

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: *239* OF 2007

IN THE MATTER OF THE EVIDENCE (PROCEEDINGS IN OTHER JURISDICTIONS) (CAYMAN ISLANDS) ORDER 1978

AND

IN THE MATTER OF THE HAGUE CONVENTION ON THE TAKING OF EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS 1970

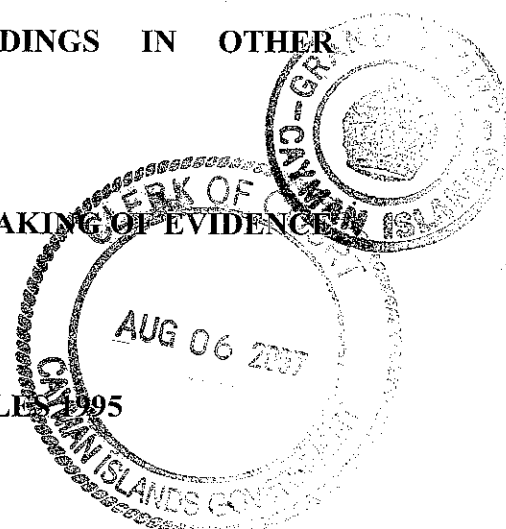
AND

IN THE MATTER OF ORDER 70 OF THE GRAND COURT RULES 1995

EX PARTE ORIGINATING SUMMONS


LET ALL PARTIES attend before the Judge in Chambers at the Law Courts, George Town, Grand Cayman on the        day of        , 2007, at        o'clock in the forenoon/afternoon, on the hearing of an application by the Attorney General **for an order that:**

1. The Joint and Provisional Liquidators of the company BII Creditanstalt International Ltd., duly appointed by the Grand Court of the Cayman Islands in Cause No. 239 of 2002, In re BII Creditanstalt International Ltd, Messrs Christopher D. Johnson and J. I. Nicholas Freeland, both of PriceWaterhouseCoopers, P O Box 258 GT, Strathvale House, 238 George Town, Grand Cayman, Cayman Islands do appear before the Clerk of the Grand Court at such place, date and time as determined by the Clerk of Court in relation to the matter set out in the Schedule hereto.
2. Christopher Johnson and J. I. Nicholas Freeland do apply to the Grand Court pursuant to section 4 of the Confidential Relationships (Preservation) Law for directions as to the manner of giving evidence within 7 days of the service of any order of this Honourable Court herein.



3. That the Clerk of Court do cause to be transcribed and recorded the evidence of the said Christopher Johnson and J. I. Nicholas Freeland, file same in the Registry of the Grand Court and do forward the said transcripts together with any exhibits produced to German Juez Castenada, National Judge of Original Jurisdiction in Commercial Matters No. 21 with seat at Marcelo Torcuato de Alvear 1840, Floor 3, in the City of Buenos Aires, in the Republic of Argentina.
4. Such other orders and directions as this Honourable Court deems fit.

Dated the *07* day of *August*, 2007.

  
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Crown Counsel  
For and on behalf of the Honourable Attorney General  
Central Authority for the Cayman Islands

TO: Clerk of the Court  
Court House  
George Town  
Grand Cayman

**Time estimate: The estimated length of the hearing of this summons is 30 minutes.**

This Ex Parte Summons was issued by the Central Authority whose address for service is c/o the Legal Department, P O Box 907, 1<sup>st</sup> Floor Ansbacher House, Dr. Roy's Drive, George Town, Grand Cayman, Cayman Islands.

