

[Stamp:  
HIGH COURT OF JUSTICE  
Grand Duchy of Luxembourg]

Civil Judgment  
Georges BADEN and jointly interested parties  
duly specified I) to X)

- v -

Raihan Nasir MAHMUD and jointly interested parties  
duly specified 1) to 4)

of twentieth December one thousand nine hundred  
and ninety-five

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Documentation cost:

Preparation 46 pages : 460.- frs

Maître Georges BADEN

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We, JEAN,  
by the grace of God,  
Grand Duke of Luxembourg,  
Duke of Nassau,  
etc., etc., etc.;

Let it be known:

that the Court of Appeal of the Grand Duchy of Luxembourg, First Division, sitting in a civil matter at a public hearing on twentieth December one thousand nine hundred and ninety-five pronounced judgment as set forth hereunder in the case listed as numbers 17 762 and 17 948.

The facts forming the basis of the judgment have been notified at the instigation of Maître Georges BADEN, Counsel for the Respondents, Georges BADEN and jointly interested parties I) to X).

**BETWEEN:**

- I. 1. Georges BADEN, Counsellor-at-Law and List I Court Advocate, resident at 7, Place du Théâtre, Luxembourg,
2. Julien RODEN, Counsellor-at-Law and List I Court Advocate, resident at 7, avenue des Archiducs, Luxembourg,
3. Brian SMOUHA, Chartered Accountant, resident at 1, Little New Street, London, Great Britain,

acting in their capacity as liquidators of BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A. (in liquidation), a public limited liability company in the form of a Société Anonyme, established and with Registered Office at 5, rue Höhenhof, Luxembourg-Senningerberg, (hereinafter referred to as BCCI), appointed as such by Order of 3 January 1992 of the Sixth Division of the District Court of and in Luxembourg,

- II. 1. Jacques DELVAUX, Notary, resident at 19, rue de l'Eau, Esch-sur-Alzette,
2. Georges RAVARANI, Counsellor-at-Law and List I Court Advocate, resident at 6, rue Zithe, Luxembourg,

acting in their capacity as liquidators of BCCI HOLDINGS (LUXEMBOURG) S.A. (in liquidation), a public limited liability company in the form of a Société Anonyme, established and with Registered office at 5, rue Höhenhof, Luxembourg-Senningerberg, (hereinafter referred to as HOLDINGS), appointed as such by Order of 18 September 1992 and 14 October 1993 of the Sixth Division of the District Court of and in Luxembourg,

- III. 1. BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A. (in liquidation), established and with Registered Office at 5, rue Höhenhof, Luxembourg-Senningerberg, acting for the purposes of these presents through its English branch established at Citadel House, 5-11 Fetter Lane, London, United Kingdom, (hereinafter referred to as BCCI UK), duly represented by the liquidators of the company, Christopher MORRIS, Nicholas R. LYLE, John P. RICHARDS and Stephen J. AKERS, Chartered Accountants, resident in London, United Kingdom,

2. Christopher MORRIS, Nicholas R. LYLE, John P. RICHARDS and Stephen J. AKERS, Chartered Accountants, resident at 1, Little New Street, London, United Kingdom, acting in their capacity as liquidators of BCCI UK,
- IV. 1. BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED in compulsory liquidation, established and with Registered Office at Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereinafter referred to as BCCI OVERSEAS), duly represented by the official liquidators of the company, Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, Chartered Accountants, resident in Georgetown, Cayman Islands, BWI,
  2. Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, Chartered Accountants, resident in Georgetown, Grand Cayman, Cayman Islands, BWI, acting in their capacity as official liquidators of BCCI OVERSEAS,
- V. 1. CREDIT AND FINANCE COMPANY LIMITED in compulsory liquidation, established and with Registered Office at Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereinafter referred to as CFC), duly represented by the official liquidators of the company, Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, Chartered Accountants, resident in Georgetown, Cayman Islands, BWI,
  2. Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, Chartered Accountants, resident in Georgetown, Grand Cayman, Cayman Islands, BWI, acting in their capacity as official liquidators of CFC,
- VI. 1. INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED in compulsory liquidation, established and with Registered Office at Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereinafter referred to as ICIC OVERSEAS), duly represented by the official liquidators of the company, Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, Chartered Accountants, resident in Georgetown, Cayman Islands, BWI,
  2. Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, Chartered Accountants, resident in Georgetown, Grand Cayman, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC OVERSEAS,
- VII. 1. ICIC HOLDINGS LIMITED in liquidation, established and with Registered Office at Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereinafter referred to as ICIC HOLDINGS), duly represented by the official liquidators of the company, Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, Chartered Accountants, resident in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, Chartered Accountants, resident in Georgetown, Grand Cayman, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC HOLDINGS,
- VIII.1. ICIC INVESTMENTS LIMITED in liquidation, established and with Registered Office at Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereinafter referred to as ICIC INVESTMENTS), duly represented by the official liquidators of the company, Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, Chartered Accountants, resident in Georgetown, Cayman Islands, BWI,
2. Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, Chartered Accountants, resident in Georgetown, Grand Cayman, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC INVESTMENTS,
- IX. 1. ICIC APEX HOLDING LIMITED (in liquidation), established and with Registered Office at Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereinafter referred to as ICIC APEX), duly represented by the official liquidators of the company, Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, Chartered Accountants, resident in Georgetown, Cayman Islands, BWI,
2. Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, Chartered Accountants, resident in Georgetown, Grand Cayman, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC APEX,
- X. 1. BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A. in liquidation, established and with Registered Office at 5, rue Höhenhof, Luxembourg-Senningerberg,
2. BCCI HOLDINGS (LUXEMBOURG) S.A. in liquidation, established and with Registered Office at 5, rue Höhenhof, Luxembourg-Senningerberg,

Respondents for the purposes of a notice of appeal lodged on 28 April 1995 by Michelle Thill, Process Server established in Luxembourg,

subsequent to representation at law by Maître Georges Baden, Counsellor-at-Law and List I Court Advocate, assisted by Maître Georges Ravarani, Counsellor-at-Law and List I Court Advocate, both resident in Luxembourg,

**AND:**



- I. 1. Raihan Nasir MAHMUD, ex-manager, resident at 100, Woodhall Gate, Pinner, Middlesex (U.K.),
2. Mohammad Ali QAYYUM, ex-international officer, resident at Dorset House, 105, Gloucester Place, London (U.K.),
3. Qaiser Mansoor MALIK, ex-officer, resident at 18, Debden Close, Woodford Green, Essex (U.K.),
4. Halida SHAFIULLAH, ex-officer, resident at Dorset House, 105, Gloucester Place, London (U.K.),

Appellants in accordance with the terms of the aforementioned appeal process officiated by Michelle Thill,

subsequent to representation at law by Maître Arsène Kronshagen, Counsellor-at-Law and List I Court Advocate, assisted by Maître Maria Dennewald, Counsellor-at-Law and List I Court Advocate, both resident in Luxembourg.

- II. The INSTITUT MONETAIRE LUXEMBOURGEOIS, established at 63, avenue de la Liberté, Luxembourg, represented by executive director, Mr Pierre JAANS, and directors, Mr Jean-Nicholas SCHAUS and Mr Jean GUILL,

Respondent for the purposes of the aforementioned notice of appeal lodged on 28 April 1995 by Michelle Thill,

subsequent to representation at law by Maître André Elvinger, Counsellor-at-Law and List I Court Advocate resident in Luxembourg.

- III. The GOVERNMENT OF THE EMIRATE OF ABU DHABI, represented by its Department of Finance, established in Abu Dhabi, United Arab Emirates,

Respondent for the purposes of the aforementioned appeal process officiated by Michelle Thill,

subsequent to representation at law by Maître Louis Schiltz, Counsellor-at-Law and List I Court Advocate resident in Luxembourg,

- IV. 1. INTERFIDUCIAIRE, a firm of tax and accountancy specialists and private company, established and with Registered Office at 121, avenue de la Faïencerie, 1511 Luxembourg, represented by the currently serving executive members and managers of the same,
2. Mr Guy BERNARD, Chartered Accountant, resident at 25, rue Tony Neuman, 2241 Luxembourg,
3. Mr Carlo DAMGE, Chartered Accountant, resident at 10, rue Michel Rodange, 7248 Bereldange,
4. Mr André WILWERT, Chartered Accountant, resident at 10, rue Gustave Kahnt, 1851 Luxembourg,

5. Mr Pierre WAGNER, Tax Consultant, resident at 10, rue des Etats-Unis, 8316 Olm,
6. FIDEM, a private company, established and with Registered Office at 121, avenue de la Faïencerie, L-1511 Luxembourg, represented by the currently serving members and managers of the same,
7. Mr Bob BERNARD, Chartered Accountant, resident in Hesperange,
8. Mrs Véronique HEGER, of no formal status, widow of Eugène MULLER, resident at 7, rue du Parc, Bertrange,
9. Mrs Laurence MULLER, student, resident at 7, rue du Parc, Bertrange,
10. Mrs Michèle MULLER, student, resident at 7, rue du Parc, Bertrange,

Respondents for the purposes of the aforementioned appeal process officiated by Michelle Thill,

subsequent to representation at law by Counsel, Maître Marc Elvinger resident in Luxembourg,

- V.
1. Mr Yves Christian LAMARCHE, bank manager, resident at Golden Gate Finance, 32, Avenue des Champs-Élysées, 75008 Paris, France,
  2. Mr Johan Diderik VAN OENEN, banker, resident at 17, The Avenue, Tadworth, Surrey KT 20 AY 17 [sic], England,
  3. Mr Alfred HARTMANN, bank manager, resident at Bellerivestrasse 201, Zurich, Switzerland,

Respondents for the purposes of the aforementioned appeal process officiated by Michelle Thill,

subsequent to representation at law by Maître Alain Rukavina, Counsellor-at-Law and List I Court Advocate resident in Luxembourg,

VI. The State Public Prosecutor attached to the Court of Appeal of the Grand Duchy of Luxembourg, Appeal Court Building, 12, Côte d'Eich, Luxembourg,

Respondent for the purposes of the aforementioned appeal process officiated by Michelle Thill,

subsequent to appearance and representation in person.

