D&O Corporate Indemnification:
A Reference Guide by Country
The legend below is based on the responses received when selected law firms within each country were asked if a company can indemnify its directors and officers should a civil or criminal claim or an administrative/regulatory investigation be brought against them.

**D&O Corporate Indemnification Allowed:**
- **NO**, see notes
- **Unclear**, see notes
- **YES**, see notes
- **YES**, with some limitations and conditions
**Corporate Indemnification by Country**

Zurich’s extensive experience in the global marketplace and dedicated teams of international underwriters enable us to offer this D&O Corporate Indemnification guide to help you manage global risks confidently and effectively.

Information is listed in alphabetical order by country, and identifies the law firm that was surveyed for each country. Zurich asked each firm the following questions:

If a civil or criminal claim or administrative/regulatory investigation is brought against a director or officer in their corporate capacity, can the company indemnify the director or officer for:

1. His/her defense costs; and/or
2. Damages, judgments and settlements? If so, are there any particular conditions that apply?

The explanatory notes are a compilation of direct unedited input received from law firms that Zurich does business with worldwide. The input was requested and received from those firms within the period May 2012 to October 2013 and, therefore, should serve as a starting point for further inquiry by qualified local legal assistance in the jurisdictions that are relevant to a customer’s particular situation.

### Explanatory Notes

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<tr>
<td>Albania</td>
<td>Kalo &amp; Associates</td>
<td>Albanian company laws do not regulate nor do they make any provision for indemnification of directors and officers against civil or criminal claims or administrative/regulatory actions brought against them because of their corporate capacity. If such an action is brought against a director/office for acts or omissions carried out while acting in his/her capacity as director or officer, the company can indemnify him/her for his/her defense costs and awards of compensation in respect of legal liability, without having to refer to or take into account any particular laws or regulations for this purpose. In addition, note that there are no legal stipulations prohibiting indemnification in cases of gross negligence or willful misconduct or similar conduct of the director/officer. However, indemnification of directors is possible in cases where it is stipulated in the articles of association of the company or in special related policies of the company. If the situation arises, decision-making or management bodies, within the powers conferred to them by the company’s articles of association, policies, etc., could indemnify the directors/officers for the costs incurred (legal costs, damages settlement, etc.) provided that such powers are prescribed in the articles of association, policies, etc. If no such provisions are set forth in advance in the articles of association, policies, etc., the indemnification could be performed on the basis of a resolution of the relevant decision-making body of the company. In addition, indemnities may also be agreed in a contract of employment or other type of contract entered between the company and the directors and/or officers.</td>
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<td>Angola</td>
<td>Faria de Bastos &amp; Lopes</td>
<td>Yes, if the company and the director so agree.</td>
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<td>Argentina</td>
<td>Manzano, López Saavedra &amp; Ramirez Calvo</td>
<td>The matter is debated under Argentine law. Some authors maintain that such an indemnification would violate the liability provisions of the Companies Law, under which both the Company and the shareholders have the right to sue directors in case of violation of their duties. However, other authors believe that there is no impediment for a Company to give a direct indemnity to a director, since there is no express provision of the law prohibiting it. In addition, those authors maintain that it is in the interests of the Company to retain reputable directors which would otherwise refrain from participating as such, should they not receive such indemnity.</td>
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| Australia | Wotton + Kearney                              | The ability of a company to indemnify an officer (which includes a director) is governed by its Constitution and section 199A of the Corporations Act (Cth) 2001. If the company’s constitution expressly permits it, a company can indemnify an officer for:

1. Liability on condition that it is not in relation to a liability:
   a. owed to the company (a company is also not allowed to exempt an officer from liability to the company incurred as an officer);
   b. for a pecuniary penalty order under section 1317G or a civil compensation order under section 1317H or 1317HA of the Corporations Act (or for a pecuniary penalty order under the Australian Consumer Law); or
   c. owed to a third party which did not arise out of conduct in good faith. |
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<td><strong>Australia</strong></td>
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<td>2. Their defense costs on condition that they were not incurred:</td>
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<td>a. defending proceedings in which the person is found to have a liability for which they could not be indemnified on the basis set out above;</td>
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<td>b. defending or resisting criminal proceedings in which the person is found guilty;</td>
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<td>c. defending or resisting proceedings brought by ASIC or a liquidator if the grounds for making the requested Orders are established (this restriction does not apply to costs incurred responding to an ASIC or liquidator investigation prior to proceedings being issued); or</td>
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<td>d. in connection with proceedings for relief to that officer under the Corporations Act in which the Court denies the relief claimed (i.e. under sections 1317S or 1318 of the Corporations Act)</td>
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<td><strong>Azerbaijan</strong></td>
<td>OMNI Law Firm</td>
<td>Directors and officers may be subject to the following liabilities under Azerbaijani law:</td>
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<td>(i) civil liability; (ii) administrative liability; and (iii) criminal liability.</td>
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<td>Generally, the indemnification concept is not expressly recognized in Azerbaijani law although it is mostly closely related to the concept of compensation of damages. Further, Azerbaijani law recognizes the principle of freedom of contract, when parties can enter into contracts which do not contradict the Civil Code. Accordingly, theoretically, a company may contractually undertake to indemnify damages that a director or officer might incur if some claims are instituted against such director or officer. We however note that there are a few provisions in the Civil Code of the Republic of Azerbaijan (the “Civil Code”) that may have bearing on indemnification clauses. For example, Article 443.8 of the Civil Code expressly prohibits the advance agreement of the parties releasing an obligor from the “obligation to compensate damages occurring due to non-performance of obligation resulting from intentional actions of an obligor.” Under Article 448.2 of the Civil Code, the release of an obligor from liability due to intent or gross negligence is prohibited. According to Article 459.6 of the Civil Code, it is prohibited that the obligee waives in advance his or her right to claim compensation of damages for violation of the obligation by the obligor. On one hand, the aforementioned provisions of the Civil Code may be interpreted in the way meaning that a company is barred from indemnifying its directors’ or officers’ costs arisen from the latter’s intentional acts and gross negligence. On the other hand, it appears from the wording of these provisions that they should apply to relationship of obligors (i.e. directors or officers) vis-à-vis obligees (i.e. a company) as opposed to third parties. In other words, while the company cannot enter into a contract with its director or officer whereby waiving its rights on such director’s or officer’s liability in relation to the company, the company may agree to indemnify its director’s and officer’s liability in relation to third parties. If the latter interpretation is accepted, the company may compensate its directors’ and officers’ monetary liability arising out of relations with third parties. Please note that insurance legislation of Azerbaijan only refers to insurance of civil liability. This means that insurance of administrative and criminal liability might be considered against law, and we are not aware of local insurance companies that offer such insurance products. Nevertheless, it might be theoretically possible to insure the company’s costs in relation to indemnification of defense costs of its directors or officers arising out of their administrative or criminal liability because the nature of the company’s undertaking to compensate a director’s or officer’s legal costs is civil (private) law as opposed to public law (e.g. administrative or criminal law). But this practice is not tested in Azerbaijan.</td>
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<td><strong>Bahamas</strong></td>
<td>Higgs &amp; Johnson</td>
<td>The companies legislation provides that a company may indemnify a director or officer of the company, a former director or officer of the company or any person who acts or acted at the company’s request as a director or officer of a company of which the company is or was a member or creditor, against all costs, charges and expenses (including an amount paid to settle an action or satisfy a judgment) reasonably incurred by him in respect of any civil, criminal, administrative, action or proceeding to which he is a party by reason of his association with the company or other entity. Indemnification would not be available unless the director, officer or other person has acted honestly and in good faith with a view to the best interests of the company or in the case of a criminal or administrative action or proceeding, had reasonable grounds for believing his conduct was lawful.</td>
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There are several possibilities for a company to protect its directors and officers against liability towards third parties and to cover the defense costs involved.

1. The first option is to include a “guarantee clause” in its contracts with the directors and officers. Via such clause, the company guarantees to indemnify the directors and officers for any third party claims resulting from professional mistakes and to pay for the defense costs. Parties enjoy wide freedom in drafting these clauses, so it would even be possible to cover intentionally caused damage (except fraud).

2. The second option is for the company to take out a D&O insurance policy. Such policy can cover the directors’ and officers’ civil liability resulting from professional mistakes and the defense costs in both civil and criminal matters. Criminal liability as such cannot be covered, as that is considered to be against public policy. As with all insurance policies under Belgian law, intentional mistakes can never be covered. There is an obligatory posteriority coverage, which can however be limited to 36 months after the termination of the insurance policy for claims that relate to i) damage which occurred during the validity of the insurance policy if, at the termination of the policy, the risk is not covered by another policy, or ii) acts or facts which occurred during the validity of the policy and which were reported to the insurance company and which could give rise to damage.

A combination of both options is also possible. In such case the company will probably stipulate in the D&O policy that it is able to recover the amounts it paid to the director/officer under the guarantee clause from the insurance company.
### Explanatory Notes

#### British Virgin Islands
Harneys

A company’s memorandum and articles of association may provide for directors to be indemnified by the company against all expenses including legal fees and all judgments, fines or amounts paid in settlement and amounts reasonably incurred in connection with legal, administrative or investigative proceedings. In practice, most companies will permit wide indemnification of members of the board of directors under their memorandum and articles of association although the directors will not normally be entitled to enforce such provisions because of privity of contract.

A company may indemnify the director in circumstances where the director is or was or is threatened to be made a party to proceedings for the mere fact that he is a director or he was at the request of the company acting as a director of another body corporate or acting on behalf of another enterprise, for example, a partnership or a trust. In these circumstances the company can indemnify the director but only if he acted in good faith and honestly and in what he believes to be in the best interests of the company, and in the case of criminal proceedings he had no cause to believe that his actions were unlawful.

If a director did not act honestly and in good faith and in what he believed to be in the best interest of the company, and in the case of criminal proceedings, had reasonable cause to believe that his conduct was unlawful, the company must not indemnify him and any purported indemnity by the company is void.

#### Cambodia
Bun & Associates

According to Article 133 of the Law on Commercial Enterprises, a company may indemnify a present or former director, officer or employee in the performance of his duties, where he has acted both reasonably and in good faith. Indemnity shall be extended where the director, officer or employee relied in good faith on the accuracy of the books or records of the company, or on other information, opinions, reports or statements presented to him by any officer of the company or any other person. Indemnity shall cover the reasonable expenses or damages of any proceeding against the director, officer or employee arising out of his services to the company.

In other words, in the event that a civil or criminal claim may arise against a company’s director or officer, and the findings prove that he has acted reasonably and in good faith, he may be awarded defense/litigation costs, as well as be granted with moneys resulting from damages, judgments and/or settlements. However, where a director or officer acts in excess of his rights and/or outside the purpose of the company’s statutes, that director or officer will be personally responsible for his acts and shall not be granted an indemnity.

#### Canada
McCague Borlack

In Canada, a business may be incorporated under the federal Canada Business Corporations Act (“CBCA”) or under the provincial or territorial business corporation statutes in each of the provinces and territories. The applicable business corporation statute in each jurisdiction permits indemnity generally and restricts it in certain circumstances. While there are some important differences in the legislation, the indemnity provisions in most business corporation statutes are fairly similar. In general, the indemnity provisions in Ontario, Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Northwest Territories, Nunavut, Saskatchewan and Yukon are more comparable to those in the CBCA, while those in Nova Scotia, Prince Edward Island and Quebec are less comparable or, in some cases, not comparable at all.

The CBCA provides that a corporation may indemnify a director or officer against all costs, charges and expenses, including amounts paid to settle an action or satisfy a judgment, reasonably incurred in respect of any civil, criminal, administrative, investigative or other proceeding. The indemnity provisions in the CBCA apply to a director or officer of the corporation, a former director or officer of the corporation or another individual who acts or acted at the corporation’s request as a director or officer, or an individual acting in a similar capacity, of another entity.

In order for a corporation to be permitted to indemnify a director or officer under the CBCA, the following conditions must be satisfied:

- the director or officer acted honestly and in good faith with a view to the best interests of the corporation (the “Good Faith Requirement”);
- in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the director or officer must also have had reasonable grounds for believing that his or her conduct was lawful (the “Lawful Conduct Requirement”);
- the costs, charges and expenses must have been reasonably incurred; and
- the director or officer must be involved in the proceeding because of his or her association with the corporation or other entity.
A corporation may advance money to a director or officer for the costs, charges and expenses of a proceeding. However, the director or officer must repay this money if he or she does not fulfill the Good Faith Requirement and the Lawful Conduct Requirement.

In addition, the CBCA provides that a director or officer has a right to indemnity from the corporation in respect of all costs, charges and expenses reasonably incurred by the individual in connection with the defense of any civil, criminal, administrative, investigative or other proceeding. In order for this mandatory indemnity to apply, the following conditions must be met:

- the director or officer fulfills the Good Faith Requirement;
- in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the director or officer fulfills the Lawful Conduct Requirement;
- the director or officer was not judged to have committed any fault or omitted to do anything that he or she ought to have done;
- the costs, charges and expenses must have been reasonably incurred; and
- the director or officer must be subject to the proceeding because of his or her association with the corporation or other entity.

