



## **DEPOSITORS' COMPENSATION SCHEME**

**(in relation to the Banking Business (Compensation of Depositors) Regulations 1991)**

**ANNUAL REPORT  
OF THE SCHEME MANAGER  
FOR THE YEAR ENDED  
31 MARCH 2009**

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## SCHEME MANAGER

In accordance with Section 5 of the Banking Business (Compensation of Depositors) Regulations 1991, made under Section 21 of the Financial Supervision Act 1988, the Financial Supervision Commission (“the Scheme Manager”) was charged with the administration of the Depositors’ Compensation Scheme.

On 9<sup>th</sup> October 2008 the Banking Business (Compensation of Depositors) Regulations 1991 were revoked and replaced by the Compensation of Depositors Regulations 2008, except that they shall continue to apply for the purposes of the fund established following the default of the Bank of Credit Commerce International S.A. in respect of which the Scheme Manager made a determination on 16<sup>th</sup> January 1992, as if they had been remade under 25 of the Financial Services Act 2008 for these purposes.

The Financial Services Act 2008, Schedule 1 states *“the Commission shall consist of not less than seven qualified persons appointed by the Treasury, subject to the approval of Tynwald”*.

Tynwald has approved the following persons to be members of the Commission:

	<b>Date first elected</b>
Mrs R V Penn (Chairman)	March 1993
Mr J R Aspden	July 1998
Mr J Cashen	January 2002
Mr T Cullen	June 2001
Mr B Stott	June 2001
Mr G Karran	July 2007
Mr A Smith	July 2007

## OFFICERS & PROFESSIONAL ADVISERS

### *SECRETARY*

Mr A J Kermode  
Financial Supervision Commission  
P O Box 58  
Finch Hill House  
Bucks Road  
Douglas  
Isle of Man  
IM99 IDT

### *ADVOCATES*

Callin Wild  
Number Fifty, Athol Street  
Douglas  
Isle of Man  
IMI IJB

### *AGENTS*

KPMG LLC  
P O Box 93  
Heritage Court  
41 Athol Street  
Douglas  
Isle of Man  
IM99 IHN

### *BANKERS*

Isle of Man Bank Limited  
Head Office  
P O Box 13  
2 Athol Street  
Douglas  
Isle of Man  
IM99 IAN

### *AUDITORS*

PricewaterhouseCoopers  
Sixty Circular Road  
Douglas  
Isle of Man  
IMI ISA

## REPORT OF THE SCHEME MANAGER

### *INTRODUCTION*

This is the eighteenth Annual Report by the Financial Supervision Commission in its role as Scheme Manager of the Banking Business (Compensation of Depositors) Regulations 1991, known as the Depositors' Compensation Scheme ("the Scheme").

### *LEGISLATION*

On 9<sup>th</sup> January 1991, the Treasury, in exercise of the powers conferred on it by Section 21 of the Financial Supervision Act 1988, made the Banking Business (Compensation of Depositors) Regulations 1991 ("the 1991 Regulations") (Government Circular No 47/91). The 1991 Regulations came into operation on 1<sup>st</sup> February 1991 and were approved by Tynwald on 20<sup>th</sup> February 1991.

The 1991 Regulations provided for the establishment of a fund out of which compensation was paid on eligible protected deposits if a Scheme participant licensed under the Banking Act 1998 (previously the Banking Act 1975) was deemed to have defaulted. The 1991 Regulations further provided for the levying of contributions on other Scheme participants in order to provide monies for the establishment of the fund, upon a default by a Scheme participant.

On 9<sup>th</sup> October 2008 the 1991 Regulations were revoked and replaced by the Compensation of Depositors Regulations 2008 ("2008 Regulations"), except that they shall continue to apply for the purposes of the fund established following the default of the Bank of Credit Commerce International S.A. in respect of which the Scheme Manager made a determination on 16<sup>th</sup> January 1992, as if they had been remade under 25 of the Financial Services Act 2008 for these purposes.

As a result of the Financial Services Act 2008, the 2008 Regulations apply to "deposit takers" rather than banking institutions. However, as building societies are excluded from the Scheme in the 2008 Regulations, the effect is that the scope of the 2008 Regulations is the same as the 1991 Regulations in relation to Scheme participants.

