

Serial No. CP2008/94

**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**

**AFFIDAVIT OF DAVID C LOVETT**

I DAVID C LOVETT of Alix Partners Limited, North Audley Street, London being sworn make Oath and say as follows:

1. I am part of the professional team at the London office of Alix Partners Limited ("Alix Partners") and am authorised by Alix Partners to make this Affidavit. Alix Partners is a global business advisory firm offering comprehensive services to improve corporate performance, execute corporate

turnarounds, and provide litigation consulting and forensic account services. The Firm's speciality is urgent, high-impact situations when results really matter. It was the recipient of a record four awards from the Turnaround Management Association in 2008. The firm has more than 800 professionals in 13 offices across North America, Europe and Asia.

2. Where the statements contained within this Affidavit are within my own knowledge they are true. Where the statements are derived from information given to me I state the source of that information and the statements are true to the best of my knowledge, information and belief. Where I comment on the actions and intentions of the Isle of Man Treasury I have the authority of the Treasury Minister so to do.
3. There is now produced and shown to me a document marked DCL1 which is my CV taken from the Alix Partners website and from which I hope it will be accepted that I have considerable experience in the restructuring of businesses. I am the joint author of "Corporate Turnaround" published in 1999 and "Leading Corporate Turnaround" published in 2005.
4. Alix Partners has been retained by the Isle of Man Treasury to assess the situation pertaining to Kaupthing Singer & Friedlander (Isle of Man) Limited ("KSFIOM") and the impact of the appointment of a provisional liquidator ("PL") on 9<sup>th</sup> October 2008. The Petition appointing a PL was called in Court on 24<sup>th</sup> October 2008 and adjourned for further consideration to a Court to be held on 27<sup>th</sup> November 2008.
5. Treasury has appointed Alix Partners particularly to investigate alternative options to a traditional liquidation. Any liquidation will be governed by the provisions of the Companies Act 1931 and the Rules made thereunder in 1934. Depositors can expect to receive:

- 1) Such dividend as the Liquidator may be able to pay after realisation of assets and;
  - 2) Where eligible, compensation funded by the Treasury under the Depositors Compensation Scheme ("DCS").
6. Bank liquidations take time and are expensive. Once the Court makes a Winding Up Order the DCS process will be triggered. It is unusual, if possible at all, for a Winding Up Order once made to be reversed.
7. Alix Partners has been working with Treasury officials and advisers to identify an alternative plan for KSFION with a view to achieving the following objectives:
- 1) Preserving part of KSFION as a going concern and thereby enhancing the value for depositors;
  - 2) Orderly and timely realisation of KSFION assets in the ordinary course;
  - 3) Fast-tracking claims through a single channel;
  - 4) Expediting payments to depositors;
  - 5) Supplementing KSFION recoveries with Treasury and/or third party funds to provide compensation greater and sooner than would be available under the DCS;
  - 6) Possibly guaranteeing a minimum dividend or payout to depositors over and above the amount the majority would achieve on a straight liquidation even with a DCS award.

8. Several potential routes have been identified as worthy of further investigation and consideration.
  - 1) A rescue or sale of KSFIOM as it stands. This may well provide a quick solution to part of the problem but it should be remembered that any buyer is going to drive a very hard bargain and there will undoubtedly be a shortfall or gap on the amount paid and the amount needed to pay creditors.
  - 2) A salvage by way of a restructuring and recapitalisation to manage the gap referred to above, of part of the bank as an operational business. This would have to be led by Treasury and would be structured so as to guarantee depositors a minimum return of an amount much in excess (for most depositors) of the DCS. This will not be a practical solution in a traditional winding up scenario.
  - 3) A restructuring plan which combines KSFIOM recoveries with third party funding to expedite payments.
  - 4) A traditional liquidation which would trigger the DCS scheme aimed at the smaller depositors but which would be unattractive to the larger depositors.
9. My discussions with Treasury officials and the Minister have revealed an acute recognition and will on the part of Treasury for the need to (1) do more for the depositors than a traditional liquidation coupled with the DCS will be likely to achieve (2) streamline the claims process (3) guarantee a minimum payment in the pound to depositors and (4) mitigate, so far as possible, the damage to the reputation of the Islands Finance Sector that the KSFIOM situation has caused. These objectives can best be achieved by showing that Treasury will do all that is possible to mitigate the adverse effects of the KSFIOM situation.

