

## **ARM ASSET BACKED SECURITIES SA - IN PROVISIONAL LIQUIDATION**

The Provisional Liquidators' update to  
Bondholders and other creditors for the period 6  
June 2015 to 30 November 2015

## Definitions

<b>AHC</b>	the Ad-Hoc Committee of Bondholders elected at the Bondholders' Meeting
<b>BDO</b>	BDO LLP
<b>Bondholders</b>	all those who invested money in the Issuer, irrespective of the Issue in which they invested (including other creditors for ease of reference)
<b>Bondholders' Meeting</b>	the meeting of the Bondholders that took place on 3 February 2014
<b>FCA</b>	the Financial Conduct Authority
<b>FSCS</b>	the Financial Services Compensation Scheme
<b>Issuer</b>	ARM Asset Backed Securities SA (in provisional liquidation)
<b>Non-Pending Investors</b>	those Bondholders who invested in Issues 1 to 8
<b>Period</b>	6 June 2015 to 30 November 2015
<b>Pending Investors</b>	those Bondholders who invested in Issues 9 to 11 and whose investment makes up the Pending Monies (the term Bondholder here is used for ease of reference and without prejudice to the determination of the issue of whether the relevant Bonds were issued or not)
<b>PLs or Provisional Liquidators</b>	the provisional liquidators, namely Mark Shaw and Malcolm Cohen of BDO (who act as agents of the Issuer and without personal liability at all times)
<b>Pending Monies</b>	the monies which were frozen by the Financial Services Authority (as it then was), representing part of Issue 9 and all of Issues 10 and 11
<b>Representatives</b>	the two individuals chosen to represent the Non-Pending and Pending Investors in an application to Court to determine the correct treatment of the Pending Monies, being Gordon Pullan and Walter Pisarski respectively.

## 1 Introduction

1.1 The Provisional Liquidators were appointed by the English High Court of Justice on 9 October 2013, under case number 6914 of 2013.

1.2 The purpose of this report is to provide Bondholders with an update as to the progress made in the provisional liquidation during the Period. The PLs are not obliged by statute to report to Bondholders in this manner, but wish all the same to do so to keep all parties updated of the progress which has been made. Disclosure will not be made in respect of issues which may prejudice Bondholders' interests, for example because of legal privilege or commercial confidentiality reasons.

1.3 The events leading up to and progress made in the provisional liquidation to 2 April 2015 were detailed in the PLs' presentation to Bondholders dated 3 February 2014 and the monthly reports dated 28 March 2014, 2 May 2014, 4 June 2014, 11 July 2014, 3 September 2014, 10 October 2014, 5 December 2014, 6 February 2015, 7 April 2015 and 5 June 2015. Copies of these documents are available on the PLs' website:

<http://www.bdo.co.uk/arm-abs-sa/>

1.4 This report should be read in conjunction with that presentation and these prior reports; the PLs have not therefore repeated the background of the provisional liquidation or the progress made in the period to 5 June 2015 in this report.

### *The FSCS claims process*

1.5 The FSCS continues to compensate Bondholders, including those in Malta. To date, we understand that compensation of approximately £64.9m has been paid to Bondholders, which represents assignments of claims of approximately £86.4m.

1.6 All Bondholders should have received their FSCS application forms now. If you have not received an application form, please contact the FSCS's Initial Contact Team on Freephone 0800 678 1100 or 0207 741 4100.

1.7 The PLs are working alongside the FSCS to calculate the proportion of assignments they have taken in relation to Pending Investors and the Non-Pending Investors.

### *The Ad-Hoc Committee*

1.8 The ninth meeting of the AHC is scheduled to be held on 15 December 2015. We expect all AHC members to be present at the meeting, including both the original members and those more recently co-opted onto the AHC.

1.9 For the reasons set out below, it is necessary to co-opt an additional member onto the AHC, Mr Brian Colby. We have raised this with the current AHC and have received no objections; however, Mr Colby will not formally be co-opted onto the AHC until the meeting on 15 December 2015.

