

9. SEP. 2009

Bl. *35-0*

FJR *09090045*

1

**NEW KAUPTHING BANK HF.**

and

**KAUPSKIL EHF.**

and

**THE MINISTRY OF FINANCE ON BEHALF OF THE GOVERNMENT OF ICELAND**

**SHAREHOLDERS' AGREEMENT**

relating to

**NEW KAUPTHING BANK HF.**

## TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION	3
2.	ORGANISATION OF THE BOARD	6
3.	BOARD MEETINGS AND VOTING RIGHTS	6
4.	GENERAL MEETINGS	7
5.	SHAREHOLDERS' PROTECTION	7
6.	TRANSFER OF SHARES	7
7.	ISSUE OF NEW SHARES	9
8.	NEW SHAREHOLDERS	9
9.	KAUPTHING HOLDCO'S CALL OPTION	9
10.	ACKNOWLEDGEMENTS AND CONSENTS	10
11.	REPRESENTATIONS AND WARRANTIES	10
12.	DEFAULT	10
13.	ENTRY INTO FORCE AND DURATION	11
14.	CONFIDENTIALITY	11
15.	CONFLICT WITH ARTICLES AND FURTHER COVENANTS	11
16.	NOTICES	11
17.	MISCELLANEOUS	12
18.	LAW AND JURISDICTION	13

THIS SHAREHOLDERS' AGREEMENT is entered into on 3 September 2009

BETWEEN

- (1) New Kaupthing Bank hf. (registered id. 581008-0150), whose registered office is at Borgartun 19, 105 Reykjavik, Iceland (hereinafter referred to as "**New Kaupthing**");
- (2) The Ministry of Finance (registered id. 550169-2829), on behalf of the Government of Iceland, whose registered office is at Arnarhvoll, Reykjavik; (hereinafter referred to as the "**Government**"); and
- (3) Kaupskil ehf. (registered id. 580609-0150), whose registered office is at Borgartún 19, 105 Reykjavik, Iceland (hereinafter referred to as "**Kaupthing HoldCo**").

WHEREAS:

- (A) on 9 October 2008 the FME appointed the Resolution Committee in accordance with article 5 of legislative Act No. 125/2008 on the Authority for Treasury Disbursements due to Unusual Financial Market Circumstances etc., amending Act No. 161/2002 on Financial Undertakings (the "**Act on Financial Undertakings**");
- (B) on 18 October 2008 the Government established New Kaupthing;
- (C) on 21 October 2008 the FME decided on the basis of the Act on Financial Undertakings to transfer certain assets and liabilities from Kaupthing to New Kaupthing;
- (D) on 24 November 2008 the District Court of Reykjavik granted Kaupthing a moratorium on payments to creditors which is still in force;
- (E) Kaupthing has the legal obligation and aim to maximise the value of Kaupthing's assets and to safeguard the interests of Kaupthing's creditors;
- (F) the Government is working towards ensuring a stable and functioning banking system in Iceland;
- (G) On 17 July 2009 certain of the Parties signed a heads of terms agreement (the "**Heads of Terms**");
- (H) the Parties have agreed to carry out and implement certain transactions, with reference to the abovementioned, and in that regard certain of the Parties have entered and/or agreed to enter into:
  - (a) the Government Capitalisation Agreement dated on or around the Signing Date pursuant to which the Government shall capitalise New Kaupthing by way of a subscription for the Government Subscription Shares in consideration for the issue by the Government of the Government Bond to New Kaupthing (the "**Government Capitalisation**"); and
  - (b) the Kaupthing Capitalisation Agreement dated on or around the Signing Date pursuant to which and only if the Capitalisation Conditions are duly fulfilled, Kaupthing Holdco shall be allotted the Subscription Shares by New Kaupthing in consideration for the Subscription Assets; and
  - (c) the Tier II Capital Instrument Agreement, the Escrow and Contingent Value Rights Agreement and the Equity Option Arrangement to be dated on or around the Signing Date,along with this Shareholders' Agreement (the "**Agreement**");
- (I) as at the Signing Date, the Government owns 100% of the issued share capital of New Kaupthing being 775,000,000 ordinary shares which it subscribed for on or around 18

October 2008 for an aggregate subscription price of ISK 775,000,000 together with Government Subscription Shares;

- (J) the Signing Conditions have been fulfilled;
- (K) it is intended by the Parties that, if the Capitalisation Conditions are fulfilled and the Kaupthing Capitalisation is completed, Kaupthing Holdco will acquire the Subscription Shares in consideration for the Subscription Assets whereupon this Shareholders' Agreement will enter into force;
- (L) it is intended by the Parties that, if the Kaupthing Capitalisation is not completed on or before the Withdrawal Date this Shareholders Agreement will not enter into force, and the Kaupthing Capitalisation Agreement and the Kaupthing Capitalisation shall terminate and cease to have any effect, and the Escrow and Contingent Value Rights Agreement and the Equity Option Arrangement shall take effect; and
- (M) subject to (L) above the Shareholders agree to enter into this Agreement regulating their relationship with each other and the affairs of and their dealings with New Kaupthing.

