
STATUTORY INSTRUMENTS

2008 No. 2674

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

PART 5

THE ADMINISTRATOR AND TRANSITIONAL PROVISIONS

Application of this Part

19. This Part applies if Kaupthing is placed into administration after the effective time.

The administration

20. The relevant provisions of the 1986 Act and the Insolvency Rules shall apply to the administration of Kaupthing subject to the modifications set out in this Part.

Objectives etc. of the administrator

21.—(1) This article only applies during the transitional period.

(2) The administrator must perform his or her functions with the objectives (“the overriding objectives”) of—

- (a) ensuring that Kaupthing provides, and managing the affairs, business and property of Kaupthing to enable it to provide, the services and facilities reasonably required by ING to discharge its obligations in respect of the rights and liabilities under the second transfer; and
- (b) ensuring that Kaupthing performs the other obligations imposed on it by or under this Order.

(3) The administrator shall only perform his or her functions with the objective determined in accordance with paragraph 3 of Schedule B1 to the 1986 Act to the extent that to do so is not inconsistent with and does not interfere with the achievement of the overriding objectives.

(4) Paragraph 3(2) of Schedule B1 to the 1986 Act only applies to the performance of the functions of the administrator to the extent that it is not inconsistent with and does not interfere with the achievement of the overriding objectives.

(5) The Treasury may, by notice in writing, give a direction to the administrator specifying that an act (or omission) is required for the overriding objectives.

(6) The Treasury may also, by notice in writing, give a direction to the administrator requiring him or her to act (or not act) if the Treasury consider that it is necessary to give such a direction for the purposes of—

- (a) protecting or enhancing the stability of the financial systems of the United Kingdom;
- (b) protecting or enhancing public confidence in the stability of the banking system of the United Kingdom; or

(c) protecting depositors.

(7) The Treasury may also, by notice in writing, give a direction to the administrator that he or she need not perform his or her functions in accordance with the overriding objectives, either in relation to a particular matter or generally.

(8) The administrator must comply with any directions given under paragraph (5), (6) or (7).

(9) The services and facilities to which paragraph (2)(a) applies include (but are not limited to) the services and facilities specified in the Schedule.

(10) The administrator shall not be required to include any proposals for achieving the overriding objectives in any statement he or she makes under paragraph 49 (administrator's proposals) or paragraph 54 (revision of administrator's proposals) of Schedule B1 to the 1986 Act or to obtain approval of such proposals at any creditors' meeting or from the court.

(11) The administrator shall not enter into a transaction or a series of transactions (whether related or not) to sell, lease, transfer or otherwise dispose of any property or right of Kaupthing having in aggregate a value of more than £50 million at any time unless—

(a) the court orders otherwise;

(b) the Treasury gives its consent to the transaction; or

(c) the sale, lease, transfer or disposal has been specifically approved at a meeting of creditors summoned under paragraph 51(1), 54(2) or 62 of Schedule B1 to the 1986 Act or by a creditors' committee constituted in accordance with rule 2.50 of the Insolvency Rules and the Treasury has consented to the sale, lease, transfer or disposal.

(12) In this article, "court" means—

(a) in England and Wales, the High Court;

(b) in Scotland, the Court of Session;

(c) in Northern Ireland, the High Court.

Insolvency Act and Insolvency Rules etc.

22. Nothing in the 1986 Act, the Insolvency Rules or any other enactment or rule of law shall operate to invalidate or prejudice any act or omission done under or pursuant to this Order or give rise to a claim against or impose any liability on Kaupthing or the administrator for any act or omission so done.

Services and facilities

23. The agreement dated 8th October 2008 between the Treasury and ING relating to the provision of transitional services by Kaupthing to ING shall bind Kaupthing as if it were a party.

Use of the Kaupthing brand

24. Kaupthing shall grant to ING a non-exclusive royalty-free licence to use the Kaupthing brand and the Edge brand and any relevant brands and sub-brands of Kaupthing during the transitional period for the purposes of ING carrying on its activities in relation to the rights and liabilities transferred under the second transfer.

Compensation payable to Kaupthing

25.—(1) ING shall reimburse Kaupthing for the costs and expenses (including fees) properly incurred by the administrator during the transitional period in fulfilling his or her obligations under article 21.

(2) Paragraph (1) does not apply to any cost or expense which would have been incurred in the administration if this Order had not been made.

Continuity

26.—(1) During the transitional period, any person wishing to terminate or modify (or treat as terminated or modified) any contract or agreement with Kaupthing for services and facilities or any right or obligation under such a contract or agreement must give not less than 14 days' prior written notice to the administrator and to ING.

(2) During the transitional period, any person who provides to Kaupthing, pursuant to any contract or agreement, services or facilities which are reasonably required by Kaupthing to perform its duties under or pursuant to this Order or the agreement dated 8th October 2008 between the Treasury and ING relating to the provision of transitional services by Kaupthing to ING shall, whether or not required pursuant to such contract or agreement, provide such services to Kaupthing for the benefit of ING or, at Kaupthing's request, directly to ING.

(3) Except with the consent of the Treasury or the permission of the court, during the transitional period—

(a) no person is entitled—

(i) to terminate or modify any contract or agreement with Kaupthing for services and facilities, or any right or obligation under such a contract or agreement, where the contract or agreement or right or obligation relates to services or facilities which are reasonably required by—

(aa) Kaupthing to perform its duties under or pursuant to this Order;

(bb) the administrator to perform his or her duties under or pursuant to this Order;
or

(cc) ING to carry on its functions in relation to the transferred rights and liabilities, or

(ii) to treat such a contract, agreement, right or obligation as terminated or modified, by virtue of, or in connection with, the first transfer or the second transfer, the requirement to provide services or facilities to or for the benefit of ING under paragraph (2) or the commencement of the administration in relation to Kaupthing; and

(b) any counterparty to such a contract or agreement must perform his or her obligations in accordance with that contract or agreement.

(4) The services and facilities to which paragraphs (1), (2) and (3) apply include (but are not limited to) the services and facilities specified in the Schedule.

(5) Any purported termination or modification of any contract, agreement, right or obligation in contravention of paragraph (1), (2) or (3), and any action taken in consequence of any such purported termination or modification, shall have no effect.

(6) Paragraph (2) does not apply where—

(a) Kaupthing, ING or the administrator, as the case may be, has failed to perform its payment obligations under the relevant contract or agreement and such non-payment is not remedied within 14 days of that person becoming aware of the non-performance; or

(b) Kaupthing, ING or the administrator, as the case may be, fails to notify the counterparty to the relevant contract or agreement within 14 days of its becoming aware of the request for consent to such termination, modification or non-performance of an obligation, that such consent has been withheld.

(7) Without prejudice to the generality of paragraph (3), the first transfer or the second transfer shall not have the effect of terminating or otherwise changing the terms of Kaupthing's membership (if any) of any payment system, including, in particular, BACS, CHAPS and the LINK payments systems.

(8) "Court" has the meaning given by article 21(12).

(9) This article is subject to any requirement of Community law.

Moratorium on payment to related companies

27.—(1) Kaupthing 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 without the consent of the Treasury, and any such purported exercise shall be void.

(3) In this article, "related party" means any member of the same group as Kaupthing that is not a subsidiary undertaking of Kaupthing.

(4) In paragraph (1), if Kaupthing is in administration, the reference to Kaupthing is to be treated as a reference to the administrator.

(5) In paragraph (3), "group" has the meaning given by section 421 of the 2000 Act.