

---

# Stanford International Bank Limited (In Liquidation)

---

## **Update to Creditors**

27 December 2017

- Marcus A Wide and High Dickson were appointed as Joint Liquidators (“the JLS”) of Stanford International Bank Limited (“SIB”) by Order of the High Court of Antigua and Barbuda on 12 May 2011.
- This Ninth Report has been compiled for the purpose of providing a brief update to creditors on significant matters arising in the liquidation since the Eighth Report, dated 24 March 2017.
- This report should be read in conjunction with the previous reports issued to creditors, and creditors should note that it has been prepared using information available to the JLS at the time of preparation.

## Canada

- The US\$5.05 billion damages claim against TD Bank continues to be a priority for the estate given it has the most potential for generating substantial returns to creditors.
- This claim is progressing as efficiently as can be hoped, given its complexity and size. Since our last report, the JJs and their legal team have spent a significant amount of time reviewing documents produced by TD Bank as part of the documentary production process. The JJs note that this review has not revealed any evidence detrimental to the JJs case and, as such, this claim will be proceeding as planned.
- As a result of the need to clarify TD's claim to privilege of certain documents the discovery process is now expected to commence in early 2018, with a trial estimated to take place in early 2019.

## Former Liquidators' Costs

- As advised in previous reports the former Liquidators had claimed \$9.2 million in fees and disbursements in respect of the work they had carried out.
- We challenged various aspects of their fees and made a counter claim against them for damages suffered by the estate arising from their conduct.
- We are pleased to announce that we have agreed an all-encompassing settlement on this issue for a payment to the former Liquidators of £2.65 million. This is a saving to the estate of almost US\$6 million (along with the legal costs that would have been incurred pursuing this litigation to completion).

## Law Firm Claims

- Creditors will recall that the JJs brought negligence actions in Antigua against US law firms Proskauer Rose ("Proskauer") and Chadbourne & Parke LLP ("Chadbourne"), which acted for SIB and failed to protect its interests while doing so.

- We are pleased to report that the Chadbourne claim has been resolved amicably pursuant to an agreement that remains confidential. This resolution has been approved by the Court.
- On 28 October 2017, the Court found that our Order permitting the Estate to serve Proskauer out of the jurisdiction was improperly granted and it was set aside. The Court has not provided its reasons. Once received we will make a determination as whether an appeal is sensible. The time for filing an appeal starts with the delivery of the reasons.

## Swiss assets

- Creditors will recall that the JJs are attempting to recover approximately US\$210 million of frozen assets in Switzerland in conjunction with the US Receiver and the US Department of Justice. With a final conviction of Stanford, the Swiss Department of Justice indicated at our last visit that they would begin the process of repatriation of the frozen funds. However, this required notice to those holding funds, permitting those persons to raise objections to the repatriation.
- As previously reported, the principal reason the funds are still frozen is that Societe General ("SG") has made a claim to indemnity from these funds for any judgment brought against it by the US Receiver and the putative class action brought in the US. While the lower Court has failed to ratify a class action, there are still appeal rights and an alternative claim filed by the US Receiver that are being pursued. While these are still active SG will continue to assert its indemnity and object to repatriation.
- The Swiss Trustee, acting on behalf of the SIB Liquidation has challenged this indemnity claim and this process is continuing in the Geneva Court system. Given the loads on the Court in Geneva we are advised it is not possible to predict when this issue might be resolved.

## Possible claims against other banks

### HSBC (UK)

- The JJs continue to investigate whether we have viable claims against HSBC, which also provided banking services to SIB. This process has been protracted as obtaining information from HSBC, as is our right under English law, has been a lengthy and slow process.
- We believe we are at the point where we have obtained sufficient information to allow our UK based solicitors and a London Queens Counsel to provide their advice on the strength of SIB's claim against HSBC. The JJs will base their decision on whether to pursue this claim on this advice.

### SG (Switzerland)

- We are in the process of liaising with our Swiss lawyers to assess the strength of our claim against SG. In the meantime, the JJs have taken the appropriate steps to "stop the clock" on the limitation period and preserve their right to bring any claim that may arise.