The CBCA further provides that a corporation, an individual or other entity may apply to a court for an order approving an indemnity and the court may so order and make any further order that it sees fit. In the case of derivative actions against directors or officers brought by or on behalf of the corporation, court approval is required before the corporation can indemnify or advance money.

In addition to statutory indemnities, corporations may also provide similar mandatory indemnities in the by-laws or articles of the corporation as well as broader contractual indemnities in written indemnity agreements entered into directly with directors and officers.

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- the director or officer was not judged to have committed any fault or omitted to do anything that he or she ought to have done;
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The CBCA further provides that a corporation, an individual or other entity may apply to a court for an order approving an indemnity and the court may so order and make any further order that it sees fit. In the case of derivative actions against directors or officers brought by or on behalf of the corporation, court approval is required before the corporation can indemnify or advance money. Despite the various statutory, by-law and contractual indemnities, a corporation may not be able to provide indemnity due its financial condition. In order to protect both the corporation and its directors and officers, directors’ and officers’ liability insurance is often obtained. The CBCA permits a corporation to purchase insurance for the benefit of directors and officers and indemnity agreements will typically require that an insurance policy be obtained.

Comparable indemnity provisions are contained in the recently enacted Canada Not-for-profit Corporations Act and similar legislation which came into force in Ontario on January 1, 2013.
Cayman Islands
Appleby

Cayman law does not prohibit or restrict a company from indemnifying its directors and officers against personal liability for any loss they may incur arising out of the company’s business. A company’s articles may often provide for the indemnification of a director or officer for breach of duty, save in circumstances where there has been willful neglect, willful default, fraud or dishonesty in the carrying out of fiduciary duties. Such indemnities have been considered by the courts many times and it is clear that the “irreducible core” [that is the duty to act in honesty and good faith] of a fiduciary’s obligations remains despite the terms of any indemnity (In re Bristol Fund Ltd. (4.) 2008 CILR 317).

No such clause can be effective to exclude liability, or provide indemnity, for fraud, on the grounds of public policy. There are also first instance Cayman Islands cases to the effect that those in a fiduciary position, such as directors, cannot exclude, or be indemnified against, willful default, willful neglect or dishonesty.

It is permissible for directors to be indemnified for defense costs associated with regulatory investigation, for example, however if such cover is provided to directors in a company’s articles, it will usually be conditional upon the investigation concerned not resulting in any criminal charges and/or a successful prosecution being the outcome of such investigations.

Chile
SegurosLex

Boards are not allowed to make decisions which do not have the company’s interest as the final aim and it is clear that these kind of indemnities would not be in the company’s interest

China (Mainland)
JunZeJun Law Offices

There are no provisions in Chinese law which prohibit or restrict a company from indemnifying its directors and officers. The Listed Companies Guidelines recommend listed companies to purchase directors and officers liability insurance but they make it clear that the liabilities of the directors and officers arising from their breach of the laws and regulations of China and the articles of association of the company should not be covered by the insurance. The company’s right to indemnify the directors and officers should be the basis for it to purchase liability insurance for the directors and officers and the Listed Companies Guidelines can be used as a reference when considering the scope of the indemnification. In practice, this issue rarely comes up in China.

Colombia
Posse, Herrera & Ruiz Abogados

1. Indemnification for defense costs: pursuant to Colombian legislation, no indemnification can be claimed by a party, when damages or costs are a consequence of the claimer’s willful misconduct or negligent acts. However, companies can agree to indemnify officers/directors for their defense costs in relation to legal or administrative actions against the acts performed in their corporate capacity that have been performed in good faith, without fault and in compliance of their legal duties.

2. Indemnification for damages, judgments and settlements: companies can agree to indemnify officers/directors for damages, judgments or settlements that are a consequence of legal or administrative actions against the acts performed in their corporate capacity that have been performed by such officers/directors in good faith, without fault and in compliance of their legal duties. However, pursuant to article 200 of the Colombian Commercial Code, officers/directors are considered personally and jointly and severable liable for any damages that their willful misconduct or fault have caused to the company, its partners or third parties. Any provision in the company’s by-laws intending to absolve officers/directors from such liability or limit its value, will be considered void. Also, pursuant to article 201 of this legislation, officers/directors are not entitled to exercise any legal action against the company claiming the payment of costs or damages derived from sanctions imposed to them as a consequence of crimes or breach of the law in the performance of their acts.

Congo Brazzaville
Cabinet D'Avocats Fernand Carlé

A company can take out insurance for its directors or officers to protect them against faults in their corporate capacity. This cover is generally known as third party insurance (head of company) and applies when a director or an officer defaults in their corporate capacity. It is not common practice in Congo to take out this cover. There are no particular conditions for taking out such cover in Congo.

Costa Rica
Arias & Muñoz

If a civil or criminal claim or administrative/regulatory investigation is brought against a director or officer in their corporate capacity, the company can indemnify the director or officer for his/her defense costs; and/or damages, judgments and settlements, as long as the director or officer did not act illegally or ultra vires. Directors and officers are severally and jointly liable for their illegal or ultra vires actions.

Croatia
Zuric i Partneri

There are no specific limitations on indemnification in Croatian law.

Explanatory Notes

- D&O Corporate Indemnification Allowed:
  - NO, see notes
  - Unclear, see notes
  - YES, see notes
  - YES, with some limitations and conditions
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<td><strong>Cyprus</strong></td>
<td>Chrysses Demetriades &amp; Co LLC</td>
<td>In principle and in accordance with the provisions of Section 197 of the Cyprus Companies Law any provision, whether contained in the Articles of Association of a company or in any other contract with a company or otherwise for exempting any officer of a company or any persona, whether an officer of the company or not, employed by the company as auditor from or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void provided that: (a) nothing in the above mentioned provision shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force; and (b) notwithstanding anything in the above provision, the company may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal in which judgment is given in his favor or in which he is acquitted or in connection with any application under section 383 of the Companies Law which relief is granted to him by the Court. Section 383 provides that in case of any proceedings for negligence, default, breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor (whether he is or he is not an officer of the company) it appears to be the Court hearing the case that the officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think fit. For the purposes of the interpretation of the above provisions the term “Officer” includes director, manager or secretary.</td>
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<td><strong>Czech Republic</strong></td>
<td>Noerr</td>
<td>Legislation authorizing statutory indemnification has not been enacted in the Czech Republic, but there is no statutory ban on indemnification of company’s directors and officers either.</td>
</tr>
<tr>
<td><strong>Denmark</strong></td>
<td>Gorrissen Federspiel</td>
<td>The Danish Companies Act does not govern the question of whether a company can indemnify a director or officer in their corporate capacity for his/her defense costs and/or damages, judgments and settlements. Neither does any other Danish act regulate this matter. However, the Danish Companies Act provides in section 364 a possibility for the shareholders to grant the board of directors discharge at the annual general meeting. The discharge only covers matters disclosed in the annual report; undisclosed issues may cause liability for the board of directors at the time the issues are disclosed. Even though a majority of the shareholders votes in favor of the discharge, a minority representing 10 per cent of the share capital is still vested with the possibility to claim compensation, given that the minority also voted against the discharge at the general meeting. Furthermore, the discharge granted at the general meeting does not have any legal effect on third party claims against the board of directors. Granting this discharge is fairly common in Denmark. If actions are brought against directors and officers of a company in their corporate capacity, the company can decide to indemnify the officer for both defense costs and/or damages, judgments or settlement amounts. The officer charged with such actions cannot be involved in making such decision on behalf of the company. It is common in Denmark for companies to take out a separate insurance policy to cover the liability of the directors and officers. Especially companies who are listed on the stock exchange tend to take out the liability insurance. Such insurance normally covers both defense costs and damages, judgments and settlements. It is common practice that the company pays the premium for such insurance.</td>
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<td><strong>Ecuador</strong></td>
<td>Perez Bustamente and Ponce</td>
<td>As a general rule, administrators, including directors, of a company do not incur personal liability for acts and/or contracts performed or executed during the performance of their duties. This exception is not applicable to institutions of the Ecuadorian financial system. A company may (but is not obliged and the law does not provide for any obligation to) indemnify a director or officer for any costs incurred in relation to his defense and for any damages, judgments and settlements. In other words, companies may assume the costs involved but there is no legal obligation in this connection, but it is a question of ethical behavior in those cases where the officer has properly performed his duties. Past experience in Ecuador indicates that companies usually assume defense costs if suits are brought against directors or officers by reason of the performance of their duties.</td>
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<td><strong>Egypt</strong></td>
<td>Zaki Hashem &amp; Partners</td>
<td>A company may indemnify its directors for defense costs and judgments/settlements. However, a director who commits fraud or gross negligence (or is convicted of a crime) cannot benefit from such indemnity.</td>
</tr>
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<td><strong>El Salvador</strong></td>
<td>Arias &amp; Muñoz</td>
<td>If a civil or criminal claim or administrative/regulatory investigation is brought against a director or officer in their corporate capacity, the company can indemnify the director or officer for his/her defense costs, and/or damages, judgments and settlements, as long as the director or officer did not act illegally or ultra vires. Directors and officers are severally and jointly liable for their illegal or ultra vires actions.</td>
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### Estonia

Sorainen & Partners FLLC

When it comes to the responsibility of the company directors, Estonian law does not prohibit the waiver of claims against directors or the limitation of their liability. The possibility of discharge depends on whether the company itself and/or a third party has a claim against the director. Estonia does not differentiate between private limited companies and stock corporations. Under the Estonian law, the shareholders may grant indemnification.

In case a claim is filed by a third party, it is important to note that a director’s liability towards third persons is very rare, and as such the indemnification against creditors is not very often raised. It must be noted that such release from liability does not limit the rights of shareholders as well as creditors to pursue claims against the director, as the case may be.

The situation is different in case of insolvency, as the director’s liability in such a case is not subject to limitation or waiver by the company. The law states that a creditor or a trustee in bankruptcy has the right to file a claim also if the company has waived the claim or has entered into a contract of compromise with such member or resulting from an agreement, has limited the claim or filing thereof in another manner or has reduced the limitation period.

The company and director may agree in advance to preclude or restrict liability in the case of non-performance of an obligation. The law additionally states that agreements under which liability is precluded or restricted in the case of intentional non-performance or which allow the director to perform an obligation in a manner materially different from that which could be reasonably expected by the company or which unreasonably exclude or restrict liability in some other manner are void. Estonian law also establishes limitations on indemnity agreements and does not allow such agreements in the case of intent and gross negligence.

A management board member of a private limited company might also be entitled to claim indemnification if an issue has been decided by the shareholders’ meeting and the director has later followed the decision or in cases where a supervisory board has the legal right to permit a director to act contrary to general provisions of the law (e.g. by release from the confidentiality obligation or prohibition on competition).

### Ethiopia

Teshome Gabre-Mariam Bokan
Law Office

Ethiopian law does not deal with indemnification of directors/officers in their corporate capacity. However, in principle, the laws of Ethiopia, as presently in force, do not forbid a company from giving indemnity to its corporate employees for defense costs, damages, judgments and settlements provided that the parties agree in advance on such an arrangement.

The Ethiopian Commercial Code defines commercial (corporate) employees as persons who are bound to a trader by a contract of employment and who assist the trader by doing work of non-manual nature as a salesman, secretary, accountant, guardian, inspector or director.

In Ethiopia, only share companies have directors. Their duties (and so liability) are legally defined under the Commercial Code, the Memorandum and Articles of Association and the resolutions of meetings held by the shareholders. Whether an indemnity for their defense costs, damages, judgments and settlements arising from a civil or criminal claim or administrative/regulatory investigation can be provided to them will depend on the provisions of the instruments defining their duties and liabilities.

In practice, the government as well as established companies provides indemnity for defense costs in proceedings instituted against its officers in claims arising in the course of their duty. However, there is no precedence so far where such entities pay damages or judgments in civil or criminal proceedings instituted against such officers personally.

In instances of liability without fault, in line with the provisions of Article 2073 of the Civil Code, any person can be indemnified in full unless the damage is due to his/her own fault or that of a person for whom s/he is liable. The indemnity provided should not absolve the director/officer from liability in instances where the director/officer was acting outside the scope of his duties; such a provision is likely to be covered in the indemnity agreement.

### Faroe Islands

Advokatskrivstovan

A company in the Faroe Islands can indemnify a director or officer for defense costs and/or damages, judgments and settlements, incurred in connection with their corporate capacity. There might be a question with regard to taxes, as the payment by the company of such expenses could be viewed by the tax authorities as taxable income for the employee. We are not aware of any administrative or court practice on the tax implications of these questions with regard to the Faroe Islands jurisdiction, although we are aware that Faroese companies in some instances indemnify directors/officers for such expenses, particularly within the fishing industry.

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**D&O Corporate Indemnification Allowed:**

- **NO, see notes**
- **Unclear, see notes**
- **YES, see notes**
- **YES, with some limitations and conditions**
### Finland

**Roschier**

Under the Finnish Companies Act, there are no specific limitations as to indemnifying a company’s directors or employees in respect of defense costs, damages, judgments or settlements. Therefore, the acceptability of such indemnification will depend on general corporate law principles.

