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

(Submitted to the 136st legislative session of the Althingi, 2008-2009)

Art. 1

The words “a party managing the liquidation of a financial undertaking's estate” in the third paragraph of Art. 9 of the Act, cf. Art. 1 of Act No. 129/2008, shall be replaced by “a provisional Board of Directors, Winding-up Board handling the winding-up proceedings of a financial undertaking or an administrator in administering its insolvent estate.”

Art. 2

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

Art. 3

The following changes shall be made to Art. 98 of the Act.

a. the third paragraph shall be worded as follows:

If a financial undertaking has been granted a moratorium it is sufficient to publish the announcement of a meeting, as provided for in the second paragraph of Art. 13 and the fifth paragraph of Art. 17 of the Act on Bankruptcy etc., with an advertisement published in at least two daily newspapers in Iceland and in each of those states where branches were operated.

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

Art. 4

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

Art. 5

Art 100 a of the Act and its heading shall be worded as follows:

Delivery of a financial undertaking to a provisional Board of Directors

If a financial undertaking is in such financial and operating difficulties that it is unlikely to be able to fulfil its obligations or satisfy minimum capital requirements, its Board of Directors may on its own initiative request that the Financial Supervisory Authority take over control of the undertaking. The Financial Supervisory Authority shall take a decision on such a request without delay. If the Financial Supervisory Authority agrees to the request, the mandate of the financial undertaking's Board of Directors is cancelled and the rights of shareholders or guarantee capital owners to take decisions on its affairs by virtue of their holdings shall furthermore be abrogated. At the same time, the Financial Supervisory Authority shall appoint the financial undertaking a provisional Board of Directors of three to five persons which alone shall exercise the same rights by law and in accordance with the undertaking's Articles of Association as the Board of Directors and shareholders' meeting, or meeting of guarantee capital owners, would otherwise have exercised, cf. however Point 4 of

the second paragraph of Art. 101.

The provisional Board of Directors shall, as soon as possible, take the necessary measures to obtain an overview of the financial undertaking's financial situation. While it controls the undertaking, the same restrictions shall apply concerning authorisation to apply execution or other enforcement remedies against the undertaking as would apply under a moratorium. The provisional Board of Directors shall only take measures concerning major interests of the financial undertaking in cases of urgency.

The provisional Board's control of the financial undertaking automatically concludes once three months have elapsed since its appointment unless:

1. the provisional Board of Directors has already submitted a petition to a District Court that the undertaking be placed in winding-up, as provided for in Point 3 of the second paragraph of Art. 101; if such has been done the Board's mandate shall continue until a final decision is taken on the petition;

2. the undertaking was granted a moratorium or authorised to seek composition; in such case the provisional Board's mandate shall continue until one month after such authorisation expires; or

3. the provisional Board of Directors has already, with the approval of the Financial Supervisory Authority, held a shareholders' meeting or meeting with guarantee capital owners where a new Board of Directors has been elected to replace the provisional Board.

If the control of the provisional Board of Directors of a financial undertaking concludes automatically when its term expires, without it having been placed in winding-up, its operating license shall be revoked immediately unless a new Board of Directors has previously been elected, as provided for in Point 3 of the third paragraph.

Art. 6.

Art 101 of the Act and its heading shall be worded as follows:

Conditions for and commencement of winding-up proceedings

The estate of a financial undertaking cannot be liquidated according to general rules.

A financial undertaking must be wound up:

1. at the demand of the Financial Supervisory Authority if it has revoked the undertaking's operating license or refused to grant it a time limit as provided for in the fourth paragraph of Art. 86, or the time limit provided for there has expired without the undertaking having increased its capital above the minimum required in Art. 84;

2. at the demand of the Financial Supervisory Authority, the undertaking's Board of Directors or provisional Board of Directors, if it must be wound-up according to its Articles of Association;

3. at the demand of the undertaking's Board of Directors or provisional Board of Directors if the company can no longer meet all obligations to creditors when their claims fall due and it is considered unlikely that the company’s payment difficulties will be alleviated in the short-term;

4. at the demand 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 undertaking, provided a motion on winding-up has been adopted by at least 2/3 of votes cast and by shareholders or guarantee capital owners who control at least 2/3 of the share capital or guarantee capital represented by votes at the meeting.

A petition for the winding-up of a financial undertaking shall be directed to the District Court where civil proceedings could be brought against the undertaking in its legal

venue. The request shall be prepared and handled by the Court like a petition for winding-up in insolvency.

Once a court has ordered that a financial undertaking shall be wound up, a District Court judge will appoint a Winding-up Board, comprised of up to five persons. Upon its appointment, the Board 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 Art. 103. Unless otherwise provided for in this Act, the rules concerning administrators in liquidation proceedings shall apply to the Winding-up Board, its tasks and the members of the Board.

The reference date in the winding-up of a financial undertaking shall be determined according to the same rules as apply to liquidation, however, it may furthermore be determined by the date the Financial Supervisory Authority granted the undertaking a time limit, as provided for in the fourth paragraph of Art. 86, or appointed for it a provisional Board of Directions, as provided for in Art. 100 a, or otherwise by the receipt by a District Court of a petition for winding-up, as referred to in the second paragraph, if nothing has previously occurred to set a reference date.

Art. 7

Art 102 of the Act and its heading shall be worded as follows:

Handling of claims etc.

The same rules shall apply to the winding-up of a financial undertaking as apply generally to insolvency liquidation 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 Board has been appointed for a financial undertaking, the Board shall without delay publish an invitation to lodge claims in the winding-up in the *Legal Gazette* (Icel. *Lögbirtingarblaðið*). The same rules shall apply concerning the contents of the invitation to lodge claims, the time limit for submitting claims and notices or advertisements for foreign creditors as apply to insolvency liquidation.

In the winding-up of a financial undertaking the same rules shall apply as apply to priority of claims against any estate under liquidation, with the exception that claims for deposits, as defined in the Act on Deposit Guarantees and an Investor Compensation Scheme, shall be included in claims which are ranked with reference to 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 time a court ruling on liquidation is issued, the date of the court ruling on the winding-up of a financial undertaking shall apply.

Provisions of Chapter XVIII and of Part 5 of the Act on Bankruptcy etc. shall apply to handling of claims against a financial undertaking in its winding-up, including regarding the effect of not lodging a claim; meetings of the Winding-up Board to discuss recognition of claims lodged shall be called creditors' meetings. If the Winding-up Board is of the opinion, upon the expiration of the time limit for lodging claims, that it is likely that the undertaking's assets will suffice to cover its debts in full, then it is not obliged at that time to take decisions on the ranking of individual claims in priority.

Once the time limit for lodging claims has expired, the Winding-up Board 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 lodging claims.

The Winding-up Board may, following the conclusion of the first creditors' meeting

after the time limit for lodging claims has expired, pay recognised claims in full or in part, in one or more payments, insofar as it is ensured that the financial undertaking's assets will suffice for at least an equivalent payment on all other claims which have the same priority and which have not been finally rejected in the winding-up process. It shall be ensured that all creditors holding recognised claims ranked with the same priority receive payment at the same time; however, derogations may be made from this with the approval of those who do not receive payment or pursuant to a decision by the Winding-up Board 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 equally ranked creditors will receive at a later stage, taking into consideration for instance whether their claims will bear interest until paid.

Art. 8

Art 103 of the Act and its heading shall be worded as follows:

Disposition of the interests of a financial undertaking etc.

