District Court of Reykjavík

Verdict
April 1st 2011

Case no. X-24/2010:

Plaintiffs: Arrowgrass Master Fund Limited
Arrowgrass Distressed Opportunities Fund Limited
CIG & Co
Conseq Invest plc
Conseq Investment Managments AS
CVI GVF (Lux) Master S.a r.l
Fondo Latinoamericano de Reservas (F.L.A.R.)
GLG European Distressed Fund
GLG Market Neutral Fund
ING Life Insurance and Annuity
ING USA Annuity and Life Insurance Co.
LMN Finance Ltd.
Lyxor / Third Point Fund Limited
Monumental Life Insurance Company
National Bank of Egypt (UK) Limited
Ohio National Life Assurance Corporation
PHL Variable Insurance Company
Phoenix Life Insurance Company
Reliastar Life Insurance Company
Security Life of Denver Insurance
Sun Life Assurance Company of Canada
Third Point Partners LP (US)
Third Point Offshore Master Fund LP
Third Point Partners Qualified LP
Third Point Ultra Master Fund LP (Cayman)
Värde Fund LP
Värde Fund V-B LP
Värde Fund VI-A LP
Värde Fund VII-B LP
The Värde Fund VIII LP
The Värde Fund IX LP / The Värde Fund IX-A LP
Värde Investment Partners LP
Värde Investment Partners (Offshore) Master LP
WGZ Bank Luxembourg S.A.
WGZ Bank Ireland plc
(*Ragnar Aðalsteinsson hrl.*)

Bayerisch Landesbank
Bremer Landesbank
Commerzbank AG

Commerzbank International S.A.
Erste Europäische Pfandbrief- und Kommunalkreditbank AG,
Eurohypo Aktiegsellschaft
DekaBank Deutsche Girozentrale
DekaBank Deutsche Girozentrale Luxembourg S.A.
Deutsche Postbank International S.A
Düsseldorfer Hypothekenbank AG
DZ BANK AG Deutsche Zentral-Genossenschaftsbank
Landesbank Baden-Württemberg
LBBW Luxembourg SA
Landesbank Berlin AG
Deutsche Postbank AG
Deutsche Hypothekenbank AG
KfW Bankengruppe
Raiffeisen Zentralbank Österreich AG
Österreichsche Volksbanken-Aktiengesellschaft
Sparkasse Oberhessen
Taunus-Sperkasse
Sparkasse Pforzheim Calw
Sparkasse-Jena-Saale-Holzland
Sparkasse Hannover
Nassauische Sparkasse Anstalt des öffentlichen Rechts
Sparkasse zu Lübeck AG
Kreissparkasse Peine
Die Sparkasse Bremen AG
Sparkasse Oder-Spree
Vereinigte Sparkassen im Landkreis Weilheim
Caixa Geral de Depositos
The Royal Bank of Scotland plc.
ABN AMRO Bank NV, London Brach
(*Arnar Þór Jónsson hrl.*)

Skiki ehf.
Blomstri ehf.
Rakel Óttarsdóttir
Íslenska útflutningsmiðstöðin hf.
Óttar Magnús G. Yngvason
(*Óttar Yngvason hrl.*)

Deutsche Bank Trust Company Americas
(*Eyvindur Sólnes hrl.*)

Landsbanki Guernsey Ltd.
(*Jóhannes Eiríksson hdl.*)

Defendants: Landsbanka Íslands hf.
(*Kristinn Bjarnason hrl.*)
Kent County Council
(Ólafur Eiríksson hrl.)

Judges: Ásgeir Magnússon District Court judge
Greta Baldursdóttir District Court judge
Ingveldur Einarsdóttir District Court judge

VERDICT
Of the District Court of Reykjavík on April 1st 2011 in case no. X-24/2010:

Arrowgrass Master Fund Limited
Arrowgrass Distressed Opportunities Fund Limited
CIG & Co
Conseq Invest plc
Conseq Investment Managments AS
CVI GVF (Lux) Master S.a r.l
Fondo Latinoamericano de Reservas (F.L.A.R.)
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The Värde Fund IX LP / The Värde Fund IX-A LP
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Raiffeisen Zentralbank Österreich AG
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Sparkasse Oberhessen
Taunus-Sperkasse
Sparkasse Pforzheim Calw
Sparkasse-Jena-Saale-Holzland
Sparkasse Hannover
Nassauische Sparkasse Anstalt des öffentlichen Rechts
Sparkasse zu Lübeck AG
Kreissparkasse Peine
Die Sparkasse Bremen AG
Sparkasse Oder-Spree
Vereinigte Sparkassen im Landkreis Weilheim
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Skiki ehf.
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Deutsche Bank Trust Company Americas
(*Eyvindur Sólnes hrl.*)

Landsbanki Guernsey Ltd.
(*Jóhannes Eiríksson hdl.*)

Versus

Landsbanka Íslands hf.
(*Kristinn Bjarnason hrl.*)
Kent County Council
(Ólafur Eiríksson hrl.)

This case, that was arraigned on April 30th 2010, was received for verdict on the last February 18th,

1.0. Claims and participation

On behalf of the plaintiffs Arrowgrass Master Fund Limited and thirty four other creditors, hereafter knows as Arrowgrass Master Fund Limited and others, it is claimed that item a of the defendant Kent County Council's claim be dismissed from the court. Otherwise the final claims of these parties are mainly that the claim of Kent County Council no. 767 in the claim registry, for the lodged amount of ISK 1,013,833,452, be rejected as a priority claim pursuant to Art. 112 of Act no. 21/1991 at the winding-up of Landsbanki Íslands hf. As a reserve claim the plaintiffs claim that if it accepted that some part of the claim has priority pursuant to Art. 112 of Act no. 112 then that amount shall be a maximum of EUR 20,887. The plaintiffs' last resort claim is that all claims of Kent County Council for priority of accrued interests pursuant to Art. 112 be rejected. The plaintiffs also demand that all counter claims of the defendant Kent County Council be rejected that pertain to the recognition of claimed amounts in excess of the amounts recognised by the winding-up board of Landsbankinn, including the priority of such amounts. In all instances the plaintiffs claim for litigation costs from the defendants, each separately or in solidum, with impunity according to the court's assessment, pursuant to the interests at stake, with added margin for VAT.

On behalf of the plaintiffs Bayerische Landesbank and thirty three other creditors, hereafter knows as Bayerische Landesbank and others, it is claimed that item a of the defendant Kent County Council's claim be dismissed from the court. Otherwise the final claims of these parties are mainly that the claim of Kent County Council no. 767 in the claim registry, for the lodged amount of ISK 1,013,833,452, be rejected as a priority claim pursuant to Art. 112 of Act no. 21/1991 at the winding-up of Landsbanki Íslands hf. As a reserve claim the plaintiffs claim that if it accepted that some part of the claim has priority pursuant to Art. 112 of Act no. 112 then that amount shall be a maximum of EUR 20,887. The plaintiffs' last resort claim is that all claims of Kent County Council for priority of accrued interests pursuant to Art. 112 be rejected. The plaintiffs also demand that all counter claims of the defendant Kent County Council be rejected that pertain to the recognition of claimed amounts in excess of the amounts recognised by the winding-up board of Landsbankinn, including the priority of such amounts. In all instances the plaintiffs claim for litigation costs from the defendants, each separately or in solidum, with impunity according to the court's assessment, pursuant to the interests at stake, with added margin for VAT.

On behalf of the plaintiffs Skiki ehf., Blomstri ehf., Íslenska útflutningsmiðstöðin hf., Óttar Yngvason and Rakel Óttarsdóttir it is claimed that the court overturn the recognition of the winding-up board of Landsbanki Íslands hf. of the claim of the defendant Kent County Council for the amount of GBP 5,000,000 with interests for the amount of GBP 28,431.52, as a priority claim pursuant to Art. 112 of Act no.21/1991 on Bankruptcy etc, cf. Art. 102(3) of Act no. 161/2002 on Financial Undertakings, as amended with Art. 6 of Act no. 44/2009, which took effect on April 22nd 2009, cf. alsp Art. 6 of Act no. 125/2008. It is also claimed that the defendant's claim be only recognised as a general claim pursuant to Art. 113 of Act no. 21/1991 at the distribution from the estate of Landsbanki Íslands hf. It is moreover claimed that the defendants Kent County Council and Landsbanki Íslands hf. be in solidum sentenced to pay the litigation costs of the plaintiffs according to the court's assessment.

The plaintiff Deutsche Bank Trust Company Americas claims that the decision of the winding-up board of Landsbanki Íslands hf., that the claims of Kent County Council should be recognised as priority claim in the sense of Art. 112 of Act no. 21/1991 on bankruptcy etc., to be overturned by judgement. In addition the plaintiff claims for litigation costs.

The plaintiffs Landsbaki Guernsey Ltd. primary claim is that the position of the resolution committee of Landsbanki Íslands hf. on the subject of the claim of Kent County Council will be overturned and changed so that the claim will only be recognised as a general claim in accordance with Art. 113 of Act no. 21/1991 on bankruptcy etc. on the winding-up of the bank. The plaintiffs' secondary claim is

that the claim of Kent County Council will only be recognised as priority claim in accordance to Art. 112 of Act no. 21/1991 and should not exceeded 20.887 EUR per deposit that the statement of claim covers. Also the plaintiff claims to be paid the legal cost in accordance to the ruling of the court or according to litigation invoices.

On behalf of the defendant Landsbanki Íslands hf. the final claims are that the position of the winding-up board to recognise the claim of Kent County Council, no. 767 in the registry of claims, as a priority claim in accordance with Art. 112 of Act no. 21/1991 for the amount of GBP 5.300.000 that is converted to ISK 1,012,724. To the extent that Kent County Council claims for the recognition of priority claims for the amount in excess of the amount recognised by the winding-up board it is claimed that these claims are rejected. There is no claim for litigation costs from other parties to the case but it is claimed that the claim of litigation cost by the plaintiffs will be rejected.

The defendant Kent County Council claims that the plaintiffs', Arrowgrass Master fund etc. and Bayerische Landesbank etc., motion for dismissal of item a if his claim will be rejected.

In other regards the defendant primarily makes the claims before the court that:

a) That his claim against Landsbanki Íslands hf. fir the amount of GBP 5,000,000 with 6% contractual interests from April 22nd 2008 to and including April 21st 2009, a total of GBP 5,300,000 be recognised as a priority claim in accordance to Art. 112 of Act no. 21/1991 on Bankruptcy etc., cf. Art. 102(3) of Act no. 161/2002 on Financial Undertakings.
b) That the defendant's claim for default interests pursuant to Art. 6(1) of Act no. 38/2001, on April 22nd 2009, for the total amount of GBP 3,484.93 be confirmed as a priority claim pursuant to Art. 112 of Act no. 21/1991, cf. Art. 102(3) of Act no. 161/2002, but if that is not recognised it is claimed in reserve in regards to this item that a claim for 8% default interests for the same period pursuant to chapter 17 of the English Judgements Act 1838, for the total amount of GB 1,162.00 be confirmed as a priority claim pursuant to Art. 112 of Act no. 21/1991, cf. Art. 102(3) of Act no. 161/2002, but if that is not accepted then a last resort claim in regards to this item is that a claim for 6% contractual interests for the same period, for a total amount of GBP 871, be confirmed as a priority claim pursuant to Art. 112 of Act no. 21/1991, cf. Art. 102(3) of Act no. 161/2002, but if that is not accepted then it is a final last resort claim in regards to this item that interests at the assessment of the court be confirmed as a priority claim pursuant to Art. 112 of Act no. 21/1991, cf. Art. 102(3) of Act no. 161/2002.
c) That the defendant's claim for accrued costs to and including April 22nd 2009, for the total amount of GBP 1,071.34 plus VAT, be confirmed as a priority claim pursuant to Art. 112 of Act no. 21/1991, cf. Art. 102(3) of Act no. 161/2002.

As a reserve the defendant claims for:

a) That the defendant's claim against Landsbanki Íslands hf. for the amount of GBP 5,000,000 with a 6% contractual interest from April 22nd 2008 to and including April 21st 2009, for a total amount of GBP 5,300,000, be recognised as a general claim pursuant to Art. 113 of Act no. 21/1991.
b) That the defendant's claim for default interests pursuant to Art. 6(1) of Act no. 38/2001, on April 22nd 2009 for the total amount of BGP 3,484.93 be confirmed as a general claim pursuant to Art. 113 of Act no. 21/1991, but if that is not recognised it is claimed in reserve in regards to this item that a claim for 8% default interests for the same period pursuant to chapter 17 of the English Judgements Act 1838, for the total amount of GB 1,162.00 be confirmed as a general claim pursuant to Art. 113 of Act no. 21/1991, but if that is not accepted then a last resort claim in regards to this item is that a claim for 6% contractual interests for the same period, for a total amount of GBP 871, be confirmed as a general claim pursuant to Art. 113 of Act no. 21/1991, but if that is not accepted then it is a final last resort claim in regards to this item that interests at the assessment of the court be confirmed as a general claim pursuant to Art. 113 of Act no. 21/1991.
c) That the defendant's claim for accrued costs to and including April 22nd 2009, for the total amount of GBP 1,071.34 plus VAT, be confirmed as a general claim pursuant to Art. 113 of Act no. 21/1991.

Moreover the defendant claims that he be, both in regards to the primary claim and the reserve claim, sentenced the litigation costs, with VAT of the litigation costs, from the plaintiffs in solidum, at the court's assessment.

2.0 **The main events of the case**

With a letter from Landsbanki Íslands hf. to the Financial Supervisory Authority, dated January 19th 2006, the bank announced its intended establishment and operation of a branch in London. Then on June 29th of the same year the bank announced that it was planning to expand the operation of the branch so that it would also receive deposits. It is stated in the announcement that it is a question of "accepting wholesale deposits in the name of the branch which will be obtained through the intercession of Heritable Bank Ltd.".

