IN THE HIGH COURT OF JUSTICE **Claim No.:**

CHANCERY DIVISION

BETWEEN:

(1) PALOMINO FUND LTD
(2) APPALOOSA INVESTMENT LIMITED PARTNERSHIP I
(3) LIPIZZANER LDC
(4) THOROUGHBRED FUND LP
(5) THOROUGHBRED MASTER LTD.
(6) WALKALOOSA LTD
(7) YORK SELECT, L.P.
(8) YORK CREDIT OPPORTUNITIES FUND, L.P.
(9) YORK SELECT MASTER FUND, L.P.
(10) YORK CREDIT OPPORTUNITIES MASTER FUND, L.P.
(11) OC OFFSHORE I, LTD
(12) OC OFFSHORE II, LTD
(13) OWL CREEK OVERSEAS MASTER FUND, LTD
(14) OWL CREEK SRI MASTER FUND, LTD
(15) CSS, LLC
(16) REDWOOD MASTER FUND, LTD
(17) FRIEDBERG GLOBAL MACRO HEDGE FUND LTD.
(18) FRIEDBERG GLOBAL MACRO HEDGE FUND
(19) VR GLOBAL PARTNERS, L.P.
(20) LITESPEED MASTER FUND LTD
(21) H PARTNERS LP
(22) H OFFSHORE FUND LTD.
(23) P H PARTNERS LTD.

Claimants

- and -

(1) THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND
(2) THE LAW DEBENTURE TRUST CORPORATION PLC

Defendants

PARTICULARS OF CLAIM

The parties

1. The Claimants ("**the Noteholders**") are the beneficial owners of (Lower Tier 2) Subordinated Notes issued by the First Defendant with a combined value of approximately US$750 million (the "**Bonds**"). The Bonds constitute more than 25% of the Notes outstanding under this Euro Note Programme, established on 28 July 2005.

2. The First Defendant ("**the Bank**") is a bank established in 1783 by Royal Charter. It provides a range of banking services, including current and deposit accounts, overdrafts, mortgages and business lending, and a range of financial advisory services, including mergers and acquisitions and underwriting. Its headquarters are in Dublin. Its profits are derived from the Republic of Ireland (56%), the UK (34%) and the rest of the world (10%). It is the largest Irish bank by total assets.

3. The Second Defendant ("**the Trustee**") is the Trustee, as defined, under a Trust Deed made on 28 July 1995 between the Bank and the Trustee relating to the Euro Note Programme ("**the Trust Deed**"). The provisions of the Trust Deed have been modified and restated from time to time by various Supplemental Trust Deeds, most recently by an Eighth Supplemental Trust Deed dated 7 July 2006. No substantive relief is sought against the Trustee.

The Bonds

4. On 28 July 2005 the Bank established a Euro Note Programme for the issue of Ordinary Notes, Dated Subordinated Notes and Undated Subordinated Notes. A maximum nominal amount of €25 billion could be issued.

5. The Bonds have been issued pursuant to this Euro Note Programme, on the terms and conditions set out in the Trust Deed and the Prospectus, including the final terms.

6. The Bonds have been issued in various series, maturing on dates between September 2015 and September 2020. Unless previously redeemed, purchased or cancelled, the Bonds are redeemable by the Bank at par on the maturity dates.

The provisions of the Trust Deed relating to modification of the Bonds

7. Paragraphs 18 and 19 of Schedule 3 to the Trust Deed ("**the Modification Power**"), confer upon a meeting of holders of the relevant securities power by extraordinary resolution to, among other things:

   (1) sanction any compromise or arrangement proposed to be made between the Bank and the holders of relevant securities;

   (2) sanction any abrogation, modification, compromise or arrangement in respect of the rights of the holders of relevant securities against the Bank;

   (3) assent to any modification of the provisions of the Trust Deed proposed by the Bank or the Trustee;

   (4) sanction the exchange of securities for or the conversion of the securities into shares, stock, bonds, notes, debentures, debenture stock or other obligations or securities of the Bank;

   and provide that any extraordinary resolution passed at a duly convened meeting shall be binding upon all the holders of such securities.

