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What happened at Aries Telecoms?

The Edge, Malaysia



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A RM400 million loan for an incomplete fibre-optic project

STORIES BY
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Aries Telecoms (M) Bhd, formerly known as V Telecoms Bhd, was once hailed as the first telecommunications company in Malaysia to have a regional presence in Southeast Asia with its planned US\$5 billion Vasseti South Asia Network (VSAN) project. However, the mammoth undertaking, which boasted that it would have more than 30,000km of terrestrial fibre-optic infrastructure across the region, did not pan out, as Bank Pembangunan Malaysia Bhd (BPMB) found out following the conclusion of its investigations in January this year.

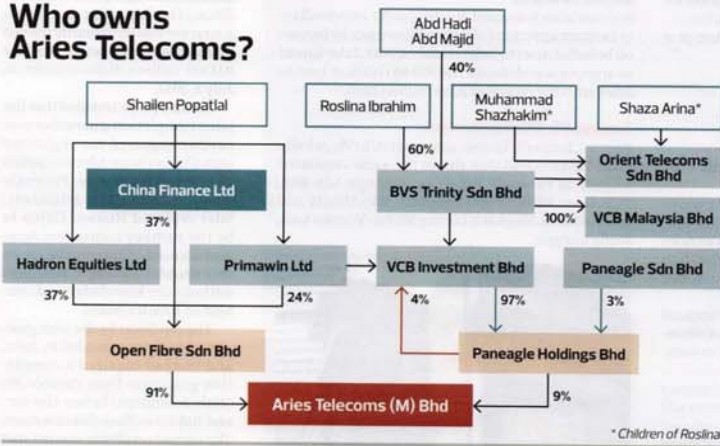
BPMB alleged wrongdoings by several quarters and has initiated a RM564.99 million civil suit against 27 defendants, including Aries' former president and group managing director Datuk Mohd Zafer Hashim, former directors, corporate shareholders and indirect shareholders (see chart).

It is understood that this will not be the only fraud-related legal action taken by BPMB. The development financial institution (DFI) is said to be initiating another suit, claiming around RM1 billion.

The Aries saga began in May 2012, when a RM400 million term loan was granted by BPMB to the company to finance the Malaysian portion of the VSAN project, with an estimated cost of RM1.3 billion.

The private project — mainly involving the laying of fibre-optic lines along the entire coast of

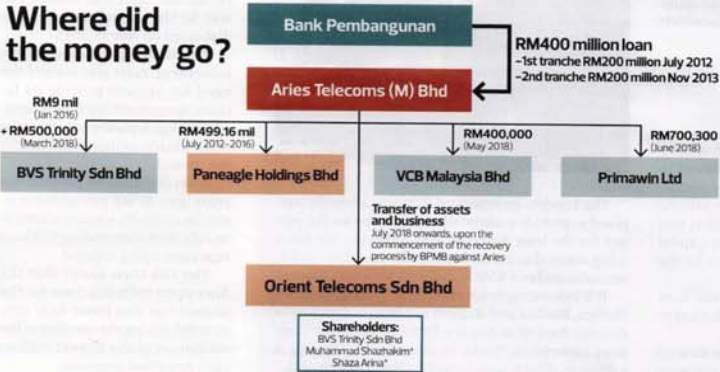
Who owns Aries Telecoms?



Peninsular Malaysia — was made out to be an infrastructure undertaking that was in line with the then government's aspirations to increase broadband penetration. The loan was initially approved based on several factors: Aries' purported paid-up capital of RM501 million; the appointment of Huawei Technologies Co Ltd China (Huawei China) as the turnkey contractor for the project; and an additional RM400 million financing to be secured from Malayan Banking Bhd (Maybank).

However, following investigations by its appointed receiver and manager, Lim Keng Peo of Deloitte Corporate Solutions Sdn Bhd, the DFI found that the defendants in their various capacities had conspired in redirecting the loan Aries obtained to other parties.

Where did the money go?



Fictitious capital injection into Aries
In June 2010, three offshore companies — Primawin Ltd, Arab Emirates Capital Ltd and China Finance Ltd (all of which are defendants) — purportedly injected RM396 million into Open Fibre Sdn Bhd for the latter to acquire a 91% stake in Aries.

