Re: Tynwald Select Committee Final Report on Kaupthing Singer & Friedlander (Isle of Man) Limited("KSFIOM")

The Third (Final) Report of the Tynwald Select Committee on KSFIOM (the "Committee"), which is now available for consultation is tabled for presentation at next week's sitting of Tynwald.

While the Report essentially concerns the events following the collapse of KSFIOM on 8 October 2008 and the credibility of the Depositors Compensation Scheme, it also reiterates the conclusions of the First (Interim) Reporton the events leading up to the collapse of KSFIOM.

The KSFIOM Depositors' Action Group ("KSFIOMDAG") gave evidence to the Committee, as representative of those suffering the consequences of the events of 8 October 2008 and onwards. KSFIOMDAG is disappointed in the weak and narrow conclusions reached by the Committee, particularly (i) in the way that it seeks to blame the collapse exclusively on the actions of the UK authorities and (ii) in relation to the – ultimately fruitless - efforts of the responsible Manx authorities to avoid the perceived ignominy of a bank insolvency on the Isle of Man by trying to foist a worthless Scheme of Arrangement on KSFIOM's creditors.

UK authorities' involvement & responsibility

We strongly contest the Committee's repeated assertion that KSFIOM "collapsed primarily because it wasprevented from accessing funds in its sister bank [KSF UK]" when its assets in the UK were "suddenly frozen" by a UK court order.

We do not deny the aggravating role of the UK authorities (with whom the Manx authorities have previously – and since - claimed a close working relationship) and (even more so) that of the insolvent Icelandic parent bank.However, the basic cause of the collapse of the bank is simple: KSFIOM made deposits to a counter-party (KSFUK) which could not cover its liabilities.

KSFIOM made those deposits with the support of the IOM regulator (the FSC) at a time when the rapidly deteriorating situation in Iceland was, we now understand, already a cause of grave concern in financial circles, as was well recognised by the FSC. Moreover, the FSC Board itself had previously passed an insightful Resolution on 2 May 2008 that KSFIOM should remove all its exposure to the Kaupthing group. We have searched in vain for any documentary evidence in support of the subsequent compromise apparently agreed between the FSC executive and KSFIOM's directors which allowed these funds to be deposited with KSF UK, where they remained exposed, albeit indirectly, to the Icelandic parent bank – and, directly, to the actions of the UK authorities. All parties agree that had these funds been placed outside the Kaupthing group, as required by the resolution passed by the FSC, KSFIOM would have been protected from the collapse of Kaupthing.

The failure of the Committee to acknowledge the responsibility of the Manx FSC and/or the directors of KSFIOM in allowing this to happen was a major cause of our dissatisfaction with the First (Interim) Report, as discussed in detail in our Response to that Report (included without comment as appendix 7 of the Committee's Final Report), to which we still await a considered response.

SOA and prevarication

Whilst the Report does conclude that the Scheme of Arrangement ("SOA") should have been abandoned, it is unable to say at what point: "It is a matter of difficult judgment when the Government should have given up onthe Scheme of Arrangement, but it is clear that it should have done so". Nor does the Report go on to make any recommendation as to what actions should be taken to mitigate the negative consequences for the affected creditors of that identified failure of the authorities.

Our view is clearer. Those involved in developing the SOA must have known from very early on that, with no additional cash to be made available, there was no way the SOA could provide anything other than a temporary financial advantage to depositors in terms of timing of payments. For an observer, discerning that benefit was a fine judgment to make, even for those closely acquainted with the matter - as witness the tepid support the SOA received from the bank's liquidators, who must have been best placed to analyse the SOA. With hindsight, itseems clear that the level of recovery of the bank's assets at which the Treasury would begin to recover its share(finally set at 70%) was always going to be chosen to minimise the risk of it not being reached and of leaving theTreasury out of pocket. Depositors could only appreciate this once the proposed SOA was finally put to them in April 2009 (at which time the official estimate of minimum recovery stood at 74%).

We are still at a loss to understand how the liquidators failed to seek an indemnity for their costs in investigatingthe SOA with the Manx authorities from the Manx Treasury as a condition of doing so, and that no meaningfulcriticism has been directed at the Manx Treasury for seeing fit to pursue the SOA to the bitter end.

We reject the statement the Committee makes in its Report that “It was not clear what the motivation of depositors was in opposing or supporting the Scheme of Arrangement…” As an organisation, we carefully considered the terms of the SOA, and reached a position of opposition after a great deal of thought. Our conclusion was based on legal advice and the best analysis that we could make at the time based on the information available to us. This was that the SOA offered only a marginal benefit in terms of timing of paymentsto a very narrowly-defined body of creditors. It did not offer more money, and it did not – in the end –significantly impact on timing of payments. Nevertheless, there were dark hints by the Manx Treasury at a “fire sale of assets”– repeated in the evidence but also in the run-up to the vote - if the SOA were not adopted, which were roundly rebutted by the liquidators, both at the time and in evidence to the Committee – and a suggestion that the Depositor Compensation Scheme (“DCS”) would not pay out as promptly as it in fact did. It is telling that there is no criticism or sanction in the Report for this clear attempt to frighten creditors into voting the “right” way on the SOA.

In summary, the Manx Treasury’s attempt to foist an inadequate and unacceptable SOA upon us was detrimental to the interests of creditors, both in terms of the delay it meant in commencing the liquidation and triggering the DCS (and hence payments to creditors) and in terms of the costs – born by the creditors – of the liquidators and their advisers (and KSFIOMDAG’s advisers) in undertaking work that the creditors neither sought nor supported.

This last injustice in particular – as well as the performance of the Manx Treasury throughout - has left a particularly bitter taste and will not be easily forgotten or forgiven. The whole episode leaves us more than ever convinced that the Manx Treasury is concerned more with its own image than with depositors' interests.

Conclusion

In the light of the Committee's findings, it is high time that depositors received an official

apology and retraction of the message put out and widely reported in the press in the months following their rejection of the SOA that they had perversely rejected a generous offer that would have solved their problems, with the implication that they were therefore no longer deserving of any sympathy. It is also high time that that some financial responsibility be assumed for the way that depositors have been treated, by the responsible authorities in the UK and the IOM working together to accelerate the pay-out to creditors now.

What happened to KSFIOM depositors can happen again to others. We are far from convinced that the revised Manx DCS is fit for purpose. In terms of recovery level for the customer, the nature of its funding and in the leve lof protection it offers (£50,000) compared to what is offered in the UK or the rest of the EU (£85,000), the DCS is not comparable to the protection afforded bank customers in other Western jurisdictions [1] .

The reputation of the IOM, and notably of its financial sector, on which much of the island's wealth and wellbeing depends, is not well served by the authorities (and those overseeing them) failing to fully acknowledge when and where the authorities were at fault. That is something that maybe voters should consider in the upcoming Manx elections.

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[1] For a detailed analysis of the differences between the IOM and UK schemes, see our document “Comparison DCS vs FSCS” uploaded on the Select Committee website. http://extranet.tynwald.org.im/COMMITTEES/KSF/Evidence/Comparison%20DCS%20vs%20FSCS.pdf