Directors' duties: QuickGuide

In the first part of our series on duties and responsibilities of directors in Europe and the US, CMS outline the key issues to be considered for a director coming from another jurisdiction to Austria, Belgium, France and Germany.

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For each jurisdiction, the following key issues are covered:

- Board/management structure.
- Eligibility requirements.
- Method of appointment.
- Method of removal.
- Authority and representation.
- Working rules of the board.
- Contractual relationship with the company.
- Conflicts of interest.
- Duties of a director.
- Liability.
- Limitation of liability.
- Immigration issues.
- Taxation.
- Social security.

Directors' duties QuickGuide

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With increased global consolidation, executives of multinational groups can find that they are required to become directors of companies in a variety of jurisdictions, often at short notice. The rules relating to directorships vary considerably from jurisdiction to jurisdiction. This quickguide provides an overview of the duties and responsibilities of directors in The Netherlands, Switzerland, the UK and the US, answering the most frequently asked questions for directors coming from another jurisdiction and concentrating on the most common form of company in each jurisdiction (*see www.practicallaw.com/A24787 for the first article in this two-part guide, covering Austria, Belgium, France and Germany*).

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	The Netherlands	Switzerland
Which types of company are covered by this guide?	Private companies with limited liability (BV). This is the most common type of limited liability company. Special rules may apply to "large" BVs (defined as companies (or groups) with at least EUR13 million shareholders' equity, a mandatory Works Council and at least 100 personnel).	The share corporation, as governed by the Swiss Code of Obligations. This can be public or private.
What is the board/management structure?	The management structure is based on a two-tier system. This consists of a management board, which performs executive tasks, and a separate (non-executive) supervisory board, which advises and supervises the management board. The supervisory board is not compulsory, except where the company is large. Most companies have only a management board. A company must have at least one managing director (there is no maximum number) but the articles may provide for two or more. If the company has supervisory directors, the articles will provide the (minimum) number. There is no statutory maximum, but large companies must have at least three supervisory directors.	There is normally a single board of directors (although a delegation of powers can in effect create a two-tier management structure) (*see below*). A company can have only one director, provided that he is a Swiss citizen and resides in Switzerland (the articles of association may set a higher number). However, if there are different classes of shares, the articles must provide for at least one representative of each class to the board. There is no maximum number of directors (unless prescribed by the articles).
What eligibility requirements apply?	There are no legal restrictions on who can become a managing director. The articles of association may, however, contain specific eligibility requirements, or may contain requirements regarding the right to nominate candidates. There is no residency requirement, and no nationality requirement, unless the articles of association require otherwise. If the articles contain such a requirement, they cannot distinguish between Dutch and other EU candidates. A legal entity, whether incorporated in The Netherlands or elsewhere, can be appointed a managing director. Supervisory directors must, however, be individuals. Specific provisions apply to the qualifications of supervisory directors and the proper composition of the supervisory board in large companies. Employees of the company or affiliates (and directors or employees of trade unions involved with the company) cannot be supervisory directors.	The following restrictions apply: • An individual director must be a shareholder of the company; • The majority of the board of directors must be both Swiss citizens and have their residence in Switzerland (although there are exceptions to this requirement for holding companies); and • At least one member of the board who has the authority to individually represent the company (*see below*) must have his residence in Switzerland. Another company, whether incorporated in Switzerland or elsewhere, cannot be appointed a director.

UK	US (Delaware)
Private limited company. Most of the duties of a director of a public limited company (PLC) are the same as for a private limited company. However, where a PLC is listed on a stock exchange, more complex rules regarding corporate governance are applicable.	The Delaware corporation which can be public or private. Generally, a business can choose to incorporate in, and be governed by the laws of, any US state, without regard to the extent of its contacts with that state. The majority of businesses incorporated in the US are incorporated in, and governed by the laws of, Delaware, as its laws are thought to be best suited to the efficient management of a company. This guide does not address legal requirements under US Federal law, such as the requirements imposed by the US Securities and Exchange Commission (the SEC), which govern reporting and disclosure obligations of "public" (or SEC-registered) companies.
Private limited companies have a single board which may comprise both executive and non-executive directors. This guide concentrates on the rules applicable to executive directors, that is, directors who have an executive role within the company. However, in general, the law does not distinguish between executive and non-executive directors so much of the information in this guide will apply equally to non-executive directors. A company can have only one director, but a sole director cannot also be company secretary. The minimum number of directors is one (or such higher number as is prescribed by the company's constitution). There is no maximum number of directors unless a maximum is prescribed by the company's constitution.	The direction of the company is generally managed by a single board of directors. Although Delaware law does not provide for more than one board of directors, the board may designate one or more committees that consist of one or more directors. Any such committee will have the power and authority granted to it in the resolutions of the board of directors or in the company's by-laws. A board must have a minimum of one director, but there is no limit on the maximum number. The total number of directors shall be fixed in either the certificate of incorporation or by-laws of the company.
There are few restrictions on who can become a director. In particular, an individual director is not required to be resident in the UK, and there is no nationality requirement. Another company, whether incorporated in the UK or elsewhere, can be appointed as a director.	Each director shall be a natural person and unless required by the certificate of incorporation or by-laws, directors do not have to be shareholders of the company. The certificate of incorporation or by-laws may prescribe specific qualifications for directors to be eligible to sit on a particular board. There are no nationality or residency requirements for a director.

	The Netherlands	Switzerland
How are directors appointed?	A managing director is appointed by resolution of the shareholders (unanimously in writing, or during an actual shareholders meeting). Managing directors of large companies are appointed by the supervisory board (unless an exemption applies). The articles may provide, for example, that certain shareholders have the right to nominate candidates. However, such "binding" nomination can be overruled by a two-thirds majority of the shareholders meeting. Notification of the appointment, signed by the director, must be filed by the company with the Trade Register of the relevant Chamber of Commerce. A small fee is payable. Managing directors are usually appointed for an indefinite period of time. Appointments for limited periods are possible but unusual and may conflict with applicable labour law. Supervisory directors are appointed for periods not exceeding four years. If the company has a Works Council, the management board must give the Works Council prior notice of any proposed candidate. The Works Council should have the opportunity to give non-binding advice before the appointment is made. Specific rules (including rights for shareholders and the Works Council to object) apply to large companies.	A director can only be appointed by resolution of the shareholders' meeting; in the absence of other quorum requirements in the articles of association, the appointment must be approved by an absolute majority of the votes allocated to the shares represented at the meeting. Notification of the appointment, signed by the chairman and the secretary of the board, must be filed with the Commercial Register of the canton where the company is registered. The above rules are the same for parent companies and their subsidiaries. Appointments are generally for a fixed term of three years, unless otherwise provided in the articles. The term of office, however, must not exceed six years. Re-appointment is possible.
How are directors removed?	A managing director may resign at any time by notice to the company (although this may constitute a breach of his employment contract). The same applies to supervisory directors. A managing director can be removed (as a director, not necessarily as an employee) at any time. The removal requires a resolution of the shareholders (or the supervisory directors, in case of a non-exempted large company) and prior consultation of the Works Council, if any (and of the shareholders, in case of a non-exempted large company). The employment contract of a managing director terminates, in most cases, on his removal from the board, but any contractual notice period should be observed and severance payments are typically due. Resignation by, or removal of, a director must be notified to the Trade Register.	A director may resign from his office at the end of his regular term of office. The director may also resign from the board at any time by notice to the company (although this may constitute a breach of contract). A director may be removed by resolution of the shareholders' meeting at any time. The same applies to delegates of the board, who may also be removed by a resolution of the board of directors. Such removal may, however, constitute a breach of contract between the company and the respective director or delegate. Resignation or removal of a director or delegate of the board must be notified to the Commercial Register of the canton where the company is incorporated.

