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Attorney-at-Law of
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Parker House, Wildey Business Park
Wildey, St. Michael, Barbados

BARBADOS

No. 2092 of 2006

**IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION**

IN THE MATTER of Bancafé International
Bank Ltd

AND IN THE MATTER of the International
Financial Services Act Cap 325 of the
laws of Barbados

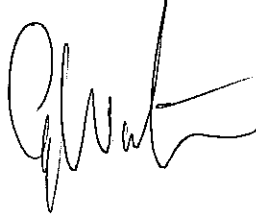
AFFIDAVIT

I **CRAIG WATERMAN** of Unit 29, El Sol Sureno Durants Christ Church
MAKE OATH AND SAY as follows:

1. I am a Director of PricewaterhouseCoopers EC Inc which has been appointed by Court Order dated the 29th day of November 2006 as Custodian to supervise the compulsory winding-up of Bancafé International Bank Ltd (BIB) pursuant to the International Financial Services Act Cap No 5 of 2002 of the Laws of Barbados (the "IFSA"). I am the Director responsible for the conduct of the said winding up.
2. I am able to make this Affidavit save where otherwise appears on the basis of facts and matters which are within my own knowledge and which I know to be true. When I refer to some other source of information that information is true to the best of my knowledge and belief.
3. This Affidavit is supplemental to my previous Affidavit filed herein on the 3rd day of September 2009 ("my previous Affidavit") and is filed in support of the application before the Court filed by the Custodian which seeks an extension of time to file its second report pursuant to the Order of this Court dated the 29th day of November 2006 and Court approval of a partial distribution to the creditors and depositors of BIB (hereinafter called "the claimants") pursuant to Section 87 (1) of the IFSA.

4. The Custodian has completed the second report which it seeks an extension of time to file. A true copy of the Custodian's second report and which sets out amongst other things the Custodian's actions receipts and disbursements since the first report is now shown to me annexed hereto as Exhibit "CW 1".

SWORN TO by the deponent, the said)
CRAIG WATERMAN)
at the Registry Office, Law Courts,)
Coleridge Street on the ~~12th~~^{13th} day)
of November, 2009)



Before me:

M. Maynard
Legal Assistant

This Affidavit was filed by Messrs. Clarke Gittens Farmer Attorneys-at-Law for the Applicant whose address for service is Parker House, Wildey Business Park, Wildey, St. Michael.

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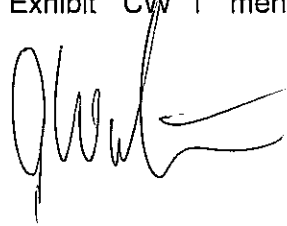
IN THE MATTER of Bancafé
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AND IN THE MATTER of the
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EXHIBIT "CW 1"

This is a copy of the document marked Exhibit "CW 1" mentioned and referred to in the Affidavit.

SWORN TO by the deponent, the said)
CRAIG WATERMAN at the Registry)
Office, Law Courts, Coleridge Street)
on the ~~12th~~ day of ~~November~~, 2009)
13th MM!



Before me:

M. Maynard
Legal Assistant

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CIVIL DIVISION

IN THE MATTER of Bancafe
International Bank Ltd.

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SECOND REPORT TO THE COURT

1. The Central Bank of Barbados seized management and control of Bancafe International Bank Ltd. ("BIB") on October 23, 2007 pursuant to section 59 (1) (a) of the International Financial Services Act ("IFSA"). This action was brought about as BIB was deemed to be insolvent.
2. PricewaterhouseCoopers EC Inc. was appointed by Court Order dated November 29, 2006, as Custodian to supervise the compulsory winding-up of BIB pursuant to the International Financial Services Act Cap No 5 of 2002 of the Laws of Barbados.
3. This is the Custodian's second report made pursuant to the Order of this Court dated November 29, 2006. The first report was submitted on August 20, 2007 ("the First Report").

