

# **Kaupthing Singer & Friedlander (Isle of Man) Limited Early Payment (No. 2) Scheme**

## **Guidance Notes**

### **Introduction**

#### ***Purpose***

This document provides general guidance on the Kaupthing Singer & Friedlander (IOM) Limited ("KSF IOM") Early Payment (No. 2) Scheme, which was approved by Tynwald on 17 February 2009.

The Early Payment (No. 2) Scheme is effectively an enhancement to the Early Payment Scheme approved by Tynwald in January 2009 so that eligible KSF IOM depositors will now be able to receive up to £10,000 rather than a maximum early payment of £1,000. These guidance notes are intended as a general guide and set out how the Early Payment (No. 2) Scheme differs from the original Early Payment Scheme and what you need to do if you wish to apply for a payment of up to £10,000 from the Isle of Man Government. In the event of any apparent conflict between the contents of the application form, the Memorandum of Assignment and these Guidance Notes, the contents of the application form and the Memorandum of Assignment will have precedence.

Attention is drawn to the fact that the original KSF IOM Early Payment Scheme approved by Tynwald in January 2009, and the Early Payment (No. 2) Scheme are entirely separate from the Depositors Compensation Scheme, the work of the Joint Provisional Liquidator/Liquidator in identifying the assets available to meet the claims of KSF IOM creditors and also the arrangements being developed for a Scheme of Arrangement. These Guidance Notes are therefore not intended to provide legal or any other advice in relation to either the Depositors Compensation Scheme 2008 (as amended), the rights of depositors to receive a payment from the Liquidator of KSF IOM, or the rights of depositors under any Scheme of Arrangement which may be implemented. The Isle of Man Government does not accept any liability for any loss or damage caused to any person relying on any information or omission in this document.

#### ***Further information on KSF IOM Early Payment Scheme and KSF Early Payment (No. 2) Scheme***

Please contact us on one of the following helplines:

Telephone helpline: +44 (0)1624 685858 (09:00 to 17:00 GMT Monday to Friday)

Email helpline: [ksfdepositors@gov.im](mailto:ksfdepositors@gov.im)

#### ***Further information***

The Isle of Man Government website ([www.gov.im](http://www.gov.im)) and the Financial Supervision Commission website ([www.fsc.gov.im](http://www.fsc.gov.im)) are updated regularly when more information on the Scheme of Arrangement or related issues become available.

## **Background**

### ***Why was the Early Payment (No. 2) Scheme developed?***

On 19 February 2009 the Isle of Man High Court agreed to a further adjournment of the application to wind up KSF IOM. This was to allow Isle of Man Government more time to develop a Scheme of Arrangement for creditors of KSF IOM. Isle of Man Government believes that KSF IOM creditors are likely to be better off under the proposed Scheme of Arrangement compared to a traditional winding up order.

However, it was clear that this further adjournment of the winding up order will inevitably delay payments to KSF IOM depositors from either the proposed Scheme of Arrangement, the liquidation or the Depositors Compensation Scheme, if it is activated. The Isle of Man Government has therefore developed an enhancement to the original Early Payment Scheme which will now enable depositors to apply for an early payment of up to £10,000 (rather than £1,000 as originally provided).

### ***What is the Early Payment (No. 2) Scheme?***

The KSF IOM Early Payment (No. 2) Scheme is set out in Government Circular 04/09, which was approved by Tynwald on 17 February 2009. The Government Circular sets out the eligibility rules and other arrangements for the Early Payment (No. 2) Scheme. A full copy of the Government Circular 04/09 has been posted on the Isle of Man Government website ([www.gov.im](http://www.gov.im)) and the Financial Supervision Commission website ([www.fsc.gov.im](http://www.fsc.gov.im)). If you would like to receive a copy by post please contact the KSF telephone helpline +44 (0)1624 685858 or email: [ksfdepositors@gov.im](mailto:ksfdepositors@gov.im).

### ***How is the Early Payment (No. 2) Scheme being funded?***

When the Early Payment (No. 2) Scheme was approved, Tynwald also approved additional funding of up to £94 million from the Isle of Man Government Reserves Fund to meet the cost of payments under the No. 2 Scheme. When this new funding is added to the £11 million of funding for the original Early Payment Scheme, Isle of Man Government has committed a total of £105 million to help eligible depositors of KSF IOM.

### ***What is the difference between the Early Payment (No. 2) Scheme and the original scheme?***

The KSF IOM Early Payment (No. 2) Scheme is similar to the original Early Payment Scheme, except for the following:

- Eligible depositors will now be able to receive up to £10,000, although the payment they receive will be reduced by the amount of any payment under the original Early Payment Scheme.
- The calculation of the entitlement of insurance companies has been revised.
- The eligibility rules have been revised to make it clear that the ultimate parent company of KSF IOM in Iceland and all subsidiaries controlled by the Icelandic parent company are not eligible to receive an early payment.

