

HONG KONG ARBITRATION

P [REDACTED] Y

Verses

F [REDACTED] CO. LTD.

FINAL AWARD  
(save as to assessment of costs)

7<sup>th</sup> January 2012

Tribunal:

Mr. Philip Yang

Mr. David Sandborg

Mr. Samuel Wong (Chairman)

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### I. INTRODUCTION

1. This is the Final Award save as to the assessment of costs in the matter of the disputes between P [REDACTED] y and F [REDACTED] [REDACTED] Co. Ltd. This Final Award is rendered following the merits hearing in Hong Kong which took place at the Hong Kong International Arbitration Center ("HKIAC") from 26 September to 30 September 2011 with post-hearing submissions made on 21 October 2011.

### II. THE PARTIES

2. The Claimant in this matter is [REDACTED] a company domiciled in Indonesia, having its office at [REDACTED] No. [REDACTED] [REDACTED], Indonesia [REDACTED].
3. The Claimant is a trading company engaged in the trading of coal and other minerals.
4. The Respondent is a company domiciled in the PRC and having its office at 7/F., [REDACTED] No. [REDACTED] Road, [REDACTED], China.
5. The Respondent is involved in trading coal, steel, rubber, mineral and timber products.
6. The Claimant was represented by [REDACTED] of Room [REDACTED] [REDACTED]/F., [REDACTED], [REDACTED] Central, Hong Kong ("[REDACTED]"). Mr. [REDACTED] ("Mr. [REDACTED]") acted as the Claimant's advocate at the arbitral hearing.
7. The Respondent was represented by William K. W. Leung & Co. of 11 Floor, Beautiful Group Tower, 77 Connaught Road Central, Hong Kong ("WL"). Mr. William Leung ("Mr. Leung") acted as the Respondent's advocate at the arbitral hearing.
8. Where letters or emails were issued by [REDACTED], it would be referred herein as letters or emails issued by the Claimant; likewise for the Respondent in respect of emails and letters issued by WL.

### III. PROCEDURAL HISTORY OF THE ARBITRATION

9. This Ad Hoc arbitration ("this Arbitration") was initiated on behalf of the Claimant on 8 August 2010. Mr. David Sandborg of 19/F, Two International

documents in the hearing bundles. In the circumstances, it cannot be said that much costs were spent in respect of these items.

391. On the other hand, the Claimant's allegation that the stockpile at [REDACTED] was not the Claimant's cargo (or that it had been deliberately admixed) led to the '*petrographic report*', the Claimant and the Respondent's expert reports and evidence *viva voce* which unnecessarily added costs. The Claimant had also deliberately withheld R [REDACTED] report<sup>239</sup>. These are matters which the Tribunal is entitled and has taken into account.
392. Of course on the part of the Respondent, it had also wasted costs in how it conducted itself at the interlocutory stage, including its unsuccessful jurisdictional and interlocutory applications.
393. Having considered all the circumstances, the Tribunal considers that it is appropriate in the circumstances that the Respondent is made to be liable to pay 15% of the Claimant's costs of the arbitration, which comprises the costs of legal representation and assistance, to be taxed/ assessed on standard basis (a basis used in the United Kingdom equivalent to the party and party basis referred to in Hong Kong Civil Procedure Order 62, para 62/App/6) by this Tribunal if not agreed.
394. As to the costs of the Award<sup>240</sup>, which comprises the Tribunal's fees, the Tribunal has assessed and settled the fees of Mr. David Sandborg, Mr. Philip Yang and Mr. Samuel Wong in the amounts respectively of HK\$ [REDACTED], HK\$ [REDACTED] and HK\$ [REDACTED]. These amounts total HK\$ [REDACTED]. The parties had made deposits with HKIAC of HK\$ [REDACTED]. Hence the balance of the Tribunal's fees to be paid is in an amount of HK\$ [REDACTED]. The party that pays the balance of the Tribunal's fees is entitled collect the

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<sup>239</sup> Para 283 of the Award

<sup>240</sup> Section 2GK of the Arbitration Ordinance Cap 341

Award and recover from the other party on the basis that each party is to bear 50% of the Tribunal's fees.

Done in Hong Kong this <sup>7<sup>th</sup></sup> ~~15<sup>th</sup>~~ day of ~~December 2011~~ <sup>January 2012</sup> *Aww*



Mr. Philip Yang

Witness by *Rui Chou Ch*



Mr. David Sandborg

Witness by *Rui Chou Ch*



Mr. Samuel Wong

Chairman

Witness by *Rui Chou Ch*