

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
MISCELLANEOUS PROCEEDINGS NO 1655 OF 2013**

IN THE MATTER of CHINA
RESOURCES POWER HOLDINGS
COMPANY LIMITED

and

IN THE MATTER of Section 168BC of
the Companies Ordinance, Cap. 32

BETWEEN

SZE CHING LOK	1 st Applicant
CHEUNG HAN SOU	2 nd Applicant
CHEUNG LUM	3 rd Applicant
WONG CHUEN	4 th Applicant
WONG YUEN HUNG	5 th Applicant
PANG LAI CHAU	6 th Applicant

and

CHINA RESOURCES POWER HOLDINGS COMPANY LIMITED	Respondent
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Before : Hon Poon J in Chambers
Dates of Hearing : 15 and 18 October 2013
Date of Decision : 18 October 2013
Date of Reasons for Decision : 31 December 2013

REASONS FOR DECISION

INTRODUCTION

1. The respondent is a public listed company in Hong Kong. It carries on the business of investing, developing, operating and managing power plants and coal mine projects in the Mainland. The applicants are shareholders of the respondent.

2. By this application, the applicants seek leave under section 168BC of the Companies Ordinance, Cap 32 to bring proceedings on behalf of the respondent against 20 of its former and current directors (“the Directors” collectively) in the form of the draft statement of claim attached to the originating summons dated 5 July 2013 (“DSOC”). A copy of the DSOC is annexed to this Reasons for Decision for easy reference.

3. On 5 August 2013, Anthony Chan J gave directions for the future conduct of the proceedings, including the filing of evidence in reply by the applicants. The 1st applicant filed his 2nd affirmation dated 26 September 2013 as the purported reply on behalf of all the applicants (“A1’s 2nd Affirmation”).

4. At the substantive hearing on 15 October 2013 before me, the respondent took the preliminary objection that A1’s 2nd Affirmation contained new complaints which had not been previously raised before. As such, A1’s 2nd Affirmation is not evidence in reply. The respondent

sought to expunge §§14 – 51 of A1’s 2nd Affirmation. The applicants disagreed.

5. After hearing counsel’s submissions, which took 2 days, I allowed the respondent’s application. I had indicated that I would hand down the reasons for my decision, which I now do.

BACKGROUND

6. Mr Yu, SC, for the respondent, has helpfully summarized the background circumstances in his written submissions, which I would gratefully adopt.

7. As said, the primary business of the respondent is electrical power generation in the Mainland. Coal is one of the types of fuel used for production of electricity. Shanxi CR Liansheng Energy Investment Co Ltd (“Shanxi CR Liansheng”) is an indirectly owned subsidiary of the respondent in the Mainland. The respondent has an attributable interest of about 51% in Shanxi Liansheng. By a letter dated 14 December 2009, the Government of Gujiao City, Shanxi invited Shanxi CR Liansheng to take over the role of Datong Coal Mine Group (“Datong”) in restructuring and consolidation of the business of Shanxi Jinye Coal Coking Group Co Ltd (“Shanxi Jinye”). To that end, on 9 February 2010, the respondent, Shanxi CR Liansheng, Shanxi Jinye, and Mr Zhang Xinming, the owner of Shanxi Jinye (“Zhang”) entered into a “corporate restructuring master agreement” (“the Acquisition Agreement”), which was subsequently amended by a supplemental agreement dated 31 May 2010 (“the Supplemental Agreement”). Pursuant to those Agreements, Shanxi CR Liansheng, a third party shareholder and Shanxi Jinye would

A establish a JV company, Taiyuan China Resources Co Ltd (“CR
B Taiyuan” or “Taiyuan China Resources”). Shanxi CR Liansheng would
C contribute 49% in the form of cash, the third party shareholder would
D contribute 31% in the form of cash, and Shanxi Jinye would contribute
E 20% in the form of assets contribution. The registered capital of CR
F Taiyuan is RMB 4 billion. Accordingly, the respondent would have an
attributable interest of about 25% in CR Taiyuan.

G 8. The assets to be acquired by CR Taiyuan from Shanxi Jinye
H were the interest in the 10 entities held by Shanxi Jinye (except those
I already contributed as capital) identified at Clause 2.1 of the Acquisition
J Agreement (“the Collective Assets”), including the Zhongshe Coal Mine
K and Hongyatou Coal Mine, the very subject matters of the applicant’s
L complaint. The consideration of the Collective Assets, capped at RMB
M 7.9 billion (subject to due diligence and appraisal), was to be paid by CR
N Taiyuan. Out of the RMB 7.9 billion, RMB 2 billion was to be paid to
O Shanxi Jinye at the time of entering into the Acquisition Agreement as
“earnest money”, RMB 1 billion was to be paid to Datong which had
paid the same to Shanxi Jinye before withdrawing from the acquisition,
and the remaining sum was to be paid to Shanxi Jinye in different phases
on satisfaction of Clause 4.4(2)-(4) of the Acquisition Agreement.

P 9. On 30 April 2010, CR Taiyuan was incorporated. On
Q 31 May 2010, CR Taiyuan entered into Asset Transfer Agreement with
R Shanxi Jinye and Zhang. None of the Directors of CRP are directors of
S Shanxi CR Liansheng or CR Taiyuan.

A 10. On 14 April 2013, mining permit for Yuanxian Coal Mine
B was issued to CR Taiyuan, valid until 14 April 2033. On 25 July 2013,
C exploration permits for Zhongshe and Hongyatou Coal Mines are issued
D to Shanxi Jinye, valid until 25 July 2015. On 26 July 2013, the transfer
E of the exploration rights for Zhongshe and Hongyatou to CR Taiyuan
F was publicly announced. On 2 August 2013, Shanxi Jinye transferred
G the exploration rights for Zhongshe and Hongyatou Coal Mines to CR
H Taiyuan. On 15 August 2013, the exploration rights for the 2 coal
I mines were formally transferred to the name of CR Taiyuan. On
J 3 September 2013, exploration permits for the Zhongshe and Hongyatou
K Coal Mines were issued to CR Taiyuan.
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I 11. The applicants took out the present application on 5 July
J 2013. Consequently, the respondent appointed Mr Johnny Mok, SC, as
K its Special Advisor to conduct these proceedings for and on its behalf.
L The appointment was made to avoid any perception of conflict.
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M 12. To date, a total sum of RMB 3.9 billion has been paid to
N Shanxi Jinye by CR Taiyuan. This sum is made up of the earnest
O money in the sum of RMB 2 billion and a further payment of RMB 1.9
P billion. Also, a sum of RMB 0.3 billion has been paid to Datong by CR
Q Taiyuan.
R

