
19.0 SALIENT TERMS OF THE PRINCIPAL AGREEMENTS AND THE BAIDS (Cont'd)

If the Government expropriates the Concession or SILK pursuant to paragraph 18.2, then the Government shall pay to SILK or the shareholders of SILK (as the case may be) within six (6) months after the date of expropriation:

- (i) the amount (if any) by which the Value of Completed Works exceeds the aggregate of the amounts paid or the liabilities and obligations to the Lenders assumed by the Government and all amounts as at the date of expropriation owing to the Government by SILK under the Concession Agreement; and
- (ii) an amount equal to:
 - (a) the amount of interest which would have accrued on the subscription moneys paid to SILK in respect of its paid up share capital if interest has accrued on such amounts from the relevant dates of payment to the date of payment by the Government on an annual basis at the rate of twelve per cent (12%) per annum; less
 - (b) any net dividends received by the shareholders of SILK, all retrenchment costs of employees (if any) and all costs of terminating third party contracts resulting from the Termination.

The subscription moneys shall include amounts subscribed for preference shares and the amount of premiums paid to SILK for the subscription of ordinary and preference shares.

20.4 Value of Completed Works

“Value of Completed Works” shall mean the amount jointly certified by the Operation Auditors to be the aggregate as at the Termination Date of;

- (i) the value of the Works in relation to the SILK Funded Stretch that have been completed at the Termination Date as certified by the consulting engineering firm referred to in paragraph 6.1;
- (ii) all design, management and consulting costs and fees for professional services reasonably and properly incurred by SILK in relation to the Concession;
- (iii) the cost of maintenance of the Ring Road (including the existing roads comprised therein) from 8 October 1997 up to the date SILK is allowed to collect Toll;
- (iv) the Land Use Payments in relation to the SILK Funded Stretches;
- (v) the certified value of any Additional Capital Investment made by SILK prior to the Termination Date and which the Government has agreed to take over upon termination of the Concession. Provided Always that such Additional Capital Investment shall not include any items which has previously been taken into account under (i), (ii), (iii) and (iv) above; and
- (vi) less any depreciation or amortisation charged and taken to the Profit and Loss Account of SILK up to the Termination Date calculated in accordance with Internationally Recognised Accounting Standards.

Provided that for the purposes of paragraph 20.2.2, a sum equivalent to the Value of Equity shall be deducted from the Value of Completed Works. For the purposes of the Concession Agreement, the Value of Equity shall mean the actual amount invested by the shareholders of SILK in SILK by way of ordinary shares, preference shares and loan stocks.

19.0 SALIENT TERMS OF THE PRINCIPAL AGREEMENTS AND THE BAIDS (Cont'd)

21. Indemnity by SILK (Clause 28)

SILK shall indemnify and keep indemnified the Government from and against all actions, suits, claims, demands, proceedings, losses, damages, compensation, costs (including solicitor and client costs), charges and expenses whatsoever to which the Government shall or may be or become liable in respect of or arising from the Concession except that SILK shall not be so liable to indemnify the Government for reasons solely and directly in executing any direction by the Government.

22. Dispute Resolution (Clause 29)

22.1 Expert Determination

Disputes relating to constructing the Ring Road in a proper and workmanlike manner using good quality materials, plant and equipment, carrying out the Construction Works not in accordance with the Approved Design or the provisions of the Concession Agreement, the Approved Design diverging from statutory requirement or other dispute which the parties agree should be dealt with under this provision, shall be determined by one independent expert in the relevant field(s) or by an independent expert in each of the relevant fields (if there is more than one field) as agreed and appointed jointly by the parties. If the parties cannot agree on such appointment, then upon the application of either party, the independent expert shall be appointed by the Board of Engineers of Malaysia. The decision of the independent expert shall be made as an experts and not as an arbitrator and shall be final and binding on the parties and SILK and the Government shall share equally the costs incurred by any such expert in making the determination unless otherwise awarded by the expert.

22.2 Arbitration

Other than disputes arising out of or relating to Toll (provisions of paragraph 13) for which there is no recourse to arbitration or, any matter dispute relating to the Concession Agreement which cannot be agreed upon or settled amicably by the parties, shall be referred to an arbitrator to be agreed between the parties hereto or, failing agreement, to be nominated on the application of either party hereto by the Director of the Regional Centre for Arbitration in Kuala Lumpur and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1952. The decision of the arbitrator shall be final and binding on each of the parties hereto. Any such arbitration shall be heard at the Kuala Lumpur Regional Centre for Arbitration.

23. Local Participation, Personnel, Material and Services (Clause 36)

23.1 Contract with Third Party

SILK may enter into contracts with local third parties only for the carrying out of the civil works, and may enter into contracts with third parties, both local and international, for the carrying out of the other Works provided always that Bumiputra construction contractors shall be invited to tender and be awarded at least thirty per cent (30%) of the aggregate contract value of the Construction Works and such Bumiputra construction contractors shall not be related to or associated directly or indirectly with SILK or the shareholders of SILK. Any award of the Construction Works to such Bumiputra construction contractor shall be made upon prior consultation of the Government and SILK shall duly notify the Government in writing of such contracts, awards or joint venture.

19.0 SALIENT TERMS OF THE PRINCIPAL AGREEMENTS AND THE BAIDS (Cont'd)

24. Environmental Matters (Clause 40)

SILK shall:

- (a) ensure that it complies with all relevant laws, in particular the Environmental Quality Act 1974, and Government policies as set out in the approval conditions of the Environmental Impact Assessment ("EIA") Report. The Government acknowledges that compliance with the approval conditions of the EIA Report shall satisfy the noise, visual impact, aerial pollution and vibration parameters required in respect of the Construction Works;
- (b) ensure the incorporation of appropriate mitigative, rehabilitative, restorative and enhancement measures in its planning, design and implementation works;
- (c) give due consideration to the preservation and social implications of water and air quality, soil, flora and fauna within the Concession Area; and
- (d) ensure that the Concession Area shall be appropriately landscaped to enhance visual amenity in accordance with Appendix P of the Concession Agreement;

PROVIDED ALWAYS that the Government reserves the right to determine the cutting, felling or preservation of trees or the replanting thereof on any part of the Concession Area and SILK shall comply with any direction of the Government in this respect.

