i></b>	<b><i>Owed to TCIB</i></b>
<b><i>TCIB Cheques received from Scotia</i></b>	-	
<b><i>Scotia Cheques delivered to Scotia</i></b>		<b><i>101,113.83</i></b>
<b><i>Total due to TCIB</i></b>	-	<b><i>101,113.83</i></b>

We were informed that cheques provided to Scotia would also be processed on a “collection” basis. Scotia advised that they had returned all of the Company’s cheques that had been processed on April 9, 2010 to their customers and that we would be provided with a listing no later than May 7, 2010. To date we have not received this listing, neither the originals nor copies of the cheques.

On May 6, 2010 we received a letter of same date advising us that thirteen (13) of the cheques delivered to Scotia totaling USD \$18,497.23 were not processed due to stop payment orders being placed against them.

### **British Caribbean Bank Limited (“BCB”)**

On April 29, 2010, we met with representatives of BCB to exchange cheques that were processed on April 9, 2010 clearing as follows:

<b><i>Cheques presented on April 9, 2010</i></b>		
	<b><i>Owed to BCB</i></b>	<b><i>Owed to TCIB</i></b>
<b><i>TCIB Cheques received from BCB</i></b>	<b><i>89,816.00</i></b>	
<b><i>BCB Cheques delivered to BCB</i></b>		<b><i>525.00</i></b>
<b><i>Total due to BCB</i></b>	-	<b><i>89,291.00</i></b>

There was a full exchange of cheques between BCB and the Company and to date we have not yet been advised of any stop payment requests from BCB's customers.

By acting on stop payment instructions, to the banks may have assisted in preferential distributions of the company's assets to those customers outside of the liquidation process. In our opinion stop payments should not have been allowed under any circumstance.

By returning cheques to customers, the settlement with clearing banks has been one-sided and does not result in fair treatment to all customers involved. This has also made it difficult to resolve outstanding settlements with some banks because we have not been able to determine which customers would have contacted the drawer of those cheques for payment. If we were to make payments on the outstanding settlements, there is the risk that customers' may be paid twice.

As a result of the apparent inequitable distribution we intend to seek the direction of the Court on these matters. Until a determination has been made as to how these issues regarding settlement clearing will be treated, all cheques that are included in the outstanding clearings will not be honored.

As part of the usual process in liquidations we began notifying banks of our appointment as provisional liquidators and that as of April 9, 2010 no movements on accounts were to take place unless directed by ourselves. We contacted Bank of America and informed them of the liquidation of the Company. As at April 9, 2010,

the Company had outstanding Bank of America drafts totaling USD \$467,226.17 and

outstanding wires of USD \$545,742.06. Outstanding local managers' cheques total USD \$533,033.89. These outstanding items cover the period July 2008 to April 9, 2010. After the removal of stale dated cheques and drafts totaling US \$17,140.61, the total potential payout for the Company for outstanding wires, drafts and managers' cheques amounts to USD \$1,528,861.51

We have received queries from customers regarding the honoring of these outstanding items. We are reviewing our position on these matters.

#### **8.4 Proceeds of Crime Order**

By an Order of The Supreme Court of Turks and Caicos Islands dated July 10, 2008, it was ordered that the assets of David Smith and Tracey Smith not be removed, disposed of, dealt with or diminish the value of any of his/her assets in Turks and Caicos Islands. This prohibition applied to assets that are held at the Company. These funds totaling US \$6,863,871 are held on the Company's balance sheet. The legal status of the balance in the event of a formal liquidation will have to be determined by the courts as regards to its ranking for distribution.

## **9 RELATED PARTY BALANCES**

As at the date of our appointment, some of the Company's shareholders, namely the Eastern Caribbean banks and NIB, held deposits with the Company or amounting to US\$38,429,104 fifty percent (50%) of its total liabilities. The deposit balances held with the Company are listed below:

1. US\$7,668,791 - St Kitts Nevis
2. US\$2,826,249 - ABI Bank, Antigua;
3. US\$2,269,859 - National Bank of Dominica;
4. US\$1,118,491 - The Bank of Nevis;
5. US\$1,644,907 - Grenada Cooperative Bank; and
  - a. US\$78,702 - Accrued interest owed to the above-mentioned banks
6. US\$17,313,064 - National Insurance Board (Regular deposit accounts);
7. US\$5,509,041 - National Insurance Board (Debenture).

