

THE TURKS AND CAICOS ISLANDS

2022

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)

TWENTY-THIRD REPORT OF THE OFFICIAL LIQUIDATOR

TO

THE SUPREME COURT OF THE TURKS & CAICOS ISLANDS

December 31, 2021

Respectfully Submitted by
Mr. Anthony S. Kikivarakis Sr.
As Official Liquidator for
TCI Bank Limited

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1 INTRODUCTION

1.1 Background

I, Anthony S. Kikivarakis Sr., Chartered Accountant and Chairman and CEO of Kikivarakis & Co., am the Official Liquidator for TCI Bank Limited (hereinafter referred to as the “Company”). I first took office as one of the Provisional Liquidators for the Company on 9 April, 2010, by order of the Honourable Justice Richard Williams of the Supreme Court of the Turks and Caicos Islands (the “Court”). On 29 October, 2010, I was appointed as one of the Joint Official Liquidators of the Company by the Court. This Joint Official Liquidator position remained in place until 23 October, 2012 when I became the sole Official Liquidator of the Company as appointed by the Court.

My powers, as Official Liquidator, 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 29 October, 2010.

In my said position and as an officer of the Supreme Court, I hereby submit to the Court, The Turks and Caicos Islands Financial Services Commission (the “FSC”), shareholders, and creditors of the Company the twenty-third report on the liquidation. This report covers the period July 1, 2021, to December 31, 2021.

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 I have relied on the integrity of the information and documents contained in the Company’s records, supplied by former employees and other interested parties. Although I have sought to cross check information from different sources, to confirm their accuracy, I have not independently verified all of the information

and documentation upon which I have relied during the course of the reporting period; neither has the Company's financial records, as at December 31, 2021, been subject to an audit.

- 1.3.2 As the Company's Official Liquidator, my report is solely based on factual matters. While I believe all of the information in this report to be true and accurate, I reserve the right to amend this report should additional information come to my attention.

1.4 Currency

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

2 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 the twenty-second report as at June 30, 2021, and the progress made since that date. Topics included in this report are dealt with in the following sections:

- (a) Collections on outstanding loans
- (b) Proof of debt and dividend payments
- (c) Shareholder Banks Balances
- (d) Investments
- (e) Cash
- (f) Other Matters

2.1 Collections on Outstanding Loans

- 2.1.1. During the reporting period, July 1, 2021, to December 31, 2021, there were loans that were either renegotiated or refinanced and final settlements made.

- 2.1.2. During this period, USD\$687,900 was collected from customers as noted in Appendix I. This amount was obtained from, sales of private treaty properties, proceeds from payouts and/or refinancing's of customers' loan balances.
- 2.1.3. As of the date of this report, there are loans and overdrafts that continue to be the subject of foreclosure proceedings arising from non-payment of outstanding amounts.

To date I have initiated foreclosure proceeding against properties of one hundred and twenty-two (122) borrowers with significant overdue loans and overdrafts. These proceedings have resulted in applications being made to the court to conduct private treaty sales. Most sales arise from private treaty court orders giving me the power to list the properties with real estate brokers.

Foreclosure proceedings and auctions as of the date of this report are as follows:

1. 119 section 64 notices served
2. 96 private treaty orders obtained
3. 15 properties have completed the 1st and 2nd auction processes
4. 4 auctions in total carried out to date
5. 2 properties sold to date by auction
6. 89 loans settled after foreclosure proceedings started

2.2 Proof of Debt and Payment of Dividends

- 2.2.1. As noted in Appendix I, during the reporting period a total sum USD\$566,088 was paid to creditors arising primarily from the third interim dividend distribution declared.

2.3 Shareholder Banks Balances

- 2.3.1. As stated in our previous report a small number of shareholder banks still have outstanding loan balances with the Company. Discussions are continuing with such banks to resolve these matters. The delayed discussions and resolutions of some outstanding matters are due to the

fact that a number of entities and related parties are themselves also either in receiverships or liquidations and the outcome in terms of distribution is uncertain.

2.4 Cash balances

For the period the net cash increase (after deducting expenses) was USD\$159,209. As at December 31, 2021, the Company's cash balance is USD\$8,606,529. Most of the cash balance consist of interest bearing deposits. This total cash balance also includes approximately USD\$3,500,000 arising from disputed balances that are subject to resolution. A detailed analysis of cash inflows and outflows is contained in the Receipts and Disbursements Account analysis provided in Appendix I.

2.5 Other Matters

During the period I continued to manage the liquidation process and my activities and those of my agents included, but were not limited to the following:

- (a) Instructing my agents, which included meeting with them, on tasks and procedures to be performed;
- (b) Meeting with and assisting customers in refinancing and restructuring their loan obligations and following up with banks on their behalf;
- (c) Instructing and receiving advice from my attorneys on legal matters arising;
- (d) Preparing and filing affidavits and reports with the Court and attending Court proceedings in person or through my agent on litigation and taxation matters where necessary;
- (e) Meeting with real estate brokers and following up on sales of properties as allowed by the court through private treaty orders;
- (f) Making dividend distributions to clients where necessary;

(g) Conducting regular ‘status update’ meetings via telephone, electronic messaging and in person with my agents, customers and shareholder representatives.

