# ACTA

**TRIBUNAL DE PRIMERA INSTANCIA DE CURAZAO**

Número de caso: CUR201903648

**ACTA de la reunión de verificación** celebrada el 27 de septiembre de 2024, a las 10:00 horas,

en la quiebra de:
la sociedad anónima
**BANCO DEL ORINOCO N.V.** ("BDO"),
declarada en sentencia de 4 de octubre de 2019
síndicos: los Sres. M.R.B. Gorsira y D.C. Narvaez.

Presentes: el Sr. P.E. de Kort, juez-supervisor, y la Sra. I.J.C. Wilson, secretaria judicial.

El juez-supervisor abre la reunión de verificación.

*Objetivo de la continuación de la reunión*

1. Esta es la continuación de la reunión de acreedores celebrada el 11 de diciembre de 2023. Esa reunión fue aplazada hasta hoy para continuar con la verificación y votar sobre el acuerdo (modificado o no). El juez-supervisor señala que ayer los accionistas de BDO solicitaron un nuevo aplazamiento, lo cual será discutido.

*Asistentes*

2. Han comparecido los síndicos, y (parcialmente por video) las personas indicadas en la lista de asistentes adjunta a esta acta (anexo 1).

*Presentación*

3. El juez-supervisor constata que los síndicos han presentado en el tribunal las listas modificadas de los reclamos provisionalmente reconocidos e impugnados, y que hoy han presentado una versión actualizada. Los síndicos mencionan que esas listas se publicarán en su sitio web.

*Informe de los síndicos sobre el estado del patrimonio de la quiebra*

4. Los síndicos informan sobre el estado del patrimonio de la quiebra. Su informe está adjunto a esta acta (anexo 2).

*Plan de composición*

5. Los accionistas de la empresa fallida presentaron antes de la reunión anterior un plan de composición para los acreedores (composition plan). Los síndicos reiteran que este plan no ofrece ninguna garantía y que, en caso de votación, recomendarían votar en contra.

*Solicitud de nuevo aplazamiento de la reunión y la cartera de inversiones*

7. Los síndicos no se oponen a la solicitud de aplazamiento de la reunión por parte de Cartera. Señalan que, por razones prácticas, también necesitan un aplazamiento, ya que ayer y anoche recibieron cientos de poderes y reclamaciones (pequeñas). Además, sin un acuerdo, la situación para los acreedores es desfavorable. Los síndicos tendrían que encontrar financiamiento e iniciar acciones legales contra Vargas y otros. Un acuerdo garantizado sería preferible. Los síndicos subrayan que la promesa hecha ayer sobre la prueba de la cartera debe cumplirse.

8. Los Sres. Murray y Delgado dicen que, según la información de su cliente, la cartera de inversiones efectivamente existe. A la pregunta de si pueden proporcionar pruebas de esto a los síndicos en una semana, responden que podrían hacerlo en dos semanas. El Sr. Murray señala que el MOU estipulaba que los síndicos y Cartera se dirigirían conjuntamente al custodio, y que esto no ha sucedido. Los síndicos mencionan que uno de ellos está disponible para viajar a Singapur con el Sr. Vargas para hablar con el custodio. El Sr. Moscarella expresa su deseo de estar presente como miembro del comité de acreedores.

9. El Sr. Murray distribuye una nota en la que se detalla la estructura de un plan de composición modificado (anexo 3). Luego, se concede una pausa de lectura de 20 minutos.

10. Varios representantes de acreedores expresan su indignación por la falta de transparencia del grupo Cartera y por la falta de claridad sobre la cartera de inversiones tras cinco años de quiebra. Algunos consideran que ya debería haber acciones penales. Consideran inaceptable otro aplazamiento, especialmente uno largo, basado únicamente en promesas. Las notas del Sr. Hung y del Sr. Parilli están adjuntas a esta acta como anexos 4 y 5. El juez-supervisor menciona que se tomará una decisión por separado sobre la solicitud de destitución de la Sra. Pineda como miembro del comité de acreedores, solicitud sobre la que primero se le dará la oportunidad de responder.

*Decisión de aplazamiento*

11. El juez-supervisor decide aplazar la reunión de verificación hasta el lunes 10 de marzo de 2025, a las 10:30 horas, bajo las siguientes condiciones:

- En un plazo de dos semanas, el grupo Cartera deberá proporcionar a los síndicos pruebas suficientes de la existencia de la cartera de inversiones;
- El grupo Cartera deberá proporcionar información mensual, como mínimo, a los síndicos y al comité de acreedores sobre el avance del plan de composición;
- El grupo Cartera deberá proporcionar la versión final de su plan modificado a los síndicos y acreedores a más tardar el 1 de febrero de 2025;
- Si no se proporciona la prueba de la cartera de inversiones o los síndicos no tienen suficiente confianza en un buen resultado, solicitarán adelantar la reunión de verificación.

De lo cual se levanta esta acta.

[Firmas]

Anexo 1

**Presentielijst verificatievergadering Banco del Orinoco NV**

27 september 2024

1. Mirto Murray ip
2. Juan Jose Delgado ip
3. Carely Valentin (vc)
4. Armando Hurtado Vezga (vc)
5. Felix Ferrer Salas (nv)
6. Rafael Alvaro Ramirez Pulido (nv)
7. Bertie Braam ip
8. Wilfred Flocker ip
9. Robert Frans ip
10. Herminio Nieto ip
11. Rafael Moscarella ip
12. Roberto Leon Parilli ip
13. Dimas Amache ip
14. Erica Amache ip
15. Roberto Hung ip
16. Jose Gregorio ip
17. Jose Vasquez ip
18. Lucas Rodrigue ip z
19. Martijn Welten ip
20. Ninunska Frans ip
21. Quincy Carrega ip
22. Remphis Espino ip
23. Jullie Acosta ip
24. Tarquino Villasmil vc
25. Carlos Bello ip / Ainhoa Galarraga
26. William Branz vc
27. Carlos Degwitz ip
28. Yolanda Zambrano ip
29. Xiomara Rauseo ip
30. Ricardo Rauseo ip
31. Luis Bracho ip
32. Henry Jatar (Senior) ip
33. Henry Jatar (Junior) ip
34. Angel Gabriel Petricone Chiarilli ip
35. Pedro Alexis Salmasi Franco ip
36. Juan Candelario vc
37. Carlos Beherends vc
38. Carlos Jimenes vc
39. Rafael Guitierez vc
40. Monica Naaldijk ip

vc = aanwezig via videoverbinding  ip= in persoon  nv= niet verschenen

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**CONTINUANCE OF THE CLAIMS ADMISSION MEETING IN THE BANKRUPTCY OF BANCO DEL ORINOCO N.V. ("BdO"), CASE NO. CUR201903648, ON SEPTEMBER 27, 2024**

**Bankruptcy report of receivers mrs. M.R.B. Gorsira and D.C. Narvaez**

Developments after the December 11, 2023 claims admission meeting

1. The creditors' meeting of December 11, 2023 was initially postponed by the supervisory judge until May 27, 2024 and then adjourned to today, September 27, 2024 for further verification of creditors' claims that had been submitted after November 22, 2023 and still would be submitted after the meeting and to give the receivers and creditors further opportunity to reconsider verification or dispute of claims. Furthermore, the creditors and the receivers would be given more time to consider the composition plan offered by the Cartera Group on December 1, 2023 and to consult with the Cartera Group regarding this proposed plan.

2. In January 2024, the receivers, together with two members of the creditors' committee appointed on December 11, 2023, Mr. Nieto and Mr. Moscarella, began reviewing the draft agreement. The receivers engaged in discussions with the Cartera Group, its owner Mr. Vargas and its counsel, while Messrs. Nieto and Moscarella, on behalf of the creditors' committee, approached creditors and requested their comments and input on the proposed composition plan. In February 2024, the receivers had a plenary meeting with the Cartera Group and its counsel in Caracas regarding the fulfillment of the agreements included in the MOU signed with the Cartera Group in October 2023 and the necessary modifications to the draft composition plan submitted by the Cartera Group on December 1, 2023.

3. Mr. Nieto and Mr. Moscarella of the Creditors' Committee collected all the creditors' comments and forwarded them, together with their own comments, to the Cartera Group (Mr. Murray) and the receivers on March 15, 2024, with an invitation to the Cartera Group to enter into further discussions with them on an amended composition plan. To date, the Cartera Group has not responded to this invitation nor has it responded in any way to the creditors' comments provided to it on the proposed composition plan. In short, the creditors' main comments amounted to the lack of an option for direct cash payment of claims and it was completely unclear how compliance with the composition plan would be guaranteed. Creditors also questioned why, with a *securities* portfolio built up with their deposits with a market value much higher than the total amount of the BdO debt, they would have to settle for less than immediate and full payment of their claims in cash. Mr. Nieto, on behalf of the creditors' committee, will report on this creditors' feed back later in this meeting and will give his advise regarding the proposed composition plan currently up for vote.

4. During the consultations with the Cartera Group in Caracas in February 2024, the receivers emphasized that, in view of the grounds for refusal of confirmation contained in Section 148 subsection 2 of the Bankruptcy Decree (the performance under and the settlement of the composition plan is not sufficiently guaranteed), the proposed plan of December 1, 2023 could never be homologated/approved by the Curacao Court in any event, and that the receivers could therefore not advise creditors to agree to such a plan either. In the proposed plan there was no role whatsoever for the receivers in the execution or the supervision of the execution of the plan and also there was no assurance whatsoever for creditors that the Cartera Group would (be able to) actually comply with the commitments made in the plan and - perhaps even more importantly - if those commitments were to be complied with, they would eventually be able to look forward to full or partial satisfaction and payment of their

claims against BdO. Another important aspect in this regard was that the present plan did not provide for an option to satisfy the claims in cash, whereas there was a *securities* portfolio built up with the creditors' deposits with a nominal and market value that far exceeded the total BdO debt. As an aside, according to the last overview of the BdO *securities* portfolio received from the Cartera Group, as of September 30, 2023, the nominal value of the portfolio was approximately USD 1.35 billion and the market value was approximately USD 1.06 billion, whilst the total amount of submitted claims against BdO amounts to approximately USD 852 million.

5. In Caracas it was then agreed with the receivers that the Cartera Group -also in view of the continuation of the creditors' meeting then scheduled for May 27, 2024- would come up with an amended composition plan no later than mid-April 2024. That agreement was not kept and still has not been kept. The Cartera Group then also requested that the payment deadlines agreed in the MOU for the bankruptcy costs be postponed by 1 month, so that the promised USD 1.5 million for these costs would be paid by mid-May 2024 instead of mid-April 2024. The receivers also agreed to this proposal. However, also these promises for payment were not kept and those payment arrangements are still outstanding to date.

6. In March 2024, there arose a discussion instigated by the receivers regarding the withdrawal by BdO and the Cartera Group of the still pending appeals against the BdO bankruptcy judgment. In short, this discussion boiled down to the following.

7. For the receivers, it was particularly important to gain insight in, control and say over the *securities* portfolio of BDO, with which the Cartera Group was always skirting. That insight and control could only be obtained through and with the cooperation of the Cartera Group and Mr. Vargas in particular. Mr. Vargas and the Cartera Group could only be persuaded to cooperate, so they always indicated, if an MOU with the receivers could be concluded.

8. The MOU was only reached after years of negotiations on October 26, 2023. The idea behind this was to thus induce the Cartera Group and Mr. Vargas to submit a composition plan before the meeting of creditors on December 11, 2023. This strategy ultimately worked. On October 26, 2023, the MOU was signed, and on December 1, 2023, the Cartera Group also submitted a composition plan.

9. Following the receivers' discussions with the Cartera Group in March 2024 in Caracas, there was another discussion with Mr. Vargas and the Cartera Group regarding withdrawal of the appeal filed in October 2019 by BdO and the Cartera Group against the bankruptcy judgment issued on October 4, 2019. That withdrawal was necessary for the bankruptcy judgment to become final. Without a final bankruptcy judgment, a composition plan could not be voted on. Mr. Vargas and the Cartera Group initially did not want to cooperate with a withdrawal of that appeal, but eventually that appeal was withdrawn by them and the bankruptcy judgment became final and preparations for the continuation of the meeting of creditors, in the mean time moved to September 27, 2024, could resume.

10. In discussions about the settlement of the BdO bankruptcy, the Cartera Group always stressed that it considered itself bound by the MOU concluded with the receivers on October 26, 2023, and the willingness was and still is expressed to settle the bankruptcy along the lines included in the MOU and on the basis of a composition plan approved by the creditors and approved by the Court. However, what is professed with the mouth has -unfortunately- not been translated into action to date.

11. Except for the submission of a composition plan, none of the agreements included in the MOU have been fulfilled to date. Also with the comments provided by the receivers and creditors on the proposed composition plan, nothing has been done to date. Not even a single response to these comments have been received. Also, contrary to repeated promises made, no amended composition plan has been offered or submitted to date nor has the Cartera Group entered into discussions with the receivers or creditors about possible amendments to the present plan. The receivers then decided to rescind the MOU on account of a breach of contract by Mr. Vargas and the Cartera Group and to hold Mr. Vargas and the Cartera Group liable for all losses the BdO estate has suffered and will suffer as a result of this breach of contract.

12. One of the key agreements in the MOU was that the Cartera Group would (i) provide insight into the historical construction and development of the *securities* portfolio held according to Cartera Group for the benefit of BdO and accrued with the deposits of the BdO account holders and (ii) until the composition plan was approved and executed, would not, without the knowledge or cooperation of the receivers, perform any acts of management and disposition with respect to the portfolio.

