

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)

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

June 30, 2012

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)

FOURTH 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 fourth 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 fourth report as the Company’s Joint Official Liquidators, which covers the period January 1, 2012, to June 30, 2012.

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 June 30, 2012, 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 are in US\$, unless otherwise stated.

1.5. **Further Steps to be Taken as Stated in Our Third Report**

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

- (a) Complete interviews of all persons related to the Debenture – Section 3.2;
- (b) Present our findings to the Court on the National Insurance Board (“NIB”) matter – Section 4;

- (c) Investigate other “secured creditors” and related party withdrawals from the Bank immediately before the commencement of the winding up, to determine whether these transactions were normal arms-length transactions – Section 3.4 and Section 4;
- (d) Start foreclosure procedures on properties where loan payments are significantly behind – Section 3.4;
- (e) Accept claims submitted by creditors for dividend entitlement and reject claims where necessary and inform the relevant claimants – Section 3.3.2 ;
- (f) Apply to the Court to make a first dividend distribution – Section 3.3.3.;
and
- (g) Make such distribution when approved by the Court – Section 3.4.

1.6. **Summary**

1.6.1. During the reporting period we continued our focus on loan collection and assisting clients with their refinancing efforts. With cash in hand now in excess of \$21 million we will make out a distribution of twenty cents (\$0.20) on all accepted claims shortly after the date of this report. We also continued our investigations into the circumstances surrounding the NIB debenture loan. The results of our efforts, along with other tasks performed during the reporting period are contained in the body 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 third report as at December 31, 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. NIB Investigation;
5. Other Matters; and
6. Conclusion.

3. STEPS TAKEN SINCE OUR LAST REPORT

3.1. Collections on outstanding loans

3.1.1. During the reporting period, January 1, 2012, to June 30, 2012, sixteen (16) loan accounts were renegotiated and paid off. This along with regular loan payments resulted in a total collection of USD\$3,539,278 as noted in Appendix I. .

3.1.2. For the period the net cash increase (after deducting expenses) was USD\$3,089,515. As at the date of this report, June 30, 2012, the Company's cash balance is USD\$21,489,708 (Appendix I).

3.2. Investigation of NIB's Claim Against the Company

3.2.1. As indicated in our previous report, we noted that we had interviewed eighteen (18) individuals in respect of the NIB debenture. Our concern focused on whether the Debenture was an arm's length transaction, given its timing, the fact that there were common directors between the Company and NIB and the fact that the debenture collateralized all of the Company's assets.

3.2.2. During the period we:

- (a) conducted further investigations into the issuance of the Debenture;
- (b) filed a Summons seeking a short extension from the Court to complete our investigation of this matter;

- (c) obtained and reviewed a legal opinion on the Debenture and the Company's potential claim against interested parties, from a U.K based Queen's Counsel who has significant insolvency experience in matters of this nature; and
- (d) approached the Court and obtained directions from the Court on the payment of the Debenture.

3.3. **Proof of Debt**

- 3.3.1. To ensure that the Company's unsecured creditors are allowed to participate in dividend distributions, we continued to encourage them to submit their Proof of Debt General Forms. In this regard, we issued a Press Release dated February 29, 2012, requesting them to file their Proof of Debt General Forms on or before March 24, 2012. This resulted in a further extension from the initial deadline of August 15, 2011, for unsecured creditors to file their claims which we then reviewed.
- 3.3.2. This review process involve comparing amounts claimed against the Company's records, reconciling the differences where possible, accepting or rejecting claims, and reviewing the right of set-off for creditors where applicable.

3.3.3. During the reporting period we sought approval from the Court to issue a first interim dividend distribution, of United States Dollar twenty cents (USD\$0.20) to unsecured creditors whose claims were admitted in the Company's winding up proceedings. On June 13, 2012, Justice Margaret Ramsay-Hale approved payment of the said first interim dividend distribution. In this regard, we issued a notice of the said payment in the local gazettes, via television and radio and on our website, advising interested unsecured creditors that they would be notified of the date of the said payment.

3.4. **Other Steps**

In Section 1.5 above, we listed further steps to be taken, as at December 31, 2011. Steps taken in this regard are listed in the appropriate sections beside the said tasks. Nevertheless, after analyzing the tasks to be performed and prioritizing the same, we were unable to conclude or complete the following steps:

- (a) In our investigation of other "secured creditors", to determine whether these transactions were normal arms-length transactions;
- (b) Foreclosure procedures on properties where loan payments are significantly behind; and
- (c) Settlement of all claims submitted by creditors.

We will continue to advise the Court and interested parties of our progress in the Company's winding up proceedings, which will include the items listed above, in subsequent reports.

