

# **GOVERNMENTS OF THE EASTERN CARIBBEAN CURRENCY UNION (ECCU) AGREE ON STRATEGY FOR BRANCHES OF BRITISH AMERICAN INSURANCE COMPANY IN THE EASTERN CARIBBEAN**

## ***Introduction***

For several months, the Governments of the Eastern Caribbean Currency Union (ECCU) have carefully monitored growing public concern about the financial situation of British American Insurance Company Limited (BAICO) and other subsidiaries of its Trinidadian parent company, C L Financial. BAICO itself is a private, limited liability company incorporated in the Bahamas. Nevertheless, the sheer size of BAICO and the significant exposure of the Eastern Caribbean have made it imperative for the ECCU Governments to adopt a proactive and collective approach to this challenge.

At the end of July/early August of this year, regulators in the ECCU and The Bahamas intervened in the operations of BAICO and applied to Courts in the several jurisdictions to appoint Judicial Managers. Consequently, Judicial Managers were appointed in all ECCU countries with branches of BAICO except Dominica. Since Dominica's law does not provide for the appointment of a Judicial Manager, the Judicial Manager for BAICO (The Bahamas) appointed an agent to take control of the affairs of the branch in Dominica.

To facilitate cooperation, expedition and reduce costs, these "ECCU" Judicial Managers were all appointed from among professionals of a single group, namely the highly respected firms of chartered accountants known as "KPMG". Except for Dominica, the full reports of these Judicial Managers were filed with the respective Courts last Friday, October 30, 2009. Dominica's report will be filed soon.

## **Key Findings of Judicial Managers**

The reports of the Judicial Managers reveal that:

- ***The liabilities of the BAICO branches in the Eastern Caribbean total EC\$1.05 billion.*** Of this sum, EC\$842.4 million are annuities or investment contracts.
- There are branches in Anguilla, Antigua & Barbuda, Dominica, Montserrat, Grenada, St. Kitts and Nevis, St. Lucia and St. Vincent and the Grenadines.
- ***British American Insurance Company Limited, a Bahamian company operated out of Trinidad, with branches throughout the Eastern Caribbean is insolvent. As of June 30, 2009 (unaudited financial statements), the deficiency was EC\$775 million.*** This deficiency may increase as there are significant concerns regarding the values attributed to some of BAICO's intra-group assets, for example a loan note due from CL Financial and its US property investments.
- ***The branches of BAICO in the Eastern Caribbean are not stand-alone legal entities.*** As a result, the liabilities of these branches are the liabilities of BAICO and the assets of these branches are the assets of BAICO unless such assets have been legitimately set aside for the benefit of local policyholders.
- ***There is only approximately EC\$30 million of assets set aside (pledged) in the Eastern Caribbean.***
- ***An amount of EC\$301 million was taken from the branches in the Eastern Caribbean to fund certain inter-company transactions including the purchase of property in Florida, United States of America. The Judicial Managers have filed a petition in US Court to be recognized in bankruptcy proceedings started by BAICO to obtain relief under Chapter 15 of the US Bankruptcy***

**Code.** This relief, if granted, will stay all actions against BAICO in the US and will allow the Judicial Managers to have a voice in any decisions regarding the distribution of the US assets.

- ***In the event of a liquidation of BAICO, policyholders will not be paid in full.*** Indeed, it is probable that if BAICO was liquidated, policyholders will only get 10 cents on their dollar. This means if you have an annuity of \$1000, you would only receive \$100.

The facts revealed in the Judicial Managers reports are troubling to say the least.

However, they are not entirely unanticipated, for over the past few months many of the grim facts concerning BAICO's financial status have become public knowledge. Moreover, the Governments of the ECCU have actively sought to obtain a better of understanding of the situation with a view to becoming part of the solution. After considerable discussion and planning, a new entity was proposed to salvage the ailing ECCU operations of BAICO and we have worked for several months to make this a reality.

Mindful of the grave consequences if British American is liquidated, and having consulted with ECCU Governments, the Judicial Managers' Reports have now endorsed this approach for the creation of a new entity and we are optimistic that their recommendations will be accepted by the Court. In that event, the ECCU governments stand ready to participate in the proposed new entity with a view to protecting the interests of regional policyholders and annuitants.

It is clear from the Judicial Managers' Reports that BAICO is insolvent and that without a substantial capital injection, policyholders and investors would suffer tremendous losses. **It is with this in mind that the ECCU governments are pleased to announce that we have agreed upon a strategy to assist the Judicial Managers in the structuring and funding of the proposed new entity to take over certain of the assets and liabilities of BAICO in the Eastern Caribbean.**

While the details of this strategy will require a great deal more work, both in collaboration with the Judicial Managers of the region and in collaboration with potential strategic partners, it is a real opportunity, perhaps the only real opportunity, to avoid some of the inevitable losses associated with liquidation and to offer policyholders and investors the potential for recovery of a greater portion of their assets and investments.