From a review of the Company's quarterly reports starting from 30 June 2008, the above-mentioned entity deposits were consistently high. The deposits held with the Company on a quarterly basis, starting from 30 June 2008 to 31 March 2010, are listed below:

## Related Party Deposits

	30-Jun-08 US \$	30-Sep-08 US \$	31-Dec-08 US \$	31-Mar-09 US \$	30-Jun-09 US \$	30-Sep-09 US \$	31-Dec-09 US \$	31-Mar-10 US \$
Eastern Caribbean Banks	40,160,216	46,139,780	47,835,319	49,370,332	45,484,199	15,482,343	15,718,351	15,578,771
National Insurance Board	10,403,766	10,470,073	14,768,889	14,972,143	15,021,570	17,262,806	17,654,398	22,899,190
Total Related Party Deposits	50,563,982	56,609,853	62,604,208	64,342,475	60,505,769	32,745,149	33,372,749	38,477,961
Total Deposits	122,620,418	132,598,881	132,340,061	136,069,494	111,915,194	85,708,507	83,714,684	77,379,579
Related Party Deposits as a %age	41%	43%	47%	47%	54%	38%	40%	50%

In July 2009, the Company decided to net off the investments in the Eastern Caribbean banks with the corresponding deposit liabilities to these banks.

We were advised by the Company's Chief Financial Officer that the Company's auditors, PriceWaterhouseCoopers, agreed with its decision. As a result of this, the Company's assets and liabilities were reduced dramatically by approximately US\$25,000,000. Nevertheless, after the net off, the deposit of the Eastern Caribbean banks and NIB still comprised a large portion of the Company's liabilities.

It should also be noted, as indicated in the FSC's petition, five (5) of the Company's Board of Directors (former & current) had credit facilities with the Company, in accounts not clearly identified as related party accounts. The Petitioner also stated that the Company could not confirm that in all instances the Board of Directors had been made aware of, or approved the facilities, which was a requirement of the Company's own policies and procedures. The balance in question amounted to US\$3,842,494 and US\$3,718,330 as at 30 June 2009 and 9 April 2010, respectively. It should be noted that of these five (5) loans issued to these related parties, only three (3) of them held deposits with the Company. Of the three (3) deposits only one (1) of them exceeded the outstanding loan balance, with the other two (2) balances amounting to twenty-seven percent (27%) and fifty-eight percent (58%) of the outstanding loan balance as at 9 April 2010.



## **10 PROPOSED INVESTORS**

Being mindful of Justice Williams' instructions that we should make every effort to keep the Company's operations ongoing we have been having meetings with a number of potential investors.

We met with a number of persons who expressed an interest in purchasing the entire Company, the Company's loan portfolio, or other aspects of the Company. To assist with this process we required interested parties to sign confidentiality agreements. As a result of our meetings, we received offers from the following individuals or entities as detailed below:

1. Temple Financial Group Limited – David Knipe;
2. ECIC Holdings Ltd. – Eastern Caribbean Banks, Milton Lawrence;
3. Altima Limited – Professor Gilbert Morris
4. Investor Group – David Kasoy & Carl Biden

The results of these efforts will be presented to the courts separately.

Since the Company's equity has been significantly eroded and is almost non-existent any new investment would at least have to replace the original capital of USD 12,000,000. In addition deposits of at least USD 15,000,000 would have to be locked in for a minimum of two years. The buy-in of NIB is imperative to the closing of any of the proposals because of its fixed and floating debenture on the Company's assets.

## **11 SUMMARY OF FINDINGS**

From a review of the Company's records and our investigations thus far, the Company was in a distressed position for at least the past eighteen months up to the date of liquidation. Significant findings are as follows:

- A substantial portion of the Company's interest income was uncollectible, due to a large portfolio of delinquent and non-performing loans
- The Company had a serious liquidity problem from as early as February 2008
- The Company's Shareholders provided a substantial portion of its liquidity, due to large deposits placed with the Company
- The Company in the first two years of its operations had made a small number of large loans, many of which are now non-performing due to the downturn in the economy.

The loan provision was based on outstanding loan balances after deducting the value of secured collateral. The problem encountered was that a lot of the valuations of securities were determined at the height of the real estate bonanza and the current values of such securities are now down by at least 40% of those values. A realistic estimate would be to take a further 10% to arrive at a 50% write down to take account of legal and other closing costs in the event of disposal of the properties. After discussions with a senior member of management a 50% write down on security values would result in a further provision of \$4.4 Million for non-performing loans thereby reducing equity by this amount.

