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Act No. 44/2009 amending Act No. 161/2002, on Financial Undertakings, as subsequently amended

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Article 1

The words “those serving as trustees in the bankruptcy of a financial undertaking”, in the third paragraph of Article 9 of the Act, cf. Article 1 of Act No. 129/2008, shall be replaced by: a provisional Board of Directors, winding-up committee handling the winding-up of a financial undertaking, or trustee managing its bankruptcy proceedings.

Article 2

The reference to Article 103 at the end of the fourth paragraph of Article 63 of the Act, cf. Article 5 of Act No. 130/2004, shall be replaced by a reference to Article 103 a.

Article 3

The following changes shall be made to Article 98 of the Act:

a. The third paragraph shall read as follows:

If a financial undertaking has been granted a debt moratorium, it is sufficient to publish a meeting notification, as provided for in the second paragraph of Article 13 and the fifth paragraph of Article 17 of the Act on Bankruptcy etc., in an advertisement in at least two daily newspapers in Iceland and in each state where branches have been operated.

b. The fourth, fifth and sixth paragraphs, cf. Article 2 of Act No. 129/2008, shall be deleted.

Article 4

Article 100 a of the Act shall have the following heading and read as follows:

Takeover of a financial undertaking by a provisional Board of Directors

If a financial undertaking faces such financial or operating difficulties as make it probable that it will not be able to fulfil its commitments or satisfy minimum capital requirements, its Board of Directors may voluntarily request that the Financial Supervisory Authority take over direction of the undertaking. The Financial Supervisory Authority must decide on such request without delay. If the Financial Supervisory Authority accedes to such request, the authority of the financial undertaking's Board of Directors becomes null and void, together with rights of shareholders or guarantee capital owners to take decisions in the undertaking's affairs by virtue of their holdings. The Financial Supervisory Authority shall concurrently appoint a provisional Board of Directors of three or five persons to exercise those rights provided for by law and the undertaking's Articles of Association which its Board of Directors and shareholders' meeting or meeting of guarantee capital holders would otherwise have held, cf. however Point 4 of the second paragraph of Article 101.

The provisional Board of Directors must, as soon as possible, take the necessary measures to obtain an overview of the financial undertaking's financial situation. While the provisional Board controls the undertaking the same limits shall apply concerning execution or other enforcement remedies against the undertaking as would apply under a debt moratorium. The provisional Board of Directors may only take actions which concern material interests of the undertaking if they are urgently necessary.

Control of the financial undertaking by the provisional Board of Directors concludes automatically once three months have elapsed from its appointment unless:

1. the provisional Board of Directors has already submitted a request for the winding-up of the undertaking to a District Court as provided for in Point 3 of the second paragraph of Article 101; in such case, its mandate remains in force until a final decision has been reached on the request;
2. the undertaking has been granted a debt moratorium or authorisation to seek composition with creditors; in such case the mandate of the provisional Board of Directors remains in force until one month after the expiry of such authorisation; or
3. the provisional Board of Directors has previously, with the approval of the Financial Supervisory Authority, held a shareholders' meeting or meeting of guarantee capital owners and a new Board of Directors has been elected for the company to replace the provisional Board of Directors.

If the control of a financial undertaking by a provisional Board of Directors concludes automatically when its mandate period expires, without the undertaking having been wound up, the undertaking's operating license shall be revoked immediately unless a new Board of Directors has been previously elected as provided for in Point 3 of the third paragraph.

Article 5

Article 101 of the Act shall have the following heading and read as follows:

Conditions for and initiation of winding-up proceedings

The estate of a financial undertaking may not be subjected to bankruptcy proceedings in accordance with general rules.

