

# The International Bar Association Company Director Checklist – Mozambique

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<b>Before appointment</b>			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"/>	<b>Special circumstances</b>		
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<b>Ongoing duties</b>			Takeover bids	19	<input type="checkbox"/>
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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"/>
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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 Mozambique, listed on a regulated market;
- private limited companies in Mozambique (“sociedades anónimas”);  
namely arising from the:
  - Commercial Code (“Código Comercial”);
  - Securities Code (“Código do Mercado dos Valores Mobiliários”);

If any specifics of listed public companies are relevant, see the third column of this checklist below.

## **Disclaimer**

This checklist is 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, however, specific legal advice should be sought. This checklist was last updated on 28 February 2022.

DUTIES AND OBLIGATIONS OF THE DIRECTORS			
	Action/issue	Specifics of listed public companies (if relevant)	Comments/notes
<b>Before appointment</b>			
<b>1. Items to understand</b>	<ul style="list-style-type: none"> <li>▪ Directors must be individuals of full legal capacity or legal persons. If a legal person is appointed as a director, it must, in turn, appoint an individual to be elected for office on its behalf (liability in such event is joint and several). A director is not required to be a shareholder, resident in Mozambique or Mozambican national. Nevertheless, certain formalities must be complied with where a foreign director is appointed, notably in respect of its registration with the Mozambican Tax Authorities and Social Security.</li> <li>▪ Directors may be appointed in the company's deed of incorporation or by resolution of a general meeting of shareholders. The appointment is effective for the period stipulated in the bylaws, which may not exceed four calendar years. Furthermore, where the company's bylaws do not set out the period of appointment, such period is deemed as four calendar years. Reappointment of directors is permitted. Although appointed for a fixed period of time, directors remain in office until their replacements are appointed, unless they are dismissed or resign.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Listed public companies shall correspond to the type of company limited by shares (SA).</li> <li>▪ There are no specific requirements for Directors of listed companies or other relevant generic items to stress.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The appointment of directors must be registered before the Commercial Registry Office and the Company shall afterwards notify the Mozambican Social Security.</li> <li>▪ In addition to the above, the appointment of directors of listed public companies shall be reported to the Mozambican Stock Exchange and must be published/announced by the Mozambican Stock Exchange's official bulletin.</li> </ul>

<p><b>2. People to meet with</b></p>	<ul style="list-style-type: none"> <li>▪ Other directors.</li> <li>▪ Management team.</li> <li>▪ Company's legal and tax advisors (external and internal).</li> </ul>		
<p><b>3. Documents to review</b></p>	<ul style="list-style-type: none"> <li>▪ Bylaws.</li> <li>▪ Internal regulations.</li> <li>▪ Resolution appointing the Director.</li> <li>▪ Company's last accounts and annual reports on its business activity.</li> <li>▪ Directors must have or obtain a Portuguese taxpayer identification number.</li> <li>▪ There is no requirement to have any resident directors. If directors do not have a permanent residence in the country, directors must have a business visa allowing to entry and exit from Mozambique and they should appoint a Mozambican tax representative. The tax representative is a person/entity located in Mozambique who represents the non-resident person towards the tax authorities.</li> </ul>		

**Ongoing duties**

<p><b>4. Points for attention</b></p>	<ul style="list-style-type: none"> <li>▪ The board of directors manages of the company’s business; they make the strategic and operational decisions of the company and are responsible for ensuring that the company meets its statutory obligations.</li> <li>▪ The majority of the board’s members must attend or be represented (if permitted by the bylaws) at board meetings for a valid convening quorum. The resolutions are passed with the majority of the votes of the directors present or represented at the relevant meetings. The chairman has a casting vote whenever the board of directors is composed of an even number of members and as provided for in the bylaws.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The boards of directors of listed companies are subject to a further layer of regulation. The Mozambican Securities Code imposes several duties on the directors of a listed company. This fact results in the directors of these companies being entrusted with added disclosure and performance responsibilities.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The board of directors is subject to the resolutions of the general meeting of shareholders or to the intervention of the audit board or the audit commission only to the extent provided by law or in the bylaws.</li> </ul>
<p><b>5. Legal status of directors</b></p>	<ul style="list-style-type: none"> <li>▪ The board of directors is the body responsible for managing the company's business, and is responsible for carrying out all acts relating to the pursuit of the company's purpose. It is the representative body of the company.</li> <li>▪ The rights and duties that are part of the legal status of directors have their source in the law, in the articles of association and in corporate resolutions (or even, provided certain conditions are met, in shareholders' agreements). A general principle of equality of functional rights</li> </ul>	<ul style="list-style-type: none"> <li>▪ Directors of public listed companies have the same legal status as those of private commercial companies.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The directors are appointed by the shareholders to manage its day-to-day affairs. The basic rule is that the directors should act together as a board but typically the board may also delegate certain powers to individual directors or to an executive committee.</li> </ul>

