

The International Bar Association Company Director Checklist – Argentina

Contact: Juan Javier Negri (javier_negri@negri.com.ar) or
Victoria Díaz Colodrero (vdc@negri.com.ar)

Item	Number	Check	Item	Number	Check
Before appointment			Potential liability	16	<input type="checkbox"/>
Items to understand	1	<input type="checkbox"/>	Duration of duties	17	<input type="checkbox"/>
People to meet with	2	<input type="checkbox"/>	Special circumstances		
Documents to review	3	<input type="checkbox"/>	Bankruptcy	18	<input type="checkbox"/>
Ongoing duties			Takeover bids	19	<input type="checkbox"/>
Points for attention	4	<input type="checkbox"/>	Market abuse/insider dealing	20	<input type="checkbox"/>
Legal status of directors	5	<input type="checkbox"/>	Defences		
Parties to which duties are owed	6	<input type="checkbox"/>	Good corporate governance	21	<input type="checkbox"/>
Powers of directors	7	<input type="checkbox"/>	Minutes of board meetings	22	<input type="checkbox"/>
Duty of loyalty	8	<input type="checkbox"/>	Discharge and indemnification	23	<input type="checkbox"/>
Duty of care	9	<input type="checkbox"/>	Insurance	24	<input type="checkbox"/>
Duty to have and maintain skills	10	<input type="checkbox"/>	Resignation	25	<input type="checkbox"/>
Additional duties (confidentiality, etc.)	11	<input type="checkbox"/>	Restructuring of assets	26	<input type="checkbox"/>
Delegation of powers/authority	12	<input type="checkbox"/>	ESG and D&I policies, metrics	27	<input type="checkbox"/>
Conflicts of interest (inc. intragroup dealings)	13	<input type="checkbox"/>			
Compliance with statutory obligations	14	<input type="checkbox"/>			
Disclosure obligations	15	<input type="checkbox"/>			

Introduction

This checklist is intended to serve as a practical guide to the main duties and obligations of the directors of:

- limited liability companies or *sociedades de responsabilidad limitada* and
- joint stock companies or *sociedades anónimas*

as required by the Argentine General Companies Act (Law 19550 as amended and restated).

Most all companies incorporated in Argentina are private (that is, their shares are not publicly traded). When necessary, we have added the additional requirements imposed upon directors of companies the shares of which are publicly traded, as required under Law 27440, Law 26831 and the rules of the *Comisión Nacional de Valores*

Directors appointed in limited liability companies are called “gerentes” (“managers”). Both directors of joint stock companies and managers of limited liability companies are collectively called “administrators” by the relevant statutes.

Disclaimer

This checklist is merely informational in character only and is not intended to be comprehensive in all respects or to serve as a substitute for professional advice. In all cases specific legal advice should be sought. This checklist was last updated on 8 April 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"> • precise nature and scope of the company's business activities; • skills the company needs or access to resources that the company lacks; • current corporate structure (corporate bodies, shares ownership – sole or multiple shareholders; potential formal corporate group structure); • remuneration package; • time of commitment (term of service) required; • company's corporate governance framework, if any; and • requirements and prerequisites for serving as a member of the relevant corporate body. 	<ul style="list-style-type: none"> • relevant market regulator's rules • verify whether you are being appointed as an independent director 	<ul style="list-style-type: none"> • Is the company's activity regulated (i.e., banking, insurance, public utilities)? • Are you required to be familiar with the industry sector/company's business activity? • In case you are appointed as an independent director, check whether you qualify as such. • Consider if joining the board would place you in a position of conflict (see section 13 below). • Ascertain whether the company is part of a corporate group and the existence of agreements with related parties. • Consider if the remuneration meets your expectations in the context of what will be expected from you in terms of time, skills and expertise. Note that any remuneration must be approved by the company's shareholders' general meeting. Listed companies must publish their remuneration policy and a

			<p>detailed report on remunerations paid to their directors. .</p> <ul style="list-style-type: none"> • Satisfy yourself as to the adequacy of the company’s corporate governance. • Ascertain that you meet the requirements and prerequisites required by applicable law or included in the company’s bylaws.
<p>2. People to meet with</p>	<ul style="list-style-type: none"> • CEO/CFO; • other directors, including those who are members of the Audit Committee; • management team; • company’s tax advisors (external and internal); • company’s lawyers (external and internal); and • company’s auditors (external and internal). 		<ul style="list-style-type: none"> • You will be responsible for the conduct of the management team, as well as your own. Assure yourself of their integrity and competence. • Are you a right fit from the company’s perspective, as well as from your own perspective? • Ascertain if there is any current litigation and the potential liability of the company. • Ascertain if there have been recent changes in the company’s external auditors and the circumstances in which the change was made. • Ascertain if there are or have been any queries from regulatory authorities and the circumstances giving rise to such queries. • Ascertain if your inclusion on the board will change significantly the

			composition and independence of the board.
3. Documents to review	<ul style="list-style-type: none"> • company's bylaws (<i>estatutos</i>); • recent board minutes and other board documents; • recent minutes from the company's shareholders' meeting; • company's annual reports; • company's annual reports on related party transactions, if any • financial data for the past three years; • existence of past insolvency petitions filed by the company; • company's business plan and corporate strategy; • company's insurance coverage for directors; • press releases by the company; and • press clippings about the company. 	<ul style="list-style-type: none"> • Rules of the relevant market regulator • Annual and semi-annual reports published in the relevant market bulletins; • Report on material transactions with related parties; • Remuneration policy 	<ul style="list-style-type: none"> • Consider how often the board meets, how are the meetings held, ascertain the issues raised, and how decisions are taken • Consider proposals for amendments to existing bylaws or other potential structural or operational changes in the company. • Consider the company's current financial position and its financial track record over the past three years. • Ascertain whether there has been any change in accounting policies or practices. • Verify the terms and conditions of the relevant insurance policies covering directors;
Ongoing duties			
4. Points for attention	<ul style="list-style-type: none"> • How are decisions made within the company? • What is the board's risk appetite? • Satisfy yourself as to the internal regulation of the company and the corporate governance framework. 	<ul style="list-style-type: none"> • How are mandatory reporting requirements regularly complied with? 	<ul style="list-style-type: none"> • Understand how the board works in practice and if independent judgment is encouraged and/or respected. • Consider if your personality fits within the company's risk management policies.

	<ul style="list-style-type: none"> • Familiarize yourself with the company's group. • Verify whether the company's ties with third parties are adequately disclosed. 		<ul style="list-style-type: none"> • Consider if the company policies favor transparency and voluntary disclosure. • Understand the company's accounting policies and practices.
5. Legal status of directors	<p>Directors cannot delegate their functions in any other corporate body or officer. Their tasks must be performed personally.</p> <p>The basic standard is to act loyalty and to apply the diligence required from a good businessman (i.e., seeking to maximize profits).</p> <p>Directors are liable in case of gross negligence or fraud.</p>		<p>Directors cannot receive or follow voting instructions.</p> <p>Directors must verify the legality of all corporate decisions and their compliance with the bylaws. This is a consequence of the rule that directors are liable for any violation of the law, the bylaws and the applicable regulations.</p>
6. Parties to which duties are owed	<p>Directors have a loyalty duty towards the corporation, not to the shareholder(s) who may have voted in favor of their appointment. This principle applies even in the case a director has been elected by a particular class of stock.</p> <p>Directors can be removed at any time by a resolution of the body that elected them (or by a court decision in case a shareholder successfully challenges the validity of the appointment).</p>		<p>Yearly, the shareholders' meeting must approve the directors' performances. Otherwise, they remain liable to the corporation for any violation of the law or the bylaws or for any negligence in the performance of their duties. 5% of the shareholders may oppose such a shareholders' decision.</p> <p>Directors are appointed by a shareholders' meeting decision. They may also be appointed by the syndics in case of emergency. This</p>

			appointment must be ratified at the next shareholders' meeting.
7. Powers of the board of directors	<p>The board of directors enjoys all necessary authority to perform all acts related to or necessary for the fulfillment of the company's corporate purpose established in the bylaws.</p> <p>The company is legally represented by its president (i.e., the president of the board of directors or the sole director, as the case may be) and not by the board or by any of its directors (unless, in this latter case, specific authority has been conferred upon a director.</p> <p>The appointment of managers does not relieve the directors from their individual liability.</p>	The company must comply with several reporting obligations towards the regulatory authorities. Failure to do so will make the directors liable for any breach.	<p>Director's authority cannot be delegated.</p> <p>The appointment of managers does not relieve the duty of care of a prudent manager. Directors are liable in case of improper appointment, selection, or control of the managers appointed by the board.</p>
8. Duty of loyalty	<p>Directors are required to act in the best interest of the company and must always give preference to the company's interests. This rule is intended to avoid all possible conflicts of interest.</p> <p>Directors must report to the board the existence of any conflict of interest and abstain from participating in and voting any decision that may conflict with the company's best interests.</p>		

	Directors are also banned from competing with the company.		
9. Duty of care	<p>Directors are required to apply a strict standard; that of a good businessman (i.e., seeking at all times to maximize profits).</p> <p>Practical consequences of that rule require directors to</p> <ul style="list-style-type: none"> • act responsibly, prudently and dutifully; • not only to seek to preserve the company's assets but to increase them as much as possible – • to be proactive; • make informed and thoroughly considered decisions; • avoid unnecessary risks 		<p>The duty of care requires</p> <ul style="list-style-type: none"> • (a) to be in possession of all reasonably available information regarding any decision to be taken. This includes information about the consequences, risks and available alternative scenarios and a careful assessment of all possible advantages and disadvantages of the respective decision), and • (b) to be informed of the company's losses/profits, financial, legal or operational threats and business opportunities.
10. Duty to have and maintain skills	The duty of care requires directors to apply all their expertise, skills, or abilities necessary to perform all activities required from them. Failure to do so will expose directors to negligence claims.		
11. Additional duties (confidentiality, etc.)	The duty of loyalty requires that directors maintain confidentiality all information and facts, disclosure of which could damage the company.		Conflict of interest rules apply to any relationship between a director and the company, as well as to persons related to a director. Related persons

	<p>(incl. the company's trade secrets and know how).</p> <p>Directors must</p> <ul style="list-style-type: none"> • abstain from competing with the company; • comply with all conflict-of-interest rules; • obtain all corporate consents/approvals of all acts to be performed on behalf of the company; • act on behalf of the company only within the scope specifically indicated in the relevant documentation; • request the appointment of shareholders' and board meetings in case the president fails to do so • ensure that all prescribed minutes, records and accounts are duly and properly registered (in particular, employment agreements, as failure to do so entails severe sanctions) 		<p>include a director's relatives, controlled persons etc.</p>
<p>12. Delegation of powers/authority</p>	<p>Even if certain decision making is delegated to lower-tier officers, directors will always remain liable for the consequences of the delegation.</p>		<p>The duty of care requires to</p> <ul style="list-style-type: none"> • carefully select any officer or manager of the company; (responsibility for selection);

			<ul style="list-style-type: none"> define the terms of reference for any officer or manager (responsibility for terms of reference, guidance and cooperation); adequately control the performance of their respective duties by next tier officers either personally or through adequate control mechanisms (responsibility for control).
13. Conflicts of interest (inc. intragroup dealings)	<p>Directors cannot enter into any contract with the company unless entered at arms' length conditions and provided the object of the contract falls within the company's corporate purpose. Otherwise, contracts will require board approval and be reported to the shareholders' meeting</p> <p>If the directors' personal interests may conflict with the company's interests the director must report the situation to the board and .abstain from participating in the decision making process.</p>		<p>A director shall not vote on any matter in respect of which he has a conflict of interest.</p> <p>The conflict of interest rules may be expanded by the company's by laws. .</p>
14. Compliance with statutory obligations	<p>Directors must comply (and ensure that the company complies) with all obligations as a good businessman would do, seeking to maximize profits in all circumstances.</p>		

