

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

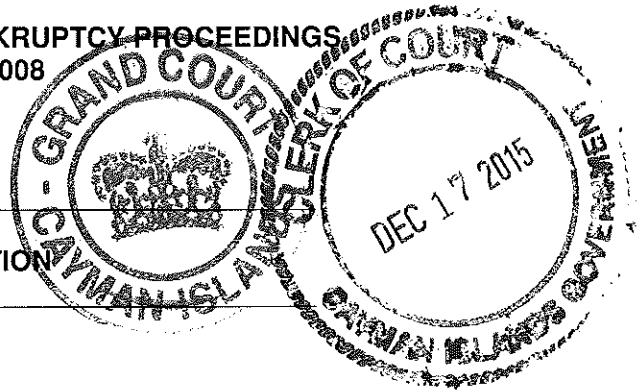
CAUSE NO: FSD NO 0266 OF 2015

IN THE MATTER OF PART XVII OF THE COMPANIES LAW (2013 REVISION)

AND IN THE MATTER OF THE FOREIGN BANKRUPTCY PROCEEDINGS
(INTERNATIONAL CO-OPERATION) RULES, 2008

AND IN THE MATTER OF KAUPTHING HF

PETITION



TO THE GRAND COURT

The humble petition of Jóhannes Rúnar Jóhannsson (the "**Petitioner**") of Borgartún 26, 7th Floor, 105 Reykjavík, Iceland shows that:

Introduction

1. This petition is presented in relation to Kaupthing hf. (formerly Kaupthing Bank hf.) of Borgartúni 26, 105 Reykjavík, Iceland ("**Kaupthing**").
2. For the reasons set out below, the Petitioner respectfully seeks a declaration from this Honourable Court that he be entitled to act as a "foreign representative" on behalf of or in Kaupthing's name, as a "debtor" subject to a "foreign bankruptcy proceeding", in the Cayman Islands pursuant to Part XVII of the Companies Law (2013 Revision) (as amended) (the "**Law**").

Particulars of Debtors Incorporation

3. Kaupthing was incorporated in Iceland in 1982, Reg. no. 560882-0419.

Nature and Place of the Debtor's Business

4. Kaupthing was initially established as a securities firm and subsequently extended its operations into investment banking. It became a commercial bank in 2003 and provided

integrated financial services to companies, institutional investors and individuals. For the reasons detailed below, Kaupthing is no longer actively trading.

Events leading to the Winding-up Proceedings

5. Following a period of rapid growth in the years 2005 to 2007, Kaupthing and its main foreign subsidiaries experienced financial difficulties during the international liquidity crisis. In early October 2008 those difficulties became severe. In particular, Kaupthing experienced problems obtaining access to funding, and there was a run on deposits, primarily on foreign deposits in foreign branches of Kaupthing, and on deposits in foreign subsidiaries of Kaupthing.
6. On 6 October 2008, Iceland's Act no. 125/2008 (the "**Emergency Act**") took effect in an attempt to stabilise the Icelandic economy and provide means to deal with the urgent financial and operational difficulties experienced by the Icelandic financial sector. The Emergency Act empowered the Icelandic Financial Supervisory Authority (the "**FME**") to take special measures in relation to financial institutions, including the ability to assume the authority of shareholders at shareholders' meetings and to appoint a resolution committee to replace a financial institution's board of directors.
7. On 8 October 2008, Kaupthing's most significant subsidiary, Kaupthing Singer & Friedlander Limited ("**KSF**") (an English company) went into administration. Four members (partners) of Ernst & Young LLP were appointed to act as administrators. The administration of KSF meant that Kaupthing had lost control of a major subsidiary, leading to an event of default under the terms of certain bonds issued by Kaupthing. In the light of KSF's administration and the default on these bonds, Kaupthing was no longer solvent.
8. With KSF having gone into administration earlier that same day (8 October 2008) and the obviously critical and rapidly deteriorating financial position of Kaupthing, Kaupthing's board approached the FME. During the night of 8 October 2008, the FME cancelled the mandate of Kaupthing's board of directors and assumed the powers of Kaupthing's shareholders at shareholders' meetings. The FME appointed a resolution committee (the "**Resolution Committee**") to take over responsibility for Kaupthing in the context of its critical financial position, replacing the board of directors as the body in

control of Kaupthing. The Resolution Committee's mandate was to manage and safeguard Kaupthing's asset portfolio.

