

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

[2025] SGHCR 18

Bill of Costs No 171 of 2024

Between

Armira Capital Ltd

... Applicant

And

- (1) Ji Zenghe
- (2) Fan Xianyong
- (3) Oriental Straits Fund III

... Respondents

GROUND OF DECISION

[Civil Procedure — Costs — Assessment]

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Armira Capital Ltd
v
Ji Zenghe and others

[2025] SGHCR 18

General Division of the High Court — Bill of Costs No 171 of 2024

AR Gan Kam Yuin
15, 17 April, 6 May 2025

20 June 2025

AR Gan Kam Yuin:

Introduction

1 Armira Capital Limited (the “**applicant**”) is a regulated financial advisory services company based in the United Kingdom (“**UK**”) that provides various services including advising on investments and arranging for custody services. It is a member of the London Stock Exchange and is authorised and regulated by the Financial Conduct Authority (“**FCA**”) of the UK. The applicant has no presence in Singapore.

2 Three Orders of Court (“**Orders**”) were made in Originating Claim No 36 of 2023 (“**OC 36**”) in favour of the applicant. These were:

- (a) First, an Order of Court dated 29 December 2023 (HC/ORC 110/2024) in respect of HC/SUM 1915/2023 (“**SUM 1915**”) ordering “[c]osts for [SUM 1915] to be paid by the [respondents] to [the

applicant] on an indemnity basis to be taxed if not agreed.” SUM 1915 was the applicant’s application to set aside default judgments entered against it.

(b) Second, an Order of Court dated 7 May 2024 (HC/ORC 2197/2024) in respect of HC/SUM 653/2024 (“**SUM 653**”) ordering that “[t]he [respondents] shall pay costs in OC 36 to [the applicant] on an indemnity basis to be taxed if not agreed.” SUM 653 was the applicant’s application for an unless order against the respondents in respect of their repeated failure to attend case conferences.

(c) Third, an Order of Court dated 11 September 2024 (HC/ORC 4932/2024) in respect of HC/SUM 1463/2024 (“**SUM 1463**”) ordering that the “[respondents] are to pay costs to [the applicant] on an indemnity basis to be taxed if not agreed.” SUM 1463 was the applicant’s application to set aside the order granting leave to the respondents to serve cause papers on the applicant in the UK.

3 The applicant filed Bill of Costs No 171 of 2024 (“**BC 171**”) for the assessment of its costs pursuant to the Orders. The respondents to BC 171 were Ji Zenghe (“**Ji**”), Fan Xianrong (“**Fan**”) and Oriental Straits Fund III (“**OSF III**”) (collectively, the “**respondents**”).

Facts

4 Ji, Fan and Euro Credit Holdings 1 Limited (“**Euro 1**”) entered into Securities Debt Agreements (the “**SDAs**”). Pursuant to the SDAs, Euro 1 agreed to lend US\$25m each to Ji and to Fan (the “**Loans**”). Ji and Fan agreed to pledge shares in a company, The Place Holdings Limited, as collateral for the Loans (the “**Pledged Shares**”).

5 Euro 1 and OSF III (the holder of the Pledged Shares and guarantor for the Loans) entered into Addendums to the SDAs (the “**ASDAs**”) for, amongst other things, OSF III to guarantee Ji and Fan’s performance of the SDAs. OSF III, Euro 1 and the applicant entered into a Custodian Management Agreement (the “**CMA**”). The applicant’s role was to arrange for custody of the Pledged Shares. The applicant had an account with CACEIS Bank Spain SAU (“**CACEIS**”) and arranged for the Pledged Shares to be held by CACEIS. CACEIS in turn arranged for the Pledged Shares to be held by sub-custodians in Singapore. Euro 1 was entitled to rehypothecate the Pledged Shares and, pursuant to the CMA, the applicant was obliged to adhere to the instructions of Euro 1 in respect of the Pledged Shares.

6 Clause 5.4 of the CMA provided that OSF III and Euro 1 agreed to indemnify the applicant against all claims “including without limitation any and all court costs, reasonable attorneys’ fees, damages and disbursements”.

7 The SDAs and CMA also provided that they were subordinate to the applicant’s Terms of Business (the “**TOB**”). In particular, terms 39.1 and 39.2 of the TOB set out an Exclusive Jurisdiction Clause in favour of the English Courts and an English governing law clause. Terms 25.6, 25.7 and 25.10 of the TOB further contained indemnities by which the respondents agreed to indemnify the applicant for all losses in relation to the TOB including legal costs on a full indemnity basis.

8 On 18 January 2023, the respondents filed OC 36 against Euro Credit Holdings Limited (“**Euro**”), Euro 1 and the applicant (collectively, the “**OC 36 defendants**”) seeking, amongst other relief, orders for the OC 36 defendants to deliver up the Pledged Shares, an injunction against the OC 36 defendants to cease dealings in connection with the Pledged Shares, damages for conversion

to be assessed, a tracing order against the Pledged Shares, and an inquiry as to the OC 36 defendants' dealings with the Pledged Shares and the proceeds thereof.

9 On 18 January 2023, the respondents filed HC/SUM 151/2023 (“**SUM 151**”) which was an application without notice for an injunction against the OC 36 defendants to, amongst other things, restrain the OC 36 defendants from dealing with the Pledged Shares. SUM 151 was granted by the court on 27 January 2023 (the “**1st Injunction Order**”) in the OC 36 defendants' absence.

10 On 13 February 2023, the respondents filed HC/SUM 371/2023 (“**SUM 371**”) which was an application without notice for, amongst other things, the respondents to be granted permission to serve the cause papers in OC 36 on the OC 36 defendants out of Singapore. SUM 371 was granted by the court on 16 February 2023 (the “**Service Out Order**”) in the OC 36 defendants' absence.

11 Between February 2023 and April 2023, the respondents sought, and obtained, orders from the court to vary the 1st Injunction Order. These orders were granted in the OC 36 defendants' absence (collectively, the “**Injunctions**”).

12 On 18 May 2023, judgment for the prayers sought in OC 36 was issued by an Assistant Registrar against the OC 36 defendants in the OC 36 defendants' absence. On 6 June 2023, judgment for the prayers sought in OC 36 was issued by a Judge of the High Court against the OC 36 defendants in their absence (collectively, the “**Default Judgments**”).

13 On 27 June 2023, the applicant filed SUM 1915 to, amongst other things, set aside the Default Judgments and the Service Out Order. In its written

submissions for SUM 1915, the applicant asked that the court take into account Clause 5.4 of the CMA by which OSF III and Euro 1 had agreed to indemnify the applicant against all claims “including without limitation any and all court costs, reasonable attorneys' fees, damages and disbursements” when determining the costs for SUM 1915. On the same day, Euro and Euro 1 filed HC/SUM 1916/2023 (“**SUM 1916**”) to, amongst other things, set aside the Default Judgment entered against them on 6 June 2023.

14 On 29 December 2023, the court made the following orders in respect of SUM 1915 and SUM 1916:

- (a) On SUM 1915:
 - (i) the Default Judgments are set aside;
 - (ii) no orders in relation to the setting aside of the Service Out Order; and
 - (iii) costs for SUM 1915 are to be paid by the respondents to the applicant on an indemnity basis to be taxed if not agreed.
- (b) On SUM 1916:
 - (i) the Default Judgment entered against Euro and Euro 1 on 6 June 2023 is set aside; and
 - (ii) the costs for SUM 1916 are to be paid by the respondents to Euro and Euro 1 on an indemnity basis and taxed if not agreed (these costs were later agreed at S\$18,000 (all-in)).

15 On 16 February 2024, the respondents’ then-solicitors ceased to act for them in OC 36. The respondents did not attend the case conferences for OC 36 on 16 February 2024 and 1 March 2024.

16 On 11 March 2024, the applicant filed SUM 653 for, amongst other things, an unless order for the respondents' claims in OC 36 to be struck out should it fail to attend the next case conference and for an order that the respondents pay costs in OC 36 to the applicant on an indemnity basis to be taxed if not agreed. Euro and Euro 1 filed HC/SUM 776/2024 ("**SUM 776**") on 21 March 2024 for a similar order against the respondents. The respondents failed to attend further case conferences for OC 36 on 5 April 2024 and 26 April 2024.

17 On 7 May 2024, the court granted SUM 653 and SUM 776 and ordered, amongst other things, that:

- (a) unless the respondents or their solicitors attend the case conference on 10 May 2024, the respondents' claims shall be struck out and the Injunctions shall be set aside; and
- (b) the respondents shall pay costs in OC 36 to the OC 36 defendants on an indemnity basis to be taxed if not agreed.

18 On 9 May 2024, the respondents appointed their present solicitors to act for them in OC 36 and they attended the case conference on 10 May 2024. As such, the respondents' claims were not struck out at the case conference.

