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Restructuring & Insolvency

# Court of Appeal Rules on When to Intervene in a Judicial Manager's Exercise of Discretion

## Introduction

While a judicial manager is given a wide discretion to employ his skills and expertise in managing the affairs of a company in judicial management, the shareholders or creditors of the company may apply to court for relief where they contend that the company's affairs, business, or property have been managed by the judicial manager in a manner which is or was unfairly prejudicial to their interests.

The power to intervene upon application by the shareholders or creditors of a company was set out in section 227R of the Companies Act ("**section 227R**"). While section 227R has since been repealed, it has been reproduced in section 115 of the Insolvency, Restructuring and Dissolution Act 2018 ("**IRDA**").

*Yihua Lifestyle Technology Co., Ltd., & Anor v HTL International Holdings Pte. Ltd.* [2021] SGHC 86 is the first decision of the Singapore High Court which had an opportunity to consider and opine on the applicable principles on when it would be appropriate to intervene in a judicial manager's exercise of discretion. The High Court's decision was recently affirmed on appeal by the Singapore Court of Appeal in *Yihua Lifestyle Technology Co., Ltd., & Anor v HTL International Holdings Pte. Ltd.* [2021] SGCA 87.

The decision in this case is significant for judicial managers, shareholders, and creditors alike, in the application of section 115 of the IRDA moving forward.

The Appellants had sought to displace the discretion exercised by the judicial managers of a company in deciding to sell the company's assets to the Respondent Purchasers rather than the Appellants' preferred purchasers. The High Court Judge declined to intervene, holding that the judicial managers' decision was not unfairly prejudicial to the Appellants. On appeal, the Court of Appeal upheld the decision of the High Court.

The Respondent Purchasers were successfully represented by Mark Cheng, Chew Xiang, Ho Zi Wei, and Tan Tian Hui of Rajah & Tann Singapore LLP (with Audent Chambers LLC as instructed counsel).

We have previously issued a Client Update on the High Court decision in this matter, "Court Intervention in a Judicial Manager's Decision", which is available [here](#).

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## Brief Facts

The Appellants were the Shareholders of the Company, which had been placed under judicial management. The judicial managers of the Company ("**JMs**") sought to sell its interests in its subsidiaries (the "**Asset**"). Competing offers were received from two parties – Golden Hill and Man Wah.

The JMs eventually sold the Asset to Golden Hill. However, the Shareholders' preferred purchaser was Man Wah. The Shareholders thus brought an application under section 227R (which was in force at the material time) to set aside the sale of the Asset to Golden Hill and to direct the JMs to accept Man Wah's offer.

The High Court Judge ("**Judge**") dismissed the Shareholders' application, finding that they had not shown that the JMs' decision to sell the Asset to Golden Hill instead of Man Wah was unfairly prejudicial to the interests of the Company's creditors or members. The Judge thus declined to intervene in the JMs' exercise of their discretion.

The Shareholders appealed against the decision of the Judge.

## Holding of the Court of Appeal

The Court of Appeal upheld the Judge's decision, finding that the Shareholders had not shown why the Court should intervene in the JMs' decision. In reaching its decision, the Court set out the relevant principles on the circumstances in which the Court would intervene under section 227R.

### General principles

Section 227R provides that the Court may intervene if (a) a JM has, *inter alia*, managed the company's affairs, business, and property in a manner which is unfairly prejudicial to the interests of its creditors or members; or (b) some actual or proposed act or omission of the JM is or would be prejudicial.

The Court agreed with the Judge's holding that the Parliament had intended that JMs be given a wide discretion to employ their skills and expertise in performing their functions, and that JMs would be justified in weighing the interests of creditors over those of shareholders of the company. The Court would only interfere with a JM's decision pursuant to section 227R if it could be shown that their conduct had been plainly wrongful, conspicuously unfair, or perverse.

The Court provided further guidance in the form of a two-stage test to determine whether a JM has acted or proposed to act in a manner which would unfairly harm the interests of the applicant:

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- (a) **Stage 1** – It must be shown that the JM's action has caused, or would cause, the complainant to suffer harm in his capacity as a member or creditor.
- (b) **Stage 2** – The harm caused by the JM's action must be unfair. Such unfairness may stem from:
- i. Conspicuously unfair or differential treatment to the disadvantage of the applicant (or applicant class) which cannot be justified by reference to the objective of the judicial management or the interests of the members or creditors; or
  - ii. A lack of legal or commercial justification for a decision which causes harm to the members or creditors as a whole. This would include a decision to sell the company's assets at an undervalue, or action based on a wrong appreciation of the law. However, the Court clarified that, in such cases, it will not interfere with the JMs' decision unless it is perverse, meaning it is unable to withstand logical analysis.

