

The International Bar Association Company Director Checklist – England and Wales

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Introduction

This Company Director Checklist has been designed as a practical guide to the main duties of directors of companies that are incorporated in England and Wales, which are traded on the London Stock Exchange and which have a premium listing with the Financial Conduct Authority.

Obligations that are relevant only to public companies with shares admitted to trading on the Main Market of the London Stock Exchange and with a premium listing on the Official List of the Financial Conduct Authority are highlighted in the second column of the checklist.

A reference to a 'company' in this checklist is to a listed company, unless stated otherwise.

Disclaimer

This checklist is not exhaustive. It is a general guide only and is not intended to be and should not be used, or relied on, as a substitute for professional advice on specific transactions or problems and should not be taken as providing legal advice on any of the topics discussed. This checklist is updated as at 31 March 2022.

DUTIES AND OBLIGATIONS OF THE DIRECTORS			
	Action/issue	Specifics of listed public companies (if relevant)	Comments/notes
Before appointment			
1. Items to understand	Understand: <ul style="list-style-type: none"> • why you have been approached; • the company's business; • what you can contribute to the company; and • what the company can offer you. 	Ensure you are familiar with the key legal requirements applicable to the management of a listed company under (for example) the FCA Handbook, the Corporate Governance Code and the Market Abuse Regulation.	You should ensure from the outset that you: <ul style="list-style-type: none"> • fully understand the company's expectations for your appointment; • have the relevant expertise to meet those expectations; • are willing and able to make a valuable contribution to the governance of the company; • have the necessary available time; and • will be sufficiently remunerated for your proposed contribution.
2. People to meet with	Meet: <ul style="list-style-type: none"> • the other directors, including recently retired directors; • senior management; and • the company's accountants, auditors and lawyers. 	Meet with the company's internal or external legal counsel to understand your specific obligations and potential liabilities as the director of a listed company.	You will be investing time in the company and may also have an ongoing financial interest in the company through shares, share options or other employee benefit schemes. You therefore need to have confidence in the company's existing directors, management and advisors, by conducting due diligence on the key people, for example, by: <ul style="list-style-type: none"> • reviewing the CVs of the directors and key managers; • running an internet search on the company, the directors and the key managers; and • understanding how the company is managed and to whom the primary areas of management responsibility fall.
3. Documents to review	Review: <ul style="list-style-type: none"> • the company's articles of association; • the company's group structure; • the company's business plan; • the last three years' annual accounts and 	Review: <ul style="list-style-type: none"> • the last year's market announcements; and the last three years' public documents (such as shareholder circulars and prospectuses). 	<ul style="list-style-type: none"> • Have unusual items explained. • Look for trends or fluctuations. • Where fair value is appropriate, have intangible assets been properly valued and correct impairment charges been

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	<ul style="list-style-type: none"> reports; the last three years' half-yearly reports and quarterly reports or interim management statements; all management accounts since last reports; the directors' remuneration policy and reports (if applicable); the last year's board papers and minutes; any recent general meeting and annual general meeting minutes; the last year's press cuttings; the company's D&O insurance policy; and management recommendations from the auditors. 		<p>made?</p> <ul style="list-style-type: none"> What powers do the directors have and what restrictions are they subject to? Has the background to any negative press been explained to you? Have management recommendations from the auditors been complied with?
4. Points for attention	<ul style="list-style-type: none"> Frequency and manner of board meetings Company's financial position Corporate governance track record, e.g. whether filing deadlines and record-keeping requirements are consistently met. 	Company's record of complying with its obligations under the FCA Handbook, Corporate Governance Code and the Market Abuse Regulation	<p>Be alive to the following:</p> <ul style="list-style-type: none"> Whether any one director appearing to have unfettered decision making powers. Whether non-executive directors constructively challenge and check executive directors and other management. The financial position of the company. The risks you are potentially exposing yourself to by assuming the role. The adequacy of corporate governance, including: <ul style="list-style-type: none"> induction processes and ongoing training to update skills and knowledge; the effectiveness of reporting procedures;

