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1999

## Act No. 98/1999 on Deposit Guarantees and Investor Compensation Scheme

Icelandic Parliament (Alþingi)

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*This is an English translation.*

*The original Icelandic text, as published in the Law Gazette (Stjórnartíðindi), is the authoritative text. Should there be discrepancy between this translation and the authoritative text, the latter prevails.*

## **Financial Services and Markets - Act No 98/1999 on Deposit Guarantees and Investor- Compensation Scheme.**

[Translation from Icelandic]

### **CHAPTER I Objective and Organisation**

#### Article 1

##### *Objective*

The objective of this Act is to guarantee a minimum level of protection to depositors in commercial banks and savings banks, and to customers of companies engaging in securities trading pursuant to law, in the event of difficulties of a given company in meeting its obligations to its customers according to the provisions of this Act.

#### Article 2

##### *Institution*

Guarantees under this Act are entrusted to a special institute named the Depositors' and Investors' Guarantee Fund, hereinafter referred to as the "Fund". The Fund is a private foundation, operating in two independent departments, the Deposit Department and the Securities Department, with separate finances and accounting, cf. however the provisions of Article 12.

#### Article 3

##### *Fund Members*

Commercial banks, savings banks, companies providing investment services, and other parties engaging in securities trading pursuant to law and established in Iceland, shall be members of the Fund. The same shall apply to any branches of such parties within the European Economic Area. Such parties, hereinafter referred to as Member Companies, shall not be liable for any commitments entered into by the Fund beyond their statutory contributions to the Fund, cf. the provisions of Articles 6 and 7. The Financial Supervisory Authority shall maintain a record of Member Companies.

#### Article 4

##### *Board of Directors and Executive Director*

The Board of Directors of the Fund shall consist of six members elected for a term of two years at a time. Commercial banks shall nominate two members to the Board of Directors of the Fund, savings banks shall nominate one member, companies and other parties engaging in securities trading pursuant to law shall jointly nominate one member, and the Minister of Commerce shall nominate two members. The Minister shall furthermore nominate a representative of depositors and investors as an observer with the right to speak and to submit proposals to the Board of Directors of the Fund, who shall meet the same requirements as Board Members. The Minister shall appoint the Chairman of the Board. Alternate Members shall be nominated in the same manner.

The Board of Directors of the Fund may appoint an Executive Director, or negotiate with a legal entity for the operation and custody of the Fund. The Central Bank of Iceland qualifies as such a legal entity, as do custody companies pursuant to the Act on Investment Funds.

Members of the Board of Directors and the Executive Director shall be of legal age and shall never have been deprived of custody of their estates. They shall have an unblemished reputation, and shall not have been convicted in a court of law for any punishable action with regard to business dealings pursuant to penal law or statutory law on limited liability companies, private limited companies, accounting, annual statements, bankruptcy or taxes.

Members of the Board of Directors and employees of the Fund are bound by confidentiality pursuant to the provisions of the Act on Commercial Banks and Savings Banks.

Every two years, or more frequently if so required, the Board of Directors shall report to the Minister on their views regarding the Fund's minimum assets as defined in Articles 6 and 7. The tasks of the Fund's Board of Directors shall be further provided for in the Fund's Articles of Association.

#### Article 5

##### *Annual General Meeting*

The Annual General Meeting shall be held before the end of March each year. The audited financial statement and the report of the Board of Directors of the Fund shall be submitted at the Annual General Meeting. The

Annual General Meeting shall decide on the Articles of Association of the Fund. The tasks of the Annual General Meeting shall be described further in the Articles of Association of the Fund, which shall be subject to the Minister's approval, following review and comment by the Financial Supervisory Authority.

All Member Companies shall be entitled to attend the Annual General Meeting, where commercial banks shall have a total of six votes, savings banks shall have three votes, and companies and other parties engaging in securities trading pursuant to law shall have three votes. Votes shall have equal weight within each group. Proposed amendments to the Fund's Articles of Association shall require a two thirds majority at the Annual General Meeting and the approval of the Minister.

