PILIOS

ATTORNEYS AT LAW

DOWNLOAD

Labour Law

Establishment and types of employment relationships in Greece

August 2023

I. Ways to conduct foreign investments in Greece

1. Incorporation of a subsidiary

One of the most common and popular ways to invest in Greece is the incorporation of a company using a corporate form provided for by the applicable law (numerus clauses). The incorporated company receives a General Commercial Registry number (GEMI) and a tax identification number. As of the publication of the incorporation in the Commercial Registry the company is deemed to be legally established. In the event of an incorporation not in accordance with the law for whatever reason, the business activity is "de facto" treated as a general partnership by the applicable law and the jurisprudence.

2. Acquisition of an existing company or group

Another investment possibility is the acquisition of an already incorporated company, which already has a Commercial Registry number (GEMI) and a tax identification number. This acquisition (after prior negotiations) usually takes place through the signing of a private contract in which the parties agree to sell and transfer all shares in the company to the acquirer. The transfer is always preceded by a full and detailed legal and financial due diligence on the part of the acquirer. The final takeover of a company, whose rights and obligations are automatically transferred to the acquirer, can be carried out in various ways, the most important of which are presented here:

a) Merger with an existing company (corporate transformation)

A potential investor can either establish a new company in Greece or merge an already existing company with registered seat in an EU Member State with another company founded in Greece. This can be done by two ways: Either of an acquisition or by establishing a new joint venture. Alternatively, a transformation or a partial spin-off of a branch of the company can be carried out, which is then later acquired or merged by the acquirer. The choice of the most appropriate course of action is always a result of extensive negotiations and consultation with the investor's legal and financial advisors.

b) Acquisition of shares of the share capital

Another investment possibility is to acquire a part (not all) of the share capital of a Greek company. The condition for this is to ensure that the acquirer can exercise control or at least decisive influence over the company and its operation in accordance with the statute and internal guidelines.

II. Establishment of an employment relationship

1. The employment contract in overview

a) Basic principles and written form of the employment contract

Labour law applies only to employees in a dependent employment relationship. Such a relationship is characterized by the fact that the work is provided subject to instructions and under a supervisory authority. There is a presumption in favor of a dependent employment relationship where work is performed for at least nine (9) consecutive months, in person and exclusively or predominantly for the same employer.

An employment contract does not need to be in writing to be valid. However, there are exceptions to this principle for part-time contracts, extensions of fixed-term contracts and for temporary employment contracts. Regardless of the type of the employment contract, the employer is obliged to inform each employee in writing about the essential terms of the employment relationship no later than two (2) months after the start of the work. Employees whose employment lasts less than one (1) month and those in non-systemic agriculture are exempt from this requirement. In addition, every employer who hires employees with dependent employment is obliged to upload the E3 form to the electronic "ERGANI" database upon each recruitment. The E3 form and the updated E4 form must be submitted in each case no later than recruitment day, but in any case, before the employee starts work performance.

The notice form must contain at least the following information: (a) the identity of the contracting parties, (b) the place where the work is to be performed, (c) the position and qualifications of the employee, the object and classification of his work, (d) the beginning of the employment relationship and, in the case of fixed-term contracts, its duration, (e) the duration of the paid leave to which the employee is entitled, and the conditions of its granting, (f) the amount of compensation to be paid in the event of termination with due notice, (g) the employee's remuneration and the methods of payment, (h) the duration of the employee's regular daily and weekly working hours, and (i) a reference to the applicable collective employment agreement defining the minimum wage and working conditions.

If the employer fails in his duty to provide the employee with the terms and conditions of the contract in writing, the employee may demand this through the courts. Such a breach of duty also entails administrative sanctions, which are enforced by virtue of a fine by the Labour Inspectorate. For limited employment or employment on a rotational basis, the employer is required to submit Form E9 electronically to the "ERGANI" system within eight (8) days.

b) Notification of recruitment and special conditions

The employer is further obliged to notify the competent department of the Employment Agency (OAED) of the recruitment within eight (8) days. Violations of this obligation do not affect the contract, but will result in administrative and criminal sanctions.

Furthermore, in order to control the labour market, legislation prohibits the employment of non-EU citizens without work or residence permits. Such permits are issued for a specified period of time and can be extended for a specified period of time under the conditions provided by law. A residence permit for dependent work grants its holder access to the labour market for a specific activity in a specific place and for a specific employer. It is valid for two (2) years and can be renewed for three (3) years. An employment contract with a foreign employee without the relevant permit is null and void. An originally valid contract also becomes void ex nunc upon expiration of the permit.

c) White-collar workers, blue-collar workers and managers

The distinction between white-collar workers, blue-collar workers and managers no longer has much practical significance, as white-collar and blue-collar workers have been equated in terms of vacation days and their payment. Today, the differences are limited to the termination of indefinite-term employment contracts: In contrast to blue-collar workers, white-collar workers receive a significantly higher severance payment here and their notice of termination can also be given with notice period.

The classification of an employee in a dependent employment relationship as a “white-collar worker" or "blue-collar worker" depends on the nature of the work to be performed and not on the payment arrangements or the categorisation in the employment contract. In general, a " blue-collar worker " is one whose work performance relies exclusively or mainly on the exercise of his or her physical strength, while the work performance of a " white-collar worker " is exclusively or mainly a result of intellectual creation and therefore requires appropriate education, experience and responsibility. In order for the mental performance of the work to outweigh the physical component, the worker must be able to demonstrate not merely general but specialised experience and education in the field, as well as special training and responsibility.

Managers, on the other hand, perform work that is essential for the existence and development of the company and requires special knowledge and experience. They also have the opportunity to perform their duties freely and independently of instructions and to make core decisions that are important for the development of the company. Thus, they have a direct and decisive influence on the corporate policy in their field.

Managing directors are excluded by law from the protection of the rules on working hours restrictions, work on Sunday and night work. The jurisprudence also considers other rules of labour law to be incompatible with the position of a managing director, such as additional remuneration for overtime, the granting of time off for recreation and additional remuneration for overnight stays away from home. This exclusion of essential principles of labour law is justified by jurisprudence on the grounds of the usually comparatively high salaries of managing directors.

2. Transfer of business and change of employer

Labour law contains a number of provisions designed to ensure the unimpeded continuation of existing employment relationships within an economic unity, regardless of the specific enterprise, and to enable employees to remain in the service of the new employer, in terms of scope and content, under the same working conditions as those agreed with the predecessor. The provisions thus ensure the protection of the workplace and the maintenance of the content of the employment relationship.

For the materialization of the legal effects of the relevant provisions, it is sufficient that the new employer takes over and continues the business in any way. The manner or form of the transfer as well as the legal reason for the change in the person of the employer is irrelevant. It is sufficient that the old employer loses his capacity as the owner and entrepreneur of the transferred enterprise and that this capacity is acquired (even if only temporarily) by the successor, who continues his activity.

Therefore, upon and from the date of transfer, all existing employment relationships (with their rights and obligations) of the transferor are transferred to the successor employer.

It should be noted that the transfer of an enterprise as such does not constitute grounds for dismissal of employees and a dismissal based thereon is invalid.

III. Types of employment contracts

Employment contracts can be concluded for an indefinite of fixed term. The duration of the employment contract is a determining factor for the possibility to terminate it. Both forms of contract are equivalent and the relevant choice is entirely at the discretion of the parties. The rule, however, is the indefinite-term employment contract without a fixed end date. A fixed-term employment contract can only be concluded for a special reason that objectively justifies the temporary employment (e.g. the nature of the work or the operational requirements of the enterprise). In labour law, the indefinite-term employment contract is therefore the rule and the fixed-term contract the exception. The jurisprudence of many courts, which in case of doubt assume an indefinite-term employment contract, is founded on this basis of interpretation.

1. Fixed-term contract

It is a fixed-term contract when the parties agree on a specific end date for the contract. On this date, the contract automatically is automatically terminated without the need for any further notice, denunciation or other action by the parties.

If, after the end of the fixed-term contract, the employee continues to work for the employer for a not insignificant period of time (not just a few days) with the employer's consent, the fixed-term contract is converted into an indefinite-term employment contract.

In the event that the fixed-term employment contracts last for an uninterrupted period of three (3) years without good cause, the presumption that these contracts serve the permanent and regular needs of the enterprise applies and they are accordingly converted into indefinite-term employment contracts. The same applies if a fixed-term contract is renewed at least three (3) times within three years. The employer bears the burden of proof in each case. A fixed-term contract is deemed to be renewed if it is concluded between the same parties with the same or similar employment conditions and there are no more than 45 calendar days between them. In corporations or groups of companies, the term 'same employer' includes all other companies in the corporation or group.

In contrast, an indefinite repeated extension of fixed-term contracts is possible if this is justified by objective reasons. Examples include the specific nature or activity of the employer, special needs directly related to the respective employment contract (such as the temporary replacement of an employee, the performance of work of a temporary nature, increased short-term work needs), a link between the temporary nature of the employment contract and further education or training measures, the objective of facilitating a change workplace for the employee, the execution of specific projects or programmes or a pure link to the air transport sector and companies providing ground handling and airport services.

In any case, the justifications for renewing the fixed-term employment contract must be set out in the written agreement between the parties, a copy of which is received by the employee, unless the contract is of a temporary nature and has a duration of less than 10 days.

A fixed-term employment contract with an early termination clause applying the relevant laws on severance pay upon termination of indefinite-term employment contracts is automatically treated as an indefinite-term employment contract upon termination. In practice, this means that the employer can terminate a fixed-term contract even before it expires and does not have to pay severance if the employment relationship has lasted less than twelve (12) months. This period is to be considered a probationary period and does not give rise to any claim for severance pay in the event of termination.

2. Indefinite-term employment contract

An employment contract is of indefinite duration if the parties have neither agreed on a specific duration nor such duration is concluded from the nature and purpose of the work.

If an employment contract has been concluded for a fixed term but the employee continues to work for the employer after the expiration of the term, it is deemed that the contract has been duly converted into an indefinite-term employment contract. A fixed-term employment contract is also deemed to be of indefinite duration if the fixed term is not objectively justified, either by the nature of the work or by the employer's operational needs.

3. Flexible forms of work - part-time work

The most typical and widespread form of flexible work is part-time employment.

A part-time employee is defined as an employee with an employment contract or employment relationship whose working hours are calculated on a daily, weekly, fortnightly or monthly basis and are less than the normal working hours of a comparable full-time employee.

When drawing up the employment contract or during its term, the employer and the employee can agree in an individual written contract on daily, weekly, fortnightly or monthly work for a definite or in definite period of time that is shorter than the normal (part) working time.

Individual part-time employment contracts must be reported to the Labour Inspectorate within eight (8) days of its conclusion. Otherwise, it is considered to be a full-time employment relationship.

The employer must not unilaterally impose reduced working hours (fewer hours per day), and termination of the employment contract based on the fact that the employee did not accept the employer's proposal to work part-time is invalid. The employee's employment with fewer hours per day must be continuous, regardless of whether the enterprise works continuously every day or not. If the employee and the employer agree, a system of fewer hours per day and fewer days per week can be introduced, and if employment on a rotational basis is imposed unilaterally, daily employment must be full-time.

If there is a need for additional work beyond that agreed, the employee is obliged to perform it if he is able to do so and a refusal would be contrary to good faith. The part-time employee can refuse to perform additional work if it is systematically performed for the purpose of achieve reduced social security contributions or other benefits from the system applied.

In order to encourage employees to opt for part-time employment, a right for full-time employees to unilaterally convert their employment contract to part-time employment, with the possibility of returning to full-time employment, has been incorporated into the law. Specifically, a full-time employee in enterprises with more than twenty (20) employees has the right to request the conversion of his or her employment contract from full-time to part-time, with the right to return to full-time employment, after the end of one calendar year, unless the employer's refusal is justified by operational requirements. In order to make part-time work more attractive so that employees take it up voluntarily, the legislator has recognised the right of the part-time employee to priority employment in a full-time job by the same enterprise/employer.

If no agreement is concluded between a trade union and the employer, or if there is no trade union, a system of working hours arrangements can be introduced at the request of the employee and following an individual written agreement. In such working hours arrangements, full-time work shall be understood as working four (4) days per week. Termination of the employment contract on the grounds that the employee did not apply for a working hours arrangement is inadmissible. The right to flexible working hours refers to five or six working days for a forty (40) hour week and for longer periods.

4. Flexible forms of work – employment on a rotational basis

When drafting or during the term of an employment contract, the employee and the employer can also agree on any form of employment on a rotational basis by means of a written individual contract. Employment on a rotational basis is employment on only a few days per week, a few weeks per month, a few months per year or a combination thereof, during which the employee works full-time.

a) One-sided determination of employment on a rotational basis

If the employee's working hours are reduced/limited, the employer can, after prior consultation with the employees' legal representatives, also introduce a rotational work system in his enterprise for up to nine (9) months per calendar year instead of termination. Such arrangements shall be notified to the competent Labour Inspectorate within eight (8) days.

The introduction of employment on a rotational basis due to economic losses of the employer constitutes a substitute measure for the termination of employment contracts and can affect the entire workforce or only part of it (depending on the sector, specialisation, etc.). In any case, employees must be provided with comprehensive information on the company's financial situation beforehand. The company's situation must be such that the introduction of the rotational work system is justified. Only temporary liquidity squeezes, for example, do not justify such an introduction.

An employer's decision to introduce such a rotational work system can only be assessed by a court in terms of its unfairness. Moreover, since employment on a rotational basis is a milder method compared to termination, there must be no terminations during this period and any severance pay will not be calculated on the basis of the reduced income. In order to terminate an employment relationship, the employee concerned must first return to full-time employment. Therefore, severance pay is also calculated on the basis of the remuneration received for full-time employment.

b) Contractual employment on a rotational basis

If employment on a rotational basis has been agreed in individual contracts, these contracts must at least contain:

(a) the identity of the contracting parties,

(b) the place where the work is performed and the address of the enterprise or employer,

(c) the period of employment, the type of distribution and the working hours,

(d) the type of remuneration,

(e) if relevant, the conditions under which the contract may be amended.

According to the relevant laws, employment on a rotational basis is work provided on only a few days per week, a few weeks per month, a few months per year, or a combination thereof, where the employee works full-time. Employment on a rotational basis with reduced daily working hours is not possible. Normally, employment on a rotational basis is arranged in the manner of a rotation with another employee, but it can also occur otherwise. Complete rotation of employees in a working day is not a conceptual element of rotational employment. Employment on a rotational basis can nevertheless be agreed in any form, as designated by law, and is also possible in different combinations.