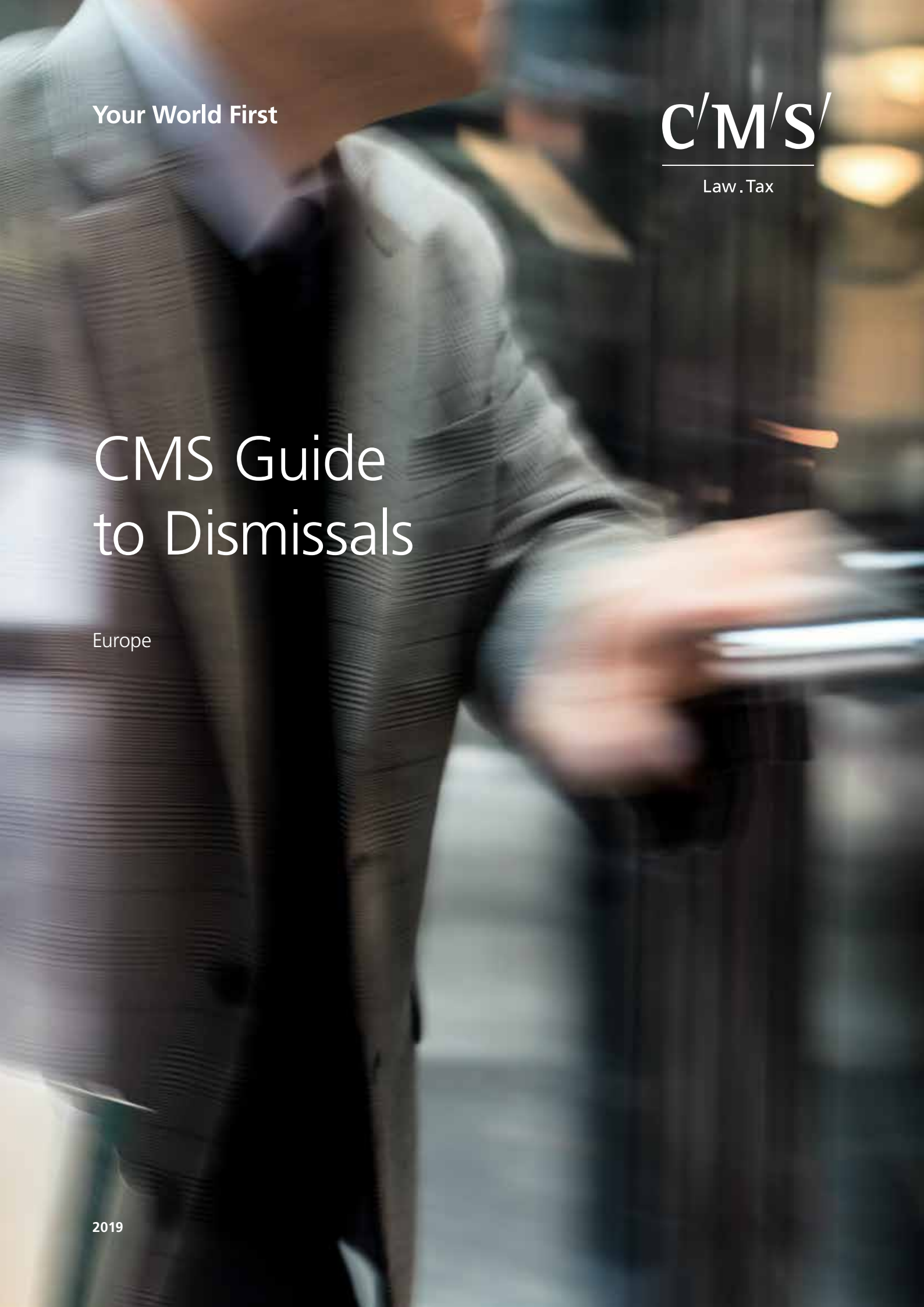

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CMS Guide to Dismissals

Europe

2019

Introduction

The CMS Guides to Dismissals are intended to help employers anticipate the possible courses of events when they decide to terminate an employment contract or dismiss a managing director. The better prepared and informed the company is, the easier the process is to handle for everyone involved. Dismissals are not just actions through which an employment relationship with a company ends, they can also be a part of a larger restructuring process, sometimes including several countries.

The Guide for Europe provides an overview of termination procedures for **employees** and **managing directors** in **25 European countries, including Russia**. The first part deals with termination procedures for employees, the second part with managing directors. The Guide is intended to provide CMS's international clients with a summary of local laws across all 25 countries, making it easier to compare and contrast each jurisdiction.

We are confident this Guide will help clients considering dismissals. If it encourages you to seek more detailed information, then please contact the CMS Employment Practice Area Group at **employment@cmslegal.com** and we will be happy to provide further advice. We have a proven track record in understanding our clients' needs, and in delivering a professional and seamless service.

Caroline Froger-Michon and Christopher Jordan
CMS Employment Practice Area Group

Full range of employment law services

Our lawyers have specific expertise in the following areas:

— Compliance with national and international laws and standards

— Individual and collective dismissals

— Employee share/stock ownership

— Employee pension schemes

— Social security contributions

— Equal opportunities and discrimination

— Employee information and consultation

— Redundancy programmes

— Labour/trade union issues/disputes

— Employee and pensions aspects of mergers and acquisitions, outsourcing, nationalisation, privatisation

— Enforcement of restrictive covenants and confidentiality provisions

— Drafting employment contracts, company policies and collective agreements

— Works councils at company, national and international levels

— Collective bargaining

— Court litigation in labour matters

— Compliance with labour health and safety regulations

— New forms of employment

— GDPR

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Employees

Austria

Reasons for dismissal

Generally, employers in Austria are not required to justify ordinary dismissals *(Kündigungen).* Nevertheless, they must observe prescribed notice periods and termination dates.

However, if an establishment employs five or more employees, these employees enjoy "General Protection against Dismissals": employees may challenge their dismissal if it has adverse effects on the individual's personal life. In these cases, the employer must justify the dismissal for reasons related to employee capabilities, conduct or operational requirements if challenged by the employee.

Certain "vulnerable" employees enjoy additional "Special Protection against Dismissal" and may only be dismissed for one of several specific reasons, often only with the prior consent of competent authorities. These include women who are pregnant or who have recently given birth, parents on parental leave, works council members, safety officers and employees formally classified as disabled persons.

Discriminatory dismissals or dismissals due to "illegal reasons"' can also be challenged by employees.

Form

Unless otherwise stipulated in a collective agreement or employment contract, dismissals do not require any particular form. However, giving notice in writing is recommended. If "Special Protection against Dismissal" applies, rules may differ.

Notice period

Although Austrian law does provide statutory minimum notice periods and dates, employers are free to designate their own notice regimes based on collective agreements and employment contracts. In case of conflicting regulations, however, employees will always benefit from the most favourable rule, pursuant to the "favourability principle" *(Günstigkeitsprinzip).*

Austrian employment law distinguishes between white-collar *(Angestellte)* and blue-collar workers *(Arbeiter),* providing separate notice models for each.

White-collar workers are entitled to receive at least six weeks' notice and up to five months' notice, always depending on the length of their employment relationship. These terms may be modified, although no notice period may exceed six months. In addition, white-collar workers benefit from statutory notice dates, ensuring that employment relationship may only end at the end of any given annual quarter. It is possible to contractually agree that a termination is possible on the 15th or last day of any given month.

If not otherwise stipulated by collective agreement, blue-collar workers are subject to a notice period of at least 14 days. In practice, however, collective agreements often guarantee more generous notice periods.

From 1 January 2021 onwards, the notice periods and termination dates for white-collar workers will apply for blue-collar workers.

Involvement of works council

If a works council exists at an establishment, it must be informed of any proposed dismissals at least one week in advance. Within this timeframe, the works council may object, explicitly approve or refrain from commenting on the dismissal. If the employer fails to comply with this requirement, either by failing to notify the works council or by failing to wait for its response within that week, the termination is void.

Involvement of a union

No involvement.

Approval of state authorities necessary

Obligatory only for certain groups of employees, e.g. severely disabled persons, pregnant women, and employees on parental leave.

Collective redundancies

When collective dismissals *(Massenkündigungen)* are imminent, employers are required to notify the Austrian Employment Service 30 days in advance. For the sake of this notification procedure, collective dismissals are defined as employment terminations affecting:

(i) at least five workers in an establishment of 21 – 99 employees; or
(ii) 5% or more of the workforce at an establishment of 100 – 600 employees; or
(iii) at least 30 workers at an establishment of more than 600 employees; or
(iv) at least five workers aged 50 or over, regardless of company size.

The requirements of the notification procedure are met if the employer informs the competent agency in writing and waits one month before carrying out the intended dismissals. Any failure to observe these rules will render all pertinent dismissals void.

Summary dismissals

A summary dismissal *(Entlassung)* does not require observance of any particular notice periods, but must be issued without undue delay. Summary dismissals are possible for good reasons only, as regulated by law. Disloyalty, untrustworthiness or persistent refusal to carry out one's contractually agreed duties are typical reasons for a summary dismissal.

Summary dismissals are effective, even if they do not meet the abovementioned requirements. However, the summary dismissal may then be treated as a regular dismissal, meaning the respective protection against dismissal is applicable.

Consequences if requirements are not met

Non-compliance by the terminating party with the prescribed or agreed periods or dates of notice constitutes untimely notice. Although such untimely notice remains effective, it entitles the employee to dismissal compensation *(Kündigungsentschädigung).* Such compensation consists of the remuneration that the employee would have received had the dismissal been properly expressed, i.e. all due remuneration between the actual termination of employment and the date of termination prescribed by law, collective agreement, works agreement or employment contract.

If the employee is entitled to General Protection against Dismissal, he or she may claim reinstatement in court. Reinstatement is granted if the employee manages to prove that the termination of the employment contract has adverse personal effects on his or her life (e.g. little chance of finding employment of similar standing and income in a reasonable time) and the if the employer fails to adequately justify the termination.

Severance pay

Austrian statute distinguishes between two severance pay models; one is applicable to all employment relationships established prior to 1 January 2003 ("old model"), and the other to employment agreements signed after that date ("new model").

The old severance pay model requires the employer to pay a sum based on the employee's length of service at the end of the employment relationship unless the employee terminates the contract him – or herself, or if he or she is dismissed without notice for good cause (summary dismissal). If the employment relationship is terminated after three years' employment, the employee is – entitled to severance pay of two months' salary. After 25 years, he or she is entitled to twelve months' salary.

The new severance pay scheme requires the employer to pay a sum of 1.53% of every monthly salary toan employee severance fund *(Betriebliche Vorsorgekasse).* At the end of any given employment, the employee may then either request disbursement of the collected amount or leave it in the fund for further investment.

Non-competition clauses

Non-competition clauses are only valid insofar as they last for no more than one year after the termination of employment, are restricted to the employer's line of business and if the employee's monthly income is above a certain threshold at the end of the employment relationship (2018: EUR 3,420 for contracts concluded after 29 December 2015). Also, contractual penalties are limited by law to six net monthly remunerations (without taking into account the 13th and 14th annual salary). If the parties agree to such a contractual penalty, the right to observe the non-competition clause or the compensation of any further damage is excluded.

A non-competition clause may not cause undue hardship to the employee's career when weighed against the employer's justified business interests. Judges may limit the scope of a clause, or the contractual penalty to be paid when violating the law. Non-competition clauses are generally rendered void when dismissals are carried out by the employer.

Miscellaneous

Not applicable.

Belgium

In Belgium, a distinction is made between blue-collar workers and white-collar workers. Blue-collar workers provide manual labour; white collar workers provide intellectual labour.

The main difference between these two statutes were the lengths of the notice periods, which were equalised on 1 January 2014.

Today, the distinction between blue-collar workers and white-collar workers is still made in the method of payment of remuneration, the calculation of notice period in case of employment before 1 January 2014, and some working conditions.

Reasons for dismissal

The Belgian legal system does not differentiate specific reasons for dismissal. The main distinction is between a "regular" dismissal with compensation (period of notice or indemnity in lieu of notice) and a dismissal with serious cause (summary dismissal). A dismissal because of business reasons falls under the normal dismissal with compensation.

According to Collective Bargaining Agreement n° 109, the employer does not have to state the motives for a dismissal on his own initiative, but only if the employee makes a written request.

If an employee requests the employer's motive for the dismissal, the employer needs to prove that the dismissal was "based on reasons which are related to the capabilities or the behaviour of the worker or which are based on the operational necessities of the company … and which would have been decided upon by a normal and reasonable employer".

If the employer fails to provide this proof, the dismissal will be considered a "clearly unreasonable dismissal" and the employee will then be entitled to an indemnity equal to between three and a maximum 17 weeks' remuneration (at the determination of the labour courts).

Form

Notice must be given in writing and must comply with the mandatory language requirements applicable in Belgium.

The employer gives notice, either by registered mail or through a bailiff *("gerechtsdeurwaarder" / "huissier de justice").* If the employee gives notice, he can also request the employer to sign a duplicate of the notice letter. The notice letter must specify the length of the notice period and the day on which the notice period begins.

For termination with immediate effect, there is no specific form of notice (except for a dismissal for serious cause). Nevertheless, a registered letter or a letter signed for receipt by the employee is recommended for reasons of proof.

Termination of an employment contract of unlimited duration

— **Employment agreement with performances before 1 January 2014**
For the determination of the applicable notice period, two distinct periods will be considered: (i) before 1 January 2014, and (ii) on or after 1 January 2014.

(i) Period before 2014
For employers to give notice, seniority acquired before 1 January 2014 will qualify for a notice period of:

(i) either a notice of three months per started period of five years of seniority for white collar-workers earning EUR 32,254 gross or less; or
(ii) one month per year of service for white-collar workers earning more than EUR 32,254 gross with a minimum of three months;
(iii) for blue-collar workers the notice periods applicable on 31 December 2013 apply to determine the notice for the period until 31 December 2013.

For blue-collar workers, the following scheme is applicable for the calculation of the first part of the notice period (calendar days):

Notice by	**Seniority of blue-collar worker**					
	< 6 months	**6 months < 5 y**	**5 y < 10 y**	**10 y < 15 y**	**15 y < 20 y**	**20 y or >**
Employer: Employment agreement entered into force before 1 January 2012	28 days	35 days	42 days	56 days	84 days	112 days
Employment agreement entered into force after 1 January 2012	28 days	40 days	48 days	64 days	97 days	129 days
Blue-collar worker	14 days	14 days	14 days	14 days	14 days	28 days

In certain industry sectors, different notice periods were applicable for blue-collar workers. These periods need to be applied in the first step of the calculation.

The notice period if the white-collar worker gives notice is:
(i) 1.5 months in the first five years of employment and three months in case of a seniority higher than five years for white-collar workers earning EUR 32,254 gross or less; or
(ii) 1.5 months per period of five years of service with a maximum of 4.5 months for white-collar workers earning more than EUR 32,254 gross or a maximum of 6 months for white-collar workers earning more than EUR 64,508 gross.

If the maximum (3, 4.5 or 6 months) referred to above is reached, the notice period corresponds to this maximum and, thus, it is not necessary to calculate the notice for the period from 1 January 2014 (see below).

(ii) Period from 1 January 2014
For the period as from 1 January 2014, fixed notice periods based on the seniority of the employee – as from that date – apply.

Seniority	Notice period in case of dismissal by the employer	Notice period in case of dismissal by the employee
0 to < 3 months	1 week	1 week
3 months to < 4 months	3 week	2 weeks
4 months to < 5 months	4 weeks	2 weeks
5 months to < 6 months	5 weeks	3 weeks
6 months to < 9 months	6 weeks	3 weeks
9 months to < 12 months	7 weeks	3 weeks
12 months to < 15 months	8 weeks	4 weeks
15 months to < 18 months	9 weeks	4 weeks
18 months to < 21 months	10 weeks	5 weeks
21 months to < 24 months	11 weeks	5 weeks
2 years to < 3 years	12 weeks	6 weeks
3 years to < 4 years	13 weeks	6 weeks
4 years to < 5 years	15 weeks	7 weeks
5 years to < 6 years	18 weeks	9 weeks
6 years to < 7 years	21 weeks	10 weeks
7 years to < 8 years	24 weeks	12 weeks
8 years to < 9 years	27 weeks	13 weeks

Attention: if notice is given by the employee, the sum of the notice period before 1 January 2014 and as from 1 January 2014 is limited to 13 weeks.

— **Employment agreement with performances from 1 January 2014**
For the termination of employment agreements with performances as of 1 January 2014, the aforementioned notice periods, applicable for the second part of the calculation, will apply. Exceptions were made for some industries (e.g. construction sector).

— **Agreements on the notice period**
Since 1 January 2014, individual negotiations have no longer been possible when dealing with the notice period or indemnity in lieu of notice for white-collar workers. However, valid agreements on termination modalities, existing on 31 December 2013 and concluded at an individual level remain valid and enforceable.

Since 1 January 2014 it has only been possible to deviate from the legal notice periods by means of a company-level collective labour agreement.

Following termination, parties may negotiate the notice period or the indemnity in lieu of notice.

— **Special terms**
Different notice periods apply in case of counter-notice by the employee whose employment contract was previously terminated by the employer and who wishes to leave the employer earlier for a new job. These notice periods are limited to four weeks.

If notice is given to an employee in order to terminate the employment agreement from the first day following the month in which the employee attains the statutory pension age, the basic terms apply with a maximum notice period of 26 weeks.

— **Protected employees**
Some categories of employees have special statutory protection against dismissal and are entitled to additional compensation if dismissed (e.g., employees that filed a harassment or discrimination complaint, employees with a political mandate, employees on parental leave).

These categories of protected employees may not be dismissed for reasons related to the grounds on which they are protected. In most cases, the employee can claim damages equal to six months' remuneration on top of normal notice requirements when the employer is unable to prove that the reasons for the termination are unrelated to the grounds for the protection.

— **Incapacity to work**
If employee is absent due to incapacity to work after the notice of termination has been given, the employer may immediately terminate the employment agreement upon payment of indemnity in lieu of notice.

Termination of an employment contract of limited duration (fixed-term or well-defined job)

Fixed-term contracts expire automatically on the date agreed by the parties; consequently, no notice of termination needs to be given or indemnity offered in lieu of notice.

If the parties continue performances after the employment contract term has expired, the contract will be subject to the same rules as an employment for unlimited duration.

A fixed-term contract can also be terminated before the agreed term unilaterally by either party or even during a period of incapacity to work.

Since 1 January 2014, each party has been able to terminate the contract by giving notice during the first half of the agreed term of the contract (limited to a maximum of 6 months); the notice period has to end within this first half of the agreed term (or the period of 6 months referred to above).

Notice must be given in the same manner as for an employment agreement for unlimited duration and will also start to run from the Monday following the week in which notice is given. The periods of notice to be given are the same as those for termination of an employment agreement for unlimited duration.

For successive contracts for a limited period, this rule can only be used for the first contract.

If the contract ends after this first half of the agreed term, the party terminating will have to pay an indemnity in lieu of notice. This amount will be equal to the amount of remuneration that would have been paid until the end of the contract, although limited to twice the amount of the indemnity in lieu of notice that should have been paid had an employment agreement for unlimited duration been offered.

Involvement of works council

The main role of the works council is to be informed and consulted about a range of economic and employment issues, although it does have some limited decision-making powers.

The employer must *inform and consult* the works council on cases of mergers, closures, business transfers, large-scale redundancies, etc.

Furthermore, the works council has a *decisive competence* in setting up the general criteria for collective dismissal or recruitment on economical or technical grounds.

Involvement of a union

The central role of the trade union delegation is to negotiate new agreements and ensure that existing ones are complied with. The trade union delegation also deals with disputes between the employer and the employees, both on an individual and collective basis.

Approval of state authorities necessary

Collective dismissal and closure

There is no approval of state authorities necessary in case of collective dismissal and closure.

However, the sub-regional employment service and the federal employment services must be *informed* about the intention to proceed with a collective dismissal and about the outcome of the information and consultation procedure with the works council.

Protected employees

Employee members of the works council or the health and safety committee can only be dismissed for "serious cause" or for economic or technical reasons. In both cases the employer must seek *authorisation* in advance, either from the labour court in the case of "serious cause" or from the competent joint committee where the reasons are economic or technical.

Collective redundancies

Specific rules apply to collective dismissals or closures. The employer must respect the information and consultation procedure prior to the decision to proceed with a collective dismissal or closure.

The employees will be entitled to specific indemnities in case of closure. Although there is no legal obligation to do so, it is quite common for social partners to negotiate and conclude a social plan.

Furthermore, the employer must take measures to re-activate the employees affected by the collective dismissal.

Summary dismissals

For a dismissal with a serious cause, the contract must be terminated within three working days after the day on which the act constituting the serious cause came to the employer's knowledge. Dismissal for serious cause should preferably be notified by registered letter.

Additionally, the employee must also be given written notice with the reasons for the termination, ultimately by registered letter within three working days after the dismissal for serious cause.

The termination must be carried out by a person authorized to dismiss the employee.

Consequences if requirements are not met

In general, Belgian employment law favours a complementary indemnity (payment of damages) rather than an obligation to reinstall the employee.

Severance pay

A party that terminates the employment contract without notice must pay compensation equal to the current annual remuneration (including benefits) corresponding to the notice period that should have been respected.

According to Belgian employment law, different non-competition clauses may apply.

Non-competition clauses

General non-competition clause

A non-competition clause in the employment contract of an employee, not a sales representative, is only valid if:

(i) the scope is limited to similar activities and to competing companies; and
(ii) the scope is limited to a well-defined geographic area in which competition may exist (limited to the Belgian territory);
(iii) the duration of the clause does not exceed 12 months after the termination of the employment agreement; and
(iv) the clause provides for the payment of an indemnity by the employer to the employee equal to at least 50% of the gross remuneration that the latter could have earned during the duration of the non-competition clause.

The non-competition clause is only enforceable if:

(i) it is a written agreement compliant with the mandatory language requirements applicable in Belgium;
(ii) the employee has acquired a special knowledge in industrial or commercial matters;
(iii) certain remuneration thresholds are met;
(iv) all the validity conditions are fulfilled (territory, duration, similarity of activities and financial compensation) and
(v) the employment agreement is terminated by the employee without serious cause or by the employer for serious cause.

The employer may waive the application of the clause within 15 days of the end of the employment. If the application of the clause is not waived within these 15 days, the employer must pay a non-competition indemnity to the former employee. However, the judge can mitigate the effects of a non-competition clause that is contrary to the public order.

International scope and / or R&D Department

The same conditions as the general non-competition clause apply, save for
(i) the geographical scope is not limited to Belgian territory,
(ii) the duration may exceed 12 months and it is also valid in case of termination by the employer.

Sales representatives

The same conditions as the general non-competition clause apply, except that
(i) the geographical scope is limited to the area of activities,
(ii) the employer does not need to pay a lump-sum compensation,
(iii) it concerns similar sales activities.

After termination of the employment

Unlike non-competition clauses included in the employment contract, post-contractual non-competition covenants are not subject to specific conditions. However, their duration, as well as the penalty in case of a breach, must be reasonable in the circumstances (seniority, salary, etc.).

Miscellaneous

Not applicable.

Bosnia and Herzegovina

Reasons for dismissal

FBiH: Under the FBiH labour law, an employer can terminate an employment contract:

— if the termination is justified due to (1) economic, technical, or organisational reasons, or (2) if the employee is not capable of conducting his/her contractual obligations; in both cases under the additional condition that the employer cannot be reasonably expected to offer the employee an alternative position, or provide to him/her any necessary training or equipment to perform an alternative role;
— if the employee has committed a serious offence or serious breach of his/her contractual obligations (in these circumstances the employer can terminate the employment contract with an immediate effect).
— in the case of minor violations of work obligations under the employment contract, an employment contract cannot be terminated without a prior written warning to the employee.

Republika Srpska: Under the labour law of Republika Srpska the employer may terminate the employment contract for the following justified reasons:

— if the employee has seriously violated work obligations under the Labour law of Republika Srpska, whereby the named law provides for an exhaustive list of activities that constitute serious violations of work obligations;
— if, due to economic, organisational and technological changes, the need for performance of specific work ceases, or a decrease of workload occurs, whereby the employer cannot secure the employee a different position;
— if the employee does not achieve certain work results or if he/she does not have the required knowledge or skills to perform his/her work;
— if the employee was sentenced for a criminal offence which was committed at work or is connected to the employee's work;
— if the employee refuses to accept the conclusion of an annex to his/her employment contract;
— if the employee does not return to work within a period of five days after the expiration of a period of unpaid leave or a period of standstill of rights from the employment relation; or
— If the employee does not respect the work discipline; whereby the named law provides for an exhaustive list of activities that constitute breaches of work discipline.

Form

FBiH/Republika Srpska: The employer must notify the employee in writing. The dismissal notice must include the reasons for the dismissal and their statutory basis. The dismissal notice must be delivered to the affected employee or, if the delivery is unsuccessful, the dismissal notice must be published on a bulletin board in the employer's premises. In addition, in Republika Srpska, the dismissal notice must provide possible legal remedies for the affected employee in addition to reasons for the dismissal.

Notice period

FBiH: The statutory minimum notice periods are seven days (employee to employer) and 14 days (employer to employee). The actual notice period is normally determined by internal company regulations and collective agreements, or if these do not exist, the notice period is incorporated into the employment contract. The Law on Employment of FBiH provides for the maximum allowed duration of notice period, i.e. a maximum of one month (employee to employer) and three months (employer to employee). The notice period commences on the day the employee is notified of the dismissal.

An employer may terminate an employment agreement without respecting the notice period, if the employee seriously breaches the work duties set out in the employment agreement.

Republika Srpska: The statutory minimum notice periods are 15 days (employee to employer) and 30 days (employer to employee).
As in the Federation of Bosnia and Herzegovina, the actual notice period is typically regulated in either internal company regulation, collective agreements, or in the specific employment contract. The notice period does not have to be respected if the termination is due to a serious breach of work duties.

Involvement of works council

FBiH: An employer who employs more than 30 employees, and who intends, within the next three months, to terminate the employment contracts of at least five of its employees due to the economic, technical or organizational reasons, is obliged to consult the competent union and works council (if one exists).

Republika Srpska: If, due to economic, organizational, or technical reasons, an employer intends, to dismiss within 90 days:

(1) ten employees, if the employer employs between 30 and 100 employees on an indefinite term, or
(2) 10% of its employees, if the employer employs more than 100 employees on an indefinite term, or
(3) 30 employees, if the employer employs more than 300 employees on an indefinite term,
(4) the employer is obligated to adopt a programme to deal with the surplus of workers. The employer is then required to deliver this proposal to the union or works council (if one exists) for their opinion. The employer is further obligated under the Law to consider this opinion and to inform the union or works council of the stance taken.

Involvement of a union

FBiH: If there has been an unlawful dismissal or any irregularity in relation to the dismissal, the union can assist an employee in making his/her claims against the employer.

If there is no works council, an employer who employs more than 30 employees, and who in a three-month period intends to, terminate the employment agreements of at least five of its employees due to economic, technical or organizational reasons, it is obliged to consult the appropriate union and works council (if one exists).

Republika Srpska: As explained under "Involvement of works council" above.

Approval of state authorities necessary

FBiH: It is necessary to obtain prior approval of the relevant labour ministry if an employer proposes dismissing a union commissioner (the employee's trustee) during and for a period of six months after his/her term of office.

Collective redundancies

FBiH / Republika Srpska: The relevant laws of FBiH and Republika Srpska do not recognize collective redundancies, as the redundancy is treated as an individual right.

Extraordinary dismissals

FBiH: The employer can terminate the employment contract without a notice if the employee has committed a serious offence or serious breach of his/her contractual obligations (in circumstances where it would be unreasonable to expect the employer to continue the employment relationship). The employee has the right to present its defence before the employer decides on the termination.

Republika Srpska: As above, an employer is entitled to terminate the employment contract with immediate effect if the employee commits a serious breach of work duties. Thereby, the Law on employment in RS (unlike in FBiH), provides a list of activities that constitute a serious breach of work duties. As in FBiH, the employee needs to be notified of the allegations against him/her and needs to be provided with the possibility to exercise his/her right to present his/her defence, before the employer decides on the termination.

Consequences if requirements are not met

FBiH: If the court determines that a dismissal is unlawful, it can oblige the employer to:

— return the employee to work at his/her request to the position he/she worked in, or other appropriate position, and to pay salary compensation equivalent to the salary that the employee would have received if he/she had worked, as well as the compensation for any damages caused to them;

— to pay the redundancy to which the employee is entitled in accordance with the law, collective agreement, employment rulebook or employment agreement; and other benefits to which the employee has the right, in accordance with the law, collective agreement employment rulebook or employment agreement.

It should be noted that the employee may request that the court adopts an interim measure on his/her return to work until the final decision in the court dispute has been made.

Severance pay

Republika Srpska: the same as above.
FBiH: An employee with a contract concluded for indefinite period of time, who has worked at least two years continuously for the same employer, has a statutory right to severance pay if his/her employment contract has been terminated by the employer. The sum depends on the employee's length of continuous work. Severance payments are normally set out in collective agreements, employment agreement and internal company rulebooks. The relevant law prescribes the statutory minimum and maximum for severance payment. The minimum amount is calculated based on the formula: one-third of the employee's average monthly salary (paid to the employee during the three months prior to dismissal) for each year of service. The maximum amount of statutory severance is six average salaries paid to the employee in the three months prior to the termination of the employment contract.

The method and deadline for payment is normally set out in a written agreement between the parties. It should be noted that the employer is not obliged to make a severance payment if the reason for dismissal is due to the employee's breach of contract or obligations that arise from the employment relationship.

Republika Srpska: An employee with an employment contract concluded for indefinite period who has at least two years of continuous work has a statutory right to severance payment, unless the employment agreement is terminated for any of the following reasons:
— the worker has made a serious violation of work duties prescribed by the Labour law of Republika Srpska;
— the employee, within a period of five working days after the expiration of unpaid leave or standstill of labour rights, does not return to work; or
— the employee does not respect work discipline or
— the employee is sentenced for a criminal offence committed at work or connected to his/her work.

The sum of the severance payment depends on the length the employee has continuously worked for the employer. The minimum and maximum amounts of the severance payment are identical to the amounts prescribed in FBiH (please see above).

Non-competition clauses

Non-competition clauses are permitted under the labour laws.

FBiH: The Law on Employment of FBiH provides for a statutory and a contractual non-competition clause. The statutory non-competition clause stipulates that an employee is not entitled – on his/her own, or a third party's account – to contract or perform work which is within the business activities of his/her employer, without prior approval of the employer.

The parties can also agree on an additional restrictive covenant into the contract restricting the employee from working for a competing business, or from conducting business in competition with the employer on his/her own or a third party's account, after the termination of the employment contract. The term of the covenant cannot exceed two years from termination. For a restrictive covenant incorporated in the employment contract to be valid, the employer must compensate the employee with at least 50% of his/her average salary (over the three-month period preceding termination) during the restricted (non-competition) period.

