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*Attorneys for Euroville S.ar.l*

**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)
	: :
	: Jointly Administered
Debtors.	: :
	: :
	: :
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**OBJECTION TO CERTAIN MATTERS SCHEDULED FOR  
HEARING ON MARCH 29, 2012 AT 11:00 A.M.**

Euroville S.ar.l. ("Euroville"), a holder of a claim for \$88,750,000 within the \$1.1 billion unsecured Murabaha Syndicated Facility (the "MSF") issued by Debtor Arcapita Bank B.S.C.(c) ("Arcapita Bank") and guaranteed by Debtor Arcapita Holdings Limited ("AIHL"; Arcapita Bank, AIHL and the other debtors collectively, the "Debtors") hereby files this Objection in connection with certain of the motions (the "Motions") scheduled for hearing on March 29, 2012 at 11:00 A.M. as set forth in the *Amended Notice of Agenda of Matters Scheduled For Hearing on March 29, 2012 at 11:00 A.M.*, filed by the Debtors on March 27, 2012 [Docket No. 32], respectfully stating as follows:<sup>1</sup>

<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings assigned to them in the Motions.

**PRELIMINARY STATEMENT**

This is an unusual case involving foreign holding companies with little or no contact with the United States and no contact with the Southern District of New York other than the recently opened bank accounts by perhaps some of the Debtors. The billions of dollars that the Debtors claim to have “under management” are in the form of minority interests in private companies that are not Debtors, and which are managed by other companies which are not Debtors. The Debtors have provided absolutely no visibility into the operations of these non-Debtors, and to this date have refused to offer any assurances that the portfolio companies or their non-Debtor managers will not engage in transactions outside the ordinary course of business without the approval of this Court. (See correspondence attached as Exhibit A). Thus, while creditors under the MSF are stayed from enforcing their remedies, the Debtors may continue to engage in insider transactions on foreign soil through non-Debtor subsidiaries and affiliates.

The Debtors have filed various “second day” motions, which they have asked the Court to hear on very short notice, seeking the authority to expend significant amounts for purposes that are not sufficiently specified. The Debtors make no attempt to disclose exactly what it is that they do, as contrasted with the investment managers at lower tier subsidiaries and portfolio company employees. The Debtors’ public filings and the motions before the Court provide scant justification for the Debtors’ enormous operating expenses, lavish employee benefits and exorbitant rent obligations to an insider landlord. These facts strongly suggest that the Court should be wary of approving anything at this juncture beyond that minimally necessary to “keep the lights on” and should afford the creditors committee (to be appointed next week) the opportunity to examine the Debtors’ financial condition and business practices and to revisit any relief which the Court may grant.

### **RELEVANT FACTUAL BACKGROUND**

1. Although denominated a “Bank”, the Debtors’ business consists largely of making medium-term equity investments in “portfolio companies”. None of these portfolio companies are Debtors in this proceeding. Also, the Debtors participate in the management of the portfolio companies through regional operating companies located in London, Singapore, Hong Kong and Atlanta. However, none of the regional operating companies are Debtors, including the entity with offices in Atlanta, Georgia.

2. According to Arcapita Bank’s Annual Report for the year ended June 30, 2011, the latest period for which public information is available, “staff compensation and benefits” totaled approximately \$75,000,000. For that period, “general and administration expenses” was approximately \$45,000,000 and “Headquarters building expenses was \$30,470,000.”<sup>2</sup> See Exhibit B hereto. There is no indication that the Debtors have taken or are planning to take any steps to bring their massive overhead under control.

3. The principal available source of funds to pay these expenses is the liquidation of the Debtors’ asset portfolio. In fact, the Board minutes attached to the Chapter 11 Petition of Arcapita Bank [Docket No. 1 at 21-32] reports, on the second page of the minutes, that on March 5, 2012, a mere two weeks before the petition date, the Executive Investment Committee of the Board approved a \$200 million “sale lease-back transaction” of the “Lusail assets” with Qatar Islamic Bank, a material shareholder of Arcapita Bank with common directors. The apparent disposition of these assets just prior to the bankruptcy filing is of great concern. According to a schedule of assets of AIHL, filed in its Cayman Islands wind-up proceeding, the book value of Lusail, consisting of a real estate development in Qatar, was \$317,379,000 -- 50% greater than the sale price. Also, although Lusail was an asset of a subsidiary of AIHL, the Cayman Island

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<sup>2</sup> This amounts to more than \$150,000 per employee.

filings do not show the proceeds on AIHL's balance sheet. There is no visibility regarding the sale process or the use or current location of the sale proceeds. Obviously, the use of those funds -- wherever they may be -- to finance the operations of Arcapita Bank, will prejudice the creditors of AIHL, such as creditors under the MSF.

