

- **Liabilities of the Directors**

**The liability of a Director to the company may arise from as follows:**

**Breach of fiduciary duty:**

Where a Director acts dishonestly to the interest of the company, he will be held liable for breach of fiduciary duty. Most of the powers of Directors are powers in trust and therefore should be exercised in the interest of the company and not in the interest of the Directors or any section of members.

In a case where the Directors, in order to forestall a takeover bid transferred the unissued shares of the company to trustees to be held for the benefit of the employees and an interest free loan from the company was advanced to the trustees to enable them to pay for the shares it was held to be a wrongful exercise of the fiduciary powers of the Directors.

**Ultra vires acts:**

Directors are supposed to act within the parameters of the provisions of the Companies Act, Memorandum and Articles of Association. Since these lay down the limits to the activities of the company and consequently to the powers of the Board of Directors.

The powers of the Directors may be limited in terms of specific restrictions, contained in the Articles of Association. The Directors shall be held personally liable for acts beyond the aforesaid limits, being ultra vires the company or the Directors.

Where the Directors pay dividends or interest out of capital, they will be liable to indemnify the company for any loss or damage suffered due to such act.

## **Negligence:**

As long as the Directors act within their powers with reasonable skill and care, as expected of them as prudent businessmen. They discharge their duties to the company. But where they fail to exercise reasonable care skill and diligence.

They shall be deemed to have acted negligently in discharge of their duties and consequently shall be liable for any loss or damage resulting there from. However error of judgment will not be deemed as negligence.

The Directors cannot be absolved of their liability for negligence by any provisions in the Articles of Association.

## **Mala fide acts:**

Directors are the trustees for the money and property of the company handled by them as well as for exercise of the powers vested in them. If they dishonestly or in a mala fide manner exercise their powers and perform their duties. They will be liable for breach of trust and may be required to make good the loss or damage suffered by the company by reason of such mala fide acts.

They are also accountable to the company for any secret profits they might have made in course of their performance of duties on behalf of the company. Directors can also be held liable for their acts of misfeasance i.e., misconduct or willful misuse of powers. However misconduct which is not willful shall not amount to misfeasance.

Where a Director misapplies or misappropriates the money or properties of the company or has been guilty of breach of trust or misfeasance, the Court may order him to repay the money or restore the property or to pay compensation.

## **Co-Directors:**

A Director is the agent of the company except for matters to be dealt with by the company in General Meeting and not of the other members of the Board. Accordingly except in one instance nothing done by the Board can impose liability on a Director. Who did not participate in the Board's action or did not know about it. To incur liability he must either be a party to the wrongful act or later consent to it.

The absence of a Director from a meeting of the Board does not make him liable for the fraudulent act of a co-Director on the ground that he ought to have discovered the fraud except where he had the knowledge or he was a party to confirm that action.

Where a Director is made liable for the acts of a co-Director, he is entitled to contribution from the other Directors or co-Directors, who were a party to the wrongful act. However, where the Director seeking contribution alone benefited from the wrongful act. He is not entitled to contribution.