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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re: :  
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: Chapter 15  
BANCREDIT CAYMAN LIMITED (IN LIQUIDATION) :  
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: Case No. 06-  
Debtor, :  
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**VERIFIED PETITION IN SUPPORT OF APPLICATION FOR RECOGNITION  
OF FOREIGN MAIN PROCEEDING PURSUANT TO § 1517  
OF THE BANKRUPTCY CODE AND SEEKING RELATED RELIEF**

Petitioners Richard Fogerty and G. James Cleaver (“Foreign Representatives” or “Petitioners”), who are Joint Official Liquidators (“JOLs”) of Bancredit Cayman Limited (in Liquidation) (“Bancredit” or “Debtor”), through their attorneys Satterlee Stephens Burke & Burke LLP, respectfully petition this court for entry of an order pursuant to § 1517 of Title 11 of the United States Code (the “Bankruptcy Code”) recognizing as a foreign main proceeding the foreign liquidation proceeding ongoing in the Grand Court of the Cayman Islands (the “Cayman Grand Court”), as more fully described herein, thereby granting related relief pursuant to § 1520 of the Bankruptcy Code, and granting additional relief pursuant to § 1521(a) of the Code. In the alternative, if the Court finds that the foreign proceeding is not eligible for recognition as a foreign main proceeding, Petitioners seek recognition of a foreign nonmain proceeding, as defined in 11 U.S.C. § 1502(5) and seek relief under § 1521 of the Bankruptcy Code.

## PRELIMINARY STATEMENT

1. Petitioners have commenced this case pursuant to 11 U.S.C. §§ 1504, 1509, and 1517 by contemporaneous filing of the Petition seeking recognition of a foreign liquidation proceeding that is currently pending in the Cayman Grand Court, and seeking relief as of right under § 1520 and further relief available under § 1521. The foreign liquidation proceeding was instituted May 31, 2004 in the Cayman Grand Court, under cause number 171 of 2004 (the ‘Foreign Proceeding’).

2. As demonstrated by this Petition, the Exhibits thereto, the accompanying Affidavit of Richard Fogerty, and the Affidavit of Aristotelis Galatopoulos, Petitioners are individual persons who are duly authorized foreign representatives of Bancredit, and as such are entitled to directly petition this court for recognition of the Foreign Proceeding under 11 U.S.C. § 1509. The Foreign Proceeding is a foreign main proceeding as defined by 11 U.S.C. § 1502(4), in that the Foreign Proceeding is pending in the Cayman Islands, which is the location of Bancredit’s registered office and therefore presumptively its center of main interests as defined by 11 U.S.C. § 1516(c).

3. Because recognition of the Foreign Proceeding would not be contrary to public policy under 11 U.S.C. § 1506, because the Foreign Proceeding is a foreign main proceeding under 11 U.S.C. § 1502(4), because Petitioners are Foreign Representatives who are persons, and because Petitioners have complied with all requirements of 11 U.S.C. § 1515 and Interim Bankruptcy Rule 1007(a)(4), Petitioners are entitled to entry of an order recognizing the Foreign Proceeding as a foreign main proceeding under 11 U.S.C. § 1517(b)(1).

4. The following documents are annexed hereto in support of this Petition:

- a) Pursuant to 11 U.S.C. § 1515(b), a copy of the order of the Grand Court of the Cayman Islands commencing the Foreign Proceeding to wind up

and liquidate Bancredit Cayman Limited, and appointing Petitioners as Joint Official Liquidators, is annexed hereto as Exhibit A.

b) Pursuant to 11 U.S.C. § 1515(c), copies of the statements by Petitioner Fogerty and Petitioner Cleaver certifying that no other foreign proceedings with respect to Bancredit are known to the JOLs, are annexed hereto as Exhibit B.

c) Pursuant to Rule 1007(a)(4) of the Federal Interim Rules of Bankruptcy, as adopted by this Court pursuant to General Order M-308 (the "Interim Bankruptcy Rules"), a list of relevant administrators, parties and entities is annexed hereto as Exhibit C.