13. Again, the Cartera Group has not fulfilled these agreements. Furthermore, further investigation by the receivers with the current *custodian* of the BdO portfolio named by the Cartera Group has revealed that Farringdon has no relationships at all with BdO, the Cartera Group or Mr. Vargas. Further, Farringdon says it has already terminated all relationships with financial institutions as of 2022. This raises the question of whether the BdO *securities* portfolio mentioned by the Cartera Group exists at all! Alternatively, does the portfolio exists, but it is held and managed by Mr. Vargas and/or the Cartera Group and they do not want to bring that portfolio under the control of the receivers. In either case, this is considered bankruptcy fraud as far as the receivers are concerned. And without such a portfolio, a viable composition plan or proper settlement of the bankruptcy settlement seems completely unfeasible.

14. On September 6, 2024, the Cartera Group, through Mr. Murray, came forward with a request to again postpone the September 27, 2024 continued meeting of creditors for one last time until sometime in the first quarter of 2025. Due to the turmoil surrounding the Venezuelan presidential election in late June 2024, it would not be possible to file a sufficiently substantiated amended composition plan, Mr. Murray indicated.

15. In reaction to this proposal the receivers indicated that they would only contemplate a further postponement and discuss same with the supervisory judge and the creditors' committee, if the Cartera Group had confirmed in writing no later than September 10, 2024 to (i) provide, no later than Friday September 13, 2024, an overview of the composition/structure and the status of the *securities* portfolio held according to Cartera Group for the benefit of BdO and built up with the deposits of the BdO account holders over the period September 30, 2023 - August 31, 2024, furthermore (ii) pay no later than September 13, 2024 the bankruptcy costs incurred up to September1, 2024 amounting to USD 630.000,- and (iii) to deposit an amount of USD 217,109,700,- of *securities* that had matured up to June 2024 into an escrow account controlled by the receivers no later than September 20, 2024.

16. That confirmation, information or payments have not come in to date. What did come in on September 16, 2024, was a repeated request from the Cartera Group to adjourn the meeting with a 180-day deadline. The Cartera Group would need that additional time: ' *to develop*

*plausible alternatives for the benefit of the creditors.*' and ' *The strategy pursued by Grupo Cartera is to offer payment modalities. The alternatives will present diverse characteristics designed to benefit the different types of creditors and will be available to all.*' and '*The existence, composition, and value of the portfolio of securities in custody will be adequately demonstrated to the satisfaction of all interested parties.*' and ' *For the final design and execution of the Composition Plan, the suitability and current valuation of the goods and assets that will be part of the payment agreement are being evaluated. The work of the appraisers will take time, and without their final reports, the definitive plan cannot be established.*'

17. This was not acceptable to the receivers. With the same rationale, almost ten months ago in December 2023, a similar request for adjournment was made and eventually granted. The creditors' meeting was then postponed till May 27, 2024, and Mr. Vargas and the Cartera Group agreed to come up with an amended composition plan during April 2024. Again, an amended composition plan was not submitted in April or in May

*18.* The most recent development is that the Cartera Group requested the Court very recently to again postpone the creditors' meeting to enable it to submit an amended composition plan. The receivers received a general outline of such amended plan only yesterday late in the afternoon and have had not the opportunity to review same. Mr. Murray will explain this request for postponement.

*The current status of the BdO bankruptcy estate*

19. Attached to this report is a financial overview of the of the bankruptcy estate (**Annex**). On the bankruptcy account there is currently only ANG 27,542.60 (USD 15,473.48). The total amount of unpaid, but already determined bankruptcy costs up to April 30, 2024 amounts to USD 383,082.48. Including estate debts and the disputed Cartera related claims, the total outstanding debt of BdO at this moment amounts to approximately USD 847,043,437.81. And to this must be added the bankruptcy costs already incurred and to be incurred as of May 1, 2024. All in all, a bleak financial picture.

**Appendix – Financial overview of the BdO bankruptcy estate**

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**VOORTGEZETTE VERIFICATIEVERGADERING IN HET FAILLISSEMENT VAN BANCO DEL ORINOCO N.V. ("BdO"), ZAAKNR. CUR201903648, OP 27 SEPTEMER 2024**

**Faillissementsverslag van de curatoren mrs. M.R.B. Gorsira en D.C. Narvaez**

Ontwikkelingen na de verificatievergadering van 11 december 2023

1. De verificatievergadering van 11 december 2023 is door de rechter-commissaris aanvankelijk aangehouden tot en verdaagd naar 27 mei 2024 en vervolgens naar vandaag, 27 september 2024 voor verdere verificatie van nagekomen en nog na te komen vorderingen van crediteuren en om de curator en crediteuren nog de gelegenheid te geven zich omtrent verificatie en betwisting van vorderingen te beraden. In het verlengde daarvan zouden de crediteuren en de curator meer tijd krijgen om zich omtrent het door Cartera op 1 december 2023 aangeboden akkoord te beraden en om met Cartera over de genoegzaamheid daarvan te overleggen.

2. In januari 2024 zijn curatoren samen met twee leden van de op 11 december 2023 aangestelde crediteurencommissie de heren Nieto en Moscarella aan de slag gegaan met het concept akkoord. Curatoren zijn met Cartera, haar UBO de heer Vargas en haar raadslieden in gesprek gegaan, terwijl de heren Nieto en Moscarella namens de crediteurencommissie de crediteuren hebben benaderd en hen om commentaar en input hebben verzocht op het concept akkoord. Curatoren hebben in februari 2024 een plenair overleg gehad met de Cartera Groep en haar raadslieden in Caracas over de nakoming van de afspraken opgenomen in de in oktober 2023 met de Cartera Groep gesloten MOU en de benodigde aanpassingen in het door de Cartera Groep op 1 december 2023 gedeponeerde concept crediteurenakkoord.

3. De heren Nieto en Moscarella van de crediteurencommissie hebben alle commentaren van de crediteuren verzameld en samen met hun eigen commentaar op 15 maart 2024 aan de Cartera Groep (mr. Murray) en Curatoren doorgespeeld met de uitnodiging aan de Cartera Groep om met hen verder in overleg te treden over een aangepast crediteurenakkoord. Op deze uitnodiging is de Cartera Groep tot op de dag van heden niet ingegaan noch heeft zij op enigerlei wijze op de aan haar verstrekte commentaren van crediteuren op het aangeboden akkoord gereageerd. Het belangrijkste commentaar van de crediteuren kwam er kort gezegd op neer dat een optie tot directe uitbetaling van de vorderingen in geld ontbrak en het volstrekt onduidelijk was hoe de nakoming van het akkoord gewaarborgd zou worden. Ook vragen crediteuren zich af waarom zij met een met hun deposito's opgebouwde *securities* portefeuille met een marktwaarde die veel hoger ligt dan het totale bedrag aan BdO schulden, genoegen zouden moeten nemen met minder dan directe en volledige betaling van hun vorderingen in geld. De heer Nieto zal namens de crediteurencommissie nog verslag doen van zijn ruggespraak met crediteuren en het advies over het thans ter stemming voorliggende akkoord van de Cartera Groep.

4. Tijdens het overleg met de Cartera Groep te Caracas in februari 2024 hebben Curatoren met name benadrukt dat het op 1 december 2023 ingediende akkoordvoorstel in ieder geval met het oog op de in artikel 148 lid 2 ten tweede Fb opgenomen weigeringsgrond (de nakoming van het akkoord is niet voldoende gewaarborgd) nooit gehomologeerd/goedgekeurd zou kunnen worden door het Gerecht en dat ook Curatoren crediteuren dus niet zouden kunnen adviseren om met zo'n akkoord in te stemmen. In het toen voorliggende akkoord was er geen enkele rol weggelegd voor Curatoren bij de uitvoering of het toezicht op de uitvoering van

het akkoord en ook was er geen enkele zekerheid voor crediteuren dat de Cartera Groep de in het akkoord wel gedane toezeggingen ook daadwerkelijk zou (kunnen) nakomen en - misschien nog wel belangrijker- indien die toezeggingen wel zouden worden nagekomen, zij uiteindelijk gehele of gedeeltelijke voldoening en betaling van hun vorderingen op BdO tegemoet zouden kunnen zien. Belangrijk aspect in dit verband was ook dat het voorliggende akkoord niet voorzag in een optie tot voldoening van de vorderingen in geld, terwijl er een met de deposito's van de crediteuren opgebouwde *securities* portefeuille was met een nominale en marktwaarde die ver boven de totale BdO schuld uitsteeg. Terzijde, volgens het laatste van de Cartera Groep ontvangen overzicht van de BdO *securities* portefeuille bedroeg de nominale waarde van de portefeuille per 30 september 2023 circa USD 1,35 miljard en de marktwaarde circa USD 1,06 miljard. De totale BdO schuld bedraagt circa USD 850 miljoen.

5. In Caracas is toen met Curatoren afgesproken dat de Cartera Groep -mede met het oog op de toen nog op 27 mei 2024 geplande voortzetting van de crediteurenvergadering- uiterlijk medio april 2024 met een aangepast akkoord zou komen. Die afspraak is toen en nu nog steeds niet nagekomen Verder heeft de Cartera Groep toen ook verzocht om de in de MOU afgesproken betalingstermijnen voor de faillissementskosten (zie voor deze termijnen artikel 2 van de MOU: bijlage 1 bij dit verslag) met 1 maand op te mogen schuiven, zodat de toegezegde USD 1,5 miljoen voor deze kosten in plaats van medio april 2024, medio mei 2024 zouden zijn voldaan. Curatoren zijn toen met dit voorstel akkoord gegaan. Die betalingsafspraken zijn echter nu nog steeds niet nagekomen.

6. Vervolgens ontstond er in maart 2024 een door curatoren aangezwengelde discussie over het intrekken door BdO en de Cartera Groep van de nog immer aanhangige hoger beroepen tegen het BdO faillissementsvonnis. Kort gezegd kwam deze discussie op het volgende neer.

7. Voor de curatoren was met name van belang om zicht op en controle en zeggenschap te krijgen over de *securities* portefeuille van BdO, waarmee de Cartera Groep steeds schermde. Dat zicht en die controle, zo was en is gebleken, zou alleen via en met medewerking van de Cartera Groep en met name ook de heer Vargas verkregen kunnen worden. De heer Vargas en de Cartera Groep waren slechts tot die medewerking te bewegen, zo gaven zij steeds aan, indien er een MOU met Curatoren tot stand zou komen.

8. De MOU is pas na jaren van onderhandelen op 26 oktober 2023 tot stand gekomen. De gedachte daarachter was om dusdoende de Cartera Groep en de heer Vargas te bewegen om nog voor de verificatievergadering van 11 december 2023 tot afwikkelingsafspraken en in het verlengde daarvan een door hen zo gewenst crediteurenakkoord te komen. Deze strategie heeft uiteindelijk ook gewerkt. Op 26 oktober 2023 werd de MOU getekend en op 1 december 2023 heeft de Cartera Groep ook een crediteurenakkoord ter griffie gedeponeerd.

9. Na de gesprekken van curatoren met de Cartera Groep in maart 2024 in Caracas is er nog een discussie geweest met de heer Vargas en de Cartera Groep over intrekking van het in oktober 2019 door BdO en de Cartera Groep ingestelde hoger beroep tegen het op 4 oktober 2019 uitgesproken faillissementsvonnis. Die intrekking was nodig om het faillissementsvonnis definitief te laten worden. Zonder definitief faillissementsvonnis kon er niet over een akkoord gestemd worden. De heer Vargas en de Cartera Groep wilden aanvankelijk niet aan intrekking meewerken, maar uiteindelijk is dat hoger beroep toch door hen ingetrokken en is het faillissementsvonnis definitief geworden en kon de voorbereiding

van de naar 27 september 2024 verplaatste voortzetting van de verificatievergadering weer worden opgepakt.

10. In gesprekken over de afwikkeling van het BdO faillissement werd door de Cartera Groep steeds benadrukt dat zij zich aan de op 26 oktober 2023 met curatoren gesloten MOU gebonden achtte en werd en wordt nog steeds de bereidheid uitgesproken om het faillissement langs de lijnen opgenomen in de MOU en op basis van een door de crediteuren geaccordeerd en door het Gerecht goedgekeurd akkoord af te wikkelen. Echter, wat met de mond wordt beleden, is tot op heden -helaas- niet in daden omgezet.

11. Geen van de afspraken opgenomen in de MOU zijn tot op heden nagekomen. Ook met het door Curatoren en crediteuren verstrekte commentaar op het op 1 december 2023 gedeponeerde concept akkoord is tot op heden niets gedaan. Daar is zelfs geen enkele reactie op ontvangen. Ook is er in strijd met herhaaldelijk gedane toezeggingen tot op heden nog geen aangepast akkoord aangeboden noch is de Cartera Groep met Curatoren of crediteuren het gesprek aangegaan over mogelijke aanpassingen in het voorliggende akkoord. Curatoren hebben toen besloten de MOU wegensa wanprestatie van de heer Vargas en de Cartera Groep te ontbinden en de heer Vargas en de Cartera Groep aansprakelijk te houden voor alle schade die de BdO boedel heeft geleden en nog zal lijden als gevolg van deze wanprestatie.