Q *THE APPLICANT'S ORIGINAL COMPLAINTS*
R

R 13. The principal complaint of the applicants concerns the
S breach of duties by the Directors in respect of the decision to enter into
T the joint venture with Shanxi CR Liansheng. I would refer to the DSOC
U for the applicants' proposed pleaded case in full. In gist, it is pleaded
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A that at the time of the Acquisition Agreement, the exploring rights in
B respect of the Zhongshe Coal Mine and the Hongyatou Coal Mine had
C already expired and no extension for the exploration rights had been
D applied for. There remained an outstanding amount of RMB
E 27,497,600 due from Shanxi Jinye being the balance of consideration for
F exploration rights for the Zhongshe Coal Mine obtained in November
G 2003. Consequently, Shanxi Jinye has no right or capacity to transfer
H the exploration rights of Zhongshe Coal Mine and the Hongyatou Coal
I Mine to CRP/Shanxi Liansheng and the Acquisition Agreement is invalid
J and terminable. The 2009/2010 Board of the Directors had failed to
conduct reasonable and proper due diligence and caused the respondent
to enter into the Acquisition Agreement which was wholly commercially
unjustifiable and detrimental of the interests of the respondent.

K 14. Further, since the conclusion of the Acquisition Agreement
L in February 2010, the Directors were still in breach of their duties by
M (a) causing the respondent/Shanxi CR Liansheng to proceed with the
N payment of the consideration under the Acquisition Agreement; and
O (b) failing to take appropriate actions to cause the respondent/Shanxi CR
P Liansheng to seek rescission/termination of the Acquisition Agreement
and commence legal proceedings against Shanxi Jinye/Zhang for
recovery of the sum paid on the ground of invalidity of the Acquisition
Agreement and damages for breach of Clause 6.3.

Q 15. By reason of the Directors' breach of duty, the applicants
R alleged, the respondent has suffered considerable loss and damage.
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16. The first affirmation of the 1st applicant filed in support of the application did not add much to what had been alleged in the DSOC.

THE NEW MATTERS RAISED IN A1'S 2ND AFFIRMATION

17. Five matters were raised in A1's 2nd Affirmation in purported reply to the respondent's affirmations :

- (1) Prepayment payments to Shanxi Jinye : §§14 - 22;
- (2) Default payment of Datong Coal Mine Group : §§23 – 28;
- (3) Losses due to the delay in coal production : §§29 – 31;
- (4) Irregularities to mining permits renewal process : §32 – 43;
and
- (5) Over payment to Shanxi Jinye : §§44 – 51.

These are undoubtedly new complaints not previously raised before.

18. First, the applicants complained that the alleged prepayments to Shanxi Jinye, in the tune of RMB3.9 billion, was paid even before the transfer of the mining permits, which were made in breach of Clause 4.4 of the Acquisition Agreement. There is no commercial or other good reason of justification why balance payments under Clause 4.4 of the Acquisition Agreement should be paid while Shanxi Jinye was in blatant disregard of the terms of the Acquisition Agreement and the Asset Transfer Agreement. Further, it was agreed under Clause 5.1 of the Acquisition Agreement that Taiyuan China Resources would undertake to repay the bank loans of Shanxi Yinye of up to about RMB1.37 billion. It was however discovered that Taiyuan China Resources agreed to undertake to pay a higher sum of RMB1.386

A billion for the bank loans in addition to the consideration of the
B acquisition.

C 19. However, neither Clause 4.4 nor Clause 5.1 was pleaded or
D referred to in the DSOC. They do not found any causes of action
E proposed against the Directors. As rightly submitted by Mr Yu, SC, for
F the respondent, the applicants' original complaint is that since Shanxi
G Jinye had nothing to convey, the respondent should not have made any
H payment to Shanxi Jinye. The allegation of prepayments or taking up
extra bank loans on its behalf is something entirely new.

I 20. Further, the applicants have also failed to explain why any
J of the Directors should be made responsible for the taking up of extra
K loans by Taiyuan China Resources, even assuming that such conduct was
L not permissible. It would be most unfair to ask the respondent to
answer such bare allegation without knowing what exactly the basis of
the new complaint is.

M 21. Second, the applicants said that pursuant to Clause 2.4 of the
N Acquisition Agreement, a sum of RMB1 billion was to be repaid to
O Datong on behalf of Shanxi Jinye, which payment should be deducted
P from the acquisition price payable to Shanxi Jinye. However, only a
Q sum of RMB300 million had been paid. The respondent is also
R responsible to procure Taiyuan China Resources to pay a total sum of
S RMB440 million for expenses and disbursement which Datong had paid
for Shanxi Jinye in relation to the Collective Assets. Datong had
commenced legal proceedings against the respondent in the Mainland for
recovery of the outstanding payments.

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22. These are plainly new complaints not previously relied on in support of the applicants' present application.

23. Third, the applicants complained that there was delay in the renewal of the exploration permits for the Coals Mines and Yuanxiang Coal Mine, the respondent has suffered a loss due to the delay in the coal production. It also makes no commercial sense to invest in the coal production when the coal price has dropped dramatically.

24. Again, these are new complaints which have nothing to do with the original complaints.

25. Fourth, the applicants complained that there are irregularities in the mining permits renewal process. In this regard, the applicants relied on an expert opinion provided by a Beijing law firm without leave.

26. This is a new complaint arising from the respondent's evidence that, despite the applicants' original complaint that the respondent should not have entered into the joint venture, mining permits have been obtained despite some delay in the process.

27. Finally, according to the expert's opinion, since Shanxi Jinye no longer has the exploration permits for the coal mines in question, the applicants alleged that the respondent needed not pay large sum of money for acquiring the exploration rights. The respondent can simply apply directly to Shanxi Land Department for the new exploration permits after being approved as a lead entity upon payment of the remaining RMB27.5 million roughly for the price of the exploration

A rights of Zongshe coal mine. In this regard, the applicants relied on a
B compensation notice dated 28 September 2008 issued by the Shanxi
C Provincial People’s Government, which read together with the appraisal
D reports provided by the respondent, indicated that the total prices for the
E exploration of the mines in question are either about RMB282 million or
F RMB135 million. There is no commercial or good justification for
paying Shanxi Jinye RMB8.49 billion.

G 28. This is plainly a new complaint, which did not feature in the
H original complaints.

I *CONCLUSION*

J 29. In my view, the applicants are not entitled to raise these new
K complaints in the pretext that they are evidence in reply. Ambushing
L the respondent in this way is not permissible. It was for this reason that
I allowed the respondent’s application to expunge §§14 – 51 of A2’s
M 2nd Affirmation.

