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17 and Debtor-in-Possession

18 **IN THE UNITED STATES DISTRICT COURT**

19 **FOR THE NORTHERN MARIANA ISLANDS**

20 **BANKRUPTCY DIVISION**

21 In re
22 IMPERIAL PACIFIC INTERNATIONAL
23 (CNMI), LLC

24 Debtor and
25 Debtor-in-possession

Case No. 24-00002
(Chapter 11)

26 **MOTION FOR ORDER AUTHORIZING DEBTOR TO OBTAIN POSTPETITION**
27 **LITIGATION FUNDING; EXHIBIT “A”; DECLARATION OF HOWYO CHI;**
28 **DECLARATION OF KELVEN WONG**

Imperial Pacific International (CNMI), LLC, debtor and debtor-in-possession (the
“Debtor”), hereby moves this Court, pursuant to 11 U.S.C. §§ 105 and 364(c)(2), and



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1 Federal Rule of Bankruptcy Procedure 4001(c) and LBR 4001-2, for an order authorizing
 2 the Debtor to incur post-petition secured financing (“Litigation Financing”) substantially
 3 on the terms set forth in Exhibit “A” hereto.

4 Specifically, the Debtor seeks:

5 1. Entry of an order granting authority to obtain post-petition financing
 6 pursuant to section 364(c)(2) of the Bankruptcy Code, to fund the Debtor’s collection
 7 case against Chan, Chi Hung for US\$1,446,1884.40, through a post-petition loan of up to
 8 HK\$1,420,000.00¹ from Kangyi Software Limited (the “Litigation Lender”), pursuant to
 9 the terms set forth in the proposed Litigation Funding Agreement (the “LFA”) which is
 10 attached hereto as Exhibit “A.”
 11

12 **JURISDICTION**

13 2. This Court has jurisdiction to consider this motion pursuant to 28 U.S.C.
 14 §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is
 15 proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
 16

17 **I. BACKGROUND**

18 3. On or about June 10, 2015, the Debtor commenced a collection action (the
 19 “HK Action”) before the High Court of Hong Kong (“HCA”), against Chan, Chi Hung
 20 for (a) US\$1,446,184.40; or an order for payment of US\$1,500,000; (b) prejudgment
 21 interest; and (c) costs. Hong Kong solicitors KCL & Partners (“KCL”) represents the
 22 Debtor in the HK Litigation.²
 23

24 4. In March, 2020, the Debtor was forced to cease casino operations due to
 25
 26

27 ¹ As of January 6, 2025, HK\$1,420,000 is equivalent to approximately US\$182,639.00.

28 ² An Application to Employ KCL was filed as ECF 347.

the COVID-19 pandemic. Since then, the Debtor has had no revenues.

5. On April 19, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code.

6. The Debtor continues to manage its properties, affairs and assets as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

7. On May 14, 2024, the UST appointed a Committee of Unsecured Creditors (the “Committee”) consisting of Hughes Hubbard & Reed LLP, DFK Limited, and Corrado Modica.

8. Trial in the HK Action is scheduled for June 16 – 25, 2025.

9. The Debtor requires financing to fund the costs of trial.

II. DEBTOR’S NEED FOR POSTPETITION FINANCING

10. The Debtor has not been able to obtain financing to pay the fees and expenses of counsel to litigate its claims against Mr. Chan.³

11. The significant terms of the LFA are as follows:⁴

- (a) Borrower: IMPERIAL PACIFIC INTERNATIONAL (CNMI), LLC.
- (b) DIP Lender: Kangyi Software Limited.
- (c) Funding Amount: HK\$1,420,000.00.
- (d) Interest Rate: Simple interest at the rate of 0.0% per annum shall accrue.
- (e) Investment Return: Sixty (60) percent interest in the net Litigation Proceeds after the repayment of the original Funding Amount, and payment of legal fees (including legal expenses) incurred in litigating the HK Action.

