

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

SECOND AFFIDAVIT OF MICHAEL PATRICK WELDON

I, MICHAEL PATRICK WELDON, Head of Supervision of the Financial Supervision Commission, PO Box 58, Finch Hill House, Bucks Road, Douglas Isle of Man being sworn make Oath and say as follows:-

1. I am Head of Supervision of the Financial Supervision Commission ("**the Commission**"), one of the above styled Petitioners in this matter. I am duly authorised to make and swear this affidavit on behalf of the Commission.

2. This Affidavit is a composite response to the Treasury Affidavits namely the Second and Third Affidavits of David Lovett ("**the Second Lovett Affidavit**" & "**Third Lovett Affidavit**" respectively) and the Second Affidavit of the Treasury Minister the Hon Allan Bell MHK ("**the Second Bell Affidavit**").
3. As the Court is aware due to revised timetabling the Commission has had very little time to formulate a response and agree the contents of my affidavit at Board level. I therefore file only a brief affidavit to ensure that the current position of the Commission is known in advance of the hearing listed for the 29th January 2009.
4. I can confirm that I have considered this my response with the Board of the Commission and I am duly authorised by the Board to respond to the Treasury's proposals in the following manner.
5. The Commission in particular notes that, subject to the agreement of Tynwald, the Government is prepared to support the proposal of the Scheme of Arrangement referred to in more detail in the Third Lovett Affidavit (the "**SoA**"), Treasury has also confirmed it considers the SoA to be in the best interests of the creditors of Kaupthing Singer and Friedlander (Isle of Man) Limited ("**KSF IOM**").
6. In relation to the business to be conducted at the Hearing listed for the 29th January 2009, the Commission as Joint Petitioner notes that an adjournment is sought by Treasury as creditor to allow the proposed SoA to be progressed in the manner and within the timetable set out in the Third Lovett Affidavit. In the event of further delay or difficulties it is proposed the Court will be notified immediately. The Commission further notes KSF IOM is still unable to pay its debts as they fall due and therefore the question of whether a further adjournment should be

granted and if so for how long remains one for the Court. The Commission understands that primarily the Court would take into account the views of creditors as it is the creditors who would be directly affected by any further adjournments for whatever duration.

7. The Commission acknowledges the work undertaken by AlixPartners and others on behalf of The Treasury in relation to attempting to formulate the framework for a SoA which is designed to provide the benefits more particularly set out in the Third Lovett Affidavit. The Third Lovett Affidavit also sets out the potential timetable albeit it is recognised that there are some uncertainties in the proposed timeline due to the fact that a number of steps need to be taken before the SoA can be progressed to fruition. In particular there are a number of outstanding legal issues which need to be resolved and documents which need to be prepared as quickly as possible and the Commission confirm that it will assist in this process so far as it is requested and able to do so (in the event the Court allows an adjournment).

8. It may be of assistance to creditors to expand upon a matter referred to at page 13 of the exhibits to the Third Lovett Affidavit. It is mentioned therein that DCS/Government payout is unlikely to be made until November 2009. The comparative figures produced in the remainder of the exhibit are of course based upon this estimate. The Commission have identified this date on the basis of the current known funding position. The Commission note that there remains a possibility that DCS payments might be made more quickly but this is dependent upon receipt of money which can properly be distributed before the funding "sunset clause" of the 23 October 2009 referred to at Regulation 12A of the Compensation of Depositors Regulations 2008.

9. The Commission also notes the use of the word "promote" at paragraph 25 of the Third Lovett Affidavit. The Commission wishes to make it clear that it does not consider it would be appropriate to "promote" a SoA as it has already been appointed as the Scheme Manager for the DCS and as such it may well find itself in a position of conflict if it were to "promote" a SoA. This does not of course detract from the Commission's ability to assist and support a SoA.

10. The Commission believes that the ultimate appropriateness of the SoA is dependent upon the following non exclusive matters:
 - a) The creditors confirm their initial support for the progression of a SoA at this stage;
 - b) Timely progression of a SoA at least in accordance with the proposed timetable;
 - c) Progression of the SoA is in itself reliant upon satisfactory resolution of legal issues; Tynwald approval; banks' agreement to fund and subsequent support from the Commission and Liquidators Provisional;
 - d) Confirmation creditor support continues;
 - e) Approval by the Court.

11. In the meantime the Commission confirms it has no objection to the proposals and awaits the considered views of the creditors – which are vitally important at this adjournment stage. Subject to satisfactorily addressing the points referred to above and considering the detail of all documents that need to be produced (including the important proposed Tynwald resolution referred to in the Second Bell Affidavit) the Commission confirms that it would support a SoA which


Government and creditors consider to be in the best interests of the creditors of KSF IOM.

12. Subject to the matters referred to above the Commission supports the request for a further adjournment for whatever time is considered most appropriate up to the 60 days requested.

TAKEN and SWORN at Douglas, Isle of Man.

This 27th day of January 2009 :

Before me: :



Commissioner for Oaths/Advocate :

Janice Rhian Turnbull
Advocate, Commissioner for
Oaths & Notary Public
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SECOND AFFIDAVIT OF

MICHAEL PATRICK WELDON

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Ref: JJW/tc/D0014-008