9. On 13 November 2008, Iceland's Act No. 161/2002 (the "**Financial Undertakings Act**") was further amended to provide that, under Article 100(a) of the Financial Undertakings Act, as amended by the Emergency Act, the FME can request that the District Courts of Iceland authorize a financial undertaking (such as Kaupthing) to be subject to a moratorium in order to allow it to reorganize its financial affairs.
10. On 24 November 2008, Kaupthing entered into Icelandic moratorium proceedings. On the same day a moratorium supervisor (the "**Moratorium Supervisor**") was appointed by the Resolution Committee to work alongside it.
11. By 22 April 2009, Iceland's Act No. 44/2009 took effect, amending the Act on Financial Undertakings. Pursuant to the Act on Financial Undertakings, the Resolution Committee also assumed all powers of Kaupthing's shareholders at shareholders' meetings. The Act on Financial Undertakings further required the Resolution Committee to file a request with the District Court of Reykjavik (the "**District Court**") for a winding-up committee to be appointed to allow for a formal claims process to begin.
12. On 25 May 2009, the District Court approved a request from the Resolution Committee, pursuant to Iceland's Act No. 44/2009, to appoint a winding-up committee for Kaupthing (the "**Winding-up Committee**") which, alongside the Resolution Committee, became responsible for processing all claims against Kaupthing and making determinations regarding the acceptance and recognition of those claims. In accordance with Iceland's Act No. 44/2009, the Moratorium Supervisor was automatically appointed to the Winding-up Committee alongside those members appointed by the District Court. Thereafter, the Resolution Committee and the Winding-up Committee jointly directed Kaupthing's affairs in accordance with the division of roles referred to above.
13. A total of 28,167 claims were lodged against Kaupthing before the deadline for lodging claims on 30 December 2009.

Winding-up Proceedings

14. On 22 November 2010, by order of the District Court Kaupthing's moratorium proceedings ended and winding-up proceedings ("**Winding-up Proceedings**") were

commenced with retrospective effect from 22 April 2009. Pursuant to Iceland's Act No. 44/2009, the date which has legal effect as the initial date of the Winding-up Proceedings is 22 April 2009. The Winding-up Proceedings have been automatically recognized and enforced in the European Union, Norway and Liechtenstein (in addition to Iceland).

15. Throughout the Winding-up Proceedings, all interested parties have had access to the latest developments, financial information and updates with respect to Kaupthing through its publicly-available website: <www.kaupthing.com>. In addition, all creditors have had the opportunity to email Kaupthing with questions in relation to its general operation, and to direct questions regarding claims and the claims process to the Winding-up Committee. The Winding-up Committee has convened regular meetings with Kaupthing's creditors, including general creditors' meetings to update creditors on the claims process and creditors' report update meetings to update creditors on developments in relation to the Winding-up Proceedings.

Exiting the Winding-up Proceedings

16. The Winding-up Committee has concluded that Kaupthing's assets will not be sufficient to meet in full the payment of the claims that the Winding-up Committee has not finally rejected. Pursuant to Article 103a of the Financial Undertakings Act, if it is established that, with respect to a financial undertaking in winding-up proceedings (such as Kaupthing), where assets will not be sufficient to meet in full the payment of the claims which its winding-up committee has not finally rejected as part of the winding-up proceedings, it may seek a composition agreement with its unsecured creditors to exit the winding-up proceedings pursuant to Chapter XXI of the Bankruptcy Act.
17. Article 103a of the Financial Undertakings Act further provides that the estate can only remain in winding-up proceedings for so long as a composition agreement with the company's unsecured creditors is achievable and has not been rejected by a certain threshold those unsecured creditors; otherwise, a winding-up committee is required to apply to the District Courts of Iceland to put the estate into bankruptcy proceedings, which is typically used for the liquidation of an entity.
18. Accordingly, under Icelandic law, the only options available to Kaupthing in order to exit the Winding-up Proceedings are as follows:

- (a) *Confirmation of a composition agreement that will bind all unsecured creditors holding claims in the composition pursuant to paragraph 3 of Article 103a of the Financial Undertakings Act by the Icelandic courts*

Under Article 27 of the Bankruptcy Act, a composition agreement is an agreement to settle or relinquish debts concluded between a company and a certain majority of its unsecured creditors who would be affected by the terms of the composition agreement. If (i) approved by the requisite majority of unsecured creditors who would be affected by the terms of the composition agreement and (ii) confirmed by the Icelandic courts, the composition agreement binds all of the company's unsecured creditors who are affected by the terms of the composition agreement.

- (b) *Initiation of bankruptcy proceedings over the company according to paragraph 4 of Article 103a Financial Undertakings Act*

If a composition proposal with those unsecured creditors who would be affected by the terms of the composition agreement is no longer achievable, or has been rejected by those unsecured creditors, then, pursuant to Article 103a of the Financial Undertakings Act, the winding-up committee will make a request to the District Court that the estate is put into bankruptcy proceedings.

