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TRANSFER OF BUSINESS FRANCE

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 / WHEN DOES TUPE APPLY?**

- 1.1 According to article L. 1224-1 of the Labor Code : "When a change occurs in the legal position of the employer, particularly by succession, sale, merger, transformation of the fund, incorporation of the company, all the work contracts in progress on the day of the modification remain between the new employer and the personnel of the company".
- 1.2 Article L. 1224-1 of the Labor Code thus contemplates the pursuit by the new employer of employment contracts in progress, particularly in the event of succession, sale, merger, transformation of the fund, incorporation. This list is not exhaustive, the case law has clarified the scope of this text and has extended it to other operations.
- 1.3 Like the European Community case law, the Court of Cassation readily acknowledges the transfer of undertakings if the transfer concerns an autonomous economic entity whose identity is maintained with the continuation or resumption of the activity of that entity by the transferee.
- 1.4 The Court of Cassation further conditions the recognition of a transfer at the meeting of the following two criteria: the transfer of a group of persons and the transfer of tangible elements (buildings, workshops, land, equipment, material, inventories, tools, etc.) and / or intangibles (customers, brands, leasehold rights, etc.) allowing the pursuit of an economic activity that pursues a specific objective.

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

- 2.1 In the presence of staff representatives, the transfer of business is preceded by information-consultation of the social and economic committee (both on the side of the transferee and the transferor).
- 2.2 The consultation must therefore precede the transfer. It must even precede the legal operation leading to the transfer. Thus, the Court of Cassation has decided that in case of

merger, the consultation of the staff representatives should intervene before the holding of the board of directors to stop the proposed merger.

2.3 Article L. 1224-1 of the Labor Code does not require the employer to inform each employee individually of the transfer of the business (even if it is customary to do so).

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

3.1 French law does not recognize the employee's right to oppose his transfer. An employee can not demand the continuation of his employment contract with the transferor nor force him to dismiss him. When the transfer can not be imposed on employees (in that the legal conditions are not met) and results from the application of an agreement, the employees then benefit from a right of option.

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

4.1 According to Article L. 1224-1 of the Labor Code, employees holding an employment contract at the date of transfer and assigned to the transferred economic entity benefit from the automatic transfer of their employment contracts. The employment contract continues with the new employer under the conditions in force at the transferor's office at the time of the transfer: qualification, contractual remuneration, seniority rights, paid leave entitlements, bonus, notice period, severance pay. The new employer can not take advantage of the transfer to force employees to make substantial changes to their employment contracts.

4.2 The principle of the continuation of the employment contract under the conditions in force in the previous employer does not preclude the new employer from making changes to the contract, at least if the employee accepts it (his agreement is obligatory). The proposed amendment can not, however, be intended to circumvent the public policy provisions of Article L. 1224-1, which would constitute a misuse of procedure.

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

5.1 The transfer automatically entails the maintenance with the new employer of the employment contracts attached to it. Except where otherwise provided by law, it renders null and void any dismissal pronounced by the transferor on the occasion of the transfer (the employee may then ask the new employer for the continuation of his employment contract which is supposed never to have been broken).

5.2 The application of Article L. 1224-1 of the Labor Code does not prevent the new employer from making dismissal for economic reasons or for personal reasons after the transfer. Judges shall ensure that the use of dismissal does not constitute an abuse of procedure designed to frustrate the transfer of employment contracts. Such dismissals would be unfair.

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

6.1 The collective status (collective bargaining agreement) of transferred employees is impacted on the occasion of a transfer. This status then continues to have effect until the entry into force of the one that is substituted for it or, failing that, for one year from the expiry of the period of notice of 3 months (ie within a period of 15 months). After this period, in the absence of a new agreement, transferred employees benefit from a guarantee of remuneration with regard to lost benefits.

6.2 The transferee shall comply with the collective status of transferred employees for one year from the expiry of the period of notice of 3 months (ie within a period of 15 months), in the absence of conclusions of a substitution agreement.

6.3 Employees of the transferred entity whose employment contract is in effect at the time of the transfer, excluding those hired subsequently, may avail of the common practices of the former employer on the day of the transfer. The transferee will have to apply it (although it can be terminated later).

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

7.1 In the case of a transfer involving the whole of the company, or what is known in France as an autonomous establishment ("établissement distinct"), the staff representatives retain their office if the transferred entity retains its autonomy. In addition, the transfer of their employment contracts to the new employer takes place automatically, by the effect of Article L. 1224-1, without any specific formality.

7.2 Failing this, the offices end on the date of the transfer. Nevertheless, their holders benefit from the protection attached to the quality of former staff representatives (for a variable number of months) and can not be dismissed without authorization from the labor inspectorate.

7.3 Furthermore, if a staff representative is included in a partial transfer of a company or establishment, pursuant to Article L. 1224-1, the transfer of the person concerned is subject to the prior authorization of the labor inspectorate. If the transfer authorization is refused, the employer must keep the employee in his service and offer him a similar job with an equivalent remuneration in another establishment or part of the company.

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

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