

**D. PROJECT MARINE****(i) Background**

122. In or around April 2007, Shukri caused the E&U Division of Sime Energy to present a 5-year strategic plan which envisioned Sime Energy owning and operating a marine fleet that would compete with international offshore construction contractors for international projects. The objective was to make Sime Energy a vertically integrated service-provider owner, and an EPCIC contractor. The Marine Strategy contemplated a build-up of Marine Transportation and Installation ("T&I") capability by way of acquisition of Offshore Support Vehicles.
123. According to this strategy, the first step was for Sime Marine to acquire vessels which could do business in the Offshore Support Vessel ("OSV") industry, and, in particular these vessels:-
- (i) Derrick Lay Barge ("DLB"); and
  - (ii) Anchor Handling Towing Supply ("AHTS").
124. The DLB covers a wide range of heavy construction vessels designed for laying large diameter pipelines and/or installation of platform jackets, topsides or modules.

125. The AHTS are vessels that can provide supplies to drilling, production or construction locations offshore. AHTS can also tow floating structures and equipment to location, anchor them to the seabed. In some cases, they also serve as emergency rescue and recovery vessels. AHTS are usually fitted with winches for towing and anchor handling.

(ii) Shukri's proposal to construct DLB and AHTS

126. By an Inter-Office Mail ("IOM") dated 11<sup>th</sup> April 2008, Shukri, as the Executive Vice-President of the Energy Division, sought the approval of Zubir, as President and Group Chief Executive, to authorize him (Shukri) to execute 4 Shipbuilding Contracts with MLC Shipping Sdn Bhd ("MLC") for construction and sale of 4 units of AHTS at US\$92 million.

127. On 24<sup>th</sup> April 2008, Shukri signed an IOM seeking the approval of Zubir for the construction of a DLB by MLC for the sum of US\$95 million which would be completed by the end of May 2009. Among the key risks listed are that Sime Energy has no experience in the T&I Sector, and therefore Sime Marine will rely on key members of MLC, their joint-venture partner. This IOM was approved by Zubir.

128. On 24<sup>th</sup> April 2008, Shukri signed an IOM seeking the approval of Zubir for the construction of 2 AHTS by MLC for US\$67.3 million, to be delivered in November 2009 and March 2010. The same risk referred in Paragraph 127 above, was specified in the IOM. The said IOM was approved by Zubir.

129. At a Risk Management Committee Meeting of the Board of Directors of Sime Darby held on 27<sup>th</sup> May 2008, Shukri presented a paper on the "Proposed Joint Venture with Puteri Offshore Pte Ltd. involving the construction of 3 offshore Marine Vessels at a cost of up to RM520 million (US\$162 million)", which had been approved for submission by Zubir. In the proposal entitled "*Sime Darby Energy Project Marine*", the joint venture was elaborated upon, with the DLB being described as having the following key features:-

- fitted with a heavy lift crane (lifting capacity of 1,600 MT).
- ability to lay pipes (water depths of up to 300 metres).

130. The minutes of the Risk Management Committee for its meeting held on 27<sup>th</sup> May 2008 record that:-

*"Management needed to undertake a due diligence on Puteri Offshore Ltd and the MLC Shipping Group, focusing in particular their engineering skills and financial capacity, as any default by the two entities posed a risk to the Group"*

The said Committee agreed to recommend to the Board of Directors that the Marine Project proposal be approved but expressly specified that it was not approving Puteri Offshore Ltd as a joint venture partner but it was for the Energy Division to persuade the Board:-

*"That, subject to the Energy Division being able to convince the Board of the suitability of Puteri Offshore Ltd becoming the joint-venture partner of the Division for the venture"*

131. The Board of Directors of Sime Darby at a meeting the following day (28<sup>th</sup> May 2008) noted:-

*"The Board commented that management should check what 'MLC' stood for and that the Group should undertake a due diligence on the integrity and financial resilience of the MLC Shipping Group. The Company needed to be careful as to who its partners were. Management was also requested to check with international banks on the financial standing of the Group"*

The minutes further record that "*subject to the results of the due diligence on MLC Shipping Group being satisfactory, the Board resolved*" that the joint venture proposal with Puteri Offshore Pte Ltd for the construction of 1 unit of DLB and 2 units of AHTS be approved.

