

# Report to LBI's creditors

Presented at the Creditors meeting November 28<sup>th</sup> 2012

**Landsbanki Íslands hf.**

Í slitameðferð | In winding-up proceedings

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## Disclaimer

This report is issued by the WuB of LBI and is intended for LBI's creditors. The report is intended to provide general information regarding the winding-up of LBI. Its contents are as prescribed by Icelandic law.

Despite the WuB's best efforts, information presented in the report may include inaccuracies. The Winding-up Committee reserves the right to amend the contents of the report, correct it or update it at any time without prior notice. The report may contain information which is subject to third-party ownership rights or copyright, which should be observed in every respect.

This report is not intended to provide the basis for financing or other assessment and should not be a premise for investment decisions or decisions on transactions in claims on LBI. The information in this report updates and replaces information in previous reports on the moratorium and other aspects concerning LBI

Neither the WuB nor employees of LBI can be liable for any direct, indirect or derivative losses which may result from the use of this report or anything based upon its contents in any manner.

## Abbreviations

BA	Act on Bankruptcy
AFU	Act on Financial Undertakings
BCL	Luxembourg Central Bank (Banque centrale du Luxembourg)
CBI	Central Bank of Iceland
DNB	Dutch Central Bank (De Nederlandsche Bank)
FME	Icelandic Financial Supervisory Authority
FSA	UK Financial Services Authority
FSCS	The Financial Services Compensation Scheme
GMSLA	Global Master Securities Lending Agreement
ICC	Informal Creditors Committee
IFGL	Iceland Food Group Limited
ISDA	International Swap and Derivatives Association Master Agreement
LB	Landsbankinn hf. (New Landsbanki Íslands)
LBI	Landsbanki Íslands hf. in winding up proceeding
LI Lux	Landsbanki Luxemburg
bn	Billions
m	Millions
WuB	Winding-up Board
TIF	The Depositors' and Investors' Guarantee Fund

CHAPTER 1

## INTRODUCTION

## 1. Introduction

Just over four years have now passed since LBI collapsed and a Resolution Committee was appointed for the bank which took over the authority of its Board of Directors and shareholders' meeting on the basis of the so-called "emergency legislation", Act No. 125/2008.

During this period information disclosure to LBI's creditors has primarily been effected through creditors' meetings and reporting in connection with them, as provided for in the Act on Bankruptcy etc.

Creditors' meetings have been held regularly since the commencement of LBI's moratorium and subsequently its winding-up proceedings.

### Creditors' meetings - dates

20 February 2009

23 November 2009

24 February 2010

27 May 2010

23 August 2010

1 December 2010

19 May 2011

17 November 2011

31 May 2012

At the first creditors' meeting held after LBI's winding-up proceedings commenced, on 23 November 2009, a list was presented of claims which had been lodged within the time limit for lodging claims, together with a report giving an account of decisions on claims. A report was also presented at the meeting on the moratorium and other issues concerning LBI, which described LBI's activities and situation in detail. This report subsequently served as the basis for an activity report which has been updated twice and made available on the public area of LBI's website, [www.lbi.is](http://www.lbi.is).

The reports on claims decisions submitted to creditors' meetings on 24 February 2010, 27 May 2010, 1 December 2010, 19 May 2011 and 17 November 2011 discussed decisions on claims which were presented at the respective meetings, as well as the status of disputes concerning objections raised regarding decisions by the WuB at previous meetings.



At the creditors' meeting held on 17 November 2011 decisions had been taken on all claims lodged within the deadline for lodging claims. No special report on claims decisions was therefore presented to the creditors' meeting held on 31 May 2012, however, a review was given of the status of disputes at that meeting. A brief overview of legal actions for damages and voiding brought by LBI was also presented at the meeting.

Minutes of creditors' meetings and the documentation which has been provided at these meetings have been made available on a secure area of LBI's website reserved for creditors. Various details of the progress of LBI's winding-up proceedings have also been placed on LBI's website, including information on disputes and financial affairs.

In recent weeks and months the WuB has been examining how to best continue information disclosure to creditors. In this examination, regard has been had for the comments and suggestions made by creditors. The objective of this report is to give creditors an overall view of the progress of LBI's winding-up proceedings; similar reports are expected to be presented at creditors' meetings at least once each year. It should be pointed out that the contents and structure of this report assume that its readers have followed the earlier stages of LBI's winding-up proceedings and are familiar with its progress in general. Creditors who lack such knowledge are advised to acquaint themselves with material available on the [LBI website](#).

CHAPTER 2

LEGAL STATUS AND AMENDMENTS TO  
LEGISLATION REGARDING THE WINDING-  
UP PROCEEDINGS

## **2. Legal status and amendments to legislation regarding the winding-up proceedings**

### **2.1. On legal status in general**

LBI is in winding-up proceedings governed by the rules of Part B of Chapter XII of the Act on Financial Undertakings, No. 161/2002, as subsequently amended (AFU). According to the first paragraph of Art. 101 AFU, the estate of a financial undertaking cannot be liquidated according to general rules. However, the fact is that rules on the winding-up proceedings of financial undertakings are in many respects similar to general rules on insolvency, and the provisions of the AFU frequently refer to provisions and chapters of the Act on Bankruptcy etc., No. 21/1991 (BA), as will be explained in more detail below.

LBI's winding-up under general rules is based on a Ruling by the Reykjavík District Court of 22 November 2010, in accordance with a joint petition from the Resolution Committee, which was still operative at that time, and the WuB, as provided for in Point 3 of the second paragraph of Art. 101 AFU. The pronouncement of this Ruling automatically concluded the bank's moratorium, which had been in effect since 5 December 2008. According to Point 2 of Temporary Provision V of the AFU, all actions remain valid and unaltered which were taken during the moratorium since the entry into force of Act No. 44/2009, i.e. from 22 April 2009 onwards, as from that date the substantial rules concerning winding-up apply, as provided for in the previously mentioned sections of the AFU, to the bank's moratorium.

The WuB is appointed by the Reykjavík District Court and is under the control of Icelandic courts. Its work is governed in all main aspects by those rules which apply to the rights, obligations and responsibility of administrators under the BA, cf. also the fourth paragraph of Art. 101 AFU. According to the provision, the WuB of a financial undertaking also exercises the rights and obligations which were held by the Board of Directors and shareholders' meeting.

The reference date for LBI's winding-up proceedings is determined by law to be 15 November 2008. The date which has legal effect as the initial date of the winding-up proceedings is also determined by law to be 22 April 2009.

As described previously, the legal environment of winding-up proceedings is in many respects based on the rules which apply to liquidation in general and the AFU frequently refers directly or indirectly to provisions, chapters or sections of the BA. In this connection, it can be useful to briefly mention here the main points as well as several important exceptions.

- a. According to the first paragraph of Art. 102 AFU, the rules of the BA apply concerning reciprocal contractual rights of the estate and claims against the estate. This includes, firstly, Chapter XV of the BA (Articles 89 to 98), which contains the rules which apply to reciprocal contracts and their treatment in liquidation, and secondly, Chapter XVI of the BA (Articles 99 to 108), which contain specific basic principles concerning claims against an insolvent estate, including the conversion of claims in foreign currencies ranked in priority with reference to Articles 112 to 114 of the BA to ISK and the conditions for the right to set-off of debts against an insolvent estate and by what means. *An important derogation, however, results from the fact that the provision of the first paragraph of Art. 99 of the BA does not apply to the winding-up of financial undertakings; accordingly claims against a financial undertaking do not automatically fall due even when it is placed in winding-up proceedings.*
- b. According to the second paragraph of Art. 102 AFU, the rules of the BA apply to the winding-up proceedings concerning the invitation to creditors to lodge claims, its legal effect, the deadline for lodging claims etc. This concerns in particular Articles 85 and 86 of the BA.
- c. According to the third paragraph of Art. 102 AFU, the rules of the BA concerning priority of claims apply to winding-up proceedings, i.e. provisions of Chapter XVII (Articles 109 to 115), with the exception, however, that *deposits, as defined in the Act on Deposit Guarantees and an Investor Compensation Scheme, are priority claims as referred to in the first and second paragraphs of Art. 112 the BA.*
- d. The provisions of Chapter XVIII of the BA (Articles 116 to 121) and of Part 5 of the BA (Articles 166 to 179), apply to the treatment of claims in the winding-up proceedings, the contents of claims lodged, the effect of failure to lodge a claim etc. It should be pointed out especially that the provision of Art. 116 of the BA completely prohibits the bringing of court action against a financial undertaking in winding-up proceedings in the same manner as applies to liquidation.
- e. According to Article 103 of the AFU, the rules of the BA on the administrator's control of the estate apply in the main to the WuB of a financial undertaking. Here reference is made in particular to provisions of Chapter XIX of the BA (Articles 122 to 130). There is, however, the important exception *that the objective of the WuB is to maximise the assets of a financial undertaking in winding-up proceedings and it is not bound by the obligation of an administrator in liquidation to expedite the liquidation and disposition of the assets and rights to the extent practicable. In this connection the WuB may, for instance, disregard a resolution by a creditors' meeting contradicting this objective.*
- f. It was previously stated that according to the fourth paragraph of Art. 101 of the AFU, the same rules apply in the main to the WuB as apply concerning the rights, duties and

responsibility of administrators under the provisions of the BA. Rules on the status of the administrator, his/her duties and conduct appear in many provisions of the BA, primarily in Chapter XIII of the BA (Articles 75 to 84).

- g. It derives from the status of LBI and the provision in the fourth paragraph of Art. 103 AFU that all provisions of Chapter XX of the BA concerning voiding of measures apply to the winding-up proceedings. Special time limits apply for bringing suit, however, according to the AFU, as well as special rules on legal venue. Further details of this will be provided in Section 2.2 below.

The sixth paragraph of Art. 102 AFU contains special rules which apply to partial payments to creditors in the winding-up proceedings of a financial undertaking. More details of these rules will be provided in a special section on partial payments and measures taken by the WuB in this regard later in this report.

Rules on the conclusion of winding-up proceedings are contained in Art. 103 a of the AFU. If it is evident that the winding-up proceedings cannot be concluded with full payment of all recognised claims against the financial undertaking concerned, in accordance with the instructions of the first and second paragraphs of Art. 103 a, the WuB can seek composition with creditors when it deems the time to be appropriate, according to the detailed instructions in the third paragraph of Art. 103 a of the Act. Reference is made to the principal rules of the BA on how composition is to be sought and on the sanctioning of composition. A special rule applies, however, on the proportion of votes required to approve composition in winding-up proceedings. According to this rule, a scheme of arrangements is considered to be approved if it receives at least the same proportion of votes weighted by the amounts concerned as is equivalent to the proportion of claims waived under the agreement; *however, it must receive votes representing at least 60% of the claim amounts and votes of at least 70% of the parties voting at the meeting.*

The rules of Art. 36 of the BA apply to the scheme of arrangements in winding-up proceedings, and therefore regard must also be had for other rules of Chapter VI of the BA, to the extent applicable. In this connection it should be borne in mind that so-called contractual claims, which are covered by the scheme of arrangements according to Art. 36 of the BA, are defined more specifically in Art. 29 as all those claims which are not specifically excluded as such in Art. 28 of the Act. A scheme of arrangements, in other words, does not affect those claims which are excluded in Art. 28 of the BA. Among those claims excluded are priority claims with reference to Articles 109, 110 and 112 of the BA. Such claims are expected to be paid in full before composition can be achieved unless special approval is obtained from the creditors in question. It is in fact one of the basic characteristics of

composition that the creditors covered by such an agreement, who are entitled to vote on it, generally hold claims of equal ranking.<sup>1</sup>

If the composition is accepted and subsequently sanctioned by a District Court the winding-up proceedings conclude, as provided for in the first and second paragraphs of Art. 103 a of the AFU.

If composition is not accepted or if the WuB considers it evident that the premises will not exist for seeking composition pursuant to the rules of the third paragraph of Art. 103 a of the AFU, when this is timely in other respects, the WuB must request liquidation of the estate of the financial undertaking concerned, as provided for in detail in the fourth paragraph of Art. 103 a of the AFU.

## **2.2. Amendments to the Act on Financial Undertakings**

In the following section, mention will be made briefly of the amendments which have been made to provisions of the AFU in recent quarters, to the extent this is considered to be of significance for LBI's winding-up proceedings. These are amendments resulting from Act No. 78/2011, on the one hand, and Act No. 146/2011, on the other. The discussion and points mentioned are by no means exhaustive.

Various amendments provided for in Act No. 78/2011 are reflected in LBI's general legal situation, as discussed in Section 2.1 above. Among these are the disappearance of the Resolution Committee at year-end 2011 and rules on the approval of composition. Other aspects worth mentioning especially here are the following:

- a. A new provision was added to Art. 101 a of the AFU, which discusses among other things special supervision by the Financial Supervisory Authority of the operations and business practices of a financial undertaking controlled by a WuB.
- b. The WuB's authorisation to make partial payments, as provided for in the sixth paragraph of Art. 102 the AFU was limited to priority claims with reference to Articles 109 to 112 of the BA. Furthermore, more detailed provisions were added to the sixth paragraph of Art. 102 AFU on escrow accounts for partial payments.
- c. The WuB's duty to inform creditors of major measures taken with regard to the sale and disposition of assets or rights at open creditors' meetings was given greater emphasis. The WuB is expected to endeavour to present major measures in the sense of the provision in advance if at all possible.

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<sup>1</sup> Other examples of claims which are excluded from composition and independent of it are claims not for monetary payment, which can be satisfied in accordance with their substance, claims which are secured by assets of the estate, to the extent applicable, and claims which would be satisfied with a set-off if no winding-up proceedings or liquidation were involved. It could also be mentioned here that according to the third paragraph of Art. 28 of the BA, composition results in subordinate claims, as referred to in Points 1, 2, 3 and 5 of Art. 114 of the BA, being cancelled.

Adoption of Act No. 146/2011 made further changes to provisions of the AFU, in particular special rules of the Act on bringing voiding actions under Chapter XX of the BA. The amendments extended the time limit for bringing voiding actions in the winding-up proceedings of a financial undertaking to 30 months instead of the previous 24, from the time the WuB was able to demand voiding; the time limit may not commence, however, until after the deadline for lodging claims. The Act also included an amendment providing for court actions in connection with voiding to be brought before the District Court where the financial undertaking was placed in winding-up pursuant to the third and fourth paragraphs of Art. 101 of the AFU.

### **2.3. Amendments to the Foreign Currency Act**

This section looks at amendments adopted in recent quarters to the Act on Foreign Currency which are considered to be of special significance for LBI's winding-up proceedings. The discussion and points mentioned are by no means exhaustive.

Adoption of Act No. 127/2011, made major amendments to Act No. 87/1992, on Foreign Currency, tightening the currency controls which apply to various cross-border capital movements and or capital movements in foreign currency. Financial undertakings in winding-up proceedings, however, enjoyed certain exemptions from the general rules of the Act, including exemption from the ban on cross-border capital movements provided for in the second paragraph of Art. 13 b of the Act and exemption from the so-called repatriation obligations for foreign currency provided for in Art. 13 of the Act.

Adoption of Act No. 17/2012 made a major change to the situation of financial undertakings in winding-up proceedings when the exemption for certain cross-border capital movements provided for in the second paragraph of Art. 13 b of the Act was cancelled. Following this it is subject to a special exemption from the CBI, based on an application thereto, as provided for in Art. 7 of the Act on Foreign Currency, No. 87/1992, if a financial undertaking in winding-up proceedings intends to carry out cross-border financial transfers in foreign currency for purposes other than payment for goods or services. This means, among other things, that partial payments to creditors pursuant to the sixth paragraph of Art. 102 AFU are dependent upon exemption from the CBI.

It should be pointed out that Act No. 17/2012 made a special exception for foreign currency deposits in accounts with foreign financial undertakings or the CBI as of the close of business on 12 March 2012. This foreign currency is therefore still considered as exempt from the second paragraph of Art. 13 b and can be used for cross-border capital transfers, which must, however, be notified to the CBI. Finally, provision was made in Act No. 17/2012 for the CBI to set, as soon as practicable, rules

concerning exemptions from the second paragraph of Art. 13 b for foreign currency accruing after to 12 March 2012 to deposit accounts with foreign financial undertakings or with the CBI.

## **2.4. Other amendments to legislation**

This section discusses amendments which have been made in recent quarters which are considered to be of a general significance for LBI's winding-up proceedings. The discussion and points mentioned are by no means exhaustive.

Adoption of Act No. 182/2011, made certain amendments to Act No. Act No. 99/1999, on Payment of Cost due to Official Supervision of Financial Activities. The change meant, among other things, that financial undertakings in winding-up proceedings pursuant to the provisions of the AFU are to pay a fixed fee for official supervision amounting to ISK 35 m annually until winding-up is completed.



CHAPTER 3

**OVERVIEW OF LBI'S ASSETS AND  
OPERATIONS AS OF 30 SEPTEMBER 2012**

### 3. Overview of LBI's assets and operations as of 30 September 2012

#### 3.1. General

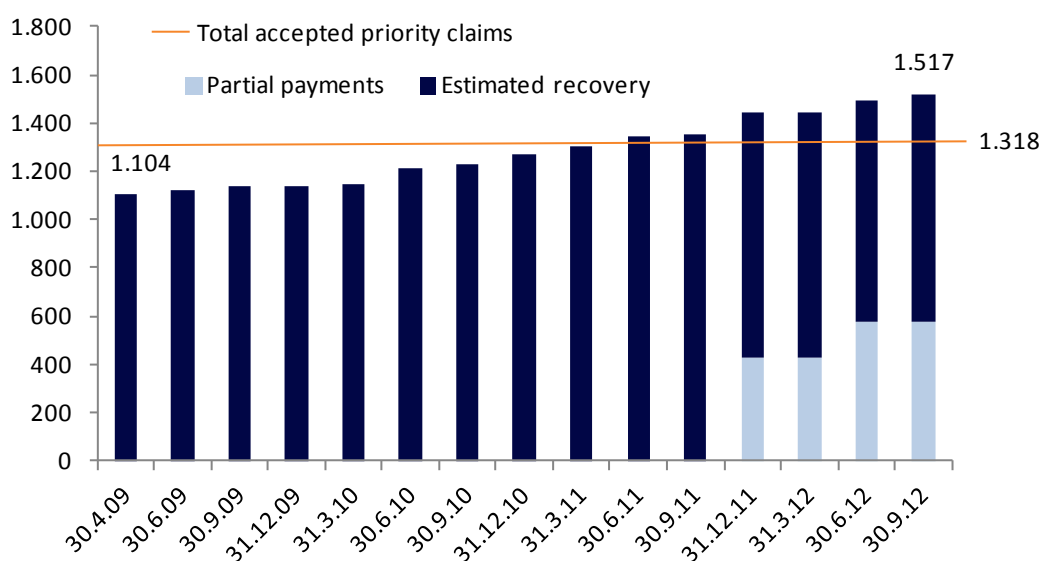
The estimated value of LBI's assets has been steadily increasing since the bank's winding-up proceedings commenced. Based on the ISK exchange rate as of 22 April 2009 against those foreign currencies which comprise the bank's asset portfolio, the estimated value of the asset portfolio, including three partial payments to priority creditors, rose from ISK 1,104 bn as of 30 April 2009 to ISK 1,507 bn as of 30 September 2012, a total increase of ISK 403 bn.

In addition to good recoveries on its asset portfolio, the very good recoveries obtained on LBI's larger assets explain the above-mentioned increases in the estimated value of the bank's asset portfolio. Of individual items the most prominent is LBI's sale of the bank's holding in Iceland Foods last March, a rise in the value of the contingent bond to be issued by LB, increases in LBI's global exposure, an agreement between LBI and the insolvent estate of Landsbanki Luxembourg and the Luxembourg Central Bank (BCL) in June 2010 and June 2012, a settlement with Björgólfur Thor Björgólfsson in June 2010, which among other things ensured a positive outcome for LBI upon the merger of Actavis with US pharmaceutical producer Watson this year, and the sale of shares in Eimskipafélag Íslands hf., firstly, in July this year and then in both a private placement and a public offering in connection with the listing of the company's shares on OMX Nordic Exchange in Iceland recently.

The following table shows the asset portfolio as of 30 September 2012 and the changes since 30 June 2012.

Estimated Recovery ISKbn	30.6.2012	30.9.2012	Changes in Quarter			FX as of 22.4.2009	
			FX change	Actual	% change	30.6.2012	30.9.2012
Cash	192.7	227.3	1.6	33.1	17%	194.6	230.3
Loans to Financial Inst.	33.4	34.9	0.5	1.0	3%	34.6	35.7
Loans to Customers	272.4	268.5	3.1	(7.1)	(3%)	271.5	264.7
Bonds	53.7	54.0	3.7	(3.3)	(6%)	57.1	57.0
Equities	40.3	0.0	0.3	(12.9)	(32%)	40.2	27.5
LB Financing	303.7	305.8	1.3	0.8	0%	312.6	317.3
Derivatives	1.8	1.6	0.0	(0.2)	(11%)	2.8	1.6
Investment in Subsidiaries	0.9	0.0	0.0	(0.9)	(100%)	1.0	0.0
Non current assets	3.8	3.6	(0.3)	0.1	1%	3.9	3.7
<b>Total assets</b>	<b>902.8</b>	<b>923.6</b>	<b>10.3</b>	<b>10.6</b>	<b>1%</b>	<b>917.3</b>	<b>937.9</b>

### Development of the Estimated Recovery - using FX rates as of 22.4.2009 (ISKbn)



For further details of the developments and changes in the estimated value of LBI's portfolio each quarter, reference is made to the bank's financial presentations, which are available on the secure creditors' area of the LBI website.

## 3.2. Disposition of assets and other rights

Amendments made to the third paragraph of Art. 103 AFU by Act No. 78/2011 (which are described in more detail in Section 2.2 above) codified the rule that LBI's WuB should inform the bank's creditors of all major measures concerning the sale or disposition of assets or other rights of the bank at creditors' meetings announced in the general manner. This applies in particular to measures taken by the WuB concerning LBI's assets, their sale or other decisions which the WuB may take which affect the bank's assets. The change codified arrangements which the WuB had in effect practised and therefore did not result in any noticeable changes for LBI's winding-up proceedings.

The following section summarises the main measures of this type taken by LBI's WuB since the beginning of 2012.

### 3.2.1. Iceland Food Group Limited (IFGL)

Following a sales process lasting around 12 months LBI's WuB sold the bank's 66.67% holding in the retail company Iceland Food Group Limited (IFGL) on 9 March 2012.

Following a preliminary examination in March 2011, LBI engaged the investment banks Bank of America Merrill Lynch and UBS to handle, under the ultimate direction of LBI, the sale of all the bank's shares in IFGL, a total of 66.67% of its issued share capital. In addition to the above-mentioned investment banks, consultants OC&C and Ernst & Young were also engaged to carry out due diligence

on IFGL, the legal firm Linklaters to handle general legal advisory and the law firm Morrison & Foerster to provide general advice on the sales process and its implementation. The sale was effected through a closed auction in which investment funds and market players were invited to participate. In July 2011, Glitnir, which held a 10% stake in IFGL, suggested to LBI that the banks jointly undertake the sale of their holdings in the company, to which LBI agreed.

