Touche Ross

BANK OF CREDIT AND COMMERCE
INTERNATIONAL SA (IN LIQUIDATION)

JOINT LIQUIDATORS REPORT

25TH NOVEMBER 1994

Deloitte Touche
Tohmatsu
International

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(In Compulsory Liquidation)

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25th November 1994

High Court of Justice
Companies Court
Chancery Division
Strand
London
WC2A 2LL

A. INTRODUCTION

1. This Report is made by the Liquidators of Bank of Credit and Commerce International SA ("BCCI SA") appointed by the Secretary of State pursuant to the Insolvency Act 1986 ("the Liquidators"). This Report has been prepared in conjunction with the liquidators of:-

1.1 BCCI SA and BCCI Holdings (Luxembourg) SA appointed by the District Court of Luxembourg ("the Luxembourg Court"); and

1.2 Bank of Credit and Commerce International (Overseas) Limited, Credit and Finance Corporation Limited, International Credit and Investment Company (Overseas) Limited, ICIC Holdings Limited, ICIC Investments Limited and ICIC Apex Holding Limited appointed by the Grand Court of the Cayman Islands.

2. A list of the principal abbreviations and definitions used in this Report is set out in Appendix I.

3. This Report is prepared in support of the application by the Liquidators due to be heard on 19th December 1994 for directions and orders approving the Revised Agreement with the Majority Shareholders of BCCI Holdings and the agreement between the Principal BCCI Companies and the Principal ICIC Companies for the Pooling of their respective assets. The particular directions and orders sought by the Liquidators are:

3.1 That the Liquidators be authorised and empowered to execute the agreements substantially in the form of the drafts appearing in the separate bundle marked "A" and to do and execute all such documents, acts and things as may be necessary or desirable to:

3.1.1 implement and bring and carry the same into full force and effect in all respects; and

3.1.2 comply with and perform each of their obligations thereunder in accordance with their respective terms.

3.2 That for that purpose the agreements substantially in the form of the drafts appearing in the separate bundle marked "A" be approved.

4. The purpose of this Report is to set out the reasons why the Liquidators consider that the orders and directions sought should be

made and to set out those facts and matters which are in the Liquidators' view material to the application on 19th December 1994 and which they consider can and should be made public. This report is divided into the following sections:

B. Developments since June 1992

This section sets out material developments since the Vice-Chancellor's order dated 12th June 1992.

C. The Agreements

This section describes the structure and principal features of the proposed agreements and sets out their potential advantages and disadvantages and contains a comparison with the Agreements previously put before the Court.

D. Financial Evaluation of the Agreements

This section sets out the estimated outcome if the agreements are implemented.

E. Conclusion and Recommendations

This section sets out the Liquidators' conclusion and recommendations.

F. Directions and Orders Sought

This section sets out the particular directions and orders to be sought on 19th December 1994.

5. The Luxembourg Court will consider whether to authorise the Liquidators of BCCI Holdings and BCCI SA appointed by the Luxembourg Court ("the Luxembourg Liquidators") to sign the agreements referred to above following hearings to be held on 30th November and 1st December 1994. The Cayman Court will consider whether to authorise the Liquidators of BCCI Overseas, CFC and ICIC appointed by the Cayman Court (collectively "the Cayman Liquidators") to sign the agreements referred to above at hearings to be held on 12th and 13th January 1995.

6. Some of the information contained in this Report is the subject of earlier Reports to the Court, and in particular the Report dated 16th March 1992 ("the March 1992 Report"). Where considered appropriate and for the sake of convenience, certain passages of the March 1992 Report have been repeated (subject to revision where appropriate) in this Report.

B. DEVELOPMENTS SINCE JUNE 1992

Court process

7. In February 1992 the Liquidators initialled Agreements (subject to

court approval) with the Majority Shareholders under which the Government of Abu Dhabi would make funds available, subject to conditions, for distribution to certain unsecured creditors of the Principal BCCI Companies ("the Original Agreement"). At the same time the Liquidators initialled a Pooling Agreement whereby the assets of BCCI Holdings and its subsidiaries BCCI SA, BCCI Overseas and CFC, including any branches of BCCI SA and BCCI Overseas which participated, would be pooled and distributed rateably amongst creditors ("the Pooling Agreement"). The Original Agreement and the Pooling Agreement, the subject of the March 1992 Report, were approved by the courts in England and the Cayman Islands on 12th and 19th June 1992 respectively. A copy of the order made by the High Court on 12th June 1992 is attached as Appendix II. An Appeal to the Court of Appeal against that order was dismissed on 17th July 1992. Copies of the judgments of the Vice-Chancellor and the Court of Appeal are included in Appendix II.

8. On 22nd October 1992, the Luxembourg Court made an order approving the Original Agreement and the Pooling Agreement. In the case of the latter, there were certain changes to the form as approved by the High Court and the Cayman Court by the deletion of the choice of law and jurisdiction provisions. Directions were given by the Cayman Court on 14th October 1992 authorising the Overseas Liquidators to execute the Pooling Agreement as amended, and by the High Court on 18th December 1992 to the same effect as regards the Liquidators.

9. In December 1992, three creditors appealed to the Court of Appeal in Luxembourg against the decision of the Luxembourg Court. On 27th

October 1993, the Court of Appeal in Luxembourg allowed the appeal in relation to the Original Agreement principally on the grounds that certain provisions were contrary to Luxembourg "ordre public". The appeal against the Pooling Agreement was withdrawn prior to the hearing and formally dismissed on 27th October 1993.

The Re-negotiations

10. Thereafter, the Liquidators, the Luxembourg and the Cayman Liquidators, accompanied by an observer from the Luxembourg and English Creditors Committees, entered into discussions with representatives of the Majority Shareholders. On 3rd March 1994, non-binding Heads of Agreement were exchanged. On 13th July 1994, a draft agreement was agreed upon by the parties, a copy of which is included in Bundle "A" and a summary of which appears at Appendix III ("the Revised Agreement").

Abu Dhabi Settlement with the US Authorities ("the Geneva Agreement")

11. An agreement was signed in Geneva on 8th January 1994 between the United States Department of Justice, the New York District Attorney, the Board of Governors of the Federal Reserve System, (the "US Authorities"), the Trustee of First American Corporation, First American Bankshares Inc and the Majority Shareholders, Sheikh Sultan bin Zayed Al Nahyan, Sheikh Mohammed bin Zayed Al Nahyan, the Department of Private Affairs of Sheikh Zayed, and the members of the Board of Directors of ADIA ("the Abu Dhabi Parties") whereby, the Abu Dhabi Parties agreed (inter alia):

- to forego repayment of US$236 million in financing they had provided to prevent a failure of First American Bankshares Inc. In addition, Sheikh Zayed, his family, and ADIA have agreed to forego their interest in shares in First American Bankshares Inc.

- to withdraw a claim to approximately US$96 million which had been forfeited under the forfeiture orders made pursuant to the Plea Agreement.

- to deliver all the original books and records of BCCI and ICIC that were within their possession custody or control, to the Liquidators. The Abu Dhabi parties have confirmed that the Liquidators have now received all those documents.

Certain additional advantages to creditors arising out of the position in the United States will also flow from the Revised Agreement as is explained in paragraph 22.

Views of the Creditors Committees

12. On 22nd September 1994, after many weeks of discussion and consultation, all members of the English Liquidation Committee (apart from the ADIA representative who, being a party to the Revised Agreement, was not eligible to vote and did not attend the relevant meetings), voted in favour of the Revised Agreement. On 28th September 1994 all members of the Luxembourg Creditors Committees of BCCI SA and BCCI Holdings voted in favour of the Revised Agreement

(apart from one member who did not express a view and the ADIA representative who did not attend). All members of the Creditors' Committee of BCCI Overseas have also voted in favour of the Revised Agreement, apart from the ADIA representative, who was not eligible to vote.

13. On 9th November 1994 all members of the English Liquidation Committee voted in favour of the ICIC Pooling Agreement. On 11th November 1994 all members of the Luxembourg Creditors' Committees of BCCI SA and BCCI Holdings also voted in favour of the ICIC Pooling Agreement.

Pooling

14. The Pooling Agreement between BCCI SA, the Luxembourg Liquidators, BCCI Overseas, the Overseas Liquidators and the Liquidators, approved by the courts in England, Luxembourg and Cayman has now been executed.

15. Participation Agreements between BCCI SA, the Luxembourg Liquidators, BCCI Overseas, and the Overseas Liquidators on the one hand and the Liquidators of BCCI Holdings and CFC on the other hand have also been executed.

16. Since the approval of the Pooling Agreement by the courts ICIC Investments, ICIC Holdings and ICIC Apex were placed in liquidation by the Cayman Court on 9th July 1993, 9th July 1993 and 11th May 1994 respectively. Ian Wight, Robert Axford, Michael Mackey and Richard Douglas, all partners of Deloitte & Touche, were appointed Liquidators.

17. The Liquidators of the Principal BCCI Companies have had extensive discussions with the Liquidators of the Principal ICIC Companies. Given the extent to which the affairs of the Principal BCCI and ICIC Companies were commingled, the Liquidators of those companies consider that the only practical and efficient way of conducting the liquidations is to enter into a further pooling agreement between the principal BCCI and ICIC Companies.

18. The terms of the Revised Agreement 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 Revised Agreement.

19. Accordingly it is proposed that the pooling arrangements already approved by the Courts be supplemented to include the Principal ICIC Companies. A copy of the draft ICIC Pooling Agreement is included in Bundle "A".

C. THE AGREEMENTS

Overall structure of agreements

20. The proposed agreements may be broadly categorised as follows:

20.1 An Agreement with the Majority Shareholders ("the Revised Agreement") under which the Government of Abu Dhabi will make funds available to the Luxembourg Liquidators, Cayman Liquidators and the Liquidators

for distribution to creditors of the Principal BCCI and ICIC Companies.

20.2 The ICIC Pooling Agreement whereby the Principal ICIC Companies will participate in the Pooling Agreements with the result that the assets of the Principal ICIC Companies will be pooled with the assets of the Principal BCCI Companies and distributed rateably amongst the creditors of those companies and there will be mutual covenants not to sue.

The Revised Agreement

21. The principal features of the Revised Agreement are:

21.1 The Government of Abu Dhabi will pay US$1,800,000,000 to the Liquidators of the Principal BCCI and ICIC Companies.

21.2 The Principal BCCI and ICIC Companies will give releases or covenants not to sue in relation to all claims they may have against the Government of Abu Dhabi and Majority Shareholders and Related Persons (other than claims to recover debts arising in the ordinary course of business shown in their books).

21.3 The Government of Abu Dhabi, the Majority Shareholders and Related Persons will give releases and/or covenants not to sue in relation to claims they may have against the Principal BCCI and ICIC Companies (other than claims by various Abu Dhabi entities to recover debts arising in the ordinary course of business shown on the books of the Principal BCCI and ICIC Companies).

21.4 In relation to the UAE branches of BCCI SA the Revised Agreement permits the UAE Liquidator to participate in the Pooling Agreements if he so requests subject to such amendments as may be required or desirable. If so the Government of Abu Dhabi will pay to the Principal Liquidators a sum which will enable the admitted UAE Branch creditors to be paid a dividend equal to the other creditors of the BCCI/ICIC Group insofar as the assets of the UAE Branches are insufficient on their own for that dividend to UAE Branch creditors to be paid. The sum will equate to the cost of the dividends to be paid on the liabilities of the UAE Branches over US$540 million, having taken into account the assets of the UAE Branches.

21.5 BCCI Holdings agrees to transfer its 40 per cent interest in UNB to the Government of Abu Dhabi or its nominee. The Liquidators' assessment of the interest is that it is not marketable other than to the Government of Abu Dhabi.

21.6 The Principal BCCI and ICIC Companies agree to give a limited indemnity to the Majority Shareholders and certain Related Persons (the "Abu Dhabi Parties") against any liability they have to a third party as a result of that third party having been sued successfully by the BCCI or ICIC Companies. If the BCCI and ICIC Companies successfully sue a third party under a claim (other than a claim arising under a transaction of a normal banking nature) and the third party successfully claims over against the Abu Dhabi Parties in relation to that claim, the Principal BCCI and ICIC Companies will pay to the Abu Dhabi Parties by way of indemnity the amount actually

recovered by the BCCI and ICIC Companies from the third party, or the amount paid by the Abu Dhabi Parties to the third party, whichever is the lower. The Principal BCCI and ICIC Companies have no liability under this Clause if a third party claims over against the Abu Dhabi Parties more than five years (or in certain circumstances seven years) after completion. The Principal BCCI and ICIC Companies' liability under the indemnity to the Abu Dhabi Parties is limited to a maximum aggregate amount of US$450 million. For the purposes of the indemnity, a third party excludes (inter alia) the Institut Monetaire Luxembourgeois and the Bank of England.

21.7 The Majority Shareholders and certain Related Parties agree to indemnify the Principal BCCI and ICIC Companies against any liability they may have to a third party as a result of the Majority Shareholders or relevant Related Parties having successfully sued that third party. If the Abu Dhabi Parties successfully sue a third party under a claim (other than a claim arising under a transaction of a normal banking nature) and the third party successfully claims over against the Principal BCCI and ICIC Companies in relation to that claim, the Abu Dhabi Parties will pay to the BCCI and ICIC Companies by way of indemnity, the amount actually recovered by the Abu Dhabi Parties from the third party, or the amount paid by the BCCI and ICIC Companies to the third party, whichever is the lower. The Abu Dhabi Parties have no liability under this Clause if a third party claims over against the BCCI and ICIC Companies more than five years (or in certain circumstances seven years) after completion. There is no limit on the amount which the Principal BCCI and ICIC Companies can recover from the Abu Dhabi Parties under this indemnity.

21.8 The Majority Shareholders agree for themselves, and will procure that UNB will agree, to waive any right to receive a dividend from monies flowing to the Liquidators as a result of the Plea Agreement made with the US Authorities, from funds which have been, are now or may in the future be held by the US Authorities as a result of any legal proceedings brought against any third party relating to the BCCI affair, or as a result of the Geneva Agreement.

21.9 The Revised Agreement will not become legally binding until it is executed. The Government of Abu Dhabi has stated that the Revised Agreement will not be executed unless a number of conditions are met. These conditions are that (a) the Liquidators obtain requisite court approvals and authorisations; (b) the Government of Abu Dhabi obtain requisite approvals and authorisations; (c) the Pooling Agreement and the proposed ICIC Pooling Agreement are executed; and (d) certain claims and debts arising in the ordinary course of banking business owed to the Majority Shareholders and various related entities are admitted in the relevant liquidations to a value of at least US$1,250 million as ordinary unsubordinated claims before or at the time of execution of the Revised Agreement.

21.10 A more detailed description of the specific terms of the Revised Agreement is set out in Appendix IV to this Report.

22. Benefits of the Revised Agreement

The principal benefits of the Revised Agreement on its being executed are as follows:

22.1 The estimated return to creditors will increase as a result of :

22.1.1 The payments totalling US$1.8 billion to be made by the Government of Abu Dhabi;

22.1.2 The waiver by the Majority Shareholders of any right to receive a dividend from US monies.

22.1.3 The contribution by the Government of Abu Dhabi towards the dividend payable to the UAE Branch creditors.

22.2 The Principal BCCI and ICIC Companies (and their creditors) will benefit from the release of substantial potential claims by the Majority Shareholders against those companies. The only exception to the releases by the Majority Shareholders is that they do not include the release of claims to recover any claims and debts arising from normal banking transactions in the ordinary court of business and appearing in the books of the Principal BCCI and ICIC Companies.

22.2.1 The Liquidators are advised by their legal advisers that it would be inappropriate for the purposes of their Report to provide a detailed assessment of claims by the Majority Shareholders because to do so might be prejudicial to the interests of creditors were the Revised Agreement not to become unconditional. There are however certain matters which the Liquidators are advised may properly be disclosed.

22.2.2 One or more of the Majority Shareholders claims to have tracing or other proprietary claims and other claims against the Principal BCCI and ICIC Companies. These claims arise from the alleged misappropriation and misapplication by former officers of the BCCI Group of principal sums totalling in excess of US$2,000 million deposited with ICIC Overseas which belonged to one or more of the Majority Shareholders. These funds were allegedly misapplied for the benefit of the BCCI Group.

22.2.3 Any claim by the Majority Shareholders based on the above allegations could have serious adverse consequences for the liquidations of the Principal BCCI and ICIC Companies. If such a claim were to be pursued, it would prevent any worthwhile distribution being made to creditors until it had been resolved. An unsecured claim, if made out, would substantially increase liabilities resulting in a dilution of the dividend payable to the unsecured creditors.

22.3 Despite the delays caused by the rejection of the Original Agreement there are still substantial benefits in the timing of payments to creditors if the Revised Agreement is implemented. This is especially so when it is considered that the alternative to the Revised Agreement is litigation.

22.4 Long, complicated and multinational litigation with an uncertain outcome will be avoided.

22.5 The Government of Abu Dhabi will indemnify the Liquidators and the Principal BCCI and ICIC Companies against any liability that the Liquidators may incur as a result of legal, or other proceedings, commenced by any of the Abu Dhabi Parties against any third party.

23. Disadvantages of the Revised Agreement

The principal disadvantages arising out of the Revised Agreement are as follows:

23.1 The Principal BCCI and ICIC Companies must release or covenant not to sue in relation to all claims of whatever nature they may have against the Government of Abu Dhabi, the Majority Shareholders and Related Persons arising out of the activities of the BCCI Group and ICIC (except those claims referred to in paragraph 23.1.1. below).

