Serial No. CP 2009/

IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN
CHANCERY DIVISION

IN THE MATTER OF KAUPTHING SINGER & FRIEDLANDER (ISLE OF MAN) LIMITED

AND

IN THE MATTER OF SECTION 152 OF THE COMPANIES ACT 1931

AND

IN THE MATTER OF THE HUMBLE JOINT PETITION OF KAUPTHING SINGER & FRIEDLANDER (ISLE OF MAN) LIMITED AND THE TREASURY OF THE GOVERNMENT OF THE ISLE OF MAN DATED 2nd APRIL 2009

SKELETON ARGUMENT ON BEHALF OF THE COMPANY AND THE TREASURY

References are to the bundle containing the Scheme documents in the form [bundle/tab]

1. This is the hearing of the Joint Petition of Kaupthing Singer & Friedlander (Isle of Man) Limited ("**the Company**") acting by Michael Simpson and Peter Norman Spratt as its Joint Liquidators Provisionally ("**the Provisional Liquidators**") and The Treasury of the Government of the Isle of Man ("**the Treasury**") seeking, *inter alia*, an order pursuant to Section 152(1) of the Companies Act 1931 ("**the 1931 Act**") convening meetings of Scheme Creditors (as defined in the Scheme) for the purposes

of considering and, if thought fit, approving a proposed scheme of arrangement between the Company and the Scheme Creditors ("**the Scheme**").

Reading

2. The Court is invited to read (1) the Joint Petition of the Company and the Treasury, (2) the Scheme which is attached to the Petition and (3) the first affidavit of Michael Simpson of 2 April 2009.

3. The Court is also invited to read the affidavit of Alan Lloyd Gough of 3 April 2009 and the fourth affidavit of Allan Robert Bell of 2 April 2009 sworn in the proceedings relating to the winding-up petition.

Background

4. The Company was incorporated in the Isle of Man on 27 April 1971 under the Companies Act 1931 to 1968 as Singer & Friedlander (Isle of Man) Limited and commenced business as a retail bank.

5. On 2 January 2007 the Company was renamed Kaupthing Singer & Friedlander (Isle of Man) Limited following its acquisition by its indirect parent, Kaupthing Bank hf, an Icelandic bank.

6. The Company carried on business in and from the Isle of Man as a "deposit taker" within the meaning of the Financial Services Act 2008. The Company held a banking licence issued under the Banking Act 1998 by the Financial Supervision Commission.

7. During September 2008, there was severe turmoil in the global financial markets. On 8 October 2008, the sister company of the Company, Kaupthing Singer & Friedlander Limited, was placed into administration in England by order of the High Court of England and Wales on the application of the Financial Services Authority. The

administration of Kaupthing Singer & Friedlander Limited caused severe liquidity problems for the Company.

8. On 9 October 2008 Michael Simpson was appointed as liquidator provisional of the Company by this Court on the joint petition of the Company and the Financial Supervision Commission of the Isle of Man.

9. On 20 November 2008 Peter Spratt was appointed as joint liquidator provisional of the Company.

Compensation of Depositors Regulations 2008

10. Under Section 25 of the Financial Services Act 2008 the Treasury may make regulations establishing a scheme for compensating investors and depositors in case where persons who are or have been licence holders are unable to likely to be unable to satisfy claims in respect of any description of civil liability incurred by them in connection with their business.

11. On 9 October 2008 the Compensation of Depositors Regulations 2008 826/08 ("**the DCS Regulations**") were approved by Tynwald and came into operation. Under the DCS Regulations, as amended by 844/08 and 232/09, a scheme was established for compensating depositors in respect of their eligible protected deposits in circumstances where a participant had defaulted. The maximum amount of compensation payable is the lesser of 100% of the amount of the eligible protected deposit or:

    (1) where the depositor is an individual beneficially entitled to the deposit, £50,000;

    (2) in any other case, £20,000 (Reg. 11).

