EMPLOYER OF RECORD (EOR) – INTERNATIONAL PERSPECTIVES

I. INTRODUCTION

In recent years, Employer of Record (EOR) models have developed into an important instrument of international personnel strategies. Companies use them in particular to deploy employees in new markets at short notice, even before they have set up their own subsidiary or branch. At the same time, EOR structures enable flexible expansion, access to international talent, as well as simplified processing of payroll and HR administration.

However, whether such a model is in fact permissible does not depend on the term "Employer of Record", but on the relevant national labour law. While some legal systems expressly permit EOR structures or have established a regulatory framework for them, in other countries they are classified under labour law as labour hire, temporary work or comparable forms of employment and are in some cases subject to significant legal restrictions.

It is therefore essential for companies operating internationally to take into account, at an early stage, the specific provisions of labour law, social security law, residence law and tax law in the country where they are operating Depending on the legal system, an incorrect structuring may have significant implications under labour, social security and tax law, in particular the establishment of an employment relationship with the host company, liability risks as well as tax consequences.

In this edition of our international newsletter on the topic of

Employer of Record (EOR) – International employment law perspectives

which we have compiled for you in collaboration with the partner law firms of Saxinger Schindhelm Services SE, we provide an overview of the legal framework and challenges of EOR models in various countries. Our alliance experts highlight, in particular, the permissibility of Employer of Record structures, the legal classification of operational authority to issue instructions, the requirements for permissible temporary agency work models, as well as the risks under labour and tax law arising from incorrect structuring.

AUSTRIA

I. Under what legal conditions is an 'Employer of Record' model permitted in your country, and is it recognised under employment law as a distinct employment model, or is it subsumed under existing categories (e.g. temporary agency work, temporary employment, outsourcing)?

The term "Employer of Record" (EOR) is foreign to Austrian law as an independent employment model. EOR structures show parallels to payrol, as both models represent a form of labour leasing. The key difference, however, lies in the international scope of the EOR. While payroll service providers operate on a national level, EORs operate predominantly cross-border. Both models are based on a three-party legal relationship: The temporary

work agency is the employer under employment law, while the hirer actually receives the work performance and integrates the worker into its business. For the legal assessment, the true economic substance of the contractual relationship is decisive. EOR models in Austria are generally subject to the provisions of the Temporary Agency Work Act (AÜG). The AÜG applies not only to purely domestic secondments, where all three parties involved are based in Austria and the worker is integrated into the employer's organisation, but also, for example, to 'virtual' secondments of workers abroad, i.e. where work is performed without the employee being physically present at the workplace abroad.

II. What legal limits apply when an employee is formally employed by a service provider but is operationally fully controlled by another company and integrated into its organisation?

If an employee is formally employed by a service provider, but is operationally managed for another company and integrated into its organisation, the provisions of the AÜG may apply. The designation of the respective contractual relationship is not decisive. Under the AÜG, the hirer is subject to those employer obligations that arise from the protection of employees, from on-site work performance, and from integration into the company. The employer's duty of care is also incumbent upon the hirer, and the hirer is also deemed an employer within the meaning of equal treatment regulations and prohibitions on discrimination. Temporary agency workers must, in principle, not be treated less favourably than comparable employees of the hiring company. The direct employer of the temporary agency worker is the temporary work agency. It enters into the employment contract and is responsible for payment of remuneration as well as calculation and remittance of social security contributions. The hirer is liable as a guarantor for the remuneration claims of the assigned worker.

III. Are there any specific regulatory requirements in your country (e.g. licensing, registration or official authorisations) for recruitment agencies that supply workers to third-party companies, and what are the typical restrictions on the use of such workers?

The supply of labour is a regulated trade under the Trade Regulation Act (GewO). In principle, a certificate of competence is required to practice this profession. Exceptions apply in the case of temporary assignments to employers who carry out the same work as the assignor, up to a maximum duration of six months in a calendar year. In the case of cross-border temporary agency work arrangements, additional requirements may apply, in particular reporting obligations under the Act to Combat Wage and Social Dumping (LSD-BG), requirements relating to the employment of foreign nationals under the Employment of Foreign Nationals Act (AuslBG), proof of social security cover (e.g. an A1 certificate), etc. A worker may not be seconded without their express consent. Furthermore, the secondment must not result in any deterioration in pay and working conditions, nor must it jeopardise the jobs of the employees at the host organisation. The assignment of workers to establishments affected by a strike or lockout is prohibited. For workers from non-EU/EEA countries, as well as for assignments from Austria abroad, authorisation is generally required. Virtual cross-border employee leasing is also subject to authorisation if the worker remains physically in Austria and, for example, only works "remotely" for the foreign company.

