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# **The Company Director Checklist – United States**

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<b>Item</b>	<b>Section</b>	<b>Check</b>
<b><u>Before Appointment</u></b>		
• Understand fiduciary duties and protections, expected committee service, governance procedures, policies and compensation package offered	1	<input type="checkbox"/>
• Speak with or meet other directors, senior management team, auditors and key personnel	2	<input type="checkbox"/>
• Review company materials and understand the business	3	<input type="checkbox"/>
<b><u>Ongoing Duties</u></b>		
• Know to whom you owe your duties as a director	4	<input type="checkbox"/>
• Understand the scope and type of duties	5	<input type="checkbox"/>
• Know what responsibilities you can and cannot delegate (oversight responsibility)	6	<input type="checkbox"/>
• Understand the “Business Judgment Rule”	7	<input type="checkbox"/>
• Know whether you are “disinterested” and “independent”	8	<input type="checkbox"/>
• Understand your personal disclosure obligations	9	<input type="checkbox"/>
• Understand the disclosure obligations of the company	10	<input type="checkbox"/>
• Understand your potential liability under other areas of law	11	<input type="checkbox"/>
• Identify key issues to be addressed	12	<input type="checkbox"/>
<b><u>Special Circumstances</u></b>		
• Understand your special responsibilities in the context of a sale transaction	13	<input type="checkbox"/>
• Understand your duties to preferred stockholders	14	<input type="checkbox"/>
• Understand your responsibilities in the context of insolvency	15	<input type="checkbox"/>

<b>Item</b>	<b>Section</b>	<b>Check</b>
<b><u>Director Liability and Protections</u></b>		
• Be aware of the extent of indemnification	16	<input type="checkbox"/>
• Be aware of the extent of insurance coverage	17	<input type="checkbox"/>
• Understand limitations on your personal liability	18	<input type="checkbox"/>
• Ensure a comprehensive corporate governance process	19	<input type="checkbox"/>
<b><u>Termination of Duties</u></b>		
• Understand how to resign your position	20	<input type="checkbox"/>
• Understand how to structure your assets to minimize losses	21	<input type="checkbox"/>

## **INTRODUCTION**

The Company Director Checklist is intended to serve as a non-authoritative reference and practical guide to the primary duties and obligations of directors of privately owned or publicly traded companies under Delaware General Corporation Law and Delaware case law. In addition, certain aspects of the Delaware Limited Liability Company Act and the rules and regulations of the U.S. Securities and Exchange Commission (SEC) are also discussed herein.

This is a general guide, not intended to substitute for professional advice, but it will emphasize situations in which legal counsel may be necessary. This checklist was last updated as of June 15, 2012.

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	Action/Issue	Comment/Notes
<b>Before Appointment</b>		
1. Understand	<ul style="list-style-type: none"> <li>• Applicable fiduciary duties;</li> <li>• Whether you are expected to serve on one or more committees of the board, and the required qualifications to serve on any such committee;</li> <li>• The corporate governance guidelines of the company;</li> <li>• The insider trading policy, code of conduct/ethics and related person transaction policy;</li> <li>• Whether adequate liability protections are in place, including with respect to indemnification, expense reimbursement and D&amp;O insurance; and</li> <li>• The compensation package offered, including cash and/or equity components.</li> </ul> <p>Inquire whether the company has a director orientation program, and if so, take advantage of such program promptly after joining the board.</p>	<p>Before you accept an appointment ensure that:</p> <ul style="list-style-type: none"> <li>• You are willing and able to make a valuable contribution to the company, including by dedicating adequate time to diligently perform your duties;</li> <li>• If you serve on the board of directors of other companies, your service with the new company does not conflict with any board or committee service limitations applicable to directors of the new company; and</li> <li>• You have the necessary expertise to meet the expectations of the company and satisfy any requirements for service on any applicable committee (for example, and in particular for a public company, an audit committee).</li> </ul> <p>Also consider the following risks and matters:</p> <ul style="list-style-type: none"> <li>• If the financial statements of the company are audited, whether the company has identified any material weaknesses in its internal control over financial reporting, which for a U.S. public company can be determined by reviewing the most recent Form 10-K of the company;</li> <li>• Financial condition of the company, including whether there is any concern the company is insolvent, in default under any debt covenants and whether the company contemplates a sale</li> </ul>