	<p>and duties applies between directors of the same company.</p> <ul style="list-style-type: none"> <li>▪ A general principle of equality of functional rights and duties applies between directors of the same company.</li> <li>▪ Also, it should be noted that, despite their different functions, no distinction is made between executive, non-executive or independent non-executive directors, in terms of duties towards the company and potential liability, i.e., the standard, and consequent liability where the standard is not met, applies equally to all directors.</li> </ul>		
<p><b>6. Parties to which duties are owed</b></p>	<ul style="list-style-type: none"> <li>▪ Directors shall perform their duties with the diligence of a judicious and organized director, in the interest of the company, its shareholders, employees. The Mozambican Commercial Code does not yet accommodate the concept of stakeholders and interest parties in this regard.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Directors of public listed companies have the same rights, duties and obligations of private commercial companies.</li> <li>▪ The Mozambican Securities Code require directors to take certain actions, refrain from taking certain action and contain express statutory provisions for corporate actions towards the Mozambican Central Bank and the Mozambican Stock Exchange.</li> <li>▪ In addition, they shall perform their duties also in the interest of, the market, the investors and stakeholders or "interested parties" - namely clients, suppliers and financiers and, in some circumstances, all those who may in some way be affected by the company's activity and suffer damage as</li> </ul>	

		<p>a result of the directors' conduct, even though they may not have a specific contractual relationship with it. Directors also have a duty towards the regulator to act in bona fide.</p>	
<p><b>7. Powers of the board of directors</b></p>	<ul style="list-style-type: none"> <li>▪ The board of directors is the company's managing body and is, as such, empowered to resolve on any matters regarding the management of the company.</li> <li>▪ The law lists the acts considered to be management acts, including, as typical management acts, the preparation of reports and annual accounts, the acquisition of real estate and of any movable and intangible assets and the acquisition, opening and closure of business premises.</li> <li>▪ The representation powers of the board of directors are exercised jointly by directors and the company is bound by the acts or contracts executed (or ratified) by the majority of its members, save where the bylaws stipulate an inferior number. The by-laws may also set forth binding of the company through managing directors within the scope of the powers delegated in them by the board of directors.</li> </ul>		<ul style="list-style-type: none"> <li>▪ Unless prohibited by the bylaws, the board may commission a director with the task of carrying out certain acts that fall within the company's object, and without such commission limiting the normal powers of the other directors.</li> <li>▪ Certain specific matters may not be delegated to the directors and must therefore be resolved on by the board, such as those related to the operation of the board (appointment of the chairman and co-opting of directors), to changes to the bylaws (change of the registered offices or increases in the share capital) or to significant changes in the company's activity (merger, spin-off and transformation projects), among others.</li> </ul>



