

**GIBSON, DUNN & CRUTCHER LLP**

Michael A. Rosenthal

Craig H. Millet (admitted *pro hac vice*)

Jeremy L. Graves (admitted *pro hac vice*)

200 Park Avenue

New York, New York 10166-0193

Telephone: (212) 351-4000

Facsimile: (212) 351-4035

Attorneys for the Debtors and Debtors in Possession

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

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

**DEBTORS' MOTION FOR AN ORDER AUTHORIZING AND  
APPROVING A SETTLEMENT AND PLAN SUPPORT  
AGREEMENT WITH STANDARD CHARTERED BANK**

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## **PRELIMINARY STATEMENT**

Standard Chartered Bank is the Debtors' only material secured creditor and is the only creditor with any claims against Debtors Arcapita LT Holdings Limited, WindTurbine Holdings Limited, AEID II Holdings Limited, and RailInvest Holdings Limited. The Debtors and the Committee have negotiated an agreement with SCB that saves the estates more than \$2 million, secures favorable refinancing for one of the Debtors' portfolio investments, simplifies the Debtors' post-emergence capital structure, and secures SCB's vote in favor of the Plan.<sup>1</sup> As a result of the settlement with SCB, the last significant hurdle to confirmation has been cleared and the Debtors are sprinting toward the finish line in these chapter 11 cases.

## **BACKGROUND**

### **A. General Background**

1. The basic background facts pertaining to the chapter 11 cases are well known to the Court and will not be repeated here.

### **B. SCB'S Relationship With The Debtors**

2. SCB extended two Murabaha facilities (the "**SCB Facilities**") to Arcapita Bank B.S.C.(c) ("**Arcapita Bank**") pursuant to those certain Master Murabaha Agreements, dated as of (i) May 30, 2011, in the principal amount of US\$50,000,000, which matured on March 28, 2012, and (ii) December 22, 2011, in the principal amount of US\$50,000,000, which matured on March 28, 2012.

3. The SCB Facilities are Shari'ah-compliant Murabaha facilities, which

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<sup>1</sup> References to the "Plan" are to the *Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c), and Related Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 1036]. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

provide for the sale of precious metals from SCB to Arcapita Bank at the cost price of the precious metals plus an agreed profit amount plus costs, on deferred payment terms. The obligations of Arcapita Bank under one or both of the SCB Facilities are guaranteed by Debtors Arcapita Investment Holdings Limited (“**AIHL**”), Arcapita LT Holdings Limited (“**Arcapita LT**”), WindTurbine Holdings Limited (“**WindTurbine**”), AEID II Holdings Limited (“**AEID II**”), and RailInvest Holdings Limited (“**RailInvest**,” and together with AEID II and WindTurbine, the “**Pledged Subsidiary Debtors**”).

4. Additionally, the obligations under the two SCB Facilities are secured by charges and/or equitable mortgages over the shares in each of Arcapita LT and the Pledged Subsidiary Debtors. The charges and mortgages are governed by the law of the Cayman Islands, and SCB has asserted that they create express trusts under Cayman Islands law with respect to all dividends and other distributions made on or in respect of the mortgaged shares, and that SCB actually owns the shares.

#### **C. SCB’s Relationship with Honiton**

5. Two of the Debtors’ Chinese affiliates, Honiton Energy (Xilinguole) Company Limited, and Honiton Energy (Baotou) Company Limited (together, “**Honiton**”), own and operate a business of wind energy development. On March 18, 2011, Honiton entered into an RMB 362,000,000 Bridge Facility Agreement (as amended, the “**Honiton Facility**”) with Standard Chartered Bank (China) Limited (Huhhot Branch) (“**SCB-China**”), pursuant to which SCB-China has extended a loan in the total amount of RMB 270,935,198.21 to Honiton.

6. On March 18, 2013, SCB-China sent a *Lender Notification of Arbitration Intention* to Honiton in which SCB-China sought (i) immediate repayment of amounts owed under the Honiton Facility, (ii) default interest on the outstanding amounts owed, (iii)

reimbursement of the structuring fee for the first extension of the Honiton Facility, (iv) reimbursement of all costs paid by SCB-China on behalf of Honiton under the Honiton Facility, and (v) reimbursement of all other costs incurred in connection with the Honiton Facility. SCB-China also stated that it intended to submit the dispute to arbitration if such repayment was not made by March 22, 2013. On March 28, 2013, SCB-China filed an application for arbitration with China International Economic and Trade Arbitration Commission, under which SCB-China alleged that Honiton has failed to perform its repayment obligations under Honiton Facility which were due on March 14, 2013, and claimed for (i) repayment of principal in the amount of RMB 270,935,198.21, (ii) payment of default interest at an amount of RMB 3,506,114, (iii) payment of structuring fee in the amount of RMB 6,370,000, (iv) payment of attorney fees previously advanced by SCB-China for Honiton in the amount of RMB 26,211.91, and (v) payment of the arbitration fee in relation to the present arbitration as well as the property preservation fees.

7. Honiton lacks the liquidity to repay the amounts owed to SCB-China. Absent a negotiated resolution with SCB-China or replacement financing, there is a risk that the Debtors' interest in Honiton will be lost as a result of an SCB-China foreclosure.

