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REPORTS

Management Contracts: New Trends & Regulations Europe

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Introduction

The role and legal status of Directors have increasingly attracted attention in light of evolving corporate governance standards and regulatory frameworks worldwide. The contractual arrangements governing Directors' positions have become more complex, reflecting new trends and regulatory developments that impact their duties, rights, and obligations.

This year's report, "*Management Contracts: New Trends and Regulations*", focuses on the diverse legal approaches to defining and regulating the relationship between Directors and their companies. From questions about the legal status of Directors to the specifics of contractual arrangements, including non-competition clauses and social security regimes, this topic addresses critical aspects that impact corporate governance globally.

Given the complexity and variety of legal regimes across jurisdictions, multinational organizations face the task of balancing uniform governance standards with local legal nuances. This WSG report gathers valuable insights from leading law firms worldwide, providing an overview of current practices and regulatory developments regarding management contracts.

We extend our sincere gratitude to all contributors for their expertise and dedication in making this edition possible. We hope that this collection will serve as a useful resource for legal professionals, companies, and practitioners interested in the evolving landscape of Directors' roles and contractual frameworks.

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The legal position of the Directors in your jurisdiction: are the Directors employees?

Austrian law distinguishes between Directors of private limited companies (GmbH) and Directors of public companies (AG). A Director of a GmbH is usually an employee if (i) they have no shareholding in the GmbH or (ii) a shareholding of less than 50% with no minority veto rights (i.e., the Director cannot prevent resolutions of the general meeting). Directors with a majority stake in the company are self-employed, whereas Directors with a 25-50% shareholding can be either employees or self-employed, depending on the terms of their director agreement and whether they have minority veto rights.

A Director of an AG, on the other hand, is not considered an employee and is entirely free from instructions.

Please describe how the relationship between the Director and the company is usually formalized in your jurisdiction (i.e. entering into an agreement such as directorship/management agreements, service contracts, corporate resolutions, other possible solutions).

The Director of a GmbH is appointed by shareholder resolution, subject to the Director's acceptance. In practice, it is advisable to formalise the appointment only once the key terms of the employment agreement have been agreed. The Director's position as a company officer remains separate from the contractual relationship, and a removal or resignation from office does not automatically terminate the contractual relationship between the parties.

Directors of an AG, on the other hand, are appointed by supervisory board resolution. Their contractual relationship is classified as a freelance agreement.

Focus on the terms of the contractual arrangements governing the Directors' positions in your jurisdiction

GmbH Directors who are employed with the company are broadly subject to the usual rules applicable to white-collar employees, such as the Austrian Act on White-Collar Employees (*Angestelltengesetz, AngG*) and the Act on Annual Leave (*Urlaubsgesetz, UrlG*). As executive employees, they are, however, exempt from the Labor Constitution Act (*Arbeitsverfassungsgesetz, ArbVG*), the Working Time Act (*Arbeitszeitgesetz, AZG*) and the Act on Rest Periods (*Arbeitsruhegesetz, ARG*).

Directors of an AG are not subject to employment regulations. In practice, it is however common for the parties to agree to the application of the AngG on a voluntary basis.

As mentioned above, director agreements are separate from the corporate office and must be terminated separately. It is common and permissible to agree that a removal or resignation from office also constitute a termination of the director agreement with effect as of the next possible termination date. Seeing as GmbH Directors are exempt from the ArbVG and enjoy a lower level of termination protection a longer notice period is usually agreed (up to six months).

While GmbH Directors can be removed from office at any time without a specific reason, AG Directors can only be removed, and can only resign, from office for cause. Justified reasons for the removal include, for example, gross breach of duty, inability to perform the duties of office properly or withdrawal of trust by the shareholders meeting; the cause need not be brought about through the Director's fault. The contractual relationship does not expire as a result of the revocation but must be terminated separately in accordance with the agreed terms.

The director agreement usually also includes comprehensive rules around fixed and variable compensation, annual leave, D&O insurance, and any additional benefits, such as private health and accident insurance or private pension contributions. It is not uncommon for Directors to receive enhanced annual leave and sick pay, beyond the minimum entitlement mandated by law.

Focus on non-competition covenants applicable to Directors

Directors of both private and public companies are subject to statutory non-competition provisions during their mandate for the company in accordance with Section 24 of the Austrian Limited Liability Companies Act (*GmbHG*) and Section 79 of the Austrian Stock Corporation Act (*AktG*), respectively. These prohibit Directors from working in the company's business sector and from participating in a competing business, be it as a shareholder or as a company officer, without the company's prior approval.

Additionally, post-contractual non-compete clauses are usually included in the director agreement. According to the AngG (which is commonly also applied to AG Directors by agreement), post-contractual non-compete clauses are effective if they:

- pertain to the company's business sector;
- do not exceed the term of one year after the end of employment;
- do not pose an excessive impediment for the Director's professional advancement; and if
- the Director's gross monthly compensation exceeded a certain threshold (in 2025 this is gross EUR 4,300 per month).

The enforceability of the clause further depends on how the contract is terminated: If the Director initiated or caused the termination through his fault, the non-compete clause is enforceable. If, on the other hand, the company gave the Director notice of termination other than for cause, the non-compete clause is generally unenforceable, but the company can uphold it against payment of the Director's last full compensation for the entire duration of the restriction.

In terms of remedies in the event of a breach, the company can require the Director to refrain from further breaches and to compensate the company for any damages incurred by the breach. If the parties agreed on a contractual penalty, the company can only demand the payment of that penalty, which may not exceed six net monthly remunerations and may be reduced by the court if considered excessive.

Social security regime applicable to Directors

GmbH Directors who are employed with the company are subject to compulsory insurance under the General Social Insurance Act (*Allgemeines Sozialversicherungsgesetz, ASVG*) for health, pension, accident and unemployment. Self-employed Directors are subject to insurance under the Commercial Social Insurance Act (*Gewerbliches Sozialversicherungsgesetz, GSVG*). These include Directors with a shareholding of more than 50% in the company and Directors with a shareholding between 25 and 50% who are free from instructions (e.g., with respect to the time and place of their work or other personal conduct) or hold certain veto rights.

Directors of an AG with a shareholding of up to 25% in the company must be registered by the company with social insurance, whereas those with a shareholding exceeding 25% must register and pay contributions themselves.

Peculiar aspects that you may want to flag/point out under your professional experience

Company Directors are usually exempt from the scope of collective bargaining agreements (*Kollektivverträge*). However, some collective bargaining agreements also apply to employed GmbH Directors (most notably the one for white-collar employees in trade). In this case, the Director is entitled to the minimum wage and any additional benefits mandated by the collective bargaining agreement (such as overtime compensation).

It is common for Directors in group structures to be employed with one group company and to be appointed as company officers in multiple group companies. In such cases, the Director's services are usually governed by the director agreement with the employing entity and the parties can agree that all services within the group be compensated with the payments made under that agreement. The Director need not be employed with every group entity in which he holds a corporate office.

Belgium

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The legal position of the Directors in your jurisdiction: are the Directors employees?

In the performance of their corporate mandate (i.e. as a member of the Board of Directors), a Director is required to have self-employed status. Indeed, Belgian corporate law explicitly states that a Director may not be an employee in this capacity.

However, this does not preclude the Director from having an additional operational role in the company (e.g. CFO, HR manager, etc.), which may be carried out either under an independent services agreement ('management agreement') or under an employment contract. It is also possible to execute the company's daily management (position of CEO/managing director) either under a services agreement as a self-employed person or under an employment contract as an employee.

However for a management role to be carried out under an employment contract, two cumulative conditions must be met: (i) the employment contract must relate to operational tasks that are distinct from those performed under the Director's corporate mandate; and (ii) this management role must be performed in a subordinate relationship to the company (i.e. under the employer's authority). Employer's authority can be exercised by the managing director, the Board of Directors acting as a collegial body, a company representative, etc.

If the operational role is performed under a services agreement, then the agreement can be concluded either directly with the individual manager or with his or her management company. Indeed, in Belgium, it is common practice to enter into such an agreement with the manager's management company due to the beneficial tax treatment of management companies.

Likewise, the corporate mandate as a Director may be performed either by a natural person or by a management company. In the latter case, the management company must appoint a natural person as its "permanent representative", which will be the person 'behind' the management company.

Please describe how the relationship between the Director and the company is usually formalized in your jurisdiction (i.e. entering into an agreement such as directorship/management agreements, service contracts, corporate resolutions, other possible solutions).

In Belgium, there is neither a legal obligation nor a common practice to enter into a written agreement for the performance of a corporate mandate as a Director. Typically, the mandate's terms are established through corporate resolutions adopted by the general meeting of shareholders. These resolutions generally set out the mandate's key features, such as the start date, duration, and whether the mandate is remunerated or not.

Historically, the absence of written directorship agreements was largely due to the principle, which applied before the entry into force of a new Companies and Associations Code in 2019, that a Director's mandate was revocable ad nutum, meaning it could be terminated at any time by the general meeting of shareholders, without notice or compensation and without justification. This rule was considered to be of public order, making any deviating contractual arrangement in a directorship agreement null and void. As a result, directorship agreements were relatively rare.

Under the current Companies and Associations Code, the ad nutum revocability of Directors is no longer considered a matter of public order. Consequently, it is now possible to include contractual provisions for notice periods or termination compensation, if the company's articles of association provide for this option. It remains to be seen whether this legislative change will lead to an increased use of directorship agreements.

By contrast, it is common practice in Belgium to enter into a management agreement, i.e. an independent services agreement, between the company and the manager (or the manager's management company) for the performance of the company's daily management and/or (an aspect of) the company's operational management. While such management agreements will often refer to the manager's corporate appointment as a Director, they typically do not govern the execution of the corporate mandate itself.

Focus on the terms of the contractual arrangements governing the Directors' positions in your jurisdiction

As a management contract for the performance of the company's daily management or its operational management is much more common in Belgium than a directorship agreement for the execution of the corporate mandate (see §2. above), we will focus on the first one.

The parties enjoy considerable contractual freedom when drafting a management agreement, as it qualifies as an independent services agreement. Consequently, Belgian labour law does not apply to such arrangements.

A management contract may be entered into for a fixed term (with or without tacit renewal) or for an undefined term and should include a fixed and/or variable remuneration (subject to VAT).

Furthermore, these agreements often include provisions outlining the scope of services, the parties' respective rights and obligations, confidentiality clauses, intellectual property assignment clauses, restrictive covenants, etc.

Termination clauses may freely stipulate notice periods and/or severance compensation, except for listed companies, where such provisions may not exceed 12 or 18 months.

A key consideration when drafting a management contract is to try to limit the risk of so-called 'bogus' self-employment, i.e. the risk that the management contract could be requalified as an employment contract if (part of) the authority normally vested with an employer is exercised over the self-employed manager.

To mitigate this risk, the management contract must be duly drafted to reflect the manager's independence. This includes clearly stating the parties' intention to establish a self-employed relationship, emphasizing the manager's freedom to organize his/her work and working time and the absence of any hierarchical control, avoiding any typical employee-type wording, and ideally agreeing on an all-inclusive fee.

Moreover, the management agreement must comply with the Belgian B2B Act.

This Act provides that any clause that creates an apparent imbalance between the rights and obligations of the parties is null and void. In addition to this general prohibition, this Act also contains a 'black list' of clauses that are always considered null and void and a 'grey list' of clauses that are presumed to be unfair, unless proven otherwise. This legislation may impact provisions in management agreements concerning variable remuneration, non-competition clauses, termination modalities, etc., which must not create an apparent imbalance between the parties.

Focus on non-competition covenants applicable to Directors

During the execution of the corporate mandate, a Director has a loyalty obligation towards the company and is therefore in principle bound by a non-compete obligation, even if no non-compete undertaking has expressly been entered into. Management services agreements typically also contain non-compete undertakings that apply while the agreement is in force and during a limited period in time following the termination of the agreement (see below).

After the end of the corporate mandate and/or the services in the framework of a management agreement, the Director/manager will be free to compete, provided such competition is not unfair. However, this freedom can be contractually restricted through the inclusion of a post-term non-competition clause.

A non-competition clause for a Director/manager in the framework of a management contract is not subject to the strict legal requirements imposed by the Belgian Employment Contracts Act, as they only apply to employees.

Therefore, the parties enjoy greater contractual flexibility. Yet, such clauses must still observe the principle of freedom of trade and industry.

In this regard, a non-competition clause may be declared null and void if it is overly broad concerning geographic scope, the type of business/activities it covers, or the duration of the restriction.

Finally, if a non-competition clause is entered into with the Director's/manager's management company, then it is advisable to expressly agree that besides the management company, also the Director/manager as a natural person undertakes not to compete.

Social security regime applicable to Directors

A distinction must be made between a remunerated and an unremunerated corporate mandate as a Director.

Remunerated corporate mandate

If the mandate is remunerated, then the Director must register either with a social insurance fund for self-employed persons or with the National Social Security Office for Self-Employed Persons and must pay social security contributions as a self-employed person.

Where the directorship constitutes the Director's main professional activity, the contributions are calculated based on the Director's annual professional income, subject to a minimum contribution of EUR 871.71 per quarter (the amount in 2025).

If, in addition to the corporate mandate as a Director, the latter also has an operational manager role as an employee in the company, then the employer must register the manager with the National Social Security Office for Employees and pay social security contributions for employees (which is approximately 27% employer contributions on top of the employee's salary and also make a deduction of 13.07% employee contributions from the salary).

For the remunerated directorship, the director will then be self-employed in a secondary occupation (if the activity as an employee amounts to at least 50% of a full-time job) and will have to pay reduced contributions as a self-employed person in a secondary occupation (unless the remuneration as a Director is less than EUR 1,881.76 per year in which case no contributions are due).

Unremunerated corporate mandate

If the Director's mandate is not remunerated, then he/she will not be required to register with a social insurance fund for self-employed persons, provided that the following three conditions are met:

(i) the unpaid nature of the mandate must be explicitly stated in the company's articles of association or formally decided by the competent corporate body in the appointment resolution;

(ii) also, in practice, the Director may not receive any benefits whatsoever in connection with his/her mandate. This not only includes the absence of a direct remuneration, but also the absence of any benefits in kind, attendance fees, cost allowances, etc.; and

(iii) the Director does not perform any additional technical, accounting, commercial or administrative activities as a self-employed person for the company.

If any of these conditions are not met, then the director must register with a social insurance fund for self-employed persons. However, as the director does not earn any income as a self-employed person, no social security contributions will have to be paid.

Peculiar aspects that you may want to flag/point out under your professional experience

One hot-topic concerns the impact of the recent reform of the Belgian extra-contractual liability legislation on Directors and managers.

This new legislation abolishes an agent's so-called 'quasi-immunity', which means that, unlike in the past, Directors/managers can now be held directly liable by the company's co-contracting party if it appears that they have committed a fault when performing their duties.

A distinction must be made depending on whether the Director/manager is acting in the performance of his/her corporate mandate or in the exercise of his/her management function (operational role) within the company.

With regard to liability for the performance of the Directors' **corporate mandate**, the rules on directors' liability in the Companies and Associations Code also apply. For example, a liability cap applies, i.e. a maximum amount for which a Director can be held liable. The maximum Director's liability depends on the company's size and ranges from EUR 125,000 to EUR 12,000,000 (it being understood that these amounts apply to all the directors together), but the cap does not apply in the event of a serious fault by the Director or a minor fault that regularly occurs.

As a counterpart to this cap on Directors' liability, the Companies and Associations Code prohibits the prior contractual exoneration of Directors' liability or the inclusion of indemnification clauses.

For **management services** provided by Directors outside their corporate mandate but within the framework of a management agreement, on the other hand, it is possible to include exoneration clauses that limit or exclude the manager's liability.

Firstly, it is possible to limit a manager's extra-contractual liability through clauses in the commercial contract between the company and its customers or clients. In addition, the manager's liability can also be limited/excluded in his/her management agreement with the company and, if they so wish, the parties can also stipulate that the company will indemnify the manager against claims from third parties.

We are often requested to support clients with reviewing their management contracts concerning this new liability legislation.

Cyprus

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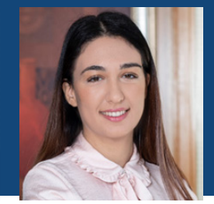

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The legal position of the Directors in your jurisdiction: are the Directors employees?

In Cyprus, directors play a central role in the governance and management of companies. Their position is shaped by both statutory rules, principally those found in the Companies Law (Cap. 113) and by principles of common law and contractual arrangements.

Under Cyprus law, directors are classified by default as officers of the company, not employees. Specifically, Cap. 113 defines a director as a person responsible for managing the company's affairs, without granting them employee status per se. However, a director may also be considered an employee if the nature of their relationship with the company meets the criteria of employment. This typically applies to directors actively involved in day-to-day operations who receive a salary and employment-related benefits. In contrast, the directors whose roles focus primarily on oversight and strategic guidance are generally not considered employees unless their engagement exhibits the characteristics of an employment contract. Ultimately, whether a director is also an employee is a question of fact, assessed based on factors such as control, remuneration, working arrangements, and mutual obligations.

Please describe how the relationship between the Director and the company is usually formalized in your jurisdiction (i.e. entering into an agreement such as directorship/management agreements, service contracts, corporate resolutions, other possible solutions).

The appointment of directors in Cyprus is typically formalised by a resolution of the board of directors or the general meeting of shareholders, depending on the provisions of the company's Articles of Association. Following appointment, the relationship between the director and the company is often formalised through one or more contractual instruments. These may include a directorship agreement, a service or management agreement, or an employment contract. Such documents set out the terms of engagement, rights and duties, remuneration, and grounds for termination. In all cases, the company's constitutional documents remain the guiding framework, and any contractual arrangement must be in line with the Articles of Association of the company and the provisions of Cap. 113.

