

Who Gets a Say? Unsecured Creditors And Judicial Management Regime In Malaysia

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Judicial management is intended to rescue financially distressed companies, not merely postpone their inevitable collapse. By imposing a statutory moratorium and allowing an independent judicial manager to take control of the company, the regime seeks to preserve value while providing breathing space for corporate restructuring.

However, corporate rescue inevitably comes at a cost. Once a judicial management application is filed, creditors' enforcement rights are significantly curtailed. This raises an important question: who should be entitled to participate in proceedings that directly affect those rights?

The recent Court of Appeal decision in *Desa Tiasa Sdn Bhd v CME Group Bhd* [2025] MLJU 4345 addresses this issue. The court held that unsecured creditors have no right to intervene in judicial management proceedings to oppose the making of a judicial management order.

Although the decision promotes efficiency and expediency in corporate rescue, it also raises broader questions concerning procedural fairness, creditor participation and the proper balance between facilitating corporate rehabilitation and protecting creditors' rights. Those questions remain far from settled, particularly as the decision is currently pending appeal before the Federal Court.

The Legislative Framework

Judicial management was introduced under the Companies Act 2016 as part of Malaysia's broader corporate rescue framework, reflecting a shift away from the traditional

liquidation-centric approach towards rehabilitation of financially distressed companies.

Upon the filing of a judicial management application, a statutory moratorium immediately restrains creditors from enforcing certain rights against the company and its assets.

Recognising the potential impact on secured lenders, Rule 13 of the Companies (Corporate Rescue Mechanism) Rules 2018 (CRM Rules) expressly permits secured creditors, or persons entitled to appoint a receiver and manager, to appear and oppose the application.

However, the legislation is silent on unsecured creditors. Whether that silence signifies exclusion or merely leaves room for intervention has been the subject of considerable judicial disagreement.

Conflicting Judicial Approaches

Before *Desa Tiasa*, Malaysian courts adopted divergent views on whether unsecured creditors could intervene in judicial management proceedings.

In *Million Westlink Sdn Bhd v Maybank Investment Bank Berhad & Ors* [2019] MLJU 1721, the High Court held that unsecured creditors lacked locus standi to intervene. The court reasoned that Rule 13 constituted a comprehensive procedural code governing participation in judicial management proceedings and therefore displaced the general intervention provisions contained in the Rules of Court 2012.

The High Court also held that its inherent jurisdiction could not be invoked to circumvent a statutory framework that deliberately confined participation to specified categories of creditors.

By contrast, the High Court in *Goldpage Assets Sdn Bhd v Unique Mix Sdn Bhd* [2020] MLJU 723 reached the opposite conclusion. The court observed that the Companies Act 2016 contains no express prohibition against unsecured creditors participating in judicial management proceedings. In the absence of any prescribed procedure, the general intervention principles under Order 15 rule 6 of the Rules of Court 2012 remained applicable.

Significantly, the court relied upon the Federal Court's decision in *Indira Gandhi Mutho v Pengarah Jabatan Agama Islam Perak & Ors* [2018] 3 CLJ 145, which reaffirmed the long-established principle that access to the civil courts should not readily be excluded unless Parliament has clearly expressed such an intention.

The conflicting authorities left the legal position uncertain until the Court of Appeal revisited the issue in *Desa Tiasa*.

The Court Of Appeal's Decision In Desa Tiasa

The dispute arose after Bellajade Sdn Bhd, a judgment creditor of CME Group Berhad, sought leave to intervene in judicial management proceedings commenced against the company.

The High Court permitted the intervention, relying on the earlier Court of Appeal decision in *Maybank Investment Bank v Million Westlink*, where the Court of Appeal had reversed the High Court's decision in that case. It was held that unsecured creditors have no right to intervene in judicial management proceedings for three principal reasons.

First, Rule 13 of the CRM Rules constitutes a complete procedural framework governing participation in judicial management proceedings and therefore displaces the general intervention provisions under the Rules of Court 2012.

Secondly, because no written judgment had been delivered in *Maybank Investment Bank*, limited precedential weight could properly be attached to that earlier decision.

Thirdly, the court rejected the High Court's conclusion in *Goldpage Assets* that Rule 13 was inconsistent with the Companies Act 2016. Instead, both instruments should be read harmoniously, with Rule 13 operating to define who may participate in judicial management proceedings.

Accordingly, the High Court concluded that unsecured creditors have no right to appear and oppose a judicial management application.

Efficiency Versus Participation

The decision reflects two competing philosophies underpinning corporate rescue legislation.

The Court of Appeal adopted a pragmatic and literal interpretation of Rule 13. By restricting participation to those expressly identified in the legislation, judicial management applications can proceed more quickly and with fewer procedural obstacles, thereby promoting the central objective of corporate rescue.

Conversely, the earlier High Court decision in *Goldpage Assets* favoured a more inclusive approach.

Unsecured creditors frequently comprise the largest class of creditors and are often those most significantly affected by the statutory moratorium. Excluding them from proceedings that suspend their enforcement rights raises legitimate concerns regarding procedural fairness and the right to be heard.

The decision also sits somewhat uneasily alongside sections 404 and 405 of the Companies Act 2016, which expressly permit any creditor- whether secured, unsecured, contingent or prospective, to apply for a judicial management order. Those provisions arguably reflect Parliament's intention to encourage collective creditor

participation rather than differentiate between secured and unsecured creditors at the commencement of judicial management proceedings.

Although efficiency remains an important objective of any corporate rescue regime, an overly restrictive approach may also reduce judicial scrutiny in cases where judicial management applications are pursued for collateral purposes or amount to an abuse of process.

Looking Ahead

The pending Federal Court appeal is likely to become the leading authority on unsecured creditors' participation in Malaysia's judicial management regime.

If the Court of Appeal's decision is affirmed, unsecured creditors will remain largely excluded from the initial judicial management process, leaving secured creditors with significantly greater procedural influence.

Should the Federal Court adopt a different approach, however, it may endorse a more inclusive interpretation that better balances efficient corporate rescue with procedural fairness and creditor participation.

Whatever the outcome, the decision will have implications extending well beyond judicial management. It will shape the extent to which Malaysian insolvency law prioritises speed and commercial efficiency over participatory justice and will determine whether unsecured creditors are passive observers or active participants in one of the most significant stages of corporate restructuring.

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