

# **Banco Privado Português (Cayman) Limited (“BPP Cayman” or “the Company) (In official Liquidation)**

## **Minutes of the Second Meeting of Creditors**

The second BPP CAYMAN Creditor’s Meeting was held on November 12, 2010, 15.30 PM, at SANA Metropolitan Hotel situated at Rua Soeiro Pereira Gomes, Parcela 2, Entrecampos, Lisbon, Portugal.

### **Agenda**

1. Introduction;
2. Conduct of the Liquidation:
  - a. Main investigations and findings;
  - b. Next steps.
3. Liquidation Strategy:
  - a. Judicial Proceedings;
  - b. Custodial Assets.
4. Funding of the Liquidation:
  - a. Fee Estimation;
  - b. Potential contribution of the Creditors.
5. Q&A.

### **Presenters**

Vijay Chopra, Joint Official Liquidator (“JOL”) – PwC Portugal (“VC”)  
Pedro Carneiro – PwC Portugal (“PC”)  
Cláudia Parente – PwC Portugal (“CP”)  
António Andrade Matos – Portuguese legal counsel of the JOLs (“AM”)

### **Order of the Meeting**

#### **1. Introduction**

PC welcomed the creditors and introduced VC as the JOL in Portugal, AM as the JOLs’ Portuguese legal counsel and CP as the joint leader of the work performed in Portugal. PC then proceeded to inform the Creditors that the meeting would be held primarily in Portuguese.

VC provided a brief presentation on the status of the liquidation and the related funding constraints and noted that given the circumstances of the liquidation the Creditors’ frustration was understandable.

VC made a brief reference to the matters to would later be discussed in further detail, namely:

- (i) The limited success of the conversations held with the Liquidation Commission (“LC”) of Banco Privado Português, SA (Em Liquidação) (“BPP SA”) to date;
- (ii) The views of the Joint Official Liquidators (“JOLs) on the basis for challenging the validity of the purported pledge granted to the Portuguese Republic;
- (iii) The unsuccessful attempts to meet with the Comissão de Mercados e Valores Mobiliários (“CMVM”) and the LC on the matter of the FEI Repos and Overdrafts transferred to BPP SA.

## **2. Conduct of the Liquidation**

CP initiated a presentation that would focus on the main investigations undertaken by the JOLs and their team, their findings and on the next steps of the liquidation.

### **a. Main investigations and findings of the JOLs**

Before proceeding with the detailed presentation, CP underlined the fact that considering BPP Cayman had no own operational structure, the majority of the relevant documentation was held by BPP SA. This fact, along with the complex linked transactions between both entities and their clients, made it necessary to negotiate and sign confidentiality agreements, which originated some relevant delays.

CP further noted that the cooperation of BPP SA has been subject to the operational restrictions and limitations resulting from its own liquidation process. As a consequence, there were significant delays in the provision of requested documentation and a significant portion of this information still remained pending.

CP began by explaining that following a detailed analysis of the Company's asset base and of documentation relating to the pledge and counter guarantee agreements, conducted by the JOLs and their team (the "JOLs Team"), it was concluded that around 90% of BPP Cayman's assets are subject to the purported pledge, and that most of the remaining assets relate to amounts due from the parent company – BPP SA –, which have a limited realistic prospect of realisation.

CP added that the JOL's have sent a letter to the Bank of Portugal ("BoP") stating their position regarding the validity of the counter guarantee and that no response had been received to date.

As to the Repo and Overdraft balances purportedly transferred to BPP SA following the establishment of the Fundo de Gestão Passiva – Fundo Especial de Investimento Fechado ("FEI"), CP informed that the JOLs Team analysed all the relevant documentation provided by BPP SA in this respect, including the FEI prospectus and the implementation agreement, and found no basis to conclude such purported transactions to be valid.

CP further detailed that the JOLs opinions were sustained on the fact that:

- (i) no documentation providing title for the purported transfer and specifically no BPP Cayman resolutions supporting that transaction were identified;
- (ii) the FEI Prospectus clearly mentions BPP Cayman as the creditor of those assets and;
- (iii) On maturity of the original Repo contracts BPP Cayman received no payment from the FEI.

CP highlighted that the JOLs have communicated their position both to BANIF – Gestão de Activos, SA, ("BANIF") - as the management company of the FEI - and BPP SA, claiming the ownership of these assets. Reference was also made to the proposed meeting between these parties and CMVM, which would be ultimately declined by both BPP SA and CMVM.

With regard to custody assets, CP highlighted that progress of was dependent on the cooperation of the LC which had been far from satisfactory in this respect. It was explained that due to the previously mentioned common operational structure of the BPP Group, all custody assets were effectively controlled by BPP SA and, as such, there was the need to identify and segregate all of BPP Cayman related assets.

Considering that, despite the efforts of the JOLs Team, that information had not been provided to that date, the JOLs remained unable to liaise with the ultimate custodians and directly deal with the received custody asset release requests.

