

Act No. 161/2002 on Financial Undertakings

CHAPTER I

Scope

Article 1

This Act shall apply to Icelandic financial undertakings and to the activities of foreign financial undertakings in Iceland. For the purposes of this Act, a "financial undertaking" shall mean an undertaking which has been granted an operating licence pursuant to Article 6, cf. Article 4.

CHAPTER II

Operating Licence

A. Granting of an Operating Licence

Article 2

Grantor of operating licences

The Financial Supervisory Authority shall grant operating licences pursuant to this Act. A financial undertaking may commence operation upon receiving an operating licence from the Financial Supervisory Authority.

The Financial Supervisory Authority shall consult with competent authorities in other member states in assessing an application for an operating licence from a financial undertaking which is:

- a. a subsidiary of a financial undertaking or insurance company with an operating licence in another member state,
- b. a subsidiary of the parent company of a financial undertaking or insurance company with an operating licence in another member state, or
- c. controlled by a party, either a natural person or legal entity, which has a dominant position in a financial undertaking or insurance company in another member state.

Consultation as provided for in the second paragraph shall include: information on the eligibility of shareholders and management, cf. Articles 42 and 52.

Consultation as provided for in the second paragraph shall furthermore apply to on-going surveillance that conditions for operation are satisfied.

For the purposes of this Act, a member state shall mean a state which is a member of the European Economic Area (EEA) or the European Free Trade Association Treaty.¹⁾

¹⁾ Act No. 130/2004, Article 1.

Article 3

Activities subject to operating licences

The following activities shall be subject to operating licences pursuant to this Act:

1. receipt of repayable funds from the public:

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

- a. deposits,
 - b. debt certificates.
2. granting of credit which is financed by repayable funds from the public;
 3. asset leasing, if such activity forms the principal activity of an undertaking. Asset leasing shall mean the leasing of movable assets or real estate where the lessor sells the lessee the leased property for the leasing fee agreed upon for a specified minimum rental period;
 4. the issuing and handling of payment cards;
 5. the issuing and handling of electronic money;
 6. trade and services in financial instruments, in accordance with the Act on Securities Transactions:
 - a. reception and transmission of instructions from customers concerning one or more financial instruments and the execution of such instructions for the account of a third party;
 - b. asset management, cf. the Act on Securities Transactions;
 - c. underwriting in connection with the issue of one or more financial instruments or the marketing of such an issue;
 - d. administration of a securities offer;
 7. operation of Undertakings for Collective Investment in Transferable Securities (UCITS).

The provisions of Chapter IV shall apply concerning other operating authorisations of financial undertakings.

Notwithstanding the first paragraph, the following parties may carry out activities as referred to in sub-paragraph a of Point 6 of the first paragraph without an operating licence:

1. the Central Banks of member states of the European Economic Area and other public institutions handling or dealing with national credit issues;
2. insurance companies;
3. legal entities providing services to their parent companies, subsidiaries or other subsidiaries of the parent company;
4. district court or supreme court attorneys and certified public accountants, provided that the service is provided as a normal part of a more extensive activity in their field of operation;
5. legal entities which provide only service in connection with managing staff investment funds;
6. legal entities which may not carry out other securities transactions than those specified in sub-paragraph a of Point 6 of the first paragraph and which may only communicate instructions to financial undertakings and their branches within the European Economic Area;
7. parties which are chiefly engaged in trading in commodities between themselves or with producers or parties using these products on a commercial basis and which exclusively provide to such producers or parties services connected with securities transactions and only to such extent as is necessary as a result of their principal activities.

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

Article 4

Types of operating licences

A financial undertaking may be granted a licence to operate as:

1. a commercial bank, in accordance with Points 1-6 of the first paragraph of Article 3. A commercial bank must, however, always have an operating licence and provide services in accordance with Points 1 and 2 of the first paragraph of Article 3;
2. a savings bank, in accordance with Points 1-6 of the first paragraph of Article 3. A savings bank must, however, always have an operating licence and provide services in accordance with Points 1 and 2 of the first paragraph of Article 3;
3. a credit undertaking, in accordance with sub-paragraph b of Point 1 and Points 2-6 of the first paragraph of Article 3. A credit undertaking must always have an operating licence in accordance with sub-paragraph b of Point 1 and Point 2 of the first paragraph of Article 3. A credit undertaking shall be authorised to call itself an investment bank;
4. an electronic money undertaking, in accordance with Point 5 of the first paragraph of Article 3;
5. a securities company, in accordance with Point 6 of the first paragraph of Article 3;
6. a securities brokerage, in accordance with sub-paragraph a of Point 6 of the first paragraph of Article 3. A securities brokerage may be authorised to trade for own account, in accordance with Article 26, cf. Article 14;
7. a management company of UCITS, in accordance with Point 7 and sub-paragraph b of Point 6 of the first paragraph of Article 3.

A financial undertaking which has been granted an operating licence in accordance with Points 1-4 of the first paragraph shall be deemed to be a credit institution in the understanding of this Act.

Article 5

Application

An application for an operating licence must be made in writing and shall be accompanied by:

1. information on the type of operating licence applied for, cf. Article 4, on activities subject to authorisation, cf. the first paragraph of Article 3, and other proposed activities, cf. Chapter IV;
2. the company's Articles of Association;
3. information on the operational structure, including information as to how the activities proposed will be carried out;
4. information on the internal organisation of the undertaking, including rules on supervision and work procedures;
5. a business plan and budget, indicating for instance the expected growth and composition of own funds;
6. information on founders, shareholders or guarantee capital owners, cf. Chapter VI;
7. information on the Board of Directors, managing director and other management officers;
8. confirmation by an accountant that share capital or initial capital has been paid;
9. information on close links between the undertaking and individuals or legal entities, cf.

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

Article 18;

10. other relevant information as determined by the Financial Supervisory Authority.

Article 6

Granting of an operating licence

A decision by the Financial Supervisory Authority on the granting of an operating licence must be notified to the applicant in writing as promptly as possible and no less than three months following the receipt of a complete application. The Financial Supervisory Authority must notify an applicant when an application is considered to be satisfactory. The operating licence must indicate what type of authorisation is involved, cf. Article 4, what activities subject to licence may be carried out on the basis of the same, and what other activities are to be carried out in accordance with Chapter IV.

A financial undertaking may not commence activities before its share capital or guarantee capital has been paid in full in cash.

The Financial Supervisory Authority must publish notifications of licences granted to financial undertakings in the Legal Gazette (*Lögbirtingablað*).

Article 7

Refusal of an operating licence

If an application does not fulfil the requirements of this Act, in the estimation of the Financial Supervisory Authority, the Authority shall refuse to grant an operating licence. Grounds must be given for refusal of an application by the Financial Supervisory Authority and the applicant notified within three months of receipt of a complete application. A refusal must, however, always be received by an applicant within 12 months from the receipt of an application.

Article 8

Register of financial undertakings

The Financial Supervisory Authority shall keep a register of financial undertakings and their branches, including all the principal information on the undertakings concerned. Changes to previously recorded information, including any increase or decrease in branches, must be notified in advance to the Financial Supervisory Authority.

B. Revocation of an operating licence

Article 9

Grounds for revocation

The Financial Supervisory Authority may revoke a financial undertaking's operating licence in whole or in part:

1. if the undertaking has been granted an operating licence based on incorrect information or by other improper means;
2. if the undertaking does not satisfy the provisions of this Act concerning initial capital, share capital, own funds or number of guarantee capital owners;

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

3. if the undertaking does not utilise its operating licence within twelve months of its granting, relinquishes the licence expressly, or ceases operation for more than six successive months;
 4. if the shareholders, members of the board and management of the undertaking do not satisfy the qualification requirements laid down in Articles 42 and 52;
 5. if there are close links between a financial undertaking and individuals or legal entities in the manner referred to in Article 18;
 6. if a ruling has been issued on the winding up of the undertaking, in accordance with Chapter XII;
 7. if the undertaking seriously or repeatedly infringes in any other manner against this Act, rules, statutes or regulations adopted by virtue of it.
- Before any revocation may be enacted pursuant to the first paragraph, the undertaking must be allowed a suitable period to rectify the situation, if rectification is possible in the estimation of the Financial Supervisory Authority.
- The Financial Supervisory Authority may prohibit a financial undertaking from pursuing certain activities for which it is authorised in accordance with Chapter IV. The provisions of the first and second paragraphs shall apply to such a prohibition.

Article 10

Notification of revocation and winding up of a financial undertaking

Revocation of the operating licence of a financial undertaking must be notified to its Board of Directors and grounds given in writing. The Financial Supervisory Authority shall publish the notification in the *Legal Gazette* and advertise in the mass media. If the financial undertaking operates branches or has services in another country such notification must be sent to the competent supervisory authorities in that country. If the operating licence of a financial undertaking is revoked, the undertaking must be wound up; the provisions of Chapter XII shall apply to the winding up.

CHAPTER III

Establishment and Activities

Article 11

Requirements as to residence of founders

Only individuals and legal entities resident in Iceland can be founders of financial undertakings.

Nationals and legal entities of other member states of the European Economic Area and member states of the European Free Trade Association (EFTA) Treaty are exempt from the residence requirements of the first paragraph. The Minister of Commerce may grant the same exemption to nationals of other states.

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

Article 12*Names*

Only financial undertakings may use, in their company name or as a clarification of their activities, the words "bank", "commercial bank", "investment bank", "savings bank", "electronic money undertaking", "securities company", "securities brokerage" and "UCITS management company", either alone or in combination with other words, in accordance with their operating licence.

If there is a danger of confusion between the names of a foreign and a domestic financial undertaking operating in Iceland, the Financial Supervisory Authority may require one of the undertakings to be specifically identified.

A financial undertaking may not identify its activities in a manner which is open to the interpretation that this could be the Central Bank of Iceland.

Article 13*Legal form*

A financial undertaking must operate as a limited-liability company. The provisions of Chapter VIII shall apply to savings banks.

Article 14*Share capital and guarantee capital*

The share capital of a commercial bank and credit undertaking, and the guarantee capital of a savings bank, cf. however Article 77, must amount to a minimum of ISK 450 million, but never less than the equivalent of EUR 5 million in ISK, on the basis of the current official exchange rate (buying rate).

The share capital of an electronic money undertaking must amount to at least ISK 90 million, but never less than the equivalent of EUR 1 million in ISK.

The share capital of a securities company must amount to at least ISK 65 million, but never less than the equivalent of EUR 730,000 in ISK.

The share capital of a securities brokerage authorised to trade for own account must amount to at least ISK 11 million, but never less than the equivalent of EUR 125,000 in ISK.

The share capital of a securities brokerage which is not authorised to trade for own account must amount to at least ISK 4.5 million, but never less than the equivalent of EUR 50,000 in ISK.

The share capital of a UCITS management company must amount to at least ISK 11 million, but never less than the equivalent of EUR 125,000 in ISK. Share capital shall be increased by 0.02% of the assets of UCITS and other collective investment funds operated by the management company in excess of ISK 25 billion, but never less than the equivalent of EUR 250 million in ISK. Share capital as provided for in the first and second sentence shall never be required to exceed ISK 1 billion, or the equivalent of EUR 10 million in ISK. For the purposes of this paragraph, the assets of a management company shall include the assets of UCITS and other collective investment funds.

If a financial undertaking requests a new operating licence the book value of its equity sheet, in lieu of share capital or guarantee capital, must comprise an amount not less than that provided for in the first to sixth paragraphs.

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

The book value of the own funds of a financial undertaking shall at no time be less than the amount provided for in the first to sixth paragraphs.

Article 15

Head office

A financial undertaking, which has been granted an operating licence in accordance with Article 6, must have its head office in Iceland.

Article 16

Auditing section

A financial undertaking must have an auditing section handling internal auditing. This provision shall not apply to securities brokerages and electronic money undertakings. The Board of a financial undertaking shall engage the director of the undertaking's auditing section, who shall be responsible for internal auditing on its behalf. Internal auditing shall be part of a financial undertaking's organisational structure and one aspect of its internal surveillance system. The Financial Supervisory Authority may, having regard to the nature and scope of the operation, grant an exemption from the operation of such an auditing section and set conditions for undertakings granted such exemptions.

Article 17

Risk management system

A financial undertaking must at all times have a secure risk management system for all its activities. [The Financial Supervisory Authority may adopt rules on systems for management of specific exposures in the activities of financial undertakings and financial conglomerates.]¹⁾

¹⁾Act No. 130/2004, Art. 2.

Article 18

Close links

An operating licence shall not be granted if close links between a financial undertaking and individuals or legal entities obstruct supervision of the undertaking by the Financial Supervisory Authority. The same shall apply if Acts or rules applying to such linked parties obstruct supervision.

Close links shall be considered to exist when two or more individuals or legal entities are linked by:

- a. business interests, i.e. a direct or indirect holding of at least 20% of share capital or control of 20% of the voting rights in an undertaking, or
- b. control, i.e. connections between a parent company and subsidiary, or comparable links between an individual or legal entity and an undertaking; a subsidiary of a subsidiary shall also be regarded as a subsidiary of the parent company which is at the head of these companies.

When two or more individuals or legal entities are permanently linked to the same person by a controlling connection, this shall also be regarded as close links between those parties.

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

Article 19*Good business practices and customs*

A financial undertaking must operate in accordance with proper and sound business practices and customs on the financial market.

