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# Post-resignation liability of directors

## Imagine...

A few years ago, you were a director of a company. Because of differences of opinion about the policy being implemented, you resigned. Today, a bailiff shows up at your door and hands you a summons in which you, as director, are held liable for recent errors that –so the argument goes– drove the company into bankruptcy. Aghast, you quickly look into the matter, and what do you find out? No announcement of your resignation as director was ever published...

## A brief clarification.

A director of a Belgian company can be held liable for errors that he committed during the exercise of his mandate, as well as for violations of the Belgian Company Code or the company's own articles of association. An aggravated liability applies if a director *knowingly* committed acts of gross negligence that contributed to the bankruptcy of the company.

A director always remains liable for management errors made *prior* to his resignation, even if they lead to harm only *after* the resignation.

Concerning the liability of a director after his resignation, two dimensions can be distinguished: an internal dimension (the relationship between the director and the company) and an external dimension (the relationship between the director and third parties).

In the relationship between the director and the company, a resignation has immediate effect. The

resignation does not have to be accepted by the company in order to take effect. A director is released from his obligations vis-à-vis the company, and any related liability, as of the moment of the resignation.

Things are different when it comes to the relationship between the director and third parties. According to the Belgian Company Code, third parties do *not* have to take account of the resignation of a director that has not published in the Belgian Official Journal, unless they became aware of the resignation in some other way.

Consequently, in the relationship between the director and third parties, there is a vacuum in the period between the moment of the resignation and the publication thereof. During this period, the director is no longer in office, but his resignation is not yet opposable to third parties. Although this position can certainly be criticized, until now the Belgian courts have always ruled that a director, during this interim period, does in fact remain liable vis-à-vis third parties. So clearly, a director has every interest in having the announcement of his resignation published as quickly as possible.

## Concretely.

- If you are a director of a Belgian company, make sure that the announcement of your resignation is published in the Belgian Official Journal as soon as possible.
- If the company neglects to publish your resignation, as a director, you can yourself sign the necessary documents for such publication and file them with the clerk of court's office.

## Want to know more?

Consult the documentation for the "Help, I'm a director!" seminar from **contrast** law seminars.