

The International Bar Association Company Director Checklist – Nicaragua

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Item	Number	Check	Item	Number	Check
Before appointment			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"/>	Special circumstances		
Documents to review	3	<input type="checkbox"/>	Bankruptcy	18	<input type="checkbox"/>
Ongoing duties			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"/>	Defences		
Parties to which duties are owed	6	<input type="checkbox"/>	Good corporate governance	21	<input type="checkbox"/>
Powers 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

- listed public companies in Nicaragua, listed on a regulated market, i.e. [*Bolsa de Valores de Nicaragua*] - private limited companies in Nicaragua

arising from the following Nicaraguan legislation, namely:

- Civil Code of the Republic of Nicaragua
- Commercial Code of the Republic of Nicaragua
- Law No. 587 “Law of Capital Markets”

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

In Nicaragua, the Capital Markets Laws and our Commercial Code prescribe that any corporation (“*sociedad anónima*”) or other mercantile entities duly incorporated can participate in the Capital Markets, be it issuing shares or issuing debt securities (bonds). Nicaraguan Capital Market is just blooming and there are no particular rules for the Directors of Companies that participate in such markets. Therefore, the general rules prescribed in our Commercial Code for these types of entities (“*sociedades anónimas*”) shall apply.

Entities that issue securities are subject to the compliance of Law No. 587 “Law of Capital Markets” and to the supervision and registration at the Superintendence of Banks and other Financial Institutions. This Checklist includes some references to the Nicaraguan Banking legislation as banks are also supervised institutions.

Disclaimer

This checklist is general and should not be relied on for advice. Consortium Legal and the authors disclaim any liability in respect of anything done in reliance on this publication. This checklist was prepared based on the most common concerns of Directors in these entities (“*Sociedades Anónimas*”) and does not follow any specific order as the duties and liabilities are spread out in Nicaraguan legislation. 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 March 8, 2022.

DUTIES AND OBLIGATIONS OF THE DIRECTORS			
	Action/issue	Specifics of listed public companies (if relevant)	Comments/notes
Before appointment			
1. Items to understand	Analyze the functions defined for the Board of Directors in the bylaws of the company. These usually include: <ul style="list-style-type: none"> • Accountability to shareholders • Any type of authorization related to any administrative act of the company (as long as there are no restrictions in the bylaws). 		The Board of Directors is the authority in charge of the administration of the company. The bylaws of the company establish the powers, duties and functions that this authority will have.
2. People to meet with	<ul style="list-style-type: none"> • Other Directors • General Manager • Shareholders • Tax advisor • Lawyer 	<ul style="list-style-type: none"> • Auditors • Compliance Officer 	
3. Documents to review	<ul style="list-style-type: none"> • company's articles of association; • recent board minutes and other board documents; • recent minutes from the company's general shareholders meeting; • company's annual reports on its business activities; • financial data for the past years; • company's business plan. 	<ul style="list-style-type: none"> • Any special request from the regulator (Superintendence of Banks and Other Financial Institutions) 	
Ongoing duties			
4. Points for attention	<ul style="list-style-type: none"> • How are decisions made within the company? • Review the corporate governance framework. 	<ul style="list-style-type: none"> • Does the company comply with the relevant obligations established in the Capital Markets Act? 	<ul style="list-style-type: none"> • Understand how the board works in practice.

5. Legal status of directors	The Board of Directors must be elected in a general shareholder’s meeting, by the period established in the bylaws (10 years maximum) and must be registered before the Public Mercantile Registry.		The Company's bylaws establish the positions to be held by the Board of Directors, which by law must have a minimum of a President and a Secretary. The faculties for each position are established in the bylaws.
6. Parties to which duties are owed	The Board of Directors has a duty to manage the company and each member of the Board (President, Secretary, among others) has its own duties as established in the bylaws of the company.		
7. Powers of the board of directors	The powers of the Board of Directors are established in the bylaws of the Company. In general terms, the Commercial Code establishes that this is an administrative body of the company.		The Board of Directors may delegate its powers.
8. Duty of loyalty	The directors of any corporation may not personally engage in the same trade or industry as those of the corporation, except in those cases in which there is a special authorization expressly granted by the General Meeting of Shareholders.		
9. Duty of care	Our laws establish general obligations for the Directors to act according to the law, the Articles of Incorporation of the respective entity and in the best interest of the organization. Our Civil Code establishes a general principle under which if a person must fulfill an obligation, he/she shall have the diligence of a “good father of family” in performing such task. Therefore, the duty is discharged by directors who comply with their obligations with the care that a diligent man would have in his personal businesses.		

10. Duty to have and maintain skills	There are no legal requirements to hold certain abilities in order to be appointed as Director of a corporation. However, the Articles of Incorporation could require certain expertise in some cases.		
11. Additional duties (confidentiality, etc.)	As a consequence of the general obligations of the Board, Directors should: <ul style="list-style-type: none"> • comply with the ban on competition; • comply with the conflict-of-interest rules; 		
	<ul style="list-style-type: none"> • obtain the corporate consents for the actions to be performed on behalf of the company, if relevant; • act on behalf of the company according to the principles of the articles of incorporation. 		
12. Delegation of powers/authority	The Board of Directors may delegate its faculties to a particular Director or to a third party, for certain acts.		
13. Conflicts of interest (inc. intragroup dealings)	If you consider that you may face a conflict of interest you should report such circumstance to the Board to see if there is a waiver that may be obtained or if you should refrain from a particular act or agreement.		
14. Compliance with statutory obligations	The Board of Directors, as the body in charge of the administration of the company must ensure that the company complies with all its legal duties in general.	Companies regulated by the Superintendence of Banks and Other Financial Institutions must comply with specific AML regulations, in addition to the general legal standards with which all other unregulated companies must comply.	

