

7 October 2016

TO ALL KNOWN DEPOSITORS

Dear Depositor

National Bank of Anguilla (Private Banking & Trust) Ltd – Administrator Appointed (“PBT”)

The purpose of this letter is to provide you with an update on the administration of PBT. This letter should be read in conjunction with my previous letters and specifically my letter dated 30 June 2016.

The Resolution Plan and Purchase and Assumption Agreement (“P&A”)

In my previous correspondences, I provided updates on my attempts to obtain copies of the Resolution Plan and the P&A, which would help to determine how depositors of PBT would be treated. I have issued an application to the Eastern Caribbean Supreme Court in the High Court of Justice (Anguillan Court) (the “Anguillan Court”) to secure the release of these documents, with a hearing set down for 11 October 2016. I have also been in discussions with the National Commercial Bank of Anguilla Limited (“NCBA”) to seek release of these documents without the need for the application and thus avoid unnecessary cost. It is expected that the Court will request that NCBA provide me with copies of the P&A with the restriction that its terms must remain confidential under the terms of the disclosure order.

Funds held at National Bank of Anguilla Limited (“NBA”)

According to publicly available information, deposits held at NBA have been transferred to NCBA which has in turn guaranteed the repayment of these up to EC\$2.8 million to the extent that the deposits qualify as “deposits” within the meaning of the Banking Act 2015 (the “NCBA Guarantee”). On 23 March 2016, approximately US\$19.4 million was owed by NBA to PBT. I have requested an updated balance as at 22 April 2016 (the date that NBA was placed into receivership) from NBA but have not received this. However, its content is not expected to vary materially from the number above.

I have written to both the Receiver and to NCBA to ascertain how this balance will be treated and whether it will be eligible for the NCBA Guarantee up to EC\$2.8 million. I have not received any response from the Receiver, although in a meeting, he advised me that he considered the balance to be a “placement” which is not eligible for protection but gave no reasons or justification for his views. NCBA has responded through its legal counsel who, *inter alia*, states that the PBT account was not transferred to NCBA under the P&A and as far as NCBA is aware, it remains with NBA and any future queries should be directed to the Receiver. I disagree with NCBA’s position and as such, I intend to

seek a declaration from the Court as to whether or not PBT is a depositor of NCBA within the meaning of the Banking Act 2015, if no progress can be made on a consensual basis with the Receiver and NCBA.

I am aware of the existence of two Depositor Protection Trusts (the “Trusts”), being one for each of NBA and the Caribbean Commercial Bank (Anguilla) Limited (“CCBL”), which were established pursuant to the Bank Resolution Obligation Act 2016 (the “Obligation Act”). It is clear to me and my lawyers that the Trusts were created to protect “large depositors” of NBA, who are defined as holding deposits in excess of EC\$4 million. The trust fund is to consist of EC\$52 million constituted by payments to the Trusts by the Government of Anguilla as payor.

Despite my best efforts to obtain a better understanding of the Trusts, I have been unable to ascertain any information over and above that which is stated on the face of the Obligation Act, articles in the local press, and short extracts on the website of the Eastern Caribbean Central Bank (“ECCB”). No clarification concerning the status of PBT’s deposit has been forthcoming from any source.

A number of depositors have noted that the European Convention on Human Rights applies to Anguilla. I have been advised that it would only be applicable when all other local remedies have been exhausted and it is therefore not a matter I am considering while other local remedies are sought.

Post-conservatorship balances (up to 24 March 2016)

As noted in previous correspondence, I have issued proceedings in the Anguillian Court, (the “Claim”) on behalf of PBT (and the Caribbean Commercial Investment Bank Ltd (“CCIB”)) against NBA, CCBL and NCBA.

The Claim seeks, *inter alia*, to recover all funds that PBT transferred to NBA since the Conservatorship commenced (12 August 2013), whether by way of new deposits placed or assets of PBT realised after the onset of Conservatorship. The Claim is a proprietary claim to assets held on the basis that they were paid to the recipients in breach of fiduciary duties owed to PBT.

As NBA and CCBL are both in receivership, it was necessary for me to seek leave from the Anguillian Court to bring the claim against the two banks in receivership.

On 24 August 2016, the Master of the Court refused leave as she was of the opinion that the claim did not have a realistic prospect of success based on the drafting of the present claim in that it did not join the Conservator Directors as parties to the proceedings (the Conservator Directors were those persons appointed by the ECCB to oversee the operations of NBA and who in effect also ran the operations of PBT).

The Master refused leave to appeal and on advice, I have made an application to the Eastern Caribbean Court of Appeal seeking leave to appeal the decision. My application was heard on 6

October 2016 and at the time of writing, I have not been provided with the decision. If the application is granted, I will then proceed to appeal the Master's decision.