#### **D. The SCB EuroLog/DIP Settlement**

8. On July 26, 2012, the Debtors filed their *Debtors' Motion for an Order Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code Authorizing the Debtors to Launch the EuroLog IPO* [Docket No. 350] (the "***IPO Motion***") seeking Court authority to execute the documents necessary to launch an IPO of certain real estate assets (the "***EuroLog IPO***"). SCB objected to the EuroLog IPO because, *inter alia*, SCB was not comfortable that its interests in the proceeds of the EuroLog IPO would mirror the interests it has in the assets that

were to be sold or that the proposed allocation of proceeds from the EuroLog IPO was appropriate. *See* Docket No. 389. To obtain SCB's consent for the EuroLog IPO and to resolve SCB's anticipated objection to the Debtors' then-pending request for postpetition financing, the Debtors reached an agreement with SCB regarding SCB's rights in collateral and entitlement to administrative expense claims (the "***EuroLog/DIP Settlement***"). The key terms of the EuroLog/DIP Settlement are as follows:

- The Debtors agreed to reimburse SCB for all reasonable fees and expenses related to the Debtors, the chapter 11 cases, the SCB Facilities, and the proceedings in the Cayman Islands;
- The Debtors agreed that if they transferred to AIHL or otherwise dispose of property directly or indirectly owned or controlled by Arcapita LT and the Pledged Subsidiary Debtors, SCB would be granted superpriority administrative expense claims against AIHL in an amount equal to the sum of all funds transferred post-petition to AIHL or otherwise disposed of on account of the SCB Asserted Trust Property;
- The Debtors agreed to make adequate protection payments to SCB in the amount of \$500,097.08 per month (subject to the Committee's right to challenge a portion of the adequate protection payments on the grounds that SCB is not entitled to post-maturity profit under the SCB Facilities);
- SCB agreed that it would not object to DIP financing on certain terms; and
- SCB provided its consent to the EuroLog IPO and the Debtors' allocation of value of various assets that would be sold in the EuroLog IPO.

The court approved of the EuroLog/DIP Settlement by order dated October 19, 2012 (the "***EuroLog/DIP Settlement Approval Order***"). *See* Docket No. 587.

#### **E. The Plan Settlement and Support Agreement**

9. SCB has asserted that the Plan cannot be confirmed over the objection of SCB and that the Plan or the terms of the Plan cannot be given effect in the Cayman Islands over the objection of SCB. The Debtors and the Committee disagree with this contention.

10. Accordingly, the Debtors and the Committee engaged in extensive, hard-

fought, arm's-length negotiations with SCB to reach an agreement that would result in a reduction of the amount paid to SCB, address Honiton's financing needs, and secure SCB's support for the Plan. The settlement reached by the parties (the "*Plan Settlement and Support Agreement*") is annexed hereto as Exhibit A.

11. The key terms of the Plan Settlement and Support Agreement are as follows:

- SCB's claims will be paid in cash on the Effective Date, subject to a \$2 million reduction of its adequate protection claims, with the proceeds of the Exit Facility;
- The Honiton Facility will be restructured on terms that are favorable to the Debtors; and
- SCB will support and vote to accept the Plan.

If a Termination Event under the Plan Settlement and Support Agreement occurs, the treatment of SCB's Claims pursuant to the Plan will be modified such that the undisputed portion of SCB's Claims will be paid and the portion of SCB's Claims that are subject to challenge will remain subject to challenge.

### **JURISDICTION AND VENUE**

12. The 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 pursuant to 28 U.S.C. §§ 1408 and 1409.

### **RELIEF REQUESTED**

13. By this Motion, the Debtors, pursuant to section 105 of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure, seek entry of an order (which order may be the order confirming the Plan) authorizing and approving the Debtors' entry into the Plan Settlement and Support Agreement.



**BASIS FOR RELIEF REQUESTED**

14. Bankruptcy Rule 9019(a) provides that “on motion by the trustee and after a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). Notably, “[a]s a general rule, . . . courts favor compromises because they are ‘a normal part of the process of reorganization.’” *DeBenedictis v. Truesdell*, No. 09 Cv. 374 (BSJ), 2009 U.S. Dist. LEXIS 64213, at \*18 (S.D.N.Y. July 13, 2009).

15. The “factors which should be considered by a court in approving a settlement agreement in the context of a bankruptcy case include the complexity of the litigation, comparison of the proposed settlement with the likely result of litigation, the scope of the discovery preceding settlement, and the ability of the defendant to satisfy a greater judgment.” *In re Ionosphere Clubs*, 156 B.R. 414, 427 (S.D.N.Y. 1993) (citing, *inter alia*, *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 292 (2d Cir. 1992)).

16. “[A]pproval of the settlement lies within the sound discretion of the bankruptcy court.” *In re Enron Corp.*, No. 02 Civ. 8489 (AKH), 2003 U.S. Dist. LEXIS 1383, at \*5 (S.D.N.Y. Jan. 31, 2003); *see also Cousins v. Pereira*, No. 09 Civ. 1190 (RJS), 2010 U.S. Dist. LEXIS 136139, at \*9 (S.D.N.Y. Dec. 22, 2010) (noting that the “bankruptcy court is in the best position, as the . . . ongoing supervisory court for the bankruptcy proceeding, to determine whether a compromise is in the best interest of the estate and [is] fair and equitable”) (citations omitted) (alteration in original).

17. In making its decisions, “the Court is not to substitute its judgment for that of the parties, nor is it to reopen and enter into negotiations with the parties, nor is it to turn consideration of the adequacy of the settlement ‘into a trial or a rehearsal of the trial.’” *In re Metropolitan Life Derivative Litig.*, 935 F. Supp. 286, 292 (S.D.N.Y. 1996) (quoting *City of*

*Detroit v. Grinnell Corp.*, 495 F.2d 448, 462 (2d Cir. 1974)); *see also In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993) (“The reviewing court need not conduct its own investigation concerning the reasonableness of the settlement and may credit and consider the opinion of the Trustee and counsel that the settlement is fair and equitable.”). Moreover, the Court is “not to determine whether the settlement was the best that could have been obtained,” but instead, to determine “whether it ‘fall[s] below the lowest point in the range of reasonableness.’” *In re W.T. Grant Co.*, 699 F.2d 599, 613 (2d Cir. 1983) (citation omitted).

