

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)

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

December 31, 2011

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

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

**THIRD REPORT OF THE JOINT OFFICIAL LIQUIDATORS**

**1. INTRODUCTION**

**1.1 Background**

1.1...1 We Messrs. Anthony S. Kikivarakis and Mark E. Munnings, Chartered Accountants and Partners in the accounting firm of Deloitte & Touche Bahamas, as Joint Official Liquidators for TCI Bank Limited (In Liquidation under the Supervision of The Supreme Court of the Turks and Caicos Islands) (“the Company”), hereby submit our third report to The Supreme Court of the Turks and Caicos Islands (the “Supreme Court”), The Turks and Caicos Islands Financial Services Commission (the “FSC”), shareholders, and creditors. As Joint Official Liquidators, our powers are set out in section 107 of the Companies Ordinance (CAP 122), which is exercisable without the sanction or intervention of the Court, pursuant to the Order of Mr. Justice Richard Williams dated October 29, 2010. In our said position as officers of the Supreme Court, we hereby submit our third report as the Company’s Joint Official Liquidators, which covers the period July 1, 2011, to December 31, 2011.

**1.2 Sources of Information**

1.2...1 Specific details of the sources of information used and relied upon are given where referred to in this report.

### **1.3 Limitation**

1.3...1 During the reporting period we have relied on the integrity of the information and documents contained in the Company's records, supplied by the Company's directors, former employees, and other interested parties. Although we have sought to cross check information from different sources, to confirm its accuracy, we have not independently verified all of the information and documentation upon which we have relied during the course of the reporting period; neither has the Company's financial records, as at December 31, 2011, been subject to an audit.

1.3...2 As the Company's Joint Official Liquidators, we report solely on factual matters. While we believe all of the information in this report to be true and accurate, we reserve the right to amend this report should additional information come to our attention.

### **1.4 Currency**

1.4...1 The Company's activities are conducted in United States Dollars (US\$) and therefore all references to currency is in US\$, unless otherwise stated.

### **1.5 Further Steps to be Taken as Stated in Our Second Report**

1.5...1 In our Second Report we stated that, in addition to the normal daily liquidation activities, we intended to perform the following tasks:

- (a) Aggressively pursue the recovery and/or payment of the Company's loans – Sections 3.1 and 4.2;
- (b) Convert the Company's other non-cash assets into cash – Sections 3.2, 4.3, and 4.4;

- (c) Relocate to less costly premises in Providenciales, Turks and Caicos Islands – Sections 3.3;
- (d) Continue the investigation into NIB's claim against the Company – Section 3.4;
- (e) Continue to build up the cash balances through the collection of loan payments and refinancing proceeds – Section 3.1;
- (f) Seek approval from the Court, by January 31, 2012, to pay a first dividend distribution to depositors and other unsecured creditors whose claims are admitted – Section 3.5; and
- (g) Hold a creditors' meeting, prior to the dividend distribution date – Section 3.5.

## **1.6 Summary**

1.6...1 During the reporting period we focused our attention on securing the Company's assets and reducing the Company's expenses, in an effort to ensure that creditors receive the best dividend distribution possible, commencing with a first dividend payment in 2012. In this regard, most of our time was spent aggressively pursuing the recovery and/or payment of the Company's loans, investigating the debenture loan issued to the Company by the National Insurance Board of the Turks and Caicos Islands (the "NIB") and the circumstances surrounding the same, and relocating the Company's main office in Providenciales. The results of our efforts, along with other tasks performed during the reporting period, exercising our duties as contained in the Order of our appointment dated October 29, 2010, are contained in the body of this report.