4. The Debtors have filed a four-week "budget" which may seem innocuous at first glance -- some \$15 million coming in and perhaps a bit more proposed to go out. But the "budget" simply perpetuates the opacity of the Debtors' operations: it focuses exclusively on the Debtor holding companies while completely ignoring the \$200 million raised less than a month ago, as well as all the other inflows and outflows of 50 or more operating entities. And, even as to the Debtors' own expenses, there is absolutely no detail of or justification for these amounts.<sup>3</sup> Respectfully, the Court should be skeptical of the Debtors' request for relief, and, at a minimum, should sustain the following objections to the Motions.

#### **THE MOTIONS AND OUR OBJECTIONS**

5. On March 26, 2012, the Debtors filed five motions which have been noticed for a hearing on March 29, 2012. These consist of (i) a motion seeking authority to pay various pre-petition claims of alleged critical and foreign vendors; (ii) a motion seeking authority to pay both pre- and post-petition salaries and benefits of 191 employees (the "Wage Motion"); (iii) a motion seeking authority to pay insurance premiums and deductibles relating to the insurance policies (the "Insurance Motion"); and (iv) two motions seeking to retain GCG, Inc. in various capacities. In addition, a continued hearing is scheduled on the Debtors previously filed cash management motion (the "Cash Management Motion"). Euroville objects to the Wage Motion, the Insurance Motion and the Cash Management Motion as set forth below:

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<sup>3</sup> It is unclear whether the budget contains any provision for paying professional fees and other costs of administering these cases. Of course, professional fees should not be paid by the Debtors without Court approval.

- **Wage Motion.** The Wage Motion seeks authority to pay the salaries and various benefits of 191 employees of the Debtors through April 25, 2012. The Motion provides no information concerning the benefit to these estates of paying the salaries and benefits that are being sought. There is no information in the Motion concerning the duties being performed by the employees and how the performance of those duties will contribute to the Debtors' reorganization.
  - There is no indication whether the Debtors have considered reducing their headcount and why such a reduction would not be appropriate under these circumstances, especially since the Debtors do not appear to be in a position to make new investments in the foreseeable future.
  - The Wage Motion also provides no justification for paying the tuition of certain employees' children, making the Indemnity Payments or other non-standard and discretionary employee benefits. Certainly, no discretionary payments should be made at this time.
  - At the very least, the Court should approve no more at this juncture than (1) the payment of unpaid pre-petition wages and benefits up to the priority cap, and (2) base salary, health and vacation benefits going forward through April 25, ensuring that the Debtors make no further commitments at this juncture that could give rise to administrative claims.
  - The court should also consider whether the Debtors should be required to justify their headcount going forward.
- **Insurance Motion.** The Debtors seek authority to pay both premiums and deductibles relating to certain identified insurance policies. Based on the information provided in the Insurance Motion, Euroville does not object to the payment of the premiums sought. Euroville does question the Debtors' request for authority to pay \$250,000 towards a "Crime" deductible under its D&O policy. The Debtors have provided no support for paying for any criminal acts of its directors and officers. Similarly, there is no support for the additional \$250,000 "Liability" deductible that the Debtors seek authority to pay.
- **Cash Management Motion.** The Debtors have submitted a proposed four-week budget (the "Budget") in purported compliance with the Interim Cash Management Order. As previously discussed, the Budget, consisting of a single page, is inadequate, and fails to even include an opening cash balance. Unless greater transparency is provided, there simply is no basis to assess the propriety of the request. Euroville is willing to work with the Debtors, as it did at the first day hearing, to come to an agreement on a short-term use of cash to bridge the estates to the point when the creditors committee can weigh in, but the filed budget must be supplemented with further detail and support for the requested expenditures.

**RESERVATION OF RIGHTS**

These objections are without prejudice to the right of Euroville to object to the Motions and any related relief on any other or further bases, and without prejudice to its right to make other or further arguments at the March 29, 2012 hearing.

WHEREFORE, Euroville respectfully requests that the Court sustain the foregoing objections and grant such other and similar relief as is just and proper.

Dated: March 28, 2012  
New York, New York

KASOWITZ, BENSON, TORRES & FRIEDMAN LLP

/s/ David M. Friedman  
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1633 Broadway  
New York, New York 10019  
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*Attorneys for Euroville S.ar.l.*

# **EXHIBIT A**

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SAN FRANCISCO

March 23, 2012

**BY ELECTRONIC MAIL**

Michael A. Rosenthal, Esq.  
Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, NY 10166

Re: Arcapita Bank B.S.C. (c) et al., Case No. 12-11076 (Bankr.S.D.N.Y.)

Dear Michael:

It has come to our attention that the Debtors are seeking to sell key assets within the immediate future. Please confirm promptly that the Debtors will not permit the stock or assets of any direct or indirect subsidiary (whether or not the subsidiary is a Debtor) to be sold or encumbered without prior notice to creditors and approval of the Bankruptcy Court.

Please also confirm that all cash and cash equivalents of the Debtors are being moved to accounts in New York and that existing accounts outside of the U.S. will be closed.

