

DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
(BAHAGIAN DAGANG)

GUAMAN SIVIL NO: D/f-22 - 1219 - 07

ANTARA

SURUHANJAYA SEKURITI MALAYSIA ... PLAINTIF

DAN

THE AYER MOLEK RUBBER COMPANY BHD. ... DEFENDAN

WRIT SAMAN

YANG AMAT ARIF TUN DATO' SRI AHMAD FAIRUZ BIN DATO'
SHEIKH ABDUL HALIM, KETUA HAKIM NEGARA, S.S.M, P.S.M.,
S.P.M.K., S.J.M.K., S.P.M.S., S.S.D.K., S.S.A.P., S.S.M.Z.,
S.P.M.T., D.S.M.T., D.S.D.K., S.M.J., S.M.S., B.C.K., P.I.S.,
MENJALANKAN KUASA-KUASA DAN TUGAS-TUGAS HAKIM
BESAR MALAYA ATAS NAMA DAN BAGI PIHAK SERI PADUKA
BAGINDA YANG DI-PERTUAN AGONG.

Kepada :-

THE AYER MOLEK RUBBER COMPANY BHD,
Suite 13-13A
Tingkat 13, Wisma UOA II
21, Jalan Pinang
50450 Kuala Lumpur

Kami perintahkan kamu bahawa dalam tempoh lapan (8) hari selepas penyampaian Writ ini ke atas kamu, termasuklah hari penyampaian itu, kamu hendaklah menyebabkan kehadiran dimasukkan untuk diri kamu dalam kausa atas guaman **SURUHANJAYA SEKURITI MALAYSIA** yang beralamat di 3, Persiaran Bukit Kiara, Bukit Kiara, 50490 Kuala Lumpur, iaitu Plaintiff yang tersebut di atas dan ambil perhatian bahawa, jika kamu ingkar berbuat demikian, Plaintiff boleh meneruskan untuk mendapatkan penghakiman dan pelaksanaan.

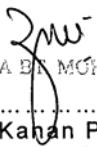
MUZLINA BT. MOHAMAD JAMIL

DISAKSIKAN oleh

Penolong

Kanan Pendaftar di Mahkamah Tinggi Malaya pada
haribulan **4 SEP 2007**, 2007.

.....
Peguamcara bagi pihak
Plaintif


MUZLINA BT. MOHAMAD JAMIL

.....
Penolong Kanan Pendaftar,
Mahkamah Tinggi, Kuala Lumpur

MEMORANDUM YANG HENDAK DITURUNKAN PADA WRIT

Writ ini tidak boleh disampaikan lebih daripada enam bulan kalendar selepas tarikh di atas melainkan jika diperbaharui melalui perintah Mahkamah.

Defendan (atau Defendan-Defendan) boleh hadir bersama dengan memasukkan kehadiran (atau kehadiran-kehadiaran) samada sendiri atau melalui peguamcara di Pejabat Pendaftaran Mahkamah Tinggi di Kuala Lumpur.

Defendan (atau Defendan-Defendan) yang hadir sendiri boleh, jika dikehendakinya, memasukkan kehadirannya melalui pos, dan borang-borang yang berkenaan bolehlah didapati dengan menghantar kiriman Pos berharga RM10-00 bersertakan sampul surat beralamat sendiri kepada Pendaftar, Mahkamah Tinggi di Kuala Lumpur.

Writ ini dikeluarkan oleh Tetuan Tommy Thomas, No. 101, Jalan Ara, Bangsar, 59100 Kuala Lumpur, Peguamcara bagi Plaintiff tersebut yang alamatnya ialah di 3, Persiaran Bukit Kiara, Bukit Kiara, 50490 Kuala Lumpur. Plaintiff adalah bermastautin di dalam wilayah terjadual, sebagaimana yang ditakrifkan dalam Akta Kawalan Pertukaran, 1953. [Ruj. Kami: AAG/20072839] (Tel: 03-2287 3540) (Fax: 03-2284 8892) [C:\Alan\2839-SC-Ayer Molek-Writ+SOC]

PENGINDORSAN TENTANG PENYAMPAIAN

Writ ini telah disampaikan oleh
dengan cara

kepada Defendan

pada hari , haribulan , 2007.

