

The International Bar Association Company Director Checklist – PERU

Contact:

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

Introduction

This checklist is intended to serve as a practical guide to the main duties and obligations of the directors of listed public companies in Peru, listed on a regulated market, i.e. the Stock Market Superintendence (SMV).

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 January 18th, 2022.

DUTIES AND OBLIGATIONS OF THE DIRECTORS			
	Action/issue	Specifics of listed public companies (if relevant)	Comments/notes
Before appointment			
1. Items to understand	The Board of the Directors (BoD) is the administrative collegiate body appointed by the shareholders of a Company,	NA	
2. People to meet with	In the case of incorporations, the appointment of the BoD should be stated in the private and public deeds. In the case of ongoing companies, the shareholders must agree the appointment of the BoD by a General Shareholder's Meeting or a Shareholders' Special Meeting, if applicable.	NA	
3. Documents to review	The appointment of the BoD must be registered in the Public Registry. In the case of incorporations, for said registration, the private and public deeds of incorporation must state the appointment and acceptance letters signed by the directors must be filed also. These letters should be notarized and apostilled if they are signed abroad. In the case of ongoing companies, a certified copy / legalized copy of the General Shareholders' Meeting or the Shareholder's Special Meeting must be filed, and acceptance letters signed by the directors must be filed also. These letters should be notarized and apostilled if they are signed abroad.	NA	
Ongoing duties			
4. Points for attention	The BoD oversee a company's administration.	NA	

5. Legal status of directors	The directors are considered the administrative collegiate body of a Company.	NA	
6. Parties to which duties are owed	Shareholders.	NA	
7. Powers of the board of directors	The BoD has the powers of management and legal representation necessary for the administration of the company within its purpose, except for matters that the law or the bylaws attribute to the shareholders.	NA	
8. Duty of loyalty	The directors carry out their duties with the diligence of an orderly businessman and a loyal representative.	NA	
9. Duty of care	The directors carry out their duties with the diligence of an orderly businessman and a loyal representative.	NA	
10. Duty to have and maintain skills	NA	NA	
11. Additional duties (confidentiality, etc.)	<p>The directors are obliged to keep secret regarding the business of the company and the social information to which they have access, even after ceasing their functions.</p> <p>Also, the directors must provide the shareholders and the general public with sufficient, reliable and timely information that the law determines regarding the legal, economic and financial situation of the company.</p>	NA	
12. Delegation of powers/authority	The BoD may appoint one or more directors to resolve or execute certain acts. This delegation can be made so that they act individually or, if there are two or more, they can act as a committee.	NA	

	<p>The permanent delegation of any power of the BoD and the appointment of the directors who have to exercise it, requires the favorable vote of two thirds of the members of BoD and their registration in the Public Registry.</p> <p>In no case may the rendering of accounts and the presentation of financial statements be delegated to the shareholders, nor the powers that the shareholders grant to the BoD, unless this is expressly authorized by shareholders.</p>		
13. Conflicts of interest (inc. intragroup dealings)	<p>Directors may not adopt agreements that do not watch over the social interests of the company, but their own interests or those of the related third parties or use the business or commercial opportunities they would be aware of by virtue of their position, for personal or third-party benefit. They cannot participate on their own behalf or on behalf of third parties in activities competing with the company, without its express consent.</p> <p>The director, who has an interest in any matter contrary to the company, must state it and refrain from participating in the deliberation and resolution concerning such matter.</p> <p>The director who contravenes these provisions is responsible for the damages caused to the company and may be removed by the BoD or shareholders upon proposal of any shareholder or director.</p>	NA	
14. Compliance with statutory obligations	<p>Besides the general obligations described in the General Companies Law, the BoD must comply with the obligations set forth in the bylaws of a company.</p>	NA	

