

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. 390 OF 2009



IN THE MATTER OF THE COMPANIES LAW (2007 REVISION)
AND IN THE MATTER OF SAAD INVESTMENTS FINANCE COMPANY (NO.5)
LIMITED

WINDING UP PETITION



To: The Grand Court of the Cayman Islands

The humble Petition of Barclays Bank PLC of 1 Churchill Place London E14 5HP, United Kingdom (the "**Petitioner**") shows THAT:

BACKGROUND

1. Saad Investments Finance Company (No.5) Limited (the "**Company**") was organised and incorporated on 10 May 2006 as an exempted liability company under the laws of the Cayman Islands and its company number is 167330.
2. The registered office of the Company is situated at the offices of Maples Corporate Services Limited, Uglan House, South Church Street, PO Box 309, George Town, Grand Cayman KY1-1104, Cayman Islands.
3. The authorised share capital of the Company is US\$100,000,100.00 divided into:
 - a) 100 Class A ordinary Shares of a par value of US\$1.00 each (the "**Class A Shares**"); and
 - b) 100,000,000 preference Class B Shares of a par value of US\$1.00 each
4. Saad Investments Company Limited ("**SICL**") is the holder of the Class A shares in the Company and was organised and incorporated on 9 July 1990 as an exempted liability

company under the laws of the Cayman Islands and its company number is 36729. Its registered office is situated at the offices of Grant Thornton Specialist Services (Cayman) Ltd, PO Box 1370, 2nd Floor, Commerce House, 7 Dr. Roy's Drive, Grand Cayman KY1-1108, Cayman Islands (as official liquidators of SICL) and Maples Corporate Services Limited, Uglan House, South Church Street, PO Box 309, George Town, Grand Cayman KY1-1104, Cayman Islands.

5. SICL and the Company form part of the Saad Group of companies, a group of companies headquartered in the Kingdom of Saudi Arabia and operating primarily in the Gulf of Arabia region (the "**Saad Group**"). It is believed that SICL was formed for the purpose, of holding and managing some of the offshore assets of Mr Al-Sanea and his immediate family, and also acts as a holding company for the Saad Group. The Saad Group is engaged in diverse businesses including civil engineering, real estate, banking and financial services, information technology, travel and tourism, and education and healthcare.
6. The Company's sole purpose is to act as a special purpose vehicle which implements a commercial agreement made between the Petitioner and SICL to re-finance SICL's interest in certain private equity vehicles. The said interests were transferred to the Company by SICL, which now holds these interests and carries on the business of an investment company. It is believed that the Company carries on business in the Cayman Islands.

THE PETITIONER

7. The Petitioner is the owner of 100,000,000 Class B Shares in the Company (the "**Class B Shares**"). The Petitioner paid the Company the sums of US\$49,000,000.00 on 29 September 2006, US\$21,000,000.00 on 1 February 2007 and US\$30,000,000.00 on 26 February 2007 in exchange for which it was issued the Class B shares..
8. The Petitioner presents this Petition as contributory of the Company and is entitled to present this Petition pursuant to section 94(3)(b)(i) of the Companies Law (2007

Revision) as the Class B Shares were originally allotted to it and because it has held such shares for a period of at least six months immediately preceding the date of this Petition.

THE DIRECTORS OF THE COMPANY

9. Mr Maan A. Al-Sanea (“**Mr Al-Sanea**”), Mrs Sana Abdulaziz Algosaibi and Mr Omer O. El Mardi (Mr “**El Mardi**”) are the directors of the Company (collectively, the “**Directors**”) and have been since its date of incorporation. Mr Al-Sanea and Mr El Mardi have also been appointed as Chairman of the Board of Directors of the Company and Secretary of the Company respectively.
10. The Directors are also appointed as directors of SICL.