18. The Plan Settlement and Support Agreement is the product of extensive arm’s-length negotiations between the Debtors, the Committee, and SCB, and represents the parties’ good faith compromise of potential disputes. As a result of the settlement, payment on SCB’s outstanding adequate protection claims will be reduced by \$2 million; the Honiton Facility will be restructured on terms that are favorable to the Debtors; and SCB will support and vote to accept the Plan. In addition, the settlement enables the Debtors to expeditiously move forward with confirmation of the Plan without litigating myriad potential disputes with SCB such as whether the Plan can be confirmed without SCB’s acceptance, whether the direct and indirect assets of Arcapita LT can be used by the Debtors or Reorganized Debtors without SCB’s consent, whether the Debtors can cramdown SCB in a shari’ah-compliant fashion, and what cramdown interest rate imposed on SCB is appropriate. Pursuant to the EuroLog/DIP Settlement Approval Order, both the Debtors’ and SCB’s expenses of such litigation would be borne by the Debtors’ estates.

19. All of these benefits of settlement come at relatively little cost to the Debtors’ estates. The Plan Settlement and Support Agreement requires the Debtors to pay SCB’s expenses and to make the adequate protection payments to SCB in accordance with the

EuroLog/DIP Settlement Order —amounts that SCB is entitled to receive anyway in accordance with the SCB Facilities.<sup>2</sup> Although the Committee retained the right to challenge more than \$5 million of the adequate protection payments, SCB is an over-secured creditor and as such is entitled to postpetition profit.<sup>3</sup> See 11 U.S.C. § 506(b). Relatedly, because SCB is over-secured, SCB is entitled to payment of its prepetition claims in full.<sup>4</sup> Considering the risks and the substantial costs involved in proceeding with litigation, the proposed settlement is well “within the bounds of reasonableness,” *In re Purofied Down Prods. Corp.*, 150 B.R. 519, 523 (S.D.N.Y. 1993), and certainly, does not “fall[] below the lowest point in the range of reasonableness,” *In re W.T. Grant Co.*, 699 F.2d at 608 (internal citations and quotations omitted).

20. In light of the foregoing, the Debtors, in their business judgment, believe that the Plan Settlement and Support Agreement represents a compromise between the Debtors, the Committee, and SCB that is fair and equitable and advances the paramount interests of the creditors of the Debtors’ estates. Accordingly, for the reasons set forth above, the Debtors submit that entering into the Plan Settlement and Support Agreement was an exercise of sound business judgment and that the Court should therefore approve the Plan Settlement and Support Agreement.

### **NOTICE**

21. The Debtors have provided notice of filing of the Motion by electronic

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<sup>2</sup> The Committee disagrees with this assertion.

<sup>3</sup> The Committee disagrees with this assertion.

<sup>4</sup> The Committee disagrees with this assertion.

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) the Committee, Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis F. Dunne, Esq. and Evan R. Fleck, Esq.); (iii) the JPLs, Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Alex R. Rovira, Esq. and Benjamin M. Klinger, Esq.); (iv) SCB, Dechert LLP, 1095 Avenue of the Americas, New York, New York 10036 (Attn: Brian E. Greer, Esq. and Nicole Herther-Spiro, Esq.); (v) Goldman Sachs International, Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022 (Attn: Mitchell A. Seider, Esq. and Adam J. Goldberg, Esq.); and (vi) 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, Inc., at [www.gcginc.com/cases/arcapita](http://www.gcginc.com/cases/arcapita).

**NO PRIOR REQUEST**

22. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: June 6, 2013  
New York, New York

Respectfully submitted,

/s/ Michael A. Rosenthal  
Michael A. Rosenthal  
Craig H. Millet (admitted *pro hac vice*)  
Jeremy L. Graves (admitted *pro hac vice*)  
**GIBSON, DUNN & CRUTCHER LLP**  
200 Park Avenue  
New York, New York 10166-0193  
Telephone: (212) 351-4000  
Facsimile: (212) 351-4035

ATTORNEYS FOR THE DEBTORS AND  
DEBTORS IN POSSESSION

**Exhibit A**  
**Settlement Agreement**

## SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter the “**Agreement**”) is entered into as of June 6, 2013 by and among: (1) Arcapita Bank B.S.C.(c) (“**Arcapita Bank**”) and affiliates Arcapita Investment Holdings Limited (“**AIHL**”), Arcapita LT Holdings Limited (“**LT Holdings**”), AEID II Holdings Limited (“**AEID**”), RailInvest Holdings Limited (“**RailInvest**”), and WindTurbine Holdings Limited (“**WindTurbine**,” and, together with Arcapita Bank, AIHL, LT Holdings, AEID, and RailInvest, the “**Debtors**”); (2) the Official Committee of Unsecured Creditors of the Debtors (the “**Committee**”); (3) Standard Chartered Bank (“**SCB**”); (4) Standard Chartered Bank (China) Limited (Huhhot Branch) (“**SCB-China**”); and (5) Honiton Energy (Xilinguole) Company Limited and Honiton Energy (Baotou) Company Limited (together, “**Honiton**” and, collectively with the Debtors, the Committee, SCB and SCB-China, the “**Parties**”).