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The particulars and background details of the case result for legal sufficiency from the facts, grounds and wording of a judgment given on 31 January 1995 after hearing all parties by

the 6th Division of the District Court of and in Luxembourg sitting in a composite matter, such judgment having been registered and notified to the parties pursuant to two service processes by Michelle Thill on 22 February 1995 and 17 March 1995 respectively, the wording of which was as follows:

**"Upon these grounds:**

The Sixth Division of the District Court of and in Luxembourg sitting in a composite matter giving judgment after hearing all parties, together with the report of Her Honour, Maryse WELTER, Judge in Bankruptcy, and the submissions of the Public Prosecutor,

orders joinder of the Applications filed respectively as listed case numbers 44 323, 44 468 and 53 642,

admits in form and declares admissible the Application directed against the State Public Prosecutor attached to the District Court of and in Luxembourg, BCCI S.A. in liquidation and BCCI S.A. HOLDINGS in liquidation pursuant to a Writ of 21 November 1994 officiated by Pierre KREMMER;

admits in form and declares admissible the Application directed against BCCI S.A. in liquidation and BCCI S.A. HOLDINGS in liquidation pursuant to a Writ of 10 October 1994 officiated by Pierre KREMMER;

declaring invalid in form the Pierre KREMMER Writs of Summons of 10 and 14 October 1994 insofar as they are directed against the State Public Prosecutor attached to the District Court of and in Luxembourg, the Institut Monétaire Luxembourgeois and the Government of the Emirate of Abu Dhabi;

and accordingly declares the Applications filed pursuant to such processes inadmissible;

declaring admissible the Applications directed against the State Public Prosecutor attached to the District Court of and in Luxembourg, the Institut Monétaire Luxembourgeois and the Government of the Emirate of Abu Dhabi pursuant to the processes of 15 and 16 November 1994 officiated by Pierre KREMMER;

stating that the Applications directed against BCCI S.A. in liquidation and BCCI S.A. HOLDINGS in liquidation pursuant to the process of 15 November 1994 are without purpose;

declaring that joinder sought respectively by the persons as set out hereunder is due and proper in form and admissible:

- 1) Raihan Nasir MAHMUD,  
Mohammad Ali QAYYUM,  
Qaiser Mansoor MALIK,  
Halida SHAFIULLAH,
- 2) Christian LAMARCHE,  
Johan Diderik VAN OENEN,  
Alfred HARTMANN,
- 3) INTERFIDUCIAIRE, a firm of tax and accountancy specialists

and private company,  
Guy BERNARD,  
Carlo DAMGE,  
André WILWERT,  
Pierre WAGNER,  
the private company FIDEM,  
Bob BERNARD,  
Véronique HEGER,  
Laurence MÜLLER, and  
Michèle MÜLLER,

declaring that the Application filed by KREMMER process of 21 November 1994 is founded;

and accordingly approves the agreements referred to as follows:

- the "Supplemental Pooling Agreement with ICIC Companies",
- the "Cost and Recovery Sharing Agreement with ICIC Companies",
- the "BCCI/ICIC Paying Agency Agreement",

and authorises the liquidators of BCCI S.A. and BCCI HOLDINGS S.A. in their due capacity to sign such agreements;

declaring that the Application seeking approval of the "agreement" negotiated between the liquidators of the BCCI-ICIC Group principal liquidations and the Government of the Emirate of Abu Dhabi in accordance with the wording resolved by exchange of correspondence of 13 July 1994 is founded;

authorising the liquidators of the principal liquidations to enter into and sign such agreement;

aggregating the costs and awarding half against the BCCI S.A. liquidation and half against the BCCI HOLDINGS liquidation, save in respect of the intervention costs remaining payable by the respective intervening parties.

Signed: Welter, Schumacher"

Pursuant to a notice of appeal of 28 April 1995 officiated by Luxembourg Process Server, Michelle Thill, aforementioned Appellants, Raihan Nasir MAHMUD, Mohammad Ali QAYYUM, Qaiser Mansoor MALIK and Halida SHAFIULLAH gave notice of their intention to lodge an appeal against the aforesaid judgment by summoning the Respondents to appear within the prescribed period through Counsel before the Court of Appeal of and in Luxembourg sitting in a civil matter at 12, Côte d'Eich, Luxembourg, for a ruling to be given in accordance with such appeal notice as appended hereto.

Michelle THILL  
PROCESS SERVER  
LUXEMBOURG

Arsène KRONSHAGEN  
Lawyers  
12, Bd de la Foire  
L-1528 Luxembourg  
AK/PB

NOTICE OF APPEAL

On twenty-eighth April in the year one thousand nine hundred and ninety-five,

On application by:

1. Raihan Nasir MAHMUD, ex-manager, resident at 100, Woodhall Gate, Pinner, Middlesex (U.K.),
2. Mohammad Ali QAYYUM, ex-international officer, resident at Dorset House, 105, Gloucester Place, London (U.K.),
3. Qaiser Mansoor MALIK, ex-officer, resident at 18, Debben Close, Woodford Green, Essex (U.K.),
4. Halida SHAFIULLAH, ex-officer, resident at Dorset House, 105, Gloucester Place, London (U.K.),

electing domicile at the offices of Maître Arsène KRONSHAGEN, Counsellor-at-Law and List I Court Advocate resident in Luxembourg, assisted by Maître Maria DENNEWALD, Counsellor-at-Law and List I Court Advocate resident in Luxembourg, duly appointed and instructed to act,

I, the Undersigned, Michelle THILL, Process Server resident in Luxembourg, registered with the District Court of and in Luxembourg,

SERVED NOTICE ON AND STATED TO:

I)

1. Georges BADEN, Counsellor-at-Law and List I Court Advocate, resident at 7, Place du Théâtre, Luxembourg,
2. Julien RODEN, Counsellor-at-Law and List I Court Advocate, resident at 7, avenue des Archiducs, Luxembourg,
3. Brian SMOUHA, Chartered Accountant, resident at 1, Little New Street, London, Great Britain,

acting in their capacity as liquidators of BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A. in liquidation, a public limited liability company in the form of a Société Anonyme, established and with Registered Office at 5, rue Höhenhof, Luxembourg-Senningerberg, hereinafter referred to as BCCI, appointed as such by Order of 3 January 1992 of the Sixth Division of the District Court of and in Luxembourg,

II)

1. Jacques DELVAUX, Notary, resident at 19, rue de l'Eau, Esch-sur-Alzette,
2. Georges RAVARANI, Counsellor-at-Law and List I Court Advocate, resident at 6, rue Zithe, Luxembourg,

acting in their capacity as liquidators of BCCI HOLDINGS (LUXEMBOURG) S.A. in liquidation, a public limited liability company in the form of a Société Anonyme, established and with Registered office at 5, rue Höhenhof, Luxembourg-Senningerberg, appointed as such by Order of 18 September 1992 and 14 October 1993 of the Sixth Division of the District Court of and in Luxembourg,

III)

1. BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A. in liquidation, established and with Registered Office at 5, rue Höhenhof, Luxembourg-Senningerberg, acting for the purposes of these presents through its English branch established at Citadel House, 5-11 Fetter Lane, London, United Kingdom, hereinafter referred to as BCCI UK, duly represented by the liquidators of the company, Christopher MORRIS, Nicholas R. LYLE, John P. RICHARDS and Stephen J. AKERS, Chartered Accountants, resident in London, United Kingdom,
2. (a) Christopher MORRIS, (b) Nicholas R. LYLE, (c) John P. RICHARDS and (d) Stephen J. AKERS, Chartered Accountants, resident at 1, Little New Street, London, United Kingdom, acting in their capacity as liquidators of BCCI UK,

IV)

1. BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED in compulsory liquidation, established and with Registered Office at Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, hereinafter referred to as BCCI OVERSEAS, duly represented by the official liquidators of the company, Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, Chartered Accountants, resident in Georgetown, Cayman Islands, BWI,
2. (a) Ian A. N. WIGHT, (b) Robert E. AXFORD and (c) Michael W. MACKEY, Chartered Accountants, resident in Georgetown, Grand Cayman, Cayman Islands, BWI, acting in their capacity as official liquidators of BCCI OVERSEAS,

V)

1. CREDIT AND FINANCE COMPANY LIMITED in compulsory liquidation, established and with Registered Office at

Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, hereinafter referred to as CFC, duly represented by the official liquidators of the company, Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, Chartered Accountants, resident in Georgetown, Cayman Islands, BWI,

2. Ian A. N. WIGHT, Robert E. AXFORD and Michael W. MACKEY, Chartered Accountants, resident in Georgetown, Grand Cayman, Cayman Islands, BWI, acting in their capacity as official liquidators of CFC,

VI)

1. INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED in compulsory liquidation, established and with Registered Office at Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, hereinafter referred to as ICIC OVERSEAS, duly represented by the official liquidators of the company, Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, Chartered Accountants, resident in Georgetown, Cayman Islands, BWI,
2. Ian A. N. WIGHT, Robert E. AXFORD and Michael W. MACKEY, Chartered Accountants, resident in Georgetown, Grand Cayman, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC OVERSEAS,

VII)

1. ICIC HOLDINGS LIMITED in liquidation, established and with Registered Office at Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, hereinafter referred to as ICIC HOLDINGS, duly represented by the official liquidators of the company, Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, Chartered Accountants, resident in Georgetown, Cayman Islands, BWI,
2. Ian A. N. WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, Chartered Accountants, resident in Georgetown, Grand Cayman, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC HOLDINGS,

VIII)

1. ICIC INVESTMENTS LIMITED in liquidation, established and with Registered Office at Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, hereinafter referred to as ICIC INVESTMENTS, duly represented by the official liquidators of the company, Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, Chartered Accountants, resident in Georgetown, Cayman Islands, BWI,
2. Ian A. N. WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, Chartered Accountants, resident in Georgetown, Grand Cayman, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC INVESTMENTS,

IX)

1. ICIC APEX HOLDING LIMITED in liquidation, established and with Registered Office at Ansbacher House, Fort Street,

Georgetown, Cayman Islands, BWI, hereinafter referred to as ICIC APEX, duly represented by the official liquidators of the company, Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, Chartered Accountants, resident in Georgetown, Cayman Islands, BWI,

2. Ian A. N. WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, Chartered Accountants, resident in Georgetown, Grand Cayman, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC APEX,

X)

1. BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A. in liquidation, established and with Registered Office at 5, rue Höhenhof, Luxembourg-Senningerberg,
2. BCCI HOLDINGS (LUXEMBOURG) S.A. in liquidation, established and with Registered Office at 5, rue Höhenhof, Luxembourg-Senningerberg,

XI)

1. The GOVERNMENT OF ABU DHABI, represented by its Department of Finance, established and with offices in Abu Dhabi, United Arab Emirates,

XII)

1. The State Public Prosecutor attached to the High Court of Justice in Luxembourg, Palais de Justice, 12 Côte d'Eich, Luxembourg,

XIII)

The INSTITUT MONETAIRE LUXEMBOURGEOIS, established at 63, avenue de la Liberté, Luxembourg, represented by executive director, Pierre JAANS, and directors, Jean-Nicholas SCHAUS and Jean GUILL,

XIV)

1. Yves Christian LAMARCHE, bank manager, resident at 32, Avenue des Champs Elysées, 75008 Paris, France,
2. Johan Diderik VAN OENEN, banker, resident at 17, The Avenue, Tadworth, Surrey KT 20 AY, 17, [sic], England,
3. Alfred HARTMANN, bank manager, resident at Bellerivestrasse 201, Zurich, Switzerland,