23.1.1 The only exception to the releases by the Principal BCCI and ICIC Companies is that they do not include releases of claims to recover any debts arising in the ordinary course of business as shown in the books of the Principal BCCI and ICIC Companies.

23.1.2 The Liquidators are advised by their legal advisers that it would be inappropriate to provide a detailed assessment of claims against the Majority Shareholders, because to do so might be highly prejudicial to the interests of creditors were the Revised Agreement not to be

implemented. The Vice-Chancellor in his judgment on 12th June 1992 said:

"I have seen on a confidential basis the legal advice given to the liquidators and also the separate legal advice to the creditors' committee. All I can say, and all I need say, is something self evident to any businessman who reads the liquidators' report and the creditors committee's report. Court proceedings in Abu Dhabi or England or Luxembourg or the United States of America, or wherever, against the Abu Dhabi Government or others in respect of these mutual claims would be likely to be protracted (five to ten years), hugely expensive and with an uncertain outcome both as to liability and as to enforceability of recovery."

The Liquidators are satisfied that this remains the position today.

23.2 The Revised Agreement does not create legally binding obligations until it is executed, and the Government of Abu Dhabi has stated that it will not be executed unless a number of conditions are met. Thus, it is possible, although the Liquidators consider it unlikely, that the Government of Abu Dhabi could refuse to sign the Revised Agreement even if the Liquidators were authorised to do so.

23.3 If the Revised Agreement is not executed for any of these reasons (or for any other reason) the costs arising, including the costs of seeking to satisfy the conditions, will have been wasted.

24. Comparison of the Revised Agreement with the Original Agreement

Although it is not possible to make an exact comparison of the monetary return to eligible creditors under the Original Agreement and of the monetary return to creditors under the Revised Agreement the Liquidators are satisfied that the terms of the Revised Agreement are at least as favourable as the terms of the Original Agreement. Further the terms of the Revised Agreement are less complex than the terms of the Original Agreement.

The principal differences between the Original Agreement and the Revised Agreement as proposed are as follows:

24.1 Amount payable by the Majority Shareholders

Under the Revised Agreement, the Majority Shareholders are to pay to the Liquidators a total of US$1.8 billion. Under the Original Agreement, the principal sum payable varied according to the value of both admitted creditor claims and realisations made by Liquidators. Based upon a formula, the contribution would vary between US$1.2 billion and US$2.2 billion. Under the Revised Agreement, the principal sum is fixed and is not linked to the value of creditors or realisations in any way.

24.2 Sharing of recoveries

The Original Agreement provided for each party to share equally in

the other's third party recoveries. Under the Revised Agreement, neither party shares in recoveries from third parties.

24.3 Indemnities

Under the Revised Agreement if the Liquidators make recoveries to which the Abu Dhabi parties have been required by third parties to contribute, such contribution, limited in aggregate to US$450 million, is to be returned to the Majority Shareholders. Under the Original Agreement, unlimited indemnities were given to the Majority Shareholders.

24.4 Under both the Original and Revised Agreements, if the Majority Shareholders make recoveries to which the Liquidators have been required by third parties to contribute, such contribution is to be returned to the Liquidators without any limit.

24.5 UAE branches

Under the Original Agreement, the UAE branches were to be dealt with by way of a separate and self-contained liquidation and were to claim in the liquidation of the Principal BCCI Companies.

Under the Revised Agreement, the UAE branches are permitted to pool with other Principal BCCI Companies. In such event the Majority Shareholders will, however, contribute sums calculated to avoid a dilution of dividend to unsecured creditors by reason of the changes from the Original Agreement. Accordingly, there is no material commercial effect as a result of these changes.

24.6 Creditor releases

The Original Agreement was conditional on creditors amounting in value to US$4.75 billion in total accepting the Majority Shareholders' offer and releasing any rights they may have had against the Majority Shareholders. Creditors who did not grant a release would not receive a distribution from the proceeds of the Original Agreement. There are no such requirements under the Revised Agreement.

24.7 US Funds assets

Under the Original Agreement, the Majority Shareholders were not disentitled from sharing as creditors in dividends arising from funds emanating from the USA. Under the Revised Agreement, Abu Dhabi has waived all rights to dividends arising from funds emanating from the USA.

24.8 Luxembourg "ordre public"

As mentioned in paragraph 9 of this report the Original Agreement was not approved by the Court of Appeal in Luxembourg on the grounds that it offended against Luxembourg "ordre public".

In negotiating the Revised Agreement the Liquidators took into account the issues raised by the Luxembourg Court of Appeal. The Liquidators are advised that no clause of the Revised Agreement should be in breach of any rule of Luxembourg "ordre public". The

matters in the Original Agreement which were of concern to the Luxembourg Court of Appeal were principally the unequal treatment of creditors arising from Abu Dhabi funds only being available to those creditors who gave releases to the Majority Shareholders and the sharing of proceeds of third party actions, certain provisions relating to set-off of claims, and the failure of Abu Dhabi to deliver up documents to the Liquidators. The question of documents has been resolved since the documents have now been delivered by Abu Dhabi to the Liquidators.

ICIC Pooling Agreement

25. The terms of the Revised Agreement were reached in anticipation of and on the basis that pooling arrangements would be entered into between the Principal BCCI and ICIC Companies party to the Revised Agreement. Further, as stated above in paragraph 21.9 the Government of Abu Dhabi has stated that the Revised Agreement will not be executed unless the ICIC Pooling Agreement is entered into.

26. The principal features of the ICIC Pooling Agreement are:

26.1 The proceeds of assets recovered by the Principal ICIC Companies and by the various Liquidators of the BCCI Companies who join the pool will be transmitted to a central pool in the same way as is already envisaged for the BCCI Companies.

26.2 The unsecured creditors of the Principal BCCI and ICIC Companies and of other companies which join in the pool will all receive the same rate of dividend from the pool in respect of their admitted claims.

26.3 Although there already exists a considerable degree of co-operation between the estates, the processing of creditors' claims will be conducted and distribution to creditors effected in a more orderly fashion by treating the liquidations of the Principal ICIC Companies as coordinated liquidations with the liquidations of the Principal BCCI Companies.

26.4 A more detailed description of the specific terms of the ICIC Pooling Agreement is set out in Appendix IV to this Report.

27 The principal benefits of the ICIC Pooling Agreement on its being executed are as follows:

27.1 The ICIC Pooling Agreement is intended to avoid so far as possible difficulties, disputes, delay and expense arising from the commingling of the affairs of the Principal BCCI and ICIC Companies .

27.2 The ICIC Pooling Agreement is intended to promote fairness by providing for all admitted creditors of the Principal BCCI and ICIC Companies to receive the same rate of dividend on their admitted claims.

27.3 Mutual covenants not to sue will be given by the Principal BCCI and ICIC Companies.

28. The Liquidators consider that the effect of the Principal ICIC Companies joining the pool will have no material adverse effect on

the return to creditors of the Principal BCCI or ICIC Companies. On the contrary, the Liquidators consider that the overall effect will be beneficial to all creditors.

Commingling of affairs

29. The ICIC Pooling Agreement represents the most (and possibly only) practicable and efficient way in which the liquidations of the companies and branches of the Principal BCCI and ICIC Companies can be carried out in the light of the way the affairs of those groups were conducted.

29.1 A summary of the structure of the group comprising the Principal ICIC Companies which contains a brief description of each company is set out in Appendix V.

29.2 The affairs of the Principal BCCI and ICIC companies were so commingled that it would be impracticable without very considerable delay and enormous expense, and might well be impossible:

(a) to determine as between each group of companies and as between companies within those groups, what property is the property of one rather than the other; or

(b) to determine what amounts, if any, are due from one company to another as a result of acts and omissions in relation to transactions which have taken place (or should have taken place) between them.

29.3 Significant claims and counterclaims are likely to exist between the Principal BCCI and ICIC Companies arising from the commingling of their affairs.

29.4 A main object of the ICIC Pooling Agreement is to avoid the difficulties, delay and expense of separating the affairs and property of the Principal BCCI and ICIC Companies and to avoid litigation between them.

30. The grounds upon which the foregoing is based include the following:

30.1.1 The Principal ICIC Companies, and in particular ICIC Overseas functioned as a bookkeeping centre for transactions initiated and co-ordinated by Abedi and Naqvi.

30.1.2 Many of these transactions were part of arrangements designed to manipulate the financial position of the BCCI Group. The principal ICIC Companies were the recipients of substantial funds from the principal BCCI Companies and in particular BCCI Overseas. The application of those funds includes:

- financing of BCCI Holdings shares and capital notes and shares in Credit and Commercial American Holdings NV (the ultimate holding company of First American Bankshares Inc) including the use of nominees (controlled, under powers of attorney, by Abedi and Naqvi and persons acting under

their direction), buy back arrangements, non-recourse arrangements and guaranteed minimum returns on "investments".

- routing of funds to disguise the true nature of transactions being undertaken and the financial effect on BCCI: in particular, funds from BCCI were routed through Principal ICIC Companies to service false and delinquent loans in the books of BCCI and to pay interest on unrecorded liabilities of BCCI.

- payment of expenses incurred by BCCI.

- many loans in ICIC's portfolio were approved by the Central Credit Committee of the BCCI Group. Loans were either transferred to Principal ICIC Companies from Principal BCCI Companies or were funded by ICIC on the instruction of the Central Credit Committee.

- other loans appear to have been booked in ICIC to cover losses sustained from trading activities incurred by the BCCI Group. In many instances, these loans were not genuine in that they did not give rise to any enforceable liability against the "borrower". Loans booked in ICIC were often reduced by transfers from BCCI.

- in some instances, security for loans booked in ICIC was either taken in the name of a BCCI company or was not

assigned to ICIC at the time the loan was transferred to ICIC from BCCI. In many instances, there were connected borrowings and deposits as between ICIC and BCCI. The treatment of transactions as between BCCI and ICIC often distorted the true financial position of the two groups. Such treatment included loan parking (i.e. recording loans made by one company in the books of another) and artificial fund transfers.

D. FINANCIAL EVALUATION OF THE AGREEMENTS

31. Any estimate of the value of future dividends to creditors is subject to fundamental uncertainties. The level of dividends will depend on the total value of creditors' claims to be admitted and the realisations available for distribution.

32. There are several significant factors affecting the value of Creditors' claims which make it difficult to predict with any certainty their total amount. The main factors affecting any estimate of the level of creditors' claims to be admitted are:-

32.1 Pooling Branches and subsidiaries

It is not known with any certainty, at the present time, which branches and subsidiaries of the Principal BCCI Companies will participate in the pooling arrangements.

32.2 Creditors of non-pooling branches

Creditors of branches who do not pool will still be eligible to claim in the liquidations of BCCI SA or BCCI Overseas although they will have to give credit for any sums they have been paid in the local liquidation.

32.3 Unclaimed balances

The Liquidators believe that there are still a large number of creditors who have not yet made claims. The Liquidators expect that a significant proportion of such creditors will make claims after the Liquidators declare their intention to pay a dividend.

32.4 Adjudication of claims

There are a substantial number of claims which the Liquidators may seek to reject for a wide variety of reasons. For example, the Liquidators believe that there are a significant number of duplicated claims. Any claim rejected or partially rejected by the Liquidators may be subject to appeal to the courts.

32.5 Sources and basis of information

The financial information available to the Liquidators is subject to considerable uncertainty for the reasons given in

paragraph 5 of the March 1992 Report. In particular, collection of full financial information for the BCCI Group would require extensive worldwide co-operation from locally appointed office holders in the jurisdictions in which BCCI operated but such co-operation has been limited.

33. Subject to the uncertainties described above based on the information currently available to the Liquidators, the Liquidators estimate that the total level of creditors' claims in the liquidations of the Principal BCCI and ICIC Companies which are likely to be admitted will fall within the range of US$8,500 million and US$11,500 million.

34. The amount of realisations available for distribution to creditors is also extremely difficult to predict with any certainty. The main factors affecting the level of future realisations are:-

34.1 Litigation

Major elements of potential recoveries are dependent on the successful outcome of litigation. There can be no certainty that litigation will be successful.

34.2 USA

The Liquidators believe that substantial funds will become available for distribution to creditors through the operation of the Plea Agreement and other agreements entered into between the US Authorities and third parties. The timing and level of the

funds to be made available is largely dependent on the successful outcome of court proceedings currently in progress in the USA and the exercise of discretionary powers vested in the US Authorities.

34.3 Loan recoveries

Loan recoveries are also a significant potential source of future realisations but the Liquidators cannot predict the outcome with any certainty.

34.4 Provisions

Not all assets realised by the Liquidators will be available for immediate distribution. Provision may have to be made for a number of matters, including provisions for disputed claims (including set off and claims of a proprietary nature), the future costs of the liquidation and of litigation. The level of provisions which will be required before making an interim distribution is uncertain at this stage, but is likely to be substantial.

35. As at 15th November 1994, the Liquidators, the Luxembourg Liquidators and the Cayman Liquidators were holding funds in excess of US$800 million. Under the Revised Agreement, they will receive an additional US$1,550 million on completion. (A further US$150 million is to be released 24 months after completion and a further US$100 million is to be released 36 months after completion).

36. In paragraph 15.5 of the March 1992 Report, the Liquidators stated that if the Original Agreement was implemented, it was hoped that creditors who were entitled to participate in the fund to be made available under that Agreement would receive a first interim payment of about 10%. Subject to the uncertainties described above and subject also to the Revised Agreement and the ICIC Pooling Agreement being implemented without delay, it is the aim of the Liquidators to declare an interim dividend of about 20% in the summer of 1995. In order to achieve that target, the Liquidators consider that it will be necessary for further significant funds to be realised and become available for distribution in addition to the funds to be provided under the Revised Agreement. Provided that the uncertainties referred to above can be resolved, the Liquidators believe at this stage that there is a reasonable prospect that this will occur.

37. In paragraph 17.1 of the March 1992 Report, the Liquidators estimated that the ultimate return to creditors who were entitled to participate in the fund to be made available under the Original Agreement would be 30 to 40%. It was made clear in that report that the estimate was based on a number of assumptions, including the impact of the cushioning effect of the Government of Abu Dhabi's variable contribution under the Original Agreement depending on the level of realisations or liabilities. The payments to be made under the Revised Agreement are fixed sums. Thus, should the level of creditors' claims to be admitted be at the higher end of the range given in paragraph 33 above or exceed the top of the range, the level of total dividends might, subject to the other uncertainties

described above, be lower than was originally estimated. The Liquidators nevertheless consider that, subject to the uncertainties described in paragraphs 32 and 34 above, a projected ultimate return to creditors of 30 to 40% has reasonable prospects of being achieved.

E. CONCLUSION AND RECOMMENDATIONS

38. If the Revised Agreement is not implemented, the Liquidators are advised that there will be no option but to pursue the Majority Shareholders through litigation. Such litigation would be prolonged. It could well require a minimum of five to seven and probably more realistically ten years to bring to a conclusion. It would be complicated and expensive. It is likely that such litigation would involve proceedings in a number of jurisdictions. Its outcome would be uncertain. The Revised Agreement and the ICIC Pooling Agreement remove the uncertainties and delay which would arise from litigation with the Majority Shareholders and as between the Principal BCCI and ICIC Companies.

39. The Liquidators, together with the Luxembourg Liquidators and the Cayman Liquidators, consider that the Revised Agreement and the ICIC Pooling Agreement offer creditors the prospect of a materially enhanced and accelerated return. They consider that in all the circumstances, the Agreements represent the best option available for creditors. Accordingly, the Liquidators recommend the Agreements to the Court and to creditors. This recommendation has the unanimous and strong support of the legal advisers to the Liquidators and of the Luxembourg Liquidators and the Cayman Liquidators.

