

IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
CLAIM NO. 194 OF 2005

IN THE MATTER OF HORIZON BANK INTERNATIONAL LIMITED
AND

IN THE MATTER OF THE INTERNATIONAL BANKS ACT No. 40 of 2004
AND

IN THE MATTER OF THE COMPANIES ACT NO. 8 OF 1994
AND

IN THE MATTER OF THE INTERNATIONAL BUSINESS COMPANIES ACT No. 18
of 1996

Between

Hon. Judith Jones-Morgan Attorney General of the state of
Saint Vincent and the Grenadines

Applicant

and

Horizon Bank International Limited

Respondent

DATED 21st April 2005
ENTERED 21st April 2005

ORDER

UPON THE APPLICATION by the Petitioner, JUDITH JONES-MORGAN, filed on
the 20th day of April 2005

AND UPON READING the Affidavit in Support of the Petition sworn by Judith Jones-
Morgan on the 20th day of April, 2005

AND UPON HEARING Mr. G. Grahame Bollers, Counsel for the Petitioner

IT IS HEREBY ORDERED THAT Marcus A. Wide **BE APPOINTED** the provisional liquidator ("Provisional Liquidator") of Horizon Bank International Limited. (the "Bank") pursuant to Section 392 of the *Companies Act*, Act No. 8 of 1994, without security, until the hearing and determination of the Petition herein or until further Order in the meantime, and who shall be entitled to exercise the following powers:

- (i) To take possession of, collect and protect all of the assets of the Bank and in particular the books, records, computer equipment and other tangible assets of the Bank (wherever they may be), the Bank's accounts receivables and other intangible assets or other personal property in which the Bank has an interest and any real property in which the Bank has an interest (wherever it may be situate) but not to sell, deal with, distribute, part with possession of, charge the same or any part thereof other than for the purpose of carrying on the business of the Bank;
- (ii) To be at liberty to require any person or persons to forthwith give to the Provisional Liquidator access to and/or deliver up to him and his duly appointed agents any assets, property, books, documents and/or records of the Bank over which they have custody and/or control and to require any such person or persons as aforesaid to make out such statement of affairs as he may require and attend on him or his duly appointed agents at such time and place as he may appoint for access to and/or the delivery of such assets, property, books, documents and records of the Bank;
- (iii) To be at liberty without further order to summon before the High Court for examination under oath any person reasonably thought to have knowledge of the affairs of the Bank or any person who is or has been a director, officer, employee, agent, shareholder, accountant, or attorney of the Bank or such other person that is believed to be knowledgeable of the affairs of the Bank and to order such person liable to be examined to produce any books,

documents, correspondence, or papers (electronic or otherwise) in his or her possession or power relating to all or in part to the Bank, its dealings, property, assets and affairs, such examinations to include but not be limited to the following individuals:

- (a) Kevin Coombes, sole officer of the Bank;
- (b) Mark Edwards, agent of the Bank;
- (c) Jerry Prucha, agent of the Bank;
- (d) William Presnail, agent of the Bank;
- (e) Daniel O'Connor, agent of the Bank;
- (f) Any present or past legal or other advisor of the Bank.

- (iv) To be at liberty to act and take proceedings in the State of Saint Vincent and the Grenadines or any foreign jurisdiction where it is believed that assets and/or any property of the Bank may be situate, including, but not limited to the right to represent and advance the interests of the Bank in proceedings in Bermuda involving Bermuda Commercial Bank in which the Bank is a named Defendant, to seek the assistance of any Court in a foreign jurisdiction in carrying out his duties as Provisional Liquidator, including but not limited to Bermuda and the Bahamas, to cooperate with any local, foreign or judicial authorities in the exchange of information pertinent to any ongoing or completed lawful investigations, proceedings or actions in the State of Saint Vincent and the Grenadines or in a foreign jurisdiction, in order to recover possession of the Bank's books, records, assets and property, including without limitation, such proceedings as may be required abroad to examine under oath persons reasonably believed to be knowledgeable of the Bank's assets and property, dealings or affairs;
- (v) To be at liberty to execute and endorse cheques and other negotiable instruments on behalf of the Bank or other documents of whatever nature in

respect of any assets or property of the Bank and to open and maintain in his name a bank account at National Commercial Bank, Kingstown Saint Vincent and the Grenadines or such other institution that the Provisional Liquidator deems appropriate, which institution operates within the jurisdiction of this Court, for deposit therein of any funds gathered as assets or property of the Bank; and