³ At the outset of the case, the Debtor obtained an unsecured DIP loan for \$1.4 million Loi Lam Sit which was recently fully funded.

⁴ Capitalized terms in this summary not otherwise defined herein shall have the meanings ascribed to such terms in the LFA.

1 (f) Use of Proceeds. The DIP Credit Facility shall be used to pay for litigation
2 expenses incurred by the Debtor in pursuing claim against Chan Chi Hung
in the Hong Kong Court.

3 (g) Security: The DIP Credit Facility shall be secured by an assignment of the
4 interest up to 60% of the Litigation Proceeds after repayment of the
Funding Amount.

5 (h) Covenants. Usual and customary for facilities of this nature, including the
6 organization, qualification and due authorization of the Borrower.

7 12. The Debtor believes that the Funding Amount is reasonable as the LFA
8 will allow the Debtor to finance fees and costs reasonably necessary to prosecute the HK
9 Action to conclusion.

10 **III. THE LITIGATION FUNDING SHOULD BE APPROVED**

11 13. The Debtor has already invested (pre-petition) substantial funding to prosecute
12 the HK Action. Unfortunately, without assurance of payment, KCL will likely seek to
13 withdraw from the HK Action and the Debtor could forfeit the approximately \$200,000
14 in Security for Costs that was deposited with the court to assure payment of defense costs
15 and enable the Debtor to preserve and enhance the value of its estate for the benefit of all
16 parties in interest. Accordingly, the timely approval of the relief requested herein is
17 imperative.
18

19
20 14. The LFA contemplates a loan to the Debtor (to be paid to HK counsel as a
21 post-petition retainer) which would be secured solely by the proceeds of the HK Action.
22 Section 364(c) of the Bankruptcy Code provides, among other things, that if a debtor is
23 unable to obtain unsecured credit allowable as an administrative expense under section
24 503(b)(1) of the Bankruptcy Code, the court may authorize the debtor to obtain credit or
25 incur debt (a) with priority over any and all administrative expenses as specified in
26 sections 503(b) or 507(b) of the Bankruptcy Code, (b) secured by a lien on property of
27
28

1 the estate that is not otherwise subject to a lien, or (c) secured by a junior lien on property
2 of the estate that is subject to a lien. *See* 11 U.S.C. § 364.

3 15. This estate is administratively insolvent and the Debtor has not been able
4 to find financing for the HK Action on terms better than those proposed by the Litigation
5 Lender.

6 16. Provided that a debtor's business judgment does not run afoul of the
7 provisions of, and policies underlying, the Bankruptcy Code, courts grant a debtor
8 considerable deference in acting in accordance therewith. *See, e.g., In re Snowshoe Co.*,
9 789 F.2d at 1088; *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990)
10 (“cases consistently reflect that the court's discretion under section 364 is to be utilized
11 on grounds that permit reasonable business judgment to be exercised so long as the
12 financing agreement does not contain terms that leverage the bankruptcy process and
13 powers or its purpose is not so much to benefit the estate as it is to benefit parties in
14 interest”); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah
15 1981); *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (D. Colo. 1985).

16 17. The Debtor submits that the circumstances of this case require that the
17 Debtor obtain financing under section 364(c)(2) of the Bankruptcy Code, and that the
18 exercise of the Debtor’s sound business judgment should be respected.

19
20
21
22 **IV. CONCLUSION**

23 WHEREFORE, the Debtor respectfully requests that the Court grant the Motion,
24 and enter an order: (a) authorizing the Debtor to enter into the Litigation Funding
25 Agreement substantially on the terms attached hereto on a final basis and authorizing the
26 Debtor to borrow up to HK\$1,420,000.00 from the Litigation Lender; and (b) granting
27 such other relief as the Court deems fair and just.
28

DATED: January 16, 2025

/s/ Chuck C. Choi

CHUCK C. CHOI

ALLISON A. ITO

CHARLES McDONALD

Attorneys for Debtor

and Debtor-in-Possession

EXHIBIT A

THIS LITIGATION FUNDING AGREEMENT (the “**Agreement**”) is made on January __, 2025 among Imperial Pacific International (CNMI), LLC, located at PO Box 504041, Saipan, MP 96950 (the “**Company**”); and Kangyi Software Limited, located at Unit 803, 8/F, Shanghai Industrial Investment Building, 48-62 Hennessy Road, Wan Chai, Hong Kong (the “**Investor**”) (collectively called the “**Parties**”). This Agreement is subject to Bankruptcy Court approval.