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P (Jeremy Poon)
Q Judge of the Court of First Instance
High Court

R Mr Horace Wong, SC, Mr Tommy Lo and Mr Jenkin Suen, instructed by
S Alvan Liu & Partners, for the 1st to 6th applicants

T Mr Benjamin Yu, SC and Mr Victor Dawes, instructed by Reed Smith
U Richards Butler, for the respondent
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STATEMENT OF CLAIM

Parties and Relevant Entities

1. The parties to this Action are:

(1) The Plaintiff (the “**Company**”) is and was at all material times:

(a) A publicly listed company incorporated in Hong Kong, the shares of which are listed on the Hong Kong Stock Exchange (stock code number 836);and

(b) Carrying on business principally as a power producer which invests, develops, operates and manages power plants and coal mine projects in the People’s Republic of China (PRC).

(2) The 1st Defendant (Zhou Junqing) is and has at material times since 21st October 2011 been an executive director of the Company and the chairman of the Company’s board of directors (the “**Board**”).

(3) The 2nd Defendant (Wang Yu Jun) is and has at all material times since 9 July 2010 been an executive director of the Company.

(4) The 3rd Defendant (Zhang Shen Wen) is and has at all material times since 23rd August 2003 been an executive director of the Company and is presently the vice-chairman of the Board.

(5) The 4th Defendant (Wang Xiao Bin) is and has at all material times since 13 February 2006 been an executive director of the Company.

(6) The 5th Defendant (Du Wenmin) is and has at all material times since 9 July 2010 been a non-executive director of the Company.

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- (7) The 6th Defendant (Wei Bin) is and has at all material times since 9th July 2010 been a non-executive director of the Company.
- (8) The 7th Defendant (Huang Daoguo) is and has at all material times since 9 June 2012 been a non-executive director of the Company.
- (9) The 8th Defendant (Chen Ying) is and has at all material times since 9 June 2012 been a non-executive director of the Company.
- (10) The 9th Defendant (Anthony Hayward Adams) is and has at all material times since 23 August 2003 been an independent non-executive director of the Company.
- (11) The 10th Defendant (Chen Ji Min) is and has at all material times since 13 February 2006 been an independent non-executive director of the Company.
- (12) The 11th Defendant (Ma Chiu-Cheung Andrew) is and has at all material times since 13 December 2006 been an independent non-executive director of the Company.
- (13) The 12th Defendant (Leung Oi-Sie Elsie) is and has at all material times since 22 April 2010 been an independent non-executive director of the Company.
- (14) The 13th Defendant (Ch'ien Kuo Fung Raymond) is and has at all material times since 22 April 2010 been an independent non-executive director of the Company.
- (15) The 14th Defendant (Song Lin) was at all material times between 23 August 2003 and 9 July 2010 and between 29 April 2011 to 21 October 2011 an executive director of the Company and the chairman of the Board.
- (16) The 15th Defendant (Wang Shuai Ting) was at all material times between 22 August 2003 to 29 April 2011 an executive director of the Company and the vice-chairman of the Board.

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(17) The 16th Defendant (Tang Cheng) was at all material times between 23 August 2003 and 22nd April 2010 an executive director of the Company.

(18) The 17th Defendant (Jiang Wei) was at all material times between 8 September 2001 and 9 July 2010 a non-executive director of the Company.

(19) The 18th Defendant (Chen Xiao Ying) was at all material times between 21 August 2007 and 22 April 2010 a non-executive director of the Company.

(20) The 19th Defendant (Wu Jing Ru) was at all material times between 23rd August 2003 and 22nd April 2010 an independent non-executive director of the Company.

(21) The 20th Defendant (Shi Shan Bo) was at all material times between 22 April 2010 and 9 June 2012 a non-executive director of the Company.

2. Other entities relevant to this Action include the following:

(1) China Resources Power Project Service Co., Ltd. (华润电力工程服务有限公司) (“**CRP Project Service**”) is and was at all material times:

(a) A wholly foreign-owned enterprise incorporated under the laws of the PRC (WFOE) with a registered equity capital of HK\$50 million; and

(b) A wholly-owned subsidiary of the Company.

(2) Shenzhen Nanguo Energy Co., Ltd. (深圳南国能源有限公司) (“**Shenzhen Nanguo**”) is and was at all material times:

(a) A company incorporated under the laws of the PRC with a registered equity capital of RMB 50 million;

(b) An indirect subsidiary of the Company, with 100% of its registered capital held by CRP Project Service;

A		A
B	(c) Ultimately under the control of the Company through the Company's control of CRP Project Service.	B
C		C
D	(3) Shenzhen Ruihua Energy Investment Co., Ltd (深圳瑞华能源投资有限公司) (“ Shenzhen Ruihua ”) is and was at all material times:	D
E		E
F	(a) A company incorporated under the laws of the PRC with a registered equity capital of RMB 2.204 billion. At all material times prior to 1 April 2012, Shenzhen Nanguo was the holder of 74.14% of its registered capital;	F
G		G
H	(b) Ultimately under the control of the Company through the Company's control of CRP Project Service and Shenzhen Nanguo.	H
I		I
J	(4) Shanxi China Resources Liansheng Energy Investment Co., Ltd (山西华润联盛能源投资有限公司) (“ Shanxi CR Liansheng ”) is and was at all material times:	J
K		K
L	(a) A company incorporated under the laws of the PRC with a registered equity capital of RMB 3.8 billion:	L
M	(b) Held by Shenzhen Ruihua and Shenzhen Nanguo as to 58% and 8% of its registered capital respectively;	M
N		N
O	(c) Ultimately under the control of the Company through the Company's control of CRP Project Service, Shenzhen Nanguo and Shenzhen Ruihua.	O
P		P
Q	(5) Shanxi Jinye Coal Coking Group Co., Ltd (山西金业煤焦化集团有限公司) (“ Shanxi Jinye ”) is and was at all material times a company incorporated under the laws of the PRC, the controlling shareholder of which is one Zhang Xin Min (张新明) (“ Mr Zhang ”).	Q
R		R
S	(6) At all material times, CITIC Trust Co., Ltd.(中信信托有限责任公司) (“ CITIC Trust ”) is a company incorporated under the laws of the PRC;	S
T		T
U		U
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(7) At all material times, Taiyuan China Resources Coal Co., Ltd (太原华润煤业有限公司) (“**Taiyuan China Resources**”) is a company incorporated under the laws of the PRC with a registered equity capital of RMB 4 billion.