The defendant Kent County Council is a British municipality, located in Maidstone in Kent. His claim is based on an agreement with the defendant Landsbanki Íslands hf., which was made with the intercession of brokers in the UK, that Landsbankinn would have the amount GBP 5,000,000, which the bank had previously had for return on investment for the defendant at his branch in London, for further return on investment in the branch's account from and including April 22nd 2008. The amount was originally transferred from the defendant's Kent County Council's account at National Westminster Bank plc to the account of Landsbankinn at HSBC Bank plc, but then transferred forwards to the branch of Landsbankinn in London and there put on an account in the name of the defendant Kent County Council. Pursuant to the available confirmation of Landsbankinn to the defendant Kent County Council, which is titled: "Deposit Confirmation", which is translated by a certified translator as a confirmation of a deposit the smount should be fixed for 365 days with a 6% fixed interest rate and thus be free for withdrawal, with a GBP 300,000 interest payment, on April 22nd 2009.

Pursuant to an authority it item a of Art. 100 in Act no. 161/2002 on Financial Undertakings, cf. Art. 5 of Act no. 125/2008, the Financial Supervisory Authority overtook on the 7th of October 2008 the authority of a shareholder meeting of the defendant, Landsbanki Íslands hf., suspended its board and appointed a resolution committee. Landsbanki Íslands was granted moratorium with a court order from the District Court of Reykjavík on December 5th 2008 and then an appointee in moratorium started working for the bank. In accordance to Act no. 44/2009, regarding the changes of Act no. 161/2002 on Financial undertakings, that came into effect on the 22nd of April 2009, the bank was wound-up and it was appointed a winding-up board. The winding-up board attends to the elements of the winding-up that defer to the treatment of claims directed against the bank. According to its advertisement regarding the recall to the creditors of the bank, the deadline for lodging claims expired on October 30th the same year. The defendant, Kent County Council, lodged a claim directed against the bank on October 28th 2009 and claimed priority for principal amount GBP 5,000,000 plus interests of contract up to and including April 22nd 2009 totalling GBP 300,000 pursuant to Art. 112 of Act no. 21/1991 on Bankruptcy etc. Then the primary claim was for default interests pursuant to Art. 6(1) of Act no. 38/2001, but in reserve for default interests under British law, on April 22nd 2009, with costs incurred before that date, would be recognised as a priority claim. Moreover the defendant lodged a claim for interests and costs accrued after April 22nd 2009 as a subordinated claim pursuant to Art. 114 of Act no. 21/1991. The winding-up board of Landsbankinn recognised the principal amount of the claim as a priority claim as well as contractual interests until the agreed upon maturity date, or a total of GBP 5,300,000, but rejected all other parts of the claim or did not take a stand towards them. On behalf of the defendants, Kent County Council, the stance of the resolution committee was objected and it was claimed that the claim would be fully recognised in the way it had been stated. The stance of the resolution committee regarding the agreement of a part of the claim as priority claim was objected by a significant number of foreign creditors and a few domestic creditors, among other things on the bases that it was not a deposit that was had insurance protection according to Act no. 98/1999. Since it was not possible to settle this disagreement in following meetings of the creditors the resolution committee

directed the disagreement to be resolved by district court, with reference to Art. 120, cf. Art. 171, of Act no. 21/1991. It was said amongst other things that in addition to the resolution committee of the bank the designated creditors that had objected to the stance of the resolution committee should be parties to the case. While running the case the statements of few participants were put forth where it said that it was not their wish to have direct participation to this case unless it constituted a withdrawal of former objections to the stance of the resolution committee regarding the claim of the defendant Kent County Council.

In regard to the fact that the resolution committee of Landsbanki Íslands hf. had in most parts agreed to the claims of the defendant Kent County Council in the case, against the objections of the general creditors that number amongst participants to it, the judge decided whilst conducting the case that the general creditors should be considered as plaintiffs but that Kent County Council and Landsbanki Íslands hf. should be defendants.

3.0. **Grounds of action and legal arguments of the plaintiffs**

3.1. The plaintiffs Arrowgrass Master Fund and others refer to, because of their motion for dismissal that the defendant Kent County Council had agreed to the stance of the resolution committee of Landsbanki Íslands hf. that it was agreed upon that the claim was considered priority claim according to Art. 112 of Act no. 21/1991. Taking into consideration the ruling of Supreme Court in case no. 638/2010 this would have to result in the defendant not being able to go through with the case and therefore this part of the claim of the defendant should be dismissed from the court.

Regarding the component these plaintiffs build on the grounds that foremost that the claim of the defendant, Kent County Council, falls outside the coverage of the laws on priority of deposits. The claim of the defendant is only one of many claims that is declared in the winding-up of Landsbankinn and originates from investments of the bank in wholesale financial market. In those instances the creditor had loaned Landsbankanum funds in a trade that had been established and negotiated about on wholesale financial market. Funds had been given over to the bank for a specific amount of time and during that period the provider of the loan had no access to the funds. The claims should not be considered as deposits but as a specific form of investment or loan. It is plain that from the business of Landsbankinn and the defendant, Kent County Council, it is determinable that specific main characteristics distinguish these loans from deposits. In that way business has been established because of intercession of a special broker and did not involve the payment of a sum of funds from the owner of the deposit to the bank for storage and/or to use payment service and general bank service. The funds were not stored in a specific bank account that was founded in the owners of the deposits name but they were deposited in an account in the name of a third party, in this case HSBC Bank plc. The funds were also not accessible until the date of payment and it was impossible to withdraw them when wanted. Also the place of payment of the transaction was not in Landsbankinn but the sum had to be deposited into a bank account that had been specified by the creditor at the beginning of the dealings. Finally it is clear that about these transactions no standard terms did apply that had been made unilateral by the bank, like is the case with deposits, but the terms had been negotiated separately each time. The dealings in question had a specific time period, just over one year. They had fixed interests of 6% and the bank was obliged to repay the capital and the interests on the day of payment just over a year later.

The plaintiffs indicate that priority of the deposits had been legalized with Art. 6 of Act no. 125/2008. That article had then been changed with Art. 6(3) of Act no. 44/2009 on the changes of the laws on Financial undertakings. Both these articles point to the detention of laws no. 98/1999 on deposit guarantee scheme and insurance system for investors regarding the definition of deposit but the laws are based on directive 94/19/EB on deposit guarantee schemes. The understanding of the aforementioned article must be that only deposits that are insured in accordance to laws no. 98/1999 should receive priority rights. The definition of what is deposit can be found in Art. 9(3)of said Act and there it is clearly stated that the concept of deposit does not cover „bonds, bills of exchange or other claims issued by an commercial banks or savings bank in the form of securities.“

It is being based on that the format of the claim in question is securities and is therefore excluded from the aforementioned definition of deposits. Since the definition of the concept securities cannot be found in Act no. 98/1999 the definitions of Act no. 108/2007 on the trading of securities must be looked to and also to older laws on the same matter no. 33/2003 and 13/1996. Taking those definitions into consideration and the explanations in aforementioned laws and the legal interpretational documents that come with them the conclusion can be made that the main characteristics of the concept securities is that it can be endorsed, that it has no requirement of form and that claims of payment in cash can be considered as securities. When the wholesale trades that this case concerns are examined with this in mind it is can be seen that the claim of the defendants had been endorsable, that the transaction lead to a claim to payment in cash, that the transaction had been negotiated by a broker on the financial market because the contract is endorsable in financial markets. Wholesale trading had therefore been in the form of securities in accordance with laws no. 98/1999 and therefore excluded from them.

Should the court reach the conclusion that wholesale trade should not be considered securities according to the exception in Art. 9(3) of Act no. 98/1999 it build upon that the transaction is not covered by the definition of deposit according to the laws on priority of deposits. This is made clear by general word definition but also from the intent of the laws. It is clear that the intent of the legislator by instituting the laws on priority of deposits was not to grant claims like this one priority but to point out that it was essential to protect individuals, their deposits and savings.

In the light of the merits and the items that discern wholesale trading from deposits, and particularly the claim that is being discussed, and in the light of the intent of the Icelandic government when instituting the laws on priority of deposits to protect retail depositors and depositors it must be concluded that the burden of proof that the claim is an deposit should res with the creditor himself, the defendant Kent County Council. Is this especially true because of the restrictions of rights that the priority of deposits may lead to should it be resorted to by the court.

Should the above argument not be agreed to it is build upon that the articles of the new legislation, including the emergency Act no. 125/2008, in conjunction with priority of deposit, and also the compartmentalisation of the banks and refunding of the new banks, are incompatible and in opposition to the fundamental principle of the protection of property, on equality and ban on discrimination that is protected by the constitution and the European Convention on Human Rights. They are therefore void and unbinding and should be excluded in the resolution of this case.

It is without a doubt that the claims of the plaintiffs in addition to their rightful expectations are protected as properties by Art. 72 of the Constitution and Art. 1 of the first addendum to the agreement of the Human Rights Covenant. The actions of the government regarding the status of the creditors in the order of debts included de facto deprivation of property of the creditors, other than owners of deposits, but most of the creditors are foreigners. It is a question of rights for pari passu standing with other creditors pursuant to Art. 113 of Act no. 21/1991 before the adoption of the Emergency Act. The same can be said on the breakdown of the banks, the refinancing of the new banks and the transference of debts and property to them. The plaintiffs endured unlawful discrimination when the value of their rights, that are protected during winding-up in accordance to written laws, was severely diminished or reduced to nothing. This reduction of property cause the plaintiffs an considerable amount of loss. It is clear that the domestic owners of deposits hand immediately obtained priority with the breakdown of the banks and the refinancing of the new banks on the expenses of other creditors that had claims that would still have been depts of the old banks. When the measures of the government are looked at it is clear that they included discrimination between at least three groups of creditors: First, domestic owners of deposits that have in every way been freed from winding-up by the breakdown of the banks and the refinancing of the new banks and had therefore in fact received unnecessary protection of the articles of the new legislation on priority of deposits, second, foreign owners of deposits that got a much better position than other general creditors with the articles on priority rights of owners of deposits, and third, mostly foreign creditors, other than owners of deposits, that had been placed into a position where their rights had been significantly reduced of value or lost as a whole.

Up to the point when action was taken to insure the functionality of the Icelandic banking system and to prevent to immediate collapse of the Icelandic economy the actions that had been done had been excessive, that is in opposition to proportionality. This stems from the fact that no compensation has been paid to the creditors that have carried the financial burden resulting from the protection of domestic and foreign owners of deposits. If compensation has not been paid it can lead to that the restrictions on the right to property, or intervention in the usage of the property in question, to be illegal. The actions taken are also believed to be in opposition to proportionality since they were not logically connected to the goals to preserve the functionality of the banking system and to prevent the immediate collapse of the banks. Special notice is directed to the point that no further gain has followed the actions taken for the Icelandic banking system since either way the domestic deposits would have been transferred to the new banks and domestic owners of deposits would in that way have been insured for their deposits. The actions taken were not carefully formed to reach the legitimate goal that was aimed at but instead the actions were based upon illogical points of view, discretion and unfairness. It is clear that the aforementioned actions did not include the least possible indentation of the mentioned rights, but in addition the entailed a breach of the principles of law regarding of ban to retroaction and clarity of law, including the violation of legitimate expectations of the plaintiffs regarding that a new legislation that would affect their rights of property would be in agreement to those principles.

It is pointed out that the institution of priority of deposits in a retroactive way is in violation of the fundamental principles and equality and the ban of discrimination that is protected by Art. 65 of the Constitution, Art. 1 of the addendum to the Human Rights Covenant and Art. 6, in accordance with Art 14 of the Human Rights Covenant. These principles are also in effect in European law and are therefore validated in Icelandic law through the EEA-agreement. It seem clear that the articles of Act no. 125/2008 and 44/2009 refer to different treatment of similar cases so that one group of general unsecured creditors, owners of deposits, are by law made owners of priority claims on the expense of other creditors that are not owners of deposits. By doing so the status of the party that was in a similar position was disrupted without objective points of view that supported the different treatment and such actions are to be treated as discrimination against the general creditors. Also there is an indirect discrimination on the grounds of nationality where the creditor to the banks, that are not owners of deposits, particularly foreign creditors, will carry excessive burden compared to other creditors to the banks because of the fact that their nationality is other than Icelandic.

The articles in question regarding priority of deposits will not be justified by referencing the point of view of constitutional emergency law, since there is no such authority granted in the constitution itself. At the least that right should be limited to situations that are rise during war conditions in addition to the fact that it is impermissible to on all accounts to deviate from the human rights provisions of the constitution. It is clear that Alþingi believe that it was utilising a right to deviate from the constitution when the emergency law and legislation related to that where passed. No reference about anything of that kind can be found in legal interpretational documents with said legislation. It is evident that there was not any kind of emergency situation in April 2009 when Act no. 44/2009 on the changes of Act no. 161/2002 on Financial undertakings were passed, but they re-legalized the priority of the deposits.

Supporting the primary claim of the plaintiffs it is finally referred to said actions of the Icelandic government included unlawful discrimination against foreign participants, cf. the Art. 4 of the EEA-agreement and Art. 16(2) of directive 2001/24/EB, and Art. 40 of the EEA-agreement on ban to the limitation of free flowing capital between member countries, and that they include illegal state aid in accordance to Art. 61(1) of the EEA-agreement.

Should it be the ruling of the court that the priority of the deposits is valid utilising the legislation that refers to it the secondary claim is that the interpretation of the rules of law should be in such a way that priority should only be granted to claims up to 20.887 EUR. In that context it is pointed out that priority on the basis of the emergency laws had been granted to „deposits according to laws no. 98/1999“, but those laws only include deposits to the amount protected by law that receives insurance. Even though the laws mention that under certain circumstances the payment of the total sum of the

deposit then the only part of the deposit that is really insured is 20.887 EUR. Furthermore it is stated in Art. 1 of Act no. 98/1999 that their goal is the grant owners of deposit minimal protection in the case of a banks bankruptcy. That is why it is argued that the goal of the legislator was to grant priority to the sum that equals to the insured sum of 20.887 EUR but the part of said claims that is in excess of that sum the status of general claim. It is clear that the mentioned interpretation, that only the specific sum should be granted priority, would honour the legitimate expectations of the owners of deposits because in that way the sum that they should have expected to be paid from the Depositors and Investors Guarantee Fund in the case of the insolvency of one of the banks would be insured.

