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# The Company Director Checklist – Cyprus

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## INTRODUCTION

This checklist summarises the obligations of a director under Cyprus law and aims to highlight the main duties owed by a director in exercising his role as a director of a public company listed on the main market of the Cyprus Stock Exchange. All references to statutory sections are to sections of the Cyprus Companies Law Cap.113, unless stated otherwise, and all references to the Code are to the Corporate Governance Code (3<sup>rd</sup> edition) issued by the Cyprus Stock Exchange Council.

The duties of a director under Cyprus law are not comprehensively codified; they are an amalgam of statutory duties, common law principles and those duties contained in the Articles of Association of a company. The Articles of Association of the company regulate the powers that a director has and in essence, his powers are as wide or restricted as the Articles provide but always subject to the statutory requirements and those powers expressly reserved for the members.

*Disclaimer: This checklist is intended to be an initial reference point for anyone considering directorship of a Cyprus public company listed on the Cyprus Stock Exchange and should not be relied upon as legal advice. It is intended only as a guide, and not as a substitute for professional advice. The information in the checklist is correct as at 13 July 2011.*

	Action/Issue	Comments/Notes
<b>Appointment</b>		
1. Consider and review	<ul style="list-style-type: none"> <li>• Gather information on the company: look at historical accounts, company reports, constitutional information and any publicly available information;</li> <li>• Check announcements on the Cyprus Stock Exchange Commission's news site;</li> <li>• Think about all the information you have reviewed and whether you require clarification or further information;</li> <li>• Consider the overall impression of the company that you have formed and its reputation in the market;</li> <li>• Take a look at key documents: service contracts, any 'director and officer' insurance policies, corporate governance procedures.</li> </ul>	<ul style="list-style-type: none"> <li>• Get professional advice on any financial and/or legal documents to ensure you understand them; in particular, read the Articles of Association of the company to see how the director's powers are regulated according to the Articles;</li> <li>• Do any of the directors strike you to be dominant? Are there are family relationships between management members or members of the Board?</li> <li>• Check that there are adequate corporate governance procedures in place and that the company operates in a transparent manner.</li> <li>• Make sure you are comfortable with the responsibilities you are taking on and that the remuneration package is commensurate with these, if in doubt seek independent legal advice.</li> </ul>
2. Understand what constitutes a 'director' in the eyes of the law	A director 'includes a person occupying the position of a director, by whatever name called.'	<ul style="list-style-type: none"> <li>• It is the role you actually perform, and not your title, which will determine whether or not you are considered to be a director of a company.</li> <li>• Where the directors are accustomed to act in</li> </ul>

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		<p>accordance with the instructions of a certain person, that person is a director in the eyes of the law and certain obligations will be imposed on him by statute (see part 27 below on “shadow directors” for a discussion of these obligations).</p>
<p>3. What is the procedure to be appointed as a director?</p>	<ul style="list-style-type: none"> <li>• The Code requires a formal and transparent procedure to be followed for the appointment of new directors to the Board.</li> <li>• The Nomination Committee should lead the process for Board appointments. The majority of the members of this Committee should be non-executive directors and its Chairman should be either the Chairman of the Board (if he is non-executive) or a non-executive director. The Chairman and members of the Nomination Committee should be identified in the Annual Report (Code, A.4.1).</li> <li>• The appointment of all directors is subject to approval by shareholders at the first Annual General Meeting after their appointment (Code, A.5.2).</li> <li>• As a director of a public company, you must file</li> </ul>	<ul style="list-style-type: none"> <li>• Where there is some defect in your appointment, for example where there is a mistake in the form, your appointment is still held to be valid (s.174).</li> </ul>