ACTIVITIES OF THE CUSTODIAN

Access to Books and Records

4. The Custodian filed an action on March 6, 2009 in the Guatemalan courts to gain access to historical financial data and customer account information contained on storage tapes. There are two copies of such tapes – one being held offsite by a company as part of an agreement with the Bancafe Grupo Financiero del Pais ("Grupo"), a group of companies of which BIB had been a member when operational, and the other held by Corfina, a quasi-governmental Guatemalan agency in charge of overseeing the liquidation of Bancafe in Guatemala. The storage company requested a formal Order of a Guatemalan court in order that the tapes could be released to the Custodian. It is believed that access to the information held on the tapes will assist the Custodian in resolving many issues, including providing greater insight into the reasons for the BIB's collapse.

An Order for the tapes was obtained on March 16, 2009 and Guatemalan counsel is fulfilling the necessary formalities to take possession.

Recent discussions with Corfina have been positive and we expect to obtain their cooperation for the release of the tapes without further legal action.

Claims Process and Distribution

5. Since the Order of this Court of March 27, 2008 allowing the Custodian to make a partial distribution to claimants of US\$27,800,000.00, 2,697 accounts with agreed claims totalling US\$148,366,404 have received a distribution

totalling US\$23,770,032,. The status of the claims process is further summarised as follows:

- a. 2,697 claims have been accepted to receive a distribution – total claim amount US\$148,366,404.
 - b. 139 claims have been deferred pending the receipt of missing information, signatures do not match, or amounts have been disputed - US\$2,675,358.
 - c. One claim in the amount of US\$3,500,000 has been rejected outright.
 - d. We have yet to receive claims for 558 accounts with balances totalling US\$8,459,639.
6. During the claims process the Custodian received claim forms from 44 Certificate of Deposit holders whose accounts were not listed on the schedule of Certificates of Deposit received from the Central Bank of Barbados as at the date of appointment. These Certificates of Deposit expired at or around October 19, 2006, the date that BIB's operations were halted by the regulators in Barbados and Guatemala. Research conducted into various suspense accounts maintained in the BIB's accounting system has revealed that some of the 44 claims additional claims received are valid and therefore they are being processed for payment.
7. The Custodian's staff has encountered significant delays in obtaining access to the books and records necessary to carry out this review, but will continue to research the status of the said accounts to ensure that potential claims are given sufficient opportunity to be proved.
8. Further analysis and review has revealed that there are potentially another 226 Certificates of Deposit which are referred to as "pending renewal" in the BIB's accounting system. These 226 claims have a total balance of approximately US\$24.9M, however, before a conclusion can be made as to the validity of these potential claims, additional research needs to be undertaken. The Custodian has not been contacted by any of the depositors in respect of these 226 Certificates of Deposit.
9. A dividend reserve has been maintained sufficient to account for payments that may be due to the potential claimants described above.

Alleged Trust for Account Holders

10. In the First Report the Custodian informed this Court that some of the former shareholders of Grupo, which had several related companies such as: Banco Del Café, Seguros del Pais, Almacenadora del Pais and Financiera del Pais and others created a trust, named *Fideicomiso FAS of Bancate International Bank* ("the Trust"). It has been claimed that shares of companies of Grupo were contributed to the Trust for the benefit of the depositors of BIB. BIB depositors were invited to exchange their investment certificates or claims in the BIB estate for participation certificates in the Trust.
11. There are 402 BIB depositors with claims totalling US\$23.5M who received a total distribution of approximately US\$4.9M from the Trust in return for an assignment of their claim in the BIB estate. The Custodian has taken the decision that any depositor participating in the Trust is currently not eligible for a distribution in the BIB estate, the rationale being that the Trust may in the future bring a claim in the BIB estate and the Custodian could be faced with the situation of paying the same claim twice. Furthermore, there is a possibility that assets that should have been available in the winding up of BIB may have been liquidated by the Trust.

Jurisdictional Issues & Legal Actions against BIB filed in Guatemala

12. As mentioned in the First Report jurisdictional issues have consumed a significant amount of the Custodian's time and that of legal counsel in

Barbados and Guatemala. The reason for the challenges to jurisdiction is that there is no immediate stay of legal proceedings for actions filed against BIB in Guatemala.

