

## **Consequences of Default by Directors**

\*Instances in which the directors are liable on conviction to be punished with imprisonment or/and a fine under the Companies Act No. 7 of 2007, are specified under the following sections.

### **Prospectus**

**Sec 42** – Authorising the issue of prospectus which contains untrue statements unless such statement is immaterial or the person authorising it had reasonable ground to believe that the statement was true.

- Imprisonment – term not exceeding 2 years
- Fine – not exceeding Rs. 500,000/-

### **Financial Assistance**

**Sec 70** – Contravention of the restrictions on giving financial assistance for the acquisition of company's own shares

- Imprisonment – term not exceeding 5 years
- Fine – not exceeding Rs. 1,000,000/-

### **Disqualification of Directors**

**Sec 213** – A person prohibited from managing a company by reason of being disqualified in circumstances specified in this section, acting in contravention of such prohibition by taking part in the management of the company without obtaining leave from court. Such circumstances of disqualification are, where the person,

- (a) has been convicted of an offence punishable with imprisonment under this Act
- (b) has been convicted of an offence involving dishonest and fraudulent acts
- (c) is adjudged insolvent under the Insolvency Ordinance
- (d) adjudged to be of unsound mind

- Imprisonment – term not exceeding 5 years
- Fine – not exceeding Rs. 1,000,000

**Sec 214** – A person prohibited from being a director of a company by reason of being disqualified in circumstances specified in this section, acting in contravention of such prohibition by taking part of the management of the company without obtaining leave of court. Such circumstances of disqualification are, where the person,

- (a) is prohibited from being a director under section 213
- (b) while a director of the company, has persistently failed to comply with the provisions of this Act
- (c) has been convicted of an offence involving dishonest or fraudulent acts in a country other than Sri Lanka
- (d) was a director of a company which became insolvent and his conduct as a director makes him unfit to be a director of a company

- Imprisonment – term not exceeding 5 years
- Fine – not exceeding Rs. 1,000,000/-

### Winding Up

**Sec 374** – In the event, a past or a present director of the company is guilty of an offence if he has, within 2 years preceding the commencement of the winding up of the company,

- concealed any part of the company's property to the value of Rs. 10,000/- or more or concealed any debt due to or from the company
- fraudulently removed any part of the company's property to the value of Rs. 10,000/- or more
- concealed, destroyed, mutilated or falsified any book or document affecting or relating to the property and affairs of the company
- made false entry in books or document affecting or relating to the property and affairs of the company
- fraudulently parted with, altered or made omission in documents affecting and relating to the property and affairs of the company
- pawned, pledged or disposed of property of the company which was obtained on credit and not paid for
- made or caused to be made any gift, transfer or charge on or has caused or connived at the levying of any execution against the company's property with the intent of defrauding creditors
- concealed or removed any part of company's property within 2 months before the date of any unsatisfied judgement or order for the payment of money obtained against the company with the intent of defrauding creditors.

- Imprisonment – term not exceeding 5 years
- Fine – not exceeding Rs. 1,000,000/-

**Sec 380** – A past or present director of a company which has wound up, is guilty of an offence, if he

- does not make known to a liquidator all the property and the details of any disposal of the property or any part of it, to the best of his knowledge and belief
- does not deliver to the liquidator all the property, books and papers of the company in his custody or under his control which he is required to deliver by law
- makes any material omission in any statement relating to the affairs of the company
- fails to for the period of one month to inform the liquidator, of a false debt proved by any person under the winding up of which he has knowledge and belief
- prevents the production of books and papers affecting or relating to the property or affairs of the company after the date of the commencement of the winding up
- attempts to account for the property of the company by fictitious losses or expenses after the commencement of the winding up or at meetings of the creditors within 12 months immediately prior to the date of commencement of the winding up

- (g) has within 12 months immediately prior to the date of commencement of the winding up or any time afterwards, obtains any property for or on behalf of the company on credit by making false representation or other fraud or under false pretence that the company is carrying on its business, which the company doesn't pay for subsequently
  - (h) is guilty of false representation or other fraud to obtain the consent of creditors of the company to an agreement with reference to the affairs of the company or to the winding up
- Imprisonment – offences (g) and (h) – term not exceeding 5 years  
Other offences – term not exceeding 2 years
  - Fine – offences (g) and (h) – not exceeding Rs. 1,000,000/-  
Other offences – not exceeding Rs. 500,000/-

**Sec 511** - Any person wilfully making a statement which is false in any material particular knowing it to be false, in any return, report, certificate, balance sheet or other document required by or for the purposes of this Act.

- Imprisonment – term not exceeding 5 years
- Fine – not exceeding Rs. 1,000,000/-

**Sec 512** – Any person with the intent of defrauding or deceiving a person,

- (a) causes or is a party to the destruction, parting, mutilation, alteration or falsification to any register, accounting records, book, paper or other document of or relating to the company
  - (b) makes or is a party to the making of a false entry in any register, accounting records, book, paper or other document of or relating to the company
- Imprisonment – term not exceeding 5 years
  - Fine – not exceeding Rs. 1,000,000

\*In terms of these offences directors shall be liable on conviction only to a fine.