However, BPMB alleged in its court filing that the purported cash injection was never recorded in Aries' accounts for the financial year ended Dec 31, 2010. As

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The 27 defendants named in BPMB's suit

INDIVIDUALS

- 1. Mohd Zafer Mohd Hisham
- 2. Shailen Popattal
- 3. Wan Alias Wan Ngah
- 4. Roslina Ibrahim
- 5. Abdul Wahid Abdul Ghani
- 6. Mohd Radzi Mohamed
- 7. Muhammad Shazhakin Shazarul Hisham
- 8. Shaza Arina Shazarul Hisham
- 9. Mustafa Ali Zaminall Sayed
- 10. Wong Chee Keong
- 11. Abd Hadi Abd Majid
- 12. Tunku Mazlina Tunku Abd Aziz
- 13. Ranjeet Singh Sidhu
- 14. Noorusa'adah Othman

CORPORATE DEFENDANTS

- 15. Paneagle Holdings Bhd
- 16. Paneagle Sdn Bhd
- 17. VCB Investment Berhad
- 18. Open Fibre Sdn Bhd
- 19. Primawin Ltd
- 20. China Finance Ltd
- 21. Hadron Equities Ltd (formerly known as Arab Emirates Capital Ltd)
- 22. Orient Telecoms Sdn Bhd
- 23. Silver Ridge Holdings Bhd
- 24. BVS Trinity Sdn Bhd
- 25. VCB Malaysia Bhd
- 26. Zavarco Plc
- 27. Silver Ridge Sdn Bhd

Datuk Zafer Hashim (first defendant)

Former president and group managing director of Bank Pembangunan Malaysia Bhd (BPMB)
The former chief financial officer of Maybank Investment Bank Bhd joined BPMB in August 2009. He was accused of using his capacity as president and group managing director to disburse a RM400 million loan to Aries despite the latter failing to meet conditions attached. In return, he allegedly received RM8 million from Aries on July 4, 2012, roughly two months after the loan was approved, according to the court filing.
The loan, which was to finance Aries' RM1.3 billion fibre-optic network installation project in Malaysia, was approved upon the conditions, among others, of Huawei China being the turnkey contractor and being able to obtain a RM400 million credit facility from Malayan Banking Bhd. However, Huawei China was replaced by Paneagle Holdings without the consent of BPMB's credit committee and its board. Maybank never extended the loan to Aries.
The top executive was also accused of manipulating the evaluation scores of an open tender undertaken by Aries, making sure that Silver Ridge Sdn Bhd would be appointed as the Independent Checking Engineer for the fibre-optic project, instead of KLIA Consultancy.
Zafer resigned on July 25, 2014, after his five-year stint with BPMB.

Shailen Popattal (second defendant)

Shareholder of China Finance, Primawin Ltd, and Hadron Equities
Director of VCB Investment
Former director of BVS Trinity Sdn Bhd, VCB Malaysia, VCB Investment, and Zavarco Plc
Shailen has a presence in most of the companies, which are also the corporate defendants in this lawsuit, that either hold indirect shareholdings in Aries or firms that had dealings with it. BPMB accuses him of being the "shadow director" of Aries who exercised control over the company.
Shailen, along with other defendants, are accused of using their capacity as the directors and/or shareholders of Aries to siphon funds out of the company.
BPMB claims that a sum of RM564.99 million is held in Quistclose trust by Shailen. The development financial institution (DFI) pierces the corporate veil between Shailen and Aries as well as four corporate defendants (the 19th, 20th, 21st and 23rd). It is suing Shailen to trace RM564.99 million into — and claim equitable title to any — assets and/or properties which Shailen held in trust for BPMB.

