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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

REPLY TO DEBTORS' OPPOSITION TO COMMITTEE'S MOTION FOR ENTRY OF AN ORDER PURSUANT TO FED. R. BANKR. P. 2004, 9006, AND 9016 AUTHORIZING EXPEDITED DISCOVERY FROM THE DEBTORS

The Official Committee of Unsecured Creditors (the "Committee") of Arcapita Bank B.S.C.(c) and the other debtors in possession in the above-captioned cases (collectively, the "Debtors") hereby replies to the Debtors' Opposition to the Committee's motion (the "Motion") pursuant to rules 2004, 9006 and 9016 of the Federal Rules of Bankruptcy Procedure, requesting entry of an order authorizing the Committee to obtain discovery from the Debtors

regarding the corporate governance and control rights for their Portfolio Investments[1] (the "Objection").

REPLY

1. The Debtors resort in their Objection to caustic rhetoric and ad hominem attacks on the Committee and its members rather than making well-founded legal arguments. The Committee will resist responding in kind to such invective. The Debtors' overheated fulminations belie a weak hand and feeble arguments. This Reply will show the Court the Motion should be granted and the Objection overruled.

2. The Motion is the Committee's request for judicial assistance in discharging its statutory mandate. The Committee is bound to investigate, among other things, the assets and financial condition of the Debtors, as well as "the desirability of the continuance" of the Debtors' business. See 11 U.S.C. § 1103(c). By refusing the Committee's information request, the Debtors seek to impede the Committee's efforts to fulfil its fiduciary obligations.

3. As the Court is aware, the value of the Debtors' estates is almost wholly dependent on the value of the Debtors' interests in the Portfolio Investments. While the Debtors generally own only a minority interest in the Portfolio Investments, they manage the entire investment and can effectuate decisions to sell the underlying Portfolio Investments because the Co-Investors, who own the remaining equity interests, have contractually agreed to a governance and management structure that allows the Debtors to do so.

4. As the future owners of the reorganized company, the Debtors' creditors are entitled to the optimal governance and management structure, but the best strategy for obtaining that structure has been obscured from the Committee by the Debtors' refusal to provide

[1] Capitalized terms not otherwise defined herein have the respective meanings ascribed to them in the Motion.

the information that is the subject of the Motion. It appears that the Debtors' failure to cooperate with the Committee has been driven by management's desire to maintain an advantage in any discussions about who will manage the Debtors' assets post-emergence. However, Chapter 11 was not designed to facilitate insiders' attempts to retain control or lucrative management positions within a debtor. Despite the Debtors' resistance, the Committee is nevertheless obligated as a fiduciary and official representative of the Debtors' unsecured creditors to continue to pursue the requested information, which clearly relates to the Debtors' assets and financial condition and, therefore, falls squarely within the Committee's statutory charge.

5. The Debtors interpose the following arguments against this straightforward proposition:

i. the Committee is not entitled to the information it seeks because there is no "logical connection" between the Debtors' control rights with respect to the Portfolio Investments (which the Debtors do not deny are important for the Committee to ascertain) and the identities of the Co-Investors and the SIP Investors (see Objection at 13);

ii. the Committee is attempting to obtain the information requested for a variety of nefarious purposes (such as interfering with the Debtors' operations and contractual relationships, violating the Debtors' exclusive periods, and soliciting votes on a plan before a disclosure statement has been approved) (see id. at 3);

iii. compliance with the Committee's discovery request would expose the Debtors and their employees to civil and criminal liability under Bahraini law (see id. at 17-19); and

iv. the Committee's request is overbroad (see id. at 15-16) and procedurally improper (see id. at 16-17).

These arguments fall into two categories: those that are simply incorrect, and those that are absurd. None of the arguments provides any basis for the Court to deny the Motion.

I. At All Times, the Committee Has Been Forthright With the Court

6. As a threshold matter, the Committee must address the Debtors' suggestion that the Committee has been "less than forthright with the Court" with respect to its goals in filing the Motion. Objection at 3. The Debtors ascribe to the Committee two purposes for the requested information, then insinuate that these purposes were concealed from the Court (yet, curiously, revealed to the Debtors in casual discussions among the professional advisors) and improper. This is simply not the case.

