

JUDICIAL ADMINISTRATION

Date Received: 1st May 2020

Time Received: 12:13pm

John Howard Batchelor
First Affidavit
Exhibit JHB-1
Filed on behalf of the Applicant
Sworn April 2020

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

CAUSE NO GC 90 OF 2020 ()

IN THE MATTER OF 2,454,429 ORDINARY SHARES IN SGOCO GROUP LTD.

AND IN THE MATTER OF GCR ORDER 50, RULE 11

FIRST AFFIDAVIT OF JOHN HOWARD BATCHELOR



I, John Howard Batchelor of FTI Consulting (Hong Kong) Limited, Level 35, Oxford House, Taikoo Place, 979 King's Road, Quarry Bay, Hong Kong ("FTI"), do solemnly, sincerely and truly **MAKE OATH** and **SAY** as follows:

Introduction

1. I am a Senior Managing Director of FTI Consulting (Hong Kong) Limited and I am based in Hong Kong.
2. I make this affidavit from facts which are either within my own personal knowledge and which I believe to be true or are derived from stated sources and are true to the best of my information and belief.
3. Annexed to this affidavit is a copy of a Stop Notice signed by me.
4. There is also now produced and shown to me and marked exhibit "JHB-1" a bundle of documents to which I refer in this affidavit. Where I refer to a document in JHB-1, I do so by reference to the page number.
5. On 16 May 2019, the Honourable Mr Justice Kawaley ("Kawaley J") made a winding-up order in respect of Worldwide Opportunities Fund SPC (in Liquidation) (the "Company") in Cause No. FSD 34 of 2019 (IKJ) and appointed Mr Andrew Morrison and Mr David Griffin (both of FTI Consulting (Cayman) Limited) and I as joint official liquidators ("JOLs") of the Company (the

"Winding Up Order"). A copy of the Winding Up Order can be found at pages 1 to 3 of JHB-1.

6. I make this affidavit in support of the JOLs' application to the Grand Court for a stop notice (the "Stop Notice") pursuant to Order 50, rule 11 of the Grand Court Rules ("GCR") in respect of 2,454,429 ordinary shares (the "Shares") in SGOCO Group Ltd., ("SGOCO") and which are currently registered in the name of the Company for and on behalf of Hong Kong Investment Fund SP ("HKIF(2)").

A. The Company

7. The Company was incorporated in the Cayman Islands on 23 February 2015 as a segregated portfolio company limited by shares whose assets were segregated between two separate portfolios: (i) HKIF(2); and (ii) Evergreen Growth Saver SP ("Evergreen"), (together the "Portfolios").
8. The Company is registered as a mutual fund with the Cayman Islands Monetary Authority pursuant to the Mutual Funds Law (2019 Revision). The address of the Company's registered office is PO Box 10240, 4th Floor, Harbour Place, 103 South Church Street, George Town, Grand Cayman KY1-1002, Cayman Islands and the Company's registration number is 296917.
9. The Company's authorised share capital is US\$50,000 divided into 100 Management Shares of a par value of US\$0.01 each and 4,999,900 participating shares of a par value of US\$0.01 each. As at May 2019, the Petitioner (as defined below) held 345,774.812 participating shares in the Company, representing approximately 85% of the economic interest in the Company.

B. Factual Background

10. Prior to May 2016, AXA China Region Insurance Company (Bermuda) Limited ("AXA" or the "Petitioner") invested approximately US\$27 million into Hong Kong Investment Fund SP ("HKIF(1)"), a segregated portfolio company of another Cayman segregated portfolio company called Megatr8 Pare Opportunities Fund SPC.
11. The investment objective of HKIF(1) was to (i) invest in interest bearing products such as deposits; and (ii) purchase participating shares in Real Estate & Finance Fund ("REFF"), an underlying company which owned interests in a money lending business and a valuable office building known as First Asia Tower at No 8 Fui Yiu Kok St, Tsuen Wan, New Territories, Hong Kong (together the "Investment Objective").

12. In May 2016, AXA was informed that HKIF(1) was to be restructured and its assets would be transferred to the Company. AXA would be issued shares *in specie* in HKIF(2) as consideration for a compulsory redemption of its shares in HKIF(1). AXA agreed to the proposed restructuring and an amendment to the Investment Objective. The Company sought to further amend the Investment Objective on dates in January, May and October 2018 to give it broader powers to invest in instruments outside the scope of the Investment Objective, to which AXA did not consent.

