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## TRANSFER OF UNDERTAKINGS POLAND

### 1. WHAT IS THE DEFINITION OF A TRANSFER OF UNDERTAKING?

1.1 In accordance with article 23 (1) of the Polish Labour Code, where an employing establishment or a part thereof is transferred to another employer, such employer shall, by operation of law, become a party to the previous employment relationship. Polish regulations do not contain an express definition of transfer of an undertaking. In accordance with Polish jurisprudence, article 23(1) of the Polish Labour Code applies in the following scenarios:

#### 1.1.1 A business transfer:

A transfer of a business or undertaking (or part of a business or undertaking) where there is a transfer of an economic entity that retains its identity – typically a transfer of the business and its assets.

#### 1.1.2 A service provision change ("SPC"):

Article 23(1) of Polish Labour Code might apply to outsourcings, insourcings and changes of service provider where there was an organised group 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. However, it must be noted that each case must be analysed individually as to whether it should be treated as a transfer of undertaking.

1.2 Article 23(1) of Polish Labour Code, as a rule, doesn't apply to transfers of shares, as the identity of the employer must change. 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 Both the transferor and transferee are required to inform the trade unions or, if there are no trade unions, their respective employees of the following:

- the proposed date of the transfer,
- the reasons for the transfer,
- the legal, economic and social implications of the transfer for the employees, and of any envisaged measures affecting the conditions of their employment, in particular the conditions of work, remuneration and retraining.

The aforementioned information must be provided at least 30 days before the planned date of the transfer of the undertaking or a part thereof.

- 2.2 It must be noted that, where there are active trade unions and the current employer or new employer envisages measures concerning terms and conditions of employment of the affected employees, he is obligated to initiate negotiations with the trade unions in order to conclude an agreement in this respect, not later than 30 days after providing information on the intended measures. Absent agreement, the employer may take the intended measures autonomously, but he must take into consideration the conclusion of the negotiations.

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

- 3.1 Although employees cannot prevent the transfer going ahead, an individual employee is entitled to terminate her/his employment without observing a period notice, upon prior notification 7 days in advance, within 2 months after the date of the transfer. This procedure for employment termination has the same effects for an employee as termination of employment by the employer with notice under applicable provisions of Polish labour law.

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

- 4.1 The transferee takes on the transferred employees on their existing terms of employment, and is not allowed to unilaterally change the terms and conditions of employment if the sole or principal reason for such change is the transfer itself.
- 4.2 However, it must be noted that the transferee may change the terms and conditions of employment because of organisational, economic and technical reasons. In addition the parties are entitled to change the terms of employment by entering into mutual agreement.

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

- 5.1 Transfer of an undertaking or any part thereof may not, in itself, constitute grounds for termination of employment by an employer. An employee may appeal to a labour court against such termination. The labour court may, on the basis of the employee's claim, declare the notice of termination ineffective, and if the employment has already been terminated, the labour court may order that the employee be reinstated under the previous terms and conditions or that compensation be awarded to the employee.
- 5.2 However, it must be noted that, as in the case of change of terms and conditions of employment, the employer may terminate employment because of organisational, economic and technical reasons.

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

- 6.1 Within one year from the date of transfer of an undertaking or a part thereof to another employer, the provisions of any collective agreement binding prior to that transfer continue to apply to employees unless separate regulations provide otherwise. An employer may apply more favourable conditions for employees than those arising from the agreement.

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

- 7.1 In general, in accordance with Polish employment regulations, due to the fact that trade unions have a very extensive autonomy, trade union active in transferor can carry out their function. It might be necessary to amend statute of trade union.

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

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