

1431.12P

Liquidation

of the public limited Bank of Credit and Commerce
International S.A.

The District Court of Luxembourg, sixth chamber;

Upon reading the petition introduced on 6 December 1991 by the Luxembourg Monetary Institute seeking a dissolution and liquidation order of the credit establishment Bank of Credit and Commerce International (in short BCCI) S.A., established and registered in Luxembourg, 25, boulevard Royal.

This petition has been served upon the prenamed credit establishment BCCI S.A. by deed of the bailiff Michelle Thill of Luxembourg, on 9 December 1991, with summons to appear before the Court of this venue to discuss the merits of such petition.

Pursuant to a judgment awarded on 8 July 1991 upon the petition by the Luxembourg Monetary Institute (in short LMI) by virtue of articles 38 and 39 of the law of 27 November 1984, as amended, relating to the access to the financial sector and the supervision thereof, the District Court of Luxembourg has ordered the respite of all payments of the credit establishment BCCI S.A. until 4 January 1992, and has appointed as supervisory commissioner Mr. Brian Smouha, partner with Touche-Ross, with the powers as provided for by article 39 of the law of 27 November 1984.

Pursuant to article 42 of this law, the District Court sitting in commercial matters, upon petition by the Public Prosecutor or the directorate of the Luxembourg Monetary Institute, may order the dissolution and the liquidation of such establishment provided for in article 1, if:

- 1) it appears that a respite of all payments previously ordered, in accordance with article 38, is no remedy to the situation which has justified such respite;
- 2) the financial situation of the establishment has deteriorated to a point where the latter can no longer satisfy its obligations vis-à-vis all creditors or shareholders;
- 3) the authorisation provided for in article 4 has been withdrawn and such withdrawal has become final.

As to the procedure

Unlike article 38 of the law, article 42 - whilst granting jurisdiction to the District Court sitting in commercial matters, and indicating that the petition for dissolution and liquidation of the credit establishment shall be commenced at the request of the Public Prosecutor or of the directorate of the Luxembourg Monetary Institute - does not precise which procedure to follow. Thus, the parliamentary documents relating to the law of 10 August 1982, dealing with the organisation ... of respite of all payments, of controlled management and of liquidation of credit establishments, have to be referred to.

In its opinion of 24 June 1980 (doc. parl. no 2548, p. 16), the Chamber of Commerce acknowledges that the bill of law does not lay down any provisions concerning a possible non-publicity of the hearings before the judge and that therefore these are ruled by common law and should thus be public. Although the Chamber of Commerce regrets that the text does not precise that the procedure shall be contradictory. The Banking Commissioner (in its submissions on pages 23 and 24 of the parliamentary document no. 2548) is of the opinion that decisions which the Court awards in case of petitions for controlled management or for liquidation, are of non-contentious jurisdiction, entailing that there shall be no contradictory procedure, such as in the case of the grand-ducal decree of 22 December 1972 relating to the control of investment funds, which has since become the law of 25 August 1983, and thereafter the law of 30 March 1988 relating to undertakings for collective investment, and in case of article 203 of the law on commercial companies, as introduced by the law of 19 May 1978.

This however is not the opinion of the Council of State who believes (doc. parl. no 2548, p. 29 and 35) that the procedure and the judicial hearing must be contradictory between the banking commissioner and the establishment. Moreover, the reasons which allow, in case of article 38, to award a judgment even without hearing the parties, i.e. the necessity to take immediate measures and the fear that the credit establishments' situation deteriorates even more to the detriment of creditors, are no longer existent in this case.

The procedure commenced by the LMI (service of the petition upon BCCI S.A. with summons to appear on a set date within the time period provided for by article 72 of the Code of civil procedure), had as an effect to assure the contradictory character of the hearing before the District Court sitting in commercial matters. It has been further filed in the forms and delays foreseen by law and is therefore formally valid.

The Court acknowledges that the contradictory character of the hearing is also achieved by the presence of the

representatives of the majority shareholders of BCCI (Holdings) S.A. of which BCCI S.A. is a 100 % subsidiary.