RECENT EVENTS

Financial Difficulties of the SAAD Group

11. On or about 28 May 2009, the Saudi Arabian Monetary Authority ordered that a number of Saudi Arabian banks freeze the accounts of Mr Al-Manea. The credit rating agency, Moody’s, on 1 June 2009, downgraded the ratings of SICL, Saad Trading & Financial Services Company, and Saad Group Limited from Baa1 to B1, and has now withdrawn its rating for these companies. Another credit rating agency, Standard & Poor, has also downgraded Saad Group Limited and other Saad entities and subsequently withdrew its rating. On 05 June 2009, the Saad Group announced that it had appointed BDO Stoy Haywood LLP to advise it on restructuring plans. On 30 July 2009 the central bank of Bahrain assumed control of Awal Bank BSC (“**Awal**”) which is owned 48% by SICL and ultimately wholly owned by the Saad companies and Mr Al-Sanea. Awal’s assets in the UK are also subject to a freezing injunction by Order of the English High Court made on 24 July 2009 by Mr Justice Field, which prohibits Awal from dealing with its assets up to the value of US\$176,040,894.87.

Presentation of Winding Up Petition for SICL

12. SICL entered into a revolving loan facility agreement arranged by the Petitioner, BNP Paribas, CALYON, Citibank N.A., DBS Bank Ltd, J.P. Morgan PLC, Mizuho Corporate

Bank Ltd and Standard Chartered Bank, with the Petitioner acting as the agent (the "**Facility Agreement**") on 24 August 2007. The Facility Agreement comprised a revolving loan facility in an aggregate amount equal to US\$2,815,000,000. Several defaults of the Facility Agreement by SICL entitled the Petitioner and the other lender banks to demand repayment of the outstanding principal amount of the loan and any accrued interest by way of serving an acceleration notice. Pursuant to the Facility Agreement this notice was served by the Petitioner, as agent for the other lenders, on 6 July 2009 (the "**Acceleration Notice**"). The sums repayable under the Facility Agreement and demanded by the Acceleration Notice became due and payable on 6 July 2009, have not been paid.

13. A Creditors' Winding-Up Petition was presented on 30 July 2009 (Cause Number 361 of 2009), (the "**SICL Petition**") and provisional liquidators were appointed for SICL by order of the Court on 05 August 2009.
14. As at the date of filing this Petition the Petitioner is not aware of any attempts by SICL to either pay or dispute these debts and consequently to defend this Petition.

Writ of Ahmad Algozaibi and Brothers Company ("AHAB")

15. On 24 July 2009, AHAB, made an ex parte application to the Court for injunctive relief freezing the assets of SICL, Mr Al-Manea, the Company, and 41 other entities connected to SICL or where Mr Al-Manea holds a beneficial interest (the "**Cayman Entities**"). The application also sought the appointment of a Receiver over the Cayman Entities. The assets of Mr Al-Manea, the Company, and the Cayman Entities have been frozen by order of the Court and a Receiver appointed for each. It is believed that as at the date of filing this Petition there has been no challenge to such Orders.
16. On 27 July 2009, AHAB filed and served a writ in (Cause Number 0359 of 2009) alleging that SICL, Mr Al-Manea, and four of the SAAD entities these being Singularis Holdings Limited, Singularis Holdings (No2) Limited, Singularis Holdings (No3) Limited, Singularis Holdings (No4) Limited, Singularis Holdings (No5) Limited (together the "**Singularis Companies**") have taken part in a dishonest conspiracy, where

Mr Al Manca has breached his fiduciary duties owed to AHAB and misappropriated assets, which SICL and the Singularis Companies has dishonestly received (the “**AHAB Writ**”). AHAB seeks various equitable remedies to rectify these breaches.

17. AHAB has also filed a claim in the New York State Supreme Court on 15 July 2009 alleging fraud, breach of fiduciary duties, mis-appropriation of assets against Mr Al Sanea during his time appointed as a senior executive of AHAB’s financial services unit, Money Exchange.