F. DIRECTIONS AND ORDERS SOUGHT

40. The Liquidators accordingly seek directions and orders:

40.1 That the Liquidators be authorised and empowered to execute the Revised Agreement and the ICIC Pooling Agreement substantially in the form of the drafts appearing in the separate bundle marked "A", and to do and execute all such documents, acts and things as may be necessary or desirable to:

40.1.1 implement and bring and carry the same into full force and effect in all respects; and

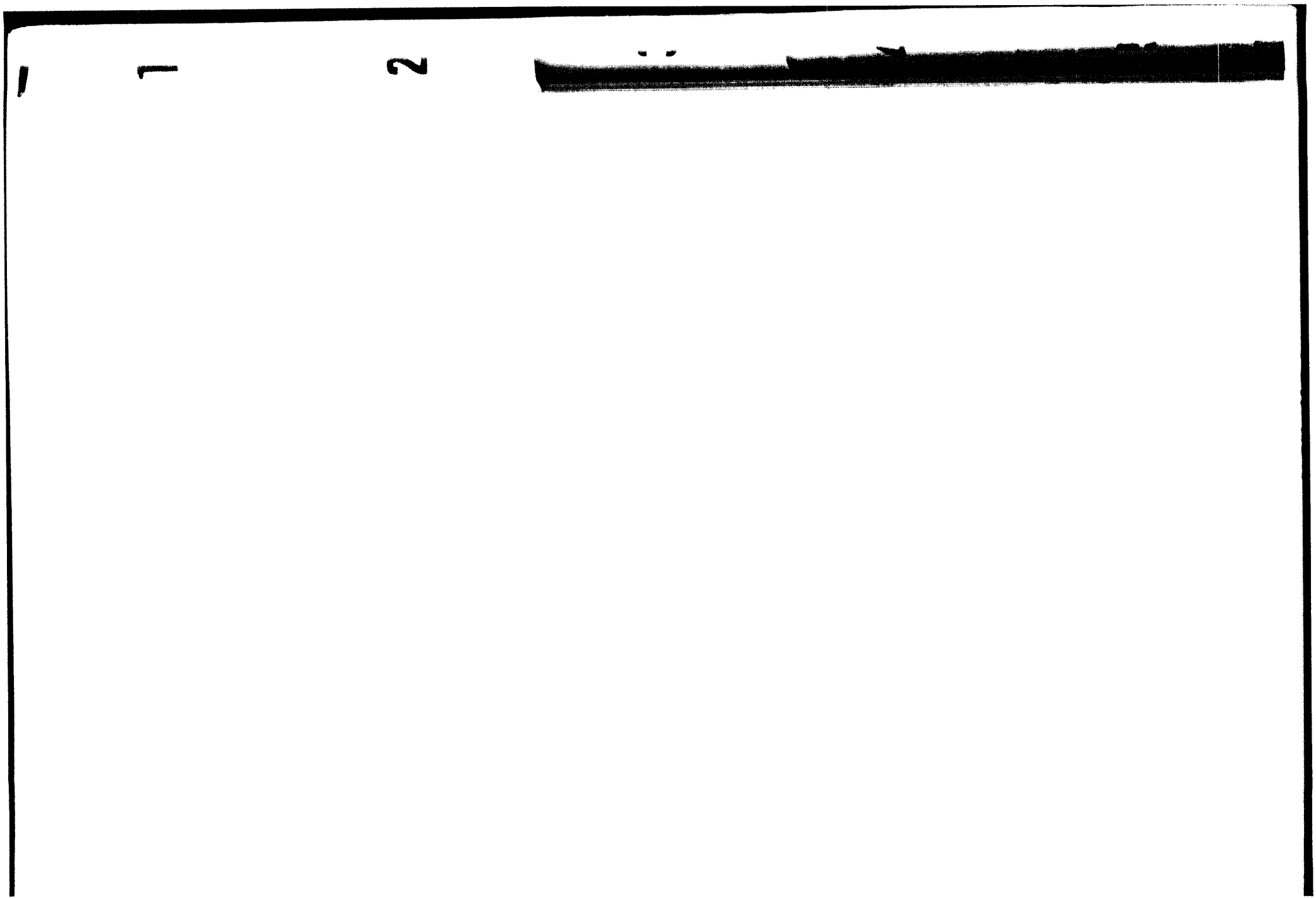
40.1.2 comply with and perform each of their obligations thereunder in accordance with their respective terms; and

40.2 That for that purpose the Revised Agreement and the ICIC Pooling Agreement substantially in the form of the drafts appearing in the separate bundle marked "A" be approved.

John Richards

For and on behalf of the Liquidators

25 November 1994



APPENDIX I

Definitions

Abedi	Agha Hasan Abedi. President and Chief Executive Officer of the BCCI Group until 1988
ADIA	The Abu Dhabi Investment Authority, one of the Majority Shareholders
BCCI or BCCI Group	BCCI Holdings and its subsidiaries and affiliates
BCCI Holdings	BCCI Holdings (Luxembourg) SA
BCCI Officeholders	The Liquidators of BCCI Holdings, the Luxembourg Liquidators, the Overseas Liquidators, the CFC Liquidators and the Liquidators
BCCI Overseas	Bank of Credit and Commerce International (Overseas) Limited
BCCI SA	Bank of Credit and Commerce International SA

CFC	Credit and Finance Corporation Limited
The Cayman Court	The Grand Court of the Cayman Islands
Cayman Liquidators	The Liquidators of BCCI Overseas, CFC and the Principal ICIC Companies appointed by the Cayman Court
The English Court	The High Court of Justice
ICIC Apex	ICIC Apex Holding Limited
ICIC Holdings	ICIC Holdings Limited
ICIC Investments	ICIC Investments Limited
ICIC Overseas	International Credit and Investment Company (Overseas) Limited
Liquidators	The Liquidators of BCCI SA appointed by the Secretary of State pursuant to the Insolvency Act 1986
The Luxembourg Court	The District Court of Luxembourg
Luxembourg Liquidators	The Liquidators of BCCI SA appointed by the Luxembourg Court

Majority Shareholders	(a) His Highness Shaikh Zayed bin Sultan al Nahyan, Ruler of the Emirate of Abu Dhabi and President of the United Arab Emirates (b) His Highness Shaikh Khalifa bin Zayed al Nahyan (c) The Government of the Emirate of Abu Dhabi and (d) ADIA
Naqvi	Swaleh Naqvi. Succeeded Abedi as Chief Executive Officer of the BCCI Group in 1988
Original Agreement	Agreement with the Majority Shareholders in February 1992 under which the Government of Abu Dhabi would make funds available, subject to conditions, for distribution to certain unsecured creditors of the principal BCCI Companies
Plea Agreement	The Agreement dated 19 December 1991 between US Federal and New York prosecuting authorities and the principal BCCI Companies

	(other than CFC) and their then court appointed officeholders and others in relation to certain U.S. Federal and New York criminal proceedings
Pool	The pool of the assets of the principal BCCI Companies and of branches of BCCI SA and BCCI Overseas, CFC and ICIC participating in the Pooling Agreements
Pooling Agreements	Agreements whereby the assets of BCCI Holdings and its subsidiaries BCCI SA, BCCI Overseas and CFC, including participating branches of BCCI SA and BCCI Overseas and ICIC may be pooled and distributed rateably amongst creditors
Pool creditors	Creditors admitted to the liquidations of BCCI Holdings, BCCI SA, BCCI Overseas, CFC and ICIC
The Principal BCCI Companies	BCCI Holdings, BCCI SA, BCCI Overseas and CFC
The Principal ICIC Companies	ICIC Overseas, ICIC Holdings, ICIC Investments and ICIC Apex
Related Persons	Persons (defined in the Original Agreement) being generally members related to or

	connected with the ruling families of the territories forming the United Arab Emirates, certain officeholders in Abu Dhabi, or UAE Government controlled organisations.
Revised Agreement	Agreement with the Majority Shareholders under which the Government of Abu Dhabi will make funds available for distribution to ordinary unsecured creditors of the Principal BCCI and ICIC Companies.
UAE branches	The United Arab Emirates branches of BCCI SA
UNB	Union National Bank (formerly called Bank of Credit and Commerce (Emirates))

IN THE HIGH COURT OF JUSTICE [illegible] 1991

CHANCERY DIVISION

COMPANIES COURT

THE VICE CHANCELLOR (SIR DONALD NICHOLLS)

12 JUNE 1992

IN THE MATTER OF BANK OF CREDIT AND COMMERCE INTERNATIONAL SA

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

ORDER

UPON HEARING Counsel for (1) the Joint Liquidators of the above-named company (hereinafter called "BCCI SA") appointed by the Secretary of State for Trade and Industry on 14th January 1992 (such joint liquidators being hereinafter called "the English Liquidators"); (2) His Highness Shaikh Zayed bin Sultan Al-Nahyan, His Highness Shaikh Khalifa Bin Zayed Al-Nahyan, the Department of Finance of the Government of Abu Dhabi and the Abu Dhabi Investment Authority ("the Majority Shareholders"); (3) the Deposit Protection Board; (4) the Creditors Committee; (5) the BCCI Depositors Protection Association; (6) the BCCI Employees Campaign Committee; (7) Faisal Islamic Bank; (8) AFEXP Commodities (UK) Ltd; and (9) a group of creditors known as "ADM"

AND UPON READING the English Liquidators' Report dated 16th March 1992 and the documents on the Court file recorded as having been read

IT IS ORDERED AND DIRECTED THAT

1 The agreements substantially in the form of the drafts appearing in the separate bundle marked "A" be approved;

2 The English Liquidators be authorised and empowered to execute the same and do and execute all such documents, acts and things as may be necessary or desirable to:

2.1 implement and bring and carry the same into full force and effect in all respects; and

2.2 comply with and perform each of their obligations thereunder in accordance with their respective terms

3 The English Liquidators shall not agree with the Government of Abu Dhabi to any figure for the aggregate Claim Value of Claims of Qualifying Creditors being less than US$4,750,000,000 (as provided for in Schedule 3 Paragraph 4(a) of the Contribution Agreement) without first seeking further directions from the Court.

AND UPON IT APPEARING

(i) that by an order made by the District Court of the Grand Duchy of Luxembourg (hereinafter called "the Luxembourg

Court") on the 3rd day of January 1992 BCCI SA was placed in liquidation in the jurisdiction in which it was incorporated;

(ii) that by the said order Georges Baden and Julien Roden, both residing in Luxembourg, and Brian Smouha, residing in London, were appointed by the Luxembourg Court as joint liquidators of BCCI SA (such persons or other the person or persons for the time being holding office as liquidators of BCCI SA appointed as such by the Luxembourg Court being hereinafter referred to as "the Luxembourg Liquidators");

(iii) that in addition to its branches in England BCCI SA had branches in twelve other jurisdictions;

(iv) that it is expedient that the determination of the claims of the creditors of BCCI SA (other than the claims of creditors whose claims are given preferential status in a liquidation of SA in a jurisdiction other than the Grand Duchy of Luxembourg) and the distribution of assets of BCCI SA to such creditors (other than as aforesaid) should be carried out in accordance with one liquidation; and

(v) that it is expedient that the liquidation in accordance with which such determination and distribution should be carried

... should be the liquidation of BCCI SA in the Luxembourg Court in Luxembourg

IS ORDERED THAT:

Subject to

(i) the provisions of the Pooling Agreement and the conditions in Clauses 1.1.1 and 1.1.2 of the Pooling Agreement being satisfied, namely:

"1.1.1 SA and the Luxembourg Liquidators obtaining from the Luxembourg Court an order or direction approving this Agreement and authorising the Luxembourg Liquidators to execute and do all such documents acts and things as may be necessary to implement the same in all respects;

1.1.2 Overseas and the Cayman Liquidators obtaining from the Cayman Court:-

(a) an order or direction ratifying and approving this Agreement and authorising the Cayman Liquidators to execute and do all such documents acts and things as may be necessary to implement the same in all respects; and

(b) directions from the Cayman Court in the form of the Cayman Directions or in such other form as may be acceptable to the Liquidator Parties;"

(ii) the terms and conditions set out in the Schedule to this Order and to provisions being made for the matters referred to in the said Schedule in accordance with the said terms and conditions,

the English Liquidators be at liberty to transmit to the Luxembourg Liquidators in Luxembourg for the purposes of the liquidation of BCCI SA by the Luxembourg Court all proceeds of the realisation of property of BCCI SA which are now or may hereafter be or come within the jurisdiction of this Honourable Court (such proceeds being hereinafter referred to as "English Proceeds")

AND THE ENGLISH LIQUIDATORS are to have general liberty to apply from time to time for further directions in relation to the matters provided for in the Schedule to this Order.

AND IT IS ORDERED that the costs of and incidental to this application of the following be paid as a cost and expense of the winding up of BCCI SA by this Honourable Court:

(i) the costs of the English Liquidators with a certificate for three counsel;

(ii) the costs of the Creditors Committee with a certificate for two counsel;

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(iii) the costs of the BCCI Depositors Protection Association with a certificate for two counsel;

(iv) the costs of the BCCI Employees Campaign Committee;

(v) the costs of Faisal Islamic Bank;

(vi) the costs of AFEXP Commodities (UK) Ltd; and

(vii) the costs of the group of creditors known as "ADM".

AND IT IS ORDERED that the Creditors Committee and the other creditors do have leave to appeal provided that notice of appeal is lodged by not later than close of business on Wednesday 17th June 1992.

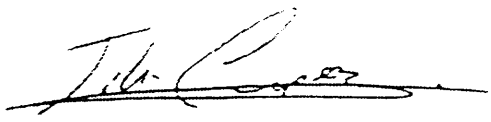
Counsel for the English Liquidators

Counsel for the Majority Shareholders

Counsel for the Deposit Protection Board

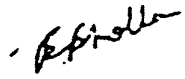
Counsel for the Creditors Committee

Counsel for the BCCI Depositors Protection Association



Counsel for the BCCI Employees Campaign Committee

Counsel for Faisal Islamic Bank



Counsel for AFEXP Commodities (UK) Ltd

Counsel for the group of creditors known as "ADM"

THE SCHEDULE

(1) The English Liquidators shall be at liberty to pay or provide for in full out of English Proceeds from time to time in their hands the costs charges and expenses incurred by, and the remuneration of, the English Liquidators payable in accordance with the Insolvency Act 1986 (hereinafter called "the 1986 Act") and the rules made thereunder

(2) The English Liquidators shall be at liberty to determine in the winding-up of BCCI SA by this Honourable Court (hereinafter called "the English Liquidation") the claims of all creditors of BCCI SA (hereinafter called "Preferential English Claims") which are payable in full in priority to other claims of creditors of BCCI SA by reason of being given preferential status by Section 175 of the 1986 Act

(3) Subject to Paragraph (4) below the English Liquidators shall be at liberty to pay or provide for in full out of the English Proceeds from time to time in their hands the claims of any creditors of BCCI SA which are Preferential English Claims

(4) The English Liquidators shall be entitled to take such steps as they think fit (including the withholding of payment of a particular Preferential English Claim pending receipt of information or the acceptance by the claimant of such terms as the English Liquidators may prescribe) to ensure that no

(c) distributions to which creditors in respect of such claims may be entitled

and for that purpose may (without prejudice to the generality of the foregoing) arrange for claims to be processed and examined by the English Liquidators and (if thought fit) referred for determination to the English Court subject to such audit or supervisory procedures as the Luxembourg Liquidators may from time to time require in order to enable such claims to be admitted in the liquidation of BCCI SA in Luxembourg and may arrange (subject to audit and supervisory procedures as aforesaid) for distributions to be made by the English Liquidators of aggregate sums paid to them by the Luxembourg Liquidators for such purpose.

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

Royal Courts of Justice
Friday, 12th June, 1992

Before:
The Vice-Chancellor
(Sir Donald Nicholls)

IN THE MATTER OF

THE BANK OF CREDIT AND COMMERCE INTERNATIONAL SA

AND IN THE MATTER OF

THE BANKING ACT 1987

AND IN THE MATTER OF

THE INSOLVENCY ACT 1986

(Transcribed from the shorthand notes of Harry Counsell & Co., 61 Carey Street, London WC2A 2JG: Telephone 071-242-9346)

MR MICHAEL CRYSTAL, Q.C., MR M. PASCOE and MR R. SHELDON (instructed by Messrs Lovell White Durrant) appeared on behalf of the Provisional Liquidators.

MR PETER SCOTT, Q.C., MR RICHARD SYKES, Q.C. and MR RICHARD HACKER (instructed by Messrs Simmons & Simmons) appeared on behalf of the Majority Shareholders, the Royal Family and Government of Abu Dhabi.

MR J WADSWORTH, Q.C. and MR L. WEST-KNIGHT (instructed by Messrs Richards Butler) appeared on behalf of the Deposit Protection Association.

MR JOHN JARVIS, Q.C. and MR J NASH (instructed by Messrs Clifford Chance) appeared on behalf of the Deposit Protection Board.

MR JOHN COOPER (instructed by Messrs Stephens Innocent) appeared on behalf of the Employees Campaign Committee.

MR DAVID HUNT, Q.C. and MR LESLIE KOSMIN (instructed by Messrs Norton Rose) appeared on behalf of the Creditors Committee.

MR SIMON MORTIMORE, Q.C. (instructed by Messrs McKennas) appeared on behalf of the Faisal Islamic Bank.

MR BITU BHALLA appeared on behalf of AFEXP Commodities (UK) Ltd.

MR C KEMP appeared on behalf of Salah Saleh and others

J U D G M E N T

(As Approved)

THE VICE-CHANCELLOR: On this application I have heard detailed argument and counter argument for four days, but I shall keep this judgment short and simple so that any depositor may read and understand it.

The proposals

In essence the main proposals are:

(1) Over the next two years the Abu Dhabi Government will contribute to the funds available to creditors a sum of money fixed by a formula and likely to be about $1,500 million.

(2) There will be a mutual release of claims between BCCI group companies and the Government of Abu Dhabi, the majority shareholders, and related persons.

(3) The Abu Dhabi parties will be admitted as creditors in the liquidation of BCCI SA and BCCI Overseas for about $1,900 million.

The effect of item (3) will be that 20-25% of the Abu Dhabi Government contribution will be returned to Abu Dhabi.

In assessing the adequacy of the Abu Dhabi offer the mutual releases under head (2) are important. The BCCI companies will release all claims in respect of promissory notes issued by the Government of Abu Dhabi, a share subscription commitment and guarantees in amounts totalling altogether about $4,461 million. These documents were entered into by the Abu Dhabi Government as part of the abortive financial support and restructuring arrangements of May and June 1991. Promissory notes to the value of $1,150 million were or may have been

discounted and realised by BCCI before trading ceased in July 1991.

The BCCI companies will also release all other claims against the Abu Dhabi parties except for banker-customer debts which arose in the ordinary course of the group's banking business.

On the other side the Abu Dhabi parties will release all their claims against the group, in particular tracing and trust claims amounting to some $2,200 million.

In the nature of things a detailed public appraisal of the strengths and weaknesses of these claims is out of the question. That would place the companies and the liquidators at a disadvantage in any future negotiations or litigation if these should become necessary.

I have seen on a confidential basis the legal advice given to the liquidators and also the separate legal advice to the creditors committee. All I can say, and all I need say, is something self-evident to any businessman who reads the liquidators' report and the creditors committee's report: court proceedings in Abu Dhabi or England or Luxembourg or the United States of America, or wherever, against the Abu Dhabi Government or others in respect of these mutual claims would be likely to be protracted (five to ten years), hugely expensive and with an uncertain outcome both as to liability and as to enforceability of recovery.

<u>The alternatives</u>

What are the alternatives to these proposals?