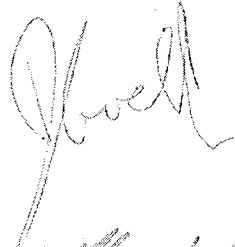
10. What all of this needs however is further detailed consideration such that the best plan can be conceived and implemented in the shortest time. My team has estimated that they need a further 60 days in order to develop and implement a plan that will meet with the approval of the Court and the majority of creditors.
11. If a restructuring plan can be put in place then I am confident that depositors will be better off than if the Court simply makes a traditional Winding Up Order. And in particular there is a real likelihood that depositors will receive an earlier payment than would be the case if the DCS were to be activated. I am advised that any of the options considered above other than winding up could be implemented by use of a scheme authorised by Section 152 of the Companies Act 1931. If such a scheme is approved by the Court then it would have to be voted on by the creditors before being implemented. This would mean that the creditors will have a direct and important voice in any plan that is recommended by Treasury.
12. Treasury is very conscious that the request to the Court for an adjournment of 60 days may be perceived as an unnecessary delay to the liquidation and DCS process and that meantime some depositors will suffer hardship. Hopefully the long-term benefits of a structured plan will outweigh the attraction of immediate action but in any event and in recognition of the hardship that may be caused to some depositors Treasury is prepared to recommend to Tynwald that a scheme be implemented to enable a payment on account to be made to depositors as soon as possible. Treasury cannot pre-judge what Tynwald will elect to do with such a recommendation but has good grounds for believing that it will be approved and that an early payment will be possible. Treasury is prepared to work with the liquidator provisional in agreeing how any such scheme can be most effectively implemented.

13. Finally I wish to say that I have given as much detail of the Treasury discussions as I can at this stage. There are still many uncertainties and the situation is in a state of flux. I do not wish to give the impression either that any particular plan will be achieved in the end. Promises are just not possible and I do not wish to make any categorical statement that a particular course will be followed when it may turn out later to be impractical or ill-advised. What I am sure about however is that a 60 day adjournment for these possibilities to be explored will not be time wasted and if an adjournment is not granted and a Winding Up Order is made on 27<sup>th</sup> November 2008 we may never know if a more satisfactory solution could, with patience, have been achieved.

SWORN in London :

This <sup>25<sup>th</sup></sup> day of November 2008 :

Before me: :



*Matthew Williams*  
MATTHEW WILLIAMS

A Commissioner for Oaths/Solicitor :

SOLICITOR

FLADGATE LLP  
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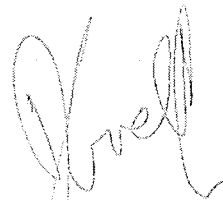
This is the Exhibit marked "DCL1" referred to in the Affidavit of David C Lovett sworn on  
the 25<sup>th</sup> day of November 2008

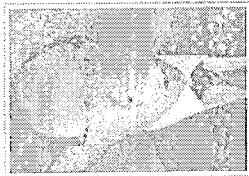
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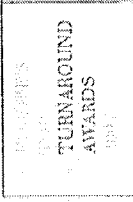
  
DAVID C LOVETT  
SOLICITOR



**David C. Lovett**  
 Managing Director  
 London  
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**Professional  
 Highlights**

David is a deeply experienced restructuring professional having worked for companies facing critical challenges during the last thirty years. Prior to joining AxiPartners he was a partner with Andersen for eighteen years where he led the Global Turnaround practice and served as CFO in the UK.



**Client  
 Experience**

Throughout his career David has led crisis management, recovery and restructuring assignments across many industries and geographies

- Acted as Chief Restructuring Officer to listed global offshore contracting company
- Acted as Lead Turnaround and Restructuring Advisor to UK's leading listed kitchen manufacturing, wholesale and retail company
- Advised UK's and Sweden's largest co-operative organisations on their reorganisations
- Assisted private equity houses on numerous occasions where enterprise value breaks above their interest in portfolio companies
- Worked in restructuring and reorganisation of major professional service organisations
- Worked with management and stakeholders to achieve organisational, financial and structural change to troubled enterprises

**Affiliations**

David is the joint author of "Corporate Turnaround" published in 1999 and "Leading Corporate Turnaround", published in 2005, and regularly speaks at professional conferences. David holds a BA (Hons) in Business, is a Fellow of the Institute of Chartered Accountants and a Fellow of the Institute for Turnaround.



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AFFIDAVIT of DAVID C LOVETT

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