		<p>transaction in the near term; and</p> <ul style="list-style-type: none"> <li>• Whether there is any litigation or governmental investigation pending or threatened against the executive officers, board or particular board members.</li> </ul>
<p>2. Speak with or meet</p>	<ul style="list-style-type: none"> <li>• Board chair and/or lead director and other current directors;</li> <li>• Under certain circumstances it may be advisable to speak with former directors;</li> <li>• CEO and CFO, and potentially other members of the senior management team;</li> <li>• Auditors;</li> <li>• General counsel and (if circumstances warrant) outside counsel or board counsel if the board has retained its own counsel; and</li> <li>• Other key personnel.</li> </ul>	<p>You should have confidence in the current directors, senior management team and advisors because you will be investing significant time and effort in the company as a director. By meeting and interviewing these individuals, you want to learn about:</p> <ul style="list-style-type: none"> <li>• History, present conditions and strategic plans;</li> <li>• Primary forces underlying performance, and key performance indicators;</li> <li>• Strengths, weaknesses, opportunities and threats;</li> <li>• The company's industry and competitors;</li> <li>• Backgrounds of other directors and senior managers;</li> <li>• Conflicts of interest/relationships of other directors that could cause them to not be independent and disinterested, and the identity of the chair of the board and whether such role is occupied by the CEO;</li> <li>• Roles of senior managers and relationships (including reporting responsibilities) within the senior management team;</li> <li>• The identity of and relationship of the company with key suppliers and</li> </ul>

		<p>customers;</p> <ul style="list-style-type: none"> <li>• Historic and current relationship between the company, its employees and unions (if applicable);</li> <li>• Independent external and internal auditor perception with respect to internal controls over financial reporting and internal accounting staff; and</li> <li>• Past or current material litigation and any issues with compliance and regulators.</li> </ul>
<p>3. Review</p>	<ul style="list-style-type: none"> <li>• Financial statements (annual and quarterly) and annual report to stockholders for at least the past three years;</li> <li>• Company organizational documents; for example, charter and bylaws;</li> <li>• Proxy statements for recent years;</li> <li>• Key debt documents or summaries of such agreements;</li> <li>• Significant 8-K current reports;</li> <li>• Form of indemnification agreement for directors, if any, and D&amp;O insurance policy or summary of coverage and limitations;</li> <li>• Board minutes, resolutions and briefing materials for at least the prior year;</li> <li>• Committee charters;</li> <li>• Corporate governance guidelines;</li> <li>• Policies: <ul style="list-style-type: none"> <li>▪ Ethics/business conduct;</li> <li>▪ Related person transactions;</li> <li>▪ Insider trading;</li> </ul> </li> </ul>	<p>Be sure that you:</p> <ul style="list-style-type: none"> <li>• Review the organizational documents to understand any restrictions on the authority of the board, board meeting and vote requirements, stockholder specific provisions and capital stock structure;</li> <li>• Review financial statements for trends, abnormal losses and recent accounting policy changes;</li> <li>• Review board minutes/resolutions and briefing materials to become familiar with historic and current issues and notable actions taken by the board;</li> <li>• Understand critical accounting policies;</li> <li>• Review business summaries to gain an understanding of the business and business specific issues; and</li> <li>• If company is public/listed, review risk factors and other portions of Form 10-K to understand management view of key risks.</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Foreign Corrupt Practices Act (FCPA); and</li> <li>▪ Confidentiality;</li> <li>• Stockholders' agreement, if any;</li> <li>• Employment agreement for CEO, CFO or others, including change of control payment provisions potentially affecting retention, if any;</li> <li>• Press clippings for at least the prior year; and</li> <li>• For a public/listed company, U.S. Securities and Exchange Commission (SEC) filings for at least the prior two years (<a href="http://www.sec.gov">www.sec.gov</a>).</li> </ul>	
<b>Ongoing Duties</b>		
4. Know to whom you owe your duties as a director	<p>You owe fiduciary duties to the:</p> <ul style="list-style-type: none"> <li>• Company and its stockholders; and</li> <li>• Potentially other stakeholders; see Section 15, regarding creditors and insolvency, and Section 14, regarding preferred stockholders.</li> </ul>	See Sections 5-15 for a discussion of your duties.
5. Understand the scope and type of duties	<p>Your basic fiduciary duties are the:</p> <ul style="list-style-type: none"> <li>• Duty of loyalty; and</li> <li>• Duty of care.</li> </ul> <p>Your other duties and responsibilities related to the duty of loyalty are:</p> <ul style="list-style-type: none"> <li>• Good Faith - To act in good faith. Fiduciary conduct motivated by an actual intent to do harm to the company is considered subjective bad faith. Conscious disregard of duty, actions of a director taken with the intent to violate law or failure of a</li> </ul>	Directors should avail themselves of all reasonably available and material information prior to making decisions. To this end, you should ensure that the company is providing appropriate materials to the board in advance of board meetings, including an agenda, and you should prepare for meetings by reviewing this material in advance. Members of the board should thoroughly discuss all matters upon which the board will take action.

