

# Meeting minutes: Creditors' Meeting held 20 October 2009

registration no. of Kaupthing Bank hf. 560882-0419;

meeting jointly held by

i) *Kaupthing Bank's Resolution Committee*, according to Article 103, Paragraph 3 of Act no. 161/2002 on Financial Undertakings, cf. Act no. 44/2009 and Temporary Provisions to Act no. 44/2009;

ii) and *Kaupthing Bank's Moratorium Supervisor* cf. Chapter 2 of Act no. 21/1991 on Bankruptcy etc., cf. Article 2 and 4 of Act no. 129/2008, still in effect according to the provisions of Article 10, Paragraph 2, of Act no. 44/2009 (both Acts amending Act no. 161/2002 on Financial Undertakings).

The meeting was held at Hilton Reykjavik Nordica, Suðurlandsbraut 2 in Reykjavík, on October 20, 2009, and commenced at 10 am.

Registered at the meeting were 104 representatives of creditors.

Members of the panel at the meeting were:

- Tómas Jónsson, Attorney to the Supreme Court, Chairman of the meeting.
- Ólafur Gardarsson, the Moratorium Supervisor and member of Kaupthing's Bank Winding-up Committee.
- Steinar Thór Gudgeirsson, Chairman of the Resolution Committee.
- Knútur Thórhallsson, Deputy Chairman of the Resolution Committee (during items 1, 2)
- Theodór Sigurbergsson, member of the Resolution Committee.
- Eva Sóley Guðbjörnsdóttir, Managing Director of Finance, Kaupthing Bank.
- Kolbeinn Árnason, Managing Director of Legal, Kaupthing Bank.
- Dieter Turowski, representative of Kaupthing's exclusive financial advisor Morgan Stanley.
- Karsten Hofacker, representative of Kaupthing's exclusive financial advisor Morgan Stanley.
- Halldór Bjarkar Lúdvígsson, Managing Director of Asset Management – Nordic Portfolio, Kaupthing Bank (during items 1-2, 6).
- Dominic McCahill, representative of Weil Gotshal & Manges, legal advisors to Kaupthing (during items 1-2, 4-6).
- Finnur Sveinbjörnsson, CEO of Arion Bank (during items 3-6).
- Björk Thórarinsdóttir, Managing Director of Credit, Arion Bank (during item 4-6).

## 1. Introduction

Ólafur Gardarsson welcomed the creditors.

The main purpose of the meeting is to provide creditors with an update on key events and activities since the last meeting in February, to provide creditors with the latest financial information on the Bank, to provide creditors with an overview of the processes and a summary of the Capitalization Agreement on Arion Bank, to outline the next steps and restructuring options of the Bank and to discuss the possible extension of the Bank's moratorium on debt payments. According to Icelandic law, no binding decisions can be made at the meeting.

Tómas Jónsson, Attorney to the Supreme Court of Iceland, was asked to serve as chairman of the meeting. He assumed the duties of the chairman and confirmed that the meeting was called as prescribed by law. Given that the majority of those present did not speak Icelandic it was decided that the meeting would be held in English.

## 2. Key Events and Progress during the Moratorium

### 2.A. Key Milestones

Steinar Thór Gudgeirsson presented key milestones. Steinar discussed the general approach of the Resolution Committee, which ultimate task and duty is to maximize the value of the Bank's assets and pass on the value to its creditors. Steinar presented a summary of the Bank's balance sheet and the status of maximizing the value of the assets. Steinar furthermore discussed the status of the Bank's subsidiaries and branches and the organizational structure of the Bank.

## **2.B. Loan Restructuring / Europe and Nordic**

Halldór Bjarkar Lúdvígsson presented an overview of the loan restructuring in the Europe portfolio (fair value as at 30 June 2009 approx. 140 bn ISK) and Nordic portfolio (fair value as at 30 June 2009 approx. 170 bn ISK). The mandate of the asset management division can be broken into five steps, which were discussed: *stabilization, consolidation, full overview*, which leads to *management* of the assets and ends with *value optimisation and exit strategy*. Halldór presented an overview of loans to customers by portfolio and sector, as well as a past cash-flow analysis. According to his presentation, a considerable part of the Nordic and Europe portfolios has undergone major restructuring and Halldór discussed the Bank's restructuring principles and core values. In all major cases the Bank has relied on valuation work or input by third party advisors. Halldór furthermore discussed actions taken on the portfolios and the progress with the restructuring work, as well as giving an overview of full repayments and exits.

## **2.C. Financial Information Update**

Eva Sóley Gudbjörnsdóttir presented an update on the financial information of the Bank, including information on the Bank's balance sheet, cash in hand, development of loans to customers at fair value and information on derivatives.

