

Memorandum from Isle of Man Government

The UK Treasury Committee is seeking to identify lessons that can be learned from the banking crisis. To that end, it has invited written evidence on four key areas. The Evidence from the Isle of Man Government which focuses on Sections 1.8 and 3.5 of the Committee's examinations is set out below.

Executive Summary

The Isle of Man Government:

- asserts that it is a well regulated economy and applies international standards to the highest level.
- contends that the usual communication channels between the Isle of Man Financial Supervision Commission and the UK's FSA were not followed in advance of or during the Kaupthing insolvency.
- has in place a deposit protection scheme in line with affordable best practice.
- is keen to contribute to a debate as to how international consumer protection may be strengthened recognising that expectations may have changed.
- welcomes the opportunity to provide evidence, both in writing and orally, to demonstrate that the Isle of Man promotes transparency in the provision of financial services and plays an active part in combating international crime.

About the Isle of Man Government

Background to the Isle of Man, its Economy and Political System

1. The Island is a self-governing British Crown Dependency with its own parliament, government and laws. The UK government, on behalf of the Crown, is ultimately responsible for its international relations and the Queen, as 'Lord of Mann', is the Head of State and is represented on the Island by the Lieutenant Governor. The Island has a special and limited relationship with the EU, under an agreement ('Protocol 3') negotiated when the UK joined Europe in 1972, allowing free trade in agricultural and manufactured products between the Isle of Man and EU members. Apart from matters relating to this agreement, including Customs, the Island is not bound by EU legislation and it pays nothing to, and receives nothing from, EU funds.
2. The Isle of Man has had one of Europe's fastest growing economies in recent years, led by the international financial services industry. Over the last 25 years, the Island has developed into a flourishing and internationally respected offshore business centre providing significant business introduction into the UK and, in particular, the City of London. Business is attracted by professional expertise, supportive government, world-class telecoms infrastructure and sound financial regulation, as well as by a competitive tax regime. New growth areas include e-commerce, film industry, international shipping, aircraft registry and space and satellite business, while traditional sectors like tourism are still important.

3. Growth in the Island's economy has been matched by investment in the Island's public services, funded by direct and indirect taxation. The Island is self-financing.
4. Economic sectors include: financial services (36% of GDP), construction (7%), manufacturing (7%), professional and scientific services (21%), tourism (5%), and farming/fishing (1%). The Island has a working population of 44,000 and an unemployment rate of 1.5%. Inflation is currently 4.7%. The Isle of Man produces its own notes and coins with the same value as UK Sterling, for local use only.
5. For the 2007-2008 taxation year overall Government net spending was £543 million. This funding was used to provide a variety of services to Isle of Man residents, many in excess of those provided in jurisdictions such as the UK. For example:-
 - the basic pension plus supplements for a married couple, with the wife qualifying on her husband's contribution, is £217.58, some £72.53 per week higher than the basic pensions of £145.05 per week in the UK.
 - free eyesight tests and dental examinations are provided under the Health Service.
 - all tuition fees for Island students accepted into Higher Education courses at UK universities are paid by the Isle of Man Government without any required student contribution, while UK students are responsible for their own tuition fees.
 - free public transportation is provided for those over 60 years and pupils travelling to and from state schools.
 - during the past decade significant investment has been made in new infrastructure throughout the Isle of Man. In recent years over £500 million have been committed for such projects as a new acute care hospital, an energy-from-waste facility, new sewerage treatment works, improved schools, a new prison and two new water treatment plants.
 - the provision of affordable housing for Island residents has been a high priority and some £200 million has been made available for housing schemes that will see more than 1,000 additional homes built before 2010. A further £85 million has been allotted to repair and refurbish public sector housing and £44 million in grants and loans has been provided to construct homes for first-time buyers.
6. The provision of extensive public services and infrastructure within a legislative framework that does not permit a budget deficit, has earned the Isle of Man a coveted AAA credit rating from both Standard and Poor's and Moody's credit rating agencies for the past 8 years.
7. The Isle of Man is an international financial centre but because of its relatively low levels of income taxation, it has on occasions, been described as a "tax haven." Such labels are misleading, and may suggest to some a stereotype of secrecy and weak financial regulation. In recent years the Isle of Man has proved to the world that it does not conform to this stereotype.

