

Executive Summary

1. Ahmad Hamad Algoaibi Brothers partnership, or AHAB, has its origins in a business began by Hamad Algoaibi in the 1940s. Hamad died in 1969 and was succeeded by his three sons, Ahmad, Abdulaziz, and Suleiman. Together, they incorporated AHAB as a general partnership and successively chaired AHAB until Suleiman's death in February 2009. AHAB has since been chaired by Yousef, Ahmad's son. Yousef, Saud (Abdulaziz's son), and Dawood (Suleiman's son) are amongst the current AHAB Partners¹.
2. From 1980 onwards, AHAB strategically expanded into financial services and other related businesses. In 1981, AHAB's board of directors established the Money Exchange as an unincorporated division of AHAB. Maan Al Sanea ("Al Sanea"), who had married Abdulaziz's daughter in 1980, was appointed its Managing Director². In the 1980s, AHAB incorporated Algoaibi Investment Holdings EC ("AIH") and Algoaibi Trading Services Ltd. ("ATS") (originally incorporated as Algoaibi Investment Services Ltd ("AIS")) and in 2003, AHAB incorporated a bank in Bahrain, The International Banking Corporation ("TIBC") (collectively, "the Financial Businesses")³.
3. From near the time of the establishment of the Money Exchange until its collapse in May 2009, financial statements, disseminated to in excess of one hundred lending banks, understated the extent of the borrowings and true extent of AHAB indebtedness to the banks and its status as a borrower. By presenting them to the banks, the false financial statements became the central instrumentality of a fraud⁴.
4. In 2009, AHAB defaulted on more than 34 billions of Saudi Riyals of debt (USD9.2 billion). Shortly after that default AHAB commenced these Proceedings against Al Sanea and the corporate Defendants (established by Al Sanea in this jurisdiction and who are in liquidation). AHAB's claim was initially to recover the US\$9.2bn of total borrowings that was unrepaid at the time of the default, (subsequently by amendment reduced to US\$6bn) representing the proceeds of the alleged fraud as at end May 2009 (plus interest)⁵.

¹ Introduction, Paragraphs 15-18.

² Introduction, Paragraphs 24-32.

³ Section 1, Paragraphs 760-781.

⁴ Section 1, Paragraph 3.

⁵ Introduction, Paragraph 5.

5. The claims of AHAB, are, in essence, for alleged fraudulent breaches of fiduciary duties committed by Al Sanea and restitution, damages and compensation from the Defendants; on the basis of their conspiracy with Al Sanea, their knowing assistance in his alleged fraud upon AHAB and ultimately, their knowing receipt of the massive proceeds of that fraud. AHAB also brings proprietary claims against the Defendants on the basis that their assets represent AHAB's property – the proceeds of the fraud – which AHAB could trace into their bank accounts or other assets⁶.
6. AHAB's claims are dismissed.

Knowledge and Authority

7. The AHAB Partners knew of and authorized the fraudulent borrowing through the Money Exchange and the Financial Businesses:
 - a. during Abdulaziz's time, the fraudulent practices of the Money Exchange were institutionalised for the purposes of defrauding the banks. Abdulaziz was knowingly aware of this and was the primary architect of the practices;⁷
 - b. Suleiman and Yousef were knowingly aware of the fraudulent practices and they continued these practices after Abdulaziz became incapacitated by a stroke and later died;⁸
 - c. Saud was fully aware of the fraudulent practices and of the financial position of the Money Exchange throughout the period 2000 to 2009;⁹ and,
 - d. Dawood had knowledge of the massive borrowing which he transacted, not only on behalf of the Money Exchange but also on behalf of the Financial Businesses, in early 2009.¹⁰

"New for Old", Forgery & Manipulation

8. As part of its amended case, AHAB alleged the existence of a "New for Old" policy. Stated to be a policy that Suleiman, sometime after Abdulaziz's stroke on 30 September 2000, implemented to restrict borrowing by Al Sanea through the Money Exchange to only such loans as had been taken before the

⁶ Introduction, Paragraph 4.

⁷ Section 1, Conclusion, Paragraph 1.

⁸ Section 1, Conclusion, Paragraph 2.

⁹ Ibid.

¹⁰ Section 1, Paragraph 71.

time of its implementation. “New for Old” is a recent invention.¹¹ There is no objective evidence to prove its existence. “New for Old” is not supported by the documents.¹² “New for Old” never existed¹³.

9. AHAB’s case also relies on the allegation that Al Sanea, in his fraud upon AHAB, engaged in forgery “on an industrial scale”.¹⁴ However, AHAB's forgery allegations have been made on a random basis with reference to questioned documents which were selected under circumstances which were themselves questionable and without any reasonable foundation for a finding that the questioned documents and signatures were deployed by Al Sanea without the knowledge and authority of the AHAB Partners.¹⁵
10. In addition to the forgery case, AHAB also ran a manipulation case. The bank facility documents on which AHAB's manipulation case is based also cannot bear the weight of inference that AHAB wishes to place upon them.¹⁶ Whatever the reason for the alteration of these documents might have been at the time, the one thing the documents show is that AHAB was in fact aware of the ever increasing facilities which they procured – that, in and of itself, is inconsistent with any concept of “New for Old”, and with the evidence of AHAB’s own witnesses.¹⁷

