

# The International Bar Association Company Director Checklist – Singapore

**Contact:** [Andrew M Lim](#), [Christopher Ong](#) and [Jo Tay](#), Allen & Gledhill LLP

Item	Number	Check	Item	Number	Check
<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>		
Documents to review	3	<input type="checkbox"/>	Bankruptcy	18	<input type="checkbox"/>
<b>Ongoing duties</b>			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"/>	<b>Defences</b>		
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

- public companies in Singapore that are listed on a regulated market, i.e. Singapore Exchange Securities Trading Limited (“**SGX-ST**”)
- private limited companies in Singapore

arising from Singapore rules and regulations , namely:

- Companies Act 1967 (“**Act**”)
- Securities and Futures Act 2001 (“**SFA**”)
- Listing Manual of the SGX-ST (“**Listing Manual**”)
- Singapore law generally

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

All section references are to the Act unless otherwise stated.

## 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 1 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>The precise nature and extent of the company's business activities.</li> <li>The skills the company needs or access to resources that the company lacks.</li> <li>The remuneration package.</li> <li>The time commitment required.</li> <li>The company's corporate governance framework.</li> <li>The track record of the company's majority shareholder</li> </ul>		<ul style="list-style-type: none"> <li>Is the industry sector one that you are familiar with? Are you expected to be an industry expert?</li> <li>Consider if joining the Board would place you in a position of conflict (discussed in Question 13).</li> <li>Consider why the company has approached you and if you can deliver all that they expect.</li> <li>Consider if the remuneration meets with your expectation in the context of what will be expected of you in terms of your time and skill/expertise.</li> <li>Satisfy yourself as to the adequacy of the company's corporate governance (discussed in Question 21).</li> <li>Consider the track record of the company's majority shareholder and its commitment to standard of good corporate governance</li> </ul>
<b>2. People to meet with</b>	<ul style="list-style-type: none"> <li>CEO/CFO.</li> <li>Other directors.</li> <li>The management team.</li> <li>The company's lawyers (external and internal).</li> <li>The company's auditors (external and internal).</li> <li>The company's financing banks</li> </ul>		<ul style="list-style-type: none"> <li>You will be responsible for the actions of the management team, as well as your own. Assure yourself of their integrity and competence.</li> <li>Are you a right fit from the company's perspective, as well as from your own perspective?</li> </ul>

			<ul style="list-style-type: none"> <li>• Ascertain if there is any current litigation and the potential liability of the company.</li> <li>• Ascertain if there has been change in company auditors in recent years and the circumstances in which the change was made.</li> <li>• Ascertain if there have been any queries from regulatory authorities and the circumstances giving rise to such queries.</li> <li>• Ascertain if your inclusion on the board will change significantly the composition and independence of the board.</li> <li>• Ascertain if the company has a strong relationship with its financing banks.</li> </ul>
<b>3. Documents to review</b>	<ul style="list-style-type: none"> <li>• Constitution of the company.</li> <li>• Board minutes and board papers for past six to 12 months.</li> <li>• Financial data for last three years.</li> <li>• Company's business plan and corporate strategy.</li> <li>• Company's insurance coverage for directors.</li> <li>• In the case of a listed company, announcements made by the company to SGX-ST in the last 12 months.</li> <li>• Press releases by the company.</li> </ul>		<ul style="list-style-type: none"> <li>• Consider how often the Board meets and the issues raised, and how decisions are taken.</li> <li>• Consider also the proposals for reform (if any) or other potential changes in the company.</li> <li>• Consider the company's current financial position and its financial track record over the last three years.</li> <li>• Ascertain whether there has been any change in accounting policies or practices.</li> <li>• A director faces exposure to personal liability. It is therefore very important to review and assess the adequacy of the</li> </ul>

	<ul style="list-style-type: none"> <li>Press clippings about the company for last 12 months.</li> </ul>		<p>company's D&amp;O insurance arrangements that are in place.</p> <ul style="list-style-type: none"> <li>Consider whether the company is about to embark on a major structural change</li> </ul>
<b>Ongoing duties</b>			
<b>4. Points for attention</b>	<ul style="list-style-type: none"> <li>How are decisions made within the company?</li> <li>What is the board's risk appetite?</li> <li>Satisfy yourself as to the internal regulation of the company and the corporate governance framework.</li> </ul>		<ul style="list-style-type: none"> <li>Understand how the board works in practice and if independent judgment is truly encouraged.</li> <li>Consider if your personality fits within that risk-taking environment.</li> <li>Consider if the company has a culture of candour, transparency and voluntary disclosure.</li> <li>Understand the company's accounting policies and practices.</li> </ul>
<b>5. Legal status of directors</b>	<ul style="list-style-type: none"> <li>A director is defined in Section 4(1) of the Act to include "any person occupying the position of director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions the directors or the majority of the directors of a corporation are accustomed to act and an alternate or substitute director". The Act does not differentiate a nominee director from the others nor does it draw a distinction between a locally resident director and a foreign director. As such, the rights, powers, duties and liabilities of a director as set out in the Act will also</li> </ul>		<ul style="list-style-type: none"> <li>Note that Section 158 of the Act seeks to recognise the position of nominee directors and the reality underlying their appointment. Section 158 allows nominee directors to disclose information to their nominating shareholders if authorised by the board of directors by general or specific mandate provided that the disclosure must not be likely to prejudice the company.</li> </ul>