4. NIB INVESTIGATION

4.1. Background

4.1.1. On December 28, 2009, the Debenture was issued with respect to a loan in the sum of USD\$5,500,000.

4.1.2. On April 15, 2010, NIB wrote to us, as the Company's Provisional Liquidators, demanding the payment of the Company's book debts into an account in the name of NIB, on the basis that the debenture in its favour had crystallized.

4.1.3. On January 17, 2011, by Summons, NIB sought an order of the Court, compelling inter alia the payment of the book debts of the Company into an account in the name of NIB, on the basis that the Debenture had crystallized.

4.1.4. As the Company's Joint Official Liquidators, we had concerns regarding the circumstances in which the Debenture had been entered into. In light of this, we responded to NIB informing them that we were investigating the Debenture and explained that we would need the approval of the Court before agreeing to transfer the book debts of the Company to NIB. Consequently, we sought an adjournment of the hearing of NIB's Summons, to allow us to continue our investigations into the circumstances which gave rise to the issuance of the Debenture. The adjournment was granted by Mr. Justice Richard Williams and the time subsequently extended by Mrs. Justice Margaret Ramsay-Hale.

4.2. **Steps Taken**

- 4.2.1. Conducted a detailed consideration of numerous Company documents, including Minutes of the Meetings of the Board of Directors, reports, correspondence, and financial statements.
- 4.2.2. Conducted a financial analysis of the Company's position during the relevant period, including how the level of deposits changed over time.
- 4.2.3. Interviewed eighteen (18) interested parties, which included directors, key personnel, and NIB board members. Upon completion of the said interviews, we reviewed copies of the transcripts of the interviews, to further assist us in our investigations.
- 4.2.4. Performed a cost benefit analysis of the potential outcome of proceedings in a case regarding the issuance of the Debenture. We realized however, that it was extremely difficult to predict with any certainty the likely outcome in terms of liability, quantum and costs, which would directly affect any further dividend distributions to the Company's creditors.
- 4.2.5. Liaised with counsel and other interested parties, regarding the results of our investigations mentioned above.
- 4.2.6. Issued an Affidavit requesting directions from the Court and instructed our attorneys to file the same and the accompanying Summons.
- 4.2.7. Performed other tasks, as deemed necessary, to assist us in our investigations.

4.3. **The Results of our Investigation**

4.3.1. Based on the nature of this case, we engaged UK attorneys specializing in insolvency matters to assist us. We presented our findings, supported by documentation, to our UK attorneys as well as our initial position that we believed that the company could pursue potential claims against interested parties in respect to the Debenture.

4.3.2. From an analysis of our investigations and further discussions with our UK attorneys we were advised and agreed that it was not commercially feasible at this time, without having access to further information or knowledge of other matters, to continue to challenge the demand for payment of the Debenture. For information purposes, non-payment of NIB's claim for the principal amount of the Debenture, in the amount of USD\$5,500,000, would have resulted in creditors receiving an additional distribution of five cents (USD\$0.05). However, as mentioned previously, the cost of any future litigation was unknown and the potential outcome could not be determined.

- 4.3.3. In light of the above and based on the significance of the decision to pay NIB USD\$5,500,000, the principal amount of the Debenture, plus interest earned to a specific date, and its possible impact on the Company's creditors, we sought directions from the Court to pay the said amount. The said application was heard on June 4, 2012, before the Chief Justice Edwin Goldsborough, after filing an affidavit and other appropriate documents with the Court. Upon appearing before the Court, an order was granted on the said date, ordering the payment of USD\$5,500,000, plus interest earned to the NIB. The interest amount is being disputed by NIB and will be addressed in our next report. The principal has however has been repaid.
- 4.3.4. It should be noted however, that we have reserved the Company's right and obtained permission from the Court, to continue our investigation into the issuance of the Debenture and we may therefore ultimately decide that it is in the creditors' best interest to pursue a case against the interested parties. Given the status of at least one (1) of the interested parties, any judgment we obtain against them is likely to be capable of enforcement. Consequently, we are of the opinion that we have not materially prejudiced the Company's unsecured creditors, by obtaining an order to pay NIB the principal amount on the Debenture, plus interest earned at a specific date.

5. OTHER MATTERS

5.1. General

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

- (a) instructing our agents, which includes meeting with them, on tasks and procedures to be performed in the Company's winding up proceedings;
- (b) meeting with and assisting customers in refinancing and restructuring their loan obligations and following up with banks on their behalf;
- (c) instructing our attorneys to assist with legal matters arising from the Company's winding up proceedings and being advised by them on the same;
- (d) preparing and filing affidavits and reports with the Court and attending Court proceedings on various matters;
- (e) performing daily operational tasks as required;
- (f) visiting the Company's offices at various times to direct and instruct agents and staff on various matters; and
- (g) reviewing and issuing letters and documents, in response to Production and Customer Information Orders, issued by the Special Investigations and Prosecutions Team ("SIPT").