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	<p>a consent form with the Registrar of companies that you consent to becoming a director of a public company, along with form HE4 and the resolution effecting your appointment.</p> <ul style="list-style-type: none"> <li>• The Code recommends that you should resign at regular intervals and at least every 3 years, submitting yourself for re-election if you wish (Code, A.5).</li> <li>• The Code requires that you should be appropriately briefed and trained on the first occasion that you are appointed to the Board of directors of a listed company, and subsequently as necessary. Furthermore, you should have cognisance of the Cyprus Securities and Stock Exchange Law, as well as of the Companies Law and, in particular, of the points pertaining to the position you are taking on.</li> <li>• Non-executive independent directors must meet a number of minimum requirements, regarding their independence, set out in the Code (Code, A.2.3 (a)-(j)).</li> </ul>	<ul style="list-style-type: none"> <li>• Make sure you are briefed and trained as soon as you are appointed to the Board, and that you are familiar with the relevant laws which apply to the business and specifically to your role. Seek independent legal advice if you are in any doubt.</li> <li>• The Code contains provisions regarding the balance of the Board of directors; the main purpose is to maintain a healthy proportion of independent non-executive directors so that no individual director or one 'group' can dominate the Board.</li> </ul>
4. Do you need any specific qualifications	<ul style="list-style-type: none"> <li>• There are no company law requirements in relation to qualifications for directors.</li> </ul>	<ul style="list-style-type: none"> <li>• The following persons are prohibited from becoming directors:</li> </ul>

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to become a director?	<ul style="list-style-type: none"> <li>• However, the Code states that the Board should consist of competent and suitable individuals able to participate in the company's Board of directors. The appointment of a suitable and competent person as a director should take into account their knowledge and experience in addition to their honesty and integrity (Code, A.4.2).</li> </ul>	<ul style="list-style-type: none"> <li>• an individual who has a bankruptcy order against him. He/she cannot become a director without the permission of the court.</li> <li>• a person who has been convicted of an offence, connected to his role as a company director may be prohibited by court order from acting as a company director for 5 years.</li> </ul>
5. What are the key provisions regarding directors' remuneration?	<ul style="list-style-type: none"> <li>• Subject always to the Articles, it is the Remuneration Committee's responsibility (consisting of a majority of non-executive directors) to set the level of remuneration of executive directors.</li> <li>• The Code requires that the remuneration packages of all directors must be approved by the shareholders at a General Meeting (Code, B.1.4).</li> <li>• Details of the remuneration for both executive and non-executive directors as well as the company's remuneration policy should be contained in the company's report on Corporate Governance (Code, B.3), as well as in a Remuneration Report sent to company</li> </ul>	<ul style="list-style-type: none"> <li>• In deciding the level of remuneration, the Remuneration Committee is required by the Code to avoid paying more than is necessary to attract and retain the directors needed to run the company successfully.</li> <li>• The Code recommends performance-linked pay for executive directors. Performance criteria are based on the long term viability of the company as well as non-financial criteria aimed at creating long term value for the company (Code, B.2.4).</li> </ul>

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	shareholders annually, annexed to or as part of the Annual Report.	
<b>Ongoing Duties</b>		
6. To whom does a director owe his duties?	<ul style="list-style-type: none"> <li>As a director, you will be under a fiduciary duty to act in the best interests of the company as a whole. This duty is owed to the company and, generally, not to a distinct group of shareholders or creditors.</li> </ul>	<ul style="list-style-type: none"> <li>An exception to your obligation to act in the best interest of the company as a whole is in the case of the company's insolvency, where the interests of the creditors are deemed to be paramount and the directors owe a positive duty to the creditors, to ensure that the affairs of the company are properly administered.</li> <li>In certain circumstances, a course of dealings between a director and a third party, including a shareholder, may give rise to fiduciary obligations.</li> </ul>
7. What are the main fiduciary duties owed by a director?	<ul style="list-style-type: none"> <li>Your fiduciary duties aim to ensure your independence and commitment to the company as well as to ensure you act within the powers conferred on you by law and through the Articles of the company. These are summarised below in parts 8-11.</li> </ul>	<ul style="list-style-type: none"> <li>Breach of your fiduciary duties exposes you to potential personal liability in damages.</li> </ul>
8. What is the duty to avoid conflicts of interest?	<ul style="list-style-type: none"> <li>The duty to avoid conflicts of interest ensures that your personal interests do not conflict with those of the company.</li> </ul>	<ul style="list-style-type: none"> <li>You should be particularly careful where the company enters into transactions and you may stand to benefit from the transaction by</li> </ul>

