

The International Bar Association Company Director Checklist – Switzerland

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Introduction

This checklist is intended to serve as a practical guide to the main duties and obligations of the directors of:

- Privately-held stock corporations (*Aktiengesellschaft; société anonyme*); and
- Publicly-held stock corporations (*Aktiengesellschaft; société anonyme*), listed on the SIX Swiss Exchange, with their registered office in Switzerland, incorporated under Swiss law.

Corporate governance and directors' duties are primarily governed by:

- Articles 620ss of the Swiss Federal Code of Obligations (**CO**; i.e. the Swiss stock corporation law);
- Swiss Federal Act on Mergers, Demergers, Transformations and Transfers of Assets;
- Swiss Federal Act on the Approval and Supervision of Auditors; and
- Swiss Criminal Code.
- Widely accepted soft law: Swiss Code of Best Practice for Corporate Governance (**Swiss Code of Best Practice**; http://www.economiesuisse.ch/sites/default/files/publications/economiesuisse_swisscode_e_web.pdf).

Listed stock corporations are subject to additional regulations including:

- Swiss Federal Act on Financial Market Infrastructure and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Act; **FinMIA**) and its implementing ordinances the Financial Market Infrastructure Ordinance (**FinMIO**), the FINMA Financial Market Infrastructure Ordinance (**FinMIO-FINMA**) and the Takeover Ordinance (**ToO**), the latter issued by the Swiss Takeover Board (**TOB**);
- Ordinance against Excessive Compensation regarding Listed Stock Corporations (**OaEC**; in force until 31 December 2022, to be integrated in the revised Swiss stock corporation law which will enter into force on 1 January 2023); and
- SIX Swiss Exchange Listing Rules (**SIX LR**), partially amended by the new Financial Services Act (**FinSA**) as of 1 February 2021, and its implementing regulations.

Note that due to its general nature this checklist does in particular not cover additional rules applying to certain regulated industries such as banks or insurance companies.

This checklist focuses on directors (i.e. members of the board of directors) of Swiss privately held stock corporations while main differences to listed public stock corporations are set out in the second column of this checklist below.

Disclaimer

This checklist is for general informational purposes only, does not constitute legal advice and may not be relied upon as such. In all cases, specific professional advice (legal, tax or other) should be sought. This checklist was updated on 26 April 2022.

DUTIES AND OBLIGATIONS OF THE DIRECTORS			
	Action/issue	Specifics of listed public companies (if relevant)	Comments/notes
Before appointment			
1. Items to understand	<ul style="list-style-type: none"> – The main duties of the board of directors (<i>Verwaltungsrat; conseil d'administration</i>) in a Swiss stock corporation; – precise nature and scope of the company's business activities; – current corporate structure (corporate bodies, shares ownership – sole shareholder or multiple shareholders, corporate group structure); – skills the company needs or access to resources that the company lacks; – existence of a possible conflict of interest with respect to the company; – time commitment (per year and overall term of service) required; – the remuneration package offered; and – the existing corporate governance requirements and procedures. 	<ul style="list-style-type: none"> – Relevant market regulator's and stock exchange rules; and – remuneration regulations according to OaEC. 	<ul style="list-style-type: none"> – The board of directors is responsible for the ultimate management and representation of the company. Its core duty is to determine the corporate strategy and allocate corporate resources (strategic governance). – By default, the board of directors is the governing body of the company, provided, however, competencies are not delegated to management or restricted by mandatory competencies of the shareholders' meeting or to the auditors. – Swiss statutory law enumerates certain fundamental matters specifically reserved for the board of directors to decide (see section 12). – Is the industry sector/company's business activity one that you are familiar with? – As a member of the board of directors, what can you contribute to this company? Do you have the required skills? (see section 10) – Consider the time you will need to diligently fulfill the obligations of a member of the board of directors. – Do you have other business obligations and interests which could contravene with the future position? (see section 13). – The remuneration package should be adequate to the task and its risk profile. Note that in listed companies (i) any remuneration has to be approved by the company's shareholders' meeting ("say-on-pay") and (ii) that the remuneration policy and a detailed report on