At the hearings, the representative of the LMI has agreed that the present judgment be awarded on 3 January 1992 in order to have it nearer in time to the judgments to be awarded in the winding-up procedure before the High Court of Justice in London relating to the UK Branch of BCCI S.A. and the definitive liquidation procedure opened against BCCI Overseas before the Grand Court of Georgetown, and in view of the circumstance that the proof of claims shall anyway necessitate delays during which the banking data concerning the financial year 1991 will be established, enabling to fix the respective contributions of the Luxembourg banks to the insurance guarantee provided for by articles 6 and following of the articles of the Association for Guarantee of Deposits. It should furthermore be noted that article 9 (5) of such articles allows the Association to request all members to pay an provision which will be taken into account for the subsequent payments requested from the members.

As to the merits

The petitioner declares to base its petition for dissolution and liquidation of BCCI S.A. on sub-section a) and b) of article 42 (1) of the law of 27 November 1984, as amended, arguing on one hand that this law does not provide for an intermediate solution between a financial reconstruction and a liquidation, which entails that the possibility of a liquidation plan to be agreed by the creditors is not foreseen by law, and, on the other hand, the information received between the filing of the petition on 5 July 1991 has revealed that the establishment has lost not only beyond its entire capital, but, moreover, taking into account the numerous litigations and contentions regarding the establishment, that a liquidation without capital contribution by the majority shareholders of BCCI Holdings does not permit to pay the creditors a dividend in excess of 10%. The petitioner states thus that a restructuring of BCCI S.A. is impossible and that its financial situation is disastrous, as it is certain that it may not satisfy its obligations towards all its creditors and shareholders. The representatives of all other parties present at the hearing declare to concur with this opinion. The representative of BCCI S.A. has left the question to the discretion of the Court.

From all the elements submitted to the Court and in particular from the submissions presented by the supervisory commissioner who is in function since 8 July 1991, as well as from a press release made by the latter on 22 November 1991, together with the UK provisional liquidators, it results that the BCCI Group is insolvent, that the respite of all payments decided on 8 July 1991 does not permit to restructure the situation of the credit establishment BCCI S.A., as injections of new funds of

several billions of dollars would be needed to this effect. It would even though not be certain that such cash injections would dissuade depositors from massive withdrawals, considering the Bank's loss of image following its shut-down and the revelations subsequently made.

It is thus certain that the situation of BCCI S.A. may not be restructured and that the latter is not in a position to satisfy its obligations towards all its creditors or shareholders. From a practical point of view it should be noted that the expiry of the respite of all payments on 4 January 1992 would have as an effect to render immediately due and payable payments owed by BCCI S.A., the assets whereof would then be exposed to enforcement measures by the creditors.

As the conditions for article 42 of the law of 27 November 1984 are satisfied, the dissolution and liquidation of BCCI S.A. should be ordered, which will moreover allow the depositors to benefit from the deposit insurance.

Pursuant to article 42 (2) of the law, the Court, when ordering the liquidation, sets the liquidation pattern of the credit establishment to be liquidated.

There are in principle two liquidation patterns provided for by Luxembourg commercial law, i.e. the one foreseen by articles 141 through 151 inclusively of the law of 10 August 1915 on commercial companies, and the one foreseen by the rules concerning bankruptcy, contained in the Commercial code.

Three remarks should be made to this regard:

- article 42 (2) permits the Court to make applicable to the extent which it determines, the rules concerning bankruptcy;
- the parliamentary documents (doc. parl. no 2548, p. 39 and 41: opinion of the Council of State) leading to the law of 24 November 1984 reveal that the Court should have extensive powers to organize the liquidation pattern of the credit establishment. Thus the Council of State declares having been inspired in the drafting of the proposed text by text proposals concerning article 44 of the bill of law no. 2366 relating to undertakings for collective investments and by article 203 of the law on commercial companies. The Court, in his view, could for instance decide:
 - * upon the ceasing of accrual of interest
 - * upon the maturity of debts
 - * upon the ceasing of individual enforcement actions,
 and by enhancing the suspect period to six months prior to the filing of the request for respite of all payments, award to the liquidators the power to challenge any acts foreseen by articles 444,

445 and 446 of the Commercial code, carried out before the respite of all payments.

