

ZUL RAFIQUE & partners

PEGUAMBELA & PEGUAMCARA • ADVOCATES & SOLICITORS
NOTARI AWAM • NOTARY PUBLIC

Ref: LMM/CKH/20604512

23 January 2007

To: RHB Investment Bank Berhad
(formerly known as RHB Sakura Merchant Bankers Berhad)
Level 11, Tower Three
RHB Centre, Jalan Tun Razak
50400 Kuala Lumpur

By hand/fax no. 03-9287 5385

Attn: Mr. Peter Choong

To: Prima Uno Berhad
Level 7, Menara Milenium
Jalan Damanela
Pusat Bandar Damansara
Damansara Heights
50490 Kuala Lumpur

By hand/fax no. 03-2094 9940

Attn: Ms Jenny Lim

Dear Sirs,

ASSET SECURITISATION – PRIMARY COLLATERALISED LOAN OBLIGATIONS TRANSACTION (“PRIMARY CLO TRANSACTION”)

We have acted as legal advisers to RHB Investment Bank Berhad (formerly known as RHB Sakura Merchant Bankers Berhad) (the “Lead Arranger and Principal Adviser”), and Prima Uno Berhad (Company No. 739904-M) (“SPV” or “Purchaser”) in connection with the transactions arising from the Relevant Documents (as defined below).

We have been requested by the Lead Arranger and Principal Adviser and SPV to issue this opinion pursuant to the terms of the documents that have been executed in connection with the asset-backed securities to be issued pursuant to the Primary CLO Transaction and condition 1.2(xi)(e) of the approval letter dated 30 August 2006 issued by the Securities Commission of Malaysia (“SC Approval”).

We have examined copies of the following which form the sole basis of our opinion herein:

- (i) sale and purchase agreement (“SPA”) dated 8 January 2007 entered into between RHB Investment Bank Berhad (formerly known as RHB Sakura Merchant Bankers Berhad) (“Originator”) as seller and SPV as purchaser;

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Koay Ben Ree
Kung Suan Im
Oh Bee Leng
Rajeswari Karupiah

*Please turn overleaf for
list of Associates*

- (ii) standard form notices of assignment dated 8 January 2007 and 23 January 2007 sent or to be sent by the Originator to the Obligors of the Loans (as defined in the SPA) in respect of the assignment/transfer from the Originator to the Purchaser, of the rights, title and interest in and to the receivables and proceeds payable under

the facility agreements dated 8 January 2007 and 23 January 2007 made between the Originator, the Obligors and SPV and of the rights, title and interest in, to and under any security purporting to secure or support payment of the loans and all proceeds thereof ("Assignment Notice");

(the documents referred to in items (i) and (ii) above shall hereinafter be referred to as the "Relevant Documents");

- (iii) letters dated 23 and 31 May 2006 from the Originator to Bank Negara Malaysia ("BNM") wherein the Originator has informed BNM of the Proposed CLO Transaction pursuant to the Prudential Standards on Asset Backed Securitisation Transactions by Licensed Institutions issued by BNM and sought approval from BNM pursuant to Section 99(1)(ii) of the Banking and Financial Institutions Act, 1989 for Messrs Zul Rafique & partners to conduct a legal due diligence exercise on the Originator in relation to the Primary CLO Transaction;
- (iv) letter from BNM dated 14 June 2006 granting approval to Messrs Zul Rafique & partners to conduct the legal due diligence exercise on the Originator pursuant to Section 99(1)(ii) of the Banking and Financial Institutions Act, 1989 ("BNM Approval");
- (v) the SC Approval;
- (vi) an extract of the resolutions of the board of directors of the Originator passed on 27 June 2006 authorising the Originator to, inter alia, enter into the Primary CLO Transaction and the SPA;
- (vii) the certified true copy of the Memorandum and Articles of Association of the Originator;
- (viii) the certified true copy of the circular resolution of the board of directors of SPV dated 11 July 2006 authorising SPV to enter into and perform the SPA;
- (ix) the certified true copy of the Memorandum and Articles of Association of SPV; and
- (x) the results of the (i) search made at the Companies Commission of Malaysia ("CCM") in relation to the Originator dated 15 January 2007 and the SPV dated 9 January 2007 and; (ii) search at the Insolvency Department of Malaysia in relation to the Originator and the SPV, both dated 15 January 2007.

