

6 May 2016

## **TO ALL KNOWN DEPOSITORS**

Dear Depositor

### **Caribbean Commercial Investment Bank Ltd – Administrator Appointed**

I refer to my appointment as Administrator of CCIB on 22 February 2016 and my letters dated 13, 19 and 27 April 2016.

The purpose of this letter is to provide you with an update on the affairs of CCIB, and provide further information in relation to the steps I have taken. Appendix 1 contains a list of frequently asked questions and the answers.

### **The Bank's relationship with the parent company**

Based on my investigations to date, it would appear that, since its inception, CCIB's affairs were conducted in a manner which involved all liquidity received by way of deposits being paid over to its parent company, Caribbean Commercial Bank (Anguilla) Limited (the "Parent"). I am continuing to investigate the terms of that relationship. However, the consequence appears to have been that, at all times, the Parent provided CCIB with liquidity on demand in order to meet withdrawal requests. All of CCIB's transactions, including in respect of deposits and withdrawals by CCIB's depositors, were routed through the Parent.

At the date of my appointment, and according to CCIB's records, CCIB had balances with the Parent amounting to approximately US\$38m (being some 99% of its reported assets). As far as I have been able to ascertain, these cash deposits were co-mingled with the Parent's own cash, and CCIB's ability to access this money was entirely dependent upon the willingness and capacity of the Parent to make the cash available.

As you are aware, the Parent was placed into Conservatorship on 12 August 2013 and was subject to the control of a Conservator appointed by the Eastern Caribbean Central Bank ("ECCB") from that date until 22 April 2016. Following his appointment the Conservator placed restrictions on withdrawals from balances on accounts at the Parent at the date of his appointment. CCIB's ability to access cash held at the Parent has been controlled by the Conservator since his appointment.

For the avoidance of doubt, since the date of my appointment I have had no access to or control over CCIB's cash held at the Parent. As provided for by the terms of my appointment, and during the period in which I was commencing my investigations, CCIB's day to day banking business was continued under the control of the Parent's conservator. Any and all withdrawals by CCIB and its depositors during this period were subject to the control of the Conservator. The only exception to this position was the "ring-fenced" account to which I have made extensive reference in my earlier letters.

I made a formal demand on the Parent Bank for full repayment of all of CCIB's balances held at the Parent. As at the date of this letter, this demand has not been satisfied.

### **The 'Resolution' of the Parent**

On 22 April 2016, the ECCB implemented its resolution plan (the "Resolution Plan") in respect of the Parent. Pursuant to the Resolution Plan and a "Purchase and Assumption" agreement ("P&A"), the assets, and certain liabilities, of the Parent were transferred to a newly established bank, the National Bank of Anguilla Ltd ("NCBA"), an entity wholly owned by the Government of Anguilla.

I was provided with no prior notice of the proposed implementation of the Resolution Plan. I have repeatedly sought information from the ECCB, Mr. Gary Moving, the Receiver appointed to the Parent Bank, Mr. Martin Dinning the Chief Executive Officer of NCBA and the Government of Anguilla as to the scope and effect of the Resolution Plan and P&A, including the effect they have on CCIB and its depositors. However very little information has been forthcoming to date. I have requested copies of the Resolution Plan and P&A. Mr. Dinning has specifically refused to provide a copy of the P&A.

During a meeting with Mr. Moving and Mr. Dinning on 27 April, I was advised that:

- The assets of the Parent were transferred to NCBA;
- The Parent has been placed in Receivership, with Mr. Moving being appointed as Receiver;
- The Parent has ceased trading but NCBA has assumed the business of the Parent;
- The ring-fenced account to which I have referred in my previous correspondence has been transferred to NCBA;
- No provision has been made for any party to meet the obligations of the Parent to repay the net new money deposited into CCIB, to which I have made extensive reference in my previous correspondence;
- No depositor protection has been afforded to CCIB or its depositors in respect of deposits placed with the Parent on or before 12 August 2013; and
- CCIB will have a claim in the Receivership of the Parent in respect of the balance due to it from the Parent.

Put simply, the cash balances CCIB held at the Parent Bank have been transferred to NCBA but the corresponding obligation to repay these funds to CCIB has not been assumed by NCBA. It appears based on the information currently available to me that the Resolution Plan has been designed to protect the depositors of the Parent, but not the deposits made by CCIB. No similar provision has been made in respect of the depositors in CCIB.

