

The requirement of a Swiss resident representative

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Swiss company law requires that a company limited by shares be represented by at least one person who resides in Switzerland. This person may be a member of the board of directors or a director with authority to sign. The requirement is satisfied by a Swiss resident with individual signatory authority, or by two Swiss residents who sign jointly.¹ For foreign groups establishing a company in Zug, the requirement means that they must either send a manager to live in Switzerland or appoint a Swiss resident as a member of the board or as a signatory.

The requirement has given rise to a professional market in board mandates. Lawyers, fiduciaries and professional directors in Zug and Zurich serve on the boards of hundreds of companies, often as the only Swiss resident member. The practice was essential to the domicile company model of the post-war decades, when many companies had no staff in Switzerland at all. Today, with the emphasis on substance, it is less common for a company with real operations to rely on a professional nominee director, but the market persists for holding companies and for companies in the early stages of their establishment.

The professional director carries real responsibilities. Swiss law imposes on the members of the board a set of non-transferable and inalienable duties, among them the overall management of the company, the determination of its organisation, the structuring of the accounting system and financial control, and the supervision of the persons entrusted with management.² A director who accepts a mandate for a company whose business he does not know, or who merely signs what the owners present to him, exposes himself to personal liability towards the company, its shareholders and its creditors, as well as to criminal liability where the company is used for criminal purposes.³ The practitioner who advises a client on the acceptance of such a mandate in Zug must ensure that the client understands these duties and has the means to fulfil them.

1 Notes

1. OR, Art. 718 para. 4 (SR 220), [gesetzestexte.help.ch](https://www.gesetzestexte.help.ch): the company must be capable of being represented by a person resident in Switzerland; the requirement may be met by a member of the board of directors or by a director; Kanton St. Gallen, Amt für Handelsregister und Notariate, "Merkblatt Neueintragung Aktiengesellschaft", [sg.ch](https://www.sg.ch): where the Swiss-resident signatory holds joint signature with one other person, a further signatory resident in Switzerland with at least joint signature must be designated. ↩
2. OR, Art. 716a para. 1 (SR 220), [gesetzestexte.help.ch](https://www.gesetzestexte.help.ch): non-transferable and inalienable duties of the board, including the overall management of the company, the determination of its organisation, the structuring of the accounting, financial control and financial planning, and the supervision of the persons entrusted with management. ↩
3. OR, Art. 754 para. 1 (SR 220), [swissrights.ch](https://www.swissrights.ch): the members of the board of directors and all persons engaged in management or liquidation are liable to the company, to the individual shareholders and to the company's creditors for the damage caused by intentional or negligent breach of their duties; StGB, Art. 29 (SR 311.0), [swissrights.ch](https://www.swissrights.ch): special duties incumbent on a legal entity whose breach founds or aggravates criminal liability are attributed to the natural person acting as its organ or member of an organ, as a partner, as an employee with independent decision-making authority or as a de facto manager. ↩

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