25. Electronic Toll Collection (Clause 42)

SILK has agreed to include an electronic toll system and to utilise such system as may be directed by the Government from time to time (subject to terms and conditions to be mutually agreed) to collect Gazetted Toll on behalf of SILK.

26. Revenue Sharing Arrangement (Clause 43)

SILK has agreed to share its toll revenue with the Government subject to the following:

- (a) the sharing arrangement shall only commence after the Loan from the Lenders have been fully paid and/or discharged by SILK;
- (b) such sharing shall only relate to the amount in excess, if any of the Projected toll revenue for any one Concession Year as set out in Appendix L(5) of the Supplemental Concession Agreement in the following proportion:

| | |
|------------|-----|
| Government | 20% |
| SILK | 80% |

Provided always that any revenue collected or otherwise received by SILK up to the projected toll revenue shall be retained by and be for the sole account of SILK.

27. Other Provisions

Other provisions in the Concession Agreement include those in respect of notices, waivers, applicable laws and appendices, confidentiality, further assurance, modification and antiquities.

19.0 SALIENT TERMS OF THE PRINCIPAL AGREEMENTS AND THE BAIDS (Cont'd)

19.2 TURNKEY CONTRACT

The following is a summary of the terms of the Turnkey Contract, prepared for the purpose of this Prospectus, with the objective of providing information that are relevant to potential investors of the Public Issue Shares. The summary does not purport to be complete. The words and expressions used hereunder shall have the same meanings as are respectively ascribed thereto in the Turnkey Contract. References to clauses refer to clauses of the Conditions of Turnkey Contract, unless otherwise specified.

1. Contract Price and Land Cost (Clauses 3 and 4 of the Articles of Agreement)

The Turnkey Contract Price is a lump sum price of RM830,000,000 for the design, construction, completion and commissioning of the Ring Road.

In addition to the Turnkey Contract Price, SILK will pay SunCon up to a sum of RM215,000,000 as Land Use Payments in respect of all costs, expenses or charges incurred by SunCon for the acquisition of land within the SILK Funded Stretch (including any compensation awarded by the courts) and/or for the removal or resettling of squatters or other occupiers on the SILK Funded Stretch and the Government Funded Stretches. Any amount in excess of the sum of RM215,000,000 shall be borne by SunCon (Clause 14.2).

2. Incorporation of terms of the Concession Agreement (Clause 5.1)

SunCon is obliged to perform its obligations under the Turnkey Contract in a manner so that SILK complies with all its obligations under the Concession Agreement and any formal contract in respect of the Government Funded Stretch 2 and additionally, so as not to cause or contribute to any breach by SILK of its obligations under the Concession Agreement, any statutory requirements (re: Clause 25.1) and any formal contract in respect of the Government Funded Stretch 2.

3. Commencement of Works (Clause 9)

SILK shall issue to SunCon a Notice to Proceed requesting SunCon to commence the Works for each of the Government Funded Stretch 2 and SILK Funded Stretch. SunCon shall within 14 days of receipt of the said Notice to Proceed, proceed with Execution of the Works with due expedition, due diligence and without delay.

If possession is obtained of parts of the Site, and SILK and SunCon agree that such parts of the Site are in size and nature sufficient and reasonable to commence and proceed with the Execution of the Works, SILK may issue to SunCon a Notice to Proceed and SunCon shall proceed with the Execution of the Works within fourteen (14) days from the date of the said Notice to Proceed.

4. Terms of Payment (Clause 45)

SunCon is entitled to interim payments based on a pre-agreed payment schedule having regard to the Approved Working Programme.

Payments are to be made monthly in arrears against Interim Certificates prepared by SunCon, checked by the Supervising Consultant and verified by the Independent Consulting Engineer. SILK will only make payments to SunCon against each Interim Certificate within 21 days after its receipt of the aforesaid having been duly reviewed by the Independent Consulting Engineer.

19.0 SALIENT TERMS OF THE PRINCIPAL AGREEMENTS AND THE BAIDS (Cont'd)

At the end of the first three (3) months from the Notice to Proceed and at the end of every three (3) months thereafter, SILK and SunCon shall jointly review the progress of Works, and the payment schedule will be adjusted in order to reflect the actual progress achieved if the cumulative actual progress deviates from the cumulative scheduled progress indicated in the payment schedule in excess of 5%.

5. Advance Payment (Clause 44)

SILK shall no later than 14 days after the date of request of SunCon, which request may only be made by SunCon after the commencement of the Works, make an advance payment of RM80,000,000, to be repaid by deduction in instalments based on an agreed formula from payments due to SunCon. Recoupment of the advance payment will only commence once the total cumulative value of the Works Executed reaches 25% of the Turnkey Contract Price and fully repaid by the time the total cumulative value of the Works Executed reaches 75% of the Turnkey Contract Price.

6. Performance Bond (Clause 6)

SunCon shall, on or before the Date of Commencement, provide SILK with three performance bonds, one for a value of 5% of the Turnkey Contract Price less the construction cost of the completed Government Funded Stretch 1 ("Performance Bond No. 1"), the second for a value of 5% of the Turnkey Contract Price ("Performance Bond No. 2") and the third for a value of 5% of the Turnkey Contract Price ("Performance Bond No. 3"). If a demand is made under the performance bonds, there is a topping up mechanism, to the effect that SILK holds the relevant performance bond having its respective value as stipulated in respect of the Works remaining to be performed.

SILK is entitled to assign the benefits under any of the performance bonds. Performance Bond Nos. 1 and 2 shall be valid until 28 days after the date of the Certificate of Completion of Making Good Defects. Performance Bond No. 3 expires upon issuance of the Certificate of Practical Completion.

7. Compensation to SunCon

SunCon is entitled to receive compensation from SILK in the following circumstances:

- (a) delay due to failure to give possession of the Site subject to the Government providing the same to SILK under the Concession Agreement and provided further that SILK may retain from any corresponding compensation payment such amount which enables SILK's debts to the Lenders (being banks or financial institutions which may agree to provide loans or other financing to SILK for the Works and land falling within the SILK Funded Stretch) to be serviced during the extension period (clause 14.5);
- (b) the Execution of the Works is delayed as a result of work carried out by other contractors on the Site, provided that SILK receives corresponding compensation from the Government (clause 23.1); and
- (c) a change to the Approved Design by the Government. SunCon shall be paid compensation to the extent of any corresponding payment or compensation made by the Government to SILK (clause 32).