IFGL's managing directors held contractual pre-emptive rights to shares sold in the company, in addition to which they were entitled to block various majority decisions by the Board of Directors and shareholders' meetings.

Following the first auction round, in which competitors and investment funds were invited to participate, four bidders were selected to continue in the auction process. This concluded with the submission of revised bids from two investment funds. Both bids were subject to various onerous conditions, including the continuing work of IFGL's managing directors, which increased the uncertainty involved in the offers and thereby the implementation of the sale.

Before the expiry of the deadline for LBI's WuB to take a decision on the bids, IFGL's managing directors submitted, in the name of a private limited company owned by them, a bid for all of LBI's and Glitnir's shares in IFGL.

It was a condition of this bid that the bidder should have exclusivity right for 42 days to purchase the said shares in the company. Before the expiration of this time limit, binding financing for the purchase was to be available from a bank, together with the bidder's binding, unconditional offer to purchase.

LBI accepted the above-mentioned bid on various conditions and agreed at the same time to grant the bidder 42-day exclusivity to purchase shares in IFGL, or until 28 March this year. The acceptance by the executive board of IFGL and the bidders of the conditions set by LBI gave the bank considerably greater flexibility to sell and maximise the value of LBI's shares in IFGL in a later sales process, should it turn out that the bidder's purchase was not concluded within the set time limits.

In tandem with its approval of the bidder's exclusivity right to purchase LBI's shares in IFGL, the bank suspended the auction process and negotiations with participants in this process.

After obtaining an independent fairness opinion from the investment banks Bank of America Merrill Lynch and UBS on the sales process and sales price, negotiations with the bidder were completed based on the above-mentioned bid within the set time limits and a purchase contract was signed on 9 March this year. According to the purchase contract, the total value of IFGL was GBP 1,550 m, of which GBP 1,300 m was paid in cash and 250 m with a vendor loan from LBI and Glitnir, divided *pro rata* between them.

LBI's share of the vendor loan is 83% of the total or GBP 207.5 m. The due date for payment of the principal and accrued interest is 10 years after the loan's issuance. The interest (PIK rate) is fixed for the first 4 years then increases in stages for the remainder of the loan term. The loan is subordinate to all other debts of the purchaser and no specific collateral was provided for it. The loan is subject to various covenants, including information disclosure, financial restructuring, changes in control, dividends, bonus payments and transactions with connected parties.

### **3.2.2. Corporal Ltd. (Hamleys)**

Following LBI's negotiations with the French toy retailer Group Ludendo (Ludendo), the latter submitted an indicative offer for Corporal, which is the parent company of the UK retail toy company Hamleys Ltd. (referred to jointly as Hamleys). LBI held a stake of around 64% in Hamleys. Based on this offer, LBI agreed in June this year to grant Ludendo exclusivity rights for two months to purchase the bank's shares in the company. This time limit was extended twice, firstly until August and then into September.

Following due diligence, which was in progress from June until August, Ludendo submitted a binding offer to purchase in September this year. Both the indicative offer and the binding offer were considerably higher than LBI's estimated valuation of the bank's holding in Hamleys.

LBI, other shareholders and the company's executive board, agreed to sell all their shares in Hamleys to Ludendo which following the purchase became the sole owner of Hamleys. The transaction was fully concluded on 17 September.

After deducting its costs, LBI received payment of around GBP 23 m in cash for its shareholding, in addition to which the bank received almost GBP 12 m in connection with a loan owned by the bank, or a total of around GBP 35 m. Prior to the sale LBI's estimated recoveries in connection with its shareholding in Hamleys and loan to the company were GBP 20 m. The enterprise value (EV) of Hamleys, based on the agreed selling price, was GBP 59.2 m.

LBI's WuB approved the above-mentioned sale after obtaining an independent fairness opinion from the investment bank Bank of America Merrill Lynch of the selling price and terms of the transaction.

### **3.2.3. Eimskip hf.**

In 2010, LBI participated in the revival of Eimskipafélag Íslands hf. (Eimskip). The company was at that time in major financial difficulties and headed for insolvency. This was avoided by means of an extensive rebuilding programme and composition in which the company's creditors participated along with the US investment company Yucaipa, which contributed new capital used in part to pay off secured claims. Following composition a rebuilding process began which proved very successful

and Eimskip's operations and financial situation improved rapidly. At the beginning of 2012, the company's strong position opened up the possibility of considering sale of the bank's shareholding, which comprised around 37.3% of Eimskip's total share capital. After an examination of possibilities for sale of the company's shares both in Iceland and abroad and the Icelandic economic environment, LBI's WuB decided to sell the bank's shares in Eimskip on the domestic market.

On 13 July this year, LBI and Yucaipa, who held around 32% of Eimskip's total share capital, each sold around 7% of Eimskip's shares in their possession to the Pension Fund of Commerce. The selling price of LBI's 7% was ISK 2.85 bn.

The sale by LBI to the Pension Fund of Commerce was an important part of a previously decided process through which Eimskip's shares were to be listed later in the year on NASDAQ OMX Nordic Exchange in Iceland and sold in an IPO.

Eimskip hired Straumur Investment Bank hf. (Straumur) and Íslandsbanki hf. to handle the above-mentioned process, i.e. the listing of the company's shares on NASDAQ OMX Nordic Exchange in Iceland and the IPO. General trading in the company's shares on the exchange was expected to commence in Q4 of 2012.

In tandem with the listing of Eimskip's share on NASDAQ OMX Nordic Exchange in Iceland on 23 October this year, a sales process commenced with the company's shares, first by subscriptions from institutional investors on 23-25 October, who were offered 20% of the company's issued share capital at a share price ranging from 205-225, and then in an IPO from 30 October to 2 November this year, where both institutional investors and the general public were offered 5% of the company's total share capital, with a possible increase of this to 8% if warranted by demand. LBI obliged itself to sell 17.94% of Eimskip's shares (35,888,211 shares) which it held in the offering for institutional investors and 1.98% (3,932,784 shares) in the IPO, or a total of 19.92% of Eimskip's total share capital (39,820,995 shares).

In the offering for institutional investors, bids were received totalling over ISK 12 bn, and bids totalling ISK 8.3 bn were accepted. The share price of shares sold was ISK 208.

The IPO, where Eimskip's shares were offered for sale at the above-mentioned price of ISK 208 per share, was very well received. Bids for some ISK 11 bn were received for shares offered of a value around ISK 2 bn, or more than five times the amount of shares on offer. As a result, the supply was increased, as had been authorised, by 3% with the company's own shares, or from 5% to 8% of the company's share capital. LBI now holds around 10% of Eimskip's total share capital.

### 3.2.4. Landsbanki Luxembourg (LI Lux)

LBI claim against the bank's former subsidiary, Landsbanki Luxembourg (LI Lux), is one of LBI's largest assets. In the summer of 2010 an agreement was reached between the administrators of LI Lux, on the one hand, and LBI as creditor, the Luxembourg Central Bank (BCL) as creditor and pledge holder, and the largest creditors of the estate of LI Lux, on the other hand, on the handling of claims against the estate and the operation of its asset portfolio. According to the agreement, LBI was to have certain access to information on the operations of the estate of LI Lux and a specified involvement in managing part of the estate's loan portfolio.

In May this year, negotiations began between the administrators of LI Lux, on the one hand, and LBI as creditor and BCL as creditor and pledge holder, on the other hand, on a review of the above-mentioned agreement. The negotiations concluded on 29 June this year with the signing of an agreement that BCL's secured claim against the estate of LI Lux would be repaid and certain assets of the estate allocated to LBI. Specifically, LBI received full ownership and control of (i) the majority of LI Lux's loan portfolio, (ii) the so-called Betula bonds and underlying loan portfolio previously pledged to BCL, (iii) the so-called Avens replacement bonds issued by the Icelandic state in EUR and (iv) ISK in cash (see below for more details).

The above agreement, which ensured LBI full ownership and disposal right to the above-mentioned assets previously owned by the estate of LI Lux, minimised uncertainty concerning the estimated value of the said assets. This together with the recalculation of claims against the estate gave LBI the opportunity to increase its assessment of the estimated value of its claim against the estate of LI Lux.

According to the above-mentioned agreement, the estate of LI Lux agreed to transfer EUR 66 m to BCL which, together with a payment of almost EUR 125 m from LBI and EUR 44 m in connection with the loan portfolio underlying the pledged bonds, paid in full BCL's outstanding claim against the estate of LI Lux. This repayment made LBI the only creditor of the estate of LI Lux, which then agreed to transfer to LBI the above-mentioned assets for full ownership and disposal. LBI is expected to recoup from the allocated assets the amount which it contributed towards paying off BCL's secured loan in 2013.

#### Estimated value of the said assets held by LBI prior to the settlement pursuant to the agreement:

	Estimated value EUR m	Estimated value ISK bn
LBI's claim against LI Lux	350	55
Betula bonds owned by LBI	108	17
LBI's cash used for the settlement	130	21
<b>Total</b>	<b>588</b>	<b>93</b>

### Estimated value of the said assets held by LBI following the settlement pursuant to the agreement:

	Estimated value EUR m	Estimated value ISK bn
Loan portfolio allocated to LBI	140	22
Avens replacement bonds allocated to LBI	285	45
Betula bonds, now classified as loans <sup>1</sup>	355	56
LBI's outstanding claim against LI Lux	77	12
ISK 2bn allocated to LBI	14	2
<b>Total</b>	<b>871</b>	<b>137</b>

On the above basis, LBI increased the estimated value of assets connected with the estate of LI Lux from ISK 93 bn to ISK 137 bn, or by a total of ISK 45 bn. LBI had previously increased the estimated value of the said assets in connection with the agreement concluded in June 2010.

LBI now has full ownership control of those assets allocated to LBI by LI Lux in accordance with the above and has concluded a short-term agreement with Reviva Capital SA for assistance and advice in managing the loan portfolios allocated to it.

#### 3.2.5. Actavis

In July 2010, LBI concluded an agreement with Björgólfur Thor Björgólfsson and companies connected to him for settlement of their obligations. LBI's announcements at that time pointed out that the estimated value of the bank's claims against these parties rose as a result of the agreement and that it was hoped that the value of LBI's claims against Björgólfur Thor Björgólfsson and companies connected with him would increase still further when the pharmaceutical company Actavis was sold.

In April 2012 the acquisition of Actavis by the US pharmaceutical company Watson was announced. In a news announcement issued by LBI at the time it was stated that LBI had participated in the transaction and expected that if it were concluded this would have a positive impact on recoveries in the bank's winding-up proceedings. These transactions were concluded on 1 November this year with a settlement between the contracting parties. The change in recoveries as a result of this measure appears as an increase in the estimated value of loans to holding companies as of 30 September 2012.

#### 3.2.6. Landsbanki Íslands hf. (LB)

After a long negotiating process, in which LBI's largest creditors participated, agreements were signed on 15 December 2009 between LBI, Landsbankinn and the Ministry of Finance on a settlement concerning the transfer of assets from LBI to Landsbankinn on the basis of Decisions by the Financial Supervisory Authority of 9, 12 and 19 October 2008. According to the settlement agreement, LBI was to receive:



1. an A bond issued by Landsbankinn in three foreign currencies, EUR, GBP and USD, with a total principal equivalent to ISK 260 bn;
2. share capital issued by Landsbankinn amounting to ISK 28 bn, or equivalent to a holding of around 19% in Landsbankinn;
3. a contingent bond issued by Landsbankinn amounting to up to ISK 92 bn. The total amount of this bond will not be determined until 31 March 2013. LBI's shareholding in Landsbankinn is to decrease in indirect proportion to the increase in the assessed amount of the contingent bond. The contingent bond is intended to be payment for the increase in the value of certain assets of LBI during the period from 9 October 2008 to 31 December 2012. In previous reports, LBI has given an account of the assessment procedure for the contingent bond, including the role of LBI Observer and the appointment of a joint valuation party;
4. a pledge agreement, under which Landsbankinn hypothecates specific assets of the bank, primarily larger corporate loans, to secure payments on the A bond and the contingent bond on time and without loss.

The above-mentioned A bond is to be repaid over 10 years with quarterly payments. During the first five years only interest is paid on the bond, initially on 9 January 2009, while from 9 January 2014 onwards payment is also made on the principal. The final maturity of the bonds is 9 October 2018.

The contingent bond which Landsbankinn is to issue no later than 1 April 2013 is to be paid on the same terms and conditions as the A bond.

Further information on the agreements, including the terms and conditions of the bonds and the collateral provided for them, can be found in the Information Memorandum published previously on the secure creditors' area of the bank's website.

LBI's financial information as of 30 June 2012 stated that the bank estimated the value of the contingent bond would be ISK 92 bn, i.e. that the bond would reach the maximum amount. If this estimate proves correct, the bank will, in accordance with the terms of the settlement agreement, deliver practically all of LBI's shares in Landsbankinn, originally ISK 28 bn, cf. the above, to the Ministry of Finance.

At the beginning of 2012, Landsbankinn requested of LBI that, in return for a pre-payment of ISK 73 bn by the bank on the above-mentioned A bond, which was based on a contractual provision in the above settlement agreement, LBI agree to postpone the first regular instalment on the bond until 9 April 2015 instead of 9 January 2014. Furthermore, Landsbankinn requested to make minor changes to the pledge agreement, primarily that additional assets of the bank be considered eligible as

collateral in the understanding of the above-mentioned pledge agreement. LBI agreed to Landsbankinn's requests in return for its acceptance that LBI Observer's active direct monitoring of the pledged asset portfolio and security cover continue for the duration of the loan term. An agreement on the above was reached and on 15 June 2012 Landsbankinn paid an amount equivalent to ISK 73.1 bn towards the bond.

On the initiative of the Ministry of Finance and Landsbankinn, the previously mentioned parties to the settlement agreement have recently held informal discussions on the terms of the agreement. No formal proposals for amendments have as yet been presented to LBI at the time of writing, but should these materialise LBI will inform creditors thereof.

### 3.3. Summary of operating costs

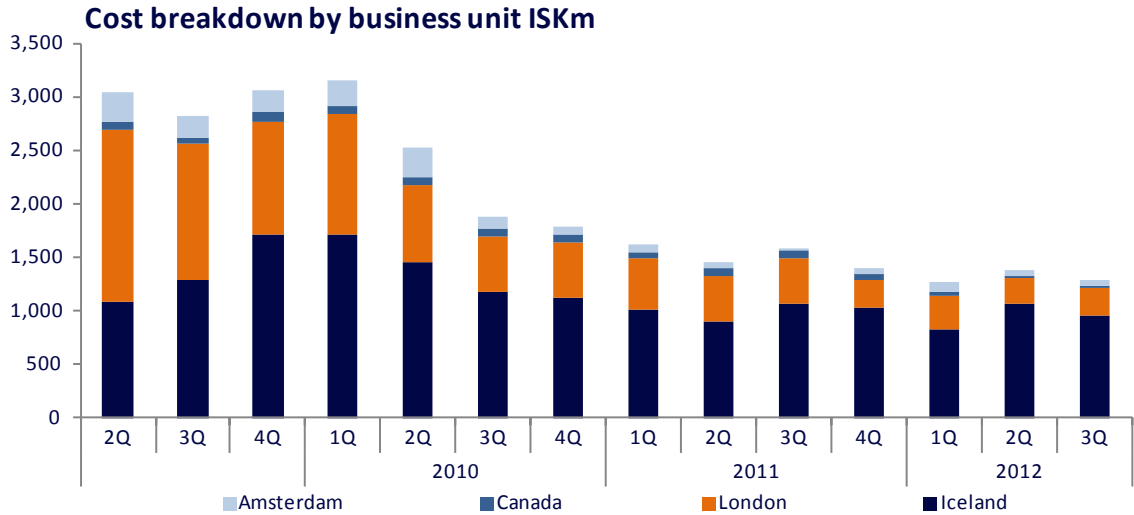
Cost incurred in the winding-up proceedings of a financial undertaking is included with so-called claims for administration of the estate, as provided for in Point 2 of Art. 110 of the BA. Such claims therefore enjoy priority in winding-up and are generally paid as they fall due, as is generally the case in normal business operations. The main cost items in LBI's operations are wage costs, expert assistance, cost of premises and costs arising from its service level agreement with Landsbankinn.

The following table provides a summary of operating cost in 2011 and 2012.

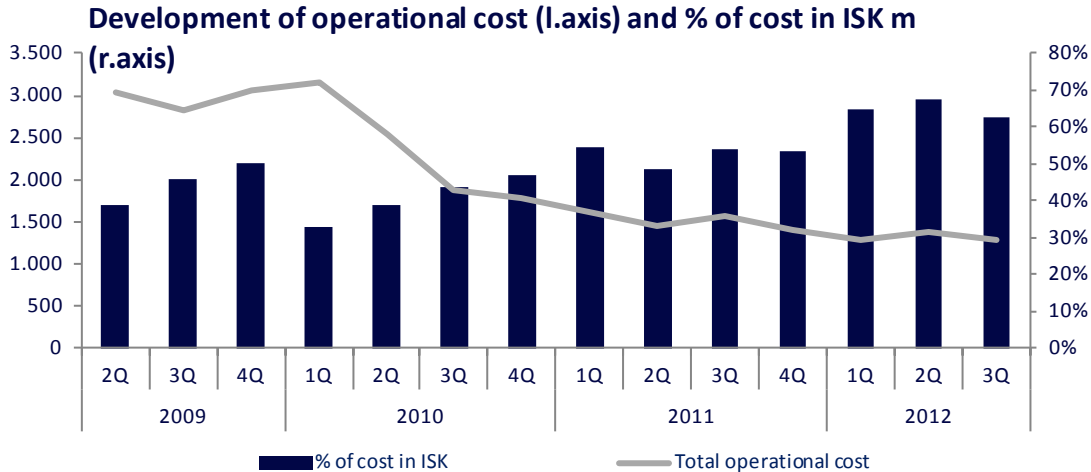
ISK m	2011				2012			Change YTD
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	
Housing and logistics	50	58	60	42	60	33	78	2%
Payroll and benefits	524	554	522	466	493	426	417	(17%)
Icelandic legal cost	199	199	160	267	300	205	158	19%
Icelandic expert cost	121	56	121	46	102	61	84	(17%)
Non-Icelandic legal cost	200	84	382	249	71	175	165	(38%)
Non-Icelandic expert cost	269	263	162	134	107	362	219	(1%)
Other Operational costs	167	147	85	112	74	51	95	(45%)
SLA cost	88	88	88	88	68	68	68	(23%)
<b>Breakdown by location</b>								
Iceland	1.016	902	1.061	1.038	837	1.076	956	(4%)
London	469	434	439	261	304	231	263	(41%)
Canada	67	65	59	52	39	16	13	(64%)
Amsterdam	66	48	22	53	95	58	52	51%
<b>Total ISKm</b>	<b>1.618</b>	<b>1.449</b>	<b>1.581</b>	<b>1.404</b>	<b>1.275</b>	<b>1.382</b>	<b>1.284</b>	<b>(15%)</b>

Operating cost in Q3 2012 amounted to ISK 1,284 m, a decrease of 19% YoY and a decrease of 58% from that of Q2 2009. The operating cost of LBI's winding-up proceedings is now equivalent to 7% of the total increase in recoveries since the beginning of LBI's winding-up proceedings.

A considerable portion of the cost reduction can be attributed to reduced activity abroad, with the accordant decrease in employee number, as well as to various actions to reduced costs in purchasing expert services. At the same time, a larger proportion of the cost is incurred in the bank's headquarters in Reykjavík. The accompanying figure shows how the proportional cost which can be attributed to activities in Reykjavík has risen from 36% in Q2 2009 to 74% of cost in Q3 2012.



The decrease in cost which has been achieved by transferring tasks to Reykjavík in tandem with generally decreasing activity has resulted in proportionally higher cost in ISK, as is shown in the accompanying figure.

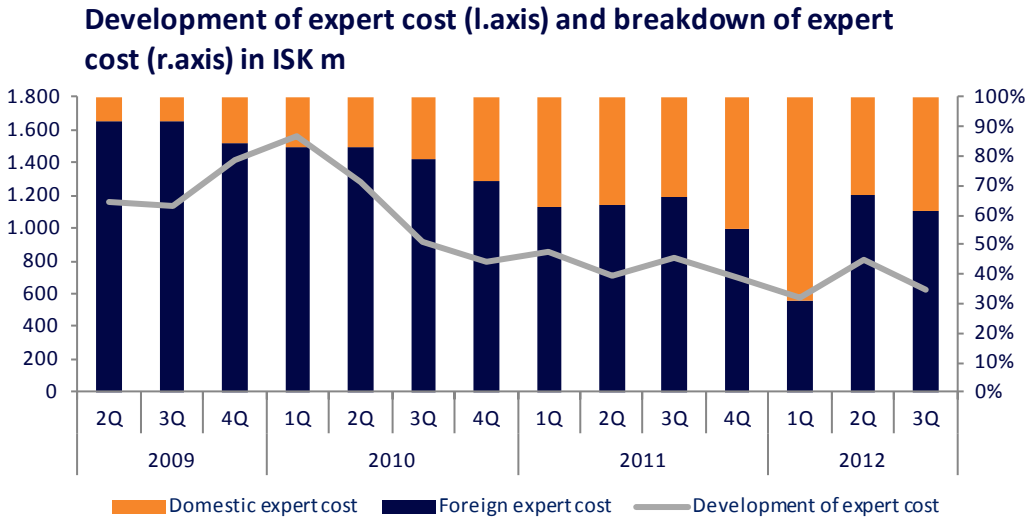


Wage cost in Q3 2012 amounted to ISK 417 m, a decrease of 20% YoY. Compared to Q2 of 2009, wage cost had declined by 59%. The principal reason for this is the decrease in number of employees at establishments abroad, in tandem with the transfer of tasks to Iceland. The cost of each full-time

equivalent position in Iceland is considerably lower than the average cost per position in foreign establishments. In the WuB's estimation there is for at least awhile yet a need for establishments abroad to take care of assets and maximise their value, although further savings can likely be achieved by transferring projects to Iceland; these matters will continue to be examined.

The cost of expert assistance in the winding-up can be roughly divided between domestic and foreign experts. The largest components in this cost are legal services, services of auditing firms and financial advisory services. Total payments for expert services have been decreasing since the beginning of the winding-up proceedings. Payments were highest at ISK 1,694 m in Q1 2010, but were ISK 627 m in Q3 2012, or 63% lower. It should be pointed out, however, that this cost item naturally fluctuates somewhat from one quarter to the next. This can be attributed to the fact that a substantial portion of expert cost is related to specific projects, such as sale of assets. It should also be pointed out that information on the cost of winding-up is presented on an accrual basis, as a result of which cost is recognised depending upon when the experts providing the services send invoices for their services. Thus it is common that tasks which extend over a period of several months are paid upon the conclusion of the project, making fluctuations of this sort unavoidable.

A summary of the development of costs and the split between foreign and domestic costs is shown



below.

Expert services purchased comprise around 50% of the total cost in LBI's winding-up proceedings. This cost is around 3.4% of the increase in the value of assets since 2009 and around 1% of the total value of assets in the winding-up proceedings, as estimated on 30 September 2012. In 2009 and 2010, the cost of foreign expert services was close to 80% of the cost of expert services purchased, while it had decreased to around 60% in 2011 and the first half of 2012.