3. The Board at the material times comprised the following Defendants:

(1) In the period between 27 April 2009 and 21 April 2010, the Board consisted of the 3rd Defendant, the 4th Defendant, the 9th Defendant, the 10th Defendant, the 11th Defendant the 14th Defendant, the 15th Defendant, the 16th Defendant, the 17th Defendant, 18th Defendant, and the 19th Defendant (the “**2009/2010 Board**”).

(2) In the period between 22 April 2010 and 8 July 2011, the Board consisted of the 3rd Defendant, the 4th Defendant, the 9th Defendant, the 10th Defendant, the 11th Defendant, the 12th Defendant, the 13th Defendant, the 14th Defendant, the 15th Defendant, the 17th Defendant and the 20th Defendant (the “**2010/2011 Board**”).

(3) In the period between 9 July 2011 and 8 June 2012, the Board consisted of the 2nd Defendant, the 3rd Defendant, the 4th Defendant, the 5th Defendant, the 6th Defendant, the 9th Defendant, the 10th Defendant, the 11th Defendant, the 12th Defendant, the 13th Defendant, the 14th Defendant (resigned on 21 October 2011) and the 20th Defendant (the “**2011/2012 Board**”).

(4) From 9 June 2012 to the present, the Board consists of the 1st Defendant, the 2nd Defendant, the 3rd Defendant, the 4th Defendant, the 5th Defendant, the 6th Defendant, the 7th Defendant, the 8th Defendant, the 9th Defendant, the 10th Defendant, the 11th Defendant, the 12th Defendant and the 13th Defendant (the “**2012/2013 Board**”).

Duties of the Defendants

A		A
B	4. As directors (whether executive, non-executive or independent non-executive) of the Company, the Defendants and each of them owe the following fiduciary duties and duties of skill and care to the Company:	B
C		C
D	(1) A fiduciary duty to act bona fide and in the best interests of the Company;	D
E	(2) A fiduciary duty in the exercise of their powers and the discharge of their duties as directors of the Company not to act for any collateral or improper purpose;	E
F		F
G	(3) A fiduciary duty not to act in the affairs of the Company in circumstances where there existed an actual or potential conflict between their duties to the Company as director and their other duties or interest;	G
H		H
I	(4) A fiduciary duty to use the assets of the Company in a manner which they honestly believed to be in the best interests of the Company;	I
J		J
K	(5) A fiduciary not to profit or obtain for themselves business opportunities acquired in the course of or as a result of their positions as a director of the Company;	K
L		L
M	(6) A duty to manage and deal with the assets of the Company in a manner analogous to and/or consistent with the duties of a trustee;	M
N		N
O	(7) A duty to comply with the Company's articles of association and the relevant laws and regulations concerning the management of the Company, including the provisions of the Companies Ordinance (Cap 32);	O
P		P
Q	(8) A continuing duty to act with the care, skill and diligence reasonably expected of a person in the position of a director in the conduct of the affairs of the Company;	Q
R		R
S	(9) A continuing duty to acquire and maintain a sufficient knowledge and understanding of the business of the Company and/or its subsidiaries to enable him to discharge his duty as a director and to acquire and	S
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maintain a general knowledge of the economy and the industry within which the Company and/or its subsidiaries operate;

(10) A duty not to exercise the powers conferred upon the directors for purposes other than those for which they were conferred;

(11) A duty to properly supervise the discharge of any delegated functions to co-directors and/or subordinates;

(12) The duties prescribed in the Companies Ordinance, including under Section 121 of the Companies Ordinance (Cap 32), and/or at common law to take reasonable steps to ensure that the Company kept proper books of account.

企业重组合同主协议(Corporate Restructuring Master Agreement)

5. On or about February 2010, the Company, Shanxi CR Liansheng, Shanxi Jinye and Mr Zhang entered into an agreement in Chinese entitled Corporate Restructuring Master Agreement (translation) (the “**Acquisition Agreement**”), pursuant to which inter alia Taiyuan China Resources would be established to acquire various mining assets from Shanxi Jinye.

6. The material terms of the Acquisition Agreement (translated from Chinese) include the following:-

(1) Clause 1.1:

“Shanxi CR Liansheng, Shanxi Jinye and an independent third party (the “**Third Party Shareholder**”) shall together invest in and incorporate a limited company in Shanxi Province, Gujiao City (the “**JV Company**”), in which Shanxi CR Liansheng shall hold 49% of the equity interest, the Third Party Shareholder shall hold 31% of the equity interest and Shanxi Jinye shall hold the remaining 20% of the equity interest”;

(2) Clause 1.2:

“Subject to approval of the relevant corporate registration authority, the provisional name of the JV Company shall be Taiyuan China Resources.”

(3) Clause 1.3:

“The registered capital of the JV Company shall be RMB 4 billion, in which Shanxi CR Liansheng shall contribute RMB 1.96 billion by way of cash (amounting to 49% of the equity interest), the Third Party Shareholder shall contribute RMB 1.24 billion by way of cash (amounting to 31% of the equity interest) and Shanxi Jinye shall contribute 20% of the “Collective Assets” (the value of which shall be appraised) of 10 different entities held under the name of Shanxi Jinye (“Collective Assets” is defined in Clause 2.2 of this Agreement) as its contribution to the registered capital (amounting to 20% of the equity interest) (the first RMB 800 million of the appraised value shall be used as Shanxi Jinye’s contribution to the registered capital and any additional amount shall be earmarked as the capital reserve of the Gujiao Joint Venture Company on a zero consideration basis).”

(4) Clause 2.1:

“Shanxi Jinye warrants and undertakes that it holds 100% of the equity interest or the full title of all of the assets of each of the following entities:

...

(2) Shanxi Jinye Coal Coking Group Co. Ltd Gujiao Zhongshe coal mine (i.e. “**Zhongshe Coal Mine**”)

Nature: A coal mining project of Shangxi Jinye Coal Coking Group Co. Ltd

Date of mineral exploration right: December 2003

Status of the mineral exploration right: Exploration permit numbered 1400000740006; valid from 29th December 2005 to 29th December 2007.