## **2 OBJECTIVE OF THIS REPORT**

2.1. The objective of this report is to provide parties interested in the Company's liquidation with the steps that have been taken since our second report as at June 30, 2011, and the progress made since that date. Topics included in this report are dealt with in the following sections:

3. Steps Taken Since our Last Report;
4. Other Matters;
5. Further Steps to be Taken; and
6. Conclusion.

### **3 STEPS TAKEN SINCE OUR LAST REPORT**

#### **3.1. Aggressive Pursuit of the Company's Loans**

3.1.1. As the Company's Joint Official Liquidators, we have collected US\$17,553,735 of the Company's loans as at the date of this report and the Company's cash balance as at December 31, 2011, is US\$18,400,193, resulting from the aggressive pursuit and collection of the Company's loan balances from what was primarily a distressed loan portfolio. During the reporting period fifty-one (51) loan accounts were paid off and/or closed out. On the dates the said loans were paid off, their payoff balances amounted to US\$2,354,904.

3.1.2. The Company's cash is maintained at two (2) financial institutions and increased by US\$3,748,107, after expenses, for the six (6) month period July 1, 2011, to December 31, 2011. US\$339,126 of the said balance is held in a fiduciary capacity.

#### **3.2. Conversion of the Company's Non-Cash Assets Into Cash**

3.2.1. As indicated in our previous report, in an effort to maximize the conversion of the Company's fixed assets into cash, we commenced negotiations with the Office of the Attorney General of the Turks and Caicos Islands ("the Attorney General"). The Attorney General had expressed an interest in purchasing most of the Company's fixed assets, leasehold improvements, and other assets, at its previous premises, located at Butterfield Square, Providenciales, Turks and Caicos Islands, as they intended to relocate a number of government departments to this location. In light of this, we held numerous meetings and telephone conferences with the Attorney General himself and representatives

from the Attorney General, in an attempt to finalize the sale of some of the Company's assets to the Attorney General. Nevertheless, late in the negotiation stage, in the autumn of 2011, we were advised by the Attorney General that they were no longer interested in entering into an agreement to purchase the said assets. During the reporting period we collected US\$18,540 from the sale of fixed assets and supplies.

### **3.3. Relocation of the Company's Premises to F203 Regent Village**

3.3.1. As the Company's Official Liquidators, we deemed it necessary to relocate the Company's premises to a building that better met the Company's liquidation needs and would result in costs savings, therefore ultimately benefiting all creditors. Consequently, the lease agreement with Butterfield Gold Ltd. has been terminated. In this regard, we viewed seven (7) premises and liaised with at least five (5) landlords or their agents, in an attempt to find a suitable location. This process also included reviewing lease agreements, along with our agents and attorneys, during the decision making process. After carefully considering the options available to us, we decided that the premises located F203 Regent Village best met the Company's needs and as such was chosen as the Company's present location. As a result of the Company's relocation to F203 Regent Village, the Company's monthly expenses, which include lease payments, security costs, and utility charges, have been reduced by approximately US\$25,000. It should be noted that we have reduced our staff compliment on the Turks and Caicos Islands to four (4) individuals, three (3) of whom reside in Providenciales.



### **3.4. Investigation of NIB's Claim Against the Company**

3.4.1. From a review of the debenture loan ("the Debenture") issued to the Company on December 28, 2009, by the NIB, in the amount of US\$5,500,000, we determined that further investigation was deemed necessary to satisfy ourselves that the Debenture was an arms-length transaction, given the timing of the transaction, certain common directorships between the Company and the NIB, and the securitization of all of the assets of the Company through a fixed and floating debenture. In this regard, we interviewed eighteen (18) individuals, which included the examination of officers, directors, the Company's management personnel, representatives from the NIB, and a representative from the FSC. In response to the same, we were able to conduct interviews and/or obtain depositions from thirteen (13) of the eighteen (18) individuals as at the date of this report.

3.4.2. As at December 31, 2011, we have a further five (5) individuals to schedule or reschedule for the requested interviews. Of the remaining five (5) individuals who we have requested to attend interviews, three (3) of them are representatives from the NIB, whom we had to reschedule after previously scheduling to meet with them on December 6, 2011, one (1) is the Company's former Managing Director, and the other is a former director. We intend to conduct these interviews subsequent to the date of this report and are awaiting the sign off of the transcripts produced from those persons we have already interviewed.

