

Frá: "Roberts, Gary" <Gary.Roberts@hm-treasury.x.gsi.gov.uk>
Dags: 22.07.2009 18:31:56
Til: <indridi.h.thorlaksson@fjr.stjr.is>
Afrit: "Peters, A (Anouk) (FM/FS)" <a.peters@minfin.nl>, "Stassen, Yvonne" <yvonne.stassen@minbuza.nl>, "Barnard, JC (Johan) (FM/AL_FM)" <j.c.barnard@minfin.nl>, "Gurga, Hannah" <Hannah.Gurga@hm-treasury.x.gsi.gov.uk>
Efni: RE: Clarification on waiver of sovereign immunity

Dear Indriði

Thank you for your email. I have discussed this email response with Johan.

I think that you are referring to the "pari passu" provision in 3.1.2(b) of the Dutch Loan Agreement, and its equivalent in the UK document.

The background to this provision is that shortly before the loan agreements were signed the same lawyers (to whom you refer in your email) started to circulate this theory of a so-called "superpriority" in favour of DIGF. My legal advice is that no such super-priority exists under Icelandic law. This is also the position of DIGF - Aslaug confirmed that there was no super-priority during the negotiations. If there were a superpriority for DIGF, this would result in an unequal treatment of the Landsbanki creditors, which would conflict with the principle of equal treatment of creditors. For that reason, there is no superpriority under Dutch law or under English law; Jan Marten van Dijk of De Brauw confirmed this to Pall Thorlasson last week. The effect of superpriority would be that the burden of the deposit guarantee system would be placed on the other creditors of the bankrupt bank. Jan-Marten summarised to Pall last week in an email the ways in which such a superpriority would also conflict with the applicable European directives and with the principles underlying them.

It was against this background that the "pari passu" provisions were inserted into the loan agreements - we agreed with you and with DIGF that no such superpriority right exists in favour of DIGF. It follows from this that both Johan and I think that the answer to your two questions is "no" in both cases. We agreed in the loan agreements that if such a right were to be asserted (as certain lawyers in Iceland now seem to be doing) that would be contrary both to Dutch and English law and to applicable European directives. For that reason, and to try to pre-empt exactly the sort of unfounded arguments which are currently being raised, the contractual provisions were agreed upon.

I hope that this provides a helpful explanation for you in addressing this point.

If there are any other points you would welcome clarification on it would be helpful to know this week as summer is upon us. Johan is currently on leave. On Monday I go to China for a 9-day business trip and Hannah will also be on leave. As such contact with us will be more difficult.

Gary

-----Original Message-----

From: indridi.h.thorlaksson@fjr.stjr.is [mailto:indridi.h.thorlaksson@fjr.stjr.is]

Sent: 21 July 2009 17:28

To: Barnard, JC (Johan) (FM/AL_FM); Roberts, Gary

Cc: Peters, A (Anouk) (FM/FS); Stassen, Yvonne

Subject: Re: Clarification on waiver of sovereign immunity