BANK OF CREDIT AND COMMERCE INTERNATIONAL SA V BANK OF ENGLAND

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INTRODUCTION/CASE OVERVIEW

The Liquidators of BCCI SA are suing the Bank of England ("the Bank") on behalf of approximately 6,500 depositors who have assigned their claims to the Liquidators for the purposes of the proceedings. The proceedings were commenced in May 1993 but were struck out at first instance by Mr Justice Clarke in July 1997 and this decision was upheld by the Court of Appeal in December 1998. The case was finally allowed to proceed to trial by the House of Lords in March 2001. Since that date there have been regular Case Management Conferences and interlocutory hearings (over 30 in all) dealing with a range of different issues, including two further appeals.

The claim is based in the tort of misfeasance in public office (the Bank cannot be sued for negligence). The Liquidators allege that the Bank failed in its statutory duty in its licensing and supervision of BCCI. If the Bank is found liable this case will obviously have major implications for regulators in financial and other sectors.

The trial started on Tuesday 13 January 2004 and is taking place before Mr Justice Tomlinson in Court 73 at the Royal Courts of Justice in London. Court 73 is the court room which was used for the Hutton Inquiry. It has been wired with the latest in IT, including image display and simultaneous live transcription of the hearing. There are remote links to offices. The trial is expected to last between 12 and 18 months. The claim is worth about £850 million (ie about US$1.5 billion).

The Liquidators do not presently intend to call any witnesses. The Bank's extensive internal documents are their "witnesses". The only witnesses will be those of the Bank. The trial has begun with the Liquidators' opening submissions, made by Gordon Pollock QC and expected to last until late June or early July this year. Mr Pollock is taking the Judge through the key documents in the case, ie the documents on which the Liquidators rely to prove their claim against the Bank. The Bank will then have a similar (but apparently shorter) period to reply. This will be followed by the evidence-in-chief and cross-examination of the Bank's witnesses.

There has been widespread press coverage of the case in the lead up to trial and during the first few weeks in newspapers, other periodicals, on television and radio and online. The story was featured on the BBC News, and Sky News and the BBC World Service.

BCCI'S HISTORY

This section is but a short summary and is devised, in part, from the recitation of the history in Lord Hope's speech in the House of Lords in March 2001.

The history of the rise and fall of the Bank of Credit and Commerce International SA ("BCCI SA") can be divided up into four periods: (1) the period prior to the grant of a full licence under the Banking Act 1979 on 19 June 1980; (2) the period from the grant of the full licence to December 1986; (3) the period from December 1986 to April 1990; and (4) the period from April 1990 to closure in July 1991.

THE EARLY YEARS

BCCI SA was incorporated under the laws of Luxembourg in September 1972 with backing from the Bank of America as a large minority shareholder. In November it established its first office in the UK and commenced its business in the UK as a deposit-taker. Two years later the structure of BCCI was altered by the incorporation in December 1974 of BCCI Holdings SA ("Holdings") in Luxembourg, of which BCCI SA became a subsidiary. In November 1975 another subsidiary of Holdings called BCCI Overseas ("Overseas") was incorporated in the Cayman Islands. Overseas opened its first branch in the UK in June 1976. Overseas was set up in order to get round restrictions on the branch numbers in BCCI SA imposed by the Luxembourg supervisors. At this stage a substantial part of the issued share capital of Holdings was still owned by the Bank of America. Although the group was trading through various branches in the UK it was not subject to any regulatory system in this country. But BCCI SA was subject to supervision in Luxembourg by the Luxembourg Banking Commission ("LBC"), later known as the IML. At the end of 1977 the Bank of America decided to withdraw from its relationship with BCCI because, the Liquidators assert, of its concerns about the dangerous state of BCCI. It sold its holding of shares in Holdings to International Credit and Investment Co Ltd ("ICIC"), which at the time was BCCI's largest shareholder, and provided finance to ICIC for such purchase: a conversion of equity to debt!