In winding-up a financial undertaking, the Winding-up Board shall dispose of its interests following the same rules as apply to administration of an estate under liquidation, with the exceptions resulting from provisions of this Article. Any disputes which may arise concerning such measures shall be resolved in accordance with the directions of the Act on Bankruptcy etc.

The objective of the Winding-up Board shall be to obtain the maximum 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 Board may, for instance, disregard a resolution by a creditors' meeting which it considers contrary to this objective.

The Winding-up Board shall call a creditors' meeting for the same purpose as an administrator holds a meeting with creditors of an estate in insolvency proceedings. If the Winding-up Board has reached the conclusion in its report, as referred to in the fifth paragraph of Art. 102, that it appears that the financial undertaking's assets will suffice for its obligations, the Winding-up Board 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 assets of a financial undertaking will be sufficient to fully satisfy its obligations, voiding may be demanded of measures taken by it according to the same rules as apply to the measures of an insolvent party upon liquidation.

Art. 9

A new Art. 103 a shall be added after Art. 103, which shall read as follows, together with its heading:

Conclusion of winding-up proceedings

If a Winding-up Board has concluded 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 its shareholders or guarantee capital owners, if a meeting of these parties called by the Winding-up Board has, with the votes of parties controlling at least 2/3 of its share capital or guarantee capital, approved the recommencement

of the undertaking's activities and a new Board of Directors has been elected to take over from the Winding-up Board, provided that the Financial Supervisory Authority has given its approval thereto and that the undertaking satisfies other statutory requirements to recommence its activities; or

2. paying to 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 Art. 63.

Winding-up proceedings may be concluded as provided for in Point 1 of the first paragraph, even if payment of all recognised claims has not been made, if those creditors who have not yet received satisfaction agree to such.

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 Board may, when it considers the time ripe to do so, seek composition with creditors to conclude the proceedings. The Winding-up Board shall then draft a scheme of arrangements following the rules of Art. 36 of the Act on Bankruptcy etc., and call a creditors' meeting to put it to a vote. Efforts to seek composition shall be governed in other respects *mutatis mutandis* by the provisions of the second paragraph of Art. 149 and Articles 151-153 of the same Act; in such case the Winding-up Board fulfils the function which an administrator would have had and holds creditors' meetings concerning these efforts. If a scheme of arrangements is approved, the Winding-up Board shall request confirmation of the proposal in accordance with the rules of Chapter IX of the same Act. If composition is confirmed the Winding-up Board shall, as necessary, fulfil any obligations to creditors it involves 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 Board considers it evident that there will be no basis for seeking composition with creditors, as referred to in the third paragraph, or if a scheme of arrangements has not been approved or a request for its confirmation has been refused, the Winding-up Board shall request of the District Court, which appointed it, that the undertaking's estate be placed in liquidation. A creditor may do the same if its claim has been recognised in winding-up proceedings and either attempts by the Winding-up Board 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 legally sanctioned interests in achieving liquidation rather than allowing the undertaking to continue in winding-up proceedings.

If the estate of a financial undertaking is placed in liquidation, all actions taken during the winding-up proceedings concerning claims against the undertaking, including the invitation to lodge claims and the processing of claims lodged, shall remain unaltered, but the administrator shall have an advertisement published in the Legal Gazette stating that the estate has been placed in liquidation. In other respects the general rules on insolvency proceedings shall apply, with the exceptions that provisions of the second paragraph of Art. 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 insolvency was issued.

Art. 10

This Act shall enter into force at once.

Notwithstanding the provisions of subparagraph a of Art. 3 and of Art. 4 of this Act, the third paragraph of Art. 98 of Act No. 161/2002, cf. Art. 2 of Act No. 129/2008, and Temporary Provision IV of Act No. 161/2002, cf. Art. 4 of Act No. 129/2008, shall continue to apply in their original form towards financial undertakings which benefit from a moratorium upon the entry into force of the Act, including an extension of the moratorium.

Art. 11

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

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 Art. 5 of Act No. 125/2008, and such Committee is still at work but the undertaking has not been granted a moratorium, the Resolution Committee shall thereafter automatically become the undertaking's provisional Board of Directors as referred to in Article 100 a, cf. Art. 5 of this Act.

II.

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

1. The moratorium shall continue in effect despite the entry into force of this Act and may be extended as provided for in those rules referred to in the second paragraph of Art. 10.

2. With regard to the moratorium, the provisions of the first paragraph of Article 101 and Articles 102, 103 and 103 a of the Act shall apply, cf. the first substantial paragraph of Art. 6 and Articles 7, 8 and 9 of this Act, as if the undertaking had been placed in winding-up by a court order on the date this Act entered into force; the winding-up shall, however, continue to be referred to as a moratorium as long as this exists, cf. Point 1. Once the moratorium expires, the undertaking shall, without a special court order, automatically be considered to be in winding-up proceedings pursuant to general rules, cf. however, Points 3 and 4. The provisions of Chapter IV of the Act on Bankruptcy etc. shall not apply to such a moratorium as is concerned here.

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 Art. 5 of Act No. 125/2008, shall continue its work with its name unaltered and fulfil the role intended for the Winding-up Board 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 Art. 103 of the Act, cf. Articles 1, 6, 7 and 8 of this Act. Should a seat on the Resolution Committee become vacant after the entry into force of this Act, the Financial Supervisory Authority shall appoint a person to assume it unless this is considered unnecessary having regard to the tasks which the Committee has yet to complete.

4. To carry out tasks of the Winding-up Board, other than those referred to in Point 3, a District Court judge shall, following a written request from the Resolution Committee,

appoint such a Board in accordance with the instructions in the first and third sentences of the fourth paragraph of Art. 101 of the Act, cf. Art. 6 of this Act. The person serving as the undertaking's appointee during the moratorium shall also automatically take a seat on this Board and shall remain in this position even after the moratorium has concluded.

III.

Notwithstanding the fifth paragraph of Art. 101 of the Act, cf. Art. 6 of this Act, the reference date in a financial undertaking's winding-up proceedings shall be determined by the second paragraph of the Temporary Provision of Act No. 129/2008 if applicable.

IV.

In order to limit damage or risk of damage on financial markets, the Financial Supervisory Authority may take special measures in accordance with the instructions of 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 shall also apply to instances 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. A representative of the Financial Supervisory Authority shall chair the meeting and have the right to speak and submit proposals. Under these circumstances, the Financial Supervisory Authority is not obliged by provisions of the Public Limited Companies Act or of a financial undertaking's Articles of Association regarding calling meetings, advance notice of meetings or proposals to amend the Articles of Association.

If the situation is urgent, the Financial Supervisory Authority may assume the power of a shareholders' meeting or meeting of guarantee capital owners in order to take decisions on necessary actions, including limiting the decision-making powers of the Board of Directors, dismissing the Board in part or in full, taking over the assets, rights and obligations of a financial undertaking in full or in part, or disposing of such an undertaking in full or in part, including through its merger with another undertaking. Such measures shall not be subject to provisions of the Act on Securities Transactions on mandatory bid obligations, nor to the provisions of this Act concerning advertisement of financial undertakings' mergers in the *Legal Gazette*. The Financial Supervisory Authority may transfer all rights to the extent 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 a merger. A decision by the Financial Supervisory Authority to take over the operations of a financial undertaking shall be notified to the undertaking's Board of Directors in writing and grounds given The Financial Supervisory Authority shall make the notification public. If the financial undertaking operates branches or provides services in another state such notification must be sent to the competent supervisory authorities in that state.