- The Company pledged various assets for specific deposit balances. This practice limits the Company's growth ability and its ability to turn investments into cash for liquidity purposes. This hand cuffing of assets could only be alleviated by the injection of capital or an increase in deposit balances.
- The Company has on its books a receivable balance of \$2,440,000 earning 5% interest from one of its Eastern Caribbean affiliates. There is also a corresponding credit amount for which no interest is paid. This transaction was not established by the movement of any cash and the recovery of the assets is subject to further investigation by ourselves.
- The Company has experienced recurring losses over the last twenty-one (21) months, from August 2008 to 9 April 2010, the date of our appointment. The audited net profit/(net loss) are listed below, along with the unaudited loss as at 9 April 2010:
  - 30 June 2008- US\$449,944
  - 30 June 2009- (US\$1,441,787); and
  - 9 April 2010- (US\$2,085,920) – (not adjusted for addition loan loss provisions)
- The Company appears to have overspent on fixed assets, particularly leasehold improvements which cannot be recovered in the event of a full liquidation.
- Accounts frozen by court order in the amount of \$6,863,871 may have to be taken into account in determining the priority payment of creditors and the direction of the court may be required in this regard.

- NIB's fixed and floating charge over the assets of the company poses a problem to any potential investor in that its priority over assets could be deemed a non-starter in negotiations. Its notification to us that its claim crystallized on the appointment of ourselves may become a matter for the court to decide.
  
- A review of the quarterly deposit positions placed by related parties (excluding directors) revealed that from 31, March 2009 to 31, March 2010 the related party deposits had decreased from \$64.3Million to \$38.4Million on a decrease of 40%. Total deposits for the same period decreased from \$136.1 Million to \$77.4 Million or 43%. If the NIB had not put in \$5.5 Million in the first quarter of 2010 the decrease in related party deposits would have been 49% instead 40% and 47% instead of 43% for total deposits.

The deposits by non-related party customers (including directors) decreased from \$72 Million to \$38.9 Million in a twelve month period ending 31, March 2010 and represent a 46% loss in such balances.

It is clear that the falling non-related party deposit balances must have been due to a loss in confidence by the public during the last twelve months of the life of the Company.

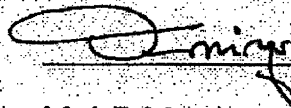
These findings are preliminary and not exhaustive but they show the Company was continuing to lose money, customers and depositors. Significant provisioning for bad loans that was needed was not being captured because too much emphasis was being

We have attached a Receipts and Payments Account for the period 9, April 2010 – 31, May 2010 (See ASK/MEM I).

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



Anthony S. Kikivarakis  
Provisional Liquidator



Mark E. Munnings  
Provisional Liquidator

## **APPENDIX I STATEMENT OF RECEIPT AND PAYMENTS**

STATEMENT OF  
RECEIPTS AND PAYMENTS ACCOUNT  
FOR THE PERIOD APRIL 9, 2010 TO MAY 31, 2010

### **RECEIPTS**

Loan Receipts - TCI Bank Customers	484,124	484,124
<i>Interest Income</i>		
Fixed Deposit	33	
Fiduciary Funds	386,544	
Less: Fiduciary Funds Paid Out	<u>(77,452)</u>	<u>309,125</u>
		793,249

### **PAYMENTS**

Salaries	160,154	
Rent		
Bank	21,438	
Liquidators	<u>16,667</u>	38,105
Security		12,172
Cost of removal of records/furniture, etc.( North Caicos/Grand Turk)		8,791
Utilities		8,591
Communication expenses		7,791
Demand Letter Delivery		4,180
Vehicle Maintenance		1,452
Cleaning Services		1,425
Bank Fees		1,309
Computer Maintenance		1,295
Advertising		715
Petty Cash	<u>300</u>	<u>246,279</u>
Excess of Receipts over Payments		546,970

### **Cash Transferred:**

Cash from Vault Providenciales	357,693	
Deposits From Grand Turk	624,450	<u>982,143</u>

### **AVAILABLE CASH BALANCE**

1,529,113

### **Cash consists of:**

Operating Account	59,080
General Account	970,000
Fixed Deposit	<u>500,033</u>
	<u><u>1,529,113</u></u>

## **APPENDIX II      SHAREHOLDINGS**

Issued and fully paid:

Class A	2,000,000 ordinary shares of \$1	NIB
Class B	1,807,500 ordinary shares of \$1	Ordinary Shareholder
Class C	1,279,000 ordinary shares of \$1	Local Companies Residents/Belongers
Class D	1,444,000 ordinary shares of \$1	Belongers
Class E	6,000,000 ordinary shares of \$1	Eastern Caribbean Banks

## **APPENDIX III – COURT ORDER**



Supreme Court Of  
The Turks and Caicos



## **APPENDIX IV – DEBENTURE**



Debenture.pdf