NOW THE PARTIES HAVE AGREED AS FOLLOWS:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 In this Agreement:**

**"Additional Call Option"** is defined in Clause 9.2.

**"Acceptance Period"** is defined in Clause 6.4.3;

**"Acquiror"** is defined in Clause 6.4.1;

**"Adherence Agreement"** means an agreement substantially in the form set out in Schedule 1 whereby a new shareholder agrees to comply with the terms of this Agreement (as it may apply to him) as a party hereto;

**"Affiliated Companies"** means any legal entity in which a Party directly or indirectly holds a Controlling Interest;

**"Agreed Form"** means a form agreed between or identified by the Parties for the purposes of this Agreement and signed or initialled for identification purposes by them or on their behalf;

**"Articles"** means the articles of association of New Kaupthing as amended from time to time;

**"Board"** means the board of Directors of New Kaupthing from time to time;

**"Business Day"** means a day except a Saturday or Sunday, on which banks in Reykjavik are open for business generally;

**"Call Option"** is defined in Clause 9;

**"Call Option Date"** means the date on which the Call Option is exercised by Kaupthing Holdco;

**"Capitalisation Conditions"** shall have the meaning given to the term in the Kaupthing Capitalisation Agreement;

**"Competition Authority"** means the Icelandic Competition Authority (*Samkeppniseftirlitið*);

**"Confidential Information"** means all information and records wherever located and which are not publicly available and in each case whether or not recorded;

**"Controlling Interest"** means the majority of the voting rights in a company or the right to appoint or dismiss the majority of the members of a company's board elected at general meetings;

**"Director(s)"** means any duly elected member of the Board from time to time;

**"Encumbrance"** means all security interests, options, equities, claims, or other third party rights including rights of pre-emption of any nature whatsoever;

**"Equity Option Arrangement"** means the Agreed Form equity option instrument issued by the Government to Kaupthing in respect of 90% of the Government's shareholding in New Kaupthing;

**"Escrow and Contingent Value Rights Agreement"** means the Agreed Form escrow and contingent value right agreement dated on or about the Signing Date;

**"FME"** means The Financial Supervisory Authority of Iceland (*Fjármálaeftirlitið*);

**"General Meeting"** means any annual or extraordinary meeting of the Shareholders;

**"Government Alternate Director"** means the Director appointed pursuant to Clause 2.2;

**"Government Bond"** has the meaning given to it in the Government Capitalisation Agreement;

**"Government Capitalisation Agreement"** means the agreement between the Government and New Kaupthing relating to the Government Capitalisation dated on or about the Signing Date;

**"Government Director"** means the Director appointed pursuant to Clause 2.2;

**"Government Shares"** means the total share capital of the Government in New Kaupthing at any time;

**"Government Subscription Shares"** shall have the meaning given to the term in the Government Capitalisation Agreement;

**"Kaupthing"** means Kaupthing Bank hf. (registered id. 560882-0419) whose registered office is at Borgatún19, 105 Reykjavik, Iceland;

**"Kaupthing Capitalisation Agreement"** means the agreement between Kaupthing Holdco, Kaupthing, the Government and New Kaupthing relating to the Kaupthing Capitalisation dated on or about the Signing Date;

**"Kaupthing Capitalisation Date"** shall have the meaning given to the term in the Kaupthing Capitalisation Agreement;

**"Kaupthing Alternate Director"** means the Director appointed pursuant to Clause 2.2;

**"Kaupthing Director"** means the Director appointed pursuant to Clause 2.2;

**"Notice"** is defined in Clause 16.1;

**"Notified Price"** is defined in Clause 6.4.1;

"Parties" means the parties to this Agreement and "Party" means each of them;

"Proposed Drag Along Sale" is defined in Clause 6.3.1;

"Proposed Tag Along Transfer" is defined in Clause 6.4.1;