In the framework of the parliamentary documents leading to the law of 25 August 1983 (doc. parl. no. 2366) on undertakings for collective investments, the opinions of the District Court of Luxembourg, of the Attorney General, of the Public Prosecutors of Luxembourg and of Diekirch, and the fact that the Council of State has replaced the word "modalités" of the liquidation initially proposed by the word "mode" of liquidation finally adopted, underline that the objective was to grant the Court a large flexibility in the determination of the liquidation procedure to be followed. This goal furthermore results from the parliamentary documents of the law of 19 May 1978, which has become article 203 of the law on commercial companies (doc. parl. no. 2104, p. 4 and 9).

- the liquidation pattern may be amended afterwards by the Court taking itself the initiative or upon request of the liquidators.

Furthermore, the Court refers to the opinion of the Council of State on page 41 of the parliamentary document no. 2548 which indicates that the liquidation pattern should remain flexible and may for this reason be modified subsequently or adapted to the circumstances.

In the present case one should consider generally that the credit establishment BCCI S.A. is part of a banking group (the BCCI Group) carrying out activities worldwide. The company BCCI S.A., of which the registered office is in Luxembourg, has two subsidiaries in Canada and in Gibraltar, and branches in thirteen different countries, of which the most important are located in the United Kingdom, in the United States of America and in the United Arab Emirates where the administrative center of the Group is located (cf. for instance page 10 of the observations of the supervisory commissioner).

Thus the Company was carrying out only about 10% of its global activity in Luxembourg, the most important volume thereof being carried out in the United Kingdom.

Considering that, by virtue of the rule of universality and unity of bankruptcies, to which the collective liquidation pattern foreseen by the law of 27 November 1984 ought to be assimilated, the liquidation pattern ordered by the Court is applicable to the assets of BCCI S.A. held in the Grand Duchy and abroad, either directly or through branches, the Court believes it is advisable that this liquidation pattern should also take into account provisions of English law which do not conflict with Luxembourg law. By using its legal discretion to combine the usual liquidation pattern for companies with the rules foreseen by bankruptcy law, the Court has been guided by following principles:

I) Creditors

The Court's main objective is to assure the respect of the creditors' rights and the equal treatment of the creditors. In this liquidation, more than in other liquidations, the assets consist of creditors' monies, and many creditors are private individuals.

Since the date of respite for all payments, it appears that serious irregularities have been committed by the Company's organs, for instance with regard to the credit policy or the presentation of the accounts, so that it is not yet possible as of today to know the exact financial situation of BCCI S.A.. The administrative and criminal proceedings pending in the United States of America for instance reveal that the American authorities are in a position to prove (cf. judgment awarded by the Court on 18 December 1991 in the matters pending between the commissioner of BCCI S.A. respectively the commissioners of BCCI Holdings S.A. and these companies) against BCCI S.A., BCCI Holdings and BCCI Overseas criminal acts punished by considerable fines. Such irregularities have taken place at least until 1 January 1991. Thus the date where BCCI S.A. has ceased its payments generally ought to be set on the maximum date foreseen by article 42 (2) of the law of 27 November 1984, i.e. six months before the filing of the request for respite of all payments by the LMI. Article 445 through 448 of the Commercial code will enable the liquidators to seek the nullity of certain acts committed by the corporate organs during the suspect period (article 445 through 447) or to challenge any acts irrespective of their date, which have frauded the creditors' rights (article 448).

The withdrawal of powers from the corporate organs (article 444 of the Commercial code) which is expressly foreseen by sub-section (4) of article 42, which does only reflect the provisions of article 452 paragraph 1 of the Commercial code, is one of the most important effects of the present decision. Its aim is to avoid that creditors suffer losses by virtue of a bad management by the corporate organs and to protect them against any possible fraud by entrusting the sole liquidators with the conservation and liquidation of their general pledge, i.e. the company's assets.

