

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC 193

Suit No 629 of 2019

Between

BTHMB Holdings Pte Ltd

... Plaintiff

And

Kim Byung Gun

... Defendant

JUDGMENT

[Contract — Contractual terms — Express terms — Interpretation of terms]
[Evidence — Proof of evidence — Onus of proof — Action for return of sale
proceeds]

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BTHMB Holdings Pte Ltd

v

Kim Byung Gun

[2022] SGHC 193

General Division of the High Court — Suit No 629 of 2019

Andre Maniam J

20–24, 27–29 September 2021, 7, 8, 10, 11 March, 27 May 2022

26 August 2022

Judgment reserved.

Andre Maniam J:

Introduction

1 This case involves a dispute over the ownership of some US\$22m in proceeds of sale of cryptocurrency.

Claims

2 The defendant, Dr Kim Byung Gun (“Dr Kim”), is a cosmetic surgeon who invested in cryptocurrency and related investments.

3 The plaintiff, BTHMB Holdings Pte Ltd (“BTHMB”), was incorporated by Dr Kim on 23 August 2018.¹ Dr Kim was initially BTHMB’s sole beneficial

¹ Affidavit of Evidence-in-Chief of Kim Byung Gun affirmed on 31 August 2021 (“Dr Kim’s AEIC”) at para 5 (Bundle of Affidavits of Evidence-in-Chief Volume 4

owner. He was also a director of BTHMB from its incorporation, and one of its joint managing directors from 20 November 2018, until he resigned from those positions on 12 April 2019.²

4 BTHMB issued its own cryptocurrency: BXA Coin. BTHMB claims from Dr Kim the balance sale proceeds he had received from selling a certain quantity of BXA Coins, after giving credit for the partial payments of BXA Coin sale proceeds which BTHMB acknowledges it had received.

5 Dr Kim’s position is that he owned the BXA Coins that were sold, and so he was entitled to their sale proceeds.³ Further, he says that BTHMB had received from him (directly or indirectly) a sum greater than those sale proceeds, and so BTHMB has received the sale proceeds – or, at least, BTHMB has suffered no loss.⁴

6 Dr Kim also counterclaims against BTHMB for reimbursement of expenses he incurred.⁵

Issues

7 I address the following issues:

- (a) What was the quantum of the sale proceeds received by Dr Kim from the sale of BXA Coins?

(“4BAEIC”) at Tab 5, page 2); Agreed Bundle of Documents Volume 1 (“1AB”) at page 4.

² Dr Kim’s AEIC at para 6 (4BAEIC at Tab 5, page 3).

³ Defendant’s Closing Submissions (“DCS”) at para 7©.

⁴ DCS at para 7(d).

⁵ Defence & Counterclaim (Amendment No 3) (“DCC”) at para 14 (Setting Down Bundle (“SDB”) at pages 54–58).

- (b) Who owned the BXA Coins that were sold?
- (c) Did Dr Kim have an obligation to make payment of the BXA Coin sale proceeds to BTHMB?
- (d) If Dr Kim had an obligation to make payment of the sale proceeds to BTHMB, did he discharge that obligation by virtue of the payments he made to BTHMB?
- (e) Is Dr Kim entitled to his counterclaim?

Background

The Bithumb Korea acquisition

8 On 12 October 2018, various transaction documents were entered into in relation to the purchase of a majority shareholding in Bithumb Korea Co Ltd (“Bithumb Korea”) from 11 shareholders (the “Sellers”).⁶ Bithumb Korea was the owner of the biggest cryptocurrency exchange in Korea, the Bithumb Exchange.⁷

9 BTHMB was the vehicle for that purchase (the “Bithumb Korea acquisition”).⁸ As at 12 October 2018, BTHMB was owned by BKSG Pte Ltd

⁶ Dr Kim’s AEIC at paras 28–29 (4BAEIC at Tab 5, pages 18–23); Affidavit of Evidence-in-Chief of Choi Dae Yeol affirmed on 19 July 2021 (“Mr Choi’s AEIC”) at paras 9–11 (Bundle of Affidavits of Evidence-in-Chief Volume 1 (“1BAEIC”) at Tab 1, pages 3–5).

⁷ Dr Kim’s AEIC at para 16 (4BAEIC at Tab 5, page 10).

⁸ Dr Kim’s AEIC at para 17 (4BAEIC at Tab 5, page 11); Mr Choi’s AEIC at para 10 (1BAEIC at Tab 1, page 4).

(“BKSG”),⁹ BKSG was owned by SGBK Group Pte Ltd (“SGBK”),¹⁰ and SGBK was owned by Dr Kim.¹¹ I refer to the agreement to purchase a majority shareholding in Bithumb Korea as the “Bithumb SPA”.

10 Under the Bithumb SPA, BTHMB was to pay the Sellers a total of US\$347,544,600 as follows:¹²

- (a) US\$10,000,000 on 12 October 2018;
- (b) US\$40,000,000 on 24 October 2018;
- (c) US\$50,000,000 on 16 December 2018; and
- (d) US\$247,544,600 on 15 February 2019.

11 Another aspect of the transaction involved the former chairman of Bithumb Holdings Ltd (the parent company of Bithumb Korea), one Mr Lee Jung Hun (“Mr JH Lee”), acquiring shares in BKSG.¹³ That was the subject of another share purchase agreement (“the BKSG SPA”). Under the BKSG SPA it was a prerequisite that SGBK “increase the capital of [BKSG] worth USD 50,000,000 by 30 October 2018”.¹⁴ In the event, that share capital increase

⁹ 1AB at page 6.

¹⁰ 1AB at page 12.

¹¹ Dr Kim’s AEIC at para 27 (4BAEIC at Tab 1, page 17).

¹² Mr Choi’s AEIC at pages 134–145, specifically at pages 134–135 (1BAEIC at Tab 1, pages 134–135).

¹³ Mr Choi’s AEIC at pages 197–198 (Articles 2.1–2.3 and 3.1 of the Bithumb Share Purchase Agreement) (1BAEIC at Tab 1, pages 197–198).

¹⁴ Mr Choi’s AEIC at page 197 (Article 1.6 of the Bithumb Share Purchase Agreement) (1BAEIC at Tab 1, page 197).

was effected by 9 November 2018.¹⁵ On 15 November 2018, Mr JH Lee made the first payment for his shares in BKSG, and became a BKSG shareholder.¹⁶

The Coin Issuance Agreement

12 On 12 October 2018, a Coin Issuance Agreement (“CIA”) was entered into between SGBK, Mr JH Lee, BKSG, and BTHMB, relating to the issuance of BXA Coins by BTHMB.

13 Based on the English translation provided by BTHMB,¹⁷ the CIA provided as follows:

Article 2 Parties’ Rights

(1) The following provisions shall be determined by the board resolution.

- (a) The business model of the Coin to be issued (which is stated in the White Paper)
- (b) Details of the Coin to be developed
- (c) Composition of a team to be listed in the White Paper about issuing the Coin
- (d) The price and conditions for distributing the Coin (except issues stated in Section 2 of this Article) and the lock-up period for distribution of the Coin
- (e) The number of the Coin to be issued

(2) The following matters shall be determined by Major Shareholder and shall not require the approval of the Company’s board of directors.

- (a) The conditions for recruiting financial investors (“**Major Shareholder FI**”) for Cryptocurrency or shares issued by the Company until the purchase price is reached for the

¹⁵ Mr Choi’s AEIC at para 54 and pages 359–360 and 364–368 (1BAEIC at Tab 1, page 18).

¹⁶ Mr Choi’s AEIC at paras 55–59 (1BAEIC at Tab 1, pages 19–21) and pages 400 and 419 (1BAEIC at Tab 1, pages 400 and 419).

¹⁷ Mr Choi’s AEIC at pages 117–121 (1BAEIC at Tab 1, pages 117–121).

payment obligation of the Share Purchase Agreement executed on [12] [October] 2018 by the Company and the shareholders of BTC Holdings Co., Ltd. And DAA Co., Ltd. (However, when the Company distributes Cryptocurrency issued by BTHMB or increases its capital in order to recruit Major Shareholder FI, the number of Cryptocurrency and shares issued by the Company and held by Major Shareholder FI shall not exceed 20% of the total number of Cryptocurrency and shares issued by the Company.)

(b) In accordance with Paragraph (a) above, 20% of the total number of Cryptocurrency issued by the Company shall be allotted to a Party designated by Major Shareholder.

(c) Capital increase in which Major Shareholder takes over the new shares on the same terms as Major Shareholder FI until the purchase price is reached for the payment obligation of the Share Purchase Agreement executed on [12] [October] 2018 by the Company and shareholders of BTC Holdings Co., Ltd. And DAA Co., Ltd. (However, the number of the Company's shares held by Major Shareholder through such capital increase shall not exceed 20% of the total number of issued shares, including issued shares specified in Section (2) Paragraph (a) of this Article.)

(3) Major Shareholder and Investor agreed that each Party shall be allocated 5% of the total number of Cryptocurrency issued by the Company, and for this purpose, the appointed directors of each Party of BTHMB shall exercise their voting rights in favor of such allocation.

Article 3 Payment of Share Purchase Price through Coin Issuance

In accordance with Article 2, (i) funds collected to the Company by issuing the Coin (ii) capital increase by the Company by targeting Major Shareholder or Major Shareholder FI shall be used primarily for paying the first and second deposits and balance pursuant to the Share Purchase Agreement executed on [12] [October] 2018, stating how the Company is purchasing the shares of BTC Holdings Co., Ltd. and DAA Co., Ltd. owned by [Lee Jeonghun] and [10] other persons. The Parties shall

cooperate and take all necessary measures to fulfill [sic] the obligations.

14 As defined in the CIA, “Major Shareholder” referred to SGBK, “Investor” referred to Mr JH Lee, and “Company” was a collective reference to BTHMB and BKSG.¹⁸

15 Dr Kim put forward a different English translation of the CIA, but neither party submitted that the interpretation of the CIA would be materially different depending on which translation was used. Dr Kim’s translation of Article 2(2)(b) of the CIA was as follows:¹⁹

20% of the total number of Cryptocurrency issued by the Company shall be allocated to a party designated by Major Shareholder pursuant to Paragraph (a) above.

The sale of BXA Coins

16 At the BTHMB board meeting on 26 November 2018, Dr Kim proposed that Oran G B Pte Ltd (“Oran G”) be appointed as third-party agent in charge of the BXA Coin and equity sales. The Board resolved to appoint Oran G on the basis that the contract with Oran G “needs to be confirmed before this agenda to be cleared”.²⁰

¹⁸ Mr Choi’s AEIC at page 117 (1BAEIC at Tab 1, page 117).

¹⁹ Dr Kim’s AEIC at page 1437 (Bundle of Affidavits of Evidence-in-Chief Volume 6 (“6BAEIC”) at Tab 7, page 1437).

²⁰ Affidavit of Evidence-in-Chief of Hwang Sunghwan sworn on 19 July 2021 (“Mr Hwang’s AEIC”) at page 69 (2BAEIC at Tab 2, page 69).

17 At the BTHMB board meeting on 7 December 2018, approval was given for 20 billion BXA Coins to be generated on 12 December 2018,²¹ and that was carried out.²²

18 On 11 December 2018, a mandate agreement was entered into between BTHMB and Oran G (the “11 December Mandate”).²³ The 11 December Mandate was backdated to 26 November 2018. Annexed to the 11 December Mandate (as Annex A) was a Token Sales Mandate Confirmation Agreement between BTHMB and Oran G dated 28 November 2018 (the “BTHMB Mandate Confirmation”)²⁴ that could be shown to potential investors as a simplified mandate (clause (f) of the “Agreement For Tokens” section in the 11 December Mandate).²⁵

19 The 11 December Mandate authorised Oran G to sell up to 15% of the total supply of BXA Coins (stated as 3 billion BXA Coins based on an expressed intent to create 20 billion BXA Coins) as part of a private sale tranche, and up to 5% (1 billion BXA Coins) as part of an equity tranche (if those were not distributed to equity investors) – clause (b) of the “Agreement For Tokens” section in the 11 December Mandate.²⁶

20 The BTHMB Mandate Confirmation referred to Oran G being authorised to sell up to 15 billion BXA Coins (then stated as 15% of the total) as part of the private sale tranche.