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	<ul style="list-style-type: none"> <li>The Code requires that all directors should bring an independent and unbiased judgment during the exercise of their duties (Code, A.1.6).</li> <li>In the case of a conflict, you should also check the Articles of Association of the company for any particular obligations they impose on you in relation to conflicts.</li> </ul>	<p>virtue of your personal circumstances.</p> <ul style="list-style-type: none"> <li>Depending on the nature of the potential conflict, the company can consent to the transaction following your full and proper disclosure to the company.</li> <li>Where the company is entering into a contract with another entity to which you are associated, you must ensure that approval from the Board is received following full disclosure to it. A failure to do so may enable the company to rescind the contract (in the event that a return to a pre-contract state of affairs is possible).</li> </ul>
9. What is a director's obligation in relation to disclosing personal profits?	<ul style="list-style-type: none"> <li>You must account to the company for any profits that you take as a result of dealing with the company's property, information or opportunities which arise by virtue of your connection with the company.</li> </ul>	<ul style="list-style-type: none"> <li>You should not retain any such profits unless this has been approved by the company in General Meeting (where the directors do not control the voting at such a meeting).</li> </ul>
10. What is the duty of proper purpose?	<ul style="list-style-type: none"> <li>You must act within your powers as a director and the powers of the company. Whilst you are obliged to promote the company and act for its benefit, you cannot exceed the authority vested in you by the company (through its Articles) or</li> </ul>	<ul style="list-style-type: none"> <li>An act which is <i>ultra vires</i> the directors, but <i>intra vires</i> the company, may be ratified by the members of the company in a General Meeting. This cannot be used however to ratify acts in breach of the directors' fiduciary</li> </ul>

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	cause the company to do something which is outside its own powers.	duties where the directors control the voting at such a General Meeting.
11. Is there a duty of good faith?	<ul style="list-style-type: none"> <li>• Yes, you owe a duty to act in good faith and for the benefit of the company.</li> </ul>	<ul style="list-style-type: none"> <li>• You must honestly believe that your actions benefit the company. The test is subjective and the duty is owed to the company as a whole, see part 6.</li> </ul>
12. What is the duty of skill and care owed by a director?	<ul style="list-style-type: none"> <li>• You have a duty to take reasonable care in the management and conduct of the company's affairs. You must act with the skill and care of a reasonably diligent person, who has the skills and qualifications that you possess.</li> </ul>	<ul style="list-style-type: none"> <li>• You are deemed to be a reasonably diligent person and expected to have: <ul style="list-style-type: none"> <li>(a) the general knowledge, skills and experience that may reasonably be expected of persons carrying out the same functions as you in relation to the company; and</li> <li>(b) the general knowledge, skills and experience that you actually have (i.e. if you hold a professional qualification, this will be taken into consideration).</li> </ul> </li> </ul>
13. Can a director avoid liability for breaching his duty of care?	<ul style="list-style-type: none"> <li>• It is not possible to grant a <i>general</i> exemption to directors to avoid liability by way of a contractual provision in their service contracts, or by way of inclusion in the Articles of Association of the company. Any such provision would be void at</li> </ul>	<ul style="list-style-type: none"> <li>• Where full disclosure of a breach of the duty of care is made by the director, he can be released from liability, retrospectively (in respect of liability to the company) by an ordinary resolution passed by the members at</li> </ul>

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	law under s.197.	a General Meeting of the company (provided that the director does not control the voting at such a General Meeting).
14. What are the key statutory duties of a director?	<ul style="list-style-type: none"> <li>Codified duties imposed by the Cyprus Companies Law broadly relate to record keeping, disclosure requirements and financial statements.</li> <li>The duties of directors of listed companies are also informed by the Code of Corporate Governance issued by the Council of the Cyprus Stock Exchange (CSE) which applies fully to companies that are listed in the main market. The objective of the Code is to strengthen the monitoring role of the Board of directors.</li> </ul> <p>These are summarised below in parts 15-17.</p>	
15. What obligations are the directors under in relation to financial reporting of the company?	<p>You will have to ensure that the company complies with its financial reporting requirements including:</p> <ul style="list-style-type: none"> <li>Ensuring that proper books of account are kept to enable financial statements to be drawn up in accordance with the law (s.141);</li> <li>Ensuring that the books of account give a true and fair view of the state of the company's</li> </ul>	<ul style="list-style-type: none"> <li>Non-compliance with the requirement to take all reasonable steps to ensure proper books of account are maintained by the company exposes you to criminal liability (with up to one year's imprisonment) and/or civil fines up to €1,710. The same penalty applies where the financial accounts presented do not represent a true and fair view of the company (s.143(5)).</li> </ul>