	generally fall upon any nominee, alternate or substitute director.		
<b>6. Parties to which duties are owed</b>	<ul style="list-style-type: none"> <li>• <b>Company, not members:</b> General rule is that a director owes his duties to the company and not to members of the company individually. Hence, only the company may commence legal proceedings against a director for any breaches of duties.</li> <li>• <b>Employee:</b> Directors must take into consideration employees' interests as well as those of the shareholders when exercising their powers (Section 159).</li> <li>• <b>Creditors:</b> Case law has indicated that when a company is near insolvency or becomes insolvent, a director must also take heed of the creditors' interests to ensure the property of the company is not improperly dissipated and that its affairs are properly managed.</li> </ul>		
<b>7. Powers of the board of directors</b>	Section 157A of the Act provides for a statutory restatement of the distribution of powers between directors and general meeting of a company. Section 157A stipulates that the business of a company shall be managed by, or under the direction or supervision of, the directors. The directors may exercise all the powers of a company except any power that the Act or the constitution of the company requires the company to exercise in general meeting.		Traditionally, the board of directors manages the business of the company while the general meeting of members exercises the powers entrusted to it by the Act and the company's constitution.

<p><b>8. Duty of loyalty</b></p>	<p>Section 157(1) of the Act provides that a director shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office. Section 157(1) is not an exhaustive statement of a director's duties as Section 157(4) of the Act specifically provides that Section 157(1) is in addition to any duties that may be imposed by any other written law, common law or equity. At common law, a director is regarded as a fiduciary of a company and accordingly he is bound to observe all fiduciary duties imposed by the common law.</p>		
<p><b>9. Duty of care</b></p>	<p>Directors' duties of good faith are derived from the fiduciary relationship the directors have with the company, the major characteristics of which are to act in good faith / <i>bona fide</i> in the best interests of the company. A director's fiduciary duty has four aspects:</p> <ul style="list-style-type: none"> <li>• <b><i>Bona fide</i> and for the benefit of the company:</b> A director must act <i>bona fide</i> for what he considers to be the best interests of the company and not for any collateral purpose. This is a subjective test. Provided that a director's motives are honest, and it can be shown that he was satisfied in his own mind that the course of action is beneficial to the company or correct, a director is normally immune from proceedings that he should have acted in some different</li> </ul>		

	<p>way or that, with hindsight, a better judgment was possible.</p> <ul style="list-style-type: none"> <li>• <b>Exercise powers for a proper purpose:</b> A director must exercise his powers in the company's interests and only for the purpose or purposes for which they are given, even if he believes that to do otherwise would be in the best interests of the company. The director will be exceeding his power if he exercises it for an improper purpose.</li> <li>• <b>Conflict of interest:</b> See Question 13.</li> <li>• <b>Proper delegation and discretion:</b> See Question 12.</li> </ul>		
<p><b>10. Duty to have and maintain skills</b></p>	<p>A director is under a mandatory duty, at all times, to act honestly and use reasonable diligence in the discharge of the duties of his office (Section 157(1)). The courts, in determining a director's duty of care and skill, have expanded on this general proposition and the law as it now stands may be summarised into three propositions:</p> <ul style="list-style-type: none"> <li>• <b>Degree of skill:</b> The standard of care and diligence expected of a director is objective, i.e. whether he has exercised the same degree of care and diligence as a reasonable director found in his position. This standard is not fixed but a continuum depending on various factors such as the individual's role in the company, the type of decision being</li> </ul>		<p>Protection is accorded by Section 157C to directors for reasonable reliance on information and advice prepared or supplied by employees, professionals and experts with respect to matters within their respective areas of competence. This is discussed in Question 12.</p> <p>Breaches of these duties by a director may lead to criminal or civil liabilities (Section 157(3)). In certain circumstances, the court may also make an order disqualifying a person from being a director. The Listing Manual requires a director to resign from the board of directors of the listed company immediately after he is disqualified from acting as a director in any jurisdiction for reasons other than on technical grounds (Rule 720 (2) of the Listing Manual).</p>

