

IN THE HIGH COURT OF MALAYA IN KUALA LUMPUR
(COMMERCIAL DIVISION)

ORIGINATING SUMMONS NO : 2007

In the matter of the Powerhouse Asset
Management Sdn Bhd Gold Structured
Investment Scheme;

And

In the matter of Fund Manager License and
Fund Manager Representative License dated
27 December 2005;

And

In the matter of Sections 356 and
360(1)(a)(iii)(M), (N) and (P), 381 and 390
Capital Markets Services Act, 2007 and
relevant provisions of the Rules of the High
Court, 1980.

BETWEEN

SECURITIES COMMISSION

... PLAINTIFF

AND

1. POWERHOUSE ASSET MANAGEMENT SDN BHD
(Company No : 707021-H)
2. TAN KOK KHENG
(Passport No : S1394328A)

... DEFENDANTS

AFFIDAVIT

I, SALMAH BEE MOHD MYDIN (NRIC No :670920-07-5500) a citizen of Malaysia of full
age with an office address at No.3, Pesiaran Kiara, Bukit Kiara, 50490 Kuala Lumpur, do
solemnly and sincerely affirm and say as follows :

1. I am the Head of the Licensing Department of the Plaintiff ("the SC") and I am duly
authorized to affirm this affidavit on its behalf. Save where it is expressly stated

otherwise, the facts deposed herein are true to the best of my personal knowledge and/or based on records of the SC to which I have full access.

2. I affirm this affidavit in support of the Originating Summons filed herein by the SC for orders to be made against the Defendants to account for and make restitution to persons aggrieved by the Defendants' contravention of the terms and conditions of their respective licenses issued by the SC pursuant to Sections 15A and 15B of the now repealed Securities Industry Act, 1983.

A. The Parties

3. The SC is established pursuant to Section 3 of the Securities Commission Act, 1993 and have powers conferred upon it by or under, the Capital Markets and Services Act, 2007 and other securities laws from time to time enacted and in force under the laws of Malaysia.

4. The functions of the SC specified in Section 15(1) of the Securities Commission Act, 1993 are to, inter alia :-

- (a) to ensure that the provisions of the securities laws are complied with;
- (b) to take all reasonable measures to maintain the confidence of investors in the securities and future markets by ensuring adequate protection for such investors; and
- (c) to suppress illegal, dishonourable and improper practices in dealings in securities and trading in future contracts, and the provision of investment advice or other services relating to securities or future contracts.

5. The 1st Defendant ("Powerhouse") is a private limited company incorporated under the laws of Malaysia on 19-8-2005 and has a registered address at 650, Blok A, Kelana Centre Point, No. 3, Jalan SS7/19, Kelana Jaya, Petaling Jaya, 47301 Selangor. Now produced and shown to me marked as **Exhibit "A-1"** is corporate

information on Powerhouse as maintained by the Companies Commission of Malaysia.

6. Powerhouse was at all material times licensed under Section 15A of the now repealed Securities Industry Act, 1983 to carry on business as a fund manager from its premises at D-8-4, Megan Avenue I, 189 Jalan Tun Razak, 50450 Kuala Lumpur vide a fund manager license ("**Fund Manager License**") issued by the SC on 27-12-2005 which expired on 27-12-2006. Now produced and shown to me marked as **Exhibit "A-2"** is a copy of the Fund Manager License.
7. The 2nd Defendant ("**Tan**") is an individual of Singaporean citizenship with an address at B-8-5 Mont Kiara, Aman Condominium, Jalan Kiara 2, 50480 Kuala Lumpur at the material time and a director and shareholder of Powerhouse. Now produced and shown to me marked as **Exhibit "A-3"** is a photocopy of Tan's passport and Form 49 dated 23-11-2005 filed by Powerhouse.
8. **Tan** was at all material times licensed under Section 15B of the now repealed Securities Industry Act, 1983 to be a fund manager representative for Powerhouse vide a fund manager representative license ("**Representative License**") issued by the SC on 27-12-2005 which expired on 27-12-2006. Now produced and shown to me marked as **Exhibit "A-4"** is a copy of the Representative License.

