

## Managing Director versus General Manager

2012

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<p align="center"><b>Managing Director (MD, in french: “Gérant”) of a French Limited Liability Company (LLC, in french “SARL”) :</b></p>	<p align="center"><b>Manager employed in a French Limited Liability Company (LLC, in french “SARL”) :</b></p>
<p><i>The following points relate to the case of a (or) MD (s) having a minority stake in the LLC (from 0% up to less than 50% of the share capital).</i></p>	<p><i>The following points relate to the case of a Manager (ex. Sales Manager, Production Manager...) who is employed in a LLC and who reports to the MD of this LLC.</i></p>
<p><b><u>Role:</u></b></p> <ul style="list-style-type: none"> <li>• A MD is a legal representative of the company.</li> <li>• Defining the role of a MD in the articles of incorporation of a LLC is essential to determine the extent of its powers and obligations (duration, age limits, compensation...)</li> </ul>	<p><b><u>Role:</u></b></p> <ul style="list-style-type: none"> <li>• The role of the Manager is defined in his employment contract. It concerns a limited scope of responsibilities</li> </ul>
<p><b><u>Power of a MD :</u></b></p> <ul style="list-style-type: none"> <li>• The articles of incorporation may limit the power of a MD of a LLC: for example prior authorizations associated with the occurrence of certain significant events such as the sale of the business, a loan to be contracted by the LLC, the sale of real estate ... However, a MD has full authority to bind the LLC vis-à-vis third parties. This means that any document signed by the MD commits the company vis-à-vis its suppliers, banks ... In case of several MDs, each MD has full authority to bind the company vis-à-vis third parties. If another co-MD wishes to oppose a decision, he will not cancel the commitment of the LLC with respect to third parties, but he can only take legal action against the MD if he did not respect the articles of incorporation of the LLC and, more broadly,</li> </ul>	<p><b><u>Power of a Manager:</u></b></p> <ul style="list-style-type: none"> <li>• The MD may delegate some of his power to his Manager(s). This can only concern the power that has been granted to the MD by the articles of incorporation. It has to be accordingly limited in duration. For example, the MD can delegate to a Sales Manager the power to negotiate commercial contracts.</li> <li>• The MD has to formalize a precise delegation of power to a Manager having the competences to take in charge the delegated responsibilities. A remuneration has to be implemented for these responsibilities.</li> <li>• A Manager who would assume all the main responsibilities to run the company would be considered by the authorities as a MD, with all consequences in terms of liability, tax issues etc</li> </ul>

<p>his powers as MD.          If the MD has committed the company in excess of the limits of his mandate, this does not invalidate such commitment, but this can imply the responsibility of the MD vis-à-vis his co-MDs.          Moreover, the law prohibits the MD of:</p> <ul style="list-style-type: none"> <li>→ Contracting a personal loan from the company</li> <li>→ Obtaining a cash advance from the company current account</li> </ul> <p>Guaranteeing or securing personal commitments towards third parties by the company</p>	
<p><b><u>Appointment, removal, resignation:</u></b></p> <ul style="list-style-type: none"> <li>• The appointment, removal and remuneration of a MD are decided by the shareholders' meeting          -Removal of a MD is always possible but should be justified to avoid paying damages to him.</li> <li>• A MD may resign at any time after informing the shareholders in a manner consistent with the articles of incorporation of the company. A resignation aiming to harm the LLC may result in the payment of damages to the LLC.</li> </ul>	<p><b><u>Appointment, removal, resignation:</u></b></p> <ul style="list-style-type: none"> <li>• A manager can be hired by an authorized person from the company, according to a contract of employment in line with the French social law and if relevant with the collective agreement of the sector the company is belonging to</li> <li>• The employment contract details the terms and conditions under which the Manager is employed, including the trial period, the removal and resignation conditions etc.</li> </ul>
<p><b><u>Compensation:</u></b></p> <ul style="list-style-type: none"> <li>• The compensation of a MD of a LLC is not mandatory          -The compensation of a MD may be foreseen in the articles of incorporation or decided at a shareholders' meeting, the later being preferable to avoid a change of articles of incorporation in case of change of compensation</li> <li>• A MD can receive different types of compensation:             <ul style="list-style-type: none"> <li>→ Fixed remuneration</li> <li>→ Variable remuneration based on sales or profits</li> <li>→ Reimbursement of expenses (travel, expenses ...)</li> </ul> </li> </ul>	<p><b><u>Compensation:</u></b></p> <ul style="list-style-type: none"> <li>• The Manager gets a remuneration as specified in his contract of employment.</li> <li>• The compensation of a Manager can also include several benefits like             <ul style="list-style-type: none"> <li>→ Variable remuneration based on objectives defined by the company</li> <li>→ Company car. The rules for using the company car have to be defined by the company</li> <li>→ Stock options</li> </ul> </li> </ul>

<p>→ Fringe benefits (housing, company car ...) Fees for attending shareholders' meetings</p>	
<p><b><u>MD status:</u></b></p> <ul style="list-style-type: none"> <li>• A MD is not an employee, whether he is shareholder or not</li> <li>• He is affiliated to the Employees' French Social Security</li> <li>• Employer's Social security contributions are calculated on the basis of his remuneration</li> <li>• He can not benefit from the French unemployment insurance</li> <li>• He can not get any benefit granted by the collective agreement of the company</li> <li>• It is possible to combine the function of MD with an employee function as defined in a separate employment contract for a defined function within the company. This overcomes the above disadvantages associated with the status of MD</li> </ul>	<p><b><u>Manager status:</u></b></p> <ul style="list-style-type: none"> <li>• A Manager is affiliated to the Employees' French Social Security and can benefit from the French unemployment insurance</li> <li>• A Manager usually gets the status of "cadre", which under the French social law implies several issues like <ul style="list-style-type: none"> <li>→ Annual working time according to the French law or to the collective agreement (usually between 214 and 218 working days per year)</li> <li>→ Monthly salary, no overtime paid</li> <li>→ Benefits according to the collective agreement</li> </ul> </li> </ul>
<p><b><u>Responsibilities of a MD:</u></b> A MD can be sentenced by a civil court as well as by a criminal court for misconduct in connection with its management.</p> <p>1) <u>Civil liability of a MD</u> When the MD has exceeded the limits of his mandate in committing the company or has made mistakes in his management, his liability may be pronounced by a civil court within 3 years. In case of bankruptcy of the LLC, the court may prove that the MD is responsible for such event due to his mismanagement. In this case, the MD may be ordered to close all or part of the liability on his personal property.</p> <p>2) <u>Criminal liability of a MD</u> The mismanagement actions implying a criminal responsibility of the MD are listed in the French Commercial Code. It may in particular include: → MD whose termination of employment or appointment has not been published</p>	<p><b><u>Responsibilities of a Manager:</u></b> The Manager is personally responsible for the actions he will undertake in the frame of the power of delegation that has been granted to him. He is responsible towards the company as well as towards third parties. The Manager gets the full liability for the delegated scope, including criminal liability.</p>

<ul style="list-style-type: none"><li>→ Presentation of wrong accounts or lack of presentation of accounts</li><li>→ Failure to send to shareholders before the annual meeting the annual accounts, the management report, the text of the proposed resolutions</li><li>→ Lack of availability of documents throughout the year for the last 3 financial years submitted to the shareholders meetings</li><li>→ Failure shareholders' meeting within 6 months after the fiscal year</li><li>→ Failure of shareholders' meetings reports or wrong reports</li><li>→ Lack of mention of the company name, capital and type on documents</li></ul> <p>Distribution of non existing dividends</p>	
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