19. The Winding-up Committee has for some time been preparing Kaupthing for an Icelandic law composition. The Winding-up Committee concluded, pursuant to Article 103a of the Financial Undertakings Act, and after consultation with Kaupthing's creditors and other parties, including the "ICC", an informal creditors committee representing certain large creditors which was formed to enable a focused, ongoing dialogue with the Winding-up Committee, to launch its composition proposal to Kaupthing's unsecured creditors whose unsecured claims would be affected by the composition proposal.
20. However, as the vast majority of the unsecured claims against Kaupthing are held by creditors domiciled abroad (including the Cayman Islands), the implementation of a composition was previously not possible without certain exemptions being received from the Central Bank of Iceland (the "CBI") because of the capital controls in effect in Iceland. The capital controls, which are provided for in the Icelandic Act on Foreign Exchange no. 87/1992 (the "**Foreign Exchange Act**"), restrict, among other things,

cross-border movements of capital. Kaupthing has submitted to the CBI a formal request for certain exemptions from the Act on Foreign Exchange which, if granted by the CBI following consultation with the Minister of Finance and Economic Affairs (the "**Minister of Finance**") and following a presentation by the Minister of Finance to the parliamentary committee on economic affairs, will allow the Winding-up Committee to implement a composition proposal, if approved by the requisite majority of unsecured creditors who would be affected by the terms of the composition proposal and confirmed by the relevant Icelandic Courts.

The Composition Proposal (now referred to as the Composition Agreement)

21. On 30 September 2015, the Winding-up Committee convened an open creditors' meeting during which, among other things, the key terms of its composition proposal (the "**Composition Proposal**") were outlined and creditors were informed of the key next steps relating to the Composition Proposal and the Winding-up Proceedings generally.
22. The Winding-Up Committee formally introduced the Composition Proposal to the unsecured creditors who would be affected by the terms of the Composition Proposal ("**Composition Creditors**") on 23 October 2015 by, among other methods, posting notice on Kaupthing's secure website accessed via www.kaupthing.com, circulating notices to its creditors convening the meeting for Composition Creditors to vote on the Composition Proposal and by making public announcements of the same in the Financial Times (US, UK and Asia editions) and notices were also to the owners of beneficial interests in the senior notes issued under Kaupthing's legacy US\$10,000,000 senior/subordinated medium term note program and in relation to which the trustee under that program is the sole recognised claimant in respect of all amounts relating to such program.
23. Documents relating to the Composition Proposal were amended on 6 November 2015, and the amended documents together with 'blacklines' were posted on Kaupthing's secure website, and creditors informed of such new documents by notices on Kaupthing's publicly available website, secure website and via email. The Composition Proposal, voting forms, proxy forms, and the key documents relating to the Composition Proposal are available on the secure website and at Kaupthing's offices in Iceland. A

second open creditors' meeting was held on 13 November 2015 to approve changes to the Composition Proposal due to negotiations with the CBI.

24. Voting on the Composition Proposal took place at a meeting on 24 November 2015 (the "**Composition Voting Meeting**"). At the Composition Voting Meeting, Composition Creditors had the opportunity to vote on the Composition Proposal, and Composition Creditors representing 93.66% of the total amount of claims on Kaupthing's voting registry participated in the vote. All valid votes were cast in favour of the Composition Proposal at the Composition Voting Meeting, such that, pursuant to Article 103a of the Financial Undertakings Act, the Composition Proposal was approved (and consequently thereafter referred to as the "**Composition Agreement**").
25. In accordance with the outcome of the Composition Voting Meeting and Article 54 of the Bankruptcy Act, on 25 November 2015 the Winding-up Committee submitted a request for confirmation of the Composition Agreement to the District Court.
26. Under Icelandic law, a composition agreement will become binding seven clear days after the date it is confirmed by the District Court, assuming it is not appealed to Iceland's Supreme Court, or, if it is appealed, the date on which it is confirmed by the Supreme Court. If a composition agreement is not confirmed by the relevant Icelandic Courts, under Icelandic law the appointed winding-up committee is required to apply to the District Court to put the company into bankruptcy proceedings.

Decision of the District Court

27. On 15 December 2015 the Composition Agreement was approved by the District Court. Assuming there will be no appeals to Iceland's Supreme Court, the Composition Agreement will become binding and effective on 23 December 2015 (the "**Effective Date**").

