

# The International Bar Association Company Director Checklist – the Czech Republic

**Contact:** Dagmar Dubecká ([ddubecka@ksb.cz](mailto:ddubecka@ksb.cz))  
Vlastimil Pihera ([vpihera@ksb.cz](mailto:vpihera@ksb.cz))

*Kocián Šolc Balaštík, advokátní kancelář, s.r.o. ([www.ksb.cz](http://www.ksb.cz))*

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

## Introduction

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

- private limited companies (limited liability companies); and
- joint-stock companies;

with their registered office in the Czech Republic, including public joint-stock companies listed on a regulated market (primarily the Czech markets Prague Stock Exchange and RM-SYSTEM), arising from Czech law, namely:

- Act No. 90/2012 Coll., on business corporations and cooperatives, as amended (the “Corporations Act”);
- Act No. 89/2012 Coll., Civil Code, as amended (the “Civil Code”); and
- Act No. 256/2004 Sb., on Capital Market Business, as amended (the “CMB Act”).

Since the majority of the companies in the Czech Republic are private, we are focusing primarily on private companies; however, for specifics of listed public companies (in comparison with private), please see the third column of this checklist below. Please note that we are not describing the applicable EU Directives and EU Regulations, although the majority of them have been implemented into or reflected in Czech law.

Just as an explanatory note: in the case of limited liabilities companies, the directors are called executives (in Czech “jednatelé”); in the case of the joint-stock companies, they are either members of the Board of Directors (in Czech “představenstvo”) or of the Administrative Board (in Czech “správní rada”). Joint-stock companies may choose between a one-tier system or two-tier system. The main duties and liabilities of the executives and the BoD’s members (or of the Administrative Board, as the case may be) are the same. With regard to the directors of public – listed – companies, the main difference is that they have to prepare and publicize on a timely basis various documents/information in accordance with the relevant law, in the Czech Republic in particular with the CMB Act.

## Disclaimer

This checklist is informational in character only and is not intended to be comprehensive in all respects or to serve as a substitute for professional advice. In all cases, however, specific legal advice should be sought. This checklist was last updated on 12 February 2022.

<b>DUTIES AND OBLIGATIONS OF DIRECTORS</b>			
	<b>Action/issue</b>	<b>Specifics of listed public companies (if relevant)</b>	<b>Comments/notes</b>
<b>Before appointment</b>			
<b>1. Items to understand</b>	<ul style="list-style-type: none"> <li>• Precise nature and scope 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 – <i>koncern</i>);</li> <li>• Remuneration package;</li> <li>• Time commitment (term of service) required;</li> <li>• Collective bargaining agreement (if any)</li> <li>• Company's corporate governance framework, if any; and</li> <li>• Requirements and prerequisites for serving as a member of the statutory body.</li> </ul>	<ul style="list-style-type: none"> <li>• Corporate governance codes/standards the company adheres to, if any;</li> <li>• Remuneration policy complying with the requirements of the CBM Act;</li> <li>• Implementation of AML/CFT rules on the company level, especially the policies in relation to managers' transactions such as "closed periods" and notification procedures;</li> <li>• Rules of the markets on which the company's shares (or other securities) are traded.</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>• Ascertain if the company has registered its UBO and if the company forms a formal corporate group.</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> <li>• Ascertain that you meet the requirements and prerequisites for serving as a member of the statutory body set out by the statutory provisions (good character, non-existence of impediments to carrying on a trade etc.).</li> </ul>
<b>2. People to meet with</b>	<ul style="list-style-type: none"> <li>• Other directors (incl. members of the supervisory board);</li> <li>• CEO/CFO;</li> <li>• Compliance &amp; internal audit directors; and</li> <li>• Company's auditors (external and internal - audit committee), if any.</li> </ul>	<ul style="list-style-type: none"> <li>• Members of the audit committee;</li> <li>• Members of the remuneration committee, if any.</li> </ul>	<ul style="list-style-type: none"> <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> </ul>