8. The Island is not a secret or closed jurisdiction; it has no bank secrecy laws. A number of external and independent assessments of financial regulation have confirmed that the Island co-operates fully in the pursuit of international financial crime, and that its defences against money laundering comply with the highest global standards.
9. The Manx government's policy is to be both internationally responsible and economically competitive. At the heart of its taxation strategy is a determination to comply with current international standards on information exchange whilst endeavouring to promote good quality business in a low tax environment.
10. A number of international organisations have assessed the Isle of Man's practices against global standards to ensure that the Isle of Man does not present a weak link in the financial system generally.
11. The International Monetary Fund ("IMF") has endorsed the Isle of Man's compliance with international standards in such areas as banking, insurance, securities, anti-money laundering and combating the financing of terrorism. The IMF's Report in 2003, stated that the regulatory and supervisory system of the Isle of Man complied well with the assessed international standards and commended the Isle of Man for the attention it had given to upgrading the financial, regulatory and supervisory system to meet international supervisory and regulation standards.
12. A further inspection was undertaken by the IMF in September 2008 and early indications confirm positive findings.
13. The Island is a member of the International Organisation of Securities Commissions (IOSCO), the main body responsible for the setting of international standards in the securities sector. It is also a member of the Offshore Group of Banking Supervisors.
14. The Financial Action Task Force ("FATF") has carried out its own review of the Island's defences against money-laundering. Its positive report concluded that the Island is a co-operating jurisdiction with measures in place which are close to full adherence with FATF recommendations.
15. The Financial Stability Forum ("FSF") also considered the effect which offshore centres generally can have on global financial stability. The Isle of Man was placed in the top group of centres reviewed.

The Isle of Man Government's comments on specific areas of the Committee's inquiry

Turning now to the Isle of Man Government's comments on specific areas of the Committee's inquiry.

Securing financial stability

1.8 Possible improvements to the architecture of international financial regulation and maintenance of global financial stability.

- 1.8.1 It is the contention of the Isle of Man Government that the financial regulations in the Isle of Man and the protocols that exist between the Island and the UK regulatory authorities are appropriate to manage financial stability, if applied consistently. These are well documented and have been subject to scrutiny by numerous national and international bodies e.g. Treasury Select Committee, IMF, OECD, etc.
- 1.8.2 It is the contention of the Isle of Man Government that there was a significant shortfall in communication between the regulatory authorities in respect of the action which the UK was planning to take in relation to Kaupthing Singer & Friedlander Limited ("KS&FL") a UK incorporated company authorised by the FSA to take deposits. This meant that the Island had no opportunity to make or join in contingency arrangements for the safety of retail depositors' funds held locally.
- 1.8.3 This has had a significant detrimental impact on the reputation of the Isle of Man, a Dependency of the British Crown, because as a consequence of the actions of the UK, Kaupthing Singer & Friedlander (Isle of Man) Limited ("KS&F(IOM)L"), a licensed banking institution in the Isle of Man could not meet the repayment demands made on it by its depositors. Many of these depositors are UK expatriates or people living in the UK who are retail depositors and for legitimate reasons found themselves banking in the Isle of Man with what had until recently been a UK banking group i.e. Singer & Friedlander.
- 1.8.4 Apart from being licensed by the Isle of Man Government's Financial Supervision Commission ("FSC"), KS&F(IOM)L was also authorised by the FSA to conduct certain activities in relation to UK Regulated Mortgage Contracts – including administering, advising, arranging and lending.

Why does the Isle of Man contend this?

- 1.8.5 The FSC signed a Memorandum of Understanding ("MOU") with the FSA in September 2003. Such memoranda, while not having any legal or contractual standing, are designed to facilitate assistance and co-operation between regulators. The regulatory relationship between the FSC and the FSA (and its predecessor for banking supervision in the UK, the Bank of England) has functioned effectively for over 25 years (when the Isle of Man was one of the first smaller jurisdictions to establish a dedicated body responsible for the regulation of its financial services industry).
- 1.8.6 Except for the recent events relating to the Kaupthing case, the FSC has had a good working relationship with the FSA particularly in relation to all banks and other credit

institutions that are domiciled in the UK and that represent significant liquidity and /or credit exposures for Isle of Man banks. This is especially the case where the UK and Isle of Man banks are both part of the same banking or financial services group. It is accepted that in the majority of these cases, but not all, the FSA is responsible for the consolidated supervision of the whole group because it is the Home Regulator. A good recent example of a case where regulatory cooperation between the FSC and FSA worked effectively is in relation to the situation experienced by Bradford & Bingley plc.