### *ACTIVATION OF THE SCHEME*

On 5<sup>th</sup> July 1991 international regulatory action co-ordinated by the Bank of England led to the closure of the Bank of Credit and Commerce International S.A. (in liquidation) ("BCCI S.A."), a Luxembourg banking company, the Bank of Credit and Commerce Overseas Limited, a Caymanian bank, and various other companies in the BCCI Group.

On 16<sup>th</sup> January 1992 the Financial Supervision Commission, as Scheme Manager, determined that BCCI S.A. was in default in terms of Regulation 4(1) of the 1991 Regulations. This followed the making of a winding-up order by the High Court

in the Isle of Man in respect of the affairs of BCCI S.A. in the Island and winding-up orders in Luxembourg, the Cayman Islands and the UK.

#### ***DEFAULT BY BCCI S.A.***

The statutory cut-off date for submission of claim forms passed on 16<sup>th</sup> July 1993.

#### ***LEVIES***

During the year ended 31 March 2009, no levies were made.

#### ***DIVIDEND DISTRIBUTION***

During the year ended 31 March 2009, the liquidators of BCCI SA made further payments to the Scheme Manager totalling £1,104,844.

More information is provided in note 6 on page 13 of the attached Financial Statements.

To date, a total of £54,163,949 has been received from the liquidators. As at 31 March 2009 £24,477,931 of this had been due, and therefore paid, to claimants.

The remaining £29,686,018 has formed part of the general pool of funds held by the Scheme Manager and enabled repayments of £23,471,495 (equivalent to 100% of total levies imposed on the banks) to be made to the contributing scheme participants.

There still remain 9 accounts where the Scheme Manager has not paid compensation and has not received a dividend distribution from the liquidator who has still to resolve them.

The total dividends declared by the liquidators to date amount to 86.5 per cent.

#### ***RETIREMENT / APPOINTMENT OF COMMISSIONERS***

There have been no changes during the year and to the date of signing the report and financial statements for the year ended 31<sup>st</sup> March 2009.

The Scheme Manager adopts a strict policy in determining and managing the conflicts of interest which may arise between members of the Commission and Scheme participants. Information regarding Commission members' conflicts of interest is available from the Commission's website [www.fsc.gov.im](http://www.fsc.gov.im).

#### ***RETIREMENT / APPOINTMENT OF SECRETARY***

There have been no changes during the year and to the date of signing the report and financial statements for the year ended 31<sup>st</sup> March 2009.

***PAYMENT OF COMPENSATION***

During the year, the Scheme Manager made no compensation payments.

As at 31 March 2009, there remained 9 claims of a general nature that had not been resolved due to the liquidators still not being in a position to give the Scheme Manager the necessary confirmations. The total potential compensation payable on these claims amounts to £5,130. For such claims, payment will only become due if the amounts are accepted by the liquidator and dividends are received into the Scheme. As the level of dividend has now reached 86.5% there is no future cost to the Scheme.

***SCHEME PARTICIPANTS***

Appendix B to this Report lists all participants in the Isle of Man Depositors' Compensation Scheme during the year ended 31 March 2009 (under both the 1991 Regulations and the 2008 Regulations).

***FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2009***

The attached Financial Statements form part of this Report.

***COMPENSATION FUND***

The Scheme Manager is currently in the process of finalising discussing with Treasury the options available to enable a distribution of all, or part, of the compensation fund to be made, less future costs to be incurred.

***DEPOSITORS' COMPENSATION SCHEME IN RELATION TO THE COMPENSATION OF DEPOSITORS REGULATIONS 2008***

A separate annual report is prepared covering the above. More information is provided in note 9 on page 14 of the attached Financial Statements.

***APPROVED BY THE FINANCIAL SUPERVISION COMMISSION AS SCHEME  
MANAGER OF THE DEPOSITORS' COMPENSATION SCHEME  
ON 17 JUNE 2009 AND SIGNED ON ITS BEHALF BY:***

Mrs R V Penn  
.....

CHAIRMAN

Mr J R Aspden  
.....

COMMISSIONER

## **Depositors' Compensation Scheme**

### **Statement of Scheme Manager's Responsibilities**

The Scheme Manager is required by Regulation 5(3) of the 1991 Regulations to prepare in respect of each financial year a report to the Treasury on the discharge of its functions and on the operation of the Scheme generally. This report shall include a balance sheet and an income and expenditure account for the Scheme.