As a starting point in the Board of Directors’ decision-making, the purpose of a company is to generate profits for its shareholders. Further, the Board of Directors has a general duty to promote the best interests of the company and to act with due care. Therefore, all decisions regarding indemnification must be based on a case-by-case assessment of all relevant circumstances, including the costs involved and the benefits to the company as a stand-alone entity. Accordingly, indemnification in relation to defense costs, damages, judgments and settlements is possible in civil or criminal claims or other legal proceedings provided that the above corporate benefit requirement is fulfilled.

However, in case a director or an officer would have committed a crime or at least acted in gross negligence, indemnification would primarily be considered distribution of assets and therefore be possible only based on a unanimous resolution by all shareholders of the company. Further, in such cases indemnification is possible only up to the amount of the distributable assets shown in the latest adopted and audited annual accounts and prohibited if it is known or should be known at the time of the decision that the company is insolvent or that the distribution will cause the insolvency of the company.

As a further note, the main rule under the Finnish accounting regime is that indemnity undertakings or other liabilities incurred by the company in the benefit of the company’s directors shall be disclosed in the notes to the annual accounts.

It would be recommended that any decision to provide indemnification be made by the Board of Directors. However, should the indemnification cover all Board members, the decision should be made by the Shareholders’ Meeting.

The above information only covers Finnish limited liability companies, which are the principal company form in use in Finland, and no other company forms. The above information also does not deal with Finnish tax and insolvency law implications.

### France

**Bernard-Hertz-Béjot**

French company law prohibits clauses limiting or excluding the directors liability to the corporation. With respect to third parties, the validity of indemnification and like “hold harmless” agreements remains untested in case law and these are not common in French corporate practice. It is usually considered that using the corporate funds to indemnify the liability incurred personally by a director or by an officer constitutes the crime of misuse of corporate assets.

### Gambia

**Amie Bensouda & Co**

A company may indemnify a director or officer of the company for his/her defense costs, damages and settlements in connection with civil or criminal claims or administrative/regulatory investigations. However the contractual duty to indemnify cannot operate where the act of the officer is unauthorized and not ratified. There may however be cases where, though it is not possible for the officer to rely on the contractual right to indemnity, an action in quasi-contract will be available.

### Georgia

**BGI Legal**

Any indemnification, if paid, is likely to be treated as a part of employment compensation and will be taxed accordingly.

### Germany

**Bach Langheid Dallmayr**

The only requirement is that the indemnification needs to be in the “interest” of the corporation, including financial and reputational interests. Otherwise the directors and officers who order or consent with an indemnification may violate the criminal law of embezzlement.

### Gibraltar

**Isolas**

Under Section 204 of the Gibraltar Companies Act (“GCA”) any provision whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any director, manager or officer of the company (or any person employed by the company as auditor) from or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void. This is provided that a company may indemnify such director, manager, officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favor or in which he is acquitted or in connection with any application under section 378 of the GCA whereupon such relief is granted to the officer or auditor in question by the Gibraltar court.

The officer or auditor concerned may seek the Gibraltar court’s relief under Section 378 of the GCA if it appears that the director or officer concerned is or may be liable in that respect but the officer has acted honestly and reasonably and having regard to all the circumstances (including the circumstance of his appointment) the officer ought to fairly be excused for the negligence, default breach of duty or breach of trust whereupon the court may relieve him either wholly or partly from liability on such terms as the court thinks fit.
Gibraltar

Continued

The position remains to be tested in the Gibraltar Courts to date. However it is generally accepted that obtaining section 378 relief on the whole of the liability the officer/auditor would otherwise be liable for would cover the costs and any damages awards arising out of the claim for negligence, default, breach of duty or breach of trust against the officer/auditor concerned.

Conditions for such Section 378 relief are that the person in question must be one of the following:
(a) directors of a company;
(b) managers of a company;
(c) officers of a company;
(d) persons employed by a company as auditors, whether they are or are not officers of the company.

Greece

Kyriakides Georgopoulos & Daniolos Issaias (KGDI)

In principle, there is no Greek law forbidding or impeding the company/employer to indemnify the director or officer for his/her defense costs deriving in relation to acts or omissions committed during/in connection with the execution of his/her duties. However, there are provisions of law regulating the conditions subject to which a company may be obliged to indemnify a director/officer in the above cases.

More particularly, according to the general provision of article 71 of the Greek Civil Code, “a juristic person shall be liable for the acts or omissions of the organs which represent it to the extent that the act or omission has taken place in the course of the performance of the duties entrusted to the organs and give rise to an obligation to repair. In addition the person responsible shall be liable jointly and severally for the prejudice.”

In view of the above provision of law and its interpretation by legal theory/jurisprudence, a condition in order for the above responsibility to arise is that the director or officer should act under its corporate capacity during the execution of his duties, even in cases of abuse of such duties. However, such responsibility does not extend to cases of damages occurred only on the occasion of the exercise of these duties (e.g. a director or officer travelling to attend a meeting out of town causes a car accident with his car, which is attributed to his liability).

For the cases that the company is also liable as above, joint liability together with the director/officer involved is provided vis a vis the third-parties who have suffered the damages, with recovery action for the person who paid compensation.

On this basis, it is not unusual in corporate practice for companies to agree to indemnify their directors/officers in similar occasions, including defense costs incurred, depending on the policy of each one company.

In cases of D&O Liability Insurance, the conditions of Policies usually contain the provision that the Insurer will:

a) pay to or on behalf of each insured person any loss except to the extent that the insured person has already been indemnified by the company for the loss; and

b) reimburse the company for any loss for which it has indemnified an insured person. In this type of Insurance Policy, there is also usually the condition that the prior written consent of the insurance company is necessary for the payment from its part of damages or defense costs. D&O Liability Insurance is a type of Insurance Policy not specifically regulated under Greek law. In this sense, this type of Policy and its terms and conditions, have been established by legal and commercial practice. Normally a D&O liability policy will cover any defense costs against claims for damages arisen due to acts or omissions based on willful misconduct of the directors/officers in cases where the insured (company) has not acted in fraud (through its competent organs), but will not cover any such claims in cases where willful misconduct is present both in the acts/omissions of the director/officer as well as the company (through its competent organs), depending on the type of policy used. It is to be noted also that Greek insurance law does not allow the insurance coverage of acts attributed to willful misconduct of the policyholder or the insured (art. 25 of Insurance Law 2496/1997). Criminal liability per se and pecuniary fines imposed in criminal proceedings are typically not covered.
### Greece, Continued

In cases of D&O Liability Insurance, the conditions of Policies usually contain the provision that the Insurer will:

a) pay to or on behalf of each insured person any loss except to the extent that the insured person has already been indemnified by the company for the loss; and

b) reimburse the company for any loss for which it has indemnified an insured person. In this type of Insurance Policy, there is also usually the condition that the prior written consent of the insurance company is necessary for the payment from its part of damages or defense costs. D&O Liability Insurance is a type of Insurance Policy not specifically regulated under Greek law. In this sense, this type of Policy and its terms and conditions, have been established by legal and commercial practice.

Normally a D&O liability policy will cover any defense costs against claims for damages arisen due to acts or omissions based on willful misconduct of the directors/officers in cases where the insured (company) has not acted in fraud (through its competent organs), but will not cover any such claims in cases where willful misconduct is present both in the acts/omissions of the director/officer as well as the company (through its competent organs), depending on the type of policy used. It is to be noted also that Greek insurance law does not allow the insurance coverage of acts attributed to willful misconduct of the policyholder or the insured (art. 25 of Insurance Law 2496/1997). Criminal liability per se and pecuniary fines imposed in criminal proceedings are typically not covered.

### Guatemala

A company can indemnify a director for his/her defense costs as well as damages, judgments and settlement. Such act, per se, is not forbidden from the commercial law point of view. Such a decision ought to be taken at the shareholders’ level. Under Guatemalan law, directors are liable before the shareholders for any losses or damages they cause the company in exercising their posts.

### Guernsey

Under Guernsey law (section 157 of the Companies (Guernsey) Law, 2008) a director can be indemnified by the company in the articles of incorporation or other document (e.g. a contract) against all liabilities, except that any provision that purports to indemnify the director from any liability in connection with negligence, default, breach of duty or breach of trust in relation to the company is void. This does not preclude the director from taking out insurance against such liabilities. In our view the indemnity can extend to defense costs, damages and settlements, although this would obviously depend on the wording of the indemnity (which is up to the parties to negotiate) and such indemnity would be void if it attempted to exculpate the director from any of the types of liability mentioned above under section 157.

### Haiti

If a civil or criminal claim or administrative/regulatory investigation is brought against a director or officer in their corporate capacity, the company will be able to indemnify the director or officer for his/her defense costs as well as damages, judgments, and settlements. The following are the particular conditions that apply: in a civil matter, it depends on the company’s agreement with the director or officer. It is not an obligation of the company, but only in accordance with the company’s agreement with the director or officer. In a criminal matter, it is strictly personal liability of the director or officer. However, nothing prohibits the company from giving the director or officer any form of indemnification.

### Honduras

If a civil or criminal claim or administrative/regulatory investigation is brought against a director or officer in their corporate capacity, the company can indemnify the director or officer for his/her defense costs; and/or damages, judgments and settlements, as long as the director or officer did not act illegally or ultra vires.

Directors and officers are severally and jointly liable for their illegal or ultra vires actions.

### Hong Kong

**Current position:**

A director’s personal liability can be mitigated through indemnification by the company and by D&O insurance. In practice, D&O insurance is a more flexible source of indemnity in Hong Kong because the circumstances in which a company is permitted to indemnify a director in relation to his or her alleged breach of duty to the company is restricted by section 165 of the Companies Ordinance to instances where judgment is given in his or her favor, or where there is an acquittal, or where he or she is relieved from liability, or the consequences of liability, by the Court. There is, however, no restriction on indemnifying a director in relation to his or her liability to third parties. The purchase of D&O insurance to indemnify a director against liability to the company and to third parties is expressly authorized by section 165(3) of the Companies Ordinance.

In keeping with the generally restrictive nature of Hong Kong law as it applies to the indemnification of directors by the companies they serve, loans to directors and those connected to them are currently prohibited, except in prescribed circumstances. This has the effect of severely restricting the ability of companies to advance defense costs to their directors, in order to help fund their defenses. Again, in practice, D&O insurance helps ameliorate this restriction. As is the position in many countries, the primary benefit of having D&O insurance in Hong Kong is the ability of the D&O insurer to advance defense costs to a director in order to help them fund their defense. Whilst most types of liability can be covered by D&O insurance, fines and penalties cannot be covered for public policy reasons.
<table>
<thead>
<tr>
<th>Country</th>
<th>Region</th>
<th>Law Firm</th>
<th>Indemnification Details</th>
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</table>
| Hong Kong   |        |                   | Future Position: The law on indemnification of directors will change significantly once the new Companies Ordinance comes into force (expected in 2014). Section 468 of the new Ordinance repeats much of the prohibition in section 165 and permits the buying of D&O insurance, but also clarifies certain important matters, such as:  
• the prohibition extends to associated companies (now a defined term);  
• indemnification against liability to a third party is permitted, provided it does not relate to a fine imposed in criminal proceedings, a sum payable by way of a penalty in respect of non-compliance with a regulatory requirement;  
• indemnification is not permitted where a director is convicted, or where judgment is awarded against him or her, or where the court refuses to order that he or she be relieved from liability, or the consequences of liability. In these circumstances, the focus will be on the final decision in the proceedings, which will at the disposal of any appeal (being the end of the period for bringing an appeal, or its abandonment or it ceasing to have effect);  
• permitted indemnification provisions must be disclosed in the directors’ report. | Section 507 of the new Companies Ordinance permits the advancement of defense costs, subject to a right of recoupment in the event that where a director is convicted, or where judgment is awarded against him or her, or where the court refuses to order that he or she be relieved from liability, or the consequences of liability. |
| Hungary     |        | Noerr             | Hungary: The Hungarian Companies Act or any other Hungarian act does not expressly regulate the question whether the company can indemnify a director/officer for his/her defense costs and/or damages, judgments and settlements. However, pursuant to Sec. 30 of the Hungarian Companies Act the memorandum of association may contain provisions for the company’s supreme body to evaluate on an annual basis the work of the executive officers in the previous financial year, and to decide concerning the granting of any discharge of liability to certain executive officers. Granting a discharge of liability constitutes the supreme body’s verification that the executive officers in question have performed their work during the period under review by giving priority to the interests of the business association. The discharge of liability shall be abolished in the event of a subsequent court ruling declaring the information based on which the discharge of liability was granted false or insufficient. |
| Indonesia   |        | Soemadipradja & Taher | Per our interviews, we did not discover any limitations or conditions for Indonesia. |
| India       |        | Luthra & Luthra   | While the roles and responsibilities of directors and officers of companies are evidently becoming wider, the ability of a company under the provisions of the Companies Act to protect and indemnify them appears to be limited.  
According to the provisions of the Companies Act, any provision, whether contained in the articles of association of a company or in an agreement with the company, or in any other instrument, for exempting any officer of the company or indemnifying him against, any liability which by virtue of any rule of law, would otherwise attach to him in respect of any negligence, default, misfeasance, breach of duty or breach of trust of which he may be guilty of in relation to the company, is void. However, a company may, in pursuance of any of such provision as aforesaid, indemnify any such officer against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favor, or in which he is acquitted or discharged or in connection with any application under certain specific provisions of the Companies Act, where relief is granted to him by the court.  
In this regard, the Department of Company Affairs (now, Ministry of Corporate Affairs) has clarified that the above provision does not permit the companies to place funds at the disposal of their managerial personnel for defending themselves in civil or criminal proceedings initiated against them and only provides for reimbursement after the termination of the proceedings in favor of such officers.  
However, there is considerable ambiguity under Indian law, on whether or not the above provisions of the Companies Act prevent a company from procuring a D&O insurance policy in favor of their directors and officers. |
| Iran        |        | Atieh Associates Law Firm | Iranian law takes a very flexible approach towards the indemnification of third parties for their liabilities vis-à-vis others. To this end, company’s directors may be indemnified in respect of civil liability. In case of criminal liability, however, given the application of individual criminal responsibility, only financial penalties could be subject to indemnification. Given that defense costs are financial, such costs are also capable of indemnification. |