Focus on the terms of the contractual arrangements governing the Directors' positions in your jurisdiction

The contracts or letters governing a director's engagement commonly include a comprehensive set of terms designed to clarify responsibilities and manage legal risk. These typically address the director's functions and duties, which include statutory and fiduciary responsibilities such as acting in good faith, avoiding conflicts of interest, and promoting the success of the company. The agreement often sets out remuneration details, including fixed fees, bonuses, and other benefits, as well as reimbursement of expenses incurred in the performance of duties. Termination provisions are also a key feature, defining notice periods, grounds for immediate removal, and post-termination obligations, if any. It is standard practice to include confidentiality clauses, intellectual property provisions, and indemnity terms. Moreover, many agreements make reference to Directors' and Officers' (D&O) insurance coverage to protect the director against personal liability arising from actions taken in their official capacity. These contracts are essential not only for clarity and compliance but also for attracting qualified professionals to directorial roles.

Focus on non-competition covenants applicable to Directors

Under Section 27 of the Contracts Law, Cap. 149, any agreement that restricts a person's ability to engage in a lawful profession, trade, or business is, on its face, void—subject to limited statutory exceptions. The law is interpreted in line with English legal principles (Section 2), which may provide guidance where Cypriot precedent is lacking.

In English common law, restrictive covenants, including non-compete clauses, may be upheld if they are reasonable in scope, duration, and geography, and if they protect a legitimate business interest. While Cypriot courts may consider these principles, they remain cautious in enforcing post-termination non-compete clauses, especially in employment contexts.

Accordingly, such clauses are generally unenforceable under Cypriot law unless they can be justified as reasonable and proportionate, and even then, judicial scrutiny is strict. This is particularly relevant for higher-paid employees and directors, where more latitude may be given, especially if the contract was negotiated at arm's length.

Companies often rely on Non-Disclosure Agreements (NDAs) to safeguard confidential information, particularly in director appointments. While non-compete clauses do appear in such contracts, their enforceability is not guaranteed and must be assessed on a case-by-case basis.

Social security regime applicable to Directors

Social insurance contributions for directors in Cyprus depend on the nature of their engagement. Directors who perform substantive duties and receive remuneration are usually considered employees for social insurance purposes. As such, both the company (as employer) and the director (as employee) are required to pay contributions to the Social Insurance Fund under the Social Insurance Law of 2010 (Law 59(I)/2010). Contributions are based on the director's insurable earnings and must be reported and paid on a monthly basis. In contrast, the directors who receive only director's fees and do not engage in managerial activities are generally not subject to social insurance contributions. In some cases, directors may provide their services through personal service companies or as self-employed professionals, triggering a different set of social insurance obligations. It is therefore essential for companies and directors to correctly determine the director's classification to ensure full compliance with both tax and social security obligations.

Peculiar aspects that you may want to flag/point out under your professional experience

From a practical standpoint, one of the most important considerations in Cyprus is to distinguish clearly between the various capacities in which an individual may act, namely as a director, employee, or shareholder. These roles carry different rights and responsibilities, and confusion between them can result in disputes, tax complications, or regulatory breaches. It is also critical to appreciate that directors are subject to strict fiduciary duties under Cypriot law. They must act in good faith, exercise independent judgment, and avoid situations where their interests' conflict with those of the company. Directors who breach these duties may be held personally liable for any resulting loss or damage,

particularly in cases involving fraud, mismanagement, or insolvent trading. Companies should ensure that directors are properly advised on their responsibilities and that suitable protections, including indemnity clauses and insurance, are in place. Additionally, as corporate governance standards continue to evolve in line with EU developments, it is advisable to periodically review directors' agreements and governance structures to remain compliant with best practices.

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The legal position of the Directors in your jurisdiction: are the Directors employees?

Under Danish law, the classification of a director as an employee protected by Danish employment legislation depends on several factors, as the title of "director" alone is insufficient to determine employment status. Factors such as the nature of the director's responsibilities, the level of control, and degree of independence exercised by the director play a crucial role in this determination.

According to the Danish Companies Act (in Danish: "Lov om aktie- og anpartsselskaber, selskabsloven"), a managing director is described as an individual with executive authority, responsible for the company's day-to-day operations and reporting to the company's board of directors or general meeting. It is also a requirement that such a director be formally registered with the Danish Business Authority (in Danish: "Erhvervsstyrelsen").

Generally, such a director does not have employee status. However, other employees carrying the title of "director" without fulfilling the above criteria will typically be regarded as employees covered by and protected under Danish employment legislation.

Please describe how the relationship between the Director and the company is usually formalized in your jurisdiction (i.e. entering into an agreement such as directorship/management agreements, service contracts, corporate resolutions, other possible solutions).

For a director who does not have the status of an ordinary employee, there are no legal requirements regarding how the director's executive service contract must be formalized or which terms it must contain.

In principle, the parties have contractual freedom in such an agreement. However, unfair terms may be set aside wholly or partly under Section 36 of the Danish Contracts Act (in Danish: "aftaleloven"). Furthermore, the Danish Act on Restrictive Employment Covenants (in Danish: "Lov om ansættelsesklausuler") regulates certain aspects of agreed non-competition clauses for directors (see section 4 below). It is also generally important to be aware of the more fundamental protections arising under EU anti-discrimination law that can affect the enforceability of contract terms.

In addition to the executive service contract itself, the director must generally comply with corporate resolutions and internal guidelines issued by the company's board of directors or general meeting.

Focus on the terms of the contractual arrangements governing the Directors' positions in your jurisdiction

The key contractual terms in a director's executive service contract typically include notice periods, salary, benefits, and a detailed description of the director's responsibilities and authority. The executive service contract typically also states whether the director may undertake secondary occupations during the engagement.

It is customary for directors to have longer notice periods than ordinary employees. Typically, notice periods range from six (6) to 12 months, either mutually or with the director having a slightly shorter notice period than the company.

Directors usually receive a fixed base salary as well as a variable component in the form of a bonus scheme or other incentive program, such as warrants or stock options. The specific terms for earning and paying these bonuses, both during the engagement and upon termination, whether due to the company's termination or the director's resignation (e.g. whether the director is a "good leaver" or "bad leaver"), should be thoroughly detailed in the agreement.

For listed companies, the director's executive service contract commonly addresses restrictions on the director's shareholdings or transactions, in alignment with the company's internal insider trading policy.

It is crucial to include robust confidentiality and intellectual property provisions to protect the company's interests.

Finally, the executive service contract should specify how breaches are to be handled, including potential claims for damages or liquidated penalties, and whether disputes arising from the relationship are to be settled by the ordinary Danish courts or by arbitration.

Non-competition and non-solicitation clauses are commonly included, as discussed in section 4.

Focus on non-competition covenants applicable to Directors

There is no specific legislation regulating the form or terms of non-competition clauses applicable to directors.

In practice, a non-competition clause will often apply for a period of 12 months after the expiry of the director's notice period. In most cases, no compensation is agreed for this period. If a longer clause period is agreed upon, especially in combination with a non-solicitation clause, the company will usually pay ongoing compensation to the director for being subject to such restrictions.

The amount of such compensation typically ranges between 40 - 60% of the director's monthly salary, subject to deduction for any income received from other sources during that time.

It is standard to agree that the non-competition clause protects against both direct and indirect professional activities within companies that compete wholly or partially with the company and its subsidiaries. Moreover, it is normal to agree upon an agreed damages clause, under which the director must pay a penalty - often equivalent to six (6) months' salary per breach.

While directors generally enjoy contractual freedom in relation to non-competition clauses, such clauses are nonetheless subject to statutory limitations under Sections 11(1) and 11(2), cf. Section 11(3), of the Danish Act on Restrictive Employment Covenants.

These provisions state that a non-competition clause becomes invalid and unenforceable if the director is dismissed due to company-related reasons. Additionally, a non-competition clause will not be valid if it is excessive in duration, geographical scope, or otherwise unreasonably restricts the director's ability to engage in future work.

Social security regime applicable to Directors

In Denmark, it is mandatory to pay a Labour Market Insurance contribution and an occupational injury insurance fee (in Danish: "AES-bidrag"), which provide financial compensation to employees who are recognized as having an occupational disease or injury.

Directors are not exempt from this obligation. The total contribution rate depends on the company's sector group and varies between DKK 277 and DKK 9,640 per year (2025 rates).

Other social security contributions, such as Labour Market Supplementary Pension (in Danish: "ATP-bidrag") and contributions to maternity funds, are only mandatory for employees with employee status, and thus not for directors.

In addition to the mandatory AES contribution, most executive service contracts will include terms regarding additional insurance coverage for the director, such as accident insurance, health insurance, and critical illness insurance. Full salary during periods of sickness and the right to paid leave for pregnancy/maternity are also commonly required, even if not mandatory by law.

Peculiar aspects that you may want to flag/point out under your professional experience

In our professional experience, we are often asked by companies to assist in drafting the director executive service contract.

It is crucial that the director's executive service contract be as detailed and thoroughly regulated as possible to ensure the best foundation for cooperation between the director and the company.

Disputes between a director and a company can have significant financial and reputational consequences.

In addition to drafting contract terms, we also assist in assessing whether a director actually qualifies as a managing director within the meaning of Danish employment law. This issue sometimes arises in disputes, particularly in cases of termination, where the enforceability of non-competition and non-solicitation clauses is frequently contested.

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The legal position of the Directors in your jurisdiction: are the Directors employees?

The legal status of a Director is an office holder who owes statutory and common law duties to their company. A director is not automatically an employee of the company, although they can be an employee if they enter into an employment contract.

An executive director carries out executive functions in the company and is usually a full-time employee of the company. This dual role is possible because a director's duties can be distinct from and complementary to their employment responsibilities and their remuneration can be structured in a way that reflects both roles.

Directors who are employees are entitled to the same employment rights as other employees, such as the right to paid family leave, Statutory Sick Pay entitlement, the right to paid annual leave and the right to make tribunal claims such as unfair dismissal.

A non-executive director or "NED" is a term used to refer to a director who is not an employee of the company or holder of an executive office. A NED would usually devote only part of their time to the affairs of the company as an independent adviser or supervisor and are usually self-employed from an employment law perspective (albeit they may still be 'employees' for income tax purposes).

Please describe how the relationship between the Director and the company is usually formalized in your jurisdiction (i.e. entering into an agreement such as directorship/management agreements, service contracts, corporate resolutions, other possible solutions).

While an employment contract can exist without being in writing, section 1 of the Employment Rights Act 1996 requires employers to provide their employees (including executive directors) with a written statement (a "section 1 statement") of particulars of employment by no later than the beginning of their employment.

An employment contract for an executive director is usually referred to as a service agreement. There are a number of specific regulatory requirements for directors' service agreements, some of which depend on whether the company is private or publicly listed.

If the director is to serve as a non-executive director or chairperson, the appointment can be formalised through a letter of appointment.

Any employment contract or letter of appointment will apply alongside the company's Articles of Association (Articles). The Articles usually set out the powers and duties of the directors, their appointment, and the procedures for their removal. The Articles will usually provide for appointment by the board, or by the shareholders via a written resolution or at a general meeting. It is not unusual for Articles to provide for the removal of a director if their employment ends and it is not unusual for a service agreement or letter of appointment to state that the employment or engagement ends if the directorship ends. However, the two roles can operate independently.

In some cases, shareholder agreements may further define the relationship between the directors and the company, particularly in private companies where shareholder influence is significant. In such cases an individual may have three roles within the company – employee, director and shareholder.

Directors' service agreements will often contain various powers of attorney – for example, to allow the company to execute documents relating to their removal from office on termination, or to ensure the company gets the full benefit of all intellectual property rights. As a result, directors' services agreements will often be executed as a deed (e.g. with both parties' signatures being witnessed).

Focus on the terms of the contractual arrangements governing the Directors' positions in your jurisdiction

In addition to the basic terms applicable to a contract of employment (including a director's service agreement), the agreement will often contain terms relevant only to directors and other senior managers, such as restrictive covenants. It should also include such other information as is required in a section 1 statement.

The service agreement should set out the director's duties, responsibilities and obligations as a director, and if applicable, as an employee. Generally, it will include terms which mirror a director's statutory duties under sections 171 to 177 of the Companies Act 2006. In addition, it may detail the director's insurance cover under the company's directors' and officers' policies.

The agreement may include a warranty that such director is not subject to any restrictions preventing them from holding office as a director, warranties in relation to their skills and qualifications or in connection with their fiduciary duties as a result of their directorship.

The service agreement should include the grounds for termination, including the company's disciplinary and grievance procedures set out in the company handbook. It should also detail what happens in the event of a dispute between the company and the director, any payment in lieu entitlement, notice periods or if the in what circumstance a company can terminate without notice.

Whilst a large proportion of remuneration for many directors comes in the form of variable awards under a bonus, share option scheme and/or long-term incentive plan ("LTIP"), their service agreement will generally not include significant detail about those entitlements. This is because the company will generally wish to avoid: (i) making the director's participation in such schemes a contractual entitlement; and (ii) creating a binding commitment for particular awards to be payable under such schemes.

As a result of this, the directors' financial compensation upon termination will often be affected by documents outside of their service agreement (such as the scheme rules for the LTIP), which may specify the mechanism for calculating such a payment dependent on whether the director is deemed to be a good leaver or a bad leaver in relation to any share-related benefits or ESOP plan.

Focus on non-competition covenants applicable to Directors

Directors' service agreements often contain various post-termination restrictive covenants, including non-competition covenants. The intention behind such clauses is to protect a company's interests from being compromised by a director or employee once they exit the company.

However, the default position under common law is that such covenants are void as an unlawful restraint of trade. For a non-compete clause (or any other restrictive covenant) to be enforceable, the company must be able to show that the relevant clause goes no further than is necessary in order to protect its legitimate proprietary interests. In determining whether the clause satisfies this test, the duration of the non-compete, its geographical scope, the definition of a competing business, and the nature of the legitimate business interests are all factors which may be considered.

A director's variable remuneration (e.g. share options or long-term incentive plans) are often governed by separate agreements which often also contain a suite of restrictive covenants, and the plan rules are likely to state that the director will forfeit their share-based benefits in the event of breach of those covenants.

A director who acts in breach of a valid restrictive covenant might be subject to a prohibitive injunction preventing them from (for example) working for the competitor until the period of the restriction expires, could be ordered to pay the company damages for the breach or may have to account for any profits they have generated as a result of the infringing conduct.

Aside from non-compete clauses, a director may also be subject to further restrictions relating to, for example, not poaching clients or colleagues for a period after termination of employment. As with non-compete clauses, such clauses have to be limited in scope to just being enough to protect legitimate business interests in order for their to be a chance of them being enforceable in the courts.

Social security regime applicable to Directors

The legislation on employed earners and Class 1 National Insurance Contributions ("NICs") applies to directors unless otherwise stated or specific administrative concessions apply. Payments to a director are liable for NICs because a directorship is an office and is classed as an "employed earner" under section 2(1)(a) of the Social Security Contributions and Benefits Act 1992.

Companies also pay employer's NICs on directors' salaries, where the director's salary is greater than £417 per month (the NIC Secondary Threshold).This applies even where an individual is a director of its own company running payroll and the only employee. A company can be held liable for both PAYE and NICs payments for non-executive and executive directors that HMRC deems should have been deducted, plus interest and penalties.

As an administrative concession, HMRC allows a non-resident director of a British-registered company to have no liability in terms of NICs if the director only attends board meetings in the UK and either:

a. the director attends a maximum of 10 board meetings in any tax year and each visit lasts no more than two nights at a time; or
b. the director only attends one board meeting in a tax year and the visit lasts no more than two weeks.

Peculiar aspects that you may want to flag/point out under your professional experience

In England and Wales, one of the most important statutory directors' duties is to promote the success of the company for the benefit of its members as a whole. However, in some circumstances, that duty will shift to require the directors to consider and weigh up the competing interests of the company's creditors.

This 'creditor duty' means that directors:

1. must give increasing regard and weight to creditors' interests the more precarious the company's financial state becomes; and
2. could be liable for wrongful trading if they allow the company to continue to trade, rather than taking all reasonable steps to minimise loss to the company's creditors, in circumstances where the director concludes (or should have concluded) that there is no reasonable prospect of the company avoiding an insolvent administration or liquidation.

Among the consequences for breach of such duties (or any other breach of directors' duties) is disqualification. Under section 6 of the Company Directors Disqualification Act 1986, the Secretary of State may make an application to court to disqualify a person from holding the office of director. The disqualification could last for up to 15 years and is published online. A disqualified person can only become a company director again (whether executive or non-executive) with the court's permission.

Estonia

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The legal position of the Directors in your jurisdiction: are the Directors employees?

In Estonia, directors are not employees but are elected either by the supervisory board or the shareholder's meeting (depending on whether the company has a 1-tier or 2-tier corporate management) and perform their duties under a service agreement. Employment law does not apply to the directors' service agreements. Theoretically, a director could also be an employee of the company, if they are engaged in dual roles that are clearly distinguishable (e.g. an engineer who performs management functions in addition to engineering work). There is no explicit regulation on managing such dual roles and possible conflicts of competence are therefore to be carefully considered.

Please describe how the relationship between the Director and the company is usually formalized in your jurisdiction (i.e. entering into an agreement such as directorship/management agreements, service contracts, corporate resolutions, other possible solutions).

A service agreement (mandate agreement) is automatically created between the company and the director by election of the director by the competent managing body and a written agreement is not strictly required. The duties of the director derive from the Commercial Code and the Law of Obligations Act. However, as the law does not sufficiently cover all aspects relating to the role and does not provide any statutory benefits for the directors apart from the general assumption that this is a paid role, a written service agreement is usually concluded with the director. Conclusion of the written service agreement needs to be approved by the same body that elects the director, which also appoints the company's representative for signing.

