

Dismissal and termination of contract of a managing director

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GRP Rainer Lawyers and Tax Advisors in Cologne, Berlin, Bonn, Düsseldorf, Frankfurt, Hamburg, Munich, Stuttgart and London - www.grprainer.com/en conclude: The managing director is distinct from other employees in one essential aspect: a dual employment relationship exists. On the one hand, the managing director is appointed by the shareholders and, on the other hand, has an employment relationship with the company. Both legal relationships must be taken into account in the context of termination of contract and dismissal.

Dismissal of the managing director

In principle, the appointment of the managing director can be rescinded at any time. However, in most articles of association the managing director can typically only be dismissed where there are significant grounds. Significant grounds in this sense generally exist where the managing director has committed a gross breach of duty and the shareholders lose confidence in his ability to manage the company in an orderly manner. Significant grounds can, for example, be fraud, disregarding binding resolutions of the shareholders' meeting, illegitimate withdrawals, refusing to comply with the obligation to disclose information, criminal offences or culpable failure to file for insolvency in due time. The decision to dismiss the managing director generally has to be taken by the shareholders' meeting.

The fact that the managing director can only be dismissed where there are significant grounds must be set out in the articles of association. A corresponding provision in the managing director's employment contract is not sufficient.

Termination of the employment contract

It is not enough for the managing director to be dismissed; his employment contract must also be terminated if an appropriate connection has not been agreed at the outset. However, at the same time, important clauses have to be considered, otherwise the contractual and statutory notice periods apply. Thus, until the termination of the employment relationship, the managing director still has to perform his executive role, yet this can be problematic following dismissal. It is therefore advisable to already have appropriate provisions agreed in the employment contract.

The dismissal and termination of contract of a managing director are therefore not comparable from a legal perspective with the termination of a "normal" employee's contract. In order to avoid legal uncertainties with unforeseeable consequences, the agreements and the company's articles of association should be as detailed as possible and clearly formulated. Lawyers competent in the field of company law can help with this. In order to avert unanticipated consequences, one should also not forego legal assistance in the case of a managing director's dismissal.

<http://www.grprainer.com/en/dismissal-termination-manager.html>

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Anlage: Bild

