

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

IN THE MATTER OF THE COMPANIES LAW (2013 REVISION)

AND IN THE MATTER OF MONGOLIAN MINING CORPORATION

WINDING UP PETITION

CAUSE NO. FSD OF 2016 ()

100

JUL 08 2016



To: The Grand Court of the Cayman Islands

The humble Petition of BNP Paribas Singapore Branch of 25 Collyer Quay #01-01, Singapore, 049319 (the *Petitioner*) SHOWS THAT:

Introduction

1. The Petitioner presents this petition for the winding up of Mongolian Mining Corporation (the *Company*) and the appointment of joint official liquidators to the Company.
2. The Petitioner seeks an order for the winding up of the Company pursuant to section 92(d) of the Companies Law (2013 Revision) (the *Companies Law*) on the basis that the Company is unable to pay its debts.
3. Terms used herein which are not otherwise defined have the meaning given in the Facilities Agreement (as defined below).

Background

4. The Company was incorporated on 18 May 2010 as an exempted company limited by shares under the laws of the Cayman Islands with registered number CT-240791. It is registered in Hong Kong under Part 16 of the Companies Ordinance with company number F0017770 and listed on The Stock Exchange of Hong Kong (*SEHK*) with Stock Code 975. The Company's

registered office is Cricket Square, Hutchins Drive, PO Box 2681, Grand Cayman, KY1-1111, Cayman Islands.

5. The objects for which the Company was established are unrestricted and it is authorised to engage in any lawful activity in accordance with the Companies Law, including but without limitation:
 - (a) to act and to perform all the functions of a holding company in all its branches and to coordinate the policy and administration of any subsidiary company or companies wherever incorporated or carrying on business or of any group of companies of which the Company or any subsidiary company is a member or which are in any manner controlled directly or indirectly by the Company;
 - (b) to act as an investment company and for that purpose to subscribe, acquire, hold, dispose, sell, deal in or trade upon any terms, whether conditionally or absolutely, shares, stock, debentures, debenture stock, annuities, notes, mortgages, bonds, obligations and securities, foreign exchange, foreign currency deposits and commodities, issued or guaranteed by any company wherever incorporated, or by any government, sovereign, ruler, commissioners, public body or authority, supreme, municipal, local or otherwise, by original subscription, tender, purchase, exchange, underwriting, participation in syndicates or in any other manner and whether or not fully paid up, and to meet calls thereon.
6. Pursuant to the Company's memorandum and articles of association, as amended and restated and adopted by special resolution on 17 September 2010 (the **Articles**), the authorised share capital of the Company is US\$60,000,000 divided into 6,000,000,000 shares of a nominal or par value of US\$0.01 each.
7. As at 6 July 2016, trading of the Company's shares on the SEHK closed at HK\$ 0.088 per share.
8. The Company is the holding company of a group of companies incorporated in Hong Kong, the People's Republic of China (**PRC**), Luxembourg and Mongolia. The Company, together with its subsidiaries (the **Group**), is the largest producer and exporter of washed hard coking coal in Mongolia. The Company owns and operates the Ukhaa Khudag and Baruun Naran open-pit coking coal mines, both located in the Umnugobi aimag (South Gobi province), Mongolia.

Facilities Agreement

9. Pursuant to a loan facility agreement dated 5 March 2014 (as amended, supplemented, novated and restated from time to time, including by way of an amendment agreement dated 11 December 2015) (the **Facilities Agreement**) entered into between:

- (a) the Company as Borrower;
- (b) Energy Resources LLC; Energy Resources Corporation LLC; Mongolian Coal Corporation Limited; Mongolian Coal Corporation S.à r.l.; and Transgobi LLC, each being an Original Guarantor and together referred to as the Original Guarantors;
- (c) the Petitioner and Industrial and Commercial Bank of China Limited (**ICBC**) (and subsequently ICBC London and ICBC Beijing) as the Original Lenders and Arranger;
- (d) BNP Paribas Singapore as Bookrunner; and
- (e) BNP Paribas Hong Kong as Agent and Security Agent,

the sum of US\$150,000,000 was advanced to the Company by the Original Lenders (the **Loan**).