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**(iii) Gross Negligence of Shukri and Zubir in not recommending outright purchase of DLB and AHTS**

132. In the IOM's dated 24<sup>th</sup> April 2008 (as pleaded in Paragraphs 127 and 128 above) reference was made to the market price of a DLB and a AHTS at the relevant time (April 2008):-

**(i) DLB**

The market value was US\$145 million. The cost of construction by MLC was US\$80 million, with working capital being an additional US\$15 million.

Thus, the sum payable to MLC was US\$95 million, which was lower than the then current purchase price of US\$145 million.

**(ii) AHTS**

The market value of 2 units was US\$79 million. The cost of construction by MLC was US\$ 58 million, with working capital being an additional US\$9.3 million.

Thus, the sum payable to MLC was US\$67.3 million, which was lower than the then current purchase price of US\$79 million.

133. The Plaintiffs contend that in failing to recommend to the Risk Management Committee and to the Board of Directors of Sime Darby that Sime Energy should have immediately purchased outright 1 unit of DLB and 2 units of AHTS, rather than entering into a joint venture with the MLC Group which required the construction of the 3 vessels over time, with its attendant risks, Zubir and Shukri acted in gross negligence of their duties to Sime Energy, as pleaded in Paragraphs 8 to 10 above.

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- (i) Purchasing the 3 vessels outright in say, August/September 2008, would have meant that they would have been available for the MOQ Project;
- (ii) Purchasing the 3 vessels would have meant that Sime Marine would have no reason to have dealings with MLC at all or on a long-term basis;

- (iii) Purchasing the vessels would have resulted in not having any problems associated with their construction in China, including the delays in completion;
- (iv) Purchasing the vessels in late-2008 would have resulted in their delivery to Sime Marine in or around late 2008 or early 2009, as opposed to a total failure of delivery, even as late as December 2010; and
- (v) The perils that have plagued the construction of the 3 vessels by MLC's agents were wholly foreseeable, and could have been avoided by the simple and clean option of purchasing them outright.

(iv) **No due diligence on MLC Group**

134. Although Shukri presented a paper and a proposal, and attended the Risk Management Committee meeting on 27<sup>th</sup> May 2008 and a Board of Directors of Sime Darby meeting on 28<sup>th</sup> May 2008, he either did not disclose at all or sufficiently highlight the fact that he had already signed on behalf of Sime Marine:-

- (i) Shipbuilding Contracts for the 3 vessels with MLC Shipbuilding Sdn Bhd on 25<sup>th</sup> April 2008; and

- (ii) Pre-Investment Agreement with Puteri Offshore Pte Ltd on 25<sup>th</sup> April 2008.

with regard to the construction of the vessels and the joint venture. His signature on all the above agreements were witnessed by Kadir.

135. The Plaintiffs contend that even if the said Agreements had been signed on behalf of Sime Marine subject to approval by the Board of Directors of Sime Darby, Shukri had pre-determined that the counter-party to the transactions was going to be MLC. Thus, Shukri disregarded the due diligence process expressly imposed by the Board of Directors as to the suitability of MLC as a joint venture party for Sime Energy.

136. The company search on Puteri Offshore Pte Ltd ("**Puteri Offshore**") was made available to Sime Marine by letter dated 25<sup>th</sup> July 2008. It disclosed that:-

- (i) Puteri Offshore is a company incorporated under the laws of Mauritius;
- (ii) It was only incorporated on 20th December 2007;

- (iii) One Redzuan Goh bin Mohammed Karian (“Redzuan Goh”) was its sole director; and
- (iv) The said Redzuan Goh is the sole shareholder, holding all 10 ordinary shares.

Because it had recently been incorporated, there was no reference to any business that it had carried on. Neither was there any information about its paid-up capital and no reference was made on the price of 1 (one) ordinary share.

137. M/s Zain & Co, a firm of advocates and solicitors practicing in Kuala Lumpur, was appointed by Sime Marine on 1<sup>st</sup> July 2008 to conduct a legal due diligence review on MLC. M/s Zain & Co. issued 2 reports on 28<sup>th</sup> July 2008.