In preparing this report the Scheme Manager is required to:

- Select suitable accounting policies and then apply them consistently; and,
- Make judgements and estimates that are reasonable and prudent.

The Scheme Manager is responsible for keeping proper accounting records, which disclose with reasonable accuracy at any time the financial position of the scheme and to enable the Scheme Manager to make reports required by the Banking Business (Compensation of Depositors) Regulations 1991 - 2007, made under the Financial Supervision Act 1988. The Scheme Manager is also responsible for safeguarding the assets of the Scheme and for taking reasonable steps for the prevention and detection of fraud and other irregularities.

**By order of the Scheme Manager**

Mr A J Kermode

**Secretary**

17 June 2009

## **Independent auditors' report to the Scheme Manager and the Treasury**

We have audited the accompanying financial statements of the Depositors' Compensation Scheme which comprise the Balance Sheet as of 31 March 2009 and the income and expenditure account for the year then ended and a summary of significant accounting policies and other explanatory notes.

### **Scheme Managers' Responsibility for the Financial Statements**

The Scheme Manager is responsible for the preparation and fair presentation of these financial statements in accordance with applicable Isle of Man law and United Kingdom Accounting Standards (United Kingdom Generally Accepted Accounting Practice). This responsibility includes: designing, implementing and maintaining internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

### **Auditors' Responsibility**

Our responsibility is to express an opinion on these financial statements based on our audit. This report, including the opinion, has been prepared for and only for the Scheme Manager and the Treasury in accordance with the Audit Act 2006 and for no other purpose. We do not, in giving this opinion, accept or assume responsibility for any other purpose or to any other person to whom this report is shown or into whose hands it may come save where expressly agreed by our prior consent in writing.

We conducted our audit in accordance with International Standards on Auditing. Those Standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Scheme Manager, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### **Opinion**

In our opinion the accompanying financial statements give a true and fair view of the financial affairs of the Scheme as of 31 March 2009 for the year then ended in accordance with United Kingdom Generally Accepted Accounting Practice and have been prepared in accordance with regulations made under the Audit Act 2006 and comply with the requirements of the Banking Business (Compensation of Depositors) Regulations 1991 – 2007 made under the Financial Supervision Act 1988.

PricewaterhouseCoopers  
Chartered Accountants  
18 June 2009

Income and expenditure account  
for the year ended 31 March 2009

	<i>Note</i>	2009	2008
		£	£
<b>Income</b>			
Dividends received from Liquidator	<i>6</i>	1,104,844	1,043,857
Bank interest receivable	<i>2b</i>	426,460	572,995
		<hr/>	<hr/>
		1,531,304	1,616,852
<b>Expenditure</b>			
Legal and professional fees		7,925	0
Scheme agents' costs		49,472	42,141
Administration costs		10,000	10,000
Telephone		67	66
Audit fee		4,095	4,420
Bank charges		33	107
		<hr/>	<hr/>
		(71,592)	(56,734)
<b>Excess of income over expenditure for the year</b>			
		1,459,712	1,560,118
Dividend surplus	<i>6</i>	(559,823)	(483,369)
Compensation fund brought forward		10,854,560	9,777,811
		<hr/>	<hr/>
Compensation fund carried forward		11,754,449	10,854,560
		<hr/> <hr/>	<hr/> <hr/>

The notes on pages 11 to 14 form part of these financial statements.

Balance sheet  
as at 31 March 2009

	<i>Note</i>	2009	2008
		£	£
<b>Current assets</b>			
Cash at bank		12,366,627	11,473,507
Sundry debtors		7,330	3,181
Prepayments and accrued income		2,806	30,967
		<u>12,376,763</u>	<u>11,507,655</u>
<b>Current liabilities</b>			
Accruals		4,000	13,623
Other creditors	7	<u>618,314</u>	<u>639,472</u>
		<u>(622,314)</u>	<u>(653,472)</u>
<b>Net current assets</b>		<u><u>11,754,449</u></u>	<u><u>10,854,560</u></u>
<b>Represented by</b>			
Compensation fund	4	<u><u>11,754,449</u></u>	<u><u>10,854,560</u></u>

These financial statements were approved by the Scheme Manager on 17 June 2009 and signed on its behalf by:

Mrs R V Penn  
*Commissioner*

Mr J R Aspden  
*Commissioner*

The notes on pages 11 to 14 form part of the financial statements.