The Board of Directors of the Fund may summon all Member Companies to a meeting should it see reason to do so. The Board shall convene an extraordinary meeting if such a meeting is requested by Member Companies representing one quarter of the total votes.

## **CHAPTER II** **Contributions to the Fund**

### Article 6

#### *Deposit Department*

The total assets of the Deposit Department of the Fund shall amount to a minimum of 1% of the average amount of guaranteed deposits in commercial banks and savings banks during the preceding year. In the event that total assets do not amount to the minimum as described in clause 1 above, all commercial and savings banks shall, no later than 1 March each year, contribute to the Fund an amount equivalent to 0.15% of the average of guaranteed deposits in the commercial or savings bank concerned during the preceding year, cf. however the minimum limit pursuant to Clause 1 above.

If, notwithstanding the above, the total assets of the Department do not amount to the required minimum, all commercial and savings banks shall submit a declaration of liability. In the declaration, each commercial and savings bank shall undertake to render a special contribution to the Department when the Department is obliged to refund deposits pursuant to Chapter III below in any commercial or savings bank that is a member of the Fund. The declaration of liability shall extend to a proportion of the amount required to make up the minimum corresponding to the proportion of the commercial or savings bank in question of the aggregate guaranteed deposits. However, demands for contributions to the Department based on declarations of liability shall not exceed the equivalent of one-tenth of the minimum total assets of the Fund. Under the aforesaid conditions, commercial and savings banks shall render payment to the Fund on demand.

Any new commercial bank or savings bank shall render a special contribution to the Department on 1 March each year from such time as it begins operations in Iceland, corresponding to 0.15% of the average amount of guaranteed deposits in the commercial bank or savings bank in question during the preceding year, until the minimum as defined in Paragraph 1 of this Article 6 has been reached. In addition, the commercial or savings bank concerned shall submit such declaration of liability as the Board of Directors of the Fund shall regard as valid for the balance between contributions to the Fund and the minimum as defined in Paragraph 1 of this Article 6.

Contributions rendered to the Department are non-refundable. Commercial banks and savings banks are obliged to provide the Fund with information regarding deposits pursuant to the provisions of this Article.

### Article 7

#### *Securities Department*

The total assets of the Securities Department of the Fund shall amount to a minimum of ISK 100 million.

In the event that total assets do not amount to the minimum as described above in Paragraph 1 of this Article 7, Member Companies shall, no later than 1 March each year, contribute a total of ISK 20 million to the Fund until it has reached the minimum required total assets. Each Member Company shall contribute a minimum amount of ISK 50,000. The annual contribution, minus the minimum contribution, is divided into two equal parts according to the following contribution bases:

1. The share of the Member Company in the aggregate amount of securities trading between Member Companies and customers who are insured pursuant to Article 9 below.

2. The share of the Member Company in the aggregate number of business accounts held with Member Companies in connection with securities trading. The number of business accounts pursuant to item 1 (c) and item 2 (a) and (b) of Article 8 of the Securities Trading Act shall be added together. Business accounts pursuant to item 1 (c) and item 2 (a) of the same Act shall weigh double in the aggregate. Business accounts with a balance exceeding ISK 1.7 million, based on the EUR exchange rate of 5 January 1999, shall also weigh double. If, notwithstanding the above, the total assets of the Department do not amount to the required minimum, each Member Company shall submit a declaration of liability. In the declaration, each Member Company shall undertake to render a special contribution to the Department when the Department is obliged to refund securities or cash pursuant to Chapter III below in any company that is a member of the Fund. The declaration of liability shall extend to the proportion of the amount required to make up the minimum corresponding to the proportion of the contributions of the Member Company in the aggregate contributions of all Member Companies in the first contribution after it has become evident that the Department's total assets will not amount to the required minimum. However, claims for contributions to the Department based on declarations of liability shall not exceed the equivalent of one-fifth of the Fund's minimum total assets. Under the aforesaid conditions, Member Companies shall render payment to the Fund upon demand.