IV. What risks under employment law and, where applicable, tax law arise in your country if an EOR-style model is used outside the permitted legal framework (e.g. the presumption of an employment relationship with the hirer, social security or permanent establishment risks)?

If EOR models are used in Austria outside the statutory framework, this may give rise to numerous risks relating to labour law, social security law and tax law. Although, under Austrian law, unlawful or covert assignments do not, as a matter of principle, automatically

result in a direct employment relationship with the employer being deemed to exist ex lege, the employer may nevertheless expose itself to significant liability risks in such cases. In particular, the hiring entity is liable as a guarantor for the remuneration claims due to the temporary worker, as well as the corresponding employer's and employee's social security contributions. In addition, during the period of secondment, the seconded worker is entitled to the same minimum pay and working conditions under the collective agreement as permanent staff. Breaches may result in high administrative penalties or monetary fines under the AÜG, LSD-BG, AuslBG, the General Social Security Act (ASVG), etc. From a tax law perspective, it is necessary to determine where the work is actually performed and who the economic employer is. If the foreign EOR is engaged as the formal employer, even though the actual circumstances suggest a different classification, there is a risk that Austrian wage tax could be claimed retrospectively. Whether such tax consequences arise always depends on the specific circumstances.

CHINA

I. Under what legal conditions is an 'Employer of Record' model permitted in your country, and is it recognised under employment law as a distinct employment model, or is it subsumed under existing categories (e.g. temporary agency work, temporary employment, outsourcing)?

Chinese employment law does not recognise the "Employer of Record" (EOR) as an independent statutory employment model. However, such a structure bears considerable similarities to the temporary agency work regulated under the Chinese Labour Contract Law: the agency is the legal employer, whilst the company at which the employee is actually deployed acts as the client company.

To the extent that an EOR structure is to be legally classified as temporary agency work, it must fulfil its statutory requirements.
In particular, the agency requires an official licence to provide temporary agency work. Furthermore, temporary agency work is generally only permitted for positions to be filled temporarily or as a replacement. In this respect, the proportion of temporary workers must not exceed 10 per cent of the number of permanent employees at the client organisation.

II. What legal limits apply when an employee is formally employed by a service provider but is operationally fully controlled by another company and integrated into its organisation?

Within the scope of permissible temporary agency work, the operational authority to give instructions may, in principle, lie with the client company, although the agency remains the legal employer. The client company organises the actual work assignment and defines workplace-related duties, while the agency bears the employer obligations arising from the employment contract. The exercise of work-related instructions by the user undertaking therefore does generally not lead to a change of employer.

III. Are there any specific regulatory requirements in your country (e.g. licensing, registration or official authorisations) for recruitment agencies that supply workers to third-party companies, and what are the typical restrictions on the use of such workers?

Commercial employee leasing in China is subject to a mandatory official licensing requirement. The temporary employment agency must, in particular, have a registered capital of at least RMB 2.0 million, suitable business premises and facilities, as well as a legally compliant system for the administration of temporary employment.

Furthermore, temporary agency work is generally only permitted for positions to be filled temporarily or as a substitute position. Such temporary or substitute positions may exist for a maximum period of six months. In addition, the number of supplied employees generally

must not exceed 10% of the total number of employees employed by the employing company.

The temporary work agency must generally conclude written fixed-term employment contracts with the supplied employees with a term of at least two years.

IV. What employment law and, where applicable, tax law risks arise in your country if an EOR-like model is used outside the permitted legal framework (e.g. fiction of an employment relationship with the employing company, social security or permanent establishment risks)?

In the case of an impermissible EOR model or impermissible employee leasing, the legal consequence is the creation of a direct (subject to social security) employment relationship with the hiring company, starting from the commencement of the employee leasing. In this case, the employment relationship is also subject to very strict and employee-friendly protection against dismissal (meaning: ordinary termination is virtually impossible).

In the case of cross-border EOR structures (e.g., hiring a Chinese employee via a service provider without the client company having its own permanent establishment in China), the foreign company also faces significant tax risks, particularly the risk of establishing a permanent establishment.

