

Arbitration Clauses and Insolvency Petitions: A Comparative Analysis of U.S. and International Jurisprudence

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Arbitration agreements and insolvency proceedings occupy overlapping but often antagonistic legal territory. The Federal Arbitration Act (FAA) and its international counterparts embody a deep commitment to party autonomy and contractual enforcement, while insolvency law demands centralized, collective administration of a debtor's affairs for the benefit of all creditors. When a creditor holds a disputed debt under a contract containing an arbitration clause and seeks to commence winding-up or bankruptcy proceedings, courts in every major commercial jurisdiction must resolve the same fundamental tension: Does the arbitration agreement control, or does insolvency jurisdiction prevail?



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Since 2020, courts across the U.S., the U.K., the British Virgin Islands, the Cayman Islands, Ireland, Hong Kong and Singapore have produced a rich and divergent body of case law. The Privy Council's landmark 2024 ruling in *Sian Participation Corp v. Halimeda International Ltd* represents the decisive shift, widening the gap between English and BVI law on one side, and Hong Kong and Singapore law on the other. This article surveys the key cases, identifies common themes, and highlights the significant doctrinal differences that now define the international landscape.

The U.S. Framework: Core vs. Non-Core and the FAA

American bankruptcy courts navigate the FAA/Bankruptcy Code tension through a two-step framework: first, whether a valid arbitration agreement exists and encompasses the dispute; and second, whether that agreement should be enforced.¹ The analytical linchpin is the core/non-core distinction. Where a proceeding is non-core — it does not invoke a substantive right created by the Bankruptcy Code and could exist outside bankruptcy — courts lack discretion to deny arbitration.² The Third Circuit's foundational decision in *Hays & Co. v. Merrill Lynch* confirmed that a trustee is generally bound by a debtor's pre-petition arbitration agreements for derivative claims, but not for causes of action that belong uniquely to the estate.³

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Core proceedings present a different calculus. Courts following *Shearson/American Express Inc. v. McMahon* apply a three-part inquiry: whether the Bankruptcy Code's text or legislative history expressly conflicts with the FAA. If it is silent, courts examine whether there is an inherent conflict; if discretion exists, courts look to whether to compel or deny arbitration.⁴ Nearly every circuit has concluded that the Code contains no express congressional intent to override the FAA, leaving most disputes to the inherent-conflict inquiry.⁵



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Courts have found inherent conflict where arbitration would impermissibly modify a substantially consummated plan of reorganization,⁶ and rejected conflict where pre-petition arbitration had commenced and the debtor's plan did not depend on the disputed claim.⁷ When an international arbitration agreement is at stake, courts apply an even stronger presumption in favor of enforcement.⁸ When discretion exists, courts weigh multiple factors, including pre-petition commencement, estate impact, specialized arbitral expertise, reorganization prospects and the risk of piecemeal litigation.⁹ The overall U.S. posture is calibrated accommodation: Arbitration is the default outside bankruptcy's core domain, and even within that domain the analysis is case-specific.

¹ 9 U.S.C. §§ 1-16 (FAA); 11 U.S.C. § 101 *et seq.* (Bankruptcy Code). See *Shearson/American Express Inc. v. McMahon*, 482 U.S. 220, 227 (1987).

² *Whiting-Turner Contracting Co. v. Elec. Mach. Enters.* (In re Elec. Mach. Enters.), 479 F.3d 791, 796 (11th Cir. 2007); *Continental Ins. Co. v. Thorpe Insulation Co.* (In re Thorpe Insulation Co.), 671 F.3d 1011, 1021 (9th Cir. 2012); *Atl. Marine Inc. v. Am. Classic Voyages Co.* (In re Am. Classic Voyages Co.), 298 B.R. 222, 225-26 (D. Del. 2003).

³ *Hays & Co. v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 885 F.2d 1149, 1153-54 (3d Cir. 1989).

⁴ *McMahon*, 482 U.S. at 225-27; *In re Touchstone Home Health LLC*, 572 B.R. 255, 272 (Bankr. D. Colo. 2017); *Glassman, Edwards, Wyatt, Tuttle & Cox P.C. v. Wade* (In re Wade), 523 B.R. 594, 603 (Bankr. W.D. Tenn. 2014).