			<p>remuneration shall be published pursuant to OaEC.</p> <ul style="list-style-type: none"> – Verify adequacy of existing corporate governance procedures to ensure effective performance by the board of directors and to protect against liability.
2. People to meet with	<ul style="list-style-type: none"> – Chairperson of the board of directors and other current members of the board of directors and, if possible, your predecessor / recently retired members of the board of directors; – CEO / CFO; – auditors; – general counsel; – management team; and – company's tax advisors. 		<ul style="list-style-type: none"> – Be aware that each of the mentioned persons is subject to certain non-disclosure duties. To allow for a meaningful discussion these persons must first be released from their confidentiality obligations; this may require that you sign a confidentiality agreement yourself. – Obtain a brief summary of the history, industry and strategy of the company (including the subsidiaries); get a feeling for the interaction between the board of directors and the senior management; understand the reasons for possible retirements of members of the board of directors; understand who the key suppliers and customers of the company are. – Understand the roles within the management, the relationship with employees and unions or works councils (if existing). – Understand the balance sheet of the company, its key value drivers, its strengths and its weaknesses. – Understand recent and current litigations and queries from regulatory authorities (if existing).
3. Documents to review	<ul style="list-style-type: none"> – The company's articles of incorporation (<i>Statuten; statuts</i>) and the organisational regulations (<i>Organisationsreglement; règlement d'organisation</i>); 	<ul style="list-style-type: none"> – The annual reports of the last years according to internationally recognized accounting standards (e.g. IFRS, US GAAP, Swiss GAAP-FER); and 	<ul style="list-style-type: none"> – Consider the company's articles of incorporation and the board's organisational regulations to understand (i) the general corporate governance framework and duties within the company; (ii) how the board of directors'

	<ul style="list-style-type: none"> – the company’s more recent minutes of the shareholders’ meetings and of the meetings of the board of directors; – the minutes of the board of directors of the last year (if available); – the company’s audited accounts including audited compensation reports of the last years (mostly according to standards set by CO); – the comprehensive audit reports of the last years; – company’s business plan, corporate strategy, annual budget; – the company’s D&O insurance coverage; – the recent press releases by and about the company; and – an excerpt of the company’s share register regarding major shareholders. 	<ul style="list-style-type: none"> – the notifications to the company when holding significant shareholdings according to the FinMIA. 	<p>is organised; (iii) the information rights of the members of the board of directors; and (iv) in listed Swiss companies the maximum number of seats on boards or executive bodies allowed by the articles.</p> <ul style="list-style-type: none"> – Consider the company’s current financial position, its current and past financial performance, and its business plan and actual budget. – Understand the structure of the shareholder pool; is there a controlling shareholder? Are there any shareholder agreements? – Members of the board of directors may be exposed to personal liability; you may wish to assess the adequacy of the company’s D&O insurance arrangements in place.
Ongoing duties			
4. Points for attention	<ul style="list-style-type: none"> – Decision-making process in the company. – Are board matters prepared and submitted to the board of directors with sufficient heads-up time? – Risk appetite of the board of directors. 	<ul style="list-style-type: none"> – How are the reporting / notification obligations according to the FinMIA and SIX LR organized and compliance secured within the company? – Check on continuous reporting duties with SIX, ad hoc publicity organization, insider regulations, management transactions requirements and measures. 	<ul style="list-style-type: none"> – Understand how the board of directors works in practice, how risk is managed and if independent judgement is truly encouraged. – Consider if the company has a culture of candor, transparency and voluntary disclosure. – Understand the company’s accounting policies and practices.
5. Legal status of directors	<ul style="list-style-type: none"> – The board of directors is responsible for the ultimate management of the company including the supervision of persons entrusted with its management. – By default, the board of directors is the governing body of the company, provided, however, competencies are not delegated to management or restricted by mandatory competencies of the shareholders’ meeting or to the auditors. 	<p>Under Swiss law, the default board structure of a stock corporation is unitary. In listed companies, however, day-to-day management is almost always delegated to executive managers, i.e. the CEO or the management as a whole. Therefore, a structure similar to a two-tiered structure could be flexibly established.</p>	<p>The delegation of management must be based on a respective provision in the articles of incorporation and the organisational regulations.</p>

