

THE INTERNATIONAL BAR ASSOCIATION COMPANY DIRECTOR CHECKLIST – SPAIN

Contact:

Alejandro Payá
Cuatrecasas, Barcelona
alejandro.paya@cuatrecasas.com

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"/>	Insolvency	18	<input type="checkbox"/>
Ongoing duties			Takeover bids	19	<input type="checkbox"/>
Points for attention	4	<input type="checkbox"/>	Market abuse/insider trading	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 (e.g., confidentiality)	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 (incl. 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

- Spanish listed companies (ie, Spanish public limited companies listed on the Spanish Regulated Markets), and
- Spanish limited liability companies (*Sociedad anónima – Sociedad limitada*)

arising from the following regulations:

- Spanish Companies Act (LSC)
- Spanish Insolvency Act (LC)
- Spanish Securities Market Act (LMV) and its implementing provisions
- Good Governance Code for Listed Companies (GGC)
- The Spanish National Securities Market Commission's (CNMV) guides and recommendations
- Commercial Code (CCom)
- Market Abuse Regulation (596/2014/EU) ("MAR") and its implementing provisions

Any specifics relevant to listed public companies are set out in the third column of the checklist below.

Disclaimer

This checklist is for informational purposes 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 in February 2022.

DUTIES AND OBLIGATIONS OF THE DIRECTORS			
	Action/issue	Specifics of listed public companies (if relevant)	Comments/notes
Before appointment			
1. Items to understand	<p>Before their appointment, directors should understand:</p> <ul style="list-style-type: none"> the company’s business; why they have been approached and what they are expected to contribute; if appointed as director of a company, the structure and form of the company’s management body and your position in it; and the remuneration for the position as director of the company. 	<p>If appointed as member of the board of directors of a listed company, directors should understand:</p> <ul style="list-style-type: none"> the class of director they will be; if they will be on any board committees, and the duties and prohibitions associated to the position; the importance of allocating sufficient time and complying with overboarding policies (as recommended by the GGC); and if they have had access to inside information, they are bound by market abuse regulations, even if they are not yet a board member. 	<p>Directors are advised to:</p> <ul style="list-style-type: none"> understand the expectations the company holds as to their appointment and the relevant expertise and time they will need to meet those expectations; ensure that no other duties place them in a conflict of interest with the proposed appointment; be aware of any risks they are potentially exposing themselves to when accepting the office; check whether their personal circumstances disqualify them from becoming a director (213 LSC); and check whether they may incur a conflict of interest if appointed as director. Directors cannot conduct activities—on their own behalf or on behalf of others—that would imply any real or potential competition against the company, unless authorized by the company by means of a shareholders meeting resolution. (229.1.f LSC).
2. People to meet with	<p>Directors should meet:</p> <ul style="list-style-type: none"> the rest of the current directors, and where appropriate, former directors; senior management including the CEO and the CFO; and 	<ul style="list-style-type: none"> Pre-appointment meetings will be influenced by the future role of each director in the company. For example, if appointed for their skills in areas such as sustainability or cybersecurity, it may be advisable to meet with key managers or 	<p>Directors are advised to:</p> <ul style="list-style-type: none"> understand how the company is managed and who is responsible for the primary areas of management;

	<ul style="list-style-type: none"> the company's accountants, auditors and lawyers. 	<p>directors in those specific areas. In the case of a prospective independent director, it may be advisable to meet with the lead independent director.</p> <ul style="list-style-type: none"> In addition to the information listed in the next column, it is important for directors to understand the shareholder profile and the investor relations policy. 	<ul style="list-style-type: none"> obtain a briefing on the company's history and strategy; obtain the company's business plan and any consultant's reports issued in the past three years; understand major performance drivers and key performance indicators; obtain a SWOT analysis of the company; review the background/resumes of the current directors and other key members of the senior management team; understand relationships and roles within the senior management team. find out who the key suppliers and clients of the company are; understand the status and nature of relationships with employees and unions; obtain an industry briefing and information on the company's competitors; obtain the accountants' and auditor's input and perceptions on the historical accounts and disclosure issues; understand key legal relationships and any past or current litigation, and issues with compliance and regulators; and check whether the company has implemented a compliance program.
3. Documents to review	Director should review:	For a listed company, they should also review: <ul style="list-style-type: none"> regulations governing the GSM and the board of directors (512, 513, 528 and 529 LSC); 	Directors are advised to: <ul style="list-style-type: none"> review the annual accounts for trends, abnormal losses, and change