D&O Corporate Indemnification Allowed:  
- **NO**, see notes  
- **Unclear**, see notes  
- **YES**, see notes  
- **YES**, with some limitations and conditions
<table>
<thead>
<tr>
<th>Isle of Man</th>
<th>Cains</th>
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<td>There are two main types of corporate vehicle on the Isle of Man, namely companies formed under the Isle of Man Companies Acts 1931-2004 (the “CA 1931-2004”) and companies formed under the Isle of Man Companies Act 2006 (the “CA 2006”); since the introduction of the legislation, most new Manx companies have been established under the CA 2006 and numerous CA 1931-2004 companies have re-registered under that Act. The position regarding the provision by companies of indemnities for their directors and officers depends upon the legislation under which the relevant company is formed and may be summarized as follows:</td>
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<td>1. CA 1931-2004 companies</td>
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<td>Section 151 of the Isle of Man Companies Act 1931 states that any provision, whether contained in a company’s articles of association, a contract with a company or otherwise, for exempting a director or officer of the company from, or indemnifying him against, any liability which would otherwise attach to him in respect of negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company is void. Section 151 was amended by the Isle of Man Companies Act 1992 by, inter alia, the insertion of paragraph (a) which permits a company to purchase and maintain insurance for the benefit of its directors, manager, officer or auditor out of its own funds in respect of such liability. By virtue of Section 151(c) “a company may ... indemnify any such director, manager, officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favor or in which he is acquitted or in connection with any application under section 337 of the Companies Act 1931 in which relief is granted to him by the court”.</td>
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<td>2. CA 2006 companies</td>
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<td>A company formed under the CA 2006 is able to agree voluntarily to indemnify against all expenses, judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings a director who, inter alia, is or was a party or is threatened to be made a party to any pending, threatened or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was a director of the company. The foregoing provisions do not apply unless the director acted honestly and in good faith and in what such director believed to be the best interests of the company and, in the case of criminal proceedings, had no reasonable cause to believe that the conduct was unlawful. A director who has been successful in defense of any proceedings is entitled to be indemnified in connection with expenses, fines etc. incurred in connection with the proceedings. A CA 2006 company may take out insurance cover for its directors against loss in respect of their liabilities incurred as directors. This can include negligence claims, default, breach of statutory duty or the cost of defending allegations or assisting the authorities with their investigations.</td>
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<tr>
<th>Italy</th>
<th>PG Legal</th>
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<td>A company may resolve to limit the liability of its directors vis-à-vis the company itself by adopting one of the following possible resolutions:</td>
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<td>• to indemnify its directors for the defense costs related to legal proceedings brought against them for activities performed during their office;</td>
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<td>• to indemnify its directors for any other cost related to damages caused to third parties during their office;</td>
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<td>• to waive any potential recourse action against the directors, also in the event the damages have been caused by the director with malice or gross negligence.</td>
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<td>The company cannot resolve:</td>
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<td>• to indemnify a director from any potential liability arising from his future actions, even committed with malice, gross negligence or against public policy before a claim and/or petition is actually filed against him;</td>
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<td>• to automatically step-in the payment of administrative sanctions imposed on its directors.</td>
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<td>Any such resolution would be void.</td>
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<th>Jamaica</th>
<th>DunnCox</th>
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<td>The director or officer can only be indemnified if he has acted honestly and in good faith with a view to the best interests of the company. Additionally a director or officer can only be indemnified in the case of a criminal or administrative action or proceeding enforced by a monetary penalty, if he had reasonable grounds for believing that his conduct was lawful. Finally, a company may not indemnify a director or officer, in respect of an action brought by or on behalf of the company to obtain a judgment in its favor.</td>
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<tr>
<th>Japan</th>
<th>Tozai Sogo Law Office</th>
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<tbody>
<tr>
<td>A Japanese company cannot preliminarily indemnify directors for their prospective liabilities to the company or any third party. Because compensation for the expense which a director has borne for the defense of a civil action or criminal charge or administrative/regulatory investigation brought against the director is considered to be a conflict of interest transaction between the director and the company, such compensation must be approved by the board of directors meeting, in a company with a board of directors, or by the shareholders meeting, in a company without a board of directors.</td>
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### Japan

**Continued**

With regard to the liabilities of a director for damages to the Company, the company can exempt the director upon the unanimous consent of all the shareholders. It is not necessary for the company to obtain the consent of all shareholders where the company accepts a settlement in a shareholder’s derivative action.

Even when the company does not obtain consent to the exemption of a director from all shareholders, the director can be granted a partial exemption from liability for damages to the company due to the negligence of his/her duties, if the director was without knowledge and was not grossly negligent in performing the duties, to the extent and in the manner set forth in the provisions of the Companies Law;

(a) by resolution of the shareholders meeting.

(b) by resolution of directors, or resolution of the board of directors meeting, if the company has a board, when such exemption by resolution of directors meeting is provided for in the articles of incorporation of the company.

(c) if the director is an external director or other outside officer, the company can set a limit on the amount of his/her liability, in advance, by a contract with the external director, etc., when the company is authorized to enter into such contract under its articles of incorporation.

With regard to the indemnification of a director for his/her liability to a third party or for a criminal or administrative penalty or fine, such compensation is considered to be a conflict of interest transaction between the director and the company. Such an arrangement must be approved by the board of directors meeting, in a company with a board of directors, or the shareholders meeting, in a company without a board of directors.

### Kazakhstan

**Aequitas Law Firm**

Current legislation in Kazakhstan does not contain any specific norms regulating the indemnification of directors or officers by a company for their defense costs, damages, judgments and/or settlements. Since there is no statutory prohibition for such indemnification, we believe that the company may indemnify its director or officer on the basis of an agreement between them, which provides for (i) possibility and (ii) terms of such indemnification.

The agreement could be a labor contract or a civil contract. The indemnification de facto can be paid as a bonus under the labor contract, but in such case it will not be possible to mention it directly as indemnification in the contract. So there is a risk related to the fact that indemnity payment is unlikely to be treated as a labor-related payment under Kazakh legislation. Therefore it seems to be more preferable for the company to enter into a separate indemnification agreement with its director or officer under which the company would be obliged to indemnify him/her in all cases mentioned in such agreement.

Indemnity payments may be subject to taxation.

### Kenya

**Kaplan & Stratton**

The relevant provisions are to be found in the Companies Act (section 206):

206. Subject as hereinafter provided, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any officer of the company or any person (whether an officer of the company or not) employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company, shall be void:

Provided that--

(i) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force; and

(ii) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal in which judgment is given in his favor or in which he is acquitted or in connection with any application under section 402 in which relief is granted to him by the court.
Kenya
Continued

An indemnity is only valid where a director is liable in the limited circumstances in which a director is found not to be liable or in which he may be excused by the court under section 402:

402. (1) If in any proceeding for negligence, default, breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor (whether he is or is not an officer of the company) it appears to the court hearing the case that that officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust that court may relieve him, either wholly or partly, from his liability on such terms as the court may think fit.

(2) Where any such officer or person aforesaid has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief, and the court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

Kyrgyz Republic

The laws of the Kyrgyz Republic (“Kyrgyz law”) do not provide a general set of rules regarding the indemnification of a civil or criminal claim or administrative/regulatory investigation expenses of the director or officer by the company. Moreover, Kyrgyz law is silent on whether such indemnification is allowed or not.

In case of civil claims, indemnification of the expenses related to such claim by the company is compulsory in certain cases. According to Article 997 of the Civil Code of the Kyrgyz Republic (“CC”), a legal entity or a citizen registered as an individual entrepreneur shall compensate for damage caused by its or his/her employee while performing his/her labor duties. For the purpose of this Article 997 employees are defined as citizens working based on an employment agreement (contract), as well as citizens performing work based under a civil contract. So, if a director or an officer (the “Employee”) caused damage to a third party while performing his/her labor duties, the company (the “Employer”) shall be responsible for the compensation of such damages to the third party. The Employer may seek reimbursement for such damages from the Employee under the following terms of the Labor Code of the Kyrgyz Republic (“LC”) and the CC:

1. According to Article 1009 CC a person who has compensated the damage caused by another person (an employee during performance of the service, job or other job duties, a person driving a vehicle, etc.) has a right of recourse to the person in the amount of the compensation rate.

2. Under Article 279 LC, the Employee shall compensate the Employer for damages incurred. The Employee shall be materially liable both for the direct damage caused to the Employer and for the damage caused to the Employer as a result of compensation of damages caused to third parties. Further, the LC provides that the material liability of the Employee may be precluded if the damage occurred as a result of a force majeure situation, foreseeable risk, emergency or necessity for defense or in the case that the Employer failed to provide proper conditions for storage of the property entrusted to the Employee.

3. The Employer may refrain fully or partially from claiming the reimbursement for damages caused by the Employee.

4. Full material liability for damage caused can be provided by an employment agreement entered into with the Employees above 18 years old directly dealing with monetary and material assets. As far as criminal claims are concerned, under Article 17 of the Criminal Code of the Kyrgyz Republic, only individuals who have committed a crime and reached the legal age shall be subject to a criminal liability. Consequently, employees shall be liable for all the expenses related to such criminal claims and court proceedings. With respect to administrative/regulatory investigations, the Code on Administrative Liability of the Kyrgyz Republic provides that fines shall be paid by the individuals, officials or a legal entity that breached the law. If the fine is imposed on the Employee, and if he/she fails to execute the payment of such fine in the set time, the court or another agency (officer) can issue a decree on imposition of the fine to the Employee or to the organization, from which such person receives some kind of income (in the form of a salary, award, scholarship or pension), to withhold the amount of fine from such income.
<table>
<thead>
<tr>
<th>Country</th>
<th>Law and Practice</th>
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<tbody>
<tr>
<td>Kyrgyz Republic</td>
<td>Although the law is silent about this issue, a separate contract on indemnification of expenses related to civil or criminal claims or administrative/regulatory investigations entered into between the Employer and Employee could be used. Another type of guarantee of indemnification provided by the Employer to its Employee could be insuring the Employee's expenses related to a liability. In practice, the Employer may guarantee its Employee the indemnification of all the expenses related to the liability (civil, criminal or administrative) towards third parties. However the director or officer continues to bear the full liability towards the company for his/her actions and the company may not guarantee indemnification of his/her expenses related to such liability. Moreover, concluding contracts with Employees and insuring the Employees for expenses related to the liability before the third parties is not a widely used practice in Kyrgyzstan.</td>
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<tr>
<td>Laos (Peoples Democratic Republic)</td>
<td>There is nothing in Lao PDR law which prevents a company from agreeing to indemnify directors or officers for defense costs, damages, judgments and settlements arising from their corporate capacity.</td>
</tr>
<tr>
<td>Latvia</td>
<td>In Latvia, the law does not explicitly regulate arrangements whereby a company undertakes to indemnify its directors or officers for civil or criminal claims or administrative/regulatory investigations being brought against them in their corporate capacity, and therefore, in principle, this should be possible. Generally, the terms of such arrangements would be subject to the particular agreement reached by the respective parties and can include defense costs, damages, judgments and settlements. In practice this is usually done in the form of directors and officers liability insurance which is taken out by the company for the benefit of its directors or officers. A specific legal issue which should, however, be taken into account with respect to company directors (but not officers) relates to the duty of due care, skill and loyalty which the directors owe to a company by the operation of law simply by being directors of a company. Although Latvian corporate law and practice is relatively new with few existing precedents in this regard, which makes the task of providing interpretation very difficult, we are of the opinion that the duty of due care, skill and loyalty prohibits the director from entering into transactions which are not in the interests of the company and this might be interpreted to include also arrangements whereby a company undertakes to indemnify its directors for civil or criminal claims or administrative/regulatory investigations being brought against them in their corporate capacity. The failure to comply with this prohibition could make the directors liable against the company for the losses caused to the company by such indemnification arrangements. To reduce the risk of liability, the indemnification arrangements should be ratified in the company's shareholders meeting.</td>
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<tr>
<td>Macau</td>
<td>Unless indemnification was previously agreed in writing with the Director/Officer, the company would need to pass a reasoned resolution to that effect.</td>
</tr>
<tr>
<td>Macedonia</td>
<td>There are a very limited number of provisions in the laws of the Republic of Macedonia that may apply to the indemnification of directors or officers of a company. Namely, rewards and/or reimbursements of directors or officers are regulated, and may be provided by a decision by the company’s shareholders (for non-executive officers), or by a management contract with the executive director(s) or officer(s). Corporate laws are silent on indemnification, so general civil code rules would apply, in the context of reimbursement of damages. Generally, when acting in their corporate capacity, company officers are not liable for damages toward third parties, unless their actions were deliberate or highly negligent. In all other cases, the company is held responsible for the actions of its officers. The company, however, can seek compensation from the officer for the damages it suffered, if the officer acted without the necessary attention of a good and conscientious businessman. Furthermore, indemnification may be arranged contractually. In this sense, any financial claim against a director or officer may be subject to indemnification, including defense costs, damages, judgments or settlements. The terms of the contract will apply in respect to the conditions for indemnification.</td>
</tr>
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### Explanatory Notes

