

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE REGIONAL)
SENIOR JUSTICE MORAWETZ)

WEDNESDAY, THE 8TH
DAY OF JUNE, 2016

IN THE MATTER OF MAPLE BANK GMBH

AND IN THE MATTER OF THE *BANK ACT*, S.C. 1991, c. B. 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

ORDER

THIS MOTION, made by KPMG Inc., in its capacity as the liquidator (the “**Liquidator**”) in respect of the winding up of the business in Canada (the “**Business**”) of Maple Bank GmbH (the “**Toronto Branch**”) and its related assets as defined under section 618 of the *Bank Act* (the “**Assets**”), for an Order substantially in the form included in the Motion Record of the Liquidator was heard this day at 330 University Avenue, Toronto, Ontario.


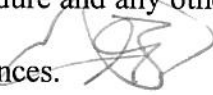
ON READING the Notice of Motion, the third report of the Liquidator dated June 2, 2016 (the "**Third Report**"), and on hearing the submissions of counsel for the Liquidator, the German Insolvency Administrator, Canada Mortgage and Housing Corporation and the other parties in attendance, no one appearing for the other parties served with the Motion Record of the Liquidator, although duly served as appears from the affidavit of service of Frances Dunne sworn June 2, 2016, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record filed by the Liquidator in support of this Motion be and it is hereby abridged such that the Motion is properly returnable today.

APPOINTMENT OF INDEPENDENT COST COUNSEL

2. **THIS COURT ORDERS** that Jonathan Wigley of the law firm Gardiner Roberts LLP be and he is hereby appointed as Independent Cost Counsel (the "**Independent Cost Counsel**") to review the fees and disbursements of the Liquidator and its counsel, Gowling WLG (Canada) LLP ("**Gowling**"), (collectively the "**Professional Fees**") and to make submissions to this Court with respect to the fairness and reasonableness of the Professional Fees and whether the Professional Fees ought to be assessed and allowed as filed upon the hearing of a motion to be brought by the Liquidator to have the Professional Fees assessed and allowed by this Court.

 3. ~~**THIS COURT ORDERS** that the Independent Cost Counsel shall, in considering whether the Professional Fees are fair and reasonable and whether they ought to be assessed and allowed as filed, consider the factors in Rule 57.01 of the Rules of Civil Procedure and any other factors that the Independent Cost Counsel considers necessary in the circumstances.~~ 

4. **THIS COURT ORDERS** that, on the motion to be brought for approval of the Professional Fees, the Liquidator and Gowling shall each file with the Court an affidavit

attesting as to the accuracy of the Exhibits attached thereto, which exhibits shall consist of: (i) a summary of the respective fees and disbursements for the Liquidator and Gowling for the applicable period; and, (ii) copies of the file or files on appropriate media in electronic form readable on computer by the current version of Acrobat Reader.

5. ~~**THIS COURT ORDERS** that all information, documents and materials as may be reasonably requested by the Independent Cost Counsel, in paper or electronic format, including, without limitation, time records and dockets, in order for the Independent Cost Counsel to fulfill his duties hereunder, shall be made available to the Independent Cost Counsel.~~

6. **THIS COURT ORDERS** that the Liquidator and Gowling shall, at the request of the Independent Cost Counsel, meet with the Independent Cost Counsel as necessary and answer any inquiries the Independent Cost Counsel may reasonably pose in order to fulfill his duties hereunder.

7. **THIS COURT ORDERS** that any expenditure or liability which shall be properly made or incurred by the Independent Cost Counsel, including the fees and disbursements of the Independent Cost Counsel incurred at the rates and charges agreed to between the Independent Cost Counsel and the Liquidator, shall be allowed to him in passing his accounts and shall be forthwith paid by the Liquidator out of the funds of the estate of the Toronto Branch.

8. **THIS COURT ORDERS** that the Independent Cost Counsel shall pass his accounts from time to time and, for this purpose, the accounts of the Independent Cost Counsel are referred to the Judge of the Commercial List of the Superior Court of Justice seized of this proceeding.

APPOINTMENT OF THE CLAIMS OFFICER

9. **THIS COURT ORDERS** that Kevin McElcheran of Kevin McElcheran Commercial Dispute Resolution, shall be appointed as Claims Officer (as that term is defined in the Claims

Procedure Order), and shall carry out his duties and powers, as Claims Officer, in accordance with the provisions of the Claims Procedure Order and specifically in accordance with paragraphs 13 to 15 of that Order.

10. **THIS COURT ORDERS** that the Claims Officer shall be at liberty to apply to this Court for advice and directions from time to time, as may be required, in the discretion of the Claims Officer.

PROTECTIONS AND LIMITATION ON LIABILITY

11. **THIS COURT ORDERS** that that the fees of Independent Cost Counsel and the Claims Officer shall be included as costs incurred in the winding up of the Toronto Branch and shall be afforded the priority as provided under section 94 of the *Winding-Up and Restructuring Act*.

12. **THIS COURT ORDERS** that Independent Cost Counsel and the Claims Officer shall incur no liability, or obligation as a result of their respective appointments, or in respect of the carrying out of the provisions of this Order, or the Claims Procedure Order, as applicable, save and except for any gross negligence or willful misconduct on their respective parts. Independent Cost Counsel and the Claims Officer shall also be afforded all the rights and protections afforded to an officer of this Court and nothing included in this Order, or the Claims Procedure Order, as applicable, shall derogate from the above-noted protections afforded to Independent Cost Counsel and the Claims Officer.

R&D STATEMENT OF THE LIQUIDATOR

13. **THIS COURT ORDERS AND DECLARES** that the Interim Statement of Receipts and Disbursements of the Liquidator for the period February 16, 2016 to May 13, 2016 be and is hereby approved.

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

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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

BETWEEN: **ATTORNEY GENERAL OF CANADA**, Applicant – and – **MAPLE BANK GmbH**, Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

ORDER
(JUNE 8, 2016)

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Lawyers for KPMG Inc., in its capacity as Liquidator of the
business in Canada of Maple Bank GmbH and its assets.