	<ul style="list-style-type: none"> – The board's core duty is to determine the corporate strategy and allocate corporate resources (strategic governance). – However, the CO flexibly allows for the formal delegation of management to (i) individual members of the board of directors; (ii) board committees or third parties (such as managers, i.e. the CEO or to senior management). 		
6. Parties to which duties are owed	The board of directors must represent the company and act in its best interest . When determining the latter, the board of directors, according to the prevailing (but not undisputed) legal perception, must preserve the mid- and long-term interests of the company and thereby appropriately consider the interest of its shareholders as well as of other stakeholders, such as the company's creditors or employees.		See sections 1 and 6–15 for a discussion of your duties.
7. Powers of the board of directors	<p>The board of directors hold:</p> <ul style="list-style-type: none"> – the internal powers towards the company (i.e. ultimate management of company's business, etc.); and – the external powers to represent the company vis-à-vis third parties. <p>Internal powers:</p> <p>The board of directors is responsible for the ultimate business management which – if not within the limits of the law delegated to an executive management – can generally be defined as:</p> <ul style="list-style-type: none"> – determining the corporate strategy; – allocate corporate resources (strategic governance); – manage the company and give the necessary instructions; – resolve on the company's business plans; 	Under Swiss law, the default board structure of a stock corporation is unitary. In listed companies, however, day-to-day management is almost always delegated to executive managers, i.e. the CEO or the management as a whole.	The board of directors may delegate certain tasks entirely and for others at least the preparation and execution of its resolutions (see section 12 for further information).

	<p>– deciding the company’s organisational, technical, business, personnel, financial and other day-to-day operational issues.</p> <p>But see for a full list of statutory inalienable and non-transferable tasks of the board of directors below section 12.</p> <p>External powers:</p> <p>You are entitled to represent and act on behalf of the company (e.g. to conclude contracts, grant a power of attorney to a third party to represent the company etc.) in the manner set out by the company’s articles of association and signatory rights as published in commercial register.</p> <p>In general, the board of directors is authorised to decide on all matters that are not reserved to the shareholders’ meeting or the auditors (by law or by the articles of association), or delegated to the executive management based on organisational regulations.</p>		
8. Duty of loyalty	<p>The duty of loyalty is a director's responsibility to act at all times in the best interests of their company. Members of the board of directors must refrain from doing anything that could be detrimental to the company. If there is a risk of a conflict of interests, the board of directors must take appropriate measures to ensure that the interests of the company take precedence.</p>		
9. Duty of care	<p>The members of the board of directors must perform the duties assigned to them by law, the articles of association and, if applicable, also by organisational regulations with all due care. The same applies to third parties to</p>		<p>Objective criteria apply in order to determine the duty of due care owed by each member of the board of directors. As a consequence, the duties of individual members of the board of directors do not differ and have no relation</p>

	<p>whom management duties have been assigned.</p> <p>Diligence means the application of the necessary prudence and caution that a reasonable person would exercise in the performance of the respective task and requires, among other things, conduct in compliance with the law.</p>		<p>to their background in terms of experience and skills.</p>
<p>10. Duty to have and maintain skills</p>	<p>Swiss law does not explicitly demand specific skills or expertise as a requirement to be elected as a member of the board of directors (but see requirements for regulated companies such as banks etc.).</p> <p>However, as a minimum, a member of the board of directors should have the following basic skills:</p> <ul style="list-style-type: none"> – basic financial and accounting understanding; – basic knowledge of economic and legal interdependencies (business judgement); and – willingness and availability to make a personal contribution. <p>To be able to keep up with the increased complexity of their tasks, in reality members of the board of directors bring significantly more skills to the board of directors' room.</p>	<p>Listed companies select their members of the board of directors based on thorough assessments of the candidates and often with outside assistance by professional executive search consultants.</p>	<p>The member of the board of directors are required to have all the skills that they need to properly exercise their particular position on the board of directors.</p> <p>Note: a lack of skill is no shield from personal liability. The duty of care is already breached if someone accepts to become a member of the board of directors knowing that they do not have the necessary basic skills for such position.</p>
<p>11. Additional duties (confidentiality, etc.)</p>	<p>All members of the board of directors are subject to a duty of confidentiality and secrecy resulting from their duty of loyalty.</p>	<p>In listed companies, members of the board of directors are also subject to the rules on prohibited insider trading and disclosure duties, in particular the disclosure of management transactions (i.e. directors' dealings).</p>	<p>The duty of confidentiality shall also extend to the period after the termination of the mandate.</p>
<p>12. Delegation of powers/authority</p>	<p>The board of directors can delegate a wide range of responsibilities, in particular day-to-day management, to third party individuals</p>	<p>In listed companies, day-to-day management is almost always delegated to executive</p>	<p>Notwithstanding the non-transferable nature of these responsibilities, the board of directors may delegate the preparation and</p>

