

**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**

**FOURTH AFFIDAVIT OF DAVID C. LOVETT**

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

2. I am the same David C. Lovett who has previously sworn three affidavits in this matter. As before, I am authorised by AlixPartners to make this Affidavit.

3. 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.
4. I refer to my First, Second and Third Affidavits sworn herein, by way of background. Where defined terms were used in my previous Affidavits, they shall be adopted and used herein.

### **Privilege & Confidentiality**

5. To the extent that reference is made herein to documents not exhibited hereto (or information derived from such documents), those documents (or information) are either the subject of legal professional privilege (which is not intended to be waived hereby) or confidentiality obligations imposed upon AlixPartners by virtue of a Non-disclosure Agreement entered into with the Liquidators Provisional. Nothing contained herein, and in particular (but without limitation), the fact that such documents (or information) are referred to herein is intended to waive privilege or breach such confidentiality obligations.
6. To the extent that reference is made herein to advice provided to Treasury, such advice remains confidential and privileged and nothing contained herein is intended to waive such privilege or confidentiality.
7. There is now produced and shown to me marked "DCL2" a paginated bundle of documents to which I shall refer herein. Save where otherwise indicated, references to pages are to pages in that bundle.

8. I swore my Third Affidavit herein on 26 January 2009, for the purpose of updating the Court and creditors with regard to the matters identified in paragraph 19 of my Second Affidavit and to provide further detail as regards the proposed scheme of arrangement ("the Scheme of Arrangement").
  
9. At the hearing of the adjourned winding up Petition herein on 29 January 2009, Deputy Deemster Corlett identified in his judgment various issues which he wished to be addressed before the Court reconvenes on 19 February 2009 to decide whether the Scheme of Arrangement should be allowed to proceed (and the necessary further adjournment of the winding up Petition be granted) or the Court should proceed to wind KSFIOM up. Those issues were as follows:
  - (a) How, if at all, potential claims against third parties (for example, regulators, directors or other governments) may be preserved and, indeed, conducted in the event that KSFIOM enters into a Scheme of Arrangement rather than is wound up<sup>1</sup>?
  
  - (b) What issues of class composition would arise and whether it would be necessary or appropriate (as suggested by Mr Simpson in his Second Affidavit) to canvass creditor views on class composition before finalising the Scheme of Arrangement?

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<sup>1</sup> It should be noted that at the hearing on 29 January 2009, it was conceded by the Attorney General on behalf of The Treasury that the proposed Scheme of Arrangement would no longer result in the immediate discharge of the Order appointing the Liquidators Provisional and dismissal of the winding up Petition (as suggested at points 13 and 14 on page 2 of exhibit "DCL1"); the petition would simply be adjourned *sine die* and the Liquidators Provisional would remain in office (whilst simultaneously acting as Scheme Administrators), able to bring claims on behalf of KSFIOM in that capacity, if they consider it in the best interests of the body of creditors of KSFIOPM so to do.

- (c) Whether a parallel process needs to be undertaken before the English Courts to create an effective moratorium?
  - (d) Whether, given the geographic spread and difficulty in contacting some creditors, it may be advisable to give more than one month's notice of any scheme meeting?
  - (e) Whether there is any disadvantage, if the winding up Order is not made by 31 March 2009, being the financial year end of the DCS?
  - (f) Whether there is any difference between the weight which would be accorded to the wishes of the creditors in a winding up petition as opposed to a scheme of arrangement, and, in particular, whether the voting mechanism prescribed by s.152 Companies Act 1931 can result in small creditors simply being out voted?
10. In addition, I note the concerns expressed in paragraphs 11 and 12 of the First affidavit of John Wright sworn herein regarding the on-going involvement of Kaupthing hf in this matter.
11. I am advised by Gough & Co., advocates for The Treasury, that immediately following the last hearing, The Treasury, at the recommendation of Gough & Co., instructed the well respected City solicitors firm of Herbert Smith and through them, Mr Gabriel Moss QC of 3-4 South Square, Grays Inn, London, one of the world's leading experts on schemes of arrangement, to assist in this matter. I understand Mr Moss has sworn an affidavit herein addressing issues (a), (b), (c) and (f) in paragraph 9 above and that referred to in paragraph 10 above.