XV)

1. INTERFIDUCIAIRE, a firm of tax and accountancy specialists and private company, established and with Registered Office at 121, avenue de la Faiëncerie, L-1511 Luxembourg, represented by the currently serving executive members and managers of the same,
2. Guy BERNARD, Chartered Accountant, resident at 25, rue Tony Neuman, 2241 Luxembourg,
3. Carlo DAMGE, Chartered Accountant, resident at 10, rue Michel Rodange, 7248 Bereldange,



4. André WILWERT, Chartered Accountant, resident at 10, rue Gustave Kahnt, 1851 Luxembourg,
5. Pierre WAGNER, Tax Consultant, resident at 10, rue des Etats-Unis, 8316 Olm,
6. FIDEM, a private company, established and with Registered Office at 121, avenue de la Faïencerie, L-1511 Luxembourg, represented by the currently serving members and managers of the same,
7. Bob BERNARD, Chartered Accountant, resident in Hesperange,
8. Véronique HEGER, of no formal status, widow of Eugène MULLER, resident at 7, rue du Parc, Bertrange,
9. Laurence MULLER, student, resident at 7, rue du Parc, Bertrange,
10. Michèle MULLER, student, resident at 7, rue du Parc, Bertrange,

aforementioned parties 1 to 10 at their elected domicile at the offices of Maître Marc ELVINGER, Counsellor-at-Law and List I Court Advocate resident at 20, rue des Franciscaines, L-1539 Luxembourg,

that the Applicants hereby lodge formal appeal against a judgment of 31 January 1995 given after hearing all parties by the Sixth Division of the District Court of and in Luxembourg sitting in a composite matter, the wording of which was as follows:

**"UPON THESE GROUNDS:**

The Sixth Division of the District Court of and in Luxembourg sitting in a composite matter giving judgment after hearing all parties, together with the report of Her Honour, Maryse WELTER, Judge in Bankruptcy, and the submissions of the Public Prosecutor,

orders joinder of the Applications filed respectively as listed case numbers 44 323, 44 468 and 53 642,

admits in form and declares admissible the Application directed against the State Public Prosecutor attached to the District Court of and in Luxembourg, BCCI S.A. in liquidation and BCCI S.A. HOLDINGS in liquidation pursuant to a Writ of 21 November 1994 officiated by Pierre KREMMER;

admits in form and declares admissible the Application directed against BCCI S.A. in liquidation and BCCI S.A. HOLDINGS in liquidation pursuant to a Writ of 10 October 1994 officiated by Pierre KREMMER;

declaring invalid in form the Pierre KREMMER Writs of Summons

of 10 and 14 October 1994 insofar as they are directed against the State Public Prosecutor attached to the District Court of and in Luxembourg, the Institut Monétaire Luxembourgeois and the Government of the Emirate of Abu Dhabi;

and accordingly declares the Applications filed pursuant to such processes inadmissible;

declaring admissible the Applications directed against the State Public Prosecutor attached to the District Court of and in Luxembourg, the Institut Monétaire Luxembourgeois and the Government of the Emirate of Abu Dhabi pursuant to the processes of 15 and 16 November 1994 officiated by Pierre KREMMER;

stating that the Applications directed against BCCI S.A. in liquidation and BCCI S.A. HOLDINGS in liquidation pursuant to the process of 15 November 1994 are without purpose;

declaring that joinder sought respectively by the persons as set out hereunder is due and proper in form and admissible:

- 1) Raihan Nasir MAHMUD,  
Mohammad Ali QAYYUM,  
Qaiser Mansoor MALIK,  
Halida SHAFIULLAH,
- 2) Christian LAMARCHE,  
Johan Diderik VAN OENEN,  
Alfred HARTMANN,
- 3) INTERFIDUCIAIRE, a firm of tax and accountancy specialists  
and private company,  
Guy BERNARD,  
Carlo DAMGE,  
André WILWERT,  
Pierre WAGNER,  
the private company FIDEM,  
Bob BERNARD,  
Véronique HEGER,  
Laurence MÜLLER, and  
Michèle MÜLLER,

declaring that the Application filed by KREMMER process of 21 November 1994 is founded;

and accordingly approves the agreements referred to as follows:

- the "Supplemental Pooling Agreement with ICIC Companies",
- the "Cost and Recovery Sharing Agreement with ICIC Companies",
- the "BCCI/ICIC Paying Agency Agreement",

and authorises the liquidators of BCCI S.A. and BCCI HOLDINGS S.A. in their due capacity to sign such agreements;

declaring that the Application seeking approval of the "agreement" negotiated between the liquidators of the BCCI-ICIC Group principal liquidations and the Government of the Emirate of Abu Dhabi in accordance with the wording resolved by exchange

of correspondence of 13 July 1994 is founded;

authorising the liquidators of the principal liquidations to enter into and sign such agreement;

aggregating the costs and awarding half against the BCCI S.A. liquidation and half against the BCCI HOLDINGS liquidation, save in respect of the intervention costs remaining payable by the respective intervening parties";

Whereas, the judgment subject to appeal has adverse wrongful effect on the applicants;

Whereas, the agreements submitted to the Court by the liquidators go against Luxembourg public policy and more especially conflict with the principle of equality among creditors;

Whereas, the agreement negotiated with the Abu Dhabi government is economically unacceptable for the creditors of BCCI in view of the liabilities assumed by the majority shareholder prior to the company being put into liquidation;

Whereas, the proposed amount remains disproportionate to the loss and detriment suffered by the deprived creditors;

Whereas, it must accordingly be rejected as inadequate;

Whereas, the appeal is further founded on any other grounds of fact and of law to be asserted whenever and wherever by the appropriate party;

And in order to obtain a ruling on the merits of the present appeal, I, Process Server, aforesaid and undersigned, in respect of the same aforementioned application, legal representation and election of domicile,

HAVE SUMMONED the respondents aforesaid to appear through Counsel within the prescribed period, such being eight days, together with a period for distance of fifteen days for those residing in Belgium, France, Monaco, the Netherlands, the Federal Republic of Germany, Switzerland and Liechtenstein, one month for those residing in any other European territory, including Cyprus and Turkey, but excluding the Union of Soviet Socialist Republics, and two months for those residing in any other country of the world, before the Court of Appeal of and in Luxembourg sitting in a civil matter at 12, Côte d'Eich, Luxembourg, for the purposes as set out hereunder:

for the present appeal to be admitted in form;

and on the main issue, to be declared justified;

and accordingly for the judgment given to be revoked if not

reversed;

for it to be declared that there are no grounds for approving the agreements referred to as:

- the "Supplemental Pooling Agreement with ICIC Companies",
- the "Cost and Recovery Sharing Agreement with ICIC Companies",
- the "BCCI/ICIC Paying Agency Agreement";

that there are no grounds for authorising the liquidators to sign such agreements;

that there are no grounds for approving the "agreement" negotiated between the liquidators of the principal BCCI-ICIC Group liquidations and the government of the Emirate of Abu Dhabi in accordance with the wording resolved by exchange of correspondence of 13 July 1994;

and that there are no grounds for authorising the liquidators to enter into and sign such agreement;

placing on record the fact that in respect of the Appellants and where appropriate, with regard to value they assess the litigation to correspond to the amount of their respective claims in the liquidation of BCCI S.A.;

making an award for the costs and disbursements of both proceedings against the Abu Dhabi government or otherwise awarding costs against the respective liquidations.

IN WITNESS WHEREOF, this constitutes legal publication.

COST:

Duty:	1,200.-
Cop.:	10,800.-
Trav.:	1,908.-
VAT:	1,440.-
Stamps:	3,800.-
Reg.:	500.-
TOTAL:	19,648.-
Post:	

On this notice of appeal, in respect of which appointed Counsel for the Appellants was Maître Arsène Kronshagen, Counsellor-at-Law and List I Court Advocate, assisted by Maître Maria Dennewald, Counsellor-at-Law and List I Court Advocate, both resident in Luxembourg, and attendant domicile elected at the offices of Maître Arsène Kronshagen, the aforementioned Respondents I - X instructed Maître Georges Baden, Counsellor-at-Law and List I Court Advocate, assisted by Maître Georges Ravarani, Counsellor-at-Law and List I Court Advocate, both resident in Luxembourg.

Aforementioned Respondent II, the Institut Monétaire Luxembourgeois, appointed Maître André Elvinger, Counsellor-at-Law and List I Court Advocate resident in Luxembourg, aforementioned Respondent III, the Government of Abu Dhabi, instructed Maître Louis Schiltz, Counsellor-at-Law and List I Court Advocate resident in Luxembourg, aforementioned Respondents IV, 1-10, appointed Maître Marc Elvinger, Counsellor-at-Law and List I Court Advocate resident in Luxembourg and Respondents V, 1-3, instructed Maître Alain Rukavina, Counsellor-at-Law and List I Court Advocate resident in Luxembourg.

By submissions notified to Maître Arsène Kronshagen, assisted by Maître Maria Dennewald, on 4 May 1995, Maître Georges Baden, assisted by Maître Georges Ravarani, for their parties pleaded to the Court:

"for it to be placed on record that with regard to pure form, the Respondents refer to the wisdom of the Court regarding the admissibility of the appeal;

declaring the appeal to have been filed too late and in consequence, for such to be declared inadmissible and dismissed;

by way of ancillary and in the event of admissibility, for it to be placed on record that with regard to the main issue, the respondents challenge the justification for the appeal;

that in consequence, the appeal be dismissed;

by way of ancillary concerning admissibility and dismissal of the appeal on the main issue, for it to be placed on record that the Respondents are making a claim against the Appellants for damages of US\$ 8,500,000.- for each month of delay and that they shall make their final claim for damages in due course;

placing on record the fact that the Respondents reserve the right to explain in greater detail their submissions and arguments at an appropriate point in time;

making an award for all costs and disbursements against the Appellants and ordering that such be set aside in favour of contending Counsel who requests the same, confirming having advanced such amounts."

At the same time, they arranged for the case to be set down for

hearing by the Court of Appeal of the Grand Duchy of Luxembourg where it was set down as a general listing for hearing by the First Division.

By Court document of 26 June 1995, acting for their parties Maître Georges Baden, assisted by Maître Georges Ravarani, notified copies of such submissions of 4 May 1995 for their respective parties to Maître André Elvinger, Maître Louis Schiltz, Maître Alain Rukavina and Maître Marc Elvinger. They also arranged for copies of such submissions of 4 May 1995 to be notified to the State Public Prosecutor.