B. Gold Structured Investment Scheme

9. On 9-1-2006, it was reported by The Star under an article entitled "*Gold's glitter to last a few more years*" that Powerhouse intended to launch a new investment scheme involving a gold structured portfolio on 8-2-2006 ("**Gold Structured Investment Scheme**"), with brief particulars of the scheme. Now produced and shown to me marked as **Exhibit "A-5"** is a copy of the said article.
10. The mechanism of the Powerhouse Gold Structured Investment Scheme was represented by Powerhouse as follows:

- (a) For a minimum investment of RM100,000.00 by each investor, Powerhouse would purchase scrap or unprocessed gold and through a manufacturing process, purify the same into 999.99% pure gold wafers.
- (b) The pure gold wafers would then be sold at a premium in the gold market and the profits distributed to investors at 10% nett returns on their initial investment over a period of 6 months.
11. On 2-3-2006, Powerhouse submitted its proposed advertisement in relation to the Gold Structured Investment Scheme for SC's consideration. Now produced and shown to me marked as **Exhibit "A-6"** is a copy of Powerhouse' letter dated 2-3-2006. Following this, on 8-3-2006, a meeting was held between representatives of Powerhouse and the SC whereupon Powerhouse represented that it had yet to commence business and had no clients. The SC also informed Powerhouse not to market or offer its gold structured product due to the SC's concerns with the investment scheme.
12. On 14-4-2006 however, 2 further articles appeared in the media regarding Powerhouse' Gold Structured Investment Scheme titled "*Powerhouse upbeat on new product*" and "*Yikon to set up local base*" in the NST and The Star respectively. The article in The Star reported that Powerhouse had entered into a contract to produce about 7 tonnes of gold wafers valued at RM500 million over a period of 2 years. Now produced and shown to me collectively marked as **Exhibit "A-7"** are copies of the said articles.

C. Investigation by Bank Negara Malaysia

13. At the material time, Bank Negara Malaysia ("BNM") commenced investigation on Powerhouse and having been satisfied or having reason to believe that Powerhouse had committed an offence under Section 25(1) of the Banking and Financial Institutions Act, 1989 ("BAFIA") for illegal deposit-taking. BNM conducted a raid of Powerhouse' premises on 10-5-2006 pursuant to its powers under Part XI of the BAFIA, and seized documents relating to the Gold Structured Investment Scheme and sample gold wafers.

14. In exercise of its powers under Part XI of the BAFIA, BNM also issued a directive to freeze all accounts in the name of Powerhouse maintained at Malayan Banking Berhad pending completion of investigations by BNM, namely :

	<u>Amount (RM)</u>
(a) Maybank Account No : 514570504402 (Account A)	300,069.50
(b) Maybank Account No : 514570503877 (Account B)	208,507.79
(c) Maybank Account No : 514570504670 (Account C)	2,124,385.00
(d) Maybank Account No : 214570055323 (Account D)	1,000,000.00

	3,632,962.29
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("Maybank Accounts")

Now produced and shown to me marked as Exhibit "A-8" is a copy of the notification from Malayan Banking Berhad to Powerhouse dated 22-5-2006.

15. On 26-5-2006, SC wrote to Powerhouse to confirm that Powerhouse' Gold Structured Investment Scheme was not approved by the SC on grounds that the Defendants were only licensed to carry on business activities relating to securitized investments. Now produced and shown to me marked as Exhibit "A-9" is a copy of the letter dated 26-5-2006.

D. Preliminary Findings by the SC

16. Based on documents from Powerhouse in the possession of the SC and pursuant to inquiries made under section 152 of the Securities Commission Act, 1993 between 17-7-2006 and 28-8-2006, it was determined that :

- (a) On or around 7-3-2006, Powerhouse had entered into a Memorandum of Understanding with Yikoni Gold Sdn Bhd ("Yikoni") to manufacture gold ornaments. A Manufacturing Agreement dated 13-4-2006 was thereafter signed for Yikoni to manufacture 999.9 fine gold wafers bearing the

Powerhouse logo. Now produced and shown to me marked collectively as Exhibit "A-10" are copies of the Memorandum of Understanding and the Manufacturing Agreement.