### Register of Charges

**Sec 110** – Director knowingly and wilfully authorising or permitting the omission of any entry required to be made under this section in the register of charges affecting property of the company

- Fine – not exceeding Rs. 200,000/-

### Auditors Access to Information

**Sec 164** – Director not providing to the auditor with information and explanations which he is entitled to require for the performance of his duties or providing false information to the auditor

- Fine – not exceeding Rs. 100,000/-

#### Transactions in which a director is interested

**Sec 192** – non disclosure to the board of director the nature and extent of his interest in a transaction or proposed transaction when he becomes aware of such interest and for non entry of such particulars of the interest in the interest register

- Fine – not exceeding Rs. 200,000/-

#### Retiring age of Directors

**Sec 212** – Failure to give notice of his age on his appointment if he has attained the age of retirement or acts as a director under any appointment which is invalid or which has terminated by reason of his age.

- Fine – not exceeding Rs. 50,000/-

#### Loans by the Company

**Sec 217** – Authorising or permitting a company to enter into transaction which contravenes the restrictions on loans to directors makes a director liable as well as the company.

- Fine- Company- Rs. 200,000/-  
Director – Rs. 100,000/-

#### Prevention of Oppression and Mismanagement

**Sec 231** - Contravention of the of the restriction placed on directors whose agreements were terminated, set aside or modified by the court under section 228(c) to be appointed or act as directors unless with the leave of court.

- Fine – not exceeding Rs. 1,000,000/-

#### Amalgamations

**Sec 241 and Sec 242** – Directors who vote in favour of an amalgamation in a resolution not signing a certificate stating that the conditions set out in section 241(1) are satisfied and setting out the reasons for such opinion.

- Fine – Rs. 200,000/-

### Creditors Voluntary Winding up

**Sec 334** – Non performance of the requirement of,

- (a) causing a full statement of the position of the company's affairs with a list of creditors of the company with their claims to be laid before the meeting of the creditors
- (b) a director to be presiding at such meeting

- Fine- not exceeding Rs. 100,000/-

\*The Companies Act No. 7 of 2007 specifies certain obligations which the board of directors as a unit has to comply with. In the event the board breaches such an obligation, every director who is in default is guilty of an offence and be liable on conviction to a fine in the following instances.

### Distributions

**Sec 56** – The board fails to obtain a certificate of solvency from the auditors when authorising distributions.

- Fine – not exceeding Rs. 200,000/-

### Financial Statements

**Sec 150 and Sec 152** – The board of the company or the group fails to comply with the obligation to prepare financial statements as required or it fail to get such financial statements certified by the person responsible for the preparation of financial statements and signed by 2 directors of the company if there is more than one director.

- Fine – not exceeding Rs. 100,000/-

### Auditors Access to Information

**Sec 164 and Sec 165** – The board of the company fails to ensure that the Auditor has access to accounting records and other documents of the company as well as the opportunity to attend every meeting of the shareholders, to receive notices and communications relating to such meeting and to be heard at the meeting on business which concerns him as an Auditor.

- Fine – not exceeding Rs. 100,000/-

### Annual Report

**Sec 166 and Sec 167** – The board of directors fails to prepare the annual report of the company as required by this Act or upon the preparation such annual report, the board fails to send the report to every shareholder of the company not less than 15 days before the date fixed for holding the annual general meeting of shareholders.

- Fine – not exceeding Rs. 100,000/-

### Serious Loss of Capital

**Sec 220** – The board fails to call an extraordinary general meeting of the shareholders to be held not later than 40 working days from the date of calling that meeting if it appears that the net assets of the company are less than half of its stated capital and such notice for meeting must be accompanied by a report stating the nature, extent and cause of the loss and the steps to be taken prevent further loss and recoup the loss

- Fine – not exceeding Rs. 200,000/-

\*In instances where the company fails to comply with the following requirements, the company as well as every director who is in default by virtue of being an officer of the company shall be guilty of an offence and be liable on conviction to a fine not exceeding the sums as specified below.

Section	Requirement not complied with by the company giving rise to liability	Liability of Company (in Rs....)	Liability of Every director in default (in Rs.....)
8	Giving notice in prescribed form to the registrar of any name change of the company	50,000	50,000
9	Giving public notice of the incorporation of the company or any change in the name	50,000	-
10	Compliance of a direction given by the registrar to change the name of the company	200,000	-
11	Changing the name of the company upon a change in the status of the company	50,000	50,000
12	Stating the company name and number in particulars specified in the section and displaying the name and number at its registered office	50,000	50,000
15	Giving notice to the registrar of a special resolution which alters the articles of the company along with the full text of the resolution and the alterations	50,000	50,000
18	Providing a shareholder with a copy of the articles of the company at his request subject to 18(2)	200,000	100,000
51	Giving notice to the registrar in the prescribed form of the number of shares issued, amount of consideration and the amount of company's stated capital after the issue	50,000	50,000
55	Giving notice to the registrar in prescribed form of the amount of the call on shares and the amount of stated capital after making of the call	50,000	50,000
59	Giving public notice of a proposed reduction of the company's stated capital and after the reduction, giving notice to the registrar of the reduction in prescribed form	50,000	50,000

