



**SUR L'ORIGINAL ET LA TRADUCTION FIGURE
LE MÊME NUMÉRO 950094**

Le soussigné Luc PETRY, traducteur assermenté près la Haute Cour de Justice de et à Luxembourg, certifie avoir vérifié la présente traduction avec un traducteur français - anglais résidant à Luxembourg.

Feuillet 1 de 9.

EUROTRADUC
2A, rue Louvigny
1946 LUXEMBOURG
Tél. 47 46 76 - Fax: 46 19 20

LUC PETRY
Traducteur - Interprète
assermenté
à la Cour Supérieure de Justice
à Luxembourg



Michelle THILL
PROCESS SERVER
1661 Luxembourg
31 Grand-rue
3rd floor
B.P. 809
Tel: 46 14 75/46 14 81
Fax: 46 17 16

SERVICE NOTICE

On22.02..... in the year one thousand
nine hundred and ninety-five,

On application by:

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

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

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

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

the above Applicants acting in their different capacities in the
proceedings culminating in the Judgment of which notice is
served.

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

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

company, Ian **WIGHT**, Robert E. **AXFORD**, Michael W. **MACKEY** and Richard **DOUGLAS**, Chartered Accountants, resident in Georgetown, Cayman Islands, B.W.I.,

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

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

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

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

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

electing domicile at the District Secretariat of the place of proceedings enforcing the same, together with the offices of Maître Georges **BADEN**, Counsellor-at-Law and Court Advocate (I), assisted by Maître Georges **RAVARANI**, Counsellor-at-Law and Court Advocate (I), both resident in Luxembourg,

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

served notice on and left a full certified true copy with:

- 1) The Public Prosecutor attached to the District Court of and in Luxembourg at the Law Courts of the Palais de Justice, Luxembourg,
- 2) The **INSTITUT MONETAIRE LUXEMBOURGEOIS**, established at 63, av. de la Liberté, Luxembourg, represented by executive

director, Pierre **JAANS**, and directors, Jean-Nicholas **SCHAUS** and Jean **GUILL**,

- 3) **BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A.** in liquidation, established and with Registered Office at 5, rue Höhenhof, Luxembourg-Senningerberg,
- 4) **BCCI HOLDINGS (LUXEMBOURG) S.A.** in liquidation, established and with Registered Office at 5, rue Höhenhof, Luxembourg-Senningerberg,
- 5) Mr Yves Christian **LAMARCHE**, bank manager, resident at 82, avenue des Champs Elysées, F-75008 PARIS,
- 6) Mr Johan Diderik **VAN OENEN**, banker, resident at 17, The Avenue, Tadworth, Surrey KT2 0AY, England,
- 7) Mr Alfred **HARTMANN**, bank manager, resident at Bellerivestrasse 201, Zurich, Switzerland,
- 8) Mr Raihan Nasir **MAHMUD**, ex-manager, resident at 100, Woodhall Gate, Pinner, Middlesex (U.K.),
- 9) Mr Mohammad Ali **QAYYUM**, ex-international officer, resident at Dorset House, 105, Gloucester Place, London (U.K.),
- 10) Mr Qaiser Mansoor **MALIK**, ex-officer, resident at 18, Debben Close, Woodford Green, Essex (U.K.),
- 11) Halida **SHAFIULLAH**, ex-officer, resident at Dorset House, 105, Gloucester Place, London (U.K.),

of the official copy in enforceable form of a Judgment of thirty-first January one thousand nine hundred and ninety-five pronounced between parties after hearing all sides by the Sixth Chamber of the District Court of and in Luxembourg sitting in a composite matter.

The present Notice being served for their information, guidance and for such purposes as the law prescribes and more especially subject to appeal.

IN WITNESS WHEREOF, and whereas notified party (11.) above is domiciled in the United Kingdom (U.K.), I have forwarded a copy of my Notice, together with a copy of the aforesaid document, all translated into English, to the aforementioned address by insured and registered mail with acknowledgement of receipt and delivered by me to the Post Office in Luxembourg 2, which I insured against the receipt as appended to my original.

COST:

Duty:	1,200.-
Extra cop.:	3,000.-
Trav.:	760.-
VAT:	595.-
Stamps:	1,080.-

Reg. :	500.-
<u>Search:</u>	<u>120.-</u>
TOTAL:	7,255.-
Postage	

Georges BADEN
avocat
LUXEMBOURG

Composite judgment: BADEN of 31 January 1995

- v -

BANK OF CREDIT AND COMMERCE
INTERNATIONAL S.A.

GRAND DUCHY OF LUXEMBOURG
DISTRICT COURT OF AND IN LUXEMBOURG

OFFICIAL COPY

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

Let it be known that

The Sixth Chamber of
THE DISTRICT COURT OF AND IN LUXEMBOURG

sitting in a composite matter
has pronounced the following
Judgment in the case listed as
numbers 44323 and 44468 (com.)
and 53642 (civ.)

Maitre Georges BADEN

(6)

Laurence MÜLLER, and
Michèle MÜLLER,

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

and accordingly approve the agreements referred to as follows:
- the "Supplemental Pooling Agreement with ICIC Companies",
- the "Cost and Recovery Sharing Agreement with ICIC Companies",
- the "BCCI/ICIC Paying Agency Agreement",
and authorise the liquidators of BCCI S.A. and BCCI HOLDINGS S.A. in their due capacity to sign such agreements;

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

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

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

Signed: WELTER, SCHUMACHER

Adjudicated, established and pronounced accordingly by the Sixth Chamber of the District Court of and in Luxembourg sitting in a composite matter at the Court Room of the Law Courts of the Palais de Justice in Luxembourg at the public hearing of thirty-first January one thousand nine hundred and ninety-five,

attended by:

Maryse WELTER, Vice-President,
Karin GUILLAUME, Senior Judge,
Paule MERSCH, Judge,
Etienne SCHMIT, Principal substitute for the Public Prosecutor,
Maryse SCHUMACHER, Clerk of the Court.

Signed: WELTER, SCHUMACHER

Ordering all Process Servers at such behest to enforce the present Judgment,

and instructing Our Director of Public Prosecutions and Public Prosecutors attached to the District Courts to assist the same,

together with all Police Superintendents and Officers where legally required,

IN WITNESS WHEREOF, the present Judgment has been signed and stamped with the Court Seal.

B e t w e e n :

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

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

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

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

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

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

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

MACKEY and Richard DOUGLAS, Chartered Accountants, resident in Georgetown, Cayman Islands, B.W.I.,

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

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

represented by acting Counsel, Maître Georges BADEN, assisted by Maître Georges RAVARANI, both Counsellors-at-Law, resident in Luxembourg,

Applicants,

represented at law by Counsel, Maître Georges BADEN and Maître Georges RAVARANI aforesaid;

a n d :

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

Respondents,

duly represented by the appointed liquidators, and represented at law by Counsel, Maître Georges BADEN and Maître Georges RAVARANI aforesaid;

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

Respondent,

represented at law by Counsel, Maître Louis SCHILTZ, assisted

by Maître Jean-Louis SCHILTZ, both Counsellors-at-Law, resident in Luxembourg,

- 4) The Public Prosecutor attached to the District Court of and in Luxembourg at the Law Courts of the Palais de Justice, Luxembourg,

Respondent,

represented by Etienne SCHMIT, principal substitute,

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

Respondent,

represented at law by Counsel, Maître André ELVINGER, Counsellor-at-Law and Court Advocate, resident in Luxembourg;

together with:

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

electing domicile at the offices of Maître Arsène KRONSHAGEN, Counsellor-at-Law and Court Advocate, resident in Luxembourg, and at the offices of Maître Marc MODERT, Counsellor-at-Law and Court Advocate, resident in Luxembourg,

represented at law by Counsel, Maître Arsène KRONSHAGEN and Maître Marc MODERT aforesaid;

voluntarily joining in the action in accordance with the terms and particulars of the Application as reproduced hereunder within the context of the proceedings instituted by the liquidators of BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A., Mr Brian SMOUHA, Chartered Accountant resident in London, Maître Georges BADEN, Counsellor-at-Law and Court Advocate resident in Luxembourg, and Maître Julien RODEN, Counsellor-at-Law and Court Advocate resident in Luxembourg,

- II)
 - 1) Yves Christian LAMARCHE, bank manager, resident at 32, Avenue des Champs Elysées, 75008 Paris, France,
 - 2) Johan Diderik VAN OENEN, banker, resident at 17, The Avenue, Tadworth, Surrey KT2 0AY [sic], England,
 - 3) Alfred HARTMANN, bank manager, resident at Bellerivestrasse 201, Zurich, Switzerland,

electing domicile at the offices of acting Counsel, Maître Alain RUKAVINA, resident in Luxembourg,

represented at law by Counsel, Maître Alain RUKAVINA aforesaid;

voluntarily joining in the action in accordance with the terms and particulars of the Application as reproduced hereunder within the context of the proceedings instituted by the liquidators of BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A., Mr Brian SMOUHA, Chartered Accountant resident in London, Maître Georges BADEN, Counsellor-at-Law and Court Advocate resident in Luxembourg, and Maître Julien RODEN, Counsellor-at-Law and Court Advocate resident in Luxembourg, and the liquidators of BCCI HOLDINGS S.A., Maître Jacques DELVAUX, Notary resident in Esch-sur-Alzette, and Maître Georges RAVARANI, Counsellor-at-Law and Court Advocate resident in Luxembourg, respectively,

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

represented by acting Counsel, Maître Marc ELVINGER, resident in Luxembourg,

voluntarily joining in the action in accordance with the terms and particulars of the Application as reproduced hereunder in respect of the proceedings instituted by Summons of 10 and 15 November 1994 by the liquidators of BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A., the liquidators of BCCI HOLDINGS S.A. and the liquidators of other BCCI and ICIC Group entities.

II)

B e t w e e n :

- I) 1) Georges BADEN, Counsellor-at-Law and Court Advocate, resident at 7, Place du Théâtre, Luxembourg,
- 2) Julien RODEN, Counsellor-at-Law and Court Advocate, resident at 7, avenue des Archiducs, Luxembourg,

- 3) Brian SMOUHA, Chartered Accountant, resident at 1, Little New Street, London, Great Britain,

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

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

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

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

Applicants,

represented at law by Counsel, Maître Georges BADEN and Maître Georges RAVARANI aforesaid;

a n d :

- 1) The Public Prosecutor attached to the District Court of and in Luxembourg at the Law Courts of the Palais de Justice, Luxembourg,

Respondent,

represented by Etienne SCHMIT, principal substitute,

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

Respondents,

duly represented by the appointed liquidators, and represented at law by Counsel, Maître Georges BADEN and Maître Georges RAVARANI aforesaid.

F a c t s :

The Applicants subpoenaed the Respondents in the present proceedings to appear before this Court by Summons as reproduced hereunder:

SUMMONS

In the year nineteen hundred and ninety four, on the tenth of October.

At the suit of

- I.
 1. Georges BADEN, lawyer, residing in Luxembourg, 7, Place du Théâtre,
 2. Julien RODEN, lawyer, residing in Luxembourg, 7, Avenue des Archiducs,
 3. Brian SMOUHA, registered accountant, residing in London, 1, Little New Street, GB,

acting in their capacity as liquidators of the *société anonyme* BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A. (in liquidation), established and with registered office situate in Luxembourg - Senningerberg, 5, rue Höhenhof, (hereafter "BCCI"), appointed to that effect by judgment of the District Court of and in Luxembourg, 6th Division, on 3 January, 1992,

- II.
 1. Jacques DELVAUX, notary, residing in Esch-sur-Alzette, 19, rue de l'Eau,
 2. Georges RAVARANI, lawyer, residing in Luxembourg, 6, rue Zithe,

acting in their capacity as liquidators of the *société anonyme* BCCI HOLDINGS (LUXEMBOURG) S.A. (in liquidation), established and with registered office situate in Luxembourg - Senningerberg, 5, rue Höhenhof, (hereafter HOLDINGS), appointed to that effect by judgments of the District Court of and in Luxembourg, 6th Division, on 18 September, 1992 and 14 October, 1993,

- III.
 1. BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A. (in liquidation), established and with registered office situate in Luxembourg - Senningerberg, 5, rue Höhenhof, acting with regard to the presents through its English branch, established in London, UK, Citadel House, 5 - 11, Fetter Lane, (hereafter "BCCI UK"), duly represented by its liquidators Christopher MORRIS, Nicholas R. LYLE, John P. RICHARDS and Stephen J. AKERS, registered accountants, residing in London, UK,

2. Christopher MORRIS, Nicholas R. LYLE, John P. RICHARDS and Stephen J. AKERS, registered accountants, residing at 1, Little New Street, London, UK, acting in their capacity as liquidators of BCCI UK,

IV. 1. BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED in compulsory winding-up, established and with registered office situate Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereafter "BCCI Overseas"), duly represented as regards the presents by its official liquidators Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, registered accountants, residing in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, registered accountants, residing in Georgetown, Cayman Islands, BWI, acting in their capacity as official liquidators of BCCI Overseas,

V. 1. CREDIT AND FINANCE COMPANY LIMITED, in compulsory winding-up, established and with registered office situate Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereafter "CFC"), duly represented by its official liquidators Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, registered accountants, residing in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, registered accountants, residing in Georgetown, Cayman Islands, BWI, acting in their capacity as official liquidators of CFC,

VI. 1. INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED, in compulsory winding-up, established and with registered office situate Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereafter "ICIC Overseas"), duly represented by its official liquidators Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, registered accountants, residing in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, registered accountants, residing in Georgetown, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC Overseas,

VII. 1. ICIC HOLDINGS LIMITED, in liquidation, established and with registered office situate Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereafter "ICIC Holdings"), duly represented by its official liquidators Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, registered accountants, residing in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, registered accountants, residing in Georgetown, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC Holdings,

VIII. 1. ICIC INVESTMENTS LIMITED, in liquidation, established and with registered office situate Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereafter "ICIC Investments"), duly represented by its official liquidators Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, registered accountants, residing in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, registered accountants, residing in Georgetown, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC Investments,

IX. 1. ICIC APEX HOLDING LIMITED (in liquidation), established and with registered office situate Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereafter "ICIC Apex"), duly represented by its official liquidators Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, registered accountants, residing in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, registered accountants, residing in Georgetown, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC Apex,

appearing through Maître Georges BADEN, assisted by Maître Georges RAVARANI, lawyers both, residing in Luxembourg,

I the undersigned Pierre KREMMER, bailiff, residing in Luxembourg, registered with the District Court of and in Luxembourg,

have served a writ of summons on:

1. BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A. (in liquidation), established and with registered office situate in Luxembourg - Senningerberg, 5, rue Höhenhof,

2. BCCI HOLDINGS (LUXEMBOURG) S.A. (in liquidation), established and with registered office situate in Luxembourg - Senningerberg, 5, rue Höhenhof,

3. the Government of the Emirate of Abu Dhabi, represented by its Department of Finances, established and with offices situate in Abu Dhabi, United Arab Emirates, which shall be summoned by a separate writ,

4. the State Attorney in Luxembourg, with offices at the Court of Justice,

5. the INSTITUT MONÉTAIRE LUXEMBOURGEOIS, established in Luxembourg, 63, Avenue de la Liberté, in the person of its General Manager Pierre JAANS and its managers Jean-Nicolas SCHAUS and Jean GUILL,

to appear on Tuesday, the twenty fifth of October, nineteen hundred and ninety four at 15:00 hours before the District Court of and in Luxembourg, 6th Division, sitting in commercial matters at the Court of Justice in Luxembourg, second floor, room number 21, in order to:

Whereas the hereabove applicants (hereafter and jointly the "Liquidators") negotiated with the Government of Abu Dhabi a Draft Agreement which text together with its schedules was finally defined on 13 July, 1994 by a letter from the representatives of the Government of Abu Dhabi and an answering-letter of the same date from the representatives of the Liquidators (hereafter the "Agreement");

that the ~~main items~~ items of this Agreement may be summarized as follows, without any pretense as to completeness:

1. The Government of Abu Dhabi (hereafter "Abu Dhabi") undertakes to pay to the Liquidators an amount of US\$ 1,800,000,000.- (one billion eight hundred million United States Dollars), of which US\$ 1,550,000,000.- shall be payable to the Liquidators upon the signature of the agreement and US\$ 250,000,000.- shall be payable in the hands of an agent of the parties, acting as a so-called "escrow agent"; this amount of US\$ 250,000,000.- shall be paid to the Liquidators by reason of US\$ 150,000,000.- upon termination of a delay this amount of US\$ 250,000,000.- shall be paid to the Liquidators in the amount of US\$ 150,000,000.- upon termination of a delay period of 24 months following the signature of the agreement and in the amount of US\$ 100,000,000.- 36 months after the signature of the agreement, the interest having accrued in the meantime falling to Abu Dhabi (article 2);

2. The Liquidators hereby guarantee Abu Dhabi up to the amount of US\$ 450,000,000.- against any recursory action undertaken by a third party, summoned or implicated in arbitrary proceedings by the Liquidators and who may have been bound in the procedures as instigated to pay indemnifications to the Liquidators; this guarantee is limited to the lower of the two amounts, either the one paid to the Liquidators, or the one paid by Abu Dhabi, and the guarantee may not in general exceed the amount of US\$ 450,000,000.-; in order to warrant the due execution on the part of the Liquidators of this obligation of guarantee, they undertake to pay into the hands of an escrow agent, but only up to the amount of US\$ 450,000,000.-, the recoveries against third parties which they may carry out (article 3);

3. Abu Dhabi for its part guarantees the Liquidators against any action initiated against them by a third party sued by by Abu Dhabi or implicated in an arbitration proceeding, up to the lower of either the amount received by Abu Dhabi, or that paid by the Liquidators, but without any limit as regards the total amount of the guarantee (article 8);

4. the Liquidators moreover guarantee Abu Dhabi, outside of and apart from the amount of US\$ 450,000,000.-, in the sole hypothesis where the Liquidators should initiate and win in an action which may be instituted against a certain bank or in an arbitration procedure against the same, initiated by the Liquidators and in the hypothesis of a recursory action of this company against Abu Dhabi; the present clause which was inserted in the draft agreement at a time when the Liquidators did not possess the necessary elements to decide whether this action had or not to be initiated, has become null and void, whereas since then the Liquidators have had the necessary documents in their possession and have been able to decide that such action was not justified (article 3 J-K-L-M-N);

5. The Liquidators grant full discharge to Abu Dhabi in relation with the engagements as accepted by Abu Dhabi within the framework of a refinancing project ("ReFinancing Package", or "RFP") which has failed to be executed, allegedly by reason of the intervention of the relevant monitoring authorities, i.e., the IML and the Bank of England, which had the various entities constituting BCCI put under compulsory supervision; in the same intent, the Liquidators grant to Abu Dhabi a discharge, respectively a covenant not to sue covering all and any possible cause for action against Abu Dhabi (and among these mainly actions in liability), to the exception of the sole commercial debts; Abu Dhabi for its part grants a parallel

discharge regarding the engagements of the ReFinancing Package (or RFP) as well as a discharge respectively a covenant not to sue for the rest (article 5);

6. Abu Dhabi expressly renounces to participate in the assets which by virtue of the Plea Agreement of 19 December, 1991 fall to the United States of America respectively the State of New York, in the assets which may be or come into the possession of the District Attorney of New York, the Department of Justice or the Federal Reserve Board following legal or arbitrary proceedings, as well as in those assets which may fall to the United States of America following the Geneva Agreement of 8 January, 1994 between the hereabove named and Abu Dhabi (article 5E);

7. the Liquidators accept that in case the liquidator of the United Arab Emirate Branches should so request, they shall accept the liquidator of such branches within the Pool, with the general effect that the assets and liabilities of such branches will be absorbed in the liquidation of BCCI and that their creditors shall be paid the same dividend as that resulting in the favour of the other creditors of the Liquidations; within this framework, Abu Dhabi agrees to moreover make a payment to the Liquidators which shall be equal to the total of dividends falling to the creditors of the United Arab Branches (from which shall be deducted the dividend payable with regard to the amount of US\$ 540,000,000.-), less the assets of the liquidator of such Branches;

Holdings undertakes to transfer its 1,549,018 shares in the company UNION NATIONAL BANK (formerly known under the name "BCC Emirates") to such party to be designated by Abu Dhabi (article 6);

8. the draft agreement provides that it shall be subject to British law and that the jurisdictions of the United Kingdom shall have exclusive competence (article 16);

Whereas this draft agreement, should it be realized, appears to be in the best interest of the Liquidations and of the creditors, and as being in no way contrary to Luxembourg public order.

