

Serial No.

**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**

**TO HIS HONOUR THE DEPUTY DEEMSTER ANDREW THOMAS KANEEN CORLETT**

**THE HUMBLE JOINT PETITION of KAUPTHING  
SINGER & FRIEDLANDER (ISLE OF MAN)  
LIMITED of Samuel Harris House, 5-11 St  
George's Street, Douglas, Isle of Man AND  
THE FINANCIAL SUPERVISION COMMISSION  
of PO Box 58, Finch Hill House, Bucks Road,  
Douglas, IM99 1DT**

**SHEWETH:**

1. This Petition is presented jointly by Kaupthing Singer & Friedlander (Isle of Man) Limited ("Kaupthing") and The Financial Supervision Commission of the Isle of Man (the "Commission").
2. The Commission was established under the provisions of the Financial Supervision Commissioner Act 1984.
3. The main functions of the Commission include, inter alia, the licensing and supervision of banking institutions under the Banking Act 1998.
4. As recited above, a specific function of the Commission is the licensing and supervision of banking institutions as defined in the Banking Act 1998. In particular Section 4(1) of the Banking Act, 1998 provides:-

*"Every application for a licence to carry on a banking business shall  
be made to the Commission"*

5. Kaupthing is a company incorporated in the Isle of Man having its registered office at Samuel Harris House, 5-11 St Georges Street, Douglas aforesaid. Kaupthing was incorporated on the 27<sup>th</sup> April 1971 with the name Singer & Friedlander (Isle of Man) Limited having changed its name to Kaupthing on 2<sup>nd</sup> January 2007. It has an authorised share capital of £10 million divided into 10,000,000 Ordinary Shares of £1.00 each. Kaupthing has issued a total of 5,000,000 Ordinary Shares of £1.00 each all of which have been issued at a consideration of £1.00 per share making a total paid up share capital of £5 million.
6. The shares in Kaupthing are owned by Kaupthing Holdings (Isle of Man) Limited of Samuel Harris House, 5-11 St Georges Street, Douglas.
7. The Directors of Kaupthing are:-
  - (a) **ANDREW JOHN DAVIES;**
  - (b) **AIDAN ANDREW DOHERTY;**
  - (c) **JOHN ALFRED CASHEN OBE;** and
  - (d) **DONALD JAMES GELLING.**
8. The Secretary of Kaupthing is Helen Joanne Christian and the Assistant Secretary is the said Andrew John Davies.
9. Subject to the matters set out hereinafter Kaupthing carries on the business of banking and is authorised to carry out banking activities pursuant to a banking licence issued under Section 6 of the Banking Act 1998 by the Commission.
10. Kaupthing is wholly owned by Kaupthing Holdings (Isle of Man) Limited as aforesaid which in turn is wholly owned by Kaupthing Bank Hf a company incorporated in Iceland having its registered office at Borgatun 19, 105 Reykavík, Iceland. Kaupthing is therefore an Isle of Man based banking subsidiary of Kaupthing Bank Hf.

11. On 8<sup>th</sup> October 2008 it was determined by the UK Financial Services Authority ("FSA") that Kaupthing Singer & Friedlander Limited ("KSF") which has its registered office at One Hanover Street, London and is regulated by the FSA no longer met its threshold conditions and was likely to be unable to continue to meet its obligations to depositors. As a result, the FSA concluded that KSF was in default for the purposes of the Financial Services Compensation Scheme (for the UK).
12. KSF is a UK based banking subsidiary of the aforementioned Kaupthing Bank Hf.
13. In order to preserve financial stability and provide protection and continuity of business for depositors, KSF's Kaupthing Edge deposit business has, as of 8<sup>th</sup> October 2008, been transferred to ING Direct, a wholly owned subsidiary of ING Group which operates through its branch in the UK. The remainder of KSF's business has been put into administration by an Order made under Part II of the Insolvency Act 1986 (an Act of Parliament) on the 8th October 2008 which appointed Maggie Hill of Ernst & Young as the administrator of KSF.
14. Substantial assets and/or loan deposits in the aggregate sum of approximately £516 million are due to Kaupthing by that part of KSF's business that has been put into administration.
15. In addition to the assets and/or loan deposits due to Kaupthing from KSF, Kaupthing has £164 million on deposit with its said parent in Iceland.
16. In addition Kaupthing Bank Hf as the parent company of Kaupthing has provided to Kaupthing an undertaking dated 17 September 2007 guaranteeing to discharge certain liabilities of Kaupthing.
16. Kaupthing is unable to meet its liabilities as and when they fall due without immediate access to those assets and/or loan deposits, or at least a significant portion thereof, which are held either by KSF in administration and/or Kaupthing Bank Hf. Such liabilities are principally liabilities due to Kaupthing's depositors. Kaupthing has approximately 7,000 bank accounts representing in aggregate liabilities of approximately £850 million.

