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Employer of Record

Introduction

Employer of Record

The concept of Employer of Record (EOR) is increasingly playing a crucial role for businesses in facilitating global expansion, managing compliance risks, enhancing operational efficiency, and supporting strategic business objectives against the background of an interconnected and competitive marketplace.

The Employer of Record (EOR) is a personnel deployment model originating from the Anglo-American region. The model is intended to make it easier for companies to employ workers abroad by instructing an agency (the EOR) to employ the worker at the place of assignment under an employment contract governed by local law and transferring the employer's right to issue instructions to the client company based abroad. The employee then performs all or part of the work in the respective country of assignment under the instructions of the client company abroad. The model is also frequently used by US companies to explore business opportunities in the European market.

The employment law teams at Taylor Wessing, ECIJA, and DR & AJU have jointly produced a comparative overview setting out the specifics of the EOR concept in several European jurisdictions as well as in China and South Korea.

If you are considering different concepts for recruiting personnel, you should always bear in mind the characteristics of your company and the jurisdiction in which you wish to operate. The overview in this document does not constitute comprehensive legal advice. You should always have your concept reviewed by a law firm to ensure that you are legally compliant. We will be happy to assist you or refer you to an expert law firm in a jurisdiction in which we are not represented ourselves.

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Austria

I. Is EOR an employee leasing service in the respective country?

Yes. The provision of employees through an EOR is temporary employment, meaning that the EOR is the Temporary Employment Agency ("TEA"). The TEA is the direct employer and an empolyee is leased to work for the user undertaking.

II. Does an EOR-service provider need an employee leasing licence to offer EOR-services?

An EOR requires a business licence as a TEA. The provision of TEA services is a so-called regulated trade which means that certain qualifications must be fulfilled to obtain the licence. A non-Austrian EOR will need either a subsidiary or registered branch office to register the licence if they want to offer services in Austria on a commercial basis. TEAs of other EU/EEA member states and Switzerland may, however, carry out services in Austria on a temporary and non-regular basis if they are permitted to provide TEA services in their home country.

III. What is the maximum leasing period?

There is no maximum leasing period in Austria. Indefinite leasing is also permitted.

IV. How is the protection of know-how and IP regulated?

The protection of know-how and IP is not statutorily regulated. Therefore, to protect the user undertaking's rights, it is recommended to include these matters in the agreement between the TEA and the end user undertaking which regulates the details of cooperation and leasing of temporary employees. It is also recommended to have confidentiality declarations signed directly by the employees.

V. Does a Permanent Establishment Risk exist?

This depends on the scope of the employee's activities. This risk increases for some tasks (e.g. sales representatives, a person entitled to conclude contract on behalf of the client company). It is always recommended to verify the position with a tax counsel.

VI. Can stock options be granted to employees?

There are no regulations that would forbid granting stock options to temporary employees. They are usually granted as a separate contractual relationship governed by the local laws in the home country of user undertaking.

VII. What alternative solutions to EOR exist?

Foreign companies may hire employees in Austria as a foreign entity and register them quite easily with the Austrian payroll, ideally with the assistance of a local payroll provider. It is not necessary to have an Austrian subsidiary or registered branch office to directly hire employees in Austria. Payroll deducts all social security contributions and income tax withholdings automatically; the initial and monthly administration costs are rather marginal. A clear benefit of such an approach is that the employees are genuinely the foreign company's own employees.

VIII. Your contact person

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Belgium

I. Is EOR an employee leasing service in the respective country?

The EOR as such is not allowed in Belgium. It does not constitute legal employment. The only employee leasing service allowed under Belgian law is the temporary work legal framework under which a temporary employment agency ("TEA") leases its employee to a user for a limited period. Under this framework, the TEA is the employer and the client the user. A contract must be signed between the TEA and client and between the TEA and the employee.

II. Does an EOR-service provider need an employee leasing licence to offer EOR-services?

The TEA needs to have a licence/recognition to perform such activities. This licence/recognition is given by the Region where the company is located. Each Region has established a specific procedure. We will now explain the rules applicable for Brussels.

2. BRUSSELS

2.1. Request procedure

Request form for recognition

- The request form is completed online via the MyBEE platform.
- The company should have a MyBEE account. Should this not be the case, there is the following tutorial on how to create an account for foreign agencies (**Link**).

Request form for recognition or renewal of recognition

1) Request for recognition: annexes to be added to the dossier

- Agencies whose registered office is outside Belgium:
- These agencies must provide evidence that they fulfil equivalent conditions in the country where they have their registered office to those imposed on agencies with a registered office in Belgium. They must therefore provide equivalent documents to those requested from "Belgian" agencies:
  - an attestation from a competent authority certifying that the agency is authorised to provide temporary services there,
  - proof that the capital has been fully paid up in accordance with the regulatory or

legal provisions applicable to the foreign legal form of the company,

- the organisation chart of the company bodies,
- a certificate from the competent foreign social security and tax authorities,
- the written proof that no arrears are owed in accordance with the applicable foreign scheme that is equivalent to the Belgian scheme of the social security fund for temporary employees,
- the model of the agreements with the user and with the employee prior to the agency work services (in accordance with the model imposed by the Collective Employment Agreement currently in force), with space reserved for the allocation of the identification number,
- a signed copy of the document on the rights and obligations of workers and jobseekers, (see further printed version),
- a copy of the models of correspondence and job offers with space reserved for the identification number to be allocated,
- the curriculum vitae, diploma and employment certificates of the applicant and the persons in charge of temporary employment services showing that they meet the conditions of professional competence,
- a copy of the employment regulations,
- where appropriate, proof that the agency complies with the statutory, regulatory and sectoral provisions on the conditions and arrangements for temporary work in the construction industry,
- in case of employment of foreign self-employed or seconded paid employees, the proof of the previous LIMOSA declaration.

- Belgian employment law is applicable to private employment agencies operating in the Brussels-Capital Region, whether their registered office is in Belgium or abroad.

2) Renewal of approval

- a certificate from the tax collector attesting that, at the time of submission of the request for extension of the recognition, the agency is not liable for tax arrears of any kind or that the discharge plan is being properly complied with,
- an attestation from the National Social Security Office that, at the time of submission of its renewal request, the agency does not owe any arrears collected by the institution responsible for collecting social security contributions or that the discharge plan is being properly adhered to,
- an updated version of any attachment that is not up to date since the last request for recognition.

2.2. Continuation of the procedure

- The request for recognition is addressed to the Board. The latter shall decide on the completeness of the document within fifteen days of receipt.
- If it is complete, the Board shall examine the request and transmit it to the Advisory Committee within fourteen days of the acknowledgement of receipt of the complete dossier.
- Thereafter, the advisory committee must deliver its opinion within 30 days. This period may be extended by a maximum of 30 days, subject to approval by the Minister. It can hear the applicant on its own initiative or at his request.
- Within fifteen days after receipt of the advice, or upon expiry of the term granted to the advisory committee to issue its advice, the Board shall forward the complete dossier to the Minister.
- The Minister shall decide on the request for recognition and submit it to the Board within 80 days of receipt of the complete dossier. In the absence of a decision within this period, it shall be deemed to be favourable.
- The Board shall notify the decision to the office concerned and the recognition shall be published by excerpt in the Belgian Official Gazette.

2.3. Fixed-term recognition

Before it can start its activities, the temporary employment agency must obtain accreditation. The accreditation is valid for two years. The temporary employment agency must apply for a renewal of the approval six months at the earliest and three months at the latest before its expiry. In principle, it then obtains accreditation for an unlimited period.

III. What is the maximum leasing period?

No maximum period exists by virtue of the law, but we recommend not exceeding 18 months.

IV. How is the protection of know-how and IP regulated?

The protection of know-how and IP is not statutorily regulated. Therefore, to protect the client's rights, it is recommended to include these matters in the agreement between the TEA and the client which regulates the details of cooperation and leasing of temporary employees. It is also recommended to have confidentiality and IP declarations signed directly by the employees.

V. Does a Permanent Establishment Risk exist?

It depends on the scope of employee's activities. This risk increases in for-some tasks (e.g. sales representatives, a person entitled to conclude contract on behalf of the client company, existence of stocks). It is always recommended to verify the position with a tax lawyer.

VI. Can stock options be granted to employees?

There is no special statutory provision in this regard. In practice it is not common to grant stock options to the temporary employees since they are not the employees of the user/ client but of the TEA.

VII. What alternative solutions to EOR exist?

Foreign companies may hire employees in Belgium with their foreign entity and register them quite easily with the Belgian payroll, ideally with the assistance of a local payroll provider. It is not necessary to have a Belgian subsidiary or registered branch office to directly hire employees in Belgium. As employer the foreign companies will need to comply with all the employer's legal obligations regarding among others the withholding of the social security contributions and the payment of withholding taxes, the well-being and safety obligations.

VIII. Your contact person

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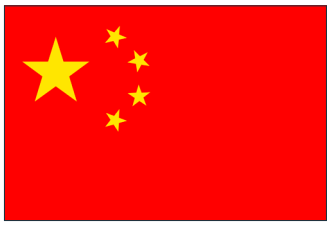
China

(excluding Hong Kong, Macao, Taiwan)



I. Is EOR an employee leasing service in the respective country?

EOR is not a legal term in China. Under Chinese law, so-called labour dispatch is comparable to EOR. "Labour dispatch" refers to a form of employment, in which the labour dispatching entity operates a labour dispatch business, hires employees and dispatches those employees to host entities. The host entity directly manages the work process of the dispatched staff.

Labour dispatch has the following main features:

1. A labour dispatching entity must obtain the Labour Dispatch Operation Licence in accordance with the law before it can operate a labour dispatch business. If a host entity enters into a labour dispatch agreement with an entity that has not yet obtained the Labour Dispatch Operation Licence, this may cause the legal risk that labour relationships between such host entity and the dispatched staff may be deemed established. Therefore, the host entity must first check and verify whether the labour dispatching entity has duly obtained the Labour Dispatch Operation Licence.
2. The labour dispatching entity hires employees and establishes labour relationships with the dispatched staff by signing written labour contracts. If a host entity uses dispatched staff without labour contracts with the labour dispatching entity, this may result in the legal risk of the host entity being found to have labour relationships with such dispatched staff. Therefore, the host entity shall also check and verify whether the labour dispatching entity has duly signed labour contracts with the dispatched staff.
3. A labour dispatch contract shall be signed between a labour dispatch entity and a host entity to establish a labour dispatch contract relationship.
4. The host entity uses the dispatched staff, but does not conclude labour contracts with the dispatched staff and does not establish labour relationships with them. The dispatched staff are subject to the direction and management of the host entity in the course of work, forming actual labour-use relationships. In practice, the host entity may conclude supplementary agreements with the dispatched staff to regulate the work content, conditions and discipline for the period of the labour dispatch.
5. The dispatched staff may only be used in temporary, auxiliary or alternative positions in accordance with the law. Temporary positions refer to jobs that have a duration of not more than six months. Auxiliary positions are non-main business jobs that are determined through the internal democratic process of the enterprise and provide services to the main business positions. Alternative positions are jobs where employees of the host entity

can be replaced by other employees for a certain period of time when the former are unable to work due to taking study sabbatical or taking leave etc. In addition, the number of the dispatched staff used by a host entity shall not exceed 10 % of the total number of the staff used by such host entity. The total number of the staff used by the host entity refers to the sum of the number of employees who have entered into labour contracts with the host entity and the number of the dispatched staff used by such host entity. If a host entity uses the dispatched staff in violation of the above mandatory provisions, the host entity might need to assume relevant legal liabilities towards the dispatched staff.

II. Does an EOR-service provider need an employee leasing licence to offer EOR-services?

A labour dispatching entity must obtain the Labour Dispatch Operation Licence in accordance with the law before it can operate a labour dispatch business. Where any entity engages in the labour dispatch business without licensing, the labour administrative department may order such entity to cease its violations, confiscate its illegal income, and impose a fine of once or up to five times the amount of illegal income; or if there is no illegal income, may impose a fine of not more than CNY 50,000 on such entity. Any labour dispatching entity or host entity that violates any statutory provision on labour dispatch shall be ordered by the labour administrative department to make corrections within a prescribed time limit; and if they fail to do so within the prescribed time limit, they shall be fined CNY 5,000 yuan up to CNY 10,000 per employee, and for a labour dispatching entity, its licence for engaging in the labour dispatch business shall be revoked. Where a host entity causes any damage to the dispatched employee, the labour dispatching entity and the host entity shall assume joint and several liabilities.

III. What is the maximum leasing period?

There is no explicit statutory limitation in this regard. However, the dispatched staff may only be used in temporary, auxiliary or alternative positions in accordance with the law. Temporary positions refer to jobs that have a duration of not more than six months. Auxiliary positions are non-main business jobs that are determined through the internal democratic process of the enterprise and provide services to the main business positions. Alternative positions are jobs where employees of the host entity can be replaced by other employees for a certain period when the former are unable to work due to taking study sabbatical or taking leave etc. In addition, the number of the dispatched staff used by a host entity shall not exceed 10 % of the total number of the staff used by such host entity. The total number of the staff used by the host entity refers to the sum of the number of employees who have entered into labour contracts with the host entity and the number of the dispatched staff used by such host entity. If a host entity uses the dispatched staff in violation of the above mandatory provisions, the host entity might need to assume relevant legal liabilities towards the dispatched staff.

IV. How is the protection of know-how and IP regulated?

There is no special statutory provision in this regard. In practice, the host entity may and should conclude supplementary agreements with the dispatched staff to regulate the work content, conditions (working time, remuneration, breaks and vacation etc.), discipline and protection of know-how and IP for the period of the labour dispatch.

V. Does a Permanent Establishment Risk exist?

In practice, no labour dispatch services in China may be provided to a foreign entity (except to its representative office in China). Should a labour dispatching entity nonetheless do so and depending on the content and length of the activities of the dispatched employee for the foreign host entity, a permanent establishment risk could exist.

VI. Can stock options be granted to employees?

There is no special statutory provision in this regard. In practice it is not common to grant stock options to the dispatched employees. The host entity may and should conclude supplementary agreements with the dispatched staff to regulate the work content, conditions (working time, remuneration, breaks and vacation etc.), discipline and protection of know how and IP for the period of the labour dispatch.

VII. What alternative solutions to EOR exist?

The first alternative solution is to directly hire through an entity set up and registered in China by a foreign entity.

The second alternative solution is "labour outsourcing". It refers to a labour-use pattern, in which the principal contracts out its certain businesses to a contractor, who arranges its own staff to complete the corresponding assignments as required by the principal.

Labour outsourcing has the following main features:

1. The principal concludes an outsourcing contract with the contractor, forming a contractual relationship for services or works under the general civil law. Therefore, the outsourcing contract is not subject to the special laws and regulations relating to labour dispatch.
2. There are usually no mandatory requirements regarding the qualification of the contractor and the type, nature and quantity of work to be outsourced.
3. The principal and the contractor agree that certain work will be assigned to the contractor for completion and that the contractor will be paid by the principal based on the amount of work and its completion.
4. The contractor establishes labour relationships with its employees as well as manages and directs them.

5. In the course of work, the principal does not directly manage and direct the contractor's staff.

Labour Dispatch vs. Labour Outsourcing:

1. **Qualification:** A labour dispatch entity must obtain the Labour Dispatch Operation Licence in accordance with the law before they may operate a labour dispatch business. In a labour outsourcing relationship, unless the outsourced project involves content to be licenced as required by law, the contractor is not required to apply for an administrative permit and there are no special qualification requirements.
2. **Position and quantity requirements:** Labour dispatch can only be carried out in temporary, auxiliary or alternative positions in accordance with the law, and the number of the dispatched staff used by a host entity shall not exceed 10 % of its total number of staff. For labour outsourcing there is no such special restrictions or requirements on positions and quantity.
3. **Legal relationships involved:** Labour dispatch involves three legal relationships: the labour dispatch contract relationship between the labour dispatching entity and the host entity, the labour contract relationship between the labour dispatching entity and the dispatched staff, and the actual labour-use or service relationship between the host entity and the dispatched staff. Labour outsourcing involves two legal relationships: the general civil contractual relationship between the principal and the contractor, and the labour contract relationship between the contractor and its employees.
4. **Direction and management:** In a labour dispatch relationship, the host entity directly commands and manages the daily work of the dispatched staff, and the dispatched staff shall follow the rules and regulations of the host entity. In a labour outsourcing relationship, the principal does not participate in the direction and management of the staff, and the contractor directly commands and manages its staff. In practice, if the principal is responsible for the actual management of the contractor's employees, instead of a labour outsourcing but a labour dispatch might be deemed established. If the contractor also has not concluded labour contracts with its employees or is not qualified to operate the labour dispatch business, the actual direction and management of the contractor's employees by the principal may even result in the principal being found to have de facto labour relationships with the contractor's employees.
5. **Measurement of work achievements:** In a labour dispatch relationship, the host entity pays the labour dispatching entity for its services based on the number of the dispatched staff, the content and/or hours of work, and other elements directly related to the dispatched staff. In a labour outsourcing relationship, the principal pays the contractor for the outsourced services based on its completion, which is not directly related to the number of staff used by the contractor or their working hours, etc.

6. **Applicable laws:** Labour dispatch is mainly governed by the Labour Contract Law of the People's Republic of China, the Measures for the Implementation of Administrative Licence for Labour Dispatch and the Interim Provisions on Labour Dispatch. In contrast, labour outsourcing is mainly subject to the Civil Code of the People's Republic of China.

VIII. Your contact person

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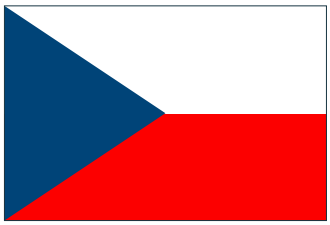
Czech Republic



I. Is EOR an employee leasing service in the respective country?

In Czech law, there is no concept of co-employment or a dual employment relationship. Generally, employees living and working in the Czech Republic are either directly employed by their actual employer or by an employment agency which temporarily assigns them for the performance of work to some other employer (the "user"). The scope of business of an employment agency under applicable law is brokerage of employment and one form of such is the employment of natural persons to perform work for another (legal or natural) person (the user) who assigns work and supervises its performance; Providers of EOR services in the eyes of the law are considered employment agencies and therefore always require a special permit. Written agreements between the employment agency (the EOR), (i) the employee and (ii) the user, including statutory requirements, are foreseen by law. In practice, this model is mainly used for blue-collar workers.

II. Does an EOR-service provider need an employee leasing licence to offer EOR-services?

Yes, employment brokerage may only be legally performed by natural or legal persons (employment agencies) with a valid permit (licence). This permit is issued by the General Directorate of Labour Office following an application for such. Obtaining such a permit is usually a complicated and lengthy process.

If an employment brokerage service provider does not have a valid permit yet provides such services (temporarily assigning its employees), it is an offence punishable by a fine of up to CZK 10,000,000 (approx. EUR 400,000), but not less than CZK 50,000 (approx. EUR 2,000). In addition, the same offence has also been committed by the company (user) that signed a contract with the employment brokerage service provider and is using its employees.

III. What is the maximum leasing period?

An employment agency may not temporarily assign the same employee to work for the same user for more than 12 consecutive calendar months. This restriction does not apply in cases where the employment agency is requested to do so by its employee, or while the work is replacing a user's female employee on maternity or parental leave, or a user's male employee on paternity or parental leave.

IV. How is the protection of know-how and IP regulated?

Statutory provisions (of the Copyright Act) apply here. Regarding intellectual property (and works created by the employee) therefore, legally the employer is the user for whom the employee is working temporarily, unless otherwise specified between the employment agency and the user. However, any arrangement that deviates from the law (if permitted at all) or addresses issues not covered by the law must be in the contracts between the parties involved. This is why if needed, it is recommended to include these matters in the agreement between the employment agency and the user, and to have a separate agreement between the user and the employee where IP rights and confidentiality issues might be addressed (to the extent allowed by law). However, a non-compete clause can only be negotiated within the employment relationship and under the conditions set out in the Labour Code. The validity of such an agreement between the employee and the user could be considered problematic under the regulations of civil law.

V. Does a Permanent Establishment Risk exist?

Depending on the scope of activities of the temporarily assigned employee, assessment of this risk by tax experts is always recommended, especially in case of certain tasks (e.g. when the employees are entitled to represent the company or shall conclude contracts on behalf of the company). However, as in practice mostly "blue collar" workers are being leased, this has not been an issue yet.

VI. Can stock options be granted to employees?

There are no regulations that forbid granting stock options to temporary employees. However, it is not known to us whether stock options would be granted to the leased employees either by the employment agency or by a user to which they were assigned (as the assigned/leased employees are usually "blue collar" workers). In the Czech Republic stock options are not that common and if granted, then this is often by a parental (foreign) company of an employer in a separate contractual relationship governed by the laws of the parental company's home country, and not by the actual employer.

VII. What alternative solutions to EOR exist?

(i) Directly hiring through an entity or branch office set up and registered in the Czech Republic by a foreign entity plus cooperation with a local payroll provider. Payroll deducts all social security contributions and income tax withholdings automatically; the monthly administration costs are rather marginal. Direct employment without having a local entity (company or a branch office) is theoretically possible; however, more than often this entails with the risk of permanent establishment.

(ii) Use of the services of an employment agency (once again usually for "blue collar" workers).

(iii) Hiring a consultant / freelancer / sole entrepreneur instead of an employee, assuming that such relationship will not qualify as hidden employment (this is quite common in IT sector).

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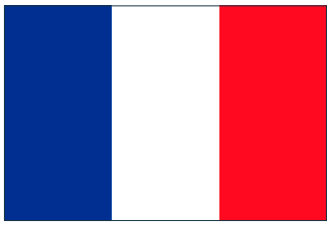
France



I. Is EOR an employee leasing service in the respective country?

In French law, EOR does not exist as such. There are other schemes for providing employees, such as umbrella companies ("Portage salarial company").

Portage salarial is a triangular relationship. On the one hand, there is an employment contract between the "portage" company and the employee. On the other, there is a commercial contract for the services provided by the portage company and the user company.

Employees on the portage scheme must have the expertise, qualifications and autonomy to seek out clients themselves and agree with them on the terms and conditions of the service and its price. The employee is responsible for prospecting clients, negotiating the service and its price, and supplying the services to the client company. The "portage" company collects the fees paid by the client and then pays the employee in the form of a salary, after deducting management costs and all social security contributions (employer and employee).

Lastly, the user company may only use a temporary employee to carry out an occasional task that is not part of its normal, permanent activity, or for a one-off service requiring expertise that it does not have.

II. Does an EOR-service provider need an employee leasing licence to offer EOR-services?

Portage is strictly regulated. The "portage" company must carry out this activity on an exclusive basis, has made prior declaration to the Labour Inspectorate and provide a financial guarantee for the payment of wages. The amount of this guarantee must be at least equal to 10 % of the previous year's payroll but may not be less than EUR 92,736 for 2024.

Failure to comply with the provisions on the "portage company" may entail the following risks:

- a maximum fine of EUR 3,750 for the legal representative and a maximum fine of EUR 18,750 for the company. A repeat offence is punishable by 6 months' imprisonment and a EUR 7,500 fine (EUR 37,500 for the Company). The judge may impose a ban on carrying on the activity of "portage" for a period of between 2 and 10 years.
- Offence of illegal lending of labour ("prêt de main d'oeuvre illicite") or illegal bargaining ("délit de marchandage"): criminal penalties: range from 2 years' imprisonment and a maximum fine of EUR 30,000 for the legal representative (EUR 150,000 for the Company) fine to 10 years' imprisonment and a EUR 100,000 fine (EUR 500,000), depending on the case.

III. What is the maximum leasing period?

The maximum duration of a portage assignment is 36 months.

IV. How is the protection of know-how and IP regulated?

1) In a "portage salarial" scheme, the IP rights and know-how generated by the employee as part of the execution of his/her employment agreement are regulated as follows under French law:

- Some IP rights on the components created by the employee are automatically assigned to the employer (such as IP rights on software and inventions).
- The other IP rights as well as know-how are held by the employee, except if an assignment provision of such rights to the employer has been executed with the employee.

Consequently, in such a scheme, all the IP rights and know-how are generally assigned by the employee to the employer (i.e., the "portage" company in this case), so that they are fully owned by a single entity, and can then be assigned, if necessary, from the "portage" company to the user company via an assignment provision included in the services contract executed between them.

2) With respect to the confidentiality of the IP and know-how held by the user company, standard practice is to regulate the matter in the services contract between the user company and the "portage company", including the obligation to replicate it in the employment agreement with the employees subject to the "portage". As a rule, and to minimize risks of direct employment relationships, there are no confidentiality agreements between employees and the user company.

V. Does a Permanent Establishment Risk exist?

As a matter of principle, tax treaties provide that a foreign company is deemed to have a permanent establishment in a specific state when it carries on its activity through a fixed place of business in this state. This implies (i) the characterization of premises with a certain stability and permanency, and (ii) the performance of the main activity of the foreign company. As per the treaty, the notion includes especially a place of management, a branch, an office, a factory, a workshop, a mine or quarry.

Alternatively, a foreign company may still be treated as having a permanent establishment in a specific state if it is represented there by a person, (i) other than an agent of an independent status, who is (ii) acting on behalf of the foreign company and (iii) has, and habitually exercises, in the state an authority to conclude contracts on behalf of the foreign company. It should be noted that the French Administrative Supreme Court approach is quite broad as it ruled that must be viewed as carrying such powers (concluding contracts on behalf of the name) a person that, habitually and even if he does not formally conclude

contracts on behalf of the foreign company (e.g., no authority to sign), decider of transactions that the foreign company is bound to endorse. This approach is also supported by the OECD which retains as definition of the dependent agent a person that "habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the company". Please note that the French Tax Administration will look for a bundle of clues, such as business cards, e-mail signature block, presentation of the employee on networks (LinkedIn, etc.), attendance at communication events as a company representative, etc. In case of the recognition of a permanent establishment, the penalties can be severe.

VI. Can stock options be granted to employees?

Insofar as the individual is an employee of the French EOR (and not an employee of the foreign issuing entity), stock-options granted to such individual would not qualify under the French Commercial Code. As a result, the acquisition gain arising from the exercise of the stock-options (i.e. equal to the difference between (i) the value of the share at the date of exercise and (ii) the strike price) will be treated as a self-employed income (i.e. French preferential tax and social security regime not applicable), which would notably entail the eligibility of social charges to be paid by the French beneficiary.

VII. What alternative solutions to EOR exist?

Alternative solutions:

- foreign companies can directly hire employees in France (even if there is no legal entity in France);
- Use a temporary employment agency: The use of temporary contract is strictly regulated and the duration of the assignment varies from case to case, but cannot exceed 24 months.

VIII. Your contact persons

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Germany

I. Is EOR an employee leasing service in the respective country?

In German law, there is no concept of a co or dual employment relationship. Generally, an employee living and working in Germany is either directly employed by its actual employer or by a third-party rendering services to the "factual" employer as customer of the EOR, subject to the underlying specific German laws. The duties and obligations in an EOR model under German law are always structured and need to be qualified as a tripartite relationship in which the obligations between (i) the hiring company (EOR) and the employee on the one hand and (ii) the company as a customer of the EOR asking for services of a specific employee on the other hand need to be strictly separated. When using an EOR model, the EOR concludes an employment agreement with the employee in purely formal terms, whereas any disciplinary employer rights regarding termination, performance and misconduct during the ongoing employment relationship are handled by the EOR. On the other hand, the company as the "factual" employer controls the employment relationship in terms of content and services as the employee is generally integrated into the work organisation of the "factual" employer and therefore is subject to the "factual" employer's instructions. In order to provide a comprehensive and clear regime regarding the services to be provided, the EOR and the respective company usually conclude a Master Service Agreement ("MSA"). Under German law, the above-described EOR model is qualified as employee leasing (*Arbeitnehmerüberlassung*), which is highly regulated and subject to strict formal requirements set out in the German Employee Leasing Act (*Arbeitnehmerüberlassungsgesetz – "AÜG"*), which need to be observed to rule out possible risks and undesirable consequences.

II. Does an EOR-service provider need an employee leasing licence to offer EOR-services?

EORs wanting to lend employees to their clients must obtain an employee leasing licence (*"Arbeitnehmerüberlassungserlaubnis"*) issued by the German Employment Agency (*Bundesagentur für Arbeit*) if the employee works (at least to some extent) for a client in Germany or the EOR has its registered office in Germany. The German Employment Agency has now stated in its directions on the AÜG (fachliche Weisungen) that a licence may also be required where the employee is working entirely remote outside Germany, but is "virtually integrated" into the German organization of a client.

If an EOR does not hold a valid licence, this is deemed illegal employee leasing (unerlaubte Arbeitnehmerüberlassung). Such illegal employee leasing may result in undesirable consequences and severe penalties. Both the EOR and the "de facto" employer can be fined up to

EUR 30,000.00 per violation.In a worst case scenario, there might even be criminal prosecution against the management of the company and the EOR.

III. What is the maximum leasing period?

Under German employee leasing law an individual employee may generally only be leased to a company for a period of 18 months (exemptions are applicable in cases where company operations are bound to certain collective bargaining agreements which allow for a longer lease, e.g. in the chemical or automotive industry). After expiry of the 18 months, the respective employee either needs to be hired by the company or the assignment needs to stop for at least a certain cooling off period.

IV. How is the protection of know-how and IP regulated?

Due to the tripartite relationship in the EOR model, know-how protection, confidentiality and non-compete issues are complex. The risks involved can often be resolved by concluding an additional agreement between the employee and the company in which the IP/confidentiality and non-compete issues are regulated. It is not sufficient under any circumstances, that the provided employment agreement, which is only binding between the EOR and the employee, governs the IP/confidentiality and non-compete issues, as this employment agreement does not and cannot specify the services performed for the company as a client of the EOR.

V. Does a Permanent Establishment Risk exist?

Depending on the type of tasks of a leased employee, the company faces the risk that the specific employment relationship is qualified as illegal employee leasing and that therefore, the foreign entity becomes taxable under German corporate tax law. The assessment of this risk is always crucial if employees perform certain tasks (especially when they are entitled to represent the company or conclude contracts on behalf of the company) which constitute a so-called permanent establishment under German law ("PE-Risk").

VI. Can stock options be granted to employees?

Granting stock options to employees of EORs is problematic under German law. Since the employees are legally employed by a third party (the EOR) the consent of the EOR is required before any stock options are granted.

The reasons for this are:

(i) the standard terms and conditions of the EORs that generally require that no direct benefits are paid/granted from the principal to the EOR's employee which is due to (ii) German tax law that considers such third-party benefits as third party wages for which the relevant income taxes/social security contributions need to be paid by the EOR on behalf of the

relevant employee and deducted from the employees' wages. Particularly, if the beneficiary can exercise the option after the employment relationship was terminated this poses a liquidity risk for the EOR since they must make the tax and social security contribution payments on behalf of their former employee and reclaim them afterwards from the relevant employee which can be tricky in practice.

- Against this background granting options to shares of Common Stock to EOR employees only works in practice (i) with the consent of the EOR and (ii) a specifically designed Stock Option Grant Notice that addresses the EOR situation, particularly already addressing the envisaged later transfer of the employment relationship to the client Inc. (or a local subsidiary).
- On the factual side of things, a certain likelihood also is required that the beneficiary, after the maximum leasing period has elapsed, becomes a direct employee of the client Inc. (or a local subsidiary) because otherwise, the beneficiary will also likely not fulfil the agreed vesting period while being employed by the EOR.

VII. What alternative solutions to EOR exist?

Foreign companies may hire employees in Germany with their foreign entity and register them quite easily with the German payroll, ideally with the assistance of a local payroll provider. It is not necessary to have a German legal entity to directly hire own employees in Germany. Payroll deducts all social security contributions and income tax withholdings automatically; the initial and monthly administration costs are rather marginal. A clear benefit of such an approach is that the employees are genuinely employees of the foreign company and candidates feel more comfortable than being hired by a third party.

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Hungary

I. Is EOR an employee leasing service in the respective country?

EOR in Hungarian law is a form of temporary agency work. This form of employment relationship is where an employee is hired out by a temporary-work agency to a user enterprise for remunerated temporary work, provided there is an employment relationship between the employee and the temporary-work agency. There are three main actors in this employment relationship: (i) the temporary-work agency, which shall mean any employer who places an employee, with whom it has an employment relationship, under contract to a user enterprise for temporary work supervised by the user enterprise; (ii) the user enterprise, which means any employer under whose supervision the employee performs temporary work and the (iii) temporary agency worker, which means an employee with a contract of employment with a temporary-work agency with a view to being assigned to a user enterprise to work temporarily, where employer's rights are exercised collectively by the temporary-work agency and the user enterprise.

II. Does an EOR-service provider need an employee leasing licence to offer EOR-services?

A registration procedure is necessary to carry out the services. If the temporary work agency intends to engage in temporary agency work, it shall notify its intention by electronic means to the competent government office, accompanied by the documents required by law (for example: the applicant has adequate office space to carry out the activity; the applicant proves the lodging of the security required). The government office keeps a separate register of the temporary work agencies.

III. What is the maximum leasing period?

According to Hungarian law the duration of assignment may not exceed five years, including any period of extended assignment and re-assignment within a period of six months from the time of termination of the end of the previous assignment, irrespective of whether the assignment was made by the same or by a different temporary-work agency. After five years, the employee concerned may not be employed on a temporary agency work basis for six months. After the six months, it becomes possible to conclude this type of contract with the same or another employer.

IV. How is the protection of know-how and IP regulated?

According to Hungarian law an agreement between the temporary-work agency and the

user enterprise shall specify the essential conditions of the employment relationship. To protect and regulate IP rights and know-how, it is recommended to regulate these matters in this agreement.

V. Does a Permanent Establishment Risk exist?

The risk of establishment can be influenced by several factors, including in particular if the foreign employer provides equipment or office space for the employee working in Hungary or employs multiple employees. It is essential to evaluate these factors to minimise the establishment risk and to avoid a situation where the company would be subject to Hungarian corporate tax obligation.

VI. Can stock options be granted to employees?

Hungarian law does not forbid granting stock options to temporary employees, but there is no specific regulation for this matter. According to Hungarian tax law, the employee shall be liable to pay personal income tax on the granted stock options.

VII. What alternative solutions to EOR exist?

A foreign legal entity may employ employees directly, in addition to meeting some administrative obligations (e.g. applying for a tax number at the Hungarian Tax Authority to fulfil tax obligations related to the employment). In practice, foreign employers assign a local payroll provider to fulfil the related tax payment obligations in Hungarian forints. Hungarian labour law also recognises special sub-cases of that direct employment, namely: (i) job sharing as a form of employment where the employer may conclude an employment contract with several employees for carrying out the functions of a job jointly, and (ii) employee sharing, which is a form of employment where several employers conclude an employment contract with one employee for carrying out the functions of a job.

VIII. Your contact person

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Netherlands

I. Is EOR an employee leasing service in the respective country?

Based on Dutch law, it is possible to make use of an EOR to employ employees in the Netherlands. The legal basis to do this is by means of a payroll agreement (Section 692 of Book 7 of the Dutch Civil Code). A payroll agreement exists when a party takes on the (formal) employer role, while this party has not fulfilled the allocation function. In this case, the recruitment and selection of the employee must take place by the client or a third party (not being the formal employer). In principle, this must involve exclusive assigning of the employee, unless the third party/client gives permission. The employee will enter into an employment agreement with the EOR. If preferrable, an additional agreement can be concluded between the client and the employee.

Pursuant to Section 8a paragraphs 1 and 2 Placement of Personnel by Intermediaries Act (Waadi), the payroll employee is entitled to the same employment conditions as those that apply to employees working in an equal or equivalent position within the organisation of the client. This includes wages, other allowances, working hours, benefits such as a thirteenth month, pension, (extra-statutory) holidays, extra-statutory supplements in the event of illness, disability, unemployment and training.

II. Does an EOR-service provider need an employee leasing licence to offer EOR-services?

No licence, but based on the Placement of Personnel by Intermediaries Act, the EOR shall register its company as such at the trade register of the Dutch Chamber of Commerce. Both the EOR and the hirer risk a penalty in case of breach of this obligation. According to Dutch law, the EOR / payroll company is not obliged to have an employee leasing licence to offer EOR-services. However, some licences and certificates (such as NEN-4400-1) are standard practice to have for EOR's. As of 1 January 2026, new legislation will likely come into force including mandatory certifications for employment agencies and intermediaries. The obligation applies to all companies that provide personnel and fall under the scope of the Placement of Personnel by Intermediaries Act.

III. What is the maximum leasing period?

There is no maximum leasing period. However, for EOR / payroll workers, the statutory provisions on succession of fixed-term employment contracts apply. This includes that a maximum of three fixed-term employment agreements can be concluded between the employee and the EOR within a maximum period of three years. In case the term of three years and/or the

maximum of 3 contracts will be exceeded, the fixed-term employment agreement will be converted by operation of law into an employment agreement for an indefinite period of time.

IV. How is the protection of know-how and IP regulated?

The principle is that there is (only) an employment agreement between the EOR and the employee. Therefore, know-how and IP of the hirer/client are generally not protected. EOR's are often not willing to change their restrictive covenants so that the hirer/client is also protected. This risk pertaining thereto can often be resolved by concluding an additional agreement between the employee and the client in which the IP/confidentiality and non-compete issues are regulated.

V. Does a Permanent Establishment Risk exist?

There is a risk of a Permanent Establishment to exist. This could be the case if the Tax Authorities see through the structure and see the employees working in the Netherlands, as the company's personnel for tax purposes.

VI. Can stock options be granted to employees?

Generally, yes, but stock options plans shall be amended (or an Appendix shall be created), in order to create the possibility to grant stock options to employees who are employed by an EOR.

VII. What alternative solutions to EOR exist?

Using an EOR to take on employees is typically a shorter-term solution for international companies who are looking to test the Dutch market with an initial step. Alternatively, employees can work in the Netherlands while employed by the foreign entity of the client. It is not required to have a local entity in the Netherlands to be able to hire employees in the Netherlands. In that case, most companies engage a payroll provider to make sure that the correct taxes and premiums are withheld and to seek tax advice in advance.

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Poland

I. Is EOR an employee leasing service in the respective country?

A statutorily admitted model of EOR in Poland is temporary employment via a registered Temporary Employment Agency ("TEA"). In this model, TEA is a direct employer and an employee is leased to work for employer-user (a client company who asks for employee leasing). Because this model provides for less employment protection rights and is mainly applied for blue-collar workers, highly qualified candidates (e.g. software developers) very often reject it and require a standard employment contract from the EOR. Although it is statutorily not regulated, agencies follow their requests and employ them directly and lease as usual employees. Such a solution poses risks to end user clients because an employee may raise a claim to establish the existence of an employment relationship with the client company, not EOR. In such a case, the client company may incur significant financial obligations and face other risks connected with lack of conclusion of an employment contract with a given EOR employee who in fact was a client's employee.

II. Does an EOR-service provider need an employee leasing licence to offer EOR-services?

Yes, a registration in the National Register of Employment Agencies is necessary to offer EOR-services. An application for entry in the register should be submitted to the marshal of the voivodeship (body of government administration) competent for the place of business.

III. What is the maximum leasing period?

A TEA may direct a given temporary worker to perform temporary work for one employer-user for a period not exceeding 18 months in total in a period of 36 consecutive months. Moreover, a TEA may direct a temporary employee to perform, continuously, for a period not exceeding 36 months, temporary work for one employer-user, which consists of tasks belonging to an absent employee employed by a given employer-user.

IV. How is the protection of know-how and IP regulated?

The protection of know-how and IP is not statutorily regulated. Therefore, to protect the employer-user's rights, it is recommended to include these matters in the agreement between the TEA and the end user client which regulates the details of cooperation and leasing of temporary employees. It is also recommended to have confidentiality declarations signed directly by the employees.

V. Does a Permanent Establishment Risk exist?

Depending on the scope of employees' activities. This risk increases in case of some tasks (e.g. sales representatives, a person entitled to conclude contract on behalf of the client company). It is always recommended to verify the position with a tax lawyer.

VI. Can stock options be granted to employees?

There are no regulations that would forbid granting stock options to temporary employees. They are usually granted as a separate contractual relationship governed by the laws of the home country of the employer user.

VII. What alternative solutions to EOR exist?

Most popular alternative solutions to EOR are: (i) direct employment as there is no legal requirement to have a local office or entity to remotely hire employees in Poland; (ii) temporary employment via licenced TEA; (iii) hiring a consultant instead of employee if such relationship will not qualify as hidden employment; (iv) outsourcing business services to a provider instead of leasing employees from EOR.

VIII. Your contact person

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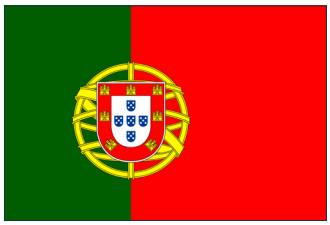
Portugal



I. Is EOR an employee leasing service in the respective country?

The leasing activity of EORs is not legally foreseen in Portugal, nor are EORs a specific type of company.

Common legal frameworks for EORs to pursue their activity are (i) acting in the capacity of a temporary employment agencies ("TEA"), (ii) temporary assignment of employees or (iii) providing outsourcing services. None of these mechanisms were constructed having EORs in mind, being therefore used by EORs in the absence of a specific legal umbrella.

When structured as a TEA, the EOR (acting in the capacity of a TEA) hires employees and leases them to the client, under a triangular relationship, entailing (i) a temporary work contract between the TEA and the employee, (ii) a temporary lease services agreement between the TEA and the client, (iii) no contractual relationship between the client and the employee. The TEA is the sole employer (e.g. paying salaries, taxes and Social Security contributions), but the client is legally allowed to direct the work of leased employees as if they were their own. The use of leased employees via TEAs is only admissible to fulfil temporary needs of the client, as defined by law (misuse of TEAs may result in a permanent employment contract between client and leased employee).

When structured as a temporary assignment of employees, the EOR leases its own employees to the client, under a tripartite agreement signed by all parties (the EOR, the client and the employee). The EOR acts is the sole employer (e.g. paying salaries, taxes and Social Security contributions), but the client is legally allowed to direct the work of leased employees as if they were their own. The use of this structure is only admissible if (i) the employee has a permanent contract with the EOR and (ii) both the EOR and the client are part of the same company group (as defined by law) or have common organisational structures (misuse of temporary assignments may result in a permanent employment contract between client and leased employee).

When structured as an outsourcing service, the scope of the contract with the EOR will be the execution of a service, not the lease of employees, since the client may not act as the employer. This structure often entails a risk of the EOR's employees claiming a direct employment relationship with the client whenever the latter acts as the real/factual employer (giving orders, controlling, and/or directing the employee's day-to-day work). Collective bargaining agreements applicable to the client may also apply to the EOR's employees, which could impact the cost-efficiency of the solution (amongst other conditions, leased employees could be entitled to the same salary and benefits of the client's own employees).

II. Does an EOR-service provider need an employee leasing licence to offer EOR-services?

It will depend on how the activity is structured: if the EOR is a TEA, it needs to be licenced by a public entity (the Employment and Vocational Training Institute), otherwise the leased employee may claim a direct employment contract with the client, both client and EOR are liable for labour credits (for the last 3 years) and social contributions, and the EOR will be subject to administrative sanctions such as fines (or even a closure order); if the EOR acts by means of outsourcing contracts or temporary assignment of employees, no licence is required (without prejudice to the legal consequences for its misuse).

III. What is the maximum leasing period?

It will depend on how the activity is structured: if the EOR is a TEA, the maximum leasing period will vary between 6 (six) months and 2 (two) years (depending on the specific temporary need of the client used to justify the temporary lease services agreement); in case of temporary assignment of employees, the maximum leasing period is 1 (one) year, renewable for equal periods up to 5 (five) years; in case of outsourcing there is no maximum limit applicable, since the activity is structured as a services provision between companies, not as a lease of employees.

IV. How is the protection of know-how and IP regulated?

Although very broad and general rules on confidentiality are covered by law, standard practice is to regulate the matter in the contract between the EOR and the client, including the obligation for the EOR to replicate it in its contractual relationship with the leased employees. As a rule, and to minimize risks of direct employment relationships, there are no confidentiality agreements between leased employees and the client. The client may also adopt the internal measures deemed necessary to ensure know-how and IP protection, namely from a technical perspective, such as restrictions on accessing or sharing information (if these involve monitoring of electronic means of communication extreme caution is advised and a prior risk assessment should be carried out).

V. Does a Permanent Establishment Risk exist?

The client may face the risk of a permanent establishment (PE) depending on multiple factors, such as the type of activity carried out, the powers granted to leased employees (especially those related to company representation before third parties) or the workplace location and characteristics. It is therefore advisable to conduct a PE risk assessment before setting up the structure for the client.

VI. Can stock options be granted to employees?

There are no specific Portuguese laws or regulations preventing the granting of stock options to leased employees (they are limited only by the type of company, its by-laws, and existing shareholders agreements on the matter). However, given that stock options are typically incentives given within the context of a labour relationship, they are not generally used for leased employees as they have no employment contract with the client (and granting stock could result in closing the gap between the leased and the client's own employees, with the risk of providing leased employees with additional arguments should they claim a direct contract with the client).

VII. What alternative solutions to EOR exist?

The most popular solutions are (i) direct hiring in the case of foreign entities, as there is no need for setting up a company or branch in Portugal, only to be enrolled in the Portuguese Commercial Registry / Social Security as a foreign employer (contributions are usually made with the assistance of a local payroll provider), or (ii) the use of any of the structures also commonly adopted by EORs, such as TEAs or outsourcing services.

VIII. Your contact person

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Slovakia

I. Is EOR an employee leasing service in the respective country?

The Slovak law does not recognise the EOR regime as a legal one. If the company decided to apply such a regime, it would entail various legal risks.

The only similar concept that is legal is the cooperation with a temporary employment agency ("TEA"). Its operation, the terms of the set-up and the rules of temporary assignment of employees are strictly regulated by the Act on Employment Services and the Labour Code. In this model, the employee enters into an employment contract with the TEA (i.e. the TEA is the direct employer), in which the TEA undertakes to provide the employee with temporary work with the user employer (a client company who asks for employee leasing) and the terms and conditions of employment are agreed upon. On the other hand, a temporary employee assignment agreement is required between TEA and the user employer. In this way the company (user employer) gets the opportunity to use employees with the qualifications it requires for its own business without being their actual employer. The company has rights over the employee, with whom it has no contract (including the right to assign tasks, organisation, management and control of work, creating favourable working conditions and ensuring safety and health protection at work). However, the provision of wage, wage compensation or travel allowances remains with the TEA.

II. Does an EOR-service provider need an employee leasing licence to offer EOR-services?

In the case of using the EOR model through a TEA, it is essential that the TEA has the relevant permission to perform such activity. The permit for the performance of TEA activities is issued by the Office of Labour, Social Affairs and Family of the Slovak Republic.

III. What is the maximum leasing period?

A temporary assignment through the TEA may be agreed for a maximum of 24 months. A temporary assignment of an employee to the same user employer may be extended or re-negotiated up to four times within a 24-month period. If the maximum duration of the temporary assignment or the number of extensions/re-negotiations of the temporary assignment is exceeded, the employment relationship between the TEA and the employee shall terminate and an employment relationship of indefinite duration shall be established between the employee and the user employer.

IV. How is the protection of know-how and IP regulated?

- **Copyright:** Pursuant to the Copyright Act, the user employer is deemed to be in the role of a "standard employer." This implies that the user employer has a statutory right to exercise economic copyrights, as well as to use moral copyrights. This statutory regime may be altered through mutual agreement.
- **Industrial Rights:** The law governs regimes concerning employee invention or designs, i.e. the relationships between the employer and the employee – inventor. However, it remains unclear if this regulation also covers the user employer. Therefore, to safeguard the user employer's rights, it is strongly recommended to cover the industrial rights regime in both the agreement between TEA and the user employee and in the agreement between TEA and the employee.
- **Know-how and Confidentiality:** The know-how is protected only through commercial regulations of trade secrets. To protect the employer's rights, it is recommended to include this matter in the respective agreements. Please note that the confidentiality clause should be concluded with the employees.

V. Does a Permanent Establishment Risk exist?

Yes, the risk of a permanent establishment cannot be ruled out. When assessing the risk of a permanent establishment, it is necessary to take into account the type of performance of activities by the user employer as well as the scope of employee's activities. Assessing this risk becomes particularly crucial when employees are tasked with specific duties (especially those involving representation of the company (user employer) or contract negotiation on behalf of the company. In particular cases, it is advisable to contact tax specialists.

VI. Can stock options be granted to employees?

No regulations exist that prohibit the provision of stock options to temporary employees. Typically, such options are awarded through a distinct contractual arrangement. However, stock option plans are not widely used locally.

VII. What alternative solutions to EOR exist?

(i) Foreign companies may hire employees in Slovakia with their foreign entity and register them quite easily with the Slovak payroll, ideally with the assistance of a local payroll provider. In such a case it is not necessary to have a Slovak entity or registered branch office to directly hire employees in Slovakia. As employer the foreign companies will need to comply with all the employer's legal obligations regarding among others the withholding of the social security contributions, the payment of withholding taxes, as well as the health and safety obligations.

(ii) Direct hire of employees through establishing of a local branch office or entity.

(iii) Usage of TEA

(iii) Subject to the type of work, mainly in case of IT services the services of freelancers/sole entrepreneurs are used. This option is formally not an employment so there is no need to be in line with relevant local labour laws. It is crucial to make sure that the relationship would differ from the employment to avoid a hidden employment.

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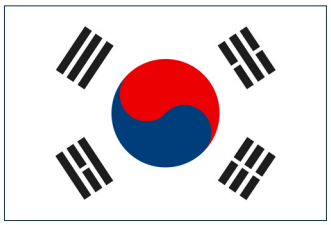

I. Is EOR an employee leasing service in the respective country?

EOR is still a new concept in Korea, and there are no explicit provisions related to the EOR in Korea.

Although it may vary depending on the actual business model of the EOR, it is similar to the concept of "temporary placement of workers" under the Act on the Protection of Temporary Agency Workers (hereinafter "Dispatch Act"). Temporary placement of workers means "engaging a worker employed by a temporary work agency to work for, and under the direction and supervision of, a user company in accordance with the terms and conditions of a contract on temporary placement of workers, while maintaining his/her employment relationship with the temporary work agency (Article 2(1) of the Dispatch Act)."

There are cases where contracts on temporary placement of workers are executed in a subcontracting method, but to be recognised as a subcontract, the user company (a client to the temporary work agency) shall have no direct control or supervision over the temporary agency workers. If the temporary agency workers are under the direct control or supervision of the user company, it is deemed disguised subcontract or illegal dispatch and the user company has an obligation to directly employ the temporary agency workers. It is understood that in the case of EOR, the temporary agency workers will eventually work under the direct control and supervision of the user company. Therefore, it is unlikely to be considered a subcontract and is subject to the requirements of the Dispatch Act.

The Dispatch Act allows temporary agency workers to be placed only in 32 industries (Article 5 of the Dispatch Act).

II. Does an EOR-service provider need an employee leasing licence to offer EOR-services?

Any company that intends to engage in temporary work agency business shall obtain approval from the Ministry of Employment and Labour ("MOEL") (Article 7 of the Dispatch Act).

The requirements for the approval are:

1) the applicant shall have assets, facilities, etc., which enable the applicant to properly conduct temporary work agency business and

2) the relevant temporary work agency business shall not target a small number of user companies (Article 9 of the Dispatch Act).

The detailed criteria of the requirements are:

1) work agency shall be a business or workplace employing at least five full-time workers (excluding temporary agency workers) covered by employment insurance, national pension, industrial accident compensation insurance, and national health insurance,

2) temporary work agency shall have capital of at least KRW 100 million (in cases of individuals, referring to their appraised asset value), and

3) temporary work agency shall have an office with an area exceeding 20 square meters for exclusive use (Article 3 of the Enforcement Decree of the Dispatch Act).

III. What is the maximum leasing period?

Once the temporary work agency obtains business approval, such approval is only valid for three (3) years (Article 10(1) of the Dispatch Act). To continue operations, the temporary work agency must renew its approval every three years. (Article 10(2) of the Dispatch Act). In practice, while the MOEL may grant initial approval relatively easily, it tends to conduct stricter inspections for illegal dispatch practices before granting renewal approval.

IV. How is the protection of know-how and IP regulated?

The laws are not explicit on the protection of EOR's Intellectual Property (IP). Therefore, it is necessary to include IP related provisions in individual contracts for temporary placement of workers or subcontracts. In other words, it is necessary to include IP related provisions and confidentiality provisions against not only the user company but also the temporary agency workers.

V. Does a Permanent Establishment Risk exist?

The short answer to this question is: it depends on the business structure and the nature of the company's activities in Korea.

According to Article 94 of the Corporate Tax Act, in principle, if a foreign company has a fixed place (permanent establishment) for the operation of all or part of its domestic business, the foreign company shall be deemed to have a domestic place of business. However, even if there is no fixed place, if a company intends to conduct business on any of the following categories or specified in the Presidential Decree, it is deemed to have a fixed place in Korea.

1. A person who has the authority to enter into a contract falling under any of the following items for the foreign corporation in Korea and repeatedly exercises such authority:

- **A.** Contract in the name of a foreign corporation
- **B.** Contract to transfer ownership of assets owned by a foreign company or to licence the use of the assets over which the foreign company has ownership or a right to use.
- **C.** Service Contract to provide services to a foreign company

2. A person who repeatedly plays an important role in the process of executing a contract (limited to cases where foreign companies execute the contract without changing the material terms of the contract), even if the person does not have the authority to conclude a contract in the name of the foreign company in Korea.

Therefore, even if the company does not establish a domestic corporation, if the company performs the above-mentioned tasks in Korea, the company that conducts EOR in Korea is likely to be considered as a fixed place (permanent establishment).

VI. Can stock options be granted to employees?

There is no specific provision in Korean law that restricts the granting of stock options to temporary agency workers (same for regular workers). Therefore, stock options may be granted under the condition that such act does not violate the foreign corporation's article of incorporation, bylaws, or the laws of the country in which the foreign corporation is located.

Under the Dispatch Act and the Labour Standard Act, a temporary work agency is the party that pays wages to the temporary agency workers. However, there is still an ongoing discussion on whether stock options can be recognised as wages, but the majority does not consider stock options as wages. Therefore, a company may grant stock options to dispatched workers regardless of the above regulations.

VII. What alternative solutions to EOR exist?

Since the Dispatch Act imposes strict regulations on temporary work agency arrangements, including limitations on the duration and permissible job categories, alternative employment structures such as EOR services may not be always legally permitted in Korea. Given these restrictions, companies seeking compliant workforce solutions may consider direct employment through a local entity.

According to Article 614 of the Commercial Act, "a foreign company intending to engage in business in the Republic of Korea shall appoint a representative in the Republic of Korea and shall establish a business office in the Republic of Korea or have its one or more representatives have his/her address in the Republic of Korea."

Therefore, in principle, a foreign company must establish a business office in Korea if it intends to engage in business in Korea but this requirement can be exempt if one or more representatives have his/her address in Korea. There are no separate registration obligations stated in the Commercial Act.

Therefore, if the address of one or more representatives of a foreign company is in Korea, the foreign company may directly employ workers without establishing a separate business office in Korea and conduct business in Korea.

VIII. Your contact persons

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Spain

I. Is EOR an employee leasing service in the respective country?

In Spain, EOR is not permitted unless it is carried out by a Temporary Employment Agency which are companies that are specifically registered for that purpose ("TEA"). The TEA is a direct employer and the employee is temporarily leased to work for the user company. Two contracts must be signed (i) service agreement entered in between the TEA and the user company and (ii) the employment contract (TEA is the one hiring and the user company the one for which the employee is actually working). Please note this is the only mechanism permitted by Spanish law. Otherwise, it is considered an illegal transfer of employees and it is therefore forbidden.

II. Does an EOR-service provider need an employee leasing licence to offer EOR-services?

TEAs require prior administrative authorisation to operate. In order to obtain such authorisation it is required that (i) the company's sole purpose is the activity of a temporary employment agency and (ii) the company must have sufficient organisational structure that enables it to fulfil the obligations it assumes as an employer.

III. What is the maximum leasing period?

The hiring of employees through TEAs can only be done through temporary contracts. Following the 2022 labour law reform, the only temporary contracts permitted are (i) contracts to meet foreseeable increases in production up to a maximum of 90 days, (ii) contracts to meet unforeseeable circumstances (6 to 12 months, depending on the case at hand), (iii) training contracts of between 6 and 12 months and (iv) contracts to replace employees on sick leave, maternity leave or similar. When the hiring exceeds the aforementioned terms, employees will be considered as permanent employees.

IV. How is the protection of know-how and IP regulated?

From the perspective of intellectual property, trade secrets and confidentiality, there are no specific provisions that determine in a particular way the regime of rights and obligations derived from the relationship between all the aforementioned parties. The applicable regulations require that the terms and conditions governing the rights shall be determined by agreement between the parties. If not expressly determined, the legal presumptions established in the applicable legislation shall apply.

For such purposes, Spanish legislation on intellectual property establishes that the exploitation rights of the work may be transferred, the transfer being limited to the right or rights transferred, to the expressly provided methods of exploitation and to the time and territorial scope to be determined. The lack of mention of a timeframe limits the transfer to five years and the territorial scope to the country in which the transfer is made. If the modalities of exploitation of the work are not specifically and concretely expressed, the assignment will be limited to that which is necessarily deduced from the agreement itself and is indispensable to fulfil the purpose of the agreement.

Likewise, from a labour perspective, the transfer to the company of the exploitation rights of the work created by virtue of an employment relationship shall be governed by the terms of the agreement, which must be in writing. In the absence of a written agreement, it will be presumed that the exploitation rights have been transferred exclusively and to the extent necessary for the exercise of the habitual activity of the employer at the time of the delivery of the work created under the employment relationship.

On the other hand, from the point of view of confidentiality and trade secrets, it should be noted that the protection is granted to the holder of a trade secret, who is any individual or legal entity that legitimately exercises control over it, and extends to any form of obtaining, using or disclosing the information constituting such secret that is unlawful or has an unlawful origin in accordance with the provisions of this law. Among the measures imposed to protect the trade secret is to have been subject to reasonable measures for its protection (confidentiality agreements, internal procedures for the protection of intangible assets, elimination of information or use of technological means ...).

Therefore, the recommendation is to reflect by agreement, the regime of assignment of intellectual property rights and any similar rights and the obligations required in terms of confidentiality and trade secret, since, otherwise, it will be subject to the interpretation of the presumptions depending on the specific context of the relationship between the parties, which may vary from case to case or may not provide adequate protection of the intangible assets concerned.

V. Does a Permanent Establishment Risk exist?

The potential existence of a PE risk will depend on the tasks carried out by the employee and the way in which they are carried out. Broadly speaking, a PE may arise under two main circumstances: i) fixed place of business (i.e. the existence of a fixed place of business through which the foreign company carries out part of all its business activity) and ii) dependent agent (a person acting on behalf on the foreign entity with capacity to bind it).

However, when there is an applicable Double Taxation Treaty, if the activities carried out by the employee are of an auxiliary or preparatory nature, no PE risk should arise (i.e. auxiliar activities escape clause).

Please note that the assessment on whether a PE risk may exist must be made on a case-

by-case basis and must consider the provisions set forth in the applicable DTT.

VI. Can stock options be granted to employees?

Temporary employees have the same rights as employees hired on permanent contracts. In addition, there is no legal provision prohibiting temporary employees from receiving stock options, although in practice it is not common.

VII. What alternative solutions to EOR exist?

In Spain there are some alternative solutions to EOR in addition to hiring employees through TEA. These are: (i) direct employment through PE or counting on an Employer's Contribution Account Number in Spain, (ii) Entering into a business relationship through consulting or service contracts instead of an employment contract. We recommend revising these to minimize potential risks, (iii) outsourcing business services.

VIII. Your contact person

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Ukraine

I. Is EOR an employee leasing service in the respective country?

Under the valid legislation there is no model for EOR in UA. The most closest model is the provision of services, where the service provider can provide an agreed scope of services. In practice companies are modifying this into TEA, however, as the only possible option is a provision of the agreed scope of services. Any modifications of such solution resulting in risks to end user clients as an employee may claim employment relationships with the end recipient of such services.

II. Does an EOR-service provider need an employee leasing licence to offer EOR-services?

No licencing for provision of the agreed scope of services.

III. What is the maximum leasing period?

No maximum period, except as stated in the agreement.

IV. How is the protection of know-how and IP regulated?

The IP rights are regulated by the agreement between parties and the employment agreement between the employee and the employer.

V. Does a Permanent Establishment Risk exist?

Yes, the risk of PE cannot be excluded. When assessing the risk of a PE, the type of actual activities should be considered - representation/acting on behalf of the company.

VI. Can stock options be granted to employees?

Stock options can only be granted to direct employees.

VII. What alternative solutions to EOR exist?

(i) Direct employment.

(ii) Engagement private entrepreneurs as contractors — not an employment relationship as such.

VIII. Your contact person

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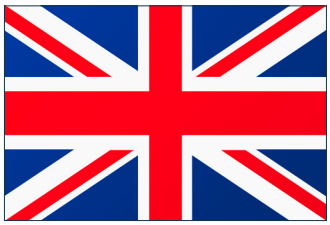

I. Is EOR an employee leasing service in the respective country?

"Employee leasing" is not a common term in the UK but we have the concept and it is arguable that the services of an EOR / PEO would fall within the definition of an "employment business" for the purposes of the Employment Agencies Act 1973, meaning that the regulation of such employment businesses pursuant to the provisions of The Conduct of Employment Agencies and Employment Businesses Regulations 2003 ("Conduct Regulations") may apply to the activities of PEOs/EORs.

If the Conduct Regulations do apply, the main consequences include the following:

- Employment businesses are required to take measures to ensure staff are well-matched to and properly suitable for end-users, for example by obtaining sufficient information on the nature of and qualifications required for the work by the end-user;
- The EOR will have to provide agency worker-seekers a "key information document" before agreeing the terms upon which they will participate in work;
- The EOR is prohibited from charging work-seekers for procuring them work (with few exceptions).

II. Does an EOR-service provider need an employee leasing licence to offer EOR-Services?

No, there is no licensing regime in relation to employment businesses in the UK and instead the regulation of such businesses is set out in the Conduct Regulations.

Some employment agencies do require a licence before supplying specific types of workers. For example, agencies need to be licenced by the Gangmasters and Labour Abuse Authority (GLAA) if they provide workers for agriculture, shellfish gathering or forestry, among other industries.

III. What is the maximum leasing period?

There is no maximum period prescribed by law. However, the longer an employee is employed by a PEO/EOR but working for an end-user company the greater the risk of a finding that they are actually employed by the end-user.

IV. How is the protection of know-how and IP regulated?

The protection of know-how and IP is not statutorily regulated where someone is not a direct employer of the end user of the services. So, to protect the end-user's rights, it is

recommended to include these matters in the agreement between the EOR/PEO and the end user client. That agreement does not bind the employees themselves, so it is also important to have confidentiality declarations and IP assignment provisions signed directly by the employees.

V. Does a Permanent Establishment Risk exist?

Yes, engaging employees via an EOR could cause end-users to unwittingly establish a Permanent Establishment ("PE"). This could result in an unexpected tax burden and other penalties. A PE is more likely to be triggered by certain activities, for example those relating to core income-generating business or the signing of contracts in the end-user's name. Consult a tax specialist for planning advice.

VI. Can stock options be granted to employees?

The granting of stock options is possible but more complex under an EOR/PEO arrangement, and complications arise for repeated grants, longer term options and when options are granted to more than a few employees. Despite this, EORs/PEOs are increasingly seeking to assist companies grant stock options in a compliant manner. The end-user will not be able to grant tax-favoured options to any employees engaged via the EOR/PEO.

VII. What alternative solutions to EOR exist?

Most popular alternative solutions to EOR are: (i) direct employment through an overseas entity or a UK entity/branch, though seek PE advice when setting up the latter for the first time; (ii) hiring individuals as consultants rather than employees (assuming that such relationship is consistent with genuine self-employment and will not be deemed false self-employment); (iv) if appropriate, outsourcing whole service areas to a third-party provider instead of engaging employees via an EOR/PEO.

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