On a final note, CP made reference to the fact that the JOLs had been made aware that BPP SA held circa €20m of cash received on behalf of BPP Cayman corresponding to liquidity of Absolute Return Investment Vehicles ("SIVs"). It was further explained that the JOLs believe this liquidity should be handed over to them in their capacity of investment managers and beneficial owners of the SIVs, in order to have it analysed and transferred to the rightful beneficiaries.

It was further added, that the JOLs have requested from BPP SA a set of information related to the SIVs - such as a list of all SIVs under BPP Cayman management, signed management agreements, fiduciaries' contacts and prospectus and financial information – which, at that stage in the liquidation had not been received.

## **b. Next steps:**

Based on the presented conclusions, PC summarised the JOLs' views that:

- i. there were relevant bases to challenge the purported counter guarantee;
- ii. there were relevant bases to challenge the transfer of the FEI Repo and Overdraft receivables;
- iii. there was a need to address the assets held in custody.

PC also highlighted the existing funding restrictions and the need to obtain funding in order to proceed with the envisaged strategy of the liquidation.

## **3. Liquidation Strategy**

AM then broadly explained the envisaged judicial strategy.

### **a. Judicial Proceedings**

Based on the documentation obtained to date and the legal analyses performed, AM referred that there was a basis to challenge (i) the pledge granted to the Portuguese State and (ii) the transfer of credits arising from the FEI Repos and Overdrafts from BPP Cayman to BPP SA.

AM explained that both transactions should be challenged before the Cayman Islands courts, particularly taking into consideration that, under a Cayman Island jurisdiction, the proposed judicial proceedings are not expected to take more than two and a half years, including appeals.

AM further detailed that in order to successfully challenge the counter-guarantee, among other actions, it would be necessary to demonstrate (i) that BPP Cayman directors violated their fiduciary duties, and (ii) that the relevant entities, i.e. BPP SA, BoP, etc., were aware of such violation.

Similarly, AM explained that in order to successfully challenge the purported transfer of the credits arising from the FEI Repos and Overdrafts from BPP Cayman to BPP SA, it would be necessary to demonstrate the ownership of those receivables, being noted that regardless of the several requests made to date, no documentation has been provided evidencing BPP SA's entitlement to those assets.

It was further added that even if BPP SA were able to provide supporting documentation to this transfer, considering it occurred within 6 months of the beginning of the liquidation, it could be eventually challenged and considered as being a preference under Cayman Islands' Law.

AM also noted that the JOLs may consider a third judicial proceeding seeking compensation from BPP SA and its directors, the Portuguese State and BoP, which may all be found civilly responsible regarding the pledge in accordance with Cayman Islands' Law.

## **b. Custody Assets**

PC proceeded to explain that following the initial investigations, the JOLs were able to identify *circa* 320 clients with custody assets held by the Company, valued at *circa* €400m. Special note was made to the units of the FEI and to the fact that the JOLs were aware that these were generating regular distributions.

PC noted that due to the previously mentioned restrictions and limitations resulting from the BPP group structure and the lack of cooperation of BPP SA in this respect, the JOLs were not able to conclude the investigations and proceed with the transfer of the assets to the clients.

Further note was made to the fact that due to the complex nature of the commercial relationships between the clients (and their custody assets) BPP Cayman and BPP SA this matter would have to be handled on a *case by case* basis, making it a complex and slow process, for which there was no funding available.

Considering the above mentioned restrictions, PC advised the creditors that there were three possibilities:

1. If creditors are willing to fund the liquidation as proposed, the JOLs would be able to satisfactorily complete all the necessary investigations and return the custody assets to their rightful beneficiaries; or
2. If no funding was obtained, each client/creditor might be obliged to solve the situation directly with the LC of BPP SA and with the custodian counterparty;
3. Alternatively, clients/creditors could voluntarily finance the analysis JOL's Team on an individual basis so that they resolve each custody asset claim with the LC of BPP SA and the custodian counterparty on their behalf.

At this point, VC stated that the JOLs and the Creditors stood at a crossroad, as the continuation of the liquidation under the terms of the proposed strategy would be dependent on successfully obtaining funding. VC also noted that even though the JOLs were confident the proposed strategy was the best course of action, it would necessarily involve some level of uncertainty and risk which potential funders should also be aware of.

Manuel Magalhães ("MM") - representative of BPP SA - interjected to explain the position of his client and reinforced the availability of the LC of BPP SA to cooperate. He further noted that the LC does not consider the FEI Repos to be a BPP Cayman asset and that the amounts received by BPP SA to date related to those Repos are not being used to fund the liquidation of BPP SA.

MM also noted that the pledge agreement between the Portuguese Republic and BPP SA had been entered into by the management preceding the liquidation of BPP SA, and that the LC of BPP SA had no responsibility for that specific agreement.

