



### The Landsbanki Freezing Order 2008

Her Majesty's Treasury issue this Notice to provide further guidance in relation to the Landsbanki Freezing Order 2008<sup>1</sup> ('the Order').

#### Outline

1. This guidance provides further information about the effect of the Order. It should be read in its entirety by anyone with concerns about a particular transaction. However, some general points should be noted.
2. The Order is specific to Landsbanki and does not freeze the funds of any other Icelandic banks. It does not affect Icelandic companies with no links to Landsbanki.
3. The Order was made on 8 October 2008 because of the Treasury's concerns that action to the detriment of the UK economy (or part of it) had been taken or was likely to be taken by certain persons, namely Landsbanki Islands hf. ('Landsbanki') and certain Authorities and the Government of Iceland involved in taking decisions in relation to Landsbanki. Its purpose is to help safeguard the UK economy by freezing assets of Landsbanki in the UK.
4. This action was deemed necessary because the emergency nationalisation law passed in Iceland on 7 October 2008<sup>2</sup> meant that UK creditors' rights could be prejudiced compared with other creditors. The Icelandic government had been unable to clarify the position of UK creditors in the administration process and there was therefore a threat to UK economic interests.
5. Freezing provisions: The Order places a freeze on funds owned, held or controlled by Landsbanki and funds relating to Landsbanki owned, held or controlled by certain Icelandic authorities and its Government. These are defined in the Order as "frozen funds".
6. Prohibitions on making funds available: This Order works in a different way to, and has a more limited effect than, financial sanctions regimes, because the prohibition on making funds available only applies to

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<sup>1</sup> S.I. 2008/2668

<sup>2</sup> Act no. 125/2008 on the Authority for Treasury Disbursements due to Unusual Financial Market Circumstances

“frozen funds” (as defined in paragraph 5 above) rather than all funds. This ensures that the Order only relates to the movement of Landsbanki assets (including debts owed to Landsbanki).

7. As the Order does not relate to funds other than frozen funds (i.e. Landsbanki funds), it does not restrict normal commercial transactions between the UK and Iceland, other than those involving such frozen funds. Furthermore, as it applies primarily in the UK (see below for further details) the Order itself does not prevent all flows of funds to or from Landsbanki.
8. Under the Order, the Authorities and the Government of Iceland are included as “specified persons” for the purpose of the prohibitions. The effect of this is not to freeze Icelandic Government assets in the UK or to prevent all payments from the UK to the Icelandic Authorities. It applies to the Authorities and the Government of Iceland to the extent they are acting in respect of funds relating to Landsbanki.
9. As indicated in previous guidance, the Order does **not** freeze the assets of subsidiaries of Landsbanki in the UK.
10. The prohibitions bind natural and legal persons (e.g. companies) within the UK, and UK nationals (including UK companies) abroad.
11. Non-UK companies are only bound by the Order for activities within the UK, e.g. a UK branch of a non-UK company is bound by the prohibitions. Branches elsewhere are not bound.
12. Furthermore, UK nationals working for non-UK companies abroad are not bound to the extent that the “person” performing the activity in question is the non-UK company abroad.
13. Landsbanki Islands hf. is an Icelandic company. Therefore, the prohibitions apply to it in relation to actions in the UK, but not to actions in Iceland or other non-UK branches.

### **Frozen funds**

14. “Funds” is defined in article 2 of the Order, and this should be referred to for any individual case. It is important to note that it is a wide definition and includes (amongst other things) gold, cash, cheques and deposits, debts and debt obligations, securities and debt instruments.
15. Examples of “frozen funds” would be:
  - Cash held by Landsbanki;
  - A debt owed to Landsbanki;
  - Interest due to Landsbanki;
  - A contractual payment due to Landsbanki;
  - Securities in a third party owned or held by Landsbanki;
  - Funds in accounts in the name of Landsbanki.

16. Examples of things which are not “frozen funds”

- Debt instruments and other securities issued by Landsbanki;
- Debts owed by Landsbanki to a third party;
- Funds owned held or controlled by a subsidiary of Landsbanki.

17. Accounts held at Landsbanki are a special case. They are not “frozen funds” insofar as the customer’s account is a debt owed to it by the bank. However, for Landsbanki to make payment in the UK, it would need to deal with frozen funds and can only make payment under licence (see licence L2 issued on 13 October 2008).

### **The Prohibitions**

18. There is a general prohibition on dealing with frozen funds.

19. This means that persons in the UK and UK persons abroad are prohibited from using, altering, moving or transferring funds which are owned, held or controlled by Landsbanki (or another specified person if the funds relate to Landsbanki).

