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Attorneys for the Debtors and Debtors in Possession

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

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In re	: Chapter 11 Case
	: :
ARCAPITA BANK B.S.C.(c), et al.,	: Case No. 12-11076 (SHL)
	: :
Debtors.	: Jointly Administered
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DEBTORS' MOTION FOR AN ORDER PURSUANT TO SECTION 363(b)(1) OF THE BANKRUPTCY CODE AUTHORIZING AIHL TO ENTER INTO A CROSS-BORDER PROTOCOL WITH THE JOINT PROVISIONAL LIQUIDATORS IN THE CAYMAN PROCEEDINGS

Arcapita Bank B.S.C.(c) ("*Arcapita*") and certain of its subsidiaries and affiliates, as debtors and debtors in possession (collectively, the "*Debtors*" and each, a "*Debtor*") hereby submit this Motion (the "*Motion*") for entry of an order, substantially in the form annexed hereto as *Exhibit A* (the "*Proposed Order*"), pursuant to section 363(b)(1) of title 11 of the United States Code (the "*Bankruptcy Code*"), authorizing Arcapita Investment Holdings Limited ("*AIHL*"), one of the Debtors in the above captioned chapter 11 cases (the "*Chapter 11 Cases*"), to enter into the cross-border insolvency protocol (the "*Protocol*") with Gordon MacRae and Simon Appell of Zolfo Cooper (Cayman) Limited ("*Zolfo Cooper*"), in their capacities as joint provisional liquidators (in such capacities, the "*JPLs*") of AIHL in the Cayman Proceedings, to

ensure efficient and just coordination between the Chapter 11 Cases and the Cayman Proceedings. In support of the Motion, the Debtors respectfully state as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate is section 363(b)(1) of the Bankruptcy Code.

BACKGROUND

2. On March 19, 2012 (the “*Petition Date*”), Arcapita and five of its affiliates (collectively, the “*Initial Debtors*”) commenced cases under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the “*Bankruptcy Court*”). On April 30, 2012, Falcon Gas Storage Company, Inc. commenced a case under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or an examiner in the Chapter 11 Cases. An official committee of unsecured creditors (the “*Committee*”) was appointed by the Office of the United States Trustee on April 5, 2012.

3. AIHL, a wholly-owned subsidiary of Arcapita and indirect parent of the other Debtors, is a Cayman Islands Exempted Company, incorporated on January 2, 1998 under the Companies Law (1995 Revision). AIHL has a key role in Arcapita Group operations. AIHL maintains an indirect ownership in all of the Arcapita Group’s syndication facilities, working capital facility entities and portfolio companies and investments. As such, AIHL holds interests

in four classes of assets – real estate, infrastructure, private equity and venture capital – in a wide range of geographical locations.

4. On March 19, 2012, AIHL filed a winding up petition in FSD Cause No. 45 of 2012 – AJ (the “*Cayman Proceedings*”) in the Grand Court of the Cayman Islands (the “*Cayman Court*”) and sought the appointment of joint provisional liquidators pursuant to s.104(3) Companies Law (2011 Revision). On March 20, 2012, an order of the Cayman Court appointed the JPLs. The role of the JPLs is to oversee, monitor and assist the directors in operating AIHL and its participation in the Chapter 11 Cases.

THE PROTOCOL

5. Since the commencement of both the Chapter 11 Cases and the Cayman Proceedings, the parties – with the encouragement of the Cayman Court – have sought to coordinate the Debtors’ actions in the two proceedings. By an order dated March 20, 2012, the Cayman Court directed that the JPLs and AIHL should seek to agree upon a cross-border insolvency protocol setting out the terms pursuant to which the JPLs would oversee, monitor and assist (a) the exercise by AIHL’s directors of their management powers and (b) AIHL’s participation in the Chapter 11 Cases, in each case without superseding the directors’ management powers or their authority to control and direct AIHL and its Chapter 11 Case. In consultation with Cayman counsel for both the JPLs and AIHL, the JPLs and the Debtors agreed upon the Protocol, the form of which is attached hereto as *Exhibit B*.

