

The International Bar Association Company Director Checklist – Angola

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Introduction

This Company Director Checklist is intended to serve as practical guide to the main duties and obligations of the directors of joint stock companies (i.e., companies limited by shares or “SAs”), both private and listed, in Angola, namely arising from:

- Law of Commercial Companies, approved by Law 1/04, of 13 February 2004;
- Securities Law, approved by Law 25/15, of 31 August 2015;
- Insolvency and Corporate Recovery Law, approved by Law 13/21, of 10 May 2021.

Disclaimer

This checklist does not constitute an exhaustive approach on these matters; thus, for complete comprehension of all relevant aspects, specific legal advice is advised.

This checklist was last updated on 28 February 2022.

DUTIES AND OBLIGATIONS OF THE DIRECTORS			
	Action/issue	Specifics of listed public companies (if relevant)	Comments/notes
Before appointment			
1. Items to understand	<ul style="list-style-type: none"> ▪ There are two major types of private limited companies in Angola: companies limited by shares (SA) and companies limited by quotas (<i>Limitadas</i> or “LDA”). Other types are mostly non-existent. The legal framework applicable in respect of SA and LDA Director obligations is mostly identical with some minor exceptions. Having said that, the legal framework with regards to obligations applicable to SAs is generally more robust as oppose to LDAs. ▪ Directors must be individuals of full legal capacity or legal persons. If a legal person is appointed as a director, it must, in turn, appoint an individual to be elected for office on its behalf (liability in such event is joint and several). A director is not required to be a shareholder, resident in Angola or an Angolan national. Nevertheless, certain formalities must be complied with where a foreign director is appointed, notably in respect of his/her registration, including obtaining the relevant work or investor visa prior to the registration with the Commercial Registrar. ▪ Directors are usually appointed in the company’s deed of incorporation or by resolution of the general meeting of shareholders. The appointment is effective 	<ul style="list-style-type: none"> ▪ The management of a listed company must be exercised by a Board of Directors comprised by an odd number of at least 3 members. ▪ The articles of association of a listed public company cannot prohibit non-shareholders from being appointed or elected to the board of directors. ▪ The bond given by directors of a listed public company cannot be less than Kz: 30,000,000.00, and may be replaced, in part, by an insurance contract. 	

	<p>for the period stipulated in the bylaws and may not exceed four calendar years. Furthermore, where the company's bylaws do not stipulate the period of appointment, such period is deemed as four calendar years. Unless otherwise established in the bylaws, reappointment of directors is permitted. Although appointed for a fixed period of time, directors remain in office until their replacements are appointed, unless they are dismissed or resign.</p> <ul style="list-style-type: none"> ▪ Directors that become permanently absent are replaced: (1) by an alternate director; (2) where no alternate directors exist, by co-opting a new director (save to the extent that the remaining directors are not sufficient for the board of directors to operate); (3) if no co-opting occurs within 60 days of the absence, by appointment of the audit board; or (4) through election of a new director. Appointment through co-opting by the board of directors or by the audit board must be ratified at the subsequent general meeting of shareholders. As an exception to this rule, the appointment of directors may be carried out by the court. 		
<p>2. People to meet with</p>	<ul style="list-style-type: none"> ▪ Other directors. ▪ Management team. ▪ Company's legal and tax advisors (external and internal). 		

3. Documents to review	<ul style="list-style-type: none"> ▪ Bylaws. ▪ Internal regulations. ▪ Resolution appointing the Director. ▪ Company’s last accounts and annual reports on its business activity. ▪ Litigation report from legal counsel. ▪ Business plan and approved budget. 		
Ongoing duties			
4. Points for attention	<ul style="list-style-type: none"> ▪ The board of directors is in charge of the management of the company’s business; they make the strategic and operational decisions of the company and are responsible for ensuring that the company meets its statutory obligations. ▪ The majority of the board’s members must attend or be represented (if permitted by the bylaws) at board meetings for a valid convening quorum. The resolutions are passed with the majority of the votes of the directors present or represented at the relevant meeting (and, if permitted by the bylaws, of the directors voting by mail). The chairman has a casting vote whenever the board of directors is composed of an even number of members and as provided for in the bylaws. 	<ul style="list-style-type: none"> ▪ Directors should, by January 31st of each year, complete and submit to the company, a list of: (a) other companies (civil or commercial) in which they hold corporate positions, with the exception of professional companies; and (b) shares held in civil or commercial companies. ▪ Directors should inform the company, by January 31st of each year (and, in any case, in time for the preparation of the annual report of the management body), the number of shares and bonds held in the company or/and companies of the group. 	