10. The purpose of the Loan was (i) to apply amounts borrowed (together with other funds available to the Company) towards repayment in full of the amounts outstanding under an existing loan facility and (following the repayment in full of the existing loan facility (as above)), (ii) for general working capital and capital expenditure requirements of the Group related to the mining and extraction operations at the Baruun Naran Coal Mine.

11. Pursuant to the Facilities Agreement, the Petitioner advanced to the Company the sum of US\$100,000,000.

Events of Default under the Facilities Agreement

12. The terms of the Facilities Agreement requires the Company to repay the Loan in instalments on the Repayment Dates after the First Utilisation Date and to make interest payments on the Interest Payment Dates, in accordance with the provisions of the Facilities Agreement thereunder.

13. The Loan accrued interest (**Interest**) at an aggregate rate per annum pursuant to the terms of the Facility Agreement (this being the aggregate of the Margin and LIBOR for such Interest Period as defined under the Facilities Agreement) (the **Standard Interest Rate**).
14. The Company made the requisite repayment instalments of the Loan on the Repayment Dates and made payment of accrued Interest on the Interest Payment Dates up to 22 March 2016.
15. The Company has since that date failed to repay any of the principal and interest of the Loan on the required Repayment Dates and Interest Payment Dates as required under the Facilities Agreement (the **Payment Default**).
16. The failure of the Company to repay the Loan on the required Repayment Dates or Interest on the Interest Payment Dates constitutes an event of default under clause 24.1 (**Events of Default**) of the Facilities Agreement.
17. Pursuant to clause 10.3 (**Default Interest**) of the Facilities Agreement, a default interest rate of 2% (two per cent) above the Standard Interest Rate (the **Default Interest Rate**) applies in respect of any unpaid Interest from its due date up to the date of actual payment (both before and after judgement). The Default Interest Rate accrued and continues to accrue on the unpaid Interest from and including 22 March 2016. As at 6 July 2016, the total outstanding default interest due to the Petitioner is US\$1,598,485.88 (the **Default Interest**).
18. The Company failed and continues to fail to repay in full the Loan, the accrued Interest and the Default Interest.
19. Accordingly, the Petitioner and ICBC instructed the Agent to write to the Company demanding the immediate repayment of all amounts accrued and outstanding under the Facilities Agreement.
20. On 26 April 2016, the Agent notified the Company in writing of the continuing Payment Default and duly gave notice to the Company pursuant to Clause 24.22 (**Acceleration**) that:
 - (a) all of the Total Commitments be and are hereby immediately cancelled;

- (b) all of the Loan, together with accrued Interest, and all other amounts accrued or outstanding under the Finance Documents be and are hereby immediately due and payable; and
- (c) the Agent is entitled to exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents;

and demanded the immediate repayment of all amounts accrued and outstanding under the Facilities Agreement (the **Demand Letter**). As at the date of the Demand Letter, the sum of US\$95,433,943.90 was immediately due and payable by the Company to the Lenders.

Other Events of Default

21. The Demand Letter also notified the Company of other Events of Default that occurred and are continuing as set out under clause 24 (*Events of Default*) of the Facilities Agreement, namely:

- (a) Clause 24.2 (a) (*Financial and information undertakings and other obligations*): “Any requirement of Clause 22.2 (*Financial conditions*) is not satisfied”; and
- (b) Clause 24.6 (a) (*Insolvency*): “Any member of the Group is unable or admits inability to pay its debts as they fall due or is deemed to or declared to be unable to pay its debts under applicable law, suspends or threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.”

22. On 27 April 2016, the Company announced to the SEHK (the **Announcement**) that it had received (i) the Demand Letter and (ii) a notice from the Shared Security Agent on the enforcement of the Lenders’ security under the Intercreditor Agreement (the **Enforcement Notice**). Under the Enforcement Notice, the Shared Security Agent, as instructed by the Security Agent:

- (a) enforced the share security granted by the Mongolian Coal Corporation Limited, a wholly-owned subsidiary of the Company in favour of the Shared Security Agent on behalf of itself and the Secured Parties (including the Lenders) (the **MCCL Share Charge**)

and appointed certain persons from FTI Consulting as the receivers over such collateral (the *Receivers*), and

(b) appointed the same group of persons from FTI Consulting as its delegates in respect to the security granted pursuant to the a share pledge granted over the shares of Mongolian Coal Corporation S.à r.l. (the *MCCS Share Pledge*).