13. Barbados is the jurisdiction in which BIB was incorporated and regulated, and hence the Custodian was appointed by the High Court of Barbados pursuant to the IFSA. However, many depositors of BIB filed legal actions in Guatemalan seeking to have the Guatemalan courts hear actions surrounding the liquidation.
14. Guatemalan counsel for the Custodian have had to defend numerous jurisdiction cases and have had good success in their efforts to have Barbados and the Barbados Courts established as the appropriate jurisdiction to oversee the liquidation of BIB.
15. On March 6, 2009 the Supreme Court of Justice of Guatemala stated that Certificates of Deposit issued by BIB are subject to the laws of Barbados. This is a very positive step as it will set a precedent for a number of similar pending cases.
16. Originally there were 83 lawsuits filed in Guatemala against BIB by depositors seeking recovery. There are presently 27 cases which are still proceeding. The depositors that have filed the actions are seeking the Guatemalan courts' permission to seize assets which are acting as security for loans extended by BIB.

ASSET AND PROPERTY RECOVERIES

Securities Held by Refco Capital Markets ("Refco")

17. As reported to the Court in of the Affidavit of Mr Christopher Sambrano, a Director of the Custodian, filed herein on January 19, 2007, BIB maintained a brokerage account with Refco, a brokerage house in the United States which filed for bankruptcy in October of 2005 (the "Refco Bankruptcy"). BIB's total claims in the Refco estate are for the sums of US\$51,535,143.99 and US\$ 173,559.39. The trustee in bankruptcy of Refco ("the Refco Trustee") has estimated that BIB will receive 85.6% of its admitted claim, which would mean BIB would receive distributions in the Refco Bankruptcy of US\$44,114,083.25 and US\$173,559.39.
18. Presently, the Refco Trustee has distributed US\$43,238,228 leaving an outstanding balance of approximately \$1,049,414 to be received. The last distribution to the Custodian was on June 29, 2009 and totalled \$800,537. Future distributions will be determined by the Refco Trustee and the timeframe for further distributions is unknown.
19. As advised in the First Report the Refco Trustee is administering a Litigation Action Trust to pursue the Directors of Refco and other professional service providers such as audit firms and investment banks etc. Damages of \$2 billion are being sought for alleged role of the defendants in aiding the corrupt Refco insiders in fraud and breaches of fiduciary duty.
20. On April 15, 2009, a US district court judge in Manhattan ruled that the Refco Trustee could not bring the case against the investment banks and advisers because a trustee cannot sue to recover for a wrong undertaken by the debtor itself.
21. It is not known whether the Refco Trustee plans to appeal the decision, however, at this time it would appear unlikely that the creditors of Refco, BIB included, will receive any additional funds as a result of legal actions taken by the Refco Trustee.

Loan Portfolio

22. The October 19, 2007 trial balance for BIB reflects an amount of US\$21,103,283.08 in respect of loans extended by BIB to debtors in Guatemala.
23. With the assistance of our legal counsel in Guatemala a realization plan is being implemented in respect of the loan portfolio. This process has proved slow for the following reasons:
- Many of the loans are of poor quality,
 - Debtors are experiencing difficulty in refinancing which is being made more difficult due to the current depressed economic climate, and
 - The loans are either unsecured or the security held is inadequate and the legal remedy for realisation will be protracted.
24. Where loan customers also have deposit accounts they provide the Custodian with their instructions to set off the deposit balance against the loan balance.
25. Of the total loan portfolio of US\$21.1 M, approximately US\$8M is past due and US\$3.5M relates to one customer.
26. The following is a summary of key transactions proposed or undertaken:

| Balance | Transaction |
|-------------|-----------------------------------------------------------------------------------------------|
| \$1,717,893 | Prosecuting actions commenced by BIB for collection prior to the appointment of the Custodian |
| \$889,215 | Set off agreed against deposit balances |
| \$3,970,357 | Proposed set offs currently being negotiated |
| \$70,000 | Cash settlement of Debts |
| \$8,575,771 | Direct negotiations taking place with six creditors |
| | |

27. Although to date, only a fraction of Back to Back loans have been applied as setoffs against bank balances, as a matter of practicality, it is expected that 100% of the 85 back to back loans, with a book value of approximately US \$4.5M will ultimately be setoff. These setoffs reduce the balance upon which the dividend payable to the account holder is calculated.

