Court File No.: CV-16-11290-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

IN THE MATTER OF MAPLE BANK GMBH

AND IN THE MATTER OF THE
***BANK ACT,* S.C. 1991, C.46 AS AMENDED**

AND IN THE MATTER OF THE
***WINDING-UP AND RESTRUCTURING ACT,* R.S.C.1985, C.W.-11, AS AMENDED**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

And

MAPLE BANK GMBH

Respondent

MOTION RECORD
(Returnable March 3, 2016)

Date: March 2, 2016

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Lawyers for KPMG Inc., in its capacity as Liquidator in respect of the winding up of the Business and Assets of Maple Bank GmbH

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Attention:Mr. Paul Lishman
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AND TO: **Dr. Michael C. Frege,**
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AND TO: **Stikeman Elliott LLP**
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Insolvency Administrator of Maple Bank GmbH

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Tab 1

Court File No. CV-16-11290-00CL

ONTARIO
SUPERIOR COURT OF JU.S.TICE
COMMERCIAL LIST

IN THE MATTER OF MAPLE BANK GmbH

AND IN THE MATTER OF THE *WINDING-UP AND RESTRUCTURING ACT*, R.S.C. 1985, C.W-11, AS AMENDED

AND IN THE MATTER OF THE *BANK ACT*, S.C. 1991, C.46, AS AMENDED

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

MAPLE BANK GmbH

Respondent

NOTICE OF MOTION

KPMG Inc. (the "**Liquidator**"), in its capacity as the Court-appointed Liquidator in respect of the winding up of the business in Canada (the "**Business**") of Maple Bank GmbH ("**Maple Bank**") and its assets as defined in section 618 of the *Bank Act* (the "**Assets**") will make a Motion to a Judge of the Commercial List (the "**Court**"), on March 3, 2016 at 10:00 a.m. or soon after that time as the motion can be heard, at 330 University Avenue, 8th Floor, Toronto, Ontario.

THE PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. To provide the Court with information and an update in respect of a draft protocol (the "**Protocol**"), which incorporates the basic framework of an agreement between Dr. Michael C. Frege, as German insolvency administrator (the "**GIA**") and the Liquidator in respect of the Proposed Chapter 15 Proceeding (as defined below) and its effect on certain assets related to the Business of Maple Bank (the "**U.S. Assets**"), which are referred to on the books of Maple Bank (Toronto Branch) ("**MBTOR**").

THE GROUNDS FOR THE MOTION ARE

The Winding-up Order

2. On February 16, 2016 on the Application of the Attorney General of Canada under the *Winding-Up and Restructuring Act* (the "**WURA**"), the Court granted an order (the "**Winding-Up Order**") (i.) to wind-up the Business of Maple Bank; and (ii.) to appoint the Liquidator in respect of the Business and Assets.

German and U.S. Insolvency Proceedings

3. Prior to the issuance of the Winding-Up Order, on February 11, 2016, the Frankfurt Lower District Court granted an order under the *German Insolvency Act* to commence a German insolvency proceeding in respect of Maple Bank (the "**German Insolvency Proceeding**") and appointed the GIA pursuant to an application filed by the Germany Federal Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht) ("**BaFin**").

4. Subsequent to the initiation of the German Insolvency Proceeding, on February 15th, 2015, the GIA filed a petition for recognition of the German Insolvency Proceeding in the Bankruptcy Court for the Southern District of New York (the "**U.S. Bankruptcy Court**") under the U.S. Bankruptcy Code, Chapter 15 (the "**Proposed Chapter 15 Proceeding**"). This petition was amended on February 19, 2016 and is to be heard on March 10, 2016.

The Protocol

5. In accordance with its statutory duties, immediately following the issuance of the Winding-Up Order, the Liquidator sought to secure all assets listed on MBTOR's financial books and records, including *inter alia* the U.S. Assets.

6. Throughout the week of February 22, 2016, in order to address the competing statutory duties of the Liquidator and the GIA, and in the spirit of the Winding-Up Order which provides for consultation and cooperation between the Liquidator and the GIA, the Liquidator, the GIA and their respective Canadian and U.S. Counsel commenced extensive negotiations in order to reach a protocol in respect of the U.S. Assets.

7. In the evening of February 28, 2016, the Liquidator and the GIA reached an agreement on the Protocol which provides for an interim resolution with respect to issues surrounding the interaction between the Proposed Chapter 15 Proceeding and the U.S. Assets.

8. Pursuant to the Protocol the GIA and the Liquidator have agreed *inter alia* that:

- The Liquidator will not seek U.S. Recognition of the Winding-Up Order and the WURA proceeding;
- subject to approval from the U.S. Bankruptcy Court, (the "**Stipulation**"), the Liquidator will be granted full standing (and related rights) in the Proposed Chapter 15 Proceeding with respect to the U.S. Assets;
- If the Stipulation is not approved by the U.S. Bankruptcy Court, the Liquidator will continue to have the right to seek U.S. recognition of the WURA proceeding;
- The Liquidator and the GIA will work together to efficiently collect, administer, initiate any law suits and liquidate the U.S. Assets;
- All proceeds collected from the U.S. Assets will be placed into an account, which will be under the joint control of both the Liquidator and the GIA; and
- To the extent there are issues, conflicts, or disagreements between the Liquidator and the GIA in respect of the U.S. Assets that cannot be resolved the parties agree to attorn to the U.S. Bankruptcy Court to determine how such issues shall be resolved.

9. It is the Liquidator's opinion that the Protocol provides a practical and cost-effective resolution of the issues surrounding the most effective means to secure and safeguard the U.S. Assets, along with an agreed mechanism by which to resolve any future disputes between the GIA and the Liquidator in respect of the U.S. Assets while dispensing with the immediate need for competing Chapter 15 proceedings to be brought by the Liquidator.

10. The Liquidator is further of the view that no creditor of MBTOR will be prejudiced by the Protocol.

11. Rule 14.05(3)(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

12. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

13. The First Report of the Liquidator, and

14. Such further and other documentary evidence as counsel may advise and this Court may accept.

March 2, 2016

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Lawyers for KPMG Inc., in its capacity as Liquidator in respect of the winding up of the Business and Assets of Maple Bank GmbH

TO: **SERVICE LIST**

IN THE MATTER OF MAPLE BANK GmbH
AND IN THE MATTER OF THE WINDING-UP AND RESTRUCTURING ACT, R.S.C. 1985, C.W-11, AS AMENDED
AND IN THE MATTER OF THE BANK ACT, S.C. 1991, C.46, AS AMENDED

Court File No. CV-16-11290-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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Lawyers for KPMG Inc., in its capacity as Liquidator in respect of the winding up of the Business and Assets of Maple Bank GmbH