Diindorskan pada haribulan , 2007.

Penghantar Saman.

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

CIVIL SUIT NO. : - 22 - OF 2007

BETWEEN

SECURITIES COMMISSION MALAYSIA ... PLAINTIFF

AND

THE AYER MOLEK RUBBER COMPANY BHD. ... DEFENDANT

STATEMENT OF CLAIM

A. PARTIES

1. The Plaintiff ("the Securities Commission" or "SC") is established pursuant to Section 3 of the Securities Commission Act, 1993. The Securities Commission has all the functions and powers conferred upon it "inter alia" by or under the Securities Industry Act, 1983 ("SI Act"), the Securities Industry (Central Depositories) Act, 1991, the Securities Commission Act, 1993, and the Futures Industry Act, 1993 ("securities laws").

2. The functions of the SC specified in Section 15 (1) of the Securities Commission Act ("the SC Act"), insofar as they are relevant to this suit, include:-

- "(i) to regulate all matters relating to securities and future contracts;
- (ii) to ensure that the provisions of the securities laws are complied with; and
- (iii) to take all reasonable measures to maintain the confidence of investors in the securities and future markets by ensuring adequate protection for such investors."

3. The Defendant ("Ayer Molek" or "the company") is a company incorporated under the laws of Malaysia, with its shares listed for trading on the Main Board of Bursa Malaysia Securities Berhad ("Bursa").

4. The principal activities of Ayer Molek were at all material times the ownership of rubber and oil palm plantations and investment holding. In or about August 1997, Ayer Molek

ceased carrying on business, and leased its entire plantation lands to a third party. At all material times, Ayer Molek's assets comprised plantation lands in Jasin, Malacca ("the Jasin land") and Segamat, Johor ("the Segamat land").

B. THE LISTING REQUIREMENTS OF BURSA

5. The Listing Requirements ("the Requirements") of Bursa have legal status pursuant "*inter alia*" to Section 2 (1) and 8(2)(d) and (e) of the SI Act, and must be complied with by *inter alia*, all companies whose securities have been admitted for listing on Bursa, and are offered for trading ("listed issuer"), including Ayer Molek. Insofar as they are relevant to this suit, the Requirements include the following :

- i) An applicant seeking a listing on the Main Board must have a minimum issued and paid-up capital of RM60 million comprising ordinary shares of at least RM0.10 each ("the minimum capital requirement") [Paragraph 3.04(1)];

- ii) A listed issuer must ensure that its paid-up capital is maintained at all times at the minimum capital requirement [Paragraph 8.16A(1)];

- iii) Bursa may suspend trading in the securities of a listed issuer that does not comply with the minimum capital requirement and thereafter delist the said listed issuer [Paragraph 8.16A(3)];

- iv) A listed issuer must make immediate public disclosure of any material information [Paragraph 9.03]; including the purchase or sale of an asset [Paragraph 9.04(h)];

- v) For a transaction where any one of the percentage ratios is equal to or exceeds 5%, as soon as possible after terms of the transaction have been agreed, the listed issuer must make an immediate announcement to Bursa of such transaction, and the listed issuer must also furnish Bursa, in a separate letter, the percentage ratios applicable to such transaction [Paragraph 10.04];

- vi) For a transaction where any one of the percentage ratios is equal to or exceeds 25%, in addition to the requirements of paragraph 10.04, the listed issuer must further obtain the approval of its shareholders in general meeting of the transaction [Paragraph 10.06(1)].

6. In the event of a breach of the Requirements by a listed issuer, the Securities Commission may take any action against it under the securities law, including under Sections 11 and 100 of the SI Act.