	<ul style="list-style-type: none"> • all relevant information recorded at the Commercial Registry (<i>Registro Mercantil</i>),¹ including at least: <ul style="list-style-type: none"> - the company's bylaws; - annual accounts and reports of the last three years; - general powers of attorney of recent years; and - any resolutions and acts recorded over the past years; • the general shareholders meeting (GSM) and the board of directors' minutes and resolutions for the previous three years; • directors and officers (D&O) insurance; • key agreements of the company, including debt agreements and employment agreements of the company's senior management; and • press clippings from the previous three years. 	<ul style="list-style-type: none"> • regulations governing the board committees, if any; • shareholders agreements regulating the exercise of voting rights at the GSM or restricting share transfer, if any (530–535 LSC); • board skills matrix, if any; • previous three years' performance evaluation of the board of directors and the resulting action plans (529 nonies LSC); • external board performance evaluation, if any; • succession planning affecting the board and senior management positions; • previous three years' resolutions and reports of the board committees (i.e., audit committee; committees for appointment and remuneration; and any other voluntary committee); • board remuneration policy (529 novodecies LSC); • three most recent annual reports on the remuneration of directors (541 LSC); • information on related-party transactions (e.g., audit committee reports or GSM or board resolutions) (529 vicies – 529 tervicies LSC); • previous three years' corporate governance reports (540 LSC); • internal code of conduct, if any; • everything published on the CNMV's website during the previous three years; and • the listed company's website. 	<p>to recent accounting policy, and have them explained;</p> <ul style="list-style-type: none"> • review GSM and board of directors' minutes/resolutions to become familiar with the historic and current actions taken by the company; • check whether the bylaws require you to be a shareholder to be appointed as director; • check whether the company's bylaws cover the remuneration they have been offered and whether the relevant formalities regarding their remuneration have been adopted. Depending on the nature and system of the remuneration, different formalities may apply (bylaws, GSM or board provisions). If stock options are included, a GSM resolution approving the stock option plan is required (219 LSC); and • check whether the annual report on remuneration of directors has been "approved" by the listed company's GSM.
--	--	--	---

¹ A national corporation directory where most legal documentation of companies (bylaws, directors and annual accounts) is recorded and is available to the public.

Ongoing duties			
4. Points for attention	Directors must: <ul style="list-style-type: none"> • be aware at all times of the company's progress, particularly of its financial position, to take appropriate decisions; • keep accounts updated; and • when delegating functions, be clear about what it is delegated and to whom. 	<ul style="list-style-type: none"> • A director's decision-making process must encompass all recommendations put forward in the GGC and CNMV guides. • Directors must align their business strategy with the company's mission and values, and the stakeholders' expectations. • Any decisions they take may have a direct impact on the company's share price. 	<ul style="list-style-type: none"> • All decisions must comply with internal procedures and regulations and the law. • The ESG criteria and the engagement with stakeholders are vital. Directors' decisions contribute to the long-term sustainable value of the company.
5. Legal status of directors	<ul style="list-style-type: none"> • The relationship of an appointed director with the company is of a commercial nature and not a labor nature. • In exceptional and very well-defined cases, an ordinary employment relationship is compatible with the director's commercial relationship. 		<ul style="list-style-type: none"> • If a director had a previous standard senior management employment relationship, it is advisable to suspend that relationship so that it can be resumed when that director cease to hold that position.
6. Parties to which duties are owed	<ul style="list-style-type: none"> • Directors must perform the duties of their office "as loyal representatives, acting in good faith and in the company's best interest" (227.1 LSC). 		<ul style="list-style-type: none"> • Directors do not owe their duties to one or more of the company's shareholders.
7. Powers of the board of directors	<ul style="list-style-type: none"> • Directors are in charge of managing the company's day-to-day operations and representing the company by binding it to third parties. To do this, they are obliged by a duty of diligence and by a duty of loyalty. • The directors' authority to represent the company extends to all activities within the scope of the corporate purpose as set out in the bylaws. 	<ul style="list-style-type: none"> • A listed company must be managed by a board of directors and only individuals can be appointed as directors (529 bis.1 LSC). • The list of powers that the board of directors of a listed company cannot delegate is broader than that of a non-listed company (529 ter LSC). The board is obliged to create at least one audit committee and one or two separate committees for appointment and remuneration (529 terdecies LSC). 	<ul style="list-style-type: none"> • The directors' company representation power does not exclude any specific empowerment the company may occasionally grant in favor of a proxy holder, where the general rules on representation apply. Any general empowerment, as well as any amendment, cancellation, or replacement affecting it, must be recorded in a public deed and registered with the corresponding Commercial Registry.

