

Directors' and Officers' Liability

## Comparative Report II

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DIRECTORS AND OFFICERS LIABILITY

### Personal Liability for Damage to Third Parties

#### General rule

- duties only vis-à-vis company
- vis-à-vis 3<sup>rd</sup> parties: non-contractual liability

#### Liability of D&O: gatekeepers for misconduct of the corporation



DIRECTORS AND OFFICERS LIABILITY

### Personal Liability for Damage to Third Parties

#### Requirements for liability

- tortious liability
- pure economic interests
  - general obligation owed by everyone (common law)
  - insufficient assets
  - acting outside capacity as an organ
  - violation of duties with specific purposes



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### Special Case: Insufficient Assets – Tightening of D&O's Duties

- economics
  - changes of incentive structure
- legal reasoning
  - creditors' interests become dominant



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