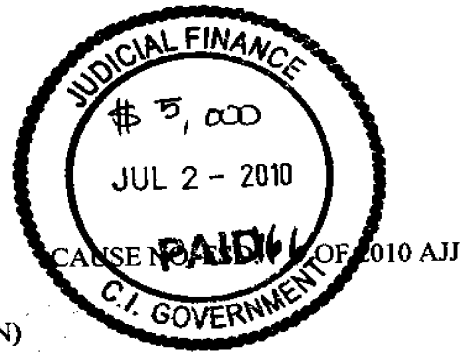


IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION



IN THE MATTER OF THE COMPANIES LAW (2009 REVISION)

IN THE MATTER OF THE BANKS AND TRUST COMPANIES LAW (2009 REVISION)

AND IN THE MATTER OF BANCO PRIVADO PORTUGUES (CAYMAN) LTD



WINDING UP PETITION

**TO:** The Grand Court of the Cayman Islands

**THE HUMBLE PETITION** of the Cayman Islands Monetary Authority ("CIMA") shows that:

- 1 Banco Privado Portugues (Cayman) Ltd (the "Licensee") is an exempted Cayman Islands company that was incorporated on 30 October 1997. The Licensee was granted a category "B" banking licence on 21 November 1997 and is engaged in providing offshore banking services. The Licensee also registered with CIMA as an Excluded Person on 29 January 2004.
- 2 The Principal Office and Authorised Agent of the Licensee is Close Bank (Cayman) Limited, PO Box 1034 GT, Harbour Palace, 103 South Church Street, Grand Cayman.
- 3 The shares of the Licensee are indirectly held by Banco Privado Portugues S.A. ("BPP S.A.") through its wholly owned subsidiary Banco Privado Portugues SGPS, a bank holding company incorporated in Portugal. Since the Licensee's incorporation, apart from the use of a statutory agent and a registered office in the Cayman Islands, all administrative and management functions of the Licensee appear to have been carried out by BPP S.A.'s management and personnel in Portugal.
- 4 BPP S.A. specialised in asset management both for private and institutional clients and also managed its own portfolio. As part of this banking business model, BPP S.A. incorporated the Licensee in the Cayman Islands.
- 5 On 16 April 2010, BPP S.A.'s Portuguese banking license was revoked.

- 6 On 29 April 2010, BPP S.A. was subject to a form of insolvency proceeding under the control of the Portuguese Central Bank (the "**Central Bank**") and a liquidation commission (the "**Liquidation Commission**") was appointed for this purpose.
- 7 On 27 May 2010 Messrs. David A. K. Walker and Ian D. Stokoe of PwC Corporate Finance & Recovery (Cayman) Limited were appointed to assume control of the affairs of the Licensee (the "**Controllers**").
- 8 At the time of the Controllers' appointment, the directors of the Licensee were Tiago Ferreira and Rui Guedes Domingues ("the Directors"). Messrs. Ferreira and Domingues gave notice of their resignation as directors of the Licensee on 29 June 2010 with immediate effect.
- 9 On 4 June 2010 by Order of the Grand Court (Cause No. FSD 151 of 2010), the Controllers obtained certain powers which permitted them to liaise with the Liquidation Commission and to report to CIMA with a recommendation.
- 10 On 8 June 2010 the Controllers and their staff met with members of the Liquidation Commission, including its president, and the Directors.
- 11 By way of an interim report dated 15 June 2010 (the "**Interim Report**"), the Controllers reported that:
- 11.1 The Licensee appears to be insolvent on a balance sheet basis. It is not known whether the Licensee is insolvent on a pure cash flow basis, simply because the Central Bank of Portugal may have taken steps under Portuguese law to prevent depositors from making demands upon the Licensee;
- 11.2 The records and affairs of the Licensee and BPP S.A.'s appear to be inextricably linked, for instance, all operations and administrative activities have been conducted on behalf of the Licensee by BPP S.A.'s staff in Portugal and there is no division of IT and accounting systems between the two entities;
- 11.3 Prior to the appointment of the Controllers, the Liquidation Commission had been content to deal with, and effectively control, the assets of the Licensee in conjunction with those of BPP S.A. The appointment of the Controllers has led to a reluctance on the part of the Liquidation Commission (and of course, the Licensee's Directors) to continue to control the Licensee's

affairs on the basis that they no longer have the power to do so. The appointment of the Controllers has effectively paralysed the affairs of the Licensee. The Liquidation Commission is now keen for the affairs and assets of the Licensee to be administered separately from those of BPP S.A., although with continued co-operation. The Liquidation Commission encouraged the Controllers to take an active role in the affairs of the Licensee;