	<p>made, the size and business of the company. This standard will not be lowered to accommodate any inadequacies in the individual's knowledge or experience. The standard will, however, be raised if he held himself out to possess or in fact possesses some special knowledge or experience (<i>Lim Weng Kee v PP</i> [2002] 2 SLR(R) 848; [2002] SGHC 193; <i>Ho Kang Peng v Scintronix Corp Ltd (formerly known as TTL Holdings Ltd)</i> [2014] 3 SLR 329 ).</p> <ul style="list-style-type: none"> <li>• <b>Attention to the business:</b> A director is not bound to give continuous attention to the affairs of his company. His duties are of an intermittent nature to be performed at periodical board meetings and meetings of any committee of the board upon which he happens to sit (<i>Re City Equitable Fire Insurance Co Ltd</i> [1925] Ch 407).</li> <li>• <b>Proper delegation and discretion:</b> See Question 12.</li> </ul>		
<p><b>11. Additional duties (confidentiality, etc.)</b></p>	<ul style="list-style-type: none"> <li>• By virtue of Section 157(2), an officer of a company is not allowed to make improper use of any information acquired by virtue of his position, to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the company. Should he do so he is guilty of an offence and is</li> </ul>		

	liable to the company for the profit and damages it suffered.		
<b>12. Delegation of powers/authority</b>	<ul style="list-style-type: none"> <li>• Having regard to the exigencies of business and the constitution of the company, a director may delegate some of his duties to some other official. A director is, in the absence of grounds for suspicion, justified in trusting that official to perform such duties honestly.</li> <li>• Section 157C accords protection to directors for reasonable reliance on information and advice prepared or supplied by employees, professionals and experts with respect to matters within their respective areas of competence.</li> </ul>		<p>Protection provided in Section 157C is available only if the director acts in good faith, makes proper inquiry where the need for inquiry is indicated by the circumstances, and has no knowledge that such reliance is unwarranted.</p> <p>The constitution of a company usually provides for the delegation of powers of directors to committees. The board of directors cannot however delegate all of its responsibilities to another person, to the effect of absolving the board from exercising proper supervision and managerial control over the company. In addition, a director cannot fetter his discretion by entering into any contract with fellow directors or a third party governing or restricting the manner in which he may vote at future board meetings.</p>
<b>13. Conflicts of interest (inc. intragroup dealings)</b>	<ul style="list-style-type: none"> <li>• A director must not put himself in a position where there is an actual or potential conflict between his duty to the company and his personal interests. To avoid the likelihood of liability should an actual or potential conflict arise, a director must ensure that the conflict is disclosed to, and approved by, the company. An area in which conflict of interests often arises is the entering into</li> </ul>		

	<p>transactions between the company and the director.</p> <ul style="list-style-type: none"> <li>• Case law has stated that it is permissible for directors (especially directors of a holding company) to consider the interest of the group as a whole when making decisions, as long as they do not sacrifice the interests of any company within the group (<i>Intraco Ltd v Multi-Pak Singapore Pte Ltd</i> [1994] 3 SLR(R) 1064).</li> </ul>		
<p><b>14. Compliance with statutory obligations</b></p>	<p>The following are some of these statutory obligations:</p> <ul style="list-style-type: none"> <li>• <b>Keeping registers:</b> Maintaining register of director’s shareholdings (Section 164 of the Act).</li> <li>• <b>Filing of returns:</b> The Act imposes numerous and diverse obligations on the company and its officers to prepare, file or distribute various documents or returns with the Registrar of Companies or to a company’s shareholders. A failure to comply with such statutory obligations, is, in most cases, ordinarily accompanied by liability which is imposed on the company and every officer “who is in default”.</li> <li>• <b>False reports:</b> A director commits an offence if he wilfully makes or authorises the following to be made to a return, report, certificate, balance-sheet,</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Keeping registers:</b> Maintaining register of members for public companies (Section 190 of the Act).</li> <li>• <b>Obligations under Listing Manual:</b> Including continuing disclosure obligations (Chapter 7), announcement of interested person transactions (Chapter 9), announcement of acquisitions and realisations (Chapter 10) and reporting on corporate governance (Code of Corporate Governance 2018).</li> </ul>	<ul style="list-style-type: none"> <li>• If a director fails to carry out these statutory obligations, he may be liable for criminal offences.</li> <li>• In addition to being criminally liable, a director who commits a breach of his fiduciary duties or wilfully commits certain breaches of the Act (for example, paying a dividend otherwise than out of profits (Section 403 of the Act) or allowing a company to incur obligations which it cannot meet as the company is insolvent (Section 238 of the Insolvency, Restructuring and Dissolution Act 2018, discussed under Question 18) may also be liable to the company or to third parties for losses so incurred.</li> </ul>

	<p>financial statements or other document required by or for the purpose of the Act:</p> <ul style="list-style-type: none"> <li>○ a statement which is false or misleading in any material particular which he knows to be false or misleading; or</li> <li>○ an omission of any matter or thing without which the document is misleading in a material respect (Section 401(2) of the Act).</li> </ul> <ul style="list-style-type: none"> <li>• <b>Audited financial statements:</b> Sections 199 to 204 of the Act deal with the obligation of a company and its officers to maintain financial statements, to lay financial statements accompanied by the auditor’s report and directors’ statement before the members at the annual general meeting, to report on the state of the company’s affairs and to provide members with copies of the financial statements.</li> <li>• <b>Nominee directors:</b> A director of a company who is or who becomes or who ceases to be a nominee must inform the company of that fact and provide prescribed information or provide details of any change to the particulars previously provided to the company (Section 386AL of the Act).</li> </ul>		
--	---	--	--

