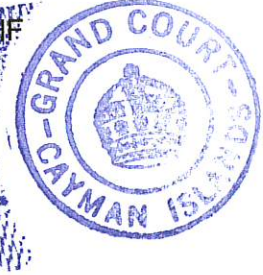


IN THE MATTER OF: THE COMPANIES LAW (2007 REVISION) (AS AMENDED)

AND IN THE MATTER OF STRAUMUR-BURDARAS INVESTMENT BANK HF

PETITION

TO THE GRAND COURT



The humble petition of Hörður Felix Harðarson, Sudurlandsbraut 4, Reykjavik, Iceland, shows that:

**Introduction**

1. On 19 March 2009, the District Court of Reykjavík, Iceland (the "**Icelandic District Court**") granted Straumur-Burdaras Investment Bank hf ("**Straumur**") a "moratorium on payments" (the "**Moratorium**") pursuant to Iceland Acts 161/2002 (the "**Financial Undertakings Act**") and 21/1991 (the "**Bankruptcy Act**"). Further, on this date, Hörður Felix Harðarson, a Supreme Court Attorney in Iceland (the "**Petitioner**"), accepted the role of Moratorium Assistant of Straumur (the "**Moratorium Assistant**").
2. The Moratorium is a "foreign bankruptcy proceeding" as that term is defined in section 252 of the Companies Law (2007 Revision) (As Amended) (the "**Law**") and the Petitioner, in his capacity as Moratorium Assistant of Staumur, is a "foreign representative" as that term is defined in section 252 of the Law.
3. The Petitioner respectfully seeks a declaration from this Honourable Court that he be entitled to act on behalf of or in the name of Straumur in the Cayman Islands.
4. Recognition of the Petitioner as a "foreign representative" of Straumur will facilitate the discharge of his duties in the Cayman Islands and enable him, if required, to apply to the Court for ancillary orders pursuant to section 253 subsections (1)(b) to (e) (inclusive) of the Law, in order to ensure that any legal proceedings affecting Straumur in the Cayman Islands, or any dealings with Straumur's property located in the Cayman Islands, are managed in accordance with the Moratorium.

## **Straumur**

5. Straumur was incorporated in Iceland and has its headquarters in Reykjavik. It is a commercial bank which principally provided investment and merchant banking, securities and asset management services to a broad range of corporate and individual investor clients. Straumur's Registered Office is located at Borgartun 25 - IS-105, Reykjavik, Iceland.
6. In August 2007, Straumur was granted an Icelandic commercial banking licence. By the end of 2007, Straumur had grown to become Iceland's largest investment bank, with operations in ten Northern and Central European countries, including ownership of United Kingdom-based stockbroker Teathers and Finnish eQ Bank, and was the sixth-largest company on the OMX Nordic Exchange in Iceland.
7. For the reasons detailed below, Straumur is no longer actively trading.

### **Straumur's assets located in the Cayman Islands**

8. Straumur has the following assets and interests located in the Cayman Islands ("**Cayman Assets**"):
  - (a) an equity investment in Altima Global Special Opportunities Fund, a Cayman Islands exempted limited company;
  - (b) a limited partnership interest in Julia Capital Management Fund Limited, a Cayman Islands exempted limited partnership;
  - (c) an equity investment in Novator Credit Opportunities Fund, a Cayman Islands exempted limited company registered as a Regulated Mutual Fund with the Cayman Islands Monetary Authority;
  - (d) an equity investment in The Itamar Fund, a Cayman Islands exempted limited company registered as a Regulated Mutual Fund with the Cayman Islands Monetary Authority; and
  - (e) limited partnership interests in Novator One LLP, a Cayman Islands exempted limited partnership (held via two subsidiaries of Straumur, STRB Investments 1 Sarl and Burdaras Luxembourg Holdings Sarl).

9. As at 1 May 2009, the combined value of the assets described in paragraphs (a) to (d) above (inclusive) was approximately US\$78.6 million. The asset described in paragraph (e) above was valued by Straumur at € 200.8 million, but the real net value of this asset is presently unknown.