It is the WuB's aim to increase the share of domestic expert services in its activities at the cost of foreign ones to the extent practicable in consideration of the interests of the winding-up. By so doing, the WuB seeks to reduce the cost of expert services purchased and reduce the outflow of foreign currency to pay costs.

The cost of LBI's premises has been decreasing. Its establishments in Reykjavík and London moved to new premises this year. In both cases the new premises are considerably more economical, although some cost was incurred in the move in both locations. Cost of premises has decreased by 20% since Q2 2009 and the decrease resulting from moving establishments in Reykjavík and London can be expected to be fully manifest in Q4 2012.

The cost of the service level agreement with LB has declined as service items have decreased in number in tandem with reduced needs; this cost has decreased by 74% since Q2 2009. The main items now included in the agreement are services in connection with information disclosure, the need for which in part is due to the fact that according to a decision by the Financial Supervisory Authority, LB holds all LBI's accounting data prior to 9 October 2008. A major portion of the services and accordant cost is due to computer and IT services. This service is and has been purchased from LB, as the banks share various systems, resulting in major efficiencies for LBI. The service level agreement is reviewed regularly to ensure it is as economical as possible. It should be pointed out, however, that no major changes are foreseeable in this regard in the near term.

CHAPTER 4

LIST OF CLAIMS AND HANDLING  
OF DISPUTES

## 4. List of claims and handling of disputes

### 4.1. Process of Lodging Claims

The WuB published its first invitation to creditors to lodge claims in the *Legal Gazette* (Icel. *Lögbirtingarblaðið*) on 30 April 2009 and again on 7 May 2009. The date of the former publication marks the beginning of the six-month time limit for lodging claims which expired at midnight on 30 October 2009. The invitation to lodge claims was also published in daily newspapers abroad in those countries where the bank's creditors were thought to be resident. The invitation to lodge claims was also published in the EU Official Journal. Creditors from member states of the European Economic Area or the European Free Trade Association were permitted to submit claims in a language of their home state. Such claims submissions were to be accompanied by an Icelandic translation; however, claims could be lodged in English without an accompanying translation. Other creditors could, furthermore, lodge their claims in Icelandic or English. All supporting documentation for claims lodged was to be accompanied by a translation into English or Icelandic, if not in either of these languages.

Once the time limit for lodging claims had expired, the WuB compiled a list of claims lodged and made independent decisions on recognising these claims, including the priority claimed for them. The WuB's decision on priority was determined by provisions of Articles 109 to 115 of the BA, with the exception resulting from amendments to the Act, that claims on deposits, cf. the provisions of the Act on Deposit Guarantees and an Investor Compensation Scheme, have priority.

The bank received a total of 11,950 claims prior to the expiry of the time limit for lodging claims, 30 October 2009. The vast majority, or close to 90%, of the claims lodged were received in October, 80% in the last week prior to the deadline and just over half in the last two days, 29 and 30 October.

Lodging a claim has, according to the sixth paragraph of Art. 117 of the BA, the same effect as bringing suit against the bank for a claim the moment the claim is received by the WuB. The WuB therefore confirmed receipt of all claims lodged with a letter to this effect, sent to all the creditors or their agents. Immediately following the expiration of the deadline, the WuB began to compile a list of the claims lodged. This list of claims contains all the claims received before the end of the time limit for lodging claims, as well as indicating the substance of the claim and what priority in ranking was requested, as is required in the first paragraph of Art. 119 of the BA. The WuB has received a total of 1,113 claims after the deadline for lodging claims. Due to their improper lodging, such claims are generally lost against the bank except in exceptional cases described in Points 1-6 of Art. 118 of the

BA. The WuB has rejected all but one of the claims which were received too late, since none of the instances described in Art. 118 could appear to apply. On 21 November 2012, the 7th edition of the list of claims was published, one week prior to the creditors' meeting on 28 November.

## **4.2. Transfer of claims lodged**

Creditors may transfer claims against LBI in full or in part, in which case the transferee assumes the rights of the transferor against LBI. According to Article 115 of the BA, transfer or other change of ownership conveys claims rights against an insolvent estate, with reference to Articles 109 to 114 of the same Act.

In order to ensure efficiency and security, the WuB, in collaboration with Epiq Systems Ltd. (hereafter Epiq) has set up specific arrangements for the transfer which are available on the bank's website [www.lbi.is](http://www.lbi.is). In order for a transfer to be registered in the regular updating of the list of claims, it must have been executed following the special arrangements. To briefly describe the transfer process, when a transferor and transferee have reached agreement on transferring a claim, they fill out the Transfer Form (the form is available on the bank's website) and submit this together with payment and relevant information to Epiq. If, in Epiq's estimation, the information provided on the Transfer Form is insufficient, the parties concerned will be notified thereof and allowed a period of 30 days to rectify the shortcomings, otherwise the transfer is deemed to have been revoked. If a transferor or transferee wishes to raise objections concerning a proposed transfer, the parties concerned must convey such to Epiq within 21 days of receipt of notice of the proposed transfer. If a transfer is objected to it is deemed to have been revoked. If a transfer is not objected to within the specified time limit the list of claims will be updated in accordance with the Transfer Form and accompanying documentation, once confirmed by the WuB.

The Winding-up Committee bears no responsibility for the validity of a transferred claim. The Winding-up Committee's recognition of the transfer and its registration does not imply any decision by the Winding-up Committee on the claim in any respect. A claim could nonetheless be rejected, if a decision has not yet been made on it when the transfer takes place.

The list of claims which is published for this creditors' meeting reflects all the transfers received and confirmed by the WuB. In the list of claims a transferred claim always has the same serial number as the original claim but only the transferee is listed as the creditor. The letter "F" in front of a transferred claim indicates that the claim has been transferred. In the case of a full transfer, the figure "100%" follows the name of the creditor. In the case of a partial transfer, the new transferee is listed with the respective percentage figure and the claim in question is given the same claim number



as the original claim together with an additional digit (e.g. the original claim number was 15,421 and the number of the claim which was transferred in part will be 15,421.1).

### **4.3. The claims decision procedure**

A decision by the WuB as to whether to recognise claims involves a preliminary examination of the claim lodged, the nature of the claim, what priority ranking is requested and whether the claim fulfils the general provisions of Article 117 of the BA. A check is then made as to whether the claim in question matches the bank's own documentation. For a claim to be given a ranking other than a general claim the creditor normally has to state specifically in its claim what priority is requested. As a rule, it is sufficient to refer to the relevant legal provision, but the text of the claim may also indicate the creditor's position in this respect

The WuB made its decisions in accordance with the basic principle of Icelandic insolvency law that if special priority is not requested in a satisfactory manner, a claim is considered to be lodged as a general claim in the understanding of Article 113 of the BA. It is in accordance with case law in Iceland that all derogations from the principle of non-discrimination between creditors should be interpreted narrowly.

Due to the large number of claims and the fact that the majority of them were received near the end of the time limit for lodging claims, the WuB was not be able to take decisions on recognising all claims and provide information on such decisions sufficiently in advance of the creditors' meeting on 23 November 2009. For this reason, a decision was taken to prioritise the claims decision process as much as possible by first taking decisions on priority claims, lodged with reference to Articles 109- to 112 of the BA, and thereafter on general claims and claims which were lodged after the time limit for lodging claims expired.

The WuB has concluded decisions on all claims lodged in the winding-up proceedings of Landsbanki Íslands. Decisions were announced at creditors' meetings on 23 November 2009, 24 November 2010, 27 May 2010, 1 December 2010, 19 May 2011 and finally 17 November 2011. At the creditors' meetings the WuB has presented and elaborated on a report with a summary of the process of lodging claims and explanations of its decisions on claims.

### **4.4. Decisions on claims**

Since the WuB presented its decisions on claims at its meeting on 17 November 2011, 11 claims have been received, with a breakdown as follows:

Claims under art. 110.	4
Claims under art. 112	4
Claims under art. 113	3
<b>Total</b>	<b>11</b>

According to Art. 121 of the BA, the WuB is to take decisions on whether, and if so how, a claim is to be recognised if received after the time limit for lodging claims provided for in Art. 85 of the BA expired.

#### **4.4.1. Claims for the administration with reference to Points 1-3 of Art. 110**

According to Point 5 of the first paragraph of Art. 118 of the BA, claims for the administration of the estate lodged with reference to Points 1-3 of Art. 110 of the BA can be accepted in winding-up even though lodged after the expiry of the time limit for lodging claims. Four claims were lodged, for which Point 3 of the provision in particular could be considered. Point 3 covers claims arising against the estate after a ruling on winding-up<sup>2</sup> due to agreements concluded or loss caused to others.

Thus Skólábrú ehf. lodged a claim with a principal amount of EUR 35,453.36 against LBI for alleged creditors' overpayment of a derivative debt to LBI and alleged illegal actions by LBI in collection of this claim. A claim was also made for payment of penalty interest as provided for in Act No. 38/2001, on Interest and Indexation, from 17 January 2011, i.e. the day LBI appropriated a pledged deposit of Skólábrú ehf. to close the claim, until the date of payment. The claim was lodged as a claim for the administration of the estate, with reference to Point 3 of Art. 110 of the BA. The WuB rejected the claim, on the basis that the creditor did not appear to have a legitimate financial claim against LBI. Reference was made to the fact that the creditor had verifiably concluded derivatives transactions with LBI and that the contract concerned in the claim had been out of the money for the customer at maturity. It had been within the contractual authorisation to appropriate the pledged assets. Skólábrú ehf. objected to the above-mentioned decision by the WuB and the creditor was therefore invited to a special meeting to resolve disagreement on 11 January 2012, in accordance with the requirement of Art. 120 of the BA. The dispute could not be resolved at this meeting and the WuB therefore referred the dispute in the case to the Reykjavík District Court for resolution, cf. the Court's case no. X-14/2012. The case is scheduled to be heard by the Reykjavík District Court on 12 December this year.

The Icelandic Competition Authority lodged a claim in the winding-up concerning administrative fines levied on LBI with a ruling by the Competition Appeals Committee, no. 6/2011. The Ruling by the Competition Appeals Committee confirmed a Decision by the Icelandic Competition Authority in

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<sup>2</sup> 29 April 2009.

substance, but reduced the amount of the administrative fine from ISK 40 m to ISK 7.5 m. The administrative fine was levied due to an infringement of Art. 17 a of the Competition Act, No. 44/2005, as notice had not been given in advance of a merger, in the understanding of competition law, which was part of collection actions for unpaid loans of a certain company group. The collection actions took place in 2009. It was demanded that the administrative fine have the status of a claim for administration of the estate in the winding-up, with reference to Art. 110 of Act No. 21/1991, and thereby enjoy priority. The WuB did not agree that there was a clear authorisation to grant priority to a fine of this type in the winding-up of a financial undertaking, and the dispute thereupon was referred to the courts.

LB lodged a claim (13121) with reference to Point 3 of Art. 110 of the BA in connection with payment based on a bank guarantee of a third-party obligation which the bank was ordered to pay to Handelsbanken in a judgement by the Supreme Court of Iceland in case no. 156/2011. The claim was lodged by LB which contended it had a right of recourse to LBI for this, since the bank guarantee should have ended with LBI upon the split of LBI in the autumn of 2008. The WuB rejected the claim for the mere reason that the obligation of LB to make payment as determined in the said Supreme Court case, had arisen from declarations by the bank itself and not on the basis of agreements with LBI or other measures by LBI. The WuB's decision on the said claim is to be dealt with at the creditors' meeting on November 2012.

Remedia ehf., Vikri ehf. and Isb ehf. lodged a claim based on paragraph 1-3 of Art. 110 of the BA with reference to paragraph 5 of Art. 118 of the BA, where they demand that LBI hands over shares in Parspro.com ehf. with the nominal value of 1.2 m ISK. The claimants base the claim on the assumption that they have proven in their ownership of the aforementioned shares and the WuB of LBI is obliged to hands those over. The claim was rejected with reference to the fact that the shares had been assigned to LBI from Landsbanki Luxembourg S.A. (in liquidation) on June 29 2012 and the shares had been registered under the name of the assignor in the share registry of Parspro.com ehf. Furthermore the WuB made reference to the fact the share registry had since been updated and LBI was now registered as the owner of the said shares in the share registry of Parspro.com ehf.. With reference to the assignment and evidence present in the file the WuB dismissed the claim of the previously reference parties to be given the shares in Parspro.com ehf. Additionally the WuB declined that the referenced Art. 110 could be a ground for proprietary claim. Remedia ehf., Vikri ehf. and Isb ehf. objected the decision by the winding up board of LBI and in their written objected state that the previously referenced shareholding in Parspro.com ehf. should be handed to them based on Art. 109 of the BA.

#### **4.4.2. Priority claims with reference to Art. 112 of the BA**

The WuB received four claims following declarations of voiding which were sent in connection with payments of money market deposits during the period 6 October to 4 December 2008. The WuB has demanded payment from these parties on the basis of Art. 142 of the BA. Voiding has been contested in all cases and the basis of the voiding is currently being tested by the courts. Should the outcome be that these parties will be subject to voiding and ordered to repay LBI the payments they received, they are permitted to lodge a claim for the original amount against Landsbanki Íslands and enjoy a position equal to that of other creditors with claims of the same ranking, as provided for in Art. 143, cf. Point 6 of Art. 118 the BA. As the legitimacy of the voidings has not yet been resolved by the courts, the time is not yet ripe to take a decision on these claims and this has therefore been postponed until the court's conclusion is available. In all instances the claims are lodged with priority with reference to Art. 112 of the BA. This is in accordance with decisions by the WuB on money market deposits. This decision has been objected to and the priority of these claims is disputed in the courts.

#### **4.4.3. General claims with reference to Art. 113 of the BA**

As a general rule, claims must be lodged with the WuB before the expiration of the time limit for lodging claims as provided for in Art. 85 the BA. If claims are not lodged within the proper time limit they are cancelled towards LBI unless the exceptions in Points 1-6 of Article 118 apply to the claim. Three general claims were lodged after the creditors' meeting on 17 November 2011. Rekstrarfélag verðbréfasjóða ÍV hf. lodged a claim (13130) following the WuB's voiding of the payment of a bill which was confirmed with a judgement from the Supreme Court in case no. 702/2011. The events underlying this claim are discussed in more detail in Section 6.3.1 of this report and reference is made to the discussion there. The claim was lodged with reference to the second sentence of the first paragraph of Art. 143 of the BA, cf. Point 6 of Art. 118 of the BA. The WuB recognised the claim with the amendment that the creditor's calculation of penalty interest was not accepted. The other two claims were rejected as lodged too late, since it did not appear that the exceptions provided for in Points 1-6 of Art. 118 of the BA applied to the claims. In the former instance, the invalidation and cancellation of a loan contract between the creditors and LBI was demanded, as well as a claim to the effect that LBI remove all pledges in connection with the transactions. The creditor maintains that the above-mentioned contracts are not legal under Icelandic law. The creditor also uses the excuse of altered premises. The latter instance was a claim for a deposit in an Icesave savings account in the UK.

## 4.5. Disputes

The WuB has taken decisions on 11,881 claims which have been discussed at creditors' meetings. Insofar as no objections are received to decisions by the WuB on recognition of claims, at the latest at the creditors' meeting where the claim was discussed, the decision of the WuB is considered final upon winding-up. On the other hand, if the WuB's decision is objected to, an attempt must be made to resolve disagreement on the claim; if this is not successful the dispute is referred to the Reykjavík District Court for resolution as provided for in Art. 120 and Art. 171 of the BA.

Objections are of two types: on the one hand, objections by creditors to decisions by the WuB concerning their own claims and, on the other hand, objections by creditors to decisions by the WuB on the claims of other creditors. Accordingly, in addition to the WuB, the creditor against whom an objection is raised as well as those who have raised the objection on the decision concerning the claim, are entitled to participate in the reconciliation meeting and, as appropriate, in the dispute before the courts. Chapter XXIV of the BA applies to the handling of such disputes by the District Court; in general, the procedure is expected to take a fairly short time. The following section describes how the WuB has attempted to resolve disagreement on decisions on claims.

The attorneys of those creditors who have objected to decisions on claims of other creditors have been granted electronic access to the claims lodged and supporting documents of the claims to which they have objected. Creditors have also been granted time limits to deliver to the WuB further comments and documentation.

Once these time limits have expired, meetings are held to attempt to resolve disagreement on claims as provided for in the second paragraph of Art. 120 of the BA. Meetings concerning a total of 2,075 claims have been held to date. When the WuB refers cases to the courts for resolution, they are ordered in priority with a view to covering all the main issues of dispute which are tested concerning the claims on which decisions have been taken and which are comparable. The WuB is of the opinion that doing so justifies postponing the handling of other disputed claims until conclusions have been obtained from the courts on similar claims which have already been referred to them. The WuB has contacted those creditors concerned to inquire whether they agree to await the conclusion of the courts in these cases. In those instances where the proposal of the WuB has been accepted, a reconciliation meeting is convened once the courts' conclusion is available in the respective cases.

The WuB has also attempted to prioritise by convening first those reconciliation meetings for claims lodged with priority with reference to Articles 109 to 112 of the BA. Claims received prior to the expiry of the time limit for lodging claims are dealt with first and then claims received after the deadline. Work is underway on resolving disagreement on general claims, with an attempt made to

cover the largest claims and groups of claims. This is done for the purpose of giving creditors as clear a picture as possible of the bank's liabilities.

Once cases have been referred to the District Court, the District Court judge determines the time and place for filing of the case. The WuB has referred 356 cases to the Reykjavík District Court, handling of 353 cases has commenced and 2 cases will be filed in the coming weeks. When a District Court judge convenes a court session he decides who are parties to the case. In by far the largest number of cases the creditors who have objected to a decision by the WuB are the plaintiffs and LBI is the defendant. When there are additional creditors involved, the judge decides whether creditors end up as plaintiffs or defendants. After the case is filed with the court, a time limit is determined for the plaintiff to submit its brief; currently two briefs are awaited from plaintiffs. Thereafter, LBI and, as appropriate, other creditors, are granted a time limit to submit briefs. Once all parties have delivered their briefs the case will be heard orally by the court. Many cases have, however, been postponed or concluded before the oral pleadings, for a variety of reasons. Thus postponements have been requested in four cases for further gathering of documentation. Five cases have been postponed indefinitely. Settlements have been reached and/or creditors withdrawn their objections in 301 cases which are then cancelled. One case has been postponed temporarily. A decision on the hearing of the case is available in one case. Following the hearing of the case the District Court judge accepts the case for a ruling. The pronouncement of a ruling is awaited in one case. Rulings by the District Court in such disputes may be appealed to the Supreme Court within two weeks of their pronouncement. The Reykjavík District Court has now pronounced 31 Rulings in disputes referred by the WuB to the court, 25 of which have been referred to the Supreme Court, which has issued its judgement in all the cases. Appeals to the Supreme Court of Iceland against Rulings are normally presented in writing, but the Court may decide to allow oral pleadings as well, if it deems necessary.

The final conclusion concerning the amount and priority of a claim can, in accordance with the above, be obtained when a decision by the WuB is not objected to or when objections are withdrawn at later stages. In addition, disagreement on a decision on a claim can be resolved at meetings held for this purpose. Failure by a creditor to present itself in court can result in the decision by the WuB being considered final, or if a settlement is reached between the creditor and the WuB then the case can be concluded with a Consent Decree. The court's conclusion can also comprise a final outcome on the fate of a claim. The final outcome concerning the amount and priority of a claim, which has been arrived at by any of the means listed above, subsequently forms the basis for payment and distributions. Before a conclusion is registered in the WuB's systems it is reviewed. This review includes an examination of all the underlying aspects of the claim, such as documentation, satisfactory payment instructions and amounts.

Publication of the list of claims and the subsequent discussion here is based on the recording of the decisions in the WuB's systems when this report is written. At this point in time the status of disputes in the winding-up proceedings of LBI is as follows:

Claim Priority - Liability type <sup>3</sup>	Accepted Amounts	Final <sup>4</sup>	Settled by other means	Paid from recoveries	Escrow allocations	Liabilities 15/11/2012 <sup>5</sup>
<b>109 - Proprietary Interest</b>	<b>4.9</b>	<b>100%</b>	<b>4.9</b>	-	-	-
<b>110 - Administrative Claims</b>	<b>7.1</b>	<b>100%</b>	<b>5.1</b>	<b>2.0</b>	-	-
<b>111 - Guarantee Claims</b>						
Deposit - Retail	6.3	100%	6.3	-	-	-
(Loans from Financial Institutions)	48.9	0%	48.9	-	-	-
Other borrowings	2.7	0%	2.7	-	-	-
<b>Total Guarantee Claims</b>	<b>57.9</b>	<b>15.76%</b>	<b>57.9</b>	-	-	-
<b>112 - Priority Claims</b>						
Deposit - Retail	1,166.9	99.97%	-	580.7	1.3	584.9
Deposit - Wholesale	145.4	97.03%	-	70.1	2.1	73.2
Loans from Financial Institutions	4.3	0%	-	-	2.3	2.0
(Loans from Financial.Inst.- Rejected)	-	-	-	-	4.1	- 4.1
Other liabilities	0.9	95.00%	-	0.4	0.0	0.4
(Claims settled by lump sum payment)	0.7	100%	-	0.7	-	-
<b>Total Priority Claims</b>	<b>1,318.2</b>	<b>99.31%</b>	-	<b>651.9</b>	<b>9.8</b>	<b>656.5</b>
<b>113 - General Claims</b>						
Deposit - Retail	0.2	0%	-	-	-	0.2
Deposit - Wholesale	10.4	0%	-	-	-	10.4
Derivatives	166.9	19.31%	-	-	-	166.9
Loans from Financial Institutions	46.9	19.47%	-	-	-	46.9
Other borrowings	179.5	0%	-	-	-	179.5
Other liabilities	9.4	0.48%	-	-	-	9.4
Securities Issued	1,229.3	24.83%	-	-	-	1,229.3
<b>Total General Claims</b>	<b>1,642.7</b>	<b>21.10%</b>	-	-	-	<b>1,642.7</b>
<b>Grand Total</b>	<b>3,030.8</b>	<b>55.10%</b>	<b>67.9</b>	<b>653.9</b>	-	<b>2,299.2</b>

The following section will provide a more detailed account of final conclusions regarding decisions on claims, in addition to attempting to give some insight into the principal disputes which are still unresolved. The claims will be discussed in the order of ranking requested. Thus one section will discuss proprietary claims, then claims for administration of the estate, then secured claims, priority claims and finally general claims. Within each category the discussion is divided according to the WuB's decision on the claims and whether this decision is final or has been objected to. Firstly, those claims are discussed which are finally recognised, i.e. the WuB has recognised the claim and this decision has neither been objected to or else disagreement has been reached or the courts have resolved the issue. This can also include claims which were rejected by the WuB but concerning

<sup>3</sup> Amounts in ISK bn

<sup>4</sup> Percentage of accepted amounts that has been finally accepted

<sup>5</sup> All numbers are using FX as of the 22nd of April 2009

which an agreement has been reached later on recognising the claim or the courts have recognised the claim. Next, claims are discussed which have been recognised but are disputed. This means that the WuB has recognised the claim fully or in part, but this decision by the WuB has been objected to and is therefore not final. There are some examples where the WuB has recognised a claim but has not accepted the priority as lodged. This can apply, for example, when a bond claim is lodged claiming priority, whereas such claims are general claims. The following discussion includes a special examination of those instances where a claim is recognised but the priority as lodged is not accepted; a distinction is made as to whether such a decision is disputed or is final. Explanatory figures for each ranking indicate specifically how high the amounts are of claims recognised in connection with transfers from other rankings. Similarly, an account is given of claims rejected by the WuB according to whether the decision is final or has been objected to. A final decision includes to instances where the WuB's decision has not been objected to, where the objections were withdrawn at later stages or a court judgement has confirmed the WuB's decision to reject a claim.

