

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD0015 OF 2010 (ASCJ)

IN THE MATTER OF THE COMPANIES LAW (2012 REVISION)  
AND IN THE MATTER OF SAAD INVESTMENTS COMPANY LIMITED (IN  
OFFICIAL LIQUIDATION)



IN CHAMBERS  
BEFORE THE HONOURABLE CHIEF JUSTICE ANTHONY SMELLIE  
ON 19 OCTOBER 2012; 16<sup>TH</sup> NOVEMBER 2012

APPEARANCES: Ms Colette Wilkins and Mr Rupert Bell of Walkers for the Joint  
Official Liquidators of Saad Investments Company Limited (in  
Official Liquidation)

**JUDGMENT**

1. This is an application made by Hugh Dickson, Stephen John Akers and Mark Byers of Grant Thornton Specialist Services (Cayman) Limited ("**GTSS**"), the joint official liquidators ("**the JOLs**") of Saad Investments Company Limited (in Official Liquidation) ("**the Company**"), by way of summons dated 27 September 2012 ("**the Summons**") seeking the following orders:
  - (a) the approval of the remuneration agreement which has been entered into between the JOLs and the Liquidation Committee of the Company ("**the Liquidation Committee**"); and

- (b) the approval of the JOLs' remuneration for the periods from 1 April 2012 to 31 May 2012 and 1 June 2012 to 30 June 2012 and for that remuneration to be paid out of the assets of the Company.
2. I note that the Summons and the Fifteenth Affidavit of Mr Akers sworn on 12 October 2012 in support of the Summons have been served on the Liquidation Committee in accordance with Regulation 13(1)(a) of the *Insolvency Practitioner's Regulations 2008 (as amended)* ("**the IPR**").

### **Background**

3. The basis for the calculation of the JOLs' remuneration was initially resolved at a meeting of the Liquidation Committee on 4 March 2010 and was the basis on which I approved the JOLs' remuneration sought in a number of past applications made by the JOLs.
4. However, an application was made by Ahmad Hamad Algozaibi and Brothers Company (a Saudi Arabian partnership) ("**AHAB**") by way of summons dated 5 April 2011 seeking variation of the basis of the JOLs' remuneration. AHAB has commenced a proceeding in this Court against the Company (FSD0054 of 2009) and various other affiliated entities incorporated in the Cayman Islands alleging that it is the victim of a fraud perpetrated by Mr Maan Al-Sanea who is the principal beneficial owner and was previously involved in the management of the Company. AHAB has made a proprietary claim over all of the assets of the Company (on the basis of the alleged fraud) or alternatively has made a claim for damages against the Company. AHAB has been admitted for voting purposes in the liquidation of the Company for US\$1.00 on the basis of its damages claim against the Company. AHAB receives the

reports and accounts provided to the Liquidation Committee by the JOLs for all applications made by the JOLs seeking approval of their remuneration.

5. I heard AHAB's application on 30 May 2011 and delivered a ruling in respect of it on 27 March 2012 ("**the Ruling**"). Whilst AHAB's application was dismissed, I expressed a number of concerns about the basis upon which the JOLs' remuneration was being calculated and noted that I would await revision of the remuneration agreement with the Liquidation Committee before giving my final approval to it.

### **The Remuneration Agreement**

6. I note from the evidence of Mr Akers that, following the delivery of the Ruling, there have been correspondence meetings and discussions involving the JOLs and the Liquidation Committee regarding the concerns which I raised in the Ruling. The evidence of Mr Akers also shows that the JOLs and the Liquidation Committee have now entered into a new agreement on the JOLs' remuneration that is to apply with effect from 1 April 2012 with the following principal terms:

- (a) Rather than as before by reference to a combination of time properly spent and a percentage of recoveries, remuneration shall be calculated by reference to the time properly spent by:
  - (i) Mr Dickson and GTSS at rates equal to 80% of the maximum rates prescribed by the IPR; and
  - (ii) Mr Akers and Mr Byers (as the United Kingdom based JOLs) at rates not more than the maximum rates prescribed by the IPR (currently USD900 per hour, or about \$550 per hour);

