

**ANNUAL GENERAL MEETING (“AGM”) TO BE HELD ON 25 APRIL 2022  
RESPONSES TO QUESTIONS RECEIVED FROM SHAREHOLDERS**

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Darco Water Technologies Limited (“**Darco**” or the “**Company**”) refers to its announcement on 8 April 2022 on the alternative arrangements for the AGM and, in particular, to the invitation to shareholders to submit questions in advance of the AGM. The Company would like to thank shareholders for the questions submitted. The Company’s responses to the questions received from the shareholders are set out below. The questions which are similar in nature and pertain to the same subject matter are grouped together for ease of reference and paraphrased for clarity:

1. **With the court’s judgment on the case against the former CEO on 8 March 2022 and Company’s decision not to appeal as announced on 7 April 2022, can the board clarify on the following for shareholders’ benefit:**
  - a) **Can the board explain in detail the background leading up to the legal case, including the company’s basis for the decision to begin the legal proceedings?**

**Response:**

Please refer to the Company’s previous announcements dated 16 April 2020 and 12 August 2020.

In the Company’s announcement on 16 April 2020, the Company informed its shareholders that an extensive internal review of, amongst others, the Con Dao Solar Project and the Can Guioc Water Project was undertaken (the “Internal Audit Review”). Further, together with the Company’s legal counsel, the Company sought further information from the Company’s former director and Chief Executive Officer, Mr. Thye (the “Former CEO”). Based on: (a) the findings of the Internal Audit Review, (b) the legal opinions obtained by the Company, and (c) the Former CEO’s responses to the Company’s requests, the Board, after deliberations, decided to commence legal proceedings against the Former CEO as part of the Company’s efforts to recover the then outstanding sums of US\$1.6 million that it had paid out pursuant to the Con Dao Solar Project and the Can Guioc Water Project.

- b) **Can the board confirm if it is true that USD\$1 million was paid out to Mr Dao’s company, CA Trading, with regard to the Can Giuoc Water Project, without board approval, before due diligence had been completed, and without Darco receiving shares or other forms of security in exchange? If so, can the board confirm if such actions are permissible under the company’s current corporate governance rules, and whether there are plans by the board to strengthen corporate governance.**

**Response:**

The High Court’s Judgment in the legal case is available publicly and is accessible at: [https://www.elitigation.sg/gd/s/2022\\_SGHC\\_49](https://www.elitigation.sg/gd/s/2022_SGHC_49) (as accessed on 19 April 2022) (the “Judgment”). Shareholders are advised to read and refer to the Judgment for the High Court’s findings and reasons for its decision in the legal case.

For the payment of US\$1 million, please refer to paragraphs 10 and 41 of the Judgment, which states:

*“On 14 December 2017, the agreement was signed (“Framework Agreement”). Later that day, pursuant to the terms of the Framework Agreement, Mr. Thye remitted US\$1m (“the Deposit”) to CA Trading. Under cl 5 of the Framework Agreement, this sum is stated to be a refundable deposit recoverable upon the discovery of any negative, unfavourable or adverse findings of a technical or financial nature that renders the plaintiff unable to proceed with entry into a sale and purchase agreement for the acquisition of the 90% equity interest in Canwaco (“Water Project SPA”).*

*“First, the payment of the Deposit under the Framework Agreement merely entitles the plaintiff to exclusively negotiate in good faith for the purchase of 90% of equity interest in Canwaco, subject to certain requirements. The Framework Agreement does not mandate the purchase of Canwaco. Clauses 4 and 6 make clear that the Framework Agreement does not involve the acquisition in Canwaco from CA Trading, and that such an acquisition will be carried out by way of a separate agreement (ie, the Water Project SPA).”*

The Company wishes to clarify that for payments made pursuant to the Can Giuoc Water Project, no security was obtained.

For the Company’s plans to strengthen corporate governance, the Company wishes to add that the Company has adopted the recommendations to address the issues raised in the Internal Audit Review. The Company remains committed to improving its corporate governance standards on an ongoing basis.

- c) **Can the board confirm if it is true that:**

- i. **USD\$600k was paid out to Mr Dao’s personal account with regard to the Con Dao Solar Project, without board approval, before due diligence had been**



## SOLUTIONS TO WATER & WASTE

completed, and without Darco receiving shares or other forms of security in exchange?