A financial undertaking shall be wound up:

1. at the request of the Financial Supervisory Authority, if the latter has revoked the undertaking's operating license or refused to grant a time limit as provided for in the fourth paragraph of Article 86, or the time limit granted pursuant to this provision has expired without the undertaking having increased its capital base above the minimum provided for in Article 84;
2. at the request of the Financial Supervisory Authority, the undertaking's Board of Directors or the provisional Board of Directors, if it must be wound up pursuant to its Articles of Association;
3. at the order of the undertaking's Board of Directors or provisional Board of Directors if it cannot completely fulfil its obligations to creditors when they fall due and the undertaking's payment difficulties are not deemed to be temporary in nature;
4. at the request of the undertaking's Board of Directors and with the approval of the Financial Supervisory Authority if a decision has been taken by a shareholders' meeting or meeting of guarantee capital owners to wind up the company with a motion to this effect supported by at least 2/3 of votes cast and by shareholders or guarantee capital owners controlling at least 2/3 of the share capital or guarantee capital represented by voters at the meeting.

A request for the winding-up of a financial undertaking must be submitted to the District Court where a civil suit against it would be heard in its legal venue. The request must be prepared and presented to the court in the same manner as a petition for bankruptcy proceedings.

Once the court has passed its verdict that the financial undertaking is to be wound up, a District Court judge will appoint a winding-up committee comprised of up to five persons. Upon its appointment the Committee shall assume the rights and obligations held by the undertaking's Board of Directors and shareholders' meeting or meeting of guarantee capital owners, cf. however, the third paragraph of Article 103. Unless otherwise provided for in this Act, the rules concerning trustees in bankruptcy proceedings shall apply to the winding-up committee, its tasks and the members of the committee.

The reference date in winding-up a financial undertaking shall be determined by the same rules as apply to general bankruptcy procedures; however, it may also be determined by the date upon which the Financial Supervisory Authority set the undertaking a time limit, pursuant to the fourth paragraph of Article 86, or

appointed it a provisional Board of Directors as provided for in Article 100 a, or the date when the District Court received a winding-up request, as provided for in the second paragraph, if no prior event has occurred to determine the reference date.

Article 6

Article 102 of the Act shall have the following heading and read as follows:

Processing of claims etc.

The same rules shall apply to the winding-up of a financial undertaking as apply generally to bankruptcy proceedings concerning reciprocal contractual rights and claims against it, with the exception that a court order for its winding-up shall not automatically result in claims against it falling due.

Once a winding-up committee has been appointed for a financial undertaking, the committee must without delay publish a notice to creditors of the winding-up in the Legal Gazette (Icel. *Lögbirtingablað*). The same rules shall apply concerning the contents of the notice to creditors, the time limit for submitting claims and notices or advertisements for foreign creditors as apply to general bankruptcy proceedings.

The same rules apply to the winding-up of a financial undertaking as apply to priority of claims against any estate under bankruptcy proceedings, with the exception that claims to deposits, as defined in the Act on Deposit Guarantees and an Investor Compensation Scheme, shall be included in priority claims as referred to in the first and second paragraphs of Article 112 of the Act on Bankruptcy etc. To the extent that the priority of claims can be determined under that Act by the date the court ruling on bankruptcy proceedings is issued, the date of the court ruling on the winding up of a financial undertaking shall apply.

Provisions of Chapter XVIII of the Act and Part 5 of the Act on Bankruptcy etc. shall apply concerning processing of claims against a financial undertaking upon its winding-up, including the effect of failure to submit claims; meetings held by the winding-up committee to discuss recognition of claims submitted are called creditors' meetings. If, following the expiration of the time limit for submission of claims, the winding-up committee considers it probable that the undertaking's assets will suffice to fully cover its debts, the committee is not obliged at that point to make a decision as to the ranking of claims by priority.

Once the time limit for submission of claims has expired, the winding-up committee shall assess whether it appears that a financial undertaking's assets will suffice to cover its obligations. A report on this assessment must be submitted and presented to the first creditors' meeting held after the expiry of the time limit for submission of claims.