If the Financial Supervisory Authority dismisses the entire Board of Directors of a financial undertaking, a provisional Board of Directors must be appointed for the undertaking immediately. The provisions of Art. 101 a shall apply in other respects to such a Board of

Directors and its work.

If necessary, the Financial Supervisory Authority may limit or prohibit disposal of a financial undertaking's capital or assets. The Financial Supervisory Authority may 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. The Financial Supervisory Authority may also void a sale of assets which took place up to one month before the Authority took special measures pursuant to this provision.

The provisions of Chapters IV-VII of the Public Administration Act shall not apply to the above-mentioned procedure and decision making by the Financial Supervisory Authority.

The Treasury shall be responsible for the cost of implementing actions by the Financial Supervisory Authority based on this provision.

This provision shall expire at the end of 2009.

Explanatory Notes on this Bill of Legislation

1. Introduction

This Bill has been drafted under the auspices of the Ministry of Economic Affairs. The Bill proposes wide-reaching changes to Chapter XII of the Act on Financial Undertakings, No. 161/2002, which discusses financial restructuring of financial undertakings, their winding-up and merger with other financial undertakings.

The rules of Chapter XII of the Act were, prior to the shocks which affected the Icelandic financial world in the autumn of 2008, based 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 adoption of Act No. 161/2002 did not amend the rules on the winding-up of commercial banks and savings banks which were set by the Act on Commercial Banks and Savings Banks, No. 113/1996, after the amendments made by Act No. 84/1998. The rules of Chapter XII were changed to the form in which they were in the autumn of 2008 by Act No. 130/2004, which was adopted to harmonise the Act with provisions of the above-mentioned Directive 2001/24/EC. Furthermore, amendments were made to the rules of the Chapter to harmonise its provisions with rules of Directive 2002/87/EC, on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate; this Directive, however, had considerably greater effect on the rules of the Act on Insurance Activities, No. 60/1994.

Adoption of Act No. 130/2004, which as previously mentioned involved adaptation to Directive 2001/24/EC, 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. This means that the resolutions of Icelandic courts on granting a financial undertaking, whose headquarters are in Iceland, a moratorium or authorisation to seek composition or on placing an undertaking in winding-up have legal effect in other countries who are parties to the Agreement on a European Economic Area, with regard to branches of this financial undertaking. Similarly, this change implies that if a financial undertaking, which has headquarters in another state of the European Economic Area but a branch in Iceland, is granted a moratorium or authorisation to seek composition, or is placed in winding-up proceedings by a court or authority in that state, this has legal effect in Iceland to the extent that the rules of that state apply to the branch in Iceland and not Icelandic law. It could be said that the branch is therefore removed from the jurisdiction of Icelandic courts in this respect.

Secondly, the principle was introduced that a decision on the financial restructuring

and winding-up of a financial undertaking and its branch 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). In the same manner as above, this implies that Icelandic law applies to the winding-up of a financial undertaking which has its headquarters here and also of its branch in another state of the European Economic Area. Furthermore, this implies that the law of a financial undertaking's home Member State, i.e. where it has its headquarters, applies to its restructuring and winding-up and that of a branch it may have in this country. There are, however, various exceptions to the above principle. These concern primarily rules on jurisdictional limits with regard to specific contracts, rights and assets which are in a state other than the home Member State. The above-mentioned principle, together with the exceptions to it, are now contained in Art. 99 of Act No. 161/2002.

The above-mentioned rules greatly increase efficiency, as the restructuring and winding-up of a financial undertaking which has its headquarters in one state of the European Economic Area and branches in other states is governed only by the rules of one state and not of many, as could previously be the case. With this Directive an attempt was made to establish harmonised rules on the financial restructuring and winding-up of financial undertakings in the European Economic Area. It is a key aspect of Directive 2001/24/EC that the system which in this manner it was attempted to establish ensured three main principles, i.e. the principle of unity, the principle of universality and the principle of non-discrimination. Strong emphasis is placed on these principles, both in the recitals of the Directive, e.g. items 12 and 16, and in its rules.

This Bill seeks to ensure that these principles are followed to their utmost, even if this implies inefficiency and extensive work, e.g. in notifications to creditors, as it is extremely important to ensure completely equal treatment of domestic and foreign creditors of financial undertakings with activities in more than one state of the European Economic Area.

2. Shocks on the Icelandic financial market and the international credit crisis

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. Although these provisions of the Act were, accordingly, intended to apply to the unusual financial situation of an individual financial undertaking, it is now evident that they are not sufficient under the circumstances which apply in Iceland.

The shocks which struck the global financial markets in the autumn of 2008 resulted in an almost complete dearth of credit and resulted in disaster for Icelandic financial undertakings practically without precedent in other countries. The shocks resulted, among other things, in the exceptional actions of the Boards of Directors of the three largest Icelandic commercial banks, and in fact of the only commercial banks with such activities in Iceland, requesting on 7 and 8 October 2008 that the Financial Supervisory Authority take measures to assume control of the banks. The Icelandic parliament Althingi had previously acted by adopting the Act on the Authority for Treasury Disbursements Due to Unusual Financial Market Circumstances, No. 125/2008, which was intended to meet the very exceptional circumstances on the financial markets, as the collapse of the financial system was imminent. These circumstances were completely unforeseen when the rules of Chapter XII of Act No. 161/2002 were adopted. The time 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. It could be said that this was a response to the emergency presented, in part, by the collapse of the three banks, as previously stated.

The amendments involved especially wide-reaching authorisations to the Financial Supervisory Authority to take over the control of a financial undertaking in a specific

situation, take those measures considered necessary and prohibit others. On the basis of those amendments made by the Act, the Financial Supervisory Authority dismissed the Boards of Directors of Glitnir banki hf., Landsbanki Íslands hf. and Kaupthing Bank hf. and appointed Resolution Committees which have exercised control of the banks since that time. There was no opportunity in drafting the Bill which subsequently became Act No. 125/2008 to foresee developments of the following weeks and months. 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. Act No. 129/2008 provided, firstly, authorisation for the administrator of a financial undertaking's insolvent estate to carry on provisionally certain activities subject to license, even though the Financial Supervisory Authority had revoked the financial undertaking's operating license. Secondly, the Act provided authorisation to extend deadlines and facilitate notifications for the Appointee of an undertaking which had been granted a moratorium. Finally, it had a Temporary Provision which authorised postponing court proceedings even though a moratorium had been granted prior to the entry into force of the Act.

The provisions of Act No. 125/2008 and Act No. 129/2008 were not intended to apply for the long term, since as previously mentioned they were adopted to respond to a very unusual situation which no one could have foreseen, i.e. the collapse of the financial system of an entire nation and the risk of its payment system also collapsing.

Now when three 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 all creditors and that the rules on restructuring and winding-up complied 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.

3. Main points of the Bill

The main purpose of this Bill is to propose the adoption of new rules on the winding-up proceedings of financial undertakings. The Bill's rules provide for the financial undertaking itself to take the initiative in such winding-up proceedings, although a Temporary Provision proposes that the Financial Supervisory Authority may also take the initiative in assuming control of a financial undertaking. The Bill proposes that the same rules as apply to liquidation should apply to much of the winding-up proceedings. 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. This does not apply, however, if the interests of creditors and, as the case may be, shareholders or guarantee capital owners, are better served by disposing of such rights sooner in order to conclude the winding-up proceedings. The Bill assumes that an invitation will 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. 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.

4. A financial undertaking in moratorium

Instruction is given in Temporary Provisions 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' moratoria 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 will 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.

