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## **Safeguarding and Protection of Employees' Rights in the Case of Transfer of Undertakings, Businesses or Parts thereof**

## The Law

The Safeguarding of Employees' Rights in the Event of Transfers of Undertakings, Businesses or Parts of Undertakings or Businesses Law of 2000 (basic Law) came into force on 7 June 2000, with a subsequent amendment that came into force on 2 May 2003. Both the basic and amending Law are presented together in this Guide and are referred to as the Law.

## Scope

The Law applies to any transfer of undertakings or businesses or parts of undertakings or businesses to another employer as a result of a legal transfer or a merger. The Law applies to public and private undertakings engaged in economic activities whether or not they are for profit, or non-profit purposes.

The Law does not apply:

- in cases of administrative reorganisation of public authorities
- in cases of transfers of administrative functions within public authorities
- to sea-going vessels.

## Basic terminology

- *Transferee* means any natural or legal person who, by reason of a transfer, becomes the employer in respect of the undertaking, business or part of the undertaking or business.
- *Workers representatives* means the representatives of the employees provided by Law or practice.
- *Transferor* means any natural or legal person who by reason of a transfer ceases to be the employer in respect of the undertaking, business or part of the undertaking and business.
- *Employee* means any person who works for another person under a contract of employment, or apprenticeship or under such conditions that an employment relationship between employer and employee can be established.

## **Safeguarding and protection of employee rights**

The transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer shall, by reason of the transfer, be transferred to the transferee. Following the transfer, the transferee shall continue to observe the agreed terms and conditions of any collective agreement, on the same terms applicable to the transferor under that agreement or practice, until the date of the termination, or expiry of the collective agreement, or until the entry into force, or application of another collective agreement for a minimum period of one year.

The provisions above shall not apply in relation to employees' rights to old-age, invalidity or survivors' benefits, under supplementary company or inter-company pension schemes, other than those provided by the Social Insurance legislation. Employees however who at the time of the transfer are no longer employed by the transferor, shall retain their entitlements to such immediate and prospective rights and benefits, including old-age and invalidity schemes, survivors' benefits under supplementary company or inter-company pension schemes.

## **Dismissals**

The transfer of an undertaking, business or part of undertakings or business shall not of itself constitute grounds for the dismissal of an employee by the transferor or the transferee. Provided that this provision shall not prejudice the right of dismissals due to economic, technical or organisational reasons which require changes in the level of employment. Essentially, lawful dismissals may arise in cases where the transfer of undertaking results in redundancies, as provided for by Article 18 of the Termination of Employment Laws of 1967 to 2003.

If the contract of employment, or employment relationship, are terminated due to the fact that the transfer involves a substantial change in the terms of employment to the detriment of the employee, the employer shall be deemed to have been responsible for the termination of the contract of employment, or employment relationship.

## **Bankruptcy, liquidation or other insolvency proceedings**

The provisions of the Law relating to the safeguarding and protection of employees' rights shall not apply to a transfer of an undertaking, business or part of an undertaking or business when the transferor is the subject of bankruptcy, liquidation or other similar insolvency proceedings instituted for the purpose of liquidating the assets of the transferor under the supervision of a competent legal authority.

## Representation of employees

If, on transfer, an undertaking, business or part of an undertaking or business retains its autonomy, the status, representation and function of the representatives or of the representation of the employees affected by the transfer shall be preserved on the same terms and subject to the same conditions as existed before the date of the transfer by virtue of law, regulations, administrative provisions, collective agreements or practice.

This however shall not apply if the conditions necessary for the reappointment of the workers' representatives or for the reconstitution of the representation of the employees under existing laws, regulations, administrative provisions, collective agreements, or practice, or by agreement with the workers' representatives, are fulfilled.

Where the undertaking, business or part of an undertaking or business does not retain its autonomy, the transferor and the transferee shall take all necessary measures to ensure that the employees transferred will continue to be properly represented during the period necessary for the reconstitution or reappointment of the representation of employees in accordance with the Law or practice. If the term of office of the workers' representatives affected by the transfer expires as a result of the transfer, the representatives shall continue to enjoy the protection provided for by Laws, Regulations, collective agreements or practice.

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## Information and consultation

Both the transferor and the transferee shall inform the employees or their representatives in advance, before the transfer is effected and in any case the transferee shall give such information before the employees are directly affected by the transfer in relation to working conditions, as follows:

- the date of the proposed date of transfer
- the reasons of the transfer
- the legal, financial and social implications of the transfer with respect to the employees, and
- the anticipated measures to be taken in relation to the employees.

The obligations provided by this section shall apply irrespective of whether the decision resulting in the transfer had been taken by the employer or by an undertaking controlling the employer. Furthermore, in considering alleged breaches of information and consultation obligations provided by this Law, the argument based on the fact that the information was not provided by the undertaking controlling the employer, shall not be accepted as an excuse.

When the transferor or the transferee intend to alter the employment status of their employees, they are obliged to enter into consultation with the employees or the workers' representatives for these alterations in good time and with the purpose of reaching an agreement. The information and consultation shall cover at least the measures envisaged in relation to the employees and they shall take place promptly before the transfer.

## **Jurisdiction and penalties**

The Labour Disputes Court has jurisdiction over the settlement of disputes (of civil nature) that arise as a result of the application of this Law. Any employer who misuses an insolvency proceeding with the sole purpose of depriving employees of the rights provided for in this Law, shall be guilty of a criminal offence and shall be liable, on conviction, to a fine not exceeding the amount of €1.708 and to possible claims of compensation brought by every employee whose rights under this Law are affected.

Any employer in breach of any information and consultation requirements shall be guilty and shall be liable, on conviction, to a fine not exceeding the amount of €854.

## **Compensation in case of redundancies**

Redundancies effected in cases where the employment relationship is terminated either by the transferor or the transferee, for reasons other than economic, technical or organizational reasons entailing changes in the workforce, are illegal and the employee shall be entitled to compensation calculated in accordance with his/her years of service and the terms of employment existing in the transferor's undertaking, as provided for by the Termination of Employment Laws of 1967 to 2003.

Redundancies made as a result of a transfer before the transfer takes place are regarded as redundancies due to a transfer. In case an employer terminates the employment relationship for economic, technical or organisational reasons either before or after the transfer of the undertaking, the employee is entitled to such payment as provided for by the Termination of Employment Laws of 1967 to 2003.