



D&O Message 2026

RISK AND INSURANCE



A newsletter on developments relating to the personal responsibility of members of Boards of Directors and Executive Committees (Directors' & Officers' Liability, D&O).

A SECURE FUTURE.

Three developments have been shaping the D&O landscape in 2026: higher exposure of executive bodies in crisis and supervisory cases, increased regulatory expectations regarding artificial intelligence (AI), per- and polyfluoroalkyl substances (PFAS) and restructuring, and rising defense and procedural costs in international disputes. Incorrect decisions, poor organization, insufficient documentation and delayed responses may be relevant to liability. Governance, early escalation and documented decision-making processes are becoming even more important for Boards of Directors and Executive Boards.

Liability under company law

Case studies from the press

MBAER

The liquidation of MBaer Merchant Bank AG is a lesson in corporate responsibility in regulated business models. FINMA identified serious, systemic shortcomings regarding anti-money laundering obligations, organization and risk management; 80% of business relationships were considered high-risk, with 98% of recently contributed assets coming from high-risk clients.

From a D&O perspective, the focus is not on stand-out isolated cases, but on whether the Board of Directors and the Executive Board responded to warning signs, compliance tip-offs and sanction risks in good time. The case shows how potential organizational shortcomings can turn into personal exposure and far-reaching regulatory measures.

CREDIT SUISSE

The derivative settlement for USD 115 million against former members of Credit Suisse Group AG's governing bodies has brought liability under company law liability sharply into focus again. The settlement was based on the allegation that the Board of Directors and the management had insufficiently managed risks relating to Archegos, Greensill and other counterparties, thereby violating Swiss liability law.

It is not so much the procedural form but the signal that is noteworthy: even years later, complex risk manage-

ment failures can still translate into concentrated claims against directors and officers, financed from D&O insurance policies.

BUSINESS JUDGMENT RULE

A recent decision by the Swiss Federal Supreme Court is sharpening the focus on inaction. One company failed to defend itself in a construction defect lawsuit, did not file a defense and was convicted to the full extent. Following its bankruptcy, liability claims against the Board of Directors were assigned. The Federal Supreme Court held that the business judgment rule only offers protection if a clean, informed decision-making process can be demonstrated. If this basis is missing, passive waiting can be qualified as a breach of the duty of care. In practice, the message is clear: even minimal process steps, escalation and documentation may be relevant to liability.

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Changes in legislation

Current and future

ABUSIVE BANKRUPTCY

Since 1 January 2025, stricter rules have been in place in Switzerland against abusive bankruptcy. The aim of the amendment is to prevent debtors from discharging their obligations through bankruptcy. This increases the relevance of liquidity monitoring, early intervention and

clear restructuring documentation for the Board of Directors and the Executive Board. Anyone who puts off dealing with financial difficulties or neglects formal obligations is increasing their personal liability risk, especially during a crisis phase.

PFAS

PFAS are one of the D&O issues that are underestimated from a regulatory perspective. At the end of 2025, the Swiss Federal Council has decided to launch an action plan for dealing with persistent chemicals. At the same time, regulatory revisions are underway, including new restrictions on PFAS-containing foam extinguishers and

packaging. For bodies of relevant companies, the risk is shifting from abstract ESG communication to specific material, supply chain and legacy issues. Documented risk analyses, substitution checks and reliable responsibilities are crucial.

Market trends and current issues D&O insurance

MORE LIABILITY PRESSURE – A PERSISTENTLY SOFT MARKET

In 2026, D&O insurance continues to be impacted by increased insolvency and restructuring risks. Switzerland's bankruptcy statistics continue to reach record levels. This is due in particular to the change in the law (as mentioned above), the impact of which ramped up significantly in the second half of 2025. This trend continued in the first few months of 2026.

At the same time, international risk dynamics are shifting further toward expensive, longer-lasting and technologically oriented processes. Published claims statistics from insurers indicate that the defense costs of large D&O claims have almost doubled in six years. Large securities procedures often take three to six years. This in addition to stable US class action activity: what is striking among registered securities class actions is the above-average number of AI and crypto cases. The trend in frequency and severity is slow, but certainly also discernible in neighboring countries. The Swiss market defies this. Claims frequency remains stable, while costs continue to be significantly reduced. This is also reflected in the ongoing decline in premiums. In addition, there are still advantages associated with intense competition and low capacity costs for insured sums. This is also reflected in our benchmark data. Purchased capacities have increased slightly again – particularly in the case of private national companies.

STABLE US CLASS ACTION ACTIVITY

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Benchmark for limits of liability

Average sums insured by our customers as at May 2026



Good to know

TRANSACTION CLAUSE AND RUN-OFF

In the case of M&A transactions, D&O protection does not automatically end with the closing. A change of control usually triggers a transaction or change-in-control clause; the existing policy then regularly only covers breaches of duty committed before execution, while subsequent actions require new cover.

That's why it's important to check at an early stage whether a run-off solution is necessary and who is financing it. The transaction clause, delayed claim coverage and responsibility in the purchase contract should be on the checklist before closing – not just after a claim has been made.

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