Tab 2

Court File No. CV-16-11290-00CL

ONTARIO
SUPERIOR COURT OF JU.S.TICE
COMMERCIAL LIST

IN THE MATTER OF MAPLE BANK GmbH

AND IN THE MATTER OF THE *WINDING-UP AND RESTRUCTURING ACT*, R.S.C. 1985, C.W-11, AS AMENDED

AND IN THE MATTER OF THE *BANK ACT*, S.C. 1991, C.46, AS AMENDED

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

MAPLE BANK GmbH

Respondent

FIRST REPORT OF KPMG INC. in its capacity as

COURT APPOINTED LIQUIDATOR OF THE BUSINESS IN CANADA OF MAPLE BANK GMBH AND ITS ASSETS AS DEFINED IN SECTION 618 OF THE *BANK ACT*

INTRODUCTION

1. On February 16, 2016 the Ontario Superior Court of Justice [Commercial List] on the Application of the Attorney General of Canada pursuant to the *Winding-Up and Restructuring Act* (the "**WURA**"), granted an order (the "**Winding-Up Order**") to (i) wind-up the Business in Canada (the "**Business**") of Maple Bank GmbH ("**Maple Bank**"); and (ii) appoint KPMG Inc. as liquidator (the "**Liquidator**") of the Business and its assets as defined in section 618 of the *Bank Act* (the "**Assets**"). The Winding-Up Order and corresponding endorsement of Regional Senior Justice Morawetz dated February 17, 2016 are attached hereto as **Appendices "A"** and **"B"**, respectively.

2. Prior to the issuance of the Winding-Up Order, on February 11, 2016, the Frankfurt Lower District Court granted an order under the *German Insolvency Act* to commence a German insolvency proceeding in respect of Maple Bank (the "**German Insolvency Proceeding**") pursuant to an application filed by the Germany Federal Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht), ("**BAFIN**"). In doing so the Frankfurt Lower District Court appointed Dr. Michael C. Frege, as German insolvency administrator (the "**GIA**").

3. Subsequent to the initiation of the German Insolvency Proceeding, on February 15, 2015, the GIA filed a petition for recognition of the German Insolvency Proceeding in the Bankruptcy Court for the Southern District of New York (the "**U.S. Bankruptcy Court**") under the *U.S. Bankruptcy Code*, Chapter 15 (the "**Proposed Chapter 15 Proceeding**"). This petition was amended on February 19, 2016 and is to be heard on March 10, 2016.

PURPOSE

4. The purpose of this first report (the "**First Report**") of the Liquidator is to provide information to the Court in respect of the draft protocol, which incorporates the basic framework of an agreement between the GIA and the Liquidator (the "**Protocol**") concerning the Proposed Chapter 15 Proceeding and its effect on certain assets related to the Business of Maple Bank. These assets are referred to on the books of Maple Bank (Toronto Branch), ("**MBTOR**") as U.S. Assets and which include, *inter alia* those U.S.-domiciled assets of MBTOR which are generally described in **Appendix "C"** of this report and which have potential value to the Canadian Liquidation estate in the order of approximately $116.7 million (the "**U.S. Assets**"). The Protocol is attached hereto as **Appendix "D"**.

TERMS OF REFERENCE AND DISCLAIMER

5. Capitalized terms not defined in this First Report are as defined in the Winding-Up Order. Unless otherwise indicated, all references to monetary amounts in this First Report are denominated in Canadian dollars.

6. Copies of the Liquidator's Reports, including a copy of this First Report, and all motion records and Orders in the WURA proceeding are be available on the Liquidator's website at http://www.kpmg.com/ca/maplebank

BACKGROUND

7. As more fully described in the proposed Liquidator's report to this Honourable Court dated February, 16, 2016, Maple Bank operated in Canada as an authorized foreign bank under the *Bank Act*, having been permitted in 2001 to establish a branch in Canada, more specifically, MBTOR. In the period leading up to the commencement of the WURA proceeding, MBTOR had three major lines of business: (1) the origination and securitization of real property mortgages in Canada; (2) structured secured lending; and (3) security financing transactions.

8. In accordance with its statutory duties, immediately following the issuance of the Winding-Up Order, the Liquidator sought to secure and safeguard all assets listed on MBTOR's financial books and records, including the U.S. Assets. In furtherance of this objective, the Liquidator retained the firm of Willkie, Farr & Gallagher as U.S. Counsel to provide advice with respect to the intended effect of the Proposed Chapter 15 Proceeding on the Liquidator's statutory and court ordered obligations to secure, safeguard and repatriate the U.S. Assets to Canada. In this regard the Liquidator considered whether it would be necessary to obtain an order under Chapter 15 of the *U.S. Bankruptcy Code* recognizing the Canadian WURA proceeding as either a foreign main or foreign non-main proceeding.

9. The Liquidator was also advised by Canadian counsel to the GIA, that the GIA has a statutory duty under the *German Insolvency Act* to take into its custody or control all of the assets of Maple Bank regardless of their jurisdiction.

10. Throughout the week of February 22, 2016, in order to address the competing statutory duties of the Liquidator and the GIA, and in the spirit of the Winding-Up Order which provides for consultation and cooperation between the Liquidator and the GIA, the Liquidator, the GIA and their respective Canadian and U.S. Counsel commenced extensive negotiations in order to reach a protocol in respect of the U.S. Assets.

11. In the evening of February 28, 2016, the Liquidator and the GIA reached an agreement on the Protocol which provides for an interim resolution with respect to issues surrounding the interaction between the Proposed Chapter 15 Proceeding and the U.S. Assets.

12. Pursuant to the Protocol the GIA and the Liquidator have agreed *inter alia* that:

- The Liquidator will not seek U.S. Recognition of the Winding-Up Order and the Canadian WURA proceeding;
- Subject to approval from the U.S. Bankruptcy Court, (the "**Stipulation**"), the Liquidator will be granted full standing (and related rights) in the Proposed Chapter 15 Proceeding with respect to the U.S. Assets;
- If the Stipulation is not approved by the U.S. Bankruptcy Court, the Liquidator will continue to have the right to seek U.S. recognition of the WURA proceeding;
- The Liquidator and the GIA will work together to efficiently collect, administer, initiate any law suits and liquidate the U.S. Assets;
- All proceeds collected from the U.S. Assets will be placed into an account, which will be under the joint control of both the Liquidator and the GIA; and
- To the extent there are issues, conflicts, or disagreements between the Liquidator and the GIA in respect of the U.S. Assets that cannot be resolved the parties agree to attorn to the U.S. Bankruptcy Court to determine how such issues shall be resolved.

LIQUIDATOR'S CONCLUSIONS

13. It is the Liquidator's opinion that the Protocol provides a practical and cost-effective resolution of the issues surrounding the most effective means to secure and safeguard the U.S. Assets, along with an agreed mechanism by which to resolve any future disputes between the GIA and the Liquidator in respect of the U.S. Assets while dispensing with the immediate need for competing Chapter 15 proceedings to be brought by the Liquidator.

14. The Liquidator is further of the view that no creditor of MBTOR will be prejudiced by the Protocol.

All of which is respectfully submitted at Toronto, Ontario this 2nd day of March, 2016.

