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Civil liability of directors of a company

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<https://fimportal.de/xzufi-services/102837992/B100019>

Modul	Sachverhalt
Leistungsschlüssel	99154058000000
Leistungsbezeichnung I	Civil liability of directors of a company
Leistungsbezeichnung II	Civil liability of directors of a company
Typisierung	11 - SDG: Allgemeine Rechte und Pflichten
Quellredaktion	Bund
Freigabestatus Katalog	unbestimmter Freigabestatus
Freigabestatus Bibliothek	unbestimmter Freigabestatus
Begriffe im Kontext	
Leistungstyp	Leistungsobjekt
Leistungsgruppierung	SDG allgemeine Rechte und Pflichten (154)
Verrichtungskennung	
SDG-Informationsbereich	Zivilrechtliche Haftung der Direktoren eines Unternehmens
Lagen Portalverbund	Gerichtliche Entscheidungen (2140300), Sanierung und Insolvenz (2160300)

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Einheitlicher Ansprechpartner	Nein
Fachlich freigegeben am	12.12.2022
Fachlich freigegeben durch	Federal Ministry for Economic Affairs and Climate Action
Handlungsgrundlage	<ul style="list-style-type: none"> • [Act on Limited Liability Companies](https://www.gesetze-im-internet.de/englisch_gmbhg/) (Gesetz betreffend die Gesellschaften mit beschränkter Haftung - GmbHG) • [Criminal Code](https://www.gesetze-im-internet.de/englisch_stgb/) (Strafgesetzbuch - StGB) • [Insolvency Code](https://www.gesetze-im-internet.de/englisch_inso/) (Insolvenzordnung - InsO) • [Civil Code](https://www.gesetze-im-internet.de/englisch_bgb/) (Bürgerliches Gesetzbuch - BGB) https://www.gesetze-im-internet.de/englisch_stgb/ https://www.gesetze-im-internet.de/inso/ https://www.gesetze-im-internet.de/bgb/ https://www.gesetze-im-internet.de/gmbhg/ https://www.gesetze-im-internet.de/stgb/ https://www.gesetze-im-internet.de/englisch_bgb/ https://www.gesetze-im-internet.de/englisch_gmbhg/ https://www.gesetze-im-internet.de/englisch_inso/
Teaser	If you want to set up a business in Germany, you must comply with certain rules and requirements. Here you can find information on, for example, the duties and liability of company management.
Volltext	<p>**Duties of the management of limited liability companies (Gesellschaft mit beschränkter Haftung - GmbH)**</p> <p>If you are a managing director of a GmbH, you must conduct the companys affairs with the diligence of a prudent businessperson. You have a duty, for example, to actively promote the object of the company based on the requirements of shareholders and to avert damage to the GmbH. Should you act in **breach of</p>

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your duties** , you will be **liable for damages**.

In other words, you will be **personally** liable. A prerequisite for this is a **breach of duty, damage** (any detriment to the companys assets) and **any contributory fault** on your part as a managing director. You are also obligated to demonstrate that you are not responsible for the damage.

Your duties as a managing director giving rise to **liability risks** can be categorised as follows:

****Duties in the start-up phase:****

- business registration
- correct information on the companys headed paper
- registering employees with health insurance providers
- setting up an accounting department
- liability for false information in the commercial register entry

****Liability risks arising from running the GmbH:****

- regulations as to form and notice when convening the shareholders meeting
- liability in the event of prohibited competitive activity (prohibition of competition)
- liability arising from concluding a contract which has brought the company no measurable benefits of any kind, but significant expense
- entering into excessively risky credit transactions
- allowing the time-barring and waiving collectible claims
- conducting transactions contrary to the object of the company
- liability for unlawful repayment of capital contributions

****Liability risks in a crisis:****

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- liability for late filing for insolvency
- liability because the shareholders meeting was not informed of a 50% loss of share capital
 - liability for payment after the companys insolvency has occurred or over-indebtedness has been established
- liability in the case of an entrepreneurial company (limited liability) if the shareholders meeting is not convened in the event of imminent insolvency
 - liability if payments have been made to the company which would inevitably lead to insolvency

****Liability of the management vis-à-vis the GmbH****

If you are in breach of one or more of the legally prescribed duties listed below, you can be held liable internally by the GmbH and even incur ****criminal liability****.

In order to avoid liability and thus an obligation to pay damages, it is important that you are familiar with the ****duties**** and the ****bases for liability**** arising therefrom.

****Civil liability****

- duty to conduct all the companys affairs with the ****diligence**** of a prudent businessperson and the liability arising therefrom
 - duty to convene a ****shareholders meeting**** in the event of loss of half the share capital
 - liability for ****false information**** in connection with the formation of the company
 - duty to register the ****list of shareholders**** with the commercial register and corresponding liability
 - duty to preserve the ****capital contributions**** and liability for unlawful repayment of capital contributions
 - duty to keep ****proper accounts****
 - duty to present a ****management report**** and the duty to submit the ****annual financial statements for publication**** to the operator of the [electronic Federal Gazette](<https://bundesanzeiger.de/pub/en/start?0>)
 - duty to act within the ****powers of representation****

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in the event of restrictions on the managing directors power of representation by the articles of association or by decision of the company

- Duty to **file an insolvency petition**; In the event of the companys over-indebtedness or insolvency, you, as managing director, and the managing directors or representative bodies of other companies, in so far as they are responsible for the management of the company, or, in the absence of management, the shareholders themselves, must file a petition for the opening of insolvency proceedings. The petition must be filed within 3 weeks. Pursuant to the provision in the Insolvency Code, this obligation applies not only to German company forms but also, for example, to foreign companies.