By submissions notified in the case on 21 June 1995, Maître Arsène Kronshagen, assisted by Maître Maria Dennewald, for their parties pleaded to the Court:

"for the present appeal to be admitted in form;

and declared justified on the main issue;

and accordingly for the judgment given to be revoked if not reversed;

for it to be stated that there are no grounds for approving the agreements referred to as:

- the "Supplemental Pooling Agreement with ICIC Companies",
- the "Cost and Recovery Sharing Agreement with ICIC Companies",
- the "BCCI/ICIC Paying Agency Agreement";

that there are no grounds for authorising the liquidators to sign such agreements;

that there are no grounds for approving the "agreement" negotiated between the liquidators of the principal BCCI-ICIC Group liquidations and the government of the Emirate of Abu Dhabi in accordance with the wording resolved by exchange of correspondence of 13 July 1994;

and that there are no grounds for authorising the liquidators to enter into and sign such agreement;

placing on record the fact that in respect of the Appellants and where appropriate, with regard to value they assess the litigation to correspond to the amount of their respective claims in the liquidation of BCCI S.A.;

making an award for the costs and disbursements of both proceedings against the Abu Dhabi government or otherwise awarding costs against the respective liquidations."

For his party, pursuant to submissions notified on 28 June 1995, Maître Louis Schiltz pleaded to the Court:

"for it to be placed on record that the party making submission refers to the wisdom of the Court on the admissibility of the

appeal with regard to pure form and timing;

and for the rest:

for the appeal to be declared inadmissible if not without foundation;

and accordingly for such appeal to be dismissed and the judgment confirmed a quo;

for it to be placed on record that the party making submission maintains its submissions adopted at first instance, namely:

"to accede to the request of the liquidators and applicant parties and accordingly approve the Agreement as defined in the writ of summons comprising an Agreement, two letters and five appendices referred to respectively as the Draft Liquidators' Deed, the Draft Government's Deed, the Draft RFP Release Documents, the Draft UNB Transfer and the Draft Written Receipt;

that it be placed on record for the party making submission that the respective position of the parties to the draft agreement results from such documents, letters, agreements and arrangements exchanged between them and submitted to the Court;

confirming that the party making submission reserves all rights, means, dues and action;"

making an award for all costs and disbursements of the appeal proceedings against the Appellants and ordering that such be set aside in favour of Maître Louis SCHILTZ, Counsellor-at-Law and List I Court Advocate resident in Luxembourg who requests the same, confirming having advanced such amounts."

For his parties, pursuant to submissions notified in the case on 4 July 1995, Maître Marc Elvinger pleaded to the Court:

"for it to be placed on record that the parties making submission refer to the wisdom of the Court."

Pursuant to submissions notified in the case on that same 4 July 1995, Maître Marc Elvinger for his parties further pleaded to the Court:

"for it to be placed on record that the parties making submission do not intend to make submission on the main issue".

For his party, pursuant to submissions notified in the case on 7 July 1995, Maître André Elvinger pleaded to the Court:

"for it to be placed on record that the IML refers to the wisdom of the Court regarding the admissibility and foundation of the appeal;

recording the fact that such party reiterates the observations

while placing on record the fact that the liquidators reserve the right to make such claim for additional damages as appropriate until the date of payment to be settled by Abu Dhabi."

By submissions notified on 12 October 1995, Maître Georges Baden, assisted by Maître Georges Ravarani, for their parties further pleaded to the Court:

"for it to be placed on record that the contending parties fully maintain their submissions and arguments at first instance deemed to be reproduced here;

for all adverse submissions and claims to be dismissed,

and for a ruling to be given in accordance with the submissions previously concluded in the matter by the contending parties."

Pursuant to submissions notified in the case on 13 October 1995, the State Public Prosecutor representing the Department of Public Prosecutions pleaded to the Court:

"for it to be placed on record that the Public Prosecutor refers to the wisdom of the Court both with regard to the admissibility and merits of the appeal."

For their parties, pursuant to submissions notified in the case on 13 October 1995, Maître Arsène Kronshagen, assisted by Maître Maria Dennewald, further pleaded to the Court:

"to declare the submissions made by Maître Georges BADEN to be without justification;

declaring the counterclaim inadmissible or otherwise without foundation;

for the rest, to find for them the benefit of the submissions previously notified in the matter;

placing on record the fact that the Appellants expressly refer to the observations made by the IML."

Pursuant to submissions made on 13 October 1995, for his party Maître Louis Schiltz further pleaded to the Court:

"dismissing all submissions or more ample claims as respectively inadmissible, superfluous or unfounded;

finding for the party of Maître Schiltz the benefit of the attendant submissions previously adopted in the matter."

Pursuant to submissions made on 19 October 1995, for his party Maître André Elvinger notified a series of observations referred



to as "Observations made for [sic] the Institut Monétaire Luxembourgeois subsequent to writs issued against the Institut Monétaire Luxembourgeois on 10 October and 15 November 1994 by the liquidators of Bank of Credit and Commerce International S.A. and the appeal lodged against the judgment of the Luxembourg District Court of 31 January 1995". Strictly speaking, this observation note does not constitute submissions put forward to the Court.

Pursuant to submissions notified on 30 October 1995, for their parties Maître Arsène Kronshagen, assisted by Maître Maria Dennewald, further pleaded to the Court:

"to revoke the judgment a quo of 31 January 1995 for being in breach of Articles 142 and 143 of the Civil Code of Procedure, instructing all duties as provided by law in such connection;

for the rest, to find for the Appellant parties the benefit of the submissions previously notified in the matter."

Pursuant to Pleadings of 3 November 1995, Maître Georges Baden, assisted by Maître Georges Ravarani, submitted additional observations.

By formal withdrawal of 3 November 1995, Maître Arsène Kronshagen, assisted by Maître Maria Dennewald, withdrew the appeal lodged on 28 April 1995, offering to pay the costs of the proceedings. Aside from being signed by Maître Kronshagen, this withdrawal was only signed by Appellants Mahmoud and Qayyum, while the other two Appellants had not signed the withdrawal in question.

Pursuant to submissions notified on 8 November 1995, for his parties Maître Marc Elvinger pleaded to the Court:

"for it to be placed on record that the parties making submission accept the withdrawal of proceedings proposed by the Appellants."

Pursuant to submissions notified on 13 November 1995, for his parties Maître Alain Rukavina pleaded to the Court:

"to place on record the fact that the contending parties accept the withdrawal of proceedings proposed by the Appellants."

Pursuant to a formal withdrawal of proceedings notified in the case on 15 November 1995, Maître Arsène Kronshagen, assisted by Maître Maria Dennewald, withdrew the appeal lodged on 28 April 1995 and offered to pay the costs of the proceedings. Aside from being signed by Maître Kronshagen, this formal withdrawal was signed by the four Appellants who at the same time accepted the judgment subject to appeal.

For their parties, pursuant to formal acceptance and withdrawal of cross-appeal proceedings notified in the case on 16 November 1995, Maître Georges Baden, assisted by Maître Georges Ravarani stated that their parties accepted withdrawal of the main appeal notified by the Appellants, together with an offer to pay costs, also stating that where necessary, further to the official recording of such withdrawal of the main appeal, they would withdraw their counterclaim. Such formal acceptance and withdrawal was signed by all parties represented by Maître Baden and Maître Ravarani.

Pursuant to submissions notified in the case on 16 November 1995, for their parties Maître Georges Baden, assisted by Maître Georges Ravarani, pleaded to the Court:

"to place on record the withdrawal of appeal by the Appellants, together with the offer to pay costs and the acceptance of such withdrawal by the respondent liquidators;

to award costs against the Appellants and order such costs to be set aside in favour of contending Counsel who requests the same, confirming having advanced such amounts."

Pursuant to submissions notified in the case on 16 November 1995, for his party Maître Louis Schiltz pleaded to the Court:

"for it to be placed on record that the contending party accepts the withdrawal of parties of Maître Kronshagen notified by the same on 16 November 1995;

instructing all duties as provided by law;

and awarding costs against the Appellants and ordering such costs to be set aside in favour of Maître Louis Schiltz, Counsellor-at-Law and List I Court Advocate, who requests the same, confirming having advanced such amounts."

Pursuant to observations notified in the case on 16 November 1995, for his party Maître André Elvinger further forwarded a series of observations of his party without, however, making formal submission or putting forward any submissions to the Court.

By submissions notified on 16 November 1995, the State Public Prosecutor representing the Department of Public Prosecutions pleaded to the Court:

"for it to be placed on record that the Department of Public Prosecutions acting not as a principal party with an interest in the subject of litigation but as a joined party assigned to ensure compliance with the legal rules of public policy and insofar as it is qualified to respond to appeal withdrawals and corresponding acceptance of such withdrawals, does not intend to oppose the same in the light of the acceptance of the appeal

withdrawal of the Appellants by the liquidators in their capacity as legal representatives bound by the legal obligations implicit in their appointment."

The case was called by Maître Georges Baden, assisted by Maître Georges Ravarani, for hearing by the First Division of the Court of Appeal on 10 May 1995. The case was deferred on several occasions and was effectively heard at public hearings of the same Division of the Court of Appeal on 3 and 16 November 1995. At these hearings, the parties were represented as indicated earlier. Counsel for the various parties each put forward the submissions as set out earlier in this document and regarding the IML, the observations as set out earlier were also put forward. Counsel then proceeded to give verbal explanations of the grounds supporting their submissions and sought adjudication.

The Department of Public Prosecutions was represented at all the hearings.

The submissions of 16 November 1995 made by Maître Georges Baden, assisted by Maître Georges Ravarani, for their parties contained - inter alia - the following passage by way of grounds:

"Regarding the attitude of the IML, it must also be pointed out that although this authority purports to act in the public interest and like the Department of Public Prosecutions, play the role of amicus curiae, its attitude is nevertheless singularly distorted and its capacity to put forward objective arguments is, at least, extremely doubtful. Not only has the IML been sued for damages by the liquidators for failing to supervise effectively BCCI S.A. Luxembourg, but also pursuant to the Steffen summons of 14 November 1995, has issued a writ against inter alia the English and Luxembourg liquidators of BCCI S.A. by way of interpleader in the aforementioned proceedings for damages and for it to be held that the IML be exempt and absolved from loss in respect of any condemnation which may be forthcoming. The fact that this writ was served on 14 November 1995, ergo on the eve of the hearing date, is extremely significant, demonstrating not only that the IML intends to exert direct undue influence on the liquidators within the context of the present proceedings, but also that the IML is quite happy to fight "below the belt" and using a personal liability action by way of defence against proceedings for damages for acts of duty and that it was an essential duty of the liquidators to proceed under penalty of their own liability. Such a nauseating attitude on the part of the IML totally discredits this authority in all its arguments made against both the present offer of withdrawal and against the agreements submitted for Court approval."