CHAPTER IV**Authorised Activities*****A. Commercial banks, savings banks and credit undertakings*****Article 20***Authorised activities of commercial banks, savings banks and credit undertakings*

The activities of commercial banks and savings banks may include the following:

1. acceptance of deposits and other repayable funds from the public;
2. lending activities, including:
 - a. consumer credit,
 - b. long-term mortgages,
 - c. factoring and the purchase of debt instruments, and
 - d. commercial credit;
3. financial leasing;
4. payment transmission;
5. issuing and administering of means of payment (e.g. payment cards, electronic money, travellers' cheques and bankers' drafts);
6. providing guarantees and commitments;
7. trading for own account or for account of customers in:
 - a. money-market instruments (cheques, bills, other comparable instruments, etc.),
 - b. foreign exchange,
 - c. futures and swaps (options),
 - d. exchange and interest-rate instruments, and
 - e. transferable securities;
8. participation in securities issues and provision of services related to such issues;
9. providing advice to undertakings on capital structure, strategy and related issues, and advice as well as services related to mergers and acquisitions;
10. money broking;
11. portfolio management and advice;
12. safekeeping and administration of securities;
13. credit reference (credit rating) services;
14. safe custody services.

Activities of credit undertakings may include Points 1 to 14 of the first paragraph, with the exception that credit undertakings may not accept deposits.

Commercial banks, savings banks and credit undertakings are authorised to trade in securities as provided for in Article 25.

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

Article 21

Other services and ancillary activities

Commercial banks, savings banks and credit undertakings may pursue other activities naturally linked to their authorised activities listed in Article 20.

In addition to services as provided for in Article 20, commercial banks, savings banks and credit undertakings may pursue ancillary activities, provided this is a normal extension of the undertaking's financial services. The provisions of the first sentence of this paragraph shall also apply when a financial undertaking has a holding in or participates in other business activity. Notification must be sent to the Financial Supervisory Authority of any intention to pursue the activities provided for in this Article. Such notification must be accompanied by information on the proposed activity deemed to be satisfactory by the Financial Supervisory Authority. If the Financial Supervisory Authority raises no objection to the proposed activity within one month of receiving satisfactory notification, this shall be interpreted as authorisation for commencing the activity. The Financial Supervisory Authority may require that a separate company pursue this activity, in which case it must notify the party concerned of its decision within the time limit specified above. Failure to send a notification in accordance with this paragraph may result in prohibition of the activity by the Financial Supervisory Authority or its demand that the activity be pursued by a separate company. Commercial banks, savings banks and credit undertakings may, pursuant to special agreement upon receiving the authorisation of the Financial Supervisory Authority, undertake to provide postal service on behalf of a party authorised to provide such service.

Article 22

Temporary activities and take-over of assets

Commercial banks, savings banks and credit undertakings may only pursue activities other than those listed in this Chapter on a temporary basis and for the purpose of concluding transactions or reorganising the activities of customers. A notification to this effect must be sent to the Financial Supervisory Authority.

Commercial banks, savings banks and credit undertakings may take over assets to secure payment of claims. Such assets must be sold as soon as this is feasible.

Article 23

Authorisation for insurance activities.

Commercial banks, savings banks and credit undertakings may operate an insurance company as a separate company.

B. Other financial undertakings

Article 24

Authorised activities of electronic money undertakings

The activities of an electronic money undertaking shall include the issuing and administering of electronic money. Activities by an electronic money undertaking, apart from the issuing of electronic money, shall be limited to:

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

1. closely related financial services or other services, such as administration of electronic money by pursuing operational or support aspects linked to the issuing of the same and the issuing and administration of other means of payment, with the exception of any and all types of credit provision, and
2. storage of data from undertakings or the public sector in the electronic medium in which electronic money is stored.

Notwithstanding the provisions of the first paragraph and Chapter V, a foreign electronic money undertaking providing services in Iceland may only issue electronic money. The same shall apply to an Icelandic electronic money undertaking providing services abroad.

Article 25

Authorised activities of securities companies

Activities of a securities company may include the following aspects in connection with trading in financial instruments:

1. *Services:*

- a. reception and transmission of instructions from customers concerning one or more financial instruments and the execution of such instructions for the account of a third party;
- b. trading in financial instruments for own account;
- c. asset management, cf. the Act on Securities Transactions;
- d. underwriting in connection with the issue of one or more financial instruments or the marketing of such an issue;
- e. administration of a securities offer;

2. *Ancillary services:*

- a. custody and administration in connection with one or more financial instruments;
- b. financial safekeeping of assets;
- c. granting of credits, guarantees or loans to an investor, enabling him/her to carry out transactions with one or more financial instruments if the securities company granting the credit or loan handles the transaction;
- d. providing advice to undertakings on structure of own funds, strategy and related issues, and provision of advice and service on mergers and acquisitions;
- e. services connected with underwriting;
- f. investment advice concerning one or more financial instruments;
- g. foreign-exchange services, if the transaction in question is part of investment services;
- h. education on and promotion of securities transactions.

Article 26

Authorised activities of a securities brokerage

The activities of a securities brokerage shall include acting as an intermediary in buying and selling financial instruments and providing expert advice on securities trading in return for compensation. A securities brokerage may only accept clients' funds or securities as part of its activities for a limited period, and provided this is necessary for concluding a transaction in which the undertaking has served as an intermediary.

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

The total value of the financial instruments which a securities brokerage, as referred to in the fourth paragraph of Article 14, may preserve on its own account may not exceed 15% of its share capital as provided for in Article 14. The Financial Supervisory Authority shall adopt detailed rules as to the time limits within which such transactions are permitted, as well as other aspects concerning the authorised activities of a securities brokerage in accordance with this Article.

Securities brokerages must provide insurance against losses they may cause to their clients through their activities. Detailed provisions on the amount of insurance and minimum conditions in other respects shall be laid down in a Regulation.

Article 27

Authorised activities of a management company

Authorised activities of a management company shall always include the operation of UCITS and other funds for collective investment. A management company shall also be authorised to pursue the following activities:

1. asset management;
2. investment advice;
3. custody and management of financial instruments in collective investment.

A management company authorised to manage assets must seek a customer's approval before investing in UCITS and other funds for collective investment.

A management company may not acquire securities with voting rights which enable it to significantly influence the management of the securities issuer.

C. Holdings in undertakings and large exposures

Article 28

Maximum qualifying holdings

A financial undertaking may not own a qualifying holding in individual undertakings which are not financial undertakings or undertakings connected with the financial sector, amounting to more than 15% of the own funds of the financial undertaking concerned, before having regard for deductions as provided for in the fifth paragraph. of Article 85. An undertaking connected with the financial sector shall mean any undertaking which is not a credit institution and operates, in particular, in acquiring holdings or pursues any of the activities referred to in Points 2 to 12 of the first paragraph of Article 20.

The total of qualifying holdings in accordance with the first paragraph may not exceed 60% of the own funds of a financial undertaking before having regard to deductions as provided for in the fifth paragraph. of Article 85. The total book value of holdings acquired by a financial undertaking may not exceed 100% of its own funds. Holdings which are to be deducted when calculating own funds, and holdings in undertakings which form a consolidation, shall not be included in the calculation of the ratios referred to in the first paragraph and the first and second sentences of this paragraph. A temporary holding of a financial undertaking in an undertaking as referred to in Article 22, and trading book holdings, shall not be included in calculation as referred to in the first paragraph and the first and second sentences of this paragraph.

Holdings of a financial undertaking may exceed the ratios referred to in the first paragraph or the first sentence of the second paragraph, provided that the amount in

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

excess is deducted in calculating own funds of the undertaking concerned. Should the holdings concurrently exceed the ratios referred to in both the first paragraph and the first sentence of the second paragraph, the greater of the excess amounts shall be deducted in calculating the own funds of the undertaking concerned.

Financial undertakings must provide the Financial Supervisory Authority with an itemised statement of holdings in other financial undertakings which they have acquired or accepted as collateral, cf. however Article 64.

In calculating ratios, as referred to in the first and second paragraphs and in Article 29, consideration shall be had for future contracts and other derivatives which a financial undertaking has concluded for its own shares. The Financial Supervisory Authority may adopt more detailed rules on this point.

Included under the trading book are financial instruments and commodities which a financial undertaking has acquired or retained with a view to resale and/or with the intention of profiting on short-term changes in the market value of these instruments or other price or interest-rate fluctuations. Furthermore, the trading book shall include positions in financial instruments and commodities resulting from matched principal broking, as well as financial instruments to which a financial undertaking is a party for the purpose of hedging other items in the trading book. Included under the trading book as well are exposures linked to unsettled and unfinished trading and off-exchange derivative trading, as well as exposures linked to an institution's obligations resulting from trading in financial instruments and commodities in the trading book.

Article 29

Own shares

A financial undertaking may not, without the approval of the Financial Supervisory Authority, own or accept as collateral its own shares in an amount exceeding 10% of the nominal value of the company's paid-up share capital. If the undertaking acquires shares exceeding this, for instance, by purchase or other transfer, it must have sold shares to bring it within the legal limit within three months. In other respects the provisions of Chapter VIII of the Act on Public Limited Companies shall apply to the authorisation of financial undertakings to acquire their own shares.

If, in connection with a public offer, a financial undertaking grants loans for purchase of its own shares or guarantee capital holdings for an amount exceeding 5% of the nominal value of the total share capital or guarantee capital of the undertaking in question, secure collateral must be provided for loans in excess of the above-stated proportion.

Article 30

Limits to large exposures

Exposure resulting from one or more customers, which are internally linked to one another, may not exceed 25% of a financial undertaking's own funds. The total of large exposures may not exceed 800% of own funds; a "large exposure" shall mean any exposure amounting to 10% of more of own funds. "Own funds" shall mean own funds in accordance with Article 84.

Exposures as provided for in the first paragraph shall include granting of loans, securities assets, holdings and guarantees granted by a financial undertaking on behalf of individual

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

customers or financially linked parties, as well as other obligations of the same parties towards the financial undertaking.

If a financial undertaking's exposures exceed the limits provided for in the first paragraph, such must be notified to the Financial Supervisory Authority without delay. The Financial Supervisory Authority may grant the undertaking a time limit for bringing its obligations into line with law.

[The Financial Supervisory Authority shall set detailed rules¹⁾ on large exposures of financial undertakings and financial conglomerates.]²⁾

¹⁾ Reg. 531/2003. ²⁾ Act No. 130/2004, Article 3.

CHAPTER V

International Activities of Financial Undertakings

A. Activities of foreign financial undertakings in Iceland

Article 31

Branches of financial undertakings within the EEA

A foreign financial undertaking, which is established and holds an operating licence in another member state of the European Economic Area (EEA), may establish a branch in Iceland two months after receipt by the Financial Supervisory Authority of notification of the proposed activity from the competent authority in the undertaking's home state. The branch may pursue any of the activities covered by this Act, provided the undertaking is authorised to do so in its home state. Swiss financial undertakings may establish branches in the manner provided for in this paragraph, provided the same requirements are made of them as of financial undertakings established in states of the EEA and a co-operation agreement has been concluded between the Financial Supervisory Authority and the competent Swiss authorities.

A "branch" shall mean a place of business which by law is part of a financial undertaking and which handles directly, in full or in part, those activities pursued by financial undertakings.

The Financial Supervisory Authority shall confirm that the foreign undertaking is subject to supervision in its home state and check its authorisations to operate and activities.

The provisions of the Act on Public Limited Companies, concerning branches of foreign limited-liability companies, shall not apply to branches as referred to in the first paragraph.

Article 32

Services provided by a financial undertaking within the EEA without establishing a branch

A foreign financial undertaking, which is established and has an operating licence in another member state of the EEA, may provide services in Iceland in accordance with this Act without establishing a branch. Such services may not commence until the Financial Supervisory Authority has received notification thereof from competent authorities in the undertaking's home state. Authorisations to provide services in Iceland from abroad in accordance with this Article may not, however, be more extensive than the operating authorisations held by the undertaking in its home state. Swiss financial

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

undertakings may provide services in the manner provided for in this paragraph, provided the same requirements are made of them as of financial undertakings established in states of the EEA and a co-operation agreement has been concluded between the Financial Supervisory Authority and the competent Swiss authorities.

Article 33

Provision of services or establishment of a branch by a financial undertaking outside the EEA

The Financial Supervisory Authority may authorise a financial undertaking established in a state outside the European Economic Area to open a branch in Iceland or to provide services in this country without establishing a branch. The requirement for the granting of such authorisation is that the undertaking be authorised to pursue activity in its home state parallel to that which it proposes to pursue in Iceland and that such activity be subject to comparable supervision in the home state.

Article 34

Authorisation for prohibiting activities of foreign financial undertakings

The Financial Supervisory Authority may prohibit a foreign financial undertaking from pursuing activities in Iceland if the undertaking in question has blatantly or repeatedly violated the provisions of this Act or statutes and rules adopted by virtue of it, or violated the provisions of other Acts on financial undertakings, provided the remedies provided in this Act have not succeeded in putting a stop to the above-mentioned violations.

Before taking a decision on a prohibition in accordance with the first paragraph, the Financial Supervisory Authority may take provisional action, if there is urgent cause for so doing, in order to protect the interests of the depositors, investors and customers of a financial undertaking.

The procedure as provided for in the first and second paragraphs shall accord with provisions of the EEA Agreement as appropriate.

Article 35

Regulation

The Minister shall issue a Regulation¹⁾ on authorisations of foreign financial undertakings to operate in Iceland and of Icelandic financial undertakings to operate abroad. The Regulation shall include provisions on supervision of and specific requirements for the branches and agents' offices of foreign financial undertakings, on authorisations of undertakings connected with the financial sector and subsidiaries of financial undertakings to pursue financial activities in Iceland and on authorisations for Icelandic undertakings connected with the financial sector to pursue financial activities abroad.

¹⁾ Reg. 307/1994, Reg. 308/1994, cf. 497/2004; Reg. 244/2004.