19 On 31 May 2024, the applicant filed SUM 1463 to (a) set aside the Service Out Order in relation to itself; (b) set aside the Injunctions in so far as they related to it; and (c) seek an order that the respondents pay costs of the application and OC 36 to the applicant on an indemnity basis to be taxed if not agreed. Euro and Euro 1 filed HC/SUM 1554/2024 ("**SUM 1554**") on 4 June 2024 to set aside the Service Out Order and the Injunctions in relation to them.

On 11 September 2024, the court dismissed SUM 1554 but granted SUM 1463 and ordered, amongst other things:

- (a) the Service Out Order in relation to the applicant to be set aside;
- (b) the Injunctions to be set aside in so far as they related to the applicant; and
- (c) the respondents to pay costs to the applicant on an indemnity basis to be taxed if not agreed.

20 On 27 December 2024, the applicant filed BC 171. As required under Order 21 r 20 of the Rules of Court 2021 (“the **Rules**”) and in accordance with Form B31 of Appendix B of the Supreme Court Practice Directions 2021, BC 171 set out, in three separate sections, the applicant’s claim for an award of costs for the following: work done in the cause or matter except for assessment of costs (Section 1), work done for and in the assessment of costs (Section 2) and all disbursements made in the cause or matter (Section 3).

Issues to be determined

21 The issues before me were:

- (a) What was the approach to be taken in the assessment of costs on an indemnity basis under Section 1 of BC 171 (“**Issue 1**”)?
- (b) What was the appropriate award for Section 1 of BC 171 (“**Issue 2**”)?
- (c) What was the appropriate award for Section 2 of BC 171 (“**Issue 3**”)?

- (d) What was the appropriate award for the disbursements claimed in Section 3 of BC 171 (“**Issue 4**”)?
- (e) What was the appropriate award for the fees claimed by the foreign lawyers under Section 3 of BC 171 (“**Issue 5**”)?
- (f) What was the impact of a contractual indemnity for costs which the applicant had received from another party (“**Issue 6**”)?

Issue 1: What was the approach to be taken in the assessment of costs on an indemnity basis under Section 1 of BC 171?

22 As already set out above, the applicant had sought costs for the three interlocutory applications, *ie*, SUM 1915, SUM 653 and SUM 1463 in OC 36 pursuant to contractual indemnity agreements between the parties contained in the CMA and the TOB and the court had ordered that costs were to be assessed on an indemnity basis.

23 Where costs are to be assessed on an indemnity basis, Order 21 r 22(3) of the Rules states that all costs are to be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred, and any doubts which the Registrar may have as to whether the costs were reasonably incurred or were reasonable in amount are to be resolved in favour of the receiving party.

24 The applicant claimed S\$477,700 plus Goods and Services Tax (“**GST**”) of S\$40,311, totalling S\$518,011, under Section 1 of BC 171, in accordance with the invoices rendered to it by its Singapore lawyers. The invoices were rendered for work done in 2023 and in 2024 and as such, GST was included in the invoices at 8% for work done in 2023 and at 9% for work done in 2024. This was because the GST rate was increased from 8% to 9% with effect from 1 January 2024. The factors for the Court to take into account under Order 21 r

2(2) of the Rules (*eg.* complexity of the case, urgency and importance to the client) were also set out in Section 1 of BC 171 in accordance with Form B31 of Appendix B of the Supreme Court Practice Directions 2021.

25 The applicant’s primary position was that pursuant to the contractual indemnity, the court should allow the amount claimed in Section 1 in accordance with the full amount of the invoices rendered to the applicant by its Singapore lawyers as the respondents, who bore the burden of proof, had failed to identify and explain which portions of the Singapore lawyers’ fees were unreasonable. The applicant’s secondary position was that even if the court were to apply the factors in Order 21 r 2(2) of the Rules and any other material factors, the respondents had not shown that the amount claimed in Section 1 was unreasonable.

26 The respondents’ position appeared to be that the contractual indemnity did not mean that the court should uphold the amount claimed in accordance with the applicant’s Singapore lawyers’ invoices, because the contractual indemnity was not worded as a full 100% indemnity of all of the legal costs incurred by a successful litigant. The respondents said that instead, the court should quantify the indemnity costs as being an uplift (usually, one-third) on the costs ranges set out in Appendix G of the Supreme Court Practice Directions 2021 (“**Appendix G**”) for the three interlocutory applications. In connection with this, the respondents also argued that applying the factors in Order 21 r 2(2) of the Rules and any other material factors would result in a figure that was consistent with the amount arrived at by applying the one-third uplift on the costs ranges drawn from Appendix G.

27 I did not entirely agree with either the applicant’s primary position or with the position put forward by the respondents.

28 The applicant’s primary position that the court should allow the amount claimed in Section 1 because that was the amount actually invoiced by its Singapore lawyers disregarded the role the court played in assessing costs under Order 21 of the Rules, even if the respondents had not explained what specific portions of the Singapore lawyers’ fees were unreasonable. I agreed with the respondents that even though the costs claimed in BC 171 were awarded pursuant to a contractual indemnity, the court should not simply allow the applicant to claim the amount of the bills presented to it by its Singapore lawyers without scrutiny. I also accepted the respondents’ argument that an award of costs on an indemnity basis does not entail a full (or literal) indemnity but rather, by a fiction, an award of costs on an indemnity basis is deemed to be an actual indemnity although in virtually every case it is not so (see, *Maryani Sadeli v Arjun Permanand Samtani and another and other appeals* [2015] 1 SLR 496 at [13]; *Then Khek Koon and another v Arjun Permanand Samtani and another and other suits* [2014] 1 SLR 245 at [176] (“**Then Khek Koon**”).

29 I accepted the respondents’ position to the extent that I agreed that the contractual indemnity did not mean that the court should simply uphold the amount claimed in accordance with the Singapore lawyers’ invoices. However, I disagreed with the respondents that there was any requirement for the contractual indemnity to be worded as a full 100% indemnity of all of the legal costs incurred by the applicant. All that was required was that the contract should provide sufficiently clearly for indemnity costs. I was of the view that the contract relied on (*ie.* the CMA and the TOB) was sufficiently clear in this regard. Further and in any event, the Orders made on the three applications awarded costs in favour of the applicant on an indemnity basis, which put the position beyond doubt.

30 The respondents also argued that an approach of allowing all Bills of Costs as claimed according to the bills rendered would cause institutions to revise their standard form contracts to include 100% indemnity provisions¹. I did not entirely understand this argument. If the respondents were suggesting that the contractual clause would say ‘costs on an indemnity basis meaning 100% of whatever our lawyers bill’ instead of the standard wording of ‘costs on an indemnity/a full indemnity basis’, I think such a clause would not be upheld by the court if it was seen as an attempt to subvert the role the court played in assessing costs. Order 2 r 13(1) of the Rules states that costs are in the discretion of the court and the court has the power to determine all issues relating to the costs of or incidental to all proceedings. This important principle is reiterated in Order 21 r 2(1) of the Rules. Such a clause may constitute an attempt to fetter that discretion. Further, as already noted at [28] above, an award of costs on an indemnity basis is not a full (or literal) indemnity but is deemed to be an actual indemnity.

31 On the other hand, if what the respondents meant to say was that the court should, in carrying out its duty to assess the Bill of Costs presented by the applicant, have regard to all the non-exhaustive factors that are stated to be relevant under Order 21 r 2(2) of the Rules, and any other material factors, and not simply award costs of the amount sought by the applicant, I accepted that submission.

32 The two ways in which an applicant may invoke a contractual indemnity for costs were explained by the court in *Telemedia Pacific Group Ltd v Credit Agricole (Suisse) SA (Yeh Mao-Yuan, third party)* [2015] 4 SLR 1019 (“*Telemedia*”). The defendant succeeded against the plaintiff and the plaintiff

¹ Notice of Dispute Annex 1 para 9.1; see also Notice of Dispute Annex 1 para 9.2, 9.3

sought costs against the defendant to be awarded on an indemnity basis. There was a contract between the plaintiff and the defendant which included an agreement that the plaintiff would indemnify the defendant fully against costs and expenses including legal costs.

33 The court in *Telemedia* explained at [24]–[35] that a party may assert its entitlement to indemnity costs by directly invoking its contractual rights under the agreement between the parties; alternatively, it may rely on the court’s statutory discretion to award costs (under paragraph 13 of the First Schedule to the Supreme Court of Judicature Act 1969 and Order 59 of the Rules of Court 2014) and urge the court to consider the costs agreement between the parties as a relevant factor in deciding whether indemnity costs ought to be awarded.