	<p>including to individual members of the board of directors, board committees and – mostly – to senior management; generally, not to legal entities. However, the following core competencies of the board of directors are non-transferable and inalienable and may therefore not be delegated:</p> <ul style="list-style-type: none"> – performing the ultimate management of the company (<i>Oberleitung; haute direction</i>), in particular the duty to determine the corporate strategy and allocate the corporate resources (strategic governance); – defining the fundamental organisational structure; – ensuring an accounting and financial controlling system as well as the financial planning to the extent necessary to manage the company; – periodically performing a risk assessment; – appointing and removing management as well as granting of signing authority to the individuals authorised to act on behalf of the company; – ultimately monitoring the individuals entrusted with management responsibilities with respect to compliance with applicable laws, the articles of incorporation, regulations and directives; – preparing annual business and compensation reports and general shareholders’ meetings as well as implementing its resolutions; and – notifying the bankruptcy court in case the company’s liabilities are no longer covered by its assets (over-indebtedness). 	<p>managers, i.e. the CEO or the senior management as a whole.</p>	<p>execution of its resolutions, but not the decision-making itself. The board of directors shall ensure appropriate reporting to its members.</p> <p>Lawful delegation excludes the board of directors’ liability for damages provided that the board of directors applied the necessary care in selecting, instructing and monitoring the party/parties to whom these responsibilities have been delegated (<i>curae in eligendo, instruendo et in custodiendo</i>).</p> <p>The organisation needs to be aligned in the most cost-efficient manner to the size, the complexity and the particular risks of the business. Have the current status of delegation of powers in the company explained to you and consider whether such delegation (or non-delegation) makes sense.</p>
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<p>13. Conflicts of interest (incl. intragroup dealings)</p>	<p>The practical rules of conduct with respect to conflicts of interests are:</p> <ul style="list-style-type: none"> – once you have accepted the membership of the board of directors, you must put the company’s interests first and subordinate your own interests; – your personal affairs must be organised in a way to prevent you from the risk of running into a conflict of interests; and – you must immediately notify the chairman of the board of directors of any significant conflict of interests to allow the board of directors to decide on how to address this issue under the particular circumstances. Possible ways to react are: <ul style="list-style-type: none"> ○ the board of directors simply accepts the situation because the conflict of interests is not material; ○ the relevant member of the board of directors must not take part in the deliberation and/or the decision on the relevant subject matter; however, they get the minutes without the relevant passages being blackened; ○ the relevant member of the board of director is sealed off from any relevant information as if they were a representative of adversarial interests; they get the minutes with the relevant passages blackened; and ○ the relevant member of the board of directors is requested to choose between eliminating the incompatible interest(s) and 		<p>The statutory duty of care and loyalty requires the board of directors to perform their duties with due care and safeguard the interests of the company in good faith, including avoiding and properly addressing conflicts of interest.</p> <p>According to Swiss case law, resolutions taken by the board of directors in disregard of existing material conflicts of interest of any member of the board of directors participating in such vote may be null and void. In addition, if a member of the board of directors fails to comply with its duty and favours its own interests over those of the company, any shareholder may hold such director and potentially the board of directors liable for any damage caused by such breach of the duty of loyalty and seek indemnification.</p> <p>The board of directors usually addresses these situations in the company’s organisational regulations. Check them for company-specific rules on the handling of conflicts of interest.</p> <p>Note: Swiss corporate law does not require members of the board of directors to be completely "disinterested"; for the conflict to be relevant it needs to be of a certain intensity. Organisational regulations that exclude a member of the board of directors from the decision-making process in cases where the decision (simply) touches their interests are invalid.</p>
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	<p>resigning as a member of the board of directors.</p> <p>Intragroup dealings:</p> <p>The duty of loyalty extends in group of companies' relationships in principle only to the interests of the company of which the member of the board of directors is a member (stand-alone); this may cause serious issues in practice. Whether certain exceptions apply to the extent the article of purpose in the articles of association provides for the promotion of the group's interests is disputed.</p>		
14. Compliance with statutory obligations	<p>The board of directors is ultimately responsible for the company's compliance with all statutory obligations.</p> <p>Lawful delegation may exclude the board of directors' liability for damages but only if and to the extent the board of directors applied the necessary care in selecting, instructing and – importantly – monitoring the persons to whom these responsibilities have been delegated.</p>		
15. Disclosure obligations	<p>Understand the material public disclosure obligations of your company and of you as a member of the board of directors:</p> <ul style="list-style-type: none"> – commercial register: maintaining the company's corporate information (including the persons authorised to represent the company) with the cantonal commercial register up to date; and – since 1 January 2021, large listed Swiss companies are required to introduce a gender quota of 30% for their boards of directors and of 20% for their executive 	<p>Recurring disclosure obligations:</p> <ul style="list-style-type: none"> – regular SIX reporting: complying with continuing reporting obligations relating to SIX Swiss Exchange; – financial statements: publishing (i) audited annual business reports, (ii) audited compensation report (relating to board / management remuneration including stock options, shares, etc.) and (iii) unaudited semi-annual (and depending on company also quarterly) financial interim reports in accordance with either IFRS or US GAAP in 	<p>The company must strictly observe legal requirements stating the way, format and timing of any disclosures.</p> <p>For Swiss listed companies, as a temporary exemption from the ad hoc publicity requirement, immediate disclosure of potentially price-sensitive, non-public information may be postponed, if:</p> <ul style="list-style-type: none"> – the fact is based on a decision or a plan of the company itself; and – its dissemination could prejudice the legitimate interests of the company.