Roslina Ibrahim (fourth defendant)

Former director of Aries
Shareholder and director of BVS Trinity
Director of VCB Malaysia and Orient Telecoms
Roslina is described as the controlling mind of Aries in the court filing. She was accused of involvement in Aries' false representations to BPMB that the disbursements of the RM400 million loan would be utilised for the fibre-optic network installation project and misrepresentation of the company's paid-up capital of RM396 million in the financial statements for the financial year ended Dec 31, 2010.
BPMB claimed that it had disbursed the loan induced by, and acting in reliance on Roslina's representations.
Furthermore, the court filing stated that Roslina knew, and/or ought to have known, that there were

substantial misrepresentations made by Silver Ridge Sdn Bhd and/or Silver Ridge Holdings in its verification reports as the fibre-optic infrastructure for the project was never fully constructed.
Roslina allegedly knew and/or ought to have known that the invoices were issued by Paneagle Holdings to Aries to justify the siphoning of funds of approximately RM499 million from Aries to Paneagle Holdings.

Datuk Wira Ranjeet (13th defendant)

Former group managing director and director of Aries
Former director and CEO of Zavarco Bhd
Former director of Zavarco Plc
Ranjeet, on behalf of Aries, allegedly offered RM8 million to Zafer through an intermediary, Datuk Noorusa'adah Othman, for the approval and subsequent disbursements of the RM400 million loan. BPMB claimed it was unaware of the matter.

Datuk Noorusa'adah Othman (Adah) (14th defendant)

Former senior corporate finance personnel to businessman Tan Sri Syed Yusof Syed Nasir, who is the former chairman and director of Aries
Noorusa'adah is accused of acting as the intermediary to facilitate a payment of RM8 million made by Ranjeet on behalf of Aries to Zafer on July 4, 2012. Zafer agreed to approve and disburse the RM400 million loan to Aries with the receipt of RM8 million cash.

Zavarco Plc (26th defendant)

Zavarco, formerly known as Vasseti (UK) Plc, wholly owns Zavarco Bhd that shares the same registered address as Paneagle Holdings, Paneagle Sdn Bhd, VCB, Open Fibre, Orient Telecoms, BVS Trinity and Aries at No 28, Tingkat 3, Lorong Medan Tuanku Satu, Kuala Lumpur.



The London-incorporated firm was allegedly supposed to provide a completion guarantee for the project for the loan disbursement. However, the court filing stated that Zavarco did not honour that but the second tranche of RM200 million loan was disbursed.
It is interesting to note that among the defendants, Shailen, Roslina and Ranjeet are former directors of Zavarco. Ranjeet is also the former CEO of the company. Meanwhile, Tunku Mazlina Tunku Abd Aziz is a director of both Zavarco and its unit Zavarco Bhd.

Allegations include fictitious payment vouchers

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such, it appeared that the sum of RM396 million was never injected into Aries.
"On Dec 13, 2010, Open Fibre entered into a sales and purchase agreement with Zavarco Bhd for RM396 million. However, this transaction is fictitious and a sham as the transfer of shares took place with no consideration," the DFI stated in the filing.

RM8 million bribe for a RM400 million loan

Zafer, the then group managing director of BPMB who approved the RM400 million loan, had allegedly caused the DFI to waive the conditions precedent to the disbursement of the loan for an RM8 million bribe.
The court filing states that Aries' former managing director Datuk Wira Ranjeet (the 13th defendant) paid Zafer an RM8 million bribe through Datuk Noorusa'adah Othman (the 14th defendant) — a former senior corporate finance officer to Tan Sri Syed Yusof Syed Nasir, who in turn is a former chairman and director of Aries. Syed Yusof is not among the defendants in the case.
For the disbursement of the first tranche of the loan, Aries was required to provide a joint completion guarantee by Huawei China and Zavarco. Subsequently, the condition of having a joint completion guarantee was temporarily waived by Zafer five days before the first RM200 million disbursement on July 2, 2012.

BPMB's probe revealed that the joint completion guarantee was neither approved nor registered with China's State Administration of Foreign Exchange. Paneagle Holdings Bhd (15th defendant) later replaced Huawei China to be the turnkey contractor. Aries was accused of appointing its 9% shareholder Paneagle Holdings without the knowledge and consent of BPMB's board.

The condition for the joint guarantee was later amended by Zafer, and instead required a completion guarantee from Zavarco Plc (26th defendant) before the second RM200 million disbursement. The revised condition was not met either, but Zafer still cleared the way for the second tranche to be disbursed on Nov 15, 2013.