34 In the first alternative, the parties by agreement may oust the statutory discretion of the court to award costs and the party who wants to invoke its contractual rights directly under the costs agreement with the other party would have to clearly and properly plead that cause of action in accordance with the usual rules governing pleadings (see also, *United Overseas Bank Ltd v Sin Leong Ironbed & Furniture Manufacturing Co (Pte) Ltd and others* [1988] 1 SLR(R) 76 at [16]–[17]). In the second alternative, the existence of a costs agreement between the parties is a highly relevant factor that a court will take into account in the exercise of its statutory discretion to award costs and the court will tend to exercise its statutory discretion to uphold the contractual bargain entered into by both parties unless it would be manifestly unjust to do so.

35 The court in *Telemedia* suggested at [35] that the question remained open as to whether the court could similarly disregard the contractual indemnity if it would be manifestly unjust, in the situation where the party was invoking

its contractual rights directly under the costs agreement (*ie.* the first alternative discussed at [34] above). Despite this suggestion, the principle that the court will generally uphold contractual indemnity clauses for costs in the absence of manifest injustice has been reiterated in cases where the applicant invoked its contractual rights directly under the costs agreement with the other party (*ie.* the first alternative discussed at [34] above) rather than relying on the statutory discretion of the court (see, *Abani Trading Pte Ltd v BNP Paribas and another appeal* [2014] 3 SLR 909 at [93]–[94] (“*Abani*”); *BNP Paribas SA v Jacob Agam* [2018] 3 SLR 1 at [125]–[127] (“*Agam*”); *Razer (Asia-Pacific) Pte Ltd v Capgemini Singapore Pte Ltd* [2023] SGHC 195 at [26]). It appeared to me therefore that this principle applied regardless of which of the two ways the applicant chose to use to assert its entitlement to indemnity costs.

36 In BC 171, the three Orders had already directed that the applicant’s costs were to be assessed on an indemnity basis. In any event, the respondents had not argued any manifest injustice as a basis to override the contractual indemnities for costs that were set out in the CMA and the TOB. It was thus neither open to me, nor necessary, to consider whether there was any reason to deviate from the commercial bargain that had been reached between the parties.

37 I come back to the respondents’ position as to the approach which the court should take in assessing the applicant’s costs under Section 1 of BC 171. The respondents cited five cases in support of the proposition that in those cases, where the successful party had claimed indemnity costs pursuant to a contractual provision, the courts in those cases had only awarded one-third more than the party and party award which was on a standard basis². The five cases cited were *Agam*, *Australia and New Zealand Banking Group Ltd v Bombay*

² Notice of Dispute Annex 1 para 8

Talkies (S) Pte Ltd and another [2015] 3 SLR 1105, *Abani, Telemedia* and *AmFraser Securities Pte Ltd v Goh Chengyu* [2016] SGHC 278.

38 I did not agree with the respondents. In those five cases, the court order was simply that there should be costs on an indemnity basis or a full indemnity basis (much like the three Orders which formed the foundation of BC 171). None of those cases stood for the proposition, as the respondents so contended, that the *meaning* of indemnity costs was that it should be *quantified* at one-third more than the party and party costs. In any event, this cannot be correct as a matter of law given the discretionary nature of costs, and adopting the respondents' proposition would seem to transform the court's discretion into a rule of law that a one-third uplift is warranted. I will say more later about what has been called the one-third rule but for present purposes I need only say that it is a rule of guidance but by no means a hard and fast rule.

39 The respondents also relied on the decision of the Court of Appeal in *Lin Jian Wei and another v Lim Eng Hock Peter* [2011] 3 SLR 1052 ("***Lin Jian Wei***") and argued that it stood for the proposition that as a general practice, costs assessed on an indemnity basis are taken to be usually one third more than that assessed on a standard basis³. I accepted that but I also accepted the applicant's point that the Court of Appeal in *Lin Jian Wei* had also stated that this general practice was not a hard and fast rule which applied invariably each time costs were ordered to be taxed on an indemnity basis⁴.

40 The applicant argued that *Lin Jian Wei* was wholly inapplicable in the present case as it was decided before the Rules came into force, which governed

³ Notice of Dispute Annex 1 para 7

⁴ Applicant's submissions para 22(1)

the present application. Further, Order 21 r 22(3) of the Rules clearly and expressly provided that for assessments on an indemnity basis, all costs are to be allowed except in so far as they are of an unreasonable amount⁵. I did not agree with this argument.

41 The commentaries on Order 21 of the Rules contained in *Singapore Rules of Court A Practice Guide* (Chua Lee Ming editor-in-chief) (Academy Publishing, 2023) as well as in *Singapore Civil Procedure 2025* Volume I (Cavinder Bull SC gen ed) (Sweet & Maxwell, 2025) put forward the position that Order 59 r 27 of the revoked Rules of Court (Cap 322, R 5, 2014 Rev Ed) found its equivalence in Order 21 r 22 of the Rules. In my view, *Lin Jian Wei* continues to be applicable when the court undertakes the assessment of costs under the Rules.

42 I thus approached BC 171 in accordance with the guidance set out in *Lin Jian Wei*. For completeness, this was in line with the applicant's secondary position (see [25] above), and with the respondents' argument that the factors in Order 21 r 2(2) of the Rules and any other material factors should be applied (see [26] above).

43 The Court of Appeal said at [78] of *Lin Jian Wei*:

The approach that should be adopted in taxation is that the Court should first assess the relative complexity of the matter, the work supposedly done against what was reasonably required in the prevailing circumstances, the reasonableness and proportionality of the amounts claimed on an item by item basis and thereafter, assess the proportionality of the resulting aggregate costs. In this exercise, all the Appendix 1 considerations are relevant. In the general scheme of things, no single consideration ordinarily ought to take precedence. In every matter, this calls for careful judgment by reference to existing precedents and guidelines. A taxing officer should consider the

⁵ Applicant's submissions para 22(3)

complexity of the issues of fact and law which arose in the matter against the backdrop of the statements as to the amount of time spent by the solicitors and also the seniority of the counsel involved in order to determine whether the costs claimed for the amount of time spent is reasonable and proportionate. For instance, in a scenario involving a taxation of party and party costs where a senior counsel is engaged for a straightforward matter that a competent senior associate could have handled with ease, the taxing officer in exercising his discretion should bear in mind the principle of proportionality in that the conduct of the litigation should be in a manner which bears some correlation to the amount or nature of the claim and award costs accordingly without undue deference to the costs claimed at a senior counsel rate.

44 Nonetheless, there were two points in which BC 171 differed from *Lin Jian Wei*. First, *Lin Jian Wei* was decided before Appendix G was introduced in the Supreme Court Practice Directions. Second, in *Lin Jian Wei* there was no contractual indemnity for costs agreed between the parties. In my view, these were both material considerations. Accordingly, I took into account the Appendix G costs ranges for the three interlocutory applications that were the subject of BC 171, with a one-third uplift thereon. I also took into account the invoices which had been rendered to the applicant by its Singapore lawyers and which the applicant was claiming pursuant to the contractual indemnity for costs agreed between the parties.

Issue 2: What was the appropriate award for Section 1 of BC 171?

45 The applicant argued that an award of S\$477,700, which was the amount that was in accordance with the invoices rendered to it by its Singapore lawyers, was appropriate and justified under Section 1. The respondents on the other hand said that an award of S\$65,170 was reasonable, and they derived this figure by applying a one-third uplift on the quanta drawn from the Appendix G costs ranges which they said would reasonably have been awarded for the three interlocutory applications that were the subject of BC 171. The respondents' figures are set out in a table at [76] below.

46 Order 21 r 2(2) of the Rules reads as follows:

(2) In exercising its power to fix or assess costs, the Court must have regard to all relevant circumstances, including —

(a)	efforts made by the parties at amicable resolution;
(b)	the complexity of the case and the difficulty or novelty of the questions involved;
(c)	the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor;
(d)	the urgency and importance of the action to the parties;
(e)	the number of solicitors involved in the case for each party;
(f)	the conduct of the parties;
(g)	the principle of proportionality; and
(h)	the stage at which the proceedings were concluded

47 As to factor (a) (efforts made by the parties at amicable resolution), counsel for the applicant wrote to counsel for the respondents on 5 December 2024 to ask for costs in the same amount that was later claimed in BC 171. On 16 December 2024, counsel for the respondents replied to say that as it was the end of the year, the clients were travelling, the amounts sought were significant, and 69 pages of exhibits had to be reviewed, the respondents asked for one month in order to respond substantively. The applicant went ahead to file BC 171 on 27 December 2024. Counsel for the applicant explained that the applicant had needed to file the Bill of Costs within one year from the first Order of Court, which was given on 29 December 2023 (see [14] above). As such, the applicant could not have waited for a month for the respondents to respond substantively.