138. KPMG, a firm of accountants, was appointed by Sime Darby Engineering on 1<sup>st</sup> July 2008 to conduct:-

- (i) high level financial due diligence on the financial affairs of the MLC Group; and
- (ii) high level integrity due diligence on Redzuan Goh and the companies within the MLC Group.

KPMG issued a draft report on 25<sup>th</sup> July 2008, which was followed by its final report on 26<sup>th</sup> August 2008. No material differences exist between the 2 reports.

139. KPMG's report highlighted the following issues:-

- (i) they had limited access to records and documents maintained by the MLC companies in Singapore and China;
- (ii) although they had access to management in MLC (Malaysia), they received verbal assurances and representations, which were not supported by documentary evidence;
- (iii) there was no proper recording of accounting transactions in MLC (Malaysia);
- (iv) in the opinion of KPMG, the management accounts of MLC (Malaysia) for the financial period ending 31<sup>st</sup> March 2008 and prior years were *"unreliable, unreflective and erroneous"*.
- (v) Redzuan Goh represented to KPMG that MLC's shipbuilding business yielded margins of between

15% to 40%, but the cash flows from 2007 to 2010 did not support this contention;

- (vi) Although KPMG were provided costing sheets for 8 out of 20 MLC vessels, the said sheets had not been updated to reflect actual contracted purchase price of machinery;
- (vii) Redzuan Goh procured engines and major machinery for all his vessels;
- (viii) Redzuan Goh depended wholly on one Vincent Tan for the supply of generator sets, steel and labour in China;
- (ix) There was no written agreement between MLC (Malaysia) and other MLC companies for the supply of generator sets, steel and labour;
- (x) Standard Chartered Bank Malaysia Berhad and CIMB Berhad were only prepared to give guarantees on behalf of MLC if sums equivalent to 50% and 100% of the guaranteed sum were placed with them as security deposits;

- (xi) Redzuan Goh may have been connected to a supplier, Flexi-Fit Investments Pte Ltd ("Flexi-Fit") : hence KPMG could not rule out the possibility of related party transactions insofar as Flexi-Fit was concerned; and
  - (xii) MLC had been late for as much as 117 days (4 months) with respect to the delivery of 4 vessels to Alam Maritim Resources Bhd.
140. The credit check by Dun & Bradstreet was conducted in July 2008. A rating was not assigned to MLC because it just had been incorporated on 5<sup>th</sup> September 2007. Although Dun & Bradstreet had requested for information, it was not given. A credit risk rating of 6 was assigned to MLC Barging Pte Ltd – this is 1.5 times higher than the average risk level. MLC Barging had also declined to give any information to Dun & Bradstreet.
141. Letters of financial standing extended by Affin Bank on 28<sup>th</sup> May 2008 and RHB Islamic Bank Bhd on 5<sup>th</sup> June 2008 on MLC were standard letters issued by banks merely stating the obvious, namely, a customer may be able to secure financing from them.
142. The Plaintiffs contend that Zubir and Shukri ought to have rejected MLC and Puteri Offshore as potential counter-

parties to Sime Marine because the due diligence reports, and, in particular, that of KPMG, were very critical and negative of the MLC Group. The critical facts were:-

- (i) Redzuan Goh was the principal player and moving spirit behind the MLC Group and Puteri Offshore;
- (ii) Nonetheless, he was not the sole shareholder in the MLC Group: his parents-in-law Vincent Tan and Nancy Eng were also shareholders;
- (iii) Hence it is very much a family run group of companies, with its inherent flaws and limitations;
- (iv) Their track record of building complex vessels like the DLB and AHTS, was not impressive;
- (v) The business of building vessels of this nature is highly capital intensive, and requires engineering standards of the highest degree, particularly in respect of the DLB; and
- (vi) At the most, the businesses carried on by Redzuan Goh and his family were very amateurish and not of a class, calibre or standing with whom a Sime Group

Company should be doing joint-venture business with.