	<ul style="list-style-type: none"> • Under the LSC, a company's managing body can be established in four different ways (210 and 233 LSC): <ul style="list-style-type: none"> - A sole director with the power to manage and represent the company. - A number of joint and several directors acting independently, each binding the company separately. - Two joint directors in public limited companies (<i>sociedad anónima</i>) or several joint directors in private limited companies (<i>sociedad limitada</i>). - A board of directors comprised of a minimum of three and, in private limited companies (<i>sociedad limitada</i>), a maximum of twelve directors known as <i>consejeros</i>. The authority to manage and represent the company is vested in the board itself, acting as a collegiate body, meaning that any board resolutions are passed by agreement of the majority of the directors. 	<ul style="list-style-type: none"> • Directors of listed companies are classed as follows according to their appointment (529 duodecies LSC): <ul style="list-style-type: none"> - Executive directors: perform senior management duties or are employees of the company or its corporate group. - Proprietary directors: (i) hold a significant stake in the company's share capital; (ii) are appointed due to their status as shareholders (even if they do not own a significant stake); or (iii) represent a shareholder. - Independent directors: those that, given their personal and professional particulars, can perform their duties without being restrained by their relationships with the company or its corporate group, significant shareholders or executives. - Other directors: this class includes directors that do not fit into any of the other classes (usually independent directors that do not meet all the requisites). 	
<p>8. Duty of loyalty</p>	<ul style="list-style-type: none"> • Directors are required to defend the corporate interest over their personal and any other interests (227 <i>et seq.</i> LSC). • Directors breaching their duty of loyalty may be obliged to return any undue gains resulting from the breach (227.2 LSC). 		<p>The duty of loyalty includes five basic obligations (228 LSC), under which directors must:</p> <ul style="list-style-type: none"> • use the conferred powers only for the purposes for which they were granted; • maintain the confidentiality of all information and matters they may access by reason of their office; • refrain from participating in discussions and voting on matters in

			<p>which they or a related person may have a direct or indirect conflict of interest;</p> <ul style="list-style-type: none"> • perform their duties of office in keeping with the principle of personal responsibility and freedom of opinion; and • take all necessary measures to avoid conflicts of interest.
9. Duty of care	<ul style="list-style-type: none"> • Directors must perform their duties and fulfill the duties imposed by law and in the bylaws with the diligence of an orderly businessperson, considering the nature of the position and the functions inherent to each one, and subordinate, in any case, their particular interest to the interest of the company (225.1 LSC). • On performing their duties, directors have the right to demand and obtain from the company the appropriate information necessary for them to fulfill their obligations (225.3 LSC). • The directors must have the appropriate dedication and adopt the necessary measures for the good management and control of the company (225.2 LSC). • Regarding strategic and business decisions, directors must act in good faith, take no personal interest in the matter being decided, have sufficient information, and follow appropriate decision-making procedures (226 LSC). Directors frequently request a fairness opinion or expert opinion to support their view of or approach to a particular transaction. 		<ul style="list-style-type: none"> • This duty includes, at least, preparing meetings and analyzing the information to be provided well in advance, collecting any additional information they consider useful to carry out their duties, attending meetings and actively participating in them, and always overseeing the company's performance. • Directors must act diligently not only in making decisions governed by legal or statutory regulations, but also in making decisions over which they have the business discretion to act as they think will best serve the corporate needs from a strategic perspective.

