

# DECISION OF THE FINANCIAL SUPERVISORY AUTHORITY (FME)<sup>1</sup>

on the transfer of the assets and liabilities of

Byr Savings Bank, Reg. No. 610269-2229 to Byr hf., Reg. No. 620410-0200

## PREMISES:

Under Interim Provision VI of Act No. 161/2002 on financial undertakings and Interim Provision IV of Act No. 44/2009, the FME is authorised to take special measures in view of exceptional circumstances to limit damage or the risk of damage in the financial markets. If it is the assessment of the Financial Supervisory Authority that circumstances require urgent action, the FME may assume the powers of meetings of guarantee capital owners for the purposes of making decisions on necessary measures, including decisions to restrict the powers of the board of directors, dismiss the board of directors in part or in full and appoint a provisional board of directors, take over the assets, rights and obligations of a financial undertaking in part or in full, or dispose of such undertaking in part or in full; the last measure may include the merger of an undertaking with another financial undertaking.

The capital position of Byr Savings Bank has fallen short of statutory limits for a considerable time; however, the FME has granted repeated grace periods in order to enable the savings bank, in collaboration with creditors, to achieve a viable reorganisation of its finances. By a letter from the FME dated 16 June 2009 the Savings Bank was granted a first grace period to bring its capital base to the statutory limit required under Article 84 of Act No. 161/2002 on financial undertakings, as authorised in the fourth paragraph of Article 86 of the Act. This grace period has since been extended by letters from the FME dated 16 July 2009, 11 August 2009, 21 August 2009, 7 September 2009, 14 October 2009, 5 November 2009, 10 December 2009, 21 January 2010, 25 February 2010 and 26 March 2010.

The FME last set a deadline for Byr Savings Bank to increase its capital base in a letter dated 26 March 2010. In its letter, the FME stressed that if this deadline passed before the measures taken by the savings bank yielded the required results, the FME would not appear to have any option other than to revoke the savings bank's operating licence in accordance with Article 9 of Act No. 161/2002, after which the savings bank would be subject to winding-up proceedings in accordance with Section B of Chapter XII of the Act. It was specifically noted that the Financial Supervisory Authority could not exclude the possibility that measures might be required in respect of the savings bank within the extended time limit, in the event of special circumstances or events, based on the authorisation provided for in Interim Provision VI of the cited Act of law. Reference was also made to the provisions of Article 100(a) of the said Act on placing a financial undertaking under a provisional board of directors.

The deadline for increasing Byr Savings Bank's capital base expired on 21 April 2010. The savings bank has explained to the Financial Supervisory Authority the progress made in negotiations on its financial reorganisation. The substance of the negotiations was that creditors should partially concede their claims while the State Treasury would contribute capital to the bank as permitted by Act No. 125/2008. Also, a reduction was envisaged of the savings bank's current guarantee capital. The contribution of the State was also subject to compliance with the conditions laid down in the rules on contributions to savings banks in

Article 2 of Act No. 125/2008, as confirmed by the acting Minister of Finance on 18 December 2008. The proposals of the savings bank were based on the assumption that these measures would suffice to meet capital base and liquidity requirements.

A letter from Byr Savings Bank received today has revealed the opinion of the savings bank's board of directors that the recent efforts to resurrect the bank's financial position will prove unsuccessful. The letter also reveals that the Savings Bank's largest creditor has rejected the current proposals. The board of directors of Byr Savings Bank sees no option but to submit a request for the Financial Supervisory Authority to take control of the savings bank in accordance with Article 100(a) of Act No. 161/2002 on financial undertakings.

It is now evident that Byr Savings Bank is not in compliance with the conditions of its operating licence and that the conditions for revocation of the licence are in place pursuant to Act No. 161/2002. It is also clear that in spite of the repeated extensions granted to the savings bank on the deadlines for bringing about a reorganisation of the savings bank's finances its financial problems have not been resolved.