## Notes

*(forming part of the financial statements for the year ended 31 March 2009)*

### 1 Constitution

The Isle of Man Depositors' Compensation Scheme was constituted under the Financial Supervision Act 1988 and governed by the Banking Business (Compensation of Depositors) Regulations 1991-2007. On 9<sup>th</sup> October 2008 the Banking Business (Compensation of Depositors) Regulations 1991 ("1991 Regulations") were revoked and replaced by the Compensation of Depositors Regulations 2008 ("2008 Regulations") except that they shall continue to apply for the purposes of the fund established following the default of the Bank of Credit Commerce International S.A. in respect of which the Scheme Manager made a determination on 16<sup>th</sup> January 1992, as if they had been remade under 25 of the Financial Services Act 2008 for these purposes.

### 2 Accounting policies

#### a *Convention*

These financial statements have been prepared under the historic cost convention.

#### b *Interest receivable and expenditure incurred*

Interest receivable and expenditure incurred, except for compensation payments (see note 2d) have been accounted for on an accruals basis.

#### c *Levies receivable*

Levies receivable from participants of the Scheme are credited to the income and expenditure account in the period in which they are levied.

#### d *Compensation payments to eligible protected depositors*

Compensation payments made to depositors are charged to the income and expenditure account when made.

#### e *Interest receivable and costs recoverable on compensation paid*

Under Regulation 15(4)(B) of the 1991 Regulations the Scheme Manager is entitled to recover such sums equivalent to the amount of compensation paid, interest on such compensation and the costs of recovery of such sums. No account of any amount, which may be recoverable under this Regulation, is taken until such recovery becomes certain.

## Notes (continued)

*(forming part of the financial statements for the year ended 31 March 2009)*

### f *Dividends received from Liquidator*

Dividends received from the Liquidator are accounted for on a received basis.

### g *Translation of foreign currency*

Foreign currency transactions during the year are translated into sterling at the rates of exchange ruling on the dates of the transactions.

### h *Basis of preparation*

The financial statements have been prepared in accordance with UK GAAP in so far as compatible with the application of the constitution on page 11.

## 3 **Levies**

The Scheme Manager was permitted under the 1991 Regulations governing the Depositors' Compensation Scheme to make successive annual levies on each Scheme participant that was a participant at the date of default of a participant until all eligible protected depositors of the defaulting participant had been compensated in full, in accordance with the 1991 Regulations.

The annual levy was equivalent to 0.125% of a participant's deposit liabilities at a date(s) specified by the Scheme Manager (subject to a minimum levy of £25,000 and a maximum levy of £250,000). All levies in respect of the Isle of Man Branch of Bank of Credit & Commerce International S.A. have now been called. When there were surplus funds available the Scheme Manager authorised repayment of the levies. The levies repaid have been made in proportion to the levies received from each of the Scheme participants.

As at 31 March 2009 all levies have been repaid in full.

## 4 **Compensation Fund**

At 31 March 2009 the Scheme has retained funds, which will be used in satisfying the liability to depositors of the Isle of Man branch of Bank of Credit and Commerce International S.A, and covering the costs of administering the Scheme.

## 5 **Taxation**

The Scheme is not subject to Income Tax and no relief is available for any expenditure.

Notes (continued)

(forming part of the financial statements for the year ended 31 March 2009)

**6 Dividends received from Liquidator**

The Liquidator has declared total dividends to date of 86.5%. These funds have been paid in several tranches over the course of the liquidation. The amount outstanding in respect of dividends cannot be determined as not all claims have yet been admitted by the Liquidators in Luxembourg.

The dividends received during the year have been applied as follows:

	2009	2008
	£	£
Repayment of compensation	2,416	5,750
Interest on compensation paid	542,605	554,738
Surplus due to claimants (see below)	559,823	483,369
	<u>1,104,844</u>	<u>1,043,857</u>

Dividend surplus payments have been dealt with as follows:-

	2009	2008
	£	£
Surplus payments received from the Liquidator	559,823	483,369
Adjustment in respect of prior year payment	-	-
	<u>559,823</u>	<u>483,369</u>
Dividend surplus payment debited to income and expenditure account	<u>559,823</u>	<u>483,369</u>

