

**Kaupthing Singer & Friedlander (Isle of Man) Limited**  
**Meeting of Committee of Inspection at 60 Circular Road, Douglas, Isle of Man on**  
**Tuesday 29 June 2010 at 08.00am**

**Present:**

Mike Simpson – Joint Liquidator (“MS”)  
Peter Spratt – Joint Liquidator (“PS”)  
David Morell – Director, PwC UK (“DM”)  
Seth Caine – Cains Advocates (“SC”)  
Charles Hewetson – Reed Smith (“CH”)  
Mark Loftus – PwC UK (“ML”)

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

**1      Loan book**

MS reviewed the loan book summary which shows that £104.7 million has been recovered from the loan book to date.

There is a further £313 million to be collected, those loans will come through between now and the end of 2013, with the exception of one loan which will come through in April 2014. There is a loan of around £250k due in 2016, however there is an outstanding set off issue which is in the process of being resolved.

The loan book generally is performing but there are some exceptions.

The loan book is quite concentrated in value - the 10 largest borrowers account for 61% of the outstanding value. The top ten exposures were discussed in detail.

There is one loan where we have appointed an LPA Receiver. That loan was about £4m in total. We’ve already received £1.5m from a bank guarantee so the remaining exposure is £2.5m on a property worth £3.5m so we should make a full recovery.

It was noted that if the loan book or intercompany balances are sold at a discount, the shortfall could not be claimed under the parental guarantee. It was also noted that we would lose between £8.5 million and £11 million of future interest.

**2      KSFUK Claim**

ML summarised the position. There has been significant progress in agreeing the UK claim. The main issue is the valuation on the KSFUK set off against the sub participation agreements.

Inter company recharges from KSFUK, which were in excess of £600,000, have now been agreed at less than £3,000. In the other direction there is interest agreed at £2.1m as opposed to previous £2.5m. We have also been advised that there may need to be a further adjustment of around £1m re some in flight transfers which were paid out in error by KSFUK (full details have not yet been provided).

The worst case value for our agreed claim is believed to be £254.3m.

### **3 Khf claim and balances**

A summary of our submission prepared by Jonsson & Hall was considered. Our submission has to be submitted into Court in Reykjavik by 3 September.

It was noted that some depositors have instigated their own claims under the parental guarantee and have instructed a law firm called BBA Legal in Iceland. The lawyers have spoken to each other previously and MS agreed to talk to Jonsson & Hall in order to determine the degree to which information and documentation can be shared between them and BBA.

It was noted that the joint liquidators have a potential conflict as their claim is for all of the creditors and it may not be in the interests of the creditors as a whole to assist those creditors who have applied individually.

It was noted that interim distributions from the Winding up Committee are not expected for some time. They have two primary issues, the overall value of claims received significantly exceeded what they were expecting and also the level of those claims which were made as Section 112 priority claims has significantly exceeded what they were expecting.

### **4 Legal cases**

Bank of England case. On about 3 October 2008 there was a Treasury directive to Kaupthing UK that deposits coming in should be put with the Bank of England on trust for retail depositors. Unfortunately retail depositors wasn't defined – directions were sought from the Court and the judge decided that KSFUK was included in the definition and would be entitled to share in the money that was put with the Bank of England. That was appealed by the UK Treasury and the Court of Appeal has ruled that unfortunately KSFUK is not a retail depositor so therefore not entitled to share in those monies.

Habana Case. The Staff of Government Division (Manx appeal court) upheld the decision of Deemster Corlett. We should recover about 75-80% of our costs, the majority of which are Counsel. It's quite an important case because it relates to the in flight funds which now have a precedent at court of appeal level that those monies are not held on any form of constructive trust for depositors who had given transfer instructions before the liquidator provisionally was appointed.

## **5 Investigation**

Members of the Committee were given a copy of the report and had an hour to read through it. DM then detailed the results of the investigation work carried out to date and CH talked about the potential legal actions against the various parties. These were debated at length by the Committee.

## **6 Claims**

### **(a) Claims summary to date**

The total value of claims received is around £903m. There are £21m of claims which have not yet been agreed for various reasons. Some of them are being held over because of dispute over valuation. There are others where there are doubts about the identity of the claimant. There are 74 direct claims that are being held over, some of which we believe are making claims to the DCS. There are a further £5m of claims which we expect to receive yet, so we expect total claims to go up to around £908 million. All letters of credit and contingent liabilities have now expired.

### **(b) Reassignment**

It was agreed that, when we are at the stage of making a final dividend or if it becomes likely that dividends will exceed 100%, we will go to Court for directions on what to do. Initially we would seek blanket permission for reassignment upon confirmation by the DCS that it had received its £50k in full. We would seek directions on whether creditors would have to resubmit their proofs.

The issues regarding reassignment were discussed at length. It was agreed to discuss further with the DCS, however, it is not proposed to activate the process at this stage.

## **7 Receipts and Payments Account to 31 May 2010**

The Receipts and Payments Account, which had been previously circulated to members, was reviewed.

It was noted that under the Winding up Rules the Committee is required to audit the cash book and sign a certificate of audit every 3 months. The cash book is defined as a book in such form that the Chief Registrar may from time to time direct, which has never happened. So it is the records in which the Joint Liquidators have entered from day to day receipts and payments made by them. The certificate to be signed by the Committee simply states that the COI certifies that they have examined the foregoing account with vouchers to the best of their knowledge and belief and said account contains the full and true account of receipts and payments.

It was noted that all preferential creditors have now been paid, the final total being £281k.

## **8 Third interim dividend**

We are now at the point where we can pay a third dividend. We have been required to hold onto 30% of the proceeds of share sales until 1 June. That time has now passed so there can be no claim on that money which means it can be distributed. That combined with other money in hand means that we are in a position to make a payment of 11.1%.

There is £122 million in the bank. 11.1% is about £102 million. Of the remaining balance, about £16 million is money which will be due to be paid out on 1<sup>st</sup> and 2<sup>nd</sup> dividend in respect of claims that are currently held over.

Further money is anticipated from KSFUK and in respect of loans which are due for repayment or are expected to repay early. There is, therefore, a possibility of a fourth dividend before the end of 2010. KSFUK appear to be following a pattern of making two distributions per annum of not less than 5%. It was agreed that the Joint Liquidators should make further distributions when available funds reach 5%.

## **9 DAG Costs**

It was noted that the DAG have submitted a legal invoice for £346k. It will be referred to the Court Assessor, following which a Court Order will be made for the determined amount.

## **10 Resolutions**

The following resolutions were passed by the Committee:

- to settle all claims against KSF UK in a sum of no less than £250 million
- to sanction going to Court for directions regarding re-assignment of Proofs of Debt.
- to confirm that the committee is content for the liquidators to pay future dividends of not less than 5% when those funds become available.