WHEREAS

- (A) On 10 January 2015, the Company commenced a legal action under HCA 75/2018 (the “**Litigation**”) against Chan Chi Hung (the “**Defendant**”). As stated in the Amended Statement of Claim dated 2 August 2022, the Company claimed against the Defendant for (a) the sum of US\$1,446,184.40; or (b) an order for payment by the Defendant to the Company of US\$1,500,000; and (c) interest (collectively called the “**Litigation Proceeds**”); and (d) any costs assessed against Defendant. Messrs. KCL & Partners (the “**Solicitors**”) act for the Company in the Litigation.
- (B) The pre-trial review of the Litigation is scheduled to be heard on 21 March 2025 (60 minutes reserved) and the trial of the Litigation is scheduled to be heard from 16 June 2025 to 25 June 2025 (8 days reserved).
- (C) Pursuant to the Order dated 21 June 2021 and 15 December 2023, the Company paid HK\$600,000 and HK\$1,200,000 into court on 11 June 2021 and 11 January 2024 respectively, for a total sum of HK\$1,800,000 (“**Security for Costs**”) in compliance with the order of Master Lai dated 9 June 2021 and the order of Master Connie Lee dated 15 December 2023.
- (D) The Solicitors instructed barrister Mr. Ronald Pang to attend the pre-trial review and the trial. It is estimated that the total legal costs for the pre-trial review and the trial (excluding expert fees estimated to be about HK \$120,000) will be between HK\$1,300,000 and HK\$2,100,000 (the “**Legal Costs**”).
- (E) The Company filed a voluntary petition on 19 April 2024 under Chapter 11 of the United States Bankruptcy Code in the United States District Court for the Commonwealth of the Northern Mariana Islands, Bankruptcy Division (the “**Bankruptcy Court**”) with the case number BK24 00002. Mr. Howyo Chi, who is the manager of the Company, is appointed as the administrator of the Company, being the debtor in possession for and on behalf of all creditors of the Company, (the “**Administrator**”) with a full authority to act for and on behalf of the Company in all matters, including entering into, signing and executing this Agreement for and on behalf of the Company, subject to Bankruptcy Court approval.
- (F) The Administrator and the Company have requested funding to prosecute the Litigation and the Investor is willing to provide funding in the sum of HK\$1,420,000 to the Company exclusively to finance the cost of litigation, including but not limited to Legal Costs (the “**Litigation Expenses**”). The total funding covers both the pre-trial review and the trial and any enforcement action.
- (G) The Parties agree that the funding provided by the Investor is of a speculative nature, and the Investor has the right to receive investment returns as stipulated in this Agreement.

NOW THEREFORE, in consideration of the promises contained herein, and for other consideration, the Parties hereby agree to be bound as follows:

1. FUNDING

- 1.1. Within ten (10) business days from the date of this Agreement is approved by the Bankruptcy Court, the Investor shall pay the Company HK\$1,420,000 (the “**Funding Amount**”) as Litigation Expenses, to be remitted to the Solicitors’ bank account (as referred to in clause 1.2 below (“**Solicitors Bank Account**”)) or deposited the cheque directly into the Solicitors Bank Account (or by such other payment method as the Solicitors may agree).
- 1.2. The details of the Solicitors Bank Account are as follows:

Bank: The Hong Kong and Shanghai Banking Corporation Ltd
Account name: KCL & Partners
Bank code: HSBCHKHHHKH
Account number: 652-557489-001
- 1.3. The Company shall use the Funding Amount exclusively for Litigation Expenses, and any Funding Amount and remaining Funding Amount (if any) after the Agreement becomes effective shall not be recoverable until the final resolution as set forth in Clause 6.1.1 below is achieved.
- 1.4. Under no circumstances shall the Investor have any obligation to pay any sums awarded against the Company, including fees, costs or awards, nor shall the Investor be otherwise liable for any obligations of the Company to the Defendant in respect of the Litigation.
- 1.5. In consideration for the payment of the Funding Amount to the Company, the Company hereby agrees that the Investor shall be entitled to an additional sixty (60) percent interest in the net Litigation Proceeds (the “**Investment Returns**”) after the repayment of the Funding Amount. The sequential payments from the Litigation Proceeds shall be as follows: (i) the full Funding Amount shall be paid; (ii) any outstanding legal fees including the Legal Costs shall be paid; (iii), sixty (60) percent of the remaining net Litigation Proceeds shall be paid to the Investor as Investment Returns.
- 1.6. The Company agrees that if it prevails in the Litigation, the Investor shall have the right to receive its loan from the Security for Costs first as the repayment of the Funding Amount.

2. RECEIPT OF LITIGATION PROCEEDS

- 2.1. Any and all Litigation Proceeds shall be deposited into a Solicitors’ client bank account (the “**Trust Account**”) which shall not be commingled with any other funds that are not Litigation Proceeds, and be disbursed in accordance with this Agreement.

3. APPLICATION OF LITIGATION PROCEEDS

- 3.1. Subject to Bankruptcy Court approval, the Company shall, within forty-two (42) days from the date of receiving the Litigation Proceeds, issue written instructions to the Solicitors through the Administrator to make sequential payments from the Trust Account as follows: (i) the Funding Amount or the balance thereof; (ii) any amounts including the Legal Costs owed by the Company to the Solicitors; (iii) Investment Returns; (iv) any remaining Litigation Proceeds (if any) to be paid to the Company. If no Litigation Proceeds are obtained from the Litigation, the Investor may only make a claim against the Company's assets as an administrative creditor for the Funding Amount. In the event that the Funding Amount is not fully compensated, the Investor may also only make a claim against the Company as an administrative creditor.

4. SETTLEMENT

- 4.1. Subject to Bankruptcy Court approval, the Company shall have the sole and exclusive right to settle the Litigation on whatever terms it deems acceptable, but must prioritize repaying the Funding Amount and any outstanding legal fees. The Company commits to paying the Investor no less than sixty (60) percent of the remaining settlement amount as the Investment Returns, after fully repaying the Funding Amount and legal fees including the Legal Costs.

5. ADDITIONAL COVENANTS OF THE COMPANY

- 6.1. At all times during the term of this Agreement, the Company shall:
- 6.1.1. remain a party to the Litigation until the resolution of Litigation which substantially concludes the Litigation with respect to the Company pursuant to (i) a final, non-appealable, legal and valid judgment of the court in Hong Kong, or (ii) a settlement agreement between the Company and the Defendant (the “**Final Resolution**”);
 - 6.1.2. promptly enforce any judgment obtained in order to receive the Litigation Proceeds and costs;
 - 6.1.3. keep the Investor fully and continually informed of all material developments with respect to the Litigation.
- 6.2. The Company’s representations and warranties to the Investor in this Agreement shall remain true, correct and complete at all times during the term of this Agreement.

6. REPRESENTATIONS AND WARRANTIES

- 7.1. The Investor represents, warrants and acknowledges to the Company, as of the date hereof, that:
- 7.1.1. It has full right, power and authority, and has taken all action necessary, to execute and deliver this Agreement, and to perform its obligations hereunder;
 - 7.1.2. This Agreement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms;
 - 7.1.3. The Investor has received and reviewed the documents referred to in the Schedule (the “**Documents**”) and has the right to request the Company to provide further documents (if necessary), and has obtained independent legal advice in connection with the Documents and this Agreement and, on the basis of that advice, is entering into this Agreement.
- 7.2. The Administrator for and on behalf of the Company must sign this Agreement within fourteen (14) days after the Investor’s execution of this Agreement and obtain approval from the United States Bankruptcy Court for the Commonwealth of the Northern Mariana Islands (the “**Federal Court**”) for this Agreement within 21 days after the Investor’s execution of this Agreement.

