**Chapter 29: Corporate Governance: External Responsibilities**

**Stakeholders** – groups affected by the business activities of a corporation

**Regulatory Offences** – less-serious offences created by government regulation through specialized legislation, agencies, and tribunals

**Mens Rea Offence** – an offence where the prosecution must establish a “guilty mind” on the part of the defendant

**Strict Liability** – an offence where there is a presumption of guilt unless the defendant can show that he or she took reasonable care

**Absolute Liability Offence** – an offence where the absence of fault is no defence

When an unincorporated business becomes insolvent, the creditors are entitled to whatever assets are available. If a deficiency remains, they may look to the personal assets of the sole proprietor or partners. However, in a corporation, a creditor’s right are limited to the assets held by the corporation.

**Reduction of Capital** – writing down (reducing) the stated amount of a corporation’s capital

**Insolvency** – having liabilities in excess of the realizable value of one’s assets or being unable to pay one’s debts as they fall due

A corporation may not pay a dividend if there are reasonable grounds for believing that the corporation is unable to pay its liabilities as they become due (solvency test) or if the realizable value of the corporation’s assets would thereby be less than the aggregate of its liabilities and its stated capital of all classes (maintenance of capital test).

**Securities Commission** – the statutory authority appointed to supervise the issue of securities to the general public, the operation of the securities industry, and the stock exchange

Before any company can make a public offering, the internal structure of the company must meet the high standards of corporate governance required by the securities regulation:

*Independence* – decision makers should be free of conflicts  
*Transparency*– decisions should be made through an open process  
*Disclosure*– information should be available to the public  
*Accountability* – decision makers should be responsible for their conduct  
*Checks and Balances* – internal structures should bring irregularities to light

**Prospectus** – the document that a corporation is required to publish when inviting the public to subscribe for its securities

A prospectus must include:  
- a full description of the securities to be offered (either shares or bonds) with a statement of their voting rights, preference, conversion privileges, and rights on liquidation  
- the nature of the business carried on  
- the names, addresses, and occupations of the directors  
- the proposed use of the proceeds from the issue of securities  
- details of any share options to be given by the corporation

**Non-Public Purchasers** – purchasers that are not members of the general public such as banks, insurance companies, and municipal corporations

**Takeover Bid** – an offer by one corporation to acquire all or a substantial part of the shares of another corporation

**Directors’ Circular** – a document required to be issued to the shareholders by the board of directors when a takeover of a widely held corporation is proposed

A corporation acts through its human agents. Where a corporation is held liable in tort, it is almost invariably on account of a negligent or wrongful act committed by an employee, agent or officer, and its liability is vicarious. A corporation is generally liable for the contracts made by its agents in the ordinary course of business under the rules of agency. Agents of a corporation acting within their actual or apparent authority bind the corporation to contracts made with third parties.

**Indoor Management Rule** – the principle that a person dealing with a corporation is entitled to assume that its internal procedural rules have been complied with unless it is apparent that such is not the case

**Pre-Incorporation Contract** – a purported contract made in the name of a corporation before it comes into existence

If a “contract” was made in the name of a corporation even one day before it came into existence, the purported contract is of no effect and a new contract would have to be negotiated once the corporation was formed.

A corporation can be charged with, and convicted of, an offence under the Criminal Code in the same way a natural person can.

**Senior Officer** – a representative who plays an important role in establishing an organization’s policies or is responsible for managing an important aspect of its activities, including the directors, the CEO, and the CFO of a corporation

- the physical act and mental intent of any offence are no longer required to be found in the same person – corporate criminal liability can be established in multiple employees with different responsibilities  
- the physical act may be committed by virtually any employee or contractor or an aggregate of them  
- corporate mens rea (guilty mind) may be found in policy-making authority and senior officers

Two types of intent:

1) In the case of an offence that requires the prosecution to prove negligence (e.g., criminal negligence causing death), an organization is a party to the offence if (a) one of its representatives, acting within the scope of his authority, is a party to the offence, and (b) the senior officer responsible for the aspect of the organization’s activities departs markedly from the standard care that could reasonably be expected to prevent the representative from being a party to the offence.

2) In the case of an offence that requires the prosecution to prove intent (other than negligence), an organization is a party to the offence if one of its senior officers (a) acting within the scope of her authority, and with the intent, at least in part, to benefit the organization, is a party to the offence or  
(b) with the required intent directs the work of other representatives of the organization so that they commit the specified act or omission, or (c), knowing that a representative of the organization is about the be a party to the offence, does not take all reasonable measures to stop them

The Criminal Code contains some offences that are particularly applicable to corporate conduct:  
- fraud  
- market manipulation – false market activity or manipulating share prices  
- distributing false prospectuses, statements, or accounts  
- criminal negligence causing bodily harm  
- whistle-blower retaliation – includes threatening, disciplining, demoting, or firing a whistle-blower

Directors, like employees, are liable for their own torts that are committed in the course of performing their duties, even though the corporation may also be vicariously liable.