

# **BAI Saga: Pyramid Scheme, Ponzi Scheme, Ponzi-like Scheme or Political Vendetta and Conspiracy?**

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‘All Ponzi Schemes are upheld by a centripetal force caused by those orbiting the circles of power, celebrity and wealth and trying to get in. When the Ponzi Scheme reaches its point of maximum growth, the force disperses and the Ponzi Scheme collapses.’ - Heather Marsh

**Abstract:** This paper sheds light on the collapse of the British American Investment conglomerate in Mauritius also known as the BAI Group. According to the Government of Mauritius, the BAI Group was operating a vast Ponzi Scheme via its banking subsidiary known as the Bramer Banking Corporation Ltd (BBCL). Furthermore, according to the report of nTan Corporate Advisory Pte Ltd which is a consultant of the Bank of Mauritius, the BAI Group’s subsidiaries such as the British American Insurance (BAI Co. (Mtius) Ltd) and Bramer Property Fund (BPF) were operating ‘Ponzi-like Schemes’. A good number of financial analysts, economists, and accountants contrarily stated that the BAI Group was operating a Pyramid Scheme. Whereas many investors of the BAI Group had the firm belief that it was a victim of political vendetta and conspiracy. Which is which? Dyed-in-the-wool prophets of doom such as the former Prime Minister of Mauritius, the current Prime Minister of Mauritius, the former Minister of Finance, Economic Planning and Development, and Foreign Affairs, Regional Integration and International Trade, the former Minister of Financial Services, Good Governance and Institutional Reforms, the leader of the MMM party and the former Governor of the Bank of Mauritius have all without exception subjectively and descriptively painted a black picture of the BAI Group hither and thither. On top of that, they have acted in ‘bad faith’ by misleading the Mauritian nation. This paper analyses the other end of the spectrum from a critical perspective based exclusively upon the Academic Literature and takes up the gauntlet with intrepidity to “Give The Devil His Due”.

**Keywords:** BAI Group, Pyramid Scheme, Ponzi Scheme, Ponzi-like Scheme, Bank of Mauritius, Government of Mauritius, Financial Services Commission (FSC), Financial Intelligence Unit (FIU), Interpol, Mr. Dawood Rawat.

## **Introduction**

### *Revocation of Banking License*

The BAI Group was comprised of over 50 subsidiaries in financial services, commerce, real estate, hospitality, health care, leisure and transport.<sup>[1][2]</sup> The countries in which the BAI Group had a strong presence under the aforementioned categories were Mauritius, Madagascar, South Africa, Kenya, Dubai, France and Malta.<sup>[3]</sup> The

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<sup>1</sup> British American Investment Company (Mauritius) Limited - 2009 Annual Report

<sup>2</sup> ‘Corporate Profile - BAI’. The Report Company. 28 June 2012. Retrieved 21 April 2015.

<sup>3</sup> British American Investment Company. Archived from [the original](#) on 5 April 2015. Retrieved 20 April 2015.

BAI Group was classified as the second largest company of Mauritius in 2010. It was an owned subsidiary of Bahamas Based Seaton Investment which was in turn owned by Klad Investment Corporation.<sup>[4]</sup>

On 3<sup>rd</sup> April 2015, the banking license of the Bramer Banking Corporation Ltd (BBCL) was revoked by the Bank of Mauritius. The reason put forward by the Bank of Mauritius to justify this monumental blunder was grounded on the damning and ignominious allegation of a \$693 MILLION USD Ponzi Scheme being operated by the Bramer Banking Corporation Ltd (BBCL).<sup>[5]</sup> Serious questions in the financial and legal arenas were raised since not a single piece of evidence or fact was set forth in order to substantiate the allegation. Categorically, the Bank of Mauritius acted as a facile bootlicker that would do anything just like a lapdog to please the Government of Mauritius.

The British American Insurance subsidiary (BAI Co. (Mtius) Ltd) was affected severely by this allegation of Ponzi Scheme. On the same day, its stock was suspended from trading<sup>[6]</sup>. And later on, the whole BAI Group was seized by the Government of Mauritius. As a result, this caused a strong tantrum among the investors of the BAI Group who were asking the reimbursement of their invested funds from the Government of Mauritius.

### *International arrest warrant for Mr. Dawood Rawat*

The question that lingers in many Mauritians' minds is that whether Mr. Dawood Rawat, the owner of the BAI Group, is a role model or a scheming swindler [like late Bernard Madoff]?<sup>[7]</sup> On 20<sup>th</sup> April 2015, an international arrest warrant was issued by the Mauritian Authorities to place Mr. Dawood Rawat on the list of persons liable to be arrested on the grounds of money laundering, misuse of corporate assets and fraudulent agreement. However, the International Criminal Police Organization (Interpol) File Control Commission decided to put an end to this situation (that lasted four years, seven months and seven days) on 22<sup>nd</sup> November 2019.

Mr. William Bourdon et Mr. d'Amélie Lefebvre who were the two lawyers representing Mr. Dawood Rawat pointed out that the Commission's conclusion constituted a setback for the reputation of Mauritius as a country with a democratic tradition. "After examining all the exhibits and documentation provided by both Mr. Dawood Rawat and the Republic of Mauritius, the Commission has concluded that the judicial file at the origin of the arrest warrant had a predominant political dimension. This decision is, in some respects, exceptional, in the case of an international arrest warrant issued by a country deemed to be democratic."

They said they were satisfied with the interest shown by the Commission in shedding light on this affair. "This decision demonstrates that the Commission has given itself the means, behind the screen of what has been presented as a common law procedure, to note the predominant political inspiration of the proceedings initiated." It is to be emphasized that Mr. Dawood Rawat has neither been convicted by the Supreme Court of Mauritius nor

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<sup>4</sup> 'Bramer Banking Corporation' - 2012 Annual Report" (PDF). 'Bramer Banking Corporation'. 31 December 2012. Archived from the original (PDF) on 22 December 2014. Retrieved 9 April 2015.

<sup>5</sup> Maglich, Jordan D. (3 April 2015), 'Mauritius Halts \$693 Million Ponzi Scheme at Bank', ponzitracker.com. Ponzi Tracker.

<sup>6</sup> AROUFF, Jean Paul (3 April 2015), 'Mauritius revokes Bramer Bank licence, PM says Ponzi Scheme found', Reuters. Thomson Reuters

<sup>7</sup> Touria Prayag, 'Dawood Rawat: A role model or a scheming swindler?', 8 April 2015, L'Express

the Judicial Committee of the Privy Council (JCPC). As such he is ‘innocent until proven guilty’ and not ‘guilty until proven innocent’.

### *Media Reportage*

The Government of Mauritius played nasty a role as the BAI Saga unfolded, since it grotesquely exploited the Mauritian media reportage in order to provoke an atmosphere of national hysteria in the country against Mr. Dawood Rawat. This action not only could make a fair trial with respect to the collapse of the BAI Group in a court of law of Mauritius almost difficult, but also could expose his entire family and him to extreme public hostility.