As regards the interest of the Liquidations and of the creditors:

that through this Agreement the Liquidators and the creditors shall have available to them a certain payment in the amount of US\$ 1,800,000,000.-;

that this payment shall be effected very rapidly in this sense that the amount of US\$ 1,550,000,000.- shall be made available immediately following the signature, the balance in the amount of US\$ 250,000,000.- becoming available within 24, respectively 36 months of said signature;

that the Liquidators may through this scheme avoid having to institute proceedings against Abu Dhabi which present, as do all and any judicial litigation, an element of dubiousness as regards success, which are bound to last for a lengthy period of time and to imply substantial costs and expenses; that at the same time all and any danger of witnessing a fiduciary action on the part of Abu Dhabi, with the effect of provisionally blocking the assets of the Liquidations, shall be avoided;

that in such way an interim dividend shall be liable to be rapidly distributed;

that over and above this payment to be made by Abu Dhabi, the Liquidators have been able to obtain that Abu Dhabi renounce to participate in all the funds liable to fall to the Liquidators from the USA; that the amounts which are currently blocked in the United States on the basis of the various agreements are such that after deduction of the costs and other payments to be made in the United States, an amount valued at up to US\$ 1,000,000,000.- may remain available; that even though an important part of this amount is subject to the discretionary judgment of United States authorities, the Liquidators may, once the agreement is made final, enter into negotiations with the United States in view of as sizeable a recovery as possible on the American assets, in which assets Abu Dhabi shall not participate with the debts which this party produced in the liquidation in view of the deposits and funds advanced, and which must be checked according to the normal verification procedure in matters of winding-up procedures;

that Abu Dhabi moreover undertook to make a contributive payment in the event of a Pooling by the liquidator of United Arab Emirates Branches; that whereas it is true that in accordance with the principle of the universality of bankruptcy as applied within the various jurisdictions having appointed the Liquidators, all and any creditors have the required capacity to enter claims in the liabilities of the liquidations, the Liquidators were however able to obtain that in the case of the branches of BCCI in the United Arab Emirates, Abu Dhabi shall make a contribution according to a

negotiated formula; that such contribution shall in turn increase the payment to be made by Abu Dhabi;

that as regards the guarantee granted by Abu Dhabi to the Liquidators, the said guarantee shall only come into play, within the allotted time period, only in the hypothesis where the Liquidators shall have recovered funds against a third party who shall have won a recursory action against Abu Dhabi; that the consequence of the above is that the Liquidators shall never be bound to disburse, on the basis of the guarantee, any assets which they shall not have previously recovered against a third party; that in other words if one may call the payment by Abu Dhabi of the amount of US\$ 450,000,000,000.- (as comprised in the total amount of US\$ 1,800,000,000.-) as being in a manner of speaking an advance subject to reimbursement in certain circumstances of the recovery against third parties, the practical result remains that Abu Dhabi actually guarantees through this device that if recoveries against third parties cannot be carried out for a minimum amount of at least US\$ 450,000,000.-, then Abu Dhabi shall be bound to stand up to this amount respectively the difference; that as has been pointed out hereabove the ceiling of the guarantee is limited to US\$ 450,000,000.- even in the case where recoveries against third parties are in excess of such amount;

that on the opposite, and even if the guarantee granted by the Liquidators does not apply to actions against monitoring authorities (the IML and the Bank of England) and is besides limited to a ceiling of US\$ 450,000,000.-, the Liquidators have obtained from Abu Dhabi the granting of an unlimited guarantee in the case where Abu Dhabi would recover against a third party which would win in a recursory action against the Liquidations;

that in reality the sole consideration given by the Liquidators resides in the fact that they grant, in the form of a discharge respectively a covenant not to sue, the equivalent of a discharge to Abu Dhabi as regards any cause for action other than normal commercial causes; that within the framework of the Agreement such discharges and covenants not to sue are entirely and fully justifies and that on the other hand Abu Dhabi undertakes covenants respectively grants discharges in all respects similar to the Liquidators;

that there results that the Agreement as presented is in the eminent interest of the creditors of the Liquidation who may in this way obtain a certified and rapid payment, as against difficult, slow and expensive proceedings;

As regards Luxembourg public order:

Whereas in the point of view of the judgment rendered by the Court of Appeals on 27 October, 1993 there appears in this Agreement no provision allowing to uphold a violation of the rules regarding the public order of Luxembourg;

that in first step following an agreement concluded on 8 January, 1994 with the United States of America, Abu Dhabi handed over to the Liquidators all the documents pertaining to the Liquidations;

that there appears in the Agreement no instance of inequality in the treatment of unsecured creditors whereas the funds payable by Abu Dhabi fall to the estate of the Liquidations and are available indistinctly to any creditor which claim has been verified and proven according to the legal rules applicable to the various Liquidations; that the only exception made to this principle, in the hypothesis where claims filed would be verified and asserted, resides in the fact that Abu Dhabi renounces any dividends issuing from the assets remaining in the United States; that it should not be considered as contrary to principle of the equalitarian treatment that a possible unsecured creditor renounce his dividend in whole or in part, in the same way that any claimant may omit to file a claim in his discretionary judgment, cancel the filing of a claim, and/or abandon or even donate his right to a dividend to whom he may please;

that there exists furthermore no clause whatsoever providing for an apportionment of the results and proceeds of the actions in liability between Abu Dhabi and the Liquidators; that indeed all and any clauses to that effect having been abandoned, the Liquidators shall keep the results of these actions in liability, and Abu Dhabi shall in the same manner keep the results of its own actions in liability in which it shall have won the case;

that any questions of indemnification have been removed in the Agreement and that the normal rules according to the various processes of liquidation shall apply without any derogation or exception;

that if it is indeed true that the Agreement is subject to British law, it is demonstrated that no rule within Luxembourg law, whether with regard to public order or not, prevents an agreement between a liquidator (or a trustee with regard to a bankruptcy) and a third party may be subject to a non-Luxembourg legislation; that the

proceedings relating to the Agreement are not the result of a particular or special Luxembourg legal provision regarding the law governing bankruptcy or liquidations, but on the very contrary issue directly from legal rules which may only be termed as stemming from common law;

that the sole specific rules governing matters of bankruptcy and of liquidation, which can not be in any way applied to relations governed by common law, are of a public order nature to the exclusion of any rules governing normal and common-law relations and this, quite independently from the fact that such a legal relation may be a liquidation or a bankruptcy;

that the concern of the Liquidators along the duration of the negotiations also consisted in avoiding any likeliness that - through the application of the rules governing private international law to a matter of such complexity and offering such a multitude of parties and considerations, and for the lack of any contractual choice -, a court should resolve to apply the laws of the State of Abu Dhabi, which laws are entirely unknown to the Liquidators and to which they did not agree to be subject, whereas one may be of the opinion that the principal consideration, i.e., the payment of over US\$ 1,800,000,000.- (both directly and indirectly), is actually made by Abu Dhabi, any payment being as a matter of principle liable to be collected;

that it should in any event be remembered that the Agreement only exclusively implies a transaction, and not a plan of liquidation, and that situations directly dependent upon the liquidation are neither affected by, nor governed by, the Agreement;

that if competence is given the courts of the United Kingdom, there should yet be retained the fact that in law no rule may prevent that an appointed liquidator or a trustee in a bankruptcy may submit an agreement or dispute before a non-Luxembourgish jurisdiction, in the same way that in many instances such a liquidator or trustee is unable to prevent normal rules of competence from entailing that of the domicile of the debtor who is domiciled abroad, which in the case of a summons by a liquidator or a trustee in a bankruptcy is perforce a non-Luxembourgish jurisdiction; that forcing a liquidator to sue in any event before the courts of Luxembourg would be the same as forcing him to obtain judgments which on the strength of things could be neither exequated nor executed abroad, whereas no foreign jurisdiction would either acknowledge nor give the exequatur to a Luxembourgish decision having been taken on the basis of such nationalistic and territorial criteria; that once again the concern of

the Liquidators was to avoid that any competence be given the jurisdictions of Abu Dhabi whereas on the contrary the other party to the agreements is precisely the Government of Abu Dhabi, with registered office in the Emirate of Abu Dhabi.

Whereas there results from the above that the Agreement is in the eminent interest of the Liquidations and their creditors and does not in any way contravene to any rule of Luxembourg public order; that the rapid conclusion and settlement of the Agreement is alike in the obvious interest of the creditors whereas on the one hand, the payment of the immediately available amount of US\$ 1,550,000,000.- will allow for the rapid distribution of a first dividend, and that on the other hand by waiting for the payment of such dividend, interest on this amount will accrue for the profit of the Liquidations as of the date of the payment;

that in accordance with the decrees of liquidation of 3 January, 1992 (BCCI) respectively of 18 September, 1992 and 14 October, 1993 (Holdings), the Liquidators are free to initiate negotiations with the authorization of the Court granted upon report by the Magistrate in bankruptcy and following advice as given by the Committee of Claimants; that as regards Holdings the Committee of Claimants unanimously voted in favour of the draft agreement, whereas in the case of BCCI a creditor abstained, all three remaining creditors having voted in its favour - this applies to the two Committees in the absence of the representative of the Department of Private Affairs of Abu Dhabi, respectively of the Abu Dhabi Investment Authority which did not participate in the meeting;

that the Liquidators solicit by the presents the approval of the transaction on hand, and conclude as being duly authorized to sign and enter into the same;

that the summoned parties the State Prosecutor of the State of Luxembourg and the *Institut Monétaire Luxembourgeois* are dedicated to represent the applicants with credit establishments over and above the fact that the IML stands as the monitoring authority of such establishments and moreover the applicant in the liquidation.

UPON THESE GROUNDS:

the summoned parties hear declared the present claim as admissible in the form and justified as regards the main issue;

hear ordained such measures as at law;

hear approved the Agreement to be entered into, as more thoroughly specified and described hereabove;

hear the Liquidators authorized to agree to and sign the Agreement as fixed by an exchange of correspondence between the parties of 13 July, 1994;

hear the costs and expenses of the presents charged to the estate of the liquidations and failing this, to the unfounded contending party;

In witness whereof I left a copy intended for the summoned party under 4/ at the Court of Justice of and in Luxembourg where being I spoke to Etienne Schmit in his capacity as Principal Deputy State Prosecutor who stated his capacity to be handed and accept my writ.

(signed:) *illegible*

Costs:	
Right:	1.200.-
Copies:	900.-
Travel:	560.-
Stamps:	1.400.-
Registr.:	100.-
<u>VAT:</u>	<u>319.-</u>
TOTAL:	4.479.-
Add. Cop.	
VAT:	
Post:	

Pierre Kremmer
Bailiff
9 rue Pierre Gellé
L-1620 Luxembourg

SERVING OF THE WRIT

Addressee of the writ: Bank of Credit and Commerce International SA
Date of service: in the year nineteen hundred and ninety four, on the tenth of October
The present writ has been served by the undersigned bailiff in the conditions indicated under the item marked with a cross and in accordance with the statements as collected, for the addressee, at his / her / its:

domicile: residence: registered office: X

as described hereafter:

B/ SERVING AT DOMICILE:

Having found: Name(s), Surname: Hubert Nicole

Capacity: employee

Address: 23, rue des Capucins, 6791 Athus

having thus stated, the said person accepted to receive a copy of my writ and delivered a receipt for the same, upon which the undersigned bailiff handed over to her a copy of the writ in a sealed envelope only bearing the name(s) , surname, capacity and address of the addressee and the seal of the bailiff upon its flap; another copy of the writ as well as a notice of delivery mentioning the indications relating to the person to whom a copy of the writ was handed; the whole in a sealed envelope only bearing the name(s), surname, capacity and address of the addressee and the seal of the bailiff upon its flap, were left on the premises.

signature of the person met on the premises: *illegible*

All paragraphs not inscribed with a cross are considered as blank. signature of the bailiff: *illegible*

NOTICE OF DELIVERY

Pierre Kremmer
Bailiff
9, rue J.B. GelléL-1620 Luxembourg

it is hereby brought to the knowledge of the addressee of the present writ that the bailiff presented himself on the date and at the address hereabove in order to serve a writ upon him. The addressee not having been found in person,

X a copy of the present writ was handed over in a sealed envelope to Hubert Nicole named hereabove under I; a second envelope containing a copy of the writ has also been left on the premises.

Date: 10.10.'94 signature of the bailiff: *illegible*

Pierre Kremmer
Bailiff
9 rue Pierre Gellé
L-1620 Luxembourg

SERVING OF THE WRIT

Addressee of the writ: **BCCI Holdings SA**
Date of service: in the year nineteen hundred and ninety four, on the tenth of October
The present writ has been served by the undersigned bailiff in the conditions indicated under the item marked with a cross and in accordance with the statements as collected, for the addressee, at his / her / its:

domicile: residence: registered office: X

as described hereafter:

B/ SERVING AT DOMICILE:

Having found: Name(s), Surname: Hubert Nicole
 Capacity: Employee
 Address: 23, rue des Capucins, Athus

having thus stated, the said person accepted to receive a copy of my writ and delivered a receipt for the same, upon which the undersigned bailiff handed over to her a copy of the writ in a sealed envelope only bearing the name(s) , surname, capacity and address of the addressee and the seal of the bailiff upon its flap; another copy of the writ as well as a notice of delivery mentioning the indications relating to the person to whom a copy of the writ was handed; the whole in a sealed envelope only bearing the name(s), surname, capacity and address of the addressee and the seal of the bailiff upon its flap, were left on the premises.

signature of the person met on the premises: *illegible*

All paragraphs not inscribed with a cross are considered as blank. signature of the bailiff: *illegible*

NOTICE OF DELIVERY

Pierre Kremmer
Bailiff
9, rue J.B. GelléL-1620 Luxembourg

it is hereby brought to the knowledge of the addressee of the present writ that the bailiff presented himself on the date and at the address hereabove in order to serve a writ upon him. The addressee not having been found in person,

X a copy of the present writ was handed over in a sealed envelope to Hubert Nicole named hereabove under 1; a second envelope containing a copy of the writ has also been left on the premises.

Date: 10.10.'94 signature of the bailiff: *illegible*

Pierre Kremmer
Bailiff
9 rue Pierre Gellé
L-1620 Luxembourg

SERVING OF THE WRIT

Addressee of the writ: **Institut Monétaire Luxembourgeois**
Date of service: in the year nineteen hundred and ninety four, on the tenth of October
The present writ has been served by the undersigned bailiff in the conditions indicated under the item marked with a cross and in accordance with the statements as collected, for the addressee, at his / her / its:

domicile: residence: registered office: X

as described hereafter:

B/ SERVING AT DOMICILE:

Having found: Name(s), Surname: Walentiny Marcelle
 Capacity: employée
 Address: 25, ? Um Schloss, L-5880 Hesperange
 having thus stated, the said person accepted to receive a copy of my writ and delivered a receipt for the same, upon which the undersigned bailiff handed over to her a copy of the writ in a sealed envelope only bearing the name(s) , surname, capacity and address of the addressee and the seal of the bailiff upon its flap; another copy of the writ as well as a notice of delivery mentioning the indications relating to the person to whom a copy of the writ was handed; the whole in a sealed envelope only bearing the name(s), surname, capacity and address of the addressee and the seal of the bailiff upon its flap, were left on the premises.

signature of the person met on the premises: *illegible*

All paragraphs not inscribed with a cross are considered as blank. signature of the bailiff: *illegible*

NOTICE OF DELIVERY

Pierre Kremmer
Bailiff
9, rue J.B. GelléL.-1620 Luxembourg

it is hereby brought to the knowledge of the addressee of the present writ that the bailiff presented himself on the date and at the address hereabove in order to serve a writ upon him. The addressee not having been found in person,

X a copy of the present writ was handed over in a sealed envelope to Walentiny Marcelle named hereabove under I; a second envelope containing a copy of the writ has also been left on the premises.

Date: 10.10.'94 signature of the bailiff: *illegible*

SUMMONS

In the year nineteen hundred and ninety four, on the fourteenth of October.

At the suit of

- I.
 1. Georges BADEN, lawyer, residing in Luxembourg, 7, Place du Théâtre,
 2. Julien RODEN, lawyer, residing in Luxembourg, 7, Avenue des Archiducs,
 3. Brian SMOUHA, registered accountant, residing in London, 1, Little New Street, GB,

acting in their capacity as liquidators of the *société anonyme* BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A. (in liquidation), established and with registered office situate in Luxembourg - Senningerberg, 5, rue Höhenhof, (hereafter "BCCI"), appointed to that effect by judgment of the District Court of and in Luxembourg, 6th Division, on 3 January, 1992,

- II.
 1. Jacques DELVAUX, notary, residing in Esch-sur-Alzette, 19, rue de l'Eau,
 2. Georges RAVARANI, lawyer, residing in Luxembourg, 6, rue Zithe,

acting in their capacity as liquidators of the *société anonyme* BCCI HOLDINGS (LUXEMBOURG) S.A. (in liquidation), established and with registered office situate in Luxembourg - Senningerberg, 5, rue Höhenhof, (hereafter HOLDINGS), appointed to that effect by judgments of the District Court of and in Luxembourg, 6th Division, on 18 September, 1992 and 14 October, 1993,

- III.
 1. BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A. (in liquidation), established and with registered office situate in Luxembourg - Senningerberg, 5, rue Höhenhof, acting with regard to the presents through its English branch, established in London, UK, Citadel House, 5 - 11, Fetter Lane, (hereafter "BCCI UK"), duly represented by its liquidators Christopher MORRIS, Nicholas R. LYLE, John P. RICHARDS and Stephen J. AKERS, registered accountants, residing in London, UK,

2. Christopher MORRIS, Nicholas R. LYLE, John P. RICHARDS and Stephen J. AKERS, registered accountants, residing at 1, Little New Street, London, UK, acting in their capacity as liquidators of BCCI UK,

IV. 1. BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED in compulsory winding-up, established and with registered office situate Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereafter "BCCI Overseas"), duly represented as regards the presents by its official liquidators Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, registered accountants, residing in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, registered accountants, residing in Georgetown, Cayman Islands, BWI, acting in their capacity as official liquidators of BCCI Overseas,

V. 1. CREDIT AND FINANCE COMPANY LIMITED, in compulsory winding-up, established and with registered office situate Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereafter "CFC"), duly represented by its official liquidators Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, registered accountants, residing in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, registered accountants, residing in Georgetown, Cayman Islands, BWI, acting in their capacity as official liquidators of CFC,

VI. 1. INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED, in compulsory winding-up, established and with registered office situate Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereafter "ICIC Overseas"), duly represented by its official liquidators Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, registered accountants, residing in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, registered accountants, residing in Georgetown, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC Overseas,

VII. 1. ICIC HOLDINGS LIMITED, in liquidation, established and with registered office situate Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI,

(hereafter "ICIC Holdings"), duly represented by its official liquidators Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, registered accountants, residing in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, registered accountants, residing in Georgetown, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC Holdings,

VIII. 1. ICIC INVESTMENTS LIMITED, in liquidation, established and with registered office situate Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereafter "ICIC Investments"), duly represented by its official liquidators Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, registered accountants, residing in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, registered accountants, residing in Georgetown, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC Investments,

IX. 1. ICIC APEX HOLDING LIMITED (in liquidation), established and with registered office situate Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereafter "ICIC Apex"), duly represented by its official liquidators Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, registered accountants, residing in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, registered accountants, residing in Georgetown, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC Apex,

appearing through Maître Georges BADEN, assisted by Maître Georges RAVARANI, lawyers both, residing in Luxembourg,

I the undersigned Pierre KREMMER, bailiff, residing in Luxembourg, registered with the District Court of and in Luxembourg,

have served a writ of summons on:

1. BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A. (in liquidation), established and with registered office situate in Luxembourg - Senningerberg, 5, rue Höhenhof, summoned by separate writ,

2. BCCI HOLDINGS (LUXEMBOURG) S.A. (in liquidation), established and with registered office situate in Luxembourg - Senningerberg, 5, rue Höhenhof, summoned by separate writ,

3. the Government of the Emirate of Abu Dhabi, represented by its Department of Finances, established and with offices situate in Abu Dhabi, United Arab Emirates,

4. the State Attorney in Luxembourg, with offices at the Court of Justice, summoned by separate writ,

5. the INSTITUT MONÉTAIRE LUXEMBOURGEOIS, established in Luxembourg, 63, Avenue de la Liberté, in the person of its General Manager Pierre JAANS and its managers Jean-Nicolas SCHAUS and Jean GUILL, summoned by separate writ,

to appear on Tuesday, the twenty fifth of October, nineteen hundred and ninety four at 15:00 hours before the District Court of and in Luxembourg, 6th Division, sitting in commercial matters at the Court of Justice in Luxembourg, second floor, room number 21, in order to:

Whereas the hereabove applicants (hereafter and jointly the "Liquidators") negotiated with the Government of Abu Dhabi a Draft Agreement which text together with its schedules was finally defined on 13 July, 1994 by a letter from the representatives of the Government of Abu Dhabi and an answering-letter of the same date from the representatives of the Liquidators (hereafter the "Agreement");

that the ~~main items~~ ~~of this Agreement~~ ~~may be summarized~~ ~~as follows,~~ ~~without any~~ ~~reference~~ ~~as to completeness:~~

1. The Government of Abu Dhabi (hereafter "Abu Dhabi") undertakes to pay to the Liquidators an amount ~~of~~ ~~US\$~~ 1,800,000,000.- (one billion eight hundred million United States Dollars), of which US\$ 1,550,000,000.- shall be payable to the Liquidators upon the signature of the agreement and US\$ 250,000,000.- shall be payable in the hands of an agent of the parties, acting as a so-called "escrow agent";

this amount of US\$ 250,000,000.- shall be paid to the Liquidators by reason of US\$ 150,000,000.- upon termination of a delay this amount of US\$ 250,000,000.- shall be paid to the Liquidators in the amount of US\$ 150,000,000.- upon termination of a delay period of 24 months following the signature of the agreement and in the amount of US\$ 100,000,000.- 36 months after the signature of the agreement, the interest having accrued in the meantime falling to Abu Dhabi (article 2);