(3) Shanxi Jinye Coal Coking Group Co. Ltd Gujiao Hongyatou coal mine (i.e. “**Hongyatou Coal Mine**”)

Nature: A coal mining project of Shangxi Jinye Coal Coking Group Co. Ltd

Date of mineral exploration right: July 2003

Status of the mineral exploration right: Exploration permit numbered 1400000740003; valid from 24th January 2007 to 24th January 2009...” (emphasis added)

(5) Clause 2.2:

“The respective parties hereby confirm that the “Collective Assets” (the “**Collective Assets**”) of the said 10 entities: No. 1 Coking Plant, No. 2 Coking Plant, Yuefeng Coal Washing Plant, Vehicle Transport Company, Power Plant, Yuanxiang Coal Mine, Railroad Shipment Station, Zhongshe Coal Mine, Hongyatou Coal Mine, and Jinyi Chemicals constitute 100% of their assets (including without limitation fixed assets such as shaft mining works and equipment, above-ground works and equipment, construction and safety investments, and intangible assets such as mining right, exploration right and land-use rights, etc. Notwithstanding the aforesaid the liabilities or third-party rights other than bank loans with respect to the said fixed and intangible assets are not included in the said Collective Assets.)”

(6) Clause 2.3

“Jinye parties [defined as Shanxi Jinye and Mr Zhang] agree to transfer 80% of the Collective Assets to the JV Company. CR parties [defined as the Company and Shanxi CR Liansheng] and Jinye parties agree that Gujiao Joint Venture Company shall accept the Collective Assets in accordance with the terms of this Agreement and those of specific Asset Transfer Agreements (including the “Asset Transfer Agreements” for No. 1 Coking Plant, No. 2 Coking Plant, Yuefeng Coal Washing Plant, Vehicle Transport Company, Power Plant, Jinyi Chemicals, Yuanxiang Coal Mine, Railroad Shipment Station, Zhongshe Coal Mine and Hongyatou Coal Mine, hereinafter called “the said asset transfer agreements”).”

(7) Clause 4.1

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“The respective parties agree that the consideration for 80% of the Collective Assets (which shall ultimately be held by Shanxi CR Liansheng and the Third Party Shareholder) shall not exceed RMB 7.9 billion. The actual amount of the consideration payable shall be calculated on the basis of the due diligence conducted on the said 10 entities respectively and the appraisal value given by a valuation body engaged by CR parties. The consideration for the acquisition of the said 10 entities shall be calculated on the basis of the assets and liabilities of the respective entities as at 31st December 2009 (hereinafter known as the “Acquisition Benchmark Date”) set out in Schedule 3.”

(8) Clause 4.2

“The respective parties agree that out of the RMB 4 billion registered capital of the Gujiao Joint Venture Company, Shanxi CR Liansheng and the Third Party Shareholder shall contribute RMB 3.2 billion in total by way of cash; Shanxi Jinye shall use 20% of the “Collective Assets” (the value of which shall be appraised) as its contribution to the registered capital; while the price for the acquisition of 80% of the Collective Assets by the Gujiao Joint Venture Company shall not exceed RMB 7.9 billion. The respective parties hereby agree that the bank interest on funds raised through Gujiao Joint Venture Company for the payment of the acquisition price under this Agreement shall be borne by CR parties and the Third Party Shareholder...”

(9) Clause 4.3

“Shanxi CR Liansheng hereby agrees to pay RMB 2 billion to Shanxi Jinye as earnest money (the “**Earnest Money**”) to show its good faith in restructuring the said 10 entities with Shanxi Jinye pursuant to this Agreement. CR Liansheng and Shanxi Jinye will enter into another written agreement related to the payment and repayment of the Earnest Money. Schedule 4 of this Agreement (i.e. the Repayment Agreement) should be referred to in relation to arrangements for payment and repayment of the Earnest Money as stated in this Clause. Parties should refer to the Repayment Agreement should there be any payment or repayment arrangements which are not specifically mentioned in this Agreement, but in the event of any inconsistency between this Agreement and the Repayment Agreement, this Agreement shall prevail...”

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Shanxi CR Liansheng agrees that it shall pay the Earnest Money of RMB 2 billion to Shanxi Jinye within ten (10) business days from the date which all of the following have been completed: 100% of the equity interests of Shanxi Jinye have been pledged to Shanxi CR Liansheng; the relevant pledging registration procedures have been completed; evidence of the completion of such pledging registration has been provided to Shanxi CR Liansheng; and the above securities have already been provided by Shanxi Jinye. For the avoidance of doubt, the provision of the Earnest Money by Shanxi CR Liansheng is conditional upon the execution of the abovementioned Equity Interest Pledging Agreement and the completion of the corresponding pledging registration procedures.”

(10) Clause 4.3.1

“Shanxi Jinye shall unconditionally and immediately repay to Shanxi CR Liansheng the full amount of the Earnest Money received in the event of any of the following situations:

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- (1) The Transfer Agreements cannot be executed before 30th April 2010;
 - (2) The equity interests pledged by Shanxi Jinye or the charged assets are being frozen by the court, auctioned, sold or other rights therein are being restricted; or the material assets of Shanxi Jinye are being transferred or subject to a guarantee or other encumbrances;
 - (3) Shanxi Jinye is in breach of the terms of this Agreement;
 - (4) The licenses in relation to the 18 Gujiao coal mines in Gujiao cannot be transferred to CR Power or its appointed company.
 - (5) Any of the conditions precedent under Article 3 of this Agreement for this transaction has not been satisfied (including without limitation the acquisition pursuant to this Agreement has not been approved at CR Power’s Shareholders’ Assembly, and CR Power, as a public-listed company in Hong Kong, as not obtained regulatory approval with respect to its acquisition and consolidation of the coal mines referred to in this Agreement;

(6) This Agreement has been duly terminated or dissolved in accordance with its provisions and laws and regulations.”

(11) Clause 4.3.2

“In the event that any of the situations in Clause 4.3.1 happens, Shanxi CR Liansheng can notify Shanxi Jinye by way of telephone call, email, facsimile, delivery by hand or other ways to ask for repayment of the Earnest Money. Shanxi Jinye shall repay the full amount of the Earnest Money (RMB 2 billion) in one lump sum to Shanxi CR Liansheng within five (5) business days of the receipt of the above notification together with interests (such interests shall be accrued from the date which the Earnest Money is paid by Shanxi CR Liansheng to the date of repayment; the applicable interest rate shall follow the lending rate quoted by the People’s Bank of China within the same period of time)...”

(12) Clause 6.3

“Jinye parties hereby unconditionally and warrant and undertake to CR parties that they possess the right, capacity and relevant qualifications with respect to their fulfillment of this Agreement.

...

They further warrant that they have obtained lawful and valid “Mining Permits” for Yuanxiang Coal Mine, Zhongshe Coal Mine and Hongyatou Coal Mine, and that they possess 100% of the equity in the said 10 entities as well as mining (or exploration) rights, land-use rights and the corresponding rights for various assets required for existing coal mining operations.