- 11.4 It appears that substantial assets and liabilities of the Licensee were transferred in March 2010 to a special investment fund (Fundo Especial de Investimento Fechado) and units in that fund have been issued to depositors of the Licensee and of BPP S.A.; and
- 11.5 After the Interim Report was finalised, further information was received that required the Controllers to update the content of paragraph 6 of the Controllers' interim report entitled "Portuguese Government's Counter-Guarantee". The Controllers understand from their Portuguese colleagues that the EUR 450M facility granted by a syndicate of banks to BPP S.A. was in fact repaid in May 2010. The Controllers understand that the banks' challenge in the Portuguese Court relates to the validity of the counter guarantee apparently issued by the BPP Group and which may be secured by group assets, including those of the Licensee. Such security if valid may prejudice the rights of the banks in their capacity as depositors of the Licensee. The Controllers do not have any more information at this stage, however, once in liquidation, the liquidators can continue to investigate these circumstances and ensure the interests of the Licensee are appropriately protected in the Portuguese litigation.
- 12 The Controllers formed the view that the Licensee is balance sheet insolvent and that there are a number of matters that require further investigation to ensure that the interests of the Licensee's depositors have been properly protected. The Controllers recommended that CIMA petition for the winding up of the Licensee as soon as practically possible in order that its affairs might be fully investigated and assets realised for the benefit of depositors and creditors.
- 13 The Authority has duly considered the recommendation of the Controllers and concurs with their recommended course of action.
- 14 On 29 June 2010 the Executive Committee of CIMA resolved that pursuant to Section 18(4)(d) of the Banks and Trust Companies Law (2009 Revision), the Authority revoke the licence and apply to the Grand Court for an order that Banco Privado Portugues (Cayman) Ltd be forthwith wound up by that Court in which case the provisions of the Companies Law (2009 Revision) relating to the winding up of a company by that

Court shall, mutatis mutandis, apply. The revocation of the license will be effective simultaneously with the appointment of the liquidators.

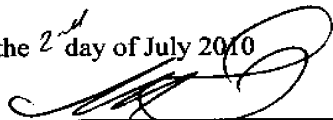
15 In the circumstances it is submitted that it is just and equitable that the Licensee should be wound up;

YOUR PETITIONER THEREFORE HUMBLY PRAYS as follows:

- (a) That the Licensee be wound up by the Court subject to the provisions of the Companies Law;
- (b) That Messrs. David A.K. Walker and Ian D. Stokoe of PwC Corporate Finance & Recovery (Cayman) Limited, PO Box 258, Strathvale House, Georgetown, Grand Cayman, KY1-1104, Cayman Islands be appointed as Joint Official Liquidators ("JOLs") of the Licensee, and that the JOLs be authorised to do any acts or things jointly and severally considered by them to be necessary or desirable in connection with the liquidation of the Licensee and the winding up of its affairs;
- (c) That the JOLs shall not be required to give security for their appointment;
- (d) That in addition to all the powers, conferred upon the JOLs at section 110 of the Companies Law and for the avoidance of doubt:
  - (i) The JOLs be at liberty to appoint agents and attorneys, solicitors, barristers and other professionally qualified persons, in the Cayman Islands, Portugal and elsewhere, to assist them in the performance of their duties on such terms as they think fit and to remunerate them out of the assets of the Licensee as an expense of the liquidation; and
  - (ii) All the powers bestowed upon the JOLs may be exercised by them within and outside the Cayman Islands (including without limitation in Portugal) and all such powers may be exercised by all or any of the JOLs.
- (e) That the JOLs be at liberty to and do pay themselves, their agents and attorneys, solicitors, barristers and other professionally qualified persons, in the Cayman Islands and elsewhere, remuneration and costs in priority to all other debts of the Licensee pursuant to section 109(2) of the Companies Law, and:

- (i) That the JOLs be entitled to receive remuneration for their services by reference to the time properly given by them and their staff in attending to matters arising in the winding up; and that the hourly rates and the amount of such remuneration be determined in accordance with the Insolvency Practitioner's Regulations 2010;
  - (ii) The JOLs be entitled to pay their agents and attorneys, solicitors, barristers and other professionally qualified persons, in the Cayman Islands and elsewhere either weekly or monthly or at such intervals as they consider appropriate; and
  - (iii) The JOLs be at liberty to meet all disbursements reasonably incurred with the performance of their duties.
- (f) That the JOLs do file with the Clerk of the Court a report in writing of the position and progress made with the winding up of the Licensee and with the realisation of assets thereof and as to any matters connected to the winding up of the Licensee, every six months or as the Court may from time to time direct;
- (g) The JOLs shall provide to the Petitioner copies of all reports filed with this Court;
- (h) That the costs of this Petition and of the Controllership be paid out of the assets of the Licensee as an expense of the liquidation; and
- (i) Such other order and directions may be made as the Court thinks fit.

Dated the 2<sup>nd</sup> day of July 2010



**CAYMAN ISLANDS MONETARY AUTHORITY**

#### **NOTICE OF HEARING**

**TAKE NOTICE THAT** the hearing of this petition will take place at the Law Courts George Town, Grand Cayman on \_\_\_\_ day of \_\_\_\_\_ 2010 at \_\_\_\_ a.m./p.m.

**This Summons for Directions** was issued by the Cayman Islands Monetary Authority whose address for service is 80e Shedden Road, Elizabethan Square, P.O. Box 10052, Grand Cayman KY1-1001, Cayman Islands on behalf of the Petitioner.