### ***The Resolution Strategy (The Plan)***

The Plan is predicated on four guiding principles, which were endorsed by the Monetary Council at its meeting in Dominica on July 10, 2009. They are:

- (i) To ensure that British American does not become a systemic risk to the financial system;
- (ii) To protect, as far as practicable, the interests of depositors and investors;
- (iii) To keep British American as a “going concern” in a form to be determined; and
- (iv) To craft a solution that is regional in nature.

The Council also approved the appointment of a Ministerial Sub-Committee on Insurance to provide oversight on this important matter. The Sub-Committee comprises: Prime Minister Ralph Gonsalves of St. Vincent and the Grenadines (Chairman), Prime Minister Roosevelt Skerrit of Dominica, Minister Nazim Burke of Grenada and Minister Timothy Harris of St. Kitts and Nevis. This Committee is supported by a Core Technical Team and a Committee of Regulators. All have been working diligently on this matter for several months.

## ***THE ESTABLISHMENT OF A NEW INSURANCE COMPANY***

The proposed new company would have its headquarters in the Eastern Caribbean and would assume the traditional life insurance, medical insurance and annuity business of British American branches in the Eastern Caribbean.

The challenge posed by BAICO's insolvency is not only a concern for the Eastern Caribbean, it is a regional problem. BAICO, though incorporated in the Bahamas has its operational headquarters in Trinidad and Tobago through its parent company. Questions relating to corporate governance and management by the CL Financial Group certainly arise, especially in view of the apparent use of monies from BAICO policy holders in the Eastern Caribbean to fund risky real estate investments in Florida and elsewhere. Indeed, the Government of Trinidad and Tobago intervened into the operations of CL Financial earlier this year and entered into a Memorandum of Understanding with that company in an attempt to address some of these issues.

Consistent with the principle of crafting a solution which is regional in nature, the new company will be capitalized by ECCU Governments, the Government of Trinidad & Tobago, the Government of Barbados, and one or more strategic investors. Policyholders may also have an opportunity to obtain equity in the new company.

Of course, it is evident from the extent of BAICO's deficits that some losses will be inevitable. Policyholders should not expect the new company to cover all the benefits and interest to which they may be entitled from BAICO. Intrinsic in the high returns offered by BAICO is a certain level of risk for which policyholders must accept some responsibility. The capital injection required to preserve even the principal amounts invested by policyholders is daunting. Thus the goal in funding the new company will

be primarily to cover as far as possible the principal amounts invested by ECCU policyholders and annuitants.

The process of forming and funding the proposed new company is one that will take some time. Indeed even after the company is established, it will take time before there is sufficient liquidity to allow for payouts to any policyholders. Policyholders and annuitants should therefore not expect to have immediate access even to those funds which may ultimately be recoverable.

The Court may ultimately find that it is in the best interests of policyholders to approve a plan which proposes a reduction in future interest rates as well as a reduction in accrued interest. Annuitants may be required to continue to invest their funds for a prescribed time and/or may have options to acquire equity in the new entity. These details are still being worked out. The Governments of the ECCU are committed to preserving the principal investments of its citizens and residents in BAICO as far as practicable. However, British American policyholders need to be realistic about what they are likely to recover. Every policyholder and annuitant of BAICO will have a critical role to play in ensuring the success of the proposed recovery plan.

At this juncture, it is important to reiterate two things: if British American is liquidated, policyholders are likely to get 10 cents on the dollar. If the Court approves this plan, policyholders will recover some funds and may have an opportunity to participate in mechanisms for an even more substantial recovery over time.

Much work remains to be done but the ECCU Governments wish to see the new company set up within six (6) months of Court approval of the plan.

## ***ESTABLISHMENT OF A MEDICAL CLAIMS SUPPORT FUND***

The Governments of the ECCU are keenly aware of persons who are awaiting funds from British American to settle their medical insurance claims. It is understood that there may be as many as 7,700 medical insurance policyholders in the Eastern Caribbean.

Governments are especially concerned about such persons and recognize the fundamental importance of health care for the well-being of our people and the development of our region. As a consequence, and for a limited period pending the establishment of the new company, the ECCU Governments have agreed to establish a Medical Claims Support Fund. The resources for this Fund will come from the Liquidity Support Fund that was established earlier this year.

The intention here is that the Governments will provide resources to assist, within certain parameters, those ECCU policy holders who would otherwise have been entitled to receive payments of claims under BAICO medical policies. It should be noted that this fund will be an independent, governmental fund rather than a part of the existing BAICO operations. However, the establishment of this fund will require some collaboration with the Judicial Managers and will ultimately need to be incorporated into the proposed new company. Thus, it too will likely require court approval before full implementation.