### 1. RECITALS

#### 1.1 Pending Chapter 11 and Related Proceedings

1.1.1 The Debtors are debtors in possession in jointly administered bankruptcy cases (individually, a “**Chapter 11 Case**” and, as jointly administered, the “**Chapter 11 Cases**”) pending in the United States Bankruptcy Court for the Southern District of New York (“**Bankruptcy Court**”) (jointly administered as *In re Arcapita Bank B.S.C.(c), et al.*, Case No. 12-11076 (SHL)), which were commenced on March 19, 2012 (the “**Petition Date**”).

1.1.2 As used herein, where required by context, “**Debtors**” includes any reorganized successor entity thereof and New Arcapita Topco (as defined in the Plan) and its newly formed subsidiaries. However, as used herein, “**Debtors**” does not include Falcon Gas Storage Company Inc., which is also a debtor in the Chapter 11 Cases.

1.1.3 Immediately after commencing its Chapter 11 Case, AIHL filed an application for a provisional liquidation in the Grand Court of the Cayman Islands (the “**Cayman Court**”), which commenced FSD Cause No. 45 of 2012-AJ (the “**Cayman Proceeding**”). On March 20, 2012, the Cayman Court entered an order enjoining creditors from taking actions against AIHL in the Cayman Islands, appointing Gordon MacRae and Simon Appell of Zolfo Cooper (Cayman) Limited as joint provisional liquidators of AIHL (the “**JPLs**”) pursuant to s.104(3) of the Cayman Companies Law (2011 Revision), and also staying the winding-up of AIHL in the Cayman Court pending the outcome of the Chapter 11 Cases.

#### 1.2 SCB Murabaha Facilities

1.2.1 Prior to the commencement of the Chapter 11 Cases, SCB extended approximately \$100 million in secured Shari’ah-compliant murabaha financing to the Debtors under two \$50 million secured murabaha facilities (together, the “**SCB Facilities**”) as follows:

1.2.1.1 SCB May 2011 Facility: Arcapita Bank obtained financing under a Master Murabaha Agreement dated May 30, 2011 between Arcapita Bank and SCB which matured March 28, 2012. The obligations of Arcapita Bank are (i) guaranteed by AIHL, LT Holdings and WindTurbine, and (ii) secured by a pledge of (A) AIHL's shares in LT Holdings and (B) LT Holdings's shares in WindTurbine, AEID and RailInvest. As of the Petition Date, the principal amount outstanding under the SCB May 2011 Facility was approximately \$46.6 million.

1.2.1.2 SCB December 2011 Facility: Arcapita Bank obtained financing under a Master Murabaha Agreement dated December 22, 2011 between Arcapita Bank and SCB which matured on March 28, 2012. The obligations of Arcapita Bank are (i) guaranteed by AIHL, LT Holdings, WindTurbine, AEID and RailInvest, and (ii) secured by a pledge of (A) AIHL's shares in LT Holdings and (B) LT Holdings's shares in WindTurbine, AEID and RailInvest. As of the Petition Date, the principal amount outstanding under the SCB December 2011 Facility was approximately \$50.0 million.

1.2.2 As of the Petition Date, the total principal amount outstanding under the SCB Facilities was \$96,610,310.28 (the "**SCB Principal Amount**").

### 1.3 **TDIC Guaranty**

1.3.1 Prior to the Petition Date, in consideration for SCB's guaranty in the amount of \$10 million for the benefit of Tourism Development and Investment Company (the "**TDIC Guaranty**"), Arcapita Bank entered into that certain guaranty indemnity for the benefit of SCB (the "**Indemnity Obligations**").

1.3.2 The Indemnity Obligations are secured by cash in the amount of \$10 million (the "**Cash Collateral**") that is held as collateral by SCB.

### 1.4 **The October 2012 Settlement with SCB**

1.4.1 On October 19, 2012, the Bankruptcy Court entered an order approving an agreement between the Debtors, the Committee, the JPLs, and SCB ("**SCB Order**") [Docket No. 587] approving certain terms set forth in the SCB Order and in the Settlement Term Sheet attached thereto as Exhibit 1 (the "**Settlement Term Sheet**").

1.4.2 As reflected in the SCB Settlement Term Sheet and SCB Order, SCB agreed (1) subject to certain conditions, not to object to any debtor-in-possession financing, and (2) to consent to the EuroLog IPO. In return, the SCB Order, among other things:

- established the validity, perfection and enforceability of SCB's claims under the SCB Facilities;
- granted SCB superpriority administrative expense claims against AIHL for any transfer to AIHL or other disposition of certain of the SCB Asserted Trust Property (as defined in the Settlement Term Sheet) (the "**SCB Sale Claims**");



- memorialized and approved the Debtors' agreement to reimburse SCB for its reasonable and documented out-of-pocket fees and expenses relating to the Debtors, the Chapter 11 Cases, the SCB Facilities and the Cayman Proceeding, and granted SCB an administrative expense claim for such fees and expenses (the "**SCB Expense Claims**"); and
- granted SCB an administrative claim (the "**SCB Adequate Protection Claim**" and, together with the SCB Sale Claims, the SCB Expense Claims, and the SCB Principal Amount, the "**SCB Claims**") as adequate protection in the amount of \$500,097.08 per month for the period from the Petition Date through and including the Effective Date (as defined in the Debtors' proposed Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors Under Chapter 11 of the Bankruptcy Code [Docket No. 1036] (as amended, modified, or supplemented, the "**Plan**") and hereinafter referred to as the "**Plan Effective Date**")), to be paid in one initial post-approval payment and monthly thereafter.

1.4.3 The Committee retained the right to challenge SCB's entitlement to a portion of the SCB Adequate Protection Claim. In addition, the Debtors, the Committee, the JPLs, and SCB reserved certain rights in relation to treatment under any chapter 11 plan or the use of what SCB argued was "trust property" in the Cayman Proceeding and the Chapter 11 Cases.