<p>5. Legal status of directors</p>	<ul style="list-style-type: none"> ▪ The board of directors is the body responsible for managing the company's business, and is responsible for carrying out all acts relating to the pursuit of the company's object. It is the representative body of the company. ▪ The rights and duties that are part of the legal status of directors have their source in the law, in the articles of association and in corporate resolutions (or even, provided certain conditions are met, in shareholders' agreements). A general principle of equality of functional rights and duties applies between directors of the same company. 		<ul style="list-style-type: none"> ▪ The directors are appointed by the shareholders to manage its day-to-day affairs. The basic rule is that the directors should act together as a board but typically the board may also delegate certain powers to individual directors or to a committee of the board.
<p>6. Parties to which duties are owed</p>	<ul style="list-style-type: none"> ▪ Directors must act in the company's best interests, with the same diligence as a judicious manager, and their actions may not be detrimental neither to the shareholders nor to employees. The Angolan Companies Law does not yet accommodate the concept of stakeholders and interest parties in this regard. 		<ul style="list-style-type: none"> ▪ These general duties must steer the directors in making management decisions; they are also the source from which other specific legal duties derive, such as the duties not to act outside the company's permitted scope of activities, not to carry out acts that are not profit-orientated, not to execute board resolutions that are null and void and to collect deferred share capital payments, and non-competition duties, among others.
<p>7. Powers of the board of directors</p>	<ul style="list-style-type: none"> ▪ The board of directors is the company's managing body and is, as such, empowered to resolve on any matters regarding the management of the company. 		<ul style="list-style-type: none"> ▪ The board of directors may delegate to one or more directors specific management matters or delegate current management of the company in general to one or more directors or to an executive committee.

	<ul style="list-style-type: none"> ▪ The law lists the acts considered to be management acts, including, as typical management acts, the preparation of reports and annual accounts, the acquisition of real estate and of any movable and intangible assets (such as, for example, patents, book-entry shares, quotas) and the acquisition, opening and closure of business premises. ▪ The representation powers of the board of directors are exercised jointly by directors and the company is bound by the acts or contracts executed (or ratified) by the majority of its members, save where the bylaws stipulate an inferior number. The bylaws may also set forth binding of the company through managing directors within the scope of the powers delegated in them by the board of directors. ▪ Bylaws can restrict or limit the board's powers, to a certain extent (e.g., created reserved matters of the Shareholders in relation to which a decision by the Shareholders is necessary). 		<ul style="list-style-type: none"> ▪ Certain specific matters may not be delegated to the directors and must therefore be resolved on by the board, such as those related to the operation of the board (appointment of the chairman and co-opting of directors), to changes to the bylaws (change of the registered offices or increases in the share capital) or to significant changes in the company's activity (merger, spin-off and transformation projects), among others.
<p>8. Duty of loyalty</p>	<ul style="list-style-type: none"> ▪ Directors are subject to a duty of loyalty, in the best interest of the company, taking into account the interests of the shareholders and employees. ▪ It is the expectation of honest and trustworthy behaviour and the fiduciary 		<ul style="list-style-type: none"> ▪ The duty of loyalty must steer the directors in taking management decisions. Most authors tend to view this fiduciary duty as autonomous ground of the liability of directors.

	<p>position occupied by the director, in their capacity as managers of others' property, which is the basis for the reliance and trust of the company and, therefore, the imposition of a duty of loyalty.</p>		
9. Duty of care	<ul style="list-style-type: none"> ▪ Directors must, even before accepting the appointment, ensure they have the technical skills and willingness to perform the relevant office. ▪ This duty implies that directors must apply to organisational, decision-making and corporate control activities the time, effort and know-how required by the nature of their duties, their specific qualifications and the circumstances. 		<ul style="list-style-type: none"> ▪ The duty of care must steer the directors in taking management decisions. Most authors tend to view this fiduciary duty as autonomous ground of the liability of directors.
10. Duty to have and maintain skills	<ul style="list-style-type: none"> ▪ This duty is associated with the obligation to manage the company in accordance with the degree of skill and diligence as would amount to the reasonable care that an ordinary person would be expected to have under similar circumstances. The standard is subjective insofar as it encompasses reference to the particular abilities of the relevant director. 		
11. Additional duties (confidentiality, etc.)	<ul style="list-style-type: none"> ▪ The director has the fundamental duty of managing and representing the company. ▪ The director is also subject to a duty of legality, which means that when managing and representing the company, the director 		<ul style="list-style-type: none"> ▪ The duty of loyalty and the duty of care are also the source from which other specific legal duties derive, such as the duty not to act outside the company's permitted scope of activities, not to carry out acts that are not profit-orientated, not to execute board