63	Giving notice to the registrar on the number of shares redeemed or acquired by the company itself	50,000	50,000
76	Giving notice to the transferee of a refusal to register a transfer of shares	50,000	50,000
78	Preparing certificates of shares, debentures and all debenture stock allotted or transferred within 2 months of the date of such allotment or transfer	50,000	50,000
81	Allowing the inspection of the register of holders of debentures or forwarding a copy of such register	50,000	50,000
104	Registration of charges existing on property acquired by the company	50,000	50,000
111	Compliance with a notice given by the registrar which is related to the review of the register of charges of the company	50,000	50,000
115	Compliance with a notice of the registrar requiring the company to change its registered office	50,000	50,000
116	Keeping the documents specified in 116(1) in the registered office of the company and if such documents are not kept at the registered office, notice be given to the registrar of the place where the records are kept	200,000	100,000
117	Taking adequate measures to prevent the records of a company being falsified and to detect any falsification of them	200,000	100,000
119	Keeping the records of the company specified in sections 119 and 120, available for inspection by the shareholders or any person authorised by a shareholder in writing	200,000	100,000
120	Keeping the records of the company specified in section 120, available for public inspection	200,000	100,000
122	Compliance with the request made in writing by a person for a copy of or extract of a document which is available to him for inspection to be sent to him within 5 working days of such request	100,000	50,000
123	Maintaining a share register that records shares issued, repurchase, redemption and transfer of shares as well as particulars of the shareholders	200,000	100,000
124	Notice of the place where the share register of kept or where the register is divided into more parts, notice of the places where each register is kept must be given to the register	100,000	50,000
126	Where the company has more than 50 shareholders, the company must keep an index of names of shareholders of the company containing written notices given by a company acting as a trustee where shares are held in trust relating to persons for whose benefit such shares are held	100,000	50,000
128	Delivery to the registrar, any court order directing the rectification of the register of the company	100,000	50,000

131	Delivery to the registrar once a year, an annual return in the prescribed form containing matters in the 5 <sup>th</sup> schedule signed by a director and the secretary of the company	100,000	50,000
133	Holding the annual general meeting of the company in the manner set out in the section	100,000	50,000
137	Notice of a meeting called by an order of the court, be sent to the registrar as required	100,000	50,000
139(3)	Inclusion of a statement in a notice calling a meeting of the company that a shareholder entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of him	-	50,000
139(5)	Where for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to some only of the shareholders entitled to be sent a notice of the meeting and to vote thereat by proxy, every officer of the company who knowingly and willfully authorises and permits their issue as aforesaid	-	200,000
142	Circulation of shareholder's resolutions on requisition	-	100,000
144	Sending a copy of a resolution in lieu of meeting to every shareholder who did not sign the resolution	100,000	50,000
147	Entering the minutes of all proceedings of general meetings and meetings of directors, in books kept for that purpose	100,000	50,000
148	Maintaining accounting records of the company in the manner specified in this section	200,000	200,000
149	Where the accounting records are not kept in Sri Lanka, company must ensure that the accounts and returns of the operations of the company are sent to and kept at a place in Sri Lanka and the notice of the place where the records, accounts and returns are kept be given to the registrar	200,000	200,000
154	Giving notice to the registrar that, the registrar is entitled appoint the auditor of the company by reason of an auditor not being appointed or re-appointed at an annual general meeting or by reason of a casual vacancy in the office of the auditor not filled within one month	200,000	100,000
161	Sending a copy to the shareholders and the registrar of a statement by the auditor setting out circumstances which the auditor believes, should be brought to the attention of the shareholders and the creditors	200,000	100,000
182	Compliance with the restriction on issue of shares of the company as specified in section 182(2)	200,000	100,000
223	Maintaining the register of directors and secretaries	100,000	50,000
229	Filing certified copies of every order altering or giving	100,000	50,000



	leave to alter the articles of the company, with the registrar		
256 and 257	Delivery to the registrar of an order by the court that approving arrangements, amalgamation and compromises and any subsequent orders in relation to such arrangements, amalgamation and compromises	100,000	50,000
320	Giving notice by publication in the gazette of a resolution for voluntary winding up of the company	100,000	50,000
381	Keeping the proper accounts of a company throughout the period of 2 years preceding the date of commencement of the winding up or period between the date of incorporation and the date of commencement of winding up, whichever is shorter	-	100,000
386	Notification that the company is in liquidation in every invoice, order for goods or business letters or any document on which the name of the company appears	50,000	50,000
484	Compliance with the direction of the registrar of the requirement produce and furnish information relating to the company and to inspect books, registers and documents of the company	100,000	50,000
493	Compliance by a registered overseas company with a notice precluding the use of its corporate name in Sri Lanka	200,000	100,000