

## Case Update

6 September 2024

# *Maybank Singapore Limited v Dynamiq Solution Pte Ltd (Official Receiver, non-party) [2024] SGHC 219*

## Introduction

Winding up a debtor company based on its inability to make payment on a statutory demand pursuant to s 125(1)(e) read with s 125(2)(a) of the Insolvency, Restructuring and Dissolution Act 2018 (the “**IRDA**”) is an option that is frequently pursued by creditors. Under Singapore law, both the statutory demand and the subsequent winding up application are required to be duly served on the debtor company before a winding up order can be made by the Courts.

From time to time, the usual method of service by leaving the documents at the registered address of the debtor company pursuant to s 125(2)(a) of the IRDA becomes unavailable and creditors are faced with the dilemma of which alternative method of service should be utilised. In this context the judgment of the Singapore High Court in *Maybank Singapore Limited v Dynamiq Solution Pte Ltd (Official Receiver, non-party) [2024] SGHC 219* (“**Maybank v Dynamic Solution**”) provides useful and rare insight into the nuances of the rules of service and potential pitfalls that creditors may face.

## Relevant Background

### **Attempts at service**

The claimant, Maybank Singapore Limited (“**Maybank**”) had applied for a winding up order against the defendant Dynamiq Solution Pte Ltd (“**Dynamiq**”) in respect of a debt allegedly owing to it under a “Micro Loan Account”.

In March 2024, Maybank (through its lawyers) had first attempted to serve its statutory demand (the “**Demand**”) for repayment by leaving it at Dynamiq’s registered office address (as revealed by an Accounting and Corporate Regulatory Authority (“**ACRA**”) search) at a unit in a building at Bendemeer Road (the “**First Unit**”). However, when attempting service, it was discovered that no such unit existed in the building. Maybank then sent a copy of the Demand by registered post to Dynamiq’s sole director as well as its company secretary on 1 April 2024.

There was no response to the Demand by anyone from Dynamiq.

A subsequent ACRA search conducted in June 2024 showed that Dynamiq’s registered address had now changed to a different unit number in a different building, also at Bendemeer Road (the “**Second Unit**”). However, Maybank did not attempt to serve the Demand at this address but instead proceeded to file its winding up application (“**Application**”).

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On 27 June 2024, Maybank attempted to serve the Application at the Second Unit. However as with the First Unit, the Second Unit could not be found. That same day, Maybank left copies of the Application at the residential addresses of Dynamiq's sole director and company secretary. Subsequently, Maybank also sent a copy of the Application by registered post to the Second Unit. Unsurprisingly, the tracking record from the postal service showed that the Application could not be delivered because the address was invalid or incomplete.

## ***The Application***

Dynamiq itself did not appear at the winding up application. However, the Official Receiver (the "OR"), which appeared as a non-party, raised two objections to the Application:

- **The Demand:** the OR submitted that Maybank should have applied for substituted service before it served the Demand on Dynamiq's sole director and company secretary since section 125(2)(a) of the IRDA required service of the Demand to be effected by leaving it at Dynamiq's registered address.
- **The Application:** the OR submitted that Maybank should have sought the court's directions pursuant to r 68(1)(c) of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020 ("**CIR Rules**") before it served the Application on Dynamiq's sole director and company secretary.

In response, Maybank argued that:

- **The Demand:** The Court should make a retrospective order for substituted service of the Demand in the circumstances.
- **The Application:** S 48A of the Interpretation Act 1965 (2020 Rev Ed) (the "**IA**") supplemented r 68(1) of the CIR Rules such that the Application had been validly served on Dynamiq's sole director and company secretary as "the secretary or other like officer" of Dynamiq, pursuant to s 48A(1)(c)(i) of the IA.

## **The Court's Decision**

In coming to a decision, the Honourable Justice Goh Yihan considered the interpretation of s 125(2)(a) of the IRDA and r 68(1) of the CIR Rules and whether those provisions were prescriptive rather than permissive. His Honour also considered the decisions in *Nanyang Law LLC v Alphomega Research Group Ltd* [2010] 3 SLR 914 and *Gunvor SA v Atlantis Commodities Trading Pte Ltd* [2024] SGHC 192.

### ***The Demand***

Where the Demand was concerned, the Court made a retrospective order allowing Maybank to serve the Demand on Dynamiq's sole director and company secretary. However, this order was made only out of an abundance of caution as the Court considered that pursuant to s 48A(1)(c)(i) of the IA, the Demand had been validly served on Dynamiq's company secretary. This was because s 125(2)(a) of the IRDA was permissive rather than prescriptive and allowed the alternative means of service as provided for in s 48A(1)(c)(i) of the IA.

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Interestingly, this was the argument that Maybank had raised with respect to the service of the Application but which the Court accepted with respect to the service of the Demand instead.

## ***The Application***

On the other hand, where the service of the *Application* was concerned, the Court did not accept Maybank's submission that the Application had been properly served on Dynamiq by serving it on Dynamiq's company secretary. This was because, unlike s 125(2)(a) of the IRDA, r 68(1) of the CIR Rules was prescriptive rather than permissive. This was especially since the opening language of r 68(1) used the term "*must*" which suggested that r 68(1) did not allow the alternative methods of service provided for by s 48A of the IA.

Further, the overall structure of r 68(1) indicated that the mode of service allowed in r 68(1)(c) i.e. that the Court could direct for service of the application on any members of the company, could be utilised only where *both* the methods prescribed in r 68(1)(a) and r 68(1)(b) could *not* be achieved.

## **Key Takeaways**

The decision in *Maybank v Dynamiq Solution* establishes that different rules may apply to the service of a statutory demand as opposed to that of a winding up application.

As a matter of general practice, whether alternative service methods of documents can be utilised will depend on whether the primary legislative provision governing service can be read permissively. Therefore, parties faced with questions of service should obtain legal advice before opting to proceed with any alternative methods of service.

The decision also highlights the possibility that debtor companies may choose to evade service by providing fictitious addresses to ACRA and that the ACRA registered address may not necessarily be up to date or accurate.

*Written with the assistance of Abirame Subramanian*

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