3.4.3. As at the date of this report, from the investigations carried out thus far, we have not yet concluded on the status of the Debenture. In this regard, we intend to file a Summons seeking a short extension from the Court to complete our investigation of this matter and the legal opinion from a Queen's Counsel, as the determination of this matter is of fundamental importance to all creditors. As previously stated, if the NIB's claim is allowed, US\$5,500,000, plus interest, of the Company's assets will be regarded as restricted, thus further reducing the possible dividends to be paid to the Company's other creditors. The resolution of this matter is therefore of paramount importance, as it may impact the amount of any additional distribution to creditors.

### **3.5. Proof of Debt**

3.5.1. As the Company's Joint Official Liquidators, we issued a notice to the local gazettes on June 8, 2011, to be placed in their next issue. The said notice was issued to the Company's creditors, requesting them to send us their names and addresses, and particulars of their debts or claims, as at April 9, 2010, and the names and addresses of their attorneys (if any), on or before August 15, 2011. In this regard, we prepared and issued a letter to the Company's clients dated June 8, 2011, along with a copy of the Proof of Debt – General Form, to assist them with filing their claim in the Company's liquidation. Copies of the said letter, notice, and Proof of Debt – General Form were placed on the Company's website and were available at the Company's premises.

- 3.5.2. As at August 15, 2011, approximately seven hundred (700) of the Company's deposit account holders had filed Proof of Debt – General Forms with the Company. The claims submitted were in excess of US\$20,000,000. However, the Company's liabilities, as at April 9, 2010, amounted to US\$78,919,419, which included the Debenture, in the amount of US\$5,509,041.
- 3.5.3. As indicated in our previous report, some of the Company's clients are entitled to a legal right of set-off of their loan and deposit balances. For this provision to apply, the applicant must show that the cross-claims are mutual or commensurable. "Mutual" means that the claims must exist between the same parties in the same right at the time the company went into liquidation. As a result, certain credit and deposit balances of loan customers, who satisfy the test of mutuality, will have those amounts applied against their outstanding loan balance as at April 9, 2010, by way of set off. In this regard, some of the Company's depositors may or may not have filed Proof of Debt – General Forms.
- 3.5.4. From a review of the Company's records, the dollar value of loans with the possible right of set-off amounts to US\$2,846,000. Consequently, the said deposit balances will be applied to their loan accounts, resulting in a one hundred percent (100%) recovery of their deposits and credit balances by way of set off, in accordance with the law. We continue to review each case individually, to apply the right of set-off where allowed by Rule 4.90 of the English Insolvency Rules of 1986.

- 3.5.5. To ensure that the Company's creditors are allowed to participate in dividend distributions, we will continue to encourage creditors to submit their Proof of Debt – General Forms and will accept such forms that are submitted subsequent to the August 15, 2011, deadline.
- 3.5.6. Due to the complexity of this process, which includes but is not limited to, reviewing Proof of Debt – General Forms, comparing amounts claimed against the Company's records and reconciling the differences where possible, accepting or rejecting the claims, reviewing the right of set-off for creditors to which it applies, and the small number of clients who have filed Proof of Debt – General Forms, we will not be able to seek approval from the Court by January 31, 2012, to pay a first dividend distribution to depositors and other unsecured creditors whose proofs of claim are admitted. Nevertheless, creditors will be duly notified of the first interim dividend distribution.
- 3.5.7. It should be noted that the Company's shareholders will not participate in the first dividend distribution, and are not expected to participate in any future dividend distributions, because the Company's equity had been completely eroded prior to our appointment as Provisional Liquidators on April 9, 2010.
- 3.5.8. From a review of the cash on hand and the expected collections from loan payment, we intend to distribute a dividend of twenty cents (\$0.20) on the dollar (\$1.00).