12. Een van de belangrijkste afspraken in de MOU was dat de Cartera Groep (i) inzicht zou geven in de historische opbouw en het verloop van de volgens Cartera Groep ten behoeve van BdO aangehouden en met de deposito's van de BdO rekeninghouders opgebouwde *securities* portefeuille en (ii) totdat het akkoord zou zijn goedgekeurd en uitgevoerd, niet zonder medeweten of medewerking van Curatoren beheers- en beschikkingsdaden ten aanzien van de portefeuille zou verrichten.

13. Ook deze afspraken is de Cartera Groep niet nagekomen. Verder heeft nader onderzoek van Curatoren bij de door de Cartera Groep genoemde huidige *custodian* van de BdO portefeuille uitgewezen dat Farringdon helemaal geen relaties onderhoudt met BdO, de Cartera Groep of de heer Vargas. Verder zegt Farringdon alle relaties met financiële instellingen al per 2022 te hebben beëindigd. Dat doet de vraag rijzen of de door de Cartera Groep genoemde BdO *securities* portefeuille überhaupt wel bestaat! Of het is zo dat die portefeuille wel bestaat, maar dat deze gehouden en beheerd wordt door de heer Vargas en/of de Cartera Groep en zij die portefeuille niet onder de controle van Curatoren willen brengen. In beide gevallen is er wat Curatoren betreft sprake van verduistering en/of bedrieglijke bankbreuk. En zonder zo'n portefeuille lijkt ook een akkoord volstrekt onhaalbaar.

14. Op 6 september 2024 kwam de Cartera Groep bij monde van mr. Murray met het verzoek aan Curatoren om de voortgezette verificatievergadering van 27 september 2024 wederom voor een laatste keer aan te houden tot ergens in het eerste kwartaal van 2025. Als gevolg van de onrust rondom de Venezolaanse presidentsverkiezingen van eind juni 2024 zou het niet lukken om een voldoende onderbouwd en toegelicht aangepast akkoord te deponeren, zo werd aangegeven.

15. Curatoren hebben toen aangegeven slechts dan met de rechter-commissaris en de crediteurencommissie over een mogelijke verdere aanhouding van de vergadering te willen overleggen, indien de Cartera Groep uiterlijk op 10 september 2024 schriftelijk had bevestigd om (i) uiterlijk op vrijdag 13 september 2024 een overzicht te verstrekken van de

samenstelling/opbouw en het verloop van de volgens Cartera Groep ten behoeve van BdO aangehouden en met de deposito's van de BdO rekeninghouders opgebouwde *securities* portefeuille over de periode 30 september 2023 – 31 augustus 2024, voorts (ii) uiterlijk op 13 september 2024 de tot 1 september 2024 gemaakte faillissementskosten ad USD 630.000,- te voldoen en (iii) uiterlijk op 20 september 2024 een bedrag van USD 217.109.700,- aan t/m juni 2024 verlopen *securities* op een door Curatoren gecontroleerde escrow-rekening te storten.

16. Die confirmatie, informatie of betalingen zijn tot op heden niet binnengekomen. Wat wel op 16 september 2024 binnen kwam was een herhaald verzoek van de Cartera Groep tot aanhouding van de vergadering met een termijn van 180 dagen. Die extra tijd zou de Cartera Groep nodig hebben: '*to develop plausible alternatives for the benefit of the creditors.*' en '*The strategy pursued by Grupo Cartera is to offer payment modalities. The alternatives will present diverse characteristics designed to benefit the different types of creditors and will be available to all.*' en '*The existence, composition, and value of the portfolio of securities in custody will be adequately demonstrated to the satisfaction of all interested parties.*' en '*For the final design and execution of the Composition Plan, the suitability and current valuation of the goods and assets that will be part of the payment agreement are being evaluated. The work of the appraisers will take time, and without their final reports, the definitive plan cannot be established.*'

17. Dit was en is voor Curatoren niet acceptabel. Met dezelfde redengeving is er bijna tien maanden geleden in december 2023 zo'n zelfde soort verzoek om aanhouding gedaan en uiteindelijk gehonoreerd. De verificatievergadering werd toen tot 27 mei 2024 aangehouden en de heer Vargas en de Cartera Groep zeiden toe in de loop van april 2024 met een aangepast akkoordvoorstel te zullen komen. Ook die vergadering werd wederom aangehouden tot vandaag zonder dat er toen overigens een aangepast akkoordvoorstel was aangeboden.

18. De meest recente ontwikkeling is dat de Cartera Groep vlak voor de vergadering het Gerecht heeft verzocht om een verdere aanhouding van de vergadering teneinde in staat te worden gesteld een aangepast akkoord aan te bieden. Curatoren hebben pas gisteren aan het eind van de middag een algemeen overzicht van zo'n aangepast akkoord mogen ontvangen en hebben nog geen gelegenheid gehad om dit geamendeerde voorstel te beoordelen. Mr. Murray zal zo dadelijk dit nieuwe voorstel nader toelichten.

*De huidige toestand van de boedel*

19. Aan dit verslag hebben Curatoren een overzicht gehecht van de toestand van de boedel (**bijlage**). Op de faillissementsrekening staat op dit moment nog maar ANG 27.542,60 (USD 15.473,48). Het totaal bedrag aan nog niet voldane, maar wel al vastgestelde faillissementskosten t/m 30 april 2024 bedraagt USD 383,082.48. Inclusief boedelschulden en de betwiste Cartera gerelateerde vorderingen bedraagt de totale uitstaande schuld van BdO op dit moment USD 847,043,437.81. En dan moeten ook nog de vanaf 1 mei 2024 reeds gemaakte en nog te maken faillissementskosten daarbij worden opgeteld. Al met al, een somber financieel beeld.

**Annex – Overzicht toestand van de boedel**

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Anexo 3.

**Cartera de Inversiones Venezolanas, C.A.**
RIF J-00331248-7

**Dear Stakeholders of the Bankruptcy of Banco del Orinoco, N.V. ("BDO")**

We are reaching out to you as the principal shareholder of BDO and representatives of the Cartera Group and related individuals and companies to update you on the progress and potential amendments to the Composition Plan submitted on December 1, 2023, to the Court of First Instance of Curaçao, as received by the court on December 4, 2023 ('Composition Plan').

The Cartera Group stands as the principal shareholder of BDO and, alongside our Related Individuals and Companies, constitutes the largest group of creditors involved in BDO's bankruptcy. This position is crucial for the bankruptcy process, and it is in the best interest of the Cartera Group and Related Individuals and Companies to ensure that this process is executed successfully and to our collective satisfaction through the approval and implementation of the Composition Plan.

Considering the upcoming Creditors' Meeting set for September 27th, we feel it necessary to inform you of our evaluation of the payment proposal included in the Composition Plan due to recent political developments in Venezuela and its inclusion on the Grey List of the Financial Action Task Force (FATF). These factors compel us to reassess certain proposals originally incorporated in the Composition Plan.

While the current Composition Plan provides viable payment alternatives for each creditor group, the aforementioned circumstances necessitate modifications to some of the initial proposals. Furthermore, we have taken into careful consideration the suggestions and concerns raised by the Receivers and members of the Creditors' Committee in relation to the original plan. We are actively working to incorporate most of these suggestions into the revised Composition Plan to demonstrate our commitment to good faith and our intention to propose a plan that is acceptable to all creditors.

To facilitate this process, we require further collaboration and input from all stakeholders involved. Your cooperation is vital as we strive for a resolution that will benefit all parties concerned.

To this end, we require additional time to finalize the development of these alternatives and present a revised proposal for the Composition Plan that is in the best interest of BDO's creditors.

It is the primary responsibility of all parties involved in the BDO bankruptcy process to seek a viable solution that enables creditors to recover their claims. Therefore, postponing the Creditors' Meeting is both necessary and essential to ensure the success of our efforts in safeguarding the best interests of all creditors.

In the spirit of transparency and efficiency, we wish to provide you with a preliminary outline of some of the modifications we intend to incorporate into the new Composition Plan. Additionally, we aim to clarify certain fundamental issues that we believe are critical for achieving a definitive and satisfactory resolution to the bankruptcy process of BDO.

## I. Distribution of the creditors' estate in bankruptcy.

The total claims in the bankruptcy proceedings amount to USD 825,615,287.24. Of this total, the Cartera Group holds 50.44% of the claims, equivalent to approximately USD 416,411,962.73. The remaining claims, totaling approximately USD 409,173,324.51, represent 49.56% of the overall claims in the bankruptcy.

| CLAIMS | Creditors | Claims | |
|---|---|---|---|
| | 2.687 | USD | 825.615.287,24 |
| **CARTERA GROUP** | 556 | USD | 416.441.962,73 |
| | 20,69% | | 50,44% |
| **REMAINDER OF CLAIMS** | 2.131 | USD | 409.173.324,51 |
| | 79,31% | | 49,56% |

The amended Composition Plan will be specifically tailored to address the 'Remainder of Claims,' which total USD 409,173,324.51. This approach aims to significantly lower the liquidation amount owed to the remaining creditors outside of the Cartera Group.

Under the terms of the Composition Plan, creditors holding these Remainder of Claims will have the opportunity to exchange their claims against BDO for an interest in a Private Commercial Fund (the "Fund").

This Fund will consist of various financial instruments and/or bonds from leading companies across several sectors, including construction, advertising, oil and gas, and real estate development.

The specific characteristics and details will be outlined in the amended Composition Plan.

- The Cartera Group will acquire the creditor's position in BDO as a result of this exchange and will provide compensation in the form of a participation in the Fund, reflecting the proportional value of the transferred claim.

- The Cartera Group will acquire the creditor's position in BDO through this exchange, compensating at the same proportional value with a participation in the Fund. As a result, the Cartera Group will be subrogated to all rights of the creditor associated with BDO, effectively assuming the role of creditor for the assigned position. This position will be valued in relation to the BDO Investment Portfolio held by the custodian, ensuring a consistent and equitable discounting process.

This process was included in the original Composition Plan, as follows:

***"Remaining Funds after Settlement of Claims***

*Any remaining portion of the Investment Portfolio will be transferred to the Cartera Group, or a third party to be appointed in writing, by notice to the Parties, by the Cartera Group, in the Cartera Group's sole discretion provided that the transfers and procedures contemplated under sections 2.1, 2.2, and 2.3 above have been completed."*

## II. Private Commercial Fund.

The Cartera Group will invite all creditors and clients of BDO to participate in the Fund. This Fund will consist of bonds and/or financial instruments from leading companies across various sectors, including construction, advertising, oil and gas, and real estate development, all of which are owned by the Cartera Group.

Creditors will have the opportunity to participate in the Fund by exchanging their claims for Fund Units. To support this decision-making process, comprehensive information will be provided to creditors and clients, including asset identification, valuations, and projections, among other relevant details.

Through this exchange, creditors will obtain a stake in the Fund equivalent to the total amount of their claim, calculated at its current market value. Additionally, they will receive a percentage of the profits generated by the Fund.

The Fund will be established with a reputable first-tier bank in Venezuela.

## III. Assets Comprising the Fund.

As previously mentioned, the Fund will consist of bonds and/or other financial instruments from select leading companies across various sectors, including construction, advertising, oil and gas, and real estate development, all of which are owned by the Cartera Group.

The companies included in the Fund are well-established entities with a proven track record of success in their respective industries. They demonstrate strong potential for growth and profitability. The real estate developments within the Fund will feature complexes situated in Venezuela, all of which are anticipated to appreciate in value over time.

These companies are currently undergoing evaluation, certification, and auditing by internationally recognized firms to ensure their credibility and investment viability. To provide transparency regarding the Fund's progress leading up to the final Composition Plan, a preliminary list of the companies whose bonds and/or financial instruments may be included in the Fund is presented below.

a) **Company 1):** It is Leading Company with over 30 years of experience, Company 1 is a premier provider of specialized technical services for the oil and natural gas industry. Their expertise includes the supply of drilling fluids, well recovery, maintenance, rehabilitation, and related processes.

   The company's installed capacity has been certified by the major oil companies in Venezuela and is currently undergoing a certification and auditing process by one of the world's top 5 leading auditing firms.

   As part of their ongoing commitment to quality and compliance, Company's installed capacity is presently being assessed for certification by a leading global auditing firm.

b) **Company 2:** Founded over 15 years ago, Company 2. specializes in the production, distribution, and commercialization of asphalt and its derivatives, initially focusing on asphalt-based waterproofing products.

The production plant is equipped with two main processing trains: (i) Asphalt Oxidation and (ii) Solvent Distillation.

Through the distillation of hydrocarbons, paraffin, and diesel oil, the facility produces aliphatic solvents that are essential for various industrial applications, including solvents, paints, and dyes.

Company 2 installed capacity is currently undergoing certification by one of the world's leading auditing firms.

c) **Company 3:** This company owns 100% of the Class B shares of a mixed-ownership company established for the development and exploitation of an oil field located in Venezuela.

As recorded in the Official Book of Reserves at the end of 2022, the Field contains a total of 49 deposits, including 43 proven reserves and 6 probable reserves. The predominant type of crude oil found in this field is medium crude, with an average API gravity of approximately 23° API.