(v) Misrepresentation of KPMG's financial due diligence reports to the Sime Darby Board

143. Zubir, who was instructed by the Board of Directors of Sime Darby to check the suitability of the MLC Group as Sime Darby's joint venture partner, failed to review the Summary of financial due diligence findings dated 19<sup>th</sup> August 2008 of KPMG which was prepared and signed by Rahim ("**Rahim's Summary**"), which had omitted KPMG's negative findings, including KPMG's opinion that "*for the financial period 31<sup>st</sup> March 2008 and prior to be unreliable, unreflective and erroneous.*" Rahim, having had full knowledge of KPMG's negative findings and the purpose of his Summary, acted in breach of his duties stated in paragraphs 8 to 10 above, when he prepared his Summary.
144. Shukri and Zubir, despite having knowledge as early as April 2008 that MLC's financial strength was in doubt, caused the contents of Rahim's Summary to be tabled at the Sime Darby Board of Directors meeting on 26<sup>th</sup> August 2008.

145. In failing to review the due diligence findings by KPMG and relying only on the Rahim's Summary, Shukri and Zubir acted recklessly in the representations that they made on the financial standing of the MLC Group to the Risk Management Committee and the Board of Directors of Sime Darby.

146. At meetings of the Risk Management Committee (25<sup>th</sup> November 2008) and the Sime Darby Board of Directors (28<sup>th</sup> November 2008), Zubir recklessly misrepresented when he reported:-

*"A due diligence on the MLC Shipping Group had been undertaken by KPMG. The due diligence had shown that although the financial statements were not up to date, the Group was financially sound".*

147. The Plaintiffs contend that Zubir and Shukri acted in breach of the duties owed to the Plaintiffs, as pleaded in Paragraphs 8 to 10 above, when Zubir and Shukri recklessly informed the Board of Directors of Sime Darby that KPMG had advised that MLC's financial position was sound, when KPMG had heavily criticized its accounts and records and when both Zubir and Shukri were aware that MLC's financial strength was in doubt.

(vi) Appointment of MLC grossly negligent

148. Between November 2007 and January 2008, requests to participate in the tender for the 3 vessels were sent by Sime Marine to 21 contractors and to 4 designers. By an e-mail message of 4<sup>th</sup> March 2008 from Mazhazmi Jamalludin, the General Manager – Marine Technical Services of Sime Marine, MLC was informed that Sime's management had decided to "go ahead" with MLC. The Plaintiffs contend that the decision to appoint MLC was taken by Zubir and Shukri.

149. The Plaintiffs contend that the evaluation process undertaken by the team working under Shukri which resulted in the choice of MLC was hopelessly flawed and did not comply with generally accepted standards.

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- (i) Although 21 contractors had been contacted to tender, 9 had indicated an interest to participate in the bid. Meetings were arranged with 4 and Invitation for Commercial Proposal letters were issued to 2 viz, Jaya Holdings Ltd ("Jaya") and MLC. No formal evaluation process was carried out; neither was a written report ever prepared which discussed the rationale for the appointment of MLC;

- (ii) The process described in sub-paragraph (i) above was not documented;
- (iii) Further, no paper containing the merits and demerits on a comparative basis was ever prepared giving reasons why MLC should be preferred to its rivals;
- (iv) No criteria on the technical capabilities of the contractors, or at least of a short-listed group, were ever circulated in writing;
- (v) There are no records prior to or about the time that Mazhazmi sent his e-mail message on 4<sup>th</sup> March 2008 to MLC as to why MLC had been selected;
- (vi) Shukri's IOM dated 24<sup>th</sup> April 2008 did not give any reasons why MLC was the successful tenderer; and
- (vii) The Board Paper presented to the Board of Directors on 28<sup>th</sup> May 2008 gave 1 reason why MLC was chosen, which shall be referred to in Paragraph 150 below.

(vii) **Misrepresentation in the Board Paper concerning  
MLC's track record**

150. The Board Paper submitted to the Board of Directors of Sime Darby for discussion at its 28<sup>th</sup> May 2008 meeting

(where the final decision to appoint MLC was made) stated that MLC had been chosen for its expertise in constructing OSV such as DLBs and AHTS, that it had constructed OSV's for industry players such as Alam Maritim Resources Berhad and its track record included 14 barges and vessels built and delivered since 2008.

151. These statements were false in that:-

- (i) MLC had never built a DLB prior to its appointment by Sime Marine in May 2008;
- (ii) only 10 barges had been delivered by MLC as at January 2008; and
- (iii) although MLC had some experience in shipbuilding, the AHTS had not been built by MLC but by Guangzhou Hangtong Shipbuilding and Ship Co. Ltd, a company which was not part of the MLC Group.