7. First, the Debtors suggest that the Committee failed to disclose to the Court its intent to share the information, once obtained, with itself (i.e., the Committee members), including those members who, according to the Debtors, are competitors of Arcapita. The Committee, which exists only through its constituent members, has indeed brought this Motion, and the information will need to be reviewed and analyzed by those members if the Committee is to discharge its fiduciary obligations. The presence of Committee members that might, in some ways, compete for business with the Debtors does not raise any new or unique issues, either in this case or in Chapter 11 cases generally, and is hardly a cause for the alarm raised by the Debtors. Here, however, it is difficult to discern how any member of the Committee could be considered an Arcapita competitor, given that the entity is engaged in a controlled wind-down of its affairs and not making new investments, and none of the members of the Committee is a private equity firm. The Debtors may indeed be wary of a competitor, although not to Arcapita, but to Newco, the new asset management business formed by current management. Obviously, any such concern is not a basis for withholding information from the Committee.

8. The Debtors' concerns regarding the confidentiality implications of sharing information with the Committee can be adequately addressed by (i) the confidentiality provisions of the Committee's by-laws, which were negotiated with the Debtors and to which the Debtors are party, (ii) the Committee members' recognition of their fiduciary duties to the Debtors' unsecured creditors, and (iii) as a practical matter, the fact that the Debtors' unsecured creditors are the real economic parties in interest in these cases and, accordingly, will directly bear the costs of any competitive harm suffered by the Debtors' businesses. The Debtors' unsupported arguments to the contrary should in no way serve as a basis for denial of the Motion.

9. Second, the Debtors purport to reveal the Committee's secret intention to "contact the Investors directly and solicit their support for the terms of a post confirmation governance system different from the Debtor's proposed Plan that excludes the personnel and management with whom the Investors are familiar." Objection at 3. Of course, this allegation is specifically designed to support certain of the Debtors' more far-fetched arguments (e.g., that the Committee seeks inappropriately to "solicit" a competing plan and is violating the Debtors' exclusive periods), which are so preposterous that they require no response. The Committee nonetheless addresses the general premise behind this allegation.

10. The Debtors seem to believe that their continued exclusive periods entitle them to more than their due. The Objection makes quite clear that the Debtors seek not only to maintain the exclusive right to file and solicit acceptances with respect to a Chapter 11 plan (rights to which they are properly entitled), but also to preserve existing management's exclusive access to the Co-Investors. The Objection does not disclose that the reason the Debtors guard management's relationships with the Co-Investors so closely is to protect the ability of existing

management to leverage those relationships into lucrative roles once they leave the Debtors and begin working with Newco, which they have already established specifically to provide services to the Co-Investors (and potentially the Debtors as well) following emergence.

11. The Committee is not obligated to support a plan that leaves the unsecured creditors beholden to the Debtors' management. While the Committee could conceivably support a plan that provides a meaningful role for current management, additional information is required to inform the question of whether such an arrangement would serve the best interests of the unsecured creditors. The Committee currently has no intention to solicit anything from the Co-Investors and SIP Investors for a number of reasons (not least of which is that the Committee does not know who the Co-Investors and SIP Investors in a given Portfolio Investment are, what interests they hold, or what rights those holdings give them). However, the Committee must interface with at least certain of the Co-Investors and SIP Investors in order to equip itself with the necessary information for a proper evaluation of the Plan.

II. The Debtors Misstate the Committee's Burden Because the Committee Is Discharging its Statutory Mandate

12. The Committee seeks information that is necessary for it to understand and quantify the risks faced by the Debtors (and, consequently, the unsecured creditors) in connection with their ability to control the method and timing of dispositions of the Portfolio Investments, which are their principal assets. Finding a way to mediate those risks through an appropriate post-emergence governance structure is the most important step that must be taken before the Committee can assess the proposed Plan. Information regarding the identities of the Co-Investors and SIP Investors and their respective holdings is essential to a complete assessment of the underlying risks.

13. While the Debtors hold only minority positions in certain Portfolio Investments, the corporate structures through which the Debtors raised third-party investments potentially insulate the Debtors' ability to maintain their control rights from Co-Investor challenge to a significant degree. The precise extent of the protection that the Debtors enjoy as a result of these structures will turn, in large part, on the interest and ability of the Co-Investors or SIP Investors in a given Portfolio Investment to organize in an attempt to wrest control from the Debtors. Contrary to the Debtors' bald assertion that the requested information bears no "logical connection" to the Debtors' control rights, understanding who the Co-Investors and SIP Investors are and what and how much they hold in which Portfolio Investments is crucial for illuminating what control risks the Debtors face. A brief explanation of the Committee's current understanding of the Portfolio Investment structures will illustrate this point.