Finally the aforementioned priority rights is said not cover any claims regarding accrued interests and cost. According to Act no. 98/1999, cf. regulation no. 120/2000 on Deposit Guarantee Scheme and Insurance Systems for Investors, particularly Art. 5, the calculation of the sum of a deposit should be in reference to its balance on the day that the Financial Supervisory Authority issued an opinion that the financial undertaking is not able to pay out the sum of the deposit. The Financial Supervisory Authority had issued that opinion on the October 27th 2008 that on the October 6th Landsbankinn had not been able to uphold its commitments regarding deposits. That day the obligations of the Depositors and Investors Guarantee Fund had become active and should the interests from that day onwards not be defined as an insured deposit according to Act no. 98/1999. Regarding the claim for costs the defendants Kent County Council it is argued that he did not demonstrate that the cost he is claiming is the cost of the collection of the claim. It is clear that if the court agrees that such a claim is true it cannot under any circumstances be granted the same kind of priority as the capital of the claim, if it should be granted priority during winding-up, since the cost can never be considered as an deposit in accordance to Act no. 98/1999. In this context it must be kept in mind that priority of claims over general claims is an exception from the principle of equality of creditors.

3.2. The plaintiffs Bayerische Landesbank and others refer to, because of their motion for dismissal, that the defendant Kent County Council was in agreement to the stance of the resolution committee of Landsbanki Íslands hf. about agreeing to his fourth secondary claim as priority claim according to Art. 112 of Act no. 21/1991 during the winding-up. While taking into consideration the ruling of Supreme Court in case no. 638/2010 it must be concluded that said defendant cannot be a part of the case and therefore this part of the presentation of the claim should be dismissed.

Regarding the material aspect of the case the plaintiffs foremost build on that the claim of the defendant Kent County Council cannot be considered deposit in the sense that is important and can therefore not be granted priority as such. It is pointed out that priority of deposits was legalized with Art. 6 of Act no. 125/2008. That article had then been changed with Art. 6(3) of Act no. 44/2009 that changed Act no. 161/2002 on Financial undertakings. Both of those Articles point towards the definition that is presented in Art. 9(3) if Act no. 98/1999 on Deposit Guarantee Scheme and Insurance System for Investors when defining deposit, but these laws are based on directive 94/19/EB on Deposit Guarantee Schemes. Aforementioned articles must be interpreted in a way such that only deposits that are insured in accordance with Act no. 98/1999 are meant to be granted priority rights.

The claim of Kent County Council can to be considered an deposit in the sense of the Art. 9(3) of Act no. 98/1999 since it is considered „in the form of securities“, did not „come to be because of a deposit or transfer in traditional common banking operation“ and is not covered in any other way by the definition of deposit according to laws no. 98/1999. It is plainly stated in the quoted article that the definition of deposit does not cover „bonds, bills of exchange or other claims issued by an commercial banks or savings bank in the form of securities.“ In the act there is no definition of the concept „securities“ but such a definition can be found in Act no. 108/2007 on Securities Brokerage, and also in older acts on the same subject no. 33/2003 and 13/1996. In Art. 2 of Act no. 108/2007 the concept securities is defined in such a way: „Any type of transferable right of creditor to payment in cash or the equivalent of such payment, and also transferable documents for ownership to other things than real estate or individual movables.“ In the statement with the bill to the aforementioned act it is stated that: „In accordance to the article it as to be possible to trade with securities in a financial market for it to be covered by the definition. Trading in a financial market it is referring to trading in a orderly

securities market, in a market square of financial instruments (MTF) or trading by interposition of a financial undertaking with a permit for trading with securities.“ The plaintiffs believe that the claim of the defendant is transferable and that the business in question was a trade on a international financial market by interposition of a financial undertaking with a permit for trading with securities. The trade had the characteristics of securities. The plaintiffs point out that the claim can in its nature not be considered a deposit and point toward the following characteristics that mostly define the claim in question: The stipulation of the trade was negotiated separately and the contract was made by the interposition of a broker in the international financial market. The trade had served the general purpose to be a short term investment for the creditor, more so than a way to store disposable funds, such that is the general purpose of deposits. From the point of view of Landsbankinn the purpose of the trade was to face a general need for working capital and it seems that the business was actively sought on the international financial market. Also the funds should be reimbursed on a specific time but for any other part the creditor did not have any access to them. Negotiations about fixed interest had specially been made that should be reimbursed along with the capital on the due date, but the terms that the defendant Kent County Council had been offered had not been available for the common owner of deposit. The defendant, that had received specialist assistance, is treated as a professional investor in that regard and his role and position hand been disparate to the position that the common owners of deposit are in. It does not seem that there was a special bank account in the name of the creditor but it seems that the creditor had deposited the funds into Landsbankans account with a third party. The documents that the trade is based upon are disparate to the documents that deposits are based on. It seems that a contract of loan granting had been made between the broker and Landsbankans, most likely verbally, but no documents are available other than the following confirmation from Landsbankanum. Also Landsbankinn should reimburse the sum with interest into an bank account owned by Kent County Council in NV Bank Ned. Gemeenten on due day. Such measure does not conform to deposit transactions and embodies that the place where payment is paid had been with the creditor. When it is a matter of trading with deposits the place where payment is paid is on the other hand with the bank that receives the deposit.

If it is not recognised that the claim is in the form of a security then it must be held that the claim falls short of the meaning of the concept deposit in the way that matters, especially when taking into consideration the purpose and goal of the articles that are taxed in this case. From the ruling of Supreme Court in case no. 184/2010 it can be said that only insured deposit according to Act no. 98/1999 can be classified as deposits in Act no. 125/2008 and no. 44/2009. To demarcate what deposits are insured all articles of Act no. 98/1999 must be considered as well as their purpose and goals. It is clear that the goal of Act no. 98/1999, cf. i.e. Art. 1 of the Act, is to grant common owners of deposits certain minimal protection. The Act is obviously based on the viewpoint of consumer protection as declared in the introduction of directive 94/19/EB, that has been instituted into Icelandic law with legislation. The said claim of the defendant does not come under that goal since it is a investment of an professional investor. In that context it is pointed out that wholesale loans or wholesale deposits had not been known phenomenon’s in Iceland when Act no. 98/1999 were passed and therefore not expected that the legislator had taken an direct stance on the matter if such trade should be considered deposits according to the Acts. Then it is moreover clear that the priority of a claim of a professional investor such as the defendant, who participated in a wholesale market with finance, is far outside the objective which the legislator may have aimed at with the adoption of the priority of deposits with the Emergency Act no. 125/2008.

The plaintiffs feel that when defining which claim should have priority as deposits according to Art. 6 of Act no. 125/2008 and Art. 6(3) of Act no. 44/2009 the purpose of this legislation has to be considered. Therefore both the prehistory and the purpose of Act no. 98/1999 as well as the Act that instituted the priority of deposits, or Act no. 125/2008 and 44/2009. Even though it seems that the state had with its actions aimed to insure the interests and individual depositors and common customers of the banks, in addition to protect the minimal functions of the banks and fund transfer, the plaintiffs feel that the priority of deposits and other actions of the state were neither what was needed nor necessary to reach these goals. It should be clear that the priority of claims of professional investors, such as the defendant that had traded on a wholesale market with capital, falls short of the goals that

the legislator may have headed for by instituting Articles on priority of deposits. Taking the aforementioned into account the defendants feel that the claim of the defendant Kent County Council falls short of the concept deposit in Act no. 125/2008 and 44/2009.

In addition of the aforementioned the plaintiffs point to three main points that should result in the court should rightly and by obligation interpret strictly the Article on priority of deposits. First, it is clear that the priority limits the rights of the plaintiffs that are protected by the Constitution and the European Convention on Human Rights. Second, the Article must be interpreted strictly in correspondence to Iceland's obligations according to the EEA-agreement, cf. Art. 3 of Act no. 2/1993 and registration 35 to the EEA-agreement, and also the general viewpoint in Icelandic law that the internal legal order should be interpreted in accordance with international obligations. It is the opinion of the plaintiffs that priority of deposits violates the EEA-agreement, i.e. its Article on equality. Third, it is clear that priority of deposits includes a exception to the principle of bankruptcy law on the equality of creditors that leads to the narrow interpretation of the concept deposit in the Articles of the Act on the priority.

Should the court conclude that said claim of the defendant can be considered an deposit and is therefore covered by the Articles on priority of deposits, the plaintiffs argue that these Articles should not be used since they are in opposition to Articles of the Constitution, the European Convention on Human Rights and the EEA-agreement.

First, the priority of deposits violates the protection of ownership according to Art. 72 of the Constitution and Art. 1 of the first addendum of the ECHR. The plaintiffs claims against Landsbankinn should undoubtedly be considered as property according to said Articles and be protected by them. These rights have been diminished in a unforeseeable and retroactive way when the Articles on priority of deposits were legalized. The status of those claims and the value was changed retroactively with the passing of the Act and such and legislation cannot stand. The plaintiffs argue that they had to give up their property. The value of the claims against Landsbanki Íslands hf. did deteriorate considerably when the owners of deposits were granted priority over and above them. This deprivation of ownership is especially directed against individual creditors, mostly foreign creditors against Landsbankinn, and can therefore not be in accordance with Art. 72 of the Constitution and Art. 1 of the first addendum of the Human Rights Covenant. The priority of deposits was instituted retroactively, completely on the expense of the plaintiffs and other general creditors since they have to carry the loss that otherwise would have fallen on the owners of deposits or the Depositors and Investors Guarantee Fund. Because the plaintiffs were deprived of ownership with confiscation the state must, in accordance to Art. 72 of the Constitution, pay full reimbursement. No such reimbursement has been offered and therefore the exertion of the Articles on priority claim must be in violation of the Constitution. Additionally the plaintiffs argue that the Articles of Act no. 125/2008 does not grant sufficient legal authority for confiscation since they are not clear and the wording to general.

Even though the aforementioned indentation of the plaintiffs ownership will not be considered confiscation but general limitation on ownership the plaintiffs argue that the permissible limit of the Constitution and Human Rights Covenant was exceeded, especially since the indentation includes discrimination and does not respect proportionality. Specifically it is argued that the plaintiffs had legitimate expectations regarding the handling of affairs that Icelandic legislation indicates if the Icelandic banks would become bankrupt. On that ground they handed loaned capital to Landsbankinn. This legitimate expectation is protected by the Article of ownership but in addition clarity of law and ban on retroactivity is also pointed at.

Second, it is argued that the institution of the priority of deposits in a retroactive way violates the main principle of equality and ban on discrimination that is protected by Art. 65 of th Constitution, Art. 14 of the Human Rights Covenant in conjunction with Art. 1 of the first addendum, Art. 26 of the International Agreement on Civic and Political Rights and Art. 4 and Art. 40 of the EEA-agreement. In this regard it is also pointed to item 12 and 16 in the forewords of the directive of the European

Parliament and Council no. 2001/24/EB on Reconstruction and Dissolution of Lending Institutions and more so Art. 16 of the directive. In addition it is pointed to the main principle of bankruptcy law regarding equality of creditors. All exceptions to that rule must be interpreted strictly. It is evident that the Articles of Acts no. 125/2008 and 44/2009 reefer to different treatment for comparable instances and by doing so the status of the participants that was analogous hand been disrupted without any objective and factual justifying the different treatment. In additon to that the differentiation does not aim towards a legitimate goal.

Third, it is argued that the priority of deposits does not hold in the light of the constitutinal principle of proportionality that amongst other things consists in Art. 72 and 65 of the Constitution, but also in the Articles of the Human Rights Covenant. In that context it is pointed to that the Articles of the Act on priority of deposits were neither able to achieve legitimate goals in the context of the principle of proportionality nor was priority a necessity in that respect. The argument that the actions had been necessary to insure minimal banking operations and the functionality of the payment system does not hold nor that the operation had been necessary to prevent a run on the bank. On the contrary it seems that with the priority the main goal was to save the state from obligation to pay as a result of te deposit guarantee and to move the losses stemming from the collapse of the banks from the state to the general creditors. Even though it is presumed that the goals were legitimate, e.g. to protect the savings of individuals or maintain minimal banking operations and prevent an immediate collapse of the economical system the plaintiffs argue that the priority of deposits was neither necessary nor able to achieve such goals. Especially it will not be agreed to the argument that the protection of professional investors like the defendant Kent County Council can be considered a legitimate goal of the operation like said before.

Should the court reach the conclusion that the goal of the priority had been legitimate then the plaintiffs argue that the actions were neither able not reach such goals nor been necessary in that sense. The plaintiffs feel that the burden of proof regarding suitability and the necessity of legislation that limits constitutionally protected rights must be in the hands of those that intend to make their case on them. Then it must also be argued that lesser resorts could have been made to reach the intended goals such as to institute a stricter definition of the concept deposit when passing the debated Articles. Finally, in this context it is pointed to that it is not enough to regard only what necessity may have been the reason for the legislation in October 2008 but the situation in Mars 2009, when Act no. 44/2009 was passed, must also be considered. During that time it would not have been possible to support the argument for impending chaos, the collapse of the payment system or total cessation of daily business and minimal banking operations. It must be considered that Art. 6 of Act no. 44/2009 and the usage of that Article does not concord with the claims of the Constitution and European Convention on Human Rights on ownership protection, equality and proportionality.

The plaintiffs point to that the priority of deposits will not be justified on the grounds of the viewpoints of constitutional emergency right. Regarding that the main argument is that constitutional emergency right has no basis in Icelandic constitutional law. It is clear that Alþingi did not see the passing of Act no. 125/2008 as some kind of divergence form the Articles of the constitution. In other words Alþingi did not see the Act as being passed on the ground of constitutional emergency right. If the conclusion will be that such right will be thought to exist the plaintiffs argue that the situation that arose in October 2008 is in no way comparable with the situations that have justified the usage of emergency rights in Icelandic judicial history, i.e. World War II. It will not be accepted that the situation „threatened the life of the nation“ in the context of the International Agreement on Civic and Political Rights and Art. 15 of the Human Rights Covenant. No emergency situation was publicly declared, cf. Art. 4(1) of the International Agreement on Civic and Political Rights, and no announcement had been send to neither the European Council nor the United Nations, cf. Art 4(3) of the International Agreement on Civic and Political Rights and Art. 15(3) of the Human Rights Covenant. Then it is clear that the coverage of constitutional emergency rights as a permission to deviate from the Constitution is limited to Articles that have to do with the distribution of power and the rendition of power but does not authorise the deviation from human rights. On all accounts it is argued that the deviation from constitutionally protected rights in this case cannot be considered

absolutely necessary, amongst other since they incorporated discrimination, cf. Art 4 of the International Agreement on Civic and Political Rights. It has not been argued that more lenient actions had not been possible.

