

BANK OF CREDIT AND COMMERCE
INTERNATIONAL SA
(IN LIQUIDATION)

JOINT LIQUIDATORS' REPORT

28TH FEBRUARY 1992

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

28th February 1992

A. Introduction

- 1 This Report is prepared by the Liquidators of the Bank of Credit & Commerce International S.A. ("BCCI") in support of their application for directions as to participation by creditors of BCCI in the winding-up of BCCI by the English Court; and in particular, directions:
 - 1.1 as to whether or not the Liquidators should summon a meeting of creditors under Section 141 of the Insolvency Act 1986 for the purpose of electing a Liquidation Committee;
 - 1.2 as to the future role and functions of the informal creditors committee;
 - 1.3 authorising the Liquidators under Section 137(4) of the Insolvency Act 1986 to advertise their appointment.

B. Background

- 2 There are 47 branches and offices of BCCI in 13 jurisdictions. The Liquidators estimate that worldwide there may be 140,000 individual and corporate creditors of BCCI. By far the largest proportion of these by both number (some 70,000) and value (\$2,752 million) are creditors in the books of the UK branches of BCCI, but only an estimated 50,000 of these are UK resident. Some 20%, or 14,000 of the creditors in the books of the UK branches are accounts which either bear the instructions "no correspondence" or which have incomplete addresses. The Liquidators present estimate of the likely level of claims (after adjustments for set-off, intra-group liabilities and contingencies) is as follows:

<u>Branch</u>	<u>Likely level of claims</u> \$ million
UK (inc. IOM)	2,752.5
UAE	1,561.5
Luxembourg	758.0
Japan	486.7
Jordan	114.2
Yemen	98.2
Germany	89.1
Bahrain	83.5
Cyprus	24.1
Italy	10.9
U.S.A.	9.5
Netherlands	7.8
Djibouti	less than 0.1
	<hr/>
	<u>5,996.0</u>

- 3 The residence of these creditors, other than those appearing in the books of UK and Luxembourg, is not known to the Liquidators. The majority of Luxembourg and Isle of Man creditors are non-resident.

C. The Present Position in Luxembourg

- 4 In its Judgment dated 3 January 1992 the District Court of Luxembourg ("the Luxembourg Court") ordered the liquidation of BCCI and appointed Mr. Smouha and Maitres Baden and Roden as Liquidators. The Judgment also provided for the creation of a creditors' committee. An (unofficial) translation of the Judgment is at Appendix 1. Under the terms of the Judgment the committee is to comprise five members selected by the Supervisory Judge from the principal unsecured creditors domiciled either in Luxembourg or abroad. Members from time to time of the committee may be removed and replaced by the Supervisory Judge.
- 5 The function of the committee is to assist the Luxembourg Liquidators and supervise the conduct of the liquidation on a consultative basis only. The committee is to meet on notice from the Supervisory Judge or the Luxembourg Liquidators, in order to consider and discuss the steps to be taken in the best interests of the creditors, and is to be convened at least every four months by the Supervisory Judge in order to receive reports from the Luxembourg Liquidators on the current status of the liquidation.
- 6 The Luxembourg Liquidators' powers to enter into settlements or compromises of disputes are currently limited by the Judgment. Any compromise the value of which exceeds US \$100,000 requires the approval of the Court after hearing the report of the Supervisory Judge and after the creditors' committee has been consulted and given its views, although (as indicated above) the creditors'

committee has a consultative role only and does not have power to sanction or to veto any proposed compromise.

