



THE TREASURY

THE KAUPTHING SINGER AND FRIEDLANDER (ISLE OF MAN) LIMITED EARLY PAYMENT (No. 2) SCHEME

1. Introduction

- (1) The Kaupthing Singer and Friedlander (Isle of Man) Limited Early Payment (No. 2) Scheme ("the Scheme") has been developed by the Isle of Man Treasury ("the Treasury") following Tynwald's approval of the original Early Payment Scheme.
- (2) This Scheme comes into force as follows —
 - (a) except for paragraph 14, when it is approved by Tynwald; and
 - (b) in relation to that paragraph, 30 days after its approval.

2. Interpretation

- (1) In this Scheme —
 - "account holder" means a person —
 - (a) legally and beneficially entitled to the proceeds of the deposit in that account; or
 - (b) legally entitled to proceeds of the deposit in that account as trustees;
 - "DCS" means the Isle of Man Depositors' Compensation Scheme constituted under the Compensation of Depositors Regulations 2008¹;
 - "KSF IOM" means Kaupthing Singer and Friedlander (Isle of Man) Limited;
 - "KSF IOM Early Payment Scheme Guidance Notes" means the notes issued by the Treasury in December 2008 as a guide to the anticipated operation of the original Early Payment Scheme;
 - "the original Early Payment Scheme" means the Kaupthing Singer and Friedlander (Isle of Man) Early Payment Scheme² approved by Tynwald in January 2009;
 - "Provisional Liquidators" means the Provisional Liquidators of KSF IOM Michael Simpson of PriceWaterhouseCoopers of 60 Circular Road, Douglas, IM1 1SA and Peter Spratt of PriceWaterhouseCoopers LLP of Plumtree Court, London EC4A 4HT;
 - "the relevant date" means 9th October 2008;

¹ S.D.826/08, amended by S.D. 844/08.

² G.C. 1/09.

“the Treasury” means the Treasury of the Isle of Man.

- (2) In this Scheme a term which is defined for the purposes of the Financial Services Act 2008 has the same meaning as it has in that Act.
- (3) The Interpretation Act 1976³ applies for the purposes of the construction of this Scheme as it applies to a statutory document.

3. Purpose of this Scheme

- (1) The purpose of this Scheme is to increase the amount of early payments to defined account holders with KSF IOM, following the decision by the Provisional Liquidators to freeze bank accounts with KSF IOM and the approval of the original Early Payment Scheme.
- (2) The aggregate of early payments to defined account holders under —
 - (a) this Scheme and
 - (b) the original Early Payment Schememust not exceed £10,000 in any case.

4. Those eligible for an early payment

The persons eligible for an early payment are those who —

- (a) were depositors with KSF IOM on 8th October 2008;
- (b) are not excluded by paragraph 5; and
- (c) make a claim in accordance with paragraph 6.

5. Persons ineligible

Despite paragraph 4, the following are ineligible to receive an early payment—

- (a) deposit-takers or investment businesses licensed under section 7 of the Financial Services Act 2008⁴;
- (b) deposit-takers authorised, licensed or recognised outside the Isle of Man;
- (c) Kaupthing Holdings (Isle of Man) Limited;
- (d) Kaupthing Singer and Friedlander Limited (a company registered in England and Wales);
- (e) Kaupthing Bank hf (a company incorporated in Iceland);
- (f) a company that on the relevant date was subject to the ultimate control of Kaupthing Bank hf;
- (g) a person who in the opinion of the Treasury has any responsibility for, or may have profited directly or indirectly from, the circumstances giving rise to the presentation to the Court of the petition for the winding-up of KSF IOM;
- (h) a person who was a shareholder, director or controller of KSF IOM on the relevant date;
- (i) a person who in the opinion of the Treasury was acting as a shareholder, director or controller of KSF IOM on the relevant date;
- (j) a person who has failed to provide any information or evidence required under the legislation applicable in the Island in relation to money-laundering;

³ 1976 c. 20.

⁴ 2008 c. 8.

- (k) a person who has a liability to KSF IOM under a lending agreement, which expression includes (but is not limited to) a finance lease, mortgage or credit card agreement;
- (l) a person who holds a deposit with KSF IOM which is used as a security for another transaction.

6. Making a claim

- (1) A claim for an early payment must be made in the form and manner specified in the KSF IOM Early Payments Guidance Notes, and must be made before —
 - (a) 31st March 2010; or
 - (b) such earlier date as the Treasury may prescribe at least 30 days in advance.
- (2) An account holder who makes a claim must also —
 - (a) execute a memorandum of assignment in favour of the Treasury in respect of his or her right, title and interest in a sum equal to the early payment under this Scheme and agreeing that a sum equal to that early payment can be deducted from any payment received —
 - (i) from the DCS;
 - (ii) from the Provisional Liquidators;
 - (iii) from a liquidator of KSF IOM; or
 - (iv) from any other person under a scheme of arrangement or compromise under section 152 of the Companies Act 1931 in connection with the restructuring of KSF IOM;
 - (b) consent to the sharing of information by the Treasury with —
 - (i) the Scheme Manager and Scheme Administrator of the DCS;
 - (ii) the Provisional Liquidators and their servants or agents;
 - (iii) a Liquidator of KSF IOM and the Liquidator's servants or agents;
 - (iv) a scheme administrator under a scheme of arrangement or compromise under section 152 of the Companies Act 1931 for the restructuring of KSF IOM and such person's servants or agents; and
 - (c) consent to the sharing of information by any of the persons referred to in paragraph (b) with the Treasury.