- ii. The former CEO had circulated to the board an unsigned LOI between Mr Dao and Darco Water Systems Sdn Bhd (DWS), but separately and without the knowledge of the board, DWS had signed a different LOI which stipulated that USD\$1 million was to be paid to Mr Dao.
- iii. DWS then entered into another agreement with Mr Dao, without the knowledge of the board, that allowed USD\$600k to be paid to Mr Dao before signing an SPA.
- iv. The former CEO then authorised a total of USD\$600k to be paid out from Darco's Singapore headquarters, without the knowledge of the board, even though all the agreements were between Mr Dao and DWS.

**If so, can the board confirm if such actions are permissible under the company's current corporate governance rules, and whether there are plans by the board to strengthen corporate governance.**

**Response:**

Please refer to paragraphs 74 to 78 (under the sub-heading, "FIRST PAYMENT"), paragraphs 79 to 83 (under the sub-heading "SECOND PAYMENT") and paragraphs 84 to 89 (under the sub-heading "THIRD PAYMENT") of the Judgment.

The Company has adopted the recommendations to address the issues raised in the Internal Audit Review. The Company remains committed to improving its corporate governance standards on an ongoing basis.

**Can the company release the 'Three Letters' referred to in the Judgment for the clarity and understanding of the shareholders?**

**Response:**

The Company has been advised by its legal advisors that the High Court has made its findings on the "Three Letters" and considered the entire body of evidence presented to Court in the case. The mere reading of the "Three Letters" in isolation may present a different view and more importantly, be misleading. Shareholders are advised to refer to the Judgment to understand the evidence presented and the treatment of such evidence by the High Court, for a full understanding of the High Court's findings and reasons for its decision in the legal case.



**SOLUTIONS TO WATER & WASTE**

- d) **Would it be accurate to say from the court’s judgment that the USD\$1.6 million total paid out to Mr Dao was not a breach of duties, because the company’s Group Charter was set up to allow the CEO to pay out up to SGD\$20 million without board approval? If so, what will the board be doing to close this loophole, to make sure all significant payments must be approved by the board?**

**Response:**

Please refer to paragraphs 35 and 36 of the Judgment, which states:

*“In response, the defendant argues that the Group Charter only requires approval from the Board for transactions that involve acquisitions or disposals. The Framework Agreement was not one such transaction. Instead, it was an agreement to enable the plaintiff to demonstrate good faith and to perform due diligence checks. Accordingly, no approval from the Board was required to enter into the Framework Agreement.”*

*“I agree with the defendant for the following reasons. Contrary to what the plaintiff contends, I find the Group Charter to have been effectively implemented. The Group Charter features in the plaintiff’s Annual Reports from 2017 to 2020. Across all four years, the reports highlight the role of the Group Charter, stating that the “Group Charter sets out the Group’s internal guidelines for material contracts and investments exceeding specified amounts”. Second, in an Internal Audit Report prepared by BDO LLP dated 22 May 2020 (“Internal Audit Report”), several references to the Group Charter were made by the plaintiff ...”*

The Company wishes to add that it has adopted the recommendations to address the issues raised in the Internal Audit Review. The Company remains committed to improving its corporate governance standards on an ongoing basis.

- e) **From paragraph 100 of the Judgment, would it be fair to conclude, according to the company’s legal counsel, that the inability of Darco’s only 2 witnesses to testify with conviction that there was anything seriously wrong with the former CEO’s actions played a very significant role in the Judge’s decision to dismiss the company’s case?**

**Response:**

Paragraph 100 of the Judgment states that:

*“Before I conclude, I observe that commercial decisions made bona fide by directors may (for any number of reasons) turn out to be poor loss-making ones. This aptly captures the situation at hand. In this connection, I am perturbed that the plaintiff’s only two witnesses, Ms Tan and Mr Teh (who worked on the two projects), were not able to testify with any degree of conviction that there was anything seriously wrong with the*



**SOLUTIONS TO WATER & WASTE**

*defendant's actions at the material time. It appears to me that it is the Board which has become aggrieved with the outcomes of the two projects. It is trite that the court is slow to interfere in commercial decisions which have been made honestly even if they turn out, on hindsight, to be financially detrimental. ..."*

As can be seen from the reading of the Judgment in full, there are several reasons as to why the Company was unsuccessful in its claim against the Former CEO. As stated in the Company's announcement of 7 April 2022, the Company has decided not to appeal the decision and respects and accepts the Judgment. The Board hence refrains from making any conclusions on its own, and shareholders are advised to read and refer to the Judgment for the High Court's findings and reasons for its decision in the legal case.

**BY ORDER OF THE BOARD**

Kong Chee Keong  
Executive Director and Chief Executive Officer

19 April 2022