			<ul style="list-style-type: none"> <li>• Ascertain if there has been a 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 financial/regulatory authorities and the circumstances giving rise to such queries.</li> <li>• Ascertain if your inclusion on the board will significantly change the balance 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 company's general meeting;</li> <li>• Company's annual reports;</li> <li>• Company's annual reports on relations with other interrelated entities, if any;</li> <li>• Financial data for the past three years;</li> <li>• Potential petitions for the 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>• Remuneration policy (published in accordance with CBM Act);</li> <li>• AML/CFT policy and other internal policies;</li> <li>• Rules of the markets on which the company's shares (or other securities) are traded;</li> <li>• Semi-annual reports;</li> <li>• Reports on material transactions with the related persons (according to the CMB Act).</li> </ul>	<ul style="list-style-type: none"> <li>• Consider how often the board meets, how the meetings are held, ascertain the issues raised, and how decisions are taken.</li> <li>• Consider also 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> </ul>	<ul style="list-style-type: none"> <li>• How is the company's attitude to the diversity, corporate responsibility and CRS ideas and how are they reflected in internal policies?</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 the given risk-taking environment.</li> </ul>

	<ul style="list-style-type: none"> <li>• Satisfy yourself as to the internal regulation of the company and the corporate governance framework.</li> <li>• Familiarize yourself with the company's corporate group; check whether the company has duly registered its UBO(s); check the persons deemed to be "related" to the company (the definition of related persons is quite broad under Czech law).</li> </ul>	<ul style="list-style-type: none"> <li>• Does the company have implemented a relevant reporting system vis-à-vis the Czech National Bank and relevant regulated markets?</li> <li>• Is the company paying sufficient attention to insider dealing and managers' transactions?</li> <li>• Is there any a share-buy-back program and does it comply with the MAR applicable rules?</li> </ul>	<ul style="list-style-type: none"> <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 <b>all competences</b> (both, "internal" and "external") that are <b>not entrusted to another body</b> 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 <b>serve with the due care of a prudent manager</b> and with <b>necessary loyalty and required knowledge and thoroughness</b> (see Section 159(1) of the Civil Code).</p> <p>You have to <b>comply with the duties imposed on directors by the laws as well as by</b> (if the following documents are in accordance with the laws) <b>articles of association, service agreements</b> and other potentially relevant <b>corporate documents</b> (e.g., resolutions of the general meeting).</p>		<p>Please note that nobody is authorized to give the directors any instructions related to the business management, except for situations in which directors request the general meeting to give a specific instruction and except where the law provides to the contrary.</p> <p>A director is always obliged to check compliance of the general meeting's/sole shareholder's decision with the applicable law. In the case of profit distribution, the director has to check whether the distribution (even if approved by the general meeting/sole shareholder) respects the relevant criteria set out by the Corporation Act. If a distribution is in contradiction with the law, the directors who approve it are considered not to act with the due care of a prudent manager (and are thus liable).</p>
<b>6. Parties to which duties are owed</b>	<p>Generally, as a director you owe your duty to <b>serve with the due care of a prudent manager to the company itself and the corporate body which appointed and recalled you (usually the general meeting).</b></p>		<p>In the case of a joint-stock company, any "qualified" shareholder (holding 3% or 5% of total shares – depending on the amount of the company's registered capital) is entitled to ask the supervisory board to review the discharge by the directors of their duties and,</p>