Governing law and jurisdiction

8. The Bonds and the Trust Deed are, so far as material, governed by English law.

9. The Bank has in the Trust Deed irrevocably agreed for the benefit of (among others) the Noteholders and the Trustee, that the courts of England are to have

jurisdiction to settle any disputes which may arise out of or in connection with (among other things) the Notes and/or the Trust Deed.

The Bank

10. Between 2005 and 2008, the Bank enjoyed a period of success: its profit increased from c.€1,230 million in 2006 to c.€1,636 million in 2007 and to c.€1,685 million in 2008.

11. Although the Bank was affected by the financial crisis, in 2008 and 2009 in particular, the Bank obtained assistance from the Irish Government (the "**Government**"). Among other things:

(1) on 30 September 2008, the Government established the Credit Institutions (Financial Support) Scheme 2008 (the "**CIFS Scheme**") pursuant to which it guaranteed all deposits (retail, commercial, institutional and interbank), covered bonds, senior debt and dated subordinated debt (lower tier II) of a number of Irish financial institutions, including those of the Bank. The CIFS Scheme expired on 29 September 2010;

(2) on 11 February 2009, the Government proposed recapitalising the Bank by subscribing for €3.5 billion in preference shares (the "**March 2009 Preference Shares**"), which would give the Government, among other things, a fixed 8% dividend. This proposal was approved by the Bank's shareholders on 27 March 2009. The Government investment was made by the National Pensions Reserve Fund ("**NPRF**");

(3) on 9 December 2009, the Government established the Eligible Liabilities Guarantee Scheme ("**ELGS**"), pursuant to which the Government guaranteed certain deposits and debt securities of participating institutions. The Bank joined the ELGS on 11 January 2010.

12. The Bank's financial position continued to improve through 2010. In February 2010, the Bank issued €250 million worth of ordinary shares to the NPRF in

lieu of the cash payment due on the March 2009 preference shares. In April 2010, the NPRF exchanged 1,036 million units of preference shares for 576 million units of ordinary shares and the NPRF participated in the Bank's rights issue, converting a further 627 million units of its preference shares into ordinary shares. €1.6 billion in new capital was raised from private sources. As at 31 December 2010, the NPRF's investment in the Bank consisted of approximately 35.97% of ordinary shares and all of the preference shares. This Government equity investment in the Bank ranks below the debt (including subordinated debt) obligations of the Bank. The Bank's audited financial statements to the year ending 31 December 2010 confirmed that the Bank was a going concern for next 12 months.

13. In 2011 the Bank's financial position has improved yet further. In February 2011 the Bank paid optional cash dividends on most of its tier 1 capital including on the preference shares held by the NPRF. Further, among other things: its loan to deposit ratio has improved markedly; its wholesale funding has reduced; its capital ratios have remained stable; and it has attracted c.€500 million from savers. The Bank's own 9 June 2011 presentation on "Proposed capital raising and investment proposals" records continuing progress since 2008 on de-leveraging and de-risking the balance sheet, strengthening capital ratios and reducing operating costs.

14. There is no immediate or credible threat to the Bank's solvency or viability.

The Central Bank of Ireland's capital requirements

15. On 30 March 2010, the Central Bank of Ireland ("**CBI**") informed the Bank that it needed to meet a minimum core tier 1 capital ratio of 8% by 31 December 2010.

16. In September 2010 the Basel Committee on Banking Supervision proposed that banks increase their core tier 1 capital ratios to 7% (including a capital conservation buffer) by 2019 (the "**Basel III proposal**").

17. On 28 November 2010 the CBI announced that it had set new minimum capital requirements for the Irish banking system, as a result of which the Bank was required to generate additional core tier 1 capital of €2.199 billion by 28 February 2011 (this deadline was subsequently deferred). The €2.199 billion reflected the CBI's estimate of the amount needed to achieve and maintain a core tier 1 ratio of 10.5%. In addition, the CBI announced that Irish banks would be required to complete a Prudential Capital Assessment Review ("**PCAR**").

18. As at 31 December 2010 the Bank's core tier 1 capital ratio was 9.7% - well above both (i) the CBI's original requirement of 8%, and (ii) the Basel III proposal of 7%.

19. On 31 March 2011, the CBI announced the results of the PCAR and published its Financial Measures Programme Report ("**FMP**"). The stated aim of the FMP is to put the Irish banking system in a position where it no longer needs to rely unduly on the Irish or European public sectors, and to implement the CBI's obligations under the agreement between the Government and the EU and the IMF ("**the Agreement**").

