

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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IN RE: : **Chapter 11**
ARCAPITA BANK B.S.C.(c), *et al.*, : **Case No. 12-11076 (SHL)**
Debtors. : **Jointly Administered**
: :
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**ORDER PURSUANT TO SECTIONS 327(a) AND 330 OF THE
BANKRUPTCY CODE AUTHORIZING CERTAIN DEBTORS TO
RETAIN AND EMPLOY KPMG LLP AS VALUATION ADVISOR
NUNC PRO TUNC TO THE PETITION DATE**

Upon consideration of the Application (the “*Application*”)¹ of Arcapita Bank B.S.C.(c), and certain of its subsidiaries and affiliates, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the “*Debtors*” and each, a “*Debtor*”), for entry of an order pursuant to sections 327(a) and 330 of title 11 of the United States Code (the “*Bankruptcy Code*”), Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the Southern District of New York (the “*Local Rules*”) authorizing the Debtors to retain and employ KPMG LLP (“*KPMG UK*”) as a valuation advisor to the Debtors *Nunc Pro Tunc* to the Petition Date; and upon the Fletcher Declaration in support thereof; and upon the *First Supplemental Declaration of David Fletcher in Support of Debtors’ Application Pursuant to Sections 327(a) and 330 of the Bankruptcy Code for an Order Authorizing the Debtors to Retain and Employ KPMG LLP as Valuation Advisor to the Debtors Nunc Pro Tunc*

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Application.

to the Petition Date [Dkt. No. 183]; and upon the *Second Supplemental Declaration of David Fletcher in Support of Debtors' Application Pursuant to Sections 327(a) and 330 of the Bankruptcy Code for an Order Authorizing the Debtors to Retain and Employ KPMG LLP as Valuation Advisor to the Debtors Nunc Pro Tunc to the Petition Date* [Dkt. No. 190]; and the Court having found that it has jurisdiction to consider this Application pursuant to 28 U.S.C. sections 157 and 1334; and the Court having found that venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. sections 1408 and 1409; and informal comments having been received from the Office of the United States Trustee for the Southern District of New York (the "*U.S. Trustee*"); and the Official Committee of Unsecured Creditors' (the "*Committee*") having filed an objection to the Application (the "*Objection*") [Docket No. 185]; and an initial hearing on the Application having occurred on May 31, 2012; and the Court having entered an order approving the Application on an interim basis to the extent set forth therein [Docket No. 203] and having entered a corrected interim order on June 12, 2012 [Docket No. 241]; and the Objection having been resolved; and the Court having found that the relief requested in the Application is in the best interests of Debtors' estates, their creditors, and other parties in interest; and notice of the Application and the opportunity for a hearing on the Application was appropriate under the particular circumstances; and the Court having reviewed the Application and having considered the statements in support of the relief requested therein at a hearing before the Court on June 26, 2012 (the "*Hearing*"); and the Court having determined that the legal and factual bases set forth in the Application and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Application is granted to the extent set forth herein.
2. In accordance with sections 327(a) and 330 of the Bankruptcy Code, Bankruptcy Rule 2014, and Local Rule 2014-1, Arcapita Bank B.S.C.(c) (“*Arcapita Bank*”), Arcapita LT Holdings Limited (“*ALTH*”), and Arcapita Investment Holdings Limited (“*AIHL*,” and collectively with Arcapita Bank and ALTH, the “*Retaining Debtors*”) are authorized on a final basis to employ and retain KPMG UK *nunc pro tunc* to the Petition Date as their valuation advisor on the terms set forth in the Application and the Engagement Letter.
3. During the term of KPMG UK’s employment in these Chapter 11 Cases, the Engagement Letter shall be deemed amended to include ALTH and AIHL as additional addressees and signatories thereto.
4. As set forth in the Application and the Engagement Letter, KPMG UK is authorized to undertake its valuation analysis on the basis of market value, defined as the price attainable between a willing buyer and willing seller, and authorized to consider the robustness of the underlying business plan and utilize commercial valuation methodologies as it considers appropriate for each individual company/investment in reaching its conclusion on value, including where appropriate, work relating to the review of robustness of underlying business plan assumptions:
 - Review and comment on the commercial environment in which the entity operates identifying key risks and opportunities that impact on current and medium term business value.
 - Review and comment on the forecast trading (including appropriate analysis of the components of revenues and costs) and cash flows.
 - Summarize and independently challenge the key assumptions that underpin the forecast trading in light of recent and current trading, and comment on the key value drivers underpinning the forecasts.
 - Review and comment on the reasonableness or otherwise of the key assumptions, highlighting where appropriate areas of vulnerability, sensitivity or potential upside.

