

Kaupthing Singer & Friedlander (Isle of Man) Limited
Meeting of Committee of Inspection at 60 Circular Road, Douglas, Isle of Man on
Wednesday 19 August 2009 at 11.00am

Present:

Mike Simpson – Chairman of the meeting, Joint Liquidator (“MS”)
Peter Spratt – Joint Liquidator (“PS”)
David Morell – Director, PwC London (“DM”)
Alun Kuhnell - PwC London (“AK”)
Seth Caine – Cains Advocates (“SC”)

Neill Angus – Axa IOM (“NA”)
Simon Bessant – (“SB”)
Gavin Brake – (“GB”)
Mark Kiernan – Trustees of Pension Scheme (“MK”)
Stuart Roberts – (“SR”)
Peter Wakeham – (“PW”)

Apologies - John Hollis of Royal Skandia

1 – Role of the Committee of Inspection

SC gave an outline of the roles and responsibilities of the Committee as set out in the Companies Act 1931 and in the Companies Winding up Rules 1934. It was indicated that where possible and appropriate the liquidators would follow best practice applied in the UK, and look to statements of insolvency practice for guidance on any unclear areas to the extent that these were consistent with applicable Manx legislation. The Committee received clarification of the role of the Liquidators regarding asset recoveries. It was noted that liquidators are not entitled to speculate, and that whilst they may be found negligent for selling assets before a known event which could be reasonably expected to increase their value had occurred, in the main the liquidators duty only extended to getting the best price at the time and point of sale.

It was agreed that the minutes of each meeting would be kept by the Liquidators and approved at each subsequent meeting. Updates are to be posted on the website as soon as possible after each meeting.

2 – Update on Asset realisations

2 a) Receipts and payments account

Assets and liabilities at and expected costs to 31 July were reviewed. These were rolled forward versions of spreadsheets previously provided to 27 May in the Official Receivers report. Key movements highlighted were:

- £18m increase in receipts from loans advanced to customers
- £93.5m received in respect of collateral shares
- £41m recovery of the net balance due from KSFUK
- Total cash assets of £312m

It was further noted that £10.2m in respect of CDs had been received since 31 July, and that a further sum of £25m plus interest is expected shortly.

It was noted that, due to the indemnities which had to be given to enable the sale of the collateral shares, the proceeds cannot yet be distributed – 70% can be distributed at the end of November, the remaining 30% at the end of May.

2 b) Loan book

A document detailing the loan book and the strategy for realisation was circulated.

At the request of the Committee, MS agreed to provide an analysis of exposure by currency and a schedule of large exposures in the next Committee Meeting, together with a summary of provisions relating to prepayment of the loans and the security relating to them.

It was noted that the statutory provisions for set off applied automatically. It was noted that there were 4 instances where the set off position was not clear, typically situations where a deposit was held in the name of an individual and the corresponding loan was in the name of a company owned by them.

MS noted two further loans of concern (total value approximately £3m), both of which relate to borrowers who are on the verge of bankruptcy and where the value of security is inadequate.

It was noted that four members of the bank's staff had been retained to manage the loan book under the control of a senior member of the liquidation team who is a former banker.

2 c) KSF UK

PS gave an update on the position with KSFUK and the detail of the claim was discussed by the Committee. He confirmed that a claim had been submitted for £349m and that work was being undertaken to reconcile the balance with KSFUK.

FX swaps

PS said that there were 41 interest rate swaps at the date of liquidation. These were formally terminated on 27 October, and the valuation of these balances is currently being discussed with KSFUK.

Repo agreement

PS noted that this agreement had been terminated on 27 October. Under the Master agreement IOM deposited £185m in the UK, for which shares held by KSFUK of an equivalent amount were to be given in collateral. The number of shares held by KSFUK varied as the movements of the share price altered their value relative to the deposit amount. Concern was expressed over the level of margin. PS stated the position was complicated by the fact that the shares given to KSFUK had been 'rehypothecated' without their original owners' knowledge. It was also noted that whether the liquidation constituted a terminating event was unclear in the terms of the agreement. Nabarro have been instructed to pursue this point.

2 d) Collateral shares

The market value of the collateral shares on 8 October 2008 was £136m. The significant holdings were:

JJB

The company held shares in JJB, representing a 23% stake in the company. It was noted that the JJB shares had been sold through JP Morgan, for a total of £6.2m (i.e. 11p per share).

Booker

The company held 327m shares in Booker representing a 22% stake. These shares had been subject to a legal dispute, with another KSF entity claiming ownership of these shares. These shares have been sold for a gross price of 94.9p per share (net 93.5p); it was further noted

that the administrators of the other entity has retained the dividend paid on them. A claim for this dividend plus interest is being pursued.