UK	US (Delaware)
Appointment as a director should be distinguished from appointment as an executive, as each is legally a separate matter. The method for appointment of a director is determined by the constitution (that is, the memorandum and articles of association) of the company. A director can normally be appointed either by the existing directors, or by resolution of shareholders. Notification of the appointment, signed by the director and by another officer of the company, must be filed with Companies House. No fee is payable. In the case of a subsidiary, the parent is often permitted to make an appointment by written notice to the company. Appointments are generally open-ended, as the term will be a function of the related contractual relationship. The constitution can, however, provide for fixed term appointments. Appointment as an executive director involves the creation of an additional contractual relationship (*see below*). This aspect of the appointment is normally a matter for the board.	An annual meeting of shareholders must be held, at which the shareholders elect directors to serve until any successors are elected and qualified or until any earlier resignation or removal. By means of its certificate of incorporation, an initial by-law or a by-law adopted by a vote of the shareholders, a company may divide its board of directors into one, two or three classes, and stipulate that the term of office of those directors comprising the first class expires at the next annual meeting, the second class expires one year thereafter, and the third class two years thereafter. This structure is often referred to as a "staggered board" and is sometimes used to make it more difficult for potential acquirers to gain majority control of the board of directors. The certificate of incorporation or by-laws may specify procedures for filling vacancies on the board of directors. If no such procedures are specified, a majority of the then current directors can decide how the vacancy or newly created directorship may be filled.
A director may resign his office at any time by notice to the company (although this may constitute a breach of his employment or consultancy contract). A director is always subject to removal by resolution of shareholders, under a statutory procedure, which affords the director the right to protest against his removal. The company's constitution (particularly in the case of a wholly-owned subsidiary) will often permit removal of a director by a simplified form of shareholder resolution or a notice to the company. It is unusual for directors to be able to remove one of their number from the board although the board may resolve to terminate the director's service contract, termination of which may require the director's immediate resignation. If directors are appointed for a fixed term, or are subject to "rotation", their appointment will terminate if they are not re-appointed at the relevant time. Resignation or removal of a director must be notified to Companies House.	A director may resign at any time by giving notice to the company in writing. The holders of a majority of the shares entitled to vote at an election of directors may remove with or without cause a director or the entire board. However, in the case of a staggered board, unless the certificate of incorporation provides otherwise, shareholders may only remove a director for cause. Resignation or removal of a director need not be notified to any authority.

	The Netherlands	Switzerland
What authority and powers of representation do the directors have?	Each managing director has the authority to represent the company. The articles may, however, provide that the company can only be represented by two or more managing directors acting jointly or with certain third parties. The full management board can always represent the company. The articles cannot limit the transactional powers of the managing directors in respect of specific subject matters or in respect of the size or nature of the transaction. Supervisory directors have no authority or powers of representation.	As a general rule, each member of the board of directors has the authority to represent the company individually and can perform all legal acts that may arise within the company's purpose. The articles or other internal regulation may, however, limit this authority in any way. If a special delegation of powers of the board has been validly made to a managing director, a committee of directors or to independent outside officers, the delegates have the same authority to represent the company. As regards third parties, the authority of a director or a board's delegate can be presumed, unless the Commercial Register restricts this authority, or unless the third party knew or should have known that there was an internal limitation of authority.
What are the working rules of the board?	The managing directors, as members of the management board, jointly have all powers to manage the company, except for those (limited) powers which by law are, or may be, attributed to the shareholders or to the supervisory board, if any. The members of the management board have collective responsibilities. They share responsibility for all decisions and acts of the management board and for the acts of each individual managing director. However, certain tasks may be allocated to one or more managing directors. Nevertheless, company policy must be decided by the management board as a whole. The same applies to any important decisions. Within these limits, the management board may adopt internal working rules, that describe in detail the duties, responsibilities and powers of each managing director as well as the rules applicable to board meetings. The adoption of these can be made subject to prior supervisory board or shareholders' approval in the articles. Similarly, supervisory boards typically have (internal) rules of procedure.	The board may take decisions on all matters which by law or under the articles are not allocated to the shareholders' meeting. However, a limited delegation of powers of the board can be made to a managing director, committee of the board and officers (if the articles allow it and corresponding by-laws have been enacted by the board). Delegates have the authority to act in the name and on behalf of the company without prior board approval. There are, however, certain duties of the board which cannot be delegated. The establishment of a second-tier management structure is a matter for the board of directors, subject however, to the requirement that any director is first appointed by the shareholders' meeting. Members of the board of directors as well as delegates of the board must be registered with the Commercial Register of the canton where the company is incorporated.

UK	US (Delaware)
As an internal matter, unless approved by the board (for example, by the delegation of powers to a managing director (see below), or by the passing of a specific resolution), no director can commit the company. In practice, directors are usually granted a level of delegated authority, consistent with their role in the company. As regards third parties, a director will be regarded as having "ostensible authority" to bind the company, even if he has no actual authority to do so. Consequently, a director acting without proper authority (and therefore in breach of his duties) may nevertheless cause the company to become liable to a third party. A person appointed as managing director might have certain powers specifically delegated to him from time to time by the board. In respect of these matters, the managing director can act without prior board approval.	Unless otherwise provided in the certificate of incorporation, the business of the company must be managed by or under the direction of the board of directors. By resolution, directors may appoint officers and establish their duties and authority so long as such resolutions are not inconsistent with the by-laws of the company.
Generally, a company is permitted considerable flexibility regarding the operation of the board. All directors must be given notice of each meeting, although there are no specific requirements as to the form this should take, unless the company chooses to prescribe rules in its articles. The standard form of articles for a company under UK law provide that notice need not be given to a director who is out of the country. As this rule can often be inappropriate, it can be changed. The board can delegate most of its powers to committees, which may include non-directors, should it choose to do so. Typically such delegation is made for specific purposes - for example, to allow the efficient handling of an IPO or M&A transaction.	In order for the board to act, a quorum (majority of the total number of directors) must be present. A company's certificate of incorporation or by-laws may provide for the number of directors necessary to constitute a quorum to be higher than a majority. Also, unless otherwise provided in the certificate of incorporation, the by-laws may provide for a quorum to be less than a majority; however, in no event may a quorum be less than one-third of the total number of directors.

