Banque Havilland, Luxembourg

- Type of restructuring:
  (Avoiding) bankruptcy, Internal restructuring
- Employees before restructuring:
  50-249
- Employees after restructuring:
  50-249
- Nace/Sector:
  Financial services
- Country:
  Luxembourg
- Date:
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- Keywords:
  Recession/Crisis

Abstract

After the major banking and financial crisis in Iceland, in October 2008 Kaupthing Bank Luxembourg S.A. entered a suspension of payment procedure. The administrators launched a tender to sell the bank's activities and assets. The offer submitted by the Rowland family was accepted. The new bank, Banque Havilland S.A., offers private banking services. The restructuring resulted in staff cuts of 150, a reduction in assets and profitability. Although clients' deposits were preserved, there was a radical change in business model. The bank currently employs around 50 in Luxembourg, and several more in subsidiaries.

Organisational profile

Background information on the company

Banque Havilland S.A. (before restructuring it was Kaupthing Luxembourg S.A.) is a bank with private banking services. It offers banking services, investment management and wealth structuring. Banque Havilland S.A. is 100% owned by the Rowland family. It has a representative office in London and a subsidiary in Monaco: Monaco employs ten people and the London office two. Banque Havilland, moreover, has an additional subsidiary, BlackFish Capital Management (BCM), a UK-based investment firm providing support to the bank's asset management division. BCM employs just a few persons. The number of employees in Luxembourg is slightly over fifty persons. In total, these entities, which are all owned by the Rowland family, have less than a hundred employees. The education and professional background of Banque Havilland's employees in Luxembourg is diverse, with 90% of all employees holding a university degree.

The activities of Banque Havilland qualify as 'international'. The bank has entities abroad and, like other banks established in Luxembourg, the bank drains clients from abroad, including from Nordic countries (former clients of Kaupthing Bank).

As will be shown below, the bank used to meet the employee number threshold for having a work council. The bank currently has workers' representatives. ALEBA, the trade union for bank and insurance employees in Luxembourg, was notably involved in the negotiation of the two social plans implemented during the restructuring process.

Banque Havilland S.A. had on 10 July 2009, date of the opening of the bank, a starting balance of €1,305 million. It appears from the annual consolidated accounts, as available on the website of the Luxembourg commercial register (*registre du commerce*), that:

- The net profits after tax for the year 2009 are€6.8 million;
- The total assets for the year 2009 are €1,272.3million;
- The net profits after tax for the year 2010 are€16.2 million; and
- The total assets for the year 2010 are €935.5million.

The Chief Executive Officer of Banque Havilland, Jean-François Willems (35 years old) obtained a Business Administration degree from the University of Liège, Belgium, in 1999. He then joined PriceWaterhouseCoopers (PWC) Luxembourg, where he had the opportunity to actively participate in the development of the corporate finance activities of the company. His experience at PWC includes international work: a nine-month secondment in Frankfurt, Germany.

Mr Willems joined Kaupthing Bank Luxembourg S.A. in 2007, where he was in charge of investment banking and corporate finance. Following the application of the bank for suspension of payment, Mr Willems actively participated in the restructuring process of the bank, a long-haul and intense working experience that lasted approximately nine months. He became CEO of Banque Havilland S.A. following the arrest and subsequent dismissal of functions of Mr Magnus Gudmundsson, former CEO and founder of Kaupthing Bank Luxembourg S.A.

The interviewed employee, Marlène Colmant, started working for Kaupthing Bank Luxembourg S.A. in 2003. Back then, the bank numbered around 50 employees, which corresponds to the number of employees Banque Havilland S.A. has today. Ms Colmant is a French citizen, commuting to Luxembourg on a daily basis. She is 41 years old and holds a degree in English, from a French university. She complemented her education by following several specific training programmes, which brought her into the banking sector. She had the status of workers' representative, following the social elections of November 2008 until November 2009, when she resigned from this post. She explained that the redundancy programme contained, for each dismissed employee, some financial support for education, some additional support for those who did not find a new job within a certain period of time, as well as some financial support for workers' children. The redundancy programme also included support for finding a new job.