152. The Plaintiffs contend that Zubir and Shukri deliberately or recklessly misrepresented to the Board of Directors of Sime Darby about the experience and expertise of MLC in building DLBs and AHTS in order to ensure that MLC was appointed, regardless of its true track record.

(viii) Non-disclosure that actual construction of 3 vessels would be carried out by sub-contractors, and not by MLC

153. Rather than building the 3 vessels, MLC appointed the following 6 sub-contractors to perform the following functions:-

- (i) Flexi-fit Investments Pte. Ltd. (**Flexi-Fit**) - Shipbuilder of the 2 AHTS.
- (ii) Singtong Marine & Offshore Pte Ltd (**Singtong**) - Designer of the DLB.
- (iii) Wison (Nantong) Heavy Industry Co. Ltd (**Wison**) - Designer and builder of the floating Crane for the DLB.
- (iv) Nantong Mee Lee Cheong Tongbao Shipbuilding Co. Ltd. (**Nantong**) - Shipbuilder of the DLB.
- (v) Khiam Chuan Marine Pte Ltd (**Khiam Chuan**) - Designer for the 2 AHTS.
- (vi) Guangzhou Hangtong Shipbuilding & Ship Co. Ltd. (**Guangzhou**) - Shipbuilder for the 2 AHTS under a subcontract with Flexi-fit.

154. Singtong has offices in Singapore and China, with the Singapore company being incorporated on 5<sup>th</sup> October 2007 and the Chinese company on 15<sup>th</sup> February 2008. Thus, neither of the Singtong companies had any prior experience with the design of a DLB, and Sime Marine's DLB was the first to be designed by Singtong.
155. Wison has offices in China and Singapore. Its China company was incorporated on 1<sup>st</sup> March 2004 and its Singapore company on 9<sup>th</sup> July 2009. Thus, Wison had no previous experience in designing and building a floating crane for a DLB, and the Sime Marine's floating crane was the first to be designed and built by Wison.
156. Nantong was incorporated in China on 30<sup>th</sup> January 2008. It had no prior experience in building a DLB, and the Sime Marine's DLB was the first to be built by Nantong.
157. Khiam Chuan is a company incorporated in Singapore on 19<sup>th</sup> June 1993 and carries on general wholesale trade and ship management services. Khiam Chuan had previously designed OSV vessels, including AHTS.
158. Guangzhou is a company incorporated in China on 2<sup>nd</sup> March 1993. There is no information regarding Guangzhou's experience in constructing AHTS based on public domain archives and international and local media.

159. The Plaintiffs contend that Shukri and Zubir acted in breach of duties owed to the Plaintiffs, as pleaded in Paragraphs 8 to 10 above, when they did not take any action to terminate Sime Marine's joint venture with MLC when they knew or ought to have known that MLC was not designing and constructing the 3 vessels, but instead was sub-contracting the jobs to 6 contractors, 3 of whom had absolutely no experience in designing and building the DLB.

(ix) Plethora of Contracts

160. On 25<sup>th</sup> April 2008, 3 Pre-Investment Agreements were entered into between Sime Marine and Puteri Offshore whereby they agreed to enter into 3 Joint Venture companies for the purpose of owning, managing and operating the 3 vessels. The said Agreements were signed by Shukri for Sime Marine and Redzuan Goh for Puteri Offshore.

161. On the same day (25<sup>th</sup> April 2008), 3 Shipbuilding Contracts were entered into between Sime Marine and MLC. The said Agreements were also signed by Shukri and Redzuan Goh.

