

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 Humble
Petition of Michael Simpson as
Liquidator provisionally of Kaupthing
Singer & Friedlander (Isle of Man)
Limited dated the 12th day of November
2008

and

IN THE MATTER of the Court Orders
dated the 27th November 2008

AFFIDAVIT OF ALLAN ROBERT BELL

I, ALLAN ROBERT BELL, of Ballabeg, Bride, being sworn make oath and say as follows:-

1. I am the Minister of the Treasury, a Department of the Isle of Man Government.
2. Where they refer to factual matters directly within my knowledge the contents of this Affidavit are true. The other matters to which I depose in this Affidavit I verily believe to be true to the best of my knowledge, information and belief.
3. I swear this Affidavit in compliance with paragraph 5 of the Order of this Honourable Court made on the 27th November 2008 and in order to make this Honourable Court

aware of certain steps taken by the Isle of Man Government in connection with Kaupthing Singer & Friedlander (Isle of Man) Limited in provisional liquidation (KSFIOM). This Affidavit supplements an Affidavit which I am given to understand has been sworn by David C Lovett of Alix Partners Limited, a business advisory firm which has been retained by Treasury to provide advice in relation to KSFIOM. The Affidavit sworn by Mr Lovett contains an update of the proposal that a Scheme of Arrangement be made between KSFIOM and its creditors in accordance with the procedure set out in section 152 of the Companies Act 1931.

4. In the course of the proceedings before this Honourable Court on the 27th November 2008 it was indicated that the Treasury proposed to bring forward a Scheme which would provide an early payment to the depositors of KSFIOM. There is now produced and shown to me marked "ARBI" a true copy of the Kaupthing Singer and Friedlander (Isle of Man) Limited Early Payment Scheme (the Scheme) which has been developed by the Treasury following the approval in principle of the Scheme at the sitting of Tynwald on the 17th December 2008 and the transfer from the Reserve Fund to the General Revenue Account of a sum not exceeding £11 million to meet the anticipated expenditure of the Scheme. When moving the principle of the Scheme in Tynwald I acknowledged that a commitment had been given to the Court that Government would endeavour to provide an Early Payment Scheme to depositors of KSFIOM in advance of any interim liquidation dividend, payment from the Depositors Compensation Scheme or any other source that may subsequently be identified.
5. The Scheme sets out, inter alia, the purpose of the Scheme, defines those who are eligible and ineligible to receive an early payment and prescribes the procedure for making a claim. I would emphasise that the Scheme is quite separate from the Depositors Compensation Scheme constituted under the Compensation of Depositors Regulations 2008 but it is important that provision is made to prevent an account holder from making a double recovery, that is receiving an early payment under the Scheme and a payment from the Depositors Compensation Scheme (if activated), the provisional liquidators of KSFIOM, a liquidator of KSFIOM, or from any other person under a Scheme of Arrangement or compromise under section 152 of the Companies Act 1931.

The maximum amount payable under the Scheme is the lesser of:-

- a. the aggregate sterling equivalent of the balance on all deposit accounts of an account holder, including accrued interest to close of business on the 8th October 2008; and
- b. £1000.

The Scheme is to be administered by the Treasury and comes into force subject to approval by Tynwald. It is intended that a Motion to approve the Scheme will be moved by me at the sitting of Tynwald this month.


6. In the course of the said proceedings on the 27th November, Kaupthing Bank hf applied by Notice of Motion to be released from the jurisdiction of this Honourable Court. On the 17th September 2007 Kaupthing Bank hf executed an Undertaking by which it guaranteed to discharge the liabilities of KSFIOM insofar as KSFIOM was unable to discharge such liabilities as had been validly asserted out of its own assets. There is now produced and shown to me as exhibit "ARB2" a copy of the said Undertaking dated the 17th September 2007. The Undertaking was to remain effective whilst KSFIOM remained a wholly owned subsidiary of Kaupthing Bank hf and should be terminable forthwith on a disposal by Kaupthing Bank hf of all or part of its interest in KSFIOM.
7. The said Undertaking appears to be in the form of a guarantee and clearly is an important document so far as KSFIOM is concerned. On the 6th January 2009 a delegation comprising the Chief Minister, myself, the Chief Secretary, the Chief Financial Officer and the Attorney General met with the Resolution Committee of Kaupthing Bank hf. The Resolution Committee now represents the Board of Directors of Kaupthing Bank hf. A court procedure pursuant to the laws of Iceland is now in place which has resulted in a moratorium being imposed on the activities of Kaupthing Bank hf which is an insolvent company. The Court has a duty to ensure that the interests of creditors are protected so that the Resolution Committee cannot take any material step without the approval of the Court.

