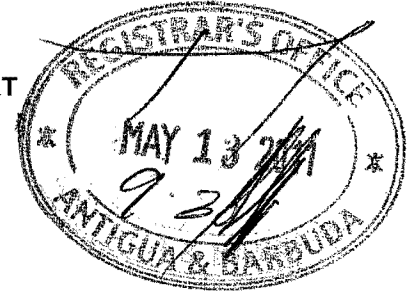


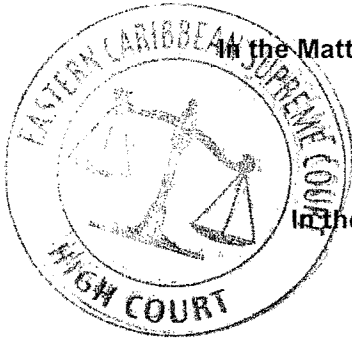
THE EASTERN CARIBBEAN SUPREME COURT  
THE HIGH COURT OF JUSTICE  
ANTIGUA AND BARBUDA



Claim No. ANUHCv 2009/0149

In the Matter of Stanford International Bank Limited (In Liquidation)

-and-



In the Matter of the International Business Corporations Act, Cap 222 of the  
Laws of Antigua and Barbuda

-and-

In the Matter of an Application for the Removal of the Joint Liquidators

ORDER  
[Appointment of New Liquidator(s)]

BEFORE THE HONOURABLE JUSTICE MARIO MICHEL IN CHAMBERS

DATED: 12 May, 2011.

ENTERED: [13<sup>th</sup>] May, 2011.

PENAL NOTICE

IF YOU, STANFORD INTERNATIONAL BANK LIMITED, OR YOUR DIRECTORS, DISOBEY THIS ORDER, YOUR DIRECTORS MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED; AND YOU, AS A COMPANY, MAY BE FINED AND HAVE YOUR ASSETS SEIZED.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS, PERMITS OR CONSTITUTES ANY BREACH OF ANY OF THE TERMS OF THIS ORDER, MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.

**UPON** consideration of the Order and Judgment of Thomas, J of this Court dated 8<sup>th</sup> June 2010 (the "Removal Order") where this Court removed Nigel Hamilton-Smith and Peter Wastell as Joint Liquidators of Stanford International Bank Limited ("S.I.B." or the "Bank"),

**AND UPON READING** (a) the Second Affidavit of Marcus A. Wide of 15 April, 2011, (b) the Second Affidavit of Hugh Dickson of 15 April, 2011, (c) the Second Affidavit of William Tacon of 16 April, 2011 of Zolfo Cooper (BVI) Ltd., (d) the Affidavits of Craig L. Waterman sworn on 12 April, 2011 and of James A. Pomeroy of PricewaterhouseCoopers sworn on 15 April, 2011, together with (e) the Second Amended Notice of Application dated 18 April, 2011 to Appoint Replacement Liquidators of Alexander M. Fundora (the "Applicant"), a creditor of the estate of S.I.B.,

**AND UPON HEARING**

Anthony Astaphan S.C., Counsel for the Applicant; K. Kentish Counsel for the Outgoing Officeholders,

**THE APPLICATION HEREIN** having been heard on 12 May, 2011,

**THIS COURT** having previously determined that in the circumstances it was just and convenient that S.I.B. be liquidated and dissolved under the supervision of the Court pursuant to the International Business Corporations Act, Cap 222 of the Laws of Antigua and Barbuda (as amended) (the "IBC Act"), and having appointed Mr. Hamilton-Smith and Mr. Wastell as Joint Official Liquidators of S.I.B. (in liquidation) all by Order of this Court dated 15 April 2009 and entered on 17 April 2009,