<p>15. Disclosure obligations of listed companies</p>		<p>Any transfer registered equal to or greater than one percent (1%) of the amount issued, made by or in favor of any of the directors and managers of the issuer, their spouses and relatives up to the first degree of consanguinity, must be communicated to the corresponding authorities within five (5) days of notification of the operation to the issuer. The communication must mention the number of securities, object of the transfer and the price paid for them.</p>	
<p>16. Potential liability</p>	<p><u>Liability:</u></p> <p>Directors shall respond, jointly and unlimitedly, to the company, shareholders and third parties for damages caused by the agreements or acts contrary to the law, to the bylaws or those made intentionally, with abuse of authority or gross negligence.</p> <p>It is the responsibility of the BoD, to comply with the agreements made by the shareholders, unless the shareholders provide otherwise for specific cases.</p> <p>The directors are also jointly liable along with the directors that have preceded them for irregularities they have committed if, being aware of them, they had not informed them in writing to the general meeting.</p> <p><u>Disclaimer:</u></p> <p>The director who, having participated in an agreement or being aware of it, has expressed his/her disconformity at the time of the agreement or when he/she was aware of it is not responsible if he/she has taking care of recording of said disagreement in the minutes</p>	<p><u>Specific liability un public listed companies:</u></p> <p>The directors of the issuers with representative shares of the capital stock registered in the stock exchange market are civilly liable before the company and the shareholders for the damages caused by adopting agreements that do not privilege the corporate interest but rather their own interests or those of third parties related, regarding transactions in which the following characteristics are presented:</p> <ol style="list-style-type: none"> 1. One of the intervening parties is the company with representative shares of the capital stock registered in the stock exchange market; 2. The controlling shareholder of the company indicated in the preceding paragraph also exercises control of the legal entity that participates as counterparty in a given transaction; and 3. The transaction is not adjusted to prices, conditions or terms that prevail in the market at the time of its approval and involves at least ten percent (10%) of the assets of the issuing company. 	

	<p>or has stated his/her disagreement by means of notarized letter.</p> <p><u>Liability in contracts, credits, loans or guarantees:</u></p> <p>Directors are jointly liable before the company and third-party creditors for the agreements, credits, loans or guarantees entered into or granted in violation of the provisions set forth in Article 179° of the General Companies Law.</p> <p><u>Liability regarding conflicts of interest:</u></p> <p>Likewise, as previously mentioned, the director who contravenes the provisions regarding conflicts of interest is responsible for the damages caused to the company and may be removed by the BoD or shareholders upon proposal of any shareholder or director.</p> <p><u>Social claim of liability:</u></p> <p>The social claim of liability against any director is promoted by virtue of the shareholders, even when the company is in liquidation. This agreement may be adopted although it has not been the subject of the summon for the corresponding meeting.</p> <p>The shareholders representing at least one third of the share capital may directly exercise the social claim of liability against the directors, provided that the following requirements are satisfied:</p> <ol style="list-style-type: none"> 1. That, the lawsuit includes the responsibilities on behalf of the company 	<p>It is up to a judge to determine the damages caused, without it being necessary to determine the existence of fault or fraud in the actions of the directors.</p> <p>The director who did not participate in the approval of the transaction is not responsible, as well as the one who, having participated, expressed his disagreement at the time of the agreement and recorded it in the respective minutes.</p> <p><u>Social claim of liability in public listed companies:</u></p> <p>In the case of companies with shares listed on the stock exchange, in order to exercise the social claim of liability, it is required to be the owner of at least 10% of the issuer's share capital. In such a case, the holding of the General Shareholder's Meeting or the lack of the respective agreement is not a previous requirement for the initiation of the action.</p>	
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	<p>and not the particular interest of the plaintiffs.</p> <p>2. That, the plaintiffs have not approved the resolution taken by the shareholders regarding the lack of substance against the directors.</p> <p>Any shareholder may directly be engaged in social claim of liability against the directors, if three months after the shareholders resolved the initiation of the claim, the lawsuit has not been filed. It is applicable to this case the provisions of point 1 and 2 stated above.</p> <p>The assets obtained by virtue of the lawsuit filed by the shareholders are received by the company, and the shareholders have the right to be reimbursed for the expenses of the process.</p> <p>The creditors of the company can only act against directors when their claim tends to reconstitute the equity, when it has not been exercised by the company or its shareholders and in addition, when it is an act that seriously threatens the credit guarantee.</p> <p><u>Personal claim of liability:</u></p> <p>Notwithstanding the provisions of the preceding articles, the claims for compensation that may correspond to the partners and third parties for acts of the directors that directly harm their interests are exempt. Direct injury is not considered to be that which refers to damages caused to the company, even if this entails damage to the shareholder consequently.</p>		
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	<p><u>Criminal liability:</u></p> <p>Lawsuits in civil proceedings against directors do not undermine the criminal liability that may be applicable.</p> <p><u>Liability expiration:</u></p> <p>The civil liability of the directors will expire two years from the date of adoption of the agreement or the realization of the act that caused the damage, notwithstanding the criminal liability.</p> <p><u>Tax liability:</u></p> <p>The directors may be jointly liable for the company's tax obligations, when they commit intent, gross negligence, or abuse of powers.</p>		
<p>17. Duration of duties</p>	<p>The bylaws of each company indicate the duration of the BoD for specified periods, not exceeding three years nor less than one. If the bylaws do not indicate the duration term, it is understood to be for one year.</p> <p>The BoD is completely renewed at the end of its period, including those directors who were appointed to finish periods. Directors may be re-elected, unless otherwise provided by the bylaws.</p> <p>The term of the BoD ends when the shareholders decide on the financial statements of its last fiscal year and elects the new BoD, but the BoD continues in office, even if its term has ended, as long as there is no new election.</p>	<p>NA</p>	
<p>Special circumstances</p>			