48 I did not find the applicant’s conduct in filing BC 171 prior to the respondents having responded substantively to have been unreasonable. For completeness, the respondents’ request for more time to respond was also not unreasonable and in any event it was fair to say that the parties were simply so far apart in principle that any amicable resolution was unlikely.

49 Factor (b) (the complexity of the case and the difficulty or novelty of the questions involved) and factor (c) (the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor) were considered together.

50 I accepted the respondents’ point that the number of issues or sub-issues listed by the applicant was not necessarily indicative of complexity and that sometimes issues were over-spliced⁶. So I did not approach this as a numbers game. The court would have to have regard to the nature of the interlocutory applications themselves.

51 The legal and factual issues the applicant would have had to contend with in the interlocutory applications included Singapore being the *forum conveniens* for OC 36, serious issues to be tried on the merits of the respondents’ claims against the applicant in OC 36, the applicant’s *prima facie* defence to the claims in OC 36 and the governing law and applicable jurisdiction clause for the disputes in OC 36. Foreign law (the TOB was governed by English law and the SDAs and ASDAs were governed by Belgian law, all with different dispute resolution clauses) was material to the issue of Singapore being the *forum conveniens* for OC 36. Three foreign law expert opinions on English and Belgian law would have had to be considered. Whilst it is true that the actual

⁶ Notice of Dispute Annex 1 para 20.3 – 20.5

opinions were issued by the foreign lawyers, it was equally necessary for the Singapore lawyers to understand the foreign law positions and how they impacted on the applications which the Singapore lawyers had to argue. This would be necessary in preparing their written and oral submissions for the interlocutory applications.

52 It was important to bear in mind that these issues arose against the backdrop that in OC 36, the respondents had pleaded serious and extensive claims against the applicant including fraudulent misrepresentation, dishonest assistance, conspiracy and breach of trust.

53 More particularly, the respondents had asserted the wrongful rehypothecation of the Pledged Shares which were transferred to up to 21 entities who were not parties to OC 36. The respondents did not disagree that this assertion required the applicant to conduct an extensive tracing exercise of the Pledged Shares to show that any transfers of the Pledged Shares which the applicant had carried out were legitimate and justified.

54 Issues concerning service of the cause papers in OC 36 on the applicant in the UK under English law also arose.

55 The respondents disputed that the three interlocutory applications had been complex or involved any difficult or novel questions. The respondents argued that in determining the three applications, the court only had to decide the key issue(s) sufficient to dispose of the applications. The respondents said that by way of example, in SUM 1463 (see [19] above), the court decided that there was a valid and binding exclusive jurisdiction clause (the “EJC”) which should be upheld, and that alone was sufficient to grant the reliefs sought, and

the Court did not make findings on other alleged issues such as *forum conveniens*, applicable governing law, or serious issues to be tried⁷.

56 I was of the view that there was an element of hindsight in the respondents' argument. Also, the question should not be whether the court had made a finding on only one key point but whether the applicant had been unreasonable to have addressed the other issues in its affidavits and submissions or prepared to address those other issues in its affidavits and submissions, and the respondents did not seem to be saying that. Further, in making the orders for indemnity costs, the court did not say that the costs awarded to the applicant should be limited to the issue(s) on which the applicant had succeeded or that the applicant should only be entitled to a percentage of its costs. Whilst such orders may more often be seen after a trial where the trial Judge wishes to award the successful party its costs for specific issues only or to reflect that for whatever reason the successful party is not entitled to all its costs, it would have been possible for the court hearing the three interlocutory applications to make such orders, but that was not the case.

57 The applicant also argued that it was necessary to the proper conduct of at least SUM 1915 and SUM 1463 for the applicant to review the pleadings in OC 36, the applications for the Injunctions, the application for Service Out, the applications to enter the Default Judgments and the affidavits filed in relation to those applications. In addition, since SUM 1915 and SUM 1463 were heard with SUM 1916 and SUM 1554 (being the similar applications brought by Euro and Euro 1) respectively, they had to consider those applications and even make submissions where those applications interacted and/or overlapped with the applicant's own applications. For completeness, the same would apply to SUM

⁷ Notice of Dispute Annex 1 para 20.7

653, which was heard with Euro and Euro 1's similar application in SUM 776, but to a much lesser extent given the nature of SUM 653 and SUM 776 (which sought unless orders due to the applicant's repeated failure to attend case conferences).

58 The respondents on the other hand submitted that the grounds for SUM 1915 and SUM 1463 were distinct and unrelated to the grounds for SUM 1916 and SUM 1554. For example, the applicant relied on the EJC in its TOB whereas Euro and Euro 1 relied on an arbitration clause in the SDAs. The respondents therefore argued that the applicant's applications in SUM 1915 and SUM 1463 were for the most part unaffected by the positions taken by Euro and Euro 1 in SUM 1916 and SUM 1554.

59 I accepted that it was not unreasonable for the applicant to want to come to grips with the papers in OC 36 including the pleadings, the various applications and their respective supporting affidavits. I also thought it was not unreasonable that the applicant would need to know what was being put forward by Euro and Euro 1 and to be ready to address any impact on its own position. I was mindful that part of the respondents' case in OC 36 was that the OC 36 defendants had engaged in a conspiracy.

60 The applicant pointed out that the Common Bundle of Documents ("CBOD") for the hearing of SUM 1463 comprised eight volumes totalling 4,405 pages. The respondents rebutted this by saying that it was the applicant who had proposed to compile the CBOD and included the entire set of cause papers, yet the applicant's written submissions for SUM 1463 primarily referred to only six affidavits. In other words, the respondents said that the vast majority of the CBOD documents were neither relevant nor necessary for SUM 1463. In response, the applicant reiterated that it was a common bundle and noted that

when the CBOD was prepared, the respondents had agreed to the proposed contents without asking for any documents to be taken out because of irrelevance or lack of necessity.

61 If documents needed to be reviewed, the work done for that review should be compensated unless it can be said that the party should not even have reviewed the documents. Whether the documents reviewed were all then referenced in the party's submissions to the court did not necessarily mean that it was unreasonable for the party to have reviewed the documents in the first place. It was unfair to judge the necessity for the contents of the CBOD by reference only to which key documents the parties referred to in submission. The question should be whether it was unreasonable for the applicant to have compiled the CBOD as it did, after obtaining the respondents' consent to the contents, and to spend time familiarising itself with the documents in preparation for a contested hearing and in anticipation of being ready to address any questions from the court. In my view, it was not unreasonable.

62 The three applications took, in total, ten hours of hearing time and SUM
653 was decided without an oral hearing.

63 A total of 674.31 hours were spent by the applicant on getting up. The amount of time spent, in percentage terms, was 23.49% for Senior Counsel, 18.48% for junior counsel, and 58.03% for the most junior counsel. In some cases, I would expect to see a more pyramidal presentation, *ie*, that Senior Counsel would spend the least time, with junior counsel spending more time, and the most junior counsel putting in the most time. However, that was simply a rule of thumb which was by no means cast in stone. In this case, the delta between Senior Counsel and junior counsel was not excessively large, and

certainly the most junior counsel put in almost two-thirds of the time on the matter overall. I did not find any unreasonableness in this regard.

64 Taking into account the issues, the number of documents, the extent of the tracing exercise for the Pledged Shares, the elements of foreign law and the interaction between the applicant's position and that of the other OC 36 defendants, it was certainly the case that there was some degree of complexity that would call for the exercise of the requisite skill and responsibility of counsel and warrant the reasonableness of the hours spent by counsel in getting up.

65 The applicant submitted that factor (d) (the urgency and importance of the action to the parties) was well made out in favour of the applicant because of its status as an entity regulated by the FCA of the UK. In addition to the applicant's reporting obligations which kicked in once OC 36 was filed, the serious claims that were pleaded in OC 36 against the applicant including fraudulent misrepresentation, dishonest assistance, conspiracy and breach of trust would have been of significant concern to an entity in its line of business. It would not be an exaggeration to say that the allegations struck at the heart of the applicant's commercial credibility since they impugned the conduct of its business of arranging custodial services and activities.

66 In response, the respondents said that reporting obligations were a neutral factor or else all disputes involving a listed company would automatically become complex⁸. I did not agree with the respondents; they were conflating factor (b) (the complexity of the case and the difficulty or novelty of the questions involved) with factor (d) (the urgency and importance of the action to the parties) whereas the applicant was making this point in connection with

⁸ Notice of Dispute Annex 1 para 22.1

factor (d). The respondents did not actually dispute that it was urgent and important for the applicant to succeed in the three interlocutory applications, for the reasons it had explained.