⁵ *Touchstone*, 572 B.R. at 273; *Johnson v. S.A.I.L. LLC* (In re Johnson), 649 B.R. 735, 740 (Bankr. N.D. Ill. 2023); *Innvantage Grp., Inc. v. Millie and Stevenson Inc.* (In re Innvantage Grp. Inc.), 669 B.R. 193, 199 (Bankr. N.D. Ill. 2025).

⁶ *U.S. Brass Corp. v. Travelers Ins. Grp. Inc.* (In re U.S. Brass Corp.), 301 F.3d 296 (5th Cir. 2002).

⁷ *Innvantage*, 669 B.R. at 200.

⁸ *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth Inc.*, 473 U.S. 614, 629 (1985).

⁹ *In re No Place Like Home Inc.*, 559 B.R. 863, 877 (Bankr. W.D. Tenn. 2016); *In re Springer-Penguin Inc.*, 74 B.R. 879, 884 (Bankr. S.D.N.Y. 1987); *In re Wade*, 23 B.R. at 612.

continued on page 66

Arbitration Clauses and Insolvency Petitions: A Comparative Analysis

from page18

The International Framework: Winding-Up Petitions and Arbitration Clauses

International courts have focused not on the core/non-core distinction but rather on whether a winding-up petition is itself a “claim” or “action” covered by an arbitration agreement — and if not, what standard governs the court’s discretion to stay or dismiss the petition when the underlying debt is disputed.

The Salford Estates Baseline and Its Overruling in *Sian*

For a decade, the English Court of Appeal’s 2014 decision in *Salford Estates (No 2) Ltd v. Altomart Ltd* set the common law baseline.¹⁰ The court held that section 9 of the Arbitration Act 1996 did not apply to winding-up petitions — a petition is not a “claim” for repayment — but said that the court’s discretion under the Insolvency Act of 1986 should, absent exceptional circumstances, result in an automatic stay or dismissal where the petition debt is subject to an arbitration agreement.

In 2024, the Privy Council expressly overruled *Salford Estates* in *Sian Participation Corp (In Liquidation) v. Halimeda International Ltd*, as a matter of both BVI and — through its authority under *Willers v. Joyce* — English and Welsh law.¹¹ The Council reasoned that a winding-up petition does not seek to resolve the underlying debt; it is evidence of insolvency, not a vehicle for adjudicating the claim. Accordingly, the mandatory-stay provisions of the BVI Arbitration Act 2013 (modeled on the UNCITRAL Model Law) do not apply to liquidation applications. The governing test is simply whether the debt is disputed on genuine and substantial grounds — the same threshold applicable to any disputed-debt petition regardless of whether an arbitration agreement exists.

The Cayman Islands Grand Court followed *Sian* in *Naas Technology Inc. v. LMR Multi-Strategy Master Fund Ltd* (2025),¹² and the Irish High Court reached the same conclusion in *San Leon Energy plc v. Brightwaters Energy Ltd* (2026), adding that automatically extending arbitration clauses to winding-up proceedings would create a procedural obstacle to legitimate statutory rights.¹³

Hong Kong: The *Guy Lam* Multi-Factorial Approach

Hong Kong charted a distinct course. In *Re Guy Kwok Hung Lam* (2023), the Court of Final Appeal held that where the petition debt is subject to an exclusive jurisdiction clause (EJC), the winding-up petition should be stayed or dismissed unless there is risk of prejudice to other creditors or the dispute is frivolous or an abuse of process.¹⁴ In *Re Simplicity &*

Vogue Retailing (HK) Co. Ltd (2024), the Court of Appeal extended this framework to arbitration clauses,¹⁵ and *Re Shandong Chenming Paper Holdings Ltd* (2024) extended it further to cross-claims falling within an arbitration clause.¹⁶ In *Re Mega Gold Holdings Ltd* (2024), the Court of First Instance acknowledged the divergence from *Sian* and stayed the petition where defenses were not plainly destined to fail and the debtors had taken genuine steps toward arbitration.¹⁷

The *Guy Lam/Sian* tension came into sharp focus in *Hyalroute Communication Group Ltd v. Industrial and Commercial Bank of China (Asia) Ltd* (2025), where the Hong Kong Court of First Instance declined to issue an anti-suit injunction blocking Cayman winding-up proceedings.¹⁸ Applying Cayman law as informed by *Sian*, the court concluded that the Cayman proceedings would not finally resolve the dispute within the meaning of the arbitration clause and therefore did not breach it. *Hyalroute* illustrates how the divergence generates complex cross-border litigation over which framework governs.