CP addressed the creditors and noted that the "cooperation" shown by the LC of BPP SA to date had been limited as, despite being bound by law to provide all the requested information, a significant part was still pending. Further reference was also made to the unavailability of the LC to meet with both the JOLs and CMVM to discuss a possible solution on the Repos and Overdrafts transactions.

At this point, AM also intervened to answer to some of MM's queries by explaining that according to the analysis performed, the Cayman Islands were an appropriate jurisdiction to pursue the proposed legal proceedings.

## **4. Funding of the Liquidation;**

### **a. Fee Estimation**

AM proceeded to explain that the estimated funding requirements for the remainder of the liquidation could be divided into two main categories: (i) the estimated litigation costs and (ii) the costs relating to the work of the JOLs and their team.

AM noted that the most significant part of the funding required corresponded to the costs associated to the proposed legal actions in the Cayman Islands, which had been estimated by the Cayman legal team in between €1.5m to €2.5m, costs with additional security for costs of €1m per defendant being necessary to guarantee the counter-party's legal expenses.

PC added that the cost of the work of the JOLs and their team for the remainder of the liquidation had been estimated in circa €1.5m. Further note was also made to the fact that contributions from creditors should also cover the unfunded work performed to date, estimated at circa €300k.

PC then summarised that the JOLs estimated a total amount of circa €5m in order to proceed with the proposed liquidation and litigation strategy. Additional reference was made to the fact that even though the potential recovery from the judicial claim is substantial there are no unencumbered assets to initiate and support any judicial claim, making the contributions of the creditors fundamental for the success of the liquidation.

PC explained to the Creditors that according to Cayman Islands law any contributions to fund the liquidation would be given a priority claim over realisations.

### **b. Potential contribution of the Creditors**

PC stated that each creditor should decide freely and in conscience on such matter; He further highlighted that the amount required from each creditor would depend on the number of creditors that fund the proceedings.

The meeting was advised that any creditors willing to fund the liquidation and judicial proceedings should contact the JOL's Team within 21 days.

## **5. Questions and Answers**

Creditors were then invited to present their questions to the JOL's Team and/or legal counsels and the following additional clarifications were provided:

Regarding the enforceability of a favourable decision of the court of Cayman Islands, AM noted that it could be enforced in Portugal. Moreover it was highlighted that there are certain mechanisms that allow for the decision be enforced and the corresponding assets being retained: *e.g.*:

- Asking the Portuguese courts to Review and confirm the Cayman Islands court judgment recognising the insolvency of BPP Cayman in order to make that decision enforceable in Portugal.
- Additional mechanisms that may be used but that should only be discussed and divulged to the creditors that wish to fund the liquidation and judicial proceedings.

As for jurisdiction, AM explained that the Portuguese Courts have not been excluded. Simply, it is a fact that Cayman Islands Courts would also have jurisdiction, and that litigation proceedings held before such Courts would be more beneficial to the creditors.

Following a specific query by MM, PC explained that the LC of BPP SA had transferred €2.5m to BPP Cayman, but these amounts are purportedly subject to the counter guarantee agreement with the Portuguese State. PC further explained that these values were paid in respect of the SIVs' Overdrafts due to BPP Cayman.

As to the FEI receivables PC explained that there are two different receivables: (i) an amount of *circa* €117m related to Repo contracts; and (ii) another amount concerning the Overdrafts amounting to *circa* €105m.

It was further added that the JOL's Team contacted BANIF in order to inform them of their concerns and requested them to refrain from paying BPP SA until any dispute be resolved. BANIF was willing to meet with the JOL's Team and with BPP SA but the latter decided that the meeting would not be worthwhile and hence declined it. Further note was made to the fact that the CMVM was not available to attend this meeting.

Regarding the counter guarantee agreement, AM informed that the JOL's Team had contacted the BoP in order to propose the creation of an escrow account for any amount received by BoP in relation to BPP Cayman's assets; however, no reply had been received to date. It was further noted that the BoP informed the JOLs of having received some 4 thousand Euros from clients relating to the repayment of amounts owed to BPP Cayman.

Following other specific queries from creditors, AM explained that the documents the JOLs had had access to in respect of the purported counter-guarantee and other transactions entered into by BPP Cayman could not be made public, due to the confidential and commercially sensitive nature of the documents

Jorge Neto and Matias Serra – both representatives of members of the Liquidation Committee of BPP Cayman – each made a brief statement summarising the strategy presented and explaining their views on the conduct of the liquidation to date and the funding process.

At this point VC proposed convening a specific meeting with the creditors that are willing and available to fund the liquidation and judicial processes where additional and detailed information on the proposed legal strategy could be provided. VC noted this meeting would be subject to having a minimum number of funders and with a reasonable prospect of providing the required funding amount.

There being no further matters to discuss, the meeting was closed at 18.30 pm. And the present minutes were prepared.

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