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	<p>affairs and explain its transactions (s.141);</p> <ul style="list-style-type: none"> <li>• Ensuring that a full set of financial accounts are drawn up for the company in accordance with the International Accounting Standards (s.142) and that a report prepared by the directors containing certain information prescribed by statute (listed in s.151) is annexed to the financial accounts. The accounts must give a fair and true view of the development and performance of the company;</li> <li>• Producing a management report, which is annexed to the financial accounts, on the state of the company's affairs and any developments of the company in accordance with the minimum requirements set out in statute (s.151(1)(a));</li> <li>• Sending documents, notices, etc. to members when required by law. S.152 contains details of documents (financial accounts, director's report and auditor's report) that need to be sent to members/debenture-holders/those entitled to receive notice of General Meetings, prior to such meeting;</li> <li>• S.142 2(a) requires the financial accounts drawn</li> </ul>	<ul style="list-style-type: none"> <li>• Directors are collectively liable under civil law for a failure to take all reasonable steps to produce the report to be annexed to the annual accounts and give a true and fair view of the development and performance of the company (as required by s. 151). You may also be found to be criminally liable with a fine of up to €17,000 and/or up to one year's imprisonment (s.151(3)(b)).</li> <li>• Officers of the company (including directors) are liable to fines (€855 - €8,550) for a failure to furnish the annual accounts and the annexed report on request (by a person entitled to make such a request as set out in s.152).</li> <li>• Where you can prove that you had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of ensuring that the requirements in relation to the keeping of books of account were met, then this shall be a defence.</li> </ul>

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	<p>up to be published no later than 18 months after incorporation and subsequently once every calendar year;</p> <ul style="list-style-type: none"> <li>• The company must also disclose those items required by the Transparency Requirements For Issuers of Securities on a Regulated Market Law 190(I) of 2007, including: <ul style="list-style-type: none"> <li>• a half-yearly financial report (Transparency requirements for issuers of securities on a regulated market Law 190(I) of 2007 s. 10);</li> <li>• an interim management statement (during both six-month periods of the financial year- Law 190(I)/2007 s. 11);</li> <li>• in certain circumstances, quarterly reports (Law 190(I)/2007 s. 12).</li> </ul> </li> </ul>	
<p>16. What disclosures must the director make?</p>	<ul style="list-style-type: none"> <li>• You are obliged by statute to make the following disclosures: <ul style="list-style-type: none"> <li>- In relation to your shareholding on the register of shareholdings (s.187);</li> <li>- In relation to your remuneration and pension benefits in the company accounts (s.188);</li> <li>- In relation to loans by the company to you (s.189);</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• A failure to make the necessary disclosures as required by statute exposes you to a fine of up to €427.50 under the Companies Law Cap.113. The Code requires that details of loans (and guarantees) to directors should also be included in the company's Report on Corporate Governance (Code, C.23) or through reference to its accounts.</li> </ul>

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	<ul style="list-style-type: none"> <li>- In relation to acquisitions or disposals of listed securities that cross certain holding thresholds (a notification is filed with the Cyprus Stock Exchange, s.171 of the Cyprus Securities and Stock Exchange Law).</li> </ul>	<ul style="list-style-type: none"> <li>• Administrative fines imposed by the Cyprus Securities and Stock Exchange Law of 1993 may apply for a failure to meet notification requirements.</li> </ul>
17. What market abuse offences should the director be aware of?	<ul style="list-style-type: none"> <li>• You must ensure that you comply with the provisions of the Law on Insider Dealing and Market Manipulation (Market Abuse), Law 116(I)/2005). This law provides that a person using confidential information or passing on to another person confidential information regarding any security listed on the Stock Exchange, which is not generally available to the public through the announcements of the issuer or contained in the prospectus or otherwise, is guilty of a criminal offence.</li> <li>• You must be aware that generally, in order for you (or persons related to you, or closely associated with either) to carry out a transaction</li> </ul>	<ul style="list-style-type: none"> <li>• As a holder of inside information, you are prohibited from: (a) using the information to acquire or dispose of financial instruments to which that inside information relates; (b) disclosing the inside information to others, and (c) inducing or recommending to another person to dispose of the financial instruments to which the inside information relates. (s.9, Law on Insider Deal and Market Manipulation (Market Abuse) N. 116(I)/2005). A person who violates this provision may liable to an administrative fine of up to € 800,000 imposed by the Cyprus Securities and Exchange Commission.</li> <li>• The company shall be obliged to disclose to the Cyprus Securities and Exchange Commission any violation of Directive 5/2005</li> </ul>

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	<p>in the Company's financial instruments, you must apply to the Board for a written license (which is recorded in the company archives). A license will not be granted during a prohibited period which consists of: (i) a closed period (1 month preceding the end of the financial year, or half-year, up to the date of the announcement of those results), (ii) any period in which there is any matter which constitutes inside information, or (iii) any period during which the person responsible for the granting of the license believes that the proposed transaction is illegal. Certain transactions do not fall within the above provisions, (e.g. granting of share options to members of the board as part of a share option scheme, s.18 (2)(g) of Directive 5/2005 of the Cyprus Securities and Exchange Commission on the Code of Conduct of Directors and Related Persons).</p>	<p>of the Cyprus Securities and Exchange Commission on the Code of Conduct of Directors and Related Persons. Any person, including a director, who is in breach of this directive, shall be subject to an administrative fine imposed by the Cyprus Securities and Exchange Commission up to € 350 000 (and in the case of a repeat violation, up to € 700,000).</p>
<p>18. What declarations of interest must the director make?</p>	<ul style="list-style-type: none"> <li>You must declare the nature of any interest (direct or indirect) in a contract or proposed contract with the company. You may be liable to</li> </ul>	<ul style="list-style-type: none"> <li>If you need to declare an interest in a proposed contract with the company, you must do so at the Board meeting considering</li> </ul>

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	a fine of up to €855 for failure to make such a declaration (s.191).	<p>the transaction in which you have an interest, or where you are not present at such a meeting, the next Board meeting.</p> <ul style="list-style-type: none"> <li>• If you become interested in the contract after it is entered into, then you must declare your interest at the first Board meeting after you become interested.</li> </ul>
19. Can a director delegate his powers and responsibilities?	<ul style="list-style-type: none"> <li>• You need express authority in order to delegate your powers to specific directors or officers, or even duly authorised third parties. In practice, this is usually contained in the company's Articles.</li> <li>• Subject to the Articles, a director may appoint an alternate director.</li> <li>• The Code proposes the establishment of the following committees within the Board of Directors: (a) the Nomination Committee, (b) the Remuneration Committee, and (c) the Audit Committee. The purpose of the committees is to increase expediency within the Board and delineate functions.</li> </ul>	<ul style="list-style-type: none"> <li>• A director does not discharge his duties merely by delegating his responsibilities. He should ensure that the tasks are delegated to competent individuals and he should remain informed of developments and progress.</li> <li>• If you do need to delegate tasks, make sure you give clear documented instructions to someone capable of carrying out the task, and that you continue to supervise him/her.</li> <li>• The Code states that where management fails to provide the Board with accurate, timely and valid information, the directors should make further enquiries.</li> </ul>

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20. Can the shareholders override a decision of a director?	<ul style="list-style-type: none"> <li>Members cannot override any <i>intra vires</i> acts of the company by its directors.</li> </ul>	<ul style="list-style-type: none"> <li>To alter the powers that the directors have, the shareholders would need to change the company's Articles.</li> </ul>
21. Can the shareholders take any enforcement action against the directors?	<ul style="list-style-type: none"> <li>Yes, under Cyprus law minority members can bring a derivative action against a director who is in breach of his duties in certain circumstances.</li> </ul>	<ul style="list-style-type: none"> <li>As the director owes his duties to the company, the proper claimant in an action against the director for breach of his duties is the company.</li> <li>However, an exception to this is the possibility for a minority shareholder to bring a derivative action where the wrongdoer is in control of the company and where he has taken an action that: (i) is outside the powers of the company, (ii) needs a special majority, (iii) breaches the personal rights of a specific shareholder, or (iv) constitutes a fraud on the minority.</li> </ul>
22. What risks are directors exposed to in relation to a company's acts and checking to ensure that these are minimal	<p>The Board takes collective responsibility for and ensuring that, inter alia, the company's tax, health and safety and environmental obligations are met.</p> <p>Key obligations include:</p> <ul style="list-style-type: none"> <li>Health and Safety Laws prescribe that an "employer" (legal or natural) can be fined up</li> </ul>	<ul style="list-style-type: none"> <li>An employer (of more than 5 persons) must have a risk assessment for their</li> </ul>

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	<p>to €10,000 or two years imprisonment. A director may be culpable if it can be proved that an offence was committed following his consent or cooperation, or has been facilitated by virtue of his negligence (Safety and Health at work Law 89(I) of 1996 s. 53(6)).</p> <ul style="list-style-type: none"> <li>• Corporate environmental liability is an ever increasing concern. Whilst the company may incur fines for breaches of environmental legislation, the directors may in certain circumstances also find themselves personally liable for the company's breaches.</li> <li>• The director of a company is responsible for the submission of Income Tax Returns and also for taking all necessary steps and actions for the assessment and submission of taxes imposed on that company. (Article 12 of the Assessment and Collection of Taxes Law). Where the failure to comply with the above is attributed to the director's unjustified refusal, failure or delay, then the director is guilty of an offence.</li> </ul>	<p>employees as well as a management system. You can seek the advice of The Cyprus Safety &amp; Health Association to insure compliance (system in place fits accepted standards and complies with the law).</p> <ul style="list-style-type: none"> <li>• A director who fraudulently or willfully submits, gives or creates any false information in relation to the income or expenses claimed or submits, keeps or prepares accounts or any other documents which are false in relation to the information pertaining to the taxation of the company (or found to aid or abet or incite the above) is guilty of an offence. He or she may face a fine of up to €17.086</li> </ul>

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		or imprisonment of up to 5 years, or both.
23. What is the position if the company may be insolvent?	<ul style="list-style-type: none"> <li>• In the course of a winding up of the company, where any business of the company has been carried out with an intent to defraud creditors or other persons for any fraudulent purpose, the court is empowered to declare that any persons (including the directors) who were knowingly parties to the carrying on of the business in the manner mentioned above, are held personally responsible (without limitation) for all or any of the debts of the company as the court deems fit. (s.311)</li> <li>• Where in the course of a company's winding up, a director (past or present) is involved in the misappropriation of the company's funds or property, or is involved in a breach of trust in relation to the company, the Court is empowered by statute to return the property or monies and compensate the company for the misfeasance or breach of trust, as the Court deems fit.</li> </ul>	<ul style="list-style-type: none"> <li>• For the court to find an 'intention to defraud' there must be actual dishonesty on the part of the wrongdoers/directors.</li> <li>• Any director (officer) is under a duty to disclose to the liquidator all of the property of the company and, in particular, must: <ul style="list-style-type: none"> <li>- when requested, deliver to the liquidator all such real and personal property of the company;</li> <li>- not conceal any property belonging to the company;</li> <li>- be careful of making any material omission;</li> <li>- account to the company for fictitious losses;</li> <li>- must not, within, twelve months of the winding up make any representations that the company is carrying on its business and acquire credit etc.</li> </ul> </li> </ul>

