

Cayman Investment Company Obtains Chapter 15 Protection in the United States

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The United States' Bankruptcy Court for the District of Delaware has recognised the liquidation of a Cayman company, Saad Investments Finance Company (No5) Limited ("**SIFCO5**") (an SPV established to operate as an investment company), as a "foreign main proceeding" under Chapter 15 of the United States' Bankruptcy Code.¹

Recognition of the liquidation as foreign main proceedings provides for an automatic stay of proceedings with respect to any assets of SIFCO5 within the United States, amongst other things.

The decision is particularly significant as it marks a clear departure from the approach of the Bankruptcy Court for the Southern District of New York, when refusing such recognition in the prominent cases of *Bear Stearns High-Grade Structured Credit Strategies Master Fund Ltd*,² *Basis Yield Alpha Fund (Master)*,³ and *re Sphinx*⁴. The Bankruptcy Code provides for recognition of foreign main proceedings only if such proceedings are pending in the same jurisdiction as the petitioner's centre of main interest, or COMI, and each case will be determined on the basis of its particular facts and circumstances. In *Bear Stearns*, *Basis Yield*, and *Sphinx*, the New York Courts set a high evidential hurdle for foreign liquidators to clear in order to prove that the location of the Company's COMI was its country of incorporation.

In the 4 December 2009 decision, Judge Gross accepted that there was sufficient economic activity taking place in the Cayman Islands as at the date that the petition for recognition was filed to establish that its COMI was in Cayman, in part, due to the management of the company being carried on at the time by Cayman based liquidators, Kinetic Partners (Cayman) Limited, and that the evidence submitted on behalf of SIFCO5 was "*very heavily weighted toward the Cayman Islands...and that the liquidation of SIFCO5 in Cayman... is certainly a proceeding that should be recognized by this Court as a foreign main proceeding*".

The Delaware Court's decision in SIFCO5 provides some welcome relief to the liquidators of offshore companies with valuable assets situated in the United States. Prior to the decision those liquidators may have considered that, following the approach of the New York Courts, recognition was effectively barred and expensive chapter 7 or 11 proceedings were the only other options. Recognition of SIFCO5 proves that this is not the case and that Chapter 15 recognition is available in the United States in appropriate cases.

Harneys act as counsel to the liquidators of SIFCO5, Kinetic Partners (Cayman) Limited, and worked hand in hand with Kinetic's US Counsel, Schulte Roth & Zabel LLP. Harneys were closely involved with the preparation for the various hearings in the Delaware Court to obtain recognition. Partners Sarah Dobbyn and Tim Cliptone, Associate Jennifer Deacon and seconded Barrister David Herbert form the Harneys' team advising on this matter and Dobbyn appeared as an expert on Cayman law during the Delaware proceedings.

For more information on this case please contact the authors Tim Clipstone (tim.clipstone@harneys.com) and Jennifer Deacon (jennifer.deacon@harneys.com) in the Cayman Islands.

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The foregoing discussion and analysis is for general information purposes only and not intended to be relied upon for legal advice in any specific or individual situation

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1 In re SIFCO5 Case No 09-13985 (KG).
2 374 B.R. 122, 132 (Bankr. S.D.N.Y. 2007), aff'd 389 B.R. 325 (S.D.N.Y. 2008).
3 381 B.R. 37, 55 (Bankr S.D.N.Y. 2008).
4 re Sphinx 351 B.R. 103 (Bankr S.D.N.Y. 2006), aff'd in re Sphinx II 371, B.R. 10 (S.D.N.Y. 2007)