ANDERSEN

# European Guide to Support Employers
# Employment of Managing Directors

Andersen in Europe

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# MALTA

## Status

The Maltese Companies Act (Chapter 386 of the Laws of Malta), provides no clear definition of the term "director" and, as a result, does not make a specific distinction between executive and non-executive directors. Typically, managing directors are viewed as executive directors, primarily because such directors tend to be involved in the day-to-day management of the company. It is common for companies in Malta to have a managing director who is the only executive director on the board. It is also common for companies to designate employees as "directors" without them being part of the company's board of directors and ultimately being recognized as directors in law.

The number of managing directors a company is required to have depends on the form of the company. Private limited companies are required to have one or more directors, while public limited companies must have at least two directors. The managing directors of a limited company are responsible for the management and day-to-day running of the company.

Any person may hold the position of a managing director, unless he or she is a minor who has not been emancipated, is legally interdicted, incapacitated or an undischarged bankrupt, or has been convicted of any of the crimes affecting public trust or of theft or of fraud or of knowingly receiving property obtained by theft or fraud.

Both executive and non-executive directors are equally responsible for maintaining the company in good order in accordance with the Companies Act. Any person holding the position of managing director will substantially carry out the same functions in relation to the management of the Company as those carried out by any Directorr and will be required to form part of the board of directors of the company.

Managing directors have a fiduciary relationship towards the company and are deemed to be mandatories and agents of the limited liability company. A director of a limited liability company may be either an individual or a corporation, unless the company is a listed or exempt corporation, in which case corporate directors are not permitted.

Managing directors must ensure that there is no conflict between their personal interests and the interests of the company. Furthermore, no property, information, or opportunity of the company may be used for

the benefit of the managing director or any other person, except with the company's express approval by resolution of the general meeting or as permitted by the company's articles of association.

Managing directors have various duties, which are generally categorized as "general" and "administrative". Such general duties arise from their juridical position under general principles of law and concern both their duties of loyalty and their duties of care and skill. The administrative duties, on the other hand, are created by specific provisions of the law, most of which concern the director's duty to keep suitable records, to account for and return on demand all property held in trust, and to keep the company's property separate from his/her personal property. In addition, managing directors have a duty to promote the interests of the company and to ensure its proper administration and management. There are also a number of other statutory duties arising under the Maltese Companies Act.

Finally, managing directors owe a duty of loyalty to the company for which they act and the duty to act in the best interests of the company. This duty also encompasses a requirement to treat shareholders equally, notwithstanding the existence of different classes of shares with different rights.

## Employment

In Malta a company is not required to enter into an employment relationship with the managing directors or to pay any remuneration to their services. Managing directors may be remunerated for their office in the company and for additional services rendered to the company. The company's articles of association may provide for specific arrangements for the appointment and term of office of managing directors.

That being said, managing directors are typically engaged via a contract of service.

## Tax & Social Security

Maltese law provides certain deterrents for directors who act unlawfully and imposes a number of personal liabilities on directors. For example, the Income Tax Management Act provides that all persons involved in the management of a company must do their best to ensure the payment of income tax. The directors and managers of every company must pay tax out of the company's assets; however, they will be held personally liable for payment if it is found that they had in their possession assets belonging to the company that could have been used to pay the tax then due.

Similarly, the Maltese Social Security Act states that whenever something is required to be done by a company, such a duty is also required to be performed personally by the directors themselves.

## Liability

The personal liability for damages of managing directors for breach of duty is joint and several, provided that where a specific duty has been delegated to one or more directors, only such director(s) shall be liable for damages. A managing director shall not be held liable for the actions of his/her co-directors if it is proved that he/she was not aware of the breach of duty before or at the time of its occurrence and where he became

aware of it after its occurrence, provided the managing director notified his/her co-directors in writing of his/her disagreement; or where he/she became aware that the co-directors intended to commit a breach of duty, provided the managing director took all reasonable steps to prevent it.

Any provision, whether included in the company's articles of association or in a contract with the company, exempting an officer from liability is considered null and void. Managing directors may be held personally liable for acts of the company, primarily in the context of wrongful and fraudulent trading.

Liability for wrongful trading arises where a liquidator presents evidence that a managing director knew or ought to have known, prior to the dissolution of the company, that there was no reasonable prospect of the company avoiding dissolution on the grounds of insolvency. On the other hand, fraudulent trading is defined as the carrying of any business of the company with intent to defraud the creditors of the company or creditors of any other person or for any fraudulent purpose. For fraudulent trading to be established, one of the prerequisites for liability to arise is the managing directors' knowledge that they participated in the conduct of the business with intent to defraud creditors. Such activity may expose directors to personal liability for all or any of the debts or other liabilities of the company if the court is satisfied that fraudulent trading indeed took place.

Managing directors may also be exposed to personal liability as a result of certain acts or omissions of an administrative nature,

including failure to notify the Malta Business Registry of a resolution the dissolution and voluntary winding up of a company, failure by the company to issue share certificates and failure to register members.

Companies are not required by law to take out D&O insurance to protect managing directors against claims for wrongful acts. However, an increasing number of Maltese companies are choosing to take out D&O insurance, particularly those engaged in licensable activities.

## Termination

In order for a managing director to be removed from office, the shareholders must request the directors to call an Extraordinary General Meeting ("*EGM*"), the agenda of which must include a specific reference to the intention of removing that director. Notice of the EGM must be sent to all members and to the director whose removal will be discussed.

The managing director concerned has the right to attend the meeting and put forward his/her case, but if the EGM decides by a vote of more than 50% of the voting rights attached to the shares entitled to attend and vote at the meeting that the managing director should be removed, such removal will be effective.

A managing director appointed by a specific class of shares may be removed by an ordinary resolution of the members of the company, unless this is specifically restricted in the company's articles of association.

It is important to note that if a managing director is a party to a services agreement which is terminated as a result dismissal, he/she may be able to bring an action against the company for wrongful dismissal or breach of contract.

Finally, a managing director may be removed from office by a court order.


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# Introduction

When hiring managing directors who are legal representatives of a company, there are specific considerations and regulations that vary across European countries. The conditions of employment for managing directors differ from those applicable to employees, and they are shaped by both company law and labor regulations.

The terms "managing director" and "CEO" are sometimes used interchangeably, but there may be some differences between the two roles depending on the country and the organizational structure. Specific titles and roles can vary from company to company and there is no universal standard across European countries. It's always advisable to review the company's structure to understand the specific roles and responsibilities associated with the positions of managing director and CEO in a particular context.

In some European countries, such as Germany, the term "managing director" is commonly used to refer to the most senior executive in a company who acts as a legal representative of the company. The managing director has significant decision-making authority and is responsible for the day-to-day management of the company's operations. In other European countries, such as the UK, the term "managing director" is often used to describe a specific senior management position within a company, typically responsible for a specific division or department. The CEO, on the other hand, is usually the most senior executive in the organization and has overall responsibility for the strategic direction and performance of the company as a whole.

Each European country has its own company law that regulates the incorporation, organization and management of companies, including the role of managing directors. These laws set out the general duties, responsibilities and powers of managing directors. However, in many countries, managing directors, like other employees, are subject to employment laws and regulations. These may include provisions on employment contracts, termination, working hours, holiday entitlements and other employment rights. Countries often have specific corporate governance guidelines or codes that companies should follow. These guidelines may address issues such as board composition, director duties and responsibilities, transparency and disclosure requirements.

The employment of directors may give rise to certain tax and social security liabilities. These may include liabilities for income tax, payroll tax and social security contributions. European countries have laws that promote equality and prohibit discrimination in employment. They usually apply to directors and ensure fair treatment regardless of factors such as gender, age, race or disability. Importantly, some industries or sectors may have additional regulations that affect directors. For example, the sectors of financial services, healthcare or energy may have specific regulations relating to licensing, compliance or professional qualifications.

This guide focuses on the rules applicable mainly to limited liability companies (LLCs) in over 30 European countries. It does not discuss rules applicable to other types of companies, such as corporations, partnerships, etc. In the guide we describe the rules for the employment and/or appointment of managing directors who are also members of the company's bodies.


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# ALBANIA

## Status

In Albania, the most common types of companies are the SHPK (*societas humanae personalitatis kufi-zuar,* or limited liability company) and the SHA (*societas per azion*, joint stock company). However, the SHPK is the most widely used type of company as it offers much more flexibility in terms of formation, capital requirements and contributions, and operation.

Albanian SHPK can be established by one or more shareholders (members). Each member acquires shares in the SHPK in proportion to their contribution. The articles of association define the applicable rules, management bodies, and the general structure of the SHPK.

The members can appoint one or more directors to manage the SHPK, either jointly or separately. In some cases, the managing director(s) may be part of a management board, which is also appointed by the members. According to Albanian law, the managing director has an executive role. However, the articles of association or other internal regulations may provide for other types of management bodies, including non-executive or supervisory directors. A managing director must be a natural person with full legal capacity and does not need to be a resident or national of Albania. There are certain legal restrictions on who can be a director. For example, a managing director of a parent company cannot be appointed as a managing director of its subsidiary. Additionally, a managing director cannot simul-taneously act as a director, hold a managerial position, or be employed in another company operating in the same business, unless approved by a resolution of the shareholders' meeting by a qualified ma-jority. Furthermore, a person convicted of financial and business crimes cannot be appointed as a managing director for a period of 5 years.

The Albanian Labor Code does not provide a specific definition of a managerial employee. However, it can be assumed that managing directors may be considered as managers and therefore employed under an employment contract.

The managing director serves as the legal representative of the SHPK and holds full powers of repre-sentation to act on its behalf, unless their powers are limited by a resolution of the general meeting or by the articles of association. If the SHPK appoints multiple managing directors, they are collectively considered as representatives of the SHPK, unless the articles of association state otherwise. The managing director is responsible for the day-to-day management of the SHPK, draws up and signs the company's annual financial statements, consolidated financial statements, and management reports, and submits these, along with proposals for profit distribution, to the general meeting for approval. Managing directors also carry

out other duties as required by law and the articles of association, including repaying contributions to members, paying interest or dividends, and distributing the assets of the SHPK, among others.

## Employment

As mentioned in section 1 above, the Albanian Labor Code does not provide a proper definition of a managerial employee. However, it can be assumed that managing directors of business companies can be considered as managers. It is important to note that the appointment as a director does not automatically constitute a contract with the SHPK. Albanian Company Law only grants directors the right to receive remuneration, which should be reasonable and aligned with their duties and the SHPK ‘s financial situation. The SHPK is not obligated to enter into a services or employment contract with the director. However, the managing director is considered an employee of the SHPK for social security and health insurance contributions purposes. A managing director can be dismissed by resolution of the members but, in any case, they remain subject to claims arising from their relationship with the SHPK based on an employment contract or any other type of agreement.

The combination of a company mandate and employee status can result in certain liabilities for the company if the director is removed. The managing director is entitled to the protection provided to employees in terms of salary, and dismissal procedures, among others. Consequently, managing directors are also eligible for unemployment insurance benefits and compensation for unlawful dismissal. The provisions of the Albanian Labor Code apply accordingly. Similar to ordinary employees, post-termination non-competition and/or non-solicitation clauses may be included in employment contracts entered with managing directors.

## Tax & Social Security

Managing directors can be engaged either as (i) independent contractors, registered as natural persons for commercial purposes in the Albanian Commercial Register, under a services agreement, or (ii) employees under an employment contract. However, if the managing director is registered for commercial purposes, a different tax regime applies which falls outside the scope of the Labor Code. Otherwise, the managing director's remuneration is treated as a salary. The services agreement is a specific contract regulated by the Albanian Civil Code, not the Labor Code.

If the managing director is an employee of the SHPK employed under an employment contract, he/she is liable to social security contributions at a rate of 11.2%. Employee contributions consist of 9.5% for social security and 1.7% for health insurance. The SHPK, as the employer, is responsible for paying social security contributions for the managing director at a rate of 16.7%. The employer's contribution consists of 15% for social security and 1.7% for health insurance.

In terms of taxation, and as of 31st December 2023, the personal income tax rates for directors and all employees with employment contracts are as follows: salaries up to ALL 50,000 (approximately 450 EUR) are not subject to taxation; for

salaries between ALL 50,001 and ALL 60,000 (EUR 550), the in-come tax rate is 13% for the amount exceeding ALL 35,000 (320 EUR); for salaries between ALL 60,000 (EUR 550) and ALL 200,000 (EUR 1,800), the income tax rate is 13% for the amount exceeding ALL 30,000 up to ALL 200,000; for salaries exceeding ALL 200,000 (EUR 1,800), the income tax rate is 23% for the amount exceeding ALL 200,000 (EUR 1,800) and ALL 22,100 (EUR 200). Starting from January 1, 2024, the income tax rate is 13% for annual salaries up to ALL 2,040,000 (EUR 18,000) and 23% for annual salaries above ALL 2,040,000 (EUR 18,000).

On the other hand, if the managing director is appointed under a services agreement (as an individual contractor), the net business income (profit) will be taxed at progressive rates ranging from 15% to 23% starting from January 2024. The tax rate will be 15% for an annual income of up to ALL 14 million (EUR 130,000), while the tax rate will be 23% if the director's income exceeds ALL 14 million (EUR 130,000).

## Liability

Managing directors may be held personally liable if they engage in misconduct that poses a risk to the SHPPK or its members. If the managing director acts with unlawful intent or abuses his/her position to the detriment of third parties, liability can be transferred from the company to the liquidator. According to Albanian Company Law, individuals acting on behalf of a SHPK (directors and members/shareholders) are jointly and/or severally liable for the company's obligations if they abuse their position and the legal form of the company. Specifically, if the managing director fails to perform certain acts, he/she may be personally liable under the following conditions: in the event of misuse of the company's legal personality to achieve unlawful objectives. The managing director's personal liability may reach the total amount of the outstanding company obligations. Managing directors will also be personally liable if they treat the com-pany's assets as if they were their own, in which case their liability can be up to the current market val-ue of the company's assets treated as their own. Finally, managing directors may also be personally liable if they allow the company to continue its business and incur new obligations towards third par-ties, including public authorities, despite knowing (or where they should have known) the insufficiency of the required capital to continue the business. In this scenario, the personal liability of managing di-rectors can be up to the aggregate amount of the company's outstanding obligations incurred after that point.

## Termination

It is important to emphasize that employment contracts of managing directors often navigate a fine line between the Albanian Labor Code and the Albanian Companies Act. In practice, the dismissal of managing directors follows the procedure set out in the Albanian Companies Act, which states that a simple resolution of the members is good grounds for terminating the employment relationship with immediate effect at any time. However, this does not affect the rights that the managing director may have under his/her employment contract with the SHPK and under the Albanian Labor Code. The termination of a managing

director's duties can occur in various ways as defined in the SHPK's articles of association, such as expiration of the term of office, incapacity, or prohibition to manage, death of the managing director (natural person), dissolution of the company (legal person), or revocation.

If the managing director combines an employment contract with a corporate mandate, the termination of the corporate mandate does not automatically result in termination of the employment contract, which is subject to a specific procedure and other rules in terms of notice period, severance pay, maternity leave, sick leave, etc. Also, the termination of the managing director's contract of employment must be for good cause, as (unlike the revocation of a corporate mandate) employee dismissals in Albania must be justified as provided in the Albanian Labor Code, including the procedure.

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# AUSTRIA

## Status

In Austria, the managing director of a limited liability company ("**GmbH**") is responsible for conducting and managing the company's affairs and business. Additionally, a managing director represents the company both in and out of court, which means that their representation power is unlimited. The managing director can act solely or together with other managing directors as provided in the articles of association and in the terms of the appointment.

Only natural persons with unrestricted legal capacity may be appointed as managing directors. There are no mandatory requirements for a managing director in terms of citizenship, domicile, or habitual residence.

The managing directors are obliged to act with the care of a prudent businessman when exercising their office and must serve at all times the interests of the GmbH, which take precedence over the managing director's own interests. If the managing director has his/her tasks carried out by others, he/she takes responsibility for their proper performance. The managing directors may not engage, in their own benefit or in the benefit of third parties, in businesses that compete with the GmbH's own business; nor can they participate in another company in the same line of business without the consent of the GmbH. Transactions entered on behalf of the GmbH exceeding the GmbH's ordinary course of business or completed under conditions other that at arm's length, must be executed as a deed.

A managing director may either be a shareholder (shareholder-managing director) or a third party not involved in the GmbH. The appointment of the managing director is generally made by a majority resolution of the shareholders. Each shareholder is entitled to vote. Shareholders who are to serve as managing directors may be appointed as such in the articles of association.

A distinction needs to be drawn between the appointment of the managing director as a corporate act and his/her employment or civil law contract. However, it is conceivable that no civil or labor agreements are made between the GmbH and the managing director. His/her contract may take the form of a freelance service contract, an employment contract, or a civil law relationship, such as a contract for work and services. The form of cooperation and the consideration of the managing director as an employee under Austrian labor laws depend, among other things, on his/her status as shareholder or non-

shareholder of the GmbH. In practice, employment contracts are typically entered into between a GmbH and a managing director.

## Employment

A managing director is treated as an employee for labor law purposes provided he/she is not a shareholder of the GmbH, his/her interest in the company is below 50%, has no blocking minority (i.e., the managing director cannot prevent the general assembly from issuing instructions to the managing director), and is bound by an employment contract.

If a managing director is categorized as an employee under Austrian labor law, he/she has the status of an executive employee and is therefore excluded from the scope of many labor law rules including, for example, working time. However, protective provisions under collective agreements, such as the right to a minimum salary, do apply in principle unless, as is very common, managing directors are excluded from the scope of collective agreements. In these cases, there is no obligation to pay remuneration to the managing directors of the GmbH nor is he/she entitled to a minimum salary. Managing directors are not subject to the active or passive voting rights of the works council, nor are they subject to general protection against termination. Accordingly, the works council does not have to be notified of an impending termination, and managing directors may not challenge their termination on any grounds.

If an employment relationship exists, however, it is customary to contractually incorporate parts of the works agreements. Likewise, a separate, more far-reaching non-competition clause is typically agreed

upon, as the statutory non-competition clause generally ends with the revocation of the managing director's appointment. It is common for managing directors to receive a fixed annual salary as well as variable remuneration components to provide both short-term and long-term incentives.

It is not compatible for a managing director to hold a dual position (e.g., employment position and a corporate office). Instead, an existing employment relationship is usually terminated upon entering into a services agreement with the managing director.

## Tax & Social Security

Depending on the contract entered into with the company and his/her interest in the GmbH, managing directors are liable to payroll tax or income tax. Third-party managing directors and shareholder managing directors with a non-substantial shareholding of less than 25% and without a blocking minority are essentially treated in the same way for tax purposes. Income from employment is subject to wage tax, which the GmbH must withhold from the managing director's remuneration. On the other hand, earnings are subject to income tax if the managing director acts on the basis of a freelance service contract. The same generally applies to a shareholder-managing director with a minor shareholding who has a blocking minority. In any case, managing directors with a substantial shareholding generate income subject to income tax.

The managing director's social security status is similar. To establish whether the managing director is subject to compulsory insurance, his/her shareholding and general influence in the GmbH are determining factors. It is common for a third-party managing director and a shareholder managing director with a minor interest of less than 25% to have an employment relationship with the GmbH.

Accordingly, the managing director is subject to compulsory health, pension, accident and unemployment insurance. If there is no employment relationship and no obligation to pay income tax, the managing director is usually not subject to compulsory insurance. In the case of managing directors with a substantial shareholding of more than 25%, it depends on whether the shareholding is less or more than 50%. As a rule, there is no compulsory insurance for the managing director if he/she has a blocking minority or holds more than 50% of the GmbH' shares.

## Liability

Managing directors are jointly and severally liable to the GmbH if they negligently breach their duty to always exercise their office with the care of a prudent businessman. The same applies if managing directors breach certain duties in tax law, insolvency law or accounting matters. Sometimes, however, managing directors are also directly liable to third parties ("external liability"). This is the case, for example, where they intentionally cause damage, interfere with legally protected interests, or violate protective laws (e.g., violation of the obligation to file for insolvency), as well as on the basis of special liability standards.

Exclusion of liability for slight negligence can be agreed by a simple majority of the shareholders, with the managing director having no voting rights. In the case of gross

negligence, an exclusion of liability is invalid because it contravenes the duty of care of a prudent businessman. In addition to their personal liability, managing directors are responsible under administrative criminal law, e.g., they are held personally liable for violations of health and safety or working time laws; this responsibility can generally be delegated to other persons.

Although D&O insurance is not mandatory, it is an integral part of the Austrian insurance market. However, there is no common standard for D&O insurance conditions as set forth in the Austrian Insurance Association's model conditions. Before entering into a D&O insurance policy, a situation assessment and risk analysis should be carried out to develop an insurance solution with the insurer that is individually tailored to the circumstances of the company and the activities of the insured persons.

## Termination

The appointment of a managing director may be terminated at any time (without cause) by a majority vote of the shareholders. The requirement to give a reason for termination can only be agreed if a managing director is also a shareholder. The termination of the managing director's appointment and the termination of his/her service contract are legally independent. When terminating an employment contract, notice periods and any fixed terms must be observed, unless there are important, legally defined reasons for termination.


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# BELGIUM

## Status

In Belgium managing directors of private companies (the most widely used type of corporate entity) are responsible for the day-to-day management of the company. Managing directors have legal, strategic, and social responsibility. The company's daily management and representation may be entrusted to one or more managing directors. A managing director is appointed and removed by the board of directors. The articles of association may provide for rules on the appointment, removal, and powers of managing directors.

In 2019, Belgian company law underwent a major reform which impacted the legal status of (managing) directors. Managing directors must now perform their activities as independent contractors. A managing director may be an individual or a legal entity. Individual managing directors do not need to be resident in Belgium, nor is there a nationality requirement. If the managing director is a corporation, it must appoint a permanent representative who must be a shareholder, a director, or an employee.

In principle, no particular skills are required to be a managing director. However, such activities may not violate non-compete rules or obligations. After all, a managing director is bound by a duty of loyalty to his/her company.

Conflicts of interest may frequently arise when the managing director is both a director and a shareholder in the company. When the management of the company makes a decision or carries out a transaction that provides a financial advantage to a shareholder who is also a director, it is considered a conflict of interest and a breach of management. Belgian company law provides for an information procedure and sanctions. The board of directors may not make a decision without first informing the other directors that a conflict of interest exists. A meeting of the board of directors must be held, and minutes of this meeting must be drawn up with certain mandatory information, such as the declaration of the conflict of interest, explanations on the nature of the conflicting interest, the financial consequences for the company, and finally, the justification of the decision that was taken. The minutes are then either reproduced in the management report or attached to the financial statements. A decision taken by the board of directors that is affected by one or more conflicts of interest may result in the nullity of that decision, which may be requested by all persons having an interest in the conflict. It is also possible to request the suspension of the decision.

## Employment

A managing director may hold office either as a director or under an employment contract. Because of the duality of his functions, he may be both an employee and a mandatary of the same company.

In the absence of this dual function, the mandatary of a company cannot be bound to it by an employment contract. However, this prohibition applies only to the duties performed as a mandatary of the company but not to the day-to-day management. Certain actions may be taken by the company's day-to-day management without the involvement of the managing directors. This applies in particular to actions that do not go beyond the ordinary needs of the company or to actions that do not warrant the intervention of the board of directors because of their limited relevance or urgency.

Dual function means that the managing director also exercises a different function within the same company. This means that 3 conditions must be met:

1. This other function must be clearly separate from the function of the director. No direct link with his/her mandate as a managing director must be present.
2. The second condition relates to the relationship of subordination, which is the essential component of any employment contract. This is the most problematic condition to meet in practice, as managing directors must carry out their work in the context of a relationship of dependence with their employer, while simultaneously being the company's most senior executive;
3. The third condition relates to remuneration. The employee director must be in receipt of remuneration for his services - as if he were not a director. The managing director's fee does not qualify as remuneration.