(vi) To be at liberty to engage agents, together with appraisers, brokers, auctioneers and any other experts including legal counsel both inside and outside the State of Saint Vincent and the Grenadines to assist in discharging his duties as Provisional Liquidator under the law.

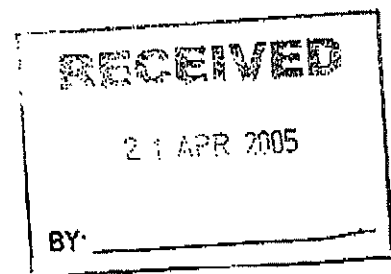
2. The Provisional Liquidator, in the carrying out of his duties and responsibilities may apply for direction from this Honourable Court from time to time, including any application as may be required for the amendment of this Order.
3. The costs of the within Application be the Petitioner's costs in the winding-up of the said Bank.
4. The Provisional Liquidator is appointed without security and the Provisional Liquidator acts solely in his capacity as Provisional Liquidator and without personal liability.

AND IT IS FURTHER ORDERED THAT notice of this Order be given to the Bank forthwith and that the Bank be at liberty to discharge the appointment of the Provisional Liquidator on 48 hours notice to the Applicant

AND IT IS FURTHER ORDERED that the Provisional Liquidator is authorized to seek the assistance of the Supreme Court of the Bahamas to secure the books, records and assets of the Bank and that the Registrar of the High Court shall execute a letter

requesting the Judicial Assistance of the High Court of the Bahamas, a copy of which is attached and marked "A" for the purposes of identification.

By Order



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of 1996

Between

Hon. Judith Jones-Morgan Attorney General of the state of
Saint Vincent and the Grenadines

Applicant

and

Horizon Bank International Limited

Respondent

ORDER OF COURT

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"A"

**IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES**

CLAIM NO. of 2005

IN THE MATTER OF HORIZON BANK INTERNATIONAL LIMITED

AND

**IN THE MATTER OF THE INTERNATIONAL BANKS ACT, No. 19 of 1996, as
am. by No. 40 of 2004**

AND

IN THE MATTER OF THE COMPANIES ACT, No. 8 of 1994

AND

**IN THE MATTER OF THE INTERNATIONAL BUSINESS COMPANIES ACT,
No. 18 of 1996**

REQUEST FOR JUDICIAL ASSISTANCE

**To: The Supreme Court of the Bahamas
 Supreme Court Building
 Parliament Street & Bank Lane
 PO Box N-167
 Nassau, Bahamas**

This Court most respectfully requests your indulgence (the "Request") in connection with these proceedings to recognize in the Bahamas the powers of Marcus A. Wide, the Provisional Liquidator (from time to time herein referred to as the "Provisional Liquidator") of Horizon Bank International Limited (In Liquidation) (the "Bank") and/or his appointed agents, as granted by this Court in an Order dated April 21, 2005 (the "Order"), as required by the laws of the Bahamas, which recognition shall involve the following:

- (a) making available to the Provisional Liquidator and/or his agents the facility to discover and trace any assets or property, including books and records, of the Bank as might be situated in the Bahamas (whether such assets, property, books and records are reposed in the name of the Bank or have in any way been misappropriated, fraudulently transferred and/or otherwise concealed from the Provisional Liquidator);

- (b) facilitating the examination of witnesses and the production of documents in furtherance of the foregoing;
- (c) ordering the turnover of any property or assets held in the name of or traceable to the Bank; and
- (d) ordering whatever other relief is appropriate to assist the Provisional Liquidator and/or his agents in the due carriage of his duties to this Court.

The background to this matter is contained in the documents appended hereto in Schedule "A", and will not be addressed at length herein.