## Clawback claims

- As previously reported, we have pursued a direction through the Antiguan Court with respect to our potential claims against those SIB CD holders who are in our view subject to clawbacks for what can be described as "preferences" or "net winners", using the provisions of Section 204 of the International Business Corporations Act ("Section 204 claims"). We have also argued the merits of these being preferential payments subject to clawback under common law.
- At first instance the JJs we not permitted to pursue Net Winners, but were given limited recourse against the Preferences. This was appealed up to the Court of Appeal ("CoA").
- The JJs received the CoA Judgment on 22 September 2017, which confirmed the lower Court decision in respect of Net Winners but going a step further and removing the ability to pursue the Preferences.

- The JJs are disappointed with the reasoning for this decision, as, after review with counsel, it did not appear to deal with basic points of SIB's case in respect of the Section 204 claims and referenced grounds that were not the subject of the appeal or cross appeal by either side.
- The JJs are also aware of a recent Privy Council decision with respect to transactions that can be set aside in a liquidation from a Cayman proceeding that appears support their underlying proposition.
- The CoA decision creates conflict between the Antigua estate and the US Receivership. In the US, Net Winners are being pursued by the Receiver with the support of the US Court.
- It is the JJ's firm belief that it is appropriate that similar claims made in each estate should be treated consistently.
- Based on our concerns with the CoA decision, the Privy Council's recent decision and the issue of conformity between the two estates, permission to appeal to the Privy Council is being sought.
- For the avoidance of doubt, any previous settlements of Net Winner or Preference claims that have completed are irrevocable.

## **Real property of related SIB group companies**

### **Stanford Development Company Ltd (SDC)**

- SIB advanced some US\$269 million to its subsidiary SDC, up to it ceasing to trade in February 2009. SDC used these funds to purchase and develop real estate in Antigua.
- The Joint Liquidators of SDC continue to focus on realising this property on behalf of its creditors, having realised c.EC\$20 million since their appointment. SDC continues to hold property with an estimated market value of EC\$50 million.
- The SDC Liquidators are in the process of finalising Sale and Purchase Agreements for another EC\$36.45 million worth of property.
- There are creditor claims of EC\$30 million in the estate, of which EC\$3.4 million has been paid in respect of preferential claims to employees as required under Antigua law.
- There is the potential for the SDC creditors to be paid in full with the surplus being paid up to SIB under its creditor claim.

### **Other Group Companies**

- The Joint Liquidators for Maiden Island Holdings Limited (MIHL) received and accepted bids for a property it holds known as “Crabbs Marina”. The specific terms of the agreement of purchase and sale are under negotiation.
- The sale of the properties “Maiden Island” and “Barnacle point” (that were also owned by MIHL) have now closed. As SIB is the sole creditor of MIHL, we anticipate the net proceeds can be distributed to SIB in fairly short order.
- The total net recoveries from the associated entities in liquidation which will flow to SIB is likely to be in the range of between US\$15 million to US\$25 million, depending on the finalisation of other creditors’ claims.

# Financial Position of the Estate

Stanford International Bank Limited (In Liquidation)

- The total balance of cash on hand as at 30 November 2017 is US\$68 million.
- Of this, US\$12.5 million is held for the first distribution and US\$18.4 million held in the Supplemental Working Capital Account (SWC). The SWC is only accessible by the JLs once the Swiss assets have been realised under the terms of the Settlement Agreement between the US parties and the Antiguan estate.
- The total unallocated cash available is therefore US\$37.1 million. The JLs have set aside US\$31 million, which is the budgeted cost of operating the estate and pursuing litigation claims, which is summarised in the table below.
- The net cash available for distribution at this time is the cash on hand less the budgeted cash commitment; this balance is US\$6.1 million.
- As advised previously, it is uneconomical to make a distribution to creditors until we have enough cash on hand to distribute at least a 1% dividend, roughly US\$50 million.
- Potential sources of recoveries are summarised in the Highlights section of this report.

## Budget Table

	US\$mil	US\$mil
<b>Provision for litigation costs</b>		
TD Bank (incl. provision for potential cost awards if not successful)	20.0	
Other litigation cost estimates	5.0	
		25.0
Operating costs		2.0
Other Fees and Professional Costs		4.0
<b>Total Funding Required</b>		<b>31.0</b>

- We will continue our efforts to achieve further asset recoveries from the sources outlined in this report.
- We will continue to provide updates via the liquidation website with regards to any significant developments in these recovery efforts.
- In particular, will update all creditors as soon as we are able to estimate when the second interim distribution to creditors will take place.



Marcus Wide  
Joint Liquidator – Stanford International Bank Limited