"Purchase Price" means an amount in ISK per Share as calculated by reference to the following formula:

ISK price per share paid under the Kaupthing Capitalisation Agreement in respect of the Subscription Shares (as defined therein) multiplied by  $(1 + \text{Risk Free Rate} + 5\%)^x$

where x equals the number of years (to 3 decimal places) since the date of the Government's initial subscription for equity and the Call Option Date (the "Determination Period");

"Purchaser" is defined in Clause 6.3.1;

"Remuneration Committee" is defined in Clause 2.6;

"Resolution Committee" means the resolution committee of Kaupthing from time to time;

"Risk Free Rate" means the average annual interest rate receivable by the Company on the Government Bond over the Determination Period (calculated from the total amount of interest receivable by the Company on the Government Bond as against its aggregate principal amount;

"Sale Shares" is defined in Clause 6.2.1;

"Share(s)" means share(s) in New Kaupthing;

"Shareholders" means the holders of the Shares from time to time; and

"Signing Date" means the date of this Agreement;

"SPRON Bond" means the bond issued to New Kaupthing by Sparisjóður Reykjavíkur og nágrennis hf., (registered ID. 540502-2770) whose registered office is at Lágmúli 6, Reykjavik, Iceland ("SPRON") as payment for deposits taken over by New Kaupthing;

"Subscription Assets" means the assets paid to New Kaupthing in consideration for the Subscription Shares according to the Kaupthing Capitalisation Agreement;

"Subscription Shares" has the meaning given to the term in the Kaupthing Capitalisation Agreement;

"Third Party Purchaser" is defined in Clause 6.2.1;

"Tier II Capital Instrument" means the Tier II capital instrument issued pursuant to the Tier II Capital Instrument Agreement and any Tier I capital instrument resulting from the conversion of such Tier II Capital Instrument;

"Tier II Capital Instrument Agreement" means the Tier II capital instrument agreement dated on or about the Signing Date;

"Transferred Assets" means the assets transferred to New Kaupthing from Kaupthing on 22 October 2008 by the FME, pursuant to a decision of the FME dated 21 October 2008;

"Transferred Liabilities" means the liabilities transferred to New Kaupthing from Kaupthing on 22 October 2008 by the FME, pursuant to a decision of the FME dated 21 October 2008; and

**"Withdrawal Date"** shall have the meaning given to the term in the Kaupthing Capitalisation Agreement.

- 1.2 References to the Parties include their respective successors in title, assigns, estates and legal personal representatives as the case may be.
- 1.3 Unless otherwise specified, references to a person include an individual, company, corporation, firm, partnership, joint venture, association, organisation, institution, trust or agency whether or not having a separate legal personality;
- 1.4 Unless otherwise specified references to the singular shall include a reference to the plural and references to one gender shall include all genders and vice versa (in each case) unless the context otherwise requires.
- 1.5 References to Clauses and Schedules shall be to Clauses and schedules of this Agreement.

1.6 The headings in this Agreement shall not affect its interpretation.

## **2. ORGANISATION OF THE BOARD**

- 2.1 The number of Directors of New Kaupthing shall be five and five alternate members.
- 2.2 The Government shall have right to nominate one Director of New Kaupthing (the **"Government Director"**) and one alternate Director (the **"Government Alternate Director"**) for so long as the Government is a Shareholder. Kaupthing Holdco shall have the right to nominate four Directors of New Kaupthing (the **"Kaupthing Directors"**) and four alternate Directors (the **"Kaupthing Alternate Directors"**) for so long as Kaupthing Holdco is a Shareholder.

2.3 Kaupthing Holdco shall nominate the Chairman of the Board.

2.4 Kaupthing Holdco, in its capacity as a Shareholder, shall vote in favour of the appointment of the Government Director and the Government Alternate Director (and any such replacements as the Government may make from time to time) and the Government, in its capacity as a Shareholder, shall vote in favour of the appointment of the Kaupthing Directors and the Kaupthing Alternate Directors (and any such replacements as Kaupthing Holdco may make from time to time).

2.5 Kaupthing Holdco may decide to increase the number of its Directors in New Kaupthing.

2.6 Each party agrees to procure that there is a committee of the Board called the remuneration committee (the **"Remuneration Committee"**), a member of which must, on request by the Government Director, be the Government Director.