- Liability for payment after the companys **insolvency** has occurred or **over-indebtedness** has been established. If the management acts contrary to the duty to file an insolvency petition, it will be liable to the company for damages in respect of the payments made after that date. The same applies when payments have been made to shareholders and these payments have contributed to the insolvency of the company.

- **prospectus liability** for the accuracy of the information contained in the prospectus in the case of investment companies

- liability for **breach of a contractual prohibition of competition**

Criminal liability

In addition to civil liability, you can also be held criminally liable for breaches of duty.

The following criminal offences may be relevant:

- criminal liability for **failure to provide information** on the loss of half the share capital
- criminal liability for **failure to file a petition** for the opening of insolvency proceedings
- criminal liability for **delay in filing an insolvency petition, bankruptcy** and other breaches of duty in

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the event of insolvency

- criminal liability for **fraud** or **embezzlement**
- criminal liability for **withholding** and **misappropriation of social security contributions**
- criminal liability for **breach of non-disclosure obligations**, such as unauthorised disclosure of business or trade secrets.

Liability of the management vis-à-vis third parties

You may also be liable for external damages to third parties.

The following situations may be relevant here:

- Liability for **legal appearance**, for example if you fail to make it clear that you are acting on behalf of a GmbH.
- Liability as **agency without authority**, for example if you do not adhere to a restriction on the power of representation entered in the commercial register.
- Liability for **fault in negotiation**. This is the case if you enjoy particular trust among business partners, and as a result the contract negotiations are strongly influenced and shaped by you as a person. If, therefore, some form of personal guarantee is claimed for the declarations made and this was of vital importance for the decision, liability for fault in negotiation is possible.

Economic self-interest

There is an economic self-interest if you, as managing director, have a strong economic interest in concluding the contract and seek personal self-benefit from the business with the GmbH or have utilised particular personal trust. This is particularly relevant in **credit transactions**.

- liability for **tort** such as fraud, subsidy fraud,

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embezzlement

- **fiscal liability** in the case of **intent** and **gross negligence**
- liability in the case of entering into transactions, despite the companys vicinity to insolvency, for **intentional infliction of damage contra bonos mores**
- liability for damages vis-à-vis creditors in the event of **delay in filing an insolvency petition**

Liability for damages as a result of complying with shareholder instructions

Your liability may be **ruled out** if you acted on the basis of **effective instructions from the shareholders meeting**. As you are legally bound by the instructions of the shareholders meeting, compliance with a legal obligation cannot give rise to a claim for damages. However, in principle you remain liable if the instruction was not effective. This may be the case, for example, where the adoption of the resolution at the shareholders meeting was incorrect. However, due account is then taken of the **companys contributory fault**.

Liability as the result of the allocation of duties among several executives

Where several persons have been appointed to the management of a GmbH, the duty to manage the company applies to each of them without limitation. If several managing directors are responsible for damage, they are liable to the company as **joint and several debtors**. This means that the company can fully benefit from each of them. Under some circumstances, the managing directors may then have to compensate each other.

Even if there is a provision in the companys **articles of association** or a corresponding resolution by the shareholders which allocates responsibilities among the managing directors within the management, it does not mean that the liability of the managing

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directors is only limited to the areas assigned to them. This regulation determining the responsibilities within the management is referred to as ****allocation of duties****. The diligence of a prudent businessperson also includes ensuring that the actions of another department do not cause lasting damage to the company. This includes a ****reciprocal, cross-divisional monitoring**** of the management among one another. The managing directors therefore have an overall duty to ensure a functioning information system. Therefore, liability cannot be excluded by making reference to the fact that it was not possible to learn of the actions of another business unit.

<https://bundesanzeiger.de/pub/de/start?0=null>
<https://bundesanzeiger.de/pub/en/start?0=null>

Erforderliche Unterlagen
Voraussetzungen
Kosten
Verfahrensablauf
Bearbeitungsdauer
Frist
weiterführende Informationen

****[Business start-up portal (Existenzgründungsportal) of the Federal Ministry of Economic Affairs and Climate Action (Bundesministerium für Wirtschaft und Klimaschutz - BMWK)](<https://existenzgruender.de/EN/Home/inhalt.html>)****

- [Overview of the liability of GmbH management](<https://existenzgruender.de/EN/Home/inhalt.html>)
- [Liability risks of GmbH management](<https://existenzgruender.de/EN/Home/inhalt.html>)
- <https://existenzgruender.de/EN/Home/inhalt.html>
- <https://existenzgruender.de/EN/Home/inhalt.html>
- https://existenzgruender.de/SharedDocs/Downloads/DE/Checklisten-Uebersichten/Recht-Verhandlungsgesprache/uebersicht_11-Haftung-GmbH-Geschaeftsfuehrer

Modul	Sachverhalt
	s.html https://existenzgruender.de/EN/Home/inhalt.html https://existenzgruender.de/DE/Gruendung-vorbereiten/Rechtsformen/Gesellschaft-mit-beschränkter-Haftung-GmbH/Haftungsrisiken-GmbH-Geschäftsführer/inhalt.html
Hinweise	
Rechtsbehelf	
Kurztext	
Ansprechpunkt	
Zuständige Stelle	
Formulare	
Ursprungsportal	Civil liability of directors of a company, Zivilrechtliche Haftung der Direktoren eines Unternehmens