

ARM ASSET BACKED SECURITIES SA - IN PROVISIONAL LIQUIDATION

The Provisional Liquidators' update to
Bondholders and other creditors for the period 3
April 2015 to 5 June 2015

Definitions

AHC	the Ad-Hoc Committee of Bondholders elected at the Bondholders' Meeting
BDO	BDO LLP
Bondholders	all those who invested money in the Issuer, irrespective of the Issue in which they invested (including other creditors for ease of reference)
Bondholders' Meeting	the meeting of the Bondholders that took place on 3 February 2014
FCA	the Financial Conduct Authority
FSCS	the Financial Services Compensation Scheme
Issuer	ARM Asset Backed Securities SA (in provisional liquidation)
Non-Pending Investors	those Bondholders who invested in Issues 1 to 8
Period	3 April 2015 to 5 June 2015
Pending Investors	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)
PLs or Provisional Liquidators	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)
Pending Monies	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
Representatives	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 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 and 7 April 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 the prior reports; the PLs have not therefore repeated the background of the provisional liquidation or the progress made in the period to 3 April 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 over £64.9m has been paid to Bondholders, which represents assignments of approximately £86.4m.

1.6 All Bondholders should have received their 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 eighth meeting of the AHC was held on 15 April 2015. All AHC members were present at the meeting, including both the original members and those co-opted onto the AHC recently.

1.9 The ninth AHC meeting is yet to be scheduled but we would anticipate this being held in July 2015.

1.10 In the Period, Robert (Bob) Sharpe, one of the originally elected members of the AHC, has resigned his position on the grounds of ill health. The PLs thank Mr Sharpe for his assistance to date and wish him well for the future.

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 The PLs have received feedback from the AHC that some Bondholders have expressed some concerns as to why this process is necessary and exactly what is involved. The PLs wish to address these concerns as far as possible and have therefore set out further detail regarding the process below.

1.13 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.

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 may 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 This is naturally an evolving process. However, time spent at this stage in refining the arguments, developing the evidence and narrowing the issues in dispute should have the effect of making the application itself more streamlined. Consistent with the broadly neutral position which the PLs have agreed to take, the views of the Representatives are being taken into account in formulating the precise wording of the questions. At this stage, the current list of questions is as set out below. However, as a result of the continuing dialogue between the PLs and the Representatives, this list is subject to change.

CASS 7.7.2 Trust

- (a) Do the client money rules in CASS 7 apply to Pending Monies received from Pending Bondholders by Jarvis Investment Management Limited ("**Jarvis**")?
- (b) If the client money rules in CASS 7 apply to Pending Monies received from Pending Bondholders by Jarvis, is there a statutory trust over those sums by virtue of CASS 7.7.2R?
- (c) If there is a statutory trust of those sums, who is/are the beneficiar(y)(ies) of that trust?

Pending Monies Trust:

- (a) What law governs the question of whether or not a 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) which of the Issues 9 to 11 Pending Bondholders are beneficiaries of that trust (the "**Beneficiaries**")?
 - (ii) do the Beneficiaries have a claim for any shortfall from the trust assets against any general assets held by ARM?
 - (iii) 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 answer to question 4(b) and (c) 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 and what is the effect of such limited recourse provisions?
- (c) For any Pending Bondholders who have claims against ARM on the basis of misrepresentation, negligent misstatement or breach of trust (or their equivalent under foreign law) (“**Alternative Claims**”), will those Alternative Claims be limited in terms of recourse?
- (d) If any Pending Bondholders have contractual 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) Are contractual claims by Non-Pending Bondholders against ARM affected by the limited recourse provisions in the Terms and Conditions of the Bonds?
- (b) If the answer to question 4(a) is “yes”, what is the effect of such limited recourse provisions?
- (c) If any Non-Pending Bondholders have claims against ARM on the basis of misrepresentation or negligent misstatement (or their equivalent under foreign law), will those claims be limited in terms of recourse?