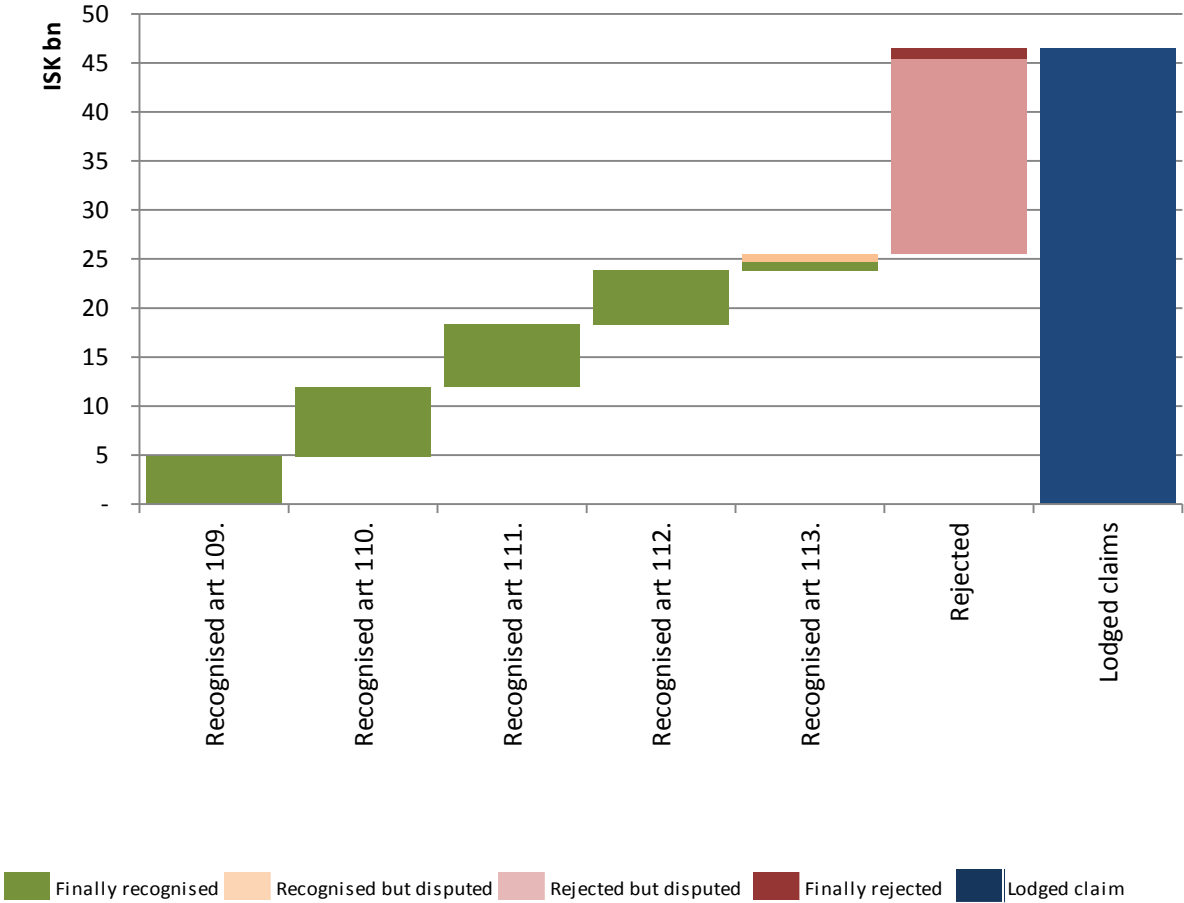
The discussion will be limited to claims or groups of claims amounting to over ISK 1 bn. Apart from this, readers are referred to brief commentaries on Rulings and Supreme Court judgements accessible on LBI's website.



### 4.6. Proprietary claims with reference to art. 109 of the BA

Claims for a total amount of ISK 46.5 bn requesting priority with reference to Art. 109 of the BA were lodged. Final conclusions have been obtained concerning claims totalling ISK 25.9 bn, while claims amounting to ISK 20.6 bn are still disputed.

See the breakdown in the accompanying figure.



	Finally accepted	Disputed	Amounts recognised
Recognised acc. to art 109.	4.9	-	4.9
Recognised acc. to art 110.	7.1	-	7.1
Recognised acc. to art 111.	6.3	-	6.3
Recognised acc. to art 112.	5.5	-	5.5
Recognised acc. to art 113.	1.0	0.7	1.7
Rejected	1.1	19.9	21.0
<b>Total lodged</b>	<b>25.9</b>	<b>20.6</b>	<b>46.5</b>

The following discussion provides an account of claims as shown in the breakdown in the figure. Firstly, claims which have been finally recognised will be discussed, After that, claims will be discussed which have been recognised, but not with priority with reference to Art. 109 of the BA,

including both claims where the decision is final and those which are disputed. Finally, there is a discussion of claims rejected by the WuB, both where the decision is final and where it is disputed.

#### **4.6.1. General claims with reference to Art. 109 of the BA**

Following the judgement of the Supreme Court of Iceland of 28 November 2011 in case no. 441/2011, 30 claims for syndicated loans totalling around ISK 4.9 bn have been recognised with priority with reference to Art. 109 of the BA. The above-mentioned judgement accepted that a claim by Landsbréf hf. , to the effect that unpaid interest payments and instalments to funds of Landsbréf hf. for participation in a loan contract where LBI was the lender together with other parties, enjoyed priority ranking with reference to Art. 109 of the BA Based on this judgement, the WuB recognised the corresponding claims from Landsvaki hf. (now Landsbréf hf.), BYR hf. (now Íslandsbanki hf.), Sparisjóðurinn í Keflavík (now LB) and Sparisjóðabanki Íslands hf. (now SPB hf.), with amendments; one claim was rejected. Following the Supreme Court's judgement negotiations have taken place between creditors and the WuB on LBI's intermediation in mediating payments on the basis of the syndicated loans to creditors.

Of the 30 claims which were recognised with amendments, the amount of part of the claims is final, since the loans underlying these claims are fully paid. LBI can be expected to have to continue to mediate payments in connection with the syndicated loans until 2017, when the last loan matures. It should be pointed out, however, that in the above-mentioned Supreme Court judgement it was pointed out that, since the winding-up of a financial undertaking as provided for in Act No. 161/2002 has the objective of concluding the final rights and obligations of such an undertaking, it is natural to conclude that an obligation cannot be placed on LBI to provide creditors for an indefinite period in the future such mediation in conveying payments.

The WuB's decision on those claims referred to above is final in all instances. However, due to the nature of the claims, the recognised amount of those claims which have arisen from loans which are not paid off increases with each payment received from the debtors of the loans. The WuB emphasises that the amounts which are recognised, in addition to those amounts which will be received from the debtors in the future, have not been recognised as LBI's assets and therefore payments on the basis of these claims do not affect the asset position or estimated recoveries.

In addition to the above, ALMC hf. (previously Straumur) lodged a claim in connection with its participation in a syndicated loan after the expiry of the deadline for lodging claims. There is a dispute between ALMC hf. and LBI on settlement in connection with the composition of ALMC hf., as to whether ALMC hf. disposed of the said claim with a declaration of set-off. The case will be heard by the Reykjavík District Court on 5 December this year. Since this dispute has not been concluded,

LBI has not delivered to ALMC hf. an amount totalling GBP 2.1 m, which LBI has received but the loan on which the claim is based has been paid off.

#### **4.6.2. Claims recognised but not with the priority as lodged**

##### **Finally recognised with reference to Art. 110 of the BA**

Landsbankinn's claim (1177), which was lodged with reference to Art. 109, in the amount of ISK 7.1 bn, was finally recognised with a Ruling from the Supreme Court as a proprietary claim with reference to Art. 110 of the BA and will be discussed in more detail in the discussion of proprietary claims.

##### **Finally recognised with reference to Art. 111 of the BA**

FSCS's claim (11924) was lodged without a specific amount with reference to Art. 109. In the dispute resolution process this was recognised as a secured claim with reference to Art. 111 of the BA in the amount of ISK 6.3 bn. This claim is discussed in more detail in the discussion of secured claims.

##### **Finally recognised with reference to Art. 112 of the BA**

A few deposit claims were lodged as proprietary claims with reference to Art. 109 of the BA. In these instances the requested priority was rejected but the claims were recognised with reference to Art. 112 of the BA. These claims were 21 in number and their total amount was ISK 5.5 bn. The largest claim in this group is a claim from the Universities Superannuation Scheme Limited, (754) in the list of claims, for just over ISK 4.9 bn, in connection with a wholesale deposit. In addition, the pension fund Stafir lífeyrissjóður lodged a claim which arose when the creditors requested a transfer from its account with LBI which did not find its way to the recipient, even though the creditor's account had been debited for the amount. A dispute concerning this claim concluded with a Consent Decree to the effect that the claim was recognised on the basis of Art. 112 of the BA in an amount just over ISK 0.7 bn. Other claims were for Icesave deposits in the Netherlands and their amounts are not significant.

##### **Finally recognised with reference to Art. 113 of the BA**

A total of three claims have been finally recognised with reference to Art. 113 of the BA which had been lodged with reference to Art. 109 of the BA. These were bond claims totalling ISK 1.1 bn; more details of decisions on such claims are given in the discussion of general claims.

### **Recognised with reference to Art. 113 of the BA but disputed**

The WuB has recognised claims totalling ISK 0.7 bn as general claims, rejecting their priority as lodged with reference to Art. 109 of the BA. The WuB's decision has been objected to and it is therefore not final.

### **4.6.3. Claims rejected**

#### **Finally rejected**

The WuB's rejection is final for 4 claims. These claims amount to a total of around ISK 0.2 bn. Either the decision was not objected to or the creditor has withdrawn its objections, so that the decisions by the WuB are final.

#### **Rejected decisions which are disputed**

Still disputed are 94 claims lodged claiming priority with reference to Art. 109 of the BA, which were rejected by the WuB. The total amount of these claims is around ISK 19,9 bn; the following four claims each exceed ISK 1 bn.

HSBC Bank plc. lodged a claim in the amount of approximately ISK 5.7 bn for monies which the creditor had delivered to LBI on 7 October 2008 in connection with settlement of a foreign currency transaction. The creditor and LBI had agreed to swap specific currencies on 7 October 2008 and the creditor fulfilled its obligation that day while LBI did not. Recognition was demanded of the claim with reference to Art. 109 of the BA and the return of the monies delivered by the creditor. The WuB refused to recognise the claim with reference to Art. 109 of the BA. An alternate claim for recognition with reference to Art. 113 of the BA was also rejected, since the creditor lodged another claim demanding recognition of a claim for the same transaction. Disagreement on the claim is in the dispute resolution process.

Nordea Bank Finland lodged a claim in the amount of approximately ISK 5.2 bn in connection with three currency swaps, which were subject to the ISDA Master Agreement on derivatives. According to the parties' agreement, the settlement date of the transaction was 7 October 2008. The creditor bases its claim on the contention that it fulfilled its obligations for payment but LBI did not. The creditor's primary claim is for the delivery of those funds which LBI was to pay, which totalled EUR 26,892,268, on the basis of Art. 109 of the BA; alternately, recognition is demanded with reference to Art. 113 of the BA. The WuB rejected the claim and the disagreement is in the dispute resolution process.

Glitnir hf. lodged claims (935, 982 and 984) in the amount of ISK 2.4 bn in connection with the creditor's involvement in mediating payments from foreign parties to recipients in Iceland. The claim

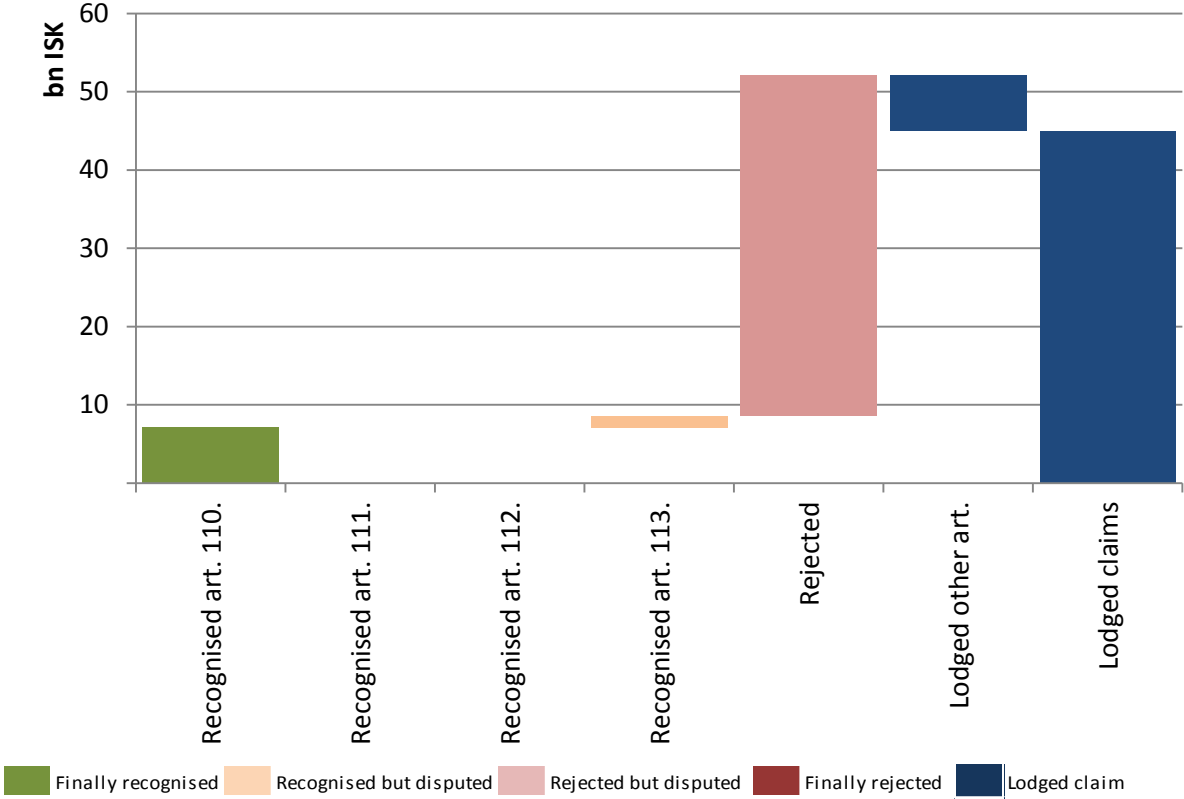
is lodge primarily claiming priority with reference to Art. 109 of the BA, but alternately based on Articles 110 and 112 of the BA. The WuB rejected the claim and it is in the dispute resolution process.

Eiríkur Sigurðsson lodged a claim based on alleged unauthorised withdrawals by LBI amounting to around ISK 3 bn. The claim is based, firstly, on Art. 109 of the BA, and alternately on Point 3 of Art. 110 and Art. 113 of the BA. A dispute concerning the claim is before the Reykjavík District Court.

### 4.7. Claims for the administration of the estate with reference to art. 110

Claims for a total amount of ISK 45 bn primarily requesting priority with reference to Art. 110 of the BA were lodged. In all instances the WuB has refused to recognise the claims with this priority and all of them are disputed.

See the breakdown in the accompanying figure.



	Finally accepted	Disputed	Amounts recognised
Recognised according to art. 110.	7.1	-	7.1
Recognised according to art. 111.	-	-	-
Recognised according to art. 112.	-	-	-
Recognised according to art. 113.	-	1.5	1.5
Rejected	-	43.5	43.5
<b>Total</b>	<b>7.1</b>	<b>45.0</b>	<b>52.1</b>

Lodged amounts	
Moved from other articles	7.1
Lodged according to art. 110.	45.0
<b>Total</b>	<b>52.1</b>

The following discussion provides an account of claims shown in the breakdown in the figure and table. Firstly, claims which have been finally recognised with reference to Art. 110 of the BA will be discussed. After that, claims will be discussed which have been recognised, but not with priority with reference to Art. 110 of the BA; all instances of such decisions have been objected to. Finally, claims will be discussed which the WuB has objected to. These decisions are disputed and therefore no final conclusion is available on these decisions by the WuB.

#### **4.7.1. Finally recognised claims with reference to Art. 110 of the BA**

A claim was lodged by LB (1177) in the amount of ISK 7.1 bn, primarily with reference to Art. 109 of the BA and alternately with reference to Art. 110 of the BA. A judgement by the Supreme Court in Case no. 112/2012 recognised the claim finally as a claim for the administration of the estate, as provided for in Art. 110 of the BA. The WuB has paid the claim with a set-off in the amount of ISK 5 bn and with a monetary payment amounting to around ISK 2 bn. It should be mentioned that Landsbankinn has opposed the set-off and a dispute concerning this is presently before the courts, cf. the discussion in Section 6.3.4.

#### **4.7.2. Claims recognised with another ranking**

##### **Recognised with reference to Art. 113 of the BA but disputed**

The WuB has recognised as general claims (3561, 3997, 1152 and 1236), with reference to Art. 113 of the BA, four claims lodged with reference to Art. 110 of the BA, for a total amount of ISK 1.5 bn.

#### **4.7.3. Claims rejected**

##### **Rejected decisions which are disputed**

The WuB has rejected claims lodged requesting priority with reference to Art. 110 of the BA totalling ISK 43.5 bn. Of these, there are four claims exceeding ISK 1 bn which are in the dispute resolution process; their total amount is approximately ISK 23.3 bn.

The Housing Financing Fund (HFF) lodged a claim (12288) with reference to Art. 110 of the BA in the amount of ISK 10 bn, due to a loss which the Fund maintains it has suffered because its right to set-offs was not observed with the transfer of so-called HFF bonds (issued by HFF) from LBI to LB in the autumn of 2008. In other respects this claim concerns the same events which are concerned in HFF's claim (2690) in connection with LBI's debts pursuant to derivative contracts. A dispute in connection with the above-mentioned claim by HFF has been filed with the Reykjavík District Court.

A dispute concerning a claim by LB (1235), originally in the amount of ISK 7.1 bn, has been filed with the Reykjavík District Court. LB has reduced its claim to just over ISK 435 m.

LB has also lodged claim (13121) that is presented in this report on page 34.

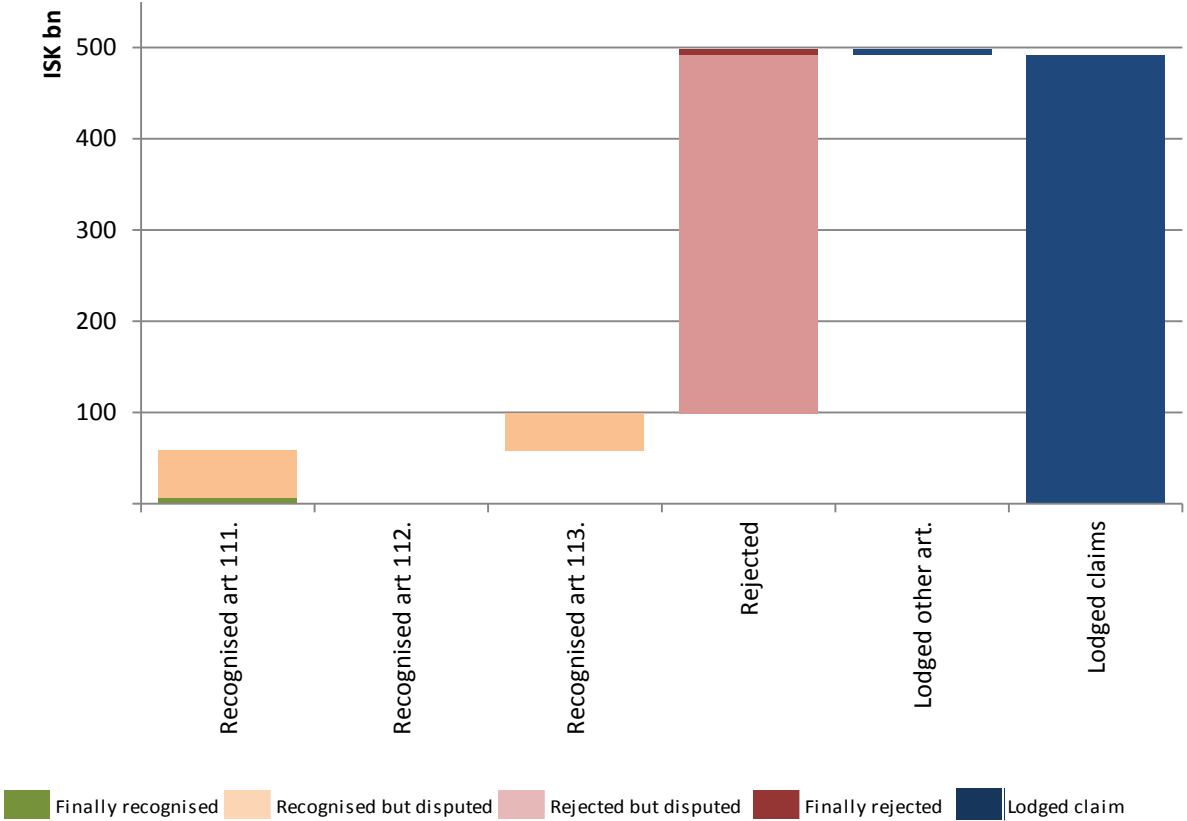
The investment bank VBS fjárfestingarbanki hf. (VBS), which is in winding-up proceedings, lodged a claim (12282) with reference to Art. 110 of the BA for repayment, based on voiding as provided for in Chapter XX of the BA, of a debt paid to LBI which was made with delivery of shares in a private limited company established to hold assets which VBS had pledged to LBI. The amount of the claim lodged is just over ISK 4 bn. A Ruling by the Reykjavík District Court on 7 November this year upheld the creditor's voiding claim but refused to recognise the monetary claim. However, LBI was ordered to return to the creditor all share capital in Vingþor ehf. The Ruling has been appealed to the Supreme Court by both parties to the case.



### 4.8. Secured claims, art. 111 of the BA

Claims in total of ISK 491.5 bn requesting priority with reference to Art. 111 of the BA were lodged. In addition, FSCS lodged a claim in the amount of ISK 6.3 bn, primarily based on Art. 109 of the BA but alternately on the basis of Art. 111 of the BA. Of these ISK 491.5 bn, a final conclusion has been obtained in ISK 14.8 bn, while ISK 482.9 bn are still disputed.

