The International Bar Association Company Director Checklist – Chile

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

Introduction

This checklist is intended to serve as a practical guide to the main duties and obligations of the directors of:

a) Listed corporations;
b) Private corporations; and
c) Companies by shares,

incorporated in Chile, including public corporations listed on a regulated market, i.e., Santiago's Stock Exchange, arising from Chilean laws and regulations, including:

- Law No. 18,046 (the "Corporations Law")
- Corporations Law's regulation contained in Supreme Decree No. 702 of 2011 of the Ministry of Finance (the "Corporations Regulation")
- Law No. 18,045 (the "Securities Market Law")
- Law Decree No. 3,583 (the "CMF Law")
- Law No.20.393 (the "Legal Entities' Criminal Law")

Since the majority of the companies in Chile are private, we are focusing primarily on private companies, however we will also note when there are specific relevant regulations for directors of listed companies.

Please note that the primary sources of corporate governance rules applicable to listed corporations in Chile are contained in the Corporations Law, the Corporations Regulation, the Securities Market Law and the rules issued by the Chilean securities regulator, *Comisión para el Mercado Financiero* ("CMF"). Moreover, there are two active stock exchanges in Chile (i.e., the Santiago Stock Exchange and the Chilean Electronic Stock Exchange) that have issued several rules and manuals for issuers and other market participants. Also, corporations' bylaws may establish additional requirements or duties related to corporate governance matters.

Explanatory note 1: There is wide freedom to decide how to manage companies by shares. They can be managed by a board of directors, an administrator, etc. It is important to also note that companies by shares are governed (in the following order) first by the corresponding articles of the Code of Commerce, then by the bylaws of the corresponding company by shares, and finally, in a subsidiary way, by the Corporations Law and the Corporations Regulation (applying the same rules than for private corporations). Therefore, directors of companies by shares may have different rules than those of corporations, as applicable.

Explanatory note 2: All currency exchange rates are considered as of March 18, 2022.

Explanatory note 3: Some corporations are called special corporations. These companies are governed by special regulations and with respect to which the legislator has

considered that the social interest is more compromised than with respect to other companies, and, therefore, have particular requirements and demands for their incorporation, existence and activities. Among them, there are insurance companies, mutual fund managers, stock exchanges, pension funds administrators, banks, securitization companies, securities depositories and general fund managers.

Disclaimer

This checklist is informational only and it is not legal advice, or it is 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 in March 2022.

DUTIES AND OBLIGATIONS OF THE DIRECTORS			
	Action/issue	**Specifics of listed public companies (if relevant)**	**Comments/notes**
		Before appointment	
1. Items to understand	There are some preliminary matters to understand before a person accepts to be director of a company: a) The nature of the company's business. b) The specific skills the company needs from directors. This matter is also related to the prerequisites to be a corporation's director: (i) It is important to check if the bylaws or internal company's policies require specific qualifications or knowledge. (ii) Consider the legal prohibitions to be elected as a board member: i. Not being of legal age (i.e., 18 years old); ii. Directors of a company whose board was revoked due to the rejection by its shareholders of the company's balance sheet; iii. Individuals convicted for a felony and those banned from holding a public office; iv. Individuals declared bankrupt (as individuals or as administrators or representatives of bankrupt companies); and v. Public officials of governmental agencies, State-owned companies whereby the State has representatives or	Please consider that the Corporations Law establishes specific prohibitions to be appointed as director of a listed corporation or its subsidiaries: a) Senators, house representatives and mayors; b) Ministers, undersecretaries, *intendentes*, governors, ministerial regional secretaries and ambassadors, heads of public services, and the immediate senior officer who substitutes any of the aforementioned individuals; c) Officials of the agency that supervises the respective listed corporation or one or more of the companies belonging to the same business group; and d) Securities brokers/dealers, and its board members, managers, key executives and administrators, except in the case of stock exchanges. Chief officers (CEO, CFO, and other chief officers) may not be directors at the same time that they hold such positions. Some listed corporations[2] are required to appoint at least one independent director. A director is deemed independent if she/he has no direct or indirect relationship with the corporation, its controlling shareholder, any of the entities that belong to the corporation's business group, or high-ranked officers of any of	It is important to note that the CMF has ruled that corporations cannot establish different kind of compensation for directors of a same corporation. In this sense, the CMF has said that the compensation has to be agreed for the function of directors and not for a specific person. However, a different compensation can be agreed for those directors that have additional duties, such as the Chairwoman/Chairman and Vice-Chairwoman/Vice-Chairman, which must be reasonable compared with the compensation for the other directors.

[2] When they have equity equal to or greater than the equivalent of 1,500,000 *Unidades de Fomento or "UF"* (approx. US$59.1 million) and at least 12.5% of their issued voting shares are held by shareholders who individually control or own less than 10% of such shares.

	contributes funds whereby such officers have supervision or oversight authority over the respective company. c) Compensation, since there is no obligation for companies to compensate their directors. The only way to know the remuneration policy of a company is by referring to its bylaws and specific internal directions on this matter[1]. d) Time commitment, which should be considered in two senses: (i) Company's bylaws must establish the duration of the directors' mandate (which shall not exceed 3 years; however, they can be reelected indefinitely), despite shareholders' meeting will always be able to revoke all board members and elect new ones; and (ii) The time actually required by a director in order to fulfill her/his duties; and e) Company's corporate governance framework.	the aforementioned entities, that could reasonably be expected to interfere with the exercise of the director's independent judgment or autonomy or interfere with her/his ability to perform a fair and adequate job or create a potential conflict of interest. Corporations Law provides certain specific examples of who may not qualify as independent director.	
2. People to meet with	a) Management team; b) Other current directors and former directors; c) Company's tax advisors (external and internal); d) Company's lawyers (external and internal); and e) Company's auditors (external and internal - audit committee).		In the case of special corporations, it is even more important to seek the advice of experts in the field in which the company is engaged, since the company does business in a highly regulated environment.
3. Documents to review	a) The company's bylaws; b) Any shareholders' agreements that may exist, if available;	Listed corporations are entities specially regulated and supervised by the CMF. That is why, in all matters relating to directors, it is	Regarding directors of special corporations, it is important to review the duties and rights of directors of such special corporations.

[1] It is quite common to include in the bylaws that directors' remuneration shall be one of the matters to be determined by the shareholders' meeting itself, commonly annually at a regular shareholders' meeting.

	c) Corporations Law, Corporations Regulation and Securities Market Law; and d) Any other books or codes that the company may have, including latest annual reports and financial statements.	always important to be aware of any rule issued by the CMF regulating any matter relating to the board of directors, directors, duties and rights, etc. Additionally, future directors of listed corporations should also review latest reports of the corporation to the CMF to see if there is any material event or transaction related to the company that may be useful to be aware of.	
Ongoing duties			
4. Points for attention	a) How are decisions made within the company? b) How is the environment on which the company does business? c) Is the company affiliated with any trade association? d) What is the board's risk appetite? e) Does the company have a clear ESG program to be implemented that should be taken into consideration in the decision-making process?	a) Are there many decisions that need to be taken by independent directors? b) Carefully consider the reporting obligations of the company.	It may also be relevant to understand how the ownership of the company is distributed among shareholders. There may be certain minority (or majority) shareholders that may want to influence in board decisions, so directors should have a particularly good understanding of their legal rights and duties, and how they must act.
5. Legal status of directors	The board of directors is a collegiate body of the company whose primary function is the management of the company, enjoying full authorities of representation. It sets the legal, economic, and financial policies of the company and engages in the execution of certain relevant acts and contracts entered into by the company. It is important to have in mind that the board of directors is a body, made up of a certain number of directors[3] (at least 3 board members in case of private corporations and at least 5 board members in case of listed		Directors are not company's employees, and their main duties are of supervision, entrusting the day-to-day management to the management/executive team of the company.

[3] The Corporations Law also allows companies to appoint alternate directors if bylaws specifically refer to this item, and each of these three or five (or more) main directors is given an alternate director, specifically designated at the same time as their appointment. Alternate directors may substitute the main directors in a definitive manner in case of vacancy and in temporarily manner in case of absence or temporary disability.

	corporations). Certain consequences follow from that fact, such as: a) Each director has no powers of administration or representation of the company by herself/himself. The directors are not individually administrators or legal representatives of the company, since this function is entrusted to the board of directors as a body; b) The function of director cannot be delegated and is exercised collectively in a legally constituted room; and c) The will of each director is not relevant for the purposes of the corporate will, but rather the will of the body that is manifested by the means provided in the bylaws and the law. Finally, the board of directors must have a Chairwoman/Chairman, which is also the company's one. The Corporations Law establishes that the Chairwoman/Chairman must be appointed among the elected directors in the first board of directors' meeting held by the company. Its main functions and duties are the following: a) To represent the board of directors and the company; b) To chair shareholders' meetings; c) To call board of directors' meetings (regular and special); d) To call shareholders' meetings; and e) To settle a vote in the event of a tie on board meetings.		
6. Parties to which duties are owed	This is a particularly key point. The board of directors is the management body of the company. Directors are not agents of the shareholders, the shareholders' meeting or the company. Each director is not indebted to		The Corporations Law states that the directors elected by a group or class of shareholders have the same duties towards the company and the other shareholders as the remaining directors and may not disregard these and the

	the shareholders whose votes elected her/him, since the director must act in the best interest of the company, for the benefit of it and not in the interest or benefit of the shareholders.		former under the pretext of defending the interests of those who elected them. Thus, if there is a conflict of interest between a shareholder and the company, the director elected by such shareholder shall have the same duties towards the company and the other shareholders as the remaining directors. The counterpart is that the shareholders are not responsible for the actions of the directors in general nor for actions or omissions of the directors elected by them, since it can never be said that a director followed instructions or orders from a shareholder because she/he is only obliged to look after the benefit of the company.
7. Powers of the board of directors	The board of directors is invested with all the management and disposition authorities other than those reserved for the shareholders' meeting by the Corporations Law or by the bylaws of the company. In fact, the board does not have absolute discretion to decide on matters related to the company's management. Instead, its decisions are to be guided by the company's benefit and limited by fiduciary duties established by the Corporations Law, to ensure the proper administration of the company. These fiduciary duties are commonly classified as duties of care, loyalty, information and confidentiality. If the directors do not comply with those duties, they will be responsible for any damages that may be caused to the company, its shareholders or third parties. As provided in the Corporations Law, directors have the right to be fully informed, with complete documentation and at any time, by the general manager or whoever acts as such,		Bylaws of corporations and companies by shares can also include a specific list or enunciation of all authorities that the board of directors has, as well as limitations to the same. Any modification to such limitations requires the resolution of a special shareholders' meeting, with the affirmative vote of 2/3 of the outstanding voting shares. It is important to remind that it is the board of directors which has all management and representation authorities, not the director herself/himself. Which is commonly used is the board of directors granting/delegating powers of attorneys to specific directors (and/or managers), to act on behalf of the corporation, in the manner and with the limitations appointed in the act of granting. Finally, fiduciary duties also apply to managers and other senior executives, not only to directors.

	with respect to the company's operation. This right shall be exercised in such a way so as not to affect the company's management.		
8. Duty of loyalty	The directors have the duty to act loyally with respect to the company and its shareholders. This duty is closely related to the concept of "corporate benefit" (*interés social*), understood as the common interest of the shareholders in pursuing one or more activities included in the business purpose of the company, with the goal of sharing economic benefits derived therefrom. The latter definition is consistent with the definition of "company" provided by Article 2,053 of the Chilean Civil Code[4]. Accordingly, obtaining and distributing profits can be considered as the main purpose of a company. Therefore, directors must always act in order to maximize the economic benefits of the company as a whole, and not theirs or a shareholder's personal benefit, including those who elected them. Duty of loyalty is reflected in many articles of the Corporations Law, including provisions prohibiting directors (i) to use, in their own or their related parties benefit, the business opportunities they become aware of due to their role as directors, causing damages to the	In order to protect the duty of loyalty, related party transactions[6] ("OPR") must meet specific conditions to be performed by a listed corporation. For more information, please refer to Section 13.	The following is a brief summary of some contexts in which directors' duty of loyalty is specially jeopardized: *a) Cases of conflicts of interest* These conflicts exist when the director and the company are on opposite sides of a given business or transaction, the director has influenced the company in its decision to enter the business, and the director's personal financial interests are, at least potentially, in conflict with those of the company. *b) Compensation* When a director is at the same time an employee of the company or provides services to it, she/he may be in breach of the duty of loyalty if she/he influences the company's decision as to her/his own remuneration. *c) Business opportunities* A director may not:

[4] Article 2053 of the Chilean Civil Code provides that a company is "a contract by means of which two or more people commit to contribute something in common with the aim of dividing the benefits arising therefrom among themselves".

[6] According to Article 100 of the Securities Market Law, the following persons are considered related to a company: a) the entities of the holding to which the relevant company belongs; b) legal entities that have, regarding the relevant company, the nature of parent company (controls more than 50% of the voting shares or has the right to appoint the majority of the board members), affiliated company (has 10% or more of the shares or the company has 10% of the shares of such person) or subsidiary; c) the directors, managers, executive officers or liquidators of the relevant company, and their spouses or their relatives up to the second degree of consanguinity, as well as any legal entity directly or indirectly controlled by these persons; and d) any person who, alone or with others with whom she/he maintains a voting agreement, may appoint at least one member of the management of the relevant company or controls 10% or more of the voting capital. Notwithstanding the above, the CMF may establish that any individual or legal entity is related to a company, if because of their relationships of equity, management, kinship, responsibility or subordination, it may be presumed that: (i) alone, or with others with whom it has a voting agreement, said person has sufficient voting power to influence in the relevant company's management; (ii) said person's business with the relevant company causes conflicts of interest; (iii) in the case of a legal entity, its management is influenced by the relevant company; or (iv) said person is in a position to have access to information about the relevant company and its business that has not been disclosed to the market, which is capable of influencing the value of the company's securities. A person shall not be considered to be related to the company by the mere fact of holding up to 5% of the voting capital, or if it is only an employee of the company without management responsibilities.

	company; (ii) to use their position in order to obtain wrongful advantages for them or their related parties, causing damages to the company[5]; and (iii) to propose, agree or carry out acts or contracts or from making any decisions, which purpose is not the corporate benefit.		a. Compete with the company in cases where such competition may cause damage to it; b. Make a secret profit in connection with the business of the company; or c. Take for herself/himself business opportunities that belong to the company and the company is interested in. In all these cases, it is advisable to take the decision with the abstention of the interested director and always in market terms, as applicable.
9. Duty of care	Corporations Law provides that, in order to fulfill their management function, the directors shall act with the degree of care that people ordinarily employ in their own business, i.e., a standard of reasonable care. In other words, the directors are liable for ordinary negligence (*culpa leve*) and are jointly and severally liable for any damages caused to the company or the shareholders due to a breach of their legal standard of care. Applicable regulations further provide that such duty of care includes, but is not limited to, (i) taking all appropriate and timely measures to regularly follow up and take decisions regarding the matters proposed by the executive management team and obtain all relevant information to perform their duties; (ii) actively participating in board and committees' meetings, encouraging the board to meet when deemed appropriate; (iii) requiring the inclusion in the board meetings agendas of any matters that may be deemed		

[5] The contravention of the prohibitions listed in numbers i) and ii) is considered to be a material breach of the duty of loyalty, and profits obtained by such breach shall belong to the company, which shall also have the right to be compensated from any losses arising from any such breach.

	convenient for the company; and (iv) opposing to illegal resolutions or to resolutions that do not contribute to the corporate benefit. According to Article 41 of the Corporations Law, any provision of the bylaws or any agreement of the shareholders' meeting seeking to release or limit directors' liability shall be null and void. On the other hand, shareholders' approval of the balance sheet, the annual report or any other general account or information does not release the directors from the liability that may be applicable for specific acts or businesses. Additionally, the express approval of such specific acts or businesses does not release directors from their liability when they incurred in ordinary negligence, gross negligence or fraud. The duty of care is reflected in a series of prohibitions contemplated in Article 42 of the Corporations Law, according to which the directors cannot, among others, i) prevent or hinder any investigation intended to determine their own liability or that of any officers or managers of the company; ii) lead the officers, managers, employees, account inspectors, auditors or risk classification companies to render irregular accounts, deliver false information or hide information; iii) provide to the shareholders irregular accounts or false information, or hide from them material information; and iv) generally, to carry out illegal acts, acts against the bylaws or the corporate benefit . In order to correctly comply with their duty of care, the directors have the right to be fully informed by the management and to request		

	sufficient information to comply with their duty of care.		
10. Duty to have and maintain skills	It is not comprised as one of the main fiduciary duties nor expressly regulated in Chilean law, but as a director, it is important to consider that: a) The shareholders' meeting is always able to renew the board of directors, even if the period of the directors has not ended yet; b) As the board of directors' actions are oriented to the corporate benefit, each director must maintain the skills needed to contribute to this ultimate goal; and c) Maintaining skills may be considered as part of the duty of care.		Even though directors should have minimum skills and knowledge to perform their duties, they must seek expert advice when needed and appropriate, being able to hire and pay for those services if in the best interest of the company (which would be the entity in charge of paying for those expenses).
11. Additional duties (confidentiality, etc.)	*Information duties.* Pursuant to applicable laws, the board must provide to the shareholders sufficient, true and prompt information regarding the legal, economic and financial situation of the company. Although this is a broad-scope duty, applicable laws provide for certain specific cases in which directors must disclose information, whether to the shareholders or relevant regulators. In turn, as explained above, with respect to the duty of care, each director has the right to be fully informed about the operations of the company. However, such right has to be exercised in a manner that does not adversely impact the company's operations. Another topic that falls under this duty is that the board of directors is responsible for the custody of the company's corporate books and records, and for ensuring that they are kept with the regularity required by law and its	Related to the duty of loyalty described above, the Securities Market Law provides obligations for directors of listed corporations regarding the use of confidential information for the purchase of publicly traded securities. These provisions have the purpose, among others, to prohibit directors, managers, administrators and chief executives, as well as some of their related persons, from conducting transactions of securities issued by the company in which the executive is employed, within 30 days prior to the disclosure of the financial statements. Accordingly, listed corporations shall consider an additional blocking purchase period applicable for their main executives and directors.	

	supplementary rules. The board of directors may delegate this function (usually to the CEO). It is also established that the directors and the general manager, if applicable, will be jointly and severally liable for the damages caused to shareholders and third parties due to the lack of fidelity or validity of the company's bylaws and the shareholders' registry. *Confidentiality duties.* Generally, directors may not disclose information to which they have had access in the performance of their functions and that has not been officially disclosed by the company. The aforementioned obligation does not apply in the following cases: a) If non-disclosure may damage the corporate benefit; b) If non-disclosure involves a breach of the bylaws, applicable laws or regulations; or c) If the information is disclosed to a third party subject to a legal or contractual non-disclosure obligation with the respective director or the board, in order that the latter may adequately analyze and assess the relevant information.		
12. Delegation of powers/authority	The management function of the directors cannot be delegated and shall be exercised collectively through board meetings, regardless of the fact that the board may delegate part of its authorities to one or more specific persons, such as the chief officers, managers or lawyers, among others. Please note that individual directors have no		

	authority to represent the corporation per se unless the board grants her/him general or limited powers of attorney. The board can set any restrictions on what a person with delegated authority can or cannot do, on the respective power of attorney. However, notwithstanding any delegation performed by the board, it remains responsible for the determination of the policies of the company as well as for the control of the correct execution of such policies by the officers and managers.		
13. Conflicts of interest (inc. intragroup dealings)	The transactions in which directors have a conflict of interest are not prohibited per se but must follow the procedure described in the Corporations Law. Its Article 44 deals with related party transactions regarding private corporations, regulating the manner in which a director may enter into acts or contracts with the corporation involving relevant amounts. To enter into such acts: a) The operations must be previously known and approved by the board of directors; b) The operations must conform to equity conditions similar to those normally prevailing in the market, unless the bylaws authorize their execution without such conditions; c) The board of directors must decide with the abstention of the director with an interest, and this must be recorded in the respective minutes; and d) The resolutions adopted by the board of directors in this respect must be informed at the next shareholders' meeting, and special mention must be made of this matter in the notice of such meeting.	OPR must meet the following conditions to be performed by a listed corporation: a) Its purpose shall be to contribute to the corporate benefit; b) The price, terms and conditions of the respective OPR shall be at market conditions (i.e., as an arm's length transaction) at the time of its approval; and c) Accomplishment of all conditions indicated in Article 147 of the Corporations Law: a. An OPR shall be approved by the absolute majority of the members of the board, with the exclusion of the directors involved in the OPR or, if the absolute majority of the board is conflicted from voting on the OPR, the transaction must be approved by either the unanimous vote of the remaining members of the board or by 2/3 of the outstanding voting shares at a special shareholders' meeting. b. If the transaction is deferred for the shareholders' approval, the board must appoint at least one independent expert to prepare and provide the shareholders with a report on the terms and	

	A director has interest in any operation in which any of the following persons/entities intervene: a) The director itself, her/his spouse or relatives up to the second degree of consanguinity or affinity; b) Companies in which she/he is a director or owns directly or indirectly, through other individuals or corporations, 10% or more of its capital; c) Companies in which one of the abovementioned persons is whether a board member or a direct or indirect owner of 10% or more of its capital; and d) The person who controls the company or any related person if the board member would not have been elected without the votes of such person. In such cases, the Corporations Law establishes a procedure for its approval, distinguishing between transactions involving "material" and "non-material" amounts[7]: a) <u>Transactions involving "non-material" amounts</u>: It may be approved by the board when it complies with arm's length conditions prevailing in the market. It is not required that the interested director abstains from voting in the relevant meeting. b) <u>Transactions involving "material" amounts</u>: A company may exclusively enter into contracts or agreements	conditions of the proposed transaction and its potential impact on the company. c. The board committee or, if there is no such committee, the non-conflicted directors may appoint an additional independent expert. Once the final appraisal report is received, the directors must explain their interest in the transaction and provide the shareholders with their opinion on the same, considering the corporate benefit. d. In any case, a violation of the OPR procedure does not void the transaction but triggers the company and the shareholders right to procure a court judgment in their favor and make the breaching individual or entity disgorge any profits obtained from the transaction, and indemnify the company for any applicable damages, regardless of any further sanctions imposed by any authority. Further, Article 147 of the Corporations Law provides that, with the prior approval of the board, the following OPRs may be executed without complying with the requirements described above: a) OPRs involving an immaterial amount; b) OPRs that, according to general policies on regular transactions (*política de habitualidad*), as determined and approved by the board, are deemed ordinary considering the purpose of the corporation; and	

[7] Any act or agreement exceeding more than 1% of the corporation's equity is considered a material amount, provided that such act or contract exceeds the equivalent of 2,000 UF (approx. US$78,900) and, in any case, whenever it exceeds 20,000 UF (approx. US$789,000). It shall be presumed as a sole operation all those perfected in a 12-month consecutive period through one or more similar or complementary acts in which exist identity of the parties, including related parties or purpose.

	involving "material" amounts in which one or more board members have an interest, when such operations are previously known and approved by the board and fulfill equity conditions similar to those usually prevailing in the market, unless otherwise stated in the bylaws. Regardless of the foregoing, this special procedure will not be applicable if the operation has been approved or ratified by the special shareholders' meeting with a quorum of 2/3 of the shareholders with voting rights. The board shall decide with the abstention of the interested director. The infraction to the rules set forth in Article 44 of the Corporations Law does not affect the validity of the operation, but may generate administrative sanctions, criminal sanctions, and the right to compensation for damages to the company, shareholders and interested third parties, in which case it is up to the defendant to prove that the act or contract complied with market conditions, or that the negotiation conditions brought benefits to the company that justify its execution; and the right to reimbursement to the corporation for the profits that the negotiations may have brought.	c) OPRs between legal entities in which the corporation owns directly or indirectly at least 95% of the property of the counterparty. Finally, Law No. 21,034 established a new presumption of liability of directors in the event that they approve OPR in contravention of the rules set by the Title XVI of Corporations Law.	
14. Compliance with statutory obligations	Directors must always abide by the provisions of the bylaws, except (i) when the provision of the bylaws is contrary to law, or (ii) when the bylaws are silent with respect to a matter that is regulated by law. Additionally, the board must always act within the limits imposed by the law. This strict subjection to the bylaws and the law does not mean that the work and rules		

	governing the board of directors are rigid; on the contrary, the board of directors is one of the freest bodies within the company, precisely to allow it to achieve the corporate benefit.		
15. Disclosure obligations of listed companies		According to CMF regulations, listed corporations must prepare and submit through the CMF website an "annual report", and make it available to the public and shareholders through the company's website, if any. This report must remain on its website for at least five consecutive years. The minimum content this annual report must include, among others, company's profile, corporate governance, business model, etc.	
16. Potential liability	*Civil liability.* Directors are generally liable for breaching their duties set forth by law or the bylaws. In certain circumstances, the director's liability will be presumed, thus inverting the burden of proof in a civil liability lawsuit (i.e., the defendant director will have to rebut the factual basis of the claim). This rule applies if (i) the corporation does not keep any books and records; (ii) directors approve the distribution of interim dividends but there are accumulated losses; (iii) the corporate assets are hidden; (iv) inexistent liabilities are recognized; or (v) asset transfers are simulated. If two or more directors are liable for the same breach, they will be jointly and severally liable, unless they can prove they did not participate in or opposed to such actions.	Article 36 of the CMF Law provides for sanctions that may be imposed on listed corporations in cases of violations of laws, regulations, bylaws, instructions and orders issued by the CMF itself or other rules. When determined by the CMF, certain sanctions (censure and fine) can also apply to the directors (as well as to managers, external auditing firms, or liquidators). In such cases, the CMF shall bring to the shareholders' meeting the infractions, non-compliances or acts incurred by the directors (or managers, external auditing firms or liquidators) so that it may remove them from their positions if it deems it appropriate, without prejudice to the exercise of the legal actions it deems pertinent. The call to this shareholders' meeting must be made by the board of directors within the time set by the CMF and may be summoned by the CMF itself if it deems it necessary to do so.	Even if there has been an increased awareness on compliance matters, it is still necessary to strengthen it in with the objective to move from a formal check of legal obligations to a model that is a useful figure in the operation, decision making process and administration of the company, as well as in its risk prevention.