67 In relation to factor (e) (the number of solicitors involved in the case for each party), the respondents did not argue that the applicant having a team of three lawyers assigned to the matter was unreasonable and neither did they say that the combination of the lawyers involved was unreasonable. The applicant engaged Senior Counsel and the respondents did not argue that the engagement of Senior Counsel was unnecessary or unreasonable in the circumstances. The team comprised Senior Counsel of 38 years' standing, junior counsel of 15 years' standing and the most junior counsel of four years' standing. I agreed that both the size and the composition of the team were not unreasonable.

68 As for factor (f) (the conduct of the parties), OC 36 had been wrongly commenced by the respondents in Singapore. There was an EJC and the respondents did not comply with it. Then, for a period of almost three months from 16 February 2024 to 9 May 2024, despite being the claimants in OC 36 on whom carriage of the action lay, the respondents did not attend, and did not appoint counsel to attend, four case conferences in the Singapore court. Instead, the respondents appointed counsel on the eve of the fifth case conference and only upon the threat of the action in OC 36 being struck out (see [18] above).

69 The Court of Appeal in *Tjong Very Sumito and others v Antig Investments Pte Ltd* [2009] 4 SLR(R) 732, in dismissing the appeal with indemnity costs, reiterated the following (at [19]):

The conduct of a party who deliberately ignores an arbitration or a jurisdiction clause so as to derive from its own breach of contract an unjustifiable procedural advantage is in substance acting in a manner which not only constitutes a breach of contract but which misuses the

judicial facilities offered by the English courts or a foreign court. In the ordinary way it can therefore normally be characterised as so serious a departure from ‘the norm’ as to require judicial discouragement ...

70 The respondents’ conduct in commencing OC 36 in Singapore despite the EJC and then in refusing to participate in OC 36 until faced with the consequence of their claim being struck out pursuant to an unless order, could not be condoned. It was important to note that the respondents proffered no explanation whatsoever as to why they had started OC 36 in Singapore only to then stop participating in OC 36 rather abruptly after the Default Judgments against the OC 36 defendants were set aside.

71 Factor (g) (the principle of proportionality) could be tested by reference to the amount at stake in the matter as a whole – in OC 36, the value of the Pledged Shares which the respondents were claiming was said to be about US\$100m. Seen in that light, the amount claimed in Section 1 was not at all unreasonable.

72 However, the amount claimed in Section 1 could also be tested by reference to the costs award for SUM 1554, which was the application by Euro and Euro 1 for similar prayers to those in SUM 1463 (*ie.* to set aside the Service Out Order and the Injunctions, as outlined at [19] above). In dismissing SUM 1554, the court fixed costs at S\$22,000, inclusive of disbursements. That being said, in SUM 1554, Euro and Euro 1 did not have the benefit of a contractual costs indemnity and they were not entities of the same kind as the applicant and SUM 1554 did not involve considerations of UK law.

73 Finally, the amount claimed in Section 1 could also be tested by reference to the party and party costs ranges in Appendix G for the particular applications, with an uplift for indemnity costs.

74 I set out in a table at [76] below the Appendix G costs ranges for the three interlocutory applications as well as the uplifted quanta for those costs ranges; the uplift was derived by assuming that indemnity costs are an uplift on the party and party quanta, and that the uplift is one-third. Finally, in the last column of the table below, I included what the respondents said would be a reasonable award on a standard basis for each application, uplifted so as to provide the indemnity quanta on each such application which the respondents said would be reasonable.

75 Before I deal with the numbers in the table, I further explain that there are two alternative ways of understanding the one-third uplift. First, one could start with the quantum of standard costs and increase it by one-third so as to arrive at the quantum of indemnity costs. Second and in the alternative, one could start with the quantum of standard costs as being two-thirds of the quantum of indemnity costs and increase the quantum of standard costs so as to arrive at the quantum of indemnity costs. I illustrate the two alternatives with an example where standard costs are S\$15,000.

(a) Under the first way: standard costs are S\$15,000 and indemnity costs are S\$20,000 [$15,000 + (15,000 / 3 = 5,000) = S\$20,000$].

(b) Under the second way: standard costs are S\$15,000 and indemnity costs are S\$22,500 [$15,000 / 2 \times 3 = S\$22,500$].

76 It can be seen from the illustration above that the two alternative ways can result in different uplifted amounts for indemnity costs even where the award of standard costs is the same. As I was not required to decide which of the two alternative ways is correct, I need say no more for the purposes of BC 171 save to note that I took into account the quanta for both alternatives.

Applic ation	Item in Appen dix G	Costs range in Appendi x G	The amount on an indemnity basis, assuming the costs range in Appendix G is increased by 1/3^ (ie. the first way in [75] above)	The amount on an indemnity basis, assuming the costs range in Appendix G is 2/3 of the indemnity amount (ie. the second way in [75] above)	The respondents ' proposed award*
SUM 1915	II.B.10. Setting aside of judgme nt	S\$2,000 to S\$19,000	S\$2,660 to S\$25,270	S\$3,000 to S\$28,500	Standard award of S\$15,000 uplifted by one-third to S\$19,950
SUM 653	II.B.19. Applica tion for unless order	S\$2,000 to S\$10,000	S\$2,660 to S\$13,300	S\$3,000 to S\$15,000	Standard award of S\$7,000 uplifted by one-third to S\$9,310
SUM 1463	II.A.2. Comple x or lengthy applicat ion fixed for special hearing (duratio n of 3hrs)	S\$9,000 to S\$22,000	S\$11,970 to S\$29,260	S\$13,500 to S\$33,000	Standard award of S\$22,000 uplifted by one-third to S\$29,260

	III.A.(ii) (3) & (4) Party - and - Party Costs for matters which are settled before trial - Torts / Comme rcial - Pleadin gs	S\$5,000 to S\$14,000	S\$6,650 to S\$18,620	S\$7,500 to S\$21,000	Standard award of S\$5,000 uplifted by one-third to S\$6,650
Total		S\$18,000 to S\$65,000	S\$23,940 to S\$86,450	S\$27,000 to S\$97,500	Standard award of S\$49,000 uplifted by one-third to S\$65,170

^using a multiplier of 1.33 for consistency with the respondents' multiplier

*the respondents used a multiplier of 1.33

77 Factor (h) (the stage at which the proceedings were concluded) was in favour of the respondents as the three applications had been dealt with at an early stage of OC 36.

78 Access to justice has been flagged as an important consideration in the context of the costs ranges in Appendix G. The Court of Appeal said in *Senda International Capital Ltd v Kiri Industries Ltd* [2023] 1 SLR 96 (“*Senda*”) at [49]:

The effect of Appendix G means that, even catering for the specificities of individual cases, the level of recoverable costs will generally remain within the ranges set out therein, which represent the level of fees which members of the public and the legal profession would generally accept as reasonable. It is consistent with access to justice considerations that costs are assessed by reference to these generally accepted levels and, again, are not dependent on subjective factors such as how much the individual litigant might have been willing to spend.

That being said, BC 171 did not involve a subjective litigant who was unreasonably willing to spend huge amounts of money on legal fees such that those fees would operate oppressively on his opponent and carry with them the risk of a denial of justice. It was the respondents who had brought OC 36 and the applicant was an unwilling party who sought to extricate itself from the proceedings.

79 Access to justice was also discussed in the context of indemnity costs, in the case of *Then Khek Koon*. The court explained at [155] that “[t]he indemnity principle makes the vindicated winner whole for the costs of what he has shown, by the court’s judgment, to be unmeritorious litigation. It therefore serves to compensate the winner, rather than to punish the loser for his original wrongdoing.”

80 The court went on to say at [156]:

the ultimate policy of the indemnity principle is rooted not in compensation but in enhancing access to justice. The indemnity principle facilitates a meritorious litigant’s pursuit of justice by ensuring retrospectively that he attains justice at his opponent’s expense rather than his own. As the Court of Appeal said in *Ng Eng Ghee (Costs)* at [1]:

In adjudicating on costs, the court also has to bear in mind that unmerited barriers in the path of recovering reasonably incurred costs might well have the chilling effect of deterring parties, in future, from legitimately pursuing or defending their rights.

81 Thus, access to justice could be understood from the point of view of both the respondents as the paying party who invoked the costs ranges in Appendix G, and the applicant as the receiving party who had legitimately defended its rights.

82 The respondents submitted two taxation precedents where indemnity costs had been awarded for trials⁹. The respondents pointed out that the awards were S\$250,000 and S\$459,000 for trials of five days and 12 days respectively, whereas BC 171 concerned three interlocutory applications, and therefore any award for BC 171 should be significantly less. I did not entirely agree with the respondents. It was possible, although probably not common, for an interlocutory affidavits-only application to merit more costs than a trial. This would ultimately turn on a consideration of the nature of the application at hand and amongst other things, the complexity of the application and the degree of involvement of counsel. Also, the respondents' taxation precedents were 14 to 19 years old. Nonetheless, I accepted that the taxation precedents, and the fact that they were awards for trial costs whereas BC 171 was for three interlocutory applications, were material factors for my consideration and I bore them in mind.