20. The FMP set out that, pursuant to the PCAR, certain banks, including the Bank, are required to raise additional capital in order to remain above the new minimum capital requirement target imposed by the CBI of 10.5% (core tier 1) in the base scenario and 6% (core tier 1) in the stress scenario (plus a buffer "*for additional conservatism*"). The requirement that the Bank generate additional core tier 1 capital of €2.199 billion by 28 February 2011 (to achieve and maintain a core tier 1 ratio of 10.5%) was superseded by a requirement instead to generate additional core tier 1 capital €4.2 billion, in order to achieve an even higher core tier 1 ratio of 15.0%.

21. The PCAR acknowledges that the minimum capital requirements are conservative (in the sense that they are high) and "*compare favourably with many banking systems in developed jurisdictions*" (in the sense that they are higher than in many banking systems in other developed jurisdictions). By way

of comparison, the Royal Bank of Scotland's capital ratio (core tier 1) at 31 December 2010 (after it had received significant aid from the UK government) was 10.7% and its target for 2013 is greater than 8%. As set out above, the Basel III proposal is that banks increase their core tier 1 capital ratios to 7% by 2019.

22. Accordingly, while the CBI recently has required Irish banks, including the Bank, to raise their minimum capital requirements, the minimum capital requirements are meant to further strengthen the banks (and not a sign of distress) and in the recent past the Bank, in particular, has been able to meet or exceed these conservative capital requirements.

23. The original deadline of 28 February 2011 for the Bank to raise €4.2 billion of core tier 1 capital and €1 billion of contingent capital was subsequently pushed back to 31 July 2011, in view of the Irish general election on 25 February 2011, the PCAR and the Prudential Liquidity Assessment Review.

The Bank's Liability Management Exercise

24. As a result, the Bank has initiated a liability management exercise ("**LME**"). On 31 May 2011, the Bank released a statement in respect of the LME stating that it intended shortly:

> "*to launch a liability management exercise in respect of approximately €2.6 billion of its subordinated liabilities. The terms of the liability management exercise will reflect the Minister of Finance's objective of ensuring subordinated bondholders contribute a significant element of the bank's Core Tier 1 capital requirement of €4.2 billion.*"

25. On 8 June 2011 the Bank announced the details of the LME in its "Announcement of Further Details of Capital Raising" ("**the FDCR**"). The FDCR also sets out the purpose of the LME (along with the Bank's other capital raising mechanisms). It states that the LME, "*together with the capital raised and generated by the Bank over the past 2 years*", should lead to a "*very strongly capitalised Bank*" with a core tier 1 ratio of 15.0% at 31 December

2010. It also states that the capital raising mechanisms will facilitate the Bank in achieving its strategic objectives, one of which is to be "*the leading bank in Ireland*".

26. Thus, the LME is not intended to address any insolvency issues (which are non-existent), but rather is intended to address extraneous issues, and further to strengthen the Bank and consolidate its position as Ireland's premier Bank.

The Consent and Exchange Offer Memorandum

27. On 8 June 2011 the Bank published its Consent and Exchange Offer Memorandum ("**the Exchange Offer**"). That was expressed to be an invitation to the holders of certain securities, including the Bonds, to offer to exchange those securities for certain consideration plus "*related Consent Solicitations*".

28. The rationale for the Exchange Offer is stated to be that:

> *The Offers are part of a range of proposals to strengthen the core tier 1 capital base of the Bank and the Group and to generate capital as part of the Bank's obligation to raise €4.2 billion in core tier 1 capital and €1.0 billion of contingent capital in order to satisfy the regulatory capital requirements announced by the Central Bank of Ireland on 31 March 2011. The overall capital requirement for the Group is supervised by the Central Bank of Ireland and each of the Existing Securities is within the scope of such consolidated supervision. The Existing Securities currently trade at a significant discount to their nominal face value. The aim of the Offers is to enable the Bank and the Group to generate core tier 1 capital by exchanging, purchasing or redeeming the Existing Securities at a discount to their par value.*

29. The Bank's proposals under the Exchange Offer ("**the Proposals**"), include the following:

    (1) a cash offer of 8% of the nominal value of Tier 1 Subordinated Notes and 16% of the nominal value of Tier 2 Subordinated Notes, with no payment in respect of accrued interest; or

(2) an equity offer of 16% of the nominal value of Tier 1 Subordinated Notes and 32% of the nominal value of Tier 2 Subordinated Notes, with payment in respect of accrued interest.

