

TRÚNAÐARMÁL

SETTLEMENT AGREEMENT

This Settlement Agreement is dated 5 June 2009 and has been entered into between:

1. **FINANCIAL SERVICES COMPENSATION SCHEME LIMITED** (CRN: 3943048), whose registered office is at 7th Floor, Lloyds Chambers, 1 Portsoken Street, London E1 8BN, United Kingdom ("FSCS"); and
2. **THE DEPOSITORS' AND INVESTORS' GUARANTEE FUND OF ICELAND** (*Tryggingarsjóður Innstæðueigenda og Fjárfesta*), a private foundation incorporated under Icelandic law, whose registered office is at Kalkofnsvegur 1, 150 Reykjavík, Iceland ("TIF").

FSCS and TIF are each referred to in this agreement as a "party" and, collectively, as the "parties".

WHEREAS:

- a) FSCS is the Scheme Manager of the Financial Services Compensation Scheme established under Part XV of the UK Financial Services and Markets Act 2000 (the "Scheme"). The Scheme is the deposit guarantee scheme established in the United Kingdom for the purposes of the EC Deposit Guarantee Directive (94/19/EC).
- b) TIF is a private foundation incorporated under the laws of Iceland, entrusted under such laws with the execution of the Icelandic Deposit Guarantee Scheme in accordance with the provisions of Icelandic Act No. 98/1999 on deposit guarantees and investor compensation schemes.
- c) Under the rules of the Scheme, the London branch (the "UK Branch") of Landsbanki Íslands hf ("Landsbanki"), a company with limited liability incorporated in Iceland, authorised in Iceland to act as a bank and regulated by the Financial Supervisory Authority in Iceland (the "FME"), elected to join the Scheme to provide "top up" cover to eligible depositors with the UK Branch.

d) On or about 31 October 2006, FSCS and TIF agreed a Memorandum of Understanding (the "MOU") setting out, inter alia, certain principles for the handling of claims for compensation from depositors with UK branches of certain Icelandic banks. Under the terms of the MOU, TIF had lead responsibility to deal with and assess and pay such depositors' claims.

On 6 October 2008, Landsbanki encountered severe liquidity and other financial difficulties which led it to default on its obligations to depositors and other creditors and which resulted in the "Icesave" website operated by the UK Branch ceasing to function.

On 8 October 2008, the Financial Services Authority (the "FSA") in the United Kingdom

*MOU
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2008 Oct 27 = OPINION
2008 Oct 31 = MOU
2008 Nov 4 = FSCS DETERMINATION

declared the UK Branch to be "in default" under the Scheme. On 27 October 2008, FME issued its opinion that Landsbanki was, on 6 October 2008, unable to make payment of the amount demanded by certain depositors and that, therefore, TIF was obligated to pay compensation in accordance with Article 9 of Icelandic Act No. 98/1999. In respect of the claims of depositors with the UK Branch, TIF became obligated to pay an amount of up to €20,887 to each individual depositor.

f) Following the declaration of default by the FSA and the issuance of the opinion by the FME, the parties have not handled claims as anticipated by the MOU. On 4 November 2008, FSCS made a determination under the rules of the Scheme, following which FSCS has, with the knowledge of TIF, proceeded to handle and pay claims of depositors in the "Icesave" product of the UK Branch. All "Icesave" depositors of the UK Branch have received or will receive from FSCS compensation for their deposits with the UK Branch including in respect of claims which TIF was obligated to pay to each such depositor. As part of the compensation process and as a precondition to payment of compensation by FSCS, depositors transfer and assign to FSCS their related rights (the "Assigned Rights") to claim against Landsbanki, TIF and third parties.