These changes are considered in more detail below.

Attention is drawn to the fact that the Early Payment (No. 2) Scheme requires depositors to complete a new application form and to sign a new Memorandum of Assignment.

### ***How will the new early payment be calculated?***

The maximum amount payable under the Early Payment (No. 2) Scheme is the lesser of:

- the aggregate Sterling equivalent of the balance on all deposit accounts of an account holder including accrued interest to close of business on 8 October 2008; and
- £10,000,

but shall be reduced by the amount of any payment received by the depositor under the original Early Payment Scheme.

For example, eligible depositors who received £1,000 under the original Early Payment Scheme will be able to receive a maximum payment of £9,000 under the Early Payment (No. 2) Scheme.

### ***What exchange rate will be used to calculate the Sterling equivalent?***

Non Sterling deposits will be converted into Sterling:

- at the middle market closing rate of exchange for the currency in question on 9 October 2008 as published in the Financial Times; or
- where no such rate was published at a rate of exchange determined by the Treasury.

This is the same exchange rate that was used for the original Early Payment Scheme.

### ***Why has the entitlement of insurance companies been changed?***

The calculation of the entitlement of insurance companies has been revised in the Early Payment (No. 2) Scheme. This change affects KSF IOM deposits in an account held in the name of the insurer but referable to a bond or policy. Under the Early Payment (No. 2) Scheme if such bonds or policies are in joint names, they will be treated as a single deposit and will therefore be eligible to receive one payment, up to the maximum of £10,000. Previously, the insurance company's entitlement for bonds or policies in joint names was such that each joint bond holder would be eligible to receive a payment up to the maximum of £1,000.

It was necessary to make this change principally due to the funding cost of making payments to insurance companies of up to £10,000 in respect of each person with an interest in a bond or policy.

## **Applications**

### ***Will I need to apply again if I have already applied under the original Early Payment Scheme?***

If you have previously made an application under the original Early Payment Scheme, Treasury will send a new Application Form and Memorandum of Assignment to you by post to the postal address you have already provided.

If you have applied previously, the Application Form and Memorandum of Assignment sent to you will include a unique reference number which will enable us to match your application for the Early Payment (No. 2) Scheme with the information we already hold from the original Early Payment Scheme. This should significantly reduce the time it will take Treasury to check your eligibility and confirm that all necessary verification work has been completed. Payments to eligible depositors who have applied previously should therefore be processed and paid quickly.

New documentation is required as the Application Form and Memorandum of Assignment which were sent to you previously related only to the original Early Payment Scheme and referred to payments of up to £1,000. The new documentation updates the acknowledgements and confirmations obtained by Treasury on the previous Application Form: the Memorandum of Assignment replaces the assignment in relation to the original Early Payment Scheme.

The Application Form and Memorandum of Assignment will need to be completed by you, signed and posted back to Treasury in the international prepaid envelope provided. It is not possible for Treasury to accept faxed documents or documents sent as attachments to email. This is because the account holder's signature will be used to verify the account holder's identity.

***How can I apply if I didn't apply for payment under the original Early Payment Scheme?***

If you have **not** made an application under the original Early Payment Scheme you will need to complete the following documentation:

- Account Holder Information Form
- Application Form and Memorandum of Assignment for Early Payment (No. 2) Scheme

These documents will be sent to everyone who has not previously applied for a payment under the original Early Payment Scheme.

If you consider that you may be eligible for a payment you should make a claim by completing the Account Holder Information Form, signing and also completing and signing the Application Form and Memorandum of Assignment. These documents should then be sent to Treasury by post to KSF Early Payment Scheme, PO Box 211, Douglas, Isle of Man, IM99 3RX. The international prepaid envelope can also be used. Documents sent by courier can be addressed to KSF Early Payment Scheme, Government Office, Bucks Road, Douglas, Isle of Man, British Isles, IM1 3PU.

Please note it is not possible for Treasury to accept faxed documents or documents sent as attachments to email. This is because the account holder's signature will be used to verify the account holder's identity.

***When will these documents be sent out to depositors?***

It is currently planned that the relevant documents will be sent out by post from 27 February 2009. In addition, the application documents will be posted on the Isle of Man Government website ([www.gov.im](http://www.gov.im)) and the Financial Supervision Commission website ([www.fsc.gov.im](http://www.fsc.gov.im)) from 10 March 2009.