Significantly, the crude oil produced from the Field does not require diluents, which is a key advantage. This medium crude, with a 23° API, can serve as a diluent itself for transporting crude oil from the Orinoco Oil Belt in Venezuela. This capability facilitates the movement of crude through the various trunk networks and pipeline systems, from extraction sites to final disposal points.

d) **Company 4:** This company boasts over 70 years of experience in the advertising sector and has established itself as a leader in the Venezuelan market. With extensive expertise, robust operational capacity, and a relentless drive for innovation, it has achieved prominent leadership across all our lines of business, gaining significant competitive advantages. Currently, the company offers a diverse range of services, including:

- Advertising Units
- Special Productions.
- Corporate and Visual Identification.
- LED Sculptures.

e) **Company 5:** This Company comprises a portfolio of eight companies that encompass all facets of the real estate and construction sector. With over 30 years of experience, it is committed to delivering high-quality services in Project Management, Administration, and Construction.

One key company of this group specializes in the establishment, construction, urbanization, rehabilitation, planning, programming, design, conservation, and maintenance of all types of engineering and architectural works, both public and private. This includes the execution of a wide range of complementary, related, and ancillary projects.

Several large commercial, industrial and residential projects have been developed or ar under development or administration in major cities in Venezuela.

## IV. Cash Option for small creditors

As outlined in the Composition Plan, creditors with claims of less than USD 10,000.00 will have the opportunity to exchange their participation in the Fund for cash. We confirm that this option will be retained in the amended Composition Plan, ensuring that small creditors have a viable alternative to participate in the process.

## V. Payment of bankruptcy costs.

We would like to reiterate, as we have previously stated, that in alignment with the Memorandum of Understanding (MOU) signed between the Cartera Group and the BDO Receiver, the Cartera Group guarantees the payment of bankruptcy costs associated with BDO's proceedings. This guarantee is contingent upon the costs being assessed and approved by the Supervisory Judge, as stipulated in paragraph 2 of the MOU.

To date, the Cartera Group has already covered over 40 percent of the costs incurred in relation to BDO's bankruptcy.

## VI. Portfolio Information vs. Claims and Equity.

The securities investment portfolio ('Investment Portfolio') of BDO, which is held in custody by a professional third-party institution known for its expertise in the field, has a nominal value of USD 1,347,949,500. Claims represent 61.25% and Equity 38.75%.

| | | | |
|---|---|---|---|
| INVESTMENTS | USD | 1.347.949.500,00 | 100% |
| **CLAIMS** | USD | 825.615.287,24 | 61,25% |
| **EQUITY** | USD | 522.334.212,76 | 38,75% |

Considering the claims of the Cartera Group, which total approximately USD 416,441,962, along with the Bank's equity of around USD 522,334,212 (owned by the shareholders), the combined total of both (Cartera Group claims plus Equity) amounts to approximately USD 938,776,175. This total represents approximately 70% of the Investment Portfolio attributed to the Cartera Group.

| | |
|---|---|
| INVESTMENTS | USD 1.347.949.500,00<br>100% |
| **CLAIMS** | **USD 825.615.287,24**<br>**61,25%** |
| **CARTERA GROUP CLAIMS** | USD 416.441.962,73<br>30,89% |
| **EQUITY** | **USD 522.334.212,76**<br>**38,75%** |

The required certifications for the Investment Portfolio will be provided in accordance with the terms outlined in the Memorandum of Understanding (MOU). This information has been communicated and reaffirmed to the Receivers on multiple occasions.

It is crucial to assess and comprehend the current environment surrounding the Investment Portfolio, especially considering the following factors:

- BDO is undergoing a bankruptcy process that has been widely reported by various media outlets and online platforms.
- BDO is a bank incorporated in Curaçao, a jurisdiction known for its low tax regulations.
- Venezuela is subject to a wide range of economic sanctions severely affecting regular operations.
- The bank's shareholders are Venezuelan nationals, who have faced ongoing media scrutiny, including derogatory labels such as "Chávez's Banker."
- Over 95% of the creditors are also Venezuelan nationals.

The custodians of BDO's Investment Portfolio have maintained a successful business relationship with the Cartera Group for more than 30 years despite the above-mentioned adverse environment. Given BDO's unique circumstances, the main shareholder has had to assume risks using its own assets to preserve this commercial relationship with the custodians and ensure the continuity of the portfolio's management.

Due to the challenging environment, the Memorandum of Understanding (MOU) explicitly outlined the conditions established by the custodians for managing communications regarding BDO's Investment Portfolio. Unfortunately, these conditions were not adhered to. All actions taken and to be taken by the Receivers that breach the provisions of the MOU affect the relationship with the custodians. These unwarranted actions create mistrust and unease among the custodians, who are understandably

reluctant to assume additional risks for a bank's Investment Portfolio given the current conditions of the BDO.

We once again reaffirm that the documents required by the MOU concerning the BDO Investment Portfolio, along with any other documentation that may be requested from the custodians in a consensual manner regarding the BDO Investment Portfolio, will be provided.

## VII. MOU

We acknowledge the communication received on September 20, 2024, from Michiel R. B. Gorsira, which indicates the unilateral termination of the MOU executed on October 26, 2023.

Cartera remains committed to advancing with this process in the best interests of the creditors, in accordance with the original spirit of the MOU, while reserving all rights concerning the Receivers' unilateral dissolution of the agreement.

## VIII. Extension for holding the Creditors' Meeting.

In light of the aforementioned reasons, we have determined that an extension of one hundred eighty (180) days would be adequate to finalize the necessary actions for submitting an adjusted "Composition Plan" and to effectively convene the Meeting of Creditors.

However, the Cartera Group remains committed to making every effort to present the Composition Plan as expeditiously as possible, without compromising its integrity or viability. Our goal is to ensure that this process serves the best interests of BDO's creditors.

The adjusted Composition Plan may be supplemented or modified to incorporate additional feedback from the Creditors Committee, the Receivers, Creditors, and the Court.

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Anexo 4

**Willemstad, September 27, 2024**
**Writing of considerations and requests Meeting of Creditors**
**Bankruptcy and liquidation of Banco del Orinoco NV[1]**
**Ref: No. Cur201903648**

**Judge of the Court of First Instance of Curaçao.**

We, Carlos Calderón Arias and Roberto Hung Cavalieri, Venezuelan lawyers, identified with Venezuelan identity cards 3,186,784 and 10,807,685, passport Nos. 164829217 and 099465696, and Inpreabogado number Nos. 12,441 and 62,741, acting in our capacity as representatives of creditors whose rights have been represented and recognized in this procedure; On the occasion of the holding of the meeting of creditors set for September 27, 2024, under the bankruptcy procedure of Curacao, we present the following aspects that we consider to be of great interest and importance in this procedure:

***1.- About the meeting of creditors and ratification of requests.***

We are facing the holding of the meeting of creditors in the bankruptcy procedure, which constitutes a continuation of the meeting on December 11, 2023, in which this representation presented a document with considerations of specific requests, among which the challenge of creditors' debts stands out. persons and companies related to the "Grupo Cartera / Vargas Irausquín", as well as the representations of other creditors exercised by their lawyers, affected by these who would have been surprised in their good faith by being made to believe that they were representatives of the bankrupt institution itself, Banco del Orinoco, N.V., (BDO), or Banco Occidental de Descuento, C.A., (BOD), currently also in liquidation, for the sole purpose of asserting before the court the most appropriate payment method for the creditor/agent when the truth is that the only hidden intention is to approve a proposal that

[1] (ES) Las traducciones al inglés y al holandés de este documento se han realizado con la asistencia de Inteligencia Artificial. En caso de discrepancias en su interpretación se deberá tener en cuenta el idioma original de redacción, que es el español.
(EN) The English and Dutch translations of this document have been carried out with the assistance of Artificial Intelligence. In case of discrepancies in its interpretation, the original language of writing, which is Spanish, must be taken into account.
(NL) De Engelse en Nederlandse vertalingen van dit document zijn uitgevoerd met behulp van kunstmatige intelligentie. In geval van discrepanties in de interpretatie ervan moet rekening worden gehouden met de oorspronkelijke schrijftaal, namelijk het Spaans.

exclusively favors in its content those who caused and are responsible for the bankruptcy, who are none other than those who managed it and are its shareholders. In all events we ratify said writing, however later in this document the challenges made and their scope are developed in greater detail.

In this sense, we ratify and attach as annexes to this document so that the following deeds can be added to the file:

1.- Letter dated April 1 addressed to the court recorded physically on May 27th, 2024[2]. (Appendix A)
2.- Letter sent to the Creditors Committee dated February 22nd, 2024[3]. (Appendix B)
3.- Letter sent to the Creditors Committee dated March 4th, 2024[4]. (Appendix C)

***2.- About the "Composition Plan".***

It should be noted that at the time of the presentation of this document, no new version of the "Composition Plan" presented by the "Portfolio/Vargas Irausquín Group" different from or later than the one corresponding to the one at the meeting on December 11, 2011, has been received. 2023, and this representation and other creditor representatives made observations sent to both the bankruptcy receivership, the Creditors Committee, and the court, of which the non-acceptance of the payment mechanism stands out as common observations, the time for this to occur and the lack of guarantees of compliance, observations that are insisted upon and reiterated in this act, which, as has been pointed out, since there is no new proposal, it is understood that the existing one is the one presented in December 2023.

An alarming and worrying aspect of the "Composition Plan", in the terms proposed, and we repeat it once again, is that if it is accepted from that moment on, Banco del

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[2] (ES) http://culturajuridica.org/wp-content/uploads/2024/09/2-SPANISH-Banco-del-Orinoco-NV-bankruptcy-petitions-CALDERON-HUNG-april.pdf
(EN) http://culturajuridica.org/wp-content/uploads/2024/09/1-ENGLISH-Banco-del-Orinoco-NV-bankruptcy-petitions-CALDERON-HUNG-april.pdf
(NL) http://culturajuridica.org/wp-content/uploads/2024/09/3-DUTCH-Banco-del-Orinoco-NV-bankruptcy-petitions-CALDERON-HUNG-april.pdf

[3] http://culturajuridica.org/wp-content/uploads/2024/09/Opinion-al-Comite-de-Acreedores-quiebra-CALDERON-HUNG.pdf

[4] (ES) http://culturajuridica.org/wp-content/uploads/2024/09/BDO-Financial-remarks-Composition-Plan-CALDERON-HUNG.pdf
(EN) http://culturajuridica.org/wp-content/uploads/2024/09/BDO-Opinion-financieras-Plan-de-Compuesto-CALDERON-HUNG.pdf

Orinoco N.V., its directors, and shareholders would be exempted, and released, and companies related to the "Portfolio / Vargas Irausquín Group" as well as the trustee of all liability, therefore, in the event of non-compliance with the same plan, there would be no legal formula to demand any liability, which is unacceptable for our clients. In this case, we warn of the inadmissibility and recklessness of said proposal since it is surprising that it is a Composition Plan that does not even provide for sufficient guarantees of compliance, and even less so, in which it is contemplated from its subscription and before its execution and compliance. exempt the failed bank from all responsibility, and all those who have much to clarify, which is why its approval must be rejected, especially when the behavior and contumacy of the failed bank, its representatives and shareholders, has been continued and demonstrated, "Grupo Cartera / Vargas Irausquín" as was warned by the Central Bank, and surely by the Court itself if a sensible Composition Plan is not achieved.

***3.- About the final decision to declare bankruptcy, its consequences, and responsibilities.***

It was learned that the representation of the "Grupo Cartera / Vargas Irausquín" withdrew the appeal against the decision dated October 4th, 2019, that declared the bankruptcy of Banco del Orinoco, N.V., therefore, having become definitive said decision to declare bankruptcy, it is important to highlight its intrinsic consequences and responsibilities such as.

*3.1.- About the assets to be liquidated and liquidation balance.*

It is the nature of the bankruptcy and liquidation processes that the assets of the bankrupt are liquidated to satisfy the debts under their quality and quantity, taking into account the order of these in case there are some privileged or third-order debts, such as the case of the shareholders of the failed company and the final owner of Grupo Cartera, Mr. Vargas Irausquín.

In the present case, and as this representation has stated on several occasions, since the declaration of bankruptcy in October 2019, which is definitively signed today, a liquidation balance sheet has not been prepared, and does not exist, indicating the estate the assets of the bankrupt useful for its liquidation. The assets, quality of the assets, of the supposed investments such as stocks and bonds that are indicated to be

in an investment portfolio are unknown, however, the reports of the trustees indicate that the representatives of the "Grupo Cartera / Vargas Irausquín" affirm that they exist. an investment portfolio managed by three custodians with a nominal value that would exceed the sum of USD 1,500 million by the time of bankruptcy, however, more than five (05) years after the intervention -September 2019-, and almost five (05) years after the intervention -September 2019-. and almost five (05) years after the intervention 05) years of the bankruptcy declaration -October 2019- subsequently appealed, the details of such investments have never been known, and that in any case if they are true, it is inexplicable how it has then been allowed to reach these phases of the bankruptcy process. liquidation, since the debts, if what is also referred to in the reports submitted by the trustees as reported by the bankrupt, are taken into account, exceed USD 807,703,989.04[5], and that at the time the trustee took control of the company, he only found the sum of USD as cash assets. 18,586.28[6], which also results in an inexplicable and astonishing situation that is simply a sum of money that would amount to more than USD. 800,000,000.00 simply disappeared, vanished, and not only does no one answer for this, but the necessary answers are not demanded and the responsibility for such a loss, which we insist, exceeds USD. 800,000,000.00, a sum that cannot easily go unnoticed, and all of this occurs using the financial system of Curacao.