14. Based on the Committee's review of documents provided by the Debtors to date, as a legal matter, major corporate decisions with respect to each Portfolio Investment (including monetization decisions) are controlled primarily by the board of directors of the Holdco for that Portfolio Investment. The boards of directors of the Holdcos (as well as those of the Syndication Companies and the SIPs) are populated by employees of the Debtors. See Disclosure Statement at 33. The Holdco directors can be replaced in two ways: either by the Holdco's shareholders (i.e., generally, the Syndication Companies, the Debtors' investment vehicles, management investment vehicles, and, in U.S. structures, PVs), or by the existing directors themselves.

15. While legal control rests with the Holdco board members themselves, the Debtors have explained to the Committee that, as a practical matter, these boards merely implement the decisions made by the Debtors' management, leaving effective control of the

Portfolio Investments with the Debtors. Evidence of this dynamic can be seen in the dutiful compliance of the Debtors' employee board members with the Debtors' directive to appoint the vice chairman of the board of Arcapita Bank B.S.C.(c) to a number of Syndication Company and/or Holdco boards in connection with the recent establishment of Newco.

16. In structuring the Portfolio Investments, the Debtors have arranged the corporate structures of most non-U.S. Portfolio Investments such that, absent the support of the Debtors' investment vehicles, all of the relevant Syndication Companies would need to vote together in order to replace a Holdco board. This has significant implications for the Debtors' ability to protect their control rights over the Portfolio Investments. For instance, if, in a given Portfolio Investment, the votes of all Syndication Companies are necessary to replace a Holdco board, a single Co-Investor with a relatively small ownership position in that Portfolio Investment could potentially protect the Holdco board from replacement by Co-Investors. This is because a Co-Investor holding a sufficiently large interest in a single Syndication Company could prevent the other Co-Investors in that particular Syndication Company from replacing the board of that Syndication Company. By doing so, that Co-Investor could ensure that, even if the boards of all of the other Syndication Companies in that Portfolio Investment were replaced with Co-Investor representatives that would vote the shares of their respective Syndication Companies to replace the Holdco board in the relevant Portfolio Investment, the other Syndication Companies would not have sufficient votes to do so.

17. While the corporate structures of the Portfolio Investments vary, a fairly typical non-U.S. structure may have four Syndication Companies, each of which holds twenty percent or less of the equity interests in the Holdco. In a typical Syndication Company, a vote of two-thirds of the shareholders of that Syndication Company would be required to replace the

board of that Syndication Company. Using these assumptions, a single Co-Investor holding less than 7% of the economic interests (one third of 20%) in a given Portfolio Investment could ensure that the Holdco board would not be replaced by a vote of the Syndication Companies. If the Debtors (or the Committee) could reach an agreement with this hypothetical Co-Investor to ensure he would be supportive of a particular Holdco board membership, then the control risk in that particular Portfolio Investment would be mitigated. Analogous issues arise in the U.S. structures that necessitate an understanding of which SIP Investors control (and by how much) the various PVs. These are vital matters that concern the Committee and bear a "logical connection" to the Debtors' control rights.

18. Moving from the hypothetical to the concrete, the Committee has recently been informed that, notwithstanding their various contractual obligations to refrain from competing with the Debtors after separation from the company, key members of the Debtors' management no longer intend to remain in the employ of the Debtors following emergence from bankruptcy but will instead run a competing management business to, among other things, advise some or all of the Co-Investors with respect to their investments alongside the Debtors' in the Portfolio Investments. Furthermore, the Committee understands from the Debtors' management that the Debtors' employees who serve on the syndication company boards do so only because they are currently employed by the Debtors and plan to vacate their board positions when the key members of the Debtors' management leave the Debtors upon emergence. This makes the issue of ongoing control of the Holdco boards extremely important for the Debtors' creditors' recoveries under the Plan. The value of these recoveries will greatly depend on the reorganized Debtors' ability to control all investment and monetization decisions effectively.

19. The Court should reject the Debtors' attempt to argue that an official committee cannot access information of a debtor that clearly relates to their assets and financial condition unless it shows "good cause." Such an argument misstates the relevant legal standard. The Committee's information request falls squarely within the Committee's statutory mandate under Section 1103 of the Bankruptcy Code.