	<ul style="list-style-type: none"> <li>• <b>Registrable controllers:</b> A director who knows or ought reasonably to know that he is a registrable controller or who ceases to be a registrable controller in relation to a company must inform the company of that fact and provide prescribed information (Section 386AJ of the Act) or provide details of any change to the particulars previously provided to the company.</li> </ul>		
<p><b>15. Disclosure obligations of listed companies</b></p>		<ul style="list-style-type: none"> <li>• <b>Interests in securities and securities-based derivatives contracts:</b> The interests and changes in interests of a director or any of his family members in shares, debentures, rights or options over shares or debentures, contracts for delivery of shares, participatory interests and other prescribed securities or securities-based derivatives contracts of the listed company or any of its related corporations must be promptly disclosed to the listed company within two business days in the prescribed form. (Section 133(1) of the SFA)  Such disclosures are to be recorded in the register of directors' shareholdings maintained by the listed company in accordance with section 164 of the Act.</li> <li>• <b>Disclosure on appointment:</b> On appointment, the director must disclose, and the company must announce the information set out in Appendix 7.4.1 of the Listing Manual. The information to be</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to make the notification in the prescribed form constitutes a breach of the SFA (Section 133(3) of the SFA)</li> </ul>

		<p>disclosed includes convictions for past offences, past (for the last five years) and present directorships and whether he has been disqualified from acting as a director in the past.</p> <ul style="list-style-type: none"> <li>• <b>Disclosure on cessation:</b> On cessation, the director must disclose, and the company must announce the information set out in Appendix 7.4.2 of the Listing Manual. The information to be disclosed includes any unresolved differences in opinion on material matters between the director and the board of directors.</li> </ul>	
<p><b>16. Potential liability</b></p>	<p>Other statutes may impose duties on directors. The following are some examples;</p> <ul style="list-style-type: none"> <li>• <b>Tax:</b> The manager or principal officer in Singapore of every company is answerable for doing all such acts, matters and things as are required to be done under the Income Tax Act 1947 for the assessment of the company and payment of tax (Section 55 of the Income Tax Act 1947).</li> <li>• <b>Employment:</b> <ul style="list-style-type: none"> <li>○ Where an offence under the Employment Act 1968 committed by a body corporate is proved to have been committed with the consent or connivance of an officer of the body corporate (which is defined to include a director), or to be attributable to any neglect on his</li> </ul> </li> </ul>		<ul style="list-style-type: none"> <li>• Workplace Safety and Health Act 2006: Defence that: <ul style="list-style-type: none"> <li>(a) the offence was committed without his consent or connivance; and</li> <li>(b) he had exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.</li> </ul> </li> </ul> <p>(Section 48 of the Workplace Safety and Health Act 2006)</p>

	<p>part, the officer as well as the body corporate will be guilty of the offence and liable to be proceeded against and punished accordingly. Where an offence under the Employment Act 1968 has been committed by a body corporate, it will be presumed, until the contrary is proved, that the offence is attributable to the neglect of, inter alia, an officer of the body corporate who is primarily responsible for the act or omission which constitutes the offence, and who has failed to exercise reasonable supervision or oversight as such officer (Section 113A(1) and (5) of the Employment Act 1968).</p> <ul style="list-style-type: none"> <li>○ Where an offence under the Workplace Safety and Health Act 2006 has been committed by a body corporate, an officer (which is defined to include a director) of the body corporate will be guilty of the offence and will be liable to be proceeded against and punished accordingly (Section 48 of the Workplace Safety and Health Act 2006).</li> <li>• <b>Environment:</b> Where an offence under the Environmental Protection and Management Act 1999 committed by a body corporate is proved to have been committed with the consent or</li> </ul>		
--	---	--	--

	<p>connivance of an officer (which is defined to include a director), or to be attributable to any act or default on his part, he as well as the body corporate will be guilty of that offence and will be liable to be proceeded against and punished accordingly (Section 71 of the Environmental Protection and Management Act 1999).</p> <ul style="list-style-type: none"> <li>• <b>Industry specific:</b> For example, the Banking Act 1970 and the Insurance Act 1966 impose additional duties on directors of companies which are regulated by these statutes.</li> </ul>		
<b>17. Duration of duties</b>	<p>Directors are to carry out and fulfil their duties for the duration of their appointment.</p> <p>In the context of a former director, his fiduciary duty continues and he must not exploit any opportunity or confidential information he had learned during his office as a director. Typically, former directors are not permitted to divert maturing business opportunities to themselves or their nominees. Nor can they be permitted to exploit confidential information acquired during his office as a director (<i>Poon Huat Seng v Goh Cheng Chua</i> [1994] SGHC 74).</p>		
<b>Special circumstances</b>			
<b>18. Bankruptcy / Insolvency</b>	<ul style="list-style-type: none"> <li>• <b>General:</b> Under Section 157(1), a director is under a duty to act honestly and use reasonable diligence. At general law, a</li> </ul>		A director found to have conducted both matters will also be criminally liable and punished as follows:

	<p>director also has a fiduciary duty to act in the best interests of the company. Where the company is insolvent or near insolvency, in acting in the best interests of the company, directors must additionally consider the interests of the company's creditors. Such issues of breach of fiduciary duty may also be engaged where the company is found to have been party to certain vulnerable transactions in a judicial management or winding up (e.g. transactions at undervalue, unfair preferences).</p> <ul style="list-style-type: none"> <li>• <b>Wrongful trading:</b> Any person who was party to the company trading wrongfully may be declared personally liable for the company's debts or liabilities, and guilty of a criminal offence of wrongful trading. A company trades wrongfully if it incurs debts or liabilities without reasonable prospect of meeting them in full when insolvent, or it becomes insolvent by reason of incurring such debts or liabilities. (Section 239 of the Insolvency, Restructuring and Dissolution Act 2018 ("IRDA")).</li> <li>• <b>Fraudulent trading:</b> Any person who has been found to have been knowingly party to the company carrying on business with the intent to defraud creditors or for a fraudulent purpose may be held personally liable for all the company's debts and liabilities, and guilty of a</li> </ul>		<ul style="list-style-type: none"> <li>• <b>Wrongful trading:</b> Fine not exceeding S\$10,000 or imprisonment for a term not exceeding three years, or both (Section 239(6) of the IRDA).</li> <li>• <b>Fraudulent trading:</b> Fine not exceeding S\$15,000 or imprisonment for a term not exceeding seven years, or both (Section 238(4) of the IRDA).</li> <li>• In either case, the court may also make the director (or any person liable) personally liable for the debt or obligation due from the company.</li> <li>• Where the director is found to have breached his fiduciary duty to the company (which involves considering the interests of the creditors), the director may also be personally liable for the losses caused to the company by reason of such breach.</li> <li>• In certain cases (including misfeasance or breach of fiduciary duty on the part of the director), the Official Receiver or Minister may apply to court for an order disqualifying the director from being a director or in any way directly or indirectly being concerned in or taking part in, the management of a company, for a period not exceeding 5 years from the date of the order (section 149 of the Act).</li> </ul>
--	--	--	---

	criminal offence of fraudulent trading. (Section 238 of the IRDA).		
<b>19. Takeover bids</b>	<ul style="list-style-type: none"> <li>Take-overs of and by companies are governed by Sections 139 to 140 and 321 of the SFA as well as the Singapore Code on Take-overs and Mergers (“<b>Take-over Code</b>”). The Take-over Code is applicable to corporations with a primary listing of their equities in Singapore. While the Take-over Code is drafted with listed public companies in mind, unlisted public companies with more than 50 shareholders and net tangible assets of S\$5 million or more are also expected to observe the letter and spirit of the Take-over Code wherever this is possible and appropriate. The Take-over Code does not apply to take-overs or mergers of other unlisted public companies or private companies.</li> <li>Section 140 of the SFA provides that a person who has no intention to make an offer in the nature of a take-over offer shall not give notice or publicly announce that he intends to make a take-over offer and a person shall not make a take-over offer or give notice or publicly announce that he intends to make a take-over offer if he has no reasonable or probable grounds for believing that he will be able to perform his obligations if the take-over offer is accepted or approved, as the case may be. If any of these provisions</li> </ul>		<ul style="list-style-type: none"> <li>The Take-over Code also applies to business trusts or real estate investment trusts (“<b>REITs</b>”) with a primary listing of their units in Singapore. Unlisted registered business trusts or REITs with more than 50 unitholders and net tangible assets of S\$5 million or more must also observe, wherever possible and appropriate, the letter and spirit of the Take-over Code as set out in its General Principles and Rules. The Take-over Code does not apply to take-overs or mergers of other unlisted business trusts or REITs. With respect to foreign-registered business trusts, the Take-over Code applies only to those with a primary listing in Singapore.</li> </ul>

	<p>are contravened, every officer of the corporation who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S\$250,000 or to imprisonment for a term not exceeding seven years or to both</p> <ul style="list-style-type: none"> <li>• The SFA also provides that while the failure of any party to comply with any of the provisions of the Take-over Code will not of itself render that party liable to criminal proceedings, such failure may, in any proceedings whether criminal or civil be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings. The SFA further provides that the Securities Industry Council may also invoke such sanctions (including public censure) as it may decide in relation to breaches of the Take-over Code by any party concerned in a take-over offer or a matter connected therewith (Section 139(8) and (9) of the SFA).</li> <li>• It should be noted that in the case of an offer document or any statement by companies involved in a take-over, directors are required to assume joint and several responsibility for all the statements contained in or omitted from these documents relating to their companies.</li> </ul>		
--	--	--	--