Republika Srpska: Similar provisions as stated above also apply in the Republika Srpska, with two key differences:

(i) the statutory non-competition clause is limited to employees that are employed full-time (in FBiH there is no limitation in this regard);
(ii) the maximum term of the restrictive contractual covenant is limited to one year following termination;
(iii) the contractual covenant is limited to the territory of Republika Srpska (in FBiH there is no territorial limitation); and
(iv) the minimum compensation that must be provided to the employee during the contractual covenant is 50% of his/her average salary (calculated over the six-month period preceding termination).

Bulgaria

Reasons for dismissal

An employment contract can be terminated at any time by an employee with notice, without having to justify the termination. In some cases (exhaustively provided in the Bulgarian Labour Code) the employee is entitled to terminate the employment contract in writing without notice.

Termination of employment contracts by an employer can only take place on the exhaustive grounds provided for in the Bulgarian Labour Code. Reasons relate to the employee (e.g. lack of efficient working performance), business (e.g. business closure, reduction of work volume), and conduct (e.g. disciplinary breaches).

Form

Must be in writing, signed by the employer. Must be registered with the National Revenue Agency within seven days of signature.

Notice period

For 'unlimited' labour contracts: statutory minimum notice period of 30 days, statutory maximum of three months.

For 'limited' labour contracts: statutory minimum notice period of three months, but the notice period may not be longer than the unexpired term of the contract.

Involvement of works council

No works council involvement.

If an employee is an elected employee representative, prior approval for his dismissal must be sought from the National Labour Inspection.

Involvement of a union

If an employee belongs to the management of an establishment-based union, or a national, territorial or branch union, prior approval for his dismissal must be sought from that union. This protection applies in case the employee is dismissed on certain exhaustively provided grounds and while the employee is a member of the union management, and for up to six months after he ceases to be a part of its management.

Where so provided for in the collective agreement, the employer may dismiss an employee due to downsizing of personnel or reduction in the volume of work after obtaining the advance consent of the relevant trade union body in the enterprise.

Approval of state authorities necessary

In case the employee is dismissed on certain exhaustively provided grounds the permission of the labour inspectorate should be obtained prior to dismissal for certain groups of employees: pregnant female workers; female workers in an advanced stage of in vitro treatment; mothers of children below the age of three years; occupational rehabilitees; employees suffering from diseases explicitly listed in a regulation of the Council of Ministers; employees on leave; elected workers' representatives; elected workers'

representatives on health and safety at work matters; members of special negotiation bodies, European works councils or representative bodies of European companies or cooperatives.

Employees on maternity leave (410 days, of which 45 days before giving birth) can only be dismissed in the event of closure of the whole business. This limitation is absolute and cannot be overcome with any approval of state authorities.

Collective redundancies

Collective redundancies are dismissals within 30 days performed at the sole discretion of the employer, for reasons not related to the dismissed employees, of the following numbers of people:

(i) at least ten employees in establishments of more than 20 and less than 100 employees; or
(ii) 10% of the employees in establishments of 100 to 300 employees; or
(iii) at least 30 employees in establishments of more than 300 employees.

If at least five dismissals have taken place within a period of 30 days, every new dismissal at the sole discretion of the employer for reasons not related to the dismissed employee shall be added up to the total number of dismissals for the purposes of evaluating whether a collective redundancy has taken place or not.

Certain reporting and consultancy obligations exist for employers in the event of collective redundancies. Consultations with union representatives and employees shall start at least 45 days before the collective redundancies. Thirty days before the collective redundancies, employers shall notify the Employment Agency.

Summary dismissals

Dismissal without notice is possible in the event of a serious breach of duty or for reasons related to the individual (e.g. deprivation of the right to exercise the job based on a court sentence or an administrative act).

Consequences if requirements are not met

If such a dismissal is challenged in court, it may be declared wrongful and repealed on these grounds, an employee may be reinstated to his previous job, and a court may award compensation (equivalent to no more than six months' salary for the period of unemployment resulting from the dismissal).

Severance pay

Statutory maximum severance payment of one month's salary for dismissals on specific grounds (e.g. closure of the establishment, partial closure of the establishment, staff cuts, etc.).

	Two months' salary for dismissal due to disability or hazard to the health of an employee, if the employee has worked for at least five years and has not received such severance pay in the last five years. Two months' salary for termination of the employment contract of an employee, whatever the grounds, who has reached the required retirement age and length of service; if the employee has worked for the last ten years with the same employer, the severance pay amounts to six months' salary. Such severance payment shall be due only once. Compensation for the non-used annual leave. Where the employment contract is terminated by mutual agreement on the initiative of the employer and against payment of compensation, the severance pay is a minimum of four months' salary of the employee.
Non-competition clauses	Employees are entitled to work for other employers outside working hours under their basic employment contract unless stipulated otherwise in the contract. Post-contractual non-competition covenants are not regulated by statute. According to Bulgarian case law, such covenants are not considered valid.
Miscellaneous	Not applicable.

Croatia

Reasons for dismissal

The reasons for regular termination as set out in the Labour Act are as follows:
- if the need for work ceases to exist for economic, technical or organisational reasons ('notice due to business reasons'); or
- the employee is incapable of fulfilling his employment-related duties due to certain personal characteristics or qualifications ('notice due to personal reasons'); or
- the employee intentionally breaches a contractual obligation ('notice due to misconduct'); or
- if the employee did not satisfy the employer's requirements during the probationary period.

Form

Written form, including reasons for termination. Decision is to be delivered to the employee.

Notice period

Regular termination: notice period ranges from two weeks to three months, dependent on the employee's length of service with the same employer. The three-month period is extended by an additional two weeks/one month for 50/55-year-old employees who have 20 or more years' continuous service with the same employer.

Extraordinary termination (summary dismissal): no notice period.

Termination during probationary period: notice period of at least seven days.

Termination by employee: notice period cannot be longer than one month if the employee has a good reason.

If the employee intentionally breaches his contractual obligations, notice periods are halved.

Involvement of works council

The works council must be informed of the employer's intention to dismiss. The works council's consent is required for dismissal of the following employees:
- members of the works council; and
- candidates running for works council positions and members of the election committee for a period of three months following the announcement of the results of the election to the works council; and
- employee representatives in a body of the employer; and
- employees with diminished ability to work and employees in immediate danger of physical disability; and
- employees over 60 years of age.

Involvement of a union

If there is no works council, consent is given by the union commissioner (the union representative employed with the respective employer). The union's consent is required for the dismissal of a union commissioner during their period of office and for six months thereafter.

Approval of state authorities necessary

If the works council or union commissioner do not provide their consent, and the dismissal of an employee is either (i) due to his occupational inability to work, or (ii) he is in immediate danger of physical disability, the consent can be substituted by an arbitration decision.

Collective redundancies

Employer who expects to terminate at least 20 employees, five of which due to business related reasons, all within a 90-days' period, is obliged to dulyconsult the works council/union commissioner in order to possibly reach an agreement to save the employees and/or limit the number of terminations. The employer is obliged to provide the works council/union commissioner with written information concerning the reasons for termination, total number of employees, number, professions and positions of employees who are supposed to be terminated, election criteria for such employees, amounts and way of calculating their severance payments and measures undertaken to prevent such terminations. Employer is obligated to consider and explain all possibilities and suggestions that may lead to avoidance of terminations. Also, the Croatian Employment Agency needs to be informed about the previously mentioned points and consultations with the works council/union commissioner.

Summary dismissals

Summary termination (summary dismissal) is defined as termination without notice, and is only lawful where there has been (i) a serious breach of employment obligations, or (ii) the employment relationship between the parties is no longer possible for another important reason (there are, therefore, two possible reasons: (i) breach of employment obligations; or (ii) another important fact; in either case, the employment relationship must not be possible any longer). The employee is to be dismissed within 15 days of the day of becoming aware of the fact/reason for dismissal.

Consequences if requirements are not met

If it is decided the dismissal is illegal, the employee is to be reinstated. Reinstatement is possible even before the end of the court procedure to determine the legality of the dismissal if the employee so requests. If the parties do not wish to continue with their employment relationship, the court shall at the employee's request determine: (i) the date of termination of the employment contract; and (ii) compensation for damages, which ranges from three to eight times the employee's average monthly salary over the previous three months (depending on the employee's age, length of contract and obligations in relation to supporting family members or other dependants as defined by family law).

Severance pay

An employee with an open-ended contract who has two years' continuous service with the same employer (and is not being dismissed due to an intentional breach of contractual obligation) is entitled to a severance payment. The statutory minimum severance payment is calculated by multiplying one-third of the average monthly salary in the preceding three months by the number of years' continuous service with that employer. The severance payment is capped at six times the average monthly salary, unless otherwise provided for by law, by-law, collective agreement or work contract.

Non-competition clauses

Post-contractual non-competition clauses must last no longer than two years from the date of termination of the contract. The employer is obliged to pay compensation (at least one-half of the average monthly salary paid in the last three months of employment). The covenant will not be valid if the employee is a minor or if the employee's salary amounts to less than the average national salary.

The non-competition clause does not apply if: (i) the employee terminates the contract without notice period (extraordinary termination) and does not state that he does agree that the clause applies; or (ii) if the employee is dismissed without a justified reason, unless the employer undertakes to pay the prescribed remuneration for the duration of the clause.

Miscellaneous

Not applicable.

Czech Republic

Reasons for dismissal

An employee may give notice of termination without stipulating a reason. An employer, on the other hand, may only give notice of termination for one of the reasons explicitly stated in the Labour Code, which are as follows:

(i) organisational reasons – the employer's enterprise shuts down or relocates, or the employee is made redundant; or

(ii) health reasons – the employee is no longer able to carry out his present work, if this is confirmed by a medical certificate issued by the occupational medical services provider or under a ruling of the competent administrative agency having reviewed the medical certificate; or

(iii) an employee no longer meets the requirements for work; or

(iv) reasons for immediate termination of the employment relationship – the employee has committed a gross breach of duty or has been lawfully sentenced to prison for a crime; or

(v) the employee has seriously, or less seriously but repeatedly, breached a statutory duty relating to his work performance; or

(vi) the employee grossly breaches his obligation to observe the prescribed regime of an insured person being temporarily unfit for work in the first 14 calendar days of temporary incapacity for work due to sickness in an especially gross manner.

Form

Written form necessary; must be delivered to the other party (both employer and employee may terminate the employment relationship by notice of termination).

Notice period

Statutory minimum notice period of two months, starting on the first day of the month after the month in which the notice of termination was delivered. It is possible to agree upon a probationary period of a maximum of three months (six months in the case of managerial employees) with no statutory notice period. There is no notice period in cases of immediate termination of the employment relationship (i.e. in particular if an employee has committed a gross breach of duty or has been lawfully sentenced to prison for a crime).

Involvement of works council

No involvement in termination process except in collective redundancies.

Involvement of a union

Employer must discuss in advance any notices of termination and any immediate cancellations of employment relationship with the trade union. Trade union approval is only required where the employee is a trade union officer. Such approval can be substituted by a court decision if the approval was withheld and the employer cannot be justifiably required to continue employing the trade union officer.

Approval of state authorities necessary

Approval of the state authorities is not required. The Labour Office need only be notified of a collective redundancy or the dismissal of a disabled person or of an employee who is not a Czech citizen.

Collective redundancies

Collective redundancies are defined as dismissals within 30 days of:
(i) more than ten employees in an establishment of 20 – 100 employees; or
(ii) 10% or more of the employees in an establishment of 101 – 300 employees; or
(iii) at least 30 employees in an establishment of 300 or more employees.

The employer must inform the works council or trade union (or directly affected employees if there is no works council or trade union) of its intentions at least 30 days prior to giving notice of termination, and must enter into negotiations to reach a compromise or reduce the number of affected employees, etc.

The employer must simultaneously inform the Labour Office in writing:
(i) that it has informed the trade union/works council (or affected employees) of its intention to make collective redundancies; and
(ii) of the actions it has taken in cooperation with the trade union/works council in relation to the collective redundancies; and
(iii) of the number, characteristics, professional structure, etc. of the employees to be made redundant.

Summary dismissals

Immediate termination (without notice period) of employment by the employer is possible only for a serious breach of labour discipline by the employee or for a lawful conviction of the employee for an intentional crime to unconditional imprisonment in duration longer than one year (or six months in case of crimes committed in connection with exercising the job).

The employer may immediately (with effect upon delivery to the employee) terminate the employment only within two months from learning the reason for immediate termination, but not later than one year from the occurrence of the respective reason.

Employer cannot dismiss with immediate effect employee who is pregnant or during the maternity or parental leave.

The immediate termination must be done in writing and delivered to the employee, with the merits of the reason for immediate termination being specified in such a way which prevents confusion with any other reason for termination.

Consequences if requirements are not met

Termination will be invalid and the employment relationship reinstated as long as the affected party makes a claim to the court no later than two months after the date of the purported termination of the employment relationship, and the court confirms the invalidity of the termination.

Severance pay

Minimum statutory severance pay depends on the reason for dismissal and/or the length of employment, and ranges from one average monthly salary for dismissals for organisational reasons (including collective redundancies) of employees whose employment lasted less than one year, to 12 times average monthly salary for dismissals for health reasons. The parties may negotiate larger severance payments or the payment of severance pay in the case of dismissal for other reasons.

Non-competition clauses

Non-competition covenants must be in written form, and shall not last more than one year. Covenants of this kind can be included in an employment contract. Monetary compensation from the employer must, as a minimum, equal half the employee's average monthly salary (that the employee had prior to termination of the employment relationship) for each month of the duration of the clause. If the agreement sets out a financial penalty for breach of the clause by the employee, the employee's obligation not to compete is discharged upon payment of the penalty. The agreement is automatically terminated if the employer fails to pay the monetary compensation to the employee when it falls due. An employer may only withdraw from the non-competition clause during the term of employment. As far as case law is concerned, the withdrawal is only effective if it has been explicitly agreed upon, and such a provision is only enforceable if it contains reasons for withdrawal, provided, in addition, such reasons are legitimate.

Miscellaneous

The employer may not give notice of termination during a 'protection period' (i.e. where an employee is temporarily unfit for work, a night-shift employee is temporarily unfit to do night work, an employee is conscripted or released from work to exercise a public office, or during pregnancy, maternity or paternity leave), unless the termination is for organisational reasons due to the closure or relocation of the enterprise.

France

Reasons for dismissal

The employer must establish a real and serious reason to dismiss an employee. It may be:

— a personal reason, notably a fault (disciplinary ground), poor performance, disablement of the employee when the employer is unable to relocate/redeploy him to another position or make reasonable adjustments to his post; or

— an economic reason, such as economic difficulties, technological changes or the absolute necessity of restructuring to safeguard competitiveness. It must be emphasised that ordonnance n° 2017-1387 of 22 September 2017 stipulates that the economic reason is analysed at the level of the group's companies established in France operating in the same industry sector.

Form

The stages in the individual dismissal procedure are as follows:

— The employee is formally invited to a preliminary meeting.

— At least five business days after the formal invitation, a preliminary meeting is held during which the employer explains the reasons for the contemplated dismissal and listens to the employee's explanation.

— The employee may be assisted by a third party (an employee of the company or an adviser of the employee mentioned on an official list prepared by the Prefect, depending on the existence of employee representative bodies in the company).

— The dismissal letter must be sent to the employee at least two (or seven for a dismissal due to economic reasons) business days after the meeting (and within a month for a disciplinary dismissal).

The dismissal letter must be a registered letter whose receipt must be acknowledged by the employee, signed by either a legal representative of the firm or a person duly empowered by a legal representative, and who must belong to the company.

Applicable collective bargaining agreements can provide for a more favourable timeframe and/or procedure.

The letter must explicitly mention the grounds for dismissal. There are other mandatory provisions such as the possibility of choosing to benefit temporarily the supplementary health care scheme in force in the company, etc.

Ordonnance n° 2017-1387 provides that the grounds set out in the dismissal letter may be specified by the employer or at the employee's request after the letter has been sent. If the employee does not make such a request, the letter's lack of an adequate explanation will not in itself support a finding that the dismissal lacks real and serious cause, but will merely entitle the employee to compensation of no more than one month's salary.

A special procedure (possible involvement of the works council, see below, meeting and notification of the dismissal) applies in the case of a dismissal for economic reasons or when the dismissal concerns a 'protected employee' (e.g. members of the social and economic council, and trade union delegates notably).

A specific procedure prior to the dismissal exists for employees who have been recognised as physically incapable of performing their work by a labour doctor (redeployment obligation, possible involvement of the social and economic council, etc.).

For a dismissal based on a disciplinary reason, the employer should move rapidly as the procedure must begin within a few weeks of the employer becoming aware of the reason for dismissal and no more than two months after the discovery of the facts.

Notice period

The notice period is set by the applicable collective bargaining agreement and the Labour Code, and generally lasts between one and three months. The contract may be terminated without notice in the event of gross misconduct or intentional misconduct.

Involvement of social and economic council

The social and economic council must be informed and consulted (with an advisory but formal vote of its members) when a mass redundancy is planned, or for the planned dismissal of a protected employee or physically disabled employee.

Involvement of a union

When a company employs more than 50 workers, trade unions may be involved in a mass redundancy procedure to negotiate an 'employment saving plan'.

Approval of state authorities necessary

This is required when dismissing 'protected employees' and now the validation or homologation of the employment saving plan is also required for mass redundancy procedures.

Collective redundancies

Different procedures apply according to the company's workforce and the number of employees concerned(the procedures are 'lighter' in small companies that dismiss fewer than ten employees)

The main principles are the same:
— The employer has a duty to inform and consult the staff representative bodies;
— All documentation related to the collective redundancy must be sent to the state authorities.

In case of mass redundancies (more than ten employees in a company employing at least 50 employees):

— The employer has a duty to inform and consult the social and economic council, involving at least two meetings (the social and economic council may be assisted by an accountant in some cases). Please note that, with the new law, the duration of the consultation has been regulated.
— An 'employment saving plan' (a social plan providing real alternatives and social measures accompanying the redundancy, such as redeployment, redeployment leave, training, etc.) should be drafted. There are two options for drafting it: either through a collective agreement negotiated with trade unions or unilaterally by the employer (only in the absence of trade unions in the company or if no agreement is found and then only after consultation with the social and economic council).
— This employment saving plan should then be sent to the state authorities that will either validate it (if agreed with trade unions) or homologate it (if unilaterally drafted by the employer). If the state authorities do not agree with the plan, the employer may present another draft after consulting the social and economic council.

Please note that the rules governing economic dismissals have been further amended recently by a law dated 8 August 2016 and, more recently, by ordonnance n° 2017-1387 of 22 September 2017, which in particular provides for:

— a new definition of the economic reasons that may justify a dismissal;
— a new way of analysing these economic reasons limited to the level of the group's companies established in France operating in the same industry sector;
— a new definition of the redeployment obligation, limited to jobs available "in French territory in the company or in other companies of the group, the organization, activities, and operating location of which allows mobility of some or all of the personnel";
— a new way to terminate contracts, disconnected from the rules governing economic dismissals: a collective agreement implementing a collective mutual termination.

These measures are applicable to economic dismissal procedures initiated on or after 24 September 2017.

Summary dismissals

The term 'summary dismissals' has no real meaning in France. Dismissal without a notice period is only possible where there has been a serious breach, but even in that case, the form described above for dismissal procedure, including the preliminary meeting and registered letter, must still be applied. In case of dismissal without notice, the employee has no dismissal indemnity or notice period indemnity, because there is no notice period. Such dismissed employees are still entitled to unemployment insurance benefits, however. The dismissal procedure must begin within a few weeks of the employer becoming aware of the reason for dismissal and no more than two months after the discovering of the facts.

Consequences if requirements are not met

The amount of damages depends on the actual loss suffered by the employee. For dismissals notified on or after 24 September 2017, the ordonnance n° 2017-1387 provides that the damages have a preset minimum and a maximum amount depending on the employee's seniority. The ordonnance also stipulates specific lower minimum amounts for companies that usually employ fewer than 11 employees, but the maximum remains identical.

In some circumstances, the dismissal will be void, allowing the employee to request reinstatement. (These circumstances may include collective redundancies without a social plan, dismissal after an occupational injury or in discriminatory dismissals, or dismissal of a protected employee without state authority authorisation). In such a case, the compensation cannot be less than six months' salary.

Severance pay

Dismissal indemnity is payable unless the dismissal is due to gross misconduct or intentional misconduct. The amount payable is mainly set by the collective bargaining agreement but must not be less than 1/4 of the monthly salary per year of service for the first ten years of seniority, plus 1/3 of the monthly salary for each year of service after ten years. Indemnity is also payable for unused accrued holiday entitlement and for the notice period if the employer chooses to release the employee from performing it.

Non-competition clauses

A non-competition clause is only valid if provided in the work contract, and if:

— The employer demonstrates that this clause is necessary to safeguard his interests and proportionate (e.g. the lower is the position the less the clause is justified);
— Its scope is limited to a reasonable area, a reasonable period of time, and precise activities; and
— The employee receives a monthly indemnity during the term of the clause (the indemnity amount is set by the work contract or collective bargaining agreement, but is generally between 20% and 50% of the employee's monthly salary).

This clause can be waived by the employer in the letter of dismissal or according to the provision of the applicable collective bargaining agreement and/or employment contract.

The examination of the terms of the applicable collective bargaining agreement is key on this matter.

Miscellaneous

Specific and restrictive rules and procedures apply in the case of pregnant women, women on and returning from maternity leave, young fathers, and employees recovering after a work-related accident or suffering from a work-related illness. Women on maternity leave cannot be dismissed during this period.

Since 2008, a new means of termination has been introduced, namely "by mutual agreement". This new possibility is called '*rupture conventionnelle*' (mutual termination of the employment contract). The termination is agreed by both employer and employee and there is no cause or reason to demonstrate.

The employee is entitled to unemployment insurance benefits and dismissal indemnity provided by law or the applicable collective bargaining agreement (or more if agreed).

A strict procedure including preliminary meetings and consideration periods should be followed (both parties have the benefit of 15 calendar days to retract, from the date on which the form is signed); a specific form must be filled in and signed by both parties.

The specific form must be sent to the state authorities for agreement. The state authorities have a 15-open day period to review the form. Within these 15 days, the state authorities can agree to the termination, disagree or stay silent (silence amounts to agreement). However, the state authorities must expressly agree for protected employees. Otherwise the termination is void.

Since September 2017 it has been possible for the employer to negotiate a collective agreement through a *'rupture conventionnelle collective'* (mass mutual termination of the employment contract) with trade unions. Such an agreement can only implement voluntary departures and thus excludes any dismissals designed to eliminate jobs. This new method of terminating contracts is entirely excluded from the rules governing economic dismissals. The labour administration is informed as soon as negotiations to conclude such an agreement start and reviews the agreement's contents before validating it.

Germany

Reasons for dismissal	Employees with more than six months' continuous service with an employer which employs more than ten employees (in exceptional cases: more than five) will fall under the Protection Against Dismissals Act. Dismissals must be justified for business-related reasons (e.g. business closure), conduct-related reasons (e.g. theft) or person-related reasons (e.g. health).
Form	Written form necessary, signed by a duly authorised representative of the employer. Must not be faxed or emailed.
Notice period	Statutory minimum notice period: four weeks to seven months, dependent on length of service. It is possible to agree upon a probationary period of a maximum of six months with a statutory notice period of only two weeks. Collective bargaining agreements may provide for variations.
Involvement of works council	Works council (if established) must be properly informed prior to dismissal of an employee (excluding high ranked executives). The works council must approve the dismissal of an employee who is a member of the works council.
Involvement of a union	No involvement.
Approval of state authorities necessary	Obligatory for certain groups of employees, e.g. the severely disabled, pregnant women, and employees on parental leave.
Collective redundancies	Collective redundancies are dismissals within 30 days of the following numbers of people: (i) more than five employees in an establishment of 20 to 60 employees; or (ii) 10% or more than 25 employees in an establishment of 60 to 500 employees; or (iii) at least 30 employees in an establishment of 500 or more employees. The employer must duly notify the employment agency, which is a state authority with local branches, of the proposed redundancies in writing prior to serving dismissal letters. However, the employment will not end before expiry of the waiting period after notification (in general one month, exceptions possible). Further, on condition that the employees of the establishment have elected a works council, the employer must prior to serving notice of termination engage in time-consuming negotiations with the works council to reach a reconciliation of interests ('*Interessenausgleich*'), which is usually combined with negotiations regarding a social plan ('*Sozialplan*').

Summary dismissals	Dismissal without notice is in general only possible where there has been a serious breach of duty. Notice must be delivered within two weeks after a representative of the employer with the authority to dismiss has gained knowledge of the reason for dismissal.
Consequences if requirements are not met	If employees file a successful action within three weeks following the receipt of the written notice: Employees are reinstated and awarded continued payment of salary. High ranked executives who themselves have authority to employ or dismiss a significant part of the workforce are not entitled to claim reinstatement if the employer does at least file a motion to terminate the employment combined with a severance. The court will in such cases terminate their employment and award severance pay of up to a maximum of 18 months' remuneration.
Severance pay	No statutory severance payment. But based on court order (see above) claims are possible. Further, severance payments may be due because of an amicable settlement by the parties, especially common if the justification of a dismissal may be doubtful, and in case of dismissals for business-related reasons according to: (i) a social plan ('*Sozialplan*') to be agreed between the employer and the works council or determined by a conciliation board, or (ii) a collective bargaining agreement ('*Sozialtarifvertrag*') to be agreed between the employer or relevant employers association on the one hand and the union on the other.
Non-competition clauses	Post-contractual non-competition covenants are only valid if the employer promises to pay at least half the entire usual remuneration (including fringe benefits etc.) during the term of the clause. However, compensation and other income must not exceed 110% (subject to a necessary relocation of the employee: 125%) of the former total remuneration. Dismissal will usually trigger this payment obligation.
Miscellaneous	Not applicable.

Hungary

Reasons for dismissal

The employer must provide a clear, authentic, causal and timely ground (as detailed below) justifying the dismissal, unless the employee is:
a) a senior executive employee; or
b) a pensioner.

Grounds for dismissal of permanent employees must involve:
(i) the employee's skills (capabilities); or
(ii) his/her employment-related behaviour; or
(iii) the employer's operational reasons (except for business transfer).

Please note that for fixed-term employees, the reasons for termination are narrower, and special rules apply.

Form

A written letter is required, signed by a duly authorised representative of the employer. The measure of an unauthorised person is deemed valid upon the subsequent approval of the person authorised to exercise the employer's rights (i.e. represent the employer). Notification must be in person or by registered post. However, under the Hungarian Labour Code effective as of 1 July 2012, it is also possible to serve notification by fax or e-mail. Notice must set out the reasons for dismissal as well as the procedure and deadline for seeking a legal remedy.

Notice period

The statutory minimum period for regular notice is 30 days, increasing to 90 days depending on seniority. The parties may agree on a longer notice period in their employment agreement, which may not exceed six months.

Involvement of works council

The works council must be informed and consulted with when a collective redundancy is planned.

The chairman of the works council may not be transferred to another workplace or dismissed by regular notice unless the prior consent of the works council has been obtained.

Involvement of a union

A representative trade union may request information from employers on all issues concerning the economic interests and social welfare of employees relating to their employment. Employers are obliged to provide this information and justify their actions. A representative trade union is also entitled to inform the employer of its opinion concerning any employer actions (decisions) and to initiate consultation in connection with such actions. Prior consent is required from a superior trade union body for the ordinary dismissal of an elected trade union official. Failure to obtain prior consent renders the dismissal invalid.

Other employment related positions

There are certain other employment-related positions that enjoy the same or similar dismissal protection as discussed above: e.g. shop steward, member of a European works council, member of a special negotiation body, and health and safety representatives.

Approval of state authorities necessary

Approval of the state authorities is not required. The relevant labour authority only needs to be informed of a collective redundancy.

If the employer and works council conclude an agreement during collective redundancy-related consultation, the agreement must be sent to the relevant labour authority.

Collective redundancies

The rules on collective redundancy are triggered by the termination of employment due to the employer's operation within 30 days of:
(i) ten or more employees in a workforce of between 21 and 99 people; or
(ii) at least 10% of a workforce of between 100 and 299 people; or
(iii) 30 or more employees in a workforce of at least 300 people.

Before passing a decision on collective redundancy, the employer must initiate a consultation procedure with the relevant works council.

The consultation procedure must cover the principles of collective redundancy, methods of reducing exposure, and mitigating consequences.

Summary dismissals

Any employment contract can be terminated in writing with immediate effect if the other party wilfully breaches or commits a grossly negligent breach of key employment obligations, or otherwise demonstrates behaviour rendering the maintenance of their employment impossible. Notice of such summary dismissal must contain the reasons, information regarding the procedure and deadline for seeking legal remedy. The right to terminate with immediate effect must be exercised within 15 days of the day on which the other party becomes aware of the reason for the termination and within one year of the actual occurrence of the reason (or in the event of a criminal offence, for the duration of the statutory period of limitation).

Consequences if requirements are not met

If it is determined by the competent court that the employer has terminated an employment relationship contrary to the Labour Code, the court may decide on the following consequences based on the request of the employee:

(i) compensation for lost earnings capped at 12 months' absence fee;
(ii) compensation for damages in addition to lost earnings caused by the unfair dismissal;
(iii) payment of the absence fee for the notice period and severance payment if the employment has not been terminated with regular notice;
(iv) reinstatement of the employment relationship in specific cases prescribed by law (with compensation for lost earnings and damages).

Severance pay

Employees with at least three years' service who are dismissed by regular notice or due to the dissolution of the employer without a legal successor will receive a severance payment of at least one month absence fee. The amount of severance increases with the length of service, up to a maximum of six months' absence fee for an employee with 25 years of service. An additional severance payment of up to three months must be paid if the dismissal happens less than five years prior to retirement age.

The employee may not be entitled to severance pay if (i) he/she is deemed to be a pensioner at the time the termination notice is delivered or at the time of the dissolution of the employer without legal successor; or (ii) his/her employment is terminated with regular notice due to his/her work-related behaviour/conduct or an ability unrelated to health status.

Non-competition clauses

During the employment relationship, employees must not engage in any conduct contrary to the reasonable economic interests of the employer (e.g. they cannot enter an employment relationship with a competitor of the employer).

Employees remain subject to this obligation after termination if the parties conclude a separate non-competition agreement in exchange for an appropriate consideration (which is at least 1/3 of the employee's base salary for the term of the agreement). The term of the non-competition agreement cannot exceed two years.

Miscellaneous

Not applicable.

Italy

Reasons for dismissal

An employee may be dismissed:
(i) with just cause: when the employment relationship cannot be continued, even temporarily, either because of a material breach of contract or another reason causing a deterioration of the relationship between the parties; or
(ii) for a justified subjective reason: in case of a material breach of the employment contract (less serious than the case of justified cause); or
(iii) for a justified objective reason: where the company is either closing, is being restructured, or there is no longer a need for the individual's position or division. Notice served at the end of a disciplinary procedure (a 'disciplinary dismissal') is classified either as a dismissal with just cause or for a justified subjective reason.

Form

Must be in written form (with the exception of domestic help and employees subject to a probationary period), signed by the employer's legal representative. Notice may be served by telegram.