The liquidation pattern does also comprise necessarily article 452, already quoted elsewhere, and permitting the enforcement of any decisions against the liquidators only, article 453 and 454 of the Commercial code, suspending the enforcement rights of unsecured creditors individually, and for a certain time the enforcement rights of secured creditors. The ceasing of interest accrual as from the date of the present judgment is another consequence of the withdrawal of powers (cf. Rep. prat. droit belge, Verbo Faillite, no. 547) and the attribution to creditors of the realisation proceeds of the assets. Considering that the company disappears after its dissolution, it is not useful to indicate that the interest shall not stop to accrue

against the Company. The information provided by the supervisory commissioner gives to understand that it is improbable or even excluded that the realisation of BCCI S.A.'s assets allows even the repayment of the total principal amount of unsecured claims.

However, by reference to the solution admitted in bankruptcy, claims secured by mortgage, privilege or by pledge shall be governed by the general principles of law. The rights of such creditors shall however be limited by article 451, paragraph 2 of the Commercial code.

Article 450 allows to render due and payable non-matured debts as from the day of the liquidation judgment, by application of article 1188 of the Civil code.

The principle of equal treatment of creditors imposes that as from this judgment no set-off, (whether legal, judicial or contractual) may be operated to the benefit of those who are simultaneously debtors and creditors of BCCI S.A.. By way of consequence, these creditors must pay to the liquidators the amounts owed to the credit establishment, and with regard to their claims, expect payment of a dividend, whereas the possibility of set-off would possibly have assured their total payment.

The prohibition of set-off, which has been confirmed in many occasions in case of bankruptcy, liquidation or controlled management (cf. for instance Cour, 2 March 1923, 11, 134; Trib. Lux. 30 July 1927, 11, 554; Trib. com. Anvers, 2 March 1937, Pand. périod. 1938, no. 226; Trib. Lux. 23 December 1983: Banco Ambrosiano Holding v Banco di Napoli International, no. 1227/83) does only suffer an exception if the claim and the debt have the same cause, in this case if they have their origin in the same contract (cf. Trib. Lux. 1 April 1977, 23, 556). Article 537 through 552 inclusively of the Commercial code govern, by reference to the bankruptcy rules, the rights and obligations of debtors which are severally bound and of guarantors, of pledgees or creditors having a privilege over movable assets, as well as creditors having a mortgage and privilege over real estate.

It is not advisable in view of the very large number of creditors, and in order to avoid an excessive formalism, to make applicable the system of proof of claims of the bankruptcy rules, entailing a filing at the Court Registry, a solemn declaration and an election of domicile. The liquidators are mandated to define the information requested in proofs of claim by drafting a standard form to be addressed to all known creditors as well as by the necessary means of publicity. There ought however be set a time limit for proofs of claims, as a mention to such time limit has been essential in the minds of the ones who drafted the bill of law relating to undertakings for collective investments (cf. doc. parl. no. 2366 quoted, p. 42).

The consequence of a lack of proof of claim at the date of 30 June 1992 shall be the one provided for in bankruptcy law by article 508 of the Commercial code, i.e. the creditor may not allege any rights over monies already paid to specific creditors, but such creditor may participate in further distribution of monies not yet distributed. Similarly to the provisions of the first version of such bill of law, distributions to creditors must be endorsed by court. Such court judgment shall depose the liquidators of the so distributed amounts, thereby excluding the possibility of attachments by other creditors of the distributed amounts with the liquidators and shall further give a public character to the distributions. Pursuant to article 508 of the Commercial Code, the liquidators shall make provisions for those claims which have been submitted to the liquidators but not yet admitted. Such claims shall be discussed in later judgments. Hence the liquidators shall be protected against claims of latecoming creditors and which indentivity did not appear in the company's books.

Any monies owed to creditors or shareholders which have not been collected by the close of the liquidation shall be consigned to the Deposit and Consignment Office for the benefit of whom it may concern.

In order to safeguard the creditors' interest, a creditors' committee shall be created, in accordance with the law of 30 June 1930.

