

2 November 2005

PRESS RELEASE ISSUED ON BEHALF OF THE ENGLISH LIQUIDATORS OF BCCI SA

1. The English and Luxembourg Liquidators of BCCI SA and the English Liquidation Committee (i.e. creditors' committee) have recently sought the guidance of the Chancellor of the High Court with regard to the future conduct of the action against the Bank of England that was commenced in May 1993. Their application to court came before the Chancellor and was heard over three days. The Chancellor heard the arguments of the Liquidators, the Luxembourg Liquidators and the English Liquidation Committee. In a reserved judgement given earlier today, he held that it was no longer in the best interests of creditors for the litigation to continue and directed that the action be discontinued. The Liquidators have now served a notice of discontinuance bringing the case to an end.
2. This decision needs to be viewed in the context of the overall success of the liquidation, and particularly in comparison with the prospects as envisaged when this litigation began in 1993. For example, in 1993 the Liquidators envisaged dividends of the order of 10%. By comparison by December this year they will have paid dividends totalling 81%.
3. The action was commenced in 1993 with the sanction of the then Vice-Chancellor. The English Liquidation Committee has taken a keen interest and has been kept fully and properly informed by the Liquidators and their lawyers of the steps taken in the action and its progress throughout the last 12 years. Notwithstanding that it has always been recognised that it was a challenging case, the Committee has always been supportive of it.
4. The Bank has invested a very substantial amount of money in its defence and this has increased the costs required to be spent by the Liquidators. The Bank's own costs have been running at approximately double the level of the Liquidators' costs. The case has continued far longer than anticipated, with far greater costs than expected, and it could continue for several years to

come. The Bank has made it very clear that normal commercial considerations do not apply to this issue and it will not negotiate.

5. When the House of Lords held that the case should go to trial with the minimum of procedural delays, it was hoped that the trial could start reasonably promptly after disclosure of the parties' documents, the most important being those of the Bank. Instead, there were delays resulting from contested applications for disclosure of documents by the Bank as well as by third parties which were mostly other branches of Government. The first proposed trial date was April 2003, but it was later deferred to October 2003 and finally to January 2004 on the Bank's application. The Bank unsuccessfully tried to defer the start of the trial to June 2004.
6. The history of the entire action has been marked by delays caused by the Bank's conduct of the defence. The Bank's attacks on the claim prior to the Liquidators' successful appeal to the House of Lords in March 2001 added an extra five years to the case. Thereafter, the Bank and the Treasury opposed disclosure of the documents in the archive of the Bingham Inquiry and the Liquidators were forced to fight this issue – successfully – in the Court of Appeal in August 2002. It was then many months before all the documents that had been requested were actually disclosed. Later the Bank opposed the disclosure of documents generated in its preparations to give evidence to the Bingham Inquiry. This, too, was an issue that the Liquidators successfully took to the Court of Appeal in April 2003.
7. One of the results of these tactics has been to tie up liquidation funds both in respect of the running costs of the litigation and in reserves for exposure to an adverse costs order. These funds would otherwise have been available for the creditors.
8. If the case were to continue it could last for several more years allowing for appeals and involve further enormous costs.
9. All this has to be set against the background of other aspects of the liquidation and an important consideration for the Committee has been that the Liquidators have already paid dividends totalling 75% and a further dividend of 6% (making a total of 81%) is to be paid in December this year. Furthermore it

is expected that at least one further dividend will be paid before the worldwide liquidations are closed. This compares with the approximately 10% envisaged when the Bank of England litigation commenced. It is hoped that the conclusion of the Bank of England action will result in an earlier release of provisions for the benefit of creditors. The Committee and the creditors are pleased with the success achieved in the liquidation.

10. This has been the most successful major financial liquidation ever, with a large part of the recoveries having come from actual or threatened litigation.

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NOTES FOR EDITORS

- (a) The proceedings were commenced in May 1993 with the sanction of the then Vice-Chancellor, Sir Donald Nicholls VC.
- (b) The claim against the Bank of England has been pursued by BCCI SA (acting solely through its Liquidators) as assignees of the claims of approximately 6,000 creditors of the English branches of BCCI SA, whose combined deposits amount to approximately £550 million as at the date of BCCI's closure. The Liquidators sought damages from the Bank in the range of £550 to £850 million for misfeasance in public office alleging failures in the licensing and supervision of BCCI SA.
- (c) Between 1995 and 2001 the Bank made a number of procedural and other attacks on the claim with the aim of having it struck out. The Liquidators resisted these attacks and in March 2001 the House of Lords, by a majority, allowed the case to go to trial. If these attacks had not been made, the trial might have started in 1998 or 1999 instead of in 2004.

- (d) In ordering that the case should go to trial in March 2001, Lord Hope said

"Justice should be even-handed whether the case be simple or whether it be complex. It is plain that the situation in which the claimants find themselves was not of their own making, nor are they to be blamed for the volume and complexity of the facts that must be investigated. I would hold that justice requires that the claimants be given an opportunity to present their case at trial so that its merits may be assessed in the light of the evidence."

Lord Steyn agreed, saying:

"It is a case that should be examined and tested with the procedure of advantages of a fair and public trial."

- (e) The House of Lords emphasised the importance of the trial judge hearing witnesses. Lord Hope said
- "In my opinion the documents alone do not tell the full story, and the question whether the Bank knew that loss to depositors was probable or was reckless in the relevant sense cannot be answered satisfactorily without hearing oral evidence".
- (f) Even after the House of Lords said that the case should go to trial with the minimum of procedural delays, delays were in fact caused by the refusal of the Bank and the Treasury to disclose documents (see paragraph 5 of the release).
- (g) The trial of the action commenced on 13 January 2004. The Liquidators closed their case after an address of 86 days on 13 July 2004, having called no witnesses, its address therefore amounting to its whole case.
- (h) The Bank commenced its opening speech on 19 July 2004 and that speech alone took 119 days, concluding on 25 May 2005.
- (i) The Bank served witness statements of 24 witnesses. Prior to the start of the trial the Bank indicated an intention to call 9 out of these

witnesses. In the first few weeks of its opening speech the Bank indicated an intention to call 4 further witnesses making a total of 13. On 4 May 2005, after referring in its opening speech to many of the statements of the 13 witnesses, indicated that it intended to call only 2, Brian Quinn and Peter Cooke, but in the wrong chronological order. Mr Cooke was head of supervision at the Bank from 1976 to 1984 and Mr Quinn overlapped with Mr Cooke and was head of supervision from 1984 until after BCCI's closure in July 1991. The Liquidators announced their intention to make an application for an order for the witnesses whose evidence had been referred to in opening to be tendered for cross-examination. The Bank signalled its intended opposition and the trial judge indicated a preliminary view that he might well have to deny the Liquidators' application.

- (j) On 13 June 2005 the Bank called its first witness, Mr Quinn. He was cross-examined for 28 days until 28 July 2005. The Liquidators had wanted to cross-examine him for not less than 48 days but the Bank successfully applied for an order curtailing the cross-examination.
- (k) On 26 September 2005 the Bank called Mr Cooke whose cross-examination terminated on 2 November 2005 when the Chancellor's decision (see paragraph 1 of the release) was announced.
- (l) The Liquidators' current legal costs are of the order of £38 million. By contrast, the Liquidators believe that the Bank has spent double that amount in defending the action.
- (m) The Liquidators have previously made a number of abortive attempts to negotiate a settlement. The Bank's position was that it would not negotiate any form of compromise.