

Bill of Legislation

on the establishment of a publicly owned limited-liability company to promote the restructuring of commercial undertakings of national significance

(Submitted to the 137th Legislative Session of the Alþingi 2009)

Article 1

The Minister of Finance is authorised to establish a publicly owned limited liability company, intended to assist financial undertakings with the financial restructuring of commercial enterprises and, if deemed necessary, to acquire, own, restructure and sell commercial undertakings of national significance in accordance with the objectives of this Act.

For the purposes of this Act, commercial undertakings of national significance shall mean enterprises performing functions of such significance to the interests or security of the general public that suspension of their operations, for a longer or shorter period, would result in substantial disruption to the entire society.

Article 2

The purpose of the company is:

- a. to assist financial undertakings in the financial restructuring of highly indebted commercial enterprises;
- b. to negotiate the purchase of holdings or secured claims in commercial undertakings of national significance which require restructuring and are owned by the banks or other financial undertakings;
- c. to work on the financial restructuring of the commercial enterprises concerned, in consultation with other owners and creditors, with the aim of avoiding suspension of operations;
- d. to work on further restructuring of the operations of such commercial undertakings in consultation with other owners and creditors, e.g. by winding up or divesting unprofitable operating units, merging companies or taking other measures deemed necessary to bring such undertakings into viable operation as soon as possible;
- e. to dispose of holdings referred to in this Article in a transparent manner and in compliance with currently applicable legislation and aiming at a broad ownership base wherever possible;
- f. to build up comprehensive expertise within the company on the restructuring of the financial and operating basis of highly indebted commercial undertakings.

Article 3

The company shall pursue the objectives of this Act as efficiently and rapidly as circumstances permit, so that the commercial undertakings can become sustainable and viable and can operate in accordance with their purpose. In carrying out its tasks, the company shall endeavour to safeguard and reinforce effective competition in Icelandic business and industry.

Holdings in commercial enterprises acquired by the company which have become viable shall be disposed of as promptly as market circumstances allow. In disposing of the enterprises, effort shall be made especially to have the enterprises owned by the general public.

Article 4

The Minister of Finance or a company owned by the Treasury shall control the state's holding in the asset management company. The Minister of Finance, in consultation with the Minister of Commerce, shall be responsible for the establishment of the asset management company.

Article 5

The company's Board of Directors shall be comprised of five directors and two alternates. Directors and the managing director must have suitable educational qualifications and expertise in financial matters and company operations.

The directors and the managing director must be legally competent. They may not, during the last five years, have been declared bankrupt or been convicted of an offence in connection with business operations, which is punishable under the Criminal Code, the Competition Act, the Act on Financial Undertakings, the Acts on Public Limited Companies and Private Limited Companies, and laws on accounting, financial statements or bankruptcy.

Directors and the managing director shall neither participate in dealing with matters where they have substantial interests at stake, nor matters concerning parties connected with them personally or financially.

Article 6

After receiving the opinion of the Central Bank of Iceland and social partners, the company's Board of Directors shall propose to the Minister of Finance for approval general criteria according to which an undertaking can be considered of national significance, in the understanding of the second paragraph of Article 1. The Minister of Finance shall, before issuing a Regulation, seek the opinion of relevant parliamentary committees on its substance.

Based on the second paragraph of Article 1 and the approved criteria as referred to in the first paragraph of Article 8, the Board of the company shall make decisions on the purchase of individual commercial undertakings, provided the acquisition can be accommodated within the company's budget as determined in accordance with the second paragraph of Article 7.

Article 7

The company's share capital upon establishment shall be ISK 20 million, provided by the Treasury. A committee of three appointed by the Minister of Finance shall, no later than two months following the establishment of the company, assess the total amount of initial capital or need for its increase based on the estimated scope of its activities and the company's annual need for operating capital. The Minister of Finance, Minister of Commerce and Central Bank of Iceland shall each appoint one member of the committee.

Article 8

The Minister of Finance shall set detailed provisions on the implementation of this Act in a Regulation, including provisions on:

- a. general criteria for commercial undertakings of national significance, as referred to in the first paragraph of Article 6,
- b. how sale of holdings in commercial undertakings shall be carried out, and
- c. how the company will function in an advisory capacity to financial undertakings.

Article 9

The company shall have completed its work and been wound up no later than five years from the date of its establishment.

Article 10

This Act shall enter into force at once.