²¹ Mr Hwang’s AEIC at page 110 (2BAEIC at Tab 2, page 110).

²² Mr Hwang’s AEIC at para 21 (2BAEIC at Tab 2, page 7).

²³ Mr Hwang’s AEIC at pages 81–82 (2BAEIC at Tab 2, pages 81–82).

²⁴ Mr Hwang’s AEIC at page 89 (2BAEIC at Tab 2, page 89).

²⁵ Mr Hwang’s AEIC at page 84 (2BAEIC at Tab 2, page 84).

²⁶ Mr Hwang’s AEIC at pages 83–84 (2BAEIC at Tab 2, pages 83–84).

21 At the 17 December 2018 BTHMB board meeting, it was resolved that Dr Kim’s personal banking account would be designated to receive proceeds from Oran G’s token sale activities, and that Oran G’s mandate *ie*, the 11 December Mandate, should be revised accordingly.²⁷

22 A mandate agreement dated 25 December 2018 (the “25 December Mandate”) was then entered into between BTHMB and Oran G.²⁸ The BTHMB Mandate Confirmation was annexed (as Annex A) to the 25 December Mandate,²⁹ just as it had been annexed to the 11 December Mandate. The 25 December Mandate allowed Oran G to sell up to 20% of the total supply of BXA Coins that had been generated by BTHMB, *ie*, 4 billion out of 20 billion BXA Coins.³⁰ Dr Kim’s personal bank account with Signature Bank was designated as the account to receive sale proceeds, with clause (k) in the “Agreement For Tokens” section providing as follows:³¹

Transfer of Funds Collected: Party B [Oran G] is required to send the amount of funds collected from any BXA token buyer to Party A [BTHMB] within three (3) working days from collection, after deducting relevant fees for collecting the funds and fees owed to Party B. Total amount of the fees, including OTC fees and all expenses related to token sales, shall be regarded as commission to Party B, and it shall not exceed 30% of total token sales proceeds. The terms and percentage of commission could be changed subject to written agreement of both parties. Once the amount has been confirmed from Party A, Party B is required to send the amount within seven (7) working days to Party A in USD via bank wire, to the designated bank account listed below. The designated Bank Account below belongs to Dr Byung Gun Kim, who will then transfer the exact

²⁷ Mr Hwang’s AEIC at pages 119–120 (2BAEIC at Tab 2, pages 119–120).

²⁸ Mr Hwang’s AEIC at page 127 – 134 (2BAEIC at Tab 2, pages 127 – 134).

²⁹ Mr Hwang’s AEIC at page 135 (2BAEIC at Tab 2, page 135).

³⁰ Mr Hwang’s AEIC at page 129 (Clause (c) in the “Agreement for Tokens” section of the 25 December Mandate) (2BAEIC at Tab 2, page 129).

³¹ Mr Hwang’s AEIC at page 130 (2BAEIC at Tab 2, page 130).

amount of funds received to BTHMB Holdings Pte. Ltd.
corporate banking account within three (3) working days.

[Details of Dr Kim’s Signature Bank account]

23 Dr Kim was not a party to the 11 December Mandate or the 25 December Mandate, but (on behalf of BTHMB) he signed both mandates as well as the BTHMB Mandate Confirmation.³² From 12 December 2018 onwards, Dr Kim gave instructions for the transfer by BTHMB of BXA Coins to wallets held by investors and Oran G: a total of 547,696,364 BXA Coins was thus transferred (as reflected on the Etherscan Ledger, a publicly available record).³³

The BXA Coin sale proceeds

24 In 2019, BTHMB asked Dr Kim about the amount of BXA Coin sale proceeds that he had collected; BTHMB also made enquiries with Oran G.³⁴ On 19 April 2019, Oran G provided documents showing that a total of US\$22,280,970 had been collected as sale proceeds and received by Dr Kim.³⁵

25 Dr Kim, however, only told BTHMB that two deposits into BTHMB’s Maybank USD account on 15 February 2019, of US\$2,624 and US\$238,381.24 (the “two 15 February 2019 deposits”), represented BXA Coin sale proceeds.³⁶ Mr Woo Ahram (“Mr Woo”), the Senior Finance Manager of BTHMB whom

³² Mr Hwang’s AEIC at pages 122 and 134 (2BAEIC at Tab 2, pages 122 and 134).

³³ Affidavit of Evidence-in-Chief of Woo Ahram sworn on 19 July 2021 (“Mr Woo’s AEIC”) at paras 19–20 and pages 149–385) (2BAEIC at Tab 3, pages 6–7 and 149–385).

³⁴ Mr Hwang’s AEIC at paras 40–43 (2BAEIC at Tab 2, pages 15–16).

³⁵ Mr Choi’s AEIC at pages 695 and 697–702 (1BAEIC at Tab 1, pages 695 and 697–702); Plaintiff’s Bundle of Documents (“PBD”) at Tab 11, pages 141–146.

³⁶ Mr Woo’s AEIC at paras 70–74 (2BAEIC at Tab 3, pages 36–37) and page 917 (Bundle of Affidavits of Evidence-in-Chief Volume 3 (“3BAEIC”) at Tab 4, Page 917); Exhibit D-5.

Dr Kim had instructed to prepare BTHMB's accounting records and financial statements in February 2019,³⁷ recorded those deposits in BTHMB's general ledger as payment of sale proceeds,³⁸ and BTHMB is not claiming those amounts from Dr Kim.³⁹

26 On 17 April 2019, Mr Choi Dae Yeol ("Mr Choi"), a joint managing director of BKSG (as of 20 November 2018),⁴⁰ emailed Dr Kim.⁴¹ The subject was, "Request mail for your information related to BXA token sale", and the email read:

... all the token sales money, including those sold through Oran.G Block and those sold by you personally, are accumulated in your personal account (or coin wallet). I would like to ask some questions and requests for information as follows in this mail.

[Questions and Requests]

– Details of the amount of USD exchanged at Octagon via Oran.G Block and paid to the chairman's personal account from 14th Dec 2018 to 4th Jan 2019, and the details of depositing all of this amount into BTHMB's account (For accounting processing purpose, we request a specific transfer details such as account transfer details).

– Details of the following items regarding your personal selling since December 2018 until present date.

...

7. With regard to the quantity you sold personally, if you exchanged money at the OTC market, please provide details such as where and how much processing fee you paid and how many USD you received and how much you deposited into the company's account (We request that you provide specific transfer details, such as account transfer details.)

³⁷ Mr Woo's AEIC at paras 1 and 5 (2BAEIC at Tab 3, page 2).

³⁸ Mr Woo's AEIC at para 73 (2BAEIC at Tab 3, page 37).

³⁹ Plaintiff's Closing Submissions ("PCS") at paras 48–49.

⁴⁰ Mr Choi's AEIC at para 22(3) (1BAEIC at Tab 1, page 8).

⁴¹ Mr Choi's AEIC at page 662 (1BAEIC at Tab 1, page 662).

8. LC personally issued to each investor or signed contract

For cost recognition and external audit purpose, we request for the number of tokens sold, the unit price of the number of tokens sold, OTC exchange fee details through Oran.G Block and Octagon, details of the deposit received by you, and the details of the deposit you made to BTHMB.

...

27 On 1 May 2019, Dr Kim replied to Mr Choi's 17 April 2019 email, attaching a table as a summary of the BXA Coin sales.⁴² The table showed that Dr Kim had collected sale proceeds totalling US\$22,837,919 and 44,543,429 HDAC Coins, from the sale of 547,696,363 BXA Coins. BTHMB has received the 44,543,429 HDAC Coins, and makes no claim against Dr Kim in that regard.⁴³ Dr Kim's 547,696,363 figure for BXA Coins sold only differs by one BXA Coin from the records on the Etherscan Ledger which indicate that BTHMB had transferred 547,696,364 BXA Coins to wallets held by investors and Oran G (see [23] above).

What was the quantum of the BXA Coin sale proceeds received by Dr Kim?

28 BTHMB acknowledges that on 15 February 2019 it received the sums of US\$2,624 and US\$238,381.24 as payment of BXA Coin sale proceeds; it also acknowledges receiving the HDAC Coins that Dr Kim had mentioned.⁴⁴

⁴² Mr Choi's AEIC at pages 715, 719–722 (1BAEIC at Tab 1, pages, 715, 719–722).

⁴³ PCS at para 3.

⁴⁴ PCS at paras 47–48.

29 BTHMB claims from Dr Kim the balance sale proceeds of US\$22,596,913.76, *ie*, the figure of US\$22,837,919 stated by Dr Kim, less the two 15 February 2019 deposits of US\$2,624 and US\$238,381.24.⁴⁵

30 In these proceedings, however, Dr Kim asserts that the sum of US\$22,837,919 stated in his table of 1 May 2019 is incorrect, for it includes not only sale proceeds from BXA Coin sales by Oran G, but also sale proceeds from BXA Coin sales by another cryptocurrency broker called Harbour, which he had personally arranged.⁴⁶ He says that from BXA Coin sales by Oran G, he received sale proceeds of just US\$22,280,868.23. That latter figure is close to the figure of US\$22,280,970 which Oran G informed BTHMB of on 19 April 2019 as being the amount of sale proceeds received by Dr Kim (see [24] above).

31 Who owned the BXA Coins that were sold? I address that below at [33]–[67]. For now, I simply observe that if BTHMB owned the BXA Coins that were sold, BTHMB’s entitlement to their sale proceeds should not depend on whether it was Oran G, or Harbour, that sold the BXA Coins. Dr Kim does however have arguments as to whether he was obliged to make payment of the sale proceeds to BTHMB, which I address below at [68]–[78].

32 On the first issue of the quantum of the sale proceeds, I find that Dr Kim received sale proceeds of US\$22,837,919 from the sale of BXA Coins, as stated in his 1 May 2019 table⁴⁷ (besides the HDAC Coins which are not in issue as BTHMB had received them).

⁴⁵ Statement of Claim (Amendment No 1) (“SOC”) at Claim (a) (SDB at page 20); PCS at paras 48 and 246(a).

⁴⁶ Dr Kim’s AIEC at para 57(c) (4BAEIC at Tab 5, page 55).

⁴⁷ Mr Choi’s AIEC at page 721 (1BAEIC at Tab 1, page 721).

Who owned the BXA Coins that were sold?

33 BTHMB says that it owned the BXA Coins that were sold, and their sale proceeds. Dr Kim says he owned those BXA Coins, and their sale proceeds. In determining who is right, I consider the relevant provisions of the CIA.

Construction of the Coin Issuance Agreement

34 Dr Kim says he is entitled to the BXA Coins that were sold, by virtue of Article 2(2)(b) of the CIA. For ease of reference, I set that out again:

BTHMB's translation

In accordance with Paragraph (a) above, 20% of the total number of Cryptocurrency issued by the Company shall be allotted to a Party designated by Major Shareholder. [BTHMB's translation]

Dr Kim's translation

20% of the total number of Cryptocurrency issued by the Company shall be allocated to a party designated by Major Shareholder pursuant to Paragraph (a) above.

35 As I noted above at [15], neither party contended that the variances in translation made a material difference to the interpretation of the provision:

(a) Nothing turns on any distinction between the cryptocurrency being “allotted” or “allocated” – the words are synonyms; BTHMB's translator used “allotted” in translating Articles 2(2)(b) and 2(3), whereas Dr Kim's translator used “allocated” in translating the same articles.