Even more so it is argued that the priority of deposits, amongst other actions of the state as a result of the collapse of the banks, amongst other the splitting of the banks and the refunding of the new banks is in whole in opposition to the Articles of the Constitution, the European Convention on Human Rights and the EEA-agreement. It is especially pointed out that the actions of the state entailed unlawful aid from the state in accordance with the EEA-agreement. Since the actions of the state resulting from the collapse of the banks was unlawful, looking at them as a whole, no rights can be based on them. That includes the priority of deposits since that amendment was a part of unlawful actions of the state.

Should the conclusion of the court be that some part of the claim can be granted priority as a deposit then the first secondary claim of the plaintiffs is that such a priority claim cannot exceed the sum of 20.887 EUR which is the amount that was insured in accordance with Act no. 98/1999. That applies to each owner of deposit but not each account of deposit. Should the first secondary claim of the plaintiffs be agreed to the consequences will be that no other claims of the defendant Kent County Council can be granted priority as deposits.

Should the aforementioned grounds of action not be agreed to the plaintiffs point to, because of the plaintiffs second secondary claim, that the interpretation of the Article on priority of deposits, as well as the Articles of Act no. 98/1999, must be in such a way that the rights of priority must not cover interests on the deposit past the 6th of October 2008, but from that day onwards Landsbanki Íslands hf. was not able to live up to its obligations according to the opinion of the Financial Supervisor Authority and from that day the Depositors and Investors Guarantee Funds duty to pay had been active. The sum of the deposit must be based on that day.

The plaintiffs object to the claims and the pleadings of the defendant Kent County Council that defer to the interests on his claim from the date of payment of the loan to 22nd of April 2009 and his expenses. In that case it the arguments of the defendant Landsbanki Íslands hf. are pointed to but the resolution committee had rejected those claims. In regards to the interests it is specifically pointed out that default interests, which is one part of the contractual relationship, are subject to British law pursuant to Art. 4(2) of Act no. 43/2000. That is in accordance to the rules of Icelandic bankruptcy law on the conflict of law that the proceedings are subject to Icelandic law but the material rights of the creditors may be subject to foreign law, e.g. it was agreed upon.

3.3 The plaintiffs Skiki ehf., Blomstra ehf., Íslenska útflutningsmiðstöðin hf., Óttar Yngvason og Rakel Óttarsdóttir say that their claim is first based that Art. 6 of Act no. 125/2008 from October 7th 2008 and Art. 6 of Act no. 44/2009 from April 22nd 2009 include massive confiscation for the plaintiffs and that it they are in opposition with Art. 72 of the Constitution on the immunity of ownership as well as Art. 1 in the first addendum to the European Convention on Human Rights, cf. Act no. 62/1994 and Articles of the EEA-agreement. The said Articles of Act no. 125/2008 are, secondly, in opposition to the rule of equality of Art. 65 of the Constitution as well as Art. 14 of the European Convention on Human Rights. The acknowledgement of such large creditors to the bank as priority creditors will result in that the priority claims will take all foreseeable property of the estate and eliminate therefore all general claims. Imbedded in that is a serious discrimination between the creditors to the bank. Third, the plaintiffs point out that aforementioned Act no. 125/2008 and no. 44/2009 includes retroactive legislation, but with the passing of those Acts the legal status of the general creditors to the bank had been changed retroactively wit great damages. Such a legislation is in opposition to the general recognised unwritten main principle of a state governed by law that forbids retroactive legislation. This principle is based on the insurance of the legal certainty of the citizens. Fourth, it is argued that the principle of proportionality was not honoured with the passing of Act no. 125/2008 and even more sot not with the passing of Act no. 44/2009. It is the valuation of the plaintiffs that it would have been easily possible to solve the banking crisis that hit in the beginning of

October 2008 by acting in a less inflictive way than was done with Act no. 125/2008. It has not been shown that more lenient ways would not have been sufficient to solve the problem. Finally it is said that the debated claim of the defendant Kent County Council cannot be considered and deposit in the sense of Art 102(2) of Act no. 161/2002, like it was changed with Act no. 125/2008 and later with no. 44/2009. The conclusion of the resolution committee in this regard is wrong and in incongruity with the documents with the statement of claim. In those documents it says that the accounts are not standard deposit accounts but the Broker company Martin Brokers plc. made a loan agreement on behalf of the creditor with the branch of with special interests and a one year credit period.

3.*4.* *The defendant Deutsche Bank Trust Company Americas* argues that it is not possible to base the priority of the claims of the defendant Kent County Council on the Articles of Act no. 125/2008 and 44/2009 on priority of deposits since they are in violation of the constitution and are therefore invalid legal grounds. The Articles violate the European Convention on Human Rights, the principles of EEA-law and the general principles of international and domestic laws. The claims of the defendants should therefore be in the same order as the claims of the plaintiff, that is to say general claims in accordance with Art. 113 of Act no. 21/1991. This is grounded on that the priority that was granted to the deposit with those Acts had been unforeseeable and retroactive and in violation of the general rules on legitimate expectations, retroaction and predictability of law. With the passing of said Articles the rights of all uninsured creditors of Landsbanki Íslands hf. were brutally broken. In Article 3.1. of the contract between the bank and the plaintiffs, dated July 21st 2006 and that applies to the issuing of bonds by the bank, it is specifically stated that claims according to bonds should be unconditional , peremptory and uninsured obligations of Landsbanki Íslands hf. Also it is stated that the claims are equal to deposits and all other uninsured obligations. To the plaintiffs this was a clear premise and contractual obligation of Landsbanki Íslands hf.

The plaintiff argues that the Articles of aforementioned Acts that speak of and change the priority order of the claims violates Art. 72 of the constitution and Art. 1 of the first addendum of the Human Right Covenant. Should said claims be made priority claims it will severely reduce the odds of the plaintiff getting any payment for his claim. Those actions were then made on the expenses of the plaintiffs and other general creditors. It leads to indentation of property and illegal limitations on the ownership of the plaintiffs without any compensation. It is hard to see that the needs or interests of the public were the foundation for the passing of said Articles. Also it is clear that the claim about proportionality that is imbedded in Art. 72 of the Constitution and emerged in Art. 12 of the Administrative Procedures Act no. 37/1993 in not met. The legislator did more than was necessary by passing said laws. It is the opinion of the plaintiffs that such excessive treatment of creditors such as is the case here violates the principle of equality and ban against discrimination that is written in Art. 65 of the Constitution and Art. 14 of the ECHR.

Should said legislation in some way be considered justifiable the plaintiffs believe that said claims of the defendants cannot be considered deposit in accordance to the Articles of the Acts. The plaintiff argues that the concept deposit should be interpreted it in such a way that it covers deposits in specific accounts in the name of the person in question. Traditional deposit is tied to specific terms that are decided in advance en not negotiated about interest and conditions each time. On the other hand the main characteristics of the wholesale loan of the defendant not in unison with said interpretation since participants negotiate the conditions of the loan each time, i.e. the amount, the credit period and interests. The loans are based on an contract between the defendant, Landsbanki Íslands hf. and the defendant Kent County Council and the conditions probably reflect the prevailing state of the market and the need for financing of the bank on the day of agreement. These are loans that the bank used for financing from the defendant, who is a professional investor, by the interposition of a broker on a money market. All discussion regarding the passing of said Acts indicates primarily that it was the intent to insure the deposits of depositors but not wholesale loans of financial undertakings or professional investors.

The plaintiff argues that the defendant has the burden of proof when referring to which claims of the defendant had been protected by insurance in accordance to Act no. 98/1999 on Deposit Guarantees

and Investor- Compensation Scheme. He will have to show that the premium had been paid to the Depositors and Investors Guarantee Fund for said loans and that the loan of the defendant had created basic reserve requirement for The Central Bank of Iceland.

If it is considered that the claim of the defendant and in some way be considered an priority claim in the order of claims the plaintiffs believe it is clear that the priority right, even so, only cover the sum of 20.887 EUR. In the debated Articles on priority rights it is pointed to Act no. 98/1999 where it is stated that deposits are only protected up to the aforementioned sum.

3.5. The plaintiff Landsbanki Guernsey Ltd. argues that his primary claim is based on that the resolution committee of the defendant, Landsbanki Íslands hf., was unauthorized to grant the claim of the defendant, Kent County Council, a status in accordance with Art. 112 of Act no. 21/1991 on Bankruptcy etc., where so-called wholesale deposits are not covered by the concept deposit in the sense of Act no. 98/1999 on Deposit Guarantee Scheme and Insurance Systems for Investors. Should they be treated as so-called money market deposits and was one way for the financial undertakings to finance its operation. Wholesale deposits should not be considered traditional deposits that Act no. 98/1999 is intended to insure. On the same account the defendant Kent County Council should not be considered a traditional owner of deposit that the Act is intended to protect.

The plaintiff argues that the Articles of the Emergency Act on priority rights of depositors violates the immunity of ownership in accordance with Art. 72 of the Constitution and Art. 1 of the first addendum of the European Convention on Human Rights that has been legalized here, cf. Act. no. 62/1994. Before the passing of Act no. 125/2008 the plaintiffs and other owners of deposits belonged to a group of general creditors. With the legislation the owners of deposits had been insured priority rights when the breakup of the estate of Landsbankinn and therefore been insured better status than the of the plaintiffs. If the legislation would not have been passed and the claims of the owners of deposits would still have had priority according to Art. 113 of Act no. 21/1991 it would be clear that the plaintiffs as well as other general creditors would have been paid a portion of their claim. According to the latest information of the resolution committee of the defendant, Landsbanki Íslands hf., the situation is the only payment will be for part of the priority claims. Nothing will be paid for the general claims. According to the aforesaid it must be held that the passing of Act no. 125/2008 had lead to the right of claim of other general creditors, i.e. the plaintiffs, were reduced to almost nothing or none. The plaintiffs believe that by they were obligated to discontinue all constitutionally protected rights of ownership in relation to Landsbanki Íslands hf. for the benefit of owners of deposit. In the annotations to the bill that was passed as Act no. 125/2008 are no reasons or goals given for this dispossession nor is there anything about the payment of compensation for those that may be forced to endure dispossession, i.e. other general creditors except the owners of deposits. The plaintiff holds that the said dispossession will not be justified by pointing to the needs of the public or any other viewpoint in addition to that the legislation did more then was necessary.

It is also held that the said Article of the Emergency Laws includes discrimination between general creditors and violates the principle of equality of Art. 65 of the Constitution and Art. 14 of the Human Rights Covenant. Their stature had been the same up to the adoption of the Act and therefore similar circumstances were dealt with in dissimilar manner. When evaluating if the status of the participants had been similar it is only possible to see if their claims had the same priority before the change. Only in absolute exceptional cases it is warranted to discriminate between men and only if the discrimination is based on factual points of view or important viewpoints that justify its necessity. The defendant Kent County Council has not been able to demonstrate that such rationalization was at hand. One thing is clear and that is that the changing of the legislation did more that was necessary to do. If the court finds that the discrimination was justifiable then the cost associated with that has to be carried by the state but not general creditors.

The plaintiff holds and points to the Articles of the Emergency Laws and the decision of the Financial Supervisory Authority from October 9th 2008 on the transference of deposits from Landsbanki Íslands hf. to Nýja Landsbanaka Íslands hf., later NBI hf., and argues that they violate Art. 4 and 40 of the

EEA-agreement, Art. 16(2) of EC directive no. 2001/24/EB and the unwritten principle of EEA-court on quality of participants. This entailed both direct and indirect discrimination and had objective or factual reason supporting it. Also there was no normal congruity between the goal that the discrimination seems to have been aimed at and the actions taken to reach said goal. In addition the actions did limit the free flow of funds, cf. the principle of Art. 40 of the EEA-agreement.

The priority right will not be justified by pointing to constitutional emergency rights because it is entirely an undefined concept. Nowhere in the Constitution can there be found a permission to use such emergency rights and neither did the creator of the Constitution ever see a reason to legalise such rights. In fact it is so that the creator of the Constitution saw a reason to reject the legalisation of such rights as can be seen in the committee report of the committee of the Constitution no. 758 from the 118th legislature, case no. 297. The priority right will not be justified by pointing out Art. 15 of the Human Rights Covenant on Indentation of Right in Times of Danger because it is clearly stated in Art. 15(3) that the participant to the contract that exerts that right has to announce it to the European Council in a specific way that the Icelandic government did not do.

It is held that by passing Act no. 125/2008 the principles og Icelandic law and EEA-law on legitimate expectations, predictability and ban to retroactivity hand been disregarded. When the trade of the plaintiff and Landsbanki Íslands hf. took place the plaintiff assumed that owners of deposits would be treated as general creditor and that they would receive priority in accordance with Art. 113 of Act no. 21/1991. With the fundamental changes of the said rules on winding-up financial undertakings the legitimate expectations of the plaintiff were violated in this respect. It is clear that the principle on legitimate expectations limits the legislator, i.e. in the passing of retroactive legislation.

Regarding the primary claim it is pointed to that here there is in effect an unwritten but general principle of proportionality when interpreting Articles of the Constitution, especially when resolving whether law are in agreement with the Constitution. It entails that limitations on ownership must be governed by legitimate goals, goals that cannot be obtained in a more lenient way, in addition that moderation must be held when applying it. The burden of proof that the conditions were fulfilled rests with the one who wants to build a case on the content of an Article, in this case the defendant Kent County Council, and the plaintiffs hold that such proof has not been successful.

Regarding the secondary claim of the plaintiffs it is held that priority right, cf. Art. 6 of the Emergency Law, does only cover the claim of the defendant Kent County Council up to the sum of 20.887 EUR for each deposit the statement of claim covers since the Depositors and Investors Guarantee Fund warrants no more than that sum.

