HONG KONG COURT REFUSED ANTI-SUIT INJUNCTION **LEAVING CREDITOR FREE TO PETITION OFFSHORE**[1]

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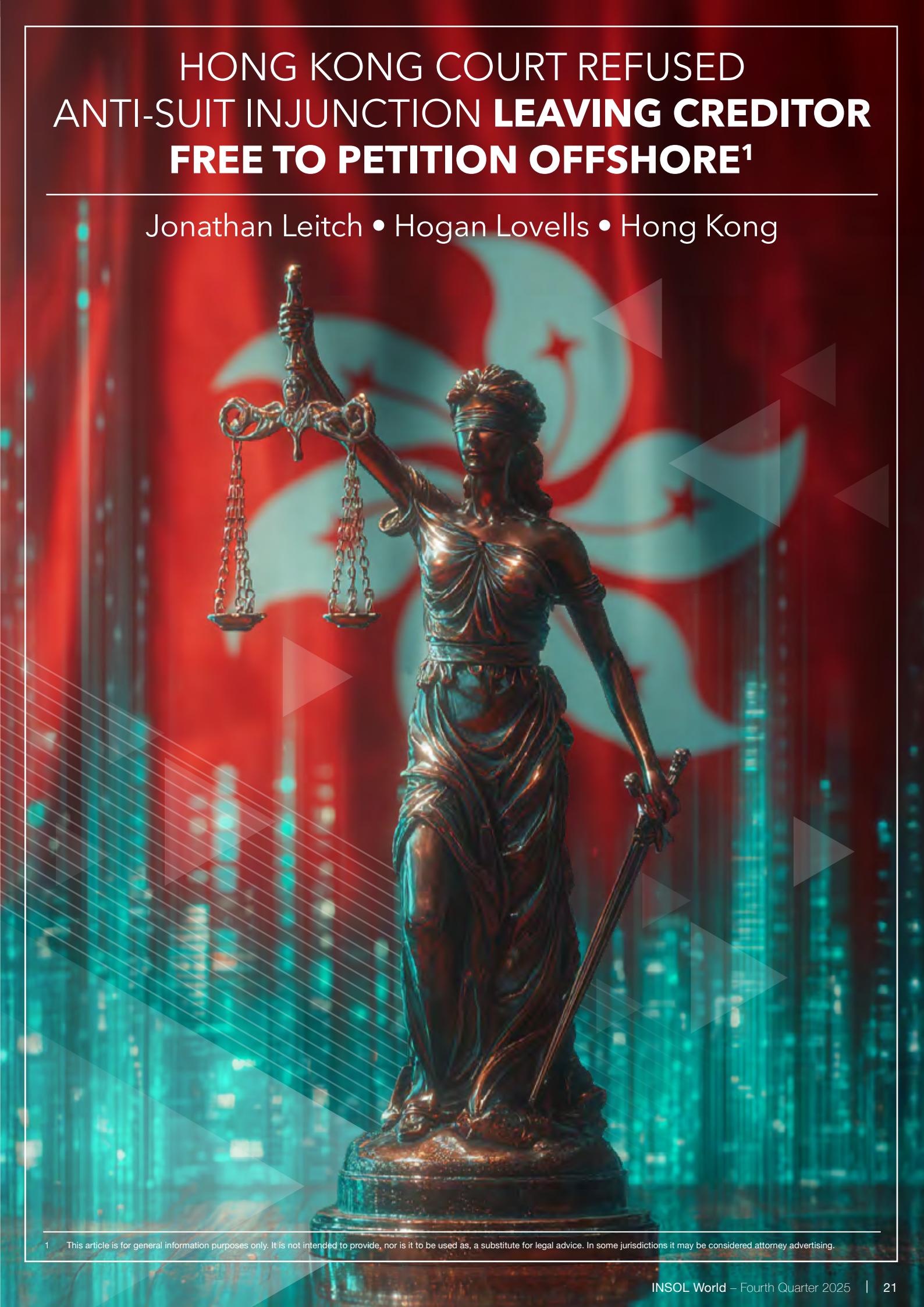

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On 1 August 2025, the Hong Kong Court of First Instance delivered a significant decision in *Hyalroute Communication Group Limited ("**Hyalroute**") v Industrial and Commercial Bank of China (Asia) Limited ("**ICBC**")* ([2025] HKCFI 2417) on a novel point of law concerning whether it should restrain a foreign winding-up petition in favour of arbitration.

Divergent legal approaches – Hong Kong vs common law

In recent years, significant judicial attention has been given to analysing the interplay between arbitration and winding-up proceedings.

