

13 April 2016

## **TO ALL KNOWN DEPOSITORS**

Dear Depositor

### **National Bank of Anguilla (Private Bank & Trust) Ltd – Administrator Appointed (the “Bank”)**

#### **Introduction**

On 22 February 2016 I was appointed Administrator of the Bank by Order of the Eastern Caribbean Supreme Court in the High Court of Justice Anguilla Circuit (the “Court”) on the application of the Anguilla Financial Services Commission (the “FSC”).

The Order appointing me (the “Order”) was made on the basis that the Court considered it necessary to protect or preserve the business or property of the Bank, or the interests of the Bank’s customers, creditors or the public. The Order conferred on me complete control of management powers in respect of the Bank pursuant to Section 31 of the Financial Services Act. It also requires me, amongst other things, to undertake a review of the financial position and performance of the Bank, and its solvency and viability, in order to determine what course of action is in my opinion most advantageous to the general interests of the customers, clients, depositors and creditors of the Bank.

Since my appointment, I have been taking urgent steps to ascertain the financial position of the Bank, and in particular whether it is in the interests of the Bank’s various stakeholders for the Bank’s business to continue as a going concern. This has involved intensive efforts to clarify with the Eastern Caribbean Central Bank (the “ECCB”), former management and the Bank’s parent entity, the basis on which trading has been conducted to date, and efforts to obtain up to date financial records in respect of the Bank.

Having reported my preliminary findings and conclusions to the Court on 21 March 2016 (the report being made on a confidential basis in accordance with the terms of the Order, and the file in respect of the proceedings against the Bank being sealed), it is necessary for me to write to all depositors in order to set out the current position in relation to the Bank’s affairs and the actions which I will now be taking.

#### **Background information about the Bank and its relationship with the parent company**

As you may be aware on 12 August 2013, the Bank’s parent company National Bank of Anguilla Ltd (the “Parent”) was placed into Conservatorship. It is therefore subject to the control of the ECCB. The Bank itself is not in Conservatorship, but since the Conservator’s appointment, its operations have been managed by the Conservator.

Since his appointment, the Conservator has been working on a plan to restructure the Parent (the “Resolution Plan”), the terms of which are yet to be finalised and which are not publicly known. I am not aware of, and thus not able to comment on, how the Resolution Plan may affect the Bank’s financial position or the eventual outcome for the Bank’s depositors.

My investigations to date indicate that the day to day operations of the Bank and the Parent are inextricably linked. Furthermore, and of critical importance to the Bank’s financial position, the Bank’s financial records suggest that some 56% of the Bank’s assets are represented by balances held at the Parent. *Prima facie*, the Bank’s claim against the Parent for these balances appears to be a claim against the Parent for return of the deposits held, but I am continuing to investigate the factual basis on which such balances were placed with the Parent and also considering (with my legal advisers) all potential legal bases for the Bank’s claim against the Parent, with a view to ensuring maximum recovery for the Bank. As the Parent will be subject to the Resolution Plan, however, the timescale for the recovery position in respect of these assets is at present uncertain.

### **How the business of the Bank has been conducted since Conservatorship**

Since the appointment of the Conservator in respect of the Parent, the Bank (under the control of the Parent, its Conservator and the ECCB) has continued to conduct business as a going concern, including taking further deposits and meeting certain withdrawal requests.

To date, requests from depositors for withdrawals from ‘net new money’(see definition and further information below) placed since the appointment of the Conservator have been met, with the Conservator (and ECCB) in effect making funds available to the Bank to enable it to meet such requests. Similarly, withdrawal requests in respect of balances held in depositors’ accounts as at the date of appointment of the Conservator have been met, in accordance with criteria specified by the Conservator.

The full factual circumstances of this continuation of business by the Bank (under the control of the Parent and the ECCB) are the subject of ongoing investigation by me. On the information currently available to me, the Bank appears to have accepted deposits and then immediately passed those deposited funds to the Parent. One consequence of this may be that although there may have been an overall decline in amounts due to depositors, net new money placed with the Bank since conservatorship may have increased. Because of this, I have been having extensive discussions with the ECCB in order to attempt to clarify the position and secure the return of funds to the Bank’s depositors, to which I refer below.