Save where otherwise disclosed to CR parties in writing, the licenses, permits and certificates for the said 10 entities (including without limitation their business registration certificates, mining permits, mining resource exploration permits, coal production and operation permits, safety production permits and safety qualification certificates for main persons-in-charge, etc.) are complete, lawful and valid, and are in compliance with the relevant requirements of the competent authorities, and that the equity, assets, mining rights, land-use rights/land-lease rights of the said 10 entities are not

subject to any mortgage, pledge, lien, right of priority in purchase, third-party rights or other similar guarantee rights, or subject to any rights claimed by any third parties.

...

In the event Jinye parties are found by CR parties to be in breach of the aforesaid undertakings, CR parties shall be entitled to deduct a corresponding amount from the acquisition price stipulated in Article 4.1 of this Agreement. Alternatively CR parties can deduct the corresponding amount from the after-tax profit of the post-acquisition Gujiao Joint Venture Company to be distributed to Jinye parties.” (emphasis added)

(13) Clause 11.1

“Insofar as it does not affect the other provisions in this Agreement, a party shall have the right to unilaterally terminate upon the occurrence of any of the following situations:

- (a) Performance of this Agreement is complete;
- (b) The respective parties have unanimously agree in writing to terminate this Agreement;
- (c) Jinye parties are in breach of any warranties and undertakings given under this Agreement (excluding their undertaking in Article 8.2) such that the objectives of this Agreement cannot be met, whereupon any of CR parties may by writing notify any of Jinye parties with respect to termination of this Agreement.

Save for the aforesaid, no party shall be entitled to unilaterally terminate this Agreement, failing which it shall be deemed to be in breach thereof. In any case the termination of this Agreement shall not affect any of a party’s rights and remedies available to it under this Agreement before its termination.”

(14) Clause 14.1

This Agreement shall be governed and interpreted by the laws of the People’s Republic of China.

(15) Clause 14.2

With respect to any disputes, arguments or claims (collectively known as “disputes”) arising from or relating to this Agreement, including breach of agreement, termination of agreement or actions which are deemed invalid, the respective parties shall exercise their best efforts to resolve such disputes by way of amicable consultation. In the event such disputes cannot be resolved by way of amicable consultation, any of the parties shall have the right to submit such disputes to China International Economic and Trade Arbitration Commission, Beijing Commission for arbitration in accordance with the prevailing arbitration rules. The award of arbitration is final and legally binding on all parties.

7. The Company will rely on the full terms and effect of the Acquisition Agreement at the trial.
8. Pursuant to and after the Acquisition Agreement was entered into (the precise dates of which are unknown):-
 - (1) The Company caused RMB 1.96 billion to be injected into Taiyuan China Resources as contribution to its registered capital. Shanxi CR Liansheng thereby acquired a 49% interest in Taiyuan China Resources;
 - (2) CITIC Trust caused RMB 1.24 billion to be injected into Taiyuan China Resources as its contribution to the registered capital of Taiyuan China Resources, thereby acquiring a 31% interest therein;
 - (3) Shanxi Jinye transferred 20% of its purported interests in the Collective Assets to Taiyuan China Resources as its purported contribution to the registered capital of Taiyuan China Resources, thereby acquiring a 20% interest therein;
 - (4) The Company caused RMB 2 billion to be paid to Shanxi Jinye as the Earnest Money;
 - (5) Shanxi Jinye then transferred the remaining 80% of its purported interests in the Collective Assets to Taiyuan China Resources, which then became the sole owner of the same; and

(6) The Company thereafter caused around RMB 6 billion to be transferred to Shanxi Jinye as consideration for the Collective Assets.

The Company reserves the right to plead further particulars upon discovery and/or the administration of interrogatories.

The Appraisal Reports

9. Prior to entering into the Acquisition Agreement, the Company and Shanxi CR Liansheng obtained the following appraisal reports in Chinese as part of its due diligence in relation to the transaction:

(1) An “Appraisal Report on Shanxi Guijiao City Zhongshe Well-field Exploration Rights” prepared by Shanxi Borui Mining Right Appraisal Co., Ltd. on April 28, 2010, which stated that inter alia:

(a) In 2003, approval was granted by the Shanxi Province Department of Land and Resources for Shanxi Jinye to obtain upon payment of consideration, the exploration right for Zhongshe Coal Mine;

(b) The mining resource exploration right permit number was 1400000310118 and was valid from June 2003 to June 2004. In 2005 Shanxi Jinye applied for an extension of time from 29 December 2005 to 29 December 2007;

(c) As at the appraisal date, there remained an outstanding amount of RMB 27,497,600 from Shanxi Jinye, being the balance of consideration for exploration rights for the Zhongshe Coal Mine obtained in November 2003;

(d) By a letter dated 15 November 2009 in Chinese entitled “Opinion on the Extension and Transfer of Exploration Right for Zhongshe Hongyatou Well-field and Delineation of Scope of Mine”, (the “**November 2009 Letter**”) the Shanxi Province Department of Land and Resources

stated that no application was made within the stipulated deadline for extension of exploration right retention period with respect to the exploration rights for the Zhongshe Coal Mine and the exploration rights for the Hongyatou Coal Mine.

As such the exploration rights for both mines had expired and the relevant exploration permits were invalid.

(2) An “Appraisal Report on Shanxi Guijiao City Hongyatou #8 and #9 Well-field Survey and Exploration Rights” prepared by Shanxi Borui Mining Right Appraisal Co., Ltd. on 28 April 2010 which explained that inter alia:

(a) According to the exploration permit issued in January 2007 by the Shanxi Province Department of Land and Resources under Permit No. 1400000740003, the validity period for exploration was from 24 January 2007 to 24 January 2009.

(b) In 2007, after geological work was completed an application was made to retain the exploration right and the validity period was extended to 24 January 2009.

(c) By the November 2009 Letter, the Shanxi Province Department of Land and Resources stated that no application was made within the stipulated deadline for extension of exploration right retention period with respect to the exploration rights for the Zhongshe Coal Mine and the exploration rights for the Hongyatou Coal Mine.

As such the exploration rights for both mines had expired and the relevant exploration permits were invalid.