	<p>boards. In order to qualify these companies must in two consecutive years meet at least two of the following criteria: (i) a balance sheet of more than CHF 20 million or (ii) whose sales revenue exceeds CHF 40 million, or (iii) that have an annual average of more than 250 FTE are required to include information on the gender quota in their annual remuneration report. If the quota is not met, the companies are required to comply or to explain why, and to describe the measures that have been and will be taken to increase the numbers for the underrepresented gender. The obligation to report will first apply in 2026 for boards of directors and in 2031 for executive boards.</p>	<p>the main trading segment of SIX Swiss Exchange; and</p> <ul style="list-style-type: none"> – corporate governance reporting: disclosing important information on the board of directors and senior management as well as on various other aspects of corporate governance in annual business reports or explain why the company does not disclose them ("comply or explain"). <p>Event-driven disclosure obligations:</p> <ul style="list-style-type: none"> – ad hoc publicity: as a rule, potentially price-sensitive, non-public information related to the company's business activities has to be disclosed without undue delay to the SIX Swiss Exchange and the market; – management transactions: disclosing management dealings, i.e., members of the board of directors and senior management must notify the company within 2 trading days if they buy or sell any equity participation rights (or financial instruments whose performance depends on such rights) in the company; the company has to publicly disclose the information within 3 trading days. – significant shareholdings: disclosing notifications received from significant shareholders regarding the reaching, exceeding or falling below certain thresholds (3%, 5%, 10%, 15%, 20%, 33.33%, 50%, 66.66%) in relation to their shareholdings and respective voting rights; the same applies to the company's acquisition of its own shares. Very short time limits apply. 	<p>In such cases, the company must take appropriate measures to ensure the undisclosed price-sensitive fact remains confidential; in case of any leaks, disclosure must be made immediately.</p> <p>We recommend to seek specific legal advice in relation to your company's and your own disclosure obligations.</p>
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<p>16. Potential liability</p>	<p>Civil liability:</p> <p>You are liable for damages caused by intentional or negligent breach of your directors' duties. As a rule, such liability is joint and several, and each member of the board of directors may be held liable with his/her entire assets. Corporate liability actions may be brought by:</p> <ul style="list-style-type: none"> – the company; – the shareholders, either directly, or, as a derivative suit, on behalf of the company, if a shareholder has suffered an indirect damage (i.e., damage to the value of their shares resulting from damage suffered by the company); and – the company's creditors in case of bankruptcy. <p>Criminal liability:</p> <p>You may further be criminally liable in the event of intentional or grossly negligent breaches of your duty of care and loyalty.</p>	<p>Criminal liability in case of impermissible compensation:</p> <p>You may further be criminally liable and sanctioned if you are in breach of certain provisions of the OaEC, provided the violation occurs "against better knowledge" (direct intent). This means that (only) the conscious, intentional payment or receipt of impermissible compensation by members of the board of directors, the senior management or, if any, the advisory board, of a listed Swiss company is sanctioned. Such offences are prosecuted <i>ex officio</i>.</p>	<p>Under the so-called "business judgement rule" as developed by Swiss case law, it is generally accepted that any business decision taken in a proper, unbiased and reasonably informed manner does not constitute a breach of obligations, even if it turns out to have been materially wrong in retrospect.</p> <p>Civil liability suits against members of the board of directors are rather rare in practice; action was more often brought against auditors ("deep pockets") in recent cases. Many confrontations end with out-of-court settlements, frequently facilitated (and financed) by directors' and officers' (D&O) insurers.</p> <p>In addition, Swiss law provides for several cases of strict liability for members of the board of directors, such as:</p> <ul style="list-style-type: none"> – the liability for unpaid withholding tax owed by the company; or – the liability for unpaid social security contributions owed by the company. <p>Any person (e.g. creditor, former employee, shareholder etc.) could alert the authorities of a criminal breach of directors' duties.</p>
<p>17. Duration of duties</p>	<p>The duties of the members of the board of directors and with it also their responsibility end with the termination of their mandate (either by resignation or lapse of term).</p>		
Special circumstances			
<p>18. Bankruptcy</p>	<p>If the company encounters serious financial difficulties the board of directors has various duties.</p> <p>In general, it is one of the non-transferable and inalienable duties of the board of</p>		<ul style="list-style-type: none"> – In such circumstances, time is of the essence and expert advice should be sought at an early stage. – If the board of directors unduly delays notifying the bankruptcy court, the members of the board of directors may