### **The current position and safeguarding depositors’ interests**

I have given careful consideration to the steps I should now take with a view to best promote the general interests of all creditors of the Bank including the interests of depositors, including whether it can be justified to allow the Bank to continue to take deposits and meet ongoing withdrawal requests.

I have engaged in extensive discussions with the Conservator and ECCB as I have sought to obtain appropriate assurances that the full return of 'net new money' placed since the onset of Conservatorship will occur, whatever may be the eventual terms of the Resolution Plan that are implemented and whenever that may occur. As noted above, the Bank is entirely dependent upon the Parent under the control of the Conservator and ECCB for the availability of funds to meet withdrawal requests. The discussions are continuing and I can now report the progress made.

### **Deposits made from 24 March 2016 onwards**

New funds deposited from 24 March 2016 have been placed in a new account which the ECCB has expressly confirmed will be held solely for the order of the depositors who placed those funds. Withdrawal requests have and are being met and new deposits are also being made.

### **Deposits made from Conservator's appointment to 23 March 2016**

As indicated above, from the date of his appointment, the Conservator has accepted new money from depositors and although the precise basis of acceptance is not known to me, it appears to have been understood that the money would be available for withdrawal. To date, I understand withdrawal requests have been made and met. I am seeking to obtain suitable and adequate assurances from the Conservator and ECCB concerning the continuing return of these monies to the depositors who placed them and the eventual full return of those monies. I have put proposals to the ECCB and it has responded with other suggestions. As yet however, those negotiations are inconclusive,

Whilst these negotiations continue, I am unable to confirm whether or not a satisfactory conclusion will be reached but will provide an update as soon as possible.

### **Withdrawals from balances placed prior to Conservator's appointment**

I understand that the Conservator has allowed restricted withdrawals to be made from balances on accounts as the date of his appointment. He also allowed further sums to be withdrawn if depositors could demonstrate exceptional personal circumstances. To date, I have continued this policy.

### **Change in policy concerning future withdrawal requests**

I have taken legal advice as I have to consider what is in the interests of the creditors, including depositors, of the Bank, in the current circumstances and in view of its insolvency, and the uncertain position of the Parent. I have concluded that:

1. With immediate effect, no withdrawals will be permitted from balances placed prior to appointment of the Conservator on 12 August 2013. However, consideration will be given to meeting requests in circumstances of exceptional personal hardship, such as meeting emergency medical bills. Please note that the money to meet any exceptional requests accepted is controlled by the Conservator and ECCB.

2. Requests for withdrawals from 'net new money' deposited between 12 August 2013 and 23 March 2016 will be considered by the ECCB, which has advised me that it intends to return the money, subject to the liquidity constraints of the Bank and the Parent over which I have no control. As noted above, securing the return of this money is the subject of my current negotiation with the ECCB which is continuing. If such requests exceed the capacity of the Bank and the Parent to meet them, given the Parent's liquidity constraints, limitations will likely have to be imposed.
3. Withdrawals from deposits made after 24 March 2016 are covered by the agreement I have reached with the ECCB referred to above.

### **Definition and calculation of 'net new money'**

I have made reference to 'net new money' in this letter. In brief, it refers to new money deposited after the onset of Conservatorship minus the withdrawals made from that money. The situation is made more complex by the fact that such withdrawals may have included withdrawals from money represented by the account balance as at 12 August 2013 when the Conservator was appointed.

Each account where deposits were made after 12 August 2013 will have to be examined in detail in order to arrive at the true quantum of net new money. I have examined the position, as has the ECCB, but our respective calculations of the amount of net new money are different. I have offered to share my review and basis of calculation in order to seek an agreed position. Resolution of this matter has not yet occurred and if agreement cannot be reached, an application to Court would, in all probability be required to determine the position.