10. Duty to have and maintain skills	<ul style="list-style-type: none"> To fulfill their obligations, directors are in charge of certain fiduciary duties. Any strategic decisions they take for the good of the company must be based on their knowledge and skills. Consequently, to act with the diligence of an orderly businessperson and loyal representative, directors must upgrade their knowledge as the company keeps evolving. 	<ul style="list-style-type: none"> The GGC recommends that directors should allocate sufficient time to the company to carry out their responsibilities effectively and to gain a solid grasp of the company's business and the governance rules to which it is subject, taking part to this effect in induction and refresher courses organized by the company. 	
11. Additional duties (e.g., confidentiality)	<ul style="list-style-type: none"> As part of the duty of loyalty, directors must keep confidential all information, data, records or background information to which they may have access in the performance of their duties, even when their role has ceased, except in cases where the law permits or requires disclosure (228.c LSC). 		<ul style="list-style-type: none"> The information that must be kept confidential is (i) of a corporate nature; and (ii) not public (confidential). Moreover, it can be deduced that disclosure of this information would not be in the company's interest. This information includes the deliberations of the board of directors.
12. Delegation of powers/authority	<ul style="list-style-type: none"> The board of directors may delegate its powers on a continuous basis establishing the delegation contents, limits and methods to (i) one or several directors (known as <i>consejeros delegados</i>); (ii) a reduced group of directors (known as <i>comité ejecutivo</i> or <i>comisión ejecutiva</i>, i.e., executive committee); or (iii) both (249.1 LSC). Some powers cannot be delegated (249bis LSC). 	<ul style="list-style-type: none"> The powers that the board of directors of a listed company cannot delegate are broader than those of a non-listed company (529 ter LSC). The board is obliged to create at least one audit committee and one or two separate committees for appointment and remuneration (529 terdecies LSC). 	
13. Conflicts of interest (incl. intragroup dealings)	<ul style="list-style-type: none"> Directors must avoid situations of conflict of interest with the company (228.e LSC). 	<ul style="list-style-type: none"> "Related-party transactions" are those that the listed company or its subsidiaries enter into with directors, significant shareholders or other 	<p>The duty to avoid situations of conflict of interest prohibits directors from (229 LSC):</p> <ul style="list-style-type: none"> carrying out transactions with the company;

	<ul style="list-style-type: none"> • The director’s main duty when a conflict of interest arises is to inform the members of the governing body or shareholders of this conflict at a GSM (229.3 LSC). • If this situation arises, regardless of whether it concerns a director or a related party, it must be reported to the company, which must record it in the notes to the annual accounts (229.3 LSC). • In specific cases, the GSM (in the most serious cases) or the governing body can exempt the prohibitions on conflicts of interest (230 LSC). • The list of parties considered related to the director include companies or entities in which the director has a considerable stake (of 10% or more of capital or voting rights) or performs a key role, and shareholders represented by the director in the governing body (231 LSC). 	<p>persons considered related parties. This definition refers to IAS 24, with the exception that “significant influence” is set at 10% or more of voting rights or the percentage at which representation on the board of directors can be obtained (529 vicies LSC).</p> <ul style="list-style-type: none"> • Listed companies must publicly announce related-party transactions that exceed certain thresholds no later than the date on which they are effected. The announcement must be accompanied by a report prepared by the audit committee (as this is required for the board to approve the transaction), which will evaluate whether the operation is fair and reasonable for the company and the shareholders other than the related party (529 unvicies LSC). • The GSM must approve related-party transactions that are worth 10% or more of the consolidated asset value (529 duovicies LSC). • All remaining transactions must be approved by the board, subject to a previous report by the audit committee. Exceptionally, the board may delegate to the CEO approval of ordinary intragroup transactions in market conditions and transactions that do not exceed 0.5% of the company’s net turnover (529 duovicies LSC). • The director affected by the conflict of interest, or the representative or related party of the shareholder affected by the conflict cannot take 	<ul style="list-style-type: none"> • using the company’s name or taking advantage of their position to unduly influence private business transaction; • using corporate assets, including confidential information; • taking advantage of the company’s business opportunities; • obtaining benefits or remuneration from third parties related to the performance of their duties of office; and • carrying out business activities in competition with the company. <p>A specific prohibition is established forbidding “proprietary” directors from approving transactions or agreements to be entered into with a shareholder they represent. As an exception to this rule of abstention, directors representing the parent company in the subsidiary can vote when approving intragroup transactions. In this case, if a claim is filed, directors must prove they acted diligently and loyally in the interest of the subsidiary (231bis LSC).</p> <p>The GSM must approve related-party transactions that are worth 10% or more of the asset value (231bis LSC).</p>
--	---	---	--

