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TRANSFER OF UNDERTAKINGS CZECH REPUBLIC

The Acquired Rights Directive (and its successor, the Transfer of Undertakings Directive) requires all EU member states to implement laws protecting employees who are affected by a transfer of a business. These protections apply when a business or its part is transferred (although generally do not apply to pure share sales). Although the member states have implemented the Directives with some minor variations (and some offer enhanced protections beyond the minimum requirements of the Directives), all require the transferor (typically the seller of the transferred business) and the transferee (the buyer) to share information and consult with affected employees, and provide protections for the affected employees against being dismissed or having their terms of employment altered as a result of the transfer. In some member states, these requirements are relaxed in insolvency scenarios.

1. **WHAT IS THE DEFINITION OF A RELEVANT TRANSFER?**
 - 1.1 In the Czech Republic, the protection of employees in the event of a transfer of undertakings is mainly regulated by Sections 338-342 of Act No. 262/2006 Coll., labour code (the “**Labour Code**”).
 - 1.2 Generally, when a relevant transfer occurs, the rights and obligations arising from the apt labour relations are transferred to the full extent to the new employer (the “**Transfer of Rights**”). The Transfer of Rights occurs when activities, or a part thereof, or tasks, or a part thereof, are transferred from one employer (transferor) to another employer (transferee).
 - 1.3 The term “tasks or activities of an employer” shall mean, in particular, those tasks related to providing production or services or similar activities pursuant to other statutory provisions that a legal entity or an individual performs in its/their own name and within its/their own responsibility in facilities or premises determined for such performance. A Transfer of Rights occurs irrespective of the legal grounds for such transfer and is irrespective of the fact of whether ownership rights are transferred. A person who is competent as an employer to continue in the performance of the tasks or activities of the former employer or in similar activities shall be regarded as the transferee.
 - 1.4 The definition is very broad in the Czech Republic and a Transfer of Rights may occur in many possible scenarios. In reality, it can be difficult to determine the limits of this definition. A Transfer of Rights occurs in the event of the transfer of a business, lease of a business, a merger or demerger (as is expressly stated by the Czech Civil Code), and can also occur in the event of the sale of an asset. These provisions go well beyond the minimum requirements of the Directive.
 - 1.5 The Transfer of Rights does not occur in the event of a transfer of shares, as the identity of the employer must change for there to be such relevant transfer.

2. **WHAT ARE THE MANDATORY INFORMATION AND CONSULTATION REQUIREMENTS?**

2.1 Before the effective date of a relevant transfer, both the transferor and the transferee are obliged to inform, sufficiently in advance (however no later than 30 days before the transfer), any relevant trade union organization or works council and consult with them with a view to reaching an agreement on the determined or proposed date of transfer, the reasons for such transfer, legal, economic and social implications for the employees and envisaged measures relating to the employees. There is no obligation to actually conclude any sort of agreement.

2.2 If neither the apt trade union organization nor works council operates as a business (undertaking) of the employer, the transferor and the transferee shall inform the employees who will be directly affected by the transfer of these facts in the same manner.

2.3 If the transferor and the transferee do not comply with this duty under para. 2.1., they could be subject to a fine of up to CZK 200,000. However, there is no administrative penalty for a violation of the duty under para. 2.2. Another possible consequence of a violation of these duties is the raising of claims by the employees for damages.

3. **CAN EMPLOYEES OBJECT TO THE TRANSFER AND, IF SO, WHAT ARE THE CONSEQUENCES?**

3.1 The objections of employees have no legal effect on such transfers. However, employees may terminate their employment due to the transfer at any time before the effective date of the transfer (regardless of how long they knew about the transfer). In such event, the employment ends on the effective date of the transfer.

3.2 When a notice of termination is given by an employee within two months following the effective date of the transfer or the effective date of the exercise of the rights and obligations arising from their labour relations (or if their employment was terminated by agreement within the same time-period), the employee may claim that the termination of their employment occurred due to a substantial deterioration of their working conditions pursuant to the Transfer of Rights. In this event, they can claim severance payment in the amount of 1-3 of their average monthly salaries (based on the duration of their employment).

4. **CAN THE EMPLOYER CHANGE TERMS AND CONDITIONS OF EMPLOYMENT FOLLOWING THE TRANSFER?**

4.1 The transferee has no special rights to change the conditions of employment after a relevant transfer. They are only entitled to change the terms and conditions of employment in the same manner that other similar employers generally do.

5. **WHAT PROTECTIONS DO AFFECTED EMPLOYEES HAVE AGAINST DISMISSAL?**

5.1 Transfers by themselves are not a valid reason for dismissal, but employees have no special protection in these cases. However, the Labour Code generally regulates the dismissal of employees very strictly. Dismissal can only occur based on the reasons specifically stated in the Labour Code, there is a mandatory two-month notice period and, in some cases, employees are entitled to severance payment (i.e. if the dismissal occurs for organisational changes).

6. **WHAT IS THE EFFECT OF TRANSFER ON THE COLLECTIVE STATUS OF EMPLOYEES (COLLECTIVE AGREEMENTS AND COMMON PRACTICES)?**

6.1 The rights and obligations conferred by collective agreements are transferred to the transferee for the period for which the given collective agreement is in effect, however, for no longer than until the end of the subsequent calendar year.

7. **WHAT IS THE IMPACT OF THE TRANSFER ON STAFF REPRESENTATIVES?**

7.1 The Labour Code contains no special provisions regarding this matter.

8. **PROPOSED AMENDMENT**

8.1 In recent years, there has been discussion regarding the amendment of the Labour Code. A proposal for such amendment was discussed in the Chamber of Deputies of the Czech Parliament in the previous electoral term, but it was not approved before new elections took place. The proposal has been re-submitted and is prepared for discussion by the current government. However, there has not been any news regarding this amendment for some time.

8.2 The proposed changes in the area of the Transfer of Undertakings are as follows:

8.2.1 The proposal aims to limit the broad definition of relevant transfers by setting several additional conditions that must be met for a Transfer of Rights to occur, such as that there needs to be an organized group of employees intentionally created by the employer for the sole or predominant purpose of carrying out certain activities or that such organized activity is not intended to be only short-term.

8.2.2 There is also a proposed alteration regarding the giving of termination notices. Currently, employees may terminate their employment at any time before a transfer. Under the new rules, termination notices would have to be submitted within 15 days from the date when the employee was informed of the transfer. If an employee was not informed 30 days prior to the effect of a transfer, their possibility of submitting a termination notice would persist for up to 2 months after the effective date of the transfer.

This material is for general information only and is not intended to provide legal advice.

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