

Kaupthing Singer & Friedlander (Isle of Man) Limited (KSFIOM)

Proposal for a Loan Trust Scheme for KSFIOM Depositors by KSFIOM Depositors Action Group

1. Current Position

1.1 We refer to the following source material:

1.1.1 The House of Commons Treasury Report into the Banking Crisis – Conclusions and Recommendations – specifically no 16 *Those involved in the failure of the offshore subsidiaries of the Icelandic banks have suffered losses to date, and many of those affected are British citizens. On the other hand, we acknowledge the clear validity of the overarching principle that the UK Government cannot cover deposits held in institutions outside its direct regulatory control. However, we believe that the UK authorities should work with the Isle of Man and Guernsey authorities to resolve these issues, especially given the complexities arising from the take over of the Derbyshire building society.;*

<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmtreasy/402/402.pdf>

1.1.2 The transcript (Hansard Early Publication) of the Proceedings of the Select Committee of Tynwald on Kaupthing Singer & Friedlander (Isle of Man) Limited and the Depositors' Compensation Scheme held on Friday 10th December 2010 (and specifically the evidence of Dr Downs);

<http://www.tynwald.org.im/papers/early/committee/eptksf101210.pdf>

1.1.3 The second affidavit of Aidan A Doherty, a Director of Kaupthing Singer & Friedlander (Isle of Man) Limited sworn in the administration proceedings in the Isle of Man courts dated 24th October 2008;

<http://www.gov.im/lib/docs/fsc/PressReleases/2ndaffidavitmradoherty.pdf>

1.1.4 The written evidence provided by the Kaupthing Singer & Friedlander (Isle of Man) Limited Depositors' Action Group to the Select Committee prior to the proceedings on 10th December 2010;

http://www.ksfiomdag.com/index.php?option=com_kb&task=article&article=152

1.1.5 The Creditors' reports and updates from the Joint Liquidators on the website of Kaupthing Singer & Friedlander (Isle of Man) Limited:

<http://kaupthingsingers.co.im/Pages/2011/March/07March2011.asp>

1.2 The latest Report to Creditors and updates from the Joint Liquidators confirm that:

1.2.1 As at 28 March 2011, 61.1 per cent of all Depositors' funds lodged with Kaupthing Singer & Friedlander (Isle of Man) Limited have been paid out and a further dividend of at least 12% to be paid no later than 1 May 2011 has been announced;

1.2.2 The estimated range of ultimate recovery of Depositors' funds lodged with Kaupthing Singer & Friedlander (Isle of Man) Limited is from 91.4 per cent to 97.7 per cent. In addition, and despite the recent unfavourable ruling by the Icelandic court with respect to its validity, there remains a possibility that additional recoveries may be made in connection with the parental

guarantee said to have been given to Kaupthing Singer & Friedlander (Isle of Man) Ltd by its Icelandic parent, Kaupthing hf;

1.2.3 The loan book of Kaupthing Singer & Friedlander (Isle of Man) Limited is in the process of being realised. This originally comprised approximately 180 loans which, as at 10 December 2010, have subsequently been reduced to approximately 90 loans. Most of these loans are expected to have been realised by the end of 2013.

1.3 The Kaupthing Singer & Friedlander (Isle of Man) Depositors' Action Group seeks 100 per cent. advance payment of deposits. This is on the basis that, as their representative, Dr Downs, stated in her evidence before the Select Committee: *"given the exceptional nature of the banking crisis, it would be the right and compassionate thing to do. It is what almost every other government – with the notable exception of Guernsey [in relation to Landsbanki] – has done during this crisis. KSF (IOM) is the only Kaupthing subsidiary in Europe where the people have not been paid out."* Dr Downs cites the example of retail depositors of Kaupthing Singer & Friedlander (UK) in London being paid out *"immediately"* as to 100 per cent.

1.4 In addition, Depositors have accumulating interest claims on their deposits, in respect of periods both before and after the collapse of KSFIOM.

1.5 In Dr Downs's evidence before the Select Committee she also notes that whereas in the UK the deposit protection scheme fully protects the first £50,000 of all Depositors' deposits (regardless of the recovery level and of the size of the deposit), the Isle of Man protects up to £50,000 inclusive of all recoveries from the insolvent bank. (By way of example, assuming a deposit of £100,000 and recovery of 50 per cent, in the UK this would yield £75,000 (£50,000 protected, 50 per cent. of remainder) whereas in the Isle of Man this would yield £50,000 (the 50 per cent payment equals the otherwise protected £50,000)).