Explanatory Notes on this Bill of Legislation

Due to the significance of certain commercial enterprises for Icelandic society, it is necessary to ensure that their activities are not disrupted despite the difficulties they face. This Bill proposes to authorise the Minister of Finance to establish a special publicly owned, limited-liability company with the purpose of assisting financial undertakings in restructuring highly indebted commercial undertakings. Should such assistance and advice prove insufficient, then this Bill proposes that the company be authorised to acquire holdings in commercial enterprises which are in such financial straits that part or all of the enterprise is now owned by financial institutions. The purpose of establishing the company is to enable it to undertake financial and operational restructuring of those enterprises to make their operations viable as soon as possible. The Bill assumes that this will be only a temporary measure, as companies are expected to be disposed of as soon as market circumstances make this feasible, and that the company itself will be wound up once its objectives have been achieved.

This Bill was submitted to the previous parliament, but was not adopted before the session ended. On all main points, this Bill is unchanged, with the exception that regard has been had for comments made in opinions of the Economy and Taxation Committee, and it is now assumed that the company will be able to provide financial undertakings with specialised advice for the financial restructuring carried out by them.

The Bill has been drafted by a working group of the Ministers of Finance and Commerce and is based on the first work programme of the Committee on Reconstruction of the Financial System of 5 February this year. In drafting the Bill, regard has been had for foreign models, including Swedish ones, as it is well known that companies of this sort have been set up successfully. The methodology is therefore known and internationally recognised. In preparing the Bill, however, consideration was also given to the fact that the situation in Iceland differs in many respects e.g. from that of the Swedish company. The greatest difference lies no doubt in the methodology applied in adopting Act No. 125/2008, on the Authority for Treasury Disbursements due to Unusual Financial Market Circumstances etc. Due to the disposal of the banks' assets and liabilities into new and old banks, which are provided for in this Act, the new banks have better possibilities of assisting a considerably larger portion of the enterprises facing difficulties than would otherwise have been the case. For the same reasons, it can be assumed that the company's main emphasis will be to assume holdings in commercial enterprises rather than debts of or claims on the companies. This will enable the separation of ownership from banking operations, enabling the company to negotiate with creditors based on commercial concerns and in consultation with other possible owners, while banking interests will continue to rest with the financial institutions involved. The Bill does, however, allow for the company to acquire specific claims or secured liabilities if conditions arise where this is deemed necessary.

The intention is not to have a company like this acquire all the commercial enterprises taken over by financial institutions or all their claims. According to a rough survey by the working group which drafted this Bill, all the state banks appear to have set up well defined procedures to assist commercial enterprises in difficulties through restructuring. Their expertise can be expected to increase greatly in coming quarters under the current circumstances. The state banks have also set up their own asset management companies to handle such tasks and other financial institutions can be expected to do the same. The intention therefore is for this company to handle only those companies regarded as being of national significance, as defined by the Bill, where it is clear that the restructuring will be so extensive and difficult that it would substantially burden general banking operations or even limit the ability of financial undertakings to look after the restructuring of other commercial enterprises.

Just what constitutes an undertaking of national significance is difficult to define satisfactorily in a legal text. The second paragraph of Article 1 of the Bill, however, assumes that such an undertaking performs functions of such significance to the interests or security of the general public that suspension of its operations, for a longer or shorter period, would result in substantial disruption to the entire society. Interests of the general public refer to activities of commercial enterprises which fulfil necessary basic needs of the society or are important links in its infrastructure. Security interests refer here, e.g. to activities concerning security of food supplies, communications or transportation of passengers or cargo domestically or internationally. It would be desirable for the company to have further references to follow. The Bill provides for the company's Board, having obtained the opinion of the Central Bank of Iceland and the social partners, to propose to the Minister of Finance more detailed criteria to determine whether enterprises fall into this category of undertakings. Once such objective criteria have been approved, the Minister of Finance would issue them in the form of a Regulation. The company's Board of Directors would then decide which

provided that the company's finances admit their acquisition. It is very important that a company such as this be as independent as possible in its work.

The Bill assumes that the company will have to carry out the tasks assigned to it in co-operation with any other owners of the undertakings and their creditors. The same applies to possible acquisition of holdings by financial institutions in commercial enterprises. Such purchases should always be concluded through negotiations and on the basis of commercial considerations rather than by applying any sort of mandatory legal remedies. The basic assumption is that it is in the interests of all parties for such enterprises to continue operation, despite the current difficult situation, while at the same time their value is maximised.

Although it may prove necessary to operate such commercial enterprises for some time after restructuring work has concluded, it is assumed that the company will be wound up within a five-year period. It is natural to set clear limits for a company such as this, since the intention is not to have such a company operate viable commercial enterprises any longer than urgent necessity requires.