		<p>part in deliberating and voting on the agreement. This does not include directors related to the parent company in intragroup transactions.</p> <ul style="list-style-type: none"> • Where, exceptionally, partners and directors can take part in voting, an entire fairness test applies. 	
<p>14. Compliance with statutory obligations</p>	<ul style="list-style-type: none"> • Directors must comply with their statutory obligations. • They are also obliged to act in (i) events of insolvency, or (ii) a wind-up cause of the company on the grounds provided by law (363 <i>et seq.</i> LSC). 		<ul style="list-style-type: none"> • Directors are liable to the company, its shareholders and creditors for any damage caused by acts or omissions contrary to the law or the bylaws, or for those performed in breach of the duties inherent to the performance of their office, provided that there has been fraud or negligence. Guilt is presumed, unless proved otherwise, when the act is contrary to the law or the bylaws (236.1 LSC). • If there is any legal cause for wind-up of the company that requires a resolution by the GSM (363 LSC), the directors are obliged to call a GSM within two months to adopt the resolution for wind-up or, if the company is insolvent, to institute insolvency proceedings (365 LSC). • The most frequent cases of claims for directors' liability arise from circumstances where losses reduce the company's equity to an amount lower than half of its share capital (363.1 e) LSC). If the GSM fails to adopt the resolution for wind-up, the directors have a duty to apply for a court-ordered wind-up of the company (366 LSC). Directors that do not fulfill the obligation to call a GSM or, as appropriate, to seek a court-ordered wind-up or file for insolvency

			<p>proceedings, will be held liable, regardless of any damage to creditors, directors' culpability, or a causal link: breaching this duty is enough to incur liability.</p> <ul style="list-style-type: none"> • For liability regarding insolvency, see section 18.
15. Disclosure obligations of listed companies		<p>The LMV and Royal Decree 1362/2007 incorporate the Transparency Directive (2004/109/EC) requirements, including the company's obligation to publish annual and half-yearly financial reports (118-119 LMV) and treasury stock transactions (126 LMV), and the shareholders' obligation to disclose major holdings (125 LMV).</p> <p>Listed companies must also disclose:</p> <ul style="list-style-type: none"> • Other relevant information, i.e., any financial or corporate information required by law or that the issuer understands has special interest for investors and is not considered inside information (227 LMV). • The board remuneration policy (529 novodecies LSC) and an annual report on the remuneration of directors (541 LSC). • An annual corporate governance report (540 LSC). • Information on related-party transactions (529 uncies LSC). See details in section 13. • Shareholders agreements regulating the exercise of voting rights at the GSM or restricting share transfer, if any (530–535 LSC). 	

		Listed companies must have a corporate website (539 LSC) with the content and technical specifications set out in Circular CNMV 3/2015.	
16. Potential liability	<p>Under the LSC, directors must perform their duties with the diligence of an orderly businessperson and loyal representative. The directors' liability regime is structured around two separate sets of regulations:</p> <ul style="list-style-type: none"> • Liability for damage, which aims to compensate damages that directors may cause to the company's equity, shareholders or third parties owing to the negligent or incorrect performance of their duties. • Liability for corporate debt, which is imposed on directors that have failed to seek the wind-up of the company on the grounds provided by law. <p>Directors' liability to the company is joint and several (<i>solidaria</i>), so it affects all members of the governing body who carried out any action or voted in favor of the damaging resolution.</p>	In addition, directors can incur liability under specific securities market rules, e.g., the responsibility statements in the annual or half-yearly financial reports or the prospectus liability regime.	<ul style="list-style-type: none"> • Directors facing an action for liability for damages may be exonerated from liability if they prove that (i) they did not take part in passing and carrying out the damaging resolution, or were unaware of its existence; or (ii) despite being aware of the resolution, they took every step to prevent the damage, or at least expressly opposed it. • Depending on the circumstances, an action for liability for damages cannot be brought against all the members of the governing body, but only directly against directors that fulfill all the requirements for liability. • Even if the GSM adopted, authorized, or ratified the resolution, this does not exonerate the directors from liability.
17. Duration of duties	<ul style="list-style-type: none"> • Directors will serve for a limited term. The bylaws must establish the relevant term, which cannot exceed six years for public limited companies (<i>sociedad anónima</i>). Directors can serve for an unlimited term in private limited companies (<i>sociedad limitada</i>) unless the bylaws provide for a specific term. Directors may be re-elected either once or several times for successive terms of the same maximum length (221 LSC). 	<ul style="list-style-type: none"> • The bylaws must establish the relevant term, which cannot exceed four years (529 undecies LSC). • A director that has continuously occupied that position for over 12 years cannot be classified as an "independent director" (529 duodecies LSC). 	<ul style="list-style-type: none"> • With regard to the company, the appointment becomes effective when accepted by the new director and must be filed for registration with the corresponding Commercial Registry. • With regard to third parties, appointment is effective from the date it is published in the Spanish Commercial Registry Official Bulletin.
Special circumstances			