KPMG Inc., in its sole capacity as Court Appointed Liquidator of the Business in Canada of Maple Bank GmbH and its Assets as defined in Section 618 of the *Bank Act*

Per: _____
Philip J. Reynolds
Senior Vice President

This is Appendix "A" to the

First Report of the Liquidator

Dated March 2, 2016

Court File No. CV-16-11290-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE REGIONAL SENIOR JUSTICE MORAWETZ	)))	TUESDAY, THE 16TH DAY OF FEBRUARY, 2016

IN THE MATTER OF MAPLE BANK GmbH

AND IN THE MATTER OF THE *WINDING-UP AND RESTRUCTURING ACT*, R.S.C. 1985, C.W-11, AS AMENDED

AND IN THE MATTER OF THE *BANK ACT*, S.C. 1991, C.46, AS AMENDED

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

MAPLE BANK GmbH

Respondent

WINDING-UP ORDER

THIS APPLICATION made by the Attorney General of Canada under the *Winding-up and Restructuring Act,* R.S.C. 1985, c. W-11, as amended ("*WURA*"), for the appointment of KPMG Inc. ("KPMG") as liquidator, without security, in respect of the winding up of the business in

Canada (the "Business") of the Respondent, Maple Bank GmbH ("Maple Bank"), and of the assets, as defined in section 618 of the *Bank Act,* S.C. 1991, c. 46, as amended, (the "*Bank Act*") of Maple Bank was heard this day at Toronto, Ontario.

ON READING the Notice of Application and Application Record in the within matter, and on hearing submissions of counsel for each of the Attorney General of Canada, and for KPMG as the proposed Liquidator.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof, including without limitation, the prescribed notice requirements of section 26 of *WURA*.

WINDING-UP

2. **THIS COURT DECLARES** that Maple Bank is an authorized foreign bank subject to *WURA*.

3. **THIS COURT ORDERS** that the Business in Canada of Maple Bank be wound up by this Court under the provisions of *WURA*.

APPOINTMENT

4. **THIS COURT ORDERS** that KPMG is appointed as liquidator (the "Liquidator") without security, in respect of the winding up of the Business, and of the assets of Maple Bank, as defined in section 618 of the *Bank Act* namely:

a) any assets of Maple Bank in respect of Maple Bank's Business in Canada, including the assets referred to in subsection 582(1) and section 617 of the Bank Act and assets under its administration; and,

b) any other assets in Canada of Maple Bank,

collectively (the "**Assets**")

5. **THIS COURT ORDERS** that the giving of security by the Liquidator upon its appointment as liquidator be and is hereby dispensed with.

6. **THIS COURT ORDERS** that Maple Bank shall cease to carry on its Business in Canada or deal in any way with its Assets, except in so far as is, in the opinion of the Liquidator, required for the beneficial winding-up of its Business in Canada and liquidation of its Assets.

LIQUIDATOR'S POWERS

7. **THIS COURT ORDERS** that, in addition to the exercise of the Liquidator's duties under sections 33 and 152 of WURA and the performance of its powers under section 35 of *WURA*, the Liquidator is hereby expressly empowered and authorized to do any of the following where the Liquidator considers it necessary or desirable:

a) take possession of and/or exercise control over the Assets or such part thereof as the Liquidator shall determine, and any and all proceeds, receipts and disbursements arising out of or from the Assets;

b) manage, operate and carry on the Business in Canada of Maple Bank so far

as it is necessary to the beneficial winding up of Maple Bank's Business in Canada and the liquidation of the Assets , including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the Business, or cease to perform or terminate any contracts of Maple Bank in respect of the Assets or Maple Bank's Business;

c) receive, preserve, and protect the Assets, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Assets to safeguard them, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

d) market any or all of the Assets, including advertising and soliciting offers in respect of the Assets or any part or parts thereof and negotiating such terms and conditions of sale as the Liquidator in its discretion may deem appropriate;

e) in respect of the Assets or the Business, initiate, prosecute and continue the prosecution of any and all Proceedings and to defend, to the extent not stayed, all Proceedings now pending or hereafter instituted with respect to Maple Bank, in the Liquidator own name as liquidator or in the name or on behalf of Maple Bank, as the case may be. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such Proceeding;

f) sell, convey, transfer, lease, assign or otherwise realize upon the Assets or any part or parts thereof, by public auction or private contract, and to

transfer the whole thereof to any Person, or sell them in parcels:

A. without the approval of this Court in respect of any transaction not exceeding $250,000 provided that the aggregate consideration for all such transactions does not exceed $1 million; and

B. with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause.

g) apply for any approval and vesting order or other orders necessary to convey the Assets or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Assets;

h) execute, assign, issue and endorse documents of whatever nature in the name of and on behalf of Maple Bank in respect of the Assets or Maple Bank's Business, and for that purpose use, when necessary, the seal of Maple Bank;

i) file any election (tax or otherwise), objection or registration, and any renewals thereof, and file any notices, as may be necessary or desirable in the opinion of the Liquidator in respect of the Assets or Maple Bank's Business;

j) draw, accept, make and endorse any bill of exchange or promissory note in the name of and on behalf of Maple Bank in respect of the Assets or Maple Bank's Business in Canada;

k) mortgage or otherwise encumber the Assets or any part thereof, or give discharges of mortgages and other securities, partial discharges of mortgages and other securities, and pay property taxes and insurance premiums on mortgages and other securities taken in favor of Maple Bank in respect of the Business;

l) pay such debts of the Maple Bank (whether incurred prior to or after the date of this Order) as may be necessary or desirable to be paid in order to properly preserve and maintain the Assets or to carry on the Business;

m) surrender possession of any leased premises occupied by the Maple Bank in respect of its Business in Canada and disclaim any leases entered into by Maple Bank in respect of its Business in Canada on not less than 10 calendar days' prior written notice to the lessor affected thereby;

n) apply for any permits, licenses, approvals or permissions as may be required by any governmental or regulatory authority in respect of the Assets or the Business;

o) re-direct Maple Bank's mail in respect of the Business;

p) settle, extend or compromise any indebtedness or contractual or other obligations or liability owing to or by Maple Bank in respect of the Assets or the Business; and

q) do and execute all such other things as are necessary for or incidental to: (i) the winding-up of the Business or the liquidation of the Assets; and (ii) the

exercise by the Liquidator of its powers hereunder or under any further Order of the Court in the within proceedings or the performance by the Liquidator of any statutory obligations to which it is subject.

