



# Prevention: Directors' and officers' liability

## Active risk management to protect your personal assets

Board members and other officers are constantly subject to a liability risk that can potentially lead to substantial claims for damages. Suitable preventive measures help you to better quantify the risk and to reduce it.

### Minimization of liability risk

The governing bodies of companies can minimize their liability risk at any time with targeted measures. If clarifications prior to taking on a mandate show that it is burdened by a very high risk, rejecting the mandate is to be recommended. If acceptance of the mandate seems to be reasonable, the risks identified during the clarifications should be accorded special attention for the duration of the mandate. Once the mandate has commenced, the governing bodies should comply with the formalities of equity law and strictly avoid any combining of the assets of the company with private assets.

The Board of Directors can largely delegate management to individual members or third parties. Through appropriate organization and division of labor, the Board of Directors can reduce its duties to the careful selection, instruction and monitoring of the management. But care is necessary: In the context of the monitoring duty, the Federal Supreme Court envisages extensive intervention duties vis-à-vis the management. If the necessary expertise is not available, the engagement of experts is advisable.

Directors' and officers' liability claims cannot be eliminated, despite taking preventive measures. Transfer the residual risk to us – AXA's directors' and officers' liability insurance (D&O) protects you from the financial consequences. [www.axa.ch/organhaftpflicht](http://www.axa.ch/organhaftpflicht)

## Possible measures to reduce liability risks

### Prior to accepting the mandate

Before accepting a mandate as a Director, potential liability risks can be prevented or at least better quantified with suitable clarifications:

- **Analysis of the company**  
(check the commercial register extract, Articles of Incorporation, organization regulations, GM and BoD minutes of the last three years, circle of shareholders, composition of the BoD and management, pending/imminent legal cases)
- **Check of the financial situation**  
(examination of the annual and auditor reports, assessment of the equity capital and liquidity situation as well as earnings; confirmation that there is no overdue tax debt and that social contribution obligations are available)
- **Clarification of the market environment**  
(product/service offering, competitors, etc.)
- **Personal risk minimization**  
(mandate agreement with exclusion of liability, marriage contract)

### During execution of the mandate

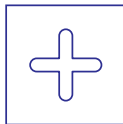
If you are a governing body of a legal entity, you must exercise your legal duties with care (especially Art. 716a SCO, Art. 717 SCO, Art. 725 SCO, Art. 52 AHVG). Recommendations:

- **Appropriate company organization**  
(sensible composition and organization of the BoD, specification of competencies, correct delegation and monitoring of the management, guarantee of meaningful and timely reporting to the BoD)
- **Keeping track of the financial situation regularly**  
(bookkeeping checks / financial controls / financial planning, solvency controls, monitoring the correct recording and payment of taxes and social insurance contributions)
- **Compliance with formalities**  
(regular BoD meetings and General Meetings, comprehensive minuting [incl. the recording of opposing votes], up-to-date regulations [i.e. organizational regulations])
- **Personal conduct**  
(unbroken and active participation in meetings, good preparation of BoD meetings, critical questioning of proposals and projects, immediate reaction in the event of disagreements, avoidance / disclosure of conflicts of interest [and if conflicts of interest, consistently step to one side], permanent further education, maintain own documentation of BoD activity)
- **Engagement of (external) experts**  
(if lack of own specialist expertise or capacities)

### After execution of the mandate

Even after resigning a mandate, certain aspects contribute to the minimization of liability:

- **Written, dated resignation of mandate**
- **No resignation of mandate at the "wrong time"**  
(e.g. on justified concern regarding overindebtedness, far-reaching legal processes and other situations in which your support is vital if further damage is to be avoided)
- **Demand complete relief**  
(discharge)
- **Immediate deletion of the commercial register entry**  
(if necessary, carry out the deregistration yourself)
- **Return of confidential documents for which a receipt should be issued**  
(e.g. BoD documentation)
- **Retention of own documentation**  
(as evidence in case of any liability claims)



### Exclusive prevention offer

White-collar crime often forms the basis for responsibility claims against governing bodies. An individual analysis by proven experts is therefore to be recommended.

In a collaboration with Structuul AG, AXA offers you the opportunity to take preventive measures in your company and implement protection at an early stage.

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For all companies that have taken out D&O or fidelity insurance with AXA, **Structuul AG grants a one-time discount of CHF 750** on the Fraud.Prevention.Awareness program.

Following successful completion of an individual Fraud.Prevention.Awareness program by Structuul AG, **AXA grants a one-time discount of CHF 250** on the next annual premium of your D&O or fidelity insurance with AXA.