	<p>director to act in the face of a known duty constitutes intentional dereliction of duty. However, fiduciary action taken solely by reason of gross negligence, including failure to become informed, without malevolent intent, does not constitute bad faith.</p> <ul style="list-style-type: none"> <li>• No Self Dealing - A transaction with the corporation in which a director has an “interest” implicates duty of loyalty concerns; however, such transaction will not be void or voidable solely for this reason if, among other things: the transaction is approved by a majority of disinterested directors, even if less than a quorum; the transaction is approved by a majority of stockholders; or the transaction is “fair” to the corporation at the time it is approved.</li> <li>• No Usurpation of Corporate Opportunities - Directors may not appropriate an opportunity rightfully belonging to the corporation. Concerns arise when: <ul style="list-style-type: none"> <li>▪ There is an opportunity that the corporation is financially able to undertake, and which, by its nature, falls into the line of business of the corporation and is of practical advantage to the corporation; or</li> <li>▪ The corporation has an actual or expectant interest in such opportunity.</li> </ul> </li> <li>• Confidentiality - To maintain the</li> </ul>	<p>According to the Delaware Limited Liability Company Act, the governing agreement of a Limited Liability Company (LLC) may limit the scope of the fiduciary duties of its manager or board of managers, or eliminate fiduciary duties, with the exception of the implied contractual covenant of good faith and fair dealing. Unless the LLC Agreement expressly limits or eliminates fiduciary duties, such manager/directors are subject to the same duties that normally apply to directors of a Delaware corporation.</p>
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	<p>confidentiality of non-public information concerning the company, as such information is the property of the company.</p>	
<p>6. Know what responsibilities you can and cannot delegate (oversight responsibility)</p>	<p>Directors must exercise ordinary care and prudence in supervising the officers and agents to whom they delegate corporate responsibility.</p> <p>The board should establish compliance and risk management programs, and must ensure reporting and information systems are established that are reasonably designed to provide directors with timely, accurate information, and then monitor or oversee such systems.</p> <p>Directors cannot ignore material “red flags” that come to its attention.</p> <p>You may rely on information and reports provided by employees of the corporation, or by any other person, as to matters you reasonably believe are within the professional or expert competence of such other person, who has been selected with reasonable care.</p>	<p>Be aware that:</p> <ul style="list-style-type: none"> <li>• Reliance on experts must be in good faith and be reasonable; and</li> <li>• You should ask questions of experts and management, and inquire into and diligently examine presentations of information.</li> </ul>
<p>7. Understand the “Business Judgment Rule”</p>	<p>If you fulfill your basic fiduciary duties by acting:</p> <ul style="list-style-type: none"> <li>• With due care, being reasonably informed;</li> <li>• With loyalty and without material personal interest;</li> <li>• In good faith; and</li> </ul>	<p>Keep the following things in mind concerning the Business Judgment Rule:</p> <ul style="list-style-type: none"> <li>• It is a judicial doctrine that limits the ability of courts to question business decisions of directors. It limits the focus of judicial inquiry in respect of the duty of care to the decision-making</li> </ul>

