

# Kroll (Cayman) Limited

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**Bancredit Cayman Limited – In Official Liquidation  
Report to the Unsecured Creditors 18 January 2008**

**STRICTLY PRIVATE AND CONFIDENTIAL**

**Status Report**

18 January 2008

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BANCREDIT CAYMAN LIMITED – IN OFFICIAL LIQUIDATION (“The Company”)

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**APPENDICES**

- I. Receipts and Payments account to 31 December 2007

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**1.0 Introduction**

This report covers the period of liquidation from 26 May 2007 to 31 December 2007 and has been prepared by the Joint Official Liquidators (“the Liquidators”) of Bancredit Cayman Limited (“Bancredit” and “the company”) as an update to the information previously placed on the website, [www.bancreditcayman-liquidation.ky](http://www.bancreditcayman-liquidation.ky), for the benefit of the general body of the unsecured creditors of the company (“the Creditors”). This report should be read in conjunction with the last report and all previous reports.

**1.1. Disclaimer**

This report should not be copied or disclosed to any third party or otherwise be quoted or referred to, in whole or in part, without the Liquidators’ prior written consent. In the event that this report is obtained by a third party or used for any purpose other than in accordance with its statutory purpose of informing the Creditors, any such party relying on the report does so entirely at their own risk and shall have no right of recourse against the Liquidators, Kroll (Cayman) Limited (“Kroll”), its partners, directors, employees, professional advisers or agents.

None of the Liquidators, Kroll, its partners, directors, employees, professional advisers or agents accept any liability or assume any duty of care to any third party (whether it is an assignee or successor of another third party or otherwise) in respect of this report and any such party who receives a copy of this report whether from Kroll, or any other source shall have no right of recourse against Kroll, its partners, directors, employees, professional advisers or agents.

In preparing this report the Liquidators, where appropriate, have relied upon information provided to them by the Company at the time of their appointment. The Liquidators have not performed an audit examination on this information. Except where specifically stated, the Liquidators have been unable to establish the reliability of the sources of information presented to them by reference to independent evidence.

**1.2. Professional Advisors**

The following professional advisors continue to be involved as the Liquidation progresses and reaches a much more litigious phase.

Name	Description	Short Form used
Maples and Calder	The Liquidators’ Cayman Islands Attorneys	M&C
Satterlee Stephens Burke and Burke	The Liquidators’ New York Attorneys	SSB&B
Puello Herrera	The Liquidators’ Dominican Republic Attorneys	PH
Arias Fabrega & Fabrega	The Liquidators’ Panama Attorneys	AFF
Woods and Aitken	The Liquidators’ US Attorney for Debtor realisations	WA
3-4 South Square Chambers	Mr Michael Crystal QC and colleagues	MC
Mark Freehill	Translation Services (Spanish)	MF

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**2.0 Assets**

A receipts and payments account to 31 December 2007 is attached at Appendix I, upon which the Liquidators comment as follows:

**2.1. Loan Book**

Since the Liquidators' last report dated 25 May 2007, 15 loan repayments have been received from debtors, in the sum of US\$235,961.43. The additional collections have been achieved despite the Artag Meridian Embargo continuing in place (see section 3.3.2 of this report).

All of the loan settlements fall within the parameters set by the Committee.

**2.2. GFN group companies as debtors**

Neither Zona Franca San Isidro (“ZFSI”) nor GFN Corporation Ltd (“GFNCL”) have repaid overdrafts amounting to UD\$6.5 million and US\$98.6 million respectively. ZFSI admits that it owes the debt of US\$6.5 million but has made no offer of payment. Caribbean Energy Corporation (CarEC), a GFN associated company, has purported to assign such amount of its claim against Bancredit as will enable ZFSI to repay its indebtedness to Bancredit in full, by way of set-off. However, CarEC's claim has been rejected and it follows that the debt owed by ZFSI remains due and payable. A collection claim is being pursued through the Dominican Republic Courts.

A Statutory Demand was served upon GFNCL on 17 August 2006 for repayment of US\$96,153,651.12 and, when this was not met, on 5 January 2007 Bancredit issued a winding up petition against GFNCL at the request and with the support of the Committee. During the rest of 2007, various affidavits have been exchanged. In response to the supporting evidence filed by the Liquidators, they received an affidavit sworn by Maria Isabel Concepcion, former Vice President of Finance at Banco Multiple Bancredito and Chief Financial Officer of the banking and insurance companies within the GFN group (“Concepcion”) in which she claimed that the Liquidators are mistaken and that the account number for which they seek repayment is not the account of GFNCL but of GFN Capital Corporation (“GFNCC”) which is a company registered in Panama. In response to Court Directions, the Liquidators filed additional evidence and GFNCL filed a second affidavit sworn by Concepcion, and an affidavit of Mauricia Santos (another GFN employee), in which GFNCL accepts that the mistaken identity defence that it relied upon in the 13 March 2007 affidavit is without merit but attempts to raise a number of further defences to the claim. The Liquidators are advised that it is likely that the petition will be heard some time during 2008.