23. MCCL, as the sole intermediary holding company below the Company, directly and indirectly owns the capital stock of all other subsidiaries of the Company.

24. The appointment of the Receivers pursuant to the MCCL Share Charge constitutes an event of default pursuant to clause 24.7(a) (*Insolvency Proceedings*) of the Facilities Agreement.

Amount outstanding

25. As at 6 July 2016, the total sums outstanding and immediately due and payable to the Petitioner under the Facilities Agreement is US\$64,729,675.50, comprised of:

(a) US\$62,000,000 in respect of outstanding principal under the Loan; and

(b) US\$2,729,675.50 in accrued and unpaid interest (comprising the unpaid Interest and Default Interest),

(together the *Debt*).

26. To date, and notwithstanding the demand for payment having been made, the Company has neglected to pay or satisfy the Debt due under the Facilities Agreement or made any satisfactory offer or presented any satisfactory proposal to secure or compound the same.

Winding up

27. For the reasons set out above, the Company is unable to pay its debts and is therefore insolvent on a cash flow basis. Accordingly, the Court may wind up the Company pursuant to section 92(d) of the Companies Law.

28. In the circumstances, the Petitioner believes that the Company should be wound up as it is unable to pay its debts and that Stuart Sybersma of Deloitte & Touche, Citrus Grove Building,

Grand Cayman, KY1-1109, Cayman Islands, and Lui Ming Yeung and Kwok Leung Ho (Glen) of Deloitte, 35th Floor, One Pacific Place, 88 Queensway, Hong Kong, be appointed as the joint official liquidators of the Company.

YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:

- (1) The Company be wound up in accordance with the Companies Law;
- (2) Stuart Sybersma of Deloitte & Touche in the Cayman Islands and Lui Ming Yeung and Kwok Leung Ho (Glen) of Deloitte in Hong Kong (as above) be appointed as the joint official liquidators of the Company (the *JOLs*);
- (3) The JOLs shall not be required to give security for their appointment;
- (4) The JOLs shall have the power to act jointly and severally in their capacity as liquidators of the Company;
- (5) The JOLs shall be authorised to take any such action as may be necessary or desirable to obtain recognition of the JOLs and/or their appointment in any other relevant jurisdiction and to make applications to the courts of such jurisdictions for that purpose;
- (6) The JOLs be authorised to exercise all of the powers set out in paragraphs 10 and 11 of Part I and of Part II of the Third Schedule to the Companies Law and section 110(2) thereof, without further sanction or intervention of this Honourable Court;
- (7) The JOLs be authorised to carry out any act or exercise any power considered by them to be necessary or desirable in connection with the liquidation of the Company and the winding up of its affairs and to prevent the dissipation of the Company's assets;
- (8) Without prejudice to the generality of the foregoing, the JOLs be authorised and be granted leave to take all such actions as may be necessary to:
 - (a) investigate the affairs of the Company and its direct and indirect subsidiaries (the *Group*);
 - (b) to exercise the rights to which a registered holder of any shares or other securities registered in the name of the Company, or to which an owner of any shares or securities

held by or on behalf of the Company (whether as principal or as agent), is entitled including, but without prejudice to the generality of the foregoing power, the right to receive dividends and the benefits of other corporate actions in relation to such shares or other securities, and the right to attend meetings and to exercise any voting power pertaining to such shares or other securities and to direct nominees of the Company in whose names shares or other securities beneficially owned by the Company are registered to exercise all or any such rights as the JOLs shall direct;

