

BOARD MEMBERS OF SWISS COMPANIES MAY NOW EXERCISE THEIR RIGHT TO INFORMATION AND INSPECTION IN COURTS

The right of a board member to information about and inspection of the business affairs of a company can now be enforced before the courts. In a ruling on 28 February 2018 ([4A_364/2017](#)), the Swiss Federal Tribunal has clarified the question left open in previous case law by acknowledging the right of any board member of a company to bring a claim in court against the refusal of the board to grant her or him access to documents related to the business affairs of the company.

The right to information and inspection provided for under Article 715a CO aims at enabling each board member to effectively fulfil the board's supervisory duties. The Federal Tribunal strengthens the rights of each board member to be informed about the company's business and thus become fully accountable. By doing so, the Federal Tribunal limits the possibility for the majority of the board to reject such a request from individual members. Beyond the idea that rights should be justiciable to be effective, one of the reasons to reinforce the rights of individual board members is that the exercise of the duty of surveillance is in the interest of the company. Consequently, the decisions of the majority of the board should be made subject to judicial control.

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