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			<ul style="list-style-type: none"> ○ the ease of full access to information; and ○ whether there have been any corporate governance issues historically.
5. Legal status of directors	<p>The directors are responsible for the day-to-day management of the company's business.</p> <p>The Companies Act 2006 (the "Act") imposes seven general duties on directors:</p> <ul style="list-style-type: none"> • to act within powers; • to promote the success of the company; • to exercise independent judgment; • to exercise reasonable care, skill and diligence; • to avoid conflicts of interest; • not to accept benefits from third parties; and • to declare interests in proposed transactions or arrangements with the company. <p>A few of these duties are considered in further detail below.</p>		
6. Parties to which duties are owed	<p>The directors owe their general duties to the company. It is the company that will be able to enforce the directors' duties. There are, however, certain circumstances in which the shareholders and creditors of the company may be able to bring a claim against the directors.</p>		

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7. Powers of the board of directors	The directors will typically be authorised by the company's articles of association to exercise all the powers of the company. In favour of a third party acting in good faith, a director will have apparent authority to enter transactions on behalf of the company (s. 40 of the Act).		
8. Duty of loyalty	<p>Section 172 of the Act provides that a director must act in the way they consider, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole (s. 172(1)).</p> <p>In so doing, the director must have regard (among other matters) to:</p> <ul style="list-style-type: none"> • The likely consequences of any decision in the long term. • The interests of the company's employees. • The need to foster the company's business relationships with suppliers, customers and others. • The impact of the company's operations on the community and the environment. • The desirability of the company maintaining a reputation for high standards of business conduct. • The need to act fairly as between members of the company. <p>Large companies must include a statement in their strategic report describing how the directors have had regard to the factors relevant to the duty to promote the success of the company.</p>		<ul style="list-style-type: none"> • The list of factors at s. 172 of the Act is not exhaustive. In having regard to these factors and any others of which you take account, you must exercise the duty of care, skill and diligence, which is discussed in more detail below. • There is no statutory definition of what promoting the success of the company for the benefit of its members as a whole means. Some commentators argue that it means a long-term increase in value. Any decision by you as to what will promote the success of the company for the benefit of its members as a whole will be one made in good faith. The section 172(1) duty is subject to any legal requirement for the directors to act in the interests of the creditors of the company, discussed further at row 18.

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9. Duty of care	<p>Section 173 of the Act requires a director to exercise independent judgment.</p> <p>This duty is not infringed by a director acting:</p> <ul style="list-style-type: none"> • in accordance with an agreement entered into by the company (e.g. a joint venture agreement or shareholders' agreement) that restricts the future exercise of discretion by the directors; or • in a way authorised by the company's constitution. 		<p>You can rely on the advice of experts when carrying out your duties, but you need to exercise your own judgement in appointing the right expert and in deciding whether to follow that expert's advice.</p>
10. Duty to have and maintain skills	<p>Section 174 of the Act requires a director to exercise the care, skill and diligence that would be exercised by a reasonably diligent person with:</p> <ul style="list-style-type: none"> • the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company (objective test); and • the general knowledge, skill and experience that the director actually has (subjective test). 		<ul style="list-style-type: none"> • At a minimum, a director must display the knowledge, skill and experience set out in the objective test, but where a director has specialist knowledge, skill or experience, the higher subjective standard must be met. • Regard will be had to your functions within the company, including your particular responsibilities and the circumstances of the company. • Case law tells us that you have a duty individually and collectively with your fellow directors, to acquire and maintain sufficient knowledge and understanding of the company's business to enable you to properly discharge your duties. • Every member of the board should be provided with ongoing training at the company's expense to enable you to act in accordance with this duty. If there is no culture of regular training, be

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			proactive in creating one.
11. Additional duties (confidentiality, etc.)	<p>The seven general duties set out in the Act codify a corresponding set of common law rules and equitable principles.</p> <p>When interpreting and applying the statutory duties, regard should continue to be had to the earlier common law rules and equitable principles.</p> <p>Certain common law and equitable duties which have not been codified, such as the duty of confidentiality, continue to be relevant.</p>		
12. Delegation of powers/authority	The company's articles will often permit a director to delegate some or all of their duties to a third party.		The exercise of a power of delegation does not absolve a director from the duty to supervise the discharge of the delegated functions. Failure to do so will constitute a breach of the director's duty to exercise reasonable care, skill and judgment.
13. Conflicts of interest (inc. intragroup dealings)	Section 175 of the Act requires directors to avoid situations in which they have, or can have, a direct or indirect interest or duty that conflicts or possibly may conflict with the interests of the company.		<ul style="list-style-type: none"> • The s. 175 duty applies in particular to the exploitation of property, information or opportunity, regardless of whether the company could take advantage of that property, information or opportunity. • The s. 175 duty does not apply to a conflict of interest in relation to a transaction or arrangement with the company. In this situation, the director would, however, still need to declare their interest to the board under s. 177. • The board can authorise a director's

