

For discussion on
27 February 2012

**Legislative Council Panel on
Administration of Justice and Legal Services**

**The Interpretation of the Basic Law
by the Standing Committee
of the National People's Congress
in the Case
Democratic Republic of the Congo & Ors
v.
FG Hemisphere Associates LLC**

INTRODUCTION

This paper provides supplementary information requested by the Panel on Administration of Justice and Legal Services ("AJLS" Panel) of the Legislative Council in its letter to the Administration dated 17 October 2011 on several issues relating to the interpretation of the relevant provisions of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China ("HKSAR") by the Standing Committee of the National People's Congress ("NPCSC") in the case of *Democratic Republic of the Congo & Ors v. FG Hemisphere Associates LLC* (FACV 5-7/2010) ("the Congo case") before the Court of Final Appeal ("CFA"). The letter invites the Administration to elaborate on (a) the mechanism under the constitutional framework and the related procedure to be followed by the Court; (b) the considerations of CFA in making the judicial reference; and (c) the implications of the CFA's substantial decision on the judicial system of Hong Kong and the Court.

BACKGROUND

2. On judicial reference to the NPCSC, the relevant part of Article 158(3) of the Basic Law provides that:

"... if the courts of the Region, in adjudicating cases, need to interpret the provisions of this Law concerning affairs which are the responsibility of the Central People's Government, or concerning the relationship between the Central Authorities and the Region, and if such interpretation will affect the judgments on the cases, the courts of the Region shall, before making their final judgments, which are not appealable, seek an interpretation from the [NPCSC]..."

3. In its provisional judgment handed down on 8 June 2011 ("June judgment") in the *Congo* case, the CFA decided, by a majority, to refer four questions on the interpretation of Articles 13(1) and 19 of the Basic Law to the NPCSC under Article 158(3) of the Basic Law. The questions were:

- (1) whether on the true interpretation of Article 13(1), the Central People's Government ("CPG") has the power to determine the rule or policy of the People's Republic of China ("PRC") on state immunity;
- (2) if so, whether, on the true interpretation of Articles 13(1) and 19, the HKSAR, including the courts of the HKSAR:
 - (a) is bound to apply or give effect to the rule or policy on state immunity determined by the CPG under Article 13(1); or
 - (b) on the other hand, is at liberty to depart from the rule or policy on state immunity determined by the CPG under Article 13(1) and to adopt a different rule;
- (3) whether the determination by the CPG as to the rule or policy on state immunity falls within "acts of state such as defence and foreign affairs" in the first sentence of Article 19(3) of the Basic Law; and
- (4) whether, upon the establishment of the HKSAR, the effect of Article 13(1), Article 19 and the status of Hong Kong as a Special Administrative Region of the PRC upon the common law on state immunity previously in force in Hong Kong (that is, before 1 July 1997), to the extent that such common law was inconsistent with the rule or policy on state immunity as determined by the CPG pursuant to Article 13(1), was to require such common law to be applied subject to such modifications, adaptations, limitations or exceptions as were necessary to ensure that such common law is consistent with the rule or policy on state immunity as determined by the CPG, in accordance with Articles 8 and 160 of the Basic Law and the Decision of the NPCSC dated 23 February 1997 made pursuant to Article 160.

QUESTION (a) – THE MECHANISM UNDER THE CONSTITUTIONAL FRAMEWORK AND THE PROCEDURE ADOPTED BY THE COURT IN THE CONGO CASE

4. The procedures for judicial reference adopted by the CFA in the *Congo* case were set out in the paper provided by the Administration upon request for the House Committee meeting on 7 October 2011. For easy reference, the information is reproduced in paragraphs 5 to 13 below.

5. On the procedure to be followed on reference, the CFA in the June judgment took the view that the above questions "are to be referred by the Secretary for Justice through the Office of the Commissioner of the Ministry of Foreign Affairs to the Standing Committee", subject to any submissions which any party to the proceedings may wish to make on the above procedure within 7 days of the delivery of the judgment (paragraphs 408 and 414).