## **3. Capitalisation Agreement on Arion Bank**

### **3.A. Overview of Agreements with the Government**

Kolbeinn Árnason presented an overview of the agreements with the Government relating to Arion Bank and discussed the two options available to the Bank. The Resolution Committee has the sole power to decide whether to choose option 1 (Kaupthing to acquire Arion Bank) or option 2 (Government retains Arion Bank). Kolbeinn presented a summary of the key terms of both options. According to option 1, Kaupthing would receive an 87% ownership following a capitalization contribution of 65% (ISK Cash and Icelandic related assets), approx. equalling 66 bn ISK (ownership might possibly be increased to 90% under option 1). According to option 2, Kaupthing would have the right to repurchase 90% of the equity from the Government during the exercise period of one month following the publication of the annual report for the years 2010-2014. Kolbeinn also discussed Kaupthing's consultation with creditors and creditors' due diligence. For further details, reference is made to Kolbeinn's presentation and further publicly available information.

### **3.B. Presentation of Arion Bank**

Finnur Sveinbjörnsson presented an overview of Arion Bank. Finnur presented the balance sheet and income statement of Arion Bank, as well as a cash flow analysis. He also discussed Arion Bank's five year business plan and presented an analysis of the loan portfolio. Finnur furthermore discussed the recovery process within Arion Bank, including a breakdown of recovery cases by sectors. Finnur discussed the current liquidity position of Arion Bank and the FX imbalance. Finally Finnur discussed the upside potential of Arion Bank and the importance of ownership for the next few months.

### **3.C. Due diligence and Summary / Review of Capitalisation Options**

Karsten Hofacker presented a summary of due diligence on Arion Bank carried out by Kaupthing and its advisors. Due diligence is ongoing, as audit of financials is not yet completed. Due diligence to date has focused on balance sheet analysis / net asset valuation of Arion Bank, detailed analysis of the business plan, liquidity risk and profit improvement measures. Karsten discussed a summary of the valuation and a returns profile with regards to the two options.

Dieter Turowski presented an overview of the pros and cons with regards to the two options.

### **3.D. Creditor Consultation Process**

Max Ziff, representative of Houlihan Lokey, discussed the due diligence on Arion Bank assets and the choice between the two options previously presented (option 1 and option 2).

Chip Fisher from Bingham McCutchen, representing a group of bond holders, and a member of the Informal Creditors' Committee (ICC) and the ICC Sub-Committee, discussed Kaupthing Bank's creditor consultation process. Chip expressed his view that he was happy with the work of the Resolution Committee with respect to guarding the interests of creditors.

A lunch break was made at 12.45 pm.

*During the lunch break creditors were invited to submit written questions for the following Q&A session.*

The meeting commenced again at 1.20 pm.

### **4. Morgan Stanley overview**

John Hepburn, from Morgan Stanley, discussed the role of Morgan Stanley with regards to the work of the Resolution Committee.

### **5. Next Steps and Restructuring Options**

#### **5.A. Legal Overview**

Ólafur Gardarsson discussed the Bank's moratorium and gave a legal overview of the moratorium process. The first moratorium was granted from 24 November 2008 until 13 February 2009. According to the Icelandic legislation, the moratorium can be granted for up to 24 months. An extension was granted from 13 February 2009 until 13 November 2009 and another extension of 9 months will be requested on 13 November 2009. The moratorium can be concluded in the following ways, which were discussed by Olafur: (1) Winding-up process pursuant to Act no. 44/2009; (2) Composition of creditors (Scheme of arrangement); (3) Insolvent liquidation.

#### **5.B. Overall Restructuring**

Dieter Turowski discussed the work streams of the restructuring process of Kaupthing Bank.

Karsten Hofacker discussed the target structure for the Bank, the current legal paths for restructuring as well as the liability restructuring.

#### **5.C. Moratorium Extension**

Ólafur Gardarsson announced his proposal that an application be made to extend the moratorium by nine months at the next hearing of the Reykjavik District Court which is to be held on 13 November 2009. The arguments presented included the fact that a Chapter 15 protection in the USA might be terminated should the moratorium not be extended. Ólafur then sought the views of the creditors on this proposal, in accordance with the Act on Bankruptcy etc.

Arnar Thór Jónsson from the law firm Réttur, acting on behalf of more than twenty bank creditors, presented concerns and objections to the capitalisation agreement. A formal letter to the Resolution Committee was also received by the chairman from the law firm, detailing the concerns and objections further.

No objections were made to the extension of the moratorium.

## 6. Q&A

Questions submitted during the lunch break were addressed by panellists (one question was also addressed by Gisli Óttarsson, Managing Director of Risk Management at Arion Bank). Any remaining questions will be dealt with in due course and published on the website. Unanswered questions directed to Arion Bank regarding SPM will be dealt with by Arion Bank.

Following this Dominic McCahill discussed the ruling of the High Court of England today, relating to Kaupthing's application for judicial review of the legitimacy of the decision taken by the UK Treasury to transfer assets and deposits from Kaupthing Edge accounts at Kaupthing Singer and Friedlander in October 2008. The Court held that the UK Treasury had acted within its statutory powers and there had been no error in its decision-making process.

The chairman of the meeting presented the main points from the minutes to the meeting and invited those present to comment on them. No comments were made.

Steinar Thór Gudgeirsson adjourned the meeting.

*The meeting was adjourned at 3 pm.*

*Minutes recorded by Kaupthing Bank's Moratorium Supervisor, cf. Act no. 21/1991 on Bankruptcy etc.*