Dear Indrioi

You raised two points in respect of the waiver of sovereign immunity where you would welcome comment from Johan and myself. I have discussed with Johan and agreed the content of this email in respect of the first point below which is common to the Dutch and UK agreements.

I am happy to confirm that it was not the intention of HM Treasury that the waiver of sovereign immunity which is contained in Clause 18 of the Loan Agreement signed on 5th June should extend to a waiver of the various forms of diplomatic immunity provided by the Vienna Convention of 1961. Also that HM Treasury will not seek to issue process or levy execution in circumstances where that would infringe upon the immunities granted to Iceland by the Vienna Convention. Johan has conformed that this is also the Dutch position.

You also mentioned a possible concern in Iceland that any enforcement of the sovereign guarantee from the Icelandic government could be applied to the assets (primarily gold) which we understand might be held by the Bank of England for the Icelandic Central Bank. (To be clear HMT has no idea whether any such assets are held; this is a matter for the Bank of England and its clients.)

As Sedlabanki is an independent institution owned by the State, it will not be treated by English courts as liable for State debts, or debts incurred by other State entities, nor will its property be available to satisfy such debts. This conclusion has nothing to do with sovereign immunity and simply reflects the fact that English law treats the central bank as a separate legal personality.

Looking at sovereign immunity under UK legislation, where the central bank of a State is a separate entity the State Immunity Act 1978 accords the same procedural privileges as extend to the State and gives the central bank special immunity. The property of foreign central banks is therefore protected from any process for the enforcement of a judgment. This protection was introduced with the specific aim of encouraging foreign central banks to deposit foreign reserves in the United Kingdom with the Bank of England. Whilst this protection can be waived by the central bank, in the present case the waiver of sovereign immunity has been given by the Icelandic Government and not Sedlabanki. (I am told that one situation in which the protection of the Act may not be available is in circumstances of fraud, for example, the assets in the bank account was paid in by an organisation other than the central bank with the intention of avoiding judgment creditors. In those circumstances, it might be open to the court to decide that it was not

the property of the central bank at all. But clearly this is not a concern in this case.)

In case it is helpful it has been suggested that I should refer your legal advisers to the following English jurisprudence which shows that the English courts do not take enforcement action against assets held by the BoE, which are the property of the central bank of a foreign country: AIC Ltd v. The Federal Government of Nigeria [2003] EWHC 1357. In this case, the Judge stated that monies in a bank account of a central bank with another bank were immune from execution, irrespective of whether the central bank was a separate entity, the source of the funds or the use/purpose for which the account was maintained. No waiver of sovereign immunity will change this position.

I am copying this email to Johan Barnard and Aslaug Arnadottir.

Gary Roberts
Head of Financial Services Strategy