3 OTHER STEPS TO BE TAKEN BY THE OFFICIAL LIQUIDATOR

Steps to be taken by myself are listed in the appropriate sections beside the said tasks. Nevertheless, after analyzing the tasks to be performed and prioritizing the same, I still have a small number of distributions not yet paid as a result of persons not being located or the current beneficiaries not yet being determined.

I will continue to advise the Court and interested parties of our progress in the Company’s winding up proceedings, in subsequent reports.

4 DIVIDEND DISTRIBUTION

On March 28, 2019, Her Ladyship The Honourable Mrs. Chief Justice Margaret Ramay-Hale approved the third dividend distribution of United States fifteen cents (US\$0.15) on the dollar (\$1.00) to depositors and unsecured creditors whose claims were admitted in the winding up proceedings of TCI Bank Limited (In Liquidation).

As a result, three dividend distributions have been made to depositors and creditors in the amount of twenty cents in the dollar (0.20) for the first and second distributions and fifteen (0.15) for the third distribution resulting in an overall payment of fifty-five cents (0.55) to unsecured depositors and creditors since commencement of the liquidation.

5 THE INTEGRITY COMMISSION

I have been successful once again against the Integrity Commission at Her Majesty’s Privy Council court hearing on October 28, 2021. I had engaged Ariel Misick, QC to lead my attorney Clayton Greene at Her Majesty’s Privy Council in this matter. The Privy Council also upheld the decision of the learned Chief Justice Ramsay-Hale in the Supreme Court:

I had to defend the Integrity Commission's appeal from a ruling of the Court of Appeal denying the Integrity Commission' appeal from a decision of the Supreme Court to the effect that the Integrity Commission acted ultra vires its powers when it purported to issue a summons directing the Official Liquidator to make available to the Commission details of accounts held at the TCI Bank in the name of certain past and present members of the House of Assembly. My advice was to the effect that the Integrity Commission Ordinance did not give blanket authority to the Commission to issue such a summons in the absence of formal enquiry and that in the circumstances my divulging the requested information could constitute a breach by me of the Confidential Relationships Ordinance. On that advice I challenged the validity of the summons by way of an Application for Judicial Review. I was successful before the Supreme Court which ruled on the principal issue that that in issuing the summons the Commission had acted ultra vires its powers as the summons could only be properly issued in circumstances where the Commission was holding a formal Inquiry. The Commission appealed to the Court of Appeal. The Court of Appeal upheld the decision of the learned Chief Justice Ramsay-Hale in the Supreme Court. The Privy Council in upholding the decisions of the Courts below advised that Integrity Commission Ordinance had to be considered against the backdrop of the central importance of the rule of law. In the circumstances a power whereby confidential financial information could be obtained from a third party in relation not only to members of Parliament but also in relation to their spouses and children in secret and in circumstances where there has been no allegation of wrongdoing could not be considered on any basis a fair process or to fall within the powers conferred by the legislature upon the Commission. The Summons therefore could only be issued in the context of a formal enquiry which under the provisions of the Ordinance gave to the parliamentarian the protections that would be afforded a defendant before a court of law. As a means of avoiding the costs of an appeal to Her Majesty's Privy Council, I had originally intended to seek the direction of the Court to approach the individuals whose account information the Commission is seeking with a view to obtaining their consent to supply the information to the Commission. I have not pursued the application for directions

given an indication from the Commission that it was its intention to pursue the appeal to Her Majesty's Privy Council in any event.

We have been awarded our costs in the matter and are pursuing these with the Commission directly.

6 CONCLUSION

As noted in prior reports the Company's main asset continues to be outstanding loans and mortgage balances. It should be noted that secured depositors/creditors have been paid in full. As a result, most of my efforts will continue to be the collection and/or conversion of the assets in the portfolio to cash. This will involve continuing foreclosure proceedings and selling properties where refinancing by borrowers is not possible.

This report covers the period July 1, 2021, to December 31, 2021, and will be followed by half yearly reports, as at June 30 and December 31.

Respectfully submitted as of the 24th day of March, 2022 this the twenty-third report.



Anthony S. Kikivarakis Sr.

Appendix I

TCI Bank Limited (In Liquidation)
Receipts & Disbursements Account
For the period July 1, 2021, to December 31, 2021
(Unaudited)
(Expressed in United States dollars)

OPENING BALANCE	9,013,408
RECEIPTS	
Loan Receipts - TCI Bank Customers	687,900
Interest income - Interest bearing deposits	7,080
TOTAL RECEIPTS	<u>694,980</u>
DISBURSEMENTS	
Liquidator and agents fees	276,335
Legal fees and commissions paid relating to foreclosure proceedings	140,087
Salaries and related expenses - former employees	55,125
Rent and utilities - office	33,196
Rent and utilities - Liquidator and Agents	11,597
Storage	6,720
Communication expenses	5,631
Cleaning services, equipment maintenance and supplies	4,712
Vehicle costs	1,899
Bank charges	469
TOTAL DISBURSEMENTS	<u>(535,771)</u>
NET RECEIPTS FOR THE PERIOD	159,209
DIVIDENDS	(566,088)
ENDING CASH BALANCE	<u>8,606,529</u>
Cash Consist of:	
Interest bearing deposits	7,014,496
Operating Account	1,544,263
General Account	47,503
Petty cash	267
TOTAL CASH HELD	<u>8,606,529</u>