Notes on individual Articles of the Bill

On Article 1

Article 1 authorises the Minister of Finance to establish a publicly owned limited-liability company, intended to assist financial undertakings with the financial restructuring of commercial enterprises and, if deemed necessary, to acquire, own, restructure and sell commercial undertakings of national significance in accordance with the objectives of this Bill.

The second paragraph contains a definition of what are considered to be undertakings of national significance.

On Article 2

This Article summarises the principal objectives of the company.

According to subparagraph a, the company may assist financial undertakings with the financial restructuring of highly indebted commercial enterprises. Where such specialised advice is involved, this would in general take place without transfer of holdings or loans to the limited-liability company. Subparagraph b states that the company may purchase holdings or secured claims in commercial undertakings of national significance from the state banks or other Icelandic financial undertakings. Under the arrangements provided for in the Bill, such purchases would not be required by law, but would instead be based on voluntary agreement between the undertaking and the financial institutions concerned. It is assumed that this measure would be applied primarily when it was evident that the financial and operational restructuring of the commercial enterprise was such an extensive task that it was deemed advisable that this be handled by a separate company rather than within the financial undertaking in question. The same could apply when there are numerous owners or creditors, e.g. all the state banks and possibly even other financial undertakings, and having such restructuring carried out by a single operation is clearly more effective.

Subparagraph c states that the company is to work on the financial restructuring of the companies under its control with the aim of avoiding suspension of their operations. One of the main objectives of such financial restructuring would have to be a scheme of arrangements with creditors on the company's credit and debt. Clearly in some instance it may be the case that the company will have only acquired a partial holding in enterprises. It may be the case, for instance, that a holding acquired as provided for in subparagraph a originated when banks or other financial institutions converted part of their claims on the company to equity, leaving some part of the company still owned by its previous owners or by other parties. In such case, the restructuring provided for in this Article is expected to be carried out in full consultation with the company's other owners.

Subparagraph d states that the company will also see to restructuring of the operations of those companies under its auspices. According to the Bill, restructuring of operations could involve, for instance winding-up or divesting of unprofitable operating units, merging companies or taking other measures as deemed necessary. Obviously, in times of a national economic downturn and low asset prices, it is important for the company to be able to restructure the companies under its auspices with the aim of adapting their operations as soon as possible to existing market conditions. This item also assumes that such restructuring of operations will be done in consultation with other possible owners as well as creditors. The objective of such operational restructuring is to bring the undertakings into viable operation as soon as possible.

Subparagraph e provides for the disposal of the holdings acquired by the company. The procedure followed must be transparent and comply with currently applicable legislation on publicly owned limited companies. Clear rules should be set right from the start and made available to all concerning

wherever possible.

Finally, subparagraph f provides for the building up of comprehensive expertise within the company on restructuring of the financial and operating basis of highly indebted commercial undertakings.

On Article 3

This Article sets out important emphases in the operations of such a publicly owned company. It states specifically that the company must operate efficiently and rapidly. The company's purpose must be to carry out the financial and operational restructuring of the commercial enterprises concerned and not to pursue commercial operations any longer than absolutely necessary. Emphasis is placed on endeavouring to have the company's activities reinforce competition in Icelandic business and industry.

The second paragraph provides for the disposal of holdings in commercial undertakings acquired by the company and which have become viable as soon as market circumstances permit. Once commercial enterprises have been restructured, the company will dispose of its holdings transparently and in compliance with law. It is up to the company's Board to assess when market circumstances permit the sale of a commercial enterprise for its maximum value. According to the provision, in disposing of the enterprises, the company shall make special effort to have such enterprises owned by the general public

On Article 4

This Article provides for the Minister of Finance to control the state's holding in the company. This is in accordance with arrangements concerning ownership of state corporations. Provision is also made for the possibility of entrusting ownership of the company to another company, owned by the Treasury. This could be, for example, a company established to manage ownership of the state banks, as has been proposed in the original work programme of the committee on reconstruction of the financial system. The Article also proposes that the Minister of Finance prepare the establishment of the company in co-operation with the Minister of Commerce.

On Article 5

This Article provides for a Board of five directors and two alternates for the company.

The second paragraph stipulates the requisite qualifications of directors and the managing director. In view of the role of the company, it is considered necessary that its managing director and Board of Directors possess suitable educational qualifications and expertise in financial matters and company operations. The condition is set that the directors and the managing director may not, during the last five years prior to their appointment, have been declared bankrupt. It is also stipulated that they may not, during the last five years, have been convicted of a major offence in connection with business operations. The five-year limit accords with provisions in the Act on Financial Undertakings, although more stringent than those of the Act on Public Limited Companies, which is natural in view of the high responsibility resting on the directors and managing director. The fourth paragraph contains rules on participation of the directors or managing director in dealing with matters where they have substantial personal or financial interests at stake, similar to those which apply to the directors and managing directors of financial undertakings.

