

# The International Bar Association Company Director Checklist – People's Republic of China

**Contact:** Zhou Yun  
Zhong Lun Law Firm ([www.zhonglun.com](http://www.zhonglun.com))  
[zhouyun@zhonglun.com](mailto:zhouyun@zhonglun.com)

Item	Number	Check	Item	Number	Check
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Legal status of directors	5	<input type="checkbox"/>	<b>Defences</b>		
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## Introduction

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

- listed public companies in People's Republic of China (**PRC**), listed on a regulated market, i.e. Shenzhen Stock Exchange and Shanghai Stock Exchange
  - private limited companies in PRC
- arising from the PRC law, mainly namely:
- Company Law of the PRC (**Company Law**);
  - Civil Code of the PRC;
  - Business Bankruptcy Law of the PRC;
  - Rules, guidelines and regulations for listed companies made by China Securities Regulatory Commission (**CSRC rules**) or Stock Exchange;

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

## Disclaimer

The content of this checklist is intended to provide general information. Although we endeavor to ensure that the information contained herein is accurate, we do not warrant its accuracy or completeness or accept any liability for any loss or damage arising from any reliance thereon. This checklist is informational in character only and is not intended to be comprehensive in all respects or to serve as a substitute for professional advice. In all cases, however, specific legal advice should be sought. This checklist was last updated on 4 March, 2022.

DUTIES AND OBLIGATIONS OF THE DIRECTORS			
	Action/issue	Specifics of listed public companies (if relevant)	Comments/notes
<b>Before appointment</b>			
<b>1. Items to understand</b>	<ul style="list-style-type: none"> <li>• precise nature and extent of the company's business activities;</li> <li>• skills the company needs or access to resources that the company lacks;</li> <li>• current corporate structure (corporate bodies, shares ownership – sole shareholder or multiple shareholders; potential formal corporate group structure);</li> <li>• remuneration package;</li> <li>• time commitment (term of service) required;</li> <li>• company's corporate governance framework, if any; and</li> </ul>	<ul style="list-style-type: none"> <li>• guidelines and administrative measures for the standardized operation of listed companies.</li> </ul>	<ul style="list-style-type: none"> <li>• Is the industry sector/company's business activity one that you are familiar with? Are you expected to be an industry expert?</li> <li>• Consider if joining the board would place you in a position of conflict (see section 13 herein).</li> <li>• Consider if the remuneration meets with your expectation in the context of what will be expected of you in terms of your time, skills and expertise. Note that any remuneration has to be approved by the company's general meeting.</li> <li>• Satisfy yourself as to the adequacy of the company's corporate governance.</li> </ul>
<b>2. People to meet with</b>	<ul style="list-style-type: none"> <li>• CEO/CFO;</li> <li>• other directors;</li> <li>• management team;</li> <li>• company's tax advisors (external and internal);</li> <li>• company's lawyers (external and internal); and</li> <li>• company's auditors (external and internal - audit committee), if any.</li> </ul>		<ul style="list-style-type: none"> <li>• You will be responsible for the conduct of the management team, as well as your own. Assure yourself of their integrity and competence.</li> <li>• Are you a right fit from the company's perspective, as well as from your own perspective?</li> <li>• Ascertain if there is any current litigation and the potential liability of the company.</li> <li>• Ascertain if there has been change in company auditors in recent years and the circumstances in which the change was made.</li> <li>• Ascertain if there have been any queries from regulatory authorities and the circumstances giving rise to such queries.</li> <li>• Ascertain if your inclusion on the board will change significantly the composition and independence of the board.</li> </ul>