(b) “In accordance with” and “pursuant to” are also synonymous – both phrases indicate that the matters in Article 2(2)(b) are to conform with Article 2(2)(a). The phrases in Article 2(2)(b) (in particular

“pursuant to”) may also indicate that what is provided in Article 2(2)(a) is the reason for the matters in Article 2(2)(b).

36 On the terms of Article 2(2)(b), the allotment / allocation of cryptocurrency under Article 2(2)(b) was to be done in accordance with (or pursuant to) Article 2(2)(a). Article 2(2)(b) thus cannot be read on its own; it must be read with Article 2(2)(a).

37 Article 2(2)(a) concerned the recruiting of financial investors using cryptocurrency or shares, until the necessary purchase price was reached for BTHMB to meet its obligations under the Bithumb SPA for the Bithumb Korea acquisition. This was subject to the condition that the cryptocurrency or shares used for that purpose must not exceed 20% of the total number of cryptocurrency or shares issued.

38 Reading Article 2(2)(b) with Article 2(2)(a), the cryptocurrency (*ie*, BXA Coins) to be allotted / allocated under Article 2(2)(b) would be the same BXA Coins referred to in Article 2(2)(a), *ie*, BXA Coins to recruit financial investors, the amount of which shall not exceed 20% of the total number of BXA Coins issued.

39 Dr Kim, however, seeks to draw a distinction between Article 2(2)(b) which refers simply to 20% of the total number of BXA Coins issued, and Article 2(2)(a) which says that the BXA Coins used to recruit financial investors “shall not exceed 20%”. His contention is that Article 2(2)(b) specifies a *fixed amount* of BXA Coins, whereas Article 2(2)(a) specifies a *limit*. He thus

contends that the two provisions were referring to different parcels of BXA Coins.⁴⁸

40 I do not accept this; instead, I interpret Articles 2(2)(a) and 2(2)(b) of the CIA as follows:

(a) Article 2(2)(a) uses the phrase “shall not exceed 20%” as it might be possible to recruit financial investors such that BTHMB could fund the Bithumb Korea acquisition, for *less than* 20% of the total number of BXA Coins and/or shares of BTHMB.

(b) Article 2(2)(b) does not use the same phrase “shall not exceed 20%”, but simply “20%”. However, as the allotment / allocation under Article 2(2)(b) was in accordance with (or pursuant to) Article 2(2)(a), the allotment / allocation would stop at what was needed, if it proved unnecessary to allot / allocate a full 20% of the total number of BXA Coins.

41 Article 2(2)(a) sets out the objective of BTHMB using up to 20% of the BXA Coins and/or 20% of BTHMB’s shares to recruit financial investors, namely, to raise funds for the Bithumb Korea acquisition. That is echoed in Article 3 which provides that funds collected from the issuance of the BXA Coin, or increased share capital, shall be used primarily for making the payments for BTHMB’s Bithumb Korea acquisition (see [13] above). Dr Kim’s contention that Article 2(2)(b) allowed SGBK to give 20% of the BXA Coin for *free* to anyone (in the event, Dr Kim himself) goes against the grain of

⁴⁸ DCS at paras 59(b)–59(c); Dr Kim’s AEIC at para 29(b)(i)(B) (4BAEIC at Tab 5, page 20); Notes of Evidence (“NE”), 7 March 2022, page 38, line 1 to page 39 line 2.

Article 2(2)(a) (and Article 3), which are about the raising of funds for BTHMB's Bithumb Korea acquisition .

42 Dr Kim says that the intention was to give him 25% of the total number of BXA Coins for free: 20% under Article 2(2)(b), and 5% under Article 2(3).⁴⁹ I do not accept this. Article 2(3) refers to 5% of the total number of BXA Coins being allotted / allocated to SGBK and 5% to Mr JH Lee, but unlike Article 2(2)(b), the allotment / allocation in Article 2(3) is not said to be “in accordance with” or “pursuant to” Article 2(2)(a). If the parties had intended to give Dr Kim 25% of the total number of BXA Coins, they could simply have said so in Article 2(3) rather than to split the 25% into: 5% going to SGBK under Article 2(3), and 20% going to Dr Kim (as the recipient SGBK might designate) under Article 2(2)(b) read with Article 2(2)(a).

43 Dr Kim tries to explain the reference in Article 2(2)(b) to Article 2(2)(a), by saying that 20% of the total number of BXA Coins would go to him for free under Article 2(2)(b) to incentivise him to raise funds for BTHMB under Article 2(2)(a).⁵⁰ If that were so, it would have been stated as such. The “incentive” also makes no sense. Article 2(2)(b) does not make entitlement to 20% of all BXA Coins conditional upon Dr Kim doing anything. On Dr Kim's case, he could simply keep 20% of the total number of BXA Coins for free under Article 2(2)(b) (and a further 5% under Article 2(3)) – even if he did not raise any funds for BTHMB, and indeed even if he made no efforts to do so. BTHMB would then have parted with 25% of the total number of BXA Coins for nothing in return. Gifting all these BXA Coins to Dr Kim would make no commercial

⁴⁹ DCS at paras 59(c)–59(d); NE, 7 March 2022, page 38, lines 13–21.

⁵⁰ Affidavit of Kim Byung Gun affirmed on 18 July 2019 at para 35 (Bundle of Affidavits Volume 1 at page 12).

sense for BTHMB. Instead, it was evidently the intention of BTHMB to use up to 20% of the total number of BXA Coins to attract financial investors, thereby raising funds to meet BTHMB's payment obligations under the Bithumb SPA (as stated in Articles 2(2)(a) and 3 of the CIA) (see [41] above).

44 I have found that besides 44,543,429 HDAC Coins, Dr Kim received US\$22,837,919 in sale proceeds from the sale of 547,696,364 (or, at least, 547,696,363) BXA Coins (at [32] above). The BXA Coins sold amounted to some 2.74% of the 20 billion BXA Coins that were generated. Putting the HDAC Coins to one side, if a full 20% of BXA Coins (*ie*, 4 billion BXA Coins) could be sold at the same pricing, that would yield some US\$166,792,555.15 in sale proceeds (4 billion x US\$22,837,919 / 547,696,364). It makes no commercial sense to say that Dr Kim could keep all that for himself (and more, if the 5% to SGBK under Article 2(3) of the CIA were also included), leaving BTHMB to fend for itself in the Bithumb Korea acquisition. It should be noted that by the time of the BXA Coins were issued, BTHMB was no longer a vehicle that Dr Kim was the sole ultimate beneficial owner of – by then, Mr JH Lee had become a shareholder in BTHMB's parent company BKSG, as envisaged in the 12 October 2018 transaction documents: see [11] above.

45 The focus of the CIA was on BTHMB raising funds to meet its payment obligations for the Bithumb Korea acquisition, not on giving Dr Kim BXA Coins for free; yet Dr Kim contends that all of the BXA Coins sold by Oran G belonged to him (and consequently that the sale proceeds were his too), and so too the BXA Coins that Dr Kim says he sold through another broker (Harbour). On Dr Kim's case, he was ahead of BTHMB in the queue, and BTHMB did not manage to sell any of *its* BXA Coins to raise funds for the Bithumb Korea acquisition. I find Dr Kim's interpretation of the CIA to be untenable.

46 For completeness, I note that the CIA also states: “Major Shareholder, Investor, BK SG and Company are hereinafter referred to as “Party” individually, or “Parties” collectively.” Moreover, the CIA defines “Major Shareholder” as SGBK, “Investor” as Mr JH Lee, and “Company” as a collective reference to BTHMB and BKSG (see [14] above).⁵¹ This might give the impression that the word “Party” in Article 2(2)(b) refers *only* to SGBK, Mr JH Lee, BTHMB or BKSG. However, neither Dr Kim nor BTHMB regarded the word “Party” in Article 2(2)(b) to be limited to those four persons; they instead appeared to accept that “Party” in Article 2(2)(b) could encompass others that SGBK might decide to allot / allocate BXA Coins to (and I agree with them on this). In particular, Dr Kim contended he was allocated the BXA Coin issued by BTHMB pursuant to Article 2(2)(b) (*ie*, that the word “Party” in Article 2(2)(b) referred to him, even though he was not one of those defined as a “Party” in the CIA).⁵² Similarly, BTHMB contended that the BXA Coin could be allotted / allocated in connection with a sale of the BXA Coins on behalf of BTHMB, *ie*, the BXA Coin could be allotted to purchasers of those BXA Coins, or intermediaries involved in the sale process, for the purposes of attracting financial investment under Article 2(2)(b) (even though such purchasers or intermediaries are not defined as a “Party” in the CIA).⁵³

The parties’ conduct

47 Dr Kim argues that the parties’ conduct before and after the CIA supports a finding that he owned 20% of the total number of BXA Coins, including all the BXA Coins that he had collected sale proceeds of. He did not,

⁵¹ Mr Choi’s AEIC at page 117 (1BAEIC at Tab 1, page 117).

⁵² DCS at paras 55 and 59(b).

⁵³ PCS at paras 69–70.

however, plead any of the conduct he now relies upon. In any event, the conduct in question does not assist him.

The Project A Agreement

48 Dr Kim says that the CIA should be interpreted consistently with the Project A Agreement.⁵⁴ Of the four parties to the CIA, only one – BKSG – was a party to the Project A Agreement, with BTC Holding Company, Inc (“BTC”). Notably, BTHMB was not a party to the Project A Agreement, and Dr Kim’s argument is, in effect, that BTHMB’s rights under the CIA should be determined with respect to another agreement that it is not a party to. I do not accept that.

49 The Project A Agreement related to a potential acquisition by BKSG of B Buster Pte Ltd (the “Target”) – an affiliate of BTC – and the terms of the agreement included the Target paying a total of 2.5 billion “BB Coin” to Dr Kim as a reward for participation in a paid-in capital increase of BKSG or the Target.⁵⁵ The structure of BTHMB’s Bithumb Korea acquisition was different – B Buster Pte Ltd was not the target company to be acquired, and it was BTHMB, not the company that was the target of the acquisition (*ie*, Bithumb Korea), that would issue the cryptocurrency. Moreover, Dr Kim agreed that in the negotiations leading to the 12 October 2018 transaction documents, a reference to a “reward” of coins to him in a draft share purchase agreement⁵⁶ had been removed from subsequent drafts, and was not there in the executed

⁵⁴ DCS at para 61(a); Dr Kim’s AEIC at page 83 (the Project A Agreement) (4BAEIC at Tab 5, page 84).

⁵⁵ Dr Kim’s AEIC at para 20 and page 83 (Article 2(8) of the Project A Agreement) (4BAEIC at Tab 5, page 12 and page 83).

⁵⁶ Dr Kim’s AEIC at page 94 (Article 5.7) (4BAEIC at Tab 5, page 94).

documents.⁵⁷ There was no reference to any “reward” to Dr Kim in the 12 October 2018 transaction documents. One cannot force on the CIA an interpretation that its terms cannot bear, with reference to an unpleaded prior agreement that involved different parties and a different deal.

Did BTHMB acknowledge Dr Kim’s ownership of 20% of all BXA Coins?

50 Dr Kim contends that his ownership of 20% of the total number of BXA Coins was acknowledged in at least two meetings of BTHMB’s board of directors, on 3 January 2019 and 8 January 2019.⁵⁸ The minutes of the 3 January 2019 board meeting⁵⁹ list five discussion items. The first four are recorded as having culminated in a resolution by the board. The fifth item, “#5 Any Other Matters”, does not similarly have a resolution recorded. That fifth item included reference to a workshop with a tentative date, location, and approximate budget; as well as a reference to “20% of BXA tokens allocated to BK”, as follows:

A portion of 20% of BXA tokens allocated to BK will be taken and used as working capital for BXA. (note: If Kangho Kim successful sells 20% of equity of BTHMB Holdings Pte. Ltd., some of the BXA tokens allocated to BK will be given to the equity investors, and the remaining BXA tokens will be used for BXA working capital)

51 Dr Kim argues that “BK” there was a reference to him, and the above passage acknowledged that he owned 20% of BXA Coin for free.⁶⁰ I agree with BTHMB that the reference to “BK” there was a reference to SGBK, not

⁵⁷ NE, 7 March 2022, page 47 line 14 to page 50 line 9; page 55 line 24 to page 56 line 15.