## **3. BOARD MEETINGS AND VOTING RIGHTS**

3.1 The quorum necessary for the transaction of business at any Board meeting shall be the majority of the Directors.

3.2 The Directors shall be entitled to cast one vote on any resolution put before a meeting of the Board.

3.3 The Government shall have veto rights in relation to any of the following matters:

3.3.1 cease to operate services that are subject to operating licences according to Article 3 of the Act of on Financial Undertakings, no. 161/2002;

3.3.2 disposing of all or substantially all of the assets of New Kaupthing;

- 3.3.3 the liquidation or winding up of New Kaupthing;
- 3.3.4 making any alterations to the Articles in such a way which, or is likely to, whether at the relevant time or after that, materially prejudice the Government, unless the alteration also affects, in the same way in all material respects all those persons who are holders of Shares;
- 3.3.5 payment of dividends for the first three years from Signing Date; or
- 3.3.6 any transactions of the Company with Kaupthing and companies related to Kaupthing
- 3.4 The veto right of the Government pursuant to Clause 3.3 shall be deemed to have been exercised if the Government Director votes against such matter at a duly convened Board meeting.

#### 4. GENERAL MEETINGS

Subject to Clause 3.3 above, all resolutions put to the Shareholders at a General Meeting shall be passed by a simple majority of votes.

#### 5. SHAREHOLDERS' PROTECTION

- 5.1 Each Shareholder agrees not to mortgage, charge or otherwise encumber any of its Shares (or any interest in such Shares) unless such disposition is made with the prior written consent of the other Shareholder and otherwise in accordance with this Agreement and the Articles.
- 5.2 The Parties acknowledge and agree that they shall bring to the immediate attention of the other Parties any circumstances of which they become aware as constituting or which may lead to a breach by New Kaupthing of its statutory and/or other duties.

#### 6. TRANSFER OF SHARES

##### 6.1 Permitted transfer

Subject only to the provisions of this Clause 6 the Shareholders are entitled to transfer their Shares, either in part or in full, to any third party, provided that such third party becomes a party to this Agreement by executing the Adherence Agreement.

##### 6.2 Kaupthing Holdco right of Pre-emption

- 6.2.1 If the Government wishes to transfer Shares (the "Sale Shares") to a bona fide arms' length third party purchaser (or purchasers) (the "Third Party Purchaser") the Government shall first offer to Kaupthing Holdco the right to buy the Sale Shares. Notice of the offer shall be sent to Kaupthing Holdco. The offer shall state the terms and conditions, including the price offered by or to the Government. The terms of the offer, including the purchase price, shall be the same as offered by or to the Third Party Purchaser.
- 6.2.2 If Kaupthing Holdco wishes to exercise its right of pre-emption, it shall give notice thereof to the Government within 20 Business Days of receipt of the offer to exercise the right of pre-emption.
- 6.2.3 Upon exercise of the right of pre-emption, the purchase price shall at the time of acceptance of the offer and transfer of the Shares be paid in cash and deposited in a recognised bank in the name of the Government and be released to the Government against delivery of the original share certificates representing the Shares being transferred duly endorsed by the Government in the name of Kaupthing Holdco and free and clear of any Encumbrance.
- 6.2.4 If Kaupthing Holdco does not exercise its right of pre-emption in respect of all the Sale



Shares, the Government shall be entitled to sell all the Sale Shares to the Third Party Purchaser within three months of the expiry of the time stipulated for acceptance in the Government's offer. The Sale Shares may not be sold to the Third Party Purchaser on terms more favourable than the terms offered to Kaupthing Holdco.

### 6.3 Drag Along Option

6.3.1 If Kaupthing Holdco wishes to sell more than 50% of the Shares then in issue in New Kaupthing and finds a bona fide arm's-length purchaser which is not an Affiliated Company of Kaupthing Holdco (the "Purchaser") and agree terms for the sale to the Purchaser of such Shares (a "Proposed Drag Along Sale") then, on receipt of written notification from the potential Purchaser, the Government shall be bound to accept any offer from the Purchaser on the same terms as agreed by Kaupthing Holdco.

6.3.2 The Government is expected to provide representations and warranties in respect of its title to Shares and capacity to sell Shares on a Proposed Drag Along Sale.

6.3.3 Kaupthing Holdco must give notice to the Government of any Proposed Drag-Along Sale as soon as practicable after reaching commercial agreement in respect of the Proposed Drag-Along Sale but in any event no less than five Business Days prior to signing a definitive agreement. That notice must set out the nominal amount of Shares proposed to be transferred, the name and address of the proposed Purchaser, the proposed form of consideration and any other terms and conditions of payment offered for the Shares.