g) On or about the date of this agreement, TIF, the Republic of Iceland ("Iceland") and the Commissioners of Her Majesty's Treasury ("HMT") have entered into or will enter into a loan agreement (the "Loan Agreement"). Under the Loan Agreement, TIF may (by virtue of Disbursement Requests issued by FSCS (on behalf of TIF), as provided in the Loan Agreement) borrow from HMT funds to (i) settle the claim by FSCS on TIF in respect of the compensation already paid by FSCS to depositors with the UK Branch up to an amount of £16,872.99 per depositor; (ii) allow the settlement by FSCS (on behalf of TIF) of the claims of depositors with the UK Branch under Icelandic Act No. 98/1999 for up to £16,872.99 per claim; and (iii) pay an amount to FSCS in compensation for certain related costs incurred and to be incurred by it.

h) By this agreement, the parties agree the process by which FSCS will (i) recover from TIF amounts of up to £16,827.99 per depositor already paid by way of compensation to depositors of the UK Branch; (ii) to the extent depositors of the UK Branch have not already received such compensation, make payments on behalf of TIF to such depositors of up to £16,872.99 per depositor using funds drawn by FSCS (on behalf of TIF) under the Loan Agreement; (iii) receive payment in relation to certain related past and future costs using funds drawn by FSCS (on behalf of TIF) under the Loan Agreement; and (iv) assign to TIF such proportion of the Assigned Rights as relate to depositors' claims (being not more than £16,872.99 per depositor) which it is obligated to guarantee under Icelandic Act No. 98/1999.

IT IS AGREED AS FOLLOWS:

1. FSCS recovery from TIF of compensation already paid

1.1 The parties acknowledge that FSCS has already, with TIF's knowledge, made payments in accordance with the Scheme rules to individual depositors of the UK Branch for claims

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- 7 in respect of which TIF has compensation obligations under Icelandic Act No. 98/1999. Furthermore, the parties acknowledge that FSCS may continue to make such payments until the date (the "Refinancing Date") notified by FSCS to TIF as being the date on which FSCS will cease making such payments and commence making compensation payments (on behalf of TIF) using the proceeds of Disbursements under the Loan Agreement. The aggregate of all such amounts, ~~(whether paid before or on or after the date of this agreement but provided they are made before the Refinancing Date,~~ is referred to as the "Refinancing Amount". The Refinancing Date shall fall not more than thirty days after the date on which the conditions precedent to Disbursements under the Loan Agreement have been satisfied and FSCS shall notify TIF in writing of the Refinancing Date not less than two Business Days in advance of the Refinancing Date.
- 1.2 The parties agree that the maximum amount payable in full by TIF for or in respect of deposits with the UK Branch is £16,872.99 for each depositor (where deposits were held in pounds Sterling). The parties agree that this sum represents the pounds Sterling equivalent as of 27 October 2008 of the minimum level of depositor protection provided by TIF of €20,887.
- 1.3 The parties agree that FSCS may, on the Refinancing Date, request (on behalf of TIF) a Disbursement under the Loan Agreement of an amount equal to the Refinancing Amount plus interest thereon (at a rate equal to that payable by TIF under the Loan Agreement, such rate to apply to each individual compensation amount paid on or prior to the Refinancing Date in respect of the period from (and including) the payment of such amount as described in paragraph 1.1 to (but excluding) the Refinancing Date). Such Disbursement shall be applied by FSCS (on behalf of TIF) to reimburse FSCS and allow it to repay amounts borrowed by it from HMT to fund the making of the compensation payments described in paragraph 1.1.
- 1.4 As soon as reasonably practicable after the Refinancing Date, FSCS will provide to TIF a list of the UK Branch depositors, together with their account numbers and account balances, in respect of which the compensation payments constituting the Refinancing Amount have been made.
- 1.5 TIF agrees that it will not raise any objection in respect of the Refinancing Amount (or FSCS's right to be reimbursed by TIF for payments of compensation comprising such amounts, together with interest thereon) on the grounds:
- (a) that any depositor is or was not entitled to be paid the amount of compensation calculated by FSCS for any reason under Article 9 of Icelandic Act No. 98/1999 or the regulations of TIF or otherwise; or
 - (b) that FSCS has calculated compensation in accordance with the rules of the Scheme and not according to any methodology which would have been used by TIF.
2. FSCS payment of compensation on behalf of TIF