See the breakdown in the accompanying figure.



	Finally accepted	Disputed	Amounts recognised
Recognised acc. to art 111.	9.0	48.9	57.9
Recognised acc. to art 112.	0.0	-	0.0
Recognised acc. to art 113.	-	40.7	40.7
Rejected	5.8	393.3	399.1
<b>Total</b>	<b>14.8</b>	<b>482.9</b>	<b>497.7</b>

Lodged amounts	
Moved from other articles	6.3
Lodged according to art. 110.	491.5
<b>Total</b>	<b>497.7</b>

The following discussion provides an account of claims shown in the breakdown in the figure. Firstly, claims which have been finally recognised as secured claims will be discussed, followed by those claims which the WuB has recognised as such in part, but where this decision has been objected to. After that, claims will be discussed which have been recognised, but not with priority with reference to Art. 111 of the BA, including both claims where the decision is final and those which are disputed. Finally, there is a discussion of claims rejected by the WuB, both where the decision is final and where it is disputed.

#### **4.8.1. Finally recognised claims with reference to Art. 111 of the BA**

FSCS lodged claim (11,924) without a specified amount, with reference to Art. 109 of the BA concerning a Trust which was established with the issuance of instructions by the FSA on 3 October 2008, for deposits in Icesave accounts in the UK which went through a payable-through account with Barclays from 2 October 2008 onwards. The WuB recognised FSCS's resulting claim as lien rights to a monetary asset, in the amount of GBP 33 m and it is undisputed that the monetary asset has been disposed of as payment towards a claim listed as no. 1 in the list of claims as it was approved in GBP on the reference date for the winding-up, 22 April 2009. This is equivalent to ISK 6.3 bn. It should be pointed out that the deposit was, for the above-mentioned reasons, not included in the estimated recoveries and therefore has no impact other than to reduce the outstanding balance on claim no. 1.

Three additional claims have been recognised with reference to Art. 111 of the BA, totalling ISK 2.7 bn. Of this, a claim (1251) from Bank of America N.A (hereafter "BofA"), which is 99% of the total amount, was the result of participation in a syndicated loan. A set-off was requested against a debt of BofA resulting, firstly from a derivative debt (ISDA) and, secondly, from a deposit of LBI in an account with BofA. With the approval of the WuB the claim has been paid, but regard was had for the right to a set-off in assessing recoveries and payment therefore has no effect on the expected recoveries from LBI.

According to the above, therefore, a total of ISK 9 bn has been finally approved as secured claims with reference to Art. 111 of the BA

#### **4.8.2. Claims recognised with reference to Art. 111 of the BA but disputed**

The WuB has recognised with reference to Art. 111 of the BA part of a claim which was originally lodged by the Ministry of Finance on behalf of the Treasury; prior to the commencement of the winding-up proceedings the claim had been transferred to the Ministry from the CBI. After the end of the deadline for lodging claims, the claim was transferred to the asset portfolio of the CBI (*Icel. Eignasafn Seðlabanka Íslands hf.*). The amount of the recognised secured claim is ISK 48.9 bn, which is the combined value of those secured assets which the pledgee appropriated. The outstanding

amount on the claim, in the amount of ISK 39.8 bn, was recognised as a general claim with reference to Art. 113 of the BA. The claim is the result of loans granted to LBI by the CBI.

#### **4.8.3. Claims recognised but not with the priority as lodged**

##### **Recognised with reference to Art. 113 of the BA**

As discussed above the WuB recognised a claim from the asset portfolio of the Central Bank of Iceland (Icel. *Eignasafn Seðlabanka Íslands hf.*) as a claim with ranking according to Art. 111 in the amount of ISK 48.9 bn. The outstanding amount, ISK 39.8 bn, was recognised as a general claim.

#### **4.8.4. Claims rejected**

##### **Finally rejected**

Merrill Lynch International Bank Ltd. lodged a claim (1249) against LBI in the amount of ISK 5.6 bn. The claim arose from an underlying ISDA Master Agreement on derivatives between the creditor and LBI. The claim was lodged as a secured claim with reference to Art. 111 of the BA on the basis of a set-off right which the creditor considered itself to hold, in part against a debt owed by Merrill Lynch International to LBI according to an underlying GMSLA Master Agreement on securities lending. The WuB rejected the claim on the basis that a trilateral set-off was unauthorised and therefore the conditions of Art. 100 of the BA were not satisfied. Since the disagreement could not be resolved, the WuB referred the dispute to the District Court. The creditor withdrew its claims against LBI before the District Court and therefore the WuB's decision on the claim became final. Following this the WuB has demanded payment of the settlement amount in accordance with the underlying GMSLA agreement with Merrill Lynch International and has demanded payment of EUR 2.1 m plus interest.

##### **Rejected decisions which are disputed**

The WuB has rejected claims for a total amount of ISK 393.3 bn lodged with reference to Art. 111 of the BA where the decisions are still disputed.

DNB lodged a claim (2) reference to Art. 111 of the BA concerning a deposit which LBI held with DNB in the amount of EUR 20 m. The WuB refused to recognise the lien right and a dispute on the claim is being heard by the Reykjavík District Court. If the lien right as lodged is accepted, the said deposit will be disposed of towards DNB's claim no. 2, otherwise the funds will accrue to LBI.

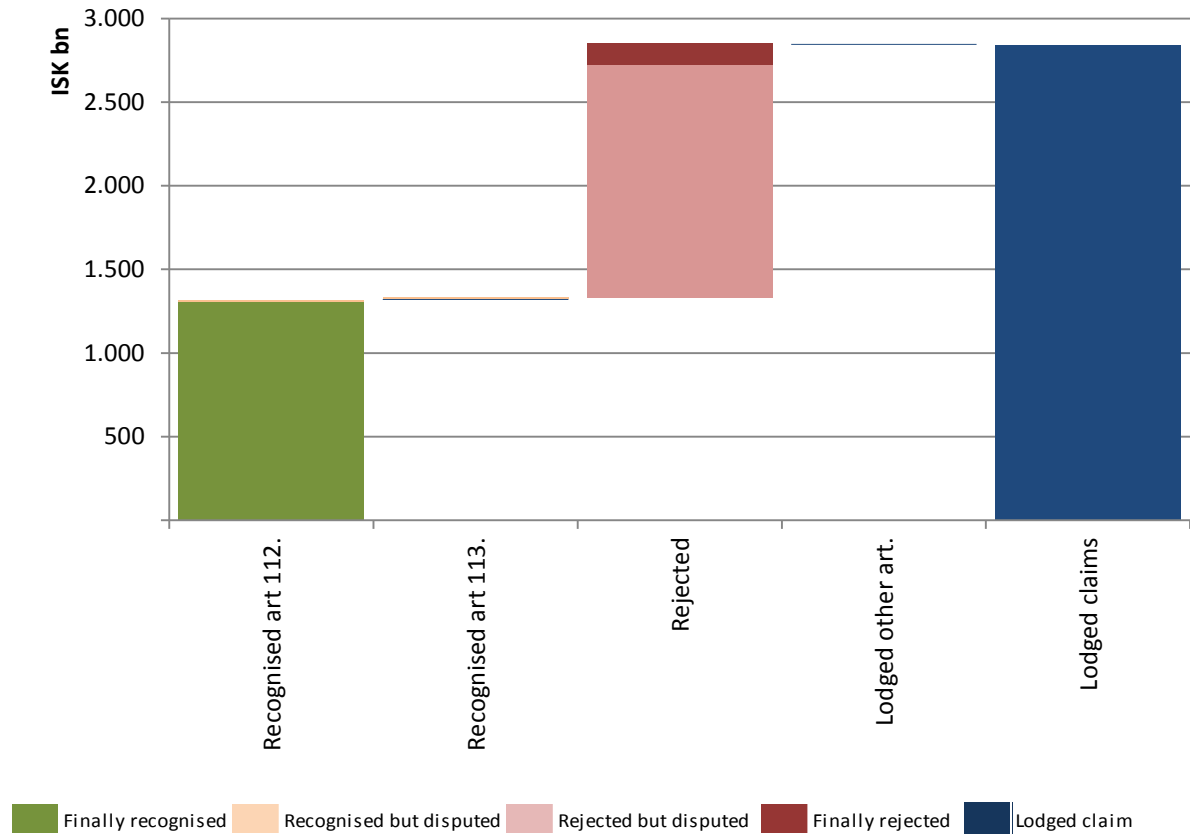
TIF lodged two claims (1243 and 1245) totalling ISK 340 bn concerning LBI's Icesave deposit in the bank's branch in Amsterdam, demanding primarily priority with reference to Art. 111 of the BA and alternately with reference to Art. 112 of the BA. The WuB rejected both claims and there is disagreement on this decision which has not been resolved.

Three foreign credit institutions, HSBC Bank plc. (1248), UBS AG (1252) and Goldman Sachs International (1253) lodged claims totalling approx. ISK 20.7 bn on the basis of an underlying ISDA Master Agreement on derivatives. The claims were lodged with reference to Art. 111 of the BA, to the extent the creditor considered itself entitled to a set-off; otherwise the settlement amount of the ISDA Master Agreement was lodged with reference to Art. 113 of the BA. The claims were rejected and work is underway to resolve the disagreement in the cases; one of them has already been referred to the District Court for resolution.

## 4.9. Priority claims with reference to art. 112 of the BA

Claims requesting priority with reference to Art. 112 of the BA in the amount of ISK 2,842.5 bn were lodged. Final conclusions have been obtained concerning claims totalling ISK 1,439.3, while claims amounting to ISK 1,408.7 are still disputed.

See the breakdown in the accompanying figure.



	Finally accepted	Disputed	Amounts recognised
Recognised according to art. 112.	1.308,5	9,7	1.318,2
Recognised according to art. 113.	4,5	8,3	12,7
Rejected	126,3	1.390,7	1.517,1
<b>Total</b>	<b>1.439,3</b>	<b>1.408,7</b>	<b>2.848,0</b>

Lodged amounts	
Moved from other articles	5.5
Lodged according to art. 112.	2,842.5
<b>Total</b>	<b>2,848.0</b>

The following discussion provides an account of claims shown in the breakdown in the figure above. Firstly, claims will be discussed which are finally recognised as priority claims, followed by those claims which the WuB has recognised as such but where this decision has been objected to. After

that, claims will be discussed which have been recognised, but not with priority with reference to Art. 112 of the BA, including both claims where the decision is final and those which are disputed. Finally, there is a discussion of claims rejected by the WuB, both where the decision is final and where it is disputed.

#### 4.9.1 Finally recognised

The WuB has recognised claims totalling ISK 1,318.2 bn as priority claims with reference to Art. 112 of the BA. By far the largest portion of these claims, 89%, are claims for retail deposits. Priority claims have been finally recognised totalling approximately ISK 1,308.5 bn.

The largest finally recognised claim is that of the UK FSCS (1) for Icesave deposits amounting to ISK 845.8 bn. A final conclusion on this claim was obtained with the judgement of the Supreme Court of Iceland in case no. 340/2011, which upheld the WuB's decision in the main. It should be pointed out that FSCS lodged a secured claim (11924) concerning a trust which was established for deposits to a payable-through account in connection with Icesave accounts with Barclays from 2 October 2008, when the FSA (UK) issued instructions on 3 October 2008. The WuB approved the disposition of the pledged monetary asset of GBP 33 m towards payment of FSCS's claim no. 1. In accordance with the final sentence of the third paragraph of Art. 99 of Act No. 21/1991, the amount disposed towards the claim as recognised in GBP on the reference date of the winding-up, 22 April 2009, and therefore the amount available for disposition is ISK 6.3 bn.

FSCS offered term deposit holders the option of waiting to transfer their deposits until they were to be available for withdrawal according to the Icesave terms which applied to the deposits. As transfer was not made until payment, decisions on such claims were postponed until FSCS could demonstrate that the claims had been paid and transferred. After the conclusion of the Supreme Court was available, disputes were resolved concerning those claims which later were transferred to FSCS (1274) on the same basis totalling approximately ISK 32.5 bn, which is fully and finally recognised as claim no. 1274. FSCS also lodged a claim (1038), as will be discussed in connection with the discussion on claims which are still disputed.

In the same manner, DNB (2) lodged a claim for Icesave which it had overtaken in the Netherlands. A judgement by the Supreme Court in Case no. 341/2011 finally recognised as a priority claim DNB's claim no. 2 in the amount of ISK 282.3 bn, which accords in the main with the WuB's decision.

A total of 733 claims from individuals concerning Icesave savings accounts in the Netherlands have been finally recognised in accordance with decisions by the WuB, 499 of these creditors accepted the WuB's offer of a lump sum payment. The total of the recognised amounts of the above-mentioned claims is almost ISK 5,9 bn.

Decisions on 99.96% of retail deposit claims are final.

Supreme Court judgements in cases nos. 300/2011 301/2011, 310/2011, 311/2011, 312/2011, 313/2011 and 314/2011 confirmed the WuB's decisions that wholesale deposits were considered deposits in the understanding of Act No. 98/1999, on Deposit Guarantees and an Investor Compensation Scheme, and enjoyed priority with reference to Art. 112 of the BA, and that UK and Dutch law applied to creditors' rights to interest.

The WuB has recognised claims amounting to approx. ISK 145.3 bn. Decisions are final concerning ISK 141.1 bn or the equivalent of 97.7 %.

The WuB received a total of 573 claims for wages and vacation pay, of which 504 were from former employees of LBI; 518 claims were recognised on the basis of Art. 112 of the BA, most of them with amendments. The amount of the claims recognised is approximately ISK 0.9 bn. A Ruling by the Reykjavík District Court in case no. X-83/2010 tested part of a claim by LB against LBI concerning claims of former LBI employees in this respect. The conclusion of the District Court was to uphold the WuB's decision, but approve additional claims amounting to over ISK 130 m on the basis of Art. 113 of the BA.

#### **4.9.2. Recognised priority claims which are disputed**

In addition the WuB has recognised priority claims totalling ISK 9.7 bn, which have been objected to by creditors and are in the dispute resolution process.

There are disputes between creditors concerning the claims of the UK savings banks Chelsea Building Society (755) and Chorley and District Building Society (832) in connection with two wholesale deposits amounting to ISK 4.2 bn. It is maintained that wholesale deposits owned by financial undertakings should not enjoy priority with reference to Art. 112 of the BA, on the same grounds as apply to money market deposits, cf. the discussion below. The disputes concerning these claims are being heard by the Reykjavík District Court. It should be pointed out that the claim of Chelsea Building Society, (755), has been transferred to the investment bank Morgan Stanley Senior Funding Inc (755.1).

The WuB took decisions on money market deposits from financial institutions and was of the opinion that these deposits should be considered deposits in the understanding of the third paragraph of Art. 9 of Act No. 98/1999, on Deposit Guarantees and an Investor Compensation Scheme. The WuB therefore recognised the priority as lodged of such claims for a total amount of ISK 4.3 bn. This decision was objected to by other creditors at the creditors' meeting on 27 May 2010, and since it was not possible to resolve disagreement on the priority of the claims, they were referred to the

District Court for resolution. The cases have been postponed until a judgement is pronounced in a case brought by Aresbank SA against Landsbankinn and the Icelandic state. Aresbank SA demands recognition that its claims, which arise from money market deposits with LBI, are deposits which were transferred to LB by a decision by the Financial Supervisory Authority on 9 October 2008 on the disposition of the assets and liabilities of LBI. A judgement in this case is expected to provide a conclusion as to whether money market deposits are considered deposits according to Act No. 98/1999. The judicial procedure has been delayed because the Supreme Court of Iceland decided to seek an advisory opinion from the EFTA Court. The EFTA Court published its conclusion on 22 November this year. It accepts that a money market deposit should be considered a deposit but national courts are entrusted with reaching a conclusion as to whether it is considered a guaranteed deposit as provided for in Act No. 98/1999.

#### **4.9.3. Claims recognised but not with the priority as lodged**

##### **Finally recognised as a general claim with reference to Art. 113 of the BA**

Claim lodged by Landsbanki Guernsey Ltd. (1277) arises from a guarantee declaration from 2004, in which LBI guaranteed under certain conditions the obligations of the Scottish bank Heritable Bank plc., a subsidiary of LBI, towards third-parties. The dispute concerning the claim concluded with the WuB recognising the claim as a guarantee claim with reference to Art. 113 of the BA, after which the case was cancelled. The recognition implies that there is no dispute concerning the above-mentioned guarantee by LBI, however, a decision cannot be made on the amount of the claim recognised until it is established whether and to what extent the guarantee will be tested. Other claims from Landsbanki Guernsey (1163, 1168 and 1173) are based on deposits with LBI in three currencies, i.e. GBP, USD and EUR. A dispute concerning the amount of the lodged claims concluded with the WuB recognising the claims with amendments as general claims with reference to Art. 113 of the BA, after which the case was cancelled. The total amount of the above three claims is around ISK 3 bn.

#### **4.9.4. Claims rejected**

The WuB has rejected claims in the amount of ISK 1,517.1 bn where the rejection is final on claims totalling ISK 126.3 bn. There is still disputes on decisions by the WuB of ISK 1,390.7 bn as priority claims in the winding-up.

##### **Finally rejected**

The WuB rejected FSCS's claim (1038) concerning Icesave deposits, lodged in the amount of ISK 32.2 bn. The claim was originally rejected as improperly lodged, but in the dispute resolution process FSCS



has agreed to reduce the amount of the claim presented to GBP 0.76 m. The difference between the amount of the claim as lodged and this amount is ISK 32 bn which is considered to be finally rejected.

The WuB received five claims from Caerphilly County Borough Council in connection with deposits with Heritable Bank plc., a subsidiary of LBI, for a total amount of approx. ISK 2 bn. The claims (1293, 1298, 1306, 1313 and 1314) were all lodged claiming priority with reference to Art. 112 of the BA based on LBI's guarantee of the obligations of Heritable Bank plc. The WuB rejected the claimed priority, as the WuB is of the opinion that claims based on LBI's declaration of guarantee are generally considered claims based on Art. 113 of the BA. The WuB furthermore regarded the claims as improperly lodged and therefore rejected the claims completely. The decision was not objected to and is therefore considered final.

### **Claims rejected but disputed**

The WuB rejected for the time being three claims of Aresbank SA (1281, 1282 and 1287) and one from UniCredit (1289) totalling around ISK 9 bn. The claims arise from money market deposits. As previously mentioned, the WuB's decision was that such claims were deposits and should enjoy priority with reference to Art. 112 of the BA. The reason for rejecting the claim by Aresbank is a case brought by the bank against LB and the Icelandic state, demanding recognition that its claims were transferred to LB by a Decision of the Financial Supervisory Authority on 9 October 2008, on disposition of assets and liabilities of LBI to LB (now Landsbankinn hf.). In the WuB's estimation, this is equivalent to the Plaintiff making claims in a court case against more than one party, in such a manner that the claims are primarily directed at one party and alternately at another, as is authorised if certain conditions are satisfied, as provided for in the second paragraph of Art. 19 of Act No. 91/1991, on Civil Proceedings. As a result, LBI's obligation will not be tested until and if LB is absolved of the creditors' claims in the court case currently in progress. This decision was objected to by the creditor, but all parties have agreed to postpone attempts to resolve disagreement until the outcome of the court case is available. UniCredit's claim was rejected as improperly lodged, in addition to which the right to a set-off was disputed. The disagreement could not be resolved and has been referred to the courts.

TIF lodged claims (1269, 1271, 1273, 1276 and 1300) with reference to Art. 112 of the BA, for a total amount of ISK 1,109.8 bn for deposit guarantees. The WuB rejected all the claims and an explanation of this decision is provided in the report on claims decisions of 19 May 2011. This decision was objected to and the disagreement is in the dispute resolution process.

Glitnir hf. lodged two claims (1272 and 1275) with reference to Art. 112 of the BA, totalling ISK 90 bn on the grounds that these were two deposits. The WuB rejected the claims completely and the disagreement is in the dispute resolution process.

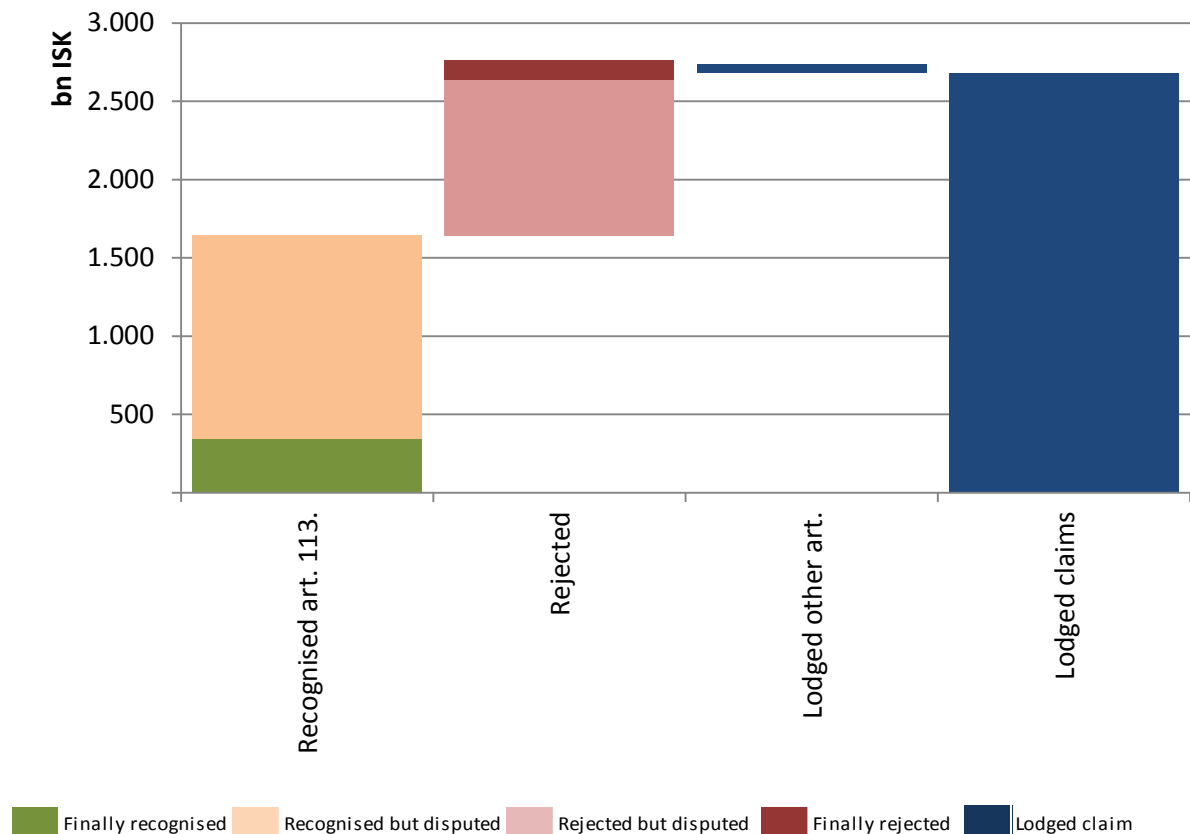
In addition, the WuB received 107 claims with reference to Art. 112 of the BA claiming damages for alleged losses resulting from the settlement of money market funds of Landsvaki hf., a subsidiary of LBI. The amount of the claims lodged is around ISK 3.4 bn. The WuB rejected the claims completely and received objections regarding 85 claims with a lodged total of ISK 3 bn. Objections regarding 59 of these claims have been recalled. WuB has referred four cases to the Reykjavík District Court for resolution. Of these four cases, two have then been revoked. Reykjavík District Court has ruled on one case which was not appealed to the Supreme Court so the decision reached by the District Court is final. Further 22 cases still subject to mediation.

