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CLAIMS ADMISSION MEETING
IN THE BANKRUPTCY OF
BANCO DEL ORINOCO N.V. ("**BdO**")
case number CUR201903648

Date: December 11, 2023

Report of the receiver Mr. M.R.B. Gorsira

What preceded the bankruptcy

BdO began banking operations in Curacao in September 1993. It was an offshore bank with only Venezuelan account holders who held mainly USD deposit and savings accounts with the bank. For some account holders, BdO also managed small bond portfolios. As of the date of bankruptcy, there were about 7,200 account holders at the bank.

For outsiders, the (payment) problems at BdO became apparent some 2.5 to 3 years before the bankruptcy. During that period, proceedings were brought against the bank in this Court by at least more than 200 account holders, with the account holders demanding payment of their balances held with the bank. In all those proceedings, BdO's defense was that there were problems with the correspondent banks and that disbursement to the account holder in question would violate anti-money laundering compliance rules. And again and again, BdO was ordered to pay out the balances to the relevant account holders with rejection of its defenses.

As of the date of bankruptcy, the total balance of account holders with BdO was approximately USD 892 million. Of that balance, approximately USD 826,243 has come forward for verification. To cover these liabilities, according to BdO and its shareholder Cartera, a bond portfolio would be held and managed. This portfolio, according to Cartera, would have had a *face value* of approximately USD 1.5 billion as of the date of bankruptcy. The portfolio would be managed and held by Welden Securities in Uruguay, later Paraguay, Vistra in Panama/Switzerland and Farringdon Asset Management in Singapore.

Cartera also provided statements of the portfolio it said it held in September 2019. Statements as of March 2020 were also provided in April 2020. According to these statements, as of March 2020, the portfolio would have had a face value of around USD 1.25 billion and a market value of around USD 1.2 billion. Meanwhile, in November 2023, Cartera provided another overview of the portfolio held as of September 30, 2023, which would currently be held only with Farringdon Asset Management in Singapore. The face value as of September 30, 2023 would be approximately USD 1.35 billion and the market value as of that date would be approximately USD 1.06 billion. Thus, based on the market value, there would be sufficient value to fully satisfy all of BdO's creditors.

The discussion about the nature and size of the bond portfolio runs like a thread through this entire bankruptcy and actually started years before bankruptcy in 2016/2017, when the then auditor KPMG started asking questions about the existence of the portfolio and in particular whether this portfolio belonged to BdO and was managed and controlled by it and thus could be included for the assessment of its solvency in the financial statements. Subsequently, the CBCS also became involved in this discussion as supervising authority. The latter ultimately found that the portfolio did not belong to BdO and that, in any case, BdO did not have any control over it. Upon this finding, the CBCS withdrew BdO's banking license at the end of July 2019 due to BdO's insolvency and then asked the General Court to declare the emergency regulations applicable to BdO.

By decision of September 5, 2019, the Court declared the emergency regime and the CBCS took over the management of BdO. During September 2019, it appeared to the CBCS that maintaining the emergency regime would not provide relief and it filed for bankruptcy of BdO at the end of September 2019. That bankruptcy was then declared on October 4, 2019 with my appointment as receiver.

Developments during the bankruptcy

Quite soon after the bankruptcy was declared, BdO's shareholder Cartera indicated that it would like to settle the bankruptcy with a composition plan in which all BdO creditors would be fully satisfied. However, in order to reach such an agreement, it would first like to come to an understanding with the receiver on how such an plan could be offered. I am talking here about the famous MOU that was finally signed by me as BdO receiver and the Cartera Group only at the end of October this year. There are several reasons why those negotiations on the MOU took so long. First of all, it took a very long time to secure the records in consultable form and to find the way through them. Also important is that quite soon the estate ran into a shortage of liquidity and has had to work for more than 2 years without being able to cover bankruptcy costs. However, most of the delay was due to multiple *lock downs* because of COVID and that it could often take months, before any comments or input came from Cartera.

I waited until the middle of this year before taking any further steps in the settlement of the bankruptcy, because Cartera insisted on getting to a creditors' agreement, on the one hand, and such an agreement would also be the only chance for creditors to obtain full or partial satisfaction of their claims, on the other. Since it was all taking a very long time anyway, I decided in the middle of this year to break the impasse by holding a meeting of creditors. This did encourage Cartera to come up with a settlement proposal on time and to conclude an MOU with the estate beforehand. This MOU was concluded at the end of October.

In short, the main agreements in the MOU are that Cartera will (i) pay the bankruptcy costs already incurred and not yet paid, as well as the bankruptcy costs to be incurred in the future, (ii) offer a creditors' agreement, (iii) provide insight into the historical build-up and course of the bond portfolio held by Cartera for the benefit of BdO and (iv) until the agreement is approved and executed, not perform any management and disposal acts with regard to the portfolio without the knowledge or cooperation of me as receiver. Furthermore, Cartera also assured in the MOU that the bond portfolio is sufficient to satisfy all BdO creditors and that the composition to be offered will see to full satisfaction of all creditors in the manner specified in the -then- to be offered composition plan.

