

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

BEFORE THE HON. CHIEF JUSTICE ANTHONY SMELLIE QC

CAUSE NO. FSD 14 OF 2010 (ASCJ)

CAUSE NO. FSD 15 OF 2010 (ASCJ)

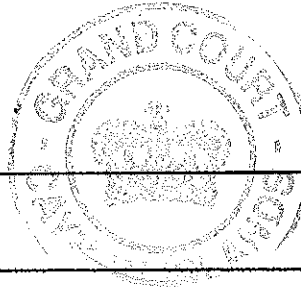
IN THE MATTER OF THE COMPANIES LAW (2013 REVISION)

**AND IN THE MATTER OF SAAD INVESTMENTS COMPANY LIMITED (IN
OFFICIAL LIQUIDATION)**

**AND IN THE MATTER OF SAAD INVESTMENTS FINANCE COMPANY (NO 5)
LIMITED (IN OFFICIAL LIQUIDATION)**

8 February 2016

ORDER



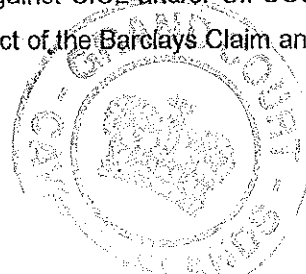
UPON THE SUMMONSES dated 3 July 2012, and filed on behalf of Barclays Bank plc (the "Applicant"), seeking permission pursuant to s. 97(1) of the Companies Law (2011 Revision) to commence and pursue proceedings against Saad Investments Company Limited (In Official Liquidation) ("SICL") and Saad Investments Finance Company Limited (No.5) Limited (In Official Liquidation) ("SIFCO5") (the "s. 97 Application")

AND UPON READING the First Affidavit of Catriona Louise Lefkos in FSD 14 and 15 of 2010, sworn 18 December 2015, the Fifteenth Affidavit of Nicolas Matthews in FSD 14 of 2010, sworn 12 January 2016, the Twenty-Ninth Affidavit of Stephen John Akers in FSD 15 of 2010, sworn 12 January 2016 and the Second Affidavit of Catriona Louise Lefkos in FSD 14 and 15 of 2010, sworn 22 January 2016

AND UPON HEARING Counsel for the Applicant, Leading Counsel for SICL and Counsel for SIFCO5

IT IS HEREBY ORDERED that:

1. The Orders of 4 September 2012 in FSD 14 and 15 of 2015 (**attached**) shall be replaced, with effect from the date of this Order, with the following provisions of this Order.
2. The Applicant has leave to commence proceedings against SICL and SIFCO5 in respect of the subject matter of the Draft Statement of Claim attached hereto¹ (the "**Barclays Claim**") upon the condition that it shall not participate (or attempt to participate) in any way in Cause No. 54 of 2009 (the "**AHAB Proceedings**") prior to the determination at first instance of the AHAB Proceedings unless required or invited by the Court of its own motion.
3. Nothing in paragraph 2 is intended to affect or prejudice the Applicant's rights arising independently of the Barclays Claim including but not limited to any right to apply to attend hearings in Chambers in the AHAB Proceedings on a watching brief only or to apply to access documents filed and/ or served in the AHAB Proceedings.
4. Immediately following service of the Statement of Claim on SICL and SIFCO5, the Barclays Claim shall be stayed without further Order (the "**Stay**"). Unless the Court otherwise Orders the Stay shall be automatically lifted 21 days after the formal handing down of judgment at first instance of the AHAB Proceedings.
5. Following the handing down of written judgment in the AHAB Proceedings, if the Court has determined that AHAB has established a proprietary claim against SICL and/or SIFCO5, there shall be listed a joint case management hearing in respect of the Barclays Claim and the AHAB Proceedings.



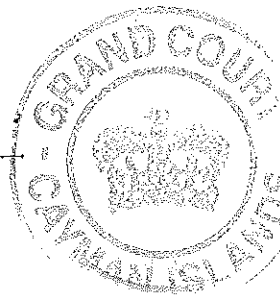
¹ The Draft Statement of Claim attached to this Order does not include Schedules 1 to 10 to the Draft Statement of Claim. The Statement of Claim that will be served will include Schedules 1 to 10 in the form referred to in the Draft Statement of Claim exhibited to the First Affidavit of Catriona Louise Lefkos.

6. For the avoidance of doubt, the Applicant does not have permission to commence proceedings against SICL in respect of the subject matters of paragraphs 165 to 183 of the draft Statement of Claim exhibited to the First Affidavit of Catriona Louise Lefkos. Insofar as the s.97 Application relates to those paragraphs it is adjourned with liberty to apply.
7. Costs in the cause (being the proceedings in which the Applicant brings the Barclays Claim against SICL and/or SIFCO5), save that the costs of the adjournment referred to at paragraph 6 above are reserved pending the outcome of that application.

DATED the 8th day of February 2016

FILED the 25th day of February 2016


THE HON. CHIEF JUSTICE ANTHONY SMELLIE QC



THIS ORDER was filed by Ogier of 89 Nexus Way Camana Bay Grand Cayman KY1-9007, Cayman Islands Attorneys-at-law for and on behalf of the Applicant whose address for service is that of their said Attorneys-at-law.

APPROVED AS TO FORM AND CONTENT

Ogier

Ogier

For and on behalf of Barclays Bank PLC



Walkers

Walkers

For and on behalf of Saad Investments Company Limited (In Official Liquidation)

Harney, Westwood & Riegels

Harney, Westwood & Riegels

For and on behalf of Saad Investments Finance Company (No.5) Limited (In Official Liquidation)

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

FSD No. [] of 2015

B E T W E E N:-

BARCLAYS BANK PLC

Plaintiff

- and -

**(1) SAAD INVESTMENTS COMPANY LIMITED
(in liquidation)**

**(2) SAAD INVESTMENTS FINANCE COMPANY (NO. 5) LIMITED
(in liquidation)**

Defendants

WRIT OF SUMMONS

TO: Saad Investments Company Limited (In Liquidation), Grant Thornton Specialist Services (Cayman) Limited, 10 Market Street, Camana Bay, Grand Cayman, Cayman Islands

AND TO: Saad Investments Finance Company (No.5) Limited (In Liquidation), Kinetic Partners (Cayman) Ltd, The Harbour Centre, 42 North Church Street, Grand Cayman, Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff, of 1 Churchill Place, London, E14 5HP, United Kingdom, in respect of the claim set out in the following pages.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, PO Box 495 GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this _____ day of _____ 2015.

NOTE - This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months), beginning with the date of issue unless renewed by Order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

A. Introduction

1. The Claimant ("**Barclays**") provided finance of US\$ 100,000,000 to the First Defendant ("**SICL**") pursuant to an accreting strike option (the "**Transaction**") contained in a Confirmation dated 25 September 2006 (the "**Confirmation**").
2. As a condition of providing such finance, Barclays was to receive preference shares in a special purpose vehicle, the Second Defendant ("**SIFCO5**"), into which SICL was to contribute shareholding or partnership interests in private equity funds (each a "**Fund Interest**"). The initial finance amount provided pursuant to the Transaction was to be 70% of the value of the Fund Interests. Upon termination of the Transaction and payment of all sums due from SICL to Barclays, Barclays was obliged to transfer its shares in SIFCO5 to SICL.
3. It was self-evidently essential to the Transaction that the Fund Interests to be transferred by SICL to SIFCO5, which would effectively provide security to Barclays in respect of the finance being provided by Barclays to SICL, were beneficially owned by SICL.
4. Proceedings have been brought in the Grand Court by Ahmad Hamad Algoaibi and Brothers Company ("**AHAB**") against, amongst others, SICL, Maan Al Sanea ("**Mr Al Sanea**") and SIFCO5 pursuant to a writ dated 27 July 2009 in Cause No. 359 of 2009 (the "**AHAB Proceedings**"). AHAB served its statement of claim in the AHAB Proceedings on 10 November 2009, an amended statement of claim on 23 July 2012 and a re-amended statement of claim on 23 November 2015. References to the "**AHAB Statement of Claim**" herein are to the re-amended statement of claim.
5. In the AHAB Proceedings, AHAB contends that:

- (1) Mr Al Sanea exercised complete managerial control of “the Money Exchange” (a division of AHAB), including as managing director and sole effective member of the Executive Committee, such that he assumed and owed fiduciary duties to AHAB;
 - (2) Between 2000 and 2009, Mr Al Sanea misappropriated over US\$ 6.1 billion of AHAB’s assets in breach of fiduciary duty;
 - (3) The misappropriated money, or a large part of it, was received by (amongst others) SICL with full knowledge of the misappropriation. Such funds were used, *inter alia*, to purchase or finance SICL’s investments; and
 - (4) Consequently, AHAB was and is the absolute beneficial owner of the money misappropriated from it by Mr Al Sanea and its traceable proceeds, which are impressed with a constructive trust in favour of AHAB, including (in particular) the Fund Interests acquired by SICL and contributed to SIFCO5.
6. SICL has denied the allegations in the AHAB Proceedings in a Defence dated 21 April 2011.
7. Barclays does not know whether the allegations made in the AHAB Proceedings against SICL and SIFCO5 are well founded. The Grand Court has held that AHAB has a good arguable case that SICL and SIFCO5 among others were fraudulent co-conspirators with Mr Al Sanea and that AHAB has a good arguable proprietary claim against each of them: 2010 (1) CILR 553. The Grand Court and the Court of Appeal, respectively, have also refused SICL’s and SIFCO5’s applications to strike out the claims against those companies. However, in the event that the claims brought in the AHAB Proceedings succeed, it will follow that:
- (1) SICL misrepresented to Barclays that:

- (a) (to the best of its knowledge and belief) it had good title to the Fund Interests which it proposed to contribute to SIFCO5 pursuant to the Transaction; and/or
- (b) it was able to perform the Transaction without any violation or conflict of any law applicable to it; and/or
- (c) it had the power to perform its obligations under the Transaction;

when, in fact, (to SICL's knowledge) SICL did not have beneficial title to the Fund Interests (or some of them) because they were the absolute beneficial property of AHAB and impressed with a constructive trust in favour of AHAB; SICL's performance of the Transaction would violate its duties in equity as a constructive trustee by transferring the Fund Interests to SIFCO5; and SICL accordingly lacked the power to transfer those assets to SIFCO5.

- (2) SICL's misrepresentations were fraudulent, alternatively negligent;
- (3) Barclays is entitled to elect, and by service of this Statement of Claim hereby elects, to rescind the Transaction for misrepresentation; and
- (4) Equitable title to the funds provided by Barclays pursuant to the Transaction re-vests in Barclays, and Barclays is entitled to trace and claim those funds and their traceable product.

8. In the event that the claims brought by AHAB in the AHAB Proceedings fail or Barclays' claim to rescind the Transaction is otherwise unsuccessful, Barclays claims:

- (1) The amount due in respect of the (automatic) early termination of the Transaction; and
- (2) (In the event that SIFCO5 is found to be indebted to SICL or any other party) Damages in respect of SICL's breach of the terms of the Transaction.

9. Further, if and to the extent that Barclays is unable to recover all of the sums paid by it under the Transaction by way of proprietary claims, Barclays also seeks a declaration that its liability under certain notes (the “Notes”) to which SICL was beneficially entitled has been set-off against the sums owed by SICL to Barclays under or in connection with the Transaction. Barclays also claims repayment of the sums which it paid under those Notes on 20 March 2013 to the extent that Barclays’ liability under those Notes had in fact been extinguished by way of set-off before that payment.

