

Q & A

These are excerpts from the main questions submitted at Kaupthing Bank's Follow-up Creditors' Meeting on 18 May 2010, and the Winding-up Committee's replies to them.

1. Does interest accruing post 22 April 2009 on accepted Art. 111 claims also rank as Art. 111 (in so far as the value of the security is sufficient to pay such interest)? If not, where does it rank (Art. 114?)

Answer:

Claims lodged as secured claims with reference to Art. 111 enjoy priority over other claims with regard to the security against which the claim is lodged. This also applies to interest prior to 22 April 2009, to the extent this is recognised. Claims for interest after 22 April 2009 only enjoy priority under Art. 111 to the extent that the security suffices for payment of the claim. To the extent that the security does not suffice to pay the claim, the claim, including a claim for interest, enjoys priority with reference to Art. 113 and 114 of the Act on Bankruptcy etc. Prior to this meeting only one decision has been taken on secured claims, and decisions on these claims have, in other respects, been postponed.

2. Were any claims filed net of set-off or net of posted collateral? Or were all claims filed gross?
3. Were priority claims which have collateral filed net of the collateral or gross?

Answers to 2 and 3:

As has been indicated, several creditors have lodged claims for set-offs. The Winding-up Committee has tried to take decisions on these claims on an ongoing basis, although part of these claims are included in decisions taken on the bond classes on which decisions have been postponed. The Winding-up Committee will continue to deal with set-off claims and attempt to conclude as many as possible prior to the next meeting, which will be held in September. In most cases these claims have been lodged as gross claims, i.e. as they were prior to declarations of set-offs, but no universal rule applied in this regard.

4. On page 4, it is mentioned that set off is indeed in Art. 111 secure claims. Does that mean that the 120 Bn ISK mentioned in the creditor report (that is the balance sheet) is lodged as a claim?
5. Does the estimate of ISK100Bn set off still stand? Are set offs included in lodged claims?
6. How do we reconcile priority claims with pledged assets on the December 2009 balance sheet?

Answers to 4-6:

As far as references to the creditors' report are concerned, we refer to the Resolution Committee and the information provided in the creditors' report.

7. On the claims list, please provide an explanation of the legend on the letters in far right column?

Answer:

The legend is explained in the report and also on the first pages of the List of Claims. H indicates rejection, S approval, AF that a decision is postponed, EA that no decision is taken and SB approved with amendments.

8. How will the WUC deal with set-off? How are they reflected in the claims list?

Answer:

The Winding-up Committee is working on an ongoing basis on taking decisions on set-off claims. Once a decision is available on a set-off claim, this is reflected in the List of Claims and also in the bank's accounts. No exact breakdown is available of netting claims by category, since they concern complex and involved claims.

9. What is the nature of Arion Bank claims? What are the Arion claims on which decision is postponed?

Answer:

Information cannot be provided on individual claims or individual creditors. Reference is made to the report of the Winding-up Committee presented to the meeting concerning the overall claims of Arion Bank hf. These include various types of claims and decisions will be made on each of them individually; decisions have been made, however, on most of the priority claims lodged on behalf of Arion Bank hf.

10. Could you please clarify amount of the depositor and investment guarantee fund claim that was removed and why it was removed? This was mentioned on the "next steps" slide.

Answer:

Roughly speaking, the Depositors' and Investors' Guarantee Fund originally lodged claims for approximately ISK 390 billion based on the calculation that 39,000 parties held deposits in EDGE accounts and on an estimated ISK 10 million maximum payment for each depositor. The Winding-up Committee has demonstrated that the Resolution Committee had paid all deposits and therefore only interest is disputed. The total amount of claims for interest was ISK 5-6 billion, of which the Winding-up Committee has only recognised around ISK 3 billion as general claims. The Guarantee Fund has now sent the Winding-up Committee a letter to amend this claim as lodged, reducing the amount from ISK 390 billion to ISK 10.3 billion.

11. If the WUC has given a decision on a claim, absent any objection, is this final and binding and is there any way a claim that has been decided can be reduced at a later date (e.g. set off rights)?

Answer:

A decision by the Winding-up Committee, which is not objected to by creditors, is considered final, cf. the third paragraph of Article 120 of the Bankruptcy Act, No. 21/1991. However, the possibility cannot be excluded that the claim will decrease at a later stage, e.g. due to set-off or payment from a guarantor.

12. What is the precise procedure of recognizing claims? Why have some of the claims arising from holding bonds not been reviewed yet?