With reference to all of the above, it is clear that as matters stand regarding the bank's position, the provisions of Interim Provision VI of Act No. 161/2002 now apply. It is the assessment of the Financial Supervisory Authority that the savings bank's current capital position will not permit it to meet its obligations to customers or creditors. The conditions for revocation of its operating licence are present, and other recourses available to the Financial Supervisory Authority are not likely to be successful. The effect of all of the above is that an extreme circumstances now exist in the understanding of the third paragraph of Interim Provision VI of the act of law cited above.

## DECISION

On the basis of authorisation granted in Interim Provision VI of Act No. 161/2002 on financial undertakings, cf. Interim Provision 44/2009, it is the decision of the Financial Supervisory Authority to assume the powers of meetings of guarantee capital holders of Byr Savings Bank and to dismiss the board of directors in its entirety, appoint a provisional board of directors and decide on the following measures, which the Financial Supervisory Authority considers necessary:

### ASSETS:

1. All the assets of Byr Savings Bank, of any nature whatsoever, including real estate, liquid assets, cash, holdings in other companies and claims, are assigned to Byr hf., with immediate effect, with the exception only of assets which are specifically exempted in the report prepared pursuant to Section 10 of this Decision. Byr hf. will take over all contractual rights of use of real estate and liquid assets, except to the extent that such rights are specifically exempted in the report prepared pursuant to Section 10 of this Decision.
2. Byr hf. will take over all collateral rights of Byr Savings Bank, including all mortgages, guarantees and other comparable rights attached to the Bank's claims. However, Byr hf. shall account to Byr Savings Bank for any specific collateral of customers, as applicable, relating to claims which are not transferred to Byr hf. pursuant to this Decision or any subsequent agreement.
3. Byr hf. will take over any intangible assets and rights, including trade marks, corporate names and patents, registered and unregistered, alternate names, databases, software and software

licences and all comparable rights, whether based on contract, registration, public licence or any other instrument, except to the extent that such rights are specifically exempted in the report prepared pursuant to Section 10 of this Decision.

4. The following parties are instructed to register or transfer rights and/or deeds of title of Byr hf. pursuant to Sections 1 – 3 above to all the real estate, securities, liquid assets, bank deposits and/or any other rights.
  - a. The Central Bank of Iceland
  - b. Financial undertakings
  - c. The Icelandic Securities Depository hf.
  - d. Public registrars pursuant to the provisions of the Public Registration Act No. 39/1978
  - e. The Iceland Property Registry
  - f. The Iceland Patent Office
  - g. Hosting agents of domains used by Byr Savings bank and related parties
  - h. Telecommunications companies
  - i. The Icelandic National Registry
  - j. Nasdaq OMX (the Iceland Stock Exchange)
  - k. Boards of directors of companies responsible for the registration of rights in share ledgers etc.
  - l. Any other parties responsible for the registration of rights
5. As of 23 April 2010, at 08:30 a.m., Byr hf. will take over the activities previously engaged in by the Byr Savings Bank and relating to the transferred assets, including Byr Savings Bank's access to payment systems of any kind. Also, as of that point in time, Byr hf. will take over rights and obligations under custody and asset management contracts with Byr Savings Bank's customers, pension savings accounts and the specific interest obligations arising out of such savings. The share of right holders in UCITS and investment funds will remain unchanged. No redemption or public notice will be required in respect of the transfer, nor will any prior consent be needed from right holders.
6. The payment position of debt instruments will be based on the same point in time as in Section 5 above. The place of payment of debt instruments with Byr Savings Bank will be the corresponding branch of Byr hf. and bills of exchange shall be regarded as properly presented for payment at Byr hf.