6. Through the Protocol, AIHL and the JPLs seek to ensure the just, efficient, orderly and expeditious administration of the Cayman Proceedings and the Chapter 11 Cases and to avoid the duplication of work and conflict between the JPLs and AIHL. The Protocol provides for, among others, the continued provision of information by AIHL to the JPLs, open

communication among the JPLs, AIHL, AIHL's creditors, the Bankruptcy Court and the Cayman Court, the provision of notice for certain actions and communications, and the appropriate forum for the approval of remuneration and compensations to be paid to the JPLs and the professionals rendering services in the Chapter 11 Cases.

7. Further, the Protocol explicitly provides that it does not purport to affect the rights, obligations or laws of any jurisdiction or any court's orders. To the extent the Bankruptcy Court or the Cayman Court directs a party to the Protocol to act or not act in a manner that conflicts with the obligations of such party under the Protocol, such party shall be relieved of its obligations under the Protocol, and such party must notify all other parties to the Protocol of the conflict.

RELIEF REQUESTED

8. By this Motion, the Debtors seek entry of an order substantially in the form of the Proposed Order, pursuant to section 363(b)(1) of the Bankruptcy Code, authorizing AIHL to execute the Protocol and authorizing the Debtors to take such actions and enter into any and all other agreements necessary to implement and effectuate the Protocol.

BASIS FOR RELIEF REQUESTED

I. Entering into the Protocol is a Sound Exercise of Business Judgment

9. AIHL's execution of the Protocol constitutes an act of good business judgment and should be approved under Bankruptcy Code section 363(b)(1).

10. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). While Section 363(b)(1) does not specify a standard for determining when a court should authorize the use, sale or lease of

property of the estate, the Second Circuit has held that a bankruptcy court should approve a debtor's sale or use of property outside the ordinary course of business if the debtor can demonstrate a sound business justification for the proposed transaction. *See Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983).

11. Once a debtor articulates a valid business justification for the proposed transaction, significant weight is given to the debtor's business judgment. "The business judgment rule 'is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.'" *In re Integrated Resources, Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). Courts apply the business judgment rule within the context of a chapter 11 case to shield a debtor's management from judicial second-guessing. *Id.*; *see also In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bank. S.D.N.Y. 1986) ("[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions.").

12. The Debtors agree with the JPLs and the Cayman Court that there exists a need to coordinate the Cayman Proceedings and the Chapter 11 Cases. By the very nature of AIHL's position in the Arcapita Group structure and its direct and indirect equity interests in other Arcapita Group entities (including the portfolio companies and investments), the treatment of AIHL creditors both in the U.S. and the Cayman Islands will directly implicate value. The Debtors therefore have an interest in confirming that estate stakeholders' interests are receiving exemplary representation by fully informed professionals in all venues and respectfully submit that the Protocol is an effective means to accomplish coordination between the proceedings in an orderly and streamlined manner. The Protocol provides a framework for the exchange of

information and communications among the JPLs, AIHL, the Bankruptcy Court and the Cayman Court, in order to structure the interactions among all parties and courts across two different proceedings in two different nations and avoid duplicative work.

13. As the protectors of the interests of Cayman stakeholders in AIHL, the JPLs' periodic reporting to the Cayman Court and monitoring of the Chapter 11 Cases will ensure that all stakeholders are treated fairly and their interests are appropriately represented. By formally memorializing the JPLs' roles, functions and entitlements in the context of the two simultaneous cross-border insolvency proceedings, the Protocol reinforces the JPLs' role as the eyes and ears for the Cayman Court in the Cayman Proceedings, as discussed during the first day hearing in the Bankruptcy Court.¹

14. The Debtors therefore respectfully submit that, in their informed business judgment, the authorization of the Protocol is in the best interests of AIHL's and therefore the Debtors' estates, creditors and other parties in interest and should be approved.