Prior to the Banking Act 1979, banking in the UK was not subject to any formalised system of regulation. Control was exercised in an informal way by the Bank and in an indirect manner by means of various statutory provisions which gave privileges to banks which were recognised by branches of government and by the Bank. After the publication of a White Paper in 1976 (which followed the serious secondary banking crisis of the mid 1970s) and the First Council Banking Co-ordination Directive (77/780/EEC), steps were taken to establish a new statutory system of banking supervision in the UK. This was contained in the Banking Act 1979, which came into force in October 1979. It provided for the recognition of banks under section 3(1) if they satisfied the criteria in Schedule 2, Part I, and for the licensing of deposit-taking institutions under section 3(2) if they satisfied the less stringent criteria in Schedule 2, Part II. Those criteria dealt with such issues as prudence and fitness and propriety.

Section 3(5) of the Act provided that, in the case of an institution whose principal place of business was in a country or territory outside the UK, the Bank might regard itself as satisfied that the criteria in Schedule 2 regarding those responsible for the management of the business and the prudence with which its business was being conducted were fulfilled provided that the relevant supervisory authorities informed the Bank that they were satisfied with respect to them,

and that the Bank was satisfied as to the nature and scope of the supervision exercised by those authorities.

BCCI'S APPLICATION

On 1 October 1979 BCCI SA applied to the Bank for recognition as a bank under the Act. On 19 June 1980 the Bank refused recognition as a bank but granted to BCCI SA a full licence under the Act as a deposit-taker. Recognition as a bank was refused, the Liquidators allege, because of BCCI's failure to meet the additional criterion for recognition, namely that it did not have a sufficiently high reputation and standing in the banking community. The Liquidators maintain that BCCI SA's principal place of business was in the UK and that the Bank knew this and that the LBC would not supervise BCCI SA. Nevertheless the Bank decided to rely under section 3(5) of the 1979 Act on the supervision of its activities by LBC. The Liquidators' case is that when the Bank granted the licence:

(a) it did so knowingly deliberately and contrary to the statutory scheme;

(b) it was recklessly indifferent as to whether it was acting in accordance with the scheme; or

(c) it willfully disregarded the risk that it was not acting in accordance with that scheme;

(i) in bad faith; and

(ii) (a) in the knowledge that the likely consequences were losses to depositors and potential depositors; or

(b) it willfully disregarded the risk of the consequences; or

(c) it was recklessly indifferent to those consequences.

JUNE 1980 TO DECEMBER 1986

During the period from June 1980 to December 1986 the activities of the BCCI group expanded dramatically not only in the UK but throughout the world. Various officials of the Bank pointed out that it was unsatisfactory for it as the supervising authority of BCCI SA in the UK to rely, as it had been doing purportedly under section 3(5) of the 1979 Act, on the views of LBC as to the activities of the holding company in Luxembourg. Various possible solutions were considered including, on the one hand, a proposal for the Bank to supervise the whole of BCCI SA and, on the other, the incorporation of Holdings in the UK to improve the effectiveness of the Bank's supervision of the group's activities in this country. In September 1984 the effectiveness of the existing statutory regime was called into question by the collapse of Johnson Matthey Bankers as a result of which the Bank was seriously criticized and the Head of Banking Supervision was replaced. In the light of that debacle a further White Paper was produced and the enactment of a

new statute, which was to become the Banking Act 1987, was proposed. The system introduced by the 1979 Act was to be both strengthened and simplified. In place of the dual system of recognition and licensing, a single system of authorisation was to be introduced with restrictions on the use of banking names. The Bank was to be required to establish a committee to be known as the Board of Banking Supervision which was to include six independent members as well as three members from the Bank ex officio. Any difference of view between the Bank members and the independent members was to be reported to the Chancellor of the Exchequer. Various other changes were to be made to the powers and duties of the Bank as regulatory authority.

In the meantime the Bank continued to rely on the views of the Luxembourg supervisors, by then known as the IML, rather than to supervise the whole of BCCI SA itself. Further important memoranda passed between officials of the Bank drawing attention yet again to the fact that the real place of business of the BCCI SA was in London and that effectively the Bank and not the IML was its prime supervisor. Concern was expressed about heavy losses resulting from BCCI SA's central treasury activities which had been identified by BCCI SA's auditors, but not been reported to the Bank until 1986 and BCCI's lack of candour about its decision to relocate its central treasury operation from London to Abu Dhabi.