	<ul style="list-style-type: none"> <li>In the honest belief that you are acting in the best interests of the stockholders, your decisions that are made for any rational business purpose should not be second guessed by a court and should be allowed to stand.</li> </ul>	<p>process and not the substantive decision.</p> <ul style="list-style-type: none"> <li>It is a presumption that a director is acting in accordance with fiduciary duties and in the best interests of the company; essentially a gross negligence standard.</li> <li>It does not protect directors against a duty of disclosure claim.</li> </ul>
8. Know whether you are “Disinterested” and “Independent”	<p>When acting, directors should be aware of whether they are “disinterested” and “independent.” The analysis focuses on the particular matter being acted upon:</p> <ul style="list-style-type: none"> <li>A disinterested director has no potential personal benefit or detriment, including financial, not shared equally with shareholders.</li> <li>An independent director does not have any other material interest or relationship that could influence their decision, and is not beholden to an interested director.</li> </ul>	<p>NYSE/NASDAQ-listed companies use a status-based approach to independence, focused on whether a director has financial ties to, or some other material relationship (such as employment) with, the company that merit finding the director not independent. This assessment is made without reference to any particular matter before the board.</p> <p>Under certain circumstances, you may want to exercise your right to abstain from voting on matters before the board in which you have a conflict of interest.</p>
9. Understand your personal disclosure obligations	<p>You should fully disclose to the other directors any material personal interest that you have in a proposed transaction or arrangement involving the company. This includes informing the company if:</p> <ul style="list-style-type: none"> <li>You are a party to a contract or transaction;</li> <li>You are a director or an officer, or acting in a similar capacity, of a party to a contract or transaction with the company; or</li> </ul>	<p>Notice of any personal interest should detail the nature and extent of such interest and describe how it relates to the subject contract or transaction.</p> <p>A director should refrain from self-interested transactions with the company unless the self interest and transaction are:</p> <ul style="list-style-type: none"> <li>Disclosed to and approved by a majority of disinterested directors;</li> </ul>

	<ul style="list-style-type: none"> <li>You have a direct or indirect material interest in a party to the contract or transaction.</li> </ul>	<ul style="list-style-type: none"> <li>Disclosed to and approved by the stockholders; or</li> <li>The contract or transaction is “fair” to the company at the time it is approved.</li> </ul> <p>Approval of an interested director transaction by fully-informed disinterested directors permits the Business Judgment Rule to be invoked.</p> <p>Keep in mind that if you serve on the board of a listed/public company, you will need to report (which information becomes public) your equity ownership in the company and your transactions with respect to company equity.</p>
<p>10. Understand the disclosure obligations of the company</p>	<p>When the board seeks or recommends stockholder action:</p> <ul style="list-style-type: none"> <li>It has an affirmative duty under Delaware law to disclose all information material to the matter, in a balanced and truthful manner. An omitted fact is “material” if there is a substantial likelihood that a reasonable stockholder would consider it important in deciding how to vote.</li> <li>The board may have a duty to disclose financial projections (in the context of a change in control transaction) where such projections are material.</li> </ul> <p>Disclosures required with respect to “public” companies:</p> <ul style="list-style-type: none"> <li>Public companies are required to file annual (Form 10-K), quarterly (Form</li> </ul>	<p>There is no obligation that all available information must be disclosed.</p> <p>Under Delaware General Corporation Law, any stockholder has the right to inspect and make copies of the company’s stock ledger and other books and records for any proper purpose.</p> <p>Often a stockholders’ agreement requires periodic financial and other disclosures with respect to private companies. Absent such an agreement, a company board has broad discretion as to information to be given to stockholders.</p> <p>While beyond the scope of this document, you should be aware that, in general, communications between the board and</p>

	<p>10-Q) and periodic (Form 8-K) reports with the U.S. Securities and Exchange Commission. Extensive disclosure is required, and audited and other financial statement requirements are applicable. This information becomes publicly available when filed with the SEC. Investors and financial professionals rely on the information in these filings, and the company is exposed to liability for material misstatements and omissions.</p>	<p>counsel may be protected from disclosure in litigation by the attorney-client privilege.</p>
<p>11. Understand your potential liability under other areas of law</p>	<p>Environmental Law:</p> <p>Judicially developed “responsive corporate officer doctrine” allows the possible imposition of environmental liabilities in the absence of corporate veil piercing or any wrong doing. Under this doctrine, environmental liability may result where the director or officer: (1) was an active participant in the event or occurrence giving rise to an environmental violation or liability; or (2) had direct control or supervision over the circumstances, matter or situation causing the environmental liability.</p> <p>Tax Law:</p> <p>Directors are generally not liable for the tax obligations of their company. However, exceptions apply under the US Internal Revenue Code for participation in misconduct related to the tax obligations of</p>	<p>Environmental Law:</p> <p>Typically, there is a nexus between individual actions and environmental liabilities or violations. However, there is a growing willingness by regulators and prosecutors to impose liability without regard to actual involvement or even awareness of alleged wrongdoing.</p> <p>Effective environmental, health and safety systems supported by adequate technical resources and funding mitigate against the imposition of such environmental liability on officers and directors.</p> <p>Tax Law:</p> <p>Directors without professional tax experience should avoid direct involvement in the preparation of tax-related documentation for the company. Those qualified and choosing to assist in</p>