17. Upon receiving notice of the making of the KSF administration order the directors of Kaupthing contacted the administrator. The administrator informed the directors of Kaupthing that pending further enquiries to be made by her in relation to the affairs of KSF she is unable to state when or if KSF will be in a position to return or repay any or all of Kaupthing's assets and/or loan deposits held by KSF.
18. Following receipt of notice of the administration order and following the aforesaid discussions with the administrator and after discussions with the Commission the directors of Kaupthing made an urgent request to Kaupthing Bank Hf to transfer to it, either by way of repayment of monies held for it on deposit with its parent and/or pursuant to the terms of the guarantee, sufficient funds to meet its liabilities as and when they may fall due. As a result of discussions held with the Commission Kaupthing requested that its parent transfer as soon as possible but in any event by no later than close of business Friday 10 October 2008 the aggregate sum of £300 million being the amount which Kaupthing requires in order to meet those depositors' liabilities which potentially are subject to payment within the next eight days.
19. Kaupthing Bank Hf informed the directors of Kaupthing that due to diverse reasons relating inter alia to financial and economic difficulties in Iceland it is unable to commit to providing Kaupthing with the liquidity which Kaupthing requires to meet its current liabilities as and when they fall due.
20. In the days immediately proceeding the presentation of this petition Kaupthing has made payments in respect of the withdrawal of funds deposited with it of between £30 million and £40 million per day. As a result of matters referred to hereinabove Kaupthing anticipates that requests from depositors for the withdrawal of their deposits will significantly increase. Without immediate access to the assets and/or loan deposits held by KSF in the UK and/or by its parent in Iceland and/or immediate funding under the guarantee Kaupthing does not have sufficient liquidity to meet its anticipated liabilities in respect of requests from depositors for the withdrawal of deposits.

21. At 9.43pm on the 8 October 2008 the board of directors of Kaupthing formally resolved that Kaupthing is and will be unable to pay its debts. The directors of Kaupthing further resolved that an urgent application should be made to this Honourable Court for the appointment of a liquidator provisionally and in due course for an order to be made winding up the affairs of Kaupthing.
22. Upon Kaupthing notifying the Commission of the passing of the aforesaid resolution the Commission suspended Kaupthing's banking licence which suspension continues to be in force.
23. Pursuant to the aforesaid resolution of the directors of Kaupthing, Kaupthing agreed that if required so to do by the Commission the application to the Court for the appointment of a liquidator provisionally and/or the winding up of Kaupthing would be made in the joint names of Kaupthing and the Commission. The Commission avers that it has standing to present this petition under section 164(1)(d) of the Companies Act 1931.
24. Kaupthing and the Commission jointly seek an order appointing Michael John Simpson of PricewaterhouseCoopers chartered accountants of Sixty Circular Road, Douglas, Isle of Man IM1 2SA to be the liquidator provisionally of Kaupthing pursuant to and subject to the terms of the draft Order annexed hereto or such other terms as the Court may see fit.
25. Further Kaupthing and the Commission jointly seek an order winding up Kaupthing on the grounds that it is unable to pay its debts and/or in the circumstances it is just and equitable that Kaupthing should be wound up and subject to such order appointing Michael John Simpson aforesaid to be the provisional liquidator and deemed official receiver of Kaupthing.


**WHEREFORE** Your Petitioner humbly prays a hearing hereof and that this Honourable Court may be pleased to:-

1. Give directions as to what (if any) further notice of this Petition should be given.
2. Make an Order or Orders pursuant to paragraphs 24 and/or 25 hereinabove.

3. That the costs of Kaupthing and the Commission of and incidental of this Petition do be paid out of the assets of Kaupthing.

And Your Petitioner will ever pray etc etc

This 9th of October 2008



Advocate for Kaupthing Singer & Friedlander (Isle of Man)  
Limited



Advocate for the Financial Supervision Commission

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