6. In light of the above decision by the CFA, the Secretary for Justice, as the Intervener in the *Congo* case, lodged written submissions with the CFA, stating that he stood ready to assist in the transmission of the letter for judicial reference under Article 158(3) of the Basic Law from the CFA to the NPCSC through the usual and proper channel for transmitting official documents by the Government of the HKSAR to state bodies in the Mainland,

provided that the letter was to be issued by the CFA and addressed to the NPCSC. The Secretary for Justice also submitted that in assisting the CFA in this regard he would be acting as no more than a conduit of official communication for passing on the letter of referral through the proper channel to the NPCSC for interpretation of the provisions concerned under Article 158(3) of the Basic Law. The above submissions were accepted by the CFA.

7. Pursuant to Article 158(3) of the Basic Law, and following its June judgment in the *Congo* case, the CFA referred the above four questions on the interpretation of Articles 13(1) and 19 of the Basic Law to the NPCSC in a letter dated 30 June 2011 addressed to the General Office of the NPCSC. The letter of referral and the supporting documents were delivered to the Secretary for Justice on the same date for transmission to the NPCSC through the usual channels.

8. In response to the CFA's request, the Secretary for Justice forwarded the letter of referral and the supporting documents to the Hong Kong and Macao Affairs Office of the State Council on 5 July 2011 for transmission to the NPCSC.

9. On 26 August 2011, upon the motion of the Council of Chairmen that the draft interpretation be examined by the NPCSC pursuant to the CFA's request, the NPCSC issued the *Interpretation of Paragraph 1, Article 13 and Article 19 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress* ("the Interpretation").

10. The Secretary for Justice was requested by the Hong Kong and Macao Affairs Office of the State Council to transmit the Interpretation to the CFA. On 30 August 2011, the Secretary for Justice transmitted the Interpretation to the CFA through the Registrar.

11. Upon receipt of the Interpretation, the CFA forwarded the Interpretation to the parties to the proceedings and proceeded to consider its judgment in the light of the Interpretation. On 8 September 2011, the CFA handed down its final judgment in the *Congo* case. The CFA considered that the June judgment was consistent with the Interpretation, and accordingly declared the judgment final.

12. On 16 September 2011, the Interpretation was published in the Gazette as L.N. 136 of 2011 (attached as **Annex A**).

13. No specific procedure is stipulated under the Basic Law or otherwise as to how a letter of referral by the CFA is to be transmitted to the NPCSC. Against this background, while the CFA saw it fit to transmit its letter of referral to the NPCSC in the *Congo* case in the manner mentioned above, it is open to the CFA to adopt a different transmission procedure in a future case, if it considers appropriate.

QUESTION (b) – THE CONSIDERATIONS OF THE CFA IN MAKING THE JUDICIAL REFERENCE

14. The considerations of the CFA in making the judicial reference are set out in paragraphs 394 to 408 of the June judgment. The CFA made reference to the previous occasions in which it had considered issues relating to Article 158(3) of the Basic Law. In

Ng Ka Ling v Director of Immigration (1999) 2 HKCFAR 4, the CFA held that, under Article 158(3), it had a duty to make a reference to the NPCSC if two conditions were satisfied:

- (a) “the classification condition”: if the provisions of the Basic Law in question
 - (i) concern affairs which are the responsibility of the CPG; or
 - (ii) concern the relationship between the Central Authorities and the Region (provisions in (i) and (ii) being referred to as “the excluded provisions”);
- (b) “the necessity condition”: if the CFA in adjudicating the case needs to interpret the excluded provisions and the interpretation will affect the judgment on the case.

15. In relation to the classification condition, the CFA adopted as the test: as a matter of substance what predominantly was the provision that had to be interpreted in the adjudication of the case? (“the predominant test”)

16. The CFA also held in *Ng Ka Ling* that once the classification and the necessity conditions were satisfied there was a duty to make a reference of the question of interpretation if it was “arguable” but not if it was “plainly and obviously bad”.

