For Immediate Release

# **Grand Court dismisses multi-billion dollar AHAB fraud claims in “one of the largest Ponzi Schemes in history”**

###### 31 May 2018 – Cayman Islands

In a landmark ruling for the Cayman Islands jurisdiction, the Grand Court has emphatically dismissed a multi-billion dollar claim presided over by the Honourable Chief Justice Anthony Smellie in the case of *Ahmad Hamad Algosaibi & Brothers Company*(***AHAB***)*v Al-Sanea & Ors*, involving allegations of fraud arising from one of the largest corporate collapses of the financial crisis. Since the commencement of the litigation, Harneys has represented Nick Matthews and Mark Longbottom of Duff & Phelps, the joint official liquidators of a Defendant entity, SIFCO5.

Dismissing the claims, the Court found that the AHAB Partners knew of and authorised fraudulent borrowing through the Money Exchange, as well as AHAB’s other financial businesses over a period of about 30 years:

*“I am satisfied that the knowledge and authority of the AHAB Partners* [of the fraudulent borrowing] *is overwhelmingly and conclusively proven.”*

Maan Al-Sanea (***Al Sanea***), was the head of AHAB’s investment division, known as the Money Exchange and married to the daughter of one of the AHAB founding Partners.  It was alleged that, over a thirty-year period, Al Sanea abused his authority to enter into billions of dollars’ worth of revolving credit facilities using only the AHAB name as collateral, unknown to the AHAB Partners.

Matters came to a head when the music stopped in 2009 and crisis weary banks began calling in their loans. The AHAB Partners insisted that they had no knowledge of the level of borrowings incurred on their behalf, and that they were in fact the victims of a US$9.2 billion fraud (which they were required to reduce to US$6 billion during the proceedings).  Their claims included allegations of forgery and the siphoning off of proceeds of fraud to special purpose vehicles incorporated by Al Sanea in the Cayman Islands, Switzerland and Bahrain (including SIFCO5). The Defendants successfully defended these allegations.

**Additional key findings**

In addition to the key finding in relation to knowledge and authority set out above, the Court, in its 1,300 page judgment, also found:

* That the “New for Old” case pleaded by AHAB at no stage existed and constituted a recent invention by AHAB, unsupported by the evidence.

Through “New for Old”, AHAB had belatedly (several years after the proceedings) sought to maintain that it implemented a policy in 2000 to restrict borrowing by Al Sanea to loans which had already been taken before the time of the policy’s implementation. The Court has held that:

*“New for Old” is indeed a recent invention, raised in a desperate attempt to salvage AHAB’s falsified case.”*

* The Court has held that the facility documents relied on by AHAB in order to demonstrate that documents were manipulated (as well as being forged) cannot bear the weight of inference that AHAB sought to place on them.
* AHAB’s forgery allegations have been found to have been made on *“a random scatter-shot basis”* and its claims of forgery *“on an industrial scale”* made without any reasonable foundation for a finding that the questioned documents and signatures were deployed by Al Sanea without the knowledge or authority of the AHAB Partners.
* Al Sanea’s withdrawals, described by AHAB as “*misappropriations*”, have been held not to be so, but instead constituted loans which AHAB expected to be repaid and which were meticulously accounted for in their books. The AHAB Partners were willing to allow the massive personal borrowing of Al Sanea from the Money Exchange to go unchecked in return for Al Sanea’s willingness also to use the Money Exchange to procure fraudulent borrowing on behalf of the AHAB Partners:

*“The quid pro quo was that Al Sanea was allowed to deploy a similar strategy for his own purposes as well - all resulting in the spiraling vortex of indebtedness which inevitably overwhelmed the Money Exchange.”*

* The Court has held that AHAB has failed to satisfy the test to establish a proprietary tracing claim against the Defendants as it could not:
1. Establish an antecedent breach of trust or fiduciary duty;
2. Identify the traced asset or traceable proceeds in the possession of the Defendants; or
3. Prove the necessary transactional links between the funds taken from the Money Exchange and the accounts of the Defendants.
* AHAB’s tracing claim having failed, the Court has directed that so too must each of the claims of dishonest assistance, conspiracy and unjust enrichment as each rested upon the allegation that the Defendants received money or assets that represented the proceeds of funds misappropriated from the Money Exchange.
* The Court has found that the proper law governing AHAB’s equitable claims is the law of Saudi Arabia. These claims all depend on AHAB being able to trace its funds into the hands of the Defendants in the Cayman Islands. No such claim has been found to be tenable, either as a matter of Saudi or Cayman Islands law.
* Fundamentally, the Court has deemed that the Defendants’ illegality defence is entitled to succeed. This is not only on the basis of AHAB’s continuous complicity in the fraud from beginning to end but even (contrary to the findings) in the event “New for Old” existed, because of AHAB’s indisputable involvement in what had already become a massive fraud on the banks and one which AHAB must have known would be continued, even if curtailed, in order to give effect to “New for Old” itself. In doing so, the Court gave detailed consideration to the factors enunciated by the Supreme Court in *Patel v Mirza* [2016] UKSC 42.

William Peake, the lead partner on the matter said he was extremely pleased with the outcome, noting *“this case provided the ideal opportunity for Harneys’ Cayman Islands and London litigation teams to work closely together, providing round-the-clock service to the Duff & Phelps team.”*

William also emphasised *that “the case also showcased the ability of the Cayman Islands Court to manage high profile large-scale litigation, demonstrating especially the quality of the Cayman Islands judiciary and the Court’s ability to use cutting-edge technology as well as the resources and flexibility to manage a year-long, multi-jurisdictional trial.”*

* ENDS -

**About Harneys**

Harneys is a global offshore law firm. We provide the world's top law firms, financial institutions and corporations with legal services relating to Bermuda, British Virgin Islands, Cayman Islands, Cyprus and Anguilla law. For more information about Harneys please visit www.harneys.com.

|  |  |
| --- | --- |
|  | MHP Communications+44 (0)20 3128 8100harneys@mhpc.com6 Agar Street, London, WC2N 4HN |