<p><b>8. Duty of loyalty</b></p>	<ul style="list-style-type: none"> <li>▪ Although not expressly provided by the Law, the Directors are still subject to a duty of loyalty, <i>i.e.</i>, to act in the best interest of the company, taking into account the long-term interests of the shareholders and considering also those of the stakeholders (such as employees, clients and creditors).</li> <li>▪ It is the expectation of honest and trustworthy behavior and the fiduciary position occupied by the director, in their capacity as managers of others' property, which is the basis for the reliance and trust of the company and, therefore, the imposition of a duty of loyalty.</li> <li>▪ Some expressions of the duty of loyalty are set forth in Mozambican law: this is the case of the duty of non-competition, or the rules on the contracting of the director with the company (self-dealing), or even the rules on the impediment to vote in the board of directors.</li> <li>▪ The prohibitions of competition and of taking advantage of business opportunities of the company are also of crucial importance, as well as the conduct duties in company acquisitions or even the typical cases of perpetuation of control. Also, confidentiality obligations are often studied from the perspective of loyalty.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The Mozambican Securities Code provides that whenever a target company is under a takeover bid, the Directors of the offeror may not take the opportunity individually and buy the shares of the target company or any other being part of the same group of entities.</li> <li>▪ Any breach to the provision above would impede the exercise of any rights given by the ownership of such shares and a right to an indemnity by the seller of the shares.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The duty of loyalty must steer the directors in taking management decisions. Most authors tend to view this fiduciary duty as autonomous ground of the liability of directors.</li> </ul>
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<p><b>9. Duty of care</b></p>	<ul style="list-style-type: none"> <li>▪ Directors are subject to a duty of care, which requires that directors have the availability, technical skills and information on the activity of the company required to the performance of their office and apply to it the diligence of a judicious and organized director.</li> <li>▪ This duty implies that directors must apply to organizational, decision-making and corporate control activities the time, effort and know-how required by the nature of their duties, their specific qualifications and the circumstances.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Directors shall be responsible for issuing a prospectus that contained an untrue statement or misleading information.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The duty of care must steer the directors in taking management decisions. Most authors tend to view this fiduciary duty as autonomous ground of the liability of directors.</li> <li>▪ The duty to act thoroughly (with duty of care) is closely associated with the duty to be informed, i.e.: <ul style="list-style-type: none"> <li>- to obtain reasonably available (both factual and legal) information regarding the decision in a particular matter prior adopting such decision (information on the consequences, risks and available alternative scenarios and to carefully assess the possible advantages and disadvantages (identifiable risks) of the respective decision),</li> <li>- to be informed of the company's losses/profits, threatening damage and business opportunities.</li> </ul> </li> </ul>
<p><b>10. Duty to have and maintain skills</b></p>	<ul style="list-style-type: none"> <li>▪ Directors shall have the technical competence and knowledge of the activity of the company adequate to his duties and using in that extent the diligence of a judicious and organized director.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The Directors should be persons capable of carrying out their functions and having the general knowledge, skill and experience of that is required to comply with the regulatory provisions applicable to the listed companies.</li> </ul>	<ul style="list-style-type: none"> <li>▪ This duty is associated with the obligation to manage the company in accordance with the degree of skill and diligence as would amount to the reasonable care that an ordinary person would be expected to have under similar circumstances. The standard is subjective insofar as it encompasses reference to the particular abilities of the relevant director.</li> </ul>

<p><b>11. Additional duties (confidentiality, etc.)</b></p>	<ul style="list-style-type: none"> <li>▪ The director has, in the first place, the fundamental duties of managing and representing the company.</li> <li>▪ The director is also subject to a duty of legality, which means that when managing and representing the company, the director has the duty to adopt a conduct that ensures the respect for the duties of the company. This duty of legality is nothing more than the imperative of directors to respect the duties of the company, ensuring its compliance: although the rules in question are addressed to the company as a legal entity, it is the directors who actually ensure its compliance.</li> <li>▪ The director also has a duty of vigilance towards the company. The board of directors is first and foremost the control or monitoring the company. This involves both supervision within the Board of Directors and supervision at the lower levels of the company. Vigilance is systematic and involves the delimitation of layered control mechanisms throughout the hierarchical structure.</li> </ul>	<ul style="list-style-type: none"> <li>▪ In terms of the Mozambican Securities Code, directors are generally privy to inside information specially in the context of the preparation of a takeover bid and must be vigilant in maintaining confidentiality.</li> <li>▪ The framework mandates the directors to disclose any information that may be deemed as material information and reasonably expected to affect the value of its securities or influence investors' decisions and act promptly in the event of unusual market activity or price variations, irrespectively of being or not confidential.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The duty of loyalty and the duty of care are also the source from which other specific legal duties derive, such as the duty not to act outside the company's permitted scope of activities, not to carry out acts that are not profit-orientated, not to execute board resolutions that are null and void, to collect deferred share capital payments and non-competition duties, among others.</li> <li>▪ Directors also owe a duty of confidentiality to the company, which is part of their duty of loyalty. It follows from the duty of loyalty that directors 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 (incl. the company's trade secrets and know how).</li> </ul>
<p><b>12. Delegation of powers/authority</b></p>	<ul style="list-style-type: none"> <li>▪ The board of directors may specifically charge one or more directors with specific management matters or, if permitted by the bylaws, delegate current management of the company to one or more directors or an executive committee. The member</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is no express guidance on a specific governance model for listed companies, however current management of the company's is usually delegated on an executive committee, if permitted by the</li> </ul>	<ul style="list-style-type: none"> <li>▪ Both in the event of charging specific management powers and of delegation of the current management of the company, the board of directors continues to be empowered to resolve on the charged or delegated matters.</li> </ul>