Notwithstanding the provisions of Paragraphs 1 and 2 hereof, the Board of Directors of the Fund may purchase

insurance from a recognised insurance company within the European Economic Area as a safeguard against damage. However, should the Fund purchase insurance, at least one fifth of the department's minimum assets pursuant to Paragraph 1 shall be in the form of securities or cash.

A new Member Company engaging in securities trading pursuant to law, based on the Securities Trading Act shall render a special contribution to the Department on 1 March every year for five years from such time as it begins operations in Iceland. The contribution shall be a proportion of ISK 20 million corresponding to the proportion of the Company's share in the contribution bases pursuant to Paragraph 2 above. Payment shall be rendered for the first time one full year after the Company begins operations. The Company shall furthermore submit a declaration of liability, which shall extend to an amount of four times the contribution rendered in the first year.

Contributions rendered to the Department are non-refundable. Member Companies are obliged to provide the Fund with information pursuant to the provisions of this Article.

#### Article 8

##### *Revocation of License*

In the event that a Member Company does not fulfil its obligations to the Fund as described in this Act and the Government Regulation issued hereunder, the Board of Directors of the Fund shall immediately report this to the Minister and the Financial Supervisory Authority. The Minister shall then, following consultation with the Financial Supervisory Authority, grant a period of three months to the Member Company concerned to make amends. In the event that the Member Company concerned has not met its obligations within that time the Board of Directors of the Fund may, following consultation with the Financial Supervisory Authority, impose daily fines on the Company. Fines shall continue to be paid until such time as the Member Company concerned has met its obligations to the Fund. Fines may amount to between ISK 50 and 500 thousand per day.

In the event that a Member Company has not fulfilled its obligations to the Fund within one month from the imposing of the first fine, the Minister may inform the Company of his intention to revoke its operating license if the Company has not fulfilled its duties after a period of 12 months has passed.

Should the time limit described in Paragraphs 1 and 2 above expire without the Member Company concerned having met its obligations to the Fund, the Minister may, following consultation with the Financial Supervisory Authority, revoke its operating license. Commitments entered into prior to the expiration of the time periods described in Paragraphs 1 and 2 above shall be protected by insurance in accordance with the provisions of Chapter III of this Act.

In the event that the time limits described in Paragraphs 1 and 2 above should expire in the case of a branch of a Member Company established in another state within the European Economic Area, the Board of Directors of the Fund may then inform the branch of its intention to exclude it from the Fund if the branch has not met its obligations within twelve months. Should the time limits described above in Paragraph 1 expire without the branch having met its obligations, the Fund may, following consultation with the Financial Supervisory Authority, exclude the branch from membership of the Fund. Commitments entered into prior to the expiration of the time limits described in this Paragraph shall be protected by insurance in accordance with the provisions of Chapter III of this Act.

The provisions of Paragraphs 1-3 also apply to the branches of Member Companies established in countries outside the European Economic Area.

### **CHAPTER III Payments from the Fund**

#### Article 9

##### *Payments from the Fund*

If, in the opinion of the Financial Supervisory Authority, a Member Company is unable to render payment of the amount of deposits, securities or cash upon a customer's demand for refunding or return thereof in accordance with applicable terms, the Fund shall pay to the customer of the Member Company the amount of his deposit from the Deposit Department and the value of his securities and cash in connection with securities trading from the Securities Department. The obligation of the Fund to render payment also takes effect if the estate of a Member Company is subjected to bankruptcy proceedings in accordance with the Act on Commercial Banks and Savings Banks and the Act on Securities Trading.

The opinion of the Financial Supervisory Authority shall have been made available no later than three weeks after the Authority first obtains confirmation that the relevant Member Company has not rendered payment to its customer or accounted for his securities in accordance with its obligations.

"Deposit" pursuant to Paragraph 1 of this Article refers to any credit balance resulting from financial deposits or transfers in normal banking transactions, which a commercial bank or savings bank is under obligation to refund under existing legal or contractual terms. However, this guarantee does not extend to bonds, bills of exchange, or other claims issued by a commercial bank or savings bank in the form of securities.

"Securities" pursuant to Paragraph 1 of this Article refers to securities that are either in the custody or under the administration or supervision of a Member Company, which is under obligation to effect refunding or return thereof in accordance with existing laws or contracts.