- 7 The first members of the creditors' committee have now been appointed by the Supervisory Judge. The committee comprises the following persons and entities (together with the approximate value of their claims, which have yet to be formally verified):

		<u>Claim (US\$)</u>
(1)	Dr. Adil Elias	1.3m
(2)	Abu Dhabi Investment Authority ("ADIA")	23.4m
(3)	VISA	25.0m
(4)	Faisal Islamic Bank	332.0m
(5)	Metropolitan Borough of Bury	10.4m

D. The Position in England as at 14 January 1992

- 8 On 6 December 1991 the Liquidators gave a written undertaking to the Official Receiver that they would proceed to summon a creditors' meeting. A copy of the letter is at Appendix 2. The undertaking was given because of the Official Receiver's concern that, if he were to exercise his powers under Section 137 of the Insolvency Act 1986 to apply to the Secretary of State for appointment of liquidators, the creditors should nevertheless be given the opportunity of attending a meeting. Copies of subsequent correspondence with the Official Receiver will be provided in a separate bundle.
- 9 As outlined in Paragraph 9 of the Provisional Liquidators' Report dated 10 January 1992, the Provisional Liquidators, after discussions with legal representatives of a number of groups of creditors (including the Depositors' Protection Association and their solicitors) took steps to procure the formation of an informal creditors' committee consisting of the following members:

- (1) Dr. Adil Elias
- (2) Mr. Raad Al-Zahawi (of Sheerbonnet Limited)
- (3) Frances Devlin (an employee)
- (4) Mr. David Swanney (a representative of the Deposit Protection Board)
- (5) Mr. B.E.N. Smallridge (a representative of the Local Authority creditors)
- (6) Mr. A. Scott (a representative of the trustees of Film and Photo Design Pension Trust)

Dr. Adil Elias, Mr. Raad Al-Zahawi and Mr. A. Scott are members of the Depositors' Protection Association.

- 10 The first meeting of the committee, attended by Christopher Morris on behalf of the Provisional Liquidators and Mr. Smouha, took place on 10 January 1992. Meetings were held subsequently on 11th, 14th and 26th February 1992. The Liquidators consider that these meetings were constructive and helpful.
- 11 At the hearing of the winding-up Petition on 14 January 1992 Counsel for the Depositors Protection Association made an application for certain directions to be given for the conduct of the liquidation. The application was made against the background of what Counsel for the Depositors Protection Association regarded as formidable practical problems in convening a general meeting of creditors of BCCI in England. He described the process of convening such a meeting as slow and very expensive, so that there was likely to be no scope for establishing a statutory liquidation committee by means of a creditors' meeting (See p3 B-C of the Judgment of Sir Donald Nicholls VC dated 14 January 1992, a copy of which appears at Appendix 3). In refusing the application then made, but leaving the Applicants at liberty to make an application on notice to the Liquidators in the ordinary way, the Vice-Chancellor went on to say:

(d) to avoid (so far as possible) overwhelming the Court with repeated applications for sanction for the exercise by the Liquidators of their statutory powers.

14 In the Liquidators' view objectives (a) and (b) can be achieved through the continuation of the informal committee established in the provisional liquidation. In the absence of a statutory committee pending the calling and holding of a meeting of creditors the Liquidators can only exercise their powers in Parts I and II of Schedule 4 of the Insolvency Act 1986 ("the Schedule 4 Powers") with the sanction of the Secretary of State or the Court (ss.167 and 141(5) of the Insolvency Act 1986). Although the Liquidators have obtained interim sanction as a matter of expediency from the Secretary of State to continue proceedings pending as at 14 January 1992 and in two cases involving amounts of less than £20,000 to compromise proceedings, the Liquidators do not consider it appropriate for the Secretary of State to be asked to exercise the functions of the liquidation committee generally as regards compromises. Accordingly, objectives (c) and (d) could in practice be achieved if (i) the constitution of the informal committee could be made to correspond more closely with that of a statutory liquidation committee, and (ii) such committee (the "Creditors Committee") were given a role by the Court in the exercise by the Liquidators of their Schedule 4 Powers.

