

Brief Summary of Malpac Group Legal Suit

The Group's wholly-owned subsidiary Malpac Capital Sdn Bhd ("MCSB") had lost a legal suit in Federal Court in September 2013 whereby two individuals ("purchasers") had vide Ipoh High Court Suit No. 22-109-2007 sued for specific performance of a conditional shares sale agreement of RRSB shares signed in 2002 ("the Original Agreement"). The sale was not completed within the stipulated time frame due to non-compliance of conditions precedent.

In September 2013, MCSB was ordered by the Federal Court to "... menyempurnakan perjanjian-perjanjian yang bertarikh 5th April 2002" ("2013 Court Order"). Thereafter, the purchasers also demanded among others that MCSB surrender and transfer a further 99,998 shares in RRSB which were issued in 2005 and which were not covered by the Original Agreement. In an effort to comply with the 2013 Court Order and also the further demands of the purchasers, the Group had appointed corporate legal advisors and an investment bank advisor ("Advisers") to advise on the legal implications if any which may arise in complying with the 2013 Court Order and the purchasers' demands. The summary of the advice by the Advisers is as follows:

- (i) **Events subsequent to agreement dated 5th April 2002:** The proposed disposal of 100% of RRSB in 2002 only comprised of 2 ordinary shares of RM1.00 each and the settlement of a shareholders' loans from MCSB of RM30.6 million. RRSB is the registered owner of two parcels of leasehold plantation lands in Teluk Intan. After the conditional shares sale agreement lapsed in October 2002, several significant, irreversible events then took place: -
 - (a) In 2003, the transfer price for the plantation lands from Danaharta-appointed Special Administrators to MCSB was increased from RM30.6 million to RM47.3 million as a result of a fresh valuation ordered by the Securities Commission. As a result, the shareholders' loans of RM30.6 million as per the Original Agreement no longer reflected the true valuation of the ;
 - (b) RRSB not only became the registered owner of the two parcels of plantation lands but also became the distinct owner of a palm oil mill, which was separately purchased outright from the Special Administrators only in 2004, which palm oil mill was not included in the Original Agreements;
 - (c) In 2005, 99,998 new ordinary shares in RRSB were issued with the knowledge of the purchasers that such new shares were not covered by the Original Agreement, and the purchasers were formally informed that MCSB did not undertake to dispose of the newly issued shares to them and that the new capitalization would have to be considered and dealt with in intended discussions going forward;
 - (d) The shareholders' loans of RM30.6 million in the Original Agreement was no longer in existence or captured in RRSB's book in 2007/2013, the structure of the RRSB had been irreversibly changed and since 2003/2004 RRSB had held the assets on trust for MCSB without any loans;
 - (e) By reason of these subsequent developments, the core business and/or principal activity of the Group was changed from financial services to the cultivation and milling of oil palm under the plantation sector;
 - (f) The total consideration for any new agreement would have been RM53.1 million for 100% of RRSB as compared to the original consideration of RM30.6 million

shareholders' loans settlement and RM2.00 for 100% of RRSB as contained in the Original Agreements and the 2002 shareholders' resolution approved;

- (ii) **Material Variations to the 2002 Shareholders' Approval:** The shareholders' approval obtained in year 2002 merely mandated the directors to transfer 100% of RRSB comprising of two (2) RRSB shares then at a total consideration of RM2.00, upon repayment and settlement of a shareholders' loan of RM30.6 million (2002 Shareholders' Approval). The above mentioned intervening events had materially varied the nature and scope of the transaction as originally envisaged when the 2002 Shareholders' Approval was passed.
- (iii) The Board was categorically advised and cautioned by the Advisers that it was mandatory to seek fresh shareholders' approval before the 2013 Court Order could be complied with based on the following: -
 - (a) **Fresh shareholders' approval requirement 1 (Companies Act 1965):** Pursuant to Section 132(c)(1A) of Companies Act 1965, the Board shall not carry into effect any arrangement for the disposal of a substantial portion of the company's undertaking or property unless the arrangement has been approved by the company in a general meeting, whereby the term 'substantial portion' shall mean the same value prescribed by the provisions in the Main Market Listing Requirements ("MMLR") which relates to disposals by a company or its subsidiaries to which such provision applies and which would require the approval of shareholders at a general meeting in accordance with the provisions of the MMLR;
 - (b) **Fresh shareholders' approval requirement 2 (MMLR Chapter 10):** Pursuant to Chapter 10.07(1)(b) of MMLR, where any one of the percentage ratios of a transaction is 25% or more, in addition to the requirements of paragraph 10.06, the listed issuer must seek shareholder approval of the transaction in a general meeting. At the material time in 2013, the aggregate consideration for the disposal of the 100% of RRSB shares to comply with the 2013 Court Order represented 27% of the Group's total assets;
 - (c) **Fresh shareholders' approval requirement 3 (MMLR Chapter 8):** Pursuant to paragraph 8.22(1) of the MMLR, where a proposal has been approved by shareholders in general meeting and a listed issuer proposes to make a material amendment, modification or variation to such proposal, the listed issuer must issue a circular to its shareholders and seek its shareholder approval of such material amendment, modification or variation. The subsequent events as enumerated in (i) above without doubt fell within the ambit of MMLR Chapter 8 as material variations to the resolutions approved by shareholders in 2002.
 - (d) **MMLR Chapter 2:** Pursuant to section 2.05 of MMLR, listed issuers are required to comply with the MMLR both in spirit and in form.
- (iv) The Advisers advised MCSB to deliver the two (2) RRSB shares pursuant to the 2002 Shareholders' Approval to the purchasers, and the Advisers advised the Group to simultaneously seek fresh shareholders' approval on the substantial transaction and the material variations for the surrendering of the 99,998 subsequent additional RRSB shares, the palm oil mill asset, the change in total consideration and structure that were not covered by the 2002 agreement in order to comply with the demands of the purchasers;

