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High Court Clarifies Liquidator's Duty in a Public Company

Mohd Afrizan bin Husain v Bursa Malaysia Securities Berhad (HC)

The High Court's decision in *Mohd Afrizan bin Husain* on 15 June 2020 is an important one for insolvency practitioners.

The applicant (**MAH**) is the court appointed liquidator of a public company, Wintoni Berhad (**the company**), which was ordered to be wound up on 17 August 2017. MAH, after his appointment, gave an undertaking, in general terms, to comply with Bursa Malaysia (**Bursa**)'s Listing Requirements in consideration of Bursa allowing the company's continued listing.

Bursa later found and publicly reprimanded MAH for causing and permitting the company's failure to announce or issue the company's quarterly reports and annual reports between 2016 and 2018. MAH challenged the decision by way of judicial review.

Nordin Hassan J, after considering the liquidator's role and powers in liquidation, held that the liquidator was not responsible for the issuance and announcement of the quarterly and annual reports. His Lordship found that that was the responsibility of the directors.

The High Court also found that the undertaking given by MAH was inconsistent with Ruling 16.11(2) of the Listing Requirements, which states that Bursa shall delist a listed corporation upon a winding-up order being made against a listed corporation. His Lordship's decision seems to suggest the undertaking defeated Ruling 16.11(2) and hence, illegal under s 24(b) of the Contracts Act 1950. Nordin Hassan J concluded Bursa's decision to sanction the liquidator, instead of delisting the company, to be unreasonable.

The High Court quashed the decisions of Bursa's Listing and Appeal Committees.

The grounds of decision may be viewed [here](#).

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