Background to restructuring events

Kaupthing Bank was an international Icelandic bank, headquartered in Reykjavík, Iceland, one of the three largest banks in Iceland. On 9 October 2008, following a major banking and financial crisis in Iceland, which involved the collapse of all three of the country's major commercial banks, the Icelandic Financial Supervisory Authority took control of Kaupthing Iceland. It assumed the power of the shareholders of the bank and appointed a Resolution Committee to replace the Board of Directors, which was granted a moratorium on payments to creditors. The United Kingdom government immediately froze the British assets of one of the failed Icelandic banks, including Landsbanki and also seized the assets of Kaupthing Singer & Friedlander, the British subsidiary of Kaupthing Iceland, on the basis of anti-terrorism law.

Kaupthing Bank Luxembourg S.A. found it impossible to refinance itself, notably as a consequence of the freeze in the UK, which placed the bank in a cross-default situation towards its own creditors. Moreover, Kaupthing Bank Luxembourg S.A. was put in a situation of cross-defaults of bonds issued by it, following what the bank's creditors would have been entitled to immediately require the execution of their bonds. Under such circumstances, Kaupthing Bank Luxembourg's Board of Directors immediately applied for and obtained on 9 October 2008 its admission to the regime of suspension of payment (*sursis de paiement*), by order of Luxembourg's District Court.

Restructuring processes

The launch of this suspension of payment procedure involved the suspension of all payments by the Kaupthing Bank Luxembourg S.A. (hereafter 'the Bank'), including any withdrawal of deposits. The Bank's management and other organs remained in place during the procedure, but all its activities became supervised by the Court appointed administrators, PricewaterhouseCoopers S.à.r.l., represented by Emmanuelle Caruel-Henniaux and Franz Fayot. (The role of the Administrators is, according to the provisions of the Luxembourg law of 5 April 1993 on the financial sector, to control the management of the assets of the Bank and especially to protect the Bank's assets, safeguard the clients' deposits and ensure equal treatment of creditors).

The administrators immediately began to explore, with the support of the management, all possible ways out of the Bank's suspension of payment and eventually launched a tender procedure to sell the Bank's activities and assets. Following the expression of interest of a Libyan sovereign fund, the administrator prepared a first restructuring plan, which was rejected by the creditors on 16 March 2009.

In the course of April 2009, two additional bidders expressed their interest to the administrators and the Bank. After discussions with all relevant stakeholders, including among others the Luxembourg State, the Belgian State, the *Association de Garantie des Dépôts du Luxembourg* (**AGDL**), who operates Luxembourg's deposit protection scheme, and the interbank creditors, it became clear that the offer submitted by the Rowland family would most likely allow the successful restructuring of the Bank.

The administrators thus prepared and submitted to the Court a second updated restructuring plan, which was eventually accepted by a double majority of the Bank's interbank creditors on 5 July 2009 and was validated by the Luxembourg District Court on 8 July 2009. As the restructuring plan involved aid subvention by the Luxembourg and Belgian states (see below for more details), the intervention was approved by the European Commission, under the compulsory State Aid notification regime, by a decision dated 9 July 2009.

Overall, there was no real 'plan' for restructuring as the decision to restructure, which started by the application for suspension of payment procedure, was taken in emergency, in the context described above. The managers and administrators followed the legal procedure, whose central element consisted in obtaining the creditors' agreements on the restructuring plan, to be approved by the creditors. The restructuring 'plan' in the present case study is more of a formal legal requirement rather than a plan aiming at implementing a new vision for the future.

The second restructuring plan envisaged a de-merger of the Bank into:

- An entity that would continue its banking activities– which later became Banque Havilland S.A.; and
- A special purpose vehicle (**SPV**) thatwould hold assets and liabilities, for which no buyer was found.

The private and deposit banking activities in Luxembourg were taken over by the UK investment firm BlackFish Capital Management. The new bank, Banque Havilland S.A., had a starting balance of €1,305 million, of which €750-800 million represented the Bank's existing commitment to the Central Bank of Luxembourg. The buyer contributed to €50 million of cash as capital increase. The transfer covered the Bank's entire infrastructure (assets, deposits, etc.), including other infrastructure such as the IT systems and headquarters (premises).

All the Bank's other assets (€1,206 million), corresponding principally to the Bank's commercial lending operations, for which no buyer was found during the restructuring procedure, were transferred into the SPV, the liabilities relating to which consisted essentially in the Bank's debts towards the Luxembourg State, the AGDL, and the Bank's interbank creditors. The SPV took the assets, not infrastructure or employees. It is run by a committee appointed by creditors with a stake in the SPV and is managed on a day-to-day basis by a dedicated team of professionals at Banque Havilland. As of today (mid-2012) the creditors have collected approximately 50% of their initial exposure.