As previously, we will contact insurance companies separately and send them the Application Form and Memorandum of Assignment for Early Payment (No. 2) Scheme so they can apply for a payment.

***What is the deadline for returning the Forms?***

No deadline has been set for receiving applications under Early Payment (No. 2) Scheme. As previously, it is intended that the Early Payment (No. 2) Scheme will continue to make payments to eligible depositors until it is likely that depositors will start to recover funds currently frozen in their KSF IOM account. These payments are most likely to arise from either the implementation of an agreed Scheme of Arrangement, a liquidation distribution to KSF IOM creditors or compensation payments, following any activation of the Depositors Compensation Scheme ("DCS"). Treasury will therefore be working closely with the Scheme of Arrangement Administrators, the Provisional Liquidators and DCS Scheme Manager in relation to the closing date of the Early Payment (No. 2) Scheme.

Once a closing date for the Early Payment (No.2) Scheme has been set, Treasury will give 30 days notice of the closing date by advertising in the local press and also placing a notice on the Isle of Man Government and FSC websites.

***What about applications under the original Early Payment Scheme?***

The original Early Payment Scheme will close on 19 March 2009. However, in practice if applications are received under the original scheme, Treasury will contact the depositor so that they can make a new application under the Early Payment Scheme (No. 2) Scheme. This means that all applications will effectively be transferred to the Early Payment Scheme (No. 2) Scheme.

***How will my application be processed?***

The Early Payment (No. 2) Scheme is being managed and administered by Treasury in accordance with the arrangements set out in Government Circular 04/09, which was approved by Tynwald. Treasury therefore have a responsibility to ensure that payments are in accordance the eligibility requirements approved by Tynwald.

When your documents are received by Treasury they will be checked to ensure they are complete and have been signed: identity checks will then be completed. However, if you have applied before, it should not be necessary for the Provisional Liquidator to recheck account details and verify your identity again, provided this work was completed for your application under the original scheme. If you have not applied before, the full verification process and eligibility review will need to be completed.

Treasury expect to start making payments to eligible depositors under Early Payment (No. 2) Scheme around 19 March 2009. All payments under the Early Payment Scheme and Early Payment (No. 2) Scheme will be in Sterling.

Attention is drawn to the fact that Treasury is registered as a Data Controller under the Isle of Man Data Protection Act and is therefore obliged to ensure that the information you provide is held confidentially and only used in connection with the original Early Payment Scheme and Early Payment (No. 2) Scheme.

## **Eligibility**

***Who is eligible to receive a payment under the Early Payment (No. 2) Scheme?***

Account holders who had a deposit account with KSF IOM on 8 October 2008, and who make an application to receive a payment, will be eligible to receive a payment unless they are ineligible persons as set out below.

***Who is ineligible?***

The following are ineligible to receive a payment from the Early Payment (No.2) Scheme:

- (a) deposit-takers or investment businesses licensed under section 7 of the Financial Services Act 2008;
- (b) deposit-takers authorised, licensed or recognised outside the Isle of Man;
- (c) Kaupthing Holdings (Isle of Man) Limited;
- (d) Kaupthing Singer and Friedlander Limited (a company registered in England and Wales);
- (e) Kaupthing Bank hf (a company incorporated in Iceland);

- (f) a company that on the relevant date was subject to the ultimate control of Kaupthing Bank hf;
- (g) a person who in the opinion of the Treasury has any responsibility for, or may have profited directly or indirectly from, the circumstances giving rise to the presentation to the Court of the petition for the winding-up of KSF IOM;
- (h) a person who was a shareholder, director or controller of KSF IOM on 9 October 2008;
- (i) a person who in the opinion of the Treasury was acting as a shareholder, director or controller of KSF IOM on 9 October 2008;
- (j) a person who has failed to provide any information or evidence required under the legislation applicable in the Island in relation to money-laundering;
- (k) a person who has a liability to KSF IOM under a lending agreement, which expression includes (but is not limited to) a finance lease, mortgage or credit card agreement;
- (l) a person who holds a deposit with KSF IOM which is used as a security for another transaction.

***What if I am advised I am not eligible but don't agree?***

You will be advised in writing if Treasury consider that you are not eligible to receive a payment under the Early Payment (No. 2) Scheme. If you have received notification that you are not eligible but don't agree, you should either write or e-mail Treasury ([ksfdepositors@gov.im](mailto:ksfdepositors@gov.im)) within 60 days of receiving the written notification the asking for your case to be reviewed and stating the reasons why a review is requested. Treasury will review your case and advise you of the outcome of that review.