B. Activities of Icelandic financial undertakings abroad

Article 36

Notification of the establishment of a branch

An Icelandic financial undertaking, intending to operate a branch in another EEA member state or member state of the European Free Trade Association (EFTA) Treaty,

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

must notify the Financial Supervisory Authority in advance thereof.

A notification as provided for in the first paragraph must include information as to the state in which a branch is to be established, a description of the activities of the branch, its structure and proposed activities, together with information on the address of the branch and the names of its management.

No less than three months after receiving the information provided for in the second paragraph, the Financial Supervisory Authority shall send a confirmation to the competent authorities of the host state that the proposed activities are in accordance with the undertaking's operating licence. Furthermore, the Financial Supervisory Authority must send the competent authorities of the host state information on the undertaking's own funds, liquidity, deposit guarantees and compensation system to protect branch customers. The undertaking in question must be notified concurrently that the above-listed information has been sent.

The Financial Supervisory Authority may prohibit the establishment of a branch as provided for in the first paragraph if it has legitimate grounds to presume that the management and financial status of the financial undertaking concerned is not sufficiently sound. The position of the Financial Supervisory Authority must be notified to the undertaking as promptly as possible and no later than three months following the receipt of satisfactory information as provided for in the second paragraph.

A financial undertaking must notify the Financial Supervisory Authority and competent authorities of the state where it operates a branch of any changes which may occur to information previously provided in accordance with the second paragraph no later than one month before the proposed changes take effect.

Article 37

Notification of service without the establishment of a branch

A financial undertaking, intending to provide services in accordance with this Act in another EEA member state or member state of the European Free Trade Association (EFTA) Treaty without opening a branch, must notify the Financial Supervisory Authority in advance thereof. The notification must indicate which state is concerned and what the proposed activities will involve.

No later than one month after receiving a notification as provided for in the first paragraph, the Financial Supervisory Authority must forward a notification to the competent supervisory authority in the state concerned together with a confirmation that the operating licence of the financial undertaking authorises the proposed activities. The Financial Supervisory Authority may prohibit activities in accordance with this Article if it has legitimate grounds to presume that the management and financial status of the financial undertaking concerned is not sufficiently sound. The undertaking must be notified of the position of the Financial Supervisory Authority as promptly as possible. Any changes to aspects previously notified in accordance with this Article must be notified to the Financial Supervisory Authority and competent authority in the state concerned no later than one month prior to their implementation.

Article 38

Activities outside the EEA

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

If a financial undertaking intends to commence activities in a state outside of the EEA it must notify the Financial Supervisory Authority in advance thereof, providing a description of the proposed activities together with other information which the Financial Supervisory Authority regards as necessary in this connection.

The Financial Supervisory Authority may prohibit activities as provided for in the first paragraph if it has legitimate grounds to presume that the management and financial status of the financial undertaking concerned is not sufficiently sound. The undertaking must be notified of the position of the Financial Supervisory Authority as promptly as possible.

Article 39

Purchase of shares in a foreign financial undertaking

If a financial undertaking intends to purchase or exercise a qualifying holding in a foreign financial undertaking, it must notify the Financial Supervisory Authority thereof in advance. The Financial Supervisory Authority may prohibit such if it has legitimate grounds to presume that information provision for this activity or for the consolidation will not be sufficiently reliable and may impede supervision of it. The undertaking must be notified of the position of the Financial Supervisory Authority and the grounds for such as promptly as possible.

CHAPTER VI

Holdings and Exercising Holdings

Article 40

Approval of the Financial Supervisory Authority

Parties who propose to acquire a qualifying holding in a financial undertaking must seek the approval of the Financial Supervisory Authority in advance. The approval of the Financial Supervisory Authority must, furthermore, be sought when an individual or legal entity increases his holding to such an extent that his direct or indirect share in its share capital, guarantee capital or voting rights exceeds 20%, 33% or 50%, or comprises such a large portion that the financial undertaking can be regarded as its subsidiary company. A "qualifying holding" shall mean a direct or indirect holding in an undertaking which represents 10% or more of its share capital, guarantee capital or voting rights, or other holding which enables the exercise of a significant influence on the management of the company concerned.

The provisions of this Chapter shall apply as appropriate to savings banks.

Article 41

Application to the Financial Supervisory Authority

Parties intending on acquiring a holding in a financial undertaking, as large as that referred to in the third paragraph, must make written application to the Financial Supervisory Authority. The application must be accompanied by information on the following:

1. the name and address of the applicant;
2. the name of the financial undertaking in which the applicant intends to invest;
3. the size of the holding or voting rights in which the applicant intends to invest;
4. plans for changes in the pursuits of the financial undertaking;

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

5. financing of the investment;
 6. the financial position of the applicant;
 7. the proposed commercial relationship of the applicant with the financial undertaking;
 8. the applicant's experience of financial activities;
 9. the ownership, board membership, or other participation of the applicant in the activities of a legal entity;
 10. any punishment to which the applicant has been sentenced and whether he/she is the object of a criminal investigation;
 11. close links of the applicant to other legal entities;
 12. other information which the Financial Supervisory Authority may request and is of significance for assessment of the eligibility of owners of qualifying interests.
- If an applicant is a legal entity the list of items in the first paragraph shall apply to the legal entity itself, the members of its board, its managing director and individuals and legal entities owning qualifying holdings in the legal entity. Information shall furthermore be given on the legal entity's auditor. This information shall be documented as appropriate.

Article 42

Evaluating the qualification of applicants

The Financial Supervisory Authority shall assess whether an applicant is eligible to own the holding, having regard to the sound and prudent operation of a financial undertaking. In assessing the eligibility of an applicant, regard shall be had, for instance, for the following factors:

1. the financial position of the applicant and parties with which he/she has close links;
2. the knowledge and experience of the applicant;
3. whether such a holding by the applicant creates a risk of conflicts of interest in the financial market;
4. the size of the holding or voting rights in which the applicant intends to invest;
5. whether such a holding by the applicant could be expected to impede supervision of the financial undertaking concerned. In assessing this consideration shall be had for earlier dealings of the applicant with the Financial Supervisory Authority or other public authorities, to whether close links between the applicant and individuals or legal entities could, in the estimation of the Financial Supervisory Authority, obstruct its normal supervision work, and whether the laws or rules to which the applicant is subject could obstruct normal supervision.
6. whether the applicant has provided the Financial Supervisory Authority with the required information together with supporting documentation and this information has proved to be correct;
7. any punishment to which the applicant has been sentenced and whether he/she is the object of a criminal investigation;
8. if a qualifying holding in a savings bank is involved, the Financial Supervisory Authority shall in addition evaluate whether the holding is in accordance with the requirements of the second paragraph of Article 70.

[If an applicant is a financial undertaking or insurance company licensed to operate in another state of the European Economic Area, the parent company of such a party, a

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

natural person or legal entity which controls the party, and if such a holding results in the company invested in being deemed to be a subsidiary of or controlled by the party in question, the Financial Supervisory Authority shall, in assessing the eligibility of the applicant for a qualifying holding, consult with the competent authorities of the said state, as provided for in the provisions on assessment for an operating license application, cf. the second and third paragraphs of Article 2. Consultation pursuant to the foregoing shall furthermore apply to on-going surveillance that conditions for eligibility are satisfied.

¹⁾[Act 130/2004, Article 4.](#)

Article 43

Response to an application

Should the Financial Supervisory Authority deem that an applicant is ineligible to acquire a holding, having regard to the sound and prudent operation of the financial undertaking, it shall refuse the applicant authorisation to do so. The Financial Supervisory Authority may, however, approve an application despite an applicant being deemed ineligible to own the holding, on the condition that the applicant take measures intended to limit the detrimental effect of his/her ownership, e.g. to entrust the holding to a special holding company which has no other activities or appoint individuals whom the Financial Supervisory Authority deems eligible as his/her representatives on the company's board. A decision by the Financial Supervisory Authority as provided for in the first paragraph shall be made in writing and be received by an applicant within one month of the day it received satisfactory information together with supporting documentation. Should a decision by the Financial Supervisory Authority fail to reach an applicant within this period it shall be deemed to have approved the application. Grounds must be given for the rejection of an application by the Financial Supervisory Authority.

Article 44

Utilisation of authorisation

Authorisation to acquire or supplement a qualifying holding in a financial undertaking shall be valid for six months after the approval of the Financial Supervisory Authority has been given. If an applicant does not avail him-/herself of the authorisation during that time he/she must seek the approval of the Financial Supervisory Authority once more, cf. Articles 40 and 41;

Article 45

Remedies if authorisation is not applied for

If a party fails to seek authorisation of the Financial Supervisory Authority when purchasing or increasing a qualifying holding, despite being required to do so pursuant to Article 40, the voting rights entailed by those shares which exceed the authorised limits shall be invalid. In such case they shall not be included in calculations of how large a proportion of share capital is represented by voting rights at shareholders' meetings. The Financial Supervisory Authority shall notify the financial undertaking concerned of the invalidity of voting rights. The Financial Supervisory Authority must also require the party concerned to submit an application together with supporting documents as provided for in Article 41. If the requested documentation is received within the time limit

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

specified, the Financial Supervisory Authority shall take a decision on the application as provided for in Article 43. Should documentation not be received within four weeks of the time it was requested, or should the Financial Supervisory Authority refuse the party concerned authorisation to acquire or supplement a qualifying holding, the latter must sell that part of the holding which is in excess of authorised limits. The Financial Supervisory Authority shall set a deadline for so doing, with this time limit being at least two months. If the holding has not been sold by the specified time, the Financial Supervisory Authority may apply per diem fines in accordance with the Act on Official Supervision of Financial Activities. If the Financial Supervisory Authority does authorise the party concerned to acquire or supplement a qualifying holding these shares shall once again confer voting rights.

Article 46

Remedies if an application is rejected

Should a party acquire or supplement a qualifying holding, despite the Financial Supervisory Authority refusing its application to do so, the voting rights entailed by those shares in excess of the authorised limits shall be invalid. In such case they shall not be included in calculations of how much share capital is represented by voting rights at shareholders' meetings. The Financial Supervisory Authority shall notify the financial undertaking concerned of the invalidity of voting rights. Once this has been done the party concerned must sell that portion of the holding in excess of the authorised limits. The Financial Supervisory Authority shall set a deadline for so doing, with this time limit being at least two months. If the holding has not been sold by the specified time, the Financial Supervisory Authority may apply per diem fines in accordance with the Act on Official Supervision of Financial Activities.

Article 47

Notification by an owner of sale of a qualifying holding

Should the owner of a qualifying holding intend to reduce the shareholding so that he/she will no longer own a qualifying holding, he/she must notify the Financial Supervisory Authority in advance, indicating what the holding will be. Should this holding fall below the limits specified in Article 40, or decrease so extensively that the financial undertaking ceases to be a subsidiary of the parent company concerned, notification thereof must also be given.

Article 48

Notification by financial undertakings of change of ownership

On receipt of notification of change of ownership of shares in a financial undertaking, which results in a shareholding exceeding or falling below the limits stated in Article 40, the board of directors of the financial undertaking must notify the Financial Supervisory Authority thereof without undue delay.

At least once a year, each financial undertaking must notify the Financial Supervisory Authority of shareholders who have qualifying holdings in the company and of the shareholdings of each of them.

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

Article 49*Remedies if an owner is ineligible to exercise a qualifying holding*

If a party who owns a qualifying holding in a financial undertaking is in a position, or utilises his holding in a way, which is to the detriment of its sound and prudent operation, the Financial Supervisory Authority may take the following measures:

1. decide that these shares shall not entail voting rights;
2. instruct the undertaking in question to take measures to reduce the shareholder's detrimental effects;
3. instruct the board of directors of the undertaking in question to call a shareholders' meeting to discuss the shareholder's conduct. A representative of the Financial Supervisory Authority shall be authorised to attend and address such a meeting.

In assessing whether to take measures as provided for in the first paragraph, regard shall be had for the aspects listed in Article 42. Furthermore, special regard shall be had as to whether the position or conduct of the party in question would be liable to lessen public confidence in the financial undertaking in question, were it to be publicly known.

The Financial Supervisory Authority may concurrently take more than one of the measures specified in the first paragraph if such is deemed necessary.

CHAPTER VII**Board of Directors and Personnel****Article 50***General provisions*

Unless otherwise provided for in this Act, the provisions of the Act on Public Limited Companies shall apply to the board of a financial undertaking.

Article 51*Number of board members*

The board of directors of a financial undertaking must be comprised of at least three persons. Boards of commercial banks, savings banks and credit undertakings must, however, be comprised of no less than five persons.

An equal number of regular members and alternates shall be appointed to the board of a financial undertaking.

Article 52*Eligibility of board members and managing director*

Members of the board and the managing director of a financial undertaking must be legally competent. They may not, during the last five years have been declared bankrupt in connection with business operations, nor convicted of a punishable offence under the Criminal Code, this Act or Acts on Public Limited Companies, Private Limited Companies, accounting, financial statements, bankruptcy or taxation, nor under special legislation applicable to parties subject to public supervision of financial activities.

In addition to the above requirements, board members and the managing director must possess sufficient knowledge and experience to be able to fulfil their position in a

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

satisfactory manner. They may not have conducted themselves in any manner which would give cause to expect them to abuse their position or injure the undertaking.

Article 53

Eligibility of personnel in securities transactions

Personnel of a financial undertaking who are responsible for day-to-day activities connected with transactions in financial instruments, as provided for in Point 6 of the first paragraph of Article 3, must have passed an examination on securities transactions. In connection with the granting of an operating licence and as soon as any changes occur, the financial undertaking must notify the Financial Supervisory Authority of its personnel as referred to in this paragraph. The Financial Supervisory Authority may adopt more detailed rules on the implementation of this provision.