Focus on the terms of the contractual arrangements governing the Directors' positions in your jurisdiction

As explained above, the main duties of the directors arise directly from the law. Under the Commercial Code, the directors are responsible for representing and managing the company, organizing accounting, calling and preparing shareholders' meetings. The obligation to "manage and represent" the company entails the duty to perform transactions with clients, employees and other third persons, ensure the company's compliance with anti-trust, taxation, environment, health and safety regulations as well as any other general or field-specific regulations that apply to the company. Directors must fulfil various general duties for the company, including upholding a fiduciary duty of loyalty, acting with due diligence, performing their duties with sufficient skill and in a manner commensurate with their knowledge and abilities, and acting to maximize the benefits to the company and to prevent any losses. A strict confidentiality requirement also applies where directors learn of facts that the company has a legitimate interest in keeping confidential. In addition, directors must abide by the competition prohibition.

The written service agreements concluded with directors typically supplement the statutory regulations in the following aspects:

- Abstaining from and managing conflicts of interest
- Extending statutory non-compete to cover any possible competing activities both during and after the service relationship
- Transfer of IP rights
- Non-solicitation.

In addition, the written service agreements typically set out the benefits relating to the role, such as compensation, vacation entitlement, compensation of expenses, work equipment, bonus payments and termination compensation.

Focus on non-competition covenants applicable to Directors

Under the Commercial Code, directors shall not, without the consent of the supervisory board (or shareholders, if there is no supervisory board in the company):

1. be a sole proprietor in the area of activity of the company,
2. be a partner of a general partnership or a general partner of a limited partnership which operates in the same area of activity as the public limited company,
3. be a member of a managing body of a company which operates in the same area of activity as the public limited company, except if the companies belong to one group.

The non-compete obligation only applies during the service relationship and not after its termination.

The non-compete clause can be extended under the service agreement to include any direct or indirect competing activities, may contain also post termination limitations and contractual penalty for breach. Unlike in case of employment contracts where post-termination non-compete clause must be fairly compensated, there is no such statutory requirement that would apply to the directors' service agreements.

Social security regime applicable to Directors

Directors are essentially treated the same was as employees in terms of social security regime, apart from the unemployment insurance, which does not apply to them (and there is no opt-in possibility either). Consequently, the company must withhold 22% income tax (paid from gross salary)[1] from all payments (e.g. salary, bonuses, etc.) made to the directors.

The following income tax exemptions apply:

- annual income up to 14 400 euros gives 7,848 euros as annual basic exemption.

1 The income tax is planned to be increased to 24% from January 1, 2026.

- in case annual income is between 14,400 euros to 25,200 euros, basic exemption decreases according to the following formula: 7,848 – 7,848 / 10,800 x (income amount – 14,400).
- if annual income is above 25 200 euros, basic exemption is 0[2].

The company must also pay 33% social tax on all payments made to the directors.

In addition to the above, the company must withhold the funded pension payment at a rate of 2% (3% in some cases) for the persons who are subject to funded pension schemes.

Peculiar aspects that you may want to flag/point out under your professional experience

In practice, termination of service and recall of directors may bring along various bonus and option-related claims. It is therefore essential to consider such bonus and option schemes in detail and ensure that both good-leaver and bad-leaver scenarios are sufficiently addressed.

2 The basic exemption system will also change and the exemption will be EUR 8,400 per year regardless of the salary level from January 1, 2026.

Finland

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Carola Möller
Partner

The legal position of the Directors in your jurisdiction: are the Directors employees?

In Finland, executive directors are primarily considered employees, and therefore subject to Finnish employment legislation. However, the Finnish system differentiates between the managing director of a company and other directors employed by the company. The managing director is not considered an employee but is rather regarded as a company organ with specific duties and responsibilities set out in the Finnish Companies Act. As the managing director is not an employee, Finnish employment legislation does not apply to them. However, the parties can expressly agree that Finnish employment legislation applies to the managing director, either in full or in part. Also, directors whose role within the company is so independent due to ownership or otherwise that they are not considered to be working under the employer's direction or supervision could be considered to fall outside the scope of Finnish employment legislation, but such an assessment is made on case-by-case basis..

Please describe how the relationship between the Director and the company is usually formalized in your jurisdiction (i.e. entering into an agreement such as directorship/management agreements, service contracts, corporate resolutions, other possible solutions).

It is customary to enter into director agreements with directors. Although commonly referred to as a director agreement, a director agreement is considered an employment contract under Finnish law, except for the managing director.

The legal status of the managing director derives from their appointment by the company's board of directors, requiring a board resolution. Additionally, the appointment must be registered with the Finnish Trade Register. In addition to the formal appointment, the managing director would typically have a managing director agreement.

Focus on the terms of the contractual arrangements governing the Directors' positions in your jurisdiction

Director agreements are typically more comprehensive than standard employment contracts, particularly regarding restrictive covenants. Directors are typically also excluded from the scope of collective bargaining agreements and from the Finnish Working Time Act if their working hours are not pre-determined or supervised and they have autonomy over their working time. Generally, director agreements include broader restrictive covenants compared to standard employment contracts with detailed clauses on confidentiality, intellectual property rights, non-competition and non-solicitation and commonly provide for contractual penalties in the event of a breach of such obligations. Further, director agreements usually include longer notice periods and references to incentive schemes in place in the company. In addition, disputes are in most cases agreed to be settled by arbitration rather than in general courts.

As said, the managing director's duties and responsibilities are set out in the Finnish Companies Act. Under the said Act, the managing director is responsible for the day-to-day management of the company in accordance with the instructions and orders given by the board of directors. Further, the managing director is responsible for ensuring that the financial administration and accounts are in compliance with the law and that its financial affairs have been arranged in a reliable manner. The managing director have an information obligation towards the company's board of directors.

The managing director, being a company organ rather than an employee, does not have statutory protection against dismissal. Due to this, it is common to agree in the managing director agreement on a fairly long notice period (often 6 months) and entitlement to severance payment if the managing director agreement is terminated by the company without breach of duties by the managing director. As employment legislation is not applied to managing directors, their agreements typically include similar rights to annual holiday and sick pay as employees. Managing director agreements typically contain similar restrictive covenants to those in director agreements, but with longer restriction periods and higher contractual penalties.

Focus on non-competition covenants applicable to Directors

Under the Finnish Employment Contracts Act, non-competition covenants for employees are permissible if particularly weighty reasons related to the operations of the employer in the employment relationship exist. In general, non-competition agreements are permissible for directors and specialist employees. The maximum duration of the post-termination non-competition covenant is 12 months, with the exception of directors who are deemed to manage an independent part of the company or to be in a similar independent position.

Directors, in their capacity as employees, are entitled to compensation for the duration of the non-competition covenant. They shall receive 40% of their salary for non-competition obligations lasting up to 6 months, and 60% for non-competition obligations exceeding 6 months. In addition, the company's right to unilaterally waive the non-competition obligation and avoid the payment obligation is limited.

It should be noted that the employment-related provisions and restrictions on non-competition covenants, including the payment obligations, do not apply to managing directors due to their non-employee status. For the managing director, non-competition covenants are permitted to the extent reasonable, and unenforceable only if they restrict the individual's freedom in an unreasonable manner. Typically, the length of the post-termination non-competition period is between 6 to 12 months in the managing director and director agreements.

As said above, it is also customary to include a contractual penalty clause for breach of the non-competition covenant in director and managing director agreements and the amount of such penalties varies between 6 to 12 months of a respective individual's salary.

Social security regime applicable to Directors

Both the managing director and other executive directors are subject to the same statutory social security regime as employees in Finland. Social security contributions for the company are approximately 21–22% on top of the individual's salary varying slightly depending on the size, industry and other circumstances of the company. Social contributions consist of health insurance, pension insurance, accident insurance and unemployment insurance contributions.

Peculiar aspects that you may want to flag/point out under your professional experience

Sometimes we come across situations where an employee has been appointed managing director and the parties have continued to apply the employment contract or situations where the managing director agreement is made on an employment contract template, which can lead to unclear situations on whether the parties intended to agree that the managing director remain covered by employment legislation.

It is usually not recommended that the parties agree that employment legislation is applied to the managing director (which is possible) due to the statutory protection against dismissal and less flexibility when it comes to restrictive covenants. In such case, the terms and conditions in the event of a termination by the company would in many cases be unclear as the managing director agreement is often terminated without specific termination grounds and in such case, the termination compensation would be subject to negotiations between the parties, and in the absence of a mutual agreement ultimately to be determined by the competent court.

Compensation paid to the managing director must be paid as personal income, which is in general subject to tax withholdings and social security and pension contributions, and therefore the managing director cannot be engaged as an independent contractor or consultant.

France

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Laetitia Ternisien
Partner

The legal position of the Directors in your jurisdiction: are the Directors employees?

In France, corporate officers ("*mandataires sociaux*") are not employees, as they act independently and are presumed not being under a subordination link towards the Company (article L.8221-6 of the Labor Code).

Any alleged employment contract concluded exclusively to shield a director from ad nutum revocation may be considered as void for fraud.

However, the simultaneous holding of both an employment contract and a Director position is possible if 4 cumulative criteria are complied with:

1. **Distinct technical** duties beyond the corporate mandate;
2. **Separate remuneration** for those duties (dual pay is indicative, not mandatory);
3. **Actual subordination** as an employee to a corporate body, evidenced by real oversight (only pay slips or dismissal letters are insufficient, Cass. soc., 10 June 2008);
4. **No fraud**, such as bypassing corporate governance rules.

When dual status exists, the employment portion is fully governed by labor law (pay slips, working time, leave, notice, etc.), and total severance (mandate + employment) is assessed in a unified way. If criteria lapse, the employment contract is deemed suspended, or terminated by mutual agreement.

Please describe how the relationship between the Director and the company is usually formalized in your jurisdiction (i.e. entering into an agreement such as directorship/management agreements, service contracts, corporate resolutions, other possible solutions).

In France, the relationship between a corporate officer ("*mandataire social*") and the company must be formalized by a corporate resolution or the company's articles of association in writing and published. This decision can be supplemented by a specific agreement:

1. **Appointment by a corporate resolution or the company's articles of association**

   A director (president, CEO, manager, or board member) is appointed either in the company's by-laws or by a decision of its competent body (shareholders' meeting, board of directors, etc.).

   This unilateral act gives rise to the "mandat social," which confers powers of representation and management of the company. It must be recorded in minutes specifying, as needed, the mandate's term, remuneration and powers. Nomination (and revocation) must be filed with the Trade and Companies Register and published in a legal newspaper (L.210-9, L.123-9 of the Commercial Code) to bind third parties, unless they had prior knowledge of the appointment. Many companies supplement this with non-binding mission letters, governance charters or shareholder agreements.

2. **Optional directorship agreement**

   Although not required, officers often sign a "*contrat de mandat social*" to formalize negotiated terms—remuneration, revocation indemnities, non-competition, social benefits, etc. Such contracts must be approved by the competent corporate body and, if between the company and its officer, may trigger the regulated-agreement procedure.

3. **Parallel employment contract**

   If an officer also performs distinct, technical duties under genuine subordination—and receives specific pay—a separate employment contract, subject to Labour Code L.1221-1, can coexist with the mandat social. In SA and SARL, such contracts may require regulated-agreement approval.

4. **Service-provider arrangement**

   In structures like SAS, management may be outsourced under a services agreement, provided the by-laws allow it and governance rules (including regulated-agreement formalities) are complied with (*Cass. com., 24 Nov. 2015, n°14-19.685*). Nonetheless, SAS must still appoint a statutory president with binding representation powers (*Comm. Code L.227-6*).

   Thus, French law recognizes (i) appointment via corporate act and publicity, (ii) optional directorship contracts, (iii) conditional employment agreements, and/or (iv) regulated service provider agreement as means to formalize the officer–company relationship.

Focus on the terms of the contractual arrangements governing the Directors' positions in your jurisdiction

Whether governed by a directorship agreement or a service provider agreement, corporate officers' agreements in France typically address standard terms—powers, mandate duration, revocation procedures and remuneration. Beyond those points, several specific clauses frequently appear:

- **Execution of mandate**: Enhanced confidentiality obligations, exclusivity or availability requirements, and expense provisions (such as corporate credit cards, travel).
- **Revocation and exit indemnity**: Although directors may be removed "ad nutum" (without cause) under corporate law, agreements often grant a contractual indemnity for early termination. "Good-leaver" events (dismissal without fault, resignation for a valid reason such as change of control) trigger full indemnity, whereas "bad-leaver" events (serious misconduct, unexcused departure) may forfeit any payment or impose share-buy-back at a reduced price.
- **Variable remuneration and long-term incentives**: Performance-linked bonuses, equity plans (BSPCE, free shares, stock-options) with claw-back mechanisms in case of mismanagement or irregularity can be provided. Fixed cash or non-cash benefits (housing, vehicle fuel) may also form part of compensation.

- **Personal protection**: Company-paid insurance (like directors' and officers' liability, unemployment coverage), legal-expense funding, or temporary retention of benefits (group health plan, company car) can also be included.
- **Post-mandate restrictions**: non-competition, non-solicitation or non-disparagement covenants may extend beyond the mandate, typically limited in duration, geography and scope. Courts require proportionality and a financial consideration to validate post-mandate obligations.

Focus on non-competition covenants applicable to Directors

Every corporate officer in France is subject, to a strict duty of loyalty and good faith toward the company he or she represents. Established by case law (*Cass. 3e civ., Feb. 11, 1964; Cass. com., Feb. 27, 1996, No. 94-11.241; Cass. com., Nov. 15, 2011, No. 10-15.049*), this fiduciary duty prohibits any competition or conflict of interest during the term of their mandate. It applies to all corporate officers. To strengthen this statutory duty, it is common to supplement it in the articles of association or in the director's agreement with additional restrictions, such as a prohibition on acquiring an equity stake in a competing business or non-solicitation of the company's clients and employees.

Once the mandate ends, however, these obligations expire. To prevent post-mandate competition, companies typically insert a non-competition clause in the bylaws or in a separate agreement. French courts require such clauses to fulfill three criteria:

1. **Proportionality** to the legitimate interests at stake (confidential information, business reputation, expertise);
2. **Temporal** and geographic scope narrowly tailored (6-24 months and defined territory);
3. **Precision** as to the prohibited activities (specific products, services, or markets).

Social security regime applicable to Directors

In France, the social-security regime for corporate officers varies depending on their legal status, the company's corporate form, and the nature and level of their remuneration. Two principal regimes apply:

1. **Self-Employed Regime ("Travailleurs Non-Salariés" – TNS)**

   Officers who alone or collectively hold a majority of the company's share capital (such as majority managers of SARLs, sole partners of EURLs, and partners in SNCs or SCA) are treated as self-employed. They affiliate with the SSI (Sécurité Sociale des Indépendants) rather than the general scheme. They do not receive pay slips; their contributions (health, basic retirement, family allowances, disability-death) are calculated on their professional income or company profits. They do not participate in the supplementary pension scheme for employees and are excluded from unemployment insurance, unless they take out private coverage.

2. **General Scheme as "Assimilated Employees"**

   Certain officers (presidents, CEOs, and deputy CEOs of SAs and SELAFAs, presidents and paid officers of SAS/SASUs, minority or equal shareholders in SARLs taxed under corporate income tax; and some non-partner managers of specific entities or associations) are assimilated to employees for social security purposes as soon as they receive remuneration. Under Art. L 311-3 of the Social Security Code, they contribute to the general regime on all fees, attendance allowances, and benefits in kind. They enjoy employee-level coverage for sickness, maternity, basic and supplementary pensions, but are not subject to labor-law protections (termination rules, working-time regulations, paid leave) unless they also hold an employment contract.

Unemployment Insurance & Private Cover

Officers without an employment contract cannot claim for unemployment benefits. Therefore, they usually subscribe to private unemployment-loss policies.

Peculiar aspects that you may want to flag/point out under your professional experience

As opposed to employees, corporate officers may be held liable for **personal misconduct or on behalf of the company**.

Management mistake, misrepresentation, unfair commercial practices, breach of legal provisions, misuse of company assets, unpaid wages, compensation or taxes, unfair dismissal, invasion of privacy, discrimination, harassment, violation of the company's articles of association, etc. can render the corporate officers liable both from a civil and criminal perspective.

Risk of reclassification into an employment contract

Corporate officers as opposed to employees must be independent in the performance of their mandate.

To limit the risk of reclassification, it is recommended advisable to avoid imposing restrictions on the conditions under which the corporate officer performs his / her responsibilities, setting objectives, establishing reporting procedures for his / her activities or, more generally, including any provision that could constitute an obstacle to the freedom that corporate officers should in principle enjoy.

These same precautions must be taken not only in the drafting of the contract itself but also, and above all, in the practical relations between the corporate officer and the shareholders. The French Supreme court has notably ruled that an examination of these relations could lead to the recognition of an employment contract between a corporate officer of the parent company and the company due to the existence of a subordination link with the latter (*Cass. soc., March 11, 2003, No. 742 FS-PB*). Therefore, the involvement of the shareholder or its representatives in the management of a company should remain limited.

Germany

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The legal position of the Directors in your jurisdiction: are the Directors employees?

Under German law, Directors acting in a corporate function are not classified as employees but are in general considered exempt from employment law. This applies, for example, to the Managing Director ("*Geschäftsführer*") of a German limited liability company ("*GmbH*") or the board member ("*Vorstand*") of a German stock corporation ("*Aktiengesellschaft*"). Directors are exercising functions directly associated with the role of the employer and are therefore not granted employee status. They are not protected against dismissal and do not enjoy labour law protection. During the last years, however, some areas of employment law protection have been extended to Managing Directors of limited liability companies who are not a major shareholder of the company in which they act as director (e.g. maternity protection), due to the fact that the European Court of Justice and the EU have an enlarged notion of who is considered an employee that includes non-shareholder directors of limited liability companies.