2. The Liquidators hereby guarantee Abu Dhabi up to the amount of US\$ 450,000,000.- against any recursory action undertaken by a third party, summoned or implicated in arbitrary proceedings by the Liquidators and who may have been bound in the procedures as instigated to pay indemnifications to the Liquidators; this guarantee is limited to the lower of the two amounts, either the one paid to the Liquidators, or the one paid by Abu Dhabi, and the guarantee may not in general exceed the amount of US\$ 450,000,000.-; in order to warrant the due execution on the part of the Liquidators of this obligation of guarantee, they undertake to pay into the hands of an escrow agent, but only up to the amount of US\$ 450,000,000.-, the recoveries against third parties which they may carry out (article 3);

3. Abu Dhabi for its part guarantees the Liquidators against any action initiated against them by a third party sued by by Abu Dhabi or implicated in an arbitration proceeding, up to the lower of either the amount received by Abu Dhabi, or that paid by the Liquidators, but without any limit as regards the total amount of the guarantee (article 8);

4. the Liquidators moreover guarantee Abu Dhabi, outside of and apart from the amount of US\$ 450,000,000.-, in the sole hypothesis where the Liquidators should initiate and win in an action which may be instituted against a certain bank or in an arbitration procedure against the same, initiated by the Liquidators and in the hypothesis of a recursory action of this company against Abu Dhabi; the present clause which was inserted in the draft agreement at a time when the Liquidators did not possess the necessary elements to decide whether this action had or not to be initiated, has become null and void, whereas since then the Liquidators have had the necessary documents in their possession and have been able to decide that such action was not justified (article 3 J-K-L-M-N);

5. The Liquidators grant full discharge to Abu Dhabi in relation with the engagements as accepted by Abu Dhabi within the framework of a refinancing project ("ReFinancing Package", or "RFP") which has failed to be executed, allegedly by

reason of the intervention of the relevant monitoring authorities, i.e., the IML and the Bank of England, which had the various entities constituting BCCI put under compulsory supervision; in the same intent, the Liquidators grant to Abu Dhabi a discharge, respectively a covenant not to sue covering all and any possible cause for action against Abu Dhabi (and among these mainly actions in liability), to the exception of the sole commercial debts; Abu Dhabi for its part grants a parallel discharge regarding the engagements of the ReFinancing Package (or RFP) as well as a discharge respectively a covenant not to sue for the rest (article 5);

6. Abu Dhabi expressly renounces to participate in the assets which by virtue of the Plea Agreement of 19 December, 1991 fall to the United States of America respectively the State of New York, in the assets which may be or come into the possession of the District Attorney of New York, the Department of Justice or the Federal Reserve Board following legal or arbitrary proceedings, as well as in those assets which may fall to the United States of America following the Geneva Agreement of 8 January, 1994 between the hereabove named and Abu Dhabi (article 5E);

7. the Liquidators accept that in case the liquidator of the United Arab Emirate Branches should so request, they shall accept the liquidator of such branches within the Pool, with the general effect that the assets and liabilities of such branches will be absorbed in the liquidation of BCCI and that their creditors shall be paid the same dividend as that resulting in the favour of the other creditors of the Liquidations; within this framework, Abu Dhabi agrees to moreover make a payment to the Liquidators which shall be equal to the total of dividends falling to the creditors of the United Arab Branches (from which shall be deducted the dividend payable with regard to the amount of US\$ 540,000,000.-), less the assets of the liquidator of such Branches;

Holdings undertakes to transfer its 1,549,018 shares in the company UNION NATIONAL BANK (formerly known under the name "BCC Emirates") to such party to be designated by Abu Dhabi (article 6);

8. the draft agreement provides that it shall be subject to British law and that the jurisdictions of the United Kingdom shall have exclusive competence (article 16);



Whereas this draft agreement, should it be realized, appears to be in the best interest of the Liquidations and of the creditors, and as being in no way contrary to Luxembourg public order.

As regards the interest of the Liquidations and of the creditors:

that through this Agreement the Liquidators and the creditors shall have available to them a certain payment in the amount of US\$ 1,800,000,000.-;

that this payment shall be effected very rapidly in this sense that the amount of US\$ 1,550,000,000.- shall be made available immediately following the signature, the balance in the amount of US\$ 250,000,000.- becoming available within 24, respectively 36 months of said signature;

that the Liquidators may through this scheme avoid having to institute proceedings against Abu Dhabi which present, as do all and any judicial litigation, an element of dubiousness as regards success, which are bound to last for a lengthy period of time and to imply substantial costs and expenses; that at the same time all and any danger of witnessing a fiduciary action on the part of Abu Dhabi, with the effect of provisionally blocking the assets of the Liquidations, shall be avoided;

that in such way an interim dividend shall be liable to be rapidly distributed;

that over and above this payment to be made by Abu Dhabi, the Liquidators have been able to obtain that Abu Dhabi renounce to participate in all the funds liable to fall to the Liquidators from the USA; that the amounts which are currently blocked in the United States on the basis of the various agreements are such that after deduction of the costs and other payments to be made in the United States, an amount valued at up to US\$ 1,000,000,000.- may remain available; that even though an important part of this amount is subject to the discretionary judgment of United States authorities, the Liquidators may, once the agreement is made final, enter into negotiations with the United States in view of as sizeable a recovery as possible on the American assets, in which assets Abu Dhabi shall not participate with the debts which this party produced in the liquidation in view of the deposits and funds advanced, and which must be checked according to the normal verification procedure in matters of winding-up procedures;

that Abu Dhabi moreover undertook to make a contributive payment in the event of a Pooling by the liquidator of United Arab Emirates Branches; that whereas it is true that in accordance with the principle of the universality of bankruptcy as applied within the various jurisdictions having appointed the Liquidators, all and any creditors have the required capacity to enter claims in the liabilities of the liquidations, the Liquidators were however able to obtain that in the case of the branches of BCCI in the United Arab Emirates, Abu Dhabi shall make a contribution according to a negotiated formula; that such contribution shall in turn increase the payment to be made by Abu Dhabi;

that as regards the guarantee granted by Abu Dhabi to the Liquidators, the said guarantee shall only come into play, within the allotted time period, only in the hypothesis where the Liquidators shall have recovered funds against a third party who shall have won a recursory action against Abu Dhabi; that the consequence of the above is that the Liquidators shall never be bound to disburse , on the basis of the guarantee, any assets which they shall not have previously recovered against a third party; that in other words if one may call the payment by Abu Dhabi of the amount of US\$ 450,000,000,000.- (as comprised in the total amount of US\$ 1,800,000,000.-) as being in a manner of speaking an advance subject to reimbursement in certain circumstances of the recovery against third parties, the practical result remains that Abu Dhabi actually guarantees through this device that if recoveries against third parties cannot be carried out for a minimum amount of at least US\$ 450,000,000.-, then Abu Dhabi shall be bound to stand up to this amount respectively the difference; that as has been pointed out hereabove the ceiling of the guarantee is limited to US\$ 450,000,000.- even in the case where recoveries against third parties are in excess of such amount;

that on the opposite, and even if the guarantee granted by the Liquidators does not apply to actions against monitoring authorities (the IML and the Bank of England) and is besides limited to a ceiling of US\$ 450,000,000.-, the Liquidators have obtained from Abu Dhabi the granting of an unlimited guarantee in the case where Abu Dhabi would recover against a third party which would win in a recursory action against the Liquidations;

that in reality the sole consideration given by the Liquidators resides in the fact that they grant, in the form of a discharge respectively a covenant not to sue, the equivalent of a discharge to Abu Dhabi as regards any cause for action other than normal commercial causes; that within the framework of the Agreement such

discharges and covenants not to sue are entirely and fully justified and that on the other hand Abu Dhabi undertakes covenants respectively grants discharges in all respects similar to the Liquidators;

that there results that the Agreement as presented is in the eminent interest of the creditors of the Liquidation who may in this way obtain a certified and rapid payment, as against difficult, slow and expensive proceedings;

As regards Luxembourg public order:

Whereas in the point of view of the judgment rendered by the Court of Appeals on 27 October, 1993 there appears in this Agreement no provision allowing to uphold a violation of the rules regarding the public order of Luxembourg;

that in first step following an agreement concluded on 8 January, 1994 with the United States of America, Abu Dhabi handed over to the Liquidators all the documents pertaining to the Liquidations;

that there appears in the Agreement no instance of inequality in the treatment of unsecured creditors whereas the funds payable by Abu Dhabi fall to the estate of the Liquidations and are available indistinctly to any creditor which claim has been verified and proven according to the legal rules applicable to the various Liquidations; that the only exception made to this principle, in the hypothesis where claims filed would be verified and asserted, resides in the fact that Abu Dhabi renounces any dividends issuing from the assets remaining in the United States; that it should not be considered as contrary to principle of the equalitarian treatment that a possible unsecured creditor renounce his dividend in whole or in part, in the same way that any claimant may omit to file a claim in his discretionary judgment, cancel the filing of a claim, and/or abandon or even donate his right to a dividend to whom he may please;

that there exists furthermore no clause whatsoever providing for an apportionment of the results and proceeds of the actions in liability between Abu Dhabi and the Liquidators; that indeed all and any clauses to that effect having been abandoned, the Liquidators shall keep the results of these actions in liability, and Abu Dhabi shall in the same manner keep the results of its own actions in liability in which it shall have won the case;

that any questions of indemnification have been removed in the Agreement and that the normal rules according to the various processes of liquidation shall apply without any derogation or exception;

that if it is indeed true that the Agreement is subject to British law, it is demonstrated that no rule within Luxembourg law, whether with regard to public order or not, prevents an agreement between a liquidator (or a trustee with regard to a bankruptcy) and a third party may be subject to a non-Luxembourg legislation; that the proceedings relating to the Agreement are not the result of a particular or special Luxembourg legal provision regarding the law governing bankruptcy or liquidations, but on the very contrary issue directly from legal rules which may only be termed as stemming from common law;

that the sole specific rules governing matters of bankruptcy and of liquidation, which can not be in any way applied to relations governed by common law, are of a public order nature to the exclusion of any rules governing normal and common-law relations and this, quite independently from the fact that such a legal relation may be a liquidation or a bankruptcy;

that the concern of the Liquidators along the duration of the negotiations also consisted in avoiding any likeliness that - through the application of the rules governing private international law to a matter of such complexity and offering such a multitude of parties and considerations, and for the lack of any contractual choice -, a court should resolve to apply the laws of the State of Abu Dhabi, which laws are entirely unknown to the Liquidators and to which they did not agree to be subject, whereas one may be of the opinion that the principal consideration, i.e., the payment of over US\$ 1,800,000,000.- (both directly and indirectly), is actually made by Abu Dhabi, any payment being as a matter of principle liable to be collected;

that it should in any event be remembered that the Agreement only exclusively implies a transaction, and not a plan of liquidation, and that situations directly dependent upon the liquidation are neither affected by, nor governed by, the Agreement;

that if competence is given the courts of the United Kingdom, there should yet be retained the fact that in law no rule may prevent that an appointed liquidator or a trustee in a bankruptcy may submit an agreement or dispute before a non-Luxembourgish jurisdiction, in the same way that in many instances such a liquidator

or trustee is unable to prevent normal rules of competence from entailing that of the domicile of the debtor who is domiciled abroad, which in the case of a summons by a liquidator or a trustee in a bankruptcy is perforce a non-Luxembourgish jurisdiction; that forcing a liquidator to sue in any event before the courts of Luxembourg would be the same as forcing him to obtain judgments which on the strength of things could be neither exequatored nor executed abroad, whereas no foreign jurisdiction would either acknowledge nor give the exequatur to a Luxembourgish decision having been taken on the basis of such nationalistic and territorial criteria; that once again the concern of the Liquidators was to avoid that any competence be given the jurisdictions of Abu Dhabi whereas on the contrary the other party to the agreements is precisely the Government of Abu Dhabi, with registered office in the Emirate of Abu Dhabi.

Whereas there results from the above that the Agreement is in the eminent interest of the Liquidations and their creditors and does not in any way contravene to any rule of Luxembourg public order; that the rapid conclusion and settlement of the Agreement is alike in the obvious interest of the creditors whereas on the one hand, the payment of the immediately available amount of US\$ 1,550,000,000.- will allow for the rapid distribution of a first dividend, and that on the other hand by waiting for the payment of such dividend, interest on this amount will accrue for the profit of the Liquidations as of the date of the payment;

that in accordance with the decrees of liquidation of 3 January, 1992 (BCCI) respectively of 18 September, 1992 and 14 October, 1993 (Holdings), the Liquidators are free to initiate negotiations with the authorization of the Court granted upon report by the Magistrate in bankruptcy and following advice as given by the Committee of Claimants; that as regards Holdings the Committee of Claimants unanimously voted in favour of the draft agreement, whereas in the case of BCCI a creditor abstained, all three remaining creditors having voted in its favour - this applies to the two Committees in the absence of the representative of the Department of Private Affairs of Abu Dhabi, respectively of the Abu Dhabi Investment Authority which did not participate in the meeting;

that the Liquidators solicit by the presents the approval of the transaction on hand, and conclude as being duly authorized to sign and enter into the same;

that the summoned parties the State Prosecutor of the State of Luxembourg and the *Institut Monétaire Luxembourgeois* are dedicated to represent the applicants with

credit establishments over and above the fact that the IML stands as the monitoring authority of such establishments and moreover the applicant in the liquidation.

UPON THESE GROUNDS:

the summoned parties hear declared the present claim as admissible in the form and justified as regards the main issue;

hear ordained such measures as at law;

hear approved the Agreement to be entered into, as more thoroughly specified and described hereabove;

hear the Liquidators authorized to agree to and sign the Agreement as fixed by an exchange of correspondence between the parties of 13 July, 1994;

hear the costs and expenses of the presents charged to the estate of the liquidations and failing this, to the unfounded contending party;

In witness whereof I left a copy intended for the summoned party under 4/ at the Court of Justice of and in Luxembourg where being I spoke to Etienne Schmit in his capacity as Deputy State Prosecutor who stated his capacity to be handed and accept my writ.

IN WITNESS WHEREOF and whereas the summoned party under 3/ is established in Abu Dhabi (United Arab Emirates), I have for that party handed over a copy of my writ together with a translation of the said writ into the Arabic language to the P&T administration and more particularly to its EMS - EXPRESS MAIL SERVICE Department, against the receipt appended herewith and I have also for that party handed over a copy of my writ together with a translation of the same writ into the Arabic language as a normal letter plus express dispatch to the Post Administration in Luxembourg.

(signed:) *illegible*

Costs:

Right: 1.200.-

Copies: 300.-

Travel: 100.-
Stamps: 960.-
Registr.: 100.-
VAT: 192.-
Post: 1.150.-
TOTAL: 4.002.-

(stamped:) Registered in Luxembourg on 17. Nov. 1994
Vol. 497, Folio 50, box 23
Duty: 100.- francs
(signed:) the Registrar *(illegible)*

SUMMONS

In the year nineteen hundred and ninety four, on the fifteenth of November.

At the suit of

- I.
 1. Georges BADEN, lawyer, residing in Luxembourg, 7, Place du Théâtre,
 2. Julien RODEN, lawyer, residing in Luxembourg, 7, Avenue des Archiducs,
 3. Brian SMOUHA, registered accountant, residing in London, 1, Little New Street, GB,

acting in their capacity as liquidators of the *société anonyme* BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A. (in liquidation), established and with registered office situate in Luxembourg - Senningerberg, 5, rue Höhenhof, (hereafter "BCCI"), appointed to that effect by judgment of the District Court of and in Luxembourg, 6th Division, on 3 January, 1992,

- II.
 1. Jacques DELVAUX, notary, residing in Esch-sur-Alzette, 19, rue de l'Eau,
 2. Georges RAVARANI, lawyer, residing in Luxembourg, 6, rue Zithe,

acting in their capacity as liquidators of the *société anonyme* BCCI HOLDINGS (LUXEMBOURG) S.A. (in liquidation), established and with registered office situate in Luxembourg - Senningerberg, 5, rue Höhenhof, (hereafter HOLDINGS), appointed to that effect by judgments of the District Court of and in Luxembourg, 6th Division, on 18 September, 1992 and 14 October, 1993,

- III.
 1. BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A. (in liquidation), established and with registered office situate in Luxembourg - Senningerberg, 5, rue Höhenhof, acting with regard to the presents through its English branch, established in London, UK, Citadel House, 5 - 11, Fetter Lane, (hereafter "BCCI UK"), duly represented by its liquidators Christopher MORRIS, Nicholas R. LYLE, John P. RICHARDS and Stephen J. AKERS, registered accountants, residing in London, UK,

2. Christopher MORRIS, Nicholas R. LYLE, John P. RICHARDS and Stephen J. AKERS, registered accountants, residing at 1, Little New Street, London, UK, acting in their capacity as liquidators of BCCI UK,

IV. 1. BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED in compulsory winding-up, established and with registered office situate Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereafter "BCCI Overseas"), duly represented as regards the presents by its official liquidators Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, registered accountants, residing in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, registered accountants, residing in Georgetown, Cayman Islands, BWI, acting in their capacity as official liquidators of BCCI Overseas,

V. 1. CREDIT AND FINANCE COMPANY LIMITED, in compulsory winding-up, established and with registered office situate Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereafter "CFC"), duly represented by its official liquidators Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, registered accountants, residing in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, registered accountants, residing in Georgetown, Cayman Islands, BWI, acting in their capacity as official liquidators of CFC,

VI. 1. INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED, in compulsory winding-up, established and with registered office situate Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereafter "ICIC Overseas"), duly represented by its official liquidators Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, registered accountants, residing in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, registered accountants, residing in Georgetown, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC Overseas,

VII. 1. ICIC HOLDINGS LIMITED, in liquidation, established and with registered office situate Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereafter "ICIC Holdings"), duly represented by its official liquidators Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, registered accountants, residing in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, registered accountants, residing in Georgetown, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC Holdings,

VIII. 1. ICIC INVESTMENTS LIMITED, in liquidation, established and with registered office situate Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereafter "ICIC Investments"), duly represented by its official liquidators Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, registered accountants, residing in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, registered accountants, residing in Georgetown, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC Investments,

IX. 1. ICIC APEX HOLDING LIMITED (in liquidation), established and with registered office situate Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereafter "ICIC Apex"), duly represented by its official liquidators Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, registered accountants, residing in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, registered accountants, residing in Georgetown, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC Apex,

all applicants electing domicile at the offices of Maître Georges BADEN, lawyer (I), residing in Luxembourg, who has been briefed and shall represent the said applicants with the assistance of Maître Georges RAVARANI, lawyer (I), residing in Luxembourg,

I the undersigned Pierre KREMMER, bailiff, residing in Luxembourg, registered with the District Court of and in Luxembourg,

have served a writ of summons on:

1. BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A. (in liquidation), established and with registered office situate in Luxembourg - Senningerberg, 5, rue Höhenhof,

2. BCCI HOLDINGS (LUXEMBOURG) S.A. (in liquidation), established and with registered office situate in Luxembourg - Senningerberg, 5, rue Höhenhof,
3. the Government of the Emirate of Abu Dhabi, represented by its Department of Finances, established and with offices situate in Abu Dhabi, United Arab Emirates, which shall be summoned by a separate writ,
4. the State Attorney in Luxembourg, with offices at the Court of Justice,
5. the INSTITUT MONÉTAIRE LUXEMBOURGEOIS, established in Luxembourg, 63, Avenue de la Liberté, in the person of its General Manager Pierre JAANS and its managers Jean-Nicolas SCHAUS and Jean GUILL,

to appear by way of representation through their lawyer(s) within the period of delay as set out by law which is of eight days for the summoned parties under 1., 2., 4. and 5. and of eight days increased by two months for the summoned party under 3., at 09:00 o'clock A.M. before the District Court of and in Luxembourg, 1st Division, sitting in civil matters at the Court of Justice in Luxembourg, third floor, room number 35, in order to:

Whereas the hereabove applicants (hereafter and jointly the "Liquidators") negotiated with the Government of Abu Dhabi a Draft Agreement which text together with its schedules was finally defined on 13 July, 1994 by a letter from the representatives of the Government of Abu Dhabi and an answering-letter of the same date from the representatives of the Liquidators (hereafter the "Agreement");

that the main items of this Agreement may be summarized as follows, without any pretense as to completeness:

1. The Government of Abu Dhabi (hereafter "Abu Dhabi") undertakes to pay to the Liquidators an amount of US\$ 1,800,000,000.- (one billion eight hundred million United States Dollars), of which US\$ 1,550,000,000.- shall be payable to the Liquidators upon the signature of the agreement and US\$ 250,000,000.- shall be payable in the hands of an agent of the parties, acting as a so-called "escrow agent"; this amount of US\$ 250,000,000.- shall be paid to the Liquidators by reason of US\$ 150,000,000.- upon termination of a delay this amount of US\$ 250,000,000.- shall be paid to the Liquidators in the amount of US\$ 150,000,000.- upon termination of a delay period of 24 months following the signature of the agreement and in the amount

of US\$ 100,000,000.- 36 months after the signature of the agreement, the interest having accrued in the meantime falling to Abu Dhabi (article 2);