NOTICE

15. No trustee or examiner has been appointed in the Chapter 11 Cases. The Debtors have provided notice of filing of the Motion by electronic mail, facsimile and/or overnight mail to: (i) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Richard Morrissey, Esq.); (ii) Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis F. Dunne, Esq., Abhilash M. Raval, Esq., and Evan R. Fleck, Esq.), counsel for the Committee; (iii) counsel for the Joint Provisional Liquidators, Sidley Austin LLP,

¹ See Transcript regarding Hearing Held on March 19, 2012 for *In re Arcapita Bank B.S.C.(c), et al.*, 12-11076(SHL), filed March 21, 2012, pp. 1, 10, 22-23 [Dkt. No. 17].

Woolgate Exchange, 25 Basinghall Street, London, EC2V 5HA, England (Attn: Patrick Corr, Esq.); (iv) the Joint Provisional Liquidators, Gordon MacRae and Simon Appell, Zolfo Cooper (Cayman) Limited, PO Box 1102, 4th Floor, Building 3, Cayman Financial Centre, George Town, Grand Cayman, KY1-1102, Cayman Islands and (v) all parties listed on the Master Service List established in these Chapter 11 Cases. A copy of the Motion is also available on the website of the Debtors' notice and claims agent, GCG, at www.gcginc.com/cases/arcapita.

NO PRIOR REQUEST

16. No prior application for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request entry of an Order substantially similar to the Proposed Order attached hereto as *Exhibit A*, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
August 15, 2012

/s/ Michael A. Rosenthal
Michael A. Rosenthal (MR-7006)
Craig H. Millet (admitted *pro hac vice*)
Janet M. Weiss (JW-5460)
Matthew K. Kelsey (MK-3137)
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ATTORNEYS FOR THE DEBTORS
AND DEBTORS IN POSSESSION

HEARING DATE AND TIME: September 5, 2012 at 11:00 a.m. (prevailing U.S. Eastern Time)

OBJECTION DEADLINE: August 29, 2012 at 12:00 p.m. (prevailing U.S. Eastern Time)

GIBSON, DUNN & CRUTCHER LLP

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Attorneys for the Debtors and Debtors in Possession

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

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IN RE:	:
	:
ARCAPITA BANK B.S.C.(c), et al.,	:
	:
Debtors.	:
	:
	:
	X

Chapter 11
Case No. 12-11076 (SHL)
Jointly Administered

**NOTICE OF DEBTORS' MOTION FOR AN ORDER
PURSUANT TO SECTION 363(b)(1) OF THE BANKRUPTCY CODE
AUTHORIZING AIHL TO ENTER INTO A CROSS-BORDER PROTOCOL WITH
THE JOINT PROVISIONAL LIQUIDATORS IN THE CAYMAN PROCEEDINGS**

PLEASE TAKE NOTICE that on August 15, 2012, the above-captioned debtors and debtors in possession (the "**Debtors**") filed the annexed Debtors' Motion for an Order Pursuant to Section 363(b)(1) of the Bankruptcy Code Authorizing AIHL to Enter into a Cross-Border Protocol with the Joint Provisional Liquidators in the Cayman Proceedings (the "**Motion**").

PLEASE TAKE FURTHER NOTICE that a hearing (the "**Hearing**") to consider the Motion will take place before the Honorable Sean H. Lane, United States Bankruptcy Judge, in Room 701 of the United States Bankruptcy Court, One Bowling Green, New York, New York

10004-1408 (the “*Bankruptcy Court*”) on **September 5, 2012 at 11:00 a.m. (prevailing U.S. Eastern Time)**, or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that any and all objections to the Motion (the “*Objections*”) shall be filed electronically with the Court on the docket of *Arcapita Bank B.S.C.(c), et al.*, Ch. 11 Case No. 12-11076 (SHL) (the “*Docket*”), pursuant to the Case Management Procedures approved by this Court and the Court’s General Order M-399 (available at <http://nysb.uscourts.gov/orders/orders2.html>), by registered users of the Court’s case filing system and by all other parties in interest on a 3.5 inch disk, preferably in portable document format, Microsoft Word, or any other Windows-based word processing format (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and served in accordance with General Order M-399 on (i) counsel for the Debtors, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York, 10166 (Attn: Michael A. Rosenthal, Esq., Craig H. Millet, Esq., and Matthew K. Kelsey, Esq.); (ii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Richard Morrissey, Esq.); (iii) Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis Dunne, Esq. and Evan Fleck, Esq.) (iv) counsel for the Joint Provisional Liquidators, Sidley Austin LLP, Woolgate Exchange, 25 Basinghall Street, London, EC2V 5HA, England (Attn: Patrick Corr, Esq.) and (v) the Joint Provisional Liquidators, Gordon MacRae and Simon Appell, Zolfo Cooper (Cayman) Limited, PO Box 1102, 4th Floor, Building 3, Cayman Financial Centre, George Town, Grand Cayman, KY1-1102, Cayman Islands, so as to be received no later than **August 29, 2012 at 12:00 p.m. (prevailing U.S. Eastern Time)** (the “*Objection Deadline*”).