1.10 The PLs appreciate that it may appear to the wider bondholder community that AHC meetings do not take place frequently; the main reason for this is that the PLs are making a concerted effort to ensure efficiencies of both time and cost. Since my previous report to Bondholders, the PLs have met with the Representatives and their legal advisers on a number of occasions. There has been significant contact between the PL's legal advisers and the Representatives' legal advisers. The PLs understand that any salient issues arising were communicated to the other members of the AHC following those meetings. The PLs and the Representatives, as well as their respective legal advisers, have focussed their energies during the Period on the application to Court set out in more detail in the next section.

1.11 To the extent possible and appropriate, the matters discussed at the AHC meetings are communicated to the Bondholders through this update report.

### *Pending Monies Court Application*

1.12 In the PLs' previous report, the reasons why this process was necessary were set out for the Bondholders. For ease of reference I have also summarised those reasons in this report.

The current situation is that there is approximately £17m held in the accounts of the receiving agents which were frozen by the FSA (now the FCA). These funds relate to investments made into issues 9-11.

- 1.13 Determining the ownership of these funds raises a number of complex and unusual legal issues in respect of which the Pending and Non-Pending Investors have different and opposing views. After discussing the matter with the AHC, the AHC expressed a clear view that the appropriate process for resolving these issues would be for the PLs to make an application to Court for directions, with two individuals representing the interests of the Pending and Non-Pending Investors respectively in that application, for the estate to bear the costs of the legal representation of those Representatives (as selected by the Representatives), and for the PLs themselves to take a broadly neutral position. The PLs had explored whether a simpler route could be used with the AHC, but the AHC's views were clear that the current route was the one they wished to see used.
- 1.14 Consequently, and as described in previous update reports, the PLs have been gathering the evidence which needs to be before the Court for the purposes of determining these issues. For their part, the Representatives and their legal advisers (including Luxembourg counsel) have been reviewing that evidence, considering the formulation of the questions which the PLs are proposing to ask the Court, and developing the arguments in support of their respective positions.
- 1.15 The substantive part of the Pending Monies court application was finalised and issued at Court on 20 November 2015. To give Bondholders an idea of the nature of the issues which are relevant for the Court, the application was supported by a witness statement in my name which ran to some 86 pages, with some 1756 pages of exhibits. In order to ensure a robust process for the resolution of this issue, it has been necessary to allow the Representatives and their legal advisers an appropriate amount of time to provide their views and input.

The PLs had previously provided in their last report the questions proposed to be put to the Court. Set out below are the finalised questions which the PLs have asked the Court to opine upon.

#### **CASS 7.7.2R Trust**

- a) *Do the client money rules in CASS 7 apply to Pending Monies received from Pending Bondholders (the "Jarvis Pending Monies") by Jarvis?*
- b) *Are the Pending Monies received from Pending Bondholders and held by SLC and/or by Squaremile (the "SLC Pending Monies" and the "Squaremile Pending Monies" respectively) to be treated as having been received and/or held by CIGL and, if so, do the client money rules in CASS 7 apply to them?*
- c) *If the client money rules in CASS 7 apply to the Jarvis Pending Monies and/or the Squaremile Pending Monies and/or the SLC Pending Monies, is there a statutory trust over those sums (or any of them) by virtue of CASS 7.7.2R?*
- d) *If there is a statutory trust of those sums (or any of them), who is/are the beneficiary(y)(ies) of that trust or those trusts?*

#### **Pending Monies Trust:**

- a) *What law governs the question of whether or not a non-statutory trust arises over the Pending Monies (the "Applicable Law")?*
- b) *Under the Applicable Law, are the Pending Monies held on trust for the Pending Bondholders by ARM, and if so what are the terms, effect, and extent of that trust?*
- c) *If the answer to question 2(b) is "yes":*

- (i) *do the beneficiaries of that trust (the “Beneficiaries”) have a claim for any shortfall from the trust assets against any general assets held by ARM?*
- (ii) *should the Beneficiaries account for and/or net off any interest or other payments received from ARM prior to ARM’s provisional liquidation?*
- d) *If the answer to question 2(b) is “no” (and subject to the answers to questions 4(b), (c) and (d) below), do the Pending Monies form part of the ARM estate for the benefit of creditors generally?*