Notice period

Other than in fixed term contracts, the length of the notice period is set by national collective contracts and varies according to the length of service and the employee's qualifications. No notice period is needed for dismissal with just cause. In dismissals for a justified objective reason and/or a justified subjective reason, the employer may renounce the notice period and pay the employee compensation in lieu of notice. Notice is not required for dismissals during fixed-term contracts or during probationary periods.

Involvement of works council

Works council members may not be dismissed within a year of the termination of their appointment. The union need not be notified prior to the dismissal of an employee. The employer must notify the works council (*'Rappresentanze Sindacali Unitarie'* and *'Rappresentanze Sindacali Aziendali'*) of any intention to make collective redundancies.

Involvement of a union

If there is no relevant works council, the employer must notify the most representative unions of its intention to make collective redundancies.

Approval of state authorities necessary

Not required.

Collective redundancies

Collective redundancy is the dismissal by an employer employing more than 15 workers of five or more employees in the same establishment, or at different establishments located in the same province within a period of 120 days. The employer must notify the works council and the Employment Office of its intention to make collective redundancies. Unions may ask for a joint examination in order to reach an agreement; failing this, the employer may notify the affected employees of their dismissal one by one with notice. To initiate redundancy, the employer must inform the employee representatives and the appropriate

industry union in writing of its intention. Where there are no local representatives, the company must notify the full-time officials in the relevant union(s). The company must also notify the labour authorities. Within seven days of union representatives being informed, the parties must conduct a joint examination of the reason for the surplus labour and the proposed dismissal, of the possibility of redeployment, and of the use of solidarity contracts or the introduction of flexible working time to forestall dismissals. Should the union not ask for a joint examination, the employer has to notify the competent local job office to continue the procedure.

The consequences of unlawful dismissal are different for employee hired before 7 March 2015 and those hired after.

For employees hired before 7 March 2015, the consequence of unlawful collective dismissal when the criteria for the selection of employees to be dismissed is violated is the reinstatement of the employee and the payment of a 'reinstatement indemnification' (a maximum of 12 months' salary).

For other cases of unlawful dismissal, the only consequence is the payment of a 'reinstatement indemnification' (set between a minimum of six and a maximum of 24 months' salary). The dismissal is then effective.

For employee hired after 7 March 2015, reinstatement and payment of a 'reinstatement indemnification' (a maximum of 12 months' salary) can only be ordered following an oral dismissal or a discriminatory dismissal.

In other cases of unlawful dismissal, the employer only has to pay a 'reinstatement indemnification' (between a minimum of six and a maximum of 36 months' salary, depending on the length of service with the employer, the lack of reasons grounding the dismissal, the damages suffered by the employee). The dismissal is then effective.

Dismissal for an economic reason – conciliation procedure

If it intends to dismiss an employee for an economic reason, an employer with more than 15 employees must first make a statement to the local labour inspectorate (ITL) with responsibility for the area where the employee works. The statement must also be forwarded to the worker in person. Within seven days of receiving the statement, the ITL proceeds to call the employer and employee before the provincial commission of conciliation. The procedure must be completed within 20 days following the hearing, unless both parties declare their intention to extend it. If the mandatory conciliation attempt is unsuccessful or the labour inspectorate does not call the parties within the deadline of seven days mentioned above, the employer may proceed to communicate the dismissal to the employee, but always observing the period of notice.

Summary dismissals

Only for just cause.

Consequences if requirements are not met

Employer with more than 15 employees

The reform implemented by Law 92/2012 and Legislative Decree 23/2015 amended by Law 96/2018 have introduced different systems for the protection of workers, applicable dependent upon the type of dismissal imposed and the reason for its unlawfulness:

Disciplinary dismissal

— Unlawful because the act does not exist or is one of the acts for which the national collective bargaining agreement or disciplinary codes provide a conservative sanction:
  - reinstatement of the employee and payment of a 'reinstatement indemnification' (a maximum of 12 months' salary).
    For employees hired after 7 March 2015 such sanctions are applicable only if the material fact grounding the dismissal does not exist.

— Unlawful in all other cases:
  - no reinstatement, but only payment of a 'reinstatement indemnification' (set at between a minimum of 12 and a maximum of 24 months' salary). The dismissal is then effective.
    For employees hired after 7 March 2015 no reinstatement, but only but only payment of a 'reinstatement indemnification' (set between a minimum of six and a maximum of 36 months' salary, depending on the length of service with the employer, the lack of reasons grounding the dismissal, the damages suffered by the employee). The dismissal is then effective.

— Unlawful because of the lack of required motivation or failure of the disciplinary procedure:
  - no reinstatement, but only payment of a 'reinstatement indemnification' (set between a minimum of six and a maximum of 12 months' salary). The dismissal is then effective.
    For employees hired after 7 March 2015 no reinstatement, but only payment of a 'reinstatement indemnification' (set between a minimum of two and a maximum of 12 months' salary, depending on the length of service with the employer). The dismissal is then effective.

Dismissal for a justified objective reason

— Unlawful (i) because of a lack of justification consisting of the physical or mental unfitness of the employee; or (ii) because it is ascertained that the dismissal was ordered before the retention period of the job had passed; or (iii) because the productive or organisational fact used as the basis for manifestly does not exist:
  - reinstatement of the employee and payment of 'reinstatement indemnification' (a maximum of 12 months' salary).

— Unlawful for any other reason: no reinstatement, only payment of a 'reinstatement indemnification' (set at between a minimum of six and a maximum of 12 months' salary). The dismissal is then effective.

— Unlawful because the dismissal has actually been ordered for discriminatory or disciplinary reasons:
  - reinstatement of the employee (also if a manager) and payment of a 'reinstatement indemnification' (of at least five months' salary). Alternatively, the employee may opt to receive an indemnification equal to 15 months' salary ('alternative indemnification').
— Unlawful because of a lack of the required motivation or, if dictated by economic reasons, without having first complied with the required conciliation procedure:
  - no reinstatement, merely payment of a 'reinstatement indemnification' (set at between a minimum of six and a maximum of 12 months' salary). The dismissal is then effective.

Employees hired after 7 March 2015 are not reinstated, but rather paid a 'reinstatement indemnification' (set between a minimum of six and a maximum of 36 months' salary, depending on the length of service with the employer, the lack of reasons grounding the dismissal, the damages suffered by the employee). The dismissal is then effective.

Employer with 15 or fewer employees
Re-employment of the employee or payment of an indemnification of between two-and-a-half and six months' salary (indemnification can be increased to up to 12 months' salary in the case of an employee with long service).

For employees hired after 7 March 2015, re-employment or payment of an indemnification between one and six months' salary, depending on the length of service with the employer, the lack of reasons grounding the dismissal, the damages suffered by the employee.

Regardless of the number of the employees, in case of a discriminatory dismissal or oral dismissal
Reinstatement of the employee (including a manager) and payment of a 'reinstatement indemnification' (of at least five months' salary). Alternatively, the employee may opt to receive an indemnification equal to 15 months' salary ('alternative indemnification').

Severance pay

In any termination of an employment contract, the employee is entitled to a severance payment *('trattamento di fine rapporto')*. This is a deferred salary payment calculated as a percentage of the annual salary (including any amounts paid by the employer as fringe benefits and other special indemnifications).

The amount of the severance payment therefore increases year-by-year: when the employment terminates (whether on a voluntarily or due to dismissal), the employee has the right to receive the total relevant amount.

The employee is also entitled to an indemnity for unused holiday, compensation in lieu of notice, and other accrued and pro rata payments.

Non-competition clauses

A post-contractual non-competition clause is valid if it has been agreed between the parties and:

(i) it is in writing; and

(ii) the restriction imposed on the employee refers to a specific object, within a specific area and for a time-limited period (maximum of three years); and

(iii) an indemnity is paid to the employee while the clause is in force. The indemnity may be paid during, at the end of, or after termination of the employment contract.

Miscellaneous

It is prohibited to dismiss certain categories of employees whose condition is considered particularly weak (e.g. due to marital status – please note that the ban on dismissal remains in place for up to one year after the marriage, pregnancy, disease, injury, military service, trade union appointment, public appointment, strike, etc.).

Luxembourg

In the past, the law in Luxembourg distinguished between 'blue-collar workers' and 'white-collar workers'. This distinction no longer exists. Luxembourg Labour Law provides for the following legal framework for the dismissal of any employee.

Reasons for dismissal

The employer needs to provide specific reasons for termination in the case of a dismissal with immediate effect for serious misconduct. The employer must indicate the reasons for the dismissal in a registered letter. The employee may be able to claim an 'indemnity' for an 'abusive dismissal'.

In case of a dismissal with notice, the employer is not obliged to indicate a specific reason for the dismissal in the registered letter, unless the employee officially requests this during the month following the dismissal letter. In such a case, it is important that the employer provides the employee with their reason within a month; otherwise, the dismissal will automatically be seen as abusive.

If the employment contract is terminated during the probationary period, the employer is not obliged to provide specific reasons for the dismissal.

Form

If the business employs fewer than 150 staff members, the employer may serve the dismissal directly.

If the business employs at least 150 staff members, the employer must invite the employee to a preliminary interview in writing before dismissing him/her.

In all cases of dismissal (i) dismissal within the probationary period, (ii) dismissal with notice and (iii) dismissal with immediate effect for serious misconduct), notice must be given in writing (either by registered letter or by giving the letter to the employee, who then acknowledges receipt by countersigning a copy of the letter). In case of dismissal with notice or in case of dismissal within the probationary period, the notice letter must specify the length of the notice period, and the day on which the notice period begins.

Notice period

The notice period is the same for all employees.

The following notice periods are applicable to all employees according to their seniority:

Employee's seniority	Notice period	
	By employer	By employee
Less than 5 years	2 months	1 month
More than 5 years but less than 10 years	4 months	2 months
More than 10 years	6 months	3 months

If the employee is dismissed during the probationary period, the notice period for each party depends on the duration of the probationary period. Where the duration of the trial period is indicated in weeks, the notice period corresponds to as many days as the trial period has weeks (e.g. three weeks is three days' notice).

Where the duration of the trial period is indicated in months the notice period corresponds to four days per month of trial period without being shorter than 15 days and without exceeding one month.

Involvement of the staff delegation

The staff delegation has no right to be informed prior to an individual dismissal, unless it is for economic reasons.

Involvement of a union

The trade union delegation has no right to be informed prior to an individual dismissal.

Approval of state authorities necessary

In case of a collective dismissal, the state authorities have to be involved in the information and consultation procedure, but state authorities do not have to approve the dismissal(s). In case of economic dismissal, the state authorities have to be notified of the dismissal at the latest on the day of the dismissal (for information purposes only, not for approval).

Collective redundancies

Specific rules apply to collective dismissals or closures. An information and consultation procedure has to be respected prior to the decision to carry out the collective dismissal or closure. Employees are entitled to specific indemnities in case of a closure for bankruptcy reasons. There is a legal obligation for social partners to negotiate and conclude a social plan.

Summary dismissals

Dismissals with immediate effect are only possible when the termination is the result of serious misconduct, such as theft, insult, etc. The employer can decide to place the employee on 'gardening leave', which means that the employee does not have to attend work. During gardening leave, the employer continues to pay the employee until he is notified of his dismissal. The dismissal notification can be given the day after the gardening leave has begun at the earliest, and eight days after the gardening leave has begun at the latest.

Consequences if requirements are not met

If the requirements are not met the employee can launch an action for abusive dismissal and ask for damages. Damages are of two types:

— material damages corresponding to the loss of income experienced through a certain period of time (reference period) and caused by the abusive dismissal. This reference period notably depends on the age and professional background of the employee. These damages usually correspond to the difference between the salary paid to the employee at the time of the dismissal and the unemployment benefit he receives during the reference period determined by the judge,

— moral damages, whose amount depends on the circumstances of the dismissal (i.e. how the employee has been treated, his length of the service within the company etc.). Moral damages aim to compensate the violation of the employee's dignity caused by the dismissal.

Severance pay

The following amount of severance pay is applicable to all employees (but not due in case of summary dismissals) according to their seniority:

5 to 10 years:	1 month
10 to 15 years:	2 months
15 to 20 years:	3 months
20 to 25 years:	6 months
25 to 30 years:	9 months
As from 30 years:	12 months

Non-competition clauses

A non-competition clause in the employment contract is only valid if:
— the scope is limited to similar activities exercised as a self-employed worker; and
— the scope is limited to a well-defined geographic area in which competition may exist within the Luxembourg territory; and
— the duration of the clause does not exceed 12 months after termination of the employment agreement.

Miscellaneous

Not applicable.

Monaco

Reasons for dismissal

An employer may not dismiss an employee without a legally valid cause.

Dismissal may be based on personal grounds (e.g. disciplinary dismissal, dismissal due to professional inadequacy, dismissal due to incapacity) or economic grounds (e.g. economic difficulties, technological changes), or subject to specific conditions, without stating a specific motive.

Form

The employee must be notified of the dismissal in writing.

Notice period

In the event of dismissal, the law provides that an employee is entitled to a notice of a duration which varies depending on his seniority as follows:

— Length of service of less than six months: no notice period applicable;
— Length of service between six months and less than two years: one month;
— Length of service of at least two years: two months.

For any dismissal, the employer may choose whether the employee works during the notice period.

In either case, employee is entitled to receive the same salary, including any benefits.

Involvement of works council

Works councils do not exist in Monaco. A staff representative (if established) must be properly informed prior to a collective redundancies.

Involvement of a union

No involvement for dismissals.

Approval of state authorities necessary

Mandatory for employees with legal protection because of their private life or their mandate.

This protection applies to staff representatives, union delegates, pregnant women, employees taking maternity leave, paternity leave, adoption leave or family support leave, members of the Labour Court, harassment referents.

The relevant Labour Authority has to be informed of projected collective redundancies prior to their dismissal, and grant prior approval.

Collective redundancies

The implementation of collective redundancies is mainly regulated by law and the National Collective Bargaining Agreement, which imposes some procedural steps prior to implementing any such decision.

Three main issues must be considered regarding the preparation and implementation of a collective social plan:

— Drafting an information document containing all essential elements regarding the decision to restructure, its motivation, its implementation and the measures taken by the employer to minimise any adverse impacts on employees;
— Circulating the information to staff representatives, discussing it with them and collecting their comments and choices about measures taken to implement the restructuring (i.e., the measures adopted to minimise the number of dismissals); and
— Implementing the restructuring plan, by obtaining the required authorisations as the case may be, notifying employees of their terminations and paying termination indemnities.

Summary dismissals

Dismissal without notice is only possible in case of gross misconduct. In such a case, the employee receives no dismissal indemnity or notice period indemnity. The employee is still entitled to unemployment insurance benefits.

Consequences if requirements are not met

Should the employer dismiss an employee on personal or economic grounds without a valid cause, the employer would have to pay a dismissal indemnity.

In addition, the employee could claim damages for injuries suffered due to his/her wrongful dismissal.

Severance pay

Dismissal indemnity is payable unless the dismissal is for gross misconduct. The amount payable is mainly set by the collective bargaining agreement, but must not be less than the French legal dismissal indemnity (since 27 September 2017: 25% of the monthly gross salary until ten years of seniority and one third of the monthly salary as of the tenth's year). A higher indemnity is payable in case of dismissal without a stated motive. Indemnity is also payable for unused accrued paid holidays and for the notice period if the employer chooses to release the employee from performing it.

Non-competition clauses

Non-competition clauses are enforceable in Monaco provided they are appropriately restricted.

A non-competition clause must comply with five cumulative conditions:
— it must be essential to protect the employer's legitimate interests;
— it must be limited to a specific time period;
— it must be limited to a geographical area;
— it must take the characteristics of the employee's job into account; and
— most importantly, it must provide for a financial counterpart.

Independent consideration is required for a non-competition clause.

Miscellaneous

Not applicable.

The Netherlands

On 1 July 2015, Dutch dismissal law was thoroughly changed. There is a limited list of specific statutory grounds for dismissal. We are expecting new legislation that will allow employers more flexibility in combining the statutory grounds. Furthermore, there is a strict separation of UWV grounds and court grounds. Although the new legislation brought more guidance on the statutory severance, case law shows that courts increasingly tend to award damages to employees in additional to statutory severance.

Termination Employment Agreement

There are different ways to end an employment agreement:
- by operation of law when a definite term employment agreement is concluded;
- after obtaining permission from the UWV (Employee Insurance Agency) in case of redundancy or after two years of sickness after which the employer may give notice;
- by termination by the (sub-district) court for grounds related to the individual, such as underperformance;
- by mutual consent via a settlement agreement;
- by giving notice with immediate effect for urgent reasons;
- by giving notice during the trial period; or
- due to the employee reaching the state pension age.

Reasons for dismissal

Termination by UWV

The employer can ask the UWV for permission to terminate the employment agreement. The UWV is an autonomous administrative authority and is commissioned by the Ministry of Social Affairs and Employment (SZW) to implement employee insurance and provide labour market and data services. The UWV also decides whether there are valid reasons for termination, which is the case if one of the following grounds apply.

	Ground	To demonstrate plausibly that
A	Economic grounds (specify the reason: less work/closing/ financial reasons/organizational reasons/other).	For economic circumstances it is necessary that the position of the employee be made redundant.
B	Long-term illness or disability (longer than two years).	No recovery is expected within 26 weeks/stipulated labour cannot be conducted in a modified form.

Termination by the (sub-district) court

The employer can request the court to terminate the employment agreement of the employee based on one specific statutory, so-called, reasonable ground. The reasonable grounds are the following:

	Ground	To demonstrate plausibly that
C	Regularly not being able to perform work due to illness or disability.	Unacceptable consequences for business operations due to regularly sickness absence/no question of inadequate care employer/no recovery within 26 weeks/stipulated labour cannot be conducted in a modified form.
D	Underperformance.	Timely notified/set out improvement or action plan/no question of inadequate care from employer or lack of possibilities of training/education.
E	Culpable acts or omissions employee.	Continuation cannot reasonably be expected from employer.
F	Conscientious objection.	Conscientious objection/ implementation activities in a modified form is not possible.
G	Disturbed working relationship.	Continuation cannot reasonably be expected from employer.
H	Other grounds.	Continuation cannot reasonably be expected from employer/ specific conditions (detention/ missing work permit).

Termination by mutual consent

One of the most frequently used ways of terminating the employment agreement for an indefinite period is a termination by mutual consent. An employment agreement can be terminated at any time by mutual agreement between the employer and the employee. In this scenario the employer offers the employee a settlement agreement, which includes all terms and conditions for the termination against full and final discharge. The agreement is drafted in a way that secures the employee's rights to unemployment benefits as far as possible, although an employer will not provide a guarantee. Parties are free to negotiate the exact conditions of the severance package. There is no statutory minimum that should be offered. Experience shows that employees tend not to agree to a settlement agreement if the severance offered is lower than the transition payment (see below for more information). The employee can revoke his consent within 14 days after signing the settlement agreement (the employee must be notified about this option).

Termination for urgent reasons (summary dismissals)

An employer can terminate an employment agreement (definite and indefinite) with immediate effect for an 'urgent' cause, such as theft, fraud, or other very serious misconduct. Notice must be given as soon as the employer becomes aware of the relevant findings and (ideally) after confronting the employee with these findings. In case of an urgent cause, there is no requirement for a mutual agreement, or court or UWV procedure.

Termination during trial period

It is possible to terminate the employment agreement during the trial period for any reason (non-discriminatory) without any compensation being due. The trial period, which is always equal for employer and employee, is a 'test' period for both employer and employee and the option to terminate the employment agreement with immediate effect is always open. It is not possible to include a trial period in an employment agreement that runs for a definite period of six months or less. The trial period is a maximum of two months for indefinite employment agreements or definite agreements of two years or more. For definite employment agreements between six months and two years, the trial period is one month maximum.

Termination due to Dutch state pensions age

An employment agreement with an employee ends by operation of law if the employment agreement includes a valid clause that stipulates that the employment agreement ends by operation of law when the employee reaches the applicable AOW (Dutch state pension age) age.

If no such clause is included, the employment agreement may also end unilaterally by the employer by giving notice if the employee reaches the applicable AOW (Dutch state pension age) or pension age (the "Pension Dismissal"). The employer may also decide to continue the employment agreement of the employee for the time being and invoke the Pension Dismissal at a later time. This is only possible when the employment agreement is concluded before the employee reaches the AOW age (currently approximately 67 years). The Pension Dismissal allows the employer to end the employment agreement unilaterally; the employee's consent is not required.

If the employment agreement was concluded after the employee reached the applicable AOW age, the employer needs a reasonable ground to be able to end the employment agreement.

Duty to seek for suitable reassignment

Before being able to terminate the employment agreement via the court or UWV, the employer must be able to demonstrate that there is no suitable position available within the company (not limited to the entity that employs the employee). The employer is obligated to seek a position within its group of companies. Reassignment to a suitable position within a reasonable period, with additional training where applicable, is not required if it is impossible or unreasonable. This obligation does not apply to termination during the trial period, nor for terminations based on urgent reasons or the employee reaching the state pension age.

The length of time the employer has a duty to look for suitable reassignment varies from employee to employee because it depends on the statutory notice period determined by the length of the employment agreement. In principle the reasonable period commences on the day the UWV or the court decides on the termination of the employment agreement.

Notice period

Court: in principle, when the court terminates an employment agreement and sets a termination date, it respects the notice period. However, the court may determine that the employment agreement will end on an earlier date due to consequence of a seriously culpable act or omission of the employee.

UWV: when the UWV allows the employer to end the employment agreement, the employer can give notice of termination to the employee with due observance of the agreed (or, in the absence thereof, the statutory) notice period. The procedural time (between filing with the UWV and its decision) may be deducted, as long as one-month notice period remains.

The statutory notice period for the employee is one month, regardless of the number of years of employment. The statutory notice period for the employer depends on the length of service as per the termination date. An applicable collective labour agreement may stipulate otherwise, but the statutory notice period to be observed by the employer is equal to:
— 1 month if the employment has lasted 5 years or less;
— 2 months if the employment has lasted between 5 and 10 years;
— 3 months if the employment has lasted between 10 and 15 years;
— 4 months if the employment has lasted for 15 years or longer.

The period of notice may, for the employee, be extended contractually up to a maximum of six months. If the employee's period of notice is extended, however, the period of notice for the employer may not be less than twice that of the employee.

Permission for termination

If the UWV refuses to let the employer end the employment agreement, the employer may alternatively request the subdistrict court to terminate the employment agreement. If the UWV grants the permission, but the employee objects, the employee can request the subdistrict court to nullify the termination and can claim reinstatement at the workplace or a reasonable compensation.

Higher court and Supreme Court

The subdistrict court ruling can be appealed in the higher court and subsequently in the Supreme Court.

Collective redundancies

If more than 20 employees are being dismissed within a three-month period, the employer must notify the UWV, the unions and the works council (if any) and discuss the consequences of any reorganization with the trade unions.

For the purpose of determining whether this threshold of 20 employees in three months has been reached, employment agreement terminated by mutual consent also count towards the total.

If trade unions are not consulted and the employer proceeds with the termination of the employment agreements based on a consensual agreement that determines the legal relationship between both parties, these agreements are subject to annulment. This may have far-reaching consequences, since redundancy pay will have to be paid back in the event of annulment and the employment agreement will have remained valid throughout.

Generally, if more than 20 employees are involved, the employer offers a social plan which may be negotiated about with trade unions (if applicable) and/or the works council. Unless a collective bargaining agreement stipulates differently, there is no statutory obligation to offer a social plan although it is very common to do so.

The works council (if applicable) must be offered the opportunity to advise on any mass redundancy being contemplated.

Transition payment and additional payment

When the employment agreement is terminated via the UWV or the court, a mandatory severance payment, the so-called transition payment, is due.

Calculation transition payment

The amount of the transition payment depends on the seniority of the employee and is equal to:

— 1/6 of the monthly salary for each six-months period that the employment agreement lasted for the first 120 months; and
— subsequently 1/4 of the monthly salary for each six months that the employment agreement lasted longer than 120 months.

For employees over 50 different rules apply. In 2019 the maximum transition payment is EUR 81,000 gross and for employees who earn more than EUR 81,000 gross a year, the transition payment is maximized at one annual gross salary.

The employee is entitled to additional (reasonable) compensation if the employer has acted in a seriously culpable way. In that case, the remuneration is not subject to a maximum and is determined by the court. Case law shows an increase in the amounts awarded to employees.

If the agreed or statutory notice period is not observed, the termination of the employment agreement is deemed 'irregular'. An irregular termination does not affect the validity of the termination itself, but it entitles the other party to claim statutory damages or compensation for the damages actually incurred.

Non-competition clauses

A non-competition clause may be inserted into the employment contract, but it will only be valid if it was set out in writing with an of-age employee. If a non-competition clause is inserted into a definite term employment agreement, the compelling reasons such a clause is necessary must be specified in writing.

Miscellaneous

Dutch employment law prohibits giving notice to certain categories of employees, such as pregnant women, members and former members of a works council and employees who are absent due to illness (at least during the first two years).

In cases where the illness commences after the employer files his application for dismissal to the UWV, the employer will still be allowed to give notice of dismissal to the employee.

The rules for special protection do not apply to cases of termination of employment by the court. However, the court will assess whether the request for termination involves a prohibition to terminate and will refuse the termination if the reason for termination directly results from a prohibition to terminate.

If a collective bargaining agreement (CBA) applies, the employment conditions will be governed by the CBA. The CBA may also provide for an alternative dismissal route in case of redundancy, but that is uncommon.

New legislation is expected shortly with the main changes being:
— a more flexible way of using the statutory grounds in case of court dismissal,
— more flexibility in offering temporary contracts,
— extension of probation period, and
— equal payment for employees and persons working through payroll.

Poland

Reasons for dismissal

The reasons for dismissal must be provided if a contract is terminated without notice or if a contract of unfixed duration is terminated with notice. The reason must be real and specific, so the employee can easily understand the grounds for dismissal. The reasons for termination with notice may be attributable to the employee (e.g. non-performance or improper performance of the employee's duties), or not attributable to the employee (e.g. redundancy). The Polish Labour Code does not list such reasons.

Termination without notice (summary dismissal) may be justified for a number of reasons, but is only permitted when certain statutory conditions are met.

In the remaining case, involuntary termination does not require justification.

Form

Similar rules apply to both ordinary termination with notice and summary dismissal without notice.

The employee must be served with the original letter of dismissal, and not an electronic file, e-mail, fax or photocopy. The letter of dismissal must be in Polish and signed by a person authorised to act on behalf of the company. It is possible to request that the employee signs other language versions of the letter in addition to the Polish version. The letter of dismissal must include information about the employee's right to appeal to a labour court. The deadline for an employee to appeal against enforced dismissal has now been extended to 21 days.

Notice period

Statutory notice periods vary depending on the type of employment agreement and the length of service with a given employer.

For a contract of unfixed duration and a fixed-term contract, the notice period is:
(i) two weeks for an employee with less than six months' service; or
(ii) one month for an employee with at least six months' but less than three years' service; or
(iii) three months if the employee has been employed for three years or more.

Probationary period employment contracts have shorter notice periods, of three working days to two weeks, depending on the agreed length of the probationary period. Polish law recognises probationary period contracts as a separate type of employment contract and not as an initial period of an indefinite term employment contract. After the probationary period, a new contract can be agreed.

Notice periods of a week or multiple weeks always end on a Saturday, and notice periods of a month or multiple months always end on the last day of the month.

The contractual or statutory notice period does not have to be observed for a summary dismissal.

Involvement of works council

A single dismissal for employee-related reasons (e.g. performance-related dismissal) is not subject to any collective notification or consultation requirement.

Only group dismissals or significant reductions of the workforce undertaken as a part of a restructuring trigger the notification and consultation requirement. The employer must notify/consult a works council about any matters relating to employment status and structure, any predicted or proposed changes in this respect, and actions taken to maintain the current level of employment. However, this will only be necessary when the anticipated changes are permanent or significant (in relation to the employer's size).

Works council members may not be dismissed involuntarily (either with or without notice) during their term of office without the prior consent of the works council.

Involvement of a union

Notification is required if the employer wishes to dismiss with notice a permanent employee (employed under an employment contract for an unfixed duration) who is a trade union member, or whose rights and interests the trade union has agreed to defend.

The trade union must be informed in writing, including the reasons for termination, at least five days before the employee receives the letter of termination. If the trade union decides that the dismissal is unjustified, it may present the employer with its substantiated objections in writing. An employer may proceed to dismiss having considered the opinion of the trade union (although this opinion is not binding). If the submission of a trade union opinion is delayed or absent, the employer may proceed without any additional consideration.

Notification is also required if the employer wishes to dismiss an employee without notice. In such a case, the trade union has three days to express its opinion in writing.

Trade union officers, or other employees named in a special resolution of the trade union's board of management, are protected against involuntary dismissal and may not be dismissed without trade union consent. The number of employees protected under a special resolution depends on the number of employees who are members of the trade union or the number of the company's officers (a decision left up to the trade union's board of management).

Approval of state authorities necessary

Not generally necessary.

However, employers have certain obligations to inform the Labour Offices of a group redundancy procedure, particularly for large-scale redundancies.

Collective redundancies

A group dismissal occurs when an employer employing at least 20 employees terminates the employment relationships of at least the following numbers of employees within 30 days, with notice, and for non-employee-related reasons:
(i) ten employees – if the employer employs fewer than 100 employees; or
(ii) 10% of the total workforce – if an employer employs at least 100 but fewer than 300 employees; or
(iii) 30 employees – if the employer employs at least 300 employees or more.

These thresholds include terminations on mutual agreement if at least five such terminations have been initiated by the employer.

Small companies (employing fewer than 20 employees) are not subject to the group dismissal procedure, and may proceed without any prior notification of/consultation with employee representatives or local authorities.

Summary dismissals

Dismissal without notice is only permitted in specified circumstances.

An employee may be summarily dismissed (disciplinary dismissal) if he:
(i) commits a serious breach of his basic employee's duties; or
(ii) commits a crime while employed (the offence must be obvious or confirmed by the judgment of a final court), provided that such crime makes his further employment impossible; or
(iii) through his own fault loses a license necessary for the performance of duties connected with the post.

Summary dismissal may only be exercised within one month of the employer becoming aware of the reasons for dismissal.

It is also possible for the employer to summarily dismiss an employee without fault due to long-term absence from work, where:
1. the employee is unable to work by reason of illness:
   (i) for a period longer than three months, if the employee has less than six months' service with a given employer; or
   (ii) for a period longer than the period the employee has been receiving sick pay and sick benefit (typically 182 days) and the first three months of rehabilitation benefit (additional 90 days); and
2. the employee's justified absence from work for other reasons lasts longer than one month.

Consequences if requirements are not met

If the termination of a contract without notice, or termination of a contract of unfixed duration with notice, is unlawful the employee may claim reinstatement or compensation.

Reinstatement cannot be claimed for an unlawful termination with notice during a fixed-term or probationary contract.

If the contract is of unfixed duration, compensation of between two weeks' and three months' salary (and not less than the employee's salary during the notice period) may be awarded.

In an unlawful termination without notice, an employee may in general only claim compensation of up to three months' salary. Further entitlement can be claimed on the basis of general civil law rules.