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

Notes on individual Articles of the Bill

On Art. 1

The Article proposes to amend Art. 9 of the Act on Financial Undertakings, which provides for the revocation of financial undertakings' operating license. The provision was amended by Act No. 129/2008, which codified authorisation for the administrator of a financial undertaking's estate, with the approval of and under the supervision of the Financial Supervisory Authority, to continue to carry out certain activities of a financial undertaking subject to license despite the revocation or its operating license in tandem with a request for liquidation. Here it is proposed that this provision be expanded to allow the Financial Supervisory Authority also to grant a limited operating license to a financial undertaking for which a provisional Board of Directors has been appointed. Furthermore, reference to the Winding-up Board of a financial undertaking is added to the provision in accordance with other changes proposed in the Bill.

On Art. 2

The amendment is necessary due to changes proposed to Chapter XII of the Act.

On Art. 3

Changes are proposed to two aspects of Art. 98 of the Act; in both instances amendments are proposed to provisions codified with Act No. 129/2008.

In the first place, an amendment is proposed to the third paragraph of Art. 98 of the Act repealing special rules on the length of financial undertakings' moratoria, as Act No. 129/2008 provided for the moratorium of financial undertakings to last for up to 24 months from the time a court first granted the moratorium. It proposes that the paragraph continue to have rules on announcement of meetings, as provided for in the second paragraph of Art. 13 and the fifth paragraph of Art. 17 of the Act on Bankruptcy etc., and no changes are proposed to those rules.

In the second place, it is proposed that the fourth, fifth and sixth paragraphs of Art. 98 be cancelled. The fourth paragraph provides for the Appointee in moratorium not to be liable for damages in connection with his/her decisions and actions as Appointee unless this concerns a violation committed deliberately or through gross negligence. The fifth paragraph states that court actions cannot generally be brought against a financial undertaking while its moratorium is in effect and the sixth paragraph states that, if a court action has been initiated against a financial undertaking which subsequently is granted a moratorium, the general rules is that the procedure will not continue while the moratorium is in effect.

On Art. 4

It is proposed that Temporary Provision IV, which was codified with Act No. 129/2008, be cancelled; the provision provides for the granting of a moratorium to financial undertakings without regard for the provisions of Points 4 and 6 of the second paragraph of Article 12 of the Act on Bankruptcy etc.

On Art. 5

This Article proposes amendments to Art. 100 a of the current Act. In fact it comprises a new Article, as it is proposed that the currently applicable Art. 100 a be partly repealed, and what remains of it, if this Bill becomes law, be moved to a Temporary Provision.

The Article contains rules authorising the Financial Supervisory Authority to appoint a provisional Board of Directors for a financial undertaking which so requests. A provisional Board of Directors is, as the name indicates, a temporary situation. The Article provides instruction on the composition of a provisional Board of Directors and on the legal effect of the appointment of a provisional Board for shareholders or guarantee capital owners. In such case, the mandate of the financial undertaking's Board of Directors is cancelled and furthermore the rights of shareholders or guarantee capital owners to take decisions on its affairs by virtue of their holdings shall furthermore be abrogated. Furthermore, the duties of the provisional Board of Directors and its status are laid down. To put it briefly, it could be said that while the financial undertaking's provisional Board of Directors functions its status is in many respects similar to that of a Board of Directors (and shareholders' meeting) in a company which has been granted a moratorium.

As previously mentioned, the appointment of a provisional Board of Directors for a financial undertaking is a temporary measure. A provisional Board of Directors is primarily intended to obtain an overview of the financial undertaking's finances and to take certain

important and urgent measures for its next steps. The appointment of a provisional Board of Directors is interference with the interests of shareholders (guarantee capital owners) and no less interference with the rights of creditors of a financial undertaking and for this reason it is important to set the Board strict limits in disposing of interests and for its term of operation. Four options are proposed for ending the term of operation of a provisional Board of Directors, i.e. firstly, that its term conclude automatically after three months have elapsed from its appointment; secondly, that its term conclude when a financial undertaking is placed in winding-up at its request; in the third place, that the term of operation conclude when the financial undertaking is granted a moratorium, in which case it is proposed that the provisional Board continue to operate for one month after the moratorium period expires; and fourthly and finally that the term of operation of the provisional Board of Directors conclude when it is replaced by a new Board of Directors of a financial undertaking, i.e. that shareholders (guarantee capital owners) once more assume control of the financial undertaking, which can only take place with the approval of the Financial Supervisory Authority.

If the first option which was mentioned concerning the end of the provisional Board's term of operation is followed, it is provided for the immediate revocation of the financial undertaking's operating license, since then it is assumed that a new Board of Directors has not been elected in accordance with the possibility of the last-mentioned option.

The first paragraph of the Article proposes that a financial undertaking, which faces such financial and operating difficulties that it is not likely to be able to fulfil its obligations or satisfy minimum capital requirements, can turn to the Financial Supervisory Authority to request that it take over control of the undertaking. This is the situation which arose at the beginning of October 2008 when Glitnir banki hf., Landsbanki Íslands hf. and Kaupthing Bank hf. requested that the Financial Supervisory Authority take over their direction. If such a situation arises and a request for “takeover” is presented, the Financial Supervisory Authority must, according to the proposal, take a decision on the request without delay. If the request is rejected, the rules of this Article do not come into consideration. If, on the other hand, the request is accepted, three things will occur, i.e.:

In the first place, the Financial Supervisory Authority will appoint a provisional Board of Directors, which will take over control of the financial undertaking and solely direct its entire administration, i.e. will have the same authority by law and according to its Articles of Association that the Board of Directors and shareholders' meeting (meeting of guarantee capital owners) has. The words “solely direct its entire administration” also imply that neither the Financial Supervisory Authority nor parties acting under its auspices direct the administration of the financial undertaking. A provisional Board of Directors may not, however, on its own demand the winding-up of a financial undertaking for the purpose referred to in Point 4 of the second paragraph of Art. 6 of the Bill.

Secondly, the mandate of the financial undertaking's Board of Directors is cancelled. This is a matter of course since a new Board with considerably broader authorisations replaces it and assumes its powers.

In the third place, the rights of shareholders (guarantee capital owners) to take decisions on its affairs by virtue of their holdings shall be abrogated. Although it may seem to be serious interference with the interests of shareholders and guarantee capital owners, to deprive them of their rights to take decisions based on their holdings, and questions may arise as to whether such is definitely compatible with rules on protection of private property in Art. 72 of the Constitution, it must be borne in mind that this is a consequence of the Board of Directors of a financial undertaking, elected by shareholders or guarantee capital owners, requesting a takeover by the Financial Supervisory Authority and thereby of the appointment of a provisional Board of Directors directly thereafter. It must be borne in mind that when this

point is reached the situation is such that the Board of Directors of the financial undertaking considers it probable that it cannot fulfil its obligations or satisfy minimum capital requirements. It is evident that the Board of Directors of a financial undertaking will not present such a request to the Financial Supervisory Authority unless it considers this unavoidable. If, in the estimation of the Financial Supervisory Authority, other options are available in the situation, such a request would likely be rejected. It must also be borne in mind that, under circumstances where a financial undertaking cannot fulfil its obligations towards creditors or satisfy minimum capital requirements, the interests of its owners, i.e. shareholders or guarantee capital owners, are generally depleted for the most part. The actual interests of owners are past history while the significance of interests of others, i.e. interests of creditors and in some instances of the public authorities, have become dominant. Finally, it should be borne in mind that this is only a temporary situation, which is created by the arrangements proposed in this Article. It should be mentioned that public interests are involved primarily because financial undertakings generally handle the funds of individuals and enterprises. They require an operating license from the authorities (the Financial Supervisory Authority) and their failure can have a major impact on the financial situation of these parties and the society as a whole. When special financial difficulties arise in financial undertakings it is important that it be possible to intervene in their activities, not least to secure the interests of their customers.