17. In the *Congo* case, the CFA was invited by Counsel for the China Railway defendants to reconsider the predominant test. However, the CFA did not consider that case to be an appropriate vehicle to reconsider that test. The CFA considered that the predominant test was of no relevance in the *Congo* case. It was applied in *Ng Ka Ling* where the scope of a non-excluded provision in the Basic Law was said to be qualified by reference to the scope of an excluded provision. In the *Congo* case, the CFA was of the view that the two Articles of the Basic Law on which the argument was centred were both excluded provisions. The first, Article 13, was a provision of the Basic Law concerning affairs which are the responsibility of the CPG. The second, Article 19, plainly concerned the relationship between the Central Authorities and the Region. Accordingly, there was no need to apply the predominant test.

18. The CFA also decided that this was not an occasion to re-visit the “arguability” threshold in relation to questions of reference. The CFA considered questions relating to Articles 13 and 19 clearly arguable. No other conclusion as to arguability was possible when regard was had to the conflicting views expressed in the courts below, particularly the division of opinion in the Court of Appeal. In addition, there was the division of opinion in the CFA.

19. In the result, the CFA held that the *Congo* case was not an appropriate vehicle to revisit the classification and the necessity conditions. There was no issue between the parties as to the classification condition. The only issue was whether the necessity condition was satisfied.

20. The CFA also held that the case could not be resolved without a determination of the questions of interpretation affecting the meaning of Articles 13 and 19 of the Basic Law, in particular in relation to the words “acts of state such as defence and foreign affairs”. It held that the necessity condition was therefore satisfied.

21. The CFA invited the parties in the *Congo* case to submit draft questions for a reference under Article 158(3) of the Basic Law. Having considered the draft questions put forward by the appellants and the Intervener, the CFA concluded that it was bound to make a reference under Article 158(3) of the Basic Law to the NPCSC of questions of interpretation of the Basic Law which involved Articles 13(1) and 19.

QUESTION (c) – IMPLICATIONS OF THE CFA’S SUBSTANTIAL DECISION ON THE JUDICIAL SYSTEM OF HONG KONG AND THE COURT

22. The CFA concluded, as confirmed by the Interpretation, that after China’s resumption of the exercise of sovereignty on 1 July 1997, the HKSAR could not, as a matter of legal and constitutional principle, adhere to a doctrine of state immunity which differed from that adopted by the PRC. The doctrine of state immunity practised in the HKSAR, as in the rest of China, was accordingly a doctrine of absolute immunity. It was not open to the courts of the HKSAR to adopt a legal doctrine of state immunity which recognized a commercial exception to absolute immunity.

23. This was a conclusion compelled by the very nature of the doctrine of state immunity, the status of Hong Kong as a Special Administrative Region of the PRC and the material provisions of the Basic Law.

24. Firstly, the CFA considered (at paragraphs 265-267) that the conferring or withholding of state immunity was plainly a matter which concerned relations between states, forming an important component in the conduct of a nation’s foreign affairs in relation to other States. Different states may, according to their own constitutional arrangements, allocate to different organs of government the responsibility for laying down the policy to be adopted on state immunity, including any exceptions to such immunity. The practice or doctrine of state immunity adopted in a unitary State applies uniformly to the whole State. There was nothing in the common law jurisprudence to suggest that a region or municipality forming part of a unitary State could establish its own state immunity practice at variance with that of the State to which it belonged.

25. Secondly, the status of the HKSAR as an inalienable part of China and as a local special administrative region of the Chinese state had been spelt out in Articles 1 and 12 of the Basic Law. The allocation of responsibility for foreign affairs on the CPG and the exclusion of foreign affairs from the sphere of autonomy of the HKSAR had been made clear by Article 13 of the Basic Law.

26. Thirdly, the common law position had been reinforced by the relevant provisions of the Basic Law. The CFA concluded, consistent with the NPCSC Interpretation, that under Article 13(1), the CPG had the power to determine the rule or policy of the PRC on state immunity; and that the determination by the CPG as to the rule or policy on state immunity fell within “acts of state such as defence and foreign affairs” in the first sentence of Article 19(3) of the Basic Law.

27. Further, the application of common law in the HKSAR was subject to such modifications, adaptations, limitations or exceptions as were necessary to ensure that such common law was consistent with the rule or policy on state immunity as determined by the CPG, in accordance with Articles 8 and 160 of the Basic Law and the Decision of the

Standing Committee of the National People's Congress dated 23 February 1997 made pursuant to Article 160.