10. In this Statement of Claim, a plea that “AHAB alleges that” is to be understood as averring that (i) AHAB has made that allegation in the AHAB Proceedings; (ii) Barclays adopts that allegation for the purposes of these proceedings only, *mutatis mutandis*, but without having independent knowledge of its truth or falsity. For the avoidance of doubt:
 - (1) Barclays adopts AHAB’s allegations that assets were impressed with a constructive trust in its favour, to the extent set out herein, only insofar as relevant to AHAB’s ability to trace into SICL’s Fund Interests as at the date of the Transaction; and
 - (2) Otherwise, Barclays reserves the right to contest AHAB’s claims on the basis that those assets were not impressed with a constructive trust in AHAB’s favour and/or because Barclays has better title to such assets.

11. Barclays reserves the right to apply to amend this Statement of Claim so as to reflect any further amendments made to AHAB’s pleadings in the AHAB Proceedings.

B. The Parties and other Relevant Persons

B.1 Barclays (C)

12. Barclays is and was at all material times a public limited company registered under the laws of England and Wales providing a range of financial services, including banking, investment banking and investment management.

B.2 Mr Al Sanea and the Saad Group

13. Mr Al Sanea is a national of Kuwait, Saudi Arabia and Bahrain, who married into the Algosaibi family in 1980; his wife, Sana Algosaibi, is an AHAB partner and the sister of the former managing director of AHAB. SICL has described Mr Al Sanea as "listed in the Forbes Top 100 Wealthiest People in the World ... ranked 7th in net assets in Saudi Arabia and 23rd in the [Gulf Cooperation Council]". (Paragraphs 10, 11, 14 to 16, 23, 24, and 27 to 31 set out matters admitted by SICL and SIFCO5 in the AHAB Proceedings.)
14. The Saad Group was established in Saudi Arabia by Mr Al Sanea. It has since expanded enormously and now holds very substantial business, property and investment interests around the world. The companies in the group are incorporated in the Cayman Islands, Saudi Arabia, Switzerland, Bahrain and elsewhere; a Swiss company, Saad Financial Services SA, appears to operate as a central office for the group.
15. AHAB alleges that:
 - (1) The Saad Group companies within Saudi Arabia are principally held by or through Saad Trading Contracting and Financial Services Company, formerly Saad Trading and Contracting Company ("STCC"). Mr Al Sanea is the ultimate beneficial owner of the Saad Group.
 - (2) STCC is a general partnership majority owned and controlled by Mr Al Sanea. Mr Al Sanea has, at all material times, treated assets in the hands of STCC

as his own beneficial property, and treated receipts and payments to and from STCC as if they were receipts and payments made in his personal capacity.

- (3) STCC was extensively funded by money misappropriated from the Money Exchange. STCC was used by Mr Al Sanea *inter alia* as a conduit to disguise his misappropriations from the Money Exchange and the receipts of traceable proceeds of those funds by the Defendants.
- (4) AHAB may and has elected that payments out from STCC to the Defendants in the AHAB Proceedings were made using AHAB's money, such that it can appropriate its beneficial interest to those payments.

B.2 SICL (D1)

16. SICL is incorporated in the Cayman Islands. On 24 July 2009, Richard Douglas and Peter Anderson of Rawlinson & Hunter were appointed as joint receivers over SICL and on 5 August 2009, Hugh Dickson of Grant Thornton Specialist Services (Cayman) Ltd ("GTSS"), Stephen Akers of Grant Thornton UK LLP ("GTUK") and Mark Byers of both GTSS and GTUK were appointed as joint provisional liquidators of SICL by Order of the Grand Court following the presentation of a petition by Barclays, Calyon (now Credit Agricole) and The Royal Bank of Scotland Plc, under an unrelated facility agreement, on 30 July 2009. They were subsequently appointed joint official liquidators on 18 September 2009 upon the winding-up of the company pursuant to a further Order of the Grand Court.
17. SICL is the principal holding company in the Saad Group outside Saudi Arabia.
18. According to its financial statements, SICL's purpose is to hold and manage offshore assets of Mr Al Sanea. SICL holds a large portfolio of investments, including cash, real estate, equities and private equity investments. In its financial statements for 31 December 2008, it reported net assets of US\$ 4.469 billion.

19. Mr Al Sanea is the chairman of the board of directors of SICL; the other directors are his wife, Sana, and his daughter, Suha.
20. AHAB alleges that:
 - (1) Mr Al Sanea is also the ultimate beneficial owner of SICL. The shares in SICL are held by Saadgroup Limited, the shares of which (or a controlling majority thereof) are in turn held by Awal Trust Company Limited as trustee of the Saad Star Trust. The Saad Star Trust is a Cayman Islands trust settled by Mr Al Sanea and which is subject to his direct or indirect control.
 - (2) Until its liquidation, Mr Al Sanea exercised complete control over the business and activities of SICL through his position as chairman and his control of the SICL shares through the Saad Star Trust.

B.3 SIFCO5 (D2)

21. SIFCO5 is an indirect subsidiary of SICL. It is a special purpose vehicle, incorporated in the Cayman Islands, which was used by SICL for the purposes of the Transaction.
22. SICL was appointed the Investment Manager of SIFCO5 pursuant to an agreement dated 21 September 2006, and was its agent with sole discretionary powers to manage SIFCO5's assets.
23. The authorised and issued share capital of SIFCO5 is as follows:
 - (1) 100 Class A ordinary shares with par value of US\$ 1.00, which are owned by SICL. Pursuant to Article 9A of SIFCO5's Articles of Association, the Class A shares entitle SICL to attend and vote at general meetings.
 - (2) 124,508,062 Class B preference shares with par value of US\$ 1.00, which are owned by Barclays. Pursuant to Articles 9B and 122(2) of SIFCO5's Articles of Association, the Class B shares did not carry the right to receive

notice of, attend or vote at general meetings (save in respect of amendments to the Articles or class rights, or where a Full Resolution was required) but had preference over the Class A shares upon winding-up.

24. AHAB alleges that:

(1) SIFCO5, together with other companies bearing the name Saad Investments Finance Company (No. x) Limited, (together, the "SIFCOs") are implicated in Mr Al Sanea's fraud; and

(2) Mr Al Sanea exercised complete control over the SIFCOs.

25. Geoffrey Varga and Nicolas Matthews of Kinetic Partners (Cayman) Limited were appointed joint provisional liquidators of SIFCO5 by an Order of the Grand Court dated 7 September 2009, and as official liquidators pursuant to an Order of the Grand Court dated 18 September 2009.

B.4 AHAB

26. AHAB alleges that:

(1) AHAB is a general partnership organised under the laws of the Kingdom of Saudi Arabia and registered under commercial registration no. 2051001439;

(2) AHAB's partners are members of the Algosaibi family in Saudi Arabia; and

(3) AHAB is managed by a board of directors, presently chaired by Yousef Ahmad Algosaibi (and formerly Abdulaziz Hamad Algosaibi until his death in May 2003 and Suleiman Hamad Algosaibi until his death in February 2009).

27. AHAB is involved in a variety of commercial activities, including manufacturing, trading, shipping, transport, hotels, food services and financial services. Its principal offices are in Al Khobar, Saudi Arabia.

B.5 The Money Exchange and AHAB's other Financial Businesses

28. Since about 1981, AHAB has had an unincorporated division known until 2006 as AHAB Money Exchange Commission and Investment and thereafter as AHAB Finance Development and Investment. The division is referred to in this Statement of Claim as the “**Money Exchange**”.
29. AHAB alleges that:
- (1) Although not a separate legal entity from AHAB, the Money Exchange was run as an independent business with its own management and staff. From 2006, the Money Exchange had its own commercial registration in Saudi Arabia;
 - (2) The original business of the Money Exchange was to provide low value cash remittance and currency exchange services for expatriate workers in Saudi Arabia; it held current accounts through a small network of seven branches; in the late 1980s and/or early 1990s, it may have carried out some limited deposit-taking and lending; it also operated a small American Express card franchise. It also held a large portfolio of investments including in Saudi blue chip equities;
 - (3) By 2008, the business of the Money Exchange had, according to its financial statements, been transformed into one principally concerned with lending and investment;
 - (4) In fact, from at least 2000, the Money Exchange was operated principally as a vehicle for Mr Al Sanea to borrow money and then misappropriate it; its financial statements have been false for many years; and, contrary to its financial statements, the Money Exchange never (alternatively, not at any time from at latest 2000) had any significant lending to third party customers.

30. AHAB alleges that, following Mr Al Sanea's marriage to Sana Algozaibi, Mr Al Sanea was appointed to manage the Money Exchange. AHAB alleges that Mr Al Sanea owed fiduciary duties arising from his position in the Money Exchange as set out in paragraphs 141 and 142 below.
31. The general manager of the Money Exchange, reporting to Mr Al Sanea, was Mark Hayley. AHAB alleges that Mr Hayley was initially recruited by Mr Al Sanea to act as deputy general manager of the Money Exchange but was instead employed by the Saad Group between 1993 and 1997, before taking up a position as general manager of the Money Exchange.
32. Other senior members of the staff at the Money Exchange included: Jawdi Jamjoun, head of operations; Benjamin Jesudas, manager, operations; Shashi Menon, head of finance; Brian Donkin, head of trading. AHAB alleges that the management and senior staff of the Money Exchange were all English-speaking expatriates and the business of the Money Exchange was almost entirely carried out in English.
33. A number of other financial businesses are recorded as owned by AHAB or former AHAB partners:
- (1) AHAB has a 93% shareholding of record in The International Banking Corporation ("TIBC"). TIBC was a bank incorporated and licensed in Bahrain, which was established in 2003 by or on the instructions of Mr Al Sanea. AHAB alleges that TIBC was operated by Mr Al Sanea as a vehicle for his fraud as set out in paragraph 120(3) below. TIBC is presently in administration in Bahrain;
 - (2) Certain deceased partners in AHAB are the shareholders of record of Algozaibi Investment Holdings EC ("AIH"), a company incorporated in Bahrain;

(3) AIH is the 100% shareholder of record of Algosaibi Trading Services Bermuda Ltd (“**ATS**”), a company incorporated in Bermuda, which traded from offices in Bahrain,

(together with the Money Exchange, referred to as the “**Financial Businesses**”).)

34. Mr Al Sanea was managing director of each of the Financial Businesses until he purported to resign in 2005/6. AHAB alleges that he exercised complete control over all of the Financial Businesses.

35. Apart from Mr Al Sanea, the senior executives of the Financial Businesses were as follows:

(1) Glenn Stewart, a US national, was general manager of ATS until 2003, when he became general manager of TIBC;

(2) Martyn Ebbs, a UK national, replaced Mr Stewart as general manager of ATS;

(3) John Potter, a US national, was general manager of AIH,

(together, the “**Senior Executives**”).)

36. AHAB alleges that, like the Money Exchange, ATS and TIBC were used by Mr Al Sanea as vehicles from which to misappropriate money.

C. The Transaction

37. On 25 September 2006, SICL and Barclays entered into the Transaction on the terms of the Confirmation and an Agreement in respect of Class B Shares of SIFCO5 of the same date (the “**Side Letter**”). The Confirmation and Side Letter supplemented, formed part of and were subject to an (amended) 1992 ISDA Master Agreement (Multicurrency—Cross Border) entered into between SICL and Barclays as of 3 January 1996 (the “**Master Agreement**”). Each of the Master Agreement, Confirmation and Side Letter are governed by English law; but English

law is materially identical to the law of the Cayman Islands insofar as relevant to this claim.