5. Filed contemporaneously with the Petition are the Affidavit of Richard Fogerty ("Fogerty Affidavit"), and the Affidavit of Aristotelis Galatopoulos ("Galatopoulos Affidavit"), which accurately set forth the remaining facts necessary for this Court to recognize the Foreign Proceeding and the Foreign Representatives. Galatopoulos is a partner with the law firm of Maples and Calder, which is legal counsel to the Petitioners as to matters of Cayman Islands law. The Fogerty Affidavit and Galatopoulos Affidavit are incorporated by reference as if fully set forth herein.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. §§ 109 and 1501. Venue of this proceeding is proper in this judicial district pursuant to 28 U.S.C. § 1410. This is a core proceeding under 28 U.S.C. § 157(b)(2)(P).

## FACTUAL BACKGROUND

### **A. Bancredit**

7. In 1988, Bancredit was incorporated and registered as company number 28811 in the Cayman Islands, with its registered office at P.O. Box 1034, Harbour Place, 103 South Church Street, George Town, Grand Cayman, Cayman Islands.<sup>1</sup>

8. Bancredit managed deposits, accounts, loans, and other credit services in U.S. dollars, mainly for clients based in the Dominican Republic. Bancredit was a wholly owned subsidiary of Bancredito Panama S.A. ("Bancredito Panama") and ultimately owned by the GFN group of companies ("GFN Group").

9. Bancredit was also an offshore affiliate of Banco Nacional de Credito, S.A. ("Bancredito S.A."), a banking institution that had operated in the Dominican Republic since 1980. Bancredit had substantial banking relationships, including substantial deposits, with Bancredito S.A. Due to large withdrawals from depositors and account holders during a period of economic instability and currency devaluation in the Dominican Republic, Bancredito S.A. became insolvent in 2003. As a result of Bancredit's substantial deposits with Bancredito S.A., Bancredit was also adversely affected.

10. Bancredito S.A. began negotiating with the E. Leon Jimenez Group ("Leon Group") for the sale of its entire operations, and in June 2003 Bancredito S.A. reached a preliminary agreement with the Leon Group and the Central Bank of the Dominican Republic ("Dominican Central Bank") for the Leon Group to assume Bancredito S.A.'s operations in the Dominican Republic. In July, the Dominican Central Bank began to repay certain third-party

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<sup>1</sup> The factual information contained herein is drawn from the Galatopoulos Affidavit, the affidavits of Richard Fogerty and G. James Cleaver, and the documents attached to this Verified Petition, including Exhibit E, the June 2005 report of the JOLs.

depositors of Bancredito S.A., Bancredit, and other affiliated companies, but not all depositors had been repaid when the Dominican Central Bank ceased distributions in October 2003.

11. Meanwhile, during this time period the Leon Group and the GFN Group were negotiating a restructuring plan regarding Bancredit and its 100 percent shareholder, Bancredito Panama. This proposed restructuring was never completed. In September 2003, Bancredito Panama was placed under the control of a Panamanian intervener, and the Cayman Islands Monetary Authority (“CIMA”), by which Bancredit was regulated, appointed Controllers to operate Bancredit. The Superintendency of Banks of the Republic of Panama forced Bancredito Panama into liquidation in November 2003. In April 2004, Bancredit’s Controllers concluded that it was insolvent and recommended to CIMA that Bancredit be placed into liquidation.

**B. Cayman Islands Liquidation Proceeding**

12. In accordance with the Controllers’ recommendation, CIMA petitioned the Cayman Grand Court for a winding up order regarding Bancredit. The court granted the petition on May 31, 2004, and appointed Richard Fogerty and G. James Cleaver, both of Kroll (Cayman) Limited, as Joint Official Liquidators of Bancredit.