### Application

Applying Stage 2 of the above test, the Court considered whether the JMs' decision to sell the Asset to Golden Hill was unfair. As the Shareholders did not claim to be the subject of differential treatment, the threshold for intervention in the present case was whether the JMs' decision was perverse. On the facts, the Court found that this threshold had not been crossed.

First, the Shareholders asserted that the JMs had erred in concluding that Golden Hill Capital's offer would yield higher shareholder returns than Man Wah's offer. The Court found that these contentions were entirely without merit and agreed with the Judge that the JMs had correctly assessed that Golden Hill's offer yielded a higher shareholder return than Man Wah's offer.

Second, the Court found the Shareholders' assertion that the JMs' refusal to provide Man Wah with the Company's financials prevented Man Wah from improving its offer to be speculative and without basis.

The Court thus agreed with the Judge that the JMs did not act in an unfairly prejudicial manner by selecting Golden Hill Capital's offer over Man Wah's offer. Accordingly, the Court declined to exercise its powers of intervention under section 227R.

### Concluding Words

The Court of Appeal's decision marks the first instance where the apex court has considered the application of section 227R. While section 227R has since been repealed, the relevance of the principles set out in this decision continue to be applicable as the provisions of section 227R are reproduced in section 115 of the Insolvency, Restructuring and Dissolution Act 2018.

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In setting out the circumstances where it would be appropriate for the court to intervene in a JM's decision, the Court has provided vital guidance to JMs on the scope of their discretion with regard to the affairs of the company. The decision also provides insight on when a shareholder or creditor may apply to the court for relief against the actions of a JM.

For further queries, please feel free to contact our team below.

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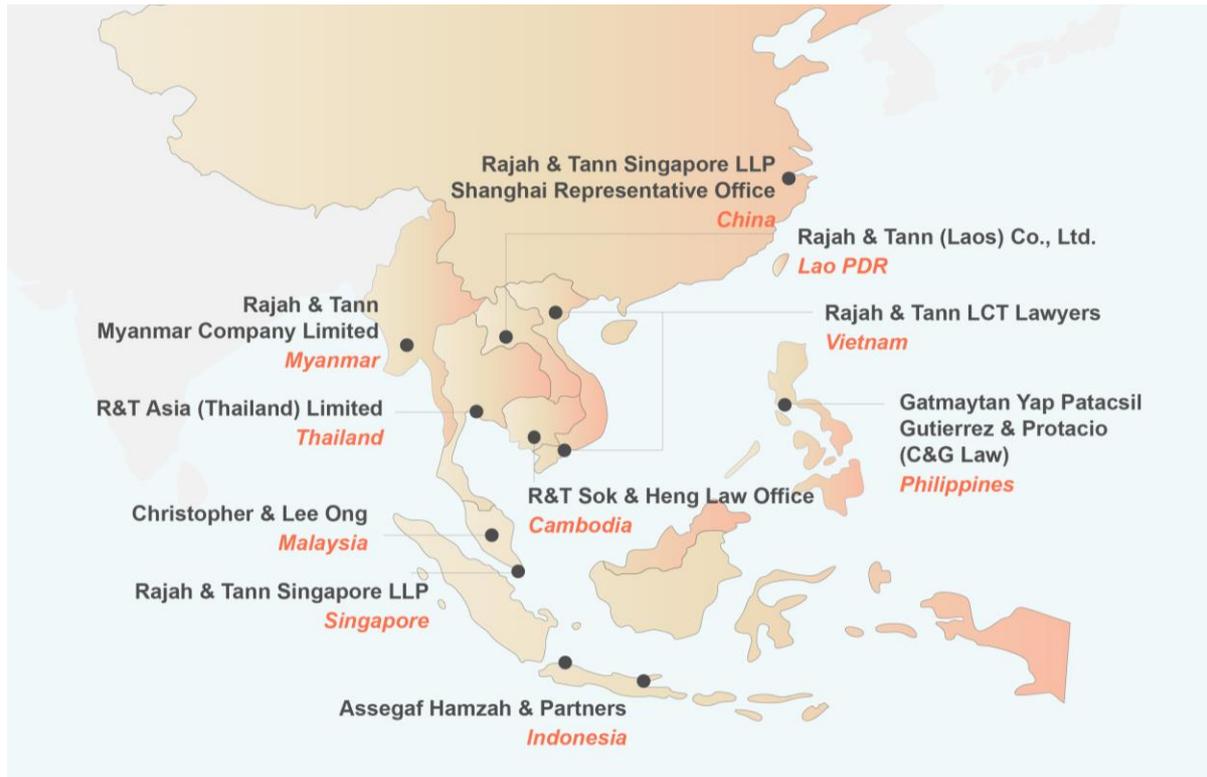
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