
The Company Director Checklist – Greece

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Review

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INTRODUCTION

The Company Director Checklist has been designed as a practical guide to the main procedures and settings/ legislative framework that govern the function of a company limited by shares under the Codified Law 2190/1920, the Athens Stock Exchange (ASE) Regulation and the whole legislative framework concerning the sector of corporations in Greece.

Disclaimer: *[to be completed]*.

	Action/Issue	Comments/Notes
Before Appointment		
1. Understand	<ul style="list-style-type: none"> • The identity of the company, i.e. the company's objectives, policies and actions • The company's presence and value in the national and/ or international business and financial environment • The needs of the Company at the time of appointment to the Board and the fit of a particular individual's skills and personality with those of the other directors in building a Board that is effective and responsive to the needs of the Company. • The remuneration package on offer • Existing corporate governance procedures 	<p>Prerequisites to accepting an appointment should be:</p> <ul style="list-style-type: none"> • That you have the ability and willingness to devote sufficient time to the affairs of the company • That the BoD as a whole reflects diverse business experience and diversity in business background, so that the working environment as well as the work object is challenging • You can contribute to the needs of the Company • Meet the criteria set by the BoD for the selection of Directors
2. Meet	<ul style="list-style-type: none"> • CEO/ CFO • Other members of the BoD as well as retired directors 	<ul style="list-style-type: none"> • Obtain an industry briefing • Be informed on the history and strategy of the company

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	<ul style="list-style-type: none"> • Managers of all the company sectors • Auditors • Company lawyer(s) 	<ul style="list-style-type: none"> • Understand status of relationships and roles within management team • Understand relationships with employees and unions • Understand the interaction between the productive groups • Get auditor's background on assessing the financial position and assets of the company • Get corporate lawyer's background on current or past litigations and other legal issues relating with the corporation's function
3. Review	<ul style="list-style-type: none"> • Company's Articles of Association (AoA) • Minutes of the BoD and of the General Assembly for the prior (at least 5) years • Past five years financial statements • If the Company is listed, announcements to ASE for the prior (at least 5) years • Newsletters issued by the corporation according to the legislation (i.e. before a corporation transformation) • Contracts signed by the company with third parties 	<ul style="list-style-type: none"> • Review Minutes of the BoD and of the General Assembly to be informed on past and current issues • Is the Company healthy and sustainable? What do the financial statements depict? • According to the Memorandum of Association Is the Company organised properly and does it function effectively? • According to the AoA, what will be the powers assigned to you? Does the AoA provide for specific regulations and restrictions on the

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		<p>directors' power?</p> <ul style="list-style-type: none"> • Are the financial statements and the valuation of the company realistic? • Review accounts to find out the trends of the company
Ongoing Duties		
4. Think	<p>About:</p> <ul style="list-style-type: none"> • The impression of the company's structure, objectives and policies • The impression of the company's team of officers and advisers. • The information that has been provided to you by the company and the quality of that information • The information that you have obtained from independent sources and how it compares with the information provided by the company 	
5. Competences of the BoD	<ul style="list-style-type: none"> • Management of the corporation • Management of the company property/ assets • Pursuit of the company objectives and policies • Representation of the company • Enhance of the long- term economic value of the company <p>(ar. 18, 22 § 1 L.2190/1920, N. 3016/2002)</p>	<p>Directors are competent to:</p> <ul style="list-style-type: none"> - Determine the company's vision and mission - determine the values to be promoted throughout the company - determine and review company goals and policies

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<p>6. Main axes of duties assigned</p>	<ul style="list-style-type: none"> • Duty of diligence of the prudent businessman- duty of care • Duty of loyalty • Duty of confidentiality • Assumption of financial risk within these duties (ar. 22a § 2, 3, 3a, 3b L. 2190/1920, ar. 2 L. 3016/2002) 	<p>In addition to business and financial issues, boards of directors must deal with challenges and issues relating to:</p> <ul style="list-style-type: none"> - corporate governance, corporate social responsibility and corporate ethics. - determine the values to be promoted throughout the company. - determine and review company goals - determine company policies
<p>7. To who are the duties owed?</p>	<p>Directors' duty and legal obligation is to act in the best interests of the shareholders (<i>theory of shareholders' value</i>)</p>	<p>However, with the corporation's operation inevitably involve, apart from the interests of shareholders, interests of other groups such as these of creditors, employees, banks, suppliers, customers. At the same time with the operation of large companies general interests are involved, such as these of the national economy, consumers' interests and protection of the environment. That's why there is a new developing tendency within the greek law and theory according to which all the above interests should govern the directors' actions. (<i>theory of stakeholders' value</i>)</p>