- (b) the JOLs may revise the rates set out above subject to the provisions of the IPR, including the limits set by the maximum and minimum rates established by the IPR applying at the relevant time and with the approval of the Liquidation Committee;
- (c) in accordance with the IPR, the JOLs may from time to time make payments on account from the Company in respect of their remuneration provided that such payments on account do not exceed 80% of the remuneration for which approval is sought from the Liquidation Committee and the Court;
- (d) in the event that any payment on account of remuneration exceeds the amount subsequently authorised by the Court, the JOLs shall repay the unapproved amount without delay;
- (e) the Recovery and Reorganisation ("**R&R**") and Forensic and Investigation Services ("**FIS**") practices of Grant Thornton UK LLP ("**GTUK**") shall be retained to assist in the winding up of the Company and their fees will be charged as a disbursement to the estate in accordance with the terms of engagement letters entered into between the Company and GTUK. In order to address the concern raised in the Ruling in this regard, GTUK will give a discount of 10% to the usual hourly rates applied by the R&R and FIS practices of GTUK for work of this nature;
- (f) the JOLs shall, as part of their reports and accounts provided to support any application for approval of their remuneration, report specifically on the areas of work performed by GTSS and GTUK respectively and the basis for the

work allocation to assist the Liquidation Committee in considering the reasonable and practicable basis for the work allocation;

- (g) the JOLs may renegotiate the terms of the engagement letters with GTUK from time to time, subject to the approval of the revised terms by the Liquidation Committee. Prior to any revision to the hourly rates charged by GTUK, the JOLs shall seek approval from the Liquidation Committee of the proposed hourly rates to be charged by the R&R and FIS practices of GTUK which shall not exceed the usual hourly rates applied by the R&R and FIS practices of GTUK for work of this nature less the 10% discount;
- (h) the JOLs are authorised to pay on account from the Company 80% of any invoice of GTUK as issued from time to time, subject to the subsequent approval of the Liquidation Committee; and
- (i) the JOLs shall use their best endeavours to ensure that any payment made to GTUK shall be subject to GTUK undertaking that, in the event that such payments on account exceed the amounts approved by the Liquidation Committee, GTUK will reimburse the unapproved amount without delay.

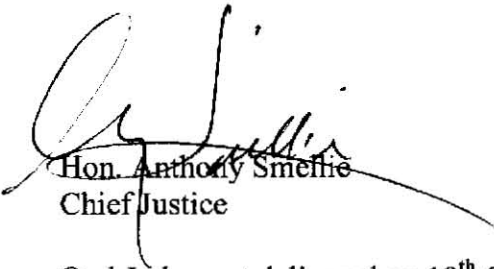
7. I commend the JOLs and their advisors for having arranged this new remuneration agreement. In this regard, I am satisfied that the JOLs have complied with Regulations 12(1)(a), 13(3)(c) and 14 of the IPR and am prepared to approve the new agreement.

8. It provides an objectively more reasonable basis for the remuneration of the JOLs themselves and for the remuneration of their affiliates – GTUK and FIS – than before.

9. First, the locally based liquidator Mr. Dickson and his staff at GTSS will have their rates capped at no more than 80% of the IPR rates, subject to re-negotiations with the Liquidation Committee from time to time. Second, the UK based liquidators Mr. Akers and Mr. Byers will have their rates capped at the maximum of the IPR rates despite the fact that they will be operating primarily from the UK and may otherwise be accustomed to charging at the commercial rates available there. And thirdly, although GTUK and FIS are involved in the liquidation as the contracted agents of the JOLs, the requirement that they will nonetheless be remunerated by the application of a volume discount, together with the first and second concessions, are important expressions of parity of treatment and fairness that bode well for the interests of creditors in the conduct of this liquidation and by way of precedent, for the conduct of comparable liquidations in this jurisdictions in the future.
10. I have also reviewed the reports and accounts exhibited to the evidence of Mr Akers concerning the quantum of remuneration for which approval by the JOLs is sought for the periods from 1 April 2012 to 31 May 2012 and 1 June 2012 to 30 June 2012. I also note from the evidence of Mr Akers that the Liquidation Committee have been provided with the reports and accounts for these periods and have, at meetings of the Liquidation Committee, approved the quantum of remuneration for which the JOLs seek approval. In this regard, I am satisfied that the JOLs have complied with Regulations 12(1)(a), 13(3)(a) and 13(3)(b) of the IPR.
11. I consider that the quantum of remuneration for which approval is sought is reasonable and the work done is value for money. I also consider that the spread of

work between the levels of staff appears reasonable. As a result, I am content to approve the quantum of the JOLs' remuneration.

12. I make orders in the terms of the Summons.



Hon. Anthony Smellie  
Chief Justice

Oral Judgment delivered on 19<sup>th</sup> October 2012  
Written reasons first issued on 16<sup>th</sup> November 2012  
and finally released on 6<sup>th</sup> December 2012

