

## **Exhibit A**

### **Evidentiary Support for First Day Motions**

**EVIDENTIARY SUPPORT FOR FIRST DAY MOTIONS**

1. As discussed above, the Debtors commenced the Chapter 11 Cases with the goal of preventing recalcitrant creditors from taking precipitous actions that could significantly erode the value of the Debtors' business to the detriment of creditors, and with the goal of negotiating and implementing a global restructuring of the Debtors' indebtedness. On the same day that the Debtors filed their chapter 11 petitions, they filed the First Day Motions seeking relief that the Debtors believe is necessary to minimize disruption to their operations. The Debtors respectfully request that the relief sought in each of the First Day Motions be granted as critical elements to minimize disruption as they transition into these Chapter 11 Cases. I have reviewed each of the First Day Motions discussed below. The facts set forth in each First Day Motion are true and correct to the best of my knowledge and belief with appropriate reliance on corporate officers and advisors.<sup>1</sup>

2. I have been advised that the Grand Court of the Cayman Islands, Financial Services Division, entered an order on March 20, 2012 in the Cayman Proceeding, attached hereto as *Exhibit 1*, appointing a Provisional Liquidator and adjourning the petition for a Winding-Up Order, as discussed in more detail above.

**A. Debtors' Motion for Order Directing Joint Administration of Related Chapter 11 Cases (the "Joint Administration Motion")**

3. The Debtors request entry of an order directing joint administration of the Chapter 11 Cases for procedural purposes only. Specifically, the Debtors request that the Court maintain one file and one docket for all of the Chapter 11 Cases under the case of Arcapita Bank

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<sup>1</sup> All capitalized terms used in this Exhibit A but otherwise not defined herein shall have the meanings set forth in the relevant First Day Motion.

B.S.C.(c) and also request that an entry be made on the docket of each of the Debtors' Chapter 11 Cases, other than Arcapita B.S.C.(c), to reflect the joint administration of the Chapter 11 Cases. Moreover, the Debtors seek authority to file the monthly operating reports (the "**Operating Reports**") required by the Operating Guidelines and Reporting Requirements for Debtors-in-Possession and Trustees (the "**Operating Guidelines**") promulgated by the Office of the United States Trustee on a consolidated basis.

4. Given the integrated nature of the Debtors' operations, joint administration of the Chapter 11 Cases will provide significant administrative convenience without harming the substantive rights of any party in interest. Many of the motions, hearings, and orders that will arise in the Chapter 11 Cases will jointly affect each and every Debtor. The entry of an order directing joint administration of the Chapter 11 Cases will reduce fees and costs by avoiding duplicative filings and objections and will allow the Office of the United States Trustee for the Southern District of New York (the "**U.S. Trustee**") and all parties in interest to monitor the Chapter 11 Cases with greater ease and efficiency.

5. Similarly, given the integrated nature of the Debtors' operations, filing of the Operating Reports on a consolidated basis would further administrative economy and efficiency in the Chapter 11 Cases without prejudice to any party in interest, and the reports would accurately reflect the Debtors' consolidated business operations and financial affairs.

6. I have reviewed the Joint Administration Motion and believe that the facts stated therein are accurate to the best of my knowledge, information and belief. I further believe that the relief requested in the Joint Administration Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will minimize disruptions to the

Debtors' operations. Accordingly, on behalf of the Debtors, I respectfully submit that the Joint Administration Motion should be approved.

**B. Debtors' Motion for Order Extending the Time to File Schedules and Statements of Financial Affairs (the "Motion to Extend Time to File Schedules")**

7. The Debtors request entry of an order pursuant to sections 105(a) and 521(a)(1)(B) of the Bankruptcy Code extending the time to file schedules and statements of financial affairs.

8. Pursuant to section 521 of the Bankruptcy Code and Federal Bankruptcy Rule 1007, the Debtors are required, within 14 days from the Petition Date (the "**Schedules Deadline**"), to file with the Court: (a) schedules of assets and liabilities; (b) statements of financial affairs; (c) schedules of current income and expenditures; and (d) statements of executory contracts and unexpired leases (collectively, the "**Schedules and Statements**"). However, under Bankruptcy Rule 1007(c), the Debtors may obtain an extension of this deadline for cause.