	<p>If you breach your duties owed to the company, you can be <b>removed</b> from the office by a resolution of the competent <b>corporate body</b>, or (in very specific cases) by decision of the competent <b>court</b> (a motion could be filed by any entity having an important legal interest, e.g., the company's shareholder, creditor etc.).</p>		<p>in specific cases, is also entitled to sue a director (for damage) on behalf of the company and represent the company in the relevant court proceedings.</p> <p>The directors are usually appointed by the company's general meeting; however, they can also be appointed by the supervisory board (if so determined by the relevant Articles of Association).</p>
<p><b>7. Powers of the board of directors</b></p>	<p>Generally, the Board of Directors are endowed with:</p> <ul style="list-style-type: none"> <li>• <b>internal powers</b> towards the company (i.e., to manage the course of company's business, etc.); and</li> <li>• <b>external powers</b> to act on behalf the company and represent it vis-à-vis third parties (enter into agreements etc.).</li> </ul> <p><u><b>Internal powers</b></u>  You are in charge of the company's <b>business management</b>, which can generally be defined as:</p> <ul style="list-style-type: none"> <li>• steering the company;</li> <li>• organizing and managing the company's business;</li> <li>• adopting decisions on the company's business plans; and</li> <li>• deciding the company's organizational, technical, business, personnel, financial and other day-to-day operational issues.</li> </ul> <p>List of examples of business management:</p> <ul style="list-style-type: none"> <li>• Operational matters (supplies, sales or advertising, financial strategies, loans, etc.);</li> </ul>		<p><b>The director's powers may be delegated.</b>  In general, internal and external delegation of the powers of the statutory body (as a whole) is permissible, unless a different conclusion follows from the law or the company's founding legal act in a particular case. The delegation of competence shall be decided by the statutory body. The decision must specify which area is the subject of the delegation and to whom it is entrusted. In future, only the delegated person shall decide on matters falling within the area in question. The powers may be delegated on one of the members of the statutory body, employee or third party.</p> <p>Delegation does not relieve the duty of care of a prudent manager. The members of the statutory body are thus responsible for proper selection, control of the exercise of the delegation and provision of the necessary cooperation.</p> <p>In practice, specialized areas are most often delegated, the management of which requires special knowledge, skills or abilities that (other) members of the statutory body lack (e.g., bookkeeping).</p>

	<ul style="list-style-type: none"> <li>• Acquisition/transfer of assets;</li> <li>• Decisions whether to raise a claim in court to collect a company's receivable;</li> <li>• Decisions on whether the company is to pay its debts;</li> <li>• Decisions on relocation of the company's premises;</li> <li>• Employee-related issues - their management, hiring, training, remuneration, creation of job assignments.</li> </ul> <p>You also have duties and responsibilities regarding, inter alia:</p> <ul style="list-style-type: none"> <li>• the <b>company's compliance with the laws and its articles of association</b>;</li> <li>• adopting <b>final decisions regarding pay-outs</b> of the company's profit and its other own resources; and</li> <li>• <b>reciprocal supervision and control</b> of service conducted by other directors.</li> </ul> <p><b><u>External powers</u></b></p> <p>You are entitled to (juridically) <b>act on behalf of the company</b> (e.g., to conclude contracts, grant a power of attorney to a third party to represent the company etc.) in <b>the manner set out by the company's articles of association</b>.</p> <p>Notwithstanding the manner of the company's representation (distribution/delegation of signing rights), the directors are <b>responsible for the monitoring</b> the execution of other directors' service.</p>		<p><b>For details, see point 12.</b></p>
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<b>8. Duty of loyalty</b>	<p>You are required to act in the best interest of the company and must always prioritize <b>the interests of the company over:</b></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); and</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 <b>responsibly, prudently and dutifully;</b></li> <li>• not only to <b>seek to preserve the company’s assets</b> but to <b>increase</b> them as much as possible - to be <b>proactive;</b></li> <li>• <b>make informed and thoroughly considered decisions;</b></li> <li>• <b>recognize threatening damage and avoid engagement of the company in any unnecessary risks</b> (however, given the nature of a business corporation, a certain amount of risk needs to be admitted); and</li> <li>• <b>avoid disinterest or dilatory and irresponsible approach</b> vis-à-vis the directors’ service.</li> </ul>		<p>The duty to act thoroughly (with due care) is closely associated with the <b>duty to be informed</b>, i.e.:</p> <ul style="list-style-type: none"> <li>• <b>to obtain reasonably available</b> (both factual and legal) <b>information regarding the decision in</b> a particular matter prior to adopting such decision (information on the consequences, risks and available alternative scenarios and to carefully assess the possible advantages and disadvantages (identifiable risks) of the respective decision);</li> <li>• to be <b>informed of the company’s losses/profits, threatening damage, business opportunities, and how the delegated powers are being exercised</b> (for details, see point 12).</li> </ul>
<b>10. Duty to have and maintain skills</b>	<p>In general, you <b>do not have to be equipped with the expertise, skills, or abilities necessary to perform all activities</b> that fall within the scope of the directors’ authority.</p>		

