



**Article by Ashley Badcock**

**COLLAPSE OF ICELANDIC BANKS**  
**LEGAL IMPLICATIONS FOR LOCAL AUTHORITIES**

A number of our public sector clients have approached us for advice concerning their deposits with Icelandic banks.

**The current position**

The three largest Icelandic banks, Landsbanki, Kaupthing and Glitnir are in receivership in Iceland. Two of the subsidiaries of these banks in the UK: Heritable (a subsidiary of Landsbanki) and Kaupthing, Singer and Friedlander (a subsidiary of Kaupthing) are in administration under UK law.

Many local authorities have large deposits in these banks, believed to amount to £858 million in total. They are unable to withdraw these deposits at present and their ability to do so in the future is in doubt. In addition, no guarantee has been given to local authorities and other public corporations that these losses will be underwritten by the UK government. However, discussions between the Local Government Association and the Government about how local authorities can be protected from the effects of these losses are continuing.

Action has been taken by the Government to protect the assets of the Icelandic banks in the UK under a freezing order made under section 4 of the Anti-Terrorism Crime and Security Act 2001. Although this action was criticised as a hostile and unfriendly act by the Icelandic government, there are strong arguments for asserting that the action fell within the terms of the legislation.

**The legal position**

As regards to the position in Iceland, within each bank a receivership committee is appointed to run the bank in place of the board of directors. The receivership is intended to give the banks temporary protection from payment of debts. It is not intended to be a liquidation.

The UK subsidiaries are in administration under UK law. This means that no claim against the banks can be commenced in the courts unless by permission of the administrator or the court. A person owed money by the bank will need to lodge their claim along with the requisite proof of the debt with the administrator.

There remains, in theory at least, the possibility of a claim against the Icelandic banks in the UK; that is the banks in receivership in Iceland, not the UK banks in administration. This would be on the basis of a breach of contract of the terms on which the sums were deposited. There are likely to be difficulties in this course of action, in terms of jurisdiction and in view of the likelihood of insolvency proceedings being commenced against these banks.

**What should local authorities do now?**

From a legal perspective, they should ascertain the terms on which the deposits have been made. Some are likely to have been on the basis that deposits were available for immediate

withdrawal. Others may have been on terms that they would be invested for longer periods. The standard terms and conditions for the deposits with the UK subsidiary bankers are to be found on their respective websites.

It is worth considering making demands for withdrawals of the relevant amounts. These could be made against both the Icelandic banks and the UK subsidiaries. This is not going to result in the payment of money, but it may elicit from the banks an explanation of the basis for the non-payment.

As regards to the banks in administration under UK law, the authority should also contact with the administrators (Ernst & Young in both cases) with details of their claims.

Authorities should also examine closely the terms under which they have been advised in connection with their investment portfolio. This will include considering the terms of appointment of their advisers. There may be the potential for claims against ratings agencies and other financial advisers.

Subject to the outcome of the discussions with the government, individual chief finance officers may need to consider whether they need to make a report under s114 of the Local Government Finance Act 1988, on the basis that the revenue shortfalls anticipated from non-payment of interest on the frozen deposits could result in budgeted amounts being inadequate for their commitments in the current financial year.

We would like to acknowledge the contribution of Edward Davies of Erskine Chambers to this leaflet. Their details are 33 Chancery Lane London WC2A 1EN 020 7242 5532

**This note is intended to provide a brief overview of the legal principles under discussion.  
It is not intended to be a comprehensive guide or to constitute legal advice.**