The WuB received a total of 476 claims, amounting to ISK 9 bn, claiming priority with reference to Art. 112 of the BA due to an alleged guarantee declaration from LBI of the deposits and obligations of Landsbanki Guernsey Ltd. The WuB rejected the priority of the claim as lodged, in addition to which claims on the basis of Art. 113 of the BA were rejected, as it was not considered proven that LBI had in fact provided a guarantee for the obligations of Landsbanki Guernsey Ltd. towards third parties. The WuB's decision was objected to, both with regard to the existence of the claim and its ranking. In consultation with the creditors, one case was selected which was referred to the Reykjavík District Court for resolution.

#### 4.10. General claims art. 113 of the BA

General claims with reference to Art. 113 of the BA for a total amount of ISK 2,678.2 bn were lodged. The WuB has rejected priority as lodged with reference to Articles 109 to to 112 of the BA in connection with claims with a total amount of ISK 56.6 bn, but recognised them with reference to Art. 113 of the BA. The WuB has, furthermore, recognised claims in the amount of ISK 1,586.1 bn. Accepted general claims thus total ISK 1,642.7 bn. Of these, a final conclusion has been obtained for claims totalling around ISK 344.7 bn, while claims totalling some ISK 1,298 bn are still disputed. The WuB has also rejected claims amounting to ISK 1,092 bn, with a final conclusion obtained for claims amounting to a total of ISK 128,1 bn.

See the breakdown in the accompanying figure.



	Finally accepted	Disputed	Amounts recognised
Recognised according to art. 113.	344,7	1.298,0	1.642,7
Rejected	128,1	964,0	1.092,0
<b>Total</b>	<b>472,8</b>	<b>2.262,0</b>	<b>2.734,7</b>

	Lodged amounts
Moved from other articles	56.6
Lodged according to art. 113.	2,678.2
<b>Total</b>	<b>2,734.7</b>

The following discussion provides an account of claims as shown in the breakdown in the figure. First discussed are claims which the WuB has recognised, both claims considered to be finally recognised upon the winding-up as well as those which are still disputed. Previously discussed were claims where the WuB has rejected priority but has recognised them as general claims but this decision has been objected to. Reference is made here to previous discussion of those claims. Next, claims will be discussed which the WuB has rejected. In a similar manner as before, a distinction is made between decisions which are final and those which are still disputed.

#### **4.10.1. Finally recognised**

The finally recognised amounts of claims with reference to Art. 113 of the BA, total ISK 344.7 bn. By far the largest portion of these, around ISK 305.5 bn, are bond claims.

The WuB recognised claims of Deutsche Bank Trust Company Americas (2581 and 2584) for MTN issues, with reference to Art. 113 of the BA as lodged, except that interest and cost after 22 April 2009 were not recognised. Various creditors objected to the WuB's decision on the claims, but withdrew these objections following the judgement by the Supreme Court of Iceland in case no. 398/2011 (Eyrir Invest ehf. v. Kaupthing Bank hf. and Deutsche Bank Trust Company Americas), as the substance of the disputes was comparable.

Disagreements on 15 derivative claims totalling around ISK 32.5 bn have been resolved.

The WuB rejected the original claim by Merrill Lynch International (2603) in the amount of ISK 18.5 bn, as well as a claim by CALYON (2745) in the amount of ISK 2.7 bn, as improperly lodged. Disagreement on the claims has been resolved and they have been recognised totalling ISK 11.3 bn.

Betula Funding Ltd. lodged a claim (2628) on the basis of the ISDA Master Agreement. The claim was recognised with reference to Art. 113 of the BA, in the amount of ISK 7.4 bn. This decision is not disputed.

Natixis lodged a claim (2669) on the basis of the ISDA Master Agreement. The WuB recognised the principal of the claim, together with contractual interest, for a total amount of ISK 4.9 bn. The creditor initially objected to the WuB's decision but subsequently withdrew its objection so that the WuB's decision is now final.

Maple Bank lodged a claim (2677) on the basis of the GMSLA Master Agreement. The WuB recognised the principal of the claim, together with contractual interest, for a total amount of ISK 4.4 bn. The creditor initially objected to the WuB's decision but subsequently withdrew its objection so that the WuB's decision is now final.

ING Bank NV of Amsterdam lodged a claim (2881) in connection with an underlying ISDA Master Agreement. The principal of the claim was recognised with amendments as a general claim in the amount of just over ISK 1.5 bn. No decision was taken on the interest portion of the claim, which was lodged as subordinate. The WuB's decision was not objected to and is therefore final.

ABN Amro Bank NV lodged a claim (2999) on the basis of an underlying ISDA Master Agreement. The WuB recognised the claim with amendments in the amount of ISK 1.1 bn. The principal of the claim was recognised together with the interest claim, to the extent it accorded with the underlying contract. The WuB's decision was not objected to and is therefore final.

There are seven other finally recognised derivative claims, for a total amount of ISK 1 bn.

Six claims for deposits, totalling ISK 6.6 bn have been finally recognised.

The estate of Landsbanki Guernsey Ltd. lodged a claim (1163) for a deposit with LBI. A dispute concerning the claim before the courts concluded with an agreement that a claim in the amount of ISK 2.5 bn was recognised.

Banca Popolare di Milano lodged a claim (1011) concerning a money market facility amounting to approximately ISK 1.4 bn. The WuB refused to recognise the claim with priority since no priority ranking was requested, as is required according to the second paragraph of Art. 117 of the BA. This decision by the WuB was not objected to by the creditor.

Claims of Aargauische Kantonalbank (2996 and 3013) are for money market facilities. The WuB recognised the claims in all respects and these decisions are final. The total amount of both claims is around ISK 2.2 bn.

#### **4.10.2. Recognised but disputed**

The WuB has recognised claims as general claims with reference to Art. 113 of the BA, for a total amount of ISK 1,298 bn which have been objected to by creditors and are therefore disputed.

LBI had a total of 106 bond issues, in various classes, currencies and countries. The total number of claims for Senior Notes was 2,326 and the total amount of claims lodged for them was ISK 1,754 bn. The WuB recognised 1,909 senior note claims totalling around ISK 1,211.5 bn. Objections to decisions by the WuB on these claims, were either submitted, on the one hand, by the parties who had lodged the claims concerned or, on the other hand, by other creditors. The objections were directed at the WuB's calculations of the amount of the claims, primarily the interest. Preparations for resolving the disputes on these claims has begun and the majority of objections raised by other creditors has already been withdrawn. The intention is to invite the creditors with those bond claims which are disputed to reconciliation meetings in the coming months.

The WuB has approved 100 claims for derivatives which are disputed, for a total amount of approx ISK 134.4 bn.

By far the largest of these is a claim from Avens BV (11961) lodged on the basis of the ISDA Master Agreement which the WuB recognised in the amount of ISK 97.3 bn.

The estate of Landsbanki Luxembourg SA (LI Lux) lodged a claim (2582) in the amount of ISK 159 bn. Most of this amount was lodged on the basis of a GMSLA Master Agreement, while an additional 14 other claims were based on currency swaps and interbank loans. The WuB recognised the entire claim in part, in the amount of ISK 29.3 bn, of which the GMSLA claim was recognised for ISK 25.1 bn. The WuB's decision on the claim was objected to. An agreement on the GMSLA claim is within reach; the aim is to resolve the disagreement in such manner that the portion of the overall claim recognised will amount to ISK 61.1 bn. If this is achieved, it will be done on the condition that no set-off or enforcement measures are applied to the claim. In addition, LI Lux will not be authorised to transfer the claim unless it is delivered as payment to LBI, which is the only creditor of the estate in Luxembourg. The outcome will be known in coming weeks.

Drake Global Opportunities (Master) Fund Ltd. lodged a claim (2912) based on the ISDA Master Agreement between creditors and LBI. The WuB recognised the principal of the claim in the amount of just over ISK 1.1 bn but rejected the claim for interest and costs. The creditor objected to the WuB's decision and a reconciliation meeting has not yet been held to resolve the claim.

The WuB has recognised 32 claims concerning a syndicated loan taken by Landsbanki Íslands hf. in the summer of 2006. The total amount of the loan was EUR 600 million, but the portion drawn was around EUR 450 million. There were a total of 33 lenders in the syndicated loan, of whom 32 lodged claims. The amount of the claims recognised is lower or ISK 72.7 bn. This is due to the fact that a few lenders availed themselves of the right to set-off against funds owned by Landsbanki Íslands hf. which were in their custody.

Four claims were also on the basis of two bilateral loan contracts, one for EUR 60 m and the other for EUR 500 m. EUR 300 m of the latter loan were drawn. Of these four claims, the WuB recognised 3 with amendments, for a total amount of ISK 63.2 bn; 2 decisions were objected to. One claim is still disputed and one was rejected as improperly lodged.

The WuB has recognised claims for deposits with reference to Art. 113 of the BA, totalling ISK 10.7 bn. These claims were lodged without requesting a specific priority ranking for the claim, as is stipulated in the second paragraph of Art. 117 of the BA, and were therefore recognised with reference to Art. 113 of the BA. Several creditors objected to the WuB's decision, demanding

recognition with reference to Art. 112 of the BA. These disputes are either in the resolution process or have been submitted to the court.

In the discussion of claims with reference to Art. 111 of the BA it was stated that the outstanding balance of a claim by Eignasafn Seðlabanka Íslands hf. (1244.1) in the amount of ISK 39.8 bn had been recognised with reference to Art. 113 of the BA. The claim is still regarded as disputed as other creditors who objected to the decision have not withdrawn their objections.

TIF lodged two claims (1278 and 1285) for unpaid contributions from LBI. The claims were recognised with reference to Art. 113 of the BA, for a total amount of ISK 5.8 bn. The claims are regarded as disputed as other creditors who objected to the decision have not withdrawn their objections.

The WuB received 24 claims for so-called *Schuldschein* loan agreements, for a total amount of ISK 35.7 bn. This is a specific type of bilateral loan contract. As explained in the WuB's report on decisions of 17 November 2011, all the claims were recognised with amendments except one, which was recognised as lodged. Objections were raised to decisions by the WuB on the great majority of claims. Reconciliation meetings have not yet been announced.

LBI had four issues of bills, two in ISK and two in foreign currencies. The WuB received 29 claims based on these issues, for a total amount of ISK 21.5 bn. The WuB recognised the claims with reference to Art. 113 of the BA, in the amount of ISK 17.7 bn. This decision was objected to.

#### **4.10.3. Claims rejected**

The WuB has rejected claims totalling ISK 1,092 bn. Of these, decisions on ISK 128.1 bn are final while objections have been raised concerning claims for ISK 964 bn which are disputed.

##### **Finally rejected**

These include both those claims where the WuB's decision was not objected to and claims where objections were withdrawn at later stages. Also included are those portions of claims which were rejected when a claim was recognised with amendments and such decisions were not objected to. The same applies when a dispute concerning a claim has been resolved and the final amount recognised is lower than the amount as lodged. The difference is then included in the amount of claims which have been rejected.

Among the claims where the WuB's decision on rejection is deemed final are three claims (2598, 2627 and 2724) which the pension fund Stapi lodged on the basis of currency and interest rate swaps totalling approximately ISK 37.1 bn. The WuB rejected the said claims with reference to an agreement between the creditor and LBI on a final settlement for derivative contracts. The creditor

did not object to the WuB's decision on rejecting the claims. The claims have therefore been finally rejected.

The City of Reykjavík lodged a claim (1180), in the amount of ISK 1.4 bn, in connection with a loss which the City maintains it suffered due to a drop in the price of units in Landsvaki's money market fund. The WuB rejected the claim completely and the resulting dispute was referred to the courts. A judgement by the Supreme Court in Case no. 288/2012 accepted the WuB's decision to reject the claim.

LB lodged a claim (2946) on behalf of the City of Reykjavík in connection with the same event as is discussed in claim no. 1180 above. The WuB rejected the claim and this decision is final.

The tax authorities in Amsterdam lodged a claim (2735) for unpaid taxes for the years 2006 to 2008 in the amount of ISK 2.8 bn. The claim was rejected as improperly lodged and this decision was not objected to.

#### **Rejected claims which are disputed**

Still disputed are 6,467 claims which the WuB has rejected and which creditors have objected to; the total amount of these claims is ISK 964 bn. The status of the disputes concerning these claims varies. Where not otherwise indicated in the following discussion, at this point in time reconciliation meetings for the claims concerned have not been announced.

The largest portion of the bond claims lodged which have been rejected concern Subordinated Notes and Capital Notes, which totalled 4,410 in number; the total amount of these claims as lodged is ISK 123.5 bn. The WuB refused to recognise the claim with reference to Art. 113 of the BA, as it considered these to be subordinate claims, as referred to in Point 4 of Art. 114 of the BA, but in other respects did not take decisions on these claims, as it can be regarded as certain that no payment will be made towards subordinate claims, cf. the final sentence of the first paragraph of Art. 119 of the BA. It could be mentioned that the judgement of the Supreme Court of Iceland in case no. 450/2012 confirmed that comparable bond claims were considered subordinate claims.

A total of 954 other bond claims were rejected; the total amount of these claims as lodged was ISK 405.9 bn. Of these, the WuB rejected 193 claims lodged under the so-called USD 7,500,000,000 Medium-Term Note Program (MTN issue) issued in the US in August 2006. The amount of the claims lodged was ISK 342.5 bn. These are claims from individuals lodged in connection with securities which they had purchased in the MTN issue; Deutsche Bank Trust Company Americas (DTBCA) also lodged a global claim for the entire issue. As previously mentioned the WuB approved DTBCA's claims. Objections were raised to the WuB's decision on individual claims in connection with the MTN issue. A declaration on the withdrawal of objections has been received but their review and



registration is not complete. Once this work is complete, the WuB's decision on rejection will be finally recorded.

In other instances where bond claims were rejected this was due to incorrect blocking numbers, that such numbers were missing, that the claim was lodged by the wrong party or incorrectly directed towards LBI.

The WuB rejected 58 claims lodged in connection with derivatives transactions, for a total amount of ISK 76.2 bn.

In the case of foreign counterparties, claims were generally lodged on the basis of the underlying Master Agreements on derivatives (ISDA, GMRA or GMSLA). In most instances claims were rejected as improperly lodged or due to a lack of documentation.

There was a substantial lack of sufficient explanation for calculations of the settlement amounts based on the underlying Master Agreements for derivatives (ISDA, GMRA and GMSLA) or for derivatives transactions not based on Master Agreements. In the dispute resolution process concerning these claims the creditors have been given an opportunity to submit further documentation and explanations. In some instances the calculations by the WuB's experts have revealed that the creditors concerned in fact did not have claims against LBI but rather owed LBI as a result of their derivatives transactions. There is frequent disagreement as to how much detail creditors must provide in explaining the basis of their claims and what premises should be used as basis for calculations and settlement.

Resolution of disputes where an underlying Master Agreement exists has commenced in most instances and in some instances the decision has also become final, cf. the discussion above.

A disputed claim from UniCredit Ban AG (2891) has been resolved with the WuB's decision to recognise the claim in the amount of just over ISK 1.6 bn. The decision is not final, since objections from other creditors concerning the claim have not been withdrawn.

The WuB has decided to refer a dispute on a derivative claim from KAS Bank NV (3021) to the District Court, since disagreement on the claim could not be resolved.

Resolution of disputes where there is no underlying Master Agreement has not commenced but should get underway in the coming weeks.

It should be pointed out, however, that although derivative claims have been rejected, the WuB considers it evident that through the dispute resolution process and as appropriate these claims will be recognised in part. At this stage it is not possible to estimate how large the amounts involved will be.

There were several instances where the WuB rejected claims of domestic parties in connection with derivatives transactions.

Claims from the Housing Financing Fund (HFF) (2690, 2747 and 2907), based on derivative contracts and an asset management agreement, demand compensation and a set-off equivalent to LBI's claims against HFF in connection with HFF bonds which LBI holds, or held as of 7 October 2008. The claims, lodged in the amount of ISK 7.8 bn, were rejected. A dispute is now being heard by the Reykjavík District Court concerning the above claims by HFF, together with additional claims from the same creditor.

Kaupthing Bank hf. lodged two claims (2618 and 2782) on the basis of derivative contracts totalling around ISK 11.8 bn. The WuB rejected the claims, on the basis that it was not clear from the claims lodged how they were related to the overall settlement of derivatives between the creditor and LBI, and raised objections to the calculation of the claims.

ALMC hf., formerly Straumur-Burðarás Investment Bank hf., lodged a claim (2903) on the basis of derivative contracts in the amount of ISK 1.5 bn. The WuB rejected the claim, referring to the judgement of the Supreme Court of 23 May 2011 in case no. 77/2011.

The pension fund Lífeyrissjóður Vestfirðinga lodged a claim (2985) on the basis of currency swaps in the amount of ISK 1.2 bn. The WuB rejected the claim with reference to an agreement between the creditor and LBI on a final settlement for derivative contracts.

Glitnir hf. lodged two derivative claims (2854 and 3007) for a total amount of around ISK 3 bn. The WuB rejected the claims, maintaining that in the total settlement of derivatives between Glitnir and LBI, Glitnir ended up owing LBI. The disagreement is in the dispute resolution process.

In addition, the WuB has rejected 1,352 claims totalling ISK 104.6 bn which are classified under the heading Other in the list of claims. These include a variety of cases, but the discussion below is limited to those claims lodged for an amount exceeding ISK 1 bn.

Landsvaki hf. lodged three claims (2590, 2668 and 2781) on the basis of a possible liability for damages and, as appropriate, a conceivable claim for recourse in connection with liability of Landsvaki hf. and LBI *in solidum* in connection with the alleged undue conduct of LBI's employees and/or management that LBI could be held accountable for. The claims arise in part from court actions brought against LBI and Landsvaki hf. in connection with the above. No awards for damages have been made in this connection in the above-mentioned court cases. The WuB rejected the claims and they are in the dispute resolution process. The total amount of the claims lodged is around ISK 41.5 bn.

Kaupthing hf. lodged a claim (2615) in the amount of ISK 10 bn, having regard for a payment towards a pledge which had been appropriated. According to the claim as lodged, it is based on surety provided by LBI for the fulfilment of a specific loan contract. It was maintained that the debtor had defaulted. The claim was rejected on the basis that there was insufficient information provided to enable a decision to be taken on the claim.

The pension fund Íslenski lífeyrissjóðurinn lodged a claim (2707) in the amount of ISK 3.4 bn based on alleged losses on assets in Landsbanki's ISK Money Market Fund (Icel. *Peningabréf Landsbankans ISK*). The claim was rejected by the WuB on the grounds that it was not considered to be proven that LBI or its employees had acted improperly in marketing of the funds and providing custody for the financial instruments of money market funds of Landsvaki hf. and thereby become liable for damages towards unit share holders. The WuB's decision was objected to and the disagreement is in the dispute resolution process.

Danske Bank lodged a claim (2708) in connection with a bank guarantee issued by LBI on 16 November 2007 in the amount of ISK 3.4 bn. The maximum amount of the guarantee was DKK 150 m but according to information in the claim letter payments covered by the guarantee, at the time the claim was lodged, amounted to DKK 129.9m. The WuB saw no reason to doubt that the guarantee as such comprised a valid obligation by LBI towards the creditor, but since no breakdown was provided for the monetary amount of the claim, nor was it properly lodged in a satisfactory manner and supported by sufficient documentation and basis, it nonetheless had to be rejected.

The State Guarantee Fund lodged a claim (2726) in the amount of around ISK 3 bn in connection with a guarantee for bonds issued by LBI hf. The claim was rejected as improperly lodged and this decision was objected to. The disagreement is in the dispute resolution process.

Melco Crown Gaming Limited lodged a claim (2786) in the amount of ISK 2.3 bn, demanding damages because the bank had not fulfilled its contractual obligations. The WuB rejected the claim since the basis for the claim could not be determined and in addition the amount of the claim was unsupported.

Clarity Partners Ltd. lodged a claim (5550) in the amount of approx. ISK 2 bn. This is a claim for damages for alleged losses which the creditor maintains it suffered upon the failure of LBI, since a loan contract between the parties was not fulfilled. The claim was rejected as no liability for damages was considered to be demonstrated.

Íslensk verðbréf hf. lodged a claim (2894) in the amount of around ISK 1.5 bn. This is a claim for damages based on the contention that LBI served as intermediary in brokering the sale of certain bonds, which Íslensk verðbréf had purchased on the expectation that they would be subsequently

listed on the stock exchange, as had been stated in LBI's notification. This had not been done. The claim was rejected as improperly lodged.

The Pension Fund of Professional Pilots, the University Fund and the pension fund Kjölur lodged claims for damages (2965, 2982 and 3014) totalling around ISK 3.5 bn, due to decrease in the value of units in Landsbanki's money market funds. The WuB rejected the claims as it was not considered demonstrated that LBI had committed punishable and illegal actions in marketing and serving as custodian for the financial instruments concerned. The WuB's decision was objected to in all instances and the cases are now in the dispute resolution process.

The WuB received 220 deposit claims lodged with reference to Art. 113 of the BA, totalling some ISK 3.4 bn, which the WuB rejected for various reasons. The decision by the WuB was objected to and work is underway to resolve disagreement.

The administrator of Teathers Ltd. lodged a claim (2770) in the amount of around ISK 2.5 bn. The claim is based on the creditor's guarantee for LBI's lease contract with Bow Bells House Asset Management, which also lodged a claim in the winding-up proceedings in connection with lost rental payments. The claim was rejected since it was not considered demonstrated that the conditions for the guarantee had developed.

The WuB rejected 79 claims lodged in connection with LBI's purchases of goods and services, for a total amount of around ISK 3.2 bn.

#### **4.11. Claims lodged after deadline**

A total of 1072 claims were received by the WuB with reference to Articles 111 to 113 of the BA after the deadline for lodging claims provided for in the second paragraph of Art. 85 of the BA had passed; the total amount of these claims is ISK 31.3 bn. The WuB took decisions on whether and how to recognise such claims, as pursuant to Art. 118 of the BA, a claim lodged after the time limit for lodging claims has expired is cancelled, unless one of the exceptions listed in Points 1 to 6 of Art. 118 of the BA applies. An examination revealed that this applied only to two claims and others were rejected as having been lodged too late. This decision was announced at creditors' meetings held on 1 December 2010, 17 November 2011 and 28 November 2012.

The WuB has received a total of five secured claims after the expiration of the time limit for lodging claims, with a total amount of ISK 0.2 bn. The decision by the WuB to reject these claims was announced at the creditors meeting held on 1 December 2010. This decision is final.