### **Other matters**

To assist in my enquiries, if you have placed with or withdrawn monies from the Bank following the Conservator's appointment, I should be grateful if you would provide me with full details of each transaction including but not limited to:

1. The account name and number used for the transaction;
2. The nature of the transaction, i.e. whether it was a deposit or a withdrawal;
3. The amount of the transaction;
4. The date of the transaction;
5. Copies of any communications you had with the Bank/the Conservator relating to the basis on which the money was deposited or withdrawn.

### **Next steps**

Although I appreciate that there are significant uncertainties arising as a consequence of the matters set out in this letter, I am unable at this point to provide any more clarity. I can assure all depositors that I am seeking to take steps to preserve and protect their interests as best as I can.

I shall write again to all depositors in due course as and when I am in a position to provide you with an update and information regarding the next steps which I propose to take in this matter.

Should you have any queries arising from this letter please contact [pbt@fticonsulting.com](mailto:pbt@fticonsulting.com).

Yours faithfully

National Bank of Anguilla (Private Bank & Trust) 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 Limited – In Administration**  
**(the “Bank”)**  
**Frequently Asked Questions**

Although the letter to depositors is comprehensive, it sets out the background of all matters and may not be relevant to all depositors. I provide a summary of the main points raised in my letter.

**Q. When was the Administrator appointed?**

A. Mr William Tacon of FTI Consulting (BVI) Limited was appointed on 22 February 2016 by an order of the Eastern Caribbean Supreme Court in the High Court of Justice Anguilla Circuit.

**Q. What was the purpose of the Administrator’s appointed?**

A. To protect the interests of the Banks and its creditors in the main being its account holders.

**Q. Who is the Conservator and what is his role?**

A. The Conservator was appointed to the parent of the Bank (National Bank of Anguilla Limited) on 12 August 2013. The parent is regulated by the Eastern Caribbean Central Bank (“ECCB”).I understand the appointment is intended to protect the position of its depositors through the implementation of a Resolution Plan.

**Q. Can I get access to money I deposited at the Bank before the appointment of the Conservator on 12 August 2013?**

A. No withdrawals can be made from money deposited at the Bank prior to the appointment of the Conservator, however special consideration will be given to meeting requests in circumstances of exceptional personal hardship, such as meeting emergency medical bills.

**Q. Why were new accounts set up for deposits into the Bank after 23 March 2016**

A. The Administrator decided that new accounts should be set up to receive deposits made after 24 March 2016 to ensure that any new deposits would be ‘ringfenced’ from the parent in view of its uncertain financial position.

**Q. Are there any restrictions on withdrawing funds deposited after 23 March 2016?**

A. There are no restrictions.

**Q. What is ‘net new money’**

A. ‘Net new money’ is the term given to the balance of money after taking into account all deposits to and all withdrawals from your account during the period from the appointment of the Conservator on 12 August 2013 to 23 March 2016. An adjustment has to be made for any withdrawals from the balance on the account as at 12 August 2013 and this is a complex matter. It does not affect you if no new money has been deposited by you between 12 August 2013 and 23 March 2016.

**Q. Can I withdraw my net new money?**

A. Withdrawals of net new money will be subject to the liquidity constraints of the Bank and the Parent. The liquidity is solely controlled by the ECCB and Conservator. If all depositors seek to recover their net new money simultaneously, withdrawal restrictions will invariably need to be applied.

The ECCB has advised me that it intends to cause the return of net new money in full, but the details of how and when it will be returned have not yet been provided.

**Q. Will I be able to recover bank balances held at the date of the appointment of the Conservator?**

A. Balances due to depositors held at the date of the Conservatorship will be dealt with as part of the Resolution Plan, details of which are not currently available. No estimates can currently be given about the timing or amount of returns of these balances.

**Q. What can I do now?**

A. Depositors should provide the Administrator with the requested information regarding your accounts.

**Q. Where can I find out more information?**

A. The Administrator acknowledges that the uncertainties regarding the current position may cause concern to depositors. Any further information or developments will be communicated to you as soon as possible.

If you have specific queries, we ask that you contact the following email address:

[pbt@fticonsulting.com](mailto:pbt@fticonsulting.com)