

Parent, Director and related Company Issues

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The types of director

The test for being a director is related to the function you perform, not your designation. CA s.9

- A director includes a person:
 - appointed as a director
 - appointed as an alternate director
 - who acts in the position of a director (even though not formally appointed)
 - on whose instructions the directors of a company are accustomed to act.

The types of director

There are several different types of director:

- **Defacto director** – a person who acts as a director even though he has not been formally appointed.
- **Shadow director** – a person who stands behind an appointed director and gives him instructions which are usually followed.

The types of director

There are several different types of director:

- **Executive director** – a director who is also an employee of the company and who carries out the day-to-day management delegated to him by the board.
- **Non-executive director** – a director who is not involved in the day-to-day management of the company but who has a supervisory, monitoring and advisory role.

The types of director

There are several different types of director:

- **Alternate director** – a person who is appointed to take the place of an appointed director who is unable to attend a board meeting.
- **Nominee director** – a person appointed to represent the interests of certain shareholders or creditors.

Duties of directors

Duties owed to the company

- A duty to act honestly and in good faith
- A duty not to make improper use of their position or information they receive
- A duty to act for a proper and legitimate purpose
- A duty to act with reasonable skill and care
- A duty to act in the best interests of the company (and to the shareholders collectively)
- A duty to avoid conflicts of interest (putting their own position ahead of the company)
- A duty to disclose all material personal interests to the company.

Duties of directors

Duties owed to third parties

- A duty not to permit the company to trade whilst it is insolvent
- A duty to delegate their powers in a responsible manner
- A duty to ensure that all relevant information is notified to the Australian Securities and Investments Commission (ASIC)
- Various duties under the Corporations Act 2001 relating to reporting, maintaining company registers and holding company meetings
- A duty to only pay dividends out of profits available for the purpose
- (Where the company is a trustee) a duty to ensure that the company is indemnified from the assets of the trust for any loss incurred while acting as trustee.

How directors' duties affect particular aspects of a business

Trade practices

- Directors must ensure the company complies with its obligations in relation to consumer protection, product liability and proper disclosure of information.

Tax

- Directors must ensure the company complies with its tax obligations (including filing returns and payment).

How directors' duties affect particular aspects of a business

Insurance

- Directors may in certain circumstances be found to be negligent if they fail to ensure the company has adequate insurance cover.

OHS

- Directors must be aware of the relevant legislation to ensure that the company complies.

Industrial relations

- Directors must be aware of the relevant legislation, as there are circumstances where employees can bring claims directly against a director.

How directors' duties affect particular aspects of a business

Environment

- Directors will be personally liable for certain offences.

Finance

- Directors have certain responsibilities in relation to the maintenance of the company's banking and finance arrangements.

Intellectual Property

- Directors should ensure that all of the company's intellectual property rights are protected, and that the company is not breaching the rights of a third party.

How directors' duties affect particular aspects of a business

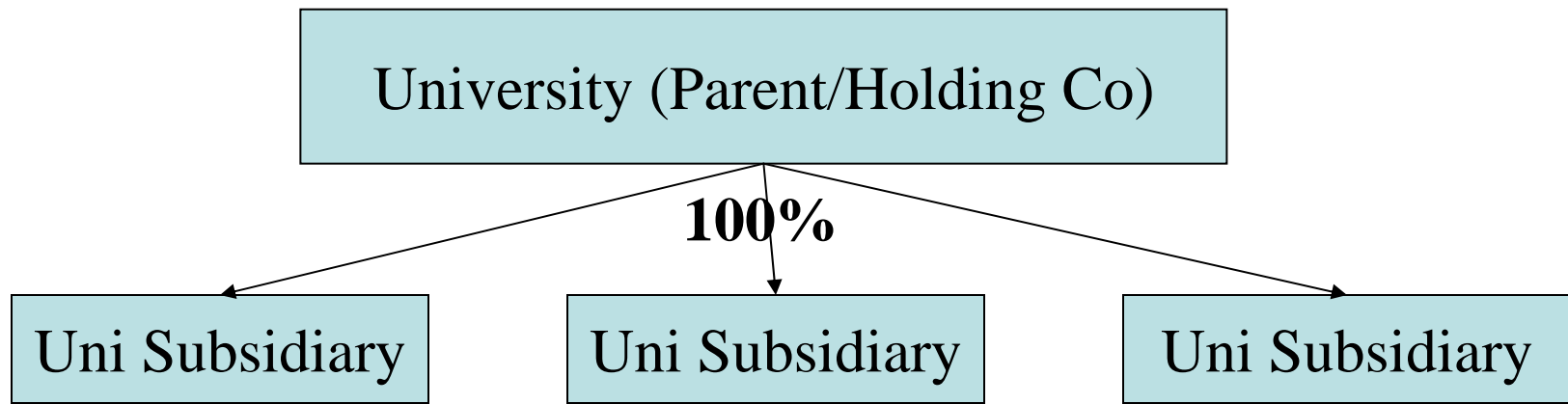
Criminal activity

- Directors will be personally liable for most types of fraudulent behaviour. Specific legislation exists in relation to misappropriation or misuse of company property, falsifying company records and publishing fraudulent statements.

Trading

- Directors must ensure that all agreements entered into by the company are for the commercial benefit of the company and that the company does not trade whilst it is insolvent.

Parent/Holding Co – Subsidiary Co



Spin-off Company

