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COMPANY DELISTING

A MATTER OF INTERPRETATION

ON Jan 5, the Federal Court held, in a case involving Bursa Malaysia Securities Bhd and a liquidator, that there is no mandatory obligation on Bursa's part, as a stock exchange, to immediately delist a company when a winding-up order is made against the listed entity.

An important consideration for the courts was the wording of Rule 16.11 (2) of the Ace Market Listing Requirements (AMLR).

Rule 16.11.(2) states that the exchange shall delist a listed corporation in any one of the following circumstances:

(a) pursuant to a directive, requirement or condition imposed by the SC (Securities Commission), after which the exchange will notify the SC of the decision to delist;

(b) upon the maturity or expiry of a class of securities;

(c) upon the commencement of a voluntary winding-up of a listed corporation in accordance with the Companies Act; or,

(d) upon a winding-up order being made against a listed corporation.

A matter of interpretation

In law, there are three main rules to interpret a statute (or rules) — the Literal Rule, the Golden Rule and the Mischief Rule, and also the integrated approach known as the Purposive Approach.

The Literal Rule gives effect to the plain ordinary meaning of words that are used. Where there is no ambiguity, the words used convey the intended meaning — no more, no less.

The Golden Rule is used where the Literal Rule would result in an absurdity or an obnoxious result. In such instances, the court investigates whether the statute wording conveys the parliament's intention.

The Mischief Rule allows judges slightly more discretion. It looks at the gap or the mischief the statute was intended to cover and apply a ruling that remedies the problem in ambiguous statutes. The Purposive Approach is one that will promote the general legislative purpose underlying the provisions.

How the courts decided

The Court of Appeal and the High Court seem to have approached the case from a Literal Rule perspective.

They pointed out that the use of the word "shall" in Rule 16.11 (2) should be construed as mandatory and that the exchange shall delist a listed company when there is a winding-up order.

The exchange does not have the discretion to maintain the company's listing status. The Federal Court, however, did not take a literal approach.

The court stated that there is no mandatory obligation on Bursa's part to immediately delist a company upon a winding-up order made against it.

The court went on to say that Bursa has a statutory duty to protect the interests of the investing public, and that in interpreting the AMLR, the court is required to consider Bursa's statutory duty and interpret it in the proper context. The court was of the view that the AMLR has to be interpreted contextually, not textually (i.e. not literally). The court seems to have taken a Purposive Approach.

Producing the financial statements

The AMLR requires financial statements (which include the quarterly statements and annual audited accounts) of the listed company to be prepared and disseminated.

Bursa had acted against the liquidator for allegedly committing breaches of its rules for causing and permitting delay in the announcement or issuance of the quarterly or annual report of the listed company. In short, Bursa claimed that the liquidator did not comply with the AMLR.

The liquidator had argued that the Companies Act prohibits him from complying. Under the Companies Act, only directors can prepare the financial statements. But since the company is wound up, the directors have lost their powers.

Based on the Federal Court decision, it is now clear the liquidator must comply or ensure compliance with the requirements to produce financial statements.

Shareholders will be able to scrutinise these financial statements and the information will be beneficial to them.

Not beneficial to exchanges

As far as a stock exchange is concerned, it is not beneficial to prolong the delisting of a company where the winding up has commenced — where there is little hope of the suspension being lifted.

A key metric to measure the attractiveness of a stock exchange is its velocity. Velocity here means the value of trades divided by the market capitalisation. Suspended counters form the denominator but do not contribute to the numerator, thus dragging the velocity down.

Thus, in instances where an exchange does not see the possibility of a suspension being lifted, it is in the exchange's interest to delist the company as soon as possible.

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The writer is chief executive officer of the Minority Shareholders Watch Group