

Kaupthing's Winding-up Proceedings

The Minister of Finance and Economic Affairs was recently quoted in the media as saying that the lifetime of the collapsed banks' estates was not "infinite" and that if compositions were not completed soon there was no alternative but to place them in bankruptcy proceedings. In support thereof reference was made to the United States.

In light of this comment it is appropriate to note that there is a fundamental difference between the winding-up proceedings of financial undertakings in Iceland and in the United States. There are no restrictions in the United States on the sale of assets and their selling price is paid almost simultaneously to creditors. Nor are there any restrictions on the flow of capital to and from the United States. This naturally facilitates a more rapid winding-up of financial undertakings, although it could be maintained that winding-up of such undertakings generally takes longer than 3-5 years, which is a short period in the case of financial undertakings.

Kaupthing's Winding-up Committee has from the outset placed great emphasis on concluding the winding-up proceedings in as short a time as possible. However, it is not in the power of the Winding-up Committee to conclude the winding-up proceedings unilaterally under the existing legislation.

Minister's involvement assured

Financial undertakings in winding-up proceedings in Iceland are not authorised to make distributions to general creditors during the winding-up following statutory amendments which were passed in the spring of 2011. In addition, distributions to general creditors, whether in connection with a composition or in the wake of bankruptcy proceedings, are subject to an exemption from the capital controls granted by the Central Bank of Iceland following consultation with the Minister of Finance and Economic Affairs. Amendments were made to the Foreign Exchange Act in 2013 which ensure the involvement of the Minister in this process. The Minister, in turn, is obliged to give an account of the economic impact of such an exemption to the parliamentary Committee on Economic and Trade.

It is therefore obvious that the position taken by the Central Bank of Iceland and the Minister of Finance and Economic Affairs will be a major determinant of how and when Kaupthing's winding-up proceedings will be concluded.

In accordance with the above, Kaupthing's Winding-up Committee requested an exemption from the capital controls in October 2012 in order to pave the way for the submission of a composition to creditors and thereby concluding Kaupthing's winding-up. The Central Bank of Iceland has not responded to this request; however,

an exemption from capital controls is a prerequisite for the submission of a composition to creditors that would conclude the winding-up proceedings.

Demonstrated willingness to co-operate

“Words are always the first step”, according to an Icelandic proverb. It is important that those parties who are familiar with the matter and have a role in resolving it can freely communicate and discuss the important and complex issues involved here. Otherwise the issues cannot be resolved and it is difficult to see that it can serve the interests of the parties not to talk to one another.

Kaupthing's Winding-up Committee, which is a neutral party appointed by the District Court with the sole task of supervising Kaupthing's winding-up and ensuring non-discrimination among creditors, expresses its complete willingness to co-operate in finding solutions to the issues involved which may arise concerning the settlement of Kaupthing and other aspects connected to it, with the objective of concluding the winding-up proceedings in a fruitful manner and in as short a time as possible. Kaupthing's Winding-up Committee is and has always been ready to undertake such discussions with the authorities concerned.

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