### 6.4 Tag-Along Option

6.4.1 No transfer of any Shares (or any interest in any Shares) in a single transaction or a series of related transactions may be made by Kaupthing Holdco if it would result in Kaupthing Holdco and/or its Affiliated Companies ceasing to hold more than 50% of the Shares in issue (a "Proposed Tag Along Transfer") unless the proposed acquiror of such Shares (the "Acquiror") has first made a written offer to the Government to purchase such number of its Shares as determined pursuant to Clause 6.4.6 at the same price per Share (the "Notified Price") and on the same terms and conditions (including time of payment, form of consideration, representations, warranties, covenants and indemnities (if any)) as to be paid and given to and by Kaupthing Holdco.

6.4.2 If the Government accepts an offer made in accordance with Clause 6.4.1 the Government is responsible for its proportionate share of the costs of the Proposed Tag-Along Transfer to the extent not paid or reimbursed by the Acquiror or New Kaupthing.

6.4.3 The written offer required to be given by the Acquiror under Clause 6.4.1 must be given not more than five Business Days after the signing of the definitive agreement relating to the Proposed Tag-Along Transfer and must be open for acceptance for at least five Business Days after the date on which the Government receives or is deemed to receive the offer (the "Acceptance Period"). Kaupthing Holdco must deliver or cause to be delivered to the Government copies of all transaction documents relating to the Proposed Tag-Along Transfer promptly as the same become available.

6.4.4 If the Government wishes to accept the Acquiror's offer it must do so by means of a written notice to Kaupthing Holdco (to be sent in accordance with Clause 16) indicating its acceptance of the offer in respect of all of the number of its Shares specified in the written offer.

6.4.5 If the Government does not accept such offer within the Acceptance Period, the Proposed Tag-Along Transfer is permitted to be made within three months of the expiry of the time stipulated for acceptance by the Government, provided that such transfer takes place at or below the Notified Price and on terms and conditions no more favourable in any respect to Kaupthing Holdco than those stated in the written offer.

6.4.6 The number of the Government's Shares referred to pursuant to Clause 6.4.1 is determined by the formula:

$(A / B) \times C$

where:

A is the aggregate amount of Shares proposed to be directly or indirectly transferred to the Acquiror in the Proposed Tag-Along Transfer;

B is the aggregate number of all Shares then in issue, subject to such adjustment as the Board may resolve is appropriate; and

C is the aggregate number of Shares owned by the Government.

## 6.5 Intra group transactions

6.5.1 Notwithstanding the provisions of Clauses 6.2, 6.3 and 6.4, a Shareholder shall be entitled to sell or transfer its Shares or a part thereof to an Affiliated Company of it without restrictions.

6.5.2 Prior to or simultaneously with the sale or transfer taking effect, the Affiliated Company shall sign an Adherence Agreement.

6.5.3 If a Shareholder has effected a sale or transfer of its Shares to an Affiliated Company the Shareholder shall guarantee the fulfilment of the Affiliated Company's obligations under this Agreement. The guarantee shall be deemed finally given and with binding effect upon the Shareholder's transfer of the Shares to the Affiliated Company.

6.5.4 If at any time the Affiliated Company ceases to be an Affiliated Company of the Shareholder in question, its Shares shall immediately be re-transferred to the relevant Shareholder, or to an Affiliated Company of the Shareholder, in accordance with the provisions of this Clause 6.5, such transfer to take effect upon the cessation of the group relation with the Affiliated Company.

6.5.5 For the purpose of ensuring that a particular transfer of Shares is permitted under, or made in accordance with, this Clause 6.5, the Board may require the transferring Shareholder or the Affiliated Company receiving the transferred Shares to provide such information or evidence as the Board may reasonably think necessary or relevant. If such information or evidence is not provided to the satisfaction of the Board within 14 days after a request for it (or the first in a series of requests), the Board may refuse to register the transfer in question and send to the transferee notice of refusal.

## 7. ISSUE OF NEW SHARES

7.1 In respect of any new share issue in New Kaupthing, the Parties shall have pre-emption rights pro rata to their shareholdings, as set out in the Articles.

## 8. NEW SHAREHOLDERS

Except as expressly set out in this Agreement or in the Articles, no Shares shall be issued or transferred to a person who is not a party to this Agreement unless prior to such issue or transfer that person has executed an Adherence Agreement as a Shareholder (in the form substantially as set out in Schedule 1).