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- 2.1 The parties agree that FSCS may, on or after the Refinancing Date, make payments on behalf of TIF in accordance with the Scheme rules to individual depositors of the UK Branch, for claims in respect of which TIF has compensation obligations under Icelandic Act No. 98/1999.
- 2.2 The parties agree that the payments described in paragraph 2.1 shall be funded by FSCS requesting (on behalf of TIF) Disbursements under and in accordance with the Loan Agreement. FSCS agrees that it will not submit a Disbursement Request (on behalf of TIF) to the Lender in respect of the funding of compensation payments to UK Branch depositors, nor apply (on behalf of TIF) the proceeds of the corresponding Disbursement, unless it has already provided, or at the same time provides, to TIF a list (a "Depositor List") of the UK Branch depositors, together with their account numbers and account balances, whom the proceeds of the Disbursement are to be used to compensate, together with a draft of the Disbursement Request.
- 2.3 TIF agrees that payments made by FSCS (on behalf of TIF) as described in paragraph 1.1 and paragraph 2.1 will be made in accordance with the Scheme rules and that, accordingly, it will not raise any objection in respect of the amounts covered by any corresponding Disbursement Request on the grounds:
- (a) that any depositor is or was not entitled to be paid the amount of compensation calculated by FSCS for any reason under Article 9 of Icelandic Act No. 98/1999 or the regulations of TIF or otherwise; or
 - (b) that FSCS has calculated compensation in accordance with the rules of the Scheme and not according to any methodology which would have been used by TIF.
- 2.4 Whether in respect of claims for which compensation has not been paid to depositors whose deposits were held in fixed term or notice accounts or otherwise, nothing in this agreement shall prevent the parties from making alternative arrangements for payment by TIF to FSCS in respect of claims of FSCS or depositors at any time, including before FSCS has paid compensation to the relevant depositors.
3. **Payment to FSCS in respect of historic and future costs**
- 3.1 FSCS may submit (on behalf of TIF) one Disbursement Request for £10,000,000 (ten million pounds) in respect of the costs incurred or to be incurred by FSCS in the handling and payment of compensation to depositors with the UK Branch and in dealing with related matters including, without limitation, recoveries and any disputes which may result.
- 3.2 The proceeds of any Disbursement made in respect of FSCS's costs may be retained by FSCS for its own account.

4. Claims against Landsbanki

4.1 For the purpose of pursuing the Assigned Rights, FSCS may appoint TIF, on terms to be agreed, as its agent and/or representative for the submission and conduct of the claims against Landsbanki, in Iceland, or elsewhere. TIF may represent FSCS in discussions with Landsbanki, and/or the representatives of the bankruptcy estate of Landsbanki, but shall have no authority to bind or commit FSCS without FSCS's prior written instruction and consent.

4.2 FSCS and TIF agree that FSCS will, in consideration for TIF's undertaking to reimburse FSCS for compensation paid to depositors with the UK Branch in respect of claims which are guaranteed by TIF under Icelandic Act No. 98/1999, assign such proportion of the Assigned Rights as relate to claims of depositors (being not more than £16,872.99 per depositor) against Landsbanki or any third party, other than TIF or Iceland, which TIF was obligated to guarantee under Icelandic Act No. 98/1999. The assignment shall be conditional upon the Loan Agreement coming into effect. The parties hereby agree that, and the terms of the assignment shall provide that:

- (a) to the extent that, following such assignment, FSCS retains any proportion of the Assigned Rights in respect of any given claim (due to the fact that such claim exceeds £16,872.99 in aggregate), then the proportion of such Assigned Rights which assigned to TIF shall, to the fullest extent permitted by applicable law, rank *pari passu* in all respects with the proportion of such Assigned Rights retained by FSCS;
- (b) in the event that, for any reason whatsoever (including, without limitation, any preferential status accorded to TIF under Icelandic law), following the assignment of a proportion of the Assigned Rights in respect of any given claim to TIF, either TIF or FSCS experiences a greater pro rata level of recovery, in respect of such claim, than that experienced by the other, TIF or FSCS (as appropriate) shall, as soon as practicable, make such balancing payment to the other party as is necessary to ensure that each of the Guarantee Fund's and FSCS's pro rata level of recovery in respect of such claim is the same as the other's; and
- (c) to the extent that, following the completion of such assignment, any further compensation payments are made by FSCS (on behalf of TIF) to depositors with the UK Branch in respect of the claims of such depositors which are guaranteed by TIF under Icelandic Act No. 98/1999, then the proportion of the Assigned Rights which relate to those claims shall, to the fullest extent permitted by applicable law, be automatically on-assigned by FSCS to TIF on terms which are identical to those which apply to the initial assignment referred to above in this paragraph 4.2.

4.3 Pending completion of the assignment described in paragraph 4.2, any recoveries in respect of the Assigned Rights shall be paid to FSCS, for distribution between FSCS and TIF. Such recoveries shall be deemed to be:

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- (a) due entirely to TIF to the extent that such recoveries are received in respect of Assigned Rights from depositors whose total claim for compensation is £16,872.99 or less; and
- (b) due to FSCS and TIF to the extent that such recoveries are received in respect of Assigned Rights from depositors whose total claim exceeds £16,872.99, in which case the recoveries shall be allocated on a *pro rata* basis between FSCS and TIF, being due to TIF in the proportion which £16,872.99 bears to the total claim for compensation and due to FSCS for the remainder.

4.4 Any recoveries in respect of the Assigned Rights shall, to the extent that they are (i) following completion of the assignment described in paragraph 4.2, received by TIF or, (ii) pending completion of the assignment described in paragraph 4.2, received by FSCS but due to TIF, be applied by or on behalf of TIF in satisfaction of TIF's obligations in accordance with the terms of the Loan Agreement.

4.5 TIF shall report in writing to FSCS at such intervals as FSCS shall require on the position of Landsbanki and the bankruptcy estate of Landsbanki, and shall notify FSCS promptly in writing of any material developments in the estate and/or for the position of creditors of Landsbanki. TIF shall forward to FSCS promptly on receipt any information received regarding Landsbanki or the bankruptcy estate of Landsbanki, including any letters or other communications received from Landsbanki or the representatives of the bankruptcy estate of Landsbanki (including, without limitation, the Landsbanki resolution committee and the Landsbanki winding-up committee).

5. Confidentiality

The parties agree that this agreement shall be confidential to the parties and may not be disclosed to any person, at any time, without the consent of the other, save that either party may make disclosure to their respective home state governmental and regulatory authorities, professional advisers or as may be required by law. It is agreed that a copy of this agreement shall be made available to the parties to the Loan Agreement and their respective professional advisers.

6. Entry into force and miscellaneous provisions

6.1 The provisions of paragraph 4.2 of this agreement (and, only to the extent required to give efficacy to such provisions, the provisions of paragraphs 9 to 15) shall come into force on the date on which this agreement is executed. The remaining provisions of this agreement shall come into force on the date on which the Loan Agreement comes into force.

6.2 Nothing in this agreement shall be deemed at law to constitute a partnership or similar relationship and neither party shall have any authority to bind the other, save as provided for in this agreement.

6.3 Nothing in this agreement or in the arrangements described hereunder will give rise to any trust or fiduciary obligations on the part of FSCS, whether owed to TIF or any third party.

6.4 This agreement and the benefit of its terms may not be assigned or transferred by either party to any other party without the prior written consent of both parties to this agreement.

6.5 Nothing in this agreement shall affect the obligations of TIF under Icelandic Act No. 98/1999 on deposit guarantees and investor compensation schemes. In particular, the fact that there may be Landsbanki London Depositors to whom compensation payments by TIF are not to be funded under the Loan Agreement shall not affect the existence or scope of the related compensation obligation of TIF.