As mentioned above, the updated restructuring plan was notably based on state intervention by the Luxembourg and Belgian governments, whose main purpose was to cover potential withdrawals by depositors who, at the end of the suspension of payment period, would be entitled to seek full reimbursement of their deposits. The intervention took the form of a loan from the Luxembourg state to the Bank of €320 million (made up of the liquidity shortfall of €310 million plus a margin of €10 million), which was to be paid in two tranches, to be granted to the Bank immediately after the split. The loan, which did not bear interests, was repaid immediately, the state accepting bonds issued by the SPV as way of payment. As the bulk of the deposits stem from the Bank's Belgian activities, the loan from the Luxembourg State was granted in cooperation with the Belgian authorities, who agreed to extend to the Luxembourg state a loan totalling €160 million.

The restructuring involved several staffing cuts. Reductions in staff was actually one of the conditions set up by the buyer for taking over the Bank's activities. These cuts occurred in several stages:

- From the moment of payment suspension on, whenapproximately 40 out of a total of 200 employees left the bank of their ownwill;
- A first and a second formal cut from 160 to 120 employeesand from 120 to 80 employees respectively occurred following the opening of thenew bank, on the basis of a redundancy programme (*plan social*). Theredundancy programme is activated, under the Luxembourg law on collectivedismissals, when there are at least seven cases of dismissals during a 30-dayperiod or nine during a three-month period, for reasons unrelated to theemployee's behaviour. In the programme, an identification of the employeeswho will be dismissed is made on the basis of predefined criteria. Packages thatare offered to them are negotiated with employee representatives and relevanttrade unions. Packages include financial compensation as well as other relevantbenefits, such as training with the view of finding a new position.
- Twelve months later, a final cut from 80 to 50 employeesoccurred, on the basis of a voluntary scheme: a private offer was made to thoseemployees who wished to leave the company on a voluntary basis (compensation,benefits, etc.).

Finally, the restructuring process entailed a radical change of business model and philosophy imposed by the buyer. As Jonathan Rowland, son of Banque Havilland's sole shareholder, David Rowland, put it at the opening event of Banque Havilland:

'The family has a wealth of investment experiencespanning forty-five years and has been involved in operating businesses aroundthe world. I am keen to look to the future with a highly motivated team andconsider Banque Havilland as a challenging opportunity. The Bank will be runconservatively as financial conservatism has always been a hallmark of thefamily'.

It appears from this that the new owners of the bank imposed a new mission statement of the bank, based on risk-reduction and sound management.

Challenges and constraints of restructuring

The restructuring and its aftermath entailed additional difficulties, some of which were specifically related to the banking sector and the financial crisis.

The first difficulty was the radical change of business model and philosophy imposed by the buyer. According to Mr Willems, this u-turn policy was difficult to put into place, perhaps partly because 80-85% of the new bank's employees were former Kaupthing Luxembourg's employees, who were used to working in a Scandinavian work environment and under a philosophy that encourages risk-taking.

Two additional events shocked the remaining workforce of the bank:

- Luxembourg prosecutors performed several searches at thebank premises following an international letters rogatory (*commissionrogatoire internationale*) initiated by Icelandic prosecutors, end of2009/beginning of 2010, as reported in the media.
- The holding in custody of the former CEO and founder ofKaupthing Bank Luxembourg S.A., Magnus Gudmundsson, following an invitation ofIcelandic authorities to provide explanations. This detention led to theimmediate removal of Mr Gudmundsson from his CEO functions, as announced in thepress on 7 May 2010.

As was evident from the employee interview, former employees of Kaupthing Bank Luxembourg S.A. had a strong feeling of loyalty towards Mr Gudmundsson and more generally towards the bank itself, which made these events particularly painful for them.

Moreover, Mr Willems explains that the collective dismissal procedure for economic difficulties, including the setting up of a redundancy programme, is a complex process to manage, due to the compulsory social dialogue that must occur between the company's management, the trade union involved – ALEBA – and the workers' representatives (work council). According to him, the redundancy programme that was put forward was reasonable, including the fair treatment of people affected by collective dismissals, which ended up to the approval of the programme by all parties around the negotiation table. The package notably included longer notice periods for job searching and a training plan.