19.0 SALIENT TERMS OF THE PRINCIPAL AGREEMENTS AND THE BAIDS (Cont'd)

8. Adherence to Construction Programme (Clause 13)

If at any time the Supervising Consultant concludes that the progress of the Works has fallen behind the Construction Programme, SunCon shall produce, at the request of the Supervising Consultant, a revised construction programme which shows the modifications to the Construction Programme necessary to ensure completion of the Works on the Date of Completion. The revised construction programme shall become the Construction Programme, subject to the agreement of SILK and the Government.

9. Rate of Progress (Clause 35)

If for any reason which does not entitle SunCon to an extension of time, in the opinion of the Independent Consulting Engineer, the rate of progress of the design and Execution of the Works or any Section of the Works is too slow to complete the Works by the relevant Date of Completion or extended Date of Completion, the Independent Consulting Engineer shall so notify SunCon through the Supervising Consultant, who shall thereupon take steps as are necessary to expedite progress so as to complete the Works or such Section of the Works by the relevant Date of Completion. SunCon shall not be entitled to any additional payment for taking such steps and shall not be entitled to any extension of time.

10. Assignment (Clause 2)

SunCon shall not assign the Turnkey Contract or any part thereof or any benefit, obligation or interest therein or thereunder without the prior written consent of SILK. SILK shall not assign, or novate the Turnkey Contract and any benefits thereunder at any time to any third party other than by a mortgage, charge or other security interest in favour of the Lenders or its Trustee and SunCon will enter into a novation of the Turnkey Contract and/or signify its consent to any assignment, charge or transfer, if required by SILK.

11. Design Warranty (Clause 11.6)

SunCon shall warrant to SILK that the Approved Detailed Design for the relevant Section of the Works shall be free from design defects for a period of five (5) years from the date practical completion of the Relevant Section is deemed to have occurred under Clause 40.2 or the Certificate of Practical Completion for the whole of the Works, as appropriate and shall provide either a design guarantee for an amount equal to RM20,750,000 or if SunCon appoints any design consultants, SunCon shall ensure that such design consultants effect and maintain professional indemnity insurance having the same value.

12. Defects Liability Period (Clause 41)

The Defects Liability Period with respect to any Section of the Works is for a period of 24 months commencing from the date practical completion of the Relevant Section is deemed to have occurred under Clause 40.2 or Certificate of Practical Completion, as may be applicable.

SunCon is obliged to complete all outstanding work or execute all redesign, work of amendment, reconstruction, and, as necessary, remedy defects, omissions, shrinkages or other faults as the Supervising Consultant may, during the Defects Liability Period or within 14 days after its expiration, as a result of an inspection made by or on behalf of SILK prior to its expiration, instruct SunCon to execute; such execution to be completed as soon as practicable after the date of such instruction and at SunCon's cost if such work is due to defective or non-conforming use of materials or design, workmanship, services or training or due to the neglect or failure on the part of SunCon.

19.0 SALIENT TERMS OF THE PRINCIPAL AGREEMENTS AND THE BAIDS (Cont'd)

13. Liquidated Damages (Clause 37)

Liquidated damages shall be RM200,000 per day up to cap of 5% of the Turnkey Contract Price, for each day of delay from the Date of Completion and the date stated in the Certificate of Practical Completion for the whole of the Works.

Without prejudice to any other method of recovery, SILK is entitled to deduct or retain from any moneys due or which may become due to SunCon such sums which are payable by way of liquidated damages.

14. Early Completion Bonus (Clause 38)

If SunCon achieves completion of any Section of the Works before the Date of Completion for that Section of the Works and SILK has taken possession thereof under Clause 40, SILK shall pay SunCon in respect of such early completion, a bonus equal to 50% of the Net Toll Revenue attributable to that Section of the Works for the period from the tolling commencement for that Section of the Works until the scheduled date of completion of that Section.

15. Variations (Clause 32)

SILK may issue instructions endorsed by the Independent Consulting Engineer to effect a Variation. No Variation shall be made by SunCon without an instruction in writing from SILK. The term "Variation" is defined to mean:

- (a) any change to the Works as set out in the Specifications whether by way of addition, modification, substitution, omission or change in quality, form, character, kind, position, dimension, level or line or any change in the specified sequence, method or timing of construction (but not merely a closer definition, a minor change in detail or an immaterial alteration, to the extent which is not abnormal for a project of the same kind and scale as the Project or any clarification by SILK pursuant to any conflict or inconsistency within any one of the documents specified in Clause 4.3); and
- (b) any change to the Approved Detailed Design or additional works which is required or requested by SILK or which may be due to changes or amendments requested by the Government after SILK and the Owner's Representative have given their respective approval pursuant to Clause 11 (but not merely a closer definition, a minor change in detail or an immaterial alteration or any clarification by SILK pursuant to any conflict or inconsistency within any one of the documents specified in Clause 4.3).

The Construction Cost shall be adjusted by the value of any Variation ascertained by SILK in accordance with the principles set out in Clause 32A.

SILK shall pay to SunCon for any Variation of the kind permitted under (b) only to the extent of any corresponding payment or compensation received by SILK from the Government under the Concession Agreement.

19.0 SALIENT TERMS OF THE PRINCIPAL AGREEMENTS AND THE BAIDS (Cont'd)

16. Extension of Time (Clause 34)

SunCon shall be entitled to an extension of time under the following circumstances:

- (a) if any delay is caused by Force Majeure; or
- (b) delay in providing possession of the Site to SunCon in accordance with Clause 14, so long as SILK is similarly entitled to an extension of time for completion under the Concession Agreement; or
- (c) additional works required by the Government in accordance with Clause 7.5 of the Concession Agreement which would entitle SILK to both an extension of time and compensation from the Government, which enables SILK's overheads to be paid and debts to be serviced during the extension period; or
- (d) other contractors carrying out other works at the Site pursuant to Clause 7.7 of the Concession Agreement which would entitle SILK to both an extension of time and compensation from the Government.

SunCon shall be entitled to be paid by SILK for any loss, cost and/or expense incurred or suffered by SunCon for or arising from any delay caused by any of the events stipulated by sub clauses (b), (c), and (d), above provided SILK receives the same from the Government under the Concession Agreement and SILK shall be entitled to retain for itself from any corresponding compensation payment which it may have received such amount of compensation as may be properly due to SILK and/or enable SILK's debts to the Lenders to be serviced during the extension period.

