

# Management Board Member Agreements in Estonia

Management board members are often acting without any written agreement or by mistake by having an employment agreement instead of management board member service agreement. The Employment Contracts Act (§ 1 Section 5) states expressly that provisions concerning employment contracts shall not be applied to contracts of members of a directing body (management board or supervisory board of a company). Thus, the legislator does not see the management board member as a weaker party who needs to be protected.

It is expected that the management board member is a professional who is able to negotiate a contract and defend his or her interests.

Under Estonian law, the management board member service agreement is not a separate type of agreement. The Estonian Supreme Court has explained that the legal relationship between a company and a member of a management board is essentially similar to any other authorisation agreement, by which the parties agree to fulfil certain tasks in a certain period of time and to which the provisions of the Law of Obligations Act (LOA) regulating authorisation agreements applies.

## **A management board member is not a robot**

On the one hand, the law gives to the members of a management board wide powers and freedom of actions. On the other hand, management board members are not entitled to any legal protection and no social guarantees as is provided for employees, and the law does not regulate the working conditions:

- the law does not require to pay the management board member any fee for the performance of his or her duties;
- a management board member can be recalled without any advance notice, without giving any reasons and without paying any compensation;
- the law does not regulate any working or rest time of a management board member, meaning basically that the management board member is expected to be on duty 24/7;
- a management board member is not entitled to any vacation or severance pay if he or she leaves the company;
- the liability of management board member is practically unlimited;
- a management board members cannot register themselves as unemployed.

While in the eyes of the law, a board member is like a robot, always ready to fulfil duties, responsible for the entire company's activities at any given time, expected not to get tired, not to rest or fall ill, in the real life human capabilities have certain limitations. Companies and board members always have mutual expectations and can have different understandings of a well-performed job and of the results to be achieved. For the avoidance of unpleasant surprises, it is reasonable to enter into a written agreement in which the relationship between the management board member and the company is regulated as comprehensively as possible. This is especially important in case the company's owners are not in the management board themselves. From the management board member's point of view, it is recommended to require, before taking office, a written agreement in order to obtain adequate legal protection.

## **What can be agreed in a management board member service agreement?**

A management board member service agreement mostly contains the same issues that can be found in an employment contract. However, it must be kept in mind that a company and a board member may not agree to apply provisions that are exclusively inherent to employment contracts. For example, the Commercial Code provides that cancellation of an authorisation agreement apply to cancellation of the agreement with a management board member (§ 309 Section 5). Therefore, it cannot be agreed to apply the equivalent regulations regarding employment contracts (including payment of redundancy compensation).

In the agreement with a board member it is reasonable to regulate the following issues:

- to establish the duties, including the division of duties among the members of the board;
- to specify the conditions of fulfilment of the obligations arising from the statutes of the company and the law;

- to regulate powers, including the internal constraints on the right of representation and conclusion of transactions;
- to regulate the remuneration, including benefits and reimbursements to the management board member (such as company car, mobile telephone compensation etc);
- to regulate working hours and vacation conditions;
- to provide the bases of liability;
- to regulate conditions of early cancellation of the agreement and compensation to be paid in case of early cancellation.

In addition, it is recommended to regulate in writing the obligation to preserve business secrets and prohibitions on competition. It is also important to remember that concluding an agreement with a management board member, as well as amendments and termination of the agreement, always requires a decision of a higher body: supervisory board decision in case there is one or the shareholder(s) decision in all other cases. An agreement with a management board member can be signed only by a representative of the company appointed for this purpose.

### **Management board member service agreement and employment contract**

The law does not prohibit a member of the management board to do some other work for the same company. Thus, a management board member of a company can in some cases have an employment relationship with the company at the same time. This is possible only upon the condition that the work performed by the management board member is not connected to the functions and responsibilities of a management board member. For example, in a dental clinic a management board member can do a dentist's work, in addition to his management functions. In such cases, the company enters into a management board member service agreement for the performance of the management tasks, and for the performance of duties as a dentist - an employment agreement is signed.

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