30. The Exchange Offer commences on 8 June 2011 and (so far as material) expires 5pm (New York time) on 7 July 2011.

31. However, if the Exchange Offer is "accepted" by 22 June 2011, there are improved cash and equity terms ("**the Early Bird Proposals**"), as follows:

(1) in respect of the cash proposal, 10% rather than 8% of the nominal value of Tier 1 Subordinated Notes and 20% rather than 16% of the nominal value of Tier 2 Subordinated Notes; and

(2) in respect of the equity proposal, 20% rather than 16% of the nominal value of Tier 1 Subordinated Notes and 40% rather than 32% of the nominal value of Tier 2 Subordinated Notes.

32. Thus, the Proposals and the Early Bird Proposals provide for the Bank to settle or buy back its subordinated debts, including the Bonds, for a fraction (at most 20%) of their face value, or the chance to enter into a heavily discounted swap, exchanging the Bonds for new shares worth a fraction (at most 40%) of the face value of the Bonds.

33. The discount which the Bank is seeking to apply to its subordinated debts does not help to achieve the strengthening the Bank's core tier 1 capital base of the Bank, the stated rationale of the Exchange Offer – the same strengthening would be achieved through a proposal converting subordinated debt to equity at par. In either case, the capital raised equals the face value of the bonds. The 'haircut' merely serves to reduce the impact of the Exchange Offer on the NPRF and the other ordinary shareholders of the Bank, who are only affected by the Exchange Offer to the extent that their current shareholdings are diluted as a consequence of subordinated debt holders accepting the equity proposal. The

NPRF's rights in respect of the preference shares are unaffected by the Exchange Offer.

34. The effect of the Early Bird Proposals is to accelerate the commercial deadline by two weeks, from 7 July 2011 to 22 June 2011. In practical terms, a decision whether or not to participate in the Exchange Offer needs to be made in advance of 22 June 2011, in order to put in place the necessary machinery.

The "Consent Solicitations"

35. The Exchange Offer also provides that, if the Bank accepts an offer pursuant to the Proposals or the Early Bird Proposals, the bondholder is bound by what are (euphemistically) described as "*Consent Solicitations*".

36. It is an express term of the Exchange Offer that:

(1) an offer to exchange (i.e. an offer by a bondholder to participate in the Exchange Offer) can only be made by the submission of a valid Exchange Instruction (as defined);

(2) the submission of a valid Exchange Instruction has the effect of instructing a proxy to attend a (and any relevant) meeting to consider an Extraordinary Resolution to amend the terms of each series of securities to which the Exchange Offer applies ("**the Extraordinary Resolution**") and to vote in favour of the Extraordinary Resolution;

(3) the Extraordinary Resolution is to amend the terms of the securities to provide the Bank a call option (the "**Call Option**"), exercisable on one business day's notice, to redeem or purchase all of the securities remaining outstanding following completion of the Exchange Offer for (in relation to the Bonds) €0.01 per €1,000 (i.e. for just 0.001% of the face value of the security), without any accrued interest, distributions or dividends;

(4) attending the relevant meeting and voting in person or separately appointing a proxy to do so will disentitle the bondholder from participation in the Exchange Offer.

37. The Exchange Offer records the Bank's intention to exercise, or procure the exercise of, any Call Option implemented shortly after the settlement date for the Exchange Offer in respect of the relevant series of securities.

38. The purported effect of the Exchange Offer is that:

(1) each security holder must elect whether or not to tender its bonds for purchase by the Bank at a very substantial discount to the nominal and current redemption value of the securities;

(2) the Early Bird Proposals are 20% higher than the Proposals in terms of either the cash or equity available on exchange, but require a decision to participate in the Exchange Offer by 22 June 2011;

(3) any security holder who elects to participate in the Exchange Offer will be required to appoint a proxy to vote in favour of the Extraordinary Resolution in respect of the relevant series of securities; and

(4) if the Extraordinary Resolution is passed by a 75% majority in value, the Bank may, at its discretion, redeem all outstanding securities of the relevant series for nominal consideration which would amount, in effect, to the complete extinction of the rights of the dissentient minority.

