
STATUTORY INSTRUMENTS

2008 No. 2674

**The Kaupthing Singer & Friedlander Limited
Transfer of Certain Rights and Liabilities Order 2008**

PART 4

FINANCIAL SERVICES COMPENSATION SCHEME

Liability of Kaupthing to the FSCS and the Treasury

16.—(1) Kaupthing is liable to the FSCS in respect of an amount equal to the amount which would have been provable in the administration of Kaupthing in respect of the transferred liabilities had this Order not been made and had Kaupthing been placed in administration immediately before the effective time.

(2) The FSCS shall pursue recoveries from Kaupthing in respect of the liability under paragraph (1) to the extent reasonably practicable.

(3) Subject to paragraph (4), if an eligible claimant had, in relation to a relevant protected deposit, a liability to Kaupthing which would have been capable of being set-off against a liability of Kaupthing to that claimant in an administration or liquidation of Kaupthing (if that liability had not been transferred), the amount which the FSCS is entitled to recover in the administration or liquidation shall be taken to be the sum of—

- (a) the amount of the reduction in the depositor's liability to Kaupthing as a result of the application of the set-off; and
- (b) the amount which would have been recovered in respect of the balance of the claim (if any) provable in the administration or liquidation of Kaupthing.

(4) Paragraph (3) applies only to the extent that its application does not have the effect that the other creditors of Kaupthing are in a worse position than they would have been had the set-off been applied.

(5) The FSCS shall determine the proportion of any amount which it receives or recovers from Kaupthing which is properly attributable to each type of liability described below and shall promptly, on receipt, account for that receipt or recovery as follows—

- (a) in full to the Treasury, to the extent that—
 - (i) the receipt is attributable to a transferred liability; and
 - (ii) the person to whom such a transferred liability is owed would not have been entitled to make a claim for compensation from the FSCS immediately before the effective time;
- (b) by reference to the relevant proportion, to the extent that—
 - (i) the receipt is attributable to a transferred liability;
 - (ii) the person to whom such a transferred liability is an eligible claimant; and

(iii) the amount of such liability exceeds the maximum compensation that the eligible claimant would have been entitled to claim from the FSCS immediately before the effective time;

and where the receipt is attributable to a transferred liability owed to an eligible claimant in relation to a relevant qualifying deposit and the amount of such liability is equal to or less than the maximum compensation that the eligible claimant would have been entitled to claim from the FSCS immediately before the effective time that amount shall be for the account of the FSCS.

(6) In paragraph (5), the “relevant proportion” is the proportion of the total liabilities which arise under article 14(1) for which the Treasury are liable.

(7) If Kaupthing is in administration, the liability incurred under paragraph (1) shall not be treated as an expense of the administration under paragraph 99(3) of Schedule B1 of the 1986 Act or rule 2.67 of the Insolvency Rules.

(8) Nothing in this Part shall have the effect that the FSCS recovers less than it would have recovered if this Order had not been made.