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<thead>
<tr>
<th>Country</th>
<th>Firm</th>
<th>Notes</th>
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<tbody>
<tr>
<td><strong>Malawi</strong></td>
<td>Savjasni &amp; Co</td>
<td>Directors, as agents, are by law entitled to an indemnity in respect of all liabilities properly incurred by them in the management of the company’s business. However, this right does not extend to indemnity for wrongful or unauthorized acts of the director. Section 163 of the Companies Act (“the Act”) provides that no provision, whether contained in the memorandum or articles of a company, or in any contract with the company shall exempt any director or other officer of a company, or indemnify him against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company. However, it is possible to provide in the articles that the directors shall be indemnified against any liability incurred by them in defending any proceedings, whether civil or criminal, in which judgment is given in their favor or in which they are acquitted or in connection with any application under Section 341(2) of the Act in which relief is granted to them by court. It is normal practice to include such an indemnity in the articles. Section 341 of the Act is a protective section for directors. It provides that in any proceedings against, inter alia, a director for any default or breach of duty under any section of the Act, if a director who is or may be liable has in the opinion of the court acted honestly and reasonably, and having regard to all the circumstances of the case, he ought fairly to be excused, the court may relieve him in whole or in part from his liability on such terms as it thinks fit. Under section 341(2) of the Act, a director who apprehends such proceedings may also apply to the court for such relief.</td>
</tr>
<tr>
<td><strong>Malaysia</strong></td>
<td>Gan Partnership and DAC Beachcroft (Singapore)</td>
<td>Domestic Companies: Although there is theoretically no limit to the extent of a director’s personal liability, the exposure can be mitigated through indemnification by the company and by D&amp;O insurance. In practice, D&amp;O insurance is a more flexible source of indemnity in Malaysia because the circumstances in which a domestic company is permitted to indemnify a director in relation to his or her alleged breach of duty to the company are restricted by section 140 of the domestic Companies Act to instances where judgment is given in his or her favor, or where there is an acquittal, or where he or she is relieved from liability, or the consequences of liability, by the Court. There is, however, no restriction on indemnifying a director in relation to his liability to third parties. Labuan Companies: The Labuan Companies Act contains no equivalent to section 140 of the domestic Companies Act, suggesting that Labuan companies are generally free to indemnify their directors, to advance defense costs to them and to purchase D&amp;O insurance for them. The position is slightly more restrictive for Labuan protected cell companies, where there is a prohibition against indemnification from the general assets of the protected cell company where there is fraud, recklessness, negligence or bad faith. It remains possible, however, for a protected cell company to indemnify its directors from cell assets, to advance defense costs to them and to purchase D&amp;O insurance for them. Loans to Directors: In keeping with the generally restrictive nature of Malaysia law as it applies to the indemnification of directors by the companies they serve, loans by domestic companies to directors and those connected to them are prohibited, except in prescribed circumstances. This has the effect of severely restricting the ability of domestic companies to advance defense costs to their directors, in order to help fund their defenses, though that restriction does not extend to Labuan companies or Labuan protected cell companies. Whether D&amp;O insurance helps ameliorate this restriction for the directors of domestic companies is unclear, since the prohibition on indemnification in section 140 of the domestic Companies Act extends to any provision, whether contained in any contract with a domestic company, or otherwise.</td>
</tr>
<tr>
<td><strong>Malta</strong></td>
<td>GVTH Advocates</td>
<td>Article 148 of the Companies Act entitled “Provisions as to liability of officers and auditors” reads as follows: 148. (1) Any provision, whether contained in the memorandum or articles of a company or in any contract with a company or otherwise for exempting any officer of the company or any person engaged by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would in the absence thereof have been attached to him in respect of negligence, default or breach of duty or otherwise of which he may be guilty in relation to the company shall be void. Provided that a company may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings in which judgment is given in his favor or in which he is acquitted. (2) Nothing in this article shall be construed as preventing or restricting a company from purchasing and maintaining for any of its officers insurance against any such liability as is referred to in sub-article (1); or as preventing or restricting any officer or auditor of a company from personally purchasing and maintaining any such insurance.</td>
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A number of observations need to be made in connection with article 148:

1. The provision clearly applies as much to a provision which purports to define the directors’ duties less onerously than the law as to a provision which expressly exempts him from liability for breach of duty.

2. An exemption or indemnity clause is certainly void if it is intended to operate in respect of future conduct of the director. Indeed, any such clause might have the effect of inducing the director not to satisfy the standards of loyalty, care and skill which the law otherwise demands. The statutory invalidation of an exempting provision should not however affect a resolution passed by the general meeting releasing a director from a breach of duty already committed and which has been fully disclosed. Such a release from liability, provided it is exercised in the interests of the members as a whole, would be an implementation of one of the modes of extinction of obligations contemplated in the Civil Code, that is, remission.

3. The words “or otherwise” used by article 148 when it prohibits exemption or indemnity clauses “whether contained in the memorandum or articles of a company or in any contract with a company or otherwise...” should be construed ejusdem generis with the preceding words “whether contained in the memorandum or articles of a company or in any contract with a company.” The generis being any arrangement between the company and its officers.

4. Notwithstanding the general prohibition against indemnity provisions, a company may indemnify any director against any liability incurred by him in defending any proceedings in which judgment is given in his favor or in which he is acquitted. There is no statutory obligation on the company to indemnify its officers.

There is no obligation to register with the Memorandum of Association Articles of Association and if Articles are not registered, or, if Articles are registered in so far as the Articles do not exclude or modify the regulations contained in the First Schedule to the Companies Act the regulations in the said Schedule are deemed to be the regulations of the Company in the same manner and to the same extent as if they were contained in duly registered Articles.

The First Schedule to the Companies Act is a model form of Articles. A Company, therefore, may either adopt the First Schedule in full or adopt the said Schedule in so far as its regulations are not excluded, modified or varied by registered Articles or register its own Articles excluding ‘in toto’ the said First Schedule.

Unless varied or excluded the provisions of regulations 83 of the First Schedule entitled ‘Indemnity’ would apply. The said Regulation reads as follows:

“Every managing director, director holding any other executive office or other director, and every agent, auditor or company secretary and in general any officer for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings in which judgment is given in his favor or in which he is acquitted.”

The indemnity given in terms of the said regulation is very restrictive and applies only where judgment is given in favor of the officer, agent or auditor concerned. Any indemnity in the Articles must not be in breach of Article 148(1).

The general rule is that a company cannot indemnify its directors, officers and employees in respect of:

1. liability for any act or omission in his capacity as a director or employee (damages, judgments or settlements); or

2. costs incurred by that director or employee in defending or settling any claim or proceedings relating to any such liability (defense costs).

If any indemnity is given outside the exceptions outlined below, it will be declared void.

However, subject to its constitution, a company may indemnify its director or employee for any costs incurred by him or the company in respect of any proceedings:

1. that relate to liability for any act or omission in his capacity as a director or employee (includes a former employee); and

2. (i) in which judgment is given in his favor, or (ii) in which he is acquitted, or (iii) which is discontinued, or (iv) in which he is granted relief (i.e. the Court has excused him for his negligence), or (v) where proceedings are threatened and such threatened action is abandoned or not pursued.
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<tr>
<th>Country</th>
<th>Law Firm</th>
<th>Relevant Information</th>
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<tr>
<td>Mauritius</td>
<td><em>Continued</em></td>
<td>Also, subject to its constitution, a company may indemnify its director or employee in respect of 1. liability to any person, other than the company or a related company for any act or omission in his capacity as a director or employee; or 2. costs incurred by that director or employee in defending or settling any claim or proceedings relating to any such liability. Such an indemnity must not be applied to criminal liability or liability in respect of the director’s breach of his power to exercise his duties honestly, in good faith and in the best interests of the company.</td>
</tr>
<tr>
<td>Mexico</td>
<td>DAC Beachcroft</td>
<td>At the start of his or her appointment, the director must post a bond to indemnify the corporation for the damages he or she may cause. However, the company can waive this obligation. A director’s personal liability for monetary damages to a listed corporation or its subsidiaries cannot be restricted or limited in any way. Directors breaching the duty of care and/or the duty of loyalty are jointly liable to compensate for damage caused to the listed corporation or its subsidiaries. Listed corporations can indemnify a director against liabilities arising from breaches of their duty of care, but only if the directors have not acted maliciously, fraudulently or illegally. For breach of the duty of loyalty, the company is expressly prohibited from indemnifying unless there is a satisfactory judgment.</td>
</tr>
<tr>
<td>Moldova</td>
<td>Turcan Cazac</td>
<td>There is no legal norm prohibiting or limiting the right of a company to indemnify its directors or officers. The decisive element of such compensations shall be the corporate capacity of director or officer, i.e. the object of civil or criminal claim or administrative/regulatory investigation is directly linked with the work duties and functions of the director or officer. It means also that the actions/inactions of director or officer, which are the object of civil or criminal claim or administrative/regulatory investigation, were made on behalf of the company and/or in its interests. Such situations shall be proven by the internal regulation of the company, labor agreement between the company and director/officer, resolution or power of attorney issued by the superior or responsible managing body of the Company, or other similar document. The lack of legislation regulating such relationships shall be understood as a right of the Company to indemnify all kind of expenditure incurred by director/officer, including his/her defense costs damages, judgments, settlements and other similar expenses. Some companies (commonly publicly-traded companies or other companies with a good level of internal management) could adopt special decision accepting to indemnify the director or officer, e.g. such compensations shall be subject of the amendments to the planned annual budget of the company, or the decision of the Board etc. However, all these matters refer to the internal organization of the company, which are not covered or conditioned by the legislation (excepting cases referred to the conflict of interests, large transactions and other similar situations). The compensations offered to the director or officer by the Company shall imply specific fiscal and accounting regime. Nevertheless, these fiscal and accounting reasons do not affect the right of the company to indemnify the director or officer. There are no particular conditions required by the law that shall be applied by the company or director/officer.</td>
</tr>
<tr>
<td>Monaco</td>
<td>Donald Manasse Law Offices</td>
<td>At the start of his or her appointment, the director must post a bond to indemnify the corporation for the damages he or she may cause. However, the company can waive this obligation. A director’s personal liability for monetary damages to a listed corporation or its subsidiaries cannot be restricted or limited in any way. Directors breaching the duty of care and/or the duty of loyalty are jointly liable to compensate for damage caused to the listed corporation or its subsidiaries. Listed corporations can indemnify a director against liabilities arising from breaches of their duty of care, but only if the directors have not acted maliciously, fraudulently or illegally. For breach of the duty of loyalty, the company is expressly prohibited from indemnifying unless there is a satisfactory judgment.</td>
</tr>
<tr>
<td>Morocco</td>
<td>Hamzi Law Firm</td>
<td>There is no legal provision that requires a company to indemnify its directors and officers for defense costs, damages or judgments and settlements, according to the Law n° 17-95 relating to stock corporations and n° 5-96 relating to partnership companies, limited partnership companies, partnerships limited by shares, limited liability companies and joint-stock companies. In the same line, there is no jurisprudence under Moroccan law related to this issue. Nevertheless, nothing stands in the way of the company supporting the defense costs, damages or judgments and settlements, on its own initiative. It cannot be inferred from this fact, however, that the company renders itself liable for misconduct of its directors and officers. A potential liability of the company toward third parties, for the acts of its directors and officers, can be deduced from the following provisions:</td>
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Morocco
Continued

Article 74 of the Law n° 17-95, provides that the company is liable for its directors’ and officers’ acts, even if they do not target business purposes of the company. The company shall not be liable if the third party knew these acts exceeded the limits of company’s field of activity.

Articles 69 and 102 of the Law n° 17-95 provide that the acts of the board of directors and the executive board are also attributable to the company.

Article 8 of the Act n° 5-96 provides that the company partnership company is liable for its managing directors’ acts which exceed the limits of company’s field of activity. Article 63 of the Act n° 5-96 establishes the same liability for the limited liability partnership toward its managing directors.

Article 35 of the Act n° 5-96 specifies that the partnership limited by shares shall be held liable for its managing director’s acts, although they do not aim the business purpose of the company.

Namibia
Engling, Stritter & Partners

See sections 255 and 256 of the Namibian Companies Act, Act 28 of 2004 which address the issue:

255. Exemption from or indemnity against liability of directors, officers or auditors

1. Any provision, whether contained in the articles of a company or in any contract with a company, and whether expressed or implied, which purports to exempt any director or officer or the auditor of the company from any liability which by law would otherwise attach to him or her in respect of any negligence, default, breach of duty or breach of trust of which he or she may be guilty in relation to the company or to indemnify him or her against that liability, is void.

2. Subsection (1) must not be construed as prohibiting a company from indemnifying any director, officer or auditor in respect of any liability incurred by him or her in defending any proceedings, whether civil or criminal, in which judgment is given in his or her favor or in which he or she is acquitted or in respect of any proceedings which are abandoned or in connection with any application under section 256 in which relief is granted to him or her by the Court.

256. Relief of directors and others by Court in certain cases

(1) If in any proceedings for negligence, default, breach of duty or breach of trust against any director, officer or auditor of a company it appears to the Court that the person concerned is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he or she has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his or her appointment, he or she ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the Court may relieve him or her, either wholly or partly, from his or her liability on terms which the Court considers appropriate.

(2) Any director, officer or auditor who has reason to believe that any claim will be made against him or her in respect of any negligence, default, breach of duty or breach of trust, may apply to the Court for relief, and the Court has, on that application, the same powers to grant relief as are by subsection (1) conferred on it with reference to proceedings referred to in that subsection.

Netherlands
Houthoff Burum

Indemnification is fully allowed in the Netherlands for both costs and damages. If it however appears that D&Os acted beyond the standard for liability vis a vis the company, a “serious fault,” indemnification will no longer be allowed.

New Zealand
DAC Beachcroft

A company may only indemnify a director if expressly permitted to do so under the company’s constitution. Impermissible indemnities are void.

The constitution of a company may permit an indemnity against:

• costs incurred in defending proceedings where judgment is given in the director’s favor, the director is acquitted, or where the proceedings are discontinued;

• liability (including costs) to a person or entity other than the company itself, or a related company, in connection with any civil action that does not concern a contravention of a directors duty of good faith and to act in the best interests of the company.

If permitted by its constitution, a company may effect insurance for a director to cover the director for liability to pay the costs of defending a civil claim and the costs of defending a criminal charge where the director is acquitted.

Nicaragua
Arias & Muñoz

If a civil or criminal claim or administrative/regulatory investigation is brought against a director or officer in their corporate capacity, the company can indemnify the director or officer for his/her defense costs; and/or damages, judgments and settlements, as long as the director or officer did not act illegally or ultra vires. Directors and officers are severally and jointly liable for their illegal or ultra vires actions.

D&O Corporate Indemnification Allowed:

- NO, see notes
- Unclear, see notes
- YES, see notes
- YES, with some limitations and conditions
A company may not indemnify a director or officer in circumstances where the liability arose as a result of the negligence, default or breach of trust of such a director or officer unless:

1. judgment is given in favor of the director or officer; or
2. in the case of a criminal claim, the director or officer is acquitted; or
3. the director or officer is relieved of such liability by a court of law as a result of the fact that the director or officer is deemed to have acted honestly and reasonably.

The following applies to the indemnification of directors’ or officers’ liability towards third parties (i.e. any other party than the company).

Any indemnification of directors shall be fixed by the general meeting as it represents a remuneration of the relevant director or directors, cf. Section 6-10 of the Limited Company Act. It also follows from Section 17-3 of the Limited Company Act that the general meeting exclusively decides any advance agreement entered into between the company and a director or officer regulating or limiting their liability in damages towards the company. It may be suggested that the same condition applies by analogy to advance indemnifications of directors’ or officers’ future liability towards third parties. The better view appears however, to be that there is no legal basis for such an analogy with the effect that the board is empowered in relation to indemnifications of officers.

In any case, the relevant body may not provide any indemnification on the company’s behalf if it confers on the director, the officer or other parties an unfair advantage at the expense of any shareholder or the company itself, cf. the Sections 5-21 and 6-28 of the Limited Company Act. This will probably depend on whether the indemnification gives the relevant director or officer a benefit which cannot be justified on the basis of the company’s and the shareholders’ interests in the matter.

If a civil or criminal claim or administrative/regulatory investigation is brought against a director or officer in their corporate capacity and they are found to have been involved in wrongdoing in their personal capacity, then the company will not be permitted to indemnify them against their defense costs and/or damages, judgments and settlements, etc. If the concerned director or officer is acquitted, then he may recover costs and expenses incurred on the defense of the proceedings filed against him.

Pakistan company law provides for limited indemnification of officers and directors. The relevant legal provisions are contained in section 194 of the Companies Ordinance 1984, (“Companies Ordinance”):

“Liabilities, etc., of directors and officers.—Save as provided in this section, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any director, chief executive or officer of the company or any person, whether an officer of the company or not, employed by the company as auditor, from or indemnifying him against, any liability which by virtue of any law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void:

Provided that, notwithstanding anything contained in this section, a company may, in pursuance of any such provisions as aforesaid, indemnify any such director, chief executive, officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favor or in which he is acquitted, or in connection with any application under section 488 in which relief is granted to him.”

Thus, section 194 of the Companies Ordinance, 1984 clearly provides an indemnity cover to directors, chief executive, officer or auditor of the company, but limited to the extent of any liability incurred in defending proceedings in which judgment is given in his favor or in which he is acquitted, or in which relief is granted to him covering any related liability incurred.

Thus, only such defense costs and other liabilities will be indemnifiable which arise from damages, judgments and settlements as are incurred by a director or officer in defending any civil or criminal proceeding in which judgment is given in his favor, or in which he is acquitted, or in which relief is granted to him in connection with an application under section 488 of the Companies Ordinance. No other costs and liabilities can be indemnified.

No indemnity will be available in respect of liabilities arising from a settlement, unless such settlement is reached as part of court proceedings.
Palestinian Territories  
A F & R Shehadeh

The applicable Law is the Companies law of 1964 (the “Law”) and its regulations. This area of the law is not well developed and we could not find legal precedents covering indemnification of directors. What is clear in the Law is that this provision renders board members accountable personally before the shareholders for gross negligence and for failure to act properly. In the event of a winding-up of a company, board members can be made to bear some or all of the company’s liabilities. The amount(s) of these liabilities will be determined by the court. The court would also determine whether or not their liability is joint.

Except for the above, the Law is silent on indemnification of directors. With the absence of provisions dealing with this matter, it follows that a company may or may not indemnify the director or officer for 1. his/her defense costs; and/or 2. damages, judgments and settlements.

Finally, the Companies Law does not deal with the matter of Directors’ and Officers’ insurance. However it can be said that whereas the provision of insurance is not contrary to public order, there is nothing in the law that would prohibit companies from purchasing and maintaining Directors and Officers insurance.

Panama

Arias & Muñoz

If a civil or criminal claim or administrative/regulatory investigation is brought against a director or officer in their corporate capacity, the company can indemnify the director or officer for his/her defense costs; and/or damages, judgments and settlements, as long as the director or officer did not act illegally or ultra vires. Directors and officers are severally and jointly liable for their illegal or ultra vires actions.

Papua New Guinea

Gadens Lawyers

It is permissible in certain circumstances where the shareholders have authorized it for a company to indemnify and take out insurance for directors and officers for their liability for acts or omissions as directors and the legal costs of their defense. A failure to have any such arrangement properly authorized results in the indemnity being void.

Peru

Rodrigo, Elias & Medrano

A company may indemnify its director or officer against all costs, charges and expenses (including an amount paid to settle an action or satisfy a judgment) reasonably incurred by the director or office in respect to any civil, criminal, administrative or other proceeding in which the director or office is involved because of his association with the company. Such indemnity could be challenged in the event that the director or officer acted wrongly, deliberately and intentionally.

Philippines

Angara Abello Concepcion Regala & Cruz (Accralaw)

Should a civil, criminal, administrative or regulatory charge be brought against a director or officer acting in his/her corporate capacity, the corporation may indemnify such director or officer for defense costs, damages, judgments and settlements arising from any claims in the exercise of their duties and responsibilities as such directors and officers. There is no limitation or prohibition by law or any other regulation for a corporation to indemnify its directors and officers in the event they are held liable in the discharge of their duties as such. However, should the director or officer act beyond the authority granted to them, the corporation is justified in not indemnifying them for any costs or damages incurred.

Poland

Wardynski & Partners

The following refers only to the liability of a director or officer towards third parties (including public authorities) and not to his/her company. Polish law does not contain any express regulations concerning the corporate indemnification of directors and officers. Thus, as a rule, companies are not prohibited from indemnifying directors and officers. However, indemnification against certain types of liability (in particular indemnification against criminal and administrative sanctions) may raise serious doubts as to its admissibility under Polish law. Provisions providing for indemnification are often contained in contracts concluded with directors and officers. To the best of our knowledge, these contracts have not been challenged in court proceedings or otherwise so far. However, in our opinion there is a risk that these contracts could be declared invalid as contrary to the principles of community life, to the extent they provide for indemnification for criminal and administrative liability.
### Puerto Rico

**O’Neill & Borges**

Subject to the following conditions:

1. any expenses must be incurred in a reasonable manner;
2. the director or officer must have acted in good faith and in a manner which such director or officer deemed to be reasonable and consistent with the best interests of the corporation and not opposed thereto; and
3. in a criminal action or proceeding, the director or officer did not have reasonable cause to believe that his conduct was unlawful.

If the above conditions are met and the director or officer prevails in the proceeding or investigation, the corporation must indemnify them. A corporation may not indemnify a director or officer when such director or officer is liable to the corporation itself. If a corporation advances expenses prior to the final resolution of a proceeding, the director or officer must execute an undertaking agreeing to repay any amounts that such director or officer is later determined to have been ineligible to receive under the limitations set out above.

A court may order indemnification at any time if it believes it to be proper.

NB. These are general guidelines and specific analysis will be required in each individual case.

### Qatar

**Al Tamimi & Co**

There is nothing under Qatar law prohibiting a company from indemnifying directors against liability for defense costs, damages, judgments and settlements (unless the Company's Articles of Association provide otherwise) but because directors may not vote on matters in which they have a personal benefit, clearly provision for the same would need to be made by the shareholders either in the Articles of Association or in a properly constituted shareholders’ assembly.

### Romania

**Musat & Asociatii**

There is no specific legal provision within Romanian law with respect to indemnification. Therefore, basic legal principles regarding liability are applicable.

The starting point is the fiduciary duty owed by directors (based on a commercial agreement) and officers (based on a commercial or an employment agreement, as the case may be) to their company, whenever they are acting in their corporate capacity.

Consequently:

1) When acting in their corporate capacity and intentionally harming their company (civil or criminal), directors and officers are thus breaching their fiduciary duty and become liable toward the company. In such case, fundamental corporate law principles oppose any indemnification by the company for its directors and officers for defense costs, damages, judgments and settlements.

2) When directors and officers are acting in their corporate capacity and are breaching the law in matters such as, for example, company accountancy rules or environment protection, this may lead to fines:
   a) imposed solely upon directors and officers, when the company is not necessarily harmed.
   b) imposed upon the company itself, thus harming the company.

Such breaches of law indicate a mismanagement of the company and non-observance of fiduciary duties, as well as possible reputational risks for the company. However, in such circumstances, it is up to the shareholders to decide whether they indemnify directors and officers for defense costs, damages, judgments and settlements, in case such directors and officers challenge the fine before court.

3) When acting in their corporate capacity and harming third parties (civil or criminal), directors and officers are acting on behalf of the company. Thus, the company becomes liable towards harmed third parties. After indemnifying the third party, the company goes against the directors and officers who are in the end liable towards the company for the breach of law that has harmed third parties. In such case, no indemnification for directors and officers can be justified.