**AND UPON THIS COURT HAVING** removed Nigel Hamilton-Smith and Peter Wastell (the "Outgoing Officeholders") as Joint Liquidators upon the Application of the Applicant and by the terms of the Removal Order dated 8th June 2010; and without in any way altering or affecting the legal rights of the estate of S.I.B. or of its past, present or future Liquidators in any thing of value, including but not limited to (i) the right to marshal into the estate or obtain control over any assets wheresoever such assets may be found in the world; (ii) any form of recognition as the foreign insolvency office holders of S.I.B. by any foreign court, administrative agency or tribunal; or (iii) the rights of the Outgoing Officeholders to seek Court approval of their reasonable fees and reasonable costs and expenses incurred whilst they were receiver-managers and/or

liquidators of S.I.B., from the estate of S.I.B. (subject to the terms of this order set out below); the Outgoing Officeholders' powers and authority under the Order of this Court dated 15 April 2009 and entered on 17 April 2009 are hereby terminated.

**AND UPON THE APPLICANT HAVING SUBMITTED** the names of three alternative pairs of suitably qualified and experienced insolvency practitioners pursuant to paragraph 9 of the Order of Thomas, J appearing at page 84 of his Judgment dated 8<sup>th</sup> June 2010 as candidates for the office of the new joint liquidators of S.I.B.,

**AND UPON** being advised of the filing of the Consents to Act of (i) Craig L. Waterman of PricewaterhouseCoopers (Barbados) and James A. Pomeroy of PricewaterhouseCoopers LLP (Halifax, Nova Scotia, Canada) (ii) Mr. Hugh Dickson of Grant Thornton (Cayman) Limited and Marcus A. Wide of Grant Thornton (British Virgin Islands) Limited; and (iii) Mr. William R. Tacon of Zolfo Cooper (BVI) Limited and Richard Edgar Lewis Fogerty of Zolfo Cooper (Cayman) Limited to act as the new joint liquidators of S.I.B.;

**IT IS HEREBY ORDERED THAT:**

**APPOINTMENT OF NEW OFFICEHOLDER**

1. MARCUS A. WIDE of Grant Thornton (British Virgin Islands) and HUGH DICKSON of Grant Thornton (Cayman Island) are hereby appointed joint liquidators (the "Liquidators" or "New Officeholders") of the Bank, with all the powers and duties of a liquidator as contained in the International Business Corporations Act, Cap. 222, as amended (the "Act") of the Laws of Antigua and Barbuda or any other legislation or rules of law related thereto or deriving therefrom and with such further duties and responsibilities as conferred by this Order.

**NOTIFICATION OF APPOINTMENT.**

2. The Liquidators shall forthwith give notice of their appointment to office to each known claimant and creditor of the Bank and all other interested persons by publishing a notice in the Official Gazette and in a newspaper with national circulation in Antigua and Barbuda and otherwise give notice in every jurisdiction where the Bank had a place of business in such manner as they shall consider appropriate.

### **TAKING POSSESSION OF ASSETS OF S.I.B.**

3. The Liquidators shall take possession of, gather in and realise all the present and future assets and property of the Bank, including without limitation, any real and personal property, cash, choses-in-action, negotiable instruments, security granted or assigned to the Bank by third parties including property held in trust or for the benefit of the Bank, and rights, tangible or intangible, wheresoever situate and to take such steps as are necessary or appropriate to verify the existence and location of all the assets of the Bank, or any assets formerly held by, whether directly or indirectly, or to the order of, or for the benefit of, the Bank or any present or former subsidiary or company associated with, or owned by, the Bank. The aforementioned assets and property shall include the terms of all agreements or other arrangements relating thereto, whether written or oral, the existence or assertion of any lien, charge, encumbrance or security interest thereon, and any other matters which in the opinion of the Liquidators may affect the extent, value, existence, preservation, and liquidation of the assets and property of the Bank. The title to all assets of S.I.B. shall vest in the New Officeholders as successors to and in substitution for the Outgoing Officeholders. For greater certainty, such vesting in the New Officeholders shall be deemed to have effect as of the date of the original appointment of the Outgoing Officeholders of 15<sup>th</sup> April 2009.

