

Amendment to the Companies Act No. 07 of 2007



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AMENDMENT TO THE COMPANIES ACT NO.7 OF 2007

A bill for the amendment to the Companies Act No.7 of 2007 was presented to Parliament by the Prime Minister and the Minister of Buddha Sasana and Religious Affairs on 21st March 2014. Prior to presenting same to Parliament, the draft was published in the Government Gazette on 10th March 2014.

The amendments proposed by the Bill affect 2 areas of legal procedure. Firstly, it generally enlarges the procedure to be followed by private companies when submitting the annual return of a Company to the Registrar of Companies. Secondly, it changes liquidation and other change of status proceedings by requiring notification to the Registrar when submitting the annual return before effecting the winding up of any company or change of status or similar situation and increases the period for claims in respect of debts regarding Income Tax and Value Added Tax to be made to the liquidator by the Commissioner-General of Inland Revenue.

The following are the specific amendments proposed to be made to the Companies Act No.7 of 2007:

Section	Provision under the Companies Act No.7 of 2007	Amended provision:
<u>S.132</u> Declaration and certificate to be sent by Private Company with Annual Return	132. Every private company shall send to the Registrar with its annual return— (a) declaration signed by the directors of the company to the effect that to the best of their knowledge and belief, they have done all things required to be done by them by or under this Act; (b) a certificate signed by a director and by the secretary of the company— (i) that the company has not since the date of the last return or in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or	In addition to the declaration under Section 132(a) and a certificate by a Director under Section 132(b), the amendment will require a Private Company to submit the following along with its Annual Return: (c) a certificate issued by the Commissioner-General of Inland Revenue confirming that the company has fulfilled the requirements specified in Section 106 of the Inland Revenue Act, No. 10 of 2006. Further, the following amendment has also been made to the Section: (2)(a) Subject to Section 131 every private company shall with the annual return of such company, or any time prior to the winding up of such company or

	<p>debentures of the company;</p> <p>(ii) where the annual return discloses the fact that the number of shareholders of the company exceeds fifty, that the excess consists wholly of persons who under section 27, are not to be taken into account in relation to that limit.</p>	<p>change of status or a similar situation specified in the 2014 Act, notify in writing to the Registrar in the manner prescribed any such winding up or change if any to be taken place.</p> <p>(2)(b) It shall be the duty of the Registrar to transmit a copy of such notice to the Commissioner-General of Inland Revenue.</p> <p>For the purposes of this Section— “Similar situation” means any arrangement, amalgamation merger or compromise as specified in the Act.”</p>
<p>Ninth Schedule(Preferential Claims)– Item 2 (b)</p>	<p>1. After paying the claims referred to in paragraph 1, the liquidator shall next pay the following claims :—</p> <p>(b) income tax charged or chargeable for one complete year prior to the commencement of the liquidation, that year to be selected by the Commissioner-General of Inland Revenue in accordance with the provisions of the Inland Revenue Act, No. 10 of 2006;</p> <p>(d) value added tax charged or chargeable for four taxable periods prior to the commencement of the liquidation, such taxable periods to be selected by the Commissioner-General of Inland Revenue in accordance with the provisions of the Value Added Tax Act, No. 14 of 2002.</p>	<p>In paragraph (b), the wording ““chargeable for one complete year prior to the commencement of the liquidation, that year to be selected” has been amended and substituted in a manner that the liquidator is required to pay under paragraph (b), income tax chargeable for five complete years prior to liquidation which will be selected by the Commissioner General of Inland Revenue.</p> <p>Paragraph 2(b) of the Ninth Schedule now reads as follows:</p> <p>(b) income tax charged or “chargeable for five complete years prior to the commencement of the liquidation, that five year period to be selected” by the Commissioner-General of Inland Revenue in accordance with the provisions of the Inland Revenue Act, No. 10 of 2006;</p> <p>Further Paragraph (d) has been repealed</p>

		and substituted with the following paragraph and accordingly the liquidator is required to pay under paragraph (d), value added tax chargeable for taxable periods within a five year period prior to commencement of liquidation: (d)value added tax charged or chargeable for taxable periods within five year period prior to the commencement of the liquidation, such taxable periods to be selected by the Commissioner-General of Inland Revenue in accordance with the provisions of the Value Added Tax Act, No. 14 of 2002;”
S.529 Interpretation		Section 529 of the Companies Act No.7 of 2007 is amended by the insertion immediately after the definition of the expression “class” of the following definition :— “Commissioner-General of Inland Revenue” means the Commissioner-General of Inland Revenue appointed under section 208 of the Inland Revenue Act, No. 10 of 2006.

A SUMMARY OF THE LEGAL EFFECTS

1. Section 132 –

- Along with the Annual Return a **certificate** issued by the Commissioner-General of Inland Revenue confirming that **the company has fulfilled the requirements specified in Section 106** of the Inland Revenue Act, No. 10 of 2006 is required to be submitted.
- Any time prior to the **winding up** of a company or **change of status** or a **similar situation**(any arrangement, amalgamation, merger or compromise) notify in writing to the Registrar any such winding up or change if any to be taken place. This has to be notified when submitting the annual return of such a Company and the Registrar will transmit such a notice to Commissioner-General of Inland Revenue.

2. Ninth Schedule (Item 2)

Increases the selection period by the Commissioner-General of Inland Revenue for claims in respect of debts regarding Income Tax and Value Added Tax respectively to be made to the liquidator.

Accordingly, the liquidator shall pay the following claims:

- **income tax** charged or chargeable for **five complete years prior to the commencement** of the liquidation, that five year period to be selected by the Commissioner-General of Inland Revenue
- **value added tax** charged or chargeable for **taxable periods within five year period prior to the commencement** of the liquidation, such taxable periods to be selected by the Commissioner-General of Inland Revenue

How the Liquidation process is affected:

As per 365 of the Companies Act No.7 of 2007, the liquidator is required to pay out of the assets of the company the expenses, fees and claims set out in the Ninth Schedule in the order of priority set out in the Ninth Schedule. As the selection period by the Commissioner General of the Inland Revenue for income tax and value added tax to be paid by the liquidator in paragraph (2)(b) and (2)(d) of the Ninth Schedule, has been increased, a higher sum will be required to be allocated by the liquidator out of the assets of the company to settle the said preferential claims.

3. Section 529 –

The introduction of the definition for the term “Commissioner-General of Inland Revenue” in the Interpretation Section.