38. Each of the Master Agreement, Confirmation and Side Letter were signed by Mr Al Sanea on behalf of SICL.

C.1 Principal Terms of the Transaction

39. This section sets out a summary of the pertinent terms of the Transaction, but Barclays shall refer to the Confirmation, Side Letter and Master Agreement at trial for their full terms and effect.
40. *SIFCO5 and provision of Shares to Barclays.* Pursuant to paragraph 2 of the Side Letter, SICL agreed to request formally that the fund manager of each private equity fund that might be agreed between Barclays and SICL do irrevocably transfer SICL's unencumbered shareholding or partnership interest in the relevant private equity fund to SIFCO5 by 25 September 2006 or as soon as possible thereafter.
41. Pursuant to paragraph 7 of the Side Letter, SICL was to procure the issuance to Barclays of shares in SIFCO5 with a net asset value equal to the value of the fund interests transferred (the "**Transfer Amount**") and the Premium of up to US\$ 21,811,850 before the date on which SICL received the Financing Amount.
42. **Payment of Financing Amount (i.e. the initial Strike Price).** Pursuant to paragraph 5 of the Side Letter, SICL was to notify Barclays on or prior to 27 September 2006 of the Financing Amount, expected to be US\$ 49 million but not to exceed US\$ 70 million. Pursuant to paragraph 2 of the Side Letter, the value of the fund interests transferred was to be such that the Financing Amount was equal to 70% of the Transfer Amount.

43. Pursuant to paragraph 6 of the Side Letter, Barclays was to pay SICL the sum so agreed on 29 September 2006. That payment constituted the (initial) Strike Amount under the Transaction.
44. **Monthly Payments.** Pursuant to the Monthly Payments clause of the Confirmation, SICL agreed to make a payment (on a monthly basis) calculated based on the Strike Price (i.e. outstanding finance) over the past month \times (1 month USD LIBOR + 1.5%) \times (number of days / 360). An additional Make-Whole Amount would also be payable to Barclays in the event that the Strike Price fell below the Minimum Strike Price.
45. **Strike Price Adjustment.** Pursuant to the Strike Adjustment clause of the Confirmation, SICL was in certain circumstances entitled (or bound) to increase or decrease the Strike Price (i.e. the value of the finance provided by Barclays) by either notionally subscribing or redeeming Shares in SIFCO5, or by making a payment to or receiving a payment from Barclays.
46. The Strike Adjustment entitled Barclays to insist that the Strike Price Ratio (as defined) did not exceed the Maximum Strike Ratio of 5; the effect of this was that the Strike Price (i.e. the value of the finance provided by Barclays) could not exceed 80% of the Net Asset Value of SIFCO5.
47. Pursuant to the Optional Partial Redemption clause of the Confirmation, SICL was in certain circumstances entitled to redeem shares in SIFCO5 without reducing the Strike Price. In effect, this permitted SICL to withdraw profit from SIFCO5 if the value of SIFCO5 increased beyond the amount required as Barclays' hedge for the Strike Price.
48. **Repayment (Strike Reduction and Final Valuation Date).** Pursuant to the Strike Adjustment and Settlement Process clauses of the Confirmation, SICL was obliged to redeem shares in SIFCO5, and to make repayments to Barclays, such that the

Strike Price was no more than US\$ 67,000,000 on the relevant date in September 2011 and no more than US\$ 33,000,000 on the relevant date in December 2011.

49. Two business days after the Final Valuation Date (in March 2012), SICL was required to pay the outstanding Strike Price and any accrued monthly payments, following which Barclays was to transfer to SICL the Shares in SIFCO5.

C.2 Payments by Barclays

50. On 29 September 2006, Barclays paid a Financing Amount of US\$ 49 million to SICL. The initial Strike Price was, therefore, US\$ 49 million.
51. The Strike Price was subsequently increased to the Maximum Strike Price of US\$ 100 million, in accordance with the terms of the Transaction, as follows:
 - (1) On 1 February 2007, Barclays paid US\$ 21 million to SICL and the Strike Price was accordingly increased to US\$ 70 million; and
 - (2) On 26 February 2007, Barclays paid US\$ 30 million to SIFCO5 and the Strike Price was accordingly increased to US\$ 100 million.

D. Representations

52. Pursuant to Section 3(a) of the Master Agreement, SICL is deemed to have represented to Barclays on the conclusion of the Transaction that:
 - (1) It had power to execute the Master Agreement and any other documentation relating to it (including the Confirmation and Side Letter) and to perform its obligations thereunder;
 - (2) Such execution and performance would not violate or conflict with any law applicable to SICL.

53. Although misrepresentation constitutes an Event of Default under the Master Agreement, Section 9(d) provides that remedies under the Master Agreement are cumulative and not exhaustive of any remedies at law.
54. Furthermore, by virtue of the circumstances of the Transaction and the negotiation thereof, it was implicitly represented by SICL to Barclays that (to the best of SICL's knowledge and belief) it had good title to the Fund Interests which it proposed to contribute to SIFCO5 pursuant to the Transaction.
55. In particular, Barclays shall rely on the following facts and matters as demonstrating that SICL made that representation:
- (1) The purpose of the Transaction was to provide leveraged finance against SICL's Fund Interests. The Fund Interests were to stand, in effect, as security in respect of the finance provided by Barclays to SICL. The Fund Interests only had value as a hedge or collateral insofar as SICL had good title to them. It was obvious that the Transaction proceeded on the basis that SICL had good title to, and would therefore be able to transfer, the Fund Interests to the relevant special purpose vehicle. By executing the Confirmation and Side Letter, SICL implicitly represented that it believed that it had such title;
 - (2) During negotiations, SICL held itself out as having Fund Interests which it would contribute to a special purpose vehicle for the purpose of the Transaction, which carried with it (as a necessary or obvious implication) a representation that SICL believed it had good title to those Fund Interests such that it would be able to transfer them to SIFCO5;
 - (3) The Side Letter recorded that SICL was to transfer "*unencumbered shareholding[s] or partnership interest[s]*" and it was implicit, in negotiating

and executing a transaction on that basis, that SICL was holding itself out as the sole beneficial owner of the Fund Interests.

56. The representations set out above will be referred to collectively as the “Representations”.

E. AHAB’s allegations

E.1 Summary

57. In the AHAB Proceedings, AHAB alleges that it has proprietary interests in the assets of (*inter alia*) SICL and SIFCO5. AHAB alleges, in particular, that the Fund Interests which were contributed by SICL to SIFCO5 pursuant to the Transaction could only have been acquired using moneys contributed by Mr Al Sanea to SICL which he had misappropriated from AHAB, such that it was (including at the date of the Transaction) the absolute beneficial property of AHAB and impressed with a constructive trust in favour of AHAB.
58. In the following sub-sections, Barclays sets out the detailed allegations made by AHAB insofar as they appear to be relevant to this claim. Barclays reserves the right to supplement or amend these allegations in the event that AHAB further supplements or amends its claim.
59. The allegations set out below are adopted *mutatis mutandis* by Barclays without independent knowledge of their truth or falsity. If and insofar as AHAB’s claim is well founded, it will follow that these allegations are true to the same extent.
60. The following sub-sections of this Statement of Claim are:
- (1) Section E.2: Mr Al Sanea’s control of the Financial Businesses (based on Section D of AHAB’s Statement of Claim);
 - (2) Section E.3: Misappropriations from the Money Exchange (based on Section E of AHAB’s Statement of Claim);

- (3) Section E.4: Other matters relied upon in support of AHAB's allegations of fraud (based on Sections F, G and H of AHAB's Statement of Claim);
- (4) Section E.5: Receipt of misappropriated money (based on Section I of AHAB's Statement of Claim); and
- (5) Section E.6: AHAB's proprietary claims against SICL and SIFCO5 (based on Sections K.1, K.2, K.3 and K.7 and L of AHAB's Statement of Claim).

E.2 Mr Al Sanea's control of the Financial Businesses

61. Each of the allegations made in this sub-section are based on AHAB's allegations in the AHAB Proceedings.
62. Mr Al Sanea exercised complete managerial control over the Financial Businesses. He was formerly managing director of the Money Exchange, ATS, AIH and TIBC. Although he resigned or purported to resign from those positions in 2005 and 2006, he continued to exercise the same control through a so-called "Executive Committee" of the Financial Businesses. The Executive Committee was established by Mr Al Sanea and he was the sole effective member. Mr Al Sanea issued instructions to management and staff of the Financial Businesses through or in the name of the Executive Committee until May 2009.
63. The partners had no substantive contact with the management and staff of the Financial Businesses, including the Senior Executives, all of whom reported exclusively to Mr Al Sanea.
64. The offices of the Money Exchange are in the same building as AHAB's principal offices. However, the Money Exchange occupies a different floor of the building and has its own secure entrance and its own postal address.
65. In recent years, Mr Al Sanea himself worked from the offices of the Saad Group elsewhere in Al Khobar. Instructions and documents passed between him and the

Money Exchange and the other Financial Businesses principally by messages and memoranda, many of which were delivered by Saad Group drivers.

66. Mr Al Sanea directed Money Exchange management and staff to accept only instructions that had been issued or approved by him in writing, including pursuant to a memorandum to Money Exchange's dealing room and back office staff which required them to disregard all instructions save for those bearing Mr Al Sanea's written approval.
67. Mr Al Sanea also directed Money Exchange mailroom staff to deliver all communications addressed to any partner or director of AHAB to him and not to the addressee. For example, in 2004, Mr Al Sanea issued a memorandum to Messrs Jamjoum, Jesudas and Menon directing that all correspondence address to Mr Suleiman or Saud Algosaibi should be forwarded to him for review first, and required them to sign an undertaking to that effect.
68. By these methods, Mr Al Sanea ensured both that the management and staff of the Financial Businesses acted solely on his instructions and that the AHAB partners remained uninformed about the true dealings of the businesses.
69. Further, Mr Al Sanea sought to influence and control Mr Hayley as general manager of the Money Exchange by making large, secret payments to him through the Saad Group:
 - (1) In 2004, Mr Hayley and Mr Al Sanea signed an "addendum" to Mr Hayley's contract of employment. The addendum provided, *inter alia*, that his monthly salary, which was then SAR 37,500 (US\$ 10,000) per month, would be increased by SAR 60,000 (US\$ 16,000) per month — a 160% increase — and that he would receive annual bonuses of US\$ 210,000. The original signed addendum was retained by Mr Hayley; it was not placed on the files of the Money Exchange.

- (2) Neither the salary increase nor the bonuses contained in the addendum were paid by or charged directly to the Money Exchange or recorded in its books. Instead, Mr Hayley would attend the Saad Group offices every month where he would be handed the amount of the salary increase in cash. The Saad Group also paid Mr Hayley's annual bonuses; in the event Mr Hayley received bonuses in a total amount of £ 2m between 2007 and 2009. The bonuses were paid by transfer from the Saad Group to an account in the name of Mr Hayley at Ifabanque.
- (3) In 2007, Mr Al Sanea arranged a loan from Ifabanque (where he is a director) to finance the purchase for Mr Hayley of an apartment in Chelsea, London. £1.5 million from Mr Hayley's bonuses were used to repay part of this loan.
- (4) On a number of occasions in about 2003 or 2004 Mr Al Sanea paid amounts of about US\$ 60,000 to Mr Hayley in traveller's cheques. Again, these payments were not made by or charged to the Money Exchange or recorded in its books.
70. There was no proper or honest reason for Mr Al Sanea to make such payments to Mr Hayley through the Saad Group. It is to be inferred that the payments were intended to, and did in fact, improperly influence Mr Hayley to collude in Mr Al Sanea's fraud.
71. Following his purported resignation as managing director of the Financial Businesses in 2005/2006, Mr Al Sanea outwardly sought to distance himself from their management when, in fact, Mr Al Sanea continued at all times until May 2009 to exercise complete control of all the Financial Businesses through or in the name of the Executive Committee. He regularly sent instructions and received reports in that capacity throughout 2006, 2007, 2008 and the first half of 2009. In particular, reports and requests from management of the Financial Businesses were addressed either to Mr Al Sanea personally or to the Executive Committee but in

either case were delivered to Mr Al Sanea's offices at the Saad Group; and instructions from Mr Al Sanea were usually in the name of the Executive Committee but signed by Mr Al Sanea personally.