> (c) A committee appointed under section 1102 of this title may –
>
> . . .
>
> (2) investigate the acts, conduct, assets, liabilities and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan; . . .
>
> (5) perform such other services as are in the interest of those of those represented.

11 U.S.C § 1103(c).

20. A statutory committee appointed under section 1102 is obligated to exercise the powers granted it under section 1103 in order to fulfil its fiduciary duties to the creditors it represents. See Advisory Comm. of Major Funding Corp. v. Sommers, 109 F.3d 219, 225 (5th Cir. 1997) ("Section 1103 essentially requires the committee to act in the best interest of the creditors it represents. The committee has the duty to use any tool available under section 1103 to accomplish this goal."). In fulfilling its obligation under section 1103 to engage in investigation of the Debtors' affairs and any other matter relevant to the case or the formulation of a plan, a committee is afforded broad authority. See, e.g., In re Anderson, 349 B.R. 448, 464 (E.D. Va. 2006) (holding that bankruptcy court could permit unsecured creditors' committee to participate in discovery and claim objection proceedings, noting that the investigative authority of an official committee is extremely broad). A Committee may resort to use of Rule 2004 of the Federal Rules of Bankruptcy Procedure where appropriate to fulfil this statutory directive. 7-1103 COLLIER ON BANKRUPTCY ¶ 1103.05 [c][ii] (16th ed. 2012) ("The Code provides the

committee with the tools necessary to undertake the investigation. To the extent that the debtor in possession is uncooperative or not forthcoming, the committee may avail itself of Rule 2004 of the Federal Rules of Bankruptcy Procedure and examine such officers, employees, and directors of the debtor as may be appropriate.").

21. Even apart from the statutory basis found in Section 1103, as set forth in the Motion and herein, the Committee has independently demonstrated "good cause" for the relief sought.

III. There Is No Nefarious Purpose to the Committee's Discovery Requests

22. The Debtors' argument that the Committee seeks the Co-Investor information for some nefarious purpose can be categorized as absurd. Throughout the Objection, the Debtors maintain that the Motion must be denied because the Committee intends to put the requested information to all sorts of uses that are nowhere mentioned or even implied in the Motion or the proposed Order, and for which the Debtors fail to offer even a shred of evidence. The Debtors assert, for example, that the Committee is interested in "obtain[ing] the authority of the Court to use [the] information [it seeks to obtain] to contact the [Debtors'] customers and disrupt the [Debtors'] business . . . ." Objection at 15.[2] According to the Debtors, the Committee is allegedly using Rule 2004 "to obtain authority for a [certain] course of conduct." Id. at 14. However, the Debtors cannot point to any portion of the Motion or the proposed Order where the Committee has sought any such authority or even discusses any such uses for the

[2] Incidentally, it is highly disingenuous for the Debtors to pretend that the Committee is seeking "public disclosure" of the Debtors' "customers and clients." Id. The Committee is doing nothing of the kind. Pursuant to the Committee's bylaws, each member of the Committee is bound to keep confidential all information it has obtained as a result of its service on the Committee that is not generally available to the public and may not disclose or reveal to third parties such confidential information, except under limited circumstances as expressly provided in the by-laws.

information requested, other than the legitimate purpose of understanding better the value of the Debtors' assets and the risks to such value.

23. The Debtors' further allegations that the Committee aims to "disrupt the Debtors' business and . . . cause harm to the value of the Debtors' assets" is reckless. The unsecured creditors whom the Committee represents are the sole economic stakeholders in these cases, and the intent imputed to them by the Debtors would only damage their own interests. It is a generally accepted presumption that a party acts in its own economic interest. The Debtors' allegation that the Committee wants to provide the information it is seeking to the Debtors' competitors so that they can appropriate the Debtors' business opportunities is similarly wrongheaded.

24. The Debtors' frantic allegations with respect to all the various ways that the creditors (i.e., the Debtors' future owners) intend to harm the Debtors reflect but one fact: the Debtors, in violation of their clear fiduciary duties, equate their interests with those of their entrenched management. Current management's protection of their proprietary access to the Co-Investors and information about their holdings (not to mention the recent incorporation of Newco) provides management with leverage to extract value from the estates, and it is this prerogative that management is anxious to safeguard. The Committee may, indeed, wish to contact the Co-Investors to understand if the costs required to keep management involved in the Portfolio Investments is justified by their special relationship with the Co-Investors, or whether alternative asset managers could offer an attractive alternative. There is nothing nefarious in the creditors' desire to "kick the tires" in this fashion. In fact, failure to do so would be in dereliction of the Committee's obligations to unsecured creditors.