Chapter 11 bankruptcy

As you are aware, I caused PBT to file a Chapter 11 petition in the United States Bankruptcy Court in the Southern District of New York placing PBT into Chapter 11 bankruptcy. PBT was placed into Chapter 11 bankruptcy on 22 June 2016.

One of the key reasons for seeking Chapter 11 bankruptcy protection was to freeze funds held in NBA's Bank of America ("BOA") account, whereby it was evident that funds belonging to PBT depositors had been paid into. A letter was sent to BOA seeking the freezing of accounts, with BOA subsequently freezing three BOA accounts from 12 July 2016 onwards, with a total amount of US\$688,410 frozen. I have requested and been provided with the BOA bank statements which are now being reviewed in detail, in order to see if further claims might be made. I cannot provide any further information at this time but will do so as and when is appropriate.

Asset recovery

1. Loans

Since my appointment, US\$601,000 has been realised from PBT's loan portfolio, which is represented by ongoing monthly collections of instalments from performing loans, or early settlements as agreed with borrowers.

PBT has 17 loans outstanding which are summarised as follows:

PBT Loan Portfolio - October 2016		
Category	Number of Loans	Balance Outstanding
Performing	7	\$3,703,702
Non-Performing	10	\$7,985,343
Total	17	\$11,689,044

There are a number of borrowers with whom I am in discussion regarding possible early settlement. Where loans have been classified as non-performing, I have sought to engage with the borrower to seek a resolution regarding repayment. Where I have not had success in engaging with the borrower, I have commenced enforcement proceedings. The majority of the loans have real property pledged as security which is either located in Anguilla or St. Maarten.

2. Treasury bills

PBT had two outstanding treasury bills at the date of my appointment which have been redeemed in the sum of US\$2,851,446.

3. Property

At the date of my appointment, the Bank was in possession of two properties, (one located in St. Maarten and one in Anguilla).

A contract for the sale of the St. Maarten property had already been executed by the PBT prior to my appointment. I reviewed the sale process undertaken by PBT together with the price attributed to the property and concluded that I would allow the sale to continue. Due to certain delays attributable to the St. Maarten government, the sale of the property has not settled at the time of writing but is expected to settle in the near future. As the sale has not concluded, I am not in a position to disclose the sale price at this time.

The remaining property is a bare plot of land in Anguilla. There is an issue with the title of this property inasmuch as it is currently registered in the name of NBA, which is an error which I am seeking to rectify before the property can be marketed for sale.

Other than the assets named above, PBT has no other assets.

Administrator's account of receipts and payments

I attach at Appendix 1, my account of receipts and payments for the period 22 February 2016 to 4 October 2016.

Some of the key items to note are:

- The Administrator's fees relating to the administration in Anguilla require approval from the Anguillian Court but on account drawings have been made in accordance with the terms of the Court Order under which I was appointed;
- The Administrator's and legal fees incurred in dealing with the Chapter 11 process also require approval by the US Bankruptcy Court; and
- I have placed \$1.5 million on a three month term deposit.

Including the term deposit, I currently hold \$2,630,397 in the administration bank accounts.

Creditors' Committee of depositors

On 11 August 2016, I held the first meeting of the informal committee of creditors, with a total of 10 members on the call. Many of the topics above were discussed during the meeting. It is my intention to hold a further creditors' committee meeting by the end of October 2016.

Should you have any queries with the contents of this letter, please do not hesitate to contact PBT@fticonsulting.com

Yours faithfully

National Bank of Anguilla (Private Banking and Trust) Ltd – Administrator Appointed



William Tacon
Administrator

APPENDIX 1

National Bank of Anguilla (Private Banking & Trust) Ltd - Administrator Appointed Receipts and Payments Account From 22 February 2016 to 4 October 2016

	<u>US\$</u>
Receipts	
Treasury Bills	2,851,446.48
Loan Receipts	601,264.34
Total Receipts*	3,452,710.82
Payments	
Legal Fees**	(520,304.17)
Administrator's Fees	(242,492.38)
Property Insurance	(34,190.00)
Data Recovery Costs	(11,529.88)
Administrator's Expenses	(8,845.38)
Property Appraisal Fees	(3,153.49)
Bank Fees	(1,798.43)
Total Payments	(822,313.73)
Net Receipts and Payments	2,630,397.09

* US\$1.5 million has been placed in a term deposit with Scotiabank in the British Virgin Islands

** \$94,714 is currently held by my US counsel as a retainer in the Chapter 11 proceedings.