In Paragraph 1 of this Article the word "cash" refers to cash deposited by an investor with a Member Company in connection with securities trading.

Deposits, securities and cash owned by Member Companies, their parent and subsidiary companies for their own account, and deposits, securities and cash connected with convictions of money-laundering, are not covered by

the guarantee described in Paragraph 1 of this Article.  
Further specifications regarding payments from the Fund shall be included in a Government Regulation.

Article 10  
*Amount payable*

In the event that the assets of either department of the Fund are insufficient to pay the total amount of guaranteed deposits, securities and cash in the Member Companies concerned, payments from each Department shall be divided among the claimants as follows: each claim up to ISK 1.7 million shall be paid in full, and any amount in excess of that shall be paid in equal proportions depending on the extent of each Department's assets. This amount shall be linked to the EUR exchange rate of 5 January 1999. No further claims can be made against the Fund at a later stage even if losses suffered by the claimants have not been compensated in full. Should the total assets of the Fund prove insufficient, the Board of Directors may, if it sees compelling reasons to do so, take out a loan in order to compensate losses suffered by claimants. In the event that payment is effected from the Fund, the claims made on the relevant Member Company or bankruptcy estate will be taken over by the Fund.

Article 11  
*Loans between Departments*

The Board of the Fund may authorise loans of up to ISK 50 million between the Deposit Department and Securities Department. Loans shall be repaid within 36 months. The Minister may impose further provisions regarding loans between the Departments in a Government Regulation.

Article 12  
*Subordinated Loans*

The Fund may grant a subordinated loan in a separate department to a Member Company in order to strengthen that Company's capital position, provided that the required funds are obtained by taking out a special loan. The Board may impose conditions for loans of this kind, e.g. that the borrower shall acquire additional capital or take other measures to strengthen its operations. The Board of Directors of the Fund may request investigations into the operations and financial situation of Member Companies that are granted subordinated loans. The Board may in this respect demand that the Member Company concerned supply the Board with any necessary information.

**CHAPTER IV**  
**Foreign Branches**

Article 13

Branches of foreign commercial banks, savings banks, companies trading in securities, and lending institutions other than commercial banks and savings banks that operate in Iceland but are established in another state within the European Economic Area, may become members of the Fund in respect of deposits, securities and cash not guaranteed in a comparable manner in the European Economic Area. Foreign branches pursuant to Paragraph 1 hereof which are established outside the European Economic Area and operate in Iceland shall be members of the Fund provided that such branches are not members a comparable investor compensation scheme in their home country. The Minister may include further provisions in a Regulation regarding membership of foreign branches in the Fund pursuant to this Article, as well as regarding the additional guarantees that branches require to conduct operations in Iceland. Further provisions regarding contributions and payments in respect of guarantees pursuant to this Article shall be laid down in a regulation.

**CHAPTER V**  
**Miscellaneous Provisions**

Article 14  
*Annual Statement and Auditing*

The financial year of the Fund shall be the calendar year. The Fund's chartered auditor shall be elected at the Annual General Meeting. The audited annual statement shall be approved and signed by the Members of the Board of Directors and confirmed by the Minister.

Article 15  
*Surveillance*

The Financial Supervisory Authority shall monitor the operations of the Fund to ensure conformity with this Act, the Regulation and the Fund's Articles of Agreement. The surveillance shall in other respects be governed by legislation on public surveillance of financial operations.

Article 16  
*Available Written Information*

Member Companies shall keep written information on their business premises regarding their membership of the Fund, the extent of the Company's guarantee, which assets are not guaranteed, and avenues of recourse for claimants in the event that they are refused compensation by the Member Company. The information shall be in

Icelandic and available at all times and easily accessible.

Any advertisements of Member Companies regarding membership to the Fund shall be restricted to direct references to the relevant Department of the Fund.

#### Article 17

##### *Exemption from Taxation and Legislation on Bankruptcy*

The Fund is exempted from income tax and net worth tax pursuant to the Act on income tax and net worth tax. The Fund shall not be subjected to receivership nor shall its assets be attached for debt.