<p>18. Insolvency²</p>	<ul style="list-style-type: none"> • Insolvency is defined as the situation in which “a debtor cannot regularly meet its obligations when they are due” (2.3 LC). When this occurs, the company will be obliged to file a petition for a declaration of insolvency within two months of becoming aware, or two months from when it should have become aware of its state of insolvency (5 LC). During this period, it can also notify the commercial court that it has started refinancing negotiations with its creditors (583 <i>et seq.</i> LC). • Directors may be personally liable only if the insolvency is categorized as faulty as opposed to fortuitous. Directors’ individual liability requires fault and can be declared against those who held office in the two years before the declaration of insolvency. 		<ul style="list-style-type: none"> • It is presumed that the debtor becomes aware of its state of insolvency, unless proved otherwise, if (i) there is a previous judicial or administrative declaration of insolvency of the debtor, as long as it is firm; (ii) there is a title for which an execution or enforcement order has been dispatched without the seizure having resulted in sufficient known free assets for payment; (iii) there are generalized attachments on the debtor’s assets; (iv) a generalized default on payments by the company occurs; (v) there is a generalized default on certain tax, social security and employment obligations during the applicable statutory period (three months); or (vi) a hasty or loss-making liquidation of assets is carried out (2 LC). • Failure to request a declaration of insolvency within the time established by law will result in the assumption (<i>juris tantum</i>) of the existence of willful misconduct or gross negligence when categorizing the insolvency (444 LC). • Directors may become personally liable, <i>inter alia</i>, for a material breach of accounting duties, including not drafting, submitting to audit, or filing the annual accounts in the Commercial Registry in any of the three years before the declaration of insolvency and, in the case of removal
--	--	--	---

² Due to COVID-19 measures, the obligation to file for insolvency has been suspended until June 30, 2022.

			of assets, in the two years before the declaration of insolvency.
19. Takeover bids		<p>The most significant issues are the following:</p> <ul style="list-style-type: none"> • Directors of a bidder company are responsible for the accuracy of the prospectus of the offer and must abstain from disseminating or publishing any information not contained in the offer and its documents. • Directors of a target company: <ul style="list-style-type: none"> (i) must act in the best interest of the company as a whole and not deny the holders of the securities the opportunity to decide on the merits of the bid; (ii) must ensure that, within 10 calendar days of the start of the acceptance period, the board draws up a detailed and reasoned report in favor of or against the offer, stating whether they intend to tender their shares owned directly or indirectly; (iii) must not carry any frustrating action without the prior consent of the target's GSM. This authorization is subject to the principle of reciprocity and is not required when searching for a "white knight." 	<ul style="list-style-type: none"> • Potential bidder and target companies should seek legal advice at an early stage when considering a takeover, and immediately on becoming aware of a potential takeover.
20. Market abuse/insider trading	Companies affected by market abuse regulations (e.g., non-listed companies with issued bonds listed on a multilateral trading facility or companies listed on BME Growth) are subject to the following obligations:	<ul style="list-style-type: none"> • Spanish listed companies are subject to market abuse regulations. • Directors must make sure their decisions comply with the company's 	