On Article 6

This Article contains provisions on the criteria according to which an enterprise can be considered of national significance and thus covered by the Act. It proposes that the company's Board of Directors formulate the criteria on which decisions are to be based and obtain the opinion of the Central Bank of Iceland and the social partners for this purpose. After receiving the opinions of these parties, the Board shall make proposals to the Minister of Finance. It is proposed that these criteria be made public in a Regulation, as it is important that the criteria to be used in assessment are clear and publicly accessible. The Article provides for the opinion of relevant parliamentary committees to be obtained before the Regulation is formally issued. This ensures that the company's activities will be transparent and the basis for its work clear to all.

The second paragraph provides for the manner in which acquisitions are to be made. It provides for the Board of Directors of the company to make such decisions based on the approved general criteria laid down in a Regulation. Such acquisitions must, however, always be subject to limits of

On Article 7

This provision states that the company's share capital upon establishment shall be ISK 20 million.

According to the second paragraph, the Minister of Finance shall appoint a committee of three persons comprised of representatives of the Minister of Finance, Minister of Commerce and Central Bank of Iceland. The committee's task will be to assess the company's financial needs and the total amount of initial capital needed based on the estimated scope of its activities and its annual need for operating capital. The committee is to deliver its conclusion no later than three months following the establishment of the company.

On Article 8

This Article authorises the Minister of Finance to set detailed provisions in a Regulation determining what undertakings are considered of national significance, in the understanding of the Act, together with general provisions concerning the disposal of the company's holdings in commercial enterprises and how the company will function in an advisory capacity to financial undertakings.

On Article 9

The situation which currently prevails calls for the establishment of a company which can take over certain commercial enterprises which have become fully or partly owned by financial institutions. Although the company may control such enterprises for a certain period, the intention here is to provide only a provisional solution and it is assumed that such enterprises will be sold as soon as this is practicable. To emphasise this intention, the Article proposes that the company be wound up no later than 5 years after its establishment.

Article 10 requires no explanation.

*Fjármálaráðuneyti,
fjárlagaskrifstofa:*

Umsögn um frumvarp til laga um stofnun hlutafélags til að stuðla að endurskipulagningu þjóðhagslega mikilvægra atvinnufyrirtækja.

Með frumvarpi þessu er óskað heimildar til handa fjármálaráðherra til þess að stofna eignaumsýslufélag. Gert er ráð fyrir að eignaumsýslufélagið sjái um endurskipulagningu þjóðhagslega mikilvægra atvinnufyrirtækja sem komin eru í rekstrarerfiðleika en eru talin skipta miklu máli fyrir íslenskt samfélag. Með þessu verði áframhaldandi starfsemi þeirra tryggð til framtíðar. Frumvarpið byggist á fyrstu starfsáætlun samráðsnefndar um endurreisn fjármálakerfisins. Samkvæmt frumvarpinu er félaginu heimilt að kaupa eignarhluti í þjóðhagslega mikilvægum atvinnufyrirtækjum sem þarfnast endurskipulagningar og eru komin í eigu ríkisbanka eða annarra fjármálafyrirtækja.

Tilgangur félagsins er samkvæmt frumvarpinu að sinna endurskipulagningu slíkra fyrirtækja, bæði fjárhags- og rekstrarlega, og að því loknu sjá um sölu fyrirtækjanna. Ekki liggur fyrir umfang starfsemi fyrirtækisins, meðal annars vegna þess að efnahagur ríkisbankanna liggur ekki endanlega fyrir og ekki er ljóst hver er fjöldi þeirra fyrirtækja sem gætu fallið undir starfsemi félagsins. Í frumvarpinu er því gert ráð fyrir að sérstakri nefnd verði falið að leggja mat á fjárhagslegt umfang starfseminnar og þörf félagsins fyrir rekstrarfé. Það er fyrst þegar sú nefnd hefur lokið störfum að fyrir liggur mat á hugsanlegum kostnaði ríkisins við yfirtöku fyrirtækjanna.

Verði frumvarpið óbreytt að lögum og ákvörðun tekin á grundvelli þeirra um að stofna félagið mun ríkissjóður leggja því til 20 m.kr. vegna stofnhlutafjár sem færast þá í efnahagsreikning ríkisins en ekki sem útgjöld í rekstrarreikning. Komi til þess að félagið hefji rekstur er gert ráð fyrir að rekstrarkostnaður verði borinn uppi af þeim félögum sem tekin verða til eignaumsýslu og að sá kostnaður falli því ekki á ríkissjóð.