

Logaras & Associates

**Commercial – Intellectual Property
Law 4864/2021: New regulatory
framework for strategic and private
investments & University spin-off
companies**

Newsletter

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Commercial – Intellectual Property

Law 4864/2021: New regulatory framework for strategic and private investments & University spin-off companies.

The regulatory framework for strategic and private investments, as well as for the establishment and operation of University spin-off companies has been recently reformed (Law 4864/2021, Government Gazette A' 237/02.12.2021) to meet the current investment and economic demands.

A. Strategic investments

By virtue of the new law, the existing provisions stipulated in Law 4608/2019 and Law 3894/2010, regulating strategic investments until recently, are now integrated in a consolidated instrument.

The objective of the new framework is to eliminate legal uncertainty caused due to the concurrent application and the overlapping provisions of the aforementioned laws and to create a more attractive investment environment to potential strategic investors.

To this end, **the definition of strategic investments is broadened** to encompass investments which *“due to their strategic importance for the national or local economy, are liable to enhance employment, the reconstruction of the production and the promotion of the natural and cultural environment of the country, according to the principles of collectively fair, inclusive, balanced and sustainable development, having as their main characteristic the attraction of investment capital, outward-looking activity and exports, innovation, competitiveness, integrated planning, conservation of natural resources in a circular economy perspective and high added value, in particular in areas of economic activities for internationally commercialised products or services”*.

The new regulatory framework is innovative in two ways. It reforms the categories of strategic investments by introducing i) **new investment activities** related to contemporary economic sectors and ii) **financial incentives** for specific categories of

strategic investments, - in addition to the tax and other incentives already provided for by the previous regime -, such as, fixed income tax rate and tax exemptions, fast-track licensing, aid and grants for the recruitment of specific categories of workers and for research and development projects, subsidies to cover the leasing and wages of the new jobs created etc.

The new regulatory framework specifies **five categories of strategic investments**:

- **Strategic Investments Type 1** with:
 - A total budget of more than EUR 75 million, or
 - A total budget of more than EUR 40 million contributing to the creation of at least 75 new annual work units (AWUs).
- **Strategic Investments Type 2**, including investments that meet at least one of the following conditions:
 - The total investment budget exceeds EUR 20 million and is related to the fields of agri-food, research and innovation, biotechnology, cultural and creative industries, robotics, artificial intelligence, medical tourism, waste management, space industry **or** the total investment budget exceeds EUR 20 million and is aimed at the digital transformation of the business or the provision of cloud computing services.
 - The total investment budget exceeds EUR 30 million and contribute to the creation of at least 50 AWUs.
 - They are realised within Clusters of Manufacturing and Business Activities,¹ have total budget of more than EUR 20 million and contribute to the creation of at least 40 AWUs.
- **Emblematic Investments of Outstanding Significance**, which may include, *inter alia*, investments promoting green economy, innovation, technology, as well as low energy and environmental footprint economy and enhance significantly Greek economy and competitiveness.
- **Strategic Investments of Fast-track Licensing**, which include investments falling into one of the following three cases:

¹ The term "Clusters of Manufacturing and Business Activities" encompasses Business Parks, Industrial Areas, Technopoles and other areas intended for the establishment of businesses.

- The total budget of the investment exceeds EUR 20 million and contributes to the creation of at least 30 AWUs.
- The total budget exceeds EUR 10 million and contributes to the creation of at least 30 AWUs, provided that the investment has already been classified as strategic and its development has been completed.
- Existing investments, whether strategic or not, aiming at the restructuring, update or expansion of facilities with a total budget of more than EUR 15 million provided that at least 100 AWUs are maintained.
- **Automatically Included Strategic Investments**, which may encompass:
 - Investments for the execution of works and/or the provision of services that fall within the competence of Public Institutions under Law 3389/2005² or investments for European Energy Projects of Common Interest with a budget of more than 20 million euros.
 - Strategic investments for the spatial organisation of enterprises, concerning the development of business parks, with a total budget of more than EUR 10 million.

Also, **the procedures for assessing and classifying investments as strategic are accelerated and simplified**, with the aim that the approval of investment projects should not exceed 60 days.

Private investments

Under the new law, the existing regulatory framework of the Greek Development Law 4399/2016 is further reformed.