## **Pyramid Scheme**

### *Definition*

“It is a form of deceitful business that provides [initial] investors payment or services for recruiting other [new investors]. In this Scheme recruitment of investors rather than selling products or services take place basically. Pyramid Schemes do have a hierarchical structure that is formed by the investors and will normally begin with initial investors who recruit other new investors who are in turn then mandated and encouraged to recruit other new investors again. And thus, this procedure continues recurrently until a hierarchical chain is created. Investors who are recruited in the Scheme initially have the opportunity to take advantage from the membership fees that have been provided by the new investors that they have just rounded up. When the Pyramid Scheme becomes bigger, the Schemer and investors at the top of the hierarchical structure bring about more proceeds or returns. When the Pyramid Scheme becomes too big and is not capable of generating enough proceeds or returns from new investors to pay initial investors or when the pool of investors is [exhausted completely], the Pyramid Scheme eventually slumps [and the investors lose everything].”<sup>[8]</sup>

“Pyramid Schemes are often broken into two categories:

1. Product based Pyramid Schemes: Participating [investors] not only contribute funds to an [investor(s)] identified at the top of the hierarchical structure, but are also encouraged to sell products or services associated with the [investor(s)] at the top. Such Schemes are often masked as [“business prospects”].
2. Non-product based Pyramid Schemes: Participating [investors] contribute funds only to an [investor(s)] identified at the top of the hierarchical structure, and no products or services are sold. Such Schemes continuously require new investors for proceeds or returns to be engendered. This motivates the existing and initial [investors] to keep on recruiting new [investors] who bring in higher proceeds or returns from various transactions of the non-product Pyramid Scheme such as membership fees, start-up costs etc.).

Pyramid Schemes are somehow quite problematic to identify instantly because they arise in many [diverse structures]. Nevertheless, they all do share one primary characteristic. They are not based on proceeds or returns from any investment or sale of goods or services to investors. Furthermore, the Schemers of Pyramid Schemes

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<sup>8</sup> FINANCIAL INTELLIGENCE CENTRE (FIC), REPUBLIC OF NAMIBIA, ‘PYRAMID SCHEMES’, July 2018

exploit several advertisement platforms that [strategically promote the recruitments of investors] such as newspapers, radios, seminars, social media, home meetings, and other online networks. To boost trustworthiness, the Schemer usually utilizes illegitimate referrals, recommendations and information to trap their victims. Below are some of the red flags to look out for:

1. Pyramid Schemes lay a strong emphasis on the recruitment of investors rather than on the sale of products or services;
2. Pyramid Schemes provide money as proceeds or returns to its existing investors for recruiting other new investors into the Schemes. This money can also be used to provide commissions to the investors.
3. Pyramid Schemes demand substantial startup costs and membership fees which are non-refundable from its investors.
4. Pyramid Schemes do provide high proceeds or returns to its investors without a long delay. The Schemer may then use the funds acquired from new investors to pay initial investors.
5. Schemers operating the Pyramid Schemes [cunningly do adopt ‘hard-sell’ techniques and marketing tactics] to force the potential investors who are also known as ‘victims’ in the true sense of the word, into making hasty and risky decisions, providing them no time to contemplate on the very nature of the investment.
6. The business activities and investments of Pyramid Schemes are in reality not usually registered with the relevant authorities.”<sup>[9]</sup>

*Genuine Reasons why BAI Group was NOT operating a Pyramid Scheme:*

1. All the businesses of the BAI Group in the range of commerce, financial services, real estate , transport, leisure, hospitality and health care were indeed registered with the responsible authorities of Mauritius such as the Financial Services Commission (FSC), the Bank of Mauritius and the Registrar of Companies (Mauritius).
2. The initial investors of the BAI Group who bought the products were not mandated and encouraged to in turn bring other new investors. There was no ‘Recruitment of Investors’ as such. Instead, there was sale of ‘Insurance Products’ such as Life Insurance and Super Cash Back Gold to investors. The sale of ‘Insurance Products’ was carried out by Insurance Advisors (IAs), Trainee Sales Unit Managers (TSUMs) etc.
3. No commissions were provided to the investors because they were not involved in any recruitment process whatsoever.

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<sup>9</sup> FINANCIAL INTELLIGENCE CENTRE (FIC), REPUBLIC OF NAMIBIA, ‘PYRAMID SCHEMES’, July 2018

4. The BAI Group never charged substantial startup costs and membership fees which were non-refundable from its investors.
5. Products such as Life Insurance and Super Cash Back Gold of British American Insurance subsidiary (BAI Co. (Mtius) Ltd) were sold to investors over a reasonable period of time (10 years, 20 years etc.).
6. Proceeds or returns to investors of BAI (British American Investment) were paid over a specified period of time and not in a short delay.
7. The BAI Group never adopted 'hard-sell' techniques to force its investors into making hasty and risky decisions in order to buy its products such as Life Insurance and Super Cash Back Gold.
8. Information about all products of the BAI Group was available on its website and via pamphlets.
9. The payments obtained from the investors were invested in the BAI Group's subsidiaries such as Apollo Bramwell, Ireko Construction, Courts, Iframac etc. These were real investments which were carried out legitimately and not by stealth.

## **Ponzi Scheme**

### *Definition*

The definition of a Ponzi Scheme is as follows:

“An opportunity to invest in a business that theoretically exploits some kind of financial gap is presented to the investors in return for remarkably high and rapid proceeds or returns. These initial investors get the money they were promised and this pushes them in bragging about it to other [potential investors]. These investors become entangled into this [fictitious] business to receive the high proceeds or returns. Amazingly, the investors do very often supplicate the Schemer to a large extent [as was the case with the Ponzi Scheme of Bernard Madoff] to take their [investments or money]. In reality, in a true Ponzi Scheme, there is no fundamental business [activity]; the mechanism is very simple and there is nothing except money coming in from [new investors] and money going out [as payment to initial investors]. Normally, a significant number of such investors reinvest their supposed proceeds or returns back into the business. In theory, they can become rich, but only in theory. [As long as new investors continue to hand over their investments or money to the Schemer so that initial investors can be paid, the Ponzi Scheme keeps on expanding and growing]” (Markopolos,2010).

### *Structure of a Ponzi Scheme*

Ponzi Schemes are not complex mechanisms to understand. They are simple to the very core. The Schemer offers high proceeds or returns at ostensibly very minimal risk from a business activity that does not in fact exist or arises from a secret idea (Lewis,2012).

The structure of a Ponzi Scheme is as shown below:

“[A realistic example] will assume that no investor puts in more than \$50,000 in the Scheme. We present one scenario for the first four years of the Scheme in Figure 1.

Figure 1: The Structure of a Ponzi Scheme Promising a 20% rate of return

Year	Funds Needed	Amounts Raised (\$1,000s)				# of Investors	
0	\$ 100,000		\$ 50.00	\$ 50.00		2	
1	\$ 120,000	\$ 40.00	\$ 40.00	\$ 40.00		3	
2	\$ 144,000	\$ 48.00	\$ 48.00	\$ 48.00		3	
3	\$ 172,800	\$ 43.20	\$ 43.20	\$ 43.20	\$ 43.20	4	
4	\$ 207,360	\$ 41.47	\$ 41.47	\$ 41.47	\$ 41.47	\$ 41.47	5

Year 0 is now, and \$100,000 is required to initiate the Scheme and consequently it needs at least two initial investors who will contribute \$50,000 each. Given a 20% rate of return, the Schemer has to pay \$120,000 in total at end of the first year. Thus, he needs to raise a total of \$120,000 in Year 1 to be able to make those payments. He now then recruits three investors who then in turn contribute \$40,000 each. At the end of Year 2, the Schemer now has to repay all those who contributed \$48,000 each last year. Therefore, he raises \$48,000 from three new investors at the end of Year 2 to make those payments. These new investors need to be repaid \$57,600 each for a total of \$172,800 at the end of Year 3. Therefore, the Schemer again recruits new investors and collects \$43,200 from four investors this time to make those payments. The sequence goes on like that.