7. DURATION OF AGREEMENT

- 8.1. This Agreement commences on the date hereof and, absent Termination, continues in effect until:
- 8.1.1. Final Resolution; and
 - 8.1.2. The Administrator and/or the Company have complied with all of its obligations pursuant to this Agreement.

8. TERMINATION

- 9.1. This Agreement will expire and terminate upon:
- 9.1.1. Repayment of the Funding Amount and the Investment Returns to the Investor under this Agreement (if any); or
 - 9.1.2. Final Resolution but No Litigation Proceeds are obtained from the Litigation.

9. INDEMNIFICATION

10.1. The Company agrees to indemnify, defend, and hold harmless the Investor, its affiliates, and their respective officers, directors, employees, and agents from and against any and all losses, liabilities, claims, damages, costs, and expenses arising out of or in connection with:

10.1.1. Any breach of this Agreement by the Company;

10.1.2. Any misrepresentation made by the Company in connection with this Agreement;

10.2. The Investor agrees to indemnify, defend, and hold harmless the Administrator and the Company and its affiliates and their respective officers, directors, employees, and agents from and against any and all losses, liabilities, claims, damages, costs, and expenses arising out of or in connection with:

10.2.1. Any breach of this Agreement by the Investor;

10.2.2. Any misrepresentation made by the Investor in connection with this Agreement.

10.3. The indemnified party shall promptly notify the indemnifying party of any claim for which indemnity is sought. Failure to provide such notice shall not relieve the indemnifying party of its indemnification obligations, except to the extent that the indemnifying party is materially prejudiced by such failure.

10. LITIGATION RISK ASSESSMENT

11.1. The Solicitors represents the Company solely in the Litigation and has no legal responsibility or obligation to the Investor.

11.2. The Investor understands that the Company cannot guarantee or control the outcome of the Litigation.

11.3. After the Investor has sought and obtained independent legal advice, it is clearly understood that litigation inherently carries risks, including but not limited to the possibility that the Company may not be able to provide any evidence to the court (including witness failing to appear in court to testify), resulting in a judgment or ruling against the Company, and/or the Company receiving a judgment for the claims that is lower than the Litigation Proceeds, and/or obtaining a favorable judgment, but the Defendant is unable to pay any or all of Litigation Proceeds, or to satisfy or discharge the favorable judgment etc.

11. THIRD PARTY

12.1. A person who is not a party to this Agreement cannot enforce, or enjoy the benefit of, any term of this Agreement. Notwithstanding the previous sentence, the Parties expressly agree that the Solicitors are entitled to enforce and otherwise enjoy the benefit of this Agreement.

12. GOVERNING LAW

13.1. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of the Northern Marianas Islands and US federal bankruptcy law. The Parties agree that the Bankruptcy Court will have exclusive jurisdiction to resolve any disputes arising from or related to this Agreement.

13. GENERAL

14.1. This Agreement shall constitute the entire agreement between the parties, and shall supersede all prior agreements, understandings and negotiations between the parties with respect to the subject matter hereof.

14.2. Neither party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld.

14.3. This Agreement shall not be amended, and no term or provision of this Agreement may be waived, except in writing signed by a duly authorized representative of each party.