15 The Liquidators consider that the role of the Creditors Committee could be defined by the Court authorising the Liquidators:

15.1 To exercise the powers specified in Paragraphs 2 and 3 of Schedule 4 (compromise of claims etc) where the amount of the claim, call, debt or liability sought to be compromised is £10m or more, after consultation with the Creditors Committee, only with the prior sanction of the court;

- 15.2 Subject to Paragraph 15.3, to exercise all other powers in Parts I and II of Schedule 4, (including the powers specified in Paragraphs 2 and 3 of Schedule 4 involving compromises of claims, calls, debts or liabilities sought to be compromised of amounts of between £500,000 and £10m), with the prior sanction of the Creditors Committee: in cases of urgency the Creditors Committee may ratify what the liquidators have done provided that such ratification is sought by the liquidators without undue delay;
- 15.3 To exercise the powers specified in Paragraphs 2, 3 and 4 of Schedule 4 (compromise of claims etc; institution and defence of proceedings) where the amount involved is £500,000 or less without the prior sanction of the committee, but (where reasonably practicable to do so) after prior consultation with the committee: in cases where it is not reasonably practicable so to consult with the committee, the liquidators should be required to submit reports to the committee as to exercise of such powers not more than two months after such powers have been exercised.
- 16 The Liquidators propose that in the interests of continuity the first members of the Creditors Committee should be the present members of the informal committee (described in Paragraph 9). ADIA (which is a member of the Luxembourg creditors committee) have requested to become a member of the Creditors Committee: such request has been considered by the informal committee of creditors who have decided to defer a decision on whether or not to accede to such request. In order to enable ADIA (or, if the Creditors Committee so decide, another creditor) to become a member of the Creditors Committee, the Liquidators propose leaving one vacancy unfilled at this stage.
- 17 The Liquidators propose that the Creditors Committee should be given the powers and functions, and adopt the constitution, set out in the Schedule to

this Report. Such constitution is derived from the Insolvency Rules 1986, Chapter 12 (rr. 4.151 et seq.) with necessary modifications to meet the circumstances of this case.

- 18 Under Rule 4.127 of the Insolvency Rules 1986, the Liquidators' remuneration is to be fixed by the Liquidation committee, by resolution of a meeting of creditors or, if not so fixed, in accordance with the scale laid down for the Official Receiver.
- 19 The Liquidators would regard remuneration calculated in accordance with the scale laid down for the Official Receiver as inappropriate. Pending any formation of a statutory liquidation committee, there should be machinery for determining the Liquidators' remuneration from time to time. The Liquidators would regard it as inappropriate for there to be no machinery for that determination, thereby leaving the Liquidators and their firm seriously exposed in respect of the substantial time charges that are being and will continue to be incurred in the liquidation. The Liquidators also acknowledge the importance of the creditors' participation in such determination.
- 20 The Liquidators respectfully suggest that their remuneration should be determined by the Court on their application from time to time, but after the remuneration the subject of each such application has been submitted to the Creditors Committee for its consideration.
- 21 Accordingly, the Liquidators invite the Court to give directions authorising the establishment of the Creditors' Committee with the powers, functions and constitution set out in the Schedule to this Report.
- 22 In order for the Creditors Committee to exercise its powers and fulfil its functions, it clearly may be required to consider confidential information including information the subject of the banker's duty of confidentiality.

Accordingly, if the Court authorises the establishment of the Creditors Committee, the Liquidators invite the Court to give directions enabling the Liquidators to disclose such information to the members (and their identified solicitors) provided that the members agree to treat such information as confidential.

F. Creditors' Meeting

23 The Liquidators acknowledge that the views of many of the creditors will not have been taken into account in determining the membership of the Creditors Committee and to that extent the committee may be thought to be less representative of the creditors' wishes than would be the case if a creditors' meeting were convened for that purpose pursuant to s.141 of the Insolvency Act 1986.

24 There are, as indicated by Counsel for the Depositors' Protection Association at the hearing on 14 January 1992, significant practical problems to be overcome in calling and holding a creditors' meeting. On the assumption that such a meeting were to be held in England alone, such problems include the following:

24.1 Venue. The Official Receiver has informed the Liquidators that in his experience a reasonable rule of thumb for attendances at first meetings of creditors in compulsory liquidations is that 10% of UK creditors can be expected to attend, although he acknowledges that the circumstances of BCCI are exceptional. The Liquidators believe that it would be essential to allow for an excess over that number, to avoid any problems of overcrowding if more than the expected number of creditors were to wish to attend, and accordingly consider the provision should be made for up to 25% attendance, or some 35,000 people. There are

relatively few venues in England capable of accommodating such numbers under cover. Earl's Court has a capacity to seat 28,000; Stamford Bridge 23,000; Wembley Arena has 10,000 permanent seats but with the capacity to add more; and the National Exhibition Centre at Birmingham may permit 35,000 to be seated utilising overflow capacity with video linking.