The second paragraph contains provisions on the first tasks of the provisional Board of Directors. As previously mentioned, it must first take measures to gain an overview of the financial undertaking's financial situation. To do so it needs time and freedom to work without interruption. To ensure this, provision is made for the financial undertaking to enjoy the same status in this regard as if it had been granted a moratorium. Therefore, execution and other enforcement actions cannot be applied against the undertaking. The rules of Art. 22 of the Act on Bankruptcy etc., No. 21/1991, apply to this situation. That provision does not prevent creditors or others from seeking their rights by bringing suit against a financial undertaking; only execution or other enforcement actions cannot be applied against it. It is proposed that the authorisations of the provisional Board of Directors to take measures involving major interests be limited to what is urgently necessary. On the other hand, it is not deemed possible to tie the hands of the provisional Board of Directors in the same manner as is done in Articles 19-21 of Act No. 21/1991, e.g. in connection with depositors.

The third paragraph contains provisions on the conclusion of control by the provisional Board of Directors. It has previously been explained that this can occur in four ways, and reference is made thereto. These routes imply that either shareholders (guarantee capital owners) are given control of the financial undertaking once more or it is placed in winding-up proceedings, as the case may be, following the granting of a moratorium.

On Art. 6

This Article is intended to replace Articles 101, 102 and 103 of the current Act. The first paragraph states that the estate of a financial undertaking cannot be placed in liquidation under general rules and therefore it is proposed that special rules apply to this. This is in accordance with the first paragraph of Art. 101 of the current Act. This does not however change the fact that various provisions of the Act on Bankruptcy etc. can be applied to the winding-up proceedings as will be mentioned later. The intention is to have a financial undertaking wound-up in the manner specified in the Bill, and that creditors' rights and possibilities to seek resolution by the courts for disputes which may arise in the winding-up proceedings are ensured. The Article lays down the requirements for placing a financial undertaking in winding-up proceedings, where a petition for winding-up should be directed,

what the substance of the petition shall be, appointment of a Winding-up Board, principles concerning its status and the status of shareholders and guarantee capital owners and how the reference date shall be determined.

The second paragraph lays down the conditions for a financial undertaking to be placed in winding-up proceedings. This can occur at the demand of the Financial Supervisory Authority, the undertaking's Board of Directors or a provisional Board of Directors; a number of variations are provided for in this regard. Point 1 states that the Financial Supervisory Authority may demand the winding-up of a financial undertaking under certain circumstances. This provision is substantially the same as Point 1 of the second paragraph of Art. 101 of the current Act. Point 2 states that the Financial Supervisory Authority, the Board of Directors of a financial undertaking or its provisional Board of Directors can demand that it be wound up, if obliged to do so by its Articles of Association. Such provisions may concern both the undertaking's financial situation and other circumstances, primarily the position of shareholders (guarantee capital owners). Point 3 states that a financial undertaking should be wound up at the request of the undertaking's Board of Directors or provisional Board of Directors under the same circumstances as a party subject to accounting obligations must request that its estate be placed in liquidation pursuant to the second paragraph, cf. the first paragraph, of Art. 64 of Act No. 21/1991, which provides for a debtor to request that its estate be placed in liquidation if it can no longer pay all its debts to creditors when they fall due and it is regarded as unlikely that its payment difficulties will be alleviated in the short-term. Point 4 proposes that a financial undertaking be placed in winding-up at the request of its Board of Directors and with the approval of the Financial Supervisory Authority if a specified majority of shareholders (guarantee capital owners) has approved a proposal for winding-up. The rule in this Point is comparable to the currently applicable Point 3 of the second paragraph and the fourth paragraph of Art. 101 of the current Act and therefore needs no explanation here.

The third paragraph contains provisions on the winding-up petition, where it should be directed and what it should contain. The Bill's proposals in this regard are substantially comparable to the first and second paragraphs of Art. 102 of the current Act, i.e. as to where the petition should be directed, which is to the District Court where civil proceedings could be brought against the undertaking in its legal venue. The current rules are unnecessarily complex in this regard. It is furthermore proposed that a winding-up petition shall be prepared substantially like a petition for liquidation. The rules of Art. 7, cf. Art. 66, of Act No. 21/1991 are expected to apply concerning the substance of the petition and the documentation which is to accompany it. It is also proposed to state that the petition shall be treated by the Court like a petition for liquidation. This entails, for example, that the rules of Art. 8 of Act No. 21/1991 will apply to handling of the petition and the provisions of Chapter XI of that Act as applicable. Finally, the District Court Judge will take a decision on the petition with a Ruling. This Ruling may, in accordance with Art. 179 of Act No. 21/1991, be referred to the Supreme Court with an Appeal.

The fourth paragraph proposes that it be stated that a District Court Judge shall appoint a Winding-up Board for a financial undertaking, comprised of up to five persons, as deemed necessary. For smaller financial undertakings, the Winding-up Board would likely have three members and five for larger ones. The Winding-up Board shall assume control of the financial undertaking and has the same rights and obligations as the undertaking's Board of Directors and shareholders (guarantee capital owners) held. The exception is made to this that, if the Winding-up Board reaches the conclusion that according to the outlook the financial undertaking's assets will suffice to cover its obligations, then the Winding-up Board shall seek the views of shareholders (guarantee capital owners) towards disposition of the undertaking's interests in tandem with giving creditors the opportunity to express their views on this at creditors' meetings. It is natural to proceed in this manner, since the ownership interests of

shareholders (guarantee capital owners) come into effect if it appears evident that a financial undertaking's assets exceed its liabilities. Furthermore, it is proposed that the same rules shall apply to the Winding-up Board, its work and its members as apply to an administrator under Act No. 21/1991. This implies, for instance, that the provisions of Art. 75 of Act No. 21/ 1991 shall apply concerning their eligibility, as well as other provisions of Chapter XIII of the Act. Provisions of the Act on administrators have been tested extensively and have generally proved effective. It eliminates legal uncertainty concerning the status and authorisations of the Winding-up Board if these aspects are unified with rules of law on administrators.

The fifth paragraph contains proposals for rules on determining the reference date. The principle is proposed that a decision on determining the reference date shall be governed by the rules of Act No. 21/1991, cf. in particular Art. 2 of the Act; from this there are three derogations, however. Firstly, the reference date would be based on that point in time when the Financial Supervisory Authority appoints a provisional Board of Directors for a financial undertaking, as provided for in Art. 5 of this Bill. Secondly, as is provided for in the second paragraph of Art. 103 of the current Act, the reference date could be based on the date when the Financial Supervisory Authority granted the financial undertaking a time limit, as referred to in the fourth paragraph of Art. 86 of the Act; and thirdly, the reference date can be based on the date the District Court received a petition for winding-up, as referred to in the second paragraph of this Article, if the reference date has not already occurred pursuant to other rules of the Bill.