2. The Liquidators hereby guarantee Abu Dhabi up to the amount of US\$ 450,000,000.- against any recursory action undertaken by a third party, summoned or implicated in arbitrary proceedings by the Liquidators and who may have been bound in the procedures as instigated to pay indemnifications to the Liquidators; this guarantee is limited to the lower of the two amounts, either the one paid to the Liquidators, or the one paid by Abu Dhabi, and the guarantee may not in general exceed the amount of US\$ 450,000,000.-; in order to warrant the due execution on the part of the Liquidators of this obligation of guarantee, they undertake to pay into the hands of an escrow agent, but only up to the amount of US\$ 450,000,000.-, the recoveries against third parties which they may carry out (article 3);

3. Abu Dhabi for its part guarantees the Liquidators against any action initiated against them by a third party sued by by Abu Dhabi or implicated in an arbitration proceeding, up to the lower of either the amount received by Abu Dhabi, or that paid by the Liquidators, but without any limit as regards the total amount of the guarantee (article 8);

4. the Liquidators moreover guarantee Abu Dhabi, outside of and apart from the amount of US\$ 450,000,000.-, in the sole hypothesis where the Liquidators should initiate and win in an action which may be instituted against a certain bank or in an arbitration procedure against the same, initiated by the Liquidators and in the hypothesis of a recursory action of this company against Abu Dhabi; the present clause which was inserted in the draft agreement at a time when the Liquidators did not possess the necessary elements to decide whether this action had or not to be initiated, has become null and void, whereas since then the Liquidators have had the necessary documents in their possession and have been able to decide that such action was not justified (article 3 J-K-L-M-N);

5. The Liquidators grant full discharge to Abu Dhabi in relation with the engagements as accepted by Abu Dhabi within the framework of a refinancing project ("ReFinancing Package", or "RFP") which has failed to be executed, allegedly by reason of the intervention of the relevant monitoring authorities, i.e., the IML and the Bank of England, which had the various entities constituting BCCI put under compulsory supervision; in the same intent, the Liquidators grant to Abu Dhabi a discharge, respectively a covenant not to sue covering all and any possible cause for

action against Abu Dhabi (and among these mainly actions in liability), to the exception of the sole commercial debts; Abu Dhabi for its part grants a parallel discharge regarding the engagements of the ReFinancing Package (or RFP) as well as a discharge respectively a covenant not to sue for the rest (article 5);

6. Abu Dhabi expressly renounces to participate in the assets which by virtue of the Plea Agreement of 19 December, 1991 fall to the United States of America respectively the State of New York, in the assets which may be or come into the possession of the District Attorney of New York, the Department of Justice or the Federal Reserve Board following legal or arbitrary proceedings, as well as in those assets which may fall to the United States of America following the Geneva Agreement of 8 January, 1994 between the hereabove named and Abu Dhabi (article 5E);

7. the Liquidators accept that in case the liquidator of the United Arab Emirate Branches should so request, they shall accept the liquidator of such branches within the Pool, with the general effect that the assets and liabilities of such branches will be absorbed in the liquidation of BCCI and that their creditors shall be paid the same dividend as that resulting in the favour of the other creditors of the Liquidations; within this framework, Abu Dhabi agrees to moreover make a payment to the Liquidators which shall be equal to the total of dividends falling to the creditors of the United Arab Branches (from which shall be deducted the dividend payable with regard to the amount of US\$ 540,000,000.-), less the assets of the liquidator of such Branches;

Holdings undertakes to transfer its 1,549,018 shares in the company UNION NATIONAL BANK (formerly known under the name "BCC Emirates") to such party to be designated by Abu Dhabi (article 6);

8. the draft agreement provides that it shall be subject to British law and that the jurisdictions of the United Kingdom shall have exclusive competence (article 16);

Whereas this draft agreement, should it be realized, appears to be in the best interest of the Liquidations and of the creditors, and as being in no way contrary to Luxembourg public order.

As regards the interest of the Liquidations and of the creditors;

that through this Agreement the Liquidators and the creditors shall have available to them a certain payment in the amount of US\$ 1,800,000,000.-;

that this payment shall be effected very rapidly in this sense that the amount of US\$ 1,550,000,000.- shall be made available immediately following the signature, the balance in the amount of US\$ 250,000,000.- becoming available within 24, respectively 36 months of said signature;

that the Liquidators may through this scheme avoid having to institute proceedings against Abu Dhabi which present, as do all and any judicial litigation, an element of dubiousness as regards success, which are bound to last for a lengthy period of time and to imply substantial costs and expenses; that at the same time all and any danger of witnessing a fiduciary action on the part of Abu Dhabi, with the effect of provisionally blocking the assets of the Liquidations, shall be avoided;

that in such way an interim dividend shall be liable to be rapidly distributed;

that over and above this payment to be made by Abu Dhabi, the Liquidators have been able to obtain that Abu Dhabi renounce to participate in all the funds liable to fall to the Liquidators from the USA; that the amounts which are currently blocked in the United States on the basis of the various agreements are such that after deduction of the costs and other payments to be made in the United States, an amount valued at up to US\$ 1,000,000,000.- may remain available; that even though an important part of this amount is subject to the discretionary judgment of United States authorities, the Liquidators may, once the agreement is made final, enter into negotiations with the United States in view of as sizeable a recovery as possible on the American assets, in which assets Abu Dhabi shall not participate with the debts which this party produced in the liquidation in view of the deposits and funds advanced, and which must be checked according to the normal verification procedure in matters of winding-up procedures;

that Abu Dhabi moreover undertook to make a contributive payment in the event of a Pooling by the liquidator of United Arab Emirates Branches; that whereas it is true that in accordance with the principle of the universality of bankruptcy as applied within the various jurisdictions having appointed the Liquidators, all and any creditors have the required capacity to enter claims in the liabilities of the liquidations, the Liquidators were however able to obtain that in the case of the branches of BCCI in the United Arab Emirates, Abu Dhabi shall make a contribution according to a

negotiated formula; that such contribution shall in turn increase the payment to be made by Abu Dhabi;

that as regards the guarantee granted by Abu Dhabi to the Liquidators, the said guarantee shall only come into play, within the allotted time period, only in the hypothesis where the Liquidators shall have recovered funds against a third party who shall have won a recursory action against Abu Dhabi; that the consequence of the above is that the Liquidators shall never be bound to disburse , on the basis of the guarantee, any assets which they shall not have previously recovered against a third party; that in other words if one may call the payment by Abu Dhabi of the amount of US\$ 450,000,000,000.- (as comprised in the total amount of US\$ 1,800,000,000.-) as being in a manner of speaking an advance subject to reimbursement in certain circumstances of the recovery against third parties, the practical result remains that Abu Dhabi actually guarantees through this device that if recoveries against third parties cannot be carried out for a minimum amount of at least US\$ 450,000,000.-, then Abu Dhabi shall be bound to stand up to this amount respectively the difference; that as has been pointed out hereabove the ceiling of the guarantee is limited to US\$ 450,000,000.- even in the case where recoveries against third parties are in excess of such amount;

that on the opposite, and even if the guarantee granted by the Liquidators does not apply to actions against monitoring authorities (the IML and the Bank of England) and is besides limited to a ceiling of US\$ 450,000,000.-, the Liquidators have obtained from Abu Dhabi the granting of an unlimited guarantee in the case where Abu Dhabi would recover against a third party which would win in a recursory action against the Liquidations;

that in reality the sole consideration given by the Liquidators resides in the fact that they grant, in the form of a discharge respectively a covenant not to sue, the equivalent of a discharge to Abu Dhabi as regards any cause for action other than normal commercial causes; that within the framework of the Agreement such discharges and covenants not to sue are entirely and fully justified and that on the other hand Abu Dhabi undertakes covenants respectively grants discharges in all respects similar to the Liquidators;

that there results that the Agreement as presented is in the eminent interest of the creditors of the Liquidation who may in this way obtain a certified and rapid payment, as against difficult, slow and expensive proceedings;

As regards Luxembourg public order:

Whereas in the point of view of the judgment rendered by the Court of Appeals on 27 October, 1993 there appears in this Agreement no provision allowing to uphold a violation of the rules regarding the public order of Luxembourg;

that in first step following an agreement concluded on 8 January, 1994 with the United States of America, Abu Dhabi handed over to the Liquidators all the documents pertaining to the Liquidations;

that there appears in the Agreement no instance of inequality in the treatment of unsecured creditors whereas the funds payable by Abu Dhabi fall to the estate of the Liquidations and are available indistinctly to any creditor which claim has been verified and proven according to the legal rules applicable to the various Liquidations; that the only exception made to this principle, in the hypothesis where claims filed would be verified and asserted, resides in the fact that Abu Dhabi renounces any dividends issuing from the assets remaining in the United States; that it should not be considered as contrary to principle of the equalitarian treatment that a possible unsecured creditor renounce his dividend in whole or in part, in the same way that any claimant may omit to file a claim in his discretionary judgment, cancel the filing of a claim, and/or abandon or even donate his right to a dividend to whom he may please;

that there exists furthermore no clause whatsoever providing for an apportionement of the results and proceeds of the actions in liability between Abu Dhabi and the Liquidators; that indeed all and any clauses to that effect having been abandoned, the Liquidators shall keep the results of these actions in liability, and Abu Dhabi shall in the same manner keep the results of its own actions in liability in which it shall have won the case;

that any questions of indemnification have been removed in the Agreement and that the normal rules according to the various processes of liquidation shall apply without any derogation or exception;

that if it is indeed true that the Agreement is subject to British law, it is demonstrated that no rule within Luxembourg law, whether with regard to public order or not, prevents an agreement between a liquidator (or a trustee with regard to a bankruptcy) and a third party may be subject to a non-Luxembourg legislation; that the proceedings relating to the Agreement are not the result of a particular or special

Luxembourg legal provision regarding the law governing bankruptcy or liquidations, but on the very contrary issue directly from legal rules which may only be termed as stemming from common law;

that the sole specific rules governing matters of bankruptcy and of liquidation, which can not be in any way applied to relations governed by common law, are of a public order nature to the exclusion of any rules governing normal and common-law relations and this, quite independently from the fact that such a legal relation may be a liquidation or a bankruptcy;

that the concern of the Liquidators along the duration of the negotiations also consisted in avoiding any likeliness that - through the application of the rules governing private international law to a matter of such complexity and offering such a multitude of parties and considerations, and for the lack of any contractual choice -, a court should resolve to apply the laws of the State of Abu Dhabi, which laws are entirely unknown to the Liquidators and to which they did not agree to be subject, whereas one may be of the opinion that the principal consideration, i.e., the payment of over US\$ 1,800,000,000.- (both directly and indirectly), is actually made by Abu Dhabi, any payment being as a matter of principle liable to be collected;

that it should in any event be remembered that the Agreement only exclusively implies a transaction, and not a plan of liquidation, and that situations directly dependent upon the liquidation are neither affected by, nor governed by, the Agreement;

that if competence is given the courts of the United Kingdom, there should yet be retained the fact that in law no rule may prevent that an appointed liquidator or a trustee in a bankruptcy may submit an agreement or dispute before a non-Luxembourgish jurisdiction, in the same way that in many instances such a liquidator or trustee is unable to prevent normal rules of competence from entailing that of the domicile of the debtor who is domiciled abroad, which in the case of a summons by a liquidator or a trustee in a bankruptcy is perforce a non-Luxembourgish jurisdiction; that forcing a liquidator to sue in any event before the courts of Luxembourg would be the same as forcing him to obtain judgments which on the strength of things could be neither exequatored nor executed abroad, whereas no foreign jurisdiction would either acknowledge nor give the exequatur to a Luxembourgish decision having been taken on the basis of such nationalistic and territorial criteria; that once again the concern of the Liquidators was to avoid that any competence be given the jurisdictions of Abu

Dhabi whereas on the contrary the other party to the agreements is precisely the Government of Abu Dhabi, with registered office in the Emirate of Abu Dhabi.

Whereas there results from the above that the Agreement is in the eminent interest of the Liquidations and their creditors and does not in any way contravene to any rule of Luxembourg public order; that the rapid conclusion and settlement of the Agreement is alike in the obvious interest of the creditors whereas on the one hand, the payment of the immediately available amount of US\$ 1,550,000,000.- will allow for the rapid distribution of a first dividend, and that on the other hand by waiting for the payment of such dividend, interest on this amount will accrue for the profit of the Liquidations as of the date of the payment;

that in accordance with the decrees of liquidation of 3 January, 1992 (BCCI) respectively of 18 September, 1992 and 14 October, 1993 (Holdings), the Liquidators are free to initiate negotiations with the authorization of the Court granted upon report by the Magistrate in bankruptcy and following advice as given by the Committee of Claimants; that as regards Holdings the Committee of Claimants unanimously voted in favour of the draft agreement, whereas in the case of BCCI a creditor abstained, all three remaining creditors having voted in its favour - this applies to the two Committees in the absence of the representative of the Department of Private Affairs of Abu Dhabi, respectively of the Abu Dhabi Investment Authority which did not participate in the meeting;

that the Liquidators solicit by the presents the approval of the transaction on hand, and conclude as being duly authorized to sign and enter into the same;

that the summoned parties the State Prosecutor of the State of Luxembourg and the *Institut Monétaire Luxembourgeois* are dedicated to represent the applicants with credit establishments over and above the fact that the IML stands as the monitoring authority of such establishments and moreover the applicant in the liquidation.

UPON THESE GROUNDS:

the summoned parties hear the applicants given official notice that the present summons is subsidiary in relation to the summons between the same parties to the same end, pending before the District Court of and in Luxembourg, sitting in commercial matters, as filed through two writs by the same bailiff of 10 and 14 October, 1994;

the summoned parties hear declared the present claim as admissible in the form and justified as regards the main issue;

hear ordained such measures as at law;

hear approved the Agreement to be entered into, as more thoroughly specified and described hereabove;

hear the Liquidators authorized to agree to and sign the Agreement as fixed by an exchange of correspondence between the parties of 13 July, 1994;

hear the costs and expenses of the presents charged to the estate of the liquidations and failing this, to the unfounded contending party;

In witness whereof I left a copy intended for the summoned party under 4/ at the Court of Justice of and in Luxembourg where being I spoke to Jacques (?) in his capacity as Deputy State Prosecutor who stated his capacity to be handed and accept my writ.

(signed:) *illegible*

Costs:	
Right:	1.200.-
Copies:	900.-
Travel:	560.-
Stamps:	1.520.-
Registr.:	100.-
VAT:	319.-
TOTAL:	4.599.-
Add. Cop.	600.-
VAT:	72.-
TOTAL:	5.271.-

Pierre Kremmer
Bailiff
9 rue Pierre Gellé
L-1620 Luxembourg

SERVING OF THE WRIT

Addressee of the writ: Bank of Credit and Commerce International SA
Date of service: in the year nineteen hundred and ninety four, on the fifteenth of November
The present writ has been served by the undersigned bailiff in the conditions indicated under the item marked with a cross and in accordance with the statements as collected, for the addressee, at his / her / its:

domicile: residence: registered office: X

as described hereafter:

A/ SERVICE TO PERSON

X Legal Entity, to: Name(s), Surname: Godfroid Esther
Capacity: employee
who dillcared being authorized to accept a copy
thus declared, which person accepted the writ.

All paragraphs not inscribed with a cross are considered as blank. signature of the bailiff: *illegible*

Pierre Kremmer
Bailiff
9 rue Pierre Gellé
L-1620 Luxembourg

SERVING OF THE WRIT

Addressee of the writ: BCCI Holdings SA
Date of service: in the year nineteen hundred and ninety four, on the fifteenth of November
The present writ has been served by the undersigned bailiff in the conditions indicated under the item marked with a cross and in accordance with the statements as collected, for the addressee, at his / her / its:

domicile: residence: registered office: X

as described hereafter:

A/ SERVICE TO PERSON

X Legal Entity, to: Name(s), Surname: Godfroid Esther
Capacity: employee
who declared being authorized to accept a copy
thus declared, which person accepted the writ.

All paragraphs not inscribed with a cross are considered as blank. signature of the bailiff: *illegible*

Pierre Kremmer
Bailiff
9 rue Pierre Gellé
L-1620 Luxembourg

SERVING OF THE WRIT

Addressee of the writ: Institut Monétaire Luxembourgeois
Date of service: in the year nineteen hundred and ninety four, on the fifteenth of November
The present writ has been served by the undersigned bailiff in the conditions indicated under the item marked with a cross and in accordance with the statements as collected, for the addressee, at his / her / its:

domicile: residence: registered office: X

as described hereafter:

A/ SERVICE TO PERSON

X Legal Entity, to: Name(s), Surname: Jean-Nicolas Schaus
Capacity: Director
who declared being authorized to accept a copy
thus declared, which person accepted the writ.

All paragraphs not inscribed with a cross are considered as blank. signature of the bailiff: *illegible*

SUMMONS

In the year nineteen hundred and ninety four, on the sixteenth of November.

At the suit of

- I. 1. Georges BADEN, lawyer, residing in Luxembourg, 7, Place du Théâtre,
 2. Julien RODEN, lawyer, residing in Luxembourg, 7, Avenue des Archiducs,
 3. Brian SMOUHA, registered accountant, residing in London, 1, Little New
 Street, GB,

acting in their capacity as liquidators of the *société anonyme* BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A. (in liquidation), established and with registered office situate in Luxembourg - Senningerberg, 5, rue Höhenhof, (hereafter "BCCI"), appointed to that effect by judgment of the District Court of and in Luxembourg, 6th Division, on 3 January, 1992,

- II. 1. Jacques DELVAUX, notary, residing in Esch-sur-Alzette, 19, rue de l'Eau,

 2. Georges RAVARANI, lawyer, residing in Luxembourg, 6, rue Zithe,

acting in their capacity as liquidators of the *société anonyme* BCCI HOLDINGS (LUXEMBOURG) S.A. (in liquidation), established and with registered office situate in Luxembourg - Senningerberg, 5, rue Höhenhof, (hereafter HOLDINGS), appointed to that effect by judgments of the District Court of and in Luxembourg, 6th Division, on 18 September, 1992 and 14 October, 1993,

- III. 1. BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A. (in liquidation), established and with registered office situate in Luxembourg - Senningerberg, 5, rue Höhenhof, acting with regard to the presents through its English branch, established in London, UK, Citadel House, 5 - 11, Fetter Lane, (hereafter "BCCI UK"), duly represented by its liquidators Christopher MORRIS, Nicholas R. LYLE, John P. RICHARDS and Stephen J. AKERS, registered accountants, residing in London, UK,

2. Christopher MORRIS, Nicholas R. LYLE, John P. RICHARDS and Stephen J. AKERS, registered accountants, residing at 1, Little New Street, London, UK, acting in their capacity as liquidators of BCCI UK,

IV. 1. BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED in compulsory winding-up, established and with registered office situate Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereafter "BCCI Overseas"), duly represented as regards the presents by its official liquidators Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, registered accountants, residing in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, registered accountants, residing in Georgetown, Cayman Islands, BWI, acting in their capacity as official liquidators of BCCI Overseas,

V. 1. CREDIT AND FINANCE COMPANY LIMITED, in compulsory winding-up, established and with registered office situate Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereafter "CFC"), duly represented by its official liquidators Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, registered accountants, residing in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, registered accountants, residing in Georgetown, Cayman Islands, BWI, acting in their capacity as official liquidators of CFC,

VI. 1. INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED, in compulsory winding-up, established and with registered office situate Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereafter "ICIC Overseas"), duly represented by its official liquidators Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, registered accountants, residing in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD and Michael W. MACKEY, registered accountants, residing in Georgetown, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC Overseas,

VII. 1. ICIC HOLDINGS LIMITED, in liquidation, established and with registered office situate Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereafter "ICIC Holdings"), duly represented by its official liquidators Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, registered accountants, residing in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, registered accountants, residing in Georgetown, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC Holdings,

VIII. 1. ICIC INVESTMENTS LIMITED, in liquidation, established and with registered office situate Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereafter "ICIC Investments"), duly represented by its official liquidators Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, registered accountants, residing in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, registered accountants, residing in Georgetown, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC Investments,

IX. 1. ICIC APEX HOLDING LIMITED (in liquidation), established and with registered office situate Ansbacher House, Fort Street, Georgetown, Cayman Islands, BWI, (hereafter "ICIC Apex"), duly represented by its official liquidators Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, registered accountants, residing in Georgetown, Cayman Islands, BWI,

2. Ian WIGHT, Robert E. AXFORD, Michael W. MACKEY and Richard DOUGLAS, registered accountants, residing in Georgetown, Cayman Islands, BWI, acting in their capacity as official liquidators of ICIC Apex,

all applicants electing domicile at the offices of Maître Georges BADEN, lawyer (I), residing in Luxembourg, who has been briefed and shall represent the said applicants with the assistance of Maître Georges RAVARANI, lawyer (I), residing in Luxembourg,

I the undersigned Pierre KREMMER, bailiff, residing in Luxembourg, registered with the District Court of and in Luxembourg,

have served a writ of summons on:

1. BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A. (in liquidation), established and with registered office situate in Luxembourg - Senningerberg, 5, rue Höhenhof, which has been summoned by a separate writ,
2. BCCI HOLDINGS (LUXEMBOURG) S.A. (in liquidation), established and with registered office situate in Luxembourg - Senningerberg, 5, rue Höhenhof, which has been summoned by a separate writ,
3. the Government of the Emirate of Abu Dhabi, represented by its Department of Finances, established and with offices situate in Abu Dhabi, United Arab Emirates,
4. the State Attorney in Luxembourg, with offices at the Court of Justice, who has been summoned by a separate writ,
5. the INSTITUT MONÉTAIRE LUXEMBOURGEOIS, established in Luxembourg, 63, Avenue de la Liberté, in the person of its General Manager Pierre JAANS and its managers Jean-Nicolas SCHAUS and Jean GUILL, who have been summoned by a separate writ,

to appear by way of representation through their lawyer(s) within the period of delay as set out by law which is of eight days for the summoned parties under 1., 2., 4. and 5. and of eight days increased by two months for the summoned party under 3., at 09:00 o'clock A.M. before the District Court of and in Luxembourg, 1st Division, sitting in civil matters at the Court of Justice in Luxembourg, third floor, room number 35, in order to:

Whereas the hereabove applicants (hereafter and jointly the "Liquidators") negotiated with the Government of Abu Dhabi a Draft Agreement which text together with its schedules was finally defined on 13 July, 1994 by a letter from the representatives of the Government of Abu Dhabi and an answering-letter of the same date from the representatives of the Liquidators (hereafter the "Agreement");

that the main items of this Agreement may be summarized as follows, without any pretense as to completeness:

1. The Government of Abu Dhabi (hereafter "Abu Dhabi") undertakes to pay to the Liquidators an amount of US\$ 1,800,000,000.- (one billion eight hundred million United States Dollars), of which US\$ 1,550,000,000.- shall be payable to the Liquidators upon the signature of the agreement and US\$ 250,000,000.- shall be payable in the hands of an agent of the parties, acting as a so-called "escrow agent"; this amount of US\$ 250,000,000.- shall be paid to the Liquidators by reason of US\$ 150,000,000.- upon termination of a delay this amount of US\$ 250,000,000.- shall be paid to the Liquidators in the amount of US\$ 150,000,000.- upon termination of a delay period of 24 months following the signature of the agreement and in the amount of US\$ 100,000,000.- 36 months after the signature of the agreement, the interest having accrued in the meantime falling to Abu Dhabi (article 2);

2. The Liquidators hereby guarantee Abu Dhabi up to the amount of US\$ 450,000,000.- against any recursory action undertaken by a third party, summoned or implicated in arbitrary proceedings by the Liquidators and who may have been bound in the procedures as instigated to pay indemnifications to the Liquidators; this guarantee is limited to the lower of the two amounts, either the one paid to the Liquidators, or the one paid by Abu Dhabi, and the guarantee may not in general exceed the amount of US\$ 450,000,000.-; in order to warrant the due execution on the part of the Liquidators of this obligation of guarantee, they undertake to pay into the hands of an escrow agent, but only up to the amount of US\$ 450,000,000.-, the recoveries against third parties which they may carry out (article 3);

3. Abu Dhabi for its part guarantees the Liquidators against any action initiated against them by a third party sued by by Abu Dhabi or implicated in an arbitration proceeding, up to the lower of either the amount received by Abu Dhabi, or that paid by the Liquidators, but without any limit as regards the total amount of the guarantee (article 8);

4. the Liquidators moreover guarantee Abu Dhabi, outside of and apart from the amount of US\$ 450,000,000.-, in the sole hypothesis where the Liquidators should initiate and win in an action which may be instituted against a certain bank or in an arbitration procedure against the same, initiated by the Liquidators and in the hypothesis of a recursory action of this company against Abu Dhabi; the present clause which was inserted in the draft agreement at a time when the Liquidators did not possess the necessary elements to decide whether this action had or not to be

initiated, has become null and void, whereas since then the Liquidators have had the necessary documents in their possession and have been able to decide that such action was not justified (article 3 J-K-L-M-N);

5. The Liquidators grant full discharge to Abu Dhabi in relation with the engagements as accepted by Abu Dhabi within the framework of a refinancing project ("ReFinancing Package", or "RFP") which has failed to be executed, allegedly by reason of the intervention of the relevant monitoring authorities, i.e., the IML and the Bank of England, which had the various entities constituting BCCI put under compulsory supervision; in the same intent, the Liquidators grant to Abu Dhabi a discharge, respectively a covenant not to sue covering all and any possible cause for action against Abu Dhabi (and among these mainly actions in liability), to the exception of the sole commercial debts; Abu Dhabi for its part grants a parallel discharge regarding the engagements of the ReFinancing Package (or RFP) as well as a discharge respectively a covenant not to sue for the rest (article 5);

6. Abu Dhabi expressly renounces to participate in the assets which by virtue of the Plea Agreement of 19 December, 1991 fall to the United States of America respectively the State of New York, in the assets which may be or come into the possession of the District Attorney of New York, the Department of Justice or the Federal Reserve Board following legal or arbitrary proceedings, as well as in those assets which may fall to the United States of America following the Geneva Agreement of 8 January, 1994 between the hereabove named and Abu Dhabi (article 5E);

7. the Liquidators accept that in case the liquidator of the United Arab Emirate Branches should so request, they shall accept the liquidator of such branches within the Pool, with the general effect that the assets and liabilities of such branches will be absorbed in the liquidation of BCCI and that their creditors shall be paid the same dividend as that resulting in the favour of the other creditors of the Liquidations; within this framework, Abu Dhabi agrees to moreover make a payment to the Liquidators which shall be equal to the total of dividends falling to the creditors of the United Arab Branches (from which shall be deducted the dividend payable with regard to the amount of US\$ 540,000,000.-), less the assets of the liquidator of such Branches;

Holdings undertakes to transfer its 1,549,018 shares in the company UNION NATIONAL BANK (formerly known under the name "BCC Emirates") to such party to be designated by Abu Dhabi (article 6);

8. the draft agreement provides that it shall be subject to British law and that the jurisdictions of the United Kingdom shall have exclusive competence (article 16);

Whereas this draft agreement, should it be realized, appears to be in the best interest of the Liquidations and of the creditors, and as being in no way contrary to Luxembourg public order.

As regards the interest of the Liquidations and of the creditors:

that through this Agreement the Liquidators and the creditors shall have available to them a certain payment in the amount of US\$ 1,800,000,000.-;

that this payment shall be effected very rapidly in this sense that the amount of US\$ 1,550,000,000.- shall be made available immediately following the signature, the balance in the amount of US\$ 250,000,000.- becoming available within 24, respectively 36 months of said signature;

that the Liquidators may through this scheme avoid having to institute proceedings against Abu Dhabi which present, as do all and any judicial litigation, an element of dubiousness as regards success, which are bound to last for a lengthy period of time and to imply substantial costs and expenses; that at the same time all and any danger of witnessing a fiduciary action on the part of Abu Dhabi, with the effect of provisionally blocking the assets of the Liquidations, shall be avoided;

that in such way an interim dividend shall be liable to be rapidly distributed;

that over and above this payment to be made by Abu Dhabi, the Liquidators have been able to obtain that Abu Dhabi renounce to participate in all the funds liable to fall to the Liquidators from the USA; that the amounts which are currently blocked in the United States on the basis of the various agreements are such that after deduction of the costs and other payments to be made in the United States, an amount valued at up to US\$ 1,000,000,000.- may remain available; that even though an important part of this amount is subject to the discretionary judgment of United States authorities, the

Liquidators may, once the agreement is made final, enter into negotiations with the United States in view of as sizeable a recovery as possible on the American assets, in which assets Abu Dhabi shall not participate with the debts which this party produced in the liquidation in view of the deposits and funds advanced, and which must be checked according to the normal verification procedure in matters of winding-up procedures;

that Abu Dhabi moreover undertook to make a contributive payment in the event of a Pooling by the liquidator of United Arab Emirates Branches; that whereas it is true that in accordance with the principle of the universality of bankruptcy as applied within the various jurisdictions having appointed the Liquidators, all and any creditors have the required capacity to enter claims in the liabilities of the liquidations, the Liquidators were however able to obtain that in the case of the branches of BCCI in the United Arab Emirates, Abu Dhabi shall make a contribution according to a negotiated formula; that such contribution shall in turn increase the payment to be made by Abu Dhabi;

that as regards the guarantee granted by Abu Dhabi to the Liquidators, the said guarantee shall only come into play, within the allotted time period, only in the hypothesis where the Liquidators shall have recovered funds against a third party who shall have won a recursory action against Abu Dhabi; that the consequence of the above is that the Liquidators shall never be bound to disburse , on the basis of the guarantee, any assets which they shall not have previously recovered against a third party; that in other words if one may call the payment by Abu Dhabi of the amount of US\$ 450,000,000,000.- (as comprised in the total amount of US\$ 1,800,000,000.-) as being in a manner of speaking an advance subject to reimbursement in certain circumstances of the recovery against third parties, the practical result remains that Abu Dhabi actually guarantees through this device that if recoveries against third parties cannot be carried out for a minimum amount of at least US\$ 450,000,000.-, then Abu Dhabi shall be bound to stand up to this amount respectively the difference; that as has been pointed out hereabove the ceiling of the guarantee is limited to US\$ 450,000,000.- even in the case where recoveries against third parties are in excess of such amount;

that on the opposite, and even if the guarantee granted by the Liquidators does not apply to actions against monitoring authorities (the IML and the Bank of England) and is besides limited to a ceiling of US\$ 450,000,000.-, the Liquidators have obtained from Abu Dhabi the granting of an unlimited guarantee in the case where

Abu Dhabi would recover against a third party which would win in a recursory action against the Liquidations;

that in reality the sole consideration given by the Liquidators resides in the fact that they grant, in the form of a discharge respectively a covenant not to sue, the equivalent of a discharge to Abu Dhabi as regards any cause for action other than normal commercial causes; that within the framework of the Agreement such discharges and covenants not to sue are entirely and fully justified and that on the other hand Abu Dhabi undertakes covenants respectively grants discharges in all respects similar to the Liquidators;

that there results that the Agreement as presented is in the eminent interest of the creditors of the Liquidation who may in this way obtain a certified and rapid payment, as against difficult, slow and expensive proceedings;

As regards Luxembourg public order:

Whereas in the point of view of the judgment rendered by the Court of Appeals on 27 October, 1993 there appears in this Agreement no provision allowing to uphold a violation of the rules regarding the public order of Luxembourg;

that in first step following an agreement concluded on 8 January, 1994 with the United States of America, Abu Dhabi handed over to the Liquidators all the documents pertaining to the Liquidations;

that there appears in the Agreement no instance of inequality in the treatment of unsecured creditors whereas the funds payable by Abu Dhabi fall to the estate of the Liquidations and are available indistinctly to any creditor whose claim has been verified and proven according to the legal rules applicable to the various Liquidations; that the only exception made to this principle, in the hypothesis where claims filed would be verified and asserted, resides in the fact that Abu Dhabi renounces any dividends issuing from the assets remaining in the United States; that it should not be considered as contrary to principle of the equalitarian treatment that a possible unsecured creditor renounce his dividend in whole or in part, in the same way that any claimant may omit to file a claim in his discretionary judgment, cancel the filing of a claim, and/or abandon or even donate his right to a dividend to whom he may please;

that there exists furthermore no clause whatsoever providing for an apportionment of the results and proceeds of the actions in liability between Abu Dhabi and the Liquidators; that indeed all and any clauses to that effect having been abandoned, the Liquidators shall keep the results of these actions in liability, and Abu Dhabi shall in the same manner keep the results of its own actions in liability in which it shall have won the case;

that any questions of indemnification have been removed in the Agreement and that the normal rules according to the various processes of liquidation shall apply without any derogation or exception;

that if it is indeed true that the Agreement is subject to British law, it is demonstrated that no rule within Luxembourg law, whether with regard to public order or not, prevents an agreement between a liquidator (or a trustee with regard to a bankruptcy) and a third party may be subject to a non-Luxembourg legislation; that the proceedings relating to the Agreement are not the result of a particular or special Luxembourg legal provision regarding the law governing bankruptcy or liquidations, but on the very contrary issue directly from legal rules which may only be termed as stemming from common law;

that the sole specific rules governing matters of bankruptcy and of liquidation, which can not be in any way applied to relations governed by common law, are of a public order nature to the exclusion of any rules governing normal and common-law relations and this, quite independently from the fact that such a legal relation may be a liquidation or a bankruptcy;

that the concern of the Liquidators along the duration of the negotiations also consisted in avoiding any likeliness that - through the application of the rules governing private international law to a matter of such complexity and offering such a multitude of parties and considerations, and for the lack of any contractual choice -, a court should resolve to apply the laws of the State of Abu Dhabi, which laws are entirely unknown to the Liquidators and to which they did not agree to be subject, whereas one may be of the opinion that the principal consideration, i.e., the payment of over US\$ 1,800,000,000.- (both directly and indirectly), is actually made by Abu Dhabi, any payment being as a matter of principle liable to be collected;

that it should in any event be remembered that the Agreement only exclusively implies a transaction, and not a plan of liquidation, and that situations directly dependent upon the liquidation are neither affected by, nor governed by, the Agreement;

that if competence is given the courts of the United Kingdom, there should yet be retained the fact that in law no rule may prevent that an appointed liquidator or a trustee in a bankruptcy may submit an agreement or dispute before a non-Luxembourgish jurisdiction, in the same way that in many instances such a liquidator or trustee is unable to prevent normal rules of competence from entailing that of the domicile of the debtor who is domiciled abroad, which in the case of a summons by a liquidator or a trustee in a bankruptcy is perforce a non-Luxembourgish jurisdiction; that forcing a liquidator to sue in any event before the courts of Luxembourg would be the same as forcing him to obtain judgments which on the strength of things could be neither exequatored nor executed abroad, whereas no foreign jurisdiction would either acknowledge nor give the exequatur to a Luxembourgish decision having been taken on the basis of such nationalistic and territorial criteria; that once again the concern of the Liquidators was to avoid that any competence be given the jurisdictions of Abu Dhabi whereas on the contrary the other party to the agreements is precisely the Gouvernement of Abu Dhabi, with registered office in the Emirate of Abu Dhabi.

Whereas there results from the above that the Agreement is in the eminent interest of the Liquidations and their creditors and does not in any way contravene to any rule of Luxembourg public order; that the rapid conclusion and settlement of the Agreement is alike in the obvious interest of the creditors whereas on the one hand, the payment of the immediately available amount of US\$ 1,550,000,000.- will allow for the rapid distribution of a first dividend, and that on the other hand by waiting for the payment of such dividend, interest on this amount will accrue for the profit of the Liquidations as of the date of the payment;

that in accordance with the decrees of liquidation of 3 January, 1992 (BCCI) respectively of 18 September, 1992 and 14 October, 1993 (Holdings), the Liquidators are free to initiate negotiations with the authorization of the Court granted upon report by the Magistrate in bankruptcy and following advice as given by the Committee of Claimants; that as regards Holdings the Committee of Claimants unanimously voted in favour of the draft agreement, whereas in the case of BCCI a creditor abstained, all

three remaining creditors having voted in its favour - this applies to the two Committees in the absence of the representative of the Department of Private Affairs of Abu Dhabi, respectively of the Abu Dhabi Investment Authority which did not participate in the meeting;

that the Liquidators solicit by the presents the approval of the transaction on hand, and conclude as being duly authorized to sign and enter into the same;

that the summoned parties the State Prosecutor of the State of Luxembourg and the *Institut Monétaire Luxembourgeois* are dedicated to represent the applicants with credit establishments over and above the fact that the IML stands as the monitoring authority of such establishments and moreover the applicant in the liquidation.

UPON THESE GROUNDS:

the summoned parties hear the applicants given official notice that the present summons is subsidiary in relation to the summons between the same parties to the same end, pending before the District Court of and in Luxembourg, sitting in commercial matters, as filed through two writs by the same bailiff of 10 and 14 October, 1994;

hear ordained such measures as at law;

hear approved the Agreement to be entered into, as more thoroughly specified and described hereabove;

hear the Liquidators authorized to agree to and sign the Agreement as fixed by an exchange of correspondence between the parties of 13 July, 1994;

hear the costs and expenses of the presents charged to the estate of the liquidations and failing this, to the unfounded contending party;

IN WITNESS WHEREOF and whereas the summoned party under 3/ is established in Abu Dhabi (United Arab Emirates), I have for that party handed over two copies of my writ together with two copies of a translation of the said writ into the Arabic language to the State Prosecutor with the District Court of and in Luxembourg, at its offices at the Court of Justice, where being I spoke to Jacques Schmit in his capacity as Deputy State Prosecutor

who stated his capacity to be handed and accept my writ in order that all the said documents be duly forwarded to the summoned party under 3/ in accordance with the law.

(signed:) *illegible*

Costs:
Right: 1.200.-
Copies: 300.-
Travel: 100.-
Stamps: 480.-
Registr.: 100.-
VAT: 192.-
TOTAL: 2.372.-

(stamped:) Registered in Luxembourg on 18 November, 1994
Vol. 499, Folio 30, box 4
Duty: 100.- francs
(signed:) the Registrar (*illegible*)

Etude d'Avocats
Arsène KRONSHAGEN
12, Bd de la Foire
L-1528 Luxembourg
AK.PB

APPLICATION FOR VOLUNTARY JOINDER

1. Mr RAIHAN NASIR MAHMUD, ex-manager, resident at 100, Woodhall Gate, Pinner, Middlesex (U.K.),
2. Mr MOHAMMAD ALI QAYYUM, ex-international officer, resident at Dorset House, 105, Gloucester Place, London (U.K.),
3. Mr QAISER MANSOOR MALIK, ex-officer, resident at 18, Debden Close, Woodford Green, Essex (U.K.),
4. Mrs HALIDA SHAFIULLAH, ex-officer, resident at Dorset House, 105, Gloucester Place, London (U.K.),

electing domicile at the offices of Maître Arsène KRONSHAGEN, Counsellor-at-Law and Court Advocate (I), resident in Luxembourg, and at the offices of Maître Marc MODERT, Counsellor-at-Law and Court Advocate (I), resident in Luxembourg,

make application for voluntary joinder on their part to be placed on record within the context of the proceedings instituted by the liquidators of BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A., Mr Brian SMOUHA, Chartered Accountant resident in London, Maître Georges BADEN, Counsellor-at-Law and Court Advocate resident in Luxembourg, and Maître Julien RODEN, Counsellor-at-Law and Court Advocate resident in Luxembourg,

regarding the application seeking authorisation from the Court for the purpose of signing various settlement agreements, more especially the "Majority Shareholders Agreement" and "ICIC Pooling Agreement",

to be concluded by the liquidators of Bank of Credit and Commerce International S.A. appointed by the Luxembourg Court, the liquidators BCCI Holdings S.A., a company under Luxembourg law, and the liquidators of Bank of Credit and Commerce International S.A. appointed in England by the Secretary of State for Trade and Commerce [sic] and the liquidators of other BCCI Group companies with the Government of the Emirate of Abu Dhabi, within the scope and capacity thereof, acting through and by means of its Department of Finance.

In their capacity as creditors of BCCI S.A. Luxembourg and representatives of the BCCI Employees Campaign Committee, the Applicants are opposed to the Court granting authorisation to the liquidators to sign such agreements and settlements.

On the grounds as more fully set out in their pleadings submitted to the Court, the conclusion of such agreements is

highly prejudicial to the Applicants.

These agreements make no provision for any specific measure such as to compensate for the individual loss and detriment suffered by the employees of BCCI (United Kingdom).

The Applicants reserve the right to put forward their submissions during the proceedings.

UPON THESE GROUNDS,

IF IT PLEASES THE COURT,

submission is made that in form, the present Application for Joinder be admitted,

and declared justified on the main issue,

and accordingly that the liquidators are not granted authorisation to enter into and sign the aforementioned settlements and agreements,

awarding costs against the liquidation.

Signed: Maître KRONSHAGEN
A CERTIFIED TRUE COPY

Respectfully yours,
Signed: Maître Arsène KRONSHAGEN

Signed: Maître Marc MODERT

Luxembourg, 29 November 1994.

That a copy of such Application be faxed subject to all due reserves to Maître Georges BADEN, assisted by Maître Julien RODEN, Counsellors-at-Law and Court Advocates both resident in Luxembourg.