17. Termination (Clauses 49 and 50)

A. SunCon's Default (Clause 49.1)

If SunCon has an order made for its winding up (except for the purpose of reconstruction or amalgamation) or goes into liquidation (other than a voluntary liquidation for the purpose of amalgamation or reconstruction) or has a receiver appointed to its assets or makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or has an execution levied against a substantial portion of its assets unless it has instituted proceedings in good faith to set aside such execution; and provided that each of these circumstances affects SunCon's ability to perform its obligations under the Turnkey Contract, then SILK may after giving 14 days' notice in writing to SunCon, terminate the appointment of SunCon without prejudice to the rights of either party against the other in respect of any antecedent breach, and enter upon the Site and the Works and expel SunCon therefrom.

If the Independent Consulting Engineer shall certify in writing to SILK that in its opinion that (i) SunCon has without reasonable excuse failed to commence the Works in accordance with Clause 9 or has suspended the Execution of the Works other than as expressly permitted by the Turnkey Contract; or (ii) SunCon has been persistently or flagrantly in breach of material obligations under the Turnkey Contract; or (iii) SunCon has without reasonable cause failed to comply with the instruction issued by the Independent Consultant Engineer through the Supervising Consultant under Clause 8.1 then SILK may give notice in writing SunCon requiring SunCon to remedy such breach. If within 14 days of such notice SunCon shall have failed to remedy the breach to SILK's satisfaction, SILK may enter the Site and the Works thereon and expel SunCon therefrom and may itself complete the Works or may employ any other contractor or contractors to complete the Works without prejudice to the rights of either party against the other in respect of any antecedent breach.

19.0 SALIENT TERMS OF THE PRINCIPAL AGREEMENTS AND THE BAIDS (Cont'd)

B. *Default of SILK (Clause 49.6)*

In the event (i) SILK fails to make payment of any amount properly due to SunCon under the Turnkey Contract within 21 days of the due date; or (ii) SILK goes into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation; or (iii) the Government terminates the Concession Agreement under Clause 25 of the Concession Agreement (i.e. termination by the Government due to events of default on the part of SILK); then SunCon shall be entitled to suspend its employment and (if such situation is capable of being remedied) may by notice require SILK to remedy the situation within 30 days. If the situation in question is incapable of being remedied or, if capable of remedy, SILK fails to remedy the situation, SunCon shall be entitled to terminate its employment under the Turnkey Contract after giving 14 days' prior written notice to SILK.

C. *Termination by SILK (Clause 50.1)*

If the Concession Agreement is terminated by SILK pursuant to Clause 26.2 of the Concession Agreement (i.e. termination by SILK due to failure without reasonable cause on the part of the Government to fulfil any of its obligations which adversely affects the right and authority of SILK to collect and retain toll), SILK shall terminate this Turnkey Contract by seven (7) days' notice in writing to SunCon.

If the Concession Agreement is terminated by the Government under Clause 25.2 of the Concession Agreement (i.e. termination by the Government due to events of default on the part of SILK), SILK shall simultaneously upon its receipt of notice by the Government to terminate the Concession Agreement, give a similar notice to SunCon to terminate the Turnkey Contract.

If the Concession expropriated by the Government under Clause 25.3 of the Concession Agreement, SILK shall simultaneously upon its receipt of notice by the Government to terminate the Concession Agreement, give a similar three (3) months' notice to SunCon to terminate the Turnkey Contract.

D. *Payments upon Termination (Clauses 49 & 50)*

- (i) In the event that a termination of the appointment of SunCon pursuant to the events specified in paragraph A above does not lead to a termination of the Concession Agreement by the Government pursuant to Clause 25 of the Concession Agreement, then SunCon will be entitled to be paid for the work done and the value of unused or partially used material and the amount of design and supervision fees, all as may be determined by the Supervising Consultant and verified by the Independent Consulting Engineer up to the date of termination of the Turnkey Contract less sums already received by SunCon.
- (ii) In the event that termination of the appointment of SunCon leads directly to a termination of the Concession Agreement by the Government, then SunCon shall compensate SILK for any costs and expenses reasonably incurred by SILK in completing the Works in excess of the costs and expenses which would have been incurred had SunCon completed the Works. Subject to review and verification by Independent Consulting Engineer, SILK shall pay to SunCon the amount which is the difference, if any, between (a) the Value of the Construction Works as certified by the Operation Auditors (pursuant to the Concession Agreement) less those portions which are attributable to all management costs and fees for professional services incurred by SILK in relation to the Concession Agreement, all interest and capitalised interest and other financing costs and expenses incurred by SILK in connection with the financing of the Concession and all other amount paid to SILK by the Government in respect of work which has not been undertaken by SunCon pursuant to the Turnkey Contract; and (b) all amounts which have been received by SunCon from SILK under the Turnkey Contract up to the date of termination of the appointment of SunCon.

19.0 SALIENT TERMS OF THE PRINCIPAL AGREEMENTS AND THE BAIDS (Cont'd)

- (iii) If the Turnkey Contract is terminated pursuant to the events stipulated in paragraph B and the Concession Agreement is also terminated, and such termination is not attributable to the default of SunCon, then without prejudice to any other rights which SunCon may otherwise have, SILK shall, subject to review and verification by the Independent Consulting Engineer, pay to SunCon:
- (a) the Value of the Construction Works as certified by the Operation Auditors less those portions which are for management costs and fees for professional services incurred by SILK in relation to the Concession Agreement, all interest and capitalised interest and other financing costs and expenses incurred by the SILK in connection with the financing of the Concession and all other amounts paid to SILK by the Government in respect of work which has not been undertaken by SunCon pursuant to the Turnkey Contract; and
 - (b) all amounts received by SunCon from SILK under the Turnkey Contract up to the date of such termination of the Turnkey Contract.
- (iv) If the Turnkey Contract is terminated pursuant to the events stipulated but the Concession Agreement is not terminated, then without prejudice to any other rights which SunCon may otherwise have, the Supervising Consultant will, as soon as may be practicable fix and determine by or after reference to the parties, or after such investigation or enquiries as it may think fit to make or institute and shall certify (subject to review and verification by the Independent Consulting Engineer):
- (a) what amount if any had at the time of such termination been reasonably earned by or would reasonably have accrued to SunCon in respect of Maintenance and Works Executed under the Turnkey Contract;
 - (b) the value of any unused or partially used materials;
 - (c) the amount of all design and supervision fees; and
 - (d) the aggregate amount so determined by the Supervising Consultant hereunder less all sums actually received by SunCon from SILK under the Turnkey Contract up to the date of such termination of the Turnkey Contract if any, shall (after review as to such aggregate amount and sums by the Independent Consulting Engineer) be paid by SILK to SunCon.
- (v) If the Turnkey Contract is terminated pursuant to the events stipulated in paragraph B and such termination is not attributable to default by SunCon, SILK shall use its best endeavours to seek the return of the Performance Bond No.1 from the Government and Performance Bond Nos. 2 and 3 from the Lenders and shall, subject to the review and verification the Independent Consulting Engineer, pay SunCon the Value of Completed Works as certified by Operations Auditors in so far as it relates to the Turnkey Contract, less amounts received by SunCon from SILK under the Turnkey Contract up to the date of such termination of the Turnkey Contract.