12. In response to issue (d) in paragraph 9 above, I am advised by the Liquidators Provisional that KSFIOM's depositor base can be broadly split between Isle of Man residents (21.9%), UK residents (22.1%), other EU residents (14.3%), others (41.7%). In such circumstances, I understand from the Treasury and the Liquidators Provisional that it would be proposed that, if leave to convene the scheme meetings were granted, the meetings would be widely advertised in the international press (International Herald Tribune, International Edition of the Financial Times etc) and in the national press in the Isle of Man and UK, as well as on the websites of the FSC and the Liquidators Provisional. In addition, notices would be sent to the correspondence postal and email address of each depositor as held in KSFIOM's internal records. Based upon my own past experience, I believe that in such circumstances, four weeks' notice should be sufficient, but of course, that is entirely a matter for the Court.

13. I understand that the Treasury Minister, Mr Allan Bell MHK, has sworn a further affidavit addressing issue (e) in paragraph 9 above.

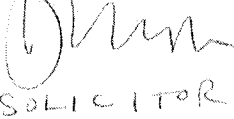
14. Conscious of the need to ensure that the timetable exhibited to my previous affidavit is adhered to, whilst the aforementioned issues are addressed for the Court, AlixPartners together with The Treasury's solicitors and advocates have continued their work in developing the detail of the proposed Scheme of Arrangement. At exhibit "DCL2" can be found the current draft framework document presently under discussion between The Treasury and the Liquidators Provisional, upon which Mr Moss' opinion is based. The broad financial aspects of the proposed Scheme of Arrangement (as described in my Third Affidavit) remain unchanged. These discussions are on-going and it is hoped that the Liquidators Provisional will support the Treasury proposal, so that a jointly proposed scheme of arrangement may be put to the creditors in the near future.

15. The Treasury is proposing to provide significant funds in this matter to prioritise payments to depositors at no additional finance cost to the depositors. Accordingly, given the commitment of the Treasury and the risk associated with the Scheme, the Scheme of Arrangement will be expected to contain provision to assist the Treasury in the management of such risk and to discharge its duties to the Isle of Man taxpayer.

SWORN at 25 North Row :  
London W1  
This 13<sup>th</sup> day of February 2009 :



Before me:



SOLICITOR

*AW* A Commissioner for Oaths :

FLADGATE LLP  
25 NORTH ROW  
LONDON W1K 6DJ  
Tel: 020 7323 4747

Serial No. 2008/94

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FOURTH AFFIDAVIT OF DAVID C LOVETT

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This is the exhibit marked "DCL2" and referred to in the Fourth Affidavit of DAVID C LOVETT sworn  
this 13<sup>th</sup> day of February 2009 before me:

 Solichai

FLADGATE LLP  
25 NORTH ROW  
LONDON W1K 6DJ  
Tel: 020 7323 4747

# KAUPTHING SINGER AND FRIEDLANDER (ISLE OF MAN) LIMITED

## PROPOSED SCHEME OF ARRANGEMENT

### SUMMARY OF THE PURPOSE OF THE SCHEME AND KEY PROVISIONS

*This document has been prepared by the Isle of Man Treasury along with its financial and legal advisers and has been and continues to be discussed with the Liquidators Provisional. The following is a summary of indicative terms and conditions. It is not meant to be all-inclusive of the terms and conditions of the Scheme, nor is it intended to be the explanatory statement to the Scheme. Those documents will be prepared if the Court supports a further adjournment of the application to wind-up the Company*