9. The size and complexity of the Debtors' business operations, the number of creditors likely to be involved in the Chapter 11 Cases (many of whom are foreign creditors), and the international scope of the Debtors' operations will make it difficult to complete the Schedules and Statements within the required time period. Indeed, for many creditors, the Debtors will not have received invoices within the 14-day period to determine the amounts due as of the Petition Date. Further, given the numerous critical operational matters that the Debtors' accounting and legal personnel must address in the early days of the Chapter 11 Cases and the volume of information that must be compiled and reviewed, the Debtors believe that they will be unable to complete their Schedules and Statements within the time provided under Bankruptcy Rule 1007. Although the Debtors' personnel have retained GCG, Inc. to assist them in compiling and formatting information for the Schedules and Statements if required to do so, only

the Debtors' personnel have the knowledge and access necessary to provide the information necessary to prepare the required filings.

10. Given the volume and complexity of the information that must be compiled and reviewed, in addition to the substantial burdens already imposed on the Debtors' management by the commencement of the Chapter 11 Cases, the limited number of employees available to collect the information, and the competing demands upon such employees, the Debtors submit that "cause" exists to extend the Schedules Deadline through and including May 3, 2012, giving the Debtors a total of 45 days after the Petition Date to file the Schedules and Statements. The requested extension will enhance the accuracy of the Debtors' Schedules and Statements and avoid the necessity of substantial subsequent amendments.

11. I believe that an extension of Debtors' time to file the Schedules and Statements is in the best interest of the Debtors, their estates, and all parties in interest. Accordingly, on behalf of the Debtors, I respectfully submit that the Motion to Extend Time to File Schedules should be approved.

**C. Debtors' Motion for Order Granting the Debtors Additional Time to File Reports of Financial Information Pursuant to Federal Rule of Bankruptcy Procedure 2015.3(a) (the "2015.3 Motion")**

12. The Debtors seek entry of an order pursuant to Bankruptcy Rule 9006(b), granting the Debtors 45 days from the Petition Date, through and including May 3, 2012, to file the reports of financial information pursuant to Rule 2015.3(a) (the "**Rule 2015.3 Reports**").

13. Certain of the Debtors may hold "a substantial or controlling interest," as those terms are defined by Bankruptcy Rule 2015.3(c), in a significant number of non-Debtor affiliate entities (the "**Non-Debtor Affiliates**"). The Non-Debtor Affiliates are located in various countries, including the Cayman Islands, Hong Kong, Singapore, Luxembourg, the United States, and the United Kingdom. Many of these Non-Debtor Affiliates have substantial assets

and operations, and assembling and compiling the financial reports of the value, operations, and profitability of these various Non-Debtor Affiliates throughout the world will require significant time and effort by the Debtors' personnel.

14. The Debtors and their professional advisors have been working diligently to prepare for the filing of the Chapter 11 Cases. The magnitude of this task, the ongoing burdens of operating the Debtors' businesses day-to-day, performing the various administrative tasks attendant to the commencement of the Chapter 11 Cases, and responding to numerous information requests from various parties in interest, and working with creditors in the near-term to develop a consensual chapter 11 plan each support an extension of the current deadline for filing the Rule 2015.3 Reports.

15. The Debtors will work cooperatively with the U.S. Trustee, any official committee appointed in the Chapter 11 Cases, the agents for their prepetition lenders, and other constituents to provide access to the Debtors' books and records, including disclosures relating to the Debtors' non-Debtor affiliates. Thus, no relevant parties will be substantially harmed by this extension.

16. I have reviewed the 2015.3 Motion and believe that the facts stated therein are accurate to the best of my knowledge, information and belief. I further believe that an extension of Debtors time to file the Rule 2015.3 Reports or to seek modification of the requirement to file such reports is in the best interest of the Debtors, their estates, and all parties in interest. Accordingly, on behalf of the Debtors, I respectfully submit that the 2015.3 Motion should be approved.