	<p>directors to oversee the overall financial performance of the company, including the financial controlling and planning; in times of crisis the board of directors itself has to take charge not only senior management.</p> <p>Restructuring measures:</p> <p>If the balance sheet shows that half of the share capital and the legal reserves are no longer covered by assets, the board of directors must promptly convene an extraordinary shareholders' meeting and propose financial restructuring measures. If the possible restructuring measures are not sufficient to prevent further losses, the possible liquidation of the company has to be considered.</p> <p>Over-indebtedness:</p> <p>If there is reason to believe that the company is insolvent or over-indebted, i.e. the company's assets no longer cover its third-party liabilities, the board of directors must draw up an interim balance sheet with its assets valued on the basis of going concern and of a liquidation and submit it to the auditors for examination. If the balance sheet shows that the claims of the company's creditors are no longer covered, neither on a going concern nor on a liquidation basis, the board of directors must, as a rule, file a bankruptcy petition without delay.</p>		<p>be held liable for damages caused by a "delay of bankruptcy filing". Shortly before and between the notice to the court and the court decision the board of directors and the management must control liquidity and payments to creditors very carefully. Otherwise they can be held liable for undue favoring certain creditors to the harm of others.</p> <ul style="list-style-type: none"> – Under certain circumstances, even in a state of over-indebtedness, the company legitimately may avoid or at least delay bankruptcy. In these delicate circumstances, and in view of the potential liability issues, expert advice needs to be sought.
<p>19. Takeover bids</p>		<p>Takeovers of public companies are subject to specific and rather complex regulations that impose mandatory obligations on bidder and target companies and their board members within pre-defined short time periods.</p>	<p>It has become standard practice for boards of directors of Swiss listed companies to prepare ahead of time for an unexpected, i.e. unsolicited, takeover bid targeting the company. For those time-sensitive cases, the</p>