On Art. 7

This Article contains proposals for rules on handling of claims etc.; in the current Act the first paragraph of Art. 103 makes reference to the fact that “general rules on liquidation etc.” shall apply as applicable to “the winding-up of a financial undertaking's estate”. This Article proposes that the same rules shall apply to reciprocal contracts and the handling of claims against a financial undertaking in winding-up proceedings as apply to this pursuant to Act No. 21/1991. Proposals are made, however, for various derogations from these rules. These rules seek to take into consideration the special circumstances which apply when a financial undertaking is wound up, e.g. the Winding-up Board is granted special authorisations to pay claims, in the manner described, immediately following the first creditors' meeting after the expiration of the time limit for lodging claims. It can be very important for financial undertakings to conclude payment to specific creditors or groups of creditors. This is not least important in consideration of the fact that the winding-up itself can take a long time, which sometimes can be to the advantage of creditors' interests. The Winding-up Board is expected to provide creditors with extensive opportunities to express their views. Meetings held by the Winding-up Board to this end are called creditors' meetings. The status of the Winding-up Board is comparable to the status of an administrator under Act No. 21/1991, which implies that a creditors' meeting cannot give instructions to the Winding-up Board on measures. The Winding-up Board takes the measures it considers proper to serve the interests of the financial undertaking. Most often this would be decisions in the interests of creditors, although this is not always the case. If creditors are of the opinion that the entire Winding-up Board or individual members of it are not fulfilling their duties or violating their rights, they may avail themselves of the remedies listed in Art. 76 of Act No. 21/1991, i.e. refer their complaints to a District Court Judge in the manner specified there. This could result in the District Court Judge dismissing the Winding-up Board or individual members of it with a Ruling and appointing a new Board or member as replacement.

It should also be pointed out that special rules of law could result in a different conclusion than is expected in the general rules of Act No. 21/1991. Examples of this are

various provisions of the Act on Financial Collateral Arrangements, No. 46/2005, the Act on Security of Payment Instructions in Payment Systems, No. 90/1999, and Chapter V of the Act on Securities Transactions, No. 108/2007. Rules of legal construction would generally result in the conclusion that the special rules would be considered to take precedence over the general rules, although each individual instance has to be assessed and a decision taken as to what legal authority applies to its resolution and how it should be applied.

The first paragraph, as previously mentioned, proposes that the same rules as are found in Act No. 21/1991 apply to a financial undertaking's reciprocal contracts and claims against it in other respects. An important derogation is proposed from these rules, i.e. that a Ruling by a District Court Judge on the winding-up of a financial undertaking does not automatically result in all claims against it falling due. The reason for this derogation is that winding-up proceedings may be initiated even if a company's financial situation is not such that its assets are less than its liabilities, and therefore the possibility is not excluded that its activities could continue during the winding-up proceedings. On the other hand, it should be borne in mind that this rule does not alter the provisions of Art. 99 of Act No. 21/1991, that the total amount of individual claims shall be based on the date the undertaking is placed in winding-up, and Art. 114 of the same Act, that claims for interest, inflation indexation, exchange rate difference and cost of collecting the claim, which fall due after the commencement of winding-up proceedings, shall be ranked behind other claims.

The second paragraph proposes that the initial actions of the Winding-up Board shall be to issue and have published an invitation to lodge claims in the winding-up. It is proposed that the same rules apply to this as are found in Act No. 21/1991. This entails, cf. Art. 86 of that Act, that a notification of the winding-up and invitation to lodge claims must be sent to all foreign creditors, whose domicile is known to the financial undertaking, and an advertisement published if there are considered to be creditors in foreign countries but it is not known where they are or how they can be reached. Proceeding in this manner is unavoidable, even though it is evident that sometimes the number of foreign creditors may be in the hundreds of thousands. The reasons are both that the invitation to lodge claims, as referred to here, has what is called a "preclusive" effect, cf. Art. 118 of Act No. 21/1991, i.e. if a claim is not lodged within the time limit for lodging claims it will not be considered in the winding-up and in most cases this means that the creditor loses all possibilities of obtaining satisfaction for its claim in full or in part from the financial undertaking's assets. In addition, a different rule would comprise an infringement of non-discrimination towards foreign creditors, which would be contrary to one of those principles on which Directive 2001/24/EB is based. Furthermore, it does not appear any more taxing for a financial undertaking to see to the sending of such a notification of the invitation to lodge claims than for other undertakings with a large number of customers abroad. The same rules apply to the contents of the invitation to lodge claims and time limits as in Act No. 21/1991 and this requires no explanation.

The third paragraph proposes that with regard to the priority ranking of claims, a matter on which the Winding-up Board must decide, the same rules shall apply as apply to claims against an insolvent estate, cf. Chapter XVII of Act No. 21/1991. It is specified, however, that claims for deposits, as referred to in the Act on Deposit Guarantees and an Investors Compensation Scheme, No. 98/1999, are in addition included with claims which enjoy priority with reference to the first and second paragraphs of Art. 112 of Act No. 21/1991. This is in accordance with the changes to rules on priority ranking which were made with Art. 6 of Act No. 125/2008. In other respects the paragraph requires no explanation.

The fourth paragraph proposes that certain provisions of Act No. 21/1991 shall apply to handling of claims against a financial undertaking being wound-up. This entails that court actions cannot be brought against a financial undertaking in winding-up proceedings, but

rather that parties who consider themselves to have a claim or other interests should lodge their claim and, if they do not accept the decision taken by the Winding-up Board on the claim or interests, they can refer this claim to a District Court Judge and subsequently refer the District Court Judge's Ruling to the Supreme Court as provided for by the rules of Act No. 21/1991. It is important to underline that creditors' right to seek a court resolution of their claim and other interests against the financial undertaking is ensured in the same manner as the right of parties who consider themselves to have a claim against a bankrupt estate. It is also proposed, as previously mentioned, that the rule apply that if a claim is not lodged within the deadline for lodging claims then it will not be considered in payment of claims in the winding-up proceedings. The fifth paragraph states that once the time limit for lodging claims has expired, the Winding-up Board 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 lodging claims. This provision is necessary in connection with interests of shareholders or guarantee capital owners, cf. for more details the third paragraph of Art. 8 of this Bill.

The sixth paragraph proposes to codify authorisations to the Winding-up Board to pay, following the expiration of the time limit for lodging claims and after having held a creditors' meeting and sought the opinions of creditors there as might be expected, part of the claims in accordance with the rules contained in the paragraph. The main point is that the Winding-up Board must ensure non-discrimination among creditors who are equally ranked and hold claims which have not been finally rejected. This paragraph also proposes rules which will offer individual creditors who elect to extricate themselves from the winding-up proceedings, e.g. by accepting less as their share than others who are equally ranked in priority will receive at later stages, the option of this route. The reason for this proposal is that creditors may be in widely differing positions. Some creditors could wish that the winding-up proceedings take a long time while an attempt is made to obtain the highest price possible for the financial undertaking's assets, so that in the end they would receive the maximum proportion towards their claims and would even be in a position where their claims would be settled in full. Other creditors may be in a position where they wish to receive payment as soon as possible and, if this became possible, would be satisfied with a lower proportion towards their claims than they would obtain in the final settlement. It must be considered important to codify such flexibility for the Winding-up Board to have regard for the varying positions of creditors in this regard. Regarding this rule there is reason to point out especially that the Winding-up Board, according to the concluding words of the sixth paragraph, is to take into consideration, if the possibility of paying individual creditors in this manner is considered, that a party receiving payment immediately itself will benefit from interest on the funds from that point onwards, while other creditors who are willing to show patience, will not receive interest on their claims but rather an additional allocation towards their claims at later stages. Equal treatment would therefore not be ensured, for instance, between a creditor who immediately receives as full payment on its claim one-fifth of its amount and another creditor who was prepared to wait for years for payment of the same or a slightly higher proportion of its claim. It is therefore required at the end of the sixth paragraph, that the Winding-up Board may only pay individual creditors pursuant to this special rule if it can be considered certain that in so doing they receive less as their share than others who intend to await for an increase in the assets of the financial undertaking so that a higher payment will be received on their claims.

