

**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. 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**



FIRST REPORT OF THE LIQUIDATOR

This is my report to this Honourable Court as Liquidator of Horizon Bank International Limited ("Horizon" or "the Bank") further to an Order dated June 9, 2005.

SCOPE OF REVIEW

My comments and opinions expressed in this report are based on a review of the books and records, including computers, of Horizon that were recovered in St. Vincent and the Bahamas, a review of information contained in the files of the International Financial Services Authority, a review of the proceedings against Horizon in Bermuda, and interviews with the Vice President of Operations for Horizon, Mr. Coombes.

My staff and I have spent a significant amount of time reviewing the records available to me, both in the context of asset recovery, and in the context of determining the reasons for the insolvency of Horizon and if there are persons who should be held accountable. My findings and the steps taken as a result of this work are summarized below.

FINDINGS AND ACTIONS RESULTING

1. Insolvency

Based on the claims filed and my assessment of the available assets it is clear that Horizon is insolvent, and likely has been since the very substantial reduction in capital that took place in 2004. In fact if the capital injection was the result of an improper use of third party funds, the insolvency may have deeper roots.

2. Guiding Minds

My review has confirmed my preliminary view that the guiding minds of Horizon in the performance of its day to day activities for the last number of years were not only the owners authorized by the Authority and its declared Directors and Officers, but persons not disclosed to the Authority. These include Mr. Edwards, Mr. Presnail, and Mr. O'Connor, all residents of Ontario, Canada. It is my intention to seek Orders for the examination of the Directors, Officers and these other individuals to more fully determine their roles, obtain a proper accounting for the deficiency and determine if there are prospects for tracing other assets.

3. Risk to Assets

As noted in my report as Provisional Liquidator, proceedings were under way in Bermuda which could have resulted in the distribution in the vast bulk of the assets of Horizon, being an account in Bermuda Commercial Bank Limited, to a limited number of claimants. I have intervened in that matter and presently have a temporary Order which has the matter on hold until a further hearing, presently set for 6 October, but which will likely be adjourned as not all the counsel for the various claimants can participate. It is my hope that the Court will recognize the Liquidation and direct that the claims against Horizon, with the exception of the proprietary claim, should be dealt in the Liquidation and recoveries distributed through that mechanism.

At present not all the claimants against Horizon have appeared in Bermuda – in some part as a result of misleading information provided by the Bank and its officers. Also some of them are sufficiently small that for them to engage counsel would be onerous in the context of their possible recovery.

In view of the significance of this proceeding, this issue has received a considerable part of my time and attention, and extensive legal advice and effort has been required. In addition, it is my interpretation of the Bermuda Court's recent ruling that to the extent that these costs are taxed and approved by this Honourable Court, my cost in pursuing this bank account may be payable from the fund even if not fully successful.

4. Proprietary Claim

This claim asserted by Messrs. Walsh and Taal, is that funds were fraudulently diverted from their legitimate investment program by their fund managers and found their way in to the bank account of Horizon. My investigation has confirmed this to a large degree, and based on the rule of the Lowest Intermediate Balance, they can in probability trace funds in which they can assert a proprietary interest. Based on a review by my staff, I have fixed this amount at US\$4,422,863.43 and an affidavit has been filed in the Bermuda proceeding asking the Court to confirm this amount, which is approximately US\$1,208,576.41 less than asserted by the claimants Walsh and Taal, and which the Court, without the benefit of evidence (bank statements), which was not before the Court when it made its preliminary determination, found to be correct.

Given the strong likelihood that they would prevail with such a claim, and in an effort to reduce what could be significant costs and time delay to the detriment of depositors, I offered, subject to this Court's confirmation, to agree to their claim in this amount if they would agree to release their claim to the balance of the funds. This offer was made on or about August 2, 2005. As yet I have had no response.

One reason may be that they wish to assert additional claims either of a proprietary nature in Bermuda or in the Liquidation. I can find no basis for any such additional claims and will resist them if made.

5. Historical Transactions

As previously reported, it appears to me that certain historical transactions in Horizon with respect to its share capital, which were carried out by the undisclosed guiding minds of the Bank, resulted in the capital of the Bank being materially overstated. The reduction in capital, which appears to have been an effort to distance Horizon from the actions of those individuals, may have resulted in the deficiency which faces the arms length depositors. I have not yet determined what claims I may have as Liquidator arising from this.