24.2 Costs. Costs would be significant. The Liquidators are advised that the chosen venue would need to be hired for two days to enable the necessary facilities to be organised and have costed (on a very preliminary basis) the holding of the Creditors' Meeting at the National Exhibition Centre as follows:

Hire of venue	£88,000
Seat hire	£94,000
Security	£30,000
Stage presentation and video link	£65,000
Central administration	£65,000
Electoral administration	<u>£50,000</u>
	<u>£392,000</u>

24.3 Proof of Debt. Rule 4.67 of the Insolvency Rules 1986 limits entitlement to vote at creditors' meetings to persons who have lodged a proof of debt and whose claim has been admitted by the Chairman of the meeting pursuant to Rule 4.70 for the purpose of entitlement to vote. If only creditors admitted for dividend were to be permitted to vote, there would inevitably be a substantial delay before that process could be sufficiently advanced to enable a committee elected at the creditors' meeting to be more representative of the creditors wishes than the Creditors Committee. The Liquidators' present estimate is that the

process of admitting or rejecting creditors' proofs is not likely to be substantially completed before November 1992 and accordingly the meeting could not appropriately be held before then. There is power (r.4.67(2)) for the Court, in exceptional circumstances, to permit creditors to vote without proving, but in the present case, where BCCI's records even in relation to UK creditors are unreliable and where the Liquidators have presently little or no knowledge of the individual claims of creditors other than UK creditors, the Liquidators do not consider that it would be appropriate for the Court to exercise that power. For the same reasons, the Liquidators do not consider it would be appropriate for proofs to be admitted for the purpose of entitlement to vote without the Liquidators conducting any exercise of verifying those proofs.

24.4 Timing. Because of the international element of BCCI's operations, and the foreign residence of very many creditors, substantial notice of the meeting (in excess of the minimum 21 days required by rule 4.54(3)) would have to be given to enable travel arrangements to be made.

25 While these practical problems of calling the meeting are undoubtedly significant, the Liquidators would not themselves regard the logistics of calling the meeting as an insuperable obstacle if the meeting could reasonably be expected to satisfy the objective of producing a more democratic and representative membership of the committee.

26 Consideration of the problems of convening a meeting of creditors has led the Liquidators to identify potentially more serious problems in the conduct of such a meeting and as to whether such a meeting would result in or would leave creditors with the perception that the meeting had resulted in a committee more representative than the Creditors Committee. Registration of even 20,000 creditors (essential both to ensure that only properly entitled persons did vote

and to enable the Liquidators to comply with their obligations under Rule 4.71(2) of compiling a list of those attending) would plainly take several hours at least, leaving those who registered first with, perhaps a half day of waiting until registration was completed. The Liquidators envisage that it might be possible to reduce these delays to some extent by implementing a system of pre-registration: this would, however, have to be carefully administered and would add to the costs.

27 Any presentation, even of the single purpose of the meeting to elect a committee, and any explanation of the procedures involved, would have to be conducted in several languages. Arranging for individual creditors to speak or make their views known, otherwise than by voting would be likely to be impossible. Equally, even dealing with any questions from any one of 20,000 creditors as to the procedures involved would present the most formidable problems.