A total of 270 claims were received by the WuB claiming priority with reference to Art. 112 of the BA after the deadline for lodging claims had passed; the total amount of these claims is ISK 1.3 bn. This

decision was announced at creditors' meetings held on 1 December 2010 and 17 November 2011. Objections were received to decisions by the WuB on 27 claims for a total amount of ISK 0.2 bn. Six of these objections have been withdrawn. The WuB has referred 18 cases in this category to the District Court for resolution; all have been cancelled. Three cases are in the dispute resolution process.

The WuB has received a total of 797 general lending claims after the expiration of the time limit for lodging claims, with a total amount of ISK 29.8 bn. Decisions on these claims were announced at creditors' meetings held on 1 December 2010 and 17 November 2011. In addition, decisions on two claims were announced at the meeting on 28 November 2012. Objections were received to decisions by the WuB on 71 claims for a total amount of ISK 10.1 bn. One of these objections has been withdrawn. Two cases have been referred to the courts for resolution, one of which has been cancelled. One other case is in the dispute resolution process. No meetings have been announced concerning the 66 claims which remain.

**4.12. Summary**

The total amount of claims lodged against LBI amounts to ISK 6,146.7 bn, of which the WuB has recognised claims amounting to a total of ISK 3,030.8 bn. This is taking into consideration 171 claims which had previously been lodged, for a total amount of ISK 222.9 bn, which have been withdrawn. Such claims are not included in the list of claims.

Total claims lodged pursuant to Art. 109	46,473,988,327
Total claims lodged pursuant to Art 110	44,983,987,883
Total claims lodged pursuant to Art 111	491,476,007,973
Total claims lodged pursuant to Art 112	2,842,457,081,782
Total claims lodged pursuant to Art 113	2,678,163,323,729
Total claims lodged pursuant to Art 114	43,192,584,486
<b>Total</b>	<b>6,146,746,974,180</b>

Total recognised to date pursuant to Art. 109.	4,850,565,840
Total recognised to date pursuant to Art. 110	7,118,537,667
Total recognised to date pursuant to Art. 111.	57,909,050,688
Total recognised to date pursuant to Art. 112	1,318,217,523,143
Total recognised to date pursuant to Art. 113.	1,642,709,793,957
<b>Total</b>	<b>3,030,805,271,295</b>

The WuB has recognised claims in the amount of ISK 4.9 bn as proprietary claims with reference to Art. 109 of the BA. Claims totalling ISK 20.6 bn are still disputed; most of the disagreements concern claims for currency swaps, where the counterparty (the creditor) fulfilled its obligations but LBI did not. Work is underway on resolving the disagreement but if this is not successful it will be referred to the courts for resolution.

Claims lodged for the administration of the estate which have been finally recognised with reference to Art. 110 of the BA total ISK 7.1 bn. Those disputed claims requesting priority with reference to Art. 110 of the BA have all been referred to the courts.

The WuB has recognised claims in the amount of ISK 57.9 bn with priority with reference to Art. 111 of the BA. The assets concerned have not been included among LBI's assets in the financial information provided to creditors. Recognition of such rights and the delivery of the assets therefore has no effect on the estimated payments to claims with a different priority. The same is true of those secured claims which the WuB has rejected with one exception. It will be determined in coming quarters whether DNB, which lodged a secured claim for a deposit in an account held by LBI with DNB in the amount of EUR 20 m, had lien rights to this deposit. If this is recognised by a court the deposit will be disposed of towards DNB's deposit claim (2).

The WuB has rejected priority claims totalling ISK 1,318.2 bn. Of these, disagreement remains concerning money market deposits which the WuB recognised in part as priority claims. A conclusion is expected from the Supreme Court soon as to whether money market deposits are guaranteed deposits in the understanding of Act No. 98/1999, on Deposit Guarantees and an Investor Compensation Scheme. Should money market deposits be granted priority with reference to Art. 112 of the BA, and if it is not recognised that such deposits should have been transferred to LB, the recognised amount of priority claims will increase by ISK 8.3 bn. If the priority of money market deposits is not recognised, the recognised amount will decrease by ISK 4.3 bn. In addition, the recognised amount could, for the same reason, decrease by around ISK 4.3 bn due to wholesale deposits owned by financial undertakings.

The WuB has rejected general claims totalling ISK 1,642.7 bn. Of these, claims amounting to ISK 1,298 bn are disputed. In addition, claims rejected by the WuB amounting to ISK 964 bn are disputed. General claims totalling around ISK 2,262 bn are therefore disputed. The WuB has naturally emphasised obtaining final conclusions concerning claims lodged with priority with reference to Articles 109 to 112 of the BA. For this reason resolution of disputes on general claims is not as far advanced, but this work has begun in all the main classes of those claims.

The WuB expects that it will be possible to conclude the majority of disputes on general claims without resorting to the courts.

CHAPTER 5

## PARTIAL PAYMENTS

## 5. Partial payments

### 5.1. Basis for partial payments and legal situation

As has been previously mentioned, the objective of winding-up proceedings is to maximise the assets of a financial undertaking; liquid funds resulting from the work of the WuB are expected to be distributed to creditors according to the applicable rules thereto. These arrangements are basically similar to usual practice in liquidation pursuant to the provisions of the BA, although with some variations.

According to the first paragraph of Art. 156 of the BA, an administrator must, as soon as possible, fulfil the claims which have been recognised and can be paid according to their priority. Funds must be set aside to satisfy to the same extent claims which are still disputed, should they be finally recognised in the liquidation. It could be said that this reflects certain basic points which to some extent apply to winding-up proceedings, *mutatis mutandis*.

Regarding partial payments in winding-up proceedings, the special rule of the sixth paragraph of Art. 102 of the AFU applies. It provides authorisation to the WuB, following the first creditors' meeting after the expiry of the time limit for lodging claims, to pay in full or in part recognised claims ranked with reference to Articles 109 to 112. of the BA, to the extent it is ensured that the assets of the financial undertaking suffice to make at payments at least as high to equally ranked claims which have not yet been finally rejected. This rule is an authorisation, but if it is applied it must be ensured that all creditors with finally recognised claims receive payment at the same time unless they agree otherwise.

Should the WuB decide to avail itself of the authorisation to make partial payments, it must pay into special escrow accounts provided for by law the corresponding amounts for equally ranked claims which are still disputed and have not therefore been finally rejected in the winding-up proceedings. A partial payment has then been made to the creditor concerned with a proviso as to the final recognition of the claim. Should the claim be subsequently recognised, the funds which pertain to it in the escrow accounts go to the creditor concerned, together with a corresponding share of the accrued interest. If partial payments are made in more than one currency, there shall be as many escrow accounts as there are currencies of payment.

It should be pointed out here that in those instances where sufficient instructions for payment of partial payments are lacking from creditors who, however, hold finally recognised claims the WuB



has taken the route of depositing the partial payments of the party concerned into the above-mentioned escrow accounts until this has been rectified.

According to the sixth paragraph of Art. 102 of the AFU, the WuB may negotiate with creditors holding finally recognised priority claims on final settlement by means of a lump sum payment of part of the claim, and a corresponding reduction of the claim by the creditor. The condition is set that the amount paid must definitely be lower than the creditor would obtain by waiting for partial payments, like other creditors, in part having regard for interest and the advantage of a lump-sum payment.

As previously mentioned, the authorisation for partial payments is restricted to priority claims with reference to Articles 109 Art. 109 to 112 of the BA. This means that if there are not sufficient funds to fulfil all the obligations of a financial undertaking, payments or distributions to general creditors, as referred to in Art. 113 of the BA, can either be made on the basis of a composition or, if composition cannot be achieved or it is considered certain that conditions for such will not exist in the future, by requesting liquidation. In the case of the latter, then payments to general creditors are governed by the rules of Chapter XXII of the Bankruptcy Act. It is established that the objective of LBI's WuB is to conclude the winding-up proceedings with composition in accordance with the rules of Art. 103 a of the AFU.

Neither partial payments in the winding-up proceedings, in accordance with the sixth paragraph of Art. 102 of the AFU, nor distributions in liquidation, in accordance with the provisions of Chapter XXII of the BA, comprise in the WuB's assessment the disposition of interests, in the sense of Chapter XIX of the BA. This does not therefore comprise a measure concerning which the law provides for disputes to be referred to the District Court, according to Art. 171 of the BA. On the other hand, the WuB may, if a dispute arises on carrying out partial payments which needs resolution, direct a request to the District Court for resolution of such a dispute specifically, pursuant to the detailed instructions of the first paragraph of Art. 171 of the BA. As will be described in detail below, there is dispute concerning the exchange rate reference for partial payments in foreign currencies, and this dispute has been referred to the District Court in accordance with the above-mentioned rules.

## **5.2. WuB's principal considerations in determining partial payments**

In the estimation of the WuB there is no legal obligation to convert foreign monetary assets to ISK and distribute them to creditors, nor is this deemed a justifiable handling of LBI's assets considering the prevailing situation. In other words, it cannot be seen to serve the interests of creditors nor of the winding-up proceedings in general. Furthermore, the WuB considers there to be a clear legal basis for making partial payments in more than one currency. Having regard for all of the above, the

WuB has decided to make partial payments to creditors in accordance with the above-mentioned authorising provision, so that the creditors concerned will receive payments in the main currencies currently available in the winding-up provisions. Further details are given below of what amounts and what currencies have been paid in those partial payments which have already been made.

The WuB's partial payments and payments to special escrow accounts have only concerned claims lodged with priority with reference to Art. 112 of the BA. It is clear, however, that higher ranking claims, i.e. claims with priority as referred to in Articles 109 to 111 of the BA, shall be paid in full, insofar as they are recognised in the winding-up proceedings, with the statutory or contractual interest they bear. It derives from the provisions of the third paragraph of Art. 99 of the BA, that such claims are paid in their original currency. It is in fact only in very exceptional cases that claims lodged with priority with reference to Articles 109 to 111 of the BA have been recognised in LBI's winding-up proceedings and the WuB has taken care to have funds available to cover claims in these priority categories for which recognition cannot be excluded.

According to the third paragraph of Art. 99 of the BA, claims in foreign currencies have been converted to ISK based on the quoted selling rate of the CBI on the lawfully determined commencement date of the winding-up proceedings, 22 April 2009. The measure taken by the WuB in making partial payment in foreign currencies has meant that the value of these currencies must be calculated in ISK with regard to the claims towards which payment is made. This is done to see the proportion of the payment comprised by the partial payment and thereby how large a portion of the said claims remains still unpaid and at the same time, and not least important, to see when the claims have been fully paid.

Icelandic law does not make clear provision as to how the value of partial payments in foreign currencies shall be calculated in ISK. From the third paragraph of Art. 99 of the BA, however, it can be concluded that claims in foreign currencies should be converted to ISK as of 22 April 2009 and from the provisions of Art. 114 of the BA it can be concluded that exchange rate gain is a subordinate claim and shall therefore not have the same ranking as a priority claim with reference to Art. 112 of the BA. In the estimation of the WuB an issue of contention such as this must be approached bearing in mind the basic principles of insolvency law and internationally recognised perspectives in this field, not least the principle of non-discrimination among creditors. It is therefore important to find the exchange rate reference for partial payments in foreign currencies which is most suited to making the partial payments equivalent to payment in ISK. The WuB's conclusion in this respect was to use as its exchange rate reference for partial payments the ISK selling rate as of 22 April 2009 for those foreign currencies used in the partial payments in each instance. The value of the partial payments in foreign currencies as payment to the claims concerned which have been calculated in ISK, is

therefore fixed and aimed at ensuring equal treatment of creditors, in particular to ensure that creditors neither enjoy exchange rate gains nor suffer exchange rate losses due to ISK exchange rate movements during the period the winding-up proceedings last.

The above-mentioned decision by the WuB has been objected to by certain creditors and because of this the dispute has been referred to the District Court, as mentioned, and is discussed in more detail in Section 5.4 below.

### **5.3. Partial payments which have been made to date**

The following section reviews in more detail the partial payments which have been carried out by the WuB in the winding-up proceedings, their amounts and premises.

#### **5.3.1. First partial payments**

The WuB availed itself of its authorisation to make partial payments in the first instance on 2 December 2011. At the creditors' meeting held on 17 November that year, details were provided of the WuB's plans to this effect. The first partial payments were made by the WuB in the following currencies and respective amounts:

EUR	1,110,000,000
GBP	740,000,000
ISK	10,000.000,000
USD	710,000,000

Based on the previously mentioned decision by the WuB on the exchange rate reference for partial payments, the combined amount of the first partial payments was equivalent to ISK 432 bn. Based on the total amount of the priority claims with reference to Art. 112 of the BA, which had not been finally rejected in the winding-up proceedings at this time, the first partial payments amounted to 31.2149% of priority claims. Of this amount, funds equivalent to ISK 75,8 bn were placed in special escrow accounts.

### 5.3.2. Second partial payments

The WuB availed itself of its authorisation to make partial payments in the second instance on 24 May 2012. The same premises were used as basis for the most part, but payment was made exclusively in one foreign currency, however:

GBP	850,000,000
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Based on the previously mentioned decision by the WuB on the exchange rate reference for partial payments, the amount in this instance was equivalent to ISK 162.4 bn. Based on the total amount of the priority claims with reference to Art. 112 of the BA, which had not been finally rejected in the winding-up proceedings at this time, the payments amounted to 12.2339% of priority claims. Of this amount, funds equivalent to ISK 5.1 bn were placed in special escrow accounts.

The total proportion which had been paid towards priority claims with reference to Art. 112 of the BA after the partial payments of December 2011 and May 2012 therefore amounted to 43.4488%, and the total which had been paid, including the payments to escrow accounts, amounted to the equivalent of over ISK 594 bn. It should be pointed out that this amount does not take into consideration any amounts which may have reverted to LBI once more from the escrow accounts after claims were finally rejected.

### 5.3.3. Third partial payments

The WuB availed itself of its authorisation to make partial payments in the third instance on 5 October 2012. The third partial payments were made by the WuB in the following currencies and respective amounts:

EUR	170,000,000
GBP	150,000,000
USD	190,000,000

Based on the previously mentioned decision by the WuB on the exchange rate reference for partial payments, the amount in this instance was equivalent to ISK 82,3 bn. Based on the total amount of the priority claims with reference to Art. 112 of the BA, which had not been finally rejected in the winding-up proceedings at this time, the payments amounted to 6.1966% of priority claims. Of this amount, funds equivalent to ISK 1,2 bn were placed in special escrow accounts.

Through the above-mentioned partial payments, a total equivalent to ISK 677 bn has been paid towards priority claims with reference to Art. 112 of the BA. It should be pointed out that this amount does not take into consideration any funds which may have reverted to LBI once more from

the escrow accounts after claims were finally rejected. This amount is equivalent to around ISK 16 bn. If regard is had, firstly, for this amount and, secondly, for the amount which still remains in escrow accounts (and will be discussed in more detail in the following section), the conclusion is that the equivalent of ISK 651 bn has now already been paid directly to priority creditors with finally recognised claims with reference to Art. 112 of the BA or 49.7941%.

#### **5.3.4. Escrow accounts**

As previously mentioned, almost ISK 76 bn was paid to special escrow accounts when the first partial payments were made in December 2011. This amount decreased substantially in the following months, and when the next partial payments were made, in May 2012, the amounts remaining in the escrow accounts were equivalent to around ISK 27.5 bn. When the WuB's third partial payments were made in October 2012, the total amounts in foreign currencies in escrow accounts were equivalent to just over ISK 9.8 bn. In addition, approximately ISK 7.8 bn of the ISK 10 bn which were paid in ISK in the first partial payments are still in escrow accounts for ISK. By far the largest share of this amount belongs to creditors with finally recognised claims but, due to currency controls and the situation of the ISK in this connection, the said creditors have not been able to provide satisfactory payment instructions for ISK.

LBI's escrow accounts for partial payments made in foreign currencies are held with LBI's foreign correspondent bank, while escrow accounts for partial payments in ISK are held with an Icelandic bank. All accounts bear floating market interest rates, which are acceptable in the WuB's opinion, and in accordance with what can be expected given the market circumstances and nature of the said accounts. Interest is added to the accounts on a monthly basis and payments are made from the escrow accounts once each month. As a rule payments are made from the escrow accounts in the second week of each month, provided that the requirements for payment have been satisfied before the end of the previous month.

#### **5.3.5. Lump sum payments**

Section 6.1 above briefly mentioned the WuB's authorisation to negotiate lump sum payments of certain claims in return for a reduction by the creditors. The detailed requirements for lump sum payments of this sort are laid down in the sixth paragraph of Art. 102 of the AFU. The primary requirement for a lump sum payment is that the creditor grants a reduction on its claim sufficient to ensure that it will definitely receive a lower amount than it would obtain by waiting for fulfilment and partial payments in the usual manner, taking interest into consideration, for instance.

In tandem with the first partial payment, the WuB offered certain creditors, specifically individuals with recognised priority claims with reference to Art. 112 of the BA, a lump sum payment in the

original currency of each claim equivalent to 70% of the value of the principal as lodged. In the WuB's estimation, a reduction of 30% was sufficient to satisfy the statutory requirement, having regard to the advantage of a lump sum payment and interest, cash flow estimates, uncertainty concerning recoveries and other factors of uncertainty.

A total of 1292 creditors received the WuB's offer of a lump sum payment. These included Icelandic wage claims (vacation pay) of former employees of LBI, while the majority was Dutch deposit holders who held claims for the remainder of their Icesave deposits. Acceptances were received from 610 creditors of the 1292 who received the WuB's offer. As previously mentioned, payment was made in the original currency of the claims. Accordingly, EUR 3.9 m was paid to the creditors in question in the Netherlands and ISK 37.7 m to the Icelandic creditors concerned.

#### **5.4. Progress of the dispute on the exchange rate reference for partial payments**

At the creditors' meeting held in LBI's winding-up proceedings on 31 May 2012, the WuB's decisions on the partial payments which took place on 2 December 2011 and 24 May 2012 were formally presented. The premises of the partial payments were explained to creditors, who were furthermore given the opportunity to object to the exchange rate reference of the partial payments and the decision by the WuB in this regard. Specifically, creditors were given the opportunity to object to the legality of the decision by LBI's WuB to calculate the value of the partial payment towards priority claims with reference to Art. 112 of the BA, which had been made in foreign currency, in ISK using the same exchange rate reference as was used to calculate claims against LBI, cf. the third paragraph of Art. 99 of the BA.

The meeting and this topic on its agenda was advertised specifically in the *Legal Gazette (Icel. Lögbirtingarblaðið)* and on LBI's website. Objections were received from several creditors, both priority creditors and general creditors, as related in detail at the creditors' meeting.

Following the receipt of the objections, the WuB convened a special meeting on 22 June 2012 in order to attempt to resolve the disagreement. At the meeting a request was made that the meeting be postponed, in order for creditors to seek to reach agreement among themselves on the issue in dispute. This was agreed to and the meeting was postponed until 15 August 2012, and then again until 14 September 2012, at the request of certain creditors.

When the meeting recommenced on 14 September 2012, the WuB's position was unchanged and the creditors concerned informed the meeting that they had not managed to reach agreement among themselves regarding the issue in dispute. It was therefore agreed that the WuB would refer the

matter to the District Court pursuant to the detailed instructions in Art. 171 of the BA and underlined in this regard that the issue in dispute, for which resolution was requested, should be demarcated in such a way that it concerned a dispute as to how the value should be calculated of foreign currencies which were used as payment towards recognised claims which had been converted to ISK as provided for in the third paragraph of Art. 99 of the BA. The WuB stated that it was of major significance for the progress of the winding-up proceedings to obtain the courts' conclusion on the issue in dispute and therefore it was proper to utilise the WuB's authorisation to refer the question to the courts.

The above-mentioned dispute has now been filed with the Reykjavík District Court. Plaintiffs in the case are all those creditors who objected to the WuB's decision, while LBI is the defendant in the case. The plaintiffs' deadline to submit their briefs and documentation is until 18 January 2013. After the plaintiffs' briefs have been submitted, LBI will have a suitable time limit to submit a brief on its behalf. It is not possible to say when the courts' final conclusion can be expected.

Finally, it should be mentioned that at the creditors meeting held on 28 November 2012, the decision by the WuB on a third partial payment will be announced, cf. the discussion of the third partial payment in Section 5.3.3 above. At this meeting creditors will be given the opportunity to object to the premises for the third partial payment in the same manner and on the same premises as for the previous partial payments. However, in the estimation of the WuB the resolution of the dispute which has already been referred to the District Court will, in all probability, be of general significance and therefore it is considered proper to postpone further processing of objections which may be received regarding the third partial payment until the courts' final conclusion is available.

CHAPTER 6

## SUITS FOR DAMAGES - VOIDING



## **6. Suits for damages – voiding**

### **6.1. Introduction**

In winding-up proceedings of a financial undertaking, the general obligation rests upon the WuB to obtain for the estate all assets which come into consideration and to maximise their value. This implies, among other things, that the the WuB should, as appropriate, demand damages from parties who have caused the undertaking, and thereby its creditors, a loss liable for compensation. Whether a court action is brought in such instances depends in each case on an assessment of the legal situation and interests involved.

As stated in the fourth paragraph of Art. 103 of the AFU, the rules of the Act on Bankruptcy etc. apply on voiding of measures when it is demonstrated that the assets of a financial undertaking will not suffice to fully satisfy its obligations. All the provisions of Chapter XX of the BA then apply, however, the time limit for bringing suit in voiding cases, which is laid down in Art. 148 of the BA, is 30 months rather than 6 months, and such cases are to be brought before the District Court where the financial undertaking is placed in winding-up.

As is generally known to creditors, Deloitte in London and Deloitte in Iceland were engaged in 2009 to carry out an investigation of LBI's activities and financial affairs prior to its failure; their investigation was carried out in collaboration with LBI's WuB, advisors and employees. At creditors' meetings on 27 May 2010 and 1 December 2010, the objectives and principal conclusions of this work were reviewed. It was pointed out there that the principal purpose was to examine whether certain events existed which could result in LBI possibly being able to demand damages or, as the case may be, insurance compensation, and bring claims for voiding and reimbursement.

At creditors' meetings on 1 December 2010 and 31 May 2012, a brief report was presented on actions for damages and voiding.

The following section gives an account in more detail of those cases which have been brought up until this point.

### **6.2. Actions for damages**

#### **6.2.1. Bank guarantee which was not enforced**

This case was brought against two former CEOs and the former MD of LBI's Corporate Banking division and their liability insurers.

The principal of the claim against parties other than the insurers is ISK 16.2 bn. Claims against the insurers are limited to their maximum liability which is equivalent to EUR 50m according to the terms and conditions of the policy.

The main circumstances of the case are that LBI loaned large amounts to the investment company Fjárfestingarfélagið Grettir hf. This included a loan maturing on 18 June 2008, on which the balance owed was at that time around ISK 18.4 bn. The loan was secured in part by a guarantee from Kaupthing Luxembourg in the amount of ISK 18 bn which was valid until 26 June 2008.

It is established that the said loan was not paid at maturity and that the bank guarantee was not enforced prior to the expiration of its validity. The borrower was subsequently declared insolvent and only a small fraction of LBI's claim against the estate was paid. The case is based on the contention that the CEOs and managing director of Corporate Banking made themselves liable by failing to enforce the bank guarantee when the loan matured.

