

Can a manager be an employee?

by Christian Weident

To establish and run a company, setting up a management team is indispensable. In the case of private limited companies and most other forms of companies, managers (Rom. *administratori*) are to be appointed. Stock companies, on the other hand, have a management team consisting of a board of administration (Rom. *Consiliu de administratie*) and directors (Rom. *directorii*), or of a supervisory board (Rom. *Consiliu de supraveghere*) and an executive board (Rom. *directorat*)¹.

The appointments are decided by the shareholders and are registered in the Commercial Register, for the company to be validly represented in relation to third parties.

Between the company and the manager², there must be, however a contract regulating the latter's activity, as well. On what actual basis do managers work for their company? Is the labour law applicable? The answers to these questions have a significant influence on the rules shaping relationships between the manager and the company.

General aspects

According to the Company Law³, the relationship between the manager and the company is based on the regulations regarding the mandate (Rom. *mandat*). The Law does not provide that there must be an employment contract with the manager.

This implies that between the manager and the company a mandate contract (which is not an employment contract) can be drawn up. But is this ~~mandatory~~ obligatory? Does the Company Law exclude an employment contract with the manager?

The legislative body has expressly answered this question only in certain cases.

Stock companies

For stock companies, the wording of the law is beyond any doubt: no member of the management body⁴ may have an employment contract with the company during his or her mandate⁵. Existing employment contracts are suspended by law starting with the appointment in a management body.

Other companies

For other companies, the position of the legislator is not equally explicit. Some legal doctrine opinions assume it is not possible to appoint a manager and sign an employment contract at the same time; however, there is no legal provision expressly excluding an employment contract.

¹ According to the choice of the shareholders

² Subsequently the term is used for all companies

³ Law 31/1990 for companies

⁴ Directors, administration boards, executive boards

⁵ Art. 137¹ paragraph. 3 and art. 152 paragraph 1 of the Company Law

The official list of occupations in Romania⁶, which must be used for employment contracts, includes the position 'manager of a company (Rom. *administrator societate comercială*).

Based on the principle "what is not explicitly prohibited is permitted", practice has shown, especially for private limited companies, that employment contracts between the company and the manager are frequently signed. In most cases though, the employment contract does not contain the position of 'manager'; the person will act, in this case, both as a manager and as an employee holding another position⁷.

This is no problem as far as the authorities are concerned, but how advisable is this approach?

Significant differences

Employees are subject to instructions and must comply with the will of the company (expressed by its manager!). In the case of a mandate agreement, however, the level of freedom increases. A mandate agreement (as opposed to an employment contract) may be drafted freely, according to the will of the parties.

The company can revoke the mandate at any time, which means ending the relationship with the manager. The manager cannot invoke protection against dismissal or any other provisions of the labour law. And above all, he cannot claim reemployment. In the case of unjustified revocation, he may only claim damages in compensation for losses suffered. In the case of an employment contract, worker protection legislation applies. Terminating an employment contract is only possible after complying with all formalities of labour law and observing all bureaucratic procedures. This does not live up to the flexibility requirements defining the mandated manager's relationship with the company.

One can also spot significant differences in rules on the liability of the manager for not fulfilling his or her duties. An employee benefits from more relaxed liability standards and limitations.

Conclusion

The special position and responsibilities of a manager require, from the perspective of the company, the use of a special contract, which steps outside labour law protection. In practice, there are numerous employment contracts, which work perfectly well as long as no conflicts arise. If conflicts occur, however, they can generate expensive and time-consuming legal disputes with minor chances of success for the company.

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⁶ C.O.R. - register

⁷ mostly "director"