



Directors' liability: In the event of a breach of duty, directors are also liable with their private assets

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GRP Rainer Lawyers and Tax Advisors in Cologne, Berlin, Bonn, Düsseldorf, Frankfurt, Hamburg, Munich and Stuttgart - www.grprainer.com/en conclude: Directors are tasked with running businesses for the benefit of the company, that is to say profitably. They cannot be legally charged for a lack of economic success, yet if directors breach their duties they may well be faced with claims for damages, both in cases of internal and external liability.

Essentially, a director is obligated to exercise the level of care due from a prudent businessman (sec. 43 para. 1 GmbHG (German Private Limited Liability Company Act)). This encompasses, among other things, control over the economic and financial affairs of the business. Even if these tasks are delegated to employees, the director is obliged to maintain an overview. If he does not fulfil his duties, he can be held liable towards the company (internal liability). This explicitly does not cover a business decision that is not met with the desired success; rather, fault - wilful or negligent - is required in order to establish a breach of duty. This kind of violation can result, for example, from instructions of the shareholders being disregarded, excessive risk or, of course, also fraud or breach of trust.

In addition, the director is responsible for the proper payment of social security contributions, tax matters or even the timely filing of insolvency if that is an imminent possibility. If he does not perform these tasks, third parties can directly assert their claims for damages against the director (external liability).

In order to reduce the risk of liability, the contract between the company and the director is important. Whereas external liability, that is concerning the claims of creditors, cannot be excluded, there is a certain amount of leeway with respect to internal liability. Here, it can be contractually agreed that the director is only liable vis-à-vis the company if he acted wilfully or with gross negligence. "Ordinary negligence" can be excluded.

When drafting contracts and also when questions of liability arise, advice should be obtained from lawyers competent in the field of company law.

<http://www.grprainer.com/en/Directors-Liability.html>

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Anlage: Bild

