

DISQUALIFICATION OF DIRECTORS

COMPANIES ACT, No. 07 OF 2007,

- ▶ **Section 213**– Persons prohibited from managing companies.

(1) Where a person—

- (a) has been convicted of any offence under this Act
– which is punishable by imprisonment;
- (b) has been convicted of an offence involving dishonest or fraudulent acts;
- (c) Found insolvent under the Insolvency Ordinance (Cap. 97) ; or
- (d) considered to be of unsound mind

- ▶ Such person shall not, during the period of five years after the conviction as the case may be, be a **director or promoter** of or in any way, whether directly or indirectly, be concerned or take part in the management of a company, unless that person,

First make application

To obtain leave the court

Apply for the leave of the court shall give the register

Not less than ten days' notice of his intention to apply for such leave

The register and such other person as the courts thinks fit attend and be heard at the hearing of any application under this section

- ▶ A person who acts in contravention of this section or of any order made under this section, shall be guilty of an offence and be liable on conviction to a fine not exceeding one million rupees or to a term of imprisonment not exceeding five years or to both such fine and imprisonment.

- ▶ These statutory duties cannot be seen in isolation because in addition a director will be subject to a wide range of regulation and legislation including,
- ▶ The Insolvency Act 1986,
- ▶ The Company Directors' Disqualification Act 1986
- ▶ The Health and Safety at Work Act 1974
- ▶ The Corporate Manslaughter and Corporate Homicide Act 2007.

Company Directors' Disqualification Act 1986

- ▶ The director has been guilty of three or more defaults in complying with companies legislation regarding the filing of documents with the Registrar of Companies during the preceding five years;

Insolvency Act 1986

- ▶ **Wrongful Trading:** If a company has gone into insolvent liquidation and before that liquidation took place a director knew, that there was no reasonable prospect that the company could avoid the liquidation, then the court may declare that the director make a personal contribution to the company's assets.
- ▶ **Fraudulent Trading:** the court may also require a director to make a contribution to the company's assets if, in the course of the winding up of a company, a director was knowingly a party to the carrying on of the company's business with the intent to defraud the creditors.

Health and Safety at Work etc Act 1974

- ▶ If a health and safety offence is committed with the consent,
- ▶ Is attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the organization,
- ▶ Then that person can be prosecuted under section 37 of the Health and Safety at Work etc Act 1974.

Corporate Manslaughter and Corporate Homicide Act 2007–

- ▶ An offence will be committed where failings by an organization's senior management are a substantial element in any gross breach of the duty of care owed to the organization's employees or members of the public, which results in death.
- ▶ The maximum penalty is an unlimited fine and the court can additionally make a publicity order.