

Swiss Director Obligations: Why It Is Important to Get It Right

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By **Christine Breitler**, 17th October 2023

The Reputation of Swiss Companies

Swiss Companies have an unrivalled reputation. It is important to understand the obligations of being a director of a Swiss company. It is these duties on which the foundation of the integrity of Swiss companies is based.

Amidst the global landscape of corporate governance, Swiss companies adhere to a standard model where the Board of Directors plays a central role. However, specific Swiss legislation dictates that a company must be represented by at least one individual domiciled in Switzerland, authorised to sign on its behalf.

Alternatively, this requirement can be fulfilled by two Swiss residents with joint signatory powers. While companies themselves cannot be appointed as directors in Switzerland, understanding the precise duties and liabilities of these appointed individuals remains critical.

The role of the director is to represent the company and to make all legal acts that may arise within the corporation's purpose, but what are his/her duties and liabilities?

The Duties of Swiss Directors

Duties of Care

The board collectively and the directors individually are obliged to conduct their responsibilities with the prudence and diligence of a judicious businessperson, considering the company's interests and leveraging the skills expected for their role.

Duty of Loyalty

Directors must prioritise the company's best interests over their own or others, refraining from personal gain through corporate opportunities and promptly disclosing any conflicts of interest to the board.

Duty of Confidentiality and Transparency

Maintaining confidentiality is paramount, especially concerning sensitive company information. Directors are obligated to provide shareholders with all vital company information and reports on the financial standing and business operations.

Equal Treatment of Shareholders

Directors must afford the shareholders equal treatment in like circumstances.

General Management

Directors hold the responsibility of steering the company, establishing policies, and devising strategies to achieve the company's objectives. They are also in charge of ensuring regulatory compliance, managing records, preparing annual reports, and maintaining relations with authorities.

Financial Management and Compliance with Statutory Obligations

Directors are accountable for the company's financial management, entailing budget preparation, overseeing accounts, and making pertinent financial decisions. They must adhere to legal obligations concerning the company's creditors, including the timely initiation of shareholders' meetings, and proposing restructuring measures as needed, with requisite reporting to the court in cases of over-indebtedness.

The directors of a Swiss limited company owe their duties to the company as well as to the shareholders and to the creditors.

The Liabilities of Swiss Directors

The members of the board of directors, any delegates of the board and any persons engaged in the management of the company (including shadow directors), are personally liable to the company, its shareholders and creditors for any damage caused by intentional or negligent violation of their duties.

In addition to civil liability, the Swiss Penal Code provides for criminal liability of directors in the event of, amongst others; false statements, artificial reduction of assets to the prejudice of creditors, disclosing commercial secrets, mismanagement, and the failure to comply with accounting regulations.

Directors may be held responsible for decisions made or actions taken by the company and be exposed to financial and legal risks.

Financial risks: directors may be liable for financial losses suffered by the company due to their negligence or misconduct. They may also be liable for the company's tax, social security, and trade debts.

Legal risks: directors may be liable for illegal acts committed by the company, such as violations of company law, competition law or environmental legislation and for non-compliance with labour and employment laws and regulations.

Tax and social security risks: directors may be liable for the payment of taxes and social security contributions due by the company and for errors in the reporting of taxes and social security contributions.

Summary

In the complex landscape of corporate governance, the adherence of directors to their designated duties is paramount. By conscientiously upholding ethical standards and fulfilling their roles diligently, directors can steer clear of potential liabilities while safeguarding the integrity and stability of their respective companies. Staying abreast of the latest legal developments and seeking professional legal advice are pivotal for directors to effectively discharge their obligations. For further information and expert guidance, reach out to Dixcart Switzerland at advice.switzerland@dixcart