At a hearing held in Kingstown, Saint Vincent and the Grenadines on the 21st day of April, 2005, this Court ordered the appointment of Mr. Marcus A. Wide of Halifax, Nova Scotia, Canada, partner in PricewaterhouseCoopers (W.I.) Inc., as Provisional Liquidator of the Bank with all of the powers and duties of a Provisional Liquidator as contained in the *Companies Act* No. 8 of 1994 of the Laws of Saint Vincent and the Grenadines or any other legislation related thereto, and with further duties and responsibilities as conferred by the Order of this Court, a certified copy of which is attached hereto as Schedule "B".

In summary, the effect of this Court's Order is that this Court has appointed Mr. Marcus A. Wide as Provisional Liquidator over the property, assets and undertakings of the Bank, wheresoever or howsoever those assets may be located or held, within or without Saint Vincent and the Grenadines. Moreover, the Provisional Liquidator has been empowered to conduct a multi-jurisdictional investigation to seek the recovery of value for the benefit of the estate of the Bank (In Liquidation).

The Bank is linked to the Bahamian jurisdiction by virtue of the fact that, until recently, the Bank operated a branch from the third floor of the Tradewinds Building, on Bay Street in Nassau. Located at the Bank's Nassau branch is the majority of the Bank's books and records, along with other property and assets of the Bank. In paragraph 1(iv) of this Court's Order, the Provisional Liquidator was authorized to seek the assistance of any foreign Court where property of the Bank was situated, and was further endowed thereby with the power to enlist agents as required to trace and gain control of the Bank's assets, books and records, wherever they may be located.

This Court has exercised its powers under the *International Business Companies Act*, No. 18 of 1996, the *International Banks Act*, No. 40 of 2004 and the *Companies Act*, No. 8 of 1994 and under the inherent jurisdiction of this Court to:

- (i) Appoint a Provisional Liquidator over the assets, property and undertakings of the Bank, wheresoever or howsoever held; and
- (ii) Authorise the Provisional Liquidator to trace, protect, preserve, institute and maintain legal proceedings, and marshal any assets of the Bank, wheresoever or howsoever held, for the benefit of the creditors of the Bank

This Court's jurisdiction to authorize the appointment of a provisional liquidator derives from Section 392 of the *Companies Act*, No. 8 of 1994. This jurisdiction is extended to international companies such as the Bank by Section 80 of the *International Business Companies Act*, No. 18 of 1996 as amended. A copy of the relevant sections of such legislation is appended hereto as Schedule "C".

This Court's jurisdiction is also inherent. To facilitate carrying out the purpose of the insolvency legislation of Saint Vincent and the Grenadines, there is deemed to be vested in this Court the necessary power and jurisdiction to authorize and sanction acts required to be done by a liquidator for the due administration and protection of an insolvent estate. This inherent power is extant even though there is no specific provision in the insolvency legislation expressly conferring such power and jurisdiction. The power to exercise inherent jurisdiction is a necessary condition of any Court of law being able to function. The High Court of Justice of the State of Saint Vincent and the Grenadines has not only statutory jurisdiction but also what is known as "inherent jurisdiction". Its inherent jurisdiction compliments its statutory jurisdictions and enables it to safeguard its own procedures and render its processes effective. In the United Kingdom of Great Britain and Northern Ireland, the inherent jurisdiction of the High Court of England and Wales comes from its position as the lineal successor of the *Curia Regis*. Since the Monarch is regarded as the fountain of justice, the Court has jurisdiction to adjudicate on any matter capable of legal adjudication which is not by custom or statute assigned to some other jurisdiction. The Monarch is the head of state in Saint Vincent and the Grenadines, and the inherent jurisdiction of its Courts is derived from the same source and the Privy Council of the English House of Lords is still the final court of appeal.

While there is no specific section or part of the Saint Vincent and the Grenadines insolvency legislation concerning companies which make explicit provisions governing international insolvencies, precedent and the common law provide a basis for the recognition of foreign insolvency office holders in Saint Vincent and the Grenadines. This Court follows judicial precedent from other Commonwealth states, most notably from England and Wales.

