



## **Media Release**

December 7, 2009

### **Notification to the Government of Belize of a Claim by British Caribbean Bank Limited under the Investment Treaty between the United Kingdom and Belize**

British Caribbean Bank Limited (formerly The Belize Bank (Turks and Caicos) Limited) (the "Bank") wishes to inform the public that its attorneys, Allen & Overy, have written to the Government of Belize advising the Government that the Bank has grounds for a claim under the Agreement between the United Kingdom and Belize for the Promotion and Protection of Investments dated 30 April, 1982 (the "Investment Treaty").

The claim arises in connection with the US\$22.5 million loan made by the Bank in 2007 to Belize Telemedia Limited. The Bank believes that the notification under the Investment Treaty is necessary in light of the stance adopted by the Government and the Government-controlled Belize Telemedia Limited on this matter and in particular, the statements recently made to the media by the Prime Minister concerning the possible nationalization of the Bank's interest in the loan to Belize Telemedia Limited.

The Bank is a qualified investor protected by the Investment Treaty as a result of an Exchange of Notes between the United Kingdom and Belize, extending the Investment Treaty to the Turks and Caicos Islands.

The Bank is also a wholly owned subsidiary of BCB Holdings Limited, which is listed on the Alternative Investment Market of the London Stock Exchange and has approximately 700 United Kingdom shareholders.

The Bank has indicated to the Government of Belize that it is willing to seek an amicable settlement to this dispute. However, failing an amicable settlement, the Bank will refer the dispute to international arbitration under the Arbitration Rules of the United Nations as provided for in the Investment Treaty.

In order for the public to be fully informed, the Bank is attaching to this release a copy of the notification which was sent by Allen & Overy to the Government of Belize on Friday, December 4, 2009.

END

# ALLEN & OVERY

## BY FAX & BY COURIER

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LT:4888381.2

4 December 2009

Dear Sirs

### **Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Belize for the Promotion and Protection of Investments dated 30 April 1982**

We act for the British Caribbean Bank Limited, formerly The Belize Bank (Turks and Caicos) Limited (the **Bank**). The Bank is a wholly owned subsidiary of BCB Holdings Limited which is an AIM listed company and has approximately 700 UK shareholders.

The Bank is a qualified investor protected by the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Belize (the **Government**) for the Promotion and Protection of Investments dated 30 April 1982 which came into force on the same date and remains in force, and was extended by Exchange of Notes between the UK and Belize concerning the Turks and Caicos Islands on the same day (the **UK-Belize BIT**).

### ***The Belize Telecommunications (Amendment) Act 2009 and the Belize Telecommunications (Assumption of Control over Belize Telemedia Limited) Order, 2009***

On 25 August 2009 the Government enacted the Belize Telecommunications (Amendment) Act 2009 (the **Act**), which enables it compulsorily to acquire all such property as the Prime Minister, with the approval of

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the Minister of Finance, considers necessary to take possession of and assume control over telecommunications. The term "property" is defined in Section 63(9) of the Act to include a mortgagee or chargee's interest in property. The Government went through all three readings of the draft legislation in the House of Representatives in the course of 24 August 2009 and the Act went before the Senate and received Governor General assent on 25 August 2009. On 25 August 2009 an Order was made by the Minister responsible for telecommunications under the Belize Telecommunications (Assumption of Control over Belize Telemedia Limited) Order, 2009, Statutory Instrument No. 104 of 2009 (the Order).

Under the Order the following property was compulsorily acquired for and on behalf of the Government:

1. approximately 94% of the shares in Belize Telemedia Limited (Telemedia). Part I A of the Schedule to the Order specified shares to be acquired. These included 11,092,884 shares held by Sunshine Holdings Limited (Sunshine) in Telemedia;
2. the property specified in the Schedule, including in Part II (Other Property Acquired), the Bank's interest in Telemedia and its subsidiaries under a Mortgage Debenture dated 31 December, 2007 between Telemedia as the Mortgagor and the Bank as the Mortgagee; and
3. the entire issued share capital of Sunshine, namely two shares in Sunshine held by Dean Boyce and the Trustees of the BTL Employees Trust (as set out section E of the Schedule).

In addition, Section 4(1) of the Act provided that the existing Board of Directors of Telemedia "shall cease to function" and by a notice published in the Gazette on 25 August 2009 an interim Board of Directors was appointed in its place.

#### ***The Telemedia Facility and the Telemedia Mortgage***

On 6 July 2007, the Bank granted Telemedia a Term Loan Facility (the Telemedia Facility). The current principal amount which is outstanding under the Telemedia Facility is US\$22,562,202.11. An express purpose of the Telemedia Facility (Clause 1(b)) is the purchase and installation of equipment for the provision of telecommunications services in Belize.

