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UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	Chapter 15
	:	
LANDSBANKI ÍSLANDS HF.,	:	
	:	Case No. 08- _____
	:	
<u>Debtor in a Foreign Proceeding.</u>	:	

**MEMORANDUM OF LAW IN SUPPORT OF PETITION
FOR RECOGNITION OF A FOREIGN MAIN PROCEEDING
AND MOTION FOR PERMANENT INJUNCTION
RELATED RELIEF PURSUANT TO 11 U.S.C. §§ 1504, 1515, 1517, 1520, and 1521**

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**MEMORANDUM OF LAW IN SUPPORT OF PETITION
FOR RECOGNITION OF A FOREIGN MAIN PROCEEDING
AND MOTION FOR PERMANENT INJUNCTION AND RELATED
RELIEF PURSUANT TO 11 U.S.C. §§ 1504, 1515, 1517, 1520, 1521**

Kristinn Bjarnason (the “Petitioner”), in his capacity as the duly appointed foreign representative of Landsbanki Íslands hf. (“Landsbanki”), which is subject of a court-supervised proceeding in Iceland and under the supervision of the Financial Supervisory Authority of Iceland (the “FME”) and a Resolution Committee (as defined below), by his U.S. counsel, Morrison & Foerster LLP, respectfully submits this Memorandum in Support of the Verified Petition for Recognition of a Foreign Main Proceeding and Motion for Permanent Injunction and Related Relief Pursuant to 11 U.S.C. §§ 1504, 1515, 1517, 1519, 1520, 1521 (the “Memorandum of Law”), and represents as follows:

PRELIMINARY STATEMENT

Landsbanki, which is incorporated in Iceland, is a full-service bank headquartered in Reykjavík, Iceland, providing retail, corporate and investment banking services. Founded as a state-owned bank on July 1, 1886, Landsbanki was privatized beginning in 1997. In 2003, the Icelandic state completed the sale of its remaining interest in Landsbanki. The registered offices of Landsbanki are located at Austurstraeti 11, Reykjavík, Iceland. Landsbanki, through its subsidiary Kepler Equities S.A. (“Kepler”), operates a licensed broker-dealer in the United States. Kepler’s offices are located in New York, New York. Kepler is not a party to this proceeding.

On October 7, 2008, the Financial Supervisory Authority of Iceland (the “FME”), used powers granted by the Icelandic Parliament to take control of Landsbanki, through the appointment of a committee to oversee the reorganization of Landsbanki (the “Resolution Committee”), which has taken over all authority of Landsbanki’s Board of Directors. The assets

of Landsbanki, including all of its domestic Icelandic deposits, were transferred to a new, government-owned entity, New Landsbanki Íslands hf. (“NBI”). Landsbanki retains all liabilities and assets not transferred to NBI.

The FME has directed that all claims against Landsbanki be directed to the Resolution Committee so that all of Landsbanki’s remaining assets can be distributed to Landsbanki’s creditors in accordance with the priorities established by statute. On December 5, 2008, the Resolution Committee filed an application to reorganize and stay creditor actions under Act No. 21/1991 on Bankruptcy, as amended (the “Bankruptcy Act”), which is made applicable to Landsbanki and other financial undertakings through Act No. 161/2002 on Financial Undertakings (the “Financial Undertakings Act”). On December 5, 2008, the District Court of Reykjavik (the “Icelandic District Court”) issued an order approving Landsbanki’s application (the “Moratorium”). Simultaneously, the Icelandic District Court appointed Kristinn Bjarnason as the assistant (the “Assistant”), who is charged with overseeing the Moratorium and the Resolution Committee’s activities with respect to Landsbanki. During the Moratorium, Landsbanki remains subject to the Financial Undertakings Act and the supervision of the FME; however, the Icelandic District Court has exclusive jurisdiction over the enforcement of the Moratorium.

The Petitioner, by commencement of this Chapter 15 case and the relief requested in the Petition and Motion, seeks to have the Moratorium and related proceedings under the Bankruptcy Act and the Financial Undertakings Act (the “Icelandic Proceeding”) made binding and enforceable in the United States.

