

THE TAKEOVER PANEL

SIME DARBY HOLDINGS LIMITED ("SIME DARBY")

The Panel met on 1st December, 1976 to consider an application by Sime Darby presented by their financial advisers, Kleinwort Benson Limited, that it should exercise jurisdiction over the affairs of Sime Darby in respect of certain actions taken or which might be taken by or on behalf of Pernas Securities Sdn Berhad ("Pernas"), which is a subsidiary of the National Corporation of Malaysia.

Sime Darby is a company registered in England and listed on The Stock Exchange in London, and on those of Kuala Lumpur, Singapore and Hong Kong. It is not resident in the UK for tax or exchange control purposes and most of the shareholders are not UK residents.

The actions which have occasioned this application to the Panel relate to the proposed re-election of four directors, three of whom are full-time executives, at the Annual General Meeting which was held in Malaysia on 19th November, 1976. Rothputra Nominees Sdn Berhad ("Rothputra"), on behalf of some 26% of the equity of Sime Darby (including that in which Pernas is interested) opposed these re-elections, and put forward three nominees for election as non-executive directors. The Chairman of Sime Darby directed that a poll be held and this is scheduled for Friday, 10th December. On 23rd November the present Sime Darby directors wrote to shareholders unanimously recommending the re-election of the present directors and on 27th November N.M.Rothschild & Sons Limited on behalf of Pernas countered with an answering circular to shareholders.

Kleinwort Benson submitted to the Panel that the change in the composition of the board sought by Rothputra would result in Malaysian interests obtaining control of Sime Darby and, further-more, that this would automatically carry control of three major subsidiary companies of Sime Darby which have shares listed in London, Consolidated Plantations Limited, Assam Frontier Tea Company Limited and Sime Darby London Limited. Kleinwort Benson had requested the Panel to assume jurisdiction in this case and to require either that Pernas and its associates should make an

offer for all the Sime Darby shares or undertake not to press for their nominees to be elected in place of the existing directors or, alternatively, that they should not vote their shares in the forthcoming poll.

The City Code states that it does not normally apply to a take-over of a company which is not resident for exchange control purposes in the United Kingdom even though such a company is listed on The Stock Exchange. In addition, the Code defines control as meaning a holding or aggregate holdings of shares carrying 30% or more of the voting rights of a company, irrespective of whether that holding or holdings gives de facto control. Furthermore, in a practice note to the Code, it is stated that the Panel would not normally regard the action of shareholders voting together on particular resolutions as action which of itself should lead to an offer obligation, but it might in certain circumstances hold that such joint action indicated that there was a group acting in concert with the result that subsequent purchases by any member of the group could give rise to such an obligation.

The Panel found no evidence that any Rule of the Code had been broken and in particular was not satisfied that a concert party existed in circumstances which would give rise to the obligation to make an offer to all shareholders. Accordingly, without defining the circumstances in which jurisdiction would be exercised, it does not propose to assume jurisdiction in this case.

The Panel wishes to emphasise that it is always the duty of directors to act in the best interests of all shareholders and not merely to consider the interests of, or be influenced by, those who may have secured their election.

6th December, 1976.