<p><b>20. Market abuse/insider dealing</b></p>	<ul style="list-style-type: none"> <li>A director of a company who buys or sells securities or securities-based derivatives contracts of the company while he is in possession of any non public price sensitive information concerning the company commits an insider dealing offence under Section 218 of the SFA . Similarly, a director who procures another person to buy or sell securities or securities-based derivatives contracts of the company while he is in possession of non public price sensitive information, commits an offence under the SFA.</li> </ul>		
<p><b>Defences</b></p>			
<p><b>21. Good corporate governance</b></p>		<ul style="list-style-type: none"> <li>A director’s exposure to liability may be reduced if the company has in place good corporate governance practices. In this regard, a director of a listed company should familiarise himself with the provisions of the Code of Corporate Governance 2018 (“<b>Code</b>”).</li> <li>The Code provides principles and provisions designed with the aim of assisting listed companies and their boards to achieve a high standard of corporate governance. Under the Code’s comply or explain approach, listed companies are expected to comply with the provisions in the Code, and variations from the provisions are acceptable to the extent that companies explicitly state and explain how their practices are consistent with the</li> </ul>	<p>The following are some of the Principles and Provisions of the Code:</p> <ul style="list-style-type: none"> <li><b>Board’s conduct of affairs:</b> A company should be headed by an effective Board which is collectively responsible and works with Management for the long-term success of the company. Directors are fiduciaries who act objectively in the best interests of the company and hold Management accountable for performance. The Board should put in place a code of conduct and ethics, set appropriate tone-from-the-top and desired organisational culture, and ensure proper accountability within the company. Directors facing conflicts of interest should recuse themselves from</li> </ul>

		<p>aim and philosophy of the relevant principle underlying the provision. Pursuant to the Listing Manual, a listed company must comply with the principles of the Code. If a listed company's practices vary from any provisions of the Code, it must explicitly state, in its annual report, the provision from which it has varied, explain the reason for variation and explain how the practices it has adopted are consistent with the intent of the relevant principle.</p> <ul style="list-style-type: none"> <li>• The MAS has also issued Practice Guidance that complements the Code by providing guidance on the application of the principles and provisions and setting out best practices for companies. Adoption of the Practice Guidance is voluntary.</li> <li>• The Practice Guidance provides that directors should be aware of their duties at law, which includes acting in good faith and the best interests of the company; exercising due care, skills and diligence; and avoiding conflicts of interest. Directors should also put in place policies, structures and mechanisms to ensure compliance with legislative and regulatory requirements, establish appropriate tone-at-the-top, desired organisational culture and standards of ethical behaviour.</li> <li>• While the duties imposed by law are the same for all directors, a listed Board will generally have different classes of directors</li> </ul>	<p>discussions and decisions involving the issues of conflict.</p> <ul style="list-style-type: none"> <li>• <b>Board composition and guidance:</b> The Board should have an appropriate level of independence and diversity of thought and background in its composition to enable it to make decisions in the best interests of the company. An "independent" director is one who is independent in conduct, character and judgement, and has no relationship with the company, its related corporations, its substantial shareholders or its officers that could interfere, or be reasonably perceived to interfere, with the exercise of the director's independent business judgement in the best interests of the company.</li> <li>• <b>Chairman and chief executive officer ("CEO"):</b> There should be a clear division of responsibilities between the leadership of the Board and Management, and no one individual has unfettered powers of decision-making. The Chairman and the CEO are separate persons to ensure an appropriate balance of power, increased accountability, and greater capacity of the Board for independent decision making.</li> <li>• <b>Board membership:</b> The Board should have a formal and transparent process for the appointment and re-appointment of directors, taking into account the need</li> </ul>
--	--	---	--