COOPERATION WITH THE GERMAN INSOLVENCY ADMINISTRATOR

8. **THIS COURT ORDERS** that the Liquidator, in exercise of its powers as enumerated under section 35 of WURA and as set out above:

(a) shall provide to Dr. Michael C. Frege, as Insolvency Administrator of Maple Bank, as appointed pursuant to the German Insolvency Code (the "German Administrator"), from time to time, such information regarding the Business and Assets of Maple Bank as the German Administrator may reasonably require in order to fulfill his statutory obligations under German law, including, without limitation, information regarding status and location of assets and liabilities, with particulars, including amount, the filing of claims by creditors, valuations and assessments if available, the disposition of Assets and negotiations with counterparties related thereto, the resolution of Liabilities, and reporting for tax and accounting purposes related to the Business and Assets of Maple Bank in Canada;

(b) shall, within fourteen (14) days of the date hereof, develop in consultation with the German Administrator an Interim Winding-Up Plan with respect to the administration and liquidation of the Business, Assets and liabilities of Maple Bank in Canada during the first sixty (60) days after the date hereof, and shall

obtain the prior approval of the German Administrator thereto, and shall thereafter act in accordance therewith as amended in accordance with the terms hereof;

(c) shall, within sixty (60) days of the date hereof, develop, in consultation with the German Administrator, a Final Winding-Up Plan with respect to the administration and liquidation of the Business, Assets and liabilities of Maple Bank in Canada and shall obtain the prior approval of the German Administrator thereto, and shall thereafter act in accordance therewith, as amended in accordance with the terms hereof;

(d) may, after consultation with, and with the prior approval of, the German Administrator, propose changes to the Interim Wind-Up Plan or the Final Wind-up Plan and the Final Wind-Up Plan shall be amended in accordance with any such changes approved by the German Administrator;

(e) shall consult with, and obtain the prior approval of, the German Administrator in respect of any proposed disposition of Assets or groups of Assets which, individually or collectively, would, or would reasonably be expected to, result in net proceeds in excess of $10 million; and

(f) shall consult with, and obtain the approval of, the German Administrator with respect to, any proposed settlement of a claim or liability relating to the Business or Assets of Maple Bank in Canada in excess of $10 million, any claims process or any distribution to the creditors of Maple Bank in Canada,

provided that, if the German Administrator declines to provide its approval in respect of

any matters contemplated in (b), (c), (d), (e) or (f) above, the Liquidator may, on five (5) days' notice, apply to this Court for such approval, and the approval of this Court (subject to rights of appeal) shall replace any requirement for the approval of the German Administrator.

9. **THIS COURT ORDERS** that: (a) the Liquidator and the German Administrator shall consult and exchange information in respect of the Assets and Business of Maple Bank in Canada and such assets and business of Maple Bank as may be connected thereto, all as may be required for the effective and efficient administration of Maple Bank in Canada and Maple Bank; (b) the German Administrator shall have the right to apply, if it so elects, to be appointed as an Inspector of the estate of Maple Bank in Canada, or, if formed, a member of any committee of creditors, and to exercise the power and rights ordinarily associated with such an appointment; and (c) the Liquidator and the German Administrator (or their respective designees) shall meet at least once in each week, which meeting may be telephonic or in person to exchange information, discuss and coordinate matters related to the administration of the Business, Assets and liabilities of Maple Bank in Canada and such assets and businesses of Maple Bank as relate thereto.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE LIQUIDATOR

10. **THIS COURT ORDERS** that: (i) Maple Bank; (ii) all of Maple Bank's current and former directors, officers, employees, agents, accountants, actuaries, appointed actuary, legal counsel and shareholders, and all other Persons acting on its instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being

"Persons" and each being a "Person") shall forthwith advise the Liquidator of the existence of any Assets in such Person's possession or control, shall grant immediate and continued access to the Assets to the Liquidator, and shall deliver all such Assets to the Liquidator upon the Liquidator's request.

11. **THIS COURT ORDERS** that all Persons shall forthwith advise the Liquidator of the existence of any books, documents, securities, contracts, orders, corporate, actuarial and accounting records, and any other papers, working papers, records and information of any kind related to the Business, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Book and Records") in that Person's possession or control, and shall provide to the Liquidator or permit the Liquidator to make, retain and take away copies thereof and grant to the Liquidator unfettered access to and use of accounting, actuarial, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 10 or in paragraph 11 of this Order shall require the delivery of Books and Records, or the granting of access to Books and Records, which may not be disclosed or provided to the Liquidator due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

12. **THIS COURT ORDERS** that if any Books and Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Books and Records shall forthwith give unfettered access to the Liquidator for the purpose of allowing the Liquidator to recover and fully copy all of the information

contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Liquidator in its discretion deems expedient, and shall not alter, erase or destroy any Books and Records without the prior written consent of the Liquidator. Further, for the purposes of this paragraph, all Persons shall provide the Liquidator with all such assistance in gaining immediate access to the information in the Books and Records as the Liquidator may in its discretion require, including providing the Liquidator with instructions on the use of any computer or other system and providing the Liquidator with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO INTERFERENCE WITH LIQUIDATOR

13. **THIS COURT ORDERS** that, subject to subsection 22.1(1.1) of WURA, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, license or permit in favor of or held by Maple Bank in respect of the Assets or the Business, without written consent of the Liquidator or leave of the Court obtained on not less than seven (7) days' notice to the Liquidator.

CONTINUATION OF SERVICES

14. **THIS COURT ORDERS** that all Persons having oral or written agreements with Maple Bank in respect of the Assets or the Business, or statutory or regulatory mandates for the supply of goods and/or services in respect of the Assets or the Business, including, without limitation, all computer software, hardware, support and data services,

communication services, centralized banking services, payroll services, insurance and reinsurance, transportation services, utility (including the furnishing of oil, gas, heat, electricity, water, telephone service at present telephone numbers used by Maple Bank) or other services to Maple Bank in respect of the Business, are hereby restrained from terminating, accelerating, suspending, modifying or otherwise interfering with such agreements and the supply of such goods and services without the written consent of the Liquidator or leave of this Court, and all such parties shall continue to comply with their obligations under such agreements or otherwise on terms agreed to by the Liquidator in writing; provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Liquidator in accordance with normal payment practices of Maple Bank or such other practices as may be agreed upon by the supplier or service provider and the Liquidator, or as may be ordered by this Court.

PREMISES

15. **THIS COURT ORDERS** that all Persons are hereby restrained from disturbing or interfering with the occupation, possession or use by the Liquidator of any premises occupied or leased by Maple Bank in Canada or in respect of the Business as at the date of this Order, except upon further Order of this Court. From and after the date hereof, and for such period of time that the Liquidator occupies any leased premises, the Liquidator shall pay occupation rent to each lessor based upon the regular monthly base rent that was previously paid by the Maple Bank in respect of the premises so occupied or as may hereafter be negotiated by the

Liquidator and the applicable lessor from time to time.

NO PROCEEDINGS AGAINST THE LIQUIDATOR

16. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Liquidator except with the written consent of the Liquidator or with leave of this Court having been obtained on at least seven (7) days' notice to the Liquidator.