Severance pay

If an employer employs more than 20 employees, and dismisses an individual solely for non-employee-related reasons (e.g. due to a reduction in the workforce or redundancy of a work post), it must pay a severance payment equivalent to:

(i) one month's salary – for employees with less than two years' service with a given employer; or
(ii) two months' salary – for employees with between two and eight years' service; or
(iii) three months' salary – for employees with more than eight years' service.

However, severance pay is capped by statute at 15 times the national minimum monthly salary (capped at PLN 33,750 from 1 January 2019, equivalent to approx. EUR 7,796).

Post-contractual non-competition clauses

Post-contractual non-competition restrictions are permitted when an employee has access to confidential information, the disclosure of which could damage the employer. In this case, the parties should in this case enter into a separate post-termination non-competition agreement. This should specify the restricted time period and compensation due to the employee (which must not be lower than 25% of the employee's salary for the duration of the agreement). Compensation may be paid in monthly instalments.

Miscellaneous

Not applicable.

Portugal

Reasons for dismissal

A. Dismissal with just cause: may occur whenever an employee commits a disciplinary offence that is serious, and its consequences make it immediately and practically impossible for the employment contract to remain in force.

Disciplinary offences that may be deemed sufficient for the employee´s dismissal with just cause include the following:

a) illegitimate non-obedience of instructions or orders given by any responsible person in a hierarchically superior position; or
b) breach of the company's employee's rights and warranties; or
c) instigation of repeated conflicts with company employees; or
d) repeated indifference to fulfilling the obligations of his/her position, with the required degree of diligence; or
e) serious damage to the patrimonial interests of the company; or
f) false declarations regarding justification for any absences from work; or
g) non-justified absences from work that directly constitute serious damage or risk to the company, or if the employee is absent from work, without justification, for five days in a row or ten individual days, in each civil year, regardless of the damage or risk caused; or
h) non-observance of work safety and health rules; or
i) physical violence, verbal abuse or any other offences punishable by law towards an employee of the company, a member of the company's corporate bodies or an individual employer that is not a corporate body, its delegates or representatives; or
j) kidnapping in general or any crime performed against the liberty of any of the people identified in the previous paragraph; or
k) non-compliance with the fulfilment of any court or administrative entity decision/ruling; or
l) abnormal reduction of performance levels.

The company's management framework, the degree of damage of the employer's interests, the nature of the relations between the parties or between the employee and his colleagues and other relevant circumstances must be attended in order to assess the just cause for dismissal.

B. Dismissal for objective reasons – collective dismissal or job position termination procedure

The dismissal of employees for objective reasons may occur for the following market-related, structural or technological reasons:

- market-related reasons – reduction of the company's activity due to the predictable decrease of demand for goods or services or the subsequent impossibility of placing such goods or services on the market; or

- structural reasons – economic or financial imbalances, change of activity, restructuring of the productive structure or substitution of dominant products; or
- technological reasons – changes to techniques or production processes, automation of production, construction or cargo movement tools, as well as computerisation and automation of services and communication methods.

C. Dismissal for objective reasons – dismissal due to maladjustment

The employer may dismiss an employee due to maladjustment to his work post for reasons that occur after they have been hired.

Maladjustment to the work post will be considered to have occurred if it makes it practically impossible for the employment contract to continue, whenever any of the following conditions are verified:

- sustained reduction of the productivity and/or quality levels of the employee´s performance; or
- the employee causes repeated malfunctions to the work instruments made available to them; or
- the security or health of the employee, or of any other employees or third parties, are at risk.

Maladjustment will also be considered to exist for employees who have been allocated to positions of high technical complexity, and/or management positions, when they do not fulfil goals previously set down in writing between the employee and the employer, making it practically impossible for the employment contract to continue.

Dismissal due to maladjustment may only occur if the following requirements are fulfilled cumulatively:

a) The job position was modified due to changes in the manufacturing or trading process, or the introduction of new technologies or equipment based on different or more complex technology in the six months before the dismissal;
b) Professional training related to the modifications of the job position was given by a competent authority or by a duly certified training entity;
c) After the training, the employee was given an adaptation period of at least 30 days in the job position, or outside when the performance of the duties may have caused damages to the employee's safety and health or other employees or third parties.

Form

I Dismissal with just cause

The dismissal of the employee with just cause involves a disciplinary proceeding in which the employee is given a detailed description of the facts that constitute the disciplinary infraction ('Nota de Culpa').

In general, this notification must take place within the 60 days after the employer becomes aware of the facts.

The employee may respond to the notification within ten business days, stating his defence, submitting documents and requesting the hearing of witnesses.

The employer or an appointed instructor will assure that all requested actions regarding the production of proof are met, and will issue a final decision within 30 days, counted from the last event adduced as proof.

The dismissal decision must be justified and submitted in writing to the employee.

II Dismissal for objective reasons – collective dismissal or job position termination procedure

The dismissal of an employee for objective reasons requires that the employee is notified in writing of the following:

- the objective reasons that justify the dismissal; and
- a list of all company staff detailed by organizational sectors of the company; and
- the selection criteria used to determine which employees are to be dismissed; and
- the number of dismissed employees and their respective professional categories; and
- an indication of the length of time over which the dismissal will be effected; and
- the calculation method to determine the severance payment to be granted to the employees to be dismissed, notwithstanding the legal minimum as established under Portuguese law; and
- the place and moment of payment of this compensation and of any labour credits due to the employee; and
- the date of termination of the employment contract.

On the five days following this notification, the employer must initiate an information and negotiation phase with employees in order to agree upon the effects and dimensions of the measures to be applied, as well as any other measures that may reduce the number of employees to be dismissed, such as:

- Suspension of employment contracts;
- Reduction of normal working periods;
- Professional reconversion or reclassification;
- Early retirement or pre-retirement.

Such meeting must involve the participation of a representative from the Portuguese Labour Directorate.

Once the parties have reached an agreement, or after 15 days counting from the initial notification of the collective dismissal/job position termination procedure, the employer may issue its final dismissal decision.

III Dismissal for objective reasons – dismissal due to maladjustment

The dismissal due to maladjustment involves the notification of the employee in writing of the following information:

- reasons that justify the dismissal; and
- the modifications introduced to the job position, or in case of non-existence of modifications, the data that support the decrease of his/her activity or quality of work; and
- the professional training or adaptation period results.

In case the employee is not a trade union representative, the employer must, within three working days after the dismissal has been commuincated to the employee, communicate it to the trade union indicated by the employee, or in its absence, to the work commission, or to the inter trade union or trade union commission.

On the ten days following this communication the employee may attach documents or request probative diligences, after which, if realized, the employer will communicate its results to the employee. After this communication the employee has ten working days to issue his/her opinion, namely, regarding the grounds of the dismissal.

The employer must issue its final dismissal decision within 30 days after receiving the employee's opinion informing the employee of the following:

- the grounds of the employment contract termination;
- confirmation that the necessary requirements have been fulfilled;
- an indication of when the dismissal will be effected; and
- a calculation method to determine the severance payment to be granted to the employees to be dismissed, notwithstanding the legal minimum as established under Portuguese law; and
- the time and place when the abovementioned compensation and of any labour credits due to the employee will be paid; and
- the date of termination of the employment contract.

Notice period

Disciplinary dismissal: no notice period is required. The employee is considered to be dismissed as soon as he is effectively notified of the dismissal decision.

Objective dismissal: the notice period varies according to the employee's seniority within the company, as follows:

— less than or equal to a year working for the company: 15-day notice period;
— greater than or equal to one year and less than five years: 30-day notice period;
— greater than or equal to five years and less than ten years: 60-day notice period;
— greater than or equal to ten years: 75-day notice period.

Involvement of works council

A. Dismissal with just cause

- a copy of the description of the facts attributed to the employee ('Nota de Culpa') must be submitted to the works council;
- once all witnesses have been heard and all documents submitted, a copy of the disciplinary proceeding must be submitted to the works council, which may issue a justified legal opinion;
- the works council must be notified of the final decision of the disciplinary proceeding.

B. Dismissal for objective reasons

The initial notification of the promotion of the collective dismissal/ procedure for terminating a job position must be sent to the works council.

The works council or another employee representative body must participate in the information and negotiation phases of both a collective dismissal and a job position termination procedure.

The works council or any other employee representative body must be notified of the final decision.

With regards to the dismissal due to maladjustment please see point III above *'Dismissal for objective reasons – dismissal due to maladjustment'*.

Involvement of a union

Disciplinary and objective dismissal: the union is not involved unless the employee is a member of, or affiliated to, a trade union.

Approval of state authorities necessary

Disciplinary dismissal: no approval required.

Objective dismissal: no approval, although the Portuguese Labour Directorate will participate in the dismissal procedure in order to verify all substantive and procedural requirements are fullfilled, and will have the power to issue a warning to the employer if any irregularity is observed.

Collective redundancies

A collective dismissal procedure must be followed, as established by the Portuguese Labour Code:

a) if the dismissal is for financial, technical, organizational or production-related reasons; and
b) the number of employees affected, within a period of 90 days, is at least:
   - two employees for companies with up to 50 employees; or
   - five employees for companies with 50 employees and above.

On the five days following the initial notification, the employer must promote an information and negotiation phase with the employees in order to agree upon the effects and dimensions of any measures to be applied as well as any other measures that may reduce the number of employees to be dismissed. Such meetings must involve the participation of a representative from the Portuguese Labour Directorate.

Although the parties are under an obligation to negotiate in good faith, this does not mean that they are obliged to reach an agreement.

Once the parties have reached an agreement, or after 15 days counting from the initial notification of the collective dismissal, the employer may issue its final dismissal decision.

The employee is considered to be effectively dismissed as soon as the notice period described above has been observed.

Summary dismissals

Dismissal without notice is not permitted according to the Portuguese Labour Code

Consequences if requirements are not met

General dismissal reasons: dismissal is considered unfair in the following circumstances:

— if the dismissal has been made for political, ideological, ethnic or religious reasons, even where other reasons are invoked; or
— if the reason that justified the dismissal is declared unfounded by the labour court; or
— if the dismissal is not preceded by the correspondent disciplinary procedure; or
— if a previous legal opinion is not requested by the competent authority in the area of equality of opportunities between men and women, if the dismissed employee is pregnant, has recently given birth, is breastfeeding or on initial parental leave.

Dismissal with just cause: such dismissals shall be considered unfair in the following circumstances:

— if a circumstanced description of the relevant disciplinary infringement has not been submitted, in writing, to the employee ('Nota de Culpa'); or
— if the initial description ('Nota de Culpa') does not describe the intention of the employer to dismiss the employee with just cause; or
— if the right of the employee to consult the disciplinary procedure and to respond to the initial description ('Nota de Culpa') has been refused; or
— if notification of the dismissal decision has not been made in writing to the employee and with the observance of the requirements established by the Portuguese Labour Code for the issuance of the final dismissal decision.

Dismissals due to objective reasons: such dismissals are considered unfair in the following circumstances:

— if the initial notification of the collective dismissal procedure has not been properly submitted to the representative employee structure or, where such a representative structure does not exist, directly to the employees included in the collective dismissal procedure; or
— the established period to issue the final decision of the collective dismissal has not been observed; or
— if the legal requirements are not fulfilled; or
— the severance compensation, as established by the Portuguese Labour Code, as well as any other due or demandable labour credits arising from the termination of the employment contract has not been made available to the employee by the end of the notice period.

Severance pay

Disciplinary dismissal: if the dismissal is declared or recognized as being unfair or wrongful, the employer will have to:
a) reinstate the employee; or
b) pay the employee an indemnity:

The employee may choose to receive an indemnity in lieu of reinstatement of between 15 and 45 days' salary per year of service, to be determined by the court pursuant to the seriousness and degree of wrongfulness of the dismissal.

In any case, the employee will be entitled to receive the non-earned salaries between the dismissal date until the final decision by the labour court and may claim an indemnity for all damages caused.

Objective dismissal: Please see table below.

If the objective dismissal is declared unfair or wrongful (because the objective grounds are not proven), or the collective dismissal procedure has not been correctly followed, the employer may have to reinstate or pay the employee an indemnity according to the terms established above.

Non-competition clauses

Non-competition clauses may be negotiated and entered into during the professional relationship. The non-competition clause is also valid if entered into at the moment of termination (but actually just before termination), so that the employment relationship is in force.

Miscellaneous

Not applicable.

In case of Collective Dismissal, Extinguishment of Job Position, or Maladjustment

Date			Compensation	Compensation: calculation specifications	Compensation: maximum limit	Compensation: minimum limit
Employment contract closed	Before 01.11.11	Until 31.10.12	One month of BR and seniority payments per year of seniority or proportional in case of fraction.		If at the end of each timeframe, a compensation results: · > 12 times the employee's monthly BR plus seniority payments or 240 times MMGR, no other calculation is applicable; · < to 12 times the employee's monthly BR mensal plus seniority payments or 240 times MMGR, the global amount of compensation may not exceed these amounts.	The total amount of compensation may not be < to three months of BR plus seniority payments.
		Between 01.11.12 and 30.09.13	20 days of BR plus proportional to the time period of the rendered work.	· Employee's BR to be considered may not be > 20 times the MMGR; · Daily amount of BR plus seniority payments is equal to the amount of BR plus seniority payments divided by 30; · In case of a fraction of the year, the amount of compensation for this period will be computed pro rata.		
		Since 01.10.13	· 18 days of BR plus seniority payments per complete year of seniority regarding the first three years (only if duration, 01.10.2013, does not exceed three years); and/or · 12 days of BR plus seniority payments per complete year of seniority, in the following years (if contract exceeds three years).			

In case of Collective Dismissal, Extinguishment of Job Position, or Maladjustment

Date			Compensation	Compensation: calculation specifications	Compensation: maximum limit	Compensation: minimum limit
Employment contract closed	Between 01.11.11 and 30.09.13	Up to 30.09.13	20 days of BR and seniority payments per complete year of seniority or proportional when a fraction of a year.	· Employee's BR to be considered may not be > to 20 times the MMGR; · Daily amount of BR plus seniority payments is equal to the amount of BR plus seniority payments divided by 30; · In case of a fraction of the year, the amount of the compensation regarding this period will computed pro rata.	The total amount of compensation may not be > 12 times the employees' monthly BR plus seniority payments, or, if the 20 times MMGR limit is applicable, 240 times MMGR. If compensation is: · > to 12 times the employee's monthly BR plus seniority payments or 240 times MMGR, no other calculation is applicable; · < 12 times the employee's monthly BR mensal plus seniority payments or 240 times MMGR; the global amount of compensation may not exceed these amounts.	
		Since 01.10.13	· 18 days of BR plus seniority payments per complete year of seniority regarding the first three years (only if duration, 01.10.2013, does not exceed three years); and/or · 12 days of BR plus seniority payments per complete year of seniority, in the following years (if contract exceeds three years).			
	After 01.10.2013		12 days of BR and seniority payments per complete year of seniority			

Romania

Reasons for dismissal

There are two alternative sets of reasons for dismissing of employees:
(i) employee related reasons: disciplinary misconduct (in case of a severe breach, or more repeated breaches), physical/mental incapacity, professional inability, being in police custody or on house arrest for more than 30 days; or
(ii) reasons not related to the employee: reorganisation of the employer's organisational structure (by way of individual or collective dismissals).

Form

Written form necessary. The employer must provide at least the following information: (i) the legal and factual grounds for dismissal; (ii) the notice period to which the employee is entitled; (iii) the dismissal priority criteria (in case of collective dismissals); (iv) a list of all available positions at the employee's level and the deadline by which the employee may choose to fill a vacancy, in case of dismissal for physical/mental incapacity or professional inability; (v) the term during which the dismissal decision may be challenged; and (vi) the competent court before which the dismissal decision may be challenged.

In case of dismissal due to disciplinary misconduct, physical/mental incapacity or professional inability, the employer must conduct a prior evaluation procedure of the employee.

Notice period

The statutory minimum notice period is 20 working days if the dismissal is due to physical or mental incapacity, professional inability or restructuring (where the employer is undertaking individual or collective dismissals), with the exception of dismissal for professional inability during the employee's probation period.

Involvement of works council

Works councils are not regulated by Romanian labour law as it presently stands.

Involvement of a union

No statutory involvement in ordinary dismissals. However, in case of disciplinary dismissals, the employee has the right to be assisted by a trade union representative during the preliminary disciplinary evaluation. Union consultation is required for collective dismissals. The union may propose methods of mitigating the impact of the collective dismissals. The employer must only reply to the union regarding the proposals within five days, setting out justifications for the measures to be taken.

Approval of state authorities necessary

Not necessary, except for collective dismissals at state-owned companies.

Collective redundancies	The employer must notify the union or employee representatives, the labour inspectorate and the employment agency when it proposes to dismiss within 30 days: (i) more than ten employees at an establishment of 20 – 100 employees; or (ii) at least 10% of employees at an establishment of 100 – 300 employees; or (iii) at least 30 employees at an establishment of at least 300 employees.
Summary dismissals	Termination without notice (summary dismissal) is only lawful if there is a severe or repeated breach of the employee's duties or if the employee is put under arrest for more than 30 days. If there is a valid reason for a summary dismissal, the employer should not wait more than 30 days after becoming aware of it before declaring the dismissal.
Consequences if requirements are not met	The dismissal will be invalid. The employer must pay the employee compensatory damages, which include unpaid wages and benefits. Upon request, the employee can be reinstated.Moral damages and court expenses may also be awarded, depending on the evidence before the court. Moral damages aim at repairing a moral prejudice sustained by the employee who is a victim of an illegal dismissal and are separate from material damages. (For example, the European Court of Human Rights has awarded moral damages of up to EUR 5,000 for the stress felt by an employee going through a court trial.)
Severance pay	There is no statutory severance payment. However, employees may be entitled to severance payments pursuant to their individual or collective labour contracts.
Non-competition clauses	Post-contractual non-competition clauses are only valid if the labour contract specifies: (i) the activities prohibited; and (ii) the amount of the monthly indemnification (at least 50% of employee salary); and (iii) the duration of the non-competition clause (maximum two years); and (iv) the third parties for whom the employee may not work; and (v) the restricted geographical area.
Miscellaneous	If the reason for a collective dismissal is change of employer control or transfer of undertakings, the court may invalidate any dismissals.

Russia

Reasons for dismissal

- Unsatisfactory performance during a probationary period;
- failure to meet the requirements of the job due to lack of qualifications (confirmed by an appraisal);
- repeated failure to perform duties without justifiable reasons following a disciplinary sanction;
- liquidation of the company;
- redundancy or staff cuts;
- change of company's proprietor (with respect to the dismissal of the company's executive, his deputies or the chief accountant);
- a single severe breach of duty including absence from the workplace without good reason for a whole working day (irrespective of the length of that working day), and absence from the workplace without good reason for more than four consecutive hours during the working day; attending work in a state of alcoholic, narcotic or other intoxication; disclosure of secrets protected by law (state, commercial, service and other) made known to the employee during the course of his employment, including the disclosure of another employee's personal data; committing pilferage, including theft, in the workplace of others' property, embezzlement, wilful destruction or damage to property as confirmed by a decision of a court, judge or other authorised body or an official empowered to hear administrative offence cases; violation (as established by a labour protection commission) of labour protection requirements, if this results in severe consequences (industrial accident, disaster) or is known to have created a real hazard with these consequences;
- commission of culpable actions by an employee directly handling money or valuables if these actions provide grounds for the employer to lose confidence in him;
- immoral deed committed by an employee engaged in educational functions that is incompatible with his duties;
- adoption of an unjustifiable decision by the executive of a company, his deputies or the chief accountant that results in losses to the company's property, its illegal use or other damage to the company's property;
- a single severe breach of duty by the company's (or branch/ representative office's) chief executive officer or his deputies;
- presentation of forged documents by the employee upon the conclusion of the employment agreement;
- other cases envisaged in the employment agreement with the chief executive officer of the company, members of the collegial executive body of the organisation, distant employees and home-based employees;
- in other cases specified by federal laws (e.g. a special ground for dismissal of a chief executive officer if a decision is passed by the authorised body of the company).

Form

For all dismissals irrespective of the ground: (i) order for the dismissal (written form, hard copy), signed by a duly authorised representative of the employer and signed by the employee to confirm familiarisation with the order; (ii) employee's workbook specifying the ground for dismissal, signed by a duly authorised representative of the employer and returned to the employee against a signature in the workbook register and the workbook itself; (iii) payslip specifying the sums to be paid to the employee upon dismissal. Other documents may be required depending on the ground for dismissal.

Notice period

The notice period depends on the ground for dismissal. For instance, in case of staff redundancy or company liquidation the notice period is not less than two months. If dismissal is due to unsatisfactory performance during the probationary period (which can last a maximum period of three months for ordinary employees and six months for some executive positions, the statutory notice period is only three days. If an employee is dismissed for a single severe breach of duty, no notice period is required.

Involvement of works council

Works councils (or other employee representative bodies, except for trade unions) are not to be involved in employment termination issues unless stipulated in a collective bargaining agreement.

However, under Russian law, employees may either be represented by trade unions, or (where there is no trade union or less than half of company employees are members of an established trade union) elect other employee representatives. Other employee representatives cannot be involved in the protection of an employee's individual rights, but only in the collective relationship with the employer (e.g. negotiating collective bargaining agreements).

Involvement of a union

Under Russian law, the primary trade union organisation is a voluntary association of trade union members, who generally work at the same company. This association operates based on the provisions adopted in accordance with its charter, or based on the general provisions of the primary trade union organisation of the corresponding trade union. The elective body of the primary trade union organisation must be informed prior to a dismissal of its members, if the reason for dismissal is company liquidation or staff redundancy. The trade union must also be consulted on the dismissal of an employee (who is a member of the trade union) due to staff redundancy; for a failure to meet the requirements associated with his position or job due to insufficient qualifications, as confirmed by the results of an appraisal; or for repeated failure to perform his duties without justifiable reasons following a reprimand (or other disciplinary sanctions).

Approval of state authorities necessary	Termination by the employer of an employment agreement with an employee under the age of 18 will only be permitted with the consent of the corresponding state labour inspectorate and the commission for children and the protection of their rights (except in the event of the liquidation of the company).
Collective redundancies	The criteria for large-scale dismissals are provided in industry sector and/or territorial agreements. An industrial agreement is entered into by authorised representatives of employees and employers at an industrial level to regulate social and employment relations, and sets out the general principles for the regulation of economic relations between employers and employees. Usually the main criteria for a 'mass personnel reduction' are indicators such as the number of employees dismissed in connection with the liquidation of a company, or the reduction of a large number of employees over a certain calendar period. The following criteria for mass redundancy are currently applied in Moscow: liquidation of a company with a staff of 15 or more persons; reduction of 25 % of the staff within 30 calendar days; reduction of a company's staff of 50 or more persons within 30 calendar days; 200 or more persons within 60 calendar days; or 500 or more persons within 90 calendar days.
Summary dismissals	Not applicable.
Consequences if requirements are not met	Reinstatement, continued payment of salary, and civil, administrative and criminal liability under Russian labour law.
Severance pay	In case of dismissal due to company liquidation or reduction of personnel, an employee is paid on the termination date a severance payment equivalent to one month's average salary. After having been terminated for company liquidation or redundancy, an employee is eligible to receive his average monthly salary whilst looking for employment for no more than two months (severance pay included), with an additional third month's payment if the employee applied to the employment service within the first two weeks after termination but failed to obtain any job.
Non-competition clauses	Non-competition clauses are not enforceable in Russia.
Miscellaneous	The employer cannot terminate employment agreements with pregnant women except in the event of liquidation of the company. There are also restrictions on termination by the employer for other categories of employees, e.g. women who have children up to three years of age; men who have three or more children, one of them up to three years of age, if one's spouse is unemployed; single mothers bringing up children aged up to 14 years (in the case of a disabled child, aged up to 18 years) and other persons bringing up children without a mother.

Serbia

Reasons for dismissal

An employer may terminate an employment only under conditions and in the events stipulated in the Labour Law. The grounds for an employer to terminate employment are the following:

a) An employer may terminate an employment contract for reasons relating to employee's work ability and his/her conduct, as follows:
   (i) if he/she does not achieve the work results or does not have the necessary knowledge and skills to perform his/her duties;
   (ii) if he/she is convicted of a crime at work or related to work (final and binding court decision);
   (iii) if he/she does not return to work for the employer within 15 days of the expiry of a period of stay of employment or an unpaid absence.

b) The employer may terminate the employment contract if the employee on his/her own fault commits a breach of a work duty, as follows:
   (i) if he/she is negligent or reckless in performing the work duty;
   (ii) if he/she abuses his/her position or exceeds his/her authority;
   (iii) if he/she unreasonably and irresponsibly uses work-related instruments;
   (iv) if he/she does not use or uses inappropriately allocated resources and personal protective work equipment;
   (v) if he/she commits another breach of work duty as determined by the collective agreement/employment rulebook or employment contract.

c) The employer may terminate the employment contract if the employee does not comply with work discipline requirements, as follows:
   (i) if he/she refuses without reason to perform work and execute the orders of the employer in accordance with the law;
   (ii) if he/she does not submit a certificate of temporary incapacity for work as required by the Labour Law;
   (iii) if he/she abuses the right to leave due to temporary incapacity for work;
   (iv) if he/she comes to work under the influence of alcohol or other intoxicating substances, or uses alcohol or other intoxicating substances during working hours, which has or may have an impact on the work performance;
   (v) gave incorrect information that was critical for concluding the employment contract;
   (vi) if the employee working in a high risk job refuses to undergo a health check, although for working on such job the specific health requirements must be met to work on such a job;
   (vii) if he/she does not respect labour discipline prescribed by an act of the employer, or if his/her conduct is such that he/she cannot continue to work for the employer.

d) The employment may also be terminated if there is a valid reason relating to the employer's needs, as follows:
   (i) if as a result of technological, economic or organizational changes the need to perform a specific job ceases, or there is a decrease in workload (redundancy);
   (ii) if he/she refuses to conclude the annex to the employment contract pursuant to the Labour Law.

Form

Termination must be in a written form, and given to the employee in person. It must contain the reasons for termination, and set out the employee's right of appeal. In certain cases, the employer must give written notice to the employee of the reasons for termination, the facts on which the decision to terminate is based, and the time limit for submitting the employee's response prior to terminating the employment.

Notice period

If the employee is dismissed for failing to fulfil his duties or not having the qualifications and ability necessary to perform his duties, he has the right to continue working for a notice period of between eight and 30 days. This notice period depends on the period for which he has paid pension insurance, and has to be determined by the employer.

In all other cases, the notice period may be defined in the individual employment contract.

Involvement of works council

There are no works councils in Serbia.

Involvement of a union

A trade union may provide its answer to a warning letter issued to employee in the procedure of employment termination due to breach of work duty or work discipline. Also, the representative trade union must be invited to give its opinion on the redundancy programme draft, when there is an obligation to pass a redundancy programme.

Collective redundancies

An employer must undertake a redundancy programme if it proposes dismissing the following numbers of employees employed on contracts of unfixed duration by reason of redundancy:

a) within a 30-day period:
   (i) ten employees where the employer employs more than 20 and less than 100 employees with contracts of unfixed duration; or
   (ii) 10% of employees where the employer employs 100 to 300 employees with contracts of unfixed duration; or
   (iii) 30 employees where the employer employs more than 300 employees with contracts of unfixed duration; or
b) 20 employees within a 90-day period, regardless of the total number of employees employed.

The redundancy programme is issued by the board of directors or the company director.

Summary dismissals

Serbian Labour Law does not permit dismissal without notice.

Consequences if requirements are not met

If a court finds that the employment has been wrongfully terminated, the employee has a right to request reinstatement. The court decides whether the employee will be reinstated. The employer must also pay damages to the employee equivalent to lost salary and other entitlements under Labour Law, the collective agreement or employment contract, and mandatory social insurance. Damages will be reduced by the amount of any income earned from any other source following termination of the employment agreement.

Severance pay

If the employee is dismissed for failing to fulfil or not having the necessary qualifications and ability to perform his/her duties, he/she has the right to continue working for a notice period of between eight and 30 days. The employee may agree to stop working prior to expiry of the notice period on payment of compensation for salary, the amount being determined by the General Act and the employment contract.

On redundancy, the employee is entitled to a severance payment for an amount determined by the company's internal acts and employment agreement. Where an employee exercises the right to severance pay, it cannot be lower than the sum of one third of the employee's average gross salary paid over the previous three months of employment preceding the month in which severance pay is paid, for each full year of employment with the employer.

Non-competition clauses

Post-contractual non-competition restrictions may last for a maximum of two years after the termination of employment. However, such restrictions are only valid if the employer undertakes to pay monetary compensation to the employee in the employment agreement.

Miscellaneous

The employer may not terminate employment, or in any other way put an employee in a disadvantageous position because of his/her status or activities as an employees' representative, trade union member, or because of his/her participation in trade union activities.

The employer may not terminate a contract of unfixed duration under any circumstances if the employee is pregnant, on maternity leave, or on leave nursing or taking special care of a child.

Slovakia

Reasons for dismissal

The employer may dismiss an employee with notice for statutory reasons, including the winding-up or relocation (in case that the employee does not agree with the relocation) of a business or a part thereof, the redundancy of the employee, inability to perform work due to health reasons, unsatisfactory performance, or disciplinary breaches. An employer may terminate an employment relationship with immediate effect if the employee is lawfully sentenced for committing an intentional crime (crime caused not by negligence, but by intent), or has committed a serious breach of discipline.

Form

Notice must be given in writing (not by e-mail or fax), and signed by the employer's representative in order to be valid.

Notice period

The general notice period is one month. In case of dismissal where the reasons are the winding-up or relocation of a business or a part thereof, redundancy of the employee, or inability to perform work due to health problems, the notice period is two months if the employment has lasted for at least one year, and three months if it has lasted for at least five years. Where the dismissal is due to reasons other than those stated above, the notice period is two months if the employment has lasted for at least one year. If the notice is given by the employee, the notice period is two months if the employment has lasted for at least one year. If the dismissal occurs during a probationary period, a written notification (not a formal notice) should be delivered to the other party normally at least three days before the intended termination date (it is not obligatory to meet such a three-day notification period, unless it is agreed in the employment contract). The statutory maximum of a probationary period is three months, and a maximum of six months in the case of managing employees. The probation period, and its length thereof, are subject to agreement between the parties.

Involvement of works council

Dismissal of a member of the works council is invalid without the works council's prior approval. Employee representatives are protected against dismissal for six months following the expiry of their term of office.

In cases of termination by notice and immediate termination, the employer is obliged to consult with employee representatives before dismissing the respective employee, otherwise such a dismissal is invalid. However, the employee representatives' consent to the particular dismissal is not a precondition for its validity.

If there are no employee representatives then the obligation of the previous consultation does not apply.

Involvement of a union

Dismissal of a trade union member is invalid if the trade union's prior approval has not been obtained. Trade union officers are protected against dismissal for six months following the expiry of their term of office.

Approval of state authorities necessary

Obligatory for disabled employees.