CZECH REPUBLIC

I. Under what legal conditions is an 'Employer of Record' model permitted in your country, and is it recognised under employment law as a distinct employment model, or is it subsumed under existing categories (e.g. temporary agency work, temporary employment, outsourcing)?

Czech law does not regulate the 'Employer of Record' (EOR) model, and such a model would be considered unlawful. Temporary agency work is permitted in compliance with strictly regulated legal provisions. Only employment agencies licensed in the Czech Republic are responsible for such activity.

Another option is the temporary dispatch of an employee to another employer. The employee must consent to the assignment. The dispatch must be carried out exclusively on a non-profit basis; the employer is only entitled to reimbursement of the wage costs and statutory contributions for the employee. The receiving employer is obliged to guarantee the same pay and working conditions for the employee as for their own permanent staff.

II. What legal limits apply when an employee is formally employed by a service provider but is operationally fully controlled by another company and integrated into its organisation?

Such an arrangement is generally prohibited, unless it concerns the temporary assignment of an employee by an employment agency or the temporary secondment of an employee to another employer.

III. Are there any specific regulatory requirements in your country (e.g. licensing, registration or official authorisations) for recruitment agencies that supply workers to third-party companies, and what are the typical restrictions on the use of such workers?

The permit for temporary agency work is granted by the Ministry of Labour and Social Affairs, including to foreign nationals, provided that a whole range of legal requirements are met. These include, in particular, the applicant’s financial and legal reliability, the payment of a security deposit of CZK 1,000,000 (approx. EUR 42,000.00), the appointment of a responsible representative with proven professional qualifications, the taking out of compulsory insolvency insurance, and compliance with further requirements. The agencies are obliged to report regularly to the Ministry on their activities.

The secondment of employees is limited to a period of twelve consecutive calendar months, unless the employee has made an explicit request or the secondment is to cover for an employee on maternity leave or parental leave. An employee who is supplied via an employment agency must not simultaneously work as a permanent employee for the same hirer. Furthermore, it remains unlawful for an employee to be temporarily assigned to the same hirer by several employment agencies in the same calendar month.

IV. What risks under employment law and, where applicable, tax law arise in your country if an EOR-style model is used outside the permitted legal framework (e.g. the presumption of an employment relationship with the hirer, social security or permanent establishment risks)?

The risks relating to employment law and, where applicable, tax law associated with an EOR-style model that falls outside the permitted legal framework are considerable. Such an approach constitutes illegal employment and can be punished with a fine of up to CZK 10,000,000 (approximately EUR 420,000.00).

Should tax liabilities in this regard have been reduced in practice, there is also a significant risk of retroactive claims relating to payroll tax, social security, and health insurance contributions.

GERMANY

I. Under what legal conditions is an 'Employer of Record' model permitted in your country, and is it recognised under employment law as a distinct employment model, or is it subsumed under existing categories (e.g. temporary agency work, temporary employment, outsourcing)?

An “Employer of Record” model is not regulated as an independent form of employment under German labour law. If an EOR employee is formally employed by an EOR service provider but actually works for a client company and is integrated into its operations, this regularly constitutes temporary agency work under the German Act on Temporary Agency Work (AÜG). Such an arrangement is generally only permissible if the EOR service provider has first obtained a permit from the Federal Employment Agency. An exception applies to the so-called group privilege: Within a corporate group, the assignment of personnel may be exempt from the licensing requirement, provided the EOR employee is not hired or employed for the purpose of such assignment. For typical EOR service providers, this exception is practically irrelevant, as they generally do not belong to the same corporate group as the client company. If the required permit is missing and the group privilege also does not apply, employee leasing is not permitted. What matters is not how the parties designate the model, but how the cooperation is actually structured. German law therefore generally treats EOR models as temporary agency work under the German Act on Temporary Agency Work (AÜG) rather than as a standalone employment model.

II. What legal limits apply when an employee is formally employed by a service provider but is operationally fully controlled by another company and integrated into its organisation?

If the client company instructs the EOR employee as to which tasks they are to carry out, when and where, and if the EOR employee is integrated into the client company’s work processes and organisation, this generally constitutes temporary agency work. The EOR service provider remains the formal employer. It concludes the employment contract, pays the remuneration and remits payroll tax and social security contributions. The client company, on the other hand, directs the daily work. At the place of assignment, it is responsible for the necessary occupational health and safety measures and instructions. During the assignment, the EOR employee must not be treated less favourably than a comparable employee of the client company. According to the principle of equal treatment (“Equal Pay/Equal Treat-

ment"), they must generally be granted the essential working conditions that apply to comparable employees of the client company. This includes in particular remuneration, working hours, breaks, holiday, shift allowances, bonuses and other company benefits.