First, further negotiations. The affidavit evidence produced by the Abu Dhabi authorities is that the majority

shareholders were themselves the principal victims of a fraud perpetrated within the BCCI group and that they have suffered financial loss exceeding $6,000 million. They point out that no one else has offered to make any substantial payment for the general body of creditors. They have emphasised repeatedly that the commercial terms of the proposals are not negotiable. In other words, they will not increase the amount of their offer.

The second alternative, if the proposals are rejected, is court proceedings by the liquidators against the Abu Dhabi parties. If this route is followed, a distribution to creditors is unlikely to be made for some years. The assets of the principal BCCI companies are expected to realise about $1,301 million. All this money would have to be retained by the liquidators to meet the $2,200 million proprietary claims being asserted by the Abu Dhabi authorities. The liquidators could make no distribution until after this claim had been resolved. Liabilities are estimated at $9,257 million. So, subject to the outcome of the litigation with the Abu Dhabi authorities, the likely dividend some years hence would be perhaps 15%. If the Abu Dhabi offer is accepted and its contribution of some $1,500 million is included, the likely dividend becomes about 30%. The first distribution to depositors would probably be made in the first half of 1993.

The views of the creditors committee

The creditors committee consider that the sum on offer is not enough. The committee would prefer a negotiated settlement, but failing an improved offer they

believe litigation would be in the best interests of the general body of creditors.

A The views of the creditors

Normally this court has regard to the views of the creditors and attaches importance to them. The company's money is the creditors' money, and they can be expected to B be the best judges of where their financial interests lie. The creditors' views on the Abu Dhabi proposal have not been obtained. In the course of the hearing before me creditors with debts of over $500 million stated their C opposition to the proposals. Leaving aside the Abu Dhabi authorities, only one creditor, the Deposit Protection Board, supported the proposals.

I have considered whether to direct that a creditors' D meeting should be held now before deciding whether or not to approve the proposals. I have decided that, in the exceptional circumstances of BCCI, I should not do so. BCCI SA and BCCI Overseas have some 140,000 depositors in E 70 countries throughout the world. There would be formidable practical difficulties in holding a meeting, but these would not be insurmountable. More importantly, F creditors of each of the two companies fall into many different classes with different interests (for example, depositors in countries where there has been "ringfencing" and depositors in countries where there has not). So a G single vote at a single meeting would not be a sound guide to the creditors' views. But an attempt to hold a series of class meetings would encounter the feature which bedevils every step in this saga which has brought loss H and misery to so many thousands of families throughout the

world: the sheer complexity one meets at every turn will thwart any effort to proceed neatly along the normal legal paths.

Even so, depositors would have a legitimate sense of grievance if there were no means by which they could have some say in whether the Abu Dhabi Government's offer should be accepted or rejected. This is particularly so because the secrecy condition imposed by the Abu Dhabi Government meant that the liquidators could not consult the creditors as the negotiations proceeded.

On this the proposals embody a limited measure of protection for depositors. The offer cannot become binding on creditors without the consent of the liquidators unless positive acceptances are received from creditors whose admitted claims exceed $4,750 million. That equals 51% of the total estimated debts. If the Abu Dhabi claims are excluded, the figure falls to 39%. If acceptances are received for less than this figure the liquidators will return to the court for directions. The court would then review the position afresh.

The best interests of the creditors

Is the acceptance of these proposals in the best interests of the creditors? I have given careful consideration to the views of the creditors committee. Despite those views, in my judgment the answer to the question is yes. Rejection of the proposals involves an enormous gamble. I do not think I should take the creditors down that route. I am acutely conscious of depositors justified sense of outrage and frustration at what has occurred; indeed, the bank that robbed its

customers. Individuals have lost their life savings, their homes, everything. Corporate depositors have lost huge sums of money. Of course they would all like a higher offer. They feel deeply and passionately that the offer is nowhere near enough. Of course they are reluctant to accept terms which will give them only partial recovery. There are depositors whose resources enable them to face with equanimity the prospect of a protracted wait for an uncertain outcome, in the hope that ultimately they will obtain more. There will be other depositors who have already suffered such hardship that nothing less than full recompense will ever receive their approval. Against this, there will be many creditors who cannot afford to wait indefinitely. They would rather take 30%, with a first distribution within 12 months. There will, I believe, be many more creditors who will realise, if they stand back and look at the alternatives in the cold light of day, that the prudent and sensible financial decision is to take what is now on offer and then to get on with their lives. In all conscience, 30% is not much, but it is worth having. It is much better than nothing.

My task is to weigh up considerations such as these and have regard to the position of the general body of creditors as a whole. Having done so, my view is that these proposals are the best option for the depositors. The risks attendant upon a rejection of the proposals are too great. The prospect of an increased recovery through a better offer or through litigation is not good enough to justify hazarding the present offer.

I have received letters from many depositors. They display a touching confidence in the ability of the English court to wave a wand and all will be well. Alas, I do not possess a magic wand. I cannot conjure money out of the air, however deserving the cause, nor can the liquidators. All I can do here is to choose between the available options. I do not believe that if I reject these proposals I would be doing the depositors a service.

I add this. In the course of argument reference was made to the forthcoming report from the inquiry being conducted by Lord Justice Bingham. I see no reason to postpone my decision until after that report has been published. Acceptance of the proposals will not preclude further discussions, if appropriate, with regulators or others.

Unfairness: creditors with personal claims

If the agreements come into operation the BCCI companies' claims against the Abu Dhabi parties will be released but only the creditors who relinquish any claims they may have against the Abu Dhabi parties will share in the contribution fund. I do not attach importance to this feature. I have seen nothing to suggest that individual creditors have claims in their own right against the Abu Dhabi parties. It is understandable that the Abu Dhabi parties wish to have a formal release from those who will be sharing in the fund they are providing.

A waste of time and money?

The Abu Dhabi Government s offer is conditional on acceptance by creditors with admitted claims totalling $7,000 million. This is a very high figure, but the Abu

Dhabi Government can waive this condition. The existence of this condition is not a sufficient reason to reject the proposals. (As already mentioned, the Government cannot waive the condition if acceptances are less than $4,750 million without the liquidators' consent.)

The pooling agreements

The pooling agreements are not conditional upon acceptance by creditors. Despite this, I am in no doubt that the agreements are so plainly for the benefit of the creditors that I should approve them without further ado. I am satisfied that the affairs of BCCI SA and BCCI Overseas are so hopelessly intertwined that a pooling of their assets, with a distribution enabling the like dividend to be paid to both companies' creditors, is the only sensible way to proceed. It would make no sense to spend vast sums of money and much time in trying to disentangle and unravel.

The UAE branches

I mention one particular point which has attracted adverse comment from some creditors. Under the proposals the creditors of branches in the United Arab Emirates will be "ringfenced". The net effect of these special arrangements will benefit the other BCCI creditors. A decision by the Abu Dhabi Government to make special arrangements for UAE branch creditors is not a good reason for rejecting the proposals.

An exceptional case

The creditors committee and others contended that I have no jurisdiction (that is, legal power) to approve these proposals on this application by the liquidators.

The argument was that in several respects the proposals involve a variation in the rights of creditors and that such a variation can only be sanctioned so as to bind the creditors as part of a formal scheme of arrangement under section 425 of the Companies Act 1985.

I do not agree. The liquidators powers under paragraphs 2 and 3 of schedule 4 to the Insolvency Act 1986, exercisable with the approval of the court, are wide and they are wide enough to cover this case.

In so far as the package does involve departures from the simple and fundamental principle that an insolvent company's assets should be distributed equally among all its creditors, I would in normal circumstances expect the scheme of arrangement procedure to be followed. That procedure contains additional safeguards for creditors. But if that procedure is followed in this case the proposals will flounder and sink in a morass of elaborate legal procedures and niceties. That cannot be the right way to approach this exceptional case. Exceptional circumstances call for exceptional treatment.

The conclusion

I shall therefore authorise the liquidators to proceed with the documents in question.

THE VICE-CHANCELLOR: Mr. Pascoe?

MR. SHELDON: My Lord, might I suggest a variation order----

THE VICE-CHANCELLOR: Yes. Costs?

MR. SHELDON: Costs; so far as the liquidators are concerned, their application would be for their costs to be paid out of the state, with a certificate for three counsel. So far as the other parties appearing before you, that is a matter which we are content to leave to

your Lordship. We have no further comment to make unless your Lordship so wishes.

THE VICE-CHANCELLOR: I presume that all other creditors will be asking for their costs. Mr. Sykes, do you wish to say anything?

MR. SYKES: We certainly will not be asking for our costs.

THE VICE-CHANCELLOR: No.

MR. JARVIS: I have instructions not to ask for costs either.

THE VICE-CHANCELLOR: Not to ask for costs, no. Very well, then I will direct that the costs of the liquidators and the costs of all the other creditors, except for the Deposit Protection Board and the Government of Abu Dhabi, be paid as costs and expenses in the liquidation.

MR. WEST-KNIGHT: With a certificate for more than one counsel where appropriate, my Lord?

THE VICE-CHANCELLOR: Yes.

MR. COOPER: Is that specifically including the employees as well?

THE VICE-CHANCELLOR: Yes, indeed.

MR. HUNT: My Lord, I do invite your Lordship to grant leave to appeal.

THE VICE-CHANCELLOR: How quickly could you give your notice of appeal, Mr. Hunt?

MR. HUNT: We will do so as soon as we possibly can. I have not discussed with my learned friend Mr. Kosmin or those instructing me whether it would be a question of being able to do it today or early next week. I suspect that early next week would probably be more realistic. We will make every effort to expedite the matter so far as we possibly can.

THE VICE-CHANCELLOR: Mr. Pascoe, do you wish to say anything about leave to appeal?

MR. SHELDON: My Lord, Mr. Pascoe is on my left, I am Mr. Sheldon.

THE VICE-CHANCELLOR: I beg your pardon.

MR. SHELDON: We are happy to leave that to the court. So far as abridgement of time is concerned if your Lordship is minded to grant leave, you do have power to abridge the time. The normal period is 28 days. In view of the uncertainty which would be caused by any delay and the fact that applications are pending in other courts as well, we would invite your Lordship to abridge the time. We say a maximum of 14 days would be appropriate.

THE VICE-CHANCELLOR: Yes. What I will do is this: I will give leave to appeal to the creditors provided that notice of appeal is lodged by not later than the close of business next Wednesday.

MR. HUNT: My Lord, I am sure it does not need to be said, but in the meanwhile the liquidators will not, I assume, be signing these documents pending the outcome.

THE VICE-CHANCELLOR: There are applications, as you know, to other courts that have to be proceeded with first.

MR. HUNT: Indeed, yes.

THE VICE-CHANCELLOR: I take it you are not going to be doing anything irrevocable between now and then.

MR. SHELDON: No.

THE VICE-CHANCELLOR: Very well.

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IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL (CIVIL DIVISION)

ON APPEAL FROM THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT

Royal Courts of Justice

Friday 17th July 1992

Before:

LORD JUSTICE DILLON

LORD JUSTICE RUSSELL

LORD JUSTICE FARQUHARSON

IN THE MATTER OF BANK OF CREDIT AND COMMERCE INTERNATIONAL SA

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

(Transcript of the Shorthand Notes of The Association of Official Shorthandwriters Limited, Room 392, Royal Courts of Justice, and 2 New Square, Lincoln's Inn, London WC2A 3RU.)

MR DAVID HUNT Q.C. and MR LESLIE KOSMIN (instructed by Messrs Richards Butler) appeared for certain creditors of BCCI.

MR PETER SCOTT Q.C., MR RICHARD SYKES Q.C. and MR RICHARD HACKER (instructed by Messrs Simmons & Simmons) appeared for the Majority Shareholders of BCCI Holdings (Luxembourg) SA.

MR MICHAEL CRYSTAL Q.C., SIR THOMAS STOCKDALE, MR MARTIN PASCOE and MR RICHARD SHELDON (instructed by Messrs Lovell White Durrant) appeared for the Liquidators.

J U D G M E N T

(Revised)

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LORD JUSTICE DILLON: I do not propose to set out the facts of and background to this matter in any detail.

A — — The appeal before us is an appeal by certain creditors or persons claiming to be creditors of B.C.C.I. S.A., the Bank of Credit and Commerce International S.A. (which I shall call "S.A."), against an order of the Vice-Chancellor, Sir Donald B Nicholls, of 12th June of this year. The substance of that order is that he ordered and directed (1) that the Agreements substantially in the form of the drafts appearing in a bundle marked "A" be approved, (2) that the English liquidators of S.A. C be authorised and empowered to execute the same and do and execute all such documents, acts and things as may be necessary or desirable to implement and bring and carry the same into full force and effect in all respects and comply with and perform D each of their obligations thereunder in accordance with their respective terms. He included in clause (3) a qualification on the English liquidators' powers, to which I shall have to come back, and he also gave a number of consequential directions.

E The Agreements referred to in paragraph 1 of his order (which I shall call "the Agreements") are fairly numerous and very complex. We are particularly concerned with two, called F the Pooling Agreement and the Contribution Agreement. The Pooling Agreement is subject to its terms being approved by the courts in Luxembourg, the Cayman Islands and England, but is not subject to approval of the Contribution Agreement. The G Contribution Agreement is subject to its terms being likewise approved and to the Pooling Agreement being so approved. The Vice-Chancellor's order gave the requisite approval of the English court with, as I have mentioned, further consequential H directions. The approval of the Cayman Islands court was given

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on 19th June 1992 on an unopposed application. Judgment on the application for approval by the Luxembourg court is due to be given early next week.

S.A. is a company incorporated in Luxembourg and in compulsory liquidation there. That is why the Luxembourg court comes in. The Pooling Agreement provides for the pooling of assets and liabilities of S.A. and Bank of Credit and Commercial International (Overseas) Limited (which I shall call "Overseas"), a company incorporated in the Cayman Islands and in liquidation there. That is why the Cayman Islands comes in. Both S.A. and Overseas carried on worldwide the business of bankers and deposit takers.

So far as England is concerned, S.A. carried on business through branches in England where it had very substantially more branches than in any other country. It is in liquidation here as a result of a compulsory winding up order pronounced on a winding up petition presented by the Bank of England. Technically, with S.A. the English liquidation is ancillary to the principal liquidation in Luxembourg, the country of S.A.'s incorporation.

It is not in doubt that S.A. and Overseas are insolvent with massive deficiencies as a result of frauds perpetrated by those concerned in the management of the companies. The overall deficiency is put on a provisional calculation at $9.25 billion. The consequence of that is that a very large number of individuals, companies and other bodies have suffered massive losses which they cannot afford. The bulk of the creditors are the unfortunate depositers who placed their monies with the various branches of the companies. There are harrowing stories of the sufferings of various of them. That is, however, merely

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background to the present appeal.

Mr. Hunt, who appears for the appellants, recognises that, if he seeks to appeal the exercise of the Vice-Chancellor's discretion, he faces the difficulties indicated in such cases as Hadmor Productions Ltd. v. Hamilton [1983] 1 A.C. 191. Instead, he places his challenge on the ground that, on a true appreciation of the law, the Vice-Chancellor had no power to make the order he did - in effect, a challenge in various forms to the jurisdiction which the Vice-Chancellor purported to exercise - and a submission that in truth the Vice-Chancellor did not have any discretion. It follows that I shall be concerned in this judgment with highly technical issues of law which have been debated in this court over the last four days. I cannot hope to follow the Vice-Chancellor's example of producing a judgment which is short and simple so that any depositor may read and understand it.

The application to the Vice-Chancellor to approve the Agreements referred to in his order and authorise the liquidators to carry them into effect was made under paragraphs 2 and 3 of Part I of Schedule 4 to the Insolvency Act 1986. These are in the following terms under the heading in Part I "Powers exercisable with Sanction":

> "2. Power to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company, or whereby the company may be rendered liable.
>
> 3. Power to compromise, on such terms as may be agreed -
>
> (a) all calls and liabilities to calls, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending

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liability to the company, and

(b) all questions in any way relating to or affecting the assets or the winding up of the company ..."

A

The section conferring these powers is section 167 of the 1986 Act which provides:

"Where a company is being wound up by the court, the liquidator may -

B

(a) with the sanction of the court or the liquidation committee, exercise any of the powers specified in Parts I and II of Schedule 4 to this Act (payment of debts; compromise of claims etc.; ..."

These provisions came into the 1986 Act from the Companies Act 1985. Corresponding provisions in substantially the same terms have been included in all the successive major Companies Acts since the original 1862 Act. For convenience, I refer to these powers as "the compromise powers".

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In passing, I note that paragraph 1 in Part I of Schedule 4 gives a power exercisable with sanction, i.e. for present purposes the sanction of the court, as follows "1. Power to pay any class of creditors in full". The most obvious purpose of this would be to enable small creditors to be paid in full for convenience of administration. This is some indication that the powers in Part 1 of Schedule 4 may be exercised in appropriate cases in ways which depart from the strict or fundamental pari passu rule, now Rule 4.181 of the Insolvency Rules 1986. This is in the following terms:

E

F

"Debts other than preferential debts rank equally betweer themselves in the winding-up and after the preferential debts shall be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves."

G

I should read next section 195 of the Insolvency Act 1986. This provides:

"(1) The court may -

H

(a) as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories (as proved to it by any sufficient evidence), and

(b) if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the court directs, and appoint a person to act as chairman of any such meeting and report the result of it to the court."

This also has its antecedents in the same terms in the general Companies Acts back to and including the 1862 Act. It is pointed out in argument that the word used in section 195 is "may", not "shall".