		<p>(executive, non-executive and independent directors) with different roles:</p> <ul style="list-style-type: none"> <li>○ <b>Executive Directors (“EDs”)</b> are usually members of senior management, and involved in the day-to-day running of the business. Executive directors are expected to: (a) provide insights on the company’s day-to-day operations, as appropriate; (b) provide Management’s views without undermining management accountability to the Board; and (c) collaborate closely with non-executive directors for the long term success of the company.</li> <li>○ <b>Non-Executive Directors (“NEDs”)</b> are not part of Management. They are not employees of the company and do not participate in the company’s day-to-day management. NEDs are expected to: (a) be familiar with the business and stay informed of the activities of the company; (b) constructively challenge Management and help develop proposals on strategy; (c) review the performance of Management in meeting agreed goals and objectives; and (d) participate in decisions on the appointment, assessment and remuneration of the executive directors and key management personnel generally.</li> <li>○ <b>Independent Directors (“IDs”)</b> are NEDs who are deemed independent</li> </ul>	<p>for progressive renewal of the Board. Further, the Board should undertake a formal annual assessment of its effectiveness as a whole, and that of each of its board committees and individual directors.</p> <ul style="list-style-type: none"> <li>● <b>Remuneration matters:</b> The Board should have a formal and transparent procedure for developing policies on director and executive remuneration, and for fixing the remuneration packages of individual directors and key management personnel. No director is to be involved in deciding his or her own remuneration. The Board should establish a Remuneration Committee (“RC”) to review and make recommendations to the Board on: (a) a framework of remuneration for the Board and key management personnel; and (b) the specific remuneration packages for each director as well as for the key management personnel.</li> <li>● <b>Accountability and audit:</b> The Board is responsible for the governance of risk and should ensure that Management maintains a sound system of risk management and internal controls, to safeguard the interests of the company and its shareholders. The Board should establish an Audit Committee (“AC”) which discharges its duties objectively.</li> <li>● <b>Shareholder rights and engagement:</b> The company should treat all shareholders fairly and equitably in order to enable</li> </ul>
--	--	---	--

		<p>by the Board. IDs have the duties of the NEDs, and additionally provide an independent and objective check on Management. In certain cases, the Listing Manual require IDs to make certain decisions and determinations. However, IDs should avoid focusing solely on the duties relating to compliance with rules. As with all directors, they are to act in the best interests of the company as a whole and not of any particular group of shareholders or stakeholders.</p>	<p>them to exercise shareholders' rights and have the opportunity to communicate their views on matters affecting the company. The company must give shareholders a balanced and understandable assessment of its performance, position and prospects. The Board should adopt an inclusive approach by considering and balancing the needs and interests of material stakeholders, as part of its overall responsibility to ensure that the best interests of the company are served.</p>
<p><b>22. Minutes of board meetings and publication requirements</b></p>	<p>Section 188(1) of the Act requires a company incorporated under the Act to cause minutes of meeting of its directors and of its chief executive officers, if any (collectively, "Board minutes"): (a) to be entered in books kept for that purpose within one month of the date upon which the relevant meeting was held; and (b) to be signed by the chairman of the meeting at which the proceedings were had or by the chairman of the next succeeding meeting. Any minutes that have been entered and signed in accordance with section 188(1) of the Act shall be evidence of the proceedings to which they relate, unless the contrary is proved.</p> <p>There is no requirement to publish the Board minutes or to file them with the Accounting and Corporate Regulatory Authority.</p>		

<p><b>23. Discharge and Indemnification</b></p>	<ul style="list-style-type: none"> <li>• Generally, a company is prohibited from exempting an officer (which includes a director) of the company (to any extent) from, or indemnifying him (to any extent) against, any liability which by law would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company (Section 172 of the Act).</li> <li>• Notwithstanding the foregoing prohibition, a company is permitted to indemnify a director against any liability incurred by him to a person other than the company, except when the indemnity is against: <ul style="list-style-type: none"> <li>(a) any liability of the officer to pay: <ul style="list-style-type: none"> <li>(I) a fine in criminal proceedings; or</li> <li>(II) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature; or</li> </ul> </li> <li>(b) any liability incurred by the officer: <ul style="list-style-type: none"> <li>(I) in defending criminal proceedings in which he is convicted;</li> <li>(II) in defending civil proceedings brought by the company or related company in which</li> </ul> </li> </ul> </li> </ul>		<ul style="list-style-type: none"> <li>• A company may indemnify its directors by entering into a separate indemnity agreement with each of its directors.</li> <li>• Alternatively, if the director is an employee of the company, the company may indemnify the director in the employment contract between the director and the company.</li> <li>• The constitution of a Singapore company often contains an indemnity provision which provides that directors of the company are entitled to be indemnified against any liability incurred by him in connection with the execution and discharge of his duties as a director. Although the constitution does not constitute a contract with a director, a director may have a contract with the company incorporating the terms of the constitution for the time being applicable and may therefore enforce such an indemnity provision.</li> </ul>
---	---	--	--