Maître ALAIN RUKAVINA
COUNSELLOR-AT-LAW
AND COURT ADVOCATE
10A, Bld de la Foire
.... LUXEMBOURG

APPLICATION FOR VOLUNTARY JOINDER
by way of ancillary in the civil case

- 1) Yves Christian LAMARCHE, bank manager, resident at 32, Avenue des Champs Elysées, 75008 Paris, France,
- 2) Johan Diderik VAN OENEN, banker, resident at 17, The Avenue, Tadworth, Surrey KT20 5AY [sic], England,
- 3) Alfred HARTMANN, bank manager, resident at Bellerivestrasse 201, Zurich, Switzerland,

represented by acting Counsel, Maître Alain RUKAVINA, Counsellor-at-Law and Court Advocate (I) resident in Luxembourg, at whose offices domicile is elected,

make application for voluntary joinder on their part to be placed on record subject to all due reserves in respect of any proceedings, grounds and issues to be asserted in other Courts or actions within the context of the civil proceedings instituted by way of ancillary by the liquidators of Bank of Credit and Commerce International SA ("BCCI SA"), Mr Brian SMOUHA, Chartered Accountant resident in London, Maître Georges BADEN, Counsellor-at-Law and Court Advocate (I) resident in Luxembourg, and Maître Julien RODEN, Counsellor-at-Law and Court Advocate (I) resident in Luxembourg, and the liquidators of BCCI HOLDINGS (Luxembourg) SA ("BCCI Holdings"), Maître Jacques DELVAUX, Notary resident in Esch-sur-Alzette, and Maître Georges RAVARANI, Counsellor-at-Law and Court Advocate (I) resident in Luxembourg, respectively,

regarding the application seeking authorisation to sign a settlement with the creditors and majority shareholders, more especially including the Government of the Emirate of Abu Dhabi ("Abu Dhabi"), in respect of BCCI SA and BCCI HOLDINGS (the "Draft Contribution Agreement").

Civil liability actions were brought by the liquidators of BCCI SA and BCCI HOLDINGS against the Applicants pursuant to Summonses of 14 March 1994 served by Michelle THILL, Process Server established in Luxembourg.

The Applicants obviously challenge the admissibility of such actions brought against them and by way of ancillary, dispute that they have been in any way negligent or been guilty of any misconduct, however slight, such as to incur their liability.

Whereas, the three Applicants have a legitimate interest in joining in the proceedings given that they were informed that the draft settlement requested by the Applicants on 30 September

1994 but not communicated until 21 November 1994 contains a third party stipulation whereby the liquidators are obliged to suspend any legal action against persons more amply specified on an appended list in "Schedule 2, Part 1" (including the three Applicants) and referred to as "Related Persons" (see also Article 5-F(1), page 28, of the aforementioned draft).

Whereas, such "Related Persons" derive direct benefit from the terms of such settlement.

Whereas, however, according to page 63, paragraph 5, of such draft ("Related Persons"), ABU DHABI has discretionary power to at any time strike out the names on the aforementioned list and even subsequent to a decision by the Court (and this until such time as the settlement in question is finally signed between parties).

Whereas, this provision accordingly grants excessive powers to ABU DHABI which may be exercised and over which the Court has no control and which may even be exercised instead and in place of the Court; if the settlement were, in effect, to be approved by the Court, ABU DHABI could thereafter amend certain provisions of the settlement as it wished based on appraisal criteria which the Court had not had any prior opportunity to consider and more especially make the continued incorporation of certain "Related Persons" on the aforementioned list dependent on purely subjective criteria such as, more specifically, the fulfilment of certain financial conditions, which would be a thoroughly iniquitous situation and conflict with Luxembourg public policy.

Whereas, under Luxembourg law, where a draft settlement is submitted to the Court for approval, it must be final and cannot be subject to any subsequent amendment after approval by the Court.

This principle is effectively derived from the following lines of reasoning:

- In its Judgments of 3 January 1992 (for BCCI SA) and 11 June 1992 (for BCCI Holdings), the Court stipulated the rules which the liquidators were required to observe; the Court ordered the liquidators to submit any settlements and agreements entered into for supervision by the Court (it did not authorise the liquidators to submit draft settlements or draft agreements which were not final) (see page 9 of the Judgment of 11 June 1992).
- The submission for approval of a draft which was not final would effectively make supervision by the Court nonsensical; what is the point of arranging for this kind of supervision if one of the parties can subsequently amend the "approved" settlement as it sees fit?
- By definition, the approval procedure constitutes confirmation by the Court of the agreement entered

into between parties (see Larousse verbo "homologation" [sic]).

If the Court were to approve the draft settlement and one of the two parties amended the same, the settlement as ultimately signed would not correspond to the text examined by the Court and would run the risk of being subsequently revoked (see *Novelles, Droit commercial, Volume 4, "Les concordats et la faillite"* [Composition agreements and insolvency], André Cloquet, No. 2286) and the liquidators would run the risk of incurring their personal liability (I. Verougstraete, "Le manuel du curateur de faillite" [Guide for the trustee in bankruptcy], no. 309, and the case law quoted therein; De Perre, "Manuel du curateur de faillite" [Guide for the trustee in bankruptcy], no. 213).

Whereas, it transpires from the foregoing that there are grounds for submitting that the list of "Related Persons" should be declared final and legally binding and cannot be subject to subsequent amendment.

Whereas, notice of the present Application for Joinder could not be given to the relevant parties given that the normal period of subpoena pursuant to Article 73 of the Code of Civil Procedure had lapsed.

Whereas, although voluntary joinder must normally be established by formal summons, this does not apply in urgent cases where joinder is validly established by means of written submissions (see Judgments of 20 July 1992 and 22 October 1992 respectively given by the 6th Division of the District Court of and in Luxembourg in the case BCCI -v- Miscellaneous).

Whereas, the decision emerging from legal literature and case law is that interim protective intervention is admissible irrespective of the interests of the intervening party, whether certain or probable, established or to be established, future or current or distinct from or combined with that of the parties in question; whereas, it is clear that a party may intervene to protect a right which is suspended by a condition or even subject to the resolution of proceedings (see RPDB, see "intervention en matière civile" [intervention in civil matters], no. 25).

Whereas, the draft settlement was not communicated to the Applicants until 21 November 1994.

Whereas, in their capacity as Respondents they have a manifest interest in joining in the proceedings instituted by the liquidators in order to safeguard their interests (see in this connection the Judgment of the CSJ of 26 October 1993, list nos. 15060 and 15314, in the case Elias, Artiki, Skolnik -v- BCCI).

UPON THESE GROUNDS

and any others by way of inference during pleading and by way of supplement, as a matter of course or otherwise, and subject to the express, formal reserve allowing the present submissions

to be changed, amplified or amended during the proceedings, on behalf of his clients, Maître Alain RUKAVINA:

BESEECHES THE COURT

to declare that urgency in this connection is established,
that in form, the present Application for Joinder be declared admissible,

and justified on the main issue,

that the provisions of the "Draft Contribution Agreement" granting discretionary powers to one of the parties subsequently to amend the content of the documents submitted to the Court be declared void and invalid;

and accordingly state that the names of the Applicants be incorporated on a definitive, legally binding basis on the appended list of "Related Persons" (Schedule 2, Part 1) of the aforementioned document and that such document be precluded from any subsequent amendment;

and by way of ancillary

establish that it was physically impossible for the intervening parties to give notice of such joinder to the parties in question;

and fix the matter for a later date in order to guarantee the rights of defence of the intervening parties, and this to allow them to serve due notification,

reserving for the Applicants the right to invoke hereafter any other grounds of fact and law,

and awarding costs as the law prescribes.

Respectfully yours,

[signed]

Luxembourg, 30 November 1994

Appendices: 5 documents

MARC ELVINGER
COUNSELLOR-AT-LAW
AND COURT ADVOCATE
LUXEMBOURG

APPLICATION FOR VOLUNTARY JOINDER

- 1) Interfiduciaire, a firm of tax and accountancy specialists and private company, established and with Registered Office at 121, avenue de la Faiencerie, 1511 Luxembourg, represented by the currently serving members and managers of the same;
- 2) Mr Guy Bernard, Chartered Accountant, resident at 25, rue Tony Neuman, 2241 Luxembourg;
- 3) Mr Carlo Dange, Chartered Accountant, resident at 10, rue Michel Rodange, 7248 Bereldange;
- 4) Mr André Wilwert, Chartered Accountant, resident at 10, rue Gustave Kahnt, 1851 Luxembourg;
- 5) Mr Pierre Wagner, Tax Consultant, resident at 10, rue des Etats-Unis, 8316 Olm;
- 6) Fidem, a private company, established and with Registered Office at 121, avenue de la Faiencerie, 1511 Luxembourg, represented by the currently serving members and managers of the same;
- 7) Mr Bob Bernard, Chartered Accountant, resident in Hesperange;
- 8) Mrs Véronique Heger, of no formal status, widow of Mr Eugène Müller and resident at 7, rue du Parc, Bertrange;
- 9) Mrs Laurence Müller, student, resident at 7, rue du Parc, Bertrange;
- 10) Mrs Michèle Müller, student, resident at 7, rue du Parc, Bertrange;

represented by acting Counsel, Maître Marc Elvinger, Counsellor-at-Law and Court Advocate (I),

make application for voluntary joinder on their part to be placed on record subject to all due reserves in respect of any proceedings, grounds and issues to be asserted in other Courts or actions in the proceedings instituted by Summons of 10 October and 15 November 1994 by the liquidators of Bank of Credit and Commerce International S.A. (hereinafter referred to as "SA"), the liquidators of BCCI Holdings S.A. (hereinafter referred to as "Holdings") and the liquidators of other BCCI and ICIC Group entities seeking authorisation to enter into and sign a settlement negotiated between them and the Abu Dhabi

Government.

I. Interest of the Applicants

Aforementioned intervening party 1), together with aforementioned intervening parties 2) to 5), have had liability proceedings issued against them by the administrators of Holdings pursuant to a Summons of 31 March served by Nickts concerning the performance of its duties as auditor in respect of BCCI Holdings for the financial years 1986 and 1987.

This action seeks an order requiring intervening parties 1) to 5) to compensate for the loss and detriment allegedly suffered by Holdings, together with its creditors and shareholders, arising from alleged misconduct by aforementioned intervening party 1) in its duties as auditor, such loss and detriment being provisionally assessed at 100,000,000,000 Luxembourg francs.

Aforementioned intervening party 6), together with aforementioned intervening parties 7) to 10), have been sued to the same end by the liquidators of Holdings pursuant to a Summons of 13 April 1994 served by Engel relating to the performance of its duties as auditor in respect of Holdings for the 1988 financial year.

The intervening parties formally contest the merits of these liability actions which despite a formal application in this connection by aforementioned intervening party 1), have to date not been withdrawn by the liquidators of Holdings. Subject to this reserve, and in view of the failure to withdraw the liability proceedings brought against them, such parties have an interest in intervening in the present proceedings insofar as the proposed settlement gives rise to injury and injustice on their part.

II. By way of preliminary and submission

By Judgment of the District Court of and in Luxembourg of 18 September 1992, Holdings was put into liquidation on the basis of Article 203 of the Act of 10 August 1915 for having been in serious breach of the provisions of such Act, more especially for failing to publish accounts approved by its General Meeting.

Without prejudice to the issue of ascertaining whether or not such was already the case at the time, it is currently established that Holdings is in an insolvent state within the meaning of the applicable provisions of the Luxembourg Commercial Code.

In these circumstances, subsequent to observing such insolvency, it would have been for the liquidators of Holdings to make the requisite formal statement of insolvency. This observation was clearly made during the preparatory work concerning Article 203 when the Legal Commission noted that "It is, of course, clear that if the Court-appointed liquidator observes that the company no longer has sufficient assets to enable its creditors to be paid, then it is incumbent upon the liquidator to make a formal statement of insolvency and thereafter for the Court to make an

Order appointing a trustee in bankruptcy" (doc. parl., 2104-2, p. 4 [sic]).

It is true to say that this view was put forward by the Legal Commission in respect of an amendment which has not been finally adopted aimed at making provision for the same method of liquidation for compulsory and voluntary liquidations but it must also be said that such affirmation has not been challenged by any other institutions consulted on the wording of the Act. In addition, it is merely a logical consequence of collective procedural law as currently prevailing in Luxembourg.

In the absence of the formal statement of insolvency being made by the liquidators, it is left to the Court to report such insolvency as a matter of course and to conclude all the requisite legal consequences of the same more especially, but not exclusively, within the context of the present approval proceedings.

III. Regarding the agreements

The settlement which the liquidators are asking the Court to endorse broadly consists of an undertaking on the part of the majority shareholder to pay an amount of 1,850,000,000 dollars to the liquidators (which under certain circumstances may be reduced to 1,350,000,000 dollars) in return for waivers on the part of the liquidators 1) to continue to implement against the majority shareholder certain undertakings entered into by the majority shareholder before the Group was put into liquidation and aimed at "mopping up" if not all, at least the bulk of the Group's losses and in any event exceeding 5 billion dollars, and this using a variety of different mechanisms, and 2) to implicate the civil liability of the majority shareholder and a whole series of "related persons" in respect of the insolvency of the Group. The "related persons" accordingly safeguarded from any direct liability action on the part of the liquidators more especially include Messrs Mazrui, Hartmann, Lamarche, Van Oenen and Twitchin, former directors of SA and Holdings.

Although in determining and ruling on the application made by the liquidators, the Court, subject to strict observance of public policy rules under Luxembourg law, must primarily consider the interests of the *creditors* of the liquidated companies, it must also consider the interests of other alleged liquidation *debtors* and cannot therefore give its consent to a settlement which would have the effect of exacerbating the situation of such debtors, whether established or alleged.

1. Regarding compliance with public policy

The intervening parties consider that an agreement designed to allow one of the contracting parties or persons designated by the same to avoid the consequences of wilfully fraudulent acts and deeds falling within the scope of criminal law conflicts with public policy. This would undoubtedly not be the case where an agreement purely focused on assessing the damages payable in respect of acts of fraud by means of realistic compromise and settlement. It is, however, clear that such is

not the case here, the loss and detriment as estimated by the liquidators in other circumstances being disproportionate to the amount which the majority shareholder is undertaking to pay, such that the irrefutable object of the settlement is to allow certain persons to avoid the legal consequences of acts which are fraudulent and in breach of public policy. In this respect, the proposed settlement is in turn contrary to public policy and as a result cannot be ratified by a Luxembourg Court.

Any other grounds based on breach of public policy are reserved.

2. Regarding the interest of creditors

The intervening parties point to caution on the issue of ascertaining whether it is in the interest of the creditors to waive contractual undertakings in an amount exceeding 5 billion dollars, together with any liability action against the main parties responsible in return for payment of 1,850,000,000 dollars. Others have cause to be interested in this aspect which at first sight, leaves much to the imagination.

3. Regarding the interest of persons who in terms of their liability, continue to be pursued by the liquidators

The effect of the disputed settlement would clearly be to exacerbate to a totally unacceptable degree the situation of such persons who like the intervening parties, have had liability proceedings issued against them by the liquidators for allegedly not having taken the requisite action to prevent the collapse of the BCCI Group.

Such is the case, both insofar as this settlement exempts the majority shareholder from fulfilling the undertakings entered into by him within the context of the "Refinancing package" referred to in §5 of the Summons of 15 November 1994, and insofar as it waives the institution of any liability action against the majority shareholder and "related persons" as a whole including the pre-appointed directors of SA and Holdings.

3.1 The aim of the "Refinancing package" and its potential implementation would have been to "mop up" a substantial, in fact the major, part of the "losses" incurred by the BCCI Group in respect of which the shortfall is currently being sought from the intervening parties in the form of damages under an alleged civil liability claim.

The waiver on the part of the liquidators to pursue implementation of the "Refinancing package" accordingly gives rise to the "resurgence" of a loss for which compensation is sought against the intervening parties. In consequence, by approving the settlement, the Court would increase the loss for which compensation is sought and in respect of which the intervening parties in particular would be pursued, barring acceptance that due to the timing of events, the cause of such loss resides not in the criticised omissions of the intervening parties and others, but in the decision of the Court authorising conclusion of the settlement. Either way, both solutions are simply inadmissible.

The comments made concerning waiver by the liquidators of fulfilment of the undertakings which form an integral part of the "Refinancing package" equally well apply to the waiving of other undertakings assumed by the majority shareholder in the period prior to the companies being put into liquidation.

3.2 In the event that the proposed settlement is signed, a whole series of persons and in effect, the main persons responsible, with "cause" to be sued in liability actions by the liquidators, would be precluded from such action, whereupon the liability actions would naturally focus on the remaining respondents, including the intervening parties.

There is no doubt that in the event that the actions went against the intervening parties in favour of the liquidators, there would in theory be nothing to prevent them from taking retrospective action against the main persons responsible, including the majority shareholder and directors whom the proposed settlement aims to safeguard.

It would, however, firstly be extremely costly for the intervening parties to implement this kind of retrospective action, costs for which they would not be liable if the persons in question had direct liability actions brought against them by the liquidators and secondly, at least insofar as such recourse would have to be based on the subrogation mechanism, the intervening parties would only be able to recover amounts which they had *paid in advance* to the liquidators, while the amounts sought from them are such that they would in any event be bankrupt if an order was made against them involving even a tiny fraction of the amounts claimed.

Finally, the clear aim and in any event effect of certain clauses of the proposed settlement, more especially the provisions relating to "Mutual co-operation", is to make liability actions, including those of a retrospective nature, more difficult for third parties against the contracting parties of the liquidators and corresponding designated parties. In this respect too, the proposed settlement is inadmissible and truly in breach of public policy insofar as it implies agreement between the liquidators and the main persons responsible, to the detriment of those who if incurring any liability at all, are in any event purely secondary in terms of their level of responsibility.

Final observation

It is to be anticipated that as was the case concerning the approval proceedings for the first draft settlement, those opposing this second draft will be criticised, at least objectively, for being the most hostile parties to the creditors' cause where the prime interest is to obtain "something" and quickly. It has to be said that this kind of criticism made at the time has proved to be utterly without foundation given that contrary to constant predictions of the liquidators and majority shareholder, the rejection of the first agreement prompted them to conclude a new settlement which although still unacceptable, makes considerably fewer

~~concessions~~ to the majority shareholder.

This gives a measure of the significance which must be given to affirmations which serve no other purpose than to endorse a settlement whereby some do well to the detriment of others.

Upon these grounds:

If it pleases the Court,

in form, the present Application for Joinder should be admitted, and by way of ancillary, it be declared that BCCI Holdings SA is in a state of insolvency and all the consequences thereof be concluded as required by Luxembourg law,

and the authorisation sought by the liquidators not be granted.

Respectfully yours,
Marc Elvinger

Pierre KREMMER
Process Server

.....
.....
.....

SUMMONS

On the twenty-first November in the year one thousand nine hundred and ninety-four,

On application by

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

acting in their capacity as liquidators of BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A. (in liquidation), established and with Registered Office at 5, rue Höhenhof, Luxembourg-Senningerberg (hereinafter referred to as BCCI), appointed as such by Order of 3 January 1992 of the 6th Division of the District Court of and in Luxembourg,

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

acting in their capacity as liquidators of BCCI HOLDINGS (Luxembourg) S.A. (in liquidation), established and with Registered Office at 5, rue Höhenhof, Luxembourg-Senningerberg (hereinafter referred to as HOLDINGS), duly appointed as such by Order of 18 September 1992 and 14 October 1993 of the 6th Division of the District Court of and in Luxembourg,

electing domicile at the offices of Maître Georges Baden, Counsellor-at-Law and Court Advocate (I) resident in Luxembourg, assisted by Maître Georges Ravarani, Counsellor-at-Law and Court Advocate (I) resident in Luxembourg;

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

summoned:

1. The Public Prosecutor attached to the District Court of

and in Luxembourg at the Law Courts of the Palais de Justice in Luxembourg,

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

to appear at three o'clock on the afternoon of Tuesday, 29 November in the year one thousand nine hundred and ninety-four before the District Court of and in Luxembourg sitting in a commercial matter at the Law Courts of the Palais de Justice in Luxembourg, 1st floor, room no. 21, for the purposes as set out hereunder:

Whereas, the aforementioned Applicants (globally referred to as "the liquidators") have negotiated and concluded the wording of the following three agreements with the liquidators of BCCI appointed by the English Secretary of State, the liquidators of Bank of Credit and Commerce International (Overseas) Ltd (Cayman Islands), the liquidators of International Credit and Investment Company (Overseas) Ltd (Cayman Islands), the liquidators of ICIC Holdings Ltd (Cayman Islands), the liquidators of ICIC Investments Ltd (Cayman Islands) and the liquidators of ICIC Apex Holding Ltd (Cayman Islands), i.e.:

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

Whereas, without claiming to be comprehensive in any way whatsoever, the substance of the agreements is as follows:

1. The "Supplemental Pooling Agreement with ICIC Companies"

The liquidators of BCCI S.A. (Luxembourg), BCCI S.A., London branch, and BCCI Overseas Ltd (Cayman Islands) (hereinafter globally referred to as the "Principal Liquidations") have between them concluded a Pooling Agreement to which the liquidators of BCCI Holdings have acceded through a "Holdings Participation Agreement";

Subject to the requisite provisions as specified in the agreement, the object and effect of this Pooling Agreement is that the liquidators of BCCI S.A. and BCCI Overseas Ltd will transfer the net assets recovered to a joint account called the "S.A./Overseas Realisation Account" and that similarly, BCCI Holdings will transfer its net assets recovered to a common account called the "Holdings Realisation Account", subject to the requisite provisions; at the time of allocating dividends, each liquidation concerned will set aside from the joint account sufficient assets to ensure that the same rate of dividend can be paid to all the creditors of the various BCCI entities in liquidation encompassed by the agreement, such that the general

effect of the Pooling Agreement will be to equalize dividends in favour of all liquidation creditors encompassed by the Pooling Agreement and at the same time avoid any potential claims, disputes and proofs of debt between the different liquidations;

The International Credit and Investment Company (ICIC) Group has been managed and operated in close association with the BCCI Group and often by the same persons; whereas, the reasons militating in favour of an equalization of dividends as sought by the Pooling Agreement also apply to those of ICIC Group entities which are under the supervision of Court-appointed liquidators insofar as there is a possibility of claims, demands and proofs of debt between entities of the two BCCI and ICIC Groups and in that it is possible that third parties witnessed their assets being transferred from one Group to the other as necessitated by cash requirements;

The Applicants are of the opinion that it is in the interests of the BCCI Group liquidations to ensure that dividends are also equalized with respect to ICIC Group creditors (insofar as such entities are under the supervision of Court-appointed liquidators) and at the same time to secure a general composition between the liquidations of the two BCCI and ICIC Groups;

The object and effect of the "Supplemental Pooling Agreement with ICIC Companies" is to incorporate the ICIC liquidations under Court supervision in the Pooling Agreement existing between the liquidators of the Principal Liquidations.

