

D&O (Global)

India	Topic	Nicaragua
<p>Takeovers of listed companies are regulated by the Takeover Regulations 1997 (Takeover Code) formulated by the SEBI. The Takeover Code applies to direct and indirect acquisitions of a company. Though the Takeover Code would not apply to unlisted public companies, in certain cases the board has refused to effect the transfer of shares on the basis that the transfer would result in the takeover of the company. In certain judgments in such cases, the courts have assailed the above action of the board of unlisted public companies as it is against the principle of the free transferability of shares of public companies. However, the shareholders of a public company can agree between themselves, providing for pre-emption rights on the shares they hold, though this is not enforceable against the company.</p>	Anti-takeover devices	<p>Yes. The articles of incorporation can contain provisions that operate as anti-takeover devices, such as the right of first refusal, prior approval by the board of directors of any transfer of shares, etc.</p> <p>Updated 11-JUN-09</p>
<p>The memorandum and articles of association of a company are public documents and may be inspected by a member of the public at the Office of the Registrar of Companies. A company is obliged to provide, upon request by any of its members, a copy of its memorandum and articles of association upon payment of a prescribed fee.</p>	Availability of corporate charter	<p>The corporate charters and by-laws are public through their registration at the Mercantile Registry, which is a registry open to the public. Any amendments to them must be authorised by a judge and become effective only after duly registered; so, there are no secret rules governing the corporation which could have effect on third parties.</p> <p>Updated 11-JUN-09</p>
<p>There are no laws or practices that require separation or joining of the functions of the chairman of the board and CEO. The Act does not confer any special executive function on the chairman of the board. Though the term CEO does not exist under the Act, it is assumed that the reference is to a managing director. It is relevant to note that only a public company or a private company that is a subsidiary of a public company with a paid-up capital of 50 million rupees is statutorily required to appoint a managing director, full-time director or manager, and all other companies may appoint a CEO, who may or may not be a director.</p>	Board chairman and CEO	<p>Neither the law nor the regulations require the separation of the functions of board chairman and CEO. The common practice is that the president of the corporation acts as CEO in most corporations.</p> <p>Updated 11-JUN-09</p>
<p>The board represents the company and owes its legal duties to the company.</p>	Board's legal duties	<p>The board of directors represents the corporation and the best interests of the shareholders as a whole. They owe no duties to the shareholders who appointed them with their vote or to any category of shareholders.</p> <p>Updated 11-JUN-09</p>
<p>The board is primarily responsible for the day-to-day conduct of the business of the company and to ensure that the business is not conducted in a manner prejudicial to the interests of the company or public. Each director has a fiduciary duty towards the company to conduct its business in accordance with prudent business principles and to uphold the interest of the company.</p>	Board's primary legal responsibilities	<p>The main responsibility of the board is to manage the corporation, to appoint the administrators in charge of daily operations, to authorise any act beyond the power granted to the administrators, to supervise actions of the administrators and to make proposals to the shareholders' annual meetings related to the approval of budgets and financial statements, the distributions of earnings, and the like.</p> <p>Updated 11-JUN-09</p>