

Managing director contract. Advantages and disadvantages

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It is well known that in Romania, board members of public limited companies are not allowed to conclude employment contracts with the company concerned during their mandates, but must be given mandate contracts. Any existing employment contracts are suspended during the term of office.

For a Romanian SRL (limited liability company), such a prohibition is not provided for by law, so in practice the parties often waver between a mandate contract or an employment contract. There is often a certain reluctance on the part of prospective managing directors to abandon the known employment relationship, which is reinforced by a current discussion about seniority (*vechime în muncă*) in mandate contracts. Below we present some basic principles and background information that companies can use when negotiating contracts.

What is the relationship between the company and the managing director?

In principle, the legal relationship between a Romanian SRL and its managing director is not an employment relationship. Rather, according to Law 31/1990 on companies, this is a mandate (contractual relationship), which is fundamentally regulated in the Civil Code. As the managing director relationship is not subject to labour law, a managing director contract (mandate contract) can be concluded between the managing director and the company, which has no contact with labour law and therefore offers a widened scope for structuring. From the company's perspective, but also from a general point of view, this offers a number of advantages.

A SRL can also base the employment of the managing director on an employment contract. This leads to a combination of legal relationships; in such cases, the managing director acts on the one hand as an organ of the company and on the other hand as an employee bound by instructions. This constellation is not advisable for various reasons: without going into detail, the avoidance of conflicts of interest, the contractual basis for liability in the event of misconduct, the standard of liability of the managing director or the termination of the contract should be mentioned in this context.

Is the managing director treated as an employee for tax and social security purposes?

Under tax and social security law, managing directors are generally treated in the same way as employees, meaning that a managing director with a mandate contract generally enjoys the same rights as an employee. Income tax and social security contributions are withheld and paid in the same way as for an employee.

Only a few non-cash benefits may be treated differently from a tax perspective. There are some non-cash benefits, e.g. meal vouchers, for which the tax code only provides for favourable tax treatment (e.g. tax exemption up to a certain amount) if these non-cash benefits are granted to employees. A managing director can also receive such benefits in kind, albeit subject to social security and tax contributions.

What applies to seniority in a mandate contract?

In the case of mandate contracts, the law - unlike in the case of an employment contract - does not stipulate that the activity performed constitutes seniority (*vechime în muncă*).

After a legislative initiative in 2024 to equalise working hours based on mandate contracts with those based on employment contracts received a negative response from the government, a current discussion arose on this topic.

At present, work carried out on the basis of a mandate contract is not legally recognised as seniority. However, from a social security perspective (especially pensions), this is not a problem in our opinion.

The so-called 'contribution period' (*stagiul de cotizare*) is decisive for the pension entitlement (in addition to the age of the employee). However, this is identical for both a managing director and an employee, as managing directors' income is treated in the same way as salary income for tax purposes. Seniority is only taken into account in some cases (e.g. when employed in the civil service).

Therefore, even if the activity based on the mandate agreement does not constitute 'seniority', this does not affect the managing director's pension entitlements.

Conclusion

In the case of a mandate contract, there are a few disadvantages with regard to the taxation of certain benefits in kind. Furthermore, the work performed does not currently constitute seniority, although this does not affect the managing director's pension entitlements. We believe that a legal categorisation of the activity performed on the basis of a mandate as seniority would be welcome.

For a number of legal and principle, the mandate contract remains the first option for the employment of a managing director in Romania, even in the case of a SRL.

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