### **BANK ACCOUNTS.**

4. The Liquidators shall open and maintain a bank account either in their names as Liquidators or in the Bank's name (in liquidation), in this jurisdiction and deposit therein the funds gathered and realised pursuant to his appointment. Notwithstanding the foregoing, the Liquidators shall have the power to open and maintain foreign bank accounts or to establish client account(s) at the bank(s) of his solicitors, attorneys-at-law or other legal counsel in foreign jurisdictions, and receive and hold all or any portion of the proceeds from the sale, recovery or realisation of the Bank's assets and property in foreign jurisdictions, in such foreign bank accounts. (All bank accounts maintained by the Liquidators are collectively referred to as the "Account").

### **NEW ACCOUNTS.**

5. The Liquidators shall open and maintain a bank account either in their names as Liquidators or in the Bank's name (in liquidation), in this jurisdiction and deposit therein the funds gathered and realised pursuant to his appointment. Notwithstanding the foregoing, the Liquidators shall have the power to open and maintain foreign bank accounts or to establish client account(s) at the bank(s) of his solicitors, attorneys-at-law or other legal counsel in foreign jurisdictions, and receive and hold all or any portion of the proceeds from the sale, recovery or realisation of the Bank's assets and property in foreign jurisdictions, in such foreign bank accounts. (All bank accounts maintained by the Liquidators are collectively referred to as the "Account").

**DISTRIBUTION OF PROCEEDS OF LIQUIDATION OF GENERAL ASSETS OF S.I.B. - FEES AND EXPENSES.**

5. (a) Subject to the repayment of any and all indebtedness that may be incurred by the Liquidators under clause 14 below, the general assets of the Bank are, from the date hereof, to be held for the benefit of the depositors and creditors of the Bank as their interests appear in accordance with the laws of Antigua and Barbuda, subject to the payment of the fees, expenses and costs of the liquidation which shall be paid in the order of priority required by section 289 of the IBC Act.
- (b) This Court confirms that, in addition to their own fees (aa) the fees and expenses of the New Officeholders shall include fees and expenses of foreign or domestic legal counsel, and agents, accountants, investigators, forensic analysts or other experts engaged by the New Officeholders to assist them in the discharge of their duties and responsibilities (the "Costs"); and (bb) the fees and expenses (including any foreign or domestic solicitors, attorneys, legal counsel and agents) of the Outgoing Officeholders, once assessed and approved by the Court shall be paid on a pro rata basis with any then outstanding fees and expenses of the New Officeholders (including any Costs) and shall be paid out of the general assets of the Bank, but subject to the obligation to repay any loan or financing obtained by the New Officeholders pursuant to clause 14 below; as well as the effect of any security or charge against the assets of the estate of the Bank pledged to secure any such loan or finance. Should the New Officeholders borrow money under clause 14, they may be paid their ongoing fees and expenses on a monthly basis from the proceeds of such funding.

**REQUEST FOR JUDICIAL ASSISTANCE ABROAD - UNCITRAL DECLARATIONS.**

6. The purpose of this clause 6 is to set out a specific request for judicial assistance to all foreign Courts where assets or Papers of S.I.B. may be found or where the Liquidators seek any form of judicial assistance. This request is made pursuant to the notions of curial deference, comity and mutual respect which endures between all Courts. This

Court requests, to the extent that such recognition has not already occurred, that this proceeding be recognised as a foreign main proceeding taking place in Antigua where S.I.B. has the centre of its main interests as that term is defined in Article 2 (b) of the UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment; and in fulfilment of the requirement for recognition as a foreign main proceeding in Article 17 subsection 2 (a) of the UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment. The place of incorporation and domicile of S.I.B. is Antigua. The place of the head office and "nerve centre" of S.I.B. is also Antigua. This Court declares that this is a collective judicial proceeding in which the assets and affairs of the debtor are subject to the control or supervision by this Court of Antigua and Barbuda for the purpose of the liquidation of the assets of S.I.B. pursuant to Article 2 (a) of the UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment.

