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10 MARCH 2021

DGIR's Appeal to Reinstate Company Remitted to High Court

KPHDN v SSM & AHBH (Liquidator) (FC)

In the LHAG Updates of 13 February 2019, "[IRB's Application to Reinstate Company Was Dismissed](#)", and 6 December 2019, "[IRB's Appeal to Reinstate Company Dismissed](#)", we commented on decisions, of the High Court and Court of Appeal respectively, on an application by the Director General of Inland Revenue (**DGIR**) under s 535(1) of the Companies Act 2016 (**CA**). The DGIR had applied to reinstate a company that had been dissolved in order to raise additional tax assessments.

Section 535(1) of the CA reads:

*"(1) Where a company has been dissolved, **the Court may, at any time within two years after the date of dissolution, on an application of the liquidator of the company or of any other person who appears to the Court to be interested, make an order upon such terms as the Court thinks fit declaring the dissolution to have been void, and such proceedings may be taken as might have been taken if the company had not been dissolved.**"*

On the application of the former liquidator under Order 14A of the Rules of Court 2012 (RoC 2012), the High Court held that it had no jurisdiction to set aside the dissolution of the company more than two years after the date of dissolution. Accordingly, based on a plain, natural and ordinary reading of s 535(1) of the CA, the DGIR's application was dismissed. The High Court's decision was unanimously upheld by the Court of Appeal on 27 August 2020.

Federal Court's (FC) decision

Recently on 8 February 2021, the FC unanimously allowed the DGIR's appeal, set aside the orders of the High Court and Court of Appeal, and remitted the matter back to the High Court for full



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trial. The FC was, however, careful to highlight that it had not determined the issue of the application of s 535(1) of the CA.

Our analysis

Pending final determination by the courts, judicial treatment of s 535(1) of the CA remains unclear. In our book, [**Spotlight on Current Malaysian Tax Issues**](#), we discussed the judicial considerations that would be relevant in an application for reinstatement under s 535(1) of the CA, where the jurisdiction of the courts is not in question and an order made by the courts is still within the two-year period. It is anticipated that these considerations will be addressed in the High Court.

In light of the recent decision by the FC, liquidators would do well to exercise vigilance and caution in the discharge of their duties, and to maintain proper records even after the expiry of two years from the date of dissolution. The DGIR may be reinvigorated in its attempts to reinstate dissolved companies to clawback additional taxes. It is therefore advisable for taxpayers and liquidators to seek proper legal advice in the exercise of their duties.

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If you have any queries pertaining to tax assessments which have been raised by the Revenue, please contact associates Chris Toh Pei Roo or Steward Lee Wai Foong, or Tax, SST & Customs partners, [**Dato' Nitin Nadkarni**](#) and [**Jason Tan Jia Xin**](#), at tax@lh-ag.com

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Published by the Tax, SST & Customs Practice

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