	The Netherlands	Switzerland
Does the appointment of a director create a contractual relationship between the director and the company?	Appointment as a managing director does not of itself amount to a contract with the company or entitle a managing director to remuneration. Unless the articles prescribe otherwise, the shareholders have the right to decide on the remuneration of the managing directors. A managing director may also have a contractual relationship with the company: as an employee under an employment contract; as a consultant providing services under a consultancy agreement; or through a company or firm which contracts with the company to provide the managing director's services. Termination of any such contract will not automatically terminate the directorship. Termination of the directorship, on the other hand, may amount to a breach of contract.	Appointment as a director does not of itself constitute a contract with the company. Swiss case law provides that a director is entitled to a reasonable remuneration. A director may have a contractual relationship with the company either: as an employee under a service agreement; as a consultant providing services under a consultancy agreement; or through a company or firm which contracts with the company to provide the director's services. Termination of any such contract will not automatically terminate the directorship (although the contract may require that the director resign in such circumstances). Termination of the directorship may constitute a breach of the related contract.
What steps must directors take to avoid conflicts of interest?	There are three main types of conflict of interest: • The company enters into a commercial contract or relationship with one of its managing directors (direct conflict). • Two companies enter into an agreement or relationship and one person holds an office on the board of both companies (conflict in legal capacities). • The interest of the managing director is not in direct conflict but the other party to the contract has an indirect link with the managing director of the company (indirect conflict). If there is a conflict of interest, the director concerned has an obligation to inform the board and/or the shareholders as appropriate.	The Swiss Federal Supreme Court has ruled that a director must not usurp corporate opportunities, that is, take personal advantage of business transactions in which the company itself may have an interest. In this case, the director's act will only be valid if it does not disadvantage the company, or, if after disclosure of the corresponding conflict of interest by the director, the board or the shareholders' meeting authorises or ratifies the relevant act.
What duties does a director owe, and to whom are they owed?	Managing directors must act in the best interest of the company. Each managing director is under a duty of care to the company to perform "properly" his part of the management tasks assigned to him. He must use all reasonable endeavours to achieve this, but does not have to guarantee any results. Managing directors must also act in good faith. The duty of good faith is part of the reasonableness and fairness requirement that is imposed on the relationship between the management board, the supervisory board, the shareholders and the Works Council.	A director must safeguard the interests of the company, although in most but not all cases, a breach of these duties can be ratified by the shareholders. Although this general duty of care is basically owed to the company, a director also has a limited duty of care with respect to shareholders (such as the duty to treat shareholders equally) and to creditors (notably after the company has become insolvent). In safeguarding the interests of the company, a director must exercise reasonable care, having regard to his own level of skill and experience. The standard of care is one of an ordinarily prudent person in like position and in similar circumstances.

UK	US (Delaware)
Appointment as a director does not of itself constitute a contract with the company, or entitle a director to remuneration. A company's constitution will generally entitle a director only to reimbursement of expenses. Directors' fees may be payable to the extent approved by resolution of shareholders. An executive director will also have a contractual relationship with the company either: as an employee under a service agreement; as a consultant providing services under a consultancy agreement; or through a company or firm which contracts with the company to provide the director's services. Termination of any such contract will not automatically terminate the directorship (although the contract may require that the director resign in such circumstances). Termination of the directorship may constitute a breach of the related contract.	Appointment as a director does not of itself constitute a contract with the company, or entitle a director to remuneration. However, directors are generally paid a fee which is designed to reward attendance at board meetings. The directors have the authority to fix the compensation of directors unless such authority is restricted by the certificate of incorporation. Directors also may receive fees for attending committee meetings for any committee that they may sit on. A director also can be an employee of the company, provided his tasks as an employee are separate from his duties as a director.
A director must always disclose to the company any outside interest which is relevant to any contract to which the company is a party. Subject to such disclosure, the company's constitution will determine whether or not a director may vote, or count in the quorum, on a matter where he has an interest.	Directors have a duty to disclose the existence of a conflict of interest to other directors before acting on a corporate matter.
A non-executive director generally owes the same duties as an executive director. A director must: • Act in the best interests of the company, although traditionally UK courts are reluctant to criticise commercial judgments of directors. • Exercise his powers for a proper purpose. In most but not all cases, a breach of these duties can be ratified by the company's shareholders. • Exercise reasonable care, having regard to his own level of skill and experience and the level of skill and experience reasonably expected from a director carrying out the functions of that director. The standard of care is generally higher for executive directors, who have a service contract with the company.	Directors are charged with the overall management of the business and affairs of the company and, in doing so, they owe a fiduciary duty to the company and its shareholders. The fiduciary duties owed by a director consist of a duty of care and a duty of loyalty. A director's duty of care requires him to perform his duty in good faith and in a manner he reasonably believes to be in the best interests of the company, with such care as an ordinary prudent person in a like position would use under similar circumstances. To uphold a directors' duty of loyalty, a director may not act to benefit personal interests at the expense of shareholders and his actions must be rationally related to the protection of shareholder interests.

	The Netherlands	Switzerland
		A director's general duty of care encompasses numerous specific duties. Some particularly important duties of the board are non-transferable. These include the general management of the company and the issuing of necessary directives, as well as corporate finance planning and supervision. If the board of directors has validly delegated certain specific duties (see above) the scope of the delegation defines the scope of the standard of care to be observed by the delegates.
When will a director be liable to the company/ shareholders/ third parties?	A managing director will be liable to the company for mismanagement where there is serious negligence. If a matter falls within the scope of responsibility of two or more managing directors, they are jointly and severally liable for any cases of mismanagement, unless a director can prove that the relevant shortcoming is not attributable to him. To prove this he must show that he was not personally negligent and further, that he did not fail in his duty to take action to avoid or prevent the consequences of the mismanagement. Liability of the managing directors may also arise in relation to certain tax and bankruptcy matters. They may also be liable to third parties under tort law in certain circumstances.	The members of the board of directors and any delegates of the board are liable not only to the company, but also to each shareholder and also to the company's creditors for any injury caused by intentional or negligent breach of their duty of care. However, creditors may only take action against a director once the company has filed for bankruptcy.
Can a director's liability be limited?	No law exists that relates directly to the validity and enforceability of indemnities by the company. However, indemnification clauses are rare because their effectiveness is generally considered to be limited. A company can take out directors' insurance on behalf of its managing directors. However, the insurance policy may contain numerous exclusions and limitations.	A director cannot limit his liability beyond the general ability of the board to limit its liability by delegating certain duties. If a given duty of the board has been validly delegated, the duty of care of the delegating members of the board is limited to the appointment, instruction and supervision of the delegates. Shareholders can ratify certain acts of the board of directors, thus limiting the board's liability to the company and the ratifying shareholders with respect to those acts, provided that there was a fully informed shareholder vote. A company can buy directors' and officers' insurance on behalf of its directors.

UK	US (Delaware)
Directors are also subject to a wide range of specific statutory duties, such as a prohibition on loans by the company to any director except in very limited circumstances. In normal circumstances the duties of a director are owed to the company. This is often (but not always) the same as owing such duties to the shareholders as a whole. Duties are not owed to any one shareholder or to the company's creditors. A director may have a defence to a claim for breach of duty if he can show that he acted honestly and reasonably in the circumstances.	
In principle, a director's liability will be to the company rather than to individual shareholders or creditors. In certain cases, this liability may be enforced on behalf of the company by minority shareholders. If the company is in financial difficulties, the directors will have greater responsibility for acting in the interests of creditors, and are more likely to incur personal liability.	Directors are generally not liable for obligations of the company; however a director may be liable to the company or its shareholders for breaches of his fiduciary duty.
A director cannot be indemnified by the company against negligence, default or breach of duty, except where judgment is given in his favour or he is acquitted; or a court otherwise grants relief to him. As these circumstances are extremely limited, a director is best advised to seek an indemnity from a parent company, subject to any legal and commercial constraints affecting that parent company. A company can buy directors' and officers' insurance on behalf of its directors.	A director's liability to a company or its shareholders for monetary damages for breach of his fiduciary duty as a director can be limited by the company's certificate of incorporation, but no limit can be imposed on a director's liability for (among other things): • Any breach of his duty of loyalty to the company or its shareholders; • Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or • Any transaction from which the director derived an improper personal benefit.

