

# **Act No. 125/2008 on the Authority for Treasury Disbursements due to Unusual Financial Market Circumstances etc.**

10/8/08

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## **Act No. 125/2008**

### **on the Authority for Treasury Disbursements due to Unusual Financial Market Circumstances etc.**

#### **CHAPTER I**

#### **Authority for Treasury disbursements due to unusual financial market circumstances**

##### **Article 1**

Under unusual and extraordinary circumstances on the financial market, the Minister of Finance, on behalf of the Treasury, is authorised to disburse funds in order to establish a new financial undertaking or take over a financial undertaking or its bankrupt estate, either wholly or in part.

Unusual and extraordinary circumstances, cf. Paragraph 1, refers to particular financial and/or operational difficulties experienced by a financial undertaking, including the probability that it will not be able to abide by its commitments vis-à-vis customers or creditors, the premises for revocation of its operating license probably exist, or there is a likelihood that the undertaking cannot meet the minimum capital requirements, and other measures adopted by the Financial Supervisory Authority are not likely to limit the damage or risk of damage to the financial markets. Unusual circumstances also, for instance, refers to the situation where a financial undertaking has requested or been granted a moratorium on payments or composition of creditors or applied for insolvency proceedings or been declared bankrupt.

The provisions of the Act on Financial Undertakings do not apply to the Government's authorisation to acquire a qualifying holding in a financial undertaking in accordance with this Act. The provisions of the Act on Securities Transactions pertaining to mandatory takeover bids and prospectuses do not apply to the acquisition and handling of Government holdings in financial undertakings in accordance with this Act. The provisions of the Act on the Legal Status of Employees upon Change of Ownership of an Undertaking do not apply to the takeover of a financial undertaking, in whole or in part, in accordance with this Act. Upon the establishment of a limited liability company for the purpose of taking over, in whole or in part, the operations of a financial undertaking, the said company shall be exempt from the provisions of the Act respecting Public Limited Companies concerning the minimum number of shareholders pursuant to Article 3, Paragraph 2 and the provisions of Articles 6 – 8 of the same Act concerning an expert report. An undertaking established in accordance with this Article holds an operating licence as a commercial bank pursuant to the provisions of Article 4, Paragraph 1, Subparagraph 1 of the Act on Financial Undertakings.

##### **Article 2**

Under the unusual circumstances specified in Article 1, the Minister of Finance, on behalf of the Treasury, is authorised to contribute to a savings bank an amount up to 20% of the book value of its equity. In return, the Treasury shall receive guarantee capital certificates or shares in the savings bank, in accordance with the capital contribution. The nominal amount of the guarantee capital shares issued to the Treasury shall equal the capital contribution, and enjoy the same rights as do other guarantee capital holdings in the savings bank concerned. The Financial Supervisory Authority may set further rules regarding trade in guarantee capital shares in such cases. In the case of a savings bank that has been converted into a limited liability company in accordance with the provisions of the Act on Financial Undertakings, the new share capital shall constitute the same proportion with respect to other issued share capital as the capital contribution does with respect to the book value of the company's equity. This provision applies equally to savings banks with guarantee capital and to savings banks that have been converted into limited liability

companies in accordance with the provisions of this Act, as appropriate. With the approval of the Board of the savings bank, it is permissible to deviate from the provisions of Article 66 of the Act on Financial Undertakings pertaining to calling meetings of guarantee capital holders and their priority rights to increases in guarantee capital or share capital.

## **CHAPTER II**

### **Amendment to the Act on Financial Undertakings, No. 161/2002, with subsequent amendments**

#### **Article 3**

Article 9, Paragraph 1, item 6 shall read as follows: if measures adopted on the basis of the provisions concerning Financial Supervisory Authority intervention in the assets, rights and obligations of a financial undertaking pursuant to Article 100 (a) have not been successful or if a ruling has been rendered concerning the dissolution of the undertaking pursuant to Chapter XII.

#### **Article 4**

Article 70 shall be amended as follows:

a. Paragraph 2 shall be amended to include a new subparagraph, which shall read as follows: in case of involvement by the Treasury pursuant to Article 2 of Act on the Authority for Treasury Disbursements due to Unusual Financial Market Circumstances etc.

b. Paragraph 3 shall be amended to include two new subparagraphs, which shall read as follows: When the Treasury is a guarantee capital holder in a savings bank, the Minister of Finance, on behalf of the Treasury, shall wield voting rights in proportion to the Treasury's holdings in the savings bank. The same shall apply to voting rights accompanying share capital holdings in a savings bank that has been converted to a limited liability company.