28. As a result of this decision of the CFA, which was declared final by the CFA on 8 September 2011, a foreign state and its assets could not be the subject of legal proceedings before the HKSAR courts or any enforcement action in the HKSAR, unless the foreign state concerned agreed to submit to the jurisdiction of the HKSAR courts. The decision has resolved the uncertainty as to whether absolute or restrictive state immunity applies in the HKSAR from 1997.

29. Having regard to Article 158(3) of the Basic Law, the CFA considered it necessary to refer certain questions on Article 13(1) and Article 19 of the Basic Law to the NPCSC for interpretation before the CFA proceeded to make its final judgment on the case. In the end, the Interpretation confirmed the above findings of the CFA's June judgment.

30. It was the first time since China's resumption of the exercise of sovereignty on 1 July 1997 for the CFA to seek an interpretation of the relevant provisions of the Basic Law from the NPCSC pursuant to Article 158(3). The *Congo* case demonstrates the significance of Article 158 as a link between two different legal systems in the context of "one country, two systems". The CFA reaffirmed its constitutional duty to seek the NPCSC's interpretation if the requisite conditions were satisfied. The principles developed in the case of *Ng Ka Ling* (referred to in paragraph 14 above) were put into application.

31. The CFA's decision on the *Congo* case as discussed above is consistent with the constitutional order within the framework of the Basic Law, and plays an important role in deepening the HKSAR's constitutional law jurisprudence towards greater maturity.

CHRONOLOGY AND JUDGMENTS

32. In addition to the above three issues, the AJLS Panel's letter of 17 October 2011 also requested that the Administration provide a chronology of events in respect of the legal proceedings relating to the *Congo* case and the relevant judgment(s) of the CFA. A copy of the chronology is attached as **Annex B**. The provisional judgment of the CFA handed down on 8 June 2011 and the final judgment handed down on 8 September 2011 are available at the website of the Judiciary¹.

Department of Justice
February 2012

¹ The provisional judgment is available at
< http://legalref.judiciary.gov.hk/lrs/common/ju/ju_frame.jsp?DIS=76747>.
The final judgment is available at
< http://legalref.judiciary.gov.hk/lrs/common/ju/ju_frame.jsp?DIS=78113>.

Interpretation of Paragraph 1, Article 13 and Article 19 of the Basic Law of the
Hong Kong Special Administrative Region of the People's Republic of China
by the Standing Committee of the National People's Congress B3687

L.N. 136 of 2011

L.N. 136 of 2011

This is an English translation of the original instrument in Chinese and is published for information—

**Interpretation of Paragraph 1, Article 13 and Article 19
of the Basic Law of the Hong Kong Special
Administrative Region of the People's Republic
of China by the Standing Committee of
the National People's Congress**

Adopted by the Standing Committee of the Eleventh National
People's Congress at Its 22nd Session on 26 August 2011

The Standing Committee of the Eleventh National People's Congress examined at its Twenty-second Session the motion regarding the request for examination of *The Draft Interpretation of Paragraph 1, Article 13 and Article 19 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress* submitted by the Council of Chairmen. The motion of the Council of Chairmen was submitted upon the report by the Court of Final Appeal of the Hong Kong Special Administrative Region requesting the Standing Committee of the National People's Congress to interpret the relevant provisions of *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, in accordance with the provisions of Paragraph 3, Article 158 of the *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*.

The Court of Final Appeal of the Hong Kong Special Administrative Region needs to ascertain, in adjudicating a case involving the Democratic Republic of the Congo, whether the Hong Kong Special Administrative Region should apply the rules or policies on state immunity as determined by the Central People's Government.