C. BREACH OF REQUIREMENTS BY AYER MOLEK

C.1 Failure to Meet the Capital Requirement

7. Ayer Molek has an authorised capital of RM800 million divided into 800 million shares of RM1 each, of which only RM1.8 million have been issued and fully paid ("the 1.8 million shares"). Thus, Ayer Molek has a shortfall of RM58.2 million of its paid up capital insofar as the minimum capital requirement is concerned. Accordingly, Ayer Molek is in breach of Paragraphs 3.04 and/or 8.16A(1) of the Requirements.

8. In consequence of such breach, the following events transpired :

- i) On 9th March 2007, Ayer Molek announced its plan to regularize the capital requirement in accordance with Paragraph 8.16A;
- ii) On or about 26th March 2007, Bursa issued a show cause letter to Ayer Molek requiring it to state why its shares should not be delisted and removed from the Main Board of Bursa. On 11th May 2007, however, Bursa announced *inter alia*, that it had decided to grant Ayer Molek an extension of time until 31st May 2007 to submit its plan to the relevant authorities for approval;
- iii) On or about 18th May 2007, one Leasing Corporation Sdn Bhd ("Leasing"), the registered holder of 452,000 shares in Ayer Molek (representing 25.11% of the paid-up capital of Ayer Molek) informed the Directors of Ayer Molek that for the purpose of protecting the value of their equity interest and those of all other shareholders, Leasing would submit a detailed

regularization plan for Ayer Molek to comply with the minimum capital requirement. The capital regularization plan was apparently forwarded by Leasing to the Directors of Ayer Molek under cover of letter dated 18th May 2007;

- iv) On 25th May 2007 however, Leasing proposed to the Directors of Ayer Molek an alternative capital regularization plan and fresh business;
- v) Ayer Molek failed to submit its plan to comply with Paragraph 8.16A(1) of the Requirements to the relevant authorities for approval by the extended date of 31st May 2007. In consequence, on 1st June 2007 Bursa announced that in accordance with its decision as stated in its letter dated 11th May 2007, the securities of Ayer Molek would be removed from Bursa's official list at 9.00am on Wednesday, 13th June 2007;
- vi) On 12th June 2007, Bursa announced that the removal of the securities of Ayer Molek from the Exchange's official list would be deferred pending the decision of

an appeal lodged by Leasing. On 12th July 2007 however, Bursa announced that after having considered all the facts and circumstances of the matter the Appeals Committee had disallowed Leasing's appeal, and that the securities of Ayer Molek would be removed from the Official List of Bursa at 9.00 am on Tuesday, 24th July 2007;

- vii) On 20th July 2007, one Goh Joon Hai filed a Writ and Statement of Claim against the Exchange in Kuala Lumpur High Court Suit No. D3-22-976-2007 [allegedly on behalf of himself and 74 other members of Ayer Molek who between them hold 194,900 shares representing 10.82% of the paid-up capital of the company ("the Minority Shareholders")] seeking *inter alia*, in the said suit an Order that Bursa be restrained from de-listing Ayer Molek;

- viii) The Minority Shareholders obtained an ex-parte Injunction in the said suit against Bursa on 23rd July 2007 restraining Bursa from removing the securities of Ayer Molek from its official list on 24th July 2007 and for a period of four months thereafter.

- ix) On 7th August 2007, the returnable date for the *inter partes* hearing of the Injunction application, the parties to the said Suit announced to the Court that they had come to a compromise, and the Minority Shareholders requested that the injunction be set aside by consent and proceeded to withdraw the Writ with no order as to costs.

- x) Bursa granted Ayer Molek a further extension of time until 1st November 2007 to prepare and announce its plan to comply with the minimum capital requirement and has deferred Ayer Molek's de-listing to that date.