Such committee which shall be appointed within a month as of the date of this judgment shall have the function to assist and supervise the liquidation operations on a mere consultative basis and shall be regularly informed on the progress of the liquidation. Considering the important number of creditors and the international character of the liquidation, the creditors' committee shall consist of five members each of whom may appoint a special proxy.

II) Supervisory Judge

The Supervisory Judge's function shall be, in particular, to supervise the liquidation with an unlimited right to be informed by means of written quarterly reports, to give the liquidators such directions she deems in the best interests of the creditors. The Supervisory Judge shall further chair the creditors' committee.

III) Liquidators

The liquidators function shall be to satisfy the creditors (cf. Parl. Doc. no 2366: undertakings for collective investments: report of the Council of State, p. 61). Any action or enforcement measure shall be taken only against the liquidators, in accordance with the rule provided for in sub-section (4) of article 42 of the law of 27 November

1984. Furthermore any action concerning the company shall only be taken by the liquidators.

In general, the liquidators who shall represent both the company and the creditors, to the contrary of the general rule applicable to the liquidation of companies (cf. *Passelecq: Traité des sociétés commerciales*, no 4502; *Trib. Lux.* 30 juillet 1927, 11, 554) and in compliance with the rule applicable in bankruptcy, shall be granted most extensive powers to fulfill their mandate. It appears essential to specify that the liquidators may exercise their powers both in the Grand Duchy of Luxembourg and abroad, as in accordance with the rule of unity and universality of a collective liquidation of a company with registered office in Luxembourg, the effects of such collective liquidation cover all assets of a company in liquidation, even those located abroad, despite the fact that foreign branches of BCCI S.A. have been subject to judicial or administrative proceedings commenced by local authorities which have appointed liquidators having the right and duty to act in the interest of local creditors.

The limitations to the powers of the liquidators are determined with regard both to the draft wording, as suggested by the Council of State, of article 44 of the law of 23 August 1983 on the liquidation of undertakings for collective investments, and to the provision of the English bankruptcy rules (cf. *Butterworths Insolvency Law Handbook*, p. 256 and ff. *ad Powers of Liquidators in a Winding Up* concerning the action of the liquidators subject to court approval) and concern in particular the continuation of the business and trade of BCCI S.A., the borrowing, mortgaging or pledging of the establishment's assets, as well as the selling of branches or subsidiaries and the contribution of the company's assets, which acts are subject to court approval.

Another category of restrictions concern settlements the value of which exceeds USD 100,000 or of undetermined value, as well as cooperation or apportionment agreements with liquidators of other BCCI entities.

It results from the submissions of the supervisory commissioner of BCCI S.A. that the affairs of BCCI S.A. were inextricably linked with those of other entities of the BCCI Group, i.e. considering the existence of a single central management entity (Central Office) and a single central treasury management entity (Treasury Portfolio Management Division) for the whole Group, both located in Abu Dhabi, which entities have performed all management and treasury operations of the different entities of the group, regardless to their distinct judicial capacity and acting as if all such entities were one single economic, commercial and financial entity. Hence the supervisory commissioner is of opinion that it is essential in order to ensure an equal treatment to all creditors of the Group to coordinate the liquidation operations by means of cooperation agreements to be concluded with the liquidators

of the different foreign entities, subsidiaries and branches, with a view to create a common pot and a common administration (Pooling Agreement) of all assets realised or to be realised by the different entities, in order to guarantee an equal distribution to creditors of those entities.

Furthermore, the supervisory commissioner has entered into negotiations with the Majority Shareholder of BCCI Holdings (Luxembourg) S.A. with the view of a global agreement which would i.a. result in the making of a substantial contribution by the Majority Shareholder to the creditors of the BCCI Group in order to increase their dividend in consideration of a waiver of all action for tort or any other reason against the Majority Shareholder.

This court does presently not intend to comment in any way these negotiations which are not finalised.