15. Disclosure obligations of listed companies	The Board of Directors shall monitor that the disclosure obligations of the company are fulfilled.		There are some specific obligations of companies to disclose some of its basic information, mostly the ones that by law must be registered in the Public Mercantile Registry or in specific cases that must be publicly in a national and official newspaper.
16. Potential liability	In general terms, directors are not liable if they acted with the diligence and care required by the law.		
17. Duration of duties	The duration of duties of the Directors lasts until their period is over. The maximum term for the Directors to be on the Board is 10 years, but each bylaws regulate this term and establish if they can be reelected.		
Special circumstances			

<p>18. Bankruptcy</p>	<p>The Criminal Code establishes that directors of a bankrupted company who participated in the bankruptcy are liable for the crimes of fraudulent bankruptcy or bankruptcy caused by negligence or imprudence. There is fraudulent bankruptcy when the person, causing a damage to his creditors: simulates debts, alienations, expenses or losses; steals or hides assets that belong to the bankrupt's estate, or does not justify their disposition or cancellation; gives wrongful advantages to any creditor; deceitfully transfers or disposes of moveable or immovable properties before the bankruptcy is declared; falsifies balances; sells assets; and carries parallel accounting books or carries them falsely. There is bankruptcy caused by negligence or imprudence when the person declares to be bankrupted or provokes the bankruptcy, causing damage to his creditors, due to his excessive expenses in relation to his personal assets, disastrous speculations, games, abandonment of his businesses or any other negligent or imprudent act.</p>	<p>Our banking law does not regulate this matter nor does the Law on Capital Markets.</p> <p>It is common that prospectuses include guarantees to protect investors.</p>	
<p>19. Takeover bids</p>		<p>The Law of Capital Markets establishes that any member of the Board of Directors of a company registered in the Securities Registry, is obliged to report to the affected company, to the stock exchanges where these shares are traded and to the Superintendent about any transactions carried out with his or her shareholdings in said company, regardless of the amount or volume.</p>	

20. Market abuse/insider dealing		<p>The Law of Capital Markets establishes that members of the Board of Directors of:</p> <ul style="list-style-type: none"> • Companies registered in the Securities Registry, 	
		<ul style="list-style-type: none"> • companies that are shareholders of companies registered in the Securities Registry, • Risk rating companies who have privileged information must refrain from carrying out, directly or indirectly, any type of transaction in the market on the securities to which such information refers, and must also refrain from communicating such information to third parties or from recommending transactions with such securities. 	
Defences			
21. Good corporate governance		<p>The Superintendence of Banks and Other Financial Institutions has a Corporate Governance Regulation.</p>	
22. Minutes of board meetings and publication requirements	<p>The minutes of the board meetings are recorded in the company's minutes book. Depending on the resolutions, some of them need to be registered if it is required by law, but if not, they don't have to be publicized.</p>		

<p>23. Discharge and Indemnification</p>	<p>The directors of corporations are not personally or jointly liable for the obligations of the corporation, but they are personally and jointly liable with the corporation and with third parties for the non-execution of the mandate and for the violation of the bylaws and legal precepts. Directors who have not taken part in the respective resolution or have protested the resolutions of the majority in the act or within the act or within the third day, will be exempted from this liability.</p>		
<p>24. Insurance</p>	<p>Our commercial legislation does not regulate the indemnification to members of a Board of Directors for damages or losses suffered as a result of acting as such, nor the purchase of</p>	<p>The Law of Capital Markets does not regulate this matter either.</p>	<p>However, the Banking Law (Ley General de Bancos) establishes that members of the Board of Directors of banks are personally and jointly liable for the damages caused to the bank for authorizing prohibited</p>

	D&O insurance for the members of a Board of Directors.		operations, and for the acts performed or resolutions taken by the Board of Directors in violation to the laws, the regulations issued by the Superintendent of Banks, the instructions and orders of the Superintendent, the regulations issued by the Central Bank and other applicable regulations. Only Directors who reflect their dissident vote in the minutes of the correspondent meeting, and those absent from the meeting in which the resolution was taken and from the meeting in which the respective minutes were approved, are exempted from being considered personally and jointly liable. Since the purpose of such regulation is to protect the bank's assets by imposing personal and joint liability to the members of the Board of Directors, then the indemnification by the bank to the members of the Board of Directors could be hired to cover any losses or damage caused to the Bank or to third parties, without protecting the Directors from gross negligence or willful misconduct.
25. Resignation	Directors may resign from the Board of Directors at any time during their term.		
26. Restructuring of assets	The relationship between the directors and the company's assets is limited solely to the management of those assets.		
27. ESG and D&I policies, metrics, reports	There are no specific regulations regarding ESG policy. In relation to D&I, the Nicaraguan Labor Code establishes that all employees must be treated equally, regardless of their differences.		