	<p>However, <b>if you have</b> certain expertise, skills, or abilities, you are <b>obliged to use them</b> in the performance of your duties - within the limits of your capabilities.</p> <p>If you acknowledge/must have acknowledged that you are <b>unable to comply with the respective duties</b> to act with the due care of a prudent manager, you have to <b>draw conclusions for yourself</b> (e.g. to consult certain issues with a competent professional or to resign from the office in case of a permanent obstacle preventing you from performing your service)' <b>otherwise</b>, you are presumed to <b>breach</b> your duties by acting with <b>negligence</b>.</p>		
<p><b>11. Additional duties (confidentiality, etc.)</b></p>	<p>It follows from the <b>duty of loyalty</b> that you are obliged to <b>maintain confidentiality</b> of all the confidential information and facts, the disclosure of which to third parties could cause damage to the company (incl. the company's trade secrets and know-how).</p> <p>Furthermore, you have to:</p> <ul style="list-style-type: none"> <li>• <b>comply with the ban on competition</b> imposed on you;</li> <li>• <b>comply with all the conflict-of-interest rules;</b></li> <li>• <b>obtain</b> all the <b>corporate consents/approvals</b> of the juridical acts to be performed on behalf of the company, if relevant;</li> <li>• <b>act</b> on behalf of the company <b>in a manner set out by the articles of association</b> (i.e., do not act on behalf of</li> </ul>	<p>Directors of listed companies face the risk of breaching the insider trading prohibition or the rules on managers' transactions. They often neglect to report their trades in the company's shares to the Czech National Bank, for which they face relatively severe penalties.</p> <p>Specific directors' duties (in particular the duty of impartiality) are imposed in the context of takeover bids (in the Act on Takeover Bids).</p>	<p>The conflict-of-interest rules are set out in the Corporations Act. The conflict-of-interest rules are applicable not only to certain relationships between the director and the company, but also to persons related to the director. The definition of "related person" is quite broad, and includes e.g. relatives of the director (not only direct ones), controlled persons, etc.</p> <p>As regards the ban on competition, the basic rules are set out in the Corporations Act; however, they can be modified by the Articles of Association and the director's service agreement. The ban on competition can be agreed also for the period after the termination of the director's office.</p>

	<p>the company without another competent director(s), if relevant);</p> <ul style="list-style-type: none"> <li>• <b>cooperate</b> with and <b>comply</b> with your obligations <b>vis-à-vis other competent corporate bodies/entities</b> (if relevant), such as supervisory board, audit committee, guardian, liquidator, insolvency administrator, etc.;</li> <li>• duly conduct your <b>duties of control and supervision</b> of any entity to which you delegated your powers (see point 12 for details);</li> <li>• duly <b>manage and conduct the internal corporate issues</b>, including <b>convening of general meetings</b>, to ensure that the <b>prescribed records and accounts are duly and properly kept</b>, and <b>drawing up and filing the corporate documents</b>; and</li> <li>• fulfil the <b>company's obligations vis-à-vis its shareholders</b>.</li> </ul>		
<p><b>12. Delegation of powers/authority</b></p>	<p>You are <b>not required to exercise all of the directors' powers alone</b>, but you are allowed to delegate certain decision-making powers to lower-tier managers, e.g., the company's senior employees or third parties such as external accountants (i.e., <b>vertical delegation of powers</b>) or the respective powers may be delegated/distributed among the directors themselves (i.e., <b>horizontal delegation of powers</b>).</p>		<p>While delegating powers (including, e.g., the powers to act on behalf of the company via a power of attorney), you are required to act with the due care of a prudent manager, so that you have to:</p> <ul style="list-style-type: none"> <li>• select the respective party as any other reasonably diligent person would have done (<b>responsibility for selection</b>);</li> <li>• define clear terms of reference for the selected person and provide all necessary information, cooperation and guide the selected person</li> </ul>

