

## **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* [2021] 10 CLJ 975 decided that public listed companies cannot apply for judicial management. This case update focuses on the issue relating to listed companies and judicial management.

### **Summary of the Decision**

On 14 April 2021, the listed company, Scomi Group Bhd, filed for judicial management<sup>1</sup>.

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.

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*”.

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

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”.

Ultimately, the Court concluded:

*“Accordingly, this Court cannot read words into section 403(b) of the Companies Act 2016 which are in my view plain, clear and unambiguous. I thus hold that section 403(b) of the Companies Act 2016 applies to all companies whose shares are quoted on a stock market of a stock exchange as is the situation here with the Applicant, and that the Applicant as a listed company under the CMSA cannot avail himself of the Judicial Management corporate rescue mechanism under Sub Division 2 of Division 8 Part III of the Companies Act 2016.”*

## 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.

Scomi Group Bhd has filed an appeal against the dismissal of its judicial management application. On 16 December 2021<sup>2</sup>, the Court of Appeal granted an interim preservation order to preserve and prevent any legal proceedings against Scomi Group Bhd pending the disposal of the appeal.

Meanwhile, another listed company, Dolomite Corporation Bhd, has also applied for judicial management<sup>3</sup>. The judicial management application is pending a hearing before the Shah Alam High Court. It remains to be seen if the High Court will also find that a listed company cannot apply for judicial management.

In the near future, Malaysia's restructuring and insolvency laws will be amended (see the Companies Commission of Malaysia Consultation Document<sup>4</sup>). 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*

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<sup>2</sup>

[https://www.bursamalaysia.com/market\\_information/announcements/company\\_announcement/announcement\\_details?ann\\_id=3219201](https://www.bursamalaysia.com/market_information/announcements/company_announcement/announcement_details?ann_id=3219201)

<sup>3</sup> <https://www.theedgemarkets.com/article/dolomite-applies-judicial-management>

<sup>4</sup>

[https://www.ssm.com.my/Pages/Legal\\_Framework/Document/Consultative%20Document%20%26Companies%20\(Amendment\)%20Bill%202020%20\(280720\).pdf](https://www.ssm.com.my/Pages/Legal_Framework/Document/Consultative%20Document%20%26Companies%20(Amendment)%20Bill%202020%20(280720).pdf)

*(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 will also bring Malaysia’s judicial management regime more in line with the origins of judicial management in Singapore after the collapse of the listed Pan Electric Limited.

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