*3.2.- The "investment portfolio" and its "custodians."*

Since the beginning of the bankruptcy process, the trustee's reports and information from representatives of the failed company and the "Grupo Cartera / Vargas" have stated that the assets of the failed company, as an investment bank, would be mainly made up of investments in bonds and securities in investment portfolios that would be held by "custodians", an investment portfolio and its composition that has in no way been demonstrated, nor has its composition, nature, amounts, or any other information been indicated, in fact, not even , it has been possible to verify the true existence and provision of services of the supposed custodians such as: (i) Welden Securities of Uruguay (WELDEN SECURITIES AGENTE DE VALORES S.A.); (ii) VISTRA INTERNATIONAL S.A. of Panama, and, (iii) FARRINGDON ASSET MANAGEMENT of Singapore, companies that, as this representation has indicated, are either not specialized custodians, have incurred in irregular situations, or have

[5] According to the report of the Trustee.

[6] Idem

simply never exercised such custody of investments, which leads to the same statement from the previous section that a sum greater than USD. 800,000,000.00 simply disappeared, vanished, with support in the financial system of Curacao, no one answers for it, and the due responsibilities are not demanded.

According to statements by the "Portfolio Group / Vargas Irausquín", as of November 2023, there would be only a single investment portfolio in Farringdon Asset Management in Singapore, with a nominal value as of September 30, 2023, of USD 1.35 billion (approx. ) and market value of USD 1.06 billion (approx.), which would be enough to satisfy all debts (USD 892 – 825 million approx.). Investment portfolio whose nature and composition are unknown, a situation that caused the Central Bank of Curaçao and Sint Maarten to indicate that it did not belong to BdO and that, in any case, BdO had no control over it.

Having said the above regarding the supposed custodians, the court is requested to require the trustees to carry out the necessary activities to require the supposed custodians and their authorities and regulators, if applicable, to report on such investments.

*3.3.- The maturation of investments.*

Indicates the report called "*Report of the receiver Mr. M.R.B. Gorsira*" dated December 11, 2023, filed in the court of first instance in the bankruptcy of Banco del Orinoco N.V., (Case Number CUR201903648) which according to the information of the Portfolio Group on the investment portfolio in the period between December 23 December 2023 and June 24, 2024, bonds with a face value of USD 217,109,700.00 would have reached maturity and consequently become payable with interest.

Given this statement made in the report, which in turn would have been indicated by the representatives of the "Grupo Cartera / Vargas Irausquín", it is necessary to ask the court to request both the trustees and the representatives of the "Grupo Cartera / Vargas Irausquín", (this representation has already requested it from the receivership through a communication dated July 31, 2024, still without response) respond to the existence of such bonds and investments, as well as whether they had reached maturity and the destination of the sums of money received, which in any case had to be passed to the trustee, being used for the payment of the bankruptcy debts.

*3.4.- The responsibility of administrators and shareholders.*

It must be insisted that the loss, loss, or disappearance of more than USD 800.000,000.00 to which the present bankruptcy and liquidation process is incurred did not occur in the commercial activity of goods or services, or that the sums of money were in a locked drawer of a desk or a safe in the administration or treasury department of a commercial house, but in a banking institution constituted and regulated by the financial system of Curacao as the administrative regulator, and of the administration of justice in which its courts must guarantee compliance with the legal system, in this case both financial and bankruptcy, and the liability derived from the same.

Being then faced with a situation of a legal fiduciary relationship such as that of receiving deposits from third parties, greater caution must be taken since the impact is not only on the depositors and savers.[7] but of the health of the financial and banking system, so strict compliance must be given in the enforceability of the due, direct, and personal responsibilities of the directors and representatives of the failed company, as well as of the economic group, which is financial in nature, and that the legal system provides for through the institutions of the bankruptcy process and the lifting of the corporate veil.

To highlight the great importance of financial systems, given their nature, of the treatment that must be given in cases of bankruptcy and liquidation of banking institutions, which in the specific case of the legal system of the Netherlands, bankruptcy legislation has A special chapter has been planned for the chaos of banking institutions such as Chapter 11AA, a situation of great interest that must be taken into account in the present case given the nature of international banks and the Curaçao regime concerning the Netherlands in terms of depositor protection.

Having signed the declaration of bankruptcy, no patrimony or asset or liquidation balance reflects the real financial situation of the bankrupt at the time of the declaration, only the disappearance and disappearance of more than USD is recorded. 800,000,000.00, an investigation of the responsibilities must be requested, among

[7] According to the Receiver's report, more than 7,200 accounts.

which are especially the "Causes of bankruptcy", "Bad administration" and "Pauliana Action"[8].

Having said the above, and given the particularities of the case, it is of interest to mention and delve into such aspects, let's see:

*3.4.1.- On the responsibility of the administrators of the failed debtor and the possibility of lifting the corporate veil.*

It is a general principle that in matters of companies, and particularly those of a commercial nature, a clear distinction is maintained between the legal personality of the companies with that of their administrators, representatives, and shareholders, a differentiation and separation that extends to their responsibility and assets to respond to any claims made to it, whether they arise from contractual relationships, abuse of rights or due to an illicit act.

Notwithstanding the above, said separation is not absolute, so the different legal systems through their legislation and as observed in the decisions of their highest levels provide for the lifting or piercing of the corporate veil, in those cases in which the use of corporate forms serves to divert responsibility or to carry out structures and activities that may generate property damage.

Although legislative foundations such as jurisprudential references on this exceptional situation can be found in each jurisdiction, in the specific case of the regulatory and judicial system of the Netherlands, the case "*Beklamel*" from which a standard has been developed which determines those cases in which the lifting of the corporate veil proceeds, thus being required of the representatives of the companies, which in cases extends the liability for damage to the shareholders themselves, particularly in situations bankruptcy or insolvency of the company.

This standard is based on a famous ruling of the Dutch Supreme Court known as the case "*Beklamel*" from October 6, 1989[9].

[8] As indicated in the VANEPS reports under numbers 1.6, 7.3 and 7.4.

[9] Beklamel, HR 6 October 1989 (ECLI:NL:HR:1989:AB9521. Available at: https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:HR:1989:AB9521

From the standard "*Beklamel*" It can perfectly be understood that the administrators, which is extendable to the shareholders, mainly if they are sole or majority shareholders, whether directly, or in turn through other corporate forms, with sufficient capacity to impose their decisions on the company, can be considered personally responsible for its obligations in the event of having acted improperly, for which the following provenance requirements were established:

1. Existence of a negligent or fraudulent act: The standard "*Beklamel*" requires that there be a negligent or fraudulent act, that is, that they constitute illegal actions or acts that are against good faith.

2. Causal relationship between the act and the damage: In addition, it is necessary to establish a direct causal relationship between the negligent or fraudulent act and the damage suffered by the creditors. This means that the acts of the directors must have directly caused or contributed significantly to the insolvency or bankruptcy situation of the company in the event of insolvency situations.

3. Knowledge or duty of knowledge: Administrators or representatives, which extends to shareholders when they have decision-making capacity over the company, must have knowledge or duty of knowledge about the harmful consequences of their actions. This implies that they must have been aware or should have been aware that such actions could lead to the insolvency of the company or cause harm to creditors.

As observed in the present bankruptcy, when reference is made to the "Grupo Cartera", originally defined in the "Composition Plan" by the shareholders of Banco del Orinoco N.V., such as Cartera de Inversiones Venezolanas C.A. and the Banco Occidental de Descuento BOD, more specifically mention is being made of a Group better identified as "Grupo Cartera / Vargas Irausquín", due to the fact that if to name a certain group the common or major shareholder must be taken into account in ascending order. participation, we observe that Víctor José de Jesús Vargas Irausquín is the sole shareholder of Cartera de Inversiones Venezolanas, C.A., and that beyond the shareholding in it, but also in the shares of other companies, it is consequently completely appropriate that when reference is made to the group of companies or economic unit controlled by this shareholder, they are known and treated as "Grupo Cartera / Vargas Irausquín", or simply as "Grupo Vargas Irausquín", or to be clearer in our ideas, as a group economic Vargas Irausquín.

In this sense, we observe that the "Grupo Cartera / Vargas Irausquín" and other related companies constitute the same economic group, all of which results from the following shareholding structure:

1. Víctor Vargas Irausquín is the sole shareholder (100%) of Cartera de Inversiones Venezolanas, C.A.,

2.- Cartera de Inversiones Venezolanas, C.A., is the majority shareholder, almost in its entirety (99.79427%) of Banco Occidental de Descuento –BOD-,

3.- Cartera de Inversiones Venezolanas, C.A. and Banco Occidental de Descuento – BOD- are the sole shareholders of Banco del Orinoco N.V.

4.- Cartera de Inversiones Venezolanas. C.A., is the sole shareholder (100%) of Valores Occidentales Corporativos, C.A.

5.- Cartera de Inversiones de Venezuela, C.A., and Valores Occidentales Corporativos, C.A., are the only shareholders of Valores Occidentales Inversiones, C.A., in a proportion of 99.5002% and 0.2578% respectively.

6.- Valores Occidentales Inversiones, C.A., the sole shareholder (100%) of BOI Bank Corporation Inc.

It is observed and unequivocally inferred from such relationships between legal entities and shareholders, a definitive decision-making control of a single person such as Víctor José de Jesús Vargas Irausquín, legal relationships and decision-making control that are even recorded and demonstrated with his own recorded statements. in communications specific to the exchange between factors of the financial ecosystem such as, among others, (i) the agreement entered into between the Banco Nacional de Credito -BNC- and Banco Occidental de Descuento -BOD- for the transfer of assets and liabilities in Venezuela of the latter, which is authenticated in the Thirtieth Public Notary of Caracas on July 13, 2022, under No. 19, Volume 43, folios 73 to 85, in which in clause 1.9, Vargas Irausquín expressly declares to be the sole shareholder (100%) of Cartera de Inversiones Venezolanas. C.A., which in turn owns 99.79427% of the shares of Banco Occidental de Descuento –BOD-; (ii) communication dated 11/07/2017 addressed by Vargas Irausquín in his capacity as President of the BOD to VISA INC., through which he states that the institutions that make up the "BOD International Financial Group, BOI Bank Corporation, Bancamerica and Allbank ", (iii) sworn statement dated 04/21/2016 of the director of BOI Bank Corporation, Inc.,

Joel Santos Tobio regarding the shareholding composition of BOI Bank International, INC., of Antigua and Barbuda, until its final beneficiary the Mr. Vargas Irausquín.

Indicated and demonstrated as it has been that the actions and consequently the responsibility of the companies that make up the so-called "Grupo Cartera" or others other than those referred to by the shareholders of the company rest with the will and decision-making control of Víctor José de Jesús Vargas Irausquín. Banco del Orinoco N.V. in liquidation, we are forced to conclude that we are faced with an economic group, rather an economic unit, "Grupo Cartera / Vargas Irausquín" or simply "Grupo Vargas Irausquín" with all the legal consequences that this implies, and this must be required as In fact we do so in the present bankruptcy process in Curacao.

Given the evident consolidation as a group, and since at first glance the necessary requirements for piercing the corporate veil could be verified, it was up to the bankruptcy liquidator to initiate and carry out the pertinent investigations, and if such requirements were verified, to attempt the corresponding actions to pierce the corporate veil in order to protect and guarantee the rights of creditors.

*3.4.2.- Responsibility for illegal acts. Fraud by deception of legitimate trust. The special case of banking activity.*

Regarding liability, and more especially civil liability and obligation resulting from abuse of rights or illegal acts, framed in the legal system of the Netherlands under the notion of "*Onrechtmatige daad bij vertrouwensbreuk*", within which is that of deceived legitimate trust, which is based on the idea that a party can incur civil liability when it deceives or abuses the trust of another party, causing damage.

Legitimate trust refers to the reasonable trust that a person places in the statements or actions of another person, based on a relationship of dependency or a relationship of trust, which in our case is that of a relationship of extreme trust derived from a fiduciary activity such as banking, in which if the person in whom the trust is placed deceives the other, and as a result, the latter suffers damage, it then results in a case of civil liability for illicit act of deceived legitimate trust.

There are three concurrent requirements for civil liability to be established for deceived legitimate expectations and in the present case all of them are met:

1. Founded trust: Which must be based on a reasonable expectation that the other party will act in a certain way or comply with certain obligations, which in the specific case given the nature of banking activity is verified by the existence of deposits having been made.

2. Deception or abuse of trust: That in the specific case is verified and verified not only in the face of restrictions and refusals to have their assets available to the depositors, or to comply with their instructions regarding carrying out the ordered transactions, transfers and non-renewals, and that even in the present process they continue to be contacted by people who claim to act on behalf of the bank, instructing them to grant mandates to people related to and contacted by the failed debtor itself and its shareholders.

3. Damages suffered: which are verified when the creditors find themselves without any possibility until the present date of disposing of their deposits, their property, resulting in many cases greater damages, since such sums of money that would be used in cases of treatments and medical emergencies of depositors and family members, sometimes even resulting in deaths and other losses, damages that can be both material and moral.

*3.4.3.- The termination of legal transactions. The Pauliana Action in bankruptcy proceedings.*

Another aspect that is natural to bankruptcy actions is the impact and possibility of annulment of the legal transactions carried out by the failed debtors that result in the reduction of the assets required to satisfy the debts, all of which is known as "rescission." bankruptcy", "*actio pauliana*", or simply "Pauliana", which, as in many legal systems, that of this jurisdiction is regulated in the Civil Code (*Burgerlijk Wetboek*) and in the General Bankruptcy Law (*Faillissementswet*), regulatory bodies that support the development of moratorium institutions, insolvency, declaration of bankruptcy, bankruptcy rescission and liquidation of companies.