	Strategy formulation, policy making and monitoring and supervision functions of directors are non-delegable.		<p><b>(responsibility for terms of reference, guidance and cooperation);</b></p> <ul style="list-style-type: none"> <li>adequately control the exercise of the delegated authority, not only personally but also by means of properly set control mechanisms (<b>responsibility for control</b>); and</li> <li><b>withdraw</b> the delegated powers without undue delay from any <b>party</b> that <b>failed to act duly and in the interests of the company</b>.</li> </ul>
<b>13. Conflicts of interest (inc. Intragroup dealings)</b>	<p>If you ascertain that your interests may conflict with the interests of the company during the performance of your duties (e.g., you/your close person/person controlled by you intend to enter into any contract with the company), you have to inform the other executives and the company's supervisory board/general meeting without undue delay in this regard.</p> <p>Subsequently, the relevant corporate body of the company is entitled to:</p> <ul style="list-style-type: none"> <li>temporarily suspend you from the performance of your duty in conflict; or</li> <li>forbid you from entering into the respective agreement.</li> </ul> <p>In such a case, you have to respect such measures and cannot perform any action subject to suspension/prohibition.</p>		<p>A director shall not vote on any matter in respect of which he/she has a conflict of interest.</p> <p>The conflict-of-interest rules can be extended by the Articles of Association; however, they cannot be narrowed.</p>
<b>14. Compliance with statutory obligations</b>	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>If you delegate your powers, you continue to be responsible for the selection, terms of reference, information, guidance, cooperation, and control of the person to which the respective powers were delegated.</p> <p>Your 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</b></p>	<p>You are responsible for the publication of all the company's relevant information/documents as required by law, such as:</p> <ul style="list-style-type: none"> <li>• Publication of financial statements;</li> <li>• Publication of a report on the company's business activities and on the state of its assets (if relevant);</li> <li>• Publication of the report on relations (if relevant);</li> <li>• Publication of the annual report (if relevant);</li> <li>• Keep registers and filings up to date (such as information obligatory registered in the public registers);</li> <li>• Publication of the relevant up-to-date information on the company's website;</li> <li>• Registration of the UBO; and</li> <li>• Publication of relevant corporate issues to the company's shareholders and creditors, if relevant (e.g. contemplated transformations, decrease of registered capital, etc.).</li> </ul>	<p>The disclosure obligations of public companies are broader due to the implementation of the transparency directive (2004/109/EC) and accounting directive (2013/34/EU) in the CMB Act.</p>	<p>Please note that the Czech implementation of the UBO register pursuant to the V. AMLD is specific by sanctioning the failure to register the UBO by specific "national" civil-law sanctions. The Czech Beneficial Ownership Register Act stipulates the unenforceability of contracts by which the identity of the beneficial owner is concealed. It further provides for a ban on the payment of dividends or other distributable sources of commercial corporations to the unregistered beneficial owner or to any other legal person or trustee of a trust structure, if the unregistered beneficial owner is also their beneficial owner. The act also provides for a general seizure of the voting rights of such persons.</p>