9. In the Affidavit in support of their application for injunctive relief in the said suit, the Minority Shareholders have alleged *inter alia*, the following :

- i) that they had requisitioned the Directors of Ayer Molek to convene an Extraordinary General Meeting ("EGM") of the company to remove all the existing 7 directors and to appoint 4 new directors to the board;

- ii) that a director of the company, namely, one Ismail bin Ahmad ("Ismail") was an undischarged bankrupt, and therefore legally incompetent to act as a director. Nevertheless the company failed, refused and/or neglected to remove Ismail as a director of the company;
- iii) that none of the existing 7 directors of the company hold any shares in Ayer Molek; and
- iv) that there is complete disinterest on the part of the directors in carrying out their duties and in taking the necessary steps to regularize the capitalization of the company to comply with Paragraph 8.16A of the Requirements.

Ismail, Ayer Molek's Group MD and Chief Executive Officer since 1993, only resigned from his posts on 22nd May 2007 despite having been adjudged a bankrupt as long ago as 4th March 2002.

10. On 6th August 2007, Ayer Molek's Board of Directors announced that pursuant to the requisition, an EGM would be held on 14th September 2007. On 7th August 2007 however, the

members of the company who had requisitioned for the EGM gave notice that the said EGM would be held on 7th September 2007 instead. This led to the Board of Directors of the company announcing that the EGM proposed to be held on 7th September 2007 was unlawful and that the EGM would proceed on 14th September 2007 as announced by them earlier. The result of the confusion on the date of the EGM has meant that it is fixed for 7th and 14th September 2007.

C2. The 2006 Transaction

- Sale of Segamat Land

11. In or about April 2006, Ayer Molek sold 287.7 hectares (equivalent to about 710 acres) of the Segamat land to one Bintang-Bintang Sdn Bhd for the sum of RM12,087,000.00 ("the 2006 Transaction"), which works out to about RM16,991.00 per acre.

12. The 2006 Transaction exceeded 25% of the percentage ratio as provided in Paragraph 10.02(h)(iii) of the Requirements. Whilst the company announced the 2006 Transaction to Bursa, wrongfully, and in breach of Paragraph 10.06 of the Requirements, Ayer Molek failed to hold a general

meeting of its shareholders to secure approval of the transaction prior to its completion or at all.

13. The proceeds of sale of the Segamat Land were allegedly deposited into a stakeholder's account maintained by the legal firm of Messrs Halim Zarus & Co. In its announcement of its 3rd quarter financial results, Ayer Molek disclosed that a part of the proceeds (RM2.4 million) was utilized to purchase a 30% shareholding in an Indonesian company called PT Varita Majutama ("Indonesian company"). A further sum of RM4,150,020.00 was allegedly advanced by Ayer Molek to the Indonesian company for the latter's alleged operating expenses. This payment was made without the approval of Ayer Molek's Board of Directors. The balance of the sale proceeds of the Segamat land, totalling about RM5,536,980.00 have been utilized for Ayer Molek's alleged operating expenses without any breakdown being given for the same.

14. In the draft report of Ayer Molek's external auditors for the financial year ending 31st December 2006, the auditors raised *inter alia*, the following issues for Ayer Molek's Board's

attention :

- i) Ayer Molek had invested in an associated Indonesian company during the year under review when the associated company had incurred a loss of RM11.3 million. The Indonesian company also had a negative shareholders' fund of RM3.2 million as at 31st December 2006;
- ii) The Directors of Ayer Molek had failed to carry out an assessment for impairment of its investment;
- iii) the Ayer Molek group equity accounted for post acquisition losses of the Indonesian company amounting to RM508,000. The quantum of the post acquisition loss was however based on unaudited management accounts. The auditors have been unable to satisfy themselves that the nett loss of the associated Indonesian company has been fairly allocated between the pre and post acquisition period for the purpose of equity accounting of the Ayer Molek group;

- iv) Ayer Molek was owed an amount of RM4.1 million by the Indonesian company and the auditors were unable to ascertain the recoverability of the debt;
- v) an amount of RM763,000 was paid as development expenditure towards a proposed procurement of agriculture land in Sarawak. As at the date of drafting the auditors' report, there was no evidence that the company had secured the land from the Sarawak Government; and
- vi) a further sum of RM573,000 for "preliminary expenses" was paid via cash cheques for which there was no documentation in support.

