

MARUBENI HONG KONG AND SOUTH CHINA LIMITED and THE MONGOLIAN GOVERNMENT [2005] EWCA Civ 395

"To: MARUBENI HONG KONG LTD

In consideration of you entering into the Deferred Payment Sales Contract No 258500 (hereinafter called the "agreement") with Buyan Holding Company Ltd, a corporation duly organized and existing under the laws of Mongolia, with its principal office at I-4000-68-4 Ulaanbaatar, Mongolia (hereinafter called the "Buyer") for sales and purchase of a textile plant the contact (sic) price of which is United States Dollars Eighteen Million Eight Hundred Eleven Thousand Six Hundred Seventy (USD18,811,670), the undersigned Ministry of Finance of Mongolia unconditionally pledges to pay to you upon your simple demand all amounts payable under the Agreement if not paid when the same becomes due (whether at stated maturity, by acceleration or otherwise) and further pledges the full and timely performance and observance by the Buyer of all the terms and conditions of the Agreement.

Further Ministry of Finance undertakes to hold indemnify and hold you harmless from and against any cost and damage which may be incurred by or asserted against you in connection with any obligations of the Buyer to pay any amount under the Agreement when the same becomes due and payable (whether at stated maturity, by acceleration or otherwise) or to perform or observe any term or condition of the Agreement or in connection with any invalidity or unenforceability of or impossibility of performance of any such obligations of the Buyer.

This covenant shall come to force from the date of implementation of this agreement and remain in full force and effect until all amounts due to you by the Buyer under the Agreement have been paid in full and all the terms and conditions of the Agreement have been fully performed and observed by the Buyer.

The Ministry of Finance hereby waives any right to require you to proceed against the Buyer or against any security received from the Buyer or any third party or to pursue any other remedy available to you...."

The letter also provided that –

"... all disputes related to this pledge shall correlate in accordance with the jurisdiction Courts of England."