Answer:

Since the expiration of the time limit for lodging claims, the Winding-up Committee has been working steadily at taking decisions on claims and has now concluded decisions on just over 13,000 claims. As explained at the last creditors' meeting in January, principal emphasis was placed on taking decisions on priority claims lodged with reference to Art. 109-112 of the Act on Bankruptcy etc. in order to be able to get court processes in motion in the cases where this was appropriate. Furthermore, decisions have been taken on claims based on bonds in the subordinated notes series and also on the US 144A notes series. The Winding-up Committee will continue to take decisions on claims until the next meeting.

13. Could claims already recognized and accepted be settled before those which have not been recognized yet (providing that both are of the same priority)?

Answer:

Reference is made to what is stated in the Winding-up Committee's report regarding the amount of priority claims and the impossibility of making payment as long as final decisions have not been obtained on these claims, in part, through the courts. In accordance with Article 156 of the Act on Bankruptcy etc., the administrator must, as promptly as possible, fulfil those claims against the estate which have already been recognised, however, the situation is such that it will not likely be possible to consider making distributions before 3 to 4 years' time at the earliest.

14. Many claims have not been recognized yet. Does this fact have any impact on the situation that the following creditors' meeting will be held in December, i.e. after the maximum moratorium date?

15. Will the Winding-up Board work after the maximum moratorium date and how?

Answers to 14 and 15:

The work of the Winding-up Committee will not change following the expiration of the moratorium period. The moratorium period is intended, in particular, to provide protection for the insolvent estate abroad, where by far the greatest number of issues, if not all, have been resolved; this therefore will not change the work of Kaupthing Bank's Winding-up Committee. Following this meeting the Winding-up Committee will continue to take decisions on lodged claims concerning which decisions have not yet been taken.

16. Is there any estimation of the commencement of claim settlement?

Answer:

It is not possible to say exactly, but it will not be possible to think about composition or distributions until after a final decision is available from the courts concerning the main priority claims.

17. At every meeting we request that you provide claim progress by category by value as well as by numbers. What is the issue with complying with this request?

Answer:

Reference is made to the information in the Winding-up Committee's report concerning the amounts in individual categories of claims. Detailed information on claims and amounts in each category will also be published on the creditors' restricted website area.

18. Where an agreement is under non-Icelandic law and is the subject of a claim which court will the WUC recognise. If the Icelandic courts have decided a claim is invalid, but the case is still pending in an overseas court will the WUC be prepared to move to a creditor composition based on the decision of the Icelandic courts.

Answer:

As is generally known, Icelandic law applies to insolvency liquidation in Iceland. With regard to the question in other respects, I think it would be incautious to respond to a hypothetical question without facing an actual instance. We simply will cross this bridge when and if we come to it.

19. Is there a reason why the next step slides were not included in the handout? Please upload to the web.

Answer:

Almost all of the slides concerning this presentation were published. However, it was not until yesterday that the Winding-up Committee sent out registered letters voiding the decision by Kaupthing's previous Board of Directors of 25 September 2008 to cancel employees' personal guarantees for loans to purchase shares. As a result it was not possible to send this for translation at a reasonable time, but we thought it appropriate to let meeting attendees know of this.

20. How can the beneficial owners of Global Notes sell their claims, since positions will not be unblocked and reblocked?

Answer:

The Winding-up Committee will endeavour to record transfers of the said claims through the procedure which has been presented on the Winding-up Committee's website, i.e. which has been developed by the Committee and Epiq Systems. The Winding-up Committee has entrusted Epiq to seek to collaborate with Deutsche Bank Trust Company Americas and DTC in order for transfer of these claims to be possible. Any eventual outcome will be announced on Kaupthing Bank's website.

21. In the opinion of the Winding-up Committee do beneficial owners lose the right to set-off, if it existed, by holding their claims through a global claim?

Answer:

The Winding-up Committee has already approved the claim of Deutsche Bank Trust Company Americas and at the same time rejected the claims of individual parties. In so doing, claims from certain parties who sought set-offs in connection with the issue have also been rejected. The Winding-up Committee has, however, not taken any decisions as to whether these parties were entitled to set-offs previously.

22. Was it not unnecessary on the part of the Winding-up Committee to demand blocking numbers from all creditors if its decision is that the Trustee can lodge a global claim?

Answer:

The Winding-up Committee has now taken a decision to recognise a claim from the Trustee, but this decision was not known before the deadline for lodging claims expired. Objections have been raised to the Winding-up Committee's recognition of the Trustee's claim and it is almost certain that this decision will be tested in the courts. It is therefore conceivable that this decision by the Winding-up Committee will be altered and in such case the Winding-up Committee will need detailed information on individual parties and, furthermore, whether they have transferred their claims, so that information will be available as to who are to receive distributions for these claims when the time comes.