Following the conclusion of the first creditors' meeting held after the expiry of the time limit for submission of claims, the winding-up committee may pay recognised claims, in full or in part, in one or more payments, insofar as it is ensured that the assets of the financial undertaking are sufficient to cover a payment of at least as much to all other claims with the same priority of rank which have not been finally rejected in the winding-up. Care must also be taken to ensure that all creditors holding recognised claims with the same priority receive payment at the same time, although derogations may be permitted with the approval of those who do not receive payment or pursuant to a decision by the winding-up committee if a creditor offers to waive its claim in return for partial payment thereof, the amount of which is regarded as definitely lower than other creditors of equal rank will receive at a later stage, taking into consideration for instance whether their claims will bear interest until paid.

Article 7

Article 103 of the Act shall have the following heading and read as follows:

Disposition of the interests of a financial undertaking etc.

When winding-up a financial undertaking, the winding-up committee shall dispose of its interests following the same rules as apply to administration of an estate by a trustee during bankruptcy proceedings, with the exceptions resulting from the provisions of this Article. Any disputes arising concerning such dispositions shall be resolved in accordance with provisions of the Act on Bankruptcy etc.

The winding-up committee shall endeavour to obtain as high a value as possible for the financial undertaking's assets, for instance, by waiting if necessary for outstanding claims to mature rather than realising them at an

earlier date, unless it is deemed evident that the interests of creditors and, as the case may be, of shareholders or guarantee capital owners are better served by disposing of such rights at an earlier stage to enable the conclusion of winding-up proceedings. To this end the winding-up committee may disregard a resolution by a creditors' meeting which it considers contrary to this objective.

The winding-up committee shall call a creditors' meeting for the same purpose as a trustee holds a meeting with creditors of an estate during bankruptcy proceedings. If the winding-up committee has concluded, in the report referred to in the fifth paragraph of Article 102, that the assets of a financial undertaking appear likely to be sufficient to cover its obligations, the winding-up committee shall, in tandem with creditors' meetings, hold meetings with shareholders or guarantee capital owners to seek their opinions on disposition of the undertaking's assets.

If it is not evident that the financial undertaking's assets will be sufficient to fulfil its obligations in full, reversal of its dispositions may be demanded according to the same rules as apply to reversal of dispositions by an insolvent company under bankruptcy proceedings.

Article 8

A new Article 103 a shall be added following Article 103, which shall have the following heading and read as follows:

Conclusion of winding-up proceedings

If a winding-up committee has completed payment of all recognised claims against a financial undertaking and, as the case may be, put aside funds for payment of disputed claims and realised its assets as necessary, it shall conclude the winding-up proceedings either by:

1. returning the undertaking to control of its shareholders or guarantee capital owners, if a meeting of these parties called by the winding-up committee has approved, with the votes of persons controlling at least 2/3 of its share capital or guarantee capital, having the undertaking recommence its activities and a new Board of Directors has been elected to take over from the winding-up committee, provided that the Financial Supervisory Authority has given its consent thereto and that the undertaking fulfils other legal requirements to recommence its activities; or
2. paying to the shareholders or guarantee capital owners their portion of the remaining value of assets, in accordance with a scheme for distribution which shall comply with the provisions of Chapter XXII and Part 5 of the Act on Bankruptcy etc.; in the case of a savings bank, however, assets remaining following payment of guarantee capital shall be disposed of in accordance with its Articles of Association and these assets may not be distributed to guarantee capital owners, cf. the fourth paragraph of Article 63.

Winding-up proceedings may be concluded as referred to in Point 1 of the first paragraph even if payment of all recognised claims has not been completed if creditors who have not yet received satisfaction agree to this.

If the financial undertaking's assets do not suffice for full payment of claims which have not been finally rejected in the winding-up proceedings, the winding-up committee may, when it considers the time ripe to do so, seek composition with creditors to conclude the proceedings. The winding-up committee shall then draft a composition proposal, following the rules of Article 36 of the Act on Bankruptcy etc. and call for a creditors meeting to vote on the proposal. The provisions of the second paragraph of Article 149 and of Articles 151-153 of the same Act shall apply as appropriate when seeking composition with creditors; in such case the winding-up committee shall perform the role which a trustee in bankruptcy proceedings would otherwise have fulfilled and shall call creditors' meetings to seek composition. If a composition proposal is approved, the winding-up committee shall request confirmation of the proposal in accordance with the rules of Chapter IX of the same Act. If the composition proposal is confirmed the winding-up committee shall, as necessary, fulfil any obligations to creditors it includes and conclude the winding-up proceedings as provided for in the first and second paragraphs.