#### Article 18

##### *Regulation*

The Minister shall in a Government Regulation impose further provisions regarding the Fund's operations, among other things about the arrangements of payments from the Fund, guarantees of deposits, securities or cash in the event of joint accounts or when a customer of a Member Company does not have absolute rights to deposits, securities and cash, and also regarding investment of the Fund's assets.

### **CHAPTER VI Reserve Funds**

#### Article 19

Commercial banks, on the one hand, and savings banks, on the other hand, that are established in Iceland may establish private foundations, i.e. Reserve Funds, to which all commercial banks or all savings banks shall be members in order to preserve the interests of customers and the financial security of commercial or savings banks.

In order to preserve the interests of customers and, to this end, the financial security of commercial banks or savings banks, each Reserve Fund may grant loans or take over certain assets, enter into guarantees, compensate for special losses and expenses suffered by commercial banks or savings banks, and provide support to commercial or savings banks in other respects in such a way as the boards of directors of the funds may decide in accordance with the provisions of this Act and the Articles of Association of the Fund. For this purpose the relevant Reserve Fund is authorised to conduct investigations into the operations and financial situation of the commercial bank or savings bank concerned. Further rules shall be established in articles of association, as well as rules regarding revenues and granting of loans.

Reserve Funds shall furthermore be authorised to grant subordinated loans to commercial banks or savings banks in order to strengthen their capital positions. The board of directors of the funds may impose conditions for subordinated loans. The board of directors may also authorise investigations into the operations and financial situation of a commercial bank or savings bank that is granted a subordinated loan. The board of directors may in this respect require that the commercial bank or savings bank concerned supply them with any necessary information.

The Annual General Meeting shall be the supreme authority in all matters of a Reserve Fund. At the Annual General Meeting each bank that is a member of the reserve fund shall have voting rights in accordance with its share in the aggregate assets of commercial or savings banks. Between Annual General Meetings and extraordinary meetings, the affairs of the Reserve Fund shall be in the hands of each respective fund's board of directors. Each reserve fund's board of directors shall consist of five members, of which four board members and an equal number of alternate members shall be elected at the Annual General Meeting for a term of one year. The election shall be by proportional vote if requested. The Minister shall appoint one member for a term of three years. The appointment and tasks of the board of directors shall be described further in Articles of Association. Members of the Board of Directors and employees of reserve funds are bound by confidentiality pursuant to the provisions of the Act on Commercial Banks and Savings Banks.

Reserve Funds are exempted from income tax and net worth tax pursuant to the Act on income tax and net worth tax. The funds shall neither be subjected to receivership proceedings nor may its assets be attached for debt. The Annual General Meeting shall establish articles of association for the Reserve funds which shall be subject to the Minister's approval following review and comment by the Financial Supervisory Authority. The Financial Supervisory Authority shall monitor the operations of the Reserve Funds. The surveillance shall in other respects be governed by legislation on public surveillance of financial operations.

### **CHAPTER VII Entry into Force etc.**

#### Article 20

This Act shall enter into force on 1 January 2000. Upon that date, the Fund shall assume the assets and liabilities of the Commercial Banks' Insurance Fund and of the Deposit Department of the Savings Banks' Insurance Fund. Both the Commercial Banks' Insurance Fund and the Deposit Department of the Savings Banks' Insurance Fund shall be closed down as of the same date.

An initial shareholders' meeting shall be held before 31 December 1999, in which Articles of Association for the Fund shall be decided in accordance with Article 5 of this Act. The provisions of this Paragraph shall enter into force immediately.

Upon entry into effect of this Act, the provisions of Chapter X (Articles 75-81) of Act No. 113/1996 on Commercial Banks and Savings Banks shall be rendered void.

Article 21

This Act is made in accordance with Joint EEA Committee Decisions No. 18/1994 and 12/1998, and with the purpose of adopting the provisions of Directive 19/1994 on deposit guarantees and Directive 9/1997 on investor-compensation schemes of the European Parliament and of the Council into national law.