## SCHEDULE

- a) If at BII's creditors's meetings held in the City of Montevideo on December 18<sup>th</sup>, 2002 all of BII's allowed creditors were given a set of documents both in English and Spanish related to background, reports, opinions, voting procedures, Proposal from HypoVereinsbank, etc., all in accordance with the documents to be duly sent to the Joint Liquidators for them to certify the authenticity of the contents of the copy hereto attached (BII Proposal November 2002 "**the Proposal**").
- b) If in the documents to which they have had access acting as Joint Provisional Liquidators and Joint Liquidators the following statements arise:
1. On September 10<sup>th</sup>, 1980, BII was incorporated under the corporate name "Americapital International Bank" in the Cayman Islands. On December 30<sup>th</sup>, 1988 the corporate changed its name to "Banco Interfinanzas International Ltd. " and in April 1999, its name was changed to "B.I.I. Creditanstalt International Bank Ltd."
  2. The corporate domicile of BII was originally set at the offices of Bank of Austria Cayman Islands Ltd., P.O. Box 3162 SMB, 2 Artillery Court, Shedden Road, George Town, Grand Cayman, Cayman Islands, and after the Grand Court of the Cayman Islands ordered its liquidation, its domicile is currently at PricewaterhouseCoopers, P.O. Box 258 GT, Strathvale House, 238 George Town, Grand Cayman, Cayman Islands.
  3. At the date of its incorporation, BII's authorised share capital was equal to US\$20,000,000, represented by 20,000,000 ordinary shares with par value of US\$1 each.

4. Shares have been duly issued and fully paid and are held equally by two shareholders: Bank Austria and Wiener Holdings Limited (a company incorporated in the British Virgin Islands).
5. If Wiener Holdings Limited is a company incorporated under the laws of the British Virgin Islands and, in accordance with the reports issued by BII's Joint Provisional Liquidators, the holders of its shares are Messrs. Miguel Angel Angelino (Chairman of BII) and Jose Maria Gonzales de la Fuente (Vice Chairman of BII).
6. If BII is insolvent given the fact that on April 10<sup>th</sup>, 2002 BII filed a winding up petition in the Cayman Islands and that on the same date Messrs. Christopher D. Johnson and J.I. Nicholas Freeland were appointed Joint Provisional Liquidators.
7. If in accordance with the documents kept by the Joint Liquidators, in view of an action exclusively conducted in the Republic of Argentina, BII attracted funds in the Republic of Argentina and that the majority of BII's depositor creditors are Argentine residents. (This request is not aimed at obtaining individual identification of creditors but of them as a whole).
8. If BII developed the great majority of its activities outside the boundaries of the Cayman Islands and specifically if they were carried out in the Republic of Argentina.
9. If BII's main corporate purpose or, in other words, BII's main operations or its business centre, was located in the Republic of Argentina, specifically in Bouchard 547, 24<sup>th</sup> and 25<sup>th</sup> floors, in the City of Buenos Aires.
10. If the majority of BII's depositor creditors are residents of the Republic of Argentina as clearly arises from the proof of claims process duly

organized and conducted by Price Waterhouse Coopers' representatives simultaneously in this City of Buenos Aires, the City of Montevideo, Republic of Uruguay and the Cayman Islands.

11. If most of BII's debtors are companies or persons residing in the Republic of Argentina or whose main activities are carried out in the country.
12. If activities to attract funds and grant credits were performed at BII's office in the Republic of Argentina.
13. If In accordance with BII's Joint Provisional Liquidators' report dated May 8, 2002 BII's Director Gabriel Falger was acting as "General Counsel and Managing Director of HypoVereinsbank", New York branch and if according to the same report, Bank Austria's employees Mariano Felder and Theodor Plank received annual fees of USD 36,000 and USD 72,000 respectively for their services to BII.
14. If BII's accounting activities were recorded by Americapital Bookkeeping Services S.A. (ABS) a Uruguayan company.
15. If at the moment of attending the meeting, BII's creditors basically had the information provided by the Joint Provisional Liquidators who elaborated an assets and liabilities statement attached as part of the Proposal duly distributed and delivered to all BII's creditors both in English and Spanish, which will be attached to the request for reports in accordance with the Proposal.
16. If the Joint Provisional Liquidators made an estimation of liquid assets which would constitute the basis for the repayment of BII's debts on the basis of the information provided by BII's Directors.

