

August 2019

## TRANSFER OF UNDERTAKINGS SWEDEN

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 it is not applicable to a pure share sale in Sweden. Although the member states have implemented the Directives with some minor variations (and some offer enhanced protections beyond the minimum requirements of the Directives), most member states require the transferor (typically the seller of the transferring business) and the transferee (the buyer) to share information and consult with affected employees and relevant trade unions. The new employer must also under mandatory law provide protections for the affected employees against being dismissed or having their terms of employment altered as a result of the transfer.

### 1. WHAT IS THE DEFINITION OF A RELEVANT TRANSFER / WHEN DOES TUPE APPLY?

1.1 Section 6 b in the Swedish Employment Protection Act regarding Transfer of Undertakings apply 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"):

This applies (with limited exceptions) to outsourcings, insourcing 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.

1.2 TUPE applies in cross border issues where the "economic entity" is situated in Sweden immediately before the transfer and, in the case of a service provision change, where there is an organised grouping of employees situated in Sweden immediately before the change.

1.3 TUPE does not apply in Sweden to transfers of shares, as the identity of the employer must change to be a relevant transfer. 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 the transferee must inform and consult with relevant trade union(s). If the transferor and the transferee are bound by the same Collective Bargaining Agreement (CBA) it is only necessary to consult with the trade union(s) bound by the CBA.

If no CBA is applicable the transferor and the transferee must consult with all trade union(s) that have members affected by the transfer. It is possible for the transferor to terminate a CBA due to the transfer of business, giving 30 days of notice.

- 2.2 The duty to consult with the trade union(s) includes both the transfer of employees and any redundancies that may follow.

- 2.3 The transferee can only make the transferred employees redundant after the transfer is completed. The transferor can make employees redundant before the transfer of business due to Economic, Technical or Organisational reasons (an 'ETO Reason'). Same rules about collective redundancy in Sweden applies in both cases.

- 2.4 If the transferor or transferee fails to comply with the information and consultation duties, each trade union(s) are entitled to claim punitive damages up to EUR 14000.

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

- 3.1 Although the employees cannot prevent the transfer going ahead, individual employees can object to their employment being transferred. If so, their employment is not transferred, and instead they have a risk of being terminated due to redundancy in accordance with mandatory Swedish law. Ordinary rules in case of a collective redundancy will apply.

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

- 4.1 The transferee takes on the transferring employees on most of their existing terms of employment for 12 months and can only make changes to their terms if the employee is offered another position.

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

- 5.1 TUPE does not provide employees with any enhanced protection against dismissal in case of redundancy or ground for personal reasons. The new employer has the same possibility to terminate employees as the previous employer.

- 5.2 Employees terminated for the sole or principal reason of the transfer itself can claim an unfair dismissal.

- 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), the employer will have due cause for termination.

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

- 6.1 Terms and conditions in new collective agreements, or changes to existing ones, may be incorporated into individual contracts of employment but this is to be agreed in the consultation process before the transfer.

6.2 After one-year post-transfer, the new employer may vary individual terms that stem from a collective agreement or earlier if the position is changed.

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

7.1 The TUPE implementation in Sweden does not provide any specific protection for staff representatives, instead mandatory Swedish law provides that protection in Law (1974: 358) on the Position of Trade Union Representatives at the Workplace.

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

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