What do we observe? First, the Ponzi Schemer takes possession of the initial \$100,000. That’s his initial financial gain from starting the Scheme. Second, the funding requirement increases at the rate of  $(1 + \text{rate of return})$  every year; that is, it increases in a geometrical manner. Third, given finite wealth, more and more investors are needed overtime. For example, two are needed to initiate the Scheme, three in Years 1 and 2, four in Year 3, five in Year 4, etc. Therefore, the Scheme relies on an infinite supply of capital. Nevertheless, [this very mechanism obviously does not last forever, and that is the ostensible reason why a Ponzi Scheme eventually fails].

Next, in the four-year period displayed in Figure 1, we assume that the Schemer is able to attract new capital as required. What if in Year 1 he can only manage to recruit two investors only instead of three, and the two investors

cannot supply the capital needed? The Scheme will fail in that year. This explains why Ponzi Schemes are at risk [and fail] even if only one investor desists.”<sup>[10]</sup>

### *Modus Operandi of a Ponzi Scheme*

“Historically, the appellation ‘[Ponzi] Scheme’ is related with Charles Ponzi, but the true architect of the Scheme was an individual called William Miller back in 1899 from Brooklyn. William Miller operated a crooked business scamming unknowing investors of their money decades before the Scheme became branded as Ponzi. As all such [fraudsters], William Miller claimed that he had some ‘inside window into the way that lucrative businesses were carried out. Yet in reality, he simply swindled and deceived his investors out of \$1 million – a sum of over \$25 million in today’s money (Skarda,2012). After Miller, the true appellation ‘Ponzi Scheme’ rambled into the national limelight. Even if Charles Ponzi was not the architect of the Scheme, his scam was so prevalent and rewarding that it captivated national attention. Just like William Miller, Charles Ponzi provided his investors with substantial proceeds or returns, when in reality, he pinched a large sum of money. Equally, Ponzi’s investors lost \$20 million approximately, which is roughly equal to \$280 million in today’s money (Grossman,2012). In reality it is due to Charles Ponzi, that the appellation ‘Ponzi Scheme’ became famous worldwide. Before him, swindling investors was relatively unusual, at least to the general public. Even if Schemers like William Miller did exist, it was much less prevalent and far less identified. Charles Ponzi, in fact, projected this category of scam into the limelight. [While Charles Ponzi eventually became the dominant character of the Scheme, no other Schemer, scammer or swindler has more unsavory reputation than Bernard Madoff]. [The notorious, nefarious and evil-minded character in the world of finance] is Bernard Madoff who was convicted in 2008 of running a \$50 billion Ponzi Scheme (Carbone,2017).

Just like his fellow Ponzi Schemers before such as William Miller and Charles Ponzi, Bernard Madoff exploited [the ‘faith’ of his investors to the fullest extent in a deceitful way] as well as his personal credentials to attain trust and he promised an average 10.5% annual [‘proceed’ or] ‘return’ to his investors for two decades (Carbone,2017). There are major similarities that can be found with all the three aforementioned swindlers along with all Ponzi Schemes in general. The winning of ‘investor trust’ is a foremost characteristic that the Schemers must possess. If this element of trust is absent, then there is basically no Ponzi Scheme. [This is a Scheme which dominantly relies upon the squirm of the investor’s psychology to the fullest extent]. Bernard Madoff, as well [as William Miller and Charles Ponzi], exploited a notion called ‘affinity fraud or [link]’, whereby [they singled out and ripped-off] the investors who shared a common bond, such as religion, [ethnicity or professional status] to build a trust (Gurun,2016). Frankly speaking, a Ponzi Scheme actually is able to proliferate due to the notion of affinity fraud or [link]. Affinity fraud or [link] has been revealed to be [a dominant element and catalyst] in the success of Ponzi Schemes (Gurun,2016). Utilizing affinity fraud or [link] helps build the trust essential to finalise the scam. In the case of Charles Ponzi, \$9.8 million in the span of 8 months in 1920 was amassed and this typically came from three-quarters of the Boston Police Force (Lewis,2012). Bernard Madoff being an individual of Jewish descent, utilized his religion [Judaism] to coerce and scam many prominent Jews, like Holocaust survivor Elie

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<sup>10</sup> Jory Surendranath (University of Southampton), Perry Mark J (University of Michigan-Flint), ‘*Ponzi Schemes:A Critical Analysis*’, ResearchGate, July 2011

Weisel and his charity, to invest into his Scheme. Bernard Madoff effectively exploited his [Jewish] religious identity [with forcefulness] to attract more money into his Ponzi Scheme<sup>[11]</sup>. He also utilized his polished and prominent reputation in the business world to target his victims. The ability to [detect a certain group of investors to persuade and scam], eventually allows for the Scheme to take off. Subsequently, a durable trust provides the cement that fastens [the investors with the Schemer] and discourages them from leaving [the Ponzi Scheme]. The reason affinity [fraud or link] singles out people with similar [statuses and identities] is trust; [the investors do not think that a Schemer belonging to the same community, religion or ethnicity as them, is going to cheat them] (Markopolos,114). [Bernard Madoff was a well-known Jew and his Jewish investors never thought that ‘a Jewish brother would deceive and scam another Jewish brother’].

Practically in every Ponzi Scheme combined with a [tangible and strong] investor trust, payment of initial investors with new investors’ money is definitely carried out. As long as new investors continue to join the Scheme, the initial investors that came before would earn lucrative proceeds or returns. [This mechanism of taking money in from new investors to pay initial investors] is in fact the very reason why such Schemes collapse. While the duration of a Ponzi Scheme fluctuates, the foreseeable collapse occurs when funds from new investors cannot pay off the initial investors. Once markets hit a rut, [there is a harsh backlash] and the whole Scheme collapses like a house of cards (Altman,2008). Once that house of cards implodes, millions and sometimes even billions of dollars have been lost.

Moreover, in all Ponzi Schemes the investors are coerced so that they have a firm confidence in a [unique] business [that is exploiting] a secret idea (Lewis,2012). It is through this [so-called secret] idea that the investment plan can start and provide exorbitant proceeds or returns. Of course, in reality, this entire strategy is a complete myth. As seen in the history of such a Scheme, Charles Ponzi promised exceedingly high proceeds or returns from investment in postal coupons, while the actual postal system significantly was in short of the quantity of the amount of money he dealt with. In accordance to Ponzi, 160 million coupons would have had to be in movement to cover the investments made by Ponzi’s firm, when in reality there were only 27,000 according to the US Postal Service (Markopolos,51). Similarly, Bernard Madoff promised proceeds or returns on a split-strike conversion tactic that historically could never produce them. Of the total \$9 billion of put options in existence on the Chicago Board Options Exchange that Bernard Madoff claimed to be exploiting, he would have needed upwards of \$65 billion at various times to protect his investors’ money (Markopolos,41-42).