Loan Recoveries

28. To date, loan recovery efforts have generated cash receipts of US\$70,000. However, the Custodian is presently in negotiations with a number of creditors and in other cases repayment will need to be achieved through realization of security.
29. As described above, back to back loans are expected to be settled by a reduction in dividends payable, however the net effect is not a cash savings to the estate since setoffs are applied dollar for dollar to the book balance of the deposit account. Therefore, the savings to the estate on the pro rata dividend payment is overturned by the full loss of collection of the loan.

Transferred Loans

Background

30. Representatives of Corfina, have informed the Custodian that as BIB was experiencing liquidity issues in 2006 customer loan accounts were transferred to Banco del Café, S.A ("Banco del Cafe") in exchange for cash to meet depositor withdrawals. Banco del Café is the Guatemalan bank which is owned by the founding shareholders of BIB, and is the parent company within

Grupo). These loan transfers are believed to have been intended to be compensation for funds advanced by Banco del Café.

31. In order to give a frame of reference, during the period January 1, 2006 to October 19, 2006 164 loans were transferred totalling US\$82M from BIB to Banco del Cafe.

Claim by Corfina

32. Corfina is in the process of collecting the balances on the loan accounts which they assert were transferred and debtors have told Corfina that amounts held on fixed deposits with BIB should be set off against amounts owing.

33. Corfina has presented the Custodian with a list of 511 fixed deposit accounts totalling US\$52.9M which they assert acted as security for some of the loans transferred from BIB to Banco del Cafe.

34. The Trustee has been advised that it is Corfina's intention to file a claim in the BIB estate for the balance outstanding on the 511 fixed deposits. The Custodian received this information in March 2009 and is in the process of examining the validity of the proposed claim. Initial investigation indicates that many of the listed Certificates of Deposit had expired or were otherwise not recorded in the accounts of BIB, and therefore would not be allowable as a claim in the BIB estate.

Validation by the Custodian

35. Since the First Report the Custodian has taken a number of steps in order to determine the validity of the loan transfers:

- a. Purchased BIB's APPX Server from Corfina in order to gain direct access to BIB's accounting software and data,
- b. hired APPX software support consultants,
- c. assigned resources to trace transferred loans through BIB's general ledger, and,
- d. filed actions in the Guatemalan courts to obtain access to BIB's archived customer and accounting data.

36. There are two primary issues which must be determined:

- a. Did BIB receive appropriate value for the loans transferred, and if so in what form?
- b. If BIB did receive value what is the appropriate way to treat a claim by Corfina in respect of the Certificates of Deposit held as collateral over the various loans transferred?

37. These issues remain outstanding and are under investigation by the Custodian's staff.

Accounts Receivable

38. The October 19, 2007 trial balance for BIB reflects an amount of US\$16,583,005 for accounts receivable.

39. The Custodian has not as yet determined with certainty the composition of this balance although initial investigation indicates that the series of accounts within this section of the balance sheet served as one segment of the balance of inter-company transactions between BIB and its parent, Banco del Cafe.

40. Review of this account is progressing rapidly with better access to and reporting from APPX accounting and banking data acquired as described

above. It is expected that the Custodian will be in a better position to comment on the account balance in the near term.

Fixed Assets

41. BIB had fixed assets recorded on its books which almost exclusively comprised real property with a book value of approximately US\$2.3M, however there is no description of this real property. The Custodian has instructed its Guatemalan legal counsel to perform searches in the property registry in Guatemala and report back on the findings; however, as yet, nothing has been found in the registry. However, with enhanced access to the historic General Ledger of the Bank, the Custodian intends to investigate the journal entries which gave rise to the asset on the balance sheet.

GENERAL

42. Funds presently held by the Custodian have been invested in call accounts and fixed deposits, however, due to the economic downturn the rates presently being achieved are comparatively low, averaging less than one percent.

LEGAL ACTIONS UNDERTAKEN BY THE CUSTODIAN

43. A claim was filed by the Custodian with the Attorney General's office in Guatemala against directors, managers, executives, representatives, administrators, employees of BIB, Vipasa International Investments Corp. and Banco del Café, S.A.
44. The claim alleges that the depositors of BIB suffered losses as a result of the following actions taken by the directors and shareholders of BIB:
- 1) Special Case of Continuing Fraud;**
 - 2) Continuing Financial Intermediation; and**
 - 3) Continuing Laundering of Money or Other Assets.**
45. In the claim it was requested that a special prosecutor be appointed to pursue the matter given the complexity of the case and the large number of entities and individuals involved.