In the course of the meeting with the Resolution Committee it was explained that the Undertaking is essentially a contract between the parent company and its subsidiary KSFION. The Committee is awaiting legal advice from Iceland as to the validity of the document but it was made clear that it was unlikely that the Undertaking could be considered to provide a source of payment to KSFION at this stage. Rather, it would seem that the Undertaking is to be regarded as a remedy of last resort when all other remedies have been exhausted.

8. As I made clear in the debate in Tynwald when moving the approval in principle of the Scheme, the Government was very appreciative of the additional time which had been allowed by this Honourable Court to enable solutions to be developed with a view to providing the best return to all depositors of KSFION. A number of options have been considered and continue to be considered based on the professional advice Treasury has received from Alix Partners. I confirm that a considerable amount of work has been undertaken by Government and a number of potential options ranging from the sale of the assets of KSFION to a restructuring of its business have been considered. Regular meetings of a high level working group comprising the Chief Minister, the Minister of the Department of Health and Social Security and myself supported by officers continue to be held and we are currently giving detailed consideration to a report prepared by Alix Partners which sets out the feasibility of possible actions in relation to KSFION including a proposal that a Scheme of Arrangement be made between KSFION and its creditors. The said report is subject to legal professional privilege and confidentiality obligations and the fact that such report is referred to herein is not intended to waive such privilege.

Taken and sworn at Douglas

this 15th day of January 2009 :



Before me:

A Commissioner for Oaths

Kevan Cubbon
Commissioner for Oaths



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This is the exhibit marked "ARB1" referred to in the affidavit of ALLAN ROBERT BELL

sworn this 15th day of January 2009

Before me:-



A Commissioner for Oaths

Kevan Cubbon
Commissioner for Oaths



THE TREASURY

**THE KAUPTHING SINGER AND FRIEDLANDER (ISLE OF MAN)
LIMITED EARLY PAYMENT SCHEME**

1. Introduction

- (1) This Scheme is the Kaupthing Singer and Friedlander (Isle of Man) Limited Early Payment Scheme and has been developed by the Isle of Man Treasury ("the Treasury") following the approval of Tynwald in principle of such a scheme in December 2008.
- (2) This Scheme comes into force when it is approved by Tynwald.

2. Interpretation

- (1) In this Scheme —
 - "account holder" means a person —
 - (a) legally and beneficially entitled to the proceeds of the deposit in that account; or
 - (b) legally entitled to proceeds of the deposit in that account as trustees;
 - "DCS" means the Isle of Man Depositors' Compensation Scheme constituted under the Compensation of Depositors Regulations 2008¹;
 - "KSF IOM" means Kaupthing Singer and Friedlander (Isle of Man) Limited;
 - "KSF IOM Early Payment Scheme Guidance Notes" means the notes issued by the Treasury in December 2008 as a guide to the anticipated operation of this Scheme;
 - "Provisional Liquidators" means the Provisional Liquidators of KSF IOM Michael Simpson of PriceWaterhouseCoopers of 60 Circular Road, Douglas, IM1 1SA and Peter Spratt of PriceWaterhouseCoopers LLP of Plumtree Court, London EC4A 4HT;
 - "the relevant date" means 9th October 2008;
 - "the Treasury" means the Treasury of the Isle of Man.

¹ S.D.826/08, amended by S.D. 844/08.

- (2) In this Scheme a term which is defined for the purposes of the Financial Services Act 2008 has the same meaning as it has in that Act.
- (3) The Interpretation Act 1976 applies for the purposes of the construction of this Scheme as it applies to a statutory document.

