Directors’ and Officers’ Liability

Swiss Report

Frédéric Krauskopf, University of Bern, Switzerland

Swiss Corporate Law – Main Features

- Conclusive Enumeration of Company Forms
- Legal Personality or Legal Capacity
- Joint-Stock Companies (‘AG’ / ‘SA’)
- Strict Regulations (eg Organisation, Stock Exchange and Money Laundering Regulations)

Liabilities of Directors and Officers

- **Partnerships**: few regulations, greater liability risks
- **Companies**: more regulation, less liability risks
- **Joint-Stock Companies**: reasonable and manageable risks

Focus on Joint-Stock Companies

General Information

- No Legal Requirements Regarding Education, Experience or Skills
- Swiss Residence Requirement
- Lack of Knowledge Inapt for Exculpation in Liability Claims
- Election and Dismissal by General Assembly or by the Board of Directors

Rules of Conduct and Duties

- **Code of Obligation** (Detailed Regulation)
- **Contract** (eg Board of Directors Mandate or Employment Contract)
- **Tort Law** (Unlawful Acts)
- **Criminal Law** (Criminal Offences Constitute Unlawful Acts)
Standard of Care

Three Main Features:

- Objective Standard for Duty of Care
- Objectified Standard of Fault
- Subjective Reasons Unusable for Exculpation

Important Aspects:

- Standard of Care as a Minimum Standard
- Sometimes: Higher Standard of Care
- Modifications of the Standard of Care

Liability in Company Law

- Personal Liability, no ‘Board Liability’
- Joint and Several Liability in Terms of Differentiated Responsibilities
- Right to Sue: Company, Shareholders and Creditors