#### 1. EXECUTIVE SUMMARY

##### 1.1. What is a Scheme of arrangement

- a) A scheme of arrangement of the kind which is being proposed by the IoM Treasury for Kaupthing Singer & Friedlander (Isle of Man) Limited (the “**Company**”) is an arrangement (provided for by Section 152 of the Companies Act 1931) between a company and its creditors, or any class of them (the “Scheme”).
- b) A scheme of arrangement will become binding on the Company and all of its creditors, or any class of its creditors, if:
  - i. A majority in number representing 75% in value of the creditors or class of creditors present and voting, either in person or by proxy, at a meeting of creditors ordered to be summoned by the Court, agrees to the arrangement; and
  - ii. The arrangement is sanctioned by order of the Court.
- c) It will be necessary for the Liquidators Provisional to seek an order of the Court extending their powers to enable them to jointly propose a Scheme with the IoM Treasury.

##### 1.2. What is the purpose of the proposed Scheme

- a) Although the Company is insolvent, it is expected to have sufficient assets to pay a proportion of the claims against it. The Company is unlikely to pay in full all claims against it.
- b) The Company’s creditors broadly split into two types:
  - i. Depositors (“**Protected Depositors**”) who have the ability to bring a claim under the Compensation of Depositors Regulations 2008 (the “**DCS Regulations**”); and
  - ii. General unsecured creditors who cannot bring a claim under the DCS Regulations.
- c) The Scheme is proposed to offer all creditors an alternative to the conventional liquidation of the Company.
- d) The principal purposes of the proposed Scheme are:
  - i. To simplify the process of proving for claims and avoid the need for Protected Depositors (being the majority of creditors in number) having to make a separate



- application for compensation under the DCS Regulations as well as proving for their debts in the liquidation of the Company;
- ii. to enable assured lump sum payments at fixed dates to be paid which will ensure that all Protected Depositors receive an amount at least equal to their compensation entitlement under the DCS Regulations, within a quicker timescale ;
  - iii. To ensure that once all Protected Depositors have received the minimum payment referred to in sub-paragraph ii. above, all creditors entitled to receive payment thereafter in accordance with the terms of the Scheme receive distributions sooner than they would have otherwise received had payment been made under the DCS Regulations or a liquidation, rather than the Scheme. The right to receive accelerated distributions (in priority to repayment of monies provided by the Treasury) will continue until all of the creditors entitled to receive such payment in accordance with the Scheme have received from the Scheme payment totalling 60% of their claim. Creditors shall not be limited to a payment of 60% of their claims but may receive more depending on asset realisations.
  - iv. To ensure that the liabilities of the Company are ascertained in the same manner that would apply if the Company was in liquidation and to provide an alternative and simple dispute mechanism to settle such claims in a cost effective manner as an alternative to the formal court process of liquidation. The alternative dispute mechanism should be simpler and less expensive for creditors;
  - v. To ensure that the assets of the Company (including all claims against third parties) are not affected by the Scheme and can continue to be realised by the Company;
  - vi. To establish a stay of proceedings against the Company and its assets;
  - vii. To ensure that rights of set-off will apply in accordance with the terms of the Scheme;
  - viii. To ensure that all assets realised are distributed rateably to Scheme Creditors in accordance with their established claims.
- e) The Scheme will ultimately result in a financial outcome for creditors no worse than would be achieved if the Company was to be placed into liquidation. However, it is anticipated that creditors will receive distributions more quickly than would be the case in a liquidation.
  - f) All payments out of the Company's assets will be made on a pari passu basis to all creditors (irrespective of whether they are depositors or not) as would be the case if the company was in liquidation.
  - g) All Protected Depositors will receive assured lump sum payments from funds provided by the Treasury on pre-determined dates.

### **1.3. Who will vote on the Scheme**

- a) Anyone who was a creditor of the Company on 8<sup>th</sup> October 2008.

- b) To reflect the fact that Protected Depositors currently have different rights to those creditors who are not Protected Depositors (in that Protected Depositors may make a claim pursuant to the DCS Regulations if the Company goes into liquidation) there will be two Scheme meetings with Protected Creditors forming a class for voting purposes at one Scheme meeting and all other creditors forming a class for voting purposes at the second Scheme meeting. In accordance with section 152 of the Companies Act 1931, the Scheme must be approved by a majority in number representing three-fourths in value of each class of creditor present and voting either by person or by proxy before an application can be made for Court sanction.