**7 Other creditors**

	2009	2008
	£	£
Unclaimed compensation and surplus payments	596,169	617,327
Other creditors (including unpaid agent's fees)	22,145	22,145
	<u>618,314</u>	<u>639,472</u>

## Notes (continued)

*(forming part of the financial statements for the year ended 31 March 2009)*

### 8 Claims not accepted by the Scheme Manager

As at 31 March 2009, the following claims had not yet been accepted by the Scheme Manager:

	Number	Potential compensation payable £
Claims where there are outstanding queries	9	<u>5,130</u>

Future compensation payments will only become due if claims not paid are accepted by the liquidator and dividends are received into the Scheme. As the level of dividend has now reached 86.5% there is no future cost to the Scheme.

### 9 Post Balance Sheet Event – Default by Kaupthing Singer & Friedlander (Isle of Man) Limited

On 27<sup>th</sup> May 2009, after the end of the financial year, the Financial Supervision Commission, as Scheme Manager, determined that Kaupthing Singer & Friedlander (Isle of Man) Limited was in default in terms of Regulation 3 of the 2008 Regulations. This followed the making of a winding-up order by the High Court in the Isle of Man in respect of the affairs of Kaupthing Singer & Friedlander (Isle of Man) Limited in the island.

## APPENDIX A - LEGISLATION

### Up to 9<sup>th</sup> October 2008

Financial Supervision Act 1988

Banking Business (Compensation of Depositors) Regulations 1991

Banking Business (Compensation of Depositors) (Amendment No 2) Regulations 1991

Banking Business (Compensation of Depositors) (Amendment No 3) Regulations 1991

Banking Business (Compensation of Depositors) (Amendment) Regulations 1992

Banking Business (Compensation of Depositors) (Amendment No 2) Regulations 1992

Banking Business (Compensation of Depositors) (Amendment) Regulations 1994

Banking Business (Compensation of Depositors) (Amendment No 2) Regulations 1997

Banking Business (Compensation of Depositors) (Amendment) Regulations 1998

Banking Business (Compensation of Depositors) (Amendment) Regulations 2003

Banking Business (Compensation of Depositors) (Term Deposit Amendment) Regulations 2004

Banking Business (Compensation of Depositors) (Amendment) Regulations 2005

Banking Business (Compensation of Depositors) (Amendment) Regulations 2007

### Effective from 9<sup>th</sup> October 2008

Financial Services Act 2008

Compensation of Depositors Regulations 2008

Compensation of Depositors (Amendment) Regulations 2008

Compensation of Depositors (Amendment) Regulations 2009

## APPENDIX B – SCHEME PARTICIPANTS

The scheme participants in the Isle of Man Depositors' Compensation Scheme during the year ended 31 March 2009, under the 1991 Regulations and 2008 Regulations, were as follows:

AIB Bank (CI) Limited  
Alliance & Leicester International Limited  
Anglo Irish Bank Corporation (International) PLC (*formerly Anglo Irish Bank Corporation (I.O.M.) P.L.C.*)  
Bank of Ireland (I.O.M.) Limited  
Bank of Scotland International Limited  
Barclays Bank PLC  
Barclays Private Clients International Limited  
Barclays Private Bank & Trust (Isle of Man) Limited  
BNP Paribas Securities Services Custody Bank Limited (*licence surrendered on 21 November 2008*)  
BNP Paribas Securities Services S.A. (*licence issued on 13 August 2008*)  
Bradford & Bingley International Limited  
Britannia International Limited  
Cayman National Bank & Trust Company (Isle of Man) Limited  
Close Bank (Isle of Man) Limited  
Conister Trust Limited (*formerly Conister Trust PLC*)  
Duncan Lawrie (IOM) Limited  
Fairbairn Private Bank (IOM) Limited  
Habib European Bank Limited  
HSBC Bank International Limited  
HSBC Bank plc  
Irish Nationwide (I.O.M.) Limited  
Irish Permanent (IOM) Limited  
Isle of Man Bank Limited  
Kaupthing Singer & Friedlander (Isle of Man) Limited (in liquidation)  
Lloyds TSB Offshore Limited  
Nationwide International Limited  
RBS Coutts Bank (Manx) Limited  
Standard Bank Isle of Man Limited  
Bank of Scotland Plc  
The Royal Bank of Scotland International Limited  
The Royal Bank of Scotland plc  
Zurich Bank International Limited