Please describe how the relationship between the Director and the company is usually formalized in your jurisdiction (i.e. entering into an agreement such as directorship/management agreements, service contracts, corporate resolutions, other possible solutions).

The relationship between the Directors and the company is usually governed by a service contract. In addition, the Directors need to be formally appointed into their corporate function as Directors by a shareholder resolution. This has the effect that there are two separate legal relationships, one being the corporate status as Director, the second being the contractual relation of the service agreement. Both legal relationships need to be aligned to avoid conflicts and disputes.

Focus on the terms of the contractual arrangements governing the Directors' positions in your jurisdiction

As Directors do not enjoy protection against dismissal, the service contract typically is concluded for a fixed term of e.g. two or three years. In this time, the service contract can only be terminated for severe cause. The service contract also contains provisions dealing with the specific tasks of the Director, the function and the remuneration as well as side issues like data handling and protection, confidentiality obligations and expense handling etc.

Focus on non-competition covenants applicable to Directors

Managing directors are normally subject to non-competition obligations for the duration of their service contract. If specifically agreed, post-contractual non-compete covenants can also be agreed.

A post-contractual non-competition clause for executive bodies is permissible if it has been expressly agreed (usually in the Director's service contract or in a separate addendum). In addition, the non-competition period must be limited and reasonably justified in terms of the scope, geographical area, and time. The maximum permissible duration is two years after the expiration of the service contract.

The Company will have to grant some form of compensation for the non-compete period, while the amount of 50 % of the former pay can be used as a rough orientation. The special provisions of Section 74 of the German Commercial Code (HGB) that deal with post-contractual non-compete clauses do not apply to Directors, while they are still sometimes used as guidelines.

Social security regime applicable to Directors

Managing Directors of a limited liability company ("*GmbH*") are subject to mandatory statutory social security insurance unless they are the majority shareholders of the Company. If the Managing Director is a majority shareholder, he is not subject to social security contributions. Directors of stock corporations are exempt from mandatory statutory social security..

Peculiar aspects that you may want to flag/point out under your professional experience

On March 19, 2025, the German Federal Labour Court reversed its stance on expiry clauses in Employee Stock Option Plans (ESOPs). The Court ruled that clauses which caused "vested" virtual stock options to forfeit immediately with or after voluntary resignation were invalid, as they were deemed unreasonably disadvantageous to the employee under Section 307 of the German Civil Code (BGB). The Court determined that vested options had to be considered as compensation for work already performed, and their immediate expiration after resignation violated the employee's rights as these entitlements had already been earned and could not be withdrawn retroactively. The new 2025 ruling emphasizes the protection of earned benefits, signaling a shift in how the Federal Labour Court protects stock options as a form of employee remuneration. The decision is likely to affect many ESOPs which previously relied on similar clauses that are now considered invalid. Adjustments to these plans will be required to comply with the new legal standards.

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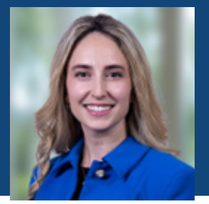

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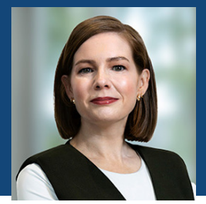

Bríd Nic Suibhne
Partner

The legal position of the Directors in your jurisdiction: are the Directors employees?

Under Irish law, directors are officers of the company, and will not, purely on account of that status, be considered an employee of the company. However, directors may also be employees, with an employment relationship to the company in addition to their fiduciary and statutory duties.

As officers of the company, directors are appointed to manage its affairs in accordance with the constitution of the company, the Companies Act 2014 and other legislation and case law. The appointment of directors is approved by resolution of the current directors or by the member(s) of the company, subject to any specific provisions contained in the constitution.

Directors typically resign by notice in writing to the company. A company may also by remove a director (not holding office for life) by shareholder resolution, notwithstanding anything in the Constitution. Under the removal process, which has a strict statutory basis, the director is entitled to extended prior notice of that resolution and has a right to make representations to shareholders.

Contracts of employment with directors may contain provisions which terminate their employment summarily if a director is disqualified. Contrarily, contracts of employments with directors may contain a provision which mandates that they resign as an officer of the company if their employment is terminated or if they are under notice of termination.

Please describe how the relationship between the Director and the company is usually formalized in your jurisdiction (i.e. entering into an agreement such as directorship/management agreements, service contracts, corporate resolutions, other possible solutions).

In Ireland, the appointment of directors is documented by way of board or shareholder resolution, and in many cases, an employment or service contract. The first directors are named by the company's subscribers at incorporation. Subsequent director appointments may be approved by resolution of the current directors or by the member(s), unless the constitution provides otherwise. Any appointment of a director without their consent is void. On appointment to a company, a director is required to complete and file a Form B10 with the Companies Registration Office (**CRO**).

In practice in Ireland, executive directors are frequently employees and their relationship with the company will be determined by the terms of their contract of employment, alongside their roles and responsibilities as a director. Non-executive directors are generally engaged under service contracts.

It is important to note that a contract of employment entered into by a company with a director for a fixed term exceeding five years must be approved by shareholder resolution. This applies to contracts to employ a director for a period of more than five years cannot be terminated by the company or can only be terminated in special circumstances.

There is also a statutory requirement that a company must keep a copy of every contract of service and memorandum with a director or a director of a subsidiary. This requirement does not apply to any contract of service with less than three years to run, or which can be terminated by the company within three years without the payment of compensation.

Focus on the terms of the contractual arrangements governing the Directors' positions in your jurisdiction

The terms of any contractual arrangements between directors and companies are a matter for negotiation between the parties and subject only to the standard principles of Irish contract law. The key terms can typically include duties and responsibilities, term and termination, remuneration, confidentiality, compliance and insurance.

It is possible (and in some cases advisable) for Irish companies to provide protection to a director in respect of personal liability they may incur in the performance of their duties. For example, companies can take out Directors' and Officers' Liability Insurance in respect of their own directors. Such insurance policies generally exclude losses incurred by directors due to their wilful default, fraud, dishonesty or criminal behaviour.

Directors' salaries, remuneration and other payments to directors must be disclosed in the company's annual financial statements which, subject to certain exemptions, are required to be filed publicly with the CRO.

Focus on non-competition covenants applicable to Directors

In Ireland, directors occupy a fiduciary position and must act in good faith in the interests of the company. Key duties include the duty to avoid conflicts of interests, the duty not to fetter their discretion as directors, and the duty to act honestly and responsibly in the conduct of the company's affairs. While there is no explicit statutory non-compete provision under Irish law, these fiduciary duties effectively prohibit directors from competing with the company. A director who acts in competition with their company would likely be in breach of these duties.

Separately, where a director is also an employee of the company, their contract of employment may include a non-compete clause. These clauses can restrict a director from engaging with any businesses or undertakings which are wholly or partly in competition with the company of which they are a director during their employment. Restrictive covenants that extend post-termination are only enforceable in Ireland where they are reasonable in scope, duration and geography, and necessary and proportionate to protect the company's proprietary and legitimate interests.

Social security regime applicable to Directors

Pay Related Social Insurance (**PRSI**) is a key part of the Irish social security system, with employers, and employees and the self-employed making contributions. In general, the payment of social insurance is compulsory. Employer's deduct their employees' PRSI contributions, while self-employed people pay their social insurance contributions directly to the Revenue Commissioners. Directors who are not employees are generally subject to a lower class of PRSI contributions which attracts more limited benefits.

Directors that own or control more than 50% of the shareholding of a company, either directly or indirectly, are normally classed as self-employed for PRSI purposes (regardless of employment relationship) and are liable to pay related PRSI at Class S (which attracts more limited benefits). The PRSI classification on directors with a shareholder below the 50% threshold is determined on a case by case basis by the Department of Social Protection taking account of the key factors in deciding whether there is an employment relationship for PRSI purposes.

Peculiar aspects that you may want to flag/point out under your professional experience

Restrictions: Directors may be subject to qualification requirements to act. For example, directors of certain regulated entities in Ireland are required to have specific qualifications or experience under the fitness and probity vetting regime. Bodies corporate, minors and undischarged bankrupts are restricted from acting as directors. In addition, all Irish companies must have at least one EEA-resident director, unless the company holds a Section 137 bond, or has obtained a certificate from the Revenue Commissioners that the company has a 'real and continuous' link with economic activity in the State.

Payments to Directors: Under Irish law, a company may not make a payment to a director by way of compensation for loss of office, or as consideration for or in connection with their retirement from office. This applies unless the particulars relating to the proposed payment, and the amount, have been disclosed to the members and the proposed payment has been approved by a resolution of the members of the company. All payments to outgoing directors should be carefully considered to ensure that prior shareholder approval is obtained, where required.

Disclosure: Unless an exception applies, directors of Irish companies are required to disclose information such as their usual residential address, interests in shares and debentures of the company or another group company, and any interests in proposed contracts with the company. These obligations apply unless a specific exemption is available. Failure to disclose can result in personal liability as well as reputational harm.

Shadow directors: In Ireland, the statutory fiduciary duties of directors apply not only to formally appointed directors, but also to (i) de facto directors and (ii) shadow directors. These individuals can be held to the same standards because they often have effective control or influence over the corporate affairs of a company.

Breach and Sanctions: Irish legislation places onerous penalties and, in some cases, personal liability and criminal sanctions on directors for non-compliance with their prescribed legal duties. For example, where directors act in breach of their fiduciary duties, they may be liable to account to the company for any losses or gain made. The Companies Act also imposes four categories of penalties on directors, ranging from a fine of up to €5,000 for a category four offence to a fine of up to €500,000 and/or imprisonment of up to ten years for a category one offence. We have seen an increase in enforcement since the establishment of the Corporate Enforcement Authority in 2022.

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The legal position of the Directors in your jurisdiction: are the Directors employees?

In the Italian system Directors are not employees, and their role is deemed of corporate nature. However, subject to certain requirements (see § 6. below), a Director can be also an employee of the company. In such a case, the same individual shall have two parallel and independent legal relationships with the same company: (i) a corporate relationship as Director and (ii) an employment relationship as employee; also, the powers as Director shall not be incompatible with the subordination as employee vis-à-vis the employer (e.g., one cannot be sole director and employee).

The members of the Board of Directors (*Amministratore*) of an Italian corporation, such as a limited liability company (S.r.l.) or a joint-stock company (S.p.A.), are appointed, and can be removed, by the shareholders'/quota-holders' meeting pursuant to the applicable provisions of Italian corporate law.

Please describe how the relationship between the Director and the company is usually formalized in your jurisdiction (i.e. entering into an agreement such as directorship/management agreements, service contracts, corporate resolutions, other possible solutions).

Entering into a written agreement with the Director is not legally required. Indeed, a directorship can be governed exclusively by the relevant corporate resolutions adopted by the shareholders'/quota-holders' meeting and/or the Board of Directors, as the case may be, setting forth the fundamental terms such as the compensation (if any, it being legally possible that the Director shall waive the remuneration for the office), the duration and the delegated powers (if any).

However, although not legally required, it is not uncommon that a directorship is governed by a written directorship agreement (the "Directorship Agreement"). This kind of agreement is not an employment contract. Therefore, it is not subject to Italian employment laws, nor to collective agreements. In the Italian practice Directorship Agreements are structured either as an agreement between the reference shareholder/quota-holder and the Director, whereby the first undertakes to cause the appointment of the Director pursuant to certain terms and conditions, or as an agreement between the company itself and the Director. There are also cases where both - the reference shareholder/quota-holder and the company - are parties to the Directorship agreement, each party undertaking the respective obligations.

Focus on the terms of the contractual arrangements governing the Directors' positions in your jurisdiction

In addition to the fundamental terms applicable to the relationship, such as the duration of the appointment and the fixed remuneration, Italian Directorship Agreements can regulate also termination mechanisms and severance packages, variable remuneration, confidentiality and other restrictions.

As regards termination, usually Directors are appointed on a fixed-term basis up to the approval of the financial statements of the company relating to a given financial year. In case of revocation of the Director before the natural expiry date without a just cause (*giusta causa*), in principle the Director shall be entitled to compensation for damages, that Italian Courts tend to quantify by reference to the amount of the compensation that would have accrued until the natural expiry date. Within this general legal framework, Directorship Agreements can contain provisions setting forth "good leaver" and "bad leaver" termination events and the relevant financial consequences. Common "good leaver" events are the revocation of the Director by the company without just cause, or the resignation by the Director with good reason (to be contractually defined). On the opposite, the revocation of the Director with just cause, or the resignation by the Director without good reason, usually qualify as "bad leaver" event. It is not uncommon that Directorship Agreements include also sickness and/or "underperformance" (to be contractually defined) as termination event; depending on the case and the outcome of the negotiation with the Director, "underperformance" can qualify as a bad leaver event or, if the contract is more favorable to the Director, as "other leaver" event.

Directorship Agreements can also govern, in addition to the fixed fees, short-term and long-term variable compensation schemes, along with ancillary mechanisms such as malus/claw-back, if not already regulated by the remuneration policies in place at company and/or group level.

Furthermore, Directorship Agreements can supplement the obligations and restrictions already imposed by the law on Directors, by setting forth additional restrictions applicable to the Director during the term of the appointment and/or after its termination. By way of example, Directorship Agreements can strengthen the restrictions on the Directors in relation to confidentiality, non-solicitation, conflict of interest, non-competition (see § 4. below) and can also provide for penalties in case of breach by the Director.

Focus on non-competition covenants applicable to Directors

Directorship Agreements can contain also post termination non-competition covenants. Since Directors are not employees, the strict limits and requirements set forth by Article 2125 of the Civil Code, applicable to non-competition covenants for employees, do not apply to Directors. In this connection, while Article 2125 requires that the non-competition obligations applicable to employees be remunerated fairly, no remuneration is legally required for non-competition obligations applicable to Directors. More flexibility applies to non-competition covenants applicable to Directors also in relation to the restricted territory and restricted activities. Despite the more flexible legal framework, in the Italian practice it is not uncommon that non-competition covenants for Directors are drafted by following the stricter rules applicable to non-competition covenants for employees, including the payment of a consideration.

Social security regime applicable to Directors

Save for certain exceptions, Directors are subject to a special social security regime called "*Gestione Separata*", i.e. a special fund established within the INPS (the Italian social security agency) different from the fund applicable to employees. According to the rules governing the "*Gestione Separata*", corporate fees paid to the Directors are subject to social security contributions up to a certain ceiling that is set forth by INPS yearly. The ceiling for the year 2025 amounts to Euro 120.607 and it is slightly increased every year. The corporate fees are subject, up to the ceiling, to approximately 35% social security contributions, while no social security contributions are paid on the fees exceeding the ceiling. The social security burden is split as follows: 2/3 on the company and 1/3 on the Director.

Peculiar aspects that you may want to flag/point out under your professional experience

In our professional experience we are often requested to support clients in structuring contracts governing the "double position" of an individual as (1) employee and (2) Director of the same company, as well as the mechanics of termination of both relationships.

Indeed, as anticipated under § 1. above, Directors can be also employees of the company, in such a case they will have two parallel - employment and corporate - relationships. According to the guidelines issued by INPS, as well as case law precedents, the same individual can hold within the same company an employment position and a corporate office provided that (i) the duties pertaining to the employment relationship are clearly identified and are other than the responsibilities and the powers pertaining to the corporate role; in other words, each (employment and corporate) relationship must have its own respective scope and responsibilities; and (ii) the individual holding both the corporate role as Director and an employment position must have, as employee, a solid reporting line towards the management body of the company so that, under the overall circumstances, he is not employee and employer of himself. The lack of the requirements under (i) and (ii) above can affect the actual existence of the employment relationship and may have serious detrimental effects on the Director's pension rights as an employee. Therefore, it is extremely important to structure the contract properly and pay particular attention to the identification of (i) the employment duties, that shall be different from the corporate responsibilities, and (ii) the reporting line of the individual as an employee.

Latvia

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The legal position of the Directors in your jurisdiction: are the Directors employees?

In Latvia, a routine management of a business company (private limited (SIA) or public limited (AS) company) is ensured by a management board (board of directors).

Directors carry out duties on the basis of the authority granted by shareholders in accordance with provisions of the Commercial Act. Directors are appointed by a decision of a shareholder (SIA) or by a decision of a supervisory board (AS). A director is a person appointed by the shareholders (the supervisory board) of a company in order to manage its property (i.e., the company's assets as a separate legal entity). The rights and duties of a director with regard to the management of a capital company, and the exercise of its powers, including the undertaking of liabilities, are closely linked to the shareholders' trust mandate. Therefore, the directors act on the basis of authorization and their appointment is based on a relationship of trust.

Therefore, directors are never considered to be employees. There is a well-established case law confirming that a company and a director do not share an employment relationship; instead, their connection is based on authorization and mutual trust.

Although the legal relationship of each director (member of the management board) with the company is established on the basis of an authorization, given the freedom of contract, the company may also regulate its legal relationship with a director on the basis of another agreement governed by the civil law, even an employment one, but this would not mean that the director obtains the status of an employee.

Please describe how the relationship between the Director and the company is usually formalized in your jurisdiction (i.e. entering into an agreement such as directorship/management agreements, service contracts, corporate resolutions, other possible solutions).

There is no legal obligation to enter into an agreement with a director. The absence of such an agreement does not impact on their status as a director in any way, because he/she carries out duties on the basis of the authority granted by shareholders/supervisory board.

Directors are deemed to have taken office from the moment of their appointment, unless a decision of the shareholders/supervisory board specifies otherwise. Registration in the Commercial Register merely confirms this fact.

Management or authorization agreements are usually concluded to regulate matters (e.g. annual leave, non-compete restrictions) that are not covered by the Commercial Act.

In the case of limited liability companies, it is a common practice for shareholders to approve a draft agreement. In the case of public limited companies, however, agreements are approved by other directors because, according to the Commercial Act, the supervisory board, which appoints directors, does not have the right to represent the company and sign the agreements with directors.