72. Mr Al Sanea also remained a signatory on the Money Exchange's account at Saudi British Bank and used that position to misappropriate very large amounts by cheque as described below.

E.3: Misappropriations from the Money Exchange

73. Each of the allegations made in this sub-section are based on AHAB's allegations in the AHAB Proceedings.

74. **Summary.** Mr Al Sanea misappropriated money from the Money Exchange in summary as follows (further details are given below):

	Estimated amount (US\$ million)
Cheques drawn on Money Exchange accounts payable to Saad Group companies	2,185
Payments received for the benefit of the Saad Group under letters of credit (LCs) issued for the account of the Money Exchange	2,030
Withdrawal of cash from Money Exchange branches	560
Electronic payments, including payments to Awal Bank	1,420+
Total	6,195+

75. There was no proper or honest reason for the Money Exchange to be making such payments to or for the benefit of Mr Al Sanea or the Saad Group.

76. The misappropriations were secretly recorded by Mr Hayley in a spreadsheet, which he regularly updated. The spreadsheet was kept secret from the AHAB

partners and directors. The spreadsheet divided the outgoings of the Money Exchange under two headings "ALGF" and "STCC". Interest and facility fees on the Money Exchange's borrowing were recorded as outgoings of ALGF; cheque payments, LC payments and cash withdrawals from branches were recorded as payments to or drawings by STCC. The spreadsheet was not provided to the AHAB partners or directors.

77. Mr Hayley also supplied Mr Al Sanea with regular cash flow projections under cover of memoranda marked "private & confidential". Mr Hayley would summarise to Mr Al Sanea the provision which he had made in those projections for payments to the Saad Group (i.e. misappropriations by Mr Al Sanea). These memoranda show that Mr Al Sanea operated the Money Exchange for the purposes of (a) servicing interest on its borrowings; and (b) paying away anything else to "STCC" (as shorthand for the Saad Group) for the benefit of Mr Al Sanea.
78. Once Mr Al Sanea had misappropriated money from the Money Exchange by the methods set out in this section E.3, there was extensive circulation of such misappropriations between (a) Saad Group companies including STCC; (b) the Defendants to the AHAB Proceedings; and (c) the Money Exchange in furtherance of Mr Al Sanea's fraud. In this manner money misappropriated from the Money Exchange was applied for the benefit of the Defendants and ultimately received by them. Paragraph 15 above is repeated.
79. The circulation of funds includes the transactions identified at paragraph 136 and particularised in Schedule 3 (which replicates Schedule 8 to the AHAB Statement of Claim).
80. Further, Mr Al Sanea caused the Money Exchange to pay sums equivalent to US\$ 1,287,117,900 directly to Awal Bank as set out in Schedule 4 (which replicates Schedule 7 to the AHAB Statement of Claim). This total sum included sums that were circulated between inter alia Awal Bank and the Money Exchange.

81. Further, Mr Al Sanea caused STCC to pay further sums to Awal Bank. These sums were equivalent to at least a further US\$ 1,140,949,239 as set out in Schedule 5 (which replicates Schedule 7a to the AHAB Statement of Claim). These sums represented the traceable proceeds of money misappropriated from the Money Exchange and paid away to STCC in the manner set out above. Paragraph 15 above is repeated. This total sum included sums circulated between *inter alia* Awal Bank and the Money Exchange.
82. There was no legitimate commercial purpose for the circulation of funds and this activity was undertaken entirely in furtherance of Mr Al Sanea's fraud. None of it was undertaken in the interests of AHAB. All of it was adverse to the interests of AHAB.
83. The circulation of funds was improperly undertaken for purposes that included the following:
- (1) to manipulate the balance sheets of the various Saad Group companies to give a false picture of their financial standing in order to procure more borrowing and to avoid breaching covenants on existing borrowing;
 - (2) to give the impression of commercial activity and financial standing on the part of the various Saad Group companies that did not reflect the true position; and
 - (3) to conceal the details of Mr Al Sanea's fraud by orchestrating a vast number of transactions to try to confound any attempt to identify with precision what had happened to money misappropriated from the Money Exchange.
84. Mr Al Sanea has at all material times been subject to a fiduciary duty to account to AHAB for his stewardship of AHAB's money as set out in Section E.6 below.
85. **The Saad accounts.** Money misappropriated by Mr Al Sanea by the methods set out above and other methods was generally recorded in the ledgers of the Money

Exchange as debits to accounts in his name or in names apparently connected with him or the Saad group. Those accounts are referred to as "the Saad accounts"; they included accounts in the following names: "Saad Co Kh", "Dues for Mr Maan", "Richab", "Saad Company", "Saad Company Tamweel". Very large debit balances were accrued on the Saad accounts.

86. The debit balances on the Saad accounts did not, however, represent money genuinely loaned by the Money Exchange to Mr Al Sanea or the Saad Group. Instead the Saad accounts were merely bookkeeping devices intended to disguise the misappropriations while ensuring that the Money Exchange's books balanced. There was no intention that they would be repaid. That is evidenced, inter alia, by the following matters:

- (1) Many of the names in which the accounts were held did not represent the names of existing legal entities. For example, Saad Company Tamweel (meaning "Finance") was not the name of a company or other legal entity in the Saad Group.
- (2) Apart from the entries in the ledgers themselves, there was no documentary record of loans to Mr Al Sanea or the Saad Group. For example, there were no account opening records, loan agreements, account statements or security documentation. No loan files were maintained. There was no correspondence between the Money Exchange and Mr Al Sanea or the Saad Group about the accounts and no evidence of any contact between the Money Exchange and the recorded account holder.
- (3) No money was advanced to the recorded account holder.
- (4) No interest was paid (although accrued in the books for some accounts), or principal repaid, on any of the accounts. No demand was made for payment of interest or repayment of principal.

- (5) In some cases, Mr Al Sanea dictated to Money Exchange staff the rate of interest to be applied to the accounts. In other cases, no interest was applied.
- (6) The purported loans (or their purpose) were not the subject of any consideration or approval by the Money Exchange or AHAB. It was manifestly not in the interest of AHAB to make very large, unsecured, non-performing loans to Mr Al Sanea or the Saad Group.
- (7) The purported loans were not disclosed in the Money Exchange financial statements as related party transactions, as they clearly should have been if genuine.
- (8) No security was obtained by the Money Exchange for the balances purportedly due on the accounts.

87. **Cheque payments.** Mr Al Sanea misappropriated about US\$ 2.185 billion by drawing a large number of cheques, from (at the latest) 1 January 2000, on the Money Exchange's bank accounts (on which he was a signatory) payable to himself or to Saad Group companies, as demonstrated by 6,540 copy cheques obtained by AHAB from the Saudi British Bank in the total sum of US\$1,613,360,050 and by entries in the Saad Tamweel ledger at the Money Exchange in relation to the balance. The Money Exchange had no liability to the Saad Group and there was no proper reason for the payments.

88. The method used by Mr Al Sanea to misappropriate money through cheque payments was as follows:

- (1) Blank chequebooks issued by Money Exchange's banks would be collected by a Saad Group driver from the offices of Money Exchange and delivered to Mr Al Sanea.
- (2) Mr Al Sanea would draw cheques in favour of himself or a Saad Group company (in most cases STCC), sign them himself and send them to be

collected for the account of the payee. Paragraph 15 above is repeated. Full particulars are set out in Schedule 1 (which replicates Schedules 3 and 3a of the AHAB Statement of Claim)

- (3) Mr Al Sanea would complete and initial a Money Exchange debit advice directing a debit in the amount of the cheque to a Saad account at the Money Exchange. The debit would then be processed by Money Exchange staff.
- (4) Payments by cheque were made very frequently in large amounts. For example, cheques were drawn by Mr Al Sanea almost every business day of 2008, often for millions of SAR. More than SAR 75m (US\$ 20m) was paid by the Money Exchange to the Saad Group in January 2008 alone.
- (5) Many of the cheques were drawn on the Money Exchange's account at Saudi British Bank.

89. Details of the cheque payments, as alleged by AHAB, are set out in Schedule 1 of the AHAB Statement of Claim.

90. Pursuant to the debit advices signed by Mr Al Sanea, the cheque payments were accounted for in the Money Exchange's books as if they were advances by the Money Exchange on the Saad accounts. However, in reality the payments represented misappropriations from the Money Exchange by Mr Al Sanea which he had no intention of repaying. Paragraph 76 above is repeated. Further, it is inherently unlikely and commercially irrational that the Money Exchange would have chosen to make loans to the Saad Group by way of a large number of cheques in irregular amounts drawn on its own accounts.

91. Once money had been misappropriated from the Money Exchange by means of the cheque payments, the money would then be circulated and applied for the benefit of the Defendants to the AHAB Proceedings in the manner set out at paragraphs 78 to 84 above. Paragraph 15 above is repeated.

92. **LC payments.** Mr Al Sanea caused the Money Exchange to open LCs as payment for goods purportedly supplied to AHAB. The goods included very large quantities of air conditioning and heating equipment, lift machinery, marble and fabrics. AHAB had no need of these goods, did not order them and never received them — they did not exist. The proceeds of the LCs were paid initially to accounts in the names of the purported suppliers but then retransferred to STCC or otherwise to Mr Al Sanea or the Saad Group. Many of the accounts in the names of such purported suppliers were held at TIBC. From 2004 onwards, TIBC was the advising bank on the majority of LCs.
93. Regardless of the names in which the beneficiary accounts at TIBC were held, those accounts were at all times under the absolute control of Mr Al Sanea and treated by him as if they held his own beneficial property.
94. Details of the LCs opened for this purpose are set out in Schedule 2 (which replicates Schedules 4 and 4a of the AHAB Statement of Claim). In summary, Mr Al Sanea misappropriated a total of about US\$ 2.03 billion under almost 1,800 LCs.
95. AHAB has obtained copy bank statements for the beneficiary accounts at TIBC in respect of those LCs that were denominated in US dollars. The proceeds of each LC were typically retransferred almost immediately from TIBC to STCC and treated by Mr Al Sanea as if they represented his own beneficial property. A summary of these transactions transferring the proceeds of LCs from TIBC to STCC is at Schedule 2a (which replicates Schedule 4b to the AHAB Statement of Claim). Such proceeds were then applied by Mr Al Sanea in furtherance of his fraud in the manner set out at paragraphs 78 to 84 above. There is no evidence that any LC, whether denominated in US dollars or otherwise, was treated in a different manner. In the premises, AHAB invites the Court to infer that the proceeds of every LC were paid away to STCC for the benefit of Mr Al Sanea.