⁵⁸ DCS at para 61(b).

⁵⁹ Dr Kim’s AEIC at pages 1848–1850 (6BAEIC at Tab 7, pages 1848–1850).

⁶⁰ Dr Kim’s AEIC at para 58(a) (4BAEIC at Tab 5, pages 55–56).

Dr Kim,⁶¹ in light of Article 2(2)(b) of the CIA referring to SGBK, not Dr Kim. Moreover, the passage does not support the conclusion Dr Kim contends for: it does not show that “BK” could keep 20% of the total number of BXA Coins for free; on the contrary, there are references to a portion of that being given to equity investors, or “taken and used as working capital for BXA”. This is inconsistent with “BK” having a full 20% of BXA Coins that it could keep, or sell and keep the proceeds thereof. This supports BTHMB’s interpretation of Article 2(2)(b) of the CIA, not Dr Kim’s. In any event, in the absence of a recorded resolution, I do not accept that BTHMB’s board passed a resolution on that item.

52 The minutes of the 8 January 2019 meeting⁶² do not refer to Dr Kim getting any BXA Coins for free. Instead, there are references to: (a) SGBK, represented by Dr Kim, in the first item which contemplates the delegation to SGBK of the signing of supplementary contracts for equity and token issuance; and (b) SGBK in the third item which contemplates that there would be no lock up of 10% of the total supply of BXA Coins “under [SGBK]”. All of that is consistent with the CIA and BTHMB’s interpretation of it: SGBK could use up to 20% of the total number of BXA Coins to raise funds for BTHMB, *ie*, those BXA Coins were not Dr Kim’s to keep for free.

53 In this regard, the English version of the minutes is erroneous where it refers in the first item and the third item to “BKSG Group” or “BKSG”; the Korean and Chinese versions correctly reflect the references as being to SGBK

⁶¹ PCS at para 72(c).

⁶² Mr Hwang’s AEIC at pages 194–196 (2BAEIC at Tab 2, pages 194–196).

Group / SGBK, consistent with the CIA (which was confirmed by Mr Hwang Sunghwan (“Mr Hwang”), a director of BTHMB, on the stand).⁶³

Mandate Confirmation dated 15 October 2018 between SGBK and Oran G

54 Dr Kim relies on a Token Sales Mandate Confirmation Agreement dated 15 October 2018 between SGBK and Oran G (the “SGBK Mandate Confirmation”),⁶⁴ under which SGBK authorised Oran G to pre-sell BXA Coins. Dr Kim contends that BTHMB knew at all times that he was pre-selling the BXA Coins, and that the terms of the SGBK Mandate Confirmation was consistent with him owning 20% of the total number of BXA Coins.⁶⁵ BTHMB was not a party to that agreement, but Dr Kim claims that he had shown it to a director of BTHMB.⁶⁶ The SGBK Mandate Confirmation was evidently backdated. It refers to a sale of up to 4 billion BXA tokens, being 20% of 20 billion BXA tokens. But as at 15 October 2018, the intended cryptocurrency had yet to be named “BXA” (the name was discussed at a meeting on 8 November 2018)⁶⁷, and the figure of 20 billion BXA Coins to be generated was only approved by BTHMB’s board on 7 December 2018.⁶⁸ As the SGBK Mandate Confirmation was backdated to 15 October 2018, and it is unclear when it was actually entered into, it does not substantiate Dr Kim’s contention that Oran G was selling *his* BXA Coins under the SGBK Mandate Confirmation, rather than *BTHMB’s* BXA Coins under a mandate from BTHMB.

⁶³ NE, 23 September 2021, page 57 line 10 to page 58 line 11.

⁶⁴ Mr Hwang’s AEIC at page 152 (2BAEIC at Tab 2, page 152).

⁶⁵ DCS at paras 11 and 61(d).

⁶⁶ NE, 8 March 2022, page 62 line 18 to page 64 line 15; Dr Kim’s AEIC at para 32(b)(ix) (4BAEIC at pages 27–28).

⁶⁷ Mr Hwang’s AEIC at page 58 (2BAEIC at Tab 2, Page 58).

⁶⁸ Mr Hwang’s AEIC at page 110 (2BAEIC at Tab 2, Page 110).

55 BTHMB had different mandate documents with Oran G, and I accept that BTHMB did not know of the SGBK Mandate Confirmation until it was disclosed by Dr Kim in his fourth list of documents in this suit.⁶⁹ But even if Dr Kim had shown the SGBK Mandate Confirmation to some director of BTHMB as Dr Kim claims, that would not have indicated to BTHMB that SGBK was intending to sell BXA Coins that SGBK (or Dr Kim) claimed to own. After all, it was contemplated that SGBK and Dr Kim would be involved in the sale of BXA Coin owned by BTHMB, by which BTHMB would raise funds for the Bithumb Korea acquisition. Thus, under Article 2(2)(b) of the CIA, it would be SGBK designating the parties to whom BTHMB would allot / allocate BXA Coins owned by BTHMB in connection with the sale of those BXA Coins to financial investors (and in the event Dr Kim was the individual who gave instructions as to who those BXA Coins should be transferred to). The SGBK Mandate Confirmation between SGBK and Oran G is not inconsistent with BTHMB being the owner of the BXA Coins that SGBK was authorising Oran G to sell.

56 The various mandates and mandate confirmations thus do not support Dr Kim's contention that the BXA Coins sold belonged to him, and not BTHMB.

Dr Kim's account of sale proceeds, and partial payment of sale proceeds

57 The account which Dr Kim provided on 1 May 2019 of the sale proceeds that had been received, and his partial payment of those sale proceeds to BTHMB (the two 15 February 2019 deposits, and the HDAC Coins), are consistent with BTHMB's case, and inconsistent with Dr Kim's.

⁶⁹ PCS at para 89(a).

58 I accept BTHMB's evidence that Dr Kim had indicated (to Mr Woo and Mr Choi) that the two 15 February 2019 deposits represented sale proceeds of BXA Coins;⁷⁰ and that BTHMB accordingly accepted those deposits as such, and recorded them as such for accounting purposes.⁷¹ BTHMB likewise accepted the HDAC Coins that Dr Kim had received from BXA Coin sales, as sale proceeds.⁷² Conspicuously, Dr Kim has not sought to claim from BTHMB the amounts of the two 15 February 2019 deposits, or the HDAC Coins (or the value thereof). Why not, if they belonged to him, and not BTHMB? Instead, Dr Kim seemed content that BTHMB was not claiming against him for those amounts (which he had paid to BTHMB).

59 The email exchanges between Mr Choi and Dr Kim in early May 2019 are telling. As I mentioned above at [27], on 1 May 2019 Dr Kim emailed Mr Choi a table setting out sale proceeds from the sale of BXA Coin. Mr Choi replied on 3 May 2019 with comments (inserted into the text of Dr Kim's 1 May email), and Dr Kim responded to that on 3 May 2019.⁷³ I set out relevant extracts below.

Dr Kim's email of 1 May 2019 with Mr Choi's comments of 3 May 2019

[Dr Kim] I send you a summary of the token sale.

I pledge that there is no missing 1 KRW, and it is likely that sales and income written in the attached table are more than those I actually received. Although it is not well organized, I have prepared it with my best efforts, and have summed up all the amounts that might have come in, assuming that all amounts have been received. I have not counted out

⁷⁰ Mr Woo's AEIC at para 72 (2BAEIC at Tab 3, page 37).

⁷¹ Mr Woo's AEIC at para 73 (2BAEIC at Tab 3, page 37).

⁷² Mr Woo's AEIC at para 83 (2BAEIC at Tab 3, para 83).

⁷³ Exhibit D-5.

commissions because I did not receive receipts for commissions.

[Mr Choi] The actual sales proceeds must be accurate. Any deficiencies as well as surpluses would be a problem, so you must give us the exact sales amount. Therefore, please count any estimated amounts out the sales. If there are fees you have actually paid, we need information on those fees for accounting of expenses.

[Dr Kim] Many of the people included in KYC are foreign staff members of my clinic and their families. They said they would buy BXA to help me. I gave back the amounts that I had received from them, but I have considered all the amounts as received and I have added them in the sales summed up in the attached table.

[Mr Choi] I didn't understand exactly what you are saying. You made a sale to your clinic's staff and their families, and you returned the money you had received from them, and then you have recorded the money as sales income?

[Dr Kim] In addition, there are two other sales that I personally made. Both the sales were not small, and I sold coins to help the company. The selling price per token was also much higher than that Orang. B. received.

I was paid in cash from buyers, and I paid commissions to the person who introduced buyers to me in cash. As he did not want to give me a receipt for the commissions, I have also included the commission amount in the token sales as token sales proceeds.

[Mr Choi] If you have anything that you received in cash, please put the received cash into your personal account and then send it to the company with supporting documents. Also, do you mean that you paid commissions in cash? We need payment receipts to recognize them as expenses.

[Dr Kim]

I know that Hdac coins worth US\$2 million were received.

... someone can proceed with selling the coins on their own and paying the proceeds to MB [BTHMB's Maybank account] even if it is somewhat cumbersome.

[Mr Choi] ... we will make a wallet to which the company can receive them. Then, we will request to transfer them to the wallet.

Dr Kim's email of 3 May 2019 to Mr Choi:

You may settle accounts by regarding that you have received all, not estimates.

I did not request for the reimbursement of expenses that I had paid for fees because I do not have supporting documents.

There are \$2,624 and \$238,381.24 that I transferred in cash on 15 February in the bank account to which I had made cash deposits for the company.

[Dr Kim then agreed to provide the wallet key for the HDAC Coin]

60 From the above exchanges, I note the following:

(a) Dr Kim did not assert that any of the BXA Coins sold belonged to him, and so he did not need to provide an account of their sale proceeds or pay the proceeds over to BTHMB;

(b) instead, Dr Kim referred to the two 15 February 2019 deposits as payments of sale proceeds, and also arranged to transfer to BTHMB the HDAC Coins that had been received as sale proceeds; and

(c) in providing an account of the sale proceeds received, and making partial payment to BTHMB, Dr Kim drew no distinction between the BXA Coins sold by Oran G, and the BXA Coins sold by him personally (or through Harbour).

61 I find that the parties' conduct does not support the interpretation of the CIA advanced by Dr Kim. Rather, the parties' conduct supports BTHMB's interpretation: the BXA Coins that were sold belonged to BTHMB, not Dr Kim.

Dr Kim's allegations of fraud

62 Dr Kim seeks to bolster his case by making allegations of fraud against Mr JH Lee. He submits that he was a target of fraud perpetrated by Mr JH Lee,⁷⁴ for which Mr JH Lee has been indicted and prosecuted in Korea.⁷⁵ Dr Kim recognises that the fraud allegedly perpetrated on him is not the subject of these proceedings,⁷⁶ and that this court “need not make any findings on fraud”.⁷⁷ However, he contends that “cognisance of the circumstances and JH Lee’s involvement provide the necessary context and frames the present dispute”.⁷⁸ In particular, he says that his position about getting 20% of BXA Coin for free under Article 2(2)(b) is consistent with Mr JH Lee having promised him those BXA Coins, and that this explanation was reasonable in light of the fraud allegedly perpetrated against him by Mr JH Lee.⁷⁹

63 After I had reserved my decision (following the parties’ closing submissions and reply submissions), Dr Kim requested through his solicitors that I withhold delivering judgment until after the conclusion of the criminal proceedings in Korea against Mr JH Lee. Dr Kim contended that the prospective Korean judgment “will be relevant and pertinent to contextualise the Suit”, and suggested that he would seek leave to adduce the Korean judgment as further evidence, proposing that parties file brief submissions on it.⁸⁰

⁷⁴ DCS at para 3(b).