For this purpose, in accordance with the provisions of Paragraph 3, Article 158 of *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, the Court of Final Appeal of the Hong Kong Special Administrative Region, seeks an interpretation from the Standing Committee of the National People's Congress on the following questions: "(1) whether on the true interpretation of Paragraph 1, Article 13, the Central People's Government has the power to determine the rule or policy of the People's Republic of China on state immunity; (2) if so, whether, on the true interpretation of Paragraph 1, Article 13 and Article 19, the Hong Kong Special Administrative Region (HKSAR), including the courts of the HKSAR: ① is bound to apply or give effect to the rule or policy on state immunity determined by the Central People's Government under Paragraph 1, Article 13; or ② on the other hand, is at liberty to depart from the rule or policy on state immunity determined by the Central People's Government under Paragraph 1, Article 13 and to adopt a different rule; (3) whether the determination by the Central People's Government as to the rule or policy on state immunity falls within 'acts of state such as defence and foreign affairs' in the first sentence of Paragraph 3, Article 19 of the Basic Law; and (4) whether, upon the establishment of the HKSAR, the effect of Paragraph 1, Article 13, Article 19 and the status of Hong Kong as a Special Administrative Region of the People's Republic of China upon the common law on state immunity previously in force in Hong Kong (that is, before 1 July 1997), to the extent that such common law was inconsistent with the rule or policy on state immunity as determined by the Central People's Government pursuant to Paragraph 1, Article 13, was to require such common law to be applied subject to such modifications, adaptations, limitations or exceptions as were necessary to ensure that such common law is consistent with the rule or policy on state immunity as determined by the Central People's Government, in accordance with Articles 8 and 160 of *the Basic Law* and the *Decision of the Standing Committee of the National People's Congress* dated 23 February 1997 made pursuant to Article 160." The above request for interpretation by the Court of Final Appeal of the Hong Kong Special Administrative Region complies with the provisions of Paragraph 3, Article 158 of *the*

Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.

In accordance with Subparagraph(4), Article 67 of the Constitution of the People's Republic of China and Article 158 of *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, and after consulting the Committee for the Basic Law of the Hong Kong Special Administrative Region under the Standing Committee of the National People's Congress, the Standing Committee of the National People's Congress, in relation to the request for interpretation by the Court of Final Appeal of the Hong Kong Special Administrative Region, hereby makes the following interpretation of the provisions of Paragraph 1, Article 13 and Article 19 of *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* and related issues:

1. On question (1) on which an interpretation is sought by the Court of Final Appeal of the Hong Kong Special Administrative Region. According to Subparagraph (9), Article 89 of *the Constitution of the People's Republic of China*, the State Council as the Central People's Government exercises the function and power to conduct the foreign affairs of the State; as the rules or policies on state immunity fall within diplomatic affairs in the realm of the foreign affairs of the state, the Central People's Government has the power to determine the rules or policies of the People's Republic of China on state immunity to be given effect to uniformly in the territory of the People's Republic of China. Based on the above, in accordance with the provisions of Paragraph 1, Article 13 of *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* that "[t]he Central People's Government shall be responsible for the foreign affairs relating to the Hong Kong Special Administrative Region", the conduct of the foreign affairs relating to the Hong Kong Special Administrative Region falls within the power of the Central People's Government. The Central People's Government has the power to determine the rules or policies on state immunity to be applied in the Hong Kong Special Administrative Region.

2. On question (2) on which an interpretation is sought by the Court of Final Appeal of the Hong Kong Special Administrative Region. According to the provisions of Paragraph 1, Article 13 of *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* and Article 1 of this Interpretation, the Central People's Government has the power to determine the rules or policies on state immunity to be applied in the Hong Kong Special Administrative Region. According to the provisions of Article 19 of *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* and Article 3 of this Interpretation, the courts of the Hong Kong Special Administrative Region have no jurisdiction over the act of the Central People's Government in determining the rules or policies on state immunity. Therefore, when questions of immunity from jurisdiction and immunity from execution of foreign states and their properties arise in the adjudication of cases, the courts of the Hong Kong Special Administrative Region must apply and give effect to the rules or policies on state immunity determined by the Central People's Government as being applicable to the Hong Kong Special Administrative Region. Based on the above, in accordance with the provisions of Paragraph 1, Article 13 and Article 19 of *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, the Hong Kong Special Administrative Region, including the courts of the Hong Kong Special Administrative Region, is under a duty to apply or give effect to the rules or policies on state immunity that the Central People's Government has determined, and must not depart from the abovementioned rules or policies nor adopt a rule that is inconsistent with the abovementioned rules or policies.