<b>3. Documents to review</b>	<ul style="list-style-type: none"> <li>company's articles of association;</li> <li>recent board minutes and other board documents;</li> <li>recent minutes from the board of shareholders;</li> <li>company's financial reports for the past three years;</li> <li>due diligence reports prepared by external lawyers (if any);</li> <li>potential petitions for company's insolvency filed with the insolvency court;</li> <li>company's business plan and corporate strategy;</li> <li>company's insurance coverage for directors;</li> <li>press releases by the company; and</li> <li>press clippings about the company.</li> </ul>	<ul style="list-style-type: none"> <li>guidelines and administrative measures for the standardized operation of listed companies;</li> <li>annual reports, semi-annual reports and quarterly reports published in accordance with the CSRC rules;</li> <li>report on material transactions with the related persons (according to the CSRC rules);</li> <li>remuneration policy.</li> </ul>	<ul style="list-style-type: none"> <li>Consider how often the board meets, how are the meetings held, ascertain the issues raised, and how decisions are taken.</li> <li>Consider also the proposals for reform (if any) or other potential changes in the company.</li> <li>Consider the company's current financial position and its financial track record over the past three years.</li> <li>Ascertain whether there has been any change in accounting policies or practices.</li> <li>A director faces exposure to personal liability. It is therefore very important to review and assess the adequacy of the company's directors' and officers' insurance arrangements that are in place.</li> </ul>
<b>Ongoing duties</b>			
<b>4. Points for attention</b>	<ul style="list-style-type: none"> <li>How are decisions made within the company?</li> <li>What is the board's risk appetite?</li> <li>Satisfy yourself as to the internal regulation of the company and the corporate governance framework.</li> </ul>	<ul style="list-style-type: none"> <li>How is reporting (according to the CSRC rules) secured? Does the company (historically) comply with the relevant obligations resulting from the CSRC rules? Has it e.g. published duly its annual reports, semi-annual reports and quarterly reports, reports on material transaction with the related persons and any other information that has a significant impact on the value judgment or investment decision of an investor?</li> </ul>	<ul style="list-style-type: none"> <li>Understand how the board works in practice and if independent judgement is truly encouraged.</li> <li>Consider if your personality fits within that risk-taking environment.</li> <li>Consider if the company has a culture of candor, transparency and voluntary disclosure.</li> <li>Understand the company's accounting policies and practices.</li> </ul>
<b>5. Legal status of directors</b>	<p>Generally, the directors have competences (both, "internal" and "external") that are not entrusted to another body of the company by the company's articles of association, a statute or decision of a public body.</p> <p>The basic duty imposed on you is to serve with necessary loyalty and diligence. You</p>		<p>Refer to Articles 21, 147 and 148 of Company Law.</p>

	<p>have to bear fiduciary duties towards the company and comply with the duties imposed on the directors by the laws as well as by (if the following documents are in accordance with the laws) articles of association, agreements on execution of their service and other potentially relevant corporate documents (e.g., resolutions of the board of shareholders).</p>		
<p><b>6. Parties to which duties are owed</b></p>	<p>Generally, the directors owe their duty to serve with the due care of a prudent manager to the company itself and the corporate body which appointed and recalled you (usually the board of shareholders).</p> <p>If you breach your duties owed to the company, you may be removed from the office by a resolution of the competent corporate body.</p>		<p>In the event of circumstances where a director violates the provisions of laws or the articles of association of the company in his/her performance of duties and powers and causing the company to suffer damages, (1) a shareholder of a limited liability company or (2) shareholder(s) of a company limited by shares holding 1% or more of shares in total for 180 days consecutively may request supervisors to sue such director for damage on behalf of the company. If the supervisor refuses to file a lawsuit or fails to file a lawsuit in time or the circumstance is urgent, the aforesaid shareholder(s) shall have the right to suit directly in their own name.</p> <p>Refer to Article 151 of Company Law for more details.</p>
<p><b>7. Powers of the board of directors</b></p>	<p>The board of directors of a PRC company is charged with certain major management functions, including:</p> <ul style="list-style-type: none"> <li>• Convene shareholders' meetings and report to the board of shareholders;</li> <li>• Execute the resolutions passed by the board of shareholders;</li> <li>• Decide on the business plans and investment schemes of the company;</li> </ul>		<p>Refer to Articles 46 and 108 of Company Law.</p>

	<ul style="list-style-type: none"> <li>• Formulate the annual financial budget and financial accounting plan of the company;</li> <li>• Formulate the profit distribution plan and loss recovery plan of the company;</li> <li>• Formulate the plan for increase or reduction of registered capital and issue of corporate bonds;</li> <li>• Formulate the plan for merger, division, dissolution or change of company structure;</li> <li>• Decide on the set-up of internal management organisation of the company;</li> <li>• Decide on appointment or dismissal of company managers and their remuneration, and decide on appointment or dismissal of deputy managers and finance controller of the company based on the nomination by the managers;</li> <li>• Formulate the basic management system of the company; and</li> <li>• Other duties and powers stipulated by the articles of association of the company.</li> </ul>		
<p><b>8. Duty of loyalty</b></p>	<p>You are required to act in the best interest of the company and must always prefer the interests of the company to</p> <ul style="list-style-type: none"> <li>• your own interests;</li> <li>• differing individual interests of third parties (except where the law provides to the contrary);</li> <li>• interests of the company's shareholders or any entity that appointed the directors to their office (except where the law provides to the contrary).</li> </ul>		