The above amounts shall be paid in each case within 30 days after the same has been ascertained and until payment as aforesaid shall carry interest at the rate of 2% per annum above the base lending rate of Malayan Banking Bhd prevailing from time to time from the due date up to the date of settlement.

19.0 SALIENT TERMS OF THE PRINCIPAL AGREEMENTS AND THE BAIDS (Cont'd)

18. Indemnity (Clause 31)

SunCon shall indemnify SILK against all losses and claims in respect of injuries or damage to any person or material and physical damage to any property whatsoever which may arise out of or in consequence of the design and Execution of the Works or any part thereof and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, except any compensation or damage for or with respect to:

- (a) the permanent use or occupation of land by the Works or any part thereof;
- (b) the right of SILK to execute the works or any part thereof on, over, under, in or through any land;

to the extent that the compensation or damages are not caused or contributed to by any act, neglect, omission or default of SunCon, his servants or agents.

SunCon's liability to indemnify SILK shall be reduced in proportion to the extent to which the default or neglect of SILK, the Independent Consulting Engineer or any other person employed by SILK in connection with the Works, their respective agents, employees or representatives, may have contributed to the said death, injuries or damage.

19. The Supervising Consultant (Clause 8.2) and the Independent Consulting Engineer (Clause 8.1)

SILK shall appoint the Independent Consulting Engineer to prepare and monitor the design and Execution of the Works as specified in the Turnkey Contract and the Supervising Consultants to supervise the Execution of the Works.

20. Force Majeure (Clause 51)

Failure by either SILK or SunCon to comply with the provisions of the Turnkey Contract shall not be grounds for termination or damages to the extent such failure arises out of Force Majeure. Force Majeure includes the following events:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies, rebellion, revolution, insurrection, military or usurped power, civil war, terrorism;
- (b) ionizing radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste, from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (d) natural catastrophe including, but not limited to, earthquakes, floods, subsidence, lightning and exceptionally inclement weather;
- (e) riot, disorders, criminal damage, sabotage, strike, lockout, labour unrest or other industrial disturbances (affecting the performance of this Contract) which are not the fault of SILK or its contractors,

which causes or can reasonably be expected to cause, either party to fail to comply with its obligations under the Turnkey Contract.

19.0 SALIENT TERMS OF THE PRINCIPAL AGREEMENTS AND THE BAIDS (Cont'd)

In the event that the Concession Agreement is terminated due to any occurrence of Force Majeure, the Turnkey Contract shall likewise be terminated and, subject to Clause 46 (payments by SILK), SILK and SunCon shall negotiate in good faith and with a view to reaching a settlement that is fair and equitable to each of the parties having regard to all the circumstances prevailing at the time of termination including all moneys receivable by SILK under the Concession Agreement and the proceeds of any insurance policies taken by the parties hereto in respect of the risks herein contemplated.

21. Insurance of Works during Construction Period (Clause 30)

Without limiting SunCon's responsibility under the Turnkey Contract, SunCon shall effect and maintain the following insurance policies from the Date of Commencement until 28 days after the end of the Defects Liability Period:-

- (a) All insurance as required by law or connection with the Turnkey Contractor's personnel and/or their dependents including but not limited to workmen's compensation or SOCSO;
- (b) Turnkey Contractor's equipment policy for the full market value;
- (c) Force majeure insurance covering the events of Force Majeure (unless otherwise waived by the Lenders or its Trustee);
- (d) Construction All Risks Insurance for the replacement value of the Works;
- (e) All policy against any liability reducing third party liability up to a limit of RM1,000,000;
- (f) Motor insurance in respect of any private cars or good carrying vehicles; and
- (g) All Risk Transit Insurance covering all materials, from the respective warehouse.

22. Settlement of Disputes/Arbitration (Clause 54)

Disputes between SILK and SunCon shall firstly be referred to and settled by the Independent Consulting Engineer. The opinions, approvals or consents of the Independent Consulting Engineer shall prevail of that of the Supervising Consultant in the event of any dispute between the Supervising Consultant and the Independent Consulting Engineer.

In the event that the Independent Consulting Engineer shall fail to give a decision for a period of ninety (90) days or if either SILK or SunCon be dissatisfied with any such decision of the Independent Consulting Engineer, then either party may refer the dispute to arbitration in accordance with the Arbitration Act, 1952. Similarly, any dispute between the Independent Consulting Engineer and SunCon shall be referred to arbitration in accordance with the Arbitration Act, 1952. The award of the Arbitrator shall be final and binding on the parties.

SunCon is obliged to proceed and continue with the Execution of the Works with all due diligence in accordance with the decision of the Independent Consulting Engineer pending a decision on the dispute.

In the event that the arbitrator finds in favour of SunCon, SILK shall fully indemnify SunCon in respect of all costs, losses and damages which SunCon has suffered of or arising from complying with the decision of the Independent Consulting Engineer.

23. Government Funded Stretch 1 (Clause 58)

Government Funded Stretch 1 forms part of the Turnkey Contract and SunCon shall be liable to SILK for the fulfillment of all the terms and conditions of the Government Stretch 1.

19.0 SALIENT TERMS OF THE PRINCIPAL AGREEMENTS AND THE BAIDS (Cont'd)

19.3 BAIDS

The following is a summary of the terms of the BAIDS, prepared for the purpose of this Prospectus, with the objective of providing information that are relevant to potential investors of the Public Issue Shares. The summary does not purport to be complete. All capitalised expressions are as defined in the Trust Deed.