⁷⁵ DCS at para 4.

⁷⁶ DCS at para 4.

⁷⁷ Defendant’s Reply Submissions (“DRS”) at para 2.

⁷⁸ DRS paras 2 and 5.

⁷⁹ DRS at para 19(d).

⁸⁰ Letter from Quahe Woo & Palmer LLC dated 11 July 2022 at paras 3, 4, 6 and 7.

64 BTHMB objected to this course of action, pointing out that Dr Kim’s allegations of fraud are irrelevant to the issues in the suit, and that BTHMB would be prejudiced.⁸¹

65 I agreed that it would not be appropriate for me to defer judgment until after the conclusion of the Korean proceedings, and the parties were informed accordingly.

66 Dr Kim’s allegations of fraud, promises, and representations by Mr JH Lee are unpleaded, and are irrelevant to the issues between BTHMB and Dr Kim in this suit:

(a) Earlier in the proceedings, Dr Kim had made Mr JH Lee a party – a defendant to Dr Kim’s counterclaim in his Defence (Amendment No 1) dated 13 December 2019. However, no *fraud* was alleged against Mr JH Lee. Rather, the counterclaim against Mr JH Lee was for breach of certain terms which Dr Kim said should be implied into the CIA.⁸²

(b) Dr Kim then withdrew his counterclaim against Mr JH Lee, and removed him as a party, by amending his pleadings to Defence (Amendment No 2) dated 30 December 2020. His defence still referred to Mr JH Lee, but only in the context of (a) Mr JH Lee having invited Dr Kim to invest in and share control of the Bithumb Exchange, (b) Mr JH Lee being the controlling mind of the Exchange and an indirect majority shareholder of Bithumb Korea (and thus one of the Sellers of the majority shareholding in Bithumb Korea), and (c) Mr JH Lee and Dr Kim each being entitled to 5% of the total number of BXA Coins

⁸¹ Letter from Allen & Gledhill dated 14 July 2022 at paras 2–5.

⁸² Defence & Counterclaim (Amendment No 1) dated 13 December 2019 at paras 20–22.

(under Article 2(3) of the CIA).⁸³ Dr Kim removed by amendment the earlier references to terms being implied into the CIA, and breaches of those terms. There were no allegations of fraud, promises, or representations by Mr JH Lee.

(c) If Dr Kim's position is that Mr JH Lee had promised, or represented, that Dr Kim could keep for free 20% of the total number of BXA Coins (in particular, those mentioned in Article 2(2)(b) of the CIA) that is a matter for Dr Kim to pursue with Mr JH Lee. What is in issue in *this suit* is whether, *as between BTHMB and Dr Kim*, BTHMB owned those BXA Coins, or Dr Kim did. On that, I have found that those BXA Coins belonged to BTHMB, not Dr Kim.

Conclusion on the ownership of the BXA Coin

67 On a construction of the terms of the CIA, the BXA Coins that were sold were owned by BTHMB. This conclusion is not displaced by a consideration of the parties' conduct. Further, Dr Kim's allegations of fraud against Mr JH Lee do not assist him.

Did Dr Kim have an obligation to make payment of the sale proceeds to BTHMB?

68 In the preceding section, I have found that BTHMB owned the BXA Coins that were sold.

⁸³ Defence & Counterclaim (Amendment No 2) dated 30 December 2019 at paras 5(a) and 5(d)(iii).

69 It should follow that Dr Kim has an obligation to make payment of the BXA Coin sale proceeds (or of an equivalent amount) to BTHMB. I accept BTHMB’s contention that Dr Kim was under such an obligation:

- (a) as a director of BTHMB owing fiduciary duties to BTHMB;
- (b) as an agent of BTHMB; and
- (c) as a trustee of the BXA Coin sale proceeds he received.

Dr Kim’s obligation as a director of BTHMB

70 At all material times, Dr Kim was a director of BTHMB – he was a director of BTHMB from 23 August 2018 to 12 April 2019, and joint managing director of BTHMB from 20 November 2018 to 12 April 2019.⁸⁴ As such, Dr Kim owed fiduciary duties to BTHMB: see s 157(1) of the Companies Act 1967 (2020 Rev Ed). Dr Kim argues that he did not breach any fiduciary duties because the BXA Coin that was sold belonged to him.⁸⁵ However, what if the BXA Coin belonged to BTHMB (as I have found at [33]–[67] above)?

71 Dr Kim says he transferred an amount equal to or greater than the sale proceeds to BTHMB, and in the next section I address whether this discharged his obligation to pay the sale proceeds to BTHMB. The point remains that as a fiduciary, Dr Kim was under an obligation to pay BTHMB the proceeds from the sale of BXA Coins which belonged to BTHMB. He was obliged to act in the interests of BTHMB, he could not keep those sale proceeds for himself.

⁸⁴ Dr Kim’s AEIC at para 6 (4BAEIC at Tab 5, page 3).

⁸⁵ Defendant’s Reply Submissions (“DRS”) at para [57(b)].

Dr Kim's obligation as an agent of BTHMB

72 BTHMB submits that Dr Kim had sold the BXA Coin and received their sale proceeds as an agent of BTHMB.⁸⁶ Dr Kim, on the other hand, says that an agency relationship between Dr Kim and BTHMB only came into existence on 25 December 2018 (the date of the 25 December Mandate);⁸⁷ in particular, Dr Kim submits that it was only on 25 December 2018 that he (a) was conferred authority by BTHMB to sell the BXA Coin and receive the sale proceeds therefrom and/or (b) undertook to perform the 25 December Mandate on BTHMB's behalf.⁸⁸ Dr Kim's contentions are flawed.

73 I adopt the following definition of agency by GHL Fridman, *The Law of Agency* (Butterworths, 7th Ed, 1996) at page 11, quoted in Tan Cheng Han SC, *The Law of Agency* (Academy Publishing, 2nd Ed, 2017) at para 01.015, which was in turn cited in *Ding Auto Pte Ltd v Yip Kin Lung and others* [2019] SGHC 243 at [129]:

Agency is the relationship that exists between two persons when one, called the *agent*, is considered in law to represent the other, called the *principal*, in such a way as to be able to affect the principal's legal position in respect of strangers to the relationship by the making of contracts or the disposition of property. [emphasis in original]

(See also *Public Prosecutor v Lam Leng Hung and others* [2018] 1 SLR 659 ("*Lam Leng Hung*") at [131].)

74 In selling BTHMB's BXA Coins, and collecting their sale proceeds, Dr Kim was acting on behalf of BTHMB – he was in an agency relationship

⁸⁶ PCS at paras 172–180.

⁸⁷ Mr Choi's AEIC at page 523 (1BAEIC at Tab 1, page 523).

⁸⁸ DRS at para 55.

with BTHMB, a relationship that did not only commence on 25 December 2018 (the date of the 25 December Mandate):

(a) BTHMB relies not only on the 25 December Mandate but also on the earlier 11 December Mandate and the BTHMB Mandate Confirmation dated 28 November 2018.⁸⁹ All these agreements mandated Oran G to sell BXA Coins on behalf of *BTHMB*, not *Dr Kim*.⁹⁰

(b) From 12 December 2018 onwards, Dr Kim gave instructions for the transfer of BXA Coins from BTHMB to wallets held by investors and Oran G, which resulted in a total of 547,696,364 BXA Coins being transferred (see [23] above). Those transfers were integral to the sale of those BXA Coins. By this time, the 11 December Mandate and BTHMB Mandate Confirmation were already in place.

(c) It was also agreed prior to the 25 December Mandate, that Dr Kim would receive the sale proceeds of the BXA Coin on behalf of BTHMB (as resolved at the BTHMB board meeting of 17 December 2018) (see [21] above).

(d) Going back to the 12 October 2018 transaction documents (which pre-dated the BXA Coin sales and Dr Kim's receipt of sale proceeds), the CIA provided for the involvement of SGBK and BTHMB, in the sale of BXA Coins to financial investors (see above at [55]). What Dr Kim did thereafter regarding the sale of BTHMB's BXA Coins and receipt of their sale proceeds was not done in his personal

⁸⁹ Reply and Defence to Counterclaim at para 5(f) (SDB at page 64).

⁹⁰ Mr Hwang's AEIC at pages 82 and 89 (2PBAEIC at Tab 2, pages 82 and 89).

capacity; it was done by him as an agent on behalf of SGBK and BTHMB.

(e) Dr Kim was a director of BTHMB at all material times, and a director is clearly an agent of the company with onerous fiduciary duties: *Lam Leng Hung* at [287].

75 Moreover, nothing in the various mandates or mandate confirmations limits their operation only to sales by Oran G after the dates of those documents. Oran G itself never took this position; on the contrary, when BTHMB asked Oran G what sale proceeds had been received, Oran G provided a full account of all the sale proceeds that had been collected, for all the BXA Coins that it had sold (including those sold as early as 18 October 2018): see [24] above.⁹¹

76 There is no merit in Dr Kim’s contention that as the 25 December Mandate was dated 25 December 2018, he was not obliged to return any sale proceeds from BXA Coin sales prior to that date. On his account that all of the sales by Oran G were prior to that date, and indeed, some were pre-sales before the BXA Coin was even issued,⁹² he would not need to return any BXA Coin sale proceeds to BTHMB.

77 If (as I have found at [33]–[67] above) BTHMB owned the BXA Coins that were sold, neither Oran G, nor SGBK, nor Dr Kim was entitled to keep the sale proceeds just because the sales predated the mandate documents between Oran G and BTHMB. Indeed, Dr Kim puts forward no positive case as to why he should be allowed to keep the BXA Coin sale proceeds should I find that the

⁹¹ PBD at Tab 11, pages 141–146.

⁹² DCS at para 7(b); Dr Kim’s AEIC at paras 36–37(a) (4BAEIC at Tab 5, pages 30–32).

BXA Coins in question belonged to BTHMB. BTHMB does not need to rely on the mandate documents (to which Dr Kim is not a party) to recover from Dr Kim the sale proceeds of the BXA Coins that BTHMB owned.

Dr Kim’s obligation as a trustee of the BXA Coin sale proceeds

78 Dr Kim was entrusted with the BXA Coins that were being sold, and given dominion over those BXA Coins. He was involved in their sale, and received the sale proceeds in his personal bank account (see [16]–[22] above). He was also involved in giving instructions for those BXA Coins to be transferred to wallets held by investors and Oran G (see [23] above). In the circumstances, Dr Kim was a trustee in relation to those BXA Coins and their sale proceeds: *Guy Neale and others v Nine Squares Pty Ltd* [2015] 1 SLR 1097 (at [51], [59] and [60]).

Were the payments made by Dr Kim payments of the sale proceeds to BTHMB?

79 Dr Kim’s case is that although he owned the BXA Coins that were sold, and thus their sale proceeds, he had made payment of the sale proceeds to BTHMB, or in the alternative, payment of a sum equivalent to or greater than the sale proceeds.⁹³ Thus, he contends, any obligation on him to pay the sale proceeds to BTHMB has been performed or discharged. Further or alternatively, he says that because of the payments he made to BTHMB, BTHMB has not suffered any loss.⁹⁴

⁹³ DCC at para 7 (SDB at pages 31–32).

⁹⁴ DCC at paras 11 and 12A (SDB at page 33).