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<p>24. What special responsibilities and liabilities are associated with a float?</p>	<ul style="list-style-type: none"> <li>• The Cyprus Stock Exchange (CSE) approves the listing of a public company along with the consent of the Cyprus Securities Commission. The obligation for fulfilling the listing requirements ultimately rests with the Board of directors as they sign the documents to be submitted to the CSE.</li> <li>• In order for a company to be listed on the Cyprus Stock Exchange it must issue a prospectus providing information which will allow investors to make informed decisions as to the financial position of the company. This prospectus must be signed by at least 3 executive members of the Board, and the President of the Board and the Managing Director/s who will be responsible for the accuracy and validity of the statements contained within. In practice, all Board members sign the prospectus.</li> </ul>	<ul style="list-style-type: none"> <li>• Since the Board is collectively responsible for the information in the prospectus, this can result in a director's liability since any person responsible for such information will be jointly and severally liable for any damages suffered to any shareholders who relied on false or mistaken information within a prospectus.</li> <li>• A director should ensure that prior to the listing, an extensive due diligence review of the company's operations is carried out, with assistance from professional advisers, to ensure that the prospectus contains accurate information to enable the investors to make an informed appraisal of the company.</li> <li>• Before signing off on the prospectus, a director should: <ul style="list-style-type: none"> <li>- understand how the due diligence verification was carried out and the methodology employed;</li> <li>- ensure he reads a draft of the prospectus as early as possible and raises any questions on its content;</li> <li>- thoroughly read the final draft of the</li> </ul> </li> </ul>

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		<p>prospectus before signing it;</p> <ul style="list-style-type: none"> <li>- and get specific legal advice on his own position.</li> </ul>
<p>25. What special responsibilities and liabilities are associated with a takeover of a public company?</p>	<ul style="list-style-type: none"> <li>• In a takeover of a public company, the Board of the target is obliged to promptly and accurately pass on information of any proposed bids to its shareholders and employees.</li> <li>• All members of the company must be treated equally and given sufficient information and time to make an informed decision as regards the takeover bid (s.5 of the Takeover Bids Law of 2007);</li> <li>• The Board when giving shareholders information must express its opinion as to the effect of the takeover upon the company's activities (s.5(c) of the Takeover Bids Law of 2007)</li> <li>• The Board must act in the best interests of all the shareholders of the company and not deny any shareholders the right to evaluate</li> </ul>	<ul style="list-style-type: none"> <li>• The Takeover Bids Law of 2007 implements European Take Over Directive, 2004/25/EC, into Cyprus Law. The domestic legislation broadly reflects the Takeover Directive.</li> <li>• The Board of a potential bidder should ensure it seeks legal advice during the early stages of considering whether to make a bid. Similarly, the Board of the target company should ensure that it gets independent legal advice as soon it is made aware of any potential bid.</li> </ul>

	Action/Issue	Comments/Notes
	<p>the public offer, nor undertake any actions which may hamper or otherwise impede a public offer (s.5(d) of the Takeover Bids Law of 2007)</p> <ul style="list-style-type: none"> <li>• Based on EU law, which was incorporated into Cyprus Law via the General Framework of Information and Consultation of Employees(Law 78(I) of 2005) and the Preservation of Employee rights during transfer of the business (Law 104 (I) of 2000), the Board must consult its employees after the offer has been announced.</li> <li>• The Board of the target may not take any action that may result in the frustration of any bid, except that in the case of a hostile bid (not recommended by the Board) the directors may put in place defensive measures as long as the Board has the prior authorisation of the shareholders and so long as all bidders are treated equally (s.34 (1) of the Bid Law).</li> </ul>	