III. Are there any specific regulatory requirements in your country (e.g. licensing, registration or official authorisations) for recruitment agencies that supply workers to third-party companies, and what are the typical restrictions on the use of such workers?

Any EOR service provider that places EOR workers with a client company must, as a general rule, obtain authorisation from the Federal Employment Agency before the assignment begins. An exception may apply, in particular, within the scope of the corporate group privilege. The permission is initially granted only for a limited period and is subject, in particular, to the EOR service provider being deemed reliable. In addition, several operational restrictions apply: an EOR employee may generally be assigned to the same client company for a maximum of 18 consecutive months. Previous assignments with this client company are taken into account, provided that there is a gap of no more than three months between the assignments. The contract between the EOR service provider and the client company must explicitly designate the assignment as temporary agency work. Furthermore, the assigned EOR employee must be specifically named before the start of the assignment. If the permissible maximum assignment duration is exceeded, the employment contract between the EOR service provider and the EOR employee is generally invalid. Instead, an employment relationship is established with the client company by force of law. The EOR employee can prevent this by declaring within one month that they wish to adhere to the employment contract with the EOR service provider.

IV. What risks under employment law and, where applicable, tax law arise in your country if an EOR-style model is used outside the permitted legal framework (e.g. the presumption of an employment relationship with the hirer, social security or permanent establishment risks)?

If an EOR-like model is used outside of statutory requirements, significant employment law, social security law, and tax law consequences can arise. If the EOR service provider lacks the required authorisation, the employment contract between the EOR service provider and the EOR employee is generally invalid. Instead, an employment relationship arises between the EOR employee and the client company by force of law. The client company must then anticipate claims for remuneration, holiday, and other working conditions, as well as risks related to protection against dismissal. For unauthorised temporary agency work, fines of up to EUR 30,000.00 each can be imposed on the EOR service provider and the client company. Further violations may result in significantly higher fines and, in exceptional cases, criminal consequences. The client company can also be held liable for unpaid social security contributions and must anticipate claims for arrears as well as late payment surcharges. For tax purposes, it can be held liable for payroll tax that has not been withheld or remitted.

ITALY

I. Under what legal conditions is an 'Employer of Record' model permitted in your country, and is it recognised under employment law as a distinct employment model, or is it subsumed under existing categories (e.g. temporary agency work, temporary employment, outsourcing)?

While the concept of the "Employer of Record" (EOR) has now become somewhat widespread in Italy, it is not formally recognised by law as an independent legal construct. The EOR is therefore generally regarded as a form of temporary agency work, with the result that the lawfulness of employment relationships established via an EOR is essentially governed by the rules on temporary agency work; in

other words, the “employer” must register as a temporary agency with the Employment Agency, amongst other things. Staff leasing by unregistered companies is impermissible and subject to fines. It is worth noting that, in practice, many “EOR” providers simply provide clients with a ready-made employment arrangement; this carries the risks described in more detail below.

II. What legal limits apply when an employee is formally employed by a service provider but is operationally fully controlled by another company and integrated into its organisation?

Under Italian law, the fact that an employee is formally employed by a service provider is not decisive: from an employment law perspective, what matters is who actually exercises the employer's powers. If both aspects diverge, the “EOR” model is exposed to legal risks.

A genuine service contract between the client and the EOR requires that the service provider retains organisational autonomy, manages its own staff and bears the business risk. The client may define goals, tasks and expected outcomes, but should not directly manage the service provider's personnel.

Risk indicators include: the daily allocation of tasks by the client, direct supervision of performance at work, the management of working hours, holidays and leave of absence, individual appraisals, hierarchical instructions, and the employee’s on-going integration into the client’s organisation.
In these cases, there is a risk of an employment relationship being established directly between the employee and the client.

If the client is to instruct the employee directly, the appropriate instrument is generally staff leasing through an authorised agency, which is subject to the statutory provisions.

III. Are there any specific regulatory requirements in your country (e.g. licensing, registration or official authorisations) for recruitment agencies that supply workers to third-party companies, and what are the typical restrictions on the use of such workers?

In Italy, the commercial supply of workers to third-party companies generally falls under the category of temporary agency work. This activity may only be carried out by employment agencies that have been authorised by the Ministry of Labour and entered in the relevant register, following verification that they meet the requirements relating to company law, professional standards, organisation and finances.

The agency remains the employer, while the employee performs their work under the direction of the hiring company. Temporary agency workers are entitled to economic and legal conditions that are no worse than those of comparable employees of the hirer.

Quantitative and time-related restrictions apply, some of which may be modified by collective agreements, as well as specific prohibitions, for example on replacing striking workers or, in certain situations, on mass redundancies or plant closures.

Temporary agency work must be distinguished from genuine contract work and from dispatching. The provision of personnel by unauthorised agencies may constitute unlawful or non-compliant temporary agency work, which carries the risk of sanctions and of an employment relationship being established directly with the hirer.

IV. What risks under employment law and, where applicable, tax law arise in your country if an EOR-style model is used outside the permitted legal framework (e.g. the presumption of an employment relationship with the hirer, social security or permanent establishment risks)?

If the EOR formally hires the employee, but they work permanently under the direction and within the organisation of the hiring company, this model may be classified as prohibited temporary agency work in the absence of a

licence; in this case, the following main risks exist:

- Employment relationship: the employment relationship may be established directly with the hirer, with retroactive entitlements to pay, job classification, annual leave, severance pay and other rights.
- Sanctions: The misuse of temporary agency work may also result in sanctions being imposed on the user organisation; in cases of circumvention, this may constitute fraudulent use of temporary agency work.
- Social security: the risk of retroactive claims for INPS contributions and INAIL premiums as well as penalties and interest.
- Taxes/payroll: work performed in Italy may entail Italian tax and withholding tax liabilities, regardless of the EOR's location.
- Permanent establishment: for a foreign company, EOR staff working on a permanent basis in Italy, particularly in commercial or negotiation-related roles, may contribute to the establishment of a permanent establishment.

Essentially, an unauthorised foreign EOR does not act as a ‘shield’ against obligations under Italian labour law, social security law and tax law.

POLAND

I. Under what legal conditions is an 'Employer of Record' model permitted in your country, and is it recognised under employment law as a distinct employment model, or is it subsumed under existing categories (e.g. temporary agency work, temporary employment, outsourcing)?

The concept of "Employer of Record" (EOR) is not expressly regulated under Polish law and is therefore not recognised as an independent employment model. The legal assessment is based on the actual structure of the collaboration. In practice, the EOR provider acts as the formal employer and enters into the employment contract with the employee, while the client company makes economic use of the performance at work.

Since the Polish labour law generally does not provide for a separation between a formal and an economic employer, there is a risk that EOR structures may be classified as temporary agency work. This applies in particular when the employee actually works under the direction and control of the client company. In this case, the provisions of the Act on the Provision of Temporary Workers may apply.

Alternatively, the collaboration can be structured as a service or outsourcing model. However, this requires that the service provider organises the service under its own responsibility and does not merely provide personnel. The legal classification is always based on the actual circumstances and not on the contractual designation of the cooperation.

II. What legal limits apply when an employee is formally employed by a service provider but is operationally fully controlled by another company and integrated into its organisation?

Under Polish labour law, the right to issue instructions is an essential characteristic of the employment relationship. The employer is entitled to organise the employee's work, issue work instructions to them, and monitor the performance of their duties.

If an employee is formally employed by an EOR provider but, in day-to-day practice, is entirely subject to the instructions of the client company and is organisationally integrated into its operational processes, this may indicate that the client company is, in fact, acting as the employer. The greater the extent to which operational management is carried out by the client company, the greater the risk that the arrangement will be reclassified as temporary agency work.

The relevant criteria include, in particular, the issuing of technical and organisational instructions, the monitoring of performance at work, integration into the client’s organisational

structure, the use of the client's work equipment, and integration into internal teams and reporting structures.

In outsourcing models, operational control should generally remain with the service provider. The client company should restrict itself to defining the desired results and not exercise a comprehensive employer function. Otherwise, there is a risk that authorities or courts will classify the actual circumstances as temporary agency work.

III. Are there any specific regulatory requirements in your country (e.g. licensing, registration or official authorisations) for recruitment agencies that supply workers to third-party companies, and what are the typical restrictions on the use of such workers?

Commercial temporary agency work is legally regulated in Poland. Companies wishing to supply employees to third-party companies must generally operate as a temporary employment agency and be entered in the register of employment agencies. Supervision is carried out by the competent authorities, in particular by the marshal's offices of the voivodeships and the State Labour Inspectorate.

Polish law furthermore provides for numerous protective provisions for temporary agency workers. In particular, principles of equal treatment regarding essential working conditions must be observed. Furthermore, there are documentation and information obligations for both the temporary employment agency and the hiring company.

A key restriction on the use of temporary agency workers is that, as a general rule, the same temporary agency worker may not be assigned to the same hirer for a total of more than 18 months within a period of 36 consecutive months. Furthermore, certain activities are excluded from the provision of temporary agency workers, for example, the replacement of workers who are lawfully on strike.

Companies offering EOR or similar models in Poland must therefore carefully check whether their activity should not actually be classified as temporary agency work. In this case, the relevant registration and compliance requirements must be met.

IV. What risks under employment law and, where applicable, tax law arise in your country if an EOR-style model is used outside the permitted legal framework (e.g. the presumption of an employment relationship with the hirer, social security or permanent establishment risks)?

Incorrect structuring of EOR models can entail significant labour, social security, and tax law risks in Poland.

From an employment law perspective, there is a particular risk that the authorities or courts will classify the structure as impermissible employee leasing. This can lead to sanctions for breaches of the regulations on temporary agency work as well as appropriate measures by the State Labour Inspectorate. In addition, employees may seek to assert claims against the hiring company, particularly if it effectively acts as their employer.

Under social security law, additional claims for social security contributions may arise if the actual employment structure was incorrectly assessed by the companies involved. In addition, default interest and administrative sanctions may be imposed.

Tax risks must also be considered. In particular, the activities of employees in Poland may, under certain circumstances, lead to the establishment of permanent operations for tax purposes for the foreign company. This applies in particular where employees are working permanently for the foreign company and are providing substantial support to its business operations in Poland.
Furthermore, risks can arise in relation to payroll tax, withholding tax, and in connection with international transfer pricing.

ROMANIA

I. Under what legal conditions is an 'Employer of Record' model permitted in your country, and is it recognised under employment law as a distinct employment model, or is it subsumed under existing categories (e.g. temporary agency work, temporary employment, outsourcing)?

Anyone wishing to hire employees in Romania via an Employer of Record (EOR) must use a legal service provider that officially acts as the employer. Romanian labour law is strictly regulated and does not allow for any deviations in this area. Employment placement/personnel leasing (temporary work) or outsourcing is regulated and permitted, depending on the terms of the contract.
From a legal perspective, the employee is generally registered with the EOR as the employer and is temporarily "assigned to work" for the end client. Whether this is classified as temporary agency work or outsourcing depends on the specific contract.

II. What legal limits apply when an employee is formally employed by a service provider but is operationally fully controlled by another company and integrated into its organisation?

Romania has no independent, separate EOR law. Instead, this model is legally handled via the regulatory framework for licensed temporary employment agencies (agency work). Therefore, it is mandatory for the EOR to be officially registered in the country.

Under Romanian labour law, this is not unlawful simply because the employee is formally employed by Company A but is managed by Company B in day-to-day operations. What matters far more is what the actual legal structure is and how it is implemented in practice.

III. Are there any specific regulatory requirements in your country (e.g. licensing, registration or official authorisations) for recruitment agencies that supply workers to third-party companies, and what are the typical restrictions on the use of such workers?

Romania has its own regulated regime for temporary agency work. Any organisation that not only places workers but also employs them directly and subsequently assigns them to a third-party company to carry out work under that company's direction is regarded as an agent de muncă temporară (temporary employment agency). In principle, this requires an official license.

IV. What risks under employment law and, where applicable, tax law arise in your country if an EOR-style model is used outside the permitted legal framework (e.g. the presumption of an employment relationship with the hirer, social security or permanent establishment risks)?

In Romania, an "EOR-like" model that effectively supplies employees to a hirer without complying with the stipulated structures can trigger significant labour, social security, and tax law risks.

What is decisive is not the designation of the contract, but its actual implementation: Who hires, who pays, who gives instructions, for whom is work performed on a permanent basis, and who bears the economic risk?

It is particularly relevant that statutory temporary agency work is tailored to specific, temporary tasks. The law specifically mentions cases of substitution, seasonal activities, as well as specialised or occasional tasks; the regular assignment of an employee to a permanent position is therefore not automatically equivalent to the statutory model.

TURKEY

I. Under what legal conditions is an 'Employer of Record' model permitted in your country, and is it recognised under employment law as a distinct employment model, or is it

subsumed under existing categories (e.g. temporary agency work, temporary employment, outsourcing)?

Turkish law does not recognise the term "Employer of Record" (EOR) as an independent employment model. EOR structures are therefore not permissible based on their designation, but rather only if they fulfil the requirements of legally permissible employee leasing. Only two scenarios are generally considered for this: Firstly, the temporary employee leasing by a private temporary employment agency licensed by the Turkish employment agency İŞKUR and secondly, intra-group temporary employee leasing within a holding company or group of companies in compliance with the statutory requirements. Outside of these legally regulated cases, Turkish law does generally not authorise a local service provider to employ employees exclusively for deployment with another company. Specifically, pure EOR or payroll models, in which the service provider acts merely as the formal employer, but the employee works permanently for the client and is subject to their instructions, are generally not recognised by Turkish labour law.

II. What legal limits apply when an employee is formally employed by a service provider but is operationally fully controlled by another company and integrated into its organisation?

Under Turkish labour law, the assessment of the authority to issue instructions and the status of an employee is not determined by the terms of their contract, but by the actual conduct of the employment relationship. If an employee is formally employed by a service provider but is operatively managed exclusively by another company and integrated into that company's organisation, this is, in principle, only permissible within the framework of a legally authorised temporary agency work arrangement, in particular through a temporary employment agency licensed by the Turkish Employment Agency (İŞKUR) or within the framework of intra-group temporary agency work. Outside this legal framework, the permanent integration of an employee into the organisation of a third party may be unlawful under labour law. In the case of lawful temporary agency work, the agency remains the formal employer and is, in particular, liable for remuneration, while the client company may issue technical instructions to the employee within the scope of the agreed assignment. At the same time, it assumes occupational health and safety obligations and is jointly liable for certain employee claims. If temporary agency work is carried out in breach of statutory requirements or if the permitted duration of the assignment is exceeded, an indefinite employment relationship with the client company may arise.

III. Are there any specific regulatory requirements in your country (e.g. licensing, registration or official authorisations) for recruitment agencies that supply workers to third-party companies, and what are the typical restrictions on the use of such workers?

In Turkey, the commercial temporary agency work is generally only permitted via private temporary employment agencies that have been authorised by the Turkish Employment Agency (İŞKUR). In additionthe Turkish Labour Law allows for temporary secondment of employee within a holding company or group of companies under certain conditions. In particular, this requires the written consent of the employee and is generally limited to six months; it may be extended twice. In the case of employee leasing via a licensed temporary employment agency, an employment contract exists between the agency and the employee; additionally, a written leasing agreement with the hiring company is required. Temporary agency work is permitted only in the cases legally regulated particularly to provide cover during maternity leave or parental leave, military service, suspended employment relationships, seasonal agricultural work, domestic services, temporary labour demand, or unforeseeable order peaks. Depending on the reason for the secondment, different maximum secondment periods and extension options apply. Further restrictions apply after mass layoffs, during a strike or lockout, in the public sector, as well as in underground mining. In some cases, there are also maximum limits for the

proportion of temporary employees in the core workforce.

IV. What risks under employment law and, where applicable, tax law arise in your country if an EOR-style model is used outside the permitted legal framework (e.g. the presumption of an employment relationship with the client company, social security or permanent establishment risks)?

If EOR-style models are used outside the legal framework, this may give rise to significant risks under labour and tax laws. Under the Turkish Labour Code, if the supply of workers continues beyond the contractually agreed or permissible duration, an employment relationship of indefinite duration with the user undertaking is deemed to have been established by operation of law. Furthermore, temporary agency workers must not be treated less favourably than comparable employees of the user undertaking in respect of their essential terms and conditions of employment. The latter also bears its own occupational health and safety obligations, particularly with regard to occupational health and safety measures, training, and the reporting of workplace accidents. In the case of foreign workers, it is also always necessary to check whether a work permit is required, as a residence permit alone does not, in principle, authorise the holder to take up employment. In addition, there is a risk of back-payment claims from social security authorities, together with late-payment surcharges and substantial administrative fines for both the supplier and the user company. Tax risks may arise if employees work permanently in Turkey for a foreign company. In particular, it must be determined whether a permanent establishment or a permanent representative for tax purposes is created by the actual business activities. Whether such tax consequences occur always depends on the specific structure and the actual activities in Turkey

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