28 The procedure for electing a committee may also become extremely unwieldy. Rule 4.152 provides that any creditor is eligible to be a member of the committee. If 20,000 creditors attend, it may not be unreasonable to expect 500 or 1,000 nominations for membership of the committee. The Liquidators envisage it being very difficult to devise any system for enabling nominees to address the meeting so as to explain why their own election should be desirable. Accordingly, it appears that it may be extremely difficult for the creditors at the meeting to make any rational distinction between one nominee and another. Even if there were only 100 nominations, electing five committee members from 100 nominees with nothing to suggest any real reason to choose between them, could amount to little more than a lottery. The only sensible alternative would appear to be to restrict nominations, perhaps to persons selected by the Liquidators as representing various interests amongst the general body of creditors. Such restriction would, however, deprive the meeting of much of its justification.

- 29 If a meeting of creditors is to be held, it will clearly be necessary to apply to the court for directions in relation to the mechanics of calling and holding the meeting. In addition to the problems referred to above, such directions would need to address the questions of whether it would be appropriate to call meetings abroad and how "no correspondence" accounts should be dealt with.
- 30 There is a further factor which in the Liquidators' view is relevant to the assessment of the democratic nature of such a meeting. The Depositors' Protection Association, with whom the Provisional Liquidators sought to deal as one of the representatives of the general body of creditors, claim to represent or to have members whose claims total in excess of \$1,000 million. (The Depositors Protection Association has taken care to point out that it cannot warrant the validity of the claims of its members and supporters). In addition, the claims of local authorities total £81.87 million. On the footing that these are valid claims, it appears inevitable that the Depositors' Protection Association and the local authorities will have a considerable influence on any decision made at the meeting, so that the opportunity for other creditors to affect the membership of the committee may be limited.

G. Other matters

- 31 The Depositors' Protection Association representing the largest group of claimants have taken the view that summoning a meeting of creditors would be impracticable.
- 32 Drafts of this Report and the Schedule have been considered by the informal committee of creditors and the Secretary of State. The directions sought have been modified where considered appropriate in the light of comments from the informal committee of creditors. Copies of correspondence with solicitors acting

for members of the informal committee of creditors and with the Secretary of State will be provided in a separate bundle.

- 33 By Section 137(4) the Liquidators are required to give notice of their appointment to the company's creditors, and the Court may alternatively permit them to advertise their appointment. Section 137(5) requires such notice or advertisement to state whether it is proposed to summon a general meeting under Section 141 for the purpose of determining whether a Liquidation Committee should be established, and if not to set out the power of the company's creditors under Section 141 to require the liquidators to summon such a meeting. The Liquidators invite the Court to give directions permitting the Liquidators to give notice of their appointment to the company's creditors by advertisement (in the form required by Section 137(5) in the London Gazette and the Financial Times. The appointment of the Liquidators will be advertised worldwide pursuant to the directions given by the Court on 26 February 1992 but such advertisement is not intended to comply with the requirements of Section 137(5).

H. Directions sought

34 The Liquidators invite the Court to give directions:

- 34.1 as to whether or not the Liquidators should summon a meeting of creditors under Section 141 of the Insolvency Act 1986 for the purpose of electing a Liquidation Committee;
- 34.2 authorising the Liquidators under Section 137(4) of the Insolvency Act 1986 to give notice of their appointment to the company's creditors by advertisement in the London Gazette and the Financial Times;

34.3 in the interim before any creditors' meeting is held, alternatively if the direction in Paragraph 34.1 be in the negative, authorising the formation of the Creditors Committee with the powers, functions and constitution set out in the Schedule to this Report.

34.4 authorising and directing the Liquidators to disclose to the members of the Creditors Committee (and their identified solicitors) such information, documents and data relating to BCCI as may be required for the purposes of the Creditors Committee notwithstanding that such material may be confidential or relates to a person who may have the right to invoke the banker/customer right of confidentiality PROVIDED THAT such members agree prior to the provision of such material to use the same only for the purposes of performing their functions as members of the Creditors Committee and to treat such material as confidential.

A handwritten signature in black ink, consisting of the initials 'J.P.' followed by a stylized, cursive name that appears to be 'Richards'.

