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Court Refuses Extra-Territorial Anti-Enforcement Injunction

In a significant decision delivered on 12 November 2019 in *Bina Puri Holding Berhad & Anor v National Housing Authority & Ors*, the Kuala Lumpur High Court refused to grant an extra-territorial anti-enforcement injunction in relation to a foreign judgment.

In that case, Bina Puri Holding Berhad (**BPHB**) and Bina Puri (Thailand) Company Limited (**BPTL**) requested RHB Bank Berhad (**RHB**) to issue three bank guarantees in favour of the National Housing Authority, Thailand (**NHA**), to secure BPTL's performance under a construction project awarded by the NHA.

Disputes arose between the NHA and BPTL. The NHA demanded that RHB make payment under the bank guarantees. On 30 November 2015, the NHA commenced a civil action in the Central Administrative Court, Thailand (**CAC Thailand**), against BPTL, RHB and another party.

On 16 August 2019, CAC Thailand decided in favour of the NHA and, among others, ordered RHB to make payment under the bank guarantees to the NHA (**CAC judgment**). Dissatisfied with the CAC judgment, BPTL appealed to the Supreme Administrative Court, Thailand. RHB did not appeal against the CAC judgment.

Simultaneously, BPHB and BPTL commenced a legal action in the Kuala Lumpur High Court to restrain the NHA and RHB from receiving and making payment, respectively, under the bank guarantees as ordered by CAC Thailand.

In dismissing the injunction application, the Kuala Lumpur High Court, among other things, recognised the importance to conform with the public policy of comity between friendly sovereign states. The judge decided not to interfere with the CAC judgment and its resultant consequence as there are not viable grounds established by BPHB and BPTL to question and defeat the CAC judgment based either on *res judicata* or Malaysian public policy. The judge felt the proper and convenient forum to determine and dispense the remedy sought by BPHB and BPTL in connection with the bank guarantees and CAC judgment is the Thai court.

The grounds of decision can be found [here](#).

RHB was represented by partners, **Mong Chung Seng** and **Chia Oh Sheng**, of [Lee Hishammuddin Allen & Gledhill](#).

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