On Art. 8

This Article makes proposals for rules on the Winding-up Board's authorisations to dispose of interests of a financial undertaking. There is no choice but to allow the Winding-up

Board wide-reaching authorisations in this regard. The general principle regarding these authorisations is that they should comply with rules on an administrator's direction of the estate in liquidation as provided for in Act No. 21/1991. Proposals are made for a number of derogations from this principle, primarily because it may be necessary for winding-up to take a longer time than insolvency liquidation, where the administrator is instructed to expedite liquidation, cf. the second paragraph of Art. 122 of Act No. 21/1991. As has previously been mentioned, a party disputing a decision or measure taken by the Winding-up Board can refer this dispute to a District Court Judge as provided for in the rules of the third paragraph of Art. 128 of Act No. 21/1991.

For explanations regarding the first paragraph reference is made to the above.

The second paragraph proposes to codify provisions that the Winding-up Board's objective shall be to obtain a maximum value for the financial undertaking's assets. In so doing, it proposes to allow flexibility so that the winding-up proceedings are not primarily aimed at concluding as soon as possible. If, in the Winding-up Board's assessment, the interests of creditors and/or shareholders (guarantee capital owners) are better served by disposing of rights as soon as possible rather than waiting in the hope that more could be obtained for them later, then it can take such a decision. Proposals from parties with interests at stake could naturally be of significance in such an assessment. The Winding-up Board, however, is not obliged by a resolution of a creditors' meeting on a specific measure or measures. It should be reiterated that creditors can refer such a decision by the Winding-up Board to a court, cf. the above discussion.

In the third paragraph it is proposed that the Winding-up Board call a creditors' meeting for the same purpose as an administrator calls a meeting of creditors. The provisions of Chapter XIX of Act No. 21/1991 show that, although the administrator's authorisations to dispose of the interests of an insolvent estate are extensive, he/she is expected to present his/her decisions to creditors and seek their opinions as appropriate before taking decisions, cf. the second paragraph of Art. 124 of Act No. 21/1991. Those creditors who wish to follow the administrator's decisions and measures have extensive possibilities to do so. The same obligations are incumbent upon the Winding-up Board. It is furthermore proposed that the Winding-up Board be obliged, when the outlook is that a financial undertaking's assets will suffice to cover its obligations, to consult with shareholders (guarantee capital owners) in tandem with its creditors' meetings to examine their opinion on the disposition of the undertaking's interests. The grounds for so doing are the same as previously mentioned, i.e. under these circumstances the owners' interests in the undertaking come into effect and it is proper that the parties exercising them have the same possibilities of influencing measures of significance for these interests.

The fourth paragraph proposes that if it is not demonstrated that the assets of a financial undertaking will be sufficient to fully satisfy its obligations, voiding may be demanded of measures taken by it according to the same rules as are found in Chapter XX of Act No. 21/1991.

On Art. 9

This Article contains proposals for rules on the conclusion of winding-up proceedings. They propose that winding-up proceedings can conclude in the following manner:

a. when payment of recognised claims against a financial undertaking has concluded and, if necessary, funds have been put aside for payment of disputed claims:

1. by delivering the financial undertaking to the control of its shareholders (guarantee capital owners) with the aim of it recommencing its activities, provided the specified conditions are satisfied; or

2. by making payment to shareholders (guarantee capital owners) of their portions of any remaining assets. It is proposed that a special rule apply to the disposition of the assets of a savings bank which remain after guarantee capital has been paid;

b. when the assets of the financial undertaking do not suffice for full payment of claims which have not been finally rejected in the winding-up proceedings:

3. by seeking composition with creditors;

4. by demanding liquidation of the financial undertaking's estate.

The Article does not state how long a time concluding winding-up in the manner described here is expected to take. It is evident, however, that winding-up proceedings which conclude as described in subparagraph a generally will take a long time. On the other hand, it is not excluded that it could take a Winding-up Board a short time to reach the conclusion that the assets of a financial undertaking are not sufficient for payment of its debts and that there is no probability that composition can be achieved with creditors, and therefore liquidation of the undertaking's estate should be requested immediately. Most important, however, is that the Winding-up Board can, in particular after consulting creditors, determine the speed of its work as it deems best to serve the interests of creditors and, as the case may be, shareholders (guarantee capital owners).

The first paragraph has proposals for rules based on the circumstances referred to in subparagraph a above, i.e. when the Winding-up Board has concluded payment of all recognised claims and set aside funds to pay claims which may be disputed, or those parties who have unpaid claims agree to such a conclusion of the winding-up proceedings. The possibility that the financial undertaking recommence activities and a new Board of Directors be elected for it to take over from the Winding-up Board is subject to various conditions. In the first place, the clear wish of shareholders (guarantee capital owners) must be established, i.e. the approval of parties exercising 2/3 of share capital (guarantee capital). Secondly, the consent of the Financial Supervisory Authority must be available for this to be achieved. Thirdly, and the Financial Supervisory Authority is to ascertain this, the financial undertaking must satisfy other statutory conditions to be able to commence activities, such as the requirements of Chapter X of Act No. 161/2002, on own funds. The other possibility is for the Winding-up Board to make payment to shareholders (guarantee capital owners) of their holdings according to an allocation proposal, which is expected to be prepared in accordance with the rules of Act No. 21/1991 referred to; by so doing the undertaking would be literally wound-up (Icel. *slitið*) with the allocation of its net assets to owners. A special rule on savings banks in this provision is substantially the same as instructions in the third paragraph of Art. 103 of Act No. 161/2002.

The second paragraph proposes to make it possible to conclude winding-up proceedings even if payment of all claims which have been recognised is not complete, if those creditors concerned agree to this. A creditor may consider its interests better served by continuing to hold the claim after the financial undertaking recommences operation, e.g. because it intends to continue doing business with it. It is therefore necessary to provide for this possibility by law.

The third paragraph proposes that winding-up proceedings may conclude with the Winding-up Board seeking composition with the financial undertaking's creditors. Negotiations on composition are governed by the Articles of Chapter XXI of Act No. 21/1991 referred to while confirmation of composition is governed by the rules of Chapter IX of the Act. The Winding-up Board shall perform the duties otherwise performed by the co-ordinator of composition negotiations. If a composition is confirmed, it is proposed that the Winding-up Board be entrusted to implement it according to its substance. If this is achieved, the winding-up proceedings can then conclude in accordance with the above-mentioned, i.e. following the options listed in subparagraph a above.

The fourth paragraph contains proposals for the rules which are to apply if the assets of the financial undertaking are not sufficient to fully satisfy its obligations and the Winding-up Board considers it demonstrated that the conditions to seek composition pursuant to the third paragraph do not exist or a request for its confirmation has been rejected. Under these circumstances it is proposed that the Winding-up Board be obliged to demand liquidation of the financial undertaking's estate. It is proposed that a creditor holding a recognised claim which has not been paid be able, under the above-mentioned circumstances, also to demand that the estate of the financial undertaking be placed in liquidation. It is also proposed that a creditor not be able to advance such a demand unless it demonstrates that it has legally sanctioned interests in forcing liquidation, rather than allowing the financial undertaking to continue in winding-up proceedings.