If it is established that a financial undertaking's assets are insufficient to fulfil its obligations completely, and the winding-up committee considers it evident that there will be no basis for seeking composition with creditors, as referred to in the third paragraph, or a composition proposal has not been approved or a request for its confirmation has been rejected, then the winding-up committee shall demand that the District Court which appointed it place the undertaking's estate in bankruptcy proceedings. A creditor may do the same if its claim has been recognised in winding-up proceedings and either attempts by the winding-up committee to seek composition with creditors have been unsuccessful or the creditor demonstrates that the legal conditions for

seeking composition with creditors do not exist, or such a large number of creditors are opposed to composition that there is no possibility of achieving composition based on available information on the undertaking's financial situation. To advance such a claim, however, a creditor must demonstrate that it has lawful interests at stake in achieving bankruptcy rather than allowing the winding-up of the undertaking to continue.

If the estate of a financial undertaking is declared bankrupt, all actions taken during the winding-up proceedings concerning claims against the undertaking, including the notice to creditors and the processing of claims submitted shall remain valid, but the trustee shall have an advertisement published in the Legal Gazette stating that the estate has been placed in bankruptcy proceedings. In other respects the general rules on bankruptcy proceedings shall apply, with the exceptions that provisions of the second paragraph of Article 103 shall apply *mutatis mutandis*, and that the date the court ruling on the winding-up of the financial undertaking was issued shall replace, with regard to legal effect, the date the ruling on bankruptcy was issued.

Article 9

Temporary Provision IV of the Act, cf. Article 4 of Act No. 129/2008, shall be deleted.

Article 10

This Act shall enter into force at once.

Notwithstanding the provisions of subparagraph a of Article 3 and of Article 9 of this Act, the third paragraph of Article 98 of Act No. 161/2002, cf. Article 2 of Act No. 129/2008, and Temporary Provision IV of Act No. 161/2002, cf. Article 4 of Act No. 129/2008, shall continue to apply in their original form towards financial undertakings enjoying a debt moratorium upon the entry into force of this Act, for instance with regard to extension of a debt moratorium.

Article 11

Upon the entry into force of this Act, the first paragraph of the Temporary Provision of Act No. 129/2008, shall be deleted.

Temporary Provisions

I.

If the Financial Supervisory Authority has, prior to the entry into force of this Act, appointed a Resolution Committee for a financial undertaking, based on Article 5 of Act No. 125/2008, and such committee is still at work but the undertaking has not been granted a debt moratorium, the Resolution Committee shall thereafter automatically become the undertaking's provisional Board of Directors as referred to in Article 100 a, cf. Art. 4 of this Act.

II.

The following special rules shall apply to financial undertakings benefiting from a moratorium upon the entry into force of this Act.

1. The authorised debt moratorium shall continue in spite of the entry into force of this Act and may be extended as provided for in the rules referred to in the second paragraph of Article 10.
2. The moratorium shall be subject to provisions of the first paragraph of Article 101, Articles 102, 103 and Article 103 a of the Act, cf. the first substantive paragraph of Article 5 and Articles 6, 7 and 8 of this Act, as if the winding-up of the undertaking had been ordered by a court ruling on the date this Act enters into force; the winding-up proceedings shall, however, be alluded to as an authorised debt moratorium as long as that authorisation is valid, cf. Point 1. Once this authorisation expires, the undertaking shall, without a specific court ruling, automatically be deemed to be in winding-up proceedings following the general rules, cf. however, Points 3 and 4. Provisions of Chapter IV of the Act on Bankruptcy etc. shall not apply to such a debt moratorium as

referred to here; the Appointee shall, however, monitor dispositions of the Resolution Committee as provided for in Article 103 of the Act, cf. Art. 7 of this Act.