Inter alia, for these reasons Ayer Molek's audited accounts for the year ending 31st December 2006 have yet to be approved and submitted to Bursa as required under the law.

C.3 The 2007 Transaction

- The Sale of Jasin Land

15. In January 2007 the company agreed to sell its last remaining plantation land measuring 91.146 hectares (equivalent

to about 225.25 acres), that is, the Jasin land to Bintang-Bintang Sdn Bhd for a total consideration of RM8 million ("the 2007 Transaction") which works out to about RM35,514.52 per acre. This transaction was completed without the approval of the company's Board of Directors.

16. Whilst the 2007 Transaction also exceeded 25% of the percentage ratio provided in Paragraph 10.02(h)(iii) of the Requirements, Ayer Molek failed to announce it to Bursa, and also failed to convene a general meeting of its shareholders in order to approve the transaction prior to its completion or at all. In consequence, Ayer Molek breached Paragraphs 10.04 and 10.06 of the Requirements.

17. Further or alternatively, Ayer Molek's failure to obtain its shareholders' approval for the 2006 and/or 2007 Transactions is in breach of Section 132C of the Companies Act, 1965.

18. The proceeds of the 2007 Transaction were placed in a stakeholder's account operated by the legal firm of Messrs Ropizah Ambri, which is a sole proprietorship. Ropizah Ambri is the wife of Ayer Molek's in-house legal advisor, one Shukor bin Ishak. The legal firm of Ropizah Ambri & Co. is located within

Ayer Molek's office premises at Suite 13-13A, 13th Floor, Wisma UOA 2, 21, Jalan Pinang, Kuala Lumpur, and shares the same telephone and fax numbers with Ayer Molek. Of the RM8 million sale proceeds of the 2007 Transaction, there apparently only remains the sum of approximately RM6.6 million in the stakeholder's account.

**D. PROTECTION OF INVESTORS AND EXERCISE
BY SECURITIES COMMISSION OF
ITS POWERS / DISCRETION**

19. By the matters pleaded above, and having regard to :
- i) the ongoing dispute between Minority Shareholders and the Board of Directors of Ayer Molek;
 - ii) the refusal of the directors of Ayer Molek to comply with the minimum capital requirement, thus seriously jeopardizing the value of Ayer Molek's shareholders' equity interest;

- iii) the EGM of Ayer Molek which is scheduled to be held on 7th and 14th of September 2007 whereat the present Directors may be removed and replaced;
- iv) the conduct of Directors in causing Ayer Molek to contravene the Requirements, and the provisions of Section 132C of the Companies Act, 1965 in relation to the 2006 and 2007 Transactions;
- v) the serious discrepancies in Ayer Molek's accounting records which have caused the delay in the approval of its audited accounts, and submission to Bursa;
- vi) the inability of Ayer Molek to answer the query raised by its auditors on the expenditure of RM573,000 from the proceeds of the 2006 Transaction which was allegedly paid towards "preliminary expenses"; and
- vii) the proximity of the relationship between the alleged stakeholder (with whom the proceeds of the 2007 Transaction have been deposited) and Ayer Molek,

the SC is concerned that unless the balance of the proceeds of the sale of the Segamat and Jasin lands are secured by Order of Court, there is a real risk that the said proceeds may be dissipated, particularly as the present Board of Directors may be removed and replaced at the EGM. Having regard to the fact that the said proceeds represent the last remaining asset of Ayer Molek and having regard to the liquidity of the sale proceeds, it is vital that in order to protect the interests of all the shareholders (and indeed the creditors) of Ayer Molek, that Securities Commission applies to Court for the necessary relief under the securities law or otherwise.

20. Further or alternatively, the non-disclosure of relevant and material information by Ayer Molek, as pleaded above, constitutes a dishonest concealment of material facts on the part of Ayer Molek within the meaning of Section 87 (1) (b) of the SI Act, perpetuated in order to induce or attempt to induce shareholders or other investors from continuing to hold on to or purchase its shares or not to sell them notwithstanding the "asset stripping" activities of Ayer Molek. The closing price of the shares of Ayer Molek as at 30th August 2007 was RM18.80 per share.