14. NOTICE

15.1. Any notice, demand, or communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally, sent by registered or certified mail, return receipt requested, or sent by electronic mail (email) to the addresses set forth below:

To the Investor:

Manager of Kangyi Software Limited
Address: Unit 803, 8/F, Shanghai Industrial
Investment Building, 48-62
Hennessy Road, Wan Chai, Hong
Kong

Email address: michaelma2023@aliyun.com

To the Company:

Imperial Pacific International (CNMI), LLC
Address: PO Box 504041, Saipan, MP 96950
Email address: Howyoding@gmail.com
And: cchoi@hibklaw.com

15.2. Any notice shall be deemed effective upon receipt if delivered personally or by email, or seven (7) days after being sent by registered or certified mail.

15.3. Either party may change its address for notice purposes by giving written notice of such change to the other party in accordance with this clause.

15. COUNTERPARTS

16.1. This Agreement may be signed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written by their respective duly authorized representatives.

SIGNED by Howyo Chi, the)
Administrator of the Company and the)
Debtor in Possession for and on behalf of)
all creditors of the Company, for and on)
behalf of Imperial Pacific International)
(CNMI), LLC)
)

in the presence of:

SIGNED by)
)
)
for and on behalf of Kangyi Software)
Limited)
)

in the presence of:

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE NORTHERN MARIANA ISLANDS**
3 **BANKRUPTCY DIVISION**
4

5 In re	Bk. No. 24-00002
6 IMPERIAL PACIFIC INTERNATIONAL	(Chapter 11)
7 (CNMI), LLC,	
8 Debtor and Debtor-in-Possession.	

9
10 **DECLARATION OF HOWYO CHI**

11 I, HOWYO CHI, hereby declare under penalty of perjury, that:

12 1. I am the manager of Imperial Pacific International (CNMI), LLC, debtor
13 and debtor-in-possession herein (the “Debtor”).
14

15 2. Except as otherwise indicated, the facts set forth in this Declaration are
16 based upon my personal knowledge of the Debtor’s business operations, my review of
17 relevant business records of the Debtor, and other information provided to me or verified
18 by other consultants under my direction and control. Unless otherwise indicated, the
19 financial information contained in this Declaration is unaudited. However, I am not
20 aware of any information contained herein that is inaccurate.
21

22 3. I make this Declaration in support of *Motion for Order Authorizing Debtor*
23 *To Obtain Postpetition Litigation Funding* (the “Motion”). Capitalized terms not herein
24 defined shall have the meaning set forth in the Motion.
25

26 4. I have reviewed the facts set forth in the Motion regarding the Debtor and
27 they are true to the best of my knowledge and belief.
28

1 5. Attached to the Motion as Exhibit A is a true and correct copy of the
2 proposed Litigation Funding Agreement, in substantially final form.

3 6. The Debtor is unable to obtain unsecured credit on an administrative basis.

4 7. I believe that the terms of the proposed financing are reasonable under the
5 circumstances and that the Debtor cannot find financing on better terms due to under the
6 circumstances.

7
8 DATED: Saipan, Northern Mariana Islands, January 17, 2025.

9
10 /s/ Howyo Chi

Howyo Chi

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS
BANKRUPTCY DIVISION**

In re

IMPERIAL PACIFIC INTERNATIONAL
(CNMI), LLC,

Debtor and Debtor-in-Possession.

Bk. No. 24-00002
(Chapter 11)

DECLARATION OF KELVEN WONG

I, KELVEN WONG, hereby declare under penalty of perjury, that:

1. I am the Director of Kangyi Software Limited (“Kangyi”).

Except as otherwise indicated, the facts set forth in this Declaration are based upon my personal knowledge. I make this Declaration in support of *Motion For Order Authorizing Debtor To Obtain Postpetition Litigation Funding* (the “Motion”). Capitalized terms not herein defined shall have the meaning set forth in the Motion.

Kangyi was approached by a former employee of the Debtor to fund the HK Action. However, Kangyi has no prior relationship with the Debtor, Best Sunshine Holdings, Imperial Pacific International Holdings, Ji Xiaobo, or Cui Lijie.

DATED: Wan Chai , Hong Kong, January 16, 2025.

Kelven Wong