	<p>the company. Two areas in which penalties may arise are: (1) aiding and abetting understatements of tax liability; and (2) failing to properly withhold and remit payroll taxes to the Internal Revenue Service.</p>	<p>tax matters must ensure the accuracy of all information reported to the IRS.</p>
<p>12. Identify key issues to be addressed</p>	<p>Think about:</p> <ul style="list-style-type: none"> <li>• Comprehensiveness, timeliness and quality of information provided to you by management;</li> <li>• Accuracy and adequacy of information provided to stockholders and investors, including in light of securities disclosure obligations;</li> <li>• Consistency of information obtained from independent sources with information provided by the company;</li> <li>• Missing information regarding important areas of review;</li> <li>• Concerns regarding the CEO and other senior managers of the company; and</li> <li>• Concerns regarding auditors, compensation consultants, counsel and other advisors and their relationships with management and the board.</li> </ul>	<p>Be aware of:</p> <ul style="list-style-type: none"> <li>• Inactive non-executive directors-Do the non-executive directors actively participate, serving as a check and balance for decisions and actions of the CEO and management directors?</li> <li>• Dominant directors-Do any of the directors or managers have unchecked decision making powers or exercise undue control over decision making, the business, assets or affairs of the company?</li> <li>• Lack of independence-Does the company have independent directors; in particular, are a majority independent? Does it have entirely independent audit, compensation and/or nominating/corporate governance committees?</li> <li>• Does the board as a whole engage in robust discussions and thoughtful decisions, or is it often a “rubber stamp” decision maker?</li> <li>• Inadequate internal controls-Does the board function effectively? Are there internal controls over financial reporting? Are reporting procedures comprehensive and effective, do</li> </ul>

		<p>directors have sufficient and timely information about operations and financial status and are concerns addressed effectively and in a timely manner? Are disclosure controls in place?</p> <ul style="list-style-type: none"> <li>• Have any advisors resigned because of a disagreement?</li> </ul>
<b>Special Circumstances</b>		
13. Understand your special responsibilities in the context of a sale transaction	<p>Special fiduciary duties (<i>Revlon</i> duties) are generally triggered in a sale or attempted sale of the control of the company for cash or stock plus a material amount of cash. In this context, directors are obligated to seek the transaction offering the best value reasonably available to the stockholders.</p> <ul style="list-style-type: none"> <li>• In general, an auction is the preferred way to determine the best value available. <ul style="list-style-type: none"> <li>▪ While this is not required, if an auction is not undertaken, directors should be able to articulate why that decision was made and be comfortable that the decision was made in the best interests of the stockholders.</li> </ul> </li> <li>• In comparing transactions, directors may consider all relevant factors: <ul style="list-style-type: none"> <li>▪ Value of non-cash consideration;</li> <li>▪ Financing contingencies;</li> <li>▪ Regulatory approvals; and</li> <li>▪ Other risks of non-consummation.</li> </ul> </li> </ul>	<p><i>Revlon</i> was a landmark decision of the Delaware Supreme Court, in which the Court declared that, in certain limited circumstances indicating that the "sale" or "break-up" of the company is inevitable, the fiduciary obligation of the directors of a target company are narrowed significantly. In these situations, the singular responsibility of the board is to maximize immediate stockholder value by securing the highest price available.</p>
14. Understand your duties to	In general, rights of preferred stockholders	Where an agreement states that the