13. Throughout 2018, the Company's NAV was proving extremely volatile and HKIF(2) was not performing well. The value of AXA's investment fell from a NAV of HK\$1,000 in April 2016 to HK\$68.621 in December 2018. Additional concerns relating to the Company included the following:

- a. Shares were quoted and traded on the US market, which was not in accordance with the Investment Objective;
- b. In 2018, queries raised on behalf of the Company's administrator, Avia Fund Services Limited ("Avia") went largely unanswered;
- c. The Company's former administrator, Portcullis Fund Administrator, and former auditors, BDO Cayman Ltd, resigned for reasons unknown. In December 2018, Avia also resigned for reasons unknown;
- d. Between January and October 2018, there were various unexplained changes to directors of the Company; and
- e. On 24 October 2018, the original investment memorandum was amended to remove any reference to the Company's investment in REFF, which was effectively the entire purpose of HKIF(2).

14. On 25 February 2019, AXA was informed by way of a notice (the "Notice") (at pages 4 to 5 of JHB-1) that the Company's directors had decided to voluntarily wind up HKIF(2) and de-register with CIMA on the basis that *inter alia* it was no longer an economically viable portfolio. As a result, AXA's shares would be compulsorily redeemed on 1 March 2019 by reference to a valuation date on 28 February 2019. The Company advised that Evergreen would also be wound up.

15. In response to the Notice, Walkers (on behalf of AXA) wrote to the Company and HKIF(2) on 26 February 2019 once again raising outstanding queries. The Company failed to reply to this

correspondence so Walkers (on behalf of AXA) wrote to the Company on 27 February 2019 agreeing that the Company should be wound up but objecting to the compulsory redemption. Walkers proposed that independent professional insolvency practitioners should be appointed as voluntary liquidators so that the Company's affairs and the destruction in value of HKIF(2) could be investigated properly (the "Voluntary Liquidation Proposal"). However, the Company did not respond. Copies of Walkers' correspondence can be found at pages 6 to 17 of JHB-1.

C. Procedural Background

16. Following the Company's failure to reply to the Voluntary Liquidation Proposal, AXA presented a winding up petition on 28 February 2019 seeking orders that the Company be wound up (pursuant to section 92(e) of the Companies Law (2018 Revision) (the "Winding Up Petition") on the grounds that *inter alia* the Company had lost its substratum and that it was therefore just and equitable that it be wound up. A copy of the Winding Up Petition can be found at pages 18 to 32 of JHB-1.
17. Pursuant to an Order for Directions made by Kawaley J on 14 May 2019, the Petitioner was granted leave to amend the Winding Up Petition, and the amended petition was filed on 14 May 2019.
18. Following a hearing before Kawaley J on 16 May 2019, the Winding Up Order was made in respect of the Company.
19. On 9 September 2019, Kawaley J granted the JOLs' application for the issue of a Letter of Request to the High Court of the Hong Kong Special Administrative Region (the "Hong Kong Court") seeking recognition of the JOLs within the jurisdiction of the Hong Kong Court. A copy of the Kawaley J's Order and the Letter of Request can be found at pages 33 to 37 of JHB-1.

D. The Company's Interest in SGOCO

20. The Company's beneficial ownership of the Shares in SGOCO arises by virtue of a share certificate dated 6 November 2018 with certificate number C1291 (the "Share Certificate"), a copy of which is exhibited at pages 38 to 39 of JHB-1.
21. SGOCO describes itself as a Hong Kong based conglomerate principally engaged in virtual reality device technology research and development, environmental protection and energy

saving technologies, Hong Kong based mortgage backed money lending facilities, and property investment.

22. SGOCO's ordinary shares are traded on the NASDAQ Capital Market and are registered under the Securities Exchange Act of 1934, as amended. The Share Certificate bears an issue date of 6 November 2018 and bears a standard US restrictive legend stating that the securities represented by the Certificate have not been registered under the Securities Act, 1933, as amended (the "Securities Act") and may not be sold or transferred unless registered under the Securities Act or pursuant to an exemption therefrom.
23. Details of the JOLs' discovery of the assets of HKIF(2), and other ongoing enquiries, is at section 5.1 at page 10 of the JOL's First Report to the Contributors of the segregated portfolios and to the Grand Court dated 2 July 2019, a copy of which can be found at 40 to 58 of JHB-1.
24. During the course of their investigations, the JOLs also ascertained that HKIF(2) maintains an interest in a convertible promissory note issued by SGOCO on 18 April 2019 (the "Note") in the principal amount of US\$2,016,236.62, which will mature on 18 April 2023. A copy of the Note can be found at pages 59 to 66 of JHB-1 (the Shares and Note together, the "Assets").
25. The financial position of HKIF(2) has been difficult to establish and it is only the Assets and a modest amount of funds in an account with China Construction Bank in Hong Kong that the JOLs have been able to recover.
26. The JOLs' investigations have also been hampered by a lack of funding and resources and they have not been able to locate the original Share Certificate (the "Original Certificate") or the original Note (together, the "Originals"). The JOLs have cause to believe that the Originals, or at the very least the Original Certificate, is in the possession of a former director of the Company, Mr Ricky Sun. Efforts on the part of the JOLs to obtain the Originals have been unsuccessful.
27. The JOLs have received an offer (the "Offer") from an individual to purchase the Assets. The terms of the Offer are being contemplated and negotiated and the JOLs intend to make an application for sanction to the Grand Court before proceeding with any proposed sale. In the interim, however, the JOLs need to obtain the Originals. If the Originals cannot be obtained, replacements will be required. The JOLs are currently working with their US Counsel, Schlueter & Associates, P.C. ("S&A"), in this regard and steps are being taken to either obtain the Originals or obtain replacements.

