

The International Bar Association Company Director Checklist- Barbados

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Item	Number	Check	Item	Number	Check
Before appointment			Potential liability	16	<input type="checkbox"/>
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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		
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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"/>
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Conflicts of interest (inc. intragroup dealings)	13	<input type="checkbox"/>			
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Introduction

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

- listed public companies in Barbados, listed on the Barbados Stock Exchange; and
- private companies

arising from laws of Barbados (as the same may be amended from time to time), namely:

- the Bankruptcy and Insolvency Act Chapter 303 of the Laws of Barbados (the “Bankruptcy Act”);
- the Companies Act of Barbados Chapter 308 of the Laws of Barbados (the “Companies Act”);
- the Companies Regulations 1984 (the “Regulations”);
- the Fair Competition Act Chapter 326C of the Laws of Barbados (the “Fair Competition Act”);
- the Financial Services Commission Act 2010 of the Laws of Barbados;
- the Income Tax Act Chapter 73 of the Laws of Barbados (the “Income Tax Act”);
- the Money Laundering and Financing of Terrorism (Prevention and Control) Act 2011 of the Laws of Barbados (the “Money Laundering Act”);
- the National Insurance and Social Security Act Chapter 47 of the Laws of Barbados (the “NIS Act”);
- the Securities Act Chapter 318A of the Laws of Barbados (the “Securities Act”);
- Take-Over Bid Regulations, 2002 (the “Take-Over Regulations”); and
- the Value Added Tax Act Chapter 87 of the Laws of Barbados (the “VAT Act”)

Since most of the companies in Barbados are private, we are focusing primarily on private companies. However, for specifics of listed public companies (in comparison with the private ones), please see the third column of this checklist below.

Disclaimer

This Checklist is general and should not be relied upon for legal advice. Lex Caribbean disclaims any liability in respect of anything done in reliance on this publication. The Checklist relates only to the Laws of Barbados in force on the date of the Checklist and only covers the main obligations or statutory requirements of directors. It is recommended that specific legal advice and appropriate accounting advice should be sought

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 shareholder or multiple shareholders); • Remuneration package; • Time commitment (term of service) required; • Company's corporate governance framework, if any; and • Whether certain indemnities need to be requested 		<p>Prerequisites to accepting an appointment as a director should be that:</p> <ul style="list-style-type: none"> • you have a clear understanding of your expected role as a board member; • you have a worthwhile contribution to make to the company; • you have the requisite qualifications, experience and expertise to meet the expectations for your contribution; • you are not expected to be a passive director; • you are a fit and proper person to be appointed as a director pursuant to the provisions of the Companies Act, the company's by-laws, policies and any applicable legislation or regulations; • the remuneration package meets your expectations; • adequate corporate governance procedures are in place to ensure that you can perform your duties and are protected; and • you are not conflicted in a way which will prevent you from acting as a director in accordance with the company's articles of incorporation, policies and any applicable legislation or regulations.
2. People to meet with	<ul style="list-style-type: none"> • Chief Executive Officer; • Chief Financial Officer; • Chairman of the Board of Directors and recently retired Chairman (if applicable); • Other potential or confirmed directors and recently retired directors (if applicable); • Company Secretary; • Company's senior management team; 		<ul style="list-style-type: none"> • Obtain a briefing on the history and strategic plan/vision of the company; • Understand major drivers of performance and key performance indicators; • Get a SWOT analysis and risk report on the company; • Get background on or resumés of the other directors and key members of the management team;

	<ul style="list-style-type: none"> • Auditor(s); and • Company’s Attorneys-at-Law (if any) 		<ul style="list-style-type: none"> • Understand relationships, roles and responsibilities of the management team; • Understand who are the key suppliers or customers of the entity; • Understand status and relationships with employees and unions; • Obtain an industry briefing; • Get auditor’s input and perceptions on historical accounts and disclosure issues and/or copies of recently audited financial statements; and • Understand key legal relationships, any past or current litigation and issues with compliance and regulators.
3. Documents to review	<ul style="list-style-type: none"> • Company’s articles of incorporation, bylaws, articles of amendment and other relevant corporate documents filed with the Corporate Affairs and Intellectual Property Office of Barbados (CAIPO); • Review recent annual reports; • Any unanimous shareholder agreement relating to the company; • Board reports, resolutions and minutes for preceding two (2) years; and • Press clippings for prior year. 	<ul style="list-style-type: none"> • Announcements or notifications published by the Barbados Stock Exchange (“BSE”) for prior year; • Published financial statements for the prior year. 	<ul style="list-style-type: none"> • Are there any restrictions on your powers as a director? • What are the current issues before the board? • Is the company compliant with the provisions of the Companies Act and other applicable legislation? • Has the company made full and timely disclosure to the market? • Have any abnormal losses been explained? • What are the financial trends? • A director faces exposure to personal liability. It is therefore very important to review and assess the adequacy of the company’s directors’ and officers’ insurance arrangements that are in place.
Ongoing duties			
4. Points for attention	<p>Think about:</p> <ul style="list-style-type: none"> • the information that has been provided by the company and the quality of the information; • the information obtained from independent sources and how it compares with the information provided by the company; 		<p>In particular make note of:</p> <ul style="list-style-type: none"> • a dominant director - does any director (or officer) exercise undue control over the company’s assets or affairs? • inactive non-executive directors – does every non-executive director act as a check on the actions of management and executive directors?

	<ul style="list-style-type: none"> • whether there are any gaps in the information that you have been provided with or have obtained; • any possible red flags or risks that the company might be exposed to; • the current liabilities of the company; and • your impressions of the company's team of officers and advisors. 		<ul style="list-style-type: none"> • lack of independence – for example, does the company have audit committees and/or an independent auditor? • inadequate internal controls – for example, does the board function effectively, are reporting procedures adequate, are each of the directors and the company's shareholders sufficiently informed about the company's operations and financial status and are concerns dealt with in a timely and effective manner?
5. Legal status of directors	<ul style="list-style-type: none"> • As a director you are a fiduciary of the company and have a responsibility while exercising the duties of a director to act honestly and in good faith with a view to the best interests of the company and exercise the duties with care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. • The articles of incorporation and by-laws of the company, as well as any unanimous shareholder agreement may also further outline certain powers and duties of the directors. 		<ul style="list-style-type: none"> • Consider whether you are consistently acting in the best interest of the company, and whether you are breaching your fiduciary responsibilities to the company. • Consider whether you are potentially disqualified under the provisions of the companies act from being a director.
6. Parties to which duties are owed (Section 95 of the Companies Act)	<ul style="list-style-type: none"> • Your statutory obligations are to act honestly, in good faith and in the best interests of the company. • In determining what the best interests of a company are, you must have regard to the interests of the company's employees in general as well as to the interests of the shareholders. • This duty is owed to the company alone and is enforceable in the same manner as 		<ul style="list-style-type: none"> • Every director and officer of a company must comply with the Companies Act and the regulations and with the Articles of Incorporation and by-laws of the company and any unanimous shareholder agreement relating to the company.

	<p>any other fiduciary duty you owe to the company.</p>		
<p>7. Powers of the board of directors (Section 58 (1) of the Companies Act)</p>	<ul style="list-style-type: none"> • Generally, the board of directors are endowed with the power to manage the affairs of the company- whether directly or indirectly. This power is subject to any unanimous shareholder agreement, and in many specific instances, the articles of incorporation and the by-laws of the company. • The directors have the power to affect certain internal operations of the company, as well as take external action on behalf of the company: the internal powers towards the company (i.e., to manage the course of company's business, etc.); and external powers to act on behalf the company and represent it vis-à-vis third parties (enter into agreements etc.). <p>You are in charge of company's business management which can generally be defined as:</p> <ul style="list-style-type: none"> • steering the company; • organizing and managing the company's business; • adopting decisions on the company's business plans; • deciding the company's organizational, technical, business, personnel, financial and other day-to-day operational issues. <p>You also have duties and responsibilities regarding, inter alia:</p> <ul style="list-style-type: none"> • the company's compliance with the law and its articles of incorporation; <ul style="list-style-type: none"> • You are also entitled to act on behalf of the company (e.g., to conclude contracts, grant 		<ul style="list-style-type: none"> • As a director it is imperative to understand whether there are any curtailments of the powers that you can exercise. These may be present in the by-laws or articles of the company or a unanimous shareholder agreement. • In exercising the powers of a director, you must also ensure that your duty as a fiduciary of the company is always borne in mind. • Even if certain powers are not prohibited, directors must consider whether they need to receive certain indemnities from the company for taking certain actions. • No provision in a contract, the articles of a company, its by-laws or any resolution, relieves a director from the duty to act in accordance with the Act or the regulations, or relieves him from liability from a breach of the Act or the regulations (section 95 (5)).

	<p>a power of attorney to a third party to represent the company etc., borrow money upon the credit of the company, issue, re-issue, sell or pledge debentures of the company, give guarantees on behalf of the company and mortgage, charge or otherwise secure obligations of the company) subject to the company's articles of incorporation, by-laws, or any unanimous shareholder agreement.</p>		
<p>8. Duty of loyalty (Section 89 (1) of the Companies Act)</p>	<p>As a director you have a duty to:</p> <ul style="list-style-type: none"> • avoid conflicts between self-interest and the interests of the company; and • Not make secret profits from your fiduciary position. 		<ul style="list-style-type: none"> • Ensure that you disclose your interests in a material contract or a proposed material contract. This disclosure must be at the meeting at which a proposed contract is first considered. • Avoid all circumstances whereby you will profit from your position of being a fiduciary of the company. • Directors are expected to abstain from voting in relation to matters on which they are conflicted.
<p>9. Duty of care (Section 95 (1))</p>	<p>You are required to:</p> <ul style="list-style-type: none"> • Act honestly and in good faith with a view to the best interest of the company; and • Exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. 		<ul style="list-style-type: none"> • The duty is not to act perfectly, but rather to make reasonable decisions. • It is expected that the skill, diligence and care that is required for the specific industry, will be exercised by you as a director. • As such you will need to ensure that you are qualified and equipped to reasonably perform your duties, in the specific manner required of a person in your position.
<p>10. Duty to have and maintain skills</p>	<ul style="list-style-type: none"> • In general, you do not have to be equipped with all the expertise, skills, or abilities necessary to perform every 		

	<p>activity that falls within the scope of the director's authority.</p> <ul style="list-style-type: none"> • However, if you have certain expertise, skills, or abilities, you are obliged to use them in the performance of your duties - within the limits of your capabilities. 		
11. Additional duties (confidentiality, etc.)	<ul style="list-style-type: none"> • You are obliged to maintain confidentiality of all the confidential information and facts, the disclosure of which to third parties could cause damage to the company (including the company's trade secrets and know how). • As a director, you may not use or disclose confidential information without the consent of the disclosing party. • A person who is in breach of the duty is liable to account for any profits made by him as a result of the use of the confidential information. 		
12. Delegation of powers/authority (Section 80 of the Companies Act)	<ul style="list-style-type: none"> • Directors of a company may appoint a managing director or a committee of directors and delegate the powers of the directors to them (except certain fundamental powers). 		<ul style="list-style-type: none"> • There are certain fundamental powers which cannot be delegated to a managing director or committee of directors: <ul style="list-style-type: none"> - submitting to the shareholders any question or matter requiring the approval of the shareholders; - filling a vacancy among the directors or in the office of auditor; - issuing shares except in the manner and on the terms authorized by the directors; - declaring dividends; - purchasing, redeeming or otherwise acquiring shares issued by the

			<p>company;</p> <ul style="list-style-type: none"> - paying a commission to any person in consideration of his purchasing or agreeing to purchase shares of the company from the company or from any other person, or procuring or agreeing to procure purchasers for any such shares; - approving a management proxy circular; - approving financial statements; - or – adopting, amending or repealing by-laws.
<p>13. Conflicts of interest (inc. intragroup dealings)</p>	<ul style="list-style-type: none"> • You must disclose in writing to the directors or an officer of the company or request to have entered in the minutes of the meeting of the directors the nature and extent of your interest where: <ul style="list-style-type: none"> - you are a party to a material contract or proposed material contract with the company; or - you are a director or an officer of any body, or have a material interest in any body that is a party to a material contract or proposed material contract with the company • You should make the required disclosure: <ul style="list-style-type: none"> - at the meeting at which the proposed contract is first considered; - if you were not then interested in the contract, at the first meeting after you become so interested; - if you become interested after the contract is made, at the first meeting after you become so interested; or - if you are interested in a contract and you later become a director of the company, at the first meeting after you become a director 		<ul style="list-style-type: none"> • A general notice to the directors of a company by a director declaring that he is a director of, or has a material interest in, another body and is to be regarded as interested in any contract with that body is a sufficient declaration of interest in relation to such contract. • When a director fails to disclose his interest in a material contract made by the company, the court may, upon the application of the company or a shareholder of the company set aside the contract on such terms as the court thinks fit.

	You should also check the company's articles of incorporation and other applicable company documents for specific provisions on conflicts.		
14. Compliance with statutory obligations	<ul style="list-style-type: none"> Understand the company's disclosure/compliance obligations relating to: <ul style="list-style-type: none"> filing annual returns (section 15A of the Companies Act); maintaining company registers and records (sections 170 - 175 of the Companies Act) 	<ul style="list-style-type: none"> The directors of a public company must take all reasonable steps to ensure that the secretary or each joint secretary of the company is a person who appears to the directors to have the requisite knowledge and experience to discharge the functions of a secretary of a public company. A director of a public company must also understand their obligations in relation to: sending copies of financial statements, auditor's reports or any further information respecting the financial position of the company to the Registrar. 	
15. Disclosure obligations	See sections 13 and 14 above	<ul style="list-style-type: none"> A director of a public company must familiarize himself/herself with all disclosure rules that may be required by the relevant regulator in Barbados. 	
16. Potential liability	<ul style="list-style-type: none"> A director can be liable for not exercising their duties as fiduciaries of the company. If for example the director has not discharged his duties honestly and in good faith, with a view to the best interests of the company, or if he did not exercise the requisite care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. A director can also incur liability for giving consent to resolutions that authorize certain acts that are not duly approved or that are contrary to the Companies Act, such as purchasing, redeeming or otherwise acquiring shares, making dividend payments, providing financial assistance etc. 		<ul style="list-style-type: none"> Directors should always seek legal advice in relation to obtaining specific indemnities, before or while acting as a director.

17. Duration of duties	<ul style="list-style-type: none"> • A director will be required to perform his duties for the full duration of their appointment. • A director of a company ceases to hold office when: <ul style="list-style-type: none"> - he dies or resigns - he is removed in accordance with the Companies Act - he becomes disqualified, in accordance with the Companies Act. 		<ul style="list-style-type: none"> • An act of a director is valid notwithstanding any irregularity in his election or appointment, or any defect in his disqualification.
Special circumstances			
18. Bankruptcy	<ul style="list-style-type: none"> • In circumstances where you have a mere suspicion that the company is insolvent, you should immediately seek further legal advice. 		<ul style="list-style-type: none"> • Section 136 of the Bankruptcy Act provides that where a bankrupt is a corporation, such officer of the corporation or such person who has or has had direct or indirect control of the corporation as the Supervisor of Insolvency may specify, shall attend before the Supervisor for examination and shall perform all the duties imposed on a bankrupt. Failure to do so is punishable as though that officer or person were the bankrupt. By virtue of section 140 of the Bankruptcy Act, the trustee may examine under oath any person reasonably thought to have knowledge of the affairs of the bankrupt or any person who is or has been a director of the bankrupt, respecting the bankrupt, its dealings or property and may order such person to produce documents etc. in his possession relating to the bankrupt, its dealings or property.
19. Takeover bids	<ul style="list-style-type: none"> • Some key issues for directors of bidder companies (“offeror(s)”) are likely to include the following: <ul style="list-style-type: none"> - whether the bid is in the best interest of the offeror; and - whether the offeror’s statement 	<p>Takeovers of public companies are subject to complex rules which impose obligations on bidder and target companies and their directors.</p>	<ul style="list-style-type: none"> • A potential bidder should seek legal advice at an early stage in considering any takeover and a target company should seek advice immediately on becoming aware of a potential takeover.

	<p>contains all required information, including all information that is material to shareholders of the target company (“offeree”), in order for the shareholders to make an informed assessment of whether to accept the bid.</p> <p>If you are a director of an offeree:</p> <ul style="list-style-type: none"> - whether to recommend acceptance of the bid; - whether you have considered alternative offers or transactions; - whether to enter into break fee arrangements with a bidder; and - whether the target statement includes all information that shareholders and their advisors reasonably require in order to make an informed assessment of whether to accept the offer. <p>Various documents must be delivered to the shareholders by the directors within the time frames prescribed by Take-Over Regulations.</p> <p>In particular, the offeror making a take-over bid shall mail or deliver to each registered shareholder of the offeree not less than 28 days before the date on which the take-over bid is to close, a Take-over Bid Circular containing all of the information prescribed by the Take-Over Regulations and inviting shareholders to tender their shares pursuant to the take-over bid (regulations 5, 6 and 7).</p> <ul style="list-style-type: none"> • Where a take-over bid is made to the shareholders of a company, the directors of the offeree shall provide the shareholders with a Directors’ Circular containing the information prescribed by the Take-Over Regulations including: - <ul style="list-style-type: none"> - up-to-date information relevant to the company and the position of the 		<ul style="list-style-type: none"> • Directors should also receive specific legal advice in relation to their role in the take-over bid.
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	<p>directors;</p> <ul style="list-style-type: none"> - a recommendation to shareholders concerning acceptance of the takeover bid; and - a disclosure of the course of action the directors plan to take. 		
20. Market abuse/insider dealing (Section 308 of the Companies Act)	<ul style="list-style-type: none"> • As a director, you will be considered an “insider” pursuant to the definition of such term in the Companies Act. • An insider will become liable, if in relation to a transaction in a share of the company or any of its affiliates he makes use of specific confidential information for his own benefit or advantage that if generally known, might reasonably be expected to affect materially the value of the share. 		<ul style="list-style-type: none"> • As a director, you will be found in breach of your fiduciary duties and a breach of confidence if found liable for insider trading. How you use information that you receive by virtue of your position as a director must always be considered.
Defences			
21. Good corporate governance	<ul style="list-style-type: none"> • The directors are in charge of the company’s business management. • The risk of liability arising is minimized if the company has good corporate governance processes in place. At a minimum: <ul style="list-style-type: none"> - the structure and composition of the board should be appropriate; - the functions and roles of the board and its members should be clear; - the information systems should be adequate; - the processes and practices should be appropriate; and 		<ul style="list-style-type: none"> • Structure and composition: consider issues such as the size of the board, its mix of skills, the proportion of executives and independents and committee structures. • Functions and roles: the principal tasks of the board, the level of the board’s involvement (as opposed to management’s involvement), appropriate time allocations for tasks and the relationship with the management team should be clearly understood and responsibilities recorded. • Processes and practices: meeting practices, decision-making mechanisms, reporting lines and processes for directors’ performance evaluation should be clearly understood. • Information systems: format for monthly reports and minutes, mechanisms for directors’ access to information and key

	<ul style="list-style-type: none"> - The required meetings and protocols surrounding same should be had/in place. 		performance indicators should be clearly defined.
22. Minutes of board meetings and publication requirements	<ul style="list-style-type: none"> • The directors are required to ensure that that records containing the minutes of the company are kept at the registered office of the company or at some other place in Barbados designated by the directors. 		<ul style="list-style-type: none"> • The minutes of the company are vital not just for record keeping purposes, but for evidentiary purposes. It is within the minutes of the company that the evidence as to whether certain actions of the board have been duly authorized, will be found. Similarly, the minutes of the board will show that the company is being centrally managed and controlled in Barbados.
23. Discharge and Indemnification (Section 97 of the Companies Act)	<ul style="list-style-type: none"> • You should ensure that you are provided with an indemnity or insurance covering all costs, charges and expenses (including an amount paid to settle an action or satisfy a judgment) reasonably incurred by you in respect of any civil, criminal or administrative action or proceeding to which you are made a party by reason of being or having been a director of the company. 		<ul style="list-style-type: none"> • The indemnity does not apply unless: <ul style="list-style-type: none"> - the director or officer acted honestly and in good faith with a view to the best interests of the company; and - in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the director had reasonable grounds for believing that his conduct was lawful.
24. Insurance (Section 100 of the Companies Act)	<ul style="list-style-type: none"> • A company may purchase and maintain insurance for the benefit of a director against any liability incurred by him in his capacity as a director of the company. • You should review any insurance policies purchased and maintained for the benefit of directors and former directors against any liability incurred by them in their capacity as a director or officer of the company. Understand the exclusions and the level of cover available. 		<ul style="list-style-type: none"> • Most insurance policies are on a “claims made” basis which means that you will obtain cover if the policy is in force when the claim giving rise to the liability is actually made as opposed to when the act giving rise to the liability occurred. This means it is important to ensure that insurance remains in place after you have resigned. Insurance may not cover you where the conduct involves a willful breach of duty, improper use of information or improper use of position or for penalties.
25. Resignation (Sections 68, 69 of the Companies Act)	<ul style="list-style-type: none"> • As a director you have the right to resign. The resignation of directors under Barbados law becomes effective at the time a written resignation is sent to the 		

	company or at the time specified in the resignation, whichever is later.		
26. Restructuring of assets	<ul style="list-style-type: none"> • Directors should ensure as far as possible, that they understand the financial position of the company, and be facilitative and expedient when the shareholders of the company are considering actions with regards to the restructuring of the company's assets 		
27. ESG and D&I policies, metrics, reports	<ul style="list-style-type: none"> • There are no specific national ESG requirements currently in relation to director's duties. Entities are encouraged to implement policies that are environmentally and socially conscious. • The constitution of Barbados provides rules against discrimination, generally, and the labour laws in Barbados provide specifically for protection against discrimination in the workplace. 		