However, should the envisaged agreement or settlement be finalised, it is held that such agreement or settlement, if any, must be approved by this court. The judgment will be given upon the report of the Supervisory Judge and, considering the impact of those agreements on the creditors' rights, upon the advice of the committee of creditors. The court will then consider to which extent those agreements comply with Luxembourg law and are in the best interests of the creditors.

In accordance with the principle of the revocability *ad nutum* of agents ("mandataires"), the mandate given by this Court to the liquidators may be revoked by this Court.

The costs and expenses of the liquidators shall be paid borne by the credit establishment and shall be considered, in accordance with article 46 of the law of 27 November 1984, as administration costs to be paid out of the assets of the liquidation prior to any distribution.

In order to avoid difficulties and to prevent contradictions contradiction which might result from actions taken by the liquidators on a separate basis (cf. Passalerq, op.cit., n°s 4486 ff), the liquidators shall act as a collective body by the joint signature of a majority of two liquidators.

Considering the importance of their tasks in relation to the liquidation, the dispersion of the assets, the obligation to continue the management of the accounts of the credit establishments, the conservation and drawing up of balance sheets and accounts, as well as the amount of work involved in the verification of creditors' proofs of claims, the liquidators may appoint representatives or collaborators. The costs relating thereto shall be paid and borne by BCCI S.A..

It falls to this Court to remind that the liquidators shall be liable to third parties as well as to the credit

establishment in respect of wrongful acts committed in the execution of their tasks. It is further reminded that any action against the liquidators, in their personal capacity or in their capacity as legal representatives of the dissolved company, shall be time barred after five years.

If further falls to this Court to specify that the liquidation shall be closed in accordance with the provisions of sub-section (9) of article 42, which content is a copy of article 151 of the law of 10 August 1915, with the additional reminder of the obligation to publish the close of the liquidation. Such publication shall indicate the places where the records and documents pertaining to the liquidation are kept, which enables interested third parties who might wish to act against the liquidators to consult such records and documents. The publication shall further indicate all measures taken to consign those monies of which could not be transferred to creditors or shareholders.

Considering that the liquidation process will probably last a long period of time, the final accounts shall most probably be submitted to this Court in a late future. In order to enable this court to verify meanwhile the liquidation process and to verify the accounts drawn up and the acts performed by the liquidators, the liquidators shall deliver interim reports on the results of the liquidation once every two years.

Finally, it is specified that in accordance with sub-section (3) of article 42 of the law of 27 November 1984, the present judgment is enforceable by provision.

On These Grounds:

the District Court of Luxembourg, sixth chamber, sitting in commercial matters, awarding a defended judgment in public hearing, having heard the submissions of the credit establishment BCCI S.A., the supervisory commissioner and all other interested parties as well as the conclusions of the representative of the Public Prosecutor,

- * declares the request admissible;
- * orders the dissolution and the liquidation of the credit establishment BANK OF CREDIT AND COMMERCE INTERNATIONAL (in short BCCI) S.A., established and having its registered office in Luxembourg, 25, boulevard Royal;

- * appoints as supervisory judge Ms. Maryse WELTER, Vice-President of the District Court in Luxembourg;

appoints as liquidators:

Mr. Brian SMOUHA, chartered accountant, residing in London,

Maitre Georges BADEN, attorney at law, residing in Luxembourg,

Maitre Julien RODEN, attorney at law, residing in Luxembourg,

with the mandate to liquidate the credit establishment BCCI S.A. incorporated in Luxembourg;

- * orders that the liquidation of BCCI S.A. shall comply with articles 42 and 46 of the law of 27 November 1984, as amended, relating to the access to and the supervision of the financial sector, articles 141, 144, 146, 147 and 149 of the law of 10 August 1915 concerning the commercial companies, and articles 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 463, 464, 465-1, -3 and -5, 484, 485, 487, 492, 508, 528, 537, 538, 539, 542, 544, 547, 548, 549, 550, 551, 552 and 562 of the chapter entitled "Bankruptcy" of the Commercial code;
- * sets on 5 January 1991 the date as of which BCCI S.A. has ceased its payments generally and determines the liquidation pattern of BCCI S.A. as follows:

"I) Creditors:

As of the date of this judgment, interest shall cease to accrue on any claims which are not secured by a privilege, a pledge or a mortgage.

