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No Judicial Management for Public Listed Companies

Judicial management is a corporate rescue mechanism introduced under the Companies Act 2016 (**Act**) to assist 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**).

Earlier this week, the Kuala Lumpur High Court shed light on the interpretation of s 403(b) of the Act.

Scomi Group Berhad (**SGB**), a public listed investment holding company, applied for it to be placed under judicial management. SGB's application was opposed by, *inter alia*, Malayan Banking Berhad (**Maybank**), on the primary grounds that judicial management is not available to public listed companies and that the application should be dismissed as it is being opposed by Maybank, a secured creditor.

The High Court dismissed SGB's application. The High Court held s 403(b) of the Act applies to all companies whose shares are quoted on a stock market of a stock exchange. Therefore, SGB as a listed company under the CMSA cannot avail itself of the judicial management corporate rescue mechanism under the Act.

The High Court further held that Maybank, which is holding security over the shares charged by SGB, is a secured creditor of SGB. Maybank thus has the right to veto SGB's application under s 409(b) of the Act. This is despite SGB's contention that the veto

power under s 409 of the Act is only available to a debenture holder.

Maybank was represented by partner Mong Chung Seng, and associate Medha Ong Ann Ting, of [Lee Hishammuddin Allen & Gledhill](#).

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