<b>9. Duty of care</b>	<p>You are required to:</p> <ul style="list-style-type: none"> <li>• act responsibly, prudently and dutifully;</li> <li>• make informed and thoroughly considered decisions;</li> <li>• recognize threatening damage and avoid engagement of the company in any unnecessary risks (however, given the nature of a business corporation, a certain amount of risk needs to be admitted)</li> </ul>	<ul style="list-style-type: none"> <li>• confirm in writing and sign the periodic reports of the company, and ensure the veracity, accuracy and completeness of the information disclosed by the company.</li> </ul>	
<b>10. Duty to have and maintain skills</b>		<p>The directors of a listed company should have the necessary knowledge and skill to perform their duties and attend the training program to acquire such abilities.</p> <p>During the director's tenure, a director shall accept the continuing training program conducted by CSRC and obtain relevant certificates.</p>	<p>The content of training program includes knowledge of standardized operation, management and capital operation.</p> <p>Refer to Implementing Rules for Training of Directors and Supervisors of Listed Companies.</p>
<b>11. Additional duties (confidentiality, etc.)</b>	<p>It follows from the duty of loyalty that you are obliged to maintain confidentiality of all the confidential information and facts, the disclosure of which to third parties could cause damage to the company (including the company's trade secrets and know how).</p> <p>Furthermore, you have to:</p> <ul style="list-style-type: none"> <li>• comply with the ban on competition imposed on you;</li> <li>• comply with all the conflict-of-interest rules (see section 13 herein);</li> <li>• assume related liquidation responsibilities;</li> <li>• prompt shareholders to make capital contributions in time;</li> <li>• prepare or keep corporate documents in accordance with laws.</li> </ul>		<p>As regards the ban on competition, the basic rules are set out in the Company Law, however they can be modified by the Articles of Association and the agreement on performance of the director's office. The ban on competition can be agreed also for the period after the termination of the director's office.</p>



<p><b>12. Delegation of powers/authority</b></p>	<p>Overall and entire delegation of powers is in general not allowed.</p> <p>With regard to partial delegation, delegation of statutory powers such as convening by the chairman of the board of the shareholders' meetings of limited liability companies (is also not allowed. Whether the partial delegation of non-statutory powers is feasible usually depends on if articles of association or other constitution documents has expressly acknowledged such delegation.</p>		<p>Where a director would like to delegate his non-statutory powers to other people, it is recommended to check with the company in advance.</p>
<p><b>13. Conflicts of interest (inc. intragroup dealings)</b></p>	<p>If a director that is affiliated with any other enterprise is interested in a matter being reviewed by a meeting of the board of directors, this director is not permitted to exercise the voting right for that matter, nor may that director vote on behalf of any other person.</p>	<p>The director of a listed company shall notify the company of existence of its related party relationship with the company in a timely manner and the company shall then file the situation with the stock exchange for the record. When the board of directors of a listed company considers a related party transaction, the related director shall withdraw from voting and shall not exercise any voting rights as a proxy of other directors.</p>	<p>Refer to Article 124 of Company Law and Guidelines of Shanghai Stock Exchange for Self-disciplinary Regulation of Listed Companies No. 5</p>
<p><b>14. Compliance with statutory obligations</b></p>	<p>You must act with the due care of a prudent manager and hence you are generally responsible for the company's compliance with all the statutory obligations imposed on it.</p> <p>Yours' failure to ensure the company's compliance might lead to the liability for any harm incurred by the company resulting hereof.</p>		
<p><b>15. Disclosure obligations of listed companies</b></p>		<p>Directors in a listed company shall guarantee that the listed company disclose information in a timely and fair manner and that the information disclosed is truthful, accurate and complete and contains no misrepresentations, misleading statements or material omissions. Any company or person unable to guarantee</p>	<p>The disclosure obligations of listed companies are so broad that you have to familiarize yourself with the relevant market regulator's rules and obligations resulting from the relevant acts.</p>