#### **Article 5**

A new article, Article 100 (a), shall be added after Article 100. It shall read as follows:

##### *Special measures*

The Financial Supervisory Authority may take special measures in accordance with the provisions of this Article if it considers such measures necessary in view of unusual circumstances or events, for the purpose of limiting damage or the risk of damage in the financial markets. Unusual circumstances or events refers to particular financial and/or operational difficulties experienced by a financial undertaking, including the probability that it will not be able to abide by its commitments vis-à-vis customers or creditors, the premises for revocation of its operating license probably exist, or there is a likelihood that the undertaking cannot meet the minimum capital requirements, and other measures adopted by the Financial Supervisory Authority are not likely to limit the damage or risk of damage to the financial markets. Unusual circumstances also, for instance, refers to the situation where a financial undertaking has requested or been granted a moratorium on payments or composition of creditors or applied for insolvency proceedings or been declared bankrupt.

In case of the circumstances or events specified in Paragraph 1, the Financial Supervisory Authority may call a shareholders' meeting or a meeting of guarantee capital holders. The Financial Supervisory Authority's representative shall chair the meeting and enjoy the right to speak and make proposals. Under these circumstances, the Financial Supervisory Authority is not bound by the provisions of the Act respecting Public Limited Companies or the financial undertaking's Articles of Association regarding calls to meetings, advance notice or deadlines for calls to meetings, or proposals for amendments to the Articles of Association.

If the circumstances are dire, the Financial Supervisory Authority may assume the powers of the shareholders' meeting or meeting of guarantee capital holders for the purpose of taking decisions on necessary measures, including limiting the decision-making power of the Board, dismissing the Board in whole or in part, taking over the operations of the financial undertaking in whole or in part, or disposing of such an undertaking in whole or in part, including merging it with another undertaking. Such measures shall not be subject to the provisions of the Act on Securities Transactions pertaining to mandatory bid obligations, nor shall they be subject to the provisions of the Act on Financial Undertakings pertaining to the advertisement of financial undertakings' mergers in the Official Gazette (Lögbirtingablaðið). The Financial Supervisory Authority is authorised to transfer all rights to the degree necessary in such instances. Should the Financial Supervisory Authority conclude that the merger of the undertaking concerned with another undertaking is the best means of protecting the interests that are at stake, the provisions of the Competition Act and the merger provisions of the Act on Financial Undertakings shall not apply to the merger. A decision by the Financial Supervisory Authority to take over the operations of a financial undertaking shall be notified

to the Board of the undertaking in question and shall be supported in writing. The Financial Supervisory Authority shall make the announcement public. If the financial undertaking operates branches or renders services in another country, such an announcement must be sent to the competent supervisory authorities in that country.

The Financial Supervisory Authority may, parallel to a decision made on dismissing the Board of a financial undertaking, decide to appoint a Resolution Committee comprised of five persons which shall have all the powers of the Board pursuant to the provisions of the Act on Public Limited Companies. The Resolution Committee shall undertake the affairs of the financial undertaking, including supervising handling of all its assets, and conducting its business operations. The Resolution Committee shall abide to and execute the decisions taken by the Financial Supervisory Authority pursuant to this provision. Articles 64 and 65 of the Act on Bankruptcy etc. shall not apply during the Resolution Committee's tenure according to this provision. At the same time the financial undertaking shall not be subject to enforcement pursuant to Act on Legal Execution or preliminary seizure pursuant to Act on Preliminary Seizure, Injunction etc.

If necessary, the Financial Supervisory Authority may limit or prohibit the disposal of the financial undertaking's capital or assets. The Financial Supervisory Authority is authorised to take custody of those assets that are to satisfy the financial undertaking's obligations and have their value assessed, and dispose of them as necessary for payment of accrued claims. The Financial Supervisory Authority may revoke sale of assets executed within one month prior to special measures taken by the Authority subject to this Article.

The Financial Supervisory Authority may demand that a financial undertaking apply for a moratorium on payments or request composition of creditors, in accordance with the provisions of the Act on Bankruptcy etc., cf. Chapter XII.A, if this is considered necessary in order to resolve the undertaking's financial or operational difficulties. The undertaking's selection of an administrator in the moratorium proceedings shall be confirmed by the Financial Supervisory Authority. The Financial Supervisory Authority may also demand that a financial undertaking be subjected to insolvency proceedings in accordance with the provisions of the Act on Bankruptcy etc.

This Article applies irrespective of whether the financial undertaking in question has requested or been granted a moratorium on payments, composition of creditors or applied for insolvency proceedings or been declared bankrupt. In such instances the Financial Supervisory Authority maintains every means to dispose of rights and obligations of the respective financial undertaking or bankrupt estate.