The defendants have submitted their briefs, all of them demanding to be absolved on the basis that this does not comprise tortious conduct on their behalf. In addition, their insurers demand to be absolved on the basis that the insurance coverage was invalid due to incorrect or insufficient information disclosure. The case has been postponed for further data gathering and it is not possible to say when a judgement can be expected from the District Court.

### **6.2.2. Loan to an Icelandic financial undertaking at the beginning of October 2008**

This case was brought against two former CEOs and their liability insurers.

The principal of the claim against parties other than the insurers is ISK 11.6 bn. Claims against the insurers are limited to their maximum liability which is equivalent to EUR 50 m according to the terms and conditions of the policy.

The principal circumstances of the case are that LBI's former CEOs approved, on 2 October 2008, a loan to Straumur Investment Bank hf. (now ALMC hf.) of ISK 19 bn, without any collateral being provided. ALMC did not pay the loan at maturity, the company was taken over by the Financial Supervisory Authority and thereafter was placed in winding-up proceedings which concluded with composition. A claim for the above-mentioned loan was among those included in ALMC's composition. The case is based on the contention that the CEOs made themselves liable for compensation by agreeing to make a loan to an Icelandic financial undertaking without security under the circumstances which prevailed when the loan was granted and given LBI's situation at that time. The defendants have submitted their briefs, all of them demanding to be absolved on the basis that this does not comprise tortious conduct on their behalf. In addition, their insurers demand to be

absolved on the basis that the insurance coverage was invalid due to incorrect or insufficient information disclosure. The case has been postponed for further data gathering and it is not possible to say when a judgement can be expected from the District Court.

### **6.2.3. Disbursements on 6 October 2008**

This case has been brought against the former CEOs, four members of the Board of Directors, the Director of Treasury and the liability insurers.

The principal of the claim against parties other than the insurers is ISK 14.1 bn, USD 10.5 m and EUR 10.8 m. Claims against the insurers are limited to their maximum liability which is equivalent to EUR 50 m according to the terms and conditions of the policy.

This case concerns events which took place on 6 October 2008, i.e. on the last day LBI operated before a Resolution Committee was appointed for the bank. Late that day, and in part after its general business had closed, LBI disbursed substantial amounts to two domestic financial undertakings and one of its subsidiaries; a substantial portion of these funds were lost. The case is based on the contention that, given LBI's financial situation at this time and in light of the prevailing circumstances, LBI's management should have ensured that disbursements such as those concerned here were not made to the detriment of the bank's creditors, since it was or should have been evident to the parties mentioned that the bank was insolvent on the said date.

The case has been pending the submission of briefs from the Defendants, which will likely be delivered in the coming weeks. It is not possible to say when a judgement can be expected.

### **6.2.4. Purchase of shares in LBI in Trading Book II**

This case is brought against a former CEO, the managing director of Securities and Treasury and the Director of Brokerage.

The principal of the claim against the defendants is ISK 1.2 bn.

This case concerns the purchase by LBI's Brokerage of own shares and shares in two other companies during the period from April to July 2008 for its so-called equity Trading Book II, which was intended to hold assets for brokering to LBI's customers. The claims are based on the contention that in these purchases the defendants exceeded their authorisations to acquire shares for the Trading Book and failed to comply with the obligation to dispose of the shares when the violation was realised. In so doing they had caused a loss, as the shares were worthless upon the collapse of the bank.

The case is pending the submission of the defendants' briefs and it is not possible to say when a judgement can be expected from the District Court.

### **6.2.5. Claims for damages in connection with auditing and consultancy services**

This case is brought against the Icelandic auditing company which served as LBI's external auditor and the UK auditing company which provided advice on auditing and financial reporting.

The principal of the claim made is ISK 83.2 bn, USD 11.2 m and EUR 64.9 m.

The case is based on the contention that the auditing of annual financial statements and review of interim financial statements, and advice on auditing and financial reporting was insufficient. The auditors also neglected to disclose to shareholders and competent authorities certain violations in LBI's activities. As a result thereof, the the annual financial statements and interim financial statements did not provide a true picture of LBI's financial position and activities, which resulted in losses to the bank and its creditors.

The case has been postponed pending the submission of the defendants' briefs, which are expected to be delivered no later than in January. It is not possible to say when a judgement can be expected from the District Court.

## **6.3. Voiding cases pursuant to Chapter XX of the BA**

### **6.3.1. Payment of bonds and bills prior to maturity – repurchases**

An examination of LBI's financial affairs during the final months preceding its collapse revealed that it had purchased its own bonds and bills in considerable quantity. In the WuB's estimation, such purchases comprised payment of a debt prior to the agreed maturity date, as the rights and obligations provided for in the securities acquired were then in the same hands, and those parties who received such payments during the six months prior to the reference date in LBI's winding-up proceedings, which is 15 November 2009, were sent a declaration of voiding together with a demand for repayment of the amount paid by LBI.

Voiding was based on the contention that the said debts owed by LBI had been paid abnormally early, in the sense of Art. 134 of the BA, which reads as follows:

*“Voiding may be demanded of the payment of a debt in the six months preceding the reference date, if such payment was made by unusual means or earlier than normal or if the amount of payment significantly impaired the payment capacity of the insolvent party, unless the payment appeared normal under the circumstances.*

*Voiding may be claimed of such payment to relatives in the six to twenty-four months before the reference date, unless it is established that the bankrupt was solvent at that time, despite the payment.”*

The WuB has brought actions for voiding and reimbursement on the above-mentioned basis against 24 foreign financial undertakings which will be heard by the Reykjavík District Court. The total amount demanded in these cases is EUR 56.8 m, USD 0.6 m and CHF 25,476.

In by far the greatest number of these cases, the defendants have submitted their briefs and the cases await hearing by the court. Defences are of various types and concern both the form and substance of the cases. It is not possible to predict when District Court judgements can be expected, but it is likely that the first of them will be pronounced in the first half of next year.

The WuB brought one case against an Icelandic financial undertaking in connection with payment of a debt in the manner described above. The Supreme Court of Iceland pronounced judgement in case no. 702/2011 on 27 September this year, accepting the voiding and claim for repayment amounting to ISK 147.9 m, penalty interest and court costs. The summary of the judgement in the registry of the Supreme Court of Iceland is as follows:

*“L hf. demanded the voiding of two payments to R hf. which took place on 6 October 2008, for payment of two bills maturing on 5 November that same year; the bills were issued by L hf. Furthermore, it was also demanded that R hf. be made to reimburse to L hf. the amount which had been paid in connection with the bills. The parties disputed whether L hf. had, in making the payments, repaid a debt pursuant to the bills earlier than normal, so that it authorised their voiding on the basis of the Act on Bankruptcy etc., or whether it had acquired the bills from R hf. The Supreme Court's judgement stated, among other things, that this had to be seen as L hf. having agreed to pay R's claim on it on 3 October 2008 and fulfilled this agreement with a settlement on the 6th of the same month. At that time there was around a month until the claim matured and L hf. had therefore paid its debt to R hf. earlier than was normal. R hf. had not shown it to be likely that it could have expected that the offer originated from a party other than L hf. due to its role as market maker, and therefore R hf. had not demonstrated that payment of the debt could have appeared normal under the circumstances. With reference to this the demand of L hf. for the voiding of the payment was accepted. The monetary claim of L hf. against R hf. was also accepted.”*

This court award has been fully paid to LBI. This judgement has confirmed that LBI's repurchase of securities issued by the bank where it was the debtor is considered payment of a debt, in the sense of Art. 134 of the BA. For this reason, it can be assumed that the principal issue of contention in those cases mentioned previously which have not yet been judged by the courts will be whether the said payments made with the repurchases appeared to be normal under the circumstances.

### 6.3.2. Payment of money market facilities

An examination of LBI's financial affairs revealed that after the bank's collapse its debts in connection with so-called money market deposits had been repaid to a substantial extent. These payments were made during the period from 7 to 27 October 2008 on the agreed due dates. According to the information available, it appears that at this time uncertainty prevailed as to whether these obligations had been transferred to the new Landsbanki by a Decision of the Financial Supervisory Authority on the division of LBI's assets and liabilities. In November 2008, the Financial Supervisory Authority confirmed that LBI's obligations from money market deposits of financial undertakings had not been transferred to theLB.

The WuB sent those financial undertakings which had received payment of their money market deposits during the period claims for voiding and reimbursement. The voiding was based primarily on the contention that the payments had reduced LBI's ability to make payment substantially, in the sense of Art. 134 of the BA, and alternately on Art. 141 of the same Act, according to which voiding may be claimed if a measure improperly benefits a creditor at the expense of other creditors if the debtor was at that time insolvent or became insolvent as a result of the measure, and provided that the party benefiting from the measure knew or should have known of the debtor's insolvency or the conditions that rendered the measure improper.

The WuB has brought 19 actions for voiding and reimbursement on the above-mentioned basis which will be heard by the Reykjavík District Court. Three of these are brought against Icelandic financial undertakings and 16 against foreign financial undertakings. The principal of the amounts claimed totals ISK 42.4 bn.

In by far the greatest number of these cases, the defendants have submitted their briefs and the cases await hearing by the court. Defences are of various types and concern both the form and substance of the cases. It is not possible to predict when District Court judgements can be expected, but it is likely that the first of them will be pronounced in the first half of next year.

In one of these cases the Supreme Court has pronounced its judgement as to whether it was authorised to bring suit for voiding against a foreign party in Iceland on the basis of a rule on legal venue adopted in Act No. 146/2011. The Supreme Court's verdict in the case, no. 485/2012, on 21 September 2012 invalidated the District Court's Ruling of dismissal and referred the case back to the District Court for substantial treatment. The summary of the judgement in the registry of the Supreme Court of Iceland is as follows:

*“L hf. referred a Ruling from the District Court, dismissing the company's case against G from the Court on the basis that the case had not been brought in the proper legal venue. Adoption of Act*

*No. 146/2011 codified a special rule on legal venue in the fourth paragraph of Art. 103 of Act No. 161/2002, providing for cases brought by a WuB on the basis of the provision to be filed with the District Court where the financial undertaking is placed in winding up. The rule on legal venue had not taken effect when the Summons to the District Court was served on G's representative, but had taken effect, however, when the case was filed. The Supreme Court's judgement stated that Art. 1 of Act No. 146/2011 provided an obligation to file in a specific legal venue cases for voiding of measures of a financial undertaking placed in winding-up. As the Act had entered into force when the case was filed, and a representative of the defendant was present at the filing where he was offered an opportunity to present a defence in the case, no cause was seen to dismiss the case from the District Court. The Ruling referred to the Court was therefore invalidated and the District Court instructed to accept the case for substantial treatment."*

This judgement has confirmed that the new rule on legal venue in voiding cases in winding-up proceedings is lawful and binding in Iceland.

### **6.3.3. Payments of salaries, bonuses, premia and stock options**

The investigation of LBI's financial affairs made a close examination of payments to the bank's employees. This included examining salary payments, bonuses and premia, especially during the last six months before the reference date. It was revealed that during the said period, settlements had been made with both the bank's former CEOs in connection with bonuses, premia and options, in addition to which two department heads had received bonus and premium payments.

The WuB has brought five voiding actions concerning such payments, three against the former CEOs and one against each of the former department heads. Two of these have been concluded with an agreement on a settlement, one after the District Court had pronounced a judgement in the case and the other after the case had been brought but before it was filed.

The basis of these cases varies somewhat and will be described in more detail here.

Three voiding actions were brought concerning settlement of bonuses and premia, including settlement of stock options of both the former CEOs and one department head concluded in September and the beginning of October 2008. It is established that LBI's Board of Directors agreed in September 2008 to settle with the CEOs concerning bonuses, premia and stock options not yet due. Payments made to each of them amounted to around ISK 300 m. Before the case was brought, one CEO repaid all but ISK 100 m which were paid to a private pension fund. The other CEO repaid an amount equivalent to ISK 100 m. Voiding actions against these parties demanded repayment of the difference between the amounts they received and those they repaid. The principal of the claims for repayment amounted to ISK 300 m. The case brought against the CEO who repaid a smaller amount

is currently being heard by the Reykjavík District Court. The defendant has until the end of November to submit his brief. An agreement was reached, however, with the other CEO on a settlement and this case is closed.

After the District Court had pronounced a verdict in the voiding case against the department head accepting the claim for voiding and repayment in the amount of ISK 89.1 m plus interest, an agreement was reached with the party on a settlement and this case is also closed.

The grounds for voiding in these cases were in the main the same, and were based on Art. 131 (voiding of a gift), Art. 134 (voiding due to payment by unusual means and abnormally early i.e. earlier than agreed) and Art. 136 (salary payments were obviously unfair). It should be pointed out that the voiding cases originally brought against the CEOs were dismissed by the court and therefore had to be brought again.

A voiding suit against one of LBI's former CEOs is being heard by the Reykjavík District Court, demanding the voiding of payment made to his private pension fund because of a trading loss on a specific transaction which it is maintained LBI had agreed to bear. The principal of the reimbursement claimed in this case is ISK 35.1 m and voiding is based on Art. 131 of Act No. 21/1991, as it has not been satisfactorily demonstrated that LBI bore the obligation on which the payment was based. The defendant has until the end of November to submit his brief and the District Court's verdict can be expected in the latter half of 2013.

A voiding suit against the former head of LBI's Brokerage, demanding the voiding of bonus payments which he received during the last six months prior to the reference date, is being heard by the Reykjavík District Court. The principal of the claim made for reimbursement is ISK 47.3 m and voiding is based on Art. 136 of the BA, as it is contended that performance-linked salary payments in this manner were obviously unfair during the said period, given the operation and performance of the department which he managed and the bank's financial situation in other respects. The defendant has until the end of November to submit his brief in this case and the District Court's verdict can be expected in the latter half of 2013.

#### **6.3.4. Payments made by set-off and for purchase of securities**

The WuB has brought two cases for voiding before the Reykjavík District Court concerning payments made by set-off of claims arising from bonds issued by LBI.

In one case, against a European bank, the principal of the claim for reimbursement is EUR 5.1 m.

The circumstances of this case are specifically that the counterparty owed LBI substantial amounts due to derivative transactions. Apparently as a result of this, in November 2008 the bank acquired a



bond claim against LBI and in February 2009 used this to make payment of part of the derivative debt with a set-off.

The voiding claim is based on the contention that the derivative debt was paid by unusual means in the sense of Art. 134 of the BA and that, since the counterparty did not acquire its claim prior to the three-month time limit provided for in Art. 100 of the BA, the authorisation for set-off cannot be based on Art. 135 of the Act.

The defendant has submitted its brief and the case is awaiting hearing by the Court. The defence concerns both the form and substance of the case and it is not possible to say when the District Court's verdict can be expected.

The other case concerns the former management company of LBI's funds. This company was among the assets transferred to the new Landsbanki based on Decisions by the Financial Supervisory Authority.

The claim for voiding and reimbursement concerns two separate events, one involving LBI's purchase of securities and the other settlement of debts. The principal of the claim made for reimbursement is ISK 22.2 bn.

The former instance concerns payments received by the management company from LBI on 6 October 2008 for securities of little or no value acquired by LBI from the management companies funds. Voiding is based on the contention that this was a gift, in the sense of Art. 131 of the BA, of the difference between the value of the payment made by LBI and the value of those securities received in return by the bank which amounts to ISK 17.2 bn.

The latter instance concerns settlement of debts owed by the management company to LBI which was concluded at the beginning of November 2008. The settlement was made with a set-off and cash payment. In this the management company used bonds issued by LBI for payment with a set-off. The WuB is of the opinion that the funds acquired the majority of the said bonds within three months of the reference date, i.e. after 15 August 2008, and therefore that they were not eligible for set-off according to Art. 100 of the BA. The voiding claim is based on the contention that payment was made by unusual means in the sense of Art. 134 of the BA, as the requirements of Art. 135 the BA are not satisfied.

In the above-mentioned settlement between LBI and the management company a mistake was made resulting in overpayment to LBI of ISK 7.1 bn in cash, which was not discovered until LBI's winding-up proceedings commenced. The new bank, now Landsbankinn, which had repaid the said amount to the management company, lodged a claim against LBI for the overpayment. A judgement by the Supreme Court in Case no. 112/2012 recognised this as a claim for the administration of the estate,

as provided for in Point 3 of Art. 110 of the BA. Generally speaking, such claims can only be created after the date of a ruling on liquidation or the reference date in winding-up proceedings, but given the circumstances in this case the Supreme Court concluded that the situation as of 7 October 2008 was deemed equivalent to a ruling on liquidation in this respect. Since Landsbankinn had acquired this claim from the management company, the WuB considered it authorised to settle the said claim for administration of the estate insofar as the original settlement between the management company and LBI could be voided. Accordingly, the claim brought in the case is that the authorisation for a set-off amounting to ISK 5 bn be recognised.

The defendants have until the end of November to submit their brief and the District Court's verdict can be expected in the latter half of 2013.

#### **6.4. Summary**

In addition to those cases discussed here above, settlements have been concluded in two instances following declarations of voiding. One case concerned a claim for voiding and repayment against an individual who had evaded, without payment, a personal guarantee for obligations towards LBI when the debts were transferred to a private limited company which he owned. The other case concerned a claim for voiding and reimbursement against an Icelandic financial undertaking which had received payment of a debt from LBI on 6 October 2008.

To date LBI has received around ISK 1.6 bn as a result of claims for reimbursement based on voiding declarations as provided for in Chapter XX of the BA, as well as payment by set-off which is disputed, cf. the discussion in Section 6.3.4. It should be emphasised that the financial information presented to creditors does not include in assets the estimated recoveries resulting from cases for damages or voiding except that payments are recognised in cash when they are received. The WuB considers it proper to continue to disclose information on these claims in this manner, since there is considerable uncertainty as to the final outcome in the cases and the ability of parties who may be ordered to make payment to fulfil their obligations.

Attention should be drawn to the fact that according to Art. 143, cf. also Point 6 of Art. 118 of the BA, parties who have been subject to voiding and reimbursement following voiding of payments by LBI of debts owed to them may lodge their original claims even though the time limit for lodging claims has expired.

As described above, there is considerable uncertainty concerning when final judgements will be available in the cases referred to here. Very comprehensive defences are made, against both the form and substance of cases, including the evidence provided, which in some instances may result in a need to obtain assessments from expert court-appointed assessors. In many cases the defendants

have made very extensive discovery requests towards LBI for submission of documentation, which can have a considerable impact on the speed of handling cases. Attention should be drawn to the fact that in some of the cases for damages which have been brought, the defendants have requested that hearing of cases be postponed until a conclusion has been obtained in criminal investigations of events concerned in the cases, cf. the third paragraph of Art. 102 of the Act on Civil Proceedings. The WuB has now initiated those cases for voiding and damages which it deems suitable, at this point in time, to have tested before the courts. Other cases may be added and will then be accounted for at creditors' meetings accordingly, together with reports on the progress of those cases which have been discussed above.

<b>Suits for damages</b>	<b>Currency</b>	<b>Amount</b>
Bank guarantee which was not enforced	ISK	16,200,000,000
Loan to an Icelandic financial undertaking Oct. 2008	ISK	11,552,000,000
Disbursements on 6 October 2008	ISK	14,116,395,373
	EUR	10,840,714
	USD	10,547,970
Purchase of shares in LBI in Trading Book II	ISK	1,208,244,352
Claims for damages in connection with auditing and consultancy services	ISK	83170,680,018
	EUR	64,931,514
	USD	11,188,670
<b>Total</b>	<b>ISK</b>	<b>126,247,319,743</b>
<b>Total</b>	<b>EUR</b>	<b>75,772,228</b>
<b>Total</b>	<b>USD</b>	<b>21,736,640</b>

<b>Suits for voiding</b>	<b>Currency</b>	<b>Amount</b>
Payment of bonds and bills prior to maturity –	CHF	25,476
repurchases	EUR	56,770,737
	USD	641,700
Payment of money market facilities	ISK	42,411,395,426
Payments of salaries, bonuses, premia and stock	ISK	300,000,000
options	ISK	89,100,000
	ISK	35,140,000
	ISK	47,308,800
Payments made by set-off and	ISK	22,248,884,070
for purchase of securities	EUR	5,115,011
<b>Total</b>	<b>ISK</b>	<b>65,131,828,296</b>
<b>Total</b>	<b>CHF</b>	<b>25,476</b>
<b>Total</b>	<b>EUR</b>	<b>61,885,748</b>
<b>Total</b>	<b>USD</b>	<b>641,700</b>

CHAPTER 7

## IN CLOSING

## 7. In closing

As creditors are aware and can be concluded from this report, LBI's winding-up proceedings are an extensive and multifaceted undertaking.

The winding-up proceedings of LBI differ in various respects from the winding-up proceedings underway for other financial undertakings in Iceland due to the very high deposit claims against the bank which it was agreed should enjoy priority with reference to Art. 112 of the BA. As stated in Section 5 of this report, around half of the priority claims have now been paid on the basis of the WuB's authorisation to make partial payments; these payments total around ISK 677. It is established that LBI cannot completely fulfil its obligations and as a result the bank's winding-up proceedings can only, according to law, conclude with composition or liquidation.

Section 2 discusses LBI's legal position in general. It explains, among other things, that the WuB can only seek composition with creditors when it considers the time to be right for so doing and, furthermore, that the composition does not affect claims with priority as provided for in Articles 109 to 112 of the BA. As a result, and due to the fact that it remains to make payment to around half of claims lodged with reference to Art. 112 of the BA, the time is not yet ripe to seek composition with LBI's creditors.

According to the fifth paragraph of Art. 103 a of the AFU, the WuB is obliged to request liquidation if it considers demonstrated that the premises for seeking composition do not exist or if a scheme of arrangements has not been approved or a request for its confirmation has been rejected. Section 3 provides an account of the estimated value of LBI's assets and Section 4 discusses the list of claims, where LBI's liabilities are shown. According to the information in these sections, the WuB estimates that recoveries on LBI's assets will suffice to pay in full claims with priority with reference to Articles 109 to 112 of the BA and that there will be considerable funds available for disposition towards claims ranked in priority with reference to Art. 113 of the BA (general claims). It is therefore not excluded that premises could exist for seeking composition, in the sense of the above-mentioned provision of the AFU and for this reason alone the conditions for requesting liquidation are not satisfied. In no respect does it appear to serve the interests of creditors, or to have any other advantage for LBI's creditors, to terminate the winding-up proceedings, with liquidation ensuing. On the contrary, liquidation could negatively impact LBI's interests and assets and cause a variety of uncertainty and disturbance to LBI's legal position internationally. It should be reiterated in this connection that as long as the winding-up is in process, the WuB can make payments towards claims ranked with a higher priority than arises from the sixth paragraph of Art. 102 of the AFU; payments

towards general claims, when the time comes for such, can only be made on the basis of a composition or following liquidation.

Having regard for all of the above, it is the WuB's opinion that, given the current circumstances, it is both desirable and obligatory to continue LBI's winding-up proceedings with the aim of concluding them with a composition when and if the premises for such exist.

The WuB hopes that this report will provide creditors with useful information and that such reports will be able to serve as the basis for regular information disclosure to creditors throughout the course of LBI's winding-up proceedings.