		<p>the truthfulness, accuracy and completeness of the information contained in the announcement shall make a statement in the announcement accordingly with an explanation of the reasons therefor.</p> <p>The listed company shall disclose:</p> <ul style="list-style-type: none"> <li>• financial and accounting reports;</li> <li>• Interim report within two months following the end of the first half of each fiscal year);</li> <li>• Annual report within four months following the end of each fiscal year);</li> <li>• When a major event occurs that may considerably affect the price at which a listed company's shares are traded and that is not yet known to the investors, the listed company shall immediately submit an ad hoc report on the details of such a major event to the securities regulatory authority under the State Council and to the stock exchange and make the same known to the general public. In the report the essence of the event shall be stated clearly.</li> <li>• Listing rules provide that a listed company shall make timely disclosure when its transaction reaches several thresholds.</li> <li>• Listing rules also interpret in detail the major event which a listed company shall report to the securities regulatory authority and to the public, including: major litigations and arbitrations, change of use of proceeds, profit, distribution and transfer of public reserve into share capital, unusual price movement and clarification of rumors, merger by absorption, material matters related to</li> </ul>	
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		convertible bonds, equity changes and acquisition, bankruptcy, etc.	
<b>16. Potential liability</b>	<p><u>Civil</u> The directors shall be liable for the compensation under the following circumstances:</p> <ul style="list-style-type: none"> <li>• harm the interests of the company by taking advantage of their connection relationships;</li> <li>• participate in approving the resolution which violates any law, administrative regulation, or the company’s articles of association, and causes heavy losses to the company;</li> <li>• violate the provisions of the laws, administrative regulations, or the company’s articles of association when performing their duties.</li> </ul> <p><u>Criminal</u> The PRC Criminal Law stipulates “economic crimes” and establishes a “dual punishment” system which subjects both an entity and its management to conviction and punishment for certain economic crimes.</p> <p>The PRC Criminal Law provides that, where an entity engages in criminal activity, in addition to the imposition of penalties on the entity, penalties can also be imposed on “the personnel-in-charge” who are directly responsible for such entities.</p>		<p>The PRC Company Law sets out various types of penalties which are triggered by a breach of different duties and prohibitions. These sanctions apply to both directors of limited liability companies and companies limited by shares. Refer to Articles 21, 112 and 149 of Company Law for more details.</p> <p>Relevant categories of violations of Criminal Law include the following:</p> <ul style="list-style-type: none"> <li>• Crimes of Disrupting the Administrative Order of Companies and Enterprises (Art. 158- 169);</li> <li>• Crimes of Disrupting the Administrative Order of Financial Markets (Art. 170-191);</li> <li>• Crimes of Undermining the Taxation System (Art. 201-212);</li> <li>• Crimes Involving Infringement of Intellectual Property Rights (Art. 213-220); and</li> <li>• Crimes of Disrupting the Market Order (Art. 221-231).</li> </ul>
<b>17. Duration of duties</b>	The term of appointment of a director shall be stipulated by the articles of association of the company, but each term shall not exceed three years. Upon expiry of the term of appointment, a director may be re-elected.		The agreement on performance of the directors' office may set out that certain obligations (e.g. related to ban on competition, business secret) shall survive the termination of the office.

	You are deemed to be a member of the company's body with duty of loyalty and diligence for the entire period from the appointment to the office until your discharge/resignation from office.		
<b>Special circumstances</b>			
<b>18. Bankruptcy</b>	<p>The liquidation group of a limited liability company is composed of shareholders while directors are not included. The liquidation group of a company limited by shares is composed of directors or persons decided by the board of shareholders.</p> <p>Where the people's court accepts a case concerning any liquidation of a company, it shall designate relevant persons to form a liquidation team, and the members of a liquidation team may come from directors.</p> <p>Members of a liquidation group shall:</p> <ul style="list-style-type: none"> <li>• perform their duties diligently and perform liquidation obligations in accordance with the provisions of the law;</li> <li>• not abuse their duties and rights to accept bribes or other illegal income and shall not misappropriate company assets;</li> <li>• bear compensation liability towards the company or its creditors for damages suffered by the company or its creditors due to an intentional or serious mistake of the member(s) of the liquidation group.</li> </ul>		Any director that violates the duties of loyalty and diligence and causes the bankruptcy of his/her enterprise shall bear civil liability pursuant to the law and shall not act as a director of any enterprise within three years from the termination of bankruptcy procedures.
<b>19. Takeover bids</b>	Whether to proceed with a takeover bid is subject to the approval of competent authorities of the company, which generally shall be the shareholders meeting.	The board of directors of the target company shall investigate the entity qualification, creditworthiness and acquisition intent of the offeror, analyze the terms of the offer, make a recommendation to shareholders on whether	Refer to Articles 32, 33 and 34 of Administrative Measures on Acquisition of Listed Companies.