	<p>of such collegial body shall also be directors.</p> <ul style="list-style-type: none"> <li>▪ Certain matters may not be entrusted to directors and must therefore be resolved upon by the board, such as those related to the operation of the board (appointment of the chairman and co-opting of directors), to changes to the bylaws (change of the registered offices or increases of the share capital) or to significant changes in the company's activity (merger, provision of security by or on behalf of the company, spin-off and transformation projects), among others.</li> </ul>	<p>bylaws or by a statutory provision for a specific sector.</p>	<ul style="list-style-type: none"> <li>▪ In addition, nonexecutive directors are liable for the general surveillance of the activity carried out by managing directors and for damages arising from the actions or omissions of managing directors under a delegation of powers, save to the extent they have caused the board of directors to intervene for the purposes of approving appropriate remedial measures.</li> </ul>
<p><b>13. Conflicts of interest (inc. intragroup dealings)</b></p>	<ul style="list-style-type: none"> <li>▪ The main legal regime governing the duties of directors within the scope of conflicts of interest between the directors and the company comprises the following: <ul style="list-style-type: none"> <li>- a company may not grant loans, make payments on account of directors, provide guarantees to secure obligations of directors or make advances in excess of one month's pay;</li> <li>- directors may not be parties to an employment or services contract with the company during the period in office as directors (if prior to the appointment as directors they had such contracts, these shall be suspended during the period of office);</li> <li>- contracts between the company and a director (other than those stated in the</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ In addition to the codified standard of conduct in the Commercial Code, the Mozambican Securities Code specifies that each director owes a duty towards the regulator to act bona fide for the benefit of the listed company and avoid any conflict between the company's interests and the interests of such a director.</li> </ul>	

	<p>preceding paragraphs) must be authorized by the board of directors (the relevant director shall be deemed as in conflict with the company and therefore impaired from voting), have the favorable opinion of the audit board or the audit commission and be specifically addressed to in the annual accounts documents of the company – this does not, however, apply to the extent such contract is included in the company’s activities and no special advantage arises thereof to the relevant director;</p> <ul style="list-style-type: none"> <li>- directors may not directly or indirectly compete with the company or perform office in or be appointed on behalf of any competing company, save if the general meeting of shareholders has consented to such activities; and</li> <li>- directors in conflict of interest with the company are impaired from voting in the relevant resolutions and must report such conflict to the chairman.</li> </ul>		
<p><b>14. Compliance with statutory obligations</b></p>	<ul style="list-style-type: none"> <li>▪ Directors are subject to a wide set of specific statutory obligations. These obligations include: <ul style="list-style-type: none"> <li>- the duty not to act beyond the corporate purpose;</li> <li>- the duty to not distribute non-distributable corporate assets or without the prior authorization of the shareholders;</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Restrictions arise for Directors during takeover bids, whereby they, unless duly authorized by the Bank of Mozambique, are prevented from practicing any act which does not extend to the normal management of the offeree company and which, by their special nature or conditions may materially affect the success of the offer or the</li> </ul>	