The managing director's employment contract must be as detailed as possible. Generally speaking, employment contracts with management directors are entered into for an indefinite period of time and contain the following clauses (1) standard clauses, including identification of the parties, the date of commencement of employment, the employee's place of work, job description, remuneration and working hours. Under Belgian labour law, individuals in managerial or fiduciary positions are not subject to working time restrictions and are therefore not subject to overtime; and (2) specific clauses, including confidentiality and non-competition clauses with associated penalties in the event of breach.

A (managing) director may also serve through a management company. A management company enters into an agreement with the company to provide the services of the director. A company can be appointed as a director, but must appoint an individual to act as its permanent representative. This permanent representative must be a shareholder, a director or an employee of the company.

## Tax & Social Security

If it is determined that the director of a company is also an employee, two different sets of labor and social security rules apply in Belgium. The employee managing director benefits from employee protection

regulations (working hours, dismissal, etc.) and is subject to the social security regulations applicable to employees. Managing directors subject to a mandate agreement, on the other hand, are treated as independent contractors.

For tax purposes, the entire directors' remuneration is treated as the remuneration of a managing director (a separate category of taxpayer under Belgian tax law), unless the individual can prove that the directorship is unpaid and that the remuneration is received only for the salaried function.

Managing directors pay quarterly social security contributions in their personal capacity through a social security fund.

The remuneration of managing directors is liable to personal income tax. Remuneration and benefits are subject to withholding tax.

The social security rights of foreign directors depend on the agreements between Belgium and their country of origin or on European regulations. These rights are also specific to their personal situation and vary according to their nationality and status (employee, self-employed, etc.).

## Liability

In terms of corporate liability, the general rule is that all companies are liable for the actions of their directors. However, there are a number of cases where the liability of corporate bodies may be challenged directly, despite the fact that the relevant action was committed in the exercise of their functions. In particular there are three cases in which the directors of a company may be held personally liable: a) as a result of a fault committed by the director in the exercise of his or her duties. If the director is a member of a board of directors, the entire board will be jointly and severally liable; b) liability for violations of the law and the articles of association, such as failure to pay social security contributions or taxes and failure to file annual accounts. This liability is also joint and several; c) the non-contractual liability of directors.

Finally, in his/her capacity as an employee, the managing director of a company may engage in misconduct that causes damage to the employer or to a third party. In both cases, his civil liability is limited to cases of willful misconduct, gross negligence and ordinary negligence.

## Termination

The expiry of the director's term of office does not automatically result in the termination of the director's employment contract.

In fact, the managing director may be appointed by the articles of association of the company. The appointment may end with the revocation of the mandate, the managing director's resignation, by death, disqualification, insolvency, or the expiry of the agreed term of office.

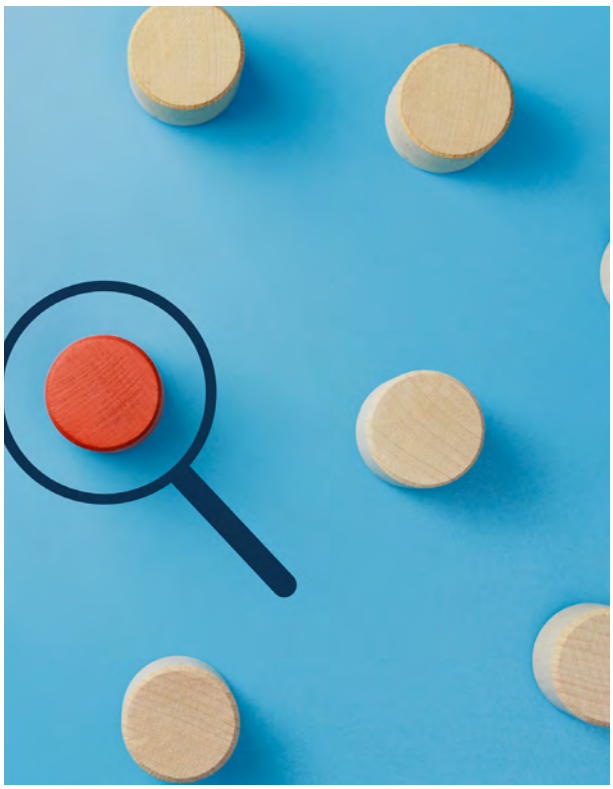
A director may also be dismissed with immediate effect without good cause, notice or compensation. However, the articles of association may provide that the term of office may be terminated only after giving notice or paying compensation.

In the case of an employment contract, the contract may be terminated either by dismissal or by resignation. In the event of dismissal of a managing director under an employment contract, the contract may be terminated either by giving notice or immediately by paying compensation equal to the remuneration the employee would have received had notice been given. The calculation of the notice period depends on the employee's length of service.

In the event of dismissal, special protective measures must be observed (trade union delegate, maternity leave, parental leave, etc.) and the employer is required to pay a lump sum for dismissal.

In addition to these protective provisions, collective agreements protect workers against unfair dismissal. This includes any dismissal that is not related to the employee's ability or behavior, is not based on the needs of the business, and would never have been taken by a fair and reasonable employer. Violation of the provisions of the collective agreement by the employer may result in the payment of a civil fine of 2 weeks' salary and/or compensation of 3 to 17 weeks' salary.

Generally, the employment contract is terminated by mutual agreement a severance payment is granted that is close to the statutory severance pay. The advantage of this type of termination is that both parties waive all rights arising from the employment relationship and no additional sums may be claimed.

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# BOSNIA AND HERZEGOVINA

## Status

In Bosnia and Herzegovina (BiH), a limited liability company can have a director or a board of directors. The limited liability company can have one or more directors and if the articles of association do not specify the number of directors, the company is run by one director. The company can have more than one director and the exact number of directors can be determined by the articles of association. If the company has a board of directors, the chairman will act as the managing director.

The managing director of a limited liability company represents the company and manages its affairs in accordance with the law and the articles of association. Any national or foreign natural person of full age (18 years) may be appointed as a director, and may be a member or non-member of the company. A non-resident may be a managing director of a company. However, a management contract must be signed and a work permit must be obtained from the BiH labor office to enter into an employment contract.

The duties and responsibilities of the director of a limited liability company are to representing the company and managing the company's affairs; determining the business plan proposal; convening the general meeting of the company's members and determining the proposed agenda; implementing the decisions of the general meeting; determining the date on which the list of the company's members with the right of notification is determined, the date on which dividends are determined and distributed, voting and other issues; entering into loan agreements; determining the date of acquisition of the right to participate in profits and the date of payment of such right, the date of acquisition of voting and other rights of company members; granting and withdrawing powers of attorney and any other matters as determined by the articles of association.

If the articles of association of the limited liability company so provide, the managing director is also responsible for: implementing the decision on the acquisition of the company's own shares and the redemption and cancellation of shares; determining the amount of profit sharing; and issuing bonds or other securities.

There are no special rules for managing directors in company or labor law and the parties are free to agree on whatever terms and conditions they think fit.

The managing director may enter into an employment contract for the purpose of performing the duties of a managing director, unless a special law provides otherwise, for an indefinite or fixed period until the expiry

of the managing director's term of office. There is also the possibility of entering into a contract when no employment relationship is established, on the ground of managerial contract.

## Employment

The managing director of a limited liability company may be a member or a non-member of the company. In any case, an agreement must be entered into setting out the duties of the director, whether or not an employment relationship is established.

The Labour Code does not recognize the dual status of employee and company director or any other position in the company, and labor rules provide that one person cannot be employed at two workplaces.

A company is not required to pay remuneration to a person performing the duties of a managing director if he/she has not entered into an employment contract. If the managing director is in receipt of remuneration for work under a contract, such remuneration qualifies as a salary in which case other rights under the Labour Code apply.

The differences between an employment contract and a contract that does not establish an employment relationship of the managing director are very small. An agreement that does not establish an employment relationship is a special form of agreement. The subject matter of such an agreement is the performance of the director's duties in the company, which are also systematized duties and are part of the management duties. The managing director's remuneration (whether employed under a contract of employment or not) is in the nature of a salary. A managing director who is not employed under an employment contract is entitled to remuneration for work, including other rights, obligations and responsibilities in accordance with the contract.

The employment contract between the managing director and his/her employer must meet the requirements of the Labour Code, which ensures that the rights of the managing director are fully protected. However, a contract that does not create an employment relationship has the same content as a contract for the performance of the duties of the director that creates the employment relationship. There is no obligation to provide for a bonus, and the parties to the contract are free to agree on such a bonus. Both contracts must be executed in writing.

In both contracts, the same rights in terms of remuneration, working hours, holidays, safety at work, responsibility for work, etc. apply. Both types of contracts may be entered into for a certain period of time, which, according to the general acts of the employer, is always related to a specific term of office, since they are persons with special powers. In addition, contracts that do not establish an employment relationship also transfer the power to decide on the employee's rights and obligations, in the same manner as employment contracts.

An employment relationship may be established for an indefinite period of time, in which case it is subject to the provisions of the Labour Code, including those relating to overtime and other employee rights.

If an employment relationship is not established by contract, it is most often entered into for a period of four years.

## Tax & Social Security

In the Republic of Srpska, tax and social security contributions for managing director are payable the same and must be deducted by the company (as the payer of the remuneration). No special rules apply if the managing directors remuneration is agreed in a management contract; there is an obligation to pay social security and vice versa.

Irrespective of whether there is an employment relationship or not, a managing director who is compensated by the company must be registered for social security. This is because his or her income is in the nature of a salary and, as in other cases, taxes and contributions are paid on his or her salary and he or she is subject to the compulsory social security system.

Health insurance in the Republic of Srpska is compulsory. As a result, monthly payments are made if a managing director has an income. There are no special rules for foreigners.

## Liability

The managing director is appointed by a member of the company to manage the company's operations and is responsible to all the company's creditors for the proper fulfilment of the company's duties and operations. In addition, as a result of his actions and the manner in which the company is managed, the company may make a profit which may be paid to a member of the company. The managing director of a limited liability company is responsible for the proper management of the company's books and internal control of the company's operations, financial statements including their accuracy. The managing director may be personally liable for his or her actions or omission and also for material, criminal and misdemeanor offences.

The managing director is responsible for the company up to the amount of the company's registered capital. The managing director is responsible for his actions to the members of the company, i.e., to the general meeting of the company. The managing director's liability may be limited by the appointment resolution.

D&O insurance is not compulsory. The parties may, however, agree that the employer shall, at its own expense, insure the managing director against risks arising from his professional activities for the company and/or issue a letter of indemnity. In practice, D&O insurance is uncommon.

## Termination

If there is an employment relationship with the managing director, the termination of the employment contract must be in accordance with labour laws. The employer must state the reasons for terminating the employment contract. Otherwise, the termination will be unlawful, as dismissals in the Republic of Srpska must necessarily be for good cause.

A managing director who is not in an employment relationship may be dismissed only in accordance with his/her agreement with the company or upon expiry of his/her term of service. If no employment relationship has been established, the management contract may provide for severance pay, a longer notice period and conditions for terminating the contract. In the case of an established employment relationship with the managing director, the Labour Code applies.

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# BULGARIA

## Status

In Bulgaria the managing director of a limited liability company represents the company in and out of court and manages the business either as sole director or jointly with other directors. Their function is to conduct all the business of the company. Managing directors cannot carry out activities for competitors or as competitors of the company, except with the company's express approval.

Bulgarian law allows both legal entities and natural persons with full legal capacity to be managing directors. If a legal entity is appointed as managing director, such legal entities' official representatives carry out the relevant duties and sign the necessary documents. In the case of a shareholder, there is no restriction on whether he can be a director. Foreigners may also be appointed as directors. Persons who have been declared insolvent or who were members of the management bodies of companies declared insolvent cannot be appointed as directors if there are still unpaid creditors.

The director of a limited liability company represents the company and manages its affairs in accordance with the law and the articles of association. The duties and responsibilities of the managing director of a limited liability company are operational, which include conducting the company's business and representing it in all its affairs, and organizational, which include conducting the general meeting of shareholders, keeping the company's records, and so on.

The managing director may be appointed and dismissed by a resolution of the shareholders.

## Employment

Bulgarian case law does not recognize the existence of an employment relationship between a company and its managing director.

However, Bulgarian legislation recognizes the management contract as a legal arrangement for regulating the relations between the company and its managing director. The need to enter into such an agreement and the payment of remuneration to the managing director are, however, mandatory for the appointment of the managing director.

If the parties agree on the payment of remuneration, it must not be lower than the minimum social security income for managerial positions as determined annually by the Bulgarian government.

A management contract is a specific type of contract, the subject-matter of which is

the performance of the director's duties in the company. The law provides for freedom of contract whereby the parties are free to agree on various terms and conditions of the management contract, including the amount of remuneration, bonuses, working hours, paid leave, use of company vehicles, etc.

## Tax & Social Security

A management relationship is recognized in Bulgaria for tax and social security purposes, and managing directors have the same status as employees for tax and social security purposes. Tax and social security contributions must be deducted from the managing director's remuneration, reported and paid to the Bulgarian authorities.

The managing director's social security coverage is the same as that of the employees. The Bulgarian social security covers health care, pension, maternity, and other benefits.

## Liability

Managing directors are fully liable to the company for all damages (including loss of profits) caused by their actions in their capacity as directors. The liability is enforced by resolution of the shareholders of the company, who also have the right to release the managing director from liability for his actions.

Provisional release from liability or limitation of liability established by law, including by a contractual provision in the management agreement, is not permitted.

## Termination

The managing director's duties may be withdrawn by the shareholders at any time and with or without cause, which automatically results in the termination of the management contract.

The managing director may ask for the withdrawal of his/her management duties at any time, in which case the company must file an application for having the managing director's name removed from the Bulgarian Commercial Register.

The management director's compensation in the event of dismissal may be determined in the management director's contract.

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# CROATIA

## Status

In Croatia, a natural person with full legal capacity may be appointed as a managing director of a limited liability company. EU nationals are not treated differently from Croatian citizens, while nationals of third countries may be granted residence and work permits provided they meet certain criteria set forth in the Croatian Aliens Act, in which case they may be members of the management of a company. In addition, the Croatian Companies Act imposes certain restrictions on appointment, including the requirement not to have been convicted of certain financial crimes. Other restrictions may also be provided for in the company's articles of association or in specific laws.

The managing director holds a position on the board of directors of the company, which may consist of one or more managing directors. Managing directors run the affairs of the company in accordance with the articles of association and the decisions of the shareholders, and following the mandatory instructions of the general meeting and the supervisory board, if the company has one. They represent the company and generally have the same duties and responsibilities, although certain duties may be delegated to a particular managing director. They are obliged to act with the diligence of a proper and diligent businessman.

Managing directors must comply with specific rules on conflicts of interest and non-competition. Thus, a managing director cannot engage in activities related to the company's business, be a member of the board of directors or supervisory board of another company involved in the company's business, perform work in the company's premises on his own or someone else's account, among other restrictions, without the consent of the supervisory board. In addition, managing directors may not take part in making decisions or entering into legal agreements if they have a legal or personal relationship with the counterparty or if the agreement would create a conflict of interest between the managing director and the company.

## Employment

Croatian law does not categorize managing directors as employees, nor does it require that they be employed under an employment contract. In this area, there is no difference if a director is also a shareholder. Managing directors may (but are not required to) enter into an employment contract with their employer. In other words, being appointed as a director or entering into another type of contract are valid methods of being employed by the company. If a director holds a dual position, it's important to note that certain provisions of the Croatian Labor Code related to fixed-term contracts, termination of employment, notice periods and severance pay do not apply. In addition, if the employment agreement allows the employee to determine his or her own working hours

(e.g., employees who perform managerial functions), the statutory provisions on weekly maximum working hours, night work, and daily and weekly rest periods do not apply. If a company decides to enter into an employment contract with the managing director, no specific rules apply other than the mandatory content of each employment contract and the restrictions mentioned above. Depending on the company's needs, it is advisable to include a non-competition clause, a non-solicitation clause, a confidentiality clause, a clause defining the director's goals, responsibilities and duties, cash and non-cash benefits, requirements for severance pay, compensation for damages, termination provisions, and other matters.

Companies usually enter into a management contract with a managing director. Management contracts are not specifically regulated by law, being subject instead to the general provisions applicable to civil obligations. This allows both parties flexibility in drafting and negotiating the details of such a contract. Although there are no mandatory provisions to be included, the above should be taken into account. Overtime rules do not apply to directors, and non-compete and non-solicitation clauses are permitted.

The managing director's remuneration varies depending on whether he or she is an employee or not. If managing directors are employees, they must be paid for their work, as this is a requirement in any employment relationship. Also, there are restrictions on the minimum wage, which is higher for managing directors than for ordinary employees (EUR 888.67 gross as opposed to EUR 700 gross). Additional rules may be found in industry-specific regulations and in collective agreements, as is the case for managers in the construction industry, whose minimum monthly salary is EUR 1,990.84.

However, managing directors may also receive additional compensation by way of bonuses, incentives, etc., depending on the provisions of their contract with the company or, in the absence of such a contract, the articles of association. The Croatian Companies Act only sets out the principles for determining the remuneration of managing directors (remuneration, profit sharing, reimbursement of expenses, payment of insurance premiums, provisions, etc.) and states that the supervisory board (or the shareholders) must ensure that the total amount of remuneration is commensurate with the work performed by the managing director and the situation of the company. In case of financial distress, the supervisory board is entitled to lower the amount.

## Tax & Social Security

Managing directors are subject to compulsory social security, including compulsory health and pension insurance. If a director is employed, he/she is insured on the basis of his/her employment. On the other hand, if a director does not have an employment contract with the company, and therefore cannot be insured as an employee, he/she is still subject to the mandatory social security system based on his/her status in the company. Special rules may apply to foreign citizens, depending on the circumstances of the case, especially whether the foreign citizen is a national of an EU country or not, whether he or

she pays taxes and contributions in his or her country of residence, and whether the social security relations between that country and the Republic of Croatia are governed by an international agreement or not.

## Liability

In a limited liability company, managing directors are generally liable to the company for the consequences of their actions. It can be assumed that they are also liable to the shareholders. This is because the shareholders give managing directors binding instructions, and may revoke the managing directors at any time with or without cause. In determining whether a breach of duty has occurred, directors bear the burden of proving that they acted as a proper and diligent businessperson, e.g., with due care. According to the Croatian Companies Act, directors are liable if they return shareholders' contributions to the company, pay dividends or interest to shareholders, make payments in the event of the company's insolvency, grant loans, etc. The statute of limitations for filing claims for breach of duty is 5 years from the date on which the claim arose.

Managing directors are not considered to have acted in breach of their duty to manage the company's affairs if, when making a business decision, they reasonably believe, based on appropriate information, that they are acting in the company's best interests. Otherwise, in some cases, the company's creditors may also claim compensation if they are unable to satisfy their claims against the company. Managing directors are not liable if their actions are based on decisions taken by the shareholders, whereas an approval of an action by the supervisory board does not exclude their liability. D&O insurance is not compulsory but recommended.

## Termination

As mentioned above, an employed director is not subject to the provisions on termination of the employment and notice periods, i.e., employed directors do not have the same protection as regular employees. Where a managing director has entered into a contract with the company, such as a management contract, the contract will terminate as agreed by the parties and, in the absence of such agreement, the general rules applicable to civil obligations will apply. Dismissal from a managerial position has no impact on other provisions of the contract entered with the company. Managing directors may resign on their own initiative, without prejudice to any contractual claim for damages. As mentioned above, the shareholders may remove the managing directors at any time with or without cause.

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# CZECH REPUBLIC

## Status

Under Czech law, the managing director of a limited liability company (*společnost s ručením omezeným* or s.r.o.) may be a natural person or a legal entity. The managing director need not be one of the shareholders and, likewise, a shareholder need not hold the position of managing director.

One or more managing directors constitute the statutory body of a limited liability company. Alternatively, if the articles of association so provide, the managing directors may form a board of directors. The directors are responsible for managing the company's business and are authorized to represent the company (individually or jointly) in dealings with third parties and authorities. The primary duties of the directors are to act with due professional care, to keep the shareholders informed of the company's affairs, and to maintain the company's required records and accounts in a proper and orderly manner.

To be eligible to become a managing director, a person must meet a number of legal requirements, including full legal capacity (generally 18 years of age), having a clean criminal record (no convictions for intentional crimes related to business activities), no recent history of insolvency, and no recent history of having a business license withdrawn for violations of the law.

Provided the above conditions are satisfied, such person may be appointed as a managing director by the general meeting of the company or by a sole shareholder. The appointment may be made effective immediately, and the ensuing registration in the Czech Public Trade Register will serve as proof of the managing director's authority in his/her dealings with business partners and other third parties.

Where a legal entity is to be appointed as managing director, it must appoint a natural person to act on its behalf as managing director of the company. This authorized person must meet the same conditions as set out above for individual managing directors.

The managing director may be a Czech citizen or a foreigner, including foreigners from non-EU states. However, the foreign element may sometimes raise certain practical difficulties and obstacles, especially in the case of managing directors who do not have a residence permit in the Czech Republic.

A commonly encountered problem is a rather strict approach (based on anti-money laundering regulations) taken by Czech banks when opening bank accounts for a company or establishing the signing authority for bank accounts

for new directors, especially if the company's business track record is insufficient. Another practical problem may arise in connection with access to the electronic data box system (*datová schránka*), which is the only official means of communication between companies and state authorities.

## Employment

Under Czech law the duties of a managing director are not classed as employment nor can they be performed on the basis of a standard employment contract. If the parties were to formally enter into an employment contract for such a position, their relationship would still be governed at the very least by the mandatory provisions set forth in the Czech Companies Act related to such matters as the director's liability and the termination of his/her position; however, even if that happens, some provisions (e.g. regarding compensation) may be deemed as valid agreement of parties within the provisions of the Czech Companies Act.

If a managing director enters into an employment contract with the company for the performance of duties other than those of a managing director (e.g., programming software not related to the development of business strategy), then such employment contract would be governed by the Czech Labor Code (including limitation of liability, termination, benefits, employee protection, etc.) just as a contract with any other employee. Below we will focus only on the performance of the duties of managing directors and agreements related to this executive position.

The rights and duties of a managing director are generally defined by the relevant provisions of the Czech Civil Code and the Czech Companies Act, and may be further specified in the company's articles of association or by a contract.

The company and the managing director may or may not enter into a managing director's service agreement; however, in the absence of an agreement, the performance of the managing director's duties is deemed to be not remunerated. The managing director's service agreement must be approved by the general meeting or the sole shareholder.

The remuneration of a managing director is not regulated by law. Therefore, it may take many forms, including a fixed amount, variable bonus schemes including profit sharing, transfer of the company's shares, benefits in kind, etc.

## Tax & Social Security

Whilst a managing director is not considered to be an employee, Czech law does not draw any significant distinction between the two in terms of their obligations to the state.

For tax purposes, managing directors are treated as employees and are therefore taxed at the standard income tax rate, which is currently 15 % for individuals. In the case of non-residents, international treaties for the avoidance of double taxation may also apply.

The Czech public social security system covers primarily pension and sick leave contributions (when the person is unable to work due to illness or because he or she

is caring for a family member). Although a managing director is treated as an employee for insurance purposes, the law does not address the possibility of changing the managing director's remuneration in case of inability to work. Provisions for such situations should therefore be included in the managing director's service agreement to avoid unnecessary disputes. It should be noted that the managing director's liability is unaffected by his/her medical condition or other disabilities.

In addition, the provision on small-scale employment applies here, i.e., if the remuneration of the managing director falls below CZK 4,000 (approximately EUR 170 in 2023), no social security contributions are due.

As far as public health insurance contributions are concerned, the managing director is again treated as an employee. No small income exclusion applies. Therefore, insurance premiums must always be paid on behalf of the managing director to the health insurance provider chosen by the managing director. This allows foreigners from non-EU member states to join the public health care system relatively easily.

## Liability

The managing directors of a limited liability company are primarily liable for the proper performance of their duties, in particular for acting with due professional care. The managing director must therefore perform his/her duties with the necessary loyalty, skill and care.
Unless the articles of association provide otherwise, managing directors may not engage in any other business related to the company's activities, including for the benefit of third parties. In addition, certain rules apply to the managing director's conflict of interest with the interests of the company. If the managing director becomes aware of his/her conflict of interest, he/she is obliged to notify other managing directors and the general meeting (or the sole shareholder). The general meeting or the sole shareholder, as the case may be, have the right to suspend the managing director from performing his/her duties or prohibit him/her from entering into a particular contract.