	The Netherlands	Switzerland
What immigration issues may arise?	Employees from outside the EEA need a work permit before being employed in The Netherlands. Applications must be made by the prospective employer and the employee with the competent local authority (*Centrum voor Werk en Inkomen*). The procedure takes a number of weeks if not months. The procedure is somewhat simplified for employees considered key personnel, if they have transferred within an international group of companies, and have been employed for at least one year before being transferred. Employees may also have to obtain other permits to be able to take up residence in The Netherlands.	Foreign directors who live in a defined border zone of Switzerland's neighbouring countries may obtain a border permit to work in a defined Swiss border zone, provided that the director returns daily to his residence abroad. To apply for this permit, the director must have lived in the border zone of the neighbouring country for at least six months. Other foreign directors must either be temporarily or permanently resident in Switzerland. A temporary residence permit may be either a renewable one-year work permit or a six to 18 month special work permit for managers or qualified specialists. Both permits are subject to cantonal and federal quotas. A foreign director may also apply for a "120-day work permit" enabling him to spend up to 120 days a year in Switzerland while retaining his residence abroad. Directors who are EU citizens can obtain a temporary or permanent residence permit under privileged conditions. After ten years of continued residence in Switzerland, a foreign director can usually apply for a permanent residence permit (this period may be reduced to five years under certain residence treaties).
What taxation will a director's income be subject to?	Fees earned by a managing director/individual for activities performed in his capacity as director of a Dutch company, which are paid by this company, are subject to Dutch personal income tax at normal progressive rates, regardless of where the activities were performed. Separate rules apply to fees paid under a service agreement or consultancy contract. Foreign employees and certain employees temporarily resident in The Netherlands are entitled to receive a tax-free cost allowance, calculated on the basis of their gross income.	Directors' fees are taxable income subject to federal, cantonal and municipal taxation. The tax liability of a foreign director can be unlimited or limited, depending on how long he stays and works in Switzerland. Liability will be unlimited if the director resides and works 30 days or more in Switzerland. He must then pay Swiss income tax based on his total global gross income at source. If a director stays and works in Switzerland for less than 30 days a year, he is subject to limited tax liability. In this case, he must pay Swiss income tax based on his Swiss earnings only. This is normally taxed at source, although some of Switzerland's double taxation treaties may provide otherwise.

UK	US (Delaware)
Nationals of countries outside the EEA need work permits to take employment in the UK, unless they have permission to work in another immigration category (for instance as the spouse of a British citizen). Applications for work permits are submitted by or on behalf of the UK employer, rather than the individual, to the Department for Education and Employment. The employer must normally show that the post cannot be filled by a resident worker. Obtaining a work permit for a director is often more straightforward as the resident labour test does not apply to board level post or intra-company transfer applications. The individual should have substantial senior board level experience. The intra-company transfer category applies to employees of multinational companies who have at least six months in-house experience working with the company overseas and is being transferred to the UK. Visitors cannot work in the UK, although they can transact business directly linked to their employment or business abroad.	US federal immigration laws allow a non-US national who is a member of the board of directors of a US company to enter the US as a business visitor to attend a meeting of the board or to perform other functions resulting from membership on the board. Individuals from 28 designated countries (including all of western Europe) may enter the US as business visitors without a visa for up to 90 days. Nationals from other countries must first apply to a US Embassy or Consulate for a business visitor visa. A director who is to be an employee of a US company must obtain an employment visa. There are several non-immigrant visa classifications which may be appropriate depending on various factors, including the company's international structure, the director's employment experience outside the US and any academic qualifications he has. An immigrant visa (for US permanent residence) is available to multinational executives who have previously worked for a related company outside the US.
As holders of an office, directors are subject to income tax on the "emoluments" from their office. Emoluments are defined to include "all salaries, fees, wages, perquisites and profits whatsoever". The terms "salaries, fees or wages" brings monetary payments within the definition and a "perquisite or profit" (perks) is apt to describe a benefit in kind. Where an office holder is subject to tax on emoluments in the UK and overseas, any relevant double taxation agreement will determine which country is entitled to tax the emoluments. Where there is no applicable double taxation agreement, UK unilateral relief may be available.	Directors' fees are subject to US federal income tax and the state income tax (if any) for the individual state in which the director resides. A director may be subject to additional taxation if the board of directors on which the director sits is located in a state other than the director's state of residence.

	The Netherlands	Switzerland
Must a director make social security contributions?	A managing director who is also an employee of the company (*see above*) may be entitled to certain social security benefits, such as disability insurance and unemployment benefits. The company should make sure that social security premiums are withheld from his salary. Any managing director, who is also a major shareholder in the company that employs him or her, is not entitled to social security benefits.	A foreign director who works to a considerable extent for a company (as an employee or as a consultant) normally qualifies as an employee of that company. In this case, the corporation will have to make Swiss social security contributions on the remuneration paid to the director. Exemptions may be available under international social security treaties.
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	UK	US (Delaware)
	As an "employed earner" a director is liable for Class 1 National Insurance Contributions unless he has reached pensionable age. Where a director is assigned for a time to the UK and is either resident or present in Great Britain, no liability for National Insurance contributions will arise during the first 52 weeks of the assignment provided certain requirements are met. This 52-week holiday is not available where the director is transferred from another EU country or from a country with which the UK has a reciprocal agreement covering contribution liability. Additionally, contributions will not normally be sought from a director who is not resident or ordinarily resident but who regularly comes to the UK for board meetings, within certain time limits.	A director must make social security contributions. Such contributions are withheld from the director's income.
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	Austria	Belgium
Which types of company are covered by this guide?	Private limited liability company (*Gesellschaft mit beschränkter Haftung*) (GmbH). This type of company is designed to offer flexibility for the smaller type of enterprise and is most commonly used.	Company limited by shares *(naamloze vennootschap/ société anonyme*). This type of company is usually used for large, capital intensive structures and sometimes for medium-sized family undertakings. It may be public or private.
What is the board/ management structure?	Private limited companies generally have one board, a management board (*Geschäftsführung*). All directors of the management board are "managing" directors. Large companies must also have a supervisory board (*Aufsichtsrat*), which has a controlling, non-managing function. The company's articles of association may also provide for a supervisory board. A supervisory board must consist of at least three directors. Additional members may be appointed unless their number is restricted by the articles. The number of directors of the supervisory board is usually determined by the articles. Members of the supervisory board cannot also be managing directors or employees. An individual must not be member of the supervisory board of more than ten (in certain cases five or 20) private or public limited companies.	The day-to-day management of the company, as well as the representation of the company in relation to management matters, may be entrusted to one or more managing directors. A managing director is appointed and removed by the board of directors. As a rule, the articles of association regulate the appointment, removal and powers of managing directors. Managing directors act jointly or severally as provided in the articles. The appointment and removal of one or more managing directors must be published in the Belgian Official Journal (notice must also be filed with the office of the Commercial Court in the district in which the company has its registered office within 15 days).
What eligibility requirements apply?	Few restrictions apply. There is no residency or nationality requirement. Only a physical person with full legal capacity can be appointed. The company must be effectively managed from within Austria. Otherwise it may be regarded as liquidated and taxed on built-in gains.	Few restrictions apply (some examples are minors and bankrupt individuals). There is no residency or nationality requirement. A company can be appointed director. Its representative body (its own board of directors) then represents the company. The articles of association may contain certain conditions regarding appointment but these may not limit the free choice of the general meeting of shareholders to appoint directors.