An additional element that did not facilitate the restructuring process related to social law in Luxembourg is the five-year social election that took place in November 2009. Following this election, six workers' representatives (*délégués sociaux*) and six deputy worker's representatives were elected, all of whom were immune from dismissal. This was seen as problematic by the management (see below for more details on this issue).

Restructuring advice and support

Financial and non-financial support was an integral part of the restructuring plan. As mentioned above, the updated restructuring plan was notably based on a state intervention from Luxembourg and Belgium, whose main purpose was to cover potential withdrawals by depositors who, at the end of the suspension of payment period, would be entitled to seek full reimbursement of their deposits. As the bulk of the deposits stem from the Bank's Belgian activities, the loan from the Luxembourg state was granted in cooperation with the Belgian authorities, who agreed to extend to the Luxembourg state a loan totalling €160 million.

This also means that the bank benefitted from external expertise, including expertise from high-profile lawyers and other financial experts.

Outcomes of restructuring

On the one hand, the outcome of restructuring may be qualified as overall positive as the main purpose of the restructuring process – preserving the deposits of clients – was achieved. On the other hand, the restructuring ended in a reduction of the Bank's assets, profitability as well as of its number of employees.

Mr Willems reports that, during the successive staff cuts, a list of approximately 15 key people circulated among the management, identifying the persons who absolutely needed to stay for the good order of the restructuring. The purpose of this list was to avoid the departure of these key workforce elements.

With respect to employees' reaction towards the restructuring, Mr Willems explains that the process was emotionally painful for them, which may be explained by the fact that there was substantial employee loyalty towards the former CEO and founder of the Bank, Mr Gudmundsson, and towards the Bank in general. Moreover, numerous employees were left inactive during the process, due to the freeze of the bank's activities and assets, which means they had no work to do and this was very difficult for them.

Ms Colmant confirms that the process was emotionally painful for employees, highlighting that tensions arose among employees for several reasons, notably due to the the fact that some workers' representatives were immune from staff-cutting. Another example is the suspicion arising in the context of collective dismissals, where employees felt that there would not be enough work for everyone, creating a difficult work atmosphere. Ms Colmant herself had her personal doubts, of course. In addition, employees started lacking motivation as business fell (payment suspension), which was difficult from a psychological viewpoint.

One remarkable element is the transparent communication policy implemented from the very first day of the restructuring process by the management, during the whole process until its end. On an almost daily basis, the CEO or Mr Willems would go and talk, generally early in the morning in the Bank's canteen, to the employees about successive small achievements and failures of the previous day/night. This may also explain the loyalty of employees to the Bank and more specifically to the Mr Gudmundsson and to the management. Ms Colmant confirms this and said that despite the tensions, there were strong bonds between employees, the bank and the management.

With respect to information of clients, during the nine months of payment suspension there was a permanent communication with the clients, namely with the 'K Group' (Belgian clients), who were very supportive, according to Mr Willems.

At the beginning of Kaupthing Bank time, Ms Colmant was responsible for assets management –pricing, update of prices, creation of securities (*titres*), and so on. The bank's development largely confined Ms Colmant role to fund custody (settlements, payments) and corporate actions.

Nevertheless, during the suspension of payments' period, she got promoted and became responsible for back office transactions on securities. Following the restructuring, her weight within the bank increased once more by being responsible for the whole back office. She describes her job as being multi-task, and explains this is due to the reduced current number of employees. When Kaupthing Bank Luxembourg S.A. counted almost two hundred employees, her job was narrower than it is today.

Following the restructuring, the scope of activities of Banque Havilland S.A. was reduced in comparison to the scope of activities of Kaupthing Bank Luxembourg S.A. Kaupthing Bank Luxembourg S.A. covered not only private banking, but also establishment and management of holding companies and corporate and investment banking services. It also accepted online deposits from retail banking customers in Luxembourg and Belgium. The corporate philosophy also changed drastically following the restructuring.