preferred stockholders	are only contractual in nature and the board does not owe them fiduciary duties. In Delaware, however, directors owe fiduciary duties to preferred stockholders as well as common stockholders where the right claimed by the preferred is not to a preference as against the common stock but rather a right shared equally with them.	preferred stockholders hold rights equal to the common stockholders, directors owe the preferred stockholders the same fiduciary duties they owe the common stockholders with respect to those rights.
15. Understand your responsibilities in the context of insolvency	<p>Creditors are afforded protection through contractual agreements, fraudulent conveyance law, implied covenants of good faith and fair dealing, bankruptcy law, general commercial law and other sources of creditor rights. Be aware that:</p> <ul style="list-style-type: none"> <li>• Creditors are not owed fiduciary duties unless the corporation is actually insolvent. That is, no “zone of insolvency” concept applies; and</li> <li>• For any period of actual insolvency, creditors may be entitled to bring a derivative claim (not a direct breach of duty claim) for breach of fiduciary duty on behalf of the company.</li> </ul> <p>There is no objective definition of insolvency, but relevant factors include:</p> <ul style="list-style-type: none"> <li>• Inability of the company to pay debts in a timely fashion; and</li> <li>• Liabilities of the company exceeding the fair market value of its assets.</li> </ul>	<p>Directors of an insolvent company:</p> <ul style="list-style-type: none"> <li>• Still must fulfill their obligation to act in the best interests of the company; and</li> <li>• Should act with a view toward maximizing the value of the insolvent company.</li> </ul>
<b>Director Liability and Protections</b>		
16. Be aware of the extent of indemnification	Know whether the company (pursuant to its charter, bylaws or indemnification agreement for directors) provides:	In general, in order to be entitled to indemnification for third party claims, you must have acted in good faith and in a

	<ul style="list-style-type: none"> <li>• Mandatory or permissive indemnification; and</li> <li>• A separate mandatory or permissive right to expense reimbursement or advancement of defense costs.</li> </ul> <p>Know the limitations on the obligation of the company to indemnify you:</p> <ul style="list-style-type: none"> <li>• Indemnification may be limited by the extent of your liability to the company;</li> <li>• You may only be entitled to mandatory indemnification if you meet the “successful on the merits” requirements under Delaware General Corporation Law; and</li> <li>• You will only be entitled to mandatory or permissive indemnification if you meet the “good faith” standard under Delaware General Corporation Law.</li> <li>• Reimbursement/advancement of defense costs, if mandatory, will initially not be subject to a good faith conduct standard but will have to be paid back to the Company if it is later determined the conduct requirement was not met.</li> </ul>	<p>manner you reasonably believed to be in (or not opposed to) the best interests of the company.</p> <p>The company will be unable to indemnify you (subject to a very limited exception) if you are found to be liable to the company. Put another way, for an action brought against you by or in the right of the company (a derivative claim) the company cannot indemnify you for amounts paid in judgment or settlement. However, subject to the preceding, the company can indemnify you for fees and expenses incurred in connection with defense or settlement of such claim if you have acted in good faith and in a manner you reasonably believed to be in (or not opposed to) the best interests of the company.</p> <p>Where the company is reimbursing or advancing defense costs and expenses to you, such may be conditioned upon your delivering an undertaking to repay such amounts if it is ultimately determined that you are not entitled to be indemnified by the company.</p>
<p>17. Be aware of the extent of insurance coverage</p>	<p>Be sure that directors are provided coverage through a D&amp;O liability insurance policy:</p> <ul style="list-style-type: none"> <li>• For all of the roles that you will perform for the company and its subsidiaries;</li> <li>• Be aware of any retention amount (that is, whether a deductible is applicable);</li> </ul>	<p>Typically, a D&amp;O liability insurance policy contains what is often referred to as Side A and Side B coverage. Side A coverage provides for defense expenses and payments of settlements or judgments on behalf of directors where these costs are not indemnified by the company. Side B</p>

	<ul style="list-style-type: none"> <li>• Know the policy coverage amount; and</li> <li>• Be aware of exclusions, such as for securities law violations.</li> </ul>	<p>coverage provides for reimbursement to the company for costs associated with payment of claims against (including expenses incurred by) individual directors where the company is either required or permitted to indemnify them.</p> <p>D&amp;O policies typically operate on a “claims-made” basis, so it is essential that coverage remain in place following your resignation. This type of policy provides protection only if the policy is in force when a claim is made, rather than when the act giving rise to the claim occurs.</p> <p>Ideally, you should have a contract right such that the company must maintain D&amp;O liability insurance for you during your tenure and throughout the statute of limitations period after your service has ceased (often 5 or 6 years).</p>
<p>18. Understand limitations on your personal liability</p>	<p>The company charter may limit the scope of your personal liability as a director. However, liability cannot be eliminated or limited for:</p> <ul style="list-style-type: none"> <li>• A breach of the duty of loyalty;</li> <li>• Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;</li> <li>• An unlawful payment of dividend or unlawful stock purchase or redemption; or</li> <li>• Any transaction from which a director derived an improper personal benefit.</li> </ul>	<p>Delaware General Corporation Law authorizes the inclusion in the certificate of incorporation of a provision eliminating or limiting, with certain exceptions, the personal liability of a director to the company or its stockholders for monetary damages for violations of the duty of care. Prior to accepting service on a board of directors, inclusion of this exculpatory provision in the charter of the company should be confirmed.</p> <p>Keep in mind that directors are exposed to personal liability for making unlawful</p>