Assumptions

In giving this opinion, we have assumed:

- (a) the authenticity and completeness of all documents submitted to us as originals;
- (b) the conformity to original documents of all documents submitted to us as copies and the authenticity and completeness of the original documents;
- (c) the correctness of all facts stated in the Relevant Documents;

- (d) that all certificates and other documents on which we have expressed reliance remain accurate and that no additional matters would have been disclosed by a companies search at the CCM in Kuala Lumpur or by enquiry at the Insolvency Department of Malaysia in respect of the presentation of winding-up petitions if carried out since our review of the search results referred to in this opinion;
- (e) that the Originator was not unable to pay its debts within the meaning of Section 218 of the Companies Act, 1965 (Act 125), Laws of Malaysia ("Companies Act") at the time it entered into the Relevant Documents, that the Originator has not been, is or will not be unable to pay its debts within the meaning of that section in consequence of the Relevant Documents to which it is a party or the transactions contemplated thereby and that, as at the date of execution of the Relevant Documents to which it is a party (i) no resolution has been passed to wind up the Originator (ii) neither a petition has been presented nor an order has been made by any competent court for the winding-up of the Originator, (iii) no scheme of compromise or arrangement has been proposed in relation to the Originator and its creditors (iv) the Originator has not been dissolved, and (v) no receiver has been appointed over the property, assets or undertaking of the Originator;
- (f) that there have not been and are no contractual or similar restrictions binding on the Originator which would affect the conclusions in this opinion and that the execution, delivery and performance by the Originator of the Relevant Documents have not violated and do not and will not violate in any material respect any provision of any material contracts or arrangements to which it is a party or which are binding on it;
- (g) that the Originator has or, as the case may be, will have full legal and beneficial title to the rights, title and interest in and to the receivables and proceeds under the loans and/or the debt securities set out in Annex B and B1 of the SPA, under the security purporting to secure or support payment of the loans and all collections ("Assets") and they are not or, as the case may be, will not be subject to any restriction on assignment to SPV. Without prejudice to the foregoing, we assume that the Assets are not the subject of any encumbrances, charges, security interests or third party claims or rights whatsoever;

We confirm that a company search was conducted on 15 January 2007 at the CCM on the Originator and the result of the search (which were based on records filed up to 14 November 2006) reveal the existence of the following 3 undischarged charges created by the Originator and registered with the CCM.

- (i) existing charge number 004 dated 16 September 2001 created in favour of Malaysian Trustees Berhad to secure an open charge in relation to a fixed charge on T1 Coupons issued by Tenaga Nasional Berhad, evidenced by one thousand T1 Coupon Certificates;
- (ii) existing charge number 005 dated 16 September 2001 created in favour of Malaysian Trustees Berhad to secure an open charge in relation to a fixed charge on one thousand Class A Redeemable Preference Shares of Tenaga Nasional Berhad;
- (iii) existing charge number 006 dated 16 September 2001 created in favour of Malaysian Trustees Berhad to secure an open charge in relation to a fixed charge on all monies from time to time standing to the credit of the Special Account (as defined in the Memorandum of Charge),

However, our search on the records filed at the CCM is not conclusive that no other security interest exists since (i) not all security interests created by a company are required to be

registered with the CCM; and (ii) a period of 30 days is allowed for a company to file and register a charge which is registrable under Section 108(3) of the Companies Act;

- (h) that the Assets were purchased by the Purchaser at fair value. "Fair value" means its market value where there is a market for the Assets. In the absence of a market value for the Assets, "fair value" would be based on what a willing buyer and willing seller would agree upon;
- (i) where amounts payable under the Relevant Documents are expressed to be calculated by reference to a formula or index or procedure, the formula or index or procedure reflects correctly the intent of the parties to such Relevant Documents as regards the provisions thereof and we give no opinion as to its efficacy;
- (j) that the procedures followed by the parties to the Relevant Documents have corresponded to and been consistent with and will correspond to and be consistent with, the terms of the Relevant Documents;
- (k) insofar as any obligation is to be performed in any jurisdiction outside of Malaysia, its performance will not be illegal or ineffective by virtue of the laws of that jurisdiction;
- (l) that the minutes of the meetings and the resolutions of the directors furnished to us are complete and factually accurate records of the deliberations and matters resolved by the directors and none of the resolutions passed thereat have been revoked, withdrawn, amended or replaced;
- (m) that the information disclosed by (i) the result of the company search conducted on the Originator on 15 January 2007 at the CCM (which were based on records filed up to 14 November 2006) and on the SPV on 9 January 2007 at the CCM (which were based on records filed up to 20 November 2006); and (ii) the result of the winding-up search on the Originator and the SPV, both dated 15 January 2007 at the Insolvency Department of Malaysia were then accurate and complete and that such searches did not fail to disclose any material information; and
- (n) that a warranty that the warrantor does not know or believe it has had any notice of any particular act, matter, thing or circumstance means that the same does not exist or has not occurred.

Opinion

Based upon the aforesaid assumptions and subject to the qualifications and reservations set out below and to matters not disclosed to us which may affect the conclusions set out below, we are of the opinion that, so far as the present laws of Malaysia are concerned:

- (1) The Originator is a company duly incorporated and existing under the laws of Malaysia.
- (2) The Originator has the requisite corporate power under its Memorandum and Articles of Association to execute, deliver and perform its obligations under each of the Relevant Documents to which it is a party and that such execution, delivery and performance have been duly authorised by appropriate corporate action.
- (3) The Relevant Documents (to which the Originator is a party) constitute legally binding and enforceable obligations of the Originator in accordance with the terms of the Relevant Documents to which it is a party.

- (4) The execution, delivery and performance by the Originator of the Relevant Documents (to which the Originator is a party) have not violated and do not and will not violate in any material respect any provision of any present Malaysian law or regulation applicable to companies generally.
- (5) No authorisations, approvals or consents of governmental, judicial and public bodies and authorities in Malaysia are required by the Originator in connection with the performance, validity or enforceability of any of the Relevant Documents (to which it is a party) save and except for the following:
 - (a) the BNM Approval; and
 - (b) the SC Approval.
- (6) We have considered whether the transfer and sale of the Assets by the Originator to the Purchaser pursuant to the SPA constitutes a true sale. Generally, in Malaysia, the phrase "true sale" of the Assets refers to a legal or equitable assignment of receivables. To constitute a legal assignment under section 4(3) of the Civil Law Act, 1956, Laws of Malaysia, the following requirements must be satisfied:
 - (a) the assignment is made in writing under the hand of the assignor;
 - (b) the assignment is absolute and not by way of charge;
 - (c) the assignment relates to the whole of the debt; and
 - (d) the assignment is notified to the debtor in writing.

If any of the above-stated requirements is not met, the assignment would take effect as an equitable rather than a legal assignment. An equitable assignment is different from a legal assignment in that a legal assignee would be able to sue a debtor without any need to rely on the assignor's assistance in the enforcement of the debt, whereas an equitable assignee would have to join the assignor in any action against a debtor. As between the assignor, its successors and assigns and the equitable assignee, the equitable assignee would be treated as the owner of the assets.

With regard to requirement (a), we are of the opinion that the SPA, would satisfy this requirement.

With regard to requirement (b), we note from Clause 2.1 of the SPA that the Originator agrees to assign absolutely to the Purchaser, all of the Originator's rights, title and interest in and to the receivables and proceeds under the loans and/or the debt securities set out in Annex B and B1 of the SPA together with all of the Originator's rights, title and interest in to and under any security purporting to secure or support the payment of the loans and all proceeds thereof. In this regard, we are of the opinion that requirement (b) would be satisfied.

With regard to requirement (c), we note from the terms of the SPA that each Asset to be assigned relates to the whole of the amounts in respect of that Asset and not part only. In this regard, we are of the opinion that requirement (c) is met.

With regard to requirement (d), we have reviewed the Assignment Notices sent or to be sent to the Obligors and we are of the opinion that the Assignment Notices, sent or to be sent to the Obligor would satisfy requirement (d) in respect of that Obligor.

Notice to the Obligors may also be important for the following reasons:

- (a) to prevent the Obligor from making payment to the Originator. If he does so despite the Assignment Notice, he can be made to pay again to the Purchaser;
- (b) to stop new equities arising in favour of the Obligor;
- (c) to prevent modification of the agreement between the Originator and the Obligor under which the debt arose;
- (d) to secure priority over another encumbrancer. Under the principle laid down in Dearle -v- Hall (1828) 3 Russ 1, a later encumbrancer taking without notice of the earlier assignment and giving notice to the debtor first would get priority;
- (e) to preserve the debt from the Originator's reputed ownership in the event of its liquidation (see Section 53A of the Bankruptcy Act, 1967);
- (f) to obtain the benefit of a statutory assignment and thus the right to sue in the assignee's name without joining the assignor as a party to the suit.

We have also considered whether the transfer and sale of the Assets to the Purchaser pursuant to the SPA could be contested successfully by a liquidator or creditor of the Originator on the basis that it creates a security interest over the Assets which will be void against such liquidator or creditor in the event of the liquidation of the Originator unless registered under Section 108(3) of the Companies Act.

To the best of our knowledge there is currently no Malaysian authorities directly on point and we cannot predict with any degree of certainty how a Malaysian court would rule on the matter if the issues were presented to it. As such, our views will be based on the English cases of Re George Inglefield [1933] Ch 1 and Welsh Development Agency -v- Export Finance Co. Ltd [1992] BCC 270 ("Exfinco case"). Although these English authorities are not binding on Malaysian courts, we believe that the principles enunciated and applied in the English cases are likely to have a strong persuasive influence on the Malaysian courts.

In our opinion, according to the principles set out in Re George Inglefield (as considered and applied by the English Court of Appeal in the Exfinco case), a court would find that the transfer of the Assets from the Originator to the Purchaser under the SPA are not made by way of the granting of a mortgage or other security interest.

In Re George Inglefield, Romer LJ identified three indicia which distinguish a sale transaction from a mortgage or charge:

- (a) in a sale transaction the vendor is not entitled to get back the subject-matter of the sale by returning to the purchaser the money that has passed between them, whereas in the case of a mortgage or charge, the mortgagor is entitled, until he has been foreclosed, to get back the subject-matter of the mortgage or charge by returning to the mortgagee the money that has passed between them;

- (b) if a mortgagee realises the mortgaged property for a sum that is insufficient to repay him then the mortgagee is entitled to recover from the mortgagor any balance, whereas in a sale and purchase contract the purchaser has to bear any loss suffered on a subsequent sale of the asset by him; and
- (c) if a mortgagee realises the subject-matter of the mortgage for a sum more than sufficient to repay (together with interest and costs) the money that has passed between him and the mortgagor, he has to account to the mortgagor for any surplus, whereas in a sale and purchase contract any profit realised by the purchaser is for the purchaser's own account.

The Exfinco case states that a transaction structured by the parties as a sale will be upheld as such for the purposes of the registration of company charges under the provisions of the UK Companies Act 1985¹ unless either (i) the transaction is, in substance, a mortgage arrangement and not a sale or (ii) the transaction is a sham. With regard to (i), if one or more of the provisions of the document as a whole is inconsistent with a sale, then the court will look to the provisions of the document as a whole to determine the substance of the transaction. The Court of Appeal held in the Exfinco case that none of the indicia of a mortgage identified by Romer LJ in Re George Inglefield is necessarily inconsistent with a sale: a transaction structured as a sale may be upheld as such notwithstanding the fact that it bears all three of these indicia. With regard to (ii), the court will find the transaction to be a sham where the documents do not represent the intentions of the parties.

With regard to the first indicia, there is no provision under the SPA which entitles the Originator to purchase the Assets.

With regard to the second indicia, we note that as long as the Assets qualify as an Eligible Loan (any loan purchased or to be purchased from the Originator, which satisfies all the criteria as agreed between the Originator and the SPV as of the date that such loans are transferred to the SPV) or an Eligible Debt Security (any debt security purchased or to be purchased from the Originator, which satisfies all the criteria as agreed between the Originator and the SPV as of the date that such debt securities are transferred to the SPV), it satisfies the Eligibility Criteria (criteria as agreed between the Originator and the SPV) and there is no breach of warranties on the part of the Originator or in respect of the Assets as at the time of the sale, the Purchaser would have to bear any loss arising from Assets which are uncollectible. As such, we are of the view that the Purchaser bears some risk in relation to the Assets which subsequently go into default. In this regard, we are of the opinion that the second indicia is not present.

With regard to the third indicia, we understand from the Relevant Documents that the Purchaser does not have to account to the Originator for any profit realised from the Assets. As such, we are of the opinion that the third indicia is not present.

Another relevant case on the potential recharacterisation of the transaction is Curtain Dream plc -v- Churchill Merchandising Ltd (1990) BCC 341 where the transaction was recharacterised by the court as a charge or mortgage. However, we are of the view that the circumstances in the Churchill case differs from the present arrangement in several material aspects. In the Churchill case, the arrangements between the supplier company and Churchill, the financing party were contained in a credit facility letter and a general trading contract. The facility letter provided that under a 90-day credit line granted by Churchill to the company,

¹ The relevant provisions in the UK Companies Act, 1985 are sections 395 and 396 which are similar to section 108 of the Malaysian Companies Act, 1965

the company would invoice Churchill for the company's own merchandise as contained in the contract of trading and that Churchill would immediately reinvoice or sell back the merchandise at a price which reflects the cost to Churchill plus a transactional fee and interest. Payment by the company under the sale back was to be made by bills of exchange accepted by the company. The contract of trading entered into between Churchill as seller of the merchandise and the company as purchaser thereof contained a reservation of title clause to the effect that title to the goods would remain with Churchill and would not pass to the company until payment in full by the company of the purchase price. There was also an undertaking by the company not to sub-sell the goods prior to payment and to segregate the goods from the company's other goods.

The court held that the relationship between the parties could be determined from the terms of the facility letter and the trading conditions, which when viewed as a global transaction, could be recharacterised as a charge or mortgage. Crucial to the court's view was the exact degree of mutuality of the obligations in both directions with regard to the passing of title to the property – once the company had embarked on the transaction it was required to transfer the property to Churchill and Churchill was bound to reconvey the property to the company. At no time could the parties, once they proceeded to implement the terms of the facility letter, withdraw from the sale back. There was a compulsory redemption requirement. The courts also held that under the general trading contract Churchill would be obligated to account to the company for any surplus on a resale of the goods while the transaction was on foot. It was the mutuality of the repurchase and redemption which was the factor for characterisation as a loan.

We are of the opinion that the present structure contemplated under the SPA can be distinguished from the Churchill case for the following reasons:

- (a) there is no obligation on the Originator to repurchase the Assets save in the event where there is a breach of the Warranties (as defined in the SPA);
- (b) there is no provision by the Purchaser of any credit facility;
- (c) there is no obligation on the Purchaser to reconvey the Assets back to the Originator; and
- (d) under the SPA, the Purchaser would not be obligated to account to the Originator for any surplus on a resale of the Assets.

As mentioned earlier, while no case on recharacterisation has been litigated in Malaysia and without predicting what a particular court in Malaysia would actually decide, if the issues were properly presented to the court and if the court applied and followed what we believe to be applicable legal principles and subject to the aforesaid reasons and assumptions, the assignment of the Assets by the Originator to the Purchaser under the SPA would constitute a true sale of the Assets and, in particular, would not result in a recharacterisation of the sale of Assets as a charge over those Assets.

- (7) We have also considered whether the liquidation of the Originator will render the "true sale" of the Assets to the Purchaser void.

Section 293(1) of the Companies Act provides that any transfer, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company which, had it been made or done by or against an individual would in his bankruptcy under the law of bankruptcy be void or voidable shall in the event of the company being wound up

be void or voidable in like manner. Section 293(1) essentially extends the avoidance provisions of the Bankruptcy Act, 1967 (Act 360), Laws of Malaysia ("Bankruptcy Act") to companies. Under Sections 52 and 53 and of the Bankruptcy Act, where a company goes into liquidation, the liquidator may apply to the court for an order to set aside an earlier transaction which meets certain conditions. A summary of such conditions is as follows:

- (a) Under Section 52, where the transaction was not made in good faith and for valuable consideration and (i) the company goes into liquidation within two years after the transaction, the transaction shall be absolutely void against the liquidator; or (ii) the company goes into liquidation within five years after the transaction, the transaction shall be void against the liquidator unless the claimant can prove that the company was at the time of making the settlement able to pay all its debts without the aid of the property purchased and that the interest of the company in the property had passed to the claimant upon execution of the relevant agreement.
- (b) Under Section 53(1) of the Bankruptcy Act, "every conveyance or transfer of property or charge thereon made, every payment made, every obligation incurred and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor or any person in trust for any creditor" shall be deemed to have given such creditor a preference if entered into within a period of 6 months prior to the presentation of a winding up petition (and a winding up order was subsequently granted) and such conveyance, etc may be found to be void as an undue preference to a creditor. In order to establish undue preference the following five conditions set out in the said Section must be proved by the liquidator on a balance of probabilities (Sime Diamond Leasing (M) Sdn Bhd -v- JB Precision Moulding Industries Sdn Bhd (1997) 1 MLJ 499):
 - (i) that the transaction in question took place within 6 months prior to the commencement of the winding-up;
 - (ii) that it satisfies the description of one of the types of transactions mentioned in Section 53(1) of the Bankruptcy Act;
 - (iii) that it took place at a time when the company was unable to pay its debts as they became due from its own money (i.e. the company was insolvent);
 - (iv) that the person in whose favour the transaction was effected stood in the relation of creditor to the company; and
 - (v) that the effect of the transaction was to confer on that person a preference, priority or advantage over other creditors in the winding-up and such test is an objective test in light of the circumstances surrounding the transaction (Don Ho Mun Tuke & Anor. -v- Oslo Finas A.S (1990) 1 MSCLC 95,343).

It is unlikely that SPV would be, at the time of the transaction, a creditor of the Originator and therefore Section 53(1) of the Bankruptcy Act should not be applicable.

Section 54 of the Bankruptcy Act, which provides protection of certain bona fide transactions, states that subject to the foregoing provisions of the Bankruptcy Act, nothing in the Bankruptcy Act shall invalidate in the case of a bankruptcy-

- (a) any payment by the bankrupt to any of his creditors;

- (b) any payment or delivery to the bankrupt;
- (c) any conveyance or assignment by the bankrupt for valuable consideration;
- (d) any contract, dealing or transaction by or with the bankrupt for valuable consideration,

if:

- (i) the payment, delivery, conveyance, assignment, contract, dealing or transaction, as the case may be, takes place before the date of the receiving order; and
- (ii) the person other than the debtor to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing or transaction was made, executed or entered into, has not, at the time of payment, delivery, conveyance, assignment, contract, dealing or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time.

Under Section 218(2) of the Companies Act, a company is deemed to be unable to pay its debts if: (a) it fails for three weeks after a demand is made by a creditor under Section 218, to pay the sum specified in the demand which sum is in excess of Ringgit Malaysia Five Hundred (RM500); or (b) an execution or other process issued on a judgment, decree or order of any court in favour of a creditor is not satisfied by the company in whole or in part; or (c) it is proved to the satisfaction of the court that the company is unable to pay its debts taking into account the contingent and prospective liabilities of the company (i.e. the company is unable to pay its debts as they fall due (liquidity test) or if the value of company's assets is less than the amount of its liabilities).

On the assumption that:

- (a) the Originator was not unable to pay its debts within the meaning of Section 218(2) of the Companies Act at the time of or as a result of the execution of the SPA; and
- (b) the purchase of the Assets was made in good faith (i.e. the Purchaser had no knowledge of the insolvency of the Originator at the time of the purchase) and for valuable consideration (ie. the consideration is and will be paid in accordance with the provisions of the SPA),

we are of the opinion that in the event of the subsequent liquidation of the Originator, the SPA (and the sale of the Assets contemplated thereunder) could not be successfully challenged by a liquidator of the Originator as a voidable transaction.

Section 292(1) of the Companies Act provides for a certain priority in a winding-up to preferential creditors in respect of unsecured debts (e.g. employees' wages or salaries and statutory payments). Since there would be a sale of the Assets to the Purchaser, the Purchaser should not be affected by such preferential creditors in the event of a winding-up of the Originator.

- (8) There are two types of administrative stays which may be obtained in favour of a company from a Malaysian court:
 - (a) Section 176(10) of the Companies Act, which allows companies to enter into a scheme of arrangement and reconstruction with its creditors, provides for a stay of

proceedings against the company for "a period of ninety (90) days or such longer period as the court may for good reason allow" pending the company obtaining the approval of its creditors and the court for the said scheme. As a matter of practice, these stays do not normally exceed six (6) months but the court has been known to grant stays exceeding six (6) months. It is possible for a creditor to obtain the leave of the court to vary or set aside the stay order;

- (b) pursuant to Section 222 of the Companies Act, where winding-up proceedings against a company have commenced, the company or any creditor or contributory may, where any action or proceeding against the company is pending, apply to the court to stay or restrain further proceedings in the action or proceeding on terms which the court thinks fit. Winding-up proceedings are deemed to have commenced upon the presentation of a winding-up petition by a creditor of the company to the court or upon the passing of a winding-up resolution by the company. The length of such stays is entirely at the discretion of the court.

We are of the opinion that the true sale will not be affected by a stay of proceedings whether obtained under Section 176 or Section 222 of the Companies Act.

In the event that a receiver is appointed over the Originator's assets, we are of the view that since the Assets do not belong to the Originator, the receiver will not be able to direct payments from the Collection Account.

- (9) We note from Clauses 3.3 and 3.4 of the SPA that the Purchase Price shall be used by the Originator solely for the purpose of funding the disbursement of the Primary Loans and disbursing the same to the Obligors. In the event the Originator contravenes this covenant, it would be liable to account to the Purchaser for the misapplication of the Purchase Price.
- (10) In relation to Section 49(1)(b) of the Banking and Financial Institutions Act, 1989 ("BAFIA") which requires the prior approval of the Minister of Finance to be obtained for the "sale, disposal or transfer howsoever of the whole or any part of the business of the licensed institution", the Banking and Financial Institutions (Exemption) Order 2002 (which came into effect on 28 March 2002) grants an exemption to "all parties to an agreement or arrangement for the securitisation of assets of licensed institutions" from the application of Section 49(1)(b) of BAFIA, "subject to such terms, conditions, restrictions or limitations as the Bank (BNM) may specify". Accordingly, the sale/transfer of the Assets by the Originator to SPV will not require the prior approval of the Minister of Finance.
- (11) With regard to stamp duty, the Stamp Duty (Exemption) (No. 12) Order 2001, which is deemed to come into operation on 1 January 2001 ("Exemption Order") provides that certain instruments specified in the Schedule to the Exemption Order which are executed on or after 1 January 2001 for the purpose of a securitisation transaction are exempted from stamp duty.

A "securitisation transaction" means an arrangement which involves the transfer of assets or risks to a third party where such transfer is funded by the issuance of debt securities to investors and approved by the Securities Commission pursuant to Section 32 of the Securities Commission Act, 1993.