Collective redundancies

A collective redundancy occurs when the employer dismisses more than ten employees within 30 days, if the employer employs fewer than than 100 but more than 20 employees. If it employs at least 100 but fewer than 300 employees, termination of at least 10% of the workforce is considered a collective redundancy. If the employer employs at least 300 employees, then termination of 30 employees is considered a collective redundancy. At least one month prior to commencement of collective redundancies, the employer must negotiate measures to avoid or limit collective redundancies, and measures designed to mitigate the unfavorable consequences of collective redundancies with employee representatives. If there are no employee representatives, the employer must negotiate directly with the employees.

The employer must provide employee representatives, or employees directly, with all the information necessary to facilitate these negotiations in writing. A transcript of the written information must also be provided to the respective Office of Labour, Social Affairs and the Family. Following the negotiations, the Office of Labour, Social Affairs and the Family, as well as the employee representatives, or directly employees, must be provided with written information on the results of the negotiations.

Summary dismissals

Immediate termination of employment by the employer is possible only for a serious breach of labour discipline by the employee or for a lawful conviction of the employee for an intentional crime.

The employer may immediately (with effect upon delivery to the employee) terminate the employment only within two months from learning the reason for immediate termination, but not later than one year from the occurrence of the respective reason.

The immediate termination must be done in writing and delivered to the employee, with the merits of the reason for immediate termination being specified in such a way that prevents confusion with any other reason for termination.

The employer may not immediately terminate the employment with a pregnant employee, an employee on maternity or parental leave, a lone employee taking care of a child younger than three years of age or with an employee taking care of a close person who is severely disabled. However, if there is a reason for immediate termination, the employment of the aforesaid employees (except for the employees on maternal or parental leave) may be terminated by notice for that reason.

Severance pay

Severance pay must only be paid if the employment has been terminated by notice of the employer or by agreement between the employer and the employee for the reasons of winding-up or relocation of the business or a part thereof, the redundancy of the employee, the employee's long-term medical inability to perform work, or the inability to perform work due to accident at work, occupational disease or its threat or due to reaching the maximum exposure at work set by the public health authority.

In case that the employee is dismissed for the reasons of winding-up or relocation of the business or a part thereof, the redundancy of the employee or the employee's long-term medical inability to perform work, the employee is entitled to severance pay equal to the average monthly earnings of the employee if the employment lasted at least two years, two times the average monthly earnings if the employment lasted between five and ten years, three times the average monthly earnings if the employment lasted between ten and 20 years and four times the average monthly earnings if the employment lasted at least 20 years.

If the employment is terminated by agreement for the same reasons as stated in the previous paragraph, the employee is entitled to severance pay equal to the average monthly earnings of the employee if the employment lasted less than two years, two times the average monthly earnings if the employment lasted between two and five years, three times the average monthly earnings if the employment lasted between five and ten years, four times the average monthly earnings if the employment lasted between ten and 20 years and five times the average monthly earnings if the employment lasted at least 20 years.

In case that the employee is dismissed or the employment is terminated by agreement for the reason of the employee's inability to perform work due to an accident at work, occupational disease or its threat or due to reaching the maximum exposure at work set by the public health authority, the employee is entitled to severance pay of at least ten times the average monthly earning of the employee, unless the accident at work was caused by the employee's breach of health and safety rules or took place while he/she was under the influence of alcohol, narcotics or psychotropic substances.

Non-competition clauses

The employer may agree with the employee in the employment contract that following termination of the employment the employee will not perform a gainful activity competitive to the activity of the employer for a certain period of time, but no longer than one year. Conclusion of such a non-competitive clause is possible only if during the employment the employee is able to gain information or knowledge which is not commonly accessible and its use could cause material harm to the employer.

The employer is obliged to compensate the employee for complying with the non-competition clause by paying them at least 50 % of the employee's average monthly earnings for each month of compliance with the obligation of the non-competition clause.

The court may consider a non-competition clause to be invalid if one of the parties challenges the validity of such a clause before the court. There is no case-law on this question yet. We would expect that the court will often consider such a clause to be invalid because non-competition clauses are usually concluded to the disadvantage of the employee.

Miscellaneous

An employer cannot dismiss an employee within a protected period, i.e. within a period during which the employee is acknowledged to be temporarily incapable of working (during sick leave due to a disease or an accident, during pregnancy, maternity or parental leave or when single-handedly taking care of a child younger than three years of age, during extraordinary or military service, whilst having been released to perform a public function, or if the employee is medically acknowledged to be temporarily unable to perform night shifts).

Slovenia

Reasons for dismissal

The Employment Relationship Act (*'Zakon o delovnih razmerjih'* or *'ZDR-1'*) distinguishes between ordinary and extraordinary termination of the employment contract. Ordinary termination is termination with notice period, which is only possible due to a business reason, reason of fault, incapacity to work, inability to work due to disability, or the unsuccessful completion of a probationary period, any of which render continuation of the employment under the conditions of the existing employment contract impossible.

A business reason occurs when the performance of certain work is no longer required under the conditions of the current employment contract due to economic, organizational, technological, structural or similar reasons on the employer's side.

Reasons of incapacity are: non-achievement of expected work results because the worker has failed to carry out the work in due time, professionally and with due quality, or non-fulfilment of the conditions for carrying out work as stipulated under the law and executive regulations issued on the basis of law due to which the worker fails to fulfil or cannot fulfil the contractual or other obligations arising out of the employment relationship.

Extraordinary termination is termination without notice period and is only possible if:
— it is based on one of the exhaustively provided reasons in ZDR-1; and
— taking into account all the circumstances and interests of employer and employee, continuation of the employment until the end of the notice period or until the expiry of the employment contract is considered impossible; and
— it is given within 30 days of establishing the reason for extraordinary termination, and within six months of the occurrence of that reason.

Form

Termination notice must be given in writing, providing for an explanation of the reasons for termination and pointing out possible legal remedies available the employee and his rights regarding unemployment insurance.

In case of ordinary termination of an employment contract due to reason of fault, the employer must, before serving the employee with termination notice, give the employee a written warning regarding fulfilment of his obligations and the possibility of termination if he fails to comply. Such a warning can be issued within 60 days of establishing the breach and within six months of the occurrence of the breach. If employee commits another breach of this or any other obligation from the employment, within a year after the warning and if such breach is serious enough, the employer may terminate the employment contract.

In case of ordinary termination given by employer due to reason of fault or incapacity (or in case of extraordinary termination), the employer must notify the employee in writing about the initiated proceeding before serving the employee with a termination notice. The notification must include details of the alleged violations of the employee's obligations or his/her alleged incompetence and thus provide the employee the opportunity to defend him-/herself within a reasonable period. The notice must be given at least three business days prior to the date of the hearing during which the employee can present his/her defence. The employer is (in some exceptional cases) released from such duty if it would be unreasonable to expect it to provide the employee such an opportunity. The employee can also request that a representative of his trade union and/or his legal representative are/is present at the hearing.

Notice period

Ordinary termination

The notice period depends on the length of service with the respective employer. As a general rule, the statutory minimum notice periods (unless otherwise determined by a collective bargaining agreement or an individual employment contract) are:

(i) in case of unsuccessful completion of a trial period: seven days;
(ii) in case of ordinary termination by the employee:
   — 15 days for employees with less than one year of service and
   — 30 days for employees with more than one year of service;
(iii) due to ordinary termination by the employer due to business reasons or incapacity:
   — 15 days for employees with less than one year of service and
   — 30 days for employees with more than one year of service.

For employees with two or more years of service, the 30-day notice period increases for two days for each year of employment with the employer, but cannot exceed 60 days. For employees with 25 years or more years of service, the notice period is 80 days, unless otherwise provided by a collective bargaining agreement.

If the employment contract is terminated due to employee fault, the statutory notice period is 15 days.

Extraordinary termination: there is no notice period.

Bankruptcy, liquidation proceeding, winding down of the employer or a compulsory settlement.

In case of winding down of the employer for other reasons, the notice period is 30 days.

In the event of confirmed compulsory settlement, the employer may terminate the employment contracts of those employees who have been characterized as redundant in the redundancy programme with a 30-day notice period. Compulsory settlement (or compulsory composition) is a proceeding for an insolvent debtor which: (i) enables financial reorganisation of the debtor; and (ii) assures partial payment of the creditor's claim, both aimed at ensuring the further operation of the debtor.

Involvement of works council or workers' representative

The employer must inform and consult the works council or workers' representative in relation to the collective dismissal of a large number of employees.

An employer cannot terminate the employment contract of a member of a works council or a workers' representative without the prior consent of the works council. The immunity applies for the length of the appointment and a year after the lapse of the mandate.

If the employer intends to dismiss an employee who is not a trade union member, the employer must, at the employee's request, notify the works council/works representative in writing of its intention to terminate (ordinary or extraordinary termination) the employee's employment contract. The works council/works representative must give its opinion within six days. Silence is deemed to mean the works council/works representative does not oppose to the termination. It may oppose the termination if it considers there are no substantial reasons for the termination or the termination procedure has not been carried out in accordance with the ZDR-1. The employer is not bound by the opinion of the works council/works representative and can continue with the termination despite a negative opinion.

Involvement of the trade union

If the employer intends to dismiss an employee who is a trade union member, the employer must, at the employee's request, notify the trade union in writing of its intention to terminate (ordinary or extraordinary termination) the employee's employment contract. The trade union must give its opinion within six days. Silence is deemed to mean the union does not oppose to the termination. It may oppose the termination if it considers there are no substantial reasons for the termination or the termination procedure has not been carried out in accordance with the ZDR-1. The employer is not bound by the opinion of the trade union and can continue with the termination despite a negative opinion.

An employer cannot terminate an employment contract of an appointed or elected trade union representative without the prior consent of the trade union. The immunity applies for the length of the appointment and a year after the lapse of the mandate.

The trade union is involved in mass redundancies (see below).

Approval by the state authorities necessary

The employer may only dismiss an employee who is pregnant, during breastfeeding (one year after birth) or on parental leave, and for one month thereafter, only with the prior consent of the labour inspectorate, if there are reasons for extraordinary termination of the employment contract, or if proceedings for terminating the employer's business have been initiated.

Mass redundancies

The employer must prepare a redundancy programme if it is established that for business reasons, the work done by a number of workers will become unnecessary in the next 30 days. The numbers of workers who need to be made redundant for this to apply are as follows:

(i) at least 10 workers where the employer employs more than 20 and fewer 100 workers; or
(ii) at least 10% of workers where the employer employs at least 100 workers but fewer than 300 workers; or
(iii) at least 30 workers where the employer employs 300 workers or more.

In determining which workers are to be made redundant, the employer must take the following criteria into consideration: the employee's qualifications, work experience, performance, length of service, medical health and social status, whether the employee is a parent of three or more minors, or if the employee is the sole provider for a family with minors. The employer can determine his own criteria instead of those provided by the collective bargaining agreement if the trade union agrees with them.

The employer must inform and consult trade unions, the works council and the National Employment Office (*'Zavod za zaposlovanje Republike Slovenije'*) regarding its intention to institute mass redundancies and a redundancy programme for business reasons. The employer cannot terminate employment contracts until 30 days after the National Employment Office has been informed in detail of the mass redundancy. The National Employment Office may increase this period to 60 days.

Consequences if requirements for dismissal are not met

If the court finds that the employer has failed to comply with statutory requirements, it will declare the termination unlawful and reinstate the employee with retroactive effect (*'ex tunc'*), recognizing the employee's period of service and other rights arising from the employment relationship.

Instead of reinstatement, the court may, at employer's or employee's proposal:

(i) determine that the termination was invalid and that the employment relationship lasted until the first instance judgment was issued; or
(ii) recognise the employee's period of service and other rights arising out of the employment relationship – the employee is then given the rights arising out of the employment relationship as if the employment contract had not been terminated; or
(iii) award appropriate monetary compensation of a maximum of 18 months' salary, calculated on the basis of the average monthly salary received in the final three months preceding the termination.

The employee may seek legal protection due to unlawfulness of termination within 30 days from the service of the termination notice.

Severance pay

An employee whose employment contract has been terminated for a business reason or reason of incapacity, is entitled to a severance payment. The amount depends on the number of (full) years of Service with the employer (including the employment with the employer's legal predecessors). The basis for calculation is the average monthly salary, which the employee has received or would have received if working in the last three months prior to the end of employment.

Severance pay is calculated as follows:

— 1/5 of the average monthly salary for each year of employment with the employer if the duration of the employment is between one and ten years; or
— 1/4 of the average monthly salary for each year of employment with the employer if the duration of the employment is between ten and 20 years; or
— 1/3 of the average monthly salary for each year of employment with the employer if the duration of the employment exceeds 20 years.

The amount of the severance payment may not exceed ten times of the average monthly salary received in the final three months preceding the termination unless an applicable collective bargaining agreement stipulates otherwise.

In the event of termination of the employment contract for a fixed period concluded for one year or less, the employee is entitled to severance pay in the amount of 1/5 of the base (base being the employee's average monthly salary for full-time in the last three months, or during the working period prior to the termination). If the contract is concluded for a period longer than one year, the severance pay increases proportionally.

The same provisions apply to workers whose employment contract has been terminated in a bankruptcy/liquidation/winding down of the employer or compulsory settlement proceeding. In a compulsory settlement proceeding, however, the employer and worker may stipulate in writing the manner, form or reduction of the severance payment if a greater number of jobs with the employer would be jeopardised by a full payment.

Non-competition clause

A non-competition clause is only valid if agreed upon in writing in the employment contract. ZDR-1 allows the use of this clause for employment contracts for indefinite term as well as for fixed term employment contracts for managerial workers. The clause can last only up to two years following termination. The clause must provide for a method of calculating the compensation to be given to the employee, otherwise it is invalid. The employee must receive at least one-third of his average monthly salary (calculated over the three months immediately preceding termination) for each month of the restricted period. If the clause prevents the employee from gaining a comparable salary, the employee is entitled to compensation during the restricted period.

A non-competition clause may be agreed only when the employment contract is terminated by mutual agreement, due to ordinary termination of the contract by the employee, ordinary termination by the employer due to reason of fault, or extraordinary termination of the contract by the employer and if the employee has gained technical, production or business know-how and business connections while carrying out work or in connection to his/her work.

However, the non-competition clause must not prevent the employee from obtaining appropriate employment. The parties can mutually agree to waive the enforcement of the clause if they wish to do so.

Miscellaneous

The employer cannot, without the prior consent of the relevant organization, terminate the employment contracts of works council members or supervisory boards representing workers, workers' representatives (including those on the council of an institution), or appointed or elected trade union representatives.

Other categories of protected workers include older workers, parents, disabled persons and persons absent from work due to illness.

The employer may not terminate the employment contract of an older employee, who has reached the age of 58 or of an employee, who has less than five years until qualifying for an old-age pension due to a business reason without his written consent.

This protection does not apply if:
(i) the employee is assured a right to unemployment benefit until he fulfils the minimum conditions for receiving an old-age pension; or
(ii) appropriate new employment is offered to the employee; or
(iii) in the event the employee has already fulfilled the above conditions for protection against the termination of the employment contract when he concluded the respective contract, unless the contract was concluded according to item (ii); or
(iv) proceedings have been initiated for terminating the business of the employer.

The employer is not allowed to terminate the employment contract of mothers during their pregnancy, while breastfeeding of children up to the age of one, or the contracts of parents during their parental leave in the form of full absence from work, and for one month thereafter. This notwithstanding, the written employment contract can be terminated with the approval of the state – see above.

The employer may terminate the employment contract of a disabled person:
(i) due to his incapacity to perform work subject to the conditions set out in the employment contract; or
(ii) due to business-related reasons;
(iii) but both are subject to the conditions set out in legislation governing pension and disability insurance or work rehabilitation, and the employment of disabled persons.

This does not apply if proceedings have been initiated for terminating the business of the employer.

Spain

Reasons for dismissal

Broadly speaking, under Spanish employment law dismissals must be based on disciplinary reasons or on objective reasons.

Disciplinary dismissals must be based on gross misconduct, defined as a significant and intentional breach of employment duties. This may include:

a) Repeated and unjustified absences from work,
b) Indiscipline and disobedience at work,
c) Verbal or physical offences against the employer or any person rendering services in the company or their relatives residing with them,
d) Breach of contractual good faith and abuse of trust at work,
e) Voluntary and continued lack of normal or agreed work performance,
f) Regular drunkenness or intoxication if it negatively affects the work performed, and
g) Harassment due to racial or ethnic origin, religious beliefs or ideology, disability, age or sexual orientation and sexual harassment against the employer or any person rendering services in the company.

The applicable Collective Bargaining Agreement may establish additional lawful reasons for disciplinary dismissal.

Alternatively, an employee may be dismissed on objective grounds such as:

a) Unexpected incompetence after hiring,
b) Inability to adapt to technical changes in his/her job position,
c) Redundancy due to economical, technical, organisational or production-related reasons,
d) Intermittent leaves, even if they are justified, when they exceed the legal limits, and
e) In cases of permanent employment contracts, when the purpose of the employment is to provide services in relation to a public programme and there is a funding shortfall.

Form

Both disciplinary and objective dismissals require certain formalities.

Disciplinary dismissals require written notification to the employee detailing:

(i) the facts and type of misconduct upon which the dismissal is based, and
(ii) the effective date of termination.

The applicable Collective Bargaining Agreement may establish additional formal requirements. Likewise, there may be additional requirements depending on the type of employee affected. For instance, Spanish Law also sets forth the obligation to initiate contradictory proceedings in relation to dismissals affecting the employees' legal representatives.

Objective dismissals include the following requirements:
(i) Delivering a written notification or dismissal letter to the employee describing in detail the objective reasons upon which the termination is based, as well as the effective date of termination of the employment contract,
(ii) Granting 15 calendar days' notice (which may be substituted by the payment of salaries in lieu),
(iii) Paying the legal severance of 20 days' salary per year of service, capped at 12 months' salary when communicating the dismissal, and
(iv) In case of redundancy, delivering a copy of the dismissal letter to the employees' representatives.

Notice period

Disciplinary dismissal does not require any notice period.

The Law stipulates a 15-calendar-day notice period for dismissals due to objective causes. The employer may substitute this obligation by paying salaries in lieu of notice.

Involvement of works council

The Works Council must be informed of every dismissal taking place in the company based on disciplinary grounds or for economical, technical, organisational or production-related reasons.

Involvement of a union

The union has a right to be heard prior to the dismissal of an employee belonging to the union.

Approval of state authorities necessary

Neither disciplinary dismissal nor individual objective dismissal require any approval from the state authorities.

Collective Redundancies

'Collective Redundancies' are dismissals executed by an employer for economical, technical, organisational or production-related reasons where, over a period of 90 days, the number of redundancies is:
— At least ten in establishments (provided they employ more than 20 employees) or companies employing between 20 and 100 workers; or
— At least 10 % of the workforce in establishments or companies employing at least 100 but fewer than 300 workers; or
— At least 30 in establishments or companies employing 300 workers or more.

Although under Spanish labour regulations only the company as a whole is considered in order to verify the number of redundancies implemented for the collective redundancies procedure to apply, according to some judicial precedents from the Court of Justice of the European Union the thresholds above are considered in both the company as a whole and the relevant establishment or workplace in which more than 20 employees are employed.

Spanish employment law states that a collective redundancy may also refer to the dismissal of every member of staff when the company employs more than five workers and ceases its operations due to financial, technical, organisational or production-related reasons.

The collective redundancy procedure starts with a consultation period with the employees' representatives which may not last any longer than one month (15 days in companies with fewer than 50 employees). Although the parties are bound to negotiate in good faith, this does not entail the obligation to reach an agreement to implement the dismissals.

The Employment Authorities must also be notified about the start and result of the collective redundancy procedure.

If the parties do not reach an agreement during the consultation period, the employer may implement the dismissals. If this happens, employees are entitled to receive compensation of 20 days' salary per year of service up to a maximum of 12 months. However, the employees have the right to challenge the dismissal before the Labour Courts.

Summary dismissals

Not applicable. Disciplinary dismissals with immediate effects are similar.

Consequences if requirements are not met

Disciplinary dismissals and objective dismissals may be declared unfair if the legal requirements are not met and/or the termination is not grounded on fair reasons.

Unfair dismissal entitles the employee to receive compensation or to be reinstated to his/her previous position with the retrospective payment of salaries.

On the other hand, disciplinary/objective dismissals may be declared null and void if:

a) The dismissal breaches constitutional rights of the employee or is discriminatory; or
b) The dismissal is not grounded on fair grounds and/or the formal requirements were not met if the dismissal affects an employee under a situation of special protection against dismissal:
   (i) the dismissal takes place during pregnancy, maternity or paternity leave and child adoption, foster care, guardianship for adoption purposes, risk during pregnancy or breastfeeding, sick leaves caused by pregnancy, birth or breastfeeding, time off for breastfeeding or hospitalization of the child after birth, or an extended leave of absence to take care of a child;

(ii) the dismissal affects an employee whose working time has been reduced to take care of children;
(iii) the dismissal affects an employee suffering gender-based violence whose working time has been reduced or reorganised given this condition; or
(iv) the dismissal affects the employees after the suspension of the employment contract due to maternity, paternity, adoption, fostering or guardianship within the nine months following the child's birth, adoption, foster care or guardianship.

Collective redundancies are also void if the legal procedure is not followed.

The consequence of a void dismissal is the reinstatement of the employee in the company and the retrospective payment of salaries.

Severance Pay

In cases of justified and fair objective dismissals or collective redundancies the minimum severance pay is 20 days' salary per year of service capped at 12 months. In addition, employees are entitled to 15 days' notice, which can be substituted by payment of salaries in lieu.

An unfair dismissal results in a severance pay of 45 days' salary per year of service until 12 February 2012 and 33 days' salary per year of service from 12 February 2012 capped at 24 months' salary or at the severance accrued as of 12 February 2012, if higher, with a cap of 42 months' salary.

Non-competition clause

During the employment it is forbidden for an employee to compete with his/her previous employer. Additionally, both parties may agree full dedication in exchange for monetary compensation.

A post-contractual non-compete clause may also be included in the contract. The following limitations and requirements apply:
— The obligation may not last longer than two years for technicians and six months for other workers after the termination of the employment contract.
— The employer must have an effective industrial or commercial interest in such non-compete obligation, and
— The employee must receive adequate economic compensation.

Miscellaneous

Not applicable.

Switzerland

Reasons for dismissal

Notice may be given without providing any reason (*'Kündigungsfreiheit'*). Both employer and employee may end the employment relationship without providing reason or cause.

However, a dismissal must not be abusive (wrongful or unlawful dismissal). Subject to certain exceptions, such a notice is unlawful where issued:

— due to an inherent personal quality of the other party (skin colour, nationality, sexuality); or
— because the other party exercises a constitutional right; or
— solely in order to prevent claims under the employment relationship from accruing to the other party; or
— because the other party asserts claims under the employment relationship in good faith; or
— because the other party is performing military service or a non-voluntary legal obligation; or
— because the employee is or is not a member of an employees' organisation or because he carries out trade union activities in a lawful manner; or
— while the employee is an elected employee representative on the works council and the employer cannot cite just cause to terminate his employment; or
— by the employer in the context of mass redundancies if the consultation process is not observed.

In any of the above-mentioned circumstances, the notice remains valid, but the party abusively giving notice may be obliged by the court to pay an indemnity of up to six months' salary.

The employer may not terminate the employment relationship during the following periods, and any notice given during these periods is void:

— while the other party is performing Swiss compulsory military service, and – where the service lasts for more than 11 days – during the four weeks preceding and following the service; or
— while the employee, through no fault of his own, is (partially) prevented from working due to illness or accident, for up to 30 days in the first year of service, 90 days in the second to fifth years of service, or 180 days thereafter; or
— during the pregnancy of an employee, and for 16 weeks following the birth.

Form

There is no specific requirement. Notice of termination may be given orally or even by conclusive behaviour. For evidentiary purposes, it is strongly recommended that any notice be issued in writing.

Notice period

The statutory notice periods are: one month in the first year of service; two months from the second to ninth year of service; and three months thereafter.

The notice period may be varied by written individual or collective employment contract; however, the notice period may be reduced to less than one month only by collective employment contract and only for the first year of service. The notice period must be the same for both parties.

The parties may agree on a probationary period of up to three months with a notice period of seven days.

Involvement of works council

Except for mass dismissals, there is no statutory requirement to involve a works council.

Involvement of a union

No involvement.

Approval of state authorities necessary

No.

Collective redundancies

The statutory provisions regarding mass dismissals apply where the employer – within a time period of 30 days – gives notice for reasons unrelated to the person of the employees and affecting:

(i) at least ten employees at a business normally employing between 21 and 99 employees; or
(ii) at least 10% of the employees at a business normally employing between 100 and 300 employees; or
(iii) at least 30 employees at a business normally employing more than 300 employees.

The provisions governing mass redundancies do not apply in the event of cessation of business operations by court order or in the case of mass redundancies due to bankruptcy or under a composition agreement with assignment of assets.

Prior to giving notice, the employer has to consult the employee's representative body or the employees, and at the same time notify the cantonal labour office in writing of the planned mass dismissal. There are only consultation rights. Neither the employees nor the cantonal labour can block a mass dismissal.

The employer is obliged to enter into social plan negotiations if it (i) usually employs at least 250 employees and (ii) intends to terminate at least 30 employees within 30 days for reasons that are unrelated to the individual employee. Notification given during a longer period but based on the same operational decision have to be added together.

The employer negotiates:
— with the employee associations that are party to the collective employment contract if he is a party to this collective employment contract;
— with the organisation representing the employees; or
— directly with the employees if there is no organisation representing the employees.

An arbitral tribunal will establish a social plan by way of an arbitral award if such negotiations fail.

Summary dismissals

Both the employer and employee may terminate the employment relationship with immediate effect at any time for cause.

The requirements for a termination for cause are high. There must be a severe breach of contract and – except for very serious cases (e.g. theft) – a clear warning, which is then ignored by the other party. The notice must be given within three days of the party becoming aware of the serious breach allowing termination for cause.

Consequences if requirements are not met

In case of ordinary dismissals:
— in case of unfair dismissal, the notice remains valid, but the party abusively giving notice may be obliged by the court to pay an indemnity of up to six months' salary.
— The employer must not terminate the employment relationship during certain protected periods, as mentioned above under 'Reasons for dismissal'; any notice given during these periods is void. If any of these circumstances apply after notice has been given, then the notice remains valid but is extended accordingly.

Where a termination is made with immediate effect for cause but the requirements are not met (e.g. no serious breach, no (sufficient) warning, notice issued too late), the employee is entitled to the salary for the period until his contract expires or could have been ordinarily terminated. In addition, the court may require the employer to pay an indemnity of up to six months' salary.

In a case of mass dismissal, a notice of termination given without or before completion of the consultation process is deemed abusive. The notice of termination remains valid, but the employer is obliged to pay an indemnity to the employee of a sum fixed by the court not exceeding two months' salary.

Severance pay

Employees are entitled to a severance payment if they are over 50 years old and with 20 or more years' service. If there is no contractual severance payment, an amount equal to between two and eight months' salary will be awarded by the court. However, the employer's contributions to the employee's pension fund over the entire period of service may be deducted from the severance payment. As a result, mandatory severance payments are rare.

Non-competition clauses

The parties to an employment agreement may agree on post-termination restrictive covenants prohibiting competitive activity by the former employee. Such covenants are subject to a number of requirements and restrictions, including the following.

(i) A post-termination restriction on competition is only valid and enforceable if it is limited to a specific activity, a reasonable geographic area, and a reasonable period of time (maximum three years, unless there are exceptional reasons for a longer period).

(ii) In addition, a non-competition restriction is only enforceable in those cases where the employee has had access to the employer's customers or to manufacturing or business secrets during the term of the employment, and the use of such knowledge could significantly damage the employer.

(iii) The non-competition restriction has to be agreed upon in writing.

(iv) The restriction does not apply if the employer terminates the employment relationship without the employee having given him any good cause to do so, or if the employee terminates it for good cause attributable to the employer.

(v) Where an employee infringing the restriction is liable to pay a contractual penalty, the employee may exempt himself from the prohibition by paying the penalty; however, he remains liable in damages for any further damage. Only where expressly so agreed in writing, in addition to seeking the agreed contractual penalty and any further damages, the employer may insist that the employee continues to observe the non-competition restriction.

Miscellaneous

Not applicable.

Turkey

Reasons for dismissal

Turkish law foresees two types of dismissals for employees: ordinary termination and extraordinary termination. Each type of termination is then further differentiated according to whether the employment security terms are applicable (as outlined below).

1. Ordinary Termination:

1.1 Where the employment security provisions apply to the dismissed employee

Whether the employer is obligated to rely on a reason in an ordinary termination depends on whether the employee to be dismissed benefits from "employment security provisions" applicable under Turkish law.

Employment security provisions would be applicable to an employee if:

(i) The employer in question employs at least 30 employees; and

(ii) The employee in question has been employed by the said employer for at least six months based on an indefinite term employment agreement.

If the conditions above are satisfied and the employee benefits from employment security provisions, the employer is obligated to supply a valid reason to dismiss such employee. Turkish law does not provide an exhaustive list of valid reasons for termination. However, the following reasons provided under the law are generally considered as guidelines for this purpose:

(i) The employee is incapable of performing their duties or they behave in an unacceptable manner;

(ii) Business necessity; or

(iii) Workplace necessity.

1.2 Where the employment security provisions do not apply to the dismissed employee

Where the conditions for employment security are not applicable, an ordinary termination does not need to be justified (i.e. the employer may dismiss the employee without having to supply any grounds).

However, where the employee has been terminated in bad faith, they may claim a "bad faith compensation" *(kötü niyet tazminatı).* For further details, please see our explanation regarding *"Consequences if requirements are not met" below.*

1.3 Rules applicable without regard to employment security provisions

In an ordinary termination, the employer is obligated to observe the statutory notification periods regardless of whether the employee in question benefits from employment security provisions. For further details regarding such periods, please see our explanations below regarding *"Notice periods"*.

Furthermore, any employee who has been employed for at least one year will be entitled to severance payment upon an ordinary termination of their employment. For further details regarding severance payment, please see our responses below to *"Consequences if requirements are not met"* and *"Severance pay"*.

Lastly, upon the ordinary termination, the employer is obligated to grant the employee the right to seek new employment during the notification period. Accordingly, an employee will be allowed at least two hours per day to find new employment (unless the employment is terminated immediately by way of paying the employee an amount corresponding to his/her notification period, as indicated in our explanations below in *"Consequences if requirements are not met")*.

2. Extraordinary Termination

In the presence of just reasons, Turkish law provides employers the right to dismiss an employee immediately without having to comply with any notification periods and, in certain instances, without having to pay any severance pay as further detailed in our responses to "Severance pay" below.

Turkish law does not provide an exhaustive list of just reasons for extraordinary termination but the following reasons indicated under the law are considered to give guidelines as to what constitutes a just reason:

(i) Health reasons;
(ii) Acts of the employee breaching moral principles and principle of good faith or similar situations;
(iii) Force Majeure; and
(iv) Apprehension or detention of the employee

Please note that the distinction based on the applicability of employment security provisions explained above for an ordinary termination is also applicable for an extraordinary termination.