This figure allows creditors or the bankruptcy trustee to challenge certain acts carried out prior to the declaration of bankruptcy or insolvency, as well as all those during the process if they do not proceed in the execution of the liquidation process itself and by

the legally appointed liquidator. seeking in this way to avoid the deterioration of the situation of the assets to the detriment of the creditors, which is done through the annulment or reversal of legal acts carried out by the failed debtors that, as indicated, may be detrimental to the interests of the creditors or as an attempt to hide or move assets beyond the scope of liquidation.

Regarding the requirements that must be met for the bankruptcy rescission to be applicable and that are also completely verified in this case, they are:

1. The contested act must have been carried out by the debtor before the declaration of insolvency, and with respect to any legal transaction carried out directly by the failed debtor after said declaration, since with such declaration and the taking of control that must making the liquidating trustee completely cease any act of the administrators or directors, such are absolutely null and void, even if the other parties have acted in good faith and were unaware of the declaration of bankruptcy, actions that would rather demonstrate fraud and deception of trust.

2. The act must be detrimental to the interests of creditors. Obviously it must be any situation that impairs the quality or quantity of the assets affected for the satisfaction of debts.

3. The debtor and the other party involved in the act must have acted with knowledge of the insolvency or with the intention of harming creditors.

4. The act must not be an ordinary transaction carried out in the normal course of business.

In the case of our interest, the acts carried out by the failed debtor prior to the date of declaration of bankruptcy are unknown, that is, October 4, 2019, although it would not be strange if such were in fact carried out, all of which should have been ascertained by the liquidator appointed by the Court, as well as to prevent other businesses from being carried out after such declaration, both cases in which, if compliance with the indicated requirements is verified, the bankruptcy rescission would lead to the annulment or reversal of the contested act, which implies that the assets are recovered and used to pay the creditors, which is why it is absolutely necessary that the liquidator, in addition to avoiding activities that deteriorate the

assets, is under the legal obligation to exercise the actions of termination if the occurrence of such legal activities or businesses is observed.

*3.4.4.- Collective or class actions.*

Another aspect that deserves special attention related to this liquidation process is the right that would assist creditors, beyond the eventual satisfaction of their debts, in the event that this is not possible in its entirety due to insufficient assets, they can continue their claim but not individually, but collectively through what is known as collective or class action, whose in-depth study will depend on the progress and results of the case, collective actions that have their basis both in the civil code, as well as in the case of the Netherlands, in the special regulation on the matter such as the Law on Collective Claims "*Wet Collectieve Afhandeling Massaschade / WCAM*", whose application in the present situation must be evaluated subsequently, with respect to its provenance requirements and the effects of any reparation that may be obtained.

However, we are not facing a collective claim action but rather a bankruptcy procedure, given the multiplicity of participants and affected parties, essential elements such as common cause, nature of the existing legal relationship, are of great importance for understanding the process. Legitimacy of representation among others, which is why antecedents of cases such as that of *Dexia/Kremlin-Aandelenlease*[10] *were* decided by the Supreme Court of the Netherlands in which the collective claim was allowed and the liability of the company was verified.

***4.- About the claims presented, challenges to claims and representations. Its effects on voting rights.***

Likewise, this representation from its initial arguments seen the debts presented by people and companies related to the bankrupt itself, Banco del Orinoco N.V., and its beneficiary shareholders "Grupo Cartera / Vargas Irausquín", as well as the debts presented by: (i) Carely del Carmen Valentín Morles, (ii) Félix Ferrer Salas, (iii) Rafael Álvaro Ramírez Pulido and (iv) Armando Hurtado Vezga, this is because they have an intimate relationship with the failed company, its shareholders, companies

[10] https://www.secjure.nl/2021/03/10/aandelenlease-affaire-het-doorgeven-van-een-order-in-het-geding/ https://www.bnnvara.nl/kassa/artikelen/vergoeding-in-aandelenlease-affaire

and related people such as the "Grupo Cartera / Vargas Irausquín", in this sense the following challenges are insisted on:

*4.1.- Challenges to the representations, credits and voting rights of people and companies related to the failed and "Grupo Cartera / Vargas Irausquín"*

It is striking that among the creditors represented by the leaders of the "Grupo Cartera / Vargas Irausquín" there are people and companies that make up and are related to each other in an intricate business network whose last link is Cartera de Inversiones Venezolanas C.A. owned by the aforementioned Mr. Vargas Irausquín in 100%, and whose debts, regardless of their amount, must be considered as debts classified as third order, which means that they cannot be paid until after they have been paid and satisfied in all the claims of the rest of the creditors, that is, those of the privileged creditors and those classified as ordinary creditors.

Banking literature has highlighted the imperative of this category as well as the existence of privileged or first-order creditors and ordinary or second-order creditors, due to the preeminence of social and fiscal reasons (privileged), of trust in the system, or the deposit of good faith (ordinary), and the relationship with the failed causer or service providers to him (third level).

We observe how they are part of the related people and companies that make up the "Grupo Cartera / Vargas Irausquín", whose related shareholding was sufficiently explained above from Víctor José de Jesús Vargas Irausquín himself, the shareholder companies as well as multiple related companies on the which this Court must before any voting activity on proposals and composition arrangements expressly establish in the list of approved creditors and their voting rights, which are those of first level or privileged creditors, the common second level creditors, and those of third level, it is important to highlight that both the first and third level cannot exercise the right to vote for the approval of the proposed agreements and in this sense, we require that this tribunal take note of the following creditors and amounts of their debts, which may not be considered in the estimates necessary to form a quorum and qualified votes both at the creditor meeting set for September 27, 2024, and at any other time.

At the meeting of creditors on December 11, 2023, this representation presented to the court a list of people and companies related to the bankrupt in order to verify if

they are in fact part of the creditors, all of this in order to challenge it if necessary. Said debts, which could not be done given the anonymized nature of the list prepared by the receivership, a list which is set out below:

| | |
|---|---|
| Víctor Vargas Irausquín | Banco Múltiple de las Américas (Bancamerica) |
| All Bank Corp (Allbank) | Valores Occidentales Inversiones, C.A. |
| Boi Bank Corporation (BOI) | Valores Occidentales Corporativos, C.A. |
| Inlet Finance Corp | Tequesta Holding Corp. |
| Palco Associates Inc. | Element Capital Advisors Ltd |
| The Nordhavn Corporation | Corp Casa de Bolsa C.A. |
| Avente International Corp. | Brinecorp Inc. |
| Sunbury Trading Co, S.A. | Denstar Inc. |
| Applemar Inc | Enliven Enterprises Inc |
| National Leasing & Financial Corp. | Asesoria e Inversiones Dfa 5000. |
| Unidad Corporativa de Mercado | VOI Fondo Mutual En Dolares De |
| Cendet Global Corp | Firswest Group Ltd. |
| BOD Valores Casa de Bolsa, C.A | Inversiones Atarep, C.A |
| Element Capital Group Ltd | Future Star Holdings Ltd |
| Tesica Services Ltd | Moralis Corporation |
| Cecve Services Ltd | Planesa Services Ltd |
| Sigmore Holdings Inc. | Latin America Asset Management Corp |
| Chalenger 5189 Leasing LLC | La Lechuza Holdings |
| Wescorp Holdings Inc. | Cayfloor Inc. |
| Total Standard Inc. | Environmental Solutions Esvenca |
| Grand Main Ltd | 1600 Ponce Lenders, S.A. |
| Proteccion, C.A. | Plus Capital Market Inc |
| Icp Consulting Ltd. | Westraders One Inc |
| Bray Capital Rd, Srl | DXF Capital Managers Inc |
| Pymefactoring, S.A. | Precision Capital Finance Ltd |
| Eagle Holding International, L | Asoc Instituto De Gerencia Y E |
| Equinoccio B.V.I. Ltd | Ubp Investment Inc. |

| | |
|---|---|
| Invest Real Estates Inc.; | Casy Overseas Corp |
| Unitown Corp. | Firgoe Company Inc. |
| Operal Investment Inc | Traspan Holdings, S.A. |
| Sandcorp Enterprises, S.A. | Percys One Corp |
| Northmile Intertrade, S.A. | Servicios Aereos Padaall, S.A. |
| Ndv Asset Management Ltd | Redcrest LTD |
| Inversiones ZURU C.A. | |

In the case of said list, this representation was able to determine six (06) debts that are in fact closely related to the "Grupo Cartera / Vargas Irausquín" and that are in fact rejected and challenged, both in their representation, creditor qualities and amounts of the debts, such debts correspond to the following people and companies:

1.- Víctor Vargas Irausquín (655) USD 6,092,703.52;
2.- Cartera de Inversiones Venezolanas (386) USD 17,262,839.39;
3.- Banco Occidental de Descuento. BOD (380) USD 18,684,873.60;
4.- BOI Bank Corporation (BOI) (383) USD 32.632.888,11;
5.- Valores Occidentales Inversiones, C.A. (439) USD 1,174,459.34; and
6.- Environmental Solutions (ESVENCA) (512) USD 73.154.215,07.

Given the indication of the six specific debts that are rejected, their exclusion is requested from the formation of the quorum and voting rights both for the approval of the Composition Plan and any other decision, without prejudice to formulating other challenges if any access to information and contacts of creditors whose list is anonymous.

*4.2.- Challenges to the representations and impact on the voting rights of creditors represented by (i) Carely del Carmen Valentín Morles et al., **NOT NECESSARILY** related to the failed and "Grupo Cartera / Vargas Irausquín"*

This representation has insisted that of the representations by various lawyers that appear referred to in the preliminary list of verified debts, and that, as referred to at the meeting of creditors in December 2023, this is how the trustee exposes them and appears in various communications, There are related aspects regarding "mandates" of creditors and, in a very special way, the conflict of interests that exists and that

vitiates the representation exercised by the representatives (i) Carely del Carmen Valentín Morles, (ii) Félix Ferrer Salas, (iii) Rafael Álvaro Ramírez Pulido and (iv) Armando Hurtado Vezga, this is due to the fact that they have an intimate relationship with the failed company, its shareholders, companies and related persons such as the "Grupo Cartera / Vargas Irausquín", since they are representatives of the themselves, as well as third parties, legitimate depositors of Banco del Orinoco N.V, who were surprised in their good faith, as we have said after having been contacted by people who indicated they were employees of Grupo Financiero BOD, more specifically from the telephone numbers + 584143617728, which would correspond to that of a citizen who said her name was "Eva de Maduro (Orinoco Curacao)" and +584246059734, which they identify as "Presidency bod123", as well as emails from the address informacionorinoco@gmail.com, requiring them to " recovery of their deposits" to grant mandates to the indicated leaders.

For a better illustration of what has been said, we observe how the list of provisionally admitted debts itself shows that the creditors included between numbers 15 to 1150, which at the time of publication of that list were 1136 creditors with an amount of USD. 517,370,951.96 in debts, are those represented by such attorneys (Valentín, Ferrer, Ramírez and Hurtado), and among whom are Víctor José de Jesús Vargas Irausquín himself, shareholder, director and representative of the "Grupo Cartera / Vargas Irausquín", located in box 655 with a credit of USD. 6,092,703.52, but it can also be seen that the following related companies that make up the "Grupo Cartera / Vargas Irausquín" are also part of the debts represented by said attorneys, such as: Cartera de Inversiones Venezolanas, C.A., (386) USD 17,262,839.39; Banco Occidental de Descuento -BOD-(380) USD. 18,684,873.60; BOI Bank Corporation Inc. -BOI- (383) USD 32,632,888.11; Valores Occidentales Values Inversiones, C.A. (439) USD 1,174,459.34 and Environmental Solutions de Venezuela, C.A., -ESVENCA- (512) USD 73,154,215.07. Regarding this last increase, the (512), it would have been noted that they would be in question due to supposedly having incurred irregularities that would have been questioned by the Central Bank of Curacao and Sint Maarten itself, which would evidently have a great effect on the formation of the voting rights and necessary quorum, information that this representation has not been able to verify due to the lack of information on the list itself, which effectively allows us to allocate efforts to the research work we carry out.

As is clearly observed, and has also been indicated to this Court, beyond any responsibility that may arise from the fact that the same person, a legal professional, serves as a representative before a judicial process, and this is, and in some legal systems legal acts are even considered a criminal offense such as prevarication, in the present case there is at least a very serious situation of conflict of interest that affects said representation, in view of which we challenge, as they were already challenged in a previous writing, the mandates presented by the citizens (i) Carely del Carmen Valentín Morles, (ii) Félix Ferrer Salas, (iii) Rafael Álvaro Ramírez Pulido and (iv) Armando Hurtado Vezga.

It is noteworthy that what is being challenged is the representation of said representatives of claims that have been referred and granted such mandates under the assumption and belief of those who contacted them were representatives of the BOD Financial Group and of which Banco del Orinoco NV is a part of with Banco Occidental de Descuento -BOD-, and the BOI International Bank of Antigua and Barbuda. Contact, recruitment that in no way can the same people who represent the bankrupt, its shareholders, people and related companies, make and even less exercise representation.