2. The "Cost and Recovery Sharing Agreement with ICIC Companies"

The liquidators of the Principal Liquidations have between them also concluded a "Cost and Recovery Sharing Agreement" whereby provision is made for the costs incurred and recoveries secured within the context of proposed arrangements designated as being of collective interest ("global") to be shared between the Principal Liquidations at the rate of 50% in respect of the English branch of BCCI, 35% in respect of BCCI (Overseas), 10% for BCCI (Luxembourg) and 5% for Holdings (Luxembourg) S.A.. This supplement to the Pooling Agreement became necessary in order to facilitate relations between the Principal Liquidations, ensure that costs collectively incurred were funded in a fair manner and that collective recoveries made were distributed fairly and in a manner approaching the probable level of liability, all pending full dividend equalization in favour of all Principal Liquidation creditors through the Pooling Agreement.

Once the liquidators of the Principal Liquidations, together with the Court-appointed liquidators of the ICIC Group liquidations under Court supervision, enter into close co-operation and a "Supplemental Pooling Agreement", it is inevitable that the ICIC Group liquidations will be involved in funding the costs and in the distribution of collective recoveries, and all the more so in that for the proposed

recovery arrangements concerned, the rights and entitlements of the ICIC Group entities compete with those of the Principal Liquidations. As already indicated with regard to the "Supplemental Pooling Agreement", the dividends in respect of the creditors of such ICIC entities will be equalized in line with the dividends to Principal Liquidation creditors such that when a dividend is paid, the provisional distribution based on the "Cost and Recovery Sharing Agreement" will be exceeded by the equalized dividends arising from the "Supplemental Pooling Agreement".

Based on the probable liabilities of such ICIC entities under Court supervision, it appears legitimate to fix the share of these ICIC entities at 2.5% of the total costs to be funded on a joint basis and the collective recoveries made, on the understanding that for the Principal Liquidations, the total share in costs and recoveries will be reduced to 97.5%, the 50%, 35%, 10% and 5% distribution between the Principal Liquidations applying to the 97.5% share attributed to the Principal Liquidations.

3. The "BCCI/ICIC Paying Agency Agreement"

The liquidators of the Principal Liquidations have between them also concluded a "Paying Agency Agreement" which supplements the "Cost and Recovery Sharing Agreement" and which will culminate in the English liquidators in their capacity as paying agents settling approved costs arising from the Principal Liquidations in respect of proposed collective arrangements on behalf of the Principal Liquidations and recover from them their share of the costs in accordance with the agreed pro rata basis.

The "BCCI/ICIC Paying Agency Agreement" also involves ICIC entities under Court supervision in this mechanism in that the English liquidators will also act as paying agents for the ICIC liquidators, settle approved costs on the 2.5% pro rata basis on their behalf and recoup from them their share of the costs in the same proportion.

It is also pointed out that in principle, the "Cost and Recovery Sharing Agreement with ICIC Companies" must be retrospective with effect from 15 January 1993, the date on which the "Cost and Recovery Sharing Agreement" between the Principal Liquidations enters into effect.

* * *

In accordance with the Winding-Up Order of 3 January 1992 in respect of BCCI S.A. and the Judgment of 18 September 1992 concerning ICIC Holdings Luxembourg S.A., subject to authorisation by the Court regarding the report of the Judge in Bankruptcy and after consulting the Creditors' Committee, the liquidators may enter into a settlement or compromise in respect of any matters in dispute where the object of any such settlement or compromise is of an unspecified value or exceeds US\$ 100,000.-.

With regard to the settlement submitted for approval by the

Court and in order to protect public interest, there are grounds for involving the Public Prosecutor in the proceedings as a Common Law Respondent in the absence of a Respondent under Private Law with a distinct interest in the proceedings (more especially given that in the settlement approval and authorisation proceedings, the contracting parties do not have a distinct interest insofar as they, like the liquidators, are perforce interested in the settlement being approved); (see in this connection Luxembourg, 30.11.1977, 23.05.1979, 02.02.1981, 01.04.1981 and 25.01.1994 in the case BCCI S.A. liquidators -v- The Public Prosecutor and BCCI S.A.; Encycl. Dalloz, Procédure civile et commerciale, 1955, Verbo Chambre du Conseil, no. 18; Dictionnaire des parquets et de la police judiciaire; Verbo Action du Ministère Public en matière civile and references cited therein).

In contrast, however, there is no legal provision which requires the contracting parties with whom the settlements are concluded to be called in the proceedings. The procedure provided for by Article 492 of the Commercial Code is effectively designed to protect the interests of creditors through supervision by the Court of the content of the settlement and of the adjudicated insolvent party which must be called to enable its observations to be put to the Court. It is inconceivable that the contracting parties to the settlement object to the Court approving agreements which they themselves have concluded and which they presumably wish to be implemented.

Upon these grounds:

It is sought that in form, the present Application be declared admissible and justified on the main issue;

that the agreements as specified hereunder be approved, i.e.:

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

as more amply described in the body of these presents, and

that the Applicants be authorised to sign such agreements,

ordering such measures as prescribed by law, and

awarding the costs of these presents against the liquidation estate.

IN WITNESS WHEREOF, I left a copy for subpoenaed party 1) above at the Office of the Public Prosecutor at the Law Courts of the Palais de Justice where being I spoke to: [handwriting illegible],

in his capacity as substitute,

who stated that he had authority to admit the deed and who accepted the same.

PIERRE KREMMER
Process Server
.....
... LUXEMBOURG

PROCESS SERVICE PROCEDURES

Addressee of the process: [handwritten] Bank of Credit and Commerce International S.A.

Date of service: In the year one thousand nine hundred and ...
[handwritten] ninety four, on twenty-first November

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

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

as indicated below.

A) PERSONAL SERVICE

- Individual or actual addressee
- [marked with a cross] Body corporate
to: Surname/first name(s): [handwritten] Godfroid Esther
Capacity: [handwritten] Employee
who stated having authority to admit the copy
- At the elected domicile, to the actual authorised representative

thus stated, such person accepted the process.

B) SERVICE AT DOMICILE

B.I) After locating: Surname/first name(s): ... [Stamp
Pierre KREMMER
Process Server
9, rue J.B. Gellé
1820 LUXEMBOURG
Tel. 487318]
Capacity: ...
Address: ...

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

..... Endorsement by the person
attended at the premises

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

- no person was at the premises
- the person present refused to state his/her surname, first name(s), capacity and address

- o the person present was under the age of 15
- o the person present refused to admit the copy
- o the person present was the applicant(s)
- o the person present refused to acknowledge receipt

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

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

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

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

OBSERVATIONS:

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

PIERRE KREMMER
Process Server

 ... LUXEMBOURG

ATTENDANCE ADVICE

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

As the actual addressee could not be located

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

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

Date:

Signature of the process server:

The cases listed as numbers 44 323, 53 642 and 44 468 filed by Summons in accordance with the foregoing were effectively set down for public hearing on 30 November and 1 December 1994 by the Sixth Chamber sitting in a commercial matter.

After suspending adjudication, the cases were again effectively set down for public hearing on 19 January 1995.

At such hearings, the grounds, explanations and submissions of the parties in the proceedings were heard, both in oral and written form.

At the public hearing of 19 January 1995, the Court considered the cases in camera after hearing the submissions of the Public Prosecutor and pronounced at the public hearing of such date the

J u d g m e n t

as set out hereunder:

By Summons of 10 and 14 October 1994 served by Pierre KREMMER, Process Server established in Luxembourg,
I) Georges BADEN, Julien RODEN and Brian SMOUHA, acting in their capacity as liquidators of BCCI S.A. in liquidation,
II) Jacques DELVAUX and Georges RAVARANI, acting in their capacity as liquidators of BCCI HOLDINGS (LUXEMBOURG) S.A. in liquidation,
III) BCCI S.A. in liquidation stated as acting for the purposes of these presents through its English branch (hereinafter referred to as BCCI UK), represented by the liquidators of the company, Christopher MORRIS, Nicholas R. LYLE, John P. RICHARDS and Stephen J. AKERS, acting in their capacity as liquidators of BCCI UK,
IV) BCCI OVERSEAS LIMITED in compulsory liquidation, represented by the official liquidators of the company, Ian A. N. WIGHT, Robert E. AXFORD and Mike W. MACKEY, acting in their capacity as official liquidators of BCCI OVERSEAS,
V) CREDIT AND FINANCE COMPANY LIMITED, abbreviated to CFC, in compulsory liquidation, represented by the official liquidators of the company, Ian A. N. WIGHT, Robert E. AXFORD and Mike W. MACKEY,
Ian A. N. WIGHT, Robert E. AXFORD and Mike W. MACKEY acting in their capacity as official liquidators of CFC,
VI) INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED, abbreviated to ICIC OVERSEAS, in compulsory liquidation, represented by the official liquidators of the company, Ian A. N. WIGHT, Robert E. AXFORD and Mike W. MACKEY, Ian A. N. WIGHT, Robert E. AXFORD and Mike W. MACKEY acting in their capacity as official liquidators of ICIC OVERSEAS,
VII) ICIC HOLDINGS LIMITED, abbreviated to ICIC HOLDINGS, in liquidation, represented by the official liquidators of the company, Ian A. N. WIGHT, Robert E. AXFORD, Mike W. MACKEY and Richard DOUGLAS,
Ian A. N. WIGHT, Robert E. AXFORD, Mike W. MACKEY and Richard DOUGLAS acting in their capacity as official liquidators of ICIC HOLDINGS,
VIII) ICIC INVESTMENTS LIMITED, abbreviated to ICIC INVESTMENTS, in liquidation, represented by the official liquidators of the

the English branch of BCCI S.A., 35% in respect of BCCI (Overseas), 10% for BCCI S.A. (Luxembourg) and 5% for BCCI HOLDINGS (Luxembourg) S.A.), and finally, a "Paying Agency Agreement" by way of supplement to the "Cost and Recovery Sharing Agreement" which made provision for the English liquidators to pay costs approved by the Principal Liquidations in respect of proposed collective arrangements and for such costs to be subsequently recovered from the Principal Liquidations in proportion to the agreed costs.

The Applicants maintain that the INTERNATIONAL CREDIT AND INVESTMENT COMPANY (ICIC) Group encompassing ICIC (OVERSEAS) Limited, ICIC HOLDINGS Limited, ICIC INVESTMENTS Limited and ICIC APEX Limited and all based in the Cayman Islands, had been managed and operated in close association with the BCCI Group and often by the same individuals; that although there may be no legal participation by one group in the other, there is, however, de facto coalescence in that a possibility exists for claims, demands and proofs of debt between BCCI Group entities and ICIC Group entities which are also under the supervision of Court-appointed liquidators; that it is possible that prior to the liquidation, third parties witnessed the transfer of their assets from one group to the other as necessitated by cash requirements and that it is also in the interest of the BCCI Group liquidations to ensure the equalization of dividends with respect to ICIC Group creditors (insofar as such entities are under the supervision of Court-appointed liquidators) and at the same time to obtain a general composition between the two BCCI and ICIC Group liquidations, based on the "Supplemental Pooling Agreement with ICIC Companies" aimed at and culminating in incorporating the ICIC liquidations under Court supervision in the "Pooling Agreement" existing between the liquidators of the Principal Liquidations.

The liquidators further state that once the liquidators of the Principal Liquidations, together with the Court-appointed liquidators of the ICIC Group liquidations under Court supervision, enter into close co-operation and a "Supplemental Pooling Agreement", it is inevitable that the ICIC Group liquidations will be involved in funding the costs and in the distribution of collective recoveries, and all the more so in that for the proposed recovery arrangements concerned, the rights and entitlements of the ICIC Group entities compete with those of the Principal Liquidations; that dividends in respect of the creditors of such ICIC entities will be equalized in line with the dividends to Principal Liquidation creditors such that when a dividend is paid, the provisional distribution based on the "Cost and Recovery Sharing Agreement" will be exceeded by the equalized dividends arising from the "Supplemental Pooling Agreement";

That in view of the probable liabilities assessed at some 300 million US\$, the liquidators concerned propose fixing the share of ICIC entities at 2.5% of the total costs to be funded on a joint basis and the collective recoveries made, on the understanding that for the Principal Liquidations, the total share in costs and recoveries will be reduced to 97.5%, the 50%, 35%, 10% and 5% distribution between the Principal Liquidations

company, Ian A. N. WIGHT, Robert E. AXFORD, Mike W. MACKEY and Richard DOUGLAS,
Ian A. N. WIGHT, Robert E. AXFORD, Mike W. MACKEY and Richard DOUGLAS acting in their capacity as official liquidators of ICIC INVESTMENTS,
IX) ICIC APEX HOLDING LIMITED, abbreviated to ICIC APEX, in liquidation, represented by the official liquidators of the company, Ian A. N. WIGHT, Robert E. AXFORD, Mike W. MACKEY and Richard DOUGLAS,
Ian A. N. WIGHT, Robert E. AXFORD, Mike W. MACKEY and Richard DOUGLAS acting in their capacity as official liquidators of ICIC APEX,

subpoenaed

- 1) BCCI S.A. in liquidation,
- 2) BCCI HOLDINGS (LUXEMBOURG) S.A. in liquidation,
- 3) the GOVERNMENT OF ABU DHABI,
- 4) the Public Prosecutor in Luxembourg, and
- 5) the INSTITUT MONETAIRE LUXEMBOURGEOIS

to appear before this Court to hear the Court rule on the merits of the Application contained in the aforementioned Summonses as reproduced herein.

By Summons of 15 and 16 November 1994 served by Pierre KREMMER, Process Server established in Luxembourg, the same Applicants subpoenaed the same Respondents to appear before this Court for the same purposes aforesaid, stipulating that the Applicants declare such Summonses of 15 and 16 November 1994 filed in accordance with the civil procedural rules before the District Court sitting in a civil matter as being by way of ancillary to those previously filed pursuant to the Summonses of 10 and 14 October 1994 served by Pierre KREMMER in accordance with the commercial procedural rules, and this before the same Court sitting in a commercial matter.

By Summons of 21 November 1994 served by Pierre KREMMER, Process Server established in Luxembourg, Georges BADEN, Julien RODEN and Brian SMOUHA acting in their capacity as liquidators of BANK OF CREDIT AND COMMERCE INTERNATIONAL, abbreviated to BCCI S.A., in liquidation, and Jacques DELVAUX and Georges RAVARANI acting in their capacity as liquidators of BANK OF CREDIT AND COMMERCE INTERNATIONAL (abbreviated to BCCI) HOLDINGS (LUXEMBOURG) S.A., in liquidation,

subpoenaed

- 1) the Public Prosecutor in Luxembourg,
- 2) BCCI S.A. in liquidation, and
- 3) BCCI HOLDINGS (LUXEMBOURG) S.A. in liquidation

to appear before this Court to hear the Court rule on the merits of the Application contained in the aforementioned Summonses as reproduced herein.

Preliminary observations

The Applications filed pursuant to the Summonses of 10 and 14 October 1994 served by Pierre KREMMER in accordance with the

commercial procedural rules seek to obtain the Court's approval concerning the conclusion of an agreement with the Government of the Emirate of Abu Dhabi whereby such Government would pay an overall amount of US\$ 1,800,000,000.- in favour of the general body of creditors of the BCCI Group in liquidation against various discharges, compositions and guarantees to be established by both the liquidators of the BCCI Group and by the Government of the Emirate of Abu Dhabi.

As previously indicated, the Applications filed pursuant to the Summonses of 15 and 16 November 1994 served by the same Process Server in accordance with the civil procedural rules and by way of ancillary serve the same purpose.

The Application filed pursuant to the KREMMER Summons of 21 November 1994 seeks to obtain approval concerning the conclusion between the Applicant liquidators of BCCI S.A. and BCCI HOLDINGS (Luxembourg) S.A. and those of the INTERNATIONAL CREDIT AND INVESTMENT COMPANY (ICIC) Group entities of three agreements referred to as the "Supplemental Pooling Agreement with ICIC Companies", the "Cost and Recovery Sharing Agreement with ICIC Companies" and the "BCCI/ICIC Paying Agency Agreement".

Insofar as the conclusion of such agreements with the ICIC Group is deemed to be a preliminary, if not a prerequisite, to the signing of the agreements to be entered into with the Government of the Emirate of Abu Dhabi, the liquidators of the ICIC entities also appearing as Applicant parties within the context of the Applications made in this connection, both types of Applications are to be considered as being related while, on the other hand, the Applications made seeking the Court's authorisation for the purpose of concluding a "Contribution Agreement" with the Government of the Emirate of Abu Dhabi are inter-related.

In order to ensure the correct administration of justice, case list numbers 44 323, 44 468 and 53 642 should accordingly be joined and adjudicated under one and the same Judgment.

For reasons of legal chronology, we should begin by analysing the Application for approval concerning the agreements negotiated with "ICIC Companies".

In the Application, the liquidators of BCCI S.A. and BCCI HOLDINGS S.A. state that between them, the liquidators of the principal BCCI Group liquidations, namely BCCI S.A., OVERSEAS and the English branch of BCCI S.A., had firstly concluded an agreement to pool the net assets recovered subject to the requisite provisions to be made, i.e. the "Pooling Agreement", to which the liquidators of BCCI HOLDINGS S.A. had acceded through a "Holdings Participation Agreement", a "Cost and Recovery Sharing Agreement" which made provision for the costs incurred and recoveries secured within the context of proposed arrangements designated as being of collective interest ("global") to be shared such as to ensure that costs collectively incurred were funded in a fair manner and that global recoveries made were distributed fairly and in a manner approaching the probable level of liability (50% in respect of

applying to the 97.5% share attributed to the Principal Liquidations; that the "BCCI/ICIC Paying Agency Agreement" also involves the ICIC entities under Court supervision in the mechanism currently prevailing between the Principal Liquidations in that the English liquidators will also act as paying agents for the ICIC liquidators, settle approved costs on the 2.5% pro rata basis on their behalf and recoup from them their share of the costs in the same proportion.

They further indicate that in principle, the "Cost and Recovery Sharing Agreement with ICIC Companies" must be retrospective with effect from 15 January 1993, the date on which the "Cost and Recovery Sharing Agreement" between the Principal Liquidations enters into effect.

There is an aspect of settlement and compromise regarding the agreements currently submitted for approval by the Court, at least with regard to the "Supplemental Pooling Agreement with ICIC Companies" and the "Cost and Recovery Sharing Agreement with ICIC Companies", given that the first makes provision for the assets of the two Groups in question to be pooled and a uniform dividend allocated to all their creditors and the second provides for a fixed sharing basis but one which relates to the assessed level of liabilities concerning the overall amounts recovered, together with the costs relating to such recovery.

A settlement can be equally well defined as an agreement under which the parties bring a current dispute to an end or an agreement forestalling a dispute which has not yet arisen (as defined by Article 2044 of the Civil Code) which presupposes mutual concessions in respect of the parties concerned; it may equally well relate to a future or existing dispute concerning assets or liabilities.

In its Judgment of 20 July 1992 which on this point was not subject to criticism on appeal, the Court already designated as settlements all the agreements submitted for its appraisal, including the "Pooling Agreement". The same designation must apply to the above agreements with the ICIC Group.

In terms of form and time, the Application duly filed in accordance with the commercial procedural rules is due and proper given that the agreements submitted for authorisation are of a commercial nature in respect of all the parties involved.

Regarding the authorisation procedure for the envisaged settlements, in establishing the method of liquidation, the Winding-up Orders in respect of BCCI S.A. and HOLDINGS stipulated identical provisions requiring the opinion of the Creditors' Committee and views of the Judge in Bankruptcy to be sought in view of the value of the present settlements which can be put at an amount in excess of US\$ 100,000.-. In addition, by virtue of these Winding-up Orders, Article 492 of the Commercial Code became applicable.

From case documentation, it emerges that the views of the BCCI S.A. and HOLDINGS Creditors' Committees were expressed on the issue of the agreements contemplated with the ICIC Group at

their meeting of 11 November 1994 when all members of the BCCI HOLDINGS Creditors' Committee and four of the five members of the BCCI S.A. Creditors' Committee expressed their approval concerning the agreements negotiated with the ICIC liquidations, the only voting abstention being the creditor, Faisal Islamic Bank of Egypt, and further that the report of the Judge in Bankruptcy on this issue formed the subject of a written memorandum submitted to the hearing.