The basis in law of the complaints of the appellants and of the other creditors who, before the Vice-Chancellor, opposed his approving the Agreements is primarily that he has wholly failed to have any regard to the views and wishes of the overwhelming majority of those creditors of S.A., whose views were made known to him. On the contrary, in despite of section 195 and, it is said, the settled practice which has developed in such matters, he has rejected the views of the overwhelming majority of those creditors and has substituted his own view that it is expedient in the interests of the creditors of S.A. that the Agreements should be approved and be carried into effect.

In addition, it is urged in relation to the Pooling Agreement that it seeks to achieve something which can only be approved by a scheme of arrangement under section 425 of the Companies Act 1985 (to which I will come) and cannot be approved under the compromise powers. It is also urged in relation to the Contribution Agreement that certain aspects of it infringe the pari passu rule which I have quoted which, it is said, is so fundamental that the court is precluded from approving the Contribution Agreement either under the compromise powers or

under any other power whatsoever.

Part of the answer to those submissions put forward by the liquidators is that it is impracticable in the circumstances of this case, and in view of the overwhelming difficulties of a complex international fraud, to convene any meeting of the creditors of S.A. or class meetings in accordance with section 425, let alone also to convene, if that be necessary, comparable meetings of creditors of Overseas. The liquidators are supported on this and other submissions by the majority shareholders in S.A. or, more strictly, its holding company, who are, in particular, the ruler of Abu Dhabi, the Crown Prince of Abu Dhabi and the government of Abu Dhabi.

The technical legal arguments which I have indicated are, of course, not just put forward by the appellants from academic interest, but because the appellants say that the terms of the Contribution Agreement put forward by the majority shareholders are seriously inadequate and they hope that, if the agreements are rejected and the majority shareholders and other Abu Dhabi interests are pressed by litigation and forced to give full discovery, much more favourable terms of compromise will be put forward by the majority shareholders. The appellants also say in relation to the Pooling Agreement that pooling of assets and liabilities of S.A. and Overseas is probably necessary, but there ought to be further investigation before it is decided whether the pooling should be on a one for one rather than some other ratio. Counsel for the appellants recognise, however, that arguments on, as it were, the merits of the appellants' case would involve an attack on the exercise of the Vice-Chancellor's discretion. For the purposes of this appeal, therefore, they concentrate on the technical legal arguments an

seek to show thereby, in effect, that the Vice-Chancellor did not have the discretion which he purported to exercise.

The essence of the Contribution Agreement is that it is a compromise of cross-claims between the majority shareholders and certain other parties in Abu Dhabi associated with them ("the Abu Dhabi interests") and the liquidators in England, Luxembourg and the Cayman Islands of S.A. and Overseas. The liquidators claim that, as the Abu Dhabi interests were the regulatory authorities in Abu Dhabi and had representation on the boards of S.A. and Overseas, they should have appreciated very much earlier the frauds which were being perpetrated on S.A. and Overseas by, particularly, Abu Dhabi citizens and should have intervened long ago. It is said that, because of those failures, the Abu Dhabi interests are liable, not only morally but also legally, to compensate the creditors for loss. Conversely, the Abu Dhabi interests put forward cross-claims against S.A. and Overseas for a total of $2.2 billion on the basis, broadly, that the sums claimed are monies which belonged to one or more of the majority shareholders and were deposited with a body called I.C.I.C. Overseas, but which were then fraudulently misappropriated by former officers of the B.C.C.I. Group for the benefit of the B.C.C.I. Group.

The provisions of the Contribution Agreement are long and complicated and to understand them fully would also require study of some of the other Agreements. The essence is, however, that the cross-claims I have just mentioned are released and cancelled and the majority shareholders will provide a compensation sum to be held as a separate fund by a paying agent. How that compensation sum is arrived at does not, for present purposes, matter. It is said that the result will be

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significantly more favourable to assenting creditors than if matters are left to take their course without any compromise.

A — —Two aspects are, however, important. The first is that under the terms of the compromise only those creditors of S.A. and Overseas will be able to participate in the compensation sum who expressly assent to the compromise and release any

B individual claims they may have against the Abu Dhabi interests. This is mitigated in the case of those creditors who initially fail to respond to the terms of the offer of compromise, or who initially oppose but subsequently change their minds, by

C complicated provisions for catch up payments in one of the supporting agreements. But it is the position that, although the compensation payment represents in part the unspecified value of an asset in S.A., that is to say S.A.'s claim for

D damages against the Abu Dhabi interests, creditors of S.A. or Overseas who do not assent to the compromise and do not release whatever individual claims they may have against the Abu Dhabi interests, will not be able to participate in that asset. This

E is said to offend against the pari passu rule. It may be added that the problem of creditors assenting is complicated by the problem of ring fencing, to which I shall have to come.

F The second aspect which may fall foul of the pari passu rule is that under the Contribution Agreement the proceeds of claims against certain third parties, and in particular two firms of accountants and one firm of solicitors, are to be

G shared equally between the Abu Dhabi interests and the liquidators.

It is not in doubt that the terms of the Contribution Agreement represent the best that the liquidators have been abl

H to achieve after protracted and difficult negotiations with the

majority shareholders. It is not a question of being able to select some terms and reject others. The terms are a package and it is a question of "take it or leave it". Factors such as that, as the appellants and other opposing creditors claim, the majority shareholders have not negotiated fairly because they have placed such difficulties in the way of the liquidators having access to and taking copies of the mass of documents held in Abu Dhabi, or that, as the majority shareholders claim, they are in truth the principal victims of the frauds and cannot be expected to put up even more money, may help to explain how the present situation has been reached, but do not help to determine this appeal. I mention in passing that, quite apart from the cross-claims of the majority shareholders which are to be disposed of by the Contribution Agreement, there are certain claims of the Abu Dhabi interests in respect of ordinary banking deposits which are agreed by the liquidators as provable debts. These amount to a total of $1.9 billion, taking S.A. and Overseas together. I shall have to refer to that figure later. These are ordinary commercial banking deposits as to which there is no doubt.

So far as the Pooling Agreement is concerned, it provides for a pool of the assets and liabilities of S.A. and Overseas. But that runs into the problem of assets and liabilities of branches of S.A. or Overseas in countries other than the United Kingdom, Luxembourg and the Cayman Islands. That brings in the question of ring fencing and how assets and liabilities in ring-fenced jurisdictions should be dealt with.

S.A. had 47 offices or branches in 13 countries, the greatest number in any one country being 24 in the United Kingdom. The next highest numbers were eight branches in the

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United Arab Emirates and three in Jordan. But by no means all the individuals or companies who placed deposits with a branch of S.A. were residents of the country where that branch was located. Overseas had 63 branches in 28 countries, the greatest number in any one country being 12 in Oman.

But the English liquidators of S.A. have no authority to collect or administer the assets of S.A. in other jurisdictions. That is a matter for local liquidations or banking regulatory authorities in each separate country.

Under English law, as under the laws of Luxembourg and the Cayman Islands, realisations by the liquidators are applicable, subject to payment of preferential creditors (which is not an issue in this case), in paying all creditors worldwide pari passu. But in many other jurisdictions, for instance in states of the U.S.A., that is not the law; in such jurisdictions, where a branch of an international company incorporated elsewhere is wound up, the proceeds of realisation of the assets of the branch may be applicable exclusively, after payment of preferentials, in paying off the creditors of that branch, in priority to all creditors of other branches. That is conveniently called "ring fencing" in that the branch is ring-fenced and isolated from other liabilities. There are other versions of ring fencing which may favour nationals or residents of a particular country at the expense of nationals of other countries. There is also the problem that in some countries, local branches of S.A. or Overseas have been sold by local banking authorities or local liquidators or have been merged with other local banks.

It is one of the provisions of the Pooling Agreement that local branches in the hands of local liquidators or

administrators should be able to come into the Pooling Agreement. It is the hope of the liquidators that branches of S.A. in nine countries (including the United Kingdom and Luxembourg and including Gibraltar, where the branch seems to have been operated, before liquidation, as a branch of the United Kingdom operation) and branches of Overseas in seven countries including the Cayman Islands will come into the Pooling Agreement.

I come then to the facts as to the consent of creditors to the Contribution Agreement and to the Pooling Agreement.

This has two aspects.

Firstly, under the Contribution Agreement there is a condition requiring a level of support from qualifying creditors. The Contribution Agreement will only become operative if the compromise embodied in it is accepted and releases are granted by creditors of S.A. and Overseas, taken together, whose claims total $7 billion. That would be about 70 or 75 per cent of creditors, including the $1.9 billion due to Abu Dhabi interests. The precise figure of the creditors of course is not yet finally known because all the claims have not been sifted and tested and there are also possible complications over certain undertakings given in the United States of America. But power is reserved to the Government of Abu Dhabi at their discretion to declare the Contribution Agreement unconditional on a lower level of acceptances. There was initially no limit on that power, but on the point being taken by the Vice-Chancellor, the Agreement was varied to limit the power thus reserved to the Government of Abu Dhabi so as not to bring the limit of acceptances below $4.75 billion without the consent of the liquidators, and it was provided by the order of the

Vice-Chancellor that the liquidators shall not agree with the Government of Abu Dhabi on any figure for the aggregate value of the claims of qualifying creditors less than $4.75 billion without first seeking further directions from the court here. That is clause 3 in the Vice-Chancellor's order.

However, the $4.75 billion qualifying claims will include the $1.9 billion admitted claims of the Abu Dhabi interests mentioned above. Accordingly, the $4.75 billion limit can be achieved by the accession of 39 per cent only of the outside creditors of S.A. and Overseas taken together, other than the Abu Dhabi interests. The 39 per cent is a figure for purposes of example on a specified estimate of total claims - plausible but such as cannot yet be calculated precisely. The figure might be less than 39 per cent. On the figures used for calculation, it would require outside support of $2.85 billion, that is to say, $4.75 billion minus the $1.9 billion admitted claims of the Abu Dhabi interest.

The second aspect concerns the Creditors' Committee.

There has not been time in this liquidation - apart from numerous other difficulties - to establish a normal liquidation committee, or committee of inspection as it used to be called. Accordingly the Vice-Chancellor was concerned, as he explained in a judgment of 2nd March 1992, to establish an informal committee, although not elected democratically by the creditors, to discharge as satisfactorily as can be arranged the same function for the creditors as would a statutory liquidation committee.

The result was the creation of the Creditors' Committee with eight members - more than the statutory liquidation committee. They include representatives of the B.C.C.I.

Depositors Protection Association, which claims to be the largest group of individual creditors of the B.C.C.I. banks who have sought to take an active part in the English and other insolvency proceedings in order to protect their interests, a representative of U.K. local authorities which have made deposits with S.A. in the United Kingdom, a representative of employees in the United Kingdom, an insolvency practitioner to look after the interests of small creditors, and a representative of the Deposit Protection Board, a statutory body in this country.

The details are set out in paragraph 55 on page 32 of the liquidators' latest statement.

The Creditors' Committee voted by a majority of 7:1 against the implementation of the Agreements. Therefore in the court below the Creditors' Committee opposed the approval of the Agreements. A small number of individual depositors also attended the hearing below and opposed, including some who had come from the Middle East and from West Africa. The one dissentient on the Creditors' Committee was the Deposit Protection Board, which favoured implementation of the Agreements.

But the Deposit Protection Board is in a slightly different position from other creditors. It is the statutory body responsible for administering the compensation scheme for depositors with failed banks under the Banking Act 1987. Its obligation was to pay each qualifying depositor 75 per cent of his claim up to a maximum of £15,000 in any one case. It therefore comes in as a creditor of S.A. by way of subrogation for the sums paid to creditors of up to £15,000 each. But it is entitled for that reason to the first £15,000 distributable

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otherwise by the liquidators to each of those creditors. It has therefore a bona fide interest in early repayment, rather than in achieving the absolute maximum return to the creditors generally.

The original appellants were the members of the Creditors' Committee other than the Deposit Protection Board. Several of them, however, declined to proceed because of the personal risk in costs. The present appellants, who include two representatives of the B.C.C.I. Depositors Protection Association who were members of the Creditors' Committee, and include also other members of that Association, were substituted as appellants on the opening day of this appeal. It is said that the Creditors' Committee and other creditors who opposed the approval of the Agreements represented some $1.34 billion if all members of the B.C.C.I. Depositors Protection Association all over the world are included.

There was no evidence - and I stress the word, "evidence" - before the Vice-Chancellor that any creditor at all of S.A. or Overseas, except the Deposit Protection Board and the Abu Dhabi authorities, favoured implementation of the Agreements, which the Vice-Chancellor and since then, the judge in the Cayman Islands court, have approved and authorised the liquidators to implement.

Before I turn to the authorities on the law, I should mention two other areas of fact, namely, the practicality of convening a meeting of creditors of S.A. (or of Overseas, so far as that is material) or class meetings of creditors for the purposes of a scheme under section 425, and the reasons why it is said that there must be the Pooling Agreement. I have already mentioned the number and wide spread of the branches of

S.A. and Overseas and the problems of ring fencing. It is said in the Liquidators' Report which I have just mentioned, by way of quotation from an earlier report to the High Court of 28th February:

> "There are 47 branches and offices of BCCI SA in 13 jurisdictions. The liquidators estimate that worldwide there may be 140,000 individual and corporate creditors of BCCI SA. By far the largest proportion of these by both number, some 70,000, and value, $2,752 million, are the creditors in the books of the U.K. branches of BCCI SA, but only an estimated 50,000 of these are U.K. resident. Some 20 per cent or 14,000 of the creditors in the books of the U.K. branches are accounts which either bear the instructions 'no correspondence', or which have incomplete addresses".

The Vice-Chancellor in his judgment at page 4E treats the figure of 140,000 as the total of creditors of S.A. and Overseas together. This is erroneous. 140,000 is the figure for creditors of S.A. only. If creditors of Overseas are added on, the total would be 310,000. In addition, in many countries, because of banking secrecy laws, the English/Luxembourg or Cayman Island liquidators cannot have access to the names and addresses of creditors who were depositors with the local branches of S.A. or Overseas.

There are problems over timing because of the number of countries involved where meetings might have to be held. There are strict time limits under the Agreements for approval.

There are problems also over proof of debts because under Rule 4.67 of the Insolvency Rules 1986 the entitlement to vote at creditors' meetings is limited to persons who have lodged a proof of debt and whose claims have been admitted by the Chairman of the meeting pursuant to Rule 4.70 for the purpose of entitlement to vote. We were told that there were persons who are creditors of one branch but debtors to another branch of S.A. or Overseas.

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As for the reasons for having the Pooling Agreement, I take the following from paragraph 22 of the Joint Liquidators' Report of 16th March 1992:

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"22.1 The Pooling Agreements represent the most (and possibly only) practicable and efficient way in which the liquidations of the companies and branches of the principal BCCI Companies, and in particular those of BCCI SA and BCCI Overseas,can be carried out in the light of the way the affairs of the BCCI Group were conducted.

B

22.2 The affairs of BCCI SA and BCCI Overseas in particular were so commingled that it would be impracticable without very considerable delay and enormous expense, and might well be impossible:

C

(a) to determine as between BCCI SA and BCCI Overseas,what property is the property of one rather than the other; or

(b) to determine what amounts, if any, are due from the one to the other as a result of acts and omissions in relation to transactions which have taken place (or should have taken place) between them.

D

22.3. The grounds upon which the foregoing is based include the following:

22.3.1 Central treasury operations were designed to control the surplus funds of the entire BCCI Group. The scale of these operations was enormous, involving management of BCCI Group and other funds of approximately US$5,000 million generated from a multitude of smaller transactions and placed both internally within the BCCI Group and with outside third parties.

E

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22.3.2. Unravelling the extremely complex position which existed at 5 July 1991 would be very difficult. Central treasury activities were all recorded in the books of BCCI Overseas. However, a substantial part of central treasury funds belonged to BCCI SA. Although all the activities are recorded in BCCI Overseas' books, these activities were operated and managed by BCCI SA under a management agreement and powers of attorney.

G

22.3.3 Recorded intercompany balances between BCCI Holdings, BCCI SA and BCCI Overseas branches were more than US$2,000 million.

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These relate to a very large number of individual transactions including treasury transactions, loan parking (i.e. recording loans made by one company in the books of another), recharges and trading balances.

22.3.4. There are numerous cross-company guarantees and letters of comfort between the principal BCCI companies. Those evaluated amount to more than US$800 million and the eventual total will almost certainly exceed this figure.

B

22.3.5 One element of central treasury operations related to repurchase agreements. Under these repurchase agreements some US$1 billion of both BCCI SA and BCCI Overseas assets were placed with various third party brokers in order to raise short term liquidity for the Cayman operations. Following default under the repurchase agreements, BCCI SA investments held within the BCCI Overseas treasury operations totalling some US$370 million were sold by the brokers as part of the repurchase agreement arrangements and applied in reduction of the liabilities to the brokers.

C

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22.3.6 The treatment of transactions as between BCCI SA and BCCI Overseas often distorted the true financial position of the two companies. Such treatment included loan parking and artificial fund transfers.

E

22.3.7 Many customers received loans from both BCCI SA and BCCI Overseas, often with common security. A third of the principal non-performing borrowers, for example, owe monies to both companies. In some cases customers received loans which were recorded in the books of one company but executed security documentation ostensibly to the other for the loans.

F

22.3.8 To date funds of over US$50 million have been realised by the BCCI Officeholders which are of uncertain ownership. The question of which entity these funds belong to would have to be resolved if the Pooling Agreements were not entered into.

G

22.3.9 BCCI Overseas' operations were only initiated in the late 1970's at a time when BCCI SA started to experience capital adequacy problems. There

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appear to have been no obvious differences between each company in respect of geographical spread, type of activity or commercial relationships.