- 1.8.7 The FSC sought to discharge its functions responsibly in relation to Kaupthing Bank hf and these circumstances are set out in the information which follows.. The presence of this banking group in the Isle of Man goes back almost 38 years when in April 1971 the Singer & Friedlander Group, a banking group in the UK, incorporated the existing bank (KS&F(IOM)L) under the name Singer & Friedlander (Isle of Man) Limited. In August 2005 the FSA had permitted the Singer & Friedlander Group to be acquired by Kaupthing Bank hf. This parent / subsidiary relationship existed until January 2007 when ownership of KS&F(IOM)L changed from it being a subsidiary of KS&FL to a sister of KS&FL and owned directly by Kaupthing Bank hf; the word "Kaupthing" being introduced into the company name, with the London bank, at that stage. During 2007, Kaupthing Group commenced to upstream deposits taken by KS&F(IOM)L to Iceland where previously it had been to KS&FL in the UK.
- 1.8.8 In December 2007, the FSA and the FSC permitted the Derbyshire Building Society to sell its Isle of Man banking subsidiary to KS&F(IOM)L.
- 1.8.9 During 2008, the two Icelandic banks (Landsbanki and Kaupthing), marketed aggressively, by offering high interest rates in the UK for retail deposits from UK consumers, via their internet product offerings ("Icesave" and "Kaupthing Edge", respectively).
- 1.8.10 The business relationship between KS&F(IOM)L and KS&FL was not removed because of the change in upstreaming by KS&F(IOM)L to Kaupthing Bank hf. KS&FL continued to participate in some significant lending opportunities together with KS&F(IOM)L as well as the latter using KS&FL for certain settlement transactions. In February 2008, the FSC visited the FSA to discuss regulatory issues concerning the market conditions and a specific session related to Kaupthing. It was evident therefore that both the FSA and the FSC believed there were common issues to discuss.
- 1.8.11 At the end of March 2008, when the FSC became sufficiently concerned with the deteriorating economic situation in Iceland, it initiated discussions with the Board of KS&F(IOM)L. The priority was to eliminate KS&F(IOM)L's exposure to Iceland.
- 1.8.12 The Board of KS&F(IOM)L offered to substitute the bank's exposure to its parent in Iceland by withdrawing deposits from Kaupthing Bank hf and redirecting those deposits to KS&FL in the UK. A liquidity facility of £185 million was left in place between KS&F(IOM)L and Kaupthing Bank hf which gave KS&F(IOM)L the opportunity to call for short term liquidity if it was needed.
- 1.8.13 Before permitting KS&F(IOM)L to place a significant amount (48% as at 30 September 2008 - after netting off the "liquidity" exposure to Kaupthing Bank hf) of

its total assets with KS&FL, the FSC believed it prudent to discuss this and confirm two important matters with the FSA:

- The maximum exposure that it permitted KS&FL to have to related parties (including Kaupthing Bank hf); and,
- The liquidity requirements placed upon it in relation to deposits made with it that had a maturity date of up to one month.

1.8.14 The FSA informed the FSC that the maximum exposure that the FSA permitted KS&FL to have with all related parties was 25% of Large Exposure Capital Base in aggregate. The FSA confirmed that this included interbank placings with a maturity of less than 12 months (which is noteworthy because such exposures, which can be significant, are sometimes exempted.) Within this limit the FSC was given to understand that there was to be no net exposure between KS&FL and Kaupthing Bank hf. The FSA also stated that most of the related party exposures comprised exposures to related parties situated within the UK. This was supported by the fact that when the FSC spoke to KS&F(IOM)L and the FSA regarding the margin on £185 million of additional collateral (that was being put in place between KS&F(IOM)L and KS&FL to give some independent security for a placing by KS&F(IOM)L with KS&FL), some difficulty was experienced because the margin was regarded as part of the 25% related party limit.

1.8.15 Secondly, the FSA informed the FSC that KS&FL had to have liquidity available within 30 days equivalent to 95% of liabilities maturing within 30 days (a mismatch of no more than 5% out to 30 days). In the maturity band sight to 8 days, no mismatch was permitted. The FSA stated that certain behavioural adjustments were permitted to the retail deposit book (except at the time for deposits accepted via the Kaupthing Edge internet product offering). No behavioural adjustments were permitted to the contractual maturity date for wholesale / interbank deposits taken by KS&FL.

1.8.16 The FSC had therefore satisfied itself that:

- The exposure to the parent bank would be eliminated (except that a line of liquidity was available to draw upon from the parent if needed and which netted off in the event of insolvency);
- The 60% of total assets of KS&F(IOM)L that were represented by claims on Kaupthing Group in October 2008 (after netting off the "liquidity" exposure to Kaupthing Bank hf) were due from KS&FL, a UK bank where all related party exposures were limited to 25% of Large Exposure Capital Base and where there was no net exposure to Kaupthing Bank hf; and,
- KS&FL would have liquid assets to meet all maturing liabilities out to 8 days and were only permitted to have a maximum mismatch of 5% out to one month.