5.2. Loans

5.2.1. During the reporting period sixteen (16) loan accounts were paid off and/or closed out, which resulted in a total collection of USD\$3,539,278 from outstanding loans.

5.2.2. In spite of our aggressive loan collection 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 USD\$10,000 and stands at approximately USD\$22,980,000 as at June 30, 2012. A list of the top twenty (20) accounts is produced below.

Number of Loans	Description	Pay-off Balances June 30,2012	Days Overdue As at June 30,2012
Loan #1	Special purpose building	\$ 839,000	1,078
Loan #2	Special purpose building	892,000	181
Loan #3	Special purpose building . Litigation issu	3,755,000	821
Loan #4	Special purpose building	737,000	580
Loan #5	Special purpose building	1,964,000	1,266
Loan #6	Apartments	706,000	1,208
Loan #7	Apartments	1,317,000	866
Loan #8	Touristic Product	672,000	1,004
Loan #9	Apartments	776,000	580
Loan #10	Apartments	839,000	795
Loan #11	Special purpose building	868,000	946
Loan #12	Commercial	668,000	1,221
Loan #13	Commercial	703,000	856
Loan #14	Touristic product-overdraft facility	1,154,000	overdraft facility
Loan #15	Apartments	884,000	1,294
Loan #16	Apartments	670,000	963
Loan #17	Vacant Land	1,567,000	619
Loan #18	Syndicated Loan	1,396,000	791
Loan #19	Commercial	1,320,000	790
Loan #20	Special Purpose Building	1,253,000	782
Total balance as at June 30, 2012		\$ 22,980,000	

5.3. Investments

5.3.1. As at the date of this report, we have received total redemption payments of USD\$1,133,333 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”) and accrued interest of USD\$206,858. In light of this, the Company’s investments have been reduced by USD\$1,340,191, as shown below.

Investments and Advances to Custor	As at 9-Apr-10	Collected During the Liquidation	As at 30-Jun-12
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	(833,333)	3,000,000
TCI Government Bond 8%	2,000,000	(300,000)	1,700,000
Accrued Interest	206,858	(206,858)	-
Total	\$ 8,172,179	\$ (1,340,191)	\$ 6,831,988

6. CONCLUSION

As the Company's Joint Official Liquidators, we will continue to exercise our duties as listed in the order of our appointment. Tasks will be prioritized and performed in an orderly manner, after reviewing and analyzing the same. As the Company's main asset is a depressed loan portfolio, most of our efforts will be dedicated to the collection of and/or conversion of this asset, which continues to pose a challenge. This is mainly due to most of the Company's loan customers experiencing difficulties in making timely payments on their outstanding loan balances, not being able to refinance their loans, or simply refusing to pay their loan obligations. Nevertheless, we have made tremendous strides in the past two (2) years and have sufficient cash on hand to pay a first interim dividend distribution of twenty cents (USD\$0.20) on the dollar (USD\$1.00), which we are in the process of paying. We have not prepared an estimate of the realizable value of the loan portfolio, which is primarily backed by property and real estate, because 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 January 1, 2012, to June 30, 2012, and will be followed by half yearly reports, as at December 31 and June 30.

Respectfully submitted as of the 27th day of September, 2012 this our fourth report.


Anthony S. Kikivarakis


Mark E. Munnings

TCI Bank Limited (In Liquidation)
Receipts & Disbursements Account
For the period January 1, 2012, to June 30, 2012
(Unaudited)
(Expressed in United States dollars)

OPENING BALANCE \$ 18,400,193

RECEIPTS

Loan Receipts - TCI Bank Customers	3,539,278
Principal repayments and interest on TCIG Bonds	463,046
Principal repayments and interest on TCIG Bonds (held in a fiduciary capacity)	459,781
Treasury vault deposits	181,098
Interest income - Interest bearing deposits	33,491
Trustee and management fees for TCIG Bonds	20,000
Proceeds from sale of assets	4,062
TOTAL RECEIPTS	<u>4,700,756</u>

DISBURSEMENTS

Payment of principal and interest on fiduciary funds	927,717
Liquidators' fees and other costs	416,635
Salaries and related expenses - former employees	72,198
Legal fees	67,598
Rent and utilities - office	45,894
Rent and utilities - Liquidators and Agents	19,204
Communication expenses	17,451
Security	13,945
Storage	9,600
Relocation costs	6,710
Vehicle costs	6,475
Equipment rental, maintenance, and supplies	5,293
Cleaning services	2,254
Courier and delivery charges	138
Bank charges	129
TOTAL DISBURSEMENTS	<u>1,611,241</u>
ENDING CASH BALANCE	<u>\$ 21,489,708</u>

Cash Consist of:

Interest bearing deposits	\$ 19,165,273
Operating Account	2,260,810
General Account	62,897
Petty cash	728
TOTAL CASH HELD	<u>\$ 21,489,708</u>