22.3.10 The central credit, internatonal and accounts divisions were responsible for monitoring and recording group activities, and made little or no distinction between legal entities. Central management and employees were similarly organised on a geographical, rather than a corporate, basis.

22.3.11 Reporting and management were organised and exercised on branch and central level only and not by legal entity. Management accounts and budgets were prepared on a group basis."

As to convening a meeting of creditors of S.A., the Vice-Chancellor said this at page 4 of his judgment:

> "There would be formidable practical difficulties in holding a meeting, but these would not be insurmountable. More importantly, creditors of each of the two companies fall into many different classes with different interests (for example, depositors in countries where there has been 'ringfencing' and depositors in countries where there has not). So a single vote at a single meeting would not be a sound guide to the creditors' views. But an attempt to hold a series of class meetings would encounter the feature which bedevils every step in this saga which has brought loss and misery to so many thousands of families throughout the world: the sheer complication one meets at every turn will thwart every effort to proceed neatly along the normal legal paths".

My personal view is that it is wholly impracticable to hol a creditors' meeting of the creditors of S.A. with appropriate classes because of conflicting interests, whether under a schem under section 425 of the Companies Act 1985 or under section 1 of the Insolvency Act 1986, or at all.

As for pooling, the Vice-Chancellor said of the Pooling Agreements at page 8B-D of his judgment:

> "I am in no doubt that the agreements are so plainly fo the benefit of the creditors that I should approve them without further ado. I am satisfied that the affairs BCCI S.A. and BCCI Overseas are so hopelessly intertwin that a pooling of their assets, with a distribution

> enabling the like dividend to be paid to both companies' creditors, is the only sensible way to proceed. It would make no sense to spend vast sums of money and much time in trying to disentangle and unravel".

A

I entirely agree. I would reject the submission that there should first be further investigation as to whether pari passu distribution is the correct basis for pooling or not. In the complexities of this case I do not see that further investigation would be likely to be fruitful and the time taken would defeat the time limits of the Contribution Agreement.

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I turn, therefore, to the law.

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I take first the law as to giving effect to majority votes of creditors. This is a question which arises in many contexts and may be said to be representative of the general approach of the courts in company matters. It arises in particular in relation to petitions for winding-up. The rules provide for advertisement of petitions so that creditors may learn of them, and they provide for notices to be given of intention to support or oppose the petition if a creditor wishes to appear on the hearing of the petition. The practice that seems to have developed before the decision of this court in the case of In re Vuma Ltd [1960] 1 W.L.R. 1283 seems to have been that it was thought to be enough simply to count the numbers of the creditors on each side and the amounts of their debts to see which overtopped the other, and the court would then give automatic effect to the side which had the more. But that was rejected in In Re Vuma, where it was ruled that it was necessary for the creditors who opposed the making of a winding-up order in respect of an apparently insolvent company to put forward reasons for their opposition, so that it was not entirely a question of mathematics: reasons also came into it. The

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consequence of that was examined by Pennycuick J. in In re A.B.C. Coupler and Engineering Co. Ltd. [1961] 1 W.L.R. 243. The position there was that the creditors had, following Vuma, given reasons for the view they were taking. The headnote recites as held, "that section 346 of the Companies Act 1948" - and I interject that is the same as section 195 of the Insolvency Act 1986 - "required the court to have regard to the wishes of the majority of creditors, which, although not conclusive, possessed great weight, and that where those wishes were reasonable the court ought to follow them in the absence of special circumstances". That reflects a paragraph in the judgment of Pennycuick J. at the foot of page 246. He expressly said at the end of the paragraph, after the reference to "the court ought to follow those wishes in the absence of any special circumstances":

> "As I understand the judgment of the Court of Appeal in the Vuma case, there is nothing in it to the contrary."

I regard the words, "in the absence of special circumstances" as of cardinal importance in that formulation. It is a formulation which has been applied many times by the judges of the Chancery Division and, for my part, I would not seek to criticise it.

There is a similar approach in the judgment of Lindley L.J. in the case of In re English, Scottish, and Australian Chartered Bank [1893] 3 Ch. 385. This was a case concerned with the approval of a scheme of arrangement under the Joint Stock Companies Arrangement Act of 1870, which was the earliest statutory antecedent of section 425 of the Companies Act 1985. Lindley L.J., having set out the provisions of the 1870 Act, cites from judgments of himself and Fry L.J. in the earlier cas

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of In re Alabama, New Orleans, Texas and Pacific Junction Railway Company [1891] 1 Ch. 213. He continues at the foot of page 408 and the top of page 409:

> "Now, it is quite obvious from the language of the Act and from the mode in which it has been interpreted, that the Court does not simply register the resolution come to by the creditors or the shareholders, as the case may be. If the creditors are acting on sufficient information and with time to consider what they are about, and are acting honestly, they are, I apprehend, much better judges of what is to their commercial advantage than the Court can be. I do not say it is conclusive, because there might be some blot in the scheme which had passed that had been unobserved and which was pointed out later.
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> While, therefore, I protest that we are not to register their directions, but to see that they have been properly convened and have been properly consulted, and have considered the matter from a proper point of view, that is, with a view to the interests of the class to which they belong and are empowered to bind, the Court ought to be slow to differ from them."

Again, he says the court ought to be slow to differ from them, not the court cannot differ from them.

There is also in the bankruptcy jurisdiction the case of In re Ridgway, Ex parte Hurlbatt, a decision of Cave J. in 1889 reported in Morrell's Bankruptcy Reports at page 277. There the position was that a compromise entered into by the trustee in the bankruptcy in respect of a claim made against the bankrupt's estate was approved by a majority of the committee of inspection, but at a subsequent general meeting of the creditors a resolution was passed refusing to accept the compromise. The trustee applied to the court for leave to carry out the compromise notwithstanding this resolution, but it was held that, the resolution refusing to approve the compromise having been passed by the creditors bona fide and with a view to their own interests after due consideration of the matter in question, the Court would not overrule their decision and the compromise must therefore be abandoned.

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Cave J., in the context of that case, said at 281:

> "I do not say that in a case where it could be shown that the decision was clearly wrong, and also it is difficult to see how any such decision could possibly have been arrived at if everything was bona fide, the Court would not interfere. But the resolution here is clearly not that. There is perhaps something to be said on both sides. I give the trustee credit for believing that the compromise he wishes to carry out is best for the creditors. On the other hand I must give credit to the creditors for believing their opinion is the right one. That being so and having no ground for thinking that the creditors have not honestly and bona fide striven to understand the matter and had their own interests in view, I think I should do wrong if I were to overrule their own decision in their own matter merely on the ground that the result they anticipate may not be realised and may not be so beneficial as they think it will be. In my opinion that was not the intention with which the Legislature gave the Court the power which it is now asked to exercise".

That was a case in which there had indeed been a meeting of the creditors to express an opinion on the compromise. But in the complexities of the present case it is not, in my judgment, practicable to convene a meeting of creditors with any necessary class meetings, and I do not believe that the judge is necessarily precluded by the views of the majority of the informal Creditors Committee, and those who happen to turn up and oppose at the hearing before him, from forming his own decision on the Agreements. The word in section 195 is "may" and not "shall" and he has, in my judgment, a residuary discretion where there are "special circumstances", to quote from Mr. Justice Pennycuick, as there are, in my judgment, in the present case.

I turn to section 425 of the Companies Act 1985. This bears the side note "Power of company to compromise with creditors and members". Subsection (1) is as follows:

> "(1) Where a compromise or arrangement is proposed between a company and its creditors, or any class of them, or between the company and its members, or any class of them, the court may on the application of the

company or any creditor or member of it or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members (as the case may be), to be summoned in such manner as the court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members (as the case may be), present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement, if sanctioned by the court, is binding on all creditors or the class of creditors or on the members or class of members (as the case may be), and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company."

In relation to the antecedent of that section under the Companies Act 1948 we were referred to the decision of Plowman J. in the matter of In re Trix Limited [1970] 1 W.L.R. 1421. The position in that case was as set out in the headnote as follows:

"The liquidator of a company (one of a group of 12) sought by summons the sanction of the court to a conditional agreement of compromise under section 245 of the Companies Act, 1948, made between the liquidator and the company."

Section 245 was the section in the 1948 Act which contained the compromise powers.

"Similar conditional agreements had been made in respect of the other companies in the group. The effect of the court's sanction would have been to enable the company's assets to be distributed in a way which might not have been strictly in accordance with creditors' rights. Those rights were difficult to ascertain with precision, but it was claimed that the cost of a scheme of arrangement with creditors under section 206 of the Act would outweigh any advantage creditors might hope to obtain by that method."

Section 206 was the predecessor of section 425.

"Held, (1) that the proper way to distribute the assets of a company other than strictly in accordance with creditors' rights was by a scheme of arrangement under section 206 of the Act which bound all creditors, and not by an agreement of compromise under section 245 which would deprive non-assenting creditors of the court's protection and prevent them from expressing their views.

The summons was accordingly dismissed. The judge said at the top of page 1424A:

> "However convenient it may be for the liquidators to have a compromise sanctioned by the court, it is in my judgment wrong in principle to allow that course to be taken, for none of the persons affected has had any opportunity of being heard to challenge it - indeed the whole object is to preclude such a challenge."

Then, a bit further down, he said:

> "The method which has been adopted here puts the burden on the court of deciding whether a particular method of distribution is fair in all the circumstances and should be accepted. In my judgment, this is an unjustifiable burden, first because, under the machinery provided by section 206, the creditors alone ought to be asked to decide it, and secondly because I have not had the benefit of hearing any alternative point of view.
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> In my judgment, it would be unfair to non-assenting creditors to deal with the matter in the way proposed since it deprives them of the opportunity of airing their views and of the protection of the court's control over meetings, advertisement and circular under section 206."

That decision of Plowman J. was followed in the Supreme Court of Queensland in the case of Re Austcorp Tiles Pty Limited [1992] 10 A.C.L.C. 62.

There is, however, also the important decision in the matter of Taylor in the Inner House of the Court of Session. That was decided on 3rd April 1992, but only reported since the decision of the Vice-Chancellor in the present case. The reference is [1992] B.C.C. 440. The Inner House was hearing an appeal from a decision of the Lord Ordinary.

The essence of the facts appears to have been this. The applicant, who is referred to as the noter, was the official liquidator to two companies, George Morris (Hotels) Ltd. and Argyll Hotels (Ullapool) Co. Ltd. He had been appointed in the place of a Mr. Armour. The moving spirit in those companies had been a Mr. George Morris. He had executed a trust deed in favour of his creditors and his estate had been sequestrated and

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a Mr. Wilson had been appointed a trustee of his estate. The facts averred were that, prior to the appointment of Mr. Armour as liquidator of the companies, the businesses carried on by the companies and at various farms and estates, including a particular hotel, were carried on in a way that did not enable a business transaction of the different entities to be distinguished and separated from each other. The sole directors of the companies were Mr. Morris and his wife. All the transactions for the hotel, the farms and the estates were conducted through one bank book. No formal or statutory accounts were prepared on behalf of the companies and the books and records of the companies were incomplete. It is said that the official liquidator discovered that the liabilities of the companies and of Mr. Morris as an individual were so intermingled that he was unable to ascertain which creditors had claims against which of the companies and which creditors had claims against the sequestrated estate of Mr. Morris. Thus it was not possible to adjudicate upon the creditors' claims.

The opinion of the court was delivered by Lord McCluskey, who set out the arguments that had been presented. He was referred to in In re Trix. He said this about it:

> "Reference was, however, made to Re Trix Ltd; Re Ewart Holdings Ltd [1970] 1 W.L.R. 1421, in which the court h declined to sanction a conditional agreement of compromise under sec. 245 of the Companies Act 1948 mad between the liquidator and a company in circumstances when not all the creditors were agreeable to the compromise. All that could really be said about that case in relation to the matter of competency was that n issue of competency was argued there."

With all respect, I doubt if that was entirely correct. He th continued to set out further arguments on the other side. He recorded at page 443 submissions for the liquidator that the language of the compromise powers:

"was sufficiently clear and unambiguous to show that the liquidator had power to engage in any compromise or arrangement that the company could have engaged in. The power of the trustee in bankruptcy contained in sec. 172 of the Bankruptcy (Scotland) Act 1913 was similarly wide. In his submission, if it could be said that a company and an individual closely connected with the company could have entered into an arrangement whereby they jointly made a compromise with a number of creditors who had potential claims against both or either, then a similar arrangement could properly and competently be made between the company and a trustee on the sequestrated estate of that individual, or between the individual and the liquidator of that company ..."

The decision was somewhat affected by considerations of Scottish procedure. Lord McCluskey at page 444C said this:

"In our opinion, it is unnecessary and undesirable at this stage to attempt to pronounce upon the competency of granting the several distinct remedies contained in the prayer of the note. The court is not being invited at this stage to grant the prayer. We are not at this stage prepared to rule that any part of the prayer is incompetent. In our view, however, it is plain that sec. 245(1)(f) permits the liquidator of a company to enter into any compromise arrangement with creditors that might have been entered into by the company itself. Similarly a trustee in bankruptcy is empowered by sec. 172 of the Bankruptcy (Scotland) Act 1913, to compromise with creditors in exactly the same way as the bankrupt himself might have compromised had the estate not been sequestrated. We see no reason to refrain from giving the wording of these two sections their ordinary meaning. In our view, if it is established that the assets of the companies and of the sequestrated estate are so confused that it is impossible separately to identify the assets of each and if also it appears that it is practically impossible to determine who are the true debtors for those creditors who have claims arising out of some business with the companies and/or the sequestrated estate, then it would be open to the noter [the liquidator] to enter into a compromise arrangement in conjunction with Robert Wight Wilson so as to enable an overall settlement to be reached with all the creditors. On that view, it appears to us that the course adopted by the Lord Ordinary, namely a remit, is a sensible one and, as far as can be judged, is more likely to lead to an early and less expensive resolution of the problems than the alternative proposed by the reclaimer."

He then refers to reasons why, if there was a reference to an accountant rather than a member of the Bar to find whether the factual conditions averred were indeed adequately made out, any other question might be resolved without further reference

to the court. It is, however, a clear decision of the Inner House, first, that compromise powers are to be given the wide meaning that they permit the liquidator to enter into any compromise arrangement with creditors that might have been entered into by the company itself. That would cover a compromise by S.A. with Overseas to resolve all their mutual dealings. It follows also from Taylor that it is authority that, if it is established that the assets of the companies and of the sequestrated estate are so confused that it is not possible to identify the assets of each and it is practically impossible to determine who the true debtors are, it would be open to the liquidator to enter into a compromise arrangement with the estate in the exercise of the compromise powers rather than by scheme under the predecessor of section 425. In re Trix is therefore, in the circumstances prevailing in Taylor, set on one side.

In the present case the conclusion of the Vice-Chancellor on this issue at page 8H to 9E of his judgment is as follows:

> "The creditors committee and others contended that I have no jurisdiction (that is, legal power) to approve these proposals on this application by the liquidators. The argument was that in several respects the proposals involve a variation in the rights of creditors and that such a variation can only be sanctioned so as to bind the creditors as part of a formal scheme of arrangement under section 425 of the Companies Act 1985.
>
> I do not agree. The liquidators' powers under paragraphs 2 and 3 of schedule 4 to the Insolvency Act 1986, exercisable with the approval of the court, are wide and they are wide enough to cover this case.
>
> In so far as the package does involve departures from the simple and fundamental principle that an insolvent company's assets should be distributed equally among all its creditors, I would in normal circumstances expect the scheme of arrangement procedure to be followed. That procedure contains additional safeguards for creditors. But if that procedure is followed in this case the proposals will flounder and sink in a morass of elaborate legal procedures and niceties. That cannot be the right

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way to approach this exceptional case."

It seems to me that, in the very similar circumstances of this case, Re Taylor is authority to warrant the conclusion at which the Vice-Chancellor arrived. Of course, in this case it is not possible to tell what the assets of S.A. and Overseas are, but it is possible, to some extent at any rate, to say who the creditors are. But it is not practicable to hold meetings, let alone class meetings, to ascertain the wishes of the creditors. I therefore do not see any real difference between the present case and Taylor.

It was submitted to us by Mr. Crystal for the liquidators that, before the Joint Stock Companies Arrangement Act 1870 was enacted, the courts had, in effect, approved schemes of arrangement, which would now be brought forward under section 425, under the compromise powers in the Companies Act 1862, which are the same as those invoked in the present case.

We were referred to two early decisions. The first is Bank of Hindustan, China and Japan Limited, in liquidation v. The Eastern Financial Association Limited, in liquidation L.R. II Privy Council Cases 489, a decision under the provisions of the Indian Companies Act which were comparable to the compromise powers under the English Companies Act 1862. There the court upheld a decision of the Appeal Court in India to approve an arrangement between the company and a class of contributories under the compromise powers. The opinion of the Committee was given by Selwyn L.J. The second is a decision of Lord Romilly in In re Commercial Bank Corporation of India and The East L.R. 8 Equity Cases 241, where the court, under the compromise power of the Companies Act 1862, sanctioned a compromise between the contributories and creditors of a company in liquidation

assented to by a large majority of both classes and providing that the creditors should accept a composition.

—Those decisions indicate a wide approach to the construction of the compromise powers and in the same way, in the fairly recent decision In re Savoy Hotel Limited [1981] Ch. 351, the court held that a wide scope should be given to the construction of the powers for sanctioning schemes of arrangement under what is now section 425.