- Taking into account the above, comment on the adequacy of the entity's existing funding through to the proposed exit date, including the ability of the entity to operate within the terms of its existing facilities and the potential for any additional funding.

Valuation methodologies KPMG is authorized to consider:

- Discounted Cash Flow ("DCF"): as applicable, assess value with reference to future projections, to be provided by management and any sensitivity analysis undertaken for the Business Plan Reviews ("BPRs"). This will include, inter alia:
 - derivation of an appropriate discount rate,
 - determination of an appropriate terminal value growth rate, and
 - consideration of the sensitivity of the valuation to small changes in key value drivers.
- Capitalized Earnings: assess value by reference to the capitalization of near-term normalized earnings at an appropriate multiple range with reference to:
 - the expected level of future operating performance of the business,
 - the life-cycle stage of the business as at the valuation date, and
 - reference to publically listed companies displaying similar characteristics and/or recent sector transactions.
- Adjusted Net Asset Value ("ANAV"): consider value with reference to the current financial position of the investee company with reference to:
 - marking every asset and liability on (and off) the balance sheet to current market values,
 - application of a premium or discount to reflect the profitability, the market position and overall attractiveness of the business, and
 - comparison of net assets plus the premium or discount to the net asset value using price to book multiple for comparable quoted companies.
- An ANAV approach to value will be primarily applicable to real estate investments.
- Forced exit basis: assess the potential implications of the following issues that may be relevant in the event of a forced exit in a:
 - nonconsensual sale of a minority or non-controlling stake;
 - distressed sale and an assessment of discount applied by potential buyers;
 - scenario in which there is a lack of funding available to enable the underlying business to achieve its business plan or maintain its current capital structure.

KPMG is authorized to consider in respect of its valuation analysis valuation at two dates: the value of the companies/investments as at a current date and the expected future value of the

companies/investments based on Arcapita's anticipated exit date (or other date to be agreed between Arcapita and the Advisers) and own internal valuation analysis. As part of the foregoing services, KPMG is authorized (i) to provide both written and oral reports to the Retaining Debtors, (ii) to engage in discussions with third-parties, including without limitation, the Committee, and (iii) to provide support, including in court proceedings, regarding any of the foregoing services.

5. Notwithstanding anything to the contrary in the Engagement Letter, the Application or the Fletcher Declarations, to the extent that the Retaining Debtors request KPMG UK to perform any services other than those detailed in Paragraph 4 above, the Retaining Debtors shall file a further application for an order of approval by the Court for a supplement to the retention and such application shall set forth, in addition to the additional services to be performed, the additional fees sought to be paid.

6. KPMG UK shall be compensated in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Order Granting Debtors' Motion For Order Establishing Procedures For Interim Compensation And Reimbursement Of Expenses For Professionals And Committee Members, the Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases M-389 (Nov. 25, 2009), and the U.S. Trustee Guidelines (the "*Fee Guidelines*"), and any other applicable orders or procedures of this Court.

7. KPMG UK shall include in its fee applications, among other things, time records setting forth a summary description of the services rendered by each professional, and the amount of time spent on each date by each such individual in rendering services on behalf of the Retaining Debtors in one-tenth (0.1) hour increments.

8. KPMG UK shall be reimbursed only for reasonable and necessary expenses as provided by the Fee Guidelines or any applicable order of this Court.

9. Notwithstanding anything in the Application or the Engagement Letter to the contrary, KPMG UK shall (i) to the extent that KPMG UK uses the services of independent contractors, subcontractors or employees of foreign affiliates or subsidiaries (collectively, the “*Contractors*”) in these cases, pass-through the cost of such Contractors to the Retaining Debtors at the same rate that KPMG UK pays the Contractors; (ii) seek reimbursement for actual costs only; (iii) ensure that the Contractors are subject to the same conflict checks as required for KPMG UK and that appropriate disclosures are made; and (iv) with respect to any independent contractors or subcontractors that are not affiliated with KPMG International, take appropriate steps to require such person or entity to file with the Court such disclosures required by Bankruptcy Rule 2014.

