

COMPANY DIRECTORS' CHECKLIST

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COMPANY DIRECTORS' CHECKLIST

This Company Directors' Checklist is a practical guide to help a candidate considering a position and/or acting as director of a listed company to assess the main issues in connection with such position and to direct his/her actions.

It does not refer to any legal system in particular. Therefore, it should be adapted to the relevant jurisdiction.

COMPANY DIRECTORS' CHECKLIST

	Action/Issue	Comment
Before Appointment		
Understand	<ul style="list-style-type: none"> • why have you been contacted?; • what are you expected to contribute?; • the remuneration package; • corporate governance procedures in place. 	<p>Conditions to accepting an appointment:</p> <ul style="list-style-type: none"> • having something worthwhile to contribute in line with expectations; • not to be expected to be a passive director; • an acceptable remuneration package; • adequate corporate governance procedures in place to facilitate your performance and ensure you protection.

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Before Appointment		
Meet	<ul style="list-style-type: none"> • CEO/CFO; • other directors (including recently retired directors); • senior management team; • General Counsel; • company outside lawyers; • auditors. 	<p>Obtain:</p> <ul style="list-style-type: none"> • an industry briefing including regulatory framework; • a briefing on history and strategy of the company; markets and key performance indicators; • auditor's input on historical financial statements and disclosure; • CVs on other directors and management team. <p>Understand:</p> <ul style="list-style-type: none"> • relationships and roles within management team; • who are the key suppliers and clients; • relationship with employees and unions; • key issues with compliance and regulators; • key legal relationships; • past and current litigation.

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Before Appointment		
Review	<ul style="list-style-type: none"> • company's constitutive documents; • past three years financial statements; • information presented to the board and minutes for past three years; • announcements and communications with regulators for past three years; • press clippings for prior year and with respect to major issues for three years. 	<ul style="list-style-type: none"> • accounts for trends and abnormal aspects: (eg. abnormal losses and gains and other relevant accounting issues); • constitutive documents and SHAs (shareholders' agreements) for restrictions on directors' powers or any shareholder specific provisions (eg. veto power on board decisions); • board reports and minutes to understand current issues; • company announcements to ensure complete and timely disclosures to the market; • allocations of responsibilities to specific directors (eg. risk management, operations, marketing, compliance, international).

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	Action/Issue	Comment
Ongoing Duties		
Consider	<ul style="list-style-type: none"> • the information provided to you by the company; • the information obtained from independent sources, compared with information provided by the company; • existing gaps; • your impressions of the company's management team and advisers. 	<p>Watch out for:</p> <ul style="list-style-type: none"> • dominant directors or officers exercising undue control over the company's affairs; • inactive non-executive directors (role played); • lack of independence (eg., lack of independent directors, audit committee and/or an independent auditor); • inadequate internal controls (does the board function effectively; are reporting procedures adequate; are the directors and shareholders sufficiently informed, are concerns addressed timely and effectively?).

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Ongoing Duties		
To whom are your duties owed?	<p>Understand:</p> <ul style="list-style-type: none"> • if your duty is to act in the best interests of (a) the company, (b) the average shareholder (the shareholder who appointed you), (c) other stakeholders (d) some or all the above, depending on circumstances; • scope, legal requirements and exceptions. 	<p>Understand:</p> <ul style="list-style-type: none"> • any conflicts that may arise.
What is the duty of skill?	<p>Understand:</p> <ul style="list-style-type: none"> • standards against which your performance shall be measured. 	<p>Consider:</p> <ul style="list-style-type: none"> • whether the board as a whole has the right mix of skills needed by the company? (If not, consider proposing replacing or adding directors to the board); • allocating specific areas to best qualified director. Can this somehow limit each directors' liability?

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Ongoing Duties		
What is the duty of care?	<p>Understand:</p> <ul style="list-style-type: none"> • scope, legal requirements and exceptions. <p>Consider:</p> <ul style="list-style-type: none"> • size of the company; • composition of the board; and • allocation of areas/tasks within the board; • whether the management team is competent and accountable and keeps board properly informed. 	<ul style="list-style-type: none"> • Participate regularly in board meetings and request special meetings when necessary. • Request written reports from management and the opportunity to question them, or independent reports to the board when necessary. • Keep record of the time you spend on board activities and allocation among issues (eg. strategy, operations, financial performance, reporting, compliance).