25. Furthermore, the Debtors somehow equate the Committee's expressed desire to "make an informed determination regarding the appropriate go-forward management structure for the Debtors post-emergence" with solicitation of the Co-Investors' vote with respect to a competing plan that the Debtors believe the Committee intends to propose. The Committee has not proposed, and has no present intention to propose, its own plan. Rather, it hopes to negotiate a consensual plan with the Debtors. However, in order for the Committee to do so, it needs a level playing field, which the information it is seeking to obtain will go a significant way to provide.

IV. Compliance with a Bankruptcy Court Order Granting the Relief Requested Will Not Violate Bahraini Law

26. The Debtors also assert that complying with the Committee's request will expose them and their agents to civil and criminal liability under Bahraini law. This is simply inaccurate.

27. The Debtors cite to Article 117 of Part 8 of the Central Bank of Bahrain and Financial Institution Law 2006 (the "CBB Law"), which limits disclosure of Confidential Information by Bahraini financial institutions and provides that "Confidential Information must not be disclosed by a Licensee unless such disclosure is done:

i. Pursuant to an unequivocal approval of the person to whom the confidential information relates.

ii. In compliance with the provisions of the law or any international agreements to which the Kingdom is a signatory.

iii. In the process of executing an order issued by a Competent Court.

iv. For the purpose of implementing an instruction given by the Central Bank."

See Declaration of Abdul Jalil Al Aradi (the "Al Aradi Declaration"), attached as Exhibit A, ¶ 3. The Debtors assert that complying with the Committee's request would necessitate disclosure of such Confidential Information, and that none of the enumerated exceptions apply.

28. As a threshold matter, Article 117's prohibition on information sharing does not preclude disclosure of the information sought by the Motion. Article 116 of the CBB Law provides that "In this Chapter, 'Confidential Information' means any information on the private affairs of any of the Licensee's ***Customers***." (emphasis added). See Al Aradi Declaration ¶ 4. The Co-Investors and SIP Investors, who are joint investors in the Portfolio Investments, are not "Customers" of the Debtors as such term is interpreted under Bahraini law. See Al Aradi Declaration ¶ 4. Accordingly, Article 117's restriction on disclosure of information is not implicated by the relief requested in the Motion, as it relates to the Co-Investors and SIP Investors and their holdings in the Portfolio Investments.

29. Even if Article 117 applied to the relief requested, disclosure of information regarding the Co-Investors pursuant to an order entered by the Bankruptcy Court would not subject the Debtors to liability under the CBB Law. The Debtors acknowledge that Article 117 of the CBB Law contains an exception for any disclosure pursuant to an order issued by a "Competent Court," but boldly assert that the reference to a "Competent Court" is limited to a Bahraini court and does not include this Court. But the CBB Law contains no such limitation. Instead, the term "Competent Court" is properly interpreted to refer to ***any*** court of competent jurisdiction. See Al Aradi Declaration ¶ 6. Not only is this Court a "Competent Court" within the meaning of Article 117, but the Debtors have expressly conceded the Court's competence. The Debtors themselves chose to file a chapter 11 petition in the Court. They cannot now argue

that this Court is not competent to order the disclosure of confidential information merely because they believe it serves their interest to do so for purposes of the Motion.

30. Lending further support to the fact that an order of this Court requiring disclosure of the information requested in the Motion would insulate the Debtors from liability under the exception contained in Article 117, Article 182 of the CBB Law specifically references the competence of foreign courts in insolvency proceedings with respect to a Bahraini financial institution. Specifically, Article 182 stipulates that "The Central Bank may provide necessary assistance to any Overseas Court or authority having the competence to decide a petition of insolvency of any Licensee." See Al Aradi Declaration ¶ 6. Given that the Debtors' chapter 11 cases are pending in this Court, there can be no argument that the Court lacks competence over the Debtors' affairs. Accordingly, under the express terms of the CBB Law, the Debtors and their agents will not face any liability if they make the requested disclosures pursuant to the Court's order.