It should be noted that in accordance with articles 87 and 94 of the Curacao Bankruptcy Law, the trustee upon taking said position must assume full and exclusive control of all communications of the failed debtor, as well as the call or summons, especially the directed to creditors to be present at meetings and meetings, and given the fact that third parties used a non-institutional means of communication such as the email informacionorinoco@gmail.com and with personal information of the depositors, it could furthermore, being faced with a situation of undue "substitution" or "impersonation" of the identity and "usurpation of powers" of the liquidator, is sufficient reason for the necessary investigations to be carried out to determine who makes use of such means outside the legal norm that provides that communications on behalf of the bankrupt to creditors for the purpose of liquidation must be carried out exclusively by the bankruptcy trustee.

It is important to point out that THE CREDITS of the creditors are NOT CHALLENGED, but rather their representation for the purposes of any vote, especially the Composition Plan presented.

Furthermore, in the bankruptcy process it has been determined in several cases how the identity of some creditors could have been usurped for the purposes of granting a representation mandate. In fact, those who subscribe here have two recordings in their hands "*voice*" and knowledge of the email sent by Ana María Ramos to the bankruptcy trustee on 08/21/2024, denouncing such rude behavior. The surprising thing is that the beneficiaries of the mandates in all the cases referred to are the same legal professionals that we mentioned in previous lines.

Having said the above, we consider that this Court of First Instance of bankruptcy and the trustees must inform the creditors who appear represented by the aforementioned representatives, that they cannot obtain said mandates on behalf of the bankrupt, and also inform that they are representatives. of the "Grupo Cartera / Vargas Irausquín" and that after that notification, they can be represented by any lawyer they trust, one of those already identified in the process or even act directly or with the assistance of the bankruptcy trustees in last resort.

Once again, to conclude, it must be insisted that the debts of all ordinary creditors legitimately presented and certified, other than those corresponding to the related companies of the failed company, and its owner, all third-order creditors, are NOT being challenged, but rather the representations improperly assumed, and of which a serious conflict of interest is verified.

***5.- About the Creditors Committee and its composition.***

At the meeting of creditors held on December 11, 2023, the final Creditors Committee was formed, ratifying Herminio Nieto, a Venezuelan lawyer representing a group of BdO creditors, and Rafael Moscarella, representative of the creditor Allbank in Panama, and replacing Mirto. Murray, a lawyer from Curaçao who represented the debtor, appointed Yasmir Pineda as representative of the "Grupo Cartera", a designation that, although it is identified with what was stated by the liquidator in that this would provide "*a formal platform to negotiate the final agreement that Portfolio will offer..., (*and*)... could also play a guiding and mediating role....*", there are some important aspects to consider that should not be overlooked.

Although the affirmation and enthusiasm expressed by the trustee can be shared in the sense that the participation of Yasmir Carolina Pineda Duque identified with the

Venezuelan ID card V-10.153.179, as a representative of the "Grupo Cartera" can be of great help to the bankruptcy procedure in general to seek formulas for negotiating a final agreement and which can play a guiding and mediating role, it cannot be overlooked that the nature of the institution of creditor boards or committees in bankruptcy processes is explained by itself, that is, that of its formation from such subjects of law that no longer exercise particular but universal collection actions, that is, the bankruptcy creditors from whose perspective the execution actions are carried out, so much so that In the bankruptcy regulations in general and especially those of the jurisdiction of Curacao, they have very important powers and functions, just see articles 72, 73, 74, 75 and following of the Bankruptcy Law of Curacao.

It is not very complicated to conclude that the fact that the Creditors Committee is made up of Yasmir Carolina Pineda Duque, a representative of the failed debtor such as Banco del Orinoco N.V., or its shareholders, the "Grupo Cartera / Vargas Irausquín", completely goes against the very nature of the institution, even more so as has been observed in the present bankruptcy procedure in which the failures of the bankrupt and its lack of collaboration with the trustee and the process have been recorded since before the declaration. of bankruptcy, it is sufficient reason why, despite recognizing that any form of fluid and direct communication between the debtor and the creditors will always be beneficial, it must be challenged as we effectively challenged the designation of Yasmir Pineda as a member of the Committee of Creditors as representative of the "Grupo Cartera / Vargas Irausquín", given which we request that the Court declare her disincorporation and proceed to designate a new member arising from the represented creditors, per article 71.3 of the Bankruptcy Law. Curaçao, after consulting all representations present at the Meeting of Creditors other than those of Grupo Cartera, related people, and companies, that is, the legal professionals already mentioned Carely del Carmen Valentín Morles, Félix Ferrer Salas, Rafael Álvaro Ramírez Pulido, and Armando Hurtado Vezga.

***6.- Situation of BOI International Bank INC., regarding the bankruptcy and liquidation of Banco del Orinoco N.V.***

An aspect of great importance is the situation of the BOI Bank International Inc., of Antigua and Barbuda, which is worth remembering is part of the BOD Financial Group, that is, the "Grupo Vargas Irausquín", since according to the "Composition Plan" proposed, is part of the formulas presented to the creditors of Banco del Orinoco

NV., through which their debts would be transferred to that "bank" in the aforementioned jurisdiction.

As referred to in other writings and which is of general information, the situation of the aforementioned BOI Bank concerning its non-transparent, rather very opaque, banking practices, which affect the rights of depositors to freely dispose of their assets, is not very different from the behavior of Banco del Orinoco N.V., currently in liquidation, with the difference that in the jurisdiction of Antigua and Barbuda, although special measures for the supervision of activities have been issued, they have not led to the declaration of bankruptcy. and liquidation, however, it should be noted that it has been known, as it consists of independent audits, that the situation of the said bank is absolutely "deplorable", which would have led, although not to the suspension or revocation of the banking license, would have been in its non-renewal, precise facts that are officially unknown by this representation but that must be verified in the present bankruptcy and liquidation procedure given its intimate relationship with the proposal made by the shareholders of the failed company.

Whether or not BOI Bank's banking license has been suspended, or whether it has simply not been renewed, given its particular situation of suspension of payments to its depositors and other serious misconduct determined by the Grand Thornton auditing firm in June 2021, all which the banking authority of that jurisdiction made known to its Shareholder / Director, the often mentioned Vargas Irausquín on June 2022, his situation must be analyzed from the most varied legal and financial aspects, from the legal nature of the amounts of money received as deposits in the event of suspension, revocation or non-renewal of the license, or the responsibility not only of the bank, but of other people and companies related and that are part of the "Grupo Vargas Irausquín", in particular also to the light of the piercing the corporate veil that results in its treatment as an economic group and that also has jurisprudential development in the jurisdiction of Antigua and Barbuda, as we previously indicated.

It happens that this representation also attends to and defends before the "Grupo Vargas Irausquín" the rights and interests of depositors who have had their rights systematically violated in the BOI Bank Corporation Inc., and since the same is a creditor of Banco del Orinoco N.V. in this procedure, which would make these depositors indirect creditors of the bankruptcy of Banco del Orinoco NV., and notwithstanding the actions that they may have in other jurisdictions such as

Venezuela as well as in Antigua and Barbuda, where it is registered BOI Bank, we request that the court seek a more appropriate treatment of the debt, especially regarding its destination to satisfy the debt of those affected in BOI as a party that is of the "Grupo Vargas Irausquín".

In that sense, given that not only what is legal but also what is fair is at stake in a process that has and will inevitably have social effects on the private lives of numerous people affected, we request the court to establish a special trust in a bank of the jurisdiction of Curacao with the amount of the credit recognized to the entity that would have ceased to be a bank and whose current and true situation is officially unknown except for its "disastrous" operation, for the sole purpose of paying each holder their credit against the commercial company BOI, for the deposits retained there, always under the prior certification of the court of its status as a creditor. The payment of debts through said trust would only benefit those depositors other than Grupo Cartera, related people, and companies.

Given the importance of this aspect, we request this Court, either directly or by instruction to the Bankruptcy Trustee, or by rogatory through the Central Bank of Curaçao and Sint Maarten itself, to request information from the Financial Services Regulatory Commission of Antigua -FSRC-, on the current situation of the BOI Bank Corporation Inc., especially if there are claims by depositors who have been affected in the free availability of their assets, and especially on the communication of the Antigua Financial Services Regulatory Commission (FSRC-) to Víctor Vargas Irausquín dated June 8, 2022, on the current situation of the BOI Bank Corporation Inc., and the external audit reports prepared by Grant Thornton Antigua in which it pronounces on the serious situation of lack of transparency, lack of collaboration and the irregularities surrounding the custodians of the bonds and securities, to which we have previously referred, as well as the impossibility of locating them.

***7. Conclusions and requests.***

As can be seen from the points developed, at the time of holding the Meeting of Creditors, we are faced with very important aspects of strict public order in which both the legal system regarding international banking and the judicial bankruptcy process could be used to generate serious patrimonial and personal effects, it is in this sense that in conclusion, we request:

**First:** The "Composition Plan" presented by the "Grupo Cartera" for the Meeting of Creditors of December 11, 2024 is rejected and that no other proposal has been received to date, all of this because it is absolutely unexecutable and without guarantees of any kind of accomplishment.

**Second**: Once the declaration of bankruptcy has become final, the bankruptcy trustees are requested to present a Liquidation Balance Sheet in which the real situation of the assets and liabilities and, in general, all the financial aspects of the bankrupt at the time of the bankruptcy are determined bankrupt and currently.

**Third**: Requires the supposed "custodians" of the investment portfolios as indicated in the reports of the trustees and representatives of "Grupo Cartera / Vargas Irausquín": (i) Welden Securities of Uruguay (WELDEN SECURITIES AGENTE DE VALORES S.A.) ; (ii) VISTRA INTERNATIONAL S.A. of Panama, and, (iii) FARRINGDON ASSET MANAGEMENT of Singapore, if they are or have been custodians of securities or commercial papers in which Banco del Orinoco N.V., Cartera de Inversiones Venezolanas, C.A., Banco Occidental de Descuento, C.A. appear as holders, or Víctor Vargas Irausquín.

**Fourth:** Request from the Superintendency of Financial Services of the Central Bank of Uruguay information about Welden Securities of Uruguay (WELDEN SECURITIES AGENTE DE VALORES S.A.), especially about the sanction procedures by said Superintendency and subsequent liquidation.

**Fifth**: Require from Vistra, S.A., information on whether it has any office or representation in Panama, especially with the name of VISTRA INTERNATIONAL S.A. of Panama, also on whether it is or has been custodian of securities or commercial papers in which Banco del Orinoco N.V., Cartera de Inversiones Venezolanas, C.A., Banco Occidental de Descuento, C.A., or Víctor Vargas Irausquín appears as the owner.

**Sixth:** Requires the Superintendency of Banks of Panama. Vistra, S.A., information about the company VISTRA INTERNATIONAL S.A. of Panama, is registered or licensed in said superintendency as a financial company for the custody of securities.

**Seventh**: Request from the Monetary Authority of Singapore (MAS) information on whether FARRINGDON ASSET MANAGEMENT of Singapore is or has been custodian of securities or commercial papers in which Banco del Orinoco N.V., Cartera de Inversiones Venezolanas, appears as the holder. C.A., Banco Occidental de Crédito, C.A., or Víctor Vargas Irausquín.

**Octavo**: The "Grupo Cartera / Vargas Irausquín" is required to report on the existence of bonds and investments, as well as whether they have actually reached maturity and the destination of the sums of money received, to which the investments indicated in the "Report of the receiver Mr. M.R.B. Gorsira" dated December 11, 2023, on the investment portfolio in the period between December 23, 2023 and June 24, 2024, bonds with a nominal value of USD 217,109,700.00 would have reached their maturity and consequently being demandable with their interests.

**Ninth**: Once the bankruptcy declaration is final, the bankruptcy trustees are requested to carry out the corresponding investigations on "Causes of bankruptcy", "maladministration", "bankruptcy rescission" and "Pauliana Action"[11], especially with regard to liability arising from piercing the corporate veil and liability for unlawful acts in accordance with the applicable legislation and jurisprudence of the Netherlands[12].

**Tenth**: Given the challenge of the debts of people and companies related to the "Grupo Cartera / Vargas Irausquín" regarding their status as third-level creditors, and the amounts of those they indicate are creditors, they request that they be excluded from the list of credits with voting rights, the following "creditors":

1.- Víctor Vargas Irausquín (655) USD 6,092,703.52;
2.- Cartera de Inversiones Venezolanas (386) USD 17,262,839.39;
3.- Banco Occidental de Descuento. BOD (380) USD 18,684,873.60;
4.- BOI Bank Corporation (BOI) (383) USD 32.632.888,11;
5.- Valores Occidentales Inversiones, C.A. (439) USD 1,174,459.34; and
6.- Environmental Solutions (ESVENCA) (512) USD 73.154.215,07

[11] As indicated in the VANEPS reports under numbers 1.6, 7.3 and 7.4.

[12] See: "Becklamel Standard" and the "Beklamel" case of October 6, 1989, of the "Onrechtmatige daad bij vertrouwensbreuk", and others.

**Eleventh**: The creditors represented by (i) Carely del Carmen Valentín Morles, (ii) Félix Ferrer Salas, (iii) Rafael Álvaro Ramírez Pulido and (iv) Armando Hurtado Vezga. are informed that said agents are the same representatives of the "Grupo Cartera / Vargas Irausquín", which would constitute a conflict of interest, and that they may well be represented by any lawyer they trust, one of those already identified in the process or even act directly or with the assistance of the bankruptcy trustees in last resort.

**Twelfth**: The aforementioned leaders, especially Valentín Morles, be asked to present a sworn statement -affidavit- of whether they have had links with the bankrupt, its shareholders and related people and companies.

