Marrache & Co ("the Firm") – No 5 of 2010

&

Isaac S Marrache – In Bankruptcy – No 1 of 2010

Benjamin J Marrache – In Bankruptcy No 2 of 2010

Solomon S Marrache - In Bankruptcy No 3 of 2010

Interim update to creditors

2 October 2014

PricewaterhouseCoopers Limited
10th Floor, International Commercial Centre
Casemates Square
Gibraltar

Chantrey Vellacott (Gibraltar) Limited
86 Main Street
Gibraltar

Dear Creditor,

We write further to our last update of 20 December 2012 to provide you with a summary of developments over the last eighteen months. You will note from reading the report, that the difficulties and challenges we highlighted in our last report appear to have intensified during this last year, with our legal team having to deal with a number of appeals at Court of Appeal level including an appeal to the Privy Council.

In our last report we specifically set-out the most relevant matters at the time, and we can now report on those, and other matters, as follows:

1. Isaac S Marrache

Isaac Marrache's appeal against the making of the bankruptcy order was refused, with the Privy Council ruling that the appeal should be *"STRUCK OUT as being abusive and hopeless"*, on the basis that *"the judgment below is unanswerable and [that] the appellant* appears *to be employing a delaying tactic"*.

Furthermore, we can report that the Joint Liquidators' application to the Supreme Court for a Possession Order over ISM's residential property at 74 Ragged Staff Wharf was successful. The property was subsequently sold for £475,000, resulting in an equity release in the sum of £150,000. This amount has been paid into the liquidation account and used to fund ongoing 3rd party costs.

2. Benjamin J Marrache

After the Court of Appeal finding that the Appeal against his bankruptcy was both frivolous and vexatious, Benjamin Marrache made an application for permission to appeal to the Privy Council. However the Board refused the Application on the basis that his appeal would be *"a hopeless appeal against the Court of Appeal's refusal to allow an appeal long out of time, an order that was both procedural and discretionary"*.

Nonetheless, our legal costs in responding to the Bankrupt's efforts have increased accordingly.

As previously reported, efforts were being made to take possession of and realise a number of Benjamin Marrache's bankruptcy estate assets. These include properties at 306 Main Street and 20 Ragged Staff Wharf as well as claims to a Mercedes, chattel assets and funds held in Israel by Anjette Marrache. All of the above claims were stayed pending mediation following an approach by lawyers acting for Anjette Marrache in late 2013.

We agreed to take part in a mediation of all claims involving Anjette and Benjamin Marrache in order to pursue a commercial solution at minimal cost. A settlement was subsequently agreed to bring to an end costly and lengthy legal applications that had been in progress, in some instances, for several years. The settlement resulted in an asset being transferred to our control which is currently being marketed for £1.375m.

The settlement was subject to approval by the Committee of Inspection and the Gibraltar Supreme Court which we obtained on the basis that both bodies took the view that on balance the settlement allowed us to recover a substantial asset, avoid further costs (both legal, and in the liquidation) and allow us to concentrate on other important aspects of the liquidation which may unlock further assets for the benefit of creditors.

As a result, a number of pending Court applications have been withdrawn.

3. Solomon S Marrache

An application for possession of Solomon Marrache's residential property at 10D Pitman's Alley was stayed pending discussions. However to date these have not been concluded and we are now in the process of bringing the matter back before the court.

4. Pending applications

At the current time the following applications to the Supreme Court are still pending:

- Application to seek an order for possession over a large number of paintings - next hearing is on 30 January 2015

- Application for the Private Examination of Benjamin Marrache, Anjette Marrache, Raphael Marrache and Abraham Marrache – waiting on a Court date, although we are no longer pursuing the application against Anjette Marrache.

5. Potential claims against third parties

We have spent a considerable amount of time preparing substantial claims against Baker Tilly (Gibraltar) Limited and Jyske Bank (Gibraltar) Limited, given their past business relationships with Marrache & Co and its partners. Following months of extensive forensic analysis we have now commenced major actions against these parties for claims in excess of £10m. Although these are in their early stages, we are being assisted by Michael Crystal QC, David Alexander QC and Marcus Haywood as leading London counsel, and expert witnesses. This is complex litigation, and is not expected to be concluded in a short period of time.

6. Legal assistance and request for Government funding

In our last report we set out the position of funding and how this was having an adverse effect on the realisation of assets. We had explained that the bankrupts were able to obtain what appears to be unlimited access to legal assistance which enables them to oppose our applications which in turn results in each application turning into a costly exercise. Although we have won every case at Supreme Court level, we have been unable to recover our legal costs (due to the peculiarities of the legal assistance fund and the way it operates in Gibraltar). This has inevitably encouraged the bankrupts to instruct their lawyers to appeal every decision made by the Supreme Court, without fear of the costs consequences.

At the time of issuing our last report, we explained that we had been exploring the possibility of obtaining funding from the Gibraltar Government via the office of the Official Receiver in order to achieve a level playing field. Unfortunately our request for funding was not granted, resulting in the continuation of this unfair and difficult situation, especially from the creditors' perspective.

We also highlighted in our last report several anomalies in some of the previous successful applications for legal aid which at the time we had communicated to the Registrar of the Supreme Court. Unfortunately despite numerous follow up calls and letters, we have not had a substantive response to our requests.

There is no doubt that without the generous legal assistance available in Gibraltar, the outcome of the bankruptcies would be very different.

Our outstanding time costs and disbursements now stand at £3,085,476 although creditors should be aware that these costs are being carried by both firms as no funds have been available to make any payment since February 2013.

7. Potential distribution to creditors and conclusion

Four years have now passed since the commencement of the liquidation and it is difficult to assess the current or longer term likelihood of a distribution to creditors. However, we can at least advise that the settlement agreement reached will allow us to conclude a number of pending issues which were proving to be costly in terms of ongoing Court applications and their respective legal costs. In turn we can now concentrate on other aspects of the liquidation which will assist us in the recovery of other assets.

Yours sincerely

Edgar C Lavarello
Joint Liquidator

Adrian C Hyde
Joint Liquidator