The Liquidators' case regarding this period is that the Bank was continuing to purport to rely on assurances from the LBC and the IML and, that despite its knowledge of the inappropriateness of this conduct, the fact that the BCCI group was effectively unsupervised and the likelihood of losses to depositors, it failed in bad faith to take steps to supervise BCCI SA and to revoke BCCI SA's licence.

The next period was marked by a number of changes in the supervisory regime and further serious expressions of concern about the activities of BCCI. The 1987 Act came into force in October 1987. Section 3(5) of the 1979 Act was replaced by an equivalent provision in section 9(3) of the 1987 Act. BCCI SA was deemed to be authorised under the 1987 Act by section 107 of that Act and Schedule 5, paragraph 2. After the failure of attempts to reach agreements between the Bank and the IML whereby BCCI SA (and indeed the Group), could be satisfactorily supervised (the IML maintaining that they continued to be unable to do so), an international co-operative group, known as "the College", was established to enable a limited member of supervisors of the operations of the BCCI Group to meet twice-yearly to discuss its financial condition. The efficacy of the College is far from clear and was doubted at the time. Nonetheless, concern was expressed at meetings of the College about a large concentration of exposures due to the group's lending and the effect on the group's activities of the arrest of seven of its officials in Tampa, Florida in October 1988 on charges of drug-trafficking, money-laundering and conspiracy. Further consideration was given to proposals for the restructuring of the group's activities with a view to achieving effective consolidated supervision in London by the Bank. Indeed the Board of Banking supervision was informed that the Bank was going to do this in early 1990. On 30 January 1990 the Bank decided to continue BCCI SA's authorisation following a decision of the Tampa prosecutor to enter into a plea-bargain agreement, approved by the court,

by which BCCI SA and Overseas pleaded guilty to all counts of money-laundering and conspiracy. Concerns were later expressed to the Bank by the group's auditors, Price Waterhouse ("PW"), about the probity of BCCI's senior management and this was followed by serious problems over the finalisation of the 1989 accounts.

APRIL 1990 TO JULY 1991

The final period from April 1990 to closure in July 1991 began with further expressions of concern to the Bank by PW about the group's serious financial problems and reports about efforts which were being made to obtain financial support from the majority shareholders. On 18 April 1990 PW reported to the board of Holdings that they were unable to sign the 1989 accounts. Later that month they felt able to do so in the light of expressions of support for the group by the Abu Dhabi Government. Eventually agreement was reached in the session in which the 1989 accounts could be signed, but in circumstances in which the Liquidators were highly critical of the role played by the Bank. In early June 1990 the IML, recognising that they were no longer in a position effectively to supervise their activities, gave notice to Holdings and to BCCI SA that they must leave Luxembourg within the next 12 to 15 months. These matters were discussed at a meeting of the College on 19 June 1990 when the IML repeated its ultimatum and the Cayman supervisor said that, if BCCI SA had to leave Luxembourg, Overseas would have to leave Cayman. Further consideration was given to the need for a clear group structure, consolidated supervision of its activities, relocation of the group to Abu Dhabi and the need for a clear and substantial commitment by the Abu Dhabi Government of its support for it.

In October 1990 PW reported to Holdings' audit committee on further serious financial problems and said that an urgent investigation was needed to quantify the group's liabilities and its need for financial support. On 5 October 1990 a letter was produced to the College on behalf of the majority shareholders undertaking to provide support to the level indicated by PW. But the IML refused to extend its deadline unless certain conditions were met and the supervisors did not regard the shareholders' proposals for support as acceptable. By December 1990 a revised support package had been put together which PW regarded as acceptable, but later that month PW became aware of the extent to which BCCI's financial problems were due to fraudulent activities on the part of management. In early 1991, there were revelations that a large number of deposits had not been recorded. On 4 March 1991 the Bank commissioned PW to investigate and report to it under section 41 of the Banking Act 1987 on malpractice within BCCI. PW delivered their report to the Bank on 24 June 1991. It contained a comprehensive account of widespread frauds and deceptions which had been perpetrated by BCCI. Four days later the Bank decided that the proposed reconstruction of the group could not be pursued and that to protect depositors BCCI SA had to be closed down. On 5 July 1991 the Bank presented a petition for the appointment of a provisional liquidator. The Bank maintains that it was only when it received the Section 41 report that it realised that BCCI was riddled with fraud. The Liquidators deny this and assert that the Bank had been aware of serious problems for a long time.