The examination committee on securities transactions shall be responsible for an examination in securities trading which shall be normally held once each year. The Minister of Industry and Commerce shall appoint the examination committee for a four-year term. To cover the costs of holding the examination, examinees shall pay a fee as determined by the Minister. Decisions of the examination committee are final administrative rulings.

The examination committee in securities transactions may entrust an independent party with grading an examination. In addition, the examination committee in securities transactions may appoint external examiners to review the examination of an examinee. Details on the holding of the examination in securities transactions, including the examination requirements and authorisation for granting exemptions from specific sections of such an examination or from the examination as a whole, shall be laid down in a Regulation.¹⁾

¹⁾Reg. 633/2003.

Article 54

Division of responsibility between the board and managing director.

Carrying out of the board's tasks

The Articles of Association of a financial undertaking must provide for the division of responsibility between the board and managing director, having regard for the provisions of the Act on Public Limited Companies.

The board shall adopt its own rules of procedure, prescribing the implementation of its tasks in detail. These rules shall discuss in particular the authorisation of the board to take decisions on individual dealings, the implementation of rules on special eligibility of board members, handling of information on individual customers by the board, participation of board members in the boards of subsidiaries and affiliated companies, and the implementation of rules on handling business dealings with board members.

These rules must be forwarded to the Financial Supervisory Authority.

Article 55

Participation of board members in handling issues

The board of a financial undertaking may not involve itself in decisions on individual dealings, unless their scope is substantial in relation to the size of the undertaking.

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

Individual board members must not involve themselves in decisions on individual dealings.

Members of the board of a financial undertaking may not be involved in handling a question which concerns:

1. dealings with themselves or undertakings where they are board members, hold responsible positions or in other respects have substantial interests at stake, or
2. dealings with competitors of the parties referred to in Point 1.

The same shall apply to dealings with parties personally or financially connected to board members.

Commercial dealings of board members, and of undertakings where they hold responsible positions, must be placed before the board of the financial undertaking, or the chairman of a company's board, for approval or refusal. The board of a financial undertaking may, however, adopt general rules on handling of such cases, prescribing in advance what business proposals require, or do not require, special discussion by the board before they can be dealt with, cf. Article 54.

Article 56

Participation of personnel in business operations

The managing director of a financial undertaking may not sit on the board of a commercial undertaking or participate in business operations in other respects. The board of an undertaking may grant authorisation for such on the basis of rules adopted by it and approved by the Financial Supervisory Authority. A holding in an undertaking is deemed to be participation in business operations, except in the case of an insubstantial holding which confers no direct influence on the management of the undertaking. Rules adopted in accordance with the provisions of Article 54 shall apply to board membership of managing directors in a financial undertaking's subsidiaries or affiliated companies, and on the authorisation of other personnel to participate in business operations.

Article 57

Dealings of personnel with financial undertakings

An agreement by a financial undertaking for loans, guarantees, options or similar dealings with a managing director shall be subject to the approval of its board. A decision thereupon must be recorded. The provisions of this Article shall also apply to the spouse of a financial undertaking's managing director.

Dealings between a financial undertaking and its personnel shall in other respects comply with rules adopted by the undertaking's board.

Article 58

Confidentiality

The board of directors of a financial undertaking, managing directors, auditors, personnel and any persons undertaking tasks on behalf of the undertaking shall be bound by an obligation of confidentiality concerning any information of which they may become aware in the course of their duties concerning business dealings or private concerns of its customers, unless obliged by law to provide information. The obligation of confidentiality shall remain even after their employment ceases.

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

Anyone receiving of information of the sort referred to in the first paragraph shall be bound by an obligation of confidentiality in the same manner as described therein. The party providing information shall remind the recipient of the obligation of confidentiality.

Article 59

Exemption from the obligation of confidentiality due to risk management and supervision on a consolidated basis

Notwithstanding the provisions of Article 58, information may be communicated to the parent company of a financial undertaking if the parent company is also a financial undertaking in the understanding of this Act or a holding company in the financial sector, cf. the fourth paragraph of Article 97. Such communication of information may, however, only take place to the extent necessary for risk management and may not include the private affairs of individual customers. The same shall apply to communication of information due to supervision on a consolidated basis.

The Financial Supervisory Authority shall set detailed rules on authorised communication of information as provided for in the first paragraph.

Article 60

Customer approval for communication of confidential information

Information on customers, as referred to in Article 58, may be communicated to outside parties after receiving the written approval of the customer involved. The approval must state what information it applies to, to what parties information on this basis may be communicated and for what purpose the information is to be communicated.

CHAPTER VIII

Savings Banks

Article 61

Establishment

Guarantee capital owners of a savings bank may not be fewer than 30 in number. At the initial meeting, each guarantee capital owner shall have one vote. The initial meeting shall approve the Articles of Association for the savings bank. These must include provisions concerning in particular the savings bank in question, such as:

1. name of the savings bank;
2. location of the savings bank and legal venue;
3. total amount of guarantee capital, division into guarantee capital holdings and voting rights;
4. rules on change of ownership of guarantee capital holdings and on increases to guarantee capital;
5. election of the board of directors of the savings banks and its functions;
6. amendments to the Articles of Association; and
7. winding up of a savings banks and disposal of own funds in this connection.

If the activities of a savings bank are bound to a specific geographical area guarantee capital owners must be resident, operate businesses or pursue other activities in this area, cf., however, Article 11.

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

Article 62

Guarantee capital certificates

Guarantee capital certificates shall be issued representing the registered guarantee capital holdings and signed by the board of the savings bank. They may not be handed over until each holding has been paid up in full. Guarantee capital certificates must be issued in the name of the owner and any assignment of such to a bearer shall not be considered valid by the savings bank. A guarantee capital certificate must state:

1. the name of the savings bank and its address;
 2. the number and nominal value of the holding;
 3. the name, address and identification number of the guarantee capital owner;
 4. the date of issue of the guarantee capital certificate;
 5. the text of Articles 64 and 65 of this Act; and
 6. specific points concerning the rights and obligations of guarantee capital owners.
- A register of the guarantee capital owners must be kept, to which all of them shall have access.

Article 63

Rights of guarantee capital owners

Guarantee capital owners shall not be personally liable for the commitments of a savings bank in excess of their guarantee capital.

Guarantee capital owners shall not be entitled to a share of profits arising from the savings bank's operational surplus in excess of what is provided for in this Act.

Guarantee capital owners shall only receive a dividend on their paid-up guarantee capital.

Guarantee capital shall not be refunded to guarantee capital owners except as provided for in the provisions of Articles 65 and [103].¹⁾

¹⁾[Act No. 130/2004, Article 5.](#)

Article 64

Sale or mortgage of guarantee capital holdings

Guarantee capital holdings in a savings bank may not be sold or otherwise assigned without the approval of the board of the savings bank. If the savings bank's board is of the opinion that a prospective purchaser of a guarantee capital holding is seeking to acquire a qualifying holding in a savings bank, the board must refer the matter to the Financial Supervisory Authority, cf. Chapter VI. A guarantee capital holding in a savings bank may not be mortgaged unless the mortgaging is authorised in the savings bank's Articles of Association subject to the approval of the board.

If guarantee capital holdings change ownership through the enforcement of mortgage rights, authorised in accordance with the final sentence of the first paragraph, the new owner must request the approval of the savings bank's board for the change of ownership within two weeks of this taking place. The provisions of the first paragraph of this Article and of Article 70 shall apply as appropriate to the treatment of such a request by the savings bank's board.

Should the savings bank board refuse to grant approval, or if a new owner fails to seek

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

approval within the time limit specified, the savings bank's board must redeem the guarantee capital holding in accordance with the provisions of Article 65.

Article 65

Redemption of guarantee capital holdings

The board of a savings bank may redeem a guarantee capital holding in the savings bank at the request of a guarantee capital owner.

The board of a savings bank is obliged to redeem a guarantee capital holding in the following instances:

1. when a legal entity, which owns a guarantee capital holding, is wound up or abolished;
2. if the estate of a guarantee capital owner is received for bankruptcy;
3. in the event of attachment of a guarantee capital owner's guarantee capital holding; and
4. if it refuses approval of change in ownership resulting from the enforcement of mortgage rights in the guarantee capital holding.

If the board of a savings banks refuses to authorise the sale of a guarantee capital holding, cf. Article 64, or does not exercise its authorisation to redeem it, as provided for in the first paragraph, it must then, upon request, act as an intermediary in the sale of the holding or redeem it within one year of receiving a written request for sale or redemption. If a guarantee capital holding is redeemed, it shall be redeemed at its nominal value plus the unutilised authorisation for the revaluation of guarantee capital as provided for in Article 67.

Article 66

Increase in guarantee capital

A guarantee capital owners' meeting may decide to raise the guarantee capital of a savings bank in operation and set rules for the subscription of new guarantee capital holdings in accordance with provisions of its Articles of Association.

The price to be paid by a new guarantee capital owner for a holding shall be the nominal value plus the unutilised authorisation for the revaluation of guarantee capital, as provided for in Article 67.

Article 67

Revaluation of guarantee capital

A savings bank may revalue its guarantee capital and make payments into the guarantee capital accounts of guarantee capital owners. When such revaluation is made, consideration shall be had for price level changes based on the Consumer Price Index (CPI).

New guarantee capital shall be revaluated proportionally based on its time of payment within the year.

Article 68

Disposition of earnings

Profits of a savings bank shall be disposed of as follows:

1. An annual general meeting (AGM) may decide, having received the proposals of the board of the savings bank, to pay guarantee capital owners dividends on their guarantee

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

capital. A reserve fund, as provided for in the Act on Deposit Guarantees and Investor-Compensation Scheme, which all savings banks establish for this purpose, shall determine the maximum percentage of dividend payment each year. Dividends may be paid despite a savings bank's operating losses.

2. In addition to dividend payments as provided for in Point 1, an AGM may decide, having received the proposals of the board of a savings bank, to dispose of up to 10% of each year's profits to raise the value of the guarantee capital of the bank; raising the value of guarantee capital in accordance with this point, however, may never exceed 5% annually. The authorisation for revaluation in accordance with this Point may not be deferred from one year to the next. Revaluation in accordance with this Point may not result in the book value of own funds, after deducting guarantee capital, becoming less than it was at the end of the year 2000. New equity capital shall be revaluated proportionally in accordance with this Point based on its time of payment within the year. Profit shall be calculated on the revalued guarantee capital at the end of each accounting year.

3. Profit which is not disposed of in accordance with Points 1 and 2 shall be placed in a reserve account.

Article 69

Indicative guidelines on interest and service charges

Savings banks may jointly entrust a party on their behalf to draw up indicative guidelines on interest rates and service charges, provided such does not violate the provisions of the Competition Act, cf. Chapter IV of that Act.

Article 70

Division of holdings and voting rights

All guarantee capital owners shall have an equal holding unless otherwise authorised in the Articles of Association.

Should the assignment of a guarantee capital holding, or increase in guarantee capital, result in a single guarantee capital owner, or a guarantee capital owner and a party with whom he/she has close links, in the understanding of the second paragraph of Article 18, acquiring or exercising a qualifying holding in the savings banks, in the understanding of this Act, the savings bank's board may not approve the assignment without the prior approval of the Financial Supervisory Authority and the fulfilment of one of the following conditions:

- a. that this is part of a necessary financial reorganisation of the savings bank in question and it appears evident that such financial reorganisation cannot be accomplished without this guarantee capital owner acquiring a qualifying holding;
- b.[that it is clearly demonstrated that the acquisition of the guarantee capital holding is part of strengthening co-operation among savings banks in Iceland or savings banks within the European Economic Area.]¹⁾

The guarantee capital owners shall have equal voting rights unless otherwise determined in a savings bank's Articles of Association. Individual guarantee capital owners may never, however, on their own behalf or on the behalf of others, exercise more than 5% of

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

the total voting rights in a savings bank, whether the control upon which such voting rights are based derives directly or indirectly from a share in the guarantee capital of the savings bank. The provisions of Article 71 shall apply to voting rights if a local authority is the only guarantee capital owner. Voting rights may not be exercised for guarantee capital certificates owned by a savings bank itself.

A guarantee capital owner may not grant a proxy to another person for a meeting of guarantee capital owners unless such is permitted in the savings bank's Articles of Association.

Any reference to total quantity of votes in a savings bank in this Act shall mean the total quantity of votes after deducting votes derived from guarantee capital certificates owned by the savings bank itself.

¹⁾[Act No. 4/2004, Article 1.](#)

Article 71

Local authority savings banks

The provisions of the first paragraph of Article 61 and the third paragraph of Article 70, concerning voting rights in a savings bank, shall apply neither to those savings banks where local authorities or regional councils (*héraðsnefndir*) are the only guarantee capital owners upon the entry into force of this Act, nor to their mergers, cf. [Article 106].¹⁾ If a regional council is one of the guarantee capital owners, the voting rights of each party shall be limited to 1/5 of the total quantity of votes in the savings bank.

¹⁾[Act No. 130/2004, Article 5.](#)

Article 72

Board of directors

The board of directors of a savings bank shall be comprised of five members. Guarantee capital owners shall elect three board members while the local authorities or regional councils concerned shall appoint two board members in accordance with detailed provisions in the savings bank's Articles of Association. The Articles of Association may provide for the guarantee capital owners to elect the entire board of a savings bank. The board of directors shall elect a chairman from among its members. As many alternates may be chosen as there are regular members, following the same rules as apply to the election of regular members. Election of the board shall be by proportional representation if so requested.