Sincerely

  
David M. Friedman

cc: Richard Morrissey, Esq.  
Office of United States Trustee



# GIBSON DUNN

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March 26, 2012

## VIA ELECTRONIC MAIL

David M. Friedman, Esq.  
Kasowitz, Benson, Torres & Friedman LLP  
1633 Broadway  
New York, New York 10019-6799

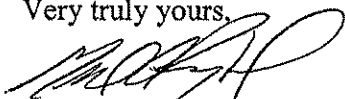
Re: In re Arcapita Bank B.S.C.(c)

Dear David:

I received your letter of last Friday. I am not aware of any asset sales at any of the Debtors. There have been, as I understand, two ordinary course condominium sales by a non-Debtor portfolio company related to the Elysian real estate project. The proceeds of these sales either have already been deposited (\$3 million in the case of one of the sales) or will today be deposited (a further \$2.6 million for the other sale) in the Debtors' account at JPMorgan that we discussed on Wednesday. All such proceeds will be fully accounted for in the cash management system. As the seller is not a chapter 11 Debtor and no consents were required from the Debtors for these sales, there is no basis for requiring Bankruptcy Court approval of such sales. And, these sales, in any event, are part and parcel of the normal operation of the business of the Debtors' non-Debtor portfolio company.

With regards to transfer of cash to JPMorgan, my understanding is that cash continues to be moved to JPMorgan as the interbank placement agreements expire. We will have a further report at the hearing next week as promised.

Very truly yours,



Michael A. Rosenthal

MAR/mf

cc: Richard Morrissey, Esq.  
Henry A. Thompson, Esq.  
Stephen Karotkin, Esq.  
Janet M. Weiss, Esq.  
Arthur Rogers, Esq.

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March 26, 2012

**BY ELECTRONIC MAIL**

Michael A. Rosenthal, Esq.  
Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, NY 10166

Re: Arcapita Bank B.S.C. (c) et al., Case No. 12-11076 (Bankr.S.D.N.Y.)

Dear Michael:

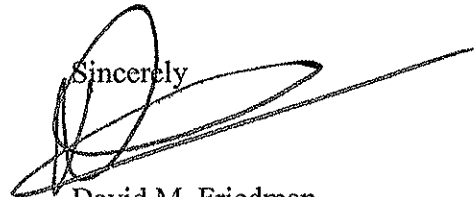
I am in receipt of your letter of today's date in response to my letter of March 23, 2012. Unfortunately, your letter is completely unresponsive to my client's concerns. We had asked for assurances that no asset sales (at either the Debtor or non-Debtor levels) would take place prospectively without notice to creditors and approval of the Bankruptcy Court. You responded by ignoring that request and simply pointing to two past sales of condominiums which you contend, without support, are "ordinary course" transactions.

Given the Debtors' past practices with regard to affiliate transactions, it is of the utmost importance that we receive these assurances immediately. As I trust you agree, for the Debtors to receive the benefits of Chapter 11 protection while simultaneously transferring assets to insiders without Court supervision would make a complete mockery of the bankruptcy process.

Please also confirm that **all** cash and cash equivalents of the Debtors are being moved to accounts in New York and that existing accounts outside of the U.S. will be closed.

We would appreciate a responsive reply as soon as possible.

Sincerely



David M. Friedman

cc: Richard Morrissey, Esq.  
Office of United States Trustee  
Stephen Karotkin, Esq.

# **EXHIBIT B**



2011

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Annual Report

CONSOLIDATED FINANCIAL STATEMENTS

CONSOLIDATED STATEMENT OF INCOME

For the year ended 30 June 2011

	Notes	Year ended 30 Jun 2011 US\$ '000	Year ended 30 Jun 2010 US\$ '000
Recurring and other income		108,372	91,504
Management fees		95,096	74,996
Fair value adjustments		48,020	(153,389)
Investment banking income (loss)		7,830	(78,198)
Foreign exchange gains (loss)		138,940	(169,893)
<b>TOTAL INCOME (LOSS)</b>	4	<b>398,258</b>	<b>(234,980)</b>
Relating to financial and other institutions		(71,290)	(95,868)
Relating to unrestricted investment accounts		(6,542)	(3,604)
Relating to medium-term financing		(19,546)	(18,385)
<b>Net funding cost</b>		<b>(97,378)</b>	<b>(117,857)</b>
<b>NET OPERATING INCOME (LOSS)</b>		<b>300,880</b>	<b>(352,837)</b>
Staff compensation and benefits		(74,491)	(77,871)
General and administration expenses		(44,767)	(43,194)
Headquarters building expenses		(30,470)	(17,257)
		(149,728)	(138,322)
<b>NET INCOME (LOSS) BEFORE ALLOWANCES</b>		<b>151,152</b>	<b>(491,159)</b>
Allowance for doubtful receivable	8 (d)	(100,989)	(68,230)
<b>NET INCOME (LOSS) FOR THE YEAR</b>		<b>50,163</b>	<b>(559,389)</b>

The attached Notes 1 to 30 form part of these consolidated financial statements.