

KAUPTHING BANK HF. CREDITORS' REPORT

5 FEBRUARY 2009



## Disclaimer

This report was prepared for the creditors of Kaupthing Bank hf. ("the Bank") for information purposes only. It should give creditors an overview of the background, the current situation and the potential steps going forward. In preparing this report, the Bank has not taken account of the interest of any particular creditor or group of creditors.

Where information in this report is based on information from third parties the Bank believes such sources to be reliable. The Bank however accepts no responsibility for the accuracy of its sources. The Bank is under no obligation to make amendments or changes to this publication if errors are found or opinions or information change.

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- (a) Resolution of issues regarding the quantum of claims
- (b) Additional claims being made against the Bank
- (c) The realisation method(s) used over time
- (d) The impact of set off and netting including in connection with derivative contracts
- (e) Movements in currency exchange rates and interest rates
- (f) Prevailing market conditions when assets are sold

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## Letter from Olafur Gardarsson, Moratorium Supervisor

5 February 2009

*Dear Creditors,*

*As the Moratorium Supervisor for Kaupthing Bank hf., I, Olafur Gardarsson, Supreme Court Attorney, have convened this creditors' meeting in accordance with article 13 of the Icelandic Act on Bankruptcy, etc., No. 21/1991.*

*On 24 November 2008, the District Court of Reykjavik granted Kaupthing Bank a moratorium on claims and a license for financial reorganization pursuant to the same act. The moratorium was granted until Friday 13 February 2009 at which time a further hearing will take place.*

*The enclosed report has been prepared to give the creditors a comprehensive information package to learn about the background, the current situation and the potential steps going forward in the moratorium process of Kaupthing Bank hf.*

*Please note that you are not obligated to attend the creditors' meeting and you will not compromise your claim or any entitlement to dividend should you not attend. All informative material from the meeting will be posted on Kaupthing Bank's website, [www.kaupthing.com](http://www.kaupthing.com), following the meeting.*

*If you have any questions or queries concerning this report or the enclosures, please email [creditorcontact@kaupthing.com](mailto:creditorcontact@kaupthing.com).*

*Yours faithfully,  
Olafur Gardarsson, Attorney to the Supreme Court of Iceland,  
Moratorium Supervisor of Kaupthing Bank hf.*

## Abbreviations

The following abbreviations are used in this report:

FME	The Icelandic Financial Supervisory Authority
ICC	Informal Creditors' Committee
The Bank	Kaupthing Bank hf.
New Kaupthing	Nyi Kaupthing Banki hf.
KSF	Kaupthing Singer and Friedlander Limited
FIH	FIH Erhvervsbank A/S
KT Lux	Kaupthing Bank Luxembourg S.A.
The Disbursement Act	Act No. 125/2008 on the Authority for Treasury Disbursements due to Unusual Financial Market Circumstances etc.
The Transfer Decision	Decision of the FME on the disposal of assets and liabilities of Kaupthing Bank hf. to New Kaupthing Bank hf. dated 21 October 2008
The Bankruptcy Act	Icelandic Act on Bankruptcy, etc., No. 21/1991

# 1. Background

## 1.1 *Broad context -The world wide credit crunch and the global financial crisis*

The world's banking system has taken centre stage in the current world financial crisis. From around mid 2007, but particularly in 2008, the market experienced acute adverse conditions characterized by the severe disruption to credit markets and turbulence in the banking and mortgage sectors. These conditions created an extremely difficult environment for banks in general and came to a head in the second half of 2008 and particularly in September and October. The severity of the situation was underlined by: i) the collapse of banking and financial sector shares in and around September 2008, ii) the collapse of Lehman Brothers, an international investment bank, on 15 September 2008 and iii) the huge and unprecedented "bail out" of American banks announced by the US Treasury Secretary on 20 September 2008, followed by similar rescue measures undertaken by most western countries.

In short, the global financial system was experiencing unprecedented difficulties and, consequently, credit markets (so essential to the smooth operation of the world financial system and to the wider economy) were seizing up, leading to what is popularly called the credit crunch. This, in turn, was having serious implications for the global economy and governments across the world as evidenced by dramatic falls in share prices and extreme volatility in the currency and commodity markets. Rating agencies were forced to reassess the credit ratings of financial sector institutions across the world.

## 1.2 *The Icelandic banking crisis*

During the past decade, the Icelandic economy has undergone dramatic change. The development of an international financial sector, along with the growth of high tech industries, aluminium production and tourism, brought unprecedented wealth to a population of roughly 300,000 that had previously sustained itself mainly through a centuries-old fishing industry. In the course of that development, Iceland's three largest banks, Kaupthing Bank ("the Bank"), Glitnir banki hf. ("Glitnir"), and Landsbanki Islands hf. ("Landsbanki"), grew to levels almost ten times that of the country's gross domestic product.

On 29 September 2008, the Icelandic authorities announced their plans to acquire a 75% stake in Iceland's third largest bank, Glitnir, which had been encountering severe short-term funding problems. This government intervention seems to have triggered the opposite reaction to that of similar actions in other countries. Instead of restoring confidence, the reverse happened. The markets had no confidence in the approach taken by the Icelandic government and a crisis of confidence hit the Icelandic banking sector, resulting in outflows of deposits. It became clear that if it had not been for state intervention, Glitnir may have collapsed and there was speculation over the ability of the Central Bank of Iceland to provide the necessary support to the wider Icelandic banking system during the crisis. This precipitated a severe drop in the value of the Icelandic krona and caused rating agencies to downgrade their credit ratings for the Icelandic state and the Icelandic banks. Foreign investors tried to divest themselves of Icelandic assets and British depositors began to withdraw their deposits from Icesave, Landsbanki's internet banking product. In addition, there was an increase in the outflow of deposits from Kaupthing Edge UK, the internet banking product of the Bank's UK subsidiary Kaupthing Singer & Friedlander ("KSF").

On Monday 6 October 2008, trading in most Icelandic banking shares (including the Bank's) was suspended in Iceland and emergency legislation, Act No. 125/2008 on the Authority for Treasury Disbursements due to Unusual Financial Market Circumstances etc ("The Disbursement Act") was enacted allowing the Icelandic Financial Supervisory Authority ("FME") to take over the running of the Icelandic banks.

### **1.3 KSF placed into administration**

After British depositors withdrew their deposits from Icesave, Landsbanki's internet banking product in the United Kingdom, the Icelandic authorities assumed control of Landsbanki. Immediately afterwards, there was a significant increase in the withdrawal of deposits from Kaupthing Edge in the United Kingdom, despite the fact that Kaupthing Edge deposits were guaranteed by the British compensation scheme and Icesave deposits by the Icelandic scheme. After the British Chancellor of the Exchequer stated that Iceland did not intend to honour its obligations to British depositors, the State Treasury, in the UK transferred Kaupthing Edge deposits from the Bank's subsidiary KSF to ING Direct, a wholly owned subsidiary of ING Group. KSF was subsequently placed into administration upon the application of the UK regulator, the Financial Services Authority ("FSA") in the UK. The Bank's creditors treated the situation as an event of default under various loan agreements and bond programs.

### **1.4 Overview of the Bank**

The Bank was the largest Icelandic bank and is headquartered in Reykjavik. It is registered in Iceland and operated through branches and subsidiaries in all of the Nordic countries, the United Kingdom, the United States, Dubai, Qatar, Luxembourg, Belgium, Switzerland, Germany, Austria, Hong Kong, Japan and the Isle of Man. The Bank offered integrated financial services to companies, institutional investors and individuals. These services included corporate and retail banking, investment banking, capital markets services, treasury services, asset management and wealth management for private banking clients. The Bank's shares were listed on the stock exchanges in Iceland and Stockholm and the Bank was the 7<sup>th</sup> largest bank in the Nordic region in terms of market capitalization for a period of time. The majority of the Bank's operating income was generated in Iceland, Scandinavia and the United Kingdom. Since its inception in 1982, Kaupthing expanded operations through organic growth and a number of strategic acquisitions, including FIH Erhvervsbank ("FIH") in 2004 and Singer & Friedlander (now KSF) in 2005. At the end of H1 2008, the Bank's group employed over 3,300 people and its total assets were close to EUR 53bn.