	<ul style="list-style-type: none"> <li>- the duty to call the general meeting in the event of loss of half of the share capital;</li> <li>- the duty to submit a management report and accounts;</li> <li>- the duty to perform their duties personally;</li> </ul>	<p>objectives and intentions announced by the offeror, in particular:</p> <ul style="list-style-type: none"> <li>- issue shares or bonds convertible into shares;</li> <li>- issue bonds or other securities or enter into contracts, giving entitlement to subscribing to shares or acquiring them in any capacity;</li> <li>- divest or transfer the operation of a sector or a significant part of the company's assets, or enter into promise contracts for that purpose;</li> <li>- divest or acquire major holdings, or enter into promised contracts for the disposal or acquisition of such holdings;</li> <li>- carry out merger or division operations or conclude agreements to that effect.</li> </ul>	
<p><b>15. Disclosure obligations of listed companies</b></p>		<ul style="list-style-type: none"> <li>▪ Main obligations include: <ul style="list-style-type: none"> <li>- issuance of new shares or reduction of the share capital;</li> <li>- issuance of new bond issues and security;</li> <li>- the allocation and payment of dividends or other income to shareholders;</li> <li>- exercise of subscription or acquisition rights;</li> <li>- swap operations;</li> <li>- payment of interest or premiums or repayment of bonds and other amounts representative of debt;</li> <li>- the date and place of an bond draw and its results.</li> </ul> </li> </ul>	

		<ul style="list-style-type: none"> <li>- any amendment to the company's bylaws;</li> <li>- any insolvency proceeding (either if commenced by the company or by a third party) and insolvency decision;</li> <li>- issuance of securities on a foreign market;</li> <li>- individual and consolidated annual financial statements reports and accounts (as well as quarterly accounts, if applicable).</li> <li>- Any information required by the Mozambican Stock Exchange or by the Mozambican Central Bank, in its capacity of securities' market regulator:</li> <li>- Any change to rights of a specific category of shares;</li> <li>- Any relevant modifications on the shareholding structure of the company;</li> <li>- Any material information reasonably expected to affect the value of its securities or influence investors' decisions and act promptly in the event of unusual market activity or price variations.</li> </ul> <p>▪ Directors of companies with public-traded bonds are required to promptly disclose to the public and release an announcement through the Mozambican Stock Exchange's official bulletin in respect of:</p>	
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<p><b>16. Potential liability</b></p>	<ul style="list-style-type: none"> <li>▪ <b>Liability vis-à-vis the company</b>  Directors are jointly and severally liable before the company in respect of damages incurred by the company arising from unlawful actions or omissions of the directors, grounded in breach of their legal or contractual duties.</li> <li>▪ <b>Liability vis-à-vis the company's creditors</b>  Directors are jointly and severally liable vis-à-vis the company's creditors whenever the company's assets become insufficient to meet the company's debts as a result of the directors' intentional breach of their legal or contractual duties aiming to protect the creditors.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Unlike other jurisdictions, in Mozambique there is not a particular requirement for a shareholder exercising its rights to claim damages caused by a director while performing his duties. With this in mind, the Directors are jointly and severally liable to any shareholder for damages incurred directly derived from the performance of their duties.</li> <li>▪ In respect of public offers, directors are responsible for the information in a prospectus, and any supplement thereto.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The Mozambican law provides for an assumption of fault as regards actions or omissions of directors, meaning that the burden of proof to challenge such assumption is borne by the directors concerned. Nevertheless, evidence of the remaining prerequisites of civil liability (unlawful action or omission, damages and linkage between the foregoing) lies with the claiming party.</li> <li>▪ The Mozambican law has adopted a restrictive approach to the business judgement rule, in the sense that directors are able to exclude liability if they provide evidence of having acted in an informed manner, without any personal motivation or interest and based on rational entrepreneurial criteria.</li> </ul>