### **Impact of the global financial crisis**

10. Straumur (like other Icelandic banks) was severely affected by the global financial crisis. By late September 2008, as a result of a number of well publicized pressures on the banks in Iceland, including difficulties in refinancing their short-term debt and a run on bank deposits, each of Iceland's three major commercial banks, Glitnir, Kaupthing and Landsbanki, were on the brink of collapse. This, in turn, threatened the economy of the entire country of Iceland.
11. The Icelandic government took emergency measures to nationalize Glitnir, Kaupthing and Landsbanki, but it did not move to take control of Straumur at this time because of Straumur's comparative strength. Straumur had a relatively small position in the Icelandic lending market and earned most of its money from foreign markets. As of December 2008, Straumur had only about 16%, or approximately €231 million, of its total lending in Iceland.
12. The global and Icelandic economic crises did, however, impose serious pressures on Straumur. Banking deposit outflows increased significantly. Lender margin calls increased. Straumur's standby financing diminished due to credit downgrades. Banks and trading counterparties began to apply increased negotiating pressure.
13. Straumur's plans to survive the Icelandic economic crisis depended heavily on its ability to sell, at fair value, its substantial inventory of capital assets. In the first two months of 2009, market conditions did not improve and Straumur's anticipated asset sales were continually delayed to avoid liquidating assets on depressed markets at "fire sale" prices. Ultimately, Straumur succumbed to Iceland's economic freeze.

### **Overview of the Icelandic proceedings involving Straumur**

14. On 9 March 2009, following extensive discussions with the Icelandic Central Bank, the Icelandic Ministry of Finance and the Financial Supervisory Authority of Iceland (the "FME"), the FME formally took control of Straumur and it ceased trading. The FME

appointed a Resolution Committee to Straumur (the "**Resolution Committee**") (discussed below).

15. On 19 March 2009, the Icelandic District Court made orders granting the Moratorium to Straumur, and at the same time, the Petitioner accepted the role of Moratorium Assistant of Straumur.
16. On 11 May 2009, at the request of the Resolution Committee, the Icelandic District Court appointed a Winding-Up Board to Straumur (the "**Winding-Up Board**"). The Winding-Up Board was appointed to, *inter alia*, review and adjudicate upon creditor claims made against Straumur. On 18 May 2009, creditors were formally invited to submit notice of their claims against Straumur to the Winding-Up Board in accordance with the Bankruptcy Act. The Moratorium Assistant has a seat on the Winding-Up Board and will retain this seat notwithstanding any expiration of the Moratorium.
17. In broad terms, the aim of each of the Resolution Committee, the Moratorium Assistant and the Winding-Up Board is to facilitate a restructuring whereby Straumur will emerge as a going concern asset or, if that is not achievable, to ensure that creditor claims are managed and assets distributed fairly in accordance with Icelandic law.
18. Each of these official appointees has a role to play in relation to Straumur's proposed restructuring (or alternatively its liquidation). The Petitioner, as Moratorium Assistant, has the primary responsibility for policing the Moratorium, ensuring that Straumur's assets are not distributed otherwise than in accordance with the Bankruptcy Act and reporting to the Icelandic District Court about such matters. As such, the Petitioner is the appropriate "foreign representative" of Straumur to seek recognition in the Cayman Islands under Part XVI of the Law.
19. A meeting of Straumur's creditors was held by the Moratorium Assistant on 5 June 2009. At the meeting, the Moratorium Assistant presented a list of Straumur's assets and liabilities and advised the meeting of the terms of the proposed restructuring (discussed below). In addition, the Moratorium Assistant sought the opinion of the meeting in relation to the proposed restructuring and extension of the Moratorium beyond 11 June 2009 (when the Moratorium is due to expire).

## **Proposed Composition Agreement**

20. The Resolution Committee and Winding-Up Board are developing a managed workout plan under Icelandic law ("**Composition Agreement**") that will, if approved by Straumur's creditors and the Icelandic District Court, transform Straumur into an asset management "partnership" operating in Reykjavik, London and Copenhagen. The operation of Straumur as a going-concern asset manager will, over the next three to five years, benefit Straumur's creditors by facilitating realisation of its assets at the best possible value as they mature.
21. The Petitioner will apply to the Icelandic District Court on 11 June 2009 for an extension of the initial Moratorium period. If the Moratorium were to expire on 11 June 2009, pursuant to the Bankruptcy Act, Straumur would automatically be deemed to be in winding-up proceedings. In a liquidation scenario, Straumur would not be in a position to support its assets, which would have to be sold, likely at distressed sale prices. Under a restructuring scenario, realization of value on Straumur's assets would likely take place over a period of years, but would be expected to result in greater over-all returns for creditors.