7. This Court declares that the Liquidators are authorised to act in any foreign state on behalf of S.I.B. as may be permitted by any applicable foreign law and/or by Article 5 of the UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment. This Court declares that the Liquidators are persons authorised in the present insolvency proceedings of Antigua and Barbuda to administer S.I.B.'s assets and affairs wheresoever they may be found in the world, and to act as foreign representatives of a foreign proceeding as prescribed by Article 2 (d) of the UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment.
8. This Court declares that this is a collective insolvency proceeding intended to marshal in and recover all assets and value owned by, or owed to, the Bank wheresoever in the world such assets or value may be located or realised upon. All creditors, depositors and investors in the Bank shall have the right to seek to prove in the estate of the Bank no matter where such parties are resident or located in the world. This Court finds that the Bank is insolvent and declares these proceedings to be in respect of an insolvent liquidation of the Bank.

## SECURITY FOR PAYMENT OF LIQUIDATORS' FEES.

9. Subject to the repayment of any and all indebtedness that may be incurred by the Liquidators under clause 14 below and to any super priority mortgage, security interest or charge which the said borrowings may require and that this Court may approve (the "Lender's Super Priority Security Interest"), the New Officeholders shall have a security interest in the assets and property of the Bank superior to all other persons as security for their fees, expenses and costs. For the avoidance of any doubt, the New Officeholders shall share on an equal footing their security interest contemplated herein by this clause 9 with the security interest held by the Outgoing Officeholders for their fees and expenses (as may be assessed and approved by the Court) claimed for work carried out to date, but always subject to any borrowing by S.I.B.

## TURN-OVER OF ASSETS AND PAPERS.

10. Subject always (in the case of the Outgoing Liquidators, and their managers, employees, agents, accountants, holders of powers of attorney, legal counsel and shareholders and all persons acting on their instructions or behalf) to the terms and conditions of the Transitional Arrangements Order (the "TAO") of even date herewith, the Bank and any person holding, or reasonably believed to have in his or their possession or power, any assets, property or information of the Bank including, without limitation, information evidenced on any computer records, electronic records, programs, disks, documents, books of account, corporate records, minutes, correspondence, opinions rendered to the Bank, documents of title, whether in an electronic medium or otherwise (collectively called "Papers"), relating in whole or in part to the Bank (or to any person, dealings, or property showing that that person is indebted to the Bank), may be required by the Liquidators to produce or deliver over such property or Papers as soon as may be practicable to the Liquidators, subject to the Liquidators tendering to pay (such person or body all reasonable disbursements incurred in relation thereto (once S.I.B. has funds available to pay for the same), notwithstanding any claim or lien that such person may have or claim on such assets, property or Papers, and the Liquidators shall have full and complete possession and control of such assets, property and Papers of the Bank including its premises. In the event of a *bona fide* dispute over ownership or any legal

entitlement to such property or Papers, the Liquidators shall be permitted to take away copies of such Papers.

#### **EXAMINATION OF WITNESSES.**

11. The Liquidators shall be at liberty, without the necessity of any further order, to summon before the High Court for examination under oath, subject to the Liquidators tendering to pay such person or body all reasonable disbursements incurred in relation thereto (once S.I.B. has funds available to pay for the same), any person reasonably thought by him to have knowledge of the affairs of the Bank or any person who is or has been an Outgoing Officeholder or a director, officer, employee, agent, shareholder, accountant of the Bank, or such other person believed to be knowledgeable of the affairs of the Bank and to order such person(s) so liable to be examined to produce any books, documents, correspondence or Papers in his or her possession, custody or power relating in whole or in part to the Bank, its dealings, property and assets and the Liquidator is authorised to issue writs of subpoena *ad testificandum* and *duces tecum* for the compulsory attendance of any of the persons aforesaid required for such examination.