#### **1.4. Provisional liquidation**

- a) The Company will remain in Liquidation Provisional during the term of the Scheme.
- b) If, for any reason, the Company was liquidated, the terms of the Scheme would continue to apply to the Company's assets.

#### **2. Moratorium**

- 2.1. Whilst the Scheme is in force and following its termination if that termination is as a result of all of the Scheme assets being fully distributed, no steps or proceedings will be capable of being brought or continued by a Scheme Creditor against the Company or its property (whether by way of demand, legal proceedings, alternative determination process or otherwise) either:
  - a) For the purpose of obtaining payment of a Scheme liability (being any liability due to a Scheme Creditor); or
  - b) For the purpose of placing the Company into liquidation (or any other insolvency process).
- 2.2. The moratorium referred to in paragraph 2.1 will only be lifted with the consent of the Scheme supervisor.

#### **3. Submission of Scheme Claims**

- 3.1. Distributions under the Scheme will only be payable on Scheme claims to the extent that such Scheme claims are allowed claims.
- 3.2. Allowed claims will be determined by the Scheme supervisor in the same manner as proofs of debt are determined in a liquidation. Any claim which is disputed by a creditor or the Scheme supervisor will be determined pursuant to an alternative dispute process provided for in the Scheme.

#### **4. Currency of payment**

- 4.1. All Scheme claims will be paid in sterling. Any claim denominated in any other currency shall be paid in sterling. All non-sterling claims will be converted into sterling at the mid-market rate specified in the Financial Times (or such other source as the Liquidators Provisional deem appropriate) on 9<sup>th</sup> October 2008.

## 5. Right to interest

5.1. Each Scheme claim will carry an entitlement to interest up to and including 8<sup>th</sup> October 2008 at the applicable contract rate or at the rate which is otherwise payable in accordance with the law.

5.2. No distribution shall be made in respect of interest accruing from 9<sup>th</sup> October 2008 unless all allowed claims in the Scheme have been paid in full. If all such claims have been paid in full then:

- a) Interest shall be treated as having accrued at the higher of the judgment rate and the applicable contract rate; and
- b) Any such interest will be paid *pari passu* to the original Scheme claim.

## 6. Set-Off

6.1. Where before 9<sup>th</sup> October 2008 (being the date of appointment of the Liquidators Provisional), there have been mutual credits, mutual debts or other mutual dealings between the Company and any Scheme Creditor, an account shall be taken of what is due from each party to the other in respect of such mutual dealings and the amounts due from one party shall be set off against the amounts due from the other. Only the net balance (if any) payable by the Bank will be treated as a Scheme claim.

6.2. Where any such amounts are denominated in different currencies (other than sterling) they shall first be converted to sterling at the mid-market rate specified in the Financial Times (or such other source as the Liquidators Provisional deem appropriate) on 9<sup>th</sup> October 2008.

## 7. General Methodology applicable to all distributions

7.1. The assets of the Company (and/or the proceeds of realisation of such assets) will be held by the Scheme Supervisor (on trust for Scheme Creditors) to be applied in accordance with the terms of the Scheme.

7.2. Whenever the Scheme Supervisor determines that he has sufficient funds in his hands for that purpose he shall, subject to the retention of such sums as may be necessary to meet costs, prior ranking claims, preferential claims and disputed claims, declare and distribute dividends among the creditors in respect of the allowed claims as described below. All unsecured scheme claims, other than scheme claims referable to preferential debts, shall rank equally between themselves for payment in accordance with the terms of the scheme and, after the preferential debts, shall be paid in full unless the assets of the Company held on trust by the Scheme Supervisor are insufficient for meeting them, in which case they abate in equal proportions between themselves. Any such distribution from the Company's assets (which shall not be treated as including amounts paid to the Company to enable it to pay the Top-Up Payment) shall be referred to as "***pari passu* distributions**".