Subsequent to all the parties in the case having read their respective submissions, for his parties Maître Georges Baden asked for it to be placed on record that he renounced the above passage of the grounds for his submissions of 16 November 1995.

Whereupon, the Court consulted privately on the matter and at the public hearing of 20 December 1995 attended by the Department of Public Prosecutions pronounced judgment, the wording of which is to follow.

**IN WITNESS WHEREOF** and subject to all due reserves, copies to be supplied to the State Public Prosecutor attached to the Court of Appeal, together with Maître André Elvinger, Maître Louis Schiltz, Maître Arsène Kronshagen, Maître Alain Rukavina and Maître Marc Elvinger, Counsellors-at-Law and List I Court Advocates all resident in Luxembourg stating that the present facts supersede those supplied to the various lawyers by Court document of 22 December 1995 notified by Michelle Thill, Process Server established in Luxembourg, and to the State Public Prosecutor attached to the Court of Appeal of the Grand Duchy of Luxembourg pursuant to notice served by the same Process Server on the same 22 December 1995, renunciation being in respect of such facts previously notified and served

respectively.

Approved by way of original:

[Signed]

Michelle THILL - Served by the undersigned Process Server  
on Maîtres Elvinger, Schiltz, Kronshagen,  
Rukavina, Counsellors-at-Law in Luxembourg  
at their respective places of domicile speaking there for:  
Maître André Elvinger, Counsellor-at-Law and List I Court  
Advocate, to his employee  
Maître Louis Schiltz, Counsellor-at-Law and List I Court  
Advocate, to his employee  
Maître Arsène Kronshagen, Counsellor-at-Law and List I Court  
Advocate, to her employee  
Maître Alain Rukavina, Counsellor-at-Law and List I Court  
Advocate, to his employee  
Luxembourg, twelfth January  
one thousand nine hundred and ninety-six

Cost frs: 640.-  
VAT: 164.-  
804.-

[Signed]

Michelle THILL  
Process Server

Served by the undersigned Process Server on  
Maître Marc Elvinger  
Counsellor-at-Law in Luxembourg, speaking  
at his place of domicile to his employee.

Cost: 340.-  
VAT: 41.-  
381.-

Luxembourg, twelfth January  
one thousand nine hundred and ninety-six

[Signed]

Michelle THILL  
Process Server  
31 Grand-Rue  
L-1661 LUXEMBOURG  
Tel.: 46.14.75  
Fax.: 46.17.16  
Postal A/C No. 76 398-59

NOTICE OF FACTS

On twelfth January in the year one thousand nine hundred and ninety-six,

on application by:

- I. 1. Georges BADEN, Counsellor-at-Law and List I Court Advocate, resident at 7, Place du Théâtre, Luxembourg,
2. Julien RODEN, Counsellor-at-Law and List I Court Advocate, resident at 7, avenue des Archiducs, Luxembourg,
3. Brian SMOUHA, Chartered Accountant, resident at 1, Little New Street, London, Great Britain,

acting in their capacity as liquidators of BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A. (in liquidation), a public limited liability company in the form of a Société Anonyme, established and with Registered Office at 5, rue Höhenhof, Luxembourg-Senningerberg, (hereinafter referred to as BCCI), appointed as such by Order of 3 January 1992 of the Sixth Division of the District Court of and in Luxembourg,

- II. 1. Jacques DELVAUX, Notary, resident at 19, rue de l'Eau, Esch-sur-Alzette,
2. Georges RAVARANI, Counsellor-at-Law and List I Court Advocate, resident at 6, rue Zithe, Luxembourg,

acting in their capacity as liquidators of BCCI HOLDINGS (Luxembourg) S.A. (in liquidation), a public limited liability company in the form of a Société Anonyme, established and with Registered office at 5, rue Höhenhof, Luxembourg-Senningerberg, (hereinafter referred to as HOLDINGS), appointed as such by Order of 18 September 1992 and 14 October 1993 of the Sixth Division of the District Court of and in Luxembourg,

- III. 1. BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A. (in liquidation), established and with Registered Office at 5, rue Höhenhof, Luxembourg-Senningerberg, acting for the purposes of these presents through its English branch established at Citadel House, 5-11 Fetter Lane, London, United Kingdom, (hereinafter referred to as BCCI UK), duly represented by the

liquidators of the company, Christopher MORRIS, Nicholas R. LYLE, John P. RICHARDS and Stephen J. AKERS, Chartered Accountants, resident in London, United Kingdom,

2. Christopher MORRIS, Nicholas R. LYLE, John P. RICHARDS and Stephen J. AKERS, Chartered Accountants, resident at 1, Little New Street, London, United Kingdom, acting in their capacity as liquidators of BCCI UK,
- IV.
1. BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED in compulsory liquidation, established and with Registered Office at Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereinafter referred to as BCCI OVERSEAS), duly represented by the official liquidators of the company, Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, Chartered Accountants, resident in Georgetown, Cayman Islands, BWI,
  2. Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, Chartered Accountants, resident in Georgetown, Grand Cayman, Cayman Islands, BWI, acting in their capacity as official liquidators of BCCI OVERSEAS,
- V.
1. CREDIT AND FINANCE COMPANY LIMITED in compulsory liquidation, established and with Registered Office at Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereinafter referred to as CFC), duly represented by the official liquidators of the company, Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, Chartered Accountants, resident in Georgetown, Cayman Islands, BWI,
  2. Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, Chartered Accountants, resident in Georgetown, Grand Cayman, Cayman Islands, BWI, acting in their capacity as official liquidators of CFC,
- VI.
1. INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED in compulsory liquidation, established and with Registered Office at Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereinafter referred to as ICIC OVERSEAS), duly represented by the official liquidators of the company, Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, Chartered Accountants, resident in Georgetown, Cayman Islands, BWI,
  2. Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, Chartered Accountants, resident in Georgetown, Grand Cayman, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC OVERSEAS,
- VII.
1. ICIC HOLDINGS LIMITED in liquidation, established and with Registered Office at Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereinafter

referred to as ICIC HOLDINGS), duly represented by the official liquidators of the company, Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, Chartered Accountants, resident in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, Chartered Accountants, resident in Georgetown, Grand Cayman, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC HOLDINGS,

VIII.1. ICIC INVESTMENTS LIMITED in liquidation, established and with Registered Office at Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereinafter referred to as ICIC INVESTMENTS), duly represented by the official liquidators of the company, Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, Chartered Accountants, resident in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, Chartered Accountants, resident in Georgetown, Grand Cayman, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC INVESTMENTS,

IX. 1. ICIC APEX HOLDING LIMITED (in liquidation), established and with Registered Office at Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereinafter referred to as ICIC APEX), duly represented by the official liquidators of the company, Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, Chartered Accountants, resident in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, Chartered Accountants, resident in Georgetown, Grand Cayman, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC APEX,

X. 1. BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A. in liquidation, established and with Registered Office at 5, rue Höhenhof, Luxembourg-Senningerberg,

2. BCCI HOLDINGS (LUXEMBOURG) S.A. in liquidation, established and with Registered Office at 5, rue Höhenhof, Luxembourg-Senningerberg,

Respondents for the purposes of a notice of appeal lodged on 28 April 1995 by Michelle Thill, Process Server established in Luxembourg,

subsequent to representation at law by Maître Georges Baden, Counsellor-at-Law and List I Court Advocate, assisted by Maître Georges Ravarani, Counsellor-at-Law and List I Court Advocate, both resident in Luxembourg,



electing domicile at the offices of Maître Georges BADEN, Counsellor-at-Law and List I Court Advocate, assisted by Maître Georges RAVARANI, Counsellor-at-law and List I Court Advocate, both resident in Luxembourg,

I, the Undersigned, Michelle THILL, Process Server resident in Luxembourg, duly registered with the District Court of and in Luxembourg,

served on and left a certified true copy with

the State Public Prosecutor attached to the Court of Appeal of the Grand Duchy of Luxembourg at his general office, Appeal Court building, 12, Côte d'Eich, Luxembourg,

of the full facts forming the basis of a judgment pronounced after hearing and argument between all parties by the Court of the Appeal of the Grand Duchy of Luxembourg, First Division, after sitting in a matter of compulsory company liquidation on twentieth December one thousand nine hundred and ninety-five in the case listed as numbers 17 762 and 17 948 and pending between the applicant parties, the notified party, and:

- I.    1.    Raihan Nasir MAHMUD, ex-manager, resident at 100, Woodhall Gate, Pinner, Middlesex (U.K.),
2.    Mohammad Ali QAYYUM, ex-international officer, resident at Dorset House, 105, Gloucester Place, London (U.K.),
3.    Qaiser Mansoor MALIK, ex-officer, resident at 18, Debden Close, Woodford Green, Essex (U.K.),
4.    Halida SHAFIULLAH, ex-officer, resident at Dorset House, 105, Gloucester Place, London (U.K.),

Appellants in accordance with the terms of the aforementioned appeal process officiated by Michelle Thill,

subsequent to representation at law by Maître Arsène Kronshagen, Counsellor-at-Law and List I Court Advocate, assisted by Maître Maria Dennewald, Counsellor-at-Law and List I Court Advocate, both resident in Luxembourg.

- II.   The INSTITUT MONETAIRE LUXEMBOURGEOIS, established at 63, avenue de la Liberté, Luxembourg, represented by executive director, Mr Pierre JAANS, and directors, Mr Jean-Nicholas SCHAUS and Mr Jean GUILL,

Respondent for the purposes of the aforementioned notice of appeal lodged on 28 April 1995 by Michelle Thill,

subsequent to representation at law by Maître André Elvinger, Counsellor-at-Law and List I Court Advocate resident in Luxembourg.