- 1.16 The PLs hope that setting out the list of questions in full is helpful for the Bondholders, not least in illustrating the complexity of this issue.
- 1.17 The PLs understand that there have been some questions raised as to why this matter cannot be compromised by the Bondholders so that they ‘all share a bit of the pain’.
- 1.18 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. 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 offer a compromise in respect of the issues not related to the Pending Monies through a Company Voluntary Arrangement (‘CVA’) which requires the agreement of 75% of those voting.
- 1.19 It is not possible, legally or practically, to compromise the Pending Monies issue pending resolution by the Court as to whether the Pending Monies compromise trust assets, which is why it is necessary to seek the Court’s view in this way. 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 for that matter the Bondholders themselves. However, it is something that is needed in order for the PLs to move forward and offer a CVA compromise of the remaining issues. Put simply, the answer to the Pending Monies issue is a binary one.

Costs of the Pending Monies Application

- 1.20 Although they have no statutory obligation to do so, the PLs’ view is that, where possible, they would like to update Bondholders regarding progress generally in the provisional liquidation. In the same spirit, the PLs also established an AHC, which is an

unusual step for this type of process, to ensure that there was some representative dialogue with the Bondholders.

- 1.21 The process of the Pending Monies Application was first raised with the AHC on 25 September 2014, at which time the PLs explained that there were 3 potential applications to Court:
- The PLs being the only applicants requesting directions on the ownership of the PMs.
 - The PLs and the Non-Pending Investors as applicants requesting directions on the ownership of the PMs and limited recourse.
 - The PLs, the Non-Pending Investors and the Pending Investors as applicants requesting directions on the ownership of the PMs and limited recourse.
- 1.22 All parties recognised that there was a balance between early resolution and lower cost on the one hand, and ensuring a robust and comprehensive process that all parties felt provided them with an opportunity to have their views heard on the other. The PLs opened the matter up for discussion and it was determined that the right solution was to make a tripartite application with the estate bearing the costs of the application.
- 1.23 As part of the process, the PLs requested budgets from the UK legal advisers setting out their estimates for the various workstreams, the monthly bills are then monitored against this budget and any divergence from the budgets is discussed.
- 1.24 The budgets received from the two UK legal advisers total £820k. How these costs are allocated against the estate on resolution of the issue is something that both the PLs and the AHC are most concerned should be equitable. It needs to be fair as between various classes of Bondholders.
- 1.25 The PLs are asking the Court to expedite the determination of the Pending Monies issue.

Costs of the Provisional Liquidation

- 1.26 Below is a table of all the costs paid in the provisional liquidation from 9 October 2013, excluding VAT.

	£	\$	€
PLs' fees and disbursements	855,423		
Bingham/Akin Gump fees and disbursements	1,157,587		
Bonn & Schmitt fees and disbursements			396,815
Ernst & Young - Supervisory Commissioner			76,901
Alpstar Capital - restructuring plan		75,000	
BDO Financial Services - preparation of accounts	61,925		
Total	2,074,935	75,000	473,716

- 1.27 Please note that the PLs' fees are subject to Court approval through a most rigorous process before a judge. The PLs have been to Court on four separate occasions to have their fees agreed for each given period. This process is very robust and requires the PLs to submit a report, generally around 20 pages long, explaining how their time has been spent and the reasoning behind this. The PLs have also been subject to direct questioning in Court by the judge. To date, the PLs' fees have been approved in full by the Court.

- 1.28 The majority of the fees in this matter are inevitably “front loaded” which means that as the assets are realised over time, the fees will dramatically reduce. Again, we would respectfully ask Bondholders to understand that the complexities and issues which the PLs have faced in this case are a function of how the Issuer was structured before their appointment. In particular, once the Pending Monies issue has been resolved and the CVA has been issued, we expect the costs burden to reduce significantly.

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 Pending Monies application has been issued.



Mark Shaw
Joint Provisional Liquidator

5 June 2015