162. The rights and obligations of Sime Marine (as buyer of the 3 vessels) were subsequently novated twice:-

- (i) by virtue of 3 Novation Agreements dated 30<sup>th</sup> May 2008 entered into between MLC, Sime Marine and Sime Marine (HK); and
  - (ii) by virtue of 3 Novation Agreements dated 17<sup>th</sup> November 2008 entered into between MLC, Sime Marine HK, Sime Darby Marine Puteri Offshore I (L) Inc. ("**SDMPO I**"), Sime Darby Marine Puteri Offshore II (L) Inc. ("**SDMPO II**"), and Sime Darby Marine Puteri Offshore III (L) Inc. ("**SDMPO III**").
163. On 5<sup>th</sup> June 2008, a Supplemental Agreement was entered into between Sime Marine, MLC, Wison and Nantong allowing Sime Marine to take-over the contracts with Wison in the event of default of MLC. Shukri signed on behalf of Sime Marine.
164. On the very next day (6<sup>th</sup> June 2008), the Supplemental Agreement was novated by virtue of a Novation Agreement entered into between MLC, Sime Marine, Wison, Nantong and Sime Marine (HK). A second Novation Agreement was entered into on 17<sup>th</sup> November 2008 between MLC, Sime Marine (HK) and SDMPO I.
165. On 5<sup>th</sup> June 2008, 2 other Supplemental Agreements were entered into for the 2 AHTS vessels between Sime

Marine, MLC and Flexi-Fit/Guangzhou. Shukri signed on behalf of Sime Marine.

166. On the very next day, (6<sup>th</sup> June 2008) the 2 Supplemental Agreements were novated by virtue of a Novation Agreement entered into between MLC, Sime Marine, Flexi-Fit/Guangzhou and Sime Marine (HK). A second Novation Agreement was signed on 17<sup>th</sup> November 2008 between MLC, Sime Marine (HK), Flexi-Fit/Guangzhou and SDMPO I and II.

167. On 27<sup>th</sup> August 2008, Sime Marine (HK) and Puteri Offshore entered into 3 Investment and Shareholders Agreements with the joint venture companies, all of which were incorporated on 21<sup>st</sup> August 2008, for the ownership and lease of the 3 vessels as follows:-

- (i) SDMPO I - to own DLB No. 12888;
- (ii) SDMPO II - to own AHTS No. 75083; and
- (iii) SDMPO III - to own AHTS No. 75084

The said agreements were all signed by Shukri and Redzuan Goh.

168. The Plaintiffs contend that the execution of some 20 contracts for the construction and sale of 3 vessels was wholly unnecessary and not in the interests of Sime Marine and Sime Marine (HK). The resulting contracting structure was incredibly complex and opaque, with no clear rights and obligations of the respective contracting parties.

169. The Plaintiffs contend that Shukri acted against the interests of Sime Marine and Sime Marine (HK) in committing the said companies to a wholly confusing legal status.

(x) Changes unfavourable to Sime Marine authorized by Shukri to be included in Shipbuilding Agreements dated 25<sup>th</sup>

April 2008

170. The Shipbuilding Agreements dated 25<sup>th</sup> April 2008 entered into between Sime Marine (signed by Shukri) and MLC were drafted by external solicitors, with substantial input from the Group Strategy and Business Development Division and Group Legal Division of Sime Darby. The final draft, approved by Choo Suit Mae (“Choo”), Head of Group Strategy-Legal, Sime Darby, stated in Clause 11 that MLC (as seller) would provide bank guarantees to Sime Marine 10 days before the 3<sup>rd</sup> to 5<sup>th</sup> installments become due and payable by Sime Marine.

171. Senior managers reporting directly to Shukri suggested that MLC be required to provide the bank guarantees for the 3<sup>rd</sup> to 5<sup>th</sup> installments only after payment has been made by Sime Marine. This proposal was opposed by Choo as not being in the interests of Sime Marine. Without consulting Choo and without Choo's knowledge, Shukri authorized a change to Clause 11 with the result that Clause 11 in the signed and legally binding Agreement with MLC contained the provision in relation to the 3<sup>rd</sup> to 5<sup>th</sup> installments, that MLC need only provide a bank guarantee after Sime Marine had paid each of the installments.

172. By authorizing the said change in Clause 11 of the Shipbuilding Agreement, Shukri acted wrongfully and contrary to the best interests of Sime Marine. Further, Shukri's conduct indicates that he was more concerned in protecting the interests of MLC, to the prejudice of Sime Marine.