1.8.17 As explained above, the FSA would have been aware of the business model adopted by KS&F(IOM)L and of the importance which the Isle of Man regulator attached to these prudential limits for the containment of risk.

Up until the demise of KS&F(IOM)L the FSC had no major concern about the way in which the local bank was managed or about its asset quality.

- 1.8.18 On 8 October 2008 KS&FL was placed into administration on application by the FSA. The relevant Order of Court provides that the Court file shall not be available for public inspection without the Court's leave. The UK Tripartite Committee / UK authorities made arrangements for a number of UK accounts (badged "Kaupthing Edge" accounts) to be transferred to ING Bank. The FSC has been informed that the funds backing the transfer of these deposits came directly from HM Treasury and/or the UK Financial Services Compensation Scheme.
- 1.8.19 Whilst the Isle of Man has been unable to verify matters because of a lack of information as can be seen later, if the limits referred to above were being properly observed it is unclear why KS&FL needed to be placed into administration without prior regulatory dialogue, given the disastrous effect which such a move was bound to have on asset values.
- 1.8.20 The UK Government has agreed to represent the Isle of Man's interests in ongoing discussions with Iceland, including on the enforcement of a guarantee given by Kaupthing Bank hf. However, it has been pointed out that under the terms of international loans granted or to be granted to Iceland, the country will be bound to treat all creditors *pari passu* and the UK Treasury has subsequently informed the Isle of Man Government that the parental guarantee is a "creditors issue" which should be pursued directly with the Resolution Committee of Kaupthing hf.
- 1.8.21 As mentioned above, a high degree of co-operation normally exists between the FSA and the FSC, supported by a MOU. This notwithstanding there was no prior indication to the FSC by the FSA that KS&FL was to be placed into administration and that KS&F(IOM)L's claim on KS&FL would be affected. Such regulatory co-operation and dialogue is to be expected situations, and as had happened in dealing with other situations previously. In the Isle of Man's view there was a breakdown of regulatory co-operation in this instance.
- 1.8.22 Prior to the placing into administration of KS&FL, arrangements (backed by UK Treasury and Bank of England/ UK Financial Services Compensation Scheme Ltd funding) were apparently made in advance to ensure that retail depositors with KS&FL (that is in effect all UK situs accounts belonging to individuals) would receive back 100% of their deposits. No opportunity was given to the Isle of Man to see whether KS&F(IOM)L's retail depositors could participate in these or other safety arrangements, even though the FSA knew of KS&F(IOM)L's high reliance on KS&FL.
- 1.8.23 The basis on which the application was made for the UK administration Order for KS&FL was not explained at the time though some details have come to light in subsequent Select Committee reporting. The underlying Court documents cannot be disclosed without the Court's leave. The FSC has requested access to them from the FSA but this has not yet been granted.
- 1.8.24 At the meeting of Creditors of KS&FL held in London on 1 December 2008, it is evident from the votes cast, that the UK authorities (in the form of the UK Financial Services Compensation Scheme Ltd) did not vote for the Liquidator Provisionally of KS&F(IOM)L to join the Creditors Committee – despite the fact that he is in effect representing the interests of the over 10,000 depositors who banked with the group through KS&F(IOM)L and has an indicative claim of £600 million against KS&FL. The FSC understand that this makes the Liquidator Provisionally of KS&F(IOM)L the

largest creditor of KS&FL apart from the UK Financial Services Compensation Scheme Ltd.

1.8.25 The Statutory Instrument, The Kaupthing Singer & Friedlander Ltd Transfer of Certain Rights and Liabilities Order 2008 (the "SI"), made by HM Treasury under emergency powers created by the Banking (Special Provisions) Act 2008 effectively provides for the immediate transfer of retail depositors to ING Direct N.V. It also imposes an overriding objective on the administrator to effect ING transfers as a priority over all other administrative actions.

Paragraph 27 of the SI, under the heading of "Moratorium on payment to related companies" states that:

1. "Kaupthing (KS&FL) shall not make any payment, dispose of any property or modify or release any right or liability to or for the benefit of a related party without the prior consent of the Treasury, and any such purported payment, disposal, modification or release shall be void.
2. No related party shall exercise any right of set-off or combination of accounts in respect of any debt owing by Kaupthing (KS&FL) without the consent of the Treasury, and any such purported exercise shall be void."

1.8.26 KS&F(IOM)L is a related party as defined. It will be seen that the effect of the paragraph in this SI creates an exceptional variance to the usual process of administration.