NO PROCEEDINGS AGAINST MAPLE BANK OR THE BUSINESS AND THE ASSETS

17. **THIS COURT ORDERS** that no Proceeding against or in respect of Maple Bank in respect of the Business, or in respect of the Assets shall be commenced or continued except with the written consent of the Liquidator or with leave of this Court having been obtained on at least seven (7) days' notice to the Liquidator, and any and all such Proceedings currently under way are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

18. **THIS COURT ORDERS** that all rights and remedies against Maple Bank in respect of the Business, or against the Liquidator, or affecting the Assets, are hereby stayed and suspended except with the written consent of the Liquidator or leave of this Court obtained on at least seven (7) days' notice to the Liquidator; provided, however, that nothing in this paragraph shall: (i) empower the Liquidator or Maple Bank to carry on any business that Maple Bank is not lawfully entitled to carry on; (ii) exempt the

Liquidator or Maple Bank from compliance with statutory or regulatory provisions relating to health, safety or the environment; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

19. **THIS COURT ORDERS** that, without limiting the foregoing, without the consent of the Liquidator or leave of the Court:

a) all Claimants (as hereinafter defined) are restrained from exercising any extra judicial remedies against Maple Bank in respect of the Business or the Assets, including the registration or re-registration of any securities owned by Maple Bank, into the name of such persons, firms, corporations or entities or their nominees, the exercise of any voting rights attaching to such securities, the retention of any payments or other distributions made in respect of such securities, the retention of any payments or other distributions made in respect of such securities, any right of distress, repossession, or consolidation of accounts in relation to amounts due or accruing due in respect of or arising from any indebtedness or obligation of Maple Bank in respect of the Business as of the date hereof;

b) all Persons be and they are hereby restrained from terminating, canceling or otherwise withdrawing any licenses, permits, approvals or consents with respect to or in connection with Maple Bank in respect of the Assets or the Business, as they were on the date hereof;

c) Any and all Proceedings taken or that may be taken by any person, firm, corporation or entity including without limitation any of the creditors of Maple

Bank, suppliers, contracting parties, depositors, lessors, tenants, co-venturers or partners (herein "Claimants") against or in respect of Maple Bank in respect of the Assets or the Business shall be stayed and suspended;

d) the right of any Claimant to make demands for payment on or in respect of any guarantee or similar obligation or to make demand or draw down under any orders of credit, bonds or instruments of similar effect, issued by or on behalf of Maple Bank in respect of the Assets or the Business, to take possession of, to foreclose upon or to otherwise deal with any Assets, or to continue any actions or proceedings in respect of the foregoing, is hereby restrained; and

e) the right of any Claimant to assert, enforce or exercise any right (including, without limitation, any right of dilution, buy-out, divestiture, forced sale, acceleration, termination, suspension, modification or cancellation or right to revoke any qualification or registration), option or remedy available to it including a right, option or remedy arising under or in respect of any agreement in respect of the Assets or the Business is hereby restrained.

LIQUIDATOR'S ACCOUNTS

20. **THIS COURT ORDERS** that the Liquidator and counsel to the Liquidator shall be paid their reasonable fees and disbursements, incurred both before and after the making of this Order.

21. **THIS COURT ORDERS** that the Liquidator and its legal counsel shall pass its

accounts from time to time, and for this purpose the accounts of the Liquidator and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

22. **THIS COURT ORDERS** that prior to the passing of its accounts, the Liquidator shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, and such amounts shall constitute advances its remuneration and disbursements, when and as approved by the Court.

CASH MANAGEMENT AND PAYMENTS

23. **THIS COURT ORDERS** that the Liquidator may deposit all moneys belonging to the Business received by or on behalf of the Liquidator and its agents to and use the bank accounts currently in the name of Maple Bank and may, at its discretion, open accounts in the name of the Liquidator.

EMPLOYEES

24. **THIS COURT ORDERS** that the employment of each of the employees of the Maple Bank in Canada with respect to the Business is hereby and deemed to be terminated as of the date of this Order. The Liquidator shall be entitled to pay all accrued and unpaid wages and vacation pay of each of such employees, including any remittances relating thereto.

25. **THIS COURT ORDERS** that the Liquidator may retain such employees of Maple Bank in respect of the Business as the Liquidator deems necessary or desirable

to assist the Liquidator in fulfilling the Liquidator's duties on such terms as may be approved by this Court and all reasonable and proper expenses that the Liquidator may incur in so doing shall be costs of liquidation of the Business and Assets. The Liquidator shall not be liable for any employee-related liabilities, including any successor employer liabilities, other than such amounts as the Liquidator may specifically agree in writing to pay.

26. **THIS COURT ORDERS** that the Liquidator may retain, employ or engage such actuaries, accountants, financial advisors, investment dealers, solicitors, attorneys, valuers or other expert or professional persons as the Liquidator deems necessary or desirable to assist the Liquidator in fulfilling the Liquidator's duties, and all reasonable and proper expenses that the Liquidator may incur in so doing shall be costs of liquidation of the Assets of Maple Bank.

PRIVACY MATTERS

27. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act,* the Liquidator shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Assets and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Assets (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Liquidator, or in the alternative destroy all

such information. The purchaser of any Assets shall be entitled to continue to use the personal information provided to it, and related to the Assets purchased, in a manner which is in all material respects identical to the prior use of such information by Maple Bank, and shall return all other personal information to the Liquidator, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

28. **THIS COURT ORDERS** that nothing herein contained shall require the Liquidator to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Assets that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act,* the *Ontario Environmental Protection Act,* the *Ontario Water Resources Act,* or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Liquidator from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Liquidator shall not, as a result of this Order or anything done in pursuance of the Liquidator's duties and powers under this Order, be deemed to be in Possession of any of the Assets within the meaning of any Environmental Legislation, unless it is actually in

possession.

LIMITATION ON THE LIQUIDATOR'S LIABILITY

29. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Liquidator under *WURA* or as an officer of this Court, the Liquidator shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or willful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Liquidator by the *WURA* or any applicable legislation.

30. **THIS COURT ORDERS** that the Liquidator may act on the advice or information obtained from any actuary, accountant, financial advisor, investment dealer, solicitor, attorney, valuer or other expert or professional person, and the Liquidator shall not be responsible for any loss, depreciation or damage occasioned by acting in good faith in reliance thereon.

CALL FOR CLAIMS

31. **THIS COURT ORDERS** that the Liquidator shall not be obligated to call for claims or otherwise implement a claims process until a further Order of this Court to this effect is issued.

SERVICE AND NOTICE

f) **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol

(which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL 'www.kpmg.com/ca/maplebank'.

g) **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Liquidator is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to Maple Bank's creditors or other interested parties at their respective addresses as last shown on the records of Maple Bank and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

32. **THIS COURT ORDERS AND DIRECTS** that the Liquidator shall publish notice of the Winding-Up Order in respect of the Business and Assets for two (2) consecutive days within five (5) business days of the making of this Order in The Globe and Mail,

National Edition, and shall also send written notice to every depositor, creditor and employee of Maple Bank in respect of the Business within seven (7) business days of making of this Order to the last known mailing address as provided for in the records of Maple Bank.

RECOGNITION

33. **THIS COURT ORDERS** that this Order and any other orders in these proceedings shall have full force and effect in all Provinces and Territories in Canada.

34. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, the Republic of Germany, including the Amtsgericht Frankfurt am Main [Insolvency Court] to give effect to this Order and to assist the Liquidator and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Liquidator, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Liquidator in any foreign proceeding, or to assist the Liquidator and their respective agents in carrying out the terms of this Order.

35. **THIS COURT HEREBY REQUESTS** the aid and assistance of the German Administrator to assist the Liquidator and its agents in carrying out the terms of this Order

36. **THIS COURT ORDERS** that the Liquidator be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body,

wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Liquidator is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

37. **THIS COURT ORDERS** that the Attorney General of Canada shall be entitled to the costs of this application, up to and including entry and service of this Order, on a substantial indemnity basis to be paid by the Liquidator from the Business and Assets as costs properly incurred in the winding-up of the Business and Assets.

