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

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| In re: | : | Chapter 11 |
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| ARCAPITA BANK B.S.C.(C.), <i>et al.</i> , | : | Case No. 12-11076 (SHL) |
| | : | |
| Debtors. | : | Jointly Administered |
| | : | |
| ----- | X | |

**STANDARD CHARTERED BANK’S LIMITED OBJECTION AND
RESERVATION OF RIGHTS TO THE DEBTORS’ CASH MANAGEMENT MOTION**

Standard Chartered Bank (“**Standard Chartered**”), through its undersigned counsel, hereby asserts this limited objection and reservation of rights (this “**Limited Objection**”) to the *Motion for Interim and Final Orders (A) Authorizing Debtors to (I) Continue Existing Cash Management System, Bank Accounts, and Business Forms and (II) Continue Ordinary Course Intercompany Transactions; and (B) Granting an Extension of Time to Comply With the Requirements of Section 345(b) of the Bankruptcy Code* [Dkt. No. 12] (the “**Cash Management Motion**”) filed by the above-captioned debtors and debtors in possession (the “**Debtors**”) for approval on a third interim basis and respectfully represents and states as follows:¹

¹ By filing this Limited Objection, Standard Chartered is not acknowledging the propriety of these chapter 11 cases or that the Court should continue to exercise jurisdiction over each of the Debtors. Standard Chartered reserves the right to request that the Court dismiss, or abstain from, these chapter 11 cases.

PRELIMINARY STATEMENT

Standard Chartered is the Debtors' sole secured creditor and, upon information and belief, is the sole creditor of each of Arcapita LT Holdings Limited ("**Arcapita LT**"), AEID II Holdings Limited ("**AEID II**"), RailInvest Holdings Limited ("**RailInvest**"), and WindTurbine Holdings Limited ("**WindTurbine**," and together with Arcapita LT, AEID II and RailInvest, the "**Subsidiary Guarantors**"). As more fully set forth below, Arcapita Investment Holdings Limited ("**AIHL**") and Arcapita LT granted Standard Chartered equitable mortgages over the equity interests in the Subsidiary Guarantors which provide, among other things, that upon an Event of Default (as defined in the Master Murabaha Agreements (defined below), which has occurred and is continuing) all dividends and other distributions made on or in respect of the equity interests pledged to Standard Chartered shall be held in trust for the benefit of Standard Chartered. As such, Standard Chartered is entitled to receive payment in full of its claims before any other creditor of the Debtors may receive a recovery in these chapter 11 cases with respect to the assets of the Subsidiary Guarantors.

Standard Chartered understands from counsel to the Debtors that the April 17, 2012 hearing on the Cash Management Motion will be on a third interim basis. Standard Chartered has not had sufficient time to review the Debtors' proposed budget for the third interim period, and has not yet been provided with the form of proposed order. As a result, Standard Chartered objects to the entry of a third interim order to the extent the form of order and third interim budget are not acceptable to Standard Chartered. In addition, Standard Chartered reserves its right to object to the entry of any further interim orders and/or a final order that would allow the Debtors to use the Cash Management Motion as a mechanism to surreptitiously transfer value from the Subsidiary Guarantors for the benefit of structurally subordinated unsecured creditors.

The preservation of the assets for the benefit of the Subsidiary Guarantors and Standard Chartered is paramount in these cases as the Debtors' assets consist primarily of illiquid minority equity interests of uncertain value. Indeed, Arcapita has conceded that "[t]he underlying investments made by the Arcapita Group are generally medium to long term projects that have limited value in the short term and often require significant on-going capital funding to complete in order to realize the value of the investment." See *Declaration of Henry A. Thompson in Support of the Debtors' Chapter 11 Petitions and First Day Motions in Accordance with Local Rule 1007-2 ¶6* [Dkt. No. 6] ("**Thompson Declaration**"). Given the Debtors' stated need for significant on-going capital funding, it is critical that Standard Chartered have oversight over the Debtors' budget to ensure that the Debtors do not expend assets to the detriment of Standard Chartered and the Subsidiary Guarantors.

Accordingly, Standard Chartered files this Limited Objection and reserves its right to object to any further interim orders and/or a final order that would in any way have the effect of adversely altering Standard Chartered's structural and secured priority in these chapter 11 cases.

STANDARD CHARTERED'S SECURED CLAIMS AND SUBSIDIARY GUARANTOR CLAIMS

1. Standard Chartered is the Debtors' sole secured creditor and, upon information and belief, is the sole creditor of each of the Subsidiary Guarantors.² The loan agreements giving rise to the Debtors' secured obligations to Standard Chartered are described as follows:

- Arcapita Bank (the "**Borrower**") is party to those certain Master Murabaha Agreements, dated as of (i) May 30, 2011 (as amended, restated, replaced, supplemented or otherwise modified from time to time, and together with such supporting and ancillary documents thereto, the "**May 2011 Master Murabaha Agreement**") and (ii) December 22, 2011 (as amended, restated, replaced, supplemented or otherwise modified from time to time, and together with such

² Standard Chartered reserves its right to assert any additional claims it may have against the Debtors that are not specified herein including claims under the Syndicated Facility (as defined in the Thompson Declaration).

supporting and ancillary documents thereto, the “**December 2011 Master Murabaha Agreement**”, and together with the May 2011 Master Murabaha Agreement, the “**Master Murabaha Agreements**”), between the Borrower, as borrower thereunder, and Standard Chartered, in its capacity as investment agent. The Borrower is borrower under two loan facilities made available by Standard Chartered pursuant to the Master Murabaha Agreements: (i) a \$50 million facility pursuant to the May 2011 Master Murabaha Facility, which matured on March 28, 2012, and (ii) a \$50 million facility pursuant to the December 2011 Master Murabaha Agreement, which matured on March 28, 2012 (together, the “**Secured Facilities**” and the obligations thereunder and under each Guaranty and Mortgage (defined below) the “**Loan Obligations**”).

