THE TIMES

Times Law: Thursday December 21 2023

COMMENT | SIMON BUSHELL

A light touch in the City requires strong shareholder rights

Stacking the odds against investors in London only boosts the appeal of New York, writes Simon Bushell

The London Stock Exchange is in decline. Arm, a British technology company, took its initial public offering to New York. BHP, a stalwart in London, last year delisted in favour of the Australian market. And recent London flotations have a patchy record. CAB Payments, a fintech company that floated in July, has collapsed in value.

In decades past, when the London exchange was booming, certain companies and investors looked askance at New York. American regulators were fearsome, they thought, prompting them not to risk exposure to US litigation, which featured jury trials, punitive damages and aggressive plaintiff lawyers willing to work on a contingency basis.

Arm Holdings, a British chip designer, made a blockbuster debut on the Nasdaq in September

MICHAEL NAGLE/BLOOMBERG/GETTY IMAGES

Those features are still abundant in New York; but nowadays they seem to be a virtue, comforting investors who like the protection that robust supervision provides, and attracting quality companies that embrace high standards in exchange for better valuations.

It is therefore worrying that the UK government's plans to resurrect the London market appear to involve deregulation, in the belief that reduced oversight will encourage what the City minister, Bim Afolami, calls "animal spirits". Some might hope that England's famed legal and court systems will provide redress even in the event of another 2008-style financial meltdown. But the truth is that disappointed shareholders in our public companies are gun-shy when it comes to litigation. With good reason, because the odds are stacked against them.

For example, the Lloyds Bank shareholder class action, arising from the bank's disastrous takeover of HBOS in 2008, was dismissed in a 280-page judgment delivered 11 years after the event. Several significant breaches of duty by directors were proved, but not shown to have caused the shareholders' losses.

Little wonder that litigation funders are seen as reluctant to sponsor UK claimants. There is no established "opt out" shareholder class action system, which makes signing on shareholders a thankless task. Courts also require litigants to put up "security for costs" — large down payments to cover a defendant's legal bills in the event the claim fails.

Bim Afolami is the latest City minister to use deregulatory rhetoric

MARTIN DALTON/ALAMY

These are just some of the factors inhibiting shareholders from seeking redress. Yet lighter regulation may fuel further investor dissatisfaction if the wrong type of companies access the UK public market.

Rule changes now contemplated by the Financial Conduct Authority will do away with the need for prospectus-led shareholder approval in major transactions, thus removing an important basis for liability for negligent misstatements by companies. Instead, these transactions will be outlined in market announcements. Only if they turn out to be dishonest or reckless — a higher threshold — can shareholders sue.

If these changes are implemented, they should be accompanied by measures to address the obstacles facing investor claims, and to support a wave of new shareholder litigation.

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