3. The Resolution Committee of a financial undertaking, appointed by the Financial Supervisory Authority prior to the entry into force of this Act based on Article 5 of Act No. 125/2008, shall continue its work with its name unaltered and fulfil the role intended for the winding-up committee in the third paragraph of Article 9, the second sentence of the fourth paragraph of Article 101, the first sentence of the fifth paragraph of Article 102 and the first to third paragraphs of Article 103 of the Act, cf. Articles 1, 5, 6 and 7 of this Act. Should a seat on the Resolution Committee become vacant following the entry into force of this Act, the Financial Supervisory Authority shall appoint a person to fill such position if deemed necessary, having regard to the tasks still unconcluded by the Committee.

4. To carry out tasks of the winding-up committee other than those referred to in Point 3, a District Court judge shall, following a written request from the Resolution Committee, appoint such a committee in accordance with the instructions in the first and third sentences of the fourth paragraph of Article 101 of the Act, cf. Art. 5 of this Act. The person serving as the undertaking's Appointee during the debt moratorium shall also automatically take a seat on this committee and shall remain in this position even after the debt moratorium has concluded.

III.

Notwithstanding the fifth paragraph of Article 101 of the Act, cf. Article 5 of this Act, the reference date in winding-up a financial undertaking shall be determined by the second paragraph of the Temporary Provision of Act No. 129/2008 as applicable.

IV.

In order to limit damage or risk of damage to financial markets, the Financial Supervisory Authority may take special measures in accordance with the instructions in this Provision if it considers such necessary in view of exceptional circumstances or events. Exceptional 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 fulfil its commitments to customers or creditors, the probability that the premises for revocation of its operating license exist, or the likelihood that the undertaking cannot satisfy minimum capital requirements, and other remedies available to the Financial Supervisory Authority are unlikely to prove successful. Exceptional circumstances can also apply where a financial undertaking has requested or been granted a debt moratorium or authorisation to seek composition with creditors.

In the circumstances or events specified in the first paragraph, the Financial Supervisory Authority may call a shareholders' meeting or a meeting of guarantee capital owners. The Financial Supervisory Authority's representative shall chair the meeting and have the right to speak and make proposals. Under these circumstances, the Financial Supervisory Authority is not bound by provisions of the Act on Public Limited Companies or of a financial undertaking's Articles of Association on calling meetings, advance notice of meetings or proposals to amend the Articles of Association.

In extreme circumstances, the Financial Supervisory Authority may assume the powers of a shareholders' meeting or meeting of guarantee capital owners 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 assets, rights and obligations of a 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 provisions of the Act on Securities Transactions on mandatory bid obligations, nor the provisions of the Act on Financial Undertakings on advertisement of financial undertakings' mergers in the Legal Gazette. The Financial Supervisory Authority is authorised to transfer all rights insofar as necessary in such instances. Should the Financial Supervisory Authority conclude that a merger of the financial undertaking concerned with another optimally safeguards the interests at stake, the provisions of the Competition Act and merger provisions of this Act shall not apply to such 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 latter and grounds given in writing. The Financial Supervisory Authority must make the announcement public. If the financial undertaking operates branches or has services in another country such notification must be sent to the competent supervisory authorities in that country.

If the Financial Supervisory Authority dismisses the entire Board of a financial undertaking, a provisional Board of Directors must be appointed for the undertaking immediately. In other respects the provisions of Articles 100 a shall apply to such a Board of Directors and its tasks.

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

Provisions of Chapters IV-VII of the Public Administration Act shall not apply to the above proceedings and decisions of the Financial Supervisory Authority.

The Treasury shall be liable for costs of implementing actions by the Financial Supervisory Authority based on this Provision.

This Provision shall expire as of 1 July 2010.

Adopted by the Icelandic parliament Althingi on 15 April 2009