

409. mail

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From: Virginia Cooper
To: Selma@althingi.is
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Sent: Wed Apr 01 12:04:18 2009
Subject: Comments on legislative bill
Selma

Further to yesterday's meeting I attach a memorandum which sets out our views on the changes proposed by the Committee to the draft Bill. I understand that the Bill has now gone to its second hearing but would request, nevertheless that the Committee take into consideration the creditors' views expressed in this note given the significance of the changes proposed.

The memorandum has been prepared with input from those representing the creditors identified in the memorandum. We have, however, discussed the changes proposed to the Bill (and in particular the 'sunset provision') with the creditors present at the Glitnir Informal Creditors Committee meeting today and the Glitnir Moratorium appointee (the resolution committee did not take part in these discussions). Those creditors include representatives of the bond holders, banks and depositors.

Although those creditors have not had an opportunity to consider the contents of the memorandum they are as a group (and without exception) opposed to the 'sunset provision' and the replacement of the resolution committee with a winding up committee either now or in 6 months time. For the reasons set out in the memorandum creditors' share the view that taking this step would be disastrous to the process and the progress which has been made by the resolution committee to date.

The ICC meeting for Landsbanki is taking place tomorrow and we will seek views of the Landsbanki creditors then. I anticipate, however, that those who have not contributed to the memorandum will share the views expressed in it and as set out above in relation to the sunset provision.

Should the committee wish to meet with creditors to discuss these concerns I would be happy to liaise with other creditors to arrange for a representative group to attend a meeting with the committee. Many are in Reykjavik for the Glitnir and Landsbanki ICC meetings this week and will be available during the course of tomorrow.

I have copied this email to those present at the meeting (many of whom represent ad hoc committees and steering groups of large groups of creditors with similar interests).

Please can you confirm receipt of this email and the attached memorandum and that both have been circulated to the committee. A translation in Icelandic is being prepared which I will email through shortly.

If you have any queries or would like to discuss the above please do not hesitate to contact me on my mobile: +44 7815 188 036

Kind regards

Virginia Cooper

COMMENTS ON THE LEGISLATIVE BILL AMENDING THE ACT ON FINANCIAL UNDERTAKINGS, NO. 161/2002, WITH SUBSEQUENT AMENDMENTS FOLLOWING MEETING ON 31 MARCH 2009

1. The comments set out below on the proposed revisions to the Legislative Bill amending the Act on Financial Undertakings, No. 161/2002, with subsequent amendments, as presented for its first reading to the Althingi at the 136th legislative session, 2008-2009 (the “**Bill**”) and as discussed at the meeting of the parliamentary standing committee (the “**Committee**”) on 31 March 2009, reflect the views of the following:
 - (A) Lex, who act as Icelandic legal advisers to, among others, Dutch local authorities, which have claims against Landsbanki in their capacity as depositors;
 - (B) Logos Legal Services, who act as Icelandic legal advisers to, among others, the UK Local Government Association, and its member UK local authorities who have claims against Landsbanki (and the other insolvent Icelandic banks) in their capacity as depositors;
 - (C) Slaughter and May, who act as English legal advisers to Her Majesty’s Treasury and the UK Financial Services Compensation Scheme;
 - (D) Bevan Brittan LLP, who act as English legal advisers to, among others, the UK Local Government Association and UK local authorities; and
 - (E) Stibbe N.V., who act as Dutch legal advisers to, among others, Dutch local authorities who have claims against Landsbanki in their capacity as depositors.
2. These comments relate only to the changes proposed to the Bill by the Committee and to the points raised at the meeting with the Committee and should be read in conjunction with the previous comments set out by and on behalf of the same creditor group in the memorandum dated 20 February 2009.
3. As before, the comments set out below are limited to those which are of greatest significance in the present context.
4. In addition, it is recognised that there is no English translation available of the proposed changes to the Bill or any formal minutes of the meeting; some of those named above are therefore necessarily constrained in their understanding of the detail of the proposed changes.
5. We understand the changes proposed to the Bill by the Committee are as follows:
 - (1) Amendment of Temporary provision II of the Bill:

- (a) The following shall be added to the final sentence of numeric 2: but the assistant shall supervise the activities of the resolution committee according to article 103 of the act, c.f. article 8 of this act’.
 - (b) The second sentence of numeric 3 shall be: If a seat on the resolution committee becomes vacant after this act comes into force the FME shall, if deemed necessary taking into consideration the unfinished projects of the resolution committee, appoint an individual to fill that seat.
 - (c) Two new sentences should be added to numeric 3: This provision becomes invalid six months after this act coming into force when the activities the resolution committee has been doing will be transferred to the liquidation committee. When the liquidation committee has taken over the activities of the resolution committee a district court judge can appoint more individuals on the liquidation committee at its request, but they cannot be more than five (the “**sunset provision**”).
 - (d) A new numeric shall be added to the provision: From this act coming into force all costs of the moratorium and the liquidation process shall be paid using the assets of the financial institution being liquidated.
- (2) Amendment of temporary provision IV. The words “at year end 2009” in the final sentence shall be replaced with: 1 July 2010.
5. In addition at the meeting the Committee invited comments on: consultation with creditors; creditors’ expectation from the Bill; and the ‘sunset provision’.
6. Our comments are as follows:
- (1) **Consuitation with creditors:** the establishment by the resolution committees of the Informal Creditors’ Committees has provided key stakeholders with a forum to discuss with the resolution committees the steps they are taking in relation to the old banks before, where practicable, final decisions are taken. The flow of information to creditors whilst slow when the procedures were first implemented has improved over recent weeks and continues to do so. The process relating to the issue of the ‘instrument’ by the new to the old bank is at a critical stage and is due, we understand, to be completed by 18 May 2009. It is important that any changes proposed by the Bill do not inhibit creditors’ ability to influence this process and any steps being taken in relation to the old banks generally. It is not clear that the same cooperation with creditors will continue if the resolution committee is replaced with a winding up committee now or (as envisaged by the sunset provision) at some point in the future.
 - (2) **Costs:** notwithstanding our comments on the sunset provision it should be emphasized that creditors continue to have a very strong focus on costs of the winding up, including costs incurred by the resolution committees. Further information is required by creditors in this regard and is expected to be received soon. The creditors will be very concerned if the level of costs appears to be excessive.

- (3) **Creditors' expectations:** Creditors will expect the resolution committee and any winding up committee to act in the interests of creditors of the relevant institution and to have clearly defined roles/responsibilities. Equally if the 'assistant' under the moratorium is to remain in office the scope of his ongoing duties should be clearly set out. These concerns were raised in the memorandum dated 20 February 2009 but do not appear to have been addressed in the changes proposed by the Committee. If these concerns are not addressed in the Bill it will create uncertainty for the relevant committees and creditors alike.
 - (4) **Currency exposure:** we remain unclear as to whether all debts of the old banks will upon the Bill coming into force be converted into ISK; we fear that this is the case and that this would not be a positive thing for the debtor banks or their creditors. Again this comment was made in our earlier remarks but again does not appear to have been addressed.
 - (5) **'Sunset provision':** If the resolution committee is to continue its duties we propose that it should do so until the business of the relevant institution is wound down. On the information currently available this is likely to take several years. Replacing the resolution committee of the relevant institution with a winding up committee now (or at any point in the future) will require a 'handover' from one to the other and a period during which the winding up committee will need to familiarize itself with the business, assets and liabilities of the relevant institution; establish relationships with the key debtors and creditors (and their advisors) and understand the issues of significance. The extent of this task should not be underestimated and it will necessarily duplicate work and time which has already been invested by the resolution committee and creditors. The delay this will cause to the process and the costs associated with it (which will be borne by the estate of the relevant institution) will be to the detriment of creditors. In contrast, if the winding up committee is appointed to deal with clearly defined aspects of the insolvency process (including obtaining and processing creditors' claims, dealing with disputes involving creditors and determining and effecting both interim and final distributions); and the resolution committee continues to be responsible for the winding down of the relevant institutions business there will be no such duplication. The operational costs associated with the work to be carried out by the winding up committee would be incurred in any event, regardless of which committee is tasked with those responsibilities. In light of this the sunset provision proposed in amendment (1)(c) should be removed.
7. The legal advisers who have been involved in the preparation of this memorandum, and our respective clients, continue to welcome the amendments contemplated by the Bill and believe that it represents a major, and important, step forward. The foregoing comments should, accordingly, be understood in this context – the intention behind them is to enhance the Bill and assist in the achievement of its objectives. As before, we would be pleased to provide more detailed comments, or answer any questions about the contents of this memorandum, upon request. For the avoidance of any doubt, however, we fully reserve all rights of our respective clients in relation to the procedures taking

place in Iceland including those which will be implemented by the Bill.

1 April 2009