

Revisiting the Outdated Standard of Directors' Duty of Care in Sri Lanka.

Yasoda Wijerathna¹, Dr. Sherin Kunhibava², Dr. Sujata Balan³

Directors' duties form an integral part of company law. For the first time in Sri Lanka, the Companies Act No 07 of 2007 (the Act), enacts directors' duties in statutory form under sections 187 to 190 to make the law clear and well settled. The directors' duty of care is set out under s. 189 of the Act. At common law, the director's duty of care, skill and diligence was initially formulated in subjective terms. However, this duty was subject to drastic changes throughout the years. Acknowledging these changes, prominent jurisdictions laid down the standard of this duty to be more demanding. For instance, jurisdictions like New Zealand and Australia, Canada have adopted an objective standard whereas jurisdictions like the United Kingdom and Malaysia have adopted a dual approach by amalgamating both subjective and objective standards. However, a careful examination of s. 189 in the Act demonstrates that this section still embraces the initial common law approach. Moreover, s. 189 (a) refers to outdated standards of 'gross negligence' and 'recklessness' that reflect an extremely lower standard. In addition, it is noteworthy that the aspect of 'diligence', one of the components of the duty that is generally known as the 'duty of care', is not mentioned in s. 189 of the Act. As a developing nation, Sri Lanka strives to achieve economic development and such can be achieved, *inter alia*, with the successful contribution of the private sector. Hence, it is imperative that the law which regulates companies to be progressive and in tandem with modern trends. In this context, this research intends to carefully examine the statutory duty of care and skill in Sri Lanka to evaluate whether the existing law is adequate. This is a doctrinal research and through a black letter approach, the relevant legislative provisions and case law will be critically analysed. Further references will be made to secondary sources. Following a critical examination of issues under concern, conclusions will be drawn whether the Sri Lankan law, in the area of directors' duty of care and skill, is in need of reform.

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¹ Faculty of Law, University of Malaya, Malaysia. yasoda.9010@gmail.com

² Faculty of Law, University of Malaya, Malaysia. sherin@um.edu.my

³ Faculty of Law, University of Malaya, Malaysia. sujatabalan@um.edu.my