1.8.27 During December 2008, the FSC had sight of the Estimated and Redacted Summary of Statement of Affairs for Kaupthing Singer & Friedlander Limited (KS&FL) (in Administration) as at 8 October 2008. This indicates some £3,025 million of loans and advances are due from "Intercompany" (related) parties, including £2,300 million from Kaupthing Bank hf. It appears from a note to that Statement that there is a net amount due from Kaupthing Bank hf of £900 million. This net amount would be 150% of what the FSC calculate may have been KS&FL's Large Exposure Capital Base. The Statement is less helpful than one would expect because it does not quantify the sums due to related parties. The aggregate for related party exposures reported on the Statement are also significantly greater than the £531million (before netting off amounts due to group) reported in Note 41 to KS&FL's audited financial statements for the year ended 31 December 2007.

1.8.28 Moreover, as explained above, KS&F(IOM)L funds were placed with KS&FL on the understanding that any exposure of KS&FL to the remainder of the Kaupthing Bank hf Group would be contained within the prescribed UK regulatory policies / restrictions applying to it in relation to related party lending and liquidity mismatches. It would appear from the Estimated and Redacted Summary Statement of Affairs that these policies / restrictions were either not applied or were subsequently relaxed significantly or were breached in a significant manner.

1.8.29 Furthermore, the UK freezing Order made by HM Treasury against Landsbanki assets (Landsbanki Freezing Order 2008) was publicly construed by many as a freeze of Icelandic assets generally. This perception, even though the generality was wrong, exacerbated an already tight liquidity position for Kaupthing Bank hf Group as a whole.

1.8.30 **In conclusion the Isle of Man contends that a solvent bank in the Isle of Man has been made insolvent by the actions of the UK authorities, when the UK was attempting to protect its own position against Iceland. Had the existing regimes and protocols been adhered to then the situation, if not avoided, could have been managed with significantly less impact on the Isle of Man.**

3.0 Protecting the Consumer

3.5 The protection of UK citizens investing funds in non-UK jurisdictions.

3.5.1 The Isle of Man Government and its regulatory authorities have designed and implemented comprehensive consumer protection regimes, based on international good practice, over many years. However, the IOM appreciates that the international financial community now wants to understand how the current market conditions have occurred and is happy to co-operate in that exercise.

3.5.2 The Isle of Man has a Financial Services Ombudsman Scheme which is a free, independent dispute resolution service for customers with a complaint against an Isle of Man financial firm such as a bank, insurance company or financial adviser which the firm has been unable to resolve. It became fully operational in January 2002. The role and powers of the Scheme are set down by law and the Ombudsmen are appointed by the Isle of Man Office of Fair Trading. It has powers to order payments up to £100,000 for cases where a consumer complaint is upheld.

3.5.3 The Isle of Man has a depositors' compensation scheme (DCS). The DCS partially compensates depositors (wherever resident) if a bank in which they have deposited money fails. To pay compensation, a DCS fund is created (when needed) from contributions made by other banks in the Isle of Man and the Isle of Man Government. The DCS compensates people who have money in current and deposit accounts in the Isle of Man up to a limit of £50,000 per individual depositor and up to £20,000 for most other categories of depositor (companies, trusts etc). There is no "standing fund" of compensation (i.e. money is not collected in advance).

3.5.4 The Isle of Man also has a scheme to compensate investors in authorised collective investment schemes: Isle of Man's Authorised Collective Investment Schemes' Compensation Scheme ("ACISCS"). The ACISCS partially compensates an investor if an authorised collective investment scheme in which they have invested fails to pay when money is due. Compensation may be due if a manager or trustee of an authorised collective investment scheme fails to repay an investor when required by the terms of the scheme. Compensation payable is calculated as 100% of the first £ 30,000 and 90% of the next £ 20,000 with a maximum compensation of £48,000. Compensation is paid out of levies collected from other authorised scheme managers and trustees ("authorised persons") in the Isle of Man. There is no "standing fund" of compensation (i.e. money is not collected in advance).

- 3.5.5 For life assurance companies, the Isle of Man's Life Assurance (Compensation of Policyholders) Regulations 1991 ensure that, in the event of a life assurance company being unable to meet its liabilities to its policyholders, up to 90% of the liability to the protected policyholder will be met. Unlike many other policyholder protection schemes, the Island's scheme operates globally, providing protection to policyholders no matter where they reside. The scheme would be funded by a levy on the funds of the other life assurance companies.
- 3.5.6 All authorised institutions are required to provide details of the various compensations schemes within their literature to ensure that depositors / investors are familiar and cognisant of the protection regimes in place. The Isle of Government prides itself both on its quality of financial regulation and on the responsible stance it takes to consumer protection. It contends that UK citizens can invest in the Isle of Man with confidence.

January 2009