

The International Bar Association Company Director Checklist – France

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INTRODUCTION

This Company Director Checklist has been designed as a practical guide for a director of a French limited company (a "**Company**") as defined under the French Commercial Code and, to a limited extent, the additional requirements for a director of a public limited company listed on NYSE Euronext Paris (a "**Listed Company**") under the Listing Rules of the Euronext Rule Book. It deals with applicable rights and requirements under French law and rules.

French joint-stock companies may opt for a one-tier system with a board of directors ("*Conseil d'administration*") or a two-tier system with a management board ("*Directoire*") and a supervisory board ("*Conseil de surveillance*").

This checklist is mainly tailored for members of a board of directors (one-tier system) and not for members of a supervisory board (two-tier system).

This Checklist is a general guide that is not intended to be a substitute for professional advice. It was updated as at 28 February 2022.

Disclaimer: This Checklist is general and should not be relied on for advice. The authors and Allen & Overy LLP disclaim any liability in respect of anything done in reliance on this publication. This Checklist was prepared with directors of a French limited company in mind. It also addresses, to a limited extent, the additional requirements for a director of a Listed Company. However, specific legal advice and, where appropriate, regulatory and accounting advice should be sought in all circumstances.

	Action/Issue	Comments/Notes
Board of directors in France		
1. Composition requirements	<ul style="list-style-type: none"> Number: a board of directors must be composed of at least three directors and at the most eighteen. The maximum term of office for directors is set by the articles of association. However, under French law, such duration may not exceed six years. Unless otherwise stated by the articles of association, directors may be re-elected by the shareholders' meeting. Gender Parity requirement: regarding Listed Companies, the percentage of women on the board must not be less than 40% regardless the company size. However, if the board consists of no more than 8 members, the requirement is that the difference between men and women cannot exceed two. Independent directors: Listed Companies must refer to a corporate governance code (Middlenext Code or AFEP MEDEF Code) and perform a "comply or explain" exercise reflected in their financial annual report. Under the AFEP MEDEF Code, the number of independent directors should represent half of the members of the board, if there is no controlling majority and at least one third, if there is a controlling majority. Directors representing employees: employees representation is mandatory in all Companies employing during two consecutive financial years 5,000 or more employees including employees of subsidiaries whose registered offices are located in France and abroad or 1,000 including 	<ul style="list-style-type: none"> The articles of association set out the number of directors required within the legal limits. For information purposes, regarding large-scale companies, other than listed ones, the obligation to satisfy a proportion of 40% or a maximum difference of 2 members also applies to companies which for the third consecutive financial year fulfil the following two conditions: (i) employ an average number of at least 250 permanent employees and (ii) have a net turnover of at least EUR 50 million or a balance sheet total equal to or greater than this amount. For companies with 500 or more employees, the obligation came into effect on 1 January 2017. For companies with between 250 and 499 employees, the obligation came into effect on 1 January 2020. Employees' representatives are not taken into account when calculating the minimum and maximum number of members of the board, nor to comply with the gender parity rule. The mechanism for appointing the employees representatives is provided by the Company articles of association (several options are possible: elections by employees; appointment by the works council; appointment by the union with the largest share of the votes in the works council elections; or a combination of these options). The articles of association may also provide for employee representation on an optional basis, if the criteria triggering the obligation are not met.

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	<p>employees of subsidiaries with registered offices located in France. There will be one employees representative, where there are up to 8 board members, and two where there are more than 8. In any case, the number of directors representing employees may not exceed 5 in a Listed Company, nor may it exceed one third of the number of other board members.</p> <ul style="list-style-type: none"> • Directors representing the employee shareholder: if at the end of the last financial year the employees' shareholding exceeds the threshold of 3% of the Listed Company's capital, the shareholders meeting must appoint at least one director representing the employee shareholders. 	
<p>2. Who can be a director?</p>	<ul style="list-style-type: none"> • There are few restrictions applicable to the person who is entitled to be a director, namely: persons without legal capacity to act (mentally impaired or non-emancipated minors) and persons who have been disqualified from acting as a director. • A legal entity can be appointed as director. In such a case, a permanent representative (<i>représentant permanent</i>) has to be appointed to represent the legal entity on the board. • The number of directors who are more than 70 years old may not exceed one third of the board, unless otherwise stated by the articles of association. • The number of directors who have an employment contract with the Listed Company may not exceed one third of the members of the board. 	<ul style="list-style-type: none"> • The holding of shares by a director is not a legal obligation. However, the articles of association may impose a minimum shareholding requirement. In such case, a person may be validly appointed as director provided that this person acquires the required number of shares within 6 months of its/his/her appointment. • In Listed Companies, it is recommended to provide statutorily that directors hold a significant number of shares. • The articles of association may also contain other requirements, for example an age limitation, maximum duration of terms of office or specific skills. • The permanent representative of a legal entity has to satisfy all the eligibility requirements applying to directors and is subject to the same requirements and liabilities as a natural person director, without prejudice to the joint and several liability of the legal entity he/she represents.

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<p>3. Limitation on number of directorships</p>	<p>The limitation on number of directorships is governed by the types of directorships as follows:</p> <ul style="list-style-type: none"> • Directors are subject to a limitation of 5 directorships; • The AFEP-MEDEF Code recommends that a director of a Listed Company may not hold more than four other directorships in Listed Companies including foreign corporations, not affiliated with his or her group. This recommendation applies at the time of appointment or, of the next renewal, of the director's term of office (Recommendations 19.4 and 19.5 of the AFEP-MEDEF Code); • A CEO is subject to a limitation of one mandate of CEO in a company registered in France. • Regarding the CEO of Listed Companies, the AFEP-MEDEF Code recommends that he or she does not hold more than two other directorships in listed companies including foreign corporations, not affiliated with his or her group (Recommendation 19.2 of the AFEP-MEDEF Code). 	<p>By exception,</p> <ul style="list-style-type: none"> • A director may have an unlimited number of directorships in subsidiaries and lower-tier subsidiaries; • A CEO of a non-listed company may have a second mandate of CEO in a non-listed company and a third one in a company (listed or not listed) controlled by the two other ones; and • A CEO of a listed company may have a second mandate of CEO in a non-listed company and a third one in a non-listed company controlled by the two other ones.
<p>4. Attendance Fees</p>	<p>The company shareholders meeting freely fix the global amount of attendance fees.</p> <p>However, for Listed Companies, the attendance fees allocated to directors is subject to a "Say on Pay" procedure.</p>	<ul style="list-style-type: none"> • Attendance fees are independent from the Company's operating income and are fixed as annual and global remuneration. • According to the remuneration policy as approved by the shareholders meeting, the board allocates among directors the global amount of attendance fees. The granted amount may be distinct for each director. As a general rule, the allocation criteria specified in the

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	<p>The “Say on Pay” procedure implies a shareholders' meeting vote in two stages:</p> <p>(i) approval of the remuneration policy applicable to directors for the next financial year (vote ex ante); and</p> <p>(ii) approval of directors' fees paid in respect of the past financial year (vote ex post).</p>	<p>remuneration policy report take account of the assiduity of each director and as the case may be, its participation to board committees.</p> <p>An unfair distribution of attendance fees in favour of majority directors could be nullified for abuse of authority.</p>
5. Appointment	<ul style="list-style-type: none"> Directors, except those representing the employees, are appointed by the shareholders' meeting. 	<ul style="list-style-type: none"> If a position is vacant before the next planned meeting, a new director may be co-opted by the board for the remainder of the term of the vacant office, such co-optation being further submitted to the shareholders' ratification.
6. Removal	<ul style="list-style-type: none"> Shareholders in ordinary meetings may dismiss a director at any time. However the concerned director must be informed of the reasons for dismissal before the vote. 	<ul style="list-style-type: none"> Such a decision must not be taken in insulting or hurtful circumstances, and after a “proper” hearing of the concerned director. If this is not the case, the concerned director will be entitled to claim damages for the injury suffered.
7. Resignation	<ul style="list-style-type: none"> A director may resign at any time, without giving any reason. However, when the resignation is reckless, the director may be ordered to pay damages to repair any loss incurred by the company. A director who is struck by incapacity or a disqualification order must resign. The resignation must be the result of a positive and unequivocal act on the part concerned. So it may not be a resignation "de facto" or a tacit resignation. 	<ul style="list-style-type: none"> The resignation of directors (like their appointment) has to be published in a legal gazette in the place of the Company's registered office and by the commercial court in the official bulletin of civil and commercial announcements (BODACC). The removal of a director does not put an end to his or her liability. He or she can still be liable if he or she has breached his or her directors' duties prior to his or her removal.

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	<ul style="list-style-type: none"> When the articles of association are silent on the form to be taken in order to resign, it may be given either orally or in writing, but the written form is always preferable for reasons of proof. 	<ul style="list-style-type: none"> The resignation is an unilateral legal act that produces its full effects once it has been brought to the knowledge of the Company, and it does not need to be accepted.
Before Appointment		
8. Understand	<ul style="list-style-type: none"> The Company's business; Why you have been approached and what you are expected to contribute; The time commitment involved; The structure of the shareholding and implemented framework for shareholder dialogue; The social and environmental implications of the company activity (which are the company stakeholders?); Has the company made public or included an ethical, social or environmental purpose ("<i>raison d'être</i>") in its articles of association? What does "<i>raison d'être</i>" imply in terms of the board's involvement notably with respect to the well-being of employees (e.g. by taking into consideration their cultural development and health through sports for employees to the extent these aspects can be deemed covered by the "<i>raison d'être</i>", as suggested by a recent French Law dated 2 March 2022); 	<p>Prerequisites to accepting an appointment should be:</p> <ul style="list-style-type: none"> that you have no other duties placing you in conflict of interests with the proposed appointment; that you have something worthwhile to contribute, that you have correctly assessed the shareholders'/company's expectations for your appointment or you have the skills and abilities in order to meet these expectations; that you have the necessary available time; that adequate corporate governance procedures are in place to ensure you can perform properly ; and that you may benefit from an insurance policy protecting you.

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	<ul style="list-style-type: none"> Has the company adopted the status of mission undertakings (“<i>entreprise à mission</i>”) and if yes, what is the corporate and governance organization put in place in this respect; The existing corporate governance procedures, and ethical rules applicable to directors (in particular the disclosures and restrictions to which they may be subject). 	
9. Meet	<ul style="list-style-type: none"> CEO/CFO/Investors Relation Officer/General Counsel; Other directors (including recently retired directors); Senior management team; Statutory auditors. 	<ul style="list-style-type: none"> Obtain a briefing on the history and strategy of the company (management presentation); Obtain an industry briefing; Understand the company's CSR commitments and, if the Listed Company is subject to the European Taxonomy Regulation (a Listed Company is concerned as long as its average number of employees during the financial year exceeds 500, and its balance sheet total exceeds €20 million or its net turnover exceeds €40 million), its environmental objectives by economic activity; Understand major drivers of performance and key performance indicators - KPI - including taxonomy-aligned indicators by economic activity and by environmental objective, if the Listed Company is subject to the European Taxonomy Regulation (see above) Get a SWOT analysis of the Company in its competitive environment and in the markets where it operates ; Get background/resume/CV of key members of management team;

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		<ul style="list-style-type: none"> • Understand who are the key suppliers and customers; • Understand status of relationships with employees, works council, and unions and the incentive schemes set up for motivating employees and managers; • Get background/resume/CV on other directors; • Understand relationships within management team and the plans discussed regarding the current and future strategy (on the basis of the business plans); • Understand the future composition of managers' committees (inter alia in terms of gender parity, succession...), if any ; • Understand status of relationships with the company shareholders: Are there ongoing discussions, particularly with activist shareholders? Were there any dissenting resolutions by shareholders at the last shareholders meetings? Are there any declarations of intent by shareholders? • Get analysts' reports regarding the market price; • Get auditor's input and perceptions on historical accounts and disclosure issues; and • Understand key legal relationships, any past or current litigation and issues with compliance and regulators.
<p>10. Review</p>	<ul style="list-style-type: none"> • Past three years consolidated accounts and interim/annual reports; • The releases published by the Company for the past three years; 	<ul style="list-style-type: none"> • Are there any abnormal losses and if this is the case, obtain explanations? • Review accounts and annual reports (registration documents or financial reports regards Listed Companies);

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	<ul style="list-style-type: none"> • The Board report on corporate governance and internal control for prior years, and the results of the questionnaires sent to directors to evaluate the functioning of the board, if any ; • The CSE report and if any (subject to the company size), the company statement of extra financial performance ; • The prior board's report on remuneration policy disclosed at the last shareholders meeting; • If any, the related-party agreements, the shareholders' agreements or investment agreements with the Company; • The latest notification of thresholds crossed and declaration of intentions sent to the company; • The Company's articles of association; • The board's and board committees' internal rules; • The corporate governance code to which the Company refers; • The Ethics Charter and if any, the existing compliance measures including the vigilance plan (if any) drawn up by the company (namely the applicable measures to prevent and detect the acts of corruption and the vigilance plan to identify risks and prevent serious violations of human rights, fundamental freedoms and environmental damages committed by the subsidiaries, and certain sub-contractors); 	<ul style="list-style-type: none"> • Are the valuations of intangible assets realistic? • Review the articles of association in order to identify any restrictions on directors' powers or any specific governance provisions (such as a power to veto board decisions or the requirement of a super majority related to specific issues); • Review boards (including its committees) /shareholders' meeting papers and minutes to get a feel for current issues; and • Review the Company releases and with respect to Listed Companies, all published regulated information (available on its website).

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	<ul style="list-style-type: none"> • The board and board committees papers and minutes for the prior year including the presentation of the business plan; • The attendance sheets of the last general shareholders' meeting and the current registered shareholders' list; • The board report on the draft resolutions submitted to the shareholders' meeting, the documents available as part of the shareholders' meeting, including the statutory auditors' reports the shareholders' meeting minutes for past three years; and • Press clippings for prior year. 	
<p>11. Think</p>	<p>About:</p> <ul style="list-style-type: none"> • information that has been provided to you by the Company, and the quality of that information; • the information that you have obtained from independent sources, and how it compares with the information provided by the Company; • whether there are any gaps in information you have been provided or you have obtained; • your impressions regarding the Company's management team, its cohesion, its efficiency, the robustness of its strategy and how this strategy is understood by shareholders and the market, its ability in communicating and building market confidence ; and 	<p>In particular, watch out for:</p> <ul style="list-style-type: none"> • The presence of influent directors - do any of the directors have specific rights, or a specific role or have taken commitments? (veto right for instance, or decisions subject to qualified majority...) • Is there a director in charge of collecting directors' concerns regarding potential conflicts of interest (e.g. a lead director)? • Is there a dissociation between the Chairman and CEO duties? Which is the rationale behind the choice made? What happens in case of conflict between the board and its Chairman? • Non-executive directors' role against executive ones;

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	<ul style="list-style-type: none"> • your impressions about mutual respect between the directors, their independence, their diversity and their skills, their compliance with care duties and the board governance especially regarding the management of conflicts of interests. • Your impressions about available means to diligently perform your duties (internal support, budget, board committees, independent expert studies, support of lawyers if needed) • Your impression regarding the involvement and progress of the company in terms of (i) monitoring environmental and societal issues, (ii) of taking into account compliance issues. 	<ul style="list-style-type: none"> • Lack of independence - for example, do the board and its committees have a sufficient number of independent directors? Regards Listed Companies, do an audit committee, a nomination and compensation committee, a “CSE committee” or any other specific committee exist? • 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?
Powers		
12. Powers of board of directors	<ul style="list-style-type: none"> • Under French Law, the Board of Directors has certain specific and defined powers within the limits of the corporate purpose of the Company. • Its mission is to determine the strategic orientations of the company's activities and to supervise their implementation, in accordance with the company's corporate interest, taking into account the social and environmental, cultural and sports issues of the company's activities. Subject to the powers of the shareholders meeting, it may deal with all matters concerning the proper running of the company and matters relating to it (Art. L.225-35 of the French Commercial Code). • As per applicable Law, the board is empowered to (i) convene shareholders meetings and setting 	<ul style="list-style-type: none"> • The Board performs its powers collegially. • The Board cannot interfere with the own powers of the shareholders meetings (but the shareholders meeting can delegate to it certain competences to implement its decisions), nor on the daily management exercised by the executive officers. However, the articles of association may provide that significant management decisions be subject to a prior authorisation of the Board. • The <i>Autorité des marchés financiers</i> – AMF - has issued a recommendation providing that a disposal of major assets by a Listed Company should not be carried out without prior consultation with the shareholders' meeting. Under such recommendation, this consultation should be based on a full reporting on the context and negotiation of the major asset disposal agreement (competitive

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	<p>their agenda, (ii) establish the financial statements and various reports to the shareholders meeting, (iii) authorize regulated agreements, (iv) co-opt directors, (v) appoint and dismiss the Chairman and CEOs, (vi) determine the remuneration policy for senior executives, set directors' fees, resolve on the company's policy on equal professional opportunities, issuing bonds, etc.)</p>	<p>process, valuation, due diligence led by the board of directors etc.). This recommendation does not include asset acquisitions, but the AMF also advises a specific reporting on the context and negotiation of a major asset acquisition agreement and on the method of financing (self-financing, taking on debt, capital increase, etc.).</p>
Ongoing rights		
<p>13. Right to participate and freely vote</p>	<ul style="list-style-type: none"> Directors are entitled to freely express their opinion and exercise their vote. <p>But they must abstain from participating to the board deliberations, nor voting:</p> <ul style="list-style-type: none"> When the prior board authorization is required on a draft related-party agreement i.e. an agreement with the Company, to which they are either a party or a directly or indirectly interested party (Art. L. 225-40 of the French Commercial Code). During the assessment by the Board of the current agreements with the Company, to which they are either a party or a directly or indirectly interested party. As a reminder, the board is required to implement a procedure to assess regularly whether agreements relating to current transactions and entered into under normal conditions continue to meet such conditions (Art. L. 22-10-12 of the French Commercial Code)/ <p>Additionally, meditate carefully on the need to refrain from taking part or voting:</p>	<ul style="list-style-type: none"> A director directly and indirectly interested in the agreement is required to inform the Board as soon as he or she becomes aware of this situation. In order to prevent conflicts of interest, the director who is a party, or a directly or indirectly interested party, may not take part in the board's deliberations or vote on the requested prior authorisation of the board. The Chairman of the board of directors shall advise the auditors of all agreements authorized and shall submit them to the general meeting for approval. The auditors shall present a special report on such agreements to the meeting, which shall rule on this report. In addition the party to the related-agreement or the party directly or indirectly interested may not participate in the vote of the shareholders meeting to which the approval this related-party agreement is submitted. Its shares shall be taken into account for the calculation of quorum but not for the calculation of the majority in the relevant shareholders meeting.

	Action/Issue	Comments/Notes
	<ul style="list-style-type: none"> If the resolution submitted to the board vote involves a conflict between your personal interest or any diverging interests you may otherwise hold, and the company's corporate interests. If a conflict of interest requires that a director abstain from participating in the Board for a long period, the French Committee in charge of monitoring of the compliance of Listed Companies with governance rules stated that this director should resign. <p>Clearly state your vote against if you do not agree with the board majority's decision and make sure that your opposition has been carefully recorded in the minutes of the meeting. As a general rule, read carefully the draft minutes of the meeting before its approval and signature, and make sure that your specific input and statements, if any, is accurately reflected.</p>	
14. Right to receive information	<ul style="list-style-type: none"> Right to receive appropriate information before meetings of the Board and between such meetings throughout the life of the corporation, if the importance or urgency of the company so requires. Ongoing disclosure should also include any relevant information, including criticism, relating to the company, such as articles in the press and financial analysts' reports. Directors must have the opportunity to meet with the company's principal executive managers (Recommendations 12.2 and 12.3 of the AFEP-MEDEF Code). 	<ul style="list-style-type: none"> Conversely, the directors are required to request the appropriate information that they consider necessary in order to perform their duties.
15. Right to give a proxy	<ul style="list-style-type: none"> Unless otherwise provided in the articles of association, a director may give a proxy to another director to represent him/her at a meeting of the board. 	<ul style="list-style-type: none"> The proxy must be given in writing or by electronic means. However, a director should endeavour to attend board meetings in person due to his duty of care.

	Action/Issue	Comments/Notes
	<ul style="list-style-type: none"> Each director may only represent one of their colleagues during the same session of the board. <p>The proxy must be given in writing.</p>	<ul style="list-style-type: none"> In case of meeting held under the form of videoconferencing, the proxy should be sent to the Chairman before that the meeting takes place
16. Right to receive appropriate training	<ul style="list-style-type: none"> Each director is entitled to receive, if considered necessary, additional training on the specificities of the Company's business and its industry (Recommendation 13.1 of the AFEP-MEDEF Code). Members of the Audit Committee must have specific skills regarding financial and accounting matters (Art. L. 823-19 of the French Commercial Code). Directors representing employees or representing employee shareholders should benefit from a tailored training of their mandate (Art. L. 225-30-2 of the French Commercial Code). 	<ul style="list-style-type: none"> If directors are subject to civil liabilities proceedings, the fact to be an expert or to have specific skills in some matters may lead the court to consider a specific liability of the relevant director for the mismanagement decisions (as a reminder, directors are individually and jointly liable for all decisions taken by the board. The court may allocate the compensation among the directors even in case of joint liability – see more details below).
Ongoing duties		
17. To whom are your duties owed?	<ul style="list-style-type: none"> In principle, your duties are owed to the Company itself. 	<ul style="list-style-type: none"> This means that you not owe your duties directly to shareholders, to employees, to creditors of the Company or to the public. However, the interests of these stakeholders are considered when defining the Company's corporate interest (see below).
18. What is the duty of loyalty?	<p>You have a duty to act in good faith and to put the interests of the Company and its shareholders ahead of any interests you may have. All decision must be taken in the company's interest being specified that the obligation to give pre-eminence to the corporate interests apply by</p>	<ul style="list-style-type: none"> French company law adopts a stakeholder approach when defining the company's interests: the corporate interest includes the interest of the Company, its shareholders, its employees, its clients and certain third parties.

	Action/Issue	Comments/Notes
	<p>taking into consideration the social and environmental challenges of the Company activity.</p> <p>Your duty is applicable:</p> <ul style="list-style-type: none"> towards the Company (misuse of assets and abuse of authority are criminal offenses); and towards the shareholders when directors are for instance party in a share sale with a shareholder. 	<ul style="list-style-type: none"> Misuse of assets consists in using company assets for personal purposes (personal enrichment without corporate counterpart for instance) The duty of loyalty towards the shareholders was first recognised in the Vilgrain case law in 1996. Mr Vilgrain, a director, was mandated by a shareholder to sell his shares. Then he purchased them before sell them back at a notably higher price, a few days later. The French Supreme Court considered that hiding parallel negotiations constitute fraudulent concealment and a breach in the duty of loyalty towards the shareholders which are also parties to a transaction with the directors.
19. What is the duty of care?	<ul style="list-style-type: none"> You are required to exercise your duties with the degree of skill and care that a reasonably prudent manager would exercise when running the same type of business under similar circumstances. 	<ul style="list-style-type: none"> The reasonable care required from directors of a Listed Company is even more demanding than the care expected from directors of a non-listed company, for instance regarding their control over information delivered to the market. To comply with a duty of care means inter alia: act in an informed manner, be assiduous, involved, collect information, ask questions, participate in board meetings, express clearly your opinion and if you are dissident, ask and check your position to be reflected on the board minutes.
20. Duty of care versus the Business Judgment Rule	<ul style="list-style-type: none"> French courts have adopted an equivalent to the « business judgment rule » as defined under US Law: there is a presumption that in making business decisions, directors acted (i) in good faith, (ii) on the basis of adequate information, (iii) and in the honest belief that their actions were in the corporation's best interest. 	<ul style="list-style-type: none"> In effect, the Business Judgment Rule creates a strong presumption in favour of the board of directors, preventing its members from being held liable for cautious decisions even if the latter results in harm to corporation, and prevents French courts from interfering in the management of the Company so long as it remains solvent.

	Action/Issue	Comments/Notes
<p>21. Precautions to take in case of conflicts of interests</p>	<ul style="list-style-type: none"> • The existence of a conflict of interests triggers the obligation to abstain from taking part in the discussion and voting regarding any matter on which you may be conflicted. • In particular, you must declare to the Chairman the agreements entered into with the Company who in turn presents them to the board and to the Company's statutory auditors (Art. L. 225-40 of the French Commercial Code) (See also section 12 above). • Except if they relate to ordinary course of business, such agreements must: <ul style="list-style-type: none"> ➤ first be authorised by the board (you must abstain from participating and voting); and ➤ subsequently be approved by the shareholders' meeting on the basis of a special report issued by the statutory auditors describing these agreements and their financial conditions. (Art. L. 225-38 of the French Commercial Code). 	<ul style="list-style-type: none"> • Internal rules of the board (if any) generally describe how conflict of interests must be managed. • At a minimum, legal provisions require to disclose all other occupied functions or directorships as part of the selecting process and taking up appointment. This transparency rules are renewed each year (in order to have a permanent and clear view of the potential conflicts of interests).
<p>22. Duty to maintain confidentiality of received information</p>	<ul style="list-style-type: none"> • You have a duty of discretion, and to comply with strict confidentiality about any information presented as such by the Chairman (Art. L.225-37 of the French Commercial Code); • With respect to Listed Companies, recommendation 20 of the AFEP-MEDEF Code provides that you should consider that you are bound by a strict confidentiality duty, going beyond the mere duty of discretion provided by French 	<ul style="list-style-type: none"> • Be specifically careful as director of a Listed Company as far you are likely to get inside information. • Indeed, in case of holding of inside information, directors shall refrain from: <ul style="list-style-type: none"> ➤ communicating such information to a third party; ➤ acquiring or selling the shares (or any related financial instruments); and

	Action/Issue	Comments/Notes
	<p>Law regarding any non-public information obtained pursuant to your duties;</p> <ul style="list-style-type: none"> The French Committee in charge of monitoring the compliance by Listed Companies with governance rules stated that the confidentiality duties provided for in Article L.225-37 of the French Commercial Code (especially with respect to information mentioned as confidential by the Chairman of the Board) must be binding on each director, including the permanent representative of a legal entity appointed as director in this entity. 	<ul style="list-style-type: none"> ➤ recommending to acquire or sell shares (or any related financial instruments). Infringement of such obligations may lead to administrative or criminal sanctions.
Potential liabilities		
<p>23. Regarding what type of infringements may you be civilly liable?</p>	<ul style="list-style-type: none"> When the civil liability of a director is engaged, this one may be subject to compensation for suffered damages on the basis of his/her evidenced fault (the amount of which is fixed by the courts). <p>The infringements for which you may be considered as civilly liable are as follows:</p> <ul style="list-style-type: none"> Infringements of the laws or regulations; Breaches of the articles of association; and Tortious or negligent acts of management. 	<ul style="list-style-type: none"> Examples of this can be non-compliance with operating rules of the board or general meetings, or violations of the rules concerning related-party agreements, or non-compliance with the limitation of the powers determined by the articles of association. Except in exceptional cases, the director is not under an obligation of results, but under an obligation of means. To determine this, the courts compare the behaviour of the concerned director to that of a normally prudent and diligent one, placed in the same situation (examples of negligent acts of management are the lack of supervision, the deferral of the repayment of amounts owed by the company and thus its exposition to default interests, a manifest inaction, etc.)
<p>24. Towards whom may you engage your civil liability?</p>	<ul style="list-style-type: none"> Towards both Company and shareholders. Towards third parties. 	<ul style="list-style-type: none"> <u>Social action (<i>ut singuli</i>)</u>: is opened to the legal representative of the Company and to the shareholders.

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	<ul style="list-style-type: none"> Directors are subject to individual and joint liability. Nevertheless the courts may allocate the compensation among the directors even in the case of joint liability (Art. L. 225-251 French Commercial Code). 	<ul style="list-style-type: none"> <u>Individual action</u>: is opened to any shareholder if this one can demonstrate a personal damage distinct from damages suffered by the Company (may be the case if the board has not correctly supervised financial information issued by the Company). Liability towards third party is engaged only if there is a “detachable fault” (Directors might be personally liable towards any third parties for wilful misconduct of a particular seriousness which could be considered as incompatible with a normal performance of their duties). It is not enough to avoid solidarity, to prove not to have participated in the deliberations of the board; indeed, unjustified absence constitutes negligence. You may however avoid liability by establishing that you have disapproved the decision taken by the board provided that you protests are explicit and recorded in the minutes. In the most severe cases, it is advisable to resign for not to join the wrongdoing.
25. Contractual liability towards the Company	<ul style="list-style-type: none"> Directors are individually liable vis-à-vis the company if they do not comply with the commitments contained in the board's internal regulations 	<ul style="list-style-type: none"> <u>Such liability was confirmed by the French Commercial Court (Decision dated November 2020)</u>
26. Regarding what type of infringements may you be criminally liable?	<p>The four following offenses are punished by prison sentence of 5 years and/or fine of €357.000 (Art. L.242-6 of the French Commercial Code):</p> <ul style="list-style-type: none"> misuse of assets; Abuse of authority; 	<ul style="list-style-type: none"> <u>Example of misuse of assets</u>: when executive directors use the Company's property or credit, in bad faith, in a way which they know is contrary to the interests of the Company, for personal purposes or to encourage another company or undertaking in which they are involved.

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	<ul style="list-style-type: none"> • Distribution of fictitious dividends; and • Publication of inaccurate financial statements. <p>As the civil one, criminal liability of the directors is a joint and individual liability.</p>	<ul style="list-style-type: none"> • <u>Example of abuse of authority</u>: executive directors of a Listed Company use the powers which they possess or the votes which they have in this capacity, in bad faith, in a way which they know is contrary to the interests of the company, for personal purposes (for instance, they change the composition of the compensation committee in order to be sure the new members will not be opposed to a significant increase of their remuneration). • <u>Distribution of fictitious dividends</u>: directors who in absence of inventory or through fraudulent inventories have knowingly made distribution of fictitious dividends. <p>This is possible to file a civil action as part of criminal proceedings. Article 85 of the French Code of criminal procedure provides “<i>Any person claiming to have suffered harm from a felony or misdemeanour may petition to become a civil party by filing a complaint with the competent investigating judge in accordance with the provisions of articles 52 and 706-42</i>”.</p>
<p>27. Specific criminal and administrative market offenses likely to be committed by directors of Listed Companies (market abuse)</p>	<ul style="list-style-type: none"> • Insider dealings (on the Listed Company’s securities and related financial instruments); and • communication of insider information otherwise than in the normal course of duties. <p><u>may be sanctioned:</u></p> <ul style="list-style-type: none"> • by the Enforcement Committee of the French Market Regulator (<i>Autorité des marchés financiers</i>) which may impose administrative fines (fines of up to €100,000,000 or ten times the amount of the profit realised and up to 15% of the turnover of the sanctioned person is a legal entity) (Art. L.621-15 of the Monetary and Financial Code); and 	<p>To prevent such market abuse breaches to which you are exposed, you may:</p> <ul style="list-style-type: none"> • refer to the board internal/ethical rules in order to: <ul style="list-style-type: none"> – know the periods during which as insider, you are required to abstain from trading (i.e. black-periods before the publication of the accounts or any other inside information as long as it is not made public); – know your reporting obligations to the company itself and to the Market Authority on transactions in the securities of the Listed Company in application of the rules aimed at preventing market abuse.

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	<ul style="list-style-type: none"> by the criminal courts which may impose penalties (up to € 100,000,000 or ten time the profit realized without being lower than such a profit) and imprisonment (Art. L. 465-1 and seq of the Monetary and Financial Code) <p>Misleading or omitted information by the legal representatives of a Listed Company may involve joint or individual liability of directors towards the shareholders having suffered a loss, to the extent the directors are in charge of verifying that (i) financial, corporate, and business information is exact, complete and precise, and published within the regulatory timeframe, and (ii) all inside information is being published as soon as possible unless there is a legitimate interest in delaying publication.</p>	<ul style="list-style-type: none"> as the case may be, delegate the management of the company's shares you hold to an independent management company.
Specific situations		
28. What special responsibilities and liabilities are associated with a takeover bid?	<ul style="list-style-type: none"> If the Listed Company is subject to a takeover bid, the board of directors must issue a reasoned opinion about the interest of the bid for the shareholders, the employees and the Company. When several directors are conflicted, the board must appoint an independent expert in charge of delivering a report regarding the fairness of the offer conditions. Unless otherwise provided by the Listed Company's articles of association, the board may take frustrating measures against an offer considered as hostile without requiring the prior approval of the shareholders meeting. 	<ul style="list-style-type: none"> Conflicted directors must be particularly prudent in case of a takeover bid and abstain from taking part in decisions, if appropriate. The directors have fiduciary duties towards shareholders and must be careful of acting in their interests and not frustrate a bid, except when they have credible alternatives to propose. Their liabilities are reinforced in a public offer period. The board must be particularly vigilant regarding information delivered and maintain the confidentiality during the prior negotiations (if any). They have to ask themselves constantly whether they hold inside information.

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	<ul style="list-style-type: none"> However, it is standard that under the resolutions approved at annual shareholders meetings, the delegations granted to the Board of Directors to, inter alia, increase the Listed Company's capital, be suspended during a public offer period, as these delegations can be used as a frustrating measures. 	
<p>29. What special liabilities in the event of insolvency?</p>	<ul style="list-style-type: none"> Directors may, where the Company is put under compulsory liquidation and the debts cannot be fully discharged, be held personally liable for the payment of the insolvent company's debts or be put under personal bankruptcy. Civil prosecution against the directors must be initiated by the court within 3 years from the date of the liquidation court order. Directors may also incur criminal liability, in the event the Company is subject to rehabilitation or compulsory liquidation, when they have committed certain fraudulent actions. <p>Lastly, directors may be put under criminal bankruptcy (<i>banqueroute</i>- art L 654-2 of the French Commercial Code), where:</p> <ul style="list-style-type: none"> in order to delay the opening of rehabilitation or compulsory liquidation proceedings, they have acquired goods or assets in view of their later sale at unfair market price or used ruinously expensive means to obtain funds; they have hidden or embezzled part of the company assets; 	<ul style="list-style-type: none"> <u>Liability for excess over assets</u>: the personal civil liability of the directors may be triggered if the court considers that mismanagement acts have contributed to the insolvency situation (<i>action en comblement de passif</i> - art L. 651-2 of the French Commercial Code). The continuation of a loss-making business may, for example, be regarded as a mismanagement act (simple negligence cannot be qualified as mismanagement act) <u>Personal disqualification</u> is possible as a prohibition to exercise civil rights, to carry out public functions, to do business in the area of business of the Company, to exercise a commercial or industrial activity, to act as manager, director or controller of a company (Art. L. 653-1 et seq. of the French Commercial Code). <u>Criminal bankruptcy</u> (Art. L. 654-1 et seq. of the French Commercial Code) may be sentenced by a fine up to €75,000 and by imprisonment up to 5 years, for natural persons.

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	<ul style="list-style-type: none"> • they have fraudulently increased the company's liability; and • they have organised the disappearance of accounting documents, did not held accounting books legally required, or have drawn-up fictitious, incomplete or irregular accounting records. 	
How to be protected		
30. Insurance policy	<ul style="list-style-type: none"> • Insurance policy taken out covers financial consequences of civil liabilities actions brought against directors. • Insurance policy covers principally two categories of fees: <ul style="list-style-type: none"> ➤ damages; and ➤ defending expenditure (legal, expert, and clerk fees...). • Disclaimer of guarantee: <ul style="list-style-type: none"> ➤ Intentional or wilful misconduct; ➤ Detachable fault; ➤ Physical or material damage injuring a third party; and ➤ Any kinds of fines and penalties. 	<ul style="list-style-type: none"> • It is commonplace that the Company takes an insurance policy on behalf of its directors.