As from the same date, there shall be no set-off, except for contingent liabilities arising out of the same contract.

Creditors must submit to the liquidators a proof of their claims by 30 June 1992.

Within three months of this judgment, the liquidators shall send by registered mail to any creditor known or identifiable through the books of the company, a circular letter and a standard proof-of-claim form the contents of which shall be determined by the liquidators. The liquidators shall also publicly advertise for creditors in those countries where BCCI S.A. had banking activities in order to inform creditors of the time-limit with regard to proof of claims.

The liquidators shall without delay take all reasonable steps to inform the creditors who have filed a proof of claim as to the admission or the rejection of their proof of claim, as well as to the date of the court hearing on such disallowance.

Any known or unknown creditors who fail to file their proof of claim within the time period set forth by this judgment shall not participate in distributions which have already been effected and endorsed by the court. Such endorsing judgment, which may order any advisable distributions to be made, shall discharge the liquidators of the so distributed amounts.

Creditors who have failed to file their proof of claim within this time period may however file claims until the last distribution of assets and may participate in further distributions which are ordered after the submission of their proofs of claim, pursuant to article 508 of the Commercial code.

Any sums or monies owed to creditors and shareholders which have not been collected by the closing of the liquidation shall be deposited with the Deposit and Consignment Office for the benefit of whom it may concern.

By virtue of the provisions of the law of 30 June 1930, which deals with the creation of a creditors' committee to safeguard creditors' interests in bankruptcy and composition proceedings, the supervisory judge shall appoint within a month as of the date of this judgment a creditors' committee consisting of five members elected out of the main unsecured creditors domiciled in the Grand Duchy or abroad. Members of the creditors' committee may exercise their duties personally or by appointing a representative, who shall be appointed by virtue of a special proxy, and the members of the creditors' committee may be replaced or revoked by the supervisory judge. Decisions to such effect shall not be subject to appeal.

The creditors' committee, whose function shall be to assist the liquidators and to supervise the liquidation operations on a consultative basis only, shall meet upon notice from the supervisory judge or from the liquidators, in order to deliberate on the measures to be undertaken in the best interests of the creditors, and shall be convened at least once every four months by the supervisory judge in order to hear the liquidators' report on the current status of the liquidation.

II) Supervisory Judge

The liquidation shall be supervised by the supervisory judge who shall have in any circumstances an unlimited right to be informed on all matters relating to the liquidation.

He may further give to the liquidators any directions he deems in the best interests of the creditors. The same judge shall further chair the creditors' committee.

The liquidators shall submit to the supervisory judge every three months a written report on the current status of the liquidation.

III) Liquidators

As of the date of this judgment, any action, concerning movable or immovable rights, any enforcement measures against movable or immovable property, shall be pursued, commenced or exercised only against the liquidators.

The Commercial Court may at any moment replace and revoke all or any one of the liquidators, or increase their number.

The liquidators shall swear an oath to the supervisory judge that they will well and truly discharge their brief.

The liquidators shall draw up an inventory of the bills, securities, claims and assets of any kind whatsoever which belong to the credit establishment BCCI S.A., regardless as to their place of deposit or location in the Grand Duchy of Luxembourg or abroad.

The liquidators shall liquidate and realise such bills, securities, claims and assets of any kind and shall distribute the proceeds in a lump sum or in instalments to the creditors. Such distributions must be endorsed by the court.

The liquidators may receive any payments, grant any releases with or without full discharge, endorse any bills of exchange, and realise the movable and immovable property of the company.

With the authorisation of the court, the liquidators may continue the business and trade of BCCI S.A. until its completion, borrow to pay company debts, mortgage or pledge the establishment's assets, sell branches and subsidiaries of whatever importance, and contribute the company's assets, in full or in part, to the assets of other companies or liquidations.