- (c) take control of such of the direct and/or indirect subsidiaries (the ***Subsidiaries***) of the Company, and/or joint ventures, investment, associated companies, business or other entities (together the ***Associated Companies***) in which the Company holds an interest (or such shares of such subsidiaries and/or associated companies as are owned directly or indirectly by the Company), in each case wherever located, as the JOLs shall think fit; and/or to call or cause to be called such meetings of such Subsidiaries and/or Associated Companies and/or to sign such resolutions (in accordance with the provisions of any relevant constitutional or related documentation of such companies) and take such other steps, including applications to and communication with appropriate courts and/or regulators, as the JOLs shall consider necessary to appoint or remove directors, legal representatives, officers, and/or managers to or from such Subsidiaries and/or Associated Companies, and in each case take such steps as are necessary to cause the registered agents (or other equivalent corporate administrators) of such Subsidiaries or Associated Companies to give effect to the changes to the boards of directors, legal representatives, officers, and/or managers of such companies or entities, including (without limitation) effecting changes to the company registers of such Subsidiaries or Associated Companies as may be deemed appropriate by the JOLs; and/or to take such other action in relation to all such Subsidiaries or Associated Companies as the JOLs shall think fit for the purpose of protecting the assets of the Company and managing the affairs of the Company (which, for the avoidance of doubt, shall include the assets and affairs of the Subsidiaries and Associated Companies);
- (d) liaise with management of the Group to stabilise and preserve value in the business of the Company and the Group;

- (e) take steps to locate, demand and secure cash held by all Group companies in bank accounts in the Cayman Islands, Hong Kong, the PRC, Luxembourg, Mongolia or elsewhere;
 - (f) communicate on the Company's behalf with the SEHK as appropriate;
 - (g) enter upon or take possession of the property of the Company including, without limitation, any premises of the Company, or any office where the JOLs have reason to believe that there are assets, property or books and records of the Company and if necessary by force, to change locks and open safes and other strongboxes;
 - (h) ascertain, take possession of, collect, give valid receipt for, and protect all books, documents, records, trading data, properties, things in action, securities and other assets of the Company, whether in hard copy, electronic form or otherwise, and whether within or outside the jurisdiction of this Court; and
- (9) The JOLs be at liberty to appoint such counsel, attorneys, professional advisors, whether in the Cayman Islands or elsewhere, as they may consider necessary to advise and assist them in the performance of their duties and on such terms as they think fit and to remunerate them out of the assets of the Company in accordance with Order 25 of the Companies Winding Up Rules 2008 (as amended);
- (10) No disposition of the property of the Company by or with the authority of the JOLs in carrying out their duties and functions and the exercise of their power under any Order granted pursuant to this Petition shall be voided by virtue of section 99 of the Companies Law;
- (11) Subject to section 109(2) of the Companies Law and the Insolvency Practitioner's Regulations 2008 (as amended), the JOLs be authorised to render and pay invoices out of the assets of the Company at the usual customary rate;
- (12) The JOLs be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties and, for the avoidance of doubt, all such payments shall be made as and when they fall due out of the assets of the Company as an expense of the liquidation;
- (13) The JOLs be at liberty to apply generally;

On behalf of the Petitioner
Winding Up Petition
Date sworn: 7 July 2016
Date filed: 7 July 2016

- (14) The costs of the Petition and the Petitioners be paid forthwith out of the assets of the Company as an expense of the liquidation;
- (15) Such further or other relief be granted as the Court deems appropriate.

AND your Petitioners will ever pray etc.

DATED this 7th day of July 2016

FILED this 7th day of July 2016

Harney Westwood & Riegels
Harney Westwood & Riegels
Attorneys-at-Law for the Petitioners

NOTE: This Petition is intended to be served on the Company at its registered office.

THIS PETITION is filed by Harney Westwood & Riegels, Attorneys-at-Law for the Petitioners, whose address for service is 4th Floor, Harbour Place, 103 South Church Street, PO Box 10240, Grand Cayman KY1-1002, Cayman Islands (Ref: 044164-0005).

On behalf of the Petitioner
Winding Up Petition
Date sworn: 7 July 2016
Date filed: 7 July 2016

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman on _____ at _____ am/pm.

Any correspondence or communication with the Court relating to the hearing of this Petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, Grand Cayman, KY1-1106, telephone 345 949 4296.