

Sanctions and the directors of Zug companies

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The sanctions have a personal dimension for the directors of companies in Zug. A director of a company that violates the sanctions may be liable under the criminal provisions of the Embargo Act as a participant in the violation. The corporate liability of Article 102 of the Criminal Code applies to sanctions violations under its first paragraph, where the offence cannot be attributed to a specific person because of the company's deficient organisation.¹ The Swiss resident director of a subsidiary of a foreign group, described in Part C, is particularly exposed where the group's business involves sanctioned countries or counterparties and the director has limited insight into the transactions.

The directors of companies owned by designated persons face a specific dilemma. They must ensure that the company complies with the freeze, that no funds are made available to the designated owners and that the required reports are filed with SECO. At the same time, they owe duties to the company and must manage it in its interest, which may require authorisations from SECO for the payment of salaries, rent and taxes. Many directors in this position have resigned, leaving companies without the Swiss resident representative that company law requires, with consequences that the commercial register has had to deal with. The practitioner who advises such a director must weigh the director's personal risks, the company's needs and the requirements of the sanctions and company law.

1 Notes

1. Art. 102 para. 1 StGB (SR 311.0), [swissrights.ch](https://www.swissrights.ch): subsidiary liability of the company where an offence cannot be attributed to a specific person because of deficient organisation; Art. 29 StGB, [droit-bilingue.ch](https://www.droit-bilingue.ch): attribution of special duties of a legal entity to its organs, partners, employees with independent decision-making authority and de facto managers; Art. 14 para. 1 EmbG (SR 946.231), [droit-bilingue.ch](https://www.droit-bilingue.ch): the Federal Act on Administrative Criminal Law applies; Art. 6 VStrR (SR 313.0), [droit-bilingue.ch](https://www.droit-bilingue.ch): offences committed in the business of a legal entity are imputed to the natural persons who committed them, and the principal or employer who intentionally or negligently fails to prevent an offence by a subordinate is liable, which for legal entities applies to the culpable organs, members of organs, managing partners, de facto managers or liquidators. ↩

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