The Liquidators' case regarding this period is based on general allegations that the Bank failed in bad faith to face up to its responsibilities as a supervisor to take decisions that would protect the interests of depositors and potential depositors.

The closure of BCCI on 5 July 1991 provoked widespread concern in the financial community on the ground that this action was long overdue, yet the action that was taken was criticised by depositors, employees and shareholders as precipitate. In a prompt response to that concern Lord Justice Bingham (as he then was) was invited to conduct an inquiry into the supervision of BCCI under the Banking Acts, to consider whether the action taken by all the UK authorities was timely and to make recommendations. The establishment of the inquiry was announced on 19 July 1991. Bingham LJ submitted his report to the Chancellor of the Exchequer and the Governor of the Bank in July 1992. Among the questions which he understood to call for consideration by his terms of reference were the following: What did the UK authorities know about BCCI at the relevant times? Should they have known more? And should they have acted differently?

THE BINGHAM REPORT

The Bingham report[1] contains a lengthy account of the entire sequence of events from the establishment of BCCI in the UK in 1972 to its closure in July 1991. Bingham LJ took evidence both orally and in writing from a large number of witnesses and he had access to many documents. He said that in deciding what was said and done during BCCI's 19 year history he had relied heavily on contemporary notes and minutes of meetings and conversations between the Bank and Price Waterhouse. His report contains numerous findings of fact and expression of opinion relevant to the questions which he understood to have been comprised within his terms of reference. The report was published in October 1992, but eight appendices to the report were not published and were not disclosed to the Liquidators until the end of 2002. The Liquidators have asserted that important documents were not shown to Bingham LJ with the result that important matters were not fully addressed by him.

LEGAL PRIVILEGE IN THE BCCI CASE

The case has spawned litigation in 2003 and 2004 concerning the extent of legal advice privilege claimed for documents created by the Bank and its legal advisors for or in relation to the Bingham Inquiry.

In April 2003 the Court of Appeal gave an important interlocutory judgment which meant that the Liquidators have been able to obtain access to internal Bank of England documents that evidence its preparations for providing information to the Bingham Inquiry in 1991 and 1992.

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[1] Inquiry into the Supervision of the Bank of Credit and Commerce International (HC Paper (1992-93) No 198

As mentioned above, Bingham LJ was appointed by the Bank and the UK government's Treasury to investigate the manner in which BCCI had been supervised. The Bank gave extensive evidence to the Inquiry. The Governor of the Bank appointed three employees, who became known as the Bingham Inquiry Unit ("BIU"), to deal with communications between the Bank and the Inquiry. The BIU gathered information, including written memoranda, from employees and ex-employees of the Bank and communicated information based on this material to the Bank's solicitors (Freshfields) and the BIU also interviewed various officials at great length. The information was used to assist the BIU in preparing the Bank's final submissions to the Inquiry. The BIU had a great deal of contact with and received advice from the Bank's solicitors and counsel. The Bank asserted the documents were covered by legal advice privilege, and therefore it was not obliged to disclose copies of any documents created by or emanating from the BIU, other than documents that were communications between the BIU and Bingham LJ and his Inquiry team. The Liquidators argued that documents prepared by the Bank's present and ex-employees for the purposes of the Inquiry should be disclosed.

The Liquidators argued that the Bank's claim that it was entitled to withhold this material went beyond the scope of the existing rules on disclosure of documents and that the Liquidators were accordingly being deprived of important material helpful for their claim against the Bank. In the first judgment on this issue, given in the High Court on 13 December 2002, Tomlinson J accepted the Bank's claim that it was entitled to withhold the documents. The Judge ruled that "an internal confidential document, not being a communication with a third party, which was produced or brought into existence with the dominant purpose that it or its contents be used to obtain legal advice is privileged from production". The Liquidators appealed to the Court of Appeal on this issue and the Court allowed the appeal.

