

Employment & Labour - Netherlands

The dismissal of managing directors - key issues

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Employment protection

Employees in the Netherlands enjoy strong protection against dismissal. Unless the employee explicitly agrees to termination of the employment agreement, the employment agreement can be terminated only by the court or by notice given by the employer with the approval of a specific governmental authority.

The sole exception to this rule concerns the position of the managing director, which differs from that of a normal employee. The managing director has a dual position, as he or she has both a corporate position and an employment agreement with the company. The managing director does not enjoy the same employment law protection as normal employees. This update outlines the key issues concerning the dismissal of a managing director in the Netherlands.

Appointment of managing director

First, it should be determined whether the managing director has been appointed by the competent body of the company or is merely an employee who uses the title of managing director. Usually, the managing director is appointed by the shareholder(s) of the company in accordance with the articles of association (or by the mandatory supervisory board, where one exists). A copy of the appointment should be kept at the company and is usually filed with the Trade Register of the Chamber of Commerce, together with the relevant details of the appointment (eg, the powers of the managing director). The Trade Register enables third parties to verify whether the person representing the company is in fact authorized to do so.

Articles of association

The managing director can be dismissed at any time by the competent body of the company. The competent body and the manner in which an extraordinary shareholders' meeting should be called are specified in the articles of association (which can be requested from the Trade Register). When (foreign) companies incorporate a legal entity in the Netherlands, it is strongly recommended that the articles of association explicitly contain an article allowing a shareholder or the supervisory board to call for an extraordinary shareholders' meeting without the cooperation of the managing director (s). Usually, the articles of association provide that the management must convene a meeting, even though the law allows for different wording. The reason for opting for such alternative wording is tactical: one usually does not want the managing director to know in advance that he or she is being invited to a meeting concerning his dismissal.

Steps for dismissal

The successful dismissal of a managing director depends in part on whether all formalities have been satisfied. The following steps must be taken:

- Verify whether an appointment resolution exists and verify this in the Trade Register.
- Verify in the articles of association which competent body can convene a meeting

and verify the applicable term between the date of invitation and the date of the meeting.

- Draft the wording for the invitation to this meeting. This invitation should explicitly state that the dismissal of the managing director will be discussed, and that he or she will be given the opportunity both to give his view on and to render advice on the intended dismissal.
- Hand over the invitation to the managing director and verify whether the articles of association require a specific manner of notification.

Settlement agreement

Usually, the parties will try to settle the dismissal prior to the meeting. In most cases the managing director is offered a settlement agreement prior to the actual meeting, which may also be discussed during the meeting. The managing director's employment agreement may contain an agreement on a fixed settlement package in case of termination of the employment agreement.

Protection in case of illness

If the managing director is ill before he or she actually receives the invitation to the meeting, termination of the employment agreement cannot take place. Therefore, the invitation is usually handed over and sent by (registered) mail afterwards.

Corporate position and employment agreement

During the meeting, once all formalities have been taken into account, the managing director can be dismissed. The Dutch Supreme Court has ruled that (unless the managing director is ill as described above) when the corporate position of the managing director is terminated, the employment agreement ends automatically as well. While the corporate position may end immediately as per the date of the meeting, the employment agreement ends in accordance with the contractual notice period (unless this is void, in which case the statutory notice period applies). However, the managing director may claim that the termination was 'manifestly unreasonable' and seek damages through the court. Such a claim can be made even if the company has met all formal (dismissal) requirements (eg, if the company has failed to offer an adequate severance package).

Works council

Finally, if the company has a works council, then both the dismissal and the hiring of a managing director are subject to the advice of the works council. In practice, because the element of surprise is sometimes needed and for tactical reasons, the works council is informed on the same day as the managing director receives the invitation.

For further information on this topic please contact [Katja Van Kranenburg-Hanspians](#) at CMS Derks Star Busmann by telephone (+31 20 301 6301), fax (+31 20 301 6333) or email (katja.vankranenburg@cms-dsb.com).

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