#### **DISCLOSURE OF INFORMATION.**

12. Further, and without limiting the generality of any other provision contained in this Order and subject always (in the case of the Outgoing Liquidators, and their managers, employees, agents, accountants, holders of powers of attorney, legal counsel and shareholders and all persons acting on their instructions or behalf) to the terms and conditions of the TAO of even date herewith:

- (a) (i) The Bank; (ii) the Outgoing Officeholders; (iii) all of its current and former directors, officers, managers, employees, agents, accountants, holders of powers of attorney, legal counsel and shareholders, and all other persons acting on its instructions or behalf; and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall as soon as reasonably practicable advise the Liquidators of the existence of any



assets and property in such Person's possession, power, control or knowledge, and shall grant immediate and continued access to the said assets and property to the Liquidators, and shall, upon a written request (to include e-mail), deliver, subject to the Liquidators undertaking to pay such person or body all reasonable disbursements incurred in relation thereto (once S.I.B. has funds available to pay for the same), all such assets and property to the Liquidators upon the Liquidators' request, subject only to any privilege attaching to solicitor-client communications or statutory provisions prohibiting such disclosure;

- (b) All Persons shall as soon as reasonably practicable advise the Liquidators of the existence of and grant access to and, upon a written request (to include e-mail), deliver, subject to the Liquidators undertaking to pay such person or body all reasonable disbursements incurred in relation thereto (once S.I.B. has funds available to pay for the same), the Liquidators or to such agent or agents he may appoint, any books, documents, securities, contracts, orders, corporation and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Bank, and any computer programmes, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall, subject to the Liquidators undertaking to pay such person or body all reasonable disbursements incurred in relation thereto (once S.I.B. has funds available to pay for the same), provide to the Liquidators, or permit the Liquidators to make, retain and take away copies thereof, and grant to the Liquidators unfettered access to and use of accounting, computer, software and physical facilities relating thereto, subject only to any privilege attaching to solicitor-client communications or statutory provisions prohibiting disclosure;
- (c) If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall, subject to the Liquidators undertaking to pay such person or body all reasonable disbursements incurred in relation thereto (once S.I.B. has funds available to pay

for the same), as soon as reasonably practicable give all reasonable access to the Liquidators for the purpose of allowing the Liquidators to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Liquidators in their discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Liquidators. Further, for the purposes of this subparagraph, all Persons shall, subject to the Liquidators undertaking to pay such person or body all reasonable disbursements incurred in relation thereto (once S.I.B. has funds available to pay for the same), , provide the Liquidators with all such assistance in gaining access as soon as practicable to the information in the Records as the Liquidators may in their discretion require including providing the Liquidators with instructions on the use of any computer or other system and providing the Liquidators with any and all access codes, account names and account numbers that may be required to gain access to the information; and

- (d) The Persons are hereby restrained and enjoined from disturbing or interfering with the Liquidators and with the exercise of the powers and authority of the Liquidators conferred hereunder.

#### **AUTHORITY TO EXECUTE INSTRUMENTS.**

- 13. The New Officeholders are authorized in their own name or on behalf of the Bank as Liquidators to join in and execute, assign, issue and endorse such transfers, conveyances, contracts, instruments of termination of any contracts, leases, deeds, bills of sale, cheques, bills of lading or exchange or other documents of whatever nature in respect of any assets, property or Papers of the Bank as may be required to carry out their duties including the realisation and liquidation of the assets of the Bank, or the collection of any Papers of the Bank, or for any other purpose pursuant to this Order.