10. KPMG UK shall provide ten (10) days’ notice to the Retaining Debtors, the U.S. Trustee, and the Committee in connection with any increase in the hourly rates listed in the Fletcher Declaration and/or the Application.

11. KPMG UK shall use reasonable efforts to coordinate, with the assistance of the Retaining Debtors, with the Debtors’ other retained professionals to avoid the unnecessary duplication of services.

12. The Engagement Letter, including, without limitation, the Fee and Expense Structure and the Engagement Provisions, is approved in all respects, except as otherwise set forth herein.

13. KPMG UK will apply any remaining portion of the Retainer as a credit toward postpetition fees and expenses, as such postpetition fees and expenses become allowed

and payable by the Retaining Debtors to KPMG UK pursuant to the procedures for interim compensation of professionals adopted by the Bankruptcy Court in these Chapter 11 cases.

14. The Retaining Debtors shall defend, indemnify and hold harmless KPMG UK, its partners, directors, members, employees and agents and any person or organization associated with KPMG UK through membership of the Swiss co-operative of professional service firms to which KPMG UK belongs and their partners, directors, members, employees and agents, (KPMG UK and each such other person being an “*Indemnified Person*”) from and against any losses, claims, damages or liabilities related to arising out of or in connection its engagement by the Retaining Debtors, including the sharing of KPMG UK’s Reports with third-parties, and will reimburse each Indemnified Person for all expenses (including fees and expenses of counsel) as they are incurred in connection with investigating, preparing, pursuing or defending any action, claim, suit, investigation or proceeding related to, arising out of or in connection with the engagement, whether or not pending or threatened and whether or not any Indemnified Person is a party; *provided, however*, the Retaining Debtors will not be responsible for any losses, claims, damages or liabilities (or expenses relating thereto) that are finally judicially determined to have resulted from the bad faith or gross negligence of any Indemnified Person, and any compensation due to KPMG UK in connection with the foregoing shall be treated as an administrative expense of the Retaining Debtors’ estates. If any claim is made against KPMG UK, and the Retaining Debtors have recompensed KPMG UK in full and final settlement for any claim, liability, expense or loss giving rise to any right of indemnification, then the Retaining Debtors shall be subrogated to any rights of recovery from third parties with respect to such claim, liability, expense or loss.

15. Notwithstanding anything to the contrary in the Engagement Letter, the indemnification provisions are hereby modified as follows:

- (a) All requests of Indemnified Parties for payment of indemnity pursuant to the Engagement Letter shall be made by means of an application (interim or final as the case may be) and shall be subject to review by the Court to ensure that payment of such indemnity conforms to the terms of the Engagement Letter and this Order and is reasonable based upon the circumstances of the litigation or settlement in respect of which indemnity is sought, provided, however, that in no event shall any Indemnified Party be indemnified in the case of its own bad-faith, self-dealing, breach of fiduciary duty (if any), gross negligence or willful misconduct.
- (b) In the event that any Indemnified Party seeks reimbursement from the Retaining Debtors for reasonable attorneys' fees in connection with a request by such Indemnified Party for payment of indemnity pursuant to the Engagement Letter, as modified by this Order, the invoices and supporting time records from such attorneys shall be included in KPMG UK's own application (both interim and final) and such invoices and time records shall be subject to the Fee Guidelines and the approval of the Court under the standards of sections 330 and 331 of the Bankruptcy Code without regard to whether such attorney has been retained under section 327 of the Bankruptcy Code and without regard to whether such attorneys' services satisfy section 330(a)(3)(C) of the Bankruptcy Code.
- (c) In no event shall any Indemnified Party be indemnified if the Retaining Debtor(s) or representatives of the estates assert a claim for, and a court determines by final order that such claim arose out of, any Indemnified Party's own bad-faith, self-dealing, breach of fiduciary duty (if any), gross negligence, or willful misconduct.

16. The Retaining Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

17. While KPMG UK is employed by the Retaining Debtors during the pendency of these Chapter 11 Cases, to the extent the terms of this Order differ from the Engagement Letter, the Prior Engagement Letter, or the Application, the terms of this Order shall govern.

18. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: New York, New York
July 20, 2012

/s/ Sean H. Lane
THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE