

NOTES TO THE FINANCIAL STATEMENTS

FOR THE FINANCIAL YEAR ENDED 31 DECEMBER 2014
(Amounts in thousands of Singapore dollars (“\$’000”))

26. CONTINGENCIES AND COMMITMENTS

(a) Contingent liabilities

(i) A sub-contractor of Darco Engineering (Taiwan) Co., Ltd (“DET”), Zhan Ji Co. (“Zhan Ji”) had made claims against DET for the balance contract sum and additional compensations relating to the following 2 projects, totalling approximately \$2.82 million, or NTD\$67.68 million (2013:\$2.85 million, or NTD\$67.68 million):

- Claim against DET by Zhan Ji on Keya project of \$1.60 million, or NTD\$38.43 million (2013: \$1.62 million, or NTD\$38.43 million). DET had won the first trial on 9 October 2012 and subsequently Zhan Ji had filed for an appeal on 25 December 2012. A second trial date has yet to be fixed. No provision has been recognised as at 31 December 2014 and 2013 as the Group’s management does not consider that there is any probable loss in view of the outcome in the first trial.
- Claim against DET by Zhan Ji on Chu Bei project of \$1.22 million, or NTD\$29.25 million (2013: \$1.23 million, or NTD\$29.25 million). DET has lost the first trial and ordered by the court to compensate Zhan Ji for a sum of \$0.87 million, or NTD\$20.77 million (2013: \$0.88 million, or NTD\$20.77 million) on 24 Jan 2013. Subsequently DET has filed an appeal on 18 February 2013, for which a second trial date has yet to be fixed.

In December 2014, Zhan Ji had applied for a provisional execution order from court to retain judicial compensation amounted to NTD\$20.77 million and then filed an appeal on court’s unfavourable judgment on its additional compensation claim of \$0.25 million, or NTD\$ 6.10 million.

The claim awarded in the first trial amounting to \$0.87 million, or NTD\$20.77 million (2013: \$0.88 million, or NTD\$20.77 million) has been included as trade payables (Note 14) as at 31 December 2014 and 31 December 2013 respectively. Based on the outcome of the first trial, the management is of the view that there is no further liability beyond the amount recorded as at 31 December 2014.

As at the date of this report, the legal cases are currently still ongoing.

(ii) A main contractor of DET, Globe Environmental Co., Ltd. (“GEC”) made an initial claim against DET for compensation amounted to approximately \$0.97 million, or NTD\$22.95 million, which DET had won the first trial on 29 April 2013. Subsequently GEC had reduced its initial claim sum to \$0.61 million, or NTD\$14.4 million in its second trial against DET, which DET had also won on 26 November 2014.

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26. CONTINGENCIES AND COMMITMENTS (CONTINUED)

(a) Contingent liabilities (Continued)

(ii) (Continued)

In November 2014, GEC had again filed an appeal to claim against DET for the same amount. On 27 January 2015, the Court has determined that the appeal is not valid and has maintained its original judgement. Based on the outcome of the proceedings, no provision has been recognised as at 31 December 2014 and 31 December 2013.

(iii) DET set up a subsidiary, Darco Puding Wastewater Management Co., Ltd (“Darco Puding”) to enter into a build-operate-transfer (“BOT”) contract with Taoyuan County Government (“TCG”) on 16 March 2010. Under the BOT contract, the Company was granted a 35 years concessionary period to construct and operate the water treatment plant. The construction of the water treatment plant was to be completed in 4 years period from 16 March 2010.

In 2010, Darco Puding found hazardous material in the ground during the construction phase and has informed TCG of this finding. The construction of the water treatment plant has been put on hold since then. The following legal cases or claims arose as a result of the cessation of work:

– Relating to the refund of deposits claimed by Darco Puding:

Due to unacceptable delays in the BOT project in Taiwan, Darco Puding decided to rescind the BOT contract with TCG in November 2012, and has taken a legal action against TCG in the Taoyuan District Court for the refund of a guarantee deposit placed with TCG amounted to \$2.50 million, or NTD\$60.00 million (2013: \$2.53 million, or NTD\$60.00 million).

Based on the legal counsel’s advice, the management has assessed that there is no impairment loss to be provided on the deposit with a carrying amount of to \$2.50 million, or NTD\$60.00 million (2013: \$2.53 million, or NTD\$60.00 million) (Note 10) as at 31 December 2014 and 31 December 2013 respectively, since the hazardous material found in the ground provides reasonable grounds for the termination of the BOT contract based on its contractual terms.

As the date of this report, the litigation preparation procedures have been completed and is now pending for a trial date to be fixed.

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26. CONTINGENCIES AND COMMITMENTS (CONTINUED)

(a) Contingent liabilities (Continued)

(iii) (Continued)

- Relating to the penalty levied by TCG for non-compliance:

As a result of the cessation of work on the project, Darco Puding was penalised by TCG for non-compliance with the schedule and other obligations as stated in the BOT contract. Total penalty levied and accrued as at 31 December 2011 amounted to \$0.43 million (NTD\$9.87 million), which has subsequently been informed by TCG to have increased to \$6.95 million (NTD\$164.98 million) as at 6 December 2012.

Based on the legal counsel’s advice, the management has assessed that there is no penalties payable beyond the amount accrued of \$0.41 million, or NTD\$9.87million (2013: \$0.42 million, or NTD\$9.87 million) as at 31 December 2014 and 31 December 2013 respectively, included in Trade and Other payables (Note 14) since the hazardous material found in the ground provides reasonable grounds for the termination of the BOT contract based on the contractual terms.

The cumulative construction costs incurred for BOT contract amounted to \$1.72 million, or NTD\$40.70 million up to the cessation of work were written off since the financial year ended 31 December 2011 in view of uncertainty of its recoverability.

- Relating to the land use right attached to the BOT contract:

TCG had since resisted Darco Puding’s action to rescind the BOT contract, and in response TCG has also ordered the Taoyuan Land Office to cancel Darco Puding’s land use rights attached with the BOT contract. Darco Puding then applied for judicial review on the ground that the Land Office had acted illegally to cancel the land use rights attached to the BOT contract. In relation to the land use rights, Darco Puding received a judgement in its favour in December 2013 and subsequently TCG has filed an appeal to the Taiwan Supreme Administration Court (the “Court”). In June 2014, the Court has rejected TCG’s appeal, and the judgement of the early court was reaffirmed. Upon receipt of the judgement letter, TCG filed a judicial response in September 2014 to cancel the land use rights and to request that the legal costs be borne by Darco Puding.

As at the date of this report, the judicial response is still under review by the Taoyuan District Court.

The management has assessed that there is no impact to the financial statements as at 31 December 2014 in view that the land use rights provided to Darco Puding for use under the BOT contract has not been recognised as the Group’s assets.

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(Amounts in thousands of Singapore dollars (“\$’000”))

26. CONTINGENCIES AND COMMITMENTS (CONTINUED)

(a) Contingent liabilities (Continued)

(iv) The Group has provided the following guarantees as at 31 December 2014:

	Group		Company	
	2014 \$’000	2013 \$’000	2014 \$’000	2013 \$’000
Corporate guarantees provided to banks and financial institutions for credit facilities granted to subsidiaries	–	–	750	2,206
Performance guarantee to customers for performance of the contracts during the contract and warranty periods	5,419	8,589	–	–

The Company has also given undertakings to continue providing financial support to certain subsidiaries as and when required to allow them to meet their obligations.

The directors have assessed the fair values of these financial guarantees to have no material financial impact on the results for the financial years ended 31 December 2014 and 31 December 2013.

(b) Contingent assets

The legal actions initiated by the Group against third parties or former employees is summarised below. No assets or income has been recognised as a result of these legal actions as the legal cases are currently still on-going and the Group has yet to receive any compensation.

(i) In March 2010, the Group reported to the Singapore Stock Exchange that the Group was concerned with the manner in which DET accounts had been managed.

On 20 May 2010, KPMG Singapore was appointed to conduct an investigation of the affairs of DET. Based on investigation report issued by KPMG Singapore on 27 May 2011, the total amount of possibly misappropriated monies amounted approximately to \$7.18 million, or NTD\$163.41 million.

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26. CONTINGENCIES AND COMMITMENTS (CONTINUED)

(b) Contingent assets (Continued)

- (i) The Group filed police reports against its former employees and third parties facilitators or conspirators, claiming a total misappropriated amounts of \$8.7 million, or NTD\$197 million as of 31 December 2013 (“Compensation Claim”). The misappropriated amounts were recorded either as alleged administration expenses or project costs and recognised in the consolidated statement of comprehensive income for the financial years ended 31 December 2009 and before.

On 9 May 2013, DET’s former general manager and former administration manger (the “Defendants”) have been formally charged by Taipei District Prosecutors Office for alleged fraud, breach of trust and misappropriating of company funds, sixteen other suppliers have been charged for alleged complicity.

On 18 June 2014, Taipei District Court of Taiwan has found the former general manager guilty of criminal breach of trust and embezzlement and sentencing him to a total of six years imprisonment, while the former administration manger has been guilty only of embezzlement and has been sentenced to three years and eight months jail term. Third parties facilitators and conspirators had been dealt with separately. The defendants has filed an appeal upon receipts of the judgment letter dated 18 June 2014.

As at the date of this report, the defendants’ appeal is under the judicial review of Taiwan High Court. The judicial review of the compensation claim has been put on hold till the final judgement on the criminal misappropriating charge. Included in the deposits of the Group as at 31 December 2014 and 2013 (Note 10) is a refundable deposit of \$0.63 million, or NTD\$15.11 million (2013: \$0.64 million, or NTD\$15.11 million) paid to the court as guarantee for withholding the defendants’ assets.

- (ii) In an unrelated case, DET filed a legal claim of \$0.08 million, or NTD\$2.00 million during the previous financial years, against its former employees and third party facilitators for breach of trust. DET had lost the first and the second trials on 28 March 2013 and 25 March 2014 respectively. An appeal has been filed on 26 February 2015, for which a third trial date has yet to be fixed.

As at the date of this report, the legal case is currently still ongoing.

- (iii) DET filed a legal claim against a subcontractor, Zhan Ji, for compensation amounting to approximately \$0.21 million, or NTD\$4.89 million in respect of construction defects. DET had won the first trial on 10 November 2014 and Zhan Ji had filed for appeal on 1 December 2014.

As at the date of this report, the legal case is currently still ongoing.

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(Amounts in thousands of Singapore dollars (“\$’000”))

26. CONTINGENCIES AND COMMITMENTS (CONTINUED)

(c) Operating lease commitments – Where the Group is a lessee

The Group leases land, staff hostels, factories, warehouses and offices from non-related parties under non-cancellable operating lease agreements. The leases have varying terms, escalation clauses and renewal rights. Lease terms do not contain restrictions on the Group’s activities concerning dividends, additional debts or further leasing.

The future minimum lease payables under non-cancellable operating leases contracted for at balance sheet date but not recognised as liabilities, are as follows:

	Group	
	2014	2013
	\$’000	\$’000
Future minimum lease payments		
– not later than 1 year	433	400
– later than 1 year and not later than 5 years	356	351
	<u>789</u>	<u>751</u>