	<p>has the duty to adopt a conduct that ensures the respect for the duties of the company. This duty of legality is nothing more than the imperative of directors to respect the duties of the company, ensuring its compliance. Although the framework is addressed to the company as a legal entity, it is the director(s) who ensure compliance.</p> <ul style="list-style-type: none"> ▪ The director also has a duty of vigilance towards the company. Vigilance is systematic and involves the delimitation of layered control mechanisms throughout the hierarchical structure. 		<p>resolutions that are null and void, to collect deferred share capital payments and non-competition, among others.</p>
<p>12. Delegation of powers/authority</p>	<ul style="list-style-type: none"> ▪ The board of directors may specifically charge one or more directors with specific management matters or, if permitted by the bylaws, delegate current management of the company to one or more directors or an executive committee. ▪ Certain matters may not be entrusted to directors and must therefore be resolved upon by the board, such as those related to the operation of the board (appointment of the chairman and co-opting of directors), to changes to the bylaws (change of the registered offices or increases of the share capital) or to significant changes in the company's activity (merger, spin-off and transformation projects), among others. 	<ul style="list-style-type: none"> ▪ The Board of listed company has the function of establishing and maintaining internal control systems, always taking into consideration the size of the company and the nature of the activity. 	<ul style="list-style-type: none"> ▪ Both in the event of charging specific management powers and of delegation of the current management of the company, the board of directors continues to be empowered to resolve on the charged or delegated matters. ▪ In addition, nonexecutive directors are liable for the general surveillance of the activity carried out by managing directors and for damages arising from the actions or omissions of managing directors under a delegation of powers, save to the extent they have caused the board of directors to intervene for the purposes of approving appropriate remedial measures.

	<ul style="list-style-type: none"> ▪ As regards authority, the company is bound by directors, within the limits of the powers granted to them by law, irrespective of the limitations arising from the bylaws or from resolutions of the general meeting of shareholders. Nevertheless, the company may avoid binding before third parties if the directors acted outside the company's permitted scope of activities, to the extent that it provides evidence that the third party knew or could not ignore, given the circumstances, that the relevant act or contract exceeded such scope and provided that, in the meantime, the shareholders did not ratify such act or contract. 		
<p>13. Conflicts of interest (inc. intragroup dealings)</p>	<ul style="list-style-type: none"> ▪ The main legal regime governing the duties of directors within the scope of conflicts of interest between the directors and the company encompasses the following: <ul style="list-style-type: none"> - a company may not grant loans, make payments on account of directors, provide guarantees to secure obligations of directors or make advances in excess of one month's pay of the director; - directors may not be parties to an employment or services contract with the company during the period in office as directors (if prior to the appointment as directors they had such contracts, these shall be suspended during the period of office); 	<ul style="list-style-type: none"> ▪ Due to the potential risks that they may hold, transactions with related parties should be justified by the interest of the company and carried out under market conditions, subject to principles of transparency and adequate supervision. 	

	<ul style="list-style-type: none"> - contracts between the company and a director (other than those stated in the preceding paragraphs) must be authorised by the board of directors (the relevant director shall be deemed as in conflict with the company and therefore impaired from voting), have the favourable opinion of the audit board or the audit commission and be specifically addressed to in the annual accounts documents of the company – this does not, however, apply to the extent such contract is included in the company’s activities and no special advantage arises to the relevant director; - directors may not directly or indirectly compete with the company or perform office in or be appointed on behalf of any competing company, save if the general meeting of shareholders has consented to such activities; and - directors in conflict of interest with the company are impaired from voting in the relevant resolutions and must report such conflict to the chairman. 		
<p>14. Compliance with statutory obligations</p>	<ul style="list-style-type: none"> ▪ Directors are subject to a wide set of specific statutory obligations. These obligations include: <ul style="list-style-type: none"> - the duty not to act beyond the corporate purpose; 		