If the company incurs a loss as a result of a managing director's breach of duty, the company may claim compensation from the managing director. The company must establish a causal link between the managing director's action or omission and the company's financial loss, which includes loss of profit or monetary compensation for intangible damages.

There is no limitation of such liability and the managing director and the company cannot validly agree on any such limitation.

D&O insurance is not mandatory under Czech law. However, D&O insurance is available on the market and it is recommended that such insurance be taken out.

## Termination

Under Czech law, the company's general meeting or the sole shareholder is entitled to recall the managing director anytime and

for whatever reason (or without stating any reason). The termination comes into effect immediately or as of the date decided by the general meeting or the sole shareholder (the date must follow the date of resolution on recall of the managing director in such a case). Subsequently, the change on the position is recorded in the trade register.

The only protection of the managing director which may be set forth in the managing director's service agreement or in a separate agreement is in the form of a special compensation (severance/parachute clause). It is not possible to limit or modify the general meeting's authorization to recall the managing director by any notice period or other conditions. Nevertheless, it is possible to include e.g., additional severance bonus for case the managing director has not been informed on his/her removal in advance.

The managing director's service agreement ceases to exist as of the termination of the position of the managing director, but not vice versa. It means that in case the managing director's service agreement is terminated earlier, the position of the managing director is not affected, but e.g., the performance of the position would be free of charge in such case.

The managing director may of course also resign from his position. Nevertheless, due to the loyalty obligation, this cannot be done with immediate effect, unless agreed with the general meeting of the company or the sole shareholder. Generally, 2 months' notice period applies.

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# CYPRUS

## Status

In Cyprus, every private limited company ('Ltd' or 'Limited' in English and **'Εταιρεία Περιορισμένης Ευθύνης**' in Greek) must have at least one director (and a secretary). Generally, a sole director may not also be the secretary of the company, although an exception is made for single-member companies.

Managing directors may be individuals or corporations. No age, nationality or residency restrictions apply to managing directors, although there are relevant tax considerations to be taken into account.

A company cannot have as its secretary a corporation whose sole director is the sole director of the first company, or have as its sole director a corporation whose sole director is the secretary of the first company. These restrictions do not apply to single-member private limited liability companies.

Under the Cyprus Companies Act (Cap. 113), a private limited liability company must have at least one director and may be a single-member company. In the case of a public company, the minimum number of directors is two and the minimum number of members is seven. The only restrictions are those imposed on individuals with a criminal record and those who have been declared bankrupt. Section 179 of the Cyprus Companies Act expressly states that bankrupt individuals cannot be managing directors of a company unless permission is obtained from the court. Failure to comply will result in imprisonment, fine or both. Further, Section 180 states that a person who has been previously disqualified from being a director of a company shall not be a director except with the permission of the court. The direction, control and management of the company is vested in the board of directors. The powers, duties and responsibilities of the board are defined in the company's articles of association, which usually provide for the appointment of a managing director.

## Employment

A managing director employed as an employee on the basis of an employment contract is paid a salary. There are no restrictions under Cypriot employment law as to who can be employed as a director, whether by age, nationality, gender or otherwise. However, a company's internal policies may impose restrictions. Although there is no requirement for a written employment contract in Cyprus, the Employer's Obligation to Inform the Employee of the Conditions Applicable to the Contract or Employment Relationship 2000 (Law 100(I)/2000, as amended) imposes an obligation on the employer to provide the employee in writing with certain information on the terms and conditions of his/her employment. Such information

includes the identity of the parties, the place of work and the registered office of the company, the employee's position or area of expertise, the starting date and the term of the contract, if the employment is for a fixed term, the notice periods, the employee's annual leave entitlement, any remuneration (including, salary, bonuses, etc.) and the payment schedule, the normal daily or weekly working hours and the application to the employment contract of any collective agreements (the latter does not apply in the case of limited liability companies).

## Tax & Social Security

Managing directors' fees and other related benefits earned in their capacity as managing directors of Cyprus tax resident companies are liable to resident and non-tax resident tax, as the case may be.

In addition, loans or financial assistance from a company to a director or relative up to the second degree are taxable as a monthly benefit in kind at 9% per annum on the loan amount, payable monthly by the company under the PAYE system.

Contributions to social security and other relevant funds are calculated on the managing director's gross remuneration based on the social security rates applicable to salaries.

On March 1, 2019, the General Healthcare System Act of 2001 (GHS), as amended, came into force. Individuals, employers and the government contribute to the GHS. Relevant contributions are payable by employees, including the self-employed, pensioners and civil servants.

In addition, all legal entities/employers are responsible for the remuneration of persons holding an office and contribute 2.9% on the other remuneration of officers, which also this applies to managing directors. As regards health care, Cypriot, EU/EEA and Swiss nationals who are permanently resident in Cyprus are entitled to such benefits. EU citizens are treated in the same way as Cypriot citizens and non-EU citizens must obtain a work permit from the Labor Department. In both cases there is no exemption from social security obligations.

In the case of a foreign director who is not a tax resident of Cyprus, there is no obligation to contribute to social security on the director's remuneration.

## Liability

Pursuant to the Cyprus Companies Act any actions of a director or manager are valid notwithstanding any defect subsequently discovered in his/her appointment or qualification (s.174). As a common law jurisdiction with a legal system based on English law, Cyprus follows the principles of equity. Managing directors (and by extension the board of directors) have the power to make majority business decisions on behalf of the company. Accordingly, they are subject to several duties to ensure that the interests of the company are protected.

These include the duty to act in good faith and in the best interests of the company; to avoid conflicts of interest; not to benefit from their office; and the duties of care and skill, which are enshrined in common law and equitable principles. These duties are owed to the corporation and not to individual

shareholders. Notably, there is no difference in principle between "executive" and "non-executive" managing directors.

In addition to the fiduciary duties outlined above, managing directors (and the board as a whole) also have various statutory duties imposed by the Companies Act and other laws, such as income tax, VAT, customs and excise, health and safety and environmental laws. Breach of the above duties under the Companies Act is a criminal offense carrying penalties ranging from a fine to 2 years imprisonment. Furthermore, managing directors are personally liable to indemnify the company for any loss caused by a breach of their duties.

Managing directors may be liable to prosecution by the Inland Revenue or Customs & Excise for tax offences and also to statutory fines which may be imposed by the Registrar of Companies for late filing.

Finally, under Section 197 of the Companies Act, a director may not be released in advance from liability to the company. Any provision in the contract of employment or articles of association seeking to exonerate or indemnify a director who has breached his or her duties and obligations is void.

## Termination

A director may be removed from office without cause before the expiration of his/her term by an ordinary resolution of the general meeting of the company. This power exists notwithstanding any provision to the contrary in the articles of association or any agreement to the contrary between the company and the director. However, the power to remove a director does not affect the right of the person so removed to claim compensation or damages (if any) that may be owed by reason of the removal.

A special 28-day notice of any resolution to remove a director must be given to the current board of directors. company. The company must then send a copy of the special notice to the director concerned. The director is

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# ESTONIA

## Status

In Estonia, a private limited company (*osaühing, OÜ*) must have a board of directors (*juhatus*). The board of directors is the management body of the limited liability company, which represents and manages the company's affairs. The board of directors may have one or more members (hereinafter also referred to as "directors"). A director must be a natural person with active legal capacity. Corporations cannot be appointed as a director. Both shareholders and other individuals are eligible to serve as managing directors. A member of the supervisory board (if any) may not be a managing director. The articles of association may provide for other persons who may not be directors.

Foreigners may also be appointed as managing directors. Individuals who have been disqualified by a court from acting as a director or from engaging in business activities, individuals disqualified from acting in the same line of business as the relevant limited liability company, and individuals disqualified from acting as a director by law or by a court decision may not be appointed as managing directors.

A managing director conducts the company's business in accordance with the law and the company's articles of association. The appointment and removal of the managing director in the *osaühing OÜ* is generally decided by a majority of the shareholders. The general meeting is also the competent body to decide on the execution and termination of the managing director's services agreement.

## Employment

Estonian law clearly states that the rules on employment contracts do not apply to a managing director's contract. Therefore, the managing director's contract usually does not establish an employment relationship, but a service relationship for managing the company. Employee protection legislation does not apply to board members.

Under Estonian law there is no requirement to have a services agreement in writing with a managing director. Nor is it a requirement to pay a salary to a member of the board of directors. However, if a decision is indeed made to pay a salary, the amount is determined by a resolution of the shareholders. When determining the method of remuneration of the managing director and the amount of fees and other benefits, and also when entering into contracts with the managing director, the shareholders (or the supervisory board) shall ensure that the remuneration is commensurate with the duties of the managing director and the financial situation of

the limited liability company. If the financial position of the limited liability company deteriorates significantly and continuing to pay the managing director the fees determined for or agreed with the member, or continuing to grant other benefits to the managing director would be extremely unreasonable for the limited liability company, it may require that the fees or benefits be reduced.

## Tax & Social Security

If the managing director is a resident of Estonia and performs his/her duties in Estonia, income tax and social security tax are withheld from his/her remuneration and paid in Estonia. A managing director who receives remuneration for his/her work must be registered in the employment register and is covered by compulsory social insurance. The first stage of pension is also paid. It should be noted that unemployment insurance is not paid from the salary of a managing director.

According to Estonian law, income tax is usually paid on income received by a non-resident for performing the functions of a managing director of an Estonian company. Social tax is not paid in Estonia if an A1 certificate has been applied for in the country of residence.

## Liability

A managing director must perform his/her duties with due diligence. A managing director who violates his/her duties and causes damage to the limited liability company shall be jointly and severally liable for compensation for the damage caused.

Managing directors will be exempt from liability if they are able to prove that he/she performed his/her duties with due diligence. A claim for compensation may be filed by the limited liability company or by a creditor if the company's assets are insufficient to satisfy the creditor's claims. After the declaration of bankruptcy, only a trustee in bankruptcy may file a claim on behalf of a limited liability company. A creditor or a bankruptcy trustee may also file a claim if the limited liability company has waived or anyhow limited the claim against or has entered into a settlement agreement with the managing director.

In Estonia, D&O insurance is not mandatory but is highly recommended.

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## Termination

A managing director may be dismissed at any time by a resolution of the shareholders, with or without cause. Any rights and obligations under contracts entered into with a managing director cease in accordance with the terms of the contract. In the case of managing directors, the statutory provisions on termination of the employment contract and notice periods do not apply. The provisions of the Law of Obligations Act on termination of the authorization contract do apply.

This means that the law does not provide for any benefits for a managing director upon termination of his/her office, even where the termination is without cause. However, in the services agreement the parties may agree on a severance payment, a notice period or other conditions for terminating the contract. The parties may also agree on post-termination restrictions such as non-competition and confidentiality.

# FINLAND

## Status

In Finland, the most commonly used form of company is the limited liability company (osakeyhtiö or Oy in Finnish, hereinafter "*LLC*"). No legal obligation exists to appoint a managing director for the company. Managing directors are considered to be statutory bodies of the LLC and are therefore not employees. The managing director must be an individual of full legal capacity, i.e., of full legal age. Guardians and individuals whose capacity to act has been restricted may not serve as managing directors. The managing director cannot be a legal person or a person who is personally bankrupt. A shareholder may be a managing director. However, managing directors may not make any decision or take any other action likely to give an unjustified advantage to a shareholder or any other person at the expense of the company or any other shareholder.

The managing director must always be resident in the European Economic Area unless an exemption is granted by the registry authority. In practice, permission is always granted if there is at least one EEA resident on the board. Permanent residents of a Lugano Convention signatory state have also been granted authorization, as has permanent residents of the United States of America.

The managing director does not have to be a member of the company's board but can be a member or chairman of the board in any company of any size. The duties of the managing director include directing the day-to-day management of the company in accordance with the instructions and orders of the board of directors (known as "general powers"). The managing director is responsible for ensuring that the company's accounts are kept in accordance with the law and that the company's financial management is conducted in a reliable manner.

The managing director must provide the board of directors and its members with the information they need to carry out their duties. The managing director must also act diligently and advance the interests of the company in accordance with applicable statutory provisions. The managing director shall have the right to represent the company in matters within his/her remit.

## Employment

The managing director of an LLC cannot be employed by it even if all other conditions of the employment relationship are met and the Finnish Employment Contracts Act does not apply. The managing director's contract

is usually entered into between the LLC and the managing director and is subject to the Finnish Contracts Act. The standard laws applicable to an employment contract apply only if expressly provided for in the contract. Therefore, remuneration of the managing director is not mandatory, but it is common practice. It is also customary to agree on bonus or other incentive schemes and employment benefits. In practice, the most common basis for compensation is a monthly salary. Typical benefits in the managing director's contract include lunch, telephone and car allowances.

As there is no specific law applicable to the employment of a managing director in Finland, the managing director's contract should contain all the terms and conditions relevant to the contractual relationship. The most important terms to include are the term of the contract, termination provisions, notice period, annual leave, severance pay, non-competition and confidentiality clauses, and a dispute resolution clause. In a standard employment relationship, most of these terms are directly imposed by law.

## Tax & Social Security

Considering the personal nature of the work of a managing director of a LLC, which can only be performed by an individual, the managing director's remuneration is invariably treated as taxable salary of the individual appointed as such, regardless of the person to whom the remuneration is paid. For example, remuneration paid to the managing director's employer or to a company owned by the managing director is treated as taxable salary income of the managing director, on which the payer must withhold tax and pay the employee's health insurance contribution.

In addition to statutory health insurance, the managing director may be covered by income-related pension insurance, unemployment insurance and accident insurance. These vary depending on whether the managing director is an owner of the company.

For unemployment insurance, a director of an LLC is treated as an employee if he or she is the sole owner of 30% or less of the LLC's shares, or he/she and his/her family member jointly own up to 50% of the shares in the company of which the director owns 30% or less of the shares. The same rules apply to accident insurance under the Finnish Accident Insurance Act.

If the above ownership thresholds are not exceeded, the LLC must provide the managing director with employee pension and accident insurance. If the thresholds are exceeded, the managing director is treated as an entrepreneur and must take out pension insurance for self-employed persons. Accident insurance is optional.

In the case of a foreign citizen, if the managing director is insured in Finland in accordance with the Health Insurance Act (i.e., he or she lives permanently in Finland and is a member of the residence-based health insurance scheme), the LLC and the managing director must pay social insurance contributions to the Finnish tax authorities. Even if the managing director is not a Finnish tax resident, the remuneration paid for his/her work is treated as income received in Finland and

becomes taxable in Finland if the work is performed exclusively or mainly on behalf of an employer resident in Finland.

The levying of contributions may be limited by the European Union's Social Security Regulation 883/2004 and the social security agreements entered into by Finland. The above contributions are not payable if the individual is an EU/EEA, United Kingdom or Switzerland resident and submits an A1 certificate from the country of residence or an equivalent certificate from a social security agreement country. This situation may vary on a case-by-case basis depending on the actual tax residence, applicable bilateral tax treaties and social security arrangements.

## Liability

A managing director who acts contrary to the instructions of the board and causes damage that would not have occurred had the instructions been followed, may be liable to the company for damages. The managing director's central role in the LLC means that he/she is usually jointly liable with the board members for the wrongful acts of the company. The managing director presents cases to the board of directors and implements them. In addition, the managing director can make independent decisions related to the day-to-day management of the company. As a result, it is difficult for the managing director to avoid liability if the board members are found guilty of misconduct. The managing director is liable to the company, the shareholders and third parties.

The liability of managing directors may be limited only if the LLC's articles of association contain a provision to that effect. This provision excludes liability to the company, i.e., to the shareholders, but not to third parties. A provision in the articles of association may at least exclude liability for ordinary negligence in respect of non-mandatory provisions of the Finnish Limited Liability Company Act. Personal liability may also be limited by agreement. A "confirmation letter" or "hold harmless letter" may be entered into, whereby, for example, the parent company agrees to indemnify the chairman against any damages he/she may incur when acting on the instructions of his/her employer.

A common solution to reduce the managing director's personal liability is to take out directors and officers (D&O) insurance. This is not mandatory but recommended. However, D&O insurance typically excludes damages caused as a result of a criminal offense. Likewise, D&O insurance does not cover damages caused intentionally. In addition, the policy may contain other terms and conditions that limit liability.

## Termination

The board of directors may remove the managing director from office. The removal is effective immediately, unless the board decides otherwise. The rights of removal and resignation are not limited by law, nor there is a need to have a legally valid reason to remove the managing director. Since the director is not an employee, the law does not protect him or her from dismissal. Therefore, it is very important to include termination provisions in the managing director's contract.

Because it is possible to terminate a contract without cause, a termination indemnity clause is usually included in managing directors' contracts. The severance payment usually amounts to 6-12 months' salary. Typically, the compensation will be higher in the event of the director's dismissal than in the case of resignation.


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# FRANCE

## Status

In France, in 2022, SAS (simplified joint stock companies) and SASU (which are single-person SAS) represented 68% of the total number of company formations, whereas limited liability companies (SARL) accounted for 30%. French simplified joint-stock companies ("*SAS*") offer much greater flexibility of operation, particularly in the drafting of the articles of association, than SARLs, the operation of which is more regulated by law.

In the case of SAS there is complete freedom to determine the composition of the management body and its operating rules in the articles of association. At least one managing director (*président*) must be appointed. However, it is also possible to appoint another managing director (*directeur général*) to run the SAS alongside the président, with the same powers. In this case, both are managing directors.

The managing director can be either an individual or a corporation. French law does not impose any restrictions, nor does it set an age limit, although such limitation may be provided for in the company's articles of association. The managing director must not be subject to a prohibition from exercising this function or be disqualified due to personal bankruptcy.

In terms of incompatibilities, a person cannot be appointed as a director if he or she is engaged in an incompatible or prohibited activity. For example, it is not possible to appoint lawyers, notaries, government, parliament or local executive members, auditors and accountants as managing directors if it could compromise their duty of independence.

The managing director has broad powers to act on behalf of the company in all circumstances within the limits of the company's corporate purpose. However, the shareholders can limit the managing director's powers by introducing a double signature for critical investments, by requiring prior approval, etc. To do so, the articles of association must include clauses limiting the powers of the managing director. These clauses have no effect on third parties.

## Employment

Under French law, the functions of the SAS managing director are performed outside the scope of an employment contract. His/her corporate functions and duties are defined in the company's articles of association, which also determine the amount, nature and conditions of his/her remuneration. The remuneration of managing directors may consist of a fixed remuneration, a profit- or

turnover-related remuneration, free shares, etc. The managing director may also serve as an unpaid officer.

The SAS managing director may also be an employee of the company he manages, but the conditions for this are strictly defined. Firstly, technical functions must be performed separately from the corporate mandate of a managing director (e.g., a CTO). Second, the managing director should receive a separate remuneration for his/her employee duties. Therefore, the managing director could receive two salaries, one for his or her corporate mandate and another for his or her separate technical functions as an employee. Finally, the managing director must carry out his/her functions as part of a relationship of subordination to the SAS, a condition that is difficult to prove if the managing director concentrates all the powers of his/her mandate.

The combination of a corporate mandate and the status of employee is of considerable interest. Indeed, there is a great deal at stake for the managing director, who, under the employment contract, will be entitled to the protection afforded to employees (for example, the right to a minimum wage or to dismissal rules). Managing directors who are also employees are also entitled to unemployment insurance. All the provisions of the French Labor Code apply, with the only limitation that the status of such an employee could be that of a manager, which would allow the rules on working hours to be excluded. As in the case of ordinary employees, it is possible to include in the employment contract non-competition and/or non-solicitation clauses appliable after the end of the employment.

However, combining the functions of a managing director of an SAS with those of an employee under an employment contract remains very rare in practice due to the difficulty of proving the existence of a subordinate relationship in such a case.

## Tax & Social Security

If the managing director of an SAS is a French tax resident and is in receipt of remuneration, he/she is subject to taxation in France as salary and wages. As such, the amount of the remuneration is subject to a 10% withholding before it is subjected to the progressive income tax scale. This deduction takes into account the professional expenses incurred by the SAS managing director in relation to his corporate mandate. As far as social security is concerned, the managing director is covered by the general social security scheme as an employee, which means that he/she benefits from the same social security coverage as ordinary employees and that his/her remuneration as a managing director is subject to social security contributions. The company, as the payer of the remuneration, is responsible for income tax and social security contributions.

In the case of a foreign national, tax and social security obligations (and exemptions) may vary widely depending on nationality, actual tax residency and applicable bilateral tax and social security treaties and must be examined on a case-by-case basis.

## Liability

By virtue of the powers granted by law and the articles of incorporation, the managing director is personally liable to the shareholders and third parties. This liability

arises from actions or facts that may be attributed to them, such as violations of legal or regulatory provisions applicable to the SAS, infringements of the company's articles of association or errors (faults) committed in the management of the company (such as simple negligence, carelessness or fraudulent practices).

In addition to the criminal penalties provided for offenses committed during the formation and operation of the company, the managing director may be held criminally liable for, among other things, the distribution of fictitious dividends, the submission of a false balance sheet to conceal the true financial position of the company, the misuse of the company's assets or credit for a purpose contrary to its interests, or the failure to consult the shareholders with respect to certain listed decisions.

D&O insurance is not mandatory under French law. In practice, however, the use of D&O insurance is becoming more and more widespread as a means of protecting directors against personal liability which may arise in the exercise of their duties and which may put their assets at risk. This insurance can be paid by the managing director or by the company.

## Termination

Under French corporate law, the managing director's duties may be terminated in a number of ways, as defined in the company's articles of association: expiry of the term of office, incapacity or prohibition to manage, death of the managing director (natural person) or dissolution of the company (legal person), and revocation.

If the managing director has a contract of employment associated with his/her corporate mandate, the termination of the corporate mandate does not de facto result in the termination of the employment contract. In this case, a procedure specific to the termination of the employment contract must be followed. The reasons for such termination will have to be different, as a dismissal in France must necessarily be justified (unlike the revocation of a corporate mandate).

The specific rules on dismissal in the French Labor Code are fully applicable whenever the termination of an SAS managing director's employment contract is considered: procedure, notice period, severance pay, compulsory letter of dismissal, protection of certain employees (e.g., maternity).

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# GERMANY

## Status

In Germany, the managing director of a limited liability company (GmbH) represents the company in and out of court and manages the business either as sole managing director or jointly with other managing directors. Managing directors are responsible for the overall management of the business of the GmbH. They conduct the company's business in accordance with the law, the company's articles of association and the provisions of their employment contract.

In Germany only individuals with full legal capacity are eligible to be appointed as managing directors of a limited liability company. Corporations are not eligible. Shareholders and third parties are eligible for the position, which includes foreigners. Nationals from non-EU member States to be appointed as managing directors in Germany must comply with the provisions of the German Aliens Act. Certain individuals are not eligible for appointment as managing directors, including individuals who have been officially prohibited from working in the company's business or who have been convicted of one or more fraudulent financial crimes.

The appointment of a managing director is an act of corporate law, which defines the position of the managing director as a corporate body. This act must be distinguished from his/her employment contract. While the appointment is a corporate act, the employment contract is of a contractual nature and covers any legal relations that are not determined by the position of the managing director, i.e., the personal rights and obligations between the managing director and his/her employer.

As a general rule, the managing director's contract does not establish an employment relationship, but a service relationship. Employee protection laws do not apply to managing directors. However, to the extent that German labor law provisions are to be measured against EU-based employee protection provisions (e.g., maternity protection), third-party managing directors who are not shareholders may be included.

The appointment and removal of the managing director in a GmbH without co-determination on a corporate level is generally made by a majority resolution of the shareholders. The shareholders' meeting is also responsible for entering into and terminating the managing director's service contract.

## Employment

Under German law there is no obligation to enter into an employment contract with

the managing director of the GmbH or that his/her position as managing director be remunerated. For example, where the managing director has an existing employment relationship with another group company, a separate managing director services agreement will not usually be executed for the appointment as managing director in another group company. In practice, however, a managing director services agreement is typically entered into with managing directors who are not shareholders.

If the managing director was previously an employee of the company, the existing employment relationship is usually terminated upon entering into the managing director service agreement. In some cases, however, it is agreed that the employment relationship will be reinstated upon termination of the service agreement. In some cases, managing directors continue to be employed on the basis of their employment relationship, but this is not recommended in view of the changed status and the associated rights and obligations.

The managing director service agreement normally specifies his/her duties and imposes restrictions on his/her legal powers of representation in the internal relationship. Although service agreements with managing directors are usually not employment contracts but independent service relationships, the topics covered in managing director service agreements are comparable to those covered in employment contracts. In terms of remuneration this usually consists of a fixed and a variable remuneration tied to the performance of the managing director and the company. The annual leave entitlement is normally between 28 and 30 days. A fixed number of working hours per week is not usually agreed, but the managing director must be able to work for the company on a full-time basis. Compensation for overtime or work on Sundays and holidays is generally not provided.

Since GmbH managing directors are not protected in the event of dismissal, the agreed notice periods are often longer than for employees, or service contracts are agreed with a fixed term of between one and five years, which can only be terminated for good cause. Severance packages for the benefit of the managing director are sometimes negotiated to protect him or her in the event of termination.

Similarly to employees, managing directors are not subject to a post-contractual non-competition covenant, which must therefore be agreed separately. The statutory provisions applicable to employees also apply to managing directors. A maximum two-year post-contractual non-compete covenant is possible, with the managing director being entitled to a monthly compensation equivalent to 50 percent of his/her last aggregate remuneration.

## Tax & Social Security

GmbHs must pay income tax and social security contributions on the managing director's remuneration. For income tax purposes, the managing director of a GmbH is always considered an employee if there is a service or an employment contract in place. If the managing director is a shareholder, he/she may also receive income from capital assets (profit shares as a shareholder), which is not subject to wage tax deduction.

However, the social security regime is different. Shareholder-managing directors who hold more than 50 percent of the company's shares or have a blocking minority are exempt from all social security contributions. They are not in an employment relationship with the company for social security purposes, as they are not subject to any instructions from the company on account of their controlling position. Non-shareholder managing directors, on the other hand, are subject to compulsory insurance in all areas of social security (health, nursing care, pension, unemployment and accident insurance).

## Liability

Managing directors must exercise the care of a prudent businessman in managing the company's affairs. If the managing director violates this duty through intent or negligence, he or she is liable to the company to the full extent of his or her assets for any damages caused. In addition, the managing director is personally liable in the areas of taxation, accounting and social security. He or she is personally liable for culpable non-payment of taxes and social security contributions and may face criminal penalties. In the event of a breach of bookkeeping and accounting obligations, both the company and creditors may claim damages from the managing director. In addition, managing directors are exposed to a high risk of liability in the event of the company's insolvency. In addition to the criminal penalties for failing to file for insolvency in a timely manner, managing directors may be personally liable to aggrieved creditors if they continue to operate the company after it has become insolvent.

Because of their far-reaching liability, managing directors often have a strong interest in limiting their liability. As far as the company's claims are concerned, their liability can be limited to gross negligence and willful misconduct in the managing director's service agreement. However, this limitation of liability does not apply to third parties. As a result, D&O insurance is regularly taken out for the benefit of the managing director. D&O insurance provides comprehensive coverage for the managing director in the event of a breach of duty. As a rule, D&O insurance is combined with legal protection insurance, which covers any legal fees in the event of a legal dispute.

## Termination

The general meeting may remove the managing director from office at any time and without cause. However, this does not mean that the managing director's employment contract is terminated. This will only be the case if the managing director's services agreement contains a clause stipulating that the removal of the managing director also results in the termination of the service agreement at the earliest possible date.

The managing director's services agreement requires a separate termination notice. The general meeting is also responsible for giving notice of termination. In the shareholders' removal resolution, one of the shareholders is usually authorized to issue and serve the termination notice on the managing director together with the removal resolution.

The termination of the employment (service) relationship does not require a reason for termination. Managing directors of a limited liability company are not protected against unfair dismissal. As legal representatives and members of executive bodies, they are expressly excluded from the scope of application of the German Dismissal Protection Act, even if they exercise their office as managing directors under an employment contract.

In the absence of good cause for dismissal, compliance with the notice period and any fixed term of the managing director's employment contract must be ensured. Dismissal as managing director does not constitute good cause for termination of the employment contract. Instead, a serious breach of his/her duty is required for good cause.

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# GREECE

## Status

In Greece, a Private Capital Company (*Idiotiki Kefalaiouhiki Eteria* - IKE) is a relatively new, flexible type of company. IKEs are capital companies as opposed to partnerships. IKEs are exclusively liable for their corporate debts, while the liability of partners for corporate debts to third parties is limited to the amounts expressly specified in the articles of association. An IKE may be formed by a single person or by a single member company.

The minimum capital is EUR 0 and may be contributed in cash or in kind, by way of personal services to the company or by way of guarantees/liabilities assumed by the shareholders towards third parties.

The IKE is managed and represented by one or more administrators, who do not necessarily have to be shareholders, and who are appointed by the articles of association. Administrators are responsible for all business of the IKE in accordance with the law and the company's articles of association.

The managing directors (IKE administrators) have broad powers to act in the name of the company in all circumstances within the domain of the company's purpose. However, in internal relations, the shareholders can restrict their powers by imposing a double signature requirement for critical investments, by requiring prior approval of the shareholders' meeting, etc. These restrictions, which must be included in the company's articles of association, are of no consequence to third parties.

Only individuals with full legal capacity are eligible to be managing directors of an IKE. Corporations are not eligible. The IKE's partners and any other individual third parties are eligible for this position. Foreigners from non-EU member States appointed as IKE administrators in Greece must have a special residence permit for this purpose.

## Employment

It is not a requirement for IKE administrators to be paid for their management services. In practice, however, a fee is typically arranged. The management activities of the managing directors (IKE' administrators) mentioned in the articles of association.

Although there is nothing prohibiting IKE administrators from having an employment contract with the IKE, in practice this is not common, as it would create confusion between the status of employer and employee.

However, and especially in larger companies called "Societe Anonyme", members of the board of directors may have an employment relationship as "executive employees".

According to Greek case law, pursuant to Article 2 of the International Convention on Hours of Work in Industrial Enterprises, adopted in Washington in 1919 and ratified by Greece under Law 2269/1920, an executive employee is any employee who holds a supervisory or managerial position or is employed in a confidential capacity. Such an employee has the authority to make important decisions independently, including hiring and dismissing employees, and formulating plans that may affect the overall performance and organization of the company. Executives are exempt from labor law restrictions on working hours, weekly rest, overtime, Sunday and holiday work, off-site work, night work, etc.

## Tax & Social Security

Pursuant to Greek Law 4172/2013 the remuneration of IKE administrators is taxed according to different tax rates as established by law. IKE administrators are also subject to the social security system and must pay social security contributions based on a flat monthly rate, including health insurance.

In the case of a foreign managing director, Greek and foreign taxes and social security contributions (and exemptions) may vary depending on the nationality, tax domicile and applicable bilateral tax and social security treaties.

## Liability

Pursuant to Law 4072/2012 on the legal regime of private companies in Greece, and Law 4174/2013, Law 4321/2015 and some sporadic provisions of the Greek Civil Code, a managing director may be held liable to a) the company for any breach of the above-mentioned statutes, the company's articles of association and/or any decision of the shareholders' meeting, including any acts of mismanagement in the exercise of their administrative duties, b) the public tax authorities for any debt incurred by the company, c) the company for any breach of the aforesaid pieces of legislation, the articles of association and/or any decision of the shareholders' meeting, and also for any acts of mismanagement in the exercise of their administrative duties resulting in an obligation to pay compensation on behalf of the company.

A managing director cannot be held liable if his/her actions (or omissions) are based on a lawful decision of the company's shareholders or constitute a reasonable business decision taken in good faith and solely in the company's interest, based on adequate information received. Accordingly, his/her liability may be limited by a resolution of the partners of the company after the approval of the annual financial statements to such cause, but only for mismanagement, unless the partners unanimously grant him/her a general release from liability.

In general, D&O insurance is not mandatory, although in practice it is not very common for private companies, given their size and the scope of their activities. The number of insurance providers offering D&O insurance is therefore limited.

# Termination

The shareholders' meeting may remove IKE administrators from office at any time and with or without cause. In the event of removal there is no compensation provided by law, unless otherwise agreed. The managing directors may, of course, resign from their office.

Where managing directors perform their duties on the basis of an employment contract, all legal requirements for termination of the employment contract must be fulfilled. This means that a notice of termination must be served to the employee, who is entitled to severance pay. Also, the termination must be notified to the authorities. The status of the IKE administrator) as an executive employee does not affect the employer's obligations in respect of dismissal.

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# HUNGARY

## Status

In the case of a Hungarian limited liability company ("*Kft*" ), any Hungarian or foreign individual of full age (18 years) may be appointed as a managing director, provided that he/she has not been sentenced to imprisonment by a final court decision, has not been prohibited from exercising his/her profession, or has not taken part in the accrual of tax and public debts within the meaning of the tax laws. The appointment of any legal entity as a managing director is also permitted.

For reasons of incompatibility, a managing director may not acquire an interest in the share capital of another domestic or foreign company, with the exception of shares in public limited companies. Managing directors may not be members of the board of directors of competing companies. In the event of accepting a new appointment, the managing director must, no later than fifteen days after accepting such appointment, notify any other company in which he/she is already a director or member of the supervisory board.

The shareholder(s) must appoint at least one managing director who is responsible for the overall operational and strategic decisions of the Kft. Unless the shareholders decide otherwise, the managing director has sole power of representation and generally represents the Kft in all matters. The articles of association of the Kft may require the additional approval of the shareholder(s) for certain actions of the managing director, but any restrictions apply only to the Kft and the managing director and not to third parties.

## Employment

Hungarian law allows the parties to choose whether managing directors perform their duties under a civil law relationship or an employment contract. In practice, both types of contracts are common. However, a person may not have both an employment contract and a civil law assignment contract for the same position of managing director.

The remuneration of the managing director is also subject to agreement between the limited liability company and the managing director, but under the employment contract the managing director must receive at least the statutory minimum salary. Although the nature of the legal relationship and the remuneration can be agreed upon, the taxation of the director's remuneration requires careful planning and a review of all the underlying circumstances if he/she holds a director's position and is in receipt of remuneration/salary in another jurisdiction.

If the managing director is employed by the Kft, he/she is often entitled, in addition to a salary, to an annual and/or long-term incentive plan, a stock option plan, a

company car, private medical insurance (in the case of foreign managing directors, also with relocation packages, accommodation, etc.) and, less frequently, D&O insurance or an indemnity letter.

The fact that a managing director is employed by a company automatically gives him or her the status of an executive employee. As a result, his/her employment contract may deviate significantly from the provisions of the Hungarian Labor Code applicable to ordinary employees. Unless otherwise agreed by the parties, the status of executive employee means, in particular, that the employer may terminate the managing director's employment without cause in parallel with the removal of the managing director from his/her position under company law. The managing director is fully liable in the event of damages caused by gross negligence or willful misconduct; his/her working hours are flexible; his/her annual leave entitlement may be shorter than the statutory leave, his/her remuneration may be agreed in any currency (not only in Hungarian forints) and he/she may not be covered by a collective bargaining agreement.

Finally, as in the case of ordinary employees, non-competition and/or non-solicitation clauses due to take effect upon after termination of the employment relationship may be agreed upon.

## Tax & Social Security

Taxes and social security contributions payable by the managing director are the same, whether he/she performs his/her duties as an employee or as under a civil law assignment and must be deducted by the Kft. In the case of a foreign managing director, Hungarian and foreign taxation and social security contributions (and exemptions) may vary depending on the managing director's nationality, tax domicile and the applicable bilateral tax and social security treaties.

## Liability

The managing directors are fully liable to the Kft for damages caused by gross negligence or willful misconduct. In addition, the liability of the managing directors to third parties is uncapped in certain specific cases (e.g., in the case of a bankruptcy offence, in the case of certain public debts accumulated by the Kft in which the managing director holds a position, or in the case of a compulsory liquidation procedure where the managing director has failed to consider the interests of the creditors in the face of the company's impending insolvency, etc.).

D&O insurance is not compulsory under Hungarian law. Therefore, the parties to the contract may decide whether the employer should take out D&O insurance for the benefit of the managing director at the Kft's own expense and/or provide a letter of indemnity.

## Termination

The appointment of the managing director may be terminated at any time by a resolution of the company, which will result in the automatic termination of his/her civil law assignment upon their recall.

If the managing director is an employee, the employer may terminate the managing director's employment by giving ordinary

notice of termination and for no cause. No protection/restriction against dismissal applies except that no termination notice may be served if the managing director is pregnant or on maternity leave or on voluntary military service.

Although an ordinary notice of termination does not need to state the reasons for the dismissal, the managing director, as an employee, is still entitled to the same statutory notice period and amount of severance pay as ordinary employees. However, it is market practice for Kfts and the managing director to negotiate a longer notice period and a higher severance payment.

If the managing director is employed and an extraordinary notice of termination is used (i.e., a notice of termination with immediate effect) the grounds for termination must be stated. Such grounds must be clear, valid

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# ITALY

## Status

In Italy the *società a responsabilità limitata* (or s.r.l.) is the most common type of limited liability company because it allows a great deal of flexibility in the management of the company in favor of the shareholders.

By resolution of the shareholders, an s.r.l. may be managed by a sole director, by a board of directors, or by two or more directors with joint or sole authority. The shareholders have ample discretion in the appointment of directors, which means that there are few binding legal requirements. Shareholders themselves may participate in the company's management, and non-shareholders may be appointed as directors. Both individuals and corporations may serve as directors. An individual who has been disqualified by a court, or who is incapacitated or bankrupt, cannot be appointed as a director.

To become a director of a company, candidates need not be resident in Italy and may be nationals of non-EU countries, subject to reciprocity with their country of origin. Non-EU directors who wish to enter Italy must obtain a residence permit. However, directors of an Italian company are not automatically entitled to a residence permit.

Where a board of directors has been appointed, it may delegate extensive powers to an executive committee consisting of some of its members or to one or more of its members, provided that such delegation of powers is permitted by the articles of association or has been approved by the shareholders. Members of a board of directors to whom authority has been delegated by the board of directors are commonly known as *consiglieri delegati* or *amministratori delegati*. Such positions are commonly translated into English as managing directors.

Managing directors have broad authority to act in the name and on behalf of their company. In the event of a conflict of interest, managing directors/directors may not take part in a decision under penalty of nullity.

Managing directors are not treated as employees of the companies which they serve. Their functions are governed by the articles of association and by the provisions of Italian corporate law applicable to s.r.l.s.

## Employment

Although managing directors are not treated as employees and are not required to enter an employment contract to hold

their position, it is very common for them to hold both a corporate office and an employment contract with the same company. Under these circumstances, both positions coexist and each is subject to different sets of rules: Italian corporate law and articles of association on the one hand, and employment law and employment contracts on the other.

More often than not, rules applicable to the position of managing director are laid down in a resolution of the board of directors. More rarely, an agreement is entered into with the company or with the shareholders. While employment contracts are normally also governed by national collective agreements, including agreements for senior executives, there are no collective agreements applicable to managing directors.

If a managing director is also employed by the same company in which he/she is a managing director, it is recommended to reconcile the two positions by properly drafting all relevant documents such as employment contracts, the board resolutions, and the managing director's services agreement.

A typical area that requires attention is remuneration.

Managing directors are entitled by law to remuneration for the services they provide; however, they may waive their right to remuneration, whereas the right to employment remuneration cannot be validly waived in advance.

Another area that calls for careful consideration is supervision, reporting lines and disciplinary actions. An employment agreement that co-exists with a directorship may be void by law if an individual (in his/her capacity as an employee) reports to him/herself (in his/her capacity as a director). This is more likely to occur if the director is a sole director as opposed to a managing director (part of a board of directors) or even a majority/controlling shareholder of the same company.

The statutory provisions on working hours, annual leave and sick leave do not apply to managing directors: however, if managing directors are also employed, there may be a need for coordination.

Conflicts of interest should also be considered, as managing directors may be required to make decisions that affect their position as employees.

Insurance coverage to protect employees or directors, or to protect a company from actions of employees or directors, should be carefully considered, as it may be difficult to draw a clear line between actions as an employee and as a director.

## Tax & Social Security

The shareholders determine the remuneration of the board of directors. If the shareholders have approved some form of remuneration for the board of directors, the board itself will determine the manner in which fees are to be allocated among the various directors and the timing of their payment.

The tax and social security implications of directors' fees should be carefully considered.

Fees paid to a managing director resident in Italy are subject to social security. If the

director is a self-employed professional subject to special social security contributions (e.g., CPAs, lawyers), such social security contributions will be withheld from the director's fees. Managing directors who are not self-employed professionals are subject to a social security regime known as gestione separata according to the following rates (in 2023):

- full contribution: 35.03%
- if the manager is a contributor to another social security fund: 24%.

Social security contributions must be paid no later than the 16th day of the month following the payment of directors' fees.

Non-Italian directors resident in the EU may be able to maintain the social security coverage of their home country: the provisions of EU REGULATION No. 883/2004 and EU REGULATION No. 987/2009 apply.

Managing directors residing outside the EU may be subject to the provisions of social security treaties between Italy and the relevant country; if there is no treaty, Italian provisions will apply and there may be a situation of double contribution according to Italian laws and the laws of the director's home country.

Managing directors who are also employed by their company and who are remunerated by way of a salary are subject to the ordinary social security contributions generally applicable to wages.

## Liability

Managing directors are jointly and severally liable to their company and to any shareholder or third party for damages caused by their failure to perform their duties. Damages includes loss of profits and actual damages. The liability of directors includes civil and criminal liability. The provisions of the law on directors' liability also apply to de facto directors, i.e., those who perform the duties of a director without being formally appointed as such.

Civil liability is related to the damage caused to the company because of a lack of due diligence.

Managing directors may be criminally liable for offenses such as false corporate communications, false reports for untrue or fraudulent omissions, and fraudulent transactions to the detriment of creditors. Other areas of criminal liability include tax and occupational safety violations.

Managing directors are liable to the company for any damages caused by failure to perform their duties entrusted to them by law and by the company's articles of association. If the company's assets are inadequate to compensate the creditors, the directors of a s.r.l. are personally liable if the damage was caused by actions performed in bad faith or through ignorance of the law.

To guard directors against their extensive liability, companies (as well as directors themselves) may take out "Directors and Officers Liability" (D&O) insurance. D&O policies are becoming increasingly prevalent, but they are not mandatory.

The laws that apply to directors, including those without delegated powers, require that their actions be characterized by transparency, information, initiative, intervention and activation. The liability of

non-executive directors is more clearly formulated than in the past and is graded according to the role they play in their company compared to that of executive directors. Managing directors should act on an informed basis when exercising their business judgment. Other directors have a duty to take action to prevent harmful actions and to remove or mitigate the harmful consequences of such actions. Accordingly, liability for damages resulting from organizational deficiencies extends to directors without delegated powers if they have failed to act promptly to remedy such deficiencies.

## Termination

The removal of managing directors is governed by company law and the company's articles of association, while the termination of their contract of employment is subject to employment law and collective agreements.

If the same person holds the position of director and is employed by the same company, the two positions are subject to different termination rules. This is because the termination of one does not automatically lead to the termination of the other. For this reason, termination in the case of dual appointments is also a matter that should be carefully considered and, to the extent possible, coordinated.

Typically, a company's articles of association provide for the length of a managing director's term. In addition, directors shall cease to hold office if they fall into a situation of disqualification or incompatibility.

In principle, managing directors may be removed by the shareholders at any time. However, if their removal is without cause, the removed director may claim damages subject to proof.

The dismissal of employees, on the other hand, is governed by a detailed set of statutory rules and collective bargaining agreements.


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# LIECHTENSTEIN

## Status

Although limited liability companies are becoming increasingly widespread in Liechtenstein (as of 31.12.2022, there were 1,028 registered in the Liechtenstein Commercial Register), companies limited by shares (as of 31.12.2022, there were 4,989) are still the most common legal form for employing managing directors.

In the case of Liechtenstein companies limited by shares that do not conduct a commercial business, a member of the board of directors who is authorized to manage and represent the company must meet the requirements of Art. 180a para. 1 or 2 of the Liechtenstein Persons and Companies Act, i.e., he or she must be an EEA/EFTA citizen and hold a license issued pursuant to the Liechtenstein Trustee Act or the Liechtenstein Act on the Supervision of Persons under Article 180a. Companies that are required to have a managing director under the Business Act or any other special law are exempt from this obligation. In this short analysis only companies limited by shares that are active in business will be discussed.

In general, the board of directors is responsible for managing the company's business and representing the company in its relations with third parties. The articles of association may provide that the management and representation may be delegated to third parties who need not be members of the company's board of directors and who are also subject to the rules on liability.

According to the Liechtenstein Business Act, managing directors must have the capacity to act, a clean criminal record and no entries in the garnishment register and, in the case of qualified trades, the required professional qualifications.

A managing director is assumed to have two legal relationships, one under company law and also a contractual relationship. These two legal relationships must be clearly distinguished in terms of origin, effect and dissolution, even if they are closely interrelated. Therefore, an employed managing director in Liechtenstein would be subject to the employee's duty of loyalty and the board's duty of loyalty under company law. In this legal situation, a managing director would be required to act in accordance with two potentially different sets of fiduciary duties, with corporate law standards being primarily applicable over employment law standards.

Managing directors must act on the basis of adequate information. They must not pursue special interests and must make decisions free from outside influence. Finally, managing directors must act in the best interests of the company and in good faith. With the implementation of the business judgment rule, Liechtenstein law provides managing directors with guidance by focusing on what the director could have reasonably assumed when he or she actually had to make the decision. Thus, the courts may not conduct "full-blown second-guessing" of the decision-making process after the fact.

Managing directors of a Liechtenstein company limited by shares do not necessarily have to be individuals. They can also be legal entities (management companies).

## Employment

In Liechtenstein, managing directors, whether or not they are shareholders, are not legally classed as employees. The characterization of a legal relationship is based on the agreed content of the contract. The legal relationship of managing directors is a combination of company law and contract law characteristics. Liechtenstein labor law treats all employees equally. No distinction is made among different categories of employees. In principle, the provisions of labor law apply to across all hierarchical levels of a company. The only decisive factor is whether the characteristics of an employment contract apply or whether a contractual relationship is to be characterized differently, e.g., as a mandate, a work contract, or a simple partnership. A Liechtenstein employment contract, which is the most common contractual relationship for managing directors of a Liechtenstein company limited by shares, is characterized by four features:

- work performance,
- integration into an external work organization,
- continuing obligation and
- remuneration.

The employee is subject to the employer's authority to give instructions and the obligation to comply with them. The relationship of dependence and subordination is the most important distinguishing feature from other contractual relationships.

Liechtenstein law expressly allows managing directors to hold a dual position (e.g., an employment and a board position). The articles of association may provide that the management and representation of the company may be delegated to one or more members of the board of directors (delegates). Usually, participation in board meetings is part of the duties of the managing director, and his/her activity is remunerated with the salary from his/her employment contract.

Liechtenstein companies regularly pay managing directors' fees and managing directors' salaries. Not paying a salary is unusual and only occurs when the owner is running the company and cannot temporarily afford to pay a salary.

To protect the health of employees and to preserve their social life, the Liechtenstein Labor Code prescribes minimum rest periods and other protective provisions. However, subject to the provisions on health protection, the Labor Code does not apply to employees who exercise a higher

managerial function. A higher managerial position is held by a person who, by virtue of his/her position and responsibility and depending on the size of the enterprise, has far-reaching decision-making powers or can significantly influence key decisions and thus has a significant influence on the structure, the course of business and the development of an enterprise or part of an enterprise.

Managing directors are usually not covered by collective agreements, as these do not apply to the owners of the company, their family members working in the company and managing directors entered in the commercial register. The employment contracts of managing directors usually contain special non-competition clauses, notice periods exceeding the standard three months and a clause stating that overtime pay is included in the basic salary.

If a managing director is also a member of the board of directors, the employment contract usually states that attendance at board meetings is part of his/her duties.

## Tax & Social Security

In Liechtenstein, the salaries of managing directors and payments to members of the board of directors must normally be taxed as income.

Employed managing directors are subject to the mandatory Liechtenstein social security system, which is based on three pillars: a) state pensions, b) occupational benefits insurance, c) private pensions. The first pillar secures the basic livelihood of all employed persons with Old Age and Survivors' Insurance, Disability Insurance, the Family Compensation Fund and Unemployment Insurance. The maximum insured salary for unemployment insurance is CHF 126,000.

Persons living or working in Liechtenstein, irrespective of their nationality, have access to medical care via compulsory health insurance. Self-employed persons are required to take out insurance. Compulsory health insurance enables persons living or working in Liechtenstein to receive benefits in kind and financial benefits in the event of illness or accident if these are not covered by accident insurance. Companies in Liechtenstein are required to take out daily sickness benefit insurance for their employees. Daily sickness allowance insurance means that companies are not exposed to the risk of loss of earnings. From the second day of illness, the daily allowance insurance pays 80% of the lost earnings up to a maximum of CHF 126,000.00.

## Liability

Managing directors of companies limited by shares are liable pursuant to Art. 218 ff. Liechtenstein Law on Persons and Companies for damages caused to the company by culpable breach of duty. In addition, the employee is liable for any damage caused intentionally or negligently to the employer. The scope of the employee's duty of care is determined by the particular employment contract, taking into account the occupational risk, the level of training and technical knowledge associated with the work, as well as the employee's abilities and skills of which the employer was or should have been aware.

From a corporate law standpoint, a managing director should always act in accordance with the business judgment rule. A managing director is deemed to have acted in accordance with this rule if the business decision was not guided by interests beyond those of the company and if the member of the management could reasonably be expected to act on the basis of appropriate information for the benefit of the legal entity.

D&O insurance is recommended in Liechtenstein, but is not mandatory.

## Termination

Although they are closely related, the termination of employment under labor law and the dismissal of members of the executive board under corporate law must in principle be considered separately. However, in the case of dismissal of members of the executive board, the resolution of the competent body of the company must first be available. Otherwise no (formally) correct dismissal under labor law can be made.

The dismissal of a member of the executive board is subject to the articles of association and can, in principle, be resolved at any time by the general meeting of shareholders.

Under employment contract law, both the employer and the employee must observe the notice period set out in the relevant employment contract in the event of ordinary termination of employment. Provided that the termination is not unlawful (which includes retaliation, dismissal for personal reasons, for exercising a constitutional right, or for preventing the exercise of a right), it may be made without good cause. The usual notice period is three months, although managing directors are often subject to a six-month notice period. The party giving notice must give reasons in writing if requested to do so by the other party.

Either the employer or the employee may terminate the employment relationship with immediate effect at any time for good cause. The party terminating the relationship must state the reasons in writing upon the other party's request. In particular, good cause is any circumstance that makes it unreasonable for the terminating party to continue the employment relationship in good faith.

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# LITHUANIA

## Status

Although limited liability companies are In Lithuania a limited liability company (UAB) is one of the most commonly encountered types of legal entities.

The managing director is the sole executive body of the company. A managing director acts on behalf of a legal entity and establishes rights and obligations arising from the management of the UAB. Any individual, including a shareholder of a company, may be appointed as a managing director. Corporate bodies cannot be appointed to these positions. Foreigners from EU and non-EU countries may be appointed as managing directors.

If necessary, the company may establish a board of directors. A managing director may not be a member of the board of directors of the company if the company does not have a supervisory board and the articles of association provide that the board of directors is to supervise the functions of the managing director in accordance with the law.

The managing director is responsible for the daily management of the company, representing it, entering into transactions on behalf of the company within the scope of the authority vested in him/her, appointing and dismissing employees, and performing other functions as may be assigned to him/her by law and the articles of association. A managing director owes certain fiduciary duties to the legal entity, i.e., the duty to act solely in the interests of the legal entity.

The position of a managing director is dualistic in nature, i.e., it has both employment and civil law characteristics. Although a managing director is subject to an employment contract, his/her legal status is unique.

## Employment

According to Lithuanian legislation, there is a requirement for paid managing directors to enter into an employment contract with the company. The applicable formalities and procedures are substantially the same as for any other employee. Contracts of employment with managing directors must be in writing, drawn up in at least two copies and signed by the managing director as the employee and the company as his/her employer. There may be situations where the employment contract is entered into by the sole shareholder of the company with him/herself as the managing director. Significantly, the employment contract must specify all necessary conditions, including his/her remuneration. The employment contract may also include other conditions related to a probationary period, non-competition, indemnification, and so forth.

The employment contract with a managing director does not differ in substance from any other employment contract, but there

are peculiarities in its implementation. First and foremost, managing directors are subject to specific working time regulations. The managing director must organize his/her working hours in line with the statutory maximum working hours and minimum rest periods.

An additional specificity of an employment agreement with a managing director is that in the event of a breach of duty, liability may vary depending on the nature of the breach giving rise to employment or civil liability.

## Tax & Social Security

If the managing director has an employment contract with his/her employer, he/she is liable to pay national social security contributions, which are calculated on the basis of the employee's salary.

Employees are covered by pension, sickness, maternity and health insurance schemes, i.e., the Lithuanian social insurance system includes compulsory health insurance. If the employee is not subject to Lithuanian social insurance legislation (e.g., because he/she is a non-Lithuanian national working remotely), but is employed by an employer registered in Lithuania, the employee's national social insurance contributions are calculated at the same rate and in the same way as for Lithuanian employees.

Citizens of the Republic of Lithuania and foreigners residing permanently or temporarily in Lithuania are regarded as persons subject to compulsory health insurance. As a result, if a foreigner with a temporary or permanent residence permit in Lithuania is appointed as a managing director and has registered his or her place of residence in Lithuania, he or she will be covered by compulsory health insurance in accordance with the employment contract with the employer.

In addition to national health insurance, some employers may offer private health insurance as part of their benefits package.

## Liability

The authority of a managing director carries with it a high degree of responsibility. Because of his/her special status, a managing director is held to a higher standard of conduct and responsibility than ordinary employees. The fact that a managing director is bound by an employment contract does not mean that he/she is subject only to labor law regulations.

Lithuanian law provides that a managing director is liable to the legal entity either under labor law or under civil law, depending on the nature of the duties breached. The employee's liability under labor law for damages caused to the company is limited to the amounts specified in the Labor Code of the Republic of Lithuania. Civil liability, on the other hand, is based on the principle of full indemnity for damages. The type of liability of a managing director is determined on a case-by-case basis, taking into account the nature of the managing director's action causing the damage and the nature of the duty violation.

If a managing director, in his/her capacity as employee, performs an action which in principle could have been performed by another employee, and thereby causes damage to the employer, the damage

is deemed to have arisen out of the employment relationship. On the other hand, if a managing director breaches general duties and fails to comply with the standards of conduct or duties imposed exclusively on a managing director by law, he/she will be subject to civil liability. It is important to note that it is possible to enter into a contract of strict liability with the director.

D&O insurance is not mandatory under Lithuanian law, but is recommended to protect the interests of managing directors.

## Termination

An employment agreement with a managing director may be terminated on the usual grounds, i.e., by agreement, at the discretion of one of the parties, at the discretion of the employer, in the absence of the will of the parties, or upon the death of the employee. Additionally, the employment agreement with the managing director if he/she is removed from office subject to the procedure established by law or the company's documents of incorporation. A distinction should be made between termination and removal. A managing director may be removed at any time, regardless of fault or other circumstances.

If the employment relationship with the managing director of a legal entity has continued for over two years and he/she is removed before the expiration of the employment contract, the managing director is entitled to severance pay in the amount of one month's the average salary, unless the removal is due to his/her fault.

If the managing director's employment contract is terminated for common reasons, e.g., at the employer's will, all provisions specific to such termination (notice periods, possible additional social security benefits, severance pay, etc.) apply.

Finally, the employer and the managing director may agree on additional safeguards that would apply in the event of the managing director's dismissal. In any case, it is necessary to bear in mind that the managing director is not only an employee acting in a fiduciary capacity, but also an employee subject to social security protection.

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# MACEDONIA

In the Republic of North Macedonia, the Constitution guarantees equal treatment of all market operators. The Law on Foreign Investors allows foreign investors to invest, transfer and repatriate their capital and profits without any restrictions.

North Macedonian laws and regulations do not distinguish between national and foreign natural persons and legal entities unless a specific international treaty provides otherwise.

## Status

According to the positive legal regulation in the Republic of North Macedonia, a limited liability company may be managed by one or more managing directors. The rights, obligations and limitations of the managing director are regulated in the memorandum and articles of association. Any legally competent natural person may be appointed as a managing director, regardless of whether the person is a domestic or foreign natural person. The only condition for the appointment of a managing director is that, at the time of the appointment, the person has not been convicted by a final court decision to a fine or a misdemeanor sanction - a ban on exercising a profession, activity or duty.

In limited liability companies and subsidiaries of foreign companies, the authorized person/managing director is considered to be a separate authority in relation to representation of the company before third parties and companies, so for these reasons there is no need for an authority - board of directors. Unlike limited liability companies and subsidiaries of foreign companies, in joint-stock companies in the two-tier management system, no person can be a member of the board of directors and a member of the supervisory board at the same time, while in the one-tier management system the managing director can be appointed to the board of directors as an executive member.

The rights and duties of the managing director are determined by the company's agreement/articles of association. If the powers of the managing director are not specified in the company's articles of association, the managing director may carry out all legal matters and actions that are customary for the management of the company's affairs and that are in the interest of the company.

In addition, the managing director is authorized to act on behalf of the company in relation to third parties, except for the restrictions provided for in the Companies Act and the Memorandum and articles of association. In companies where there is more than one managing director, all of them have the same powers and rights in relation to the management of the company,

unless the agreement/statement on the establishment of the company stipulates otherwise.

In the Republic of North Macedonia, it is regulated that a managing director may not, without the consent of the general meeting, carry out on his own account or on behalf of another person any work that falls within the scope of the company's activities, be a partner with unlimited liability in another company with the same or similar object of activity as the company, be a member of a management body or a member of a supervisory board, be a controller in another company with the same or similar object of activity, or carry out work on his own account or on behalf of another person in the company's premises. If the managing director does not comply with these provisions, the same may be revoked without prior notice and without the right to compensation.

Where the managing director has a direct or indirect interest in entering into a particular contract or in any other business activity of the company to which the company is a party, he/she must act in accordance with the North Macedonian Law on Commercial Companies, as he is obliged to inform the board of directors, i.e., the Supervisory Board, in the case of companies in which they alone or together with related parties hold 20% or more of the shares, and of all known current or possible transactions in which they are an interested party.

## Employment

Under the laws of the Republic of North Macedonia, the company and the managing director may enter into an employment contract or an employment contract for entrepreneurs/management contract. The provisions of the Labor Relations Act apply to the employment contract, whilst the employment contract for entrepreneurs/ the management contract is subject to the Commercial Companies Act. In practice, a large number of companies use the employment contract for entrepreneurs/ management contract, which sets out the terms and conditions applicable to the employment for a fixed period, the employee's working hours, daily and annual leave, remuneration, and termination of the employment contract.

In the Republic of North Macedonia, there is no obligation to pay a special remuneration to the managing director if he/she is not an employee of the company. In joint-stock companies where a board of directors has been established and the managing director is a member of the board as an executive director, a decision may be made to pay a special remuneration to the members of the board of directors, including the managing director as a member.

Most managing directors in the Republic of North Macedonia are employed under management contracts, as opposed to ordinary employment contracts. In management contracts, the parties are free to negotiate the rights and obligations of the managing director. Therefore, the conditions applicable to the managing director's working hours, annual leave, bonuses, non-competition clauses, overtime, and benefits (including the use of a company phone, laptop, vehicle, etc.) may be different from the conditions arising from an ordinary contract of employment.

## Tax & Social Security

In the Republic of North Macedonia, no specific tax regulations apply to the remuneration of managing directors. If the managing director is an employee of the company, he or she is subject to compulsory social and health insurance. The basis for calculating and paying the mandatory social security contributions depends on the type of monetary compensation paid by the managing director's employer for the payment of the contributions. If the managing director is a foreign citizen and is not regularly employed in the Republic of North Macedonia, he/she is not required to pay contributions according to the Convention on Social Security, provided that his/her home country is a signatory to the Convention.

## Liability

The managing director must manage the company's affairs with the care of a prudent and diligent businessman and protect the company's trade secrets. His/her liability (both types of liability, i.e., liability arising from a legal breach and contractual liability) is persona and unlimited; if there are two or more managing directors in the company, they are jointly and severally liable to the company and to third parties for any actions in breach of statutory provisions for failure to comply with the agreement on behalf of the company. The managing director shall be personally liable for damages caused to the company by legal transactions entered into with the company in his/her own name or in the name of a third party and for his/her own account, unless prior approval has been obtained from the supervisory authority or, if the company has no supervisory authority, from the other managing directors, as the case may be.

The managing director may not limit his/her responsibility towards the company and third parties. The laws of North Macedonia do not yet provide for the obligation to take out D&O insurance.

## Termination

The managing director's termination is governed by the relevant employment or management contract. As a general rule, the managing director is protected against termination of his/her contract and cannot be dismissed without cause. Also, the notice of termination must state the reason(s) for the managing director's dismissal unless the management agreement provides otherwise or, in the case of fixed-term management agreements, where this comes to an end due to expiry of the agreed term.

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# MALTA

## Status

The Maltese Companies Act (Chapter 386 of the Laws of Malta), provides no clear definition of the term "director" and, as a result, does not make a specific distinction between executive and non-executive directors. Typically, managing directors are viewed as executive directors, primarily because such directors tend to be involved in the day-to-day management of the company. It is common for companies in Malta to have a managing director who is the only executive director on the board. It is also common for companies to designate employees as "directors" without them being part of the company's board of directors and ultimately being recognized as directors in law.

The number of managing directors a company is required to have depends on the form of the company. Private limited companies are required to have one or more directors, while public limited companies must have at least two directors. The managing directors of a limited company are responsible for the management and day-to-day running of the company.

Any person may hold the position of a managing director, unless he or she is a minor who has not been emancipated, is legally interdicted, incapacitated or an undischarged bankrupt, or has been convicted of any of the crimes affecting public trust or of theft or of fraud or of knowingly receiving property obtained by theft or fraud.

Both executive and non-executive directors are equally responsible for maintaining the company in good order in accordance with the Companies Act. Any person holding the position of managing director will substantially carry out the same functions in relation to the management of the Company as those carried out by any Directorr and will be required to form part of the board of directors of the company.

Managing directors have a fiduciary relationship towards the company and are deemed to be mandatories and agents of the limited liability company. A director of a limited liability company may be either an individual or a corporation, unless the company is a listed or exempt corporation, in which case corporate directors are not permitted.

Managing directors must ensure that there is no conflict between their personal interests and the interests of the company. Furthermore, no property, information, or opportunity of the company may be used for

the benefit of the managing director or any other person, except with the company's express approval by resolution of the general meeting or as permitted by the company's articles of association.

Managing directors have various duties, which are generally categorized as "general" and "administrative". Such general duties arise from their juridical position under general principles of law and concern both their duties of loyalty and their duties of care and skill. The administrative duties, on the other hand, are created by specific provisions of the law, most of which concern the director's duty to keep suitable records, to account for and return on demand all property held in trust, and to keep the company's property separate from his/her personal property. In addition, managing directors have a duty to promote the interests of the company and to ensure its proper administration and management. There are also a number of other statutory duties arising under the Maltese Companies Act.

Finally, managing directors owe a duty of loyalty to the company for which they act and the duty to act in the best interests of the company. This duty also encompasses a requirement to treat shareholders equally, notwithstanding the existence of different classes of shares with different rights.

## Employment

In Malta a company is not required to enter into an employment relationship with the managing directors or to pay any remuneration to their services. Managing directors may be remunerated for their office in the company and for additional services rendered to the company. The company's articles of association may provide for specific arrangements for the appointment and term of office of managing directors.

That being said, managing directors are typically engaged via a contract of service.

## Tax & Social Security

Maltese law provides certain deterrents for directors who act unlawfully and imposes a number of personal liabilities on directors. For example, the Income Tax Management Act provides that all persons involved in the management of a company must do their best to ensure the payment of income tax. The directors and managers of every company must pay tax out of the company's assets; however, they will be held personally liable for payment if it is found that they had in their possession assets belonging to the company that could have been used to pay the tax then due.

Similarly, the Maltese Social Security Act states that whenever something is required to be done by a company, such a duty is also required to be performed personally by the directors themselves.

## Liability

The personal liability for damages of managing directors for breach of duty is joint and several, provided that where a specific duty has been delegated to one or more directors, only such director(s) shall be liable for damages. A managing director shall not be held liable for the actions of his/her co-directors if it is proved that he/she was not aware of the breach of duty before or at the time of its occurrence and where he became

aware of it after its occurrence, provided the managing director notified his/her co-directors in writing of his/her disagreement; or where he/she became aware that the co-directors intended to commit a breach of duty, provided the managing director took all reasonable steps to prevent it.

Any provision, whether included in the company's articles of association or in a contract with the company, exempting an officer from liability is considered null and void. Managing directors may be held personally liable for acts of the company, primarily in the context of wrongful and fraudulent trading.

Liability for wrongful trading arises where a liquidator presents evidence that a managing director knew or ought to have known, prior to the dissolution of the company, that there was no reasonable prospect of the company avoiding dissolution on the grounds of insolvency. On the other hand, fraudulent trading is defined as the carrying of any business of the company with intent to defraud the creditors of the company or creditors of any other person or for any fraudulent purpose. For fraudulent trading to be established, one of the prerequisites for liability to arise is the managing directors' knowledge that they participated in the conduct of the business with intent to defraud creditors. Such activity may expose directors to personal liability for all or any of the debts or other liabilities of the company if the court is satisfied that fraudulent trading indeed took place.

Managing directors may also be exposed to personal liability as a result of certain acts or omissions of an administrative nature,

including failure to notify the Malta Business Registry of a resolution the dissolution and voluntary winding up of a company, failure by the company to issue share certificates and failure to register members.

Companies are not required by law to take out D&O insurance to protect managing directors against claims for wrongful acts. However, an increasing number of Maltese companies are choosing to take out D&O insurance, particularly those engaged in licensable activities.

## Termination

In order for a managing director to be removed from office, the shareholders must request the directors to call an Extraordinary General Meeting ("*EGM*"), the agenda of which must include a specific reference to the intention of removing that director. Notice of the EGM must be sent to all members and to the director whose removal will be discussed.

The managing director concerned has the right to attend the meeting and put forward his/her case, but if the EGM decides by a vote of more than 50% of the voting rights attached to the shares entitled to attend and vote at the meeting that the managing director should be removed, such removal will be effective.

A managing director appointed by a specific class of shares may be removed by an ordinary resolution of the members of the company, unless this is specifically restricted in the company's articles of association.

It is important to note that if a managing director is a party to a services agreement which is terminated as a result dismissal, he/she may be able to bring an action against the company for wrongful dismissal or breach of contract.

Finally, a managing director may be removed from office by a court order.


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# MOLDOVA

## Status

The limited liability company ("*LLC*"), which is the simplest and most common form of business organization in Moldova, may have one or more managing directors, all of whom are appointed either by the company's shareholders acting collectively as general meeting of shareholders or by the sole shareholder. The board of directors of the company, if any, may also act as the appointing body. After their appointment, managing directors are registered in the publicly accessible State Register of Legal Entities ("*Public Register*"). From the date of registration, the managing director is entitled to validly represent and act on behalf of the LLC.

Both an individual and a legal entity may serve as the managing director of a Moldovan LLC; in practice, corporate managing directors are much less common. If the managing director of the LLC is a legal entity, this legal entity is required to appoint a specific individual for the permanent performance of the managing duties.

The managing director must be of age, have full active legal capacity and not be prohibited by law or a court order from holding a management position. A potential managing director should also not have a criminal record for certain crimes, primarily financial. If an LLC has a board of directors, the managing director may be appointed as one of its members, but not as its chairman.

Moldovan law is generally quite flexible and does not require the managing director to be a Moldovan citizen or a permanent resident of Moldova. There are exceptions to this rule, such as where the LLC is required to obtain a license for certain activities (e.g., recruitment of personnel for employment abroad), but such exceptions are very limited. If the managing director is a foreigner, the LLC must generally apply for and obtain the right to work in Moldova for its managing director. As part of Moldova's move towards the EU, EU nationals benefit from a simplified residence procedure.

Statistically, most LLCs in Moldova have one managing director; however, the law allows for the appointment of multiple managing directors and some companies (especially those with foreign capital and more complex corporate structures) choose this option. By default, if there are two or more managing directors, the law provides that they have equal rights and powers and act independently and individually in connection with the management and representation of the

company; however, LLCs are free to deviate from this rule in their articles of association.

LLCs have obligations to third parties and are bound by the actions of their managing directors, even if such actions exceed the company's business. Managing directors are required to comply with the articles of association, any decisions of the other bodies of the LLC (i.e. its shareholders, board of directors or internal auditor) and the following primary legal obligations: to pursue the purpose of the company; to act competently and prudently; to avoid conflicts of interest; not to accept benefits and incentives from third parties; to disclose conflicts of interest in any transaction being considered by the company, and duties of non-competition and confidentiality. Many of these statutory obligations will continue to apply to the managing director after his/her termination. For example, the former managing director will be bound by a non-compete obligation, provided that such a provision was included in his/her employment contract with the LLC and does not exceed three years after termination.

## Employment

The employment status of a managing director and the requirement to enter into an employment contract with him/her depends primarily on whether he/she is also a shareholder of the LLC. Only managing directors who are also shareholders of an LLC are exempted from the application of Moldovan labor law, including the requirement to enter into an employment contract.

Where the managing director is not also a shareholder, even if a civil (management or mandate) agreement is legally sufficient for a valid appointment and representation, such managing director would be entitled to claim employee status and related benefits (e.g., paid annual and sick leave, etc.) under Moldovan labor law. The risk of employment misclassification of civil law agreements with individuals who are not duly registered to carry out entrepreneurial or professional activities in Moldova is generally quite high. Accordingly, Moldovan courts will apply labor law if they consider that a civil law agreement conceals an employment relationship. In such cases, managing directors are both employees and civil law representatives, with the former being more relevant in practice due to the more detailed nature and strictness of Moldovan labor law.

In practice, most LLCs do not enter into detailed contracts, of employment or otherwise, with their managing directors. In such cases, managing directors are bound by the provisions of the LLC's articles of association, by shareholder resolutions and their legal duties. However, this is not optimal, and it is strongly recommended that LLCs have detailed written employment contracts with their managers or, where such managers are also shareholders, either a mandate contract or a shareholder agreement governing their roles and functions.

In general, an employment contract between an LLC and a managing director is subject to the same general legal framework as for regular employees. As a result, the managing director is entitled to a monthly salary, daily

and weekly maximum working hours, special remuneration for overtime work, paid annual leave, paid sick leave, etc. However, there are also special rules that are determined by the nature of the position of a managing director within the LLC.

In addition to the above legal obligations, the managing director's employment contract may include non-solicitation provisions and other restrictions that would apply both during and after the managing director's employment with the LLC. The employment contract will also provide for a full and irrevocable assignment of intellectual property rights to any "work made for hire" to the extent permitted by applicable intellectual property laws. The performance targets to be achieved by the managing director and their deadlines can and should also be stipulated in the employment contract.

In terms of extra-statutory benefits, managing directors, usually of top companies operating in Moldova, benefit from various incentives: year-end bonuses, private health insurance, employee loans, stock grant schemes, severance packages, etc. These benefits are binding on the LLC if they are explicitly included in the employment contract with the managing director.

## Tax & Social Security

From a tax law perspective, a managing director is treated like any regular employee, regardless of whether he/she is acting on the basis of an employment contract or a civil law agreement. No special rules apply. Thus, income tax, social security and health insurance contributions paid by managing directors are equivalent to those paid by employees. The LLC is required to withhold such taxes and contributions from the payments made to the managing director and forward them to the state budget. Due to the withholding nature of these payments, foreign managing directors will be subject to the same tax regime as Moldovan nationals for any salary paid in Moldova.

Under Moldova's compulsory social security system, managing directors are entitled to a retirement pension, various allowances (e.g., related to maternity leave, parental leave, work accidents, etc.) and compensation charged to the Moldovan state budget. Similarly, under the compulsory Moldovan medical insurance system, managing directors may have some of their medical expenses covered by the Moldovan state, in accordance with the limits of what is covered by such medical insurance, and as updated by the Moldovan government from time to time. The managing directors will receive these social and medical benefits on the basis of the deductions made by the LLC from their salaries and under the same conditions as those applicable to regular employees.

## Liability

Moldovan law requires managing directors to act with the degree of competence, diligence and skill that may be expected of a good manager. Managing directors are fully liable (including financially) for losses caused to the company,

including for making illegal payments to its shareholders. If several managing directors are appointed, they are generally jointly and severally liable unless otherwise determined by a court decision.

Moldovan civil laws actually limit any potential liability exemptions of managing directors by holding null and void any provision of the articles of association or agreement with the managing director where: the duties and obligations of the managing director provided by the law are limited or excluded; and the liability the managing director bears under the law before the company is limited or excluded in advance.

Exceptionally, subject to the duty to provide adequate information and to comply with any conflict-of-interest rules, the shareholders or the board of directors of an LLC may exempt the managing director from liability, settle or waive the company's claim against the managing director in specific cases. Even then, such indemnity does not bind the LLC's creditors or third parties affected by the managing director's actions.

LLCs are entitled to purchase and maintain D&O liability insurance. Any such insurance must provide for a deductible of at least 10%. This means that the managing director must pay 10% of any losses out of his or her own pocket. LLCs or their parent companies are also free to indemnify their managing directors, subject to general rules of public policy.

## Termination

As a general rule, the shareholders or the board of directors of an LLC have the right to remove the managing director at any time without giving any reason or notice. Upon registration of the manager's removal in the Public Register, the managing director's employment contract with the LLC, if any, is terminated by law.

Including for termination, civil rules on representation and mandate will apply to the relationship between the LLC and the managing director and prevail over labor law in all cases, even where there is an employment contract between the LLC and the managing director. Therefore, the managing director is not protected against unfair dismissal and, consequently, cannot seek his/her reinstatement from the court.

The only legal remedy available to the managing director in this case is to challenge the formal reason of the dismissal (if any was relied upon by the LLC) and/or to enforce his/her entitlement to a severance payment, if any is provided by the law and/or the employment contract.

Under Moldovan labor law, the managing director is entitled to a statutory severance payment in the amount equivalent to not less than three times his/her average monthly salary if his/her employment contract is terminated by the LLC without any fault on his/her part. The managing director's employment contract may provide for a higher severance payment, which of course will bind on the LLC.

A court may find the severance payment to be grossly disproportionate and require a reduction. In general, severance payments to managing directors in an amount exceeding the fixed component of his/her remuneration for two years will be considered disproportionate. No severance payment is due at all if the managing director has failed to achieve any performance targets agreed in writing with the LLC.

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# NORWAY

## Status

In Norway, it is customary for limited liability companies (*aksjeselskap* or AS) to appoint a managing director. However, the company's general meeting may decide whether the company should have a managing director or not. In other words, there is no requirement under Norwegian law for a limited liability company to have a managing director except for public limited companies (ASA).

The managing director's main responsibility is the day-to-day management of the company's financial, human and material resources. He/she has the right and the duty to participate in the management of the company. The managing director, in cooperation with the board of directors, is responsible for establishing the company's targets and objectives and for effectively directing the efforts of all employees to achieve those targets and objectives. The managing director must manage the company in accordance with the law, the company's articles of association, the resolutions of the general meeting and/or the board of directors and under the provisions of the managing director's employment contract.

Pursuant to Norwegian company law, the managing director's day-to-day management does not encompass matters outside the normal management of the company or of major importance. The managing director decides on matters subject to the authorization of the board of directors or if the board of directors' decision cannot be awaited on his/her own without causing major inconvenience to the company.

## Employment

As a rule, the managing director is an employee of the company but this is not an absolute requirement. The managing director can also be engaged by the company as a contractor. It is the board of directors that employs the managing director. Since the managing director is an employee, he/she is entitled to the same employment protection as any other employee of the company. Therefore, the requirements for employment protection under the Norwegian Working Environment Act apply.

The managing director may in principle have a fixed-term employment relationship, provided that the conditions for such a relationship are satisfied. A managing director's position can also be part-time.

The managing director can perform different roles - for example, he/she may serve both as managing director and as a member of the board. The managing director can also be employed on a fixed-term basis for one year at a time. This exception only applies to managing directors.

The board of directors may give general instructions and individual orders binding the managing director in the exercise of the day-to-day management. The managing director is also bound by budgets, plans, etc., as these may be determined by the board of directors at any time.

In addition to an employment contract, separate bonus and incentive arrangements are often made with the managing director. These may be tied to performance or results, be based on profit considerations, or on a combination of the foregoing. In addition to the employment contract, a specific job description is often agreed for the managing director. Typically, his/her job description sets out, among other things, the expected performance of the managing director and detailed reporting obligations to the board of directors.

The provisions of the Norwegian Working Environment Act on specific working hours do not apply to the managing director, who has agreed for complete autonomy. In practice, this means that the managing director will not be entitled to overtime pay, unless otherwise agreed.

## Tax & Social Security

The managing director is considered an employee of the company and is therefore subject to ordinary income tax. Also, the employer must pay social security contributions for the managing director as it does for other employees.
The managing director must also be part of the company's pension plan, but it is not uncommon for managing directors to have a better pension plan than ordinary employees, although this is not a requirement.

Employees living and working in Norway are covered by the Norwegian National Insurance Scheme (if they meet the eligibility criteria). It is not a requirement for the employer to provide health insurance for the employees. However, it is increasingly common for companies of a certain size to take out health insurance for the management, which provides access to private health care.

## Liability

The managing director may be held personally liable to the shareholders and/or third parties for financial loss caused intentionally or negligently in his/her capacity as such. In many cases, the company will also be held liable for the same loss because the managing director is acting on behalf of the company and because the company is his/her employer. As a result, the company is responsible for the managing director's actions and omissions as an employee. As the company will often be jointly liable for the loss (and will usually be financially in a better position than the managing director), a personal claim against the managing director is particularly relevant in situations where the company is the claimant, is insolvent, or where a claim against the company will not compensate for the loss in full.

The managing director may also be held criminally liable for violating the Norwegian Working Environment Act, embezzlement, misuse of the company's assets for a purpose contrary to the company's interests, failure to pay taxes and social security contributions or otherwise if the managing director intentionally or negligently violates any of his/her duties as such.

## Termination

As the managing director is, in most cases, considered an employee of the company, the managing director is subject to the rules on dismissal under the Norwegian Working Environment Act. Unless otherwise stated in an agreement with the managing director, he/she is protected against unfair dismissal and is subject to a notice period, right to remain in office, etc.

However, the position of the managing director differs significantly from that of subordinate employees, as the managing director must ensure that the company's goals are met. Therefore, the protection of managing directors against unfair dismissal is slightly weaker than that of subordinate employees. If a managing director's performance is unsatisfactory, or if, for example, he or she has significant problems working with the board or other employees, Norwegian case law has established that dismissal may be objectively justified with little evidence.

According to the Norwegian Working Environment Act, the board of directors may enter into an agreement with the managing director stating that the rules on protection against unfair dismissal, etc. do not apply to the managing director, having previously agreed to waive such rights in return for compensation upon termination of employment. In such a case, the board of directors may require the managing director to resign immediately in exchange for the agreed compensation. Usually, such an exemption from the protection against dismissal is agreed in the employment contract for a managing director.

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# POLAND

## Status

In Poland, the managing director of a limited liability company exercises the powers of the board of directors. Therefore, he/she is entitled, but also required, to manage the company's affairs and represent it. Where the board of directors consists of more than one person, and in the absence of contractual provisions, the joint action of two members of the board of directors (joint representation) or one member of the board of directors together with an authorized representative (mixed representation) is required to make a binding declaration on behalf of the company. Of course, in the case of a multi-member board of directors, it is also possible that the articles of association allow each board member to represent the company independently. In matters pertaining to the management of the company's affairs, the articles of association and the resolutions of the shareholders adopted on the basis of the company's articles constitute the authority of the board member.

In Poland only individuals with full legal capacity may serve as managing directors of a limited liability company. Corporations and other legal entities may not be appointed as managing directors. In addition, individuals convicted of certain offenses by a final court resolution and individuals disqualified by a court order from holding a certain position or exercising a certain profession for a certain period of time may not be appointed as managing directors. On the other hand, foreigners may be appointed as managing directors, but they must comply with certain formalities related to the legalization of their residence and the taking up of employment.

The appointment of a person to the position of a managing director does not establish an employment relationship under Polish labor law. A managing director may exercise his/her functions under an appointment, an employment contract or a civil law contract. The managing director is entitled to represent the company in and out of court. In addition, any managing director may, without prior resolution of the board of directors, perform any actions that do not exceed the ordinary course of the company's activities. If one of the other directors objects or if the matter goes beyond the company's ordinary activities, a prior resolution of the board of directors is required. Managing directors are also liable for their actions. Managing directors of a limited liability company may not engage in competing interests or participate in a competing company without the consent of the company. Usually, managing directors are appointed by a resolution of the shareholders, who may appoint a person from among themselves or a third party. Managing directors may also be removed from his/hers position by the shareholders at any time, which is equivalent to the termination of the managing director's mandate.

## Employment

Under Polish law, the managing director of a limited liability company may perform his/her functions on the basis of an appointment, an employment or under a civil law contract.

In case of appointment, the relationship of the managing director and the company shall be established solely on the basis of a resolution of the shareholders which specifies the amount of the remuneration for the period(s) of the managing director's term of office. Appointment is also the most cost-effective form of engaging a managing director. It is important to note that there is no obligation to establish an employment relationship with a managing director or to pay him/her a salary for his/her management activities.

An employment contract may be included in the appointment resolution to serve as a basis for remuneration. If an employment contract is entered into, the managing director should be treated the same as any other employee of the company in terms of taxation and other benefits. This means, in particular, that the managing director would be entitled to remuneration, annual leave and other benefits as defined by labor law under the same conditions as other employees. In addition, the employment contract should specify the scope of the employee's work and his/her daily and weekly working hours.

Unlike other employees, a managing director is not entitled to have his/her weekly working time, including overtime, limited to an average of 48 hours nor is the managing director entitled to at least 11 hours of uninterrupted rest between working days, nor is he/she entitled to remuneration and overtime pay.

To ensure that such contracts are not challenged, it is important to remember that the managing director's duties under the employment contract must be clearly separated from his or her duties as a board member. These duties should not overlap. In addition, the position must actually exist within the employer's structure and the impact of the director's work under an employment contract must be verifiable.

A managing director may also be employed under a civil law contract subject to the statutory provisions on commissions. The rights and obligations of the parties to the mandate agreement must be adequately and comprehensively specified.

## Tax & Social Security

Managing directors employed under an employment or management contract are subject to full personal income tax and full social security contributions (including health insurance), which are calculated, withheld and paid by the company. If a managing director is remunerated solely on the basis of a shareholders' resolution, he/she is subject to standard tax, but only health insurance is subject to social contributions.

Managing directors who are not tax residents in Poland are subject to a flat tax rate of 20%. Social insurance may vary depending on the individual situation of the managing director.

## Liability

Pursuant to the Polish Commercial Companies Code, managing directors are liable to the company for damages caused any acts or omissions contrary to the law or the company's articles of association, unless they are not at fault. Therefore, the managing director should act with the diligence required according to the professional nature of his/her activity. However, if the managing director acts loyally towards the company, within the limits of legitimate business risks, including on the basis of information, evaluations and opinions that should have been taken into account in a careful assessment under the given circumstances, and takes decisions that appeared justified in the light of the indications and recommendations available at the time of the decision, his/her actions will not be considered a breach of his/he duty of care.

In addition, the managing director is personally and subsidiarily liable to the company for its obligations in the event that their enforcement proves ineffective. Such responsibility may be discharged if the managing director is able to prove that an insolvency petition was timely filed, or that a decision on the opening of restructuring proceedings or a decision on the approval of an arrangement in insolvency proceedings was simultaneously adopted, or that the failure to file an insolvency petition was not the managing director's fault, or that no damage was caused to creditors despite the failure to file an insolvency petition and to adopt a decision on the opening of restructuring proceedings or a decision on the approval of an insolvency arrangement.

A managing director may also be liable under criminal law.

The liability of a managing director may be limited by implementing appropriate provisions in his/her contract with the company. In practice, the managing director's liability is often contractually limited to a certain amount for damages. Alternatively, the management director may be exempted from liability for entering into certain types of contracts. Contractual provisions excluding or limiting liability for intentional acts or omissions, however, are not permitted.

To protect the assets of the managing director in the event of claims by third parties or individuals, it is common to take out D&O insurance. This is not mandatory, but it provides comprehensive protection for the managing director in the event of a breach of duty and is therefore very common.

## Termination

A managing director may be removed at any time by a resolution of the shareholders, unless the articles of association provide otherwise. However, the removal of a managing director needs to be differentiated for the termination of his/her employment contract. The termination of the managing director's employment requires additional formalities, which result from the employment contract and the Polish Labor Act.

Care must be taken when terminating the employment of a managing director. The employer's notice of termination of an employment contract for an indefinite period of time must state the reason for termination. Note that the termination of a

managing director's employment contract is also subject to a number of exceptions. For example, the company cannot terminate such a contract when the managing director is on leave or during any other similar situations. The employment contract of a managing director may not be terminated where she is pregnant or on maternity leave. In addition, a managing director may be entitled to trade union protection, in which case the appropriate procedure must be followed. If a managing director subject to an employment contract is dismissed, employment law applies as it relates to notice pay and paid annual leave, among others.

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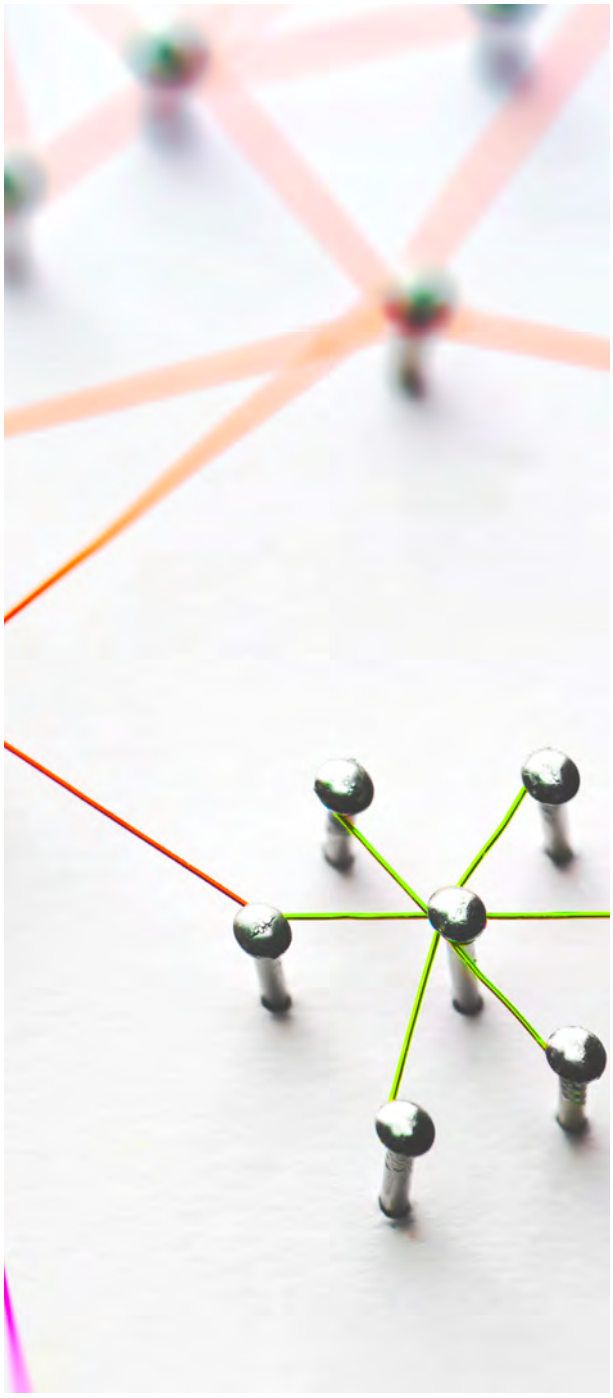

# PORTUGAL

## Status

Portuguese law offers a wide variety of legal forms for establishing, organizing and developing a business activity.

The two most commonly used legal forms to pursue commercial activities are public limited companies ("*SA*") and private limited companies ("*LDA*"). Both legal forms are commercial in nature.

In joint stock companies, board members are called administrators. In private limited companies, the company's management is performed by a manager or a board of managers. In both companies they may also be shareholders. Any individual or corporate body may be appointed as an administrator or manager.

In general, there is complete freedom to appoint any person to serve in a corporate body, the only requirement being that they must have full legal capacity. The law does not impose any nationality requirements on directors. Foreigners need only ensure that they have a Portuguese tax number.

Under Portuguese law, limited liability companies may be managed and represented by one or more directors provided that the share capital does not exceed €200,000. Managing directors must be individuals of full legal capacity and may be appointed from among persons who are not related to the company.

In any of the foregoing cases, managers and directors have the authority to represent and manage the company. All managers and directors are bound by the duties of good management, fidelity, loyalty and diligence.

## Employment

In limited liability companies managers may be employed under a contract of employment. Usually, however, they work under a management contract.

In joint-stock companies, administrators cannot work as employees and must perform their functions under a mandate or management contract. If the management director has an existing employment contract with the company at the moment of his/her appointment, the employment contract is suspended during the mandate.

The company's board of directors or the articles of association determine the term of the managing director's office and the terms of his/her remuneration.

If a foreign employee or manager is employed, the necessary documentation must be submitted to comply with the rules applicable to the permanent entry, departure and deportation of foreigners to and from Portuguese territory.

A managerial position may be performed under a service commission agreement, which must be executed in writing.

Either party may terminate the managing director's labor relationship by giving at least 30 or 60 days' written notice, provided that the relationship has continued for at least two years.

## Tax & Social Security

Managers and administrators are required to register with the local Social Security and pay the same contributions as in employment contracts, currently 23.75% for the company and 11% for the manager.

Expatriate managers who can prove that they are paying contributions to another compulsory social security system are not required to contribute to the Portuguese system.

Instead, they are covered by the general social security system as employees, which means that they benefit from the same social security coverage and are entitled to protection in the event of unemployment.

## Liability

Managing directors are jointly and severally liable to the company, the shareholders and third parties for damages caused by actions in breach of their legal or contractual duties.

The basic characteristics of this type of liability are as follows:

1. In the case of liability to the company, the director's fault is presumed by law. Therefore, the directors have the burden of proving that they acted without fault. In the case of liability to shareholders and third parties, it is they who have the burden of proving the director's fault;
2. A director is not liable for damages caused by a board resolution on which he either did not vote or voted against. This rule creates doubts as to its scope, in particular whether liability is excluded if the director is present but simply refuses to vote. In practice, it is always advisable for a director who is present at a meeting to vote against a resolution to prevent liability. If the director voted against the resolution, he or she has five days from the date the resolution was passed to register his or her dissent. This can be done in the relevant minute book, in a written document submitted to the company's supervisory body (if any) or in the presence of a notary public;
3. A director will be liable if he could have exercised any of the veto rights provided by law. In our opinion, this would cover situations such as where a director becomes aware of another director's unlawful conduct and does nothing to prevent it;
4. Managing directors are also not responsible for any action taken to implement a shareholders' resolution, even if it is voidable;
5. Favorable opinions or consents do not exempt directors from liability. In our opinion, this rule is intended to cover those situations in which a company has a supervisory body that has consented to or issued a favorable opinion on the conduct of the director;

6. The joint and several liability of the directors means that the company, the shareholders or a third party may choose to recover the total damage from any director. However, such director is entitled to be indemnified by the other directors in proportion to their contribution to the damage. The law assumes that the contribution to the damage is equal for all directors.

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## Termination

Managing directors may be removed at any time by a resolution of the shareholders. Such removal may be based on just cause. A serious breach of the duties of the manager and/or director and his or her inability to carry out his or her duties properly constitute just cause for removal.

Managing directors may also be removed without any just cause, in which case the company may be liable to pay damages to the director for any losses resulting from the removal. The amount of compensation may not exceed the total remuneration the removed director would have received had he or she remained in office until the end of his or her term.

If the director was a party to an employment contract prior to the mandate, the termination of the corporate mandate does not result in the termination of the employment contract. To terminate a director's employment contract, the company must show good cause or a very objective reason, such as the elimination of the director's position or a redundancy.

# ROMANIA

## Status

The Romanian equivalent of a limited liability company is a societate *cu răspundere limitată* (S.R.L.) and the Romanian counterpart of a joint stock company is a societate pe acțiuni (S.A.). Of these, the limited liability company is the most common type of company in Romania.

The Romanian translation of "*managing director*" may change its original meaning in English and may refer to: (i) the director ("administrator" in Romanian), who is directly appointed by the general meeting of shareholders and has the specific duties set out in the articles of association (e.g. to implement the decisions of the general meeting of shareholders, to determine the company's management policy, etc.); or (ii) the managing director or general manager ("director general" in Romanian), who performs more executive functions, e.g. by implementing the decisions of the directors. The managing director has extensive powers to act on behalf of the company in all circumstances within the limits of the company's purpose.

Romanian company law provides that managing directors appointed in joint-stock companies may not have an employment contract with the company while holding such position. If the managing director is appointed from among the employees, their employment contract is automatically suspended during their term of office. Therefore, the managing directors of a joint-stock company may only enter into a management contract during their term of office.

Limited liability companies, on the other hand, do not have such a limitation. As a result, the managing directors may also enter into employment contracts to perform such a function and are thus ordinary employees whose executive functions are defined in their job descriptions. In the case of limited liability companies, it is possible for both a management contract and an employment contract to run in parallel.

The managing director may be an individual or a legal entity (although the latter is uncommon) and may be either a member of the board of directors or a third party. Romanian law does not impose any restrictions on the nationality or residence of the managing director. However, special rules apply to visa requirements and relations with immigration authorities if the managing director is a foreign national.

The managing director must not be subject to a prohibition on exercising this function, for example, because he has been prohibited from holding such position by a court decision for criminal acts related to corruption, embezzlement, forgery, tax evasion, and others.

# Employment

Managing directors usually enter into management agreements, which are regulated by Romanian legislation (as mandate contracts) but fall outside the scope of the Romanian Labor Code. In this case, the restrictive regulations of the Labor Code do not apply, which results in greater flexibility for the company. For example, the company is under no obligation to remunerate the managing director for unused annual leave upon termination; nor do the cumbersome dismissal procedures apply. Also, managing directors are not entitled to overtime pay, are not subject to collective bargaining agreements, and non-competition covenants (if any) are not subject to mandatory remuneration, among other things.

Management contracts do not have a predetermined content as employment contracts, but in practice, they contain certain provisions typically found in employment contracts (e.g., monthly salary, annual leave). In the case of management contracts there is no obligation to offer remuneration, as the Civil Code also allows for unremunerated mandates, which nevertheless are rarely used in practice. Usually, non-remunerated mandates exist in the case of limited liability companies, where the managing director is also employed under an employment contract.

Alternatively, in the case of limited liability companies, managing directors may enter into an employment contract for the performance of this function, in which case they are ordinary employees subject to Romanian labor laws in all respects. For example, they must be medically examined, their employment contract must contain the minimum statutory provisions, they may not exceed the maximum working hours per day, week and month, they must be granted a minimum annual leave of 20 working days, a minimum gross salary, additional remuneration for overtime, for work performed during annual holidays, etc.). Provision for a salary is a must, this being at least the amount of the national minimum gross salary, as the case with regular employees.

The employer's discretion to impose certain restrictions on the employee is rather limited in the case of employment contracts. However, given the executive position of managing directors, certain provisions may be of interest to employers, such as (i) setting a maximum probationary period of 120 calendar days, which is only possible for management positions. The maximum probationary period for execution (i.e., non-management) positions is 90 calendar days. Significantly, an employment contract can be terminated by either party during the probationary period simply by giving notice and without good cause; (ii) setting a maximum notice period of 45 working days in case of resignation (i.e., the maximum notice period for execution (i.e., non-management) roles is 20 working days); or (iii) inserting special clauses such as non-solicitation, confidentiality, post-contractual non-competition, the latter being subject to compensation.

Whether the managing director is engaged under a contract of employment or a management contract, it is possible to provide for bonus schemes, usually performance-related.

## Tax & Social Security

Managing directors are liable to payroll tax and social security contributions whether they perform their activity under an employment contract or under a management. The tax rules are the same. In theory, tax and most social contributions are borne by the employee, but the company is ultimately responsible for their calculation and payment.

No special tax rules apply to managing directors, regardless of their nationality. Social security regulations apply to all employees, regardless of their position in the company. Social security contributions include mandatory contributions to the Romanian health system.

## Liability

In consideration of the powers granted by law and the articles of incorporation, managing directors are personally liable to the shareholders and third parties. This liability arises from acts or omissions attributable to them, such as violations of legal or regulatory provisions applicable to the relevant company, violations of the company's articles of association or errors (faults) in the management of the company (such as negligence, carelessness, or fraud).

In the case of managing directors acting under management contracts, the situation is similar to that of any other civil commercial relationship. The company would need to take legal action to cover its potential damages, and the management contract can be terminated unilaterally by the company.

In the case of employees, labor laws determine disciplinary and financial liability and establish certain procedures and limitations to protect employees from potential abuse of power by employers.

For this reason, the company must be able to demonstrate in detail the errors committed by the manager and their subsequent implications for the managing director's liability to arise, whether it be disciplinary or financial. While the law does not cap the employee's total liability, it does set a maximum amount that the employee may agree to pay to his/her employer for the damages caused. In claims for damages in excess of this amount, or if the employee refuses to compensate the employer, the company must seek redress in a court of law.

Therefore, in the case of an employee-managing director, the company has the same remedies as in the case of regular employees, i.e., remedies related to professional performance (including dismissal), disciplinary action (which may result in dismissal) or financial liability either by agreement with the employee up to the statutory limit or as determined by a court.

The employment contract may limit the managing director's liability. However, companies may not include a penalty clause, which is expressly prohibited by Romanian labor laws. Penalty clauses consist of provisions under which a company sets a certain amount of damages in advance as compensation for potential breaches of an obligation, without proof of actual damages. Significantly, penalty clauses may be used in management contracts.

Taking out professional insurance for the activities of the managing director is recommended, but not mandatory.

## Termination

Romanian law does not stipulate any protection in the case of management contracts. Therefore, managing directors and their company usually agree on a certain compensation equivalent to x times his/her monthly salary) in the case of unilateral termination by the company. Managing contracts may also provide for a longer notice period, but usually companies are not willing to allow key personnel to continue to have access to the company's information and systems when their departure is imminent. Unlike an employment contract, a management contract can be terminated without cause with reasonable notice.

In the situations covered by the Romanian Labor Code, there is no prohibition against dismissal based solely on the employee's position, including that of a managing director. The Labor Code provides such protection for employees in certain vulnerable situations (e.g., medical incapacity, maternity leave, etc.) that are not related to the employee's position.

In the case of dismissal of employees, the grounds for dismissal must be clearly stated and must include the minimum requirements set out by law, depending on the reason for dismissal. Termination of an employment contract by dismissal is available only in the cases strictly regulated by law (e.g., disciplinary reasons, poor professional performance, redundancy) and only after the required preliminary formalities have been completed. Failure to comply with the minimum content of the dismissal notice or failure to comply with the procedures established by law will result in the notice being declared null and void if challenged by the employee in court.

If the court rules in favor of the employee, it shall order the reimbursement of wage-related rights calculated from the date of the unlawful/unjustified dismissal decision and, at the employee's request, reinstatement to his/her former position. Finally, Romanian law does not provide for mandatory severance pay, but the parties may agree otherwise.

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# SERBIA

## Status

In Serbia the managing director of a limited liability company (D.O.O in Serbian) represents the company in and out of court and manages the business either as the sole director or jointly with other directors. Managing directors conduct the company's business in accordance with the law, the company's articles of association and the provisions of their employment contract or, failing this, an agreement on the rights, duties and responsibilities of the managing director.

The company may have one or more directors who are the legal representatives of the company. The legal representative of a company can be an individual or a company registered in the Republic of Serbia. A company managing director acts through its legal representative, who in turn is an individual who may be authorized for this purpose by a special written power of attorney. The company's legal representatives are registered with the Serbia Business Register Agency (SBRA). The number of directors is determined by the deed of incorporation or by resolution of the general meeting. Otherwise, the company has one director. The director is appointed and removed from office by the general meeting, i.e., the supervisory board, if the company's management consists of two bodies. The director may be appointed by the articles of association at the time of the company's formation. Unless otherwise specified in the appointment resolution, the director's term of office starts on the day the appointment resolution is adopted. Unless the articles of association or the resolution of the general meeting of the company provide otherwise, the term of office of a director is unlimited.

Both a shareholder and any individual third party are eligible for this position, including foreigners. If a foreigner is appointed as managing director and is employed in Serbia, he/she must comply with the provisions of the Law on Foreigners and the Law on Employment of Foreigners.

The appointment of a managing director as an act of corporate law establishing the position of the managing director as a corporate body must be distinguished from his/her employment contract and from any other arrangement setting out his/her rights, duties and responsibilities of the managing director in the case of a non-employment engagement. A managing director may be engaged (i) under an employment contract or (ii) a non-employment arrangement. The decision to appoint an individual to the position of managing director is not enough. The managing director's status in the company must be determined in accordance with the provisions of the

Serbian Labor Law (i.e., by entering into a contract of employment) or an arrangement setting out the managing director's rights and obligations.

## Employment

If the managing director is employed in a company, the employment contract must be entered into between him/her and the company. Upon execution of the employment contract, the managing director must be registered as an employee with the social security authorities. Remuneration is a required component of the employment contract, and Serbian labor regulations specify a minimum amount of remuneration, currently set at approximately 361 EUR net (489 EUR gross) per month. In addition to the minimum salary, the managing director is entitled to food allowance, holiday allowance and salary increase for previous years of service with the specific employer and affiliated companies. The employee managing director is also entitled to any other rights and is bound by the rest of obligations laid down in the Labor Code for ordinary employees. A managing director may enter into an employment relationship for an indefinite period of time or for a fixed term. In the latter case the employment relationship may be set to expire upon the termination of the director's term of office. If the employment relationship is established for an indefinite period of time, dismissal does not automatically result in termination of the employment relationship, which is maintained by transferring the director to another suitable position, if any. The notice period in case of termination of the managing director's employment contract may not exceed 30 days. The managing director's employment contract includes a non-competition clause, effective during the term of his/her employment or even after termination (if agreed between the parties) for 2 years from the date of termination, in which case the company is required to pay compensation.

If a non-Serbian national is to be engaged as a managing director and employed in the company, the following permits must be obtained: (i) a residence permit issued by the Ministry of the Internal Affairs and (ii) a work permit issued by the labor authorities.

A managing director of a Serbian company can also be engaged under an arrangement (not subject to labor laws) setting out the rights and obligations of the managing director and the company, i.e., a management agreement. In this scenario the managing director's remuneration is subject to income tax as other income at the rate of 20% and also to social security contributions. In the case of the management agreement, there is no minimum statutory pay; however, the Ministry of Labor and the Ministry of Finance have taken the view that managing directors do not work for no remuneration and that such a contractual provision would be contrary to the laws and the Constitution of the Republic of Serbia. Therefore, an appropriate remuneration must be contractually agreed. In practice, it is not uncommon for management agreements to provide that the managing director will not receive any remuneration on the basis of the agreement, if he/she is also an employee of an affiliated company and in receipt of a salary which also covers his/her work as a

managing director in this Serbian company. The parties to a management agreement are free to include any other rights and obligations, as this arrangement does not constitute an employment contract, and the Serbian labor law provisions on the rights and duties of employees do not apply. Management agreements are entered into for a term equal to the term of office. The law does not require any notice period, which should therefore be contemplated in the management agreement. Management agreements may include a non-competition clause.

If a non-Serbian national is to be engaged as a managing director and is to be employed outside the employment relationship, the following permits must be obtained: (i) a residence permit issued by the Ministry of Internal Affairs and (ii) a work permit issued by the labor authorities.

## Tax & Social Security

The managing director's salary under an employment contract is subject to income tax and social security contributions at a rate of approximately 65% of the net salary amount. Where a management contract is in place, the managing director's remuneration is subject to income tax as other income at the rate of 20% and also to social security contributions

## Liability

The managing director must exercise the care of a prudent businessman in the affairs of the company. If the management director breaches this obligation intentionally or negligently, he or she is liable to the company to the full extent of his or her assets for any damages caused. In addition, the managing director is personally liable in the areas of taxation, accounting and social security. The management director is personally liable for culpable non-payment of taxes and social security contributions and may face criminal penalties. In the event of a breach of bookkeeping and accounting obligations, both the company and the creditors may claim damages from the managing director, whose exposure in the event of the company's insolvency is significant.

Because of their broad liability, managing directors have a strong interest in limiting their liability. As far as the company's claims are concerned, the managing director's liability can be limited to gross negligence and willful misconduct in the managing director's management agreement, while the same limitations apply directly under the law if the managing director and the company have entered into an employment agreement. However, the limitation of liability does not apply to third parties.

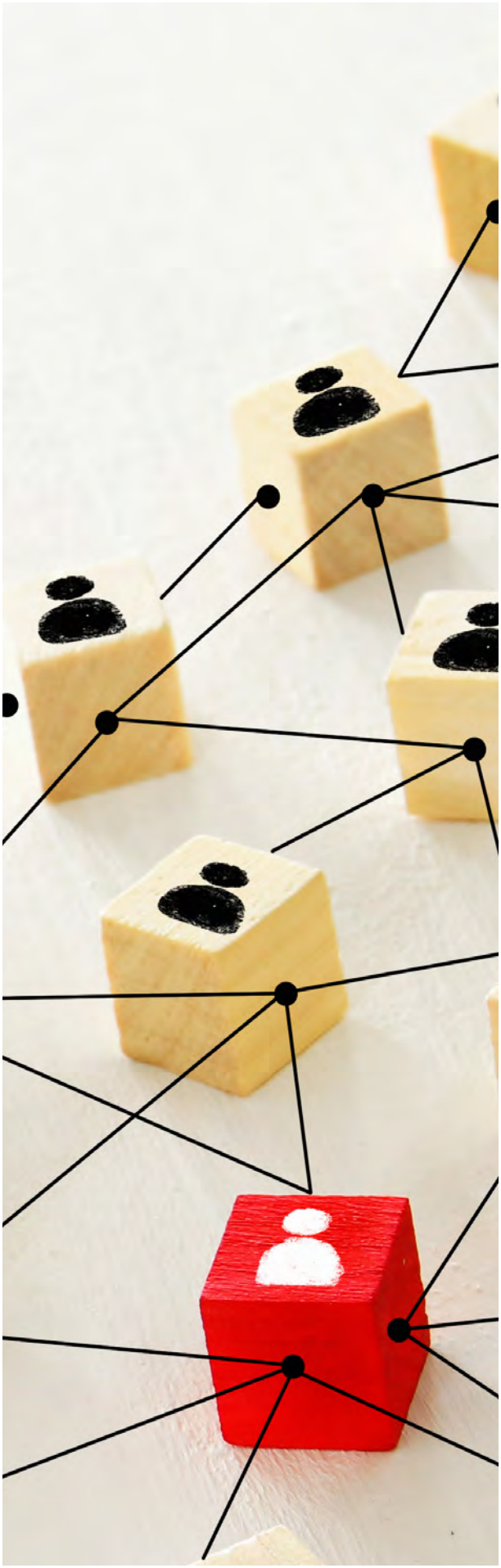
## Termination

The shareholders' meeting may remove the managing director from office at any time without cause. However, removal does not result in the termination of the managing director's engagement. This is only the case if the managing director and the company have entered into an employment agreement for a fixed term equal to his/her term of office, and in the case of a management agreement, which should contain a provision whereby the removal as managing director

simultaneously constitutes the termination of his/her employment. Where the employment relationship is established for an indefinite period of time, the expiry of the managing director's term of office does not automatically terminate his/her employment, which continues on the basis of an offer to relocate the managing director to another suitable position, if available. Otherwise, the managing director may be dismissed as redundant with severance pay.

The managing director's management contract, i.e., employment contract for a fixed term, requires a separate termination notice in any case. The general meeting is also responsible for serving notice of termination. In the shareholders' resolution on the removal from office, one of the shareholders is usually authorized to issue the notice of termination and hand it to the managing director together with the removal resolution.

Managing directors of a limited liability company who were employed for an indefinite period are protected against unlawful dismissal.



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# SLOVAKIA

## Status

In Slovakia, the managing director of a limited liability company (*spoločnosť s ručením obmedzeným* "*s.r.o.*" or "*company*") represents the company and manages its business either as the sole managing director or jointly with other managing directors. Any Slovak or foreign individual of full age (18 years) with no criminal record may be appointed as a managing director, provided that he/she has the capacity to perform legal transactions, has not been disqualified from acting as a member of a corporate body or has not been entered as a debtor in the Register of Execution Orders pursuant to the Slovak Commercial Code.

Foreigners from non-EU countries who are to be appointed as managing directors must have a residence permit (temporary or permanent) in the Slovak Republic. Legal entities may not be appointed as managing directors. The managing director cannot be a member of the supervisory board of the s.r.o. The managing director is responsible for conducting the company's business in accordance with the law, the s.r.o.'s articles of association and the provisions of his/her contract, if any. The shareholder(s) must appoint at least one managing director, and it is possible for the managing director to be the same person as the shareholder. The s.r.o.'s articles of association may require additional approval of the shareholder(s) for certain acts of the managing director, but any restrictions apply only to the s.r.o. and the managing director, not to third parties.

The appointment of a managing director is an act of company law, which establishes the position of the managing director as a corporate body. In most cases the appointment is made together with the execution of a contract related to the managing director's function, if concluded. As a general rule, the relationship between the managing director and the s.r.o. is subject to a mandate contract as regulated in the Slovak Commercial Code. In this case, the mandate contract may not be in writing. However, the s.r.o. may enter into a special type of contract with the managing director (the "managing director's contract"). The managing director's contract may cover various matters, such as leave, severance pay, confidentiality, remuneration, obligations, limits on the legal powers of representation in internal relations, post-contractual non-competition clause, among others. The managing director's contract must be distinguished from an employment contract. This is because, under Slovak law, the relationship between a s.r.o. and the managing director is not an employment but a commercial relationship. As a result, the laws on the protection of employees do not apply.

## Employment

The relationship between the managing director and the s.r.o. is subject to the Slovak Commercial Code (this relationship is therefore not an employment relationship governed by the Labor Code), albeit there are no limitations for the managing director to be also an employee of the s.r.o. If the managing director has entered into an employment contract as an employee performing the same or similar duties to his/her position as managing director (as regulated by commercial law), such employment contract will be void.

Employment relationships between a s.r.o. as an employer and a managing director as an employee are governed by the Labor Code. This means that a managing director has the same rights as any other employee, including the right to remuneration, paid overtime, paid night work, the right to be protected by health and safety at work, to information on work hazards, etc.

This type of relationship is based on a written employment contract or other type of agreement on work performed outside the employment relationship, with the Slovak Labor Code containing the mandatory requirements for such a contract.

## Tax & Social Security

For tax and social security purposes, a distinction should be made between the situation where a managing director (i) does not receive any remuneration based on a managing director's contract, (ii) receives regular or irregular remuneration based on a managing director's contract, (iii) is in receipt of a salary based on an employment agreement, (iv) receives a combination of the above.

Probably the most common situation in the Slovak Republic is where the managing director does not receive any regular or irregular remuneration based on his/her contract. In this case, no social security contributions are payable. In terms of health insurance contributions, the managing director pays a minimum monthly health insurance contribution.

If the managing director has entered into a managing director's contract with the s.r.o. and the amount of remuneration is determined therein, the managing director's contributions are as summarized below depending on if his/her remuneration is regular (e.g., monthly) or irregular (e.g., tied to performance or at irregular intervals).

Regular remuneration: contribution for health insurance amounts to 14% of the managing director's remuneration (of which 10% is paid by the company and 4% by the managing director); social insurance contribution is 33.55% (of which 24.15% is paid by the s.r.o. and 9.4% by the managing director).

Irregular remuneration: contribution for health insurance is 14% of the managing director's remuneration (of which 10% is paid by the company and 4% by the managing director); social insurance contribution is 28.75% (of which 21.75% is paid by the s.r.o. and 7% by the managing director).

Contributions, if the managing director (without remuneration as managing director) is also an employee of the company, are as follows: health insurance – 14% (of which 10% is paid by the company and

4% by the managing director) and social insurance – 34.6% (of which 25.2% is paid by the company and 9.4% by the managing director).

Contributions, if the managing director (with remuneration as a managing director) is also an employee of the company, are paid by him/her from his/her remuneration as a managing director and also from his/her salary as an employee.

## Liability

The managing director must exercise the care of a prudent businessman in the affairs of the company. If the managing director breaches this obligation intentionally or negligently, he or she is liable to the s.r.o. to the full extent of his or her assets for any damages caused. In addition, the managing director is personally liable in the areas of taxation, accounting and social security. The managing director is personally liable for culpable non-payment of taxes and social security contributions and may face criminal penalties. In the event of a breach of bookkeeping and accounting obligations, both the s.r.o. and the creditors may claim damages from the managing director. The managing director also faces a high risk of liability in the event of the s.r.o.'s insolvency. In addition to the criminal liability for failing to file for insolvency in a timely manner, the managing director may be personally liable to creditors if he or she continues to conduct business after the s.r.o. has become insolvent. Because of their extensive liability and their strong interest in limiting their liability, no agreement can be made between the company and the managing director that excludes or limits

his or her liability. The same applies to the company's articles of association, which cannot contain such a limitation. Any such agreement would be absolutely null and void under the Civil Code. Under current law, D&O insurance is not mandatory, and may be agreed upon by the parties.

The Labor Code sets out rules applicable to the liability of employees. This is divided into general employee liability for damages and specific types of employee liability (e.g., for loss of entrusted property, etc.). In addition, the amount of compensation is limited by the employee and depends on specific circumstances (e.g., employee's intent, alcohol, etc.).

## Termination

The shareholders' meeting may remove the managing director from the office at any time without cause. The removal of a managing director is an act of corporate law, which puts an end to his/her office and results in the termination of managing director´s contract.

Where the managing director is subject to an employment relationship, this must be terminated separately under the conditions and according to the procedure established by the Labor Code. An employment agreement may be terminated a) by agreement, b) by notice of termination, whereby the employer must rely on one of the grounds for termination expressly set out the Labor Code, whereas an employee may terminate an employment agreement for any reason or without giving any reason at all, c) immediately, d) during the probationary period, if any. An employment agreement executed for a fixed term terminates upon expiry of the agreed term. The Labor Code lists additional conditions for termination of employment.

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# SLOVENIA

## Status

The most common type of legal entity in the Republic of Slovenia is the limited liability company or d.o.o.

Any individual with the legal capacity to enter into binding contracts, including a shareholder of the d.o.o, may be appointed as a managing director. Corporations, however, may not serve as such.

Some exceptions also apply to the eligibility to be appointed as a managing director. For example, an individual who is already a member of another management or supervisory body of the same company cannot be appointed as a managing director. Also, an individual who has recently been convicted of certain criminal offenses (e.g., against the economy, labor relations and social security, etc.) or an individual who is subject to a provisional measure prohibiting him/her from practicing his/her profession cannot serve as a managing director.

Where a managing director is engaged for an indefinite period of time before entering into a fixed-term employment agreement for the position of managing director, the rights, duties and obligations under the standard employment agreement could be suspended during the term of the managing director's employment. Upon termination of the managing director's corporate status, his/her standard employment agreement would be reinstated.

Managing directors are typically characterized by a dual legal status, i.e., corporate and contractual. Both are closely intertwined, particularly in the sense that the contractual status gives substance to and clarifies the corporate status.

Under Slovenian law, a managing director may enter into an employment relationship or a contractual relationship under civil law.

## Employment

If an employment agreement is entered into, the managing director is entitled to at least the minimum salary, but if a civil contract is entered into between the company and the managing director, remuneration is not mandatory. Managing directors often receive additional benefits such as a company car for private use, D&O insurance, supplementary pension insurance, frequent medical check-ups and a higher severance pay.

If a managing director enters into an employment agreement, the parties may agree on rights, duties and responsibilities that differ from those of standard contracts of employment in terms of fixed-term

employment, working hours, breaks and rest periods, remuneration, and termination. In particular, the parties often determine that the employment agreement is entered into for a fixed term which coincides with the term of the managing director's office, or otherwise terminates where the managing director's corporate status is also terminated. The employment agreement of a managing director usually provides that he/she may manage his/her working hours independently. The parties may agree that the managing director is not entitled to overtime pay.

The corporate and contractual status of a managing director are created by two distinct acts, namely: an appointment and a contract. Corporate law sets out rules applicable to the position of managing director in terms of performance as a corporate body (corporate status), whilst the contract provides for the protection of the managing director's labor law/civil status. The powers and responsibilities of the managing director as a body of the company are typically set out in the articles of association, while his/her individual position, rights and obligations are determined contractually. Thus, the contract does not alter the corporate status of the managing director, which is determined by law.

A non-competition clause may be included in the managing director's employment agreement in the same way as for ordinary employees.

## Tax & Social Security

The company is liable to pay income tax and social security contributions on the managing director's remuneration. If the managing director is in an employment relationship, he/she is treated as an employee for income tax and obligatory social insurance purposes. The employer is required to pay social security contributions for pension and disability insurance, health insurance, parental care insurance and unemployment insurance.

The same obligation to pay income tax and social security contributions applies to a managing director who is also a shareholder of the same company, regardless of whether he/she is serving under an employment or a civil law contract.

If a managing director is employed elsewhere and starts to work separately as a managing director for the company under a civil law contract and receives remuneration for his/her work as a managing director, contributions to pensions and disability insurance, health insurance and income tax must be calculated and paid.

In case of a foreign citizen, tax and social contributions payments may vary depending on their nationality (e.g., EU and non-EU nationals), and should therefore be examined on a case-by-case basis.

## Liability

Companies assume rights and obligations and are therefore independently liable for the obligations assumed. However, managing directors are jointly and severally liable to the company for damages resulting from a breach of their duties, unless they can

prove that they performed their duties in good faith and diligently. The managing director may also be personally liable to third parties, e.g., to the company's creditors if the company is unable to pay.

In performing their duties on behalf of the company, managing directors must act with the care of a diligent and honest businessman.

The managing director of a company conducts the company's business and represents it under his/her own liability. In addition to liability for damages, a managing director may also be held criminally liable for certain offenses, including abuse of a position of trust in a business activity, business fraud, and tax evasion, among others.

The managing director is not required to compensate the company for damages if his/her act was based on a lawful resolution of the general meeting. The liability of the members of the board of directors for damages cannot be excluded even if the supervisory board or the board of directors approved the act. The company may waive or set off claims for damages three years after the claims arose.

If the company takes out D&O insurance for the managing director, which is not mandatory, the insurance deductible must be at least 10% of the damage, but not greater than 1.5 times the managing director's fixed annual remuneration.

The institution of disciplinary action against managing directors is not

common in Slovenia because, provided there is a relationship of trust between the supervisory board, the general meeting of the company and the managing director, minor violations by managing directors are dealt with through confidential discussions without the use of formal disciplinary proceedings. On the other hand, in the event of a material breach of the managing director's duties, the company may remove him/her from office under Slovenian law.

## Termination

The general meeting may remove the managing director at any time, whether the managing director's contract is for a fixed or indefinite period. However, the articles of association may provide that the managing director may only be dismissed for certain specified reasons.

In the case of a managing director's term of office, the parties to the employment agreement have different options available to them to deal with the termination of the employment agreement. Thus, it may be agreed that the expiry of the term of office also terminates the employment agreement, or that the expiry of the term of office is a good ground for terminating the employment agreement.

In practice, upon termination of the employment agreement, the executive director is entitled to a severance pay and notice period. The employment agreement may also provide for the managing director's right to an alternative suitable job in case of dismissal or termination of the term of office. These rights are usually related to the reason for the dismissal and are available to the managing director only if the dismissal is not for cause.

If the employment agreement with the managing director makes no provision for the termination of the employment agreement, the statutory provisions as they relate to termination formalities, notice periods, severance pay, compulsory redundancy notices, protection for certain employees, etc., apply to the managing director.

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# SPAIN

## Status

In Spain, most companies take the form of either a stock company (*sociedad anónima*, "*S.A.*") or a limited liability company (*sociedad de responsabilidad limitada*, hereinafter "*S.L.*"). The choice of one or the other depends on the specific case, but the S.L. is the most common choice not only by local owners but also by foreign investors, and it represents the majority of the Spanish market.

This is due, among other things, to the fact that with the latest reform of the Spanish Companies Act (Ley de Sociedades de Capital in Spanish), the statutory minimum share capital required for the incorporation of an S.L. has been reduced to €1, with a view to simplifying incorporation formalities and limiting costs.

The management of an S.L. is carried out by a sole director or by two or more directors acting jointly or jointly and severally, or by a board of directors consisting of a minimum of three and a maximum of twelve members. The appointment of a managing director is the responsibility of the board of directors.

In Spain, both corporations and individuals may be appointed as directors. There is no legal requirement to have any particular qualification or to be a shareholder unless the articles of association provide otherwise. Foreigners may also be appointed.

Although this is not very common, the articles of association may impose certain eligibility conditions in addition to the requirements of capacity and absence of legal prohibitions and incompatibilities). Such additional conditions may include: the fact that the candidate must work in the company and/or be a shareholder or simply personal conditions related to age or Spanish residency.

## Employment

According to the "link theory" as developed by Spanish case law, unless otherwise agreed by the parties the functions exercised as a director of a company comprise those performed as an employee (especially if these are managerial).

Since 2018, the Supreme Court has limited the scope of compatibility of labor and commercial relations. In order for them to coexist, there must be employment functions that are completely unrelated to and independent of the corporate position of managing director, which means developing the position on an outside employment and dependency basis.

Thus, if the managing director was previously an employee of the company with managerial functions, his/her becoming a member of the board of directors could determine the termination of his/her previous employment relationship, which would be absorbed into his/her commercial relationship, unless there is an agreement declaring its suspension.

Notwithstanding the above, it should be noted that this position may soon change as a result of the enforcement in Spain of the judgment of the Court of Justice of the European Union of May 5, 2022. According to this resolution the fact that an individual, on the basis of a valid contract of employment, performs simultaneously the functions of CEO and of a member of a statutory body, does not, in itself, give rise to the presumption or the exclusion of the existence of an employment relationship.

In terms of the remuneration of managing directors, Spanish law establishes a presumption that the position is not remunerated in S.L. companies unless otherwise provided in the articles of association, which must specify the remuneration conditions. In listed companies, the position of director is presumed to be remunerated, unless otherwise provided in the articles of association.

## Tax & Social Security

In Spain, managing directors who exercise a direct or indirect effective control over a company must pay social security contributions as freelancers. Unless proven otherwise, a person is presumed to have effective control of a company if at least half of the capital for which he/she provides

services is distributed among the company's partners with whom he/she lives and to whom he/she is related by marriage or by blood, affinity or adoption up to the second degree. Effective control is also deemed to exist if his/her interest in the company's capital is equal to or greater than one third, or if such interest is equal to or greater than one quarter if he/she has been assigned managerial and executive functions.

Even if the above circumstances do not occur, the administration can prove by other means that the managing director has effective control of the company.

Conversely, managing directors who do not exercise effective control over the company, but who provide paid services to it, must be included in a special company contribution account, separate from the rest of the company's employees, with the express exclusion of unemployment protection and the protection of the Wage Guarantee Fund (FOGASA in Spanish).

The Capital Companies Law provides that all remuneration received by managing directors must be clearly stated in the articles of association. The general shareholders' meeting must approve annually the maximum amount of compensation for all directors. Unless the General Shareholders' Meeting has already done so, the board of directors must approve the specific distribution of the remuneration among its members according to the functions performed by each of them.

In the case of a managing director or a director with executive functions, a contract must be entered into between the company and the director in question. This contract defines his/her rights and obligations, functions and duties, and his/her remuneration, which, as stated above, must be approved by the board of directors, with the relevant director abstaining from voting.

Failure to comply with the laws on managing directors' remuneration may result in the non-deductibility for tax purposes of the amount paid by way of remuneration.

## Liability

Managing directors are liable for any breach of their duties in the exercise of their office.

The responsibility of managing directors can be internal or external. Internally, managing directors are liable to the shareholders and to the company if they fail to fulfill their duties; externally, managing directors are liable to third parties whose interests have been directly harmed and to the company's creditors.

To hold managing directors liable, the company, the shareholders and third parties may bring liability actions. One of them is the corporate liability action, which is intended to protect the interests of the company and may be exercised by the company itself (with the prior approval of the general shareholders' meeting), by shareholders holding at least 5% of the company's share capital, or by the company's creditors.

However, the company's creditors are entitled to exercise such action only if it has not been exercised previously by the company and its shareholders and the company's assets are insufficient to pay their claims.

Another remedy is the individual liability action, which is considered a personal compensation action because it seeks to redress the individual interest of the shareholders or of any third party who has been directly affected by the directors' illegal act.

The directors' liability rules apply to general managers or to any person who, under whatever name and in the absence of a permanent delegation of powers by the board of directors to a managing director, has the power to represent the company at a high level, without prejudice to any action that the company may bring against him/her on the basis of his/her legal relationship with the company.

D&O insurance is not mandatory but is recommended to cover these situations.

## Termination

The managing director may be removed without compensation, except in those rare cases mentioned above where he/she is also bound to the company by a valid employment contract. However, according to the prevailing legal doctrine, compensation clauses must be considered valid if expressly provided in the articles of association or in the managing director's contract and do not restrict or prevent the removal of the managing director at the company's discretion.

Therefore, severance payments (sometimes similar to those for employees) are often negotiated to protect managing directors in the event of termination.

In addition to the expiry of his/her term of office, a managing director may be removed at any time and without cause by the general meeting if his/her removal is warranted to effectively protect the company's interests. Finally, the managing director may also be removed from his/her post as a result of death, the dissolution of the company, a court order or an administrative decision.

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# SWEDEN

## Status

The most common type of company in Sweden is the limited company (*Aktiebolag*). There is no requirement to appoint a managing director, but the board of directors may appoint one. The managing director is responsible for the day-to-day management of the company in accordance with the guidelines and instructions issued by the board of directors. In addition, the Managing Director may, without the approval of the board of directors, take measures which, in light of the scope and nature of the Company's business, are unusual or of major importance in those circumstances where a decision by the board of directors cannot be deferred without causing significant disruption to the Company's business. In such cases, the board of directors shall be informed of the actions taken as soon as possible. The managing director is also responsible for taking all necessary measures to ensure that the company's accounts are kept in accordance with the law and that the company's funds are managed properly.

A managing director must be over 18 years of age, must not have been declared bankrupt, have been disqualified from conducting business, or have a guardian appointed. A legal entity (e.g., a corporation) cannot serve as a managing director. The managing director may be a member of the board of directors. In a private limited company, the managing director may also be the chairman of the board of directors. The managing director must be resident in the European Economic Area. The Swedish Companies Registration Office may grant an exemption from the residency requirement on a case-by-case basis.

A public limited company (i.e., a company with a minimum share capital of SEK 500,000 whose shares are publicly offered on the stock exchange) must have a board of directors consisting of at least three directors and a managing director. The managing director may be a member of the board but may not serve as chairman.

It is important to note that the appointment of an individual as a managing director gives rise to liabilities under both company law and the contractual relationship between the managing director and the company if the appointment is subject to an employment contract.

## Employment

Although there is no requirement under Swedish law that an individual serving as a managing director must be subject to a written employment agreement, most companies use these to set out the terms and conditions of the appointment. The Employment contracts for managing directors who are classed as a employees may vary from company to company. Since the managing director is generally not covered by the employment protection rules that apply to employees in Sweden, agreements specify the rules that apply when the employee is terminated (i.e., provisions on notice, severance pay and non-competition clauses). Although Swedish legislation does not contain a minimum salary requirement, it is important to note that an individual performing managerial duties without remuneration and other conditions normally granted to managers may claim that he or she is entitled to employment protection. The employment contracts of managing directors often contain more generous provisions on annual leave and sick pay than those available to other categories of employees. Managing directors are usually covered by the company's pension plan. However, it is not uncommon for senior executives to have higher pension contributions and the ability to retire earlier than regular employees.

Managing directors are exempt from working time regulations and it is extremely rare for them to be compensated for working unsocial hours other than by a higher salary and/or longer annual leave.

## Tax & Social Security

All employers in Sweden pay statutory social security contributions on behalf of their employees, consisting of charges for pensions, health insurance and other social benefits. These contributions amount to 31.42 percent of the gross salary. There are no special rules for the company or the managing director with regard to social security contributions or income tax. The Swedish social security system provides financial security during the various stages of life. It includes benefits for families with children, people with a disability or illness and the elderly. The system is publicly funded through taxes and contributions.

## Liability

The general rule is that a managing director is not liable for the company's debts, but there are exceptions where a managing director may be personally liable. This is the case if the company fails to pay taxes and fees to the Swedish Tax Agency on time, or in the case of prohibited loans in which the managing director is involved, e.g., loans to shareholders, board members or relatives of the managing director. If the annual report and audit report are not submitted to the Swedish Companies Registration Office within 15 months of the end of the financial year, the managing director may be liable for the company's obligations.

A managing director is liable to the company, the shareholders or any other person for damages caused by his/her willful misconduct or negligence in the performance of his/her duties. The general meeting of the company shall decide whether to discharge the

managing director from liability. If discharge is granted, this means that the company normally may not make any claims for damages against the managing director.

As a result of Swedish legislation, which includes personal liability for a managing director, it is customary for the managing director to take out liability insurance that provides compensation in the event of liability. Such liability insurance is usually taken out by the company and is considered part of the managing director's remuneration package.

## Termination

Managing directors are expressly excluded from the employment protection provisions of the Swedish Employment Protection Act. Where an employer terminates the employment of a managing director, the termination need not be based on objective grounds (redundancy or circumstances attributable to the employee personally), which is otherwise a requirement. For this reason, it is important that termination issues be addressed in the individual employment contract. It is common for the employment contract of a managing director to be for an indefinite term with a notice period agreed by both parties, as well as rules on severance pay.

The board of directors is entitled to dismiss a managing director if it has lost confidence in him/her. In the event of termination by the Company, managing directors normally leave their position immediately, but continue to receive their salary and benefits during the notice period. If the managing director is in material breach of his/her duties to the company or is otherwise in material breach of the employment agreement, the board of directors is entitled to terminate the agreement and the managing director's employment agreement with immediate effect.

The terms and conditions agreed to by the managing director in the employment agreement may be reviewed by the court with respect to (among other things) their validity, fairness and reasonableness. The assessment is made in accordance with the principles set out in the Swedish Contracts Act. If the court finds that a term is unfair to one of the parties, it may be modified or even annulled.

Finally, it should be noted that it is common for the parties to have agreed that disputes will be settled by arbitration rather than by the ordinary courts.


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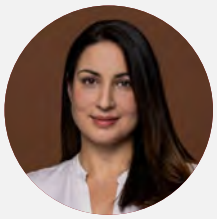

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# SWITZERLAND

## Status

In Switzerland there are two main types of companies, the AG (*Aktiengesellschaft* in German, "SA" - *Société Anonyme* in French, "SA" - *Società Anonima* in Italian) (company limited by shares) and the GmbH (*Gesellschaft mit beschränkter Haftung* in German, "Sàrl" - *Société à responsabilité limitée* in French, "Sagl" - *Società a garanzia limitata* in Italian) (LLC). Both account for more than 230,000 companies in the country. The following text is limited to the GmbH for reasons of prevalence and ease of establishment.

The LLC is regulated by the Swiss Code of Obligations, which sets the minimum share capital at CHF 20,000.00. This may also consist in the main foreign currency required for the business.

The organization of the company is determined by the articles of association ("AoA") subject to any applicable legal restrictions. The members of the company are jointly responsible for its management, although the AoA may provide for alternative arrangements. Only individuals may be appointed as managing directors, while the legal entity or business corporation participating in the company should, where appropriate, appoint an individual to perform this function on its behalf. The AoA may make this appointment subject to the approval of the general meeting of the company. There may be more than one managing director at a time, provided that a chairman is elected from among them by the general meeting of the company. The company must be represented by a person resident in Switzerland. This person must be a managing director or a manager.

Managing directors are responsible for all affairs that are not reserved for the general meeting by law or by the AoA. They have certain inalienable and irrevocable duties, such as: the overall management of the company and issuing the required directives; determining the organization in accordance with the law and the AoA; organizing the accounting, financial control and financial planning systems as required for the management of the company; supervising of the persons who are delegated management responsibilities, in particular with regard to compliance with the law, AoA, regulations and directives; preparing the annual report; preparing for the members' general meeting and implementing its resolutions; filing an application for a debt restructuring moratorium and notifying the court in the event that the company is overindebted.

In addition, managing directors must perform their duties with due care and

protect the interests of the company in good faith, must keep business secrets and owe the same duty of loyalty as the members of the company. Managing directors are subject to an equal treatment clause of the members of the company. In addition, they may not engage in competing activities. However, the AoA can provide for exceptions, as can a written resolution with the approval of all members of the company, which is usually secured.

Managing directors who are external to the company are considered employees only for social security purposes, i.e., the company pays any insurance contributions. If a managing director is appointed as an employee of the company, this can be stipulated in the employment contract. In principle, employment and appointment as a managing director are legally independent.

## Employment

Managing directors are not required to enter into an employment contract with the company; in fact, their position is reviewed annually and they may or may not be re-elected. The managing director can resign from his/her position at any time, and the meeting of company members can also remove the managing director at any time.

It is often the managing director who represents the company, both internally and externally, in particular in relation to bona fide third parties, unless otherwise provided in writing in the commercial register.

Under Swiss law there is no requirement for companies to pay a salary to a managing director unless they are also employees of the company. Where this is the case, the managing director is treated like any other employee. However, it is customary to remunerate the services of the managing director by paying a salary, which is considered legitimate if it is disclosed to the members of the company or approved by the general meeting. Managing directors are usually entitled to other benefits, including a company car, additional leave, special training and education, increased specialist visits and medical benefits, cash bonuses, and bonus payments in the form of company shares. In addition, their working hours are flexible, overtime is unpaid, and annual leave varies on a case-by-case basis.

Though this is not required by law, it is common practice for the managing director to enter into a separate post-contractual non-competition and non-solicitation clause with the company.

## Tax & Social Security

The company must regularly pay social security contributions on the managing director's remuneration. For income tax purposes, the managing director is always considered to be an employee if there is an employment contract, as he/she receives income from his/her contract that is equivalent to an employee's income. In addition, if the managing director is a member of the company, he or she will receive profits from capital assets, if there has been a dividend distribution, which will be taxed regularly according to applicable tax regulations.

In this sense, the managing director is treated as any other employee and is therefore

subject to the compulsory social security system and must pay OASI contributions together with the employer, even if he or she is a foreigner. For specific details, it is important to refer to the provisions of the bilateral agreements on social security concluded with the signatory countries.

Special regulations for the managing director in the area of social security include the declaration due from the company to basic social insurance on the remuneration paid to him or her.

As with ordinary employees, the social security system does not automatically cover compulsory health insurance, which is usually the responsibility of the managing director. Sometimes basic or additional health insurance is offered by some companies as an incentive.

Foreign managing directors are subject to tax at source on their income if they do not have a residence permit, i.e., permit C, but live in Switzerland. If a managing director is in receipt of family allowances or is required to pay alimony to a divorced spouse, he or she is also subject to tax at source. Under certain conditions the managing director is required to submit an ordinary tax return, considering the tax at source withhold as an account. If the foreigner is a cross-border commuter, his/her income from work in Switzerland is subject to tax at source. In addition, managing directors who are members of the board of directors are taxed at source for the director's fees paid to them by a Swiss company at a rate of 20-30%, depending on the canton in which the company is domiciled.

## Liability

Managing directors must exercise their powers with due diligence and protect the interests of the company in good faith.

Managing directors are personally, jointly and severally liable for tax debts and social security contributions, as well as for breach of duty of care and delay in filing for insolvency without notifying the court. If the unlawful act or breach of duty causes damage and the proper causal connection is proven, the managing director is also liable for minor negligence. Managing directors are directly liable for criminal mismanagement, misrepresentation of business transactions, forgery, insider trading, bankruptcy and environmental crimes. Ignorance is never excused. In addition, managing directors are liable to both the company and the company's members for any damages caused.

To prevent liability for such actions, it is recommended that decisions be made using the business judgment rule, which provides immunity from liability in all cases: no conflicts of interest, reasonable background, and proper deliberation process. It is also recommended not to delegate non-delegable tasks, to maintain transparency in information processes, and to adapt the organization of the company to its business environment. Managing directors should also avoid unfair preferential treatment of creditors in the event of bankruptcy.

D&O insurance is not mandatory but strongly recommended as it protects the personal assets of managing directors.

However, no insurance will cover damages caused intentionally, and coverage for gross negligence is also limited or excluded, as both result in criminal prosecution.

## Termination

The meeting of company members decides annually on the extension of the term of office of the managing director, who can therefore be removed without cause. In addition, the meeting of company members can vote to remove the managing director at any time, which means that the managing director's performance is important in maintaining his or her position.

The law does not provide specific rules for the removal of an external managing director. In the case of internal directors, i.e., those who have a contractual relationship with the company, it is their employment contract that sets out dismissal procedures. In any case, it should be noted that the employment contract and the position of manager director are two distinct concepts, and that the termination of one does not automatically result in the termination of the other, unless specifically agreed upon between the managing director and the company.

As for the need to provide grounds for dismissal, this is only a requirement where the managing director is employed by the company and the dismissal is for gross misconduct.

Managing directors do not benefit from protection against unfair dismissal. However, if they are also a party to a contract of employment, they can benefit from all labor laws that protect an ordinary employee as far as their contract of employment is concerned.

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# UKRAINE

## Status

In Ukraine legal entities are typically incorporated as limited liability companies ("**LLCs**"). The corporate governance structure of an LLC consists of the general meeting of participants (or a sole participant), which is the supreme governing body of the LLC, and an executive body, which manages the day-to-day operations of the LLC and has the authority to resolve all issues related to the LLC's activities, except for issues that fall within the exclusive competence of the general meeting of participants. The executive body of an LLC can be of two types: a sole executive body, usually called the director, or a collective executive body (the composition of which is determined by the LLC's charter) with its head, usually called the general director. For the purposes of this article only, the sole executive body and the head of the collective executive body of an LLC are hereinafter referred to as the "**managing director**".

There are no requirements or restrictions as to who may be elected (appointed) as managing director, except that it must be an individual. The employment of foreign citizens, who do not hold a permanent residence permit in Ukraine, to the position of the managing director is subject to a work permit to be obtained by the LLC-employer from the employment center, which is similar to the employment of foreign citizens to any other position within a company. Foreign citizens working in Ukraine should also comply with migration legislation requirements (i.e., obtain a work visa and a temporary residence permit, register a place of residence).

## Employment

Until the recent amendments to the Law of Ukraine “On Limited Liability and Additional Liability Companies”, managing directors were considered employees of the LLC. Currently, the law also permits engaging the managing director on the basis of a civil law agreement on provision of services. However, due to the vague wording of the provision in question and inconsistencies with related provisions of other laws, it is not clear how this new engagement option can be implemented in practice, especially for foreigners.

In case of employment of a managing director of an LLC, the employment relationship must be established on the basis of an employment contract. According to Ukrainian labor legislation, the employment contract is a special form of the employment agreement, in which the term, the rights, duties and liabilities of the parties (including property liability), the conditions for

providing the employee with material needs and organizing his/her work, and the conditions for terminating the employment contract, including early termination, may be determined by mutual consent of the parties. An employment contract may be entered into only in cases expressly determined by the law.

Accordingly, in contrast to an employment agreement entered into with regular employees, an employment contract must be entered into only with certain categories of employees for which entering into the employment contract is provided for by Ukrainian laws and regulations, in writing, and for a specified term (i.e., it is a fixed-term agreement).

Although Ukrainian labor legislation allows to provide in the employment contract different as compared to statutory, terms and conditions of employment and work, these may concern only the above-mentioned terms and conditions (rights and duties, liability, grounds for termination, material and organizational conditions of work). Any other provisions of the employment contract may not impair the statutory rights and interests of employees working under an employment contract. For example, while an employment contract may establish different rules related to the material liability of the managing director, which may cover both actual damages and loss of profits, it may not shorten the length of the statutory annual leave or establish different rules on monthly salary payment. Any terms and conditions of employment contract that worsen the status of the employee by reference to any applicable laws and a collective bargaining agreement are null and void by operation of law.

## Tax & Social Security

Other than as described above and except for the specific grounds for termination described below, the employment of managing directors is subject to the same labor, tax and social security laws and requirements as of any other regular employee.

## Liability

Under labor laws applicable to ordinary employees, their liability is limited to compensation for actual damages caused by the employee's wrongful guilty act (omission). Also, liability is capped to the amount of the average monthly salary of the employee. However, the scope of liability of a managing director is subject to different rules. Managing directors are generally liable for losses caused to their employer by their wrongful guilty actions or omissions, which may include actual damages and loss of profits, unless the managing director is able to prove that such losses were not caused by his/her fault. However, as stated above, the parties to the employment contract may alter such general liability rule of the managing director.

## Termination

A managing director, like any other employee of a LLC, may be dismissed at any of the general grounds for dismissal established

by the Labor Code of Ukraine (i.e., on his/her own initiative, at so called "neutral" dismissal ground like mutual agreement of the parties or expiration of the term of a fixed-term employment contract, and on the employer's initiative). In addition to such general grounds for dismissal, a managing director may be dismissed at some specific grounds related to the particularities of this position, for example: on the grounds provided for in the employment contract; on the grounds provided for in the Law of Ukraine "On Limited Liability and Additional Liability Companies", for example in case of violation of the rules applicable to the disclosure of conflicts of interest and related persons, violation of the obligation to call the meeting of the executive body of the LLC; in case of a single gross violation of professional duties; in case of committing guilty actions resulting in untimely payment of the salary or payment of the salary in an amount lower than the statutory minimum; in case of committing mobbing of an employee, which fact is established by a court decision; at the request of a trade union in case of violation of the labor legislation by the managing director; in case of termination of the powers of an official of the LLC.

This latter ground for dismissal allows terminating the employment relationship with the managing director in connection with termination of his/her corporate powers, i.e., his/her removal from office by the general meeting of participants. Since the participants of a LLC have the right to remove the managing director from this position at any time without prior notice and for any reason, Ukrainian labor laws establish the obligation to pay the managing director a severance payment in the amount equivalent to six times his/her average monthly salary.

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