## **4 OTHER MATTERS**

### **4.1. General**

4.1.1. We continue to manage the Company, which includes, but is not limited to the following:

- i. assisting customers in refinancing and restructuring their loan obligations;
- ii. meeting with bankers and/or holding telephone conferences with them, to discuss their interest in refinancing certain customers' loan balances;
- iii. instructing our attorneys to assist with legal matters as it relates to the Company's liquidation and being advised by them on the same;
- iv. meeting with individuals to discuss their accounts and aggressively following up on loan collections;
- v. preparing and issuing our Second Report;
- vi. preparing affidavits and reports for and attending Court on various matters;
- vii. performing other operational tasks as deemed necessary in the Company's liquidation process;
- viii. paying the Company and liquidation monthly expenses;
- ix. visiting the offices at various times to direct and instruct staff on various matters; and
- x. reviewing and issuing letters and documents, in response to Production and Customer Information Orders, issued by the Special Investigations and Prosecutions Team ("SIPT").

## **4.2. Loans**

4.2.1. The Company's largest asset is its loan portfolio and therefore most of our efforts have been focused on realizing the components of this group. Shortly after the Company was opened, it made a number of large real estate loans, amongst others for the construction of churches, schools, a police barracks, apartments, small resorts, a tourist attraction complex, convenience shop, retail spaces, and an entertainment complex. For various reasons; the main cited being the downturn in the economy; many of the Company's loan customers discontinued making regular monthly or any loan payments, which resulted in the Company having liquidity issues. Our focus has therefore been the aggressive pursuit of loan balances, to maximize the return to creditors.

4.2.2. In our efforts to collect the outstanding loan balances we performed numerous tasks, which are generally summarized below:

- i. liaised with loan customers and/or their representatives, via email and telephone, and in person to discuss their loan accounts with the objective of satisfying the same;
- ii. reviewed customer loan files and account balances, to assist us with negotiating settlement balances with them;
- iii. prepared and issued letters to financial institutions, to assist clients with refinancing their loans;
- iv. executed documents to assist customers with refinancing their loans and/or releasing the Company's charge over securities held for the said loans; and
- v. issued demand letters to delinquent loan customers.

4.2.3. As a result of our efforts mentioned in 4.2.2. fifty-one (51) loan accounts were paid off and or closed out during the reporting period and their payoff balances amounted to US\$2,354,904. In total we collected US\$4,362,335 from outstanding loans.

4.2.4. In spite of those efforts, a large number of clients remain delinquent. As at the date of this report, the balance of the top twenty (20) significant overdue loans and overdrafts increased by US\$2,012,000, and stands at approximately US\$22,970,000 as at December 31, 2011. A list of the top twenty (20) accounts is produced below.

Number of Loans	Description	Pay-off Balance	Days Overdue
		As at 31-Dec-11	As at 31-Dec-11
Loan #1	Special purpose building	\$ 805,000	896
Loan #2	Special purpose building	865,000	30
Loan #3	Special purpose building . Litigation issues	3,621,000	639
Loan #4	Special purpose building	740,000	551
Loan #5	Special purpose building	1,892,000	1,084
Loan #6	Apartments	678,000	1,026
Loan #7	Apartments	1,268,000	715
Loan #8	Touristic Product	646,000	822
Loan #9	Apartments	763,000	490
Loan #10	Apartments	839,000	795
Loan #11	Special purpose building	667,000	52
Loan #12	Commercial	643,000	1,039
Loan #13	Commercial	677,000	674
Loan #14	Touristic product-overdraft facility	1,114,000	overdraft facility
Loan #15	Apartments	853,000	1,112
Loan #16	Apartments	1,576,000	399
Loan #17	Vacant Land	1,515,000	437
Loan #18	Syndicated Loan	1,337,000	609
Loan #19	Commercial	1,270,000	608
Loan #20	Special Purpose Building	1,201,000	600
Total balance as at December 31, 2011		\$ 22,970,000	

4.2.5. Five (5) of the accounts listed above, whose pay-off balance as at December 31, 2011, amounted to US\$3,592,000 of the US\$22,970,000, were not included in the top nineteen (19) significant overdue loans and overdrafts accounts in our previous report. These account holders have either stopped making payments on their accounts or have become delinquent in their monthly loan payments. It should be noted that the four (4) account holders that they replaced on the significant overdue loans and overdraft list, remain delinquent and their aggregate loan pay-off balance as at December 31, 2011, amounts to approximately US\$2,386,000, a US\$97,000 increase from our last report.