31. If any additional proof of the above conclusion were necessary, the Committee can offer two: (i) the Committee, of which the Central Bank of Bahrain is a member, voted unanimously to direct counsel to prepare and file the Motion, and (ii) the Debtors have previously provided the Committee's advisors with the identities of the Co-Investors for purposes of their conflict checks without expressing any concern regarding the violation of the CBB Law.

V. The Motion was Procedurally Proper

32. The Debtors have also asserted that the Motion was procedurally improper because it was filed under Bankruptcy Rule 2004, rather than Bankruptcy Rules in the 7000 series. This is incorrect.

33. It is well established that Bankruptcy Rules in the 7000 series are to be used only in adversary proceedings and contested matters. The Motion was not, in fact, filed in either an adversary proceeding or a contested matter. The filing of a motion to approve a disclosure statement does not initiate a contested matter. In re Hawthorne, 326 B.R. 1, 3 (Bankr. D.D.C. 2005). Instead, the filing of an objection is required before a contested matter arises. See Advisory Committee Note to Bankruptcy Rule 9014 ("the filing of an objection to . . . a disclosure statement creates a dispute which is a contested matter."). See also In re Catholic Bishop of N.Alaska, No. 08-0010 (DMD), 2009 WL 8412170, *2 (Bankr. D. Alaska July 20, 2009) (motion for approval of disclosure statement became a contested matter when an objection was filed).

34. Since the Committee has not filed an objection to the Debtors' disclosure statement, no contested matter exists with respect thereto, and the Committee's seeking discovery under Rule 2004 is entirely proper under these circumstances.[3]

[3] The mere possibility that a contested matter may arise in the future and the information discovered pursuant to Rule 2004 may be used in such contested matter is not sufficient to deny a party in interest its right to Rule 2004 discovery. See, e.g., In re Best Craft General Contractor & Design Cabinet, Inc., 239 B.R. 462, 465 (Bankr. E.D.N.Y. 1999) (Rule 2004 examinations, when initiated for a legitimate purpose, may proceed even where there is a possibility that the resulting evidence may be used in litigation).

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court (i) overrule the Objection, (ii) grant the Motion, and (iii) grant such other relief as is just.

Dated: March 4, 2013
New York, New York

MILBANK, TWEED, HADLEY & M^{c}CLOY LLP

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Exhibit A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

DECLARATION OF ABDUL JALIL AL ARADI IN SUPPORT OF REPLY OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF ARCAPITA BANK B.S.C.(C), ET AL., IN SUPPORT OF MOTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ENTRY OF AN ORDER PURSUANT TO FED. R. BANKR. P. 2004, 9006, AND 9016 AUTHORIZING EXPEDITED DISCOVERY FROM THE DEBTORS

ABDUL JALIL AL ARADI, under penalty of perjury, says:

1. I am an attorney licensed under the laws of the Kingdom of Bahrain, with license number 480104476 issued by the Ministry of Justice and Islamic Affairs, valid through June 3, 2013. I am a partner in the law firm of Hassan Radhi and Associates Law Office ("HRA"), located at 605 Diplomat Tower, Diplomatic Area, Manama, Kingdom of Bahrain. HRA is Bahraini counsel to the Official Committee of Unsecured Creditors (the "Committee") appointed in the above-captioned jointly administered chapter 11 cases of Arcapita Bank B.S.C.(c) ("Arcapita") and its affiliated debtors and debtors in possession (collectively, the "Debtors"). I hereby submit this declaration in support of the Committee's reply (the "Reply") to the Debtors' opposition [Docket No. 874] (the "Objection") to the Committee's motion [Docket No. 843] (the "Motion") pursuant to rules 2004, 9006 and 9016 of the Federal Rules of Bankruptcy Procedure, requesting an order authorizing the Committee to obtain

discovery from the Debtors regarding the corporate governance and control rights for their Portfolio Investments.[1]

2. I have a License in Law from the University of Beirut, and I have been admitted to practice law in Bahrain since 2005. I am licensed to opine on Bahrain laws, and I have worked and am currently working in association with international law firms on various legal issues and litigation in connection with banking and finance, contracting, and international arbitration. In particular, I am familiar with the Central Bank of Bahrain and Financial Institutions Law Decree No. 64 of 2006 (the "CBB Law"). The information given below is based on Bahrain laws and my understanding of the laws as a Bahraini licensed lawyer.