1. Introduction

The BAIDS is one of a series of secured bearer promissory notes issued by SILK and constituted by a trust deed dated 8 August 2001 between the Company and PB Trustee Services Berhad (7968-T) ("Trustee") as trustee for the BAIDSholders.

2. Form, denomination and title

- 2.1 SILK shall issue fifteen (15) Global Certificates, each representing bearer promissory notes with the Maturity Dates and the Face Amounts as follows:

| Maturity Date of BAIDS represented by Global Certificate | Face Amount of BAIDS represented by Global Certificate RM |
|---|--|
| Sixth (6th) anniversary of the Issue Date | 150,000,000 |
| Seventh (7th) anniversary of the Issue Date | 150,000,000 |
| Eighth (8th) anniversary of the Issue Date | 155,000,000 |
| Ninth(9th) anniversary of the Issue Date | 160,000,000 |
| Tenth (10th) anniversary of the Issue Date | 95,000,000 |
| Eleventh (11th) anniversary of the Issue Date | 65,000,000 |
| Twelfth (12th) anniversary of the Issue Date | 75,000,000 |
| Thirteenth (13th) anniversary of the Issue Date | 75,000,000 |
| Fourteenth (14th) anniversary of the Issue Date | 65,000,000 |
| Fifteenth (15th) anniversary of the Issue Date | 170,000,000 |
| Sixteenth (16th) anniversary of the Issue Date | 170,000,000 |
| Seventeenth (17th) anniversary of the Issue Date | 170,000,000 |
| Eighteenth (18th) anniversary of the Issue Date | 170,000,000 |
| Nineteenth (19th) anniversary of the Issue Date | 170,000,000 |
| Twentieth (20th) anniversary of the Issue Date | 170,000,000 |
| Aggregate Face Amount | 2,010,000,000 |

- 2.2 Subject to the Code, a BAIDSholder may require the exchange of the Global Certificates for Definitive BAIDS (Please refer to clause 5.2 of the Trust Deed).

3. Status

- 3.1 The BAIDS are direct, unconditional and secured obligations of the Company.
- 3.2 The indebtedness of the Company to the Trustee and the BAIDSholders arising under or in connection with the BAIDS and the other Transaction Documents are secured by all assets and undertakings of the Company pursuant to the Security Documents.

19.0 SALIENT TERMS OF THE PRINCIPAL AGREEMENTS AND THE BAIDS (Cont'd)

3.3 Subject to any written law, the BAIDS rank *pari passu* and rateably without any preference priority among themselves and in priority to all other present and future unsecured indebtedness of the Company other than obligations and priorities created by law.

4. Negative Pledge

4.1 The Company covenants and undertakes with the Trustee and each of the BAIDS holders in the terms as set out in clause 12 of the Trust Deed, which includes a covenant that, from the date of the Trust Deed until all its liabilities and obligations under the BAIDS have been discharged, the Company shall not without the prior written consent of the Trustee:

- (a) create or attempt to create any Security Interest upon, or permit any Security Interest to arise on, subsist or affect, all or any part of its rights, undertaking, business or assets, other than any Permitted Encumbrances; and
- (b) incur, assume or permit to exist:
 - (i) any indebtedness for money borrowed or raised by whatever means, except indebtedness in relation to the Permitted Borrowings; and
 - (ii) any contingent indebtedness under any guarantee, indemnity, security or other commitment designed to assure any creditor against loss in respect of any indebtedness of any third party.

5. Mandatory Redemption

Unless the Trustee has made a declaration under BAIDS Condition 9.1(3), the Company shall redeem the BAIDS at their Face Amount on the respective Maturity Dates and shall not redeem the BAIDS in whole or in part before the respective Maturity Dates.

6. Purchases

6.1 Subject to the selling restrictions set out in the BAIDS, the Company may at any time and from time to time purchase the BAIDS at any price in the open market or otherwise.

6.2 The BAIDS so purchased shall be cancelled and shall not be deemed to be outstanding for the purposes of calculating quorums at meetings of the BAIDS holders or for the purposes of BAIDS Conditions 9 and 10 or for the replacement of any certificate that has been mutilated or defaced, destroyed, worn-out, lost or stolen.

7. Cancellation

A BAIDS which is redeemed shall be cancelled forthwith. A BAIDS so cancelled and a BAIDS purchased and cancelled pursuant to BAIDS Condition 5 may not be reissued or resold.

19.0 SALIENT TERMS OF THE PRINCIPAL AGREEMENTS AND THE BAIDS (Cont'd)

8. Events of Default

- 8.1 If at any time and for any reason and whether within or beyond the control of the Company any of the following events of default occur and is continuing:
- (a) *Non-payment*: the Company fails to pay the Face Amount of any BAIDS on the due date or on demand, if so payable;
 - (b) *Breach of obligations*: the Company, any Security Party or any Project Counterparty fails to observe or perform any of their respective obligations under any of Transaction Documents or any Project Document or under any undertaking or arrangement entered into in connection herewith or therewith other than an obligation of the type referred to in BAIDS Condition 8.1(a) above which:
 - (i) in the opinion of the Trustee, has a Material Adverse Effect on the obligations of the Company or any Security Party under the BAIDS or any other Transaction Document; and
 - (ii) in the opinion of the Trustee, is not capable of remedy or which in the opinion of the Trustee being capable of remedy is not remedied to the satisfaction of the Trustee within seven (7) days after receipt by the Company or the Security Party, as the case may be, of a notice from the Trustee specifying the default, or such further periods as may be granted by the Trustee;
 - (c) *Misrepresentation*: any representation, warranty or statement which is made (or acknowledged in writing to have been made) by the Company or any Security Party in the Trust Deed or under any of the other Transaction Documents or which is contained in the Offering Circular of the BAIDS, any certificate, statement, legal opinion or notice provided under or in connection herewith or therewith proves to be incorrect in any material respect or if repeated at any time with reference to the facts and circumstances subsisting at such time would not be accurate in all material respects and which in the opinion of the Majority BAIDSholders may have Material Adverse Effect;
 - (d) *Unlawfulness*: it is or it becomes unlawful by the laws of Malaysia for the Company or any Security Party to perform or comply with any one or more of their respective obligations under the BAIDS or any other Transaction Documents;
 - (e) *Disposal of assets*: the Company or any Security Party transfers or disposes of or threatens to transfer or dispose of substantially all of their respective business or assets other than:
 - (i) in the ordinary course of business of the Company or that Security Party, as the case may be and provided that such transfer or disposal does not in the opinion of the Majority BAIDSholders have a Material Adverse Effect; or
 - (ii) any disposal which does not in the determination of the Trustee affect the ability of the Company to perform its obligations under the BAIDS or of that Security Party's ability to perform its material obligations under any Security Document;
 - (f) *Cessation of business*: other than for the purposes of or pursuant to a restructuring or reorganisation where such change or suspension shall not in the determination of the Trustee affect the ability of the Company to perform its obligations under the BAIDS, the Company changes or threatens to change the nature or scope of its business, suspends or threatens to suspend a substantial part of the present business operations which it now conducts directly or indirectly and the result is that its financial condition or its ability to observe or perform its obligations under the BAIDS or any of the other Transaction Documents is materially and adversely affected;

