

# Banco Privado Português (Cayman) Ltd (In Liquidation)

Joint Official Liquidators' Second Report to Creditors

November 12, 2010

Strictly Private and Confidential



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# 1. Basis of preparation and disclaimer

## Basis of Preparation

This report has been prepared for the purpose of providing a second report of the Joint Official Liquidators' ('JOL's') to the creditors of Banco Privado Português (Cayman) Limited ('the Company' or 'BPP Cayman'). A copy of this report will also be sent to the Grand Court of the Cayman Islands

This report should be read in conjunction with the first report to creditors, abbreviations used are outlined in Section 7.

## Disclaimer

This report is strictly confidential and must not be provided to or made available, by any means, to any person other than the intended recipients, the Creditors of the Company. This report should not be copied or disclosed to any third party or otherwise be quoted or referred to, in whole or in part, without the prior written consent of the JOLs. In the event that this report is obtained by a third party or used for any purpose other than in accordance with its statutory purpose, any such party relying on the report does so entirely at their own risk and shall have no right of recourse against the JOLs, PricewaterhouseCoopers ('PwC'), PricewaterhouseCoopers Cayman Islands ("PwC Cayman"), PricewaterhouseCoopers Portugal ("PwC Portugal"), their partners, directors, employees, professional advisors or agents. None of the JOLs, PwC, PwC Cayman, PwC Portugal, their partners, directors, employees, professional advisors or agents accept any liability or assume any duty of care to any third party (whether it is an assignee or successor of another third party or otherwise) in respect of this report and any such party who receives a copy of this report whether from PwC, or any other source shall have no right of recourse against PwC, its partners, directors, employees, professional advisors or agents.

In preparing this report the JOLs must stress that they have relied upon information provided to them by the Company, its directors, its service providers and its parent company Banco Privado Português SA ('BPP SA'). The JOLs note that at this stage in the liquidation they have only received relatively limited information relating to the material matters discussed in this Report and as such the position stated may be subject to material revision on receipt of further information. The JOLs have not performed an audit examination on this information. Except where specifically stated, the JOLs have been unable to establish the reliability of the sources of information presented to them by reference to independent evidence. Accordingly, no representation or warranty of any kind (whether express or implied) is given by PwC as to the accuracy, completeness or fitness for any purpose of this report.

## 2. Introduction

- The purpose of this second report to Creditors is to provide a brief update on, the JOLs' actions since the Creditors' meeting held on 26 August 2010, the JOLs' current understanding of the financial position of BPP Cayman and the JOLs' proposed actions to progress the liquidation of BPP Cayman.
- In the first report to Creditors, presented at the 26 August 2010 meeting, the JOLs highlighted that BPP Cayman had access to free assets of only €0.6 million and, if the purported pledge over the Company's assets under the Counter-Guarantee was effective, there was little prospect of further free assets being identified.
- Having now conducted a detailed review of the asset base of the Company, the JOLs can confirm that no further material free assets, with a prospect of timely realization, have been identified. As such, the liquidation of BPP Cayman remains subject to severe funding constraints.
- However, as also noted in the first report to Creditors, the JOLs have grave concerns regarding the propriety of material transactions purportedly entered into by the Company, and in particular; the purported Counter-Guarantee and the purported transfer of Repo and Overdraft receivables to the parent bank, BPP SA.
- It is the JOLs' and their attorneys' view that these transactions can, and should, be challenged in order to ensure that the Creditors of BPP Cayman receive their proper share of the insolvent estate of the Company.
- The JOLs have prepared this report, and scheduled a Creditors' meeting for 12 November 2010, in order to update Creditors on the JOLs' views and proposed course of action and in order to identify whether Creditors are prepared to fund the legal actions required to challenge the transactions referred to above.

# 3. Conduct of the liquidation

- Below is a summary of the main work-streams undertaken by the JOLs since the Creditors' meeting on 26 August, 2010:
  1. Appointment of Vijay Chopra as a JOL on 1 September 2010 by order of the Grand Court of the Cayman Islands;
  2. Detailed review of BPP Cayman's asset base, and investigation of assets purportedly pledged in favour of the Republic, liaising with former directors, BPP SA and external custodians;
  3. In-depth investigation of Repo and Overdraft positions with the Special Investment Fund (FEI), purported transfers, and investigation into the formation of the FEI itself;
  4. Ongoing dialogue and correspondence with Banif Gestão de Activos, fund manager of the FEI, CMVM and BPP SA in relation to Repos and Overdrafts;
  5. Investigation of the purported Counter-Guarantee, legal analysis, and subsequent correspondence with Bank of Portugal (BoP);
  6. Development of litigation strategy;
  7. Meetings of the Liquidation Committee, and ad hoc liaison with Liquidation Committee members on specific issues;
  8. Review of initial custody asset claims and development of a proposed universal approach for resolution; and
  9. Ongoing dialogue with Company creditors, providing responses to claim specific queries.