7.3. The Liquidators Provisional and the Scheme Supervisor in consultation with the creditors' committee will agree the timing and quantum for each distribution. However, (unless an earlier

timetable is agreed with the Treasury) the Scheme will specifically provide in terms of timing (but with no guarantee being given as to quantum) for:

- a) The first distribution to occur within three months of the date of commencement of the Scheme;
- b) The second distribution to occur on the first anniversary of the date of commencement of the Scheme; and
- c) A third distribution to occur on the second anniversary of the date of commencement of the Scheme.

7.4. The Scheme shall provide for a Top-Up Payment to be made by the IoM Treasury ("**Treasury**").

The only Scheme Creditors eligible to receive Top-Up Payments are Protected Depositors.

7.5. Each Scheme Creditor who is entitled to receive a Top-Up Payment in accordance with the terms of the Scheme shall be treated by the scheme as having assigned its allowed claim to the Treasury. The consideration for such assignment shall be treated by the scheme as:

- a) That Creditors Top-Up Payment; plus
- b) The other amounts irrevocably directed by the Treasury to be paid to that Scheme Creditor in accordance with the terms of the scheme – details of those payment directions are set out below.

7.6. Each Protected Depositor who assigns a scheme claim to the Treasury shall be referred to as a "**Protected Scheme Creditor**" and each claim so assigned shall be referred to as a "**Protected Scheme Claim**".

7.7. The Top-Up Payment from the IoM Treasury will be made available to the Company for the benefit of every Scheme Creditor who is a Protected Depositor on the following basis:

- a) The Top-Up Payment shall not exceed in aggregate (which shall include for these purposes any payment made under the DCS Regulations or the Early Payment Schemes referred to below) £50,000 in the case of an individual or £20,000 in any other case (or, in each case, the relevant Scheme Creditor's claim if lower);
- b) The Top Up payment will be paid in three tranches:
  - i. If, on the first distribution date, the Scheme Creditor receives by way of pari passu distribution of the Company's assets on its allowed claim an amount which is less than (A) payment in full of its allowed claim, and (B) £20,000 in the case of an individual (or £8,000 in any other case), then the Treasury shall pay to the Scheme Company for the benefit of that Scheme Creditor an amount such that the total amount received by that Scheme Creditor on the first distribution date shall, when aggregated with the pari passu distribution payable to the Scheme Creditor on the first distribution date, be equal to the lower of (C) that Scheme Creditor's allowed claim and (D) £20,000 in the case of an individual (or £8,000 in any other case).

- ii. If, on the second distribution date, the Scheme Creditor receives by way of pari passu distribution of the Company's assets an amount which, when aggregated with its first distribution and any Top-Up Payment previously received, is less than (A) payment in full of its allowed claim, and (B) £35,000 in the case of an individual (or £14,000 in any other case), then the Treasury shall pay to the Company for the benefit of that Scheme Creditor on the second distribution date a Top-Up Payment which shall, when aggregated with (C) the pari passu distribution received by the Scheme Creditor on the first distribution date and the second distribution date and (D) any Top-Up Amount previously received, be equal to the lower of (E) that Scheme Creditors allowed claim and (F) £35,000 in the case of an individual (or £14,000 in any other case).
  - iii. If, on the third distribution date, the Scheme Creditor receives by way of pari passu distribution of the Company's assets an amount which, when aggregated with its first and second distribution and any Top-Up Payment previously received, is less than (A) payment in full of its allowed claim, and (B) £50,000 in the case of an individual (or £20,000 in any other case), then the Treasury shall pay to the Company for the benefit of that Scheme Creditor on the third distribution date a Top-Up Payment which shall, when aggregated with (C) the pari passu distribution received by the Scheme Creditor on the first, second and third distribution dates and (D) any Top-Up Amount previously received, be equal to the lower of (E) that Scheme Creditors allowed claim and (F) £50,000 in the case of an individual (or £20,000 in any other case).
- c) For the avoidance of doubt, the Top-Up Payment is a payment by the Treasury to the Company for the benefit of the Scheme Creditor (not a payment made by the Company to the Scheme Creditor out of its general assets available for distribution) and it shall not be treated as reducing the allowed claim of the Scheme Creditor. The precise nature of the Top-Up Payment (i.e. whether it is paid by way of quietclose loan to the Company or on a basis whereby the Company holds the payment as trustee or agent for the Treasury) will need to be agreed with the Liquidators Provisional as part of the detailed drafting mechanics of the Scheme. The payment mechanism utilised will ensure tax neutrality. No matter what mechanism is used, the economic effect will be identical.