	<ul style="list-style-type: none"> <li>▪ <b>Liability vis-à-vis the shareholders and third parties</b></li> </ul> <p>Directors may also be jointly and severally liable vis-à-vis the shareholders and/or third parties for damages incurred directly derived from the performance of their duties.</p>		<ul style="list-style-type: none"> <li>▪ Directors that have not participated in or that voted against a resolution of the board may also set aside their liability on such grounds.</li> <li>▪ Clauses excluding or limiting the liability of the directors or requiring that a claim against a director be dependent upon a prior opinion or resolution of the shareholders as regards claims filed by shareholders on behalf of the company or a prior court judgment on the existence of the cause of the liability or of the dismissal of the relevant director are not allowed under Mozambican law.</li> <li>▪ The general statute of limitation applying to civil liability of directors is five years (save to the extent the unlawful action or omission is punishable as a criminal offence and the applicable statute of limitation is longer, in which event such longer statute of limitation applies).</li> </ul>
<b>17. Duration of duties</b>	<ul style="list-style-type: none"> <li>▪ Directors are appointed for the period set out in the articles of association, which shall not exceed four calendar years.</li> </ul>		<ul style="list-style-type: none"> <li>▪ In the absence of such indication in the articles of association, the term of office shall have the duration of four calendar years, re-election being allowed.</li> </ul>
<b>Special circumstances</b>			
<b>18. Bankruptcy</b>	<ul style="list-style-type: none"> <li>▪ The courts will hold an insolvency to be wrongful when it results from the fraudulent action or serious fault of the</li> </ul>	<ul style="list-style-type: none"> <li>▪ The insolvency of a public listed company triggers exclusion from trading as the admission requirements are no longer</li> </ul>	<ul style="list-style-type: none"> <li>▪ Where a company is declared insolvent, its directors will, in most cases, be deprived of their powers to manage and dispose of the</li> </ul>

	<p>insolvent or its legal or de facto directors in the three years prior to the start of the insolvency proceedings. This is the general principle.</p> <ul style="list-style-type: none"> <li>▪ The insolvency of a company is always considered wrongful, when its legal or de facto directors: <ul style="list-style-type: none"> <li>a) destroy, damage, make unfit for use, conceal or cause to disappear either all or a significant part the debtor's assets;</li> <li>b) create or artificially increase liabilities or losses, or reduce profits, notably by causing the debtor to enter into damaging transactions either for their own benefit or that of others with whom they have a special relationship;</li> <li>c) purchase goods on credit, reselling those goods or transferring them as payment at a price considerably lower than the actual one, before satisfying the obligation;</li> <li>d) dispose of the debtor's assets for their own benefit or that of third parties;</li> <li>e) carry on, under cover of the legal personality of the company, if applicable, an activity for their own benefit or that of third parties, to the detriment of the company;</li> <li>f) use the debtor's assets or credit in contradiction with the debtor's interests, for their own benefit or that of third parties, in particular to favor another company in which they hold a direct or indirect interest;</li> </ul> </li> </ul>	<p>fulfilled, i.e. the company can no longer prove that its economic and financial situation is compatible with the nature of the securities to be admitted and with the market where the admission is requested.</p>	<p>company's assets and will cease to be remunerated. However, they may keep their position.</p> <ul style="list-style-type: none"> <li>▪ If the court holds that the company's insolvency is wrongful, the court's judgment must identify the legal or de facto directors responsible. The judgment must also ban the persons in question from managing the assets of third parties and from engaging in commercial activities for a period between 2 and 10 years (including a ban on holding office in any legal entities). Besides this, the court must decide on the loss of any credits held by the directors from the company (directors will also be ordered to return any amounts or assets received from the company to settle their credits) and order the directors to indemnify the insolvency creditors for their unpaid credits, with the limit of the directors' own assets. The liability is joint and several among all the directors affected by the classification of the insolvency as wrongful.</li> <li>▪ If the insolvency is wrongful, this may also give rise to criminal liability on the part of the persons identified by the court as being responsible. Among others, we have the: <ul style="list-style-type: none"> <li>a) Crime of "negligent insolvency" that envisages the situations where the debtor due to a serious negligence or</li> </ul> </li> </ul>
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	<p>g) execute, for their own benefit or that of third parties, an operation at a loss, despite knowing, or being under the duty to know, that the latter might easily lead to a situation of insolvency;</p> <p>h) materially breach the obligation of keeping organized accounting, keep false accounts or double accounts, or commit an irregularity with significant detriment to the understanding of the debtor's assets or financial status;</p> <p>i) repeatedly breach their duties of presentation and cooperation up until the date of the order that declares the opening of the process to classify the insolvency as wrongful.</p> <ul style="list-style-type: none"> <li>▪ Engaging in any of the types of conduct described above will lead to an irrebuttable presumption that the insolvency is wrongful.</li> <li>▪ Besides the conduct described above, the insolvency will be presumed wrongful whenever the legal or de facto directors have breached the following duty and obligations: (i) the duty to submit the company to insolvency proceedings within 30 days of their knowledge of the actual or imminent insolvency situation (as a general rule, a company is considered insolvent whenever it is not capable of meeting its obligations as they fall due or if its liabilities exceed its assets) and/or (ii)</li> </ul>		<p>imprudence, prodigality or manifestly exaggerated expenses or bad speculation, creates an insolvency status; or because he does not request on time any measure to recover the company knowing that the company has economical or financial difficulties; and</p> <p>b) Crime of "malicious insolvency" .</p>
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	<p>the obligations to prepare the annual accounts, within the period of time established by law, to submit the annual account to supervision or to deposit them at the companies registry office.</p> <ul style="list-style-type: none"> <li>▪ Directors are also obliged to collaborate and to provide all information required by the court in an insolvency proceeding.</li> <li>▪ Among others, failure by the Board of Directors to comply with the duty to file for insolvency is deemed by law as an <i>ius tantum</i> assumption of malicious insolvency.</li> </ul>		
<p><b>19. Takeover bids</b></p>	<ul style="list-style-type: none"> <li>▪ The Mozambican Commercial code does not provide any provision dealing with takeover bids.</li> </ul>	<ul style="list-style-type: none"> <li>▪ In Mozambique, the takeover bids are addressed to all shareholders or to the holders of a class of shares. The public offer may be dependent on acceptance by holders of a certain number of shares and may also be limited to a maximum number of shares.</li> <li>▪ Takeovers may be voluntarily or mandatory under law, as detailed by the Mozambican Securities Code.</li> <li>▪ Acquisitions from 20% of the voting rights or that in any way ensure control (“domínio”) of a target company may trigger a mandatory offer.</li> <li>▪ There are no express provisions dealing with hostile takeover bids.</li> </ul>	