39. On the true construction of the Modification Power, it does not confer upon a meeting of holders of the relevant securities power by extraordinary resolution to bind a dissentient minority so as to extinguish or relinquish all or substantially all their rights under those securities.

40. Further or alternatively, the proposed amendment of the terms of the Bonds as contemplated by the Extraordinary Resolution is beyond the scope of the power conferred by the Modification Power and would therefore be ultra vires.

41. Further, or in the further alternative, the proposed Extraordinary Resolution would in the circumstances be an improper exercise of the Modification Power, an abuse of power, oppressive and/or discriminatory, in that:

(1) it would confer no benefit on the holders of securities who have already elected or may elect to participate in the Exchange Offer;

(2) it would confer no benefit on any holder of securities who does not elect to participate in the Exchange Offer, whose contractual rights under the Bonds would (if the Extraordinary Resolution is valid and effective) be thereby extinguished, released or expropriated for nominal consideration; and

(3) the exercise of the Modification Power would therefore not be for the purpose of benefiting the holders of the relevant securities as a whole, and no reasonable security holder could consider it to be for such purpose.

42. The Extraordinary Resolution would involve the extinction, release or relinquishment of the dissentient minority's rights and is so unreasonable as to call for the intervention of the Court.

43. In the premises, it is to be inferred that:

(1) the threat of a security holder's rights being expropriated for nominal consideration pursuant to the proposed Extraordinary Resolution is being used by the Bank to coerce the Noteholders and other holders of securities to participate in the Exchange Offer, notwithstanding the detrimental effect that that will have on the security holder's contractual rights; and

(2) the Bank is inducing or procuring, or intends to induce or procure, the aforesaid abuse of power; and in any event intends to take advantage of it.

The Irish legislation and its effect in England

44. The Irish Credit Institutions (Stabilisation) Act 2010 provides that the Irish Minister of Finance may in certain circumstances apply to the Irish High Court for a Subordinated Liabilities Order ("**SLO**") in relation to the subordinated liabilities of a relevant institution (including the Bank). An SLO may make provision for, among other things, the postponement, termination, suspension or other modification of specific rights, liabilities, terms and obligations associated with subordinated liabilities, including in respect of the repayment of principal, the payment of interest, any right to enforce payment and the applicable law.

45. By regulation 5(1) of The Credit Institutions (Reorganisation and Winding Up) Regulations 2004 ("**the Regulations**"), an "*EEA insolvency measure*" has effect in the United Kingdom in relation to any branch, property or other assets, or any debt or liability of that credit institution as if it were part of the general law of insolvency of the United Kingdom.

46. By regulation 5(6) of the Regulations, an EEA insolvency measure means, so far as material, "*a directive reorganisation measure*" which has effect in relation to an EEA credit institution by virtue of the law in the relevant EEA State.

47. By regulation 2 of the Regulations, a directive reorganisation measure means a reorganisation measure as defined in Article 2 of the directive of the European Parliament and of the Council on the reorganisation and winding up of credit institutions (2001/24/EC) ("**the Directive**"), which reorganisation measure was adopted or imposed on or after 5 May 2004. By Article 2 of the Directive, reorganisation measures are measures which "*are intended to preserve or restore the financial situation of a credit institution*".

The threat of an SLO if the Noteholders do not participate in the Exchange Offer

48. The Exchange Offer expressly referred, under the heading "*Background to the Offers*", to a statement made by the Irish Minister of Finance on 31 May 2011 ("**the 31 May 2011 Statement**"), as follows:

> *"I would like to reiterate that it is Government policy to achieve appropriate burden-sharing from holders of bank subordinated debt in Bank of Ireland, EBS Building Society and Irish Life & Permanent. The burden-sharing process is already underway in respect of AIB. Similarly to AIB, this is the final market based step to ensuring appropriate burden sharing by subordinated bondholders. These financial institutions are remaining solvent due to the ongoing overwhelming financial support of the State, without this support subordinated bondholders' entire investment would have been irrecoverable. The levels of burden-sharing in these LMEs are the minimum acceptable to the Government. If these LMEs fail to deliver the expected core tier 1 capital gains to each of the banks, the Government will take whatever steps are necessary under the Credit Institutions (Stabilisation) Act 2010 or otherwise to ensure that burden sharing is achieved. Any further action, after investors have had an opportunity to take part in these LMEs, will result in severe measures being taken in respect of the subordinated liabilities."*

