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Banking & Insolvency



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Court of Appeal confirms judicial management is not available to public listed companies

Judicial management is a corporate rescue mechanism introduced under the Companies Act 2016 (**Act**) with the aim of assisting financially distressed companies to rehabilitate their financial position.

However, pursuant to s. 403 of the Act, judicial management is not available to two categories of companies:

- (a) A licensed institution or an operator of a designated payment system regulated under the laws enforced by the Central Bank of Malaysia.
- (b) A company which is subject to the Capital Markets and Services Act 2007 (**CMSA**).

In a significant decision delivered earlier today in **Scomi Group Berhad v Malayan Banking Berhad & 2 Others**, the Court of Appeal affirmed the decision of the High Court and held that judicial management is not available to public listed companies.

The Court of Appeal in its broad oral grounds held inter alia the legislative intent behind s. 403(b) of the Act is clear. S. 403(b) applies to all companies whose shares are quoted on the stock market which are regulated by CMSA. The shares of Scomi Group Berhad (**SGB**) are listed on Bursa Malaysia and therefore, SGB is subject to and comes within the purview of the CMSA. All companies which are subject to CMSA are caught by s. 403(b) of the Act and precluded from applying for judicial management.

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The Court of Appeal also held that s. 409(b) of the Act confers on a secured creditor the power to veto an application for judicial management. The Court of Appeal rejected SGB's contention that only a secured creditor who is entitled to appoint a receiver or receiver and manager of the whole or substantially the whole of SGB's property may veto the judicial management application under s. 409(b).

Malayan Banking Berhad was represented by partner Mong Chung Seng, and associate Medha Ong Ann Ting, of Lee Hishammuddin Allen & Gledhill.

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