Memo: EU Posted Workers Regime in Cyprus

1 Introduction
1.1 The Posted Workers Enforcement Directive 2014/67/EU has been implemented in Cyprus by the enactment of law 63(I)/2017 (the “Law”) which is currently in full force.

1.2 The Law replaced legislation 137(I)/2002 which was the Cypriot implementation of EU Directive 96/71/EC and as such remains currently the single piece of legislation that governs and regulates the employment rules of posted workers in Cyprus.

2 Categories of worker

There is no distinction in the Law in relation to categories of employees that are caught by the legislation. As a result, the Law applies equally to all employees irrespective of their position.

3 Length of posting

3.1 Section 2(1) of the Law defines “posted” as an employee who has his/her usual place of work in a Member State and his employer decides to relocate him/her temporarily in Cyprus for the purpose of performing his/her work for a limited period of time.

3.2 Section 13(4)(i) of the Law specifies that the competent authorities in Cyprus will examine, amongst other criteria, the extent of the limited nature of the period of employment to determine the applicability of the Law and to detect instances of abuse of the posted workers legal framework.

3.3 It is therefore evident that if the nature of the employment becomes permanent then the employee will fall outside the scope of the Law.

4 Type of work

4.1 Section 4(2) of the Law specifies the types of work that fall within the scope of the legislation as follows:

4.1.1 employees who have been posted to Cyprus by their employer on a temporary basis and for a limited period of time to be seconded to a client or another business due to a contractual agreement between the foreign employer and the host business;
4.1.2 employees who have been posted to Cyprus by their foreign employer on a temporary basis and for a limited period of time to work in the premises or business that is part of the same group of companies with the employer; and

4.1.3 agency employees who have been posted to Cyprus by their foreign employer, in virtue of a contract to provide its services to the host business.

4.2 In all three cases above it is apparent that the worker must remain employed outside the host country for the whole duration of the posting in order for the Law to have applicability.

5 Legal control of worker

The worker must remain an employee/worker of their home country employer and must not become employed by the host. In relation to legal control as per section 4(2) there must be an established, contractual, employment relationship between the worker and the foreign employer at the time of the posting. As such the employee, taking into account the temporary nature of the secondment, must not become employed by the host company as that will automatically place him/her outside the scope of the Law.

6 What does the foreign employer firm and the domestic employer firm need to do?

6.1 According to section 11 of the Law, the foreign employer firm is required, prior to the arrival of the employee in Cyprus, to make a notification in writing (in English or Greek) to the competent authority (Ministry of Labour) and provide the following details:

6.1.1 name (or trading name), address (including head office details) and type of legal entity of the foreign employer;

6.1.2 details of the representative of the foreign employer and domestic employer (if applicable);

6.1.3 name, passport information, date of birth and job title of the posted worker;

6.1.4 the commencement date and the termination date of the posted worker;

6.1.5 details and nature of the work secondment; and

6.1.6 name (or trading name), address (including head office details) and type of legal entity of the domestic employer.

6.2 In addition, any changes/alterations of the above information during the period of employment must be communicated in writing to the Ministry of Labour within 15 days of the date the change/alteration took place.

7 Applicability for workers from outside the EU

7.1 The Law applies only to workers who are employed in another Member State.

7.2 However, it is worth mentioning that in the event of a non-EU employee who is working in another Member State and is posted to Cyprus then, in addition to the notification requirements set out in section 6 above, the employee must also ensure to apply for the relevant entry permit before his/her arrival to Cyprus in compliance with the relevant Cypriot immigration legislation.

7.3 In addition, section 4(4) of the Law stipulates that employers who are based outside the EU must not be receiving any preferential treatment in comparison to employers who fall within the remit of the Law.
8 Penalties for non-compliance

8.1 Criminal liability of any person who does not comply with the provisions of the Law (maximum imprisonment up to 2 years or maximum fine up to EUR50,000,00 or both);

8.2 criminal liability in cases of obstruction of a formal investigation by the Ministry of Labour (maximum imprisonment up to 3 months or maximum fine up to EUR3,000,00 or both); and

8.3 administrative fine up to €10,000,00 (increased to up to €20,000,00 if not first instance of non-compliance or additional penalty of up to €100,00 per day if fine not paid within deadline) in cases of non-compliance with the provisions of the Law.