Company A

The company holds a 35.5% stake in the ordinary share capital of Company A, plus 20.5% of its redeemable preference shares. It was noted that it is planned to sell the shares, but that this is not yet possible due to a protracted legal dispute, and at present the identity of the company cannot be revealed.

2 e) Collateral shares in transit

At 8 October 2008 there were also three sets of shares in transit. They were deposited with KSFION on 6 and 7 October with the knowledge of KSFION under the terms of the Repo agreement. On 8 October KSF UK took them back without the agreement of KSFION, and sold them for £14m. The Liquidators have put in a proprietary trust claim, the argument being that they were provided as part of collateral under the terms of the agreement and that no evidence exists of the agreement of KSFION to release them. It was noted that should this claim succeed, it would reduce the other claim against KSFUK pound for pound. However, money received would be 100% of the amount due rather than the dividend based amount.

It was noted that shares in two companies had been taken from KSFION without KSFION's agreement on the morning of 8 October, but that 2m shares in another company were to be given in exchange. This obligation to reimburse is not being disputed by KSFUK and KSFION is in the process of claiming for them.

2 f) CDs

It was noted that the remaining money should be received shortly.

2 g) Bank of England case

PS gave an overview of the case. A judgment favourable to KSFION had been passed, however it is being appealed by other parties.

If the original judgment stands, KSFION could be entitled to an amount of £1.5m. It was noted that any money received from the Trust account would be set off against the claim for cash held at KSFUK pound for pound.

2 h) Habana case

SC circulated copies of the judgment. He noted that this was a test case for in flight transfers. The Deemster concluded that no trust had been created. It was noted that the appeal period would expire on 1 September, but that such appeal was considered unlikely.

2 i) Parental guarantee

MS noted that he had made a claim against the parent to protect the position of KSFION, but that the Resolution Committee of Khf has no power to adjudicate or agree. The claim will be considered by the Winding Up Committee in Iceland in due course.

MS noted that claims had to be presented to the Winding Up Committee (which would be accepted until 30 December 2009) and that he had not submitted a claim form yet as the intention was to submit the claim in December when the most up to date information (in particular the anticipated recovery from the UK) was available.

It was noted that funds from the Icelandic Government and Old Kaupthing were expected to be used to capitalise New Kaupthing bank, with majority control going to Old Kaupthing. The idea was for the New Kaupthing bank to be a profitable entity which in time would be able to pay off the government and creditors, but that the plan is not clear at the moment and needs to be ratified.

SB queried whether there were any actions to block the transfer of shares in KSFIOM to protect the parental guarantee. MS acknowledged that whilst there was a risk, it was not considered likely.

IT WAS RESOLVED that the liquidators should contact the IOM Government to push the UK Government to represent the Isle of Man's interests regarding the potential loss on the parental guarantee.

MS noted that there due to be three meetings of Khf creditors which MS will attend :

- A meeting in September re the New Kaupthing agreement
- A meeting in October/November to extend the moratorium
- A meeting in late January dealing with the claims process

3 Claims agreement process

AK gave an overview of the claims agreement process.

The assignment to the DCS by each individual claimant has to be verified. As of 7 August, 3,456 had been agreed, 433 had queries outstanding, and 602 were in the second stage of review. POD forms continue to be received. An issue had arisen with the terms and conditions of the bank originally proposed to make the payment and a replacement bank has been identified and put in place.

4 First Interim Dividend

The estimated amount of the first dividend is 22.17%.

It was noted that further receipts are expected shortly which could materially increase this figure.

The Committee considered a proposal to delay the first interim dividend until these material sums had been received in order to enable the first dividend to be as high as possible.

IT WAS RESOLVED to set the dividend at 22.17%, but to increase this to reflect any further cash received in time to pay the first interim dividend on 4 September 2009.

5 Investigation

DM circulated a document on the proposed forensic investigation and gave an overview of the investigative process to be undertaken. The focus of the investigation is looking at recovering money from other sources than asset realisations, and the work is being performed by him under the oversight of Dan Schwarzman, a Partner in PwC London. The main sources of recoveries to be considered are from stewards of the company, regulators, and from claims arising from large or unusual transactions within group companies.

It was agreed that DM will meet separately with members of the Committee to progress the scoping of the investigation.

6 Fees

It was noted that the liquidation fees to 26 May were £3.1m, and that fees from 26 May to 31 July were £780k.

MS stated that the liquidator's fees should stabilise after the PODs had been verified and the first dividend paid.

7 Any other matters

A series of draft resolutions was presented to the Committee for consideration, relating to the operation of bank accounts, conduct of legal proceedings and approval of expenses.

It was agreed the Committee members would consider the resolutions and revert to the Liquidators.

8 Next meeting

It was therefore resolved to agree the date in due course, having regard to timing of the investigation work and the next Khf creditors meeting.

The meeting concluded at 4:10 PM.