The Liquidators argued before the Court of Appeal that documents prepared by the Bank's employees or ex-employees, whether these were prepared for submission to or at the direction of the Bank's solicitors, should be disclosed on the basis that these documents were simply the "raw material" on which the BIU would thereafter seek advice from the Bank's solicitors. Only communications between solicitor and client and evidence of the content of such communications were privileged. Any preparatory materials obtained before the communications, even if prepared for the dominant purpose of being shown to a client's solicitor, at the solicitor's request and even if subsequently sent to the solicitor, were not privileged.

The Bank did not see it this way however, and argued that any document prepared with the "dominant purpose" of obtaining a solicitor's advice on it was protected from disclosure by virtue of legal advice privilege, whether or not the document was actually communicated to a solicitor. The Bank claimed that there was no authority to support the proposition that only communications between a solicitor and a client were privileged. The Bank accepted that documents sent to or by an independent third party would not be covered by legal advice privilege.

In making its decision, the Court of Appeal reviewed case law relating to legal privilege dating back to the early nineteenth century. In the early cases there was no distinction drawn between litigation privilege and legal advice privilege. In *Anderson v Bank of British Columbia* [1876] a clear distinction began to emerge. The case established that information supplied by an employee stands in the same position as information from an independent agent and is not privileged, even if prepared for the dominant purpose of being shown to a solicitor or prepared at the solicitor's request.

But Counsel for the Bank submitted that the law had changed in the twentieth century and that the case of *Balabel v Air India* [1988] in particular had widened the scope of legal advice privilege. However, the Court of Appeal held that later authorities did not change the position and that, in the circumstances, the BIU was the client of the Bank's solicitors and that only communications between the BIU and the solicitors could amount to communications between solicitor and client. Documents prepared by other Bank employees and ex-employees, even if they had been forwarded to the Bank's solicitors by the BIU, were not solicitor/client communications and were, therefore, not privileged.

Even if the Court had found that the BIU documents were "communications" they would need to satisfy the "dominant purpose" test, namely, were they created with the dominant purpose of seeking or receiving legal advice? The Court held that the dominant purpose of sending the documents to the Bank's solicitors was to enable the BIU to discharge the Bank's duty to present all relevant factual material to the Inquiry and not to obtain legal advice on the material. Accordingly, the Bank was obliged to disclosure the documents.

The Court of Appeal was clearly reluctant to expand the scope of legal advice privilege and the Bank's application for leave to appeal to the House of Lords was dismissed. Counsel for the Bank submitted that the principles which apply to litigation privilege should also apply to legal advice privilege. However, the Master of the Rolls, Lord Phillips, observed that: "As the law developed, it then extended the privilege to cover advice that was not in the context of litigation, but it did not carry the whole baggage with it".

This judgment will have implications in circumstances where an individual or a company is seeking or receiving advice from external or in-house solicitors in a non-litigious situation. Confidential communications between solicitor and client where the dominant purpose is the seeking or giving of legal advice will be privileged. Beyond this, what will legal advice privilege protect? The first stage is to decide whether the situation is a non-litigious one, but this may not always be as straightforward as it sounds.

The case of *Re L* [1997] was considered by the Court of Appeal in the BCCI case. In *Re L* the House of Lords decided that litigation privilege cannot exist in non-adversarial proceedings. In the BCCI case the Bingham Inquiry was a non-statutory inquiry, conducted in private, the results

of which were made public. The Court of Appeal found that the Bingham Inquiry did not constitute adversarial proceedings so that litigation advice privilege could not arise.

At first instance Tomlinson J recognised that one outcome of the Bingham Inquiry might be criticism of the Bank's conduct in relation to the supervision of BCCI "… which would itself be likely either to lead to or to encourage the institution or attempted institution of proceedings against the Bank by depositors …". It is likely that some inquiries will lead to the discovery of information which ultimately founds litigation by one party against another. However, this will not affect the characterisation of the inquiry itself as non-adversarial.