Please see our responses below regarding *"Consequences if requirements are not met"* for further details of the legal ramifications of an unjust termination (i.e. where the termination is absent of the alleged just reasons).

Form

As a matter of validity, notice *(bildirim)* for dismissal must be in writing and signed by the employee to confirm they have received such notice. In addition, it is advisable to have two witnesses present at the time of notice to evidence a possible refusal by the employee to take receipt of the termination notice.

It is also advisable to send an official notification *(tebligat)* to the employee's registered address of residence following due receipt of the termination notice (or refusal of the same) to ensure that the employee is duly notified of the termination. For such purpose, specific rules under the notification procedures legislation shall become applicable.

Lastly, please note that an employee may not be terminated due to his/her performance or behaviour without granting such employee a right to defend himself/herself.

Notice period

1. Ordinary Termination

For an ordinary termination explained above, the notice periods depend on the length of employment. The relevant periods are as follows:

(i) For employees whose term of employment is shorter than six months, the statutory period is two weeks;
(ii) For employees whose term of employment is between six months and one and a half years, the statutory period is four weeks;
(iii) For employees whose term of employment is between one and a half years and three years, the statutory period is six weeks; and
(iv) For employees whose term of employment is longer than three years, the statutory period is eight weeks.

In principle, Turkish law allows for the employer and the employee to agree on extended notification periods. However, the Turkish Court of Appeals has made at least one ruling where it has stated that an employee, upon his/her termination of the employment, would only be bound to observe the periods indicated above (and not those agreed under the employment agreement). Therefore, if the employee terminates his/her employment, he/she may not be required to observe a notification period longer than those prescribed under the law (as indicated above).

2. Extraordinary Termination

For an extraordinary termination, a notice period *does not* need to be observed by the employer (i.e. the dismissal will be effective immediately).

However, in an unjust termination (where the alleged just reasons for termination do not exist), compensation pertaining to the notification periods will be applicable. For further details, please see below our responses to *"Consequences if requirements are not met"* below.

Involvement of works council

Not available.

Involvement of a union

A union will be involved in the dismissal of employees if collective employment agreements have been entered into by employees' unions and employers (or employers' unions) that foresee the establishment of certain bodies (composed of the representatives of labour unions and the employers) (e.g. disciplinary boards) authorized to make advisory opinions on dismissals. While such advisory opinion is not directly binding on the employer, Turkish courts may still determine that a termination that goes against such opinion is an invalid termination.

Approval of state authorities necessary

Not available.

Collective redundancies

Collective redundancy is recognized under Turkish law and the relevant provisions will be applicable when the employment of the following numbers of employees are terminated on the same day or within a period of one month following the same procedures and principles as termination with a valid reason:

(i) Ten employees in a workplace where 20–100 employees are employed;
(ii) 10% of employees in a workplaces where 101–300 employees are employed; or
(iii) 30 employees in a workplace where at least 301 employees are employed

Collective redundancy is subject to judicial review upon petition by the employees. The judicial review will determine whether the collective redundancy has been implemented for valid reasons and the necessary conditions have been satisfied. For such purposes, the court will make use of data from all types of workplace records and expert opinions, and will reach its own decision

Certain procedures must also be followed for the due implementation of a collective redundancy. To elaborate, where a collective redundancy is in question, the employer is obligated to inform the regional Directorate of the Employment and Social Security Ministry and Turkish Employment Office at least 30 days before the implementation of such collective redundancy. In the event that the employer does not inform the relevant state institutions, it will incur an administrative fine of TL 857 (app. EUR 141) (as of 2019) for every employee affected by the collective redundancy.

It should also be noted that the notification period for the termination starts within one month of having informed the relevant state institution. Without such notification, notification periods for the termination cannot be duly initiated.

Summary dismissals

Please see above our explanation regarding extraordinary termination.

Consequences if requirements are not met

There are different consequences under Turkish law for an ordinary termination and an extraordinary termination in which a valid or just reason is absent. These are as follows:

1. Ordinary Termination

1.1 Where the employment security provisions apply to the dismissed employee

In this scenario, the notification periods indicated above must be observed by employers when terminating an employee. As such, the employer would be obligated to either

(i) Allow the employee to work during the notification period (duly paying him/her for the work performed during such the period); or
(ii) Pay the amount corresponding to the notification period if the employer wishes to terminate the employee immediately.

In addition to this, in case of a termination, the employee may initiate a "lawsuit for re-instatement" *(işe iade davası)* claiming that such dismissal is **not** based on one of the valid reasons explained above.

In such a lawsuit, if the court determines that the ordinary termination is absent of a valid reason, it will render a judgement about:

(i) The re-instatement of the employee to the position he/she held prior to termination; **and**
(ii) The amount of compensation the employer is obligated to pay to the employee in case the employer will not re-instate the employee.

If the employer re-instates the employee, it is obligated to pay to the employee a (maximum) amount equal to four months' salary as well as any other receivables of the employee, which is meant to compensate the employee for the duration of the lawsuit during which the employee did not work.

If the employee chooses not to re-instate the employee, it is obligated to pay compensation to the employee equal to

(i) Four months' salary as well as any other receivables of the employee, which is meant to compensate the employee for the duration of the lawsuit during which the employee did not work; **and**
(ii) Four to eight months' salary as compensation for undue termination.

In both scenarios, the salary taken as the basis for the compensation amount is the monthly salary the employee received immediately prior to termination.

Lastly, amounts corresponding to unused leave periods (if any) will also become payable to the employee.

1.2 Where the employment security provisions do not apply to the dismissed employee

In this case, the employer must observe the notification periods or make the corresponding payments as indicated above in our responses to paragraph 1.1 *(Where the employment security provisions apply to the dismissed employee).*

In addition to the above, if the employment has been terminated in bad faith (e.g. solely to avoid paying certain receivables to an employee, due to the employee's involvement with a labour union etc.), the employer would be obligated to pay a bad faith compensation. Such compensation is equal to three times the amount pertaining to the notification periods of the employee.

Lastly, amounts corresponding to unused leave periods (if any) will also become payable to the employee.

1.3 Severance Payment

Any employee who has been employed for at least one year will benefit from severance payment upon ordinary termination of his employment relation by the employer regardless of whether the employee benefited from employment security provisions. For further details, please see our responses to *"Severance pay"* below.

2. Extraordinary Termination:

2.1 Where the employment security provisions apply to the dismissed employee

In this scenario, as the dismissal will be effective immediately, *in the absence of such just cause* for termination, the employer would be obligated to compensate the employee for the amount pertaining to the notification periods (as indicated above).

Furthermore, the employee will also be entitled to initiate a lawsuit for re-instatement. Please see our responses above to 1.1 *(Where the employment security provisions apply to the dismissed employee)* regarding the possible outcomes of such lawsuit.

Lastly, amounts corresponding to unused leave periods (if any) will also become payable to the employee.

2.2 Where the employment security provisions do not apply to the dismissed employee

In this case, as the dismissal will be effective immediately, *in the absence of such just cause* for termination, the employer would be obligated to compensate the employee for the amounts pertaining to the notification periods (as indicated above).

The bad faith compensation indicated in our responses above to 1.2 *(Where the employment security provisions do not apply to the dismissed employee)* are also be applicable in this case.

Lastly, amounts corresponding to unused leave periods (if any) will become payable to the employee.

2.3 Severance Payment

If the employee was employed for at least one year, he/she will benefit from a severance payment upon an unjust termination of his/her employment regardless of whether he/she benefited from employment security provisions.

For further details, please see our responses to *"Severance pay"* below.

Severance pay

As indicated above, in an *ordinary termination,* employees who have worked for the employer in question for at least one year, will be entitled to severance pay regardless of whether they benefited from employment security provisions prior to termination and even if there was a valid reason for their dismissal.

As for an *extraordinary termination,* employees who have worked for the employer in question for at least one year will be entitled to severance pay if they were terminated based on any grounds other than "acts breaching moral principles and principle of good faith or similar situations". Further, an employee will be entitled to severance pay at any rate if he/she was terminated on an unjust basis (i.e. if the alleged just reasons for termination do not exist).

Regarding the amount of the severance payment, please note that upon termination of the employee, the employee, in principle, is entitled to 30 days' pay for each year of employment prior to termination. However, this payment is subject to a ceiling of approximately TL 6,017.60 (app. EUR 987) (subject to an inflation markup bi-annually). That is to say that, even if the salary of the employee corresponding to 30 days was higher than the said amount of TL 6,017.60, he/she may only receive this amount as severance payment for each year of employment.

For calculation of the severance pay, the gross salary will include tax and security premiums deducted from the salary as well as additional moneys and monetary rights provided to the employee, including bonuses, child support payments, and monetary assistance in relation to health and transportation to and from work.

Non-competition clauses

During the term of the employment agreement, employees are under a non-compete obligation as per the terms of Turkish law.

For any non-compete obligations to prevail after the employment relationship, they must be limited by time and geographical scope so as not to prejudice the economic well-being of the employee.

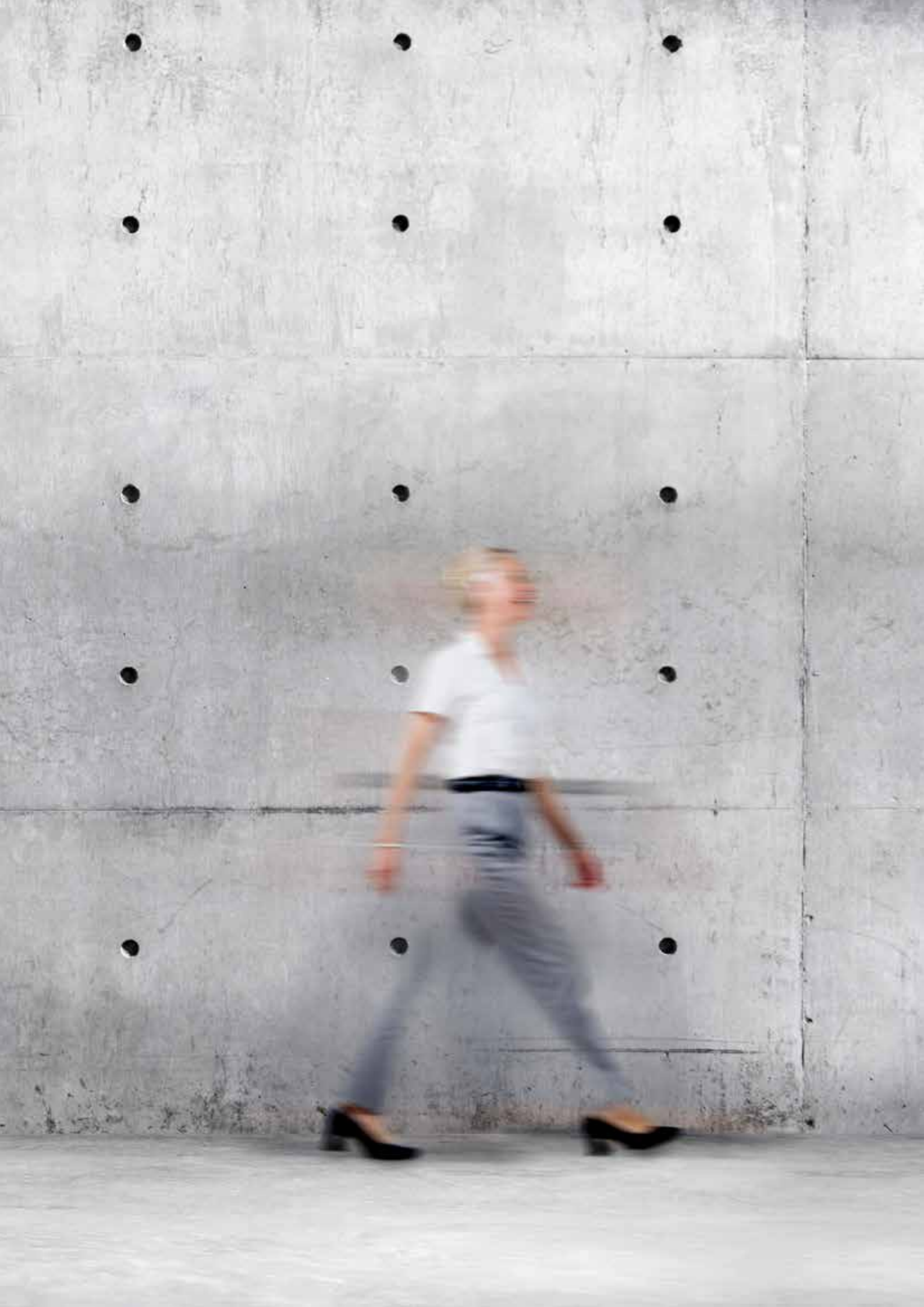
From a timing perspective, Turkish law, in principle, allows for a two year period as a valid non-compete term starting from the termination of the employment relationship. As for the geographical scope, Turkish law requires that the non-compete obligation is limited to certain regions or cities where the employment of the employee by a competitor would be most detrimental for the initial employer. Where a non-compete obligation is found to be in excess of the said limitations, it will be limited by Turkish courts. Accordingly, in a dispute, the court will not take into account the contractual non-compete obligation but determine the scope of the non-compete obligation that could duly be agreed between the parties and proceed on that basis.

There is no specific regulation or established precedent under Turkish law regarding a non-compete in favour of a third person who is not the actual employer of the employee in question (e.g. the parent company of the employer). As such, it is likely that a non-compete obligation in favour of such third person would be unenforceable under Turkish law.

Miscellaneous

It should be noted that Turkish courts are extremely employee friendly. Therefore, complying with the necessary principles and procedures with regard to a termination is essential. For this purpose, all the relevant documents (e.g. the employment agreement) must be reviewed very carefully and all notices and notifications (i.e. the termination notices/notifications) must be prepared in a diligent manner and duly served.

Lastly, Turkish employers are obligated to treat employees equally and where a termination has been effected on a discriminatory basis, an employee may claim a discrimination compensation *(ayrımcılık tazminatı).* Such compensation will equal four months' of the employee's salary when subject to discrimination as well as any further receivables the employee should have received had he/she not been subject to such discrimination.



Ukraine

Reasons for dismissal

Generally, it is difficult to terminate an employee without the employee's consent under Ukrainian law. Valid grounds for termination may be divided into those related to the employee's breaches of employment duties ("termination with cause on the part of the employee") and those not related to the employee's actions ("termination without cause"). Termination is not generally allowed while an employee is on annual or sick leave.

An employer may unilaterally terminate an employee with cause in the following cases:
— systematic unjustified failure to fulfil employment obligations;
— unjustified absence from work for more than three hours during one day;
— appearance at work while under the influence of alcohol or drugs; or
— misappropriation of property;
— a single gross violation of employment obligations;
— actions of a company head causing delayed or reduced payment of wages;
— immediate subordination to a related party contrary to the Ukrainian law "On Preventing Corruption";
— actions of an employee entrusted with company assets (cash or property) that result in the loss of the employer's trust; or
— immoral conduct.

Termination in most of these cases is regarded as a disciplinary sanction and must be imposed following special procedures prescribed by law. An employer may terminate an employee without cause in the following cases:
— changes in organisation of work and production (redundancy);
— employee unsuitability for the job or position due to lack of qualification or poor health conditions;
— reinstatement of an employee who previously occupied the position;
— absence from work due to sickness for more than four continuous months;
— recruitment by the army or mobilization of an employer-natural person during a special period; or
— the employee's unsuitability for the job or position is discovered within his/her probation period.

Except than when an employee is absent for four months due to sickness, termination without cause is only allowed if the employee cannot be transferred to another position or job.

Form	In all cases, a decision regarding dismissal must be conveyed in the form of a written order and signed by a duly authorised representative of the employer. The employee is to be provided with a copy of the dismissal order on the last day of his/her employment.
Notice period	This depends on the grounds for dismissal. The statutory minimum notice period is two months if the case involves redundancy. In certain cases (e.g. where there has been a single gross violation of employment duties), notification is not required
Involvement of works council	Not applicable unless provided for by a collective bargaining agreement or the internal policies of the employing company.
Involvement of a union	In cases involving redundancies, the employer must notify and consult with the trade union at company level (if such a union operates at the employing company). In some cases, moreover, the employer is required to obtain prior consent from the trade union at company level (if one operates) to terminate the employment of trade union members. Such cases can include redundancy (unless the redundancy is caused by the liquidation of the employing company).
Approval of state authorities necessary	Not applicable.
Collective redundancies	Currently there are no specific rules for collective redundancies in Ukraine, i.e. the redundancy procedure is the same irrespective of the number of people being made redundant. In cases of redundancy, the employer must comply with the following notification and consultation requirements: — it must inform the trade union at company level (if one such operates within the company) about the redundancies being considered. The notice must be given within three months of the decision on the redundancies being taken, but no later than three months before the redundancies are expected to take place. Given these time requirements, it is advisable to notify the trade union promptly after the decision on redundancies has been taken; — it must notify give the employees notice of the redundancy two months in advance; — in case of collective redundancy (see definition below), it must notify the State Employment Centre (in this text, the 'Agency') notice of any redundancies being considered, two months in advance;

The applicable law defines "collective redundancy" as a one-time dismissal or series of dismissals following a decision by the employer made within (i) one month, if

— ten or more employees have been dismissed from a company employing 20 to 100 individuals; or
— 10% or more of the workforce have been dismissed from a company employing 101 to 300 individuals; or

(ii) three months, if

— 20% or more of the workforce have been dismissed, irrespective of the total number of staff.

Summary dismissal

Generally, dismissal without notice by an employer is only possible with respect to certain categories of employees (i.e. the general management of the company) in cases where there has been a serious breach of duty. Also, dismissal without cause and without notice is possible for employees qualifying as company officials (e.g. director) if their corporate mandate is terminated.

Consequences if requirements are not met

Employees are reinstated, and/or awarded continued payment of salary.

Severance pay

A statutory severance payment of one average monthly salary is only required if the decision regarding the dismissal has been taken by the employer on the following grounds:

— changes in organisation of work and production (redundancy); or
— employee unsuitability for the job or position; or
— reinstatement of an employee who previously occupied the position.

When dismissing a company official in connection with the termination of his/her corporate mandate, a statutory severance payment of six times the employee's average monthly salary must be paid.

In all cases of dismissal, an employer must pay a terminated employee all payments due under his/her employment agreement (e.g. salary and compensation for any of the employee's annual vacation accumulated but unused during his term of employment with the employing company). Voluntary severance payments are also subject to negotiations between employer and employee. These are especially common if the justification for a dismissal may be doubtful.

Non-competition clauses

Post-contractual non-competition covenants are not enforceable in Ukraine.

Miscellaneous

Certain categories of employee cannot be dismissed by an employer without their prior consent. These "protected" employees include:

— pregnant women; and
— women with children under the age of three, or under the age of six if a registered medical practitioner certifies that home care is necessary; and
— single parents or the legal guardians of a child under the age of 14 or a handicapped child.

The law only allows "protected" employees to be dismissed if the employer is liquidated without legal succession. Under these circumstances, the law requires that they be paid their average salaries for three months following the termination.

United Kingdom

Reasons for dismissal

A claim for unfair dismissal can be made if the reason for dismissal was not one of a number of 'fair reasons' (e.g. conduct, capability or redundancy).

Most employees need a particular length of service to bring a claim for unfair dismissal. At present this is two years' service. However, all employees can bring a claim for unfair dismissal if the reason for dismissal is deemed to make the dismissal automatically unfair (e.g. for whistleblowing or for family reasons such as dismissals for reasons connected to pregnancy, parental leave, or requests for flexible working).

Even if the dismissal is deemed to be for a fair reason, to avoid a successful claim for unfair dismissal the employer must still follow a fair procedure and act reasonably in dismissing the employee.

If the reason for the dismissal involves discrimination against the employee (because of a protected characteristic such as sex, race, age or disability), employees may make a discrimination claim irrespective of their length of service.

Employees with two years of service have the right to request a written statement of reasons for dismissal. Employers must provide the statement within 14 days of the request.

Irrespective of length of service, employees dismissed during pregnancy or statutory maternity or adoption leave are automatically entitled to a written statement of reasons for dismissal without having to request it.

Form

Employees may be dismissed orally or in writing. In misconduct and capability dismissals the ACAS Code of Practice states that it is good practice to invite the employee to attend a meeting to explain their version of events. A letter should then be sent to confirm the reason for the dismsisal and the date of dismissal in writing to avoid any dispute over the effective date of termination. A failure by the employer to follow the Code of Practice does not give an employee a remedy for breach. However in the event that an unfair dismissal claim is successful and there has been non-compliance with the Code the tribunal has the power to increase the award of compensation by up to 25 %.

Notice period	There is a statutory minimum notice period of between one and 12 weeks, dependent on length of service. The contract of employment can provide for a longer notice period. Failure by the employer to comply with the contractual notice period can result in a claim for 'wrongful dismissal'.
Involvement of works council	No general legal requirement for involvement, but staff forums may be involved in the case of collective redundancies (see below).
Involvement of a union	No involvement normally other than in the case of collective redundancies (see below).
Approval of state authorities necessary	Not necessary.
Collective redundancies	If 20 or more employees are proposed to be made redundant within a period of 90 days or less, consultation with employee representatives (who may be trade union representatives) must begin at least 30 days (or 45 days if 100 or more employees are to be made redundant) before the first dismissal takes effect. Additionally, employers are obliged to notify the Secretary of State (for Business Innovation and Skills) where they are proposing to dismiss as redundant 20 or more employees within a 90-day period. The Secretary of State must receive notification at least 30 days (or 45 days if 100 or more employees are to be made redundant) before the first dismissal takes effect. A copy of the notification must also be provided for the employee representatives.
Summary dismissals	Summary dismissal (dismissal without notice) is only lawful where the employee has committed a breach of contract that is sufficiently serious to entitle the employer to treat the employment contract as terminated with immediate effect. A typical example is where the employee has committed gross misconduct.
Consequences if requirements are not met	The employee may have various claims, such as an unfair dismissal claim. Most employment-related claims are made in employment tribunals.

Severance pay

The employment contract may provide for the employer to make a payment in lieu of notice, for example, equal to the salary that the employee would have earned during the notice period. If this is not provided for in the contract, the parties can agree for such a payment to be made, for example, as 'damages' for breach of contract.

If an employee with two years' continuous service has been made redundant, he will be entitled to a statutory redundancy payment. The amount is calculated according to a statutory formula based on the employee's age, length of service and weekly pay (capped at GBP 508 as at April 2018), up to a maximum of GBP 15,240 (as at April 2018). The employment contract may provide for an enhanced redundancy payment.

If the employee has been unfairly dismissed, he may be able to claim a 'basic award' calculated according to the same formula as the statutory redundancy payment (but employees cannot usually recover both a statutory redundancy payment and a basic award), and a 'compensatory award' is lower of one year's salary and GBP 83,682 (as at April 2018).

Employees who argue that they were dismissed for making a protected disclosure (whistleblowing) are not restricted by the statutory cap referred to above. Similarly the statutory cap does not apply where the dismissal was related to a prohibited ground under the Equality Act 2010. In these scenarios the potential awards can be significant.

Non-competition clauses

Restrictive covenants will be void for unlawful restraint of trade and so are unenforceable unless they protect the legitimate business interests of the employer and go no further than is necessary to provide that protection, in terms of activity, duration and geographical area. However they are widely used in senior level contracts. It is always recommended to take advice on tailoring such a clause for each individual employee and to ensure that when employees are promoted or their role changes that the restrictions are suitably updated.

Miscellaneous

Employers may wish to avoid a potential dispute over a termination of employment by obtaining a waiver of rights from an employee in consideration for a termination payment. In the UK this agreement is referred to as a settlement agreement and there are a number of statutory formalities to include before such an agreement is enforceable, including the requirement that the individual takes independent advice on the terms of the agreement. There are also risks attached to making an offer to an employee to enter into a settlement agreement and therefore legal advice should be taken before doing so.

Managing Directors

Austria

Reasons for dismissal	Company may revoke the appointment/terminate the service contract without cause, but in compliance with applicable notice periods and termination dates.
Form	Valid shareholder's resolution on revocation of appointment as managing director and on termination of the service contract is required. Managing director has only to be notified in writing if so agreed in the service contract.
Notice period	Revocation of appointment: possible without notice. Termination of the service contract: Austrian law does provide statutory minimum notice periods and dates, rarely collective agreements and their notice periods and termination dates apply, unless a more favourable contractual agreement exists. Managing directors generally have fixed term contracts or long contractual notice periods.
Involvement of works council	No involvement.
Involvement of a union	No involvement.
Approval of state authorities necessary	Not required.
Summary dismissals	A summary dismissal ('*Entlassung*') does not require observance of any particular notice periods, but must be issued without undue delay. Summary dismissals are possible for good reasons/serious breach of duty, as regulated by law. Disloyalty, Untrustworthiness or persistent refusal to carry out one's contractually agreed duties are typical reasons for a summary dismissal.
Consequences if requirements are not met	If there is no valid shareholder resolution, the revocation of appointment as managing director will be invalid. It is possible for the revocation to be valid, but for the termination of the service contract to be invalid. If this is the case, the managing director is entitled to continued payment of salary and adequate employment.
Severance pay	Austrian statute distinguishes between two severance pay scheme; one is applicable to all employment relationships established prior to 1 January 2003 ('old model'), and the other to employment agreements signed after that date ('new model').

The old severance pay scheme required the employer to pay a sum based on the length of service of the employee at the end of the employment relationship unless the employee terminated the contract him- or herself, or if he or she was dismissed without notice for good cause (summary dismissal). After three years of employment, the employee would – in case the employment relationship were terminated – be entitled to severance pay in the amount of two monthly salaries. After 25 years, he or she would be entitled to twelve monthly salaries.

The new severance pay scheme requires the employer to pay a sum of 1,53 % of every monthly salary to an employee severance fund (*'Betriebliche Vorsorgekasse'*). At the end of any given employment, the employee may then either request disbursement of the collected amount or to leave it in that fund for further investment.

Non-competition clauses

Non-competition clauses are only valid insofar as they are concluded for the duration of no more than one year after the termination of employment, are restricted to the employer's line of business and if the employee's monthly income is above a certain threshold at the end of the employment relationship (2018: EUR 3.420 for contracts concluded after the 29th December 2015) Also, contractual penalties are limited by law to an amount of six net monthly remunerations (without taking into account the 13th and 14th annual salary). If the parties agree on such a contractual penalty, the right to observe the non-competition clause or the compensation of any further damage is excluded.

A non-competition clause may not represent an undue hardship on the employee's career when weighed against the employer's justified business interests. Judges may limit the scope of a clause, or the contractual penalty to be paid when violating the law. Non-competition clauses are generally rendered void when dismissals are expressed by the employer

Miscellaneous

Not applicable.

Belgium

According to Belgian law, company directors operate on a self-employed (independent) basis. In certain company forms, the board of directors can also delegate the powers related to the day-to-day activities of the company to a manager in charge of daily management. This manager can be a third party or a director of the company. If a director is put in charge of the daily management, this mandate is called "managing director".

The daily management can be performed either on a self-employed basis (with or without a separate service agreement) or as an employee. Essential for the daily management as an employee is the relationship of subordination (i.e. power to decide what an employee must do and how it must be done). We refer to part 1 of this Guide for all aspects of the employment contract.

In this Annex, we examine the situation of a company director as well as a self-employed manager in charge of daily management. Both mandates can either be performed directly by a natural person or through a legal entity. In case of the latter, the legal entity must appoint a natural person as legal representative who exercises the mandate and duties in the name and for the account of the legal entity.

Reasons for dismissal

The mandate of a director of a public limited company ('NV'/'SA') can in principle be revoked "ad nutum" (immediately, without indemnity and without having to give a reason for the dismissal). In a NV/SA this is a rule of Belgian public order. In a private company with limited responsibility ('BVBA'/ 'SPRL'), revocation "ad nutum" of the mandate is the general rule unless (i) the bylaws stipulate otherwise, (ii) the mandate is "ad nominatim" stipulated in the bylaws, or (iii) unless the dismissal is regulated in a separate agreement (as long as it does not contradict the bylaws).

For daily management, the procedure for the nomination and dismissal can be stipulated in the company's bylaws, but in practice it is often regulated in a separate service agreement. If the procedure for dismissal is not specified, the mandate can be revoked "ad nutum" and no reason need to be given.

Form

The mandate of a director can be revoked by decision of the General Shareholders' Meeting. The mandate of a manager in charge of the daily management can be revoked by decision of the board of directors.

The revocation of both a director or a manager in charge of daily management must be published in the Official Belgian State Gazette ('Belgisch Staatsblad'/'Moniteur Belge').

Notice period	As stated above, the mandate of a director of a NV/SA can be revoked "ad nutum", without any notice period. In a BVBA/SPRL the same principle applies, unless the bylaws or a separate agreement stipulate otherwise. For the daily management, the procedure for the nomination and dismissal can be stipulated in the company's bylaws or in a separate service agreement. If nothing is specified therein, the mandate for the daily management can be revoked without any notice period.
Involvement of works council	In companies listed on the stock market the departure fee of the executive directors, the members of the board committee and other persons in charge of daily management may not exceed 12 months' remuneration. The Belgian Company Code permits derogations from this rule, provided that the Works Council is notified beforehand and the prior consent of the General Shareholders' Meeting is obtained. If a departure fee of more than 18 months' remuneration is granted, a motivated advice from the Compensation Committee is also required.
Involvement of a union	No involvement.
Approval of state authorities necessary	Not required.
Summary dismissals	Not applicable.
Consequences if requirements are not met	A company is bound by the actions of a dismissed company representative until and unless such a dismissal has been officially published in the Official Belgian State Gazette. However, if this protection is beneficial to third parties, it cannot be invoked by third parties that know that the company representative has already been dismissed.
Severance pay	There is no mandatory severance pay, unless stated otherwise in the bylaws of the company. Parties may agree upon severance pay in a separate agreement (when such an agreement is permitted).
Non-competition clauses	It is possible to agree upon a non-competition clause. If the scope of the clause is too wide (according to its geographic area, its length, or the activities it concerns), its validity may be challenged or the clause may be mitigated by the court.
Miscellaneous	Not applicable.

Bosnia and Herzegovina

It should be noted that in Bosnia-Herzegovina, the business activities and actions of a company are governed by its management. Under the law of Business Entities FBiH, management may consist of a company director, or of a company director and one or more executive directors. Under the law of Business Entities of the Republika Srpska, a limited liability company may have a director or board of directors.

Both in the Federation of Bosnia and Herzegovina and in Republika Srpska, directors can either be employed by the company under a standard employment contract or under a "special" type of contract regulating all their obligations, rights and engagement conditions, including termination. If the "special" contract, i.e., management contract, is concluded, then standard labour law principles do not apply. In addition, the Labour Law in FBiH provides that, even if a standard employment contract is concluded with the director/executive directors, certain sections (provisions) of the named law do not apply to it (i.e., working time, annual leave and absences, employee protection, salary and salary remuneration and dismissal).

Therefore, in Republika Srpska, general labour law principles will apply to a director unless the director has a "special" contract, i.e., a management contract. In the Federation of Bosnia and Herzegovina, the mandatory provisions on dismissal do not apply to directors, irrespective of whether an employment contract or a management contract is concluded.

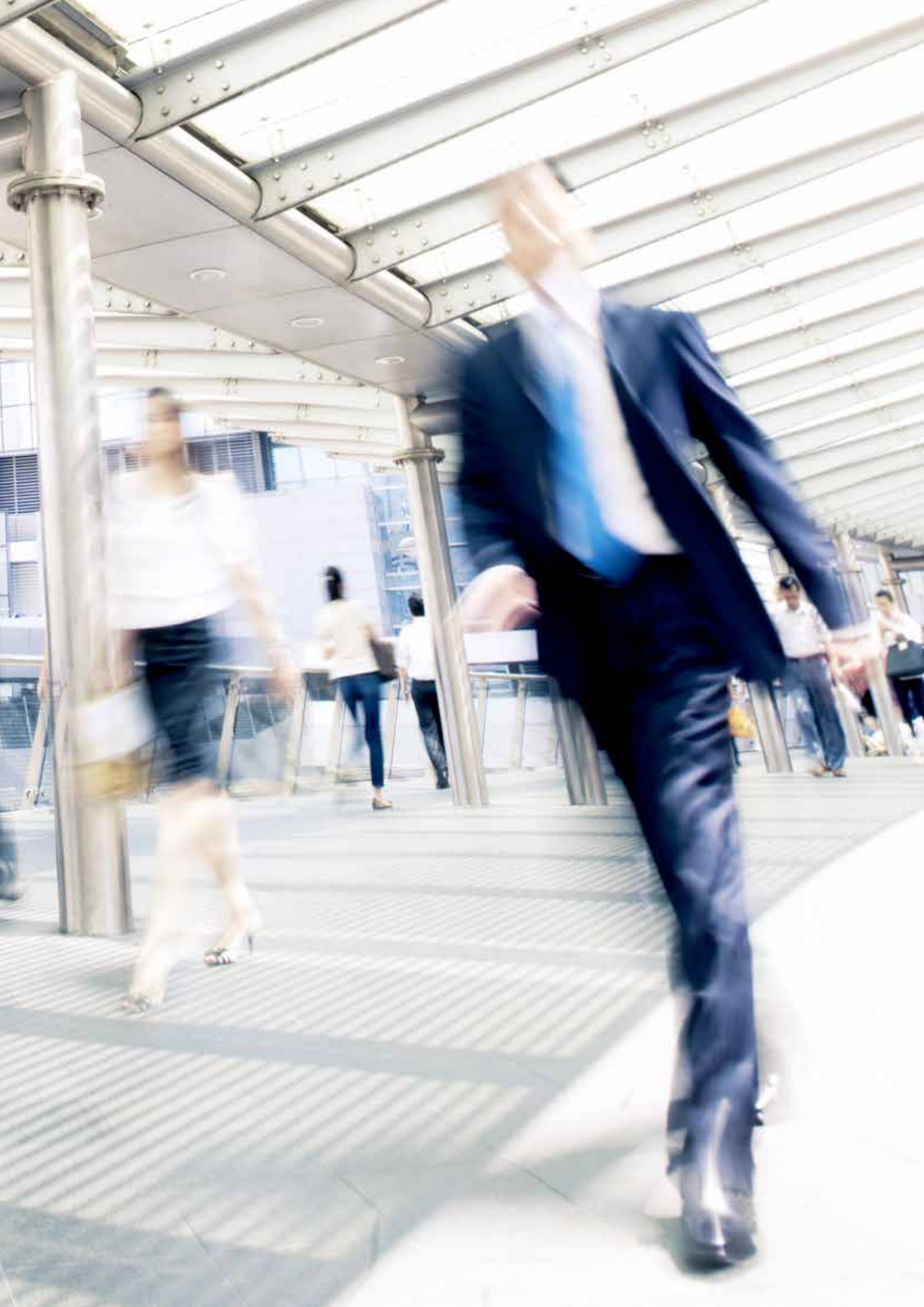
The table below deals with directors who have concluded a "special" contract in Republika Sprska or an employment contract or management contract in the Federation of Bosnia and Herzegovina. Directors with standard employment contracts in Republika Srpska are dealt with in the "Dismissal of employees" table.

Reasons for dismissal	The labour law principles do not apply to directors with "special" contracts, i.e., management contracts in Republika Srpska, and to directors with either a management contract or an employment contract in the Federation of Bosnia and Herzegovina. In these cases, the management contract will set out the reasons for dismissal.
Form	The form will depend on the provisions of the management contract, although it is highly likely that notification of dismissal will be required to be in writing and delivered to the director.
Notice period	It depends upon the provisions of the management contact.
Involvement of works council	No involvement.

Involvement of a union	No involvement.
Approval of state authorities necessary	Not required.
Collective redundancies	Not applicable.
Summary dismissals	Not applicable.
Consequences if requirements are not met	Depends on the provisions of the special contract.
Severance pay	If the director has a special contract, any severance payment will be as provided for in such contract. This will usually provide for a larger sum.
Non-competition clauses	Under the Law of Business Entities of FBiH the company director and executive directors cannot, without approval of the relevant corporate body as per the company's statute, in their position as director/executive directors or as employees of another company, nor as independent contractors, participate in activities which are or could be in a competitive relation to the company's business activities. By the Law of Business Entities of Republika Srpska, members of the board cannot directly or indirectly be involved with another business entity, which performs competitive business activities, unless with provided authorization. In both FBiH and Republika Srpska either by statute or an establishing act of the company, the non-competition clause can be prolonged for a period after the duty of a director/executive director has ceased, but for no longer than two years. As the parties negotiate the terms of the special contract, they may agree to the inclusion of non-competition clauses.
Miscellaneous	Not applicable.

Bulgaria

Reasons for dismissal	A company may revoke the appointment of a managing director and terminate his service contract without cause at any time. Managing directors are hired under service contracts (called management and representation contracts), and not employment contracts.
Form	Valid shareholders' resolution on revocation of appointment as managing director. Termination of the contract must be in writing.
Notice period	Revocation of appointment by the company: possible without notice. A managing director can request that the company release him from office. If the company fails to do so within one month (for limited liability companies) or six months (for joint stock companies), the managing director is entitled to deregister himself as a managing director from the Bulgarian Commercial Register, regardless of the lack of revocation of appointment.
Involvement of works council	Termination of the service contract: no statutory regulation of the notice period; depends on the agreement between the parties.
Involvement of a union	Not applicable.
Approval of state authorities necessary	Not applicable.
Summary dismissals	Not applicable.
Consequences if requirements are not met	Not applicable. The revocation of an appointment as managing director is invalid without a valid shareholder resolution.
Severance pay	No statutory severance pay. Severance pay is subject to negotiation.
Non-competition clauses	Unless explicitly waived by the company, non-competition restrictions apply to managing directors for the period of their mandate. Post-contractual non-competition clauses are not explicitly regulated by statute. Such covenants may be agreed upon in a service contract but their enforceability may be arguable.
Miscellaneous	Not applicable.



Croatia

It should be noted that the title 'managing director' is not recognised under the Croatian Companies Act or other relevant applicable legislation. The Croatian Companies Act recognises only a 'director', who is authorised to represent the company and obliged to be registered as a member of the management board with the respective commercial court.

A managing director need not to have an employment agreement with the company, or any other type of agreement, in order to be able to represent the company.

Where a managing director has a managing/service agreement which falls under the regulation of Croatian obligatory law, only the provisions of the managing/service agreement apply. If aspects of the relationship are not dealt with in the managing/service agreement, the relevant provisions of the Croatian Obligations Act will apply.

Where a managing director does not have any employment or managing/service agreement with the company, he shall be treated as a member of the management board only.

The table below sets out the position under Croatian law with respect to the managing directors of a limited liability company, with and without service agreements.

Reasons for dismissal	No special reasons required (unless otherwise specified within the statute of the company or the contract itself). Where the managing director has a service agreement, the provisions of that service agreement (and consequently the Croatian Obligations Act) will apply. If the managing director is a member of the management board according to the statute of the company (and not only appointed by resolution of the shareholders), the company statute may set out that revocation is only possible for special reasons.
Form	Valid shareholders' resolution on revocation of appointment as member of the management board. Registration of this revocation with the court registry. Termination of the service agreement in the same form in which the agreement has been signed (Obligations Act provisions shall apply).

Notice period	According to the Croatian Companies Act, the appointment of a director of the company can be revoked at any time without notice (for no special reason). Some restrictions (not strictly defined) can be set out within the statute of the company. If the director has a service agreement, the notice period will be as set out in the service agreement.
Involvement of works council	No involvement.
Involvement of a union	No involvement.
Approval of state authorities necessary	Respective commercial court brings a resolution on registration of the resolution in the court registry. The court's resolution and registration are declaratory.
Collective redundancies	Not applicable.
Summary dismissals	Not applicable.
Consequences if requirements are not met	If there is no valid shareholder resolution, the revocation will be invalid and the court will refuse to register it in the court registry. Where the managing director has a service agreement, he could claim: (i) compensation for damages; or (ii) fulfilment of contractual obligations in accordance with the provisions of the Croatian Obligations Act.
Severance pay	Severance pay may be specified in the managing director's service agreement (this is usually a large sum).
Non-competition clauses	The managing director, as a member of the management board, is prohibited from doing the following without the approval of the supervisory board (or the shareholders, if the company does not have a supervisory board): (i) being a member of the supervisory board or management board of another company with the same business activities; or (ii) performing business activities equal to those of the company for his or somebody else's account; or (iii) using the company's premises for performing business for his own or somebody else's profit. The company is entitled to compensation for any damage caused.
Miscellaneous	Not applicable.

Czech Republic

Reasons for dismissal	An appointment as managing director (as a statutory body or a member of a statutory body of an entity, i.e. not as an employee) may be revoked without stating any reason.
Form	A valid shareholder resolution at general meeting is required. There must be a simple majority of shareholders present, unless agreed otherwise or provided otherwise in the relevant company's statutory documents. Apart from cases when entities have a sole shareholder, revocation of an appointment as managing director must be on the programme of the invitation to the general meeting. If not, the appointment may only be revoked if all shareholders are present and agree to change the programme to include the revocation.
Notice period	None.
Involvement of works council	None.
Involvement of a union	None.
Approval of state authorities necessary	Revocation of appointment as managing director must be filed in the Commercial Register as soon as possible. The Commercial Register may review the revocation in order to verify whether the revocation was done in accordance with applicable laws and the relevant entity's statutory documents.
Collective redundancies	Not applicable.
Summary dismissals	Not applicable.
Consequences if requirements are not met	Invalidity of revocation.
Severance pay	No statutory severance pay.
Non-competition clauses	Not applicable.
Miscellaneous	Not applicable.

France

Reasons for dismissal	The company may generally revoke the appointment of the managing director without cause, unless stated otherwise in the by-laws of the company or the resolution of appointment. However, a fair reason is legally required in certain forms of companies (e.g. the civil form or commercial forms such as certain limited companies ('SA') or limited liability companies ('SARL')).
Form	A resolution taken by the shareholders or board of directors, depending on the form of the company and the internal organisation of the management. The managing director must be notified in writing of the revocation, and the change of managing director must be published in a public Corporate Register.
Notice period	There is no notice period, except where one is provided by the by-laws of the company or in the resolution of appointment of the managing director.
Involvement of works council	No.
Involvement of a union	Not available.
Approval of state authorities necessary	Damages may be payable to the managing director. Their amount depends on the moral and material loss or prejudice suffered by the managing director.
Collective redundancies	Not applicable.
Summary dismissals	Not applicable.
Consequences if requirements are not met	Damages may mainly be claimed: — for lack of fair reason in companies where such a reason is legally required to revoke a representative; or — if the revocation is notified under hurtful circumstances (e.g. is very sudden and unexpected, or is publicly announced before the director is informed), or if the managing director has not been granted a reasonable opportunity to make his point before the decision to revoke him is made (absence of due process).
Severance pay	There is no mandatory severance pay for the capacity as director, unless stated otherwise in the by-laws of the company or in the resolution of appointment of the managing director.

Non-competition clauses	The terms of any non-competition clause must be agreed between the parties. If the scope of the clause is too wide (according to its geographic area, its length, or the activities it concerns), its validity may be challenged.
Miscellaneous	The director may also be an employee. In this case, a proper dismissal process will have to be implemented in addition to the revocation process and corresponding dismissal indemnities paid.

Germany

Reasons for dismissal

Limited companies ('GmbH'): the company may revoke the appointment/terminate the service contract without cause, unless the articles of association or the contract provide otherwise. Stock corporation companies ('AG'): revocation of appointment/termination of service contract only with important reason. Withdrawal of confidence by resolution of the shareholders may be an important reason to revoke the appointment as such, but it does not justify a termination of the service agreement.

Form

By valid shareholders' resolution or, if a supervisory board is established, a valid supervisory board resolution on revocation of appointment as managing director and on termination of the contract; both must be delivered to the managing director in written form (signed by the representative of the shareholders' meeting/supervisory board).

Note: a supervisory board is mandatory at companies with limited liability with more than 500 employees, and at stock corporations.

Notice period

Revocation of appointment: no statutory notice period (true for both limited companies ('GmbH') and stock corporation companies ('AG')). Termination of the service contract:

— GmbH: managing directors usually have fixed-term contracts or long contractual notice periods. However, the statutory minimum notice period is just four weeks, and may be extended depending on the length of service.
— AG: a managing director's service contract must be a fixed-term contract (max. five years, min. one year), and only summary dismissal – generally without notice – is possible.

Involvement of works council

No involvement.

Involvement of a union

No involvement.

Approval of state authorities necessary

Not required.

Collective redundancies

If one wants to be on the safe side the notification of the employment agency shall at least count in managing directors of a GmbH.

Summary dismissals

Generally only possible in case of a serious breach of duty. Notice must be delivered within two weeks of the shareholders' meeting/supervisory board's meeting at which the shareholders/supervisory board members were informed of the reasons which will justify the termination. Further, such meeting has to be arranged within due course if some of its members become aware of the aforementioned reasons.

Consequences if requirements are not met

The revocation of an appointment as managing director and/or termination of the service contract will be invalid. It is possible for the revocation to be valid, but the termination of the service contract invalid. In such cases, the managing director is entitled to continued payment of salary.

Severance pay

There is no statutory severance payment. Severance payments are subject to negotiation, but amounts granted by a supervisory board are limited by the criminal offence of 'fraudulent breach of trust'.

Non-competition clauses

Post-contractual non-competition clauses are possible. However, the permitted scope is not clearly fixed by statutory law but depends on the merits of the single case (somehow confusing case law). To avoid high risks the company shall promise to pay a reasonable compensation (at least half the fixed salary) during the term of the clause, the term shall not exceed a period of two years and the regional and factual scope shall be focussed on activities carried out by the manager during the last two years of service. There is no statutory limit which must not be exceeded by the compensation and other income generated by the former managing director during the term of the covenant not to compete, but the parties may agree on a limit according to the law applicable to employees.

Miscellaneous

Due to the sophisticated case law it is highly recommendable to not use standard forms but to seek advice of a specialist in the case given.

Hungary

Reasons for dismissal	A company may revoke the appointment and terminate the service contract or employment agreement without cause at any time.
Form	By valid shareholders' resolutions on revocation of an appointment as managing director and on termination of the service/employment contract; the resolutions must be delivered to the managing director.
Notice period	For an employment agreement, the statutory notice period applies, unless otherwise agreed by the parties. For a service contract, the regulations set out in it apply.
Involvement of works council	No involvement.
Involvement of a union	No involvement
Approval of state authorities necessary	Revocation of appointment as managing director must be filed in the competent court of registration for registration purposes.
Collective redundancies	Not applicable.
Summary dismissals	Any employment contract can be terminated in writing with immediate effect if the other party wilfully breaches, or commits a grossly negligent breach of, a material employment obligation, or otherwise demonstrates behaviour rendering the maintenance of their employment impossible. Notice of such an extraordinary dismissal must contain information regarding the reasons, the procedure and deadline for seeking legal remedy. The right to terminate the employment of an executive employee with immediate effect must be exercised within 15 days of gaining knowledge of the ground but within three years of its actual occurrence (or in the event of a criminal offence, up to the statutory limitation) at the latest.
Consequences if requirements are not met	For a single member company, if the shareholder's resolution on the revocation of appointment of the managing director has not been delivered to the managing director, it will not be in force. It is possible that the revocation is valid but the termination of the service or employment contract has not been carried out in a valid manner. If this is the case, the managing director is entitled to continued payment of remuneration in accordance with the service or employment agreement.

	The consequences of the unfair termination of the employment of an executive employee trigger the provisions of unfair termination in case of non-executives; however, the cap on the employee's liability is higher if the executive employee terminates his/her employment in breach of the Labour Code.
Severance pay	The statutory severance payment is payable unless agreed otherwise in the employment agreement of the parties. For a service agreement, no statutory severance payment is payable.
Non-competition clauses	Post-contractual non-competition clauses may be included in a service contract without limitation. In case of an employment agreement, the general rules of non-competition apply, i.e. a non-competition obligation requires a specific agreement and consideration but the parties may deviate from such rules in the employment agreement.
Miscellaneous	Not applicable.

Italy

Reasons for dismissal	At a limited liability company by shares (i.e. *'Società per azioni'*), or a limited liability company by quotas (i.e. *'Società a responsabilità limitata'*) where a managing director is appointed for a fixed period, a shareholders' meeting may revoke appointment as managing director where there is just cause. According to case law, this is generally the case where there has been a breach of legal or statutory obligations, or where the managing director has breached duties of loyalty, fairness, diligence and honesty. At a limited liability company by quotas where a managing director is appointed for an open-ended period, a quota holders' meeting may revoke the appointment of the managing director without just cause at any time, even though the managing director will then be entitled to damages unless proper notice is given.
Form	In the case of a liability company by shares, where the managing director does not have an employment contract, the appointment as managing director may be revoked by resolution at the ordinary shareholders' meeting. The resolution must be signed by the chairman and secretary, and any required notice be given.
Notice period	According to the Italian Civil Code, the company must give the managing director adequate notice of the revocation. If the annulment is with just cause, no notice is required. At a limited liability company by quotas where a managing director has been appointed for an open-ended period, the company may revoke his appointment at any time without just cause, but must give proper notice.
Involvement of works council	No involvement.
Involvement of a union	No involvement.
Approval of state authorities necessary	Not required.
Collective redundancies	Not applicable.
Summary dismissals	Not applicable.
Consequences if requirements are not met	If the appointment as managing director is revoked without just cause, the revocation is valid, but the managing director is also entitled to damages. A decision to revoke an appointment as managing director is invalid if it is made for a fraudulent purpose.
Severance pay	The managing director is only entitled to receive payment for the activities he has carried out, and to reimbursement for any expenses incurred in relation to his office prior to revocation of his appointment as managing director.

Non-competition clauses

A post-contractual non-competition clause is valid on condition that:
(i) it is set out in writing with the consent of both parties; and
(ii) the restriction imposed refers to a specific object, within a specific area, and for a time-limited period (maximum five years); and
(iii) an indemnity is paid by the company while the clause is enforced.

Miscellaneous

According to the Italian Civil Code, if there is well-founded suspicion that the managing director has committed serious irregularities in the course of his management causing damage to the company, the court may annul the appointment of the managing director:
(1) in case of a limited liability company by shares, upon request of shareholders representing one-fifth of the company capital;
(2) in case of a limited liability company by quotas; upon request of every quota holder.

Luxembourg

In Luxembourg Company Law, the mandate 'manager' is used for the directors of a private limited liability company ('SARL') appointed by the shareholders of such company. 'Managing director' is used as a title for the director of a public limited liability company ('SA') who has been given the mandate of day-to-day management.

In Luxembourg, the managing director can have an employment contract within a company for the execution of specific tasks combining this employment relationship with a non-remunerated or remunerated mandate within the company as managing director.

This table differentiates between (I) a manager of a SARL, appointed by the general meeting of shareholders, and (II) a managing director of an SA, appointed by the board of directors.

Reasons for dismissal	(i) The mandate of the manager of a SARL can only be revoked for legitimate reasons by the general meeting of shareholders, unless the articles of association provide otherwise. (ii) The mandate of the managing director of an SA can be revoked by the board of directors in accordance with the articles of association. If the latter remain silent on the issue, the revocation of the mandate is governed by the rules of mandate, meaning that the mandate can be revoked *ad nutum* (i.e. at any time and for any reason).
Form	A decision from the general meeting of shareholders is required. The revocation must be published in the Luxembourg Register of Commerce and Companies.
Notice period	Normally none, unless provided for in a contract.
Involvement of works council	No involvement.
Involvement of a union	No involvement.
Approval of state authorities necessary	Not required.
Summary dismissals	Not applicable.
Consequences if requirements are not met	A company can still be considered to be bound by the actions of a dismissed managing director (SA) or manager (SARL) unless the dismissal is officially published in the Luxembourg Register of Commerce and Companies.

Severance pay	None, unless the revocation is persecutory or otherwise provided for in a contract.
Non-competition clauses	None, unless such non-competition clauses are provided for in a contract. Such non-competition clauses are only valid if they meet certain requirements (i.e. they are of limited duration, limited geographical area and the competing business is clearly identified).
Miscellaneous	Not applicable.

Monaco

Reasons for dismissal

A company may generally revoke the appointment of the managing director without cause, unless stated otherwise in the by-laws of the company or the resolution of appointment. This is particularly the case for limited companies ('SA'). However, a just cause is legally required in limited liability companies ('SARL') when revoking a managing director who is also a shareholder of the company. In any event, revocation must follow mandatory steps to be declared valid.

Form

A resolution is taken by the shareholders and/or board of directors, depending on the form of the company and the internal organisation of the management. The managing director must be given the opportunity to explain himself or herself and the revocation must not be made vexatiously.

Notice period

No notice period, except where one is provided by the by-laws of the company or in the resolution of appointment of the managing director.

Involvement of works council

No.

Involvement of a union

No.

Approval of state authorities necessary

For limited liability companies ('SARL'), appointment of a new director is subject to government approval. For all companies, the change of director must be registered in the Monaco Companies Register.

Collective redundancies

Not applicable.

Summary dismissals

Not applicable.

Consequences if requirements are not met

Damages may be claimed, mainly:
— for the lack of a just cause, in the event that such reason is legally required to revoke a legal representative; or
— if the revocation is notified under hurtful circumstances (e.g. is very sudden and unexpected, or is publicly announced before the director is informed), or if the managing director has not been granted a reasonable opportunity to make his/her point before the board's/shareholders' decision to revoke him/her (absence of due process). However, the managing director cannot be reinstated.

Non competition clauses

Non competition clauses are only valid insofar as they specify a restricted application in time and space. They also have to include financial compensation in order to compensate the director for the loss of revenue they cause him or her. If the clause does not include those elements, it is null and void. In that case, the director may still be held liable for unfair competition towards the company if it is demonstrated that the director resorted to fraudulent practices intended to disturb the company's activity such as denigrating it or employing key members of its staff.

The Netherlands

Dual relationship

In the Netherlands, the statutory director has a special legal status. The statutory director has a dual position, as he or she has both a corporate position and an employment agreement with the company. The statutory director does not enjoy the same dismissal protection as regular employees.

Reasons for dismissal

The employer may revoke the corporate appointment as statutory director by the general shareholders meeting, except where the articles of association or the contract provide otherwise. In all circumstances, the employer needs to have a reasonable grounds to terminate the employment agreement.

Form

Before being able, exceptions excluded, to terminate the corporate position of the statutory director by means of a resolution, certain procedural steps must be taken. These steps are set out in the articles of association of the company. The manner in which the statutory director is invited, the wording of the invitation and the timing of the shareholders meeting are essential to ensure that the corporate termination cannot be legally challenged. Once the corporate position has been terminated validly, the employment agreement will end automatically after expiration of the notice term.

If the statutory director falls ill before actually receiving the invitation to the shareholders meeting, the employment agreement will not end automatically but remain in place.

Involvement of works council

If the company has a works council, then both the dismissal and the hiring of a statutory director (= the individual who, alone or jointly with others, exercises the highest direct authority in managing work within an enterprise) are subject to the advice of the works council. The involvement of the works council must be initiated at such a stage when the decision is still being contemplated.

Transition payment and additional payment

When the statutory director's employment agreement is terminated, the mandatory transition payment is due. The statutory director is entitled to an additional (reasonable) compensation if the employer has acted in a seriously culpable manner. This could apply if the dismissal is not based on any of the statutory reasonable grounds. In that case, the remuneration is not subjected to a maximum and will be determined by the court. It is also possible that a contractual severance payment (golden parachute) has been agreed on in the employment agreement.

Poland

Reasons for dismissal

A management board member may be dismissed from the corporate function without cause, unless the company deed or articles of association provide otherwise.

Apart from dismissal from the board, the contract under which the management board member received remuneration (if concluded) must be terminated separately. Polish law does not provide for a specific type of contract for board members.

In civil law relationships, if the contract (e.g. management contract) is terminated without significant reason, the company should cover any loss incurred by the management board member. Further entitlements may be provided for individual contracts.

A management board member may also be employed under an employment contract. If this is the case, our remarks in Dismissals of Employees, Poland apply. Further entitlements may be provided for in individual contracts.

Form

In the case of limited liability companies (*'spółka z ograniczoną odpowiedzialnością'),* management board members may be dismissed from office by a resolution of shareholders unless the company deed states otherwise.

In case of joint-stock companies *('spółka akcyjna'),* a management board member can be dismissed by the supervisory board, unless the articles of association state otherwise. The shareholders can also dismiss a management board member at any time.

The management board member concerned and court register should then be notified of the decision regarding the dismissal, but the dismissal is valid from the date of the relevant resolution (unless the resolution itself states otherwise).

If a management board member has an additional civil contract (e.g. a management contract), this must be terminated separately as it does not automatically expire upon the management board member's dismissal from the board.

In dealings with a company's management board member, the company should be represented by the supervisory board (if any is present) or an attorney-in-fact appointed by a resolution of shareholders meeting. These rules do not apply to a former management board member deemed to be an ordinary worker from the time of his dismissal from the board. Any additional contracts with the former management board member may be terminated by the board.

Notice period	A management board member may be dismissed from the corporate function without any notice period. However, notice periods may be stipulated in civil contracts.
Involvement of works council	No involvement.
Involvement of a union	Please see Dismissals of Employees, Poland for management board members employed under an employment contract.
Approval of state authorities necessary	Not required.
Collective redundancies	Please see Dismissals of Employees, Poland for management board members employed under an employment contract.
Summary dismissals	Please see Dismissals of Employees, Poland for management board members employed under an employment contract.
Consequences if requirements are not met	Please see Dismissals of Employees, Poland for management board members employed under an employment contract.
Severance pay	Please see Dismissals of Employees, Poland for management board members employed under an employment contract. Both, civil law and employment contracts may provide for voluntary severance payments.
Non-competition clauses	Please see Dismissals of Employees, Poland for management board members employed under an employment contract. Civil law contracts may provide for competition restrictions. Statutory provisions on minimum compensation do not apply to management board members employed under a civil law contract.
Miscellaneous	Not applicable.

Portugal

Under Portuguese law, the managing director and other members of the board of directors have a commercial relationship, and are beyond the scope of employment law. The table below deals with a 'director', who has been appointed for the directorship mandate in accordance with the Portuguese Companies Code. It should be noted that senior managers are exclusively those who, on behalf of the legal owners of a company, have independent authority (reporting directly to the board of directors) and full responsibility for the company's general objectives.

Reasons for dismissal	The company may request the dismissal of the director with just cause whenever a serious breach of the director´s duties towards the company has taken place, which affects the director´s liability to fulfil the normal performance of his duties.
Form	Just cause: a resolution to dismiss a director with just cause may be passed by shareholders by a simple majority. Where there is just cause, any of the shareholders may request that the director is suspended and dismissed by means of a legal action to be submitted to the company. Where there is no just cause, the company´s contract may determine specific majority rules for the director´s dismissal.
Notice period	Just cause: no notice period. Dismissal takes effect when the director is notified.
Involvement of works council	No involvement.
Involvement of a union	No involvement.
Approval of state authorities necessary	Not required.
Collective redundancies	Not applicable.
Summary dismissals	Not applicable.

Consequences if requirements are not met	The Portuguese Companies Code does not foresee any specific consequences if any requirements are not met. Contractual and legal penalties may be applicable, however. If a resolution to dismiss a director is passed without just cause (or deemed by a court to be without just cause following a legal challenge by the director), then the director is entitled to compensation for the damages suffered.
Severance pay	When calculating such severance for damages, the law states that we should consider that the director would not continue his mandate for more than four years, or for the time remaining in the mandate currently in force.
Non-competition clauses	According to the Portuguese Companies Code it is not allowed, unless authorized by partners, to perform competing activities during the mandate. Non-competition clauses may also be negotiated and entered into after termination of the mandate, but actually just before termination, so that the mandate is still in force.
Miscellaneous	Not applicable.

Romania

Under Romanian Company Law, the equivalent of the position of 'managing director' may be the position of 'director' at a joint-stock company ('SA') or limited liability company ('SRL') (in Romanian, *'administrator'*), but also the position of 'general manager' in at an SA or SRL (in Romanian, *'director general'*). For the sake of clarity, this role is referred to below as 'managing director'. The managing director is appointed by, and has his or her powers established and revoked by, the general meeting of shareholders. If concluded, contracts between the managing director and an SA or SRL are considered to be management contracts, governed by the Romanian Civil Code, not individual labour contracts, governed by Romanian Labour Code.

Reasons for dismissal

Provided a management contract has not been entered into between the managing director and the SA or SRL, the managing director may be dismissed without cause, pursuant to a resolution by the general meeting of shareholders of the employer.

Where a management contract has been entered into, dismissal must be for one of the reasons set out in the contract.

Form

If a management contract has not been concluded between the managing director and the SA or SRL, only a resolution by shareholders is necessary to revoke the appointment of the managing director.

If a management contract has been entered into, the managing director must additionally be provided with formal notice of the revocation in accordance with the provisions of the management contract.

Notice period

There is no statutory notice period. The notice period will be set out in any management contract.

Involvement of works council

No involvement.

Involvement of a union

No involvement.

Approval of state authorities necessary

Not necessary.

Collective redundancies

Not applicable in the absence of a labour contract.

Summary dismissals	Not applicable in the absence of a labour contract.
Consequences if requirements are not met	The managing director may challenge his or her dismissal in a court of law and seek reinstatement and/or compensation.
Severance pay	No statutory severance payment, unless provided for in the shareholders' resolution and/or management contract.
Non-competition clauses	Non-competition clauses may be set out in the management contract and are in general enforceable.
Miscellaneous	In the case of a general manager (in Romanian *'director general'*) of an SRL, an individual labour contract may also be concluded (please see above).

Russia

It should be noted that, under Russian law, all employees, including the managing director, must sign an employment agreement.