Further information on the implications of this situation on CCIB and its depositors and the steps I am taking to challenge what has happened, are set out below.

### **Assets and liabilities of CCIB held by the Parent as at the date of Conservatorship**

Despite repeated requests I have received no meaningful information from any party as to how the funds held by CCIB at the Parent at the date of the Conservator's appointment will be treated. I am seeking to ascertain whether such funds should be reflected as liabilities due to CCIB by the Parent, or whether CCIB has a basis to assert any direct claim to assets reflecting the funds placed with the Parent.

It is however my understanding from meeting with Mr. Moving and Mr. Dinning that NCBA's position is that the funds held as at the date of the Conservator's appointment reflect a liability due by the Parent to CCIB, which liability has not been assumed by NCBA. NCBA's position is that CCIB has a claim against the Parent in Receivership in respect of this amount. I have no visibility on the financial position of the Parent, however as its assets (apart from, in all probability, non-performing loans) have been transferred to NCBA, I have no reason to believe that any provision has been made for either the Parent or NCBA to repay the amount due to CCIB.

I am currently considering what actions I can take to compel the ECCB, the Receiver and the NCBA to provide me with full details of the Resolution Plan and P&A, as well as details of how CCIBs' and its depositors' interests will be treated. I am considering what legal remedies are available to me to seek redress. I should point out that depositors might have separate causes of action, and urge you to take your own legal advice.

### **Post-conservatorship balances (up to 24 March 2016)**

As stated previously, assurances were given to CCIB's depositors by the Conservator, the ECCB and the Parent that money deposited with CCIB in the period 12 August 2013 to 23 March 2016 ("Net New Money") would remain fully available to depositors for withdrawal. Furthermore, during my own discussions with the Deputy Governor of the ECCB and Conservator, both repeatedly expressed the view that the Net New Money would be repaid, subject only to available liquidity.

As with the position in relation to pre-conservator balances, I have now been advised by Mr. Moving and Mr. Dinning that no provision has been made by any party to meet the obligations to repay these funds.

In circumstances where CCIB was subject to the control of the ECCB appointed conservator, I have adopted the position that all deposits made with CCIB and the proceeds of any asset realisations made by CCIB, which have been paid over to the Parent, since the Conservator's appointment, were paid out in breach of fiduciary duty owed to CCIB and are held on constructive trust for CCIB by the Parent/NCBA (to the extent NCBA has also received the proceeds).

In view of the continued refusal of the relevant parties to recognise CCIB's entitlement to these funds I have commenced a claim in the Eastern Caribbean Supreme Court in the High Court of Justice Anguilla ("Anguillian Court") against the Parent and NCBA seeking *inter alia* the return of these funds.

Additional claims that may exist against other parties relating to their conduct in this matter are being considered.

### **Funds depositors post 24 March 2016 in the Ring-fenced Account**

I have been advised that these funds have been transferred to NCBA. Mr. Dinning has orally confirmed that withdrawals from funds placed into this account will be honoured.

In the event that you have net deposits remaining in the ring-fenced account, that is a positive balance after taking into account all deposits and withdrawals made in the period 24 March 2016 to date, you must provide instructions for the return of these funds to Ms Marisa Gumbs.

### **Actions by CCIB's depositors**

CCIB's depositors may well have rights of action against the Parent, the Conservator, the ECCB and others in their own right. I have been made aware that Mr. Harry Wiggin of Webster Law, a law firm in Anguilla, is considering whether other lawyers who have been instructed by depositors can co-ordinate their efforts and therefore consider whether proceedings amounting to a class action can be brought on behalf of all depositors. I also understand that a Mr. Graham Crabtree represents a number of depositors and is working with Mr. Wiggin in relation to this.

Should you wish to discuss this with Mr. Wiggin or Mr. Crabtree they can be contacted at [hwiggin@websterlawbwi.com](mailto:hwiggin@websterlawbwi.com) or [info@ceg.ai](mailto:info@ceg.ai).

### **Outcome for CCIB's depositors**

The outcome for the depositors of CCIB will be driven by:

- i) the recoveries I make from the Parent, NCBA and any other parties against whom CCIB has a claim in relation to the Net New Money and the pre Conservatorship Funds; and
- ii) recoveries I make from any other parties whom CCIB has a claim against.

