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Act on Government Guarantee Fund

Parliament of Finland / Suomen eduskunta

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(Unofficial translation, amendments up to 644/2006 included)

Act on Government Guarantee Fund
30.4.1992/379

Section 1

Duties of the Fund

(4.4.1996/245)

To safeguard the stable operations of deposit banks, there shall be a Government Guarantee Fund, referred to in this Act as the Fund.
(19.12.1997/1237)

Out of the assets of the Fund, loans may be granted on special terms (support loans) to the guarantee funds referred to in section 55 of the Act on Credit Institutions (1607/1993) in accordance with this Act. At the risk of the Fund, guarantees may be issued for loans raised by the said guarantee funds.
(19.12.1997/1237)

Out of the Fund assets, shares and holdings in a Finnish deposit bank can also be subscribed, guarantees can be provided for loans taken out by a bank, and other financial support can be granted if this is necessary to safeguard a bank's operations and the stability of financial markets.

The Fund can own shares in a limited-liability company where the government or the Fund exercises authority on the basis of share ownership, the purpose of which is the purchase or other acquisition and management and sale or other assignment of assets or liabilities belonging to a bank subject to government or Fund support measures or separated from such bank by decision of an authority (asset management company). An asset management company can exercise authority based on share ownership in another limited-liability company with the same purpose, in which case the last-mentioned company is also an asset management company. The Fund can own shares in a limited-

liability company the purpose of which is the ownership of asset management company shares and in another limited-liability company if this can be deemed necessary in terms of safeguarding a bank's operations and the stability of financial markets.

Act 4.4.1996/245 came into force 1.5.1996. The paragraph 5 of its provision on entry into force is as follow:

Any contracts concluded by the Fund and obligations and rights in its name will remain valid, and they will continue primarily on the Fund's responsibility and secondarily on the government's responsibility.

Section 2

Fund assets

The Fund comprises the assets which accrue from Fund operations and those which are granted to the Fund in the State budget.

Section 3

Fund administration

(4.4.1996/245)

The Fund is an ex-budget fund, which is managed by the Ministry [of Finance].

Section 4

The Government Guarantee Fund Council

(4.4.1996/245)

The operations of the Fund and the use of bank support shall be supervised by the Government Guarantee Fund Council comprising nine members. The Council shall be elected by Parliament in the first session of the electoral period. The term of the Council shall commence upon the completion of the election and last until the election of the members of the next Council.
(21.1.2000/36)

The Council elects a chairman and vice-chairman from amongst its members.

The function of the Government Guarantee Fund Council is:

- 1) to supervise observance of the terms laid down for bank support;
- 2) to make proposals for principles to be observed in the supervision of support granted and the operations of asset management companies;
- 3) to ratify the Fund's annual budget and annual accounts;
- 4) to make a proposal to the Council of State on any borrowing for Fund operations; and
- 5) to perform other duties assigned to it by the Council of State plenary session.

The convening procedure, quorum and decision-making procedure of the Government Guarantee Fund Council are laid down in the Fund rules, ratified by the Ministry [of Finance].

Section 5

Operating Instructions Board

(18.6.1998/418)

The Fund shall have an operating instructions board comprising five members. The members of the Board shall be appointed for four years at a time by the plenary session of the Council of State. The Board shall elect a chairman and a deputy chairman from among its members. The members of the Board shall act subject to public liability.

The duties of the Board shall be to issue operating instructions to companies referred to in section 1, paragraph 4 in issues relating to court proceedings for damages and criminal trials based on a special audit performed under section 14 a and to the enforcement of the judgments rendered therein as well as to confirm the principles relating to the collecting of the claims on and the restructuring of the debts of over-indebted credit customers.

The convening procedure, quorum, decision-making procedure and the fees of the members of the Board shall be provided for in the Rules of the Fund to be confirmed by the Ministry.

Sections 6–6b repealed by Act of 4.4.1996/245.

Section 7
Annual accounts and audit
(4.4.1996/245)

The Bookkeeping Act (655/1973) shall be observed in Fund bookkeeping as appropriate. The Auditing Act (936/1994) shall be observed in auditing as appropriate. The financial year of the Fund is the calendar year.

To audit the Fund's administration and accounts, the Council of State plenary session appoints at least two and at most six auditors for a calendar year at a time, two of whom shall be Authorized Public Accountants or one a Chartered Public Finance Auditor. The auditors' fees are decided by the Ministry [of Finance].

The audit of the Fund shall be made annually by the end of March following the financial year.

The auditors shall provide the Council of the Government Guarantee Fund with a written auditors' report, including statements on the adoption of the profit and loss account and balance sheet, and any comments which may have an effect on the adoption of the profit and loss account and balance sheet. The auditors' report shall be submitted at the latest two weeks before the meeting at which the annual accounts are presented for adoption. The Fund's annual accounts are adopted by the Council.

