

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
**FINANCIAL SERVICES DIVISION**

**CAUSE NO. FSD: 166 OF 2010 AJJ**

**IN THE MATTER OF THE COMPANIES LAW (2010 REVISION)**  
**AND IN THE MATTER OF BANCO PRIVADO PORTUGUES (CAYMAN) LTD**

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**FOURTH AFFIDAVIT OF IAN STOKOE**

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I, **IAN STOKOE** of PwC Corporate Finance & Recovery (Cayman) Limited ("**PwC**") of PO Box 258, Strathvale House, George Town, Grand Cayman, KY1-1104, Cayman Islands, **MAKE OATH AND SAY** as follows:

- 1 I am a director of the firm of PwC and one of the Joint Official Liquidators ("**JOLs**") of Banco Privado Portugues (Cayman) Ltd (the "**Company**"). I am authorised by David Walker and Vijay Chopra to make this affidavit on the JOLs' behalf.
- 2 The facts and matters set out in this affidavit are derived either from my own personal knowledge, in which case I confirm they are true or from information provided to me by the JOLs' Portuguese legal counsel, Antonio Andrade de Matos of AAA Advogados, Rua Alexandre Herculano, 50-9, 1250-011, Lisbon, Portugal in which case I believe that they are true to the best of my knowledge and belief.
- 3 I make this affidavit in support of the JOLs' Summons seeking the Honourable Court's sanction of the JOLs' proposed intervention and participation in the Portuguese

liquidation of the Company's indirect parent company, Banco Privado Portugues S.A..("BPP SA").

- 4 There is now produced and shown to me marked "IS-2" a translated copy of the second creditors' Report ("**Second Report**") provided to creditors in advance of the meeting on 12 November 2010 (a copy of which was filed at Court on 17 November 2010 under cover of a letter from the JOLs' Cayman Islands attorneys). The definitions used below are the same as those adopted in the Second Report.
- 5 I understand that the members of the Company's liquidation committee have been provided with this affidavit and accompanying summons in final draft form. The JOLs have received no objections in the limited time available.

#### **Second Report**

- 6 The Second Report was produced to update creditors on the JOLs' progress and to address the funding difficulties facing the estate. In order to reach out to the creditor base for funding, the JOLs set out their preliminary views on potential causes of action and potential next steps.
- 7 At section 5 of the Second Report, the JOLs set out their views on the Repos and Overdrafts position. These can be summarised as follows:
  - 7.1 A EUR233m receivable due from FEI to the Company (in respect of Repos and Overdrafts transferred to FEI) was allegedly transferred to BPP SA shortly after the establishment of FEI in March 2010. That transfer was purportedly in return for a Euro for Euro reduction in the intercompany indebtedness of the Company to BPP SA.
  - 7.2 Despite several requests, the JOLs have received no documentation to evidence that such a transfer actually occurred. The JOLs understand from interviewing the Company's former directors that they do not recall signing documents to effect such a transfer.
  - 7.3 The JOLs take the position that no such transfer occurred (in which the case FEI remains indebted to the Company) and/or, in the alternative, that any transfer is invalid, for example as a preference under Cayman Islands law.

7.4 There is no indication from BPP SA's liquidation commission that it wishes to resolve this issue amicably.

8 At the creditors' meeting it was agreed that the creditors would indicate to the JOLs within 21 days whether they were interested in funding the possible actions outlined in the Second Report.

#### **Portuguese Events Since the Creditors Meeting on 12 November 2010**

9 On 16 November 2010, the JOLs were contacted by Mr de Matos in respect of a significant development in the liquidation of BPP SA.

10 I summarise that development below without waiving privilege in respect of Mr de Matos' advice to the JOLs:

10.1 As a matter of Portuguese insolvency law, BPP SA's liquidation commission is required to list and collect BPP SA's assets including debts owed to it by third parties (the "**Asset List**"). There is no time limit within which Portuguese liquidators must prepare the Asset List and therefore it is almost impossible to predict when it will be published.

10.2 BPP SA's liquidation commission has published its Asset List. BPP SA's liquidation commission also appears to have written to third parties included in the Asset List to collect the relevant assets. Mr de Matos was contacted by Linklaters Portuguese office who act for Banif, the depository bank of FEI, to inform Mr de Matos that BPP SA's liquidation commission had written to Banif to assert ownership to and collect the Repo and Overdraft receivables.

10.3 Portuguese insolvency law contains a mechanism whereby parties who dispute the accuracy of the Asset List have a narrow time frame within which to assert their position ("**Portuguese Proceeding**"). If the JOLs dispute the position taken by BPP SA's liquidation commission in relation to the FEI receivable, the JOLs have until close of business (Portuguese time) on Monday, 22 November to file a document in the Portuguese insolvency court which sets out:



- (a) Why the JOLs believe the Asset List is inaccurate, i.e. why the Company is entitled to the Repo and Overdraft assets payment from FEI;
- (b) All supporting documents; and
- (c) A list of relevant witnesses.

10.4 The Portuguese Proceeding is likely to conclude with a hearing before the Portuguese Court and such a hearing could occur at any time.

10.5 Any ruling will be subject to appeal.

10.6 The Bank of Portugal is likely to participate in the Portuguese Proceeding in light of the overlap between the Company's right to this receivable from FEI and the alleged counter-guarantee and pledge of the Company's assets in favour of Bank of Portugal as discussed at paragraph 4 of the Second Report.

#### **Urgency**


11 The JOLs understand that the only way to extend the deadline of close of business (Portuguese time) on Monday, 22 November is to apply to the Portuguese court on an urgent basis. The JOLs are advised that the grant of such an extension is by no means a certainty. In any event, the JOLs believe that, in the circumstances they face, the Portuguese Proceeding represents a cost-effective option (which does not require creditor or third party funding) to bring focus to the relevant issues central to the liquidation, namely the Repos and Overdraft receivable and the counter-guarantee and pledge. In addition, it appears that the Portuguese Proceeding is both procedurally straight forward and does not expose the Company's estate to adverse costs orders.

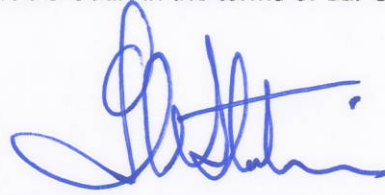
12 In light of the above, it appears that participation in the Portuguese process is, in the JOLs' view, unavoidable and in the best interests of the Company's estate. If the JOLs do not participate in the Portuguese Proceeding, potentially a Portuguese judgment will

be rendered without taking the JOLs' position into account. Therefore, the JOLs respectfully seek an order from this Honourable Court in the terms of our Summons.

SWORN to at )

this 22 day of November 2010 )  
before me )

  
\_\_\_\_\_  
Notary Public



\_\_\_\_\_  
Ian Stokoe

Applicant  
I Stokoe  
Fourth Affidavit  
19 November 2010  
Exhibit IS-2

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**EXHIBIT "IS-2"**

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This is the Exhibit shown to me and marked "IS-2" to the Fourth Affidavit of IAN STOKOE dated this 22 day of November 2010.



Notary Public