12. For these purposes, a fund was to be created from time to time as the need arose into which was to be paid, inter alia, money obtained by levying contributions from participants (Reg. 6). The levies on participants are subject to annual and overall limits (Reg. 12). In addition, in relation to a default which has been declared to be committed prior to 23 October 2009, the Treasury was to pay such sum as represented the total amount by which the compensation payable in respect of each depositor exceeded £20,000 (Reg. 12A).

13. A default has not yet occurred in relation to the Company. However, in the event that a winding-up order is made in relation to the Company then the Company would then be likely to be determined to be in default (Reg. 3) so that the rights to compensation under the DCS Regulations would then be triggered.

14. The timing of any payments which would be made under DCS Regulations would be uncertain given that in making any payments the Scheme Manager is required to have regard to other claims which may be made on the fund (Reg. 8(2)). See further the Third Affidavit of Michael Simpson of 18 February 2009 and the letter from the Financial Supervision Commission of 16 February 2009 which indicated that half of the available funds might be distributed immediately with a possible later dividend of the remainder after 23 October 2009 but assuming there was no other substantial default.

Early Payment Schemes

15. By two Government circulars, No. 01/09 and No. 04/09, The Kaupthing Singer and Friedlander (Isle of Man) Limited Early Payment Scheme ("**EPS1**") and The Kaupthing Singer and Friedlander (Isle of Man) Limited Early Payment (No. 2) Scheme ("**EPS2**") were established.

16. EPS1 and EPS2 provided for depositors entitled to compensation under the DCS Regulations to receive total early payments of up to £10,000 in respect of their

entitlements to compensation under the DCS Regulations in the event that a winding-up was made in relation to the Company. In return for such payments, depositors were required to assign to the Treasury the equivalent part of their rights against the Company.

The Scheme

Application of the Scheme

17. The Scheme applies to all liabilities of the Company which would have been provable under the Companies Act if the Company had been placed into liquidation on 9 October 2008.

18. A Scheme Creditor is any person to whom the Company owes such a liability other than creditors with employee and preferential claims. Preferential claims and the claims of employees as a result of their employment will be paid in full[1]. The Scheme will also not affect the rights of any creditors with security over the Company's assets.

19. Under the terms of the Scheme, the assets of the Company are to be held by the Company on trust for the Scheme Creditors (Clause 10.2).

Purpose of the Scheme

20. The Scheme is designed to reflect the treatment which Scheme Creditors would have received in the event that the Company had gone into liquidation but to enable those Scheme Creditors who would be entitled to receive compensation under the DCS Regulations in the event of a winding-up order being made in relation to the Company ("**Protected Depositors**"), to receive that compensation in a more efficient

[1] Preferential liabilities are to be paid from the Company's assets under the terms of the Scheme: Clause 11.3.2. Employee claims are to be paid from the Company's assets under the terms of the Scheme as Post-Insolvency Costs: Clauses 11.1.1, 11.3.1.

manner than would be the case if such compensation was to be payable under the DCS Regulations.

21. The purpose and effect of the Scheme is[2]:

    (1) to enable the liabilities of the Company to be ascertained with certainty;

    (2) to ensure that a moratorium (similar to the moratorium which would be created if the Company placed into liquidation) is established, thereby ensuring that all claims of Scheme Creditors are dealt in accordance with the terms of the Scheme; and

    (3) to ensure that the assets of the Company can be distributed to the Scheme Creditors in a similar manner to that which would apply if the Company was placed into liquidation.

22. Accordingly, under the terms of the Scheme, the assets of the Company are to be collected, realised, and applied in making *pari passu* distributions to Scheme Creditors (after the payment of certain costs and preferential liabilities) (Clause 11).

23. In addition, under the terms of the Scheme, the Treasury will provide funding to enable "Top-Up Payments" to be made to Protected Depositors, being any person with a deposit with the Company who would be entitled to receive compensation under the DCS Regulations. The Top-Up Payments made by the Treasury will ensure that by the second anniversary of the Scheme each Protected Depositor who has submitted a claim which has been allowed will receive an amount which is at least equal to the amount which that Protected Depositor would have received pursuant to the DCS Regulations had the Company been placed into liquidation on 9 April 2009.

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[2] See Clause 6.1 of the Scheme.