1.4.4 Except as expressly set forth herein, the SCB Order and Settlement Term Sheet shall remain in full force and effect.

## 1.5 **Honiton Facility**

1.5.1 Prior to the Petition Date, SCB-China entered into a RMB 362,000,000 Facility Agreement dated March 18, 2011 with Honiton, as amended by the first amendment agreement dated July 12, 2011, the second amendment agreement dated August 30, 2011, the third amendment agreement dated December 12, 2011, the fourth amendment agreement dated August 22, 2012 and the fifth amendment agreement dated December 31, 2012 pursuant to which SCB-China as the lender provided a facility in favor of Honiton (the "**Honiton Facility**").

1.5.2 On or about March 18, 2013, SCB-China sent a Lender Notification of Arbitration Intention, dated March 18, 2013, to Honiton in which SCB-China claimed for the repayment of all the payables, including the principal, the default interest, the structuring fee, all cost paid by SCB-China on behalf of Honiton under the Honiton Facility and any cost incurred in connection with such claim and stated that it intended to submit the dispute to arbitration ("**Honiton Arbitration**") if such repayment was not made by Honiton by March 22, 2013.

## 1.6 **Plan and Disclosure Statement**

1.6.1 On April 25, 2013, the Debtors filed their Second Amended Disclosure Statement in Support of Second Amended Joint Plan of Reorganization of Arcapita Bank

B.S.C.(c) and Related Debtors Under Chapter 11 of the Bankruptcy Code [Docket No. 1038] (as amended, modified, or supplemented, the “**Disclosure Statement**”), which attached the Plan. The Disclosure Statement was approved by an order of the Bankruptcy Court entered on April 26, 2013 [Docket No. 1045] and the Debtors are in the process of soliciting the acceptance of the Plan by the classes of creditors defined in the Plan.

1.6.2 The Plan proposed treatment of the SCB Claims and any other claims SCB has against the Debtors (the “**SCB Plan Treatment**”); however, SCB has not agreed to the SCB Plan Treatment and, in an objection filed with respect to the Disclosure Statement, SCB objected to the SCB Plan Treatment and indicated that it will vote against the Plan and will object to confirmation of the Plan. SCB further contends that the Plan cannot be confirmed over the objection of SCB and that the Cayman Court cannot give effect to the Plan or the terms of the Plan over the objection of SCB. The Debtors and the Committee disagree with this contention. On May 31, 2013, AIHL obtained an Order of the Cayman Court approving the transactions contemplated by the Plan subject to (a) SCB’s entry into this Agreement or (b) SCB receiving the treatment set forth in Section 4.6 hereof.

## 1.7 **Resolution of Issues**

1.7.1 The Parties have negotiated in good faith with respect to disputes concerning the foregoing, including with respect to the Cash Collateral, the Honiton Facility, the Honiton Arbitration, and the SCB Plan Treatment and, pursuant to this Agreement, the Parties desire to enter into a comprehensive agreement resolving their differences with respect to these issues. This Agreement shall not include the Syndicated Facility Claims (defined in the Plan) held by SCB and such claims shall be treated in accordance with the treatment for all Syndicated Facility Claims under the Plan.

## 1.8 **Capitalized Terms**

1.8.1 Capitalized terms not otherwise defined in this Agreement shall have the meaning given to them in the Plan, Disclosure Statement or other document specifically referenced in this Agreement.

# 2. **AGREEMENT**

NOW, THEREFORE, in consideration of the covenants, conditions, terms and representations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties hereby represent and agree as follows:

## 2.1 **Treatment of SCB Claims**

2.1.1 **Plan Treatment:** If the Agreement Effective Date (as defined below) occurs on or prior to the Plan Effective Date, on the Plan Effective Date the Debtors shall pay or cause to be paid to SCB in cash an amount (the “**Cash Payment**”) equal to (a) any amounts then due and unpaid on account of the SCB Adequate Protection Claim and the SCB Expense Claims through and including the Plan Effective Date, plus (b) \$94,610,310.28, in full satisfaction of the SCB Claims (other than claims related to the TDIC Guaranty and

Indemnity Obligations and SCB's Syndicated Facility Claims) and any other claims, including administrative claims, of SCB against the Debtors. If the Agreement Effective Date does not occur on or prior to the Plan Effective Date, SCB shall receive the treatment set forth in Section 4.6 hereof on the Plan Effective Date.

**2.1.2 Release of Committee Challenge Right.** Subject to the occurrence of the Agreement Effective Date, the Committee shall and hereby does waive and release the Committee Challenge Right (as defined in the SCB Order). If the Agreement Effective Date does not occur or a Termination Event occurs, the Committee Challenge Right shall be treated as set forth in Section 4.6 hereof.

**2.1.3 Payment of the SCB Adequate Protection Claim and SCB Expense Claims.** The SCB Adequate Protection Claim and SCB Expense Claims shall be paid on a current basis in accordance with the SCB Order and Settlement Term Sheet through and including the Plan Effective Date.

## **2.2 TDIC Guaranty**

**2.2.1 The TDIC Guaranty Is Unaffected.** Nothing herein and nothing in the Plan shall affect the parties' rights and obligations under or with respect to the TDIC Guaranty or the Indemnity Obligations, which shall remain in full force and effect according to their terms and Reorganized Arcapita Bank shall remain obligated on the Indemnity Obligations.

**2.2.2 Payment of Outstanding Obligations.** On the Plan Effective Date, the Debtors shall pay to SCB all amounts and commissions then due and owing to SCB under the TDIC Guaranty and the Indemnity Obligations in full in cash.