#### **4.3. Investments and Advances to Customers**

4.3.1. US\$7,668,791 of the US\$8,172,179 assets listed as Investments and Advances to Customers (“Investments”) are pledged as collateral for a loan/deposit from St. Kitts and Nevis Bank (a shareholder). The said loan/deposit is included within liabilities under “loans and advances from banks.” If this transaction is an arms-length transaction, these assets may not be fully collectible for the Company’s use and benefit of the general body of creditors. As the assets may have been pledged to a shareholder bank, when the Company may have been insolvent and was experiencing liquidity problems, we will investigate the circumstances surrounding the issuance of the pledge and seek to determine whether the pledged assets is reasonable and available to the shareholder bank or the general body of creditors.



4.3.2. For the period July 1, 2011, to December 31, 2011, we received US\$1,253,770 as interest and principal repayments on the TCI Government 8% Fixed Rate Non-callable 2006-2021 Bonds and the TCI Government 7.5% Fixed Rate Non-callable 2006-2021 Bonds (“the Bonds”). Of the said amount, US\$689,573 represents the Company’s unrestricted interest in the Bonds, which represents partial redemption of the Bonds and interest payments on the same. The Company serves as the Government of the Turks and Caicos Islands’ paying agent for interest payments on the said bonds. In this regard, US\$225,071 was paid to bond holders during the period and as at December 31, 2011, we hold US\$339,126 in a fiduciary capacity.

4.3.3. As at the date of this report, we have received redemption payments of US\$866,667 of the Bonds and the US\$206,858 accrued interest as at April 9, 2010. In light of this, the Company’s investments have been reduced by US\$1,073,525, as shown below.

<b>Investments and Advances to Customers</b>	<b>As at 9-Apr-10</b>	<b>Collected During the Liquidation</b>	<b>As at As at 31-Dec-11</b>
Unquoted investment in ECIC Ltd.	\$ 631,990	\$ -	\$ 631,990
Antigua Government Bond 8.5%	1,499,998	-	1,499,998
TCI Government Bond 7.5%	3,833,333	(666,667)	3,166,666
TCI Government Bond 8%	2,000,000	(200,000)	1,800,000
Accrued Interest	206,858	(206,858)	-
<b>Total</b>	<b>\$ 8,172,179</b>	<b>\$ (1,073,525)</b>	<b>\$ 7,098,654</b>

4.3.4. During the reporting period, we were informed of a redemption of the Bonds, which was discussed with representatives from the Turks and Caicos Islands Government and RBC Merchant Bank Limited. After carefully analyzing the offer to purchase the said bonds we felt that it was in the Company's and creditors' best interest to retain the said bonds and earn the higher rate of interest of 7.5% to 8.0%. Interest is being paid in a timely manner on those bonds.

#### **4.4. Other Assets**

4.4.1. During the period of this report, we were able to collect US\$8,246,418 of the Company's assets as follows:

- i. US\$4,362,335 represents loan payments;
- ii. US\$3,175,969 represents funds held at Bank of America / Master Card. On July 28, 2011, US\$3,175,969 was transferred under our control, after liaising with representatives from MasterCard and Bank of America, via email and telephone, to have the Company's cash balances held with them transferred to us. The balance held with them was US\$3,100,000, which earned interest of US\$75,969, for a total payment of US\$3,175,969;

4.4.2. US\$689,573 represents interest paid on investments in bonds and partial redemption of the said bonds, namely TCI Government Bonds; and

