

# DECISION OF THE FINANCIAL SUPERVISORY AUTHORITY (FME)

*relating to the position of Spkef Savings Bank*

## BACKGROUND:

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 shareholders' meetings or meetings of guarantee capital holders 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.

On 22 April 2010 the Financial Supervisory Authority issued a decision on the transfer of the assets and liabilities of the Keflavik Savings Bank to the Spkef Savings Bank based on authorisation laid down in Interim Provision VI of Act No. 161/2002 on financial undertakings, cf. Interim Provision IV of Act No. 44/2009. By the decision, the Financial Supervisory Authority assumed the powers of guarantee capital holders' meetings of the Keflavik Savings Bank, dismissed the board of directors in its entirety and appointed a provisional board of directors for the bank. Concurrently, the Financial Supervisory Authority made a decision to transfer all the assets of the Keflavik Savings Bank, except as specifically excluded, to the Spkef Savings Bank and made provisions for the assumption by the Spkef Savings Bank of obligations relating to deposits and certain lines of credit. In addition, mortgages were taken over which attached to assets, to the extent that they were considered secured by the asset taken over, as well as employment contracts of employees other than the managing director and executives/directors of individual divisions. The purpose of these actions by the FME was, among other things, to ensure access to deposits, ensure unhindered and undisrupted access to banking services, and prevent further damage in the financial market.

Section 11 of the cited Decision of the FME provided that whereas assets were being transferred for the purpose of meeting liabilities, the value of the assets to be transferred to Spkef Savings Bank pursuant to the Decision should be assessed as provided in Interim Provision VI of Act No. 161/2002. The Section provides that if an agreement cannot be reached concerning settlement with respect to the transfer of the assets and liabilities of the Keflavik Savings Bank to Spkef Savings Bank 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 negotiations between the parties resulted in the signature of a "Term Sheet" on 3 November 2010 on a settlement relating to transferred assets and liabilities, with reservations made by both parties as regards the conclusion of a final agreement. By a declaration dated 11 February 2011, the parties announced that negotiations between them had been discontinued and that the FME would be asked to nominate appraisers to assess the value

of transferred assets and liabilities pursuant to Section 11 of the cited Decision of the Authority. It is established that this assessment has not been performed.

A letter from the Ministry of Finance to the FME dated 5 March 2011 reveals that work has been in progress on the financial restructuring of Spkef Savings Bank from the time that the FME issued its decision on the transfer of the assets and liabilities of the Keflavik Bank to the Spkef Savings Bank. This work, in broad terms, proceeded in three parts: First, efforts were made to negotiate a settlement relating to the transferred assets and liabilities with the winding-up board of the Keflavik Savings Bank; second, work was done on assessing the funding needs of the Spkef Savings Bank, so that it could comply with the requirements of the FME; and third, work was done on assessing the operational viability of the Bank. The letter reveals that the Icelandic State Financial Investments (ISFI ) notified the Ministry of Finance that it was the decision of an ISFI working group to recommend an attempt to merge the Spkef Savings bank with NBI hf. instead of funding it separately. The working group was of the opinion that in this manner the funding cost to the State Treasury would be reduced and the rationale for the operation of the Bank would be strengthened.

The cited letter says that the Ministry of Finance, on the basis of the recommendation of the ISFI, had requested discussions with NBI hf. on taking over and merging with Spkef, and today, 5 March 2011, an agreement to this effect had been signed. In general terms, the agreement means that NBI hf. will take over the operation, assets and liabilities of the Spkef Savings Bank by merging the bank with NBI hf. The merger is therefore a merger without liquidation, with the effect that the Spkef Savings Bank will be merged in its entirety with NBI hf. through a takeover of assets and liabilities (merger by takeover) and that the bank will be dissolved. The letter from the Ministry of Finance also says that under the agreement between the Ministry of Finance and NBI hf. on the takeover and merger with Spkef Savings Bank, plans for the direct funding of Spkef Savings Bank will be abandoned. The letter notes that the circumstances of Spkef Savings Bank are urgent and that it is the opinion of the Ministry of Finance that all conditions are in place for the application of Interim Provision VI of Act No. 161/2002.