Article 73

Conversion of a savings bank to a limited-liability company

Upon the proposal of the board of a savings bank, which was in operation as of 31 December 2000, a meeting of guarantee capital owners may decide, by a majority of two-thirds of votes cast, and furthermore with the approval of guarantee capital owners controlling at least two-thirds of the guarantee capital represented at the meeting, to convert the savings bank into a limited-liability company, having received the approval of the Financial Supervisory Authority. The conversion of the savings bank to a limited-liability company shall then be implemented by merging the savings bank with a limited-liability company which the savings bank has previously established for the purpose of

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

assuming the operations of the savings bank, including all its assets and liabilities, rights and obligations.

The provisions of the first sentence of the second paragraph of Article 3 of Act No. 2/1995, on Public Limited Companies, shall not apply to the number of founders of a limited-liability company as provided for in the first paragraph. The provisions of the first paragraph of Article 20 of the same Act, on the minimum number of shareholders, shall not apply to a limited liability company as provided for in the first paragraph until the point where the conversion of the savings bank to a limited-liability company, as provided for in the first paragraph, takes place.

Upon the conversion of a savings bank to a limited-liability company in accordance with this Article, the operating licence of the savings bank shall remain valid.

A savings bank which is converted to a limited-liability company in accordance with the provisions of this Article must have the words "*hlutafélag*" (limited company) or the abbreviation "*hf.*" (PLC) in its name in addition to "*sparisjóður*" (savings bank).

A savings bank which is converted to a limited-liability company in accordance with the provisions of this Article need not issue a call notice to creditors. A change in the registration of ownership in registers of liens, resulting from the conversion of a savings bank to a limited liability company, shall be exempt from stamp duty.

In the event that the provisions of Article 77 apply to the own funds of a savings bank which is converted to a limited-liability company, these same provisions shall continue to apply to the savings bank after its conversion to a limited-liability company.

If a savings bank is converted to a limited-liability company the provisions of Articles 61-68 and Articles 70-72 shall be replaced by the provisions of Chapter VII of this Act and the Act on Public Limited Companies as applicable, unless otherwise provided for in the preceding provisions of this Article.

Article 74

Division of share capital in a savings bank

In converting a savings bank to a limited liability company, as provided for in Article 73, guarantee capital owners shall only receive shares in the limited-liability company as recompense for their guarantee capital holding. The total share capital received by guarantee capital owners in the savings bank shall amount to the same proportion of its share capital, following the conversion, as their guarantee capital, revalued in accordance with Article 67, comprises of the estimated market value of the savings bank. The market value of the savings bank, together with the recompense for guarantee capital holdings, shall be evaluated by an independent body based on the same point in time as the change in the legal form of the savings bank. In evaluating the proportion of guarantee capital, regard shall be had for the dividend to be expected from the guarantee capital holding in accordance with Article 68, on the one hand, and the dividend to be expected from and risk of shares in the savings bank, on the other. Following its conversion to a limited-liability company, that portion of the share capital of the savings bank which is not allocated to guarantee capital owners, in accordance with the above, shall become the property of a self-governing foundation established in accordance with Article 76.

The provisions of Articles 120-128, together with the provisions of Article 131 of Act No 2/1995, on Public Limited Companies, shall otherwise and as applicable apply to the

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

conversion of a savings bank to a limited liability company as provided for in the preceding provisions of this Article.

Article 75

Voting rights in a savings bank which has been converted to a limited-liability company

The Articles of Association of a savings bank, which has been converted to a limited-liability company in accordance with Article 73, must specify the voting rights deriving from shares in savings banks and how these are to be exercised. Individual shareholders may never, however, on their own behalf or on behalf of others, exercise more than 5% of the total voting rights in a savings bank, whether the control upon which such voting rights are based derives directly or indirectly from a share in the guarantee capital of the savings bank.

[A self-governing foundation shall, however, exercise voting rights in accordance with its shareholding.]¹⁾

¹⁾[Act 4/2004, Article 2.](#)

Article 76

A self-governing foundation as shareholder in a savings bank

If a decision is taken to change a savings bank to a limited-liability company, in accordance with the provisions of Article 73, the savings bank must take the initiative in establishing a self-governing foundation which, upon the change, shall become the owner of that portion of share capital in the savings bank which is referred to in Article 74. The principal purpose of the self-governing foundation shall be to encourage the prosperity and growth of activities of the savings bank. The Financial Supervisory Authority must approve the Articles of Association of the foundation. [Prior to a meeting of guarantee capital owners, as provided for in the first paragraph of Article 73, no binding decisions may be taken on behalf of the self-governing foundation.]¹⁾

[The board of a self-governing foundation as provided for in the first paragraph shall include two representatives of the municipality where the savings bank is domiciled when it is converted to a limited company, one representative appointed by the Minister of Finance and two representatives appointed by the Minister of Commerce. The Board so comprised shall elect its Chairman and represent the interests of the self-governing foundation from the date of the guarantee capital owners' meeting, as provided for in the first paragraph of Article 73. Its term of office shall be four years unless otherwise provided for in the Articles of Association. At least two months prior to the end of the Board's term of office, its Chairman shall obtain new appointments as provided for in the first sentence.

Prior to a meeting of guarantee capital owners, as provided for in the first paragraph of Article 73, the savings bank shall have obtained appointments as provided for in the second paragraph of this Article.]¹⁾

Allocations may only be made from the assets of a self-governing foundation, as provided for in the first paragraph, or the property remaining upon its winding up disposed of, to cultural or charitable pursuits in the operating region of the savings bank in question at the time of its conversion to a limited liability company. Provisions of law

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

concerning self-governing foundations pursuing commercial operations shall apply in other respects to a self-governing foundation as provided for in the first paragraph. A self-governing foundation established in accordance with this Article shall be exempt from income and net worth taxes, provided that the conditions of the first sentence, concerning allocation to cultural or charitable pursuits, are complied with.

¹⁾*Act No. 4/2004, Article 3. The amendment entered into force on 6 February 2004, but does not apply to those savings banks where guarantee capital owners had already decided to establish a limited company, as provided for in Article 73 of the Act, cf. Act No. 4/2004, Article 5.*

Article 77

Minimum initial capital

Savings banks in operation upon the entry into force of this Act, whose own funds are lower than the initial capital provided for in Article 14, may continue their activities provided their own funds do not drop below what they amounted to upon the entry into force of Act No. 43/1993, on Commercial Banks and Savings Banks. If their own funds drop below the above-mentioned limits, the Financial Supervisory Authority may grant the Savings Bank in question a reasonable length of time to rectify the situation. If the savings bank fails to fulfil the requirements for own funds following the expiration of this time limit, its operating licence must be revoked in accordance with the provisions of Chapter II.

Should new parties take over the activities of a savings bank operating in accordance with the first paragraph, the savings bank's own funds must have reached the minimum provided for in Article 14 within three months of such take-over.

CHAPTER IX

Electronic Money Undertakings

Article 78

Electronic money

"Electronic money" shall mean monetary value, as represented by a claim on the issuer which is stored in an electronic medium, issued in exchange for an amount of funds not less than the monetary value issued and accepted as means of payment by undertakings other than the issuer.

Article 79

Redeemability of electronic money

Acceptance of funds in exchange for electronic money shall not constitute a deposit or other repayable funds if the funds accepted are immediately exchanged for electronic money.

A bearer of electronic money may, during the period during which the electronic money is valid, request that the issuer redeem it at par value in coins or bank notes, or by a transfer to an account without other charge than is strictly necessary to carry out that operation.

The contract between the electronic money undertaking and the bearer of electronic money must clearly specify the conditions for redemption.

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

A contract as provided for in the third paragraph may stipulate a minimum threshold for redemption. Such a threshold may not exceed ISK 500.

Article 80

Own funds requirements

Notwithstanding the provisions of Article 84, the own funds of an electronic money undertaking must always amount to at least 2% of whichever of the following is higher:

1. the current amount of its financial commitment due to outstanding electronic money, or
2. the average of its preceding six months' financial commitments due to outstanding electronic money.

If an electronic money undertaking has not operated for six months its own funds must amount to at least 2% of whichever of the following is higher:

1. the current amount of its financial commitment due to outstanding electronic money, or
2. the six months' estimated total amount of its financial commitment due to outstanding electronic money. The six months' estimated total amount of the financial commitments of the undertaking concerned must be indicated in the undertaking's business plan, subject to any adjustment to that plan as requested by the Financial Supervisory Authority.

An electronic money undertaking must send the Financial Supervisory Authority calculations twice each year showing that the provisions of this Article have been complied with, together with the necessary accompanying documents in accordance with detailed rules adopted by the Financial Supervisory Authority.

Article 81

Limitations of investments

Investments of electronic money undertakings must at least correspond to its financial commitments due to outstanding electronic money. An electronic money undertaking may only invest in liquid assets or claims in accordance with rules¹⁾ set by the Financial Supervisory Authority on limits to investments of electronic money undertakings. The rules shall, for instance, specify what assets and claims an electronic investment undertaking may invest in, evaluation of the value of assets, limits on market exposure and maximum investments.

If the value of assets or claims as referred to in the first paragraph drops below an amount equal to the financial commitments of the electronic money undertaking due to outstanding electronic money, the electronic money undertaking in question must rectify the situation without delay and provide the Financial Supervisory Authority with an account of the measures taken to this end.

An electronic money undertaking must send the Financial Supervisory Authority calculations twice each year showing that the provisions of this Article have been complied with, together with the necessary accompanying documents in accordance with detailed rules adopted by the Financial Supervisory Authority.

An electronic money undertaking may not own a holding in other undertakings unless

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

they handle operating aspects connected with the electronic money which the electronic money undertaking issues or distributes.

¹⁾ Reg. 671/2002.

Article 82

Limits to scope of application

The Financial Supervisory Authority may exempt an electronic money undertaking from individual or all provisions of this Act if a maximum of ISK 6000 can be stored on the electronic medium and one of the following conditions is satisfied:

1. the electronic money issued by the undertaking is accepted as means of payment only by subsidiaries of the undertaking, by a parent undertaking or other subsidiaries of the parent undertaking, or
2. the electronic money issued by the undertaking is only accepted as means of payment by a limited number of undertakings which can be closely distinguished by their location in the same operating region or other limited area of the operating region of an electronic money undertaking, or by their close financial or business relationship.

An electronic money undertaking covered by the first paragraph must submit an annual report on its activities to the Financial Supervisory Authority in accordance with detailed rules adopted by the Financial Supervisory Authority and including information on the total amount of financial commitments due to unredeemed electronic money. The report must be received by 1 April each year.

CHAPTER X

Liquid Assets and Own Funds

Article 83

Liquid assets

Financial undertakings must at all times strive to have sufficient liquid assets available to be able to pay out withdrawals of deposit funds and other payments involved in the activities of the undertaking concerned.

Article 84

Definition of own funds

The own funds of financial undertakings, as defined in the fourth paragraph, may not at any time amount to less than 8% of their risk-weighted asset base.

Notwithstanding the provisions of the first paragraph, the Financial Supervisory Authority may decide upon an own funds percentage higher than 8% for those financial undertakings regarded as having an unsatisfactory financial position with regard to risk level, if other supervisory actions are not likely to compensate for the imbalance in own funds and risk level within a reasonable time limit. The Financial Supervisory Authority's evaluation of risk level and any decision on a higher capital adequacy ratio must be based on detailed rules¹⁾ which it has set.

The risk-weighted asset base of an undertaking shall be evaluated with regard for its total assets, off-balance sheet items, foreign-exchange risks and other market exposures, in accordance with detailed rules²⁾ set by the Financial Supervisory Authority on assessment

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

of risk-weighted asset base for the calculation of the capital adequacy ratio of financial undertakings. The own funds requirement as provided for in the first paragraph shall also apply to consolidated accounts. [The Financial Supervisory Authority shall set rules on calculation of the capital adequacy ratio for financial conglomerates, based on Directive 2002/87/EC of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate.]³⁾

In calculating a capital adequacy ratio as referred to in the first paragraph, own funds shall consist of three parts, Own Funds Part A, Own Funds Part B and Own Funds Part C, together with the deductions provided for in Article 85. If own funds items are based on an interim financial statement, this must be signed as audited or examined by an auditor. The following restrictions shall apply to individual Own Funds Parts:

1. Own Funds Part A must amount to at least one-half of own funds prior to the deduction according to Article 85.

2. Own Funds Part B may amount to a maximum of 50% of Own Funds Part A.

3. Own Funds Part C may amount a maximum of 50% of Own Funds Part A.

Furthermore, Own Funds Part C may amount to a maximum of 4.8% of the risk-weighted asset base due to market exposures of trading book items, as provided for in Article 28 and exchange-rate risk.

Own Funds Part A shall consist of paid-up share capital, reserve funds, share premium account, the revaluation account according to inflation accounting principles, and retained earnings, after deducting the book value of own shares/guarantee capital certificates, goodwill and other intangible assets, as well as any loss and approved dividend allocation. In addition, regard shall be had for the share of smaller holdings in assets of subsidiaries in accordance with consolidated accounting principles.

Own Funds Part B shall be a total of Points 1 and 2:

1. Subordinated loans taken by a financial undertaking against the issue of special debt instruments which state clearly that the repayment period of the loan is not less than five years and that, in the event of the bankruptcy of the financial undertaking concerned or its winding up, repayment may be obtained following all claims against the financial undertaking other than the repayment of share capital or guarantee capital. When five years of the loan period remain, the amount of the loan shall be scaled down by 20% for each of the years, or proportionally for part of a year, passing of these five years. In the case of a loan which is to be paid off in instalments over the loan period, the remaining payments for each year shall be scaled down in a similar manner. Only paid-up amounts may be included.