19.0 SALIENT TERMS OF THE PRINCIPAL AGREEMENTS AND THE BAIDS (Cont'd)

- (g) *Expropriation*: any governmental authority expropriates or threatens to expropriate all or part of the Company's assets and the result is that the Company's financial condition or its ability to observe or perform its obligations under the BAIDS or any of the other Transaction Documents is materially and adversely affected;
- (h) *Cross-default*: the following:
- (i) any indebtedness in respect of moneys borrowed or raised of the Company becomes due or capable of being declared due before its stated maturity;
 - (ii) any indebtedness in respect of moneys borrowed or raised of any Security Party in excess of RM20,000,000 or the equivalent thereof, becomes due or capable of being declared due before its stated maturity;
 - (iii) any guarantee of or indemnity given by the Company is not discharged at maturity or when otherwise due;
 - (iv) any guarantee of or indemnity given by any Security Party in excess of RM20,000,000 or the equivalent thereof, is not discharged at maturity or when otherwise due;
 - (v) the Company or any Security Party goes into default under or commits a breach of any instrument or agreement relating to any such indebtedness or guarantee relating to it as described above, which in the opinion of the Majority BAIDS holders have a Material Adverse Effect, or the security for any such indebtedness becomes enforceable;
- (i) *Appointment of receiver, legal process*: the following:
- (i) any person holding an encumbrance takes possession of, or a trustee or administrative or other receiver or similar officer is appointed in respect of all or any part of the business or assets of the Company or all or a substantial part of the business or assets of any Security Party; or
 - (ii) distress or any form of execution is levied or enforced upon or sued out against all or any part of the business or assets of the Company or all or a substantial part of the business or assets of any Security Party,
- and is not discharged within twenty one (21) days after being levied, enforced or sued out;
- (j) *Insolvency*. the Company or any Security Party becomes unable to pay its debts as they fall due or suspends or threatens to suspend making payments with respect to all or any class of its debts;
- (k) *Litigation*: any litigation, arbitration, winding-up or administrative proceeding (save for any proceedings which are frivolous or vexatious) is commenced against the Company or any Security Party which in the opinion of the Majority BAIDS holders would have a material adverse effect on the business, assets or financial condition of the Company or that Security Party or which would materially and adversely affect the Company's or such Security Party's respective ability to observe or perform any of its material obligations under the BAIDS and/or the other Transaction Documents and such proceedings are not set aside within fourteen (14) days;

19.0 SALIENT TERMS OF THE PRINCIPAL AGREEMENTS AND THE BAIDS (Cont'd)

- (l) *Composition or winding up:* the Company or any Security Party convenes a meeting of its creditors or proposes or makes any arrangement or composition with or any assignment for the benefit of, its creditors, or a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for making an administration order against or for winding up, dissolution or liquidation of the Company or any Security Party, or a petition for winding up is presented against the Company other than a petition which in the determination of the Trustee is of bad faith;
- (m) *Ineffective or invalid provision:* any provision of the BAIDS, any other Transaction Document or any Project Document is or becomes invalid or unenforceable or if any law is brought into effect which purports to render ineffective or invalid any provision of the BAIDS, any other Transaction Document or any Project Document which would prevent the Company or any Security Party from performing any of their respective material obligations or thereunder;
- (n) *Judgment Outstanding:* the Company or any Security Party shall fail to satisfy any judgment passed against the Company or the Security Party, as the case may be, by any court of competent jurisdiction and no appeal against such judgment has been made to any appropriate appellate court within the time prescribed by law or such appeal has been dismissed and in the case of any judgment obtained in default of appearance no application has been made to set such judgment aside within fourteen (14) days of the Company or the Security Party, as the case may be, becoming aware of the judgment;
- (o) *Licence:* any licence, authorisation, approval, consent, order, exemption, registration, filing or notarisation referred to in clause 12.1(f) of the Trust Deed is revoked or withheld or modified in any material respect or is otherwise not granted or fails to remain in full force and effect;
- (p) *Nationalisation:* the Project is nationalised or all or a material part of the property or assets of the Company shall be condemned, seized or otherwise appropriated or nationalised and such situation shall remain unremedied for more than thirty (30) days, or custody or control of such property or assets shall be assumed and retained for more than thirty (30) days by any person acting or purporting to act under the authority of the Government, or the Company shall have been prevented for a period of more than thirty (30) days from exercising normal managerial control over all or any substantial part of its or their property or assets by any such person;
- (q) *Moratorium:* the Company or any Security Party enters into or proposes to enter into or there is declared by any competent court or authority a moratorium on the payment of indebtedness or other suspension of payments generally;
- (r) *Authorisations:* at any time any authorisation, permit, act, condition, thing, approval, licence or consent required to be done, fulfilled, performed or obtained:
- (i) to enable the Company or any Security Party lawfully to enter into, exercise its rights under and perform the obligations expressed to be assumed by it in this Deed, any other Transaction Document or any Project Document, as the case may be;
 - (ii) to ensure that the obligations expressed to be assumed by the Company or any Security Party under the Trust Deed, any other Transaction Document or any Project Document as the case may be are legal, valid and binding;
 - (iii) to make the Trust Deed, any other Transaction Document or any Project Document admissible in evidence in Malaysia; and/or
 - (iv) to enable the Company to undertake or continue undertaking the construction, operation, maintenance and other matters related to the Project,