## 9. KAUPTHING HOLDCO'S OPTION

9.1 Kaupthing Holdco shall have a call option over the Government Shares whereby Kaupthing Holdco has the right to purchase the Government's Shares in New Kaupthing (the "Call Option").

9.2 Kaupthing Holdco shall also have an option to acquire a sufficient number of the Government Shares to increase Kaupthing Holdco's share ownership to 90% of the total share capital (the "Additional Call Option").

- 9.3 The Call Option and/or the Additional Call Option may be exercised at any time during the term of this Agreement.
- 9.4 If the Call Option and/or the Additional Call Option is exercised the consideration for the Government Shares shall be the Purchase Price minus any dividends and distributions to shareholders paid to the Government before the exercise of the Call Option and/or the Additional Call Option.
- 9.5 If Kaupthing Holdco exercises the Call Option, it shall be obliged to procure a corresponding purchase of the Tier II Capital Instrument accordingly (provided that such purchase obligation is permitted by the FME and does not jeopardise the Tier II Instrument's 'Tier II' status, or if converted into a Tier I instrument, the Tier I instrument, the 'Tier I' status. For the avoidance of doubt, if Kaupthing Holdco exercises the Additional Call Option this will not trigger any such rights or obligations under the Tier II Capital Instrument.
- 9.6 As an alternative to the Additional Call Option, Kaupthing Holdco shall have the right to subscribe for a sufficient number of shares in New Kaupthing to increase Kaupthing Holdco's share ownership to 90% of the total share capital through the issue of new shares. The Government shall not have any pre-emptive or priority rights to such new shares. The price for such new shares shall be the ISK price per share paid under the Kaupthing Capitalisation Agreement in respect of the Subscription Shares (as defined therein). The Parties shall take such steps as may be necessary to give effect to this clause 9.6.
- 9.7 In no event shall the Additional Call Option or the alternative option considered in clause 9.6 trigger a right or duty of redemption of shares according to the Icelandic Act on Public Limited Companies.

## 10. ACKNOWLEDGEMENTS AND CONSENTS

- 10.1 Where this Agreement provides that any particular transaction or matter requires the consent, approval or agreement of any Party such consent, approval or agreement may be given subject to such terms and conditions as that Party or a Shareholder may impose and any breach of such terms and conditions by any person subject thereto shall automatically be deemed to be a breach of the terms of this Agreement.
- 10.2 For the purpose of this Agreement, the approval of a Director shall be considered equal to the approval of the Shareholder appointing such Director.

## 11. REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to the others that:

- 11.1 it has the full power and authority to execute, deliver and perform this Agreement in accordance with its terms; and
- 11.2 its entry into the Agreement does not directly or indirectly breach any law, intellectual property of third parties or any of its contractual obligations with third parties.

## 12. DEFAULT

In the event that any of the Parties should commit any material breach of this Agreement, or commit any fraud towards the other Parties and fails to remedy its default within fifteen (15) Business Days after the Parties not in default have sent a notification thereof the Parties not in default shall be entitled to terminate this Agreement, and/or claim damages for any losses which the breach or fraud have caused. Such rights shall be in addition to any other remedy which may be available to the Party in question under applicable law.

**13. ENTRY INTO FORCE AND DURATION**

- 13.1 This Agreement shall enter into force upon the Capitalisation Conditions being duly fulfilled and the completion of the Kaupthing Capitalisation as set out in the Kaupthing Capitalisation Agreement.
- 13.2 This agreement will terminate:
- i) upon request of either Party if the total shareholding of the Government in New Kaupthing is at any time less than 5% of the total share capital;
  - ii) if the express written agreement of the Parties is that the Agreement should terminate;
  - iii) if one party owns all the Shares in New Kaupthing then in issue.
- 13.3 This Agreement shall (other than Clauses 14 and 17.4) terminate in respect of the rights and obligations of a Shareholder, upon that Shareholder ceasing to hold any Shares provided always that this Clause 13 shall not affect the rights or obligations of any Party that have accrued prior to termination.
- 13.4 For the avoidance of doubt, if the Kaupthing Capitalisation Agreement is not completed on or before the Withdrawal Date, this Agreement shall not take effect.

