Hong Kong Court Refuses Anti-Suit Injunction Against Winding-Up Petition in Debtor's Home Court— *Hyalroute Communication Group Limited v Industrial and Commercial Bank of China (Asia) Limited* [2025] HKCFI 2417

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BACKGROUND

In mid-2018, the Cayman Islands-incorporated claimant, Hyalroute Communication Group Limited ("HCGL"), entered into a Hong Kong law-governed facility agreement (the "Facility") with the defendant bank, the Industrial and Commercial Bank of China (Asia) Limited ("ICBC"), under which HCGL guaranteed the obligations of its subsidiary, the Myanmar Fiber Optic Communication Network Company Limited ("MFOCN"). However, as an alternative to HCGL's guarantee obligations, the Facility also provided for ICBC to take out insurance from the World Bank's Multilateral Investment Guarantee Agency ("MIGA") (the "Policy"), and the Facility provided that if HCGL paid all required Policy premiums to MIGA and formally notified ICBC when any Policy "Covered Risks" arose, HCGL's obligations as guarantor would be suspended with respect to any consequences of such Covered Risks. The Facility provided for disputes to be resolved by Hong Kong-seated arbitration under the rules of the Hong Kong International Arbitration Centre.

MFOCN drew down USD 100mn under the Facility. However, after Myanmar suffered a military coup in January 2019, MFOCN found itself unable to repay. The occurrence of the coup would have been a "Covered Risk" for the purposes of the Policy, but it transpired that HCGL had not been paying the required Policy premiums to MIGA, and HCGL did not properly notify ICBC of the situation in Myanmar. HCGL nevertheless maintained to ICBC that its obligations as guarantor of MOFCN were suspended.

In mid-November 2024, ICBC made a statutory demand in respect of sums owed under HCGL's guarantee obligations under the Facility and filed a petition in the Cayman Islands courts seeking to have HCGL wound up (the "Winding-Up Petition"). HCGL responded in early December 2024 by seeking an anti-suit injunction from the Hong Kong courts to stay the Winding-Up Petition, arguing that ICBC was in breach of its agreement to refer any disputes arising out of the Facility to Hong Kong arbitration.

DECISION

HCGL's anti-suit application came before Mr William Wong SC, sitting as a Recorder. He observed that the test for an anti-suit injunction in Hong Kong is:

- *First*, whether the defendant is in breach of an arbitration agreement; and
- *Second*, if so, whether there are nevertheless strong contrary grounds against an anti-suit injunction.

Breach of the Arbitration Agreement

Recorder Wong noted that in recent previous cases where a party had commenced winding-up petitions in foreign courts, the Hong Kong courts had set a low threshold for determining whether the winding-up proceedings were a breach of an arbitration agreement. In particular, as said in *Re Mega Gold Ltd; Re Man Chun Sing Matthew*,[1] if a debtor simply refused to admit the "petition debt" upon which a creditor based its winding-up petition, the Hong Kong courts had considered that this was sufficient to be a "dispute" that would engage a generally worded arbitration agreement, which would satisfy the first stage of this test.

Applying this framework to the facts, Recorder Wong started with the express terms of the arbitration clause in the Facility and noted that the parties had agreed that disputes would be "*finally resolved*" by arbitration. However, Recorder Wong considered that this reference to "final resolution" meant that if the Winding-Up Petition would not finally resolve the validity or value of HCGL's guarantee, then ICBC had not breached the arbitration agreement by issuing it.

Recorder Wong reasoned that a useful test for whether the Winding-Up Petition would amount to a final decision over the guarantee was if it would give rise to *res judicata* or an issue estoppel between HCGL and ICBC.[2] He further reasoned that he could not treat the Petition as having final effect as a matter of Hong Kong law if Cayman law would not do so itself. Turning therefore to Cayman law, he concluded that it would not regard the resolution of the Winding-Up Petition as a final decision on the guarantee. Cayman law distinguishes between a "threshold" question for commencing insolvency proceedings, as to whether there is a "genuine dispute on substantial grounds" as to the existence or validity of the debt, and a "substantive" question as to how any such dispute should be resolved. In this case, Recorder Wong considered on the evidence before him

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1 *See, Re Mega Gold Ltd; Re Man Chun Sing Matthew* [2024] HKCFI 2286, ¶¶ 55–72 for a helpful summary of Hong Kong's approach.

2 Relying on *Re Lam Kwok Hung Guy* [2022] 4 HKLRD 793.

that the Winding-Up Petition would only decide the threshold question and that the Cayman courts would refer any substantive dispute to the parties' agreed forum.

Recorder Wong therefore rejected HCGL's argument that ICBC had breached its agreement to arbitrate by commencing the Winding-Up Petition.

Strong Contrary Grounds

Recorder Wong also held that there were in any event strong grounds against granting an anti-suit injunction. In his view, HCGL's defence that its obligation to satisfy the guarantee had been suspended was "*hopeless and frivolous*" because MIGA had cancelled the Policy following HCGL's non-payment of the premiums. He considered it "*abusive for* [HCGL] *to rely on such a defence to prevent [ICBC] from invoking the Cayman Court's winding up jurisdiction*".

COMMENT

The decision in *Hyalroute* may indicate a shift in the approach taken by the Hong Kong courts to the interface between insolvency law and international arbitration. As Recorder Wong noted, in recent years, the Hong Kong courts have followed the reasoning of the English case *Salford Estates (No 2) Ltd v Altomart Ltd (No 2)* [2014] EWCA Civ 1575 ("*Salford Estates*") and held that any dispute about a petition debt, even a non-admission of the debt, is sufficient to engage a generally worded arbitration agreement and raise a presumption in favour of granting an anti-suit injunction to stay any insolvency proceedings. However, *Hyalroute* departed from this, despite the arbitration clause being in an apparently standard form and broad enough to cover all disputes between the parties. Instead, Recorder Wong declined to interfere in the insolvency proceedings commenced in the jurisdiction in which HCGL was incorporated.

In doing so, *Hyalroute* appears to move towards the position in modern English law, following the Privy Council's decision in *Sian Participation Corp (In Liquidation) v Halimeda International Ltd* [2024] UKPC 16 ("*Sian Participation*"), which overturned *Salford Estates*. The test the English courts apply after *Sian Participation* is only to grant an anti-suit injunction against a winding-up petition where the debtor can show that the relevant petition debt is genuinely disputed on substantial grounds and that this dispute is to be resolved by arbitration. Different considerations may apply if the arbitration clause expressly includes insolvency disputes, or if the insolvency procedure invoked would necessarily involve the resolution of substantial questions of fact, but generally, English courts are now more reluctant than before *Sian Participation* to grant anti-suit injunctions against insolvency proceedings.

Whether other Hong Kong decisions will follow *Hyalroute* in moving towards *Sian Participation* remains to be seen.

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Please do not hesitate to contact us with any questions.

Tony Dymond
Partner, London | Hong Kong
+44 20 7786 9030
+852 2160 9800
tdymond@debevoise.com

Gavin Chesney
Counsel, London
+44 20 7786 5494
gchesney@debevoise.com

Sarah Lee
Registered Foreign Lawyer, Hong Kong
+852 2160 9803
slee1@debevoise.com

Amina Afifi
Associate, London
+44 20 7786 5465
aafifi@debevoise.com

Laith Najjar
Associate, London
+44 20 7786 5485
lnajjar@debevoise.com

Benjamin Teo
Associate, Hong Kong
+852 2160 9813
bteo@debevoise.com

Ross Moore
Trainee Associate, London
+44 20 7786 5433
rmoore2@debevoise.com