- III.   The GOVERNMENT OF THE EMIRATE OF ABU DHABI, represented by its Department of Finance, established in Abu Dhabi,

United Arab Emirates,

Respondent for the purposes of the aforementioned appeal process officiated by Michelle Thill,

subsequent to representation at law by Maître Louis Schiltz, Counsellor-at-Law and List I Court Advocate resident in Luxembourg,

- IV. 1. INTERFIDUCIAIRE, a firm of tax and accountancy specialists and private company, established and with Registered Office at 121, avenue de la Faïencerie, 1511 Luxembourg, represented by the currently serving executive members and managers of the same,
2. Mr Guy BERNARD, Chartered Accountant, resident at 25, rue Tony Neuman, 2241 Luxembourg,
3. Mr Carlo DAMGE, Chartered Accountant, resident at 10, rue Michel Rodange, 7248 Bereldange,
4. Mr André WILWERT, Chartered Accountant, resident at 10, rue Gustave Kahnt, 1851 Luxembourg,
5. Mr Pierre WAGNER, Tax Consultant, resident at 10, rue des Etats-Unis, 8316 Olm,
6. FIDEM, a private company, established and with Registered Office at 121, avenue de la Faïencerie, L-1511 Luxembourg, represented by the currently serving members and managers of the same,
7. Mr Bob BERNARD, Chartered Accountant, resident in Hesperange,
8. Mrs Véronique HEGER, of no formal status, widow of Eugène MULLER, resident at 7, rue du Parc, Bertrange,
9. Mrs Laurence MULLER, student, resident at 7, rue du Parc, Bertrange,
10. Mrs Michèle MULLER, student, resident at 7, rue du Parc, Bertrange,

Respondents for the purposes of the aforementioned appeal process officiated by Michelle Thill,

subsequent to representation at law by Counsel, Maître Marc Elvinger resident in Luxembourg,

- V. 1. Mr Yves Christian LAMARCHE, bank manager, resident at Golden Gate Finance, 32, Avenue des Champs-Élysées, 75008 Paris, France,
2. Mr Johan Diderik VAN OENEN, banker, resident at 17, The Avenue, Tadworth, Surrey KT 20 AY 17 [sic], England,

3. Mr Alfred HARTMANN, bank manager, resident at  
Bellerivestrasse 201, Zurich, Switzerland,

Respondents for the purposes of the aforementioned appeal  
process officiated by Michelle Thill,

subsequent to representation at law by Maître Alain Rukavina,  
Counsellor-at-Law and List I Court Advocate resident in  
Luxembourg,

such facts having been prepared and signed by Maître Georges  
BADEN, aforesaid.

For such purposes as the law provides.

COST:

Duty:	1,200.-
Trav.:	100.-
VAT:	156.-
Stamps:	1,200.-
Reg.:	500.-
TOTAL:	3,156.-
S.cop.:	} 436.-
S.VAT:	
Post:	
TOTAL:	3,592.-

[Stamp]

THILL Michelle  
Process Server  
LUXEMBOURG

PROCESS SERVICE PROCEDURES

Addressee of the process: [typewritten] The State Public Prosecutor  
attached to the Court of Appeal, Luxembourg

Date of service: In the year one thousand nine hundred and ...  
[typewritten] ninety-six, on twelfth January

This deed has been served by the undersigned process server as indicated by  
a cross and in accordance with the statements made in respect of the  
addressee at:

- o its/his/her place of domicile
- o its/his/her place of residence
- o [marked with a cross] ... its/his/her registered office
- o its/his/her elected domicile at .....
- o [typewritten] its general office .....

as indicated below.

---

A) PERSONAL SERVICE

- o Individual or actual addressee
- o Body corporate
  - on: Surname/first name(s):
  - Capacity:
  - who stated having authority to admit the copy
- o At the elected domicile, on the actual authorised representative

thus stated, such person accepted the process.

---

B) SERVICE AT DOMICILE

[Stamp: illegible]

B.I) After locating: Surname/first name(s): [handwritten] WIWINIUS,  
Jean-Claude

Capacity: [handwritten] Advocate-General

Address: [handwritten] LUXEMBOURG, 12, Côte d'Eich

thus stated, such person consented to admit the copy and acknowledge  
receipt, whereupon the undersigned process server handed to such person a  
copy of the process under sealed cover only indicating the surname, first  
name(s), capacity and address of the addressee and the stamp of the process  
server affixed over the sealing of the envelope; moreover, a copy of the  
process, together with an Attendance Advice, giving indications for the  
person to whom a copy of the process has been delivered, all under sealed  
cover only indicating the surname, first name(s), capacity and address of  
the addressee and the stamp of the process server affixed over the sealing  
of the envelope, were left at the premises.

... [Signature] .....

Endorsement by the person  
attended at the premises

---

B.II) After being unable to locate any person with capacity or consenting to  
admit the copy and acknowledge receipt insofar as:

- o no person was at the premises
- o the person present refused to state his/her surname, first name(s),  
capacity and address
- o the person present was under the age of 15
- o the person present refused to admit the copy

- o the person present was the applicant
- o the person present refused to acknowledge receipt

and after checking that the address was correct by making enquiries with:

- o the Census Office
- o the Trade and Companies Registry
- o .....

the undersigned process server left a copy of the process, together with an Attendance Advice, at the premises, advising of the process service procedures, all under sealed cover only indicating the surname, first name(s), capacity and address of the addressee and the stamp of the process server affixed over the sealing of the envelope, and moreover sent a copy of the process and Attendance Advice to the addressee by ordinary mail on ... (date) ....

---

ALL PARAGRAPHS NOT MARKED WITH A CROSS WILL BE DEEMED NOT TO HAVE BEEN WRITTEN.

OBSERVATIONS: .....

Signature of the process server: ... [signature illegible]

---

THILL Michelle  
Process Server  
LUXEMBOURG

ATTENDANCE ADVICE

It is brought to the attention of the addressee of the present Advice that the process server attended at the address and on the date indicated above for the purpose of serving a process on such addressee.

As the actual addressee could not be located

- o a copy of such process was delivered under sealed cover to [handwritten] WIWINIUS Jean-Claude aforesaid under B.I) above and a further envelope containing a copy of the process and the present Advice were left at the premises
- o the person present having refused [] to accept [] to state his/her surname, first name(s), capacity and address [] to acknowledge receipt
- o no person with capacity to admit the copy could be located at the premises

a copy of the process and of the present Advice were left at the premises and a further copy of the process and copy of the present Advice were sent to the addressee by ordinary mail.

Date: ..12.01.96..      Signature of the process server: ...[illegible]...

T H E   C O U R T   O F   A P P E A L   :

In respect of a judgment given after hearing all parties to the proceedings, namely aside from the applicants, the respondents originally summoned, including the Department of Public Prosecutions and the Institut Monétaire Luxembourgeois, together with the parties making voluntary joinder on application, by the District Court of and in Luxembourg on 31 January 1995, the wording and content of which was as follows:

**"Upon these grounds:**

The Sixth Division of the District Court of and in Luxembourg sitting in a composite matter giving judgment after hearing all parties, together with the report of Her Honour, Maryse WELTER, Judge in Bankruptcy, and the submissions of the Public Prosecutor,

orders joinder of the Applications filed respectively as listed case numbers 44 323, 44 468 and 53 642,

admits in form and declares admissible the Application directed against the State Public Prosecutor attached to the District Court of and in Luxembourg, BCCI S.A. in liquidation and BCCI S.A. HOLDINGS in liquidation pursuant to a Writ of 21 November 1994 officiated by Pierre KREMMER;

admits in form and declares admissible the Application directed against BCCI S.A. in liquidation and BCCI S.A. HOLDINGS in liquidation pursuant to a Writ of 10 October 1994 officiated by Pierre KREMMER;

declaring invalid in form the Pierre KREMMER Writs of Summons of 10 and 14 October 1994 insofar as they are directed against the State Public Prosecutor attached to the District Court of and in Luxembourg, the Institut Monétaire Luxembourgeois and the Government of the Emirate of Abu Dhabi;

and accordingly declares the Applications filed pursuant to such processes inadmissible;

declaring admissible the Applications directed against the State Public Prosecutor attached to the District Court of and in Luxembourg, the Institut Monétaire Luxembourgeois and the Government of the Emirate of Abu Dhabi pursuant to the processes of 15 and 16 November 1994 officiated by Pierre KREMMER;

stating that the Applications directed against BCCI S.A. in liquidation and BCCI S.A. HOLDINGS in liquidation pursuant to the process of 15 November 1994 are without purpose;

declaring that joinder sought respectively by the persons as set out hereunder is due and proper in form and admissible:

- 1) Raihan Nasir MAHMUD,  
Mohammad Ali QAYYUM,  
Qaiser Mansoor MALIK,  
Halida SHAFIULLAH,

- 2) Christian LAMARCHE,  
Johan Diderik VAN OENEN,  
Alfred HARTMANN,
- 3) INTERFIDUCIAIRE, a firm of tax and accountancy specialists  
and private company,  
Guy BERNARD,  
Carlo DAMGE,  
André WILWERT,  
Pierre WAGNER,  
the private company FIDEM,  
Bob BERNARD,  
Véronique HEGER,  
Laurence MÜLLER, and  
Michèle MÜLLER,

declaring that the Application filed by KREMMER process of 21 November 1994 is founded;

and accordingly approves the agreements referred to as follows:  
- the "Supplemental Pooling Agreement with ICIC Companies",  
- the "Cost and Recovery Sharing Agreement with ICIC Companies",  
- the "BCCI/ICIC Paying Agency Agreement",

and authorises the liquidators of BCCI S.A. and BCCI HOLDINGS S.A. in their due capacity to sign such agreements;

declaring that the Application seeking approval of the "agreement" negotiated between the liquidators of the BCCI-ICIC Group principal liquidations and the Government of the Emirate of Abu Dhabi in accordance with the wording resolved by exchange of correspondence of 13 July 1994 is founded;

authorising the liquidators of the principal liquidations to enter into and sign such agreement;

aggregating the costs and awarding half against the BCCI S.A. liquidation and half against the BCCI HOLDINGS liquidation, save in respect of the intervention costs remaining payable by the respective intervening parties",

notified to Raihan Nasir MAHMUD, Mohammad Ali QUAYYUM, Qaiser Mansoor MALIK and Halida SHAFIULLAH who voluntarily joined in the proceedings to oppose the original applications, lodging appeal by formal process of 28 April 1995 citing all other parties to the proceedings at first instance.

In a document of 3 November 1995 entitled "Withdrawal of proceedings" notified to those representing the Respondents, a request was made "for it to be placed on record that the Appellants are withdrawing their appeal lodged on 28 April 1995 and that in accordance with Article 403 of the Civil Code of Procedure, they undertake to pay the costs of the proceedings". This document bore the signatures of Raihan Nasir MAHMUD and Mohammad Ali QUAYYUM.

On 16 November 1995, a second document also entitled "Withdrawal of proceedings" was notified to those representing the Respondents containing an offer of withdrawal in the same terms.

This document bore the signatures of the four Appellants, MAHMUD, QUAYYUM, MALIK and SHAFIULLAH, each preceded by the handwritten words "approved by way of withdrawal of proceedings and acceptance of the judgment subject to appeal". It established the final position of the Appellants in relation to the appeal they had brought.

It is for the Court in the last instance to appraise the bearing of the same in order to drawing attendant legal conclusions in the light of the attitude adopted in this connection by the various Respondents. (Encyclopédie Dalloz, Procédure civile et commerciale, éd. 1956, section "Désistement" [Withdrawal], no. 91).