## 4. Counter-Guarantee

- The JOLs have reviewed all currently available information pertaining to the purported Counter-Guarantee and have interviewed former officers of the Company, and BPP SA, who were in place during the relevant period.
- Based on these investigations, the JOLs believe:
  1. On the date that the Counter-Guarantee was purported to be given, BPP Cayman was insolvent and had suspended repayments to depositors;
  2. Through its intervention in the affairs of BPP SA, its suspension of repayments to depositors, and its appointment of board members of BPP SA, the Bank of Portugal ('BoP') became in control of the BPP Group's banking division, including BPP Cayman, from 1 December 2008 onward. The JOLs believe that, from that point up until commencement of the liquidation, there was no independent control over BPP Cayman;
  3. BPP Cayman received limited (if any) corporate benefit from the proceeds of the €450 million refinancing;
  4. The Portuguese Republic is the sole beneficiary of the Counter-Guarantee. Based on the information available to the JOLs, the €450 million appears to have been principally used to repay wholesale lenders, regional Portuguese financial institutions, religious institutions and selected BPP SA creditors;
  5. The basis on which beneficiaries of this funding were chosen has not been adequately explained to the JOLs; however, it is clear that the payments to selected creditors do not represent a credible attempt to restructure the BPP Group.

## 4. Counter-Guarantee (continued)

6. In purporting to delegate authority to BPP SA and / or in ratifying the giving of the Counter-guarantee, the board of BPP Cayman failed to act in the corporate benefit of BPP Cayman and its creditors. Instead, it appears that the board of BPP Cayman acted in the interests of BPP SA and breached their fiduciary duties to BPP Cayman; and
7. Such a breach of fiduciary duty was known or should have been known to the parties who benefitted from it or assisted in it. Those parties include BPP SA, BPP SA's directors, and BoP.

### Conclusions

- Based on the above findings, the JOLs believe that the purported granting of the Counter-Guarantee should be legally challenged and the appropriate parties held accountable.
- The JOLs note that a successful challenge would potentially release approximately €148 million of balance sheet assets for the benefit of the Company's Creditors, plus potentially a further c.€105 million of overdrafts due from FEI, which are also purportedly pledged.



## 5. Repo and Overdraft positions with the FEI

- In the first report to Creditors, the JOLs undertook to investigate the establishment of the FEI in general and in particular the €233 million of Repo and Overdraft receivables due from the FEI to BPP Cayman, which were purportedly transferred to BPP SA shortly after the establishment of the FEI.
- Such transfer was purported to be in return for a reduction in an intercompany payable due from BPP Cayman to BPP SA.
- The JOLs have investigated this purported transfer and have identified the following key issues:
  1. No documentations has been provided to the JOLs to evidence that the transfer actually occurred;
  2. The JOLs understand that the former officers of BPP Cayman did not formally approve such a transfer;
  3. Ample documentation exists to evidence BPP Cayman's position as creditor for these Repos and Overdrafts, including the FEI Prospectus, dated 1 February 2010 and the FEI Implementation Agreement;
  4. Notwithstanding the pre-existing position regarding these assets, the FEI Prospectus provided for a proportionate sharing of monies from the €233 million of Repos and Overdrafts between the portfolio managed customers of BPP SA and BPP Cayman. Clearly, the FEI provisions have not been implemented;
  5. BPP SA has asserted its position as creditor to Banif, and as a result has received repayments from FEI in relation to the Repos, totaling approximately €49 million. The Liquidation Commission of BPP SA appears to be using these monies to fund the liquidation of BPP SA;
  6. BPP SA believe that, despite the legal position of BPP Cayman as the Repo creditor, the Repo repayments from FEI rightly belong to BPP SA as a result of the repayment of external Repo financiers having been made via BPP SA. However, this contention ignores the fact that repayments to external Repo financiers were funded by a €450 million refinancing, which was supported by a pledge over BPP Cayman's assets;



## 5. Repo and Overdraft positions with the FEI (continued)

7. BPP Cayman has received no repayment from the FEI for the outstanding Repos or Overdrafts. FEI is therefore breaching its obligations to BPP Cayman;
8. In any event, any transfer of the receivables as alleged by BPP SA to reduce its intercompany claim against BPP Cayman would be invalid as a preference under Cayman Islands law.

### Conclusions

- On any view (i.e. either no transfer having occurred or, in the alternative, the purported transfer being a voidable preference), the JOLs believe that the current treatment of Repo and Overdraft monies clearly prejudices BPP Cayman creditors and also contravenes the key provisions for treatment of these monies, set out in the FEI Prospectus.
- BPP Cayman creditors, including those who chose to participate in the FEI, are being prejudiced to the advantage of BPP SA creditors. Even if BPP Cayman creditors also have corresponding positions in BPP SA, they will still suffer material prejudice, to the advantage of those creditors whose position is solely in BPP SA.
- On numerous occasions, the JOLs have sought to meet with BPP SA and Banif to resolve the issues above. However, while Banif was willing to meet, BPP SA's Liquidation Commission has refused to participate. The JOLs have also sought CMVM's assistance in resolving this matter, given its role as regulator of the FEI. However, CMVM has also refused to participate.
- In light of the BPP SA's lack of cooperation and the current impasse, the JOLs and their attorneys consider that litigation is the only remaining option to address the prejudice suffered by BPP Cayman Creditors.