In addition to the companies in liquidation, the liquidators rightly subpoenaed the Public Prosecutor as Respondent under Common Law in the absence of a Respondent under Private Law with a distinct interest in the proceedings, given that in the settlement approval (and authorisation) proceedings there is no distinction between the interest of the parties to the proposed settlements and the interest of the parties applying for approval (and authorisation), and given that Article 492 of the Commercial Code makes no provision, expressis verbis, for the party to the settlement to be called in the proceedings (cf. more especially Trib. Lux. 3.12.1992, case number 41 787, in this connection).

The Application is, therefore, admissible.

With regard to the main issue, it transpires from the documents submitted and information supplied that it is difficult to distinguish between the assets and liabilities of the BCCI Group and those of the ICIC Group and that there is a de facto merging of assets between the two series of entities.

Hence, one of the main points of the agreements negotiated with the Government of the Emirate of Abu Dhabi and a point, moreover, submitted for approval by the Court, concerns the waiving of a debt of approximately 2.2 million US\$ [sic] by such Government in respect of a deposit made by the Ruler of Abu Dhabi in respect of ICIC where the funds were misappropriated by former executive officers of ICIC and BCCI in favour of the BCCI Group.

That being the case, the incorporation of ICIC entities in the envisaged agreements with the Government of Abu Dhabi cannot be avoided, and an identical line of reasoning to the rationale justifying the "Pooling" arrangement between the various BCCI entities, without the respective total assets and liabilities of such entities having been examined in depth during the hearing preceding the Judgments of 20 July and 22 October 1992 and the Judgment of 27 October 1993, namely the concern to avoid any dispute between the liquidations in question and the creation of an instrument enabling creditors at international level to be treated equally (cf. Court of Appeal, 27 October 1993, case list numbers 15 060 and 15 134), must culminate in the extension of the "Pooling" arrangement and corresponding supplementary agreements to encompass ICIC entities being approved, there having been no criticism of such provisions, moreover, on the part of the litigants.

The Application made by the liquidators of BCCI SA and HOLDINGS seeking approval of the envisaged agreements with the ICIC Group

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in liquidation is accordingly granted, with costs being awarded against the respective estates of BCCI S.A. and BCCI HOLDINGS S.A. on the basis of an equal allocation of such costs between the two estates.

Concerning the Applications seeking approval of the Draft Agreement negotiated with the Government of the Emirate of Abu Dhabi;

The Applicants under the global designation "the liquidators" state that a draft agreement had been finally concluded on 13 July 1994 by a letter from representatives of the Government of the Emirate of Abu Dhabi and a letter in reply of even date from representatives of the liquidators.

That by way of recap, this exchange of correspondence designated "agreement" stipulated that the Government of Abu Dhabi (hereinafter referred to as Abu Dhabi) would undertake to pay US\$ 1,800,000,000.- to the liquidators, of which US\$ 1,550,000,000.- would be payable to the liquidators on signing the agreement and US\$ 250,000,000.- would be payable to an agent of the parties, referred to as the "Escrow Agent"; of this US\$ 250,000,000.-, US\$ 150,000,000.- would go to the liquidators 24 months after signing the agreement and the remaining US\$ 100,000,000.- 36 months after signing the agreement, with Abu Dhabi obtaining the benefit of interest accrued over the period (Article 2).

That the liquidators would guarantee Abu Dhabi in the sum of US\$ 450,000,000.- against retrospective action taken by any third party sued or involved in arbitration proceedings by the liquidators and required in the proceedings to pay indemnities to the liquidators in accordance with various specified terms, Abu Dhabi for its part guaranteeing the liquidators against any action taken against them by any third party sued by Abu Dhabi or involved in arbitration proceedings.

That the liquidators would grant discharge to Abu Dhabi in respect of the undertakings accepted by Abu Dhabi under a proposed refinancing arrangement (the "Refinancing Package" or "RFP") which had not been implemented allegedly due to intervention by the supervisory authorities, i.e. the IML [Luxembourg Monetary Institute] and Bank of England, which had required the different BCCI entities to be placed under Court supervision.

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The liquidators would also grant discharge to Abu Dhabi and give an undertaking not to sue ("covenant not to sue") encompassing any potential cause of action against Abu Dhabi (more especially liability actions), apart from ordinary trade debts; for its part, Abu Dhabi would in turn grant discharge to the liquidators concerning undertakings in respect of the Refinancing Package (RFP), together with a discharge and undertaking not to sue on outstanding aspects (Article 5), more especially an amount of approximately 2.2 billion US\$ [sic] deposited in the course of time with the ICIC Group.

That Abu Dhabi would expressly waive participation (a) in any

assets attributed to the United States of America and State of New York by virtue of the Plea Agreement of 19 December 1991, (b) in any funds currently or subsequently held by the New York District Attorney, the Department of Justice or the Federal Reserve Board as a result of legal or arbitration proceedings, and (c) in any funds reverting to the United States of America arising from the Geneva Agreement of 8 January 1994 between the United States and Abu Dhabi (Article 5E).

That if required by the liquidator of the United Arab Emirates branches, the liquidators would agree to accepting these branches in the "Pool", the general effect being that the assets and liabilities of such branches would be absorbed by the BCCI liquidation and that their creditors would receive the same dividend as the resulting dividend allocated to the other liquidation creditors; within this context, Abu Dhabi would further agree to making a payment to the liquidators equivalent to the overall dividends allocated to the creditors of the United Arab Emirates branches (less the dividend payable in relation to US\$ 540,000,000.-) and the assets of the liquidator of these branches.

That BCCI HOLDINGS S.A. would undertake to transfer its 1,549,018 ordinary shares in UNION NATIONAL BANK (previously known as BCC Emirates) to such party as specified by Abu Dhabi (Article 6).

That the draft agreement stipulated that English law would apply and that jurisdiction would only be allocated to the United Kingdom Courts (Article 16).

Under the terms of the Application made by the liquidators, the matter in question involves an amended version of the draft settlements referred to as the "Contribution Agreement" and others previously negotiated with representatives of the Abu Dhabi Government which were agreed by the Court by Judgment of 22 October 1992, such Judgment, however, having been reversed in this connection by Judgment of 27 October 1993 of the Court of Appeal.

It can now be accepted that like the former "Contribution Agreement" and attendant agreements, the "agreement" freshly submitted for approval by the Court may qualify for designation as a settlement, a designation which in the course of time has not attracted any criticism either in the High Court or Appeal proceedings.

Regularity of form regarding the Application

The liquidators firstly filed their Application for Approval in accordance with the commercial procedural rules and secondly and by way of ancillary, in accordance with the civil procedural rules.

It is for the Court, therefore, to determine under which procedural provisions the Application has been validly made by examining the nature of the Application submitted for its appraisal.

The "agreement" negotiated with representatives of the Abu Dhabi Government concerning payment of an overall amount of US\$ 1,800,000,000.- by such Government and its agreement to waive a substantial claim for deposits against various waivers and guarantees to be granted by the liquidators constitutes on its part a settlement with regard to any liability incurred in its capacity as majority shareholder of BCCI HOLDINGS and waiver of any private trustee rights; in respect of the Government, it is of a civil nature, while in respect of the liquidators, it is of a commercial nature, the same being based on the banking or commercial activities of credit institutions or companies in liquidation.

In respect of the INSTITUT MONETAIRE LUXEMBOURGEOIS, an institution under public law and watchdog acting solely in the public interest (Art. 3 (2) of the Act of 20 May 1983 establishing an Institut Monétaire Luxembourgeois, as amended by the Act of 5 April 1993), the action emanating from this settlement is of a civil nature which also applies to the Public Prosecutor, a Common Law Respondent equally involved in the proceedings in order to protect the public interest.

It transpires from the foregoing that with regard to the Abu Dhabi Government, the IML and the Public Prosecutor, the Application seeking approval of the settlement to be entered into with the Abu Dhabi Government must be filed and instituted in accordance with the civil procedural rules to be observed before the District Court sitting in a civil matter; that the filing summons must accordingly comply with the stipulated formalities concerning writs of summons as provided for by Article 61 of the Code of Civil Procedure which inter alia stipulates that the summons must contain the legal counsel appointed to act for and represent the applicant or otherwise may be deemed invalid.

The Summonses of 10 and 14 October 1994 are accordingly invalid with regard to the aforementioned subpoenaed parties, the substantive invalidity of the same arising from a breach of a fundamental rule of legal arrangement (cf. in this connection Court of Appeal, 5 February 1992: RAVET and WOLTER; cf. OBRECHT, case list no. 13 305).

In form, however, the Summonses of 15 and 16 November 1994 made by way of ancillary against the same subpoenaed parties in accordance with the formalities stipulated in the above text are due and proper and are accordingly admissible in this regard.

Turning to the companies in liquidation, BCCI S.A. and BCCI S.A. HOLDINGS, in respect of which the Application is of a commercial nature, these companies were properly subpoenaed by Summons of 10 October 1994 served on a fixed date, indicating the date and time of the hearing, formalities which pursuant to Article 641 of the Commercial Code, recent case law considers to be mandatory before the District Court adjudicating on a commercial basis, such procedure being applicable due to the nature of the matter as opposed to the Court to which application is made (cf. Court of Appeal, 13 May 1992: SCHNELL-FEIN s.à.r.l. -v- Jean STOFFEL et Cie s.e.c.s., case list no. 13 492; Court of Appeal,

15 July 1994: TURPEL -v- MARCOTRUST Trustee in Bankruptcy, case list no. 16 073; Cass., 19 May 1994: KEIFFER -v- HENGEL and FRIEDRICH, no. 27/94).

In consequence, the Summons of 10 October 1994 being admissible with regard to such Respondents, the Summons of 15 November 1994 is in their regard without purpose.

It further emerges from the documents submitted that in this particular case, there was preliminary consultation of the Creditors' Committees as required concerning the authorisation of settlements involving more than US\$ 100,000.-, given that at the meeting of these Committees on 28 September 1994, all members present consented to the draft agreement, apart from FIBE which abstained, and that the written report of the Judge in Bankruptcy has been submitted to the hearing.

In response to the requirements of Article 492 of the Code of Civil Procedure, the liquidators summoned in the proceedings both the companies in liquidation and the Abu Dhabi Government, the contracting party to the settlement to be authorised.

The Application is accordingly admissible.

By written submissions put forward at the hearing of 30 November 1994, Raihan Nasir MAHMUD, Mohammad Ali QAYYUM, Qaiser Mansoor MALIK and Halida SHAFIULLAH, claiming to be creditors of BCCI in their capacity as former employees and in respect of their participation in the "BCCI Employees Provident Fund" and "BCCI Staff Benefit Fund" sought voluntary joinder in the proceedings brought by the liquidators to oppose authorisation being given to the liquidators to conclude the proposed agreement with the Abu Dhabi Government.

By written submissions put forward at the same hearing, Yves Christian LAMARCHE, Johan Diderik VAN OENEN and Alfred HARTMANN, referring to a civil liability action brought against them by the liquidators of BCCI S.A. and Holdings, together with INTERFIDUCIAIRE, a firm of tax and accountancy specialists and private company, Guy BERNARD, Carlo DAMGE, André WILWERT, Pierre WAGNER, the private company FIDEM, Bob BERNARD, Véronique HEGER, Laurence MÜLLER and Michèle MÜLLER, maintaining that they too were at the receiving end of a civil liability action emanating from the same liquidators, also sought voluntary joinder in the proceedings to oppose the Application made by the liquidators.

Without criticising the capacity of the intervening parties, the liquidators have nonetheless pointed to the irregularity of form of such applications for voluntary joinder, maintaining, moreover, that they are of no requisite interest.

The voluntary joinder of the intervening parties must be considered as ancillary or protective interim intervention whereby the third parties are confined to safeguarding their interests either to monitor the progress of the proceedings and attendant activation where appropriate, or to side with one of the parties where the interests of such party merge with their own (cf. Encycl. Dalloz, Procédure civile et commerciale [Civil

and commercial procedure], Vol. Intervention, nos. 3 and 6).

In the case in question, the intervening parties appear to endorse the stance adopted by the IML.

Regarding the form of such intervention, it should initially be pointed out that insofar as the applications for joinder are directed against the liquidators in respect of whom the case is of a commercial nature, it is, in principle, the procedure adopted in this matter which must be observed.

Although it is true that pursuant to Article 415 of the Code of Civil Procedure, in commercial matters application for third party joinder cannot be made merely by submissions but must be instituted by a Process Server (Court of Appeal, 4 February 1933, Pas. 13, p. 51), in urgent cases this stipulation is reduced to a requirement for written submissions to be made (cf. Encycl. Dalloz, Procédure civile et commerciale [Civil and commercial procedure], Vol. Intervention, no. 48).

Given that the case was set down and fixed only a few days before the hearing date, the Court accepts that it was impossible for the intervening parties to proceed by issuing a writ of summons.

As sufficiently documented in the case, the Court further points to the interest of the intervening parties. In the event of ancillary joinder, intervention based on a conditional and even potential right is admissible (cf. Encycl. Dalloz aforesaid, nos. 18 and 19, together with the references cited therein).

It has accordingly been adjudged that the creditors are entitled to join in the approval proceedings in order to contest the settlement if they see fit (cf. Pandectes belges, aforesaid, no. 1678).

From the foregoing, it follows that the applications for voluntary joinder on the part of

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

Appraisal criteria

It transpires from indications supplied in the case that the envisaged "agreement" with the Government of the Emirate of Abu Dhabi results from negotiations held between the liquidators and corresponding Government representatives following the Appeal Court Judgment of 27 October 1993.

Three aspects emerged from the debate conducted during the hearings of 30 and 1 December 1994 and 19 January 1995:

- 1) The freshly negotiated agreement no longer contains any of the provisions which attracted criticism by the Court of Appeal on the ground that they conflicted with Luxembourg public policy.

It is established in the case that the new agreement no longer stipulates that only creditors waiving their rights against the majority shareholders would participate in the distribution of funds paid by Abu Dhabi, that the clause providing for a half-share of the proceeds from liability proceedings would be removed and that finally, no provision would be made in the present draft agreement allowing any setoff concerning amounts owed to and by the majority shareholder.

Hence, in his written "Observations" expressed at the hearing of 30 November 1994, the IML representative observed that the basic inequality of creditors was rectified and that in addition, "we are no longer confronted by a hotchpotch of a liquidation and settlement arrangement, as was the case with the previous proposal".

It transpires from this last observation that the fact that the "Agreement" allocates jurisdiction to the English Courts and stipulates that English law applies which, according to the liquidators, is due to the refusal of the contracting party to accept stipulations in favour of Luxembourg insofar as the contracting party is not familiar with Luxembourg law and in the event that no provisions exist to settle this issue, and the concern of the liquidators not to be confronted by Courts and legislation of which they have little knowledge, cannot be allowed to contravene Luxembourg public policy in that such designation and allocation does not relate to matters which are perforce brought before the Court and submitted to the law governing the place where the liquidation is initiated.

Finally, the Court is of the opinion that Article 6(c) of the "Agreement" which merely makes provision for the liquidators of the United Arab Emirates branches to participate in the Pooling of the Principal Liquidations, whereupon Abu Dhabi would make a contributory compensatory payment for any excess liabilities of such branches, in no way conflicts with public policy, given that it is established that BCCI S.A. and OVERSEAS have branches throughout the world where local liquidators have been appointed who refuse to participate in the Pooling arrangement, given that locally realised assets mean that their creditors are treated better than the Principal Liquidation creditors.

A final observation relates to the retention of documents belonging to the Principal Liquidations for which Abu Dhabi has attracted criticism and which have been released, the liquidators having, moreover, indicated that on examination, these documents are not liable to affect the details of the proposed settlement.

In this connection, the Court refers to the assurances given by its appointed Court representatives and to their statements concerning the bearing of the so-called "David Sandy" incident, in that the "handling" of the diskettes relating to a number of

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these documents has no repercussions on the negotiated settlement package.

2) The new agreement is financially more advantageous for BCCI creditors.

The liquidators maintain that the new agreement will place a certain payment of US\$ 1,800,000,000.- at the disposal of the creditors.

That this payment will be made very rapidly in that US\$ 1,550,000,000.- will be available immediately after signing the agreement and the balance of US\$ 250,000,000.- within 24 and 36 months respectively.

That by so doing, even the liquidators can avoid having to institute proceedings against Abu Dhabi which, as in all litigation, would involve an element of uncertainty as to the outcome, would be drawn-out and would incur substantial costs; that at the same time, any risk of fiduciary action on the part of Abu Dhabi potentially culminating in the assets of the liquidators being provisionally frozen will be eliminated.

That in such a manner, an interim dividend could be paid within a very short space of time;

That aside from the payment to be made by Abu Dhabi, the liquidators have been able to secure an undertaking from Abu Dhabi waiving any participation in any funds which the liquidators may obtain from the United States; that after deducting costs and other payments to be made to the United States, an estimated amount of up to US\$ 1,000,000,000.- approximately will remain available, a substantial proportion of which will depend on the discretion of the United States authorities and will be subject to negotiations with the United States in the event that the present agreement becomes final and legally binding.

That with regard to the guarantee given to Abu Dhabi by the liquidators, this will only come into play within the specified period in the event that the liquidators recoup against a third party winning a retrospective action against Abu Dhabi and does not apply to any action against the supervisory authorities (the IML and Bank of England); that as a result, on the basis of the guarantee, the liquidators will never have to make any disbursements involving assets not previously recouped against a third party, the guaranteed being capped at US\$ 450,000,000.-, even where the amounts recouped against third parties are higher, while for their part, the liquidators have obtained an unlimited guarantee from Abu Dhabi in the event that the Abu Dhabi Government recoups against any third party winning a retrospective action against the liquidations, and while the preceding agreements stipulate a general guarantee for the liquidators in favour of the majority shareholder.

The IML representative has observed that there is a slight increase in the amount compared to the first agreement.

In reality, the waiver by the Abu Dhabi Government to participate in the funds obtained by the liquidators from the American authorities is such as to afford certain benefit to other qualifying creditors.

In addition, the freshly negotiated agreement appears to offer a simpler interpretation than the previous agreement; previously criticised intervention by the Abu Dhabi Government in the conduct of the liquidation out of requisite, due respect concerning stated debts and involvement in proceedings against "third parties" is no longer in evidence.

It must accordingly be accepted that the large majority (approximately 93% of votes expressed) in favour of the former agreement emerging from the consultation of creditors in the summer of 1992 would currently be demonstrated in favour of the new agreement.

3) The creditors no longer oppose the agreement.

In line with English Vice-Chancellor, Sir Richard Scott, who approved the proposed agreement with regard to the English branch of BCCI S.A. on 19 December 1994, the Court observes that the creditors who objected to the previous agreement have ceased their opposition to the "agreement", apart from the individual group of former employees who continue to reproach the Abu Dhabi Government for having failed to formulate specific measures in their favour.

Regarding the rights and entitlements claimed by such intervening parties in respect of the various employees' funds set up by the former BCCI management, such employees must put forward their claims within the context of the specific procedures available to them in this connection.

As for the other intervening parties, these are potential debtors involved in liability actions by the liquidators whose interests in truth conflict with those of the general body of creditors. It is purely the interests of the general body of creditors which the Court must bear in mind in appraising the appropriateness of the settlement to be approved (cf. Cass. fr., 8 March 1988, Consorts Charpentier -v- Crédit Lyonnais et autres [sic], Jurisdate, Doc. No. 85-17955, cited in the Judgment of 22 October 1992).

In consequence, the Court finds that the appraisal factors which established its approval decision in respect of the previous agreement are enhanced; that in addition, there is still no alternative for the creditors, apart from the option proposed by the IML, namely to institute legal proceedings against the Abu Dhabi Government, an option which as the liquidators have constantly pointed out, could be long and drawn-out, costly and fraught with risk.

The Application made by the liquidators is accordingly granted, the "agreement" negotiated between the liquidators and the Government of the Emirate of Abu Dhabi approved, and the liquidators authorised to sign such "agreement".

U p o n t h e s e g r o u n d s :

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

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

admit in form and declare admissible the Application directed against the Public Prosecutor attached to the District Court of and in Luxembourg, BCCI S.A. in liquidation and BCCI S.A. HOLDINGS in liquidation pursuant to the Pierre KREMMER Summons of 21 November 1994;

admit in form and declare admissible the Application directed against BCCI S.A. in liquidation and BCCI S.A. HOLDINGS in liquidation pursuant to the KREMMER Summons of 10 October 1994;

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

and accordingly declare the Applications filed pursuant to such Summonses inadmissible;

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

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

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

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

A certified true copy issued at the instigation of the party:
BADEN.

Luxembourg, 6 February 1995.

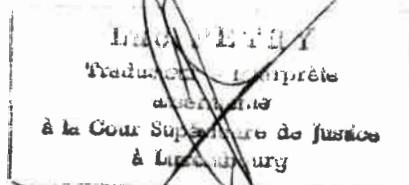
Chief Clerk of the Court,

[signed]

[stamped "DISTRICT COURT OF AND IN LUXEMBOURG"]

Cost: 880.- francs

Certified true translation



Pour Me Georges Baden empêché
s. Nicolas Bannasch
Pour copie conforme