PLEASE TAKE FURTHER NOTICE that if no Objections are timely filed and served with respect to the Motion, the Debtors may, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion, which order may be entered with no further notice or opportunity to be heard.

Dated: New York, New York
August 15, 2012

/s/ Michael A. Rosenthal
Michael A. Rosenthal (MR-7006)
Craig H. Millet (admitted *pro hac vice*)
Janet M. Weiss (JW-5460)
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ATTORNEYS FOR THE DEBTORS AND
DEBTORS IN POSSESSION

Exhibit A
Proposed Order

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

-----X
In re : **Chapter 11 Case**
ARCAPITA BANK B.S.C.(c), et al., : **Case No. 12-11076 (SHL)**
Debtors. : **Jointly Administered**
-----X

**ORDER PURSUANT TO SECTION 363(b)(1) OF THE BANKRUPTCY CODE
AUTHORIZING AIHL TO ENTER INTO A CROSS-BORDER PROTOCOL WITH
THE JOINT PROVISIONAL LIQUIDATORS IN THE CAYMAN PROCEEDINGS**

Upon consideration of the Motion (the “*Motion*”)¹ of the debtors in possession in the above-captioned case (collectively, the “*Debtors*” and each, a “*Debtor*”) for an order pursuant to section 363(b)(1) of title 11 of the United States Code (the “*Bankruptcy Code*”), authorizing Arcapita Investment Holdings Limited (“*AIHL*”) to enter into the cross-border insolvency protocol (the “*Protocol*”) with Gordon MacRae and Simon Appell of Zolfo Cooper (Cayman) Limited (“*Zolfo Cooper*”) in their capacities as joint provisional liquidators (in such capacities, the “*JPLs*”) of AIHL in the Cayman Proceedings, to ensure efficient and just coordination between the Chapter 11 Cases and the Cayman Proceedings; and the Court having found that it has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of Debtors’ estates, their creditors, and other parties in interest; and notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion and having considered

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

the statements in support of the relief requested therein at a hearing before the Court (the "**Hearing**"); and the Court having found that the Debtors have demonstrated that entry into the Protocol is an exercise of sound business judgment under section 363(b)(1) of the Bankruptcy Code; and the Court having determined that the legal and factual bases set forth in the Motion 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 THAT:

1. The Motion is granted to the extent set forth herein.
2. AIHL is authorized to execute the Protocol, in the form annexed as *Exhibit B* to the Motion.
3. The Debtors are authorized to execute and enter into such documents and take such other actions as are reasonably necessary or appropriate to effectuate the Protocol and implement the relief granted in this Order.
4. To the extent there is an inconsistency among the terms of the Motion and this Order, the terms of this Order shall govern.
5. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
6. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: _____, 2012
New York, New York

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Protocol

Cross-Border Insolvency Protocol

Regarding Arcapita Investment Holdings Limited

Subject to the authorisation from the Grand Court of the Cayman Islands (the "**Cayman Court**") and the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**"), Gordon MacRae and Simon Appell of Zolfo Cooper ("**ZC**"), as joint provisional liquidators (the "**JPLs**") of Arcapita Investment Holdings Limited ("**AIHL**"), enter into this Cross-Border Insolvency Protocol (the "**Protocol**") with AIHL (acting by its directors), as follows:

Preliminary Statement

The purpose of the Protocol is to ensure the just, efficient, orderly and expeditious administration of the pending insolvency proceedings of AIHL in the Cayman Islands (the "**Cayman Proceedings**") and the chapter 11 proceedings of AIHL, Arcapita Bank, B.S.C. (c) ("**Arcapita**") and certain other affiliated debtors (collectively with AIHL and Arcapita, the "**Debtors-in-Possession**") before the Bankruptcy Court (the "**Bankruptcy Proceedings**") and to avoid duplication of work and conflict between the JPLs and AIHL.