3.6 The defendant, Kent County Council claims to base his claims firstly, on his credit balance being a deposit as defined by Act no. 98/1999 Deposit Guarantees and Investor- Compensation Scheme. The concept deposit is defined clearly in art. 9(3) of the Act and the provision of art. 6 of Act no. 125/2008, the so-called Emergency Act, refers to that definition. It is stated in the definition that a deposit refers to any credit balance resulting from financial deposits or transfers in normal banking transactions, which a commercial bank or savings bank is under obligation to refund under existing legal or contractual terms. There is therefore no need nor should the assertion of the plaintiffs on language usage and/or language understanding in the interpretation of the concept be based on. The conditions of the concept of the law are clear and the credit balance of the defendant fulfils all of these.
It is undisputed, and confirmed by documentation, that the defendant deposited the funds in question with the defendant Landsbanki Íslands hf. and that the bank was under obligation to refund these funds with interest. With regard to transfer, the condition remains that it results from normal banking transactions. The receipt of credit balances comes under this, cf. art. 20(1) of the Act on Financial Undertakings. As no distinction is made there between retail and wholesale deposits, it is clear that the concept covers both of these. The defendant deposited funds into an account with Landsbanki, which then issued a confirmation, signed by one of the bank's employees, of the receipt of the deposit. There, the reference is clearly to a deposit, specifying e.g. the number of the account where the deposit was

deposited, the amount of the deposit, rate of interest and the date when the deposit is available for disbursement, as is customary in instances of so-called term deposits. This confirmation also contained terms of the deposit, as there is no need for more sophisticated documentation for such a simple instrument. This is in effect a receipt and it is in most respects comparable to confirmations issued to retail customers. Both parties considered this to be a deposit and all communications bear the undisputable hallmarks of this. The deposit was registered as such in the accounts of the bank and it furthermore paid the obligatory contributions to the Depositors' and Investors' Guarantee Fund. It did in effect admit that this was a credit balance transaction as the winding-up board agreed that the deposit had priority.

The defendant refers to the conclusion that its deposit come under the definition of the law on deposit guarantees also being in accordance with the purpose of that same law to implement the provisions of European Union Directive no. 94/19/EC in Icelandic law. The Icelandic law therefore needs to be interpreted with regard to the Directive. It may be deduced from documentation from the European Commission that the definition of the concept deposit in art. 2(1) of the Directive had purposefully been kept wide and to encourage coordination among member states with regard to minimum guarantee of deposits. In order to set off this wide definition, however, there are available both obligatory and optional exceptions. With these the concept of deposit is not being narrowed but rather which categories of deposits and depositors should enjoy guarantee cover. Securities are e.g. not counted as deposits pursuant to art. 1 of the Directive. Secondly, own funds of a financial undertaking and deposits owned by other financial undertakings are exempt from guarantee cover pursuant to art. 2 of the Directive. And finally, art. 7(2) authorises member states to exempt certain categories of deposits or certain groups of depositors from guarantee cover. The member states are thereby authorised to exempt deposits of parties, as is the case with the defendant, who are so large that they are not authorised to publish a shortened financial statement. Thereby it is clear that such deposits come under the concept of deposit by the definition of the Directive, otherwise they would not need to be exempted specifically. Iceland did not exempt such deposits, as the plaintiffs have actually themselves admitted. It is also pointed out that had the intention been to exempt large deposits or credit balances such as the wholesale credit balance of the defendant, they would have been defined and cited in Annex 1 to the Directive where exemption authorisations are cited. This was not done and these deposits must therefore enjoy guarantee cover pursuant to the Directive.

The defendant claims to object the arguments, which the plaintiffs refer to in their statements in support of wholesale deposits not counting as deposits and therefore coming outside the scope of provisions on the granting of priority rights to deposits. There is no legal foundation for defining a deposit by a so-called depositary role. It is clear that all credit balances of a bank are part of its financing and it is known that up to 30-40%of the financing of the Icelandic banks in the year 2008 were credit balances. With regard to the assertion of the plaintiffs that the funds in question were not kept in a special bank account in the name of the depositor and therefore cannot be considered a deposit, the defendant points out firstly, that the available documentation demonstrates that its deposit had been deposited into an account with the defendant Landsbanki Íslands hf. with a special account number, 20000174. Besides, there is no reservation in the Act on Deposit Guarantees and Investor-Compensation Scheme that an account should be "in the name" of the depositor in question. In fact, the Directive on deposit guarantee schemes expressly assumes nameless deposits, cf. item 10, Annex 1, and member states should exempt these specifically if it is not their intention that these enjoy guarantee cover. It is undisputed that Iceland did not make use of such an exemption. With regard to the assertion of the plaintiffs that the funds were not accessible, and/or that it was impossible to withdraw the funds when so wished, then it may be said that various types of accounts come under the concept of deposit, which serve various roles suited to the needs of the depositor at each time. There is no doubt of termed deposits counting as guaranteed deposits which enjoy priority at the winding-up of financial undertakings. The plaintiffs have also referred to the fact that the credit balance of the defendant was supposed to be refunded automatically on the day it was available for disbursement and that it was not subject to standard terms, composed by the bank, and that this supports the conclusion that this was not a deposit enjoying guarantee cover. However, neither of these arguments is supported by provisions of law or other legal grounds. It is even so that in art. 9(3) of the Act on Financial

Undertakings, it is provided that by deposit is meant any credit balance resulting from financial deposits or transfers in normal banking transactions, which a commercial bank or savings bank is under obligation to refund "under existing legal or contractual terms". However, there was never any negotiation between parties but rather the defendant assessed it so, on the basis of advertised terms and where applicable with the assistance of intermediaries, what financial undertaking to deposit its funds with to yield a return. It is clear that it changes nothing on the nature of the deposit in this respect how high the yearly turnover of the depositor is or whether the depositor has its own fund management or not. Finally, the argument of the plaintiffs, that the credit balance of the defendant is in effect a security as defined by the Act on Securities Transactions no. 108/2007, is rejected. Securities are transferable rights of claim for a money payment or its equivalent, as well as transferable certificate for the right of ownership to other than a property or individual realisable assets, such as shares, bonds, subscription rights, exchangeable securities or changeable securities. In the condition of transferability is further entailed that the rights entailed in the right of ownership of the certificate in question can be transferred to another party. This is not the case with the receipt for transfer and receipt of funds in question, in the case of the defendant. Such documentation is not by nature a transferable undertaking and can therefore not be bought and sold in a financial market.
The defendant rejects the submission of the plaintiffs that the Act on Deposit Guarantees and Investor-Compensation Scheme only applies to deposits up to a legally protected limit, or up to the amount of 20,887 euros, and that therefore the aim of the Emergency Act was to grant only that amount priority. As is clearly stated in art. 9 (1) of the Deposit Guarantees and Investor- Compensation Scheme, the Fund is under obligation to refund to the customer of a member company the equivalent of deposit in Deposit Department, then this obligation of the Fund is not limited to the amount of 20,887 euros but the equivalent of the deposits should be guaranteed in full. It is also stated in art. 10(1) of the Act that it is the "total amount" of a deposit which is guaranteed pursuant to the law, irrespective of what is disbursed in accordance with the financial position of the Depositors' and Investors' Guarantee Fund.
However, should the court reach the conclusion that the defendant´s deposits is not a deposit by the definition of art. 9(3) of the Act on Deposit Guarantees and Investor- Compensation Scheme, it should be considered that at least there was a transfer by the definition of the provision. It is undisputed and confirmed by documentation that the funds in question were deposited with the defendant Landsbanki Íslands hf. on 10 January 2007. The deposit must therefore enjoy priority at the winding-up of the bank.

The defendant also rejects the plaintiffs´s submission which argues that art. 6 of the Emergency Act no. 125/2008 breaches art. 72 and art. 65 of the Constitution and comparable provisions in the European Human Rights Convention, in addition to the principles of the EEA Agreement. However, it is pointed out that it is unnatural to discuss the validity of the Emergency Act in a dispute pursuant to art. 171 of the Act on Bankruptcy as the Icelandic state is not a party to the case. It is also clear that it has no meaning, with regard to the conclusion of this case, to discuss the validity of other measures which the Icelandic state resorted to on account of the economic crisis in its entirety, but those which relate to the priority of deposits.

The Emergency Act neither stipulates that it should work retroactively nor does it in effect do so, as it is only about the priority of claims in bankruptcy or winding-up proceedings occurring after their coming into effect. The Act could only be considered to be retroactive if it entailed rules on how assets should be divided in bankruptcy occurring after it coming into effect. This is not the case in this instance as the winding-up proceedings of Landsbanki begun when its winding-up board was appointed on 29 April 2009, but the Emergency Act came into effect on 7 October 2008. It is therefore clear that the assertion of some of the plaintiffs´ that the right of claim was already established when the Emergency Act was passed does not matter in this instance, in addition to there being nothing to indicate that this assertion is correct. It is also clear that the provision of the Emergency Act on the priority of deposits has a general value for the foreseeable future and therefore does not aim at particular instances. The Act was passed so that the Financial Supervisory Authority could use it, if it considered there to be a need in the future.

Provided that the lodged claims of the plaintiffs have been confirmed in accordance with law, the defendant can accept that the plaintiffs may have enjoyed the right of ownership which they are entitled to base on in accordance with the terms of the transaction. However, this right had become a right to lodge a claim at the wound-up estate of the defendant Landsbanki Íslands hf. at its bankruptcy. The plaintiffs, however, never had the claim to receive payment of a particular amount in the event of bankruptcy. They could only have justifiable expectation that their claim would be handled according to the law as it was at that time when the winding-up proceedings of the bank would begin. With the Emergency Act, no change was made to the position of the plaintiffs´ claims as general claims at the winding-up proceedings, it only changed the position of depositors´ claims in the order of priority. The plaintiffs have not been stripped of their right of ownership of their claims nor have their rights altered. The plaintiffs have also not proved that the value of their right to lodge a claim at the winding-up proceedings was diminished with the passing of the Emergency Act. Should such a reduction in value have occurred it is in no way different from depreciation which occurs on account of taxes being raised or other government measures, which may lead to increased rights for certain parties or groups. In this respect, it will also be pointed out that it is not clear whether the plaintiffs had all purchased their claims before the collapse or after and then whether they have incurred a loss at all.

The plaintiffs´ assertion that provisions of the Emergency Act on making deposits priority claims in fact entails expropriation is obviously based on a misunderstanding as these legal provisions do not fulfil the conditions which courts have until now considered to characterise expropriation. Of most importance is that the law neither targets specific assets nor establishes right of ownership for others but grants claims of the same type, deposit claims, an improved right to what they had before. However, should the court reach the unlikely conclusion that this was expropriation then this would not lead to the annulment of the Emergency Act but only grant the plaintiffs a possible right to damages from the Icelandic state.

The plaintiffs´ assertion is rejected that there was no legitimate aim with the setting of the provision in art. 6 of the Emergency Act. The grounds were general, objective reasons to save the Icelandic financial and payment systems in an emergency situation. Legal interpretation documentation clearly indicates that the purpose of the law amendment was to build trust, ensure public safety and save valuables. These measures contributed to saving the Icelandic state from bankruptcy. It is without doubt, that the granting of priority to depositors was a necessary and indispensable part of the measures of the state which aimed at ensuring stability and prevent or stop a run on the banks and their bankruptcy. In this respect, depositors were in a completely different position to that of lenders. Lenders are in the position that they can at the making of a lending agreement insure themselves from a possible bankruptcy, e.g. by taking collateral. However, depositors look at their deposits as their assets and it therefore causes permanent damage to the foundation of banking transactions if people and companies do not trust banks with their savings. It was therefore necessary that savers could trust that their deposits were as secure as possible. Foreign savers mattered practically as much as domestic ones, and even more so with respect to the liquidity of the banks.

The plaintiffs´ assertion, that there were other and more moderate measures than that of granting priority to deposits to prevent the collapse of the banks and ensure the interest of the state, does not hold. In this regard, the defendant firstly points out that the court does not have authority to provide for this at this time and that in any case none of the measures which the plaintiffs pointed to in their statements was an obviously effective way to reach the goals which the Icelandic state was aiming for at the time. The plaintiffs´ submission that the change in order of priority of the claims in question was in breach of their justified expectations also does not hold. In that respect it may be pointed out that laws and regulations in relation to bankruptcy and financial undertakings are constantly being revised and that already in 2006, government warned that a review of the regulations on financial undertakings and deposits was underway. It is clear that the order of priority at the winding-up of a bankrupt estate has been changed before and no-one then thought that this change entailed a restriction to the right of ownership or breach of justifiable expectation, despite the change undoubtedly having had a negative effect on many claimants. The reference point has always been that the changes would cover transactions which had been made before the coming into effect of the law.

With regard to the submission of the plaintiff that the granting of priority rights to deposits is a breach of the provisions for equality in art. 65 of the Constitution, art. 14 of the European Human Rights Convention and art. 26 of the contract on civilian and political rights, the defendant points out that comparable viewpoints are valid for the analysis of cases pursuant to all these three provisions. The above assertion of the plaintiffs´ is therefore based on one group of general claimants, depositors, having been moved into a position of priority claimants to the detriment of general claimants. This, however, does not hold, as it is a fundamental condition for the use of the principle of equality that instances compared are actually comparable. It is far from the truth that all general claims are comparable. It is clear that the claims of the plaintiffs and the deposit claim of the defendant are based on different grounds. There is therefore a fundamental difference in the opportunities of lenders such as the plaintiffs on the one hand and depositors on the other to ensure their interests in negotiations, e.g. with regard to guarantees for repayments. Depositors have to place all their trust in the solvency of the bank. This difference of situation is reflected e.g. in the responsibility of the Icelandic stat with regard to the deposit guarantee commitments of the Depositors´ and Investors´ Guarantee Fund. This unique position also explains the measures which it was necessary to resort to with the Emergency Act. Depositors´ general trust in the transactions of the banks with which they had entrusted their savings is a fundamental condition for the stability of the banking system and the financial system as a whole.