John Richards

For and on behalf of the Liquidators

28th February 1992

SCHEDULE

1 Committee's powers and functions

1.1 The Creditors Committee shall have the following powers and functions with regard to the exercise of the powers of the liquidators of Bank of Credit and Commerce International SA ("the company") specified in Parts I and II of Schedule 4 to the Insolvency Act 1986 ("Schedule 4"):-

1.1.1 The liquidators of the company may exercise the powers specified in Paragraphs 2 and 3 of Schedule 4 (compromise of claims etc) where the amount of the claim, call, debt or liability sought to be compromised is £10m or more, after consultation with the Creditors Committee, only with the prior sanction of the court.

1.1.2 Subject to Paragraph 1.1.3, the liquidators of the company may exercise all other powers in Parts I and II of Schedule 4, (including the powers specified in Paragraphs 2 and 3 of Schedule 4 involving claims, calls, debts or liabilities sought to be compromised of amounts of between £500,000 and £10m), with the prior sanction of the Creditors Committee: in cases of urgency the Creditors Committee may ratify what the liquidators have done provided that such ratification is sought by the liquidators without undue delay.

1.1.3 The liquidators of the company may exercise the powers specified in Paragraphs 2, 3 and 4 of Schedule 4 (compromise of claims etc; institution and defence of proceedings) where the amount involved is £500,000 or less without the prior sanction of the committee, but (where reasonably practicable to do so) after prior

consultation with the committee: in cases where it is not reasonably practicable so to consult with the committee, the liquidators shall submit reports to the committee as to exercise of such powers not more than two months after such powers have been exercised.

- 1.2 Any sanction given by the Creditors Committee under Clause 1 shall not be a general sanction but shall relate to a particular proposed exercise of the liquidators' power in question.
- 1.3 The liquidators remuneration for their services as such shall be determined from time to time on application to the court, after the same has been submitted to the Creditors Committee for its consideration and for the purposes of such consideration the Creditors Committee shall have due regard to the principles set out in Rule 4.127 of the Insolvency Rules 1986. On any such application to the court, the court may, if it appears to be a proper case, order the costs of the liquidators' application, including the costs of any member of the Creditors Committee appearing or being represented on it, to be paid out of the assets.
- 1.4 The liquidators may apply to the court for directions in relation to any matter the subject of the provisions in this Schedule and shall do so if the Creditors Committee so decides.

2

Membership of committee

- 2.1 The Creditors Committee shall consist of at least 3, and not more than 6, creditors of the company.

2.2 The first members of the Creditors Committee shall comprise:

- (1) Dr. Adil Elias
- (2) Mr. Raad Al-Zahawi (of Sheerbonnet Limited)
- (3) Frances Devlin (an employee)
- (4) Mr. David Swanney (a representative of the Deposit Protection Board)
- (5) Mr. B.E.N. Smallridge (a representative of the Local Authority creditors)
- (6) Mr. A. Scott (a representative of the trustees of Film and Photo Design Pension Trust)

Pending satisfaction by such members of the conditions set out in Clause 2.3 below (other than in the case of the representative of the Deposit Protection Board), such members shall be eligible to remain as members of the Creditors Committee so long as they appear to the Liquidators to be bona fide creditors of the company.

2.3 Any creditor of the company (other than one whose debt is fully secured) is eligible to be a member of the committee, so long as-

2.3.1 he has lodged a proof of his debt, and

2.3.2 his proof has neither been wholly disallowed for voting purposes, nor wholly rejected for purposes of distribution or dividend.

2.4 A body corporate may be a member of the committee, but it shall not act as such otherwise than by a representative appointed under Clause 7 below.

2.5 A representative of the Deposit Protection Board shall (in addition to the creditor members referred to in Clause 2.1) be entitled to be a member of the committee. Clauses 9 and 10 below shall not apply to

the Deposit Protection Board. The provisions in Section 58 of the Banking Act 1987 shall apply, so far as material, to the Deposit Protection Board's membership of the Creditors Committee notwithstanding any provision contained in this Schedule.

- 2.6 No person may act as a member of the committee unless and until he has agreed to do so.
- 2.7 If there is any change in the membership of the Creditors Committee, the liquidators shall report the change to the court.