24. The Treasury has also agreed to subordinate its existing claim against the Company (which arose prior to the presentation of the winding-up petition in respect of deposits placed with the Company) of approximately £2,800,000 (Clause 5.2 of the Scheme).

25. The Treasury has undertaken to be bound by the Scheme (**Bell 4 para. 5**).

The Top-Up Payments

26. The Top-Up Payments will be made in three instalments:

    (1) On the First Distribution Date (being between 90 and 100 days after the Scheme becomes effective), each Protected Depositor will receive at least £20,000 (if an individual) or £10,000 (in any other case);

    (2) On the Second Distribution Date (being the first anniversary of the Scheme becoming effective or such other date as is determined), a further instalment so that each Protected Depositor has received at least £35,000 (if an individual) or £15,000 (in any other case); and

    (3) On the Third Distribution Date (being the second anniversary of the Scheme becoming effective or such other date as is determined), a further instalment so that each Protected Depositor has received at least £50,000 (if an individual) or £20,000 (in any other case).

27. The Top-Up Payments will therefore ensure that every Protected Depositor will receive an amount equal to the lesser of (i) its claim against the Company and (ii) £50,000 in the case of a Protected Depositor who is an individual and £20,000 in any other case. The intention is that each Protected Depositor will, as a minimum, receive the same amount that it would have received had the Company been placed into liquidation and had compensation been paid under the DCS Regulations.

28. In return for a Top-Up Payment, the relevant rights of the Protected Depositor against the Company will be automatically assigned to the Treasury (Clause 18.2).

Claims against third parties

29. If the Scheme is approved by creditors and sanctioned by the Court, then the Company will continue in provisional liquidation (Clause 9.1) and the Provisional Liquidators will become the Scheme Supervisors (Clause 4.2).

30. It will thus be open to the Company acting by the Provisional Liquidators to pursue any claims which the Company may have against third parties. Indeed, it is the responsibility of the Provisional Liquidators to realise and collect in the Company's assets (Clause 10.3). Any such realisations will be held on trust for Scheme Creditors to be applied in accordance with the terms of the Scheme (Clause 10.2). The Scheme Supervisors will then be responsible for distributing the assets in accordance with the Scheme (Clause 10.3).

31. There are certain claims which are only capable of being brought in the event that a winding-up order is made. The principal examples are the setting aside of fraudulent preferences under Section 250 of the 1931 Act or a claim for fraudulent trading against directors under Section 259 of the 1931 Act. Accordingly, the Scheme contains provision to allow the Provisional Liquidators (having consulted with the Treasury and the Creditors' Committee) to apply to the Court to make an winding-up order in the event that this is considered necessary (Clause 9.2). In these circumstances, the provisions of the Scheme will continue to apply (Clause 9.3).

32. The Scheme does not affect any claims which the Scheme Creditors may themselves have against third parties (except in relation to the rights to compensation under the DCS Regulations in the event that a winding-up order is made in relation to the Company).

33. Further, the Scheme does not affect the status of the Scheme Creditors as creditors of the Company. The Scheme does not affect the claims of Scheme Creditors against the Company except to the extent it imposes a moratorium on their enforcement and provides that payments are to be made by the Company from its assets in respect of the claims. Thus once the Scheme comes to an end because all assets have been distributed, the Scheme Creditors will be left with the balance of their claims against the Company which they would then in principle be able to enforce or prove in a liquidation. The Scheme Creditors remain as creditors of the Company throughout and the Scheme Liabilities remain liabilities of the Company to those creditors. If the Scheme Creditors have claims against third parties which depend on their status as creditors of the Company those claims will be unimpaired by the implementation of the Scheme.

Deferral of the Treasury's rights

34. The provisions relating to Top-Up Payments also benefit other Scheme Creditors (other than Protected Depositors) as the Treasury will agree in accordance with the Scheme to defer its right to receive payment on the claims assigned to it as a result of the making of the Top-Up Payments until such time as all Scheme Creditors have received a distribution of 60 pence in the pound on their claims (Clause 18.5). The Treasury will thus receive no payment under the Scheme until all creditors have been paid at least 60 pence in the pound on the amount of their claims. This deferral of the Treasury's right to receive payment ensures that all other creditors receive payment more quickly and in larger amounts than would otherwise have the case.