3. On question (3) on which an interpretation is sought by the Court of Final Appeal of the Hong Kong Special Administrative Region. State immunity concerns whether the courts of a state have jurisdiction over foreign states and their properties and whether foreign states and their properties enjoy immunity in the courts of a state. It directly relates to the state's foreign relations and international rights and obligations. Therefore, the determination as to the rules or policies

on state immunity is an act of state involving foreign affairs. Based on the above, “acts of state such as defence and foreign affairs” as stipulated in Paragraph 3, Article 19 of *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* includes the act of determination by the Central People's Government as to the rules or policies on state immunity.

4. On question (4) on which an interpretation is sought by the Court of Final Appeal of the Hong Kong Special Administrative Region. According to the provisions of Articles 8 and 160 of *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, the laws previously in force in Hong Kong shall be maintained only if there is no contravention of *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*. In accordance with the provisions of Paragraph 4 of the *Decision of the Standing Committee of the National People's Congress on Treatment of the Laws Previously in Force in Hong Kong in accordance with Article 160 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, such of the laws previously in force in Hong Kong which have been adopted as the laws of the Hong Kong Special Administrative Region shall, as from 1 July 1997, be applied subject to such modifications, adaptations, limitations or exceptions as are necessary so as to bring them into conformity with the status of Hong Kong after resumption by the People's Republic of China of the exercise of sovereignty over Hong Kong as well as to be in conformity with the relevant provisions of the Basic Law. The Hong Kong Special Administrative Region, as a local administrative region of the People's Republic of China that enjoys a high degree of autonomy and comes directly under the Central People's Government, must give effect to the rules or policies on state immunity as determined by the Central People's Government. The laws previously in force in Hong Kong relating to the rules on state immunity may continue to be applied after 1 July 1997 only if they comply with the above requirements. Based on the above, in accordance with the provisions of Paragraph 1, Article 13 and Article 19 of *the Basic Law of the Hong Kong Special Administrative Region of the*

Interpretation of Paragraph 1, Article 13 and Article 19 of the Basic Law of the
Hong Kong Special Administrative Region of the People's Republic of China
by the Standing Committee of the National People's Congress B3697

L.N. 136 of 2011

People's Republic of China, such of the laws previously in force in Hong Kong concerning the rules on state immunity which have been adopted as the laws of the Hong Kong Special Administrative Region according to the *Decision of the Standing Committee of the National People's Congress on Treatment of the Laws Previously in Force in Hong Kong in accordance with Article 160 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, when applied as from 1 July 1997, must be subject to such modifications, adaptations, limitations or exceptions as are necessary so as to be consistent with the rules or policies on state immunity that the Central People's Government has determined.

The Interpretation is hereby announced.

**CHRONOLOGY OF EVENTS IN RESPECT OF
THE LEGAL PROCEEDINGS RELATING TO THE CONGO CASE**

| Date | Events |
|-------------|---|
| 2003 | |
| Apr 30 | International Chamber of Commerce (“ICC”) arbitral awards made against the Democratic Republic of the Congo (“DRC”) in favour of Energoinvest for balance of sums due and unpaid in respect of loan agreements for construction of power lines in the DRC. |
| 2004 | |
| Nov 16 | Energoinvest assigned to FG Hemisphere (“Plaintiff”) benefit of all rights against the DRC under the ICC arbitral awards. |
| 2008 | |
| May 15 | The Plaintiff obtained an ex parte Order from Saw J of the Court of First Instance (“CFI”)(HCMP 928/2008). That Order, <i>inter alia</i> , (i) gave the Plaintiff leave to enforce the ICC arbitral awards against the DRC (sued as the 1 st Defendant) in the same manner as judgments of the Hong Kong Court; (ii) gave the Plaintiff leave to serve an originating summons and the order on the DRC out of the jurisdiction; and (iii) granted interim injunctions restraining three subsidiaries of the China Railway Group Limited (sued as the 2 nd , 3 rd and 4 th defendants) from paying the DRC US\$104 million by way of entry fees and restraining the DRC from receiving that sum from the China Railway subsidiaries. |
| May 16 | The Plaintiff issued an originating summons against the DRC and the China Railway subsidiaries as the 1 st to 4 th Defendants. |
| May 23 | Poon J continued the injunctions and gave directions. |
| Jul 7 | Reyes J replaced the various injunctions made against the 1st to 4th Defendants and granted fresh instructions restraining them until further order from receiving (in the case of the DRC) and making (in the case of the others) payments of the entry fees and granted the Plaintiff leave to effect substituted service of the order upon the DRC by service on the DRC’s solicitors in Hong Kong. |

| Date | Events |
|-------------|---|
| | DRC issued a summons, by which it sought a declaration that CFI had no jurisdiction over the DRC in respect of the subject matter of the claim or the relief or remedy sought in the proceedings; a declaration that the originating summons had not been served on the DRC; and for discharge of the various orders thus far made against the DRC. |
| Aug 23 | Chu J gave leave to amend the Originating Summons and to add China Railway Group Limited as the 5 th Defendant, dispensing with service of the Amended Originating Summons on the DRC and the 2 nd to 4 th Defendants. |
| Oct 31 | Master Lung gave leave for substituted service of Amended Originating Summons on Huen Wong & Co for the DRC. |
| Nov 12 | Secretary for Justice applied to intervene on the ground of public interest. |
| Nov 18 & 19 | Hearing of the Plaintiff's Originating Summons and the DRC's Summons before Reyes J. |
| Nov 20 | The Office of the Commissioner for Ministry of Foreign Affairs of the People's Republic of China in the HKSAR ("OCMFA") issued a letter to the Constitutional and Mainland Affairs Bureau of the HKSAR Government stating the principled position of the Central People's Government ("CPG") on the issue of state immunity ("the 1 st OCMFA Letter"). |
| Nov 21 | Secretary for Justice applied for leave to adduce the 1 st OCMFA Letter as new evidence. |
| Dec 2 | Reyes J allowed the 1 st OCMFA letter to be adduced and heard submissions on the weight to be attached to the letter. |
| Dec 12 | Reyes J declared that the court had no jurisdiction over the DRC in the proceedings; and, <i>inter alia</i> , discharged the <i>ex parte</i> injunction against the DRC dated 16 May 2008. |
| Dec 16 | Summons by 2 nd to 5 th Defendants to discharge injunction and dismiss the Amended Originating Summons. |

| Date | Events |
|---------------------|--|
| Dec 18 | The Plaintiff filed the Notice of Appeal against Order of Reyes J dated 12 December 2008 (CACV 373/2008). |
| 2009 | |
| Jan 6 | Intervener filed Respondent's Notice (CACV 373/2008). |
| Jan 8 | 1 st Defendant filed the Notice of Cross-appeal and additional grounds (CACV 373/2008). |
| Jan 21 | 2 nd to 5 th Defendants filed the Respondents' Notice (CACV 373/2008). |
| Feb 26 | Reyes J discharged the injunctions against the 2 nd to 5 th Defendants and dismissed the Defendants' Originating Summons as amended. |
| | Reyes J stayed the orders for discharge of injunctions, setting aside of leave as to service, and dismissal of the Originating Summons pending the Plaintiff's appeal. |
| Mar 4 | The Plaintiff filed Notice of Appeal against Order of Reyes J dated 26 February 2009 (CACV 43/2009). |
| Mar 10 | Rogers VP directed that the two appeals (CACV 373/2008 & CACV 43/2009) be heard at the same time. |
| May 21 | OCMFA issued the 2 nd letter explaining the CPG's position on the issue of state immunity in the light of the PRC's signature of the United Nations Convention on Jurisdictional Immunities of States and Their Property. |
| Jun 26 | The DRC filed Supplemental Notice of Cross Appeal (CACV 373/2008). |
| Jul 7 | The Plaintiff filed Amended Notice of Appeal (CACV 373/2008). |
| Jul 28-31 & Aug 3-4 | Hearing before Stock VP, Yeung JA and Yuen JA of the Court of Appeal (CACV 373/2008 & CACV 43/2009). |
| 2010 | |
| Feb 10 | CA judgment handed down, allowing the Plaintiff's appeals by a |