GFN International Investment Corporation (“GFNII”) continues to be indebted to the company in an amount in excess of US\$5.5 million (see section 2.5 Dresdner Bank).

Bancredit has a separate claim against GFNCC in respect of four CDs having a total value of US\$15,516,754.88 to be reinvested as at 31 July 2003. The management accounts to that date also indicate that interest may never have been paid on the principal monies invested, but the amounts were, instead, rolled over into the investment. There is currently no litigation in progress because the prospect of any recovery being made in respect of the CDs is extremely doubtful.

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**2.3. CD and Bank Accounts held at Union Planters**

On 12 December 2007, SSB&B filed a Complaint under docket reference *Bancredit Cayman v. Regions Bank Corporation*, Adv. Proc. 07-01882-RAM, in relation to the second account that Bancredit held at Union Planters Bank (now Regions Bank) where the balance has not been repaid to the Liquidators by either Union Planters Bank or Regions Bank.

**2.4. Tricom SA**

**2.4.1. The claim against Tricom SA**

On 16 November 2007 SSB&B lodged a complaint with the New Jersey court against Tricom SA, under docket reference *Bancredit Cayman Limited v. Tricom, S.A.* Adversary No. 7-2595 and it is expected that the matter will be heard later this year.

The claim against Tricom amounts to at least US\$120,522,000, before interest, and may be summarised as follows:

<b>Narrative</b>	<b>US\$'000</b>
Purported Share Placement	70,000
Purported Substitution of Debt	22,000
Loan or payment made improperly	11,375
Overdraft (adjusted for further claims identified during forensic review)	17,147

Interest is claimed in addition to the principal amounts of the heads of claim.

**2.4.1 The Restructuring of Tricom**

The Liquidators recognise that, given Tricom's apparent insolvency, Bancredit may be unlikely to receive repayment in full of the monies that it provided to Tricom. However, the Liquidators will maintain the claims against Tricom so that Bancredit has the right to be involved in the restructuring negotiations.

**2.5. Dresdner Bank**

The monies claimed from GFNII (see section 2.2 above) arise out of a lodgement in an account at Dresdner Bank of US\$5.5 million. When the Controllers and, later, the Liquidators requested the repayment of this sum they were told that it had been pledged in support of monies owed by GFNII and was not, therefore, available to Bancredit on demand unless and until GFNII repaid that loan. Subsequently the Liquidators were told that Dresdner had applied Bancredit's monies in part settlement of that GFNII debt as it claimed to be entitled to do under the terms of the loan agreement and a guarantee in support of the lending. Despite attempts, including litigation, to obtain reimbursement from GFNII, the monies have not yet been repaid. The Liquidators are concerned that there may have been irregularities surrounding the timing of the engrossment of loan agreement and guarantee and, on their behalf, SSB&B have issued a subpoena, under the provisions of Chapter 15 of the US Bankruptcy Code, against Dresdner Bank for the delivery up of copies of the relevant documentation that was provided to it on behalf of Bancredit.

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**2.6. The Liquidator of Bancredit Panama**

The Liquidators continue to be uninformed as to the potential outcome of the Panama liquidation due to Mr Pazmino’s (“the Panama liquidator”) refusal to give any details of his asset realisations or level of claims. Whilst he has lodged so called “Resolutions” in the Panama Court detailing assets and liabilities, as required in that jurisdiction, these are unhelpful because they include assets and liabilities at apparent book values with no indication of estimated to realise amounts being given. No periodic Receipts and Payments accounts have been filed, as would be the case in many jurisdictions and it seems there is no requirement for such accounts to be filed in Panama. Furthermore, by reference to an article in the Panama press, it seems that the Panama liquidator has embarked upon an action against one of the purported “investors” in Tricom, for the recovery of what the Panama liquidator claims is a loan from Panama made at the time of the alleged US\$70 million share issue that the Liquidators now know to have been a sham by which the source of Bancredit’s payment of US\$70 million to Tricom was masked. The Liquidators are not sure why the Panama liquidator has taken action against only one of the purported “investors” and the Liquidators are concerned that the cost of this action may represent an unnecessary dissipation of whatever assets there are in the Panama liquidation.

**2.7. Interest received**

The funds held in the client account for the Company have been invested in various rolling monthly fixed deposit accounts to maximize realisations for creditors. The interest received to date is US\$1,709,095.15.