		<ul style="list-style-type: none"> <li>▪ The entire processing of the public offer, namely its launch, process, content of the offer documents and consideration are regulated by securities Code.</li> <li>▪ Regarding reactive measures, it should be noted that the target board of directors' scope of action is limited to day-to-day management after it becomes aware of the takeover, to ensure there are no significant changes to the target's financial position (the so-called neutrality rule).</li> </ul>	
<b>20. Market abuse/insider dealing</b>		<ul style="list-style-type: none"> <li>▪ Directors are subject to a wide set of specific duties, including the duty to not distribute non-distributable corporate assets or without the prior authorization of the shareholders; The duty to call the general meeting in the event of loss of half of the share capital;</li> <li>▪ The duty to submit a management report and accounts; The duty to perform their duties personally; The duty to not acquire the company's own shares or those of dominant companies outside the cases permitted by law; The duty of loyalty; and the duty of care.</li> </ul>	
<b>Defences</b>			
<b>21. Good corporate governance</b>		<ul style="list-style-type: none"> <li>▪ There are no soft or hard law provisions dealing with good governance practices for public listed companies, however as a matter of practice the investors tend to have</li> </ul>	

		standards to be in line with international market practice.	
<b>22. Minutes of board meetings and publication requirements</b>	<ul style="list-style-type: none"> <li>▪ The meetings of the board of directors must be recorded in minutes. The minutes shall be recorded in the company's minutes book.</li> <li>▪ There are no publication requirements for the minutes of board of directors' meetings, except when the board of directors' resolutions are related to the practice of acts subject to registration (e.g. approval of amendments to the bylaws, capital increases, mergers or demergers, etc.).</li> </ul>	<ul style="list-style-type: none"> <li>▪ The Minutes of board meetings resolving on the approval of the financial statements, annual accounts and management report by the board must be disclosed to the public.</li> </ul>	
<b>23. Discharge and Indemnification</b>	<ul style="list-style-type: none"> <li>▪ If the director is able to prove that he acted in an informed manner, without any personal motivation or interest and based on rational entrepreneurial criteria, his conduct is considered to be lawful, and no indemnity obligation may be imposed on him.</li> </ul>		<ul style="list-style-type: none"> <li>▪ The business judgment rule operates as a cause for discharge of directors' liability. A director is not liable for a mistake in business judgment made in good faith and in what the director believed to be the best interests of the corporation.</li> <li>▪ Mozambican law has adopted a restrictive approach to the business judgement rule, in the sense that directors are able to exclude liability if they provide evidence of having acted in an informed manner, without any personal motivation or interest and based on rational entrepreneurial criteria.</li> </ul>