	Where the basis for the claim are corporate actions that aggravated the corporation's financial position jeopardizing creditors' interest, a director's knowledge thereof will be presumed (meaning it can be rebutted) if (i) the corporation entered into an agreement with a creditor to the detriment of their other creditors, or (ii) if after failure to pay a debt, the corporation paid debts to one or more creditors to the detriment of other creditors. Finally, a topic worth mentioning is the so-called derivative action or *acción derivativa* of Article 133 bis of the Corporations Law, which is granted to the shareholder or group of shareholders representing at least 5% of the shares issued by the company or to any of the directors, to be able to sue for damages against the person liable, in the name and benefit of the company, in cases where there has been a loss of the companies' assets due to a violation of the Corporations Law, the Corporations Regulation, the bylaws, rules issued by the CMF in case of listed corporations and the resolutions issued by the board of directors. Thus, the derivative action is a mechanism that allows a minority shareholder or any director to protect the interests of the company against the negligence or abuse of directors, executives, external auditors or account inspectors. *Criminal Liability.* Chilean criminal law provides for insolvency-specific crimes regarding the conduct of directors. Such crimes, include amongst others:		

	a) Execute acts or contracts that reduce assets or increase liabilities without any economic or legal purpose other than damaging creditors, during the two years prior to the initiation of the bankruptcy proceedings; b) Deliver to the insolvency authorities or creditors false or incomplete information, which does not reflect the financial position of its debts or liabilities; and c) Failure to keep the accounting records required by law, or hiding, destroying or altering such records, etc. *Legal Entities' Criminal Law.* Legal Entities' Criminal Law established the eventual criminalization of the following offenses: a) Money laundering; b) Financing of terrorism; c) Bribery of national or foreign public officials; d) Receiving stolen goods; e) Misappropriation; f) Disloyal administration; g) Corruption between private individuals; h) Incompatible negotiation; i) Some fishing and aquaculture offenses; j) Severance fund; and k) Instruction to go to the workplace in quarantine or isolation (added due to Covid–19). This issue is relevant since in order to criminally sanction companies, these crimes must be committed: a) For the benefit of the company;		

	b) By its owners, administrators or those who work under their direction; and c) That the company can be accused of lack of direction and supervision (the adoption of Crime Prevention Models, promoted by this law, aims precisely accrediting effective compliance with the duties of supervision and management that correspond to the owners and senior management of companies). Thus, it is precisely the acts committed by the directors which, to the extent that they comply with the requirements listed above, may generate the criminal liability of the company.		
17. Duration of duties	The duration of a director position must be regulated in the bylaws (which term cannot exceed 3 years). In case the bylaws do not regulate it, directors will last 1 year on their duties, being able to be reelected indefinitely. Liability of directors for acts or omission occurred during their tenure will last according to the general statute of limitations applicable on each case.		In any case, there is nothing to prevent the shareholders' meeting from deciding to renew the board of directors before the end of their term of office. What is important to bear in mind, is that the law requires the renewals to be made by the totality of the directors, in order to protect minority shareholders.
Special circumstances			
18. Bankruptcy	There is no legal obligation for a company nor its board of directors to file for bankruptcy or to offer a reorganization plan to its creditors. If a corporation is in an insolvency process, the board of directors should always cooperate with such process and make sure that the shareholders are duly and timely informed about the ongoing developments of such process.	Regarding listed corporations, the board of directors should also make sure that the company duly and timely complies with the reporting obligations to the relevant authorities about the developments of the process. In this sense, Article 101 of the Corporations Law provides that if a corporation should cease to pay one or more of its obligations, the general manager or the board of directors in absence thereof, shall notify the CMF about it on the following business day.	Among some practical recommendations for directors of companies near insolvency, there are the following: a) Oversee that accounting books and records are kept up to date and in compliance with applicable legal, tax and accounting rules; b) Timely approve the annual financial statements, and summon to the general shareholders' meeting, which in turn must also approve them;

	In this sense, Article 101 of the Corporations Law states that if a corporation (i) failed to pay one or more obligations, or (ii) is subject to an insolvency proceeding, the board must summon to a shareholders' meeting to report to the shareholders regarding the legal, economic and financial position of the corporation.		c) The decision-making processes should be documented, and arguments or reasons for such decisions should be reasonable, and based on documented information (keeping a record thereof); and d) Refrain from approving actions or transactions which entail: a. Making advance payments; b. Paying debts other than as required by the respective contracts; c. Altering the pari passu rule among creditors; and d. Damaging creditor's interests.
19. Takeover bids		The main task of directors in matters related to takeover bids (which regulations are only applicable to listed corporations), hereinafter referred to as "OPA"[8], relates to taking care of the company's interest, because of their fiduciary duty, make sure the corporation complies with OPA's regulations, as applicable, and respecting the limits imposed by the insider trading rules. Article 207 letter c) of the Securities Market Law establishes an obligation for directors to individually issue a written report with their informed opinion about the convenience of the offer for the shareholders. On it, the directors must indicate their relationship with the controller of the company and with the offeror, and the interest they may have in the transaction. In addition, in case of non-compliance with the law and rules governing OPAs, directors may be exposed to civil, administrative and criminal penalties. In this sense, there is a criminal	