Dr Kim’s case on payment of sale proceeds

80 Dr Kim’s defence is inherently inconsistent: he claims that he owned the BXA Coins and their sale proceeds (and so he was under no obligation to make payment of the BXA Coin sale proceeds to BTHMB), but he says he has made payment of the sale proceeds to BTHMB nevertheless.

81 That begs two questions:

- (a) why was Dr Kim paying BTHMB sale proceeds that he considered belonged to him, rather than keeping them for himself; and
- (b) were the payments made by Dr Kim to BTHMB in the *nature* of payments of sale proceeds of BTHMB’s BXA Coin?

82 It is common ground that the legal burden of proving the *nature* of the payments Dr Kim made to BTHMB rests on Dr Kim: *SCT Technologies Pte Ltd v Western Copper Co Ltd* [2016] 1 SLR 1471 (“*SCT Technologies*”) at [16]–[31]. In particular, Dr Kim having asserted that the obligations owed by him to BTHMB have been *discharged* by virtue of the payments he made to BTHMB, bears the burden of proving that: *SCT Technologies* at [31]; *Ma Ong Kee v Cham Poh Meng* [2013] SGHC 144 (“*Ma Ong Kee*”) at [42].⁹⁵

83 In *SCT Technologies*, the respondent-debtor asserted that its debts on three invoices had been paid, pointing to certain payments that it had made to the creditor. The court held that the respondent-debtor bore the burden of proving the purpose of the payments, *ie*, that they were meant to discharge the debts in question (at [21]–[28] and [31]). On the evidence, however, there was

⁹⁵ PCS at paras 57–59; DCS at para 30.

little to support the respondent-debtor's case on what the payments were for, and the court thus found that the respondent-debtor failed to prove that the debts had been discharged by virtue of the payments it had made (at [34]–[40]).

84 Dr Kim pleads that he had made payment of the sale proceeds of the BXA Coins to BTHMB, pointing to 12 payments (the “Defence Transactions”) totalling US\$58,141,908.69.⁹⁶ The two 15 February 2019 deposits which BTHMB accepts were payments of BXA Coin sale proceeds (and so BTHMB does not claim those amounts against Dr Kim) are Defence Transactions Nos 11 and 12 (see above at [25]).

85 In respect of the balance sale proceeds, Dr Kim relies on Defence Transactions Nos 1 to 10 (the “Ten Defence Transactions”) as payments of sale proceeds, or payments which otherwise afford him a defence.

86 It is improbable that Dr Kim would have meant to pay some US\$58m to BTHMB as sale proceeds, when he only received some US\$22m in sale proceeds from selling BXA Coin. In his evidence, Dr Kim does not say that this is what he intended. Indeed, he does not say that any of the Ten Defence Transactions was meant as a payment of sale proceeds, *ie*, payment that BTHMB was entitled to because it owned the BXA Coins that were sold.

87 Instead, Dr Kim says that he made the payments “to allow [BTHMB] to meet its payment obligations under the [Bithumb SPA]”.⁹⁷ That, however, only says what Dr Kim's *objective* was in making the payments,⁹⁸ it says nothing

⁹⁶ DCC at para 7 (SDB at pages 31–32).

⁹⁷ Dr Kim's AEIC at para 40 (4BAEIC at Tab 5, page 36).

⁹⁸ See DCS at paras 7(c), 7(d) and 40.

about the *nature* of the payments: were they payments of sale proceeds, loans, gifts, payments of share capital, etc? All these types of payments would have achieved Dr Kim's *objective* of allowing BTHMB to meet its obligations, but the *nature* of the payments would differ.

88 A simple example will illustrate the point: consider a person who borrows \$1m from a bank, then uses the borrowed money to place a fixed deposit of the same amount with the same bank. His payment of \$1m to the bank to place the fixed deposit does not discharge his liability to the bank for the bank loan he took. Rather, there are then two loans in existence: (1) he owes the bank \$1m and interest on the loan he took; and the bank owes him \$1m and interest on the fixed deposit he placed. His payment of \$1m to the bank was not *meant* by him to discharge his bank loan – it was meant as a fixed deposit, and that is the *nature* of the payment.

89 Returning to the present case, in his evidence Dr Kim does not say he meant the Ten Defence Transactions as payments of the sale proceeds of the BXA Coins. Indeed, for him to say that would be inconsistent with his primary case that the BXA Coin sale proceeds belonged to him, and he was under no obligation to pay the sale proceeds over to BTHMB.

90 Dr Kim thus finds himself in the awkward situation of trying to prove that the Ten Defence Transactions were payments of sale proceeds, whilst not saying that is what he meant them to be. He tried to navigate this by tracing the *source* of some of the Defence Transactions to the sale proceeds that he had received. He relied on the expert opinion of Mr Wong Joo Wan ("Mr Wong"), who had concluded that US\$18,490,836.92 of the sale proceeds was transferred

to BTHMB.⁹⁹ However, Mr Wong did not comment on the *nature* of the payments. Indeed, Mr Wong's analysis was done expressly "barring the nature of the payments".¹⁰⁰ On the other hand, BTHMB's expert, Mr Hawkes, correctly recognised that it is necessary to determine the nature of the payments.¹⁰¹ In that regard, Mr Hawkes did not merely look at the *source* of the payments (as Mr Wong had), he also considered the obligations of the parties, the timing of the payments, the supporting documentation, and the accounting records.¹⁰²

91 The *source* of a payment does not necessarily determine its *nature*. In my earlier example (at [88] above) about borrowed money being used to place a fixed deposit, the bank was the *source* of the money borrowed, but that does not mean that the use of the borrowed money to place a fixed deposit was in the *nature* of a repayment of the bank loan; it was simply a placement of a fixed deposit, leaving the bank loan still outstanding.

92 If the payments Dr Kim made to BTHMB were in the nature of a loan, or a gift, or to acquire something from BTHMB (shares or another asset), they would not be in the nature of a payment of BXA Coin sale proceeds. Payments of a different nature would not discharge Dr Kim's obligation to make payment of the BXA Coin sale proceeds to BTHMB.

⁹⁹ Expert Report of Wong Joo Wan (Mr Wong's Report) at para 4.60 and page 28, exhibited in the Affidavit of Evidence-in-Chief of Wong Joo Wan ("Mr Wong's AEIC") at pages 49 and 60 (Bundle of Affidavits of Evidence-in-Chief Volume 7 ("7BAEIC") at Tab 8, pages 49 and 60).

¹⁰⁰ Mr Wong's Report at paras 5.17 and 5.19, exhibited in Mr Wong's AEIC at pages 66 and 68 (7BAEIC at Tab 8, page 66 and 68); Exhibit P6 (Joint Expert Statement) at para 3.2.3.

¹⁰¹ Exhibit P6 (Joint Expert Statement), para 3.2.3.

¹⁰² NE, 29 September 2021, page 69 line 3 to page 70 line 18.

BTHMB's case on payment of sale proceeds

93 BTHMB put forward what it understood the payments to be. It regarded the first seven Defence Transactions to comprise:¹⁰³

- (a) US\$50,000,000 paid as share capital;
- (b) a surplus US\$300,000 (out of Defence Transaction No 4) as an advance from BKSG; and
- (c) a surplus US\$22,898.45 (out of Defence Transaction No 7) as capital reserves received from BKSG.

94 BTHMB regarded Defence Transactions Nos 8 to 10 as advances by Dr Kim or BKSG.¹⁰⁴

95 Although BTHMB put forward a positive case for what the payments were, to support its contention that they *were not* payments of sale proceeds, that does not shift the legal burden away from Dr Kim to prove that they *were* payments of sale proceeds (see [82] above).

Were the Ten Defence Transactions payments of sale proceeds?

Defence Transactions Nos 1 to 7

96 BTHMB recorded Defence Transactions Nos 1 to 7, and the payments totalling US\$50,000,000 in share capital, as follows:¹⁰⁵

¹⁰³ PCS at paras 118–147.

¹⁰⁴ PCS at paras 148–162.

¹⁰⁵ PCS at para 118.

| Defence Transaction | Date | Paying party | Amount paid (US\$) |
|----------------------------|-------------|---------------------|---|
| 1 | 27 Sep 2018 | BKSG | 10,000,000 |
| 2 | 19 Oct 2018 | Dr Kim | 3,000,000 |
| 3 | 25 Oct 2018 | BKSG | 10,000,000 |
| 4 | 29 Oct 2018 | BKSG | 7,000,000 (and 300,000 as account payable) |
| 5 | 30 Oct 2018 | BKSG | 10,000,000 |
| 6 | 2 Nov 2018 | Dr Kim | 199,995 |
| - | 5 Nov 2018 | Unknown | 299,995 |
| 7 | 9 Nov 2018 | BKSG | 9,500,010 (and 22,898.45 as capital reserves) |
| Total | | | 50,000,000 |

97 As I noted above at [11], BTHMB's Bithumb Korea acquisition involved SGBK increasing BKSG's share capital by US\$50m. It was contemplated that BKSG would in turn increase BTHMB's share capital by US\$50m, and BTHMB would use the funds it received to make payments towards the Bithumb Korea acquisition.¹⁰⁶

¹⁰⁶ Mr Choi's AEIC at paras 14–21 (1BAEIC at Tab 1, pages 6–7).

98 BTHMB did receive funds of US\$50m (and more), and it made the first two payments required of it for the acquisition: US\$10m on 15 October 2018,¹⁰⁷ and a further US\$40m by 9 November 2018.¹⁰⁸

99 Contemporaneously, on 9 November 2018, Ms Jessica Oh of Lee Kim Alliance Pte Ltd (“Lee Kim”) (the company handling BTHMB’s accounts then) informed various persons (including Dr Kim) that: “The capital increase of BK SG PTE LTD has been completed ... the capital is USD 50,000,000”.¹⁰⁹ Consequential changes were made to BKSG’s constitution, and its records with ACRA. BTHMB’s constitution (as of 20 November 2018)¹¹⁰ and ACRA records (as of 18 November 2018)¹¹¹ were also changed to reflect that BKSG held 100,000 shares in BTHMB which had share capital of US\$50m. BTHMB considered that it had by 9 November 2018 received US\$50m as an increase in its share capital, and that is how Lee Kim recorded the payments in its ledger, the Lee Kim Ledger.¹¹² BTHMB followed suit in its general ledger.¹¹³

100 In or around January 2019, the Korean Fair Trade Commission (“KFTC”) investigated BTHMB’s Bithumb Korea acquisition.¹¹⁴ In that regard, on 28 January 2019 Dr Kim emailed Mr Woo to say, “USD 50 million ... has been invested by CEO Kim Byung Gun (Industry: Operating plastic surgery

¹⁰⁷ Mr Choi’s AEIC at para 40 (1BAEIC at Tab 1, page 14).

¹⁰⁸ Mr Choi’s AEIC at para 53 (1BAEIC at Tab 1, page 17).

¹⁰⁹ Agreed Bundle of Documents Volume 2 (“2AB”) at pages 1137–1144; Mr Choi’s AEIC at para 54 (1BAEIC at Tab 1, pages 17–18).

¹¹⁰ 2AB at page 1178.

¹¹¹ 2AB at pages 1168–1177.

¹¹² Mr Woo’s AEIC at para 48 and page 25 (2BAEIC at Tab 3, pages 24 and 25).

¹¹³ Mr Woo’s AEIC at para 49 (2BAEIC at Tab 3, page 26).