Relevant PRC Law on Mining Resources

A
B 10. Article 3 of the “Mineral Resources Law of the People’s Republic of China” (the “**PRC Resources Law**”) states that inter alia: B

C All mining resources belong to the State; the State Council shall exercise the State’s ownership of such mining resources. ... Due application shall be made with respect to exploration or mining of mining resources, and upon approval such exploration and mining rights shall be registered. D

E
F 11. Article 5 of the “Measures for Control of Transfer of Exploration Rights or Mining Rights” (the “**PRC Mining Rights Control Measures**”) states that inter alia: F

G Transfer of exploration right shall be subject to the following conditions: H

I (1) Two full years have passed since the date of issuance of the exploration license, or the mineral resources available for further exploration or mining in the exploration zone have been discovered; J

K (2) The specified minimum input to exploration has been fulfilled; L

M (3) There is no dispute on ownership of the exploration rights; M

N (4) The exploration fee or any price for exploration rights has been paid in accordance with the relevant provisions of the State; and N

O (5) Other requirements provided by the competent department of geology and mineral resources of the State Council. O

P
Q 12. Article 10 of the PRC Mining Rights Control Measures states that inter alia: Q

R With regard to the application for transferring exploration rights or mining rights, the examining and approving agency shall make a decision of approval or disapproval within 40 days as of the date of T

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receipt of the application for transfer, and notify the transferor and the transferee.

Where the transfer is approved, the transferor and the transferee shall, within 60 days as of the date of receipt of the approval notice of transfer, go through the formalities for registration modification with the original licensing authority; the transferee shall, after paying the relevant fees in accordance with the provisions of the State, obtain the exploration license or mining license and become an exploration licensee or a mining concessionaire.

Where the transfer is approved, the transfer contract shall take effect as of the date of approval.

Where the transfer is disapproved, the examining and approving agency shall give reasons therefor.

13. Article 10 of the “Measures for Registration Administration of Exploration Blocks of Mineral Resources” (the “**PRC Mining Resources Administration Measures**”) states that inter alia:

Where there is a need to extend the time for exploration, the exploration licensee shall, 30 days prior to the expiration of the period of validity of the exploration license, complete the procedures for extension of registration with the registration agency, and the extension period each time shall not exceed 2 years. Where the exploration licensee does not complete the procedures for extension of registration by the prescribed time limit, the exploration license shall automatically expire.

14. Article 21 of the PRC Mining Resources Administration Measures states that inter alia:

After verifying a mineable ore deposit within the period of validity of an exploration license, an exploration licensee may, upon approval by the registration agency, suspend the minimum input to exploration in the corresponding blocks and may also apply to reserve the exploration right 30 days prior to the expiration of the period of validity of the exploration license.....The longest period for reservation of an exploration right shall not exceed 2 years, and if there is a need to extend the period for reservation, the applicant may apply therefor twice with each extension not exceeding 2 years; and the scope of reservation of an exploration right is the scope of the mineable ore deposit.....The exploration license shall be cancelled when the period for reservation of an exploration right expires.

15. Article 7 of the “Administrative Measures for Bid Invitation, Auction and Listing of Exploration Right and Mining Right (Trial)” (the “**PRC Mining Rights Bidding Measures**”) states that inter alia:

Competent authorities shall grant the newly established exploration right by bid invitation, auction or listing, in the case of:

- (1) mining area explored and detected with State fund that is ready for further exploration;
- (2) mining area without exploration right;
- (3) exploration blocks specifically planned in mining resource exploration at both national and provincial levels; or
- (4) other circumstances prescribed by competent authorities.

16. Article 12 of the PRC Mining Rights Bidding Measures states that inter alia:

The bid invitation, auction and listing of exploration right and exploitation right shall be implemented as planned. Competent authorities shall, by taking into account the mining resource planning, specific planning of mining resource exploration, overall planning of mining areas, national industry policies and market supply and demand, compile the plans for the bid invitation, auctions and listing of exploration right and exploitation right according to the statutory terms of reference specified by the permits of exploration and exploitation, and report the same to their superior competent authorities for future reference.

17. Article 17 of the PRC Mining Rights Bidding Measures sets out the contents of any tender, auction and listing notices.

18. Article 18 of the PRC Mining Rights Bidding Measures states that inter alia:

Competent authorities shall examine the qualifications of bidders in accordance with provisions. Competent shall inform bidders complying with the requirements for qualifications of bid invitation, auction and listing, as well as time and places for paying bidding margins.

Relevant PRC Law on Contract

19. Article 52 of the "Contract Law of the People's Republic of China" (the "PRC Contract Law") provides that:

A contract is invalid under any of the following circumstances:

- (1) either party enters into the contract by means of fraud or coercion and impairs the State's interests;
- (2) there is malicious conspiracy causing damage to the interests of the State, of the collective or of a third party;

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- (3) there is an attempt to conceal illegal goals under the disguise of legitimate forms;
- (4) harm is done to social and public interests; or
- (5) mandatory provisions of laws and administrative regulations are violated.

20. Article 58 of the PRC Contract Law provides that:

After a contract becomes invalid or is rescinded, any property obtained under the contract shall be returned. If it is impossible or unnecessary to return the property, compensation shall be made at an estimated price. The party at fault shall compensate the other party for the loss caused by the fault. If both parties have faults, they shall bear their respective responsibilities.

21. Article 59 of the PRC Contract Law provides that:

If the parties impair by malicious conspiracy the interests of the State, of the collective or of a third party, the property they have thus obtained shall be returned to the State, the collective or the third party.

22. Article 94 of the PRC Contract Law provides that:

The parties may dissolve the contract under any of the following circumstances:

- (1) the aim of the contract cannot be attained because of force majeure;
- (2) before the period of performance expires, either party clearly indicates by word or by act that it will not discharge the principal debts;

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(3) either party delays the discharge of the principal debts and still fails to discharge them within a reasonable period of time after being urged;

(4) either party delays the discharge of debts or is engaged in other illegal activities and thus makes realization of the aim of the contract impossible; or

(5) any other circumstances as provided for by law.

23. Article 97 of the PRC Contract Law provides that:

After the dissolution of a contract, for those clauses not yet performed, the performance shall cease. For those already performed, the party concerned may, in accordance with the situation of performance and the nature of the contract, demand their restoration to the original status or take other remedial measures, and have the right to claim compensation.

Breaches of Duty by the 2009/2010 Board

24. At the time of the Acquisition Agreement, the 2009/2010 Board well knew and/or should have known, from inter alia:

- (1) Articles 2.1(2) and (3) of the Acquisition Agreement; and
- (2) The November 2009 Letter issued by the Shanxi Province Department of Land and Resources mentioned in the two appraisal reports dated 28 April 2010;
- (3) The mineral exploration rights in respect of the Zhongshe Coal Mine and the Hongyatou Coal Mine (the “**Exploration Rights**”) had already expired on 30 December 2007 and 25 January 2009 respectively;

(4) As no extension of the Exploration Rights had been applied by Shanxi Jinye, the Exploration Rights had expired and the relevant exploration permits were invalid;

(5) There remained an outstanding amount of RMB 27,497,600 from Shanxi Jinye, being the balance of consideration for exploration rights for the Zhongshe Coal Mine obtained in November 2003.