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			<p>conflict of interest provided that, in the case of a private company, nothing in the articles prohibits an authorisation and, in the case of a public company, the articles specifically permit an authorisation. The interested director may not count in the quorum or vote on the authorisation resolution.</p> <ul style="list-style-type: none"> • On your appointment to the board, you should declare all of your other directorships and, if they are able and they think fit, the board will authorise your other directorships. Going forward, you need to declare to the board each further directorship that you intend to take on. • Check the company's constitution for any other specific provisions regarding conflicts. • Even if a potential conflict situation has been authorised or approved by the company and/or its constitution, you must be careful to fulfil your obligation to promote the success of the company.
14. Compliance with statutory obligations	<p>Your duty to exercise reasonable care, skill and diligence makes you generally responsible for the company's compliance with the statutory obligations binding it.</p> <p>You are responsible for supervising the statutory compliance of any person discharging functions you delegate to them.</p>		<ul style="list-style-type: none"> • You are entitled to reasonably rely on legal advice, and must take such advice where it is necessary and appropriate to do so. • You should take into account the advice and expertise of others when considering the company's compliance with statutory obligations, but you are ultimately responsible for the implementation of that advice.

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15. Disclosure obligations	<p>As a director you are obliged to make disclosures in a variety of circumstances. For example:</p> <ul style="list-style-type: none"> You should tell the board of your own or another director's wrongdoing where doing so is consistent with the duty to act in good faith in the interests of the company. Any conflicts of interest which arise during the course of your directorship. These are explained further at row 13. 	<p>Where you or persons closely associated with you transact in shares or other financial instruments of the company, you must (using a prescribed form) notify both the company and Financial Conduct Authority promptly and no later than three business days after the date of the transaction. It is important that you check whether the company has imposed an earlier deadline on when you need to notify it.</p> <p>A person closely associated with you includes your spouse or civil partner, dependent child, a relative you have lived with, and certain legal persons like companies.</p> <p>Generally, a director of a listed company cannot transact its shares, debt instruments or financial instruments within the 30 days prior to the company publishing any report it is required to publish by the rules of its trading venue. These include interim financial reports and the year-end report.</p>	<ul style="list-style-type: none"> You should take legal advice in relation to your specific disclosure obligations. The rules apply to you and your connected persons. There is specific information that you must give in relation to each disclosure. Board guidance on your disclosure obligations would be useful.
16. Potential liability	<p>Disclosure</p> <p>The company is under various disclosure obligations, including:</p> <ul style="list-style-type: none"> providing information to shareholders; issuing reports and accounts at specified times; keeping certain documents available at its registered office for inspection; and filing information with Companies House, which will be open to public viewing. <p>Failure to disclose can be a civil or criminal offence, sometimes considered to be</p>	<p>Directors of a listed company must ensure that due regard is paid by the company to the Listing Principles and the Premium Listing Principles. The FCA is prepared to take enforcement action for a breach of the Listing Principles and the Premium Listing Principles alone, regardless of whether any specific FCA rule has also been breached.</p> <p>A listed company may be liable to compensate a shareholder who suffers loss consequent to a misleading statement or omission. Directors</p>	<ul style="list-style-type: none"> You should speak to the company's auditors, accountants, lawyers and financial advisers as appropriate. The board should have taken thorough advice on the company's and its directors' competition law obligations. You should review this advice fully and raise any specific queries with the company's legal advisers.

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	<p>committed by the company and all of its directors, and punishable by fines or disqualification.</p> <p>It is a statutory obligation to record the minutes of all board meetings. Further, these minutes must be kept for at least 10 years. A failure to do so is a criminal offence committed by every director.</p> <p>Competition If the company breaches competition law, you may be personally liable.</p> <p>Environment The general duties discussed above mean that in promoting the success of the company, you are required to have regard to environmental matters. The annual business review also needs to contain information on environmental matters.</p> <p>Certain breaches of environmental law in England may lead to personal criminal and/or civil liability.</p> <p>Health and safety The general duties discussed above mean that, amongst other things, you are required to have regard to the interests of your employees.</p> <p>You can be found personally liable for health and safety breaches and you should therefore take specific legal advice on your duties. This</p>	<p>may be liable to the company if the statement or omission relates to an annual directors' report, strategic report or directors' remuneration report.</p>	<ul style="list-style-type: none"> You should speak to your fellow directors and take specific legal advice on any environmental legislation that may apply to the company's business in each country in which it conducts its business. Ensure you review all policies and protocols the company has in place. As the directors can be liable for failing to prevent bribery and for the actions of their staff, you should also review the training records to ensure that staff are aware of their obligations under the Act. You should be particularly aware of the company's approach to corporate hospitality as this can constitute bribery in some situations. Directors can face high fines and criminal liability including prison sentences of up to 10 years. Care must be taken to ensure you are aware of your duties and implement the required safeguards to protect against market abuse. Detailed consideration of the scope of the market abuse is beyond the scope of this note.

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	<p>generally requires wrongdoing for liability to arise.</p> <p>Tax Potential personal liability may arise in respect of the company's failure to comply with tax law, including for tax avoidance or evasion.</p> <p>Anti-bribery The Bribery Act applies to any company which is incorporated in the United Kingdom or does any business in the UK, even if the offence takes place outside the UK.</p> <p>If a company commits a bribery offence with the consent of a director then that director will be personally liable for an unlimited fine and up to ten years' imprisonment.</p> <p>Market abuse The Market Abuse Regulation governs the regulation of insider trading and insider lists and market manipulation.</p> <p>Apart from personal liability, where a director engages in fraudulent or wrongful trading or has been found guilty of other misconduct in connection with a company and is held to be unfit by the court, he may under the Company Directors Disqualification Act 1986 be disqualified by court order for up to fifteen years from acting as a director or from having any involvement in the promotion, formation or management of a company.</p>		

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17. Duration of duties	<p>Most of your duties to the company will end when you cease to be a director. Some of those duties will continue to apply, with the same penalties for breach as if you had breached them while you were a director:</p> <ul style="list-style-type: none"> You cannot exploit any property, information or opportunity which you became aware of when you were a director, as this would constitute a conflict of interest. You cannot accept benefits from anyone in relation to actions which you took, or chose not to take, while you were a director, as this would constitute a conflict of interest. 		<p>Seek legal advice on whether a conflict of interest can reasonably be said to exist if you are in this position and wish to benefit.</p> <p>Where a conflict of interest may arise with respect to property, information or opportunity, the current directors of the company are able to authorise that conflict in accordance with the company's articles of association. Note the further detail at row 13.</p>
Special circumstances			
18. Bankruptcy	<p>You may be personally liable to contribute to the company's assets if at any time before insolvent liquidation you know (or ought to have known) that there is no reasonable prospect of the company avoiding an insolvent liquidation, and you fail to take every step to minimise potential loss to the company's creditors as a whole. At such time your duty to act in the company's best interests is second to your duty to consider the interests of the company's creditors.</p> <p>The standard required as to what you ought to know, the conclusions you ought to reach and steps you ought to take is that which would be known by someone with your actual skill, knowledge and experience (as well as the skill, knowledge and experience that you</p>		<ul style="list-style-type: none"> As soon as you believe that the company is or may shortly become insolvent, take legal advice. You may be personally liable for wrongful trading under the Insolvency Act. Very broadly, the question you need to ask yourself is whether the company has a reasonable prospect of avoiding insolvent liquidation. In the UK, a company's solvency depends on its ability to pay debts when they fall due and the value of its assets in relation to its contingent and prospective liabilities. If the answer is no, then to avoid potential personal liability for wrongful trading, you must take every step to minimise loss to the company's creditors

