WATERSHED LAW

Legal Update
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ARBITRATION • INSOLVENCY

The *AnAn* doctrine in full strength: Singapore's distinct pro-arbitration path in insolvency proceedings

The Singapore Court of Appeal's recent decision in *Singapore Commodities Group Co, Pte Ltd v Founder Group (Hong Kong) Limited (in liquidation)* [2026] SGCA 24 ("*Singapore Commodities*") reaffirms that insolvency courts should not engage in a merits review of disputed debts subject to arbitration agreements. This decision deepens the divergence between Singapore's position and that of the UK and Malaysia.

> *In summary: if a defendant's dispute over a debt is subject to an arbitration agreement, the winding up application is likely to be dismissed. This reinforces Singapore's reputation as a jurisdiction that gives robust effect to arbitration agreements, even if curtailing the utility of winding up proceedings as a debt enforcement mechanism.*

The general approach: the triable issue standard

When a defendant disputes a debt in insolvency proceedings on *bona fide* and substantial grounds, the court will generally dismiss the winding up application. In practice, the court considers if the defendant's defence raises a triable issue. This general approach applies when the dispute is not subject to an arbitration agreement.

The effect of a dispute goes to the claimant's standing to bring the winding up application. If a triable issue is found, then the claimant has no standing to apply *as a creditor* to wind up the defendant.

But there is one important exception – that is, the court has the discretion nonetheless to exercise its general civil jurisdiction to decide the dispute. If it does so in the claimant's favour, the court can make a winding up order. While the courts will generally decline to exercise this discretion, the existence of this discretion is important. It is this feature that underpins the justification for a different approach when an arbitration agreement is involved.

ourwatershed.com

A 6 Battery Road, #03-01, Singapore 049909
T +65 6485 4021
E office@ourwatershed.com

Watershed Law LLC (UEN No. 202435111W) is registered in Singapore as a law corporation with limited liability.

Why an insolvency court would decline to decide a disputed debt, despite its jurisdiction to do so, is uncontroversial. First, the insolvency procedure is ill-suited for determining disputes of fact. Second, the court is keen to guard against the pendency of winding up proceedings being abused to exert improper pressure against a company genuinely disputing the debt. When a winding up application is in force, those that deal with the company might withdraw credit or refuse to trade with it. A company might end up paying a genuinely disputed debt out of commercial necessity, rather than running the risk of its business being destroyed.

The prima facie standard of review: why?

Where the dispute is subject to an arbitration agreement, the Singapore courts take a different approach. This was formulated in *AnAn Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2020] 1 SLR 1158 ("*AnAn*"), drawing on the English decision in *Salford Estates (No 2) Ltd v Altomart Ltd (No 2)* [2015] Ch 589 ("*Salford Estates*").

Rather than investigate if a debt is disputed on *bona fide* and substantial grounds, the court asks: is there a valid arbitration agreement? Is the dispute subject to that arbitration agreement? If the questions are answered in the affirmative, the winding up application is likely to be dismissed. In answering these questions, the court applies only a *prima facie* standard of review.

Why the lower threshold? In *Singapore Commodities*, the Court of Appeal explained in detail how an arbitration agreement changes the analysis. The central question remains: does the claimant have standing? Indeed, much of the Court's reasoning was directed at explaining that disputed debt cases are fundamentally jurisdictional in nature: absent creditor standing, the insolvency court lacks jurisdiction to make a winding up order.

If parties agree to resolve disputes over a debt in arbitration, it would be inappropriate for the court to review the merits of the dispute because this would be inconsistent with the parties' agreed mode of dispute resolution. Further, under the *kompetenz-kompetenz* principle, the court should also not conduct anything beyond a *prima facie* review of whether a valid arbitration agreement exists and whether the dispute falls within the scope of such an agreement.

If the court will not generally examine the merits, it cannot exercise the discretion to decide the dispute as part of its general civil jurisdiction; that discretion is, as a general rule, displaced by the parties' agreement to arbitrate. Accordingly, the claimant will almost invariably be unable to establish its standing as a creditor and the court will not have jurisdiction to wind up the defendant.

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The safety valve: abuse of process

Applying the *prima facie* standard of review, however, does not mean that a defendant can simply assert a dispute to stave off winding up. *Singapore Commodities* reiterated the position in *AnAn* that the *prima facie* standard of review was subject to an "*overarching restriction*" that the court will not stay or dismiss a winding up application where to do so would amount to an abuse of the process of the court.