83 An overarching consideration was that since the costs in BC 171 were to be assessed on an indemnity basis, it was for the respondents to show that the costs incurred and claimed by the applicant were unreasonable, and any doubts which I may have had as to whether the costs were reasonably incurred or were reasonable in amount were to be resolved in favour of the applicant.

⁹ Respondents' submissions para 9

84 Bearing in mind all the above, I allowed Section 1 at S\$250,000 plus GST which in my view was, in all the circumstances and specific to this Bill of Costs, an appropriate, reasonable and proportionate award.

85 As mentioned at [24] above, the applicant's lawyers had rendered their invoices in 2023 and in 2024, with GST at 8% for work done in 2023 and at 9% for work done in 2024. Three of the invoices were for work done in 2023 and totalled S\$268,200 whereas the remaining three invoices were for work done in 2024 and totalled S\$209,500. The award of S\$250,000 for Section 1 should be apportioned in the same proportions between 2023 and 2024 and GST should be applied at 8% and at 9% accordingly. On that basis, I awarded GST at S\$21,096.40.

Issue 3: What was the appropriate award for Section 2?

86 The Appendix G costs range for Section 2 is S\$1,500 to S\$5,000. The applicant sought S\$4,000 by reference to Appendix G plus S\$4,645.18 for filing fees and printing plus £8,400 for the fees of its English costs expert plus £5,000 for the fees of the English lawyers.

87 The respondents did not object to these figures except for arguing that the English lawyers should only be allowed £2,500 under Section 2.

88 I ordered costs of Section 2 in favour of the applicant at S\$4,000 plus S\$4,645.18 for filing fees and printing plus £8,400 for the fees of the applicant's English costs expert plus £3,000 for the fees of the applicant's English lawyers.

Issue 4: What was the appropriate award for the disbursements claimed in Section 3 of BC 171?

89 The applicant sought S\$10,058.87 for the disbursements incurred by the applicant’s Singapore lawyers.

90 Out of the S\$10,058.87 for the applicant’s Singapore lawyers’ disbursements, the respondents accepted S\$8,925.77 but queried the balance of S\$1,133.10. The applicant explained that the balance of S\$1,133.10 was the total amount levied on all the law firm’s invoices as a notional amount to cover disbursements not otherwise captured in the invoices.

91 I understood that law firms may have different ways to deal with disbursements which were not otherwise specified in their invoices. For example, the invoices might specifically itemise disbursements such as filing fees or overseas courier charges but might not specifically itemise disbursements such as stationery. The alternatives would be to list each and every disbursement item to an absurd level of granularity, or for the law firm to absorb the cost of such items. I was of the view that what the law firm had done in this case was acceptable and for completeness I noted that counsel for the respondents, quite rightly, did not take much issue with it either.

92 I awarded disbursements of S\$10,058.87 under Section 3 in respect of the applicant’s Singapore lawyers’ disbursements.

Issue 5: What was the appropriate award for the fees claimed by the foreign lawyers under Section 3 of BC 171?

93 The applicant engaged UK lawyers, Fieldfisher LLP (“**Fieldfisher**”), when it discovered that the Default Judgments had been entered against it in OC 36. Fieldfisher then instructed the applicant’s Singapore lawyers to act for the

applicant in OC 36. The applicant did not immediately and directly engage a Singapore law firm to advise it on OC 36. The applicant had no presence of any sort in Singapore. The CMA was discussed, negotiated and signed by the applicant in the UK and was not preceded by any visit to Singapore or other business activity in Singapore. The applicant was established, regulated and operated in the UK. The regulated activity of arranging custody for the Pledged Shares took place in the UK and the applicant was conscious of the EJC and the governing law being English law. In these circumstances, the applicant's response to the Default Judgments entered against it in OC 36 was to instruct UK lawyers¹⁰. The respondents did not argue that it was unreasonable for the applicant to have done so.

94 Upon being engaged, Fieldfisher carried out work for the applicant and rendered its invoices to the applicant accordingly, which amounted to £337,971.55. The applicant explained that in BC 171 it claimed only that part of Fieldfisher's invoiced fees which were associated with the Singapore action (*ie.* OC 36) and this amounted to £200,315.81. The amount of £200,315.81 comprised £117,729.38 for work done in 2023 and up to 15 January 2024, £35,742.50 for work done for 22 January 2024 onwards, £13,457.96 for disbursements, and value added tax ("VAT") at 20% on the fees and disbursements amounting to £33,385.97.

95 The respondents asserted that Fieldfisher's invoices should have been claimed as legal fees and not "masqueraded as disbursements"¹¹. I found this language to be unnecessarily offensive and I also disagreed with the point being made by the respondents. Claiming foreign lawyers' fees, where applicable,

¹⁰ Affidavit of Gurmail Uppal paras 8, 16, 18 - 20

¹¹ Notice of Dispute p3 S/N 4; Respondents' submissions para 6.1

under Section 3 is quite normal (see, *McCullie v Butler* [1961] 2 WLR 1011 at p 1014). Indeed, it was my view that they could not be claimed under Section 1 but were correctly claimed under Section 3 much as one would claim, for example, the fees paid to a medical expert. The assistance a foreign lawyer provided to the Singapore court (leaving aside cases where they might have a right of audience) was that of an expert like any other expert. Even where the fees of an expert were claimed under Section 3, the court still exercised oversight of such fees. Naturally, the nature and extent of the oversight would depend on what kind of expert had been engaged, whether there were professional fee guidelines issued by the expert's industry, *etc.* But in any event claiming such foreign lawyer's fees under Section 3 did not mean that they would escape the court's scrutiny and I did not think that was the applicant's intention in doing so.

96 The parties agreed, and I accepted, that Fieldfisher's fees should be assessed according to the rules and in the way in which they would have been assessed in the UK (see, *Societa Finanziaria Industrie Turistiche SpA v Manfredi Lefebvre D'Ovidio De Clunieres Di Balsorano and another* [2006] EWHC 90068 (Costs) at [42]). In this regard, the parties appointed experts to opine on the fees which should be allowed for Fieldfisher. The applicant's expert was Mr Thomas George Mason ("**Mr Mason**") and the respondents' expert was Mr Philip Maximilian Daval-Bowden ("**Mr Daval-Bowden**"). Each of the experts filed a report.

97 Both experts referred to the UK Civil Procedure Rules (the "**CPR**"). Specifically, Rule 44.5 of the CPR states:

(1) Subject to paragraphs (2) and (3), where the court assesses (whether by summary or detailed assessment) costs which are payable by the paying party to the receiving party under the terms of a contract, the

costs payable under those terms are, unless the contract expressly provides otherwise, to be presumed to be costs which —

(a) have been reasonably incurred; and

(b) are reasonable in amount,

and the court will assess them accordingly.

(2) The presumptions in paragraph (1) are rebuttable. Practice Direction 44 — General rules about costs sets out circumstances where the court may order otherwise.

(3) Paragraph (1) does not apply where the contract is between a solicitor and client.

98 Rules 44.4(1)(b)(i) and (ii) of the CPR state that the court will have regard to all the circumstances in deciding whether the costs have been unreasonably incurred or are unreasonable in amount, if the court is assessing costs on the indemnity basis. Rule 44.3(3) of the CPR states that when costs are assessed on the indemnity basis, the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in the favour of the receiving party.

99 Rule 44.4(3) of the CPR further says that the court will also have regard to:

- (a) the conduct of all the parties, including in particular —
 - (i) conduct before, as well as during, the proceedings; and
 - (ii) the efforts made, if any, before and during the proceedings in order to try to resolve the dispute;
- (b) the amount or value of any money or property involved;
- (c) the importance of the matter to all the parties;
- (d) the particular complexity of the matter or the difficulty or novelty of the questions raised;
- (e) the skill, effort, specialised knowledge and responsibility involved;

- (f) the time spent on the case;
- (g) the place where and the circumstances in which work or any part of it was done; and
- (h) the receiving party's last approved or agreed budget.

100 I agreed with Mr Daval-Bowden that there are significant similarities between the test of reasonableness as applied in Singapore and as applied in the UK¹². However, the experts disagreed on two points which affected the determination of the amount to be allowed under Section 3 of BC 171 for Fieldfisher's fees.

101 First, Mr Mason said that because Fieldfisher's fees would be assessed according to the rules and procedure in the UK, and because the assessment was on the indemnity basis not the standard basis, and because the requirement of proportionality does not apply in the UK when assessment is on the indemnity basis, a proportionality assessment did not and could not apply¹³. Mr Daval-Bowden on the other hand (whilst agreeing that proportionality did not apply in the UK for indemnity costs) was of the view that the paying party could still argue that the fees were disproportionate or unreasonable¹⁴.

