

## SINGAPORE INTERNATIONAL COMMERCIAL COURT

12 May 2016

### Media Summary

#### **Singapore International Commercial Court Suit No 1 of 2015**

***BCBC Singapore Pte Ltd and anor v PT Bayan Resources TBK and anor***  
**[2016] SGHC(I) 01**

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The Singapore International Commercial Court handed down its first judgment in SICC Suit No 1 of 2015 today. The case concerned a joint venture in Indonesia between publicly listed parties from Australia and Indonesia and their associated companies. The joint venture sought to exploit a patented technology, a binderless coal briquetting process (“the BCB Process”), developed in Australia, to produce and sell upgraded sub-bituminous coal from East Kalimantan. A claim was brought by BCBC Singapore Pte Ltd (“BCBCS”) and its affiliate company in Australia against PT Bayan Resources TBK (“BR”), an Indonesian company, and its affiliate company in Singapore. BR conversely commenced a counterclaim against BCBCS and its parent company in Australia, White Energy Company Limited.

The parties’ commercial relationship began in 2006 when they signed a joint venture deed. However, due to unexpected developments and increased expenses pertaining to the joint venture, including intervening legislation in Indonesia which regulated the sale of coal, numerous agreements, memoranda and a side letter were entered into between the parties during the period 2007 to 2011, resulting in a complex contractual matrix.

The parties agreed to have the dispute resolved in tranches; the first tranche was devoted to ascertaining the true meaning and exact nature and scope of a number of provisions in the various agreements and the parties’ obligations thereunder. The decision to divide the suit into tranches was reached after conferring with the parties who shared the view that, given the complexity of the case, the Court’s interpretation of the various agreements would assist in 2

narrowing the areas of dispute between them moving forward. The parties agreed on certain specified issues to be determined by the Court in the first tranche; these issues could be broadly grouped as (a) funding issues, (b) coal supply issues and illegality; and (c) counterclaim issues on implied duties.

After a nine-day trial, closing submissions were delivered by the parties on 14 January 2016.

In its judgment, the Court held that BR was not obliged to provide funding to the joint venture during the period of November 2011 to March 2012, which was the period in which the dispute between the joint venture parties came to a head. Although the parties had entered into various subsequent agreements during the course of the joint venture, on a true construction of those agreements, the parties never gave up certain core rights under the original joint venture deed which required the agreement of both parties on the funding to be contributed to the joint venture and the right to refuse to provide additional funding at their absolute discretion.

The Court declined to decide whether BR had an obligation to supply coal during this same time period due to the lack of evidence led on this issue, preferring to decide the issue at a subsequent tranche when the parties have the opportunity to lead relevant evidence to enable findings of fact on which the issue could be properly decided. The Court further held that the arrangement between the parties regarding the supply of coal was not void for illegality as it did not contravene Indonesian law. The coal would be sold at the regulated price and the Indonesian government would receive full royalties and taxes on the coal transactions.

As for the counterclaim brought by BR, the Court found that BCBCS was only obliged to assist in the development of the BCB Process and that its obligations did not extend to designing, building or operating the coal upgrading plant. Given the above findings, it was not strictly necessary for the 3

Court to determine whether BCBCS had an obligation to ensure that a certain minimum amount of upgraded coal briquettes would be produced 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, an obligation of guaranteed performance could not be justified.

The Court has accorded the parties 30 days to consider the judgment and to then decide on the future conduct of the case.

*This summary is provided to assist in the understanding of the Court's judgment. It is not intended to be a substitute for the reasons of the Court.*

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