Instead of acting legitimately, the Schemer engrosses the investors’ money and rewards initial investors with the promised high proceeds or returns from the money handed over by the new investors; the Scheme [collapses] when there is no more money from new investors (Lewis,2012). Essentially, when the markets are doing well more investors roll in. Along with Bernard Madoff, in the United States in 2008 and 2009, 190 Ponzi Schemes collapsed (Lewis,2012). Prior to 2008, the markets were in reasonable condition. Once the global markets began

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<sup>11</sup> Nicole Turgeon, Honor Theses: *‘Money, Manipulation, & Madoff: What are Ponzi Schemes and How to Avoid Becoming a Fraud Victim’*, Assumption University, 2020



to stagger amidst the recession, both initial and new investors within Ponzi Schemes began pulling their money, and that is when this scam comes to fruition.”<sup>[12]</sup>

### *Elements of a Ponzi Scheme*

Ponzi Schemes are limited to *redistribution of the raised moneys*.<sup>[13]</sup> “The ploy on which they are established is ‘Rob Peter to Pay Paul’ as the Ponzi Schemers according to Deason, Rajgopal, Waymire and White (2015), never invest the funds into any legitimate business to yield proceeds or returns on investment.”<sup>[14]</sup>

“1. If the Schemer is steadily providing positive proceeds or returns despite the fact that the market crumples and investors of other competitors are losing money, then he is most likely to operate a Ponzi Scheme. No firm has an infallible business strategy that is so distinct and fruitful that delivers high proceeds or returns in an economic downturn.

2. When a firm owned by a Schemer, is providing inadequate investment credentials or none at all, it means the firm is decisively and purposefully not divulging the appropriate information to the investors in order to fraudulently camouflage inappropriate practices and potentially a Ponzi Scheme.

3. When a firm provides higher investment proceeds or returns than its competitors [in the business] with minimal or no risk at all, then it is most likely to be deceitful. Also, the possibility of a Ponzi Scheme is very high.

4. If a firm is unlicensed by the authorities, then it is most likely to be concealing illegal practices. A lack of license [for operating the business] from legal authorities could also mean that the Schemer may not have the appropriate information and know-how needed to advise and guide the investors.

5. If the Schemer cannot properly provide bona fide explanation with respect to the investments he is making, then it is a dappled and risky business venture that should not be undertaken at all. As such, the Schemer could be intentionally trying to conceal a Ponzi Scheme.

6. If an investor cannot receive the investment information (in form of paperwork, documents in doc. or pdf etc.) that is entitled to them, then the probability that the Schemer is operating a Ponzi Scheme is high. Furthermore, if there are many inconsistencies and mistakes throughout the paperwork (if any are provided), then this means that the investment is not legitimate at all and therefore a Ponzi Scheme is being operated.”<sup>[15]</sup>

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<sup>12</sup> ‘The Evolution and Impacts of the Ponzi Scheme and Governmental Oversight An Honor’s Senior Thesis Project on the Intricacies of Ponzi Schemes and its Regulating Authority’ by Adam Cohler, Senior Business Administration Major, Concentration in Finance, Ramapo College of New Jersey Ramapo College Honor’s Symposium April 12, 2017

<sup>13</sup> TIBOR TAJTI (THAYTHY), ‘Pyramid and Ponzi Schemes and the repercussions of the differing regulatory approaches Hungarian developments in the light of contemporary global trends’, Hungarian Journal of Legal Studies 62 (2021) 1, 24–74, Department of Legal Studies, Central European University - Private University, Quellenstrasse 51, Vienna, Austria

<sup>14</sup> Jack, Jackson T.C.B (PhD) and Jack Better, ‘ROBBING PETER TO PAY PAUL: THE IMPACT OF PONZI SCHEMES IN NIGERIA’, Social Facts: FUOtuo Journal of Sociology and Anthropology (SOFUOJOSA), 1 (1 & 2), 144 – 156, November 2019

<sup>15</sup> Nicole Turgeon, Honor Theses: ‘Money, Manipulation, & Madoff: What are Ponzi Schemes and How to Avoid Becoming a Fraud Victim’, Assumption University, 2020

7. Affinity fraud or link (such as religion, ethnicity or professional status) is utilized to help build trust. Affinity fraud or link exploits the intrinsic trust within a particular group of investors. Without trust, it is impossible to start a Ponzi Scheme.

8. In a Ponzi Scheme, the Schemer often encourages his investors to “roll over” their proceeds or returns at the time of maturity.

9. Investors are mostly ‘sophisticated’ in a Ponzi Scheme. For instance, as was the case with the Ponzi Scheme of Bernard Madoff, the investors were considered as ‘sophisticated’ as a result of their wealth or expertise in financial or business matters.<sup>[16]</sup>

### *Factors That Draw Individuals to Ponzi Schemes*

“The four factors that (Greenspan,2009) thinks contributed to the success of the Ponzi Scheme of Bernard Madoff and could be accountable for the success of other Ponzi Schemes are situation, cognition, personality, and emotion. Each of these factors will be examined:

**Situation:** - [Bernard] Madoff was a prominent philanthropist. Thus, his [very reputation played a pivotal role in stimulating the judgment of the potential victims]. [Nobody had any doubts that a philanthropist would rip off his own fellows just like a wolf would pounce on a sheep].

**Cognition:** - Gullibility can also include a lack of clear thinking. Individuals can have a high IQ, in spite of that be quite gullible. [Impulse and intuition governed by passion often cause even the most intelligent individuals to make illogical decisions]. [An inclination to adopt the easiest path and put ample trust in others contributes enormously in the success of the Ponzi Scheme].

**Personality:** - Julian Rotter (1980) wrote of the importance, relevance and significance of trust. Human relationships [depend to a large extent] on interpersonal trust. Distrust causes human relationships to deteriorate. A disinclination to oppose or refute a so called ‘trusted’ colleague helps the Ponzi Schemer.

**Emotion:** - Emotion is part of every gullible act. The Ponzi Scheme investor has an [intensely strong desire to become wealthy in a short period of time without hard work even if he has to take risky actions]. [This very desire is so powerful that first and foremost it impedes emotional reasoning thereby compelling] the individual to exhibit gullible behavior (Greenspan,2009).”<sup>[17]</sup>

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<sup>16</sup> Smith Felicia, Madoff Ponzi Scheme Exposes ‘*The Myth of the Sophisticated Investor*’, University of Baltimore Law Review, Volume 40 Issue 2 Winter 2010, Article 3: For purposes of this article, the term sophisticated investors also encompass “accredited investors” within the meaning of rule 501(a) of Regulation D under the Securities Act. 17 C.F.R. § 230.501(a) (2009). Accreditation is a concept the Commission initially created to obviate the uncertainty arising from a requirement that an issuer make a “subjective determination” concerning an offeree or purchaser’s sophistication or financial condition. Under former Rule 146, an issuer would determine a particular purchaser’s eligibility to participate in an offering by reference to the rule’s objective standards for accredited persons. Exemption of Limited Offers and Sales by Qualified Issuers, Securities Act Release No. 6180,45 Fed. Reg. 6362, 6363 (Jan. 28, 1980) (to be codified at 17 C.F.R. pts. 230 and 239).