21. Further or alternatively, the omission by Ayer Molek to make a public announcement relating to the sale of the Jasin land and its failure to convene a general meeting of members to approve the said sale thereby carrying out the same secretly and surreptitiously constitute unlawful activities on its part within the meaning of Section 87A of the SI Act in that:

- (a) it was a scheme to deceive or defraud;
- (b) it amounted to a course of business which would operate as a fraud or deceit upon its shareholders or other investors; or
- (c) it was a failure to state a material fact, namely, that its remaining landed asset had been sold, probably at an under-value.

22. According to the audited accounts of Ayer Molek as at 31st December 2005, as published in its 2005 Annual Report presented at its Annual General Meeting held on 28th June 2006, the Segamat and Jasin lands were valued at RM29,996,000.00. Accordingly, to sell the same for RM20 million represents an under-value, and a loss to the company, and its shareholders.

23. The Securities Commission institutes this suit *inter alia*, pursuant to the powers conferred on it under Sections 90 and/or 100 of the SI Act.

E. RELIEF

Accordingly, the Securities Commission prays for the following relief:-

- (1) An Order that the Defendant, whether by itself, its servants, agents or otherwise howsoever, be restrained from:
 - a) removing from Malaysia any of its assets which are in Malaysia, whether in its own name or not and whether solely or jointly owned;
and
 - b) in any way disposing of or dealing with or dissipating any of its assets, whether they are in or outside Malaysia, whether in their own name or not and whether solely or jointly owned, or otherwise diminishing their value,

including the following assets in particular :-

(i) all monies held in the accounts of the said Defendant in all Banks and other financial institutions in Malaysia;

and

(ii) all monies held in the accounts of the said Defendant in all Banks and other financial institutions outside Malaysia.

(2) Without prejudice to the generality of the Orders sought in Paragraph 1 above, that no monies belonging to the Defendant held in any account operated by its solicitors, Messrs Ropizah Ambri & Co, or by any other solicitors or other agents, in any bank in or outside Malaysia, be withdrawn until trial of this suit or until further Order;

(3) An Order that the Defendant affirm, file and serve on the Plaintiff's Solicitors, an Affidavit within 10 days of the service of this Order on it, giving information pertaining to all its assets, whether in or outside Malaysia, and whether in its own name or not and whether solely or jointly owned, including the nature, value, location and other relevant details of all such

assets (including monies held by its solicitors as stated in Paragraph 2 above);

- (4) An Order that the Defendant affirm, file and serve on the Plaintiff's Solicitors, an Affidavit within 10 days of the service of this Order on them, giving information on how and for what purposes the proceeds of the 2006 and 2007 Transactions (as defined in the Statement of Claim filed herein) were applied by the Defendant;
- (5) An Order compelling the Defendants to make a public announcement relating to the 2007 transaction in full compliance of the relevant Requirement within ten (10) days of an Order of this Court;
- (6) An Order compelling the Defendant to hold an extraordinary general meeting to seek approval from its shareholders in respect of the 2006 and 2007 transactions, within 30 days of an Order of this Court;
- (7) An Order that the Defendant makes restitution, at such rate and on such terms as imposed by this

Honourable Court to persons aggrieved in the opinion of this Court, by reason of the breach on the part of the Defendant of the securities laws and relevant Requirements in relation to the 2006 and 2007 transactions;

- (8) Further or other relief under Section 100 (1) of the SI Act or otherwise;
- (9) Costs;

Dated this 4th day of September, 2007.


.....
Plaintiff's Solicitors.

This Statement of Claim is filed by Messrs Tommy Thomas, No. 101, Jalan Ara, Bangsar, 59100 Kuala Lumpur, Solicitors for the Plaintiff abovenamed. [Our Ref: AAG/20072839] (Tel: 03-2287 3540) (Fax: 03-2284 8892) [C:\Alan\2839-SC-Ayer Molek-Writ+SOC]