EPS Payments

35. Any payments which a Scheme Creditor has received under EPS1 or EPS2 are to be deducted from any payments which the Scheme Creditor would otherwise be due under the terms of the Scheme (Clause 19). Any amounts so deducted will be paid to the Treasury.

Other features of the Scheme

36. In the conventional manner:

(1) The Scheme imposes a moratorium on claims by Scheme Creditors against the Company or its assets (Clause 8.1). The purpose of such moratorium is to ensure that the claims of all Scheme Creditors are dealt with in accordance with the terms of the Scheme.

(2) The Scheme contains a mechanism for adjudicating on the claims of creditors (Clauses 12.1, 13 and 14) and for these purposes a Scheme Adjudicator may be appointed. Any decision of the Scheme Adjudicator will be final and binding (to the extent permitted by law) (Clause 14.7.6).

Foreign currency claims

37. Claims which are not in Sterling are to be converted into Sterling at the mid-market rate specified in The Financial Times on 9 April 2009 (Clause 25).

Set-off

38. Set-off will take place in relation to the claims of Scheme Creditors in the same way as if the Company had gone into liquidation on 9 April 2009 (Clause 28).

Effectiveness of the Scheme

39. The Scheme will become effective once an office copy of the order of the Court sanctioning the Scheme has been delivered for registration as required by Section 152(3) of the 1931 Act and the moratorium created as a result of the appointment of

the Provisional Liquidators has been recognised in England (or such other relief has been granted as is satisfactory to the Provisional Liquidators) (Clause 7).

40. In relation to recognition, it is intended that the provisional liquidation will be recognised in England pursuant to the provisions of the Cross-Border Insolvency Regulations 2008 which implement the UNCITRAL Model Law on Cross-Border Insolvency. It is anticipated that such recognition can be obtained promptly.

Benefits of the Scheme

41. The benefits of the Scheme are therefore as follows:

(1) all creditors will receive an amount equal to the amount they would have received had the Company been placed into liquidation;

(2) there will be certainty as to the timing of the first three distributions in the first two years after the commencement of the Scheme;

(3) Protected Depositors will have certainty that they will receive the amounts which they would have received under the DCS Regulations on or before the second anniversary of the Scheme becoming effective;

(4) if the total distribution paid to Scheme Creditors is less than 60%, all Scheme Creditors will benefit because the payments that would otherwise have been made to the Treasury as assignee of the claims of Protected Depositors will be available for Scheme Creditors;

(5) Scheme Creditors will benefit from the Treasury's agreement to subordinate its own pre-insolvency claim.

Companies Act 1931

42. Section 152 of the 1931 Act enables a compromise or arrangement to have binding effect between a company and its creditors, or any of class them, where the compromise or arrangement is:

    (1) approved by a majority in number representing three-fourths value of the creditors or class of creditors (as the case may) present and voting (either in person or by proxy) at the relevant meeting or meetings; and

    (2) sanctioned by the Court.

43. As noted in the first affidavit of Gabriel Moss QC of 12 February 2009, Section 152 is in essentially the same terms as the equivalent provisions of the English Companies Acts. The most recent version of these provisions is contained in Section 899 of the Companies Act 2006.

44. Under Section 152 of the 1931 Act (as under the English legislation), and as Chadwick LJ explained in **Re Hawk Insurance** [2001] 2 BCLC 480 at para. 11, the promulgation of a scheme of arrangement follows a three-stage process:

    (1) The initial order of the Court making an order that a meeting or meetings of creditors be convened to consider and, if thought fit, to approve the scheme;

    (2) The holding of the meeting or meetings of creditors; and

    (3) The order of the Court sanctioning the scheme.