Background

Arcapita is a Bahraini investment bank which provides banking and investment facilities to a large number of high net worth individuals. It was incorporated in November 1996 in the Kingdom of Bahrain where its registered office is based. The activities of Bank included investing on its own account and providing investment banking services in conformity with Islamic Shari'ah rules and principles.

AIHL is a Cayman Islands Exempted Company, incorporated on 2 January 1998 under the Companies Law (1995 Revision). AIHL's registered office is at Paget-Brown Trust Company Ltd, PO Box 1111 GT, Boundary Hall, Cricket Square, Grand Cayman, Cayman Islands KY1-1102.

AIHL is a wholly owned direct subsidiary of Arcapita. It holds interests in four asset classes: (i) real estate; (ii) infrastructure; (iii) private equity and (iv) venture capital; over a wide range of geographical locations.

The Proceedings

- (1) On 19 March 2012, Arcapita and AIHL (and four other affiliates) commenced chapter 11 proceedings in the Bankruptcy Court. Arcapita and AIHL are continuing to serve as debtors-in-possession and operate their businesses pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
- (2) On 19 March 2012, AIHL filed a Winding Up Petition in FSD Cause No. 45 of 2012 - ACJ in the Cayman Court and sought the appointment of JPLs pursuant to s.104(3) Companies Law (2011 Revision).
- (3) The Order appointing the JPLs (as subsequently varied) (the "**Order**") directed, *inter alia*, that the JPLs and AIHL acting by its directors should seek to agree a protocol setting out the terms upon which the JPLs should oversee, monitor and assist the exercise of the directors' powers of management of AIHL and AIHL's participation in the Bankruptcy Proceedings but not supersede the directors or their authority to control and direct AIHL's Bankruptcy Proceedings.

NOW THEREFORE, the JPLs and AIHL (acting by its directors) hereby stipulate and agree, subject to the approval of the Bankruptcy Court and the Cayman Court of the terms of this protocol and subject to the powers already afforded to the JPLs under the Order, the following:

- (1) AIHL (acting by its directors) subject to existing confidentiality and non-disclosure agreements with the JPLs shall continue to provide such information as is reasonably requested by the JPLs including, without limitation such reasonable requests for explanations as to:
 - (a) the actions or decisions taken by AIHL;
 - (b) the terms of the incurrence of any indebtedness or borrowing of money by AIHL whether pursuant to loan arrangements with financing institutions, Bank or

otherwise, and the granting of security in respect of the same, and the guaranteeing of any indebtedness or borrowings of affiliates;

- (c) the sale or disposal of any assets of AIHL;
 - (d) the filing by AIHL of any plan of reorganisation in the Bankruptcy Proceedings and/or any proposals for a scheme of arrangement in the Cayman Proceedings;
 - (e) the terms of funding of any of AIHL's investments; and
 - (f) the terms of any budget to be filed in the Bankruptcy Proceedings.
- (2) The JPLs and AIHL's advisers in the Bankruptcy Proceedings shall hold regular meetings/conference calls to discuss all matters pertinent to the continued operation of AIHL's business, including without limitation its participation in the Bankruptcy Proceedings.
- (3) The JPLs shall receive and be given notice of all proceedings in the Bankruptcy Court in accordance with the practices of the Bankruptcy Court and have the right to appear in all proceedings in the Bankruptcy Court. The JPLs shall give notice to AIHL of all proceedings in the Cayman Court and will not object to AIHL attending and seeking to be heard at any hearings before the Cayman. AIHL shall provide the Official Committee of Unsecured Creditors with a copy of any such notice which AIHL receives from the JPLs.
- (4) The Bankruptcy Court will be requested to hold monthly omnibus hearings to hear such motions as may be filed by any party as provided for in the Case Management Order, during which the status of the Bankruptcy Proceedings and the Cayman Proceedings may also be discussed.
- (5) The JPLs may communicate and/or consult with AIHL's creditors or any of them, as and when and in the manner they believe it is appropriate to do so.
- (6) The JPLs may, as they deem necessary and subject to any ruling of the Cayman Court, apply for directions from the Cayman Court in relation to any matter. For the avoidance of doubt, this right is without prejudice to the right of AIHL at s.1(3)