## **2. Timeline of events**

### ***29 September – 9 October 2008***

- The Icelandic authorities announce their plans to acquire a 75% stake in Glitnir
- The rating agencies downgrade Icelandic sovereign, Kaupthing, Glitnir and Landsbanki debt
- Trading in shares in the Bank suspended
- Icelandic parliament passes the Disbursement Act
- Central Bank of Iceland extends EUR 500m loan to the Bank
- FSA in the UK succeeds in having administrators appointed over KSF
- The Bank's board of directors requests that the FME take control of the Bank pursuant to the Disbursement Act

### ***9 October – 22 October 2008***

- FME appoints a Resolution Committee which immediately assumes control of the Bank
- Nyi Kaupthing Banki hf. ("New Kaupthing") is created
- Certain domestic assets and domestic deposits transferred to New Kaupthing in accordance with the transfer decision ("The Transfer Decision")

### ***22 October to date***

- The Resolution Committee works towards maximising the value of the Bank's assets
- The Resolution Committee holds meetings and conference calls with ICC, informal committee of the largest creditors of the Bank
- Moratorium granted and Olafur Gardarsson appointed as the Moratorium Supervisor
- Filing of Voluntary Petition under Chapter 15 of the US Bankruptcy Code
- Moratorium is recognized as a foreign main proceeding under Chapter 15 of the US Bankruptcy Code
- Entered into discussions with a prospective financial advisor to advise and assist on restructuring the Bank

### **3. The Resolution Committee**

#### **3.1 *The adoption of the Disbursement Act***

As discussed in the previous chapter, Iceland is currently in the midst of a banking crisis of extraordinary proportions. The three main banks, which all collapsed in less than a week, accounted for about 85 percent of the domestic banking system. On 9 October 2008, in accordance with the provisions of Iceland's new Disbursement Act, which had been passed into law because of the unusual and dire circumstances in the financial market, the board of directors resigned and the FME appointed a five-member Resolution Committee, which immediately assumed the powers, and wields all the authority, of the Bank's board of directors. These actions were taken to guarantee the appropriate level of activity by the Bank in Iceland and to help stabilize the Icelandic financial system. The members of the Resolution Committee were selected by the FME from a broad cross-section of Icelandic business, legal and accounting fields. Today, the Bank's Resolution Committee consists of the following five members:

- Steinar Thor Gudgeirsson, Attorney to the Supreme Court of Iceland – Chairman
- Johannes Runar Johannsson, Attorney to the Supreme Court of Iceland
- Knutur Thorhallsson, Certified Public Accountant
- Gudni Adalsteinsson, Economist
- Theodor Sigurbergsson, Certified Public Accountant

Initially, the Resolution Committee operated in consultation and co-operation with the FME. However, after a moratorium status was granted to the Bank, on 24 November 2008, the Resolution Committee became virtually independent from any governmental body and currently directs the Bank in co-operation with Olafur Gardarsson, the Moratorium Supervisor. As an entity in Iceland with a banking licence, the Bank is still subject to supervision by the FME.

#### **3.2 *Initial objectives of the Resolution Committee***

At its inception, the Resolution Committee had the objectives laid out below. Some of these objectives were set with reference to the Disbursement Act. However, it should be noted that the Resolution Committee played no part in determining the creation of New Kaupthing.

*Maintaining the Bank's commercial banking operations in Iceland* in line with the Disbursement Act. The Resolution Committee worked hard to ensure that the daily operations of the Bank's branches were not significantly affected.

This objective was reached when New Kaupthing was formally established on 18 October 2008 and took over the Bank's commercial banking operation in Iceland on 22 October 2008.

*Protecting depositors both domestically & overseas* in accordance with the Disbursement Act. The Resolution Committee co-operated abroad with governments, financial authorities and central banks. This objective was achieved domestically, where New Kaupthing is now responsible for domestic deposits and, in terms of foreign depositors, has either been completed or final arrangements are being negotiated. According to the Disbursement Act, deposits received by the Bank or its branches are priority claims against the Bank. The Bank is thus under an obligation to repay deposits prior to regular claims. Icelandic law does not affect the repayment of deposits received by subsidiaries or their branches. Possible repayment of those deposits is the concern of the boards of directors or administrators of the relevant subsidiaries.

*Ensuring expertise and knowledge by hiring key employees.*

This objective was achieved through the appointment of several qualified full-time and part-time employees.

*Ensuring cash flow in all currencies both domestically and to/from foreign jurisdictions.* The difficulties that were experienced with payments to and from Iceland were primarily due to the actions of foreign governments and foreign currency restrictions imposed by the Central Bank of Iceland. Efficient movement of capital was vital for the Icelandic economy. These difficulties were resolved in part with the Transfer Decision.

*Preserving the interests of creditors.* The Resolution Committee has focused on protecting the assets of the Bank and preserving value for creditors. Creditors have been informed of developments via the Bank's website, creditor contact address and press releases.

This objective is an ongoing task and will not be fully attained until a permanent solution for the assets, satisfactory to the creditors of the Bank has been identified and executed.

### **3.3 Main tasks of the Resolution Committee today**

The Resolution Committee is responsible for the Bank's daily operations and holds organized meetings on daily basis. When formal meetings are held, the presence of all members of the committee is required. Currently the work of the Resolution Committee is subject to the supervision of the Moratorium Supervisor. The most significant projects of the Resolution Committee are as follows:

*Protection of creditors' interests.* The main task of the Resolution Committee is to protect the interests of the Bank's creditors. From discussions with various creditors early in the process, the Resolution Committee learned that creditors were concerned about the immediate sale of assets. The Resolution Committee shares the creditors' desire to maximize the value of the Bank's estate and recognizes that this may take a significant period of time to achieve. When the Resolution Committee evaluates any of the assets of the Bank, a preliminary valuation of the asset is performed and the scope of associated servicing and monitoring work is evaluated. Assets are valued in respect of two valuation scenarios: Firstly, current market value and secondly the cost and amount of support needed and potential recovery or redemption value if sold at a later stage.

To date, no assets have or will be sold in "fire sales". According to the strategy, assets are only sold if they require support beyond the means of the Bank or if a satisfactory bid price can be achieved for them after taking into account the future funding support needed to maintain these assets. Other assets should be preserved and protected until market conditions improve with temporary support from the Bank where and when deemed necessary. This should ensure that the maximum value for each asset can be passed on to creditors of the Bank at a later stage.

The Resolution Committee realizes that the outcome of this exercise may well have an impact on the overall recovery of Iceland and assist in regaining foreign investors' confidence and trust. Solutions which endeavour to find the best possible closure for all relevant parties in a realistic time frame and distribute the resulting value to creditors will be discussed further in chapter 7. *Potential Restructuring Options.*

*Communication with creditors.* The Bank endeavours to maintain good and effective relations with its creditors. In October 2008, Deloitte UK was engaged by the Resolution Committee to facilitate and advise on creditor relations. Early in January 2009, Deloitte's appointment was terminated and the Resolution Committee assumed responsibility for all communication and consultation with creditors. To facilitate communication with creditors all over the world, the Bank's website, [www.kaupthing.com](http://www.kaupthing.com) has been developed into an information centre for creditors. The website is updated frequently and invites

creditors to ask questions via a specific email address, [creditorcontact@kaupthing.com](mailto:creditorcontact@kaupthing.com). Every effort is made to respond to questions or comments in a timely manner or when relevant information becomes available.

Shortly after Deloitte's appointment, the ICC was formed. Although this committee does not have formal powers or duties under Icelandic law, it is consultative in nature. Indeed the Resolution Committee has engaged in discussions with the ICC with respect to, among other things, the protection, maximization and realization of the Bank's assets, and restructuring proposals aimed at making distributions to creditors of the Bank. The Resolution Committee meets with the ICC and holds conference calls with the committee when needed.

*Finalizing the Bank's balance sheet.* The aggregate balance sheet has been divided between the Bank and New Kaupthing as at 22 October 2008. Separate balance sheets for the Bank and New Kaupthing are currently being prepared. It is expected that this work will be concluded once Deloitte and Oliver Wyman have finalized their valuation of the assets which were transferred to New Kaupthing.

*Internal audit.* The Resolution Committee has engaged PricewaterhouseCoopers ("PwC"), Iceland, to conduct thorough internal auditing work and investigation as requested by the FME. PwC has primarily investigated all larger transactions which occurred since 1 September 2008. A report has been prepared and submitted to the FME.

*Closing derivative contracts and evaluating netting effects.* The Resolution Committee is working towards closing all derivative agreements and is evaluating any netting effects.

*Prevent the provisional attachment of assets and facilitate the retrieval of the Bank's assets.* The Resolution Committee is committed to protect the interests of creditors by preventing the provisional attachment or freezing orders on assets. In the European Economic Area the Bank seeks recognition of the moratorium on a case-by-case basis on grounds of the EU Winding-Up Directive No. 2001/24/EC. The Bank has also been granted an injunctive relief and the moratorium recognized as a foreign main proceeding under Chapter 15 of the United States Bankruptcy Code. This has provided the Bank with protection for its assets in the United States. The Resolution Committee has successfully opposed freezing orders in the United States and Luxemburg. Further freezing orders are being opposed in the Netherlands and Luxemburg.

The Resolution Committee has also facilitated the release of assets through negotiations with local authorities or private parties in several countries. This was necessary as authorities in these jurisdictions had made the release of assets conditional on the payment of deposits.

#### *Stay on litigation against the Bank*

The Resolution Committee has successfully opposed litigation against the Bank in the United Kingdom and is currently opposing litigation in Austria.

#### *Collecting claims and enforcing securities.*

The Bank continues to enforce rights against its debtors in case of non-performance of obligations. That includes enforcing pledges and other securities, taking control of relevant entities etc.

#### *Review unusual transactions*

The Resolution Committee continues to review any unusual or irregular transactions which are brought to its attention and concern the Bank. Any transactions which merit further reviewing will be given appropriate attention and handled accordingly.

