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Financial undertakings

Item 409

Minister of Economic Affairs (Gylfi Magnússon) (External):

Mr Speaker. I present a Bill amending the Act on Financial Undertakings, No. 161/2002, as subsequently amended, Item 409 on Parliamentary document 693.

The Bill proposes extensive 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.

These provisions of the Act on Financial Undertakings were drafted prior to the shocks which affected the Icelandic financial world in the autumn of 2008 and were based mainly on the rules of Directive 2001/24/EC of the European Parliament and the Council of 4 April 2001, on the reorganisation and winding up of credit institutions. The changes which are proposed in the Bill also accord with the above-mentioned Directive.

The provisions of Chapter XII of Act No. 161/2002 assumed the relatively normal situation of the country's financial system, i.e. in particular that one financial undertaking might end up in financial difficulties, and provided instructions as to how this should be resolved. It is now evident that they are not sufficient to deal with the current circumstances in this country. The time which was available to draft the Bill which became Act No. 125/2008 was extremely short and high uncertainty prevailed. The Act made certain amendments to Act No. 161/2002, in particular to its Chapter XII. One could say that this was a response to the emergency presented, in part, by the collapse of the three banks. It proved necessary to make further changes to Act No. 161/2002, in particular to its Chapter XII, and this was done with Act No. 129/2008, which took effect on 14 November 2008. This Act was also a response to an emergency situation, although it was not as unexpected as the one which gave rise to the adoption of Act No. 125/2008. The provisions of Acts Nos. 125/2008 and 129/2008 were not intended to apply in the longer term, as they were adopted to respond to a very unusual situation which no one could have foreseen. Some criticism has been directed at a provision which was adopted with Act No. 129/2008, prohibiting court actions against financial undertakings which had been granted a moratorium, and the Economic and Trade Committee of the Althingi, for instance, recommended that the Ministry revise the provision. Furthermore, the Economic and Trade Committee was of the opinion, when discussing the Bill which became Act No. 129/2008, that it was important to undertake an overall review of statutory provisions on the winding-up of financial undertakings. This Bill proposes to cancel the provision prohibiting court actions against financial undertakings in moratorium.

Now, when some months have passed since the above-mentioned Acts were adopted, there has been an opportunity to organise subsequent developments with regard to the financial

restructuring and, as the case may be, the winding-up of the three commercial banks directed by the Financial Supervisory Authority. Work has been underway on preparing proposals for amendments to the Act on Financial Undertakings which would comprise an overall review of its Chapter XII and furthermore a response to the situation which has developed in this country. In this work special emphasis has been placed on ensuring non-discrimination among creditors and that the rules on restructuring and winding-up comply with comparable rules applying to other undertakings and individuals, as applicable. Special emphasis has been placed on enabling the creditors of those financial undertakings concerned to safeguard their interests.

The main points of the Bill are:

In the first place it proposes to adopt new rules on the winding-up proceedings of financial undertakings; the rules in the Bill assume that the financial undertaking itself take the initiative for such winding-up proceedings. A Temporary Provision, however, proposes that the Financial Supervisory Authority can also take the initiative in assuming control of a financial undertaking.

Secondly, the Bill proposes that the same rules as apply to liquidation should apply to much of the winding-up proceedings.

Thirdly, it provides for the appointment of a Winding-up Board, which in most respects has the same authority as the administrator of an insolvent estate. The main rule applies here, however, that the Winding-up Board's objective shall be to maximise a financial undertaking's assets, including by waiting if necessary for its outstanding claims to mature rather than realising them sooner.

Fourthly, the Bill proposes that an invitation be issued to lodge claims, giving creditors the opportunity to lodge their claims with the Winding-up Board, and that decisions will be taken regarding them, if necessary through court resolution. It is proposed that creditors be able, in a similar manner as is practised in liquidation, to safeguard their interests in winding-up and to have the opportunity of referring disputes on the legitimacy of their claims and on decisions and measures taken by the Winding-up Board to the courts.

Furthermore, proposals are made to enable winding-up proceedings to conclude in such a manner that financial undertakings have the option, with the approval of the Financial Supervisory Authority, of recommencing activities or of their owners (shareholders/guarantee capital owners) receiving payment of their holdings in the undertaking after claims lodged against it have been paid. Provision is also made for the Winding-up Board to seek composition with creditors and implement this, whereafter the financial undertaking can either recommence its activities, with the approval of the Financial Supervisory Authority, or make payment of its assets to shareholders or guarantee capital owners.

Finally, it is proposed that, under certain circumstances, the Winding-up Board will be obliged to request liquidation of the financial undertaking's estate.

Instruction is given in the Temporary Provisions of the Act as to how to proceed with financial undertakings which benefit from a moratorium upon the entry into force of the Act.

It is proposed that these undertakings' moratorium continue despite the entry into force of the Act and that a moratorium may be extended for up to 24 months from the time a court first granted the moratorium.

It is furthermore proposed that those financial undertakings which have already been granted a moratorium be authorised to apply specific provisions which apply to undertakings in winding-up proceedings, e.g. rules on processing claims and on disposition of the interests of the financial undertaking. It is proposed, however, that the winding-up proceedings continue to be referred to as a moratorium as long as the latter remains in force. Once the moratorium concludes, a financial undertaking will automatically be considered to be in winding-up proceedings without a specific court order.

In the third place, it is proposed that the Resolution Committee of a financial undertaking which has been granted a moratorium shall continue its work and be called a Resolution Committee. The Resolution Committee shall perform the role intended for a Winding-up Board in specific provisions of the Bill, while it is proposed that other tasks be handled by a Winding-up Board appointed by a District Court Judge at the Resolution Committee's request. The Appointee in moratorium automatically shall be a member of such Winding-up Board. In this connection it is important that it be clear what tasks the Resolution Committee is to handle and what tasks the Winding-up Board is to handle.

Furthermore, it is proposed that the cost of the work of Resolution Committees and Winding-up Boards be paid by the financial undertaking concerned.

I move, Mr Speaker, that following the discussion this item be referred for a second reading and to the honourable Economic and Trade Committee.