## **BORROWINGS.**

14. In the light of the limited measure or scarcity of liquid assets currently available to S.I.B., this Court acknowledges the need for S.I.B.'s estate to be placed into a financial condition which shall permit it to function properly. The New Officeholders are hereby empowered under section 308 (1) (f) of the IBC Act and authorised by virtue of this Order to (a) borrow a principal sum (in such amount as the Court may approve) as they may consider necessary or desirable including any monies borrowed or to be borrowed for fees and expenses incurred (or to be incurred) by the New Officeholders while operating by virtue of their appointment hereunder, and (b) pledge or mortgage by way of a first charge in super priority ranking to all other claims or charges, any one, more or all of the present or contingent assets of the Bank as security for such borrowings. The terms and conditions governing any loan agreement or pledge or mortgage of assets of S.I.B. as collateral security therefor may be agreed upon by the New Officeholders provided that such terms of finance or funding shall be consistent with this Order, the TAO and subject to the further approval of this Court. Any such first charge or mortgage shall specifically be deemed to be in priority to any other claim to a charge or lien in and to such assets or rights, including but not limited to any right or claim created by the order of this Court dated 15 April, 2009 provided that before this provision shall affect or alter any rights of the Outgoing Officeholders, they shall be given at least fourteen (14) days notice of any hearing listed on the application of the Liquidators to approve the terms of any proposed borrowing or finance to be procured by the Liquidators under this Clause 14.

## **PAYMENT OF FEES AND EXPENSES.**

15. The remuneration of the Liquidators and their expenses or disbursements including legal costs or fees, may be drawn and paid on account of the total on a monthly basis from the assets of the Bank or from borrowings obtained under clause 14, including cash and deposits on hand, on the basis of the time expended by the Liquidators and their staff or the staff of the professional services firm they are associated with at their usual hourly or daily rates for such work subject to such amounts being taxed from time to time as the Court may direct.

#### **ENGAGEMENT OF EXPERTS AND PROFESSIONALS.**

16. The Liquidators may engage agents, appraisers, auctioneers, brokers, or any other experts as may be required to assist them with the liquidation process and determining claims in the liquidation. The Liquidators may also engage the professional services firm with which they are associated, to provide services to S.I.B. in accordance with the hourly rates set forth in their Consents to Act or Affidavits filed with this court in April 2011.

#### **ENGAGEMENT OF LEGAL PROFESSIONALS.**

17. The Liquidators may retain independent legal advice and engage solicitors, legal Counsel or other professional advisors or consultants, both inside and outside Antigua and Barbuda and elsewhere to assist them as Liquidators to discharge their duties hereunder. The Liquidators may also retain the services of private investigators, forensic analysts, accountants or other service providers who are within or without the jurisdiction of this Court, to further their investigations and work in respect of the Bank or otherwise. The Liquidators are empowered to use the funds of the Bank to pay the fees and disbursements of such service providers at their regular hourly rates and on a monthly basis.

#### **REPORTING.**

18. The Liquidators shall provide a report to this Honourable Court within 90 days of their appointment with respect to the liquidation and their preliminary determination of the assets to be realised, the likely recoveries and the extent to which the claims of creditors, depositors, and investors in the Bank may be met. The Liquidators shall further report to the Court as they or the Court determines is appropriate, but shall in any event report no less frequently than six months from the date of their last report.

#### **INDEMNIFICATION OF NEW OFFICEHOLDERS.**

19. The New Officeholders and their respective officers, employees, legal counsel, solicitors, agents, and such other persons retained by them in the performance of their duties

hereunder are hereby granted indemnity from the assets of the Bank for their fees, expenses and actions taken, including indemnity for any litigation or other claims, actions or demands whatsoever in respect of any debts, costs, claims, liabilities, acts, matters, or things done or due to be done or omitted by the New Officeholders and their officers, employees, legal counsel, solicitors, agents and such other persons retained by them except where there is a finding by the Court of willful misconduct in the performance of his and/or of their respective duties.