*Finding solutions for the Bank's main branches and subsidiaries.* The Resolution Committee has conducted a substantial amount of work abroad to: i) secure the future business of entities, ii) restructure and sell off entities, iii) close down entities. Furthermore, members of the Resolution Committee or representatives have been nominated by the committee to replace former representatives of the Bank in subsidiaries which can still be effectively controlled by the Bank.

*Policy formulation regarding the Bank.* The Resolution Committee is focused on finding the best possible closure for all relevant parties in a realistic time frame and distributing the resulting value to creditors. From discussions with the creditor community the Resolution Committee learned that creditors wanted to be able, along with the Resolution Committee, to engage with governmental authorities and agencies. The Resolution Committee is working on this matter in co-operation with the government, the Central Bank of Iceland and the FME.

The next two subchapters below discuss the current status of each of the Bank's subsidiaries and branches.

### **3.4 Current status of the Bank's subsidiaries**

Foreign subsidiaries of the Bank and their branches are directly responsible for the deposits made with them. These entities are not governed by Icelandic law. The rights of depositors regarding deposits made with a subsidiary of the Bank or branch of a subsidiary will be determined by the law and regulations applicable to that entity.

*FIH* is a subsidiary wholly owned by the Bank. It is a Danish full service corporate & investment bank specializing in lending to Danish companies. The entity was acquired by the Bank in 2004. The entity is operational and is no longer in the process of being sold. The board of directors of FIH has adopted a plan to adjust and focus FIH's future activities to meet the current market situation of the financial sector. As part of this adjustment, FIH has closed down the equities trading, research and wealth management department. These business areas were not expected to contribute positively to FIH's earnings on a short-term or a medium-term basis. In the future, FIH will focus on the core business areas: loans to corporate customers supplemented by two advisory units: Corporate Finance (FIH Partners) and Financial Solutions (advisory related to strategic risk management and liability management). The Bank remains the sole shareholder of FIH.

*Kaupthing Bank Sweden* is a subsidiary wholly owned by the Bank. Following the opening of a Stockholm branch in September 2000, the Bank acquired both the Swedish securities firm Aragon and JP Nordiska Bank in 2002. Kaupthing Bank Sweden offered integrated financial services to institutional investors, companies and individuals. These services included corporate banking, investment banking, capital markets services, asset management and comprehensive wealth management for private banking clients.

The entity is operational with support from the Swedish government. Kaupthing Pension Consulting and Kaupthing Finans AB have been sold as these business lines did not constitute a core business for Kaupthing Sweden and the latter would have required continued financial support. The Resolution Committee has had ongoing discussions with Ålandsbanken Abp to acquire all of the operations of Kaupthing Sweden apart from the corporate loan portfolio which will be transferred to Iceland. This portfolio accounts for the majority of the Swedish assets of the Bank but the private banking and asset management assets would go to Ålandsbanken. The parties have already signed a memorandum of understanding and the Resolution Committee expects to sign a Sale-Purchase Agreement in early February and close the transaction soon after. Deposits held by Kaupthing Sweden have been repaid to depositors. The repayment was funded with a loan from the Swedish Central Bank.

*KSF* is a wholly owned subsidiary of the Bank, acquired in 2005. It was an established bank in the UK offering integrated financial services to companies, institutional investors and individuals. These services included corporate banking, investment banking, treasury services, and comprehensive wealth management services for private banking clients.

On 8 October 2008, *KSF* was taken into administration and Maggie Mills, Tom Burton, Alan Bloom and Patrick Brazzill of Ernst & Young, UK, were appointed as administrators. *Kaupthing EDGE UK* was transferred by the UK Treasury to ING Group and later the same day, the entity was put into administration on the application of the FSA

*Kaupthing Singer & Friedlander (Isle of Man) Limited* is a wholly owned subsidiary of the Bank. The entity carried out traditional banking activities as well as asset management activities for a broad spectrum of corporate and private customers along.

The entity is in provisional liquidation and Michael Simpson of PricewaterhouseCoopers and Peter Spratt of PricewaterhouseCoopers (London) were appointed as joint provisional liquidators of the entity.

*Kaupthing Bank Luxembourg* ("*KT Lux*") is a wholly owned subsidiary of the Bank and *Kaupthing Bank Belgium* is a branch of *KT Lux*. The main services offered at *KT Lux* were private banking and wealth management. The services included asset management, securities brokerage, the issuing of credit cards and the establishment and management of holding companies in addition to providing general deposit accounts and loans.

On 9 October 2008, *KT Lux*'s board of directors applied for a suspension of payments status with the Luxembourg District Court sitting in commercial matters. *KT Lux* was granted this status and its management was monitored by administrators. The Court appointed PriceWaterhouseCoopers Luxembourg, represented by Mrs Emmanuelle Caruel-Henniaux and Mr Franz Fayot, to act as *KT Lux*'s administrators. This decision also applies to the Belgian branch of *KT Lux*.

The government of Luxembourg and a consortium of investors led by a Libyan sovereign wealth fund have entered into a memorandum of understanding aiming to continue the activities of *KT Lux*. This memorandum of understanding assumes that the depositors, whose cash deposits have been frozen since 9 October 2008, will recover their entire savings at the end of the transaction.

*Kaupthing Bank Luxembourg, Geneva Branch* is a branch of *Kaupthing Bank Luxembourg*. The main services offered at *KT Lux, Geneva Branch* were private banking and asset management for private and institutional clients, as well as advisory services in alternative investments for qualified investors. The entity is in an insolvency process and all assets have been frozen.

*Kaupthing Bank US* is a wholly owned subsidiary of the Bank established in 2000. The entity focused on securities brokerage and investment banking. The entity is in the process of closing and winding down.

The *Bank's subsidiary in Japan* was solvent and has been closed down. The *Bank's subsidiary in Hong Kong* is in insolvent liquidation.

### **3.5 Current status of the Bank's branches**

According to the Disbursement Act, deposits made by private individuals and companies are priority claims. Whether the legislation applies to depositors depends on which entity in the *Kaupthing Group* they were deposited with. The legislation only applies to Icelandic financial undertakings. The

Resolution Committee of the Bank anticipates that the Bank will be able to pay back its deposits which have been defined as priority claims, made at the parent company and in branches belonging to the parent company. This process can take some time, due to various complications within each entity, and the continued patience of customers is very much appreciated.

*Kaupthing EDGE Austria* is a branch of the Bank. It was established in 2008 and offered competitive solutions for depositors. Depositors have now been paid back. The entity is in the process of being closed and wound down.

*Kaupthing Bank Finland* was a branch of the Bank. The branch offered a wide range of investment banking services to companies, institutions and wealthy private individuals. Following the appointment of the Resolution Committee the Finnish FSA took charge of the branch on 9 October 2008. Since then, the Resolution Committee has been working closely with the FSA to close down the branch. The deposits held by the branch have been repaid to depositors. The repayment was funded by a loan from three commercial banks in Finland which was guaranteed in part by the Finnish state. The credit portfolio and certain other assets of Kaupthing Bank Finland were pledged against this loan. The asset management operation has been sold as well as a part of the loan portfolio. The remainder of the loan portfolio has been transferred to the Bank in Iceland. The branch was closed down at the end of January.

*Kaupthing EDGE Germany* is a branch of the Bank. It was established in 2008 and offered competitive solutions for depositors. The operation has been seized by the German government, and its assets have been frozen by the German Financial Regulatory Authority, Bafin. The Resolution Committee has been committed to pay back all priority claims as quickly as possible and therefore its put a great importance in settling the claims of the 30.000 depositors in Germany and has put forward several proposals to achieve this.

As the Bank has now secured sufficient funds it is now possible to pay the large majority of the German depositors back. However, 55 m Euro (out of the total of 330m Euro) have been seized by DZ Bank and therefore it is not achievable to pay deposits back in full at this stage. The Bank wants to start the payments as quickly as possible and is liaising with Bafin on the right process to achieve this. A press release will made once the plan is ready.

*Kaupthing Bank Norway* is a branch of the Bank. Kaupthing entered the market in Norway in 2003, when the Bank acquired Tyren Holding AS, an asset management company. The branch provided comprehensive financial services including asset management, in a separate entity, and private banking to wealthy private individuals, investment banking and capital markets services to companies, institutional investors and private clients. In addition, it had started to provide their clients with banking services, adding retail banking and corporate banking to its range of services.

On 11 October 2008, the Norwegian government placed a freezing order on the assets of the entity and related companies and placed the operation of the branch under administration. Deposits held by the branch have been repaid to depositors by the Norwegian Banks' Guarantee Fund. The administrators in Norway and the Resolution Committee have agreed on a solution to release the assets under administration in Norway. As a result, the majority of the corporate loan portfolio will be transferred to Iceland.

*Kaupthing Bank Dubai and Qatar* were two branches of the Bank, one in the Dubai International Financial Centre and one in the Qatar Financial Centre, both established in 2007. The branches focussed on providing investment banking services in the region. The ongoing operations of the branches have been sold to the Bank's previous management in Dubai and Qatar. The proceeds from the sale are held by the Bank.