It is not possible at this point to provide you with an indication of the quantum or timing of a return to depositors. You will appreciate that unless they are settled on a voluntary basis, which I consider to be unlikely, the claims I refer to in i) and ii) above may take a significant time to be resolved.

I will issue a further update to depositors at such time as there are any material developments.

Should you have any queries with the contents of this letter, please do not hesitate to contact [ccib@fticonsulting.com](mailto:ccib@fticonsulting.com)

Yours faithfully

Caribbean Commercial Investment Bank Ltd – Administrator Appointed

A handwritten signature in black ink, appearing to read 'W. Tacon', with a stylized flourish above the name.

**William Tacon**  
**Administrator**

## **Caribbean Commercial Investment Bank Ltd – Administrator Appointed (“CCIB”) Frequently Asked Questions**

### **Q. What has happened to the money I deposited at CCIB?**

A. All monies deposited at CCIB were paid over by CCIB to the Parent. The terms upon which CCIB did so remain under investigation. In turn, during the period of its operation, the Parent provided CCIB with liquidity on demand to meet withdrawal requests.

As far as the Administrator is aware, the assets of the Parent, including the monies transferred to it by CCIB, have been transferred to NCBA.

Save in respect of funds placed into the ring-fenced account previously described and established by the Administrator (which funds are understood to be fully available to depositors who placed them by way of demands made to NCBA). The Administrator has been advised by the Parent and NCBA that the obligations of the Parent to meet its liabilities to CCIB, and thus enable the repayment of CCIB's depositors, will not be met.

### **Q. What is the Administrator doing to recover the money CCIB deposited at the Parent?**

A. The Administrator has commenced a claim in the Anguillan Court against the Parent and NCBA seeking the return of all monies paid to the Parent by CCIB from 12 August 2013.

The Administrator is also considering what legal remedies are available to him in relation to recovering the monies held by CCIB at the Parent as at 12 August 2013.

### **Q. Do CCIB's depositors have rights of action against the Parent, the Conservator, the ECCB or any other parties?**

A. Depositors should take their own legal advice as to rights of action open to them.

The Administrator will continue to take all steps open to him to advance the interests of the creditors of CCIB as a whole.

### **Q. I had a term deposit with CCIB as at 12 August 2013, which has subsequently matured and been placed back onto term deposit. Can I access these funds?**

A. These monies form part of the funds that CCIB paid to the Parent. Consequently, they are understood to have been transferred to NCBA.

The Administrator has been advised by the Parent and by NCBA that the obligations to repay these deposits will not be met.

**Q. Can I withdraw any money from CCIB now?**

A. No. CCIB has no liquid assets. All of its cash assets were held at the Parent and have since been transferred to NCBA. CCIB has ceased to carry out banking business and its affairs will be liquidated. Money in the ring fenced account is available to depositors who placed funds there.

**Q. I have heard reports that deposits up to EC\$2.8m are fully protected, is this correct?**

A. To the best of the Administrator's knowledge this is not correct. The ECCB and NCBA have stated that deposits up to EC\$2.8m which have been placed with the Parent, Caribbean Commercial Bank (Anguilla) Limited, are protected. However the Administrator's understanding is that this protection only applies to persons/entities who were direct depositors with the Parent. Formal clarification of the position is being sought from the Parent and NCBA.

**Q. Does CCIB have a deposit with the Parent with protection up to EC\$2.8m?**

A. The Administrator has been advised by the Receiver that he considers that the account between CCIB and the Parent is a "placement" but not a deposit and therefore not subject to the protection of EC\$2.8m.

The Administrator is examining the status of the account and will challenge the Receiver's view if my analysis and legal advice differs from his current position.

**Q. How long will this take to resolve and how much will CCIB's depositors recover?**

A. The amount returned to depositors by the Administrator will depend upon recoveries made from claims against various parties.

It is not possible at this stage to estimate the quantum or timing of a return to depositors.

**Q. I had a merchant services facility with CCIB. Can I still use this?**

A. No. As CCIB has ceased to operate this facility is no longer available.

**Q. I had a debit/credit card from CCIB. Can I still use these?**

A. No. As CCIB has ceased to operate these can no longer be used.

**Q. Can the Administrator assist us to open accounts with other financial institutions?**

A. No, unfortunately the Administrator cannot assist you in this regard.