

No 068601 of 2013

No 6914 of 2013

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**  
**COMPANIES COURT**

**BEFORE MR JUSTICE DAVID RICHARDS**  
**ON WEDNESDAY 9 OCTOBER 2013**



**IN THE MATTER OF ARM ASSET BACKED SECURITIES S.A.**  
**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

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**ORDER**

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**UPON THE PETITION** for the winding up of ARM Asset Backed Securities S.A. (the “**Company**”) under the Insolvency Act 1986 (the “**Act**”) presented by the Company acting by its directors, Timothy Roberts, Ross Carr and Ronan Collins, on 8 October 2013 (No 6914 of 2013) (the “**Petition**”)

**UPON THE APPLICANT’S APPLICATION** for the appointment of Mark James Shaw and Malcolm Cohen both of BDO LLP (the “**Proposed Provisional Liquidators**”) as joint provisional liquidators of the Company (No 068601 of 2013) (the “**Application**”)

**UPON HEARING** Leading Counsel for the Applicant

**UPON READING** the evidence

**AND UPON THE COMPANY UNDERTAKING** to file a signed copy of the witness statement of Timothy Roberts in support of the Application

**UPON THE COURT BEING SATISFIED** on the evidence before it that Council Regulation (EC 1346/2000) on insolvency proceedings (the “**Insolvency Regulation**”) will apply to these proceedings and that these proceeding will be main insolvency proceedings within the meaning of that regulation

**IT IS ORDERED** that:

- (1) The Company has permission to amend the Petition to rely on the grounds identified in section 221(5)(a) and (b) of the Insolvency Act 1986, in addition to the ground identified in section 221(5)(c) of the Insolvency Act 1986.
- (2) Mark James Shaw and Malcolm Cohen be appointed as joint provisional liquidators of the Company (the “**JPLs**”).
- (3) Any act or decision required or authorised under any enactment or this Order to be done by the JPLs may be done by any or any combination of the JPLs.
- (4) The JPLs shall have the power to perform the following functions in relation to the affairs of the Company, such functions to be performed as the JPLs think fit in the interests of the Company (and, for the avoidance of doubt, its creditors):
  - (a) to locate, protect, secure, take possession of, collect and get in all the property or assets (of whatever nature) to which the Company is or appears to be entitled, such assets and property not to be distributed or parted with by the JPLs until further order except pursuant to the functions and powers herein contained;
  - (b) to locate, protect, secure, take possession of, collect and get in the books, papers and records of the Company including the accounting and statutory books, records, and papers of the Company;
  - (c) to do all things as may be necessary or expedient for the protection of the Company’s property or assets and the maintenance of value in such property and assets;

- (d) to investigate the affairs of the Company and obtain such information as is necessary for the purposes of (a) to (c) above and/or to locate, protect, secure, take possession of, collect and get in the books, papers and records of the Company including the accounting and statutory records, books and papers of the Company, which records books and papers shall include those in electronic form;
- (e) to propose and to effect a compromise or arrangement with one or more of the creditors or members of the Company or other person including a compromise or arrangement to be effected by a company voluntary arrangement under the Act (a “CVA”) and / or by a scheme of arrangement under the Companies Act 2006 (a “Scheme”) or other applicable legislation;
- (f) to exercise such rights and powers as are conferred upon a provisional liquidator under sections 234, 235 and 236 of the Act;
- (g) to carry on the business of the Company;
- (h) to pay any employees of the Company or of any other company or entity concerned in the business of the Company as they think fit and dismiss any such employees;
- (i) to continue to operate the existing bank accounts of the Company and to open and operate new bank accounts as appropriate and to pay monies into such accounts and authorise payments from such accounts;
- (j) to incur and pay normal administrative expenses of the Company and to make any other payments which are necessary or incidental to the performance of the JPL’s duties and functions;
- (k) to terminate, complete or perfect any contracts or transactions relating to the business of the Company;

- (l) to effect any insurance in connection with the management and maintenance of the business, property and assets of the Company;
- (m) to bring, defend or intervene in any action or other legal proceedings whether in their own names or in the name and on behalf of the Company in any jurisdiction;
- (n) in the name and on behalf of the Company to do all acts and to execute all deeds receipts or other documents and for that purpose when necessary using the Company's seal;
- (o) to engage and retain and/or employ in any jurisdiction any financial advisers, brokers, consultants, lawyers, accountants and other professionally qualified persons, agents or specialists as may be necessary to assist them in the carrying out of their duties and functions. The costs of the same shall be payable from the assets of the Company at the discretion of the JPLs;
- (p) to enter into contracts with third parties for the provision of such goods and services as may be necessary to assist them in the carrying out of their duties and functions;
- (q) to deal with any creditor or debtor of the Company or any third party including for the purposes of entering into compromises, settlements, commutations transfers or assignments of contracts entered into by the Company or rights of the Company under such contracts;
- (r) to rank and claim in the bankruptcy, liquidation or insolvency of any person (including but not limited to a body corporate) indebted to the Company and to receive dividends, and to accede to trust deeds for the creditors of any such person;
- (s) to sell or authorise the sale or otherwise dispose of or authorise the disposal of the property of the Company, including the sale or purchase or transfer of

debts and the sale or purchase or transfer of the Company's business as a going concern by public auction or private treaty;

- (t) to incur and expend such sums as necessary or appropriate for the carrying on of their powers and functions as JPLs and to pay such sums out of the assets of the Company;
  - (u) to enter into any protocol, agreement, memorandum of understanding or other arrangement with the Supervisory Commissioner of the Company (as appointed by the Luxembourg court) which the JPLs believe to be appropriate or expedient to the discharge of their duties or the interests of the Company or its creditors;
  - (v) to do all things reasonably and properly incidental to the exercise of the foregoing powers.
- (5) In the event that a winding up order is made in respect of the Company on the Petition, no disposition of the Company's property by or with the authority of the JPLs in either case in the carrying out of their duties and functions and the exercise of the powers conferred by this Order or under the Act shall be avoided by virtue of Section 127 of the Act.
- (6) The remuneration of the JPLs shall be payable as costs of the provisional liquidation and shall be fixed by the Court on application of the JPLs from time to time by reference to the work done by the JPLs on a time cost basis applying the usual rates of the JPLs' firm for the type of work involved together with any costs and expenses incurred in connection therewith and any applicable value added tax. Pending such remuneration being so fixed, the JPLs shall be able to draw from time to time 70% of such remuneration on account. For the avoidance of doubt, to the extent that the JPLs' remuneration is fixed at less than 70% of fees requested, the JPLs shall repay the appropriate amount to the Company.
- (7) The costs of the Application shall be paid as an expense in the provisional liquidation.

- (8) There be liberty to the JPLs to apply to the Court including for directions as to any matter arising in or in relation to the provisional liquidation or the assets, liabilities business and affairs of the Company.

### **NOTICE TO OFFICERS OF THE COMPANY**

You are required by Section 235 of the Act to give the JPLs such information as they may reasonably require relating to the Company's property and affairs and to attend upon them at such times as they may reasonably require.

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Applicants' Solicitors