Though the categories of conduct that could meet the threshold of abusive conduct are not closed, the threshold is very high.

One recognised form of abuse which frequently features in winding up proceedings is when a defendant resiles from a previous admission of the debt. In *Singapore Commodities*, the Court of Appeal set out a two-stage test for this: (a) the debtor must first make a clear and unequivocal admission as to both liability and quantum for the claimed debt; and (b) the debtor must then resile from the admission without a clear and convincing reason for its change in position. If either is missing, then the court is unlikely to find an abuse of process.

Singapore Commodities

The facts in *Singapore Commodities* were interesting and unusual. Parties had already proceeded to arbitration before arriving in the Court of Appeal. The unusual procedural posture arose because, in arbitration, the alleged debtor sought only a negative declaration, while the alleged creditor declined to bring a counterclaim for the debt. Ultimately, the arbitration did not conclusively resolve the dispute over the alleged debt.

The decision in *Singapore Commodities* turned on whether the debtor had clearly and unequivocally admitted to the debt (both in terms of liability and quantum), and if so, whether it had a clear and convincing reason for resiling from that position. While there were audit confirmation letters, financial records and a confirmation request evincing the debtor's acknowledgment of the debt, these were found not to constitute clear and unequivocal admissions.

The main reason for this finding was that the tribunal had determined, as a matter of Chinese law (which governed the underlying contract), that such documents could not be used to determine the

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rights between a creditor and debtor. The Court of Appeal even went so far as to state that it was prepared to find that an estoppel had arisen.

Assuming, however, that there were unequivocal and clear admissions, the Court of Appeal also considered whether the debtor's explanation for its change of position was excusable. On this, the appellant (the alleged debtor) offered two related arguments: first, the contract was void under Chinese law as it was entered into for accounting and bookkeeping purposes and parties had no genuine intention to trade; and second, the respondent (the alleged creditor) never delivered any goods to the appellant. The Court of Appeal accepted these as clear and convincing reasons for resiling from any admissions because it was entitled to maintain these objections in the winding up proceedings, given the equivocal outcome at arbitration.

Notably, the Court observed that it would not consider the merits of the explanation given by the defendant, so long as there is an explanation that satisfies the court that the defendant is not contesting the winding up application simply because it is unable to pay the debt.

Divergence from other common law jurisdictions

What is particularly notable about the decision in *Singapore Commodities* is that it affirms the approach in *AnAn* despite recent and divergent approaches in other common law jurisdictions, namely, the UK and Malaysia.

In *Sian Participation Corp v Halimeda International Ltd* [2025] AC 1321 ("*Sian Participation*"), the Privy Council rejected the *Salford Estates* approach and held that the ordinary "*genuine and substantial dispute*" test should apply even where the debt is subject to an arbitration agreement. The Privy Council reasoned that a winding up application does not determine the underlying debt dispute and therefore does not offend the parties' agreement to arbitrate. The Malaysian Federal Court adopted a similar position in *V Medical Services M Sdn Bhd v Swissray Asia Healthcare Co Ltd* [2025] 2 MLJ 744 ("*Swissray*"), emphasising the distinct policy objectives underpinning insolvency and arbitration regimes.

The Court of Appeal observed that aspects of *Sian Participation* and *Swissray* were fundamentally inconsistent with Singapore law as articulated *in AnAn*. It reaffirmed that where parties have agreed to arbitrate disputes concerning the debt, the insolvency court should not engage in any merits review beyond the *prima facie* threshold. In the Court of Appeal's view, permitting a triable issue analysis

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would undermine party autonomy and incentivise creditors to circumvent arbitration agreements through insolvency proceedings.

The result is that Singapore now stands apart from the UK and Malaysia in maintaining a strongly pro-arbitration approach to insolvency proceedings. For maritime parties, where arbitration clauses are ubiquitous, this reinforces Singapore's reputation as a jurisdiction that gives robust effect to arbitration agreements.

Whether Singapore's position will ultimately converge with those of the UK and Malaysia remains to be seen. In *Singapore Commodities*, the Court of Appeal pointed out that it was not asked to revisit the correctness of the position in *AnAn*. For now, *Singapore Commodities* confirms that Singapore remains among the most arbitration-protective common law jurisdictions in the insolvency context.

Contacts

Christian Teo
Director

christianteo@ourwatershed.com

Esther Yong
Associate Director

estheryong@ourwatershed.com

Jonas Chung
Associate

jonaschung@ourwatershed.com

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