Focus on the terms of the contractual arrangements governing the Directors' positions in your jurisdiction

The procedure of appointment, the term of office and recalling of directors is governed by the Commercial Act. The Commercial Act also sets out the general duty of directors to act as honest and diligent managers. Therefore, although these matters are usually included in the agreements, they are essentially a repetition of what is provided for by the Commercial Act.

The Commercial Act also states that directors are entitled to childcare-related leaves and sets out the procedure for granting them.

According to the Commercial Act, the directors are entitled to a remuneration that is consistent with the company's financial situation and the responsibilities of a director. In limited liability companies, remuneration is established by the supervisory board, or by the meeting of shareholders if there is no supervisory board. In public limited liability companies, it is established by the supervisory board. If the remuneration is included in the agreement, its amount will be subject of an agreement reached between the parties.

In addition, agreements with directors cover issues such as the transfer of intellectual property rights, confidentiality rules, contractual penalties for breaching confidentiality, other types of leave of absence and non-compete provisions following termination of the legal relationship.

As directors' working hours are generally not regulated, they are not set out in contracts, as they may have to carry out their duties at different times. The place of work depends on the situation, whereas it is usually office-based, remote, or a combination of both.

The agreements also cover benefits granted by the company, such as a company car or a mobile phone, unless these are already covered by internal policies. Various bonuses may be set out in the agreement or determined by the shareholder/supervisory board.

Payments in connection with the recall of a director ('golden parachute'), provided the recall is not the director's fault, are also usually included in the agreements.

Focus on non-competition covenants applicable to Directors

The Commercial Act provides for non-compete restrictions during a director's term of office. Specifically, it states that a director may not:

1. be a general partner in a partnership or a shareholder with supplemental liability in a company engaged in the same commercial activities as the company in question;
2. conduct transactions relating to the company's commercial activities in their own name or on behalf of a third party;
3. be a member of the executive board of another company engaged in the same commercial activities as the company in question, unless the two companies are part of the same group.

If a director violates these provisions, the company is entitled to request compensation for losses or the recognition of the relevant transactions as such that are concluded in the name of the company, and the transfer of the income acquired or the right of claim to such to the company.

The provisions of the Labour Act that govern restrictions on professional activities shall apply by analogy to restrictions on competition following termination of the legal relationship with the director. This restriction also includes a prohibition on non-solicitation. According to the Labour Act, this restriction cannot exceed 2 years. The amount of monthly compensation for the restriction of competition, which must be paid after termination of the relationship (and cannot be paid in advance or included in the monthly compensation for performing the directors' duties), must be determined. This amount is not fixed by law, while it depends on the extent of the restriction (typically 30–70% of the monthly remuneration). The extent and territorial limits of the restriction must also be determined. The company may only withdraw from this limitation before terminating the legal relationship with the director.

Social security regime applicable to Directors

Directors' remuneration is usually subject to all so-called 'payroll taxes', unless they are registered as self-employed persons, which is not a common practice. If a director is entitled to the remuneration, they are considered, from a tax perspective, to be an employee, for whom mandatory social security contributions and personal income tax are payable under Article 1(2)(c) of the State Social Insurance Act and Article 8(21) of the Personal Income Tax Act. The status of the employee in the context of the social security system does not affect the legal relationship between the director and the company, i.e. it is still a relationship of authorization.

Peculiar aspects that you may want to flag/point out under your professional experience

In practice, it is not uncommon for a director to hold an additional position as an employee. This often happens when executives are appointed to the management board. However, legally speaking, this situation is neither correct nor advisable. The dual status poses risks, as it is usually difficult to determine whether the duties of the position have been performed in a capacity of an employee or that of a director. One and the same incident of misconduct cannot be used as a cause to terminate both legal relationships at the same time. According to the case law, a director may perform different duties within the company, meaning an additional employment relationship is unnecessary. The procedure and grounds for terminating the employment relationship and the directorship are different. Therefore, it is advisable to avoid such situations that would prevent from a director being recalled for a misconduct while still remaining an employee. Appointing an employee to the management board should terminate the employment relationship, if there is one.

In many countries, not only members of the management board (directors) but also certain executives who ensure running of the company (such as *Chief Executive Officer, Chief Financial Officer, Managing Director* etc.) are registered with commercial registry offices. The legal framework in Latvia does not provide for such a registration of officials. The officials do not have an autonomous legal status stipulated by the law or any special rights and obligations. If the company's corporate policy requires such executive positions, it must be clarified whether these are "internal use" roles for directors, or if employees are recruited for them.

Lithuania

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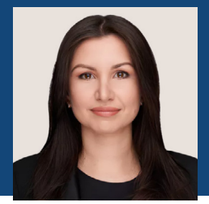
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The legal position of the Directors in your jurisdiction: are the Directors employees?

Under Lithuanian law, members of the management board (liet. *valdybos nariai*) (the **Directors**) are not considered to be employees of the company and their role is deemed of corporate nature. The management board (liet. *valdyba*) itself is an optional governing body of the company, which, if established, is mainly responsible for making strategic decisions of the company and approving significant transactions. Therefore, the Directors do not enter into employment contracts. It would be however possible to conclude civil agreements with the Directors instead.

An individual may simultaneously serve as both an employee and a Director, subject to certain exceptions under Lithuanian corporate law. In such cases, it would be essential to maintain a clear distinction between the two roles: the employment relationship (or employment contract) governed by the Labour Code of the Republic of Lithuania, and the Director's management board membership, governed by corporate law and civil agreement, if in place.

It should be noted that unlike the Directors, the CEO of the company (liet. *vadovas*) – a sole executive body of the company – would have to be employed by the company under the employment contract.

The Directors of a Lithuanian limited company, such as a private limited liability company (liet. *UAB*) or a joint-stock company (liet. *AB*), are appointed, and can be removed, by the shareholders' meeting/supervisory board meeting pursuant to the applicable provisions of Lithuanian corporate law.

Please describe how the relationship between the Director and the company is usually formalized in your jurisdiction (i.e. entering into an agreement such as directorship/management agreements, service contracts, corporate resolutions, other possible solutions).

Entering into a written agreement with the Director is not legally required. Indeed, a Director's management board membership is usually governed exclusively by the relevant corporate resolutions adopted by the shareholders' meeting/supervisory board meeting and pursuant to applicable corporate laws and the Working Regulations of the management board.

Nevertheless, although not legally required, it is not uncommon that a Director's management board membership is governed by a written management board member agreement. This kind of agreement is not an employment contract. Therefore, it is not subject to Lithuanian employment laws. In practice such agreements are structured as a civil agreement between the company itself and the Director. Such agreement usually outlines duties, restrictions, liability and remuneration conditions.

Focus on the terms of the contractual arrangements governing the Directors' positions in your jurisdiction

Since entering into a written agreement with the Director is not legally required, there are no mandatory clauses to be established in such an agreement, and the content of it would be entirely subject to the agreement of the parties, provided that the terms were not contrary to mandatory legal norms or public policy.

Such agreement would typically state that it establishes a civil legal relationship and that it cannot be interpreted as an employment contract, and therefore, the provisions of the Labour Code of the Republic of Lithuania regulating employment relationships do not apply.

Other than that, the management board member agreement would usually clarify/repeat duties and rights of the Director as well as the procedure of participation in the management board meetings, establish remuneration conditions, restrictions in relation to confidentiality, non-solicitation, conflict of interest, non-competition (see § 4. below), provide rules in respect to use/creation/handling of intellectual property and personal data as well as on Director's liability.

As regards to the termination, Directors are appointed on a fixed-term basis up to the approval of the financial statements of the company relating to a given financial year. In case of revocation of the Director before the natural expiry date without a just cause, there would generally be no legal consequences unless otherwise agreed in the agreement though such provisions are rare in practice.

Focus on non-competition covenants applicable to Directors

Management board member agreement can contain non-competition covenants. The specific provisions regulating non-compete agreements found in the Labour Code of the Republic of Lithuania – such as limitations on duration, compensation requirements, and enforceability – would not apply to agreements concluded with the Directors. Such non-competition clauses would be governed by the general principles of civil law, including freedom of contract and good faith. As a result, the scope, duration, restricted territory, and potential financial compensation (if any) for the non-competition covenant would be entirely subject to the agreement of the parties, provided that the terms were not contrary to mandatory legal norms or public policy.

Social security regime applicable to Directors

Since under Lithuanian law, the Directors are not considered to be employees of the company, the social security regime slightly differs comparing to regular employees if the Director receives any kind of remuneration from the company. The social security regime also depends on whether the Director is a Lithuanian tax resident or a tax resident of another European Union country or a non-EU country or else (e.g., presents an A1 certificate, works remotely, has registered individual activity and etc.).

Under Lithuanian law, only the portion of the Director's (Management Board member) annual remuneration that does not exceed 60 times the officially determined annual average salary is subject to social security contributions. The health insurance contributions, however, apply to the entire remuneration amount. As an example, in 2025, 60 average salaries are equal to EUR 126,532.80. If a Director receives a total yearly remuneration of EUR 200,000 for his/her board activities, social security contributions (at the rate of 8.72%) apply only to EUR 126,532.80. By contrast, health insurance contributions (6.98%) apply to the entire amount of EUR 200,000. When remuneration is paid monthly, the company submits the relevant data to the Lithuanian Social Security Authorities. Once the threshold of 60 average salaries is reached for a particular individual, the authorities notify the company that the individual's further payments are subject only to the health insurance contributions.

For personal income tax, the company withholds 20% of the Director's remuneration. When the Director files the annual income tax return, the applicable tax rates are determined based on total annual income. If the Director's income exceeds 60 average salaries (EUR 126,532.80 in 2025), the amount above that threshold is taxed at 32%. It should also be noted that in determining whether the 60 average salaries threshold has been reached, any employment income and some other types of income are also taken into account, not just the remuneration received for board activities.

From 2026 onward, the personal income tax regime in Lithuania will become more progressive. Specifically: the portion of income up to 36 average salaries will be taxed at 20%, the portion from 36 up to 60 average salaries will be taxed at 25%, income exceeding 60 average salaries will be taxed at 32%.

Peculiar aspects that you may want to flag/point out under your professional experience

In practice, more often companies choose not to enter into a written agreement with the Directors, instead relying solely on the corporate appointments and statutory duties, particularly when no remuneration is involved. Therefore, such agreements are more common in companies where independent Directors rather than appointees of the shareholder's/company's employees are appointed.

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The legal position of the Directors in your jurisdiction: are the Directors employees?

Under Dutch law, managing directors (*statutair bestuurders*) have a dual legal relationship. On the one hand, they are appointed as managing directors by the general meeting of shareholders (or the supervisory board, depending on the governance structure). On the other hand, they may also have a contractual relationship with the company, sometimes through a management or service agreement, but usually through an employment agreement.

However, even if such an employment agreement exists, managing directors are generally not considered employees in the traditional sense as they do not enjoy the same level of employment protection as regular employees under Dutch employment law. They are not subject to the usual dismissal protections and can be removed from office by a shareholder resolution, although contractual consequences (e.g. severance) may still apply.

Please describe how the relationship between the Director and the company is usually formalized in your jurisdiction (i.e. entering into an agreement such as directorship/management agreements, service contracts, corporate resolutions, other possible solutions).

In the Netherlands, the relationship between a managing director and the company is typically formalized through an appointment resolution of the general meeting of shareholders or the supervisory board, depending on the company's governance structure. This appointment is registered with the Dutch Chamber of Commerce.

In addition to the corporate appointment, it is common practice to enter into a separate service agreement or employment agreement that governs the contractual aspects of the relationship, such as remuneration, duties, termination, and confidentiality. However, this agreement does not affect the director's corporate status, which is governed by Dutch corporate law (Book 2 of the Dutch Civil Code).

It is important to note that managing directors do not enjoy the same level of employment protection as regular employees under Dutch law, even if they have an employment agreement.

Focus on the terms of the contractual arrangements governing the Directors' positions in your jurisdiction

Directors' contracts may include fixed-term employment agreements, which may deviate from the standard chain rule, with regard to the maximum duration of 3 years. The appointment period for directors is usually four years. This term is customary and is often stated in the company's articles of association. After this term, the director can be reappointed, depending on the articles of association and the company's decision-making process. Renewal procedures require formal resolution by the supervisory board or shareholders' meeting, depending on the company's governance structure. The renewal process must be initiated well in advance of contract expiration, and companies often include automatic renewal clauses with opt-out provisions to ensure continuity of leadership.

Dismissal procedures must follow both corporate and employment law requirements, including advisory obligations under the Works Councils Act and proper notice. As with regular employees, directors are subject to a prohibition of termination during illness.

Compensation terms often include a statutory severance payment and, in some cases, a contractual severance payment. If there are no reasonable grounds for dismissal, the Dutch court may award fair compensation to the director.

Primary contractual obligations for directors under Dutch law include:

- Directors must act in the best interests of the company and its stakeholders, exercising due care and diligence in their decision-making
- Directors are required to maintain strict confidentiality regarding company information both during and after their tenure. This duty applies to all non-public and sensitive business information obtained in the course of their position.
- Non-compete / business relation / non-solicitation clauses: These clauses are often included in the employment agreement to prevent directors from joining competitors, soliciting employees, or doing business with clients or partners of the company for a specified period post-termination. Under Dutch law, such clauses must meet reasonableness requirements and may be subject to judicial review for fairness and proportionality.
- Directors are obliged to properly fulfil their duties in accordance with Section 2:9 of the Dutch Civil Code. Failure to do so may result in internal liability towards the company in case of manifestly improper management (*kennelijk onbehoorlijk bestuur*).
- Directors must keep adequate records, report truthfully on the financial position of the company, and cooperate with audits or investigations. Mismanagement or failure to comply with financial or tax obligations may result in personal liability, especially in cases of insolvency.
- It is common practice for companies to take out directors' and officers' (*D&O*) liability insurance to cover personal liability risks arising from the director's role. The employment agreement may include a clause confirming the company's obligation to maintain such coverage and to include the director as an insured party, subject to the policy's terms and conditions.
- A provision that the director shall refrain from accepting any form of remuneration, consideration or benefit—whether monetary or otherwise—from third parties in connection with their duties or activities performed for or on behalf of the company and/or any of its affiliated entities, unless prior written approval has been obtained from the company.
- A provision that the director shall not engage in any paid or unpaid ancillary activities during the term of this employment agreement without the prior written consent of the company.

Focus on non-competition covenants applicable to Directors

Non-competition clauses may be included in the employment contract and are subject to reasonableness and proportionality under Dutch employment law.

Key points include:

1. **Validity**: A non-compete clause must be clearly defined and reasonable in scope, duration, and geographic reach to be enforceable.
2. **Enforceability**: Unlike regular employees, managing directors are not protected by the same strict rules under Dutch employment law. As a result, non-compete clauses are generally more enforceable against directors, provided they are not excessively restrictive.
3. **Post-termination restrictions**: These are common and may include prohibitions on working for competitors, soliciting clients or employees, or starting a competing business for a defined period (e.g., 12 months).
4. **Compensation**: While not mandatory, it is increasingly common to include financial compensation for the duration of the non-compete period, especially if the clause significantly limits the director's future employment opportunities.

Social security regime applicable to Directors

In the Netherlands, the social security position of managing directors depends on the nature of their relationship with the company and their level of control.

Directors without a controlling interest (i.e. they do not hold a substantial shareholding and cannot block decisions), who work on the basis of an employment agreement: These directors are generally considered to be in an employment-like position for social security purposes. As such, they are usually covered by the Dutch employee insurance schemes, including unemployment (*WW*), disability (*WIA*), and sickness (*ZW*) benefits.

Directors with a controlling interest (e.g. sole shareholders or those who can block shareholder decisions): These directors are typically excluded from employee insurance schemes. They are considered self-employed for social security purposes and must arrange their own insurance coverage for disability, unemployment, and pensions.

Peculiar aspects that you may want to flag/point out under your professional experience

1. **Dual Role Complexity:** Managing directors often hold both a corporate and contractual role. This duality can create legal complexity, especially in dismissal situations, where termination of the corporate role does not automatically terminate the contractual relationship—and vice versa.
2. **Dismissal Risks:** Although directors can be dismissed relatively easily by shareholder resolution, failure to follow proper procedures (e.g. giving the director a chance to be heard) can lead to liability for wrongful dismissal or severance claims under the employment agreement.
3. **Limited Employment Protection:** Directors are excluded from many employee protections under Dutch employment law, including dismissal protection and participation rights under the Works Councils Act (Wet op de ondernemingsraden), unless they also hold a separate employment contract in a non-statutory capacity.
4. **Liability Exposure:** Directors can be held personally liable for mismanagement, especially in cases of bankruptcy or failure to comply with statutory duties (e.g. timely filing of annual accounts). A directors' and officers' liability (D&O) insurance is therefore essential.

Norway

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Partner

The legal position of the Directors in your jurisdiction: are the Directors employees?

In the Norwegian system, the role as a director establishes a corporate legal relationship with the company and does not in itself constitute an employment relationship. In other words, the role of a Director does not imply that the individual is also considered an employee of the company.

However, it is common for a Director to also have a job alongside their directorship. The individual may work for the same company or another company. In these cases, the Director may also be considered an employee of the company. Whether this is the case depends on a comprehensive overall evaluation. This assessment can be complex and demanding. Although, as guidance, a so-called 'seven-point list' has been established in preparatory works and case law. These are key factors in the assessment:

1. Does the Director make their personal work effort available to the employer?
2. Is the Director obliged to comply with the employer's instructions and control?
3. Does the employer bear the risk of achieving the desired result?
4. Does the employer provide work premises, equipment, tools, or similar resources for the performance of the work?
5. Is the Director remunerated for the work performed?
6. Is the relationship stable and ongoing, with specific terms for termination?
7. Does the Director primarily work for one client?