**Twelfth**: The contested mandates granted to (i) Carely del Carmen Valentín Morles, (ii) Félix Ferrer Salas, (iii) Rafael Álvaro Ramírez Pulido and (iv) Armando Hurtado Vezga are annulled, maintaining the validity of the registrations of claims whose Representation may be assumed by other lawyers or the receivership itself if this is the extreme case, given the existing conflict of interest as such agents are also representatives of the shareholders of the failed debtor, related people and companies.

**Thirteenth**: To remove Yasmir Pineda from the Creditors Committee as a representative of the "Grupo Cartera / Vargas Irausquín", given the conflict of interest that goes against the very nature of what is a Creditors Committee and proceeds to appoint a new member arising from the represented creditors, in accordance with article 71.3 of the Bankruptcy Law of Curaçao.

**Fourteenth**: To require the Antiguan Financial Services Regulatory Commission - *FSRC*- information on the current situation of BOI Bank Corporation Inc., especially on whether there are complaints from depositors regarding the non-availability of their deposits.

On September 27th, 2024

Carlos Calderón Arias

Roberto Hung

Anexo 5

Caso: Bancarrota del Banco del Orinoco, N.V.

Ciudadano
**Juez de Primera Instancia de Curazao**
Su despacho. -

Yo, **Roberto León Parilli**, titular del pasaporte venezolano Nro. 172094438, abogado en ejercicio inscrito en el INPREABOGADO de Venezuela bajo el Nro. 29568, con el debido respeto en mi carácter de representante mandatario de un grupo de 521 depositantes acreedores del Banco del Orinoco, N.V., estando debidamente acreditado ante esa instancia mediante informe presentado por el ciudadano Síndico de bancarrota de la entidad, siendo mis representados identificados en el listado que consigno en este acto ante el tribunal mediante memoria digital USB, donde igualmente acompaño los documentos mandatos e identificativos que nos han sido otorgados a tales efectos, siendo esta la segunda reunión de acreedores convocada ante el tribunal, con el debido respeto y acatamiento acudo ante su competente autoridad con el fin de exponer:

Como es del conocimiento del tribunal, los accionistas principales del Banco del Orinoco N.V., presentaron una propuesta de plan de composición, cuyos términos fueron debidamente informados a nuestros representados, quienes una vez estudiados dichos términos nos han instruido de manera precisa y expresa para presentar una serie de observaciones que deben ser corregidas para que este plan constituya una vía de resolución justa y aceptable conforme a sus derechos e intereses. Estas observaciones fueron oportunamente presentadas por nosotros ante el Comité de Acreedores designado por el tribunal; y ante los síndicos de la liquidación VANEPS.

Ahora bien, habiendo sido convocada para el día de hoy la segunda reunión de acreedores en la sede del tribunal, en cuya agenda se plantea realizar una votación para aprobar o desaprobar el plan de composición inicialmente presentado en

diciembre de 2023 por el accionista del banco en liquidación, Cartera Venezolana de Inversiones, S.A., y no teniendo conocimiento sobre la presentación de un nuevo plan de composición enmendado, como lo hemos solicitado en atención a las observaciones mencionadas, debo manifestar en este acto que es voluntad expresa de nuestros 521 acreedores representados, DESAPROBAR EL PLAN DE COMPOSICIÓN PRESENTADO inicialmente por el accionista de la entidad en diciembre de 2023.

De la misma manera, he recibido instrucciones expresas de nuestros representados para manifestar ante el tribunal su disposición de analizar una nueva propuesta de plan de composición que reúna algunos requisitos fundamentales que le otorguen seguridad o garantías de fiel cumplimiento; plazos aceptables para comenzar con las devoluciones de fondos a sus legítimos propietarios; detalles sobre la identificación, cantidad y calidad de los activos que respaldarían el plan de composición, así como su valoración y saneamiento legal, entre otros aspectos.

En tal sentido, en nombre de mis representados presento ante el tribunal nuestros alegatos y observaciones al plan de composición propuesto en diciembre de 2023, con el fin de que se tomen en cuenta, dado el caso que se establezca nueva oportunidad para discutir un plan enmendado que reúna mejores condiciones y apego a la justicia:

**Alegatos sobre el plan de composición presentado por el accionista Cartera Venezolana de Inversiones, S.A.**

El plan de composición que plantea el accionista principal del Banco del Orinoco se compone de dos figuras a elegir, la primera la migración de fondos a otra entidad del grupo financiero (BOI Bank); la segunda la constitución de un fideicomiso cuyos beneficiarios serían los depositantes.

El primer mecanismo propuesto resultaría contrario a los derechos e intereses de los acreedores, así como también de los clientes del BOI Bank de Antigua, tomando en cuenta que el BOI Bank, desde hace más de cinco años no ha permitido que sus depositantes puedan movilizar sus fondos de ninguna manera, es decir, los fondos de los depositantes del BOI Bank se encuentran bloqueados, al igual que los de los depositantes del Banco del Orinoco, tomando en cuenta este escenario, migrar los fondos a esa entidad en situación de bloqueo, no garantiza que los acreedores del Banco del Orinoco puedan recuperar por esa vía el dinero que les corresponde.

Ahora bien, en cuanto a la segunda opción, un fideicomiso de activos que garantice el pago a los acreedores es una opción aceptable. Sin embargo, asumiendo la opción del fideicomiso, hay que destacar que la información contenida en el plan de composición es considerablemente incompleta como para analizar y mucho menos aprobar la conveniencia de este acuerdo judicial.

Apuntando a la constitución de un fideicomiso como vía de recuperación de los depósitos comprometidos, es mandato expreso de nuestros representados, exigir dentro del eventual acuerdo una serie de representaciones y garantías, incluidas antes de ser sometido a votación en la reunión de acreedores convocada por el tribunal, todo lo cual podemos resumir como sigue:

**Calidad de los activos fideicomitidos:**

En el plan de composición propuesto no se detallan, ni siquiera mencionan los activos que serían transferidos al fideicomiso para su realización y liquidación. Sin conocer detalladamente estos activos, no es posible valorar la conveniencia de aceptar un fideicomiso como mecanismo para la devolución de los depósitos de nuestros representados. Una aceptación a ciegas, sin conocerse cómo estará conformado el portafolio de bienes fideicomitidos para alcanzar los fines del fideicomiso, sería poco transparente y seguro.

En este sentido solicitamos formalmente al tribunal que ordene al accionista principal del banco, la presentación formal de una lista específica y exhaustiva de los bienes que serían transferidos al fideicomiso en propiedad, en cuanto a los bonos su denominación, valor nominal, descuento, plazos, cupones, valoración mark-to-market, duración y perfil de riesgo financiero; en cuanto a los inmuebles, su descripción, ubicación, valor de adquisición, valoración actual de mercado, situación legal. Para esta determinación podría el tribunal ordenar la realización de una due diligence previa la votación a realizarse en la reunión de acreedores, con el fin de garantizar que estos activos no presenten vicios ocultos, ni medidas judiciales, gravámenes que afecten su disponibilidad en los plazos del fideicomiso y que soean suficientes para respaldar el cumplimiento del acuerdo.

**Plazos del fideicomiso:**

Tomando en cuenta que la intervención y decreto de liquidación del BDO datan de finales del año 2019, es decir, hace casi de cinco años, además de lo cual, antes ya los depositantes dejaron de tener acceso a los depósitos que legítimamente les pertenecen. Consideramos que esperar dos años más para recibir los primeros abonos de intereses y cinco años para recuperar sus fondos a través de un fideicomiso u otro mecanismo, es un tiempo por demás largo e injustificado.

Aun cuando no se conocen del plan de composición los activos propuestos para el fideicomiso, se desprende del informe presentado por el Síndico del Banco del Orinoco ante el tribunal el 11 de diciembre pasado, que ha tenido conocimiento según información proporcionada por el accionista principal del banco, sobre que en el período del 23 de diciembre de 2023 al 24 de junio de 2024, un grupo de los bonos que conformarían la cartera de activos fideicomitidos, con un valor nominal total de US$.217,109,700; y durante el periodo del 30 de enero al 3 de noviembre 2025, otro conjunto de bonos con un valor nominal total de US$.125,275,000; madurarán y se pagarán con intereses. Visto lo anterior, compartimos lo expuesto por el ciudadano síndico (cita textual): "***Mi pregunta al accionista sería, entonces,***

***¿por qué estos montos no podrían reservarse para pagar a aquellos acreedores que continúan insistiendo en el pago directo de su reclamo en efectivo y no desean optar por las opciones "de pago" alternativas actualmente ofrecidas en el acuerdo?".***

Según indica el síndico en su informe, desde diciembre de 2023 hasta noviembre 2025 bonos por un valor nominal total de US$.342,384,700, podrían otorgar parcial liquidez al fideicomiso, lo cual a nuestro entender representa aproximadamente el 43% del total de la deuda global del Banco del Orinoco según se desprende del mismo informe del síndico. En tal sentido, lo que resultaría conveniente y justo sería que los depositantes, que han esperado tantos años, muchos de ellos en situación crítica, puedan acceder a parte de sus fondos con atención a estos vencimientos, es decir, un abono parcial y porcentual en 2024, otro abono parcial proporcional en noviembre 2025 y progresivos abonos subsiguiente, vinculados al vencimiento de los demás grupos de bonos que fueren transferidos al fideicomiso.

En cuanto a los inmuebles destinados al fideicomiso, valorada su situación legal (due diligence) y una vez homologado el acuerdo definitivo, cualquier depositante debe poder elegir alguno o algunos de los inmuebles que por su valor actual de mercado compensen su crédito, con el fin de que se les adjudique directa e inmediatamente sin tener que esperar dos o cinco años para la realización mediante ventas a terceros.

Tomando en cuenta que los requerimientos de nuestros representados están centrados en la pronta recuperación de sus depósitos, incluida la posibilidad de negociar un pago rápido, es necesario que el fideicomiso permita la venta de posiciones en el mercado secundario, operaciones a descuento y otros instrumentos financieros compatibles con la necesidad de recuperar fondos en el corto plazo.

El plan de composición propuesto por los accionistas principales del Banco del Orinoco, tal como originariamente ha sido presentado, implicaría que los depositantes no recibirían ningún pago durante los dos primeros años, a partir de los dos años recibirían unos pequeños pagos por concepto de intereses y a los cinco años supuestamente recibirían su participación en el fideicomiso, al valor que esta tuviere en el mercado, sin importar que porcentaje sobre sus depósitos representaría esa participación, es decir, los depositantes estarían cerrando el proceso judicial de bancarrota a cambio de una expectativa de recuperación parcial dentro de cinco años, sin garantía alguna sobre los montos a recuperar, renunciando a sus acciones legales y al proceso de liquidación que viene realizándose a cargo del síndico de la entidad.

**Entidad Fiduciaria:**

El plan de composición presentado por los accionistas principales del Banco del Orinoco plantea un fideicomiso bajo la administración de los propios accionistas del banco, es decir, la empresa Cartera Venezolana de Inversiones SA, todo lo cual representa sin duda alguna un conflicto de intereses inaceptable como mecanismo de resolución, por ser contrario a la justicia, a la transparencia y a la equidad, en tal sentido, dado el caso de que finalmente se someta a votación una propuesta equilibrada mediante la constitución de un fideicomiso, esta debe incluir una entidad fiduciaria imparcial, que no represente los intereses de ninguna de las partes, así debe exigirlo el tribunal en sana administración de justicia.

## Otras solicitudes

En atención a los alegatos anteriores solicitamos al tribunal con el debido respeto, que en uso de sus facultades y con el objeto de garantizar la equidad entre las partes, antes de someter a votación un plan de composición ordene las siguientes actuaciones:

**Verificación de la legitimación de los representantes y verificación de los montos que constituyen la cartera de depósitos:**

Es un hecho cierto y comprobable que los depositantes sometidos al bloqueo de sus fondos por largos períodos de tiempo se han visto sometidos a un estado de necesidad que podría conducirlos a designar mandatarios que podrían estar incursos en conflictos de intereses, por lo cual, a fin de evitar vicios del consentimiento sería adecuado solicitar una ratificación de las representaciones otorgadas.

En cuanto a los montos que conforman la cartera, de la simple vista de las listas de créditos admitidos se evidencia que existe un importante número de depositantes que han otorgado mandatos a abogados para representarlo en la recuperación de depósitos inferiores a $100, incluso algunos inferiores a $1, lo cual produce dudas de legitimidad para el otorgamiento de facultades en la votación para aprobar o desaprobar el plan de composición. Por otro lado contrastan depósitos muy elevados algunos por montos de 8 cifras altas, lo que hace necesario el debido control de legitimación de fondos.

**Concesión de nuevo plazo para que la accionista presente nueva plan de composición enmendado**

Si la opinión de los síndico fuere la de conceder un plazo adicional para que el accionista del banco presente nueva propuesta enmendada, y si el tribunal lo considera conveniente, solicitamos que se trate de un plazo perentorio y prudencial, tomando en cuenta el tiempo que han tenido que esperar los depositantes afectados para definir una resolución del caso apegada a las leyes y a la justicia.

De la misma manera se solicita que se establezcan las condiciones adecuadas de transparencia y seguridad para que una nueva propuesta sea debida y oportunamente conocida por los acreedores de la entidad, con el fin de que previo

estudio y análisis, puedan emitir un voto de aprobación o desaprobación, de manera consciente y libre con pleno respeto del consentimiento y voluntad.

En Curazao a veintisiete días del mes de septiembre de 2024.-

Roberto León Parilli
Representante de depositantes del BDO