<p><b>16. Potential liability</b></p>	<p>In the case of a breach of the duty to act with the due care of a prudent manager or other obligations related to the directors' service, you can be held liable by either "civil (personal) liability" or "criminal liability".</p> <p><u>Civil liability</u> The <b>civil liability</b> may give a rise to your:</p> <ul style="list-style-type: none"> <li>• obligation to <b>provide the company</b> (or in some unique cases its <b>shareholders</b>) with <b>full compensation for the harm</b> incurred by the company (or in some unique cases by its <b>shareholders</b>);</li> <li>• obligation to <b>return benefits obtained/transfer rights to the company</b> in the case of a violation of the ban on competition;</li> <li>• <b>statutory guarantee for the company's debts</b> to the extent to which you failed to compensate the harm (if the <b>creditors</b> are unable to recover the performance from the company);</li> <li>• <b>expulsion from the statutory bodies</b> of any business corporation (including the company) up to 3 years from the legal force of the decision on expulsion; and</li> <li>• obligation to <b>provide consideration to the insolvency estate</b> (in the case of the company's bankruptcy).</li> </ul> <p><u>Criminal liability</u> The directors' breach of duty to act with the due care of a prudent manager may result in criminal liability.</p>	<p>Please see the notes on insider trading under point 11 above.</p> <p>The specific responsibility for information included in prospectus in accordance with the prospectus regulation (EU) 2017/1129 could be mentioned here. The directors are usually the only persons signing the prospectus for the issuer as responsible person in the Czech Republic. However, we do not yet have any case law that sheds light on the possible scope of directors' liability for the prospectus.</p>	<p>As mentioned under point 6 above, a "qualified" shareholder is entitled to file suit against the director (for damage) on behalf of the company and represent the company in the relevant court proceedings.</p> <p>As the <b>general standard</b> of acting with the due care of a prudent manager is <b>strict</b> and might lead to undesirable excessive liability of the directors, the Corporations Act sets out protection for business decisions adopted by the directors, i.e., the so-called "<b>business judgment rule</b>" providing the directors with "<b>safe harbor</b>".</p> <p>It follows from the business judgment rule that the duty to <b>act with the due care of a prudent manager</b> (on an informed basis and thoroughly) is <b>deemed to have been complied</b> with if you:</p> <ul style="list-style-type: none"> <li>• <b>could have reasonably presumed</b> that you are acting on an <b>informed basis</b>;</li> <li>• <b>in the interest of the company</b>; and</li> <li>• your actions do <b>not constitute a breach</b> of their <b>duty of loyalty</b>.</li> </ul> <p><b>Specific rules</b> apply in a <b>corporate group holding structure</b> for the directors of the company that is a "dependent entity".</p> <p>You <b>may be released</b> from your liability for any harm incurred by the company provided that the company would not end up bankrupt as a result of acts by the "dominant entity" towards the company (the "dependent entity") and if it is proved that:</p>
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	<p>Typically, there is delinquency involving a <b>breach of duty in the management of another's property</b> which can be <b>committed</b> either <b>deliberately</b> or by <b>gross negligence</b>.</p> <p>If there is <b>no damage</b> incurred by the company, the executives may be punished for <b>attempted delinquency</b>.</p> <p>You <b>cannot be released</b> from criminal liability even if it is proven that you <b>acted upon instructions from a third party</b>.</p>		<ul style="list-style-type: none"> <li>• The company's harm occurred in the interests of the "dominant entity" or another entity with whom it constitutes a concern; and</li> <li>• The respective damage was or will be settled within the corporate group, i.e., if it was or will be compensated within a reasonable period and within the corporate group <i>via</i> adequate consideration or other demonstrable benefits arising from the membership in the corporate group.</li> </ul> <p>Any person (e.g. creditor, former employee, shareholder etc.) can notify the police of a criminal breach of director duties. It should be noted that often this becomes the preferred scenario by the claimants as there are no costs attached to notifying the police while the civil proceedings can be quite costly.</p>
<p><b>17. Duration of duties</b></p>	<p>You are deemed to be a member of the company's body with the <b>duty of loyalty</b> for the entire period from the appointment to the office until your discharge/resignation from office, i.e., <b>24/7</b>.</p> <p>As a result, you <b>cannot do anything which is manifestly contrary to the interests of the company</b>, even when you are not performing the duties directly related to the execution of your office.</p> <p>Upon the termination of your office, you <b>are obliged to hand over to the company</b></p>		<p>If you act "on behalf of the company" even after your term of office has ceased as if you were still the company's director, you are liable for potential harm incurred by the company to the same extent as if your term of office lasted. In the event of a breach of the duty to act with due care, you are liable for any harm incurred by the company resulting from your conduct as if you were the director of the company. It is irrelevant whether you did not know about the termination of your office or whether you knew about it and yet deliberately disregarded it.</p>

	<p><b>everything belonging to the company and in your possession</b> and if you <b>fail</b> to do so, you are obliged to <b>compensate</b> the company for the harm incurred thereby.</p>		<p>The director's service agreement may set out that certain obligations (e.g. related to the ban on competition, trade secrets) shall survive the termination of the office.</p>
<b>Special circumstances</b>			
<b>18. Bankruptcy</b>	<p><b>You are obliged to file an insolvency petition</b> without undue delay after becoming aware, or with due diligence should you become aware, of the company's insolvency.</p> <p>You are obliged to take <b>the solvency test before you pay out a share of company profits or other own resources</b>. The payout cannot be done if this would cause the company to become insolvent.</p> <p>During the bankruptcy proceedings, generally, an insolvency administrator (insolvency trustee) is appointed in the insolvency declaration issued by the insolvency court. From that moment on, the debtor's right to administer and dispose of assets belonging to the insolvency estate is transferred to the insolvency administrator. If the debtor disposes of assets after the opening of insolvency proceedings, such disposals are ineffective or invalid (unless the Czech Insolvency Act states otherwise). <b>The directors are therefore normally not involved in insolvency proceedings. However, they have duties of disclosure and cooperation in order to assist the insolvency administrator, the insolvency court and</b></p>		<p>See also the liabilities associated with the bankruptcy of the company in point 16.</p> <p><b>The solvency test</b> consists of assessing whether the company is insolvent, i.e., primarily if the company is in the status of illiquidity (the company has multiple creditors and payment obligations overdue for more than 30 days, and is unable to meet its payment obligations) or over-indebtedness (company's assets (considering potential positive going concern prognosis) no longer cover its liabilities (the balance sheet test)).</p>