28. S&A has been liaising with SGOCO's transfer agent, Continental Stock Transfer & Trust (the "Transfer Agent"), as follows:
- a. On 13 March 2020, S&A spoke to the Transfer Agent by telephone to discuss the missing Share Certificate and the power and authority of the JOLs pursuant to the Winding Up Order;
 - b. On 17 March 2020, S&A emailed a copy of the Winding Up Order to the Transfer Agent to demonstrate the JOLs' authority to act and requested that SGOCO does not register transfer of the Share Certificate. A copy of the email can be found at pages 67 to 68 of JHB-1;
 - c. On 22 March 2020, S&A sent a demand letter (the "US Demand Letter") to the Transfer Agent pursuant to Article 8-403 of the New York Uniform Commercial Code, formally requesting that SGOCO does not register the transfer of the Share Certificate on the basis the JOLs are the beneficial owners. As the shares are listed on NASDAQ, and the Transfer Agent is located in New York, the transfer of the shares is subject to the laws of the State of New York. Copies of the US Demand Letter is at page 69 of JHB-1 and a copy of Article 8-403 can be found at pages 70 to 72 of JHB-1;
 - d. On 1 and 2 April 2020, S&A telephoned the Transfer Agent on several occasions and left voice messages but no response to was received;
 - e. On 1 April 2020, S&A spoke with Loeb & Loeb, SGOCO's US lawyers, by telephone in relation to *inter alia* replacing the Share Certificate and Note and on 7 April 2020, Loeb & Loeb confirmed (i) that SGOCO would accept an indemnity regarding the reissuance of the Note, on terms to be agreed, and; (ii) that the Transfer Agent required a surety bond in respect of the Share Certificate. As at the date of swearing hereof, negotiations and communications regarding the reissuance of the Share Certificate and Note are continuing.
29. On 1 April 2020, Ogier, the JOLs' Cayman Counsel, sent a letter to SGOCO by way of email and courier to demand that SGOCO refrain from registering the transfer of the Shares to any party other than that nominated by the JOLs by way of express written instructions (the "Cayman Demand Letter"). A copy of the Cayman Demand Letter can be found at page 73 of JHB-1.
30. The JOLs have been advised by their US Counsel that a series of steps must be taken to obtain a replacement certificate and a replacement note, which may take some time and must be in

accordance with Article 8-405 of the New York Uniform Commercial Code, a copy of which is at pages 74 to 75 of JHB-1.

Conclusion

31. Taking the foregoing into account, to the best of my knowledge, information and belief, at all material times, the JOLs have been and remain the beneficial owners of the Shares. In the circumstances, the Court is respectfully asked to grant the Stop Notice in the form annexed hereto.
32. Any such notice as is referred to in Order 50, rule 12 of the GCR may be sent to the Company c/o Ogier, 89 Nexus Way, Camana Bay, Grand Cayman, Cayman Islands KY1-9009 for the attention of Marc Kish/Gemma Lardner.

SWORN at

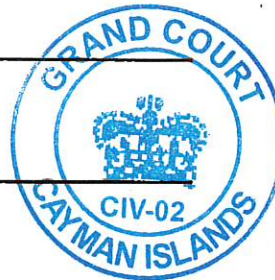
This _____ day of _____ 2020

NOTARY PUBLIC / SOLICITOR



JOHN HOWARD BATCHELOR

STOP NOTICE



TO:

SGOCO Group Ltd.,
C/o Conyers Trust Company (Cayman) Limited
P.O. Box 2681
Cricket Square
Hutchins Drive
George Town
Grand Cayman
Cayman Islands

TAKE NOTICE that the securities in which the Applicant has beneficial entitlement pursuant to Certificate C1291 as referred to in the Affidavit to which this notice is annexed consist of the following:

2,454,429 ordinary shares of a par value of US\$0.001 each in SGOCO Group Ltd., registered in the name of Worldwide Opportunities Fund SPC for an on behalf of Hong Kong Investment Fund.

This notice is intended to stop the transfer of the said securities without first giving fourteen (14) days' notice in writing to Worldwide Opportunities Fund SPC (in Official Liquidation) and not the payment of any dividend or interest due thereon.

A handwritten signature in black ink, appearing to be "J. Batchelor", is written over a horizontal line.

Signed: John Howard Batchelor

For and on behalf Worldwide Opportunities Fund SPC (in Official Liquidation) for and on behalf of Hong Kong Investment Fund SP