The two early cases were before the 1870 Act came in. The scope of that is shown in the judgment of Lindley L.J. in the case of In re Alabama, New Orleans, Texas and Pacific Junction Railway Company [1891] 1 Ch. 213 at page 236. It provided:

> "Where any compromise or arrangement shall be proposed between a company which is, at the time of the passing of this Act or afterwards, in the course of being wound up, either voluntarily or by or under the supervision of the Court, under the Companies Acts, 1862 and 1867, or either of them, and the creditors of such company, or any class of such creditors, it shall be lawful for the Court, in addition to any other of its powers, on the application in a summary way of any creditor or the liquidator, to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the Court shall direct ..."

Then it had provisions for the effect of a majority in number, representing three-fourths in value, of creditors agreeing to the arrangement or compromise.

That was an additional power at that stage and Lord Justice Lindley explains in his judgment in the Alabama case at the foot of page 235 and at the top of page 236 that:

> "... the Companies Arrangement Act of 1870 was passed for the purpose of increasing the power of creditors to make arrangements and compromises with liquidators. Under the Act of 1862, the compromise clauses were the 159th and 160th, and under that Act there was a difficulty, if not an impossibility, of majorities of creditors binding minorities. If there was any such power it was very restricted, and it was to enlarge the power in that respect that the Act of 1870 was passed."

The difficulties to which Lord Justice Lindley refers seems to have been created primarily by a decision of Lord Justice James, sitting I think at first instance, in the case of In re Albert Life Assurance Company, and other Companies L.R. 6 Chancery Appeals 381. It was decided on 1st and 2nd March 1871. The position there was that one insurance company purchased the businesses of several companies and indemnified them against their liabilities and a scheme was proposed under the 1862 Act for the sanction of the court under which the contributories were to pay certain contributions, and the assets of the company and the contributions were to be handed over to a new company which was to take over the business and policies of all the companies. This had been accepted by a majority of three-fourths in value of the creditors of each of the companies, but Lord Justice James refused to approve it, with great regret, because there was no provision to make it binding upon any dissentient creditors or contributories.

In the case of In re New Zealand Banking Corporation 21 L.T. 481 Lord Romilly seems to have held that the sanction of the court to a compromise between the company and other parties under the compromise powers in the 1862 Act gave the court no jurisdiction to stay actions brought by dissentient contributories, not against the company but against the directors of the company as individuals.

One sees, therefore, that the problem is a problem of binding the dissentient parties. It is not a problem which arises, as I see it, quoad the Contribution Agreement by itself. There is no question there of the majority of the creditors binding the minority. Rights as between the Abu Dhabi interests and the liquidators are compromised, as is often done without

creditors meetings at all. The dissentients are left free not to assent to the arrangement. But with the Pooling Agreement the problems are different because it is wholly impossible, as I see it, to go through the procedure of a scheme under section 435. Everything is so mixed as it was in the case of Taylor. As, therefore, in the case of Taylor it is necessary, in my judgment, for the matter to be dealt with under the compromise powers, and possible on the width of those powers as interpreted in the case of Taylor. No question really arises of binding the dissentient creditors because the state of chaos which has been achieved by those in charge of the affairs of these companies necessarily means that there is nothing whatever that dissentients could wish to do. Accordingly, in my judgment, the Vice-Chancellor was entitled to take the view he did and he is warranted by the decision of the Inner House in the case of Taylor. It is highly desirable in matters of company law, where the relevant provisions of the statute apply to England and to Scotland alike, that the English court and the Scottish court should adopt the same construction and act in the same way in relation to the same sections.

The other point taken by the appellants concerns the departures under the Contribution Agreement, as I have outlined above, from the pari passu rule. Reference has been made to the decision of the House of Lords in British Eagle International Air Lines Limited v. Compagnie Nationale Air France [1975] 1 W.L.R. 758. That case actually only decided that the pari passu rule invalidated a clearing house arrangement for the settlement of debts among airline operators which they had entered into before one of them went into liquidation. When the liquidation supervened, the rights of all concerned were governed by the

pari passu rule in company liquidation which superseded the arrangements for the previous clearing house settlement arrangements. As I see it, in a liquidation there can be a departure from the pari passu rule by a scheme of arrangement under section 425; but, equally, there can be a departure from the pari passu rule if it is merely ancillary to an exercise of any of the powers which are exercisable with the sanction of the court under Part I of Schedule 4 to the Insolvency Act 1986.

There some things that cannot be done without a scheme of arrangement and in the normal run that would include a very large number of proposals, and indeed almost all, if not all, proposals for re-arrangements of rights as between creditors of different companies or different classes of creditors. But the compromise powers within their scope are an alternative way of doing things, and I do not believe that the British Eagle decision precludes that being exercised in a way which may, in an ancillary fashion, involve a departure from the strict pari passu rule. If any compromise is dissected, it may involve elements of give and take as to who is to have what, which may make it quite impossible to fit the compromise in with the strict pari passu rule. Here the condition is that these two aspects I have mentioned are part of the scheme of the Contribution Agreement, but not negotiable.

I therefore agree with the conclusion of the Vice-Chancellor. The court has a residual discretion not to follow the wishes of the Creditors Committee in the special circumstances of this case. Each way it is put the appellants' claim that the judge had no jurisdiction or power to approve the Agreements or to authorise them to be carried into effect fails. I would not interfere with the discretion which I hold the judge

had to approve the Agreements, notwithstanding the views of the majority of the Creditors Committee and notwithstanding that the Pooling Agreement was not put before the judge by way of a scheme under section 425 for which it was impracticable to convene any meetings, and notwithstanding the incidental departures from the pari passu rule of distribution which there are to be found under the Contribution Agreement. I would accordingly dismiss this appeal.

LORD JUSTICE RUSSELL: I agree and there is nothing that I can usefully add.

LORD JUSTICE FARQUHARSON: I agree.

MR CRYSTAL: My Lord, in those circumstances, would your Lordships dismiss the appeal with costs, the costs to include the costs of the unsuccessful application to adduce further evidence.

LORD JUSTICE DILLON: Firstly, Mr Crystal, you are asking for costs as against the present appellants, presumably, and that should therefore surely not include any costs before they launched their application to be joined.

MR CRYSTAL: My Lord, I am only talking about the costs of and occasioned by the fact that these individuals became appellants in this court.

LORD JUSTICE DILLON: You are not seeking any costs against the members who were original appellants?

MR CRYSTAL: No.

LORD JUSTICE DILLON: So it would be costs as against the appellants from the time of the issue of their application to be joined?

MR CRYSTAL: Yes, my Lord.

MR HUNT: I resist that application. As your Lordship knows, in the court below when I was acting for the Creditors Committee, notwithstanding that the Committee's opposition failed, the Vice-Chancellor thought it right that the costs, indeed of all opposing creditors, should be paid out of the estate. Your Lordships will also be aware that there was a further very short hearing before the Vice-Chancellor on 17th June, of which we have a transcript of the judgment in Bundle H at Tab 11 (I am not going to take your Lordships to it) in which I entirely accept that the Vice-Chancellor said that an appeal was a different matter and, although it had been right before him that those opposing the proposal should have their costs out of the estate, he said, as I say, that the appeal was a different thing

and that was a matter for the Court of Appeal. What I would submit is that this was an appeal which it was right that my clients should take over, and that it has raised important matters of law which were not dealt with in the Vice-Chancellor's judgment. Your Lordships have not in any way described the appeal as frivolous or anything of that sort, and of course it is, I think it is fair to say, the first case in which this court, or rather the Vice-Chancellor, has decided to ignore the views, or rather to overrule the views, of the majority of the Committee, notwithstanding no suggestion that those were unreasonable, and this court has taken the same view. In those circumstances, I do submit that this is an appeal which was properly brought and, given the nature of the jurisdiction which the Vice-Chancellor has been asked to exercise and which this court is being asked to exercise, the proper course would be that the liquidators should get their costs from the estate, as they did in the court below, rather than from the individual appellants.

LORD JUSTICE DILLON: Thank you, Mr Hunt. Mr Hacker, you are not asking for costs against anybody?

MR HACKER: There are no matters in relation to which we wish to address your Lordships.

LORD JUSTICE DILLON: Mr Crystal?

MR CRYSTAL: My Lord, the Vice-Chancellor, in his judgment of 17th June 1992, said this: "The position therefore, as I see it, is that creditors who wish to appeal may of course do so pursuant to the leave I gave. But they must appreciate, and in fairness to the general body of creditors I should leave no room for misunderstanding, that they do so at their own risk as to costs". I make the submission which I have made that these appellants should pay the costs occasioned by their taking over this appeal.

LORD JUSTICE DILLON: Thank you.

(Their Lordships conferred)

LORD JUSTICE DILLON: The appellants went ahead with their eyes open, at their own risk as to costs. In the interests of the other creditors, we think it is right that the appellants should pay the liquidators' costs of the appeal from the date of the appellants' application to be added as parties.

MR CRYSTAL: I am much obliged.

MR HUNT: If your Lordship has concluded that matter, I do invite the court to give the present appellants leave to appeal to take this matter to the House of Lords. In my submission, your Lordships' judgment and that of the court as a whole does raise important matters of principle, both on the matter of the approach of the court to compromises when faced with the position of the views which had been expressed in this case and on the matters of pari passu. In my submission, those are matters which the House of Lords ought properly to consider.

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(Their Lordships conferred)

LORD JUSTICE DILLON: Leave to appeal is refused.

A MR CRYSTAL: My Lord, I wanted to express the parties' gratitude that the court felt able to take this case this week and also to give judgment during the course of this week. We are very much indebted to the court.

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APPENDIX III

SUMMARY OF THE DRAFT AGREEMENT
BETWEEN
THE GOVERNMENT OF THE EMIRATE OF ABU DHABI
ACTING BY AND THROUGH ITS DEPARTMENT OF FINANCE
("THE GOVERNMENT OF ABU DHABI"),
THE PRINCIPAL COMPANIES AND THE PRINCIPAL LIQUIDATORS

Clause 1

Clause 1 deals with the interpretation and construction of various words and phrases in the Agreement. Some of the main definitions are:-

"Principal Companies" means BCCI Holdings, BCCI SA, BCCI Overseas, CFC, ICIC Overseas, ICIC Holdings, ICIC Investments and ICIC Apex;

"Principal Liquidators" means the liquidators of the Principal Companies appointed in the principal jurisdiction;

"Majority Shareholders" means His Highness Shaikh Zayed, His Highness Shaikh Khalifa, the Government of Abu Dhabi and the Abu Dhabi Investment Authority;

"Related Persons" means the persons listed in Part 1 of Schedule 2 and in the main are persons or entities resident in the UAE. However the Government of Abu Dhabi can delete any person or entity from this list by notice to the Principal Liquidators in writing prior to completion of the Agreement;

"Releasing Related Persons" means those of the Related Persons who release the Principal Companies and the Principal Liquidators from any claims they may have against the Principal Companies and the Principal Liquidators other than claims arising out of transactions of a normal banking nature;

"Non Releasing Related Persons" means those of the Related Persons who do not give such a release to the Principal Companies and the Principal Liquidators;

"Abu Dhabi Parties" means the Majority Shareholders and the Related Persons listed in Part A of Part 1 of Schedule 2 and is relevant only for the indemnities referred to in Clauses 3 and 8 of the Agreement;

RFP Documents" means the documents referred to in Part 4 of Schedule 2 and were entered into in May and June 1991 during negotiations for the possible restructuring of BCCI;

"BCCI/ICIC Group Claims" means claims which the Principal Companies/Principal Liquidators have against the Majority Shareholders and the Related Persons other than claims under transactions of a normal banking nature;

"Majority Shareholder Claims" means claims which the Majority Shareholders and the Related Persons have against the Principal Companies/Principal Liquidators other than claims under transactions of a normal banking nature;

"Liquidators' Deed" is the formal deed to be entered into at completion by the Principal Companies and the Principal Liquidators releasing and waiving any rights they may have against the Majority Shareholders and the Releasing Related Persons from the BCCI/ICIC Group Claims (or, where the Principal Companies and the Principal Liquidators have a claim against both the Majority Shareholders/Releasing Related Persons and a third party, then the Principal Companies and the Principal Liquidators only covenant not to sue the Majority Shareholders and the Releasing Related Persons in respect of that claim). Also, in the Liquidators' Deed, the Principal Companies and the Principal Liquidators covenant not to sue a Non Releasing Related Person so long as that Non Releasing Related Person does not bring or continue proceedings against the Principal Companies or the Principal Liquidators;

"Government's Deed" is the formal deed to be entered into at completion by the Government of Abu Dhabi for itself and the other Majority Shareholders and the Releasing Related Persons releasing and waiving the Principal Companies and the Principal Liquidators from the Majority Shareholder Claims (or, where the Majority Shareholders or the Releasing Related Persons have a claim against both the Principal Companies/Principal Liquidators and a third party, then the Government of Abu Dhabi for itself and the other Majority Shareholders and the Releasing Related Persons only covenants not to sue the Principal Companies and the Principal Liquidators in respect of that claim).

Clause 2

Clause 2 deals with the Government of Abu Dhabi's obligation to pay on completion the sum of US$1.8 billion

- on completion, the Government of Abu Dhabi will pay to the Principal Liquidators the sum of US$1.55 billion

- on completion, the Government of Abu Dhabi will pay to an Escrow Agent the sum of US$250 million

- the Escrow Agent will retain the sum of US$250 million in a separate fund and will pay the Principal Liquidators out of the fund US$150 million 24 months after completion and US$100 million 36 months after completion

- all interest accruing on the fund for the 36 month period after completion will be for the account of the Government of Abu Dhabi

- if the fund is depleted otherwise than in specified circumstances, the Government of Abu Dhabi will replace the amount so depleted.

Clause 3

Clauses 3(A) - 3(D) deal with the indemnity to be given by the Principal Companies/Principal Liquidators to the Government of Abu Dhabi . If the Principal Companies/Principal Liquidators successfully sue a third party under

a claim (other than a claim arising under a transaction of a normal banking nature) and the third party successfully claims over against the Abu Dhabi Parties in relation to that claim, the Principal Companies/Principal Liquidators will pay to the Government of Abu Dhabi by way of indemnity the amount actually recovered by the Principal Companies/Principal Liquidators from the third party or the amount paid by the Abu Dhabi Parties to the third party whichever is the lower

- the Principal Companies/Principal Liquidators have no liability under this Clause if a third party claims over against the Abu Dhabi Parties more than 5 years (or in certain circumstances 7 years) after completion

- the Principal Companies/Principal Liquidators' liability under the indemnity to the Government of Abu Dhabi is limited to a maximum aggregate amount of US$450 million

- for the purposes of the indemnity, a third party excludes inter alia the Luxembourg Monetary Institution (IML) and the Bank of England.

Clauses 3(E) to 3(H) deal with the discharge by the Principal Companies/Principal Liquidators of their obligations under the indemnity referred to above as follows:-

- all recoveries received by the Principal Companies/Principal Liquidators from third parties in respect of the claims referred to above will be paid to an Indemnity Escrow Agent and maintained in a separate fund until the amount paid into the fund totals US$450 million. However, no recovery has to be paid into the fund if the third party from whom the recovery is obtained waives any rights it may have against the Abu Dhabi Parties

- all interest accruing on the fund will be paid to the Principal Liquidators

- where the Principal Companies/Principal Liquidators have successfully sued a third party who successfully claims over against the Abu Dhabi Parties thus causing the indemnity to operate, the amount which the Principal Companies/Principal Liquidators are obliged to pay to the Government of Abu Dhabi under the indemnity in respect of that recovery will be paid out of the fund and any balance in the fund in respect of that recovery will be returned to the Principal Companies except in certain circumstances where the fund has to be maintained at a level equal to the Principal Companies/Principal Liquidators' contingent liability under these clauses

- at the expiry of 5 (or as the case may be 7) years after completion, any balance remaining in the fund will be paid to the Principal Liquidators unless at that time the Abu Dhabi Parties remain subject to proceedings which could cause the indemnity to operate or there is a dispute as to the entitlement out of the fund in which case the balance will only be paid to the Principal Liquidators after those proceedings have been resolved and any such disputes have been settled

- if the fund is depleted otherwise than in specified circumstances, the Principal Companies/Principal Liquidators will replace the amount so depleted.

Clause 3(I) provides that a foreign pooling liquidator must also pay any recoveries he receives from third parties in respect of claims of the type

referred to above into the fund and the Principal Companies/Principal Liquidators must take such steps as they consider reasonable to ensure this is done.

Clauses 3(J) to 3(L) deal with the specific circumstances of an indemnity given by the Principal Companies/Principal Liquidators to the Abu Dhabi Parties if the Principal Companies/Principal Liquidators decide to sue Security Pacific under a transaction arising out of the RFP documents.

Clause 3(M) provides that a payment includes either cash or a tangible asset and a payment or receipt includes, in most circumstances, an amount which is satisfied by way of set off deduction or withholding.

Clause 3(N) provides that the Government of Abu Dhabi must minimise any liability of the Abu Dhabi Parties to a third party.

Clause 4

Clause 4 deals with completion

- completion is to take place where the parties agree and on formal signing of the Agreement. The current intention of the Principal Liquidators is that completion will take place following the last of

  (1) the Luxembourg, London, and Cayman Court approvals to the Agreement having been obtained and

  (2) the Pooling Agreement and certain related documentation having been entered into

and will be simultaneous with the admittance (but only after verification) by the Principal Liquidators of certain debts owed by the Principal Companies to the Majority Shareholders and the Related Persons

- at completion, payment of the US$1.8 billion will be made and certain documents will be handed over.