7. Liability and indemnity

7.1 The following actions shall not be open to dispute by TIF on any ground other than (without prejudice to paragraph 1.5 and paragraph 2.3) an allegation that FSCS has not acted in good faith:

- (a) the submission of a Disbursement Request by FSCS (on behalf of TIF) to the Lender in accordance with the Loan Agreement and the process specified in paragraph 1.3, 2.2 or (as the case may be) 3.1;
- (b) the receipt by FSCS (on behalf of TIF) of the proceeds of the corresponding Disbursement; and
- (c) the application of such proceeds by FSCS in accordance with the Loan Agreement and paragraph 1, 2 or (as the case may be) 3, being, in the case of paragraph 2, the payment by FSCS (on behalf of TIF) of compensation (funded by the proceeds of such Disbursement) to UK Branch depositors in respect of all or part of the claim of such depositors against TIF.

7.2 This paragraph 7.2 applies if, by reference to any Depositor List provided to TIF pursuant to paragraph 2.2, or by reference to the list and information provided to TIF pursuant to paragraph 1.4, a greater amount (the "Excess") has been drawn by FSCS (on behalf of TIF) under the Loan Agreement in order to compensate depositors than has actually been paid by way of compensation by FSCS to the relevant depositors with the UK Branch. If this paragraph 7.2 applies, and provided that TIF has notified FSCS of the alleged Excess not later than 15 March 2012, FSCS shall make a reduction equal to the Excess in the amount of the next Disbursement. If no further Disbursements are to be made, then FSCS shall (on behalf of TIF) prepay the Reimbursement in an amount equal to the Excess at the end of the then current interest period under the Loan Agreement.

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7.3 FSCS shall not be liable to TIF for any claim or loss (whether direct or indirect and/or consequential) and TIF agrees that it shall not take any action against FSCS for any act or omission or failure to comply with the terms of this agreement or otherwise when acting under or in relation to this agreement or in pursuing (whether before or after the date of this agreement) the Assigned Rights, except in the event of bad faith on the part of FSCS.

7.4 TIF will indemnify FSCS on demand for any loss or liability it incurs or suffers in pursuing the Assigned Rights prior to the completion of the assignment described in paragraph 4.2, to the extent that such Assigned Rights are pursued by FSCS for the benefit of TIF or in order to realise funds which will be applied (on behalf of TIF) in reducing the amount outstanding under the Loan Agreement or in discharging any other liability of TIF.

8. Representations and warranties

8.1 TIF represents and warrants that:

- (a) it shall not undertake any action without the prior approval of FSCS if such action would impede or harm the right of FSCS to make a claim against Landsbanki or any other party on the basis of the rights which have passed or it is intended shall pass to FSCS from the depositors of the UK Branch by way of transfer, assignment or subrogation;
- (b) it is a private foundation, duly incorporated and validly existing under the law of Iceland and it has the power to own its assets and carry on its business as it is being conducted;
- (c) the obligations expressed to be assumed by it in this agreement will be, subject to any general principles of law limiting its obligations which are specifically disclosed to FSCS in writing prior to the date of this agreement, legal, valid, binding and enforceable obligations; and
- (d) its signatories to this agreement are duly authorised to sign this agreement on its behalf.

8.2 TIF undertakes to (i) use its best efforts to promote the enactment of legislative and other measures; and (ii) obtain the requisite internal and external approvals, in both cases to permit or facilitate the actions envisaged by this agreement and the Loan Agreement.

9. Entire agreement

This agreement may be amended, supplemented or waived only by mutual consent in the form of a written agreement between FSCS and TIF.

10. MOU

In the event of a conflict between the MOU and the terms of this agreement, the latter shall prevail.

11. Counterparts

This agreement may be executed in any number of counterparts, and by the parties on separate counterparts, and this shall have the same effect as if the signatures on the counterparts were on a single copy of this agreement. Each counterpart shall be an original copy of this agreement, but they shall together constitute one and the same agreement.

12. Notices

12.1 Any communication to be made under or in connection with this agreement will be made in writing in English and, unless otherwise stated, may be made by letter, fax or email.