20. There is a prohibition on making **frozen** funds available to or for the benefit of Landsbanki (or another specified person). As noted above, this prohibition works differently to those under financial sanctions regimes. It is a prohibition on making frozen funds available to Landsbanki (or another specified person) i.e. it only applies to funds owned held or controlled by Landsbanki (or another specified person if the funds relate to Landsbanki). (See the examples above of “frozen funds”).

21. There is also a prohibition on making frozen funds available at the direction or instruction of Landsbanki (or another specified person). Again, this only applies in relation to “frozen funds”.

22. The final point to note in relation to the prohibitions is that as well as being backed by criminal offences, the prohibitions are supplemented by an offence of engaging in an activity knowing or intending that it will enable or facilitate the commission by another person of an offence (‘the anti-facilitation measure’). As the anti-facilitation measure only applies where the other person is being enabled or facilitated in the commission of an offence, it does not apply where the other person would not, in any event, be committing an offence.

23. If a person is not a UK person, and is performing actions outside the UK, that person is not committing an offence. Therefore, there is no question of enabling or facilitating that person to commit an offence.

24. As noted above, Landsbanki is an Icelandic company, not a UK company. Its actions in the UK are within the scope of the Order, but it is not prohibited from any activities taking place outside the UK.

## **Examples of how the prohibitions apply**

25. Landsbanki has a branch (not a subsidiary) in London ('the London Branch'). The London Branch is performing activities in the UK, and is therefore subject to the prohibitions.
26. Therefore, the London Branch is prohibited from dealing with frozen funds (including its own funds), without a licence.
27. A licence has been granted L2 to allow the London Branch to carry out commercial finance, asset based lending, and capital markets and fixed income activities as well as operating customers' business accounts and carrying out related activities (see paragraph 10 of licence L2).
28. A financial institution holding an account for Landsbanki in the UK (and a UK financial institution holding such an account in a branch elsewhere) is prohibited from dealing with that account without a licence.
29. Licence L2 gives broad exemptions to financial institutions to enable them to carry out banking activities within the UK (see paragraph 11 of licence L2)

## **Other licensed activities**

30. Licence L2 permits any person to pay (frozen) funds into the London Branch or another account of Landsbanki within the UK (see paragraph 7 of licence L2).
31. As debts due to Landsbanki are "frozen funds", this enables any UK person to discharge a debt due to Landsbanki by paying that debt into a relevant account in the UK.
32. Licence L2 also permits any person to whom the prohibitions apply to exercise rights of set-off; termination; closing out; netting, reimbursement or indemnity (see paragraph 8 of licence L2).
33. A resulting debt due to Landsbanki can therefore be paid in accordance with paragraph 8 of licence L2.

## **Correspondent banking relationships**

34. If a UK financial institution has a correspondent banking relationship with Landsbanki, the following points are relevant:
35. An account in the UK in the name of Landsbanki is subject to the prohibitions but there are broad exemptions for financial institutions in licence L2.
36. UK financial institutions can pay their own funds into accounts in their name held with Landsbanki (whether UK, Iceland or elsewhere) as these are not frozen funds.
37. A UK financial institution can receive payments of frozen funds from Landsbanki into a UK account (under licence L2).

38. An account with Landsbanki in Iceland in the name of the UK financial institution is not subject to the prohibitions – the account is a debt to the UK financial institution and as the account is outside the UK, Landsbanki is not prohibited under the Order from making payments.

### **Settlement systems**

39. Landsbanki London Branch is permitted to give instructions to clearing, payment and settlement systems and to carry out transactions through such systems (and the prohibitions do not apply to third parties dealing with the London Branch with regard to these matters) (see paragraph 10.5 of licence L2).

### **Other activities which are not prohibited**

40. A variety of activities are not prohibited, either because they do not relate to “frozen funds” or they are not being performed by a person who is subject to the prohibitions:

41. As noted above, there is no prohibition in relation to the Authorities or the Government of Iceland in relation to funds other than “frozen funds” (i.e. Landsbanki-related funds).

42. A UK national is not prohibited from paying funds into Landsbanki (whether in the UK, Iceland or elsewhere), provided that the funds are not “frozen funds”.

43. Activities taking place in Iceland (or elsewhere outside the UK) are only subject to the prohibitions if (a) frozen funds are involved and (b) a UK person would be carrying out the activity in question.

44. Any enquiries on this Notice should be directed to the Treasury’s Asset Freezing Unit at:

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45. All media enquiries should be directed to the Treasury’s Press Office on 020 7270 4558,

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