ANDRE ELVINGER
JEAN HOSS
YVES PRUSSEN
JACQUES ELVINGER
LAWYERS
LUXEMBOURG

PETITION

for the dissolution and winding up of a credit establishement under article 42 of the act of 27 November 1984 as amended, concerning access to the financial sector and its supervision.

To the presiding judge and judges of the District Court of Luxembourg sitting on commercial matters

The following has the Maitre Andre Elvinger of pleading through the agency of its representative, lawyer, residing at Luxembourg, the undersigned,

The Luxembourg Monetary Institute, established at 63 Avenue de la Liberté, Luxembourg, represented by its Director-General, Mr Pierre Jaans, and its directors Mr Jean-Nicolas Schaus and Jean Guill.

it hereby requests that you order the dissolution and winding up of the credit establishment BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A., established and having its registered office at 25 Boulevard Royal, Luxembourg,

by your judgement of 8 July 1991, confirmed by judgement of the Court of Appeal sitting on commercial matters on 14 August 1991, you placed this establishment under the scheme of suspension of payments in accordance with article 38 of the act of 27 November 1984, as amended,

in accordance with your said judgement, the suspension expires on 4 January 1992;

as will be explained below, it does not appear that the suspension scheme will permit the remedying of the situation in the light of which it was imposed;

the interests of creditors consequently require dissolution and winding up to be ordered in any event before the suspension expires; in fact, in the absence of such a measure, not only will the establishment be exposed to the inroads of its creditors but, in addition, the execution measures that the better informed and advised of the creditors would undertake would prevent an equal footing amongst creditors;

moreover, it will be in the interests of the private depositors that dissolution and winding up are ordered by judgement made before 31 December 1991;

in fact, dissolution and winding up of the establishment would, under the terms of article 11 of the Articles of the Deposit Guarantee Association would initiate the guarantee referred to in articles 6 et seq. of the said articles; according to article 10 of these Articles, IML will fix the contributions to be made by banks on the basis of a specific data at 31 December each year; if the bank were to be dissolved after 31 December 1991, such information could be obtained by banks only after the first quarter; the private depositors will then obtain their guaranteed payments only at the end of an extended period, which would be technically unavoidable.

the petition is based on article 42 of the said act, since

(a) it appears that the scheme of suspended payments introduced will not permit the remedying of the situation which lead to its introduction;

(b) the financial situation of the establishment is disrupted to a point where it can no longer meet its commitments towards all creditors and stockholders;

it has not been possible since the application requesting the introduction of the suspended payments scheme was submitted to you by the applicants on 5 July 1991 to obtain copies of the annual accounts as at 31 December 1990, and much less so to have these accounts certified by the company's auditors;

on the contrary, according to a communication made jointly on 22 November 1991 by the Commissioner whom you appointed under your judgement of 8 July 1991 and the provisional liquidators appointed by the British legal authorities, a communication seen and approved by 77% of the majority shareholders, not only do the establishment's losses exceed its entire share capital, but in addition, having regard to the numerous lawsuits and complaints directed at the establishment, winding up without the intervention of the majority shareholder would, in the case of creditors, result in a dividend which in all probability would be less than 10% of the sums owed to them.

it is clear, moreover, from the same communication that a transaction has been negotiated with the majority shareholder according to which the latter would intervene according to a timetabled plan which would permit a dividend to be announced in favour of creditors that could lie between 30% and 40%, and which would be paid to them provided they waive any liability or other proceedings against the majority shareholders.

according to information received from the Commissioner, this draft transaction includes important conditions, the factual and legal basis of which must still be carefully examined;

it would already appear that even in the event of all the conditions of the transaction contemplated with the majority shareholder being met, and provided this draft transaction were to prove acceptable having regard to the interest of creditors and the requirements of the law, it will be impossible to redress the situation of the establishment.

in fact, contrary to the schemes of composition and controlled management, expressly excluded by article 44 of the act, the procedure provided under the modified act of 27 November 1984 does not permit the business to be continued through the approval of its creditors to a plan granting them a partial repayment, such a situation being in fact incompatible with the requirements for trust and security that should characterise credit establishments. Article 6(d) and (e) of the act require a financial basis and sufficient credit, conditions which are incompatible with a situation where depositors must be satisfied only with the payment of a percentage of their debts. To the same effect, article 42 requires winding-up where "not all creditors or stockholders can be satisfied";

the financial situation of the establishment is therefore permanently dislocated and it is already clear that it can no longer meet its commitments towards all creditors or stockholders;

an order is therefore required for the dissolution and winding up of the credit establishment BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A.;

the winding up of such an establishment requires substantial technical resources as appropriate to those required for managing an undertaking; a committee of liquidators must therefore be appointed which can be supplemented as required in course of time, and which will be required to set up an operational structure which it will control and supervise;

Moreover, having regard to the substantial irregularities discovered up till now, the provisions governing bankruptcy should be applied in so far as the Court sees fit and, in particular, the run-up period should be fixed at a date six months prior to the lodging of the petition for suspension, namely 5 January 1991;

FOR THESE REASONS

The Deponent requests that it please the Court,

to hold that the credit establishment, Bank of Credit and Commerce International S.A., established and having its Head Office at 25 Boulevard Royal, Luxembourg, is dissolved and be wound up;

To appoint an investigating Judge and a committee of liquidators;

To decide on the extent of which the rules governing bankruptcy should be applied, and, in all circumstances, to fix the date at which cessation of payments should take place at 5 January 1991;

In addition, to decide on the method of winding up, having regard to the observations appearing in this application, while reserving its right to make additions or subsequent changes to this method of liquidation, either ex-officio or at the suit of the liquidators;

To make the judgement subject to summary execution;

To hold that as at the date of your judgement, any action concerning movables and immoveables or any enforcement procedures on movables or immoveables may be imposed, bought or executed only against the liquidators;

To order publication of your judgement in whole or in excerpt at the cost of the establishment and through the efforts of the liquidators, in the Memorial and in at least three Luxembourg or foreign journals of adequate distribution, to be appointed by yourselves;

To make provision as to costs.

With humble respects (Signature)

Submitted to the Law Courts in Luxembourg on 6 December 1991.

LS

Certified a true copy
Luxembourg, 23 January 1992
The Chief Clerk
(Signature)

UNIVERSAL TRANSLATIONS

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our ref
your ref

I . Hans Abram Smith . . . .
Translator to UNIVERSAL TRANSLATIONS of Prince Rupert House, 64 Queen Street, London EC4R 1AD do hereby declare that I am familiar with the English and French languages and am the translator of the document(s) attached and certify that the following is a true translation to the best of my knowledge and belief.

Signature: . . H.A. Smith . . .

Dated this 30th day of March 1992

FELLOW OF THE INSTITUTE OF LINGUISTS