The liquidators may with the authorisation of the court, which shall be given after hearing the report of the supervisory judge and the opinion of the creditors' committee, settle or compromise on any disputes, even those relating to immovable property, if the value of such settlement or compromise is undetermined or exceeds 100.000,- United States Dollars, conclude cooperation or apportionment agreements with the liquidators of other BCCI group entities, commence court proceedings together with

third parties and apportion the results thereof with such third parties.

The liquidators may commence and defend any proceedings or actions before any court in the Grand Duchy of Luxembourg or abroad which they believe to be necessary for the protection of creditors' rights or for the winding up or liquidation, or for the vesting of possession of any assets, bills, securities or claims which belong to the estate of BCCI S.A..

The liquidators shall also have the power to defend any proceedings and actions commenced against them in their capacity as liquidators, or against the establishment BCCI S.A., to defend, as plaintiffs or as defendants, and to intervene, in any process, proceedings or actions pending now or in the future before any court whatsoever, to exercise any rights of appeal against any judgment, order or other decision awarded in any disputes, process or proceedings, whether in Luxembourg or abroad, insofar as the liquidators believe such defence, suit, intervention and appeal necessary or advisable for the protection of BCCI S.A.'s assets.

The liquidators may, if they believe it necessary, appoint representatives, agents or collaborators in order to hold the records and archives of the establishment BCCI S.A. and to preserve and realise the assets, and take any other measures which they deem to be appropriate in the interests of the liquidation.

Any costs of the liquidators in this respect shall be paid and borne by the credit establishment BCCI S.A..

Save in the case of a special proxy for specific acts, the liquidators shall enforce their decisions and act in relation to third parties and other institutions and courts, by the signature of any two liquidators, who shall not be compelled to give evidence to any such third parties as to their mutual understanding in college.

Once every three months, and each time the circumstances so require, the liquidators shall submit to the supervisory judge a written report on the results of their management, such reports to be printed at the expense of BCCI S.A. and be made available to the creditors or published in certain newspapers, as determined by the liquidators.

The costs and fees of the liquidators shall be paid and borne by the establishment BCCI S.A., pursuant to article 46 of the law of 27 November 1984.

Once every two years, the liquidators shall submit to the court a written interim report on the results of the liquidation.

Upon completion of the liquidation, the liquidators shall report to the court on the results of the liquidation and

the use of proceeds of the establishment, render account, and make available to the court any supporting evidence.

The court shall appoint auditors to analyse the submitted documents. After hearing the report of the auditors, the court shall make an award concerning the management of the liquidators and the closing of the liquidation.

The liquidators shall be liable to third parties as well as to the credit establishment in respect of the execution of their tasks and of any wrongful acts committed by them in the course of their management.

Any action against the liquidators in such capacity shall be time barred five years after the publication of the closing of the liquidation.

Any action against the liquidators in relation to wrongful acts committed during the liquidation shall be time barred five years after the committing of such wrongful acts, unless such acts have been fraudulently concealed, in which case it shall be five years from the discovery of such wrongful acts.

The judgment which brings the liquidation to a close shall be published in accordance with the directions contained in such judgment and shall indicate the place where the records and documents pertaining to the liquidation shall be deposited and kept for at least five years, and the measures taken to consign the monies and assets owed to creditors, the transfer of which could not be effected."

* orders this judgment to be enforceable by provision, despite any appeal, upon the view of the deed thereof and before registration;

* awards the costs against the establishment BCCI S.A.;

* orders this judgment to be published by excerpt in the Recueil C of the Mémorial of the Grand Duchy of Luxembourg, Recueil Spécial des Sociétés et Associations, and in the following newspapers: Luxemburger Wort, Tageblatt, Financial Times, International Herald Tribune, Le Monde, Frankfurter Allgemeine Zeitung and Neue Zürcher Zeitung.

So done and adjudicated in public hearing, on Friday, the third of January nineteen hundred and ninety two, in the presence of:

Maryse WELTER, Vice-president,
Marc KERSCHEN, 1st Judge,
Jeanne COLLING, 1st Judge,
Brigitte KONZ, Substitute of the Public Prosecutor
Maryse SCHUMACHER, Registrar.