above, to be put on notice of any such application and the right to be heard and, where necessary, object to the directions sought.

- (7) The Cayman Court and the Bankruptcy Court may, but are not required to, communicate with one another, provided that advance notice is given to the JPLs and AIHL in respect of any such communication.
- (8) The parties shall attempt to negotiate and agree as soon as possible procedures relating to the remission of further funds to the JPLs for the purpose of funding the provisional liquidation.
- (9) The Cayman Court shall have exclusive jurisdiction over the remuneration of the JPLs. The JPLs shall seek approval of their remuneration from the Cayman Court and shall not be required to seek approval of such remuneration or their expenses from the Bankruptcy Court or the courts of any other jurisdiction.
- (10) Subject to the terms of any retention orders granted or to be granted by the Bankruptcy Court, the Bankruptcy Court shall have sole jurisdiction in respect of the compensation of the professionals rendering services in the Bankruptcy Proceedings. The professionals rendering services in the Bankruptcy Proceedings will seek approval of their fees from the Bankruptcy Court and shall not be required to seek approval of such fees from the Cayman Court or the courts of any other jurisdiction.
- (11) This protocol shall be binding on and inure to the benefit of the parties hereto and their respective successors, assigns, representatives, heirs, executors, administrators, liquidators, trustees (including any trustees under chapters 7 or 11 of the Bankruptcy Code), and receivers, receiver managers, or custodians appointed under New York law or Cayman Islands Law, as the case may be.
- (12) This protocol may not be waived, amended or modified except in writing by all parties and subject to the approval and authorisation of the Bankruptcy Court and the Cayman Court.
- (13) Each party represents and warrants to the other that its execution, delivery, and performance of this protocol are within the power and authority of such party and

have been duly authorised by such party (except that it is acknowledged that approval of the Bankruptcy Court or the Cayman Court (as applicable) is required).

- (14) This protocol may be signed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument, and may be signed by pdf signature, which shall be deemed to constitute an original signature.
- (15) The parties hereto are hereby authorised to take such actions and execute such documents as may be necessary and appropriate to implement and effectuate the terms of this protocol.
- (16) This protocol is not intended to circumvent, alter, or otherwise affect the rights, obligations, or laws of any jurisdiction and accordingly, if a party to the protocol is directed by its Court to act (or not to act) with respect to a particular issue whether on his own application or otherwise, that party's obligation to follow its Court's direction should not be impaired or abridged by this protocol. To the extent any party's obligation to follow its Court's order conflicts with its obligations under this protocol, that party shall be relieved from its obligation under the protocol, but such party must notify in writing all other parties of the conflict between its Court's direction or order and the protocol. In all other material respects, the affected party will remain bound by the terms of the protocol.
- (17) This protocol shall be deemed effective upon its approval by the Bankruptcy Court and the Cayman Court. This protocol shall have no binding or enforceable legal effect until approved by the Bankruptcy Court and the Cayman Court.

IN WITNESS WHEREOF the parties hereto have caused this protocol to be executed either individually or by their respective attorneys or representatives hereunto authorised.

ARCAPITA INVESTMENT HOLDINGS LIMITED (IN PROVISIONAL LIQUIDATION)

By: _____

Director

By: _____

Director

**JOINT PROVISIONAL LIQUIDATORS OF ARCAPITA INVESTMENT HOLDINGS
LIMITED (IN PROVISIONAL LIQUIDATION)**

By: _____

Gordon MacRae as joint provisional liquidator and without personal liability

By: _____

Simon Appell as joint provisional liquidator and without personal liability