Authority by Which the Foreign Representative Was Appointed

28. Pursuant to amendments made to the Financial Undertakings Act, the Resolution Committee's role came to an end on 1 January 2012 and all of its responsibilities, powers and authority were transferred to the Winding-up Committee. The Winding-up Committee is presently comprised of the following persons:

- (a) Feldís Lilja Óskarsdóttir, District Court Attorney, who was appointed by the District Court on 25 May 2009;
 - (b) Theodór S. Sigurbergsson, Certified Public Accountant, who was appointed by the District Court on 5 January 2012; and
 - (c) The Petitioner, Jóhannes Rúnar Jóhannsson, Supreme Court Attorney, who was also appointed by the District Court on 5 January 2012.
29. Following the Effective Date, Kaupthing will continue to be managed by the Winding-Up Committee which will continue to have the governing authority and powers of the board of directors and all powers of shareholders at shareholders' meetings in accordance with paragraph 3 of Article 103a of the Financial Undertakings Act, until a shareholders' meeting has been convened at which a new board of directors of Kaupthing is appointed.
30. The Winding-up Committee will, pursuant to the above and pursuant to the terms of the Composition Agreement, as soon as practicably possible fulfil the obligations of Kaupthing under Icelandic law and the terms of the Composition Agreement.
31. Following the confirmation of the Composition Agreement by the District Court on 15 December 2015, the Winding-up Committee agreed that the Petitioner would make the present application under Part XVII of the Law, to act on its behalf for Kaupthing in the Cayman Islands.
32. As the Composition Agreement is the arrangement by which Kaupthing's debts to its Composition Creditors will be repaid and/or relinquished, it constitutes a "*foreign bankruptcy proceeding*" as defined in section 240 under Part XVII of the Law.
33. As a "*foreign corporation*" subject to a foreign bankruptcy proceeding in the country of its incorporation, Kaupthing is a "*debtor*" as the term is similarly defined in Part XVII of the Law.
34. Accordingly, the Petitioner, in his capacity as member of Kaupthing's Winding-up Committee, is an official appointed in respect of a debtor for the purposes of a foreign bankruptcy proceeding. As such, the Petitioner falls within the definition of a "*foreign representative*" defined in Part XVII of the Law.

Powers and Duties of the Foreign Representative under the Laws of Iceland

35. From 1 January 2012, Kaupthing has been solely managed by the Winding-up Committee, which has the governing authority and powers of Kaupthing's board of directors and shareholders at shareholders' meetings.
36. The Winding-up Committee is responsible for all of Kaupthing's affairs, including directing its daily operations, managing its assets, administering the claims process and safeguarding Kaupthing's other interests, with the principal objective of preserving the interest of the creditor body as a whole. Its work is governed in all main aspects by the rules which apply to the rights, responsibilities and obligations of administrators under the Bankruptcy Act, cf. the fourth paragraph of Art. 101 of the Act on Financial Undertakings. The Icelandic Register of Enterprises lists the members of the Winding-up Committee as Kaupthing's board of directors.

Reasons for Seeking a Declaratory Order

37. As set out above, a 'composition' under Icelandic law is an arrangement between a financial undertaking and its unsecured creditors which provides for the repayment and/or relinquishment of its debts to its creditors, not unlike a Cayman Islands scheme of arrangement. If approved by the requisite majority of a company's unsecured creditors and confirmed by the relevant Icelandic Courts, an Icelandic law composition binds all unsecured creditors of that company.
38. Recognition of the Petitioner as Kaupthing's foreign representative will facilitate the discharge of the duties of the Winding-up Committee in the Cayman Islands and enable him, if required, to apply to the Court for ancillary orders pursuant to section 240 subsections (1)(b) to (e) (inclusive) of the Law, in order to ensure that any legal proceedings which might affect Kaupthing in the Cayman Islands, or any dealings with Kaupthing's property located in the Cayman Islands, are managed in accordance with the Composition Agreement.

Recognition of the Petitioner's Right to Act in the Cayman Islands

39. 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 Kaupthing's name in the Cayman Islands.

YOUR PETITIONER THEREFORE HUMBLY PRAYS:

1. For a declaration pursuant to Part XVII of the Law that the Petitioner, Jóhannes Rúnar Jóhannsson, in his capacity as a member of Kaupthing's Winding-up Committee, be recognised as the only person entitled to act on behalf of and/or in Kaupthing's name in the Cayman Islands.
2. For such further or other orders as the Court sees fit.

AND your Petitioner will ever pray etc.

DATED the 17th day of December 2015



WALKERS
Attorneys at Law for the Petitioner

NOTE: This petition is not intended to be served.