Singapore: The *Prima Facie* Standard and Its Limits

Singapore’s Court of Appeal established its rule in *AnAn Group (Singapore) Pte Ltd v. VTB Bank* (2020): If a debtor demonstrates on a *prima facie* basis that a valid arbitration agreement covers the dispute and the dispute is not an abuse of process, the winding-up application should ordinarily be dismissed.¹⁹ The court reasoned that a triable-issues standard would allow creditors to use winding-up proceedings as a coercive debt-collection device, substituting the insolvency court’s judgment for the arbitrator’s on issues contractually reserved to arbitration.

Subsequent cases refined the rule. *Founder Group (Hong Kong) Ltd v. Singapore JHC Co. Pte Ltd* (2023) held that a debtor cannot invoke an arbitration agreement while simultaneously asserting that the underlying contract is void.²⁰ *Sun Quan v. AI MTBL SPV LLC* (2025) confirmed that *AnAn* applies in personal insolvency.²¹ The Court of Appeal in *Sapura Fabrication Sdn Bhd v. GAS* (2025) declined to revisit *AnAn* after *Sian*, but clarified that enforcing arbitration agreements does not automatically trump the insolvency regime once a company is already in collective statutory proceedings.²² Courts in *Aryan (SEA) Private Ltd v. Pure Group (Singapore) Pte Ltd* (2025)²³ and *Olea Global Pte Ltd v. Energe Asia Pte*

10 *Salford Estates (No 2) Ltd v. Altomart Ltd* (No 2) [2014] EWCA Civ 1575.

11 *Sian Participation Corp (In Liquidation) v. Halimeda International Ltd* [2024] UKPC 16 (¶¶ 88-94, 124-25); *Willers v. Joyce* [2016] UKSC 44.

12 *Naas Technology Inc./BPGIC Holdings* [2025] CIGC (FSD) 28 (¶¶ 54-62, 64-70).

13 *San Leon Energy plc v. Brightwaters Energy Ltd* [2026] IEHC 1 (¶¶ 23-24, 52-55-57).

14 *Re Guy Kwok Hung Lam, ex p Tor Asia Credit Master Fund LP* [2023] HKCFA 9 (¶¶ 95-105).

15 *Re Simplicity & Vogue Retailing (HK) Co. Limited* [2024] HKCA 299 (¶¶ 34-39, 47).

16 *Arjowiggins HKK 2 Ltd v. Shandong Chenming Paper Holdings Ltd* [2024] HKCA 352.

17 *Re Mega Gold Holdings Ltd and Re Man Chun Sing Matthew* [2024] HKCFI 2286 (¶¶ 66-95).

18 *Hyalroute Communication Group Ltd v. Industrial and Commercial Bank of China (Asia) Ltd* [2025] HKCFI 2417 (¶¶ 4-5, 55-62, 75-82, 121-28).

19 *AnAn Group (Singapore) Pte Ltd v. VTB Bank (Public Joint Stock Company)* [2020] SGCA 33 (¶¶ 56, 72, 110).

20 *Founder Group (Hong Kong) Ltd (in liquidation) v. Singapore JHC Co. Pte Ltd* [2023] SGCA 40 (¶¶ 53-63).

21 *Sun Quan v. AI MTBL SPV LLC* [2025] SGHCR 10 (¶¶ 1, 17-26).

22 *Sapura Fabrication Sdn Bhd, et al. v. GAS* [2025] SGCA 13 (¶¶ 5-6, 44, 95-98).

23 *Aryan (SEA) Private Ltd v. Pure Group (Singapore) Pte Ltd* [2025] SGHC 99 (¶¶ 9-14).

Ltd (2026)²⁴ have since declined to follow *Sian*, the latter ordering winding-up where the arbitration clause did not cover the relevant debts and the debtor's disputes were opportunistic.