	<ul style="list-style-type: none"> - the duty to not distribute non-distributable corporate assets or dividends without the prior authorization of the shareholders or which under the Companies Law cannot be distributed; - the duty to call the general meeting in the event of loss of half of the share capital; - the duty to submit a management report and accounts; - the duty to post bond or contract liability insurance ("D&O Insurance"), unless otherwise released via bylaws or shareholder resolution. 		
15. Disclosure obligations of listed companies			
16. Potential liability	<ul style="list-style-type: none"> ▪ Vis-à-vis the company Directors are jointly and severally liable before the company in respect of damages incurred by the company arising from unlawful actions or omissions of the directors, grounded in breach of their legal or contractual duties. ▪ Vis-à-vis the company's creditors Directors are jointly and severally liable vis- 		<ul style="list-style-type: none"> ▪ Angolan law provides for an assumption of fault as regards actions or omissions of directors, meaning that the burden of proof to challenge such assumption is borne by the directors concerned. Nevertheless, evidence of the remaining prerequisites of civil liability (unlawful action or omission, damages and linkage between the foregoing) lies with the claiming party. ▪ Directors that have not participated in or that voted against a resolution of the board

	<p>à-vis the company's creditors whenever the company's assets become insufficient to meet the company's debts as a result of the directors' intentional breach of their legal or contractual duties aiming to protect the creditors.</p> <p>▪ Vis-à-vis the shareholders and third parties</p> <p>Directors may also be jointly and severally liable vis-à-vis the shareholders and/or third parties for damages incurred directly by the shareholders and/or third parties arising from the performance of their duties.</p>		<p>may also set aside their liability on such grounds.</p> <p>▪ Clauses excluding or limiting the liability of the directors or requiring that a claim against a director be dependent upon (1) a prior opinion or resolution of the shareholders as regards claims filed by shareholders on behalf of the company or (2) a prior court judgment are not allowed under Angolan law.</p> <p>▪ The general statute of limitation applying to civil liability of directors is five years (save to the extent the unlawful action or omission is punishable as a criminal offence and the applicable statute of limitation is longer, in which event such longer statute of limitation applies).</p>
17. Duration of duties	<p>▪ Directors are appointed for the period set out in the articles of association, which shall not exceed four calendar years.</p>	<p>▪ The directors of listed public companies are appointed for the period of time set out in the articles of association of the company up to a maximum of four years.</p>	
Special circumstances			
18. Bankruptcy	<p>▪ The courts will hold an insolvency to be wrongful when it results from the fraudulent action or serious fault of the insolvent or its legal or de facto directors in the three years prior to the start of the insolvency proceedings. This is the general principle.</p>		

	<p>▪ The insolvency of a company is always considered culpable, when its legal or <i>de facto</i> directors:</p> <ul style="list-style-type: none">a) destroy, damage, make unfit for use, conceal or cause to disappear either all or a significant part the debtor's assets;b) create or artificially increase liabilities or losses, or reduce profits, notably by causing the debtor to enter into damaging transactions either for their own benefit or that of others with whom they have a special relationship;c) purchase goods on credit, reselling those goods or transferring them as payment at a price considerably lower than the actual one, before satisfying the obligation;d) dispose of the debtor's assets for their own benefit or that of third parties;e) carry on, under cover of the legal personality of the company, if applicable, an activity for their own benefit or that of third parties, to the detriment of the company;f) use the debtor's assets or credit in contradiction with the debtor's interests, for their own benefit or that of third parties, in particular to favour another company in which they hold a direct or indirect interest;g) execute, for their own benefit or that of third parties, an operation at a loss, in spite of knowing, or being under the duty to know, that the latter might easily lead		
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	<p>to a situation of insolvency;</p> <p>h) materially breach the obligation of keeping organised accounting, keep false accounts or double accounts, or commit an irregularity with significant detriment to the understanding of the debtor's assets or financial status;</p> <p>i) repeatedly breach their duties of presentation that declares the insolvency.</p> <p>j) justified or committed serious inaccuracy in the documents attached in the process.</p> <ul style="list-style-type: none"> ▪ Engaging in any of the types of conduct described above will lead to an irrebuttable presumption that the insolvency is culpable. ▪ Directors are also obliged to collaborate and to provide all information required by the court in an insolvency proceeding. ▪ Among others, failure by the Board of Directors to comply with the duty to file for insolvency is deemed by law as <i>an iuris tantum</i> assumption of malicious insolvency. 		
<p>19. Takeover bids</p>		<ul style="list-style-type: none"> ▪ The directors of a listed public company, until information concerning the offer is made public, must (i) limit the disclosure of information relating to the public offer and (ii) limit the use of the information disclosed to the purposes related to the preparation of the 	