2. The revaluation account, according to cost-basis accounting principles.

Own Funds Part C shall consist of short-term subordinated loans taken by a financial undertaking against the issue of special debt instruments which state clearly that the repayment period of the loan is not less than two years and that, in the event of the bankruptcy of the financial undertaking concerned or its winding up, repayment may be obtained following all claims against the financial undertaking other than the repayment of share capital or guarantee capital. Furthermore, provision shall be made to the effect that payments may neither be made nor interest paid on the loan if the capital adequacy ratio of the financial undertaking drops below 8% or if the repayment of capital or

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

payment of interest results in the drop of the capital adequacy ratio below 8%. The Financial Supervisory Authority must be notified if such payment causes the capital adequacy ratio to drop below 10%. The Financial Supervisory Authority may authorise particular financial undertakings to include profits from trading book transactions in Own Funds Part C, after deducting foreseeable charges and net losses on other activities, provided none of these amounts has been included in Own Funds Part A.

The accelerated repayment of subordinated loans is authorised if a borrower so requests, provided the approval of the Financial Supervisory Authority has been obtained and that such repayment will not unacceptably affect the [borrower's] capital adequacy ratio in the estimation of the latter.

Notwithstanding the provisions of the first to seventh paragraphs, the own funds of a securities company, securities brokerage and UCITS management company may never amount to less than the equivalent of 25% of its fixed operating expenses for the preceding accounting year. The Financial Supervisory Authority may authorise exemptions from this requirement if a major change has occurred in the operation of the company from one year to the next. During its first year of operation, the own funds of a securities company, securities brokerage and UCITS management company may never amount to less than the equivalent of 25% of its budgeted fixed operating expenses. The Financial Supervisory Authority may require a change to be made to the operating budget if it is of the opinion that it does not properly reflect the activities proposed.

The Financial Supervisory Authority may prescribe in Rules⁴⁾ that items other than those listed in the fifth to seventh paragraphs may be included in a financial undertaking's own funds.

¹⁾Reg. 530/2004. ²⁾Reg. 530/2003. ³⁾Act No. 130/2004, Article 6. ⁴⁾Reg. 156/2005.

Article 85

Deductions from own funds

The book value of holdings and subordinated claims in any other financial undertakings or undertakings connected to the financial sector shall be deducted from own funds according to the fourth paragraph of Article 84. In the case of holdings amounting to up to 10% of share capital in each individual financial undertaking, the deduction shall, however, be limited to the total amount of holdings and subordinated claims exceeding 10% of own funds, as calculated in accordance with the fourth paragraph of Article 84, prior to a deduction as provided for in this Article. Shareholdings of a savings bank in Icebank Ltd. amounting to more than a 10% portion of the bank's share capital shall, however, be calculated in the same manner as holdings of up to 10%.

[If an investment in holdings in another financial undertaking, undertaking connected with the financial sector, insurance company or holding company in the insurance sector is a temporary measure, and intended as financial assistance with reorganisation or to save the undertaking concerned, the Financial Supervisory Authority may grant an exemption from the provisions of the first sentence of the first paragraph.

Shareholdings and subordinated claims in other financial undertakings or undertakings connected with the financial sector, cf. the first paragraph, or in insurance companies or holding companies in the insurance sector, cf. the fourth paragraph, which are included in the consolidated accounts of the financial undertaking concerned or when applying

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

provisions on supervision of financial conglomerates, shall not be deducted from the own funds of the undertaking concerned.

Shareholdings and subordinated claims in insurance companies and holding companies in the insurance sector, as well as items listed in Points 4 and 5 of the first paragraph of Article 29 of Act No. 60/1994, and which the financial undertaking holds as a result of its interest in the above-mentioned companies, shall be deducted from own funds in calculating a capital adequacy ratio as provided for in the fourth paragraph of Article 84. The deduction in connection with holdings in insurance companies shall, however, be limited to an amount corresponding to the share of the insurance company's minimum solvency requirement. In the case of financial conglomerates, however, the provisions of the third paragraph of Article 84 shall apply to calculations of capital adequacy ratio.]¹⁾ Furthermore, shareholdings in companies, which are in excess of the limits stated in the first paragraph and the first sentence of the third paragraph of Article 28, shall also be deducted from own funds.

¹⁾[Act No. 130/2004, Article 7.](#)

Article 86

Initial measures due to insufficient own funds

If the board or managing directors of a financial undertaking have reason to expect that its own funds will be less than the minimum required by law, they must immediately notify the Financial Supervisory Authority thereof. The auditor of the undertaking concerned has a comparable obligation if he/she has reason to expect that its management has not fulfilled their obligations as provided for in the first sentence of this paragraph. If it receives a notification as provided for in the first paragraph, or has other reason to assume that the own funds of a financial undertaking may be less than the minimum provided for in Article 84, the Financial Supervisory Authority must demand a financial statement immediately from the board of the undertaking, which must submit such within a reasonable time limit. The Financial Supervisory Authority may prescribe that such a financial statement be endorsed by an auditor.

If a statement as referred to in the second paragraph reveals that the own funds of a financial undertaking do not satisfy the provisions of Article 84, the undertaking's management must hold a shareholders' or guarantee capital owners' meeting without delay and subsequently provide the Financial Supervisory Authority with a summary indicating the measures to be taken as a result. This summary must be submitted within the time limit set by the Financial Supervisory Authority.

Once the Financial Supervisory Authority has received the documentation provided for in the third paragraph, it may grant the financial undertaking concerned a time limit of up to six months to increase its own funds to the minimum provided for in Article 84. If there are cogent reasons for so doing, the Financial Supervisory Authority may prolong this period by up to an additional six months. If a summary as provided for in the third paragraph is not received within the specified time limit, if the remedies proposed in the summary are not satisfactory in the opinion of the Financial Supervisory Authority, or if the time limit provided for in this paragraph expires, the operating licence shall be revoked, cf. Article 9.

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

CHAPTER XI

Annual Accounts, Auditing and Consolidated Accounts

Article 87

Drafting and attestation of annual accounts

The board of directors and managing director of a financial undertaking must compile annual accounts for each accounting year. The annual accounts must include a profit and loss account, balance sheet, statement of cash flow and explanatory notes. A report shall also be compiled by the board, which shall be an integral part of the annual accounts. The accounting year for financial undertakings shall be the calendar year.

The annual accounts shall be signed by the board of directors and managing directors of financial undertakings. If a member of the board or managing director of a financial undertaking has objections concerning the annual accounts, he/she must make a written explanation accordingly when signing them.

Article 88

Good accounting practices

The annual accounts must give a clear picture of the financial position and operating performance of the financial undertaking. They must be compiled in accordance with law, rules and good accounting practices and include, for instance, a profit and loss account, a balance sheet, explanatory notes and information on off-balance-sheet items. The Financial Supervisory Authority shall, after consultation with the Icelandic Accountancy Council, set rules¹⁾ on the layout of annual accounts, the contents of individual items of the profit and loss account and the balance sheet, and of off-balance-sheet items and on the assessment of individual items.

In collaboration with the Icelandic Accountancy Council, the Financial Supervisory Authority shall ensure that a definition of state-of-the-art in good accounting practices in compiling annual accounts and interim accounts of a financial undertaking is always available.

¹⁾Reg. 834/2003, Reg. 97/2004, Reg. 102/2004.

Article 89

Report of the board of directors

The report of the board of directors must include an overview of the activities of the financial undertaking concerned during the year, as well as information on aspects of importance in assessing the financial position of the undertaking concerned and its performance during the accounting year which does not appear in the annual accounts.

The report of the board shall, in addition, provide information on the following:

1. events of significance following the end of the accounting period,
2. expected future development of the undertaking, and
3. actions which will be of significance for its future development.

The report of the board must also provide information on the average number of employees during the accounting year, total wages, commissions or other remuneration to employees, the managing director, board of directors and others in the service of the financial undertaking in question. If a share of the profits is paid to the board or managing director this shall be specifically indicated. The report of the board must give

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

information on the number of shareholders or guarantee capital owners at the end of the accounting year. In other respects the provisions of the Act on Public Limited Companies shall apply as appropriate.

In their reports, boards shall make proposals on the disposition of profits in the undertaking concerned or measures to meet losses.

Article 90

Auditing

The annual accounts of a financial undertaking must be audited by an accountant or accounting firm.

An auditor as provided for in the first paragraph must be elected at the AGM of a financial undertaking for a one-year term.

If at all possible, the same party shall be elected as auditor of a parent company, affiliate and subsidiary. The auditor of the parent company shall, in addition, audit the consolidated accounts.

Article 91

Qualifications of auditors

An auditor may not be a member of the board, an employee of the financial undertaking or work on its behalf in any respect except auditing.

An auditor may not be in debt to the undertaking whose accounts he/she audits, neither as principal debtor nor as loan guarantor. The same shall apply to his/her spouse.

Article 92

Disclosure requirements of auditors

If an auditor becomes aware of substantial flaws in operations or matters concerning internal control, collateral of loans, or other matters which could weaken the financial position of the undertaking in question, or aspects which could result in his refusal to endorse the accounts or in endorsement with reservations, or if an auditor has reason to expect that there has been any violation of laws, regulations or rules which apply to the undertaking, the auditor must notify its board of directors and the Financial Supervisory Authority thereof. This shall also apply to similar matters which an auditor may learn of concerning undertakings with close links to the financial undertaking concerned, cf. the second paragraph of Article 18. Such a notification does not violate the auditor's obligations of confidentiality as provided for in Article 58 of this Act or the provisions of other acts.

Article 93

Good auditing practices

In collaboration with the Association of Certified Public Accountants and other parties concerned, the Financial Supervisory Authority shall ensure that a definition of state-of-the-art in good auditing practices in auditing financial undertakings is always available. The Financial Supervisory Authority shall set rules¹⁾ on auditing accounts of financial undertakings.

Other than as provided for in this Act, auditing of financial undertakings shall be in

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

accordance with the provisions of Chapter VII of Act No. 144/1994, on Annual Accounts, as subsequently amended.

The provisions of the first paragraph shall also apply to subsidiaries of a financial undertaking, as well as to holding companies in the financial sector or mixed holding companies as referred to in Article 97 and subsidiaries of such companies.

¹⁾Reg. 532/2003.

Article 94

Special auditing

The Financial Supervisory Authority may have a special audit of a financial undertaking carried out if the Authority deems there is reason to expect that an audited financial statement does not provide a clear picture of the financial position and operating results of the undertaking. The Financial Supervisory Authority may require the undertaking concerned to bear the cost of such an audit.

The provisions of the first paragraph shall also apply to subsidiaries of a financial undertaking, as well as to holding companies in the financial sector or mixed holding companies as referred to in Article 97 and subsidiaries of such companies.

Article 95

Submission and publication of annual accounts

The audited and endorsed accounts of a financial undertaking, together with the report of the board of directors, must be submitted to the Financial Supervisory Authority within ten days of their signing, and no later than three months after the end of the accounting year.

If amendments to the endorsed annual accounts are approved at the AGM, the amended annual accounts must be submitted to the Financial Supervisory Authority within ten days of the AGM with an explanation of the amendments that have been made.

The annual accounts of a financial undertaking, together with the report of the board of directors, shall be available at the place of business of the undertaking concerned and be given to any party with commercial interests who requests them within two weeks of its approval by the AGM.

Article 96

Interim financial statements

A financial undertaking must compile and publish interim financial statements in accordance with rules¹⁾ set by the Financial Supervisory Authority.

The Financial Supervisory Authority may grant exemptions from provisions on compiling interim financial statements.

¹⁾Reg. 834/2003.

Article 97

Consolidated accounting

An undertaking shall be considered as a parent undertaking if it:

1. controls the majority of votes in another undertaking;
2. has holdings in another undertaking and has the right to appoint or dismiss the majority

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

of members of the board or executives;

3. has holdings in another undertaking and the right to exercise decisive influence on its activities on the basis of the company's Articles of Association or agreements with it;

4. has holdings in another undertaking and controls the majority of votes in that undertaking on the basis of an agreement with other shareholders or other owners; or

5. has holdings in another undertaking and holds a dominant position in it.

An undertaking which is connected to a financial undertaking or holding company in the financial sector, as described in the first paragraph, shall be regarded as a subsidiary. An undertaking which is a subsidiary of a subsidiary, shall also be regarded as a subsidiary of the parent company.

The parent company and its subsidiaries form a consolidation.

[A "holding company in the financial sector" shall mean an undertaking linked to the financial sector, which is not a mixed holding company with financial activities, whose subsidiaries are either exclusively or principally financial undertakings or undertakings linked with the financial sector and at least one subsidiary is a financial undertaking.

A "mixed holding company" shall mean a parent company which is not a holding company in the financial sector, a financial undertaking or mixed holding company with financial activities, having at least one subsidiary is a financial undertaking.]¹⁾

[A "mixed holding company with financial activities" shall mean a parent company which is not subject to supervision but which together with its subsidiaries, at least one of which is subject to supervision and has its head office in a Member State, and other entities forms a financial conglomerate.]¹⁾

In assessing voting rights and rights to appoint or dismiss directors or management, the rights controlled by both parent companies and subsidiaries shall be combined.

In assessing voting rights in a subsidiary, voting rights deriving from the own shares of the subsidiaries and its subsidiaries shall not be included.

Provisions of Articles 87-92 and 95-96 shall apply as appropriate to both a consolidation, where the parent company is a financial undertaking or holding company in the financial sector, and to individual undertakings of the consolidation.

The Financial Supervisory Authority shall, after consultation with the Icelandic Accountancy Council, set detailed rules²⁾ on the compilation of consolidated accounts for consolidations where the parent company is a financial undertaking or holding company in the financial sector.

The Financial Supervisory Authority may set rules on consolidated statements for consolidations where the parent company is a mixed holding company.

¹⁾Act No. 130/2004, Article 8. ²⁾Reg. 834/2003.