1.6 It is noted that the Depositor profile includes both direct Depositors and retail bondholders, holding their deposits through a life company (together referred to in this note as "Depositors"). The breakdown of the original Depositor profile is set out at:

<http://www.kaupthingsingers.co.im/Pages/2009/March/13March2009.asp>

2. Status of Loan Trust Proposal

2.1 According to the evidence of Dr Downs before the Select Committee:

2.1.1 through their advisers, the Depositors' Action Group has been in contact with Treasury officials in the UK and the Isle of Man to discuss the creation of a loan trust underwritten by both governments, allowing depositors to draw in advance their deposits, which would be largely repaid from the assets of the Bank;

2.1.2 Dr Downs states *"we have already got support in Westminster for the idea, so we are really calling on the Isle of Man Government to come to the table and sit down and try and work out the details"*;

2.1.3 At this stage, there is no documented proposal, but the matter has been discussed with members in Westminster and the UK Treasury “*and there is expressed support for the idea*”.

3. Structure of Loan Trust Proposal

3.1 Attached is an indicative structure chart of a Loan Trust Scheme in the Appendix to this note.

3.2 The parties to the arrangement would comprise the following:

3.2.1 Trust: SPV vehicle incorporated in either England & Wales or Isle of Man;

3.2.2 Trustee: Corporate trustee holding for benefit of the beneficiaries;

3.2.3 Administrative Agent: functions to include administration of claims procedure and eligibility of Depositors, monitoring of advance payments to Depositors and return of funds to the Trust in respect of Depositors’ entitlements;

3.2.4 Security Beneficiaries: UK and Isle of Man government lending entities, the principal security for whom will comprise the Deposit Portfolio (representing entitlements assigned to the Trust by way of security against advance payments to Depositors);

3.2.5 Beneficiaries: Retail/Institutional depositors with outstanding balances which have not been satisfied by payments received to-date (estimated 4,000 depositors outstanding).

3.3 The operation of the Loan Trust Scheme would be as follows:

3.3.1 The UK and Isle of Man government entities would lend, in aggregate, c. [£200m] to the Trust, which would be secured against the Trust and its assets. The Loan Trust Scheme would need to determine whether such lending is pre-funded or draw down in instalments/on basis of claims. (Pre-funding would be administratively more convenient and avoid potential scaling back of funding arrangements during the life of the Fund);

3.3.2 Individual Retail/Institutional Depositors would apply to the Fund, through the Administrator, for participation in the scheme. Depositors will have the choice and may choose not to participate. Eligibility criteria would include:

(a) Retail/Institutional Depositor of Kaupthing Singer & Friedlander (Isle of Man) Limited with outstanding amounts owed;

(b) Submission of executed form of assignment of entitlements by way of security only.

3.3.3 Participation in the scheme would be for a loan advanced against a Depositor's entitlement and to be secured by way of security assignment of that entitlement to the Trust.

3.3.4 The terms of loan, including proportion of advance, would need to be detailed.

3.3.5 On proof of a Depositor's claim, the Administrator (on behalf of the Trustees) would direct the Fund to advance an amount to the relevant Depositor and to countersign the security assignment of the Depositor's entitlement (and such other matters as may be necessary to perfect the security assignment).

3.3.6 The assigned Depositor entitlements will comprise the Fund's Deposit Portfolio, which is to be held by way of security for the UK and Isle of Man government entities to secure repayment of their funding loans to the Trust. These loans will not bear interest, reflecting the low cost of borrowing at a governmental level.

3.3.7 The Administrative Agent would monitor distributions in respect of the Deposit Portfolio, remitting returns pro rata to the UK and Isle of Man government lending entities in accordance with the terms of the underlying loan or other financing agreement. The Administrative Agent will further provide reports of portfolio performance/collections.

3.4 It would be necessary to consider how the assignments would be handled for Depositors whose rights are currently assigned to the Depositors Compensation Scheme. For these Depositors, the amount of advance payment would be reduced by the amount (if any) of compensation received and not yet recovered by the Scheme in the liquidation;

3.5 It would be necessary to consider the requirements for flexibility in the future, including, for example, the impact of a sale of Kaupthing Singer & Friedlander (Isle of Man) Limited as a going concern or an early termination of the Fund arrangements.

4. Documentation

We envisage the documentation would comprise the following:

4.1 Trust Deed

4.2 Administration Agreement

4.3 Loan Agreement (UK and Isle of Man government contribution to the Fund) (alternatively bond issuance or other form of financing)

4.4 Pro forma loan or advance agreement

4.5 Pro forma form of assignment of individual depositor's deposit entitlement to the Fund

4.6 Security documentation over Trust and assets in favour of Government lending entities (if not contained within framework of Trust)

4.7 Umbrella Agreement between Kaupthing Singer & Friedlander (Isle of Man) Limited and the Fund acknowledging the proposed arrangements (and acknowledging notification of each deposit entitlement being assigned). It is possible for the Umbrella Agreement to include additional rights against Kaupthing Singer & Friedlander (Isle of Man) Limited, such as an assignment of the benefit of its entitlements against Kaupthing hf. or other third parties.

Appendix
Outline Transaction Structure