4.4.3. US\$18,540 represents proceeds from the sale of the Company's assets.

## **5 FURTHER STEPS TO BE TAKEN**

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

1. Complete interviews of all persons related to the Debenture;
2. Present our findings to the Court on the NIB matter;
3. Investigate other “secured creditors” and withdrawals from the Bank immediately before the commencement of the winding up, to determine whether these transactions were normal arms-length transactions;
4. Start foreclosure procedures on properties where loan payments are significantly behind;
5. Settle claims submitted by creditors for dividend entitlement and reject claims where necessary and inform the relevant claimants;
6. Apply to the Court to make a first dividend distribution;
7. Make such distribution when approved by the Court; and
8. Issue our next report as Joint Official Liquidators.

## 6 CONCLUSION

The collection of and/or conversion of the Company's assets into cash, mainly its principal asset a depress loan portfolio, continues to pose a challenge. This is mainly due to most of the Company's loan customers experiencing difficulties in satisfying their outstanding loan balances, not being able to refinance their loans, or simply refusing to pay their loan obligations. Nevertheless, we are making every effort to convert assets to cash, to ensure that creditors receive the best dividend distribution possible, commencing with a first dividend payment in 2012.

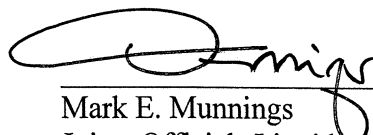
We have not prepared an estimate of realizable value of the loan portfolio, which is primarily backed by property and real estate. Any estimate of recovery from the sale of properties would be speculative at this time, as we have not sold any properties by foreclosure proceedings.

This report covers the period July 1, 2011, to December 31, 2011, and will be followed by half yearly reports, as at June 30 and December 31.

Respectfully submitted as of the 30<sup>th</sup> day of March 2012, this our third report



Anthony S. Kikivarakis  
Joint Official Liquidator



Mark E. Munnings  
Joint Official Liquidator

TCI Bank Limited  
(In Liquidation)  
Receipts & Disbursements Account  
For the period July 1, 2011, to December 31, 2011  
(Unaudited)  
(Expressed in United States dollars)

<b>OPENING BALANCE</b>	<b>\$ 11,552,086</b>
<b>RECEIPTS</b>	
Loan Receipts - TCI Bank Customers	4,362,335
Cash balance transferred from Bank of America	3,100,000
Principal repayments and interest on TCIG Bonds	689,573
Principal repayments and interest on TCIG Bonds (held in a fiduciary capacity)	564,197
Payment of principal and interest on fiduciary funds	(225,071)
Interest income - Bank of America deposits	75,969
Proceeds from sale of assets	18,540
Interest income - Interest bearing deposits	16,285
<b>TOTAL RECEIPTS</b>	<b><u>8,601,828</u></b>
<b>PAYMENTS</b>	
Liquidators' fees and other costs	898,866
Termination payments (severance and thrift fund)	238,574
Legal fees	189,238
Rent and utilities - office	188,417
Salaries and related expenses - former employees	80,789
Communication expenses	31,391
ATM removal and restoration costs	28,085
Security	25,943
Rent and utilities - Liquidators and Agents	15,172
Court taxation costs on fees	13,750
Equipment rental, maintenance, and supplies	9,381
Relocation costs	9,190
Security deposit-Regent Village	8,800
Vehicle costs	5,471
Cleaning services	4,685
Storage	4,320
Miscellaneous	896
Courier and delivery charges	407
Bank charges	346
<b>TOTAL DISBURSEMENTS</b>	<b><u>1,753,721</u></b>
<b>ENDING CASH BALANCE</b>	<b><u><u>\$ 18,400,193</u></u></b>

<b>Cash Consist of</b>	
Interest bearing deposits	\$ 17,131,782
Operating Account	1,207,596
General Account	60,314
Petty cash	<u>500</u>
<b>Total Cash Held</b>	18,400,193
<b>Less: Fiduciary Funds held</b>	<u>(339,126)</u>
<b>CLOSING BANK CASH</b>	<u><u>\$ 18,061,067</u></u>