	<ul style="list-style-type: none"> • Those having access to inside information cannot engage or attempt to engage in insider trading, or recommend or induce another person to engage in insider trading. Nor can they unlawfully disclose inside information (14 MAR). • Directors and closely related persons are subject to certain notification and disclosure requirements (19 MAR and 230 LMV). • Directors cannot conduct any transactions relating to the company's shares or debt instruments or to derivatives or other financial instruments linked to them during "blackout periods" (30 calendar days before the announcement of an interim financial report or year-end report) (19.11 MAR). 	<p>internal procedures and rules, including those provided in the internal code of conduct (if one exists).</p>	
Defenses			
<p>21. Good corporate governance</p>	<ul style="list-style-type: none"> • Directors must manage the company in good faith and in the company's best corporate interest. • Directors must prepare meetings and analyze the information to be provided well in advance, collect any additional information they consider useful to carry out their duties, attend meetings and actively participate in them, and always oversee the company's performance. • Directors must allocate the resources and time necessary to properly perform their duties. • The board of directors should meet as frequently as necessary to perform 	<ul style="list-style-type: none"> • Every year, the listed company must publish an annual corporate governance report to disclose to the market its level of compliance with the good governance recommendations (540 LSC). • The board of directors should meet with the necessary frequency to properly perform its functions, at least eight times a year, in accordance with a calendar and agendas set at the start of the year, to which each director may propose the addition of initially unscheduled items (Recommendation 26 GGC). 	<ul style="list-style-type: none"> • It is advisable to keep records of all information received. • Directors that request adequate and timely background information on matters to be discussed in board meetings, but are not provided with it, should always insist that this be recorded in the minutes. • If listed, directors should familiarize themselves with the Code and ascertain whether the recommendations in the Code are followed in practice in the company.

	<p>their duties, and at least once every three months (245.3 LSC). The items on the agenda must be detailed and provide directors with all the information they may need to properly prepare for the meeting in advance.</p>		
<p>22. Minutes of board meetings and publication requirements</p>	<ul style="list-style-type: none"> • Discussions and agreements reached in the board of directors' meetings must be recorded in a minutes book (250 LSC). • The company's minutes book must be legalized telematically at the Commercial Registry within four months of the closing date of the financial year. 		<ul style="list-style-type: none"> • Board of directors' meetings are confidential. • Directors cannot use the minutes of board meetings for private purposes.
<p>23. Discharge and indemnification</p>	<p>Directors may leave office for several reasons, as follows:</p> <ul style="list-style-type: none"> • Objective reasons • Dismissal or removal resolved by the GSM at any time—even where the dismissal or removal was not scheduled. • Dismissal or removal resolved by the shareholder(s) that appointed the relevant director according to the proportional representation system in public limited companies (<i>sociedad anónima</i>). • Resolution by the shareholders meeting to take a derivative action. • Legal ruling. • Resignation by the director. <p>Where remuneration is provided for a director position, the bylaws must specify the remuneration system or systems, including potential compensation for dismissal or</p>	<p>The GGC recommends that termination payments should not exceed a fixed amount equivalent to two years of the director's total annual remuneration, and that it should not be paid until the company confirms that the director has met the predetermined performance criteria.</p> <p>For the purposes of this recommendation, payments for contractual termination include any payments the accrual or payment obligation of which arises as a result of or on the occasion of the termination of the contractual relationship between the director and the company, including previously unconsolidated amounts for long-term savings schemes and the amounts paid under post-contractual non-compete agreements.</p>	<ul style="list-style-type: none"> • To obtain indemnification following the discharge of directors' duties, the provisions of the agreement between the parties must be followed. • The details should be set out in the agreement between the director with executive duties and the company. • Directors discharged from their duties must keep the company's confidential information secret. They must not disclose or use the information for their personal benefit or for the benefit of third parties. They are forbidden, for their own benefit or that of closely related persons, from making investments, and carrying out any transactions relating to the assets of the company they became aware of while fulfilling their duties as director.

	<p>termination of the relationship with the company (217.2 LSC).</p> <p>Moreover, the GSM will set the maximum amount of annual compensation for all directors, including indemnity for early dismissal.</p> <p>If a member of the board of directors is appointed executive director, or if executive duties are assigned to a member under another title, that member must enter into an agreement with the company, which must be approved by the favorable vote of two-thirds of the board members. The agreement must specify the items for which the director can receive remuneration for performing executive duties, including indemnification for early dismissal. The director cannot receive any remuneration for performing executive duties other than the amounts or items stipulated in the agreement (249.3 and 4 LSC).</p>		
24. Insurance	<p>Directors are advised to:</p> <ul style="list-style-type: none"> • ensure they are offered coverage under a D&O policy; • make sure their liability for the company's debts in the case of a compulsory wind-up situation is covered; • bear in mind that willful misconduct and administrative fines cannot be insured; and • make sure the insurance extends to a further four years after leaving office. 		<ul style="list-style-type: none"> • Note that overseas D&O policies may not consider the particularities of Spanish law.
25. Resignation	<ul style="list-style-type: none"> • As a rule, directors may resign at any time by notifying the company. 	<p>The GGC provides that directors who give up their position before their tenure expires, through resignation or resolution of the GSM, should state the reasons for this decision or, in the case of non-executive directors, their</p>	<ul style="list-style-type: none"> • Directors wishing to resign are advised to do so by sending a notarized letter to the company. Resignation is effective from the date