		bid. The breach of this duty constitutes a serious violation.	
20. Market abuse/insider dealing		<ul style="list-style-type: none"> ▪ Without prejudice to possible criminal liability, the use and disclosure of inside information in relation to securities and other financial instruments is prohibited. ▪ In the event that directors become aware of facts concerning the company, which have not been disclosed and which can influence the market value, and acquire or transfer shares or bonds in the company and obtain a profit or avoid a loss, they may compensate the damaged parties in the general terms. ▪ Whenever a director of a listed public company obtains information through an unlawful act and passes it on to someone outside the normal scope of his or her functions, or, based on such information, trades or advises someone to trade in securities or derivative instruments, for himself or herself or for others, he or she shall be punished with imprisonment of up to five years or with a fine of up to 300 days. ▪ The Director of a listed public company who discloses wrong, incomplete, exaggerated or tendentious information, or carries out other fraudulent practices that are suitable to artificially change the regular running of the markets, will be punished with a penalty of 	

		imprisonment up to five years or with a fine up to 300 days.	
Defences			
21. Good corporate governance			
22. Minutes of board meetings and publication requirements	<ul style="list-style-type: none"> ▪ The meetings of the board of directors must be recorded in minutes. The minutes shall be recorded in the company's minutes book. ▪ There are no publication requirements for the minutes of board of directors' meetings, except when the board of directors' resolutions are related to the practice of acts subject to registration (e.g. approval of amendments to the bylaws, capital increases, mergers or demergers, etc.). ▪ If the minutes are made outside the minutes book as "separate" (<i>avulsa</i>), the signatures of the directors shall be certified by a notary public. 		
23. Discharge and Indemnification	<ul style="list-style-type: none"> ▪ If the director is able to prove that he acted without fault, his/her conduct shall not trigger liability towards the company. 	<ul style="list-style-type: none"> ▪ The compensation resulting from removal without just cause is capped and may not exceed the amount the director would have received up to the end of the period he/she had been elected for. 	
24. Insurance	<ul style="list-style-type: none"> ▪ Unless exempted by the bylaws or through resolution of the general meeting of shareholders, directors must guarantee the 	<ul style="list-style-type: none"> ▪ Directors of listed public liability companies are required to provide a performance 	<ul style="list-style-type: none"> ▪ The performance of office must be guaranteed within 30 days of the appointment or election, and the guarantee

	<p>performance of office in the manner set forth in the bylaws, by resolution of the general meeting of shareholders or as provided for by law. Such guarantee may not amount to less than the equivalent in Kwanza to US\$20,000.</p>	<p>guarantee to cover potential liabilities (which may be replaced by insurance).</p>	<p>must be maintained until the end of the calendar year following that in which the administrator ceases his or her duties for any reason.</p>
<p>25. Resignation</p>	<ul style="list-style-type: none"> ▪ A director may resign from office at any time by notifying the chairman of the board of directors. If the chairman is the one resigning, he/she must notify the audit board or the audit commission. The resignation becomes effective at the end of the subsequent month, except if in the meantime a new director is appointed. 	<ul style="list-style-type: none"> ▪ When a director resigns, listed public companies shall disclose that fact to the regulator. 	<ul style="list-style-type: none"> ▪ Resignation of a director must be registered before the Commercial Registry Office.
<p>26. Restructuring of assets</p>	<ul style="list-style-type: none"> ▪ Most mechanisms for restructuring of assets are voluntary. Hence, there is no general duty on directors to request a restructuring procedure (either in or out of court). ▪ However, where a restructuring of assets is voluntarily submitted by a non-insolvent company and its creditors, the company (through its directors) must provide all information and documents required by the judicial administrator and by the creditors. ▪ Where an asset restructuring plan or an insolvency plan is approved, the company is obliged to comply with it. ▪ Directors performing their duties following the approval of an insolvency or 		

	restructuring plan may be liable, along with the company, for tax debts if, by their own fault, the assets of the company became insufficient to pay such debts.		
27. ESG and D&I policies, metrics, reports			