**14. CONFIDENTIALITY**

Save as otherwise expressly permitted in this Agreement, or otherwise in the ordinary course of New Kaupthing's business, the Shareholders undertake to each other and to New Kaupthing that they will not at any time use or divulge or communicate or permit to be used or divulged or communicated to any person other than to those officers, advisers or employees of New Kaupthing or of either Shareholder or, in the case of Kaupthing Holdco, Kaupthing or Kaupthing's shareholders who need to know the same (provided however these persons are bound by confidentiality commitments no less stringent than those contained herein), any Confidential Information relating to the other Shareholder or New Kaupthing which may come to their knowledge, and each Shareholder shall use his best endeavours to prevent the publication or disclosure of any such information by him (or by those for whom he is responsible) concerning such matters.

**15. CONFLICT WITH ARTICLES AND FURTHER COVENANTS**

- 15.1 Where the provisions of this Agreement are in conflict with the Articles, the Parties agree that the provisions of this Agreement shall prevail.
- 15.2 The Parties undertake to diligently take all necessary actions and cooperate in good faith to ensure due implementation of the provisions of this Agreement, including any Board or General Meeting resolutions, amendments to the Articles and registrations, as may be necessary.
- 15.3 Without affecting New Kaupthing's obligations under the Articles and applicable law, New Kaupthing hereby agrees with the Shareholders that it will comply with the terms and conditions of this Agreement insofar as they relate to New Kaupthing.

**16. NOTICES**

- 16.1 Any demand, notice or other communication given or made under or in connection with this Agreement ("Notice") shall be in the English language in writing and signed by or on behalf of the Party giving it and marked for the attention of the other Party. A notice may be delivered personally or sent by fax, pre-paid recorded delivery or international courier to the address or fax number provided in Clause 16.3

16.2 A Notice shall be deemed to have been received

- i) at the time of delivery if delivered personally;
- ii) at the time of transmission if sent by fax;
- iii) 2 (two) Business Days after the time and date of posting if sent by pre-paid recorded delivery; or
- iv) 3 (three) Business Days after the time and date of posting if sent by international courier,

provided that if deemed receipt of any Notice occurs after 6.00 p.m. or is not on a Business Day, deemed receipt of the Notice shall be 9.00 a.m. on the next Business Day. References to time in Clause 16 are to local time in the country of the addressee.

16.3 The addresses and fax numbers for service of Notice are:

16.3.1 For Kaupthing Holdco:

- 16.3.1.1 Name: Kaupskil ehf.
- 16.3.1.2 Address: Borgartúni 19, 105 Reykjavík, Iceland
- 16.3.1.3 For the attention of: Steinar Þór Guðgeirsson
- 16.3.1.4 Fax number: 444-6129
- 16.3.1.5 with a copy to: Kaupthing Bank hf.

16.3.2 For Kaupthing

- 16.3.2.1 Name: Kaupthing Bank hf.
- 16.3.2.2 Address: Borgartúni 19, 105 Reykjavík, Iceland
- 16.3.2.3 For the attention of: Steinar Þór Guðgeirsson
- 16.3.2.4 Fax number: 444-6129
- 16.3.2.5 with a copy to: Kaupthing Bank hf.

16.3.3 For the Government:

- 16.3.3.1 Name: Ministry of Finance
- 16.3.3.2 Address: Arnarhvoll, 150 Reykjavík
- 16.3.3.3 For the attention of: Permanent Secretary
- 16.3.3.4 Fax number: 562 8280

**17. MISCELLANEOUS**

17.1 Assignment

Neither Party may assign the whole or any part of this Agreement to any third party without the other Party's prior written approval.

17.2 Entire Agreement

This Agreement together with the Articles represents the entire agreement between the Parties, and supersedes all prior agreements and understandings with respect to the matters covered by this Agreement.

**17.3 Amendments**

This Agreement may not be amended unless in writing signed by both Parties.

**17.4 Announcements**

**17.4.1** Except as provided in Clause 17.4.2, no announcement shall be made by any Party relating to this Agreement without the prior written approval of the other Parties, such approval not to be unreasonably withheld or delayed.

**17.4.2** A Party may make an announcement relating to the Agreement if (and only to the extent) required by the law of any relevant jurisdiction or any securities exchange, regulatory or governmental body in which case such Party shall take all steps as may be reasonable in the circumstances to agree the contents of such announcement with the other Parties prior to making such announcement.

**17.4.3** The restrictions on announcements in this Clause 17.4 shall continue to apply after the termination of this Agreement.

**17.5 Severability and Validity**

If any of the provisions of this Agreement are held to be illegal, invalid or unenforceable under any applicable statute or rule of law, such invalid provision shall not affect the legality, validity or enforceability of the remainder of the Agreement and the Parties agree that they will use their best endeavours to replace the offending provisions with provisions which effect shall be as close as possible to the intended effect of the offending provisions.