23. Is the Winding-up Committee of the opinion that the decision on a global claim is in accordance with the principle of insolvency law concerning equal treatment of creditors?

Answer:

The Winding-up Committee took the above-mentioned decision after careful consideration. The assistance of both US and Icelandic legal counsel was sought with regard to the terms and conditions of the US 144A bond issue. The Winding-up Committee regards its decision to be in accordance with the provisions of the Act on Bankruptcy, but it is up to the courts to provide the final answer.

24. Is the Winding-up Committee of the opinion that with a misleading FAQ list and information last autumn it has caused beneficial owners of Global Notes damage which is liable for compensation under the third paragraph of Art. 110 of the BA?

Answer:

The Winding-up Committee does not consider itself to have published misleading information and the answer is therefore no.

25. Does the WUC have any guidance on how to effect a transfer of a bond claim that is subject to the omnibus filing by Deutsche Bank as Note Trustee?

If there is no guidance yet as how to transfer these claims, will the WUC be issuing guidance in the future and what is that timing?

Answer:

As has already been mentioned, ways are being sought to enable transfers to be effected in a relatively simple manner. If and when this is successful details will be provided on Kaupthing Bank's website.

26. Can the WUC comment on the conflict (if any) between who is to be recognised as the creditor as regards the 144A Bond issues: The Trustee or the beneficial owner?

Answer:

As has already been mentioned, the Winding-up Committee has already taken the decision to recognise the claim from the Trustee in this case. Reference is made to the discussion in the report presented by the Winding-up Committee concerning this matter.

27. When will a creditors' meeting take place where up to date reporting on recent events in connection with former shareholders and managers is given?

28. Is it planned that more than 18 months after the break down of Kaupthing real participation of creditors in the decision making process will be possible?

29. Both the WUC and the Res Com have not been appointed by the creditors. The ICC's have no decision making power. The lack of genuine creditor participation is totally unacceptable.

Answers to 27-29:

Regular meetings are held by the Winding-up Committee, on the one hand, where decisions on individual claims and the claims process as a whole are discussed. On the other hand, meetings are held by the Resolution Committee where Kaupthing's financial matters are discussed. Efforts are made to keep creditors as well informed on the progress of the estate as possible. As previously mentioned, an investigation is underway, in part, of issues concerning the bank's former managers and shareholders. This work is simply in progress and it is not possible nor the right time to give any detailed information on this at the moment.

With regard to involvement of creditors in the decision-making process, the fact is that the Winding-up Committee and the Resolution Committee are appointed by the competent authorities in accordance with applicable law. They alone are to handle the affairs of the estate, take decisions on behalf of the estate and be responsible for its obligations, as provided for in the Act on Bankruptcy etc., so that these are the bodies which, under Icelandic law, are responsible for taking decisions and bear the responsibility for those decisions. It is, however, the desire of both the Resolution Committee and the Winding-up Committee to keep creditors as well informed as possible and to involve them as much as possible in accordance with applicable law.

30. Has there been a decision made on penalty interest claims? Which article would such claims be under? What is the total amount of penalty interest claimed? What is the total amount of accrued interest cleared?

Answer:

A decision on penalty interest is taken concerning each individual claim and in general the interest shares the priority of the claim. With regard to the total amount of claims lodged for penalty interest and general interest, these figures have not been compiled, and it is very difficult to state this since in many instances bond holders lodged claims for both penalty interest and general interest, demanding whichever figure was highest.

31. In the cases where derivatives, bonds or loans are filed as priority claims, is there any basis for claiming priority aside from collateral?

Answer:

Creditors have a choice as to how they lodge their claims, including what priority they claim. It is up to the Winding-up Committee to assess and decide on each claim individually. It cannot issue a statement as to the legitimacy of individual classes of claims as a whole, since the basis of each claim has to be examined, together with the underlying contractual terms etc., which can naturally vary greatly.

32. Have the derivatives claims been reconciled with Alvarez/Marcel valuations?

33. Have derivatives claims been filed and recorded net of collateral or do they include 120 Bn netted on the asset side?

Answers to 32 and 33:

With regard to the involvement of Alvarez and Marcel, they were engaged together with the legal office Olswang to assist Kaupthing Bank's employees in taking decisions on the bank's derivative books. This involves settling the bank's derivatives which are both in the money and out of the money. These parties therefore are involved in the underlying claims.

It varies greatly whether creditors lodged claims for derivative transactions having regard to collateral or without deducting this from their claims and therefore it is not possible to give a single overall answer on that. With regard to questions concerning the asset side of the bank's balance sheet, they have to be directed to the Resolution Committee.