**2.2.3 Cash Collateral.** SCB shall continue to hold the Cash Collateral securing the Indemnity Obligations until SCB receives reasonably satisfactory evidence that the TDIC Guaranty has been terminated or released (the "**TDIC Termination**").

**2.2.4 Release and Disposition of Cash Collateral:** SCB agrees to release and remit to Arcapita Bank or, if such release occurs after the Plan Effective Date, New Arcapita Topco, the portion of Cash Collateral exceeding any amounts paid by or owed to SCB under the TDIC Guaranty within five (5) business days of the receipt by SCB of reasonably satisfactory evidence of the TDIC Termination. SCB shall be authorized to immediately setoff and apply any unpaid amounts then due and owing to SCB under the TDIC Guaranty and Indemnity Obligations from the Cash Collateral upon the TDIC Termination without any further order of the Bankruptcy Court.

## **2.3 Honiton Facility**

**2.3.1 Honiton Restructuring Agreement:** Honiton and SCB-China shall enter into a restructuring agreement related to the Honiton Facility (the "**Honiton Restructuring Agreement**"), which Honiton Restructuring Agreement shall be consistent with the terms and conditions of the term sheet attached hereto as Exhibit A and made a part hereof. A draft of the Honiton Restructuring Agreement will be delivered by SCB-China no later than June 10,

2013. Following execution, the Honiton Restructuring Agreement shall be effective upon the satisfaction or waiver of the conditions precedent and conditions subsequent specified in Exhibit A, and effectiveness shall not be subject to any other conditions precedent or conditions subsequent unless otherwise agreed in writing by each of the Parties.

**2.3.2 Payments by Debtors:** The Debtors may satisfy any obligations of the Debtors to make payments to SCB-China in connection with the Honiton Restructuring Agreement by directly or indirectly funding Honiton, either alone or in conjunction with other owners of Honiton, and causing Honiton to make such payments.

**2.3.3 Withdrawal of the Honiton Arbitration Proceedings and Preservation Orders.** Within 7 days of execution of the Honiton Restructuring Agreement, SCB-China shall (a) issue a letter to Honiton's satisfaction to the arbitral tribunal to withdraw the Honiton Arbitration, and (b) issue a separate letter to Honiton's satisfaction to the relevant local courts to withdraw the preservation orders against Honiton Energy Xilinguole and Honiton Energy Baotou.

**2.3.4 Escrow.** Within 3 business days of entry of the 9019 Order (defined below), Honiton or the Debtors shall fund the US\$4 million into escrow with a Party or financial institution mutually acceptable to the Parties. For the avoidance of doubt, the escrowed funds shall only be released to SCB-China if the Honiton Restructuring Agreement becomes effective and shall be returned to Honiton or the Debtors if the Honiton Restructuring Agreement does not become effective.

**2.3.5 No Proceeding.** SCB-China agrees to adjourn the arbitration proceeding until the Honiton Restructuring Agreement is executed so long as the Honiton Restructuring Agreement is executed no later than June 30, 2013, or such later date as is mutually agreed by the Parties. If the Honiton Restructuring Agreement is executed by June 30, 2013, SCB-China agrees to further adjourn the arbitration proceeding pending the delivery of the letters described in Section 2.3.3 above.

## **2.4 Modification of the Plan**

**2.4.1** The Debtors shall modify the Plan and the SCB Plan Treatment to be consistent with the provisions of this Agreement, including the provisions set forth in section 4.6 below.

**2.4.2** The Debtors, the Committee and SCB hereby agree, and the Confirmation Order shall provide, that the Plan and the SCB Plan Treatment shall be modified to be consistent with the provisions of this Agreement.

## **3. RELEASES**

**3.1 SCB Included in Released Parties and Plan Releases:** As provided in the definition of "**Released Parties**" in the Plan, if SCB votes in favor of the Plan, SCB shall be deemed to be a Released Party under Section 9.2 of the Plan, and the Plan and order confirming the Plan shall so provide; provided that the Committee Challenge Right shall only be released if the Agreement Effective Date occurs on or prior to the Plan Effective Date. For the avoidance of doubt, the

Committee Challenge Right shall be released as provided in this Agreement notwithstanding anything to the contrary in Section 9.10 of the Plan.

**3.2 Other SCB Claims are Discharged and Released.** If the Agreement Effective Date occurs on or prior to the Plan Effective Date, on the Plan Effective Date and upon receipt by SCB of the Cash Payment, any claim of SCB against the Debtors (excluding claims under the TDIC Guaranty or the Indemnity Obligations and SCB's Syndicated Facility Claims), including without limitation any claim by SCB that the collateral pledged to secure the SCB Facilities is "trust property" under the laws of the Cayman Islands and is not property of the Debtors' estates or any other claim by SCB related to the collateral pledged to secure the SCB Facilities, shall be subject to the discharge, releases and injunctions set forth in the Plan. SCB agrees to cooperate to release and re-convey any and all interests in the collateral pledged to secure the SCB Facilities, and to execute any document reasonably requested of SCB to cause the release and reconveyance of such collateral. If the Agreement Effective Date does not occur on or prior to the Plan Effective Date, then SCB's claims shall be treated as set forth in Section 4.6 hereof.

**3.3 No Third Party Beneficiaries.** The Parties each warrant, acknowledge and agree that there are no third party beneficiaries of the rights and obligations created by, or the releases provided in, this Agreement.

**3.4 Binding on Successors and Assigns.** This Agreement shall be binding on the Parties and their successors and assigns (including any trustee appointed under chapter 7 or chapter 11 of title 11 of the United States Code for the estates of the Debtors) and inure to the benefit of the Parties and their respective successors and assigns.