6. Discontinuance of Operations

As a result noted in my report as Provisional Liquidator, the business of Horizon has not been continued.

7. Possible Fraudulent Preferences

My enquiries have confirmed that a number of transactions that may have conferred a preference on the recipients. These are potentially recoverable in a Court Ordered Winding-up, but would not otherwise be available, to mitigate depositor and creditor losses. Those identified to date total in the range of US\$1,400,000.00. At present my efforts and limited resources are directed to the recovery of the bank account in Bermuda and I will turn my attention to these as time and funding permit.

8. Other Assets

I have traced monies of Horizon into Extant, a company related to the guiding minds, which were in turn lent on into other ventures. One of these was a mortgage on a property in Ontario, Canada owned by a daughter of Mr. Presnail, who I believe to have been one of the Bank's guiding minds, on which no payments have been made. Extant has assigned this mortgage to the estate in Liquidation and I have registered the estate's interest in Ontario.

9. Potential Liability of Directors

I have not been able to establish that the reason for the significant shortfall in the assets of Horizon as against the claims of its depositors and creditors is a result of ordinary trading losses. Further, the fact that the Directors and Owners appear, on the basis of my preliminary review of the records now in my possession and the interviews with the Vice President of Operations, to have ceded operating control to others not disclosed to the Authority and failed to exercise oversight, may expose them to the provisions of Sections 469 *et seq.* of the *Companies Act* of St Vincent and the Grenadines and personal liability for that shortfall.

10. Creditors Claims

I have initiated a claims process and to date have received 61 claims totaling US\$11,140,827.62.

Of these claims 38 are represented in the Bermuda proceeding. These claims total US\$9,430,819.18.

Therefore of the claims filed to date there are 23 claims totaling US\$1,710,008.44 who have no representation in the Bermuda proceeding. As noted above and from my review of the correspondence from Horizon, I am of the view that they were falsely reassured that they need not participate and that their claims would be dealt with in full. In support of this notion, I should report that there remain 81 accounts, totaling \$5,152,476.36 which have neither filed a claim in the estate nor have representation in the Bermuda proceeding. Together with the 23 claims mentioned above, this leaves approximately 43%, in dollar value of the estate, unrepresented in the Bermuda proceeding

I am of the view that the creditors and depositors of Horizon should properly be dealt with in the Liquidation of Horizon and this Honourable Court. There may yet be further claims not yet made and therefore not before the Court in Bermuda. In this regard I have in mind proceedings initiated in Western Canada with respect to an alleged fraud where funds were allegedly channeled through Horizon. However, Horizon is named as defendant in the litigation. It is not clear if Horizon or any of its guiding minds were part of this fraud, or if Horizon has obligation beyond the balances in the accounts used by the

alleged fraudsters. In fact my initial investigations suggest not. However this issue is not resolved as yet.

Another issue is that the claimants that have engaged counsel in Bermuda, in the absence of action by the Controller of the Bank, have in some cases incurred significant cost in asserting their interest in funds in the Horizon account that was frozen. It is also fair to say that had they not intervened, the funds were at risk, in the absence of opposition, of being distributed to the proprietary claimants in full. Thus the moneys were kept intact until my appointment by this Honourable Court and my intervention in the proceeding. Therefore I am of the view that their taxed costs of asserting their claims in Bermuda should be a claim admissible in the Liquidation. This may be a matter on which I may seek the direction of this Honourable Court.

11. Potential Distributions

Based on the known claims to date and the funds that I believe should be available from Bermuda the creditors, before costs, will recover approximately 48.5 % of their debt (assuming the offer to settle as described above is accepted). I am not sure what the impact of permitting costs of proceedings in Bermuda as part of allowable claims would be.

Clearly if any creditor, proprietary or otherwise seeks to prolong the litigation in Bermuda, this could have a substantial impact on total costs and thus on recoveries.

I have not included in the above amounts that which could be recovered from the Ontario mortgage, nor any other assets or claims that may arise as result of my continuing investigations and examination of those knowledgeable in the affairs of the Bank. Nor have I factored in any possible recoveries from Directors or other guiding minds of the Bank arising from their fiduciary obligations to depositors and their obligations under the statutes of St. Vincent. These obligations are potentially substantial and could be sufficient to extinguish the deficiency.

Dated at Halifax this 6th day of October, 2005



Marcus A. Wide, Liquidator of Horizon Bank International Ltd.