7.8. In relation to each Protected Scheme Claim, the Treasury shall, in accordance with the terms of the Scheme, irrevocably direct that the following payments shall be made by the Scheme Supervisor in relation to each Protected Scheme Claim:

- a) until such time as the Protected Scheme Creditor has received in aggregate the lower of:
  - i. the amount of its Protected Scheme Claim; and

- ii. £50,000 in the case of a Protected Scheme Creditor who is an individual or £20,000 in any other case
- to pay to that Protected Scheme Creditor:
- iii. any pari passu distribution on the date it is made which would otherwise be paid to the Treasury in respect of that Protected Scheme Claim (notwithstanding the assignment); and
  - iv. the Top-Up Amount payable in relation to that Protected Scheme Claim. The Top-Up Amount shall only be payable as described in paragraph 7.7 above.
- b) As and when the Protected Scheme Creditor has received the lower of:
- i. The amount of its Protected Scheme Claim; or
  - ii. £50,000 in the case of an individual or £20,000 in any other case
- then the Scheme Supervisor shall notify that Protected Creditor of its "**Individual Percentage Rate of Return**" or "**IPRR**" being the amount received by it in accordance with the Scheme (being the amount received by reference to the pari passu distributions received and Top-Up payment received) as at that date divided by the value of its Protected Scheme Claim with the result expressed as a percentage.
- c) No further payment shall be made to that Protected Scheme Creditor from any pari passu distribution which the Treasury is entitled to receive in respect of the Protected Scheme Claim until the pari passu distribution for all Scheme Creditors with allowed claims is at least equal to the IPRR of that Protected Scheme Creditor (that period being referred to as the "**Foregone Period**"). The Treasury shall direct in the Scheme that the amount of any distributions which it would otherwise be entitled to receive (the "**Foregone Distribution**") during the Foregone Period shall be advanced by the Company to the other Scheme Creditors with allowed claims (or reserved for creditors with disputed scheme claims), such payment being made pari passu to the amount of those claims.
- d) Once the pari passu distribution for all Scheme Creditors with allowed claims is equal to the IPRR for the Protected Scheme Creditor then the Treasury shall direct that any pari passu distribution which it is entitled to receive in respect of that Protected Scheme Claim shall be paid to the Protected Scheme Creditor. This payment direction shall continue until the pari passu distribution of all Scheme Creditors is 60%.
- e) Once the pari passu distribution for all Scheme Creditors with allowed claims is 60% the Company shall pay to the Treasury an amount equal to the Foregone Distribution by way of a catch-up distribution which shall be made solely to the Treasury.
- f) Thereafter, the Treasury shall direct as follows in relation to all pari passu distributions payable in respect of the Protected Scheme Claim:
- i. Until such time as the Treasury has received in respect of that Protected Scheme Claim payment which, when aggregated with the payment under sub-paragraph (c), is

equal to the Top-Up Amount paid to that Scheme Creditor, the pari passu distributions from the Company shall be paid to the Treasury; thereafter;

- ii. pari passu distributions paid by the Company shall be paid to the Protected Scheme Creditor.

7.9. A Scheme Creditor who is not a Protected Scheme Creditor shall not assign its claim to the Treasury and shall not be entitled to receive the Top-Up Payment. Any such creditor shall continue to receive pari passu distributions as and when distributions are made to other Scheme Creditors.