13. The order authorized Fogerty and Cleaver as JOLs “to do any acts or things jointly and severally considered by them to be necessary or desirable in connection with the liquidation of the Company and the winding up of its affairs.” It also authorized them to “employ attorneys, counsel and professional advisors whether in the Cayman Islands or elsewhere as they may consider necessary to advise and assist them in performance of their duties and on such terms as they may think fit.”

14. The first meeting of creditors was held on August 24, 2004, in the Dominican Republic. At that meeting, the creditors established a creditors’ committee, titled a

Liquidation Committee ("Creditors Committee"). A copy of the Revised Certificate of Constitution of Liquidation Committee is attached as Exhibit D.

15. Over the past 22 months since Bancredit entered liquidation, the Petitioners have worked to recover Bancredit's transaction records in order to investigate Bancredit's affairs and verify its assets and liabilities, an endeavor in which Petitioners have sought and received the assistance of the Dominican Central Bank. Petitioners have also sought to recover funds owed to Bancredit from third parties, including Bancredito S.A. and Bancredito Panama. A copy of the JOLs' June 3, 2005 Report to Creditors describing their activities is attached hereto as Exhibit E.

16. Petitioners have also caused Bancredit to commence two lawsuits in the United States in furtherance of their activities as JOLs of Bancredit. *Bancredit Cayman Limited v. Remington Summit LC, Claudio Silvestri, and Rolando Gonzalez Bunster, also known as Rolando Gonzales Bunster*, No. 4:05cv473 ("Remington Lawsuit"), is pending in the 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 ("Morales Lawsuit"), is pending in the United States District Court for the Eastern District of Pennsylvania. In both cases, Bancredit is suing to recover on promissory notes and/or defaulted loans owed to Debtor. Copies of Bancredit's complaints in the Remington Lawsuit and Morales Lawsuit are attached hereto as Exhibits F and G, respectively.

17. In *Community Bank of Florida v. Hemisphere Nat'l Bank and Richard E.L. Fogerty, in his capacity as Official Liquidator for Bancredit Cayman Limited*, No. 05-3935 CC26, which is pending in Miami-Dade County Court, Florida ("Community Bank Lawsuit"), Petitioner Fogerty is being sued in his capacity as JOL by an entity that attempted to transfer \$7,825.00 to a third party's account at Bancredit, through Hemisphere National Bank. In that

complaint, plaintiff alleges that Bancredit may have received the funds, and if so, received them after it went into receivership, and plaintiff therefore seeks recovery of the funds from the estate.

A copy of Community Bank's complaint is attached hereto as Exhibit H.

18. At present, Petitioners are addressing claims from 73 creditors claiming approximately US\$215 million. Of those claims, Petitioners 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.

19. A distribution to creditors was made in October 2005. Petitioners anticipate that further funds will be available for distribution to creditors.

**C. Chapter 15 petition**

20. Petitioners now wish to continue their investigation into the assets and liabilities of Bancredit by obtaining information from correspondent banks in the United States through which third parties transacted business with Bancredit, and also from any third parties that transacted with Bancredit and may have improperly received or retained Bancredit assets. Accordingly, Petitioners seek recognition of the Bancredit liquidation as a foreign main proceeding in order to seek the United States Bankruptcy Court's assistance in identifying, realizing, and properly administering the assets of Bancredit for the benefit of its creditors.

**RELIEF REQUESTED**

21. In furtherance of their duties as JOLs of Bancredit, Petitioners seek an Order of this Court pursuant to §§ 105(a), 1507, 1517, 1520 and 1521 of the Bankruptcy Code, and, if and as necessary, Rule 65 of the Federal Rules of Civil Procedure as made applicable herein by Rule 7065 of the Federal Rules of Bankruptcy Procedure, substantially in the form of

the Proposed Order Granting Recognition, annexed hereto as Exhibit I, granting the following relief necessary to best advance the Bancredit liquidation:

(a) Recognition of the Bancredit liquidation as a foreign main proceeding as defined in § 1502(4) of the Bankruptcy Code;

(b) Granting relief as of right upon recognition of a foreign main proceeding pursuant to § 1520 of the Bankruptcy Code if the Bancredit liquidation is recognized as a foreign main proceeding;