An EGM was then held in July 2014 to seek such fresh shareholders' approvals for the proposed arrangement for surrender and disposal. The proposal was overwhelmingly rejected by the shareholders at the said July 2014 EGM. In light of the rejection of the proposal by the shareholders at the July 2014 EGM, the Group and its directors were placed in a very precarious position whereby non-compliance and contravention of Section 132C of the Companies Act 1965 and the Bursa Listing Requirements could result in the Group and its directors being exposed to potential criminal and civil liability including a jail sentence.

MHB then filed proceedings in the Kuala Lumpur High Court ("KLHC") seeking assistance and guidance of the court, as well as various declaratory and injunctive relief, arising from the aforesaid outcome of the July 2014 EGM and in the context of Section 132C of the Companies Act 1965 and the Bursa Listing Requirements. MHB took the position that MHB also sought inter alia an order from the Court for the company and the directors to be relieved from any liability whatsoever under Section 132C of the Companies Act 1965 should MCSB be required to transfer the RRSB shares and the plantation assets to the purchasers in the absence of fresh shareholders' approval.

All our prayers in the said suit were however dismissed by the KLHC on 11th April 2017 primarily on the basis of res judicata. The Court also expressed the view that the 2002 agreement was for the sale of the entire paid-up capital of RRSB, irrespective of the subsequent increase in paid-up capital.

Subsequent to MHB's filing of the suit in KLHC, MHB, MCSB, as well as the directors and the CEO in their personal capacity were sued by the purchasers for alleged abuse of court process and conspiracy to injure the purchasers by lawful and unlawful means. The purchasers alleged that the Federal Court review application filed by MCSB in 2014, the 2014 EGM, a subsequent cross-application filed by MCSB in the Ipoh High Court and the KLHC suit by MHB were all pursued by the Group to prevent them from enjoying their fruits of litigation. In addition, the purchasers claimed for special damages amounting to RM29.4 million, general damages and exemplary/aggravated damages (to be paid jointly and severally by MHB, MCSB, the directors and the CEO) to the purchasers for the possible profits under-earned between the period of 2004-2017. The alleged damages were underpinned by the hypothetical assumptions that the purchasers would have (i) replanted the plantation land successfully and optimally since 2004, (ii) would have successfully upgraded the mill to a modern system with substantial cost savings and (iii) would have generated much better returns. These allegations based on hypothetical assumptions were made despite the fact that the first legal suit in the Ipoh High Court was initiated by the purchasers only in 2007 and the disputes were still ongoing as at the end of 2016.

It is also to be noted that the plantation land and the mill therein were under the sole, exclusive and full possession, control and management of the purchasers from 2002 till to date. MCSB counterclaimed for unpaid rental from the purchasers for the period from 2011 to 2015, based on fresh evidence newly discovered in 2016 that the audited accounts of one Sri Ganda Oil Mill Sdn Bhd, the operating company for the oil palm plantation and palm oil mill (wherein the purchasers are major shareholders) had disclosed in their audited accounts that plantation rental was purportedly paid to MCSB up until February 2015 which was factually not the case.

On 31st May 2017, the KLHC dismissed MCSB's counterclaim in total while allowing the purchasers' claim for abuse of process and conspiracy to injure against not only MHB and MCSB but also the directors and

CEO as well and award the purchasers special damages of RM29.4 million, general damages of RM1 million, exemplary damages of RM250,000, interest and costs. The Group is now appealing to the Court of Appeal against the abovementioned decisions of the KLHC.

The directors and the management of the Group, together with their counsel and advisors have tried their utmost best and exhausted substantial time and resources to vindicate and protect their rights and interests through the legal process. The directors and the management are not personally emotionally attached to the loss of RRSB or the plantation assets, but the Group and the directors are legally bound to ensure that the rights and interests of the Group, its shareholders and the investing public are protected and upheld, and also to ensure that the Group does not contravene the country's laws and MMLR. The Group would make it very clear that in filing the KLHC suit, the Group had no intention to disregard or go against the 2013 Court Order. MHB genuinely took the view based on legal advice received that the surrender and disposal of the 99,998 subsequent additional RRSB shares and the palm oil mill asset as well as compliance with the 2013 Court Order could not be effected due to contravention of the Companies Act 1965 and the MMLR.