The fifth paragraph proposes that, if a financial undertaking's estate is placed in liquidation in accordance with the fourth paragraph, measures taken by the Winding-up Board be allowed to stand unaltered, i.e. they cannot be overturned by means other than those listed above. It is also proposed that the invitation to creditors to lodge claims, the handling of claims lodged etc. which the Winding-up Board has carried out, remain unaltered; the administrator appointed by a District Court Judge for the liquidation, however, is to have an advertisement published in the *Legal Gazette* concerning the placing of the undertaking's estate in liquidation.

On Art. 10

The Article requires no explanation.

On Art. 11

The Article proposes that part of the Temporary Provision in Act No. 129/2008 be cancelled; this provision states that if a moratorium has been granted with reference to the second paragraph of Art. 98 of the Act prior to the entry into force of Act No. 129/2008, but a meeting with creditors, as provided for in the first paragraph of Art. 13 of the Act on Bankruptcy etc., has not yet taken place, a District Court Judge is authorised, after obtaining a debtor's reasoned request, to postpone a court action which was already decided on, however, not for a longer period than provided for in the first sentence of the third paragraph of Art. 98 of the Act.

On Temporary Provision I

This states that if the Financial Supervisory Authority has, prior to the entry into force of the Act, appointed a Resolution Committee on the basis of Art. 5 of Act No. 125/2008 and such Resolution Committee is still at work but the undertaking has not been granted a moratorium, the Resolution Committee shall thereafter automatically become the undertaking’s provisional Board of Directors as referred to in Article 100 a, cf. Art. 5 of the Bill.

On Temporary Provision II

This states how to proceed with financial undertakings which benefit from a moratorium upon the entry into force of the Act. The first special rule which applies to those undertakings is that their moratorium shall continue notwithstanding the entry into force of the Act. It is proposed that it be possible to extend the moratorium in accordance with the second paragraph of Art. 10 of the Bill, which states that the provision of the third paragraph

of Art. 98 of the Act on Financial Undertakings shall retain its validity towards the said undertakings. Therefore a District Court Judge may extend the moratorium of financial undertakings for up to 24 months from the court session when it was first granted. Authorisation to extend the moratorium shall be granted without regard to the provisions of Points 4 and 6 of the second paragraph of Article 12 of the Act on Bankruptcy etc.

Point 2 of the Provision states that regarding the moratoria of financial undertakings which have been granted a moratorium before the entry into force of the Act, the provisions of the first paragraph of Article 101 and Articles 102, 103 and 103 a of the Act shall apply, cf. the first paragraph of Art. 6 and Articles 7, 8 and 9 of the Bill, as if the undertaking had been placed in winding-up with a court Ruling on the date this Bill becomes law.

The winding-up proceedings, however, will continue to be referred to as a moratorium as long as the latter remains in force. Once this expires, the financial undertaking shall automatically and without a special court ruling go into winding-up proceedings pursuant to general rules, having regard to Points 3 and 4 of this Provision. The provisions of Chapter IV of the Act on Bankruptcy etc. shall not apply to moratoria of undertakings covered by this Provision.

Point 3 of the Provision proposes that the Resolution Committee of a financial undertaking which has been granted a moratorium, which was appointed by the Financial Supervisory Authority prior to the entry into force of this Act, shall continue its work and be called a Resolution Committee. The Resolution Committee shall fulfil the role intended for a Winding-up Board 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 Art. 103 of the Act, cf. Articles 1, 6, 7 and 8 of the Bill. Should a seat on the Resolution Committee become vacant after the adoption of this Bill, the Financial Supervisory Authority shall appoint a person to assume it unless this is considered unnecessary having regard to the tasks which the Committee has yet to complete.

Point 4 of the Provision states that, to handle tasks other than those entrusted to the Resolution Committee in Point 3, a District Court Judge shall appoint a Winding-up Board for the undertaking in accordance with instructions in the first and third sentences of the fourth paragraph of Art. 101 of the Act, cf. Art. 6 of the Bill. A District Court Judge shall appoint a Winding-up Board after receiving a written request from a Resolution Committee. The person serving as the financial undertaking's appointee during the moratorium shall automatically take a seat on such a Winding-up Board and shall remain in this position even after the moratorium has concluded.

On Temporary Provision III

It is furthermore proposed that the reference date be determined in the manner specified in Temporary Provision III and therefore the reference date has already arrived in the handling of those three financial undertakings which have now been granted a moratorium.

On Temporary Provision IV

Here it is proposed that part of the current Art. 100 a in Act No. 161/2002 retain its validity; this provision was added to the Act with the adoption of Act No. 125/2008. This part provides for the Financial Supervisory Authority to be able, if the specified conditions are satisfied, itself to take the initiative in placing a financial undertaking in winding-up proceedings. The rules found in this Bill, however, are based on the financial undertaking itself taking the initiative in the winding-up proceedings. It is necessary to retain in effect for the moment older rules, which are contained in this Temporary Provision; here they are

expected to expire at year-end 2009. Should it be deemed necessary to have statutory rules of this sort in the future this will have to be examined especially and then suitable amendments made to Act No. 161/2002 before this Temporary Provision expires.

Attachment

Ministry of Finance, Office of the Budget

Opinion concerning the Bill of legislation amending Act No. 16/2002, on Financial Undertakings, as subsequently amended

The Bill proposes extensive amendments to Chapter XII of the Act which concerns the financial restructuring of financial undertakings, their winding-up and merger with other financial undertakings. The principal point of this Bill is to propose the adoption of new rules on the winding-up proceedings of financial undertakings, which provide for certain financial undertakings themselves to take the initiative in such winding-up proceedings. The Bill's Temporary Provisions, however, propose that the Financial Supervisory Authority can also take the initiative in assuming control of a financial undertaking. Furthermore, the Bill proposes that similar rules apply to winding-up proceedings as apply to insolvency liquidation. It is assumed that a Winding-up Board will be appointed which, in most respects, will hold the same authorisations as the administrator of an insolvent estate; however, the main rule applies here that the Winding-up Board's objective shall be to maximise the value of a financial undertaking's assets. The cost of this Board's work shall be paid by those undertakings in winding-up proceedings.

The final paragraph of Art. 100 a of the Act on Financial Undertakings, cf. Act No. 125/2008, provides for the Treasury to be responsible for the cost of implementing the actions of the Financial Supervisory Authority based on the provision, including the cost of liquidation if such cost is incurred. Since the Resolution Committees of the three former banks were appointed on the basis of this provision, the Treasury has borne the cost of their work insofar as the state has paid the salaries of Resolution Committee members, but not other costs. Adoption of Act No. 129/2008 codified authorisation for financial undertakings to request a moratorium for up to 24 months. The view has been that the Treasury should pay the cost of the Resolution Committees' work while the financial undertakings were in moratorium. The Bill provides for the three financial undertakings, for whom Resolution Committees have been appointed, be granted certain authorisations which financial undertakings generally hold in their winding-up. It furthermore proposes that the undertakings may be in moratorium for the entire 24-month period, after which they automatically move into winding-up proceedings. The Bill provides for the cost of activities of financial undertakings in moratorium and in winding-up, including the cost of the work of Resolution Committees, to be paid by the financial undertakings concerned and not by the Treasury after the entry into force of the Act. The cost of the Resolution Committees has, up until now, been around ISK 45 million per month, which has been paid by the Treasury. Based on this cost, and that the Resolution Committees would have worked until the end of the authorised moratorium period, this provides for the financial undertakings themselves to bear as much as ISK 855 million which otherwise could have been incurred by the Treasury. If the Bill becomes law without amendments, it can be expected to reduce Treasury expenditures in 2009 and 2010 by this amount; these expenditures were not provided for in the current budget.