- (b) A vehicle known as G-Vest Corporation Sdn Bhd ("G-Vest") had been appointed as Powerhouse' agent on 8-2-2006 to remit investor funds for purposes of sourcing for and purchasing scrap gold. The scrap gold would be delivered to Yikoni for manufacture and thereafter, G-Vest would issue purchase orders on behalf of Powerhouse to Yikoni with information provided by Yikoni as to the weight and purity of the processed gold wafers. Now produced and shown to me marked as Exhibit "A-11" is a copy of the letter of appointment dated 8-2-2006 and a letter dated 17-5-2006 from G-Vest confirming the same.
 - (c) Between the period 27-2-2007 and 15-5-2007, G-Vest had apparently delivered scrap gold weighing 103,011.87 grams in pure gold equivalent to Yikoni under purchase orders with instructions to convert them to pure gold wafers and thereafter, to deliver the pure gold wafers (less processing fees) to Powerhouse. Now produced and shown to me marked collectively as Exhibit "A-12" are copies of the receipts from Yikoni and corresponding purchase orders from G-Vest, as well as a letter of instruction dated 16-5-2007 from G-Vest.
17. On 10-7-2006, BNM carried out a raid at the premises of Yikon and seized 92.935 kg of Gold Wafers ("Gold Wafers"). The Gold Wafers are valued at an estimated value of RM7.45 million based on the London fixing price as at 2-10-2007.

E. Contravention of Securities Industry Act 1983

18. It was at all times known to Powerhouse and Tan that the Fund Manager License was expressly subject to inter alia, the following conditions :-
- "1. That the license holder is prohibited from carrying on any other securities trading business other than the business of managing institutional investment

funds, trust funds, pension funds, insurance funds, provident funds and private individual fund ...

10. That the license holder is not permitted to publish, distribute, disseminate or provide any notice, circular or advertisement which solicits investment in any undertaking, development scheme or investment contract managed by the license holder in any form without the written approval of the SC.
 19. That the licence holder and its directors cannot allow any unlicensed fund manager representatives to undertake any activities of a licenced fund manager representative."
19. In the course of the aforesaid investigations by the SC, it was determined that Powerhouse had, contrary to representations made to the SC on 8-3-2006 and prior to SC's approval :
- (a) published, distributed and/or disseminated notices or advertisement to solicit investment in the Gold Structured Investment Scheme. Now produced and shown to me marked as Exhibit "A-13" is a sample of a promotional brochure on the Gold Structured Investment Scheme published by Powerhouse;
 - (b) entered into contracts with 75 individual investors ("Investors") who had invested an aggregate sum of RM12.8 million in the Gold Structured Investment Scheme between the period 9-2-2006 and 16-5-2006. Now produced and shown to me marked as Exhibit "A-14" is a list of the Investors and their respective sum of initial investments.
 - (c) engaged unlicensed fund manager representatives to solicit funds from Powerhouse's clients on behalf of Powerhouse to invest in the Gold Structured Investment Scheme pursuant to referral agreements signed. Now produced and shown to me and marked as Exhibit "A-15" are copies of 2 such referral agreements;

F. Directive issued by SC

20. On 13-12-2006, the SC issued a directive to Powerhouse under section 47F of the Securities Industry Act, 1983 inter alia, not to deal with the monies in its Maybank accounts and to transfer the same as directed, to a trust company or such other person as may be specified by the SC. Now produced and shown to me marked as Exhibit "A-16" is a copy of the said directive dated 13-12-2006.
21. On 29-12-2006, SC proceeded to use its powers under the securities laws to supervise the process of making restitution of the respective investments under Powerhouse's Gold Structured Investment Scheme to the Investors.

G. Restitution to Investors

22. In the interest of refunding investor funds in an orderly manner, the SC has appointed United Overseas Bank (Malaysia) Bhd and UOB Trustee (Malaysia) Berhad ("the Trustees") as a distribution agent and administrator in respect of the monies and properties traced from the funds of the investors of the Gold Structured Investment Scheme and/or belonging to Powerhouse including, inter alia, the following :

- (a) the funds in the Maybank Accounts; and
- (b) the Gold Wafers.

23. The scope of the Trustees' appointment is to liquidate and give an account of the cash proceeds from the Maybank Accounts and the Gold Wafers to the Plaintiff and distribute the cash proceeds to the Investors of the Gold Structured Investment Scheme pro-rata their respective initial investment. Now produced and shown to me marked as Exhibit "A-17" is a copy of the letter of appointment of United Overseas Bank (Malaysia) Bhd and UOB Trustee (Malaysia) Berhad containing the terms of the appointment.
24. The Defendants were at all material times aware of and were actively involved in the appointment of the Trustees, as well as the selection of the buyers for the Gold Wafers. For example, after discussions with the Trustees and Powerhouse on the

selection of a buyer for the Gold Wafers, it was Tan who had given the names of several local gold traders to United Overseas Bank (Malaysia) Bhd for the tender process and on 31-7-2007, Tan was present during the inspection of the Gold Wafers by 3 potential gold traders including Lin Shoon Jewellers Sdn Bhd, which was ultimately selected in the tender process. Now produced and shown to me marked as Exhibit "A-18" are copies of documents evidencing the Defendants' involvement in the said tender process.