***Does my eligibility under the Early Payment Scheme also establish my entitlement to compensation or liquidation distributions?***

The original Early Payment Scheme and the Early Payment (No. 2) Scheme are entirely separate from any Scheme of Arrangement, the Depositors Compensation Scheme (DCS) and also any work which may be carried out by the Liquidator to distribute KSF IOM assets.

As a result, if you are eligible for a payment under the Early Payment (No. 2) Scheme this does not mean that you will also be entitled to receive a payment of any kind under a Scheme of Arrangement, from the DCS, if it is activated, or a liquidation distribution. You will be required to make a formal claim in accordance with the requirements of the relevant scheme.

Equally, if you are not considered to be eligible for a payment under the original Early Payment Scheme or the Early Payment (No. 2) Scheme, this will not prevent you from making a claim for any payment under one of these schemes.

## **Assignment**

***Why is a new Memorandum of Assignment required?***

The memorandum issued for the original Early Payment Scheme only assigned rights and interests up to a maximum of £1,000. The content of the Memorandum of Assignment for Early Payment (No. 2) Scheme has therefore been updated for payments up to a maximum of £10,000. In addition, we have also revised the content of the new Memorandum of Assignment to take account of comments received from depositors and others with an interest in the set off arrangements. The aim of these amendments is to make it clear how the set off and recovery of early payments will work.

In addition, to the above the new Memorandum of Assignment has also been drafted so that it also consolidates the total amount received from the original Early Payment Scheme and the Early Payment (No. 2) Scheme. This has been done simply to make it easier to operate the set off under the Memorandum of Assignment.

***Why is an Assignment required at all?***

It is a requirement of the Early Payment (No. 2) Scheme that those applying to receive a payment execute a Memorandum of Assignment in favour of the Treasury. This is to ensure that Treasury has the right to recover the amount of the payment from:

- the Depositors Compensation Scheme;
- the Provisional Liquidators;
- a Liquidator of KSF IOM;
- any other person under a scheme of arrangement; or
- an account balance available to the depositor in the event that KSF IOM is purchased by a new owner.

As a result, eligible depositors who wish to receive a payment under the Early Payment (No. 2) Scheme must agree that the amount of any payment can be set off against any compensation or liquidation distribution or any other payment or account balance to which they become entitled. Those applying for the payment give their consent to this by signing the new Memorandum of Assignment.

***Will this change any of my rights or entitlements in the future?***

By signing the Memorandum of Assignment, an account holder agrees to assign all his/her right, title and interest but only in respect of the total amount received from the original Early Payment Scheme and the Early Payment (No. 2) Scheme (up to a maximum of £10,000). As a result, Treasury will 'stand in the shoes' of an account holder but only in respect of the rights relating to the amount of the payment from the original and No.2 Early Payment Scheme. This means that the Treasury:

- has the right to recover the total amount of any payments directly from the Liquidator, Scheme Manager of the Depositors Compensation Scheme (if the DCS is activated) or any other party (in the event of a restructuring, scheme of arrangement or purchase of KSF IOM); and
- has the right to vote in relation to any restructuring or scheme of arrangement proposed by the Liquidator Provisional/Liquidator in proportion to the payments made to KSF IOM depositors.

Attention is drawn to the fact that the Early Payment (No. 2) Scheme will pay a maximum of £10,000 to eligible account holders. It follows that the assignment of rights can never exceed £10,000: rights in relation to any remaining account balance will be entirely unaffected.

***How will the reduction in entitlement be allocated between compensation, liquidation distribution or any other payment?***

Any payment received will be set off against any or all of the following:

- any liquidation distribution;
- any compensation payment;
- any other payment or account balance that the account holder is entitled to following a scheme of arrangement, restructuring or sale of KSF IOM assets.

The order of set off will depend on when each source of funds becomes available. The set off will be applied against the source of funds to which the account holder first becomes entitled. If it is not possible to set off the payment received by the account holder fully, then the remaining balance will be set off against the next available source of funds. This will continue until the full amount paid under the original Early Payment Scheme and Early Payment (No. 2) Scheme has been set off and recovered by Treasury.

***What if I don't agree with the way the set off has been applied to reduce my entitlement?***

If you receive a liquidation distribution then the amount of any set off as a result of receiving a payment under the Early Payment Scheme and/or Early Payment (No. 2) Scheme will be advised to you by the Liquidator. If you consider that the set off has not been calculated in accordance with these guidance notes then you should contact the Liquidator and ask for clarification of the reduction in your entitlement.

Similarly, if you have a query over an adjustment to any compensation payment under the Depositors Compensation Scheme or a payment from any other source then you should contact the relevant party to resolve the query.