

LHAG

SPECIAL ALERT

Dispute Resolution



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Raintree F&B Sdn Bhd v Red Sena Berhad (In Liquidation) **[Federal Court Civil Application No. 08(f)-333-10/2023(W)]**

On 11.3.2024, the Federal Court unanimously dismissed the Applicant's ("**Raintree**") application for leave to appeal against the Court of Appeal's decision on 19.9.2023. The Court of Appeal upheld the decision of the High Court that the Applicant is not entitled to participate in the distribution of the surplus funds of Red Sena Berhad ("**Red Sena**"), a Special Purpose Acquisition Company ("**SPAC**"), on its voluntary winding-up, following its failure to complete a qualifying acquisition within the permitted timeframe.

This is the first authoritative case in Malaysia on distribution of the surplus assets of a SPAC. It serves as a timely reminder that a SPAC is governed by the Equity Guidelines issued by the Securities Commission Malaysia ("**SC Equity Guidelines**"), under Section 377 of the Capital Markets and Services Act 2007 ("**CMSA**").

Background

Red Sena is a SPAC, incorporated by six individuals who are directors and shareholders of Raintree, forming the Management Team of Red Sena. Raintree and the Management Team are the promoters of Red Sena.

As a SPAC, Red Sena had no operations or income-generating business. Its sole objective was to undertake an initial public offering (“**IPO**”) for the purpose of raising funds to acquire an operating company, business, or asset, in the food and beverage industry (“**Qualifying Acquisition**”).

Prior to the IPO, Red Sena raised a total sum of RM10 million from the subscription of its shares by Raintree (“**Raintree Proceeds**”). In total, Raintree subscribed to 200,000,000 ordinary shares in Red Sena at RM0.05 per share.

Red Sena subsequently raised a total of RM400 million from the IPO (“**IPO Proceeds**”), by issuing 800,000,000 new ordinary shares at RM0.50 per share to subscribers (“**IPO Investors**”).

In accordance with Paragraphs 6.21, 6.21A, and 6.22 of the SC Equity Guidelines, Red Sena placed 92% of the IPO Proceeds amounting to RM368 million in a trust account (“**IPO Trust Proceeds**”). Under these provisions, the IPO Trust Proceeds can only be utilised to acquire the Qualifying Acquisition. Pursuant to Paragraphs 6.21B, 6.24, and 6.24A of the SC Equity Guidelines, the balance 8% of the IPO Proceeds amounting to RM32 million (“**Remaining IPO Proceeds**”) were set aside to defray expenses related to the IPO and completion of the Qualifying Acquisition (“**Permitted Purposes**”). These provisions expressly provide that prior to the completion of the Qualifying Acquisition, the Remaining IPO Proceeds cannot be utilised for

payment of remuneration to members of the Management Team.

Red Sena was listed on the Main Market of Bursa Malaysia Securities Berhad on 10.12.2015 (“**Listing Date**”). Under the SC Equity Guidelines, Red Sena had to complete the Qualifying Acquisition within 36 months from the Listing Date, i.e., by 10.12.2018 (“**Permitted Timeframe**”). Red Sena did not complete the Qualifying Acquisition within the Permitted Timeframe. In accordance with the SC Equity Guidelines, the shareholders of Red Sena consequently passed a special resolution to voluntarily wind up the company and appointed Pauline Teh @ Pauline Teh Abdullah and Onn Kien Hoe of Messrs. Crowe Advisory Sdn Bhd as joint and several liquidators (“**Liquidators**”).

Upon a review of Red Sena’s accounts, the Liquidators identified a surplus of RM15,453,164.00, representing the aggregate of the balance Raintree Proceeds (RM54,222.00) and balance Remaining IPO Proceeds (RM15,398,942.00).

Due to differences among some shareholders of Red Sena and the Management Team on the manner of distribution of the balance Raintree Proceeds and balance Remaining IPO Proceeds, the Liquidators filed an application under Section 461 of the Companies Act 2016, for the Court’s determination of whether Raintree, members of the Management Team, and persons connected to them are entitled to participate in distribution of the balance Raintree Proceeds and the balance Remaining IPO Proceeds.

High Court

On 14.10.2019, the High Court held Raintree, members of the Management Team, and persons connected to them are entitled to the entire balance Raintree Proceeds but are not entitled to participate

in the distribution of the balance Remaining IPO Proceeds (“**2019 Order**”).

On 11.11.2019, Raintree applied to set aside or vary the 2019 Order insofar as it concerns distribution of the balance Remaining IPO Proceeds.¹

On 15.8.2022, the High Court dismissed Raintree’s application. The written grounds of the High Court can be viewed [here](#).

Court of Appeal

On 19.9.2023, the Court of Appeal dismissed Raintree’s appeal against the decision of the High Court. The broad oral grounds of the Court of Appeal are set out in an earlier update - [*Raintree F&B Sdn Bhd v Red Sena Berhad \(In Liquidation\) \[Court of Appeal Civil Appeal No. W-02\(A\)-1595-08/2022\]*](#).

Federal Court

Raintree applied for leave to appeal to the Federal Court on 4 questions (“**Leave Application**”). In dismissing the Leave Application, the Federal Court unanimously held that the questions posed did not meet the threshold for leave under Section 96(a) of the Courts of Judicature Act 1964.

Conclusion

The decision of the High Court and Court of Appeal uphold the policy intent of the relevant provisions in the SC Equity Guidelines - to ensure IPO Investors are not put at risk and will be able to recoup their invested funds if the SPAC fails to complete the qualifying acquisition within the permitted timeframe, and promote trust and confidence in the legislative scheme governing SPACs.

¹ Kuala Lumpur High Court Companies Post Winding-Up No. WA-28PW-626-11/2019

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Lambert Rasa-Ratnam (together with Chia Oh Sheng and Lim Jun Xian) appeared on behalf of the Securities Commission Malaysia as *amicus curiae* in the High Court, Court of Appeal, and Federal Court.

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