Reasons for dismissal

In addition to the reasons for dismissal which apply to common employees, an employment agreement with an executive is terminated:

(i) upon removal of the executive of a debtor company under insolvency legislation (bankruptcy); or in connection with the taking of a decision by an empowered body of a company or owner of property of a company regarding termination of an employment agreement. Consequently, the authorised management body of a company, e.g. the general meeting of shareholders or board of directors (as specified in the company's charter), can take a decision regarding the dismissal of a managing director. Some specific entity forms, such as state enterprises, do not have shareholders, and their property is owned not by themselves, but by the founder which is also the owner of their property and which is commonly authorised to take such a decision; or

(ii) on other grounds stipulated in the employment agreement.

Form

In the case of limited liability companies and joint stock companies, managing directors may be dismissed from office by a resolution of shareholders (participants) unless the company charter states otherwise (i.e. the company charter can state that such resolution shall be passed by the board of directors rather than by the shareholders). The decision on dismissal should then be notified to the managing director, but it is valid from the date of the relevant resolution (unless the resolution itself states otherwise). In addition to the above decision an order on termination of employment should be issued and the relevant record should be made in the managing director's personal labour book. In dealings with a company's managing director, the company should be represented by a person appointed by a resolution of shareholders or the board of directors. As a matter of practice, it is strongly advisable to appoint a new managing director by the resolution dismissing the 'old' one because a Russian company would face numerous practical problems operating without a managing director.

Notice period

The notice period depends on the ground for dismissal. For instance, in case of company liquidation the notice period is not less than two months. If dismissal is due to unsatisfactory performance during the probationary period (which can last a maximum period of six months), the statutory notice period is only three days. If a managing director is dismissed for a single severe breach of duty or in connection with the taking of a decision by an empowered body of a company or owner of property of a company regarding termination of an employment agreement, no notice period is required.

Involvement of works council	Work councils are not involved in a managing director dismissal unless this is stipulated in a collective bargaining agreement.
Involvement of a union	Under Russian law, employees may either be represented by trade unions or (where there is no trade union or less than half the company employees are members of an established trade union) elect other employee representatives. However, such other employee representatives cannot be involved in the protection of an employee's individual rights, but only in the collective relationship with the employer (e.g. negotiating collective bargaining agreements).
Approval of state authorities necessary	No.
Collective redundancies	Not applicable.
Summary dismissals	Not applicable.
Consequences if requirements are not met	Reinstatement, continued payment of salary, civil, administrative and criminal liability under Russian labour law.
Severance pay	If an executive's employment agreement is terminated by the company's empowered body or the owner of a company's property in the absence of any culpable action by the employee, then compensation is payable to the executive at the rate set by the employment agreement but not lower than three times average monthly earnings. This concerns lump sum compensation payable to the managing director in case the employment agreement is terminated in connection with a decision as above by the company's empowered body or the owner of company's property.
Non-competition clauses	Non-competition clauses are not enforceable in Russia.
Miscellaneous	A new managing director is to be appointed as noted above at the same time as a managing director is dismissed, otherwise the company will not be able to operate normally.

Serbia

Serbian Labour Law stipulates that a director may enter into two types of agreement:
(i) an employment contract; or
(ii) a management contract without the establishment of employment.

It should be noted, however, that there is no statutory procedure for dismissing a company director, except if the director signs a management contract in which case the contract is terminated in accordance with the provisions of the contract itself and general contract rules.

When a managing director enters into an employment contract, the general rules for employment termination also apply to him or her.

Slovakia

Reasons for dismissal	A company may dismiss its managing director (as a statutory body or a member of a statutory body of an entity, i.e. not as an employee) without cause, unless the articles of association provide otherwise.
Form	A valid shareholder resolution is required for revocation of the appointment of the managing director and for termination of any agreement setting out the terms of appointment. The managing director is to be provided with a copy of the resolution, or information regarding the dismissal. The company has only to inform the managing director that the general meeting of shareholders has decided for the dismissal.
Notice period	Dismissal is possible without notice, and will be valid from the date of adoption of the shareholders' resolution.
Involvement of works council	No involvement.
Involvement of a union	No involvement.
Approval of state authorities necessary	Not necessary.
Collective redundancies	Not applicable.
Summary dismissals	Not applicable.
Consequences if requirements are not met	If no shareholders' resolution has been adopted, or the dismissal has failed to comply with any requirements set out in the articles of association, then the revocation of appointment will be invalid.
Severance pay	No statutory severance payment; severance pay is subject to negotiation.
Non-competition clauses	Under Slovakian law, a managing director is bound by a non-competition clause during the performance of his/her function. A post-contractual non-competition clause may be considered invalid if the contractual clause refers to the time after dismissal from the function, in which case the court may find it invalid. Such clauses are common in practice, and provide the managing director with compensation. It is less likely that a contractual party will sue the other party before the court on the basis of such a clause being invalid.
Miscellaneous	Not applicable.

Slovenia

Under Slovenian law, the managing director or other members of the management board do not need to have an employment agreement with the company, or any other type of agreement, in order to be able to represent the company. The table below deals with a 'managing director', who has been appointed for the term of office in accordance with the Slovenian Companies Act. If the 'managing director' is in an employment relationship with the company, both corporate and employment aspects have to be taken into account. From the employment perspective, the employer and managing director can agree to regulate their relationship differently than prescribed by law regarding:

(i) the conditions and limitations of fixed-term employment,
(ii) working time,
(iii) provision of breaks and rest periods,
(iv) the remuneration,
(v) disciplinary responsibility, and
(vi) termination of the employment contract.

If the parties do not agree, the statutory provisions apply (please see the general section above).

Reasons for dismissal

The managing director of a limited liability company may be recalled at any time by a resolution of a general meeting of shareholders, irrespective of whether the managing director has been appointed for a fixed or indefinite period. The conditions for the recall of the managing director are to be determined in the contract concluded between the managing director and the company (management agreement). If the company has a supervisory board, then the supervisory board appoints and recalls (dismisses) the managing director.

At joint stock companies, the supervisory board may (prior to the end of a manager's term of office) recall (dismiss) members of the management board for the following reasons:

(i) if the member is in serious breach of his obligations; or
(ii) if the member is not able to manage the operations; or
(iii) if the general meeting of shareholders passes a vote of no confidence in him (unless the vote of no confidence has been passed on the basis of clearly unsubstantiated reasons); or
(iv) if other economic and business reasons exist (e.g. significant changes in shareholder structure, reorganisation, etc.)

Form

In limited liability companies, managing directors are recalled by shareholders' resolution. In joint-stock companies, members of the management board are recalled by the supervisory board. In a one-tier system, the board of directors recalls the executive directors (if appointed). The manager/managing director must be notified in writing about the recall.

Notice period	No statutory notice period. The notice period depends on the provisions of the management contract or other contract setting out the legal basis for the (contract/letter of) appointment of the manager.
Involvement of works council	No involvement.
Involvement of a union	No involvement.
Approval of state authorities necessary	Not required.
Collective redundancies	Not applicable.
Summary dismissals	Not applicable.
Consequences if requirements are not met	The managing director cannot be reinstated (even if the recall was unjustified). However, the managing director has the right to compensation or reimbursement for damages in accordance with the general principles of civil law. There is no statutory compensation. Compensation is based on income, and provisions for its calculation are to be set out in the management contract or other contract setting out the legal basis for the appointment of the manager.
Severance pay	The amount of severance pay is not regulated by the Companies Act. According to the Companies Act, however, in joint stock companies the severance pay may be paid out only in case of early termination (and only due to specific reasons), whereby the general meeting may determine the highest amount. Severance pay is set out in the articles of association of the company or in (the managing director's) contract.
Non-competition clauses	The articles of association of the company may provide a non-competition clause. To be valid, the prohibition on competition cannot be longer than two years, unless the member of the management board has been recalled (for the reasons set out above), or the managing director has been recalled by a shareholders' resolution. In these circumstances, the prohibition cannot be longer than six months.
Miscellaneous	Not applicable.

Spain

Under Spanish law, managing directors and other members of the board of directors have a commercial relationship with the company and, therefore, are beyond the scope of employment law. The table below deals with 'senior executives', who have a special employment relationship governed by Royal Decree 1382/1985 of 1 August. It should be noted that senior managers are exclusively those who exercise powers inherent to the ownership of the company, with independent authority (reporting directly to the board of directors) and full responsibility for the company's general objectives.

Reasons for dismissal	Disciplinary dismissals must be based on gross misconduct, defined as a significant and intentional breach of employment duties. On the other hand, the employment contract of senior executives may be terminated by withdrawal, where no reason is required (lack of confidence). Likewise, the contract may be terminated based on legal grounds and following the legal procedures set out in the Spanish Workers' Statute for common employees (e.g. objective dismissal based on economical, technical, organisational and production-related grounds).
Form	Notwithstanding the type of termination, it is necessary to notify the senior executive of the employer's decision in writing. In the event of dismissal, the employer must explain the reasons for termination and state the date on which it will take effect.
Notice period	No notice period is required in case of disciplinary dismissal. In case of withdrawal, by contrast, senior executives are entitled to three months' notice unless otherwise agreed up to six months. The employer may substitute this obligation with the payment of salary in lieu.
Involvement of works council	No involvement.
Involvement of a union	No involvement.
Approval of state authorities necessary	Not applicable.
Collective redundancies	Common regulations shall apply.
Summary dismissals	Not applicable.

Consequences if requirements are not met

In the event of a disciplinary dismissal or withdrawal, failure to comply with the formal requirements above may lead to the dismissal being declared unfair.

Severance pay

Disciplinary dismissal: if the dismissal is declared or acknowledged as unfair or wrongful, the senior executive is entitled to severance pay of 20 days' salary in cash per year of service, with a maximum of 12 monthly payments, unless otherwise agreed in the employment contract.

Withdrawal: severance of seven days' salary in cash per year of service, with a maximum of six monthly payments, unless otherwise agreed in the employment contract.

Non-competition clauses

1. Non-compete clause during the term of the employment contract: Senior executives cannot enter into employment contracts with other companies unless they receive prior authorisation from their employer or by way of written agreement.
2. Non-compete clause after termination of the employment contract: it can be agreed at any time of the relationship, or even upon termination.

A non-compete clause after termination of the employment contract can be agreed at any time of the relationship, or even upon termination.

The following limitations and requirements apply:

- the obligation may not last longer than two years; and
- the employer must have an effective industrial or commercial interest in such a non-compete obligation; and
- the employee must receive adequate economic compensation in exchange for the non-compete obligation.

Miscellaneous

Not applicable.

Switzerland

In general, the managing director is an employee of the company. In certain situations and subject to the prohibition of circumventing employment law, the managing director might be a self-employed person who has entered into a service agreement with the company.

The following comments relate to situations whereby the managing director is an employee of the company.

Reasons for dismissal

Swiss employment law does not set any special provisions relating to the dismissal of a managing director. The same rules apply as for any other employee.

For the reasons for dismissal, cf. the Swiss chapter 'Dismissal of employees', above.

Form

The same rules apply as they would to any other employee: Swiss employment law does not require a specific form. Notice of termination may be given orally, or even by conclusive behaviour. For evidentiary purposes, it is strongly recommended that any notice be issued in writing.

The provisions set forth by Swiss Company Law must also be taken into account for managing directors. For example, in a company limited by shares (*'Aktiengesellschaft'*), the appointment and dismissal of persons entrusted with managing and representing the company is part of the non-transferable and inalienable duties of the board of directors.

Notice period

Not available.

Involvement of works council

Not available.

Involvement of a union

Not available.

Approval of state authorities necessary

Not available.

Summary dismissals

Not available.

Consequences if requirements are not met

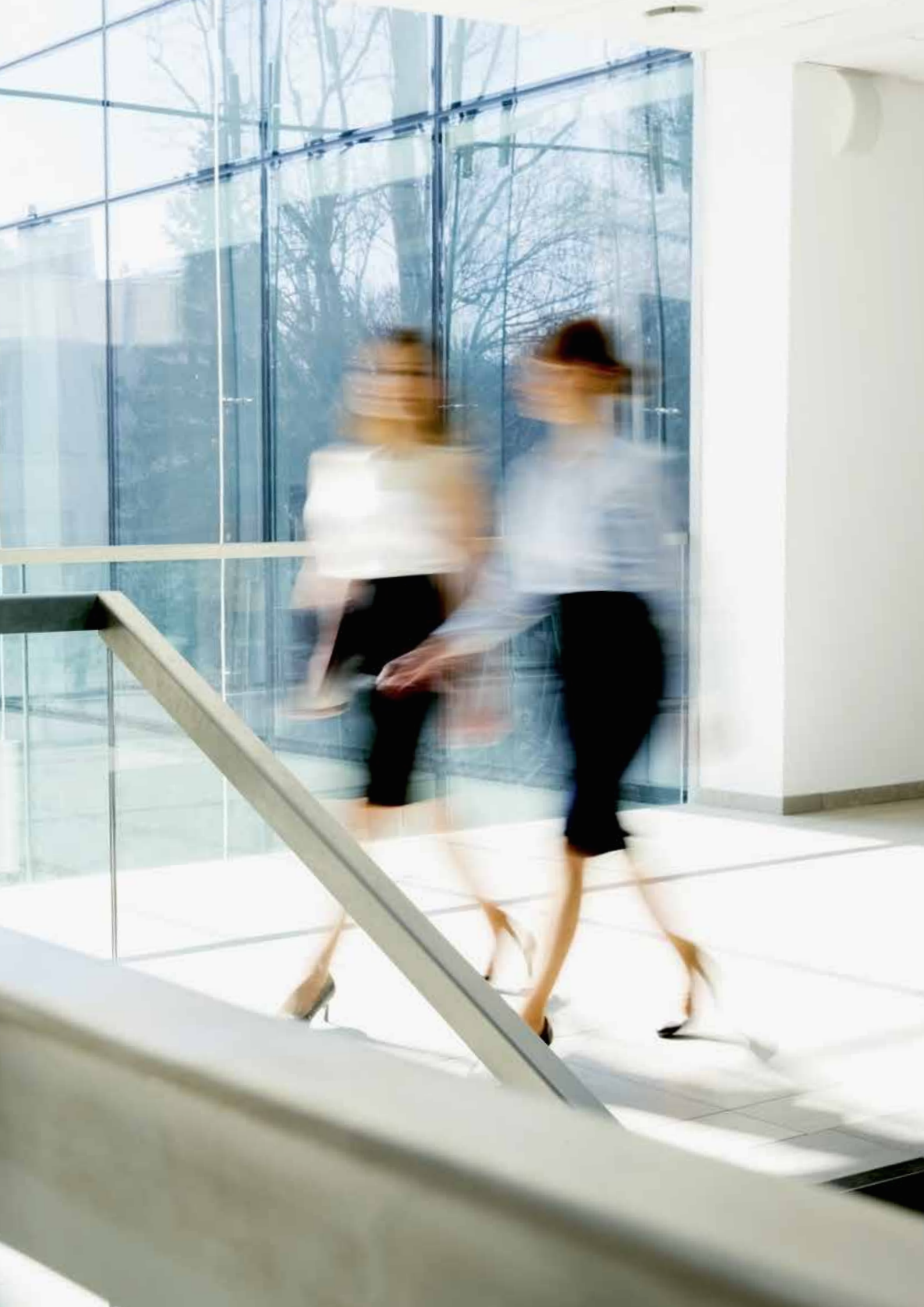
Not available.

Severance pay

Not available.

Non-competition clauses

Not available.



Turkey

Reasons for dismissal

First, Turkish law only recognizes a distinction between the termination of employees and

(i) Employer representatives and deputy employer representatives who manage an enterprise in its entirety; and

(ii) Employer representatives who manage a work place in its entirety and who are authorized to employ and dismiss employees.

(Persons in (i) and (ii) above are collectively referred to as "Managers" for the purposes of this Guide)

For the purposes of (i) above, employer representatives and deputy employer representatives are usually considered to be the general managers *(genel müdür)* and deputy general managers *(genel müdür yardımcısı)*, respectively, of the relevant entities. *Managing directors* should fall in the scope of *"general managers"* as explained above.

As for (ii) above, any person who has been given both powers indicated in it will also be subject to the regime explained below. However, in Turkish legal practice, persons other than employer representatives and deputy employer representatives, would rarely hold all of such powers together.

Turkish law foresees two types of dismissals for Managers, namely ordinary termination and extraordinary termination.

Ordinary Termination

As outlined under the relevant section of this Guide, certain employees benefit from employment security provisions under Turkish law and are granted certain remedies in case of an ordinary termination.

Under Turkish law, employment security provisions do not apply to Managers. Therefore, a manager may be terminated without a valid reason and remedies against such ordinary termination (such as initiating lawsuit for reinstatement (*işe iade davası*)) will not be available. However, the employer is still obligated to observe the notification periods for the ordinary termination of a Manager. For further details regarding such periods, please see our explanations below regarding *"Notice periods"* and *"Consequences if requirements are not met"*.

Furthermore, any Manager who has been employed by the employer in question for at least one year will be entitled to severance pay for an ordinary termination. For further details, please see our responses to "*Consequences if requirements are not met*" and "*Severance pay*" below.

In addition, where the Manager has been terminated in bad faith, he/she may claim a "bad faith compensation" *(kötü niyet tazminatı)*. For further details, please see our explanations below regarding *"Consequences if requirements are not met"*.

Upon the ordinary termination of a Manager, the employer is obligated to grant the Manager a right to seek new employment during the notification period. Accordingly, such Manager shall have at least two hours per day to find new employment (unless the employment is terminated immediately by way of paying the Manager the amount corresponding to his/her notification period, as indicated in our explanations below in *"Consequences if requirements are not met")*.

Lastly, upon an ordinary termination, an amount corresponding to unused leave periods will also become payable to the Manager.

Extraordinary Termination

In the presence of just reasons, Turkish law provides employers the right to dismiss a Manager immediately without having to comply with any notification periods or having to pay any severance pay.

While the law does not provide an exhaustive list, the following just reasons indicated under the law are considered as a guideline for this purpose:

(i) Health reasons;
(ii) Acts of the manager breaching moral principles and the principle of good faith or similar situations;
(iii) Force Majeure; and
(iv) Apprehension or detention of the manager

Please see our responses below regarding "Consequences if requirements are not met" for further details as to the legal ramifications of an unjust termination (i.e. where the termination is absent of the alleged just reasons).

Form

There is no requirement for a due notice of termination of a Manager to be given in writing. However, it would be advisable to give such notice in a written form and have two witnesses present at the time of the notice for evidentiary purposes.

Further, it would also be also advisable to send an official notification *(tebligat)* to the Manager's registered address of residence to ensure that the Manager is duly notified of the termination. For this purpose, specific rules under the notification procedures legislation become applicable.

In addition to the above, in most cases there will be a shareholders' resolution and/or a board of directors' resolution for the appointment of the Manager and this resolution will be registered with the relevant trade registry and published in the trade registry gazette. Where the Manager is terminated, a new shareholders' resolution and/or a board of directors' resolution will need to be made regarding the revocation of the appointment of the Manager in question and the new resolution will also need to be registered with the relevant trade registry and published in the trade registry gazette.

Notice period

Ordinary Termination

For an ordinary termination explained above, the notice periods depend on the length of employment. Accordingly, please find below the relevant periods:

(i) For Managers whose term of employment is shorter than six months, the statutory period is two weeks;
(ii) For Managers whose term of employment is between six months and one and a half years, the statutory period is four weeks;
(iii) For Managers whose term of employment is between one and a half and three years, the statutory period is six weeks; and
(iv) For Managers whose term of employment is longer than three years, the statutory period is eight weeks.

Please note that Turkish law, in principle, allows for the employee and the employer to agree on an extended notification period. However, the Turkish Court of Appeals has made at least one ruling where it has stated that an employee, upon his/her termination of the employment, would only be bound to observe the periods indicated above (and not those agreed under the employment agreement). As this ruling would also be valid for Managers, if a Manager terminates his/her employment with the employer, he/she may not be required to observe a notice period longer than those indicated above.

Extraordinary Termination

For a due extraordinary termination, a notice period does not need to be observed by the employer (i.e. the dismissal will be effective immediately).

However, in an unjust termination (where the alleged just reasons for termination do not exist), compensation pertaining to the notification periods will be applicable. For further details, please see below our responses to *"Consequences if requirements are not met"* below.

Involvement of works council

Not available.

Involvement of a union

A union will be involved in the dismissal of Managers if collective employment agreements have been entered into by employees' unions and employers (or employers' unions) which foresee the establishment of certain bodies (composed of the representatives of labour unions and the employers) (e.g. disciplinary boards) authorized to make advisory opinions on dismissals. While such advisory opinion is not directly binding on the employer, Turkish courts may still determine that a termination that goes against such opinion is invalid.

Approval of state authorities necessary

Not available.

Collective redundancies

No specific provisions are applicable to a collective redundancy concerning Managers. However, in determining whether a collective redundancy has occurred, the number of terminated Managers (if any) will also be taken into consideration.

Summary dismissals

Please see above our explanation regarding extraordinary termination.

Consequences if requirements are not met

There are different consequences under Turkish law for an ordinary termination and an extraordinary termination which is absent of a valid or just reason. These are as follows:

Ordinary Termination

In an ordinary termination, the employer would be obligated to observe the notification periods indicated above. As such, the employer would be required to either

(i) Allow the Manager to work during the notification period (duly paying him/her for the work performed during such period); or

(ii) Pay the amount corresponding to the notification period if the employer wishes to terminate the Manager immediately. Furthermore, any Manager who has been employed for at least one year will benefit from severance payment upon ordinary termination of his employment relation by the employer. For further details, please see our responses to "*Severance pay*" below.

In addition to the above, if the employment was terminated in bad faith (e.g. solely to avoid the payment of certain receivables to a Manager etc.), the employer is obligated to pay a bad faith compensation. Such compensation equals three times the amount pertaining to the notification period of the Manager.

Lastly, any amount pertaining to unused leave periods will also become payable to the Manager.

Extraordinary Termination
In this case, as the dismissal will be effective immediately, in the absence of such just cause for termination, the employer is obligated to compensate the Manager for the amount pertaining to the notification periods (as indicated above).

Furthermore, if the Manager was employed for at least one year, upon an unjust termination, he/she will benefit from severance payment upon an unjust termination of his/her employment. For further details, please see below our responses to *"Severance pay"*.

In addition, the bad faith compensation indicated above for ordinary terminations also become applicable.

Lastly, any amounts pertaining to unused leave periods become payable to the Manager.

Severance pay

As indicated above, in an ordinary termination, a Manager who has worked for the employer in question for at least one year is entitled to severance pay even if there was a valid reason for his/her dismissal.

As for an extraordinary termination, Managers who have worked for the employer in question for at least one year will be entitled to severance pay if they were terminated based on any grounds other than "acts breaching moral principles and principle of good faith or similar situations".

Further, a Manager will be entitled to severance pay at any rate if he/she was terminated on an unjust basis (i.e. if the alleged just reasons for termination do not exist).

Regarding the amount of the severance payment, please note that upon termination of the Manager, the Manager, in principle, is entitled to 30 days' pay for each year of employment prior to termination. However, this payment is subject to a ceiling of approximately TL 6,017.60 (app. EUR 987) (subject to an inflation markup bi-annually). That is to say that, even if the salary of the Manager corresponding to 30 days was higher than the said amount of TL 6,017.60, he/she may only receive this amount as severance payment for each year of employment.

For calculation of the severance pay, the gross salary will include tax and security premiums deducted from the salary as well as additional moneys and monetary rights provided to the Manager, including bonuses, child support payments, and monetary assistance in relation to health and transportation to and from work.

Non-competition clauses

During the term of their employment, Managers are under a non-compete obligation as per the terms of Turkish law.

For non-compete obligations to prevail following the end of the term of employment relationship, such non-competition clauses must be limited by time and geographical scope.

From a timing perspective, Turkish law, in principle, allows for a two year period as a valid non-compete term starting from the termination of the employment relationship. As for the geographical scope, Turkish law requires that the non-compete obligation is limited to certain regions or cities where the employment of the Manager by a competitor would be most detrimental for the initial employer. Where a non-compete obligation is found to be in excess of the said limitations, it is subject to limitation by Turkish courts. Accordingly, in a dispute, the court will not take into view the contractual non-compete obligation but will determine the scope of the non-compete obligation that could duly be agreed between the parties and proceed on that basis.

Please note that there is no specific regulation or established precedent under Turkish law regarding a non-compete in favour of a third person who is not the actual employer of the Manager in question (e.g. the parent company of the employer). As such, it is likely that a non-compete obligation in favour of such third person would be unenforceable under Turkish law.

Miscellaneous

It should be noted that Turkish courts are extremely employee friendly and the same approach would prevail for the Managers. Therefore, complying with the necessary principles and procedures with regard to a termination is essential. For this purpose, all the relevant documents (e.g. the employment agreement) must be reviewed very carefully and all notices and notifications (i.e. the termination notices/notifications) must be prepared in a diligent manner and duly served.

Ukraine

The legal requirements applicable to dismissing general managers of Ukrainian companies are the same as for all other employees, except for the special terms of dismissal applicable to employees qualifying as company officials (e.g. director) if their corporate mandate is terminated. Ukrainian law allows a company to enter into an employment contract with the company director. An employment contract is a specific form of employment agreement which, unlike a regular employment agreement, may provide additional grounds for dismissal comparable to those available under the law. As a result, a company director may also be dismissed on grounds and subject to procedures provided by his employment contract (if one is concluded). In June 2018 the new Law of Ukraine on Limited and Additional Liability Companies (New LLC Law) came into effect presenting certain innovations for regulating the formation of a company management body (including general managers). Although the New LLC Law leaves open the theoretical possibility of appointing someone to head such a management body based on either an employment or a civil law contract, and presents additional grounds for termination of employment, the wording of the current version of the New LLC Law is vaguely drafted in this respect. Therefore, we may only speculate on these innovations until the relevant court practice becomes available and brings more certainty.

Reasons for dismissal

Generally, it is difficult to dismiss an employee without the employee's consent under Ukrainian law. Valid grounds for termination may be divided into those related to the employee's breaches of employment duties ("termination with cause on the part of the employee") and those not related to the employee's actions ("termination without cause"). Termination is not generally allowed while an employee is on annual or sick leave.

An employer may unilaterally dismiss an employee with cause in the following cases:

— systematic unjustified failure to fulfil employment obligations;
— unjustified absence from work for more than three hours during one day;
— appearance at work while under the influence of alcohol or drugs; or
— misappropriation of property; or
— a single gross violation of employment obligations;
— actions of a company head causing delayed or reduced payment of wages;
— immediate subordination to a related party contrary to the Ukrainian law 'On Preventing Corruption';
— actions of an employee entrusted with company assets (cash or property) that result in the loss of the employer's trust; or
— immoral conduct.

Termination in most of these cases is regarded as a disciplinary sanction and must be imposed following special procedures prescribed by law. An employer may terminate an employee without cause in the following cases:

— changes in organisation of work and production (redundancy);
— employee unsuitability for the job or position due to lack of qualifications or poor health;
— reinstatement of an employee who previously occupied the position; or
— recruitment by the army or mobilization of an employer-natural person during a special period;[1]
— employee unsuitability for the job or position discovered within his/her probation period;
— absence from work due to sickness for more than four continuous months; or
— on grounds provided in the employee's employment contract (provided the law allows entering into the employment contract with such an employee).

Termination without cause (except when an employee is absent for four months due to sickness) is only allowed if an employee cannot be transferred to another position or job.

Form

In all cases, a decision regarding dismissal must be conveyed in the form of a written order and signed by a duly authorised representative of the employer. The employee is to be provided with a copy of the dismissal order on the last day of his employment.

Notice period

This depends on the grounds for dismissal.

The statutory minimum notice period is two months if the case involves redundancy.

In certain cases (e.g. where there has been a single gross violation of employment duties), notification is not required

Involvement of works council

Not applicable.

[1] Within a period of martial law or mobilization.

Involvement of a union	In cases involving redundancies, the employer must notify and consult with the trade union at company level (if such a union operates at the employing company). In some cases, moreover, the employer is required to obtain prior consent from the trade union at company level (if one operates) to terminate the employment of trade union members. Such cases can include redundancy (unless the redundancy is caused by the liquidation of the employing company).
Approval of state authorities necessary	Not applicable.
Summary dismissals	Generally, dismissal without notice by an employer is only possible with respect to certain categories of employees (i.e. the general management level of the company) in cases where there has been a serious breach of duty. Also, dismissal without cause and without notice is possible with respect to the employees qualifying as company officials (e.g. director) if their corporate mandate is terminated.
Consequences if requirements are not met	Employees are reinstated, and/or awarded continued payment of salary.
Severance pay	A statutory severance payment of one average monthly salary is only required if the decision regarding the dismissal has been taken by the employer on the following grounds: — changes in the organisation of work and production (redundancy); or — employee unsuitability for the job or position; or — reinstatement of an employee who previously occupied the position. If a company official is dismissed in connection with the termination of his/her corporate mandate, a statutory severance payment of six times the employee's average monthly salary must be paid. In all cases of dismissal, an employer must pay the dismissed employee all payments due under his/her employment agreement (e.g. salary and compensation for any of the employee's annual vacation accumulated but unused during his/her term of employment with the employing company). Voluntary severance payments are also subject to negotiations between employer and employee. These are especially common if the justification for a dismissal is in doubt.
Non-competition clauses	Post-contractual non-competition covenants are generally non-enforceable in Ukraine.
Miscellaneous	Not applicable.

United Kingdom

In the United Kingdom (UK), the rights and obligations of a 'director' are the same whether they are for a 'managing director' or any other type of director. However, not all directors are employees. 'Managing directors', for example, are employees of the company, but 'non-executive directors' are not employees. Normal practice is for a managing director to have a service agreement supplementing his statutory and common law obligations as a director. Normally the director would resign his directorship at the time his employment was terminated, so his directorship and employment terminate simultaneously. This table only covers removal of the director from office as a director, and does not cover termination of any contract of employment or other employment issues.

Reasons for dismissal	Subject to a statutory right of removal (see below), the company may remove the director for any reason, unless the articles of association of the company or any other agreement between the director and the company provide otherwise.
Form	The Companies Act 2006 gives shareholders a mandatory right to remove a director by 'ordinary resolution' (i.e. a simple majority of the shareholders attending and voting) at a meeting notwithstanding any other agreement between the director and the company. The resolution will be of no effect if passed in writing instead of at a meeting. At least one of the shareholders must give at least 28 clear days' notice in writing before the meeting of an intention to move the resolution at the meeting; that notice must be copied to the director. The director has the right to be heard at the meeting and to make written representations. Directors may also be removed by other means set out in the articles of association of the company.
Notice period	Removal as a director is immediate unless otherwise specified in the articles of association of the company.
Involvement of works council	No involvement.
Involvement of a union	No involvement.
Approval of state authorities necessary	Not necessary.
Collective redundancies	Not applicable.

Summary dismissals	No special rules apply.
Consequences if requirements are not met	The removal of the director is void.
Severance pay	The director may be entitled to a payment under the terms of any service contract (for example a payment in lieu of notice), or as an employee under statute (for example a statutory redundancy payment).
Non-competition clauses	Restrictive covenants may be included in any service agreement. However, they will be void for unlawful restraint of trade and therefore unenforceable unless they protect the legitimate business interests of the employer and go no further than necessary to provide that protection in terms of the activities covered, duration and geographical area.
Miscellaneous	Not applicable.

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