96. The LCs identified in Schedule 2 were all entirely fraudulent and opened in furtherance of Mr Al Sanea's fraud. All the commercial activity purporting to underlie the LC transactions was falsified by Mr Al Sanea or on his instructions. For example, commercial registration documents for many of the purported beneficiaries were forged by Mr Al Sanea or on his instructions to give the false impression to the issuing banks and anyone else who might inspect those documents that the purported beneficiaries carried on business on a scale vastly in excess of the true scale of their undertakings.
97. Many of the purported beneficiaries of the LCs were unaware that their identities were being used by Mr Al Sanea in furtherance of his fraud. In any event, the purported beneficiaries had no control of any kind over the accounts opened at TIBC in their names into which the proceeds of the LCs were paid, nor any other form of control over the proceeds. The accounts in the names of the purported beneficiaries were entirely controlled by Mr Al Sanea for his benefit or the benefit of the Saad Group and adversely to the interests of AHAB.
98. Each LC was opened following a written request received by the Money Exchange or ATS from the Saad Group. The request would specify the issuing bank, the amount and the beneficiary and enclose a *pro forma* invoice covering the supply of goods to AHAB for delivery to a warehouse in Dammam, Saudi Arabia (although AHAB has no warehouse in Dammam). Staff in the Money Exchange's LC department would arrange for the LC to be issued for the Money Exchange's account as requested. Payment would be against presentation of a commercial invoice and a delivery note.
99. A number of different purported suppliers were used as beneficiaries; those used most frequently included Al Waha Consultant Engineers and Architects, Walid Ahmed Safar Trading Services, Madhar, and Emad Yousef, all with PO Box addresses in Al Khobar. It is highly unlikely that these companies would have been

in a position to supply the huge quantities of goods purportedly supplied. For example, Al Waha purportedly supplied more than US\$ 429m of goods to AHAB.

100. An apparently conforming commercial invoice and delivery note purportedly signed on behalf of the supplier/beneficiary would be delivered to the Money Exchange by the Saad Group. The documents were forged or fraudulent: no goods had been sold or delivered to AHAB. At the direction of Mr Al Sanea, staff at the Money Exchange would sign the delivery note purportedly on behalf of AHAB and present the documents to the issuing bank. Payment under the LC would be made to the purported beneficiary but in fact such payments would at all times be under the control of Mr Al Sanea and treated by him as if the proceeds of each LC were his own beneficial property.
101. As applicant for the LC, the Money Exchange would be liable to reimburse the issuing bank. However, the Money Exchange would generally request the issuing bank to defer reimbursement for a period of up to 180 days. At the end of that period, the Money Exchange would be liable to reimburse the issuing bank for the amount paid under the LC together with interest.
102. The proceeds of every LC belonged absolutely in equity to AHAB and constituted its beneficial property the moment such proceeds were paid out by the respective issuing bank under any given LC.
103. AHAB is entitled to trace such property from the maturity payment under any given LC into the proceeds of that LC and assert a proprietary right to such proceeds on the following bases:
 - (1) the fraudulent scheme to open any given LC shows a coordination between the depletion of the Money Exchange's funds and the proceeds of that LC;

- (2) further or alternatively, and considering any given LC transaction as a whole, the value of the proceeds is attributable to the misuse of the Money Exchange's assets;
 - (3) further or alternatively, there is a sufficient transactional link between the maturity payment and the proceeds of any given LC to establish that the proceeds constitute the product of the maturity payment.
104. Further or alternatively, the proceeds of every LC belonged absolutely in equity to AHAB and constituted its beneficial property the moment such proceeds were paid out by the respective issuing bank under any given LC by reason of those proceeds being an unauthorised profit made by Mr Al Sanea in breach of his fiduciary duty as follows:
- (1) Mr Al Sanea would not have been able to cause the Money Exchange to open any given LC had he not been AHAB's fiduciary;
 - (2) the object of the scheme to open the LC on the part of Mr Al Sanea was to perpetrate a fraud on AHAB for the benefit of Mr Al Sanea;
 - (3) to procure the opening of any LC with such an object was a breach of fiduciary duty on the part of Mr Al Sanea;
 - (4) the payment of the proceeds of the LCs to accounts in the names of purported suppliers but in fact held for the benefit of Mr Al Sanea was outside the scope and was an abuse of Mr Al Sanea's fiduciary duty;
 - (5) any payment made by an issuing bank to such an account under Mr Al Sanea's control was an unauthorised profit made by Mr Al Sanea in breach of fiduciary duty; and
 - (6) any such profit belonged to AHAB beneficially from the moment it was made and AHAB's right to such a profit is a proprietary right.

105. The moneys paid to the purported beneficiaries would subsequently be retransferred to the Saad Group.
106. As between themselves, Mr Al Sanea and Mr Hayley treated the payments under the LCs as payments to the Saad Group (as they were), rather than as payments for goods supplied to AHAB (as they appeared to be). Thus:
- (1) Payments under the LCs were accounted for by the Money Exchange by recording debits to Saad accounts, which, as pleaded above, were used as a bookkeeping device to record payments to the Saad Group.
 - (2) As pleaded in paragraph 76 above, Mr Hayley's spreadsheet recorded payments under LCs as payments to STCC.
 - (3) As pleaded in paragraph 77 above, Mr Hayley's cash flow projections made allowances for substantial LC payments to STCC.
 - (4) In a memorandum to Mr Al Sanea dated 9 January 2008, Mr Hayley stated that AHAB opened LCs in favour of STCC to the extent of US\$ 20 million per month on average; that, on negotiation, STCC received payment; and that, on maturity, settlement was made by AHAB.
107. Once money had been misappropriated from the Money Exchange by means of the LCs to STCC in the manner set out at paragraph 95 above, the money would then be circulated and applied for the benefit of the Defendants to the AHAB Proceedings in the manner set out at paragraphs 78 to 84 above. Paragraph 15 above is repeated.
108. **Cash withdrawals from branches.** Money Exchange branches received substantial amounts of cash from customers who had made deposits or instructed foreign remittances. The branches would also periodically receive cash from the Money Exchange head office.

109. Mr Al Sanea would regularly send a Saad Group driver to collect the cash from the branches. Mr Al Sanea would keep the cash, leaving the Money Exchange with the obligation to repay the deposit or complete the remittance.
110. Mr Al Sanea would complete and initial a debit advice directing a debit to a Saad account in the amount of the money he had taken from the branches. However, as with the other methods of misappropriation, the debit did not represent a genuine loan and Mr Al Sanea had no intention of repaying the money.
111. Based on Mr Hayley's spreadsheets, AHAB believes that the total amount misappropriated in this way exceeded US\$ 560m.
112. Once AHAB's money had been misappropriated from the Money Exchange by means of the cash withdrawals, the money would then be circulated and applied for the benefit of the Defendants to the AHAB Proceedings in the manner set out at paragraphs 78 to 84 above.
113. **Payments to Awal Bank.** Payments to Awal Bank are of limited relevance to these proceedings, unlike the AHAB Proceedings, because the overwhelming majority of the alleged payments appear to have taken place after the conclusion of the Transaction. However, the payments are further evidence of a pattern of misappropriation by Mr Al Sanea. In particular:
- (1) As set out in paragraphs 80 and 81 above, large sums were paid from the Money Exchange to Awal Bank, which were subsequently circulated by Mr Al Sanea for the purposes identified at paragraphs 82 and 83 above.
 - (2) The Money Exchange also made payments of at least US\$ 20 million to Awal Bank on the instructions of Mr Al Sanea, purportedly in respect of facility fees charge to ATS. However, there were no such genuine obligations to ATS to Awal Bank, and the payments were in fact made to facilitate Awal Bank's funding and profitability.

(3) On or about 3 and 6 May 2009, the Money Exchange paid a further US\$ 191 million and €4 million to Awal Bank. This payment was made when the Money Exchange had become unable to meet its financial obligations when they fell due, and represented the transfer of all but US\$ 2 million of the total balance of the Money Exchange's US\$ account at the Bank of America. Mr Al Sanea did not inform the AHAB partners of the Money Exchange's inability to meet its obligation, nor did he ask them for an injection of further cash, nor did he advise the lenders that the Money Exchange was suspending all payments. Rather, on 3 May 2009, Mr Al Sanea initially directed (via Mr Stewart) a transfer of that sum to Delmon Dana EC (a company controlled by Mr Al Sanea and owned by his wife). When Mr Hayley refused to execute this transaction, Mr Al Sanea directed that the payment be made to AHAB's account at Awal Bank; however, Awal Bank was under the ultimate beneficial ownership of Mr Al Sanea and, at the time, under his control. There was no proper reason for the Money Exchange to transfer money to Awal Bank — the transfers were in reality a final misappropriation by Mr Al Sanea intended to secure for himself as much of the remaining Money Exchange cash as he could before his fraud was discovered (as it was shortly afterwards). (Awal Bank, which is now in administration, returned US\$ 20 million following a request from AHAB on 14 May 2009 but has retained the balance.)

114. **Electronic transfers.** Amounts estimated to exceed US\$ 1.42 billion (including the payments to Awal Bank) were paid or transferred electronically by the Money Exchange on Mr Al Sanea's instructions, as set out in Schedule 6 (which replicates Schedules 11 and 11a to the AHAB Statement of Claim). About SAR 330m (US\$ 88m) of that was booked by the Money Exchange in its Commitment Fees account, and therefore treated as an expense of the Money Exchange. The remainder was debited to various Saad accounts; however, as pleaded above, the debits did not represent genuine loans and Mr Al Sanea had no intention of repaying the money.

115. The payments included the sums paid to SICL set out in Schedule 8 (which replicates Schedule 9 to the AHAB statement of case).
116. There was no proper or honest reason for the Money Exchange to make these payments.

E.4: Other matters relied upon in support of AHAB's allegations of fraud

117. Each of the allegations made in this sub-section are based on AHAB's allegations in the AHAB Proceedings. These matters, to the extent proven, demonstrate the participation of SICL in Mr Al Sanea's fraud, evidence his propensity for dishonesty and manipulating financial records, and show the beneficial receipt and/or handling by Saad Group companies of AHAB's money in furtherance of Mr Al Sanea's fraud.
118. **Unauthorised borrowing by AHAB.** In order to fund the misappropriations pleaded above, Mr Al Sanea caused a large number of loan agreements and other related documentation, including guarantees, to be executed in the name of AHAB with various banks and financial institutions. The borrowing was vastly in excess of what the Money Exchange or the AHAB group as a whole required for its genuine business. Mr Al Sanea also caused ATS, AIH and TIBC to borrow large amounts which were then transferred to the Money Exchange and/or misappropriated by him.
119. In total, Mr Al Sanea arranged borrowing from at least 118 different lenders. The balance of that borrowing, including accrued interest, was about SAR 34,600m (US\$ 9,200m) as at the end of May 2009; the amount is likely to rise as further interest accrues. Details of the total unauthorised borrowing by the Financial Businesses are given in Schedule 7 (which replicates Schedule 6 to the AHAB Statement of Claim).
120. AHAB alleges that Mr Al Sanea arranged finance without the knowledge or authority (actual or implied) of AHAB in the following ways:

- (1) In or around 2000, Suleiman (who had taken over responsibility for dealing with the proposed liquidation or disposal of the Money Exchange) decided that borrowing through the Money Exchange should be curtailed and that such borrowing should not materially increase beyond the level that he understood to have been approved or known about by Abdulaziz before his stroke, such that Mr Al Sanea was authorised only to maintain the level of borrowing by arranging the renewal or replacement of existing facilities provided that such funds were to be used for the benefit of the Money Exchange. In or around late 2002 or early 2003, Suleiman instructed Mr Al Sanea that if Mr Al Sanea wished to renew or replace any existing borrowing of the Money Exchange then he had to establish that the proposed new borrowing was not an increase on the expiring facility. However, Mr Al Sanea arranged further finance without AHAB's knowledge and authority.
- (2) Mr Al Sanea was not authorised to place the name of the chairman of AHAB on loan documentation but, without AHAB's knowledge and authority, forged or cause to be forged the signatures of the chairman of AHAB on such documentation.
- (3) Mr Al Sanea arranged borrowing by or through TIBC, for which he had no authority. TIBC's purported business was lending to Saudi Arabian customers who had been introduced to it by the Money Exchange, and TIBC financed this business principally by bank borrowing. In fact, TIBC made no loans and had no genuine business or customers. AHAB alleges that customers of TIBC were dummies, in that they did not exist at all, or they had not agreed to and were not aware of the loans in their names, or they were associates (employees or acquaintances) of Mr Al Sanea who permitted their names to be used. TIBC was not paid facility fees by customers individually as would be the case if the loans were genuine, but required payment by the Money Exchange of an aggregate fee for a block of customers (which requests were

approved personally by Mr Al Sanea). The money borrowed by TIBC and purportedly loaned to its dummy customers was in fact largely transferred to the Money Exchange by dishonest methods, including sham deposits and concealed Islamic financing transactions.