The plaintiffs´ submission, that the priority of deposits is in breach of provisions of art.4 and art. 40 of the EEA Agreement on the ban against discrimination is dismissed. Only art. 40 of the Agreement applies here but this is a special provision on ban against discrimination in instances of transfer of funds owned by those who are resident in the member states of the EEA Agreement. The general provision of art. 4 on ban against discrimination on the basis of nationality can only apply if specific provisions of the Agreement do not apply. Pursuant to art. 6 and art. 9 of the Emergency Act, all deposits pursuant to law, are granted priority. No distinction is made on the grounds of nationality, residence or where the money is used for investment and the plaintiffs have not pointed to any such discrimination. It is far from the truth that the priority right in question discriminates against foreign parties rather than domestic parties. It is clear that the deposits of foreign parties amounted to larger amounts than those of domestic parties. However, should the court reach the unlikely conclusion that the priority entailed discrimination, this will be entirely justifiable as the aim was legitimate and the means appropriate and necessary and as limited as possible. In this respect, the exemption provisions of art. 43(4) of the EEA Agreement are referred to.

With regard to the plaintiffs´ reference to items 12 and 16 in the Introduction to Directive no. 2001/24/EC on reorganisation and winding up of credit institutions, as previously it remains clear that art. 10(h) of the Directive provides that the laws of the home state should determine the “priority of financial claims”. It is so both in Icelandic law and in the legislation of most states in Western Europe that the order of priority of financial claims at the winding-up process is provided for despite the principle of the equality of claimants. The provisions on the priority of deposits have general validity and apply to all in exactly the same position. They have, and with the coming into effect of Act no. 44/2009, been granted validity for the foreseeable future. In this respect, it should also be pointed out that the EEA Agreement only has the position of general law in this country and it is not permissible to put to one side provisions in newer special legislation on the basis that they breach the Agreement. If this were so, the plaintiffs´ resources would be limited to damages from the Icelandic state.

The defendant also to rejects the submissions of the plaintiffs with regard to the measures of the Icelandic state on account of the banking collapse, which they call “package of measures”, that this entails illegitimate state support by the definition of art. 61(1) of the EEA Agreement. The defendant refers in this respect to the fact that it will not be determined in a dispute pursuant to art. 17 of the Bankruptcy Act whether such an alleged breach of the Icelandic state has occurred and it is hard to see how alleged state assistance can be in aid of invalidating the measures of the state, as is maintained on the part of the plaintiffs.

With regard to interest, it is clear that the winding-up board had agreed contractual interests on claims for wholesale deposits up until their date of maturity, or up until 22 April 2009 if date of maturity was after that time. The deposit of the defendant had a date of maturity on 22 April 2009 and the claim of the defendant for contractual interest up until 21 April amounting to 300,000 GBP was accepted as a priority claim. The winding-up board had, however, rejected the defendant´s claim that it have acknowledge Icelandic interest on penal interests pursuant to Act no. 38/2001 in this interim period up until the start date of the winding-up proceedings, in this instance on account of penal interests on 22 April 2009.

It is undisputed that Icelandic law stipulates that interest should be paid up until and inclusive of 22 April 2009 on account of claims to the defendant Landsbanki Íslands hf. but the winding-up board of the bank had, however, rejected the defendant´s claim for Icelandic penal interests pursuant to Act. no. 38/2001 on interests and price indexation in this period on the basis that English law applied to the claim materially. Pursuant to art. 2 of Act no. 38/2001, art. 6(1) of the Act shall apply when there is a noncompliance of agreement, as is the case here, except parties to the contract have negotiated other interests than should apply in such instances, and tradition would indicate that other interests should apply in such instances or other legal consequences will apply. No agreement, law or tradition is available in this instance and it is therefore clear that interests pursuant to art. 6(1) of the Act must be used and that interest should be calculated from the date of maturity, cf. art. 5(1). The penal interests that the Central Bank of Iceland issues from time to time must then be used as reference, as the law does not stipulate specifically for interests in a foreign currency. If this is not accepted, it is clear that pursuant to English law, a court can determine interests of a claim if it is paid too late, cf. art. 35A of the Supreme Courts Act 1981. In addition, art. 17 (1) of the Judgements Act 1838 provides that a claim on which a judgement has been passed, shall bear interest until the judgement is carried out and the claim fulfilled, but currently such interest is 8%.

It is pointed out that the winding-up board of Landsbanki has agreed contractual interests for all claims of the British Deposit Guarantee Fund and the Dutch Central Bank on account of deposits up until and including 22 April 2009, irrespective of the dates of maturity of fixed term deposits, or in the case of open deposits, irrespective of whether a claim had emerged for payment or not. Should the claim of the defendant for interest on 22 April 2009 not be accepted then this entails discrimination between claimants.

With regard to the claim for accrued costs, the defendant bases on the fact that claims for costs which had accrued before 22 April 2009, should be agreed as a priority claim pursuant to art. 112 of Act no. 21/1991 and case law, is clear in this regard. It is clear that a decision of acceptance and where applicable, cost of claimants in Icelandic declarations of bankruptcy, is based on Icelandic law even though it is considered that the contractual relationship between the parties is subject to English law.
Many judgement precedents of the Supreme Court are available for interests and costs on account of a priority claim enjoying the same position in the order of priority as the claim itself, and this conclusion is clear should a counter-inference be made from provisions of art. 114 (1) of Act no. 91/1991. Should the court, however, reach the conclusion that the claim of the defendant is not a priority claim, it is a general claim pursuant to art. 113 of Act no. 21/1991 with reference to the same submissions as in relation to the primary claim as applicable.

3.7 The defendant Landsbanki Íslands hf bases its claims specifically on the claim of the defendant Kent County Council, which is a so-called wholesale deposit, being considered a deposit by the definition of Act no. 98/1999 on Deposit Guarantees and Investor- Compensation Scheme and therefore is considered a priority claim pursuant to art. 112(1) of Act no. 21/1991, cf. art. 102 (3) of Act no 161/2002. With regard to preconditions for the above conclusion, it is referred to that neither at the implementation into law of the Directive of the European Parliament and of the Council no. 94/19/EC on deposit guarantee schemes, which took place with Act no. 39/1996, nor with Act no. 98/1999, the authorisation of the Directive to exempt the deposits of various parties from guarantee, such as financial undertakings, other than the participating companies of the Depositors' and Investors' Guarantee Fund, towns and councils, as well as pension and retirement funds was utilised,

but such parties are a high proportion of the depositors of Landsbanki Íslands hf. There are then certain types of deposit, e.g. wholesale deposits, which are not exempted from guarantee, cf. art. 9(3) of Act no. 98/1999. This has relevance, e.g. with reference to the judgement of the Supreme Court in case no. 184/2010 where the conclusion was reached that claims which did not enjoy guarantee pursuant to Act no. 98/1999 could therefore not enjoy priority pursuant to art. 112 of Act no. 21/1991.
In assessing whether the disputed claim counts as deposit by the definition above, the capital of the deposit needs to have been, in accordance with the agreement of the parties, deposited into the bank's account in the form of a transfer with a transaction which may be regarded as normal general transaction of the bank. It is then clear that wholesale transactions were transferred into the accounts and financial statements of the bank as deposits and in accordance with this, the bank paid contributions for wholesale deposits to the Deposit Department of the Depositors' and Investors' Guarantee Fund in accordance with Act no. 98/1999. Finally, it is pointed out that the documentation which the transaction is based on, in many ways bear the hallmarks of a deposit. It is the assessment of the defendant that the purpose and understanding of both parties which conducted the transaction was that this was a deposit commitment.

With regard to the position of the winding-up board to accept the claim of Kent County Council for contractual interests in the contractual period amounting to 300,000 GBP the defendant refers to the deposit claim counting as a private law contractual commitment in the definition of Act no. 43/2000 on the conflict of law in the area of contractual law. The primary claim of Kent County Council on Icelandic penal interests pursuant to art. 6(1) of Act no. 38/2001 on 22 April 2009 is rejected. As it is the assessment of the Landsbanki winding-up board that wholesale deposit commitments, which have been established in the bank's branch in London, have the strongest ties to England in the understanding of art. 4(1) of Act no. 43/2000, English law should apply materially to the claim despite the priority and handling of claims abiding by Icelandic law. Icelandic laws therefore apply to lodged claims to the winding-up board as well as the position of the claim in the order of priority but on the existence of the claim, British laws apply pursuant to art. 8 and art. 9 of the law referred to. Pursuant to Icelandic law, the right to interest and costs forms part of a contractual claim and therefore British law also applies to the right of the defendant Kent County Council to claim interest and cost on its claim.

The reserve claim of the defendant of 8% penalty interest is in accordance with article 4.93 of British bankruptcy regulations from 1986, cf. chapter 17 of English procedural law and is rejected as neither has an adequate argument been presented for these regulations to apply to a foreign branch in Britain and therefore Icelandic winding-up proceedings, cf. art. 117(2) of Act no. 21/1991, nor has the existence of these rules been demonstrated, cf. art. 44(2) of Act no. 91/1991. Also, judgement has not been passed in England on the claim of Kent County Council against Landsbanki Íslands hf on 8% interest pursuant to chapter 17 of the English Judgement Act as is stipulated in named provision and the claimant can therefore not base a right on the law in support of the interest claim. In that matter, the position of the winding-up board may not be equalled to the acceptance of the claim for judgement of an English court on the claim, in addition to the winding-up board having taken a position on the claim after 22 April 2009. Then it is also pointed out that interests, pursuant to the provision generally, does not apply until a judgement on the claim has been passed. Even though the claimant would thereby have been able to receive judgement on the above matter, i.e. if Landsbanki had not been granted moratorium on 5 December 2008, it is clear that such a judgement would not have been available until after the reference date of the winding-up proceedings of the bank on 22 April 2009 and a claim on the basis of such a judgement therefore not be considered remaining by the definition of art. 114 of Act no. 21/1991.

With regard to Kent County Council's claim of last resort on contractual interest but otherwise interest by consensus, the defendant states that these are rejected on account of this not being sufficiently argued.

The claim of Kent County Council of costs before 22 April 2009 to the amount of 1,071.34 GBP is rejected. It cannot be seen from the available documentation that the defendant has begun the

collection of its claim against Landsbanki before 22 April 2009 nor that the claimed cost is related to the collection of the claim or proceedings on account of it before that time. To the extent that cost does not relate to the direct collection of a claim, the preparation of proceedings or proceedings against Landsbanki Íslands hf. in this country, the assessment of the winding-up board prevails, with reference to Act no. 43/2000 on the right of claimant to receive the claimed cost paid by the law that applies to the primary claim materially, which is British law. Pursuant to the principal rule of British bankruptcy law from 1986, the claimants themselves need to carry costs of proving their claims, including cost to gather evidence in support of the claim. As it is neither specified in the lodged claim nor in the statement of the claimant how this claimed cost arose, this claim should be rejected. In Icelandic bankruptcy law, it has been agreed that suitable collection cost and/or judged costs of the case which have accrued before the verdict date, be added to primary claim and that such a derived claim should enjoy the same priority as the primary claim. If the claim has not been judged, there are only grounds for acknowledging collection costs should collection procedures demonstrably have begun before the verdict date and the claimant claimed collection costs for that time limit. The claim of the defendant for costs until 22 April 2009 is therefore not supported by British or Icelandic law.

4.0. Conclusion

4.1. It was demanded on behalf of the plaintiffs Arrowgrass Master Fund et.al. and Bayerische Landesbank et.al. that the claim of Kent County Council would be dismissed from the court. On behalf of the defendant, Kent County Council the motion for dismissal was. The court did not consider grounds for oral pleadings on this dispute specifically but rather the parties to the case were given the opportunity to recapitulate on their standpoints on the dismissal of the case when the case was taken for material processing.

The plaintiffs Arrowgrass Master Fund et.al. and Bayerische Landesbank et.al. believe that as it is clear from the pleadings of the defendant Kent County Council that he does not object to the decision of the Winding-up Board of the defendant in regards to his claim but on the contrary he agrees with the decision of the Winding-up Board that it is a priority claim, in addition to that he bases on the same arguments, grounds of action and legal arguments as the Winding-up Board, the defendant cannot be a party to the dispute of the plaintiffs Arrowgrass Master Fund et.al. and Bayerische Landesbank et.al. The defendant Kent County Council bases on that the motion for dismissal is submitted too late in addition to that a creditor of a bankrupt estate is always entitled to participation in a dispute regarding his own claim.

From the pleadings of the plaintiffs Arrowgrass Master Fund et.al. and Bayerische Landesbank et.al. it can be deduced that their claims for dismissal are based on the decision of the Supreme Court in case no. 638/2010 which was issued on January 24th 2011 and thus it cannot be accepted that claim in this regard is submitted too late.

Pursuant to Art. 102(4) of Act no. 161/2002 the provisions of chapter XVIII and section 5 of Act no. 21/1991 apply to the treatment of claims against financial undertakings at winding-up. Pursuant to Art. 119 of Act no. 21/1991 a Winding-up Board shall make a list of all lodged claims after the grace period for lodging claims expires and there make a decision on how to recognise each claim separately. Art. 120(1) of the Act states that a creditor, who does not accept the decision of a Winding-up Board, can object to the Winding-up Board's decision at a winding-up meeting which is held to address lodged claims. In the same way a creditor is entitled to object to the decision of the Winding-up Board on the recognition of a claim made by other creditors, if the decision affects the distribution from the estate so that the interests of the one who objects are affected.

There is no dispute that the decision on the claim of the defendant Kent County Council at the winding-up affects the interests of the creditors Arrowgrass Master Fund et.al. and Bayerische Landesbank et.al. and they had every right to object the decision of the winding-up board of the defendant Landsbanki Íslands hf. for the recognition of the claim. The participation of the winding-up board of the defendant Landsbanki Íslands in the dispute only pertains to the dispute of the defendant Kent County Council for interests and costs.