19.0 SALIENT TERMS OF THE PRINCIPAL AGREEMENTS AND THE BAIDS (Cont'd)

is not done, fulfilled, performed or obtained or is withdrawn, modified, suspended, revoked or otherwise ceases for any reason to remain in full force and effect which:

- (1) in the opinion of the Trustee is not capable of remedy; or
- (2) in the opinion of the Trustee being capable of remedy, is not remedied to the satisfaction of the Majority BAIDSholders within 30 days after receipt by the Company of a notice from the Trustee specifying the default,

and which, in the opinion of the Majority BAIDSholders will have a Material Adverse Effect;

- (s) *Termination of Project Documents:* any Project Document is terminated or ceases to be in full force and effect and such termination or cessation has, in the opinion of the Majority BAIDSholders, has a Material Adverse Effect;
- (t) *Failure by contractor:* Suncon, or any other contractor or sub-contractor under the Project Documents fails to comply with any of its material obligations under the Project Documents or the Project is not implemented in accordance with the requirements of the Government under the Concession Agreement, which failure:
 - (i) in the opinion of the Trustee is not capable of remedy; or
 - (ii) in the opinion of the Trustee being capable of remedy, is not remedied to the satisfaction of the Trustee within fourteen (14) days or such other period as may be determined by the Trustee after receipt by the Company of a notice from the Trustee specifying the default;
- (u) *Ranking:* at any time the payment obligations of the Company under the Transaction Documents do not rank in all respects prior to all its unsecured and insubordinate indebtedness with the exception of indebtedness which, without notarisation registration or any other act, is preferred by operation of law;
- (v) *Encumbrance:* any Security Interest over the assets of the Company becomes immediately enforceable;
- (w) *Enforcement:* any Transaction Document or Project Document is alleged by Company or any Security Party or Project Counterparty, as the case may be, not to be in proper legal form for the enforcement thereof in the courts of Malaysia;
- (x) *Destruction of Project:* the Project or any part thereof is destroyed or suffers substantial damage whether by an Event of Force Majeure (as defined in the Concession Agreement) or any act or neglect of any person or otherwise howsoever unless the Trustee is of the opinion that the destruction or damage is capable of being remedied within a period acceptable to the Trustee without affecting the financial position of the Company or its ability to perform its obligations under the Transaction Documents or the Project Documents;
- (y) *Abandonment:* the Company, Suncon or any contractor under any Project Document has, in the opinion of the Trustee, abandoned the construction in whole or in part of the Project or any work comprised in the Project;
- (z) *Change in financial position:* any change in the financial position of the Company or any Security Party which, in the opinion of the Majority BAIDSholders, will materially and adversely affect the ability of the Company or such Security Party to perform any of its material obligations under any Transaction Document or Project Document;

19.0 SALIENT TERMS OF THE PRINCIPAL AGREEMENTS AND THE BAIDS (Cont'd)

- (aa) *Termination Events under Concession Agreement:* any of the events under clauses 25.1 or 26.1 of the Concession Agreement occurs;
- (bb) *Equity Contributions:* any of the shareholders fail to make the relevant equity or other contribution to the Company, as required under the Shareholders' Undertaking, within the time period provided in the Shareholders' Undertaking unless prior to the expiry of such time period, such contribution has been made by any other shareholder;
- (cc) *Delay in completion of Project:* there is a substantial delay in the Construction Works, which delay will materially and adversely affect the ability of the Company to perform its obligations under any Transaction Document (for the purposes of this clause any delay of the Construction Works by twenty five per cent (25%) or more relative to the construction programme agreed between the Company and the Government as set out in Appendix G of the Concession Agreement or any delay which may result in the Ring Road Completion Date being later than the date falling thirty six (36) calendar months after the Supplemental Concession Agreement, is deemed to be a substantial delay;
- (dd) *Section 176 of the Companies Act, 1965:* any step being taken by the Company or any Security Party, its/their creditors or any of its/their shareholders or any other person on its/their behalf or any legal proceedings or application being started or threatened against the Company or any Security Party under Section 176 of the Companies Act, 1965; or
- (ee) *Other events:* any other event or circumstances not specifically referred to in this BAIDS Condition 9.1 occur or arise which in the opinion of the Majority BAIDS holders will have a Material Adverse Effect,

then at any time thereafter, the Trustee may and upon the instructions of the Majority BAIDS holders, shall:

- (1) by notice to the Company, the Lead Manager, the Central Depository and Paying Agent require the Lead Manager, Central Depository and the Paying Agent:
 - (i) to act only in accordance with the instructions of the Trustee in relation to payments to be made by or on behalf of the Trustee under the Trust Deed on the terms and conditions of the Depository and Paying Agency Agreement (except that the Trustee's liability under those agreements relating to the indemnification, remuneration and payment of all other "out-of-pocket" expenses to the Central Depository and Paying Agent (if any) is limited to the amounts for the time being held by the Trustee on the trusts constituted by the Trust Deed);
 - (ii) to hold all BAIDS on behalf of the BAIDS holders and in accordance with the instructions of the Trustee; and
 - (iii) to deliver all cancelled BAIDS, and all sums, records and other documents in respect of the BAIDS to the Trustee or as the Trustee may direct;
- (2) by notice in writing to the Company, the Lead Manager, the Central Depository and the Paying Agent, require the transfer of all sums held by the Lead Manager, the Central Depository and the Paying Agent in respect of the BAIDS to or to the order of the Trustee and require the Company to make all subsequent payments in respect of the BAIDS to or to the order of the Trustee and not to the Lead Manager, Central Depository and or the Paying Agent;
- (3) declare by notice in writing to the Company that notwithstanding the Maturity Dates stated on the BAIDS, the Face Amount of all Outstanding BAIDS together with all sums payable to the BAIDS holders under the Trust Deed shall become immediately due and payable; and

19.0 SALIENT TERMS OF THE PRINCIPAL AGREEMENTS AND THE BAIDS (Cont'd)

- (4) without further notice to the Company to institute such proceedings and to take such steps as it thinks fit, including enforcing remedies under each of the Transaction Documents.

9. Enforcement

No BAIDSholder may proceed directly against the Company unless the Trustee, having become bound to proceed pursuant to the provisions of the Trust Deed fails to do so and such failure is continuing or unless otherwise permitted under the terms of the Trust Deed.

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