	<p><b>creditors' bodies with the fulfilment of their duties.</b></p> <p><b>The situation is different in formal reorganization</b> (one of the methods of bankruptcy resolution), in which the debtor's <b>management remains in possession (in the director's hands)</b>. However, the company's rights to dispose of assets is limited, and each material disposal of assets requires the prior consent of the creditors' committee and the insolvency administrator.</p>		
<b>19. Takeover bids</b>	<p>The public proposal of the contract shall be published in the manner in which the company's general meeting is convened in accordance with the law and the company's articles of association.</p>	<p>In the case of a takeover, you have in particular the following obligations:</p> <ul style="list-style-type: none"> <li>• to inform the employees;</li> <li>• to act prudently and prevent any actions that could impede the takeover; and</li> <li>• to prepare a written opinion on whether the takeover bid is in the interest of the company, offerees, employees and creditors.</li> </ul>	<p>The takeover is regulated by Act No. 104/2008 Czech Coll, the Takeover Act. More detailed information on takeover bids, including on obligation of director in a take-over proceeding, is included in specific guidelines on take-over bids published by IBA – MA committee.</p>
<b>20. Market abuse/insider dealing</b>		<p>This legal sphere is governed primarily by (EU) 596/2014 Market Abuse Regulation (MAR) with no additional "national" rules. The breach of those rules can be sanctioned by administrative sanctions imposed by the Czech National Bank; however, they can also be qualified as criminal delicts or trigger the civil law responsibility for damage.</p>	
<b>Defense</b>			

<p><b>21. Good corporate governance</b></p>	<p>The directors are in charge of the company's business management and represent the company in all matters. In particular, some of these duties include:</p> <ul style="list-style-type: none"> <li>• <b>ensuring that the prescribed records and accounts are duly and properly kept and that the shareholders list is administrated;</b></li> <li>• <b>informing the shareholders</b>, upon request, at the company's general meeting about any company-related matters relevant for assessment of the matters on the agenda of the general meeting;</li> <li>• <b>disclosing financial statements</b> or main facts shown therein in the manner prescribed by law and by the Articles of Association for convening the general meeting at least 30 days before the date of the general meeting, including a specification of the time and place where the financial statements are available for review;</li> <li>• <b>drawing up the full wording of the Articles of Association</b> and filing them with the Collection of Deeds of the Commercial Register after becoming aware of any change (in detail see point 15.).</li> </ul>	<p>Czech listed companies shall in their annual reports provide information about the codes of corporate governance to which it complies with or that it does not comply with any code (comply or explain). Please note that in the Czech Republic there is the "old" corporate governance code of the Czech Security Commission from 2004 and the "new" corporate governance code of the Czech Institute of Directors from 2018. Both could be characterized as a transposition of OECD principles of corporate governance. However, none of them is universally accepted.</p>	
<p><b>22. Minutes of board meetings and publication requirements</b></p>	<p>Minutes of meetings shall:</p> <ul style="list-style-type: none"> <li>• <b>be drawn up and signed by the chairman and the minute taker;</b></li> <li>• <b>document the course of the board of directors' meetings and its decisions;</b></li> </ul>		<p><b>In the case of an individual statutory body</b>, a record should be made about the decision taken.</p> <p>The law does not prescribe the obligation to publish the minutes; however, it is strongly</p>