CHAPTER XII

[Financial Reorganisation, Winding up and Merger of Financial Undertakings]¹⁾

¹⁾[Act 130/2004, Article 12.](#)

[A. Financial reorganisation of credit institutions]

¹⁾[Act 130/2004, Article 9.](#)

[Article 98

Financial reorganisation

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

Financial reorganisation of credit institutions shall mean measures intended to maintain the credit institution's financial position or to restore it to normal and which could affect prior rights of third parties, including measures which could conceivably involve a suspension of payments, suspension of enforcement measures or a reduction of claims. If a credit institution's head office is in Iceland, financial reorganisation shall mean an authorisation for suspension of payments or to seek debt composition as provided for in the Act on Bankruptcy etc., No. 21/1991.

The Act on Bankruptcy etc., No. 21/1991, shall apply to a credit institution's authorisation to seek suspension of payments and debt composition and to the implementation of such measures, unless otherwise provided for in this Act.]¹⁾

¹⁾[Act 130/2004, Article 9.](#)

[Article 99

Financial reorganisation of a credit institution with head offices in Iceland and branches in another EEA state.

Should a court in Iceland grant a credit institution authorisation to seek a suspension of payments or composition with creditors, such authorisation shall automatically apply to all branches operated by the credit institution in other states of the European Economic Area.

Icelandic law shall apply concerning the legal effect, procedure and implementation of the decision, with the following exceptions:

- a. An employment contract shall be governed by the law of the state which applies to the employment contract and employment relationship.
- b. A contract for the use or purchase of real property shall be governed by the law of the state where the property is located.
- c. Rights of a credit institution in respect of real property, a vessel or aircraft shall be governed by the law of the state where official registration has been effected.
- d. Authorisation for financial reorganisation shall not affect the rights of mortgagees to assets which are located in another member state of the European Economic Area.
- e. If the credit institution has acquired an asset with a reservation of title to ownership, the credit institution's authorisation for financial reorganisation shall not affect the seller's right based on the reservation of title, provided the asset is situated in another member state.
- f. If a credit institution has sold an asset, the authorisation for financial reorganisation shall not affect the buyer's rights, provided the asset is in another member state and delivery has already taken place when the authorisation is granted.
- g. The legitimacy of a credit institution's disposal of real property, a vessel or an aircraft, which is subject to official registration, as well as of transferable securities or other securities registered in a central securities depository, shall be governed by the law of the state where the asset is located or where official registration has been effected.
- h. The legal effect of a ruling on financial reorganisation on pending lawsuits, concerning an asset or other right which a credit institution has disposed of, shall be governed by the law of the state where the lawsuit was initiated.
- i. The enforcement of right to title, including rights to mortgaged financial instruments, which are electronically registered shall be governed by the law of the state where the

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

registration is effected.

j. A netting agreement shall be governed by the law of the state which applies to such agreement.

k. Without prejudice to sub-paragraph i, a repurchase agreement shall be governed by the law of the state which applies to such agreement.

l. Without prejudice to sub-paragraph i, transactions on a regulated securities market shall be governed by the law of the state which applies to such transactions.

m. Payment and settlement instructions in payment and settlement systems shall be governed by the law of the state which applies to the system concerned.

n. Notwithstanding the provisions of sub-paragraphs d and e, the provisions of Chapter III of the Act on Conclusion of Contracts, Power of Attorney and Invalid Legal Instruments, No. 7/1936, on invalid legal instruments, may be applied unless the law of the host state does not allow this.

The court shall ensure that the Financial Supervisory Authority is notified immediately of any request received from a credit institution for authorisation to suspend payments or seek composition with creditors. The Financial Supervisory Authority shall forward information on the request and the response to it to the competent authorities and creditors of the credit institution in the states concerned, as provided for in rules set by the Minister.

Mandatory notifications to known foreign creditors of a credit institution in connection with suspension of payments or composition with creditors shall be as provided for in rules set by the Minister.]¹⁾

¹⁾[Act 130/2004, Article 9.](#)

[Article 100

Financial reorganisation of a credit institution with its head office abroad and a branch in Iceland

A branch operated in Iceland by a credit institution with its head office in another member state of the European Economic Area, cannot be granted an independent authorisation for financial reorganisation in Iceland. Should the competent authority in another state of the European Economic Area decide on the financial reorganisation of a credit institution established and licensed to operate in that state, this decision will automatically apply to branches operated by the credit institution in Iceland.

Should it be deemed necessary to carry out financial reorganisation of the Icelandic branch of a credit institution established in another state of the European Economic Area, notice of such shall be sent to the Financial Supervisory Authority. The Financial Supervisory Authority shall forward the notification to the supervisory authorities of the home state.

The legal effect, procedure and implementation of the decision shall be governed by the law of the home state, with those exceptions listed in the second paragraph of Article 99.

A case may arise where application is made for authorisation to suspend payment, or for authorisation to seek composition with creditors, on the basis of the second paragraph of Article 6 of the Act on Bankruptcy etc., for a branch which a credit institution, established in a state outside of the European Economic Area operates in Iceland. The District Court judge shall then notify the Financial Supervisory Authority of such request. If the

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

credit institution concerned operates branches in other states of the European Economic Area, the Financial Supervisory Authority shall notify the supervisory authorities in those states of the request. The courts shall endeavour to co-ordinate actions with the authorities of other host states.]¹⁾

¹⁾Act No. 130/2004, Article 9.

[B.]¹⁾ Winding up

¹⁾Act 130/2004, Article 9.

[Article 101]¹⁾

Decision on winding up

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

A financial undertaking must be wound up in the following instances:

1. if the Financial Supervisory Authority revokes the financial undertaking's operating licence, as referred to in Article 9, refuses to extend a time limit as referred to in the fourth paragraph of Article 86, or the time limit in accordance with this provision has expired without the undertaking having increased its own funds above the minimum provided for in Article 84;
2. if the financial undertaking must be wound up in accordance with the Articles of Association of the undertaking in question;
3. if a shareholders' meeting or meeting of guarantee capital owners has decided to wind up the financial undertaking.

In such instances as are referred to in Points 2 and 3 of the second paragraph, the Financial Supervisory Authority must obtain a financial statement from the board of the financial undertaking concerned in the same manner as provided for in the second paragraph of Article 86.

A decision as provided for in Point 3 of the second paragraph shall only be valid if it [is approved by the Financial Supervisory Authority and]²⁾ receives the approval of at least two-thirds of the votes cast, and furthermore the approval of shareholders or guarantee capital owners controlling at least two-thirds of the share capital or guarantee capital represented at a meeting of guarantee capital owners.

¹⁾[Act 130/2004, Article 9.](#) ²⁾[Act 139/2004, Article 10.](#)

[Article 102]¹⁾

Ruling by a District Court on winding up

When a financial undertaking must be wound up as provided for in Point 1 of the second paragraph of Article [101]²⁾, or if the Financial Supervisory Authority is of the opinion, in instances covered by Points 2 or 3 of the same provision, that it is not certain that the undertaking's assets will be sufficient to cover its liabilities, the Financial Supervisory Authority shall send to a District Court judge in the legal venue of the undertaking concerned a request that its estate be subject to bankruptcy proceedings.

When a financial undertaking must be wound up as provided for in Point 2 or 3 of the second paragraph of Article [101]²⁾, and the Financial Supervisory Authority deems it evident that the undertaking's assets will be sufficient to cover its liabilities, the Authority shall send to a District Court judge in the legal venue of the undertaking a request that its

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

estate undergo bankruptcy procedures to wind up the financial undertaking. Once a District Court Judge has examined whether the provisions of Article [101]²⁾ concerning the demand are satisfied, he/she shall issue a ruling as to whether such request shall be granted.

The call for claims against the estate of a financial undertaking must indicate whether it has undergone bankruptcy proceedings in accordance with the first or second paragraph.

¹⁾[Act 130/2004, Article 9.](#) ²⁾[Act 130/2004, Article 5.](#)

[Article 103]¹⁾

Bankruptcy proceedings of a financial undertaking

Unless otherwise prescribed by the provisions of this Act, the general rules of the Bankruptcy Act shall apply as appropriate to bankruptcy proceedings on the estate of a financial undertaking, with the exception that their provisions on cancellation of measures shall not apply to bankruptcy resulting from the second paragraph of Article [102]²⁾.

Where the provisions of the Bankruptcy Act base legal effect on the day of deferral, for the purposes of bankruptcy proceedings on the estate of a financial undertaking, the date which the Financial Supervisory Authority has set as deadline, in accordance with the fourth paragraph of Article 86, shall be equivalent to that day; if such a deadline does not precede the bankruptcy, the date used shall be the date upon which the request of the Financial Supervisory Authority is received by a District Court judge, as referred to in the first or second paragraph of Article [102]²⁾.

Once all the debts of a savings bank have been paid, the guarantee capital owners shall be paid their shares out of the bank's remaining assets. Any remaining assets shall be allocated in accordance with the provisions of the savings bank's Articles of Association. The remaining assets may not, however, be disposed of to guarantee capital owners, cf. the fourth paragraph of Article 63.

¹⁾[Act 130/2004, Article 9.](#) ²⁾[Act 130/2004, Article 5.](#)

[Article 104

Winding up of a credit institution with head offices in Iceland and branches in another EEA state.

Should an Icelandic court decide on the winding up of a credit institution which is established and licensed to operate in Iceland, this authorisation shall automatically apply to any branches operated by the credit institution in other states of the European Economic Area. The legal effect, procedure and implementation of the decision shall be governed by Iceland law, with those exceptions listed in the second paragraph of Article 99.

The court shall ensure that the Financial Supervisory Authority is notified immediately of the decision on winding up.

If a credit institution operates branches in other states of the European Economic Area, the Financial Supervisory Authority shall forward information on the request and the response to it to the competent authorities in the states concerned, as provided for in rules set by the Minister. If a known creditor of the credit institution is resident in another state of the European Economic Area, the liquidator shall, without delay, inform the creditor of the commencement of the winding up. The notification shall state the time limits for

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

lodging claims, where lodgement of claims shall be made and the consequences of failure to lodge claims, as provided for in rules set by the Minister.]¹⁾

¹⁾*Act No. 130/2004, Article 11.*

[Article 105

Winding up of a credit institution with its head office abroad and branches in Iceland

A branch operated in Iceland by a credit institution with its head office in another member state of the European Economic Area, cannot be granted an independent authorisation for winding up in Iceland. Should the competent authority in another state of the European Economic Area decide on the winding up of a credit institution established and licensed to operate in that state, this decision will automatically apply to branches operated by the credit institution in Iceland. The winding up of a credit institution as provided for in this Article shall mean collective proceedings opened and monitored by the administrative or judicial authority in another state of the European Economic Area, intended to realise assets under the supervision of those authorities. The legal effect, procedure and implementation of the decision shall be governed by the law of the home state, with those exceptions listed in the second paragraph of Article 99. Should a demand for bankruptcy proceedings be advanced, based on the second paragraph of Article 6 of the Act on Bankruptcy etc., for a branch which a credit institution, established in a state outside of the European Economic Area, operates in Iceland, the District Court judge shall notify the Financial Supervisory Authority of such request. If the credit institution concerned operates branches in other states of the European Economic Area, the Financial Supervisory Authority shall notify the supervisory authorities in those states of the demand.]¹⁾

¹⁾[*Act 130/2004, Article 11.*](#)

[C.]¹⁾ Merger

¹⁾[*Act 130/2004, Article 9.*](#)

[Article 106]¹⁾

A merger of a financial undertaking with another undertaking, or an individual operating unit of the same, shall only be authorised if a decision thereto has received the approval of a shareholders meeting or meeting of guarantee capital owners in the undertaking taken over with at least two-thirds of the votes cast, and furthermore the approval of shareholders or guarantee capital owners in the undertaking taken over controlling at least two-thirds of the share capital or guarantee capital represented at a the meeting of shareholders or guarantee capital owners, and has received the approval of the Financial Supervisory Authority. If the undertaking taken over is completely owned by the company taking it over, voting as provided for in the first sentence of this paragraph in the company taken over is not required.

[A merger of a savings bank with another undertaking or an individual operating unit of the same shall only be authorised if the savings bank has previously been converted to a limited-liability company in accordance with the provisions of Chapter VIII, except in the case where the merger involves two or more savings banks which have not been transformed into a limited liability company or companies.]²⁾

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

Mergers of financial undertakings shall otherwise be subject to provisions of the Act on Public Limited Companies, as appropriate, and agreements between the parties concerned.

A financial undertaking which is wound up as the result of a merger is not obliged to issue a call to creditors or to keep their assets separate. Amendments to the registration of ownership in mortgage registers resulting from mergers of financial undertakings shall be exempt from stamp duties.

The Financial Supervisory Authority shall announce a merger of financial undertakings in the Legal Gazette. The announcement must specify when a merger takes effect, the names of the undertakings concerned, the time limit for submitting objections to the transfer of deposits, conceivable changes to the payment locations for debt instruments and other aspects which are to be announced to customers in particular.

When two or more financial undertakings merge, the own funds formed by the merger shall not be less than the combined own funds of the undertakings concerned at the time the merger took place, if the minimum provided for in Article 14 has not been reached.

¹⁾[Act 130/2004, Article 11.](#) ²⁾[Act 4/2004, Article 4.](#)

CHAPTER XIII

Supervision

A. General authorisations for supervision

[Article 107]¹⁾

The Financial Supervisory Authority

The Financial Supervisory Authority shall supervise the activities of financial undertakings and undertakings connected to the financial sector to which the provisions of this Act apply, as well as activities of Icelandic financial undertakings abroad, unless otherwise provided for by law or international agreements to which Iceland is a party. Furthermore, the Financial Supervisory Authority shall supervise subsidiaries, affiliated undertakings and funds pursuing the activities listed in Chapter IV, to the extent required by activities subject to supervisions. The supervision shall be as provided for in this Act and the Act on Public Supervision of Financial Activities.