The provisions of Chapters IV-VII of the Administrative Procedures Act shall not apply to the proceedings and decisions made by the Financial Supervisory Authority in accordance with this Article.

The Director, employees, and members of the Board of the Financial Supervisory Authority are not personally liable for compensatory damages due to decisions made and actions taken in accordance with this Article.

The Treasury shall bear liability for expenses incurred as a result of actions taken on the basis of this Article, including expenses arising from insolvency proceedings, if such expenses are incurred.

## **Article 6**

Article 103 shall be amended to include a new paragraph, Paragraph 1, which shall read as follows:

In dividing the estate of a bankrupt financial undertaking, claims for deposits, pursuant to the Act on on Deposit Guarantees and an Investor Compensation Scheme, shall have priority as provided for in Article 112, Paragraph 1 of the Act on Bankruptcy etc.

## **CHAPTER III**

### **Amendment to the Act on Official Supervision of Financial Activities, no. 87/1998, with subsequent amendments**

#### **Article 7**

Article 8 shall be amended to include a new paragraph, which shall read as follows:

If a party, other than a financial undertaking, that is subject to official supervision experiences unusual financial and/or operational difficulties and the Financial Supervisory Authority considers it necessary to take special measures so as to limit damage or the risk of damage in the financial markets, the provisions of Article 100 (a) of the Act on Financial Undertakings shall apply to the authority of the Financial Supervisory Authority to intervene in its operations.

## **CHAPTER IV**

### **Amendment to the Act on Deposit Guarantees and Investor-Compensation Scheme, No. 98/1999, with subsequent amendments**

#### **Article 8**

Article 9 shall be amended as follows:

- a. Paragraph 1 shall be amended to include three new subparagraphs, which shall read as follows: The Fund is authorised to reimburse the value of deposits from its Deposit Division and to remit such payments in accordance with the terms applying to the deposit or securities; for example, as regards tied periods, termination, and the like. It shall always be permissible to reimburse the value of deposits, securities, or cash in Icelandic krónur, even though the original transactions may have been in another currency. The Fund is authorised to setoff the financial undertaking's claims against a customer's claim of disbursement.
- b. Paragraph 6 shall be amended to include two new subparagraphs, which shall read as follows: Nevertheless, deposits which Member Companies or their parent or subsidiary companies hold on behalf of depositors shall not be exempted from insurance pursuant to Paragraph 1. Deposits in UCITS, investment funds, investment funds of professional clients, pension funds and other funds for collective investment shall not be exempted from insurance pursuant to Paragraph 1, even though the custodian or management company of such a fund may be a Member Company or parent or subsidiary company of a Member Company.

#### **Article 9**

Article 10, Paragraph 3 shall be amended to include a new subparagraph, which shall read as follows: In case of insolvency, the claim of the Fund shall have priority as provided for in Article 112, Paragraph 1 of the Act on Bankruptcy etc.; otherwise, it is enforceable by execution without prior adjudication or settlement.

## **CHAPTER V**

### **Amendment to the Act on Housing Affairs, No. 44/1998, with subsequent amendments**

#### **Article 10**

A new item shall be added to Article 9, Paragraph 1, as a new item 3. It shall read as follows: To purchase or refinance bonds of financial undertakings which are secured against collateral in residential property.

#### **Article 11**

The following amendments shall be made to Article 15:

- a. A new paragraph shall be added, as follows: The Housing Financing Fund is authorised to purchase bonds of financial undertakings which are secured against collateral in residential property. Such transfers do not require approval of the debtor. The Minister may set further rules on such transfers in a regulation.
- b. The title of the Article shall read as follows: Housing Financing Fund lending. Purchase of bonds of financial undertakings.

#### **Article 12**

Following the words "Housing Financing Fund lending" in Article 29, the following text shall be added: purchasing bonds of financial undertakings which are secured against collateral in residential property.

#### **Article 13**

Following the words "Article 53" in Paragraphs 1, 2 and 6 of Article 48, this text shall be added: Article 15, Paragraph 2 and.

## **CHAPTER VI**

### **Entry into force**

#### **Article 14**

This Act shall enter into force at once. Without prejudice to the provisions of Article 8, Paragraph 2 of the Act on the Law and Ministerial Gazette and the Official Gazette, this Act shall be binding upon publication.

#### **Interim provision.**

This Act shall be revised by 1 January 2010.

*Adopted by the Althingi on 6 October 2008*

[Act No. 125/2008 on the Authority for Treasury Disbursements due to Unusual Financial Market Circumstances etc.](#) on pdf-format (42.4 kb)