**STAY.**

20. All actions, proceedings and any claims whatsoever and wheresoever initiated against the Bank, its assets and property or the Bank's direct or indirect subsidiaries, are hereby stayed and no person, which shall include a body corporate, shall bring or continue with a claim or proceeding against the Liquidators, the Bank or the Bank's direct or indirect subsidiaries, without leave of this Honourable Court.
21. All persons having oral or written agreements with the Bank or statutory or regulatory mandates for the supply of goods and/or services including, without limitation, all computer software, communication and other data services, centralised banking services, payroll services, insurance, transportation and freight services, utility or other services to the Bank are hereby restrained until further order of this Honourable Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Liquidators, and that the Liquidators shall be entitled to the continued use of the Bank's current telephone numbers, facsimile numbers, Internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Liquidators in accordance with normal payment practices of the Bank or such other practices as may be agreed upon by the supplier or service provider and the Liquidators, or as may be ordered by this Honourable Court.

**DIRECTIONS – URGENCY.**

22. The Liquidators in the carrying out of their duties and responsibilities may apply for directions and guidance from this Honourable Court from time to time including any

application as may be required for the amendment of this Order. In light of the number and complexity of the urgent matters facing the administration of the SIB Estate, the Registry is directed to seek to list any application by the Liquidators for directions or Court approval urgently and to the extent that the Liquidators file a certificate of Urgency with any Notice of Application which they file. The Registry shall list a hearing for two hours duration for Monday 11 July, 2011 (or for whatever day may be convenient and which is near to such date provided that 14 days notice of any such hearing is given to the Outgoing Officeholders), to hear the New Officeholders' prospective Application for Court approval of the terms under which they may borrow monies for the funding of the liquidation under clause 14 hereof (and any ancillary or related applications). This direction shall not preclude the New Officeholders from seeking an earlier date for such hearing (provided that 14 days notice of any such hearing is given to the Outgoing Officeholders).

#### **CONTRACTS.**

23. No person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Bank without written consent of the Liquidators or leave of this Honourable Court.

#### **APPROVALS.**

24. The Liquidators, in their name or in the name of the Bank, shall be at liberty to apply for any permits, licenses, approvals or permissions as they may be advised by their counsel are required by or deemed necessary pursuant to any laws, governmental or regulatory authority, in the pursuit or performance of their duties hereunder.

#### **AUTHORITY TO ACT.**

25. The Liquidators shall have the authority as officers of this Honourable Court to act in Antigua and Barbuda or any foreign jurisdiction where they believe assets, property or Papers of the Bank may be situate or traced at equity or otherwise, and they shall have the right to bring any proceeding or actions in Antigua and Barbuda and any foreign

jurisdiction for the purpose of fulfilling their duties and obligations under this Order and the Act and to seek the assistance of any Court of a foreign jurisdiction in the carrying out of the provisions of this Order or any subsequent order in this proceeding, including without limitation, subject to the Liquidators tendering to pay such person or body all reasonable disbursements incurred in relation thereto (once S.I.B. has funds available to pay for the same),, an order of examination of persons believed to be knowledgeable of the affairs, assets and property of the Bank and to assist the Liquidators in the recovery of the assets and property of the Bank or to trace such assets into the hands of others.

26. The Liquidators are hereby constituted as foreign representatives for the purposes of any proceedings with respect to the Bank that may be commenced or taken under any applicable law outside Antigua and Barbuda, including but not limited to any foreign bankruptcy, trust, insolvency, company or other applicable law.
27. Subject always (in the case of the Outgoing Liquidators, and their managers, employees, agents, accountants, holders of powers of attorney, legal counsel and shareholders and all persons acting on their instructions or behalf) to the terms and conditions of the TAO of even date herewith, the Liquidators shall be at liberty and are hereby authorised and empowered to apply, upon such notice as they may consider necessary or desirable, to any other Court or administrative body in any other jurisdiction, whether in Antigua and Barbuda or elsewhere, without limitation, for orders recognising the appointment of the Liquidators by this Honourable Court and confirming the powers of the Liquidators in such other jurisdictions, and requesting the further aid, assistance or recognition of any Court, tribunal, governmental and administrative body or other judicial authority, howsoever styled or constituted, to assist in carrying out the terms of this Order and the duties and responsibilities of the Liquidators hereunder, including but not limited to, and on the basis of:
  - (a) all applicable foreign corporate, insolvency or other statutory provisions or customary practices that permit the recognition of foreign representatives of an insolvent estate; and/or
  - (b) the doctrines of curial deference and comity, including but not limited to:

- (i) recognising the Liquidators as having the equivalent powers of a liquidator or of an insolvency office holder within any foreign jurisdiction(s) and to investigate the affairs of the Bank, take evidence thereof and identify, trace, arrest, seize, freeze, detain, secure, recover, receive, control, preserve and protect the Bank's assets, property and Papers and administer such property, assets and Papers, howsoever characterised, pursuant to this Order;
- (ii) granting extraordinary relief to the Liquidators to identify, trace, arrest, seize, freeze, detain, secure, recover, receive, control, preserve and protect the Bank's assets, property and Papers and compel disclosure of information and documents to the fullest extent otherwise permitted, in aid of the Liquidators' authority hereunder to discover assets, property and Papers under the dominion or control of the Bank, to trace the movement and conversion, past and present, of the Bank's property, assets or Papers and to learn fully of the activities of the Bank with regard thereto;
- (iii) compelling disclosure of the identities of all known or unknown wrongdoers, facilitators and all other persons or entities who have acted, knowingly or unknowingly, in concert with the Bank in any fashion whatsoever; and
- (iv) compelling for examination under oath, by the Liquidators or other authorised person, any person reasonably thought to have knowledge of the affairs of the Bank, or any person who is or has been an agent, banker, clerk, employee, contractor, servant, officer, director, nominee, trustee, fiduciary, auditor, 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 person liable to be so examined to produce any books, documents, correspondence, reports or papers in his possession or power relating in



whole 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.

#### **COSTS.**

28. The Applicant be awarded all his reasonable costs and disbursements incurred in, and arising out of, the Removal Application, the related appeals litigation and the instant new appointment application (such costs to include the costs and disbursements of the Applicant's overseas Solicitors and/or Attorneys retained to instruct his counsel herein) (the "Applicant's Costs"). The Applicants Costs shall be paid from either any loan advanced to the estate of S.I.B by a third party under clause 14 or from the assets of the estate of S.I.B. within 28 days of the entering of this Order, such costs to be assessed if not agreed upon by the New Officeholders and the Applicant.

#### **REQUEST.**

29. This Honourable Court requests the aid, assistance and recognition of any foreign Court, tribunal, governmental body or other judicial authority howsoever styled or constituted, in any other jurisdiction where property, assets or Papers of the Bank may be found (or traced to), to assist in carrying out the terms of this Order and the duties and responsibilities of the Liquidators hereunder and to act in aid of, and to be complementary to, this Court in carrying out the terms of this Order.

#### **INTERPRETATION.**

30. To the extent of any conflict or inconsistency between the contents of this Order and the contents of the Order of this Court dated 15<sup>th</sup> April, 2009 (and which appointed the Outgoing Officeholders, Nigel Hamilton-Smith and Peter Wastell to office), the contents of this Order shall prevail otherwise the terms of the 15 April 2009 Order shall continue to subsist and endure.

31. The Court notes the agreement of the Outgoing Officeholders to co-operate with the Liquidators in providing all reasonably assistance in connection with matters arising in the estate of S.I.B. and in the handover of the liquidation, such co-operation being in accordance with the terms of a Transitional Arrangements Order of equal date herewith. All reasonable costs incurred by the Outgoing Officeholders in providing assistance (including of legal advisors) in the transition of the Estate from the Outgoing Officeholders to the New Office Holders be costs in the estate and payable from any borrowings obtained under clause 14 to a limit of US\$250,000 unless approved by the Court. The Liquidators shall not be required to post security in respect of their appointment.
32. The Liquidators act solely in their capacity as Liquidators and without personal liability if they rely in good faith upon the financial statements or records of the Bank or upon an opinion, report or statement of any professional advisor retained by them.

BY THE COURT



Registrar