I. FACTS

This Court is respectfully referred to the Petition and Motion, which sets forth the relevant facts and is incorporated by reference herein.

II. JURISDICTION AND VENUE

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157 and the “Standing Order of Referral of Cases to Bankruptcy Judges” of the United States District Court for the Southern District of New York (Ward, Acting C.J.), dated July 10, 1984. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue is properly located in this District pursuant to 28 U.S.C. § 1410.

III. ARGUMENT

A. This Case Has Been Properly Commenced Under Chapter 15

Section 1504¹ provides that a case under Chapter 15 is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515. 11 U.S.C. § 1504. Chapter 15 of the Bankruptcy Code applies to the Icelandic Proceeding because the Foreign Representative is seeking assistance from the Court in connection with that proceeding. *See* Bankruptcy Code § 1501(b)(1); *see also* Bankruptcy Code § 1504 (Chapter 15 case is commenced by filing a petition for recognition of foreign proceeding).

Bankruptcy Code § 1501(c)(1), however, provides that Chapter 15 does not apply to “a proceeding concerning an entity, other than a foreign insurance company, identified by exclusion in section 109(b).” Four types of entities are identified by exclusion under Bankruptcy Code § 109(b), none of which apply to the Debtor: (a) railroads; (b) certain domestic financial institutions; (c) foreign insurance companies doing business in the United States; and (d) “a foreign bank, savings bank, cooperative bank, savings and loan association, building and loan association, or credit union that has a branch or agency (as defined in section 1(b) of the

¹ Unless otherwise indicated, all sections refer to sections of title 11 of the United States Code (the “Bankruptcy Code”) and Chapter 15 refers to Chapter 15 of the Bankruptcy Code.

International Banking Act of 1978) in the United States.” *See* Bankruptcy Code § 109(b) (emphasis added).

Landsbanki is not a railroad, a domestic financial institution, or a foreign insurance company; and, although Landsbanki is a foreign bank, Landsbanki does not have any “branch” or “agency” in the United States (as those terms are defined in section 1(b) of the International Banking Act of 1978) because the Landsbanki does not maintain any office or place of business in the United States at which deposits are received, credit balances are maintained, checks are paid, or money is lent.²

To comply with the requirements of section 1515, clear and objective standards must be satisfied by the Petitioner. As more fully discussed below, the Petitioner respectfully submits that these standards have been met.

1. This Case Was Commenced in Accordance with Section 1515(a)

Section 1515(a) establishes two principal requirements: the Petitioner must qualify as a “foreign representative” and the Icelandic Proceeding must qualify as a “foreign proceeding.”

a. *The Petitioner is a Foreign Representative*

The Petitioner is a foreign representative under section 101(24). Section 101(24) defines a “foreign representative” as

a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of such foreign proceeding.

² Section 1(b)(3) of the International Banking Act of 1978 defines “branch” as “any office or any place of business of a foreign bank located in any State of the United States at which deposits are received.”

Section 1(b)(1) of the International Banking Act of 1978 defines “agency” as “any office or any place of business of a foreign bank located in any State of the United States at which credit balances are maintained incidental to or arising out of the existence of banking powers, checks are paid, or money is lent but at which deposits may not be accepted from citizens or residents of the United States.”

11 U.S.C. § 101(24). The Petitioner is a person who is authorized to oversee the administration of Landsbanki's affairs pursuant to the Moratorium. *See* Declaration of Eyvindur G. Gunnarsson Pursuant to 28 U.S.C. § 1746 at ¶ 19, filed contemporaneously herewith.

Thus, from the face of the evidence submitted in connection with the Petition and Motion the Petitioner is duly authorized to represent Landsbanki as its "foreign representative" consistent with the definition set forth in section 101(24).

