

As set out in our progress report dated 30 October 2009, the Joint Administrators of Kaupthing Singer & Friedlander Limited (in administration) ("KSF") applied to Court for directions as to the operation of certain aspects of rules 2.85 and 2.105 of the Insolvency Rules 1986, which govern the way in which mutual debts owing between KSF and its creditors are set off against each other. Judgment was handed down on 2 October 2009 and the High Court gave leave to appeal to the Court of Appeal. The Administrators appealed part of the judgement which held that debts (payable to or by KSF) maturing after the Administrators' payment of the first distribution on 22 July 2009 should be discounted to present value according to the statutory formula contained in IR 2.105.

On 11 May 2010, the Court of Appeal held that, where a creditor owes a future debt to KSF, that debt should be discounted by the formula in IR 2.105 only to the extent necessary to achieve a set-off against any debt owed by the company to the creditor. The two debts should be set-off against each other at their present values to determine the net balance. To the extent that the future debt owed to the company is not extinguished by the set-off exercise, the net balance will be payable in its full, non-discounted amount when it falls due.

The Administrators will contact those creditors who are affected by the Court of Appeal's decision in due course.

A copy of the judgment is available here:

<http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2010/518.html&query=kaupthing&method=boolean>