

*Business Law: CIMA Year One*  
**Corporate Management: Directors**

All companies must have directors; public companies must have at least two and private companies must have at least one. The actual number of directors necessary is fixed by the Articles of Association of each company. Directors may be called by an alternate name within companies, but the legal definition of a director is not set by job title.

Directors can be “executive” or “non-executive”. All directors have some non-executive duties:

- attending board meetings
- advising with good faith and due diligence
- take part in decision making

In addition to this, executive directors take a more active role in running the company, normally controlling one part of the company in particular. A company may have as many executive directors as it likes, with no minimum.

If an executive director controls the company as a whole, they are known as the managing director (although in some companies this title will change). The managing director is considered as an agent of the company and has the ability to contract. Any contract made by the managing director, or even a director *who appears to be the managing director*, is binding.

**Removal and disqualification**

Directors can be removed by an ordinary resolution with special notice, under s303 of the Companies Act 1985. 28 days’ notice is required so that the director may have time to prepare and present a defence.

The Articles of a company may allow for the removal of a director in other ways, such as a vote of the board.

If directors abuse their position, they may be disqualified from taking position as a director by the Company Directors’ Disqualification Act 1986. Directors may be disqualified:

- if they are convicted of an offence in connection with the company (for example, theft from the company).
- a court considers that they are to blame for a company going into insolvent liquidation.
- they have been continually in breach of regulations regarding the submission of annual reports and accounts to the Registrar of Companies.
- they are undischarged bankrupt.

- they have been found guilty of fraudulent trading (that is, they have deliberately tried to defraud creditors).
- they have been found guilty of wrongful trading (that is, they have continued business as usual when they knew the company was about to enter insolvent liquidation).

Companies may independently disqualify directors by their Articles. Under Table A, a director will be disqualified if they are a mental patient, or if they become bankrupt. Furthermore, s293 of the Companies Act 1985 states that no director may be appointed (or reappointed) if they are over the age of 70.

### **Directors' duties to the company**

A director owes duties to the company similar to those owed by an agent or a partner:

- reasonable skill and care,
- no taking unauthorised benefit
- no undisclosed conflicts of interest
- confidentiality,
- fiduciary duty of proper purpose – the motives of the director must be fair, so that any contract is incidental to the company's business, is formed in good faith, and is entered into for the good of the company.

#### **Rolled Steel Products Ltd v British Steel Corporation (1985)**

One director was part of RSP and Scottish Steel. Scottish Steel owed BSC some debts, but if BSC were to sue, then Scottish Steel would fold. RSP guaranteed the loan (so that if Scottish Steel didn't pay, then RSP would pay instead). The guarantee was held by the courts to be void – RSP had no interest in Scottish Steel continuing trading, so it was only in the director's interest.

#### **Regal (Hastings) Ltd v Gulliver (1942)**

R owned a cinema. The directors of R decided to buy two other cinemas in the area (since three cinemas in a group were more valuable than the three cinemas separately). R, however, could not afford the cinemas. Some of the directors had some spare money, so they set up a subsidiary company with this, owned by R, the shareholders and directors. This company bought the two cinemas. The directors then sold their shares in the subsidiary, making a profit on their investment. The new shareholders then sued the directors for the profit they had made, since it had not been disclosed to R.

### **Directors' duties to employees**

As well as to shareholders, directors have a duty (to the company) to act in the best interests of the company's employees. Since the duty is to the company, it is not possible for employees to sue for breach of duty.

### **Directors' duties to creditors**

Generally, directors do not have direct duties to creditors (due to the veil of incorporation). However, there are some exceptions, particularly when a company is being wound up. In this case, a director may be found personally liable if fraudulent or wrongful trading occurs.

### **Directors' duties to shareholders**

Since directors' duties are to the company in general, it is rare that a director can be liable to an individual shareholder. However, minority shareholders are afforded some protection from actions of directors; these are covered separately.