

## **BRITISH CARIBBEAN BANK SETTLES DISPUTE WITH THE GOVERNMENT OF BELIZE CONCERNING BELIZE TELEMEDIA LIMITED RELATED LOANS**

British Caribbean Bank Limited (the “Bank”) has settled its dispute with the Government of Belize (the “Government”) concerning the Belize Telemedia Limited related loans and the Government has paid the Bank US\$48,544,927.78 as compensation for the acquisition of the Bank’s property.

The Bank’s property (in the form of rights under a loan and a mortgage debenture with Belize Telemedia Limited (“Telemedia”), as well as its rights under loans and related security agreements with one of the former shareholders of Telemedia, Sunshine Holdings Limited) was first purportedly compulsorily acquired by the Government on 25 August 2009 pursuant to the Belize Telecommunications (Amendment) Act 2009 (the “2009 Act”) and the Belize Telecommunications (Assumption of Control over Belize Telemedia Limited) Orders 2009 (the “2009 Orders”).

The Bank brought a constitutional challenge to the 2009 Act and 2009 Orders, and on 24 June 2011, the Court of Appeal declared that the 2009 Act and the 2009 Orders were unlawful, null and void but failed to grant consequential relief (in Civil Appeal 30 of 2010).

The failure to grant consequential relief was appealed by the Bank to the CCJ. That appeal was stayed on 25 January 2012 pending determination by the Belize Supreme Court and Court of Appeal of a further claim brought by the Bank and others challenging the constitutionality of the 2011 Act and the 2011 Order. The 2011 Act was enacted and the 2011 Order was issued on 4 July 2011. Together they had the purported effect of acquiring precisely the same property that the Government had unlawfully acquired under the 2009 acquisition, with retrospective effect from 25 August 2009 (the date of the initial purported acquisition under the 2009 Act and Orders).

On 25 October 2011, the National Assembly passed the Belize Constitution (Eighth Amendment) Act 2011 (the “Eighth Amendment”). The Eighth Amendment purports to amend the Belize Constitution by, among other things: (i) enshrining in the Constitution a statement that the Government shall have majority control of certain named public utility providers (including Telemedia); and (ii) declaring that the acquisition of Telemedia, and the proprietary and other rights and interests held by the Bank, under the 2011 Act and Order were for a “public purpose”.

The Bank commenced a constitutional challenge to the 2011 Act and the 2011 Order on 22 September 2011 and amended it to include a challenge to the Eighth Amendment on 16 November 2011 (Claim No. 597 of 2011). In a judgment dated 11 June 2012, in Claim Nos. 597 of 2011 and 646 of 2011, Legall J held that the 2011 Act and Eighth Amendment were invalid in part, and the 2011 Order was invalid in its entirety, but refused to grant consequential relief on the basis that s. 144 of the Eighth Amendment,

which provided that the Government was to have control of specified public utility providers, was valid.

The Bank then cross-appealed that judgment to the Court of Appeal, and in a judgment handed down on 15 May 2014, in Civil Appeal 18 of 2012, the Court of Appeal (by majority) dismissed the Bank's cross-appeal against the judgment of Legall J and allowed the Respondents' appeal. The Court of Appeal *inter alia* declared that the 2011 Act and the 2011 Order were valid and constitutional but took effect from 4 July 2011 only, rather than from 25 August 2009. It also declared that the Eighth Amendment is valid. The Bank appealed the decision of the Court of Appeal in Civil Appeal 18 of 2012 to the CCJ. The appeal was heard in December 2014 with a consequential relief hearing in January 2015.

On 11 September, 2015, the Bank entered into a Settlement Agreement with the Government. In accordance with the terms of the Agreement, the Government agreed to pay the Bank US\$48,544,927.78 as compensation for the acquisition of the Bank's property in 2009 and 2011.

The Settlement Agreement was enshrined in legislation on 17 September, 2015. The Government paid the Bank US\$48,544,927.78 on 23 September, 2015. On 24 September, 2015, in accordance with the Settlement Agreement, the Bank submitted an application to the CCJ to have the proceedings brought by the Bank stayed on the terms set out in the Settlement Agreement except for the purpose of carrying such terms into effect without the need to bring a new claim.