49. The Exchange Offer expanded upon the threat of recourse to the Credit Institutions (Stabilisation) Act 2010 made in the 31 May 2011 Statement, in the following terms:

> *"As a further measure to expand the financial stability tools available to the Government in respect of the Irish banking sector, on 21 December 2010 the Credit Institutions (Stabilisation) Act 2010 (the "Stabilisation Act") was signed into law. The Stabilisation Act provides for significant powers to recapitalise and restructure the Irish banking industry in the period up to 31 December 2012. The powers of the Minister for Finance under the Stabilisation Act are of an exceptional nature and include the power to apply to the High Court for formal orders and directions to impose onerous requirements on relevant institutions and the holders of securities issued by the relevant institutions (including modifying or potentially extinguishing the rights (including those relating to the payment of interest and principal and events of default) attributable to subordinated liabilities of a relevant institution, such as the Bank)."*

50. Further, also on 8 June 2011 the Bank announced that a "*Key Highlight*" of "*Further Bondholder Burden Sharing*" would be "*Steps taken by the Minister of*

Finance…under the Stabilisation Act or otherwise to ensure burden sharing with subordinated bondholders is achieved". It announced that:

> *"To the extent that eligible subordinated debt securities are not acquired or exchanged pursuant to the LME…, the Minister stated on 31 May 2011 that 'The levels of burden-sharing in these LME's are the minimum acceptable to the Government. If these LME's fail to deliver the expected core tier 1 capital gains to each of the banks, the Government will take whatever steps are necessary under the Credit Institutions (Stabilisation) Act 2010 or otherwise to ensure that burden sharing is achieved. Any further action, after investors have had an opportunity to take part in these LMEs, will result in severe measures being taken in respect of the subordinated liabilities'. In these circumstances, the Bank believes the level of return to the holders of the outstanding eligible subordinated debt securities may be materially below that available pursuant to the cash alternative under the LME."*

51. The Bank's 9 June 2011 presentation on "Proposed capital raising and investment proposals" refers explicitly to the possibility of using an SLO to achieve its capital objectives: "*Core Tier 1 to be generated from SLO or other action*". The presentation also refers to "*action by the Minister for Finance to ensure that burden sharing is achieved in respect of any subordinated debt outstanding post LME*", and records that *"[t]he size of the Rights Issue of €2.07 billion as set out above is based on the Minister's stated policy that there will be burden sharing with subordinated debt holders through the LME and, if necessary, action by the Minister under the Stabilisation Act or otherwise*".

52. If an SLO is implemented, it would (unilaterally), if effective as a matter of English law, adversely affect the Noteholders' contractual rights under the Bonds, and thereby significantly reduce their existing contractual claims against the Bank, to an extent greater even than that envisaged by the Exchange Offer.

53. The Bank is able to raise the capital to meet the CBI requirements from private sources. By way of example, on 17 June 2011 the Noteholders wrote to the Bank with a proposal that, in summary, (i) the rights to purchase new capital shares in the Bank in conjunction with the LME ("the Rights Issue") would be issued to all holders of common equity in the Bank, including shares issued to holders of tier 1 and tier 2 debt who elect to convert their debt into equity, (ii)

the debt held by all participating tier 1 and tier 2 debt holders would be converted into equity at par value plus accrued interest, and (iii) the entire amount of new equity capital sought to be raised pursuant to the Rights Issue and not raised by existing shareholders exercising their rights would be raised by private investors including the Noteholders. Copies of the letter and the draft term sheet enclosed therewith are attached at **Schedule 1**. The letter highlighted particular benefits of the proposal, as follows:

(1) it would relieve the Government and Irish taxpayers of the burden of having to fund the Bank's capital requirements;

(2) it would demonstrate the health of the Bank by its ability to raise capital from private sources on arm's length market terms; and

(3) it would permit the Bank to execute the LME on a largely consensual basis and to meet the CBI's requirements by the 31 July deadline.