- (4) Mr Al Sanea also arranged borrowing by or through ATS, for which he had no authority. In particular, ATS' business purportedly involved arranging trade finance for AHAB (and also the Saad Group) for the purchase of commodities, but this was not a genuine business: goods were generally not delivered but were immediately resold, usually to the original supplier, such that the transaction was in substance a simple loan. In many cases the goods purportedly purchased did not exist and the suppliers were shell companies owned or controlled by ATS.

121. **False FX transactions.** Mr Al Sanea caused there to be entered on the books of the Money Exchange false foreign exchange (FX) transactions with SICL, STCC and Awal Bank. These did not represent actual transactions which had been negotiated and agreed with Money Exchange but were simply accounting entries designed to create a recorded profit in the name of and for the benefit of the relevant counterparties.

122. The details of each transaction, including the currencies exchanged, the amounts, the applicable rates and the opening and settlement dates were provided by email from Saad Group employees to the Money Exchange accounting department with instructions that the transaction should be recorded on those terms. The transactions were not the subject of any prior negotiation or any consideration or approval by the Money Exchange.

123. For example:

- (1) On 27 November 2008, Jagit Narang, an employee of STCC, emailed the Money Exchange with details of FX transactions with a covering instruction that Mr Al Sanea's approval had been obtained. The transactions were not genuine: (i) some were in the past and did not reflect any prior agreement; (ii) some involved Money Exchange buying and selling the same amount of a currency on the same day, but at different rates, resulting in an immediate fixed profit to the Saad Group counterparty; (iii) no money was paid to or from the Money Exchange in settlement.
 - (2) In 2008, false FX trades resulted in the booking of an apparent profit in SICL's favour of US\$ 128 million.
124. **False recording of deposits and loans.** Mr Al Sanea instructed the Money Exchange to book deposits in accounts for Saad Group companies while simultaneously booking debits of equal value on accounts apparently related to the Saad Group. The book entries did not represent genuine loan or deposit transactions.
125. **False confirmation of deposits.** Mr Al Sanea caused the Money Exchange to give false confirmations that it held deposits in the name of Saad Group companies. For example:
- (1) Between about February and March 2009, Mr Al Sanea caused the Money Exchange to confirm to Saadgroup Bank Europe Ltd's auditors that it held deposits of US\$ 101 million in the latter's favour which was, as Mr Al Sanea was informed, untrue.
 - (2) The Money Exchange issued deposit confirmations to Saad Leasing and Assets Financing Co Ltd, Saad Financial Services SA and Mr Al Sanea when, in fact, it held no such deposits.

126. **Temporary deposits with the Saad Group.** Mr Al Sanea used the Money Exchange funds to place temporary deposits with Saad Group companies. There was no proper commercial purpose for these deposits and AHAB believes that they were intended only to improve the appearance of the relevant Saad Group companies' financial statements. In particular, during 2008 and 2009, a total of US\$ 1.232 billion was temporarily deposited with SICL. For example, pursuant to an exchange of e-mails between Mr Al Sanea and Mr Hayley, Mr Al Sanea caused the Money Exchange to deposit US\$ 100 million with SICL over the 2008 year end.
127. **Concealment.** Mr Al Sanea sought to conceal his misappropriations (and the unauthorised borrowings used to fund those misappropriations), through the methods described above and by manipulating the Money Exchange's financial records as described below. The AHAB partners were not informed at any time by Mr Al Sanea or by the Senior Executives of either the payments to the Saad Group or the extent of the unauthorised borrowing which funded them, neither of which was apparent from the financial statements provided to the partners. The AHAB partners did not discover Mr Al Sanea's fraud until about May 2009.
128. In addition to the matters set out above, Mr Al Sanea manipulated the Money Exchange's financial records and statements:
- (1) The Money Exchange prepared financial statements from its internal computerised accounting ledgers. Mr Al Sanea caused the Money Exchange to maintain a ledger (ledger 3) which was not included in the financial statements but was used by Mr Al Sanea to keep an internal record of transactions which he wished to conceal; Mr Al Sanea, with Mr Hayley's assistance, would decide whether to include transactions on an official ledger or on ledger 3. Separate financial statements were prepared in relation to ledger 3 and/or Mr Al Sanea's borrowing, but they were prepared for Mr Al

Sanea's internal use and were not provided to AHAB's partners either at all or at least from May 2003.

- (2) On Mr Al Sanea's instructions, the financial statements and other documents of Money Exchange reported that it had a substantial third party lending business. In fact, the Money Exchange had no significant lending to third party customers at all (alternatively, at any time during or after 2000), nor did any of the Financial Businesses. Cash outflow went either to service existing unauthorised borrowing or to the Saad Group.

E.5: Receipt of misappropriated money

129. Each of the allegations made in this sub-section are based on AHAB's allegations in the AHAB Proceedings.
130. **Summary.** The money misappropriated by Mr Al Sanea was often paid in the first instance to various Saad Group companies, including STCC.
131. As set out at paragraphs 78 to 83 inclusive above, there was extensive circulation of the money misappropriated from the Money Exchange between (a) Saad Group companies (including STCC) and the Money Exchange; and (b) the Defendants to the AHAB Proceedings and the Money Exchange in furtherance of Mr Al Sanea's fraud. Money misappropriated from the Money Exchange was also paid beneficially to the Defendants to the AHAB Proceedings. Paragraphs 15 and 74 to 83 inclusive above concerning the general operation of Mr Al Sanea's fraud on AHAB are repeated.
132. As part of his fraud, Mr Al Sanea extensively used (amongst other companies) SICL and the SIFCOs as the ultimate repository of the proceeds of his fraud or a large part of them.
133. **Misappropriations from AHAB.** Mr Al Sanea misappropriated money from the Money Exchange by means (amongst others) of:

- (1) the fraudulent cheque payments to himself and Saad Group companies (including STCC) as set out in paragraphs 87 to 91 above;
- (2) the fraudulent LCs paid to nominee accounts controlled by Mr Al Sanea at TIBC and thereafter to STCC as set out in paragraphs 92 to 107 above;
- (3) the fraudulent cash withdrawals from branches as set out in paragraphs 108 to 112 above; and
- (4) the fraudulent electronic transfers, as set out in paragraphs 113 to 116 above, including the payments directly to Awal Bank, as set out in Schedules 4 and 5.

134. As regards SICL in particular:

- (1) Mr Al Sanea caused money misappropriated from the Money Exchange to be paid directly to SICL for SICL's benefit, as set out in Schedule 8;
- (2) Mr Al Sanea also caused money to be paid to (amongst other companies) SICL with either (a) generic transaction narrative/description/details; or (b) unparticularised transaction narrative/description/details, as set out in Schedule 9 (which replicates Schedule 10 to the AHAB statement of case). In the absence of proof to the contrary, it is to be inferred that each of these transfers was money misappropriated from the Money Exchange given (a) the fraud undertaken by Mr Al Sanea involving those companies and (b) the fact that certain transfers using such descriptions can be matched against the known misappropriations particularised in Schedule 10 (which replicates Schedules 10b to 10d to the AHAB statement of case).
- (3) SICL's financial statements report contributions by shareholders of US\$ 75 million in 2004, US\$ 98 million in 2005 and US\$ 143 million in 2006. Mr Al Sanea is the ultimate beneficial owner of the shares in SICL and must have provided these funds. Given that Mr Al Sanea's principal source of funds was

money he had misappropriated from the Money Exchange (either routed through STCC or otherwise) it is to be inferred that those contributions were or represented money misappropriated from the Money Exchange.

135. The sums misappropriated as set out in paragraphs 133 and 134 above were impressed with a constructive trust in favour of AHAB.

136. Mr Al Sanea also caused some of the money misappropriated from the Money Exchange to be circulated between various entities and applied for the benefit of the Defendants to the AHAB Proceedings in furtherance of his fraud, as described at paragraphs 78 to 83 above, including by way of those transactions involving SICL set out in Schedule 3.

137. AHAB alleges that:

(1) It is entitled to and has elected to appropriate its beneficial interest to any of the assets of the Defendants to the AHAB Proceedings that are still in their possession by reason that they must be presumed to have spent their own money before having recourse to the traceable proceeds of money misappropriated from the Money Exchange,

(2) It is entitled to a proprietary interest in the entirety of the remaining assets of each of the Defendants to the AHAB Proceedings by reason of each of them having received sums representing the traceable proceeds of money misappropriated from the Money Exchange that were in every case greater than the total assets remaining in that Defendant's hands. In the premises, as set out below, some or all of the Fund Interests transferred to SIFCO5 were impressed with a constructive trust in favour of AHAB on the date of the Transaction.

138. **SIFCO5.** SIFCO5 holds substantial investments in the form of the Fund Interests, which investments were transferred to it by SICL as part of the Transaction. The

Fund Interests transferred to SIFCO5 as an equity contribution (together, the "Funds Portfolio") were not purchased with the advance made under the Transaction, which SICL already owned. AHAB alleges that the Funds Portfolio as an asset of SICL could only have been acquired using moneys contributed by Mr Al Sanea to SICL which he had misappropriated from AHAB; the Funds Portfolio was then contributed to SIFCO5. SIFCO5's principal asset, the Funds Portfolio itself, was received directly from SICL and must have been purchased using the moneys contributed to SICL by Mr Al Sanea. AHAB alleges that the Funds Portfolio was impressed with a constructive trust in favour of AHAB on the date of the Transaction.

139. Mr Al Sanea's only (or at least principal) source of such large amounts of cash during this period was the money misappropriated from the Money Exchange, which exceeded US\$ 4.735 billion by the end of 2008. It is to be inferred that the money contributed to SICL, including that used to purchase or fund the investments contributed to SIFCO5, was part of or derived from the proceeds of the fraud on AHAB.

E.6: AHAB's proprietary claims against SICL and SIFCO5

140. Each of the allegations made in this sub-section are based on AHAB's allegations in the AHAB Proceedings.
141. By reason of his complete managerial control of the business of the Money Exchange, which he exercised with the full trust and confidence of AHAB, his position as managing director and sole effective member of the Executive Committee of the Money Exchange, Mr Al Sanea assumed and owed fiduciary duties to AHAB, including duties:
 - (1) to act in good faith and only in the best interests of the Money Exchange and AHAB;

- (2) to act only within the scope of his authority from AHAB;
- (3) not without the informed consent of AHAB to put himself in a position where his own interests were in conflict with those of the Money Exchange and AHAB;
- (4) not without the informed consent of AHAB to make any profit derived from his position at the Money Exchange.