- The Loan Obligations are guaranteed by AIHL, Arcapita LT, AEID II, RailInvest and WindTurbine (collectively, the “**Guarantors**”), in accordance with those certain Guaranties, dated (i) May 30, 2011 in respect of the May 2011 Master Murabaha Agreement (the “**May 2011 Guaranty**”) and (ii) December 22, 2011 in respect of the December 2011 Master Murabaha Agreement (the “**December 2011 Guaranty**,” and together with the May 2011 Guaranty, the “**Guaranties**”), by the Guarantors.
- The Loan Obligations in respect of the May 2011 Master Murabaha Agreement are secured by an equitable mortgage over the shares in Arcapita LT, AEID II, WindTurbine and RailInvest (such shares, collectively, the “**May 2011 Collateral**”) pursuant to the Equitable Mortgage Over Shares in RailInvest Holdings Limited, dated December 22, 2011, the Equitable Mortgage Over Shares in AEID II Holdings Limited, dated December 22, 2011, the Equitable Mortgage Over Shares in WindTurbine Holdings Limited, dated May 30, 2011, and the Equitable Mortgage Over Shares in Arcapita LT Holdings Limited, dated May 30, 2011 (collectively, the “**May 2011 Mortgages**,” and together with the May 2011 Master Murabaha Agreement (and the other Finance Documents (as referred to therein)) and the May 2011 Guaranty, the “**May 2011 Loan Documents**”).
- The Loan Obligations in respect of the December 2011 Master Murabaha Agreement are secured by an equitable mortgage over the shares in Arcapita LT, AEID II, WindTurbine, and RailInvest (such shares, collectively, the “**December 2011 Collateral**”, which together with the May 2011 Collateral constitutes the “**Collateral**”) pursuant to the Equitable Mortgage Over Shares in RailInvest Holdings Limited, dated December 22, 2011, the Equitable Mortgage Over Shares in AEID II Holdings Limited, dated December 22, 2011, the Equitable Mortgage Over Shares in WindTurbine Holdings Limited, dated December 22, 2011, and the Equitable Mortgage Over Shares in Arcapita LT Holdings Limited, dated December 22, 2011 (collectively, the “**December 2011 Mortgages**,” and together with the December 2011 Master Murabaha Agreement (and the other Finance Documents (as referred to therein)) and the December 2011 Guaranty and the May 2011 Loan Documents, the “**Loan Documents**”).

2. Pursuant to the May 2011 Mortgages and December 2011 Mortgages, any time after the occurrence of an Event of Default, the Security Agent (as defined in the Loan Documents) becomes entitled to “receive and retain all dividends and other distributions made on or in respect of the Mortgaged Shares or any thereof and any such dividends or other distributions received by the Mortgagor after such time shall be held in trust by the Mortgagor for the Security Agent” *E.g.*, Equitable Mortgage over Shares in AEID II Holdings Ltd., dated December 22, 2011, ¶8.3. An Event of Default has occurred and is continuing under the Loan Documents.

3. Because Standard Chartered is (a) the Debtors’ only creditor that can assert guaranty claims against each of the Subsidiary Guarantors and that has a secured interest and perfected lien on the equity interests of the Subsidiary Guarantors and (b) the beneficiary of a trust under the Loan Documents and Cayman Islands law, Standard Chartered is indisputably senior in priority to all of the Debtors’ other debt obligations with respect to the assets of the Subsidiary Guarantors.

THE CASH MANAGEMENT MOTION

4. In the Cash Management Motion, the Debtors are seeking, among other things, the Court’s authorization to continue to use their Cash Management System (as defined in the Cash Management Motion) and to make Intercompany Transactions in the ordinary course of business. However, under the Cash Management System, if there were a sale of or dividend from one or more of the non-Debtor portfolio companies in which the Subsidiary Guarantors have an interest, the proceeds would not go to Standard Chartered as required by the Loan Documents and Cayman Islands law or even to the Subsidiary Guarantors, but would be aggregated into an account held by Arcapita Bank or AIHL, thereby eviscerating the secured and

structural priority to which Standard Chartered is entitled. Specifically, if the value of the Subsidiary Guarantors, which is at best uncertain, is transferred to AIHL or Arcapita Bank, Standard Chartered's security interests could be rendered worthless and the Subsidiary Guarantors could impermissibly be rendered insolvent to the detriment of Standard Chartered. Of course, in that event any such transfers could result in fraudulent transfers and/or the payment of dividends in breach of trust which should not be countenanced by this Court.

LIMITED OBJECTION AND RESERVATION OF RIGHTS

5. Standard Chartered objects to the entry of a third interim order to the extent the form of order and third interim budget are not acceptable to Standard Chartered. Standard Chartered reserves its rights to make additional objections at the hearing and reserves its rights to object to the entry of any further interim orders and/or a final order that would permit disbursements of funds from the Subsidiary Guarantors and their non-Debtor subsidiaries to AIHL or Arcapita Bank for the benefit of structurally subordinated unsecured creditors.

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WHEREFORE, for the foregoing reasons, Standard Chartered respectfully requests that the Court (a) deny the Cash Management Motion unless the form of order and budget for the third interim period are acceptable to Standard Chartered and (b) grant Standard Chartered such other and further relief as the Court deems appropriate.

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