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	Société anonyme (joint stock company). This type of limited company is commonly used. It can be public or private.	*Société par actions simplifiée* (simplified joint stock company). This type of company, which is more and more commonly used, offers a flexible structure and its uses may include joint ventures. However, it may be private only and not public.	Limited liability company (*Gesellschaft mit beschränkter Haftung*) (GmbH). The GmbH is by far the most common private company form of business entity.
	Shareholders can organise the management structure of the company as an executive or collegiate body. However, they must provide for the appointment of a chairman who represents the company in its relationships with third parties. The chairman of the board of directors (*conseil d'administration*) and the managing director may be the same person or two individuals, depending on the provisions of the articles of association. The chairman of the board of directors (*conseil d'administration*) is in charge of organising and managing the board (i.e. he has a non-executive role). The managing director is in charge of the general management of the company (i.e. he has an executive role). A *société anonyme* may also be managed by a *directoire* (managing board) and *conseil de surveillance* (supervisory board) instead of the more commonly used *conseil d'administration*. The *directoire* is responsible for managing the company, while the *conseil de surveillance* is responsible for supervising the *directoire*. In addition, one or more statutory auditors control the company's accounts and supervise the management of the company.	The articles of association may provide for the appointment of a supervising body, its membership and its working rules. The shareholders' meeting should also be considered a supervising body, particularly where it approves the annual accounts. As in the case of the *société anonyme,* the SAS is subject to supervision by one or more auditors.	There is no board system as such. However, one or more managing directors may together be considered the "management board". Limited liability companies may have a voluntary advisory board (*Beirat*). However, this is not very common for companies that are part of a larger group. Companies with more than 500 employees must have a supervisory board, some of whose members are elected by the employees.
	Few restrictions apply (some examples are minors and those disqualified from acting as director). There is no residency or nationality requirement. A legal entity can be appointed director. In this case a *représentant permanent* (a standing representative) must be appointed to represent the entity on the board. The *représentant permanent* must meet the eligibility requirements applicable to directors. The articles of association may contain certain requirements, for example specific skills or age limitation. In non-state owned companies, all the directors must hold qualifying shares.	Few restrictions apply on who can act as manager (examples are carrying out an activity incompatible with management duties and personal bankruptcy). The articles of association may set specific requirements such as age limitation, a requirement to hold shares or specific skills. A legal entity may be appointed as a manager, unless the articles provide otherwise.	Generally, very few restrictions apply. There is no residency or nationality requirement (although some commercial registers may require that directors be capable of entering Germany at any time). Only individuals (as opposed to companies or other corporate entities) may be appointed managing director. The management of the company must effectively take place within Germany (otherwise the German courts may consider the company to be foreign and the limitation of shareholders' liability may cease to apply).

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How are directors appointed?	Managing directors are appointed by shareholder resolution. They may also be appointed by a provision in the articles of association, if and as long as they are shareholders. The period of appointment is not limited unless the articles provide otherwise. Notification of the appointment, signed by the managing director(s), with certified evidence of the appointment and a certified sample signature of the managing director must be filed with the Commercial Register. A small fee is payable. Directors of the supervisory board are appointed by shareholder resolution. The term of appointment cannot exceed five years. Notification of appointment, signed by the managing director(s), must be filed with the Commercial Register. A small fee is payable.	Directors are appointed by the general meeting of shareholders. Upon formation of the company, the directors may be appointed in the deed of incorporation by the general meeting. The general meeting of shareholders must always be free to choose the directors. The articles of association set their term of appointment, which cannot exceed six years. Unless the articles provide otherwise, directors are eligible for re-appointment. In the event of an early vacancy, a newly appointed director serves for the period of the person he replaces.
How are directors removed?	A director may be removed at any time by resolution of the shareholders. A director may resign at any time by giving notice to the company. However, this may amount to a breach of duty or a breach of contract. If directors are appointed for a fixed term, or are subject to "rotation", their appointment will terminate if they are not re-appointed. Notification of the removal or resignation of a director, signed by the (new) managing director(s), must be filed with the Commercial Register. A small fee is payable.	The general meeting of shareholders may remove any director at any time. A director may resign at any time. However, his resignation must not cause damage to the company and should therefore be done carefully. The director may be required to settle current business. The removal or resignation of a director must be published in the Belgian Official Journal and filed with the office of the Commercial Court in the district in which the company has its registered office within 15 days. The removal or resignation of a director does not shield him from liability. He can still be liable for faults committed during his office, even if the damage occurs after his removal or resignation.
What authority and powers of representation do the directors have?	Managing directors can only represent the company together. However, the articles of association may, and usually do, provide that one or two managing directors or, if there is more than one managing director, one managing director and a *Prokurist* (agent with limited power to represent) may represent the company.	The board of directors has all powers that are necessary or useful to implement the corporate object of the company, except for those powers expressly reserved to the general meeting of shareholders by law or the articles of association. The board represents the company in relation to third parties.

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Directors are appointed by ordinary general shareholders' meeting. The articles of association may provide that some directors be elected by employees (up to a maximum of four) following consultation with the shareholders. Upon incorporation, the articles may designate the first directors. The articles set the term of appointment, which may not exceed three years for directors appointed at the time of incorporation, and six years in all other cases. Directors are eligible for re-appointment unless the articles provide otherwise. The appointment of a director must be published in a legal notice bulletin and filed with the office of the commercial court (*greffe du tribunal de commerce*).	The articles of association can freely determine the method of appointment of the chairman and the other managers. A decision by the shareholders is not necessarily required. Upon incorporation, the articles must designate the first managers. The appointment of managers must be published in a legal notice bulletin, and filed with the office of the commercial court. The chairman and all persons with actual power to manage must be mentioned in the trade and companies register.	The method of appointment is determined by law and the articles of association (*Satzung*). A managing director is normally appointed by shareholders' resolution or, if the articles allow, by a committee of shareholders or the advisory board (different rules apply if there is a mandatory supervisory board). Notification of the appointment and an affidavit, signed by the managing director and notarised by a notary public, must be filed with the competent commercial register. Appointments are frequently open-ended, but can also be for a fixed term. Companies also regularly enter into service agreements with their managing directors.
The general meeting of shareholders may dismiss the directors at any time. There is no need to provide reasons for the dismissal, but such a decision must not be taken in insulting and hurtful circumstances (but only after a "proper hearing"). A director may resign at any time, without giving a reason. Where the resignation is reckless, the director may be ordered to pay damages to repair the loss incurred by the company. A director who is struck by an incapacity or a disqualification order must resign. The removal of a director must be published in a legal notice bulletin and filed with the office of the commercial court. The removal of a director does not end his liability. He can still be liable for faults committed during his office.	The articles of association set the basis for dismissal of managers. The decision to dismiss may be reserved to the shareholders, to a supervising body, to a group of shareholders and so on. A dismissal decision need not be justified, but it must not be taken in insulting and hurtful circumstances (but only after a "proper hearing"). Managers may resign at any time on the basis set out in the articles of association (such as on giving notice). The articles may provide for the payment of damages if a manager is removed, and set the basis for payment.	A managing director is subject to removal by shareholders' resolution at any time (although he may still be entitled to his salary and other benefits under a service agreement). A managing director may resign from his office at any time by giving notice to the company (although resignation may amount to a breach of contract). Resignation or removal of a director must be notified to the competent commercial register in notarised form.
The board of directors plans the company's activities and supervises their implementation. The board has all powers to carry out the company's corporate object in any circumstances and in the name of the company, except for those matters expressly reserved to the general	The chairman has all powers to fulfil the corporate object of the company in all circumstances and in the name of the company. He represents the company in its dealings with third parties. The articles of association may limit the powers granted to the chairman.	The authority to conduct the business of the company *(Geschäftsführung)* is distinct from the power to represent it in dealings with third parties *(Vertretungsbefugnis)*. While the internal authority may be limited, the external power to represent the company is generally unlimited.

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	The actions of managing directors properly representing the company (i.e. exercising powers conferred by law or by the articles) are valid and binding regardless of whether prior approval by the shareholders or the supervisory board is required. A managing director has full authority to manage the company. This authority may be restricted by the articles or by shareholder resolution. The articles will often provide that certain key managing acts are subject to prior approval by the shareholders or the supervisory board.	The articles may grant one or more directors the power, solely or jointly, to represent the company in all acts, deeds and before the courts and public authorities. This authority must be published in the Belgian Official Journal. Some of the board's powers can be allocated to certain individual directors. This cannot, however, be invoked against third parties. The articles may limit the powers granted to the board of directors. Such restrictions, however, may not limit the fundamental powers of the board. Restrictions on the powers of the board are not enforceable against third parties.
What are the working rules of the board?	A company may have one or more managing directors. Usually the number of managing directors is determined by the articles of association. All directors have the same rights and duties and are jointly obliged to manage the company. However, certain management issues may be allocated to specific persons by the articles, by either shareholder resolution, resolution of the supervisory board and/or the management board itself. Shareholders may give binding instructions to the directors for any acts of management unless otherwise provided by the articles or unless there is a supervisory board.	A company limited by shares must have at least three directors (there is no maximum unless the articles of association provide otherwise). However, if the company has only two shareholders, the board may consist of only two directors. The board of directors is a collegiate body. Decisions are taken with a majority of votes, unless the articles of association provide otherwise. The directors can take decisions in writing (i.e. without a formal meeting) only if they are taken unanimously and are absolutely necessary for the interests of the company.
Does the appointment of a director create a contractual relationship between the director and the company?	Appointment as a director does not of itself amount to a contract with the company, or entitle a director to remuneration. A company's articles will generally only entitle members of the supervisory board to reimbursement of expenses. Supervisory board directors' fees commensurate with their duties may be payable to the extent specified in the articles of association or approved by resolution of shareholders. A managing director may also have a contractual relationship with the company, e.g. as an employee under a service agreement or as an independent contractor providing services under a consultancy agreement. Termination of any such contract will not automatically terminate the directorship. Termination of the directorship will not automatically terminate, but may amount to a breach of, the related contract.	A director in a company limited by shares is an agent (*lasthebber*) of the company. A director may, but need not, be remunerated. The general meeting of shareholders determines the directors' remuneration, unless the articles of association grant this power to the board of directors. A director can also be an employee of the company, provided his tasks as an employee are separate from his duties as director. A management company may be formed (a company that contracts with the company to provide the directors' services).

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meeting of shareholders by law or by the articles of association. In practice, the managing directors exercise most of these powers. However, certain decisions are expressly reserved to the board (such as convening general meetings and adopting the company's accounts and annual management reports). The articles may limit the powers granted to the board over and above the usual legal restrictions. Such restrictions are not enforceable against third parties.	Such restrictions, however, are not enforceable against third parties. In the absence of specific legal provisions, the powers of the other managers must be precisely set out in the articles. In principle, they are not the legal representatives of the company in relation to third parties, but the chairman may delegate (limited) powers to them.	The managing director's authority to conduct the company's business is restricted by various means including the articles of association, internal management rules and the service agreement. In respect of such matters, the managing director may not act without prior approval from the competent body (usually the shareholders). Generally, the company is represented by all its managing directors acting jointly. This rule, however, is often altered by the company's articles to give one or more managing directors power to represent the company.
A company should have at least three directors and at most 18 (excluding any directors appointed by employees). The articles of association set out the number of directors required within those limits. The board of directors is a collegiate body. Its decisions must be taken by a majority of the directors present or represented. In principle, the chairman of the meeting has a casting vote.	Where a board exists, the articles of association can specify its desired working rules.	The minimum number of managing directors is one (or a higher number as set by the company's articles). All "board members" are vested with the same rights and duties. The managing directors must jointly manage the company. The shareholders, and even the directors, may modify this and allocate certain tasks to one or more managing directors. However, such a distribution of responsibilities does not affect the overall responsibility of each managing director for the company's business as a whole.
Directors are in principle agents of the company. A limited number of them (in principle a third of the directors in office) may also be employees of the company subject to certain conditions. Directors are paid directors' fees of an annual basic amount to reward regular attendance at board meetings. Additional extraordinary remuneration may be granted by the board to directors who carry out specific activities (missions or specific mandates). Remuneration of the chairman and managing director is determined by the board of directors.	Managers, if any, are in principle agents of the company. A manager of an SAS may be an employee of the company, unless the articles of association provide otherwise, and only if he fulfils specific tasks as employee and remains in a subordinated position as regards the company. The articles of association set the conditions for the remuneration of the chairman and any managers.	Appointment as a managing director does not in itself create a contractual relationship between the director and the company, or entitle the director to remuneration. The company therefore usually enters into a service agreement with the managing director, specifying his duties and remuneration, and containing provisions on issues such as, confidentiality, non-solicitation, non-competition and fringe benefits. The service agreement is entered into by all shareholders on behalf of the company (unless there is a supervisory board) and the managing director. Termination of the directorship does not automatically terminate a complementary service agreement and vice versa, although the service agreement may provide for automatic termination of the service agreement upon termination of the directorship.

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What steps must directors take to avoid conflicts of interest?	A director must refrain from any action that might be detrimental to the company. A director cannot represent the company in dealings with himself, or with a third party represented by himself unless the company consents by shareholder or supervisory board resolution or the company's interests are not negatively affected. Directors must not accept any loans from the company without prior approval by the shareholders or the supervisory board. Managing directors cannot transact business within the company's line of business for their own account or for the account of others, nor can they be general partner of a partnership or a member of the management or supervisory board of another company in the same line of business, without the prior approval of the shareholders or supervisory board.	If a director has a direct or indirect personal and conflicting interest of a financial nature in a decision or transaction within the authority of the board of directors, he must disclose this interest to the other directors before the decision or transaction (and, if applicable, to any statutory auditors). The statement of the director and the reasons justifying his conflict of interest must be recorded in the minutes of the board meeting. Directors who have a conflicting interest at a board meeting in a company that has made a public offer of securities, may not participate in the deliberation of the board regarding the decision or transaction concerned, nor vote on the matter.
What duties does a director owe, and to whom are they owed?	A director's duties are owed to the company (and not to any one shareholder or the company's creditors). A managing director must manage and act on behalf of the company in line with the business purpose, in the best interests of the company and in accordance with instructions by shareholders, with the diligence of an orderly businessman (without regard to his own individual level of skill and experience). Directors are subject to a wide range of specific statutory duties, for example compiling and disclosing financial statements to shareholders and to the public and convening shareholder meetings.	Each director must act in the best interests of the company as a whole and not only for its shareholders. Directors must make and implement their decisions in the "corporate interest" of the company. The board of directors is under a duty to determine the strategy of the company and to implement this strategy. It must also inform the shareholders in certain circumstances and for specific operations, mainly relating to the equity of the company. Directors also owe to the company a general duty of care (to manage the company in a proper way) and a duty of loyalty (to strictly observe the rules on conflicts of interest).

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If a director has a personal interest in a decision that must be made, he may still participate in the voting, unless his interest conflicts with the interests of the company. Where there is a conflict between the interests of the company and his interests as a shareholder, a director must favour the interests of the company. Unless a contract between the company and a director relates to ordinary business and is on an arm's length basis, it requires authorisation and approval by the board and by the shareholders. All agreements between the company and a director must be disclosed to the board. Loans from the company to a director, and certain similar arrangements, are prohibited.	Unless a contract between the company and the chairman (and any director) relates to ordinary business and is on an arm's length basis, it requires approval by the shareholders. Loans from the company to the chairman (and any director) and certain similar arrangements, are prohibited.	A managing director cannot compete with the company's business while holding office, although the shareholders may release him from this requirement at any time. Any non-competition and non-solicitation covenants which go beyond this must be set out in the service agreement. A managing director cannot represent the company in dealings with himself or with a third party represented by him (such as another "affiliated" company for which he also acts as managing director) unless authorised by shareholders' resolution. Such a resolution must be permitted by the company's articles and recorded in the commercial register.
Unless he has a mandate to act individually on behalf of and in the name of the company, a director usually fulfils his duties as a part of the board's collegiate actions. Generally, an individual director must act in the interests of the company, and must be particularly careful if the company is in financial difficulties. A director has a duty of confidentiality in relation to all the board's proceedings. He must attend board meetings: even if absent he is still liable for any decision that could have been harmful to the company or a third party. He may be represented by another director, although not permanently.	The position of the chairman (and any director) is the same as for a director of a *société anonyme.*	A managing director must comply with a wide range of statutory duties, the articles of association, the provisions of any service agreement and shareholders' resolutions. He must, in all circumstances, act in the best interests of the company. A breach of a director's duties to the company can normally be ratified by the shareholders. There are many duties that are aimed at protecting the interests of third parties such as the company's creditors and even the general public (e.g. the tax and social security authorities). If the company is in financial difficulty, there is a greater onus on the managing director to act in the interests of creditors, and a greater risk of him incurring personal liability. A managing director must always employ the diligence of an "orderly businessman", exercising reasonable skill and care.

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When will a director be liable to the company/ shareholders/ third parties?	A director is fully liable to the company (but not shareholders) for a wilful or negligent breach of duty. Where there is a wilful or negligent breach of duty by two or more directors, they are jointly and severally liable. In case of default of the company or failure to file for insolvency proceedings in a timely manner due to wilful misconduct or negligence, a director may also be liable to creditors. Wilful or negligent injury to creditors' interests or a failure to file for insolvency proceedings in time may also be a criminal offence. In case of wilful or negligent default on the payment of taxes or social security contributions, a managing director may be personally liable to the tax authority for amounts outstanding. This may also amount to a criminal offence.	Directors are not personally liable for any obligations of the company. The company is bound by the acts of the board of directors and the individual directors representing the company and the managing directors (even if such acts are beyond its corporate object, unless the company proves that the third party was aware). Each director is individually liable to the company for management faults. Directors are also jointly liable to the company, as well as to third parties, for breaches of the Commercial Companies Code or breaches of the articles of association. Directors are personally and severally liable for any loss sustained by the company or by a third party as a result of decisions or transactions that have secured for them (or one of them) an unlawful financial advantage to the prejudice of the company, even if such decisions or transactions took place in accordance with the rules on disclosure of conflicts of interest. In the event of bankruptcy, directors may be liable if they were grossly negligent and this contributed to the bankruptcy.
Can a director's liability be limited?	A director's liability to the company cannot be limited by agreement. However, it is common practice to resolve upon the approval of the director's acts *(Entlastung)* after the close of each business year, thus waiving any recognisable claims of the company. A director's liability to the company is excluded if the shareholders give their consent by shareholders' resolution. The company may also take out directors' liability insurance.	The annual general meeting of shareholders must expressly decide whether or not relief from liability should be granted to the members of the board. If the annual meeting decides to grant relief, the directors are, as a rule, shielded from liability to the company for the period before the annual meeting (but not from liability to individual shareholders or third parties). To limit the liability of the directors, a guarantee arrangement can be entered into to indemnify the director against the financial consequences only of the liability incurred (he may still be criminally liable). A director or company may also take out insurance to limit the financial consequences of liability (again, he may still be criminally liable). All actions against directors become statute-barred after five years.

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Directors are not personally liable for all commitments of the company. Proceedings to contest the board's decisions are brought against the company itself. In its relationships with third parties, the company is bound even by acts exceeding the corporate object, unless the company can show that the third party was aware of this. Directors are liable for certain faults committed in the exercise of their duties only. They may be individually or jointly liable, depending on whether the fault was committed by an individual director, or collectively by several directors. Directors may also be criminally liable for offences committed in the exercise of their duties (such as misuse of company property). In the event of bankruptcy, a specific action may be brought against directors, who may be ordered to pay off all or part of the company's debts. A personal bankruptcy procedure may also be brought against a director.	The chairman and managers of an SAS are liable on the same basis as directors of a *société anonyme.*	A managing director who negligently or intentionally breaches his duties to the company, is liable for damages in relation to the company unless the managing director's action has been (validly) approved or ratified by the shareholders. The company is then, as a general rule, precluded from claiming damages. If misconduct can be attributed to several managing directors, they are liable on a joint and several basis. Particular liabilities may arise in connection with the managing director's duty to monitor the contribution and maintenance of the company's share capital. If the company becomes insolvent or over-indebted and the managing director fails to file a petition for insolvency in time he will be liable for damages not only to the company but also to third parties (particularly creditors). This is also a criminal offence. A breach of the managing director's obligations under tax and social security laws may also have implications extending beyond liability to the company. In the event of misconduct or gross negligence, the relevant government authorities may have a cause of action against a managing director and in extreme cases, criminal sanctions may ensue.
Directors' liability cannot be limited in the articles of association. Articles that require the consent of a shareholders' meeting for an action against a director, or provide an anticipated waiver of this action, will be ineffective. Regardless of any decision made by the shareholders in a general meeting, the company may still sue a director who has acted outside the scope of his powers as a director.	Liability of the chairman and managers cannot be limited in the articles of association.	It is doubtful whether a managing director's liability to the company can be validly limited in advance by any kind of general agreement. However, the company can waive specific claims against a managing director. The shareholders of a company regularly resolve upon the approval of the director's acts (*Entlastung)* after the close of each business year, thus waiving any claims identifiable at the time of the resolution. A managing director's potential liability towards third parties or creditors cannot be limited or waived by the company. The personal exposure of a managing director may be covered by the parent company, if so agreed and to the extent permitted by law, by granting an indemnity. The company may also take out D&O insurance cover in favour of its managing directors.