<sup>17</sup> Jacobs Pearl (Sacred Heart University) and Schain Linda (Hofstra University), ‘*The Never Ending Attraction of the Ponzi Scheme*’

### *Genuine Reasons why BAI Group was NOT operating a Ponzi Scheme:*

1. It is true that the British American Insurance subsidiary (BAI Co. (Mtius) Ltd) was consistently offering positive proceeds or returns via its products such as Life Insurance and Super Cash Back Gold to its investors. At no point in time did the market of insurance go down in Mauritius (while the insurance subsidiary was still active) thereby causing investors of other insurance companies such as the following to lose money:

- Albatross Insurance Co Ltd,
- Anglo Mauritius Assurance Society Ltd
- Ceylincostella Insurance Company Ltd
- G.F.A. Insurance Ltd
- Indian Ocean General Assurance Ltd
- Island Life Assurance Co Ltd
- Jubilee Insurance (Mauritius) Ltd
- La Prudence (Mauricienne) Assurances Ltee
- Lamco International Insurance Ltd
- Life Insurance Corporation of India
- Llyods (Mauritius)
- Mauritian Eagle Insurance Company Ltd
- Mauritius Union Assurance Company Ltd
- New India Assurance Company Ltd
- State Insurance Company of Mauritius Ltd
- Sun Insurance Company Ltd
- Swan Insurance Company Ltd

We observe that “the insurance industry [in Mauritius] is relatively well developed. It makes considerable use of reinsurance facilities [and services] so that it is free from the extensive premium, product, investment, and reinsurance controls that have afflicted the insurance industries of so many developing countries around the world...[The insurance industry is highly concentrated and saturated with many companies]...Despite the high level of concentration [and saturation], the insurance industry appears to be extremely competitive and as such it operates with high efficiency. [It is to be noted positively] that large and medium-size insurance companies have strong reserves, proper reinsurance provisions, and decent profitability...”<sup>[18]</sup>

2. The BAI Group’s subsidiaries were all registered with the Registrar of Companies of Mauritius. The British American Insurance subsidiary (BAI Co. (Mtius) Ltd) was registered with the Financial Services Commission

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<sup>18</sup> Vittas, Dimitri. 2003. ‘*The Insurance Industry in Mauritius*’, Policy Research Working Paper; No. 3034. World Bank, Washington, DC. © World Bank. <https://openknowledge.worldbank.org/handle/10986/18272> License: CC BY 3.0 IGO.”

(FSC) and the Bramer Banking Corporation Ltd (BBCL) was licensed and regulated by the Bank of Mauritius. In other words, the registration credentials were easily available to the investors.

3. There was no utilization of affinity fraud or link (such as religion, ethnicity, or professional status) to help build trust between Mr. Dawood Rawat and the investors whatsoever. Mr. Dawood Rawat is a Mauritian Muslim of Gujrati origin. There is no incriminating evidence which proved that he utilized his religion, ethnicity or professional status to target the investors (as was the case with the Ponzi Scheme of Bernard Madoff). Moreover, no religious leader of Islam (Maulana or Ulema), political figure or iconic figure of a closed cluster of people was hired by the BAI Group to promote or speak conclusively to its investors about a particular product offering.

4. The BAI Group was indeed offering high investment proceeds or returns to its investors with minimal risk. These proceeds or returns were known to the general public and cogently were not as excessive as those of Sunkai and Whitedot Ponzi Schemes in Mauritius. Nevertheless, the high investment proceeds or returns in no way proved that the BAI Group was most likely engaged in a fraudulent activity such as the Ponzi Scheme. There was no legal evidence to prove same in a court of law.

5. The owner Mr. Dawood Rawat was able to properly provide explanation with respect to the investments he was making. His investments were known to Mauritian Authorities and the Mauritian nation. Nothing was hidden.

6. Paperwork were available for the BAI Group's investments and business transactions. Furthermore, there were no discrepancies and errors in the paperwork provided to the investors. This could be testified by its former investors, Insurance Advisors (IAs) and Trainee Sales Unit Managers (TSUMs) etc.

7. The Insurance Advisors (IAs) and Trainee Sales Unit Managers (TSUMs) of the British American Insurance subsidiary (BAI Co. (Mtius) Ltd) were not encouraging the investors to "roll over" their proceeds or returns at time of maturity. There was no such mechanism in the insurance subsidiary. Also, their duty of scheme did not include such a provision.

8. In the BAI Group, there were underlying businesses and actual investments were made. It had over 50 subsidiaries both locally and internationally.

9. The actions and reactions of the Bank of Mauritius were fundamentally bombastic and oxymoronic. On the one hand, the Bank of Mauritius was maintaining its allegation of a \$693 MILLION USD Ponzi Scheme being operated by the Bramer Banking Corporation Ltd (BBCL) with vehemence. On the other hand, on 27<sup>th</sup> February 2015, it was requesting the owner of the BAI Group, Mr. Dawood Rawat, to inject Rs350 MILLION in the bank due to the fact that the latter was losing deposits via withdrawals done massively by the clients and there was a serious liquidity crisis. If the Bramer Banking Corporation Ltd. (BBCL) was really operating a Ponzi Scheme, then its license had to be revoked unconditionally by the Bank of Mauritius according to the Mauritian Laws. But such was not the case. The Bank of Mauritius was demanding the Rs350 MILLION at any cost to remedy the liquidity crisis in the so-called 'Ponzi Bank'. This makes no sense at all! Furthermore, no reasonable delay to do same was granted within the legal context to Mr. Dawood Rawat. The bank's license was revoked overnight

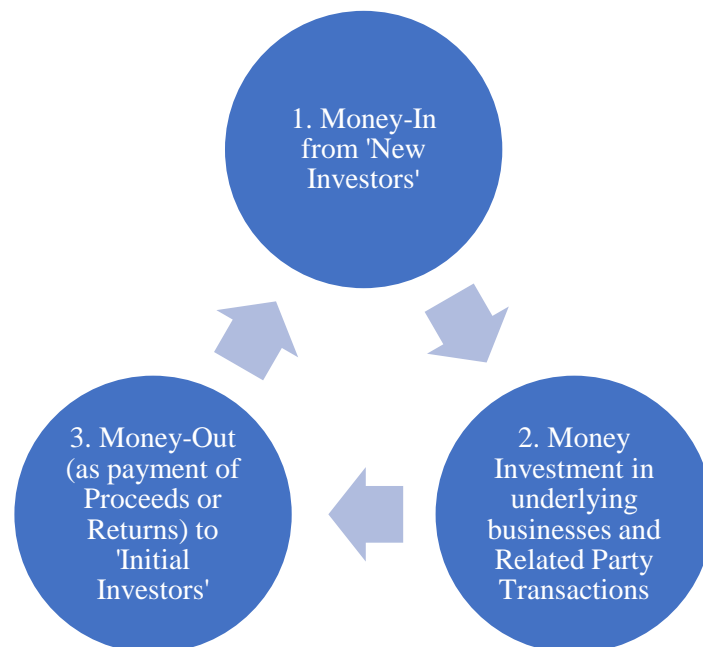
without convening him officially in a meeting, on 2<sup>nd</sup> April 2015 in spite of the fact that he had raised the said amount according to his averment.

10. The hierarchy of a Ponzi Scheme as shown previously in Figure 1, was non-existent in the structure of the BAI Group. Rather, it had a fluctuating structure. The number of investors in say Year 1 could be less than Year 2. Year 3 could be less than Year 2 and Year 4 could be greater than Year 2. Such an occurrence is definitely not a Ponzi Scheme.

11. The investors of BAI Group were from different communities, ethnicities, religions and social classes. There was no presence of ‘sophisticated’ investors among Mr. Dawood Rawat’s clientele as was the case with the Ponzi Scheme of Bernard Madoff.