**3.0 Liabilities**

**3.1. Unsecured Claims**

No additional claims have been agreed since the last report and no further dividends have been declared, pending the outcome of the hearing in relation to the claims made by GFN Group companies which matter is discussed below.

**3.1.1. Customer deposits and the Central Bank**

It now seems that the Central Bank repaid at least one amount to a depositor in respect of a current account at Bancredit when such payment was not appropriate. At such time as a further dividend can be paid, 4% (being the percentage of the first dividend distribution) of that element of the Central Bank claim that relates to the inappropriate payment will be recovered from any second dividend payable to the Central Bank.

**3.1.2. Banco Leon**

The Liquidators continue to hold monies in respect of catch up dividends to Banco Leon, pending resolution of the claim made by GFN (see below). Since they last reported, the Liquidators have received documentation confirming that the claims of Banco Leon have been assigned to the Central Bank.

**3.1.3. Duplicative Claims made by GFN Group Companies and the Central Bank**

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At the end of November 2007, the Liquidators successfully appealed the decision made by the Honourable Mrs Justice Levers that the Court does not have the jurisdiction to make an order for costs against the GFN companies and this now leaves the way clear to re-list the hearing for an Application for a Security for Costs Order against them. If such an order is granted by the Court, the GFN companies will be required to deposit in excess of US\$1 million as security for costs before matters can proceed.

The Liquidators have filed an application seeking directions upon the appeals against the Liquidators rejection of the apparently duplicative claims detailed earlier in this section of the report and the applications to expunge the claims of the Central Bank and Banco Leon. That application is likely to be heard at the same time as or shortly after the Application for a Security for Costs Order.

**3.1.4. Claims adjudication**

The application to the Court discussed above will also include an application for directions in the matter of a proposed payment in respect of the claims of the unconnected third party creditors. The Liquidators have been unable to obtain a consensus among the members of the Committee for the proposal that the claims of the smaller third party creditors be paid in full, in the interests of streamlining the operation of the liquidation.

Three members of the Committee have agreed but two, the Central Bank and Conaresa have disagreed in meetings and through their attorneys. Banco Leon, whilst not a member of the Committee, has also objected to such a payment. At the most recent meeting, representatives of the Central Bank indicated that they objected to a payment in full to the third party creditors because it was unrealistic to believe that there would ever be a payment in full made to creditors from liquidation assets. Members of the Committee representing smaller third party creditors expressed the view that, because of the perceived fight that they say is going on between two major creditors (the Central Bank and the GFN group), it is preventing progress of the liquidation and prejudicing their position.

The Liquidators will report back to the Committee on the current position.

**3.2. Investigation**

The Liquidators have reported to CIMA, in confidence, about a number of irregularities that had come to light as a result of their investigations.

**3.3. Actions brought against the Company and/or its Liquidators**

**3.3.1. Economic Group Action against GFN companies**

Bancredit’s assets remain under threat as a result of an action brought in the Dominican Republic court (“the DR court”) by a group of GFN creditors known as el Grupo Economico (“the economic group”). The claims of the members of the economic group relate to monies owed to them by GFN group companies (other than Bancredit) in respect of commercial paper issued by those GFN companies. None of those concerned had deposited monies with Bancredit. PH was previously allowed to view the initial judgment in the action, which is now publicly available, and confirmed that, by this, the Company had not been made liable for the debts of other companies within the GFN group. Despite this, by a later ruling handed down in August last year, the Dominican Republic court of appeal held that Bancredit was jointly and severally liable, together with GFN, for those debts (which amount to US\$4,299,765.95). It appears that this may, amongst other matters, have been predicated upon a notice on the face of the commercial paper which read “This certificate may be redeemable at its maturity through Bancredit Cayman Limited”. For payment to have been made in that way, it would have been necessary for the relevant GFN company to put Bancredit in funds to do so. Additionally, in certain cases Bancredit holds commercial paper issued by GFN group companies

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as security for loans made by Bancredit to the third party owners of those certificates. If Bancredit is liable to repay the monies represented by the certificates, Bancredit has no recourse on the loans except the issuer of the certificate – the relevant GFN company. An appeal against the decision was filed by PH with the Dominican Republic supreme court, on behalf of the Liquidators, on 17 September 2007 and this has yet to be assigned a hearing date.

