

Cairns

Serial No. CP 2008/94

**IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN  
CHANCERY DIVISION**

**IN THE MATTER of THE COMPANIES  
ACT 1931**

and

**IN THE MATTER of KAUPTHING  
SINGER & FRIEDLANDER (ISLE OF  
MAN) LIMITED**

and

**IN THE MATTER of THE JOINT  
PETITION OF KAUPTHING SINGER &  
FRIEDLANDER (ISLE OF MAN)  
LIMITED and THE FINANCIAL  
SUPERVISION COMMISSION dated  
the 9th day of October 2008**

and

**IN THE MATTER of the Court Orders  
dated 9th October 2008 and 24th  
October 2008**

**SECOND AFFIDAVIT OF MICHAEL SIMPSON**

I, **MICHAEL SIMPSON**, of Sixty Circular Road, Douglas, Isle of Man IM1 1SA being sworn make oath and say as follows:-

1. I am one of the duly appointed Joint Liquidators Provisionally of Kaupthing Singer & Friedlander (Isle of Man) Limited and I also make this Affidavit on behalf of my Joint Liquidator Provisionally, Peter Spratt.
2. Where I refer to factual matters directly within my knowledge the contents of this Affidavit are true. The other matters to which I have deposed in this Affidavit I verily believe to be true to the best of my knowledge, information and belief.
3. In this Affidavit I will use the following abbreviations for ease of reference:-

- "DCS" - the Depositors Compensation Scheme (the Scheme set up by Tynwald to provide some compensation to depositors of a deposit taking business licensed in the Isle of Man (with certain exceptions) in the event of the default of the deposit taker.
  
- "Mr Lovett's Third Affidavit" - the Third Affidavit of David C Lovett of AlixPartners Limited, sworn on 26th January 2009.
  
- "the Company" - Kaupthing Singer & Friedlander (Isle of Man) Limited.
  
- "creditors with full claims outside the CDS" - Creditors who are not entitled to claim compensation from the DCS and who will therefore claim in full in any liquidation or Scheme.
  
- "creditors with partial claims outside the DCS" - Creditors who are entitled to claim compensation from the DCS, but who will still be able to claim for the balance of their deposits in any liquidation or Scheme of Arrangement, after receipt of the full amount due to them under the DCS.
  
- "the Treasury" - The Treasury of the Isle of Man Government

4. I swear this Affidavit for the assistance of the Court and the creditors of the Company to set out my initial views upon the proposed Scheme of Arrangement, discussed in Mr Lovett's Third Affidavit. I should emphasise that these are my preliminary views, as I have not had the opportunity to review the proposed Scheme in detail in the time available to me.

5. Before commenting on the proposed Scheme, I would like to emphasise that my principal concern is that the best interests of the creditors of the Company are served, whether this is through a liquidation of the Company, or by a Scheme of Arrangement.

6. Since November 2008 I and members of my team have met several times with AlixPartners, on occasion in conjunction with their client, the Treasury. These meetings have primarily centered on the provision of information to AlixPartners to assist them in their role as advisors to the Treasury. As part of those meetings AlixPartners have provided a broad outline of suggested proposals that the Treasury are considering in respect of a possible Scheme of Arrangement, although on the basis that the proposals were very much work in progress. I have provided general comments in respect of these suggested proposals.
7. Mr Lovett's Third Affidavit has provided me with greater clarity in respect of the proposed Scheme of Arrangement, although there has been very little time to review this in any detail.
8. Based upon the information set out in Mr Lovett's Third Affidavit, it appears to me that the potential advantages of the Scheme over a liquidation are as follows:-
  - (i) it may provide all creditors with a quicker initial return either in respect of DCS claimants through the timing of the Top-Up Funding or in respect of creditors with full or partial claims outside the DCS through the Treasury agreeing to subrogate their claim until all other creditors have received a dividend of at least 60%, (although I should mention that if the Company were to be placed into liquidation immediately, I presently hold almost £140 Million in recovered assets, and would be in a position to pay an initial dividend of at least 10% to all creditors within 3 months);
  - (ii) if the ultimate dividend to creditors in the liquidation of the Company proved to be less than 60%, then the Scheme would provide a better return to those creditors who have full or partial claims outside the DCS, given that the Treasury will forego its right to prove in the

Scheme in respect of its Top-Up Funding until all other creditors have reached a return of 60%. Nevertheless, I am hopeful that the ultimate dividend to creditors in the liquidation of the Company would be in excess of 60%; and

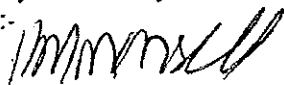
(iii) there would be only one officeholder carrying out the claims management process (although I do not anticipate that this would lead to a large saving in cost).

9. Other than referred to above, I understand that it is not suggested that the Scheme will provide a better final outcome for creditors or that in respect of creditors who have full or partial claims outside the DCS that the quantum of any dividends will be guaranteed.
10. I should mention that it is my view that the amount realised in respect of the Company's assets will be the same whether it is carried out in a liquidation or by a Scheme of Arrangement, including the amount realised in respect of the Loan Book. The duty to maximise returns for creditors, together with the ability to take commercial decisions whilst taking account of the commercial risk involved, means the credit management process will be the same in either process.
11. Similarly, it is my view that the reporting process will be equally as transparent in a liquidation as in a Scheme, given the need to keep ordinary creditors as informed as possible. This is the policy that I have adopted as Joint Liquidator Provisionally, with weekly website updates and fortnightly calls with creditors, organised in conjunction with the Depositors' Action Group.
12. As to the potential advantages of the Scheme over a combined liquidation / DCS, I do not currently have sufficient information regarding the timing of the funding of the DCS to make immediate comparison.
13. Turning to the Timetable exhibited to the Third Lovett Affidavit, I do have reservations as to whether this Scheme is achievable in the time allowed for in the Third Lovett Affidavit, not least for the following reasons:-

- (i) amongst the legal problems to be overcome by 30th March 2009 is the issue of the different classes of creditors for voting purposes in relation to the Scheme. I understand that in England & Wales it is considered good practice in schemes in which there may be a number of classes of creditors to canvas creditors for their views as to appropriate classes, before finalising a Scheme, which can be a time-consuming process;
- (ii) if a moratorium is to be effective, it may be necessary for a parallel Scheme to be approved by the English High Court, given the large number of depositors and the high value of assets belonging to the Company situated within that jurisdiction. Again, this may be a time-consuming process;
- (iii) given the geographic spread and the difficulty in contacting some creditors, it may be advisable to give more than one month's notice of any scheme meeting, although the length of notice to be given to creditors of any Scheme meeting will ultimately be a matter for the Court to determine when full details of any Scheme are presented to it.

14. With regard to the Treasury's application for an adjournment, I am very conscious that my duty is to remain impartial as between all the creditors of the Company. A number of those creditors will be represented by Counsel at the hearing on 29th January 2009, and I am aware that a number of creditors have also written to me and to the Court, expressing their views as to whether an adjournment should be granted. In the circumstances, I will leave it to the discretion of the Court as to whether the adjournment sought by the Treasury is granted.

Taken and sworn at Douglas :  
This 28<sup>th</sup> day of January 2009 :  
Before me: :



A Commissioner for Oaths :  
**KAREN MARGARET MANSELL**  
**COMMISSIONER FOR OATHS**

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**CAINS Advocates Limited  
Old Bank Chambers  
15/19 Athol Street  
DOUGLAS  
Isle of Man**