142. Further to the duties particularised at paragraph 141 above, and as a core incident of his fiduciary position, Mr Al Sanea owed the following accounting duties to AHAB:

- (1) to account immediately to AHAB for any advantage or profit obtained during the course of his fiduciary duty, whether or not such advantage or profit was within or exceeded the scope of his authority or duty;
- (2) to hold any such advantage or profit for the account of AHAB;
- (3) immediately upon AHAB's demand for an account to identify and quantify any deficit in the trust fund (i.e. money misappropriated from the Money Exchange by Mr Al Sanea); and
- (4) immediately upon AHAB's demand for an account to show what became of the trust fund (i.e. the money misappropriated from the Money Exchange by Mr Al Sanea), including whether it was retained, dissipated or invested, and whether any such investment was at a profit or a loss.

143. Any such advantage or profit of the kind identified in paragraph 142 above belonged to AHAB from the moment it was made and AHAB's right to any such advantage or profit is a proprietary right.

144. As a consequence of his position as a fiduciary, Mr Al Sanea was and remains disabled from setting up a beneficial title of his own to any such advantage or profit.

145. As a consequence of his position as a fiduciary whose conduct has deprived AHAB of necessary evidence by his falsification and destruction of records, the Court must (as between AHAB and Mr Al Sanea) make every assumption against Mr Al Sanea. The duty is on Mr Al Sanea to render an account and if he does not do so then, as between AHAB and Mr Al Sanea, AHAB's case is made out.
146. In dishonest breach of fiduciary duty, Mr Al Sanea:
- (1) caused the payments set out in Section E.3 and E.4 to be made when, as he well knew, those payments were not in the interests of the Money Exchange or AHAB but were misappropriations or profits made in breach of his fiduciary duty and/or for the account of AHAB wrongfully made for his own benefit and for the benefit of the Saad Group; and
 - (2) caused the misappropriated money to be received by (among others) SICL as set out in Section E.5 above.
147. The knowledge of Mr Al Sanea is to be attributed to SICL since at all material times he was the principal director of SICL and/or SICL existed for his benefit and/or he exercised complete effective control over it.
148. In the premises of AHAB's claim:
- (1) AHAB was and remained (at the date of the Transaction) the equitable owner of the money misappropriated from the Money Exchange as set out in Sections E.3 and E.5 above;
 - (2) In particular, AHAB was the equitable owner of payments made (directly or indirectly) to SICL, including the shareholder contributions made to SICL;
 - (3) Therefore, AHAB was and remained (at the date of the Transaction) entitled to assert a proprietary interest to the traceable product of that money in SICL's hands; and

- (4) The Fund Interests contributed to SIFCO5 had been acquired using monies misappropriated from AHAB or their traceable proceedings, such that those Fund Interests were (at the date of the Transaction) the absolute beneficial property of AHAB and were impressed with a constructive trust in favour of AHAB.

F. Barclays' Misrepresentation Claim

149. In the premises that AHAB's allegations, as set out in Section E, are true:

- (1) SICL's representations, as set out in Section D, were false because:
- (a) SICL did not have the power to perform its obligations under the Transaction;
 - (b) SICL's performance of the Transaction would violate or conflict with a law applicable to it; and
 - (c) SICL did not have good title to the Fund Interests which it proposed to contribute to SIFCO5.

But, in fact:

- (a) The Fund Interests were the absolute beneficial property of AHAB and impressed with a constructive trust in favour of AHAB;
- (b) And therefore:
 - (i) SICL required AHAB's consent to perform the Transaction by transferring the Fund Interests to SIFCO5; and
 - (ii) In the absence of such consent, SICL's performance of the Transaction (by transferring Fund Interests to SIFCO5) would violate its obligations in equity as a constructive trustee not to deal with the Fund Interests without AHAB's consent.

- (2) The representations were made fraudulently by SICL because:
- (a) Mr Al Sanea's knowledge is to be attributed to SICL;
 - (b) Mr Al Sanea must have known that the Fund Interests derived from funds misappropriated from AHAB and that, therefore, he was not free to deal with them as if they were SICL's own;
 - (c) Mr Al Sanea was involved in the approval and execution of the Transaction, and accordingly knew that the representations were being made by SICL; and
 - (d) Mr Al Sanea knew that the representations being made by SICL in the context of the Transaction were false, alternatively he was (in circumstances where he knew that the Fund Interests derived from funds he had misappropriated from AHAB) reckless as to their truth or falsity.

Alternatively, the representations were negligent.

- (3) Without prejudice to the burden of proof, which rests upon SICL in the event that it has made fraudulent misrepresentations, Barclays avers that it relied on the representations when concluding the Transaction. Barclays would not have entered into the Transaction:
- (a) If SICL revealed the true position which, in the premises, is as alleged by AHAB; or
 - (b) If SICL had refused to make any representation as to whether it had the power and/or was lawfully able to transfer the Fund Interests to SIFCO5 and/or whether it had good title to those Fund Interests.
- (4) Barclays is entitled to rescind the Transaction, which right it has elected to exercise by the service of this Statement of Claim.

- (5) For the avoidance of doubt, this claim (and the remedies set out in Section G) are subject to English law because that is the governing law of the contract. However, English law is materially identical to the law of the Cayman Islands insofar as relevant to this claim.

G. Remedy

150. In the premises Barclays has validly rescinded the Transaction and Barclays is the equitable owner of the money paid by Barclays pursuant to the Transactions and is entitled to trace those moneys into and through the hands of the recipients and claims an account from SICL and SIFCO5.
151. In particular, Barclays is the equitable owner of the following monies or their traceable proceeds:
- (1) The US\$ 49 million paid by Barclays to SICL on 29 September 2006;
 - (2) The US\$ 21 million paid by Barclays to SICL on 1 February 2007; and
 - (3) The US\$ 30 million paid by Barclays to SIFCO5 on 26 February 2007.
152. Further, according to SIFCO5's financial statements, related parties contributed funds of at least US\$ 104,466,200 to SIFCO5. Barclays infers that these "contributions" were the result of payments made (directly or indirectly) from SICL to SIFCO5 (the legal nature of these "contributions" is addressed in Section H below). It is to be inferred that the money used by SICL to make those payments to SIFCO5 is traceable, in whole or in part, to the US\$ 70 million provided by Barclays to SICL which is referred to in paragraphs 151(1) and (2) above (the remaining US\$ 30 million, referred to in paragraph 151(3) above, was paid directly to SIFCO5). If that is so, Barclays is entitled to trace into the funds paid by SICL to SIFCO5, and to assert its equitable title to those funds or their traceable proceeds in the hands of SIFCO5.

153. Accordingly, and in particular, Barclays is entitled to assert its equitable interest in:
- (1) Monies and assets held by SICL which are traceable to the payments identified in paragraphs 151(1) and 151(2) above;
 - (2) Monies and assets held by SIFCO5 which are traceable either to the payment made directly to SIFCO5 by Barclays identified in paragraph 151(3) above or payments made by Barclays to SICL but then paid on (whether directly or indirectly, and whether in the circumstances set out in paragraph 152 above or otherwise) to SIFCO5; and/or
 - (3) Fund Interests held by SIFCO5 which were purchased or funded with such monies or assets.
154. SICL is also liable to pay US\$ 100 million, together with compound interest pursuant to the equitable jurisdiction of the Grand Court, by way of rescission of the Transaction to the extent that Barclays is unable to recover its funds *in specie*.
155. Further or in the alternative, Barclays is entitled to interest under section 34 of the Judicature Law (2013 Revision).

H. Alternative Claims in respect of the Transaction

156. In the event that AHAB's claim fails, or Barclays' claim to rescind the Transaction otherwise fails, Barclays claims the following sums under the Master Agreement and Transaction:
- (1) The amount due, in accordance with the express terms of the Transaction, in respect of its early termination as a result of an Event of Default affecting SICL; and
 - (2) (In the event that SIFCO5 is found to be indebted to SICL or any other party) Damages in respect of SICL's breach of the terms of the Transaction.

H.1 Sums due upon Automatic Early Termination

157. Pursuant to Part 1 of the Schedule to the Master Agreement, SICL and Barclays agreed that "Automatic Early Termination" applied to both parties.
158. The Master Agreement (including the Transaction) provided that, in the event that a party became subject to the appointment of a receiver, an Event of Default occurred in respect of that party pursuant to Section 5(a)(vii)(6) of the Master Agreement; and that, immediately upon the occurrence of that Event of Default, an Early Termination Date would occur pursuant to Section 6(a) of the Master Agreement, in respect of which the party subject to the appointment would be the Defaulting Party. Accordingly, the appointment of the joint receivers of SICL 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 Transaction), in accordance with Clause 6 of the Master Agreement. The termination of the Transaction resulted (by way of the application of the Early Termination Provisions in the Transaction), in SICL being obliged to pay all sums due under the Transaction.
159. Upon the early termination of the Master Agreement (including the Transaction):
- (1) Barclays was required to calculate the payment on early termination in accordance with Sections 6(d) and (e) of the Master Agreement;
 - (2) However, the Confirmation (which takes precedence in the event of inconsistency pursuant to Section 1(b) of the Master Agreement) makes special provision for payments on termination in the Early Termination clause. That clause provides that, if the Transaction terminates due to an Event of Default in respect of which SICL was the Defaulting Party, then SICL is obliged to pay within 30 days:
 - (a) the Strike Price;

- (b) any accrued but unpaid Monthly Payments and Make-Whole Payments; and
- (c) an Early Redemption Amount, being the difference (if positive) between:
 - (i) the Minimum Strike Price x the Spread (1.5%) x 4; and
 - (ii) the aggregate amount of any Make-Whole Amount and Spread already paid.

160. Barclays calculated and gave notice of the amount due in respect of the Transaction on 27 August 2009. The sums payable in accordance with the Early Termination clause of the Confirmation, as notified to SICL in that letter, are:

- (1) US\$ 100 million in respect of the Strike Price;
- (2) US\$ 115,559.03 in respect of accrued but unpaid Monthly Payments; and
- (3) US\$ 151,891.41 as the Early Redemption Amount.

That is, a total amount of **US\$ 100,267,450.44**.

161. Barclays claims the sum of US\$ 100,267,450.44 as debt, together with interest under Section 6(d)(ii) of the Master Agreement (at the Default Rate of Barclays' cost of funding plus 1%), alternatively section 34 of the Judicature Law (2013 Revision).

H.2 Damages for breach of the terms of the Transaction

162. SICL has filed a proof in SIFCO5's liquidation in the amount of US\$ 100,310,101 (excluding interest and subject to revision) in respect of alleged "*intercompany transactions*" between SICL and SIFCO5.

163. Barclays' primary case is that any funds provided to SIFCO5 by SICL (as to which no admissions are made) are not repayable and do not give rise to any

indebtedness on the part of SIFCO5 to SICL. Barclays reserves its right to challenge any admission of SICL's proof of debt by SIFCO5's liquidator.

164. However, in the event that SIFCO5 is found to be indebted to SICL or any other party, Barclays claims damages for SICL's breach of the Transaction as follows:

- (1) Pursuant to "Annex 2 – Investment Guidelines" of the Confirmation, which applied to all assets of SIFCO5 over which the Investment Manager (i.e. SICL) had discretion, SICL agreed that:

"[SIFCO5] shall not, for so long as the B shares are held by [Barclays], incur any indebtedness other than under the Cash Management Facility."

(the "**Indebtedness Restriction**".)