Parliamentary State auditors and the State Audit Office are entitled to audit the Fund, and the finances and operations of a bank, guarantee fund, asset management company or other corporation or foundation which has received support and financing under this Act, to verify that the information provided as a basis for receiving support and financing is true and sufficient and that support and financing have been used appropriately for the specified purpose. The same applies to a party to which the recipient has allocated use of the above-mentioned support and financing. To obtain the information necessary for auditing, the parliamentary State auditors and the State Audit Office are entitled to executive assistance from the Financial Supervision.

Sections 8-10 repealed by Act of 4.4.1996/245.

Section 11

Granting a support loan and guarantee

(19.12.1997/1237)

A support loan and a guarantee shall be granted on application by the guarantee fund. A precondition for the granting of a loan and a guarantee shall be that one or several banks belonging to the applicant guarantee fund are in such financial difficulties that granting a rescue loan or subsidy from the guarantee fund in question is necessary to safeguard the operations of the bank and the stability of the financial markets and the own assets of the guarantee fund are not sufficient for the purpose.

Section 12

Terms of support

Terms can be laid down for the support loan and other support measures, concerning the guarantee fund receiving support and the operations and administration of the bank to be supported.

A support loan and other repayable financial support can be left entirely or partly uncollected, should Parliament so decide.

Section 12 a

(28.12.2001/1508)

Covering the losses of a bank subject to support measures and other special terms to be set for support

Where support is granted in the manner referred to in section 1, paragraph 3 by subscribing the shares of a deposit bank, the support shall be granted to the bank on condition that, unless the provisions of section 12 b are applied to the support decision, the losses shown on the adopted balance sheet of the bank needing support shall be covered before granting support by lowering the share capital and the share capital of the bank shall be raised by the amount of the support, in derogation from the pre-emptive subscription right of the shareholders, by an issue directed at the Government Guarantee Fund or a

limited company referred to in section 1, paragraph 4. A condition for support to a bank other than a limited-liability bank may be that the bank be changed into a limited company by conveying all its assets and liabilities to a limited company to be established in accordance with the provisions of sections 90 – 92 of the Savings Banks Act (1502/2001) or of sections 31 and 32 of the Act on Co-operative Banks and Other Credit Institutions in the Form of a Co-operative (1504/2001) prior to granting the support and that the support be granted to the bank to be established.

A condition for the support may be that the bank subject to the support shall draw up and adopt the annual accounts for a shortened financial period ending prior to the granting of the support and to be determined in more detail in the support terms. The bank subject to support measures may, in a case referred to in this paragraph, draw up the annual accounts for a shortened financial period in accordance with the conditions for the support as well as, if the shortened financial period is at least six months, for the following financial period of not more than 18 months in derogation from the provisions of the Act on Credit Institutions on a financial period.

The provisions of paragraph 1 on shares shall correspondingly apply to capital loans.

Section 12 b
(28.12.2001/1508)

Redemption of shares and capital loans of a bank subject to support measures

Instead of applying the condition for support referred to in section 12 a, the shares of the bank subject to support measures may be redeemed against full compensation for the Government Guarantee Fund or for a company referred to in section 1, paragraph 4. The provisions of chapter 18, sections 2 - 11 of the Limited-Liability Companies Act (624/2006) shall apply to the determination of the market price of a share and the redemption procedure. (21.7.2006/644)

The provisions of paragraph 1 on shares shall correspondingly apply to capital loans.

A decision referred to in this section shall be made in the plenary session of the Council of State. The conditions for the decision shall be that the interests

of the State cannot be adequately safeguarded by a condition for support in accordance with section 12 a, paragraph 1 and that the equality of the shareholders shall not be derogated from without a weighty reason.

Section 13

Requesting an opinion

(4.4.1996/245)

Before granting a support loan or deciding on any other support measures, the Ministry must request an opinion from the Bank of Finland and the Financial Supervision.

Section 14

(4.4.1996/245)

Deciding on support measures

The permission referred to in section 61, paragraph 5 and section 62, paragraph 1 of the Act on Credit Institutions and other matters relating to support measures shall be decided upon by the Ministry unless the decision has to be made by the plenary session of the Council of State. (19.12.1997/1237)

The Ministry shall handle matters pertaining to the appointment of a Government representative at general meetings of shareholders of companies referred to in section 1, paragraph 4 owned by the State or by the Fund and, unless the matter belongs to the Operating Instructions Board under section 5, to the issuing of operating instructions to the companies as well as to the safeguarding of the interests of the Government as well as to management principles pertaining jointly to the companies. (18.6.1998/418)

Assignment of the shares and holdings referred to in section 1, paragraph 3, and acquired for the government and the Fund is decided on by the Council of State plenary session.

On the terms laid down by it, and within the Fund assets or appropriations and authorizations granted in the State budget, the Council of State plenary session shall decide matters which pertain to:

1) the granting of loans and issue of guarantees as referred to in section 1, paragraphs 2 and 3, and the acquisition of shares referred to section 1, paragraph 3, or granting of other financial support referred to in section 3;

2) subscription of shares or other acquisition of shares or assignment of shares in a company referred to in section 1, paragraph 4;

3) a loan granted to a company referred to in section 1, paragraph 4, a guarantee for loans taken out by the company and guarantees for the company's commitments or the company's other financial support;

4) conclusion of a contract on the operations of a company referred to in section 1, paragraph 4, on the financing of operations, on winding down of operations or on coverage of losses.