54. In the premises, and subject to disclosure, it is to be inferred that:

(1) the Bank and the Government have already agreed (or share a common understanding) that if the Noteholders do not agree to the Bank's Proposals, the Government will implement an SLO purporting to impose on the Noteholders terms even less favourable than those proposed in the LME;

(2) if the Noteholders do not agree to the Bank's Proposals, the Government will therefore implement an SLO purporting to impose on the Noteholders terms even less favourable than those proposed in the LME;

(3) the threat of an SLO is being used by the Bank and/or the Government to coerce the Noteholders and other holders of Notes to agree to the Bank's Proposals, notwithstanding the detrimental effect that that will have on the Noteholders' contractual rights;

(4) the Bank does not intend to perform its legal obligations under the Bonds in their current form, even if the Noteholders do not accept the Proposals, or any proposals by the Bank which would reduce their contractual rights against the Bank;

(5) an SLO made in those circumstances would not be intended to address an immediate or credible threat to the Bank's solvency (there being no such threat) or to restore the Bank to viability or otherwise to preserve or restore the financial situation of the Bank (there being no such need); but

(6) rather, such an SLO would be intended:

i. to assist the Bank in meeting the conservative capital requirements imposed by the CBI,

ii. to ensure that subordinated debt holders contribute a significant element of that capital,

iii. to give effect to the Government's political objective of "burden sharing", thereby avoiding or minimising the negative impact on shareholders of the Bank of meeting the CBI's capital requirements; and relieving the shareholders of the burden of bolstering capital which would prima facie fall on them, and

iv. to create value for the shareholders at the expense of the Bank's creditors by unilaterally imposing reduced contractual entitlements on subordinated debt holders.

Declaratory relief

55. The Noteholders are entitled to and claim declarations that, on the true construction of the Bonds, the Trust Deed and the Regulations, and in all the circumstances:

(1) there is no power for a meeting of holders of the relevant securities by general resolution or otherwise to bind a dissentient minority to extinguish or relinquish all or substantially all their rights under those securities;

(2) the proposed amendment of the terms of the Bonds as contemplated by the Extraordinary Resolution is beyond the scope of the power conferred by the Modification Power and would be ultra vires the holders of the relevant series of securities and therefore invalid and of no effect as a matter of English law;

(3) the proposed Extraordinary Resolution would be an improper exercise of the Modification Power, an abuse of power, oppressive and/or discriminatory and therefore invalid and of no effect as a matter of English law;

(4) Noteholders that do not participate in the Exchange Offer will not be bound by the proposed Extraordinary Resolution, or any purported variation to the terms of the Bonds pursuant thereto, and their contractual rights against the Bank under the existing terms of the Bonds will remain unaffected as a matter of English law;

(5) an SLO making provision in respect of the Bonds would not be intended to preserve or restore the financial situation of a credit institution, and therefore would not be a directive reorganisation measure within the meaning of the Regulations, and therefore would have no effect as a matter of English law;

(6) failure by the Bank to comply with the existing terms of the Bonds (disregarding the purported effect of such an SLO, if implemented) would be a breach of the Bank's contractual obligations to the Noteholders; and

(7) the Bank is already in anticipatory breach of its contractual obligations to the Noteholders under the Bonds.

AND THE CLAIMANTS CLAIM

(1) Declarations, pursuant to paragraph 55 above;

(2) An injunction restraining the Bank from (i) accepting or acting upon any offer to participate in the Exchange Offer on terms that include the Consent Solicitations, (ii) taking any further steps in respect of the Exchange Offer in its current form (including soliciting or otherwise encouraging Noteholders or other holders of securities to participate in the Exchange Offer), and (iii) in any event, acting upon the outcome of that process, including the tabling the Extraordinary Resolution and the exercise of the Call Option;

(3) Further or other relief;

(4) Costs

MATTHEW COLLINGS QC
CIARAN KELLER

Statement of Truth

The Claimants believe that the facts stated in these Particulars of Claim are true.

I am authorised to sign this Statement of Truth on behalf of the Claimants.

………………………………

Full name: John Simon Reynolds
Partner, White & Case LLP
Date: 17 June 2011

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Tel: 0207 532 1000
Fax: 0207 532 1001
Ref: JR/PP/4402893-0002