GROUND FOR THE PETITION

18. The Petitioner presents this Petition on the basis that it is just and equitable that the Company should be wound up for the following reasons:

- a) the Company’s substratum has gone and/or the purpose for which the Company was set up has fallen away and/or been exhausted and it can no longer achieve its object;
- b) the only remaining purpose of the company is the realisation and distribution of its assets;
- c) the Petitioner has lost all confidence in the probity of the Directors; and
- d) in any event given the creditor’s petition that has been presented in respect of the Company’s Investment Manager (*i.e.* SICL), together with various interlocutory orders of the Court, SICL is prevented from fulfilling and/or performing its functions as Investment Manager.

A: Failure of the Company’s Substratum/Object

19. The Company is a special purpose vehicle, whose sole purpose, and the reason for which it was established, was to implement a commercial agreement between SICL and the Petitioner for the refinancing by the Petitioner of SICL’s interests in certain private equity funds (the “**Underlying Funds**”) previously held by SICL and contributed by SICL as in specie contributions for the allotment of the Class B Shares to the Petitioner.

The Company holds these interests in the Underlying Funds and the principal role of SICL is to act as the Investment Manager for the Company to use its professional skills to invest in the Underlying Funds. As a consequence of this agreement the only shares in the Company allotted were the A Shares to SICL and the B Shares to the Petitioner and further the transfer by SICL of any of its A Shares or by the Petitioner of any its B Shares was prohibited without the agreement of the other (save the Petitioner is entitled to transfer its shares in certain defined circumstances where SICL has breached repayment provisions in the commercial agreements referred to below).

20. The commercial agreement was structured as an Accreting Strike Option (“ASO”) and was entered into by the Petitioner and SICL on 25 September 2006. The ASO was evidenced by a confirmation supplementing, forming part of and subject to an ISDA Master Agreement entered into by SICL and the Petitioner on 3 January 1996 (the “**Master Agreement**”) The ASO provided a mechanism by which SICL could effectively borrow money from the Petitioner in order to increase the level of investment made by the Company in the Underlying Funds and by which SICL could gain leveraged exposure to the Company. As a result of this mechanism, the Petitioner invested monies from SICL together with the monies lent by the Petitioner to SICL into the Company, with the Class B Shares issued to it in exchange. The par value of the Class B Shares represented the amount lent by the Petitioner to SICL plus the monies invested by SICL itself through the ASO. Upon maturity (**defined as the “Final Valuation Date”**) of the ASO, SICL would have received the benefit of any increases in value resulting from the trading in the Underlying Funds by virtue of it being counterparty to the ASO and it would pay to the Petitioner the amount borrowed together with accrued financing charges.
21. The appointment of a Receiver over the Company’s property by the Court on 24 July 2009 constituted an Event of Default under Section 5(a)(vii) of the Master Agreement which had the effect of automatically terminating the Master Agreement (including the ASO), in accordance with clause 6(a) of the Master Agreement. . The termination of the ASO results, by way of the Early Termination Provisions in the ASO, in an obligation on SICL to pay all sums due under the ASO within 30 calendar days of such date, which in the said circumstances will be on 23 August 2009 (the “**Final Payment Date**”), and in

the event that SICL has not made such payment, the Petitioner may sell or redeem the Class B Shares and apply any proceeds against the amounts due to it by SICL under the ASO. As at the date of filing this petition SICL has not paid the monies that it owes under the ASO.

22. The demise of the ASO means that the commercial purpose of the Company has failed and that no commercial purpose for the Company remains. The Company can no longer conduct its investment business in circumstances where the ASO has been terminated. There are no other classes or series of shares of the Company in issue, nor is there any other business which the Company carries on other than that which is connected to the operation of the ASO.

23. Accordingly, the object for which the Company was formed has failed.

B: The only remaining purpose of the Company is the realisation and distribution of its assets.

24. The Petitioner repeats the contents of Paragraphs 19-23 above.

25. Were it to decide to seek the redemption of its Class B Shares, the Petitioner believes that such action will almost certainly lead to the liquidation of the Company's assets as it is considered unlikely that the Company would be able to satisfy this request without liquidating them.

26. In those circumstances such redemption request would almost certainly result in the Company being unable to pay its debt to the Petitioner when it was due and the Petitioner would be entitled to apply to wind up the Company as one of its creditors.