<p>15. Disclosure obligations</p>	<p>Directors are responsible for the timely filing and publication of all the company's relevant information/documents as required by laws, such as:</p> <ul style="list-style-type: none"> • annual financial statements; • letters to shareholders; • report on related third party transactions (if relevant); • annual reports (if relevant); • notices regarding legal changes in corporate and capital structure 	<p>Disclosure obligations of public companies are much broader, as they include quarterly reports.</p> <p>Listed companies must provide information regarding any event that may alter the trading of the company's stock</p> <p>Directors must be familiar with the company's reporting requirements and applicable regulations regarding filing and publications.</p>	<p>Reporting requirements must include information regarding ultimate beneficiaries of corporate shareholders.</p>
<p>16. Potential liability</p>	<p>Directors are jointly and severally liable to the company, its shareholders and third parties in case of misperformance of their duties (measured against the standard of care of a good businessperson). Breach of the directors' duties may entail civil or (very rarely) criminal liability.</p> <p>Exposure to civil liability towards the company will require plaintiff to show a direct action from and gross negligence by the defendant director that caused provable damage to the company.</p> <p>Civil liability towards shareholders will require evidence of a direct damage</p>		<p>In the event a director is not released from liability and the shareholders' meeting decides to bring legal action against such director, but no suit is filed within three months, any shareholder may bring action on behalf of the company.</p> <p>The courts have construed that, under the business judgment rule, and in the absence of fraud, there are corporate decisions that cannot generate any liability.</p>

	<p>attributable to the defendant director's gross negligence. Court judgments against directors may require them to reimburse or disgorge any funds received by the director as a consequence of the wrongdoing.</p> <p>Except for corruption cases, criminal liability will require to show that the director was directly involved in the criminal action.</p>		
17. Duration of duties	Directors must continue to hold their positions until a replacement director is appointed.		<p>At the end of their term in office, directors must hand over to the company any company assets in their possession.</p> <p>Companies may enter into termination agreements with their directors to include obligations to be performed beyond the term of office.</p>
Special circumstances			
18. Bankruptcy	<p>Directors must request court protection in case of insolvency of the company. Under composition proceedings the board will continue to run the company under the surveillance of a court-appointed receiver.</p> <p>If bankruptcy is declared all directors will cease in their functions and may</p>		<p>Insolvency is deemed to exist whenever the company is unable to repay its debts as they come due.</p>

	be faced with several personal restrictions.		
19. Takeover bids	No directors' action is required in case of private companies. Publicity must be given to takeover bids in case of public companies.	In case of a takeover, directors must <ul style="list-style-type: none"> • inform the employees, • opine on the convenience of the transaction. 	
20. Market abuse/insider dealing	In case of private companies there are no specific rules applicable to the situation except for the generic principles governing civil liability. In case of public companies, directors and related parties are restricted from taking any advantage from the information available to them.	Directors of public companies are required to report any transaction involving shares of the company where they act as such.	
Defences			
21. Good corporate governance	The board of directors is in charge of the company's management (but it is not the legal representative of the company). The board is required to convene a shareholders' meeting if at least 5% of the shareholders require it to do so. The board is required to provide all shareholders with all relevant information necessary to participate at the meeting at least 15 days prior to the relevant meeting Directors acting as shareholders are prohibited from voting on any matter in which they were involved.	Disclosure requirements of public companies are much broader than in case of private companies. The <i>Comisión Nacional de Valores</i> requires a number of periodic filings (mainly quarterly financial statements).	

22. Minutes of board meetings and publication requirements	Minutes of meetings are mandatory. They must be signed by all directors participating at the relevant meeting. In case of abstentions or negative votes the minutes must reflect those circumstances.	Independent directors who are also part of the Audit Committee must maintain separate minutes of their meetings	Minutes must be kept even in the case there is a single director.
23. Discharge and Indemnification	The shareholders may at any time revoke the appointment of any director. If the director was elected by a particular class of stock, the consent of the class will be required. The company may provide for indemnification to directors who are faced with contingencies as a consequence of the fulfillment of their duties, except in the case of fraud by the director.		For indemnification see also the liability in point 16.
24. Insurance	Argentine law does not require D&O liability insurance. A company may pay the insurance premiums as part of the directors' remuneration.		
25. Resignation	Directors must remain in office until formally discharged. The company (through board action) may refuse to accept the resignation of a director if deemed unexpected or inconvenient to the company.		
26. Restructuring of assets	Directors are required to take action in the case of insolvency requesting adequate court protection or filing for bankruptcy.		

27. ESG and D&I policies, metrics, reports	Argentine law requires listed companies to provide some information on ESG policies. All Argentine employers must comply with the anti discrimination statutes applicable to them.		
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