(xi) **Waiver of Conditions Precedent and Payment Clause in the Shipbuilding Agreements**

173. The Shipbuilding Agreements were entered into by Sime Marine with MLC on 25<sup>th</sup> April 2008, well before the Board of Directors of Sime Darby had given approval to enter into the transaction. Accordingly, Clause 44.1 of the

Shipbuilding Agreement for the DLB contained, *inter alia*, Conditions Precedent (“CP”), which included:-

- (a) that Sime Marine would secure a resolution of the Board of Directors of Sime Darby approving the purchase of the vessels; and
- (b) the completion of :
  - (i) a technical due diligence on the vessel and the floating crane; and
  - (ii) financial and legal due diligence on Puteri Offshore, the results of which are satisfactory to Sime Marine.

The Shipbuilding Agreements for the 2 AHTS contained similar Conditions Precedents.

174. To the knowledge of Zubir and Shukri, the approval by the Board of Directors of Sime Darby on 28<sup>th</sup> May 2008 was a conditional one, subject to proper due diligence on the MLC Group and Puteri Offshore. On 9<sup>th</sup> June 2008, Shukri submitted an Inter Office Memo (“IOM”) to Zubir stating:-

*“Based on the documentation reviewed and analysis performed on MLC Group, I am of the opinion that the MLC*

*Group possesses the financial resilience and integrity to be a credible joint venture partner for the construction and joint ownership of the offshore support vessels ("OSV"). Documents obtained from both Affin Bank Bhd and RHB Islamic Bank Bhd have confirmed the credit worthiness of MLC Group."*

Shukri concluded his IOM this way:-

*"Therefore the Energy Division would like to proceed with the execution of the 3 Shipbuilding Contracts by removing all conditions precedent mentioned in Clause 44 of the said contracts. Accordingly, the effective date of the shipbuilding contracts is 25<sup>th</sup> April 2008. Nevertheless, I would like to propose that a desktop due diligence on MLC Group be undertaken by external consultants concurrently in order to ascertain the financial integrity of MLC Group."*

175. On 23<sup>rd</sup> June 2008, Shukri submitted another IOM to Zubir seeking the latter's approval to:-

- (i) waive the Conditions Precedent set out in Clause 44.1 of the Shipbuilding Agreements;
- (ii) appoint KPMG and Zain & Co to conduct due diligence on MLC Group and Puteri Offshore;

- (iii) accept the bank guarantee facility confirmation for US\$82 million issued by CIMB Bank Bhd on behalf of MLC; and
- (iv) pay the sum of US\$40,260,000.00 representing 30% of the contract price to MLC with immediate effect.

The said IOM was approved by Zubir.

176. Shukri and Zubir acted in disobedience of the Resolution dated 28<sup>th</sup> May 2008 of the Board of Directors of Sime Darby when they issued and approved respectively the IOM dated 23<sup>rd</sup> June 2008 since no proper due diligence had taken place without KPMG and M/s Zain & Co being appointed, let alone tendering their reports. The latter professional firms having only been appointed by the same IOM, the decision to waive the CP on due diligence was wholly wrongful.

177. Further, their approval of the payment of US\$40 million to MLC was in breach of Clause 12 of the Shipbuilding Agreements in that an unconditional and irrevocable confirmation from MLC's financier was not provided. By their reckless conduct, Zubir and Shukri had removed all safeguards put in place in the said Agreements to protect

Sime Marine against breaches by MLC, thereby increasing the risks to Sime Marine in the entire transaction.

178. By such conduct, Zubir and Shukri had acted in breach of the duties owed to the Plaintiffs as pleaded in Paragraphs 8 to 10 above.

(xii) Waiver of the Bank Guarantee for the 3<sup>rd</sup> to 5<sup>th</sup>

Instalment Payments for DLB 12888

179. By June 2009, Sime Marine had paid a total sum of US\$22,860,000.00 to MLC for DLB12888. The 5th installment payment in the sum of US\$7,620,000.00 was due and payable in June 2009, but Sime Marine was not obliged to pay it because, contrary to Clause 11.1 of the Shipbuilding Agreements, MLC had not furnished the bank guarantees for the 3rd and 4th installments.

180. By an IOM dated 17<sup>th</sup> June 2009, Shukri sought Zubir's approval to:-

- (i) waive the requirement for MLC to issue unconditional bank guarantees for the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> installments;
- (ii) propose that MLC gives a corporate guarantee for the 1<sup>st</sup> to 5<sup>th</sup> installments; and

- (iii) pay MLC the 5<sup>th</sup> installment amounting to US\$7.62 million.