### 3.6 The future vision of the Resolution Committee

As previously discussed, one of the Resolution Committee's main aims is to safeguard the value of the Bank's assets until they are transferred to the creditors in whatever form. In order to achieve this goal, the Resolution Committee must possess the requisite expertise to manage the assets and to provide the necessary services. Therefore the Resolution Committee has hired experts in various fields to manage the Bank's assets, which include the loan portfolio, bonds, shares, and foreign subsidiaries and branches.

The analysis of the tasks of the Resolution Committee, outlined in subchapter 3.3, was the first step towards making the work of the Resolution Committee and the Bank more efficient. The Resolution Committee's next step in this process was to hire experts with the requisite knowledge of the tasks of the Resolution Committee and asset management.

The bank operates, today, as an asset management company where long-term goals are the key factor. It is clear from the discussions the Resolution Committee has had with several creditors that the main focus for creditors is for them to recover as much of their claims as possible, but the time frame for getting reimbursed is more flexible.

As stated above, the Resolution Committee has hired skilled employees specialized in the fields in which the Bank most needs them. Four divisions have been created which report to the Resolution Committee and each division has a managing director responsible for the operation of that division.



#### **Asset management**

The role of the division is to safeguard and increase the value of the Bank's assets. This should be done by: devising a cash flow plan for the Bank's loan portfolio which is updated regularly; by assessing the capital requirements of the asset portfolio and the Bank's capacity to meet this; by being responsible for every loan; by conducting regular follow-up checks, and regularly updating all the Bank's assets.

The objective of the division is to maintain and support the Bank's asset portfolio, increase the value of the asset portfolio and prevent a "fire sale" of assets. The asset portfolio should be self-financing and instalments on the loans sufficient to support other assets.

#### **Legal counsel**

The legal counsel division provides legal advice wherever needed on asset management and Resolution Committee projects. The division also supervises the hiring of outside legal experts, both in Iceland and abroad, and the work they provide.

The objective of legal services is to provide the best possible legal advice on asset management and Resolution Committee projects. The division is expected to have the requisite expertise on legal aspects of all agreements and related documents. The division also has an overview of all legal agreements and the services provided and costs incurred by external legal advice.

### ***Finance***

The role of the finance division is to supervise the Bank's finances. The division should also liaise with departments such as back office on work which is outsourced.

Among the objective of the division is to prepare a definitive balance sheet for the Bank and to complete the preparation of the financial results for the third and fourth quarters of 2008. It also needs to complete the reconciliation of the accounts of the old bank. In addition it needs to ensure that all procedures are in order, e.g. that payments are recorded in the accounts etc., and generally supervise the Bank's finances.

### ***Creditor & Portfolio management***

The division has two main roles: Firstly, it is responsible for relations with creditors. Secondly it manages loans and provides general support to the asset management division and therefore works with all the Bank's loans.

## **4. Asset sales**

### **4.1 General approach and rationale**

As discussed in the previous chapter, the Resolution Committee is committed to protecting the asset base of the Bank. The committee fully realizes that current market conditions are unlikely to produce acceptable values for many of its assets. Therefore, the Resolution Committee is determined to support the assets of the Bank where practicable to reach maximum value and does not entertain any "fire sale" bids.

To minor extend, however, the Resolution Committee has disposed of overseas assets. These disposals have been driven by a mix of two things: i) local regulatory authority "freeze of assets" or agreements to prevent the freezing of certain assets; and ii) acceptable bid prices taking into account the future funding support needed for maintaining these assets.

The Resolution Committee has taken measures to ensure that certain foreign assets would not be sold at "fire sale" prices by reaching agreements with three countries in which the Bank had entities in insolvency proceedings – i.e. the Swedish government, the Finnish government and the Norwegian government. The relevant agreements provide that the governments will not sell assets at the current distressed levels but will instead aim to sell assets in such a way that the maximum value possible is obtained for each asset. This arrangement is likely to ensure that the best possible prices will be obtained for the assets and makes it more likely that proceeds will flow back to the Bank and as a result increase proceeds paid to creditors.

### **4.2 Assets sold to date**

The following assets have been sold from the parent company on behalf of the Resolution Committee.

*Kaupthing Bank Dubai and Qatar* was primarily an asset management operation based on human capital and commission income. It became evident that it would be expensive to close down the entity and it was therefore more economic to sell the branch at a fair price to its employees. The proceeds from the sale are held by the Bank.

*A loan to a UK real estate holding company* was sold a few weeks after the collapse of the Bank. This asset was easily marketable and was sold at a fair price. The Bank needed cash to support other assets and since the bid price was considered fair, it was accepted.

*A 20% stake in the asset management firm Drake Management* was also sold a few weeks after the fall of the Bank. This asset was easily marketable and was sold at a fair price. The Bank needed cash to support other assets and since the bid price was considered fair, it was accepted.

The following assets have been sold from the branches of the Bank.

*A loan to a Norwegian equipment manufacturer* was sold to repay the Norwegian Banks' Guarantee Fund which paid Kaupthing Norway depositors.

*Kaupthing Bank Asset Management* operations in Finland and certain loans from the loan book in Finland that received satisfactory bids were sold to pay back part of a loan from the Finnish government.

The following assets have been sold from the subsidiaries of the Bank as far as the Resolution Committee is aware.

*Kaupthing Pension Consulting* and *Kaupthing Finans AB* have been sold as these business lines did not constitute a core business for Kaupthing Bank Sweden and the latter would have required continued financial support. The proceeds were used to pay back part of a loan from the Swedish Central Bank which was granted to Kaupthing Sweden on 8 October.

In addition, the Resolution Committee has had ongoing discussions with Ålandsbanken Abp to acquire all of the operations of Kaupthing Sweden apart from the corporate loan portfolio which will be transferred to Iceland. This portfolio constitutes the majority of the Swedish assets but the private banking and asset management assets would go to Ålandsbanken. The parties have already signed a memorandum of understanding and the Resolution Committee expects to sign a Sale-Purchase Agreement in early February and close the transaction soon after.

The aggregate book value of the assets sold by the Resolution Committee from the parent company and its branches in voluntary sales is less than EUR 65m but in addition, some forced assets sales have taken place to pay back deposits, which have been defined as priority claims.

## 5. Financial analysis

### 5.1 *The Bank/New Kaupthing split*

On 6 October 2008 the Disbursement Act was passed by the Icelandic parliament, providing the FME with the authority and power to intervene in the operations of financial undertakings in order to respond to the unusual circumstances in the Icelandic financial sector. On 9 October 2008, in accordance with the same act, the FME appointed the Resolution Committee to take control of the Bank. On 21 October 2008, the FME issued the Transfer Decision, by which it determined to transfer certain specific assets of the Bank and certain specific obligations of the Bank, to New Kaupthing, which is owned by the Icelandic government. According to the FME, these actions were taken to secure the continuation of vitally important domestic banking and payment services.

Under the Transfer Decision, New Kaupthing takes over all of the Bank's deposit liabilities in Iceland, and also the bulk of the Bank's assets that relate to its Icelandic operations, such as loans and other claims. In turn the FME has decided that New Kaupthing shall issue a bond to the Bank, equivalent to the surplus of assets over liabilities at fair value. Other assets and liabilities will remain in the Bank, which will in turn remain under the control of the Resolution Committee.

PwC has established a preliminary statement of net assets for New Kaupthing at the date of its establishment and conducted a valuation of the assets that remained in the Bank. The FME has also appointed Deloitte to complete an independent net asset valuation for New Kaupthing. The FME has stated that the valuation of the net assets will take longer than initially envisaged, and a decision on the completion date will be taken no later than 15 February 2009. Oliver Wyman has been appointed to co-ordinate the valuation process. Any currently released information on balance sheet numbers for the Bank and New Kaupthing should be regarded as preliminary only and may well change based on this process.

Financial instruments will be defined to transfer payment from New Kaupthing to the Bank to compensate fair value for the net transfer of assets. The FME recognizes that this is a complex exercise requiring dialogue with the creditors of the Bank and that different solutions may be found for each bank.

Kaarlo Jännäri, former Director General of the Finnish FSA, who has extensive experience in a collapsed financial sector environment, has been engaged by the government to assess the regulatory framework and supervisory practices and to propose necessary changes to strengthen safeguards against potential new crises.

The current estimated balance sheet of New Kaupthing and its development, based on the above, are presented in the table below.