## 6. Next Steps

- Based on the results of their investigation work, and the legal advice obtained, the JOLs believe it appropriate to challenge the legality of the purported Counter-Guarantee.
- Similarly, the JOLs also consider it appropriate to challenge the purported transfer of FEI Repo and Overdraft receivables due to BPP Cayman.
- The potential recoveries from legal action are substantial. However, at this point the BPP Cayman insolvent estate has insufficient free assets to support any legal action.
- Accordingly, the JOLs have convened a Creditors' meeting on 12 November 2010 in order to identify whether Creditors are prepared to fund the legal action required to obtain control of these assets.
- If there is sufficient Creditor interest in funding further action, the JOLs will arrange for subsequent meetings of the potential funders, to provide a detailed strategy and discuss terms of funding.
- In the absence of funding for legal action, it is inevitable that the Counter-Guarantee and the purported transfer of Repos and Overdrafts will remain unchallenged, and that there will be no return whatsoever to BPP Cayman Creditors.

## 7. Glossary of terms and abbreviations

<b>Term</b>	<b>Definition</b>
the Company or BPP Cayman	Banco Privado Português (Cayman) Limited (in Liquidation), a Cayman Islands registered company which formerly held a Class B Banking license issued by CIMA in 1997
the BoP	the Bank of Portugal
BPP Group	A Portuguese based private banking group ultimately owned by Privado Holding, S.G.P.S., S.A. the Portuguese based ultimate holding company of the BPP Group
BPP SA	Banco Privado Português, S.A., a Portuguese private bank which was placed into liquidation on 29 April 2010 and is the immediate parent of the Company.
CIMA	The Cayman Islands Monetary Authority
CMVM	The Portuguese securities market commission
Counter-guarantee	Purported guarantee and pledge provided by BPP SA to the Portuguese Republic on 5 December, 2008
the FEI	A special investment fund established on 30 March 2010 as an independent vehicle for the purpose of ring-fencing AR Strategy assets and liabilities from the BPP Group and enabling an orderly realization
the JOLs	David A K Walker, Ian D Stokoe of PwC Cayman and Vijay Chopra of PwC Portugal. By order of the Grand Court of the Cayman Islands, Mr Walker and Mr Stokoe were appointed as JOLs on 9 July 2010 and Mr Chopra was appointed on 1 September 2010
the Liquidation Commission	Commission appointed by BoP to oversee the liquidation of BPP SA, comprising Luis Máximo dos Santos, Antonio Silva Ferreira, and Manuel Martins Mendes Paulo

# Appendix 1 – Receipts & Payments

An analysis of receipts and payments from commencement of the liquidation to 30 September 2010 is set out below.

<b>Receipts</b>	<b>USD</b>	<b>EURO</b>
Fund held on behalf of BPP Cayman by Maples and Calder	52,124.20	
Banif - Banco de Investimento, SA		610,557.45
<b>Payments</b>		
PwC Controllershship Fees - Cayman		(87,717.40)
PwC Controllershship Fees - Portugal		(38, 533.25)
Maples Controllershship Fees	(52,124.20)	(8,126.93)
Bank Charges		(200.00)
<b>Net Funds Available</b>	<b>Nil</b>	<b>475,979.87</b>
<b>Additional receipts from repayment of loans</b>	<b>225, 413.74</b>	<b>2,315,991.38</b>

## Appendix 2 – Liquidators' fees

Fees up to 30 September 2010 are set out below and are subject to the approval of any Liquidation Committee and the Grand Court of the Cayman Islands

<b>PwC Cayman</b>	<b>Hours</b>	<b>USD</b>	<b>EURO*</b>
Partner and Director - JOLs	100	58,437	41,408
Senior Manager	245	122,200	86,591
Senior Accountant	164	47,417	33,600
Administrator	35	5,504	3,900
<b>Total PwC Cayman fees</b>	<b>544</b>	<b>233,588</b>	<b>165,499</b>

\*PwC Cayman fees have been converted from USD to Euros at the exchange rate on 3 November 2010

<b>PwC Portugal</b>	<b>Hours</b>	<b>EURO</b>
Partner - JOLs	77	46,200
Senior Manager	479	143,550
Corporate consultant	814	122,025
<b>Total PwC Portugal fees</b>	<b>1,370</b>	<b>311,775</b>
<b>Total Liquidation fees to 30 September 2010</b>	<b>1,914</b>	<b>477,274</b>