3 **Obligations of liquidators to committee**

- 3.1 Subject as follows, the liquidators shall report to the members of the Creditors Committee all such matters as appear to the liquidators to be, or as the members have indicated to the liquidators as being, of concern to the members with respect to the winding up.
- 3.2 In the case of matters so indicated to them by the committee, the liquidators need not comply with any request for information where it appears to them that-
 - 3.2.1 the request is frivolous or unreasonable, or
 - 3.2.2 the cost of complying would be excessive, having regard to the relative importance of the information, or
 - 3.2.3 there are not sufficient assets to enable them to comply, or
 - 3.2.4 the request is for disclosure of a document forming part of the records of the company, or information contained therein, which the liquidators consider should be treated as confidential or is of such a nature that its disclosure

would be calculated to be injurious to the interests of the company's creditors, members or contributories.

Further, the liquidators need not comply with any request for information where the court directs that any such request should not be complied with.

- 3.3 A person who becomes a member of the committee at any time after its first establishment is not entitled to require a report to him by the liquidators, otherwise than in summary form, of any matters previously arising.
- 3.4 Subject to Rule 12.13 of the Insolvency Rules 1986, nothing in this Clause disentitles the committee, or any member of it, from having access to the liquidators' records of the liquidation, or from seeking an explanation of any matter within the committee's responsibility.
- 3.5 The foregoing clauses in this section are without prejudice to the rights of the Deposit Protection Board under Section 65 of the Banking Act 1987.

4 **Meetings of the committee**

- 4.1 Subject as follows, meetings of the Creditors Committee shall be held when and where determined by the liquidators.
- 4.2 The liquidators shall call a meeting of the committee to take place -
- 4.2.1 if so requested by a member of the committee or his representative (the meeting then to be held within 21 days of the request being received by the liquidators), and

4.2.2 for a specified date, if the committee has previously resolved that a meeting be held on that date.

4.3 The liquidators shall give 7 days' written notice of the venue of a meeting to every member of the committee (or his representative, if designated for that purpose), unless in any case the requirement of the notice has been waived by or on behalf of any member.

Waiver may be signified either at or before the meeting.

5

The chairman at meetings

5.1 The chairman at any meeting of the Creditors Committee shall be one of the liquidators of the company, or a person nominated by them to act.

5.2 A person so nominated must be either-

5.2.1 one who is qualified to act as an insolvency practitioner in relation to the company, or

5.2.2 an employee of the liquidators or their firm who is experienced in insolvency matters.

6

Quorum

A meeting of the committee is duly constituted if due notice of it has been given to all members, and at least 2 members are present or represented.

Committee-members' representatives

- 7.1 A member of the Creditors Committee may, in relation to the business of the committee, be represented by another person duly authorised by him for that purpose.
- 7.2 A person acting as a committee-member's representative must hold a letter of authority entitling him so to act (either generally or specifically) and signed by or on behalf of the committee-member.
- 7.3 The chairman at any meeting of the committee may call on a person claiming to act as a committee-member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient.
- 7.4 No member may be represented by a body corporate, or by a person who is an undischarged bankrupt or is subject to a composition or arrangement with his creditors.
- 7.5 No person shall-
- 7.5.1 on the same committee, act at one and the same time as representative of more than one committee-member, or
- 7.5.2 act both as a member of the committee and as representative of another member.

8

Resignation

A member of the Creditors Committee may resign by notice in writing delivered to the liquidators.

9

Termination of membership

9.1 A person's membership of the Creditors Committee is automatically terminated if-

9.1.1 he becomes bankrupt or compounds or arranges with his creditors, or

9.1.2 at 3 consecutive meetings he is neither present nor represented (unless at the third of those meetings it is resolved that this Clause is not to apply in his case).

9.2 The membership of a member is also automatically terminated if he ceases to be, or is found never to have been, a creditor.

10

Removal

A member of the committee may be removed by the court.

