

## CHAPTER 17 COMPANY LAW II: COMPANY OFFICERS AND LIABILITIES

*After studying this chapter students should be able to:*

### DEFINE 'DIRECTOR' AND UNDERSTAND THE POSITION OF THE BOARD OF DIRECTORS

- A director is an officer of a company who acts as an agent of the company. He can bind the company by his acts without incurring personal liability.
- Directors are responsible for the day-to-day management of the company and for developing company strategy and policy.
- All companies must have at least one director and public limited companies must have at least two directors.
- The Board of Directors is the 'mind' of the company and has responsibility for managing its affairs. The board may delegate some of its powers to individual directors to act on its behalf.

### OUTLINE THE APPOINTMENT AND REMOVAL OF DIRECTORS

- The first director or directors of a company are those named on registration of the company.
- The procedure for appointing new directors is set out in the company's articles. Usually directors are appointed by ordinary resolution at a general meeting or by the existing directors.
- Some articles allow for retirement and re-election of directors after a set number of years.
- A director can be removed before the expiration of his term of office by an ordinary resolution of the shareholders at a general meeting
- The Company Directors Disqualification Act 1986 allows a court to disqualify any person from being a director.

### DESCRIBE THE POWERS AND DUTIES OF DIRECTORS

- The extent of the directors' powers is defined by the articles of a company.
- The directors must always exercise their powers for the proper purpose for which they were given and what they honestly believe to be in the best interests of the company.
- Directors must act within their actual or apparent authority, but where directors act outside their powers, protection is given to third parties acting in good faith: CA 2006, s 40.
- Directors' duties set out in the CA 2006 are to act within their powers, to promote the success of the company, to exercise independent judgement, to exercise reasonable skill, care, and diligence, to avoid conflict of interest, not to accept benefits from third parties, and to declare an interest in any proposed transaction or arrangement with the company.
- A director who has breached his duties will be required to make up any losses suffered by his company and account for any secret profit gained.
- The articles of a company can impose more onerous duties on a director but they cannot reduce the statutory ones.

#### EXPLAIN THE ROLE OF A COMPANY SECRETARY AND COMPANY AUDITORS

- A company secretary is an officer and agent of a company and plays a key role in ensuring procedures are observed.
- A public company must appoint a company secretary and a private company may appoint one.
- An auditor is an independent contractor appointed to check that the company accounts are accurate and properly prepared, and to report to the shareholders.
- Companies are required, by law, to appoint an auditor each financial year to carry out an audit of the accounts.

#### UNDERSTAND THE MEANING OF CORPORATE GOVERNANCE

- Corporate governance is concerned with how the company is governed and its objectives and strategic direction.
- Some of the rules are found in the CA 2006 and other rules work through compliance with the Code on Corporate Governance which sets out standards of good practice.