45. The present English procedure is governed by the terms of a Practice Statement issued by the High Court of England and Wales in 2002: **Practice Statement (Companies: Schemes of Arrangement)** [2002] 1 WLR 1345. Pursuant to this

Practice Statement, the principal issue for the English Court at the convening stage is to be satisfied that the Company's proposals for the summoning of meetings of creditors to consider the Scheme are appropriate. In particular, the English Court is required to consider whether more than one meeting of creditors is required and, if so, what is the appropriate composition of the meetings.

46. This Practice Statement does not, however, apply in the Isle of Man. The 1931 Act is based on the English Companies Act 1929. The position under the 1929 Act is reflected in a Practice Note which was issued by Eve J and reported at [1934] WN 142. It is therefore questionable whether it would be appropriate for the Practice Statement to be applied to the present application.

47. In relation to court's consideration of the composition of meetings of creditors, the position as reflected under the 1934 Practice Note is as described by Lord Millett in **Re UDL Holdings Ltd** [2002] 1 HKC 172 (paras. 13-14) (a decision of the Court of Final Appeal of the Hong Kong SAR):

> "13. At the first stage the Court does not address the question whether it is necessary to order more than one meeting. The practice in England was established by a Practice Note issued by Eve J and reported in [1934] WN 142. This laid it down that it was the responsibility of the company which was putting forward the Scheme to decide whether to call more than one meeting and if so how the meetings should be constituted. If they were incorrectly constituted or objection was taken to the presence of any class of creditors the objection ought to be taken on the application for sanction and the company must take the risk of the application being dismissed.
>
> 14. It might be thought singularly unhelpful to leave the question whether the meetings were correctly convened to the third stage, by which time a wrong decision by the company at the outset will have led to a considerable waste of time and money. But in my opinion the practice is a sound one. The only alternative would be to require notice of the initial application to be made inter partes and for notice of the application together with a copy of the Scheme to be given to everyone potentially affected by it, with the risk of incurring the costs of a contested hearing and possible appeals before it could be known whether the Scheme was likely to attract sufficient support in any event."

48. Accordingly, if the 1934 Practice Note is applied, at the present stage the sole issue for the Court is to determine whether the proposed Scheme is one which properly ought to be permitted to put before creditors at the proposed meetings of creditors.

49. In the event that the Scheme is approved by creditors, creditors would be able to challenge the composition of classes at the sanction hearing if they so wished. But, in any event, the proposed composition of the meetings of creditors is proper for the reasons set out below.

Whether the Scheme is one which should properly be put before Scheme Creditors

50. Issues relating to whether the Court has jurisdiction to sanction the Scheme and whether it should exercise its discretion to do so (including the question of whether the Scheme is "*fair*") are dealt with at the sanction stage (assuming that the Scheme is approved by the requisite majorities of creditors). It is submitted that at the present stage the Court is only to be required to be satisfied that the Scheme is a proper one to be put before the Scheme Creditors such that the Court should direct the convening of meetings so that the creditors may consider the proposal.

51. The proposed Scheme is plainly one which ought to be put before Scheme Creditors so that they may have the opportunity of considering it and expressing their views on the proposal. The Scheme offers clear and tangible benefits to Scheme Creditors over liquidation. Scheme Creditors should therefore have the opportunity of considering and voting on the proposal.

52. If meetings of creditors are not convened, the probable alternative is that the Company will be placed into liquidation (**Bell 4 para. 6**).

Proposed meetings of Scheme Creditors

53. It is proposed that there will be two meetings of Scheme Creditors:

(1) a meeting of those Scheme Creditors who would be entitled to compensation under the DCS Regulations in the event that the Company went into liquidation i.e. the Protected Depositors; and

(2) all other Scheme Creditors.

The test

54. As noted above, applying the 1934 Practice Note it would neither be necessary nor appropriate for the Court to address any issues concerning the composition of classes at this present first stage of the three-stage process.

55. If the Court considers it appropriate to consider issues concerning the composition of the classes at the present hearing, the test as to whether more than one meeting of creditors is necessary is whether the rights of the creditors are so dissimilar as to make it impossible for them to consult together with a view to their common interest: **Re Hawk Insurance** [2001] 2 BCLC 480 at para. 26. As the Court of Appeal stated in **Hawk** (para. 30):

> "In each case [the] answer to the questions will depend upon analysis (i) of the rights which are to be released or varied under the scheme and (ii) of the new rights (if any) which the scheme gives, by way of compromise or arrangement, to those whose rights are to be released or varied."