Pursuant to the Telemedia Facility, Telemedia was obliged to make monthly interest payments to the Bank which were due on 10 September 2009 and on 10 October 2009. In breach of the Telemedia Facility, Telemedia failed to make these interest payments to the Bank. Therefore, an event of default has arisen under Clause 9(a)(i) of the Telemedia Facility and all indebtedness and liability of Telemedia to the Bank has become immediately due and payable.

Prior to the compulsory acquisition of the Bank's interest in Telemedia as mortgagor pursuant to the Order, the Bank's security was set out in a Mortgage Debenture between Telemedia and the Bank dated 31 December 2007 (the Telemedia Mortgage). The Telemedia Mortgage was comprehensive and comprised a charge by Telemedia over all its assets.

Clause 9 (Default and Acceleration) of the Telemedia Mortgage provides that all principal and interest shall become immediately due and payable and the security enforceable:

*"(1) if (a) [Telemedia] fails to pay as required by the Facility Letter Agreement any amounts of principal or interest thereon or other amounts payable to the [Bank] and such failure has not been remedied by [Telemedia] within seven business days notice of such failure from the [Bank] to [Telemedia] [...];*

*(9) if [Telemedia] changes its ownership structure or management without the consent of [Telemedia]"*



The Bank did not consent to the ownership structure and management of Telemedia being changed under the Order. This change in ownership structure and management is an event of default under Clause 9(9) of the Telemedia Mortgage. This in turn triggers a cross event of default under Clause 9(f) of the Telemedia Facility.

All indebtedness and liability of Telemedia to the Bank under the Telemedia Facility has become immediately due and payable. On 14 October 2009, the Bank wrote and notified Telemedia of its failure to make two successive interest payments under the Telemedia Facility and requiring payment to be made by 23 October 2009. The letter also pointed out that, by virtue of the change in Telemedia's control and management, events of default have arisen under Clause 9(a)(i) and 9(f) of the Telemedia Facility and under Clause 9(9) of the Telemedia Mortgage. Telemedia has not remedied any of these failures. However, the Bank is unable to enforce its comprehensive security against Telemedia under the Telemedia Mortgage because the security itself was compulsorily acquired on behalf of the Government pursuant to the Order.

#### *The Sunshine Facility, the Sunshine Overdraft and the Sunshine Security Agreement*

On 19 September 2005 the Bank granted Sunshine a Syndicated Loan Facility (the **Sunshine Facility**). The current principal amount which is outstanding pursuant to the Sunshine Facility is US\$2,601,748.90. A condition precedent to the Sunshine Facility was the grant by Sunshine of certain security in favour of the Bank. The Security Agreement between Sunshine and the Bank dated 19 September 2005 (the **Sunshine Security**) was comprehensive and comprised a first legal charge by the Bank over the 11,092,844 shares owned by Sunshine in Telemedia. The Bank's security interest in Sunshine under the Sunshine Security was not acquired for and on behalf of the Government under the Order. However, the 11,092,844 shares in Telemedia over which the Bank had security were compulsorily acquired.

Under Clause 6.1 of the Sunshine Facility (Event of Default) *"This Security will become immediately enforceable if an Event of Default is outstanding and the Agent gives notice that this security is enforceable."*

Pursuant to Clause 14.1 (Default) of the Sunshine Facility, it is an event of default if:

*"14.1.1 [Sunshine] fails to pay any sum due from it hereunder on the due date or on demand, if so payable; ...*

*14.1.6 any governmental authority expropriates or threatens to expropriate all or part of its assets and the result of the foregoing is, in the determination of the Majority Lenders, materially and adversely to affect its financial condition or its ability to perform its obligations under this Agreement..."*

If an event of default occurs, the Agent may declare the loan to be immediately due and payable. As a result of the Order which expropriated Sunshine's shares in Telemedia, an event of default has arisen under Clause 14.1.6 of the Sunshine Facility.

The Bank also granted an overdraft facility to Sunshine under a letter dated 19 May 2006 (the **Sunshine Overdraft Facility**). The current amount which is outstanding pursuant to the Sunshine Overdraft Facility is US\$977,620.19. A condition precedent to the Sunshine Overdraft Facility was the grant by Sunshine of certain security in favour of the Bank, as set out in Clause 5 of the Sunshine Overdraft Facility. The security comprised a first legal charge by the Bank over the entire issued share capital of Sunshine, namely two ordinary shares, as set out in two Mortgage of Shares documents, first between Dean Boyce and the Bank dated 19 May 2006, and second between the Trustees of the Employees Trust and the Bank dated 19 May 2006 (together the **Sunshine Mortgages of Shares**).

