LONELY AT THE TOP (OF THE WORLD)

RESTRUCTURING AND RECAPITALIZING ICELANDIC BANKS

WHEN ICELAND'S economy was growing by double digits and its international banks were able to finance a wide array of domestic and international activities, they got plenty of attention and had many admirers. But toward the end of 2008, admirers were in short supply and helping hands seemed otherwise occupied. Morrison & Foerster's involvement in what is perhaps the most challenging and politically charged cross-border restructuring of 2009 began at the end of 2008 when Iceland's financial regulator nationalized all three of Iceland's largest banks.

In response to the Icelandic government's action and the perception that Iceland was not going to honor what was taken to be a guarantee of non-domestic bank depositor claims (under EU law), the UK government froze several billion dollars of an Icelandic bank's assets using the UK anti-terrorism legislation (the first time this had been done to another country since World War II); regulators around Europe placed the bank's subsidiaries into administration; and banks and bondholders around the U.S. and Europe began to take enforcement action against the bank's assets around the world.

In response to the growing concern that assets of the Icelandic banks would effectively be dissipated by a race to the courthouse by creditors (multiple lawsuits and freezes were being filed daily), Morrison & Foerster was asked to design and implement a strategy that would allow for asset preservation and that would enhance the value to be distributed to all creditors. At the outset, we realized that Iceland's existing laws for financial institutions contained none of the elements to achieve a restructuring of a bank's assets or a stay of creditor enforcement actions around the world. Based on our experience with international restructurings, we recommended a series of legislative amendments to the Icelandic law dealing with financial institutions—this included introducing the concept of a moratorium on enforcement actions (that could be enforced in the U.S. through Chapter 15 of the U.S. Bankruptcy Code, and in the EU through the EU Winding-Up Directive) and subsequently through adopting bankruptcy provisions into the Icelandic banking law in order to allow the banks to continue to manage and wind down their assets over the long term. These legislative amendments were adopted by the Icelandic parliament and in large measure applauded by creditors as value enhancing.

The measures have been recognized by the U.S. Bankruptcy Court in New York under Chapter 15 of the U.S. Bankruptcy Code and by courts around Europe.

We were involved in negotiations with The Bank of England, Her Majesty's Treasury and FSCS. We worked with two of the banks on the restructuring of their multi-billion dollar loan portfolios (spread across the globe). We advised in negotiating and documenting the arrangements with creditors, which involved the issuance of securities to the "old" banks as compensation for the creditors. These discussions involved reconciling the interests of quite a number of parties and structuring a novel package of securities. Now, restructured, the banks are proceeding to deal with continuing requests from creditors, reconciling derivatives and other claims, and identifying approaches, once again, for attracting international capital investment.