All amounts in ISKbn

	Book value of assets transferred to New Kaupthing 22.10.2008	Preliminary Fair Value Adjustments	New Kaupthing before capital injection and bond issue	Bond Issue and Capital injection (outstanding)	New Kaupthing Opening balance sheet (estimate) 22.10.2008
<b>Assets</b>					
Cash and balances with central banks .....	2		2	75	77
Loans to credit institutions .....	47	(20)	27		27
Loans to customers .....	1.410		1.410		1.410
Impairment on loans to customers .....	(19)	(935)	(954)		(954)
Bonds and debt instruments .....	44		44		44
Shares and instruments with variable income .....	22		22		22
Investments in associates .....	9		9		9
Investments in subsidiaries .....	12		12		12
Property and equipment .....	9		9		9
Other assets .....	44		44		44
<b>Total Assets</b>	<b>1.580</b>	<b>(955)</b>	<b>625</b>	<b>75</b>	<b>700</b>
<b>Liabilities</b>					
Due to credit institutions and central banks .....	78		78		78
Deposits .....	339		339		339
Borrowings .....					
Other liabilities .....	34		34		34
Bond issued to old Bank .....				174	174
<b>Total Liabilities</b>	<b>451</b>		<b>451</b>	<b>174</b>	<b>625</b>
<b>Equity</b>					
Shareholders' equity .....				75	75
Other equity .....	1.129	(955)	174	(174)	
<b>Total Equity</b>	<b>1.129</b>	<b>(955)</b>	<b>174</b>	<b>(99)</b>	<b>75</b>
<b>Total Liabilities and Equity</b>	<b>1.580</b>	<b>(955)</b>	<b>625</b>	<b>75</b>	<b>700</b>
Exchange rate (EUR/ISK)	150,245	150,245	150,245	150,245	150,245

## 5.2 The Bank's balance sheet

The financial information in the next three subchapters is based on 15 November 2008 which is the cut-off date the Moratorium Supervisor is obligated to use in his presentation of the Bank's financial information according to the Icelandic Act on Bankruptcy, etc., No. 21/1991 ("Bankruptcy Act").

Readers' attention is drawn to the terms of the disclaimer at the beginning and the end of this report.

Below is the balance sheet of the Bank at book value as at 15 November 2008. The Bank's balance sheet as at 30 June 2008 is included to facilitate comparison with the latest reviewed accounts. Further discussions on the notes can be found in the next subchapter, 5.2 *Further breakdown of the Bank's balance sheet*.

All amounts in ISKm

		15.11.2008	30.06.2008
<b>Assets</b>	<b>Notes</b>		
Cash and balances with central banks .....		4.012	11.591
Loans to credit institutions .....	1	235.300	901.441
Loans to customers .....	2	962.788	1.665.889
Bond from New Kaupthing .....	3	173.761	
Bonds and debt instruments .....	4	299.562	241.872
Shares and instruments with variable income .....	5	184.998	199.841
Derivatives .....	6	347.162	135.766
Derivatives used for hedging .....			20.432
Investments in associates .....	7	69.611	106.580
Investments in subsidiaries .....	8	533.428	385.529
Intangible assets .....			50.001
Property and equipment .....		628	9.120
Tax assets .....	9	2.519	1.453
Other assets .....	10	148.611	48.531
<b>Total Assets</b>		<u>2.962.380</u>	<u>3.778.046</u>
<b>Liabilities</b>			
Due to credit institutions and central banks .....		9.001	143.787
Deposits .....	11	96.104	496.086
Financial liabilities measured at fair value .....	12	148.384	111.701
Borrowings .....	13	2.867.206	2.284.341
Subordinated loans .....	14	456.707	292.925
Tax liabilities .....		150	55
Other liabilities .....	15	191.996	24.945
<b>Total Liabilities</b>		<u>3.769.548</u>	<u>3.353.840</u>
<b>Equity</b>			
Share capital .....		7.270	7.187
Share premium .....		136.591	148.362
Other reserves .....		132.241	61.196
Retained earnings .....		(1.083.270)	207.461
<b>Total Equity</b>		<u>(807.168)</u>	<u>424.206</u>
<b>Total Liabilities and Equity</b>		<u>2.962.380</u>	<u>3.778.046</u>
Exchange rate (EUR/ISK)		171,077	124,390

## 5.3 Further breakdown of the Bank's balance sheet

All amounts in ISKm

### Note 1: Loans to credit institutions

Loans to credit institutions specified by types of loans:	Pledged	Unpledged	Total
Money market loans .....		14.239	14.239
Bank accounts .....		167.998	167.998
Bank accounts subsidiaries .....	27.184		27.184
Net position against subsidiaries .....		25.879	25.879
<b>Loans to credit institutions</b> .....	<b>27.184</b>	<b>208.116</b>	<b>235.300</b>

### Note 2: Loans to customers

a. Loans to customers specified by types of loans:	Pledged	Unpledged	Total
Subordinated loans .....		4.333	4.333
Other loans .....		958.455	958.455
<b>Loans to customers</b> .....		<b>962.788</b>	<b>962.788</b>
b. Loans to customers specified by sectors:			
Individuals .....			24.272
Holding companies .....			345.938
Industry .....			186.758
Real estate .....			157.809
Service .....			136.186
Trade .....			111.826
<b>Loans to customers</b> .....			<b>962.788</b>
c. Loans to customers specified by geographical region:			
UK .....			661.067
Scandinavia .....			122.681
Luxembourg .....			83.415
Other counties .....			95.624
<b>Loans to customers</b> .....			<b>962.788</b>
d. Loans to customers - breakdown by currency			
GBP .....			524.719
USD .....			224.330
EUR .....			144.418
Other .....			69.321
<b>Loans to customers</b> .....			<b>962.788</b>
e. 10 largest loans to customers - sector and country			
UK / Service .....			85.251
UK / Trade .....			72.834
UK / Industry .....			60.351
UK / Trade .....			59.486
UK / Individual .....			50.488
Luxembourg / Holding .....			43.200
UK / Real estate .....			42.065
UK / Holding .....			41.200
UK / Holding .....			31.421
UK / Holding .....			26.663
<b>10 largest loans to customers</b> .....			<b>512.960</b>

### Note 3: Bond from New Kaupthing

Bond from New Kaupthing .....	173.761
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Under the Transfer Decision, New Kaupthing takes over all of the Bank's deposit liabilities in Iceland, and also the bulk of the Bank's assets that relate to its Icelandic operations, such as loans and other claims. In turn New Kaupthing shall issue a bond/security to the Bank, equivalent to the surplus of assets over liabilities at fair value. PwC has established a preliminary statement of net assets for New Kaupthing at the date of its establishment, 22 October 2008. This preliminary statement is used as a basis for the current valuation of the bond. The value in terms of the bond/security have not been finalised and the ultimate value of this instrument is presently uncertain and its value is likely to be materially different from the value recorded here. Further information can be found in chapter 5.1 *The Bank/New Kaupthing split*.

### Note 4: Bond and debt instruments

Bond and debt instruments are specified as follows:

	Pledged	Unpledged	Total
<i>Bonds and debt instruments:</i>			
Listed .....	234.113	11.267	245.380
Unlisted .....	21.042	33.140	54.182
<b>Bonds and debt instruments</b> .....	<b>255.155</b>	<b>44.407</b>	<b>299.562</b>
<i>10 largest positions:</i>			
1 Central Bank of Iceland .....	17.717		17.717
2 Housing Financing Fund .....	16.182		16.182
3 Housing Financing Fund .....	15.391		15.391
4 Housing Financing Fund .....	11.632		11.632
5 Credit Suisse International .....		8.039	8.039
6 Glitnir Banki .....	4.959		4.959
7 Housing Financing Fund .....	4.926		4.926
8 Hypo Public Finance Bank .....	4.732		4.732
9 Ssif Nevada Lp .....	4.394		4.394
10 Capitalia Societa Per Azioni .....	4.316		4.316
<b>Bonds and debt instruments</b> .....	<b>84.249</b>	<b>8.039</b>	<b>92.288</b>

### Note 5: Shares and instruments with variable income

Shares and instruments with variable income are specified as follows:

	Pledged	Unpledged	Total
<i>Shares and instruments with variable income:</i>			
Listed .....	138.235	2.410	140.644
Unlisted .....	2.449	41.905	44.354
<b>Shares and instruments with variable income:</b> .....	<b>140.683</b>	<b>44.315</b>	<b>184.998</b>
<i>10 largest positions:</i>			
1 Trade / UK .....	45.451		45.451
2 Financial / Scandinavia .....	30.233	28	30.260
3 Industry / UK .....	27.208		27.208
4 Industry / UK .....	21.247		21.247
5 Service / Scandinavia .....	8.416		8.416
6 Trade / UK .....		7.509	7.509
7 Trade / UK .....		6.854	6.854
8 Real estate / Other .....		5.632	5.632
9 Industry / Iceland .....	5.439		5.439
10 Holding / Other .....		4.943	4.943
<b>Shares and instruments with variable income:</b> .....	<b>137.994</b>	<b>24.966</b>	<b>162.960</b>

### Note 6: Derivatives

Derivatives are specified as follows:

Asset swaps .....	48.236
FX contracts .....	88.701
Interest rate swap .....	204.813
Options .....	5.242
Other derivatives .....	170
<b>Derivatives:</b> .....	<b>347.162</b>

Derivatives specified by financial and nonfinancial counterparties:

Financial .....	295.846
Non financial .....	51.316
<b>Derivatives:</b> .....	<b>347.162</b>

## Note 7: Investment in associated companies

Instruments in associated companies are specified as follows:

	Pledged	Unpledged	Total
<i>Associated companies:</i>			
Listed .....	62.299		62.299
Unlisted .....		7.312	7.312
<b>Associated companies:</b> .....	<b>62.299</b>	<b>7.312</b>	<b>69.611</b>
<i>Positions:</i>			
Storebrand .....	62.299		62.299
Finoble .....		645	645
KP II BV .....		6.667	6.667
<b>Associated companies:</b> .....	<b>62.299</b>	<b>7.312</b>	<b>69.611</b>

## Note 8: Investment in subsidiaries

Instruments in subsidiaries are specified as follows:

	Pledged	Unpledged	Total
<i>Subsidiaries:</i>			
Listed .....		10.665	10.665
Unlisted .....	260.110	262.653	522.763
<b>Subsidiaries:</b> .....	<b>260.110</b>	<b>273.318</b>	<b>533.428</b>
<i>Positions:</i>			
FIH .....	238.605		238.605
Kaupthing Bank Luxembourg .....		70.641	70.641
Kaupthing Singer & Friedlander .....		91.345	91.345
Norvestia .....		10.665	10.665
Kaupthing Sverige .....	21.505		21.505
Singer & Friedlander Isle of Man Holdings Ltd. ....		14.425	14.425
Kirna and subsidiaries .....		70.101	70.101
New Bond Street Diversified Fund .....		8.320	8.320
Kaupthing ASA .....		3.276	3.276
Fron Insurance .....		1.736	1.736
Other .....		2.809	2.809
<b>Subsidiaries:</b> .....	<b>260.110</b>	<b>273.318</b>	<b>533.428</b>

## Note 9: Tax assets

Tax assets are specified as follows:

Prepaid income tax for 2007 .....	2.519
<b>Tax assets</b> .....	<b>2.519</b>

## Note 10: Other assets

Other assets are specified as follows:

Unsettled derivatives .....	118.194
Accounts receivables .....	24.935
Accrued income .....	2.518
Prepaid expenses .....	1.267
Non-current assets and disposal groups classified as held for sale .....	78
Sundry assets .....	1.618
<b>Other assets</b> .....	<b>148.611</b>

Unsettled securities trading are specified as follows:

Against financial counterparty .....	93.233
Against non financial counterparty .....	24.961
<b>Unsettled securities trading</b> .....	<b>118.194</b>

## Note 11: Deposits

Deposits are specified as follows:

Deposits in Germany branch .....	48.415
Deposits linked to loans .....	47.689
<b>Deposits</b> .....	<b>96.104</b>

## Note 12: Financial liabilities at fair value

Financial liabilities are specified as follows:

Asset swaps .....	12.348
FX contracts .....	13.812
Interest rate swap .....	59.875
Options .....	4.434
CDO .....	51.397
Other derivatives .....	6.518
<b>Financial liabilities</b> .....	<b>148.384</b>

Financial liabilities specified by financial and nonfinancial counterparties:

Financial .....	114.844
Non financial .....	33.540
<b>Financial liabilities</b> .....	<b>148.384</b>

## Note 13: Borrowings

Borrowings are specified as follows:

Bonds issued .....	1.882.779
Bills issued .....	67.849
Money market loans .....	348.549
Other loans .....	568.029
<b>Borrowings</b> .....	<b>2.867.206</b>

Bonds issued are specified as follows:

144A .....	503.971
EMTN .....	1.252.103
Samurai .....	103.285
Domestic .....	17.945
Covered Bonds .....	5.475
<b>Bonds issued</b> .....	<b>1.882.779</b>

Money Market loans are specified as follows:

Central Bank of Iceland - Repo loans .....	222.352
Other banks .....	126.197
<b>Money Market loans</b> .....	<b>348.549</b>

Other loans:

Other banks .....	568.029
<b>Other loans:</b> .....	<b>568.029</b>

## Note 14: Subordinated loans

Subordinated loans are specified as follows:

EMTN Tier 1 .....	101.290
Stand alone Tier 1 .....	95.552
Domestic Tier 1 .....	4.618
144A Lower Tier 2 .....	173.163
EMTN Lower Tier 2 .....	82.084
<b>Subordinated loans</b> .....	<b>456.707</b>

## Note 15: Other liabilities

Other liabilities are specified as follows:

Unsettled derivatives .....	102.194
Liabilities to Norway and Finland regarding deposits .....	85.025
Accounts payable other .....	4.387
Accrued income / prepaid income .....	390
<b>Other liabilities</b> .....	<b>191.996</b>

Unsettled derivatives are specified as follows:

Against financial counterparty .....	77.233
Against non financial counterparty .....	24.961
<b>Unsettled securities trading</b> .....	<b>102.194</b>

## 5.4 Estimated valuation of the Bank's assets

According to article 14 of the Bankruptcy Act, the Moratorium Supervisor is obliged to present his estimate of the Bank's assets and liabilities as at the reference date, 15 November 2008, at the creditors' meeting. The valuation presented below was carried out by the Resolution Committee and the relevant specialists within the Bank who are familiar with the assets. The valuation has been prepared as of the reference date on the basis of an arm's length transaction between a willing seller and a willing buyer of the relevant asset.

This valuation does not take into account the impact of set-off and netting. The preliminary estimated impact of set off and netting ranges from ISK 200-400bn., and this will clearly make a material difference to overall creditor recoveries. The Moratorium Supervisor and the Resolution Committee would emphasise that this is a historic valuation only and one which does not take into account the Bank's current strategy, to safeguard and increase the value of the Bank's assets, and does not reflect any added value which may be achieved in a restructuring process.

Readers' attention is drawn to the terms of the disclaimer at the beginning and the end of this report.

<i>All amounts in mISK</i>	Balance sheet 15.11.2008 book value	Pledged positions	Priority claims	Balance sheet 15.11.2008 after subtracting	Estimated valuation 15.11.2008
<b>Assets</b>	(1)	(2)	(3)	(2) and (3)	
Cash and balances with central banks .....	4.012			4.012	4.012
Loans to credit institutions .....	235.300	(27.184)		208.116	100.000
Loans to customers .....	962.788			962.788	250.000
Bond from New Kaupthing .....	173.761			173.761	170.000
Bonds and debt instruments .....	299.562	(255.155)		44.407	10.000
Shares and instruments with variable income .....	184.998	(140.683)		44.315	10.000
Derivatives .....	347.162			347.162	90.000
Investments in associates .....	69.611	(62.299)		7.312	0
Investments in subsidiaries .....	533.428	(260.110)		273.318	20.000
Property and equipment .....	628			628	0
Tax assets .....	2.519			2.519	0
Other assets .....	148.611			148.611	100.000
Priority Claims .....			(135.898)	(135.898)	(135.898)
<b>Total Assets</b>	<u>2.962.380</u>	<u>(745.432)</u>	<u>(135.898)</u>	<u>2.081.051</u>	<u>618.114</u>
Exchange rate (EUR/ISK)	171,077	171,077	171,077	171,077	171,077
<b>Liabilities</b>					
<i>Senior Liabilities</i>					
Due to credit institutions and central banks .....	9.001			9.001	
Deposits .....	96.104		(48.415)	47.689	
Financial liabilities measured at fair value .....	148.384			148.384	
Borrowings .....	2.867.206	(745.432)		2.121.775	
Tax liabilities .....	150			150	
Other liabilities .....	191.996		(87.483)	104.513	
<b>Total Senior Liabilities</b>	<u>3.312.841</u>	<u>(745.432)</u>	<u>(135.898)</u>	<u>2.431.512</u>	
<b>Subordinated loans</b> .....	<u>456.707</u>			<u>456.707</u>	
<b>Equity</b>					
Share capital .....	7.270			7.270	
Share premium .....	136.591			136.591	
Other reserves .....	132.241			132.241	
Retained earnings .....	(1.083.270)			(1.083.270)	
<b>Total Equity</b>	<u>(807.168)</u>			<u>(807.168)</u>	
<b>Total Liabilities and Equity</b>	<u>2.962.380</u>	<u>(745.432)</u>	<u>(135.898)</u>	<u>2.081.051</u>	
Exchange rate (EUR/ISK)	171,077	171,077	171,077	171,077	

## **6. The moratorium**

### **6.1 Introduction**

On 21 November 2008 the Resolution Committee filed an application with the District Court of Reykjavik, pursuant to Bankruptcy Act to stay creditor actions in order to facilitate the financial reorganization of the Bank. The Bank was granted a moratorium on debt payments and a licence for financial reorganization on 24 November 2008. Olafur Gardarsson, Attorney to the Supreme Court of Iceland, was appointed as the Moratorium Supervisor. The moratorium has been granted until 2 pm Icelandic time on Friday 13 February 2009 at which time a further hearing will take place for the Court to determine whether it is appropriate for the moratorium to be extended. The further court hearing will be open to the public. The Moratorium Supervisor is obliged to summon the Bank's creditors to a meeting to be held not later than three days prior to 13 February 2009. The meeting will be held today, 5 February 2009. This meeting is held for information purposes for all creditors of the Bank. However, the Moratorium Advisor will seek opinions on the situation from the attendees but not with any voting mechanisms and no formal decisions will be taken. The moratorium process can last for a maximum of 24 months. The moratorium can, in theory, end in a number of ways including: i) the debtor continuing its operation after restructuring its finances; ii) voluntary agreements with the creditors; iii) scheme of arrangement; iv) insolvency.