		<p>If you are a member of the board of directors of a public target company, key issues you will need to consider include:</p> <ul style="list-style-type: none"> – whether prior to any bid, the company has a defense manual in place for rapid response; – what your immediate do's and don'ts are and how to best organise your board of directors and advisory team; – whether the members of the board of directors are free of conflicts of interest; – whether a bid is in the best interest of the target company and fits or is even superior to its strategy to create value; – whether the bidding price is adequate; – whether you should consider to take defensive measures or alternative offers ("white knight") or transactions; – whether to allow due diligence or to enter into a transaction agreement with the bidder; – whether to recommend acceptance or refusal of the bid or whether to abstain from a recommendation; and – whether the target's board report includes all information that shareholders and their advisers reasonably require in order to make an informed assessment on whether to accept the offer. 	<p>board of directors usually prepares a so-called "defense manual", which defines the necessary processes and identifies the necessary teams (lawyers, accountants, investment bankers, media relation experts, auditors, etc.).</p> <p>As part of the preparation, the board of directors may implement certain defensive measures and/or submit to the shareholders' meeting certain defensive measures for pre-approval.</p> <p>Note that during a takeover process for public companies: (i) bidder companies; (ii) the target company; and (iii) shareholders holding at least 3% in the target company have to notify the takeover board of any purchase or sale of securities in the target company.</p> <p>For more information on takeovers, see the IBA Takeover Guide – Switzerland, available online at: https://www.ibanet.org/unit/Corporate+Law+Section/committee/Corporate+and+M%26A+Law+Committee/3006</p> <p>In addition, for an in-depth analysis of the case law on Swiss takeover regulation, see www.takeoverpractice.ch.</p>
<p>20. Market abuse/insider dealing</p>		<p>As a member of the board of directors of a listed company you should also be aware of the Swiss (and any other applicable) market abuse regulations relating to (prohibited) insider trading and market manipulation.</p> <p>In case of a violation, the FinMIA and FinMIO provide for administrative sanctions by the Swiss Financial Market Supervisory Authority</p>	

		FINMA and/or potentially severe criminal sanctions prosecuted by the Attorney General of Switzerland.	
Defences			
21. Good corporate governance	The risk of liability can be minimised if good corporate governance processes are in place. The benchmark is set by the Swiss Code of Best Practice issued by economiesuisse, the most influential association of Swiss businesses from all sectors of the economy. The Swiss Code of Best Practice sets corporate governance standards in the form of non-binding recommendations. Despite its character as soft law, most of the major non-listed and particularly listed companies in Switzerland follow the Swiss Code of Best Practice.	For listed companies, an additional benchmark is the SIX Directive on Information Relating to Corporate Governance.	To get a benchmark for best practices in the field and where your company stands in terms of corporate governance, you should consult the Swiss Code of Best Practice (link to an online English-language version: economiesuisse swisscode e web.pdf). Should you identify material shortcomings, you may wish to address them within the board of directors.
22. Minutes of board meetings and publication requirements	Minutes of meetings of the board of directors must: <ul style="list-style-type: none"> – contain the participants and absents; – document the resolutions passed and, where appropriate, summarise the discussions held on the occasion of the passing of resolutions; and – be signed by the chairperson and the secretary. 		The minutes of the board of directors' meetings provide an important corporate memory and evidence that the legally required board resolutions have been carried out. They allow for the clarification about and protection against potential liability claims against the members of the board of directors in the future. There is no statutory publication requirement . The minutes are an internal company document and should be kept for evidential purposes.
23. Discharge and Indemnification	Discharge: Make sure that shareholders declare the discharge from liability of the members of the board of directors for the known business transactions (basically reflected in the financial statements) at the annual shareholders' meeting.		Discharge: Discharge can only be granted for incidents that are known or were readily recognisable. Furthermore, only those shareholders who have agreed to the discharge are bound to the discharge and it is only valid with regard to those damages that the company itself has incurred. Shareholders who have approved