4) When acting outside their corporate capacity and harming third parties, directors and officers are acting on their own behalf, not involving their company and related fiduciary duties, such as in private car accidents or conflicts with neighbors. It is up to the shareholders to decide whether they indemnify directors and officers in such circumstances for defense costs, damages, judgments and settlements, taking into account all circumstances, including reputational risks for the company. In the particular case of joint-stock companies, directors and officers must have a professional insurance policy meant to cover their liability towards their company and third parties, when acting in their corporate capacity. The law allows the company to pay the insurance premium.
<table>
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<tr>
<th>Russia</th>
<th>Debevoise &amp; Plimpton</th>
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<td>As a general rule, under Russian law a company may indemnify its directors/officers for defense costs incurred by such directors/officers in defending a civil claim brought against them in their corporate capacity. A company may also indemnify its directors/officers for damages and judgments awarded against them or settlements reached with respect to such civil claims. However, a company may not indemnify its directors/officers if the civil claim is brought by a company or in the interests of the company (for example, by its shareholder as a derivative claim). If a civil claim made against a director/officer in the interests of a company (but not by the company itself) is ultimately dismissed, the company may indemnify such director/officer for defense costs incurred by him/her in defending such civil claim. A company may not indemnify its directors/officers for damages and judgments awarded against them or settlements reached with respect to a criminal or administrative/regulatory claim or administrative/regulatory investigation brought against them in their corporate capacity. The company may indemnify its directors/officers for defense costs incurred by such directors/officers in defending such criminal or administrative/regulatory claim or administrative/regulatory investigation provided that such criminal or administrative/regulatory claim or administrative/regulatory investigation is ultimately dismissed. Russian law does not directly prohibit indemnification by a company for defense costs incurred by its directors/officers in defending a criminal or administrative/regulatory claim or administrative/regulatory investigation in which such directors/officers were found guilty or which was settled, however, there is a risk that such indemnification may be treated as unlawful. Payment of any of the above discussed permitted indemnifications by a company to its directors/officers will result in negative tax consequences for both the company and the directors/officers, in particular, (i) a company may pay such indemnification only out of its net profit, (ii) in case of payment of indemnification to a director/officer acting on the basis of a contract with a company (members of the board of directors may act in their capacity without any contract), such company will be required to pay so-called social insurance contributions to the Pension Fund, Social Insurance Fund and Federal Fund of Mandatory Medical Insurance at a rate of 10% of the indemnification amount, provided that in the year in question any remuneration or compensation that the company has already paid to such directors/officers exceeds RUB 512,000 in the aggregate; if not, for such part of the indemnification amount that falls below this RUB 512,000 threshold, the company will be required to pay social insurance contributions at a rate of 30%, and with respect to the remainder, at a rate of 10%, (iii) the directors/officers will be required to pay individual income tax at a rate of 13% (if they are Russian tax residents) or 30% (if they are not Russian tax residents).</td>
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<thead>
<tr>
<th>Serbia</th>
<th>Bojovia Dasic Kojovic</th>
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</thead>
<tbody>
<tr>
<td>The Serbian Companies’ Act does not address at all indemnification arrangements between a company and its director/officer. Accordingly, there are no limitations on a company to enter into such arrangements with its directors/officers. However, if the indemnification arrangement is with a director who is at the same time the statutory representative, proxy by employment or procurist of the indemnifying entity, such indemnified party cannot conclude the indemnification agreement with himself/herself on behalf of the company without a special authorization from the shareholders’ assembly, unless otherwise provided in the Articles of Association (e.g. unless the Articles of Association explicitly dispense with the special authorization requirement in a specific case or delegate the authority to issue authorization to another corporate body, such as the board of directors; in the latter case, the approval of such other body is required). The requirement of special authorization does not apply in case the indemnified director is at the same time the sole authorized representative and the sole shareholder of the indemnifying company.</td>
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<tr>
<th>Sierra Leone</th>
<th>CLAS Legal</th>
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<tbody>
<tr>
<td>The Companies Act 2009 of Sierra Leone stipulates that the director or officer shall be indemnified if his/her action was expressly or impliedly authorized or if it was within the scope of their employment as an employee. In such cases the action of the director, officer or employee is seen as acts of the company. However, the director or officer must have been expressly or impliedly authorized to do the act that led to the claim or investigation. Some companies provide for full indemnification on any matter concerning a director irrespective of whether the action is authorized but this is not a requirement set in law.</td>
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### Explanatory Notes

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<thead>
<tr>
<th>Country</th>
<th>Firm</th>
<th>Note</th>
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</thead>
<tbody>
<tr>
<td><strong>Singapore</strong></td>
<td>DAC Beachcroft</td>
<td>Although there is theoretically no limit to the extent of a director’s personal liability, the exposure can be mitigated through indemnification by the company and by D&amp;O insurance. The circumstances in which a company is permitted to indemnify a director in relation to his or her alleged breach of duty to the company is restricted by section 172 of the Companies Act to instances where judgment is given in his or her favor, or where there is an acquittal, or where he or she is relieved from liability, or the consequences of liability, by the Court. There is, however, no restriction on indemnifying a director in relation to his liability to third parties. In keeping with the generally restrictive nature of Singapore law as it applies to the indemnification of directors by the companies they serve, loans to directors and those connected to them are prohibited, except in prescribed circumstances. The purchase of D&amp;O insurance to indemnify a director against liability to the company and to third parties is expressly authorized by section 172(2)(a) of the Companies Act.</td>
</tr>
<tr>
<td><strong>Slovakia</strong></td>
<td>Noerr</td>
<td>Generally, Slovak law does not prohibit the company from indemnifying its directors, officers and employees. However, certain restrictions may apply to Joint-Stock Companies which may not provide a loan or credit, transfer or permit the use of its property to, or secure the obligation of a director or board member or affiliated persons, without the previous consent of the supervisory board; such actions must be performed at arm’s length.</td>
</tr>
<tr>
<td><strong>Slovenia</strong></td>
<td>Jadek &amp; Pensa</td>
<td>In case of a favorable outcome for the director or officer in a criminal, misdemeanor, administrative or regulatory proceeding, the government will mostly have to reimburse the director or officer for the defense costs in an amount recognized under law. However, the company can indemnify the director or officer if so agreed in contract (i) when such reimbursement is not set with law, (ii) for the difference to the full defense costs which will most likely exceed the recognized amount of costs and also (iii) in case of a non-favorable outcome in most misdemeanor, administrative or regulatory proceedings. A contract on indemnification regarding a non-favorable outcome in criminal proceedings will be null and void due to contravention of local compulsory regulations and/or moral principles. The latter may also apply to some misdemeanor, administrative or regulatory proceedings which intend to protect the company. This is to be assessed on a case-to-case basis. In case of civil claims, however, it is to be considered, who is the entity raising the claim. In case the claim is raised by the company itself, it will under law always have to reimburse the director or officer for litigation defense costs in an amount recognized under law if the claim is unjustified and rejected in court. In case of unjustified and rejected claims, the company can, if so agreed in contract, indemnify the director or officer for the difference to the full defense costs which will most likely exceed the recognized amount of costs. A contract on indemnification of defense cost, damages, judgments or settlements, when the company’s claim is justified, will be most likely null and void due to contravention of local compulsory regulations and/or moral principles. This is to be assessed on a case-to-case basis. However, it is allowed and common that a company ensures payment of its claims through conclusion of an insurance policy prior to emergence of claims. If a civil claim is raised by a third person, the company will under law have to reimburse the director or officer, who cannot be held responsible for emergence of such claim (e.g. execution of a binding shareholders’ decision), any defense cost, damages, judgments and settlements which are the result of any improper handling of company body or employee. The latter also applies to the recognized amount of defense cost of the director or officer for litigation against the company. Furthermore, the company, if so agreed in contract, will have to reimburse the director or officer for the difference to the full defense costs which will most likely exceed the recognized amount of costs. In case the claim is raised by the company itself, it will under law always have to reimburse the director or officer for the defense costs in an amount recognized under law. However, the company can indemnify the director or officer if so agreed in contract (i) when such reimbursement is not set with law, (ii) for the difference to the full defense costs which will most likely exceed the recognized amount of costs and also (iii) in case of a non-favorable outcome in most misdemeanor, administrative or regulatory proceedings. A contract on indemnification regarding a non-favorable outcome in criminal proceedings will be null and void due to contravention of local compulsory regulations and/or moral principles. The latter may also apply to some misdemeanor, administrative or regulatory proceedings which intend to protect the company. This is to be assessed on a case-to-case basis. In case of civil claims, however, it is to be considered, who is the entity raising the claim. In case the claim is raised by the company itself, it will under law always have to reimburse the director or officer for litigation defense costs in an amount recognized under law if the claim is unjustified and rejected in court. In case of unjustified and rejected claims, the company can, if so agreed in contract, indemnify the director or officer for the difference to the full defense costs which will most likely exceed the recognized amount of costs. In case the claim is raised by the company itself, it will under law always have to reimburse the director or officer for litigation defense costs in an amount recognized under law if the claim is unjustified and rejected in court. In case of unjustified and rejected claims, the company can, if so agreed in contract, indemnify the director or officer for the difference to the full defense costs which will most likely exceed the recognized amount of costs.</td>
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<tr>
<td><strong>South Africa</strong></td>
<td>Bowman Gilfillan</td>
<td>Section 78(2) of the Companies Act No. 71 of 2008, as amended, (the “Act”) provides that, subject to Sections 78(4) to (6), any provision of an agreement, the constitution of a company, or a resolution adopted by a company, whether express or implied, is void to the extent that it directly or indirectly purports to: (a) relieve a director of a common law fiduciary duty or liability; or (b) negate, limit or restrict any ‘legal consequences’ arising from an act or omission that constitutes willful misconduct or willful breach of trust on the part of the director. In other words, a director cannot contract out of his common law duties or liabilities, but the ‘legal consequences’ of an unlawful act or omission (whatever they may be, including the amount of damages for which the director may be held liable) may be negated, limited or restricted by agreement (such as an insurance contract) in all instances, other than where the act or omission constituted willful misconduct or willful breach of trust on the part of the director.</td>
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</table>
South Africa

Continued

A company may not directly or indirectly pay any fine that may be imposed on a director of the company, as a consequence of that director having been convicted of an offence, nor may a company indemnify a director in respect of such a fine, unless the conviction was based on strict liability. There is one limited exception to this prohibition — it does not apply to a private company if a single natural person is the sole shareholder and sole director of that company, or if two or more related natural persons are the only shareholders of that company and there are no directors of the company other than one or more of those natural persons.

Section 78(4) provides that, except to the extent that a company’s constitution provides otherwise, the company may:

(a) advance expenses to a director to defend litigation in any proceedings arising out of the director’s service to the company; and

(b) directly or indirectly indemnify a director for such expenses, irrespective of whether it has advanced those expenses, if the proceedings:

(i) are abandoned or exculpate the director; or

(ii) arise in respect of any liability for which the company may indemnify the director in terms of Sections 78(5) and (6).

Sections 78(5) and (6)(a) are particularly important from a business point of view. They provide that, except to the extent that a company’s constitution provides otherwise, a company may indemnify a director in respect of ‘any liability arising,’ other than any liability arising:

• due to lack of authority, reckless or fraudulent trading, or defrauding a stakeholder, or

• from wilful misconduct or willful breach of trust on the part of the director. The words ‘any liability arising’ are extremely wide and seems to mean ‘any liability arising out of the director’s services to the company.’ A company may therefore indemnify a director in respect of any liability arising from that director’s negligence. Section 78(7) is the only provision of the Act which deals with D&O insurance. It provides that, except to the extent that a company’s constitution provides otherwise, a company may purchase insurance to protect:

(a) a director against any liability or expenses for which the company is permitted to indemnify a director in accordance with Section 78(5); or

(b) the company against ‘any contingency’ including, but not limited to:

(i) any expenses that the company is permitted to advance in accordance with Section 78(4)(a) or for which the company is permitted to indemnify a director in accordance with Section 78(4)(b); or

(ii) any liability for which the company is permitted to indemnify a director in accordance with Section 78(5).

A company is thus permitted to take out D&O insurance against most contingencies (including negligence) at its cost, even if the director receives the proceeds of the policy. In particular, D&O insurance may be taken out for breach by a director of a director’s fiduciary duties.

Section 78(8) provides that a company is entitled to claim restitution from a director of the company or of a related company for any money paid directly or indirectly by the company to or on behalf of that director in any manner inconsistent with Section 78.

Spain

Spanish Law does not regulate indemnification of directors. In consequence, indemnification is neither expressly allowed, nor forbidden. In the absence of specific regulation, section 28 of the Companies Act 2010 provides that the articles of association of companies may include any agreement which is not contrary to the act, nor to the legal principles which shape limited companies.

On this general basis, there are different opinions. Some legal studies are of the opinion that indemnification agreements are not legal since, according to this view, they would amount to an exemption of liability for directors beyond that permitted in the Companies Act, and would render the regulation of liability of directors – which is of a mandatory nature – void, or would be detrimental to companies and for the exclusive benefit of directors. Other legal studies conclude that indemnification, however, is legal. To this end, they rely on an application by analogy of section 1893 of the Spanish Civil Code, which in respect of the so-called negotiorum gestio (management of third-party business), establishes the obligation to indemnify the manager for the necessary and useful expenses incurred and the damages sustained in the performance of the task.
### Spain

*Continued*

On these grounds, it is argued that indemnities and defense costs could or even should be legally indemnified by companies where the defendant directors have not breached any of their duties, and provided the claimant is not the company itself. If the defendant directors have breached their duties, there is more debate but some studies still conclude that indemnification would be legal with few exceptions (i.e., save in certain cases). For instance, companies should not indemnify where the damage has been caused to the company itself; or where the director concerned carried out a wrongful act in breach of fiduciary duties or the duty of loyalty to the company, or where a criminal offence or dishonest act has been committed.

In the absence of any regulation, there is no obstacle to any indemnity being granted by a non-Spanish company to a director of a Spanish company, provided that this does not interfere with the proper performance of his/her duties by the director concerned (i.e., that when a decision is to be taken, the driver is the interest of the company, not the particular interest of the shareholder who granted the indemnity).

In respect of the advancement of defense costs, companies have no obligation to advance defense costs, but they are permitted to do so. This, however, is arguable.