	<p>judgment is given against him; or</p> <p>(III) in connection with an application for relief under Section 76A(13) or 391 of the Act in which the court refuses to grant him relief.</p>		
<b>24. Insurance</b>	<ul style="list-style-type: none"> <li>Under Section 172A of the Act, a company may purchase and maintain directors' and officers' (D&amp;O) insurance for an officer of the company (which would include a director of the company) against any liability for negligence, default, breach of duty, or breach of trust, by the officer in relation to the company.</li> </ul>		
<b>25. Resignation</b>	<ul style="list-style-type: none"> <li>It would be useful to review the constitution to ascertain if there are specific requirements in relation to resignation. Ordinarily, a resignation may be tendered in writing to the company.</li> </ul>	<ul style="list-style-type: none"> <li>Breaches of a director's duty of good faith may lead to criminal or civil liabilities (Section 157(3) of the Act). In certain circumstances, the court may also make an order disqualifying a person from being a director. A disqualified director will be prohibited from taking part in the management of companies, whether directly or indirectly, during the period of the disqualification or disqualification order. The Listing Manual requires a director to resign from the board of directors of the listed company immediately after he is disqualified from acting as a director in any jurisdiction for reasons other than on technical grounds.</li> </ul>	<ul style="list-style-type: none"> <li>A director is not allowed to resign or vacate his office (notwithstanding the provisions in the company's constitution or any agreement with his company) unless there is remaining in the company at least one director who is ordinarily resident in Singapore. A resignation or vacation of office of a director in breach of these provisions will be deemed invalid (Section 145(5) of the Act).</li> </ul>

<p><b>26. Restructuring of assets</b></p>	<ul style="list-style-type: none"> <li>• In an insolvency of the company, the director should consider whether it would be in the interests of the company (by reference to the interests of the creditors) to cause the company to commence restructuring proceedings (e.g. scheme of arrangement or judicial management) or to enter winding up.</li> <li>• In entering into transactions when the company is in the zone of insolvency, directors should consider if the transactions may be vulnerable to challenge, and consider if any defences can be established. For example: <ul style="list-style-type: none"> <li>○ <b>Transactions at undervalue (section 224 of the IRDA):</b> Note however it is a defence if the company entered into the transaction in good faith and for the purpose of carrying on its business, and at the time the company entered into the transaction there were reasonable grounds for believing that the transaction would benefit the company.</li> <li>○ <b>Unfair preferences (section 225 of the IRDA):</b> Note however that the court must not make an order in relation to an unfair preference claim <u>unless</u> the company which gave the preference was influenced in deciding to give the unfair</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Under rule 1014 of the Listing Manual, a “major transaction” (as defined in the Listing Manual) must be made conditional upon approval by shareholders in general meeting.</li> </ul>	<ul style="list-style-type: none"> <li>• It would also be helpful to engage financial advisors as early as possible, to assist with the decision-making process. A director may, in performing his or her duties, rely on reports, statements, financial data and other information prepared or supplied, and on professional or expert advice given by a professional advisor or expert in relation to matters which the director believes on reasonable grounds to be within the person’s professional or expert competence (section 157C of the Companies Act 1967).</li> <li>• Section 160 of the Companies Act 1967 prohibits directors from carrying into effect any proposals for disposing of the whole or substantially the whole of the company’s undertaking or property unless those proposals have been approved by the company in general meeting.</li> </ul>
---	---	--	---

	<p>preference by a desire to produce in relation to the counterparty.</p> <ul style="list-style-type: none"> <li>Where the company has to enter into certain transactions when it is in the zone of insolvency, directors may consider applying for a court declaration that the proposed course of conduct, transaction or series of transactions does not constitute wrongful trading (section 239(10) of the IRDA).</li> </ul>		
<p><b>27. ESG and D&amp;I policies, metrics, reports</b></p>		<ul style="list-style-type: none"> <li>The Listing Manual requires listed companies to produce annual sustainability reports on a comply or explain basis.</li> <li>Issuers have to publish a sustainability report at least once a year, and this report should describe the sustainability practices with reference to six primary components: material environmental, social and governance factors; climate-related disclosures consistent with the recommendations of the Task Force on Climate-related Financial Disclosures; policies, practices and performance; targets; sustainability reporting framework; and the board statement and associated governance structure for sustainability practices. If the issuer cannot report on any primary component, it must state so, and explain what it does instead and the reasons for doing so.</li> <li>The SGX announced, on 15 December 2021, that it will proceed with plans to require companies listed on the SGX to</li> </ul>	

		<p>provide climate-related reporting and disclosures on board diversity. All issuers must provide climate reporting on a “comply or explain” basis in their sustainability reports from the financial year (“FY”) commencing 2022. Climate reporting will subsequently be mandatory for issuers in the (1) financial, (2) agriculture, food and forest products, and (3) energy industries from FY 2023. The same requirements will apply to the (4) materials and buildings, and (5) transportation industries from FY 2024.</p> <ul style="list-style-type: none"> <li>• In addition, with effect from 1 January 2022, SGX requires: <ul style="list-style-type: none"> <li>○ issuers to subject sustainability reporting processes to internal review;</li> <li>○ all directors to undergo a one-time training on sustainability;</li> <li>○ sustainability reports to be issued together with annual reports unless issuers have conducted external assurance; and</li> <li>○ issuers to set a board diversity policy that addresses gender, skill and experience, and other relevant aspects of diversity. Issuers must also describe the board diversity policy and details such as diversity targets, plans, timelines and progress in their annual reports.</li> </ul> </li> </ul>	
--	--	--	--