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Ongoing Duties		
How much can you delegate and rely on others?	<p>Verify:</p> <ul style="list-style-type: none"> • whether and how can you delegate performance to others, and whether you will remain liable; • whether exceptions exist; • the extent, you can rely on information from others (employees, professional advisers/experts, and other officers or committees). 	<p>Verify:</p> <ul style="list-style-type: none"> • need for good faith defense, independent assessment or others conditions.

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Ongoing Duties		
Is there a Business Judgment Rule?	<p>Verify:</p> <ul style="list-style-type: none"> • scope, standards and conditions (eg. good faith, sufficient knowledge, best interest of the company). 	<p>Generally:</p> <ul style="list-style-type: none"> • take truly informed decisions; • your belief that the judgment is in the best interest of the company should be reasonably grounded; • the Business Judgment Rule does not apply to specific obligations (eg. preparation of prospectuses for securities offerings).

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Ongoing Duties		
How should conflicts of interest be treated?	<p>Verify:</p> <ul style="list-style-type: none"> • definition and action required; • whether there are exceptions; • whether you have to abstain from participating in the relevant meeting and/or from voting in the relevant decision; • company's constitutive document and shareholders' agreements for specific provisions on conflicts. 	<p>Verify:</p> <ul style="list-style-type: none"> • when and how must you give notice of material personal interests in matters related to the affairs of the company? (indicate nature and extent of the interest, relation to the affairs of the company).

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Ongoing Duties		
What are your other key duties?	<ul style="list-style-type: none"> • do not use your position or information received as a result of your position to: <ul style="list-style-type: none"> - gain an advantage for yourself or someone else; or - cause detriment to the company; • ensure that your company complies with its statutory disclosure obligations. 	<ul style="list-style-type: none"> • directors may be civilly liable for a breach of duties (eg. subject to penalties and compensation for any loss or damage arising from your breach); • directors may also be criminally liable if their breach was intentional (eg. required to pay an additional penalty or go to prison, or both); • in addition to civil and/or criminal liability for a breach of directors' duties, the Companies law generally imposes liability for other breaches such as financial reporting, record keeping and related party transactions.

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Ongoing Duties		
What are your disclosure obligations as a director of a listed company?	Understand: <ul style="list-style-type: none">• your disclosure obligations under securities regulations and stock exchange, (eg. your relevant interest in the securities of the company).	Ensure: <ul style="list-style-type: none">• mechanisms are in place for compliance in complete and timely manner.

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What other statutory obligations do you have?	<p>Understand:</p> <ul style="list-style-type: none"> • scope and nature of other company disclosure obligations (eg. maintaining company registers, preparing and filing annual and quarterly and/semi-annual financial reports); • annual reporting to members at AGM; • disclosure document in specific circumstances (eg. such as takeover bids). 	<p>Verify:</p> <ul style="list-style-type: none"> • scope of your civil liabilities, for breach by your company of these obligations; • scope of your criminal liability for breach if you aided, abetted, or were in any way knowingly involved in the breach.

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Ongoing Duties		
What is your potential liability under specific legislation	<p>Verify:</p> <p>Tax</p> <ul style="list-style-type: none"> • directors' personal liability for tax violations committed by the company (eg. failing to file tax returns, making false or misleading statements, incorrectly keeping accounts, failing to pay amounts withheld from salaries). <p>Environmental:</p> <ul style="list-style-type: none"> • directors' personal liability for environmental violations committed by the company, (eg. polluting, failure to comply with approvals or remediation orders). 	<p>Verify:</p> <p>Tax</p> <ul style="list-style-type: none"> • existence of defenses under applicable law. <p>Environmental:</p> <ul style="list-style-type: none"> • existence of defenses under applicable law.

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Ongoing Duties		
What is your potential liability under specific legislation	<p>Verify:</p> <p>Labor</p> <ul style="list-style-type: none"> • directors' personal liability for failure to meet obligations under labor law (eg. failure to register employees, pay sums due; health and security). 	<p>Verify:</p> <p>Labor</p> <ul style="list-style-type: none"> • existence of defenses.