Despite the absence of specific regulation, pursuant to general legal principles, as indicated above, companies should not be allowed to indemnify the following:

- damage caused to the company itself, or where the director concerned carried out a wrongful act in breach of fiduciary duties or duty of loyalty to the company;
- damage arising from a criminal offence or dishonest act;
- fines and penalties arising from deliberate acts.

### Sweden

Wistrand

A director or an officer may be indemnified in Sweden for his/her defense costs and/or damages, judgments and settlements as a result of a civil or criminal claim or administrative/regulatory investigation brought against the director or officer in their corporate capacity. Normally such indemnification derives through a D&O insurance policy taken out by the company or, less commonly, by an indemnification issued by, for example, the parent company. The extent of the insurance protection/indemnification depends on the wording thereof, but there are no statutory limitations or prohibitions.

### Switzerland

Prager Dreifuss

There is no statutory provision dealing with this issue or any Swiss case law. Most Swiss scholars consider the indemnification by the company a violation of the mandatory provision of article 754 of the Swiss Code of Obligations which states the liability for administration, business management and liquidation, and is regarded as part of the basic legal structure of each corporation. For the same reason, the general rule is that Swiss company law does not allow the directors and officers to contractually limit their liability towards the company. The situation is different with regard to third parties. The general approach is that the company may indemnify its directors and officers for the defense costs incurred in the successful defense of a third-party claim. Furthermore, as long as the court has not decided on the director’s or officer’s liability, the company may agree to a settlement and pay for the incurred defense costs as well as for the amount of settlement which has been reached with the claimant third-party. What can be seen in practice is that parent companies indemnify the directors and officers of their subsidiary. As this amounts to an indemnification by a shareholder (instead of the company), this is generally regarded to be acceptable.

### Taiwan

Lee & Li

According to the Taiwan Company Act (“Act”) and the Taiwan Securities and Exchange Act (“SEA”; applicable to public companies), a director or an officer owes certain liabilities to the company. Such corporate managerial liability is stipulated in Article 23 of the Act. That is, the responsible person of a company, including directors and supervisors and other managerial officers acting within the scope of their duties, should be loyal to the company and exercise the due care of a good administrator in conducting the business operations of the company, and if he/she defies the provision, he/she shall be liable for the consequent damage sustained by the company. In addition, if the responsible person of a company has, in the course of conducting the business operations, violated any provision of the applicable laws and/or regulations and thus caused damage to any other person, he/she shall be liable, jointly and severally, for the damage to such other person.

However, the corporate indemnification system is not provided for under Taiwanese laws. Though some scholars have advocated the introduction of a corporate indemnification system into the Act to release the corporate managers from the managerial liability arising from the performance of their corporate duties, the legislation has not yet been established.
D&O Corporate Indemnification Allowed:

- **Williams Watson, Farley & Thailand**

  Continued

  NO, see notes

  Unclear, see notes

  YES, see notes

  YES, with some limitations and conditions

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Due to the lack of regulations, in the event of a corporate indemnification issue, the general view is that the case should be examined in accordance with the "commission" under the Taiwan Civil Code ("Code"), which explains the relationship between the company (the commissioning party) and the director/officer (the commissioned party). If a director/officer would like to seek compensation from the company for his/her loss incurred while acting in his/her corporate capacity, theoretically speaking, he/she may cite Article 546 of the Code as a legal ground. Article 546 of the Code reads, "[I]f, in the dealing of the affairs commissioned, the commissioned party has incurred injury through a circumstance for which he is not responsible, he may demand for the injury from the commissioning party."

So far, there is no case precedent involving corporate indemnification in the public database and thus the public have no guidelines to follow. Therefore, in the event of any dispute, issues surrounding the subject issue such as whether a company can or should compensate its director or officer, whether the director or officer is entitled to such compensation, the scope of compensation and all other requisite elements for the implementation of corporate indemnification will be determined by the court on a case-by-case basis. By the same token, before a case is presented to the court, we are unable to know whether it is legally permissible for a company to indemnify its director or officer for: (1) his/her defense costs; and/or (2) damages, judgments and settlements arising from a civil or criminal claim or administrative/regulatory investigation brought against the director or officer acting in corporate capacity. On a related note, though the regulatory framework for a corporate indemnification system is still under development in Taiwan, listed companies are encouraged by the Taiwan Stock Exchange ("TWSE") and GreTai Securities Market ("GTSM") to purchase directors’ and officers’ liability insurance products ("D&O Insurance") as a corporate governance measure. For example, Article 39 of the Corporate Governance Best-Practice Principles for TWSE/GTSM Listed Companies ("Principles") stipulates that according to the articles of incorporation or resolution adopted at a shareholders meeting, a TWSE/GTSM-listed company may take out liability insurance for directors covering their liabilities resulting from exercising their duties during their terms so as to mitigate and spread the risk of material harm to the company and shareholders arising from the wrongdoing or negligence of a director. Noticing the trend toward a corporate indemnification system, certain Taiwanese insurance companies provide D&O Insurance products. In the meantime, according to some new releases, more and more companies purchase such products to establish a sound corporate governance policy.

A company wishing to indemnify a director or officer should consider their decision against the background of any D/O insurance policy in place. The terms of any such policy may affect the extent to which the company can offer an indemnity and also the whether it makes commercial sense for a company to do so. D/O insurance policies are typically split into 3 categories:

- **Side A**: this provides cover to the directors and officers where any indemnity provided by the company is not engaged (for example, because some form of exception applies) and is not usually subject to a retention.
- **Side B**: this provides cover to the company for an indemnity given to a director or officer (also known as ‘balance sheet protection’) and is usually subject to a retention.
- **Side C** (also known as ‘entity cover’): this provides cover against claims made against the company itself.

It is common practice for Thai insurance firms to require companies to purchase both Side A and Side B cover. Where there are different limits to the level of cover, this may affect the extent of the indemnity a company will find it sensible to offer. The level of the retention will also be relevant to the company’s decision.

Where no D/O insurance policy is in place, the Civil and Commercial Code and the Non-Life Insurance Act will apply. Under Thai law, a company is bound to provide compensation for any financial damages, judgments or settlements awarded to third parties which arise from the actions of its directors or officers. However, the company has a right of recourse against any director or officer who caused the damage. Whether the individual is required to compensate the company or not depends on whether the individual has been negligent. Thai agency law protects directors and officers who are acting on behalf of the company when the damage is caused. As a result, a director or officer will only be liable for any damage resulting from his own negligence, omissions which the agency agreement obliged him to perform, or from an act committed without or in excess of authority.

Thai law does not preclude a company indemnifying a director or officer for their defense costs and in fact this is quite commonplace because Thai courts rarely order an unsuccessful claimant to reimburse the defendant’s defense costs.
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<th>Country</th>
<th>Law Firm</th>
<th>Remarks</th>
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<tr>
<td>Thailand</td>
<td>Continued</td>
<td>Unusually, it is also not prohibited for companies to agree to indemnify their directors and officers for criminal or regulatory penalties provided always that their directors and officers are not acting negligently and/or in bad faith, which is prohibited in a number of jurisdictions. Any indemnity offered by the company will only trigger where the director or officer is acting in their corporate capacity. Any negligent action or one made in bad faith will also release the company from the indemnity. In circumstances where the company is not obliged to pay out under an indemnity, it may still choose to do so, but should ensure it has the consent of its shareholders.</td>
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<td>Tunisia</td>
<td>Ferchiou &amp; Associes</td>
<td>Neither Tunisian law nor Tunisian case law deal with the indemnification of the directors or officers by their company for civil or criminal claim or administrative/regulatory investigation brought against them in their corporate capacity. Defense costs may be paid by the company on behalf of the directors or officers as long as this payment is duly authorized (the kind of authorization will vary depending on the kind of company: bylaws, shareholder meeting, board decision...). For civil damages, settlements or judgments, the company may pay the outstanding amounts on behalf of its officer or director when it is duly authorized to do so (the kind of authorization will vary depending on the kind of company: bylaws, shareholder meeting, board decision...). For criminal fines, settlements or judgments, we believe that the indemnification of directors or officers might be against public policy. Indeed, criminal responsibility is individual and cannot be shared with any other person or entity. By indemnifying directors or officers for their criminal liability, the company would pay instead of the person convicted and for a crime it did not commit. This would go against public policy. Thus any contractual provision providing for such indemnification would be void.</td>
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<tr>
<td>Turkey</td>
<td>Mehmet Gün &amp; Partners</td>
<td>Under Turkish law, there is no provision preventing a company from indemnifying its directors and officers for these matters. However, if the director/officer acted deliberately or with gross negligence/fault, then from the Turkish labor law point of view, as these would constitute a just cause to terminate the contract of employment, practically it would not be expected for a company to indemnify the losses in such cases, unless the contract of employment between the director and the company sets out the contrary (i.e. that any kind of loss shall be indemnified by the company, regardless of the degree of negligence).</td>
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<tr>
<td>Ukraine</td>
<td>Atherstone &amp; Cook</td>
<td>Per our interviews, we did not discover any limitations or conditions for Ukraine.</td>
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<tr>
<td>United Arab</td>
<td>Al Tamimi &amp; Company</td>
<td>There is nothing under UAE law prohibiting a company from indemnifying directors. To the extent possible, a company may seek to reduce its exposure under such an indemnity by appropriate insurance coverage. Such an indemnity may be considered at board or shareholder level (subject to any restrictions on the company’s articles) but if considered at board level then any directors benefitting from the indemnity would be prohibited from voting on that issue. It follows that a blanket indemnity relating to all directors would need to be passed by shareholder resolution. On a related issue, short of providing an indemnity, article 115 of Federal Law No. (8) of 1984 concerning Commercial Companies allows shareholders to absolve the board of responsibility for acts previously undertaken by them in their capacity as a board. The extent of any such absolution is as follows: (i) the board cannot be absolved of responsibility vis a vis third parties (as clearly the shareholders cannot waive rights on behalf of third parties), (ii) the board can be absolved of responsibility for civil actions that may have otherwise been brought against them by the shareholders provided, however, that one year has passed since the date of the resolution absolving the board (i.e. the shareholders may turn around and bring an action against the board within a year of the passing of such a resolution but thereafter are time barred), and (iii) the board cannot be absolved of responsibility for criminal actions unless such a claim is time barred by the statute of limitations applicable to any such criminal action (as would be the case with regard to any criminal action).</td>
</tr>
<tr>
<td>Kingdom</td>
<td>DAC Beachcroft</td>
<td>It is usually the case that a company’s articles of association will provide that a director may be indemnified in civil proceedings brought by a third party against the claim itself and the legal costs of defending the proceedings. However, under s.232 Companies Act 2006, the company cannot exempt a director from, or indemnify him against, any liability in connection with any negligence, default, breach of duty or breach of trust in relation to the company. However, under s.233 Companies Act 2006 the company is permitted to purchase insurance against such liabilities.</td>
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Each state has its own indemnification statute but most contain the following provisions:

- empowering a corporation to indemnify directors or officers;
- stating required standards of conduct to be eligible for indemnification;
- mandating indemnification for expenses to the extent the person successfully defends a claim;
- prescribing the necessary procedure to authorize indemnification;
- providing for court-ordered indemnification where appropriate;
- permitting advance payment of expenses;
- declaring statutory indemnification to be non-exclusive; and
- empowering a corporation to purchase and maintain D&O insurance.

Except for criminal or administrative liabilities.

Per our interviews, we did not discover any limitations or conditions for Venezuela.

It is a matter of agreement between the company and its officer and director.

Where a director or officer of a company acts recklessly or with gross negligence or with intent to defraud any person or for any fraudulent purpose in carrying out the business of a company he or she will be personally liable. The Zimbabwean Companies Act nullifies any exemption or indemnification granted to a director or officer of the company against liability which by law attaches to him or her in respect of any negligence, default, breach of duty or breach of trust of which he or she may be guilty. A company may however indemnify its director or officer against any liability, civil or criminal, where judgment is given in his favor subsequent to any proceedings against him.

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<tr>
<th>Region</th>
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<th>Notes</th>
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<tbody>
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<td>USA</td>
<td>Meagher &amp; Gee</td>
<td>Each state has its own indemnification statute but most contain the following provisions:</td>
</tr>
<tr>
<td></td>
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<td>- empowering a corporation to indemnify directors or officers;</td>
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<td>- empowering a corporation to purchase and maintain D&amp;O insurance.</td>
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<tr>
<td>Uzbekistan</td>
<td>Colibri Law Firm</td>
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<tr>
<td>Venezuela</td>
<td>Hoet Pelaez Castillo &amp; Duque</td>
<td>Per our interviews, we did not discover any limitations or conditions for Venezuela.</td>
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<td>YKVN</td>
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<td>Where a director or officer of a company acts recklessly or with gross negligence or with intent to defraud any person or for any fraudulent purpose in carrying out the business of a company he or she will be personally liable. The Zimbabwean Companies Act nullifies any exemption or indemnification granted to a director or officer of the company against liability which by law attaches to him or her in respect of any negligence, default, breach of duty or breach of trust of which he or she may be guilty. A company may however indemnify its director or officer against any liability, civil or criminal, where judgment is given in his favor subsequent to any proceedings against him.</td>
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Zurich
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