If the first two questions are answered affirmatively, the individual will typically be considered an employee under Norwegian law. There is nevertheless no automatic conclusion, and challenging cases may arise where the Director also performs work for the company in a particularly independent position.

If the Director is also considered an employee of the company, the individual will thus have two distinct but parallel legal relationships with the company: an employment relationship (as an employee) and a corporate relationship (as a Director).

As will be outlined below, it is important to distinguish between these two legal relationships.

Please describe how the relationship between the Director and the company is usually formalized in your jurisdiction (i.e. entering into an agreement such as directorship/management agreements, service contracts, corporate resolutions, other possible solutions).

In Norway, the corporate relationship between the company and the Director is typically established through a form of two-step process. (The employment relationship as an employee is established through a written employment contract, which must meet certain statutory minimum requirements).

The first step is the election of Directors, and the rules for this election are regulated by law. The main rule is that the general meeting (i.e., the shareholders) elects the Directors. In Norway, this is justified by the reasoning that shareholders bear the risk of their investment in the company and therefore must be able to choose who will manage and govern the company.

From this main rule, there are categories of exceptions: The first exception applies to companies with a corporate assembly (a deliberative and decision-making body consisting of shareholders and employees). This is mandatory if the company has more than 200 employees, but it can also be stipulated in the company's articles of association. If the company has such an assembly, it is the corporate assembly that shall elect the Director, and not the general assembly.

The second exception applies to companies without a corporate assembly. Depending on the number of employees, the majority of the employees may demand that certain Directors be elected by and from among the employees:

- The company consist of more than 30 employees = The majority of the employees can demand that one (1) Directors be elected by and from among the employees.
- The company has more than 50 employees = The majority of the employees can demand that two (2) Directors be elected by and from among the employees.
- *Please note: This is solely a right that the employees have and is contingent upon the majority of the employees asserting this right.*
- The company has more than 200 employees = The company shall have a board member who is elected by and from among the employees. In addition, the majority of the employees can demand that two (2) Directors be elected by and from among the employees.

When a Director is elected, the legal relationship between the company and the elected Director only arises when the individual accepts the position. The individual is not obligated to take on the position, even if he or she is elected. It requires consent. Although such consent is typically considered to be given implicitly when the individual runs for election, it is this agreement that establishes the (corporate) legal relationship between the company and the Director.

Focus on the terms of the contractual arrangements governing the Directors' positions in your jurisdiction

The regulation of the relationship between a Director and the company is both governed by legislation, the company's articles of association, and any specific agreements. Here, only a general overview of typical terms will be provided.

Duration of the directorship: Under Norwegian law, the main rule is that a Director is elected for a term of two years at a time. However, a longer or shorter term may be stipulated in the company's articles of association.

The Director has an obligation to remain in the position until the term of service has expired. However, a Director may be required to remain in his/her position beyond the expiry of the term. This situation may arise if a new Director has not been elected. In such cases, the Director must remain in their role until a new Director is elected. The latter does not apply to Directors who are elected by and from among the employees.

Obligations during the term: The obligations applicable to each Director can vary significantly. Nevertheless, legislation establishes certain fundamental obligations.

Firstly, the Directors are responsible for ensuring the prudent management of the company. Secondly, as a consequence of this overarching obligation, the Directors must oversee the daily management and the company's operations in general. Additionally, the Directors are tasked with setting budgets, establishing guidelines for the company, and monitoring the accounts, among other duties.

Responsibilities: Under Norwegian law, a Director may risk personal liability for their own or the company's negligent actions. This can involve large sums for an individual. For this reason, it is relatively common to take out liability insurance. This is especially true in companies where the business is conducted with a certain degree of volatility.

Rights: Similar to obligations, the rights of individual Directors can vary significantly. However, at a general level, a Director has the right to participate in the deliberation of matters that fall under the board's purview and to demand that these matters be addressed in meetings, thereby allowing them to influence the management of the company.

A Director also has a statutory right to resign from their position before the term of service expires. There is no requirement to provide a reason, and only reasonable prior notice must be given to the general meeting.

In addition, a Director is typically entitled to a remuneration. However, the Director does not have a statutory right to this remuneration, but if they are entitled to it, the law stipulates that the general assembly determines the amount of the remuneration.

Termination: Unlike the employment relationship of an employee, a Director does not have protection against being removed from his position. The general assembly can dismiss the Director at any time, and there are no requirements for justification or prior notice.

The exception applies to a Director who is elected by and from among the employees. Such a Director cannot be removed before the term of service expires.

Focus on non-competition covenants applicable to Directors

As implied in section 1, it is important to distinguish between a person's role as a Director and as an employee of the company. This also applies in relation to non-competition clauses.

The Director is also an employee of the company: If the Director is also an employee of the company, a non-competition clause, i.e., a prohibition against participating in a competing company (which also includes position as a Director), arises from the general duty of loyalty during the employment period.

After the employment relationship has ended (i.e. after the expiration of the notice period), such a clause must be agreed upon in writing. If this is the case, the employer can enforce that the employee cannot take on new employment or accept competing board positions in other companies even after the employment relationship has ended. The conditions in the Working Environment Act will then apply. This states requirements for the written justification, compensation to the employee, and limitations on how long the clause can be enforced (maximum 12 months).

Even though the company can enforce a non-compete clause for up to 12 months after the employment relationship has ended, it is conceivable that the term of service for the position as a Director has not expired. Although it may be impractical, there could be a reason to agree on a non-competition clause in relation to his or her role as a Director.

The Director is not an employee of the company: If the Director is not an employee of the company, it should be agreed that the Director cannot take on positions in competing companies. Such clauses are not regulated by law. Therefore, the parties are generally free to agree on the terms of the non-competition clause. However, as is well known, the terms must not be unreasonable, as they may then be set aside due to contractual limitations.

Social security regime applicable to Directors

A Director residing in Norway will be a member of the so-called National Insurance Scheme (in Norwegian: "*Folketrygden*"). This means that, as a general rule, the Director will be entitled to the social benefits provided by the National Insurance Act. This includes, but is not limited to, sickness benefits, unemployment benefits, pension, etc.

Although, it is worth noting that holiday pay is not accrued from a Directors' remuneration. Nor will the remuneration be included in the calculation basis for sick pay. Conversely, it is taxable income, and social security contributions and employer's contributions are deducted from it.

Peculiar aspects that you may want to flag/point out under your professional experience

Our experience is that, in practice, problems can arise when the same person is both a Director and an employee of the company. This will be particularly relevant when the Director is also employed in a managerial or particularly independent position.

It is nevertheless important to keep these roles separate. The reason is that the rights, obligations, and responsibilities associated with the role as a Director and the role as an employee normally involve significant differences. In cases where a clear distinction between these roles is not practiced, substantial challenges may arise if a person in the company performs an action that gives rise to liability. For example, doubt may arise as to whether the company (in the position as an employer) or the Directors can be held liable for damages.

Furthermore, it is worth noting that the Norwegian Private Limited Liability Companies Act and Public Limited Liability Companies Act impose requirements regarding gender balance on the Directors of certain companies. These regulations came into effect in January 2024 and have attracted significant media attention.

Poland

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The legal position of the Directors in your jurisdiction: are the Directors employees?

Directors who are board members can be engaged in three different ways:

- by appointment to the board by resolution only (with or without remuneration),
- by resolution and a civil law contract (e.g. a contract of mandate or managerial contract), or
- by resolution and an employment contract.

Establishing an employment relationship between the Director and the company (which is not necessary to act as a board member), is conditional upon the parties entering into a separate employment contract which will govern the parties' rights and obligations arising from the employment relationship.

Please describe how the relationship between the Director and the company is usually formalized in your jurisdiction (i.e. entering into an agreement such as directorship/management agreements, service contracts, corporate resolutions, other possible solutions).

Directors who are board members are appointed by resolution of the relevant corporate body. For example, in a limited liability company (*sp. z o.o.*), by default, Directors are appointed by the shareholders' resolution and in the case of a joint-stock company (*S.A.*), the supervisory board appoints them. However, these rules can be modified in the company's articles of association or statute. The resolution creates a corporate relationship between the Director and the company. It may also set out the rules concerning the Director's remuneration.

Employment contracts are a popular type of contract with Directors. Such contracts offer a lot of guarantees to the employee (including annual leave, protection against dismissal, parental rights). On the other hand, they significantly limit the freedom of the parties to shape the terms and conditions of their cooperation due to the minimum level of protection for the employee under labour law.

Apart from employment contracts, the parties may enter into civil law contracts, including, for example, a contract of mandate or a managerial contract. Managerial contracts are also a popular type of contract for Directors who are board members. These types of contracts allow greater freedom of the parties in shaping their terms. The scope of the Director's duties, as well as the rules regarding remuneration, can be specified in civil law contracts.

Focus on the terms of the contractual arrangements governing the Directors' positions in your jurisdiction

Standard market practice is to include the following in Directors' contracts (both civil law contracts and employment contracts but within the framework allowed by law):

- a precise description of the Director's scope of responsibilities, including their fiduciary duties,
- restrictive covenants such as non-solicitation, confidentiality and non-competition (see point 4. below),
- rules of transfer and remuneration for IP rights,
- contractual penalties (in employment contracts only for breaches of obligations arising after employment termination (e.g. non-competition clause after termination of employment)),
- provisions limiting the Director's liability,
- Director's additional benefits,
- rules on provision of D&O insurance.

In many respects, the content of the employment contract is limited by the minimum requirements under labour law. For example, rules on employee's liability, rules on termination (including minimum notice periods) or annual leave entitlement must be observed.

Civil law contracts, including managerial contracts, allow for greater freedom in shaping work and pay conditions. The content of such contracts may vary depending on the needs of the company concerned. At the same time, a civil law contract usually entails greater responsibilities for the Director than in the case of an employment contract. Managerial contracts may also provide for some of the entitlements due to employees with employment contracts (e.g. annual leave or paid sick leave) which is, however, not recommended due to the potential risk of reclassification.

Focus on non-competition covenants applicable to Directors

As regards board members, the Commercial Companies Code provides for a statutory non-compete. In a limited liability company (sp. z o.o.) and in the case of a joint-stock company (S.A.), without the company's consent, by operation of law, a member of the board may not engage in competitive business interests or be engaged in a competitive entity as a partner in a civil law partnership, other partnership or as a member of a body of a corporation or participate in another competing legal entity as a member of its body. This also extends to participation in a competing corporation if the board member holds at least 10 per cent of the shares or stocks in that corporation or has the right to appoint at least one board member.

In addition, certain acts of unfair competition are prohibited by law (for board members but also for regular employees or contractors), including inducing the company's clients to break a contract or to improperly perform a contract, as well as violation of business secrets. Nevertheless, these prohibitions often recur in Directors' contracts.

Non-competition clauses can be additionally included in employment contracts as well as in civil law contracts. They can also take the form of separate agreements. Every non-compete agreement should specify:

- the scope of the prohibition (by specifying exactly what is prohibited),
- the duration of the prohibition (during and/or after termination of the contract),
- the territorial area of the prohibition.

In addition, the agreement may include rules for withdrawing or terminating the non-compete.

	Non-compete during employment	Non- compete after employment termination	Non-compete during and after termination of a civil law contract
Compensation for compliance with the non-compete	Not required	The post-termination non-compete must be compensated with a minimum of 25% of the remuneration for the corresponding period before the employment termination	Not required, however, if the non-compete is particularly broad and there is no or little compensation, such a non-compete may be considered contrary to the principles of social co-existence and consequently invalid
Scope of the non-compete	The non-compete should only prohibit activities that compete with the employer's business activity, not any types of professional activity		It can be decided freely; however, it will be subject to the principles of social co-existence
Duration after termination	N/A	The non-compete must have a specified duration after employment termination, it cannot be concluded for an indefinite period. Standard market practice is for non-compete to last up to 6-12 months after employment termination. Generally, non-competes lasting up to 2-3 years after employment termination are accepted (although this depends on an assessment of all the circumstances)	It should be limited in time to comply with the principles of social co-existence. The periods specified for the post-employment non-compete can be used for reference
Penalties for breaches	There can be no additional contractual penalties	Contractual penalties may be provided for (in an amount compatible with the principles of social co-existence)	

Social security regime applicable to Directors

Social security regimes will depend on the form of the Director's relationship with the company.

	Contributions to social insurance	Health insurance contribution
Appointment to the board by resolution	N/A	Compulsory
Employment contract	Compulsory pension, disability, sickness and accident insurance contributions	Compulsory
Civil law contracts (generally unless such a contractor is insured under another title, such as other employment contract or business activity)	Compulsory pension, disability and accident insurance contributions Voluntary sickness insurance contribution	Compulsory

Peculiar aspects that you may want to flag/point out under your professional experience

In practice, the biggest challenge is usually to choose the most suitable form of engagement for Directors. The choice of the appropriate form of cooperation with the Director is not entirely arbitrary. The decision between an employment contract or other type of contract should depend on an assessment of the degree of independence of the Director in the fulfilment of their duties.

Also, in practice, EU regulations play a major role, as they determine which social security regime applies to board members fulfilling their functions from outside Poland or in Poland for foreign companies.

Specific rules apply to representation in contracts and disputes between Directors who are board members and the company. In such cases, the company is generally represented by the supervisory board or a proxy appointed by a meeting of shareholders' resolution.

Scotland

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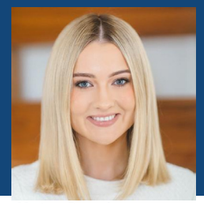

Martyna Proczek
Solicitor

The legal position of the Directors in your jurisdiction: are the Directors employees?

Under UK law, which applies equally in Scotland, the starting position is that directors are office holders who owe statutory and common law duties to the companies they serve. Directors are appointed pursuant to the articles of association of the relevant company and registered in the UK company register, known as Companies House. Such directors are referred to as "statutory directors". The status of statutory director does not in itself create an employment relationship between directors and the companies they serve. However, a statutory director can be an employee if they have entered into a contract of employment.

In the UK, statutory directors are generally divided into those carrying out executive functions (such as the operational running of the company) and non-executive functions (such as strategic oversight of the company). It's commonplace for executive directors to also be employees – they tend to be engaged under contracts of employment which pay them a salary and grant them the same employment protections generally afforded to employees under UK employment law. Since directors are capable of holding employee status, it also follows that they can be workers. Under UK law, workers are afforded fewer protections compared to employees.

Non-executive directors do not tend to also be employees – they tend to operate similarly to consultants and are normally paid fees (as opposed to a salary) in exchange for their services.

The question of whether a director is an employee will be determined by reference to the employment status tests set out in UK law – i.e. whether there is a mutual obligation on the company and the director to offer and accept work beyond the duties required of a director.

Companies regulated by the UK's Financial Conduct Authority (FCA) and/or Prudential Regulation Authority (PRA), are subject to an additional layer of oversight from the Senior Managers and Certification Regime (SMCR) and the FCA's remuneration code and PRA rulebook. The SMCR requires the formal approval of certain directors as "Senior Managers" if they perform various senior management functions – such individuals will need to satisfy fitness and propriety requirements and be subject to ongoing scrutiny regardless of their employment status. It is possible under the SMCR for a director to be regulated without being an employee and vice versa.

Please describe how the relationship between the Director and the company is usually formalized in your jurisdiction (i.e. entering into an agreement such as directorship/management agreements, service contracts, corporate resolutions, other possible solutions).

Under UK company law, appointments of directors are governed by the relevant company's articles of association and the Companies Act 2006. If the intention is for an individual to simply be a statutory director and not also an employee, the procedure set out in the company's articles of association for appointing a director should be followed and Companies House must be notified about the appointment.

As mentioned above, it is common for statutory directors who are in charge of the day-to-day operational running of the company (i.e. executive directors), to also be employees of the company they serve. The employment relationship is documented by an employment contract commonly known as a "service agreement". The service agreement should include, amongst other things, the "written statement of employment particulars" required by the Employment Rights Act 1996. This requires the service agreement to provide specific information to the director, such as a job description, remuneration, holiday entitlement, hours of work and details of benefits amongst other things.

A company must keep available for inspection copies of all directors' service agreements entered into by the company or one of its subsidiaries for a period of at least one year from the date of termination or from the date they expire.

In FCA and PRA regulated firms, both executive and non-executive appointments may require submission of further information to the FCA and/or the PRA. Where dual regulation applies (i.e. of both the FCA and PRA), companies must ensure that the service agreements reflect obligations under both regulatory regimes.

Focus on the terms of the contractual arrangements governing the Directors' positions in your jurisdiction

Together with the usual terms included in employment contracts, some specific provisions are commonly found in service agreements as a matter of practice. For example, under the Companies Act 2006, directors in the UK owe "general duties" to the company they serve – the duties require directors in the UK to:

- act within their powers;
- promote the success of the company for the benefit of its members (shareholders) as a whole, having regard to a non-exhaustive list of factors;
- exercise independent judgment;
- exercise reasonable care, skill and diligence;
- avoid conflicts of interest;
- not accept benefits from third parties; and
- declare certain interests they have in a proposed transaction or arrangement with the company.

Ordinarily, the company makes directors aware of these obligations by explicitly referring to them in the service agreement.

Service agreements contain provisions commensurate with the level of seniority that directors hold in an organisation, it is therefore commonplace to find the following provisions in service agreements:

- contracting out of the maximum weekly working time provided for under the Working Time Regulations 1998;

- references to participation in long-term incentive plans or other forms of variable pay schemes (similarly to other jurisdictions, the remuneration packages of directors are often largely composed of variable elements of pay, and such provisions in service agreements should make clear that participation is governed by the specific rules of the scheme, as amended from time to time to ensure that the company has sufficient flexibility to administer the scheme in line with its business needs);
- confidentiality provisions reflective of the level of sensitive information that directors are privy to;
- intellectual property provisions reflective of the works and ideas that directors may implement as part of the key roles they hold;
- power of attorney provisions which appoint any other director of the company to do all such things necessary on the director's behalf such as removing the director from their appointment upon the termination of their employment;
- termination provisions which are likely to include notice periods ranging from 3 – 6 months (please see section 6 for a limit on the length of notice periods for directors), garden leave and post-termination restrictive covenants.

For directors in FCA/PRA regulated firms, service agreements will often refer to the FCA's conduct rules, duty to cooperate with the FCA/PRA, fitness and propriety requirements, as well as compliance with various regulatory duties under the SMCR if the individual is a senior manager. Reference should also be made to the firm's obligation to provide a regulatory reference upon termination of a senior manager – this reference must disclose any relevant conduct issues or disciplinary actions from the past six years.

Furthermore, variable remuneration must comply with the FCA remuneration code and PRA rulebook, which include specific rules on deferral of payments, performance linkage and malus/clawback.

Focus on non-competition covenants applicable to Directors

As a matter of UK law, post-termination restrictive covenants are enforceable only if they go no further than reasonably necessary to protect a legitimate business interest. Non-compete clauses are commonly included in service agreements, but in order to increase the likelihood of their enforceability are limited by time, geographical extent, and sector/business activity. Non-competes for directors therefore typically range from 6 – 12 months and often relate to the specific business and markets their company operates in.

Non-solicitation of clients/key employees and non-dealing clauses are also commonly included and applicable for the same length of time as a non-compete. These provisions are more likely to be upheld than non-compete clauses particularly where the employee in question had personal relationships with clients or access to sensitive information, which is likely to be the case for a director.

For FCA/PRA firms, post-termination restrictive covenants are complemented by regulatory deterrents, such as clawback of variable remuneration provisions linked to post-employment conduct, loss of deferred or unvested variable pay on breach of covenants, and reputational risks through regulatory references.

Social security regime applicable to Directors

Directors who are employees will be treated the same as other employees for payroll purposes – they will be subject to the UK's Pay As You Earn (PAYE) system and their earnings will be subject to income tax and National Insurance Contributions (NICs).

Non-executive directors' fees should also be paid through the PAYE system and be made subject to deductions for income tax and national insurance contributions.

It is also worth noting that whilst the NICs regime is UK wide, Scotland has devolved income tax bands so Scottish income tax rates may vary from those in England.

Peculiar aspects that you may want to flag/point out under your professional experience

- Shareholder approval is required for directors' service agreements where the guaranteed term of their employment exceeds two years. This includes situations where the employment cannot be terminated by the company except in specific circumstances or where the notice period for termination extends beyond two years.
- Public companies in the UK must publish annual Director Remuneration Reports which set out the actual payments made to directors and how the company intends to implement its remuneration policy.
- Termination payments made to directors in companies regulated by the FCA/PRA must not reward failure or misconduct but rather should reflect the relevant employee's performance achieved over time.

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The legal position of the Directors in your jurisdiction: are the Directors employees?

Pursuant to Act No. 513/1991 Coll., the Commercial Code (the "**Commercial Code**"), the relationship between a member of a company's governing body (whether statutory or supervisory) and the company itself is considered exclusively a commercial relationship. This relationship is governed solely by the provisions of the Commercial Code. As a consequence, the performance of duties by a member of a company's body cannot be executed under an employment relationship, and such individuals are not deemed employees within the meaning of labour law.

Accordingly, any employment contract or similar agreement intending to establish an employment relationship for the purpose of performing duties of a managing director or a member of the board of directors would be considered invalid.

Nevertheless, the applicable legislation does not prevent individuals from working for the company under an employment contract, as long as their job does not involve performing the duties of a statutory body. In this context, a managing director may concurrently hold an employment contract with the company [distinct from an Agreement on the Performance of Office of Managing Director (the "**Contract**")] under the Labour Code, but in respect of tasks unrelated to the exercise of their statutory duties. In such cases, the managing director may also be considered an employee in relation to that separate role.

Please describe how the relationship between the Director and the company is usually formalized in your jurisdiction (i.e. entering into an agreement such as directorship/management agreements, service contracts, corporate resolutions, other possible solutions).

The managing director performs his/her function primarily on the basis of a Contract pursuant to Section 66(6) of the Commercial Code. This Contract must be in writing and approved either by the general meeting (or sole shareholder) of the company, or in writing by all shareholders who bear unlimited liability for the company's obligations.

In practice, however, it is often the case that no Contract is concluded between the company and the managing director. In these cases, the relationship is governed by the statutory provisions on mandate contracts, specifically Section 66(6) in conjunction with Sections 566 et seq. of the Commercial Code. As a result, even in the absence of a written Contract, the law presumes the existence of a legal relationship, and the managing director may still be, subject to the circumstances of the case, entitled to receive customary remuneration. If the amount of remuneration is not agreed, nor otherwise covered in an existing contractual arrangement, the managing director may be entitled to what is considered customary for similar activities, taking into account factors such as the size of the company, industry standards, and the complexity of the duties performed.

If the company and the managing director agree that no remuneration will be paid, this is recommended to be expressly and unambiguously stated in a written Contract and approved, as noted above.

Focus on the terms of the contractual arrangements governing the Directors' positions in your jurisdiction

Generally, the parties are free to structure the contractual terms of the Contract according to the specific needs and operational circumstances of the company, provided that all contractual provisions comply with the binding rules of the Commercial Code.

The Contract should clearly identify the parties involved, define their respective rights and obligations, specify the remuneration (fixed amount or based on a defined calculation method) and outline the scope of duties associated with the role. Additionally, the Contract often addresses other important matters such as the duration of the office/appointment, the resulting legal consequences, liability for damages, confidentiality obligations, and the inclusion of a non-compete clause. It is also possible for the Contract to include various benefits, such as days of leave, a company laptop, car, reimbursement of business-related expenses, insurance/wellness packages, and various monetary or non-monetary contributions.

Focus on non-competition covenants applicable to Directors

The Commercial Code distinguishes between (i) non-compete covenants after a managing director leaves their office and (ii) non-compete obligations during an office of managing director.

(i) Non-compete covenants after a managing director leaves their office

The Commercial Code expressly regulates non-compete covenants in Section 672a, but only in relation to commercial agents.

Section 672a of the Commercial Code provides that "In contract, it may be agreed in writing that, for a period of no more than two years following the termination of the contract, the agent shall not engage (either independently or on behalf of others) in business activities within a specified territory or with a specified group of clients that are competitive with the principal's business. Furthermore, if the clause unduly restricts the agent beyond what is necessary to protect the principal's legitimate interests, a court may limit or invalidate it.".

As a general rule, based on the principle of contractual autonomy, it is permissible to include a non-compete covenants also in other various types of commercial contracts, such as those with managing directors. In the absence of specific legislation governing such arrangements for managing directors, as they are not explicitly regulated by law, reliance is placed on established court decisions and legal doctrine.

That said, we are aware that court practice reflects two diverging views on how Section 672a of the Commercial Code should be applied in such cases. One legal view maintains that the mandatory requirements set out in Section 672a (as noted above) should be strictly followed, even outside the agency relationship. Under this view, non-compete covenants that do not meet these formal requirements are considered void. The second view argues that Section 672a should be applied only by analogy and solely in terms of ensuring proportionality and balance in the non-compete covenants. Under this view, non-compete covenants that do not meet all the formal requirements of Section 672a are not automatically null and void, provided they respect the general principles of contractual fairness and balance.

(ii) Non-compete obligations during the performance of function of managing director

The specific forms of non-compete obligations during the performance of function of managing director are addressed within the individual statutory provisions applicable to each type of business company.

To illustrate a practical limitation of non-competition clauses, the two most common forms of Slovak business companies, limited liability companies (s.r.o., in Slovak: spoločnosť s ručením obmedzeným) and joint-stock companies (a.s., in Slovak: akciová spoločnosť), impose very similar statutory restrictions on members of their executive bodies (managing directors and board members, respectively). Beyond the statutory restrictions, additional non-compete limitations can be introduced, provided they are explicitly stated in the company's Memorandum of Association, Foundation Deed or Articles of Association.

For both of these company types, the law prohibits members of statutory bodies from:

- entering into business transactions in their own name or for their own account that are related to the company's business activities;
- acting as intermediaries for third parties in transactions involving the company;
- participating in another business as a partner with unlimited liability;
- acting as a statutory body or a member of a statutory or other governing body of another legal entity with a similar business activity, unless it concerns a legal entity in which the company is involved, or in which one of its shareholders or a person controlled by the same controlling entity is also a shareholder.

As a general rule, a company affected by the activities of a member of its corporate body has the right to seek legal remedies under the Commercial Code (Sec. 65). These include the right to:

- demand the surrender of any benefits gained from the transaction by the person who breached the non-compete obligation (i.e., the person may have obtained financial gain, typically in the form of profit, as a result of the competing activity);
- request the transfer of relevant rights to the company (e.g., in cases where the breach resulted in the conclusion of a lucrative business deal or contract with another party);
- claim compensation for damages suffered by the company, either as actual damage or lost profit.

These rights must be exercised within 3 months from the date the company became aware of the breach, and no later than 1 year from the date the rights arose. In addition to these specific rights, the company may also claim damages under the relevant provisions of the Commercial Code (Sec. 373).

Social security regime applicable to Directors

A managing director may carry out their role with or without entitlement to remuneration. If remuneration is agreed upon, it can take various forms—regular (e.g., monthly) or irregular (e.g., quarterly, annual, or performance-based bonuses linked to specific goals). Importantly, entitlement to remuneration is the first trigger for the obligation to pay health and social insurance contributions.

Performing Functions with Entitlement to Remuneration

When a managing director receives remuneration, whether regular or irregular, they are deemed an employee for the purposes of Slovak social security and health insurance legislation. Consequently, the director must pay contributions on both the remuneration and any distributed profit shares, which serve as the contribution base under applicable laws.

If a managing director receives both regular and irregular payments, each type of income is assessed separately for contribution purposes. Similarly, if the managing director also holds a standard employment contract with the company, contribution liabilities must be evaluated independently for each legal relationship.

Performing Functions Without Remuneration

The managing director does not incur social insurance liabilities for performing their duties without remuneration, as they receive no income and do not hold employee status. However, they are still required to pay a minimum monthly health insurance contribution as a self-employed person.

Peculiar aspects that you may want to flag/point out under your professional experience

In practice, we frequently encounter situations where the parties to a Contract negotiate terms and conditions typically associated with the Labour Code. However, as noted above, the relationship between a company and its managing director does not exhibit the characteristics of dependent employment and therefore does not constitute an employment relationship, but rather a commercial one. This relationship remains governed by the Commercial Code.

Consequently, while parties may agree on certain terms and conditions or include provisions [such as termination conditions inspired by the Labour Code] the fundamental rules established by the Commercial Code concerning the appointment and termination of the managing director's office cannot be validly altered by contract.

The Commercial Code explicitly regulates the appointment and termination of the office of managing director, which can only be ended by one of the following means: (a) voluntary resignation, (b) removal from office, (c) expiry of the term of office, (d) death or loss of legal capacity of the individual managing director, (e) dissolution of a legal entity serving as statutory body of a public company or limited partnership, or (f) loss of eligibility to hold office.

These are the statutory methods for terminating a managing director 's function, which do not need to be explicitly included in the Contract. Nevertheless, it is common for parties to attempt to introduce additional contractual termination mechanisms that conflict with these statutory provisions, which is not legally permissible.

Additionally, a common misunderstanding frequently observed in practice is the assumption by clients that appointing a managing director under an employment contract alone is sufficient to regulate the managing director's relationship with the company. Clients often do not explicitly address the performance of the office of managing director in a contract, including whether the office is to be performed without remuneration. As a result, numerous legal disputes arise in which managing directors claim, retroactively, entitlement to remuneration for exercising their office (despite the company's belief that no such entitlement exists) many of which claims can be deemed contrary to good morals.

Spain

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The legal position of the Directors in your jurisdiction: are the Directors employees?

In Spain it is necessary to differentiate between the following:

a. Directors who have an employment relationship with the company.

b. Employees who are considered senior managers, defined as employees who exercise the powers inherent in the legal ownership of the company and relating to its general objectives, independently and with full responsibility, limited only by the direct instructions and criteria of the person or of the higher bodies of governance and management of the entity respectively occupying the position of legal owner.

c. Members of the Company's managing body, who do not have an employment relationship with the Company, but rather a civil/independent contractor (or organic) relationship and as a result, its regulation is not affected by labor legislation.

The Spanish courts and tribunals have established what is known as the "relationship theory". According to this theory, when the functions of a senior manager and member of the managing body are concomitant, the organic relationship prevails, and, as a result, the independent contractor relationship. There can only be a situation of coexistence of two legal relationships - one independent contractor and the other employment - when the latter is an ordinary employment relationship and not a special senior management relationship.

Please describe how the relationship between the Director and the company is usually formalized in your jurisdiction (i.e. entering into an agreement such as directorship/management agreements, service contracts, corporate resolutions, other possible solutions).

The manner in which the relationship of directors is formalized, in accordance with the above classification, is as follows:

a. An ordinary employment contract for employees who provide services as Directors.

b. A special senior manager employment contract, for those who are considered as such. Their relationship is governed by the employment contract, by Royal Decree 1382/1985 and in the absence of any provisions therein, by the Civil Code.

c. In a services contract and the provisions of the Company's bylaws, in the case of members of the managing body.

In accordance with article 249 of the Capital Companies Law. where a member of the board of directors is appointed managing director or given executive functions under another title, a contract must necessarily be entered into between the director and the company, which must be approved in advance by the board of directors with the affirmative vote of two thirds of its members. The director in question must abstain from attending the deliberations and participating in the vote. The approved contract must be attached as an exhibit to the minutes of the meeting.

Focus on the terms of the contractual arrangements governing the Directors' positions in your jurisdiction

The aspects vary depending on the case in question:

a. Directors with an employment relationship: the clauses common to ordinary workers are applicable, although they usually contain specific provisions on remuneration or working hours; always in full compliance with the Workers' Statute and the collective labor agreement applicable.

b. Senior managers: the contract usually contains specific provisions regulating severance in the event of termination of the contract (golden parachutes), and other details regarding the conditions applicable to the relationship. In some cases, when the position is held as a result of a promotion from a prior ordinary relationship, the contract tends to include provisions regarding the replacement or holding in abeyance of the former relationship.

c. In the case of members of the managing body, the contract provides details, notwithstanding other aspects, of all items for which remuneration may be obtained for the performance of executive functions including, if applicable, any severance pay for early termination from such functions and amounts to be paid by the company as insurance premiums or contributions to saving systems. The director cannot receive any remuneration for the performance of executive functions where the amounts or items thereof are not provided for in the contract. The contract must be consistent with the remuneration policy, if any, approved by the shareholders' meeting.

Focus on non-competition covenants applicable to Directors

In the case of Directors with an ordinary employment relationship, post-contractual non-competition covenants may not last for a period of more than two years, an actual industrial or commercial interest must be substantiated and adequate remuneration must be established (the law does not fix the actual amount, but the figure tends to be between 60-70% of the last salary received).

In the case of senior managers, the regulation is identical to that of ordinary employees.

For members of the managing body, the law establishes a non-competition obligation while they are discharging their duties, but no provisions are established as regards non-competition once the organic relationship has ended.

Social security regime applicable to Directors

Directors with an ordinary employment relationship and senior managers are subject to the general social security regime.

Members of the managing body come under the general social security regime for workers treated as employees (they have no unemployment protection, or wage guarantee fund (FOGASA)), when they are remunerated for their activities but do not have effective control of the company. If they do hold effective control, they would come under the special regime for self-employed workers.

Effective control is deemed to be where the individual (i) holds half of the share capital (directly, or together with the spouse or family members up to the second degree of consanguinity or affinity, adopted children and persons who live with the individual), (ii) holds a stake of more than one third of the share capital or (iii) where their stake is in excess of 25% of the share capital if they perform functions relation to management and administration.

Peculiar aspects that you may want to flag/point out under your professional experience

It is essential to carry out a detailed analysis of the situation of the individuals concerned to see whether they fall into any of the above three categories, since the regulation of their relationship and the consequences of its termination are very different.

Generally speaking, in cases of internal promotion, the employees that become members of the managing body (whether following an ordinary employment relationship or special senior management relationship) request that certain guarantees be included in their contract as director, to protect them from possible subsequent unilateral decisions by the Company that lead to the termination of their relationship.

Sweden

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The legal position of the Directors in your jurisdiction: are the Directors employees?

In Sweden, the legal position of Directors (Sw: *Styrelseledamöter*) of a Swedish limited liability company is distinct from that of employees. They are appointed and can removed by shareholders in accordance with applicable Swedish corporate legislation. Their role is one of governance and oversight rather than operational management, and they receive a board fee determined by the shareholders rather than a salary under an employment contract. Since board members are not employees (however see below), they are not covered by Swedish employment laws.

If a Director also takes on an executive role, such as Managing Director (Sw: *Verkställande Direktör*), the individual can be both a Director and an employee. If considered as an employee, the Director is subject to Swedish employment law, with certain possible exceptions outlined below in section 3.

Please describe how the relationship between the Director and the company is usually formalized in your jurisdiction (i.e. entering into an agreement such as directorship/management agreements, service contracts, corporate resolutions, other possible solutions).

The relationship between a Director and a company is primarily governed by Swedish corporate law rather than by contract. There is no mandatory requirement for a written directorship agreement or similar under Swedish law and unusual for companies to enter into such agreements. Instead, the relationship is formalized by an appointment at the general meeting and normally by board instructions adopted by the board.