ADVICE AND DIRECTIONS

38. **THIS COURT ORDERS** that Liquidator may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

39. **THIS COURT ORDERS** that interested parties may apply to the Court for advice and directions on at least seven (7) days notice to the Liquidator and to any other party likely to be affected by the Order sought or upon such other notice, if any, as this Court may order.

C. Irwin
Registrar

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

FEB 16 2016

IN THE MATTER OF MAPLE BANK GmbH
AND IN THE MATTER OF THE WINDING-UP AND RESTRUCTURING ACT, R.S.C. 1985, C.W-11, AS AMENDED
AND IN THE MATTER OF THE BANK ACT, S.C. 1991, C.46, AS AMENDED

Court File No. CV-16-11290-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

WINDING-UP ORDER

John J. Lucki
Department of Justice
Ontario Regional Office The Exchange Tower
130 King Street West
Suite 3400, Box 36
Toronto, Ontario M5X 1K6

Tel: (416) 973-5402
Fax: (416) 973-2319
Law Society No.

Solicitor for the Applicant,
The Attorney General of Canada

This is Appendix "B" to the

First Report of the Liquidator

Dated March 2, 2016

CITATION: Maple Bank GmbH (Re), 2016 ONSC 1181
COURT FILE NO.: CV-16-11290-00CL
DATE: 2016-02-17

ONTARIO SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

RE: IN THE MATTER OF MAPLE BANK GmbH

AND IN THE MATTER OF THE *WINDING-UP AND RESTRUCTURING ACT*, R.S.C. 1985, C.W-11, AS AMENDED

AND IN THE MATTER OF THE *BANK ACT*, S.C. 1991, C.46, AS AMENDED

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

And

MAPLE BANK GmbH

Respondent

BEFORE: Regional Senior Justice Morawetz

COUNSEL: J.J. Lucki for the Attorney General of Canada

A.L. MacFarlane, M. Karabus and T. Gertner for KPMG Inc., Proposed Liquidator

M. Konyukhova for the German Insolvency Administrator

E. Pleet for Paul Lishman

HEARD and ENDORSED: February 16, 2016

REASONS: February 17, 2016

ENDORSEMENT

[1] This Application was brought by the Attorney General of Canada ("Attorney General"), at the request of the Superintendent of Financial Institutions (the "Superintendent') under section 621 of the *Bank Act*, S.C. 1991, c.46, as amended (the "*Bank Act*") for:

(a) an order under section 10.1 of the *Winding-up and Restructuring Act*, R.S.C., 1985, c. W-11, as amended (the "*WURA*") for the winding-up of the business in Canada of the respondent Maple Bank, GmbH ("Maple Bank") and for the liquidation of its assets as defined in section 618 of the *Bank Act*;

(b) in connection with such winding-up order, an order under section 23 of the *WURA* appointing KPMG Inc. "KPMG" as liquidator of the estate and effects of Maple Bank or, alternatively, provisionally appointing KPMG as liquidator under section 28 of the WURA and provisionally granting KPMG all of the powers of a liquidator pending further order of the Court, and providing directions under section 28 of the WURA regarding the manner, form and length of notice to be given in respect of the proposed final appointment of KPMG as liquidator;

(c) an order restraining further proceedings, in any action, suit or proceeding against Maple Bank, pursuant to Section 17 (and Section 154) of the *WURA*;

(d) related relief in connection with the requested winding-up order and appointment of a liquidator, as set out in the draft order attached to the Notice of Application.

[2] The Application was not opposed.

A. Overview

[3] Maple Bank is a Canadian owned German bank, and is also an "authorized foreign bank" in Canada under section 2 and Part XII.1 of the *Bank Act*. As a German bank, Maple Bank is subject to regulation in Germany by the Federal Financial Supervisory Authority ("BaFin"). As an authorized foreign bank under the *Bank Act,* Maple Bank is regulated, with respect to its business in Canada, by the Office of the Superintendent of Financial Institutions ("OSFI").

[4] The recent emergence of significant German tax claims against Maple Bank (said to arise from alleged tax evasion in Germany) and resulting over indebtedness on the part of Maple Bank has led, to Maple Bank admitting its insolvency, to BaFin issuing a "Moratorium" order essentially requiring Maple Bank to cease business and then instituting insolvency proceedings in Germany appointing an insolvency administrator, to various financial institutions issuing default notices and terminating agreements in respect of their dealings with Maple Bank's business in Canada, and to the Superintendent issuing orders under section 619 of the *Bank Act* for taking control of the assets of Maple Bank in Canada and in respect of its business in Canada.

[5] The Superintendent has asked the Attorney General of Canada, pursuant section 621 of the *Bank Act*, to seek a winding-up order under section 10.1 of the *WURA* in respect of Maple Bank's business in Canada.

[6] Maple Bank's primary business activities in Canada are the securitization of mortgage receivables, fixed income trading, structured finance and securities finance. In addition, some wholesale deposits raised in Germany are booked on the Maple Bank's Canadian balance sheet.

[7] Maple Bank is not authorized to accept deposits from Canadian sources, but is not prohibited from accepting wholesale deposits from foreign institutional investors.

[8] At December 31, 2015, Maple Bank's Canadian Branch reported total assets of $5.3 billion and total liabilities of $4.8 billion, of which $563 million were wholesale deposits. At December 31, 2015, the Maple Bank had unencumbered assets on deposit with a Canadian financial institution totalling approximately $469 million.

[9] According to Mr. Paul Laverty, Director in the Deposit-Taking Group (Toronto) of OFSI, in September 2015, German authorities commenced an investigation of Maple Bank for alleged tax evasion. As a result, Maple Bank was placed on OSFI's Watch List in December 2015. Maple Bank tried to reach a settlement with German authorities with respect to its tax liabilities, but German authorities turned down a settlement offer from Maple Bank in relation to its taxes owing.

[10] On February 6, 2016, BaFin imposed a moratorium on Maple Bank's business activities, including its operations in Canada (the "Moratorium"), on the basis of over-indebtedness on Maple Bank's balance sheet taking into consideration German tax liabilities. The Moratorium placed a ban on disposals and payments for Maple Bank, ordered that Maple Bank be closed for business with customers, and prohibited the institution from receiving payments not intended for payment of debts towards it.

[11] Maple Bank's principal officer of the Canadian branch, Mr. Paul Lishman, advised OSFI that Maple Bank's operations were severely constrained by the Moratorium. In the days immediately following imposition of the Moratorium, numerous financial institutions such as Canadian Imperial Bank of Commerce, Royal Bank of Canada, Bank of Montreal, as well as CMHC, delivered default notices to Maple Bank and terminated their agreements with Maple Bank as a result of the Moratorium.

[12] During the period February 8 -9, 2016, OSFI advised Maple Bank of OSFI's intention to make, and then proceeded to make, variations to the Order to Commence and Carry on Business, under which Maple Bank had been operating in Canada, to add restrictions prohibiting Maple Bank, without the Superintendent's prior approval, from moving to a foreign jurisdiction any assets in Canada, and from transferring (except pursuant to existing employment contracts) any of its assets in Canada or in respect of its business in Canada if the value of the assets transferred exceeded $25,000.

