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Committee Opinion

on the Bill of Legislation amending Act No. 161/2002, on Financial Undertakings, as subsequently amended.

From the Economic and Trade Committee

The Committee has discussed this issue and has met with Arnar Þór Sæþórsson and Jóhannes Karl Sveinsson of the Financial Supervisory Authority, Eva Margrét Ævarsdóttir of the Icelandic Bar Association, Jóna Björk Guðnadóttir of the Icelandic Financial Services Association, Erla S. Árnadóttir and Steinunn Guðbjartsdóttir from Glitnir's Resolution Committee, Steinar Þór Guðgeirsson from Kaupthing's Resolution Committee, Einar Jónsson and Lárentsínus Kristjánsson from Landsbanki's Resolution Committee and Áslaug Árnadóttir and Jónína S. Lárusdóttir from the Ministry of Economic Affairs. The Committee also received opinions from the Institute of State Authorised Public Accountants, the Financial Supervisory Authority, British and Dutch creditors of Landsbanki, the Icelandic Bar Association, procedural committee, the Icelandic Financial Services Association, Glitnir's Resolution Committee, the Central Bank of Iceland and the Consumers' spokesperson.

General

The Bill proposes amendments to Chapter XII of the Act on Financial Undertakings, which concerns the financial restructuring of financial undertakings, their winding-up and merger with other financial undertakings. Directive 2001/24/EC, on the reorganisation and winding up of credit institutions, was transposed into Icelandic law with Act No. 130/2004, which made two very significant changes to arrangements provided for in Chapter XII of Act No. 161/2002. In the first place, it introduced the principle that the authorities in the home Member State of a financial undertaking should alone take decisions on the financial restructuring and winding-up of a financial undertaking and its branches in other states of the European Economic Area. Secondly, the principle was introduced that a decision on the financial restructuring and winding-up of a financial undertaking and its branches in another state of the European Economic Area must comply with the law of that state where the financial undertaking has its headquarters (the home Member State). There are several exceptions to this rule. The Directive was intended to establish harmonised rules on the financial restructuring and winding-up of financial undertakings in the European Economic Area.

In the autumn of 2008, the Boards of Directors of the three largest banks in Iceland requested that the Financial Supervisory Authority take measures to take over the banks. Such circumstances were completely unforeseeable when the rules of Chapter XII of the Act on Financial Undertakings were adopted; they were extraordinary in that the entire financial system could be said to have collapsed with the failure of the three banks, while provisions of the Act assumed rather that one financial undertaking or part of the financial system might collapse, but that the situation in financial system would, however, be relatively normal.

Adoption of Act No. 125/2008, the so-called “emergency legislation”, made various

changes to provisions of the Act on Financial Undertakings. The Financial Supervisory Authority, for instance, was granted extensive authority to take over management of a financial undertaking under certain circumstances. The Authority was authorised to appoint five-person Resolution Committees, which were intended to exercise all the authorisations of the Boards of Directors of the financial undertakings taken over pursuant to the Public Limited Companies Act. According to the Act, the Resolution Committees were to deal with all matters of the financial undertaking, including supervising handling of its assets and its other operations. In addition, the Authority was authorised to take any other measures deemed necessary. According to the Act, the Financial Supervisory Authority was authorised, for instance, to limit or prohibit the disposition of an undertaking's funds and assets, as well as to take into its custody assets which should be used to meet the undertaking's obligations. The Financial Supervisory Authority was also granted authorisation to void sales of assets which had taken place one month before the Financial Supervisory Authority took action.

Further amendments were made to the Act on Financial Undertakings by Act No. 129/2008 (the November legislation), which provided authorisation for the administrator of a financial undertaking's insolvent estate to carry on provisionally certain activities subject to license, despite revocation of its operating license. Art. 2 of the Act provided for a financial undertaking to be able to be in moratorium for up to 24 months. The Article also provided for the Appointee in moratorium not to be liable for damages in connection with his/her decisions and actions as Appointee unless this concerned a violation committed deliberately or through gross negligence. Furthermore, Art. 2 prohibited the bringing of court actions against a financial undertaking in moratorium except in specified instances. In addition, a Temporary Provision authorised postponing court actions even though a moratorium had been granted prior to the entry into force of the Act. This Bill proposes to repeal most of the provisions of the November legislation.

The Bill is the result of an overall review of Chapter XII of the Act on Financial Undertakings and at the same time a response to the situation which has developed in Iceland. In drafting the Bill, emphasis has been placed, in particular, on ensuring equal treatment of creditors and that rules on restructuring and winding-up accord with comparable rules on other undertakings and individuals.

Principal points of the Bill

Art. 3 proposes amendments to Art. 98 of the Act. It is proposed that special rules on the length of a financial undertaking's moratorium be cancelled and the arrangement whereby the Appointee in moratorium is not liable for damages resulting from his/her actions unless the violation was committed deliberately or through negligence removed in accordance with provisions of the Act on Bankruptcy etc., No. 21/1991. It is also proposed that provisions prohibiting bringing suit against a financial undertaking during its moratorium be removed from the Act.

Art. 5, which has the heading “Delivery of a financial undertaking to a provisional Board of Directors”, proposes that a financial undertaking itself may take the initiative in requesting that the Financial Supervisory Authority take over control of the undertaking. The mandate of the undertaking's Board of Directors then becomes invalid and a provisional Board of Directors takes over which is intended to operate generally for three months or longer in certain instances. Temporary Provision IV provides for the Financial Supervisory Authority also to take the initiative in taking over control of a financial undertaking; it contains most of the authorisations introduced in Art. 100 a with the adoption of the emergency legislation but the provision is expected to be valid temporarily.

It is proposed that a financial undertaking be wound-up according to specific rules, although various provisions of the Act on Bankruptcy etc. will be applied to the winding-up