The Resolution Committee will continue to operate during the moratorium with the power of the board of directors and will as such continue to have decision-making powers.

The Resolution Committee will operate under the supervision of the Moratorium Supervisor. His aims are consistent with those of the Resolution Committee, to preserve assets and to optimize recovery for the creditor body.

During the moratorium the ICC will remain an informal body representing the interests of the creditors. It will have no legal status.

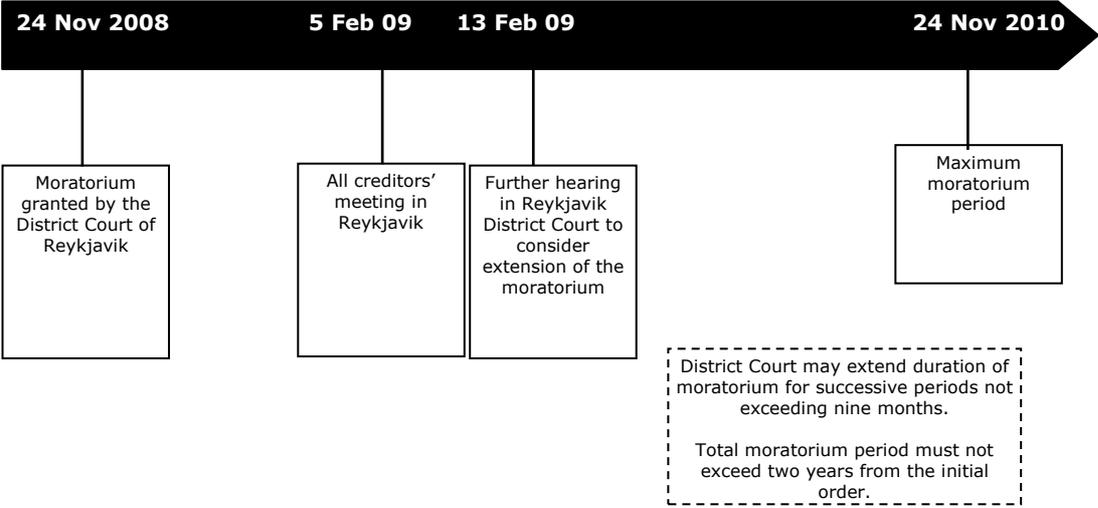
### **6.2 Timeline for the moratorium**

According to Act No. 161/2002 on Financial Undertakings, when a district court first authorizes a moratorium, such authorization shall extend to a specific date and hour within twelve weeks of the date of the original ruling. In the case of the Bank, this specific date is 13 February 2009, at 2 pm Icelandic time. At that time the District Court of Reykjavik will hold a court session and consider the further handling of the matter.

The Moratorium Supervisor and the Resolution Committee firmly believe that it is in the best interests of creditors to extend the moratorium. Therefore, the Bank will submit a petition for a 9-month extension of the moratorium at the court hearing on 13 February 2009. The Moratorium Supervisor's rationale for the petition can be found in chapter 8. *Next steps - proposal to extend the moratorium.*

If the District Court decides on 13 February 2009 to extend the authorization for moratorium, the moratorium shall be extended to a specified date within nine months, when a court session shall be held again to consider the matter. Further extensions may be requested in the same manner. The District

Court can currently not authorize a moratorium lasting longer than a total of 24 months from the court hearing of 24 November 2008.



**6.3 Rationale for the moratorium**

Applying for the moratorium was, in the opinion of the Resolution Committee, a necessary step to ensure that all creditors of the Bank are treated fairly and appropriately in accordance with Icelandic law through the protection of the Bank’s assets.

The Resolution Committee is committed to protecting the interests of creditors by preventing the provisional attachment or freezing of assets. The moratorium has provided the Bank with appropriate protection from legal actions, such as the freezing of assets, and ensured that it maintains a banking licence sufficient to support its assets. . In the European Economic Area the Bank seeks recognition of the moratorium on a case-by-case basis on grounds of the EU Winding-Up Directive No. 2001/24/EC. The Bank has also been granted recognition and injunctive relief under Chapter 15 of the United States Bankruptcy Code. This has provided the Bank with protection for its assets in the United States. The Resolution Committee has successfully opposed freezing orders in the United States and Luxemburg. Further freezing orders are being opposed in the Netherlands and Luxemburg. Without the moratorium, preventing proposed freezing orders would be considerably more difficult for the Bank, if not impossible.

The moratorium has and will continue to provide the “breathing space” needed for the Resolution Committee to develop effective asset realisation and restructuring strategies to maximize returns for all creditors of the Bank.

While protecting the Bank from certain actions by creditors, restrictions are also placed on the Bank in regards to its authorization to dispose of assets, to discharge liabilities and to assume new liabilities.

**6.4 Analysis of the moratorium legislation**

While in moratorium, the Bank remains under the direction of the Resolution Committee which is responsible for the daily operations of the Bank in accordance with the Transfer Decision of 9 October 2008 but is also under the supervision of the Moratorium Supervisor. The Bank remains subject to Act No. 161/2002 on Financial Undertakings and the general supervision of the FME. The District Court of Reykjavik however has exclusive jurisdiction over the enforcement of the moratorium, its extension and termination.

The moratorium process restricts the payment of claims by the Bank, except to the extent it may be certain that the claim would be paid, considering its rank in the order of preference of claims, if the Bank were to enter insolvent liquidation following the moratorium. However, the payment of a debt or the performance of an obligation is allowed in order to prevent significant damage to the Bank. The Bank cannot, while in moratorium, dispose of the Bank's assets except in order to secure the day-to-day operations of the Bank, to effect the reorganization of the Bank's finances or if the disposal of an asset is necessary to protect the value of that asset. While in moratorium the Bank cannot assume new financial obligations unless that is done in order to continue the Bank's business operation or to forestall significant damage.

Most contractual or legal provisions providing for consequences of non-performance will not apply during the period of the moratorium. The Bank may not enter insolvent liquidation nor have its assets subject to an attachment, an execution or a forced sale while the moratorium remains in effect. No law suit can be commenced against the Bank while the moratorium is in effect unless such action is specifically provided for by law or relates to criminal proceedings.

## **6.5 *The Moratorium Supervisor***

As discussed above, Olafur Gardarsson, Attorney to the Supreme Court of Iceland and a partner of the Reykjavik Law Firm, was appointed as the Moratorium Supervisor. He has been a Supreme Court Attorney since 1992 and his areas of expertise include mergers and acquisitions, corporate and telecommunications law.

The Moratorium Supervisor has the power to oversee the distribution of assets of the Bank and the payment of claims during the moratorium. He must approve all major transactions undertaken by the Bank and ensure that no such transactions are in violation of the Bankruptcy Act. His aims are consistent with those of the Resolution Committee, namely to preserve assets and to optimize recoveries for the creditor body. He assists the Bank in its efforts to restructure its finances and to decide how best to achieve any reorganization. He has a duty to inform the District Court of Reykjavik if the Bank does not abide by the Moratorium Supervisor's directions or the provisions of the Bankruptcy Act.

## **6.6 *Icelandic composition legislation overview***

Under Icelandic law, a scheme of arrangement refers to an agreement on settlement or relinquishment of debts concluded between a debtor and a certain majority of his creditors, which is subsequently confirmed in court. When the scheme of arrangement settlement has been approved by the court it is binding on creditors and is to be implemented according to its terms.

A scheme of arrangement has the same objective as a moratorium: to address a debtor's financial difficulties. A scheme of arrangement seeks to solve a debtor's financial difficulties by proportionally reducing creditors' claims, whereas a moratorium gives the debtor a certain grace period to consolidate and reorganize its business with the hope that the debtor can increase, or at least preserve, the value of its financial interests. A scheme of arrangement process does not give rise to a stay on creditor action. However, a scheme of arrangement can be used as an exit route from a moratorium.

The original debts are extinguished on performance of the scheme of arrangement.

The minimum creditor support required is 60% by value and number of creditors voting. If the write-down is greater than 60% of the debt, then the minimum creditor support required to approve the scheme of arrangement is increased accordingly. If an alternative to the write-down of a debt is proposed – e.g. a debt for equity swap – the requisite creditor approval is also 60%.

The Resolution Committee would continue to wield the power of the board of directors during a scheme of arrangement proceeding and as such would continue to have the decision-making power. The court appointed supervisor would continue to work with the Resolution Committee during a scheme of arrangement proceeding.

## **6.7 Potential closing of the moratorium process**

As previously outlined, the Bank was granted a moratorium on debt payments and a license for financial reorganization in a court hearing on 24 November 2008. The District Court can currently not authorize a moratorium lasting longer than a total of 24 months from the court hearing, i.e. until 24 November 2010.