Clause 5

Clause 5 deals with certain releases and covenants to be given by the parties at completion

- the Principal Companies/Principal Liquidators will hand to the Government of Abu Dhabi on completion the Liquidators' Deed and formal releases in respect of the RFP documents

- the Government of Abu Dhabi will hand to the Principal Liquidators on completion the Government's Deed, formal releases in respect of the RFP documents and the authorities of the Releasing Related Persons for the Government of Abu Dhabi to execute the Government's Deed on their behalf

- each foreign liquidator who pools must enter into a formal release similar to the Liquidator's Deed in favour of the Government of Abu Dhabi and in return will receive a release similar to the Government's Deed. The foreign pooling liquidator must also covenant with the Government of Abu Dhabi to pay any recovery he receives from a third party into the fund under clause 3 if appropriate

- the Principal Liquidators and the Government of Abu Dhabi represent that, save as has been disclosed, they have not in any way transferred their rights in the BCCI/ICIC Group Claims or the Majority Shareholder Claims respectively

- the Majority Shareholders waive their rights to receive as a creditor a dividend on monies which come into the estate of BCCI/ICIC from the United States of America and which are out of assets, which by reason of the Plea Agreement of 19th December 1991 have been forfeited to the United States of America or to the State of New York, assets which are or may come into the possession of the District Attorney of New York, the Department of Justice or the Federal Reserve Board as a consequence of Court proceedings against or settlement with third parties, and assets which may be received by certain US Authorities under the Geneva Agreement of 8th January 1994 between amongst others those US Authorities and the Government of Abu Dhabi. The Government of Abu Dhabi is also to procure that (subject to completion taking place and the Government of Abu Dhabi's nominee being registered as the shareholder of the shares in UNB currently held by BCCI Holdings) Union National Bank will also waive its rights to claim a dividend on these US funds

- where BCCI/ICIC discontinue or stay proceedings against any Related Person pursuant to the obligations under the Liquidators' Deed and as a result of such discontinuance or stay, costs are awarded against the Principal Companies or the Principal Liquidators, then the Government of Abu Dhabi will indemnify the Principal Companies and the Principal Liquidators against payment of such costs.

Clause 6

Clause 6 deals with the shares owned by BCCI Holdings in Union National Bank formerly BCCI Emirates and the branches of BCCI SA in the United Arab Emirates

- so far as UNB is concerned, as part of the overall settlement, BCCI Holdings will transfer its 40% shareholding in UNB to such party as the Government of Abu Dhabi nominate and if it is found that any of the Principal Companies own any shares in UNB, these shares will also be transferred

- so far as the UAE Branches are concerned, the Principal Liquidators will permit the UAE liquidators to pool if the UAE liquidators so request. If so the Government of Abu Dhabi will pay to the Principal Liquidators a sum which will enable the admitted UAE Branch creditors to be paid a dividend equal to the other creditors of the BCCI/ICIC Group insofar as the assets of the UAE Branches are insufficient on their own for that dividend to UAE Branch creditors to be paid. The sum will equate to the cost of the dividends to be paid on the liabilities of the UAE Branches over US$540 million, having taken into account the assets of the UAE Branches.

Clause 7

Clause 7 expressly reserves the right for the Majority Shareholders to pursue Portfolio Claims i.e. claims by the Majority Shareholders against any third party (other than the Principal Companies/Principal Liquidators) by tracing or otherwise in respect of funds deposited by the Majority Shareholders with the ICIC Group, and

- if the Government of Abu Dhabi considers that any of the Principal Companies needs to be named as a defendant to proceedings against a third party in respect of a Portfolio Claim, it can bring the Principal Company in as a defendant but in which event the Government of Abu Dhabi will give to the Principal Companies and the Principal Liquidators a complete indemnity for all costs and damages suffered by the Principal Companies as a result

- for the purposes of this Clause, Principal Liquidators and Principal Companies include a foreign pooling liquidator

- there is also an express acknowledgement that the Principal Companies and the Principal Liquidators can pursue any claim against any third party (other than the Majority Shareholders and the Related Persons) even though the Majority Shareholders are also pursuing a claim against the same third party by way of a Portfolio Claim or otherwise.

Clause 8

Clause 8 deals with the indemnity given by the Government of Abu Dhabi to the Principal Companies and the Principal Liquidators and is the reverse situation of Clause 3. If the Abu Dhabi Parties successfully sue a third party under a claim (other than a claim arising under a transaction of a normal banking nature) and the third party successfully claims over against the Principal Companies or the Principal Liquidators in relation to that claim, the Government of Abu Dhabi will pay to the Principal Companies/Principal Liquidators by way of indemnity the amount actually recovered by the Abu Dhabi Parties from the third party or the amount paid by the Principal Companies/Principal Liquidators to the third party whichever is the lower

- the Government of Abu Dhabi have no liability under this Clause if a third party claims over against the Principal Companies/Principal Liquidators more than 5 years (or in certain circumstances 7 years) after completion

- there is no limit on the amount which the Principal Companies/Principal Liquidators can recover from the Government of Abu Dhabi under this indemnity

- for the purposes of this Clause a foreign pooling liquidator also has the benefit of this indemnity

- payment includes either cash or a tangible asset and a payment or receipt includes, in most circumstances, an amount which is satisfied by way of set off deduction or withholding

- the Principal Companies/Principal Liquidators must minimise any liability they might have to a third party.

Clause 9

Clause 9 deals with access to certain individuals referred to in Schedule 3 who remain detained in Abu Dhabi.

Subject to judicial authority approval in Abu Dhabi and the rights of the individuals, the Government of Abu Dhabi will use its reasonable endeavours to ensure the Principal Liquidators are permitted access to these individuals for the purposes of examining and taking statements from them.

Clause 10

Clause 10 deals with the circumstances when the parties to the Agreement will be discharged from any further obligations under the Agreement

- the Majority Shareholders and the Releasing Related Persons will be discharged from any further obligations under the Agreement if either the Principal Companies acting through the Principal Liquidators commence or continue proceedings against the Majority Shareholders or the Related Persons after completion in breach of the Liquidators' Deed or if the Principal Companies acting through the Principal Liquidators after completion seek to apply to expunge or reduce the admittance of any debts of the Majority Shareholders or Related Persons once those debts have been formally admitted in the liquidations of the Principal Companies

- the Principal Companies and the Principal Liquidators will be discharged from any further obligations under the Agreement if, otherwise than is expressly provided in the Agreement, any of the Majority Shareholders commences or continues proceedings against the Principal Companies or the Principal Liquidators after completion in breach of the Government's Deed

- if any Releasing Related Person commences or continues proceedings against any of the Principal Companies or the Principal Liquidators after completion in breach of the Government's Deed, although the Principal Companies/Principal Liquidators will not be released and discharged from any further obligations under the Agreement, the

Government of Abu Dhabi will indemnify the Principal Company and the Principal Liquidators from all costs and damages incurred as a result of those proceedings.

Clause 11

Clause 11 deals with the without prejudice position of the parties (including the Majority Shareholders and the Related Persons) in entering into this Agreement.

Clause 12

Clause 12 deals with currency and payment

- dollars are the sole currency

- payments are to be made in immediately available funds and on a business day
- provides for how a sum which is received in a currency other than dollars is to be converted into dollars.

Clause 13

Clause 13 deals with mutual co-operation between the parties (including the Majority Shareholders and the Releasing Related Persons) to the Agreement

- the parties are to provide each other with such assistance, information and copies of documentation as they reasonably may be able to provide or

as may be reasonably available to them in matters concerning the affairs of the BCCI/ICIC Group or a Portfolio Claim at the cost of the requesting party

- in particular, if the Principal Liquidators receive a request from a third party for access to any records which relate to the affairs of the Majority Shareholders or the Releasing Related Persons, the Principal Liquidators must notify the Government of Abu Dhabi of this request prior to granting the access

- there is no obligation to provide co-operation and assistance if any party considers in its discretion that to do so would be contrary or detrimental to its interests or in a manner which would involve it in a breach of any legal duty or obligation.

Clause 14

Clause 14 deals with certain general provisions relating to the Agreement including

- the Government of Abu Dhabi may assign its rights under the Agreement to any of the Majority Shareholders but otherwise the Agreement shall not be assignable

- each party shall after completion at the cost of the requesting party execute any further assurances to enable the Agreement to be implemented

- dealing with how notices are to be given and payments are to be made (in the case of payments by the Government of Abu Dhabi to the Principal

Liquidators, these payments are to be made into a bank or banks in Luxembourg unless the parties to the Agreement shall otherwise agree)

- interest on any late payment is at the rate of 2% above LIBOR

- the obligations of the Principal Companies and the Principal Liquidators are joint and several.

Clause 15

Clause 15(A) deals with the liability of the Principal Liquidators

- except in the case of fraud, dishonesty or deliberate breach of the Agreement which is dishonest, the liability of the Principal Liquidators to the Government of Abu Dhabi is limited to the amounts the Principal Liquidators are entitled to recover by way of indemnity out of the assets which are under their control and any other amounts to which they may have recourse in the liquidation of all the Principal Companies i.e. all the pooled assets.

Clause 15(B) deals with the situation where a foreign liquidator of a BCCI branch or subsidiary who has not pooled sues the Majority Shareholders or the Related Persons. In such circumstances

- any proceedings brought by the foreign non-pooling liquidator will not be a breach of this Agreement, the Liquidators' Deed or the formal releases given in respect of the RFP documents by the Principal Companies acting by the Principal Liquidators

- however the Majority Shareholders and the Related Persons can pursue any claim against the foreign non-pooling liquidator although in such circumstances will not be able to recover from the Principal Companies acting by the Principal Liquidators any awards made against that foreign non-pooling liquidator.

Clause 15(C) deals with a proceeding which has already been commenced by the Government of Abu Dhabi against BCCI in respect of promissory notes issued under certain of the RFP documents. These proceedings will be discontinued but in the meantime will not constitute a breach of the obligations of the Government of Abu Dhabi under the Government's Deed.

Clause 16

Clause 16 deals with the law and jurisdiction of the Agreement

- the Agreement is governed by English law

- any dispute under the Agreement must be dealt with by the English Courts.

NOTE

THIS MEMORANDUM IS ONLY A SUMMARY OF THE MAIN PROVISIONS OF THE DRAFT AGREEMENT. IT DOES NOT CONTAIN ALL THE PROVISIONS OF THE DRAFT AGREEMENT WHICH SHOULD BE READ IN ITS ENTIRETY TO UNDERSTAND FULLY ITS TERMS AND CONDITIONS.

SUMMARY OF THE ICIC POOLING AGREEMENT

As the ICIC Pooling Agreement will be supplemental to BCCI Pooling, in order to have a full understanding of the ICIC Pooling Agreement, it is necessary to explain the principal features of the BCCI Pooling Arrangements as regards those companies and foreign branches which have taken part, or will take part.

Principal features of the BCCI Pooling Agreements

1. The principal features are as follows:-

(a) the proceeds of assets recovered by the various Liquidators will be transmitted to the Pool;

(b) the creditors of Bank of Credit and Commerce International S.A. ("BCCI SA") and Bank of Credit and Commerce International (Overseas) Limited ("BCCI Overseas"), and other companies which join in the Pool, will all receive the same dividend from the Pool in respect of their admitted claims.

(c) the processing of creditors' claims will be conducted, and distributions to creditors effected, in a more orderly fashion since the liquidations of participating foreign branches will be conducted in close cooperation with the principal liquidations in Luxembourg and the Cayman Islands respectively;

The Mechanics of BCCI Pooling

2. The BCCI Pooling Agreements consist of the following:

(a) an agreement ("the Main BCCI Pooling Agreement") between BCCI SA, its Luxembourg Liquidators, BCCI Overseas, its Cayman Liquidators, and the English Liquidators of BCCI SA;

(b) a series of agreements ("BCCI Branch Participation Agreements") between BCCI SA, its Luxembourg Liquidators, BCCI Overseas, and its Cayman Liquidators (collectively "the Principal BCCI Parties") on the one hand and the Liquidators of a foreign branch

of BCCI SA or BCCI Overseas on the other hand, whereby the liquidation of the foreign branch will be conducted in close cooperation with the Principal Liquidations in Luxembourg or the Cayman Islands;

(c) an agreement between the Principal BCCI Parties on the one hand and Credit and Finance Corporation Limited ("CFC") on the other hand, whereby CFC and its creditors can participate in the Pool; and

(d) an agreement ("the BCCI Holdings Participation Agreement") between the Principal BCCI Parties on the one hand and BCCI Holdings Luxembourg SA ("BCCI Holdings") and its Liquidators on the other hand, whereby BCCI Holdings and its creditors can participate in the Pool.

The ICIC Pooling Agreement

The parties to the ICIC Pooling Agreement will be the Principal BCCI Parties, CFC and its Liquidators, and BCCI Holdings and its Liquidators (on the one hand), and ICIC Overseas, ICIC Holdings, ICIC Investments and ICIC Apex, and their respective Liquidators ("the Principal ICIC Parties") on the other hand.

The ICIC Pooling Agreement, which has all the principal features of the BCCI Pooling Agreements, extends the provision of the main BCCI Pooling Agreements to cover the ICIC companies. The ICIC Pooling Agreement contains the following provisions:

(a) provisions for cooperation between the BCCI Liquidators and the ICIC Liquidators in the realisation of assets of the BCCI and ICIC companies;

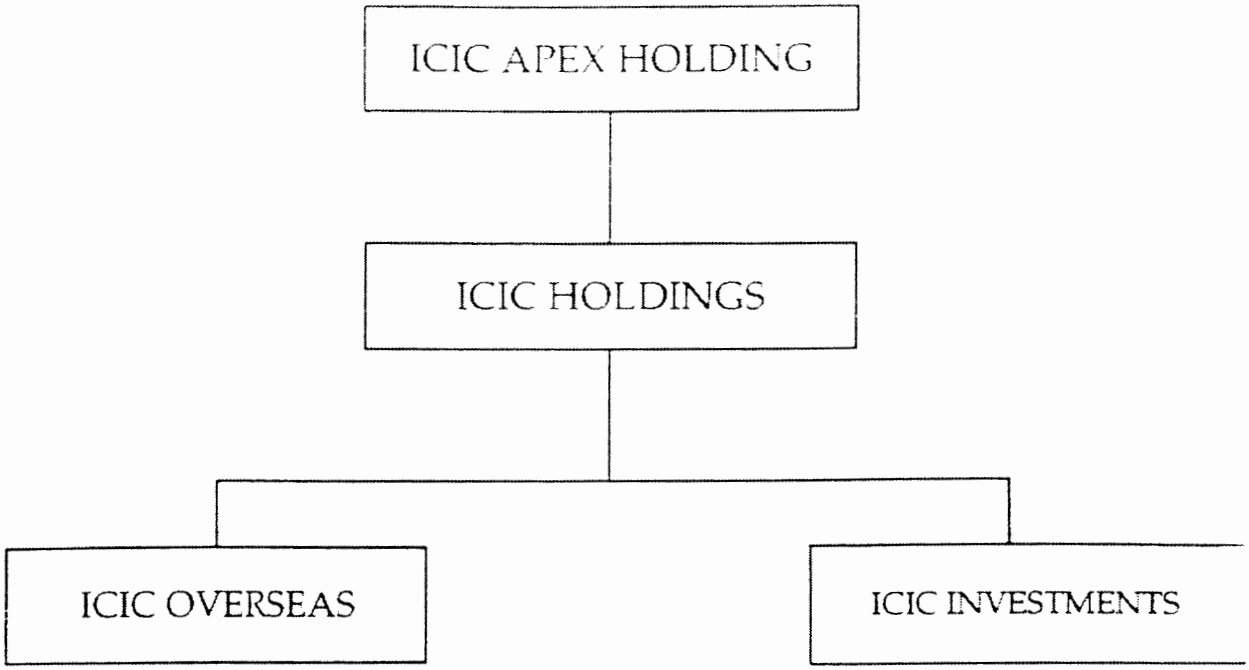
(b) provisions for realisation of the assets of the ICIC companies by the ICIC Liquidators and for the proceeds of all realisations to be placed in the Pool;

(c) provisions for periodic reviews of the Pool to determine the amounts, if any, considered to be available for distribution to creditors of the principal BCCI companies and the ICIC companies and other companies joining the Pool ("the Pool Creditors");

(d) provisions for the companies participating in the Pool to receive from the Pool such amount as would result in Pool Creditors receiving the same dividends on their Admitted Claim;

(e) provisions for each of the participating BCCI companies, and CFC and each of the participating ICIC companies to exchange deeds of covenant not to sue.

APPENDIX V
CORPORATE STRUCTURE OF PRINCIPAL ICIC COMPANIES



ICIC Apex Holding Ltd. ("ICIC Apex")
ICIC Apex was incorporated in 1986 in the Cayman Islands. It is a company limited by guarantee. It has no share capital and its beneficiaries are understood to be "mankind at large". ICIC Apex holds 100% of the ordinary shares in ICIC Holdings Ltd.

ICIC Holdings Ltd. ("ICIC Holdings")
ICIC Holdings was incorporated in the Cayman Islands in 1974. It has an issued share capital of $20 million, comprised of $5 million ordinary shares which are held by ICIC Apex and $15 million non-voting redeemable preference shares which are held by other individuals and corporations.

International Credit and Investment Company (Overseas) Limited. ("ICIC Overseas")
ICIC Overseas was incorporated in the Cayman Islands in April 1976.
It has an issued share capital of $12.5 million comprising ordinary shares 100% of which are held by ICIC Holdings. Prior to 5th July 1991, ICIC Overseas held a Class 'B' banking licence from the Cayman Islands Government.

ICIC Investments Ltd. ("ICIC Investments")
ICIC Investments was incorporated in the Cayman Islands in 1985 and is a wholly owned subsidiary of ICIC Holdings. ICIC Investments carried out investment activities on behalf of ICIC Overseas and others.