(c) Granting further additional relief as authorized by § 1521 of the Bankruptcy Code, including, without limitation:

(i) staying the commencement or continuation of any action or proceeding concerning the assets, rights, obligations or liabilities of Bancredit including any action or proceeding against the JOLs in their official capacity as JOLs of Bancredit, to the extent not stayed under § 1520(a) of the Bankruptcy Code;

(ii) staying execution against the assets of Bancredit to the extent not stayed under § 1520(a);

(iii) suspending the right to transfer or otherwise dispose of any assets of Bancredit to the extent this right has not been suspended under § 1520(a);

(iv) providing for the examination of witnesses, the taking of evidence, the production of documents, or the delivery of information concerning the assets, affairs, rights, obligations or liabilities of Bancredit, and finding that such information is required in the Foreign Proceeding under the law of the United States;

(v) entrusting the administration or realization of all or part of the assets of Bancredit within the territorial jurisdiction of the United States to the Petitioners;

(vi) otherwise granting comity to and giving full force and effect to the Bancredit liquidation; and

(vii) awarding Petitioners such other and further relief as this Court may deem just and proper.

22. In the event the Court determines that the Bancredit liquidation is not eligible to be recognized as a foreign main proceeding, Petitioners seek recognition of the Bancredit liquidation as a foreign nonmain proceeding, as defined in 11 U.S.C. § 1502(5), and request that the Court grant the relief authorized by § 1521 of the Bankruptcy Code and such other and further relief requested in the paragraph above.

**REQUEST FOR WAIVER OF LOCAL BANKRUPTCY RULE 9013-1(b)**

23. It is respectfully requested that this Court waive and dispense with the requirement set forth in Rule 9013-1(b) of the Local Rules for the United States Bankruptcy Court for the Southern District of New York that any motion filed shall be accompanied by a memorandum of law on the grounds that, while chapter 15 of the Bankruptcy Code is itself novel, the relevant authorities in support of the Petition are contained herein.

**HEARING DATE AND NOTICE**

24. Petitioners request that the Court set the date for a hearing, pursuant to § 1517(c) of the Bankruptcy Code, for the week of June 13, 2006 (the "Hearing Date"). If no objections to this Petition are filed by the date ordered for such objections, Petitioners request that the Court enter the proposed order recognizing the foreign proceeding without a hearing, pursuant to Local Rule 2002-1.

25. As set forth in the Fogerty Affidavit and Galatopoulos Affidavit, a Creditors Committee has been established in the Bancredit liquidation. 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.

26. In accordance with Cayman law, all known creditors of Bancredit were provided with written notice of the first meeting of creditors, at which the Creditors Committee was established, and persons claiming to be creditors were provided with proof of claim forms to complete and return to the JOLs. Creditors were also individually notified in writing when a distribution from the estate was declared in October 2005. In the future, they will be individually notified in writing of declared distributions from the estate, and of the conclusion of liquidation proceedings. Otherwise, notice of significant events in the liquidation proceeding has been and will be effected by communications with the individual members of the Creditors Committee and by posting regular status reports regarding the progress of the liquidation proceedings on the Website. These notice procedures are fully compliant with Cayman law.<sup>2</sup>

27. Petitioners propose that once a Hearing Date has been set by the Court, notice will be given by following the standard notice procedures followed in the Bancredit liquidation, as Petitioners consider that those notice procedures are effective for and expected by creditors. They are also effective for Petitioners. Specifically, Petitioners propose sending a Notice of Filing and Hearing (the "Notice"), in substantially the form annexed hereto as Exhibit J, with copies of the Chapter 15 Petition, the Fogerty Affidavit, the Galatopoulos Affidavit, and accompanying exhibits, by international courier to an agent in the Dominican Republic for hand

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<sup>2</sup> In addition to these procedures for notice to creditors, the JOLs are also required to report to the Cayman Grand Court every six months regarding Bancredit's liquidation proceedings.