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	<p>ought to have) who is fulfilling your functions within the company.</p> <p>A liquidator (or administrator) can obtain a court order setting aside certain transactions made when the company was insolvent, or which caused the insolvency and which were made at an undervalue. A transaction is at an undervalue if the company receives no consideration for it, or significantly less consideration than it provides itself. The liquidator (or administrator) may also set aside transactions which “prefer” any creditor of the company.</p>		<p>as a whole, which may mean ceasing trading.</p> <ul style="list-style-type: none"> • Consider your conflicts – do you know information that you are duty-bound to share with your fellow directors?
19. Takeover bids	<p>Additional restrictions apply to bidders, targets and their directors on takeovers.</p> <p>In addition to a your general duties, you must also comply with the City Code on Takeovers and Mergers, including accepting responsibility for all documents published in connection with a bid and providing shareholders with enough information to reach an informed decision.</p>		<ul style="list-style-type: none"> • Seeking early legal advice is essential. • Detailed consideration of the scope of the City Code on Takeovers and Mergers is outside the scope of this Checklist. • Where there are competing or hostile bids for the company’s shares, you will need to weigh up very carefully the factors to which you should be having regard.
20. Market abuse/insider dealing	<p>You cannot engage in market manipulation, meaning behavior which may give false or misleading signals that could affect the price of a financial instrument. This includes, for example, the dissemination of rumours.</p> <p>It is an offence to knowingly mislead someone about the market for a financial instrument issued by your company if it induces them to trade, or refrain from</p>	<p>You are responsible for ensuring compliance with a listed company’s primary obligation to publicly announce inside information which directly concerns the company as soon as possible. You must not disclose inside information outside the course of carrying out your duties to the company.</p> <p>Listed companies would be well advised to appoint a disclosure committee to consider</p>	<ul style="list-style-type: none"> • You should ensure the company has robust procedures for identifying inside information and how to treat it. • If in doubt as to communication about inside information, seek legal advice.

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	trading, in that instrument.	and approve the making of appropriate public announcements.	
Defences			
21. Good corporate governance	<p>It goes without saying that you are less at risk of personal liability where the company is well run. Some of the basic matters to look for are:</p> <ul style="list-style-type: none"> • board division – there should be clear division between running the board and management of the company’s business; • non-executives – there should be constructive challenge from non-executive directors on the board; • knowledge – the board should have a broad bank of knowledge, experience and skills; • reporting and risk – there should be effective corporate reporting and risk-management procedures; and • there should be effective information systems. 	Premium-listed companies are subject to the UK Corporate Governance Code 2018 on a comply or explain basis. As part of this, half of the board excluding the chair must be made up of non-executive directors, whom the board consider to be independent.	<ul style="list-style-type: none"> • The chair and the chief executive should not be the same person. • Board division – no one person should have overriding influence. • Knowledge – effective, reward-based remuneration packages are helpful in ensuring a high-quality board. • Reporting and risk – areas of individual responsibility should be clearly delineated; there should be effective reporting lines and meeting practices. • Information – board papers should be clear and access to information easy.
22. Minutes of board meetings and publication requirements	<p>It is a statutory obligation to record the minutes of all board meetings. Further, these minutes must be kept for at least 10 years. A failure to do so is a criminal offence committed by every director.</p> <p>There is no statutory obligation to publish board minutes, and shareholders have no statutory right to view board minutes.</p>		<ul style="list-style-type: none"> • Board minutes are evidence of the proceedings of the board. You should consider carefully what is appropriate or necessary to record in the minutes to evidence that you have observed your responsibilities to the company and complied with your legal and regulatory duties. • Check your company’s constitutional documents to see if they vary how minutes are recorded or provide rights of shareholders to access the minutes.

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23. Discharge and Indemnification	The company can indemnify you, very broadly, against most liabilities other than where they are owed to the company or where they relate to criminal proceedings in which you are convicted.		<ul style="list-style-type: none"> • Check the company's constitution for the extent of the indemnity the company proposes to offer you. This should then be documented in a separate deed of indemnity. • While the board are prohibited from discharging from liability a director who has committed a default in relation to the company, the shareholders may be willing to pass a resolution to ratify the director's default.
24. Insurance	The company will commonly take out insurance to insure its directors against most of their potential liabilities.		<ul style="list-style-type: none"> • No insurance can provide cover for loss due to fraud, dishonesty, wilful default or criminal behaviour. • Financial Conduct Authority-regulated companies cannot take out insurance to pay a penalty (rather than any related compensation) imposed by the Financial Conduct Authority on a company's director. • Check that the company has full cover for you.
25. Resignation	Deliver a written letter of resignation to the company, unless the company's constitution or your contract specify otherwise.		Subject to the constitution, it will be effective on the date stated in it. Resignation may not prevent personal liability. For example, even if the company were to become insolvent after your resignation you could still incur liability for wrongful trading during your tenure.