¹¹⁴ Mr Woo’s AEIC at para 35(2) (2BAEIC at Tab 3, page 18).

hospitals in Korea, Singapore and China ...).¹¹⁵ Dr Kim also stated that the income was “derived from the plastic surgery so far” and that “BK SG increased the capital of BTHMB and paid for the purchase of BTC Holdings shares in Korea with the payment”.¹¹⁶

101 On 7 February 2019, Dr Kim emailed Mr Woo again, this time to say: “The individual CEO Kim Byung Gun increased the capital of BK SG by [US]\$50 million. BK SG increased the capital of BTHMB and the amount was used as payment for the share purchase.”¹¹⁷

102 Dr Kim’s emails above at [100]–[101] (the “early 2019 emails”) were his instructions to represent to the KFTC that there had been a US\$50m increase in BTHMB’s share capital, which was derived from Dr Kim’s plastic surgery income (and not from the sale of cryptocurrency issued by BTHMB).¹¹⁸ In other words, Dr Kim had represented to BTHMB that: (1) the US\$50m he paid to BTHMB by Defence Transaction Nos 1 to 7 were in the nature of payments to increase BTHMB’s share capital; and (2) that the source of the US\$50m was *not* the BXA Coin sale proceeds, but income from his plastic surgery. In so far as Dr Kim now contends that Defence Transactions Nos 1 to 7 were *not* in the nature of an increase in BTHMB’s paid-up share capital, and that some or all of them were payments of BXA Coin sale proceeds, that would contradict the early 2019 emails, and the explanations he provided in the early 2019 emails in relation to the KFTC’s investigations.

¹¹⁵ Mr Woo’s AEIC at page 738 (3BAEIC at Tab 4, page 738).

¹¹⁶ Mr Woo’s AEIC at pages 738 and 755 (3BAEIC at Tab 4, pages 738 and 755).

¹¹⁷ Mr Woo’s AEIC at page 761 (3BAEIC at Tab 4, page 761).

¹¹⁸ Mr Woo’s AEIC at paras 35–36 (3BAEIC at Tab 4, pages 18–19).

103 On the stand, Dr Kim acknowledged that the early 2019 emails did not mention any sale proceeds from the BXA Coin going towards the first US\$50m that BTHMB paid towards the Bithumb Korea acquisition; instead, that was said to have come from Dr Kim’s plastic surgery income.¹¹⁹ He said that the KFTC was “watching to see if there was participation of this cryptocurrency related party or person in this transaction”, and so “the fact that the coin sale proceeds were being used for the payment already, that could not be seen”.¹²⁰ Dr Kim was saying that some part of the US\$50m which he paid to BTHMB as share capital actually came from the BXA Coin sale proceeds, and that he had instructed Mr Woo to misrepresent the facts to the KFTC.

104 Dr Kim’s admission that BTHMB had received US\$50m as payments of share capital is crucial. That was the *nature* of that US\$50m, whether the *source* of some of it was the BXA Coin sale proceeds (rather than all of it coming from Dr Kim’s plastic surgery income). As noted above at [88] and [91], the *source* of a payment does not necessarily determine its *nature*. BTHMB correctly regarded US\$50m of what it received as payments by (or on behalf of) its shareholder, BKSG, to increase BTHMB’s share capital. That still leaves Dr Kim having to account for, and to pay to BTHMB, the full amount of the BXA Coin sale proceeds.

105 On a related note, besides the Defence Transactions, Dr Kim had in the particulars to para 7 of his Defence & Counterclaim (Amendment No 3) dated 2 July 2021 cited another transaction as being “payment of the Sale Proceeds ... or in the alternative, a sum equivalent to or greater than the Sale Proceeds”. In particular, he pleaded that he had arranged for a further US\$43,500,000 from

¹¹⁹ NE, 10 March 2022, page 10 lines 14–23.

¹²⁰ NE, 10 March 2022, page 12 lines 19–25.

his own funds to be paid to BTHMB by way of an investment by him in a fund called “Winners Fund”, which paid the said sum to a company called BMC Global Limited (which in turn paid the sum of US\$41,039,995 to BTHMB on or around 8 February 2019 for shares in BTHMB).¹²¹ On Dr Kim’s own description, that transaction was *not* a payment of the BXA Coin sale proceeds:

- (a) the payment to BTHMB was not made on the basis that it represented sale proceeds of BTHMB’s BXA Coins, instead it was payment for shares in BTHMB; and
- (b) the ultimate source of the payment to BTHMB was not even the BXA Coin sale proceeds, but Dr Kim’s own funds.

106 That transaction could not be considered a payment of BXA Coin sale proceeds (that BTHMB could keep because it owned the BXA Coin that had been sold), for BTHMB provided consideration for the payment in the form of shares. Unsurprisingly, in his closing submissions Dr Kim abandoned reliance on this transaction, he relied only on the Defence Transactions.¹²² To the extent that Defence Transactions Nos 1 to 7 were also in the *nature* of payments of share capital to BTHMB (as discussed above at [97]–[103]), they would likewise not be payments of the sale proceeds of the BXA Coin, even if some of the BXA Coin sale proceeds had been used to make payments of share capital.

¹²¹ DCC at para 7 (SDB at pages 31–32).

¹²² DCS at paras 29 to 52; DRS at paras 30 to 48; see also Plaintiff’s Reply Submissions (“PRS”) at paras 55 and 61.

Defence Transactions Nos 8 to 10

107 Defence Transactions Nos 8 to 10 had initially been recorded in BTHMB's general ledger as amounts due to BKSG.¹²³ Following documentary proof that Defence Transactions Nos 9 and 10 had come from Dr Kim, BTHMB will be updating its financial statements to reflect that.¹²⁴ BTHMB also takes the position that Defence Transaction No 8 was a transfer of money from BKSG to BTHMB as share capital for shares which were eventually cancelled, and that the money was thus recorded as an amount owed to BKSG as a shareholder of BTHMB.¹²⁵ In other words, BTHMB acknowledges that it owes BKSG US\$2.448m in relation to Defence Transaction No 8; and that it owes Dr Kim US\$4.5m in relation to Defence Transaction No 9 and US\$930,000 in relation to Defence Transaction No 10.

108 Dr Kim did not tell BTHMB that Defence Transactions Nos 8, 9 or 10 were payments of sale proceeds; he does not say in his evidence that that is what they were, and BTHMB did not regard them as such.

Conclusion on the Ten Defence Transactions

109 I find that Dr Kim has not proved that the Ten Defence Transactions (or any part thereof) were payments of BXA Coin sale proceeds: he did not tell BTHMB at any point that the Ten Defence Transactions were payments of BXA Coin sale proceeds, BTHMB did not regard them as such, and on the evidence they were not in the *nature* of payments of BXA Coin sale proceeds.

¹²³ Mr Woo's AEIC at paras 60–67 (2BAEIC at Tab 3, pages 33–36).

¹²⁴ PCS at para 148; Mr Woo's AEIC at paras 68–69 (2BAEIC at Tab 3, page 36).

¹²⁵ Mr Woo's AEIC at paras 61–67 (2BAEIC at Tab 3, pages 33–35).

110 I would highlight that the first of the Defence Transactions (a US\$10m payment on 27 September 2018) was received by BTHMB prior to BTHMB knowing of any BXA Coin sales – that payment predates the 12 October 2018 transaction documents; it predates the various mandate documents with Oran G; it predates any sale of BXA Coin (which Dr Kim says only started from 15 October 2018);¹²⁶ and it predates Dr Kim’s receipt of any BXA Coin sale proceeds (which he says he only started receiving on 22 October 2018).¹²⁷ Dr Kim provides no basis for regarding Defence Transaction No 1 as a payment of sale proceeds to BTHMB; indeed, the same may be said for Defence Transactions Nos 2 to 7 as well.

111 Further, I find that BTHMB was correct in not regarding Defence Transactions Nos 1 to 7 as involving any payment of sale proceeds. It correctly regarded US\$50m from Defence Transactions Nos 1 to 7 as a payment to increase its share capital, leaving two smaller amounts: (a) US\$300,000 out of Defence Transaction No 4 was regarded as an account payable (to BKSG); and (b) US\$22,898.45 out of Defence Transaction No 7 was regarded as capital reserves (see [96] above). Mr Woo explained that he had treated these two amounts in that manner because:¹²⁸

- (a) he was squaring off US\$300,000 out of Defence Transaction No 4 against Dr Kim’s withdrawal of S\$411,252.79 (approximately US\$300,075) from BTHMB’s RHB account on 5 November 2018; and

¹²⁶ DCS at para 11(c).

¹²⁷ DCS at para 21(b).

¹²⁸ Mr Woo’s AEIC at para 50.

(b) after accounting for US\$50m as an increase in share capital, there remained an excess of US\$22,898.45 out of Defence Transaction No 7, which he thus regarded as capital reserves.

112 Mr Woo was justified in not regarding these two amounts as payments of BXA Coin sale proceeds, based on the information he had (and the absence of any indication from Dr Kim that they should be regarded as payments of BXA Coin sale proceeds).

113 I find that none of the Ten Defence Transactions was a payment of BXA Coin sale proceeds. However, BTHMB acknowledges that it owes Dr Kim the amount of Defence Transactions Nos 9 and 10, *ie*, US\$4.5m and US\$930,000, totalling US\$5.43m (see [107] above). As Dr Kim is relying on those transactions as a defence to BTHMB's claim against him,¹²⁹ I allow that amount of US\$5.43m (a debt admittedly owed by BTHMB to Dr Kim) to be set-off against Dr Kim's liability to BTHMB for the balance sale proceeds.

114 In the circumstances, Dr Kim is to pay BTHMB the balance sale proceeds of US\$22,596,913.76 less the US\$5.43m which BTHMB acknowledges it owes him in respect of Defence Transactions Nos 9 and 10, *ie*, Dr Kim is to pay BTHMB US\$17,166,913.76. This is subject to Dr Kim's counterclaim which he relies on as a set-off.¹³⁰ I consider Dr Kim's counterclaim below.

¹²⁹ DCC at para 7 (SDB at pages 31–32).

¹³⁰ DCC at para 13 (SDB at page 34).

Dr Kim's Counterclaim

115 Dr Kim's counterclaim is in relation to payments he says he made on behalf of BTHMB: (i) costs and/or expenses that were related to, connected with and/or arose out of BTHMB's acquisition of Bithumb Korea and/or the Bithumb SPA and/or were expenses that in the ordinary course of business were payable by BTHMB, as well as (ii) expenses in the course of his duties as a director of BTHMB.¹³¹ These payments were made in various currencies, and they amount to some US\$2,398,444.39 (based on the exchange rates at the time Dr Kim's counterclaim was prepared – 5 October 2020).¹³²

116 Dr Kim says he incurred these expenses on BTHMB's instructions and/or with BTHMB's agreement, and that BTHMB was at all material times aware of them. He says BTHMB is liable to him pursuant to a promise by BTHMB and/or agreement between him and BTHMB, during a meeting of BTHMB's board on 26 December 2018 that those expenses would be repayable on demand as a reimbursement by BTHMB to him.¹³³

117 The minutes of the 26 December 2018 board meeting¹³⁴ do not record a resolution by BTHMB's board that BTHMB would reimburse Dr Kim for all "BXA-related expenses" (as Dr Kim asserts).

118 The first item in those minutes was "#1 Bithumb Listing Activity (Tony)". The minutes record what was discussed by the board regarding that

¹³¹ DCC at para 14 (SDB at page 34).

¹³² Defence at para 14 (SDB at page 34).

¹³³ Defence at para 15 (SDB at page 34).

¹³⁴ Dr Kim's AEIC at pages 2033–2035 (6BAEIC at Tab 7, pages 2033–2035).

item, and then what was resolved: “RESOLVED: #1 unanimously approved by the Board members attending the meeting.”

119 The second item on expenses was recorded as follows:

#2 Settlement of Expense Incurred by BXA (BK):

Currently, the expenses are paid from BK’s personal account.

1. All BXA-related expenses are paid for using BK’s personal funds and it will be paid to BK once BXA has adequate working capital
2. The cost of the meetup in Shanghai on will be paid using BK’s Chinese card.