	Action/Issue	Comments/Notes
26. What special responsibilities and liabilities are associated with a joint venture?	<ul style="list-style-type: none"> <li>The fact that a director of a joint venture company is appointed by, and may also be a director or employee of, one of the joint venture company's shareholders may place him in a position of potential conflict between his loyalty to his appointing shareholder and his duties as a director of the joint venture company.</li> <li>As well as the usual duties owed by the director of any company, further duties and constraints may be imposed on directors of a joint venture company, either through the company's Articles of Association or by separate shareholders' agreement or by a combination of the two.</li> </ul>	<ul style="list-style-type: none"> <li>In the case of a joint venture a director should be particularly careful to ensure he complies with his duty to avoid conflicts (as set out in part 8) and also to ensure that he does not act in a way which is unduly unfair on minority shareholders.</li> </ul>
27. What obligations are imposed on "shadow directors"?	<ul style="list-style-type: none"> <li>Certain statutory obligations apply to 'shadow directors'. Under Cap 113, a 'shadow director' is someone under whose instructions the directors are accustomed to act.</li> </ul>	<ul style="list-style-type: none"> <li>Under Cap 113, the specific duties which apply to "shadow directors" include that they must be listed on the register of directors, and their shareholdings must be listed on the company's register of directors' shareholdings. They must also provide certain information in circulars, trade catalogues and business letters. Furthermore, they are subject to the same penalties imposed on directors for offences</li> </ul>

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		committed on a company's winding up (see part 22 above).
<b>Self Defence</b>		
28. For general matters affecting the company	<ul style="list-style-type: none"> <li>You should be confident that the correct corporate governance procedures are in place; the Code imposes an obligation on the company to maintain a sound system of internal control to safeguard shareholders' investments and company assets (Code, C.2).</li> <li>You should always ensure that the views you express at Board meetings are correctly recorded and you should actively raise concerns and seek confirmations as you see fit. These may well prove useful in the future if a specific matter comes into question, particularly in the event of insolvency.</li> <li>You should attend Board meetings, probe the management team where more information is required, and keep abreast of developments in the company.</li> </ul>	<ul style="list-style-type: none"> <li>Good corporate governance is often the best protection offered to the director. This includes: <ul style="list-style-type: none"> <li>- Appropriate structure and composition of the Board;</li> <li>- Clear delineation of responsibilities and functions between the Board and the management team;</li> <li>- Adequate information systems and an accurate paper trail to ensure minutes, meetings and KPIs are correctly recorded;</li> <li>- Timely and regular meeting practices (the Code recommends that the Board meets six times a year) to ensure the free flow of information and that the directors are kept abreast of all developments. The Code recommends that the Board maintain a formal schedule of matters specifically reserved for the decisions of the Board of</li> </ul> </li> </ul>

	Action/Issue	Comments/Notes
		directors.
29. Relief from liability due to breach of director's duty of care, negligence, breach of trust or default	<ul style="list-style-type: none"> <li>Where a director is sued for breach of any of his duties he can apply for relief from the court.</li> </ul>	<ul style="list-style-type: none"> <li>In order to apply for relief from the court, the director must have acted honestly and reasonably and the court must deem that in light of all the circumstances he ought to be excused. The court can relieve him of liability on such terms as it sees fit. (s.383)</li> </ul>
30. Can a director resign whenever he wants?	<ul style="list-style-type: none"> <li>You should follow the notice procedures laid out in either your service contract or the Articles of the company.</li> </ul>	<ul style="list-style-type: none"> <li>Where these are silent, you merely have to give the Board notice of your resignation for it to be effective.</li> </ul>
31. Protection of personal assets	<ul style="list-style-type: none"> <li>As an additional protection you can structure your personal assets in such a way so that they are held by family members or trust companies, and not directly by you.</li> </ul>	<ul style="list-style-type: none"> <li>Professional legal advice should be sought in the case of asset arrangements.</li> </ul>
32. Indemnities	<ul style="list-style-type: none"> <li>On being appointed, you can sign a letter of indemnity under which the company promises to indemnify you for any liability incurred as a result of your position as director.</li> </ul>	<ul style="list-style-type: none"> <li>This excludes indemnification for liability arising out of fraud or any illegal act.</li> </ul>
33. Insurance	<ul style="list-style-type: none"> <li>Check the company's directors' and officers' liability insurance policy and check that there is an adequate level of cover. In particular you should ensure that you are covered in respect of</li> </ul>	<ul style="list-style-type: none"> <li>You should raise any queries you have about policy cover with an independent legal adviser.</li> </ul>

	<b>Action/Issue</b>	<b>Comments/Notes</b>
	all of your responsibilities within the company as well as ensuring that there is continuing run-off policy cover, which covers you even after you retire.	