The offered creditors' agreement

So far, Cartera has only fulfilled the agreement in the MOU regarding the offer of a creditors' agreement. This will be further deliberated and voted on in due course in view of article 136 Fb after the settlement of the verification of claims in what I believe to be the second half of May 2024 in a deferred claims admission meeting.

It is also good that this offered plan is not discussed and voted on until later, i.e. sometime in May 2024, because (i) the creditors have only had a short time to evaluate the proposal, (ii) Cartera has yet to provide the necessary explanation and substantiation of its proposal, (iii) there is already the necessary confusion and discussion as to who is authorized to act on behalf of which creditor and the resolution of this will take time and (iv) -for me the most important reason- Cartera and the

creditors, including the creditors yet to be verified should be given sufficient time to discuss and negotiate a final proposal with each other.

This all the more so because in bankruptcy there is only one (1) opportunity to offer a settlement and I think we should seize that opportunity in this bankruptcy with both hands, if only because I think the chances are considerable that creditors will receive nothing at all if no settlement were to be reached.

Although as far as I am concerned not yet on the agenda, I would like to comment briefly on the offered agreement, or rather on what I find lacking in it, as a starting point for a possible discussion with Cartera.

The first thing that strikes one is that it is not explained that and why none of the grounds for refusal for homologation mentioned in article 148 paragraph 2 Bankruptcy Decree would apply here. Thus it is not indicated how and why compliance with the offered composition would be sufficiently guaranteed. This is particularly important because in the proposed settlement there does not seem to be or be a guarantee role for me as receiver in bankruptcy. Furthermore, the option of a cash payment directly to creditors is not included in the proposed composition plan. Why this option was not included is not explained.

Regarding this cash payment option, I would like to add that, according to information provided to me by Cartera regarding the portfolio, in the period December 23, 2023 to June 24, 2024, bonds with a face value totaling USD 217,109,700, and in the period January 30 to November 3, 2025, a further set of bonds with a face value totaling USD 125,275,000, will mature and come to payment with interest. My question to Cartera would then be, why these amounts could not be set aside to pay those creditors who continue to insist on direct payment of their claim in cash and do not wish to opt for the alternative "payment" options currently offered in the agreement.

Last but not least, the offered agreement says nothing about the satisfaction of bankruptcy costs, estate creditors, tax debt and unsecured creditors other than account holders.

I will leave this discussion for what it is. As far as I am concerned it should be continued prior to the postponed meeting of creditors in which, after the closure of the verification of claims, a vote will be taken on the agreement, amended or otherwise. Prior to that vote, the creditors' committee and I will also give our opinion on the settlement then up for vote.

The current state of the bankruptcy estate

I have attached to this report an overview of the status of the estate (**Appendix**). At this moment only ANG 33,083.58 (USD 18,586.28) is left in the bankruptcy account. The total amount of bankruptcy expenses not yet paid but already determined up to October 13, 2023 is USD 480,379.36. Including estate debts and excluding late claims, BdO's total outstanding debt at this time amounts to USD 806,745,826.81. And to this must be added the bankruptcy costs already incurred and to be incurred as of October 14, 2023. All in all, a bleak financial picture. Hopefully that picture will shift with the agreement offered by Cartera!

Proposal to appoint a definitive creditors' committee

A provisional creditors' committee has already been appointed. Members of this provisional committee are Mr. Mirto Murray on behalf of the Cartera Group, Mr. Herminio Nieto, lawyer in

Venezuela and representative of a group of BdO creditors and Mr. Rafael Moscarella as representative of BdO creditor AllBank in Panama. I would like to propose to the meeting that we now appoint a definitive creditors' committee with the reappointment of Mr. Nieto and Mr. Moscarella as members. I think it would be further appropriate to appoint an attorney for Cartera to it. This will then give a formal platform to negotiate the final agreement to be offered by Cartera. I could then also play a guiding and mediating role as receiver.

Motion to adjourn the claims admission meeting

I have already indicated to all creditors prior to this meeting that there will not be a vote on the agreement offered by Cartera today and that I would like to propose that the claims admission meeting be adjourned for the settlement of the claims admission until sometime in the second quarter of 2024 and immediately after that settlement, in accordance with article 136 Fb, the agreement then presented for a vote will be considered and voted on.

Why I think it is right not to deal with the offered agreement at this point in time, I have indicated earlier. However, in view of article 136 Fb, the question has still arisen whether the claims admission meeting and the handling of the composition plan could be postponed for such a long time. Because the claims admission proces has not been completed, the handling of or voting on the settlement is not -yet- an issue or at hand, according to article 136 Fb. Furthermore, the Supreme Court[1] has previously ruled, that an adjournment and a later reopening of the same claims admission meeting for the purpose of settling the admission and verification of claims can be done without further ado.

My request to the supervisory judge is therefore that the meeting be adjourned to a date in May 2024 in order to complete the admission and verification of claims at that time and immediately thereafter to consider and then put to a vote the offered settlement, amended or otherwise.

Annex - Overview of the state of the estate

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[1] See HR November 28, 2014 NJ 2015/123 with note by Van Schilfgaarde.