		<p>to accept the offer, and engage an independent financial consultant to issue a professional opinion. The board of directors of the target company shall announce a report by the board of directors of the target company and the professional opinion of the independent financial consultant.</p> <p>The board of directors of the target company shall not, without the approval of a shareholders' general meeting, dispose of the company assets, make external investment, make adjustment to the principal business of the company, provide guarantee or loans, etc. which will have significant impact on the assets, liabilities, equities or business results of the company.</p> <p>The directors of the target company shall not resign during the period of an acquisition by offer.</p>	
<p><b>20. Market abuse/insider dealing</b></p>	<p>If abuse of market position or insider dealing constitutes a breach of the duty of loyalty and diligence, directors shall be subject to relevant liabilities (see section 13 herein).</p>	<p><u>Civil</u> If you abuse insider information for insider dealing, you will be liable for the harm incurred by the investors. Furthermore, you can be discharged from the office upon resolution of the competent corporate body.</p> <p><u>Administrative</u> You may be warned or fined by CSRC.</p> <p><u>Criminal</u> Abuse of insider information and status in business relations is also crime and a penalty might get up to 10 years of imprisonment.</p>	
<p><b>Defences</b></p>			

<p><b>21. Good corporate governance</b></p>	<p>A director’s exposure to liability may be reduced if the company has in place good corporate governance practices. In this regard, a director should familiarize himself with the Company Law and relevant regulations.</p>		<ul style="list-style-type: none"> <li>• The structure and composition of the board should be appropriate according to relevant law and regulations;</li> <li>• The functions and roles of the board and its members should be clearly written in the articles of association of the company;</li> <li>• The information systems should be adequate for directors, such as reports and minutes;</li> <li>• The management supervision, reporting and decision-making structure processes and practices should be appropriate and clearly understood;</li> <li>• If there is any doubt in the mind of directors as to the legality of the subject of a board resolution or the adequacy of legal advice provided to the board with respect to the subject matter, then the directors should vote against the resolution.</li> </ul>
<p><b>22. Minutes of board meetings and publication requirements</b></p>	<p>The board of directors shall record minutes of meeting and the directors present at the meeting shall sign on the minutes of meeting.</p>		
<p><b>23. Discharge and Indemnification</b></p>	<p>The shareholders' meeting shall have the power to remove a director prior to the expiration of his/her term of office, and a director may be removed without cause so long as the procedures are lawful and the resolutions are valid.</p> <p>Where a director files a lawsuit due to a dispute between him/her and the company on compensation after he/she is dismissed, the people's court shall comprehensively consider the reasons for dismissal, the remaining term of office and the remuneration of the director so as to determine whether compensation shall be</p>		

	given as well as the reasonable amount of compensation.		
<b>24. Insurance</b>	There is no prohibition against a company taking out a D&O policy to cover the liability of directors.	With approval of general meeting of shareholders, a listed company may purchase liability insurance for directors.	<p>PRC Company Law focuses on how to strengthen the duties of directors. The limitation of directors' liabilities is not fully understood and defined. The indemnities and insurance of directors are not adequately stipulated in Company Law and relevant regulations.</p> <p>Nonetheless, it is recommended that directors consider requesting that companies obtain insurance on behalf of directors.</p>
<b>25. Resignation</b>	Review the requirements in the articles of associations; otherwise deliver your resignation in writing to the company.	<p>In general, the resignation of a director shall become effective upon delivery of the resignation report to the board. However, if the resignation of a director causes the number of the board members to fall below the quorum required by law, or if the resignation of an independent director causes the number of the independent directors to be less than one third of the board members, or there is no accounting professional among the independent directors, the resignation report shall become effective only after that there is a new director fills the vacancy.</p> <p>Before the resignation report takes effect, the director who plans to resign shall continue performing duties in accordance with laws, regulations, the relevant provisions and the articles of association.</p>	Refer to Article 4.3.10 of Listing Rules of Shanghai Stock Exchange
<b>26. Restructuring of assets</b>	Whether to accept a restructuring plan is subject to the approval of competent authorities of the company, which generally shall be the shareholders meeting.	For a material asset restructuring of a listed company, its board of directors shall pass a resolution pursuant to the law and submit the resolution to a shareholders' general meeting for approval. The listed company's board of	

		directors shall make a specific judgment on whether the material asset restructuring constitutes a related party transaction and disclose the same as a board resolution matter.	
<b>27. ESG and D&amp;I policies, metrics, reports</b>	<p>PRC law does not provide for any mandatory obligations regarding ESG policy for non-listed companies.</p> <p>As you are considered as an employer, in relation to D&amp;I you should follow the Labor Law of the PRC where the equal treatment of all employees and prohibition of their discrimination is stipulated directly.</p>	CSRC has revised the Guidelines on Governance of Listed Companies by increasing the chapters of stakeholders, environmental protection and social responsibilities, and stipulates that listed companies shall, according to laws and regulations and the requirements of relevant authorities, disclose environmental information (E), social responsibilities including poverty alleviation (S) and corporate governance information (G).	