

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

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

**ORDER PURSUANT TO SECTIONS 327(a) AND 328
OF THE BANKRUPTCY CODE AUTHORIZING DEBTORS TO
RETAIN AND EMPLOY ERNST & YOUNG AS
AUDITOR TO THE DEBTORS *NUNC PRO TUNC* TO THE PETITION DATE**

Upon consideration of the application (the “*Application*”)¹ of the debtors in possession in the above-captioned case (collectively, the “*Debtors*” and each, a “*Debtor*”)for an order pursuant to sections 327(a) and 328 of title 11 of the United States Code (the “*Bankruptcy Code*”), Rule 2014 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 Ernst & Young (“*EY Bahrain*”) as auditor to the Debtors, *nunc pro tunc* to the Petition Date; and upon the Sadiq Declaration in support thereof; and the Court having found that it has jurisdiction to consider this Application pursuant to 28 U.S.C. §§ 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. §§ 1408 and 1409; 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

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in 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; and the Court being satisfied that EY Bahrain is a “disinterested person” as such term is defined under section 101(14) of the Bankruptcy Code; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by this Application is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; 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 328(a) of the Bankruptcy Code, Rule 2014 of the Bankruptcy Rules and Rule 2014-1 of the Local Rules, the Debtors shall be, and hereby are, authorized to employ and retain EY Bahrain in accordance with the terms and conditions set forth in the Engagement Letters, effective *nunc pro tunc* to the Petition Date, to perform services including but not limited to those listed below:
 - Audits of special purpose financial statements of certain special purpose vehicles (SPVs) established for the Debtors’ employee stock purchase plans for the years ended December 31, 2004 to December 31, 2010;
 - Audit of special purpose financial statements of NRA Limited for the years ended December 31, 1998 to December 31, 2010; and audit of special purpose financial statements of Arcapita Incentive Plan Limited for the years ended December 31, 1998 to December 31, 2010;
 - Assessment of the Debtors’ compliance with the Istisna’a Development Agreement dated December 15, 2009, based on financial information as at December 31, 2010; and

- Audits of special purpose financial statements of Cayman Islands SPVs established for the purpose of raising investment capital from inception to June 30, 2008.

3. The terms of the Engagement Letters, including without limitation the fee, expense reimbursement, indemnification and limitation of liability provisions, are reasonable terms and conditions of employment and are hereby approved. Notwithstanding anything to the contrary in the Engagement Letters, the indemnification provisions are hereby modified as follows:

- (a) All requests of EY Bahrain for payment of indemnity pursuant to the Engagement Letters 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 Letters 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 EY Bahrain 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 EY Bahrain seeks reimbursement from the Debtors for reasonable attorneys' fees in connection with a request by EY Bahrain 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 EY Bahrain's own application (interim or final as the case may be) 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) EY Bahrain shall not be entitled to reimbursement by the Debtors for any fees, disbursements and other charges of EY Bahrain's counsel other than those incurred in connection with a request of EY Bahrain for payment of indemnity or in connection with responding to objections to EY Bahrain's fee applications.

4. All compensation and reimbursement of expenses payable to EY Bahrain pursuant to the Engagement Letters (as modified hereby) shall be subject to review only pursuant

to the standards set forth in section 328(a) of the Bankruptcy Code and shall not be subject to the standard of review set forth in section 330 of the Bankruptcy Code; *provided, however*, the U.S. Trustee shall retain all rights to respond or object to EY Bahrain's interim and final applications for compensation and reimbursement of expenses on all grounds, including, but not limited to, reasonableness pursuant to section 330 of the Bankruptcy Code (including any allegations that EY Bahrain and another professional retained by the Debtors and compensated by the estates provided unnecessarily and unreasonably duplicative services); *provided further*, that in the event the U.S. Trustee objects, the Court retains the right to review the interim and final applications of EY Bahrain pursuant to section 330 of the Bankruptcy Code.

5. The requirements of the Bankruptcy Code, the Bankruptcy Rules, Local Rule 2016-1, the United States Trustee Guidelines, General Order M-389 and any other compensation procedures adopted by this Court are each hereby modified such that in its applications for compensation, EY Bahrain shall be required only to submit summary time records in one-half hour increments and a calculation of the total fees requested for such work in accordance with the comments made on the record during the Hearing with respect to the period preceding July 1, 2012. Without limiting the foregoing, EY Bahrain shall not be required to maintain detailed time records, to provide or conform to a schedule of hourly rates for its professionals, or to maintain or submit time records on a "project category" basis.

6. During the pendency of the Chapter 11 Cases, the following limitation of liability provisions of the Engagement Letters shall be deemed stricken: (a) prohibition against recovery of consequential, incidental, indirect, punitive or special damages in connection with claims arising out of the Engagement Letters or otherwise relating to the services provided by EY Bahrain; and (b) limitation of liability to fees actually paid to EY Bahrain. Further, during

the pendency of the Chapter 11 Cases, the deadline to bring claims against EY Bahrain relating to the services rendered under the Engagement Letters shall be increased from 12 months of the act or omission alleged to have caused the claim, to 36 months of the act or omission alleged to have caused the claim.

7. If at any time the Debtors and EY Bahrain wish to enter into additional engagement letters, the Debtors shall file further application(s) for an order of approval by the Court for any such additional engagement letters and such application(s) shall set forth, in addition to a description of the additional services to be performed, the fees that may be paid under such additional engagement letters.

8. To the extent that the Debtors make a payment to EY Bahrain on account of fees and expenses incurred in the performance of services pursuant to the Engagement Letters and this Order for the benefit of AIHL or any subsidiary of AIHL, nothing herein shall be construed to affect any claims among the members of the Arcapita Group on account of such payments to EY Bahrain.

9. Notwithstanding anything in the Application or the Engagement Letters to the contrary, during the pendency of the Chapter 11 Cases, this Court retains exclusive jurisdiction over all matters arising out of and/or pertaining to EY Bahrain's engagement by the Debtors and any matters, claims, rights, or disputes arising from or related to the implementation or interpretation of this Order.

10. While EY Bahrain is employed by the Debtors during the pendency of the Chapter 11 Cases, to the extent the express terms of this Order differ from the Engagement Letters or the Application, the express terms of this Order shall govern.

11. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

12. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

13. Notwithstanding anything to the contrary in the Engagement Letters, if EY Bahrain immediately terminates its engagement with the Debtors upon EY Bahrain's determination that it can no longer provide services in accordance with applicable law or professional obligations, then EY Bahrain will promptly file with this Court written notice of its termination.

Dated: July 11, 2012
New York, New York

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