18. Bankruptcy	NA	NA	
19. Takeover bids	NA	<p>It is assumed that the BoD of a target company, in its capacity as depositories of the shareholders' trust, adopt a role of impartial informants, characterizing the duty of loyalty to the extreme where they favor the interest of the shareholders before their own interests (given that in a takeover it is common that as a consequence of it, the company changes administration).</p> <p>Based on the aforementioned premise, the target company's BoD has the duty to act neutrally in the face of potential competing offers and, in particular, must refrain from carrying out or arranging any act that is not part of the ordinary course of business of the company and whose consequence is to disturb the normal development of the offer or favor some bidder.</p> <p>Additionally, before the start of a takeover bid and before the presentation of any competing offer, the BoD of the target company is responsible for preparing a reasoned report indicating the advantages and disadvantages of accepting the formulated takeover bid or the competing offer, as appropriate.</p> <p>Failure to comply with said obligations by the BoD of the target company, in addition to the administrative sanctions that may be applicable, may motivate the initiation of a liability lawsuit.</p>	
20. Market abuse/insider dealing	NA	It is presumed that all directors have access to privileged information and, consequently, they have the duty to keep it confidential.	

		<p>By legal mandate, the directors must refrain from using information for their own benefit or that of third parties, since otherwise they would be civilly liable before the company or other affected third parties, in addition to the patrimonial and criminal consequences that result from application in insider dealing cases.</p> <p>Privileged information must, in most cases (except in the case of confidential information), be communicated to the SMV, to the Superintendent of the same and to the stock exchange as a fact of importance.</p>	
Defences			
21. Good corporate governance	The directors carry out their duties with the diligence of an orderly businessman and a loyal representative.	NA	
22. Minutes of board meetings and publication requirements	<p>The deliberations and agreements of the BoD must be recorded, by any means, in minutes that will be collected in a book, on loose sheets or in another form permitted by law and, exceptionally as indicated by article 136 of the General Companies Law. The minutes must express, if a session was held: the date, time and place of celebration and the name of the attendees; if there was no session: the form and circumstances in which the agreements were adopted; and, in any case, the matters dealt with, the agreements adopted and the number of votes, as well as the records that the directors want to state.</p> <p>If the bylaws do not provide otherwise, the minutes will be signed by those who acted as president and secretary of the session or by those who were expressly designated for that purpose. The minutes shall have legal validity and the agreements to which they refer may</p>	NA	

	<p>be carried out from the moment they were signed, under the responsibility of those who signed them. The minutes must be signed within a maximum period of ten business days following the date of the session or the agreement, as appropriate.</p> <p>Any director can sign the minutes if they so wish and state so in the session.</p> <p>The director who considers that a record contains inaccuracies or omissions has the right to demand that his observations be included as part of the record and to sign the corresponding addition.</p> <p>The director who wants to save his responsibility for any act or agreement of the BoD must request that his opposition be recorded in the minutes. If it is not recorded in the minutes, he should request that it be added to the minutes, as indicated above.</p> <p>The term to request that the observations be recorded or that the opposition be included expires twenty business days after the session is held.</p> <p>At the request of the General Manager or any of the members of the BoD, a notary public designated by the applicants may be present during the session to certify the authenticity of the agreements adopted, which may be executed immediately by virtue of the certification. Said certification, as well as the one referred to in article 138° of the General Corporate Law, gives merit to the registration of the agreements adopted in the corresponding registry.</p>		
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23. Discharge and Indemnification	NA	NA	
24. Insurance	NA	NA	
25. Resignation	<p>The position of director becomes vacant due to the death, resignation, removal, or occurrence of the director in any of the causes of impediment indicated by law or the bylaws.</p> <p>Also, if a director presents a cause of impediment, he has the obligation to resign from his position.</p>	NA	
26. Restructuring of assets	NA	NA	
27. ESG and D&I policies, metrics, reports	NA	NA	