From the point of view of Ms Colmant, the restructuring had several impacts on work organisation:

- The restructuring changed work organisation: employeeshad to learn and develop new skills, perform new tasks and take additionalresponsibilities. This is a direct consequence of the successive waves ofcollective dismissals: some people who performed some functions left the companybut these functions had to be taken over by those who remained in the bank. Forinstance, Ms Colmant faced an increase of responsibilities and a diversificationof these. Regarding the loss of expertise following staff departure, as statedabove, the management had a list of key-people who were all successfullyretained through the restructuring period. More generally, the bank has beensuccessful in conveying its corporate message to the people who were needed forbuilding the new bank. During downsizing, the bank hardly lost any staff who themanagement wanted to retain.
- Relationship with management changed as top managerschanged. This is all the more true due to the fact that the philosophy of thebank changed, which implied for some employees a change of behaviour (lessrisk-taking). Ms Colmant sees this as a positive element.
- The opening of the new bank involved the implementationof new procedures and processes, which was for her a source of excitement and ofmotivation.
- The overall environment of her department changed: it isnow less international than it was before, even if the work is still carried outin English.
- The restructuring allowed her personally to gain inconfidence, as she felt trusted and appreciated by the management with theincrease in her responsibilities.

Commentary

Several lessons may be drawn from the restructuring of Kaupthing Bank Luxembourg S.A. and the creation of Banque Havilland S.A.:

- The applicable Luxembourg legal framework is not adaptedto companies dealing with numerous stakeholders from various backgrounds, suchas banks and other financial institutions.
- The fact that the Bank was a small bank somehow'facilitated' the process –although the process was far frombeing easy, as approximately 20% of the employees hold 80% of the informationneeded for going through the restructuring process. This makes it relativelyeasy to retrieve information that is necessary to go through the process, suchas figures for setting up the restructuring plan, details on employees,etc.
- The restructuring process was so complicated (filing forbankruptcy, old fashioned procedure not adapted to modern finance and banking,no precedent, urgency and deadlines of the procedure, dealing with hundreds ofcreditors, and the like) that, should the management/the administrators haveknown the difficulties they would have to face beforehand, they would havesimply not gone through the search of a buyer and applied for bankruptcy. Itappears from this case study that it would be worth rethinking restructuringprocedures as currently applicable to the financial sector.

It is the impression of the author of this report that one of the main factors explaining why the management fought so hard to go through the whole restructuring process, despite the enormous difficulties, are primarily the personality of some key persons in the management team, including the current CEO, Mr Willems, and secondly, (the fact that the Bank was a small bank, whose development and success is partly attributed to the personal efforts of the former CEO and founder of the Bank, Magnus Gudmundsson

Mr Willems furthermore illustrates that the legal procedure, whose central element consisted in obtaining the creditors' agreements on the restructuring plan, was not adequate for the Bank's situation, including the following elements:

- After the rejection of the first restructuring plan, theLuxembourg District Court granted an extension to the suspension of paymentproceedings in order for the Administrators to prepare a second restructuringplan and to negotiate with other potential investors. The extension wasconsidered pragmatic, but attracted some debate given the absence of anyprovisions in Luxembourg law allowing such extension.
- The Bank's lawyers succeeded in obtaining thelimitation of the scope of the creditors' agreement required underLuxembourg law to the agreement of the so-called 'RestructuredCreditors' – the main creditors of the banks – generallyinstitutions loaning money to banks against remuneration. This demonstrates thatthe legal requirement to obtain the creditors' agreement upon doublemajority vote is not adapted to a bank's life, where numerous stakeholdersof diverging nature are involved. This issue was debated before the DistrictCourt first, who rejected it, and then was appealed before the *Courtd'Appel de Luxembourg*, who eventuallydecided that the Administrators must seek theadherence of a limited number of creditors on 28 January 2009.
- The suspension of payment has, under Luxembourg, theconsequence of isolating the entity requesting suspension from the rest of itscompany group (among others). This prevented the execution of intra-group debtscheduling, which complicated the restructuring process, according to MrWillems.

Ms Colmant does not see how things could have been carried out otherwise. She explains that restructuring procedures such as the one undergone by the bank must entail some unexpected elements. She believes the management and the administrators have done a huge job in saving the bank.

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Information sources

Interviews

Jean-François Willems, General Manager, and Marlène Colmant, employee, Banque Havilland

Company website

http://www.banquehavilland.com/

Secondary sources

Publicly available information, stemming from press articles (www.finanznachrichten.de, www.efinancialnews.com, www.guardian.co.uk, www.news-banque.com, www.nytimes.com, www.paperjam.lu, www.lequotidien.lu), online newsletters (www.linklaters.com) and press releases available on the website of Banque Havilland.

The European Commission's State aid decision N° 344/2009 – Luxembourg and N° 380/2009 – Belgium, on restructuring aid for Kaupthing Bank Luxembourg S.A., publicly available on the website of the Commission.

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