**D. Debtors' Motion for Interim and Final Orders Confirming the Protections of Sections 362 and 365 of the Bankruptcy Code And Restraining Any Action in Contravention Thereof (the "Automatic Stay Motion")**

17. The Debtors request entry of an order pursuant to sections 105(a), 362, and 365 of the Bankruptcy Code, enforcing, restating, and restraining any action taken in contravention of the automatic stay and the provisions in the Bankruptcy Code preventing the enforcement of *ipso facto* clauses.

18. The Debtors have borrowed more than \$1 billion from financial and other institutions. While many of these institutions have connections with the United States, many do not. In addition, the Debtors have foreign operations with potentially large numbers of foreign creditors and counterparties to contracts (the "**Foreign Creditors**") who may be unaware of the global-reaching prohibitions and restrictions of the Bankruptcy Code. In particular, these Foreign Creditors may be unfamiliar with the operation of the automatic stay and other provisions of the Bankruptcy Code, including the stay on enforcement of *ipso facto* clauses.

19. Due to this unfamiliarity, certain foreign creditors may attempt to seize assets located outside of the United States to the detriment of the Debtors, their estates, and creditors, or may take other actions in contravention of the automatic stay imposed by section 362 of the Bankruptcy Code. In addition, upon learning of these Chapter 11 Cases, foreign creditor counterparties to unexpired leases and executory contracts may attempt to terminate those leases or contracts due to the commencement of these Chapter 11 Cases in contravention of section 365 of the Bankruptcy Code.

20. To ensure that the Debtors' operations are not disrupted by enforcement actions or the exercise of self-help remedies initiated by Foreign Creditors outside the United States, the Debtors seek entry of an order that confirms, restates, and restrains any action taken in violation of two key protections afforded to the Debtors under the Bankruptcy Code: (a) the



automatic stay provisions of section 362 of the Bankruptcy Code; and (b) the prohibition of section 365 of the Bankruptcy Code against terminating agreements and leases due to *ipso facto* provisions, both of which are further described below. A specific order from this Court that the Debtors can present to Foreign Creditors outside of the United States will assist in protecting the Debtors from actions by such creditors that would violate the provisions of the Bankruptcy Code.

21. I have reviewed the Automatic Stay Motion and believe that the facts stated therein are accurate to the best of my knowledge, information and belief. I further believe that the relief requested in the Automatic Stay Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will assist the Debtors in seeking protection from foreign creditors and governmental units. Accordingly, on behalf of the Debtors, I respectfully submit that the Automatic Stay Motion should be approved.

**E. Debtors' Motion for an Order (A) Waiving the Requirement That Each Debtor File a List of Creditors and Equity Security Holders and Authorizing Maintenance of Consolidated List of Creditors in Lieu of Matrix; (B) Authorizing Filing of a Consolidated List of Top 50 Unsecured Creditors; and (C) Approving Case Management Procedures (the "Notice and Procedure Motion")**

22. The Debtors request entry of an order (A) waiving the requirement that each debtor file a list of creditors; (B) authorizing the filing of a single, consolidated list of the 50 largest unsecured creditors in lieu of filing separate lists of the 20 largest unsecured creditors of each Debtor; (C) approving certain procedures for the Debtors to supply notice to creditors and parties in interest, certain procedures for case management, and certain other administrative procedures; and (D) authorizing the Debtors to maintain a consolidated list of creditors in lieu of a matrix.

23. Provided that it is appointed by the Court as the Debtors' noticing and claims agent, GCG will maintain an electronic list of the Debtors' creditors. The Debtors do not

believe that they could effectively and accurately convert their records into a creditor matrix format more efficiently than a consolidated list could be prepared by GCG. The Debtors believe that they would incur unnecessary expense were they forced to perform such a conversion.