### **I. The legal nature of the withdrawal contained in the document notified on 16 November 1995**

Although entitled "Withdrawal of proceedings", the terms of the handwritten words preceding the signature of the four Appellants - "approved by way of withdrawal of proceedings and acceptance of the judgment subject to appeal" - require the document in question to be considered as a withdrawal of action, namely of the appeal action, the Appellants precluding themselves from reiterating this means of redress as would have been open to them in the event that they had simply withdrawn from the proceedings and no procedural obstacle would have prevented them from filing a new appeal (e.g. non-expiry of the time period due to an irregularity in notifying the judgment at first instance). In effect, the expression "acceptance of the judgment subject to appeal" perforce reflects a will to submit to the provisions contained in this decision at first instance.

### **II. The attitude of the various Appellants**

a) In a document referred to as the "Acceptance of withdrawal of proceedings and cross-appeal" notified to the other parties in the case on 16 November 1995, Maître Georges BADEN, assisted by Maître Georges RAVARANI, acting for:

- I. 1. Georges BADEN, Counsellor-at-Law and List I Court Advocate, resident at 7, Place du Théâtre, Luxembourg,
2. Julien RODEN, Counsellor-at-Law and List I Court Advocate, resident at 7, avenue des Archiducs, Luxembourg,
3. Brian SMOUHA, Chartered Accountant, resident at 1, Little New Street, London, Great Britain,

acting in their capacity as liquidators of BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A. (in liquidation), a public limited liability company in the form of a Société Anonyme, established and with Registered Office at 5, rue Höhenhof, Luxembourg-Senningerberg, (hereinafter referred to as BCCI), appointed as such by Order of 3 January 1992 of the Sixth Division of the District Court of and in Luxembourg,



II. 1. Jacques DELVAUX, Notary, resident at 19, rue de l'Eau, Esch-sur-Alzette,

2. Georges RAVARANI, Counsellor-at-Law and List I Court Advocate, resident at 6, rue Zithe, Luxembourg,

acting in their capacity as liquidators of BCCI HOLDINGS (Luxembourg) S.A. (in liquidation), a public limited liability company in the form of a Société Anonyme, established and with Registered office at 5, rue Höhenhof, Luxembourg-Senningerberg, (hereinafter referred to as HOLDINGS), appointed as such by Order of 18 September 1992 and 14 October 1993 of the Sixth Division of the District Court of and in Luxembourg,

III. 1. BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A. (in liquidation), established and with Registered Office at 5, rue Höhenhof, Luxembourg-Senningerberg, acting for the purposes of these presents through its English branch established at Citadel House, 5-11 Fetter Lane, London, United Kingdom, (hereinafter referred to as BCCI UK), duly represented by the liquidators of the company, Christopher MORRIS, Nicholas R. LYLE, John P. RICHARDS and Stephen J. AKERS, Chartered Accountants, resident in London, United Kingdom,

2. Christopher MORRIS, Nicholas R. LYLE, John P. RICHARDS and Stephen J. AKERS, Chartered Accountants, resident at 1, Little New Street, London, United Kingdom, acting in their capacity as liquidators of BCCI UK,

IV. 1. BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED in compulsory liquidation, established and with Registered Office at Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereinafter referred to as BCCI OVERSEAS), duly represented by the official liquidators of the company, Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, Chartered Accountants, resident in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, Chartered Accountants, resident in Georgetown, Grand Cayman, Cayman Islands, BWI, acting in their capacity as official liquidators of BCCI OVERSEAS,

V. 1. CREDIT AND FINANCE COMPANY LIMITED in compulsory liquidation, established and with Registered Office at Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereinafter referred to as CFC), duly represented by the official liquidators of the company, Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, Chartered Accountants, resident in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, Chartered Accountants, resident in Georgetown, Grand

Cayman, Cayman Islands, BWI, acting in their capacity as official liquidators of CFC,

- VI. 1. INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED in compulsory liquidation, established and with Registered Office at Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereinafter referred to as ICIC OVERSEAS), duly represented by the official liquidators of the company, Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, Chartered Accountants, resident in Georgetown, Cayman Islands, BWI,
2. Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, Chartered Accountants, resident in Georgetown, Grand Cayman, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC OVERSEAS,
- VII. 1. ICIC HOLDINGS LIMITED in liquidation, established and with Registered Office at Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereinafter referred to as ICIC HOLDINGS), duly represented by the official liquidators of the company, Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, Chartered Accountants, resident in Georgetown, Cayman Islands, BWI,
2. Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, Chartered Accountants, resident in Georgetown, Grand Cayman, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC HOLDINGS,
- VIII.1. ICIC INVESTMENTS LIMITED in liquidation, established and with Registered Office at Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereinafter referred to as ICIC INVESTMENTS), duly represented by the official liquidators of the company, Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, Chartered Accountants, resident in Georgetown, Cayman Islands, BWI,
2. Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, Chartered Accountants, resident in Georgetown, Grand Cayman, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC INVESTMENTS,
- IX. 1. ICIC APEX HOLDING LIMITED (in liquidation), established and with Registered Office at Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereinafter referred to as ICIC APEX), duly represented by the official liquidators of the company, Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, Chartered Accountants, resident in Georgetown, Cayman Islands, BWI,
2. Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and

Richard DOUGLAS, Chartered Accountants, resident in Georgetown, Grand Cayman, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC APEX,

- X. 1. BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A. in liquidation, established and with Registered Office at 5, rue Höhenhof, Luxembourg-Senningerberg,
2. BCCI HOLDINGS (LUXEMBOURG) S.A. in liquidation, established and with Registered Office at 5, rue Höhenhof, Luxembourg-Senningerberg,

stated on behalf of their clients that such clients "hereby accept withdrawal of the main appeal notified by the Appellants, together with an offer to pay costs, and that where necessary, further to the official recording of such withdrawal of the main appeal, shall withdraw their counterclaim". This document bore the signatures of all parties represented by Maître BADEN and Maître RAVARANI. In consequence, this acceptance pursuant to private judicial law properly applied, given the express approval given in this regard by such clients, sought in this case together with their counterclaim - damages for vexatious appeal - from which they moreover and where necessary withdrew, it is additionally true that acceptance of a principal withdrawal, irrespective of the nature and bearing thereof, destroys any counterclaims attaching to the same (same publication, same reference, nos. 54 and 98). Hence, withdrawal of the counterclaim becomes devoid of purpose.

b) By submissions notified on 16 November 1995, the representative of the Respondent, the Government of Abu Dhabi represented by its Department of Finance, requested that it be placed on record that such party "accepts withdrawal of the parties of Maître KRONSHAGEN notified by the same on 16 November 1995". These submissions were only signed by the representative of this Respondent.

Given that as a party summoned at first instance, this party concurred in the submissions made at first instance by the original applicants, and that as a Respondent in the appeal proceedings, in submissions notified on 28 June 1995, concluded in favour of confirmation of the referred judgment and was by acceptance accordingly precluded from appealing such decision, its consent to the proposed withdrawal is not required.

c) By submissions of 8 November 1995, the representative of the firm of tax and accountancy specialists and private company, INTERFIDUCIAIRE, Guy Bernard, Carlo DAMGE, André WILWERT, Pierre WAGNER, the private company, FIDEM, Bob BERNARD, Véronique HEGER, Laurence MULLER and Michèle MULLER asked for it to be placed on record "that they accept the withdrawal of proceedings proposed by the Appellants".

This acceptance clearly relates to the first withdrawal document issued on 3 November 1995 and no formal acceptance followed in relation to the withdrawal contained in the document of 16 November 1995. It was only signed by the representative of the

Respondents.

Disregarding any irregularity of form, the Court considers that consent to the withdrawal on the part of these Respondents is not required in the light of their attitude in the appeal proceedings.

As explained earlier, the withdrawal of the Appellants as such transpires from the document of 16 November 1995 must be considered as a withdrawal of action.

In principle, a withdrawal of action which destroys the main claim also destroys any attendant interference proceedings.

It is true that this rule only applies to intervention of a purely interim, protective nature, with aggressive intervention where the intervening parties seek adjudication of the dispute pending between the principal parties, being able to survive withdrawal of the main applicant insofar as rights independent of their own form the supporting basis.

In the case in point, the Respondents concerned made voluntary joinder at first instance and their intervention accepted as admissible by the judges then adjudicating was to be deemed aggressive in that they opposed the original applications allowed by this Court.

As Respondents in the appeal proceedings, they had prior to the present debate on withdrawal, asked for it to be placed on record that they did not intend to submit on the main issue, their attitude accordingly being to interpret the same as a purely passive, interim development (cf. same work, same reference, no. 102).

d) The same considerations apply in respect of parties Yves Christian LAMARCHE, Johan Diderik van OENEN and Alfred HARTMANN who making voluntary joinder in the proceedings at first instance opposing the initial claims (cf. application of 30 November 1994) had, as Respondents, also asked for it to be placed on record that they did not intend to contend the main issue and whose representative had under his sole signature stated that the first withdrawal document was accepted (cf. submissions notified on 13 November 1995).

e) In an inter-Counsel document entitled "Submissions" notified on 19 October 1995, the Respondent, the Institut Monétaire Luxembourgeois, referred to itself as an "interpleading party in receipt of notice of appeal of 28 April 1995 served by Michelle THILL, Process Server", pointing out in substance in this document that it did not consider itself to be a party to the proceedings in accordance with the legal provisions instituting the same in that it was a supervisory watchdog of the financial sector, the duties of which are performed solely in the public interest.

Referring to this capacity in a document notified on 16 November 1995 headed "Observations", the Institut Monétaire Luxembourgeois considered that it was not for it to accept or

refuse the withdrawal of the Appellants.

Disregarding the issue of ascertaining whether this problem falls within the scope of the Court within the context of the withdrawal proceedings, it has nonetheless sought to highlight the potential problem pertaining to public policy by asserting that the withdrawal of the Appellants would be the result of an agreement between the Appellants and the liquidators of BCCI OVERSEAS from which they would derive benefits which within the context of the so-called "Pooling Agreement", whereby the assets and liabilities of BCCI OVERSEAS and BCCI S.A. would in the final analysis be aggregated, would be in breach of the principle of equality among creditors.

Case documents, more especially explanations given by Maître Georges BADEN in his submissions of 16 November 1995, point to the agreement in question having been negotiated by the liquidators of foreign legal entities placed under the control of foreign Courts and jurisdictions, and to such liquidations at the present stage being entirely independent, the liquidators of BCCI S.A. and BCCI HOLDINGS having no right of intervention in the method of administering foreign liquidators. Such foreign status implies that the Luxembourg Courts clearly have no power of control.

The Court considers that the underlying conditions of the withdrawal challenged by the Institut Monétaire Luxembourgeois are extrinsic in relation to these proceedings and that Luxembourg public policy is not directly in question in terms of the offer and acceptance of withdrawal currently put before it.

f) By document of 16 November 1995, the representative of the Department of Public Prosecutions made submission in the following terms:

"for it to be placed on record that the Department of Public Prosecutions acting not as a principal party with an interest in the subject of litigation but as a joined party assigned to ensure compliance with the legal rules of public policy and insofar as it is qualified to respond to appeal withdrawals and corresponding acceptance of such withdrawals, does not intend to oppose the same in the light of the acceptance of the appeal withdrawal of the Appellants by the liquidators in their capacity as legal representatives bound by the legal obligations implicit in their appointment".