According to the third paragraph of Interim Provision VI of Act No. 161/2002, circumstances need to be urgent for the FME to take action on the basis of the provision. It is the position of the Ministry of Finance in the cited letter that the circumstances of Spkef Savings bank are urgent and that its funding must not be delayed further. It is urgent, according to the letter, to find a permanent channel for the bank's operation. The letter says, furthermore, that in the opinion of the managers of the bank, which was stated in a letter to the Ministry of Finance on 25 February, the position of the Bank is that as at the turn of the year the Bank's equity was negative by ISK 11.2 billion and that ISK 19.4 were needed for the bank to comply with the requirements of the FME regarding minimum capital. The letter also says that the Spkef Savings Bank had been suffering a serious and chronic liquidity problem, and that its transactions with the Central Bank of Iceland were subject to the condition of a guarantee by the State Treasury, which the Ministry of Finance had granted. The Ministry of Finance is also of the opinion that the operation of the Spkef Savings Bank and its ability to meet its obligations to depositors and other customers is entirely subject to direct support and guarantees by the State.

The letter from the Ministry of Finance asks the FME to exercise its authority under Interim Provision VI of Act No. 161/2002 on financial undertakings and agree to merge Spkef Savings Bank with NBI hf. in accordance with the agreement between the Ministry of Finance and NBI hf., dated 5 March 2011.

#### PREMISES:

With reference to all the foregoing, the opinion of the FME is that it is evident that the savings bank is now in a position where the provisions of Interim Provision VI of Act No. 161/2002 apply, as it is clear that the Ministry of Finance has abandoned its intention of funding the bank directly. It is the assessment

of the Financial Supervisory Authority that the bank's current capital and liquidity 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 meet with success. The effect of all of the above is that extreme circumstances now exist in the understanding of the third paragraph of Interim Provision VI of the act of law cited above.

The letter from the Ministry of Finance states that the merger of the Spkef Savings Bank with NBI hf. will not disrupt the settlement process between the Keflavik Savings Bank and the Spkef Savings Bank relating to the takeover of assets and liabilities pursuant to the Decision of the FME of 22 April 2010, but will have the consequence that NBI hf. will assume the rights and obligations of the Spkef Savings Bank vis-à-vis the Keflavik Savings Bank. It is also revealed that the agreement between the Ministry of Finance and NBI hf. provides that the State Treasury will guarantee any claims that may be made against NBI hf. in respect of the takeover of the assets and liabilities of the Keflavik Savings Bank. The merger of Spkef Savings Bank with NBI hf. will therefore in no way prejudice the interests of the creditors of the Keflavik Savings Bank. It is also the opinion of the Ministry of Finance that the merger will have no effect on the right of the winding-up board of the Keflavik Savings Bank to access to data and information on matters which are under investigation or which the winding-up board or other parties might wish to investigate later. With reference to the above, it is the conclusion of the FME that the interests of customers, creditors and other stakeholders are protected by the arrangements provided for in the agreement between the parties.

#### DECISION

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

1. NBI hf., State Reg. No. 471008-0280, will take over, in its entirety, as of Monday 7 March 2011, at 08:30 a.m., the assets and liabilities of the Spkef Savings Bank, State Reg. No. 471008-0120, under the terms of an agreement between the State of Iceland and NBI hf., on the takeover by NBI hf. of Spkef Savings Bank, dated 5 March 2011. The merger is a merger without liquidation, so that Spkef Savings Bank will be merged in its entirety with NBI hf. through a takeover of assets and liabilities (merger by takeover). No redemption or public notice will be required as a result of the merger.
2. The preparation of a joint balance sheet and statement of earnings will be based on 1 January 2011, which shall constitute the date of settlement of the merger pursuant to the cited agreement.
3. The Spkef Savings Bank is dissolved as of 08:30 a.m. on Monday, 7 March 2011. No call to creditors is required with respect to the dissolution.
4. 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

5 March 2011

Kristín Haraldsdóttir  
Vice Chairman of the Board of Directors

Gunnar T. Andersen  
Director General