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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re: :  
: Chapter 15  
BANCREDIT CAYMAN LIMITED (IN LIQUIDATION) :  
: Case No. 06-  
Debtor, :  
:  
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**AFFIDAVIT OF RICHARD EDGAR LEWIS FOGERTY**

I, RICHARD EDGAR LEWIS FOGERTY, hereby declare as follows:

1. I am an individual person over the age of 18 and, if called upon, could completely testify to all matters set forth in this statement based upon my own personal knowledge except for matters based on documentary evidence provided to me regarding judicial proceedings, and as to those matters, I believe them to be true.

**Foreign Representative**

2. G. James Cleaver and I, both of Kroll (Cayman) Limited, were appointed Joint Official Liquidators (“JOLs”) of Bancredit Cayman Limited (“Bancredit” or “Debtor”) by order of the Grand Court of the Cayman Islands (“Cayman Grand Court”) on May 31, 2004 (“Liquidation Order”), a copy of which is attached to the Verified Petition as Exhibit A. The Liquidation Order authorizes us to represent Bancredit in foreign courts in furtherance of our duties as JOLs, and thereby authorizes us to petition this Court for recognition under Chapter 15 of the United States Bankruptcy Code (the “Bankruptcy Code”).

## **Debtor**

3. Bancredit is a bank incorporated in the Cayman Islands in 1988 and regulated by the Cayman Islands Monetary Authority. Bancredit was registered as company number 28811, with a registered office at P.O. Box 1034, Harbour Place, 103 South Church Street, George Town, Grand Cayman, Cayman Islands.

4. The June 2005 report of the Joint Official Liquidators, which is a true and accurate description of Bancredit's insolvency proceedings as of that date, includes a summary of Bancredit's pre-insolvency banking activities. It is attached to the Verified Petition as Exhibit E. Bancredit does not have a branch or agency in the United States.

## **Foreign Main Proceeding**

5. The JOLs are petitioning the Court for recognition of the Foreign Proceeding as a foreign main proceeding, because Bancredit's registered office was in the Cayman Islands, at P.O. Box 1034, Harbour Place, 103 South Church Street, George Town, Grand Cayman, Cayman Islands. Further, the Foreign Proceeding is the only liquidation proceeding regarding the Debtor known to me. The Cayman Grand Court has sole authority over Bancredit's Cayman Islands liquidation as a matter of Cayman Islands law. The Cayman Islands is the site of Bancredit's license and registration as a bank.

6. If the Court determines that the Cayman Islands is not the center of main interests of the Debtor, and, therefore, that the case commenced by this Chapter 15 Petition may not be treated as a foreign main proceeding, the JOLs alternatively petition the Court to recognize the Foreign Proceeding as a foreign nonmain proceeding. The Debtor has maintained a registered office in the Cayman Islands where it has engaged in administrative and regulatory activities necessary to comply with its Cayman Islands banking license, and subsequent to the

Liquidation Order has carried out liquidation proceedings from the JOLs' offices in the Cayman Islands, and therefore has maintained a place of operations within the Cayman Islands where it carries out nontransitory economic activity.

### **Assets and Liabilities**

7. At present, the JOLs are addressing claims from 73 creditors claiming approximately US\$215 million. Of those claims, the JOLs have admitted claims totaling more than \$30 million from 12 creditors. Claims totaling approximately \$185 million from 61 creditors have not yet been adjudicated. One of the 12 admitted claims was received from a British passport holder living in Florida. No other claims have been received from individuals or entities in the United States. No claimants whose claims have been denied currently hold unexercised appeal rights.

8. A distribution to creditors was made in October 2005. Though the total value of Bancredit assets that the Joint Official Liquidators will be able to identify and realize remains unclear, we anticipate that further funds will be available for distribution to creditors.

