

Case Update: Malaysia High Court Finds that Listed Companies Cannot Apply for Judicial Management

The Malaysia High Court in the judicial management application of *Re Scomi Group Bhd* decided that public listed companies cannot apply for judicial management. Hence, Scomi Group Bhd's judicial management application was dismissed. This case commentary refers to the Court's brief grounds of decision and where the full grounds have not been issued yet.

Summary of the Decision

Malaysia's judicial management provisions are similar to Singapore's. In turn, judicial management is similar to the administration procedure in the United Kingdom. Judicial management is part of Malaysia's corporate rescue mechanism provisions.

On 14 April 2021, the listed company, Scomi Group Bhd, filed for judicial management¹.

Under Malaysia law, there are restrictions excluding certain types of companies from applying for judicial management. In particular, section 403(b) of the Companies Act 2016 ("**CA 2016**") sets out that the judicial management provisions do not apply to "*a company which is subject to the Capital Markets and Services Act 2007.*"

The Court ultimately held that the words in section 403(b) of the CA 2016 apply to all companies whose shares are quoted on a stock market of a stock exchange, as is the situation here with Scomi Group Bhd.

Scomi Group Bhd, as a listed company under the Capital Markets and Services Act 2007 ("**CMSA**"), cannot avail itself of the judicial management corporate rescue mechanism under Sub Division 2 of Division 8 Part III of the CA 2016.

¹ <https://www.theedgemarkets.com/article/scomi-applies-judicial-management-help-rehabilitate-group>

First, the Court examined the CMSA. In the preamble to the CMSA, the CMSA is an Act “to regulate and to provide for matters relating to the activities, markets, and intermediaries in the capital markets and for matters consequential and incidental thereto”.

Section 2 of the CMSA sets out the interpretation section and defines terms such as ‘capital market’, ‘corporation’, ‘listed corporation’, ‘securities’, ‘stock market’ and ‘listed’.

Second, under Part VII of the CMSA under “Provisions Applicable to Listed Corporations”, sections 317 to 321 govern listed corporations and the duties imposed on them under the CMSA.

Therefore, when reading the CMSA as a whole and for those sections, the Court concluded that essentially, any body corporate whose shares are quoted on a stock market will be governed by the CMSA.

The Court rejected Scomi Group Bhd’s argument that section 403(b)’s reference to “companies which is subject to the Capital Markets and Services Act 2007” means “companies licensed and regulated under the CMSA” or to only “companies that are involved in activities or markets in the capital market or which are intermediaries in the capital market”.

Commentary

Subject to any further appellate court decision, this High Court decision provides guidance on the current restriction for listed companies to apply for judicial management in Malaysia.

In the news is that of another listed company, Dolomite Corporation Bhd, having also applied for judicial management². It remains to be seen if the High Court will also make the same finding that a listed company cannot apply for judicial management.

² <https://www.theedgemarkets.com/article/dolomite-applies-judicial-management>

In the near future, Malaysia’s restructuring and insolvency laws will be amended (see the Companies Commission of Malaysia Consultation Document³). One of the changes will be to replace the broad wording in section 403(b) of the CA 2016 to a more targeted reference to only specific licensed entities.

“(b) Any company—

- (i) which is registered or approved under Part II, licensed under Part III, or recognised under Part VIII of the Capital Markets and Services Act 2007;*
- (ii) which is approved under Part II of the Securities Industry (Central Depositories) Act 1991; and*
- (iii) as may be prescribed by the Minister on the written request from the Minister charged with responsibility for finance.”*

The policy change is to specifically allow listed companies in general to be able to apply for judicial management. This aligns Malaysia’s corporate rescue laws to support a wide spectrum of distressed companies. This also brings Malaysia more in line with the origins of judicial management in Singapore after the collapse of the listed Pan Electric Limited.

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