Pursuant to Clause 8 (Default and Acceleration) of the Sunshine Overdraft Facility:



*"All indebtedness and liability of [Sunshine] to the Bank shall become immediately due and payable, if any one or more of the following events of default occurs".*

Clause 7 (Covenants and Undertakings) of the Sunshine Overdraft Facility provides that, unless the Bank's consents, Sunshine undertakes not to "sell, grant, lease or otherwise dispose of its assets or create or permit to subsist any encumbrance, mortgage, pledge, lien, charge, assignment, hypothecation or security interest in and over its assets". As a result of the Order, the effect of which was that Sunshine's shares in Telemedia were otherwise disposed of, an event of default has also arisen under Clause 7(c) of the Sunshine Overdraft Facility.

On 14 October 2009, the Bank therefore wrote to Sunshine demanding payment by 23 October 2009 of the amounts outstanding under the Sunshine Facility and under the Sunshine Overdraft Facility. No payment was made by Sunshine to the Bank by 23 October 2009 or indeed at all. Therefore, a further event of default has occurred under Clause 14.1.1 of the Sunshine Facility. Sunshine does not have any assets other than the shares in Telemedia. As the Government has compulsorily acquired all of Sunshine's shareholding in Telemedia and the entire issued share capital of Sunshine, the Bank's ability to recover the funds loaned to Sunshine by way of enforcing its security has been removed as the Sunshine Security and the Sunshine Mortgages of Shares have become worthless.

#### *Recent statements made by Telemedia and the Prime Minister*

Recent conflicting statements have been made in the press by the current management of Telemedia and the Prime Minister as to the status of the Telemedia Facility, the Sunshine Facility and the Sunshine Overdraft.

In a press statement dated 18 November 2009 the Government of Belize commented on an article in The Reporter newspaper in which it was claimed that Telemedia had defaulted on the Telemedia Facility. The Government stated that it had expressly acquired the Telemedia Facility. It stated as follows:

*"...and the mortgage debenture securing the loan expressly acquired from the Bank by the Government of Belize. Legally, then, BTL owes no loan to the Belize Bank and cannot default on what it doesn't own. The US\$22.5 million is now a matter wholly and exclusively between the Bank and GOB."*

Net Vasquez, Telemedia's chairman, apparently admitted to Telemedia's default under the Telemedia Facility and stated that he regarded the obligation to repay the debt as being an obligation now owned by the Government. In an article published on 20 November 2009, he is said to have told the Amandala, a Belizean newspaper, that:

*"the government took over the debt to avoid assets being crow-footed by the bank in the event that a default would have been declared at the time of the government-takeover. Vasquez had previously told us that the loan was already in arrears".*

On 25 November, Amandala published a further article demonstrating confusion over the legal status of the Telemedia Facility and who bears liability to repay it. The article states:

*"Now the question is, did the government act illegally when it took over the \$45 million debt to the Belize Bank in the BTL nationalisation?... Prime Minister and Minister of Finance, Dean Barrow, told Amandala Monday night that the government has not acquired BTL's debt... However, it was... a Government of Belize release last Wednesday [that said] that Government had acquired the loan and its responsibilities".*

The Amandala article then quotes Mr Barrow as saying that the Bank would be paid by "The Government, by way of compensation" and also records the Prime Minister's position as being that "the government intends to



*challenge the very validity of the mortgage debenture and won't press BTL for payments on the loan until all the issues are settled". It further reports Mr Vasquez as asserting that "it is not taxpayers who will have to pay in the end". Finally, the Amandala article reports that "That's a long, tough and tricky road' the Prime Minister said, adding that the question of compensation is very much up in the air."*

Further, on the morning of 25 November 2009, the Prime Minister gave an interview on KREM Radio's "Wake up Belize". The Prime Minister stated his position as being that:

*"The government acquired the debt [i.e. the debt owed to the Bank] in the sense of acquiring the rights of the creditor [i.e. the Bank's rights] The government did not assume the obligation of the debtor... what the government has done is to step into the shoes of the creditor not of the debtor. The government has taken away from the creditor the creditor's right to go against the debtor."*

Later, the Prime Minister described the Government's position as *"We were absolutely certain that in doing what we did, that is in acquiring a mortgage debenture with respect to this loan that we put Telemedia and television access beyond the reach of our adversaries... Well, I'm going to acquire the first facility letter as well"*.

In a press conference yesterday, Telemedia alleged that the Telemedia Facility was used by Telemedia to purchase its own shares and that under the laws of Belize, this was unlawful and void.

The Bank strongly denies that the Telemedia Facility is unlawful. Under the terms of the Telemedia Facility, Telemedia warranted that it was fully and legally authorized to enter into and to perform the terms of the loan agreement with the Bank. The proceeds of the loan were used for a number of legitimate and legally permitted purposes including the development of Telemedia's switching platforms and transmission links; the expansion of Telemedia's external plant network, and the funding for the purchase by certain subsidiary companies of Telemedia of the Telemedia shares being sold by the Royal Bank of Trinidad and Tobago pursuant to its foreclosure of the outstanding Prosser Group loan.