12. Money coming in from new investors was in fact invested in the underlying businesses and Related Party Transactions. Consequently, the proceeds or returns obtained from them were paid to initial investors. Money obtained from new investors was never paid directly to initial investors as was the case with the Ponzi Scheme of Bernard Madoff. Had this crucial element of ‘investment’ been absent in the modus operandi of the BAI Group, we could have stated indisputably that it was indeed operating a Ponzi Scheme. Figure 2 shows the scenario clearly and therefore we can’t use the Ponzi Scheme terminology with respect to the BAI Group.

Figure 2: Money-In, Money-Out and Investment in the BAI Group <sup>[19]</sup>



<sup>19</sup> Teeluckdharry Guru Dev (2002) – Original Diagram

## Ponzi-like Scheme in the Academic Literature

*nTan Corporate Advisory Pte Ltd.*

This consultant appointed by the Bank of Mauritius to scrutinize the BAI Group issued a highly controversial and sinister report declaring without any legal and plausible evidence that the “[British American Insurance] subsidiary (BAI Co. (Mtius) Ltd) and [Bramer Property Fund] (BPF) were operating ‘Ponzi-like Schemes’.”<sup>[20]</sup> Emphatically, it is to be noted that this dubious and fictitious terminology has not been expounded in the Academic Literature at all. This is an extremely problematic prevalence. On the contrary, a good number of academic articles and management text books have been written by University Professors, Financial Analysts, Chartered Accountants, Forensic Accountants and PhD holders on Ponzi Schemes.

The Bank of Mauritius should have carried out an in-depth research on the topic of ‘Ponzi Scheme’ from a purely Academic Perspective, prior to giving consideration to such a report from a Political Perspective. Moreover, documents, financial statements and information made available by the BAI Group were not independently authenticated or scrutinized. Conclusions, findings or readings drawn in the report were not made known to the BAI Group which was therefore not given the opportunity to criticize or correct the said conclusions, findings or readings. Such repudiations definitely undermine the authenticity of the report and makes it highly disputable for a court of law to consider.

According to many Mauritian citizens, the entire credibility of the nTan Corporate Advisory Pte Ltd is to be questioned severely. Had this report been issued by a renowned accounting body such as Deloitte, PricewaterhouseCoopers (PwC), Ernst & Young, Grant Thornton, BDO, RSM Tenon, Smith & Williamson, Baker Tilly, Moore Stephens, Mazars, Haines Watts, Crowe Clark Whitehill, Saffery Champness, Begbies Traynor, UHY Hacker Young, Kingston Smith, Zolfo Cooper, MHA MacIntyre Hudson or Johnston Carmichael, one could have considered it with a high degree of seriousness.

Scandalously, the report of this bogus consultant was utilized as an artifice by both the Bank of Mauritius and the Government of Mauritius to commit a so called ‘corporate burglary’ whereby all the assets of Mr. Dawood Rawat were hijacked overnight in unlawful and unethical circumstances. This is an extremely harsh injustice perpetrated against him and his family that could only be alleviated by either the Supreme Court of Mauritius or the Judicial Committee of the Privy Council (JCPC).

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<sup>20</sup> Report of nTan Corporate Advisory Pte Ltd on BAI Group, Page 4: “[Proceeds] or returns paid to existing policyholders and investors of BA Insurance and BPF were paid out of funds raised from new policyholders and investors. To lure new policyholders and investors, BA Insurance and BPF offered insurance policies and BPF Preference Shares respectively that offered [proceeds] or returns higher than were sustainable by BA Insurance and BPF. Both BA Insurance and BPF had to attract new investments at an ever-increasing rate to meet their existing commitments and would inevitably collapse under the weight of their liabilities”.

## Related Party Transactions

### *Definition and 'Rent-Seeking' Behaviour*

In relation to business conglomerates the Academic Literature uses the term 'Related Parties' frequently. International Financial Reporting Standards (IFRS, 2020) refers to 'Related Parties' as:

- a) A person or a close member of that person's family is related to a reporting entity if that person has control, joint control, or significant influence over the entity or is a member of its key management personnel; or*
- b) An entity is related to a reporting entity if, among other circumstances, it is a parent, subsidiary, fellow subsidiary, associate, or joint venture of the reporting entity, or it is controlled, jointly controlled, or significantly influenced or managed by a person who is a related party.*

IFRS defines related party transaction:

*... as a transfer of economic resources or obligations between related parties, or the provision of services by one party to a related party, regardless of whether any consideration is exchanged. The parties to the transaction are related prior to the transaction.*

Related Party Transactions are legitimate activities and serve practical purposes<sup>[21]</sup>:

- They are recognized in corporate and taxation laws.
- They have their own standards for accounting treatment.
- Systems of checks and balances have been built around them to make sure they are conducted within these boundaries.

“‘Related Party Transactions’ can have a positive or negative impact on a firm performance (Gordon et al.2004; Ryngaert and Thomas 2007). [There are 2 hypotheses]. [First], the efficient transaction hypothesis suggests that ‘Related Party Transactions’ can fulfill basic economic need of a company by lowering cost of transaction so that company can be more efficient. ‘Related Party Transaction’ has its own positive influence in the day-to-day business operation and to the general economy. [Second], the conflict-of-interest hypothesis pertains to ‘Related Party Transactions’ as transactions with the tendency toward expropriation of minority shareholders’ wealth. Consistent with the hypothesis, McCahery and Vermeulen (2005) conclude that even though ‘Related Party Transactions’ can play a positive role for companies, abusive and fraudulent ‘Related Party Transactions’ may exist whereby controlling shareholders’ wealth is maximized at the expense of minority shareholders.”<sup>[22]</sup>

The report of nTan Corporate Advisory Pte Ltd mentions the term ‘Related Party’ on 74 occasions and thus there is a very strong emphasis on it. On 6<sup>th</sup> December 2013, the Financial Services Commission (FSC) instructed the British American Insurance subsidiary (BAI Co. (Mtius) Ltd) to avoid further investments in ‘Related Party [Transactions]’ in order not to exceed the threshold or limit imposed by it. On 21<sup>st</sup> March 2014, the Financial

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<sup>21</sup> Asia-Pacific Office of the CFA Institute Centre for Financial Market Integrity, ‘*Related-Party Transactions*’, Cautionary Tales for Investors in Asia, CFA Institute, Centre for Financial Market Integrity

<sup>22</sup> Sidharta Utama, Cynthia A. Utama, Rafika Yuniasih, ‘*RELATED PARTY TRANSACTION - EFFICIENT OR ABUSIVE: INDONESIA EVIDENCE*’, Asia Pacific Journal of Accounting and Finance, Volume 1 (1), December 2010

Services Commission (FSC) agreed to grant the insurance subsidiary an extension to the deadline of reducing its exposure in 'Related Party [Transactions]' by 31<sup>st</sup> December 2016 and maintained that it is to be reduced to 10%. As from 2008, Bramer Property Fund (BPF) also was involved in 'Related Party [Transactions]'. The report also points out that "[Bramer Banking Corporation Ltd (BBCL)] entered into transactions during the Review Period in which funds were irregularly made available to related parties in the BAI Group". The material fact that we must analyse is whether the 'Related Party [Transactions]' of Bramer Banking Corporation Ltd (BBCL) entailed any conflicts of interest or were abusive and fraudulent. If such was the case, then the Mauritian authorities should not have allowed any tax benefits to be claimed from the 'Related Party Transactions'. The report also mentions further that the "[Bramer Banking Corporation Ltd (BBCL)] would have breached the 'Related Party [Transactions]' exposure limit [of 60%] if it had fully and accurately disclosed its 'Related Party Exposure' in accordance with the Bank of Mauritius regulations". Well, it could be indicated clearly that this was just a hypothesis that had not been authenticated convincingly by the Bank of Mauritius, whose mumbo jumbo explanation left a great deal to be desired.

