Risks for Transactions and Directors in Financially Distressed Businesses (Switzerland)

by *Thomas Rohde*, *Dr. Christoph Neeracher*, *Dr. Luca Jagmetti*, Bär & Karrer Ltd.

Practice notes | Law stated as at 01-Oct-2025 | Switzerland

A Practice Note addressing the legal and practical considerations in Switzerland for a company director where that company is in financial distress and may subsequently enter insolvency proceedings. This Note also explores certain types of claims that may be brought against directors as well as claims to challenge transactions approved by these directors.

When a company is in financial distress and enters into insolvency proceedings, there are a variety of legal and practical issues to consider. Before the distressed company goes into insolvency proceedings, the directors may need advice on what they need to do to fulfil their duties to the company, its creditors, and its shareholders, and will need to consider the status of any ongoing transactions the company may be engaged in. Once the company has gone into insolvency proceedings, the pre-insolvency actions of the directors will be scrutinised by insolvency officials attempting to achieve the greatest return for the company's creditors.

This Note considers the legal and practical issues involved in the law of Switzerland, including an overview of the duties of the members of the board of a Swiss stock corporation that is in financial distress and may subsequently enter insolvency proceedings. It addresses:

- The duties that directors owe to their company, its shareholders, and its creditors, and how these may change according to the company's financial situation.
- The investigation of the directors' pre-insolvency actions by insolvency officials.
- The powers of the insolvency officials to challenge transactions, and general powers of recovery, in their aim to achieve the greatest possible return for the company's creditors.
- The potential for any claims against the company's directors, and whether the directors can be personally pursued because of certain conduct even if ordinarily they would not be liable for the insolvent company's debts.

While this Note refers to the duties of the directors of a Swiss stock corporation and the consequences of their violation, the duties of the managing officers of a Swiss limited liability company, which is the other type of corporate form normally used in Switzerland, and the consequences of a violation of these duties, are generally the same. Furthermore, some additional duties may apply in case of Swiss stock corporations, which are listed on a stock exchange, which are not further discussed in this Note.

Directors' Duties

The duties of a Swiss corporation's directors are set out in the corporate law section of the *Swiss Code of Obligations* (CO) (Article 620 et seqq. CO, the directors' duties being mainly set out in Articles 716 – 717a of the CO and Articles 725 –725b