25. Further, the Defendants in the 2009/2011 Board well knew, or should have known had they properly discharged their duties pleaded in paragraph 4 above, that inter alia:

(1) The resources and associated rights in the Zhongshe Coal Mine and the Hongyatou Coal Mine (collectively the “**Coal Mines**”) belonged to the PRC state pursuant to Article 3 of the PRC Resources Law;

(2) As Shanxi Jinye, being the holder of the Exploration Rights prior to their expiration, had not applied for an extension of the Exploration Rights within 30 days prior to their expiration:

(a) The Exploration Rights automatically ceased to be of effect pursuant to Article 10 of the PRC Mining Resources Administration Measures; and

(b) The relevant exploration permits de-registered pursuant to Article 21 of the PRC Mining Resources Administration Measures;

(c) As a result, Shanxi Jinye had no right or capacity to transfer the Exploration Rights to the Company and/or Shanxi CR Liansheng pursuant to Article 5 of the PRC Mining Rights Control Measures;

(3) Further, by reason of the outstanding fees of RMB 27,497,600 due from Shanxi Jinye, Shanxi Jinye had no right or capacity to transfer the Exploration Rights to the Company and/or Shanxi CR Liansheng pursuant to Article 5 of the PRC Mining Rights Control Measures;

(4) Any acquisition of the Exploration Rights by the Company and/or Shanxi CR Liansheng could only be done by way of auction or tender from the PRC state pursuant to Articles 7, 12, 17 and 18 and 20 of the PRC Mining Rights Bidding Measures.

26. However, in breach of their duties pleaded in paragraph 4 above, the Defendants comprising the 2009/2010 Board:

(1) If they were unaware of the matters pleaded in paragraph 25 above, failed to conduct reasonable and proper due diligence in relation to the subject matter of the Acquisition Agreement;

(2) Caused the Company and/or procured Shanxi CR Liansheng to enter into the Acquisition Agreement, which was wholly commercially unjustifiable and detrimental to the interests of the Company in the light of the matters pleaded in paragraphs 24 and 25 above; and

(3) Or alternatively, even if the Acquisition Agreement was commercially justifiable (which is denied), failed to ensure whether sufficiently or at all that the consideration for the Collective Assets in the Acquisition Agreement properly reflected the matters in paragraphs 24 and 25 above;

Breaches of Duty by the 2009/2010 Board, 2010/2011 Board, 2011/2012 Board and the 2012/2013 Board (collectively the “said Boards”)

27. The Defendants in the said Boards well knew, or should have known had they properly discharged their duties pleaded in paragraph 4 above:

(1) Of the matters pleaded in paragraphs 24 and 25 above;

(2) That there was a case that Acquisition Agreement was thus invalid by reasons that:

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(a) Shangxi Jiaye purportedly transferred the Exploration Rights it no longer owned and was therefore in contravention of Article 3 of the PRC Resources Law and Articles 5 and 10 of the PRC Mining Rights Control Measures; and

(b) The Acquisition Agreement (and subsidiary agreements made pursuant thereto) purports to deal with mining rights which belonged to the PRC state of which none of the parties to the Acquisition Agreement had any right to deal with and may be regarded as a malicious collusion between the parties under Article 52 of the PRC Contract Law.

(3) That there was a case that the Acquisition Agreement was thus terminable by the Company and Shanxi CR Liansheng:

(a) Shanxi Jinye was in clear breach of the condition and warranty in Clause 6.3 of the Acquisition Agreement, giving the Company and/or Shanxi CR Liansheng a unilateral right of termination under Clause 11.1;

(b) As Shanxi Jinye no longer had the Exploration Rights, the aim, or one of the main aims of the Acquisition Agreement can no longer be performed, giving the Company and/or Shanxi CR Liansheng the right of termination pursuant to Article 94 of the PRC Contract Law and Clause 11.1 of the Acquisition Agreement.

(4) As at the date of this Statement of Claim, neither the Company nor Shanxi CR Liansheng has been able to acquire the Exploration Rights or any similar rights pursuant to the Acquisition Agreement.

28. However, in breach of their duties pleaded in paragraph 4 above, the Defendants comprising the said Boards:

A (1) If they were unaware of the matters pleaded in paragraph 27
B above, failed to take reasonable steps to monitor, to keep
C themselves informed and to understand the business and
investments of the Company and its subsidiaries.

D (2) Notwithstanding the matters pleaded in paragraphs 24 to 27
above:

E (a) Caused the Company and/or Shanxi CR Liansheng to
F proceed with the performance of the Acquisition
G Agreement (and any subsidiary agreements
entered pursuant thereto) and carry out the acts
pleaded in paragraphs 8(1), (4) and/or (6) above;

H (b) Failed to take any or any sufficiently and timely steps
I to cause the Company and/or Shanxi CR
J Liansheng to seek the invalidation, rescission or
termination of the Acquisition Agreement (and
any subsidiary agreements entered pursuant
thereto);

K (c) Failed to take any or any sufficiently and timely steps
L to cause the Company and/or Shanxi CR
M Liansheng to recover the sums paid to Shanxi
N Jinye as pleaded in paragraphs 8(4) and/or (6)
above pursuant to inter alia Clauses 4.3.1 and
4.3.2 of the Acquisition Agreement and Articles
58, 59 and/or 97 of the PRC Contract Law; and/or

O (d) Failed to take any or any sufficiently and timely steps
P to cause the Company and/or Shanxi CR
Q Liansheng to commence legal or other
R proceedings against Shanxi Jinye and/or Mr
Zhang for recovery of damages or compensation
under the Acquisition Agreement pursuant to inter
alia Articles 58, 59 and/or 97 of the PRC Contract
Law and Clause 11.1 of the Acquisition
Agreement.

S The Company reserves the right to plead further particulars upon
T discovery and/or the administration of interrogatories, including
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in particular, in relation to the respective dates of the matters pleaded in paragraphs 8(1), (4) and (6) above.

29. By reason of the Defendants' breaches of duty as pleaded above, the Company has suffered serious loss and damage.
30. The Company claims interest pursuant to Section 48 of the High Court Ordinance (Cap 4) for such period and at such rate as the Court thinks fit.

AND THE PLAINTIFF CLAIMS AGAINST THE DEFENDANTS AND EACH OF THEM FOR:

1. Damages and/or equitable compensation to be assessed;
2. Interest as aforesaid;
3. Costs; and
4. Further or other relief.

Dated the day of 2013

Alvan Liu & Partners
Solicitors for the Plaintiff