7 Maximum amount

- (1) The maximum amount payable under this Scheme is the lesser of —
 - (a) the aggregate Sterling equivalent of the balance on all deposit accounts of an account holder including accrued interest to close of business on 8th October 2008; and
 - (b) £10,000,but subject to sub-paragraph (2).
- (2) If an eligible person has received a payment under the original Early Payment Scheme the maximum amount payable under sub-paragraph (1) shall be reduced by the amount of any payment received by the eligible person under that scheme.

- (3) Non Sterling deposits will be converted into Sterling —
- (a) at the middle market closing rate of exchange for the currency in question on the relevant date as published in the Financial Times; or
 - (b) where no such rate was published at a rate of exchange determined by the Treasury.

8. Joint account holders

- (1) If an account with KSF IOM was held on the relevant date in the joint names of two or more persons they shall each be entitled to an early payment if they otherwise satisfy the requirements of the scheme.
- (2) In a case to which this paragraph applies, for the purposes of paragraph 7 the balance of any joint account shall be treated as divided equally amongst all the account holders.
- (3) This paragraph does not apply in the case of an account held on trust for more than one beneficiary (as to which see paragraph 9).
- (4) If this paragraph applies joint account holders may elect to receive either —
- (a) a single payment payable to them all, in the name of one or more of the account holders; or
 - (b) a payment per account holder.

9. Trust accounts

If an account with KSF IOM was held on the relevant date on trust by two or more persons as trustees one early payment, computed on the basis of a single deposit, shall be payable under paragraph 7.

10. Account holders with more than one account

If an account holder holds —

- (a) an account in his or her sole name; and
- (b) an account in joint names, one of which is his or hers,

paragraph 7 shall apply to the aggregate of the value of the account referred to in paragraph (a) and the account holder's share of the value of the account in paragraph (b).

11. Insurance bonds

- (1) If an insurer has issued a bond or policy part or all of the proceeds of which were invested on the relevant date with KSF IOM in an account held in the name of the insurer but referable to that bond or policy, one early payment computed on the basis of a single deposit shall be payable in respect of that account under paragraph 7, but subject to sub-paragraph (2).
- (2) For the sake of clarity, in the case of an account held in the name of an insurer but referable to more than one bond or policy as mentioned in sub-paragraph (1) one early payment, computed by reference to the total balance of the account, shall be payable in accordance with paragraph 7.
- (3) In this paragraph "insurer" has the meaning given by section 54 of the Insurance Act 2008.

12. Review of eligibility

- (1) If the Treasury decides that an account holder is ineligible in accordance with paragraph 5, the account holder may apply to the Treasury, on one occasion only, for a review of that decision.
- (2) An application for review must —
 - (a) be made —
 - (i) within 60 days of the notification of the decision to the account holder;
 - (ii) in such form and manner as the Treasury may specify; and
 - (b) state the grounds on which review is requested.

13. Management and operation of the Scheme

- (1) The Treasury shall —
 - (a) administer this Scheme; and
 - (b) cause records to be kept sufficient to disclose the Scheme's financial position.
- (2) From the monies approved by Tynwald for this Scheme the Treasury may —
 - (a) make payments to eligible account holders; and
 - (b) meet any other costs associated with its administration.
- (3) Payments under this Scheme shall be made in Sterling and in such manner as the Treasury thinks fit, subject to sub-paragraph (4).
- (4) In exceptional circumstances the Treasury may determine in a particular case to make a payment in a currency other than Sterling.
- (5) The Treasury shall provide information to Tynwald at such intervals as the Treasury shall determine in respect of payments made under this Scheme and shall lay an annual report before Tynwald.

14. Revocation

- (1) The original Early Payment Scheme is revoked, subject to sub-paragraph (2).
- (2) For the sake of clarity, sub-paragraph (1) does not prevent the Treasury from exercising —
 - (a) any right under that scheme to require the execution of further documents by recipients of an early payment;
 - (b) any right vested in it by virtue of an assignment executed in consideration of an early payment under that scheme.
- (3) Sub-paragraph (2) does not limit the application of section 15 of the Interpretation Act 1976 (savings implied on repeal – preservation of existing rights) in relation to the original Early Payment Scheme.

Signed 5th February 2009

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Minister for the Treasury

Explanatory Note

(This note is not part of the Circular).

This circular set out the provision and eligibility rules in respect of early payments of up to £10,000 being made to account holders of Kaupthing Singer & Friedlander (IOM) Limited in pursuance of a resolution of Tynwald in February 2009.