**Pending Bondholder Claims:**

- a) *If the answer to question 2(b) above is “no”, do the Pending Bondholders have a claim against ARM in contract?*
- b) *If the answer to question 3(a) is “yes”, are the contractual claims of the Pending Bondholders affected by limited recourse provisions in the terms and conditions of the Bonds (the “LRP”) and what is the effect of the LRP?*
- c) *For any Pending Bondholders who have claims against ARM on the basis of misrepresentation, negligent misstatement or fraud (or their equivalent under foreign law) (“Alternative Claims”), will those Alternative Claims be affected by the LRP and if so how?*
- d) *If any Pending Bondholders have contractual claims or Alternative Claims against ARM, on what basis (if any) should they account for and/or net off any interest or other payments received from ARM?*

**Non-Pending Bondholder Claims:**

- a) *For any Non-Pending Bondholders who have contractual claims or Alternative Claims against ARM, will those claims be affected by the LRP and if so how?*
- b) *Depending on the answers given to any part of question 4(a), are there any remedies available to the Non-Pending Bondholders (under English law or Luxembourg law) which would have the consequence or effect of setting aside or displacing the LRP?*
- c) *Is there any principle of English law or Luxembourg law which might operate so as to displace the LRP or render them unenforceable, whether as a matter of public policy or otherwise?*
- d) *What is the effect of the sale by ARM and ARM Trust to FCIL of ARM’s portfolio of Life Policies on:*
  - (i) *the contracts between the Non-Pending Bondholders and ARM;*
  - (ii) *the LRP; and*
  - (iii) *any contractual claims or Alternative Claims the Non-Pending Bondholders have against ARM?*

**Distributions**

- a) *Depending on the answers to the questions set out in the Application, in particular (1), (2) and (4) above:*
  - (i) *should the beneficiaries’ beneficial entitlements be identified on the basis of the rule in Clayton’s Case or rateably by reference to their relative contributions?; and*

- (ii) *should the PLs be permitted and directed to distribute any trust money, and if so how?*

- 1.16 Whilst substantially the same as those questions previously set out, the questions have evolved due to the in-depth discussions between the legal teams of both the PLs and the Representatives.
- 1.17 In addition to those questions set out above, it has been determined that it is necessary also to include the question of whether or not priority ranking applies to the Bonds. It was, however, agreed that the application would be issued now and an amended application would be issued in the coming months to include this matter. This is to ensure that the earliest Court hearing can be obtained.
- 1.18 As a result of this additional matter being included within the application, Mr Brian Colby was approached to act as a new representative beneficiary. Mr Colby will represent the position of those Bondholders who have an interest in the the Bonds being found to rank in priority of issue rather than as pari passu in any distribution.
- 1.19 Mr Colby has chosen Berwin Leighton Paisner LLP ('BLP') to act as his legal advisers. A revised representative beneficiary agreement is currently in circulation between all Representatives.
- 1.20 The PLs understand that there have been some questions raised as to why the Pending Monies matter cannot be compromised by the Bondholders so that they 'all share a bit of the pain'. Put simply, the answer to the Pending Monies issue is a binary one.
- 1.21 The PLs entirely appreciate that, if a settlement could be reached, there could be a significant saving of legal costs for the estate. However, given the nature of the issues in dispute (including the questions as to whether the Pending Monies are held 'on trust' for any party), structuring a compromise is not straightforward - and may even be practically impossible. However, the possibility of settlement is something which is being kept under review, and will, as appropriate, be discussed with the Representatives. In addition, after the determination of the proposed application, the PLs anticipate being able to make a relatively swift distribution, most likely through a Company Voluntary Arrangement ('CVA') which requires the agreement of 75% of those voting.
- 1.22 If and until a settlement is capable of being reached, it is necessary to pursue the application and seek the Court's view on the entitlement to the Pending Monies. We would respectfully ask the Bondholders to understand that the need to solve this problem did not arise from the conduct of the PLs, or the AHC - or crucially the Bondholders themselves. However, it is all the same something that we need to deal with in order for the PLs to move forward and, depending on the outcome of the application, offer a CVA compromise of the remaining issues.

## **2 Next report from the PLs**

- 2.1 It is the intention of the PLs to provide their next progress report to Bondholders once the first directions hearing has been heard and the timetable for the substantive hearing has been set out.



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Mark Shaw  
Joint Provisional Liquidator

9 December 2015