On all such considerations, the Court allows the withdrawal of the Appellants as set forth above.

#### U P O N   T H E S E   G R O U N D S   :

The Court of Appeal, First Division, sitting in a matter of compulsory company liquidation ruling after hearing all parties in the case, including the representative of the Department of Public Prosecutions,

places on record for the parties of Maîtres Maria DENNEWALD and Arsène KRONSHAGEN their withdrawal to be regarded as a withdrawal of action,

places on record for the parties of Maître Georges BADEN, assisted by Maître Georges RAVARANI, their acceptance of such withdrawal,

stating to be without purpose the withdrawal of their counterclaim made where necessary by the parties of Maître Georges BADEN, assisted by Maître Georges RAVARANI,

confirming that there is no requirement for such withdrawal to be accepted by the other parties in the case,

ordering the withdrawal so regarded to undergo such consequences as the law provides,

and where appropriate, ordering the parties of Maître Maria DENNEWALD and Arsène KRONSHAGEN to pay the costs of the abandoned action incurred in the appeal proceedings,

further ordering such parties to pay the costs of the present judgment,

instructing that costs be set aside in favour of Maître Georges BADEN, assisted by Maître Georges RAVARANI, and Maître Louis SCHILTZ, contending Counsel who request the same, confirming having advanced such costs.

Signed: THILL, BELLOT



Pronounced, adjudicated and executed accordingly by the Court of Appeal of the Grand Duchy of Luxembourg, First Division, sitting in a civil matter at a public hearing on twentieth December one thousand nine hundred and ninety-five at the Law Courts of the Palais de Justice, 12 Côte d'Eich, Luxembourg:

Members of the Bench:

Marc THILL, Division President,  
Marie-Jeanne HAVE, Leading Counsel,  
Fernand BOSSELER, Counsel,  
Jean-Pierre KLOPP, First Advocate-General,  
Armand BELLOT, Clerk of the Court.

Signed: THILL, BELLOT.

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Ordering all Process Servers and Officers at such behest to enforce the present judgment;

and Our State Public Prosecutor and Public Prosecutors attached to the District Courts to assist the same;

together with all police superintendents and officers where required by law.

IN WITNESS WHEREOF, the present judgment has been signed and sealed with the seal of the High Court of Justice.

By way of certified true copy,

issued on request to Maître Georges BADEN, Counsel for the Respondents, Georges BADEN and jointly interested parties I) to X).

Luxembourg, 17 January 1996

Chief Clerk of the Court,

[Signed]

Marcel LANNERS

[Handwriting: Let a copy of the foregoing judgment be notified subject to all due reserves to Maîtres André ELVINGER, Louis SCHILTZ, Arsène KRONSHAGEN, Alain RUKAVINA and Marc ELVINGER, Counsellors-at-Law resident in Luxembourg.

Approved by way of original:

[Signed: Georges Baden]



s. Nicolas Bannasch  
Pour copie conforme





# Touche Ross



Mr M Rahman  
Pine Grove  
Edwin Road  
West Horsley  
Surrey

**Bank of Credit & Commerce International SA**  
**(In Compulsory Liquidation)**

Citadel House  
5/11 Fetter Lane  
London EC4A 1BR

Telephone: National 0171 583 5305  
International + 44 171 583 5305  
Fax: 0171 353 4483  
Direct Fax: 0171 353

Joint Liquidators appointed by the UK Secretary of State: C Morris, J P Richards, S J Akers and N R Lyle.  
Joint Liquidators appointed by the District Court of Luxembourg: B A Smouha, G Baden and J Roden.  
Registered in Luxembourg No. B10370.  
Registered in England No. FC7574. Registered Office: Citadel House, 5/11 Fetter Lane, EC4A 1BR.

18th November 1994

Dear Sir/Madam

**BANK OF CREDIT & COMMERCE INTERNATIONAL SA**  
**(In Compulsory Liquidation)**

As you are aware, since July 1991, discussions have been held with the Government of Abu Dhabi (representing the Majority Shareholders of BCCI Holdings (Luxembourg) SA ("Holdings")) with a view to agreeing arrangements which would improve and accelerate the return to creditors.

Agreements were initialed by the Liquidators and the Majority Shareholders in February 1992 subject to Creditors' Committee and Court approval. Those Agreements were approved by the courts in England and Cayman in the summer of 1992, and later that year by the Luxembourg District Court. In October 1993, following an appeal by certain creditors against that approval in Luxembourg, the Court of Appeal allowed an appeal primarily on the grounds that certain provisions of the Agreements were contrary to Luxembourg "order public".

Thereafter, the Liquidators (accompanied by an observer from the Luxembourg and English Creditors' Committees) entered into further discussions with representatives of the Majority Shareholders. As a result of those discussions, a draft of a proposed new Agreement with Abu Dhabi was finalised on 13th July 1994. The Proposed Agreement will result in the Government of Abu Dhabi, on behalf of the Majority Shareholders of Holdings, paying US \$1,800 million to the Luxembourg Liquidators, the Cayman Liquidators, the CFC Liquidators, the English Liquidators and the ICIC Liquidators for distribution to ordinary unsecured creditors of BCCI SA, BCCI Overseas, CFC, BCCI Holdings and the ICIC Companies.

Aberdeen, Bath, Belfast, Birmingham, Bournemouth, Bracknell, Bristol, Cambridge, Cardiff, Crawley, Dartford, Edinburgh, Glasgow, Leeds, Leicester, Liverpool, London, Manchester, Milton Keynes, Newcastle upon Tyne, Nottingham and Southampton.

Principal place of business at which a list of partners' names is available:  
Stonecutter Court, 1 Stonecutter Street, London EC4A 4TR.

Authorised by the Institute of Chartered Accountants in England and Wales to carry on investment business.



**Deloitte Touche  
Tohmatsu  
International**

A summary of the Proposed Agreement is attached.

The Proposed Agreement has been unanimously approved by those members of the English Liquidation Committee, the Luxembourg Creditors Committee of BCCI SA, the Luxembourg Creditors' Committee of BCCI Holdings and the BCCI Overseas Creditors' Committee who voted. Representatives of the Majority Shareholders, who have an interest in the Proposed Agreement, did not vote and one other creditor chose to take no position on the Proposed Agreement, neither voting nor abstaining.

The Liquidators have also had extensive discussions with the Liquidators of the principal ICIC Group Companies and have agreed that, given the extent to which the affairs of the principal BCCI and ICIC Companies were commingled, the only practical and efficient way of conducting the liquidation of those companies, is to enter into a further pooling agreement between the principal BCCI and ICIC companies. The terms of the Proposed Agreement with the Government of Abu Dhabi were reached in anticipation of and on the basis that pooling arrangements would be entered into between the BCCI and ICIC companies party to the Proposed Agreement. The arrangement also therefore involves a Proposed ICIC Pooling Agreement whereby the assets of the principal BCCI Companies and the principal ICIC Companies will be pooled and distributed rateably amongst creditors. A summary of the Proposed ICIC Pooling Agreement is also attached.

This letter and its attachments summarise the arrangements and provide notification of the hearing dates on which the courts will consider the arrangements.

#### COURT HEARINGS

The court in Luxembourg will consider whether to approve the Proposed Agreement with the Majority Shareholders and the Proposed ICIC Pooling Agreement at hearings to be held on 30 November and 1 December 1994.

The High Court in London will consider whether to give such approval at a hearing on 19 December 1994 at 9.30 am.

The Cayman Islands Court will consider approval hearings to be held on 12 and 13 January 1995.


Any creditor who requires further information concerning, or intends to appear or be represented at, the court hearings should contact Creditors Claims Department, BCCI SA, Citadel House, 5-11 Fetter Lane, London EC4A 1BR, or telephone the BCCI Advice Line on 071 583 5305.



## SUBMISSION OF CLAIMS

The Liquidators have already written to you concerning the procedure for establishing claims and have provided you with Proof of Debt forms. If you have not yet received a Proof of Debt form and would like to submit a claim, please write to the Liquidators at Citadel House, 5-11 Fetter Lane, London, EC4A 1BR.

The receipt of this letter does not constitute an admission by the Liquidators that you are a creditor of any of the BCCI Group Companies.



C Morris  
J P Richards  
S J Akers  
N R Lyle

Joint Liquidators of BCCI SA appointed by the Secretary of State in England.

**BANK OF CREDIT AND COMMERCE INTERNATIONAL (IN LIQUIDATION)  
NOTICE TO CREDITORS**

**Proposed Agreement with Majority Shareholders  
and Pooling Agreement with ICIC**

The Liquidators of Bank of Credit and Commerce International SA ("BCCI SA"), Bank of Credit and Commerce International (Overseas) Ltd ("BCCI Overseas") and Credit and Finance Corporation Ltd ("CFC") are in the process of sending out letters (with attachments) to creditors relating to:

- a Proposed Agreement with the Government of Abu Dhabi on behalf of the Majority Shareholders of BCCI Holdings (Luxembourg) SA ("Holdings") under which US \$1,800 million will be paid to the Liquidators of BCCI SA, BCCI Overseas, CFC, Holdings and the principal ICIC Companies for distribution to unsecured creditors;
- a Proposed Pooling Agreement whereby the assets of the principal BCCI Companies and the principal ICIC Companies will be pooled and distributed rateably amongst creditors.

The court in Luxembourg will consider whether to approve the Proposed Agreement with the Majority Shareholders and the Proposed ICIC Pooling Agreement at hearings to be held on 30 November and 1 December 1994.

The High Court in London will consider whether to give such approval at a hearing on 19 December 1994 at 9.30 am.

The Cayman Islands Court will consider approval at hearings to be held on 12 and 13 January 1995.

**If any creditor requires further information, or intends to appear or be represented at the court hearings, he or she should contact, for BCCI SA - England, Creditors Claims Department, Citadel House, 5-11 Fetter Lane, London EC4A 1BR; for BCCI SA and BCCI Holdings (Luxembourg) SA, Airport Centre, 5 Rue Hohenhof, L-1736 Senningerberg, Luxembourg; for BCCI Overseas and CFC, the Creditors Group, PO Box 1359, One Capital Place, George Town, Grand Cayman, Cayman Islands, BWI.**

**Submission of Claims**

If any creditor has not yet received a proof of debt form and would like to submit a claim, please write to the appropriate Liquidators at one of the addresses noted above.

This notice **ONLY** applies to BCCI SA and BCCI Overseas and their branches and to CFC.