In a climate where the number of official, or semi official, inquiries is increasing and where litigation may ultimately ensue from such enquiries, the impact of the judgment will clearly be of relevance to companies or individuals responding to regulatory inquiries or investigations, even though they may be non-adversarial in nature.

It will therefore become increasingly important to identify who the client is in a given situation. This may not be immediately apparent. For example, where a company is seeking or receiving legal advice from solicitors, one individual or a group of individuals within the company may be the client. It will be important from the outset to identify the client for the purposes of dealing with the solicitors and for all communications with the solicitors to be channelled through the client.

Following the judgment, companies and individuals will need to take care over the way in which they communicate with their legal advisers. In order to found a claim for privilege in a non-litigious situation solicitors will need to show either that they are giving legal advice or that litigation is contemplated. This might be done by way of an effective paper trail to demonstrate that the dominant purpose of the communication is the seeking or giving of legal advice, or to record that legal proceedings are contemplated in which case it may be possible to claim litigation privilege over the material.

However, it is apparent that the Court of Appeal in the BCCI case analysed the dominant purpose test based on the facts of the case and the dominant purpose of any communication will be a subjective judgment in each case. Companies and individuals will need to take care as to how documents are provided to external solicitors or in-house lawyers and should be aware that their preparatory materials will not necessarily be protected from disclosure.

SECOND COURT OF APPEAL HEARING ON PRIVILEGE

Following the first Court of Appeal decision the Liquidators issued a further application seeking disclosure of communications passing between the Bank's solicitors (Freshfields) and the BIU by which the Bank sought and were given advice on the presentation of its "case" to Bingham LJ. This included notes of interviews with the Bank officials. This was heard by Tomlinson J in October 2003 who ruled in November 2003 that the Liquidators were entitled to the documents. The Judge held that the only documents which could be withheld on grounds of legal advice

privilege were: (1) communications passing between the Bank and its legal advisers for the purposes of seeking legal advice (ie advice concerning the Bank's rights and obligations); and (2) any document which evidences the substance of such a communication. The Bank appealed against this decision to the Court of Appeal. The Court heard the appeal in January 2004 and gave judgment in March 2004. The Court of Appeal upheld Tomlinson J's decision and refused the Bank permission to appeal to the House of Lords. The Bank petitioned the House of Lords which has now granted the Bank leave. The appeal is due to be heard in late July this year and the outcome is obviously awaited with interest.

Following the two decisions of the Court of Appeal, the Bank has disclosed notes of interviews of Bank officials (including Freshfields' handwritten notes) and a large number of successive drafts of witness statements. As a result of reviewing these documents, the Liquidators have been able to trace the evolution of the accounts of the Bank's licensing and supervision of BCCI. The documents withheld pending the House of Lords appeal are principally those evidencing Freshfields' presentational advice.

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CASE BACKGROUND

The table below sets out the important relevant dates in the history of the case.

EVENT	DATE
The BCCI Group collapses.	July 1991
Lord Justice Bingham (now Lord Bingham) is commissioned to chair an inquiry into the collapse of BCCI.	July 1991
Bingham Report published.	October 1992
Liquidators of BCCI SA issue writ against the Bank of England ("the Bank").	24 May 1993
Bank serves first version of its defence.	21 December 1994
Mr Justice Clarke (the Judge at first instance) orders that some issues of law should be tried as "preliminary issues".	19 July 1995
Mr Justice Clarke hears the trial of the preliminary issues.	November 1995 to January 1996
Mr Justice Clarke gives two judgments on the preliminary issues in favour of the Bank.	1 April 1996 and 10 May 1996
Liquidators serve amended draft Particulars of Claim.	July 1996
Mr Justice Clarke hears the Liquidators' application for leave to amend their Particulars of Claim and the Bank's application to strike out the claim.	November 1996 to April 1997
Mr Justice Clarke gives judgment in favour of the Bank and strikes out the claim.	30 July 1997
Mr Justice Clarke grants the Liquidators leave to appeal to the Court of Appeal.	2 October 1997
Hearing in Court of Appeal.	July 1998
Court of Appeal upholds Mr Justice Clarke's judgment by a majority of 2:1.	4 December 1998
Liquidators obtain leave to appeal to House of Lords.	11 December 1998
First hearing in House of Lords (dealing with issues of law).	January 2000
House of Lords' first judgment (in the form of judgments on the legal requirements of the tort of misfeasance).	18 May 2000