Two days before the second disbursement, Zafer also waived the need for Aries to provide its facility agreement with Maybank, which was represented to be the other RM400 million financier for the project.

Aries defaulted on the loan five years later. BPMB proceeded to issue the company a notice of default in July 2018, demanding full loan repayment plus interest.

The DFI then found that the fibre-optic infrastructure for the project was also never fully constructed, raising the question of the utilisation of the RM400 million cash Aries had borrowed.

Inflated invoices and site discrepancies

Between July 2012 and 2016, Aries allegedly made RM499 million in payments to Paneagle Holdings — which exceeded the value of contracts for the fibre-optic project.

The invoices issued by Paneagle Holdings for the payments did not contain supporting documents to indicate proper verification of the work done.

"In essence, the invoices by Paneagle Holdings do not appear to have been for actual work done or equipment supplied for the project. The invoices also appear to be inflated," states BPMB in its legal filing.

For instance, Aries had also engaged several other contractors, including Scot Technology (M) Sdn Bhd and Excel Concept and Services, for the construction of air-conditioned cabins for the project at RM87,000 per cabin, which was significantly lower than the RM782,000 per cabin rate it agreed to in its contract with Paneagle Holdings.

In January 2016, Aries allegedly issued fictitious payment vouchers amounting to RM9 million to Paneagle Holdings, which were also not backed by any supporting documents.

In another twist, the probe by Deloitte revealed that although the payment vouchers were issued in favour of Paneagle Holdings, the RM9 million cash was actually diverted to another investment holding company, BVS Trinity Sdn Bhd (24th defendant), in which Aries' former director Roslina Ibrahim (fourth defendant) holds a 60% stake.

BPMB accused Roslina of being a mastermind in the "Aries fraud scheme".

"The fictitious payment vouchers in favour of Paneagle were issued to conceal the siphoning of funds from Aries to BVS Trinity," alleges BPMB.

BPMB also discovered discrepancies in the sites certified by its independent checking engineer (ICE) Silver Ridge Sdn Bhd (27th defendant) — tasked with verifying the progress of the project — alleging that manipulation was involved in the latter's appointment during an open tender process (see accompanying story on next page).

While Paneagle Holdings had certified 28 network routes, Silver Ridge Sdn Bhd's progress report, on the other hand, contained a total of 39 network routes. Surprisingly, BPMB only identified three common network routes between the list of certified and completed routes.

"This raises questions on the accuracy and validity of Paneagle Holdings' certificate of acceptance and Silver Ridge Sdn Bhd's and/or Silver Ridge Holdings' progress report," says BPMB.

In short, hundreds of million had been paid for little work done.

Transfer of assets to Orient Telecoms

As BPMB commenced the recovery process against Aries as it failed to repay its loan, the assets and business



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of the latter were allegedly transferred to Orient Telecoms Sdn Bhd (2nd defendant), in which BVSTrinity holds a stake.

Interestingly, one of the defendants, Wong Chee Keong — a director of Silver Ridge Sdn Bhd and its parent Silver Ridge Holdings — is the current chairman of Orient Telecoms.

BPMB points out that Orient Telecoms was incorporated on Jan 4, 2018, less than a month after a notice of demand was issued to Aries on Dec 15, 2017.

From June 4, 2018 onwards, Aries began novating its licence, tenancy and customer agreements to Orient Telecoms.

Money flows to related parties

Aries also allegedly funnelled money, disguised as directors' fees, shortly after the notice of demand was issued to others.

For instance, between March and June 2018, Aries transferred approximately RM1.6 million to related entities, falsely recorded as payments to Aries' creditors. These included a RM13,800 payment voucher to its director Zulizman Zainal Abidin and a RM180,000 payment voucher to Yanti Mushira Mustafa, who was not the company's director then.

BPMB alleges that the RM180,000 sum was for the benefit of Zulizman, Shailen Popatlal and/or Roslina.