	<ul style="list-style-type: none"> <li>• <b>contain the attendance list</b> as an attachment to the minutes; and</li> <li>• <b>specify by name the members of the board</b> who voted against the particular decisions or abstained (members not specified by name shall be deemed to have voted in favor of the relevant decision).</li> </ul>		<p>recommended to keep them for evidentiary purposes (proving due diligence etc.).</p> <p>The minutes are quite an important evidence factor in the event that a lawsuit is brought against the director for his/her liability.</p>
<b>23. Discharge and Indemnification</b>	<p>The court may decide, even without a petition, that a member of the statutory body of a business corporation who has <b>repeatedly or seriously violated his or her duties in the performance of his or her duties</b> in the last 3 years prior to the commencement of the proceeding <b>may not serve as a member of the statutory body of any business corporation for up to 3 years from the legal effect of the decision on discharge.</b></p> <p>Each qualified shareholder is entitled to claim damages on behalf of the company against a member of the board.</p> <p>If you are obliged to indemnification for breach of the duty of due care, the company may <b>settle the damage pursuant to a contract entered into with you; the consent of the highest body of the company adopted by at least a two-thirds majority vote of all members is required</b> for the contract to be effective.</p>		For indemnification see also the liability in point 16.
<b>24. Insurance</b>	<b>Czech law does not require professional liability insurance</b> , although it is common practice to have in place D&O insurance. The		

	company is allowed to pay the premiums for this insurance as part of your remuneration.		
<b>25. Resignation</b>	<p><b>You have the right to resign from office without being obliged to state the reasons for doing so.</b> The form of resignation may be prescribed by the Articles of Association. However, written form is recommended. Resignation is either made at the general meeting or delivered to the general meeting.</p> <p><b>The term of office shall end on the date on which the resignation was or should have been considered by the body of the company which appointed you to the position.</b> If you announce your resignation at the meeting of the body of the company which appointed you to the position, your office shall terminate upon the expiration of 2 months after such announcement, unless the competent body, at your request, approves a different time of termination.</p>		
<b>26. Restructuring of assets</b>	<p>Since there are no specific out-of-insolvency restructuring proceedings regulated by statute in the Czech Republic, <b>only insolvency proceedings can be initiated.</b> In general, the law requires that representative bodies are fully aware of the financial situation of the company at all times, especially during financial difficulties. <b>They have to undertake reasonable efforts to overcome the reasons for insolvency, e.g. by pursuing restructuring measures with immediate effect.</b></p>		

	<p><b>You shall also convene the general meeting</b> without undue delay after becoming aware that the company is threatened with bankruptcy.</p>		
<p><b>27. ESG and D&amp;I policies, metrics, reports</b></p>	<p>Although there is not as yet specific Czech regulation in respect of ESG and D&amp;I issues, applicable EU regulation (as discussed below) currently applies to the finance and investment industry.</p> <p>Nevertheless, standards of evolving norms in international corporate governance, particularly with respect to Czech companies that are part of a larger global holding, make it prudent for Czech company directors to pay due regard to ESG and D&amp;I issues in the operations and management of Czech company operations. This applies particularly for example to annual reports, where metrics for a given year may be set forth for a Czech subsidiary of a global holding group.</p> <p>ESG and D&amp;I policies will be of particular relevance in supply chain issues and vetting by potential purchasers or business partners. Accordingly, a lack of consideration for ESG risk could potentially be considered a breach of fiduciary responsibilities or, at a minimum, a reputational cost.</p> <p>The EU’s Sustainable Finance Disclosure Regulation (SFDR), which came into effect in March 2021, is very broad in its regulatory approach, covering nearly all asset managers, investment product providers, and financial advisors that operate within the EU. Under the SFDR, all EU asset managers (whether or</p>		

	<p>not they are focused on sustainability) are now asked to publicly disclose: their approach to incorporating sustainability considerations; their investment decisions; any “adverse impacts” investments may have on environmental or social factors; and any sustainability risks that may impact investment performance. Financial products marketed as having ESG characteristics or a “sustainable investment” objective will face additional reporting requirements intended to discourage greenwashing.</p> <p>By mandating that financial advisors and managers in the EU approach climate and sustainability as a fundamental investment risk, the new ESG regulations will transform the global standard for risk management and establish new normals of best practice. EU company directors and managers in the finance/investment field who do not begin to take steps to integrate corporate ESG factor data may be at risk of finding themselves out of step with evolving risk-management standards.</p>		
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