

**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 HUMBLE JOINT PETITION of KAUPTHING SINGER &  
FRIEDLANDER (ISLE OF MAN) LIMITED and the FINANCIAL SUPERVISION  
COMMISSION dated 9th October 2008**

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**AFFIDAVIT OF DEAN WADDINGHAM**

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I, **DEAN WADDINGHAM**, of Clerical Medical House, Victoria Road, Douglas, Isle of Man, IM99 1LT **DO SWEAR AND MAKE OATH AND SAY** as follows:

1. I am the managing director of CMI Insurance Company Limited ("**CMI**"), an unsecured creditor of Kaupthing Singer & Friedlander (Isle of Man) Limited (the "**Company**"). I am duly authorised by CMI to make this affidavit on its behalf.
2. The statements contained in this affidavit are within my own knowledge and are true.
3. I have been provided with and have read materials provided including the first, second, third and fourth affidavits of David C Lovett, the first, second and third affidavits of Allan Robert Bell, the affidavit of Gabriel Moss QC and the exhibits to those affidavits.
4. I am of the view that a scheme of arrangement is preferable to a liquidation of the Company, because of the flexibility of a scheme of arrangement and the potentially accelerated timetable for distributions. Nevertheless, CMI has a number of requests and concerns regarding the proposed scheme of arrangement.
5. CMI's first and paramount concern is to ensure that the decision over whether to proceed with a liquidation or a scheme of arrangement is taken with the interests of its policyholders in mind. In particular, CMI is concerned to

ensure that a scheme of arrangement will result in a return to policyholders that is no less favourable than would be the case under a liquidation. While I note the considered comments of Gabriel Moss QC regarding technical legal matters relating to schemes of arrangement, I believe that it would be useful for all creditors if the Treasury or its advisers were to issue a simple, clear statement confirming that a scheme of arrangement will not operate to prejudice the interests of creditors, compared with a liquidation.

6. I attended the hearing on 29<sup>th</sup> January 2009 where the Treasury's advocate suggested that the proposed scheme of arrangement would benefit small depositors. While applauding this initiative, I note that little was said regarding the potential benefits to larger creditors. A scheme of arrangement should not be established purely for the benefit of one particular class of creditors. I would also point out that, although a large corporate creditor, in many cases the amounts owed to CMI are referable to individual policyholders who would, had they made deposits with the Company directly, be classified as ordinary depositors.

I would also consider it appropriate if a specific objective was to be set to pay creditors amounts equal to 20 per cent of their claim after 3 months, 30 per cent (in aggregate) of their claim after 12 months, and 50 per cent (in aggregate) of their claim after 24 months. This would put a corporate depositor owed £100,000 by the Company in at least the same position as an individual owed £50,000.

7. I note, and share the frustrations of other creditors in relation to, the numerous delays that have occurred while the Treasury has created the framework for the proposed scheme. I believe, however, that the adversity caused by these delays could be alleviated if the Treasury were to:
  - (a) ensure that a distribution of approximately 12.5 per cent (less any amounts received pursuant to the Early Payment Scheme(s)) be made immediately; and
  - (b) guarantee that a stated percentage of amounts owed to depositors would be repaid (at as high a level as possible, but no less than 35 per cent).

As regards (a) above, I understand that the provisional liquidators have already realised approximately £140 million. Based on the draft balance sheet exhibited to the affidavit of Michael Simpson dated 21 January 2009, this represents approximately 15 per cent of total deposits. Given that these funds are available, and will be distributed in the event of either a scheme of arrangement being approved or the Company entering into liquidation, I believe that all depositors would benefit from an immediate distribution of 12.5% per cent if the amounts owed to them. This would also mean that the hardship caused by any additional time spent considering the terms of a scheme of arrangement would be mitigated.

As regards (b) above, a guarantee from the government to this effect could potentially enable depositors to obtain advances from commercial lenders against that guarantee, and would therefore lead to their being put in funds earlier than might otherwise be the case, without necessarily causing any additional cashflow burden to be assumed by the taxpayer. I have been advised that, based on information contained in Exhibit "DCL 1" to the third



Affidavit of David C. Lovett dated 26 January 2009; namely the illustrative scheme of arrangement, the then final average estimated recovery for creditors was 65% and that 71% of depositors were expected to be paid out in full. On that basis, it would seem to me that based on its assessment of the position, Treasury should be in a position to provide a guarantee that at least 35 per cent of amounts owed to depositors would ultimately be repaid. I have also been advised that, at the Hearing on 29 January, Treasury representatives advised the Court that *"an estimated 54 per cent of all depositors would be repaid in full within three months of such a scheme taking effect; 65 per cent would be repaid in full within 12 months, and 71 per cent of all depositors would be repaid in full within two years. The remaining 29 per cent would receive between 65 per cent and 100 per cent of their claims depending on assets recovered"*. I have been advised that the wording above in quotation marks appears on the Treasury's website.

8. I also note and support the government's efforts to assist depositors through the Early Payment Schemes. CMI wishes to ensure that larger depositors are not adversely affected by the treatment of smaller depositors under the Early Payment Schemes.
9. I would like to emphasise that the above suggestions are designed to be constructive but that they should not detract from efforts, by the provisional liquidators and others, to achieve a 100 per cent return for all the Company's depositors.

TAKEN AND SWORN at Douglas :

This 18<sup>th</sup> day of February 2009 :



Before me:-



A Commissioner for Oaths



Serial Number: CP 2008/94

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