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26. Restructuring of assets	<p>Your day to day duties continue to apply during a corporate restructuring. Relatively few statutory requirements touch on the restructuring process as compared with formal insolvency proceedings. However, if your company is restructuring while facing insolvency (as discussed above), you will need to consider the company's creditors' interests in your decision-making.</p>		<ul style="list-style-type: none"> • If you consider that your company is facing insolvency, take legal advice on your duties. • Directors are responsible for production of a business plan and fall back plan for formal insolvency if the restructuring fails. • Minutes of a board meeting where restructuring is discussed should record that you have taken into account any specific policies adopted in relation to governance, risk, financial management, record keeping and potential litigation. If you think a creditor's interest may intrude such that the creditor's interest duty is activated, that should be reflected in the minutes in full.
27. ESG and D&I policies, metrics, reports	<p>ESG issues, from improving gender and ethnic diversity to reducing a business' environmental impact, have gained importance for boards in the last few years.</p> <p>As an employer, you must ensure the company puts in place policies which comply with legislation relevant to creating an inclusive workplace.</p> <p>Your company must publish a gender pay gap report if it employs more than 250 people as of 5 April each year.</p> <p>Many companies, including those with turnover of more than £500 million, are required to make a statement in their annual report confirming the extent to which they have made disclosures in the annual report which are consistent with the</p>	<p>Note that all listed companies (other than investment entities or shell companies) are required to make disclosures in the annual report which are consistent with the recommendations of the Task Force on Climate-Related Financial Disclosures (or otherwise explain why they have not done so). The UK Corporate Governance Code 2018 emphasises considering stakeholders in the company. Stakeholders are concerned with the 'corporate purpose' of companies as formulated by the board.</p> <p>There is an expectation amongst stakeholders that the corporate purpose does not solely focus on short-term returns for members; but that it seeks to balance the creation of long-term shareholder value with creation of value for other stakeholders such as local</p>	<ul style="list-style-type: none"> • Failure to sufficiently consider wider stakeholder engagement will not only affect the reputation of a company but could result in directors breaching their fiduciary duty to promote the success of the company, as well as the related fiduciary duty to exercise reasonable care, skill and diligence (which is described in general terms below). • In addition to considering the reputational impact on the company of any decisions or failures to act, directors should also have regard (amongst other things) to: <ul style="list-style-type: none"> (i) risks and potential risks that could be incurred by the company; and (ii) the resilience of the company's strategy.

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	recommendations of the Task Force on Climate-related Disclosures (TCFD) (or otherwise explain why they have not done so).	<p>communities which the company operates in and/or impacts, whether such value is from an environmental, social or governance perspective or otherwise.</p> <p>Directors must ensure that statements of corporate purpose are not only clear and carefully considered following engagement with stakeholders, but that the corporate purpose is promoted and delivered at all levels of the business, with accountability for delivery and alignment of the culture of the company with such purpose resting with the board.</p>	<ul style="list-style-type: none"> • From an ESG perspective, risks such as the transition risks associated with the move towards a low-carbon economy, liability risks (including litigation) from increased transparency and disclosure by a company and the potential impact of physical events such as a change in temperature due to climate change have received greater attention from companies in recent years. • Recommended climate-related disclosures include describing the impact of climate-related risks and opportunities on the company's businesses, strategy and financial planning, and describing the resilience of the company's strategy, taking into consideration different climate-related scenarios. • Interlinked with the need to identify and assess risk, directors need to ensure that the company is resilient and is able to prevent, adapt, respond to, recover and learn from such risks. • As evidenced by the COVID-19 pandemic, directors also need to ensure that their strategy is resilient to supply chain issues and that the company and its suppliers have sufficient monitoring/reporting processes in place.