3. Purpose of Scheme

The purpose of the Scheme is to provide early payments, not exceeding £1,000 in any case, to defined account holders with KSF IOM following the decision by the Provisional Liquidators to freeze bank accounts with KSF IOM.

4. Those eligible for an early payment

The persons eligible for an early payment are those who —

- (a) were depositors with KSF IOM on 8th October 2008;
- (b) are not excluded by paragraph 5; and
- (c) make a claim in accordance with paragraph 6.

5. Persons ineligible

Despite paragraph 4, the following are ineligible to receive an early payment—

- (a) deposit-takers authorised, licensed or recognised outside the Isle of Man;
- (b) deposit-takers or investment businesses licensed under section 7 of the Financial Services Act 2008² or which would be required to be so licensed but for a transitional provision of the Financial Services Act 2008 (Appointed Day) Order 2008 as amended;
- (c) a company that on the relevant date was —
 - (i) a parent company of KSF IOM, including Kaupthing hf (a company incorporated in Iceland); or
 - (ii) subject to the ultimate control of Kaupthing hf;
- (d) a person who in the opinion of the Treasury has any responsibility for, or may have profited directly or indirectly from, the circumstances giving rise to the presentation to the Court of the petition for the winding-up of KSF IOM;
- (e) a person who was a shareholder, director or controller of KSF IOM on the relevant date;
- (f) a person who in the opinion of the Treasury was acting as a shareholder, director or controller of KSF IOM on the relevant date;
- (g) a person who has failed to provide any information or evidence required under the legislation applicable in the Island in relation to money-laundering;

² 2008 c. 8.

- (h) a person who has a liability to KSF IOM under a lending agreement, which expression includes (but is not limited to) a finance lease, mortgage or credit card agreement;
- (i) a person who holds a deposit with KSF IOM which is used as a security for another transaction.

6. Making a claim

- (1) A claim for an early payment must be made in the form and manner specified in the KSF IOM Early Payments Guidance Notes, and must be made before —
 - (a) 31st March 2010; or
 - (b) such earlier date as the Treasury may prescribe at least 30 days in advance.
- (2) An account holder who makes a claim must also —
 - (a) execute a memorandum of assignment in favour of the Treasury in respect of his or her right, title and interest in a sum equal to the early payment and agreeing that a sum equal to the early payment can be deducted from any payment received —
 - (i) from the DCS;
 - (ii) from the Provisional Liquidators;
 - (iii) from a liquidator of KSF IOM; or
 - (iv) from any other person under a scheme of arrangement or compromise under section 152 of the Companies Act 1931 in connection with the restructuring of KSF IOM;
 - (b) consent to the sharing of information by the Treasury with —
 - (i) the Scheme Manager and Scheme Administrator of the DCS;
 - (ii) the Provisional Liquidators of KSF IOM and their servants or agents;
 - (iii) a Liquidator of KSF IOM and the Liquidator's servants or agents;
 - (iv) a scheme administrator under a scheme of arrangement or compromise under section 152 of the Companies Act 1931 for the restructuring of KSF IOM and such person's servants or agents; and
 - (c) consent to the sharing of information by any of the persons referred to in heads (i) to (iii) of paragraph (b) with the Treasury.

7 Maximum amount

- (1) The maximum amount payable under this Scheme is the lesser of —

- (a) the aggregate Sterling equivalent of the balance on all deposit accounts of an account holder including accrued interest to close of business on 8th October 2008; and
 - (b) £1,000.
- (2) Non Sterling deposits will be converted into Sterling —
- (a) at the middle market closing rate of exchange for the currency in question on the relevant date as published in the Financial Times; or
 - (b) where no such rate was published at a rate of exchange determined by the Treasury.

8. Joint account holders

- (1) If an account with KSF IOM was held on the relevant date in the joint names of two or more persons they shall each be entitled to an early payment if they otherwise satisfy the requirements of the scheme.
- (2) In a case to which this paragraph applies, for the purposes of paragraph 7 the balance of any joint account shall be treated as divided equally amongst all the account holders.
- (3) This paragraph does not apply in the case of an account held on trust for more than one beneficiary (as to which see paragraph 9).
- (4) If this paragraph applies joint account holders may elect to receive either —
 - (a) a single payment payable to them all, in the name of one or more of the account holders; or
 - (b) a payment per account holder.