b. *The Icelandic Proceeding is a Foreign Proceeding*

Section 101(23) defines a "foreign proceeding" as

a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

11 U.S.C. § 101(23). The Icelandic Proceeding is a combined administrative and judicial proceeding under which the assets and affairs of Landsbanki are subject to the supervision of the FME, the Assistant and the Icelandic District Court for the purpose of administering the valuation and adjustment of its assets and creditors' claims under the law relating to the distribution of Landsbanki's assets. Proceedings of this type have been recognized as foreign proceedings within the meaning of section 101(23). *See, e.g., In re Bancafe Int'l Bank, Ltd.*, No. 06-16712 (BKC) (RAM) (M) (Bankr. S.D. Fla. Jan. 12, 2007) (docket no. 12); *In re Bancredit Cayman Ltd.*, No. 06-11026 (SMB) (Bankr. S.D.N.Y. June 15, 2006) (docket no. 13); *In re Norshield Asset Mgmt. (Canada), Ltd.*, No. 06-40997 (BKY) (Bankr. D. Minn. June 28, 2006) (docket no. 7); *In re Trade and Commerce Bank*, No. 05-60279 (SMB) (Bankr. S.D.N.Y. Feb. 16, 2006) (docket no. 10).

Accordingly, the Icelandic Proceeding is precisely the sort of proceeding the enactment of Chapter 15 was meant to assist, and falls within the definition of a “foreign proceeding” set forth in section 101(23).

2. This Case Was Commenced in Accordance with Section 1515(b)

To establish a basis for recognition under Chapter 15, the petition must be supported by documentation on which the Court may ground recognition. Section 1515(b) provides:

A petition for recognition shall be accompanied by:

- (1) a certified copy of the decision commencing such foreign proceeding and appointing the foreign representative;
- (2) a certificate from the foreign court affirming the existence of such foreign proceeding and of the appointment of the foreign representative; or
- (3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of such foreign proceeding and of the appointment of the foreign representative.

11 U.S.C. § 1515. Here, the Petition and Motion is accompanied by a certified copy and English translation of the order approving the Moratorium, which order also appoints the Petitioner as the Assistant.

3. This Case Was Commenced in Accordance with Section 1515(c)

Section 1515(c) provides that a “petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.” 11 U.S.C. § 1515(c). The Statement of Foreign Representative Pursuant to 11 U.S.C. § 1515(c) Identifying Foreign Proceedings (the “Section 1515(c) Statement”), as included in the Declaration of Kristinn Bjarnason, has been filed contemporaneously with the Petition and Motion and provides that the Icelandic Proceeding is the only foreign proceeding with respect to Landsbanki that currently is known to the Petitioner.

B. The Icelandic Proceeding is Entitled to Recognition as a Foreign Main Proceeding

Under section 1517(b), a foreign proceeding shall be recognized as a foreign main proceeding if it is pending in the country where the debtor has the “center of its main interests.” 11 U.S.C. § 1517(b)(1). In the absence of evidence to the contrary, a foreign debtor’s registered office is presumed to be the center of the debtor’s main interests. *See* 11 U.S.C. § 1516(c). The registered office and headquarters of Landsbanki is in Reykjavík, Iceland. Because the center of main interests of Landsbanki is Iceland and the Icelandic Proceeding is pending in Iceland, the Icelandic Proceeding should therefore be recognized as a foreign main proceeding.

C. The Petitioner is Entitled to Relief Under Section 1520

Upon recognition of the Icelandic Proceeding as a foreign main proceeding, the Petitioner is automatically entitled to certain relief under section 1520(a). Section 1520(a) provides that, upon recognition:

- (1) sections 361 and 362 apply with respect to the debtor and the property of the debtor that is within the territorial jurisdiction of the United States;
- (2) sections 363, 549, and 552 apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;
- (3) unless the court orders otherwise, the foreign representative may operate the debtor’s business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and
- (4) section 552 applies to property of the debtor that is within the territorial jurisdiction of the United States.

11 U.S.C. § 1520(a). As these benefits flow automatically from the recognition of the Icelandic Proceeding as a foreign main proceeding, the Petitioner respectfully submits that no further showing is required.

D. The Petitioner is Entitled to Relief Under Section 1521(a)

Upon recognition of a foreign proceeding, section 1521(a) authorizes the Court to “grant any appropriate relief” at the request of the foreign representative where necessary to effectuate the purpose of Chapter 15 and to protect the assets of the debtor or the interests of the creditors, including,

- staying the commencement or continuation of an individual action or proceeding concerning the debtor’s assets, rights, obligations or liabilities;
- staying execution against the debtor’s assets;
- suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor; and
- granting any additional relief that may be available to a trustee, except for the relief available under sections 522, 544, 545, 547, 548, 550 and 724(a).

