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DRAFT

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By Post & By Email
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Dear Sirs

Kaupthing Singer & Friedlander (Isle of Man) Ltd (“KSF (IoM)”) - In Provisional Liquidation

As you know this firm, together with John Wright, act for the Depositors' Action Group. We refer to the hearing of 29 January and to the proposed Scheme of Arrangement. You are to put in evidence which gives further clarification on how a scheme would operate and how it would compare with a liquidation. The essence of any Scheme of Arrangement is that it should produce a greater return for depositors than liquidation. Our understanding of the proposals currently before the court is that they will not produce any greater return for depositors but might speed up payments. There has been some indication that the asset collection process under the Scheme may be affected more efficiently, with presumably costs savings, but we have seen nothing to support that proposition.

Our clients have nothing against a Scheme of Arrangement in principle as long as it is clearly shown it is significantly more advantageous than liquidation. As yet they remain sceptical that it will be and to the contrary, as set out in the most recent affidavit of John Wright, are concerned that the Scheme could be detrimental to recoveries.

If the Scheme is to have any prospect of success then the further evidence to be filed must show absolutely clearly the advantages and deal with all salient issues. To that end as part of that evidence our clients will expect to see the following issues fully addressed:-

By the Liquidator Provisionally

- What assets would the Liquidator Provisionally expect to realise either in his own role or, if appointed, in any subsequent liquidation:

 Certainly;

☐☐ Probably;

☐☐ Possibly.

- Could we have a full explanation of the position with the monies held by KSF London?
- What are the likely timescales for the recoveries?
- What is the LP's best estimate at the moment for payments to be made to depositors?

This information should include a list of all potential actions the Liquidator Provisionally feels he has or may have against third parties, including but not limited to Kaupthing hf, Kaupthing Singer & Friedlander (UK) Ltd, KSF(IoM)'s former directors and/or advisors, the FSC and the UK FSA. It should where possible include a value ascribed to that litigation. It should articulate the duties owed by the Liquidator Provisionally or liquidator to the creditors to maximise returns and to distribute them to creditors.

The proposer of the Scheme

Ordinarily a scheme of arrangement is proposed by the company. In this case that does not appear to be the case. There should be clarification of this position and where the proposer of the Scheme is subject to any potential conflict of interest, this conflict of interest should be pointed out to creditors and explained. By way of example if the proposer of the Scheme were in other circumstances to be a potential defendant in the Company's actions to recover its lost assets, this needs to be clearly stated with the relevant safeguards put in place.

Further can you confirm that you and Alix Partners will take legal responsibility for any representations made in the Scheme?

The Scheme of Arrangement should be clearly set out, based on the assumptions and figures provided by the Liquidator Provisionally. If for example the Liquidator estimates that he will recover £400 million in two years and £600 million in five years, the evidence should make clear:-

- The extent to which recoveries under the Scheme would be the same as those under a liquidation, clarifying and highlighting any differences in the extent to which recoveries would be made (for instance in pursuing litigation against third parties).
- The extent to which distributions of the estimated recoveries would be made by reference both to the final amount payable and to the timing of interim payments. If for example the Liquidator states that it is possible that he will recover £600 million in five years the evidence in respect of the Scheme should involve an assessment of whether in the same circumstances the same sum is achievable in a Scheme, and use that sum (or whatever is estimated to be achievable in the same circumstances) as a comparator and compare payments under a scheme of those in a liquidation.
- The evidence should include details of the Liquidator's responsibility to creditors and the Scheme Administrator's responsibility to creditors and in particular the Scheme Administrator's continuing accountability to creditors with regard to pursuing actions against third parties.
- To the extent that it is proposed that Scheme Creditors should waive or assign any rights against the Company or third parties in the event that the Scheme is approved, the extent of such a requirement and its effect on the ability of each class of creditor to recover should be clearly outlined.

We should say that it is an absolute requirement of those instructing us that their rights against third parties (to include the directors and advisors of the Company and the Isle of Man authorities) must not be affected by any scheme of arrangement. How is that to be done?

Further what control will the creditors have after any Scheme of Arrangement to ensure the Bank pursues all its rights against any third parties?

Classes of Depositors

The comparison between a liquidation and a scheme of arrangement should set out clearly how each of the following types of depositor and/or creditor would fare under a liquidation a scheme, both in terms of the timing of payments and in terms of the total amount ultimately payable. Comparisons

must be made on a like for like basis. If for example the Liquidator believes he could achieve £400 million within two years a sensible view should be taken on to what extent the Scheme Administrator would be able to achieve the same amount over the same period in the same circumstances and that figure should be used as a basis for the comparison. The classes should include but may not be limited to, the following:-

- Private/retail depositors
- those who hold their funds in a currency which has significantly appreciated since October 2008, such as the Euro or US dollar.
- Those who have deposits through a bond or other institution
- Businesses, corporations and institutions;

For each of the above, worked examples should be provided for:

- Those who hold less than £10,000;
- Those who hold more than £10,000 but less than £50,000;
- Those who hold more than £50,000 but less than £100,000;
- Those who hold more than £100,000 but less than £200,000;
- Those who hold between £200,000 and £500,000;
- Those holding more than £500,000.

In the present incarnation of the draft Scheme it is envisaged that the Treasury and others will defer their rights in the Scheme until 60p in the pound has been paid but will then claim under subrogated rights. The effect of this would be as we understand it effectively to cap distributions to depositors at

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that level. We are instructed that such a proposal will be opposed. Insofar as this provision is in some form retained a clear exposition of how it would in practice affect distributions should be given, in comparison to what would occur under liquidation.

We should say that our clients fully appreciate that precise figures cannot at this stage be given by the Liquidator and that any figure provided (apart from that of funds already gathered in) is provided for illustrative purposes only. That said, it must be possible to compare recoveries, costs and dividends under a liquidation and under a scheme. This task must be undertaken with sufficient clarity if the Scheme is to have any chance of approval.

Yours faithfully

Edwin Coe LLP