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<p>8. Other fundamental duties under the greek legislation</p>	<ul style="list-style-type: none"> • Disclosure obligations: <ul style="list-style-type: none"> ➤ Memorandum and articles of association and their amendments ➤ Appointment and dismissal of the directors ➤ Every decision for increase or decrease of capital ➤ annual financial statements, monthly financial statements of Banks ➤ dissolution of the corporation ➤ judicial decisions declaring the company void or bankrupt ➤ judicial decisions recognizing as void or voidable General Assembly decisions • Obligation to inform the investors periodically and constantly • Obligation to issue a newsletter before the public offer. • Establishment of internal control system: obligatory and necessary for listed and public companies as well as for companies of 	<p>Because of corporations' contribution to economic prosperity, it is crucial that all evidence relating to these must be available to every third party.</p>

	Action/Issue	Comments/Notes
	<p>financial sector, voluntary for all the other companies</p>	
<p>9. Special prohibitions</p>	<ul style="list-style-type: none"> • Directors are not allowed to be granted loans, credit by the company or the granting of guarantees or securities to third parties in favour of these persons. • Not allowed to conclude any other contract with the company unless special permission is given by the General Meeting. <p><i>If the company is listed:</i></p> <ul style="list-style-type: none"> • Prohibition of abuse of privileged information • Prohibition of market manipulation <p>(L. 3340/2005)</p>	
<p>10. Business judgment rule</p>	<p>Directors shall not be liable against the company for negligent business action or decision, if the following conditions are met:</p> <ul style="list-style-type: none"> • There is no conflict of interests between the directors and the company • The directors must have acted in good faith and in a manner they reasonably believe to be in the best interests of the corporation. • They acted with the care that a prudent 	<p>This rule only regulates the directors' liability towards the company but not towards third parties. The rule helps to make sure a corporation's board of directors is protected from misleading allegations about the way it conducts business</p> <p>The BoD should be allowed to make decisions without fear of being prosecuted. The business judgment rule further assumes that it is unfair to expect those managing a company to make</p>

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	<p>businessman would exercise under similar circumstances.</p>	<p>perfect decisions all the time. Much of company law can be seen as a balance between allowing directors to manage the company's business so as to make a profit, and preventing them from abusing this freedom. BJR expresses exactly this balance.</p>
<p>11. Powers of the BoD can be assigned to other persons</p>	<ul style="list-style-type: none"> The law provides that the BoD can assign the administration and representation authority to one or more persons, members or not. (ar. 22 § 3 L. 2190/1920) 	<ul style="list-style-type: none"> The third person shall be liable towards the company for any fault committed by him/ her during the managements of the company's affairs. The third person must not pursue own interests that conflict the company's interests. The third person is obliged not to compete the company. (ar. 22a §6 L. 2190/1920)
<p>12. Conflict of interests</p>	<ul style="list-style-type: none"> The members of the BoD and every third part to whom the BoD has assigned authorities must not pursue own interests that conflict the company's interests. (ar. 22a § 3a L. 2190/1920) Directors are also expected to spend the necessary time to perform their responsibilities appropriately and to ensure that other existing or 	<ul style="list-style-type: none"> The members of the BoD and every third party to whom authorities of the BoD have been assigned, are obliged to timely disclose to the other members of the BoD their own interests which might result from transactions of the company that fall under their duties. (ar. 22a § 3b L. 2190/1920. Members of the BoD participating in the

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	<p>future commitments do not materially interfere with their responsibilities as members of the Board.</p>	<p>management of the company in any manner whatsoever as well as managers (executives) of the company must not take on their own account or on the account of a third party any action that is considered to fall within any of the company's objectives or participate as general partners in partnerships pursuing such objects without permission of the General Meeting. (ar. 23 L. 2190/1920)</p>
<p>13. Directors' personal liability</p>	<ul style="list-style-type: none"> • The directors' liability is internal (towards the corporation) as well as external (towards all the stakeholders). • The threatened sanctions fall within the civil, criminal and administrative law (Greek Civil Code, L. 2190/ 1920, ar. 115 L. 2238/1994, special legislation) 	<p>The internal liability is towards the corporations and the external towards the shareholders, the corporate creditors, the employees, the suppliers, the customers and the Public Sector.</p>
<p>14. What is the position if the company may be insolvent?</p>	<ul style="list-style-type: none"> • If no timely application for bankruptcy, the members of the BoD who are responsible for this delay are liable for damages of corporate creditors over the debts created by the day the application should have been submitted until the declaration of the bankruptcy of the company. • If the company's bankruptcy was caused by 	<p>By virtue of this law direct personal liability of the directors is established under the condition that the interests of corporate creditors were harmed.</p> <p>The established personal liability for damages is based on the general principle governing the law, the duty of care and protection of corporate creditors: when the debtor is in state of insolvency,</p>