**3.5 No Transfer of Claims.** The Parties each warrant, acknowledge and agree that no other person or entity has claimed or now claims any interest in the claims released and resolved by means of this Agreement or in the Plan, that they have the sole right and exclusive authority to execute this Agreement and to tender and receive the consideration provided for herein, and that they have not sold, assigned or otherwise set over to any other person or entity, any claim, lien, demand, cause of action, obligation, damage or liability covered hereby.

#### **4. GENERAL**

**4.1 Conditions Precedent:** This Agreement is binding on the Parties from and after the date hereof, but the provisions of this Agreement that are subject to the occurrence of the Agreement Effective Date are expressly subject to the following conditions precedent (the "**Conditions Precedent**");

4.1.1 Entry of a final order of the Bankruptcy Court confirming the Plan (the "**Confirmation Order**");

4.1.2 Entry of an order of the Cayman Court validating the transactions related to AIHL set forth in the Plan (the "**Cayman Approval Order**");

4.1.3 Entry of a final order of the Bankruptcy Court, which may be the Confirmation Order, approving this Agreement (the "**9019 Order**");

4.1.4 Compliance by SCB with its obligations under section 4.5 below; and

4.1.5 The Honiton Restructuring Agreement shall have been executed and all conditions precedent and conditions subsequent to the effectiveness of the Honiton Restructuring Agreement shall have been satisfied or waived as provided therein.

The Conditions Precedent may be waived only upon the written consent of all Parties to this Agreement.

4.2 **Agreement Effective Date:** The Agreement Effective Date shall be that date on which all of the Conditions Precedent have been satisfied or waived by the Parties (the “**Agreement Effective Date**”).

4.3 **Modification of Prior SCB Settlement:** The provisions of the SCB Order and the Settlement Term Sheet, including those provisions related to the SCB Sale Claims, the SCB Expense Claims and the SCB Adequate Protection Claims, shall remain in full force and effect, provided, however, that upon approval of this Agreement by the Bankruptcy Court, the rights and obligations of the Debtors and SCB pursuant to the SCB Order and Settlement Term Sheet shall be deemed modified to the extent necessary to be consistent with their respective rights and obligations set forth in this Agreement.

4.4 **Termination:** Except as provided in section 4.6 below, any and all agreements or obligations of the Parties under this Agreement that are subject to the occurrence of the Agreement Effective Date shall terminate and be null and void, and each Party shall have such rights and obligations as it would have had if this Agreement had never been executed, upon the occurrence of any of the following events (each, a “**Termination Event**”), unless waived in writing by all Parties:

4.4.1 Entry, prior to the Plan Effective Date, of an SCB Termination Order (as defined in the SCB Order and Settlement Term Sheet);

4.4.2 If all of the Conditions Precedent have not been satisfied or waived on or prior to the Plan Effective Date; or

4.4.3 If the Honiton Restructuring Agreement has not been executed by June 30, 2013.

4.4.4 If the Plan Effective Date does not occur by December 31, 2013.

4.5 **Plan Support:** Provided that a Termination Event has not occurred, SCB shall (i) vote its claims under the SCB Facilities in favor of the Plan or any other chapter 11 plan of reorganization for the Debtors that incorporates the provisions of this Agreement, and (ii) take such other actions as may be reasonably requested by the Debtors and the Committee to support entry of the Confirmation Order, the 9019 Order, the Cayman Order and the occurrence of the Plan Effective Date.

4.6 **SCB Plan Treatment on Termination:** If a Termination Event occurs, the Plan, as modified to incorporate the provisions of this Agreement, will automatically be modified to



provide that SCB will receive the following treatment in full and final settlement and satisfaction of SCB's claims against the Debtors (including the SCB Claims but excluding claims related to the TDIC Guaranty and the Indemnity Obligations and SCB's Syndicated Facility Claims):

4.6.1 On the Plan Effective Date, the Debtors shall pay to SCB, in full satisfaction of the SCB Claims (other than claims related to the TDIC Guaranty and the Indemnity Obligations and SCB's Syndicated Facility Claims) and any other claims, including administrative claims, of SCB against the Debtors, in cash an amount equal to (a) \$96,610,310.28, plus (b) all unpaid SCB Adequate Protection Claims, plus (c) all unpaid SCB Expense Claims, less (d) the amount of SCB Adequate Protection Claims subject to the Committee Challenge Right under the SCB Order (the "**Disputed Amount**");

4.6.2 The Committee Challenge Right shall not be cancelled or released and shall remain exercisable by the Committee or the Committee's designee and need not be exercised in connection with confirmation of the Plan. In accordance with the SCB Order, the Debtors shall oppose any assertion of the Committee Challenge Right and support SCB's right to retain the full Disputed Amount.

4.6.3 On the Plan Effective Date, the Debtors will fund a cash reserve in an amount equal to the Disputed Amount plus \$1.0 million (the "**Cash Reserve**") for SCB's reasonable and documented fees and expenses anticipated to be incurred in connection with the litigation of the Disputed Amount. The Cash Reserve shall be maintained in an escrow account held by JPMorgan Chase N.A. or Wells Fargo Bank N.A. (or any other party or financial institution mutually acceptable to the Parties) (the "**Reserve Account**"). If, subsequent to the Plan Effective Date, a consensual agreement is reached with SCB on resolution of the issues related to the Disputed Amount, all amounts in the Reserve Account shall be released as provided in a joint instruction from the Debtors and SCB (a "**Joint Instruction**"); if, on the other hand, no consensual agreement is reached and a Bankruptcy Court resolution is required, the Disputed Amount shall be released as provided in the order of the Bankruptcy Court (the "**Bankruptcy Court Determination**"); provided that in all circumstances SCB shall be reimbursed on a monthly basis from the Cash Reserve for its reasonable and documented out-of-pocket fees and expenses for which it is entitled to be reimbursed under the terms of the SCB Facilities; and

4.6.4 On the Plan Effective Date and after receipt by SCB of the payments set forth in Section 4.6.1 and establishment of the Cash Reserve and Reserve Account, the existing security interests and liens of SCB in the Debtors' assets and the assets of the Debtors' subsidiaries shall be released and replaced with a security interest in the Cash Reserve and the Reserve Account pending the Bankruptcy Court Determination or Joint Instruction.