11

Vacancy

11.1 The following applies if there is a vacancy among the members of the committee.

- 11.2 The vacancy need not be filled if the liquidators and a majority of the remaining members so agree, provided that the total number of members does not fall below the minimum required by Clause 2.1 above.
- 11.3 The liquidators may appoint any creditor (being qualified under these provisions to be a member of the committee) to fill the vacancy, if a majority of the other members agree to the appointment, and the creditor concerned consents to act.
- 11.4 Alternatively, the court may decide that a creditor be appointed (with his consent) to fill the vacancy.

12 **Voting rights and resolutions**

- 12.1 At any meeting of the committee, each member of it (whether present himself, or by his representative) has one vote; and a resolution is passed when a majority of the members present or represented have voted in favour of it.
- 12.2 Every resolution passed shall be recorded in writing, either separately or as part of the minutes of the meeting. The record shall be signed by the chairman and kept with the records of the liquidation.

13 **Resolutions by post**

- 13.1 In accordance with this Clause, the liquidators may seek to obtain the agreement of members of the Creditors Committee to a resolution by sending to every member (or his representative designated for the purpose) a copy of the proposed resolution.

- 13.2 Where the liquidators make use of the procedure allowed by this Clause, they shall send out to members of the committee or their representatives (as the case may be) a copy of any proposed resolution on which a decision is sought, which shall be set out in such a way that agreement with or dissent from each separate resolution may be indicated by the recipient on the copy so sent.
- 13.3 Any member of the committee may, within 7 business days from the date of the liquidators sending out such a resolution, require them to summon a meeting of the committee to consider the matters raised by the resolution.
- 13.4 In the absence of such a request, the resolution is deemed to have been passed by the committee if and when the liquidators are notified in writing by a majority of the members that they concur with it.
- 13.5 A copy of every resolution passed under this Clause, and a note that the committee's concurrence was obtained, shall be kept with the records of the liquidation.

14 **Liquidators' reports**

- 14.1 The liquidators shall, as and when directed by the Creditors Committee (but not more than once in any period of 2 months), send a written report to every member of the committee setting out the position generally as regards the progress of the winding up and matters arising in connection with it, to which they (the liquidators) consider the committee's attention should be drawn.

14.2 In the absence of such directions by the committee, the liquidators shall send such a report not less often than once in every period of 6 months.

14.3 The obligations of the liquidators under this Clause are without prejudice to those imposed by Clause 3.

15 **Expenses of members, etc.**

The liquidators shall defray out of the assets, in the prescribed order of priority (as defined in r. 13.13 of the Insolvency Rules 1986), any reasonable travelling expenses directly incurred by members of the Creditors Committee or their representatives in respect of their attendance at the committee's meetings, or otherwise on the committee's business.

16 **Dealings by committee-members and others**

16.1 This Clause applies to-

16.1.1 any member of the Creditors Committee,

16.1.2 any committee-member's representative,

16.1.3 any person who is an associate (as defined in s. 435 of the Insolvency Act 1986) of a member of the committee or a committee-member's representative, and

16.1.4 any person who has been a member of the committee at any time in the last 12 months.

16.2 Subject as follows, a person to whom this Clause applies shall not enter into any transaction whereby he-

16.2.1 receives out of the company's assets any payment for services given or goods supplied in connection with the administration, or

16.2.2 obtains any profit from the administration, or

16.2.3 acquires any asset forming part of the estate.

16.3 Such a transaction may be entered into by a person to whom this Clause applies-

16.3.1 with the prior leave of the court, or

16.3.2 if he does so as a matter of urgency, or by way of performance of a contract in force before the date on which the company went into liquidation, and obtains the court's leave for the transaction, having applied for it without undue delay, or

16.3.3 with the prior sanction of the Creditors Committee, where it is satisfied (after full disclosure of the circumstances) that the person will be giving full value in the transaction.

16.4 Where in the committee a resolution is proposed that sanction be accorded for a transaction to be entered into which, without that sanction or the leave of the court, would be in contravention of this Clause, no member of the committee, and no representative of a member, shall vote if he is to participate directly or indirectly in the transaction.