56. It is not necessary that the rights be identical, merely that they be not so dissimilar as to prevent consultation together in the common interest.

57. In **Re UDL Holdings** Lord Millett set out the relevant principles as follows (184-185):

> "(2) Persons whose rights are so dissimilar that they cannot sensibly consult together with a view to their common interest must be given separate meetings. Persons whose rights are sufficiently similar that they can

consult together with a view to their common interest should be summoned to a single meeting.

(3) The test is based on similarity or dissimilarity of legal rights against the company, not on similarity or dissimilarity of interests not derived from such legal rights. The fact that individuals may hold divergent views based on their private interests not derived from their legal rights against the company is not a ground for calling separate meetings.

(4) The question is whether the rights which are to be released or varied under the scheme or the new rights which the scheme gives in their place are so different that the scheme must be treated as a compromise or arrangement with more than one class."

58. Where a scheme is proposed as an alternative to an insolvency procedure, the correct approach is to consider the rights which are to be released or varied under the scheme as the rights which creditors would have in the insolvency: **Re Hawk**, para. 42.

59. It is important to note that the test is based on similarity of *legal rights* against the Company and not on other interests. It follows that, although creditors may be in a different position because of their own individual circumstances, it does not follow that they would form a different class provided that they have the same legal rights against the Company. An example is where two creditors of a company are to have their rights against the company compromised in the same way under a scheme but one creditor has the benefit of a valuable claim against a third party guarantor which the other creditor does not. Although the creditors have different interests, they should nevertheless form part of the same class since their legal rights against the company itself are the same. The reasons why the Courts have adopted this approach are summarised in the judgment of Lord Millett in **UDL Holdings** at para. 26.

60. However, the divergence of interests within a class is something which the Court may take into account at the sanction stage in deciding whether or not to sanction a scheme.

The present case

61. As noted above, in the present case, it is proposed that separate meetings of Protected Depositors and other Scheme Creditors be convened.

62. The reason for this treatment is summarised in Mr Moss QC's first affidavit at paras. 38-43 and confirmed in his second affidavit at paras. 8-14.

63. In relation to the rights which the Scheme Creditors would have on a liquidation of the Company:

    (1) If the Company was placed into liquidation, the DCS Regulations would be triggered. The effect of this would be that unsecured and non-preferential creditors would be treated the same way under the liquidation rules (see Sections 247 and 248 of the 1931 Act) but that certain of these creditors would receive additional rights to compensation under the DCS.

    (2) The right to compensation under the DCS, however, is not a right *against the Company* such as to be taken into account for the purpose of formulating classes.

64. In relation to the rights which Scheme Creditors will have under the proposed Scheme:

    (1) All Scheme Creditors will have a right to a *pari passu* distribution from the Company's assets reflecting their entitlements upon a liquidation of the Company;

    (2) In addition, those Scheme Creditors who are Protected Depositors will receive the Top-Up Payments.

65. In terms of rights under the Scheme, the creditors therefore clearly fall into two groups: those with rights to the *pari passu* distribution alone, and those also with rights to the Top-Up Payments.

66. The question which then arises is whether these rights are so different that the two groups cannot consult together in their common interest. This is a point which may be debatable. However, in order to be prudent, the Company and the Treasury have taken the view that it is appropriate for separate meetings of Scheme Creditors who are Protected Depositors and other Scheme Creditors to be convened.

67. In relation to Scheme Creditors who are Protected Depositors, there is a distinction between individuals who are entitled to Top-Up Payments to a maximum recovery of £50,000 and other persons (including, for example, companies) who are entitled to Top-Up Payments to a maximum recover of £20,000. However, the rights of such depositors are not so dissimilar that they cannot consult together with a view to their common interest and it is not therefore necessary to place them into separate classes for voting purposes.