Now, we are confronted with a somber predicament which has been condemned by both the Bank of Mauritius and the Government of Mauritius. It is true to say that the BAI Group was not abiding by the rules and regulations imposed by the Financial Services Commission (FSC) vis-à-vis its 'Related Party Transactions'. "To explain the [ostensible] reason why 'Related Party [Transactions]' and conglomerate/affiliate transactions can be problematic, we have to consult the Academic Literature on 'Rent-Seeking' behavior. [We could argue rationally that although the exposure over 10% of the assets related with the 'Related Party Transactions' of the BAI Group was unlawful certainly, there was nothing unethical duly. This is due to the fact that it did not exhibit any 'Rent-Seeking' behaviour and this is the one and only judicious element that Mr. Dawood Rawat has to provide as a realistic justification in a court of law (if ever he is prosecuted) to defend himself. "One should all the time bear in mind, it is a truism that in certain circumstances not only whatever is ethical might be unlawful, but also whichever is lawful might be unethical." <sup>[23]</sup>

The term 'Rent-Seeking' too has been given a number of definitions in the [Academic] Literature. Corporate Finance Institute (2015) defines the phrase as, 'an individual or an entity seeking to increase their own wealth without creating any benefits or wealth for the society'. Fischer (2005) says, that 'Rent-Seeking' describes the ability to capture incomes without producing output or making a productive contribution. Basically, 'Rent-Seeking' transactions are geared at obtaining financial gains or other benefits by influencing distribution, rather than production, of economic resources. Fischer (2005) argues that 'Rent-Seeking' discourages innovation in revenue enhancement, cost reduction, technology improvement, etc. and instead relies on 'connections' for redistribution of economic resources to the firm for increase in wealth. And continues that, such practices result in reduction in overall economic efficiency. 'Rent-Seeking' behaviour results in loss of government revenues, decrease in competition and rise in income inequality.' <sup>[24]</sup>

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<sup>23</sup> Teeluckdharry Guru Dev (2022), *'Arguing The Unarguable'* - Cambridge Open Engage

<sup>24</sup> African Journal of Management Research (AJMR) - Anthony Q. Q. Aboagye: *'Ghanaian Banking Crisis of 2017-2019 and Related Party Transactions'*.



In essence, there are some pertinent questions that all Mauritians should ask themselves pertaining to the ‘Related Party Transactions’ of the BAI Group in Mauritius. Was there any loss in the revenues of the Government of Mauritius? Was there a decrease in competition in the Insurance and Banking sectors in Mauritius? Was there a rise in income inequality in Mauritius? Was there a reduction in the overall economic efficiency in Mauritius? Was the BAI Group increasing its own wealth and financial gains without creating any benefits or wealth for the society in Mauritius? Was the BAI Group capturing incomes only from its investors, without producing any outputs and economic resources for the society in Mauritius? Were the controlling shareholders’ wealth of the BAI Group maximized at the expense of the minority shareholders in Mauritius? The answers are absolutely ‘NONE’. In Mauritius, the BAI Group created employment for about 4000 Mauritian citizens, provided loan facilities to both low-class and middle-class citizens via the Bramer Banking Corporation Ltd (BBCL), and offered tremendous benefits to the society in Mauritius at large via the world-class Apollo Bramwell Hospital. Ipso facto, all these contributions to the society in Mauritius should be acknowledged not only by the Government of Mauritius, but also by the opponents of Mr. Dawood Rawat.

Frankly speaking, all those who are acquainted with Mr. Dawood Rawat will agree definitely that he does not have this so called ‘Rent-Seeking’ attitude which is characterized by the ‘Too-Big-To-Fail’ syndrome. This very attitude has been analysed by Sorkin (2009) in the Academic Literature and this was the [fundamental] reason why many large United States financial institutions took on excessive risks that resulted in the 2007-2009 global financial crisis.

### *Abusive and Fraudulent Practices*

The report also does not mention the terms ‘Fraud’ and ‘Window Dressing’ of any kind in any manner. Nonetheless, it gives us the stout belief that it is indeed striving in a masquerade to relate the ‘Related Party Transactions’ of the BAI Group with abusive and fraudulent practices as was the case with Enron which was a U.S. based energy and commodities company based in Houston. “In the infamous scandal of Enron back in 2001, ‘Related Party Transactions’ were used with special-purpose entities to help conceal billions of dollars in debt from failed business ventures and investments. The related parties misled the board of directors, their audit committee, employees, as well as the public. These abusive and fraudulent ‘Related Party Transactions’ led to Enron's bankruptcy, prison sentences for its executives, lost pensions and savings of employees and shareholders, and the ruin and closure of Arthur Andersen, Enron's auditor, which was found guilty of federal crimes, and [Securities and Exchange Commission] (SEC) violations.”<sup>[25]</sup> At this juncture, it would be astute to say that the BAI Group’s organizational structure and culture were completely different from those of Enron. There is undeniably no legal evidence to prove that the ‘Related Party Transactions’ of the BAI Group were abusive and fraudulent.

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<sup>25</sup> ‘Related Party Transaction’ by Will Kenton, Khadija Khartit, Suzanne Kvilhaug, April (2022), <https://www.investopedia.com/terms/r/related-partytransaction.asp>

### *Losses of the BAI Group*

According to the report “through its various [Ponzi-like] Schemes, the BAI Group was able to conceal its massive losses [in order to] obscure its true financial position. [And] the accumulated deficit continued to grow such that in 2015, the BAI Group inevitably collapsed under the weight of its huge losses and the unsustainable liabilities.” There is once again no legal evidence to establish that the BAI Group hid any losses [for about 50 years of its very existence] and as a consequence bamboozled the Mauritian regulators such as the Bank of Mauritius, Financial Services Commission (FSC) and Financial Intelligence Unit (FIU) by adopting ambiguous accounting practices.

### *Absurdity of the report*

As further reported in it, “in order to sustain the [Ponzi-like] Schemes, funds were channeled to ‘Related Party [Transactions]’ which were subsequently recorded as having ‘generated’ significant amounts of accounting gains (including fair value gains, unpaid interest income and unpaid dividend income).” In other words, the nTan Corporate Advisory Pte Ltd has done a blatant and malicious amalgam between ‘Ponzi-like Schemes’ and ‘Related Party Transactions’. Once again, this has not been documented at all in the Academic Literature. This is highly confusing and misleading. Likewise, it also highlights obscurely that “the collapse of the BAI Group was hastened by the inability of the related parties to repay the funds which they had received via the ‘Related Party [Transactions]’.” For the sake of argument, either the BAI Group collapsed due to the so called ‘Ponzi-like Schemes’ or its inability to repay funds associated with ‘Related Party Transactions’ to investors. Nonetheless, according to the report this was a synchronous phenomenon and as such we conclude that it is unequivocally tainted with absurdity.