A new industry-oriented aid scheme is introduced, while the schemes for large-scale investments and innovation are refined. Besides other prescribed incentives, grants are provided for more categories of investment projects, concerning, *inter alia*, the re-opening of industrial plants or activities related to the primary and manufacturing sectors.

² Law on partnerships between public and private sector.

In addition, investment assessment and control procedures are improved rendering them faster and more efficient, involving more parties from the private sector.

Finally, shorter time limits are introduced for the completion of the assessment of investment projects, so as not to exceed 60 days, as well as for monitoring of their implementation, to ensure greater flexibility and expediate the implementation and conclusion of investment projects.

B. University spin-off companies

Law 4864/2021 sets forth the regulatory framework for the incorporation and operation of **spin-off companies**, aiming to establish a comprehensive regulatory framework and to reform the existing provisions governing spin-off companies.

The term “spin-off company” indicates a **capital company** established by the academic or research staff (hereinafter “researchers”), members of national research organisations (Universities, research centers, University research institutes, science and technology parks, etc.), for the purpose of **commercial exploitation of the research findings and the knowledge** generated by the researches. In other words, it functions as the vehicle for interlinking intellectual property with the market, by contributing to the development of innovative products and services.

The **establishment of a spin-off company** requires the submission by the researchers concerned of an **application for establishment** to the University’s rector’s council or the board of directors of research centers and other research organisations. The latter deciding bodies approve, *inter alia*, the draft spin-off agreement, i.e. the agreement between the research organisation and the spin-off company to be established.

The decision on the establishment shall be adopted by said bodies **no later than four (4) months following the submission of the application**. Failure to do so, results in the tacit approval of the application. The founding partners shall establish the spin-off company **within six (6) months from the adoption of the approval decision**,

otherwise, a new application needs to be submitted. The law further provides for the possibility of setting up a **joint spin-off company** with the participation of several researchers from different research organisations.

Spin-off companies may have their registered seat in Greece or another Country, provided that they establish a branch, office or other establishment in Greece, recognised by the Greek tax legislation as a permanent establishment. They are allowed to transfer their registered seat after incorporation in another Country, on condition that a branch, office or other establishment recognised by the Greek tax legislation is maintained in Greece.

Spin-off agreement. The research organisation and the founding partners, acting on behalf of the company under establishment, shall sign the **spin-off agreement**, based on the draft agreement, within six (6) months from the adoption of the approval decision. The agreement enters into immediate force following the establishment of the spin-off company, which is automatically rendered party to the agreement. The agreement shall be of a fixed duration and, unless otherwise specified therein, it shall have a duration of ten (10) years and shall lay down, *inter alia*, the conditions for the exploitation of the organisation's intellectual property rights by the spin-off company, including the terms of licensing or transferring of the intellectual property rights in and to the research findings, the consideration to be paid by the spin-off company to the research organisation, as well as other fiduciary and information obligations, , etc.

Share ownership by researchers. The researchers may join the spin-off as founding partners or serve as members of the executive management of the company. Furthermore, any researcher, member of the organisation, may also conclude a work contract with the spin-off company for the purpose of carrying out specific research activities.

Share ownership by research organisations/third parties. Both the research organisation and third individuals or legal entities may become partners to the spin-off company, either at the time of its establishment, or at a later stage, by acquiring shares

from partners or by participating in any share capital increase. If investment holding companies join as third parties, a shareholders' or partners' agreement must be concluded with the rest of the partners of the spin-off company, specifying any restrictions on the transfer of shares to third parties, the right to information and veto rights, as well as the rights of the investor and the other partners in the event of a acquisition or dissolution of the company.

Spin-off companies may issue corporate bonds or convertible bonds according to the legislation governing the relevant type of spin-off company.

Incentives for the creation and development of spin-off companies. To promote the development of spin-off companies, the law provides that research organisations may use 0.5% of the funding they receive from the overheads of the total budget of the projects financed, as seed capital for their participation in spin-offs and/or the registration of the organisation's intellectual property rights in relation to the research findings.

Intellectual property rights on research findings. Unless otherwise specified in the relevant regulations of the research organisation, research inventions generated within the organisation shall be considered as “employee inventions” and the research organisation shall become the sole owner of the relevant patents.

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