<p><b>24. Insurance</b></p>	<ul style="list-style-type: none"> <li>▪ As a rule, directors' liability must be secured if the articles of association so provide.</li> <li>▪ Shareholders may exercise the office of director, provided that they give a bond established in the articles of association. Except as otherwise provided, the bond shall be equal to the value of the capital subscribed by the shareholders, and shall be intended exclusively to cover any acts of maladministration committed.</li> <li>▪ Nonexecutive directors and those who are not remunerated for the performance of their offices are exempted from providing such guarantees.</li> </ul>		<ul style="list-style-type: none"> <li>▪ The performance of office must be guaranteed within 30 days of the appointment or election, and the guarantee must be maintained until the end of the calendar year following that in which the administrator ceases his or her duties for any reason.</li> <li>▪ The costs triggered by bond/insurance may not be borne by the company (save if and to the extent the amount covered thereby exceeds the minimum amount provided for by law).</li> </ul>
<p><b>25. Resignation</b></p>	<ul style="list-style-type: none"> <li>▪ A director may resign from office at any time by notifying the chairman of the board of directors. If the chairman is the one resigning, he must notify the audit board or the audit commission. The resignation becomes effective at the end of the subsequent month, except if in the meantime a new director is appointed to replace the resigning one.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Any change to the members of the board of directors should be informed to the Mozambican Stock Exchange.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Resignation of a director must be registered before the Commercial Registry Office and the Company shall notify the Social Security.</li> </ul>
<p><b>26. Restructuring of assets</b></p>	<ul style="list-style-type: none"> <li>▪ Most mechanisms for restructuring of assets are voluntary. Hence, there is no general duty on directors to request a restructuring procedure (either in or out of court).</li> </ul>	<ul style="list-style-type: none"> <li>▪ Any restructuring decision is subject to the disclosure requirements under the Mozambican Securities Code.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Where there is a choice to restructure a company that is either experiencing a difficult economic situation or is close to being insolvent, the directors can seek to restructure it either in or out of court.</li> </ul>

	<ul style="list-style-type: none"> <li>▪ However, where a restructuring of assets is voluntarily submitted by a non-insolvent company and its creditors, the company (through its directors) must provide all information and documents required by the judicial administrator and by the creditors.</li> <li>▪ Where an asset restructuring plan or an insolvency plan is approved, the company is obliged to comply with it.</li> <li>▪ Directors performing their duties following the approval of an insolvency or restructuring plan may be liable, along with the company, for tax debts if, by their own fault, the assets of the company became insufficient to pay such debts.</li> </ul>		<ul style="list-style-type: none"> <li>▪ In contrast with insolvency proceeding, in these cases, the debtor stays in possession of its assets. Hence, the directors will remain with powers to dispose of a manage the company's resources (even if in some cases they must request authorization to do certain acts).</li> <li>▪ The company and its directors are held liable for any losses caused to the creditors, during the restructuring processes, if the information, documentation, or communications are incorrect or incomplete.</li> </ul>
<p><b>27. ESG and D&amp;I policies, metrics, reports</b></p>	<ul style="list-style-type: none"> <li>▪ There are not significant instruments in Mozambique directly or indirectly related to ESG matters.</li> <li>▪ Concerning the environmental dimension, the following is noteworthy: <ul style="list-style-type: none"> <li>- the Mozambican Criminal Code sets out different types of environmental crimes and that environmental damages may determine the attribution of compensation according to the Mozambican Civil Code;</li> <li>- The Law establishes a legal regime of general principles of environmental policy;</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ There are no provisions dealing with specific issues such as operations, business environment and general sustainability matters, however as a matter of practice the investors tend to have standards to be in line with international market practice.</li> </ul>	



	<ul style="list-style-type: none"><li>▪ Regarding matters of a social nature, it is important to highlight that:<ul style="list-style-type: none"><li>(i) arbitrary discrimination is prohibited in Mozambican Constitution, Criminal Law, Civil Law and Labour Law.</li><li>(ii) The Law provides the regime for prevention, prohibition and combatting of discrimination.</li><li>(iii) Law dealing with local content requirements is expected to be approved during 2022.</li></ul></li></ul>		
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