

## Client Alert

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## Singapore International Commercial Court (SICC) Hands Down its First Judgment

The Singapore International Commercial Court, established last year to provide a forum for transnational commercial disputes, has issued its first judgment. The case involved business interests in Australia, Indonesia and Singapore, and a large-scale industrial project relating to the extraction and upgrading of coal. The total value of the claim and counterclaim is approximately US\$800 million.

The present judgment, *BCBC Singapore Pte Ltd and Anor v PT Bayan Resources TBK and Anor* [2016] SGHC(I), was handed down by a panel of 3 respected judges, including the former English High Court Judge Sir Vivian Ramsey, former Judge of the Court of First Instance in Hong Kong Anselmo Reyes and Justice Quentin Loh of the Singapore High Court.

Dismissing the claims, the Court found that:

- (i) The Defendants were not obliged to provide funding to the joint venture company; and
- (ii) The Plaintiffs were not under an implied obligation to: (1) exercise reasonable skill and care of a competent designer, builder and operator of coal preparation and briquetting plants; and (2) procure that the joint venture company produce a volume of upgraded coal briquettes within a reasonable period of time.

The Court also found that "insufficient evidence" had been provided for them to determine whether the Defendants had breached its obligation to supply coal to the joint venture company. Accordingly, the Court declined to answer this question at this stage of the proceedings and instead reserved it for the later tranche.

The full judgment can be found [here](#). You can also read more about the SICC [here](#).

## Background

These proceedings concern a joint venture between parties in Australia and Indonesia, with associated companies in Singapore.

The joint venture sought to exploit technology developed in Australia for upgrading coal (the "**BCB Process**") in conjunction with a supply of coal from certain mines in Indonesia (the "**Project**").

The second plaintiff, Binderless Coal Briquetting Company Pty Ltd ("**BCBC**"), is a company incorporated in Australia, holding the exclusive worldwide licence of the BCB Process. The first plaintiff, BCBC Singapore ("**BCBCS**"), is a company owned in Singapore. BCBC and BCBCS are indirect wholly-owned subsidiaries of the second defendant by Counterclaim, White Energy Company Ltd ("**WEC**"). WEC is a public-listed company incorporated in Australia. These companies are collectively referred to as the **Plaintiffs**.

The first defendant, PT Bayan Resources TBK ("**BR**"), is a public listed company incorporated in Indonesia. It owns subsidiaries which operate sub-bituminous coal mines in Indonesia. The second defendant, Bayan International Pte Ltd ("**BI**"), is a company incorporated in Singapore and is an associated company of BR. These companies are collectively referred to as the **Defendants**.

BCBC and BI were the original parties to the joint venture agreement signed on 7 June 2006. On 11 January 2007, the parties established a joint venture company, PT Kaltim Supacoal ("**KSC**"), in Indonesia with BCBCS holding 51% and BI holding 49% respectively of the issued shares. BCBCS and BR were subsequently substituted as the joint venture parties via a Deed of Novation dated 12 February 2009. WEC undertook certain guarantee obligations in relation to BCBC and BCBCS. Multiple Memorandums of Understanding had also been entered into by the parties along the way.

This dispute concerns various claims for breaches of the joint venture agreement and the various subsequent agreements entered into by the parties.

## Issues

The parties agreed that the dispute would be resolved in tranches. The present decision concerns a determination of the first tranche of issues. These include issues relating to the contractual obligations of the parties without going into whether these obligations had been breached or not (those and further issues will be decided in later tranches).

The issues to be decided can be broadly grouped as:

- funding issues;
- coal supply issues; and
- counterclaim issues.

## Decision

### *Issue 1: Funding Issues*

The issues in relation to funding had to do largely with whether BR had an obligation to provide funding for the period between November 2011 and 2 March 2012.

The essence of the Plaintiffs' arguments is that pursuant to a **Memorandum of Understanding** ("**MOU**") entered into by the parties,

BR was under an obligation to provide such funding regardless of the amount or duration, and regardless of whether BR consented to such expenditure being incurred.

The Defendants' position was that the obligation to provide funding pursuant to the MOU was subject to the overriding rights under the joint venture agreement.

Applying Singapore law on contractual interpretation to the facts, the Court found that, amongst other things, BR was not obliged to provide funding to the joint venture.

This was largely because whilst the parties to the dispute had entered into a subsequent MOU in relation to certain funding issues, on a true construction of the agreements, the parties had never waived certain fundamental rights under the joint venture agreement. In particular, the parties have not waived their rights to: (1) have both parties agree on how much funding to be provided to the joint venture; and (2) the absolute discretion to refuse to provide additional funding to the joint venture.

### *Issue 2: Coal Supply Issues*

The Court found that the evidence placed before it was inadequate to decide important factual issues in relation to this question.

Accordingly, the Court declined to answer this question at this stage of the proceedings and instead reserved it for the later tranche. This will allow parties to place the necessary facts before the Court, to be fully explored.

### *Issue 3: Counterclaim Issues*

The Counterclaim issues concern questions of implied terms of the joint venture agreement. The Defendants' position was that BCBCS was under an implied obligation to: (1) exercise the reasonable skill and care of a competent designer, builder and operator of coal preparation and briquetting plants; and (2) procure that KSC produce a volume of upgraded coal briquettes within a reasonable period of time, *if* BR was under an obligation to provide funding to KSC between November 2011 and 2 March 2012 (i.e. Funding Issues).

Applying Singapore law on the implication of terms into the agreement between the parties, the Court found that BCBCS was only obliged to assist in the development of the BCB Process. There was no implied contractual duty to use the reasonable skill and care to be expected of a competent designer, builder and operator of coal preparation and briquetting plants in providing technical assistance to KSC.

Given the Court's findings on the Funding Issues, it was not strictly necessary for the Court to determine whether BCBCS had an obligation to procure that KSC produce a volume of upgraded coal briquettes within a reasonable period of time.

Nevertheless, the Court found that BCBCS did not have such an obligation. The parties were aware at all times of the risks involved in

the project and that the BCB Process was an unproven technology. Accordingly, in such circumstances, it was difficult to impose an implied term which amounts to a guarantee of particular performance by KSC.

## Comments

In the words of the presiding Justice Quentin Loh:

*"[The SICC] signifies not only the aspirations of Singapore to establish itself as a dispute-resolution hub, but it also reflects the needs of international trade and commerce for different fora, for different kinds of dispute-resolution methodologies to resolve the many different types of disputes that can and unfortunately do arise from time to time..."*

The present case displays the SICC's ability to deal with disputes involving business interests in multiple countries. The judges and counsel cooperated to avoid unnecessary, time-consuming and costly skirmishes over interlocutory matters. This will undoubtedly provide great comfort to parties looking towards the SICC for effective, quality dispute resolution.