#### ***Breaches of the UK-Belize BIT***

The Government's conduct is in breach of the following obligations under the UK-Belize BIT namely:

- to encourage and create favourable conditions for UK/TCI nationals to invest in its territories (Article 2(1));
- to accord investments of UK/TCI nationals fair and equitable treatment and provide full protection and security in respect thereof (Article 2(2));
- not to impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in Belize (Article 2(2));
- to observe any obligation it may have entered into with regard to investments of UK/TCI nationals (Article 2(2));
- not to treat investments of UK/TCI nationals less favourably than investments of Belize nationals or the nationals of any third State (Article 3(1));
- not to treat UK/TCI nationals less favourably than Belize nationals or nationals of any third State as regards their management, use, enjoyment or disposal of their investments (Article 3(2));



- not to expropriate or nationalise investments of UK/TCI nationals except for a public purpose and against prompt compensation amounting to the market value of the investment before the impending expropriation became public knowledge (Article 5(1)); and
- to ensure that any UK/TCI national affected by an expropriation, either directly or by the expropriation of assets of a company in which the UK/TCI national holds shares, shall have a right to prompt and independent judicial review of his case and the valuation of his investment (Article 5).

The Government's compulsory acquisition under the Order of:

1. the Bank's security interest in Telemedia under the Telemedia Mortgage;
2. the 11,092,844 shares owned by Sunshine in Telemedia, over which the Bank holds a first legal charge under the Sunshine Security, thus impairing the Bank's use of its security interest; and
3. the entire issued share capital of Sunshine, over which the Bank holds a first legal charge under the Sunshine Mortgages of Shares, thus impairing the Bank's use of its security interest

is in flagrant breach of the Government's obligations under the UK-Belize BIT to qualified investors such as the Bank.

There can be no justification under international law for the abuse of sovereign power that taking control of the Bank's security interest in Telemedia under the Telemedia Mortgage entails. In the recitals to the Order, the Minister responsible for telecommunications asserts as follows:

*"AND WHEREAS, after a careful consideration of all the facts and circumstances, I consider that control over telecommunications should be acquired for a public purpose, namely the stabilisation and improvement of the telecommunications industry and the provision of reliable telecommunications services to the public at affordable prices in a harmonious and non-contentious environment".*

It cannot, on any view, be said that the Government was acting for a public purpose when it compulsorily acquired the Telemedia Mortgage. The Bank's loan under the Telemedia Facility was provided to Telemedia for the expressly stated purposes of purchasing and installing equipment for the provision of telecommunications services in Belize and general working capital. In light of the event of default, the Bank is now entitled to the repayment of its loan in full. This in turn is highly likely to jeopardise Telemedia's ability to provide reliable telecommunications services to the public at affordable prices.

Further, the Prime Minister made it very clear that the true aim of the Government's action was targeted at the Accommodation Agreement entered into between Telemedia and the Government, which has no connection whatsoever with the Telemedia Mortgage, the Sunshine Security or the Sunshine Mortgages or Shares entered into by the Bank.

It is clear in light of the above that the stated legislative basis provides no justification for the Government's acquisition of the Telemedia Mortgage and the elimination of value in the Sunshine Security and the Sunshine Overdraft. Rather, this appears to have been directly targeted at the Bank's association with Lord Ashcroft's interests. The Act and the Order constitute a gross abuse of the proper legislative function.

Further, even if (which is denied) it could be said that the taking of the Bank's interest was for a public purpose, the provisions which purport to allow for "reasonable compensation" under the Act are patently inadequate and a clear breach of our clients' rights under the UK-Belize BIT, even if (which is denied) it could be said that the taking of the Bank's security interest in Telemedia was for a public purpose. The provisions do not in any event qualify or limit our client's rights to submit the dispute to international arbitration in accordance with the UK-Belize BIT.

In the circumstances we have advised our client that they have grounds for a claim against the Government under the UK - Belize BIT. Please therefore treat this letter as formal notification on behalf of the Bank of a claim pursuant to Article 8(1) of the UK-Belize BIT. Our client is willing to seek amicable settlement of the dispute as contemplated by the UK-Belize BIT and we invite your proposals in that regard. Please also let us know which of the means of international arbitration set out in Article 8(2) you propose for the dispute. We confirm that we would be happy to agree to arbitration before a panel of three arbitrators, either before the Court of Arbitration of the International Chamber of Commerce or pursuant to the current version of the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), 1977. If the UNCITRAL Rules are chosen, we suggest that the Court of Arbitration of the International Chamber of Commerce act as the designated appointing authority. We note that, failing agreement, Article 8 provides that disputes shall be referred to international arbitration under the UNCITRAL Rules.

Yours faithfully

*Allen & Overy LLP*

**Allen & Overy LLP**

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