		<p>opinion of the reasons for the GSM resolution. The letter must be sent to all board members.</p> <p>This should all be reported in the annual corporate governance report and, if it is relevant for investors, the company should publish an announcement of the departure as soon as possible, with sufficient reference to the reasons or circumstances described by the director.</p>	<p>on which the company receives the notification.</p> <ul style="list-style-type: none"> • Check whether it is necessary to call a GSM.
26. Restructuring of assets	<ul style="list-style-type: none"> • In corporate transactions involving the acquisition, sale or transfer of key assets to another company, directors of the company must seek authorization from the GSM (160.f LSC). • Any merger or spin-off requires an agreement of the GSM (160.g LSC). 	<ul style="list-style-type: none"> • In listed companies, the following matters are considered to fall under the powers of the GSM (511bis LSC): <ul style="list-style-type: none"> - Transfer to subsidiaries of key activities that the company had performed itself until that moment, although the company will keep full control over these subsidiaries. - Operations with effects equivalent to liquidating the company. 	<ul style="list-style-type: none"> • Assets are considered key when the sum of the transaction exceeds 25% of the asset value shown in the latest approved balance sheet.
27. ESG and D&I policies, metrics, reports	<ul style="list-style-type: none"> • Directors are responsible for orientating, supervising, and controlling the approach of the company in terms of sustainability. • Every year, if the company fulfills the legal requirements, a non-financial information statement must be prepared and attached to the annual accounts, which must be filed in the Commercial Registry. It must include information regarding the company's impact on society, the measures it implements to favor equality between women and men, and to protect the environment, among others (art 49.6 CCom). 	<ul style="list-style-type: none"> • Given the importance of topics related to sustainability, social and environmental aspects, and corporate governance, listed companies are encouraged to identify and assign specific functions in this area to a special committee (which could be the audit committee, the appointment committee, a sustainability or corporate social responsibility committee, or another <i>ad hoc</i> committee), or to divide those functions among several committees (Recommendation 53). The GGC suggests a list of the functions that can be assigned to those committees (Recommendation 54). 	<ul style="list-style-type: none"> • Progressively, listed companies are creating specific sustainability committees for the express purpose of supervising and monitoring the company's fulfillment of ESG standards.

	<ul style="list-style-type: none"> • ESG factors increasingly drive financing strategies. Banks, investors and funds no longer make their investment/lending decisions based exclusively on financial parameters. They also consider environmental, social and governance issues, which means companies must be ready to provide clear and comprehensive information on these matters even if they are not obliged to publish a non-financial information statement. • Existing EU taxonomy regulations, directly applicable in Spain since January 1, 2022, establish the criteria to determine whether an economic activity is “environmentally sustainable.” To be considered “green,” an economic activity must meet the social requirements considered minimal safeguards. • Directors’ remuneration must be “designed to promote the long-term profitability and sustainability of the company” (217.4 LSC). 	<ul style="list-style-type: none"> • The members of this committee should be non-executive directors, the majority being independent directors. The president of the committee should also be independent. • The GGC understands that the board of directors “should be guided at all times by the company’s best interest, understood as the creation of a profitable business that promotes its sustainable success over time, while maximizing its economic value.” In pursuing the corporate interest, the board of directors should “strive to reconcile its own interest with the legitimate interests of its employees, suppliers, clients and other stakeholders, as well as the impact of its activities” (Recommendation 12). • Also, in listed companies, the sustainability policy must be approved by the board of directors as a whole (529 ter 1a LSC) and the remuneration policy for directors must guarantee sustainability in the long term and must identify the objectives linked to variable remuneration, including social responsibility criteria (529 LSC). 	
--	---	---	--