The CBB Law's Restriction on a Licensee's Disclosure of Confidential Information Does Not Apply to Information Regarding the Co-Investors

3. Article 117 of Part 8 of the CBB Law, which limits disclosure of Confidential Information by Bahraini financial institutions and provides that "Confidential Information must not be disclosed by a Licensee unless such disclosure is done:

i. Pursuant to an unequivocal approval of the person to whom the confidential information relates.

ii. In compliance with the provisions of the law or any international agreements to which the Kingdom is a signatory.

iii. In the process of executing an order issued by a Competent Court.

iv. For the purpose of implementing an instruction given by the Central Bank."[2]

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[1] Capitalized terms not otherwise defined herein shall have the respective meanings ascribed to them in the Motion, the Objection, and/or the Reply.

[2] A true and correct copy of each article of the CBB Law cited herein is attached hereto as Exhibit A.

For any disclosure of Confidential Information, if any one of the exceptions in paragraphs (i) through (iv) of Article 117 apply, then the disclosure is permitted by the CBB Law.

4. As a threshold matter, Article 117's prohibition on information sharing does not preclude disclosure of the kind of information sought by the Motion. Article 116 of the CBB Law provides that "In this Chapter, 'Confidential Information' means any information on the private affairs of any of the Licensee's ***Customers***." (emphasis added). The Co-Investors and SIP Investors, who are joint investors in the Portfolio Investments alongside various subsidiaries of the Debtors, are not "Customers" of the Debtors as such term is interpreted under Bahraini law. Accordingly, Article 117's restriction on disclosure of information is not implicated by the relief requested in the Motion because no "customer" information is implicated.

The United States Bankruptcy Court is a "Competent Court" for Purposes of Permissible Disclosure Under Article 117 of the CBB Law

5. Even if Article 117 applied to the relief requested, disclosure of information regarding the Co-Investors pursuant to an order entered by the Bankruptcy Court would not subject the Debtors to liability under the CBB Law. Article 117 of the CBB Law contains an exception for any disclosure pursuant to an order issued by a "Competent Court."

6. The term "Competent Court" does not refer only to a Bahraini court, but rather is properly interpreted to refer to ***any*** court of competent jurisdiction, whether located in the Kingdom of Bahrain or in another jurisdiction. Article 182 of the CBB Law specifically references the competence of foreign courts in insolvency proceedings with respect to a Bahraini financial institution. Specifically, Article 182 stipulates that "The Central Bank may provide necessary assistance to any Overseas Court or authority having the competence to decide a

petition of insolvency of any Licensee." Given that the Debtors' chapter 11 cases are pending in the Bankruptcy Court, the Bankruptcy Court is competent to adjudicate the Debtors' affairs.

7. Accordingly, under the express terms of the CBB Law, the Debtors and their agents will not face any liability if they make the requested disclosures pursuant to the Bankruptcy Court's order.

8. In conclusion, based on Bahrain laws and my understanding of the laws as a Bahraini licensed lawyer, I submit that (i) the Debtors would not breach any provision of Bahrain laws by providing information regarding the Co-Investors, as the restriction on sharing "Confidential Information" is limited to a Licensee's Customers, and (ii) the Debtors would be obliged by law to provide such information as the Committee requests in the Motion if an order is issued by the Bankruptcy Court, which is a Competent Court, requiring such disclosure.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 4, 2013

Abdul Jalil Al Aradi

EXHIBIT A

ARTICLE (116)
DEFINITION OF CONFIDENTIAL INFORMATION

In this Chapter, "Confidential Information" means any information on the private affairs of any of the Licensee's customers.

ARTICLE (117)
RESTRICTION ON DISCLOSURE OF CONFIDENTIAL INFORMATION BY LICENSEES

Confidential Information must not be disclosed by a Licensee unless such disclosure is done:

1. Pursuant to an unequivocal approval of the person to whom the confidential information relates.
2. In compliance with the provisions of the law or any international agreements to which the Kingdom is a signatory.
3. In the process of executing an order issued by a Competent Court.
4. For the purpose of implementing an instruction given by the Central Bank.

ARTICLE (182)
PROVISION OF ASSISTANCE

The Central Bank may provide necessary assistance to any Overseas Court or authority having the competence to decide a petition of insolvency of any Licensee.