102 Second, Mr Daval-Bowden said that Appendix G ought also to be considered when deciding on the quantum of fees for Fieldfisher whereas Mr Mason disagreed¹⁵.

103 I did not agree with Mr Mason on the first point. The court retained oversight of all items claimed under Section 3 in accordance with our principles

¹² Mr Daval-Bowden's Report para 15

¹³ Mr Mason's Report para 80

¹⁴ Mr Daval-Bowden's Report paras 19 – 23

¹⁵ Mr Daval-Bowden's Report para 24; Mr Mason's Report para 81

of assessment on an indemnity basis. As such, even if proportionality was not a factor that was taken into account where costs were assessed on an indemnity basis in the UK, and even if Fieldfisher's fees should be assessed according to the rules and in the way in which they would have been assessed in the UK, that was simply a starting point which could not override the legislative provisions governing the assessment of costs in Singapore. Order 21 r 2(2)(g) of the Rules states that the court "*must* have regard to" the principle of proportionality [emphasis added]. As such, I was of the view that proportionality was a factor I should take into account when deciding how much to award for the fees of Fieldfisher.

104 I did not agree with Mr Daval-Bowden on the second point. The work done by Fieldfisher was not necessarily directly for the purposes of the three applications and this was evident from the affidavit filed by the applicant¹⁶. I will say more later about the work done by Fieldfisher. For present purposes I need only say that I did not consider Appendix G when assessing how much to award for Fieldfisher's fees.

Work agreed to be reasonable

105 Both experts agreed that certain aspects of the work done by Fieldfisher, as well as the time spent on such work, were reasonable. These included work done to compile a chronology and legal points in relation to material provided to Fieldfisher by the applicant, work done in relation to the requirements for service of Singapore court documents in the UK under relevant treaties and service conventions, input on the affidavit/s to be filed by the applicant in the Singapore proceedings, and input on the Belgian law advice. I accepted that all

¹⁶Affidavit of Gurmail Uppal paras 19 – 34

of that work, and the time spent, should be allowed and I will summarise at [124(a)] below how much was awarded for this item.

Work agreed to be unreasonable

106 Both experts agreed that certain aspects of the work done by Fieldfisher, as well as the time spent on such work, were unreasonable. These included work done in relation to a costs schedule and the costs to be claimed in the Singapore proceedings. I disallowed any fees for Fieldfisher for such work; for completeness, this amounted to £13,220 at the hourly rates used by Mr Mason and to £11,242 at the hourly rates used by Mr Daval-Bowden. I will explain at [121] below what hourly rates I allowed for Fieldfisher's work.

Work described as work for instructing counsel or 'solicitor and client' work or duplicated work

107 The applicant said that it was the respondents' decision to commence proceedings in the wrong jurisdiction (*ie.* Singapore) that required the applicant to utilise the services of two law firms, whereas the applicant would only have needed to engage Fieldfisher if the proceedings had been brought in the UK¹⁷. Whilst this was true, it did not meet the respondents' point that the applicant should have instructed the Singapore lawyers directly for the conduct of OC 36 rather than rely on Fieldfisher to do so, in which case there would only have been one law firm involved.

108 Mr Daval-Bowden said that Fieldfisher was essentially acting as the client and whilst this could be more convenient for the applicant, it was a luxury and it was not reasonable for the respondents to bear the costs for such work.

¹⁷ Affidavit of Gurmail Uppal para 25

Instead, the applicant could and should have dealt directly with the Singapore lawyers and thus borne the costs of proving its own case. Also, he said that there was duplication of work between Fieldfisher and the applicant's Singapore lawyers, for example when they reviewed the same affidavits or written submissions¹⁸.

109 In response, the applicant explained that Fieldfisher performed work that the Singapore lawyers could not, such as advising on English law¹⁹. Fieldfisher also:

- (a) took instructions from the applicant, including compiling factual material, and then instructed the applicant's Singapore lawyers;
- (b) reviewed draft correspondence, submissions and affidavits and provided input from an English law/litigation perspective;
- (c) advised on litigation strategy from an English law perspective²⁰.

110 The applicant argued that whilst it would have been possible for it to give instructions directly to the Singapore lawyers, the applicant and its Singapore lawyers would ultimately still have required input from Fieldfisher with regard to the application of English law and regulations on the relevant aspects of OC 36. As such, it was actually more efficient and cost-effective for the applicant to instruct the Singapore lawyers through Fieldfisher²¹.

¹⁸ Mr Daval-Bowden's Report paras 29 - 47

¹⁹ Affidavit of Gurmail Uppal para 22 - 23

²⁰ Affidavit of Gurmail Uppal paras 22 - 23

²¹ Applicant's submissions para 52

111 According to the applicant, because of the EJC, proceedings might in the future be commenced in the UK. Any submissions and arguments made in OC 36 could affect the applicant's position in any future UK proceedings. Submissions and arguments made in the course of OC 36 could also affect the applicant's rights and obligations under the CMA and the applicable regulatory requirements. It was therefore necessary for Fieldfisher to be involved and provide input throughout OC 36²².

112 The applicant said that there was no duplication of work in the sense of both Fieldfisher and the Singapore lawyers performing the exact same tasks. Whilst, for instance, the same affidavit would have been reviewed by both Fieldfisher and the Singapore lawyers, for the reasons already explained, both sets of lawyers were each looking out for different things²³.

113 Mr Mason said that certain aspects of the work done by Fieldfisher, as well as the time spent on such work, were reasonable. These included work done on the draft defence in the Singapore proceedings, input on and review of the written submissions for the Singapore proceedings, providing instructions to the Singapore lawyers, seeking documents and instructions from the applicant as requested by the Singapore lawyers, input on the affidavit/s for the Singapore proceedings, and input on issues of the collateral management fee and custody fees.

114 As noted at [93] above, the respondents did not take the position that it was unreasonable for the applicant to have engaged Fieldfisher, instead of engaging Singapore lawyers directly, at the inception of the matter. The

²² Affidavit of Gurmail Uppal para 23

²³ Applicant's submissions paras 43 - 48

question therefore became whether, having *already* engaged Fieldfisher, it was unreasonable for the applicant *not to* disengage from Fieldfisher and deal directly with the Singapore lawyers²⁴.

115 It appeared to me that the applicant's first port of call had been Fieldfisher for the reasons set out at [93] above and the applicant used Singapore lawyers because Fieldfisher could not undertake all the work that was necessary to defend the applicant and protect its rights in OC 36. I came to the view that it would not be unfair to also say that the applicant relied on Fieldfisher to ensure that nothing that happened in OC 36 would prejudice the applicant in any way, whether then or in the future, in the UK²⁵.

116 I broadly accepted the applicant's explanations for, and Mr Mason's analysis of, the distinct functions discharged by Fieldfisher and the Singapore lawyers and the work done by each of them respectively. I also agreed that in all the circumstances it was not unreasonable that the applicant declined to disengage Fieldfisher.

117 That being said, the applicant's need for Fieldfisher to be on board throughout the Singapore litigation was, to a not insignificant extent, also for its own comfort level and reassurance. I was of the view that it was unreasonable to make the respondents bear all the fees for such work. Accordingly, I applied a discount of 25% and allowed this work at 75%. I will summarise at [124(b)] below how much was awarded for this item.

Affidavit and exhibits

²⁴ Affidavit of Gurmail Uppal para 21

²⁵ Affidavit of Gurmail Uppal paras 19 – 34

118 The applicant had sought fees for Fieldfisher’s time spent on finalising a draft affidavit and exhibits to be filed in the Singapore proceedings. Mr Daval-Bowden accepted that these were reasonable but Mr Mason did not. I accepted Mr Mason’s opinion and disallowed the fees of Fieldfisher; for completeness, this amounted to £1,850 whether the hourly rates used by Mr Mason or by Mr Daval-Bowden were applied.

Inter-firm correspondence and interactions with the applicant

119 Fieldfisher had also spent time liaising between the Singapore lawyers and the applicant. Mr Daval-Bowden was of the view that the work done and time spent by Fieldfisher were unreasonable, but Mr Mason said that they should be allowed at 85%. Having accepted that it was not unreasonable for the applicant to continue using Fieldfisher as well as the Singapore lawyers, I allowed 85% of this item and I will summarise at [124(c)] below the amount that was awarded for this item.

Research and internal preparation

120 Finally there was a category of work done which Mr Daval-Bowden was of the view were reasonable, but Mr Mason was of the view should be allowed at 85%. This included research and work done within the team at Fieldfisher. I allowed this item at 85% and the amount I awarded is summarised at [124(d)] below.

