

Directors' and Officers' Liability

# Swiss Report


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DIRECTORS' AND OFFICERS' LIABILITY

## 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)



DIRECTORS' AND OFFICERS' LIABILITY


## Liabilities of Directors and Officers

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



DIRECTORS' AND OFFICERS' LIABILITY


## Focus on Joint-Stock Companies



DIRECTORS' AND OFFICERS' LIABILITY

## 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



DIRECTORS' AND OFFICERS' LIABILITY

## 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)



DIRECTORS' AND OFFICERS' LIABILITY

## Standard of Care

### Three Main Features:

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



## Standard of Care

### 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