## **International Monetary Fund (IMF)**

### *Lack of credibility*

The report of the IMF on the BAI Group is imbued with nebulousness to a great extent. According to it, “The insurance company had substantial proportion of its assets invested in related companies. In addition, it issued single policy premium products promising relatively high returns, but suffering from high lapse rates, that were only sustainable as long as fresh cash was injected into the scheme from new policies, from the investment proceeds [or returns] from old policies (mostly in related companies), or from other entities in the group.”<sup>[26]</sup> First, the term ‘Scheme’ has been used metaphorically in it to denote Ponzi Scheme. Second, it has made an aggravating concoction of proceeds or returns from old policies of initial investors from related companies (that is from Related Party Transactions) and [Ponzi] Scheme. Third, it fails to take into account ‘investments’ in the underlying businesses of the BAI Group and payment of proceeds or returns to initial investors from the investments made. This report as such is a carbon copy of that of the nTan Corporate Advisory Pte Ltd that should be rejected at any cost.

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<sup>26</sup> Page 36: INTERNATIONAL MONETARY FUND, IMF Country Report No. 16/89, MAURITIUS 2015 ARTICLE IV CONSULTATION—PRESS RELEASE; STAFF REPORT; AND STATEMENT BY THE EXECUTIVE DIRECTOR FOR MAURITIUS, March 2016

## Legal Implications

### *Role of regulators*

First, the Financial Services Commission (FSC) as well as the Financial Intelligence Unit (FIU) have indeed performed their duty properly in regulating the activities of the BAI Group. For sure it was never operating a Pyramid Scheme, Ponzi Scheme or Ponzi-like Scheme. The ‘Related Party Transactions’ of the BAI Group were not abusive and fraudulent in spite of the fact that they exceeded the limits prescribed by the Bank of Mauritius, Financial Services Commission (FSC) and Financial Intelligence Unit (FIU). In the case of Sunkai and Whitedot, maybe there were shortcomings with the regulation of the Financial Services Commission (FSC) and Financial Intelligence Unit (FIU). Regarding the regulation of banking activities in Mauritius, there are laws such as the Banking Act of 2004 and the Bank of Mauritius Act 2004. Whereas in the case of non-banking financial activities, we have several laws such as the Financial Services Act (FSA) 2007, the Financial Intelligence and Anti-Money Laundering Act (FIAMLA) 2002, the Securities Act 2005, and the Insurance Act 2005. All these laws need to be amended and a precise definition of Ponzi Scheme based upon the Academic Literature has to be infused therein so that in the future no other conglomerate suffers the same fate as the BAI Group.

### *Bankruptcy System*

Second, “it is frequently also thought that recovering the money invested in a collapsed [Pyramid Scheme or Ponzi Scheme] is a desperate effort because by the time the bubble ruptures no assets are left at all behind, to be included in the bankruptcy estate and, consequently, victims cannot recover anything. Whether this is so or not, depends on a number of factors, among which the efficiency of the applicable bankruptcy regime ranks first. If the bankruptcy system, especially its avoidance and [bankruptcy] laws, function correctly there may be a reasonable chance for creditor recoveries even in case of fallen Pyramid Schemes or Ponzi Schemes. The [foremost] problem [here] is that bankruptcy systems are often defunct [or obsolete], not only in emerging legal regimes having introduced [modern bankruptcy laws] recently, but also in some European countries with considerable legal tradition”<sup>[27]</sup>. In Mauritius, it could be maintained that this very scenario is manifesting itself actively as well and therefore the bankruptcy system with its avoidance laws needs to be reinvigorated in the interests of the victims of Pyramid Schemes and Ponzi Schemes. In the case of the collapse of the BAI Group where there was no Pyramid Scheme, Ponzi Scheme or Ponzi-like Scheme at all, the majority of the policy holders and investors were enduring hardships in recuperating their invested money. And some have not recovered anything whatsoever until now and as a consequence this knocked the whole country for a loop. This is a highly problematic situation that calls the credibility of the Government of Mauritius into question.

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<sup>27</sup> TIBOR TAJTI (THAYTHY), ‘Pyramid and Ponzi Schemes and the repercussions of the differing regulatory approaches Hungarian developments in the light of contemporary global trends’, Hungarian Journal of Legal Studies 62 (2021) 1, 24–74, Department of Legal Studies, Central European University - Private University, Quellenstrasse 51, Vienna, Austria

## Conclusion

### *Law of propaganda*

To conclude, we could affirm and reaffirm, vigorously and fearlessly that the BAI Group was not operating any Pyramid Scheme, Ponzi Scheme or Ponzi-like Scheme based upon our knowledge of the Academic Literature. In addition to this, we note with serious concern that some megalomaniac ministers of the Government of Mauritius and dark triad politicians had a grudge against Mr. Dawood Rawat and their political stratagem specifically was derived from the law of propaganda of the propagandist Nazi Joseph Goebbels which is “Repeat a lie often enough and it becomes the truth”. In psychology, such a phenomenon is known as the “illusion of truth” effect and this is a lethal weapon that the enemies of Mr. Dawood Rawat (such as ministers and politicians) have used to lamentably and wretchedly guillotine the BAI Group on the political scaffold of Mauritius.

We also observe with astonishment that a political vendetta and conspiracy against Mr. Dawood Rawat was in fact the very outcome of an incestuous relationship between the Bank of Mauritius and the Government of Mauritius.

### *Indecisiveness of legal advisers and counsels*

The legal advisers and counsels of Mr. Dawood Rawat were to blame severely for not having advised him to take strong legal actions promptly against all those who besmirched the very reputation of the BAI Group (particularly the leader of the MMM party) on both the national and international levels by branding it in a defamatory manner as a ‘Ponzi Conglomerate’ back in 2010. Therewithal, they should have filed a judicial review in the Supreme Court of Mauritius regarding the pronouncement process for the revocation of the banking license of Bramer Banking Corporation Ltd (BBCL) within a reasonable delay according to law in 2015.

### *The Achilles’ heel*

The BAI Group was a big business empire. There is no doubt about that. Nevertheless, its CEOs, accountants, managers, investment managers, auditors and directors were not ‘vigilant’ to the fullest extent. They were being observed clandestinely by the Government of Mauritius and especially the competitors of the BAI Group in the Private Sector. Last but not least, there was a huge problem with the strategic management and business administration of the BAI Group (which was highly involved in undertaking risky ventures). In the proper sense of the word, its Dominant Logic was no longer working properly. “In [Academic Literature], this powerful concept refers to the main methodology a company uses to make a profit. It describes essentially the cultural norms, mindsets, conceptual models, administrative tools and beliefs that the company espouses in its organizational structure in order to become successful. Dominant Logic can be helpful to a company engaged in corporate diversification and hence it is an important means for the application of strategies across its different businesses. Prahalad and Bettis wrote their seminal paper on this concept which explains how firms and leaders make critical decisions that lead to business success. However, the Dominant Logic of a company becomes a barrier that stifles

creativity and innovation when the business landscape in which it operates, undergoes considerable changes.”  
[28][29][30].

The Dominant Logic of the BAI Group should have been reviewed and challenged in order to stop the financial losses of some of its subsidiaries (as per its financial statements) and put it on the right track. Unfortunately, this was a crucial action that its top management failed to accomplish. This is a fact of paramount importance that Mr. Dawood Rawat should realize with objectivity and this was irrefutably the Achilles' heel of the BAI Group.

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<sup>28</sup> Ankush Chopra, 'Dominant Logic: How Top Managers Make Powerful Decisions'

<sup>29</sup> C. K. Prahalad; Richard A. Bettis (Nov–Dec 1986), 'The Dominant Logic: A New Linkage between Diversity and Performance', Strategic Management Journal. 7 (6): 485–501

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