The moratorium process of the Bank would most likely conclude by means of either of the following:

### **i) Insolvent liquidation**

If the moratorium period is not extended and the Bank is forced into insolvent liquidation, the Moratorium Supervisor and the Resolution Committee firmly believe that further value will be lost. Claims of the creditors of the Bank will be converted immediately into Icelandic krona and the assets of the Bank would most likely be converted into Icelandic krona as well to minimize the foreign currency risk. The management of the assets of the Bank would vest in a liquidator who is likely to put emphasis on a direct realisation of assets. The Moratorium Supervisor and the Resolution Committee believe that a sale of the Bank's assets in today's market environment would have a significant negative impact on the possible debt recovery. In addition, a Bank in insolvent liquidation would forfeit its banking license, face forced asset sales, and have less flexibility to support its assets. It is likely that performing loans to customers as well as listed and unlisted assets would be sold at a substantial discount.

It is the opinion of the Moratorium Supervisor and the Resolution Committee that this option would minimize debt recovery for the creditors of the Bank and it would not be in their best interests.

### **ii) Scheme of Arrangement**

A scheme of arrangement seeks to solve a debtor's financial difficulties by proportionally reducing creditors' claims but at the same time allows the debtor to stay solvent. This arrangement endeavours to maximize debt recovery and preserves creditors' interest by granting the debtor the opportunity to be restructured and support assets instead of being forced into an immediate sale of assets. If the moratorium process of the Bank were to be concluded by scheme of arrangement, potential restructuring options of the Bank can be considered and evaluated. Further discussions on potential restructuring options can be found in chapter 7. *Potential restructuring options*.

As discussed in subchapter 6.6 *Icelandic composition legislation overview*, the minimum creditor support required for a scheme of arrangement is 60% in terms of value and the number of creditors voting. Claims are converted into Icelandic krona when the original composition application is made but distributions can be in any currency specified under the scheme.

## **7. Potential restructuring options**

In accordance with the FME's Transfer Decision, Kaupthing was divided into the Bank and New Kaupthing on 22 October 2008. As previously discussed in subchapter 5.1 *The Bank/New Kaupthing Split*, New Kaupthing primarily consists of the domestic operations funded by local deposits. With the assistance of PwC, Iceland, a preliminary balance sheet statement of New Kaupthing was prepared and the government is currently committed to injecting equity into the New Kaupthing.

### **7.1 Valuation of assets transferred to New Kaupthing and the bond**

According to the Transfer Decision, New Kaupthing will issue a bond to the Bank.

The value of the bond will represent the surplus of assets over liabilities at fair value. The FME has appointed Deloitte, UK, to complete an independent net asset valuation for New Kaupthing and Oliver Wyman has been appointed to co-ordinate the valuation process.

The methods used aim at "fair value measurement based on orderly transactions between market participants on the measurement date and not the price that would be achieved in a forced liquidation or distressed sale". The valuation criteria seek to consider the long-term economic environment in Iceland and not the immediate market value of Icelandic loans. The FME has stated that the valuation of the net assets will take longer than initially envisaged, and a decision on the completion date will be taken no later than 15 February 2009. Any currently released information on balance sheet numbers for the Bank and New Kaupthing should be regarded as preliminary only and may well change based on this process.

### **7.2 Other restructuring methods**

Turning New Kaupthing into an independent entity, applying the methodology introduced in the Transfer Decision, will require a determination of the value of the assets transferred. The Resolution Committee has learned via discussions with the creditor community that they find such a valuation approach subject to interpretation and assumptions and creditors might therefore not receive the maximum value possible for these assets.

Some creditors have suggested that consideration should also be given to alternative options for structuring ownership of New Kaupthing as well as additional restructuring scenarios. They would like to see the following objectives carefully looked into:

- i) Avoid relying solely on the methodology suggested in the Transfer Decision in valuing the assets transferred to New Kaupthing as it is subject to various debatable assumptions
- ii) Most of the potential future upside of the assets in New Kaupthing should flow back to creditors of the Bank
- iii) If the government injects capital into New Kaupthing, some upside sharing between the creditors and the government should be recognized
- iv) Most of creditors' exposure to New Kaupthing should be in the form of senior debt

The Moratorium Supervisor and Resolution Committee understand creditors' concerns and believe that maximum debt recovery for creditors will not be achieved using the methodology laid out in the Transfer

Decision but via an alternative solution. They realize the benefit that a financial advisor might bring to such discussions and are committed to obtaining advice where appropriate to ensure that the value of assets is maximized for the benefit of creditors.

### **7.3 *The relationship between the Bank and New Kaupthing***

Rather than New Kaupthing paying the Bank for the transferred assets with a bond issue and the Icelandic government as the sole owner of New Kaupthing, a series of alternative ideas has been explored. The ideas range from relying solely on the Icelandic government to inject the equity into New Kaupthing, and thereby retaining all the future upside, to the opposite where creditors retain the full equity upside and are in turn fully responsible for the capitalization of New Kaupthing.

### **7.4 *Consideration of wider restructuring options***

It is the ultimate role of the Moratorium Supervisor and the Resolution Committee to maximize the value of the Bank's assets and pass on the value to its creditors. Creditors have expressed their views that the maximum value of the assets would not be reached via asset sales under current market conditions. Therefore, according to creditors' requests, the Moratorium Supervisor and the Resolution Committee have been working on other solutions to preserve the value of these assets until the markets recover. In many cases, the assets need to be held for some time for them to be redeemed at full value. According to the Bank's strategy, assets are only sold if they require support beyond the means of the Bank or if a satisfactory bid price can be achieved for them after taking into account the future funding support needed to maintain these assets. Therefore, the Resolution Committee will also ask the financial advisor to come up with structuring ideas on how the assets can be passed over to creditors at a later stage. All these ideas should aim at providing ongoing support to the assets and building a structure where creditors can exit their holdings over time by selling bonds and/or shares.

### **7.5 *The Bank's co-ordination group***

As some of the structuring ideas might require an input and acceptance from other parties than the Bank's creditors, the Resolution Committee asked for a co-ordination group to be set up between the Resolution Committee, ministries and the Central Bank of Iceland. This group does not have formal powers and is consultative in nature.

The Chairman of the co-ordination group is Magnus Gunnarsson – representative of the board of New Kaupthing Bank hf. Other members of the group are: Steinar Thor Gudgeirsson - Chairman of the Resolution Committee of the Bank, Thorhallur Arason - representative of the Ministry of Finance, Helga Oskarsdottir - representative of the Ministry of Commerce and Jon Sigurgeirsson - representative of the Central Bank of Iceland.

## 8. Next steps – a proposal to extend the moratorium

In the previous chapters, the Moratorium Supervisor and the Resolution Committee have summarized the Bank's position, its future outlook and potential alternatives. When exploring the possible immediate next steps, there are two realistic options: insolvent liquidation, or the continuation of the moratorium with the aim of maximising the value of the Bank's assets for the benefit of the creditors.

At the hearing on 13 February 2009, the District Court of Reykjavik will decide whether to grant an extension of the moratorium. It is the opinion of both the Moratorium Supervisor and the Resolution Committee that the interests of the creditors are best served by applying for an extension of the moratorium. The Resolution Committee and the Moratorium Supervisor have on the behalf of the Bank therefore, decided to apply for an extension of 9 months.

The Resolution Committee's petition to the court will, amongst other things, be based on the following arguments:

- i) Prevent a forced assets sale
- ii) Less flexibility, time, and negotiation power to maximize value of assets
- iii) Maintain ability to support assets
- iv) Not appropriate to sell off substantial part of assets without a formal evaluation
- v) Interested foreign parties may not gain any potential upside within New Kaupthing
- vi) The sale of assets will mean a substantial loss of value for creditors
- vii) In the event of insolvent liquidation, claims of the creditors of the Bank will most likely be converted immediately into Icelandic krona. The ability to transfer value to creditors other than in Icelandic krona will be lost

## Disclaimer

This report was prepared for the creditors of Kaupthing Bank hf. ("the Bank") for information purposes only. It should give creditors an overview of the background, the current situation and the potential steps going forward. In preparing this report, the Bank has not taken account of the interest of any particular creditor or group of creditors.

Where information in this report is based on information from third parties the Bank believes such sources to be reliable. The Bank however accepts no responsibility for the accuracy of its sources. The Bank is under no obligation to make amendments or changes to this publication if errors are found or opinions or information change.

The actual realisable value of the Bank's assets and liabilities may differ materially from the values set forth herein. Factors which may lead to material differences include:

- (a) Resolution of issues regarding the quantum of claims
- (b) Additional claims being made against the Bank
- (c) The realisation method(s) used over time
- (d) The impact of set off and netting including in connection with derivative contracts
- (e) Movements in currency exchange rates and interest rates
- (f) Prevailing market conditions when assets are sold

This report has been prepared in order to comply with the requirements of Icelandic law. It is not intended that the information contained herein should be relied upon by any person in connection with trading decisions relating to the Bank. Neither the Bank nor the Moratorium Supervisor accepts any responsibility for any such reliance.

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## **Q&A Form**

*In the Q&A session, the attendees will have the opportunity to ask the Moratorium Supervisor questions. In order that all persons who wish to ask questions may have the opportunity to do so, each attendee will be granted a maximum of 2 minutes to ask his/her question(s).*

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Country: \_\_\_\_\_

Summary of your question(s):