[13] On February 9, 2016, Maple Bank advised BaFin of its impending insolvency and gave its consent to BaFin to initiate liquidation proceedings in respect of Maple Bank in Germany. OSFI learned of this development on February 9, 2016. BaFin subsequently commenced insolvency proceedings in Germany in respect of Maple Bank on February 10, 2016.

[14] In light of the actions taken by BaFin, and Maple Bank's admission of insolvency and consent to BaFin's insolvency proceedings, Mr. Laverty stated that the Superintendent decided grounds existed under subsections 619(2)(a) and (g) of the *Bank Act* for the Superintendent to take control of Maple Bank's assets in Canada and assets in respect of

its business in Canada, and that such step was necessary to protect the depositors and creditors of Maple Bank in relation to its business in Canada.

[15] On February 10, 2016, the Superintendent took control of those assets of Maple Bank for a period not exceeding sixteen days pursuant to 619(1)(a) of the *Bank Act,* on the basis of the grounds set out in subsections 619(2)(a) and (g) of the *Bank Act.*

[16] On February 11, 2016, BaFin informed OSFI that, in the German insolvency proceedings, the German court had appointed an insolvency administrator of Maple Bank, and had assigned to the insolvency administrator the right of disposal of current and future assets of Maple Bank.

[17] Having regard to all of the foregoing developments and circumstances, Mr. Laverty stated that the Superintendent determined it was reasonable to conclude that grounds existed for extending the Superintendent's control of the relevant assets of Maple Bank under subsection 619(1)(b) of the *Bank Act.* On February 12, 2016, the Superintendent provided notice to Maple Bank of his intention to continue the control of the assets beyond the initial sixteen day period pursuant to subsection 619(1)(b)(ii) of the *Bank Act*, based on the grounds set out in subsections 619(2)(a), (b) and (g). Those subsections provide:

> "*619(2) Control by the Superintendent under subsection (1) may be taken in respect of an authorized foreign bank where*
>
> *(a) the authorized foreign bank has failed to pay its liabilities or, in the opinion of the Superintendent, will not be able to pay its liabilities as they become due and payable;*
>
> *(b) the authorized foreign bank in respect of its business in Canada has failed to pay its liabilities or, in the opinion of the Superintendent, will not be able to pay its liabilities as they become due and payable;*
>
> ...
>
> *(g) in the opinion of the Superintendent, any other state of affairs exists in respect of the authorized foreign bank that may be materially prejudicial to the interests of the authorized foreign bank's depositors or creditors in respect of its business in Canada... Including where proceedings under a law relating to bankruptcy or insolvency have been commenced in Canada*

> *or elsewhere in respect of the authorized foreign bank or its holding body corporate."*

[18] Since issuance of that notice, Canadian counsel for the German insolvency administrator has communicated with KPMG (who the Superintendent appointed on February 12, 2016 as the Superintendent's representative to assist in taking control of the relevant assets of Maple Bank). Canadian counsel for the German insolvency administrator requested information regarding Maple Bank's business in Canada. KPMG responded with the information it had available.

[19] On February 15, 2016, Canadian counsel for the German insolvency administrator delivered written submissions to the Superintendent in respect of the Superintendent's Notice of February 12, 2016.

[20] Mr. Laverty stated that following careful consideration of those representations, the Superintendent decided later on February 15, 2016 to continue its control of assets pursuant to subsection 619(1)(b)(ii) of the *Bank Act* and to request, pursuant to section 621 of the *Bank Act*, that the Attorney General of Canada apply for a winding-up order in respect of Maple Bank's business in Canada under section 10.1 of the *WURA*.

B. Issues

[21] The principal issues on this Application are whether a winding-up order should be made under the *WURA* in respect of Maple Bank's business in Canada and whether a Liquidator should accordingly be appointed with respect to Maple Bank's assets as defined in section 618 of the *Bank Act*.

C. Analysis

[22] The *Bank Act* and the *WURA*, together, provide a complete and comprehensive code governing the establishment, operation, regulation, supervisory intervention, and insolvency and liquidation of authorized foreign banks.

[23] Part XII.1 of the *Bank Act* includes, in sections 618 through 627, various provisions regarding "Supervisory Intervention" in respect of authorized foreign banks by the Superintendent of Financial Institutions.

[24] Section 619 of the *Bank Act* gives the Superintendent broad discretionary authority to take control of the "assets" of an authorized foreign bank. Such "assets" are defined in section 618 of the *Bank Act* to include both any asset of the authorized foreign bank "in respect of its business in Canada", and "any other asset in Canada".

[25] The grounds for exercise of the Superintendent's discretionary authority under subsection 619(2) include grounds which are expressly based upon the Superintendent's "opinion" as to certain matters.

[26] Counsel to the Superintendent submits that it is apparent in the circumstances of this case that the Superintendent has ample basis to reasonably form the opinions referred to in section 619(2).

[27] Counsel further submits that consistent with the nature of the Superintendent's function and responsibilities, considerable deference should be accorded to the Superintendent's judgment and discretionary decisions. Further, Courts have been reluctant to question decisions made by the Superintendent or Minister exercising their supervisory powers to take control. In particular, where the governmental authority needed only to form a certain belief in order to intervene in a company's affairs, the Court was of the view that it should only consider if there was arbitrariness in the exercise of discretion and that there was sufficient evidence to form that belief. *(See Attorney General of Canada v. Cardinal Insurance Co.*, (1982) 39 O.R. (2d) 204 (H.C.) and *Canada (Attorney General) v. Security Home Mortgage Co.*, [1996] A.J. No. 1015 (Q.B.)

[28] Counsel further submits that under subsection 619(1) of the *Bank Act,* the opinions and grounds in subsection 619(2) authorized the Superintendent to either take control of the assets for a period not exceeding 16 days (subsection 619(1)(a)), or take or extend control of the assets for a longer period (unless the Minister of Finance advised that it was not in the public interest to do so). Accordingly, counsel submits that the Superintendent was

clearly authorized both to initially take control of the assets for a period not exceeding 16 days under subsection 619(1)(a), as the Superintendent did pursuant to notice dated February 10, 2016, and to then to continue control beyond 16 days under subsection 619(1)(b).

[29] In addition, section 621 of the *Bank Act* authorizes the Superintendent to apply for a winding-up order in respect of an authorized foreign bank under section 10.1 of the *WURA* where the Superintendent had control of the assets pursuant to subsection 619(1)(b).

[30] Having taken control of the assets of Maple Bank under subsection 619(1)(b), counsel submits the Superintendent was clearly authorized under 621 of the *Bank Act* to ask the Attorney General to apply for a winding-up order under section 10.1 of the *WURA*.

[31] Section 10.1 establishes two categories of grounds upon which the court may make a winding-up order in respect of an authorized foreign bank.

(a) First, section 10.1 authorizes a winding-up order if the Court is of the opinion that, for any reason, it is just and equitable.