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	malice or gross negligence of members of the board, the fault directors shall be liable for damages against the corporate creditors.	he is obliged to take into consideration his creditors interests because they are at risk. The business Judgment Rule is not applied on this case.
15. What special responsibilities and liabilities are associated with a float?	<ul style="list-style-type: none"> • Not applicable 	<ul style="list-style-type: none"> •
16. What special responsibilities and liabilities are associated with a takeover?	<p>Directors of a bidder company should take into consideration:</p> <ul style="list-style-type: none"> • Whether the proposal is in the best interests of the company • Whether the bidder's statement contains all required information which are necessary to the shareholders of the target company in order to decide whether to accept the bid. <p>Directors of the target company should take into consideration:</p> <ul style="list-style-type: none"> • Duty of neutrality 	Directors of the target company must not take any action which is not included in the usual corporate actions and may result in the cancellation of the public proposal. Directors undertake the obligation to refrain from any relevant action as of they are officially informed about the offer until the disclosure of the outcome of the bid or its recall.

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	<ul style="list-style-type: none"> • At the same time, directors may seek alternative offers that serve more effectively the company's interests • The BoD receives information and is obliged to process and evaluate all the data concerning the public proposal. • Directors have the duty to inform the shareholders of any evidence relating to the bid. 	
17. What special responsibilities and liabilities are associated with a joint venture?	<ul style="list-style-type: none"> • Within the Greek legislation, the term "joint venture" does not attribute a special legal form of corporation. • The members of the joint venture are business entities that do not discard their legal and economic independence. • The joint venture may constitute a civil or commercial company depending on the commerciality of the objective pursued. 	The members of the joint venture are unlimited and severally with the joint venture liable towards third parties.
Self Defence		
18. Good corporate governance	<p>Within the greek legislation corporate governance includes the following:</p> <ul style="list-style-type: none"> • Respect and protection of the rights and interests of all shareholders. • proper composition of the board of directors 	<p>The corporation is directed and controlled in a more effective way by virtue of the corporate governance principles.</p> <p>Corporate governance aims to create the conditions allowing the directors to make sound</p>

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	<p>so that it fulfills the criteria of independence</p> <ul style="list-style-type: none"> • management structures with clear roles, which balance the abilities and experience of executives with the requirements, nature and breadth of corporate activities • appropriate reward, assessment and development structures • support of transparency, integrity and responsibility in the decision making process • specific corporate procedures which reflect the daily modus operandi and ensure an effective method of internal audit 	business decisions.
<p>19. lack of knowledge- proof of ignorance / of showing the utmost diligence</p>	<p>The defendant- member of BoD may prove that he/ she acted lawfully and showed the utmost diligence to the best interests of the company but he/ she could not have predicted the negative outcome and he/ she didn't intend to harm third parties' interests.</p>	
<p>20. Civil liability insurance</p>	<p>Review the directors' and officers' liability insurance policy: usually it covers the director for all the positions he holds in the company.</p>	<p>The legislation is very strict: The director's action must not be a result of negligence, deceit, misconduct, improper use of position or of information. He/she must have obeyed all the above mentioned rules and obligations.</p>

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21. Structure of assets in order to minimise losses	It is common for directors to structure their assets so that their personal property is diminished. Their assets are held by other members of their families.	Under the Greek law the validity of these property transfers is subject to judicial review and the transfer may be annulled if the transfer took place in bad faith, i.e. the member of the BoD having the object to harm creditors' interests.
22. Resignation	Delivery of resignation in writing to the company as well as to the competent Public and Tax authority and to the competent Chamber.	<ul style="list-style-type: none"> • Effective from the next of the day the notice is given • The resigned member is not exempted from liability for actions he/she performed during his/ her service. The resignation is valid only "ex nunc".