17. If in the reports elaborated by the Joint Provisional Liquidators in respect of the collectability indexes and BII's loans portfolio assessment which collection management would be the only source for the repayment of creditors' claims it was stated that funds arising from collection of said portfolios would be enough to face the scheduled payments pursuant to the terms of the Proposal.
18. If all the information the Joint Provisional Liquidators used as the basis to elaborate the reports – especially the one called “Assets and Liabilities estimated statement as a October 31<sup>st</sup> 2002” – related to the collectability indexes of BII's loans portfolio as well as their assessment was provided by officers of Bank Austria Creditanstalt AG and/or Directors appointed by the latter in BII and/or by the Directors of BII and/or by officers of Bayerische Hypo-Und Vereinsbank AG, New York Branch, who actively took part in BII's liquidation process and all of them jointly or individually provided all documents that served as the bases for the Joint Provisional Liquidators to elaborate reports duly given to creditors before the Creditors' Meeting wherein the Proposal was to be submitted to consideration.
19. If based upon facts which occurred after the elaboration of the report dated October 31, 2002 the information provided by the aforesaid was inaccurate and biased and what was reported did not match real facts and the portfolio collectability did not relate to the reports sent to the Joint Provisional Liquidators.
20. If on the basis of the facts thereafter occurred, the Joint Provisional Liquidators consider that the information provided to them by Bank Austria, its officers and BII's managers was deliberately deceitful, meaning that debts and the possibility of recovery were “inflated” to lead them to elaborate an inaccurate report that consequently conditioned the creditor's favourable vote.

21. If Bayerische Hypo-Und Vereinsbank AG, through its New York branch, promoted and obtained from BII's creditors, before the Creditors' meeting and subject to the approval of the payment Proposal, the granting of a percentage of their claims against BII in its favour to obtain the waiver of all rights or lawsuit arising from BII or BICA's activities against Bayerische Hypo-Und Vereinsbank AG or any natural person or legal entity related to Bayerische Hyp-Und Vereinsbank AG or Bank Austria Creditanstalt AG or any shareholder, director, officer or person related to Bank Austria Creditanstalt AG and/or Bayerische Hypo-Und Vereinsbank AG.
22. If Bayerische-Hypo Und Vereinsbank AG subordinated the acquisition of said portion of credits to the approval of the schedule of payments proposed by BII. If the text of the Waiver and Assignment document intended to be signed is the one duly distributed to creditors both in English and Spanish viz., the Proposal
23. If it is correct that, based upon the information with the Joint Liquidators, in May 1999 BII and Bank Austria Creditanstalt AG entered into an agreement called "Silent Founded Participation Agreement" related to the characteristics and means of some credit operations carried out in the Republic of Argentina wherein BII really acted as creditor and funds purveyor, notwithstanding the fact that to the presumable effect of obtaining irregular tax benefits, Bank Austria Creditanstalt AG dealt with the fronting of operations, thus appearing as creditor before debtors.
24. If Bayerische Hyp-Und Vereinsbank AG acting as controlling company of Bank Austria Creditanstalt AG, offered BII in liquidation – and informed so as to all creditors – a revolving line of credit of up to USD 10,000,000 aimed at "increasing the certainty of the payment goal to creditors in view of the Agreement and reduce the risk of case shortfall in the recovery of

assets for Class A and B creditors”. If in the same letter it is said that: “Let us repeat that we sincerely consider that the approval of the Agreement provides the most positive approach aimed at the recovery of BII’s assets in the forthcoming years. Not only does it represent a benefit to HVB (Bayersische Hypo-Und Vereinsbank AG) Group but also to the general interest of all creditors. Again, given the hard reality in Argentina, we hope the Agreement is strongly supported by its creditors to avoid BII’s liquidation.

25. If they are aware that a group of BII’s creditors filed a lawsuit in Austria and Switzerland against Bank Austria Creditanstalt AG for the recovery of their claims against ABII.
26. If as a result of said lawsuit, Bank Austria Creditanstalt AG entered into a conciliation agreement during the 3<sup>rd</sup> quarter of 2005 in view whereof it agreed to pay in favour of more than one hundred and thirty of BII’s creditors an amount equivalent to 70% of their claims against BII and consequently became assignee of these creditors’ loans.
27. Notwithstanding the information requested in 2.25 and 2.26 above, in the event that the Joint Liquidators had no confirmation of the actions by and/or results of actions by a group of creditors and Bank Austria Creditanstalt AG, that they report if during the second half of 2005 they were notified by any assignments of rights from creditors of BII in favour of Bank Austria Creditanstalt AG as a result of which the latter, in its capacity of assignee, acquired all the rights in respect of certain depositors.

**END OF SCHEDULE**