The main dispute of this case is where to place the claim of the defendant Kent County Council in the priority ranking at the winding-up of the defendant Landsbanki Íslands hf. Item 4 of Art. 171(1) of Act no. 21/1991 states that a request for the resolution of the district court of a dispute at winding-up it shall be stated whether the liquidator believes that the relevant bankrupt estate needs to be a party to the dispute. It also says in paragraph 3 of the provision that if the dispute regards whether a claim against a bankrupt estate is to be recognised the one making the claim shall generally be the plaintiff of the case and the estate or the one objecting to the claim shall be the defendant. As has been previously stated the winding-up board of the defendant Landsbanki Íslands hf. considered that it must be a party to the case as there was a dispute concerning among other things interests and costs and for that reason the participation was decided thus that the creditor, Kent County Council, would be the defendant at the side of the Winding-up Board but the creditors that objected to the claim would be the plaintiffs. There is not always need for a bankrupt estate to be a party to a dispute regarding claims against an estate, but on the other hand it is obvious that the owner of the claim which a dispute revolves around must always be a party to the dispute. Otherwise there would be risk that his interests would be wasted, as he did not have the opportunity to present his standpoints regarding the claim. Thus the motion of the plaintiffs Arrowgrass Master Fund et.al. and Bayerische Landesbank et.al. is rejected.

4.2. There is no dispute in the case regarding the decision of the winding-up board of the defendant Landsbanki Íslands hf. to recognise the principal amount of the claim of the defendant Kent County Council for the amount of GBP 5,000,000 with contractual interests until the maturity date for the amount of GBP 300,000. The plaintiffs, who are general creditors pursuant to Art. 113 of Act no. 21/1991 demand that the decision of the winding-up board of landsbankinn to recognise the aforementioned claims as priority claims at the winding-up is overturned. The plaintiffs and the defendant Landsbanki Íslands hf. moreover demand that the defendant's claim for interests on April 22nd 2009 and accrued costs until that date are rejected, including the priority of such amounts.

The dispute between the plaintiff and the defendant mainly pertains to whether the aforementioned wholesale deposit of the defendant Ken County Council can be considered to be a deposit according to Act no. 98/1999 on Deposit Guarantees and Investor- Compensation Scheme and therefore enjoy priority at the winding-up of the bank pursuant to Art. 102(3) of Act no. 161/2002 on Financial Undertakings as amended with Art. 6 of Act no. 125/2008 on the Authority for Treasury Disbursements due to Unusual Financial Market Circumstances etc., the so called Emergency Act and later Art. 6 of Act no. 44/2009.

Pursuant to the referenced provision of Art. 102(3) of the Act the same rules shall apply for the winding-up of financial undertakings as for the priority of claims against a bankrupt estate, but however "claims for deposits pursuant to the Act on Deposit Guarantees and Investor- Compensation Scheme shall moreover be considered to be claims that enjoy priority pursuant to Art. 112 (1) and (2) of the Act on Bankruptcy etc." The concept deposit is then defined in Art. 9(3) of Act no. 98/1999 as

"any credit balance resulting from financial deposits or transfers in normal banking transactions, which a commercial bank or savings bank is under obligation to refund under existing legal or contractual terms". Art. 9(6) states that bonds, bills of exchange and other claims in the form of securities shall also be excluded from deposit protection and also excluded from guarantee protection were deposits, securities and cash owned by member companies, as well as their parent companies and subsidiaries, for their own account and deposits, securities and cash connected to cases with a conviction for money laundering.

The plaintiffs have made reference to that the wording of documents relating to the transaction in question between the defendants, and also in regards to such transactions in general, shows that the transaction was in fact in the form of an investment or a loan agreement and thus the claim cannot be considered to be a deposit. There are words such as maturity, counterparty and dealing rate. The court does however believe that term usage in documents concerning the transaction can in no way give a conclusive indication of the nature of the transaction in question. Thus the word deposit is stated therein on several occasions, e.g. in the context "deposit confirmation", "your Pound Sterling deposit" and "cash deposit".

It can be deduced from the available documents that the transaction in question between the defendants were categorised as the type of banking transactions which are generally called "wholesale deposits" in the documents of Landsbanki Íslands hf. They seem to have been generally categorised as deposits in the banks operation and books, in addition to a confirmation from the Depositors' and Investors' Guarantee Fund, which has not been refuted, for Landsbankinn having paid premiums of these deposits to the fund. In a letter of Landsbankinn to the Financial Supervisory Authority, dated June 29th 2005, the following is stated on the acceptance of "wholesale deposits": "Landsbankinn intends to expand the operations of the branch so that it also extends to receiving deposits. It is a question of receiving wholesale deposits in the name of the branch which will be obtained through the intercession of Heritable Bank Ltd. In accordance to this it is hereby notified that the operation of the London branch will be expanded but the operations which we intend to perform is covered by item 1. The reception of deposits and other funds for repayment pursuant to a list in Annex 1 to Directive 2000/12/EC."

In a specific agreement made between Landsbankinn (the customer) and Heritable Bank Ltd. on the "handling of its wholesale deposit portfolio and the processing of the relevant documents..." one can find the following definition or explanation of what is entailed in the concept "wholesale deposit": "A monetary amount which a company or an institution deposits at the customer, mainly on behalf of the intercession or recognised money market brokers, which the customer pays fixed interests of or other repayment and shall be reimbursed, in part or in whole, pursuant to a request thereof after the fixed period has expired or at the agreed upon date and which pertain to the relevant terms and conditions of the customer."

The plaintiffs have made references to that the disputed claim of the defendant Kent County Council has some main characteristics which support it without question that it was in the form of an investment or a loan and can therefore not be considered to be a deposit under Act no. 98/1999. They have in that regard referred to among other things that the funds were not stored in a specific account in the name of the creditor, that the funds were not accessible to the creditor until the maturity date, the place of payment was with the creditor himself and not the bank and there were no standard terms of the bank that applied to these transactions but rather the interest rate was specifically negotiated with the intercession of a special broker. The court believes that none of these specified characteristics can

in any way be deduced from the aforementioned legal provisions which apply to the priority of deposits nor the legal interpretation documents relating to the adoption of these provisions.

Regarding the assertion of the plaintiffs that the funds were not stored in a specific bank account which was opened in the name of the depositor the plaintiffs have among other things referred to that the definition of deposits in Art. 9(3) of Act no. 98/1999 is based on a definition of directive 94/19/EC, but there in the English text the wording “funds left in account” is used which clearly indicates that the funds were deposited to a designated account. The defendant Kent County Council has objected to the stated assertion of the plaintiffs. He refers among other things to that it can be deduced from the preparation documents for the directive, including the submitted comments of the European commission on the definition of the term deposit, that the quoted wording was intended for a far broader reference. Thus it states among other things: “The idea of “credit balance” is relatively clear: In particular it is used for current accounts but it is supplemented by the idea of “funds left in accounts” which is intended to indicate savings books or accounts or any other instrument in which funds generally remain for longer than in current accounts”. This entails that the concept can cover savings books, savings accounts or any type of storing places where funds are kept for a longer time than on current accounts. It has been established that the deposit in question was registered in the books of the bank with a designated account- or transaction number but it is unclear whether it was a conventional, specified bank account. When the text of the directive and the explanation of the Commission is compared it cannot be seen that the referenced wording of the English texts of Art. 1(1) of directive 94/19/EC clearly supports the interpretation of Art. 9(3) of Act no. 98/1999 that deposits must be in a specific account owned by the depositor to be considered a guaranteed deposit under the Act.

In regards to other aforementioned characteristics of the wholesale deposit in question which the plaintiffs refer to the court takes into consideration that there have been submitted in the case terms for conventional deposit accounts, which have are undisputedly considered to be deposits, as most of the references characteristics seem to be in place. Thus it can be seen in the terms for a so called fixed interest rate account of Íslandsbanki hf. that the deposit is always fixed for a certain period and during that period the deposit cannot be withdrawn from the account. Then it is disclosed that at the end of the fixed period the deposit, plus accrued interests, will be paid to a special current account designated by the owner. Similar provisions can be seem in the terms of the so called “Icesave deposit accounts” of Landsbankinn which have been categorised as retail deposits but therein it is also stated that such a deposit is based on a specific agreement between the parties. In regards to that item specifically it is explicitly stated in Art. 9(3) of Act no. 98/1999 that a guaranteed deposit can be based on a contract between two parties. Finally it cannot be seen from this context that the intercession of a special broker has any special relevance in this regard.

In light of the above it cannot be accepted that any of the aforementioned items, separately or with others, supports the pleadings of the plaintiffs that the claim of the defendant Kent County Council can cannot be considered a deposit which enjoys guarantee protection under Act no. 98/1999.

There is no further definition of the concept deposit in Art. 9(3) of Act no. 98/1999 of relevance to be found in the legal interpretational documents for the adoption of Act no. 98/1999 or for the provisions of Act no. 113/2006 on Commercial Banks and Savings Banks which the former Act replaced. The plaintiffs have maintained however that the aforementioned provision should be interpreted narrowly considering that the provision of Art. 102(3) of Act no. 161/2002 is granting depositors priority above other creditors, in addition to that all such provisions regarding the priority ranking of claims at bankruptcy shall be interpreted narrowly. This standpoint cannot be agreed with. Art. 21 of Act no.

98/1999 states that the Act is adopted among other things to adopt to Icelandic law the provisions of directive 94/19/EC on deposit guarantees and thus this provision of the Act must be interpreted in light of it. When assessing whether the claim of the defendant Kent County Council is covered by the aforementioned definition of Act no. 98/1998 for the term deposit it must also be taken into consideration that in the directive in question it nowhere stated that such deposits should be excluded from deposit guarantee. Art. 7(2) states however that member states can decide that specific forms of deposits of designated depositors, such as municipalities or bigger investors, are excluded from the guarantee scheme. It is established that the aforementioned authority was not used in Act no. 98/1999, beyond that which has been stated above herein. Then it must be considered that although the objective of protecting individuals and smaller investors during solvency problems of financial undertakings weighed heavily when the Depositors' and Investors' Guarantee Fund was established it is clear however that the role of the fund to encourage general financial stability and empowerment of the financial system on a broad basis was undoubtedly most important in that regard. Considering this it cannot be seen that any arguments support otherwise than that the legal provision in question should be interpreted according to its text.

The plaintiffs have among other things maintained that the transactions in question are in fact considered to be securities, and not deposits and do therefore not enjoy guarantee protection. The refer in that context to the definition of securities in Act no. 108/2007 on Securities Transactions and older Acts on the same issue no. 33/2003 and 13/1996, as there is no such definition in Act no. 98/1999, it is disclosed that securities are any type of assignable claims for the payment of money or its equivalent, as well as assignable certificates for property rights other than real estate or specific liquid assets. In the current Act no. 108/2007 on Securities Transactions the definition is stated in item 2 of Art. 2(1) that securities are the assignable securities which can be the subject of transactions on a financial market. When considering the above it cannot be accepted that the confirmation or receipt submitted in the case, and is titled "deposit confirmation" to the extent that the defendant Kent County Council made his payment to the defendant Landsbanki Íslands hf. pursuant to a special agreement between them on April 4th 2008 can be considered to be assignable claims under the definition above. Thus it will not be held that the wholesale deposit in question can be considered a security pursuant to the referenced provision of Art. 9(3).

In regards to the issue whether the acceptance of wholesale deposits can be considered conventional general banking operations, it must be considered that nowhere in the Act is there a definition of what such operations entail. It is however integral to the nature of the issue that "conventional general banking operations" change in accordance with developments and changes to the financial markets. Thus there is no single explanation to be found on what is considered to be conventional general banking operations. As there is nothing to establish otherwise than that the acceptance of such wholesale deposits was covered by the operation licences of a commercial bank which pertain to the acceptance of deposits, cf. item 1 of Art. 20(1) of Act no. 161/2002 on Financial Undertakings, and is therefore considered to be a part of the licensed operations of Landsbanki Íslands hf., it must be considered that it is considered as conventional under the aforementioned legal provision.

During the main hearing of the case the plaintiffs Landsbanki Guernsey LTD. and Deutsche Bank Trust Company Americas based on in their pleadings that the claim of the defendant Kent County Council should be rejected on the grounds that pursuant to Art. 4(1) and (2) of Act no. 43/2000 on Conflict of Law in Contract law British laws should be applied to the contents of the contract between the defendants and with consideration to that Landsbankinn had a base of operations on London. The contract is therefore covered by a legal provision on the British deposit guarantee scheme and not the Icelandic one and pursuant to British laws the claims of municipalities cannot enjoy guarantee

protection, which is the prerequisite for priority pursuant to Art. 102(2) of Act no. 161/2002. The defendant Kent County Council has objected to this, firstly on the grounds that it is a grounds of action which is submitted too late and otherwise that with reference to that the claim is subject to the Icelandic deposit guarantee scheme and has full guarantee protection. Neither in the briefs of those two plaintiffs nor in the comments which they submitted on the so called counter claims of the defendants, Kent County Council, is there any reference to the standpoints in question. Thus the defendants were unable to respond to these grounds of action under the proceeding of the case with the submission of documents or recapitulate and argue the case in light of these new grounds at the mean hearing of the case. Thus it must be considered that it is a new ground of action which cannot be taken for consideration for the resolution of the case, cf. Art. 101(5) of the Act on Civil Proceedings no. 91/1991.

In light of all of the above it is the decision of the court that the delivery of the defendant's Kent County Council wholesale deposit to the account of the branch of Landsbanki Íslands hf., for temporary safekeeping with a certain return on interest, is covered by the wording of the first item of the referenced provision of Art. 9(3) of Act no. 98/1999 to be established by a deposit or a cash transfer that the bank must reimburse in accordance to the terms of the contract between the defendants. As the plaintiffs have not successfully established that the deposit is excluded from guarantee protection pursuant to other provisions of the Act or for other reasons it is considered to be a deposit which enjoys guarantee protection pursuant to Act no. 98/1999.

4.3. The plaintiffs Arrowgrass Master Fund Limited et.al., Bayerische Landesbank et.al. and Landsbanki Guernsey Ltd. make a reserve claim for the priority of the claims of the defendant Kent County Council is limited to EUR 20,887. Pursuant to Art. 9(1) of Act no. 98/1999 the guarantee fund is obligated to reimburse a customer claiming payment from a member company for the amount of a deposit if the member company is unable in the opinion of the Financial Supervisory Authority to disburse the value of a deposit. It moreover says in Art. 10(1) of Act no. 98/1999 that if the assets of the relevant department of the guarantee fund are insufficient to pay the total worth of guaranteed deposits, securities and cash in the relevant member companies the payments from each department shall be divided between the creditors so that each claim for up to ISK 1.7 million, fixed to the exchange rate of the EUR, shall be compensated in full but ell that exceeds that amount shall be paid proportionally to what the assets of each department can cover. In a bill for Act no. 98/1999 on Deposit Guarantees and Investor- Compensation Scheme it was stated that the role of the guarantee fund of commercial banks was according to law to guarantee the payment of a deposit to a depositor which he had requested and a commercial bank or a branch could not disburse.