24. Given the size and complexity of the Debtors' businesses, the filing of a consolidated list of Debtors' creditors holding the 50 largest unsecured claims (the "***Consolidated Top 50 List***") will facilitate the U.S. Trustee's review of creditors' claims and will enable the appointment of a single creditors' committee for the Chapter 11 Cases. By contrast, the filing of a list of the 20 largest unsecured claims for each of the Debtors would impose an unnecessary burden on the U.S. Trustee, and would, in addition, increase the cost to the Debtors' estates without providing any added benefit.

25. The noticing procedures, case management procedures, and certain other administrative procedures set forth in the Notice and Procedure Motion (collectively, the "***Procedures***") will promote administrative efficiency. Due to the large number of creditors and other parties in interest in the Chapter 11 Cases, providing notice of all pleadings and other required documents to each of these constituencies would be burdensome and costly for the Debtors' estates. The Notice Procedures will provide any party in interest affected by the relief sought by a particular filing or pleading with notice thereof. Also, interested parties who have expressed an interest in receiving notice of all filings will be given such notice pursuant to the Notice Procedures. The Notice Procedures will not adversely affect the relevant parties in interest and will preserve the Debtors' estates by avoiding the incurrence of unnecessary expenses to provide notice of pleadings to parties in interest.

26. Scheduling regular omnibus hearings will also promote administrative efficiency in the Chapter 11 Cases. There will likely be numerous motions and applications filed

in the Chapter 11 Cases in pursuit of various forms of relief. By scheduling regular, monthly omnibus hearings in advance, the Debtors and parties in interest will be better able to plan for and schedule attendance at hearings. This relief will reduce the need for emergency hearings and requests for expedited relief. Similarly, establishing the Procedures for court filings and deadlines will allow the Debtors and parties in interest to plan their filings.

27. I have reviewed the Notice and Procedure Motion and believe that the facts stated therein are accurate to the best of my knowledge, information and belief. I further believe that the above notice, case management, and other administrative procedures are in the best interests of the Debtors, their estates, and all parties in interest. Accordingly, on behalf of the Debtors, I respectfully submit that the Notice and Procedure Motion should be approved.

# Exhibit 1

MOURANT  
OZANNES

THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

FSD CAUSE NO. 45 OF 2012

IN THE MATTER OF THE COMPANIES LAW (2011 REVISION) (THE "LAW")

AND IN THE MATTER OF ARCAPITA INVESTMENT HOLDINGS LIMITED (THE  
"COMPANY")

ORDER

UPON hearing Leading Counsel for the Company;

AND UPON the Company's directors wishing to formulate a compromise or arrangement which can be presented for approval to the Company's creditors pursuant to a principal bankruptcy case filed under Chapter 11 of Title 11 of the United States Code (the "US Bankruptcy Code") (or, alternatively, under sections 86-88 of the Law if for any reason a Chapter 11 Plan cannot be confirmed through the US Bankruptcy Proceedings (as defined below);

AND UPON the Company and other companies in its group, including its parent Arcapita Bank B.S.C.(c), filing principal Chapter 11 bankruptcy proceedings (the "US Bankruptcy Proceedings") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court");

AND UPON the Company issuing a summons seeking ancillary relief from the Grand Court of the Cayman Islands (the "Court") with a view to facilitating the US Bankruptcy Proceedings and, if subsequently necessary, an arrangement, by invoking section 97 of the Law such that no suit, action or other proceedings, including criminal proceedings, shall be proceeded with or commenced against the Company except with the leave of the Court and subject to such terms as the Court may impose;

AND UPON reading the Affidavits of Isa Zainal and Michael Rosenthal;