However, if the Director also has an executive role and is considered as an employee, the relationship between the Director, including a Managing Director, and the company is typically formalized through an individual employment agreement. This employment agreement outlines key terms and conditions of employment and is usually signed by the Chairman of the Board of Directors. Although Swedish law does not strictly require that employment agreements shall be in writing, it is highly recommended to enter into a written employment agreement in order to regulate the legal relationship and avoid future disputes. Under the Swedish Employment Protection Act (the "**EPA**"), employees are also entitled to receive certain employment-related information in writing.

Focus on the terms of the contractual arrangements governing the Directors' positions in your jurisdiction

As mentioned above, under Swedish law, there is no mandatory requirement for a written directorship agreement (and uncommon among Swedish companies). Directors' remuneration is determined by the general meeting of shareholders, typically structured either as a fixed fee or as performance-based compensation linked to company results.

However, in the case of an employment relationship, the contractual terms governing the relationship between a Director and a company, particularly in the case of a Managing Director, are typically set out in a detailed employment agreement including provisions on responsibilities, compensation packages, termination, pension, post-employment restrictions, and other duties.

The EPA governs, among other things, the conditions under which employees may be terminated. However, employees in executive roles, such as Managing Directors, are often excluded from a majority of the protective provisions under the EPA, including those related to termination, provided that specific criteria are met. These employees can be terminated with notice at any time, as the EPA's restrictions do not apply, and termination is instead governed by the employment agreement. Such employees are further not typically subject to probationary periods.

In smaller companies, it is typically only the Managing Director which fulfills the criteria for exemption from the protective provisions under the EPA. In larger companies, it is possible for additional executives (such as CFOs or COOs) to also be exempt, provided that their roles and employment terms align with the criteria described below.

In order for an employee to be exempted from the protective provisions under the EPA, the terms and conditions of the employment as well as the employee's duties and responsibilities must be those of *an employee in an executive position*. This means that the terms and conditions should deviate from those of the other employees, meaning for example that the employee's salary as a general rule should be higher. The employee must also be entitled to a notice period of at least six months if the company gives notice. There is no legal requirement for the employer to provide the employee with any severance pay in addition to the notice period of six months, but it is quite common for agreements with executives to include such extra compensation.

As regards the duties and responsibilities, the employee shall represent the employer, be in charge of the operations of the business to a certain extent and often ensuring the employer's compliance with Swedish corporate legislations.

Furthermore, an employee who meets the exemption criteria under the EPA is generally also exempt from the collective bargaining agreements applicable to the company. This allows more flexibility in negotiating individual terms.

Focus on non-competition covenants applicable to Directors

Directors in Sweden are rarely subject to non-competition clauses.

However, for executive Directors that are employed by the company, it is common for their employment agreements to include post-employment restrictions such as non-competition, non-solicitation, and confidentiality clauses.

The legal framework governing non-competition clauses is set out in Section 38 of the Swedish Contracts Act (Sw: *Avtalslagen*). Under this provision, a non-compete clause is unenforceable if it is considered unreasonable. The reasonableness of such clauses is assessed based on Swedish case law and practice, which evaluates several key factors, including geographical scope, duration, scope of activities restricted, and compensation for financial loss. If the Director is not exempted from the applicable collective bargaining agreement, further limitations on the reasonableness of a non-competition clause may apply.

Social security regime applicable to Directors

As previously noted, Directors are generally not classified as employees. Consequently, they are not entitled to social security benefits such as parental leave in their capacity as Directors. However, board fees are generally subject to social security contributions, as described below.

If the Director is employed by the company, the Director is covered by the same social security coverage as other employees which includes mandatory contributions and access to occupational benefits. Employers are required to pay social security contributions (Sw. *Arbetsgivaravgifter*) of 31.42% of the employee's gross salary in addition to the employee's salary. These contributions funds e.g. state pension and sick pay. Such Directors are entitled to public benefits like state pension, sick pay, and parental benefits, provided they meet the eligibility criteria.

Such directors typically also receive additional insurance coverage beyond the public system, such as healthcare and sick pay insurance, as well as supplementary occupational pension benefits. Directors may also expect the employer to provide a liability insurance covering the Director's activities as a representative of the company.

Peculiar aspects that you may want to flag/point out under your professional experience

From a practical perspective, a recurring issue we see in Sweden involves employment agreements with Directors that are not properly aligned with the legal definition of an employee in an executive position. This mismatch can have significant legal implications.

Specifically, if the employment agreement fails to clearly reflect the Director's executive duties, responsibilities, and compensation, the individual may not qualify for exemption from the protective rules under the EPA, and the applicable collective bargaining agreement. As a result, the Director may unintentionally gain full employment law protection, including protection under provisions that are typically excluded for executive roles. These discrepancies can lead to disputes upon termination and may limit the company's ability to freely manage the employment relationship.

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The legal position of the Directors in your jurisdiction: are the Directors employees?

Under Swiss law, the directors, understood as the members of the board of directors, constitute the supreme governing body of the company and are generally responsible for its strategic oversight and overarching management. The board may delegate operational (day-to-day) management to third parties or individual board members. Board members entrusted with the company's operational management are referred to as *executive board members*, as opposed to *non-executive board members*, who only engage in the overarching, strategic management.

Under Swiss law, the relationship between a member of the board of directors and the company must be assessed from both a corporate law and a contractual law perspective (referred to as a "dual relationship"): From a corporate law perspective, a board member is always an organ of the company and is therefore subject to the duty of care and loyalty provisions as well as liability provisions. From a contractual perspective, the relationship between a board member and the company can take different forms, and a distinction must generally be made between non-executive and executive board members. A non-executive board member is generally not considered an employee of the company. In addition to their function as a corporate organ, there is typically a contractual component that is usually classified as a simple mandate. The situation differs for executive board members (e.g., the CEO), where the contractual relationship with the company typically qualifies as an employment contract. If the contractual relationship is classified as an employment contract, the executive board member holds a dual role, acting both as a corporate body of the company and as an employee.

Please describe how the relationship between the Director and the company is usually formalized in your jurisdiction (i.e. entering into an agreement such as directorship/management agreements, service contracts, corporate resolutions, other possible solutions).

Regardless of whether a board member is executive or non-executive, they only attain the status of a corporate body of the company upon being elected to the board by the general meeting. However, the situation differs when it comes to the contractual relationship. As briefly touched upon in answer 1, the legal relationship between a board member and the company may take different forms:

- **Simple mandate**: The contractual relationship between the company and a non-executive board member is typically a simple mandate agreement. Under Swiss law, a simple mandate does not require a formal agreement and can therefore be concluded even orally. A defining feature of a simple mandate is that either party has the right to terminate it at any time – this right cannot be excluded or unreasonably restricted. Aside from this, the law imposes very few mandatory requirements on the content of a simple mandate.
- **Employment contract**: The contractual relationship between the company and an executive board member is typically an employment contract. Since only certain provisions of an employment contract require a written agreement under Swiss law, employment contracts can generally be concluded orally. However, once an employment contract has been entered into, statutory employment protections provisions apply even if the employee is an executive board members.

As Swiss law does not provide specific provisions on whether board members must be engaged as employees or mandatee, the courts assess the nature of the contractual relationship on a case-by-case basis. When deciding whether a board member's contractual relationship with the company qualifies as an employment contract, Swiss courts particularly consider whether a relationship of subordination exists, as well as the extent to which the individual is integrated into the company's hierarchy. A high level of integration into the company's operational processes is an indicator of an employment contract. The distinction between an employment contract and a mandate is especially important in terms of the applicability of employment law protections provisions. However, the often ambiguous case law on this issue frequently results in legal uncertainty in practice.

Focus on the terms of the contractual arrangements governing the Directors' positions in your jurisdiction

Swiss law does not generally specify what must be included in a contract between a board member and the company (see above questions 2). This applies regardless of whether the legal basis of the relationship is an employment contract or a mandate agreement. Nevertheless, aspects such as the duration and compensation should be regulated in either case. Both a simple mandate and an employment contract can be entered into for a fixed or indefinite period. In practice, however, agreements with board members are usually concluded for an indefinite period. This is the case even though board mandates must usually (from a corporate law perspective) be confirmed annually by the general assembly.

The compensation for board activities can be agreed as either a fixed fee or a performance-based fee (e.g. remuneration based on hours worked), whether under an employment contract or a mandate agreement. It is common practice in Switzerland for a company's articles of association to stipulate that the compensation of board members must be approved by the general meeting.

Further, board members are liable for damages caused to the company, individual shareholders or company creditors through intentional or negligent breaches of their duties, particularly the duty of care. This statutory liability under corporate law generally cannot be limited by contractual agreement. Therefore, D&O (Directors and Officers) insurance is typically included in contracts with members of the board of directors.

Focus on non-competition covenants applicable to Directors

All board members – whether executive or non-executive – hold the status of a corporate body and are subject to the provisions of corporate law. Although Swiss corporate law does not explicitly impose a non-compete obligation on board members, they are generally prohibited from competing with the company during their term of office due to their statutory duty of loyalty. However, this obligation generally ends upon the termination or resignation of the board mandate.

If a board member is employed under an employment contract, they are prohibited by statute from competing with their employer during the term of the employment relationship. In particular, they are not permitted to perform paid work for a third party if doing so would breach their duty of loyalty to the employer. Under Swiss law, it is also permissible to agree on a post-contractual non-compete clause with employees. However, such a clause must be agreed in writing (meaning wet-ink signatures or a qualified electronic signature). In addition, the clause must not unreasonably restrict the employee's economic prospects and must therefore be limited in terms of subject, location and duration. By law, the maximum duration of a post-contractual non-compete clause is three years. Moreover, a non-compete clause is only enforceable if, during their employment, the employee had access to the company's customer base or to manufacturing or business secrets, and if the use of that knowledge could significantly harm the employer.

If a board member is engaged under a simple mandate, there is generally no statutory non-compete obligation during the term of the mandate. However, a mandate holder is legally obliged to act loyally toward the principal. As a consequence of this duty of loyalty, the mandate holder must avoid conflicts of interest, which may result in a de facto obligation not to work for a competitor of the company during the mandate term, if doing so would violate the duty of loyalty. Based on the principle of contractual freedom under Swiss law, it is also permissible to agree on a post-contractual non-compete clause with a mandate holder. However, such a clause must not unduly restrict the mandate holder's economic freedom and should therefore be limited in subject matter, geographic scope, and duration. Whether the other protective provisions that apply to post-contractual non-compete clauses in employment relationships—such as the requirement of a written agreement or the maximum durations of three years or six months—also apply by analogy to mandate agreements with board members remains unclear. According to case law, analogous application may be possible in the case of "employee-like persons"; however, whether non-executive board members engaged under a mandate fall into this category has not yet been clarified by Swiss courts.

Social security regime applicable to Directors

From the perspective of Swiss social security law, individuals are generally classified as either employed, self-employed, or not employed.

From a social security perspective, a board member with an employment contract with the company is considered employed. As such, social security contributions must generally be paid on all forms of compensation received under the contract, such as salary, bonuses and other benefits. These contributions are required for OASI (Old Age and Survivors' Insurance), IV (Invalidity Insurance), EO (Loss of Earnings Compensation) and UI (Unemployment Insurance). Additionally, affiliation with a pension fund is mandatory if the salary exceeds the minimum enrolment threshold under the Occupational Pensions Act (BVG) or the company's applicable pension plan.

Non-executive board members are generally regarded as self-employed for Swiss social security purposes, unless they are employed by another company and carry out the board mandate solely as part of that employment. In such cases, the board member is considered employed under Swiss social security law (see above).

Even if a board member is classified as self-employed, contributions to OASI, IV, and EO must be paid on all remuneration received in connection with the board mandate. However, contributions to UI are not required. Pension fund affiliation usually is necessary if the board compensation exceeds the enrolment threshold under the Occupational Pensions Act or the relevant pension plan of the company.

Special attention must be paid to international situations: in cross-border cases, bilateral or multilateral social security treaties must be taken into account. This is particularly relevant for foreign board members who reside in Switzerland and exercise their board functions within the country.

Peculiar aspects that you may want to flag/point out under your professional experience

As demonstrated, Switzerland lacks clear statutory frameworks that precisely define the structure and nature of the (contractual) relationship between the board of directors and the company. The absence of such legal provisions means that key questions concerning the engagement of board members often need to be resolved by courts or legal scholars, which can result in legal uncertainty in practice. Nevertheless, it remains essential to clearly distinguish between a board member's role as a corporate organ and their contractual, potentially employment-related, status within the company, as the associated duties may differ depending on the role.

Furthermore, while significant aspects of the relationship between companies and their board members remain unregulated by law, there is a noticeable trend towards strengthened corporate governance. For example, additional regulations have been introduced particularly for publicly listed companies. Such companies must, for instance, have the remuneration of board members and other persons entrusted with executive management approved annually by the general meeting. They are also subject to rules aimed at ensuring balanced gender representation on both the board of directors and in executive management.

Ukraine

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The legal position of the Directors in your jurisdiction: are the Directors employees?

Yes, Directors are usually employees, but other options are possible, depending on the type of legal entity.

Ukrainian law separates the corporate and employment roles of Directors. The corporate function is carried out based on a shareholders' resolution and lies in the Director's ability to act on behalf of the legal entity.

Simultaneously, the Director and the legal entity have an employment relationship, where the legal entity itself is the employer and the Director is the employee. An exception to this rule occurs when the founder (or one of the founders) independently manages the legal entity on a non-remunerated basis. The model in which the legal entity is managed by the founder without an employment contract is more common for non-profit organizations.

In addition, the law allows Directors of Limited Liability Companies ("LLC"), Additional Liability Companies ("ALC"), and non-executive Directors of Joint-Stock Companies ("JSC") to be engaged on the basis of service agreements, both remunerated and non-remunerated. Independent non-executive Directors of the JSC cannot be employees and can only be engaged under a service agreement. We note that the LLC and the JSC are the most popular forms of private commercial legal entities in Ukraine.

The corporate powers of Directors engaged under employment contracts and service agreements are identical. However, terms of engagement—such as remuneration, work schedule, benefits, amount of paperwork, severance pay, etc.—vary significantly (please see more details in item 6 below).

There are also two separate termination procedures: termination of corporate powers by a shareholders' resolution and termination of employment under the general procedure applicable to all Ukrainian employees.

Please describe how the relationship between the Director and the company is usually formalized in your jurisdiction (i.e. entering into an agreement such as directorship/management agreements, service contracts, corporate resolutions, other possible solutions).

The relationship between the Director and the company in Ukraine is formalized by a shareholders' resolution appointing the Director and a written employment contract or service agreement (in cases allowed by law), unless the Director is the founder who runs the company on a non-remunerated basis.

Depending on the type of the Director's contract, some additional paperwork is required. For an employment contract, this usually includes an appointment application from the future Director and an order of appointment issued by the company.

If the Director is engaged under a service agreement, the Director and the company normally sign a Certificate of Transfer and Acceptance of Services on a regular basis, such as monthly or quarterly.

Focus on the terms of the contractual arrangements governing the Directors' positions in your jurisdiction

The Director's employment contract must specify the duration of employment, the rights, responsibilities, and liability of the Director, the terms of their compensation, the conditions for their dismissal, and any other employment terms as agreed upon by both parties.

The service agreement between the Director and the company usually specifies the rights and obligations, liability of the parties, remuneration, reimbursement of the Director's expenses, and terms of the agreement's termination.

Also, it is common practice to include confidentiality provisions in both employment contracts and service agreements.

As regards termination, contractual arrangements typically specify that the employment contract or service agreement is terminated upon termination of the corporate powers of the Director. The termination of powers is formalized by a corporate resolution of the shareholders and may be carried out at any time without specific cause. However, if the Director is an employee, dismissal due to termination of powers will trigger severance pay equal to six months' average salary.

It is also possible to provide in the employment contract or service agreement the possibility of termination due to unsatisfactory performance, failure to achieve specific results, breach of obligations, disclosure of confidential information, etc.

Focus on non-competition covenants applicable to Directors

Non-competition covenants are generally applicable to Directors of commercial entities, such as LLCs, ALCs, and JSCs.

In particular, Directors of LLCs and ALCs are not allowed, unless with the approval of the company's general meeting of participants or supervisory board, to engage in business activities within the sphere of the company's operations.

Directors of JSCs may not be officials of another business entity operating in the sphere of the company's activities, unless otherwise provided by the company's charter.

The law does not explicitly allow for post-termination non-competition covenants, and Ukrainian courts usually find such post-termination covenants unenforceable.

Social security regime applicable to Directors

All legal entities in Ukraine that engage Directors on a remunerated basis, whether as employees or contractors, are payers of the Unified Social Contribution (USC). The company pays USC at a rate of 22% of the Director's accrued income. As of 2025, the maximum amount of USC is 35,200 UAH, which is approximately 750 EUR.

Peculiar aspects that you may want to flag/point out under your professional experience

We are often requested to consult on which model of engagement to choose for the Directors of an LLC, which is one of the most popular forms of private commercial entities in Ukraine — as employees or contractors.

The service agreement inherently differs from an employment contract, particularly:

- The engaged individual is not considered a company employee and does not receive common employment benefits (such as vacation, sick leave, overtime pay, and others);
- The individual does not have formal working hours and is not subject to the company's HR policies;
- The amount of necessary paperwork is significantly lower (e.g., no need to keep records of vacation, business trips, working time, etc.);
- A service agreement is much easier to terminate, as the procedure, notice period, and payments (if any) may be agreed upon by the parties.

From a practical perspective, companies may still prefer employment contracts with their Directors for two main reasons. Firstly, employment contracts may be more beneficial for a Director, as they are much more difficult to terminate and provide various employment benefits (vacation, family leave, sick leave, etc.). Secondly, employment contracts allow for long-term stays for foreign Directors, as they may serve as a basis for obtaining a temporary residency permit (through the issuance of a work permit). There is no possibility of obtaining a residency permit for foreign Directors based on a service contract, and such Directors usually cannot stay in Ukraine for more than 90 days in any 180-day period.

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