120 There was no record of what the board resolved on the second item, in contrast with how the first item was recorded. The evidence of Mr Hwang – who was at the meeting – is that there was no agreement for the reimbursement of Dr Kim at the board meeting of 26 December 2018, as Dr Kim claims.¹³⁵

121 I find that Dr Kim has not proved that the BTHMB board had resolved on 26 December 2018 to reimburse him for “all BXA-related expenses”. That leaves Dr Kim to prove that he was nevertheless entitled to such reimbursement.

122 Before I deal with that, I note that the expenses in question span the period from 21 August 2018 (item 1) to 27 March 2019 (items 76 to 79, and 81);¹³⁶ some of the expenses were only incurred after the 26 December 2018 board meeting. As such, even if the board had on 26 December 2018 resolved to reimburse Dr Kim, in relation to the future expenses (at least) that could only be a decision *in principle* – whether a particular expense would be reimbursed would still depend on what it was. In this regard, the fact that Dr Kim is

¹³⁵ Mr Hwang’s AEIC at para 50 (2BAEIC at Tab 2, page 18).

¹³⁶ DCS at pages 86–124 (Table of Dr Kim’s alleged BXA-Related Expenses).

withdrawing his claim for two of the expenses (items 9 and 57,¹³⁷ both pre-dating the 26 December 2018 board meeting) neatly illustrates that BTHMB had not given blanket approval to reimburse Dr Kim for all BXA-related expenses that he might claim to have incurred:

(a) item 9 was for payment of an invoice issued by Lee Kim to BKSG; and

(b) item 57 was for a return flight booking from Seoul to Shanghai and back – Dr Kim’s position is, that is a duplicate claim with item 60 (for the ticket for that flight) so he withdraws item 57.¹³⁸

123 On its part, BTHMB does not dispute Dr Kim’s claims in relation to 21 items, namely: items 18, 20, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, and 41.¹³⁹ These 21 items total S\$1,054.14. I allow Dr Kim’s claims for these items.

124 Of the disputed items, I allow Dr Kim’s claim for items 52 and 55, for a total of 4 months’ salary which Dr Kim paid to one Mr Shin Hyun Seop (“Mr Shin”). I accept Dr Kim’s evidence that (a) Mr Shin was hired by BTHMB, but Mr Shin was unable to obtain the necessary work permit or employment pass to enter Singapore; and (b) at Mr Shin’s request, Dr Kim paid him salary on behalf of BTHMB comprising KRW30,859,590 as three months’ salary (on 15 December 2018), and a further KRW10,286,530 as one month’s salary (on 5 January 2019).¹⁴⁰ In his confirmation letters dated 15 December

¹³⁷ DCS at pages 90 and 109 (Table of Dr Kim’s alleged BXA-Related Expenses).

¹³⁸ DCS at page 109 (Table of Dr Kim’s Alleged BXA-Related Expenses at Item No 57).

¹³⁹ Mr Woo’s AEIC at para 107, PRS at Appendix A.

¹⁴⁰ Dr Kim’s AEIC at paras 77–81 (4BAEIC at Tab 5, pages 68–69).

2018 and 5 January 2019, Mr Shin acknowledged that he had received KRW30,859,590 and KRW10,286,530 respectively “from BTHMB HOLDINGS PTE. LTD. Director Kim Byung Gun”.¹⁴¹ There is also an email dated 3 December 2018 from Mr Woo wherein he mentions “Shin Hyun Sup S\$36,585: Director Hyun-seop Shin, Consulting Cost ...”, as an “Agency cost”.¹⁴² That sum of S\$36,585 is close to the three months’ salary Dr Kim says he paid on 15 December 2018, at the exchange rate prevailing then. The four months’ salary which Dr Kim paid total KRW41,146,120.

125 I also allow Dr Kim’s claims for items 4, 6 and 42 (for S\$50,000, S\$250,000 and S\$30,000 respectively) totalling S\$330,000. These items are not expenses for which Dr Kim claims reimbursement; rather, they were sums lent by Dr Kim to BTHMB, which he wanted repayment of. BTHMB and Dr Kim had entered into a Loan Agreement dated 2 November 2018 (the “Loan Agreement”) under which Dr Kim would make a loan to BTHMB (clause 3.1).¹⁴³ Clause 3.3 of the Loan Agreement provided that the Loan Agreement had a one-year term (the “Initial Term”), and would be automatically renewed for successive one-year terms (each a “Renewal Term”) thereafter “until and unless either Party provides the other Party with thirty (30) days prior written notice to the end of the Initial Term or the Renewal Term”.

126 In 2021, Dr Kim provided particulars of his claim for S\$409,185.58, including the above three items totalling S\$330,000.¹⁴⁴ He described them as

¹⁴¹ Dr Kim’s AEIC at pages 1954 and 1956 (6BAEIC at Tab 7, pages 1954 and 1965).

¹⁴² Mr Woo’s AEIC at page 1094 (3BAEIC at Tab 4, page 1094).

¹⁴³ Mr Woo’s AEIC at pages 1074–1078 (3BAEIC at Tab 5, page 1074–1078).

¹⁴⁴ Particulars Served Pursuant to Request (Amendment No. 1) dated 2 July 2021 (“Dr Kim’s Particulars”) at para 1 and Annex A, items 40–42 (SDB at pages 85 and 96).

loan remittances from his Maybank account to BTHMB, and said that the purpose of the loan remittances was for BTHMB's Bithumb Korea acquisition / the Bithumb SPA.¹⁴⁵ It is tolerably clear from the evidence and Dr Kim's particulars that the three payments were not payments made by Dr Kim on behalf of BTHMB, but rather money lent by Dr Kim to BTHMB that he wanted back. In the circumstances, I accept that the particulars Dr Kim provided in 2021 were a sufficient written notice to terminate the Loan Agreement in accordance with clause 3.3 of the Loan Agreement, such that the sums lent to BTHMB should be repaid to Dr Kim.

127 I do not allow Dr Kim the other disputed claims. I agree with BTHMB that Dr Kim has not satisfactorily proved that he incurred the expenses in question, or that they were incurred for the purposes alleged by him.

128 I specifically address items 69, 70, 71, and 72, which were respectively for:

- (a) CNY180,000 which Dr Kim allegedly paid to Sun Ying Jun ("Tony Sun");
- (b) CNY80,000 which Dr Kim allegedly paid to Tony Sun;
- (c) CNY11,200,000 which Dr Kim allegedly paid to Shanghai Qiri Information Technology Co Ltd ("Shanghai Qiri"); and
- (d) CNY2,086,381 which Dr Kim allegedly paid to Tony Sun.

¹⁴⁵ Dr Kim's Particulars at Annex A, items 40–42 read with the Legend (SDB at pages 93 and 96).

129 These payments make up the bulk (in monetary terms) of Dr Kim’s counterclaim. Dr Kim says:¹⁴⁶

(a) BTHMB and One Root Investment Holding Ltd (“One Root”) had, to the best of his recollection, entered into a service agreement under which One Root would be provided with around 450m BXA Coins and paid US\$20m in cash for its provision of BXA Coin management services;

(b) BTHMB did not have the funds to pay the US\$20m to One Root and so One Root notified BTHMB that it would not be able to provide the said management services to BTHMB;

(c) BXA Coin was listed on 1 February 2019 on a minor coin exchange that Tony Sun (One Root’s CEO, and BTHMB’s joint managing director together with Dr Kim at that time) had introduced, and it was therefore necessary to engage One Root to provide “market making” services for the BXA Coin (Dr Kim recalls that One Root had offered to provide these services for approximately US\$5m); and

(d) Dr Kim could only afford to pay One Root approximately US\$2m and he did so by transferring CNY13,546,381 to Shanghai Qiri and Tony Sun (as One Root’s nominated recipients)¹⁴⁷ – items 69 to 72 of his counterclaim.

¹⁴⁶ Dr Kim’s AEIC paras 68–72 (4BAEIC at Tab 5, pages 64–66).

¹⁴⁷ Dr Kim’s AEIC at paras 71(a) and 71(c) (4BAEIC at Tab 5, pages 65–66).

130 Unlike his other expense claims, Dr Kim did not submit the above claims in relation to One Root / Shanghai Qiri / Tony Sun to Mr Woo for processing.¹⁴⁸ These payments were not recorded in BTHMB's general ledger or other documents.

131 Dr Kim has not adduced any documentary evidence of (a) the alleged service agreement between One Root and BTHMB; (b) the listing of BXA Coin on a minor exchange; (c) One Root's offer to provide marketing services for US\$5m; or (d) Shanghai Qiri or Tony Sun being One Root's nominated recipients. In the circumstances, I consider that Dr Kim has not satisfactorily proved that these are expenses that BTHMB ought to reimburse him for. Whether Dr Kim has any recourse against One Root, Shanghai Qiri, or Tony Sun, is a separate matter.

132 I thus allow Dr Kim's counterclaim in part, to the extent of

(a) S\$331,054.14 (being S\$1,054.14 (see [123] above) plus S\$330,000 (see [126] above)); and

(b) KRW41,146,120 (see [124] above).

133 These sums may be set-off against his liability to pay BTHMB the sum of US\$17,166,913.76 (the balance of the BXA Coin sale proceeds after setting-off amounts that BTHMB admits it owes Dr Kim: [114] above).

Conclusion

134 I order Dr Kim to pay BTHMB the principal sum of US\$17,166,913.76 less the sums that I have allowed on Dr Kim's counterclaim, *ie*, S\$331,054.14

¹⁴⁸ Dr Kim's AEIC at para 63 (4BAEIC at Tab 5, page 62).

and KRW41,146,120. To that end, the S\$ and KRW sums should be converted into US\$. Should parties be unable to agree on the appropriate exchange rates to apply, they are to write in within 21 days stating their respective positions on this issue and I will determine it.

135 Dr Kim is to pay BTHMB interest on the net sum owed to BTHMB (from the preceding paragraph) at the usual rate of 5.33% per annum from 27 June 2019 (the date of the writ) to the date of this judgment.

136 As a director, agent, and trustee, Dr Kim is an accounting party in relation to BTHMB (see *Libertarian Investments Ltd v Thomas Alexej Hall* (2013) 16 HCCFAR 681 at [172], cited with approval by in *UVJ v UVH* [2020] 2 SLR 336 at [27]). As such, I order Dr Kim to provide an account to BTHMB of what became of the US\$22,596,913.76 in BXA Coin sale proceeds. I note that Dr Kim has provided Mr Wong's expert opinion that, having conducted a tracing exercise, US\$18,490,836.92 of the sale proceeds was paid to BTHMB as part of the Defence Transactions.¹⁴⁹ Dr Kim may rely on Mr Wong's expert opinion as an account for what happened to that amount of sale proceeds. However, there remains a shortfall of US\$4,106,076.84 (being US\$22,596,913.76 less US\$18,490,836.92) that Dr Kim still has to account for. BTHMB may seek directions from a registrar regarding the provision of that account, and if it should appear that by retaining the sale proceeds Dr Kim has profited beyond the amount of interest awarded to BTHMB, BTHMB may seek an order for payment of the difference.

¹⁴⁹ Mr Wong's Report at paras 4.59–4.60, exhibited in Mr Wong's AEIC at pages 60 (7BAEIC at Tab 8, page 60).

137 As the successful party in this suit, BTHMB is entitled to costs from Dr Kim (to be assessed if not agreed), unless either party wishes to contend that some other costs order should be made. In that event, or if the parties are unable to agree on the quantum of costs, they shall put in their respective costs submissions (limited to 15 pages, excluding any schedule of disbursements) within 21 days.

Andre Maniam
Judge of the High Court

Chan Tai-Hui Jason SC, Leong Yi-Ming and Tan Xue Yang (Allen &
Gledhill LLP) for the plaintiff;
Palmer Michael Anthony, Reuben Tan Wei Jer, Joel Raj Moosa and
Nadine Victoria Neo Su Hui (Quahe Woo & Palmer LLC) for the
defendant.