From the above it can be clearly deduced that the Depositors' and Investors' Guarantee Fund must pay a guaranteed deposit in full as long as there are sufficient assets in the fund. Thus the aforementioned minimum guarantee does not change in any way the priority rights of the claim pursuant to Art. 112 of Act no. 21/1991.

4.4. The plaintiffs base on that regardless that the court reaches the decision that the aforementioned claim is considered to be a deposit and is thereby covered by the legal provision of the priority of deposits, these legal provisions will not be applied, as they are in violation of the provisions of Art. 72 and 65 of the Constitution, the corresponding provisions of the European Convention on Human Rights, and the main principles of the EEA agreement. The same applies as to the provisions of other Acts which have been adopted for related measures of the state which pertained to the division of the banks, the refinancing of the new banks and the transfer of their debts and assets. The defendant,

Kent County Council, has objected to these assertions and refers in that context to that a judgement on such claims will not be passed in this case as the state is not a party to the case.

The issue in this part of the case does in fact only pertain to whether the legislation of the aforementioned provision of Art. 102(3) of Act no. 161/2002, with Art. 6 of Act no. 125/2008 and later Art. 6 of Act no. 44/2009, may violate Art. 65 and 72 of the Constitution, and then with consideration to the interpretation of the provisions of the European Convention of Human Rights and EEA law, with the result that it cannot be properly applied, but does not pertain to whether the Icelandic state may have become liable for the legislation.

It is not accepted that there is a judicial necessity for the state to be a party to the case. It is in the power of the courts to decide, without the participation of the state being a necessity, whether certain legal rules which are being disputed are in violation of the provisions of the constitution with the result that they cannot be based upon. In this case, which only revolves around the issue whether the defendant's claim has priority at the winding-up of Landsbanki Íslands hf. on the basis of Art. 6 of Act no. 125/2008, it cannot however be for consideration whether other provisions of that Act, or related legislation, which do not pertain to the priority of deposits, are in violation of the Constitution or the European Convention on Human Rights.
Pursuant to Art. 72 of the Constitution no. 33/1944 the right for property is sacrosanct and no one can be forced to hand over his property unless required to do so for the public interest. For that to happen there must be legal instructions and full reimbursement. The contents of Art. 1 of Annex 1 to the European Court of Human Rights is in broad strokes the same.

As was previously stated Art. 102(3) of Act no. 161/2002 on Financial Undertakings was amended with Art. 6 of Act no. 125/2008, cf. Act no. 44/2009 in such a way that claims for deposits pursuant to Act no. 98/1999 would be considered priority claims pursuant to Art. 112(1) and (2) of the Act on Bankruptcy etc. at the winding-up of financial undertakings. The plaintiffs, who all are owners of claims which have the status of general claims at the winding-up of Landsbanki Íslands hf., that these measures of the state entailed unlawful diminishment of the value of the right of claims and thus caused them considerable damages. The status of those claims and their value was altered retroactively with the adoption of the Act and such legislation cannot hold up. Then they had legitimate expectations which are protected by Art. 72 of the Constitution, regarding the judicial procedure stipulated by Icelandic legislation in case of bankruptcy of the Icelandic banks.

The courts agree with the plaintiffs that their claims, which are considered to be limited property rights, enjoy the protection of Art. 72 of the Constitution. When however resolving whether the provisions of Art. 6 of Act no. 125/2008 entailed such a limitation of these rights that it is equivalent to expropriation or entails such a general limitation of their property rights that it violates Art. 72(1) of the Constitution the nature of the measures in question must be considered, their objective and consequences and also the situation in society when they were resorted to.

As has been described the adoption of the provision of Art. 6 of Act no. 125/2008 amended the previous order of the priority ranking of claims at winding-up of financial undertakings. It cannot be seen otherwise than the provision was meant to cover a non specified group of investors, but it is predictable that this change could possibly be at the expense of other creditors in such a way that they would in turn receive less for their claims from the winding-up and even nothing at all. The Act came into force when it was published and thus this provision applied to the winding-up of the financial undertakings that were taken for winding-up after that time. Although it is clear that there was a very short prelude to the adoption of the Emergency Act it cannot be seen otherwise than that this arrangement was in accordance to how things were done previously when amending the current priority provisions at bankruptcy. The court cannot agree with the plaintiffs that they have an unconditional constitutional right to be treated in accordance to the priority rules of a Bankruptcy Act which was in force when their agreement with the defendant Landsbanki Íslands hf. was made. It is of no consequence in that regard that in the case of the plaintiff Deutsche Bank Trust Company Americas it was stipulated in its contract with Landsbankinn that the claims were equal to deposits and all other

unsecure obligations. Then there has nothing been established on that the government did, at the time which the plaintiffs acquired their claims, anything which gave the plaintiffs reason to believe that there would be no amendments made to the priority ranking at bankruptcy of financial undertakings, even in a crisis.

There is nothing in this case which indicates that the plaintiffs' claims were overdue when the Act was adopted. Then it must be kept in mind here that although the owners of deposits were granted priority in the priority ranking above that of the plaintiffs and other general creditors by the disputed legislation it has as of yet not been established in the case, and is considered unproven, that the value of the plaintiffs' claims was diminished by it and then how much, compared to if these measures would not have been resorted to.

From the legal interpretational documents with the bill for Act no. 125/2008 it can be deduced that it was adopted with the objective of protecting the public interest and ensure and rebuild financial stability. As such the Prime Minister's presentation speech and the speech of the Minister of Commerce at 1. round of debates on the bill mention that there is a risk that the banks will close, the payment system freeze up or collapse and will not be effective. It is stated that a part of these measures is that the state has declared that "all deposits in Icelandic banks in Iceland are guaranteed in full and without limit", and that deposits should be made priority claims at the winding-up of financial undertakings, cf. the previously referenced Art. 6 and Art. 9 of the Act, which stipulates that the claim of the Depositors' and Investors' Guarantee Fund has priority pursuant to Art. 112 of Act no. 21/1991. In light of the above and other documents of the case it seems clear that the legislation was suited to maintaining the trust of the private persons and companies for that their deposits would be guaranteed and that banking operations would remain functional. By doing so a run on the banks was prevented and the functionality of the banking system was ensured, which was an imperative basis for preventing an economic collapse in Iceland. It must be considered that priority provision was unavoidable to ensure that the state could stand under its abovementioned guarantee of deposits, for both domestic and foreign parties. According to this it is agreed with the defendants that there was dire need for choosing this approach to save the state from imminent insolvency and the society from economic collapse. These measures of the state were therefore obviously sanctioned by great public interest.

Then it must be considered, considering the circumstances surrounding the legislation in question which is described above herein and the dire need which surely was in place for a quick response of the government, that the plaintiffs have not sufficiently established that these measures concerning the priority of deposits went further than was expressly needed in order to achieve the objective of saving the nation from en economic collapse and thereby guarantee the interests of the common citizen.

When considering all of the above it is the conclusion of the court that the plaintiffs did not establish that the disputed priority provision of Art. 6 of Act no. 125/2008 diminished their property rights retroactively so that it violates Art. 72 of the Constitution nor that full proportionality was not observed at its adoption. Then the pleading of the plaintiffs that the legal provisions in question violate the rule of equality of Art. 65 of the Constitution because depositors' claims and unsecured claims are not in a similar position and thus their positions will not be compared when assessing whether there has been a violation of the rule of proportionality. In that context it is mostly looked to that in an international perspective the special status of deposits is recognised against general claims of other types, which pertains to the trust of individuals and companies that their deposits are guaranteed, cf. the aforementioned directive no. 94/19/EC and its confirmation with Act. 98/1999. It has been described above herein that it is generally held that a lack of such trust is suited to instigate a run on a bank with severe consequences for the stability of the banking system as a whole and thereby the public interest.

According to the above it is the court's conclusion that the provision of Art. 6 of the so called Emergency Act no. 125/2008 neither violates the property right provision of Art. 72 nor the rule of

equality of Art. 65 of the Constitution. In light of this the court will not address the plaintiffs' pleadings which pertained to constitutional emergency rights.

4.5. As has been previously recapitulated there is a dispute between the plaintiffs and the defendant Landsbanki Íslands hf. on the one hand and the defendant Kent County Council on the other hand regarding its claim for interests on April 22nd 2010, which is the maturity date of the deposit and moreover the starting day of the winding-up, and for costs which it states were incurred before April 22nd 2009. It has been established that the defendants have neither negotiated on whether or what interests Landsbankinn should pay if the deposit would not be disbursed on the maturity date nor on the laws of which country the contractual relationship of the parties should be subject to. As it is a private contractual obligation under Act no. 43/2000 on the Conflict of Law in Contract law the dispute between the parties shall be resolved on the basis of that Act. Pursuant to item 1 of Art. 4(1) of Act no. 43/2000 it shall be subject to the laws of the country to which the contract has the strongest ties. According to the last item in Art. 4(2) of the Act, if a contract is to be fulfilled at another base of operations than his head offices the laws of the country where the base of operations is shall apply. Considering the above, and as it must be considered that Landsbanki Íslands hf. was meant to fulfil its main obligation of the repayment of the deposit amount at the London branch of the bank, the dispute between the parties regarding interests for this period and costs must be resolved on the basis of English laws. Thus the defendant's claim for the payment of default interests pursuant to Act no. 38/2001 on Interests and Indexation on April 22nd 2009 is rejected.

The defendant Landsbanki Íslands hf. has submitted in the case an overview of the UK law firm Morrison and Foerster on the provisions of European laws on interests and costs and refers to it in its pleadings. It cannot be seen that the contents of the overview was specifically objected to, although the plaintiffs and the defendant Landsbanki Íslands hf. objected to that rules specified therein apply and consider that their existence was not sufficiently established, cf. Art. 44(2) of Act no. 91/1991. The court believes that this overview may be taken into consideration when assessing whether and then what British rules of law apply in this case.

In the overview of the British law firm there are among other things recapitulated provisions on interests pursuant a British regulation on insolvency from 1986. It is stated therein that Art. 4(93) of the regulation it is stipulated on what basis a creditor can claim for interests of a debt. Item 1 of the provision states that when a recognised claim carries interests they are to be recognised as a part of the debt excluding the part of the interests which are overdue after the starting day of winding-up. It is then stated in items 2 and 3 that if the debt is based on a written document and is due at a certain time interests will be claimed for the period from that day until the starting day of the winding-up. Finally item 6 states that interests claimed pursuant to item 3 are the interests that apply pursuant to Art. 17 of the British Act on Judgments of 1838 on the starting day of winding-up, but they are 8% annual interests according to the documents of the case. As there has nothing been submitted that these provisions should not be applied to the payment of interests and the costs in question it is the court's decision that the resolution of the interest claim in question of the defendant may be based on these provisions. Accordingly the plaintiffs[sic] claim for 8% annual interests for his claim on April 22nd 2009 is recognised.

Pursuant to Act. No. 44/2009 the rules of Act no. 21/1991 on Bankruptcy etc. generally apply to the winding-up of financial undertakings, including the treatment of claims against such an undertaking. According to Art. 114(1) of the Bankruptcy Act claims for interests, indexation, interest difference and collection costs of a claim pursuant to Art. 112 of 113 which has been accrued after a court order for bankruptcy, are subordinated claims. A counter-argument of this provision leads to that the

defendant's claim for interests until April 22nd 2009 is to be recognised with the claim as a priority claim. Thus the pleadings of Arrowgrass Master Fund Limited et.al. and Bayerische Landesbank et.al. that interests accrued after October 6th 2008, when Landsbankinn was according to an announcement from the Financial Supervisory Authority unable to fulfil its deposit obligations, cannot enjoy priority is rejected.

The defendant Kent County Council makes a claim for incurred costs for the amount of GBP 1,071.34. It states that it suffered the costs in question from necessary measures taken to protect its interests in an Icelandic bankruptcy case. According to the aforementioned overview of Morrison and Foerster it is stated that the general rule pursuant to the regulation on insolvency from 1986 is that each creditor shall carry the costs of proving his claim but that the courts have the authority to make a decision on costs. According to the defendant's statement of claim it is a question of legal expenses, including costs for meetings and correspondence with the resolution committee of the defendant Landsbanki Íslands hf. and various Icelandic official parties. It cannot be deduced from the documents of the case beyond all doubt how the amount of the aforementioned costs is calculated or when it was established. Considering that and that the defendant's claim was not overdue until after Landsbanki Íslands hf. was in moratorium, it cannot be seen that there was a necessity to incur the costs in question except to the extent which the defendant Kent County Council needed to prove its claim. Thus the defendant is not considered to have established with solid evidence that he has a legitimate claim in this regard and it is therefore rejected.

Considering all of the above it is the conclusion of this case that the claim of the defendant Kent County Council for the amount of GBP 5,000,000 with interests as further stipulated in the conclusion of the verdict, is recognised as a priority claim.

As there are considerable issues of doubt in this case. In light of that and with reference to Art. 130(3) of Act no. 91/1991 it is considered suitable that each party carries his own litigation costs.

This verdict is issued by the District Court judges Ásgeir Magnússon as chairman of the Court, Greta Baldursdóttir and Ingveldur Einarsdóttir

Conclusion of the verdict:

The claim of the defendant, Kent County Council, for the amount of GBP 5,000,000 with a 6% contractual interests from and including April 22nd 2008 and until April 21st 2009 and 8% annual interests on April 22nd 2009, is recognised as a priority claim pursuant to Art. 112 of Act no. 21/1991, at the winding-up of the defendant, Landsbanki Íslands hf.

Litigation fee between the parties is cancelled.

Ásgeir Magnússon
Greta Baldursdóttir
Ingveldur Einarsdóttir

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True copy confirmed:
The District Court of Reykjavík April 1st 2011.

Fee: ISK 12,250

Paid: