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TRANSFER OF UNDERTAKINGS FINLAND

The Acquired Rights Directive (and its successor, the Transfer of Undertakings Directive) required all EU member states to implement laws protecting employees who are affected by a transfer of a business. These protections apply when a business 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 transferring 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 The Finnish Employment Contracts Act ("ECA", 26.1.2001/55) protects employees' rights where there is a "transfer of an undertaking" i.e. in the following scenarios:

1.1.1 A business transfer:

A transfer of a business refers to the assignment of an economic entity (an enterprise, a business, a corporate body or a foundation) or an operative part thereof to another employer, if the business or the part thereof to be assigned retains its identity after the transfer. This typically means a transfer of the business and its assets. When the assignment constitutes a business transfer, the rights and obligations and employment benefits related to them under employment relationships valid at the time of the assignment devolve to the new owner or proprietor.

1.1.2 A service provision change ("SPC"):

A service provision change applies to outsourcings, insourcings and changes of service provider where there was an organised grouping of employees carrying out the relevant activity pre-transfer and the transferor intends that the transferee will take over the activity on a continuous rather than one-off basis, for example when a municipality reassigns the previous service provider or takes back the activity as its own after the contract period has ended.

1.2 ECA applies in cross-border issues where the transferee is situated in Finland, or the transferred economic entity is situated in Finland immediately before the transfer and following the transfer. In the case of a service provision change, ECA applies also when there is an organised grouping of employees situated in Finland immediately before the change.

1.3 ECA generally doesn't apply to transfers of the entire share capital as only the owner of the company changes, not the employer. In addition, the identity of the employer must change

for there to be a relevant transfer. A change of form of a business or a merger is not considered a transfer of business, either. However, it *would* apply to an asset transfer carried out as a precursor to or following a share sale.

2. WHAT ARE THE MANDATORY INFORMATION AND CONSULTATION REQUIREMENTS?

2.1 There are no explicit regulations on the transferor's obligation to provide employee-related information to the transferee. However, the transferee and the transferor are jointly liable for employment claims deriving from the employment period up to and during the transfer. However, unless otherwise agreed, the assignor is liable to pay the assignee employee claims that have fallen due before the assignment. Thus, the transferor ought to provide the transferee all necessary personnel files and completed tax and social security records and all records required to be kept under the Finnish Working Hours Act (605/1996) electronically or via hard copy with due respect to the local laws and regulations.

Information and consultation requirements concern transferors and transferees that employ over 20 employees. If the transferor employs over 20 employees before the transfer and the transferee employs over 20 employees after the transfer, there is a dual requirement of information from both sides.

2.2 Both the transferor and transferee must inform the representatives of the affected personnel groups with available information. This includes the time or intended time of transfer, the reasons for transfer, the transfer's legal, economic and social consequences to the employees, and the planned measures regarding the employees. The transferor shall provide the representatives of the personnel groups with the relevant information within a reasonable time before the transfer, considering, for example, the length of time between the decision and execution dates of the transfer. The transferee shall provide the same information to the representatives of the personnel groups within one week after the date of the transfer.

2.3 After providing the relevant information to the representatives of the personnel groups, the transferee must consult the employees by providing them an opportunity to ask further questions, and by answering to the questions posed. On request of the representatives of the personnel groups, the employer must present the information to the entire personnel of the undertaking in accordance with the principles and practices of the undertaking's internal communication. The transferor does not have the same obligation to consult the personnel.

2.4 In case the transferee intends to make redundancies or other personnel-related changes after the transfer, the proposed measures must be subject to another cooperation procedure.

2.5 If either the transferor or transferee fails to comply with the mandatory information and consultation requirements, it shall be imposed a fine for a violation of the cooperation obligation. The liability in the event of a breach of the duty to cooperate belongs to the employer who was responsible for the information and consultation duties.

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

3.1 The employees do not have the right to object to the transfer of business itself and remain employed by the transferor, but the employees have the right to terminate their contracts of employment. This applies also to fixed-term employment contracts, so the employee's right to terminate his or her employment is irrespective of the length of the regular notice period. If an employee is informed of the transfer at least one month before the date of the

transfer, the employment will end on the date of the transfer. If an employee is informed of the transfer later than one month before the date of transfer, the employment will end either on the date of the transfer or one month after being informed of the transfer.

- 3.2 If the new employer unilaterally seeks to impose new terms or working arrangements which are materially detrimental to the employees and the employee terminates his or her employment, the new employer is responsible for the termination of the contract. In case law, this has been interpreted so that the transferee is obliged to compensate the employee for the wages and other employment benefits for the duration of the period of notice required by the new employer. It is also possible that the new employer must pay compensation for unjustified termination of the employment contract.

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

- 4.1 The transferee takes on the transferring employees on their existing terms of employment. The new employer and the employee can agree together on changes to the employee's contract. The new employer can make unilateral changes to the transferred employee's terms only in limited circumstances. Changes to terms of employment will be void if the sole or principal reason for the change is the transfer itself, unless either:

- the reason for the variation is a valid Economic, Technical or Organisational reason (an 'ETO Reason');
- the new employer has other weighty reasons for dismissal or grounds for termination of employment; or
- the reason for the variation is the transfer, but the terms of the employee's pre-existing contract permits the employer to vary the employee's terms and conditions.

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

- 5.1 ECA provides employees with enhanced protection against dismissal. This protection is granted irrespective of the length or the quality of the employment.
- 5.2 If the new employer's sole or principal reason for the dismissal is the transfer itself, the employee's dismissal will automatically be deemed unfair.
- 5.3 However, if the employer can show that the reason for dismissal is an ETO reason entailing changes in the workforce (numbers, functions or location), then the dismissal will instead be potentially unfair.
- 5.4 To defend a claim for unfair dismissal where there is a valid ETO reason, the employer must also show that the dismissal was procedurally and substantively fair.

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

- 6.1 The transferee is obligated to comply with the collective agreement that is binding on the transferee until the end of the collective agreement period. Terms and conditions in new collective agreements, or changes to existing ones, may be incorporated into individual contracts of employment with the employee's consent. The transferee is not entitled to unilaterally change essential terms of employment in connection with a transfer of business without legal termination grounds. However, the transferee is obligated to harmonise the

terms of employment with its existing workforce pursuant to the principle of equal treatment.

6.2 After the end of the collective agreement period, the new employer can apply a collective agreement binding on the new employer to the employee. The new employer and the employee can also agree otherwise.

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

7.1 The staff representatives' representation and status shall remain the same as before the transfer until the end date of the collective agreement if the economic entity or part thereof retains its identity. For instance, if they are dismissed and the dismissal is chiefly related to their role as representative, the dismissal will be deemed to be automatically unfair.

7.2 The representatives must have access to such facilities as is appropriate for them to carry out their function. They also have a right to reasonable time off with pay during working hours so that they can dedicate time to their duties as representative.

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