The Financial Supervisory Authority may demand any sort of documentation or information from individuals or legal entities which own or plan to acquire and exercise holdings in financial undertakings in order to evaluate whether they are covered by the notification obligation as provided for in Chapter VI and whether they are considered eligible to exercise a qualifying holding.

The Financial Supervisory Authority may demand any sort of documentation or information from subsidiaries or affiliates, or from other parties regarded as having close connections with a financial undertaking, which the Financial Supervisory Authority regards as necessary in the course of its supervision of the financial undertaking concerned.

The Financial Supervisory Authority may demand any sort of data or information from holding companies in the financial sector or mixed holding companies, provided the Financial Supervisory Authority deems such information to be necessary for its supervision of financial undertakings which are subsidiaries of these holding companies.

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

[The Financial Supervisory Authority shall oversee dealings by a financial undertaking with its subsidiaries and affiliated companies, companies which control or have holdings in the financial undertaking, and other subsidiaries and affiliated companies of such companies. Furthermore, the Financial Supervisory Authority shall keep track of dealings between a financial institution and individuals with holdings of 20% or more in the above-mentioned companies. Financial undertakings shall provide the Financial Supervisory Authority with a report on such dealings in accordance with its specific instruction. Where the dealings are made with enterprises or individuals in other states, co-operation between supervisory authorities shall be as provided for in international agreements to which Iceland is a party and co-operation agreements concluded by the Financial Supervisory Authority on their basis.

The Financial Supervisory Authority may, at the request of supervisory authorities in another state, verify information from parties in Iceland subject to supplementary supervision of financial conglomerates. The supervisory authorities concerned may participate in efforts to verify such information.]²⁾

Should the Financial Supervisory Authority be of the opinion that activities covered by this Act are pursued without the required authorisation, it may demand from the parties concerned or parties subject to supervision such data and information as are necessary to determine whether such is the case. It can demand that such activities cease immediately. In addition, it may make public the names of parties regarded as offering services without the required authorisation.

Provisions of the Act on Public Supervision of Financial Activities on daily fines and on searches and seizure of documents may be applied for obtaining information and carrying out supervision as provided for in this Article.

¹⁾[Act 130/2004, Article 11.](#) ²⁾[Act 130/2004, Article 13.](#)

[Article 108]¹⁾

Assistance to authorities of other EEA states

Supervisory authorities in a state within the European Economic Area shall be authorised to carry out checks in Icelandic branches of undertakings established in their countries upon prior notification of such to the Financial Supervisory Authority.

If a financial undertaking, which has received an operating licence in Iceland and pursues activities in another state of the European Economic Area, violates the laws of that state and the competent authorities of that state take measures comparable to those listed in Article 34, the Financial Supervisory Authority shall assist the authorities in that state in their exchanges with the management of the financial undertaking concerned.

[The Financial Supervisory Authority shall notify the appropriate foreign authorities of suspension of payments, composition with creditors or bankruptcy of domestic credit institutions operating branches in other states of the European Economic Area.]²⁾

¹⁾[Act 130/2004, Article 11.](#) ²⁾[Act 130/2004, Article 14.](#)

B. Supervision on a consolidated basis

[Article 109]¹⁾

The provisions of Part C of Chapter IV and of Chapter X shall apply to consolidations where the parent company is a financial undertaking or a holding company in the

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

financial sector. The parent company shall be responsible for implementing this provisions. [The provisions of Article 52 on eligibility of board members and managing directors, and of Articles 84 and 85 on own funds shall also apply to holding companies in the financial sector.]²⁾[The provisions of Article 30 and Articles 84-86 shall also apply to financial conglomerates, as referred to in the third paragraph.]²⁾

If a financial undertaking or holding company in the financial sector, alone or jointly with other undertakings in the consolidation, owns a holding in an affiliated company, which is a financial undertaking or undertaking in the financial sector, and that undertaking is operated in co-operation with other undertakings, which are not part of the consolidation, in applying the provisions of the first paragraph on own funds a proportional consolidation method shall be used, having regard for the size of the holding in the undertaking in question. If the responsibility of the financial undertaking or holding company for the affiliated company in question is not limited to the share of its holding or voting rights, the provisions of traditional consolidated accounting shall apply. An "affiliated company" as referred to in this paragraph shall mean a company, not a subsidiary, in which another company and its subsidiaries own a holding and have substantial influence on, or in which the direct or indirect holding amounts to 20% or more of own funds or voting rights.

[The Financial Supervisory Authority shall ensure that financial conglomerates comply with the provisions of this Act. A financial conglomerate shall mean a group of companies, or companies which have close connections, cf. Article 18, where there is a regulated entity at the head of the group and at least one entity within in the group operates in the financial sector and another entity operates in the insurance sector and where the consolidated and/or aggregated activities in the financial sector, on the one hand and, on the other hand, comparable activities in the insurance sector are both considered significant according to rules set by the Financial Supervisory Authority. Where there is no regulated entity at the head of the group, but the group's activities occur primarily within the financial or insurance sector, as defined in rules set by the Financial Supervisory Authority, the group shall be considered a financial conglomerate. Each sub-group which fulfils the conditions of the second sentence shall be regarded as a financial conglomerate. The Financial Supervisory Authority shall set detailed rules on the definition of financial conglomerates and their supervision.]²⁾

The Financial Supervisory Authority may decide that the provisions of the first paragraph of this Article and the [ninth and tenth paragraphs of Article 97]²⁾ shall also apply in other instances involving a financial undertaking which alone or jointly with another party has such ownership links to an undertaking that it is deemed necessary to apply these provisions.

The provisions of the first paragraph of this Article and the [ninth and tenth paragraphs of Article 97]²⁾ shall not apply to undertakings in which a financial undertaking has temporarily acquired a holding, either to ensure the enforcement of a claim or due to reorganisation of the undertaking, nor to enterprises pursuing insurance activities. The Financial Supervisory Authority may decide, however, that the provisions in question shall apply.

The Financial Supervisory Authority may grant an exemption from the provisions of the

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

first and second paragraphs of this Article and the [ninth and tenth paragraphs of Article 97]²⁾.

¹⁾[Act 130/2004, Article 11.](#) ²⁾[Act 130/2004, Article 15.](#)

CHAPTER XIV

Penalties

[Article 110]¹⁾

Fines

Violations of this Act concerning the following shall be liable to fines unless more severe penalties are prescribed in accordance with other Acts:

1. the exclusive right of financial undertakings to use in their company name or as a clarification of their activities the name of the type of financial undertaking for which the undertaking has been granted an operating licence (Article 12);
2. authorised activities (Parts A and B, Chapter IV);
3. obligation to provide solid surety for loans exceeding a specific proportion of their total share capital (second paragraph, Article 29);
4. activities of Icelandic financial undertakings abroad (first and fifth paragraphs of Article 36, first and fourth paragraphs of Article 37, first paragraph of Articles 38 and Article 39);
5. qualifying holdings (first paragraph of Article 40, Article 47, and the first paragraph of Article 48);
6. participation of directors in dealing with matters (second and third paragraphs of Article 55);
7. participation of personnel in business operations (Article 56);
8. business transactions of personnel with the financial undertaking (first paragraph of Article 57);
9. obligation of a savings bank which has been converted to a limited-liability company to add the denomination of a limited-liability company to its name (fourth paragraph of Article 73); and
10. annual accounts and auditing (Article 87, first paragraph of Article 88 and the first and second paragraphs of Article 95).

¹⁾[Act 130/2004, Article 11.](#)

[Article 111]¹⁾

Fines or imprisonment

Violations of this Act concerning the following shall be liable to fines or imprisonment of up to one year in duration, unless more severe penalties are prescribed in accordance with other Acts:

1. that activities subject to an operating licence shall not be pursued without an operating licence (Article 3);
2. maximum loans to individual customers (Article 30);
3. activities of foreign financial undertakings in Iceland (first paragraph of Article 31, Articles 32 and 33);
4. confidentiality (Article 58);
5. limits to the investments of electronic money undertakings (the first, second and fourth

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

paragraphs of Article 81);

6. initial measures due to insufficient own funds (first and third paragraphs of Article 86);
and

7. eligibility of an auditor and his/her responsibility to give notification of flaws in operations (Articles 91 and 92).

Anyone who knowingly provides wrong or misleading information, concerning the situation of a financial undertaking or other matters concerning it, publicly or to the Financial Supervisory Authority, other public party or his/her customers, shall be liable to fines or imprisonment of up to one year in duration, unless more severe penalties are prescribed in accordance with other Acts.

¹⁾[Act 130/2004, Article 11.](#)

[Article 112]¹⁾

Liability of legal entities for violations. Attempted violation or participation in such. Limitations on liability

In the event that a violation is committed in the course of the activities of a financial undertaking or other legal entity, such a legal entity may be fined. The liability shall be as provided for in Part A of Chapter II of the Criminal Code. An attempt to commit or participation in a violation of this Act is liable to punishment as prescribed by the Criminal Code.

Violations of this Act shall be liable to punishment whether they are committed intentionally or through negligence. Any culpability resulting from the provisions of this Chapter shall expire in five years' time.

¹⁾[Act 130/2004, Article 11.](#)

CHAPTER XV

Miscellaneous provisions

[Article 113]¹⁾

Registration of accounts by name

All deposit accounts, custody accounts and safety deposit boxes must be registered in the name of the customer together with his/her address and identification number.

¹⁾[Act 130/2004, Article 11.](#)

[Article 114]¹⁾

Lost documents

If a deposit certificate or acceptance receipt issued by a financial undertaking for a pledge or assets taken into custody is lost, the board of the financial undertaking may summon the bearer of the documents in question with three months notice from the final publication of such a summons, which must be published in the Legal Gazette three times.

If no one answers the summons before the time limit elapses, all claims on the financial undertaking based on the deposit certificate or acceptance receipt shall be cancelled. The financial undertaking shall then, at the request of the person who formerly received the deposit certificate or acceptance receipt from the undertaking in question, issue the party

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

or such person who proves his/her legal right derived from this party, with a new one with the same terms and conditions as the previous one.

¹⁾[Act 130/2004, Article 11.](#)

[Article 115]¹⁾

Exemption from stamp duties

Deposit certificates, cheques and any type of obligation issued in the name of financial undertakings, obligations giving them right to a pledge, dividend coupons of their bonds and assignments shall be exempt from stamp duties.

¹⁾[Act 130/2004, Article 11.](#)

[Article 116]¹⁾

Exempted funds and exemption from legal form

Despite the authorised activities of the Harbour Improvement Fund in accordance with the Harbours Act, No. 23/1994, of the Housing Financing Fund in accordance with Act No. 44/1998, on Housing Affairs, and the Tourism Fund in accordance with Act No. 117/1994, on the Organisation of Tourism Affairs, these funds shall not be considered as financial undertakings in accordance with this Act.

Public investment funds which are in operation upon the entry into force of this Act shall be exempt from the requirements of Article 13 on operating as a limited-liability company.

¹⁾[Act 130/2004, Article 11.](#)

CHAPTER XVI

Entry into force, etc.

[Article 117]¹⁾

Adaptation

This Act introduces into Icelandic law provisions of the Directives of the European Parliament and the Council Nos. 2000/12/EC, relating to the taking up and pursuit of the business of credit institutions, 93/6/EEC, on the capital adequacy of investment firms and credit institutions, 93/22/EEC, on investment services in the securities field, 86/635/EEC, on the annual accounts and consolidated accounts of banks and other financial institutions, 107/2001/EC, amending Directive 85/611/EEC on undertakings for collective investment in transferable securities (UCITS), 95/26/EC, amending various Directives in the field of financial services, with a view to reinforcing prudential supervision, 2000/28[EC], amending Directive 2000/12/EC concerning the definition of a credit institution, and 2000/46[EC], on the taking up and pursuit of the business of electronic money institutions.

¹⁾[Act 130/2004, Article 11.](#)

[Article 118]¹⁾

Entry into force

This Act shall enter into force 1 January 2003. ... The words "financial instrument" in this Act shall mean securities as defined in Act No. 13/1996, on Securities Transactions.

¹⁾[Act 130/2004, Article 11.](#)

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.

[Article 119]¹⁾ ...

¹⁾[Act 130/2004, Article 11.](#)

[Article 120]¹⁾ ...

¹⁾[Act 130/2004, Article 11.](#)

Temporary provisions**I.**

Commercial banks, savings banks, credit institutions other than commercial and savings banks, electronic money undertakings, securities companies and securities brokerages currently operating shall retain their operating licences upon the entry into force of this Act. Within six months they must notify the Financial Supervisory Authority what activities as provided for in Article 3 and Chapter IV they pursue upon the entry into force of the Act. The notification shall be made in such form as the Financial Supervisory Authority requests.

Credit institutions holding operating licences in accordance with Act No. 123/1993, on Credit Institutions other than Commercial Banks or Savings Banks, must have operating licences as credit undertakings in accordance with this Act.

A financial undertaking currently operating as provided for in the first paragraph may not subsequently commence new activities unless it notifies the Financial Supervisory Authority of such in advance.

Management companies of UCITS must apply for an operating licence in accordance with this Act within six months of its entry into force.

II.

Financial undertakings must send the Financial Supervisory Authority rules in accordance with Chapter VII within twelve months from the entry into force of this Act.

III.

Securities brokerages operating as private limited-liability companies must change their operations to a public limited company within twelve months of the entry into force of this Act.

Adopted by Althingi on 13 December 2002.

Although every effort has been made to have this translation complete and accurate, should there be any discrepancy between texts, only the official Icelandic text as published in the Official Journal of Iceland, *Stjórnartíðindi*, is authentic.