EVENT	DATE
Second hearing in House of Lords (as to whether the Court of Appeal had been right to uphold Mr Justice Clarke's decision to dismiss the action).	January 2001
House of Lords' second judgment allowing the Liquidators' appeal against the dismissal of the action. The parties are directed to bring the case to trial as quickly as possible.	22 March 2001
The first Case Management Conference ("CMC") takes place.	November 2001
CMCs take place before Mr Justice Tomlinson dealing with a variety of procedural issues.	Various dates 2002 and 2003
Bank's disclosure begins. The Bank serves its first list of documents on the Liquidators comprising approximately 80 files of documents. (Subsequent lists have been served during 2002 and 2003. In total the Bank has served lists in excess of 4,000 files of documents).	March 2002
Mr Justice Tomlinson rules in favour of the Liquidators' application to obtain access to the documents in the "Bingham Archive". The Judge orders that the actual disclosure of the documents must await hearing on confidentiality issues relating to some of the documents.	31 May 2002
Hearing of HM Treasury's appeal to the Court of Appeal in respect of this decision.	July 2002
Court of Appeal upholds Mr Justice Tomlinson's judgment allowing disclosure to the Liquidators of documents from the Bingham Archive.	7 August 2002
Mr Justice Tomlinson hears argument on confidentiality issues relating to some of the documents.	October 2002
The parties begin to receive disclosure of documents from the Bingham Archive.	October 2002
Mr Justice Tomlinson hears the Liquidators' application to obtain a complete copy of Appendix 8 of the Bingham Report. Appendix 8 contains material relating to the Security Services' involvement with BCCI. Appendix 8 is ultimately disclosed with some sensitive sections redacted.	October and November 2002
Hearing of the Liquidators' application to obtain copies of the documents generated by the Bank in relation to the Bingham Inquiry ie. by the Bingham Inquiry Unit (the Bank claiming this material to be privileged from disclosure).	November 2002
Mr Justice Tomlinson gives judgment in favour of the Bank on the Bank's Bingham Inquiry Unit documents. The Liquidators appeal to the Court of Appeal.	13 December 2002

EVENT	DATE
The Liquidators serve their Amended Particulars of Claim (increased from about 100 pages to 1,000 pages).	31 December 2002
Court of Appeal hears the Liquidators' appeal in respect of the Bank's Bingham Inquiry Unit material.	March 2003
Court of Appeal rules that the Liquidators are entitled to the Bank's Bingham Inquiry Unit documents and refuses the Bank permission to appeal.	3 April 2003
House of Lords declines Bank's application for permission to appeal.	14 May 2003
Four day hearing at which the Bank attempts to restrict the amendments which can be made to the Liquidators' Particulars of Claim, claiming that otherwise the trial date should be postponed for at least 5 months.	May 2003
Mr Justice Tomlinson rules against the Bank and orders that the trial date should not move. The Judge allows the Liquidators to make criticisms of 14 further Bank officials.	6 June 2003
Bank's first tranche of witness statements served in respect of the key officials. The rest of the Bank's witness statements to be served in tranches up until the end of December 2003.	August 2003
Hearing of Liquidators' application to obtain copies of further Bank Bingham Inquiry Unit material (judgment awaited).	October 2003
Mr Justice Tomlinson gives judgment on Liquidators' application for copies of further Bank Bingham Inquiry Unit material. The Bank appeals against this decision to the Court of Appeal.	4 November 2003
Trial begins (estimate 12-18 months)	13 January 2004
Court of Appeal rules that the Liquidators are entitled to the further Bank Bingham Inquiry Unit material and refuses the Bank permission to appeal.	1 March 2004
House of Lords grants the Bank leave to appeal.	28 April 2004
Date of House of Lords Appeal	26 July 2004

14 May 2004