	<p>Indemnification:</p> <p>You may wish to ensure that the company:</p> <ul style="list-style-type: none"> – provides for D&O insurance (see below); and/or – grants you an indemnity, and – undertakes to advance you the legal costs in case a suit is filed against you as a member of the board of directors. 		<p>the discharge can still assert claims for damages they themselves have directly suffered. Creditors are not bound by the shareholders' discharge resolution at all.</p> <p>Indemnification:</p> <p>The advance of such legal costs is treated as a loan by the company to a member of the board of directors. Note that the company cannot, in case you are found to have acted with gross negligence or willful intent:</p> <ul style="list-style-type: none"> – waive the repayment of such advanced costs; or – indemnify you. <p>No such restrictions exist with respect to an indemnity that a shareholder grants a member of the board of directors that they delegated into the board of directors.</p>
24. Insurance	<p>It is considered generally permissible in Switzerland for companies to insure their members of the board of directors and officers against liability, including potential claims by the company, and pay the respective premiums. In practice, such liability insurance is purchased by virtually all public and many privately held companies.</p>		<ul style="list-style-type: none"> – Note that general indemnification arrangements in favour of the members of the board of directors to cover any liability, such as for gross negligence and willful intent, would generally be void. – Require a D&O insurance with sufficient coverage. – Request a copy of the whole policy for your files and check it for the comprehensiveness of the coverage; in particular, for appropriate geographic coverage (e.g., United States risk, if necessary).
25. Resignation	<p>You may unilaterally terminate your mandate as a member of the board of directors at any time with immediate effect by simply giving written notice of resignation.</p>	<p>Under the OaEC the term of office in listed Swiss companies is uniformly and mandatorily one year ending with the next ordinary shareholders' meeting.</p>	<p>In exceptional situations you may be liable for the resignation at an inopportune time if you leave the company at a time where it most needed you as a member of the board of directors. After the termination you will not be held liable for future decisions of the</p>

	<p>Other ways in which your mandate ends are: expiration of term and you do not stand for re-election, or the shareholders' meeting does not re-elect you.</p> <p>Even during your term of office, a duly called shareholders' meeting providing on the agenda for a proposed removal could resolve to remove you from office at any time, even without cause; in practice this is very rare.</p>		<p>board of directors, but you remain jointly and severally liable for potential claims and damages arising from resolutions that were taken during your tenure.</p>
<p>26. Restructuring of assets</p>	<p>The board of directors is obliged to supervise the financial situation of the company and must take all measures necessary to ensure the company's liquidity and financial stability, e.g. pursuing restructuring measures without delay.</p> <p>See also section 18 above.</p>		
<p>27. ESG and D&I policies, metrics, reports</p>	<p>Swiss corporations, including listed companies, are currently under no statutory obligation to comprehensively report on ESG related issues.</p> <p>However, on 1 January 2022, new regulations have come into force for better protection of people and the environment. Swiss companies that comply with the new legal requirements are legally obliged to report as of the business year 2023 on the risks of their business activities in the areas of the environment, social concerns, labor concerns, human rights and the fight against corruption, as well as on the measures taken against these risks. Companies with risks in the sensitive areas of child labor and so-called conflict minerals must further comply with special and far-reaching due diligence and reporting obligations. This report must be approved and signed by the board of</p>	<p>Since 1 January 2021 there are guidelines on gender representation in listed companies for the board of directors (at least 30% of each gender) as well as for the executive board (at least 20% of each gender) under a "comply or explain" concept. Any company that does not meet these provisions will be required to state in its remuneration report the reasons for such imbalance, and the actions that are being taken to improve the situation.</p> <p>SIX Swiss Exchange offers listed issuers the opportunity, by means of an opting in, to publish an issuer's commitment to ESG principles by way of an annual sustainability report in accordance with an internationally recognized standard either in their annual report or a separately published report.</p>	

	directors. The board of directors must ensure that the report is published electronically immediately after approval and remains publicly available for at least ten years.		
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