27. Accordingly, the only remaining purpose of the company is the realisation and distribution of its assets, such winding up being the function of a liquidator and not the Directors.

C: Loss of all Confidence in the Probity of the Directors Conduct of the Fund's Business

28. By reason of the facts and matters set out above, and in light of the particulars set out in the AHAB Writ, the Petitioner has lost all confidence in the probity of the Directors' conduct of the Company's affairs.

D: The SICL Petition and ancillary orders in the AHAB Writ: Investment Manager's inability to act

29. As set out herein, as a result of the AHAB Writ the Court appointed Receivers over the assets of SICL and of the Company on 24 July 2009 and froze the assets of both companies.

30. Further, ancillary to the creditors' petition presented in respect of SICL, on 5 August 2009 the Court appointed provisional liquidators (the "**Provisional Liquidators**") in respect of SICL.

31. In the circumstances the Receivers and/or the Provisional Liquidators have displaced the Directors as directors of SICL and/or the Company and accordingly in the circumstances SICL is no longer able to act and/or fulfil its function and duties as Investment Manager under clause 5 of the Company's Articles of Association. The Petitioner is unable to cause any party to replace SICL as Investment Manager given the provisions of the said clause 5 and accordingly the Company and its assets are not being managed properly or at all or in accordance with the Articles of Association.

32. In all the premises, it is just and equitable for the Company to be wound up.

YOUR PETITIONER THEREFORE HUMBL Y PRAYS THAT:

1. the Company be wound up by the Court under the provisions of the Companies Law (2007 Revision);
2. Geoffrey Eugene Varga of Kinetic Partners (Cayman) Limited of The Harbour Centre, 42 North Church Street, PO Box 10387, Grand Cayman KY1-1004, Cayman Islands and

Nicolas Matthews, also of Kinetic Partners (Cayman) Limited, be appointed as Joint Official Liquidators of the Company (the “Liquidators”);

3. the Liquidators be authorised to exercise any of the powers conferred on them by the Court pursuant to Section 110(2) and Parts I and II of the Third Schedule of the Companies Law (2007 Revision) without the further sanction or intervention of the Court;
4. the Liquidators be authorised to carry out any act or exercise any power considered by them to be necessary or desirable in connection with the liquidation of the Company and the winding-up of its affairs and to prevent the dissipation of the Company’s assets;
5. the Liquidators do file with the Clerk of the Court a report in writing detailing the present position and progress made to date with the winding up of the Company with the realisation of the assets thereof and to any other matters connected to the winding up of the Company, as the Court may direct;
6. the Liquidators be at liberty to appoint counsel, attorneys, and/or any other professional advisors, whether in the Cayman Islands or elsewhere as they may consider necessary to advise and assist them in the performance of their duties and on such terms as they may think fit and to remunerate them out of the assets of the Company;
7. the Liquidators and their staff be remunerated out of the assets of the Company at the usual customary rate;
8. the Liquidators be at liberty to apply generally;
9. the costs of the Petition and the Petitioner be paid out of the assets of the Company;
10. the Liquidators shall cause a copy of this Petition to be delivered to the Registrar of Companies;
11. alternatively, that the Court do make such orders for regulating the future conduct of the affairs of the Company as the Court shall see fit; and

12. such further or other relief be granted as the Court deems appropriate.

Dated the 19th day of August 2009

Filed the 19th day of August 2009

Harney

Harney Westwood & Riegels
Attorneys-at-Law for the Petitioner

NOTE:

It is intended to serve this Petition upon:

The Registrar

The Company, at its registered office.

Saad Investments Company Limited, at its registered office

THIS PETITION is filed by Harney Westwood & Riegels, Attorneys-at-Law for the Petitioner, whose address for service is 3rd Floor, Genesis Building, 13 Genesis Close, PO Box 10240, Grand Cayman KY1-1002, Cayman Islands (Ref: SED/JJD//012032.00032).

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, on 2009 at 10.00am.

Any correspondence or communication with the Court relating to the hearing of this Petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, Grand Cayman KY1-1106, Telephone 345-949-4296.