68. As explained in Mr Moss's second affidavit at paras. 10-14, distinctions in respect of the amounts which Protected Depositors may in fact recover under the Scheme does not give rise to any class issues. The difference in recoveries reflects the fact that Protected Depositors have claims of a different quantum, and does not result from their being given different rights under the Scheme. At the very most, it may be that the creditors have different interests but, as explained above, this does not justify their being placed into separate classes for voting purposes.

The Explanatory Statement

69. Unlike the provisions of the English Companies Acts 1985 and 2006, the 1931 Act does not require the production of an explanatory statement explaining the purpose and effect of the proposed scheme of arrangement. The Company and the Treasury

nevertheless consider that the production of such a statement is likely to be of assistance to Scheme Creditors and a document which has been prepared which is in the bundle.

70. Forms of Voting and Proxy and the Notice of Meeting are in the bundle.

Relief sought

71. It is proposed that this Court order that the meetings of Scheme Creditors be convened for 19 May 2009 beginning at 11.00 am with each meeting being held at Villa Marina at Douglas in the Isle of Man.

Notification of Scheme Creditors

72. The directions which are further sought from the Court are set out in Mr Simpson's affidavit at para. 9 and in the draft order before the Court.

73. It is proposed that within 10 working days of the Court giving directions the Company will send out to all Scheme Creditors by first class mail a copy of the Scheme, the Explanatory Statement, the Notice of the meetings of Scheme Creditors and the Form of Proxy. The exception to this is where a Scheme Creditor has requested that documents should not be sent by post in which case they will be sent by email or fax. The Company's records of the addresses of Scheme Creditors are considered to be substantially up to date.

74. It is further proposed that within 10 working days of the Court giving directions the Company will advertise the meetings of Scheme Creditors in the following newspapers:

    (1) the International Herald Tribune;

(2) the international edition of the Financial Times;

(3) the Financial Times;

(4) the New Zealand Herald;

(5) the Isle of Man Examiner;

and in electronic form on the Company's website.

75. The newspapers have been carefully selected so as to bring the meetings of Scheme Creditors to the attention of as many Scheme Creditors as possible bearing in mind their geographical location. The schedule attached to Mr Simpson's affidavit at "MS1" shows the geographical location of the Company's customers.

76. The Scheme is to be in or substantially in the form of the document exhibited to Mr Gough's affidavit and the Explanatory Statement, Notice of Meetings and Form of Proxy are to be in or substantially in the form of the documents produced to the Court.

Conduct of the meeting

77. It is proposed that the Chairman of the meeting will be Michael Simpson or, failing him, Peter Spratt, and that the Chairman shall be ordered to report the result of each Scheme Meeting to the Court.

78. In the usual way, the Chairman will be responsible for determining entitlement to vote at the meeting.

79. Provision is made for Scheme Creditors to vote in person at the meetings or by proxy.

Draft Order

80. A draft order is contained in the bundle.

Conclusion

81. In the circumstances the Company and the Treasury respectfully asks the Court to make an order in the form of the draft order before the Court.

Richard Hacker QC

7 April, 2009

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SKELETON ARGUMENT

IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN

CHANCERY DIVISION

RE KAUPTHING SINGER & FRIEDLANDER (ISLE OF MAN) LIMITED

AUTHORITIES

Section A.

1. **Practice Note** [1934] WN 142

2. **Practice Statement (Companies: Schemes of Arrangement)** [2002] 1 WLR 1345

3. **Re UDL Holdings Ltd** [2002] 1 HKC 172

4. **Re Hawk Insurance** [2001] 2 BCLC 480

Section B.

5. **Re Crigglestone Coal Company Limited** [1906] 2 Ch. 327

6. **Re Langley Mill Steel and Iron Works Company** (1871) L.R. 12 Eq. 26

7. **Re Southard & Co. Ltd** [1979] 1 W.L.R. 1198 C.A.

8. **Re Northern Developments** (Templeman J)

9. **Re Northern Developments** (C.A.)

10. **Re Bank of Credit and Commerce International** (BCCI) [1992] BCLC 570.

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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

SKELETON ARGUMENT

Gough & Co