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What immigration issues may arise?	Foreign directors require a permit to immigrate and a labour permit. EU and EEA nationals are exempt from these requirements. A temporary residence permit (valid for a year but may be renewed) is required for directors employed by an international employer in the course of an employee rotation. A permanent residence permit is required in all other cases. A permanent residence permit will only be issued if it is covered by the immigration quota for key employees. A director must apply to confirm that a permit is available under such quota. The application for both types of immigration permit must be filed outside Austria with certain documents. Once he has obtained permission to immigrate, a director must apply for a labour permit (valid for a year but may be extended). This can be restricted to certain geographic areas or to a certain position. Directors with 25% or more of the shares of the company do not need a labour permit. A director with less than 25% is only exempt if the authority confirms that he exercises essential influence over the management of the company.	As a rule, if a director does not become a resident in Belgium and is not remunerated, there are no immigration issues. In other cases, a distinction must be made between EU-residents and non-EU-residents. EU-residents have the right to work in any member state. There are no special requirements, except the obligation to register with the town hall where the director resides. Non EU-residents who come to live in Belgium and are remunerated by the company must get an authorisation to stay for more than three months in Belgium. This must be requested from the Belgian embassy or the Belgian consulate in the director's home country. If the authorisation is granted, a stamp will be put on the director's passport. Depending on the country from which he comes, the director may also require a professional card. This can be obtained from the Belgian municipality where the director is living or from the Belgian embassy or consulate in his home country if he does not yet live in Belgium (valid for up to five years but renewable).
What taxation will a director's income be subject to?	If an individual is resident in Austria, his worldwide income is subject to Austrian income tax. If an individual is not resident in Austria, only certain sources of income, including income from employment in Austria or consultancy services provided in Austria, is subject to Austrian income tax. Numerous double taxation treaties limit Austria's or the foreign country's right to tax. Income is generally taxed at a progressive rate, ranging from 0% to 50%. Tax treatment of service fees depends on whether the director is qualified as an employee or as an independent contractor. If a director is categorised as an employee, the income is taxable in Austria and subject to withholding tax. If he is categorised as an independent contractor, the income is taxable in Austria if the services are performed in Austria.	A director who resides in Belgium will be taxed in Belgium. To calculate the tax, all forms of remuneration are taken into account, such as the director's fees and all benefits granted to the director in the context of the exercise of his function. The tax rate is progressive. Costs related to the exercise of the director's function are tax-deductible. The director may deduct a flat amount, fixed by the tax administration, or he can prove his real costs. The company must withhold an advance tax payment. If the director is a member of the board of several companies, each company must withhold an advance tax payment separately.

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EU residents have the right to work in any member state. There are no special requirements. Any foreign individual (EU or non-EU) can be a director of a *société anonyme* - no permit is required. Any EU citizen can be chairman of a *société anonyme;* however, where a non-EU citizen proposes to be chairman of a *société anonyme,* a special permit will need to be obtained (a *carte de commerçant étranger*).	For the chairman, see the position in relation to the *société anonyme*.	A foreign managing director who wishes to live in Germany must obtain a residency permit. Unlike foreign employees (except managers) directors do not need a labour permit. EU and EEA nationals are entitled to a temporary residency permit, issued for at least five years. Subsequent permits may be granted for an unlimited period of time. In all other cases, a residency permit will only be issued on a discretionary basis if there is a "special local requirement" or "a major German economic interest". A permit will not generally be refused if the director is a citizen of the country of the head office of the employer and if he meets certain professional criteria. However, a permit may also be granted to directors who do not qualify in this sense. The residency permit will be issued for a limited period of time and subsequent permits are granted when necessary. It must generally be applied for outside Germany.
Directors' fees are subject to income tax in France whether or not the director lives in France. The remuneration of the chairman and the managing director is subject to the tax regime applicable to employees.	The chairman and managers of an SAS are subject to the tax regime applicable to employees.	If a managing director lives in Germany, his worldwide income is subject to German income tax. If he is not resident in Germany, only certain sources of income, including income from employment in Germany or consultancy services provided in Germany, are subject to German income tax. Numerous double taxation treaties limit Germany's or the foreign country's right to levy taxation. Income is generally taxed at a progressive rate, ranging from about 20% to about 50% (including solidarity surcharge). Various tax deductions may apply, with certain restrictions in the case of non-resident taxation. If a director is also a shareholder of the company, the dividends received may be subject to different rules depending on whether they qualify as salary or as income from capital investments.

	Austria	Belgium
Must a director make social security contributions?	If a director is an employee, pension contributions, health insurance, casualty insurance and unemployment insurance must be paid. If a director is an independent contractor (this will generally be the case if his shareholding exceeds 25%), pension contributions, health insurance and casualty insurance must be paid. Individuals who contribute to the above schemes are entitled to payments in cash or in kind on retirement, sickness, disability, casualty, unemployment (for employed individuals) etc., subject to specific preconditions (e.g. minimum contribution periods).	A director is deemed to be self-employed even if he does not receive remuneration for his function as a director. Within 90 days of the start of his activity, he must be registered with a social insurance company. Directors are personally liable for the payment of social security contributions, payable on a quarterly basis. These contributions are calculated on the director's annual remuneration of three years ago and are tax-deductible. If a director has reached retirement age and does not receive remuneration for his role as a director, he is no longer deemed to be self-employed.
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France (1)	France (2)	Germany
A chairman should be registered for social security purposes and with the pension scheme for managers. Directors' fees are not subject to social security contributions, as long as they do not amount to supplementary remuneration (the beneficiaries of which also include employees of the company).	Remuneration of the chairman and managers is in principle subject to contributions to the general social security regime.	If a director is qualified as an employee (this normally is the case) pension contributions, health insurance, casualty insurance and unemployment insurance are compulsorily deducted, regardless of whether the director is resident in Germany or not. A director's social security contributions amount to about 20% of gross salary up to certain caps. German social security laws do not apply to EU and EEA nationals who are sent to Germany by foreign employers for not more than a year. Numerous treaties with other countries also limit the applicability of the German social security laws. If a director is an independent contractor (e.g. because he holds more than 50% of shares of the company or he has a blocking minority), pension contributions, health insurance, casualty insurance and unemployment insurance are not compulsory.
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