Relative Benefits and Al Sanea’s indebtedness to the Money Exchange

11. The explanation for AHAB's complicity is the pursuit by the AHAB Partners of the strategy to use borrowing in order to acquire and hold investments. These comprised the immensely valuable strategic equity investments in banks and other institutions, together with land holdings. Because of AHAB’s failure to inject capital or to pay down the borrowings of the Money Exchange the strategy also required the constant taking of further borrowing to repay earlier borrowing.¹⁸
12. The AHAB Partners were willing to allow the massive personal borrowing of Al Sanea from the Money Exchange to go unchecked because it was the *quid pro quo* for his willingness also to use the Money Exchange to procure fraudulent borrowing on behalf of the AHAB Partners themselves.¹⁹ Withdrawals

¹¹ Section 3, Paragraph 11.

¹² Section 3, Paragraph 188.

¹³ Section 3, Paragraph 190.

¹⁴ Section 4, Paragraph 1, referring to Mr. Quest in opening submissions.

¹⁵ Section 4, Paragraph 243.

¹⁶ Section 5, Paragraph 69.

¹⁷ Section 5, Paragraph 70.

¹⁸ Section 1, Paragraph 10.

¹⁹ Section 6, Paragraph 1.

by Al Sanea were not “*misappropriations*” but loans, which AHAB expected to be repaid²⁰ and which were meticulously accounted for.²¹

Proprietary Claims

13. AHAB’s claims are primarily proprietary in nature seeking to recover what AHAB says is its property (or the traceable substitutes) from the Defendants.
14. For every proprietary tracing claim, two premises must be established: (1) the antecedent breach of trust or fiduciary duty; (2) the identification of the traced asset or its traceable proceeds in the possession of the defendant.²²
15. AHAB seeks to assert as against the Defendants, a liability to account on the basis of their dishonest involvement with Al Sanea and knowing receipt of the proceeds of his fraud against AHAB and thereby reverse the burden of proof. The Defendants are also said to have participated with Al Sanea in the creation of a “*maelstrom*” and to have been involved with him in the “*cross-firing*” of transactions.²³ However,
 - a. there was no “*maelstrom*” or “*cross-firing*” of transactions;²⁴ and,
 - b. AHAB must first prove the antecedent breach of trust by Al Sanea before it can rely on the line of cases towards the “*reversal of the burden of proof*” for which it contends and it has failed to do so.²⁵
16. Even if AHAB had been able to establish the antecedent breach of trust by Al Sanea, it would still have had to prove the necessary transactional links, invariably required by the case law, between its funds taken from the Money Exchange and the accounts of the Defendants. It has failed to do so.²⁶ Other than in respect of US\$165m of transfers from the Money Exchange to the GTDs the necessary transactional links have not been proved (and the evidence reveals that the transfers totalling US\$165m were made for

²⁰ Section 6, Paragraph 5.
²¹ Section 6, Paragraph 10.
²² Section 7, Paragraph 51.
²³ Section 7, paragraph 27.
²⁴ Section 7, Paragraph 37.
²⁵ Section 7, Paragraph 27.
²⁶ Sections 7A, 7B & 7C.

commercial purposes allowed by AHAB as between the Money Exchange and the GTDs such that AHAB's claim in relation to them is unsustainable).²⁷

Personal Claims

17. Each of the dishonest assistance, conspiracy and unjust enrichment claim rests upon the allegation that the Defendants received money or assets that represent the proceeds of funds misappropriated from the Money Exchange. Accordingly, if the tracing claim fails, so must all of these claims.²⁸

Conflicts of Law

The proper law governing AHAB's equitable claims is the law of Saudi Arabia.²⁹ Whether regarded as proprietary or personal, AHAB's claims against the Defendants all depend on AHAB being able to trace its funds into the hands of the Defendants in the Cayman Islands. Both as a matter of Saudi and Cayman Islands law, no such claim is tenable.³⁰

Illegality

18. The Defendants' illegality defence is entitled to succeed, 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 through Abdulaziz until October 2000, 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 other words, the putative "New for Old" policy itself involved the continued dissemination to the banks of falsified accounts, in order to induce the banks to continue to lend at least as much as was required to prevent the collapse of the Money Exchange and the other Financial Businesses.³¹

Counterclaims

19. The GTDs bring counterclaims against AHAB for a total of about US\$5.9bn, instigated in large part by promissory notes presented to the GTDs by Al Sanea as representing security for debts owed to two of

²⁷ Section 7A, Paragraphs 79-80.

²⁸ Section 7C, Paragraph 32.

²⁹ Section 7, Paragraph 79.

³⁰ Section 7, Paragraph 82.

³¹ Section 7D, Paragraph 4.

the GTDs (SICL and Singularis) by AHAB. Other of the counterclaims amounting to more than US\$1bn were based primarily upon liabilities recorded in the accounts of SICL as due from AHAB.³²

20. The GTDs' counterclaims are dismissed. The evidence relied upon in proof of the counterclaims is unsafe and unreliable against the background and out of the cauldron of fraud that characterised the operation of the Money Exchange and the Financial Businesses.

³² Section 8, Paragraph 1.