

Legal Disclaimer

This Discussion Document is intended to provide a general overview in relation to some issues which are relevant to Kaupthing Singer & Friedlander (Isle of Man) Limited in provisional liquidation – it is not a substitute for specific professional advice and should not be relied upon as such. This Document has been prepared in good faith but no representation or warranty is given as to the accuracy of the information supplied within it.

The IoM DCS

The Depositors Compensation Scheme (DCS) on the Isle of Man was not designed to envisage systematic failure of the banking system and differs significantly from the UK Version. It is basically constructed as a post event funded scheme i.e. funds are collected to compensate after any default, more to cover any instances of fraud or bankruptcy that might occur locally. Despite the global financial crisis experienced since October 2008, in its latest form, as expressed in legislation passed by Tynwald on 8 October 2008, it continues in this vein and is therefore unlikely to meet the general expectations of depositors.

Upto £150m is being made available by the Isle of Man Government to any DCS should that may be triggered by liquidation of a bank on the Isle of Man. A maximum fund for with compensation is allowed for up to a maximum cap of £350m, the balance of the funds being gathered through an annual levy on local banks over time – any funds in this regard are yet to be collected.

It should be noted that the maximum cap is a total that is applicable to all banking institutions that fall into liquidation before 9 October 2009. This means that if another bank were to suffer a similar fate as KSFIO before that date the maximum payout, in the first year, of is upto £350m-150m plus the annual bank levies due – would be shared by depositors in that bank as well thus proportionally reducing individual payouts to depositors during the first year. This means that any Scheme Manager that is appointed would could be unable to calculate total liabilities under the scheme before this date since the future is unknown.

Currently, and in the absence of contributions from the IoM banks, the maximum available in the DCS is upto £150m from the Isle of Man Government and then only for deposits between 20k and 50k with balances below this band covered by bank levies. with ~~the estimated current shortfall of liability under the DCS to KSFIO depositors standing stands at £208m overall.~~ From this it can be seen that there is already a gap in initial funding that may be due to all-eligible KSFIO depositors which needs to be covered under the implementation of this scheme until the bank levies are collected. On this basis currently, notwithstanding any future liquidations on the Isle of Man before

9 October 2009, ~~just 72% not all of~~ deposits eligible under the DCS could be met from ~~current funds available in the short term of £150m plus bank levies during the first year.~~ So if you have £10k on deposit with KSFIOm you would receive a maximum of £7,200 ~~from the funds currently available from liquidation plus the residual guarantee over time.~~ It is anticipated that future funds gathered through levies on the local banks could take years to be paid out under the DCS unless a better way is found.

A further complicating factor is that potential claimants have six months to submit a claim from the date the scheme is triggered and the Scheme Manager, subject to legal clarification, is duty may be bound to wait to see the total number of claimants before any money is paid. So if KSFIOm was liquidated on 29 January, the Scheme Manager would have to wait until the end of ~~June~~ July 2009 before making arrangements to pay any claim and would then be able to do so only on the basis that there was a degree of certainty that no other IOM banking institution was likely to fall into difficulties before 9 October 2009. It is therefore unlikely possible that even a proportionate claim would be paid between June and October 2009.

~~Then any liquidation funding that becomes available is used to repay the DCS first of all so if a £50,000 depositor receives £25,000 as partial payment during an initial phase of payments, a subsequent distribution by the liquidator of £30,000 would entail a payment to the DCS of £25,000 (to repay the funds already provided) and a distribution to the depositor of just £5,000. The depositor would have to wait for further distributions from the liquidator before the full £50,000 balance was received (remaining £20,000).~~

~~Furthermore once you have made a claim under the DCS you handover your rights to all distributions from the liquidator which will then be paid out to the DCS rather than to you directly. In this way you trade guarantee of 100% return of funds for payments over a much longer timescale and are subject to any costs incurred by the scheme.~~

All in all, the DCS on the Isle of Man does NOT offer the same route of recompense as the UK Government offered to Kaupthing UK or Icesave depositors in the UK. It has a totally different mechanism in mind, built to combat historic old potential liabilities style liquidations rather than the banking crises we find in the new world of 2008/09. Any small depositor believing that triggering the DCS may be the best way to a more immediate return of their money may be disappointed.

It is sensible to explore as to whether a better solution can be achieved. This does not negate a DCS route if we choose.

Legislation document:

<http://www.gov.im/lib/docs/fsc/PressReleases/compensationofdepositorsregulation1.pdf>