

Hearing Date: September 5, 2012 at 11:00 a.m. (Prevailing Eastern Time)

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

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<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>ARCAPITA BANK B.S.C.(C), et al.,</b>	:	<b>Case No. 12-11076 (SHL)</b>
	:	
<b>Debtors.</b>	:	<b>(Jointly Administered)</b>
	:	
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**STATEMENT OF THE OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS IN CONNECTION WITH THE DEBTORS' MOTION FOR  
AN ORDER AUTHORIZING AIHL TO ENTER INTO A CROSS-  
BORDER PROTOCOL WITH THE JOINT PROVISIONAL  
LIQUIDATORS IN THE CAYMAN PROCEEDINGS**

The Official Committee of Unsecured Creditors (the "Committee") of Arcapita Bank B.S.C.(c) ("Arcapita") and each of its affiliated debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases") hereby submits this statement with respect to *the 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* [Docket No. 403] (the "Motion"): <sup>1</sup>

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

**STATEMENT**

1. The Committee supports AIHL's decision to enter into a cross-border insolvency protocol with the Joint Provisional Liquidators ("JPLs") appointed in the Cayman Proceedings to ensure coordination between the Chapter 11 Cases and the Cayman Proceedings. The Protocol presented for approval is not optimal for this purpose because it fails to include certain procedural and substantive provisions (relating, for example, to reconciliation of claims filed in both proceedings) that would have reduced the inefficiencies attendant to conducting separate insolvency proceedings for AIHL in two jurisdictions. Nevertheless, the Committee does not believe that these deficiencies should prevent the Court from granting AIHL approval to enter into the Protocol because the Protocol contains no provisions that are prejudicial to the interests of the Debtors or their unsecured creditors.

2. At the invitation of the Debtors and the JPLs, the Committee offered comments to a pre-filing draft of the Protocol and requested that (i) the Committee receive notice of the developments in the Cayman Proceedings on the same terms as the Debtors, and (ii) the Protocol address certain procedural issues, such as the procedures governing joint hearings of the Cayman Court and this Court, mutual recognition of the respective stays of proceedings granted under U.S. and Cayman law, and procedures governing resolution of disputes with respect to the Protocol.

3. The JPLs agreed to include a provision requiring that AIHL forward to the Committee all notices it receives from the JPLs with respect to proceedings in the Cayman Court, but they declined to include provisions addressing the other issues the Committee sought to have addressed, all of which are customary in transnational protocols. Accordingly, the Protocol fails to address important procedural

issues, which, if not remedied, could lead to inefficiencies and additional costs later in these cases.

4. The Protocol also fails to address substantive issues by, for example, not providing any mechanism for the reconciliation of claims filed in AIHL's chapter 11 case and the Cayman Proceedings. Although the dual claim reconciliation will, out of necessity, be addressed later in these cases, potentially in the context of a chapter 11 plan and the Cayman scheme of arrangement, the Committee believes that the utility of the Protocol would have been enhanced if it addressed such issues. Nor does the Protocol provide a mechanism for the remuneration of the JPLs and their professionals. The Protocol assigns the allowance of the JPLs' fees to the exclusive jurisdiction of the Cayman Court, but, even though the cash and/or assets that will be used to pay such fees may well be located in the United States, the Protocol assigns no role to this Court with respect to the payment of such fees.

#### **CONCLUSION**

5. The Committee does not object to AIHL and the JPLs entering into the Protocol to comply with the directive of the Cayman Court. However, the Committee believes it is important for the Court to be aware of the various matters that the Protocol does not address that will need to be addressed during the Chapter 11 Cases.

Dated: New York, New York  
August 29, 2012

**MILBANK, TWEED, HADLEY & M<sup>c</sup>CLOY LLP**

By: /s/ Dennis F. Dunne

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