**IT IS HEREBY ORDERED THAT:**

1. Gordon MacRae of Zolfo Cooper, 4th Floor Bermuda House, Dr Roy's Drive, P.O. Box 1102, Grand Cayman KY1-1102, Cayman Islands and Simon Appell of Zolfo Cooper LLP, 10 Fleet Place, London. EC4M 7 RB, United Kingdom, be appointed Joint Provisional Liquidators of the Company (the "**Provisional Liquidators**") and have the power to act jointly and severally under section 104(3) of the Law, with the powers set out in, and subject to, the following provisions of this Order, on the ground that the Company is or is likely to become unable to pay its debts within the meaning of section 93 of the Law and the Company intends to present a compromise or arrangement to its creditors.
2. The directors of the Company are authorized to continue to exercise all powers of management conferred on them by the Company immediately prior to the date of this Order and to remain the representatives of the Company in its capacity as debtor in possession under s.1107 of the US Bankruptcy Code, subject to the Provisional Liquidators overseeing, monitoring and assisting the directors in the exercise of such powers (but not superseding the directors or their authority to control and direct the Company's US Bankruptcy Proceedings). Without prejudice to the generality of the foregoing, the directors of the Company are authorized to take all necessary steps with a view to formulating and presenting a compromise or arrangement to the Company's creditors and, in particular, to take such steps and proceedings on behalf of the Company as may be required in relation to the US Bankruptcy Proceedings.
3. The Provisional Liquidators and the Company acting by its directors shall seek to agree, within 14 days, a protocol which sets out the terms upon which the Provisional Liquidators shall oversee, monitor and assist, the exercise of the directors' powers of management and the Company's participation in the US Bankruptcy Proceedings (but not supersede the directors or their authority to control and direct the Company's US Bankruptcy Proceedings), liberty to apply to the Court for the purposes of approving the protocol or in the case of no agreement for further directions.
4. For the avoidance of doubt, no payment or other disposition of the Company's property shall be made or effected without the Provisional Liquidators being consulted. Without

prejudice to the generality of the foregoing and without prejudice to such terms as may be agreed under the protocol, the Provisional Liquidators shall be consulted, and if not in agreement, shall be authorised to appear before the US Bankruptcy Court where:

- i. The Company seeks to dispose of any business operation, subsidiary, division or other significant asset of the Company's business, including the whole or any of its under taking as a going concern; and
  - ii. The Company seeks to incur debt or borrows money, and/or grants security in respect of the same and/or guarantees indebtedness or borrowed money of affiliates.
5. For the avoidance of doubt the Provisional Liquidators are not being appointed as "foreign representatives" within the meaning of s.101(24) of the US Bankruptcy Code and are not authorised or required to seek recognition under Chapter 15 of the US Bankruptcy Code.
6. For the purposes set out in paragraph 2 above, the Provisional Liquidators may exercise the following powers:
- a. To open and maintain bank accounts in the name of the Company.
  - b. The power to engage staff (whether or not as employees of the Company) whether in the Cayman Islands or elsewhere as they may consider necessary to assist them in the performance of their functions and on such terms as they may think fit and to pay for same out of the assets of the Company.
  - c. The power to engage attorneys and other professionally qualified persons (whether or not as employees of the Company) whether in the Cayman Islands or elsewhere as they may consider necessary to assist them in the performance of their functions and on such terms as they may think fit and to pay for same out of the assets of the Company.
7. The Provisional Liquidators are directed to provide this Court with a written report as to the financial affairs of the Company and the progress of the US Bankruptcy Proceedings every two months or more frequently should the Provisional Liquidator believe that there are material developments which should be drawn to this Court's attention.

8. For the avoidance of doubt, pursuant to s.97(1) Companies Law (2011) Revision no suit, action or other proceeding, including criminal proceedings, shall be proceeded with or commenced against the Company except with the leave of the Court and subject to such terms as the Court may impose.
9. The remuneration and expenses of the Provisional Liquidators, including the expenses associated with exercise of their powers, shall be paid out of the assets of the Company, subject to the approval of the Court.
10. The Winding Up Petition shall be adjourned to a date to be fixed upon the application of the Company or upon the application of any creditor or contributory.
11. The Company's costs of and occasioned by this summons shall be paid out of the assets of the Company.
12. Such further and/or other relief be granted as this Honourable Court deems fit.

DATED this 19<sup>th</sup> day of March 2012

FILED this 19 day of March 2012



THE HONOURABLE CHIEF JUSTICE  
JUDGE OF THE GRAND COURT