[8] A takeover bid, *oferta pública de adquisición de acciones* in Chile, is a transaction in which a person approaches shareholders of a listed corporation to announce her or his desire to buy a certain number of shares (or convertible securities) of such listed corporation at a certain price within a certain period of time.

		offense that punishes those who defraud others by acquiring shares of a listed corporation, without following the OPA process in the cases required by law.	
20. Market abuse/insider dealing	The directors who carry out fraudulent or negligent activities are jointly and severally liable for the losses caused to the company and the shareholders. Therefore, to seek directors' liability, the Corporations Law provides the following actions: a) Direct action of the company against its managers (including directors): It can be exercised against the members of the company's administration who have damaged the company due to fraud or negligence, in order to obtain compensation for any losses suffered as a consequence of such managers' fraud or negligence; b) Shareholders' derivative action: As described above, this action may be exercised by the directors of a corporation and any shareholder or group of shareholders representing at least 5% of the shares issued by the company (in the name and benefit of the company). Its purpose is to obtain compensation for the losses suffered by the company as a consequence of any breach of the regulations applicable to corporations; and c) Shareholders' individual action seeking tortious liability: This action may be exercised by one or more shareholders for the individual benefit of each of them. Its purpose is to obtain compensation from any losses suffered by one or more	This is one of the key issues that the CMF seeks to address and regulate. In addition to the general rules, the CMF is constantly generating proposals for legal amendments to reduce market abuses and insider trading. *Inside Dealing.* Article 165 of the Securities Market Law establishes that any director with access to inside information of listed corporations and their securities because of her/his title/position (including being a director) has to maintain strict reserve and may not use such information to her/his own benefit nor to the benefit of another, nor sell or purchase the securities she/he has inside information about for herself/himself or for third parties, directly or indirectly. Directors are also prohibited from using inside information to obtain profits or to avoid losses, by means of any type of operation with the securities referred to above or with instruments whose profitability is determined by those securities. They must also refrain from communicating such information to third parties or recommending the purchase or sale of the aforesaid securities, making sure this does not occur either through employees or trusted third parties. Article 166 of the Securities Market Law contemplates a legal or refutable presumption of access to inside information against, among others, directors of an issuer, directors of stock intermediaries, and directors of rating agencies	Please, also refer to the Legal Entities' Criminal Law explanation in Section 16. In matters of inside information, the board of directors must take certain precautions to protect such information (i.e., keep documents under lock and key, ensure that meetings are held in secure and closed places, among others).

	shareholders in their individual capacity, and it is exercised against those members of the management who are personally liable for the breach of their duties, including directors.	qualifying the issuer or institutional investor. The effect of such legal presumption is a reversal of the burden of proof. Under the same, the burden of proof lies with such persons who, in order not to be incriminated, shall provide proof that they did not use any privileged information when trading the corresponding securities. Finally, the Securities Market Law provides that people who breach insider trading regulations shall be subject to civil and criminal liability, and sanctions penalized by the CMF.	
Defences			
21. Good corporate governance		Among the minimum requirements and contents that the CMF indicates must be included in the annual report that the board of directors must annually submit to the regular shareholders' meeting and to the CMF, corporate governance is specifically addressed, and must refer to the following: a) How the company seeks to ensure and evaluate the proper functioning of its corporate governance; b) How the company integrates a sustainability approach in its business (environmental, social and human rights issues); c) How the entity detects and manages the conflicts of interest it faces; d) How the entity addresses the interests of its key stakeholders; e) How the entity promotes and facilitates innovation; f) How the entity detects and reduces organizational, social or cultural barriers that may be inhibiting diversity of capabilities and conditions; and g) How the entity identifies the diversity of capabilities and what the entity's hiring policies are to preserve diversity.	

		Please find below examples of corporate documentation that is in accordance with the current corporate governance requirements: *Code of Ethics and Corporate Governance* Even though having a code of corporate ethics is not mandatory by law, many listed corporations have one. *Manual on the Handling of Information of Interest* This type of manual is mandatory for entities which are issuers of securities of public offer. Pursuant to the Securities Market Law, the issuers of securities of public offer must adopt policies aimed at (i) ensuring the timely communication to the market of information of interest and (ii) establishing the rules under which their directors, managers, administrators, main executives and the entities directly controlled by them, or through third parties, will be able to purchase or sell securities issued by the relevant company or other securities whose price depends on, or is conditioned, in whole or in part, by the price variation of the former. *Crime Prevention Model* A model for the prevention of crimes, while not mandatory, is a means contemplated by Chilean law as a safe harbor to evidence fulfillment of control and supervision obligations under the Legal Entities' Criminal Law. Hence, it is highly advisable to adopt it.	