### **Correspondent Banks**

9. Bancredit transacted business through numerous correspondent banks in the United States, through which Bancredit assets were transferred. Obtaining information from those correspondent banks and from entities or individuals who transacted business with Bancredit will assist us in our efforts to investigate, identify, and properly administer the assets and liabilities of Bancredit for the benefit of its creditors.

## **Lawsuits Pending in the U.S.**

10. Bancredit is a plaintiff in two lawsuits in the United States in which it seeks to recover on promissory notes and/or defaulted loans owed to Bancredit. These lawsuits seek to recover assets for the benefit of all Bancredit creditors:

- *Bancredit Cayman Limited v. Remington Summit LC, Claudio Silvestri, and Rolando Gonzalez Bunster, also known as Rolando Gonzales Bunster*, No. 4:05cv473, United States District Court for the Eastern District of Texas.
- *Estate of Bancredit Cayman Limited v. Diego Morales-Ceballos a/k/a Diego Morales*, No. 5-CV-6740, United States District Court for the Eastern District of Pennsylvania.

11. Petitioner Fogerty, in his capacity as JOL of Bancredit, is a defendant in one lawsuit in the United States, in which a particular creditor seeks to recover assets from Bancredit outside the Cayman Islands statutory scheme:

- *Community Bank of Florida v. Hemisphere Nat'l Bank and Richard E.L. Fogerty, in his capacity as Official Liquidator for Bancredit Cayman Limited, in Liquidation also known as Bancredito Cayman Limited*, 05-3935 CC26, in the County Court of Miami-Dade County, Florida.

12. Copies of the complaints in the above-mentioned U.S. lawsuits are attached to the Verified Petition as Exhibits F, G, and H, respectively.

## **Notice**

13. At the first meeting of creditors in August 2004, a liquidation committee ("Creditors Committee") was established. A copy of the Revised Certificate of Constitution of Liquidation Committee is annexed to the Verified Petition as Exhibit D. Additionally, the Joint Official Liquidators have established an official website, <http://www.Bancreditcayman-liquidation.ky/>, (the "Website") on which court orders and liquidators' reports and announcements are posted for review by all creditors in the case.

14. As JOLs, we are responsible for effecting notice to creditors regarding activities in the Foreign Proceeding. When giving notice, we provide individual notice to the members of the Creditors Committee by couriering documents to an agent in the Dominican Republic who then hand delivers the documents to each committee member. Materials that are not sensitive or legally privileged are also posted on the Website. Because it is not required by Cayman Islands law, we have not filed a list of individual creditors with the Cayman Grand Court.

15. In my opinion, based on my experience with the Bancredit liquidation proceedings in the Cayman Islands, notifying Bancredit creditors of legal proceedings in the United States through individual notice to members of the Creditors Committee, and also through posting of relevant documents on the Website, would be an effective means of notifying Bancredit's creditors, would be familiar to Bancredit's creditors, and would not be unduly burdensome to Bancredit.

WHEREFORE, I respectfully request that this Court enter an Order, substantially in the form of the Proposed Order on Notice annexed to the Petition as Exhibit K, setting a Hearing Date and prescribing the appropriate form of notice, and

WHEREFORE, I respectfully request that this Court enter an Order, substantially in the form of the Proposed Order on Recognition annexed to the Petition as Exhibit I, granting the relief requested in the Application and Verified Petition and such other and further relief as may be just and proper.

IN WITNESS WHEREOF, I have executed this Statement under penalty of perjury under the laws of the United States of America this 4<sup>th</sup> day of May, 2006.

/s/ Richard Fogerty  
RICHARD E.L. FOGERTY

Sworn to this 4th day of May, 2006 before the undersigned, a person duly authorized to witness and attest to the execution of documents of this nature within the Cayman Islands.

\_\_\_\_\_/s/ Rhonda Anderson\_\_\_\_\_  
Rhonda Anderson  
My commission expires:  
\_\_\_\_1 January 2007\_\_\_\_\_  
Notary Public  
Cayman Islands