## **8. Specific Provisions relevant to distributions**

8.1. All distributions will be paid in the following order of priority:

- a) All post insolvency costs of the Liquidators Provisional and all Scheme costs of the Scheme Supervisor;
- b) Preferential liabilities (if any); and
- c) Unsecured allowed claims.

8.2. In relation to disputed claims, a reserve account shall be established. On each distribution date there shall be deposited into the reserve account an amount equal to the distribution which would have been paid on the disputed claim had that disputed claim been an allowed claim. Once a disputed claim becomes an allowed claim the Scheme supervisor shall, as soon as reasonably practicable make a catch-up distribution to that Scheme Creditor from amounts standing to the credit of the reserve account. Excess amounts standing to the credit of the reserve account may be removed from that account and added to the general Scheme funds.

8.3. Specific provision will be made for unclaimed distributions in order to enable the amount of any unclaimed distribution to be returned to the Company after one year from the date of the final distribution of a dividend. Such funds will then be available for distribution to the creditors generally.

8.4. Specific provisions will deal with mechanics for drawing cheques etc in order to pay distributions.

8.5. Specific provision will be made to ensure that, as is the case in liquidation, a late proving creditor has the right to receive a catch-up distribution on an allowed claim but no right to disturb past distributions.

## **9. Depositors**

9.1. For the purpose of receiving the Top-Up Payment, a depositor includes any person who was a depositor on 8<sup>th</sup> October 2008 provided such person is not excluded from receiving payment under the DCS Regulations.

9.2. The rights of:

- a) joint account holders,
- b) trust account holders,
- c) a partnership;

- d) account holders with more than one account; and
- e) client accounts

to receive the Top-Up Payment shall be in accordance with the eligibility criteria under the DCS Regulations.

#### **10. The Kaupthing Singer and Friedlander (Isle of Man) Limited Early Payment Schemes (“EPS”)**

11. Pursuant to the terms of the EPS arrangements, any creditor who has received payment thereunder has agreed to assign to the Treasury his rights to the payments he is entitled to receive under the Scheme up to the amount of payment he has received under the EPS. The Kaupthing Singer and Friedlander (Isle of Man) Limited Early Payment (No.2) Scheme is currently under preparation. In accordance with the terms of the EPS, Protected Depositors who receive a payment under the EPS must repay the amount of that payment (the “**Reimbursement Amount**”) to Treasury out of any payments received under the Scheme. The Scheme will provide for the Reimbursement Amount to be withheld from any payment due to the Protected creditor under the Scheme. The amount withheld shall be paid to the Treasury. Payment to the Treasury will constitute a good discharge of (a) the amount due to the creditor under the Scheme and (b) the amount due from the creditor to the Treasury under the EPS.

#### **12. The DCS Regulations**

12.1. From the effective date of the Scheme, each Scheme Creditor will waive its right to receive payment of any amount which may be, or which may become, payable under the DCS Regulations as a result of the insolvency or financial difficulty of the Company.

#### **13. Miscellaneous provisions to be included in the Scheme**

##### **13.1. Assignments**

- a) Scheme claims (after taking in to account any set off) will be assignable.
- b) Any assignment of a Scheme claim will take subject to the terms of the Scheme.

##### **13.2. Creditors’ Committee**

- a) A creditors’ committee will be established.
- b) The Treasury will be represented on the committee.

##### **13.3. Termination of the Scheme**

- a) The Scheme will continue until all assets available for distribution have been distributed.
- b) Prior to the final distribution the Scheme supervisor shall reserve a sufficient amount to wind-up the affairs of the Scheme and the Company.
- c) If the final distribution would result in less than £1 being paid to each creditor, the balance of the cash available to the estate (after reserving for costs) shall be donated to charity.

##### **13.4. Notices**

- a) The Scheme will contain usual provisions for notices

##### **13.5. Governing law**



- a) Isle of Man
- b) The Scheme will contain provisions enabling the Scheme supervisor to seek the direction of the Court at any time.
- c) All parties to submit to the exclusive jurisdiction of the Isle of Man courts.

**Herbert Smith LLP**

**12 February 2009**