**17.6 Waiver**

The waiver of any particular breach or default or any delay in exercising any rights shall not constitute a waiver of any subsequent breach or default.

**17.7 Costs**

Except as expressly provided otherwise, each Party shall pay its own costs and expenses in connection with the negotiation, preparation and performance of this Agreement.

**18. LAW AND JURISDICTION**

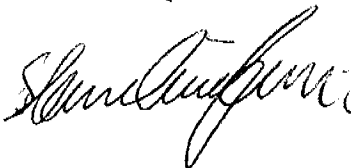
**18.1** This Agreement shall be governed by and construed in accordance with Icelandic law.

**18.2** The Parties irrevocably agree that the courts of Iceland are to have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement and proceedings in respect of any dispute may be brought in such courts.

IN WITNESS WHEREOF each Party has executed this Agreement, or caused this Agreement to be executed by its duly authorised representatives.

Signed by

for and on behalf of Kaupskil ehf.

)   
)

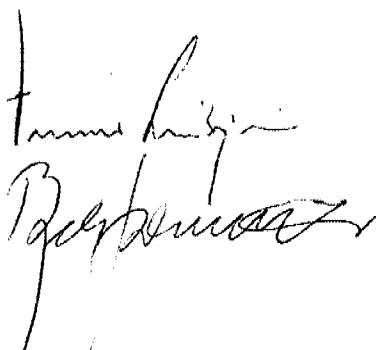
Signed by

for and on behalf of the Government

)   
)

SIGNED BY

FOR AND ON BEHALF OF NEW KRUPTING BANK



## SCHEDULE 1

## ADHERENCE AGREEMENT

THIS DEED is made on \_\_\_\_\_ 200\* by the person whose contact details appear in the schedule (the "New Shareholder");

## WHEREAS:

- (A) By an Agreement dated [ \_\_\_\_\_ ] (the "Shareholders Agreement") concerning New Kaupthing Hf., made between the Government, Kaupthing Holdco and New Kaupthing (as those expressions are defined in the Shareholders' Agreement)

**Option A** [to be used where Shares are to be transferred]

and to which [ \_\_\_\_\_ ] (the "Transferor") is a party [by virtue of a Deed of Adherence dated [ \_\_\_\_\_ ]], the Transferor has agreed to sell and transfer to the New Shareholder [Insert number and class of Shares] conditional upon the New Shareholder entering into this Deed of Adherence.

**Option B** [to be used when Shares are to be subscribed]

New Kaupthing will issue to the New Shareholder [Insert number and class of Shares] conditional upon the New Shareholder entering into this Deed of Adherence.

- (B) The New Shareholder wishes to acquire those Shares, subject to such condition and to enter into this Deed of Adherence pursuant to the Shareholders' Agreement.

## THIS DEED WITNESSES:

1. The New Shareholder undertakes to and covenants with all the parties to the Shareholders' Agreement from time to time (including any person who enters into a Deed of Adherence pursuant to the Shareholders' Agreement, whether before or after this Deed is entered into) to comply with the provisions of and to perform all the obligations in the Shareholders' Agreement in so far as they remain to be observed and performed and as far as they are applicable to New Shareholders as if the New Shareholder had been an original party to the Shareholders' Agreement [in place of the Transferor].
2. [The Transferor assigns to the New Shareholder its share of its rights under the Shareholders' Agreement in proportion to the number of Shares transferred as against the number of Shares retained by the Transferor (if any).] **[Only relevant for Option A and Transferor will need to be a party for that purpose if not dealt with elsewhere]**
3. Except as expressly varied by this Deed, the Shareholders' Agreement will continue in full force and effect, and the Shareholders' Agreement be interpreted accordingly.
4. The interpretation provisions and the provisions of clause 17.7 (Costs), 16 (Notices), 17.2 (Entire agreement), 17.3 (Amendments), 13 (Termination), and 18 (Governing law and jurisdiction) of the Shareholders' Agreement apply to this Deed as if those provisions had been set out expressly in this Deed, which will take effect from the date set out above.



16  
THE SCHEDULE

DETAILS OF NEW SHAREHOLDER

Name :  
Registered number (if a company) :  
Country of Incorporation (if a company) :  
Address :

EXECUTED by the parties as a deed

Signed by

A handwritten signature in black ink, appearing to be "L. S. Arun" or similar, written over a horizontal line.

for and on behalf of [ ]