The instruments which are stipulated in the Exemption Order include, inter alia:

- (a) any instrument that operates to transfer, convey, assign, vest, effect or complete a disposition of any legal or equitable right or interest in or title to any asset or charge or mortgage which in the Schedule is referred to as "the rights" to or in favour of a

special purpose vehicle and also an instrument which operates to retransfer or effect a repurchase of the rights from the special purpose vehicle to or in favour of the person from whom the rights were acquired. We are of the view that the SPA would fall under this exemption paragraph; and

- (b) any other instrument or document to which a special purpose vehicle is a party. We are of the view that this exemption paragraph is wide enough to cover the other Transaction Documents to which the SPV is a party.

Therefore, we are of the view that the SPA and the other Transaction Documents to which the SPV is a party would be exempted from stamp duty by virtue of the Exemption Order.

Reservations

This opinion is subject to the following:

- (a) Any provision for default interest to be paid on overdue amounts may amount to an irrecoverable penalty.
- (b) Any provisions in the Relevant Documents to the effect that any calculations, determination, notification or opinion will be conclusive and binding may not be enforceable if such calculations, determination, notification or opinion are fraudulent or manifestly inaccurate and may not necessarily prevent judicial enquiry into the merits of any claim based on such calculations, determination, notification or opinion by an aggrieved party.
- (c) The term "enforceable" when used in this opinion means that each obligation or document is of a type and form enforced by the Malaysian courts. It is not certain, however, that each obligation or document will be enforced in accordance with its terms in every circumstance, enforcement being subject to, inter alia, the nature of the remedies available in the Malaysian courts and all limitations resulting from the laws of bankruptcy, insolvency, liquidation or other laws affecting generally the enforcement of creditors' rights. The term "enforceable" does not mean or imply that the provisions of the Relevant Documents will be enforced in all circumstances or that any particular remedy will be available. Equitable remedies such as injunctions or orders for specific performance are discretionary and will not be granted automatically by the courts.
- (d) The effectiveness of terms exculpating a party from a liability or duty otherwise owed is limited by law.
- (e) We express no opinion in this letter as to the indefeasibility of the title of the Originator to any of the Assets. The Purchaser's title will generally be subject to:
 - (i) the rights of a person with a prior equitable interest in the Assets if (1) notice of such equitable interest is given by such person to the Obligor of the Assets before the Purchaser gives notice to the Obligor, or (2) the Purchaser has notice of the equitable interest at the time the Assets are assigned to the Purchaser;
 - (ii) the rights of a person with a subsequent equitable interest where the person acquiring such equitable interest (1) does not have notice of the assignment to the Purchaser at the time of creation of the equitable interest and (2) gives notice of the equitable interest to the Obligor before the Purchaser gives notice to the Obligor;

- (iii) the rights of a person with a prior legal charge over or a prior legal assignment of the Assets (regardless of notice); and
- (iv) the rights of a person with a subsequent legal charge over or a subsequent legal assignment of the Assets when such legal interest is acquired for value and without notice of the equitable assignment (unless the Purchaser had given notice of the assignment to the Obligor prior to the creation of such legal interest).
- (f) Notwithstanding any indemnity provisions in the Relevant Documents, the party claiming under the indemnity is obliged to show the amount of loss or expenses incurred or suffered by it in relation to or arising under the Relevant Documents if the matter is brought before the courts. Any indemnity for the costs of litigation may not be given its full effect by the Malaysian courts.
- (g) A power of attorney may, in certain circumstances, be revoked by the winding-up or dissolution of the donor company.
- (h) Any person who is not a party to an agreement may not be able to enforce any provisions of that agreement which are expressed to be for the benefit of that person.
- (i) Our opinion is based upon Malaysian laws and regulations prevailing as at the date of this opinion.

This opinion is given for the sole benefit of the Lead Arranger and Principal Adviser and SPV and may not, except with our prior written consent, be transmitted to or relied upon by any other person. You may, however, provide a copy to the Securities Commission of Malaysia pursuant to condition 1.2(xi)(e) of the SC Approval. This opinion is strictly limited to the matters stated herein and is not to be read as extending by implication to any other matter. It is to be governed by and construed in accordance with Malaysian law.

Yours faithfully
ZUL RAFIQUE & partners