(b) Second, section 10.1 authorizes a winding-up order whenever control of the assets of the authorized foreign bank is taken on a ground referred to in any of subsections 619(2)(a), (b), (d) or (f) of the *Bank Act*.

[32] In this case, based on the Superintendent's opinion set out in unchallenged affidavit of Mr. Laverty and Maple Bank's admission of insolvency, the grounds upon which the Superintendent took control of the assets under subsection 619(1)(b) of the Bank Act included the grounds in subsection 619(2)(a) and (g) of the Bank Act.

[33] In my view, based on the evidence, it is both just and equitable to make a winding-up order in these circumstances. Given the admitted insolvency of Maple Bank and the appointment of a German insolvency administrator over Maple Bank, a continuation of the operations of a Canadian branch is neither operationally nor legally viable. The only practicable alternative under the statutory regime applicable to authorized foreign banks is the making or a winding-up order and appointment of a liquidator.

[34] Once a winding-up order has been made, the *WURA* also permits the Court to appoint a liquidator, or provisionally appoint liquidator, of the estate and effects of a company, and confers various powers and duties on the liquidator.

[35] These circumstances, given the complexity of the business of Maple Bank in Canada, and given KPGM's involvement in assisting the Superintendent in taking control of assets, in my view it is appropriate to appoint KPMG as Liquidator and to authorize KPMG to exercise the powers set out in the draft order annexed to the Notice of Application. KPMG has given its consent to this appointment.

[36] Finally, I expect that there will be ongoing communication as between the German insolvency administrator and the Liquidator. It should be noted that this order is without prejudice to the right of any party to raise any issue relative to the application of this order or these proceedings to (i) assets of Maple Bank in respect of Maple Banks business in Canada which are not situate in Canada or (ii) assets of Maple Bank which are not in respect of Maple Banks business in Canada which are situated in Canada. With respect to (ii), any such dispute shall be subject to an order of this court.

Regional Senior Justice G.B. Morawetz

Date: February 17, 2016

This is Appendix "C" to the

First Report of the Liquidator

Dated March 2, 2016

Toronto Branch of Maple Bank Summary of U.S. Assets Amounts in $CAD (000s)	Type of transactions		Estimated Value ($CAD 000's)
Loans / Repos			
Global One Funding VI	Loans receivable	$	81,061
Retail Energy Holdings	Loans receivable		3,905
Genie Energy Holdings	Loans receivable		2,792
SG Americas Securities LLC	Repo transaction		20,497
State Street Bank and Trust	Stock loan arrangement		4,039
Derivatives Transactions			-
Citibank	Derivative clearing		4,419
Totals		**$**	**116,713**

This is Appendix "D" to the

First Report of the Liquidator

Dated March 2, 2016

Draft Proposal Terms

March 1, 2016

1. The Canadian Liquidator will not seek U.S. Recognition of the Canadian Winding-Up Proceeding. However, the German Insolvency Administrator (the "**GIA**") agrees that, solely with respect to the Subject Assets, the Canadian Liquidator will be granted full standing (and related rights) in Maple Bank GmbH's Chapter 15 Proceeding (the "**Existing Chapter 15 Proceeding**") as the Liquidator of the Canadian Branch of Maple Bank GmbH on any and all matters related to the Subject Assets. The Canadian Liquidator's standing provided for in this paragraph will need to be approved by the Bankruptcy Court in the Existing Chapter 15 Proceeding (the "**Stipulation**"). The Stipulation will provide for the full standing of the Canadian Liquidator solely with respect to the Subject Assets and also include relevant provisions regarding cooperation between the GIA and the Canadian Liquidator on any and all issues or matters relating to the Subject Assets as set out in paragraphs 2 - 4 below. (For the avoidance of doubt, the agreement in the Stipulation that the Canadian Liquidator will have standing solely with respect to the Subject Assets will not be deemed a waiver or otherwise affect any standing that the Canadian Liquidator may have or has absent the Stipulation relating to issues other than assets that are not Subject Assets, and all of the Parties' rights with respect thereto, including the GIA's right to contest such standing, are reserved.) The Canadian Liquidator reserves its right to seek U.S. Recognition of the Canadian Winding-Up Proceeding if the Stipulation is not approved in the Existing Chapter 15 Proceeding and the GIA reserves its right to oppose the U.S. Recognition of the Canadian Winding-Up Proceeding in such event. "**Subject Assets**" as defined herein are comprised of the following assets, which appear on the books of Maple Bank Toronto Branch, as of the date of this agreement, [Insert List] but without prejudice to the Canadian Liquidator confirming in writing within ten (10) days of the date hereof that to best of its knowledge, information and believe that above list of assets comprise the complete list of Subject Assets and without prejudice to the right of the Administrator to assert that any additional assets designated as Subject Assets are not, in fact, assets referable to the Branch. Assets of Maple Bank GmbH in the United States not Subject Assets (the "**Other Assets**") are excluded from the Stipulation and the Canadian Liquidator will not oppose U.S. Recognition of the German Insolvency Proceeding as a "foreign main proceeding" with respect to the Other Assets.

2. The Canadian liquidator and the GIA will work together to efficiently collect, administer, initiate any law suits and liquidate the Subject Assets. The Canadian Liquidator and the GIA will cooperatively work together with the aim of maximizing efficiency and to avoid duplication of any efforts (including those related to any retained professionals).

3. All proceeds collected from the Subject Assets will be placed into an account, which will be under the joint control of both the Canadian liquidator and the GIA (the "**Joint Control Account**"). Any disposition, distribution or directive of any kind related to the proceeds in the Joint Control Account must be agreed upon by both the Canadian Liquidator and the GIA. Absent such agreement, no action can be taken with respect to those proceeds until there is a final, non-appealable order from the US Court exercising jurisdiction over and resolving the dispute.

4. To the extent there are issues, conflicts, or disagreements between the Canadian Liquidator and GIA related to the Subject Assets that they cannot resolve through cooperation, the parties agree in the first instance to jointly request the US Court to determine how such issues shall be resolved.

5. The foregoing is without prejudice to, and the parties reserve their rights in respect of, the allocation of the Subject Assets and the proceeds thereof to the Canadian Proceeding or the German Proceeding.

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Court File No. CV-16-11290-00CL

IN THE MATTER OF MAPLE BANK GmbH
AND IN THE MATTER OF THE *WINDING-UP AND RESTRUCTURING ACT*, R.S.C. 1985, C.W-11, AS AMENDED
AND IN THE MATTER OF THE *BANK ACT*, S.C. 1991, C.46, AS AMENDED

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

FIRST REPORT OF THE LIQUIDATOR
Dated March 1, 2016

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IN THE MATTER OF MAPLE BANK GmbH
AND IN THE MATTER OF THE WINDING-UP AND RESTRUCTURING ACT, R.S.C. 1985, C.W-11, AS AMENDED
AND IN THE MATTER OF THE BANK ACT, S.C. 1991, C.46, AS AMENDED

Court File No. CV-16-11290-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(*COMMERCIAL LIST*)

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD
(RETURNABLE MARCH 3, 2016)

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