It should be noted that this Fund will not apply to holders of annuities who are seeking funds to pay medical needs. Annuitants can expect some recovery only after the establishment of the proposed new company.

## ***TRANSFER OF THE PROPERTY INSURANCE PORTFOLIO***

The ECCU Governments further endorse the recommendation of the Judicial Managers to transfer BAICO's property insurance portfolio within the ECCU to an existing insurer, rather than including it in the assets of the proposed new company. The reasons for this decision are several, however among the most compelling is the fact that BAICO's reinsurers have cancelled reinsurance contracts with British American due to its insolvency. Given the size of the ECCU property insurance portfolio (3500 policyholders), the cost of such reinsurance is prohibitive at this time.

The Governments of the ECCU are of the view that ECCU property insurance policyholders would be best served by the proposed transfer to ensure that all property claims can properly be met.

Once again, it must be noted that this proposed transfer is subject to Court approval.

## ***LATEST DEVELOPMENTS ON CLICO***

CLICO Holdings Barbados Ltd is another subsidiary of the Trinidadian company C. L. Financial Limited. The Governments of the ECCU are aware that some CLICO companies in the Eastern Caribbean have recently been slow in paying claims.

Once again it should be noted that this is a private company. Nevertheless, in the interest of the public, the Governments of the ECCU and Barbados are in an ongoing dialogue on the status of CLICO Holdings (Barbados) which is the parent company for all CLICO branches in the Eastern Caribbean.

The Government of Barbados has informed that two CLICO subsidiary companies, CLICO Mortgage Finance Company and CLICO General Insurance, have already been sold and discussions underway for the sale of CLICO International Life Insurance. It is the understanding of ECCU Governments that the completion of these sales will provide CLICO Holdings (Barbados) with resources

to meet its obligations to all of its investors and policyholders, including those in the Eastern Caribbean countries.

The ECCU governments will continue the dialogue with the Government of Barbados to monitor this situation to the fullest extent possible.

### ***More Patience and Further Consultation is Required***

The resolution of issues surrounding the insolvency of BAICO is a complex undertaking. However, the ECCU Governments believe that the proposed plan, subject of course to judicial approval, can work. The alternative of immediate liquidation is, in our view, unacceptable.

The ECCU Governments understand the concern and anxiety of policyholders and have crafted this plan with them in mind; however, the policyholders of British American will need to continue to be patient and realistic.

At this juncture and quite understandably, policyholders and investors have many questions.

The ECCU Governments are asking the Judicial Managers to make appropriate arrangements to receive feedback from policyholders and the public on the plan and to provide available information to policyholders.

Furthermore, over the next few weeks, our Governments will be arranging meetings with staff and policyholders and investors to explain the proposed plan and to receive their views and suggestions.

The Governments of the ECCU are also aware that many individuals rely upon British American Life Insurance policies as collateral for loans and will be consulting with Banks in the region in an effort to address their concerns in this regard.

### **Why did this happen and how can it be avoided?**

In as much as BAICO is a private, limited liability company, matters related to internal corporate governance and management are most properly addressed by its shareholders and its creditors.

Even so, to the extent that the failure of a company like BAICO can have such wide reaching socio-economic effects across the region, the ECCU governments must next ask some salient questions: “Who is responsible for this difficult situation in which we find ourselves?” and “How can this be avoided in the future?”. These are important questions which must be addressed. However, the ECCU governments’ first priority in this regard has been and continues to be to craft a viable and sustainable solution for its affected citizens and residents. No doubt, as the smoke clears, further investigations into the underlying reasons for the collapse of BAICO will likely be an important next step and once again regional cooperation will be critical.

Yet, even before we know the exact actions which precipitated this crisis, we can begin to grow from the lessons of this experience, both as individuals and as nations. The legal and supervisory frameworks within which insurance companies are regulated require re-examination and to some extent, that review has already begun across the region. As individuals too we can learn from this process the importance of investment diversification, “not putting all one’s eggs in one basket”, as well as the need to understand the nature of the investments we make and the risks attached to them.

### **Conclusion**

A difficult challenge is on our hands. However, a strategy for recovery has been prepared by the ECCU Governments, and the Judicial Managers have made recommendations that are consistent with that strategy. Further, the plan is subject to Court approval. This judicial safeguard will ensure that the interests of all affected parties will be comprehensively considered before any implementation begins.

The ECCU Governments firmly support this approach and believe that it is a much superior alternative to liquidation.

The choice is clear:

Liquidation: policyholders get 10 cents on their dollar.

Proposed New Plan: policyholders have an opportunity for greater recovery over time.

At this juncture, we are reminded of the old adage: “we do it best when put to the test”. This situation is indeed testing but out of this difficult chapter will emerge a stronger insurance industry and a stronger regional economy.

**Issued by Governments of the ECCU  
November 02, 2009**