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Ongoing Duties		
Understand directors' potential liability under specific legislation	<p>Verify:</p> <p>Trade Practices</p> <ul style="list-style-type: none"> • directors' personal liability for breaches by the company (scope, conditions exceptions) (eg. engaging in misleading or deceptive conduct, price fixing and other anticompetitive actions). <p>Miscellanea</p> <ul style="list-style-type: none"> • exchange controls; • antimoney laundering laws; • anti-corruption laws. 	<p>Understand:</p> <p>Trade Practices</p> <ul style="list-style-type: none"> • nature and extent of the company's obligations under the relevant legislation; • precautions necessary and reasonable to prevent a contravention occurring; and • mechanisms in place to monitor compliance. <p>Miscellanea</p> <ul style="list-style-type: none"> • same as above.

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Special Circumstances		
<p>What liabilities are associated with issuance of securities?</p>	<p>Verify:</p> <ul style="list-style-type: none"> • directors' personal liability related to information contained in the prospectus and filings; • lack of reporting; • price manipulation; • insider trading; • disclosure under listing rules, including continuous disclosure and corporate governance reporting. 	<p>Ensure:</p> <ul style="list-style-type: none"> • appropriate due diligence is conducted; • prospectus is complete and accurate; • company has competent counselors (lawyers, accountants, etc).

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Self Defence		
Good corporate governance processes	<p>Ensure:</p> <ul style="list-style-type: none"> • good corporate governance processes are in place. 	<p>Structure and composition: consider size of the board, mix of skills and committees in place.</p> <p>Functions and roles: consider principle tasks of the board, level of the board's involvement, time allocations for tasks, relationship with management team.</p> <p>Processes and practices: meeting practices, decision-making mechanisms, reporting lines and processes for directors' performance evaluation should be clearly understood.</p> <p>Information systems: request periodic reports or directors' access to information.</p>

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Self Defence		
Indemnities	<p>Ensure:</p> <ul style="list-style-type: none"> • proper indemnity in place for liabilities you incur as a result of your position as a director; • insurance in place for your directors' liability while you are a director and for an adequate numbers of years after you resign; and • your access to the company's records while you are a director and after you resign for purposes of defending yourself in proceedings. 	<p>Verify:</p> <ul style="list-style-type: none"> • legality and enforceability of indemnification and insurance provided and approval by appropriate corporate body; • exclusions.

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Self Defence		
What should you do if you think a board decision is against the law, the constitutive documents or the interest of the company?	Verify: <ul style="list-style-type: none">• provisions of applicable law and constitutive documents.	Verify: <ul style="list-style-type: none">• how do you leave your opposition on record?

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Self Defence		
How do I resign?	<ul style="list-style-type: none">• review statutory requirements and requirements in the constitutive documents.	<ul style="list-style-type: none">• to whom must resignation be notified?• verify as from when it is effective;• does your resignation have to be expressly accepted?

Patricia López Aufranc has been a partner at Marval, O'Farrell & Mairal since 1987, specialized in corporate, finance and international trade. Her practice has focused on international financial and commercial transactions, mergers and acquisitions, joint ventures, anti-dumping investigations, and a wide range of business contracts.

Before joining the firm she worked for The First National Bank of Boston, in Boston, from 1985 until 1986. She also worked for the law firm Klein & Mairal from 1979 until 1984 and for the *Office Juridique Français et International* in Paris between 1978 and 1979.

She graduated from the Law School of the University of Buenos Aires in 1975. She also obtained a *Diplôme Supérieur* in Corporate Law from the School of Law of the University of Paris II (Panthéon) in 1977 and a Master in Laws (LL.M.) from the Law School of Harvard University in 1985.

She has been a professor of International Business Transactions at the Southwestern University School of Law Summer Law Program in Argentina from 1994 to 1999. She also taught Capital Markets regulation at the Di Tella University in Buenos Aires between 2001 and 2005 and she lectures at several local universities. She has published articles in Argentina and abroad, and regularly makes presentations in local and international forums related to her field of practice.

Presently she is vice-president of the Business Law Commission of the Buenos Aires Bar Association, member of the International Bar Association, chair of the Corporations Commission of the International Association of Lawyers (UIA).

She has been identified as leading lawyer in banking, capital markets and international trade by several publications including Euromoney Publications, Chambers, Global Counsel 3000 and Latin Lawyer.