## **The Resolution Committee, the Moratorium and Moratorium Assistant**

22. On 9 March 2009, the FME (the Icelandic regulatory body charged with overseeing the activities of Iceland's banks and other financial institutions), used the powers conferred upon it by the Parliament of Iceland to take control of Straumur through, *inter alia*, the appointment of the Resolution Committee. The Resolution Committee assumed the authority of Straumur's Board of Directors and shareholders and accordingly, became the ultimate "decision-maker" for Straumur.
23. As stated above, in accordance with its powers and duties, on 18 March 2009, the Resolution Committee applied to the Icelandic District Court for the grant of the Moratorium and the appointment of the Petitioner as the Moratorium Assistant. On 19 March 2009, the Icelandic District Court granted the Moratorium and the Petitioner accepted the role of the Moratorium Assistant. While also governed by the Bankruptcy Act, a moratorium proceeding differs substantially from a formal bankruptcy proceeding in that it is utilised by companies seeking to reorganize their debts and reach agreement with creditors, rather than those seeking immediate liquidation.

24. Pursuant to the Moratorium, Straumur enjoys relief from payment obligations and protection against creditor actions and may not distribute its assets otherwise than in accordance with the Financial Undertakings Act and the Bankruptcy Act.
25. The Moratorium will remain in effect for an initial period of twelve weeks until 11 June 2009. The Moratorium may be extended until 18 March 2011 by an Order of the Icelandic District Court. Each extension may only be for up to nine months in duration. In total, the duration of the Moratorium may not exceed twenty-four months.
26. During the period of the Moratorium, Straumur will remain subject to the Bankruptcy Act, the Financial Undertakings Act and the supervision of the FME.
27. As each of the appointees to Straumur is seeking to achieve the same goal, there is unlikely to be any dispute between them as to the division of their powers.

#### **Powers and duties of the Petitioner**

28. The Bankruptcy Act and the Financial Undertakings Act govern, amongst other things, the Moratorium procedure and the role, duties and powers of the Moratorium Assistant. Pursuant to the Bankruptcy Act, the role of the Moratorium Assistant is to assist the debtor in its efforts to reconstruct its finances and make decisions on how to achieve the reorganization. The Moratorium Assistant must monitor dispositions of the Resolution Committee and has a duty to inform the Icelandic District Court if the Resolution Committee does not abide by the Moratorium Assistant's directions or the provisions in the Bankruptcy Act. The Moratorium Assistant's powers and duties extend to the Cayman Assets.
29. The general rule during the Moratorium is that the disposition of assets by a debtor is prohibited unless deemed necessary in the day to day operation of the business or necessary to achieve a reorganization of the debtor's finances, provided that a fair price is paid in return and the payment is preserved. Payment of liabilities or the performance of other obligations is prohibited unless it is necessary in order to forestall significant damage or it is clear that in the event of a full bankruptcy proceeding following the Moratorium, the obligation would be fulfilled or the debt paid. The Moratorium Assistant therefore acts as a fiduciary to the estate of the debtor to ensure the fair disposition of assets.

## **Recognition of the Petitioner's right to act in the Cayman Islands**

30. Straumur is a "foreign corporation" as that term is defined in section 252 of the Law.
31. The Moratorium was granted by the Icelandic District Court. It is a procedure governed by the Bankruptcy Act aimed at facilitating the reorganization and rehabilitation of Straumur, or if that is not achievable, the orderly winding-up of Straumur. As such, the Moratorium is a "foreign bankruptcy proceeding" as that term is defined in section 252 of the Law.
32. As a "foreign corporation" subject to a "foreign bankruptcy proceeding", Straumur is a "debtor" as that term is defined in section 252 of the Law.
33. The Petitioner, in his capacity as Moratorium Assistant to Straumur, is an official appointed in respect of a "debtor" for the purposes of a "foreign bankruptcy proceeding". As such, the Petitioner is a "foreign representative" of Straumur as that term is defined in section 252 of the Law.
34. In the premises, the Petitioner respectfully seeks a declaration from this Honourable Court in terms that he is entitled to act on behalf of or in the name of Straumur in the Cayman Islands.

Your Petitioner therefore humbly prays that:

1. It be declared that the Petitioner, Hörður Felix Harðarson, in his capacity as Moratorium Assistant of Straumur, be entitled to act on behalf of and/or in the name of Straumur-Burdaras Investment Bank hf.
2. Such other orders as the Court thinks fit.

AND your Petitioner will ever pray etc.

DATED this <sup>th</sup> 0 day of June 2009

*Walkers*

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**WALKERS**

Attorneys at Law for the Petitioner

This petition is not intended to be served.

This Petition is presented by Walkers, Attorneys at Law, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9001, for the Petitioner whose address for service is care of his said Attorneys at Law.

**NOTICE OF HEARING**

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman on at 10.00am.

Any correspondence or communication with the Court relating to the hearing of this Petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, Grand Cayman, KY1-1106, Telephone 345 949 4296.