**FACV Nos. 9 and 10 of 2023**

**[2024] HKCFA 23**

**IN THE COURT OF FINAL APPEAL OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**FINAL APPEAL NOS. 9 AND 10 OF 2023 (CIVIL)**

(ON APPEAL FROM CACV NOS. 346 AND 337 OF 2022)

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BETWEEN

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|  | **CHINA LIFE TRUSTEES LIMITED** | | **Plaintiff**  **(Respondent)** |
|  | **and** | |  |
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|  | **CHINA ENERGY RESERVE AND CHEMICALS GROUP OVERSEAS COMPANY LIMITED** | | **1st Defendant**  **(1st Appellant)** |
|  | **CHINA ENERGY RESERVE AND CHEMICALS GROUP**  **COMPANY LIMITED**  **(中国国储能源化工集团股份公司)** | | **2nd Defendant** |
|  | **and** | |  |
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|  | **BANK OF COMMUNICATIONS  TRUSTEE LIMITED** | | **Interested Party** |
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|  | **BANK OF COMMUNICATIONS** | | **Garnishee** |
|  | **AD HOC COMMITTEE  (comprising CMB Wing Lung Bank Ltd and The Export-Import Bank of China)** | | **Intervener**  **(2nd Appellant)** |
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(HEARD TOGETHER)

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| Before: | | Chief Justice Cheung, Mr Justice Ribeiro PJ,  Mr Justice Fok PJ, Mr Justice Lam PJ and  Mr Justice Gummow NPJ | |
| Date of Judgment: | | 5 August 2024 | |
| **JUDGMENT ON COSTS** | |

**Mr Justice Ribeiro PJ:**

1. This is the Court’s judgment on costs. On 14 June 2024, the Court unanimously allowed the appeals and discharged the garnishee order made in favour of the respondent.[[1]](#footnote-1) The parties were given liberty to lodge written submissions on costs within 14 days of the judgment, to be dealt with on the papers.
2. The 1st appellant, SPV1, and the Intervener, the Ad Hoc Committee (together “the appellants”), lodged a joint submission dated 28 June 2024. No submissions have been received from the respondent, China Life Trustees Ltd. As the time limit for such submissions has well passed, we now hand down our judgment on costs.
3. Costs should plainly follow the event and the respondent should in principle pay the costs here and below. The appellants, however, have fairly drawn attention to two issues that might be considered potentially to limit the scope of the costs awarded.
4. The first is whether costs should be awarded in favour of both SPV1 and the Ad Hoc Committee. In our view, the answer is plainly “Yes”. As pointed out in the judgment,[[2]](#footnote-2) the appeals concerned competing claims between different creditors to the sum garnisheed by the respondent. The Ad Hoc Committee’s locus to intervene was accepted by Au-Yeung J.[[3]](#footnote-3) SPV1 and the Intervener plainly each had an interest in resisting the respondent’s attempted seizure of those funds. Given the financially distressed state of the Group, it was legitimate for the Intervener to be separately represented in the litigation. And as the appellants point out, in the Courts below, the respondent had obtained costs orders against both SPV1 and the Intervener.
5. The second issue mentioned by the appellants is whether any adjustment to the costs order should be made to reflect the fact that while it had filed evidence, SPV1 was not represented and did not appear at the hearing before Au-Yeung J. However, SPV1 did in fact appear and instructed separate counsel in the Court of Appeal.[[4]](#footnote-4) It also appeared (represented by overlapping teams of counsel representing SPV1 and the Intervener) in this Court. In the circumstances, there is no reason in principle to deprive SPV1 of any of its costs, including such costs (likely to be slight) occasioned by the proceedings at first instance. The reasonableness of costs incurred will obviously be subject to taxation.
6. Accordingly, we make the following orders as to costs, namely:
   1. That all orders as to costs adverse to the appellants made in the Courts below be set aside;
   2. That the respondent do pay to the appellants their costs of and occasioned by this appeal certified fit for three counsel;
   3. That the respondent do pay to the appellants their costs of and occasioned by the appeal in the Court of Appeal, certified fit for two counsel;
   4. That the respondent do pay to the Intervener their costs of and occasioned by the proceedings at first instance, certified fit for two counsel; and
   5. That the respondent do pay to the 1st appellant its costs of and occasioned by the proceedings at first instance.

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| (Andrew Cheung)  Chief Justice | (R A V Ribeiro)  Permanent Judge | (Joseph Fok)  Permanent Judge |

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| (M H Lam)  Permanent Judge | (William Gummow)  Non-Permanent Judge |

Written submissions by Mr Laurence Li SC and Mr Sik Chee Ching, instructed by Grandall Zimmern Law Firm for the 1st Defendant (1st Appellant) and instructed by Kirkland & Ellis for the Intervener (2nd Appellant)

1. [2024] HKCFA 15. [↑](#footnote-ref-1)
2. Judgment at §11. [↑](#footnote-ref-2)
3. [2022] HKCFI 795 at §69. [↑](#footnote-ref-3)
4. [2023] HKCA 966. [↑](#footnote-ref-4)