11 U.S.C. § 1521(a)(1), (a)(2), (a)(3), (a)(7).

The relief sought in the Petition and Motion is necessary to effectuate the purpose of Chapter 15. For example, the Petition and Motion requests that this Court give effect to the Icelandic Proceeding and thereby cooperate with and assist the FME, the Assistant, the Resolution Committee, and the Icelandic District Court to provide for a fair and efficient administration of Landsbanki’s proceeding. This relief will channel all claims against Landsbanki into one proceeding in accordance with the Icelandic Proceeding and thereby protect the interest of all creditors in having their claims valued and paid on a consistent and non-discriminatory basis, in accordance with section 1522(a). Were that process to be disrupted by uncoordinated claim litigation or unilateral action by creditors located in the U.S., the injury to Landsbanki and its creditors would be irreparable.

1. The Requirements for a Permanent Injunction Are Satisfied in Accordance With Section 1521(e)

The standards, procedures and limitations applicable generally to an injunction also apply to relief sought under section 1521(a). *See* 11 U.S.C. § 1521(e). The relief sought in the Petition and Motion is warranted under the standard applicable in the Second Circuit for granting a permanent injunction. That standard is essentially the same as the standard for a preliminary injunction, except rather than demonstrate a likelihood of success on the merits, the movant must actually succeed on the merits. *See Clarkson v. Coughlin*, 898 F. Supp. 1019, 1035 (S.D.N.Y. 1995). In addition, the movant must make a showing of the likelihood of irreparable harm, *i.e.*, an injury that cannot be redressed through financial compensation. *See id.* Irreparable harm must be likely and imminent, not remote or speculative. *See id.*; *Civic Ass'n of the Deaf of New York City, Inc. v. Giuliani*, 915 F. Supp. 622, 631 (S.D.N.Y. 1996).

Irreparable harm to an estate exists where the orderly determination of claims and the fair distribution of assets are disrupted. *See, e.g., Victrix S.S. Co., S.A. v. Salen Dry Cargo A.B.*, 825 F.2d 709, 713-14 (2d Cir. 1987); *Cunard S.S. Co. v. Salen Reefer Servs.*, AB, 773 F.2d 452, 458 (2d Cir. 1985) (“Unless all parties in interest, wherever they reside, can be bound by the arrangement which it is sought to have legalized, the scheme may fail.”) (citing *Canada S. Ry. Co. v. Gebhard*, 109 U.S. 527, 539 (1883)); *In re MMG, LLC*, 256 B.R. 544, 555 (Bankr. S.D.N.Y. 2000) (“As a rule ... irreparable harm exists whenever local creditors of the foreign debtor seek to collect their claims or obtain preferred positions to the detriment of the other creditors.”).

The relief sought in the Petition and Motion may be obtained without undue hardship or prejudice to the rights of U.S. creditors. As shown in the documents submitted with the Petition, the Icelandic Proceeding contemplates a means of claimant participation. Moreover, the claims

valuation process is applied uniformly to all creditors, regardless of domicile. In addition, each creditor is afforded adequate notice and an opportunity to be heard.

For the reasons set forth above, relief is necessary to ensure that orders issued in the context of the Icelandic Proceeding are enforced in the U.S. and Landsbanki is protected from unilateral creditor action.

CONCLUSION

The Petitioner respectfully submits that the Petition and Motion satisfies the requirements for the recognition of the Icelandic Proceeding and for the injunctive and other relief sought therein. Unless the relief requested is granted, the Icelandic Proceeding will be undermined with the consequence of imminent and irreparable harm arising to Landsbanki and its creditors through exposure to unilateral U.S. creditor actions in derogation of the collective interests embraced by the Icelandic Proceeding. In order to ensure equal and consistent treatment of all creditors, each must similarly be bound and Landsbanki's assets similarly protected, irrespective of diversity of domicile or location.

For the foregoing reasons, the Petitioner respectfully requests that this Court grant the relief requested in the Petition and Motion.

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New York, New York

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