Common Themes

Despite doctrinal divergence, the cases across all jurisdictions share four organizing themes. First, every system agrees that a winding-up petition is not itself a “claim” or “action” within the mandatory-stay provisions of arbitration statutes — the structural premise on which *Salford Estates* itself rested. What divides courts is whether the absence of a mandatory stay means the ordinary genuine-dispute threshold governs (the *Sian* line) or whether a more arbitration-friendly threshold applies by analogy (the *Guy Lam/AnAn* line).

Second, every system recognizes that abuse of process places a floor on the protection of arbitration agreements. A debtor that admits the debt in liability and amount, litigates merely to delay, or cannot genuinely commit to arbitration will not receive a stay regardless of the applicable standard.

Third, all jurisdictions treat the issue as one of judicial discretion rather than categorical rule. The U.S. reserves discretion in core proceedings; Hong Kong adopts a multi-factorial approach; Singapore recognizes abuse-of-process exceptions; and even post-*Sian* courts acknowledge that if an arbitration agreement expressly addresses insolvency proceedings, the calculus may differ.

Fourth, the weight afforded to arbitration agreements intensifies when an international clause is present. The U.S. Supreme Court in *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth Inc.* recognized that international comity and predictability require particularly rigorous enforcement of international arbitration clauses.²⁵ International courts share this instinct, as reflected in *Sian*, *Hyalroute* and *Sapura*.

Significant Differences

The most consequential difference is the standard of review. Under *Sian* (BVI/England/Wales), inserting an arbitration clause does not raise the bar; the creditor need not obtain an arbitral award before commencing winding-up proceedings if the debt is not genuinely disputed on substantial grounds. Under *Guy Lam/Simplicity* (Hong Kong), the creditor must generally arbitrate first unless countervailing factors exist. Under *AnAn* (Singapore), a *prima facie* showing of a covered dispute ordinarily requires dismissal of the winding-up application.

The U.S. framework is structurally distinct from both international camps. It does not ask whether the parties had an arbitration agreement and whether

the debt is disputed; it asks what kind of proceeding is before the court. For non-core matters, arbitration follows automatically. For core proceedings, the court must find an inherent conflict before exercising any discretion to deny arbitration. This means that in the U.S., even an undisputed claim could be deflected to arbitration if it is non-core — a result that finds no parallel in international practice.

A further structural difference lies in the relationship between insolvency jurisdiction and private contractual rights. The *Sian* line treats insolvency as inherently collective and public, not susceptible to ouster by bilateral contract except where the contract expressly contemplates it. The *AnAn/Guy Lam* line treats party autonomy as the dominant value, requiring insolvency to yield to private ordering until arbitration has run its course. Under the Singapore/Hong Kong approach, winding-up proceedings may present an attractive forum for debtors seeking to delay insolvency; the English/BVI/Cayman approach forecloses that option.

The divergence also raises a growing choice-of-law problem for international finance. Loan agreements governed by English law with arbitration in Hong Kong or Singapore are common in Asian credit markets. A creditor holding such an instrument may now face contradictory outcomes depending on the insolvency forum — a gap that *Hyalroute* illustrates vividly. Until convergence emerges through judicial dialogue or treaty, practitioners must carefully consider governing law, seat of arbitration and available insolvency remedies when structuring international credit instruments.

Conclusion

The intersection of arbitration agreements and insolvency proceedings has generated a sophisticated and rapidly developing body of law on both sides of the Atlantic and across the Pacific. All courts agree that winding-up petitions fall outside mandatory stay provisions, all reject abuse of process, and all treat the question as one of discretion informed by competing policies.

But the operational standard differs fundamentally: The 2024 *Sian* ruling has crystallized a genuine divide between the English-law world and the leading Asian financial centers of Hong Kong and Singapore, while the U.S. core/non-core framework remains analytically distinct from both. International practitioners advising creditors and debtors in cross-border restructurings would benefit from close familiarity with all three approaches, as the choice of insolvency forum — and the drafting of the underlying arbitration clause — may prove decisive. **abi**

²⁴ *Olea Global Pte Ltd v. Energe Asia Pte Ltd* [2026] SGHC 18 (¶¶26-30, 45, 61-71).

²⁵ *Mitsubishi Motors*, 473 U.S. at 629.