9. Trust accounts

If an account with KSF IOM was held on the relevant date on trust by two or more persons as trustees one early payment, computed on the basis of a single deposit, shall be payable under paragraph 7.

10. Account holders with more than one account

- (1) If an account holder holds —
 - (a) an account in his or her sole name; and
 - (b) an account in joint names, one of which is his or hers,paragraph 7 shall apply to the aggregate of the value of the account referred to in paragraph (a), and the account holder's share of the value of the account in paragraph (b).

11. Insurance bonds

- (1) If an insurer has issued a bond or policy part or all of the proceeds of which were invested on the relevant date with KSF IOM in an account in the name of the insurer but referable to the particular bond or policy, each such policy

shall be treated as if it were held by a separate person for the purposes of determining entitlement to an early payment.

- (2) Accordingly joint account bond holders shall be treated in the same manner as joint account deposit holders in accordance with paragraphs 8 and 10.
- (3) In this paragraph "insurer" has the meaning given by section 54 of the Insurance Act 2008.

12. Review of eligibility

- (1) If the Treasury decides that an account holder is ineligible in accordance with paragraph 5, the account holder may apply to the Treasury, on one occasion only, for a review of that decision.
- (2) An application for review must —
 - (a) be made —
 - (i) within 60 days of the notification of the decision to the account holder;
 - (ii) in such form and manner as the Treasury may specify; and
 - (b) state the grounds on which review is requested.

13. Management and operation of the Scheme

- (1) The Treasury shall —
 - (a) administer this Scheme; and
 - (b) cause records to be kept sufficient to disclose the Scheme's financial position.
- (2) From the monies approved by Tynwald for this Scheme the Treasury may —
 - (a) make payments to eligible account holders; and
 - (b) meet any other costs associated with its administration.
- (3) Payments under this Scheme shall be made Sterling and in such manner as the Treasury thinks fit, subject to sub-paragraph (4).
- (4) In exceptional circumstances the Treasury may determine in a particular case to make a payments in a currency other than Sterling.
- (5) The Treasury shall report to Tynwald annually in respect of payments made under this Scheme.

Signed 7th January 2009

.....
Minister for the Treasury

Explanatory Note

(This note is not part of the Circular).

This circular set out the provision and eligibility rules in respect of early payments of up to £1,000 being made to account holders of Kaupthing Singer & Friedlander (IOM) Limited in pursuance of a resolution of Tynwald in January 2009.

Serial No. CP 2008/94

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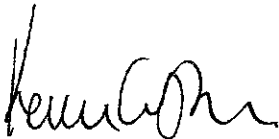
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sworn this 15th day of January 2009

Before me:-



A Commissioner for Oaths
Kevan Cubbon
Commissioner for Oaths



KAUPTHING BANK

BY THIS UNDERTAKING Kaupthing Bank hf (registered in Iceland with Company Reg No. 5600882-0419) whose principal office is at Borgartún 19, IS-105 Reykjavík, Iceland guarantees to discharge the liabilities of its subsidiary Kaupthing Singer & Friedlander (Isle of Man) Limited (Company Reg No 3519) whose registered office is at 5-11 St Georges Street, Douglas, Isle of Man IM99 1SN insofar as Kaupthing Singer & Friedlander (Isle of Man) Limited is unable to discharge such liabilities as have been validly asserted out of its own assets. This undertaking shall remain effective whilst Kaupthing Singer & Friedlander (Isle of Man) Limited remains a wholly owned subsidiary of Kaupthing Bank hf and shall be terminable forthwith on a disposal by Kaupthing Bank hf of all or part of its interest in Kaupthing Singer & Friedlander (Isle of Man) Limited.

In witness whereof this Undertaking has been duly executed and delivered on behalf of Kaupthing Bank hf this 17th day of September 2007.

Executed as a deed by
Kaupthing Bank hf
acting by an authorised signatory

(Authorised Signatory)

INGOLFUR HELGASON
CEO, KAUPTHING BANK
ICELAND

Dated

2009

Serial No. CP 2008/94

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AFFIDAVIT OF ALLAN ROBERT BELL

HM Attorney General
Douglas