Hourly rates

121 Having dealt in principle with the various categories of work as analysed by the respective experts, it was also necessary to consider the hourly rates to be applied for the work that was allowed in principle. Mr Mason explained that

in his view, it was reasonable for the applicant to have instructed a London firm such as Fieldfisher. As for the hourly rates, Mr Mason said that the starting point should be the Guideline Hourly Rates (the “**GHR**”) used in the UK, and specifically referred to the highest band of the GHR (“**London Band 1**”) plus an uplift for most of the lawyers assigned to the matter²⁶.

122 Mr Daval-Bowden disagreed; he pointed out that London Band 1 rates were for very heavy commercial and corporate work by centrally based London firms whereas London Band 2 was for less complex matters where the solicitors were based in the City of London and Central London. Mr Daval-Bowden noted that the hourly rates initially claimed by Fieldfisher for most of the lawyers assigned to the matter were higher than even the London Band 1 rates. He suggested that the appropriate rates would be a mid-point between London Band 1 and London Band 2 plus an uplift²⁷.

123 I agreed with Mr Daval-Bowden. The work done by Fieldfisher that was allowed for the purposes of the Singapore proceedings should necessarily be work that was supportive of the Singapore proceedings and I did not agree that the rates Mr Mason recommended should apply. Or, if a great deal of expertise was brought to bear because it was important to the applicant that the applicant’s interests in the UK should be protected, then, similar to my point at [117] above about the applicant’s comfort level and reassurance, that work should not be charged at the GHR recommended by Mr Mason.

124 I summarise below the categories and amounts I awarded for Fieldfisher’s work, using the rates put forward by Mr Daval-Bowden:

²⁶ Mr Mason’s Report paras 128 - 146

²⁷ Mr Daval-Bowden’s Report paras 60 - 68

- (a) Work that both experts agreed was reasonable (see [105] above): £28,194.
- (b) Work done that Mr Mason said was reasonable but Mr Daval-Bowden disagreed and I allowed at 75% (see [117] above): £31,880.33.
- (c) Work done that Mr Daval-Bowden said was unreasonable but Mr Mason said should be allowed at 85% and I allowed at 85% (see [119] above): £30,502.76.
- (d) Work done that Mr Daval-Bowden said was reasonable but Mr Mason said should be allowed at 85% and I allowed at 85% (see [120] above): £7,493.29.

125 The total figure I allowed for Fieldfisher's fees was £98,070.38 before VAT of 20%. Just on a rough and ready basis, using the rate that was publicly available on the website of the Monetary Authority of Singapore (S\$1.7194 / 1 £) when I delivered my decision to the parties on 6 May 2025, that would be about S\$168,622.21 before VAT of 20%. I was fully aware that the exchange rate would fluctuate but I wanted to make the observation that the total figure (before VAT) awarded to Fieldfisher was (absent any extreme swings in the exchange rate) less than the amount I had awarded under Section 1 for the applicant's Singapore lawyers (before GST) and I thought that such relative proportionality was correct. It was in line with the observation I made at [123] above, namely, that since this was an assessment of costs of a Singapore proceeding, whatever role the foreign lawyers played should be subordinate to the role of the Singapore lawyers at least in so far as a costs award for the Singapore proceeding was concerned, and the respective costs awards in the Singapore proceeding should correspondingly reflect that.

126 Fieldfisher also claimed disbursements of £12,910.21 that were fees for Fieldfisher (Belgium). Both experts said this was not unreasonable²⁸. I allowed disbursements of £12,910.21.

Issue 6: What was the impact of a contractual indemnity for costs which the applicant had received from another party?

127 Euro 1 had paid the applicant the sum of £244,000 pursuant to the contractual indemnity for costs that existed between Euro 1 and the applicant. The applicant relied on two decisions of the Federal Court of Australia, *Cristovao v Tan & Tan Lawyers Pty Ltd* [2018] FCAFC 41 (“*Cristovao*”) and *North Australian Aboriginal Legal Aid Service Inc v Bradley (No 2)* [2002] FCA 564 (“*NAALAS*”), in support of the proposition that Euro 1’s indemnity should not be considered in deciding the appropriate costs order which the applicant was entitled to from the respondents²⁹. The respondents did not dispute the legal principle cited by the applicant but simply asserted that the court should deduct the sum of £244,000 from whatever costs were awarded in BC 171 “so as to avoid double recovery”³⁰.

128 In *Cristovao*, the appellant claimed against his lawyers for professional negligence. The lawyers called on an insurance policy that funded the costs of defending the claim. The appellant’s claim was dismissed with costs. The appellant did not pay the costs and the lawyers took out bankruptcy proceedings against the appellant. The appellant argued that he could not have owed the costs which were awarded to the lawyers as the lawyers had been indemnified by their insurers and the insurers had already paid for the legal costs incurred by the

²⁸ Mr Daval-Bowden’s Report para 71; Mr Mason’s Report para 150

²⁹ Applicant’s submissions para 62

³⁰ Notice of Dispute Annex 1 para 45

lawyers. The court held that even if the lawyers had been indemnified for their costs by the insurers, the lawyers were still entitled to costs from the appellant (*Cristovao* at [40]).

129 The case of *NAALAS* involved an application to invalidate the appointment of the Chief Magistrate of the Northern Territory. The application failed but the applicant submitted that the Chief Magistrate was not entitled to any costs because the Northern Territory had already indemnified him. The court rejected this argument, noting that any arrangements in any given case for the payment of fees are a matter between the parties to those arrangements and are of no relevance when determining whether or not the successful litigant is entitled to costs (*NAALAS* at [104]).

130 In addition to asserting that the court should deduct the sum of £244,000 from whatever costs were awarded in BC 171 “so as to avoid double recovery”³¹, the respondents said that assuming that I awarded the applicant costs and disbursements in the amounts submitted by the respondents, setting off that award against the sum of £244,000 would result in a net negative amount being due to the applicant from the respondents on BC 171³².

131 I did not agree with the respondents. Euro 1’s obligation to indemnify the applicant co-existed with the respondents’ obligation to indemnify the applicant. The respective obligations arose independently of each other and were not contingent on each other. I accepted, as enunciated in *Cristovao* and *NAALAS*, that Euro 1’s indemnity should not be taken into account when

³¹ Notice of Dispute Annex 1 para 45

³² Respondents’ submissions para 2

assessing the costs which the applicant was entitled to from the respondents under BC 171. On that basis, there was no concept of a double recovery.

132 That being said, the applicant proposed to use the amount of £244,000 which the applicant had already received from Euro 1 to first defray the difference between the costs the applicant had incurred and the award in BC 171. Then, if there was any balance of the Euro 1 indemnity, that balance would be applied to defray the award in BC 171. Finally, if there was still a balance owed under BC 171, the applicant would look to the respondents to pay that.

133 The respondents, however, suggested that Euro 1's indemnity should be applied against the amount awarded in BC 171. I did not agree with the respondents. The respondents were still receiving the benefit of Euro 1's indemnity under the applicant's proposal and there was no principled reason to first apply the entire amount of Euro 1's indemnity against the award in BC 171.

134 I accepted the applicant's proposed manner of applying the Euro 1 indemnity. For easier understanding, I set out below the different outcomes that would result if the applicant's approach was applied as opposed to the respondents' approach. For simplicity, I used notional round figures in Singapore dollars.

	Applicant's approach		
1	Total costs incurred by the applicant	A	S\$900,000
2	Total amount assessed by the court	B	S\$600,000
3	Total costs incurred less the assessed amount. This sum represented the applicant's out-of-pocket costs	$C = A - B$	S\$300,000
4	Euro 1 Indemnity	D	S\$400,000
5	Euro 1 Indemnity less the applicant's out-of-pocket sum	$E = D - C$	S\$100,000

	for costs. This sum represented any remaining Euro 1 Indemnity amount after first satisfying the applicant's out-of-pocket costs		
6	Assessed amount less any remaining Euro 1 Indemnity amount. The respondents would pay this sum in costs to the applicant	$F = B - E$	S\$500,000
	Respondents' approach		
1	Amount assessed by the Court	A	S\$600,000
2	Euro 1 Indemnity	B	S\$400,000
3	Amount assessed less Euro 1 Indemnity amount. The respondents would pay this sum in costs to the applicant	$C = B - A$	S\$200,000

Conclusion

135 Parties had liberty to apply if they faced any difficulties working out the amounts to be set out when extracting the Registrar's Certificate.

136 I thank counsel for their assistance.

Gan Kam Yui
Assistant Registrar

Yeap Poh Leong Andre SC, Gan Eng Tong and Wayne Yeo (Yang Weien) (Rajah & Tann Singapore LLP) for the applicant;
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