

Hong Kong courts declined to restrain Cayman winding-up proceedings despite arbitration clause

18 August 2025

Following *Re Guy Lam*¹ and *Sian Participation Corp v Halimeda International*², the Hong Kong courts have diverged from their English and offshore counterparts on the threshold for staying winding up proceedings in favour of arbitration: courts in Hong Kong will generally stay proceedings unless an abuse is demonstrated, whereas English law requires a debtor to show a bona fide dispute.

In one of the very first anti-suit injunction applications to restrain foreign winding up proceedings in favour of arbitration before the Hong Kong courts, the Hong Kong Court of First Instance (the **Court**) in *Hyalroute Communication Group Limited v Industrial and Commercial Bank of China (Asia) Limited* [2025] HKCFI 2417 considered, as Recorder William Wong SC described it, the “*interesting and novel*” question of whether the Hong Kong courts would restrain winding up proceedings in foreign jurisdictions that follow the *Sian* approach in favour of Hong Kong arbitration.

Background

The dispute arose from a term facility agreement (**TFA**) entered into between Hyalroute Communication Group Limited (**Hyalroute**), which is incorporated in the Cayman Islands (as guarantor), its Myanmar subsidiaries (as borrowers), and Industrial and Commercial Bank of China (Asia) Limited (**ICBCA**, as lender). The TFA included an arbitration clause which mandated that “*any dispute, controversy or claim arising in any way out of or in connection with [the TFA] ... shall be referred to and finally resolved by binding arbitration*” in the Hong Kong International Arbitration Centre.

Hyalroute and its subsidiaries operated in the fibre optic communications sector in Myanmar, where business faced significant disruption following a military coup and foreign currency restrictions imposed by local authorities.



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¹ (2023) 26 HKCFAR 119, a decision in the Hong Kong Court of Final Appeal.

² [2024] UKPC 16, a decision in the Privy Council.

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ICBCA had secured insurance against war, civil unrest, and currency transfer restrictions (**Covered Risks**). The TFA allowed Hyalroute to suspend obligations for any default caused by a Covered Risk, pending an insurance claim by ICBCA. Hyalroute accordingly claimed its repayment obligations were suspended and that it bore no liability for the loan, as ICBCA had made several claims under the insurance contract.

Despite Hyalroute's position, ICBCA served a statutory demand against Hyalroute in the Cayman Islands and threatened to commence winding-up proceedings to enforce its debt. In response, Hyalroute applied to the Court for an anti-suit injunction, arguing that all disputes under the TFA, including the question of indebtedness, fell within the arbitration clause and thus should be resolved through arbitration rather than Cayman insolvency proceedings.

Decision and reasoning

The Court reaffirmed the general rule that it will ordinarily uphold the parties' contractual bargain where there is a valid and binding arbitration agreement and may restrain proceedings brought in breach of such an agreement.

However, given that the express language of the arbitration clause under the TFA precluded the parties from having disputes finally resolved in a non-contractual forum, whether foreign insolvency proceedings (such as a Cayman winding-up petition) would be restrained depended on whether those proceedings had the effect of "*finally resolving*" the underlying dispute. That question, in turn, depended on how Cayman courts viewed their own winding up proceedings – Hong Kong law cannot regard the Cayman proceedings as finally resolving the dispute if Cayman law does not.

As such, the Court accepted that even though Hong Kong law applied in determining whether the arbitration agreement was breached, reference had to be made to Cayman law in determining the effect of the Cayman winding up proceedings. Applying the principles laid down in the Privy Council decision in *Sian*, winding-up petitions in Cayman, as well as in the British Virgin Islands and England, do not finally resolve substantive questions regarding the existence or amount of a disputed debt. Rather, such proceedings simply address a threshold issue for insolvency without adjudicating on the merits of the underlying claim. On this basis, the Court concluded that the Cayman winding up petition would not definitively resolve the dispute and would not contravene the arbitration agreement, and the anti-suit injunction was dismissed.

Key takeaways

The guidance from this case is significant because parties incorporated in offshore jurisdictions, such as the Cayman Islands, often opt for Hong Kong arbitration in their contracts for dispute resolution.

As can be seen, there are significant differences amongst jurisdictions as to the effect of winding-up petitions where there is a disputed debt, which give rise to opportunities and practical challenges when cross-border insolvency and arbitration obligations intersect. Creditors should be aware that, notwithstanding the existence of an arbitration agreement, it may still be

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possible to pursue insolvency proceedings in certain foreign jurisdictions. Conversely, debtors seeking anti-suit relief to restrain such proceedings must be prepared to adduce persuasive evidence that the foreign process would result in a final determination of the dispute, in breach of the arbitration agreement.

For more on anti-suit injunctions and cross-border enforcement, or potential impacts to your group's existing structures, please reach out to your Linklaters contact.

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