This Court also recognizes the doctrines of comity and curial difference. Such doctrines provide an independent basis for this Court to recognize foreign insolvency office holders.

This Court seeks the indulgence of the Honourable Court to whom this Request is made pursuant to the principles of international comity and mutual respect indifference that endures between us.

The Court to whom this Request is addressed is asked to take due notice of the Order made by this Court in relation to these proceedings. The Bank appears to have property in Nassau, Bahamas held in its former branch office on the third floor of the Tradewinds Building on Bay Street and/or other premises presently or formerly occupied by the Bank

or its past or present officers, directors, and agents, including, but by no means limited to Mr. Kevin Coombes, a Bahamian resident and known officer of the Bank.

The Court to whom this Request is addressed is most respectfully asked, pursuant to the principles of international comity and/or any applicable Bahamian company, insolvency or other law, to

- (a) take due cognizance of the appointment of the Provisional Liquidator,
- (b) accept the validity of such appointment, and
- (c) recognize the powers granted to the Provisional Liquidator by this Court as having the equivalent or substantially similar powers of a trustee in bankruptcy, liquidator or other insolvency office holder within the Bahamas, such as the power to investigate the affairs of the Bank, take evidence or discovery thereof under oath and identify, trace, arrest, seize, freeze, detain, secure, recover, receive, control, preserve and protect the Bank's assets, or property that the Bank can trace its title into, in equity or otherwise, and to administer such property or assets.

This Court thus most respectfully seeks the indulgence of the Supreme Court of the Bahamas to:

- (a) recognize the appointment of the Provisional Liquidator by the Court in the State of Saint Vincent and the Grenadines pursuant to the terms of this Court's Order;
- (b) grant to the Provisional Liquidator and/or his agents such powers of inquiry, examination of witnesses, and of asset discovery, arrest and recovery, as are necessary to render effective his appointment pursuant to the terms of this Court's Order;
- (c) grant to the Provisional Liquidator and/or his agents the power to obtain documents, sworn evidence and information from such persons in the Bahamas having information relevant to the facts outlined in this Request, the Bank or any of the concerns identified in this Request or otherwise (including, but not limited to, the Bank's present and former officers, agents and directors, lawyers, accountants, or others in the Bahamas who may reasonably be determined by the Provisional Liquidator to potentially hold such knowledge);
- (d) grant extraordinary relief to the Provisional Liquidator and/or his agents to trace the movement and conversion, past and present, of the Bank's property, assets, books and records, both paper and electronic;
- (e) compel the disclosure of the identities and involvement of all known or unknown wrongdoers, facilitators and any other persons or entities who have

acted, knowingly or unknowingly, in concert with the Bank in any fashion whatsoever;

- (f) compel for examination under oath by the Provisional Liquidator, his agents or other authorized person, any person reasonably thought or suspected to have knowledge or information of the affairs of the Bank (or of the misappropriation, concealment or conversion of any of its property), or any person who is or has been a direct or indirect agent, banker, clerk, employee, contractor, servant, officer, nominee, trustee, fiduciary, auditor, trader, accountant, shareholder, lawyer, attorney, solicitor, advocate or advisor to the Bank, regarding the Bank, their dealings or the Bank's assets, property or papers, and ordering any such person to produce to the Provisional Liquidator any books, documents, correspondence, reports or papers in his possession or power relating in all or in part to the Bank, or in respect of his dealings with either the Bank or with the Bank's assets, property or papers;
- (g) order the turnover of any and all property, books and records (both paper and electronic) of the Bank located in the Bahamas, or of the proceeds of such property, to the Provisional Liquidator and/or his agents, including any property that the Bank can trace its title into, in equity or otherwise; and
- (h) grant or order any other appropriate relief.

You are most respectfully asked to consider the intended Application in the Supreme Court of the Bahamas for the relief set out above.

Issued by the High Court of Justice in the State of Saint Vincent and the Grenadines, at Kingstown, Saint Vincent and the Grenadines on the 21st day of April, 2005.

BY THE COURT:

