



Engaging and terminating managing directors in Europe

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Preface

Employment law varies considerably from jurisdiction to jurisdiction throughout Europe. This is also the case when engaging and terminating the engagement of managing directors. In some countries, it is common to engage self-employed managing directors on a so-called service agreement, and in other countries it is standard practice to engage managing directors as employees. The manner in which the managing director is engaged may be crucial, not only during the period of employment, but also when the company would like to terminate the engagement of the managing director.

For a parent company with subsidiaries in other jurisdictions, it is easy to make incorrect assumptions when engaging or terminating the managing director of a subsidiary in a different jurisdiction. It is advisable, therefore, to consider carefully what applies in the jurisdiction in question before taking steps to engage or terminate a managing director.

The term managing director (“MD”) refers in this document to the person at the company responsible for conducting the day-to-day management in accordance with the guidelines and instructions of the board of directors. A managing director is often also referred to as Chief Executive Officer (CEO). The concept of a managing director is not the same in all European countries, and the rights and obligations of the managing director can vary from country to country.

In some countries, the managing director is regarded as an employee and in other countries not. In several countries, the type of agreement entered into with the managing director determines whether or not the managing director is an employee. If the managing director is regarded as an employee, this will mean in some countries that the managing director enjoys all the rights, benefits and entitlements reserved for all employees under employment law. In other countries

the managing director enjoys only certain of those rights, benefits and entitlements that are reserved for employees in general.

The decision to engage or terminate a managing director generally needs to be made by the board of directors of the company, which may involve procedural rules beyond the scope of employment law. Further, the termination of a managing director usually raises issues of post-termination non-compete, non-solicitation and confidentiality clauses, which should also be considered.

Since following the correct procedural rules is essential for a successful engagement or termination of a managing director, it is critical that such matters are carefully planned and prepared for in advance.

In the summary below you will find information which is useful when planning to engage or terminate a managing director in different European countries. The summary

has been jointly produced by 33 employment lawyers working in various European countries. Please note that the information is limited to a high-level overview of the employment-law landscape and does not deal with company law or corporate governance considerations.

Rebecka Thörn

Partner/lawyer at the Swedish law firm Delphi
Initiator and editor

Austria

Service agreement, consultancy agreement or employment contract?

For MDs of a limited liability company (GmbH), the overwhelming majority are engaged under employment contracts. In contrast, MDs of joint-stock companies (AG) are generally engaged through service agreements as they are not considered to be employees. Service agreements for MDs of joint-stock companies are required to be concluded for a fixed term.

Is there a need to have a valid reason for terminating a managing director?

For termination by way of unilateral notice, a valid reason is not required for terminating an employment contract or a service agreement. However, notice periods and end dates have to be complied with. Statutory notice periods for MDs of limited liability companies depend on the length of service. The notice period for the MD can be contractually extended to a maximum of six months, in which case the notice period for the company may not be shorter. A valid reason might be required at a later stage in the event the MD challenges the termination.

Is severance payment mandatory?

Severance payment is only mandated by statute for contracts of employment concluded before 1 January 2003.

Belgium

Service agreement, consultancy agreement or employment contract?

When exercising a corporate mandate, MDs are presumed to engage in an independent activity. Therefore, as a director, they can only be engaged as a self-employed person.

Additional operational activities (e.g. the day-to-day management of the company) can however be carried out both under a service/consultancy agreement (or a so-called “management agreement” if the agreement is entered into with the MD’s management company) and under an employment contract. The latter is only possible if the additional activities are performed under the

authority of an employer (i.e. when authority, leadership and supervision are exercised by the competent body of the company).

Is there a need to have a valid reason for terminating a managing director?

All terms and conditions regarding termination stipulated in the articles of association or in the agreement should be taken into consideration. No statutory provisions apply, except for the concept of lawful reason (see below). The reasons for termination do not need to be communicated to the MD, unless otherwise stipulated in the articles of association or in the agreement.

If the MD carries out additional activities under the authority of an employer and thus qualifies as an employee, “regular employment law” will apply. In this case, the employer is not obliged to provide a detailed account of the reasons that led to the employee’s dismissal. The employer is only required to inform the employee of the reasons for dismissal if she or he requests so.

If the employee successfully challenges the dismissal and can show that the dismissal was unfair, the employer will have to pay compensation ranging from 3 to 17 weeks’ salary. A dismissal is considered unfair if (i) the reason does not relate to the employee’s suitability or conduct, or is not based on necessities relating to the operations of the company and (ii) the decision to dismiss the employee would never have been made by a reasonable employer.

Is severance payment mandatory?

When the MD is exercising a corporate mandate, a severance payment is required only if specified in the agreement with the MD or in the articles of association. If the MD carries out additional activities as an employee, the employer can terminate the agreement, either by giving notice (the notice period depends on the employee’s length of service) or by terminating with immediate effect and making payment in lieu of notice.

Bosnia and Herzegovina¹

Service agreement, consultancy agreement or employment contract?

MDs can be engaged either under

- i) an employment contract (thus establishing an employment relationship,) or
- ii) a management contract (without establishing an employment relationship).

Is there a need to have a valid reason for terminating a managing director?

RS and BD Employment contracts can only be terminated for reasons set out in law or the internal rulebooks of the employer whereas management contracts can be terminated in accordance with their terms and conditions (including termination for convenience).

FBH No, unless the employment contract or management contract stipulates otherwise.

Is severance payment mandatory?

FBH Only if there is an express provision for severance pay in the internal rulebooks of the employer.

Termination of an employment contract may result in the obligation to pay statutory severance pay.

Anything else to observe?

RS Regardless of the type of contract, an MD is entitled to a salary.

FBH If the MD is engaged under an employment contract, he or she is entitled to salary, however, there is no legal obstacle to engage an MD under a management contract without remuneration.

BD If the MD is engaged under an employment contract,

1. Bosnia and Herzegovina (BH) is a complex and decentralized state and consists of three separate jurisdictions when it comes to employment matters, with their own set of regulations (Federation of Bosnia and Herzegovina (**FBH**), Republika Srpska (**RS**) and Brčko District Bosnia and Herzegovina (**BD**)). Although the three jurisdictions regulate a number of matters in the same or in a similar way, certain matters are regulated differently. For the purpose of this summary, we have provided unified answers for matters which are regulated in the same manner in all three jurisdictions and noted explicitly where discrepancies exist between the three jurisdictions.

he or she is entitled to a salary, however, if the MD is engaged under a management contract, remuneration is due instead of salary.

Bulgaria

Service agreement, consultancy agreement or employment contract?

There is a special type of agreement called a “management agreement” which is essentially a service agreement under civil law and not an employment contract. In practice, there are some MDs with employment contracts, which is a source of legal complication/uncertainty.

Is there a need to have a valid reason for terminating a managing director?

An MD does not benefit from employment protection and can thus be removed from office at any time without particular grounds.

Is severance payment mandatory?

No, only if such is included in the management agreement.

Croatia

Service agreement, consultancy agreement or employment contract?

It is common practice for MDs to enter into manager employment contracts. However, the provisions of the Employment Act regarding fixed-term employment, termination, notice periods, and severance payment are not applicable to manager employment contracts.

It is also possible to conclude a service agreement or a consultancy agreement with a board member/director.

Is there a need to have a valid reason for terminating a managing director?

No, an MD does not have employment protection.

Is severance payment mandatory?

No, only if it is included in the agreement concluded with the MD.

Cyprus

Service agreement, consultancy agreement or employment contract?

It is common practice that MDs are engaged under an employment contract. It is possible for MDs to be engaged under consultancy agreements, but this is rather uncommon.

Is there a need to have a valid reason for terminating a managing director?

An employer must have a valid reason for terminating the employment of an MD with an employment contract. This does not apply if the contract is for a fixed term of fewer than 30 months and the prescribed term expires.

Is severance payment mandatory?

Yes. There are specific situations in which an employer does not need to provide severance pay to an employee, for example, if an employee steals. In all other instances, the employee is entitled to severance pay.

Czech Republic

Service agreement, consultancy agreement or employment contract?

MDs are to be engaged under a special contract concluded in accordance with the provisions of the Act on Business Corporations (ABC) and approved by the general meeting or sole shareholder of the company. Such a contract may include certain provisions of the Labour Code or reference to these, but these provisions cannot be contrary to the principles of performance of office of an executive director under the ABC.

Is there a need to have a valid reason for terminating a managing director?

No, the MD may be removed from office at any time without grounds. Usually an MD is either removed from office or he or she tenders resignation. There may be additional rules on termination depending on the type of company and its ownership structure.

Is severance payment mandatory?

No, unless agreed in the MD agreement.

Anything else to observe?

In the Czech Republic, it is not possible for an MD to perform directorship duties within the context of an employment relationship. Generally, the MD may only enter into an employment contract with the company for work other than the performance of his/her office as director.

Denmark

Service agreement, consultancy agreement or employment contract?

As a main rule, a so-called “true” MD (who is registered as such with the Danish Business Authority) is not covered by the Danish regulations designed to protect and safeguard employees. Thus, the MD’s service agreement (employment contract) is the sole basis of the agreement between the company and the MD.

Is there a need to have a valid reason for terminating a managing director?

No. Since an MD is not subject to employment protection legislation, an MD can be removed without reason, unless specifically agreed otherwise in a service agreement.

Is severance payment mandatory?

No. Not unless this has been specifically agreed in a service agreement.

Estonia

Service agreement, consultancy agreement or employment contract?

The overwhelming majority of MDs are appointed to the company’s management board. The corporate mandate does not require any written contract. It is governed by the law, articles of association and a shareholders’ resolution. In many cases, however, it is advisable to have a written contract, and in such cases MDs who are members of the management board are engaged under service agreements.

However, MDs who are not members of the management board are mostly engaged under employment agreements.

Is there a need to have a valid reason for terminating a managing director?

No, the MD has no employment protection if he or she is a member of the management board.

However, the situation is different if the MD is not a member of the management board and is engaged under an employment contract.

Is severance payment mandatory?

No, unless included in the service agreement with the MD. Severance payment may be mandatory, depending on the ground of dismissal, if the MD is not a member of the management board and is engaged under an employment contract.

Finland

Service agreement, consultancy agreement or employment contract?

MDs are not considered as employees, so employment protection and other employment legislation do not apply to them. However, MDs are covered by the mandatory rules on pension and other social insurance. An MD is engaged under a service agreement instead of an employment contract to maintain the difference between ordinary employees and the MD.

Is there a need to have a valid reason for terminating a managing director?

No.

Is severance payment mandatory?

No but it is common to include it in the MD agreement.

France

Service agreement, consultancy agreement or employment contract?

The overwhelming majority of MDs are appointed as officers of the company, according to its articles. The corporate mandate (CM) does not require any contract. It is governed by the articles of association or by a shareholders’ resolution. Powers must be clearly delegated to the officer.

Is there a need to have a valid reason for terminating a managing director?

No, the corporate mandate can be revoked at any time provided this is not done under vexatious conditions.

Is severance payment mandatory?

No, unless otherwise provided for in the articles.

Anything else to observe?

The CM can combine his/her other contract with an employment contract. This special situation requires that the following conditions are met.

- i) Only functions that are strictly distinct from the corporate mandate may be exercised. In practice, these may be specific technical functions.
- ii) Remuneration must be received separately under the employment contract. The employee thus benefits from two sources of remuneration, one under his/her other employment contract and the other under his/her other corporate mandate.

Termination of an employment contract involves compliance with a notice period (usually three months) and the payment of statutory compensation calculated on the basis of seniority.

Note that in this case, the termination of one of the relationships (contract/mandate) has no impact on the other.

Germany

Service agreement, consultancy agreement or employment contract?

It is possible to employ an MD under a service agreement, an employment contract, or a consultancy agreement. The overwhelming majority of MDs are engaged under service agreement.

Is there a need to have a valid reason for terminating a managing director?

An MD has no employment protection under a service agreement. The statutory period of notice is usually one month, with termination at the end of the month. However, it is common to agree longer periods of notice of at least three months.

Is severance payment mandatory?

No, unless included in the agreement with the MD.

Anything else to observe?

If an employee is appointed as MD, an MD's service agreement should always be in writing and the former employment relationship terminated in writing. Otherwise, there is a risk that the MD invokes his or her former employment relationship after termination of the MD's service agreement.

Greece

Service agreement, consultancy agreement or employment contract?

Two different cases can be distinguished.

- i) The MD is a (major) shareholder and member of the board of directors. In such a case, an independent service agreement (which may be a consultancy service agreement, there is no legal difference) may be preferable to an employment contract, given the degree of independence of the MD.
- ii) In all other cases, the MD will be engaged under an employment contract.

Is there a need to have a valid reason for terminating a managing director?

When engaged under an employment contract of indefinite term, the MD enjoys the same protection as any other employee, including when it comes to terminating the relationship with the company.

As a general rule, the employer does not have to justify the dismissal (exceptions apply to fixed-term employment contracts – where the dismissal must always be justified – and in cases such as pregnant employees, trade union board members etc.). However, a dismissal can be challenged in court as abusive due to the absence of legal grounds for the dismissal or as unlawful due to failure to comply with the requirements set out in law. A dismissal may be rendered void, if the employer is considered to have acted in bad faith in violation of the general principle of the prohibition of abuse of rights under the Greek Civil Code.

Is severance payment mandatory?

Severance payment is mandatory upon the termination of the employment contract (dismissal).

Hungary

Service agreement, consultancy agreement or employment contract?

The majority of MDs are engaged under employment agreements. However, an MD may also be employed under a civil law agreement (a so-called mandate agreement).

Is there a need to have a valid reason for terminating a managing director?

As a rule, no, unless the employment agreement contains such a requirement.

Is severance payment mandatory?