Besides that, fictitious payment

vouchers were raised, which included a RM500,000 purported payment for Zeta Resources Sdn Bhd, although it was later discovered that the funds were actually transferred to BVS Trinity.

Another RM400,000 payment, purportedly for Aries' creditors, was instead made to VCB Malaysia Bhd, a wholly-owned subsidiary of BVS Trinity.

There was also a RM700,300 payment received by BVI-incorporated Primawin under the guise of payment to Aries' creditors.

More skeletons in the closet?

The RM400 million loan to Aries is regarded as one of the many credit facilities that raised many eyebrows.

Sources familiar with the DFI had previously highlighted to *The Edge* the loan and investment in Syarikat Borcos Shipping Sdn Bhd and the credit line to Asian Broadcasting Network Sdn Bhd (ABN), plus Integrated Nautical Resort Sdn Bhd and Garuda Suci Sdn Bhd — two companies linked to Indonesian businessman Tan Sri Peter Sondakh.

Global Maritime Ventures Bhd (GMV), a 90% unit of BPMB, bought 35% of Borcos for RM146.55 million in 2011 and the remaining 65% for RM190.45 million from AWH Equity Holdings Sdn Bhd in January 2013.

As at end-March 2014, Borcos had a RM62.7 million unsatisfied

credit facility with BPMB.

Many were puzzled as to why GMV bought out Borcos. After the takeover by BPMB, Borcos posted an after-tax loss of RM238.39 million for its financial year ended December 2014 on revenue of RM123.28 million. At end-December 2014, Borcos' total liabilities exceeded RM510 million while its total assets came to RM574.34 million.

KPMG was appointed as liquidator at Borcos at end-December 2016.

Pay-TV operator ABN was another company that was granted a loan by BPMB. ABN, which was linked to previously well-connected businessman Tan Sri KK Eswaran, had a RM450 million facility with BPMB that is unsatisfied, according to searches on the company.

However, the assets of ABN were auctioned off to help pay off its debts in late 2018 and early 2019.

Back to the lawsuit filed recently, this is not the first legal action taken against Aries (see sidebar on the right). The court case will be closely watched to see whether justice will be served eventually.

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Aries no stranger to legal actions

Few may know that Bank Pembangunan Malaysia Bhd (BPMB) had taken legal action in relation to a RM400 million loan it granted to Aries Telecoms (M) Bhd in 2018 when the latter couldn't service its loan.

It is the same credit facility over which the development financial institution is currently suing its former president and CEO Datuk Zafer Hashim and 26 others for alleged bribery and fraud.

The lawsuit filed four years ago was in relation to Aries' default on the repayment of the RM400 million loan. BPMB was claiming a sum of RM451.27 million, comprising the principal sum of RM386.87 million, interest of RM50.49 million and late payment charges of RM13.9 million.

The defendants of the lawsuit then were Aries, its director Zulizman Zainal Abidin and Zavarco Bhd.

As Aries had failed to repay its loan, BPMB then demanded that Zavarco settle the sum owed, given that the latter was the corporate guarantor for the loan. However, Zavarco also failed to comply with the repayment demand.

The case is still ongoing, with the next case management slated for Thursday (July 7).

Meanwhile, a counterclaim

was filed by the three defendants back then, which BPMB named as Datuk Wira Ranjeet Singh Sidhu (former group managing director and director of Aries), Tan Sri Syed Yusof Tun Syed Nasir and Afidah Mohd Ghazali, although the action was subsequently dismissed by the High Court.

Notably, there were two other suits filed against Aries by Tenaga Nasional Bhd (TNB) and the Malaysian Communications and Multimedia Commission (MCMC) in 2018 and 2019, respectively.

TNB's action entailed an outstanding sum of RM9.92 million in relation to the leasing of 15 links of fibre optic core in the northern region and 20 links of fibre optic core in the central southern region over five years between November 2011 and November 2016.

Meanwhile, MCMC's suit was in relation to an outstanding sum of RM177,428, the amount being the yearly fee imposed on holders of network facilities provider and network service provider licences.

Licence holders are charged RM50,000 per year per licence, and Aries failed to settle the fees for the annual periods ended Nov 14, 2017 and Nov 14, 2018.