A Journey Between Distant Places: How Saad Group's Cayman Liquidators Are Seeking Compensation from Foreign Banks


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The Saad Group is believed to be the biggest Ponzi scheme in history. In a judgment handed down on 10 May 2019 (FSD54 of 2009 ASCJ), the Grand Court of the Cayman Islands found that Maan Al-Sanea was responsible for running a massive fraud against more than 100 Saudi and international banks for over twenty years, involving the churning of borrowings totaling approximately US$330 billion, leading to the collapse of the Saad Group in 2009, with claims exceeding US$22.5 billion.

Hugh Dickson and Mark Byers, of Grant Thornton UK LLP, Joint Official Liquidators (JOLs) of Saad Investments Company Ltd (SICL) and Singularis Holdings Ltd (Singularis), the two Cayman offshore investment vehicles of Al-Sanea, have brought litigation against several banks around the world believed to have turned a blind eye to the fraud, among which is the well-known Singularis v Daiwa case.

When the Saad Group was about to collapse in 2009, Al-Sanea misappropriated a large proportion of the books and records. From the records available it became apparent that in mid-2009 Al-Sanea had caused hundreds of millions of dollars to be paid away from the Saad entities' bank accounts to other entities he controlled in Saudi Arabia. The liquidators chose to seek contemporaneous documentation from banks who facilitated those payments, including in the UK and Switzerland.

In most cases, books and records are outside the jurisdiction of the Cayman Islands. Therefore, in spite of strong authority given to Cayman liquidators to compel third parties to provide information pursuant to the Companies Law [2020], insolvency practitioners are often faced with cross-border enforcement of judgment issues.

Consideration is commonly therefore given to seeking the recognition of the Cayman liquidation in other jurisdictions as a means of then compelling cooperation and production of books and records outside of the Cayman Islands.

Having obtained recognition of the Singularis liquidation in the United Kingdom, the liquidators then used section 236 of the UK Insolvency Act 1986 to compel Daiwa to produce all records it held with respect to an account it maintained in the name of Singularis and, in particular, records relating to payments made away from Singularis in June & July 2009 in excess of US$200 million. Those records indicated that Daiwa had not used reasonable skill or care in dealing with the instructions to make those payments and the liquidators sued Daiwa for its role in the loss to Singularis, arguing the payments were a fraud perpetrated on Singularis.

In 2017, the High Court of England and Wales held that "Any reasonable banker would have realised that there were many obvious, even glaring, signs that Mr Al Sanea was perpetrating a fraud on the company when he instructed that the money to be paid to other parts of his business operations". Daiwa had failed to monitor the activity on the Singularis account and had accepted dubious reasons for the payments. The liquidators and Singularis were awarded in excess of US$150 million. In February 2018 the Court of Appeal,

and in December 2019 the UK Supreme Court, confirmed that Daiwa had breached its duty of care owed towards Singularis when it facilitated the making of the payments.

A similar suit is in preparation in Switzerland, where the liquidators are about to seek from a Geneva bank the recovery of fraudulent transfers that took place in 2009 from SICL's account, amounting to approximately US$70 million.

Compared to their position in common law jurisdictions, foreign litigators face several obstacles when seeking access to evidence located in Switzerland, the main one being the blocking statute that prevents Swiss holders of information to cooperate with foreign courts or insolvency office holders without prior authorization from Swiss authorities.

The most efficient way to avoid this pitfall is to have the foreign insolvency recognized in Switzerland.

Furthermore, the lack of discovery under Swiss civil procedure make it a requirement to have all the necessary evidence available before starting the substantive proceedings. The insolvency of the claimant is a significant exception to the absence of pre-trial collection of evidence, as exemplified by the SICL case.

When SICL's Cayman insolvency was recognized in Switzerland, the Geneva Bankruptcy Office was appointed liquidator of SICL's ancillary bankruptcy to liquidate its Swiss assets and claims. In that context, the JOLs had the Bankruptcy Office register a US$70 million claim against the Geneva bank. The JOLs then requested the Bankruptcy Office to issue a production order against the Geneva bank seeking all information (including internal documents) regarding the suspicious transfer of funds.

In a landmark decision (5A_126/2020), the Swiss Supreme Court rejected the appeal filed by the bank against the production order. It reaffirmed that a bank cannot invoke banking secrecy to refuse to inform the insolvency office holder on its insolvent client's accounts and that the bank must, in the context of its contractual obligation to render account, provide all documents relevant for the purpose of verifying whether it has performed its contractual duties.

Besides the contractual obligations of the banks, the Swiss Supreme Court also added that in the context of insolvency, there is a public interest in the disclosure by banks of internal information that may enable foreign insolvency office holders to identify claims, to assess their amounts and to collect all supporting evidence.

The Saad Group case illustrates that, whilst appointed Cayman liquidators obtain broad powers to compel cooperation and delivery up of records, recognition of the Cayman liquidation abroad yields significant results. A universalist approach is now more readily adopted to cross-border insolvencies in order to reach evidence and assets that are commonly outside of Cayman for the benefit of stakeholders.

Where Singularis v Daiwa illustrates the efficiency of discovery of common law, SICL's Swiss litigation creates new avenues for IPs. In spite of the absence of efficient pre-trial collection of evidence proceedings, insolvency gives a powerful ground for broad disclosures of bank records and lifting of Swiss banking secrecy.