Decisions by the Council of State on the above-mentioned shall be based on a justified estimate of the cost-efficiency of a measure and its economic feasibility.

The Council of State plenary session shall determine, under authorizations granted in the State budget, the consideration payable, determined according to the liability incurred by the State from the principal of various guarantees, securities and commitments and its contractual obligation. The guarantee payment referred to in section 15, paragraph 1, of the Act on State Lending and State Guarantees (449/1988) will not be collected on these guarantees or obligations.

Section 14a
Special audit
(4.4.1996/245)

The Ministry [of Finance] shall order one or several auditors to perform a special audit of the bank subject to support measures or applying for support.

A person performing a special audit shall have the same rights to acquire information as the Financial Supervision or its representative in accordance with the Act on Credit Institutions (503/1993).

What is prescribed in paragraphs 1 and 2 shall apply to banks for which support measures are decided on by the Council of State plenary session or the Ministry of Finance.

Section 15
Borrowing
(4.4.1996/245)

A loan can be taken out for the Fund if its own assets are not sufficient for the granting of the necessary support loans or for other support measures in accordance with this Act. The amount of the loan taken out for the Fund may, at the end of each calendar year, together with the own assets of the Fund and the guarantees and securities granted by it, not exceed 20 000 million marks. The counter value of a foreign-currency denominated loan shall be calculated in accordance with the middle rate quoted by the Bank of Finland for the currency in question at the time the loan is taken out. The taking out of loans for the Fund and agreements on interest-rate or currency exchange or other hedging agreements relating to the loans shall be decided upon by the plenary session of the Council of State, which may, within the limits set by it, delegate the decision-making relating to the taking out of loans and the agreements on interest-rate or currency exchange or other hedging agreements to a Ministry or the State Treasury. The loans shall be taken out in the name of the State. (31.10.1997/964)

If the Fund's assets are inadequate to cover repayment of the loans taken by it and any interest on them and other costs payable on the loans, or to fulfil the Fund's guarantee liabilities, the shortfall will be paid out of an appropriation to be included in the State budget.

If Parliament has not decided otherwise in connection with the State budget, the Fund shall remit back to the State the assets granted under paragraph 2, in the manner decided by the Council of State plenary session.

Sections 16-17 repealed by Act of 4.4.1996/245.

Section 18

Disclosure of confidential information

(21.5.1996/640)

Notwithstanding the provisions of this Act on confidentiality, the Bank of Finland, the Financial Supervision Authority and a bank subject to support measures shall be liable to disclose to the officials of the Ministry attending to the duties of the Fund, the auditors of the Fund and the Government Guarantee Fund Council the information necessary for the performance of their duties under this Act.

Notwithstanding the confidentiality prescribed in the Act on the Openness of Government Activities (621/1999), a member of the Government Guarantee Fund Council, an auditor and an official of the Ministry attending to the duties of the Fund or a person performing a task commissioned by them may disclose the information he has obtained on the financial position of a private person or an organization, the private personal circumstances of a person or on a trade or business secret to the plenary session of the Council of State when it handles support measures to banks, to Parliamentary State auditors and the State Audit Office as well as to a prosecuting and pretrial authority for the investigation of a crime.

Section 19 repealed by Act of 21.5.1999/640.

Section 19a

Certain provisions concerning companies

(4.4.1996/245)

Section 24, subsection 1 of the Act on the State Budget (423/1988) shall not apply to the shares of an asset-management company or another company referred to in section 1, subsection 4 or of a company owned by them nor the Act on the Exercise of Governmental Shareholding Power in Certain Limited-Liability Companies Engaged in Financial Operations (740/1991). In addition to the legislation on limited companies in force, an asset-management company shall

be governed by the provisions of chapter 10 of the Act on Credit Institutions (1607/1993) on customer protection, section 94 on secrecy obligation and section 100 on breach of secrecy obligation and by the provisions of section 25 of the Act on the Financial Supervision Authority (587/2003) on a conditional fine. (27.6.2003/602)

An asset management company is subject not only to the current legislation on limited-liability companies, but also to the provisions of chapter 10 of the Act on Credit Institutions (1607/1993) concerning customer protection, the provisions of section 94 concerning the confidentiality duty and the provisions of section 100 on breach of the confidentiality duty, and the provisions of section 23 of the Act on Financial Supervision Authority on a conditional fine.

The Financial Supervision, which has the right of inspection and information in matters concerning these provisions, as prescribed in section 11 of the Act on Financial Supervision, shall supervise observance of the provisions on customer protection and the confidentiality duty.

Section 20 Entry into force

This Act comes into force on 30 April 1992.

The annual payment referred to in section 9 shall be remitted for the first time for the 1992 calendar year.

21.7.2006/644

This Act enters into force on 1 September 2006.

The provisions in force upon the entry into force of this Act shall be applied to the redemption if the redemption request has been notified to the bank subject to support measures prior to the entry into force of this Act.

GP 109/2005

Finance Committee Report 7/2006

Reply of Parliament 63/2006