12.2 The address, fax number and email address (and the department or officer, if any, for whose attention the communication is to be made) for any communication to be made under or in connection with this agreement is:

- (a) in the case of FSCS, Financial Services Compensation Scheme, 7th Floor, Lloyds Chambers, 1 Portsocken Street, London E1 8BN, United Kingdom; loretta.minghella@fscs.org.uk and +44 (0)20 7892 7637 (attention: Loretta Minghella, Chief Executive), with a copy to HMT, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ, United Kingdom; tom.scholar@hm-treasury.x.gsi.gov.uk and +44 (0)20 7270 5764 (attention: Tom Scholar); and
- (b) in the case of TIF, Borgartun 26, 3rd floor, 105 Reykjavík, Iceland and +354 590 2606 (attention: Managing Director),

or, in each case, any substitute address, fax number or email address (or department or officer) which any of the above may notify to the others by not less than five Business Days' notice.

12.3 Any notice served by personal delivery, post, fax or email shall be deemed to have been duly given:

- (a) if left at the address of the person to be served, at the time when it is so left (or, if left on a day that is not a Business Day, at 8:15am (local time) on the next following Business Day);
- (b) if sent by email, when received in legible form (or, if sent on a day that is not a Business Day, at 8:15 am (local time) on the next following Business Day);
- (c) if sent by registered international post, on the second Business Day following the day of posting; and

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- (d) if sent by fax, when confirmation of receipt is received from the receiving fax machine (or, if sent on a day that is not a Business Day, at 8:15am (local time) on the next following Business Day),

and provided that, in proving the giving of notice under or in connection with this agreement, it shall be sufficient to prove that the notice was delivered to the address for service or that the envelope containing such notice was properly addressed and posted by registered international post (as the case may be).

13. Governing law and jurisdiction

- 13.1 This agreement and any matter, claim or dispute arising out of or in connection with this agreement, whether contractual or non-contractual, shall be governed by, and construed in accordance with, the laws of England.
- 13.2 Any matter, claim or dispute arising out of or in connection with this agreement, whether contractual or non-contractual, and including any matter, claim or dispute regarding the existence, validity or termination of this agreement (a "Dispute"), shall be subject to the exclusive jurisdiction of the English courts.
- 13.3 The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.
- 13.4 Paragraphs 13.2 and 13.3 are for the benefit of FSCS only. As a result, FSCS shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, FSCS may take concurrent proceedings in any number of jurisdictions.
- 13.5 Without prejudice to any other mode of service allowed under any relevant law, TIF hereby irrevocably appoints the Embassy of Iceland, of 2A Hans Street, SW1X 0JE London, England as its agent for service of process in relation to any proceedings before the English courts in connection with this agreement and agrees that failure by the process agent to notify it of any process will not invalidate the proceedings concerned.

14. Waiver of sovereign immunity

TIF consents generally to the issue of any process in connection with any Dispute and to the giving of any type of relief or remedy against it, including the making, enforcement or execution against any of its property or assets (regardless of its or their use or intended use) of any order or judgment. If TIF is entitled in any jurisdiction to any immunity from service of process or of other documents relating to any Dispute, or to any immunity from jurisdiction, suit, judgment, execution, attachment (whether before judgment, in aid of execution or otherwise) or other legal process, this is irrevocably waived to the fullest extent permitted by the law of that jurisdiction.

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15. Defined terms

Terms defined in the recitals to this agreement shall have the same meaning when used in the operative provisions of this agreement. In addition, terms defined in the Loan Agreement shall, unless they are given an alternative meaning in this agreement or the context otherwise requires, have the same meaning when used in this agreement.

THIS AGREEMENT HAS BEEN MADE ON THE DATE STATED AT THE BEGINNING OF THIS AGREEMENT BY:

.....
Financial Services Compensation Scheme
Limited

Name: Aleksander J Kuczynski

Title: General Counsel

.....
The Depositors' and Investors' Guarantee
Fund of Iceland (*Tryggingarsjóður
Innstæðueigenda og Fjárfesta*)

Name: Aslaug Arnadóttir

Title: Chairperson of the Board

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