25. To date, the Trustees have recovered a total sum of RM10,874,460.90 for distribution to investors, the details of which are as follows:

	<u>RM</u>
Sale proceeds of Gold Wafers (61.6kg)	4,940,893.25
Value of Gold Wafers (31.3kg) @ 2-10-2007	2,509,128.15
Maybank Account A (less bank charge RM5)	300,064.50
Maybank Account C (less bank charge RM5)	2,124,380.00
Maybank Account D (less bank charge RM5)	999,995.00

Recovery by Trustees	<u>10,874,460.90</u>

The sums have been deposited into 5 trust accounts maintained by the Trustees. Now produced and shown to me are copies of the following documents, marked respectively as follows:

Exhibit	Documents
A-19	Copy of a letter from UOB Trustee (Malaysia) Berhad to SC dated 26-9-2007 on the opening of the 5 trust accounts
A-20	Copy of a letter from UOB Malaysia to Lin Shoon Jewellers Sdn Bhd confirming the settlement amount of RM4,940,893.25 for the tender
A-21	Copy of a letter from Powerhouse to Malayan Banking

	Berhad dated 4-10-2007 instructing the remittance of monies into the 5 trust accounts
A-22	Copies of letters from UOB Trustee (Malaysia) Berhad to SC dated 9-10-2007 confirming the remittance of monies into the 5 trust accounts

26. To date, the entire recovered sum of RM10,874,460.90 has been fully disbursed to the Investors pro-rata their respective investment, either in cash or in the form of Gold Wafers, valued as at 2-10-2007. Now produced and shown to me marked as **Exhibit "A-23"** are copies of letters from the SC to the Trustees authorizing the distribution of 31.3 kg of Gold Wafers to 24 investors and the balance in cash.

27. After taking into account the amount of recovery of RM10,874,460.90 by the Trustee, there is still a shortfall of **RM1,925,539.10** to make full restitution to the Investors. The breakdown of the shortfall is as follows:

	<u>RM</u>
Total investments	12,800,000.00
<u>Less</u> Monies & Gold Wafers recovered by Trustee	10,874,460.90

Interim Shortfall	1,925,539.10
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28. There is an amount of RM216,231.49 belonging to Powerhouse in its office account (now in Maybank Account B) that is currently maintained by the Trustees and a further sum of RM150,000 that was earlier deposited by Powerhouse with the SC as a security deposit for the fund manager's license application pursuant to section 23 of the repealed SIA (now section 70 of the CMSA).

29. In the interest of providing full restitution to investors and restoring investor confidence, the SC believes that the total sum of RM366,231.49 ought to be utilized towards reducing the amount of the shortfall to **RM1,559,307.61**:

	<u>RM</u>
Interim Shortfall	1,925,539.10
<u>Less</u> amount in Powerhouse's Maybank Account B	216,231.49
<u>Less</u> security deposit	150,000.00

Final Shortfall	1,559,307.61

30. In pursuance thereof, the SC is empowered to, under the Capital Markets Services Act, 2007 and do hereby respectfully seek the Orders sought in the Originating Summons filed herein.

To an Affidavit by a deponent)
SALMAH BEE MOHD MYDIN)
 affirmed on 05 NOV 2007)
 at Kuala Lumpur.)
 No interpretation required])



SALMAH BEE MOHD MYDIN



This Affidavit of **SALMAH BEE MOHD MYDIN** is filed by Messrs Wong & Partners, Solicitors for Plaintiff abovenamed, whose address for service is at Level 41, Suite A, Menara Maxis, Kuala Lumpur City Centre, 50088 Kuala Lumpur. This Affidavit was affirmed on **05 NOV 2007** and filed on **05 NOV 2007**
 Tel No : 03 - 2055 1888 / Fax No : 03 - 2161 2919
 [Ref: CKY/YCG/DCI/egh/78210738-221760 (#154540)]