The Cash Management Facility is defined as a facility extended to SIFCO5 by SICL of up to the lesser of (i) 10% of SIFCO5's Net Asset Value; and (ii) US\$ 2,500,000.

- (2) SICL has, in the premises, breached the Indebtedness Restriction in that SIFCO5 incurred indebtedness other than under the Cash Management Facility.
- (3) Barclays has, in the premises, suffered loss and damage representing the difference between:
 - (a) The value that Barclays' preferential equity interest in SIFCO5 would have had in the event that SIFCO5's only indebtedness was up to US\$ 2.5 million under the Cash Management Facility; and
 - (b) The actual value of that interest, i.e. the value of that interest in circumstances where SIFCO5 is required, in its liquidation, to pay indebtedness other than the Cash Management Facility which, in effect, will take priority over Barclays' interest in SIFCO5.

That difference will be equal to any amount paid by SIFCO5's liquidator to SICL or any third party in respect of any indebtedness other than the Cash Management Facility.

- (4) Barclays claims that sum as damages from SICL, together with interest under section 34 of the Judicature Law (2013 Revision).

AND the Plaintiff claims:-

Against SICL

- (1) A declaration that Barclays has validly rescinded the Transaction for fraudulent, alternatively negligent, misrepresentation.
- (2) Rescission of the Transaction, including payment of the US\$ 100 million paid by Barclays under the Transaction together with compound interest pursuant to the equitable jurisdiction of the Grand Court.
- (3) A declaration that the Relevant Sum (which was otherwise payable on 20 March 2013 in accordance with the terms of the Notes) was set-off against SICL's liabilities under or in connection with the Transaction under s. 140(3) of the Companies Law and CWR O. 16, r. 10.
- (4) Repayment of the Relevant Sum.

Against SICL and SIFCO5

- (5) Declarations that:
 - a. equitable title to the funds paid by Barclays under the Transaction, or their traceable product, has re-vested in Barclays; and
 - b. Barclays is entitled to trace the moneys in equity into and through the hands of SICL and SIFCO5.

- (6) An account by SICL and SIFCO5 of all moneys received by them and what has become of those monies.
- (7) All necessary accounts and inquiries to enable Barclays to trace and claim the monies or other assets to which they are beneficially entitled.

In the alternative, against SICL

- (8) US\$ 100,267,450.44.
- (9) Damages for breach of contract.

And, in any event, against SICL and SIFCO5

- (10) Interest under Section 6(d)(ii) of the Master Agreement and/or section 34 of the Judicature Law (2013 Revision) on all sums found to be due to Barclays from SICL and/or SIFCO5.
- (11) Such further or alternative relief as the Grand Court may see fit to grant.
- (12) Costs.

Ogier (A Firm)
Attorneys for the Plaintiff

THIS WRIT was issued by Ogier, attorneys for the Plaintiff, whose address for service is 89 Nexus Way,
Camana Bay, Grand Cayman, KY1-9007, Cayman Islands
(Ref: 421074.00003/RDL/OGP)

SCHEDULE 1:

Replicates Schedule 3 and Schedule 3a of the AHAB Statement of Claim

SCHEDULE 2

Replicates Schedule 4 of the AHAB Statement of Claim

SCHEDULE 2a

Replicates Schedule 4b of the AHAB Statement of Claim

SCHEDULE 3

Replicates Schedule 8 of the AHAB Statement of Claim

SCHEDULE 4

Replicates Schedule 7 of the AHAB Statement of Claim

SCHEDULE 5

Replicates Schedule 7a of the AHAB Statement of Claim

SCHEDULE 6

Replicates Schedule 11 and Schedule 11a of the AHAB Statement of Claim

SCHEDULE 7

Replicates Schedule 6 of the AHAB Statement of Claim

SCHEDULE 8

Replicates Schedule 9 of the AHAB Statement of Claim

SCHEDULE 9

Replicates Schedule 10 of the AHAB Statement of Claim

SCHEDULE 10

Replicates Schedule 10b, Schedule 10c and 10d of the AHAB Statement of Claim

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

BEFORE THE HON. CHIEF JUSTICE ANTHONY SMELLIE QC

CAUSE NO. FSD 15 OF 2010 (ASJC)

IN THE MATTER OF THE COMPANIES LAW (2011 REVISION)

**AND IN THE MATTER OF SAAD INVESTMENTS COMPANY LIMITED (IN OFFICIAL
LIQUIDATION)**

4 September 2012

CONSENT ORDER

UPON THE SUMMONS dated 3 July 2012, and filed on behalf of Barclays Bank PLC (the "Applicant"), seeking permission pursuant to s. 97(1) of the Companies Law (2011 Revision) to commence and pursue proceedings against Saad Investments Company Limited (In Official Liquidation) ("SICL") in respect of the subject matter set out in the draft Statement of Claim exhibited to the First Affidavit of Mr Blake dated 2 July 2012 (the "s. 97 Application")

AND UPON reading the joint letter to the Court dated 31 August 2012 and filed on behalf of the Applicant and SICL (the "Joint Letter")

AND UPON the Parties having agreed to enter into a Standstill Deed as referred to in the Joint Letter as soon as reasonably practicable

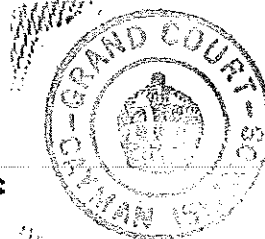
IT IS HEREBY ORDERED BY CONSENT that:

1. The hearing of the s.97 Application set down for 9.30am, Wednesday 5 September 2012 be vacated and be re-listed in accordance with the terms of the Joint Letter.
2. Costs reserved.

DATED the 4 day of September 2012

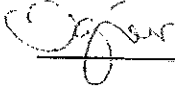
FILED the 4 day of September 2012


THE HON. CHIEF JUSTICE ANTHONY SMELLIE QC



THIS ORDER was filed by Ogier of 89 Nexus Way Camana Bay Grand Cayman KY1-9007, Cayman Islands Attorneys-at-law for and on behalf of the Applicant whose address for service is that of their said Attorneys-at-law.

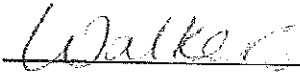
APPROVED AS TO FORM AND CONTENT



Ogier

For and on behalf of Barclays Bank PLC

APPROVED AS TO FORM AND CONTENT



Walkers

For and on behalf of Saad Investments Company Limited (In Official Liquidation)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

BEFORE THE HON. CHIEF JUSTICE ANTHONY SMELLIE QC

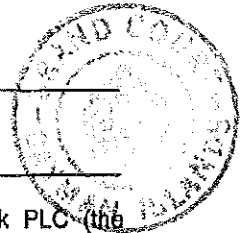
CAUSE NO. FSD 14 OF 2010 (ASJC)

IN THE MATTER OF THE COMPANIES LAW (2011 REVISION)

AND IN THE MATTER OF SAAD INVESTMENTS FINANCE COMPANY (NO. 5) LIMITED (IN OFFICIAL LIQUIDATION)

[] September 2012

CONSENT ORDER



UPON THE SUMMONS dated 3 July 2012, and filed on behalf of Barclays Bank PLC (the "Applicant"), seeking permission pursuant to s. 97(1) of the Companies Law (2011 Revision) to commence and pursue proceedings against Saad Investments Finance Company (No.5) Limited (In Official Liquidation) ("SIFCO5") in respect of the subject matter set out in the draft Statement of Claim exhibited to the First Affidavit of Mr Blake dated 2 July 2012 (the "s. 97 Application")

AND UPON the Applicant agreeing to be bound, solely for the purposes of the proceedings contemplated by the s.97 Application, by any decision made by the Grand Court, insofar as it affects Saad Investments Company Limited (In Official Liquidation) ("SICL") and SIFCO5, in FSD 54 of 2009 (Ahmad Hamad Algosabi and Brothers Company v SICL and others) (the "AHAB Proceedings") as to whether Mr Al Sanea misappropriated assets in breach of fiduciary duty (the "Threshold Issue")

AND UPON reading the joint letter to the Court dated 4 September 2012 and filed on behalf of the Applicant and SIFCO5 (the "Joint Letter")

AND UPON the Joint Letter recording the Applicant and SIFCO5's agreement i) to enter into a Standstill Deed as soon as reasonably practicable; ii) to consent to the s.97 Application, such consent to be conditional only upon SICL's application for summary judgment/strike out of the AHAB Proceedings, currently set down for hearing on 5-9 November 2012 (the "SICL Application"), either failing or not being pursued; iii) to seek the re-listing of the s.97 Application to be dealt with by consent either on the papers or by way of a short oral hearing in the event that the said condition is satisfied, with a joint invitation to the Court to grant the s.97 Application on terms that the Applicant's proceedings against SICL and SIFCO5 ("Barclays' Intended Writ"), once commenced, be subject to an immediate stay pending such case management directions as the Court may give in the context of both the AHAB proceedings and Barclays' Intended Writ proceedings; and iv) that the Joint Official Liquidators of SIFCO5 may expend reasonable costs and legal expenses out of the SIFCO5 liquidation estate in defending the AHAB Proceedings and the Barclays' Intended Writ; and further, v)

to invite the Court to list a CMC in respect of the Barclays' Intended Writ at the same time and together with a directions hearing in the AHAB Proceedings so that case management could take place in both claims; and vi) at the CMC to invite the Court to extend the stay of Barclays' Intended Writ pending determination of the Threshold Issue (subject to any case management directions relating to tracing issues, in which the Applicant would wish to participate)

IT IS HEREBY ORDERED BY CONSENT that:

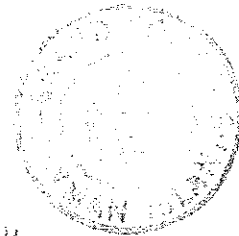
1. The hearing of the s.97 Application set down for 9.30am, Wednesday 5 September 2012 be vacated;
2. Should the SICL Application fail to be dispositive of the AHAB Proceedings as against SICL or should the Court be notified that the SICL Application will not be pursued, the s.97 Application shall be re-listed for determination on the papers or for a short oral hearing as soon as practicable thereafter, and SIFCO5 shall consent to the s.97 Application;
3. The Applicant shall not be entitled to impugn the reasonable fees and expenses of the Liquidators of SIFCO5 (including those of SIFCO5's attorneys) incurred prior to 3 July 2012 by virtue of the proprietary claims contained in the Barclays' Intended Writ;
4. The Applicant shall allow the Liquidators of SIFCO5 to continue to expend reasonable sums on their own fees and expenses, including in defending the AHAB Proceedings and in defending the claims set out in Barclays' Intended Writ, notwithstanding the proprietary claims contained in the Barclays' Intended Writ; and
5. As to costs:

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- a. In the event that Barclays' Intended Writ is issued, the costs of this application shall be costs in those proceedings;
 - b. In the event that Barclays' Intended Writ is not issued, each party shall bear its own costs of this application.

DATED the 4th day of September 2012

FILED the 4th day of September 2012


THE HON. CHIEF JUSTICE ANTHONY SMELLIE QC



THIS ORDER was filed by Ogler of 89 Nexus Way Camana Bay Grand Cayman KY1-9007, Cayman Islands Attorneys-at-law for and on behalf of the Applicant whose address for service is that of their said Attorneys-at-law.


APPROVED AS TO FORM AND CONTENT



Ogler

For and on behalf of Barclays Bank PLC

APPROVED AS TO FORM AND CONTENT



Harneys, Westwood & Riegels

For and on behalf of Saad Investments Company (No.5) Limited (In Liquidation)