Background

46. Along with BIB, Grupo comprised Banco Del Café, Bancafe International Bank, Almacenadora Del Pais, S.A., Seguros Del Pais, S.A., Valores Del Pais, S.A., and Financiera Del Pais, S.A. Banco Del Café operated as the entity responsible for the direction and administration and control of the other entities in Grupo.
47. BIB and Vipasa International Investments Corporation ("Vipasa") are related entities as they have common shareholders. Vipasa is an unregulated Caymanian entity.
48. The audited financial statements of BIB reflect that significant sums were loaned by way of promissory notes to Vipasa. The table below reflects the amounts owed by Vipasa at BIB's financial year end for different years:
- a. December 31, 2000 – US\$70 million
 - b. December 31, 2001 – US\$94 million
 - c. December 31, 2000 – US\$262 million
49. In 2002 the Central Bank of Barbados raised concerns regarding the quantum of funds which BIB had loaned to Vipasa as a related entity. In order to satisfy the regulatory authorities the executives of Grupo decided to effect the following strategy:

- a. Vipasa bought bonds issued by various governments with financing provided by Refco, what was then a large brokerage company in the United States.
- b. Vipasa repaid its liability to BIB by transferring ownership of the government bonds obtained in the transaction above.
- c. As security for the loan extended by Refco to Vipasa to purchase the government bonds, BIB signed a "Guaranty and Transfer Authorisation Agreement" as guarantor in respect of Vipasa's account with Refco. BIB guaranteed all of the agreements and liabilities entered into by Vipasa, including the payment of any and all margins, losses and other debts, costs and expenses due to Refco by Vipasa. Under the agreement Refco had the authority to transfer discretionally, unlimited and without notice, funds from accounts that belonged to BIB to satisfy the liabilities of Vipasa.

As BIB had to sign a guaranty to support Vipasa's borrowing at Refco to purchase the bonds, the Bonds in effect did not belong to Vipasa and therefore Vipasa's liability to BIB was never repaid as the transfer of the bonds by Vipasa to BIB was purporting to accomplish.

- d. The financial statements of BIB, which were audited by KPMG Barbados, did not disclose the guaranty or contingent liability associated with the bonds and thus the financial position of BIB was materially misstated to the regulators in Barbados. The effect of the misstatement was that BIB's assets were incorrectly inflated making the Bank's solvency position appear more favourable than was in fact the case.

50. A mentioned at paragraph 17 hereof, in October 27, 2005 Refco and its subsidiaries filed for bankruptcy in the United States.
51. On January 19, 2007 the Custodian submitted an urgent application to this Court seeking the Court's approval of a proposed settlement of claims made by BIB in the Refco Bankruptcy.
52. Claims were filed by BIB in the Refco Bankruptcy in the amounts of US\$207,934,212.52 and US\$173,559.39.
53. The Refco Trustee sought to reduce the value of BIB's claim in the Refco estate by US\$155,696,433.08 through exercising Refco's security rights under guaranties executed between BIB and Refco. The nature of the guaranties issued were detailed above and in our January 19, 2007 submission to this Court.
54. The Custodian conducted analysis and examined the relevant security documents provided by the Refco Trustee and concluded that the Refco Trustee's assertion surrounding the reduced BIB claim was valid.
55. On January 25, 2007 an Order was issued by this Court allowing the Custodian to agree to set-off claims of Refco against BIB, thereby reducing BIB's total claims in the Refco estate to the sums of US\$51,535,143.99 and US\$ 173,559.39.

Basis of Recovery from Legal Suit

56. Based on a review of internal documents and the banking and accounting records of BIB it appears that Vipasa transferred more than US\$60 million to Banco Del Café through several transactions to pay the debts of related parties owed to Banco Del Café.
57. The basis of the claim being brought is that funds from depositors of BIB were channeled to Vipasa who then used the funds to repay the debts of related party companies which were owed to Banco Del Café. As the bonds

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