#### DEBTS AND OTHER OBLIGATIONS:

7. Byr hf. will take over the obligations of Byr Savings Bank relating to deposits from financial undertakings, the Central Bank of Iceland and other customers. Deposits will be transferred based on the position and accrued interest at the point in time specified in Section 5. No redemption or public notice will be required for the transfer. However, Byr hf. will not take over deposit obligations of Byr Savings Bank where a creditor has established the obligation by means of a bond and/or other debt instrument and received payment of his claim prior to its due date while at the same time a deposit has been made with Byr Savings Bank, provided that the arrangement is subject to rescission pursuant to Act No. 21/1991 on bankruptcy etc. Furthermore, Byr hf. will not take over money market deposits from any financial undertakings which may have deposits with Byr Savings Bank.

8. Byr hf. will take over obligations according to import and export guarantees relating to performance by undertakings and individuals in connection with their normal activities. Byr hf. will not take over guarantees of Byr Savings Bank relating to: a) obligations of subsidiaries, b) companies under moratorium, composition or in bankruptcy, c) obligations of parties owning a qualifying holding in Byr Savings Bank and related parties, d) obligations to Icelandic financial undertakings; e) other specifically identified guarantees listed in the report prepared pursuant to Section 10 of this Decision.
9. Secured debts attached to assets transferred to Byr hf. are taken over to the extent that they are secured by the assets taken over, as further itemised in the report compiled in accordance with Section 10 of this Decision. Byr hf. will take over rights and obligations under the employment contracts of employees other than the managing director of the savings bank and heads of individual divisions.

#### VALUATION OF ASSETS AND SETTLEMENT:

10. A further itemisation of the assets and liabilities transferred pursuant to this Decision will be contained in a separate report to be prepared by an auditing firm appointed by the Financial Supervisory Authority. Byr hf. shall preserve all data relating to the assets taken over and statutory databases with respect to rules on money laundering, accounting etc.
11. Whereas assets are being transferred for the purpose of meeting liabilities, the value of the assets transferred to Byr hf. pursuant to this Decision shall be assessed as provided in Interim Provision VI of Act No. 161/2002. If an agreement cannot be reached concerning settlement with respect to the transfer of the assets and liabilities of Byr Savings Bank to Byr hf. before the deadline set by the Financial Supervisory Authority, the conclusions of the appraisers of the value of assets and liabilities shall be used for the purposes of the settlement between the parties. The appraisal of assets and liabilities shall be based on the time of the transfer pursuant to Section 5. The conclusion of the appraisers regarding the appraisal of assets and liabilities shall be made available in accordance with the further decision of the Financial Supervisory Authority. The cost of the appraisal shall be paid by Byr hf.
12. Funding for Byr hf. and the issue of a financial instrument regarding the transfer of assets and liabilities of Byr Savings Bank to Byr hf. shall be made available pursuant to the further decision of the Financial Supervisory Authority.

#### OTHER MATTERS

13. The transfer of claims pursuant to this Decision shall not deprive a debtor of any netting rights held by such debtor against a previous claimholder or such claimholder's bankruptcy estate. In the course of settlement pursuant to Sections 11 and 12, an amount shall be estimated which, as a result of netting, could be deducted from claims taken over by Byr hf. pursuant to this Decision.
14. Notwithstanding the provisions of Sections 1 – 6, Byr Savings Bank shall retain ISK 100 million in cash to cover costs resulting from this Decision.

15. No default recourses of any counterparty shall be activated as a consequence of this Decision.

This Decision is based on available information and documents. If the Decision proves to be founded on insufficient or false information regarding the circumstances, if the premises underlying the Decision prove to be inaccurate in significant respects, or if the FME believes that other arrangements are necessary, the FME may amend this Decision in any manner necessary, which includes cancellation of the Decision in part or in full or postponement of its individual parts.

This Decision is approved by the board of directors of the Financial Supervisory Authority and is effective immediately.

THE FINANCIAL SUPERVISORY AUTHORITY

22 April 2010

Lilja Ólafsdóttir  
Chairman of the Board of Directors

Gunnar T. Andersen  
Director General

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<sup>1</sup>The original Icelandic text is the valid text. In case of any discrepancy between the original Icelandic text and the English translation, the original Icelandic text applies.