	<p>A director may choose to vote in opposition to a proposed action of the board, or may abstain from voting. The choice to vote in opposition to a proposed action, or to abstain from voting, should be recorded in the board minutes. In general, an interested director who played no role in the decision making process of the board (including by abstaining) should not be liable with respect to a claim that the challenged board action was wrongful.</p>	<p>dividends and redemptions of company stock. In general, dividends and redemptions should only be made out of surplus, which is a function of the fair value of the assets over the liabilities of the company.</p> <p>Directors are also potentially exposed to liability in connection with securities offerings by the company.</p>
<p>19. Ensure a comprehensive corporate governance process</p>	<p>The following components of a good corporate governance process can minimize the risk of liability for directors:</p> <ul style="list-style-type: none"> <li>• Oversight and reporting systems should be well structured and complied with at all times;</li> <li>• Formation of committees (such as audit, nominating/corporate governance and compensation) can aid the board in the discharge of its duties; consider whether each such committee must be (pursuant to any applicable stock exchange rule) or should be comprised entirely of independent directors;</li> <li>• Committee charters, governance guidelines and codes of ethics should meet any applicable stock exchange requirements and otherwise reflect best practices; and</li> <li>• Consider regular executive sessions (that is, excluding management directors) of the board.</li> </ul>	<p>Structure and composition of the board should reflect:</p> <ul style="list-style-type: none"> <li>• A board size that matches the size and complexity of the company;</li> <li>• An appropriate mix of skill sets;</li> <li>• Proper separation of roles; <ul style="list-style-type: none"> <li>▪ Consider separating the roles of CEO and Chairperson of the Board or appointing a (rotating) lead director.</li> </ul> </li> <li>• A proper balance of executive directors and independent directors; and <ul style="list-style-type: none"> <li>▪ Boards of NYSE/NASDAQ-listed companies must consist of at least a majority of independent directors, subject to limited exceptions.</li> </ul> </li> <li>• The existence of necessary committees. <ul style="list-style-type: none"> <li>▪ Boards of NYSE/NASDAQ-listed companies must have certain committees, including audit, nominating/corporate governance and compensation committees.</li> </ul> </li> </ul>

	<p>What constitutes an appropriate corporate governance process for a public company may be different, and possibly less comprehensive, for a private company.</p>	<p>Functions and roles should ensure that:</p> <ul style="list-style-type: none"> <li>• Core tasks of the board are being completed in a timely manner and with due care;</li> <li>• The level of board oversight and involvement in company affairs is appropriate; and</li> <li>• There is a well defined and appropriate relationship between the board and the management team.</li> </ul> <p>Oversight and reporting systems should:</p> <ul style="list-style-type: none"> <li>• Determine the frequency and content of board reports;</li> <li>• Set expectations for meeting practices and decision-making procedures;</li> <li>• Define key performance indicators and mechanisms by which directors may gain regular and immediate access to information;</li> <li>• Determine reporting lines; and</li> <li>• Determine processes by which the performance of directors will be evaluated.</li> </ul>
<b>Termination of Duties</b>		
<p>20. Understand how to resign your position</p>	<p>You may resign at any time upon notice given in writing or by electronic transmission (such as email) to the company. Review and follow the procedures for director resignation included in the company bylaws. The bylaws should require that such notice be given to all members of the board or to an agent of the company, such as the chairperson of the board, the president or</p>	<p>Your resignation will become effective on the date specified in the written notice submitted by you. If you do not specify an effective date, your resignation will become effective on the day notice is delivered.</p> <p>Neither the company nor the board has to formally accept your resignation, and such resignation cannot be rejected.</p>

	<p>the secretary. Your resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of a future event. A resignation which is conditioned upon your failing to receive a specified vote for reelection as a director may provide that it is irrevocable.</p>	<p>A director cannot be removed by the board or other directors. However, a director or the entire board can be removed with or without cause by the stockholders, with certain exceptions, including where there is a staggered board.</p>
<p>21. Understand how to structure your assets to minimize losses</p>	<p>You should seek professional advice regarding whether and how to structure your assets, as there may be tax consequences and anti-avoidance measures that apply to certain arrangements.</p>	