- **Hong Kong law:** Following *Re Guy Lam* (2023) 26 HKCFAR 119, the Hong Kong Court of Final Appeal established that the Hong Kong courts will generally stay winding-up proceedings in favour of arbitration unless there is abuse of process. The focus is on upholding the parties' contractual bargain to arbitrate disputes.

- **English law:** As clarified in *Sian Participation Corp v Halimeda International* [2024] UKPC 16, a debtor is required to show a *bona fide* dispute on substantial grounds before the court will stay or dismiss a winding-up petition, even where an arbitration clause exists. The court will conduct a threshold inquiry into the genuineness of the dispute, rather than automatically deferring to arbitration.

Background

Hyalroute is a company incorporated in the Cayman Islands. The defendant, ICBC, is a bank. In 2018, two of Hyalroute's subsidiaries entered into a term loan agreement with ICBC with Hyalroute acting as guarantor. The borrowers and Hyalroute failed to repay the loan.

The term loan agreement, governed under Hong Kong law, contained an arbitration provision requiring any dispute or claim to be dealt with by way of arbitration administered by the Hong Kong International Arbitration Centre ('**HKIAC**').

ICBC served a statutory demand on Hyalroute following which Hyalroute issued a summons in Hong Kong seeking an anti-suit injunction to restrain ICBC from pursuing winding-up proceedings in the Cayman Islands, arguing that this would breach the arbitration provision in the term loan agreement.

Arbitration clause

Recorder William Wong SC dismissed Hyalroute's application, holding that the arbitration provision had not been breached. The Recorder considered only the "final" resolution of a dispute would be caught by the term loan agreement and that, as a matter of proper construction, the negative obligation under the terms of the term loan agreement – not to have disputes finally resolved in a non-contractual forum – was not infringed.

The term loan agreement referred to the term "finally resolved" and the Court held that it imposed a positive obligation on the parties to have disputes within the scope of the term loan agreement finally resolved by arbitration, as well as a negative obligation not to have disputes finally resolved in a non-contractual forum.

The Court found that as the proceedings did not have the effect of finally resolving the dispute, the negative obligation was not infringed and there would be no breach of the arbitration provision. Thus, the real issue was whether the Cayman winding-up proceedings would have the effect of finally resolving the dispute over Hyalroute's indebtedness under the term loan agreement.

The Court found in favour of ICBC that, in resolving the question whether Cayman proceedings would have the effect of "finally resolving" the dispute between the parties or give rise to *res judicata*, it should consider Cayman Islands law.

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Despite the lack of any expert evidence on Cayman Islands law, based on the authorities from that jurisdiction, the Court concluded it was clear that Cayman law does not view a winding-up petition as resolving a dispute substantively. Under Cayman law, it is only seen as resolving the threshold question of whether there is a genuine dispute on substantial grounds. The Court therefore agreed with ICBC, holding that on proper construction, the Cayman winding-up petition would not have the effect of "finally resolving the dispute" within the meaning of the arbitration provision and therefore would not be in breach of the term loan agreement.

On a final note, the Court went on to consider the merits issue and concluded that the underlying merits of Hyalroute's defence were hopeless, frivolous and it was an abuse for it to rely on such defence to prevent ICBC from invoking the Cayman Court's winding-up jurisdiction.

Court of Appeal

Shortly after the decision was handed down, Hyalroute sought a further interim anti-suit injunction to restrain the presentation of the winding-up petition pending determination of its appeal. This was refused on the basis that the Court of Appeal considered Hyalroute had no real prospect of success. Accordingly, the Court of Appeal, in the decision of 21 October 2025, has now confirmed for the first time that the "abuse of process" exception as set out by the Court of Final Appeal in *Re Guy Lam* can be applied in such cases. As at the time of writing, the substantive appeal remains to be heard.

Key takeaways

The decision underscores several risks and uncertainties for creditors and debtors:

- Arbitration clauses requiring arbitration in Hong Kong may not shield offshore-incorporated debtors from winding-up petitions being filed in their place of incorporation, even if the underlying debt is disputed.

- Creditors may find it more effective to pursue winding-up remedies in the debtor's place of incorporation (e.g., Cayman Islands or other common law-based jurisdictions), where the courts will scrutinize the debtor's defences but are less likely to be restrained by Hong Kong anti-suit injunctions, even if an arbitration clause is present.

- Hong Kong Courts are unlikely to restrain offshore winding-up proceedings unless there is a clear breach of an arbitration agreement.

- Parties need to carefully consider the interplay between arbitration and insolvency remedies when drafting arbitration clauses to ensure the provisions accurately reflect their intentions concerning how disputes should be resolved.