In certain cases, yes. Under the Labour Code, for example, if the employer terminates the employment by “ordinary termination notice” and the employee has been employed by the company for at least three years, severance pay is payable. The employment contract may deviate from most of the provisions of the Labour Code, either to the detriment or the benefit of the MD.

Anything else to observe?

It is worth noting that there are certain periods during which termination may not take place (e.g. pregnancy, maternity leave, parental leave). It is quite common to enter into a post-employment non-competition agreement with an MD in which case certain further rules (some of which are mandatory) apply.

Ireland

Service agreement, consultancy agreement or employment contract?

In Ireland, “service agreement” and “employment contract” are interchangeable terms. In the majority of cases, MDs will be employed under a service/employment agreement, rather than under a consultancy agreement.

Is there a need to have a valid reason for terminating a managing director?

In theory, an employment agreement can be terminated for any reason, or for no reason. In reality, however, yes – there needs to be a valid reason for terminating an MD.

There are several reasons for this, chief among them the fact that if the MD has accrued twelve months' service (inclusive of their notice period), they are entitled to the protections afforded under Irish unfair dismissals legislation. These protections require an employer to follow a fair process in effecting the termination of an MD's employment, as well as to have a fair (i.e. valid) reason for terminating the employment.

That said, the twelve-month service requirement that must be met in order to avail of unfair dismissal protections does not apply to employment equality (i.e. anti-discrimination) or to whistleblowing protections. As such, any decision to terminate the employment of an MD, even if they have fewer than twelve months' service, should be considered carefully, since a failure to provide a valid reason for termination could increase the risk of a statutory claim being initiated by the MD under employment equality (e.g. a claim for discriminatory dismissal) and/or whistleblowing (e.g. a claim for penalisation) legislation, or an injunction application being made by the MD to the civil courts seeking to restrain the employer from proceeding with or giving effect to their termination.

There are also various circumstances where a dismissal will be “automatically” unfair, and where the twelve-month service requirement does not therefore apply, e.g., dismissing an employee on maternity leave.

Is severance payment mandatory?

No, not unless provided for in the MD's contract of employment (which is rare).

Anything else to observe?

The comments now stated assume that the employing entity is a private company, i.e. not a publicly listed company. Additional considerations are likely to apply if the employer is a publicly listed company. Depending on the industry (e.g., financial services), the termination of an MD (or any employee) may require certain regulatory filings and/or notifications to be made.

Italy

Service agreement, consultancy agreement or employment contract?

The role of MD, i.e., a member of the board of directors with delegated powers for the management of the company does not require an employment relationship *per se*. Very often MDs have a separate service agreement with the company regulating some of their duties/rights. However, it is quite common that MDs also have an employment contract in parallel.

Is there a need to have a valid reason for terminating a managing director?

In principle yes, but the actual consequences depend on the underlying contractual agreement that has been entered into. If subject only to appointment by the shareholders, the revocation of the MD before the natural term of the mandate requires a valid reason, otherwise the company may be liable for the remuneration due until the expiration of the term. If an employment contract has been concluded between the company and the MD, dismissal must be justified with a valid reason and the safeguards typical of the employment relationships apply.

Is severance payment mandatory?

Absent a valid reason for termination, it is common practice to provide some severance pay. If the MD is an employee, compensation during the period of notice and statutory severance payment are payable as a minimum.

Anything else to observe?

It is important that there is clear demarcation of the tasks of the person as MD and as employee. Likewise, it is important to ensure that the role as employee does not report to the MD (otherwise the same person would be at the same time the controller and the controlled, something which is not admissible under Italian law).

Latvia

Service agreement, consultancy agreement or employment contract?

The concept of MD is not defined in law. Most often, it is an employee who manages the day-to-day business

of the company. He or she is considered to be the administrative head of the company in cases when members of its management board do not live in Latvia and, therefore, cannot carry out the day-to-day management of the company.

A member of the management board may be appointed as the MD. This is uncommon and then merely an internal “title” and does not affect the legal status of the person.

Is there a need to have a valid reason for terminating a managing director?

If the MD is an employee, he or she is entitled to all the protections of the Labour Act. Therefore, a valid reason is required.

Members of the management board may be removed from their positions for any reason. In certain cases, this must be a serious reason.

Is severance payment mandatory?

Severance pay is payable only to employees in cases provided for in the Labour Act.

In the event of termination of the legal relationship with the member of the management board, it is subject to the agreement between the parties.

Anything else to observe?

The legal framework in Latvia does not provide for registration of officers such as an MD or CEO. In Latvia, the routine management of a business company is conducted by a management board (board of directors) and its members are registered in the Commercial Register.

Lithuania

Service agreement, consultancy agreement or employment contract?

Company law clearly stipulates that an employment contract must be concluded with the MD of the company. However, in some exceptional cases, depending on the legal entity, no employment contract is necessary if the MD is engaged as such without remuneration (for example, personal entities, small

entities, some public legal persons).

Is there a need to have a valid reason for terminating a managing director?

No, there is no need to have a valid reason for the dismissal of the MD.

Is severance payment mandatory?

Yes, one month’s severance pay if the MD has worked for more than two years. No severance pay is payable if the dismissed MD is at fault.

North Macedonia

Service agreement, consultancy agreement or employment contract?

In practice, most managers are engaged under employment contracts concluded either according to the local employment or corporate legislation.

Employment law provides an opportunity for the employment of managers under a managerial contract.

Company law provides for the employment or engagement (not necessarily forming an employment relationship) of MDs registered in the local trade registry and who are members of management or supervisory bodies, under a special type of contract.

Is there a need to have a valid reason for terminating a managing director?

No, if the managerial contract prescribes an option for termination without cause. The minimum and maximum duration of notice period for managerial contracts concluded under employment law is one to three months.

Is severance payment mandatory?

Severance payment is not mandatory save for specific cases of termination of employment prescribed under employment law, most of which do not apply to managerial contracts. Severance may be applicable if agreed in the managerial contract.

Montenegro

Service agreement, consultancy agreement or employment contract?

The MD of a company must be employed. The MD can be employed for an indefinite term or fixed term (for the duration of their mandate).

Is there a need to have a valid reason for terminating a managing director?

Yes, for an indefinite-term employment contract, which can only be terminated on the grounds for termination (misconduct, failure to achieve the expected work results, redundancy, etc.).

A fixed-term employment contract can be terminated by dismissal or the employee’s resignation from office.

Is severance payment mandatory?

Yes, only in the case of termination of an indefinite-term employment contract for reasons of redundancy (in situations where the executive director is removed from office, and there is no other position within the company that can be offered to him or her).

Norway

Service agreement, consultancy agreement or employment contract?

The overwhelming majority of MDs are engaged under employment agreements. There are some exceptions whereby MDs are engaged on a consultancy basis instead. However, there are strict requirements governing this. For example, it can only be done for a limited period of time.

Is there a need to have a valid reason for terminating a managing director?

Yes, as a main rule the MD enjoys customary employment protection rights and a valid reason for termination is required. However, it is possible and common to include a severance clause in the MD’s employment contract. If such a clause is included, the company can terminate without cause in return for payment of the agreed severance pay.

Is severance payment mandatory?

No, unless included in the agreement with the MD.

Anything else to observe?

If a severance clause is not included in the employment contract, the MD does not only have employment protection rights. He or she is also as a main rule entitled to remain in his or her position (i.e., to continue working and receiving salary) until a court has finally settled the case, which typically takes between seven to eleven months from the date of termination.

Poland

Service agreement, consultancy agreement or employment contract?

In Poland, MD’s can be engaged under a contract of employment or a civil law contract. The choice largely depends on: how much freedom the MD is to have in fulfilling his or her duties (a contract of employment is more subordinate than a service contract); who is to bear the costs of employing the MD; and whether the MD is a shareholder or from outside the organisation.

Additionally, the MD is often appointed by a resolution of a company.

Is there a need to have a valid reason for terminating a managing director?

Termination of a contract of employment, requires an employer to provide a reason justifying the termination. The reason must comply with statutory requirements, i.e., it must be true, actual, and specific, and termination of a contract of employment without notice is permissible only in the few instances described in the Labour Code.

The parties to a service contract can decide on matters such as whether a reason for termination is required, periods of notice (the standard market practice is between three and six months) or termination with immediate effect under specific circumstances. If such matters are not regulated in a contract, the general rules of civil law will apply, which means that the contract can be terminated at any time by either party. However, if terminated without a valid reason, the party terminating the contract will be obliged to remedy any resulting

harm to the other party. The MD does not have any employment protection.

Is severance payment mandatory?

Yes, if a contract of employment is terminated by an employer and the employer employs at least 20 persons. Severance payment is not mandatory for service contracts.

Portugal

Service agreement, consultancy agreement or employment contract?

MDs of joint-stock companies (S.A.) are generally engaged under service agreements.

The majority of MDs of limited liability companies (Lda.) are engaged under employment contracts. However, these employment contracts are commonly made subject to a service commission regime, which allows for termination upon providing notice.

Is there a need to have a valid reason for terminating a managing director?

If the MD has been hired under an employment contract subject to a service commission regime, the law stipulates a 30-day or a 60-day period of notice for termination (respectively for contracts of up to two years, or for longer), without the need to justify the termination.

Is severance payment mandatory?

Yes, if an MD is hired under an employment contract subject to a service commission regime.

No, if the MD is hired under a service agreement, unless such compensation has been included in the contract.

Romania

Service agreement, consultancy agreement or employment contract?

MDs are commonly contracted either under employment contracts or under management contracts. For some categories of company (e.g., joint stock companies), retaining MDs under management agreements is mandatory.

The management agreement is regulated by civil rather than employment legislation and does not imply any sort of licensing (e.g., registration as freelancer with the trade registry).

Is there a need to have a valid reason for terminating a managing director?

This depends on the type of contract concluded with the MD. If engaged under a management contract, termination without cause is typically an option provided for in the contract. If engaged under an employment contract, the company must have a valid reason for termination. The most common reasons are poor performance, disciplinary, and redundancy.

Is severance payment mandatory?

Regardless of the type of contract entered into by the MD, severance pay is not mandatory under law but may be agreed contractually. In some situations, a severance package is included in the collective agreement, employee handbook or internal policies and may equally apply to an MD retained under the framework of the employment legislation.

Serbia

Service agreement, consultancy agreement or employment contract?

An MD can enter into a contract of employment and thus establish an employment relationship, or he or she can enter into a management agreement without establishing an employment relationship.

If the role does not require full-time engagement with the company, an MD's status is usually regulated by a management agreement. But where the MD performs full-time work for the company, an employment contract is more common.

Is there a need to have a valid reason for terminating a managing director?

Yes, for an indefinite-term employment contract, which can be terminated only on the prescribed grounds for termination (misconduct, failure to achieve the expected work results, redundancy, etc.).

A fixed-term employment contract and management agreement can be terminated by dismissal or the employee's resignation from office.

Is severance payment mandatory?

Yes, only in the case of termination of an indefinite-term employment contract due to redundancy (in situations where director is dismissed from office, and there is no other position within the company that can be offered).

Slovakia

Service agreement, consultancy agreement or employment contract?

MDs are primarily to be engaged in their function under a commercial contract. If not, their relationship with a company is governed by rules applicable to a so-called (commercial) mandate contract.

However, the law provides that an MD may also enter into an employment contract with the company if the scope of work under this contract involves duties that differ from those performed in their role as MD.

Is there a need to have a valid reason for terminating a managing director?

No, in the case of a purely commercial contract.

If an employment contract has also been entered into, the specific reasons for termination set out in the Labour Code need to be met.

Is severance payment mandatory?

In the case of a purely commercial contract, no, unless specifically included in the agreement with the MD.

Where there is also an employment contract, severance pay is mandatory only where expressly provided in law (e.g. redundancy, incapacity due to ill health, etc.) or where additionally agreed in that contract.

Anything else to observe?

The commercial agreement concluded with the MD must be in writing and approved by the company's general meeting (sole shareholder). If these conditions are not met, the contract is not valid.

If the MD's duties are to be performed without remuneration, it is strongly recommended to agree this expressly in the contract, otherwise the director might claim remuneration in the "usual (customary) amount."

Slovenia

Service agreement, consultancy agreement or employment contract?

It is possible to enter into a management employment agreement and thus establish an employment relationship or to enter into a civil management agreement without establishing an employment relationship.

Is there a need to have a valid reason for terminating a managing director?

The management employment agreement may provide terms for termination other than those set out in the Employment Relationships Act. It is market practice to provide in the management employment agreement that the agreement will automatically terminate if a director is removed from office (which may be done at any time). In the absence of such a provision, the management employment agreement will not automatically terminate upon recall of the director from the office. In this case, the management employment agreement may be terminated on the grounds of incompetence due to recall of the director from the office of the company.

The management employment agreement can also be terminated based on the grounds of termination of employment (misconduct, business reasons, reasons of incompetence, etc.).

Is severance payment mandatory?

Severance payment is also subject to a contract. Market practice is that the management employment agreement provides that upon termination of the agreement (if the agreement is terminated without fault of the director), the director is entitled to severance pay. The parties can also agree that a director is not entitled to severance pay.

If there is no provision on termination and severance payment in the management employment agreement, a director is entitled to severance pay in cases of termination as provided in the Employment Relationships Act.

Spain

Service agreement, consultancy agreement or employment contract?

The relationship of an MD with the company is deemed to be one of employment, but with special provisos. There is specific legislation that regulates the employment relationship of senior management personnel.

Is there a need to have a valid reason for terminating a managing director?

No, the company may decide to terminate the MD's contract without just cause. However, this is subject to certain requirements.

Is severance payment mandatory?

Yes. Compensation to be received by the executive is at the discretion of the parties, since the contract itself may provide for compensation that is higher or lower than that set out in law. If the contract is silent on the matter, compensation corresponding to seven days' salary per year worked with a limit of six monthly payments is payable if the employer terminates the contract.

However, other compensation may be payable depending on the reasons given for terminating the MD's contract.

Sweden

Service agreement, consultancy agreement or employment contract?

The overwhelming majority of MDs are engaged under employment contracts. There are some exceptions whereby MDs are engaged on a consultancy basis instead, but this can only be done for a limited period of time.

Is there a need to have a valid reason for terminating a managing director?

No, the MD has no employment protection. The minimum notice period is six months, but longer notice periods are often agreed in the employment contract.

Is severance payment mandatory?

No, unless included in the agreement with the MD.

Switzerland

Service agreement, consultancy agreement or employment contract?

MDs are usually engaged under an employment contract. Depending on the individual case, engagement under a consultancy or service agreement is possible, but the risk that this will still constitute an employment relationship must be taken into account.

Is there a need to have a valid reason for terminating a managing director?

No special reason is required for the termination of an MD. There are only restrictions in the case of abusive dismissals, whereby the termination itself remains valid, but the employee can claim compensation of up to six months' salary.

Is severance payment mandatory?

No, in general there is no entitlement to severance pay unless the parties have agreed otherwise.

The Netherlands

Service agreement, consultancy agreement or employment contract?

An MD is engaged either under a management agreement (i.e., service agreement) or under an employment contract. Both are very common in the Netherlands. In case of a publicly listed company, the MD may only be engaged under a management agreement.

Is there a need to have a valid reason for terminating a managing director?

Not in case of a management (i.e., service) agreement. There must be a reasonable notice period included in the agreement. Normally parties agree upon three to six months.

Yes, in case of an employment agreement. Then the MD enjoys some employment protection, including the need to have a valid reason for terminating an MD. Under Dutch law, there is an exhaustive list of valid reasons.

Is severance payment mandatory?

Not in case of a management (i.e., service) agreement, unless provided for in the agreement.

Yes, in case of an employment contract. The statutory transition allowance is payable if the company terminates the contract. In addition to the transition payment, an MD will often claim additional severance pay, referred to as fair compensation (this is often part of the negotiations). Lastly, it could also be included in the employment contract with the MD.

Anything else to observe?

In the case of an employment agreement extra caution is required. The shareholders' resolution to dismiss the MD *automatically* implies the resolution to terminate the employment contract if both relationships (corporate and employment relationship) are with the same legal entity, unless explicitly agreed otherwise or a "prohibition of termination"² applies. Although dismissal of an MD can take immediate effect, their dismissal as an employee (besides the need to have valid reason), requires the provision of notice in compliance with the applicable period of notice.

Prior to the dismissal of an MD, any works council must be given the opportunity to submit its advice.

Turkey

Service agreement, consultancy agreement or employment contract?

Almost all MDs are engaged under employment contracts and service or consultancy agreements are very rare.

Is there a need to have a valid reason for terminating a managing director?

No, an MD having the unrestricted authority to hire and fire subordinates will not benefit from employment protection.

Is severance payment mandatory?

2. In that they are also an employee, the MD enjoys protection against dismissal when "prohibitions on termination" apply (e.g. illness). This enables the MD assert that any notice sent while the prohibition was in effect is invalid. Please note that during illness, a company must continue to pay wages for a maximum period of two years. An exception to this rule applies when an MD reports sick *after* receiving notice to attend the shareholders' meeting at which his or her dismissal is on the agenda.

Yes, for an MD having served at least one year, unless termination is based on illegal or unethical conduct of the MD for actions specifically listed in the Turkish Labour Code.

United Kingdom

Service agreement, consultancy agreement or employment contract?

MDs tend to be executive (as opposed to non-executive) directors and, therefore, employees employed under an employment contract (confusingly referred to as a "service agreement" in practice).

Is there a need to have a valid reason for terminating a managing director?

As a general rule, yes. If the MD has at least two years' continuous employment, they are protected from unfair dismissal. This means that the employer must have a fair reason to dismiss (there are five potentially fair reasons) and a fair process must be followed in carrying out the dismissal.

Even if the MD has fewer than two years' continuous employment, it is advisable to carefully consider the reason for termination and the procedure to adopt, as MDs are protected under anti-discrimination and whistleblowing legislation from the outset of employment. Failure to provide a valid reason for termination may, depending on the circumstances, increase exposure to potential claims under these laws. These claims are also more valuable to an MD than an unfair dismissal claim as such claims are not subject to a cap on the amount of compensation which can be awarded.

There are also a number of circumstances in which dismissals will be deemed "automatically unfair," where the reason or principal reason for dismissal is one of a number of reasons proscribed by statute (an inadmissible reason). There is no minimum length of service requirement in respect of these claims.

Is severance payment mandatory?