Zubir approved the request.

181. Shukri and Zubir acted recklessly and in gross disregard of their obligations owed to the Plaintiffs, as pleaded in Paragraphs 8 to 10 above, by waiving the requirements for bank guarantees, with its obviously inherent benefits, and to accept in substitute a worthless corporate guarantee from MLC itself, which to their (Shukri's and Zubir's) knowledge had cash flow problems.

**(xiii) Non-Delivery of 3 Vessels**

182. The original delivery date for DLB 12888 was 15<sup>th</sup> March 2009, which was extended to 31<sup>st</sup> July 2009. As at the date hereof, it has not been delivered to Sime Marine.
183. The scheduled delivery date for the 2 units of the AHTs was 1st March 2010. As the date hereof, they have not been delivered to Sime Marine.
184. The Plaintiffs contend that Zubir and Shukri acted in breach of the duties pleaded in Paragraphs 8 to 10 above, which resulted in Sime Marine suffering a total loss amounting to USD48 million in the investment in the 3

vessels. Accordingly, the Plaintiffs seek from Zubir and Shukri compensation in that sum, together with loss of profit that would have accrued to the Plaintiffs had the vessels been delivered on time

**E. RELIEF**

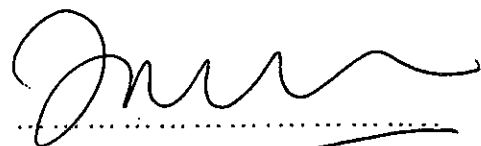
Accordingly, the Plaintiffs' seek judgment as follows:-

- (1) An Order that each of the Defendants make restitution in the sum of RM80,510,755.00, wrongly paid to consultants in the QP Project, as pleaded in Paragraph 53 above;
- (2) An Order that damages be assessed for all losses caused by the Defendants and suffered by the Plaintiffs in the QP Project to be paid by each of the Defendants as pleaded in Paragraph 62 above;
- (3) An Order that Kadir and Zaki make restitution in the sum of RM6.6 million wrongly given up with respect to the Performance Bond in the MOQ Project, as pleaded in Paragraph 77 above;
- (4) An Order that Shukri, Rahim and Zubir make restitution in the sum of RM6,210,000.00 wrongly released to RNZ in the MOQ Project, as pleaded in Paragraph 89 above;

- (5) An Order that damages be assessed for all losses caused by the Defendants and suffered by the Plaintiffs in the MOQ Project, to be paid by each of the Defendants, as pleaded in Paragraph 103 above;
- (6) An Order that each of the Defendants make restitution in the sum of USD30,808,000.00 being consultancy fees wrongly paid in the MOQ Project, as pleaded in Paragraph 121 above;
- (7) An Order that that Zubir and Shukri make restitution in the sum of USD48,000,000.00, being the losses suffered as a result of the total failure to deliver the 3 vessels in Project Marine, as pleaded in Paragraph 184 above;
- (8) An Order that compensation be assessed with respect to the loss of profit suffered by the Plaintiffs by reason of the failure to deliver the 3 vessels in time in Project Marine, and that each of the Defendants be ordered to pay it, as pleaded in Paragraph 178 above;
- (9) An Order that Damages be assessed for all losses suffered by the Plaintiffs in the 3 projects by reason of the actions and omissions of each of the Defendants, and an Order that such payment be made;

- (10) Aggravated or exemplary damages to be paid by each of the Defendants;
- (11) Alternatively, an Order that damages be assessed on the basis that each of the Defendants acted in breach of trust and/or fiduciary duty, and an Order that such payment be made;
- (12) Interest on all sums ordered to be paid from such period and for such rate as the Court deems fit;
- (13) Costs; and
- (14) Further or other relief.

Dated this 23<sup>rd</sup> day of December, 2010.~



Zaid Ibrahim & Co

Solicitors for the Plaintiffs

This **STATEMENT OF CLAIM** is filed by Messrs. Zaid Ibrahim & Co, Solicitors for the Plaintiff abovenamed, whose address for service is at Level 19, Menara Milenium, Jalan Damanlela, Pusat Bandar Damansara, 50490 Kuala Lumpur.

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