**3.3.2. Artag Meridian Embargo**

The embargo registered by Artag against the Company's assets remains in place against most of the debtors that owe money to Bancredit in respect of loans made by the Company and continues to impede loan collections amounting to some US\$9.38 million. Artag is a company connected to GFN. The Liquidators have requested that PH continue their efforts to have each of the embargoes lifted and these applications are presently proceeding through the various stages of the DR court. Despite approaches made by PH to the debtors that have been served with an Artag Meridian embargo, in an attempt to negotiate settlement of the loans, no offers to pay monies into an escrow account pending the lifting of the relevant embargo have been obtained. By this we mean that monies, either the full debt owed or agreed instalments to repay the loans, were not be passed to the Liquidators' attorney or the debtor's attorney and held in escrow until the embargo is lifted, at which time the funds could be transferred to the Liquidators' bank account.

The indebtedness claimed by Artag pursuant to which it has obtained the legal embargo in the Dominican Republic, is in respect of the same promissory note pursuant to which GFN SA and Artag are jointly claiming to be owed an amount of US\$168.7 million. Artag claims that the debt arising out of the promissory note has been assigned to it by GFN SA.

**4.0 The Liquidation Committee**

The Committee comprises five members being The Central Bank and Conaresa as well as three smaller individual creditors. Although Banco Leon is not a member of the Committee it previously controlled Conaresa. The Liquidators subsequently learned that Banco Leon no longer controlled Conaresa. Conaresa has yet to prove its debts against the Company and investigations indicate that it may be, in fact, a net debtor.

**5.0 Liquidation Expenses**

It will be noted that the Liquidators' asset recoveries over the course of the Liquidation are, to date US\$28 million and from the preceding narrative it will be evident that the Liquidators have for some time been involved in a litigation-heavy period of the liquidation.

**5.1. Legal and other Professional Fees**

By reference to Appendix 1 to this report, it may be seen that the fees and expenses of the professional advisors instructed by the Liquidators currently amount to US\$4,155,222.08 and that the costs of translation are US\$58,475.66.

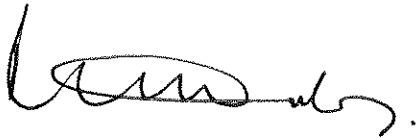
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**5.2. Liquidators' fees**

On 28 November 2007, the Grand Court of the Cayman Islands ("The Court"), sanctioned the Liquidators' remuneration for the period 3 October 2006 to 31 October 2007 on a percentage basis of 8% by value of assets realised and 4% by value of distributions made to creditors during that period. This included payment at the rate of 8% in respect of the amount of an unsecured claim that was settled by way of set off against a debt owed to Bancredit.

The Court also approved the remuneration of the Liquidators for the period 1 August 2006 to 31 July 2007 on a time cost basis for time specifically spent in relation to litigation matters and further ordered that, from 31 July 2007, the Liquidators' remuneration by reference to (a) the time properly given in attending to the litigation and (b) otherwise on a percentage basis of 8% by value of assets realised and 4% by value of distributions made.



**Richard E L Fogerty**  
Joint Official Liquidator

## **APPENDIX I**

Bancredit Cayman Limited - In Official Liquidation

Joint Official Liquidators' receipts and payments account  
For the period 4 September 2003 to 31 December 2007

Receipts	As at 31 December 2007	US\$
<i>Cash recovered from banks:</i>		
HSBC	17,671.55	
Union Planters	25,367.33	
Dresdner	940,284.27	
American Express	158,216.97	
Hemisphere	362,258.67	
	<hr/>	
		1,503,798.79
<i>Customer loan repayments</i>		23,089,955.22
<i>Funds received from Cap Cana</i>		286,749.00
<i>Sale of investment</i>		1,245,095.14
<i>Intercompany debts</i>		61,048.35
<i>Interest received</i>		1,709,095.15
<i>Sundry income</i>		100.00
		<hr/>
<b>Total receipts</b>		<b>27,895,841.65</b>
		<hr/>
<b>Payments</b>		
<i>Controllers' fees</i>		-414,498.00
<i>Controllers' expenses</i>		-39,243.87
<i>Liquidators' fees</i>		-2,402,610.45
<i>Liquidators fees for litigation support work</i>		-552,812.90
<i>Liquidators' expenses</i>		-254,743.87
<i>Legal fees and expenses</i>		-4,155,222.08
<i>Translation fees</i>		-58,475.66
<i>Webdesign and maintenance</i>		-1,121.95
<i>Dividend to unsecured creditors</i>		-4,331,141.97
<i>Dresdner - subrogated claim</i>		-20,943.03
<i>Document management</i>		-39,673.07
<i>Judicial Taxes re debt collection</i>		-1,181.38
<i>Bank charges</i>		-8,629.66
		<hr/>
<b>Total payments</b>		<b>-12,280,297.89</b>
		<hr/>
<b>Net position as at 31 December 2007</b>		<b>15,615,543.76</b>