22. Minutes of board meetings	According to Article 48 of the Corporations Law, the resolutions of the board of directors must be recorded in minutes, which, in turn, have to be included in a minutes' book. The minutes must be signed by each director attending the meeting. If any of them is unable to sign, the respective circumstance or impediment shall be recorded therein. The minutes shall be deemed approved from the moment of signing, unless the unanimous vote of the directors provides otherwise, and this is reflected in the minutes. As previously mentioned, it is a board's duty to keep the company's books up to date and the minutes must reproduce the full content of the board meetings. Related to directors' liability, a director who wishes to save her/his own for any act or resolution of the board of directors must state her/his opposition in the minutes, which must be reported by the presiding director at the next regular shareholders' meeting. The director who considers that the minutes contain inaccuracies or omissions has the right to make the corresponding reservations before signing them.	Unless there is unanimous agreement to the contrary, the board meetings of listed corporations must be recorded by the person acting as secretary, in a form that allows a faithful recording of the audio of the deliberations. Such recordings must be kept in reserve by the corporation until the respective minutes are approved by all the directors who must sign them and made available to the directors who wish to verify the accuracy of the minutes submitted for their approval. In the event that a director considers that there are fundamental and substantial discrepancies between the content of the minutes and that of the recordings, she/he may request that her/his own words are incorporated verbatim into the minutes, according to the content of the recordings in the respective passages.	As a recommendation, a director shall always review the content of the minutes. Any director who wishes to save her/his own will have to demonstrate that she/he objected and had reservations about the resolution, and this must be recorded in the minutes.
23. Discharge and Indemnification	As of this matter, please refer to Section 16.		By way of comment, in Chile, conflicts arising in corporations must be resolved through arbitration. However, the Corporations Law states in Article 125 that such arbitration is without prejudice that, upon the occurrence of a conflict, the plaintiff may remove its knowledge from the jurisdiction of the arbitrators and submit it to the decision of the ordinary courts. Although it may seem very broad, the same law limits this right of recourse to the ordinary courts and provides

			that it may not be exercised either by directors, managers, administrators or executives, or by shareholders who individually own, directly or indirectly, shares whose book or stock market value exceeds 5,000 UF (approx. US$197,000), according to the value of such unit at the date of filing the claim.
24.Insurance	In Chile there is no obligation to contract D&O insurance, but it is increasingly seen as a good corporate governance practice.		
25. Resignation	Directors are free to resign from their position (in addition to the existence of specific grounds for disqualification and supervening incompatibilities that require them to resign). Regarding resignation, there are two perspectives to analyze: a) That of the resigning director. Corporations Law and the Corporations Regulation only require the notification of the resignation (it can be a written one) through a minister of faith, to the Chairwoman/Chairman, general manager, or those who act in their stead of the company, without any other formality; and b) That of the other directors who do not resign. The resignation of a director, except in those cases where an alternate director is designated according to the bylaws, obliges the shareholders to renew the board of directors in its entirety in the next shareholders' meeting. In the interim, a replacement director must be appointed by the board. Nothing forces the shareholders to re-elect the previously appointed directors, even if the		A director who acquires a capacity that disqualifies her/him to hold such position or incurs in a supervening legal incapacity, shall automatically cease to hold such office. Likewise, any director who notifies her/his resignation to the Chairwoman/Chairman or to the general manager shall automatically cease on her/his functions.

	renewal occurred before the end of their term of office.		
26. Restructuring of assets	This matter is regulated in the Law for the Reorganization and Liquidation of Assets of Companies and Individuals No. 20,720. Related to the restructuring of assets, the participation of the board of directors focuses on the following points: a) The directors must continue in the exercise of their functions, ensuring that correct decisions are made for the company, unless there is a court order stating otherwise; and b) The board of directors must inform and keep the shareholders informed about the status of the process. Thus, their main function continues to be aligned with two of the directors' fiduciary duties: to take care of the corporate benefit and development of the business, and to inform the shareholders and keep all information available to them and through appropriate channels.		Chilean criminal law provides for insolvency-specific crimes regarding the conduct of directors. Such crimes include amongst others: a) Execute acts or contracts that reduce assets or increase liabilities without any economic or legal purpose other than damaging creditors, during the two years prior to the initiation of the bankruptcy proceedings; b) Deliver to insolvency authorities or creditors false or incomplete information, which does not reflect the financial position of its debts or liabilities; and c) Failure to keep the accounting records required by law, or hiding, destroying or altering such records, etc.
27. ESG and D&I policies, metrics	There is an obligation for the board of directors to present at the regular shareholders' meeting (to be held in accordance with the bylaws and the law, within the first four months of the year) an annual report indication certain matters related to compliance, management evaluation, etc.	Among the minimum requirements and contents that the CMF indicates must be included in the annual report that the board of directors must submit to the regular shareholders' meeting of listed corporations and the CMF, the following topics, among others, are specifically addressed: a) Company's profile, including mission, vision, purpose and values. It is specifically requested to indicate whether or not it adheres to the Guiding Principles on Human Rights and Business issued by the United Nations, or another similar standard;	Many of these matters have been tried to be implemented in Chile through incentives given to companies. In addition, there is a strong component of international standards that many foreign investors in Chile requires the companies to adopt and to invest in. Directors are strongly encouraged to include these topics in board of directors' meetings and to adopt all the measures recommended for the diverse types of industries, especially considering that the CMF is each time putting more focus on this kind of topics.

		b) Strategy (strategic commitments that have been adopted within the framework of compliance with the United Nations Sustainable Development Goals); c) People (number of employees by gender, nationality, age range, disability and other categories; there is a long description of the issues to be addressed in terms of pay gaps, workplace harassment and inclusion policies); and d) Indicators for different areas; legal and regulatory compliance; environmental (compliance models and environmental risk matrices, with specific obligations for the company in this area); free competition; among others.	