| Date | Events |
|--------|---|
| | majority (with Yeung JA dissenting) and restoring Saw J's order subject to a remitter to CFI. By that majority, CA held that the DRC enjoyed restrictive but not absolute immunity. |
| Mar 9 | The DRC filed the Notice of Motion for Leave to Appeal to the Court of Final Appeal ("CFA") from the judgment of CA in CACV 373/2008 & CACV 43/2009. |
| Mar 10 | 2 nd to 5 th Defendants, the Intervener and the Plaintiff filed their respective Notices of Motion for Leave to Appeal to CFA from the judgment of CA in CACV 373/2008 & CACV 43/2009. |
| Apr 21 | Hearing before Stock VP, Yeung JA and Yuen JA on the applications for leave to appeal to CFA. |
| May 5 | CA handed down judgment granting leave to appeal to CFA. |
| May 12 | The Intervener filed Notice of Appeal (FACV 5/2010). |
| May 24 | The DRC filed Notice of Appeal (FACV 6/2010). |
| Jun 8 | The 2 nd to 5 th Defendants filed Notice of Appeal (FACV 7/2010). |
| Jun 30 | <p>The DRC filed its Written Case ("Case").</p> <p>The DRC filed a Notice of Motion asking CFA to consider and decide (i) whether or not Article 158 of the Basic Law required the seeking of an interpretation of Articles 8, 13 and 19 of the Basic Law from the NPCSC and (ii) whether or not Article 19 of the Basic Law required that the Chief Executive of the HKSAR issue a certificate in respect of the contents of the 2 letters from the CPG which were referred to in CA judgment.</p> |
| Jul 19 | Registrar of CFA directed that the Notice of Motion filed by the DRC on 30 June 2010 be heard in the substantive appeal fixed for March 2011. |
| Aug 25 | The OCMFA issued the 3 rd letter ("the 3 rd OCMFA Letter") which <i>inter alia</i> reiterated the position of the CPG on state immunity. |
| Aug 31 | The DRC filed its Amended Case. |

| Date | Events |
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| Sept 7 | <p>Case for the 2nd to 5th Defendants was filed.</p> <p>The Intervener's Case was filed.</p> <p>The Intervener applied for leave to adduce the 3rd OCMFA Letter as further evidence.</p> <p>2nd to 5th Defendants filed a Notice of Motion asking CFA to consider and decide whether or not Article 158 of the Basic Law required the seeking of an interpretation of Article 13 of the Basic Law from the NPCSC.</p> |
| Sept 8 | Registrar of CFA directed that the Notice of Motion filed by the 2 nd to 5 th Defendants on 7 September 2010 be heard at the same time with the substantive appeal on 21 March 2011. |
| Nov 8 | The Plaintiff's Case was filed. |
| Nov 30 | The DRC filed its Supplemental Case. |
| 2011 | |
| Jan 25 | The Intervener's Supplemental Case was filed. |
| Feb 8 | The Supplemental Case for the 2 nd to 5 th Defendants was filed |
| Mar 14 | The Plaintiff's Supplemental Case was filed. |
| Mar 15 | The Intervener's Amended Supplemental Case was filed. |
| Mar 21-25, 28 & 29 | Hearing before Bokhary PJ, Chan PJ, Ribeiro PJ, Mortimer NPJ and Mason NPJ (FACV 5-7/2010). |
| Mar 31 | At the invitation of CFA, written submissions filed by (i) the 2 nd to 5 th Defendants; (ii) the Intervener and (iii) the DRC respectively with the draft questions to be referred to the NPCSC. |
| Jun 8 | CFA handed down provisional judgment. By a majority (with Bokhary PJ and Mortimer NPJ dissenting), CFA decided provisionally that the DRC enjoyed absolute immunity. By that majority, CFA decided to refer four questions on the interpretation of |

| Date | Events |
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| | Articles 13(1) and 19 of the Basic Law to the NPCSC. |
| Jun 30 | CFA referred four questions on the interpretation of Articles 13(1) and 19 of the Basic Law to the NPCSC. |
| Aug 26 | NPCSC issued its interpretation. |
| Sept 8 | CFA handed down final judgment, declaring the provisional judgment final. |
| Sept 16 | NPCSC's interpretation published in the Gazette as L.N.136 of 2011. |