


FINANCE

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Brain Gain

How CFOs can leverage the new powers of IT



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Laborious Contracts

It's awkward for CFOs to sue their employers. Instead they should pay close attention to three main contractual pitfalls.

By Jessica Jacobi and Inigo Sagardoy

CFOs are loyal to their companies. But disagreements are natural and cannot always be avoided. When this happens and a CFO takes their employer to court over an alleged contract violation, it is the wording in their employment contract that takes centre stage.

In the following, we describe the three most common sources of potential conflict with employers based on our experience of giving advice to both CFOs and companies as clients.

Are you board?

The big issue differentiating the two possible positions a CFO may have in a company lies in the question of membership on the board of directors. It is possible for CFOs to either serve on the board or be regular employees; both are common. Under German law, a board member with an unlimited contract can be terminated anytime, without the necessity of a "justified reason" as long as the contractual notice period is observed.

In contrast, a regularly employed CFO can only be terminated if certain legal requirements are met. This can also be challenged before the German and Spanish labour courts. When a settlement cannot be reached, legal proceedings are nearly always the outcome.

CFOs with board member positions would be well-advised to negotiate for a fixed-term contract, lasting possibly several years. We have repeatedly seen instances where board-level CFOs were simply let go. This can come as an enormous surprise, especially if the CFO previously had the protection offered by employee

status in the same company and gave it up for the more prestigious position as a board member.

If the employment contract offers a performance-based bonus – as is common in CFO contracts these days – CFOs should insist upon setting realistic goals. This will make it more likely they obtain the maximum possible bonus.

Some annual aims are very detailed and differentiate explicitly between individual and company goals. Individual goals can be numeric such as a certain EBIT or percentage of growth, or soft factors such as a successful integration of a newly acquired business.

Just be clear

Our experience is that the more detailed the agreement is, the better for both the CFO and the company. It helps the parties of the contract to achieve their goal of successful cooperation, and it is also helpful in case of a lawsuit because there is less room for dispute.

If a company is slow in presenting an agreement, then the CFO should regularly ask to be presented with goals. This will be useful if the company claims that the CFO

underperformed and refuses to pay the maximum bonus.

The remuneration of a CFO is generally subject to taxes and social security deductions in the country of the workplace. However, there is a growing trend in multinational corporations to allocate the remuneration of the CFO (and other employees or board members) in a way that makes use of tax advantages, which are outlined in most Double Tax Treaties.

It's taxing but worth it

Optimising the contract of a CFO from a tax and social security point of view is often complicated as each individual case is different. However, it can be well worth the effort as this may lead to a higher net income for the CFO without burdening the company with higher costs.

In the past year, we helped obtain this kind of a tax reduction for two larger, multinational clients. One was for services as a member of the board of a Swedish corporation (in addition to the remuneration as a regular employee in his home country) and one was for a German national who was a board member of a Belgian corporation. ||



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