No. Whereas the employer is almost always required to provide notice of termination or payment in lieu of notice (often three or six months in practice) additional

severance pay is not required unless this is provided for in the MD's service agreement, which is relatively rare.

However, it is not unusual for a severance payment to be made to a departing MD in return for them entering into a settlement agreement on departure settling all actual and potential claims the MD may have arising out of their employment or its termination.

Anything else to observe?

It is important to comply with the terms of the MD's employment contract in terminating their employment, not only to avoid a breach of contract or wrongful dismissal claim, but because failure to do so would result in any post-termination restrictions within the contract (non-competition provisions, for example) falling away.

Depending on the sector, there may also be regulatory obligations to consider in the termination of an MD.

Contacts

This summary has been compiled by the employment lawyers listed below, all of whom work at European law firms in an international context. If you need further employment law advice, please feel free to reach out to any of them.

Austria

Hans Laimer / Partner
Zeiler Floyd Zadkovich
hans.laimer@zeiler.eu

Belgium

Kato Aerts / Partner
Lydian
kato.aerts@lydian.be

Bosnia and Herzegovina

Lejla Ademović / Senior associate
Karanovic & Partners
lejla.ademovic@karanovicpartners.com

Bulgaria

Plamen Peev / Partner
Peterka & Partners
peev@peterkapartners.bg

Croatia

Dora Horvat / Partner
Ilej Partners
dora.horvat@ilej-partners.com

Cyprus

Marlen Vakis / Associate
Pyrgou Vakis
m.vaki@pyrgouvakis.com

Czech Republic

Pavel Jakab / Lawyer
Peterka & Partners Law Firm
jakab@peterkapartners.cz

Denmark

Julie Flindt Rasmussen / Associate partner
Lund Elmer Sandager Law Firm LLP
jfr@les.dk

Estonia

Anu Kirss / Senior associate
TGS Baltic
anu.kirss@tgsbaltic.com

Finland

Mika Kärkkäinen / Counsel
Dittmar & Indrenius
mika.karkkainen@dittmar.fi

France

Caroline Barbe / Partner
Solucial Avocats
cbe@solucial.com

Germany

Frieder Werner / Partner
Menold Bezler
frieder.werner@menoldbezler.de

Greece

Georgia Konstantinidou / Partner
DRAKOPOULOS
gkonstantinidou@drakopoulos-law.com

Hungary

Zoltán Balázs Kovács / Partner
Szecskay Attorneys at Law
zoltan.kovacs@szecskay.com

Ireland

Declan MacQuillan / Senior associate
Arthur Cox LLP
declan.macquillan@arthurcox.com

Italy

Michelangelo Cicogna / Partner
De Berti Jacchia Franchini Forlani
m.cicogna@dejalex.com

Latvia

Irina Rozenšteina / Associate partner
Ellex Klavins
irina.rozensteina@ellex.legal

Lithuania

Ieva Povilaitienė / Partner
TGS Baltic
ieva.povilaitiene@tgsbaltic.com

North Macedonia

Ana Kashirska / Senior associate
Karanovic & Partners
ana.kashirska@karanovicpartners.com

Montenegro

Milijana Tomić / Senior associate
Karanovic & Partners
Milijana.Tomic@karanovicpartners.com

Norway

Lill Egeland / Partner
Simonsen Vogt Wiig
leg@svw.no

Poland

Marcin Wujczyk / Partner
Wardynski & Partners
marcin.wujczyk@wardynski.com.pl

Portugal

Alexandra Almeida Mota / Lawyer
Bas sociedade de advogados
aamota@bas.pt

Romania

Adelina Iftime-Blagean / Lawyer
Wolf Theiss
adelina.ifetime-blagean@wolftheiss.com

Serbia

Milena Jakšić Papac / Partner
Karanovic & Partners
milena.papac@karanovicpartners.com

Slovakia

Peter Fedor / Attorney
ČECHOVÁ & PARTNERS s. r. o.
peter.fedor@cechova.sk

Slovenia

Saša Oražem / Senior counsel
Karanovic & Partners
sasa.orazem@karanovicpartners.com

Spain

Pilar Baltar Fillol / Associate director
Roca Junyent
p.baltar@rocajunyent.com

Sweden

Rebecka Thörn / Partner
Delphi
rebecka.thorn@delphi.se

Switzerland

Melanie Fischer / Associate
Wenger Vieli Ltd
m.fischer@wengervieli.ch

The Netherlands

Concetta Allegra / Senior associate
Doorn en Keizer B.V.
c.allegra@denklaw.nl

Turkey

Ferhat Pekin / Senior partner
Pekin Bayar Mizrahi
f.pekin@pekin.com.tr

United Kingdom

Andreas White / Partner
Kingsley Napley LLP
awhite@kingsleynapley.co.uk