

**AIJA PRAAG 2014 – JOINED SESSION LABOUR AND CORPORATE**

**Who is not afraid of being a company director ?**

The position of a director/managing director of a company has changed substantially during the past couple of years. Legislative changes, close monitoring by shareholders and the international economic and financial crisis have contributed to an increased attention towards management of companies. The expectations towards directors and managing directors have become much higher. Last but not least, also the media have developed a particular interest in company management, in particular, the remuneration of top management.

**1. The legal position/status of a director and/or managing director in the different jurisdictions ?**

- *How to define the mandate of a director / managing director from a legal perspective ?*

Mandate of a director/ managing director considers as a member of the board.

- *Distinctive factors between the mandate of director and the mandate of managing director;*

According Latvian Laws, concepts of the mandate of director and the mandate of managing director are not separated.

- *Terminology : difference between managing director and CEO*

There is no CEO concept in Latvia.

- *Distinction between aspects of employment law and aspects of company law :*

- o *What is the contractual relation with the Company ?*

An employment contract with members of executive bodies of capital companies shall be entered into, unless they are employed on the basis of another contract governed by civil law. If the executive body of a capital company is employed on the basis of an employment contract, it shall be entered into for a specified period.

There is no need to enter into an employment contract, if member shall not perform any other duties in the company.

- *Under what status does a director / managing director carry out his/her tasks : can a director and/or managing director carry out his/her duties as an employee ?*

Director and/or managing director can carry out his/her duties as an employee.

- *Are there typical rights /obligations related to the mandate of director / managing director ?*

A board of directors is the executive institution of a company, which manages and represents the company. All members of the board of directors have representation rights. Members of the board of directors shall represent the company jointly if the articles of association do not specify otherwise.

A board of directors shall supervise and manage the affairs of a company. It shall be responsible for the commercial activities of the company, as well as for accounting, in compliance with law.

A board of directors shall administer the property of the company and shall act with its means according to the requirements of law, the articles of association and decisions of meetings of stockholders

- *What are the rights in the event of termination/dismissal ?*

Members of a board of directors may be recalled by the council if there are important reasons.

Such important reason shall, in any case, be considered to be gross violations of authority, failure to perform or to appropriately perform his or her duties, an inability to manage the company, or causing harm to the interests of the company, as well as loss of confidence expressed at a meeting of stockholders.

A member of the board of directors may at any time relinquish the office of a member of the board of directors by submitting a notice to the company.

To a member of the board in the event of termination/ dismissal Labor Law is not applicable.

## **2. What is the impact of corporate governance legislation or soft-law (such as corporate governance codes) for the position of a director / managing director ?**

No impact.

## **3. Liability of a company director / managing director ?**

The members of the board of directors shall be solidarily liable for such losses caused as a result of false information, which is submitted after entering of the company in the Commercial Register.

For the submission of false information to the Commercial Register, persons shall be held to administrative liability or criminal liability.

Members of the board of directors and council shall perform their duties as would an honest and careful manager.

Members of the board of directors and council shall be jointly liable for losses that they have caused to the company.

Members of the board of directors and council shall not be liable in accordance, if they prove that they have acted, as would an honest and careful manager.

A member of the board of directors and council shall not be liable for losses caused to the company if he or she has acted in good faith within the framework of a lawful decision of the meeting of shareholders. The fact that the council has approved the actions of the board of directors shall not release the members of the board of directors from liability to the company.

**4. Are there any recent changes in remuneration legislation / policies for company directors / managing directors ?**

No. The members of the board of directors have a right to remuneration which is commensurate with their duties and the financial circumstances of the company. The amount of the remuneration shall be determined by a decision of the council, but if the company has no council – by a decision of shareholders.

**5. Has it occurred in your jurisdiction that management decisions were revised after being challenged by stakeholders (e.g. consumers) ?**

- *[to the extent applicable] Can you give some examples?*
- *Was this protest spontaneous or organized by certain groups/institutions ?*

Although hypothetically possible, There is no such practice in Latvia.

**6. Has your jurisdiction issued specific legislation on female presence in the board of directors ?**

No, but according Section 7 of Latvian Labor Law everyone has an equal right to work, to fair, safe and healthy working conditions, as well as to fair work remuneration. The rights shall be ensured without any direct or indirect discrimination- irrespective of a person's gender.

**7. Is there in your jurisdiction an obligation to have a minimum of independent and/or non-executive directors in the board ?**

No.

**8. Are there in your jurisdiction certain obligations that are different for private and for publicly owned companies and which are not yet covered by the above topics ?**

- Composition of Board of Directors ?

No difference.

- *Compensation for Directors ?*

For private owned companies - the amount of the compensation shall be determined by a decision of the council, but if the company has no council – by a decision of shareholders. For publicly owned companies – depends on company size.

- Obligation to have certain stakeholders represented in the Board ?

No difference.

**9. Position of directors/ managing directors in the event of disposal and/or merger of the company ?**

- *Is it typical to have wording on the position of the management in transfer agreements ? If yes, which topics would usually be covered ?*

No, this is not common. This issue is left in sole discretion of acquirer.

- *Is it common to have wording on discharge for the services performed prior to the disposal/merger?*

According to Latvian law the management can be released from liability only for certain, fully identified actions, but not for all of its activities. Usually this is done together with discharging the management.

- *Is it common to have contractual limitations of liability towards the acquirer ?*

If an undertaking or an independent part thereof is transferred to the ownership or use of another person, the acquirer of the undertaking shall be liable for all the obligations of the undertaking or its independent part.

However, in respect of those obligations which arose prior to the transfer of the undertaking or its independent part to the ownership or use of another person, and the terms or conditions for the fulfilment of which come into effect five years after the transfer of the undertaking, the transferor of the undertaking and the acquirer of the undertaking shall be jointly liable.

In the case of the transfer of ownership or use of an undertaking or an independent part thereof, claims and other rights included in the undertaking or its part shall be transferred to the acquirer of the undertaking.

An agreement, which is in contradiction to those provisions, shall be void as to third parties.

- *Is it common for the sale agreement to provide restrictive covenants on the part of directors / managing directors ? If yes, what type of restrictive covenants?*

This is possible, but varies depending on the particular transaction.

**10. Are there in your jurisdiction minimum requirements to become a company director ?**

No.

**11. Does a company director has specific obligations with regard to:**

- *Non-compete obligations*
- *The obligation to reveal so-called "corporate opportunities" towards the company*

A member of the board of directors, without the consent of the council or, if such has not been formed – without the consent of the meeting of shareholders, may not:

1) be a general partner in a partnership, or a shareholder with supplemental liability in a capital company which is engaged in the field of commercial activities of the company;

2) conclude transactions in the field of commercial activities of the company in his or her own name or in the name of a third party;

3) be a member of the board of directors of another company which is engaged in the field of commercial activities of the company, except in cases when the company and the other company are part of the same group of companies.

If a member of the board of directors violates those 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 the income acquired or the right of claim to such to the company.

As well, it is possible to make an agreement between an employee and an employer regarding the restriction of the occupational activities of the employee (restriction on competition) after termination of employment legal relationships.