#### 4.7 General

4.7.1 This Agreement is the product of good faith, arm's length negotiations between the Parties and their counsel and shall not be construed for or against any Party or its representative(s) because that Party or that Party's legal representative drafted such provision.

4.7.2 The validity, construction and all rights and obligations relating to this Agreement shall be governed by New York law. Any disputes arising from this Agreement, including any requests for emergency or injunctive relief, shall be brought before the Bankruptcy Court, which shall have exclusive jurisdiction over any dispute arising under or related to this Agreement.

4.7.3 If any provision of this Agreement is held to be invalid, void, or illegal by any court of competent jurisdiction, that provision shall be deemed severable from the remainder of this Agreement and shall in no way affect, impair or invalidate the remaining provisions herein contained. If any provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

4.7.4 The Parties hereto each warrant, covenant and agree that no other Party, agent, employee or attorney of any Party has made any promise, representation or warranty, whether express or implied, not expressly contained herein concerning the subject matter hereof, to induce any Party to enter into and execute this Agreement. Each Party further acknowledges and agrees that none of them have executed this Settlement Agreement in reliance upon any promise, representation, warranty or agreement not contained or set forth herein.

4.7.5 Except for the Plan, the SCB Order and Settlement Term Sheet, and the Honiton Restructuring Agreement, this Agreement sets forth all agreements, covenants, representations, warranties, express or implied, with regard to the subject matter hereof. All prior or contemporaneous conversations, negotiations, actual, possible and alleged agreements and representations with respect to the subject matter hereof and not contained in this Agreement and the above agreements are waived, merged and superseded hereby.

4.7.6 The Parties represent and warrant to all other Parties that they have read and fully understand the terms of this Agreement. After consulting with counsel, each of the Parties has concluded that it is in its best interest to settle their differences and disputes upon the terms and conditions set forth herein, and in doing so, does not admit, concede or imply that it has done anything wrong or legally actionable.

4.7.7 No provision herein may be waived, modified or amended unless in writing and signed by all Parties whose rights are thereby waived, modified or amended. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

4.7.8 Any notice required or desired to be given relating to the Agreement shall be provided by email with a copy to follow by fax or first class mail addressed as follows:



If to the Debtors:

Michael A. Rosenthal  
Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, NY 10166  
[mrosenthal@gibsondunn.com](mailto:mrosenthal@gibsondunn.com)  
Telephone: (212) 351-3969  
Fax: (212) 351-351-6258

If to SCB:

Brian Greer  
Dechert LLP  
1095 Avenue of the Americas  
New York, New York 10036-6797  
email: [brian.greer@dechert.com](mailto:brian.greer@dechert.com)  
Telephone: (212) 698-3536  
Fax: (212) 698 3599

If to SCB-China:

John E. Usher  
Standard Chartered Bank  
21/F, UC Tower, 500 Fushan Road, Pudong,  
Shanghai 200122, China  
email: [john.usher@sc.com](mailto:john.usher@sc.com)  
Telephone: +86 21 5016 3790  
Fax: +86 21 5016 2425

If to Honiton:

Matthew R. Pollard  
Arcapita  
email: [mpollard@arcapita.com](mailto:mpollard@arcapita.com)  
Telephone: +65 6499 9888  
Fax: +65 6499 9870

If to the Committee:

Evan Fleck  
Milbank, Tweed, Hadley & McCloy LLP  
One Chase Manhattan Plaza  
New York, NY 10005  
email: [EFleck@milbank.com](mailto:EFleck@milbank.com)  
Telephone: (212) 530-5567  
Fax: (212) 822-5567

4.7.9 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all, when taken together, shall constitute the entire Agreement. For purposes of this provision, a facsimile signature shall be deemed to be the equivalent of an original signature, and shall be effective to bind a Party hereto.

IN WITNESS WHEREOF, the Parties hereto have executed and entered into this Agreement as of the date first above written.

(SIGNATURES ON FOLLOWING PAGES)

Agreed and accepted:

**ARCAPITA BANK B.S.C.(C)**

\_\_\_\_\_  
Name:

Title:

**ARCAPITA INVESTMENT HOLDINGS LIMITED**

**ARCAPITA LT HOLDINGS LIMITED**

\_\_\_\_\_  
Name:

Title:

**AEID II HOLDINGS LIMITED**

\_\_\_\_\_  
Name:

Title:

**RAILINVEST HOLDINGS LIMITED**

\_\_\_\_\_  
Name:

Title:

**WINDTURBINE HOLDINGS LIMITED**

\_\_\_\_\_  
Name:

Title:

\_\_\_\_\_  
Name:

Title:

**OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS**

**STANDARD CHARTERED BANK**

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

**STANDARD CHARTERED BANK (CHINA)  
LIMITED (HUHHOT BRANCH)**

**HONITON ENERGY (XILINGUOLE) COMPANY  
LIMITED**

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

**HONITON ENERGY (BAOTOU) COMPANY  
LIMITED**

\_\_\_\_\_  
Name:  
Title:

101515154.1

**Exhibit A**  
**Confidential Non-Debtor Term Sheet**